



Dublin ICCA2008

ICCA Conference Programme



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Monday 9 June 2008 - Morning Session

Theme	Working Group A: Arbitration Treaties/Treaty Arbitration	Working Group B: Rules-Based Solutions to Procedural Issues
	<p>THE IMPACT OF INVESTMENT TREATY ARBITRATION: IDENTIFYING THE EXPECTATIONS, TESTING THE ASSUMPTIONS</p> <p>From the negotiation of the Washington Convention through contemporary BIT practice, the fundamental rationale for providing private parties with access to international arbitration with states with which they have contracted or in which they have invested has been the expectation that an effective dispute resolution regime will promote beneficial economic activity. With several decades of experience, governments are now in a position to make sophisticated assessments of the costs and benefits, in light of the full range of relevant political and economic considerations, of making such recourse available, and investors, too, have substantial experience against which to measure the value of treaty protection in making investment decisions and the utility, if a dispute arises, of pursuing arbitration. This multidisciplinary panel will identify the theoretical drivers behind investment treaty-making and then examine those drivers in light of empirical data and present expectations.</p>	<p>The major arbitral institutions have periodically revised their rules in an effort to address recurring issues of arbitral procedure. The discussions in the UNCITRAL Working Group on Arbitration, which will soon complete a comprehensive revision of its 1976 Rules, provide a useful framework to identify such recurring procedural problems and how they can (or cannot) be adequately addressed by arbitration rules.</p> <p>The focus of Working Group B panels will therefore be on rulemaking. Panels will determine how recurring procedural problems should be addressed to ensure a fair and efficient arbitral process and compare those solutions to existing rules. The objective will be to provide a critique for current and future rules revisions and guidance on how existing rules can be used to achieve fairness and efficiency. The UNCITRAL discussions will provide a constant benchmark, but neither the papers nor the discussions will be limited to those discussions. The reporters and commentators will prepare papers, but their presentation will include consideration, by use of hypothetical fact patterns, of concrete problems.</p>
<p>Morning Session I 09.15 to 10.45</p>	<p>Origins and theory. This panel will examine on a multidisciplinary basis the origin, legitimacy, and impact of treaty arbitration.</p> <p>Chair: Professor Gabrielle Kaufmann-Kohler Levy Kaufmann-Kohler Geneva</p> <p>Reporter: Professor Benedict Kingsbury New York University School of Law New York</p> <p>Commentators: Professor Beth Simmons Weatherhead Center for International Affairs Harvard University Cambridge, Massachusetts</p>	<p>A: MULTI-PARTY DISPUTES The UNCITRAL Working Group on Arbitration is considering new provisions to address issues arising in multi-party disputes, including in connection with the appointment of arbitrators and the joinder of other parties. This panel will propose possible ways to address these issues and consider to what extent current or future arbitration rules accommodate such solutions. With respect to the question of joinder, the panel will consider specifically whether rules for administered arbitration should give arbitral institutions a greater role in making joinder decisions and in articulating the standards for doing so.</p>

Monday 9 June 2008 - Morning Session - Continued

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	<p>Margrete Stevens King & Spalding Washington, D.C.</p>	<p>Chair: Carlos Nehring Netto Nehring e Associados São Paulo</p> <p>Reporter: Nathalie Voser Schellenberg Wittmer Zurich</p> <p>Commentators: Cristian Conejero Roos Cuatrecasas Abogados Madrid</p> <p>John L. Gardiner Skadden Arps New York</p>
<p>Morning Session II 11.15 to 12.45</p>	<p>Present expectations and realities. This panel will examine the expectations and objectives of current users and affected constituencies.</p> <p>Reporter: Professor Christopher Greenwood London School of Economics London</p> <p>Commentators: Judge Charles N. Brower Iran-United States Claims Tribunal The Hague</p> <p>Professor Brigitte Stern Université de Paris I Paris</p>	<p>B. CONSOLIDATION OF CLAIMS The UNCITRAL Working Group is considering provisions that would provide for a single determination of related claims arising under separate contractual instruments. This panel will propose possible ways to address such questions of consolidation and consider to what extent current or future arbitration rules accommodate such solutions.</p> <p>Chair: Professor Dr. Iván Szász Squire Sanders Budapest</p> <p>Reporter: Professor Michael Pryles Australian Centre for International Commercial Arbitration Sydney</p> <p>Commentators: Eduardo Goncalves Barretto Ferreira, Kujawaski, Brancher e Gonçalves Sao Paulo Brazil</p> <p>Professor Nayla Comair-Obeid Obeid Law Firm Beruit</p> <p>Summary Commentator: Professor Pierre Tercier University of Fribourg Fribourg</p>

