SECOND EDITION

World Arbitration UPDATE

SEPTEMBER 26- SEPTEMBER 30

Brochure subject to updates

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. Out of approximately 3,300 investment treaties in force, 1,138 have been invoked in investment arbitrations. As those investment cases have led to 225 awards rendered between 2011 and 2020, and as the use of international commercial arbitration has also reached new heights during the last decade, WAU will provide 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.

WAU connects different regions with the global community aiming 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 second 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

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EVENT PROGRAM

Monday, September 26th — Americas

8:30am - 10:00am
Washington D.C. Time

Community Consultations, Environmental Protection and Investment Projects in International Arbitration

11:30am - 1:00pm
Washington D.C. Time

Practical Steps in CSR and Human Rights Assessment

1:30pm - 3:00pm
Washington D.C. Time

Damages, Country Risk, and Interest Rates

4:00pm - 5:30pm
Washington D.C. Time

Capacity-Building, Institution-Creation, and Prospects for Collaboration Regarding International Arbitration in the Caribbean

Tuesday, September 27th — MENA & Africa

12:00pm - 1:30pm
Qatar Time (AST)
5:00am - 6:30am
Washington D.C. Time

Legal Developments in Arbitration in Sub-Saharan Africa

2:30pm - 4:00pm
Qatar Time (AST)
7:30am - 9:00am
Washington D.C. Time

Legal Developments in Arbitration in the MENA Region.

Schedule subject to updates

EVENT PROGRAM

Tuesday, September 27th — MENA & Africa

7:30pm - 9:00pm
Qatar Time (AST)
12:30pm - 2:00pm
Washington D.C. Time

Force Majeure, Change of Circumstances and Necessity in a Fast Pace Evolving World and Book Launch: “Balancing the Protection of Foreign Investors and States Responses in the Post-Pandemic World”

Wednesday, September 28th — Asia & Oceania

8:00am - 9:30am
Wednesday, September 28th
Singapore Time (SGT)
8:00pm - 9:30pm
Of Tuesday, September 27th
Washington D.C. Time

The Nuts and Bolts of Legal Finance for International Arbitration Disputes: From the Merits Assessment to Enforcement of Awards

10:00am - 11:30am
Wednesday, September 28th
Singapore Time (SGT)
10:00pm - 11:30pm
Of Tuesday, September 27th
Washington D.C. Time

Intersection of Special Economic Zones in Asia and International Arbitration

6:00pm - 7:30pm
Wednesday, September 28th
Singapore Time (SGT)
6:00am - 7:30am
Wednesday, September 28th
Washington D.C. Time

The Actions of Russia, Countermeasures and Resulting International Disputes, Including Investor-State and Commercial Arbitration

4:00pm - 5:30pm
Wednesday, September 28th
Iran Time (IRST)
8:30am - 10:00am
Wednesday, September 28th
Washington D.C. Time

Influence of the Iran-US Claims Tribunal on Public International Law and Investment Law

EVENT PROGRAM

Thursday, September 29th — Europe

12:00pm - 1:30pm
Paris Time (CEST)
6:00am - 7:30am
Washington D.C. Time

Taking Stock of the ECT Modernization Process: Fit for the 21st Century?

2:00pm - 3:30pm
Paris Time (CEST)
8:00am - 9:30am
Washington D.C. Time

Space Law and Arbitration

4:00pm - 5:30pm
Paris Time (CEST)
10:00am - 11:30am
Washington D.C. Time

Tax Measures and Investment Arbitration

6:30pm - 8:00pm
Paris Time (CEST)
12:30pm - 2:00pm
Washington D.C. Time

Investment Arbitration and Journalism

Friday, September 30th — Diverse Topics

7:00am - 8:30pm
Washington D.C. Time

Diversity and International Arbitration: What Dispute Settlement System Fosters Greater Diversity and Inclusion in International Investment and Commercial Arbitration?

9:00am - 10:30am
Washington D.C. Time

UNCITRAL Working Group III and Fragmentation of ISDS

Schedule subject to updates

EVENT PROGRAM

Friday, September 30th	Diverse Topics
12:00pm - 1:30pm Washington D.C. Time	ICSID Rules Amendments
2:00pm - 3:30pm Washington D.C. Time	The Arbitral Process and New Technologies: Artificial Intelligence, Virtual Hearings, Block Chain, and their Influence

EVENT PROGRAM

COMMUNITY CONSULTATIONS, ENVIRONMENTAL PROTECTION AND INVESTMENT PROJECTS IN INTERNATIONAL ARBITRATION

Monday, September 26
8:30am - 10:00am EST

Hybrid Panel in Cámara de Comercio, Bogotá

International projects usually involve multiple stakeholders, among these are local communities, whose interests and priorities might clash with those of multinational corporations. The tension between stakeholders may lead to undesirable consequences affecting the outcome of the project or the communities. Consultations to the communities are carried out to influence administrative and legislative decisions that may affect them. Under international law, pursuant to human rights treaties and international instruments including the ILO Convention 169, consulting the communities that could be affected is binding. In particular, consultations must be undertaken in good faith, seeking to achieve consent. Pursuant to the 1966 International Covenant on Civil and Political Rights (ICCPR), the State must ensure the effective participation of members of minority communities in decisions which affect them. Consultation is a mechanism developed by domestic legislation, that may or may not require—in addition to informing, and asking the communities and/or natives for their feedback—that consent be obtained by the government of the host State to move forward with the investment project.

For example, pursuant to Article 330 of the Colombian Constitution, indigenous and Afro-Colombian communities (among others) have the right to prior consultation. That right entitles those communities to participate in decisions that may affect their lives, territory and political and economic worldview. Similarly, pursuant to Article 30 of the Bolivian Constitution, indigenous peoples have the right to be consulted through appropriate procedures, whenever legislative or administrative measures related to the exploitation of non-renewable natural resources may affect them.

A handful of investment arbitrations have shed some light on the issue of consultations and community participation. In Bear Creek v. Peru, the tribunal ruled that the State was bound to monitor closely the efforts conducted by the investor to obtain consent from the communities, and to voice its concerns throughout the consultation process. There is increased recognition of social corporate responsibility standards—under which corporations must respect essential human rights.

EVENT PROGRAM

Monday, September 26
8:30am - 10:00am EST

This panel will consider the right to consultations of communities, the obligation of the State concerning consultations, and several related questions. Do consultations to the communities that might be affected by investment projects require their consent to the project moving forward? Is the State obligated to closely support an investor throughout the process of obtaining a social license to operate? Or must the investor exercise its own due diligence in the consultation process with the communities? Should compensatory damages payable to an investor be reduced on the basis of contributory fault for failure to comply with guidelines provided by the community during consultations?

MODERATOR

- **Jose Antonio Rivas** (Xtrategy LLP)

PRESENTER

- **Ana Milena Vives** (Xtrategy LLP)

PANELISTS

- **Natalia Angel Cabo** (Justice of the Constitutional Court of the Republic of Colombia, Professor of Law at Universidad de los Andes)
- **James Anaya** (Former Special Rapporteur on the indigenous peoples rights 2008-2014; Professor of Law, University of Colorado)
- **Andrea Bjorklund** (Full Professor and L. Yves Fortier Chair in International Arbitration)
- **René Urueña** (Professor of Law, Los Andes University)

EVENT PROGRAM

PRACTICAL STEPS IN CSR AND HUMAN RIGHTS ASSESSMENT

Monday, September 26
11:30am - 1:00pm EST

What is the next frontier in Business and Human Rights in international law? Should the developments be limited to country-by-country national regulations and the creation of binding obligations for businesses to respect human rights and the environment? Or are there developments in international law leading towards the consolidation of due diligence binding practices on social, human rights and environmental assessments by companies and investors? Should those be minimum international standards that foreign investors ought to respect by performing such assessments?

The field of Business and Human Rights has attracted growing attention in recent years considering that companies can be directly linked, or even cause, human rights violations and harm to the environment both in their value chains and operations worldwide. The way in which human rights should be regulated for businesses, and even if there should be hard law on the matter, remains a spirited debate. As reflected in the UN Guiding Principles on Business and Human Rights, States still hold the primary responsibility to protect human rights, while the responsibilities of enterprises may still not be fully clear. Although many transnational corporations have adopted Corporate Social Responsibility (CSR) policies, these in many cases may result from reputational concerns rather than from a sense of legal obligation.

