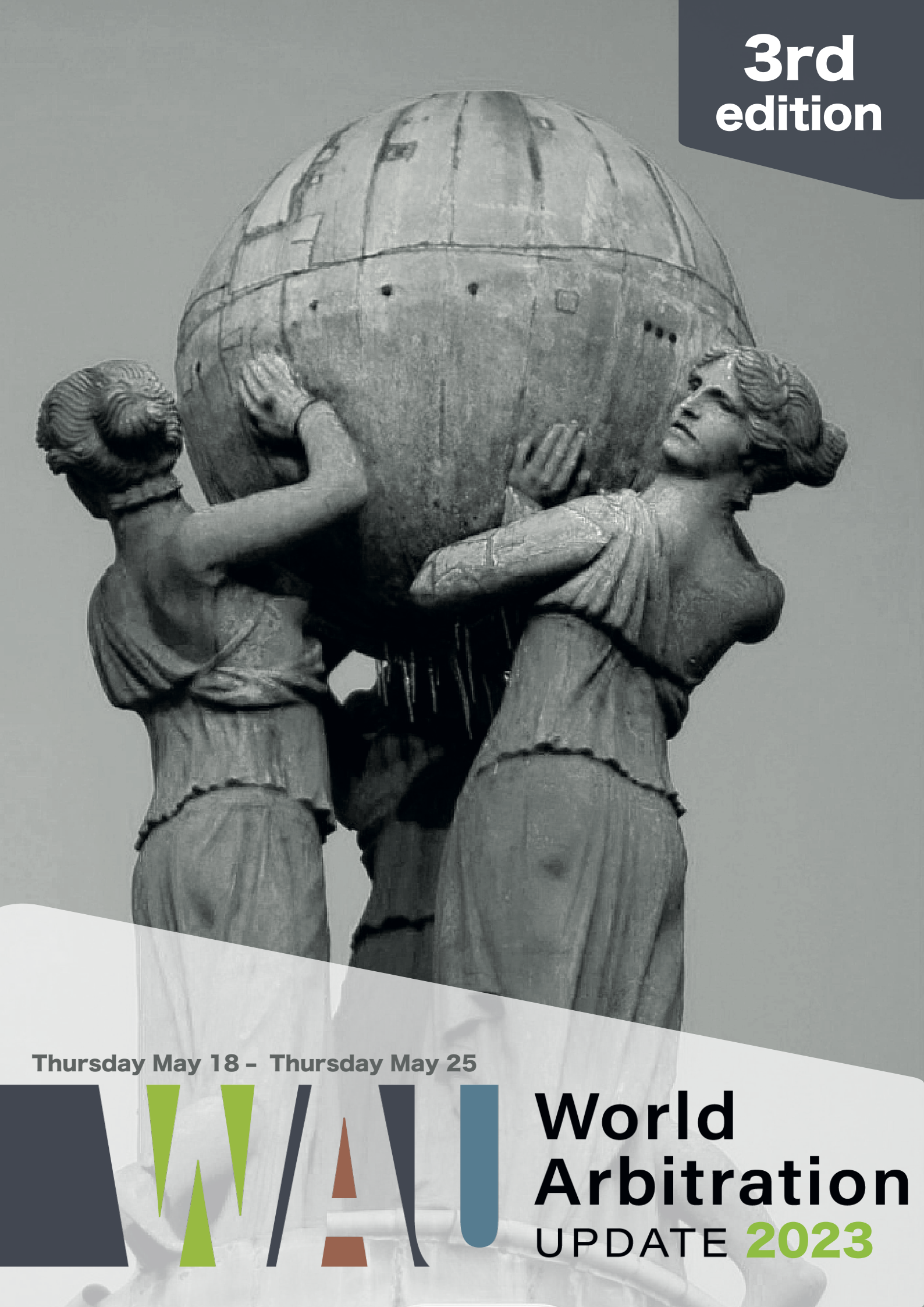


3rd edition

Thursday May 18 – Thursday May 25

WAU World Arbitration UPDATE 2023

Introduction to WAU: Decentralization and Update of International Arbitration

Rigorous and remarkable counsel, arbitrators and academics are living and practicing beyond the centers of international arbitration. There are large, medium, and boutique firms, as well as solo practitioners, actively advancing international arbitration and public international law in non-traditional venues in Africa, the Americas, Asia, Europe and Oceania.

The World Arbitration Update (WAU) will update the global community on key and novel topics of investment and international commercial arbitration, and public international law in a decentralized forum.

By the end of the 1990s, and even by the end of the 2000s, it may have been possible to keep up to date individually by directly digesting the few investment arbitration awards and main publicly disclosed international commercial arbitration awards. As 1,138 of the approximately 3,300 investment treaties in force have been invoked in investment arbitrations leading to 96 awards rendered between 2001 and 2010, and 225 awards rendered between 2011 and 2020. As the use of international commercial arbitration has reached new heights during the last two decades, WAU focuses on providing an international arbitration update focused on key investment and international commercial issues with global and regional impact.

The WAU panels will follow a dynamic format where a presenter will first provide an update of the issue that the panel will address, including relevant treaty and international customary norms, as well as case law. An open discussion by the panelists, including practitioners, counsel for investors, counsel for States, arbitrators, officials of international organizations and arbitration centers, and academics, will then follow. After each panel, there will be a networking space in breakout rooms for panelists and WAU attendees to meet and interact.

> On behalf of WAU, its circles of supporting firms, organizations, experts, panel speakers and moderators, we welcome the global community, newcomers, and experienced practitioners alike to the first edition of the World Arbitration Update.

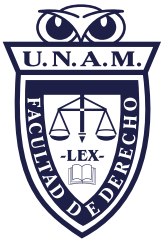
WAU connects different regions and the global community, and aims to decentralize and further expand international arbitration and public international law. At WAU, practitioners, States, private parties, arbitrators, international organizations, academics and students have the possibility to engage with each other and nourish the conversation on investment and international commercial arbitration, while being members of a forum that integrates the world through connectivity and precise updates.

On behalf of WAU, its circles of supporting firms, organizations, experts, panel speakers and moderators, we welcome the global community, newcomers, and experienced practitioners alike to the third edition of the World Arbitration Update.

José Antonio Rivas
Xtrategy LLP
Co-Chair of WAU

Ian A. Laird
Crowell & Moring LLP
Co-Chair of WAU

Circle of supporting organizations



Cámara de Comercio de Cali | Centro de Conciliación, Arbitraje y Amigable Composición

CAM Centro de Arbitraje de México

Arbitral Women

Arbanza Escuela de Arbitraje

NYIAC New York International Arbitration Center

Center for Arbitration and Conciliation | Bogotá Chamber of Commerce

Georgetown International Arbitration Society

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EVENT PROGRAM

Americas Mexico City Investment Arbitration Days

Wednesday May 17

3:30pm-5:30pm CST This session will be only in person at the National Autonomous University of Mexico, Mexico City	Educational Session: Introduction to Investor-State Arbitration

Thursday May 18

9:30am-10:15am CST **11:30am-12:15pm EST** Virtual and in-person at National Autonomous University of Mexico, Mexico City	Keynote Speech: Proliferation of Investment Arbitration: Where We Are and Where We Go?
10:30am - 11:45am CST **12:30pm - 1:45pm EST** Virtual and in-person at National Autonomous University of Mexico, Mexico City	Do's and Don'ts in Investment Arbitration: Arbitrators and Party Representatives
12:00pm - 1:15pm CST **2:00pm - 3:15pm EST** Virtual and in-person at National Autonomous University of Mexico, Mexico City	Do We Need Treaty Disciplines on damages?
3:00pm - 4:15pm CST **5:00pm - 6:15pm EST** Virtual and in-person at National Autonomous University of Mexico, Mexico City	Is Latin America Special in Terms of Investment Arbitration?
4:30pm - 6:00pm CST **6:30pm - 8:00pm EST** Virtual and in-person at National Autonomous University	Where Are We in Solving Problems of States, Investors and Society?

