News and Notes from

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32ND ANNUAL ITA WORKSHOP AND ANNUAL MEETING – ONLINE ARBITRATION HEARING: ETHICAL CHALLENGES AND OPPORTUNITIES

Giammarco Rao
Associate at Mistelis and Haddadin

On June 17-18, 2020, the Annual ITA Workshop was held virtually for the first time since its creation in 1989. Due to the current COVID-19 international crisis, the ITA decided to develop an innovative, abbreviated virtual Workshop for online presentation. To inaugurate this new series of online events, the ITA focused on a very sensitive topic for the international arbitration community at the moment, which is the relationship between ethics and virtual hearings.

A. The Young ITA Roundtable on June 17

On June 17, 2020, ITA Chair **Joseph E. Neuhaus** (Sullivan & Cromwell LLP, New York) introduced the first virtual ITA Workshop. His introduction pointed out the challenges that the current historical situation is facing. Following the death of George Floyd, the world is called again to address racial discrimination and unfairness. In particular, Mr. Neuhaus pointed out how the international arbitration community should make even more efforts to address these issues as well. He mentioned that such efforts should be made at different levels. For example, the appointment of more black women and men as arbitrators would significantly improve diversity. If these efforts are made, he noted, then the international arbitration community will contribute to the historic change that will follow the death of George Floyd.

Following Mr. Neuhaus' introduction, Chair of the Young ITA, **Robert Reyes Landicho** (Vinson & Elkins LLP, Houston), welcomed the participants to the Young ITA Roundtable. He then introduced a mock pre-hearing conference, in which **Thomas Innes** (Steptoe & Johnson London) – for Claimant – and **Jawad Ahmad** (Mayer Brown, London) – for Respondent – discussed the possibility of moving online a hearing of an arbitration under the 2017 ICC Rules, seated in Paris.

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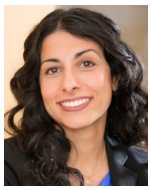
ITA-ASIL CONFERENCE

Lucy Winnington-Ingram
Associate at Reed Smith LLP (London)

On June 24, 2020 the 2020 Virtual ITA-ASIL conference took place. The subject of the conference was an update on UNCITRAL Working Groups II and III in the form of an interview with UNCITRAL Legal Officer and Secretary of Working Group III, Corinne Montineri.

Introducing the conference, Senior Vice Chair, **Tom Sikora,** identified the ongoing reforms to the investor-State dispute settlement ("ISDS") system as being of the utmost importance to the continued effectiveness of the promotion and protection of investments. This is of particular importance when international legal norms are being replaced by a shift towards a more multi-polar world in which international law is often disregarded. Mr. Sikora described the present as a "watershed moment" highlighting the importance of the work of the international legal community to defend a rules-based system for the settlement of international disputes.



This sentiment was echoed by the President of ASIL, **Catherine Amirfar,** who noted that the theme for 2020 was the "promise of international law." This invites us to reflect on the successes and failures of international law, whilst reaffirming its commitment to achieving its promise of a more just and peaceful world. We are in a pivotal moment of global affairs inviting us to come together as a global community to take action.

The interview was conducted by the Chair of the Academic Counsel of the ITA, **Professor Chiara Giorgetti.**

Starting with Working Group II (Arbitration and Conciliation / Dispute Settlement), which is presently focussed on reforms for the expedition of commercial arbitrations, Professor Giorgetti asked Ms. Montineri for further details of the project and the discussions which took place at the last meeting of Working Group II in February 2020.

In response, Ms. Montineri began by explaining the background to Working Group II, noting that it had been active for the past 20 years. Its previous reform projects have included the revision of the UNCITRAL Model Law on International Commercial Mediation and the creation of the first model law on mediation (the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation). Following its work on mediation, the current focus is on improving the efficiency of commercial dispute resolution procedures. Reforms aimed at streamlining the process (both in respect of time and costs) must, at the same time, be carefully balanced against the need to guarantee due process and fairness.

Working Group II's intention is to develop expedited arbitration provisions that will provide for the expedited resolution of disputes ("UNCITRAL Expedited Rules"). These will be rules, rather than guidelines, which could be annexed to the UNCITRAL Arbitration Rules or serve as standalone provisions which cross-reference to the UNCITRAL Arbitration Rules.

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Robert Landicho


Thomas Innes


Jawad Ahmad


Stephanie Cohen

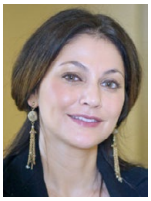

Anna-Maria Tamminen


Joseph Chedrawe

The mock pre-hearing conference was arbitrated by **Stephanie Cohen** (Independent Arbitrator, New York), **Anna-Maria Tamminen** (Hannes Snellman, Helsinki), and **Joseph Chedrawe** (Vinson & Elkins LLP, Dubai), who acted as members of the Arbitral Tribunal.

The Claimant argued that the hearing should go forward to ensure fairness and efficiency. To the contrary, Respondent argued that if the hearing were conducted online, there would be a breach of due process. In particular, it was pointed out that the need for translation for two out of four witnesses might have an impact on the Respondent's ability to present its case virtually. After a careful discussion on the views of the parties, the Tribunal agreed that the different concerns put forward could be taken care of in the procedural order, for example, by using the ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic. Accordingly, the Tribunal decided that the hearing could move forward.

Following the mock pre-hearing conference, **Marike R.P. Paulsson** (Senior Advisor, Albright Stonebridge Group, Bahrain) moderated a discussion between experienced young practitioners. The speakers included **Sue Hyun Lim**, (Secretary General, Korean Commercial Arbitration Board, KCAB INTERNATIONAL, Seoul) **Alexander Leventhal** (Quinn Emmanuel, Paris, France), **Vinicius Pereira**, (Campos Mello Advogados in association with DLA Piper, Rio de Janeiro), and **Sylvia Sámano Beristain** (Secretary General, Arbitration Center of Mexico, Mexico City).


Marike Paulsson


Sue Hyun Lim


Alexander Leventhal


Vinicius Pereira


Sylvia Sámano Beristain

*(See **ANNUAL ITA WORKSHOP**, page 4)*

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Ms. Montineri noted that certain practical difficulties have arisen out of the ad-hoc nature of the UNCITRAL Arbitration Rules, meaning that arbitrations conducted pursuant to them are not necessarily administered by an institution which can determine whether a dispute should instead be governed by the UNCITRAL Expedited Rules. As such, at this stage, it is anticipated that the UNCITRAL Expedited Rules will apply on a consent basis (rather than by reference to any financial or other metric).

As a further practical point, Working Group II has also considered how parties to a dispute conducted under the UNCITRAL Expedited Rules might revert back to the UNCITRAL Arbitration Rules should the Expedited Rules prove to no longer be appropriate. This could be effected by way of a joint request by the parties to the tribunal, or by way of a decision of the tribunal on the request of just one party. In these circumstances, the existing tribunal would remain in place unless the parties jointly decided to appoint a new tribunal.

Ms. Montineri noted that these practical difficulties will likely be addressed by some form of non-binding guidance that will set out recommendations for when the UNCITRAL Expedited Rules should apply. For example, by reference to factors such as urgency and the value of the claim.

Finally, Ms. Montineri noted that pursuant to the UNCITRAL Arbitration Rules there is a mechanism for designating an appointing authority, which is the Secretary General of the Permanent Court of Arbitration. This procedure may not be appropriate for expedited arbitrations as it may take too long, so Working Group II is also considering how a shortcut for the appointment of an arbitrator could be put in place under the UNCITRAL Expedited Rules.

In response to a follow-up question from Professor Giorgetti on any developments following the February 2020 meeting, Ms. Montineri confirmed that Working Group II had reached an advanced stage in their discussions, including in relation to what the provisions should cover and how they should be drafted. Since then, the Secretariat has been working on developing a working paper on the reforms to include the substance of the February 2020 discussions. The next meeting of Working Group II occurred from 21 to 25 September 2020.

In a final question on Working Group II, Professor Giorgetti asked Ms. Montineri what could be expected from the next meeting in September 2020.

Ms. Montineri responded that the next step will be to hold the session of the Commission which took place in July 2020. The meeting in September was still planned to go ahead in Vienna, but it is not yet known what format it will take. Working Group II is presently undertaking a "silent procedure" where it puts forward proposals to the Member States for their input and further discussion. If the Member States remain silent on those proposals, then they will be adopted. Further information will be published on the UNCITRAL website in due course about how Working Group II intends to move forwards.

In response to a question from the audience on how the UNCITRAL Expedited Rules were likely to differ from the ICC Expedited Procedure Provisions, Ms. Montineri noted that there would be a number of commonalities. One big difference is that there is a financial threshold above which the Expedited Procedure Provisions may not apply. This is something that Working Group II has decided not to include for the UNCITRAL Expedited Rules.

Moving to the role of Working Group III (Investor-State Dispute Settlement Reform), Professor Giorgetti noted that the options for reform proposed by Working Group III are numerous and encompass a wide range of systemic and non-systemic issues. Whilst the meeting planned for the end of March 2020 has had to be postponed, many of these issues were the subject of the discussions at the previous two meetings in October 2019 and January 2020, and the discussions appear to have gathered momentum since then.

Ms. Montineri noted that there was a wide-ranging consensus amongst States that reform was needed and numerous proposals were submitted to Working Group III. Once received, the first task was to group the various proposals and prepare a coherent roadmap for discussion. The roadmap has three levels. The first looks at alternative dispute resolution ("ADR"), first instance procedures (e.g. State-to-State, investment arbitration, the proposal for an EU investment court, domestic courts, etc.), and support to parties (e.g. around dispute prevention and advisory centres). Then at the next level sit the appellate procedures (e.g. State-State appeal, the creation of a standing appellate body / appeal mechanism, an appellate instance investment court, and mechanisms under the ICSID Convention). On the third level, there are more wide-reaching issues such as treaty interpretation, State control and substantive standards.