To address concerns for the protection of minimum labor, environmental and human rights standards, important legislative developments are taking place at the domestic, regional and international levels. For instance, some States have introduced CSR clauses into trade and investment agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Canada– Colombia FTA, the EU-Vietnam FTA, and the Regional Trade Agreement entered into between the European Union, the United Kingdom, and the Southern Common Market (MERCOSUR). Of special relevance is the 2016 Nigeria–Morocco BIT which includes several provisions related to human rights protection, labor, environment, and corruption. Several of those provisions are hard law.

In parallel, various States have adopted national laws and action plans on Business and Human Rights or are discussing legislative initiatives to prevent human rights violations and adverse environmental impacts. For instance, Article 5 of the Chinese Company act requires enterprises to "undertake social responsability", whilst France's 2017 duty of

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Monday, September 26
11:30am - 1:00pm EST

vigilance law mandates large French companies to prevent severe human rights violations and environmental damage. The European Commission has proposed a directive that aims to foster sustainable and responsible corporate behaviour and anchor human rights and environmental considerations in the decisions on companies' operations. Those legislative acts are helping to create binding obligations for companies to prevent and remedy human rights violations across their group operations. Yet, query as to whether the existing norms may help to drive change towards responsible business practices and whether the current voluntary approach of business to human rights and responsible business conduct is sufficient. This Panel will engage in discussions between experts, policy makers and companies to discuss the contents of existing legislations, its implementation, results and opportunities for strengthening regulatory requirements. It will also discuss the role of international law including treaties and investment arbitration in Business and Human Rights. Among others, the following issues will be addressed:

- Countries' journey from voluntarism to mandatory due diligence
- How to define company liability in this legislation.
- Whether international arbitration has something to learn from due diligence CSR assessments, human rights assessments and the underlying instruments that may make those assessments obligatory?
- Could failure to comply with CSR and human rights assessments contained in domestic law raise an issue of legality of the investment before international arbitral tribunals?
- Are obligatory CSR and human rights assessment desirable to promote foreign direct investment in the host State?
- While reports on this topic have concluded that CSR requirements have a positive effect on attracting investment, would human rights assessments have a same effect?
- Should States and treaty negotiators aiming to attract investments reject requesting that due diligence CSR and human rights assessments be performed by companies and foreign investors?

MODERATOR

- **Douglas Cassel** (King & Spalding)

PANELISTS

- **Nathan Lankford** (Miller & Chevallier LLP)
- **Stephane Brabant** (Trinity International LLP)
- **Elise Groulx Diggs** (Georgetown and 9 Bedford Row)
- **Rae Lindsay** (Clifford Chance)

DAMAGES, COUNTRY RISK, AND INTEREST RATES

Monday, September 26
1:30pm - 3:00pm EST

When arbitral proceedings get to the quantum phase, a question lingers in the parties' and counsel's mind: How may the country risk affect the damages calculation? Should an investor who has invested in a country that has routinely expropriated investors, or that has prominent legal security issues and is known for the lack of independence of its judiciary be penalized at the quantum stage for having invested in such high-risk environment, as opposed to an investor who has invested in a country with moderate track record of respect for the rule of law?

Are investment treaties not supposed to protect foreign investors precisely against violations of international law treaty standards—including, among others, expropriation without compensation, fair and equitable treatment, national treatment, full protection and security, most-favored nation treatment, and free transfers—consistent with the principle of full reparation set out by the PCIJ in Chorzow Factory? That is, by wiping-out all the consequences of the illegal act and reestablishing the situation which would, in all probability, have existed if that act had not been committed. Should that not include projecting the lost profits that the investor would have received but for the breach of the treaty caused by the acts of State?

On the other hand, should the expectations of profits by an investor—and therefore his damages—be the same in a country with high political risk than in a country with lower risk? Tribunals have answered these questions differently. In *Gold Reserve v Venezuela* the tribunal ruled that "it is not appropriate to increase the country risk premium to reflect the market's perception that a State might have a propensity to expropriate investments in breach of BIT obligations", although the country risk premium should take into account "genuine risk . . . including political risk, other than expropriation." By contrast, in *Venezuela Holdings v Venezuela* the tribunal considered that "the confiscation risk remains part of the country risk and must be taken into account in the determination of the discount rate."

EVENT PROGRAM

Monday, September 26
1:30pm - 3:00pm EST

A follow up question is how do the mechanics work when a tribunal decides that the political risk should be accounted for? Asset valuation often relies on a discounted cash flow (DCF) analysis, where the future cash flow is discounted based on the cost of capital, lwhich is a function of the risk of the project. That risk may be higher depending on the country where the capital is located. Thus, a higher discount rate results in a lower damages valuation. Often that discount rate is addressed through a country-risk premium (included in the cost of equity).

This panel will address the above issues, and continue the discussion by analyzing various other questions, including:

- How to conceptually evaluate the country risk – should expropriation risk be included?
- What are the different types of exposures, i.e. risks, depending on the type of investments and types of assets?
- How do you traditionally measure the country risk?
- How to practically identify in the damages calculations the difference between including a high-country risk host State and a low-country risk host State?
- Are their specific country-related risks potentially overlooked or otherwise not addressed?
- Many business-related risks are rapidly growing, particularly in energy related sector. Which are those?
- Should the myriad of risks identified be included in the country risk premium in the cost of capital or could cash flows be used instead?
- How and why are interest rates used in a damages calculation?
- What are the types of interest rates used, and are there controversies regarding the type of interest rate calculations used?

MODERATOR

- **Miguel Nakhle** (Compass Lexecon)

PRESENTER

- **Matilde Flores** (Chaffetz Lindsey)

PANELISTS

- **Olga Ukhaneva** (Charles River Associates)
- **Carlos Pabón Agudelo** (Infrastructure Economic Consulting)
- **Miguel Lopez Forastier** (Covington & Burling)
- **Robert Patton** (NERA)

EVENT PROGRAM

CAPACITY-BUILDING, INSTITUTION-CREATION, AND PROSPECTS FOR COLLABORATION REGARDING INTERNATIONAL ARBITRATION IN THE CARIBBEAN

Monday, September 26
4:00pm - 5:30pm EST

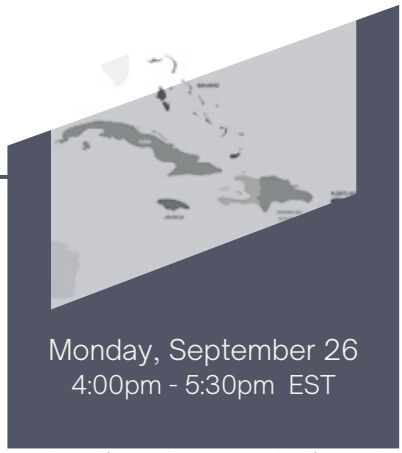
International arbitration has long been associated with traditional cities as epicenters of arbitration. Yet, recent years have witnessed the migration of arbitration to new regional quarters. This trend is visible in the Caribbean region, where States interested in promoting the Caribbean as a major trade hub are offering neutral dispute settlement mechanisms.

With the increase of commerce, realizing the need for geographically close neutral and efficient systems of adjudication, Caribbean countries have engaged in modernizing their arbitration laws, infrastructure and general arbitration dispute resolution climate. For instance, in 2016, the BVI, established the BVI International Arbitration Centre, and Jamaica created the Mona International Centre for Arbitration and Mediation, now called the Jamaica International Arbitration Centre. In 2018, Barbados established the Arbitration and Mediation Court of the Caribbean. For its part, with its Institutional Arbitration Rules applicable since September 2021 and other initiatives, the OHADAC Arbitration Centre located in Guadeloupe has been promoting dispute resolution—including arbitration and mediation—within the objectives of Caribbean integration, sustainable development, and an effective response sensitive to natural disasters and climate change.