Friday May 19

9:00am - 10:15am CST **11:00am - 12:15pm EST** Virtual and in-person at National Autonomous University	From Metalclad to Ruby River Capital LLC: Mexico's NAFTA Experience and the Future of Investment Arbitration under the USMCA
10:20am - 11:35am CST **12:20am - 1:35pm EST** Virtual and in-person at National Autonomous University	What can ISDS (and ISDS lawyers) learn from the WTO (and WTO lawyers)?
11:45am - 1:00pm CST **1:45am - 3:00pm EST** Virtual and in-person at National Autonomous University	The Use of Modern Technology in Investment Arbitration

Middle East and Africa

Monday May 22

2:00pm - 3:30pm AST (Baghdad and Tel Aviv Time) **7:00am - 8:30am EST** (Washington D.C.) Virtual	The Abraham Accords – Arbitration of Disputes involving Israel and the MENA Region
1:00pm-2:30pm Accra Time **2:00pm-3:30pm Abuja Time** **9:00am-10:30am EST** Virtual	The Protocol on Investment of the African Continental Free Trade Area (AfCFTA), USMCA and New Generation of Investment Treaties by Region.
6:00pm-7:30pm AST (Baghdad and Tel Aviv Time) **11:00am-12:30am EST** Virtual	Corruption in Investment Projects: The Standard of Proof and the Consequences for Investment Arbitration
5:30pm-7:00pm Accra Time **6:30pm-8:00pm Abuja Time** **1:30pm-3:00pm EST** Virtual	Consequences of Energy Transition Policies for Investment Arbitration Disputes

Asia and Oceania

Tuesday May 23

8:00am-9:30am SGT (Singapore and Hong Kong Time) **8:00pm-9:30pm EST** (Monday 22) Virtual	Role of Domestic Legislations on Evidence in International Arbitration Proceedings / Clash of Legal Cultures in Taking of Evidence in International Arbitration
10:00am-11:30am SGT (Singapore and Hong Kong Time) **10:00pm-11:30pm EST** (Monday 22) Virtual	Artificial Intelligence: What are the Current and Future Possibilities of ChatGPT and Predictive Analytics for International Arbitration? tional Arbitration
6:00pm-7:30pm SGT (Singapore and Hong Kong time) **6:00am-7:30am EST** (Tuesday 23) Virtual and in Singapore	Untapped Potential? Settlement offers and amicable resolution in investment arbitration through mediation and conciliation and latest ADR instruments: The Singapore Convention and the ICSID Rules on Mediation and Conciliation. Arbitration
8:30pm-10:00pm SGT (Singapore and Hong Kong time) **8:30am-10:00am EST** (Tuesday 23) Virtual	Enforcement of Arbitration Awards Outside of the European Union, Tracing of Assets, Effective Strategies and New Technologies to Achieve Compliance.

Europe

12:00pm-12:20pm EST (Washington DC time) **7:00pm-7:20pm EEST** (Kyiv time) Virtual and in-person at Pillsbury Winthrop Shaw Pittman LLP	Update from the Ukrainian Trenches – Special Speaker

12:30pm-2:00pm EST (Washington DC time) **7:30pm-9:00pm EEST** (Kyiv time) Virtual and in-person at Pillsbury Winthrop Shaw Pittman LLP Washington D.C.	Ukraine and Ukrainian Nationals and Assets: Options of International Arbitration and Litigation, Funding and Recovery Options for Ukraine, its Nationals and the Protection of their Assets
9:00pm-10:30pm CEST **3:00pm-4:30pm EST** Virtual	Dispute Boards as Means to Conclude Successfully Investment Projects and Resolve Disputes

Wednesday 24 May

2:00pm-3:30pm CEST (Madrid time) **8:00am-9:30am EST** Virtual	The ECT, Investment Treaties in Europe, and International Arbitration Awards Unfavorable to European States: Demystifying the Conundrum of International, Regional European, and Domestic Law.
7:00pm-8:30pm CEST **1:00pm-2:30pm EST** Virtual and in-person in Madrid at Eversheds Sutherland offices (Paseo de la Castellana, 66)	Update of International Construction and Infrastructure International Arbitration: The Effects of Supply Chain Disruptions and Global Rise in Interest Rates

Diverse topics

Thursday May 25

9:00am-10:30am EST Virtual	2023 the Year of Near or Full Financial Crisis? An Update of Investment Arbitration in Financial Services: The World of Banking, Prudential Measures, and Sovereign Bonds
11:00am -12:30pm EST Virtual and in-person Bogotá D.C.	Investment Arbitration in War and Armed Conflicts: Can Investment Legal Principles Coexist with International Humanitarian Law?
1:00pm-2:30pm EST Virtual and in-person Washington D.C.	The Code of Conduct for Adjudicators in International Investment Disputes is a Reality!

World Arbitration UPDATE

Americas

Mexico City Investment Arbitration Days

Thursday May 18

Wednesday May 17

1. Educational Session: Introduction to Investor - State Arbitration

3:30pm - 5:30pm CST

Location: This session will be only in person at the National Autonomous University of Mexico, Mexico City

Panelists:
- Samantha Atayde, RRH Consultores
- Adriana Pérez-Gil, Van Baels & Bellis
- Nicholas A Lawn, Van Baels & Bellis
- María Lucía Casas, Xtrategy LLP

Description:
International Investment Agreements (IIAs) emerged during the 20th century as an alternative to settle disputes between investors and States (previously resolved before domestic tribunals or through diplomatic means) with the primary objective of depoliticising disputes. Nowadays, more than 2500 IIAs worldwide commit state parties to afford specific standards of treatment and grant protection to foreign investors, including recourse to Investor-State Dispute Settlement (ISDS) and compensation.

The educational session aims to give non-experts, including students an introduction and an overview of the ISDS regime, including the basic concepts, principles, and current developments. This as a preliminary event to the remaining days of panels.

This panel will address the following questions:
- What are (IIAs)
- Scope, main concepts, and substantive provisions under IIAs
- The objective of ISDS and its main characteristics
- How ISDS works
- Current challenges and ISDS reform

Thursday May 18

2. Keynote Speech: Proliferation of Investment Arbitration: Where We Are and Where We Go?

9:30am-10:15am CST
11:30am-12:15pm EST

Meg Kinnear
Secretary General of ICSID.

Location: Virtual and in-person at National Autonomous University of Mexico of Mexico, Mexico City

Presenter: Ricardo Ramírez Hernández, RRH Consultores

3. Do's and Don'ts in Investment Arbitration: Arbitrators and Party Representatives

10:30am-11:45am CST
12:30pm-1:45pm EST

Location: Virtual and in-person at National Autonomous University of Mexico, Mexico City
Moderator: Nicholas A Lawn, Van Baels & Bellis
Panelists:
- José Antonio Rivas, Xtrategy LLP
- Hugo Perezcano Díaz, IIURIS
- Gaela Gehring Flores, Allen & Overy
- Eduardo Sisqueiros, International Arbitrator

Description:
In recent years, Investment Arbitration has faced significant criticism, both from the outside and inside of the system – leading one prominent US practitioner to refer to ISDS as 'the wild, wild west of international law and arbitration'.