Each of these proposals also gives rise to its own sub-set of issues which States have indicated to be of general interest. These include: third-party funding, security for costs, claims for reflective loss, the dismissal of frivolous claims, future treaties, a code of conduct for adjudicators, counterclaims, the calculation of damages, and denial of benefits provisions.

One of the key issues of those identified above has been the creation of a code of conduct for adjudicators in ISDS. Working Group III is currently inviting comments on its Draft Code of Conduct for Adjudicators in Investor-State Dispute Settlement, published in May 2020 ("Draft Code of Conduct"). In addition to the Draft Code of Conduct, there have been further discussions around third-party funding and its regulation, although Ms. Montineri stressed that Working Group III wanted to remain consistent with what ICSID was doing in this regard.

Commenting on the Draft Code of Conduct, Professor Giorgetti noted that it was interesting to see ICSID and UNCITRAL working together, and that the Draft Code of Conduct addresses a number of key criticisms of the ISDS system including issue conflict, multiple appointments and double-hatting.

Ms. Montineri responded that the Draft Code of Conduct is intended to work across the whole framework of ISDS. Working Group III will need to see whether it will need to be adjusted so that it can be applied across these different types of proceedings. The Draft Code of Conduct touches on traditional issues, as well as new ones such as "double-hatting" and multiple appointments. It is important for practitioners to be able to review the Draft Code of Conduct and provide their comments on whether it is feasible. That is why a number of provisions have square brackets leaving room for discussion on those particular proposals.

Turning to a different issue under consideration, Professor Giorgetti next asked where Working Group III stood on the appellate mechanism. Ms. Montineri responded by noting that a second paper was published on this in January 2021. At this stage, Working Group III is still engaged in preliminary discussions; the focus is on what the elements of any appeal mechanism might be regardless of the ultimate form any mechanism might take. For example, Working Group III has been looking at possible grounds for appeal, including whether these should include ICSID annulment grounds and/or grounds under domestic law. Also under consideration are the types of decisions which may be open to appeal – for example, would any appeal mechanism extend to provisional measures or disqualification decisions? The question of form has not yet been considered, but future discussions will take into account lessons learn by other institutional bodies.

*(See **ITA-ASIL CONFERENCE**, page 4)*

*(Cont'd from **ANNUAL ITA WORKSHOP**, page 2)*

The panel focused on recent developments in international arbitration in their respective jurisdictions. The panel touched upon recent developments in the international investment treaty regime and potential claims arising out of COVID-19 related measures. For example, it was noted that in May 2020, most European Member States signed an agreement for the termination of Intra-EU Bilateral Investment Treaties. On another note, it was pointed out that the United States-Mexico-Canada Agreement would be entered in force on July 1, 2020.

The panel also discussed several issues relating to cybersecurity issues, witness testimony, reduction of costs, and technological solutions with respect to virtual hearings. For instance, it was noted that cybersecurity issues exist regardless of whether the hearing is virtual or not. After all, many aspects of arbitration proceedings, such as filing the parties' submissions, have been dealt with virtually for many years. Interestingly, on witness testimony, it was suggested that the presence of a "guard" in the room with the witness might be a solution to ensure that the witness would not be reading answers.

B. The 32nd Annual ITA Workshop - Welcome

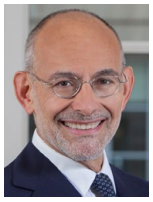
On June 18, 2020, the ITA Chair, **Joseph E. Neuhaus** (Sullivan & Cromwell LLP, New York) and **Dominique Brown-Berset** (Brown & Page, Geneva) welcomed the participants on behalf of the ITA. Before leaving the "screen" to Ms. Brown-Berset, Mr. Neuhaus expressed the support of the ITA to the initiative of Nancy M. Thevenin and Katherine Simpson to promote greater diversity in international arbitration and respond to the perceived shortage of African American arbitrators in the U.S. Their initiative could be found at CAILAW. Then, Ms. Brown-Berset's personable introduction of the Keynote Speaker, **Justin D'Agostino** (CEO, Herbert Smith Freehills, Hong Kong) set the tone for the first virtual ITA Workshop and Keynote Address.

His address was then followed by an interactive panel discussion introduced by **Loukas Mistelis** (School of Law, Queen Mary University of London) and moderated by **Sylvia Noury** (Freshfields Bruckhaus Deringer LLP, London). In the panel, **Gabriel Costa** (Managing Counsel Litigation - Latin America & Caribbean, Shell Brasil LTDA, Rio de Janeiro), **Elie Kleiman**, (Jones Day, Paris), **Carlos Lapuerta**, (The Brattle Group, London), **Lucy F. Reed** (Arbitration Chambers, Hong Kong/London/New York), and **Larry Shore** (Bonelli Erede Pappalardo Studio Legale, Milan) discussed the different issues put to them by Sylvia Noury.


Loukas Mistelis


Sylvia Noury


Gabriel Costa


Elie Kleiman


Carlos Lapuerta


Lucy Reed


Laurence Shore

*(See **ANNUAL ITA WORKSHOP**, page 5)*

*(Cont'd from **ITA-ASIL CONFERENCE**, page 3)*

Moving to the topic of a multilateral instrument on ISDS reform, Professor Giorgetti asked if such an instrument would incorporate a menu of options allowing contracting States to pick and choose provisions.

Ms. Montineri responded that the idea is to show that the reforms are consistent in that there are core elements that all States can adopt. Beyond those core elements, there will be options that States may decide to adopt. Ms. Montineri likened this to the UN Convention on the Law of the Sea, which allows contracting parties to choose certain options, for example specifying the forums for dispute settlement that they will accept. Working Group III is aiming for consistency and flexibility, but it is important to avoid over-complication and fragmentation.


Dr. Crina Baltag

The conference next moved to its audience question and answer portion, with questions from the audience being put to Ms. Montineri by **Dr. Crina Baltag,** Senior Lecturer in International Arbitration at Stockholm University. The first question concerned the nature of any reforms presently contemplated in the area of ADR and dispute prevention, including mediation.

Ms. Montineri noted in response that some States had been very active at a local level in looking at dispute prevention. Certain institutions have likewise developed models aimed at dispute prevention. Further discussion and consultation was required in order to identify what is missing from the current system and what any future reforms should focus on.

In the final question of the day, Dr. Baltag noted that one of the criticisms of the Draft Code of Conduct, specifically the proposed prohibition against double-hatting, is that it could negatively impact diversity and, as such, it was asked whether Working Group III had discussed how to address the issue of diversity as part of the proposed reforms.

Ms. Montineri confirmed that "diversity was at the heart of the discussions in January. It will be a core element of whatever we do." Working Group III is conscious that commentators have said that an outright ban on double hatting will negatively impact diversity, however the Draft Code of Conduct is not proposing an outright ban, but rather that double-hatting be regulated. In conclusion, Ms. Montineri stated that it was necessary to "think outside of the box for diversity," with the Draft Code of Conduct being looked at in the wider context of selection of arbitrators.

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During the panel discussion, a word cloud question was asked to the audience, and two polls were conducted on the participants' views concerning virtual hearings. The first question aimed at identifying what the main perceived ethical challenges are relating to virtual hearings. The second question was put forward to understand whether participants had already attended a virtual hearing. The third question asked the participants whether they would be pushing for virtual hearings, both substantive and procedural, even after the travel restrictions will be lifted. The results are shown at the end of this report.

C. The Keynote Address of Justin D'Agostino - Ethics and Online Arbitration: Brave New World, or 1984?

Justin D'Agostino

Aldous Huxley wrote *Brave New World* in 1931. It describes a society set in a futuristic "World State," in which humans are genetically engineered and fall into five social classes, depending on their intelligence and ability to work. The highest cast – the Alphas, are designed to be leaders and thinkers enjoying every advantage that World State can offer. The lowest cast – the Epsilons – are condemned to a life of menial labour.

George Orwell in *1984* has a similar dystopian view of the future. His work describes a society living under a repressing regime that controls every aspect of its citizens' lives through the infamous Big Brother and makes it impossible to keep confidential and private the most intimate and personal thoughts and relationships.

Both these works rely on the premise that the advance of technology would lead to negative consequences for society ethics and freedoms. They raise the question as to whether technology might have a negative impact on society. By relying on these works, Mr. D'Agostino introduced the topic of his keynote address. He considered whether the advance of technology has negative consequences on the arbitration world and, in particular, on arbitration proceedings. From the outset, he claimed that the advent of technology in arbitration would be a welcome development. To support his claim, he considered the potential ethical issues, suggested solutions, and pointed out the rewards that will come with the use of virtual hearings.

In particular, his address focused on the potential ethical concerns relating to virtual hearings. Indeed, while the reference to online arbitration is to the whole arbitral proceeding, he pointed out that the COVID-19 crisis has led the international arbitration community to embrace the use of virtual hearings. Despite the overall positive feedback, however, ethical concerns might arise for virtual hearings. Accordingly, he considered such issues and divided them into five categories: confidentiality, witness testimony, equality of arms, technology, and human behaviour.

To begin with, he took into account the potential issues concerning confidentiality. For example, parties may worry about sharing commercially sensitive information using technology. In the same way, they may be concerned about unauthorised recordings to be released to third parties. Similarly, they may worry that a third party might hack the software and gain access to sensitive information or that the software provider might misuse the data.

Secondly, he considered the issues relating to witness evidence online. For example, there might be risks of counsel coaching witnesses during cross-examination. Further, counsel might complain that cross-examining a witness who is in another room might be very difficult. Indeed, it is almost impossible to establish any rhythm in cross-examining if the counsel and witness are in different rooms. And of course, all these issues might be exacerbated in case of poor connectivity or when it is not possible to hear or see the witness. Reading body language is not an easy task in general, but when the screen shows only the head of the witness, this might be even more difficult.