In parallel, the Caribbean Task Force of the Institute for Transnational Arbitration (ITA)'s Americas Initiative has been busy promoting good international arbitration practices in the region, overcoming obstacles traditionally faced by dispute resolution, and advocating for the adoption of national norms reflecting the contents of the UNCITRAL Model law. The recent adoption of a version of the Model Law for the Caribbean, the CARICOM Model Arbitration Bill in 2021, and the creation of the Impact Justice Model Arbitration Bill, 2022, appear to be strengthening the arbitration environment in the Caribbean.

In the face of challenges, Caribbean States are cooperating with countries across the world. For instance, on climate change over insular States, Antigua and Barbuda are joining efforts with the Pacific nation of Tuvalu to register a new commission with the United Nations, in order to pave the way for future damages claims against major polluting countries, through adjudication, such as the UN's International Tribunal for the Law of the Sea. Despite the uncertainty on the outcome of these claims, we might be witnessing a new field of international dispute resolution.

EVENT PROGRAM



Monday, September 26
4:00pm - 5:30pm EST

This Panel will focus on how arbitration plays a role in the modernization efforts in the Caribbean, how Caribbean arbitrations centers are developing, including the laws and regulations that have been adopted to promote and strengthen international arbitration, and how Caribbean nations and their regional centers may be contributing through dispute resolution to respond to the challenges created by climate change and natural disasters.

MODERATOR

- **Christina Beharry** (Foley Hoag LLP)

PANELISTS

- **Chris Malcolm** (Jamaica International Arbitration Centre)
- **Marie Camille Pitton** (OHADAC Regional Arbitration Centre)
- **Tanya Goddard** (Arbitration and Mediation Court of the Caribbean-BVI, Secretary General)
- **David S. Berry** (University of the West Indies)
- **François Lassalle** (BVI International Arbitration Centre)

EVENT PROGRAM

LEGAL DEVELOPMENTS IN ARBITRATION IN SUB-SAHARAN AFRICA

Tuesday, September 27
12:00pm - 1:30pm AST

In the last decade, countries across Sub-Saharan Africa witnessed a surge in economic activity. These countries have been identified as top investment destinations and have seen increased foreign direct investment and commercial activity within and outside their borders. The increase in economic activity has come with increased disputes and the resolution of these disputes through domestic and international arbitration. Despite the growth of arbitration in Sub-Saharan Africa, it remains relatively unfamiliar terrain for most practitioners advising and representing businesses on arbitration-related matters.

This panel will provide an overview and update of the practice in Sub-Saharan Africa, highlighting the prospects for investors and practitioners and the challenges including:

- Recent developments concerning the African Continental Free Trade Area ('AfCFTA') and international dispute resolution
- Update on the Africa Arbitration Academy's Model BIT Project
- The legal environment for international arbitration and its capacity to support the arbitral process in Sub-Saharan Africa
- The role of ad-hoc arbitration and the growth of arbitral institutions in these markets
- Developments in commercial and investment arbitration, including the most active sectors and landmark cases

MODERATOR

- **Ucheora Onwuamaegbu** (ArentFox Schiff LLP)

PRESENTER

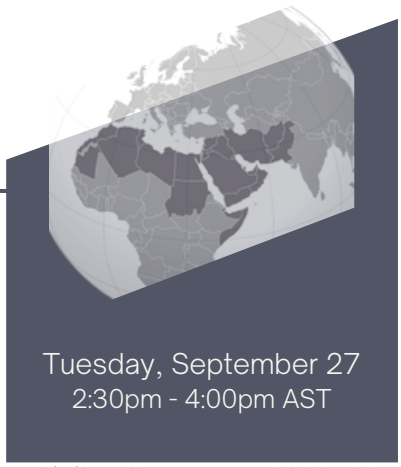
- **Efemena Iluezi-Ogbaudu** (Linklaters)

PANELISTS

- **Abayomi Okubote** (Pensbury Attorneys & Solicitors; Executive Director, Africa Arbitration Academy)
- **Ana Carolina Dall'Agnol** (Oxford and Kluwer Arbitration Blog, Assistant Editor for Africa)
- **Victoria Kigen, Case Counsel** (Nairobi Centre for International Arbitration)

EVENT PROGRAM

LEGAL DEVELOPMENTS IN ARBITRATION IN THE MENA REGION



Tuesday, September 27
2:30pm - 4:00pm AST

International Dispute resolution continues to rise in the Middle East and North Africa (MENA), closely matching uncertainty in the economy, first coming out of the period of the Arab Spring in the early 2010s, and now from the adjustments being made in the face of the pandemic and the war in the Ukraine. Despite a current tendency towards negativity, the recent World Bank MENA Economic Update estimates that the Middle East and North Africa (MENA) region's economies will grow by 5.2% in 2022, the fastest rate since 2016.

With a spate of arbitrations arising from the disruption of the Arab Spring, to new problems from an uncertain world economy, the usage of international arbitration in the region only continues to grow. Our featured arbitration Centre for this panel is ICC Qatar.

This panel will provide an update on issues related to current topics in arbitrating international disputes in MENA:

- Expansion of ICSID arbitration in the region, plus new developments regarding arbitration under the Islamic Co-operation (OIC) Agreement.
- Latest Developments in the region, including expansion of the activities of arbitration centers, reform of arbitration in Dubai with the abolishment of the DIFC-LCIA Arbitration Centre, and recent judgments on arbitration in Qatar, Egypt, and Dubai, among other jurisdictions.

MODERATOR

- **Randa Adra, Partner** (Crowell & Moring)

PRESENTER

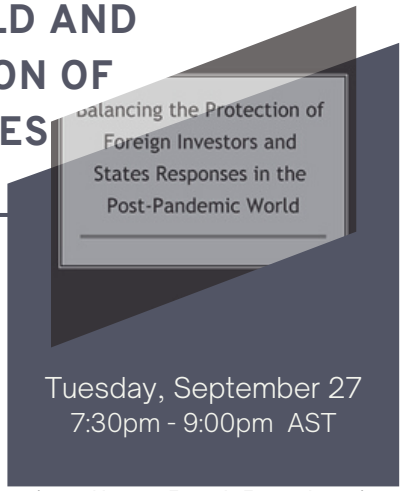
- **Khushboo Shahdadpuri** (Al Tamimi & Company)

PANELISTS

- **Diana Hamade** (Diana Hamade Attorneys at Law)
- **Moustafa Alam Eldin** (Zulficar & Partners)
- **Ilias Bantekas** (Hamad bin Khalifa University)

EVENT PROGRAM

FORCE MAJEURE, CHANGE OF CIRCUMSTANCES AND NECESSITY IN A FAST PACE EVOLVING WORLD AND BOOK LAUNCH: "BALANCING THE PROTECTION OF FOREIGN INVESTORS AND STATES RESPONSES IN THE POST-PANDEMIC WORLD"



During these past three years, the world has faced several upheavals that have had a global impact on the performance of projects and contracts.

This panel will launch the book entitled *Balancing the Protection of Foreign Investors and States Responses in the Post-Pandemic World,* published by Wolters Kluwer, and discuss, some of State defenses or circumstances precluding wrongfulness including, among others, force majeure, national security interest, necessity, change of circumstances.

The book provides an expansive synopsis of the diversity of approaches and tools for States and investors to anticipate and mitigate emergency situations in the future, by making a parallel with the COVID19 pandemic.

The first part of the book is dedicated to the perspective of the State and State defenses e.g., Force Majeure and National security Interest (NSI). **The second part of the book delves into** the perspective of the investor and more precisely with the claims available to investors during emergencies, including fair and equitable treatment, expropriation, and discriminatory measures. **The third part** covers different regions of the world as to the disputes that arose in the Covid context, and States' responses in policy and arbitration defenses.

The co-authors of the book and panelists will share their insights of the subject from the uniquely holistic perspective of both States and foreign investors.
Concretely, the panelists will articulate their analyses around two paradigmatic instruments: the investment contract and investment agreement, as encapsulated in the book, and will provide for an extension for dialogue among the authors.