Despite suggestions that ISDS and its participants are unregulated, there have long been guidelines on best practices, and the leading institutions are currently working on a detailed set of rules to promote best practices amongst arbitrators and counsel in investment arbitration.

This Panel will be both theoretical and practical. We will hear from leading arbitrators and counsel on the norms which should apply in investment arbitration. Based on their practical experience, arbitrators and counsel will share what constitutes good practice and less desirable behavior over the course of an arbitral proceeding, what makes an outstanding arbitrator and an outstanding counsel.

This panel will address the following questions:

- Should an arbitrator who has rendered prior awards or decisions, which deal with a disputed issue in a new case before him/her refuse appointment?
- Should arbitrators act as arbitrator and counsel simultaneously?
- Are repeat appointments a problem for arbitrators?
- What makes an outstanding arbitrator?
- What makes an outstanding counsel?

4. Do We Need Treaty Disciplines on damages?

12:00pm-1:15pm CST
2:00pm - 3:15pm EST

Location: Virtual and in-person at National Autonomous University of Mexico, Mexico City

Speakers
Moderator: Orlando Pérez Gárate, TMI Abogados
Panelists:
- Martin Plettner, RIóN
- Richard Caldwell, Brattle Group
- Rafael T. Boza, Pillsbury Winthrop Shaw Pittman LLP

Panel description:
Generally, an investment arbitration may comprise two parts once the tribunal has accepted jurisdiction – namely, state responsibility and quantum. Investment treaties deal at length with a State's international responsibility but barely address how the issue of quantum should be dealt with. In practice, arbitrators rely on the party-appointed damages experts to guide them on concepts such as 'fair market value' to award damages. Is this a flaw in the system which should be remedied or is the succinct reference to quantum in investment treaties a better approach?

This panel will address the following questions:

- To what extent do investment treaties deal with damages?
- Is the lack of treaty provisions on damages problematic?
- Is it necessary to develop treaty provisions on damages?
- If treaty provisions on damages were to be developed, what would the minimum rules on damages be?
- Is Latin American Special in Terms of Investment Arbitration?

5. Is Latin America Special in Terms of Investment Arbitration?

3:00pm-4:15pm CST
5:00pm - 6:15pm EST

Location: Virtual and in-person at National Autonomous University of Mexico, Mexico City

Speakers

Moderator: Adriana Pérez-Gil, Van Bael & Bellis

Panelists:
- Mateus Aimoré Carreteiro, Veirano Advogados
- Álvaro Galindo, Carmigniani Pérez
- Luis González García, Matrix Chambers

Panel description:
Over the last 20 years, government regulation in Latin America has given rise to a huge wave of investment arbitrations in the region. Indeed, between 2012 and 2021 four Latin American countries were among the top 10 most frequent respondents in ISDS (Venezuela, Peru, Mexico and Colombia). In parallel, while a number of Latin American countries (such as Ecuador, Venezuela and Bolivia) took action to withdraw from the ISDS system in the 2010s, many are gradually returning to it in recent years.

This panel will adress the following questions:

- What is currently happening in Latin America in terms of treaty practice and investment arbitration case law?
- Why are some Latin American States returning to ISDS?
- Based on current trends, is ISDS here to stay in Latin America?
- What is special about Latin America as a region for ISDS? In
- what ways does the legal tradition of Latin American States contribute to the special nature of ISDS within the region?

6. Where Are We in Solving Problems of States, Investors and Society?

4:30pm-6:00pm CST
6:30pm - 8:00pm EST

Location: Virtual and in-person at National Autonomous University of Mexico, Mexico City

Speakers

Moderator: Meg Kinnear, Secretary General of ICSID

Panelists:
- Professor Yannick Radi, UCLouvain University
- Dawn Yamane Hewett, Quinn Emanuel Urquhart & Sullivan LLP
- Lucinda A. Low, Steptoe & Johnson
- Silvia Marchili, White & Case LLP
- Ian A. Laird, Crowell & Moring

Panel description

In recent years, the ISDS system has received increasing public scrutiny, with criticism received from many corners, including State regulators, legislators, environmentalists, commentators, and even investment arbitration practitioners and arbitrators. Aside from the discussion on ISDS reform triggered by such criticism, this Roundtable will take a step back and will first analyze whether the ISDS system is actually solving any of the problems it was initially designed to address and – if it is failing to do so – what can be done to improve the system to ensure that the most basic problems are solved.

This panel will address the following questions:

- What was the original ISDS system trying to solve? Was it desig ned to solve problems for States, Investors and Society?
- What problems does today's ISDS system solve?
- Does the modern ISDS system create or promote regulatory chill? Is this good or bad?
- What problems should an ideal ISDS system address?
- How can ISDS promote an Energy Transition? Does ISDS help or hinder climate change goals?
- Should an ISDS system balance the interests of States, Investors and Society? If so, how could such balance be achieved?

Friday May 19

7. From Metalclad to Ruby River Capital LLC: Mexico's NAFTA Experience and the Future of Investment Arbitration under the USMCA

9:00am-10:15am CST
11:00am-12:15pm EST

Location: Virtual and in-person at National Autonomous University of Mexico, Mexico City

Speakers

Moderator: Carlos Humberto Reyes, Instituto Investigaciones Jurídicas Universidad Nacional Autónoma de México

Panelists:
- Cindy Rayo, Trade and Investment Lawyer
- Aristeo López, Clark Hill Law
- Bernardo Sepúlveda, CREEL García-Cuéllar Aiza y Enríquez

Panel description:
On 1 July 2023, NAFTA Chapter 11 (which has been kept alive pursuant to a legacy clause in the USMCA) will come to an end together with the NAFTA arbitration era. The modern ISDS system owes much to NAFTA jurisprudence, both on procedural and substantive issues. For example, the influence of the NAFTA FTC Interpretative Note on Article 1105 went beyond NAFTA and was incorporated into various other FTAs and BITs. Although there will still be a transition period in which NAFTA legacy claims submitted before 1 July 2023 will be arbitrated, the landscape for Mexican, Canadian and US investors will be completely different. They will now have to rely on the reduced protections of the USMCA.

This panel will adress the following questions:

- What was the Mexican experience of NAFTA?
- Metalclad is undoubtedly a seminal case within ISDS jurispruden ce. What have the Metalclad and other Mexican NAFTA cases contributed to the ISDS system?
- Why is the legacy clause in the USMCA important and how does it apply?
- What is the future of investment arbitration under the USMCA?

8. What can ISDS (and ISDS lawyers) learn from the WTO (and WTO lawyers)?

10:20am-11:35am CST
12:20pm-1:35pm EST

Location: Virtual and in-person at National Autonomous University of Mexico, Mexico City

Speakers

Moderator : Samantha Atayde, RRH Consultores

Panelists:
- Ricardo Ramírez Hernández, RRH Consultores
- Philippe De Baere, Van Bael & Bellis
- Carlos Véjar, Holland & Knight

Panel description:
The ISDS system and the WTO system come from different juridical backgrounds, were designed to achieve different objectives, and each has their own way of solving disputes. Indeed, ISDS disputes are handled by investment arbitration counsel, while international trade counsel handle WTO disputes. Yet, both the ISDS system and the WTO system are premised on Public International Law and International Economic Law and there are significant substantive and procedural synergies between each system.