Thirdly, he discussed the potential ethical issues relating to equality of arms. Equal treatment of the parties is a fundamental principle of international arbitration, and its violation might result in setting aside the award. At present, there is a debate as to whether the arbitral tribunal's discretion entitles it to order a remote hearing. And when a tribunal orders a virtual hearing, there may be many inequalities. For example, a party may be located in a jurisdiction where there are poor connectivity or electricity issues. Similarly, a party might not have access to appropriate technology. In the same way, the hearing might be during business hours for a party while for the other party it may be late at night because of different time zones. While applications based on these grounds might not be successful, he noted, they may result in an increase of time and costs.

Furthermore, he touched upon the issues concerning the use of technology and, in general, human behaviour. On the former, he pointed out that the inability of the tribunal to use technology might reduce the time to hear a witness, and in doing so, it might lead to ethical issues. On the latter, he considered whether individuals might be more willing to ignore the societal norms that would generally prevent them from acting in a particular way in-person.

In terms of solutions, he highlighted many ways in which potential issues might be alleviated. For example, arbitrators would be well-advised to include in their first procedural order the possibility of having virtual hearings and virtual hearings protocols. Further, the use of appropriate technology would, of course, solve most technical issues. In any event, however, testing every technical aspect before the hearing and having technical support during the hearing would be crucial to avoid any issues.

Furthermore, to support the idea that moving hearings online would improve arbitration, he listed the rewards that would come with it. First, virtual hearings will reduce costs. For example, travel expenses will be eliminated. Secondly, it will be easier to find available arbitrators for hearings, especially since they will not need to travel to attend them. Alternatively, tribunals could split up the hearing without having to hear the case at once. Further, virtual hearings might lead to an overall improvement of the process. For example, the use of recordings of the hearing and real-time transcriptions might be more helpful than just reading written transcripts, especially when they want to consider witnesses' demeanour.

Moreover, he pointed out how the use of virtual hearings might lead to an increase in appointments of younger arbitrators. If arbitrations are moving online, arbitrators should be more tech-savvy, and adding that criteria would necessarily lead to the appointment of younger arbitrators. Without a doubt, this would increase the diversity in the arbitral community and, more importantly, it will allow international arbitration to survive. Indeed, the progress made so far, in his view, has been too slow.

Similarly, moving hearings online would have significant environmental impacts. For example, online hearings would result in a significant reduction of the carbon footprint, and electronic bundles would reduce significantly paper use. He also noted that the younger generation often drives the environmental agenda and younger arbitrators might be more in favour of virtual hearings, being more aware of the positive environmental impacts of them.

In conclusion, he noted how the COVID-19 crisis has led to a shift of the arbitration community towards openness to virtual hearings. And as a result of that, he believes that the ability to use technology will improve as well. These changes would have eventually occurred, but the COVID-19 crisis has worked as a catalyst pushing the arbitration community in the brave new world of technological solutions.

*(See **ANNUAL ITA WORKSHOP**, page 6)*

*(Cont'd from **ANNUAL ITA WORKSHOP**, page 5)*

A. **Online Arbitration Hearing: Ethical Challenges and Opportunities**


Sylvia Noury

After a brief introduction by Loukas Mistelis, Sylvia Noury welcomed the participants. She presented the speakers of the interactive panel discussion on ethical challenges and opportunities relating to online arbitration hearings. Ms. Noury then put to them a number of questions relating to the relationship between virtual hearings and ethics. The questions related broadly to due process concerns, the conduct of counsel and tribunal, the examination of witnesses and experts, technology, efficiency and the environment, and the factors to consider when deciding whether to have virtual hearings.

First, on due process concerns relating to virtual hearings, it was noted that the abuse of due process might be an issue for virtual hearings. For example, unsupported claims of violation of Article 5 (1) (b) New York Convention may be put forward when connectivity issues allegedly prevented a party from presenting its case. Similarly, a party may object that a virtual hearing would not be fair.

In order to address such claims, it was suggested that arbitrators should be prepared to press parties who claim due process violations in order to identify specific concerns. Of course, if the seat of arbitration prohibits virtual hearings, then the tribunal should exclude it. The same would apply if the tribunal felt that witness testimony should be held in-person for different factors. In any event, it was noted that the dialogue between the parties and the tribunal at the beginning of the proceedings would likely prevent due process issues relating to virtual hearings.

Secondly, on the conduct of counsel and tribunal, it was pointed out that there are concerns relating to abusive conduct by parties. These concerns would raise the question as to how tribunals should address them. On this point, it was noted that critical solutions would be cooperation between the parties, and in the alternative, the proactive role of tribunals. Cooperation pertains to the idea of arbitration itself, and it is expected by the arbitration community, in which professionals combine high professional skills with high ethical standards.

Alternatively, when there is no cooperation, arbitrators should have a more proactive role, by establishing a number of rules for virtual hearings. After all, virtual hearings are very similar to telephone hearings or videoconferences.

Thirdly, on examination of witnesses and experts, the panel discussed how it would be possible to read witnesses effectively on the screen and what changes there might be in terms of witnesses' preparation for the hearing. In particular, it was suggested that witnesses should sit far enough away from the screen. This would allow the tribunal to read body language more effectively.

In terms of preparation, it was noted that virtual hearings might have consequences, especially if witnesses are not familiar with arbitration proceedings. Also, there might be integrity issues, since it would be difficult to ensure that witnesses do not have access to answers prepared by counsel. A solution to this issue, it was suggested, might be to have a member of the other party team sitting in the room with the witness.

Furthermore, the panel considered technology in relation to virtual hearings. In particular, it was noted that given the limitations of technology, more emphasis might be put on written advocacy, especially when witness testimony is not critical for the case. Another point raised by the panel concerned security and confidentiality issues during the virtual hearing. It was suggested that the parties and the tribunal should discuss who would be responsible for security and confidentiality beforehand.

Moreover, the panel discussed what impacts virtual hearings would have on efficiency and the environment. For example, it was agreed that minimizing travel would have a huge impact on the carbon footprint and contribute directly to sustainability. This is particularly true in cases where witness testimony might not be critical. Virtual hearings would have an impact on efficiency as well. Indeed, tribunals would have to understand which parts of the proceedings could be dealt with virtually. And this would lead to more flexibility.

Further, virtual hearings would have a positive impact on gender diversity. For example, in the case of pregnancy, women may be prevented from travelling for health concerns. Virtual hearings would allow them to attend hearings without having to incur in any risks. Without a doubt, this would further improve gender diversity in the arbitration community.

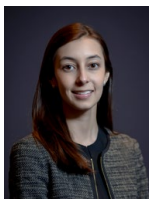
In conclusion, the panel expressed general agreement on the possibility of having virtual hearings. Of course, parties might consider different factors when deciding whether virtual hearings would be appropriate for the case at stake. In particular, they might consider procedural and strategical aspects such as the witness' ability to explain the facts, the possibility of settling the dispute during the hearing, or simply the possibility of giving more effective visual presentations in-person on critical aspects of the case. From the arbitrators' perspective, it would be relevant to understand which aspects of a conventional in-person hearing might be replaced by virtual hearings equally fairly, more efficiently, less expensively, more securely and confidentially, and with a lower carbon footprint.

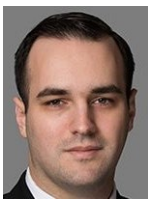
#YOUNGITATALKS COVID-19 AS AN EXCUSE NOT TO PERFORM INTERNATIONAL CONTRACTS

Osayame West-Idahosa, Esq

Osayame West-Idahosa

On August 10, 2020, participants were treated to a virtual panel on the topic of COVID-19 as an excuse not to perform international contracts. The panel was introduced by **Karima Sauma** (CICA) who welcomed moderator **Michael A. Fernández** (Winston & Strawn LLP) and **Prof. Alejandro M. Garro** to discuss the approach to the enforcement of contracts in arbitration or in litigation, with particular emphasis on the legal concept of *force majeure*.


Karima Sauma


Michael Fernandez


Alejandro Garro

Prof. Garro began by addressing the typical problems that could be found around the interpretation and application of force majeure or hardship clauses incorporated into contracts entered into before the impact of COVID-19 became known, drawing a distinction with similar disputes in which the contracts failed for a *force majeure* clause.

*(See **#YOUNGITATALKS COVID**, page 7)*

(Cont'd from ***#YOUNGITATALKS COVID****, page 6)*

The common law/civil law divide, in the first scenario, brings into play the restrictive approach to contract interpretation imposed by the parole evidence rule in common law jurisdictions, as opposed to the open-ended approach to the admissibility of evidence seeking to ascertain the intention of the parties, which prevails in civil law jurisdictions. In the second scenario, that is, those in which the contract fails to include a *force majeure* or hardship clause, the obstacles to contract performance are left to the doctrinal approach of various jurisdictions towards concepts such as "impossibility of performance," "frustration of contracts," and related civil-law doctrines under concepts such as "*force majeure*," "hardship," etc.

Prof. Garro also drew distinctions between excuses not to perform or to suspend performance in purely domestic contracts such as contracts of lease, loan, construction, sale, etc., as opposed to contracts of the same type but in the context of a cross-border transactions. Prof. Garro believes that parties will be encouraged to exhaust their efforts to settle their disputes amicably, renegotiating the terms of the bargain in order to reach a fair allocation of the losses and gains brought about by the unforeseen and extraordinary impact of COVID-19.

However, this will not be the case in many other cases in which the party opposing the application of *force majeure* clause, or of any default doctrine allowing an excuse, will seek the enforcement of the contract as written.