MODERATOR

- **Alvaro Galindo** (Universidad de las Americas; Carmigniani Pérez Abogados)

PRESENTER

- **Munia El Harti Alonso** (Xtrategy)

PANELISTS

- **Pascale Accaoui Lorfing** (Research Associate - CREDIMI - University of Burgundy)
- **Yulia Levashova** (Nyenrode Business Universiteit)
- **Crina Baltag** (Stockholm University)

EVENT PROGRAM

THE NUTS AND BOLTS OF LEGAL FINANCE FOR INTERNATIONAL ARBITRATION DISPUTES: FROM THE MERITS ASSESSMENT TO ENFORCEMENT OF AWARDS

Wednesday, September 28
8:00am - 9:30am SGT

Third-party funding (TPF) plays an increasingly important role in international arbitration. It offers innovative ways to finance arbitrations and enforcement of awards. TPF is a means to access justice for deserving but impecunious parties lacking the financial muscle to have their day before an arbitration tribunal. But TPF is also a risk-sharing mechanism for companies and parties who have investment priorities other than funding their own cases, and are willing to share the favorable damages awarded by arbitration tribunals.

The efficacy of arbitration as a dispute resolution mechanism depends, to a large extend, on whether the integrity of the award will be protected by the national courts in enforcement proceedings and treated as final and binding. Unsurprisingly, funders decide to finance or not a case by considering—in their due diligence analysis—the merits of the case, making a cost-benefit analysis, and performing an early assessment of recoverability of the amount of damages awarded by the arbitration tribunal. Therefore, key factors determining how attractive a case is to funders include integrity of the court system, legal consistency, and the strength of the enforcement process, in addition (of course) to whether opposing party has the means and identifiable assets to pay the award.

Enforcement of arbitration awards is complex, it requires knowledge of the local laws and procedures, and it often demands following multi-jurisdictional strategies deploying the legal tools available to reach the main assets and their location.

The panelists will explain the steps involved in funding international arbitration, detailing how the preliminary assessment is completed in early stages of commercial and investment arbitration cases, in collaboration with counsel for the funded party and asset tracers who would identify the assets and facilitate the collection of the damages awarded.

EVENT PROGRAM

Wednesday, September 28
8:00am - 9:30am SGT

This panel will also discuss, among others the following issues:

- How funders may decide to include costs of enforcement in the budget or not, if a battle of enforcement ensues?
- The team strategy to maximize possibilities of enforcing an award and collecting the damages awarded.
- The work with local counsel and other advisers when enforcing an award in multiple jurisdictions.
- 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? and
- The challenges of enforcement proceedings against sovereigns in light of the coverage provided by sovereign immunity.

MODERATOR

- **Bethel Kassa** (GST)

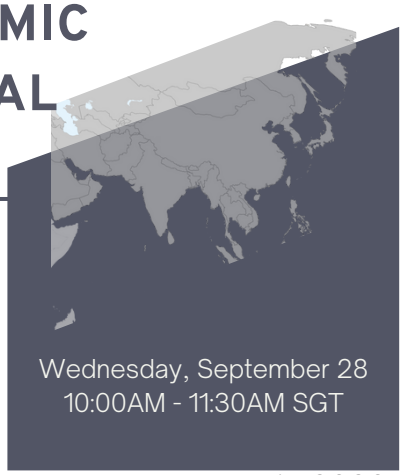
PRESENTER

- **Ankita Ritwik** (Gibson Dunn)

PANELISTS

- **Nilufar Hossain** (Omni Bridgeway)
- **Erika Levin** (Fox Rothschild LLP)
- **Chris Weil** (Mintz)
- **William Mara** (Validity)

INTERSECTION OF SPECIAL ECONOMIC ZONES IN ASIA AND INTERNATIONAL ARBITRATION



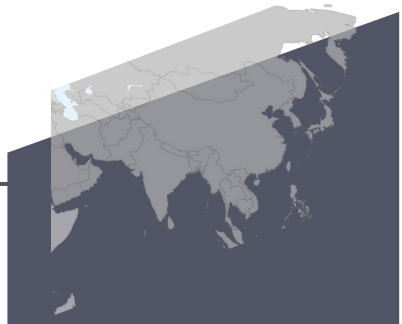
For several years now, Asia has been growing constantly and become a key player in world trade. Despite the pandemic, Asia again seems to be the continent that is doing best in economic growth. The GDP growth remained relatively stable despite the shock of the pandemic and compared to the rest of the world: The Asian economy contracted by 1.5 percent in 2020, while the world economy shrank by 3.2 percent. Moreover, Asia is expected to recover faster than the rest of the world. From July 2021, the International Monetary Fund (IMF) projected that Asia would grow at 7.5 percent in 2021 and 6.4 percent in 2022, compared to 6.0 percent and 4.9 percent for the world, respectively.

What has contributed to maintaining this economic strength in a period where the whole world has slowed down? There may be several contributing factors, including the creation and development of special economic zones, particularly linked to arbitration procedures or adjudicative processes.

A closer look into the experiences of certain countries—including United Arab Emirates (UAE), Singapore and China—may provide insights of their models, and possibly whether they offer flexible regulatory frameworks adapted to the needs of entrepreneurs seeking to grow their ventures in special economic zones.

UNCITRAL instruments have been of relevance. In 2013 the Model Law on Arbitration was introduced in the financial free zone Dubai International Financial Centre (DIFC). In December 2015 arbitration regulations were enacted for another financial free zone, the Abu Dhabi Global Market (ADGM). Those regulations apply to arbitrations seated in the ADGM, include provisions on arbitral proceedings, and recognition and enforcement of arbitral awards. The recent recognition of all these laws as UNCITRAL model laws have contributed to the entry into force of the UAE Federal Arbitration Law in June 2018, which goes further than traditional model laws by incorporating highly modern provisions particularly useful in the current COVID-19 period. Such law incorporates the use of new technologies reflected in legal instruments—e.g., the e-commerce Model Law on Electronic Transferable Records (2017) rolled out in the Abu Dhabi Global Market in 2021—geared to increase the efficiency of the arbitral process and promote business. Similarly, Singapore has joined the Model Law on Electronic Transferable Records.

EVENT PROGRAM



Wednesday, September 28
10:00AM - 11:30AM SGT

In addition, some studies show that simplified business registration for micro, small, medium-sized, and enterprises looking to set up in special economic zones would facilitate trade and promote investment. This may be another area ripe for legal harmonization as UNCITRAL has a legislative guide on simplified business registration.

Thus, some governments in Asia may be determined to promote business in special zones (whether SEZs, financial zones, or special ports) through dispute resolution relying on new technologies. Understanding and explaining the intersection of those zones and arbitration, and how they are used by governments as regulatory sandboxes to attempt harmonizing the legislation that they might introduce on a national level are central subjects for this panel, which will also address the following questions:

- How special economic zones offer investors an opportunity to solve their disputes through arbitration?
- How UNCITRAL rules or other rules of arbitration applied to special economic zones may provide a flexible legal framework considering the needs of investors?
- How to use instruments such as the Model Law on Electronic Transferable Records (2017) and new technologies to optimize the arbitral process?
- How simplified business registration for micro, small and medium-size enterprises for set up in special economic zones might be an area ripe for legal harmonization through UNCITRAL rules?

MODERATOR

- **Julien Chaisse** (City University of Hong Kong)

PRESENTER

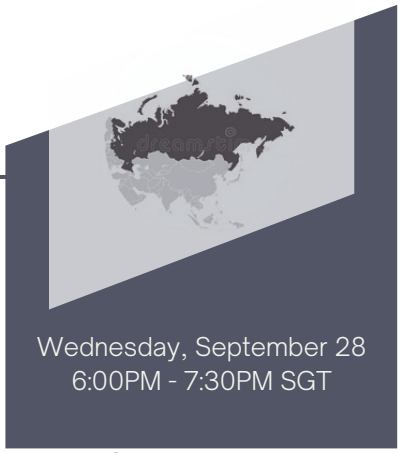
- **George Dimitropoulos** (College of Law, Hamad Bin Khalifa University)

PANELISTS

- **Junianto James Losari** (City Univerty of Hong Kong)
- **Dominic Dagbanja** (The University of Western Australia)
- **Kehinde Olaoye** (City University of Hong Kong)
- **Pilar Cerón** (Xtrategy)
- **Humberto Macias** (Deputy General Counsel, Honduras Próspera LLC)

EVENT PROGRAM

THE ACTIONS OF RUSSIA, COUNTERMEASURES AND RESULTING INTERNATIONAL DISPUTES, INCLUDING INVESTOR-STATE AND COMMERCIAL ARBITRATION



Wednesday, September 28
6:00PM - 7:30PM SGT

Hybrid Panel in K&L Gates Straits Offices in Singapore

In response to the imposition of international sanctions on Russia for its invasion of Ukraine, Russia has imposed sweeping economic measures on foreign investors from States it considers "unfriendly", including Singapore, the UK, the US, and EU Member States. Both international sanctions on Russia and Russia's own economic measures on foreign investors have had wide-ranging impacts across global market sectors, affecting foreign investors from around the world both directly through compliance mechanisms and indirectly through international commercial contracts.