Currently, as both systems are currently at a time of challenges – if not crisis –, now it may be appropriate to consider the overlaps between these two systems and to understand what could be drawn from the WTO system to improve current flaws or perceived flaws within the ISDS system. In December 2021, the WTO and over 100 of its members recognized the crucial importance of international investment for economic growth, sustainable development, and global resilience, and expressed their intention to conclude, by the end of 2022, a multilateral agreement on Investment Facilitation for Development (IFD).

This panel will adress the following questions

- What are the basics of the WTO system and how is it different to the ISDS system?
- What are the strengths or benefits of the WTO system?
- What features of the WTO system could be applied to improve the ISDS system?
- What is the status of the investment facilitation negotiations at the WTO?
- How will Investment Facilitation for Development (IFD) fit into the international investment framework?
- Would there be any additional benefits of the IFD for those WTO Members that are also parties to regional trade agreements with investment chapters or bilateral investment treaties promoting sustainable investments?

9. The Use of Modern Technology in Investment Arbitration

11:45am-1:00pm CST
1:45pm-3:00pm EST

Location: National Autonomous University of Mexico, Mexico City

Speakers

Moderator: Hugo Romero Martínez, RRH Consultores

Panelists:
- Julie Bédard, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
- Barton Legum, Honlet Legum
- Patrick W. Pearsall, Allen & Overy

Panel description:
Modern Technology is all around us, and in investment arbitration it is currently playing an essential role: Proceedings are now being conducted by having virtual hearings and using e-filing systems and electronic hearing bundles, and by relying in other applications and technology developments. But what about the technology of tomorrow? What role will AI play in investment arbitration and how will the metaverse create a new frontier for international arbitration?

This panel will adress the following questions:

- What modern technologies are most frequently used in Invest ment Arbitration?
- What technologies must be used for a best-in-class investment arbitration proceeding?
- What is coming in terms of new technologies in Investment Arbi tration?
- How is AI being used in Investment Arbitration?
- Will AI ever replace humans in Investment Arbitration?
- Is the metaverse an area where arbitration is required?
- Might investment arbitration step into the Metaverse and work there considering the characteristics of it involving Sovereign States being at one side of the disputing parties' equation?

World Arbitration UPDATE

Middle East and Africa

Monday May 22

10. The Abraham Accords – Arbitration of Disputes involving Israel and the MENA Region

2:00pm-3:30pm AST
(Baghdad and Tel Aviv Time)
7:00am-8:30am EST
(Washington D.C.)

Location: Virtual

Speakers

Moderator: Nir Keidar, Gornitztky & Co.

Panelists:
- Menashe Cohen, President, Israeli Institute for Commercial Arbitration (IICA)
- Prof. Arie Reich, Bar Ilan University
- Andrew Mackenzie – DLA Piper
- Paul Hughes, Kobre & Kim

Panel description:

The Abraham Accords were signed in September 2020 between Israel, the United Arab Emirates (UAE), and Bahrain, and are aimed at normalizing diplomatic and economic relations. Since that time, Sudan and Morocco have also normalized relations with Israel, in addition to Egypt in 1979 and Jordan in 1994. The Accords e provisions for the opening of embassies, the exchange of ambassadors, and the establishment of direct flights and economic ties between the signatory countries. The Accords—seen as a major breakthrough in the Middle East marking a departure from the longstanding Arab stance of boycotting Israel until a peace agreement is reached with the Palestinians—were brokered by the United States and were praised by many countries as a positive step towards peace and stability in the region. In particular, the agreements emphasize the importance of maintaining peaceful relations and resolving disputes through peaceful means, in accordance with the principles of the United Nations Charter.

The active development in Israel of a new international arbitration Law (based on the UNCITRAL Model Law), and following the further normalizing of economic relations with a number of its MENA neighbors through the Abraham Accords and other agreements, foretells increased economic activity and access to international dispute resolution mechanisms in the MENA region and with Israel. Our panel will explain and examine these new developments and provide further context as to why these developments should be a focus for all users and practitioners interested in international arbitration in the region.

11. The Protocol on Investment of the African Continental Free Trade Area (AfCFTA), USMCA and New Generation of Investment Treaties by Region.

1:00pm-2:30pm
Accra time/
2:00pm-3:30pm
Abuja time/
9:00am-10:30am EST

Location: Virtual

Speakers

Moderator: Jose Antonio Rivas, SJD, Xtrategy LLP

Presenter: Hamed El-Kady, Lead, International Investment Agreements, UNCTAD

Panelists:
- Professor Makane Moïse Mbengue, Université de Genève
- Saadia Bhatty, Gide Loyrette Nouel
- Suzy H. Nikièma, International Institute for Sustainable Development
- Michael Imran Kanu, Ambassador & Deputy Permanent Representative for Legal Affairs of the Permanent Mission

Panel description:
Foreign direct investment remains important for growth and development for most countries, given insufficient private domestic investment. In Africa policymakers are promoting inward investments through changes in domestic regulations and international agreements including through the AfCFTA, by addressing the protection, promotion, and facilitation of intra-African investments in the draft Protocol on Investment. While this protocol will provide investors with additional legal protection to mitigate against investment risk in the continent, it also provides a modern perspective as investment treaty by offering conscientious provisions on the right to regulate, administrative and judicial treatment, labor and environmental international rules as obligations for investors, rights of local communities and indigenous peoples, international human rights and climate change.

A fundamental position that has found its way into the Protocol is that intra-Africa bilateral investment treaties will terminate upon the Protocol coming into effect (See Article 5, Protocol (Zero Draft)). However, such bilateral investment treaties will continue to provide protection to investors and their investments post-termination pursuant to the applicable sunset provision of each applicable treaty. The Protocol omits the Fair and Equitable Treatment Standard and incorporate the concept of "administrative and judicial treatment" (See Article 15, Protocol (Zero Draft)). This concept develops the notion of judicial and administrative due process and rejects manifest arbitrariness, in substitution of FET.

Meanwhile in North America, the United States-Mexico-Canada Agreement ("USMCA") made substantial changes to and replaced NAFTA. The most significant development of the USMCA is Canada's entire withdrawal from investor-State arbitration vis-à-vis United States and Mexican investors. Within the new treaty, investment arbitration remains between the US and Mexican investors, and Mexico and US investors, but to a limited number of claims, among others in the energy sector.

These treaties, among the latest in the world, reflect a new reality and modern concerns in treaty negotiations, international investment protection standards, and the States' right to attract investment while continuing regulating its economy in accordance with due process, and being responsive to climate change, environmental, labor and human rights concerns. In tandem with these treaties, in different continents State have also concluded new model investment treaties, which make it apparent the evolution of investment treaties towards a new and more balanced bread of investment treaties.

This panel addresses the question of what are in substance the newest investment treaties, which incorporate provision that have the potential of balancing the system for protection to qualified, sustainable and responsible investments?