In the case of cross-border transactions or international commercial contracts, the question of whether the outbreak of the virus may justify the aggrieved party not to perform will depend on certain variables, including the choice of forum and the choice of law, that is, which law applies to the contract and which tribunal – arbitral or judicial — will bear the responsibility of deciding the dispute. In the presence of a *force majeure* clause, or similar contract provision comtemplating the adjustment of the performances in case of unforeseen impediments, the approach of the court or the arbitrator towards the interpretation of such clause would be most relevant. And the applicable law to the interpretation of the contract has much to say about the more or less strict interpretation of the terms used by the parties.

Prof. Garro went on to discuss the different approaches that civil and common law jurisdictions have taken to deal with complex fact situations in which one of the parties alleges drastic and unexpected change of circumstances in order to be released of its obligations. He referred to the doctrine of impossibility of performance as an example of an almost universal concept, codified in most civil law jurisdictions but also found in the form of precedents developed by nineteenth century English law courts.

Beyond situations of outright factual or legal impossibility, civil and common law jurisdictions have adopted different concepts in order to reconcile and balance the bedrock principle of the binding force of contracts (*pacta sunt servanda*, as a fundamental principle of Roman law) with flexible standards addressing supervening extraordinary events, the non-occurrence of which was considered a basic assumption of the contract (*clausula rebus sic stantibus* developed by Canon law). Prof. Garro stressed the differences between the strict common law approach towards contract performance with the more flexible, though highly exceptional, approach of most civil law jurisdictions towards acknowledging situations of economic hardship.

Modern soft-law rules of international contract law provide for the parties' entitlement to request renegotiation of the bargain in the hope of reaching an amicable solution. However, if the renegotiations fail, the judge or the arbitrator under many of these rules is granted the power to adjust the terms of the contract in order to reestablish the balance or equilibrium of the bargain, or to terminate the contract as of the time when the supervening and extraordinary events disrupted the balance of the performances. One additional, though even more extraordinary, power granted to an arbitral tribunal is the possibility to decide the case on the basis of equitable principles (*ex aequo et bono*), although under modern arbitration laws this requires the parties' express consent. Regardless of the remedy sought by any of the parties, under most legal systems – regardless of their common-law or civil-law pedigree — the disadvantaged party (i.e, the party affected by the unforeseen and extraordinary event) must give reasonable notice to the other, stating the impact of the change of circumstances and its impact on its ability to perform. The excuse not to perform or to delay performance, if available, extends only for as long as the impediment affects the performance, and the disadvantaged party is bound to exhaust all efforts to mitigate the damage caused by such an impediment.

The panel shifted to Q&A with Prof. Garro, with Karima Sauma and Michael A. Fernández asking questions. Mr. Fernández posed a question on the legal concept of foreseeability, particularly in the context of civil law. In response, Prof. Garro observed that most arbitrators, no matter where they are from, are extremely reluctant to depart from the terms of the contract and will attempt to enforce the terms of the contract as written. As to the concept of "unforeseeability," Prof. Garro stressed that very few things are actually "unforeseeable" (even pandemics are hardly "unforeseeable") yet the test to be applied is whether the impediment or drastic change of circumstances could have been reasonably taken into account at the time the contract was concluded. In the factual context of Covid-19, the question to be addressed in not whether the pandemic could have been foreseen, but rather whether the government measures taken in order to contain the outbreak of the infection (i.e., lockdowns, quarantines, disruptions of travels, supply chain transactions, etc.) could have been actually expected by experienced business people at the time they signed a contract.

Mr. Fernández further questioned how civil law and common law courts would approach a question of foreseeability differently. Prof. Garro responded by referring to New York courts as an example for common law jurisdictions, explaining that the concept of *"force majeure"* under New York law is tied to the presence of a *force majeure* clause in the contract, whereas many civil law jurisdictions incorporate a definition of *"force majeure"* in their civil codes. This does not mean, by itself, that the outcome of disputes with identical facts would necessarily be decided differently in a civil law and in a common law jurisdiction. Beyond legal doctrines and the common-law or civil-law tradition of a jurisdiction, the outcome of the case, and the question whether the obligor or party affected by COVID-19 measures would be justified not to perform is most likely to hinge on the type of contract involved, the particular obligation whose performance is alleged to be impeded by COVID-19 and, ultimately, on the specific facts of the case.

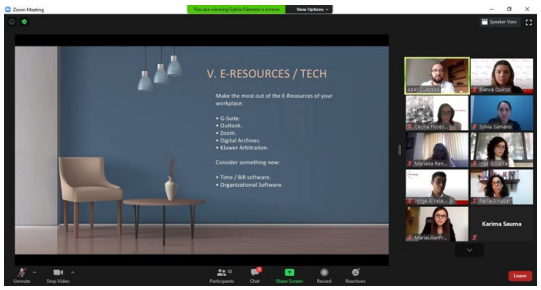
The panel concluded with Prof. Garro answering one final question regarding his thoughts on the future outcome of the impact of COVID-19 on the jurisprudence. Prof. Garro responded that he expected a wave of declarations of *force majeure*, hardship, frustration, and the like, most of which to be settled by thoughtful negotiations between the parties to the contract. However, he also expects judges and arbitrators becoming more familiar with legal concepts such as *"force majeure,"* "frustration of contract," "hardship," etc., especially if the contract in question is international and foreign law is potentially applicable to the dispute. It is more difficult to predict, however, whether the courts will become more rigorous or strict in their affirmation of the sanctity of contracts or the flexibility of called for a fair and equitable solution evenly distributing the impact of COVID-19 on the expected gains and losses of the parties to the contract. The panel ended with Prof. Garro suggesting that courts and arbitrators facing these types of disputes will be facing similar legal problems, calling for a genuinely "international" or "transnational" rule of contract law on which judges and arbitrators can rely in order to find a just solution to the type of cases.

YOUNG ITA MENTORSHIP PROGRAM ANNOUNCEMENT

Young ITA is thrilled to announce the third edition of the Young ITA Mentorship Program, September 2020-July 2021. In this 10-month Program, Mentees will meet with and learn from leading figures in the arbitration field. The Program is hands-on, offering students and early career professionals an exceptional opportunity to glean valuable knowledge from preeminent practitioners, and to forge lifelong connections. Any member of Young ITA may apply.

Young ITA will pair each successful applicant with a senior Mentor and a "Mentorship Facilitator" -- an accomplished arbitration practitioner who can assist Mentees in their activities and serve as a liaison between Mentors and Mentees.

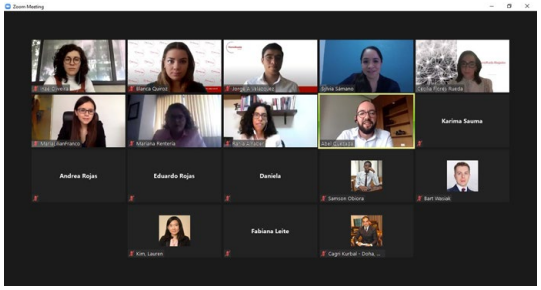
Throughout the Program, Mentors, Facilitators, and Mentees will hold quarterly meetings or conference calls to discuss career development and opportunities for collaboration or to attend workshops or conferences together, among other activities.



Young ITA is committed to supporting the development of early career arbitration professionals. To help us do this effectively, we ask applicants to submit a CV, together with a brief cover letter explaining their reasons for seeking to participate in the Program. The letter should address how the applicant expects to benefit from the Program, and specify the region or country where the applicant will be based during the Program year.

For more information and the program Guidelines, visit the Young ITA website.

To apply for the Young ITA Mentorship Program, please send your CV and cover letter to Mentorship Chair Karima Sauma at ksauma@cica.co.cr, with email subject line "Application Young ITA Mentorship Program".



YOUNG ITA MENTORSHIP PROGRAM SPEAKER SERIES: THE ELASTIC CORPORATE FORM IN INVESTMENT ARBITRATION

Malgorzata Mrózek (Fitch Law Partners)

On May 29, 2020, the Young ITA Mentorship Program hosted via Zoom its second Speaker Series Program, entitled The Elastic Corporate Form in Investment Arbitration.

Karima Sauma, Young ITA Mentorship Program Chair and Executive Director of the International Arbitration and Mediation Center - AmCham Costa Rica, welcomed the attendees. She explained the dual goals of the Speaker Series: one, to showcase lead thinkers in the international arbitration space, and two, to promote discussion among the Young ITA Mentorship groups.

Ed Grgeta, a facilitator in Young ITA's mentorship program and Senior Vice President with Compass Lexecon, moderated the day's program and introduced the program's speaker.

Julian Arato, Professor of Law and Co-Director of the Dennis J. Block Center for the Study of International Business Law at Brooklyn Law School, discussed his working paper, "The Elastic Corporate Form," which is part of his broader work on the private law subtly established by investment treaties. Professor Arato argues that the investment treaty regime (both the treaties themselves and their dispute settlement mechanisms) has negatively impacted the property, contract, and corporate domestic laws of nations around the world.

The working paper and Professor Arato's presentation focus on the distortions of domestic corporate law created by investment treaties and their Investor State Dispute Settlement ("ISDS") awards. Professor Arato argued that ISDS subverts principles of corporate law by allowing investors (who are broadly defined under the treaties as anyone owning shares, stocks or indirect equity in a foreign corporation) to bring claims whenever they feel their rights as shareholders have been violated. Such claimants, if successful, can recover the loss of their stocks' value (a shareholder reflective loss claim), thereby recovering directly from the state and circumventing the corporation. This circumvention of national laws preventing shareholder reflective loss claims undermines domestic corporate law and how domestic corporate laws regulate the interests and rights of key corporate players. The consequences of this can raise the cost of doing business for everyone involved, Professor Arato argued, and negate the benefits of foreign investment.

This is not the original goal of ISDS. The purpose of the investment treaty regime is promote good investment, by mitigating the risks foreign investors may face, namely: (1) that the state may take the investors' property without compensation; (2) the state will be favored in its own national courts; and (3) that the state will not honor an award to the investors. The investment regime mitigates these risks by resolving investment disputes through investment treaties that provide substantive protections and permit investors to resolve disputes through ISDS. Yet the distortion of domestic corporate law undermines the stated benefits for almost everyone involved, Professor Arato argued, except for investor-claimants. Professor Arato stated that signatories and drafters should take these issues under consideration when drafting future investment treaties.