Monday 9 June 2008 - Afternoon Session

Theme	Working Group A: Arbitration Treaties/Treaty Arbitration	Working Group B: Rules-Based Solutions to Procedural Issues
	<p>INVESTMENT TREATY ARBITRATION AND COMMERCIAL ARBITRATION: ARE THEY DIFFERENT BALLGAMES?</p> <p>As BITs proliferated and BIT arbitrations followed, both arbitrators and practitioners from the world of international commercial arbitration entered the field, so that now the two universes largely overlap. Does that overlap obscure fundamental differences to which we should pay greater attention? This panel will examine that question from the standpoint first of the legal regime governing the arbitration and then of the actual conduct of the proceeding.</p>	
<p>Afternoon Session I 2 to 3.30</p>	<p>The legal framework.</p> <p>Pure commercial arbitration happens as a matter of contract, solely through the consent of the actors, though its effectiveness relies in the end on a network of national and international law. The legal norms it applies will be drawn from a wide variety of legal systems. Treaty arbitration, on the other hand, is a creature solely of international law, and the standards it applies will also be drawn from both conventional and customary international law, generated by both, so to speak, legislative and judicial processes. Even so, it, too, seeks to rely on national legal systems to ensure its effectiveness. Do these characteristics warrant different treatment of the proceedings as a legal matter, or do the differences arise solely because of the involvement of a state such that they can be addressed by prudent application of broadly applicable doctrine and procedure? Is it feasible to conduct treaty arbitration under rules that also serve in commercial disputes, or do we need to generate additional sets of rules, other than ICSID, expressly designed for investor-state disputes?</p> <p>Chair: V. V. Veeder Q.C. Essex Court Chambers London</p>	<p>SUMMARY DISPOSITION</p> <p>The AAA International Arbitration Rules expressly allow the tribunal to “direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.” Tribunals operating under other rules often entertain applications for summary disposition even without an express statement of their authority in the applicable rules. The recent revision of the ICSID rules grants ICSID tribunals the authority summarily to dismiss a claim by granting an objection that “a claim is manifestly without legal merit.” Such objections have often been raised in investment treaty disputes as objections to the jurisdiction of the tribunal or the admissibility of a claim, including when a proceeding was governed by ICSID or UNCITRAL Rules.</p> <p>The proposed UNCITRAL revisions do not address the question of summary disposition. This panel will examine when and how summary disposition should be used, articulate guidelines for the exercise of the authority, and consider to what extent current or future arbitration rules should take account of the practice.</p> <p>Chair: Dr. Werner Melis Vienna International Arbitral Centre (VIAC) Vienna</p>

Monday 9 June 2008 - Afternoon Session - Continued

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	<p>Reporter: Professor Campbell McLachlan QC Victoria University of Wellington Bankside Chambers (Auckland) & Essex Court Chambers (London)</p> <p>Commentators: Brooks Daly Permanent Court of Arbitration The Hague</p> <p>Professor Bernard Hanotiau Hanotiau & van den Berg Brussels</p>	<p>Reporter: Judith Gill Allen & Overy London</p> <p>Commentators: Teresa Giovannini Lalive Geneva</p> <p>Louise Barrington King's College London</p> <p>Michael Collins, S.C. Dublin</p>
<p>Afternoon Session II 4 to 5.30</p>	<p>The actual conduct. The need for a substantive- knowledge base aside, are there distinct challenges of conducting a treaty arbitration as compared to a pure commercial one? Do different strategic choices and advocacy considerations arise? This panel will address a range of issues that may include choice of arbitrators, the pursuit of contract claims through treaty arbitration, the role of domestic courts as either competing forums or domestic law interpreters, distinctions between admissibility and jurisdiction, document production by a state, interim relief against a state, the dearth of counter-claims by states, and testimony by officials of a state.</p> <p>Reporter: Abby Cohen Smutny White & Case Washington, D.C.</p> <p>Commentators: Toby Landau Q.C. Essex Court Chambers London</p> <p>Sarah Francois-Poncet Salans Paris</p>	<p>PROVISIONAL MEASURES The UNCITRAL Working Group recently completed and the Commission approved model legislative texts governing provisional measures. The Working Group has now turned its attention, in light of that work, to revision of Article 26 of the Rules. ICSID has also recently enacted revisions to its rules designed to facilitate the expeditious handling of applications for provisional measures by the arbitral tribunal. Following up on the work of recent ICCA Congresses, this panel will assess the impact of the revisions to Article 26, propose best practices for arbitrators considering applications for provisional measures, and consider the most effective use of such applications for parties seeking relief.</p> <p>Chair: Tinuade Oyekunle Tinuade Oyekunle & Co. Lagos</p> <p>Reporter: Luis Enrique Graham Chadbourne & Parke Mexico City</p> <p>Commentators: Dr. Nael Bunni Bunni & Associates Dublin</p> <p>Yang Ing-Loong Heller Ehrman Beijing</p> <p>Wendy Miles WilmerHale London</p>

Tuesday 10 June 2008 - Morning Session

Working Group A: Arbitration Treaties/Treaty Arbitration

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Morning Session I
09.15 to 10.45

REMEDIES IN INVESTMENT TREATY ARBITRATION: THE BOTTOM LINE.