12. Corruption in Investment Projects: The Standard of Proof and the Consequences for Investment Arbitration.

6:00pm-7:30pm AST
(Baghdad and Tel Aviv Time)
11:00am-12:30am EST

Location: Virtual

Speakers

Moderator: Rainbow Willard, Willard Arbitration

Panelists:
- Pedro Soto, Gibson Dunn
- Caline Mouawad, Chaffetz Lindsey LLP
- Guled Yusuf, Allen & Overy
- David Khachvani, Lévy Kaufman-Kohler
- Athina Fouchard Papaefstratiou, independent arbitrator

Panel description:
The popular conception of transnational corruption might encourage visions of silver-tongued crooks in shadowy back-rooms. However, as arbitrators have realized, much of corruption in investment projects transpires in ostentatious hotels and prestigious government buildings, perpetrated by well-connected people and public-facing officials. In investment arbitrations, corruption has been wielded as a sword by investors and as a shield by host States; the unresolved ambiguity surrounding the appropriate standard of proof may have led to inconsistent results.

This panel will offer an update on the key and latest investment arbitrations where the issue of corruption has been addressed by the tribunals. Among others, panelists will (i) consider the consequences of corruption for the arbitration depending on whether the corrupt acts took place when the investment was made or when the investment was already operating in the host State; and (ii) address the standard of proof that applies to allegations of corruption in the context of in investment projects, (iii) analyze the lack of clarity and consensus on what the standard of proof is when dealing with allegations of corruption; and (iv) discuss the advantages and disadvantages of a more flexible and case-sensitive standard.

13. Consequences of Energy Transition Policies for Investment Arbitration Disputes

5:30pm-7:00pm Arca time
6:30pm-8:00pm Abuja time
1:30pm-3:00pm EST

Location: Virtual

Speakers

Moderator: Christina Beharry – Foley Hoag
Presenter: María Lucía Casas, Xtrategy LLP
Panelists:
- Julie Carey, NERA Economic Consulting
- Garrett Rush, Secretariat
- Lisa Sachs, Columbia Center on Sustainable Investment
- Louise Barber, Herbert Smith Freehills LLP

Panel description:
The global energy sector is transitioning from fossil fuels to increased use of renewable energy. This transition is partly driven by the Paris Agreement's goal to limit the global average temperature increase to 1.5°C above pre-industrial levels. On the one hand, the energy transition involves tremendous private investment. An estimated US $131 trillion will be needed by 2050 to limit the global temperature increase to 1.5ºC by the end of the century. Much of that investment will be cross-border. On the other hand, existing investments in the energy production and transmission sector, particularly carbon-intensive energy, face uncertainty as countries pass laws and regulations to facilitate the energy transition, including by phasing out fossil fuels. Such facing out could, in some cases, affect projects or existing contracts or concessions in natural resources that were moving forward or that were expected (by investors) to be renewed. In other cases, where initial sovereign policy in support of renewable energy may have led to State commitments to subsidize investment in renewable energy, the issue could be new regulations stopping priorly promised financial support to renewables, for example in the line of investment arbitrations on subsidies to renewables filed against Spain.

Governments thus face potentially competing objectives: Moving the energy transition forward and implementing the Nationally Determined Contributions (or NDCs) they have made under the Paris Agreement, while also respecting the rights of companies and investors that own assets impacted by the transition. The tension between these objectives has produced a host of investor-state disputes in recent years. Various questions, which this panel will attempt addressing, are at issue:

- What are the main latest awards addressing matters related to the environment, fossil fuels and the energy transition?
- What were their outcomes and their international law rationale?
- What could their effect be for the aimed energy transition of the economies in the world?
- Are existing investment treaties too rigid to permit a cost-efficient energy transition?
- Is investment arbitration per se contrary to renewable energy and a transition away from fossil fuels, or could investment treaties with key for-renewable-energy-project provisions constitute incentives for the transition?
- Are there minimum customary international environmental obligations that should be considered as applicable law by investment tribunals?

World Arbitration UPDATE

Asia and Oceania

Tuesday May 23

14. Role of Domestic Legislations on Evidence in International Arbitration Proceedings / Clash of Legal Cultures in Taking of Evidence in International Arbitration

8:00am-9:30am SGT
(Singapore and Hong KongTime)
8:00pm-9:30pm EST

Location: Virtual

Speakers

Moderator: Professor Julien Chaisse, City University of Hong Kong

Presenter: Junianto James Losari, UMBRA Strategic Legal Solutions

Panelists:
- Dr. Lars Markert, Nishimura & Asahi
- Dr. Kabir Duggal, Arnold & Porter
- Prof Jeffrey Waincymer, National University of Singapore
- Yan Zhang, Sidley Austin LLP

Panel Description:

The evidentiary stage is at the core of both litigation and arbitration. However, in international arbitration, rules of arbitral institutions and arbitration laws of States offer little guidance on procedures relating to evidence, such as collection, taking, presentation, and assessment. The International Bar Association Rules on the Taking of Evidence in International Arbitration (the IBA Rules) and the Rules on the Efficient Conduct of Proceedings in International Arbitration (the Prague Rules) provide guiding principles on taking of evidence in international arbitration, but these rules are not binding on either the parties or the tribunal.

Practitioners in international arbitration may come from civil law or common law jurisdictions. Although most practitioners are qualified in one jurisdiction, there is a growing number of those qualified in multiple jurisdictions. While there is an argument that certain convergence has been achieved in international arbitration, this WAU panel will explore this notion by bringing together academics and practitioners from both civil law and common law jurisdictions. The panellists will also share their experience in dealing with evidentiary issues in international arbitration by addressing, among others, the following questions:

- What are the clashes between practitioners from the two jurisdictions when it comes to the taking of evidence in international arbitration?
- To what extent is there convergence of procedures for the taking of evidence in international arbitration?
- In such a clash, how would the arbitrator deal and decide on the procedure to take?
- As a practitioner, how to deal with a clash of cultures in the taking of evidence?
- What is the main concerning difference between the two jurisdictions as regards the taking of evidence?
- At the post-award stage, are there any cases/precedents where the award is challenged on the basis that the taking of evidence performed in the arbitration was different from the procedure of taking of evidence in the country of the seat or enforcement?
- What are the main advantages and disadvantages of the two legal systems in relation to the taking of evidence?
- Are there any particular criticisms regarding the IBA Rules or the Prague Rules?
- Is there anything that can be done to improve the procedures of taking of evidence in international arbitration or is the status quo enough?

15. Artificial Intelligence: What are the Current and Future Possibilities of ChatGPT and Predictive Analytics for International Arbitration?

10:00am-11:30pm SGT
(Singapore and Hong KongTime)
10:00Pm-11:30pm EST

Location: Virtual

Speakers

Moderator: Kiran Gore, Law Offices of Kiran N Gore PLLC
Presenter: Sarah Chojecki, ArbTech
Panelists:
- Kelby Ballena, Allen & Overy
- Isabel Yishu Yang, ArbiLex
- Dmitri Evseev, founder of Arbitration City Ltd
- Elizabeth Chan, international arbitration practitioner

Panel Description:
ChatGPT has taken the world by storm. Potentially passing the Uniform Bar Exam, writing comprehensible memorandums, and helping judges to reach decisions ChatGPT seems to be a current promise do it all. Albeit Artificial Intelligence and Machine learning may supplement the practice of law, their ability to replace humans altogether in the legal profession remains the domain of science fiction.