However, a number of venues exist for the resolution of the wide range of disputes anticipated to result from the current crisis. In particular, foreign investors may still seek protection under investment treaties. Currently, there are 62 BITs in force between Russia and other States, including 27 States that Russia has determined to be "unfriendly" as a result of international sanctions imposed on Russia. Such treaties generally include substantive obligations to promote and protect foreign investment (e.g., to provide fair and equitable treatment, not to undertake unlawful expropriation of foreign investments, etc.) as well as for access to investment treaty arbitration against the Host State in certain circumstances. Such public international law obligations under international investment treaties now appear at odds, for example, with recent economic measures imposed by Russia against foreign investors including:

- Currency Transfer Restrictions
- Transaction Approval Requirements
- Prohibition of Foreign Currency Export
- Restrictions on Debt Repayment
- Prohibition of Certain Exports and Imports
- Non-Enforcement of Intellectual Property Rights

Also, the Russian Duma has considered additional measures (which many anticipate to be expropriatory) to effect the transfer of ownership or operation of certain foreign investments where foreign investors have ceased operating in Russia in the current climate of international sanctions.

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Wednesday, September 28
6:00PM - 7:30PM SGT

The resulting international legal climate arising from Russia's actions in Ukraine breaks new ground in public and private international law. Practitioners are therefore broadly anticipating a wave of disputes both in international commercial arbitration and in investor-State arbitration, including with respect to claims advanced by covered investors in investment treaty arbitration against Russia for economic measures like the above.

This panel will explore the implications of these developments both from a global perspective and a regional perspective in Southeast Asia, highlighting the following key points of interest:

- The Current International Sanctions Climate
- Regional Focus on International Sanctions in Southeast Asia
- Consideration of Current Venues for Disputes Arising from the Invasion of Ukraine
- Potential Mechanisms for Foreign Investors to Pursue Claims Arising from the Conflict in Ukraine in Investment Treaty Arbitration
- Anticipated Disputes and Issues in International Commercial Arbitration Prompted by the Conflict in Ukraine
- The Current Landscape for Sovereign Immunity and the Potential for Enforcement of Arbitral Awards Against State Assets

This program will provide a brief summary of recent developments in relation to Russia's invasion of Ukraine and identify key legal issues, including the interplay between international sanctions and customary international law (e.g., the characterization of countermeasures and the application of the law of State Responsibility (including State Defences) in Public International Law as well as issues arising in Private International Law and International Commercial Arbitration (such as Force Majeure). The panel discussion will be followed by a Q&A period as well as a networking session.

MODERATOR

- **Gene Burd** (FisherBroyles)

PRESENTER

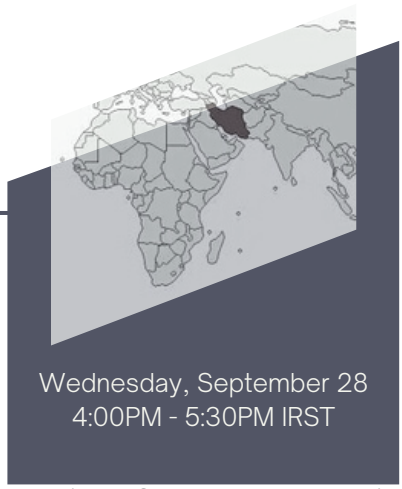
- **Rob Houston** (K&L Gates Straits Law LLC)

PANELISTS

- **Tatyana Slipachuk** (Sayenko Kharenko Law Firm)
- **Raja Bose** (K&L Gates Straits Law LLC)
- **Romesh Weeramantry** (Clifford Chance Asia)
- **Hamish Egan** (HKA)

EVENT PROGRAM

INFLUENCE OF THE IRAN-US CLAIMS TRIBUNAL ON PUBLIC INTERNATIONAL LAW AND INVESTMENT LAW



Wednesday, September 28
4:00PM - 5:30PM IRST

The Iran–US Claims Tribunal (IUSCT) was created as part of the negotiated settlement recorded in two complementary declarations known as the Algiers Declarations, and was a response to the severe crisis in relations between the two States between 1979 and 1981. This crisis was precipitated by, among others, the seizure of the United States Embassy in Tehran and its diplomatic and consular staff and actions taken by the United States in response thereto.

The IUSCT has jurisdiction over a specific set of disputes relating to a specific time period and with a specific configuration of parties as between Iran, the United States, and their respective nationals. It will cease to exist once these disputes have been resolved. Insofar as the claims of nationals against the two States are concerned, these disputes concerned debts, contracts, expropriations, and “other measures affecting property rights”.

Most of the claims of nationals against one or the other State were resolved by the mid-1990s. Since then, the work of the Tribunal has been focused on resolving the remaining disputes between the two States which concern contractual arrangements between them for the purchase and sale of goods and services, and the interpretation or performance of their respective obligations under the Algiers Declarations. In its more than 40-year history, the IUSCT’s jurisprudence has had a significant influence on various aspects of international law, including the law of State responsibility as it has been applied by investor-State arbitral tribunals.

For example, certain IUSCT awards concerning expropriation and “other measures affecting property rights” are considered to be foundational statements of the modern international law of expropriation, in its direct and indirect forms. Concerning attribution, the IUSCT has closely considered the link between the actions of persons or entities distinct from the State, and the State, to determine whether the State should be liable for those acts. On nationality, the IUSCT has also produced substantial case law regarding the nationality of individual claimants, especially dual nationals, which has influenced *inter alia* the treatment of this issue by investor-State arbitral tribunals.

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4:00PM - 5:30PM IRST

The panel will consider whether the Tribunal's jurisprudence concerning these issues remains influential today and the relevance of the similarities and differences between the jurisdictional bases for decisions of the IUSCT and investor-State arbitral tribunals.

This panel will discuss the substantive contribution to the development of international law made by the IUSCT and will reflect more broadly upon the lessons learned from its experience concerning the peaceful settlement of disputes between States.

MODERATOR

- **Heather Clark** (IUSCT, Legal Adviser)

PANELISTS

- **Reza Eftekhar** (IUSCT, Legal Adviser)
- **Aniruddha Rajput** (Member, ILC; Consultant, Withers LLP.)
- **Damien Charlotin** (International Arbitration Reporter, Senior Analyst)
- **Kabir Duggal** (Arnold & Porter)

EVENT PROGRAM

TAKING STOCK OF THE ECT MODERNIZATION PROCESS: FIT FOR THE 21ST CENTURY?

Thursday, September 29
12:00pm - 1:30pm CEST

The Energy Charter Treaty (ECT) is a multilateral trade and investment treaty in force since 1998 providing for an international binding legal framework for energy cooperation between 53 Contracting Parties, among which the European Union and EURATOM are also tincluded in their own capacity. Today, it is the most used investment agreement globally.

It is the only intergovernmental agreement applicable to all energy sources (fossil fuels, renewables, nuclear and others) at every stage of the supply chain (production, distribution, transit). It provides for a dispute resolution mechanism based on arbitration, with the fossil fuels and renewable energy disputes dominating the arena, both in numbers and total damages awarded, i.e., approx. EUR 500 mil. + Yukos cases (EUR 41bn) for fossil fuels and approx. EUR 1.2bn for renewables. On June 1, 2022 there were 54 pending cases.

The ECT reform emerged as a necessity due to (i) the inconsistent interpretation and application of the ECT provisions by tribunals, national courts and recently by the Court of Justice of the European Union (CJUE), (ii) the EU's concerns regarding the investment protection provisions in the ECT and (iii) the necessity to align the ECT with the Paris Agreement, and with EU's goals on sustainable investment, climate change and net zero goals. The modernization discussions started in 2017, but the first negotiation round took place only in July 2020. After five years, the ECT Reform was concluded in 2022.