Professor Arato ended his presentation by giving the program attendees career advice. He started by describing his own career path, which started at Freshfields practicing international law.

*(See **YOUNG ITA MENTORSHIP PROGRAM**, page 9)*

*(Cont'd from **YOUNG ITA MENTORSHIP PROGRAM**, page 8)*

After a few years, he moved to take a fellowship at Columbia Law School, and then moved to Brooklyn Law School. He spoke about the value of being in practice before going into academia, and how unfortunately there is too little overlap between practitioners and academics. To develop a career in academia, publication is key – publishing often and publishing early in one's career. Given the competitive nature of academic positions, those hoping to do into academia should begin publishing on a variety of topics while they are in practice.

#YOUNGITATALKS GLOBAL MENTORSHIP PROGRAM TIPS FOR HOME OFFICE / WORKING FROM HOME

Blanca Quiroz Estrada
Lawyer at FloresRueda Abogados (Mexico)

A virtual conference about Tips for Home Office was held on September 3, 2020 via the digital Zoom platform as part of the Young ITA Mentorship Program Series.

The event was organized in collaboration between Young ITA, the Arbitration Center of Mexico (Centro de Arbitraje de México, or "CAM" by its name in Spanish) and FloresRueda Abogados.


Karima Sauma

This event brought together mentors and mentees for the ITA Global Mentorship Program. The mentorship chair and executive director of the International Center for Conciliation and Arbitration, **Karima Sauma**, gave the welcoming speech, and **Cecilia Flores Rueda** (FloresRueda Abogados) proceeded to introduce each of the mentees and panelists of the event.


Sylvia Sámano Beristain

The conference started with the participation of the moderator **Sylvia Sámano Beristain** (Secretary General of the CAM), who shared her enthusiasm for her participation in the Mentorship Program. She addressed the importance of these programs since they not only increase education in arbitration law but also allow young arbitration practitioners who are eager to learn the opportunity to connect with other professionals and establish great friendships.

As an introduction, she mentioned that the global pandemic has impacted everyone and that working from home has not been an option for most; this has encouraged everyone to adapt. However, there have also been benefits that can be taken away from this new reality. Young generations, like these mentees, have a lot to share, they have demonstrated that there can be commitment to the place of work, even though it is impossible to be physically there, as long as good habits are put into practice.


Maria Lilian Franco

After this introduction to the topic, the panel entitled "Tips for Home Office / Working from Home" took the floor. **María Lilian Franco** (Aguilar Castillo Love, Guatemala), shared the importance of being efficient while working from home. Ms. Franco addressed several tips on time management, including the elimination of electronic time wasters that can become distractors, the completion and prioritization of tasks that have the greatest impact on achieving our daily goals, the reduction of meetings to allocate time to the most important and critical tasks, and the inclusion of apps into the workspace that can help improve our productivity, such as Trello, Asana, amongst others.

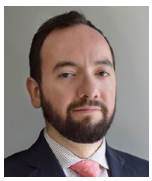
The discussion was followed by the input of **Inaê Siqueira de Oliveira** (Ernesto Tzirulnik Advocacia), who addressed the issues on mental health in uncertain times like the present pandemic. She approached the topic by explaining that we should not be too demanding on ourselves since this would only increase self-pressure and anxiety while decreasing productivity.

Ms. Siquerira continued to address the issue of legitimate expectations during the pandemic, proposing that each of us should create reasonable expectations, balancing our needs and interests by having time for work and time to unwind. Nevertheless, she stated that even tough times are uncertain, we should take advantage of the situation by reaching out to people, participating in virtual events, keeping in touch and learning from each other, always remembering that physical and mental health comes first.


Rania Naber

Moreover, **Rania Naber** (construction arbitration lawyer) continued the discussion by explaining the necessity for self-development, stating that "it is time to turn self-isolation to self-improvement." Everyone should take advantage of these times to perfect skills and plan for the future by seeking to improve not only in their professional careers, utilizing tools such as online courses, podcasts, videos or virtual internships but also focusing on reaching all kinds of goals, i.e. relationship goals, health goals, psychological goals.

The next panelist, **Mariana Rentería Díaz Barriga** (corporate and arbitration lawyer), focused her presentation on several recommendations (social etiquette) for webinars and videoconferences as the new way of communication: i) develop skills that help to separate work spaces and hours, in order to differentiate between multiple tasks and maintain balance in our lives i.e. work, exercise, family, meal hours, ii) start each day as any other day, it is important to remember that isolation does not mean a type of vacation, iii) use digital apps to improve and facilitate work and social meetings (i.e. Zoom, Skype), iv) clear up and establish special working areas in order to avoid stress and anxiety, v) develop multitasking skills as many distractors may appear, and vi) be punctual and coordinate yourself to avoid wasting time.


José Abel Quezada

In addition, **José Abel Quezada** (Del Castillo y Castro Abogados) informed us about the innovative technological resources to make the most out of working from home. He suggested several virtual tools to develop organization and technological skills that would allow us to continue working efficiently from home.

Mr. Quezada talked about the importance of making appointments, fixing calendars, organizing files, making backups in our home computers, arranging meetings, and looking into online document resources, all with the use of innovative and useful software and apps. A few examples mentioned are tools such as G-Suite, Outlook, Zoom, Digital Archives, and Kluwer Arbitration.

As a conclusion, Cecilia Flores Rueda proposed a mindful and practical technique to manage time now that we are adapting to these new circumstances. This technique is called the Pomodoro Techinque, which revolves around planning your daily activities by timing each of the tasks (either for work or personal time) you want to accomplish throughout the day; when establishing timetables it is also important to allocate a certain amount of time to clear your head and de-stress between each activity so you can remain at your highest productive levels throughout the day without burning yourself out, keeping in mind your wellbeing as well as the fulfillment of critical tasks.

2020 NEW EXECUTIVE COMMITTEE MEMBERS & NEW ROLES

ITA Welcomes Four New Members to its Executive Committee & Congratulates Existing Member Tom Sikora in his New Role

Senior Vice Chair

TOM SIKORA is Senior Counsel in the International Disputes Group at Exxon Mobil Corporation. Tom manages international commercial and investment arbitration for Exxon Mobil Corporation. Prior to joining ExxonMobil, he spent ten years at El Paso Corporation managing the company's international arbitration and complex litigation. Tom initially practiced international arbitration of energy, construction and insurance disputes at Vinson & Elkins LLP in Houston, Texas. Tom is a member of the Council (formerly Board of Directors) of the American Arbitration Association and the International Centre for Dispute Resolution. He is a member of the Executive Committee of the Institute for Transnational Arbitration, where he serves as Senior Vice Chair. Tom also serves as a Co-Chair of the Energy Arbitrators List. He is a former officer of the IBA Arbitration Committee and the ICC Commission on Arbitration. Tom graduated from Harvard with an A.B. in History and Literature and from the University of Virginia School of Law with a J.D.

Vice Chairs

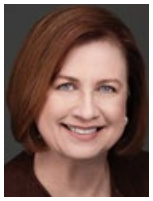
JAMES CASTELLO, a lawyer who has been based in Europe for 20 of his more than 30 years in practice, is a partner in King & Spalding's Paris office. He practices exclusively international arbitration. He has advised and represented clients in a wide range of commercial as well as investor-Sate arbitrations. Since 2001, he has served on the U.S. delegation to the Arbitration Working Groups of the U.N. Commission on International Trade Law (UNCITRAL), participating actively in drafting or revising such instruments as the Model Laws on International Commercial Arbitration and on International Commercial Conciliation, the Arbitration Rules, and the Rules (and the Convention) on Transparency in Treaty-based Investor-State Arbitrations. Formerly a member of the London Court of International Arbitration (including on the Court's drafting committee for the 2014 LCIA Arbitration Rules), he now serves on the LCIA's Board of Directors and on the Advisory Board of the Vienna International Arbitral Centre. James has also worked in all three branches of the United States government, including in such senior legal positions as Deputy Counsel to President Clinton, at the White House, and Associate Deputy Attorney General in the Justice Department. He began his legal career with several clerkships, including at the U.S. Supreme Court and at the Iran-U.S. Claims Tribunal in The Hague. He holds degrees from Yale and the University of California at Berkeley, and is admitted to practice in New York, Washington, D.C., and Paris.

LUKE SOBOTA is a founding partner of Three Crowns and managing partner of the firm's Washington, DC office. He represents private and sovereign clients in some of their largest and most important commercial, investor-state, and inter-state arbitrations. Luke also has 20 years of experience litigating international issues in U.S. courts. Luke's practice experience spans the energy, financial, construction, and technology sectors, and includes the successful prosecution of one of the largest ICC cases in history. His investment arbitrations have involved multi-billion-dollar claims pertaining to expropriation, fair and equitable treatment, and denial of justice. He is also representing sovereign clients on vital issues of public international law. Luke is ranked by Chambers and Partners, which describes him as an "'extraordinarily intelligent'" attorney who "draws extensive praise for his advocacy skills, with clients affirming that 'his analysis and strategic view is outstanding.'" Who's Who has recognized Luke as "'a very sharp intellectual' with broad expertise in commercial and investor-state arbitrations" and that he "'is praised for his 'fantastic analytical and writing abilities.'" Legal 500 writes that Luke "'is extremely smart and a great strategic thinker' and is an 'excellent draftsman.'" Luke is a Lecturer on Law at Harvard Law School. He also teaches courses on international arbitration at American University and the University of Miami. Among other publications, he is the co-author of the second edition of *International Arbitration: Three Salient Problems* (Cambridge University Press, anticipated 2020) and *General Principles of Law and International Due Process* (Oxford University Press, 2017). Luke previously worked in the Office of Legal Counsel at the U.S. Department of Justice, where he advised and prepared formal legal opinions for executive branch officials on a range of constitutional, international, and administrative law issues. He earned his law degree from the University of Chicago Law School, after which he clerked for Chief Justice William H. Rehnquist of the U.S. Supreme Court.