International law has a well articulated body of standards, frequently said to be reflected in Chorzow Factory, on the right to compensation for breach, yet there is substantial reason to question whether, in application, these standards achieve the economic objective they purport to seek. Commercial arbitration, meanwhile, has regularly drawn from both the fields of finance and economics and bodies of national law in pursuit of what should be the same objective. This panel will critique the current state of international investment law on compensation for economic damage and consider the methods for proving such damage. It will also compare that body of law with its counterparts in commercial arbitration to identify any differences in theory or practice. Finally, it will consider the role of nonpecuniary remedies in the face of the limitation in Article 54(1) of the ICSID Convention and the difficulty of enforcing such remedies, especially against states.

Chair:

Professor Dr. Karl-Heinz Böckstiegel
University of Cologne
Cologne

Reporters:

Carole Malinvaud
Gide Loyrette Nouel
Paris

Pierre Bienvenu
Ogilvy Renault
Montreal

Commentator:

Doak Bishop
King & Spalding
Houston

Professor Filip De Ly
Faculty of Law, Erasmus University
Rotterdam

THE UNCITRAL RULES REVISION: AN ASSESSMENT

Depending on the progress of the UNCITRAL Working Group, it is possible that the proposed revision will be ready for submission to the Commission at the time of the Congress. This panel, conducted in roundtable fashion, will provide a forum for either an overall assessment of the revision or specifically address remaining controversies.

Chair:

Professor David D. Caron
Boalt Hall School of Law, University of
California at Berkeley
Berkeley

Participants:

James Castello
Dewey & LeBoeuf
Paris

Georgios Petrochilos
Freshfields Bruckhaus Deringer
Paris

Michael E. Schneider
Lalive
Geneva

Josefa Sicard-Mirabal
International Court of Arbitration
New York

William K. Slate II
International Center for Dispute
Resolution
New York

Christopher To
Hong Kong International Arbitration
Centre
Hong Kong

Tuesday 10 June 2008 - Afternoon Session - Continued

Working Group A: Arbitration Treaties/Treaty Arbitration

Working Group B: Rules-Based Solutions to Procedural Issues

Morning Session II
11.15 to 12.45

THE ENFORCEMENT OF INVESTMENT TREATY AWARDS: GETTING TO JUDGMENT

This panel will look at defending and enforcing treaty awards. How does annulment review of an ICSID award compare to setting aside review of award subject to the New York Convention? How do the recognition and enforcement mechanisms of the ICSID and New York Conventions compare in their application to treaty awards, and how do those differing routes to enforcement factor into decisions about where to file when a treaty gives the investor a choice? Can we draw any conclusions by comparing challenges to treaty awards that arise from alleged circumstances that might have arisen in any arbitration (e.g., CME) with those that might have arisen only in the BIT context (e.g., Occidental)?

Chair:

Yves Fortier C.C., O.Q. Q.C.
Ogilvy Renault
Montreal

Reporter:

Gaetan Verhoosel
Debevoise & Plimpton
Paris

Commentator:

Yas Banifatemi
Shearman & Sterling
Paris

Professor Dr. Guido Santiago Tawil,
M. & M. Bomchil,
Buenos Aires, Argentina.

RECENT DEVELOPMENTS IN INTERNATIONAL ARBITRATION

This panel will address recent developments in the field. Depending on events, it will be either be organized around related issues or take up separate topics of broad interest. Topics will be identified a month or so before the Congress, appropriate speakers will be invited to prepare brief remarks, and then the chair will engage the speakers and audience in a roundtable discussion.

Chairs:

Professor Catherine Kessedjian
University of Paris II
Paris

Professor William Park
Boston University School of Law
Boston

Speakers will include Paul Gallagher,
S.C., Attorney General of Ireland

Tuesday 10 June 2008 - Afternoon Session

Plenary Session:

The New York Convention at 50

Afternoon Sessions I & II

2.00 to 3.15

3.45 to 5.00

This double session will take up the afternoon of the second day. Albert Jan van den Berg will deliver the keynote address, followed by sustained commentary from several speakers and then critique from the floor. The session will close with Professor van den Berg's response.

Chair:

Donald Francis Donovan
Debevoise & Plimpton
New York

Keynote Address:

Professor Albert Jan van den Berg
Hanotiau & van den Berg
Brussels

Commentators:

Rory Brady S.C.
Dublin

Teresa Cheng S.C.
Des Voeux Chambers
Hong Kong

Professor Emmanuel Gaillard
Shearman & Sterling
Paris

Carolyn Lamm
White & Case
Washington, D.C.

Jan Paulsson
Freshfields Bruckhaus Deringer
Paris