A closer look at the practice of tribunals in cases under the auspices of the ECT reflect the point on consistency. The notion of "investment" has been interpreted broadly sometimes (Energoalliance v Moldova, Petrobart v Kyrgyz Republic) and narrower other times (Energorynok v Moldova). But this is not only an investment arbitration tribunal's issue. This lack of consistency is also observed in practice by regional and national courts: The CJUE in its preliminary ruling addressing the questions from Paris Court of Appeal, in Republic of Moldova v. Komstroy (Energolliance) had also a narrower interpretation of the notion of "investment", while the Court of Cassation in Paris had a broader reading of "investment".

Thursday, September 29
12:00pm - 1:30pm CEST

Different tribunals have also interpreted the standards of protection divergently creating uncertainty about the obligations of fair and equitable treatment, full protection and security, and minimum standard of treatment contained in Article 10(1) ECT. An added ingredient has been the tension between EU law and the ECT. After Achmea, the EU Commission in its amicus briefs, and the EU Member States as respondents argued in favour of the incompatibility between the ECT dispute resolution mechanism in intra-EU ECT disputes. Tribunals were divided on the matter. While the Electrabel v. Hungary tribunal held that EU law prevailed over the ECT 'in case of any material inconsistency', the opposite conclusion was reached in RREEF v Spain. But in AES v. Hungary, a case comparable to Electrabel, the tribunal—in line with basic principles of public international law— considered EU law as a 'fact'. The Vattenfall tribunal held that the ECT prevailed over EU law. However, in September 2021, the CJUE saw an opportunity to bring its own regional "clarity" by opining in its preliminary ruling that the ECT will be outranked in an intra-EU ECT-related dispute. Thus, for the CJUE—which is not the authoritative interpreter of the ECT—an ECT investment tribunal would not have jurisdiction in such disputes. Yet, Komstroy was never an intra-EU ECT dispute, but a dispute involving a non-EU State and a third country investor. Moreover, CJUE did not rely on the Vienna Convention on the Law of Treaties, but on the EU law supremacy over an apparent conflicting international norm.

Now that the ECT reform has been concluded, its outcome features various aspects: The facilitation of sustainable investments with the creation of a modern framework, the increase in the level of investment protection, the creation of mechanisms that allow States to pursue their individual energy security and climate goals, the apparent end of intra-EU applications under the ECT, the strengthening of environmental and social provisions, and the inclusion of new definitions for relevant terms such as "investor" and "investment". From a public international law perspective, certain questions had been raised before the reform to the ECT: Does the CJUE have jurisdiction to interpret ECT as EU law since Komstroy was an extra-EU dispute having the arbitration seat in an EU Member State? Can one signatory, i.e., the EU, impose its multilateral investment court system in the ECT? Is the CJUE competent to provide an interpretation of the rights and obligations on non-EU

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12:00pm - 1:30pm CEST

ECT Contracting Parties? How to reconcile the principles of supremacy and autonomy of EU law, as a sui generis and regional legal order, with the public international law order governing ECT as a multilateral treaty?

Now that the modernization process has concluded, what are the answers which are provided by reform of the ECT? This panel will discuss the ongoing tensions between EU law and International Investment Law, as well as the new status created by the deal achieved after the negotiations of modernization of the ECT.

MODERATOR

- **Jose Antonio Rivas** (Xtrategy LLP)

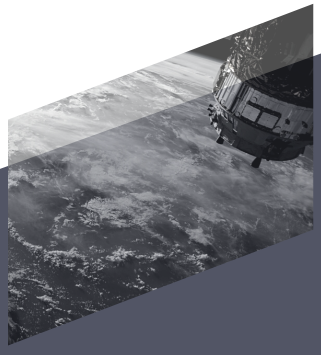
PRESENTER

- **Daniela Ghicajanu** (Georgetown University)

PANELISTS

- **Guy Lentz** (ECT Secretary-General)
- **Lukas Stifter** (Chair, Modernisation Group - Energy Charter Treaty)
- **Nikos Lavranos** (International Dispute Resolution Arbitrator & Mediator)
- **Marinn Carlson** (Sidley Austin)

SPACE LAW AND ARBITRATION



Thursday, September 29
2:00pm - 3:30pm CEST

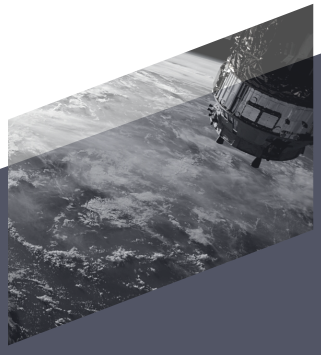
Traditionally, space law was mainly limited to States and international organizations, but now the "commercialization" of Space is steep and accelerating. In a report dated May 2022, Citi expects the space industry to reach $1 trillion in annual revenue by 2040, after the global space economy's value reached $424 billion in 2020, having expanded 70% since 2010. Whereas State actors were the only real driving forces behind the development of Space activities until about 15 years ago, private interests have no doubt driven the development of this nascent industry.

These evolutions are likely to result in an increase in the existing types of space-related disputes, generate new types of disputes, and impact the ways in which such disputes are resolved, including disputes involving, among others, space debris, property rights, and frequency licensing issues. Most famously, in Devas v. India the tribunal decided that India had expropriated the investor's frequency spectrum and touched upon how physical presence is not necessarily a requirement for territorial nexus, thus opening the possibility for frequencies to be part of a State's sovereign interests. In Eutelstat v. Mexico the tribunal rejected the claims of the investor regarding violations to legitimate expectations and fair and equitable treatment. The claims were brought in the context of use of frequencies at a given orbital slot and the requirement of satellite operators to reserve a certain amount of frequency capacity for the Mexican government.

This panel will address, among others, the following key questions:

- What are the main treaties, principles and rules of international space law?
- Can international investment treaties apply to disputes arising from space-related activities?
- Which are the existing areas of space-related disputes and where can new disputes be expected to arise in the future?
- On what bases could tribunals uphold jurisdiction related to disputes involving space ventures and/or space debris?
- What are some examples of State acts or omissions that might be attributable to a State in space?
- What, if anything, makes arbitration more or less attractive than other dispute settlement processes used in resolving space-related disputes?

SPACE LAW AND ARBITRATION



Thursday, September 29
2:00pm - 3:30pm CEST

MODERATOR & PRESENTER

- Viva Dadwal (**King & Spalding**)

PANELISTS

- **Irmgard Marboe** (University of Vienna, Professor of International Law, Head of the National Contact Point for Space Law)
- **Werner Eyskens** (Crowell Moring LLP)
- **Maximilian Trautinger** (Schonherr)
- **Nick Storrs** (Taylor Wessing)
- **Dr. Jan Frohloff** (Space Arbitration Association)

EVENT PROGRAM

INVESTMENT ARBITRATION CONCERNING TAX MEASURES

Thursday, September 29
4:00pm - 5:30pm CEST

Over the last years, the interaction of international investment law and international and domestic tax measures has gained increased attention. According to UNCTAD data, tax issues have already played a role in approximately 15 percent of all known investment disputes. Especially, the 2020 awards in Vodafone v. India and Cairn Energy v. India have fuelled a debate on the role of investment arbitration in the resolution of tax-related disputes.

On the policy level, this debate comes at a time of significant reforms of the international tax systems. Noteworthy developments include the global corporate minimum tax initiative endorsed in November 2021 by the G20 and the OECD/G20 Inclusive Framework for the implementation of the Base Erosion and Profit Shifting (BEPS) Project, which aim at tackling tax avoidance, improving the coherence of international tax rules and ensuring a more transparent tax environment. Implementing these initiatives will also have to consider their relationship with other frameworks of international economic governance, specifically international investment treaties.

Several investment treaties include provisions that refer to tax-related issues. Commonly, carve-out clauses in various treaties filter out of the jurisdiction of an investment tribunal the State's sovereign power to tax. But more sophisticated provisions are found, for instance, in the Energy Charter Treaty's Article 21 or in Article 11 of the 2021 Canadian Model FIPA. Despite the tendency to include tax carve outs in investment treaties, there seems to be limited detailed discussion on the rationale for a complete removal of taxation measures from an investment tribunal's jurisdiction.