Chair, Americas Initiative Practice Committee

MONTSERRAT MANZANO is Partner in the Dispute Resolution group of Von Wobeser y Sierra, S.C. with more than 18 years of experience including her expertise in dispute resolution. She has participated in a vast number of arbitrations as party attorney, arbitrator and/or arbitral tribunal secretary, in arbitrations conducted under the rules of the ICC, AAA, UNCITRAL, PCA, ICSID, complementary mechanism of ICSID and CAM. She has solid experience in dispute resolution related to administrative law, public procurement and government contracting. Furthermore, she has participated in both commercial and investment arbitrations, in various sectors including the following: energy, construction, port, shipping and chemical involving both Mexican and foreign applicable law. Montserrat has been recognized by various leading international editorials including: Global Arbitration Review 100 (GAR 100), Who's Who Legal Mexico, Who's Who Arbitration, Who's Who Legal Arbitration Future Leaders.

Co-Chair, Strategic Planing Committee



ANN RYAN ROBERTSON, C.ARB is an International Partner with the firm of Locke Lord LLP and the Deputy President of the Chartered Institute of Arbitrators (CIArb). In 2021, she assumed the role of global President of the CIArb. Ann serves as both arbitrator and counsel in international and domestic arbitrations in a variety of complex business disputes across a number of industries. She has been named to Global Arbitration Review's "Who's Who Legal: Arbitration" since 2015 and to The Best Lawyers in America, International Arbitration/ Govermental since 2014. A member of numerous arbitral institutions' panels of neutrals, Ann is currently chairing the ICDR Task Force on Rules Revision. She is an adjunct professor at the University of Houston Law Center and for eighteen years coached the Law Center's Willem C. Vis International Arbitration Moot team. Ann is a frequent speaker and author on international arbitration topics and most recently was named "Premier Woman in the Law" by the Association of Women Attorneys Foundation.

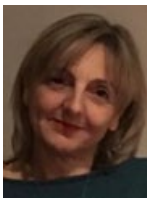
INTRODUCING THE NEW MEMBERS OF THE ITA ACADEMIC COUNCIL

ITA welcomes the seven new members of our Academic Council for 2020-2021

WOLFGANG ALSCHNER is an Associate Professor at the University of Ottawa, Faculty of Law. He holds a BA degree in International Relations from the University of Dresden, an LLB degree from the University of London, a Master of Law from Stanford Law School, as well as two degrees (a Master in International Affairs and a PhD) from the Graduate Institute of International and Development Studies. He is an empirical legal scholar specialized in international economic law and the computational analysis of law.

ERIC DE BRABANDERE holds the Chair in International Dispute Settlement at Leiden University Law School, and is a founding partner of De Meulemeester & De Brabandere Law Firm (DMDB Law) based in Brussels. He is specialised in international arbitration and international investment law. At Leiden Law School, Eric De Brabandere is Director of the Grotius Centre for International Legal Studies, and of the Master of Advanced Studies in International Dispute Settlement and Arbitration which he founded in 2017. Eric De Brabandere also is Editor-in-Chief of the Leiden Journal of International Law, and a member of the Board of Editors of the Journal of World Investment & Trade, the Revue belge de droit international, and the Martinus Nijhoff Investment Law Book Series. He formerly held visiting professorships at the University of Trento in Italy in international investment law and the Catholic University of Lille in France in international dispute settlement. He is the author or editor of the books 'Investment Treaty Arbitration as Public International Law: Procedural Aspects and Implications' (CUP, 2014), 'Procedure in Interstate Litigation: A Comparative Approach' (as editor) (CUP, 2020 forthcoming), 'Foreign Investment in the Energy Sector: Balancing Private and Public Interests (edited with T. Gazzini) (Martinus Nijhoff, 2014), 'Investment Law: The Sources of Rights and Obligations' (edited with T. Gazzini) (Martinus Nijhoff, 2012), and more than 80 book chapters and articles on international law, investment law, and international arbitration. Alongside his academic position at Leiden University, Eric De Brabandere practices in international law and investment arbitration as partner with DMDB Law. He has been appointed as sole and co-arbitrator in commercial arbitrations, regularly acts as expert in international proceedings, and has acted as counsel in investment treaty arbitrations under the ICSID Convention and the UNCITRAL Arbitration Rules.

KATIA FACH GÓMEZ is a Tenured Professor (Professeur Titulaire) in Private International Law at the University of Zaragoza (Spain) and also an Independent Arbitrator and Mediator in International and Domestic Disputes. She is a member of the Institute of European Law and Regional Integration (IDEIR) of the Complutense University of Madrid. Katia is a certified mediator in Spain (included in the official register of mediators of the Spanish Ministry of Justice). She has been designated by the Kingdom of Spain as conciliator in the official list of the International Center for Settlement of Investment Disputes (ICSID) (end of the term - February 2026). She was Adjunct Professor at Fordham University (New York), Visiting Scholar at Columbia Law School (NY), and Pre- and Post-Doctoral Grantee at the Max-Planck Institut (Germany). She has also lectured at numerous European and Latin American Universities (Germany, France, Czech Republic, Mexico, Brazil, Guatemala, Chile, Colombia and Peru). She graduated summa cum laude from the University of Zaragoza, holds a European Ph.D. summa cum laude in International Environmental Law, and an LL.M. summa cum laude from Fordham University. She is author of several books and book chapters and her articles have appeared in a number of international peer-reviewed law journals. Admitted to the Spanish bar, she has been involved in various international litigation and arbitration cases in USA and Europe, and has chaired several arbitration panels in Spain. She has served numerous times as scientific expert for the European Commission and various foreign funding agencies.



MARIA CHIARA MALAGUTI is Full Professor of International law at *Università Cattolica del Sacro Cuore* (Milan/Rome, Italy). She is currently legal advisor to the Italian Ministry for Foreign Affairs and International Development (MAECI) on trade matters and to the World Bank on modernization of payment systems, financial markets and governance. Having taken part into many negotiations of legal instruments in the field of commerce as part of the Italian delegation, she currently chairs the UNCITRAL WG1 on Micro, Small and Medium-Size Enterprises. An international arbitrator in particular for foreign direct investments, she also supports the General Attorney's Office of Italy in all procedures opened against Italy until now. She practices as a lawyer in Milan and Rome, and also assists private parties in arbitration and ADR. Maria Chiara is on the list of arbitrators for the OSCE Court, included in the roster of ICSID conciliators and arbitrators (appointed by Italy), on the list of DSB - WTO panelists (for trade in goods and services and intellectual property), member of the Arbitration and ADR Committee ICC Italy, Italian delegate at the ICC Commission on Arbitration and ADR (international) and member of the IILA Administrative Court (Italian-Latin American Institute).

In the past, she was legal assistant and chief of cabinet at the European Court of Justice, and until July 2003 she was senior expert at the European Central Bank. Dr. Malaguti holds degrees in law and in economics, an LLM from Harvard Law School and a PhD from the European University Institute (EUI) in Florence, Italy. A national of Italy, she is fluent in English, French, Spanish and German. She publishes extensively.

MARTINS PAPARINSKIS teaches at UCL Faculty of Laws in London. He is a generalist public international lawyer with a variety of specialist interests. He has published and spoken on generalist topics, such as law of treaties, State responsibility, and international dispute settlement, as well as on topics in the subfields of international investment law, international trade law, international human rights law, and international environmental law.

ANNA SPAIN BRADLEY is the Vice Chancellor of equity, diversity and inclusion at UCLA "(September 1)" and current Professor of Law at the University of Colorado specializing in international law, international dispute resolution and human rights. A graduate of Harvard Law School, Anna served as an attorney-adviser at the U.S. Department of State where she represented the US before the Iran-US Claims Tribunal and has served as legal counsel for state parties in investment-state disputes before the Permanent Court of Arbitration since 2015. She is also a mediator with over 20 years of experience and a founding member and former Board Member of Mediators Beyond Borders International. Anna is a member of the Council of Foreign Relations, a member of the Institute for Transnational Arbitration's Academic Council and a former Executive Council member of the American Society of International Law. She is the author of two forthcoming books and numerous law review articles and is the co-editor of a casebook on international dispute resolution.

*(See **ITA ACADEMIC COUNCIL**, page 13)*

INSTITUTE FOR TRANSNATIONAL ARBITRATION EXPERTS...IN THE NEWS UPDATES


Tiana Bey


Theresa Bowman

Supporting Member **MSK** has designated **Tiana Bey** (Washington, D.C.) and **Theresa Bowman** (Washington, D.C.) as additional representatives on the Advisory Board.


Jean-Rémi de Maistre

New Sponsoring Member **Jus Mundi** has designated **Jean-Rémi de Maistre** (Paris) as its representative on the Advisory Board.

New Arbitral Institution Member **Court of International Commercial Arbitration Romania (CCIR-CICA)** has designated **Cosmin Vasile** (Bucharest) as its representative on the Advisory Board.


Cosmin Vasile


Douglas Harrison

Douglas Harrison (Arbitrator, Harrison ADR Professional Corporation) has joined ITA as an Associate Member.

Sally A. Harpole (Independent Arbitrator, San Francisco, CA) has joined ITA as an Associate Member.


Sally A. Harpole


Calvin Hamilton

Calvin Hamilton (Senior Lecturer and Independent Arbitrator, Int-Arb Arbitrators & Mediators, St. James, Barbados) has joined ITA as an Academic Member.