As new technology emerges, international arbitration should embrace it responsibly. It is crucial to assess where we stand technologically—despite the potential of AI, calibrations and recalibrations may constantly follow as needed—and examine the ethical implications of using AI to ensure responsible and transparent use, while allowing the uniqueness of human input, learning and creativity to continue it development. A distinction is to be made between the use of AI as a tool for case management, streamlining legal research, the use of AI for drafting memorials, decision-making, and predicting outcomes of tribunals and courts

This panel will adress the following questions:

- How can AI help streamline the arbitral process (appointment of arbitrators, case management, cost estimations, drafting of standard sections of awards)?
- How far have predictive analytics in investment and internatio nal commercial arbitration come in the past 5 years? Is the information that predictive analytics rely on more complete today to ensure a higher degree of accuracy?
- Should the legal profession, clients and funders rely on predicti ve analytics to support its legal decision-making?
- Should arbitrators beware of the rise of "robotration"?
- Does this give us any concern in terms of equality and fair procedures?
- What are the risks that counsel and arbitrators be wary of when using such tools (algorithmic bias and vulnerability of the data input)?
- What are the limits to AI decision-making: The black box of legal decision-making?

16. Untapped Potential? Settlement offers and amicable resolution in investment arbitration through mediation and conciliation and latest ADR instruments: The Singapore Convention and the ICSID Rules on Mediation and Conciliation.

6:00pm-7:30pm SGT
(Singapore and Hong KongTime)
6:00am-7:30am EST

Location: Virtual and in person in Singapore

Speakers

Moderator: Robert L. Houston, Senior Associate, K&L Gates Straits Law

Presenter:

Panelists:
- Raja Bose, Partner, K&L Gates Straits Law
- Anna Holloway, Legal Counsel, International Centre for Settlement of Investment Disputes
- Túlio Di Giacomo Toledo, Legal Counsel and Representative in Singapore, Permanent Court of Arbitration
- Kevin Kim, Board Member, Singapore International Media tion Centre
- Sharon Ong, Director-General (International & Advisory), Ministry of Law, Singapore

Panel Description:
Other than international arbitration, in the last five years alternative international dispute resolution mechanisms have seen the birth of a new treaty on mediation with the United Nations Convention on International Settlement Agreements Resulting from Mediation (2018) ("The Singapore Convention on Mediation"), which as of April 2023 has been signed by 55 States and ratified by 11. In parallel, in 2022 the ICSID and its Additional Facility Rules on Fact-Finding and Conciliation were amended, and the first ICSID Mediation Rules were established, all already being in effect now.

In the middle of a changing environment for investment arbitration, ISDS reform, and new model investment treaties, the new international instruments on fact-finding, conciliation, and mediation may provide oxygen and concrete alternatives to solve international commercial and investment disputes.

This panel will take stock of the progress made internationally in international fact-finding, conciliation, and mediation, and will analyze how these mechanisms may be an untapped opportunity to solve disputes by (i) considering the number of cases that have relied on any of these mechanisms, even though when compared to arbitration they remained underutilized, (ii) identifying the key new or amended provisions that make them appealing for disputing parties, and (iii) explaining the set of circumstances in which these alternatives may be most useful, and their main features.

17. Enforcement of Arbitration Awards Outside of the European Union, Tracing of Assets, Effective Strategies and New Technologies to Achieve Compliance.

8:30pm-10:00pm SGT
(Singapore and Hong KongTime)
8:30am-10:00am EST

Location: Virtual

Speakers

Moderator: Charlene Sun, DLA Piper

Presenter: --

Panelists:
- Alexandre de Gramont, Dechert LLP
- Christopher Weil, Mintz Group
- Francis Xavier S.C., Rajah & Tann Singapore LLP
- Myriam Seers, Agora

Panel Description:
The ability to enforce an arbitral award is an important factor for investors when considering potential investment opportunities. The main enforcement regime for arbitral awards is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("the New York Convention"). Enforcing an arbitral award generally requires two steps. First, the award must be "recognized" and converted into a domestic judgment. Second, the resulting judgment may be enforced through domestic procedures governing the execution of judgments. ICSID Convention do not rely on the New York Convention considering that pursuant to its Article 54 each ICSID Contracting State shall recognize an ICSID Convention award "as binding" and "enforce the pecuniary obligations imposed by that award . . . as if it were a final judgment of a court in that State."

Until recently, specially before March 6, 2018 when the Court of Justice of the European Union rendered the judgment in Slovak Republic v. Achmea B.V., European States as co-creators of investment arbitration and signatories to the largest number of investment treaties by any region, enforcing investment arbitration awards, which are generally rendered by applying international law, were enforced by European States. However, since the Achmea judgment, Europe, in tandem with the European Commission's project to create a multilateral international investment court, have become visibly hostile to investment arbitration relying on European law to excuse and even forbid compliance with investment arbitration awards. Thus, investors who according to investment tribunals have been affected by Sovereign European States in breach of investment treaties, are seeking enforcement in various other jurisdictions, including in the U.S., Canada, Singapore, Dubai, and other financially strategic as well as arbitration friendly jurisdictions.

This panel will discuss enforcement of arbitral awards in New York, Washington DC, Ontario, the United Kingdom, Singapore, and Dubai. It will also address the team strategy to maximize possibilities of enforcing an award and collecting the damages awarded, the work with local counsel and asset tracers, and reliance on new technologies for enforcement of an award in multiple jurisdictions and collection of damages. How to enforce against non-signatories of the contract at issue, or State-owned companies, who are related, and may possibly be controlled by the losing party? It will also consider the challenges of enforcement proceedings against sovereigns in light of the coverage provided by sovereign immunity.

World Arbitration UPDATE

Europe

Tuesday 23 and Wednesday 24 May

18. Update from the Ukrainian Trenches – Special Speaker

12:0pam-12:20pm EST
(Washington DC time)
7:00pm-7:20pm EST
(Kyiv time)

Location: Virtual and in-person at Pillsbury Winthrop Shaw Pittman LLP Washington D.C.

Special Speaker Daniel Bilak, Kinstellar

Panel Description:
With over 30 years of profession experience in the investment scene in Central and Eastern Europe, Daniel Bilak is incredibly well placed to update on the latest developments in Ukraine in 2023 and the international legal efforts for the defense of Ukrainian interests and nationals

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In 2016, he was appointed Chief Investment Adviser to the Prime Minister of Ukraine. He spearheaded Ukraine Invest, the Ukrainian government's investment promotion agency, which was developed to attract foreign direct investment into Ukraine. His legal background began in Canada, but it has spanned across Central and Eastern Europe, especially in the energy, agribusiness, infrastructure and technology sectors. He is most recently a Partner and Chairman of the Management Committee of Kinstellar's Ukraine office. He also acted as Counsel to the Business Ombudsman Institution and served as a senior United Nations Development Programme (UNDP) governance expert.

Ukrainian defense efforts are simultaneously broadcasted to the world and shrouded in mystery. Dan will be updating on these efforts and linking them to concrete legal actions being pursued internationally.

19. Ukraine and Ukrainian Nationals and Assets: Options of International Arbitration and Litigation, Funding and Recovery Options for Ukraine, its Nationals and the Protection of their Assets

12:30pm-2:00pm EST
(Washington DC time)
7:30pm-9:00am EEST
(Kyiv time)

Location: Virtual and in-person at Pillsbury Winthrop Shaw Pittman LLP Washington D.C.

Speakers
Moderator: Luke Wochensky, Pillsbury Winthrop Shaw Pittman LLP
Panelists:
- John W. Boscariol, McCarthy Tetrault
- Olexander Martinenko, Kinstellar
- Gene Burd, FisherBroyles
- Dmytro Shemelin, Omni Bridgeway

Panel Description:
Ukraine, Ukrainian nationals, and international investors are faced with a multitude of hurdles in their quest to recover and protect assets. This panel will address three key issues that might arise: the choice of arbitration or litigation, the funding possibilities, the enforcement process in key jurisdictions, and the prospect of recovery once favourable decisions are rendered.