The vast majority of investment treaties currently in force, in any event, lack a general tax carve-out. As in *Cairn Energy v. India*, tax issues are frequently at the core of arguments submitted by the parties. There, the tribunal held that retroactive taxation violated fair and equitable treatment. Additional questions have been raised, for instance, in *First Majestic v. Mexico*, where an arbitration has been initiated to enforce obligations under a double taxation treaty. There, the Claimants allege that Mexico failed to properly engage in the tax treaty dispute settlement under the mutual agreement procedure.

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Thursday, September 29
4:00pm - 5:30pm CEST

Finally, tax issues may also arise in post-award matters. This can be the case, even in investment arbitrations that otherwise lack a tax law angle, when the tribunal's award may be subject to taxes that might prevent achieving the goal of granting full compensation for the damages caused by the acts and treaty violations of the State.

This panel will address relevant policy questions, as well as practical aspects on the increased importance of tax matters in investment arbitration. It will feature a dialogue between tax and investment law practitioners, and academics that will shed light on the interaction between those two regimes.

MODERATOR

- **Sebastian Wuschka** (Of Counsel, Luther)

PANELISTS

- **Trisha Mitra** (Lalive)
- **Prof. Robert Danon** (Partner, DANON, University of Lausanne, Chairman of the Permanent Scientific Committee (PSC) of the International Fiscal Association)
- **Robyn Rylander** (Mannheimer Swartling)
- Wendy Miles (Twenty Essex)

EVENT PROGRAM

INVESTMENT ARBITRATION AND JOURNALISM

Thursday, September 29
6:30pm - 8:00pm CEST

Approximately 20 years ago, when The New York Times published one of its earliest stories about investment arbitration, it rightly labeled the mechanism "obscure." Nowadays, however, investment arbitration is mainstream — and references to the mechanism abound. (Notably, investment arbitration has even been the subject of a scripted TV series/legal drama.)

In recent years, many advocates, parties, and arbitrators have set out their opinions on investment arbitration and the media. However, very few panels have focused on the practicalities of media coverage from the perspective of the journalists themselves. To fill the gap, this panel mainly will feature journalists and media specialists, and will address such issues as the following:

What is the pace of reporting on investment arbitration news? What are the challenges of entering the opinion-centered realm of web-based publications? When might a case climb the ladder from a specialized periodical to the mainstream national or even international media? How and when (if at all) should counsel interact with the specialized media and journalists? Is there an ethical responsibility concerning reporting the news objectively and in a manner that will educate the public rather than undermine the investor-State arbitration system?

MODERATOR

- **Mallory Silberman** (Arnold & Porter partner, with an undergraduate degree from the S.I. Newhouse School of Public Communications)

PRESENTER

- **Clovis Trevino** (former IAR Reporter)

PANELISTS

- **Caroline Simson** (360) (Senior reporter for Law360's international arbitration newswire)
- **Jean Remi de Maistre** (CEO & Co-Founder of Jus Mundi)
- **José Antonio Rivas** (Xtrategy Partner, and Co-founder of World Arbitration Update (WAU) and Washington Arbitration Week (WAW))

EVENT PROGRAM

DIVERSITY AND INTERNATIONAL ARBITRATION: WHAT DISPUTE SETTLEMENT SYSTEMS FOSTER GREATER DIVERSITY AND INCLUSION IN INTERNATIONAL INVESTMENT AND COMMERCIAL ARBITRATION?

Friday, September 30
7:00am - 8:30am EST

Parties, including States and companies, have increased their awareness of the importance of diversity, and in some cases emphasize to counsel the relevance of selecting arbitrators from a broad pool of candidates including gender, geographic and cultural diversity. As in the case of rapper and media proprietor Jay Z — who initially complained about the virtual lack of African American candidates in the list of arbitrators provided by the American Arbitration Association (AAA), following which the AAA reasonably offered five African American candidates from which the parties could choose a three-member panel—heads of companies are increasingly more aware about the importance of having diverse and competent individuals as adjudicators. Query as to whether this important push for greater diversity is becoming—based on statistics and numbers—an increasing perceivable trend in international commercial and investment arbitration.

Gender, cultural, ethnic, and geographical diversity, added to diversity from various legal systems, may be in the psyche of younger public officials in charge of vetting candidates for appointment to tribunals in investment arbitrations or international commercial arbitrations involving State or State-owned companies. But the question is very practical: Instead of promoting diversity due to moral correctness, what may a party gain from a more diverse pool of arbitrators? The answer may be linked to ensuring fairness and real international due process as, in the words of Ula Cartwright-Finch, “increased diversity can help reduce cognitive biases to which homogenous groups are susceptible and improve the intelligent performance of three-member teams.”

While international arbitration centers appear to be an engine for change by proposing diverse candidates in their panels of arbitrators (for example, in 2020 the percentage of women sitting in ICC arbitral tribunals reached 23.4%, 37% of all arbitrators appointed by the Court were women, ICC arbitrators come from 92 different nationalities, and the seat of arbitrations has been located in 65 countries), a significant challenge remains in the appointment of arbitrators by parties. Clients and their counsel may have a larger pool of male and white arbitrators with a proven track record—and therefore more predictable—to choose from, than the pool of gender and ethnically diverse candidates. The road must start somewhere. Blunt commitments—such as the ICC World Council decision on gender diversity of full gender parity for the term 2018-2021 appointing 88 men and 88 women—could be replicated by other arbitration centers, and considered for ingenious initiatives on

EVENT PROGRAM

Friday, September 30
7:00am - 8:30am EST

ethnic and geographic diversity. What initiatives are those?

In the conversation on diversity and international adjudication the big elephant—or at the very least a monstrous animal—in the room is whether permanent international courts may foster more diversity than arbitration tribunals whose periods expire with the life of each case. While the International Court of Justice, still in 2022, has only 4 female judges out of 15 seats (i.e., less than 26%), the Statute of the International Criminal Court provides that in selecting judges, the parties shall consider the representation of the principal legal systems of the world, equitable geographical representation, and fair representation of female and male adjudicators. What has been the performance of the ICC in terms of diversity? What system may foster greater diversity, the flexibility of international arbitration or an explicitly regulated-for-diversity permanent international court system?

This panel will explore, among other issues, (i) what is diversity and inclusion? Beyond gender diversity, which is essential, what other types of diversity—including ethnic, racial, and cultural diversity, as well as sexual orientation diversity— should dispute resolution in investment and international commercial arbitration be promoting? (ii) Whether international arbitration as we know it in investor-State arbitration, for example under ICSID, or in international commercial arbitration under the ICC, ICDR or similar rules, fosters and effectively promotes diversity and inclusion?, and (iii) are any of the current or proposed systems of adjudication in international law closer to achieving the objective of effectively encouraging diversity and inclusion, including the International Investment Court proposed in the CETA, the International Criminal Court , the WTO Appellate Body, international commercial arbitrations under the ICC, ICDR or similar rules, or any proposal on diversity and inclusion in UNCITRAL Working Group III?

MODERATOR

- **Kabir Duggal** (Columbia Law School and Arnold & Porter)

PANELISTS

- **Amanda Lee** (Arbitrator and Founder of Careers in Arbitration)
- **May Tai** (Herbert Smith Freehills)
- **Gaela Gehring Flores** (Allen & Overy)
- **Natalie Reid** (Debevoise & Plimpton) (TBC)

EVENT PROGRAM

UNCITRAL WORKING GROUP III AND FRAGMENTATION OF ISDS

Friday, September 30
9:00am - 10:30am EST

The last years have been marked by the reform of the institutions, treaties, and procedural rules that make-up a large part of investment arbitration. These institutional efforts to reform the ISDS system have continued throughout 2022.
UNCITRAL Working Group III ("WGIII") has been busy since the 2017 broad mandate entrusted by the Commission to explore ISDS reform. In 2022 the WGIII has continued its work focusing on the draft code of conduct for international investment adjudicators (having UNCITRAL and ICSID issue Draft Version Four on 22 July 2022), a first review of the draft standing multilateral mechanism, and discussions on a possible multilateral advisory centre. In the 42nd session, held in February 2022, the multilateral advisory centre was removed from the agenda and the time was divided between the two other topics. However, as WGIII was unable to reach a consensus on all provisions of the draft code of conduct, as well as of the draft standing multilateral mechanism, a revised version of both will be resubmitted for consideration at the 43rd session of WGIII in September 2022.