Mohamed S. Abdel Wahab


Elena Burova


Byung-Woo Im


Noha Khaled Abdel Rahim


Juan Carlos Mundo Medina


Mohamed Negm


Iris Raynaud


Mai Umezawa


Baiju Vasani


Iris Raynaud

We are happy to welcome the following country reporters who have joined the ITA Arbitration Report Board of Reporters this quarter: **Prof. Dr. Mohamed S. Abdel Wahab** (Zulficar & Partners, Cairo) (Reporter for Egypt and OHADA), **Elena Burova** (Zulficar & Partners, Cairo), **Byung-Woo Im** (Kim & Chang, Seoul) (Reporter for Korea), **Noha Khaled Abdel Rahim** (Zulfica & Partners, Cairo) (Reporter for Egypt and OHADA), **Juan Carlos Mundo Medina** (Mediation & Arb Ctr of the Mexico City National Chamber of Commerce) (Reporter for CANACO), **Mohamed Negm** (Egyptian State Lawsuits Authority, Ministry of Justice, Geneva) (Reporter for Egypt), **Iris Raynaud** (Hanotiau & van den Berg, Brussels) (Reporter for Belgium), **Mai Umezawa** (Nagashima, Ohno & Tsunematsu, Tokyo) (Reporter for Japan), **Baiju Vasani** (Ivanyan & Partners, Moscow) (Reporter for Russia) and **Cosmin Vasile** (Zamfirescu Racoti Vasile & Partners, Bucharest) (Reporter for CCIR-CICA).


Charles N. Brower

Charles N. Brower is serving three appointments as ICJ Judge ad hoc in three ongoing active cases (one by Colombia defending against Nicaragua in 2014, and two by the USA in 2018 defending against Iran), the most appointments ever received by an American, and the only ones received by an American other than a professional academic. Only four Americans have ever been so appointed – Professor Bernard Oxman of the University of Miami (once), Professor Thomas Franck of NYU (once) (deceased) and our own Professor David D. Caron (twice, one of them being an Iran v. USA case to which Judge Brower was appointed following his death).

Most recently, on 3rd February, the ICJ issued its Judgment rejecting all of the USA's preliminary objections to jurisdiction and admissibility in *Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, in which Judge Brower joined the unanimous Court in rejecting the USA's two objections to jurisdiction and another objection, BUT dissented from the Court's finding that Iran's case was admissible and that another objection was rejected. Judge Brower wrote a 19-page Separate Opinion explaining why he thought that the case is inadmissible because it constitutes an "abuse of process" and that it should also have been dismissed based on another objection. It is notable that two of the only four Americans ever appointed Judges ad hoc of the ICJ have been Chairmen of the ITA!


Simon Gabriel


Andreas Schrengenberger

Simon Gabriel and **Andreas Schrengenberger** (Gabriel Arbitration, Zurich) authored the article "The New Swiss Approach to the Right to Be Heard – Balancing Challenging Fairness and Efficiency Concerns," which was recently published by the Indian Journal of Arbitration Law. The article deals with recent jurisprudence of the Swiss Supreme Court, which changes the nature of the parties' right to be heard under Swiss lex arbitri substantially. Whereas in the past any violation of the right to be heard led to the annulment of the award, the Swiss Supreme Court now requires that there be a potential impact on the substantive outcome of the case. In practice, this is particularly relevant for potential objections against infringements of the right to be heard: If the infringed party was not able to present its case, the new test by the Swiss Supreme Court may pose serious evidentiary issues in subsequent annulment proceedings, e.g., when the party had not been granted an opportunity by the tribunal to submit an additional brief setting out its position on an important point.


Bernard Hanotiau

Professor Bernard Hanotiau (Hanotiau & Van Den Berg, Brussels), an ITA Reporter for Belgium, published the second edition of his book "Complex Arbitrations: Multi-Party, Multi-Contract, and Multi-Issue." It is a unique source of documentation on the topic with the analysis of hundreds of arbitral awards and court decisions from all over the world.

Ben Love (Reed Smith, New York), ITA Communications Committee Co-Chair and Executive Committee Member, was recently invited to serve on the 2021 Annual Meeting Committee of the American Society of International Law (ASIL). The theme for ASIL's 2021 Annual Meeting is "Reconceiving International Law: Creativity in Times of Crisis," and the Annual Meeting Committee will, among other tasks, select and shape the sessions for the meeting.


Ben Love


Nudrat Piracha

Nudrat Piracha (Pakistan) received her first appointment as a member of the ICSID Ad hoc committee on annulment in the case of *Raymond Charles Eyre and Montrose Developments (Private) Limited v. Democratic Socialist Republic of Sri Lanka* on June 2, 2020. She previously completed her S.J.D. under the supervision of Judge Charles Brower, Mr. Stanimir Alexandrov, Mr. Sean Murphy, and Dean Rosa Celoriao, becoming the first woman in Pakistan to qualify as an S.J.D.


Stephan Wilske

Stephan Wilske (Gleiss Lutz, Stuttgart), ITA's Reporter for Turkey, published the article "The Impact of COVID-19 in International Arbitration - Hiccup or Turning Point?" in the Contemporary Asia Arbitration Journal (CAA J.), Vol. 13 No. 1 (May 2020), pp. 7-44. This paper was supposed to be presented at the 2020 Taipei International Conference on Arbitration and Mediation (October 15/16, 2020) which was cancelled because of the COVID-19 pandemic.

Jorge Velázquez and **Guillermo Madrigal** (Mexico City) have joined **FloresRueda Abogados**.


Jorge Velázquez

*(Cont'd from **ITA ACADEMIC COUNCIL**, page 11)*


Catharine Titi

CATHARINE TITI, DR IUR., FCIARB is a Research Associate Professor (tenured) at the French National Centre for Scientific Research (CNRS)–CERSA, University Paris II Panthéon-Assas, France. She serves on the Steering Committee of the Academic Forum on ISDS, whose work contributes to the discussions in Working Group III of the United Nations Commission on International Trade Law (UNCITRAL WG III). She is Co-Chair of the ESIL Interest Group on International Economic Law, Member of the International Law Association (ILA) Committee on Rule of Law and International Investment Law and she serves on the Editorial Board of the Yearbook on International Investment Law & Policy (Columbia/OUP). Catharine holds a PhD from the University of Siegen in Germany (*Summa cum laude*, Rolf H. Brunswig PhD Prize), she is a Fellow of the Chartered Institute of Arbitrators (FCIArb) and she is designated to the Pool of Arbitrators of the Court of Arbitration for Art (CAfA). She has previously been a consultant at the United Nations Conference on Trade and Development (UNCTAD). In 2016, Catharine was awarded the prestigious Smit-Lowenfeld Prize of the International Arbitration Club of New York for the best article published in the field of international arbitration.

The Institute for Transnational Arbitration

A Division of THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

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(as of 12 April 2021)

ABBREVIATIONS

NY	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly, 1958 New York Convention)
ICSID	Convention on the Settlement of Investment Disputes (1965)
IA	Inter-American Convention on International Commercial Arbitration (commonly, Panama Convention) (1975)
USBIT	United States Bilateral Investment Treaty
TIP	US Treaties with Investment Protection Provisions
ECT	Energy Charter Treaty (1998)
MC	United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (commonly, Mauritius Convention) (2017)

SYMBOLS

S	Signed, but not ratified
R	Ratified, acceded or succeeded
A	Subscribed, but not signed, ratified or paid
(*)	Capital-exporting country under MIGA
N/A	Not applicable

CHANGES FROM PREVIOUS ISSUE

NY	Ethiopia (R); Palau (R); Sierra Leone (R); Tonga (R)
ICSID	Djbouti (R)
IA	None.
USBIT	Updated.
ECT	Introduced.
MC	Australia (R); Belgium (S); Bolivia (R); Congo (S); Finland (S); France (S); Gabon (S); Germany (S); Iraq (S); Italy (S); Luxembourg (S); Madagascar (S); Netherlands (S); Sweden (S); Syrain Arab Rep. (S); United Kingdom (S); USA (S)
TIP	Introduced.
OPIC	Removed.
MIGA	Removed.

NATION	NY[1]	ICSID[2]	ECT[3]	IA	USBIT	TIP[4]	MC
Afghanistan	R	R	R			R	
Albania	R	R	R		R		
Algeria	R	R				S	
Andorra	R						
Angola	R					S	
Antigua and Barbuda	R					R[23]	
Argentina	R	R		R	R	R	
Armenia	R	R	R		R	S	
Australia	R	R	S			R / S[19]	R
Austria	R	R	R				
Azerbaijan	R	R	R		R		
Bahamas	R	R				R[23]	
Bahrain	R	R			R	R / S[24]	
Bangladesh	R	R			R		
Barbados	R	R				R[23]	
Belarus	R	R	S[20]		S		
Belgium	R	R	R				S
Belize		S				R[23]	
Benin	R	R				S[22] / R[29]	
Bhutan	R						
Bolivia[6]	R			R		S[31]	R
Bosnia and Herzegovina[7]	R	R	R				
Botswana	R	R				R[26]	
Brazil	R			R		R	
Brunei Darussalam	R	R				R / R[27]/S[19]	
Bulgaria	R	R	R		R		
Burkina Faso	R	R				S[22] / R[29]	
Burundi	R	R				R[25] / R[30]	
Cambodia	R	R				R / R[27]	
Cameroon	R	R			R		R
Canada	R	R				R[8] / S[19]/S[21]	R