The panel will touch upon questions of sovereign immunity and enforcement jurisdiction in international arbitration. This will be contrasted with international litigation options, including in the US and the UK, concerning efforts to thwart private entities or individuals directly involved in or supporting the Russian invasion in Ukraine (see: Wagner Group). In addition, the panelists will also provide an update on the greater and fundamental tension between the use of force in the invasion by the Russian troops and the perils posed to the international rule of law, by addressing the efforts being made in the International Claims and Reparations Project.

One of the most significant challenges in the use of international litigation or arbitration to advance claims of Ukraine and Ukrainian nationals is the financing of those claims, and the prospects of recovery once favorable decisions are rendered. This panel will also explore, from a funder, counsel, and asset recovery perspective, the viability of financing litigation in various jurisdictions, and international arbitration. Our speakers will address how the general requirements to fund any legal dispute might be fulfilled concerning sovereign and private Ukrainian interests.

20. Dispute Boards as Means to Conclude Successfully Investment Projects and Resolve Disputes

9:00pm-10:30pm CEST
3:00pm-4:30am EST

Location: Virtual

Speakers

Moderator: Margie-Lys Jaime, University of Panama

Panelists:
- Christian Díaz Barcía, CONEXA Partners
- Luis Martínez, International Centre for Dispute Resolution – ICDR
- Jaime Gray, NPG Abogados
- Marion Smith KC, Essex Chambers

Panel Description:
International or domestic construction projects are often very lengthy and involve multi-tired commercial relationships in which parties have millions of dollars at stake. Construction projects frequently give rise to disputes in respect to project completion delays, material shortages, payment defaults, inability to mobilize manpower and equipment, or increases in costs. Over the past several decades, a one-of-a-kind dispute resolution approach has come up in the construction and infrastructure industry to efficiently resolve disputes and minimize the need to resort to litigation or arbitration (as an early dispute avoidance mechanism): Dispute boards.

The first dispute board was constituted in the 1960s in the US, for the Boundary Dam Project in Washington state. Thereafter, dispute boards became popular in the US. In Latin America, the first dispute board was established around 1980 for a project in Honduras funded by the World Bank: El Cajon Dam and Hydropower Project. Following this project, dispute boards were recognized for preventing the escalation of disputes in the UK-France Channel Tunnel Project in the early 1990s .

Dispute Boards were further publicized and known by the construction and infrastructure industry and States in 1995, after FIDIC included a dispute board mechanism as part of the construction contract in the orange book. This was followed by the World Bank mandate, also in 1995, through which it ordered the use of dispute boards on all projects financed by the bank that exceeded US$50 million. After this initiatives, the American Arbitration Association (AAA) published its Dispute Resolution Board rules on 1 December 2000, followed by the ICC Dispute Board Rules initially introduced in 2004, and later revised in 2015, the Dispute Board Federation Ad Hoc Dispute Adjudication Board Rules in 2011, and by those of the Chartered Institute of Arbitrators published in 2014. Just recently in November 2022, the International Center for Dispute Resolution – ICDR and the AAA published its Dispute Avoidance and Resolution Board Guidelines.

According to some statistics, dispute boards have been established since 1975 in more than 2,800 around the world and approximately 85% to 98% of these matters have not escalated to arbitration or litigation. Although dispute boards are being used worldwide, 85% of known dispute boards have been in the US in large-scale construction projects. Examples of such projects include the Panama Canal expansion project , the Ertan Hydroelectric Project, UK-France Channel Tunnel Project, Uganda's Owen Falls Extension Hydroelectric Project, the Hong-Kong Airport and the London Docklands Light Railway Project.

This panel will adress the following questions:

- The importance and effectiveness of Dispute Boards for infras tructure and long term investment projects.
- Should there be an international legal regime for the enforcement of dispute boards decisions similar to the New York Convention applicable to arbitral awards?
- Could dispute boards replace or help define arbitration in infras tructure projects as a dispute settlement of last resort?
- What are the known advantages of dispute boards over other dispute resolution mechanisms?
- What has been the performance of dispute boards so far?

Wednesday May 24

21. The ECT, Investment Treaties in Europe, and International Arbitration Awards Unfavorable to European States: Demystifying the Conundrum of International, Regional European, and Domestic Law.

2:00pm-3:30pm CEST
(Madrid time)
8:00am-9:30am EST

Location: Virtual

Speakers

Moderator: Marinn Carlson, Sidley Austin

Presenter: Daniela-Olivia Ghicajanu, Georgetown Law

Panelists:
- Professor Chester Brown, Sydney University
- Jose Antonio Rivas, Xtrategy LLP
- Nikos Lavranos, European Federation of Investment Law and Arbitration
- Laura Rees-Evans, Fietta LLP

Panel description:
The Energy Charter Treaty (ECT) modernization process started with ambitious plans. However, towards the end of 2022, some European Union member states shifted against the modernized draft version agreed by the ECT parties in August 2022, with eight EU member states announcing their intention to withdraw from the ECT. In December 2022, three of them (France, Germany, Poland land) sent the withdrawal notification to the ECT Secretariat. Additionally, the EU Parliament adopted a resolution requiring the EU Commission to withdrawal from the EU block. While political discussions are ongoing in the European capitals, in Brussels, and at the ECT level, 2023 has seen developments in arbitration forums and national courts. The arbitral award in Komstroy was annulled by the Paris Court of Appeals after the Court of Justice of the European Union (CJEU) preliminary decision. By contrast, at the other side of the Atlantic, the District Court for the District of Columbia confirmed the enforcement of the award. Recently, the same US court, for the first time, refused to enforce an ECT arbitral award against Spain accepting Spain's argument regarding the invalidity of an arbitration agreement under European Union law. (see Blasket Renewable Investments, LLC v. The Kingdom of Spain). Spain remains the State with the highest number of ECT cases (51 cases as of January 10, 2023), followed by Italy (13 cases – Italy withdrew in 2016 but is subject to the 20 years sunset clause) and Romania (8 cases).

In this turmoil of events many questions arise: Whether the EU and its member States will continue to be part of the ECT, whether arbitral tribunals will follow or not the decision in Komstroy—despite CJEU being a regional and not an international court or tribunal with the competency under the ECT to rule on the legality of the investment arbitration awards under international law—how non-EU member States national court will consider EU law in the enforcement phase, and whether foreign investors will be attracted to invest in EU territory given the dismantling of ISDS in Europe and the direction of the CJEU that intra intra-EU BITs and ECT investment arbitration awards not be enforced by European domestic courts. international investment arbitration awards. The recent geopolitical tensions, the European energy crisis and the race for energy autonomy, to which we must add the European Union's commitment to net zero, are just some of the realities that all the 27 EU member states have to consider when they act as respondents and as host states attracting foreign investors.

22. Update of International Construction and Infrastructure International Arbitration: The Effects of Supply Chain Disruptions and Global Rise in Interest Rates.