It is worth noting that since 2007, new generations of ISDS provisions negotiated in international investment agreements have come to fruition. In fact, there seem to be numerous single topic conventions that address specific procedural elements of arbitration or mediation such as the Mauritius Convention on Transparency; the Singapore Convention on Mediation. Potentially, this method would be used to adopt WG III amendments. In parallel, there are many new investment treaties, model BITs, and overlapping investment chapters.

With multilateral negotiations to reform investor-state dispute settlement (ISDS) now underway, a long suspense before the outcome is unavoidable. States are pursuing a wide range of changes to the current system, some of which may be incompatible with one another.

EVENT PROGRAM

Friday, September 30
9:00am - 10:30am EST

- The latest version of the Draft Code of Conduct that will be discussed at the September 2022 UNCITRAL Session.
- The draft standing multilateral mechanism
- The most important structural reforms to the ISDS system.
- How might the geography of international jurisdictions in investment disputes look like, including possibly investment arbitration for some, and a multilateral investment court for others?
- What may be the specific one-off international instruments and topics that States may have the option to accede or become a Party to?
- Do the means to pragmatically move forward ISDS reform--by providing the option to support certain international investment instruments and not others—create a problem of fragmentation that will prevent creating a consistent and balanced new ISDS system?

MODERATOR

- **Margie-Lys Jaime** (Republic of Panama)

PRESENTER

- **Maria Lucia Casas** (Xtrategy, Senior Associate)

PANELISTS

- **Anna Joubin-Bret** (Secretary of the United Nations Commission on Trade Law)
- **Mairée Uran Bidegain** (Program for the Defense of the State in Investment Arbitration, Ministry of Foreign Affairs, Chile)
- **Katerina Florou** (University of Liverpool, Assistant Professor)
- **Lauren Mandell** (WilmerHale)

EVENT PROGRAM

ICSID RULES AMENDMENTS

Friday, September 30
12:00pm - 1:30pm EST

Hybrid Panel in Arnold & Porter Offices, Washington D.C.

On 21 March 2022, the Members States to the ICSID Convention approved a long-awaited update to the ICSID Rules and Regulations for resolving international investment disputes. This is the first amendment to the ICSID Rules since 2006, and the most extensive modernization of ICSID procedures in the Centre's history. The updated rules are the outcome of six working papers over 5 years of collaboration with State officials, legal counsel, adjudicators, businesses representatives, and civil society.

The update of the rules for arbitration, mediation, conciliation, and fact-finding incorporates innovations designed to make ICSID cases more efficient, broaden access to ICSID's facilities and services, and ensure greater transparency in the conduct and outcome of proceedings. The amendments came into effect on 1 July 2022 and are applicable to arbitrations commenced from that date onwards. ICSID is publishing extensive guidance notes for those using the rules over the next few months.
The innovations introduced in the 2022 Rules and Regulations cover: (i) measures designed to make cases more efficient, (ii) new expedited arbitration rules, (iii) rules that enhance the transparency of ICSID orders, decisions, and awards, (iv) broader access to ICSID's specialized rules and services, (v) new rules for mediation and fact-finding, and (vi)disclosure of third-party funding, among others.
The panel will address:

- What to expect of how these rules will operate in practice?
- What are the key areas of difference between the 2006 and the 2022 Rules?
- Whether the amendments are modernizing ICSID procedures and encourage broader engagement with investor-State dispute settlement?
- Whether the amendments are responsive to problems identified by critics of the ISDS system?

MODERATOR

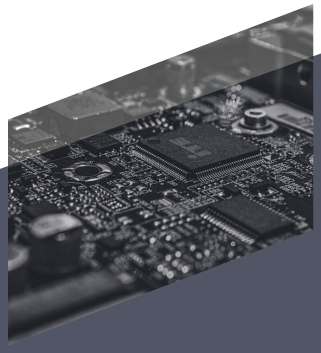
- **Gonzalo Flores** (ICSID, Deputy Secretary General)

PANELISTS

- **Martina Polasek** (ICSID, Deputy Secretary General)
- **Mallory Silberman** (Arnold & Porter, Partner)
- **Bart Legum** (Honlet Legum Arbitration, Partner)
- **Antonio Parra** (World Bank Consultant, and Former Deputy Secretary of ICSID)
- **Ian Laird** (Crowell & Moring, Partner)

EVENT PROGRAM

THE ARBITRAL PROCESS AND NEW TECHNOLOGIES: ARTIFICIAL INTELLIGENCE, VIRTUAL HEARINGS, BLOCK CHAIN, AND THEIR INFLUENCE



Friday, September 30
2:00pm - 3:30pm EST

What is the international arbitration of tomorrow and how can we take advantage of the opportunities that new technologies provide in the international arbitration process?

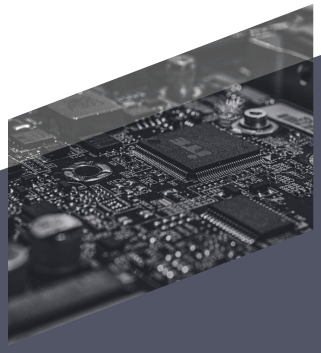
Technology has been rapidly evolving, impacting all sectors of the economy including the legal industry. The Covid-19 pandemic has also caused significant disruption to the economy globally. At the same time, the pandemic has revealed international arbitration's astounding resiliency during a global crisis by embracing new technologies almost instantly, allowing for arbitrations to proceed and for disputes to be resolved remotely. As new possibilities continue to emerge and novel forms to resolve disputes are taking shape, it is urgent that we remain proactive in the way that we adopt new technologies to benefit international arbitration.

To understand how to maximize the benefits of technology and address the negative impact they might have on the arbitral process, this panel will explore virtual hearings, artificial intelligence ("AI"), and blockchain (or distributed ledger) technologies, which use is likely to significantly increase in the coming years.

This panel will be invited to address general questions on new technologies as well as particular issues on virtual hearings, artificial intelligence and blockchain arbitration, including:

- What are the characteristics of virtual hearings, AI, and blockchain technologies?
- To what extent can they improve access to justice (e.g., lower costs, increase transparency, provide expeditious resolution of disputes, guarantee procedural fairness)
- Does their use give rise to concern on equality and procedural fairness?
- Are virtual hearings here to stay or are we migrating towards a hybrid model? If so, what technology is most appropriate?
- What challenges could an opposing party raise to virtual and hybrid hearings?
- Is there a need for an international set of rules governing virtual hearings or witness examination?

EVENT PROGRAM



Friday, September 30
2:00pm - 3:30pm EST

- To what extent can AI be used for arbitrator selection, outcome prediction, and the treatment of evidence? Can arbitration proceedings be automated or autonomous without violating the principles of fairness, due process, and party autonomy?
- Can AI, in its current form, meet the requirements of transparency and accountability? Should the underlying technology be subject to judicial or arbitral review, and if so how can that review take place?
- Could AI significantly diminish the costs of arbitration while maintaining the same standards of fairness and due process as they are applied today in international arbitration? How can this be achieved?
- What is blockchain arbitration? What types of disputes does it best resolve? Does its use give rise to regarding due process, fairness, and accountability?
- What are the consequences of the use of blockchain arbitration in regards of the recognition and enforcement of awards?
- Is there a need for legal standards to harmonize blockchain arbitration? If so, what should they be?

MODERATOR

- **Sophie Nappert** (Arbitrator and co-founder of ArbTech)

PRESENTER

- **Sarah Chojecki** (International Arbitration Specialist, Tribunal Assistant)

PANELISTS

- **Isabel Yishu Yang** (Founder & CEO of ArbiLex)
- **Elizabeth Chan** (Foreing Lawyer Allen & Overy and Metaverse Legal Administrator)
- **Colin Rule** (CEO of Mediate.com and Arbitrate.com)
- **Pratyush Panjwani** (Senior at Hanotiau & van den Berg