Cape Verde	R	R				S[22]	
Central African Republic	R	R					
Chad		R					
Chile	R	R		R		R / S[19]	
China (People's Republic)[9]	R	R					
Colombia	R	R		R		R / S[31]	
Comoros	R	R				R[30]	
Congo		R			R		S
Congo (Democratic Republic of)		R			R	R[30]	
Cook Islands	R						
Costa Rica	R	R		R		R[10]	
Côte d'Ivoire	R	R				S[22] / R[29]	
Croatia[7]	R	R	R		R		
Cuba	R						
Cyprus	R	R	R				
Czech Republic	R	R	R		R		
Denmark[11]	R	R	R				
Djibouti	R	R				R[30]	
Dominica	R					R[23]	
Dominican Republic	R	S		R		R[10]	
Ecuador	R			R		S[31]	
Egypt	R	R			R	R / R[30]	
El Salvador	R	R		R	S	R[10]	
Equatorial Guinea							
Eritrea						R[30]	
Estonia	R	R	R		R		
Eswatini		R				R[26] / R[30]	
Ethiopia	R	S				R[30]	
Fiji	R	R					
Finland	R	R	R				S
France[12]	R	R	R				S
Gabon	R	R					S
Gambia		R				S[22]	R
Georgia	R	R	R		R	R	
Germany	R	R	R				S
Ghana	R	R				R / S[22]	
Greece	R	R	R				
Grenada		R			R	R[23]	
Guatemala	R	R		R		R[10]	
Guinea	R	R				S[22]	
Guinea-Bissau		S				S[22] / R[29]	
Guyana	R	R				R[23]	
Haiti	R	R			S	R[23]	
Holy See (Vatican City)	R						
Honduras	R	R		R	R	R[10]	
Hungary	R	R	R				
Iceland	R	R	R			S	
India	R						
Indonesia	R	R				R[27]	
Iran	R						
Iraq		R				S	S
Ireland	R	R	R				
Israel	R	R				R	
Italy	R	R					S
Jamaica	R	R			R	R[23]	
Japan	R	R	R			S[19]	
Jordan	R	R	R		R	R	
Kazakhstan	R	R	R		R	R[28]	
Kenya	R	R				R[25] / R[30]	

Kiribati							
Korea (Republic) (South)	R	R				R	
Kosovo		R					
Kuwait	R	R				S / S[24]	
Kyrgyzstan	R	S	R		R	R[28]	
Lao People's Democratic Republic	R					R / R[27]	
Latvia	R	R	R		R		
Lebanon	R	R				S	
Lesotho	R	R				R[26]	
Liberia	R	R				R/S[22]	
Libyan Arab Jamahiriya						S / R[30]	
Liechtenstein	R		R				
Lithuania	R	R	R		R		
Luxembourg	R	R	R				S
Madagascar	R	R				R[30]	S
Malawi		R				R[30]	
Malaysia	R	R				R / R[27] / S[19]	
Maldives	R					R	
Mali	R	R				S[22] / R[29]	
Malta	R	R	R				
Marshall Islands	R						
Mauritania	R	R					
Mauritius	R	R				R / R[30]	R
Mexico	R	R		R		R[8]/S[19]/S[21]	
Micronesia		R					
Moldova	R	R	R		R		
Monaco	R						
Mongolia	R	R	R		R	R	
Montenegro	R	R	R				
Morocco	R	R			R	R	
Mozambique	R	R			R	R	
Myanmar (Burma)	R					S / R[27]	
Namibia		S				R[26]	
Nauru		R					
Nepal	R	R					
Netherlands[13]	R	R	R				S
New Zealand[14]	R	R				R / S[19]	
Nicaragua	R	R		R	S	R[10]	
Niger	R	R				S[22] / R[29]	
Nigeria	R	R				R	
North Macedonia[7]	R	R	R				
Norway	R	R	S				
Oman	R	R				R / S[24]	
Pakistan	R	R					
Palau	R						
Panama	R	R		R	R	R	
Papua New Guinea	R	R					
Paraguay	R	R		R		S	
Peru	R	R		R		R / R[18]/S[19] / S[31]	
Philippines	R	R					
Poland	R		R		R	R[27]	
Portugal	R	R	R				
Qatar	R	R				S / S[24]	
Romania	R	R	R		R		
Russian Federation	R	S	S		S		
Rwanda	R	R			R	R / R[25]	
Saint Kitts and Nevis		R				R[23]	
Saint Lucia		R				R[23]	
St. Vincent and the Grenadines	R	R				R[23]	

Samoa		R					
San Marino	R	R					
Sao Tome and Principe	R	R					
Saudi Arabia	R	R				R / S[24]	
Senegal	R	R			R	S[22] / R[29]	
Serbia[7]	R	R					
Seychelles	R	R				R[30]	
Sierra Leone	R	R				S[22]	
Singapore	R	R				R / R[27]	
Slovakia	R	R	R		R		
Slovenia[7]	R	R	R				
Solomon Islands		R					
Somalia		R				R[30]	
South Africa	R					R / R[26]	
South Sudan		R				R[25]	
Spain	R	R	R				
Sri Lanka	R	R			R	R	
Sudan	R	R				R[30]	
Suriname						R[23]	
Sweden	R	R	R				S
Switzerland	R	R	R			R	R
Syrian Arab Republic	R	R					S
Taiwan							
Tajikistan	R		R			R[28]	
Tanzania	R	R				R[25]	
Thailand	R	S				R / R[27]	
Timor Leste		R					
Togo		R				S[22] / R[29]	
Tonga	R	R					
Trinidad and Tobago	R	R			R	R[23]	
Tunisia	R	R			R	R[30]	
Turkey	R	R	R		R	S	
Turkmenistan		R	R			R[28]	
Tuvalu							
Uganda	R	R				R[25] / R[30]	
Ukraine	R	R	R		R	S	
United Arab Emirates	R	R				S / S[24]	
United Kingdom[15]	R	R	R				S
United States of America[16]	R	R		R	N/A	N/A	S
Uruguay	R	R		R	R	R	
Uzbekistan	R	R	R		S	R[28]	
Vanuatu							
Venezuela	R			R			
Vietnam	R					R /S[19] / R[27]	
West Bank and Gaza[17]	R						
Yemen		R	R			R	
Zambia	R	R				R[30]	
Zimbabwe	R	R				R[30]	

Notes: (1) Extends to metropolitan and overseas constituent territorial subdivisions but not to overseas dependent territories. Consult UNCITRAL for definitive status, as well as for the reservations to the Convention. (2) Extends to metropolitan and overseas constituent territorial subdivisions and to overseas dependent territories unless specifically excluded. (3) 1991 European Energy Charter was signed by the US. European Union and EURATOM have ratified the ECT. (4) Treaties signed or ratified by the US with provisions on investments. (5) See also 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. (6) ICSID Convention entered into force for Bolivia on July 23, 1995. On May 2, 2007, Bolivia denounced the ICSID Convention, with effect on November 3, 2007. The Government of Bolivia delivered notice to the United States on June 10, 2011, that it was terminating the "Treaty Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment." As of June 10, 2012 (the date of termination), the treaty ceases to have effect, except that it continues to apply for another 10 years to covered investments existing at the time of termination. (7) As of 4 February 2003, The Federal Republic of Yugoslavia has changed its name to "Serbia and Montenegro." Montenegro declared itself independent from Serbia on June 3, 2006. Bosnia & Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Slovenia are separated successor states to parts of the former Yugoslavia and have succeeded to the NY. The Former Yugoslav Republic of Macedonia changed its name to the Republic of North Macedonia on 12 February 2019. (8) Included in the North American Free Trade Agreement among the United States, Canada and Mexico. (9) NY: includes Hong Kong Special Administrative Region. (10) Included in the Dominican Republic - Central America - United States Free Trade Agreement. (11) NY: includes Faeroe Islands and Greenland. (12) NY: includes, inter alia, French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, and St. Pierre and Miquelon. (13) NY: includes Aruba and Netherlands Antilles. (14) ICSID Convention: excludes Cook Islands, Niue and Tokelau. (15) NY: includes Bermuda, Cayman Islands, Gibraltar, Guernsey, Isle of Man, and British Virgin Islands. ICSID Convention: excludes British Indian Ocean Territory, Pitcairn Islands, British Antarctic Territory and Sovereign Base Areas of Cyprus. ICSID Convention: continues to include Hong Kong Special Administrative Region. (16) NY: includes, inter alia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and US Virgin Islands. (17) West Bank and Gaza are not recognized as states by the United States. (18) United States - Peru Trade Promotion Agreement. (19) Trans-Pacific Partnership signed on February 4, 2016. (20) The State has signed the ECT and it applies it provisionally, under Art. 45 of the ECT. (21) USMCA signed on November 30, 2018. (22) Economic Community of West African States (ECOWAS) – US Trade and Investment Framework Agreement ('TIFA') signed on August 5, 2014. (23) Caribbean Community (CARICOM) – US TIFA, in force on May 28, 2013. (24) Gulf Cooperation Council – US Framework Agreement signed on September 25, 2012. (25) East African Community – US TIFA, entered into force on July 16, 2008. (26) Southern African Customs Union – US TIFA, entered into force on July 16, 2008. (27) Association of South-East Asian Nations (ASEAN) – US TIFA, entered into force on August 25, 2006. (28) Central Asia – US TIFA, entered into force on June 1, 2004. (29) West African Economic and Monetary Union (WAEMU) – US TIFA, entered into force on April 24, 2002. (30) Common Market for Eastern and Southern Africa (COMESA) - US TIFA, entered into force on October 29, 2001. (31) Andean Community (ANCOM) – US Trade and Investment Council signed on October 30, 1998.

SOURCES:

This issue was compiled by Co-Editors Crina Baltag and Monique Sasson of The Institute for Transnational Arbitration based on the following sources: United Nations; ICSID; UNCITRAL; Organization of American States; Energy Charter Secretariat; UNCTAD and the Office of the United States Trade Representative. The Scoreboard is designed to be a convenient reference and it is not intended to be relied on as legal advice. Please consult the sources directly to confirm the status of any particular ratifications, reservations, changes, special conditions or new developments.

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The Hon. Carl Ginsberg
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International Institute for Conflict Prevention & Resolution (CPR)
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