7:00pm-8:30pm CEST
1:00pm-2:30pm EST

Location: Virtual and in-person in Madrid at Eversheds Sutherland offices (Paseo de la Castellana, 66)

Speakers

Moderator: Pilar Colomés less, Eversheds Sutherland

Panelists:
- Miguel Angel Andrés, Trina Solar
- José Antonio García, The Brattle Group
- María Paula Jijón, Madrid International Arbitration Center
- Prof. Rafael Gil Nievas, Eversheds Sutherland
- Javier Ruz Cerezo, Grupo San José
- Andrea Zumbado, ArcelorMittal

Panel description:
Since the pandemic the construction industry has faced a lot of challenges due to supply chain delays and material price increases. Supply chain disruption can delay work progress and hinder the completion of a project. Moreover, the Russian invasion of Ukraine, wildfires, environmental challenges and economic issues related to a global rise in interest rates and increased tariffs from the United States have not helped the situation. As noted in an FTI report in 2022, "in the year to December 2021 costs increased by around 15%, which is more than the price rises seen over the previous seven-years. Essential construction materials, such as reinforcing steel and structural timber rose by more than 40% over 2021." The severity of the supply chain disruption has given rise to international arbitration disputes and might possibly continue leading to international commercial disputes.

This session will bring together panelists who will discuss the key trends and challenges in international construction and infrastructure disputes, how construction and infrastructure companies may have been and may still be affected by supply chain delays and how the chain of related components and services may have been and could still be affected. The session will shed light on how cross-border infrastructure disputes can be resolved in a fair and efficient manner. Panelists will also address whether infrastructure and construction arbitration has evolved and somehow adjusted given the supply chain disruption of recent years.

Diverse topics

Thursday May 25

23. 2023 the Year of Near or Full Financial Crisis? An Update of Investment Arbitration in Financial Services: The World of Banking, Prudential Measures, and Sovereign Bonds

9:00am-10:30am EST

Location: Virtual

Speakers

Moderator: Berglind Halldorsdottir Birkland, Debevoise & Plimpton

Presenter: David Attanasio, Dechert LLP

Panelists:
- Michael Seelhof, Seelhof Consulting LLC
- Danielle Morris, WilmerHale

Panel description:

The financial sector has recently suffered a surprising blow with the collapse of the Silicon Valley Bank (SVB), a major California-based lender for tech startups. As a result, SVB became the biggest lender to crash since the 2008 financial crisis and the second largest bank to fail in United States history. US regulators announced that they will guarantee every deposit. On its part, the Federal Reserve took measures to tackle the financial uncertainty. Meanwhile, in European soil, Switzerland's biggest bank, UBS, bought its rival, Credit Suisse (CS)—which had been suffering of trust and profitability issues—through a rescue operation in an attempt to calm the financial panic unleashed by the failure of SVB. The Swiss government approved the transfer, thus wiping out Credit Suisse's investors, who received less than half of the net worth of their shares.

Financial uncertainty, measures taken by multiple central banks to target inflation, as well as the implementation of macro-prudential measures in banking might open the door for potential disputes that could be settled through investment arbitration, which has recently risen in popularity amongst banking and financial industries. In fact, Addiko, an Austrian bank, recently filed an ICSID claim against Slovenia on a matter related to an exchange-rate cap in Swiss franc loan agreements concluded between 2004 and 2010. Furthermore, in 2016 and 2020 Croatia and Montenegro were hit by ICSID claims related to the financial sector. Specifically, the claims concerned measures to protect borrowers and the Swiss central bank's decision to discontinue its exchange rate ceiling. There have been similar investment arbitrations related to the financial sectors initiated against the Netherlands and Belgium by Chinese investors.

Also, as in Gramercy v. Peru, sovereign bonds—such as the Peru's agrarian reform bonds—may be considered investment and measures taken by the State in respect of such bonds, may lead to awards on liability.

This panel will explain the dynamics from the domestic law and economics perspective of the tools available to States to maintain financial systemic health and stability through prudential measures, and to partly finance itself through sovereign bonds. In parallel, the panelists will discuss the fact patterns in financial services seen in investment arbitrations in the world of banking, prudential measures, and sovereign bonds.

24. Investment Arbitration in War and Armed Conflicts: Can Investment Legal Principles Coexist with International Humanitarian Law?

11:00am-12:30pm EST

Location: Virtual and in-person in Bogotá D.C.

Speakers

Moderator: José Antonio Rivas, Xtrategy LLP

Panelists:
- Eduardo Zuleta, Zuleta Beyond Boarders
- Santiago Zuleta Rios, Zuleta Beyond Boarders
- Amanda Lee, International Arbitrator and Founder of Careers in Arbitration and ARBalance
- Dr Jure Zrilic, City University of London
- Martha Lucía Zamora, National Agency for legal Defense
- Carlos Enrique Arévalo, La Sabana University

Panel description:

International humanitarian law derives its principles from State responsibility. Private property must always be respected and protected under The Hague Convention. In contrast, the investment law regime exists to protect foreign investors whilst promoting investment flows. It is still unclear how armed conflict affects a State's obligation to protect foreign investment. With the Ukraine-Russia war, the question of how arbitral tribunals will treat these issues of armed conflict has never been more relevant. However, it is crucial not to neglect non-international armed conflicts (e.g., like in Colombia, Syria or Mali) to which Protocol II of the Geneva Convention (Relating to the Protection of Victims of Non-International Armed Conflicts) applies, as well as customary international humanitarian law, especially Common Article 3 (on Conflicts not of an international character) of the Geneva Conventions.

This panel will discuss the application of norms from both regimes, and what happens when a conflict between norms of both regimes arises. It seeks to address whether the principle of lex specialis might hold any answers, or whether the investor state dispute settlement institutional framework may be ill-suited to entertain disputes with elements of international humanitarian law. The Ukraine-Russia conflict is likely to deal primarily with the ILC Article on State responsibility, as well as obligations of Full Protection and Security under the Russia-Ukraine BIT. In comparison, non-international armed conflict may involve non-State actors, which present unique questions of responsibility under an investment treaty or contract.

25. The Code of Conduct for Adjudicators in International Investment Disputes is a Reality!

1:00pm-2:30pm EST

Location: Virtual and in-person Washington D.C.

Speakers

Moderator: Ian A. Laird, Crowell & Moring

Presenter: Chiara Giorgetti, School of Law, Richmond University

Panelists:
- Marinn Carlson, Sidley Austin
- Martina Polasek, ICSID
- Lauren Mandell, WilmerHale

Panel description:

The Code of Conduct for Adjudicators in International Investment Disputes was first proposed in 2019 by the United Nations Commission on International Trade Law (UNCITRAL). The code aims at establishing ethical and professional standards for arbitrators in investment disputes, with the goal of increasing transparency and accountability in the system. Since its proposal, the code has undergone several rounds of consultations and revisions. Just recently on April 3, 2023, UNCITRAL Group III completed work on the draft code of conduct for arbitrators in investor-state disputes after reaching a compromise on double-hatting. Reportedly, for the following three years after acting as an arbitrator, that arbitrator shall not act as counsel or expert witness in an ISDS case or related proceeding involving the same measure or the same or related parties involved in the arbitration where the arbitrator served. For its part, in those cases involving the same provisions of the same instrument of consent (e.g., a treaty or a contract), the prohibition period will only be one year, although the disputing parties can agree to opt out of these provisions.

Our expert panelists will look to answer the most pressing questions on the new code: Besides the deal brokered on double hatting, what are the main principles enshrined in the Code of Conduct recently finalized by UNCITRAL Group III that everyone should know? Are there mechanisms to ensure compliance and enforcement or is this just more soft law? Looking ahead, what do we see next for the work of UNCITRAL Working Group III?