The International Council for Commercial Arbitration (ICCA), founded in 1969, is the leading world-wide organization devoted to promoting international arbitration and other forms of dispute resolution. The next international conference will be held in Montréal, from May 31 to June 3, 2006.

In order to achieve its objectives, ICCA regularly convenes Congresses and Conferences for presentation of papers and discussion of topics concerning both the theoretical and practical aspects of international dispute resolution. These meetings attract a large number of participants from all parts of the world and have made significant contributions to the development and improvement of dispute resolution theory and practice.

ICCA's principal publications, prepared with the assistance of the Permanent Court of Arbitration at The Hague, in the Netherlands, include the Yearbook on Commercial Arbitration, International Handbook on Commercial Arbitration and ICCA Congress Series, consisting of the collected papers presented at ICCA meetings.

ICCA has official status as a non-governmental organization (NGO) accredited by the United Nations, and in that capacity has actively participated in the preparation of the UNCITRAL Arbitration Rules, the UNCITRAL Conciliation Rules, the UNCITRAL Model Law on International Commercial Arbitration, the UNCITRAL Model Law on International Commercial Conciliation and other UNCITRAL projects.

ICCA is governed by Council Members, who are recognized specialists in the field of dispute resolution and who serve in their individual capacities. ICCA's Statement of Purposes and Procedures provides that the Members «shall be elected from various parts of the world, from different legal and economic systems, and from developed and developing nations». Persons who have served as Members for long periods are eligible to be designated life time Advisory Members. There are presently 39 Members and 9 Advisory Members, coming from 29 countries.

**ICCA**

**OFFICERS**

Honorary Presidents
The Hon. Giorgio Bernini
Mr. Fali S. Nariman
Prof. Pieter Sanders

President
Dr. Gerold Herrmann

Honorary Vice Presidents
Judge Howard M. Holtzmann
Prof. Sergei Lebedev
DDr. Werner Melis
Ms. Tinuade Oyekunle

Vice Presidents
Mr. Donald Francis Donovan
Mr. Michael Hwang, S.C.
Prof. Dr. Iván Sáez

Secretary General
Mr. Antonio R. Parra

**MEMBERS**

Mr. Cecil Abraham
Mr. Guillermo Aguilar-Alvarez
Dr. Husain M. Al Baharna
Prof. Dr. Albert Jan van den Berg
Prof. Piero Bernardini
Dr. Robert Briner
Prof. Dr. Neil G. Buoni
Prof. Dr. Karl-Heinz Böckstiegel
Prof. Bernardo M. Cremades
Mr. Yves Derains

Prof. Ahmed S. El-Kosheri
Mr. Ulf Franke
Dr. Dr. Ottooartdtt Glossner
Prof. Martin Hunter
Mr. Neil Kaplan, CBE Q.C.
Prof. Dr. Gabrielle Kaufmann-Kohler
Prof. Alexander S. Komarov
Prof. Dr. Pierre Lalive
The Hon. Marc Lalonde
Mr. Arthur Marriott, Q.C.
Mr. Carlos Nehring Netto
Mr. Jan Paulsson
The Hon. Andrew John Rogers, Q.C.
Mr. William K. Slate II
Prof. Yasuhei Taniguchi
The Hon. S. Amos Weko, EGH, S.C.
Dr. Wang Sheng Chang

**ADVISORY MEMBERS**

Mr. Robert Coulson
Prof. Dr. Radomir Djurović
Dr. Mauro Ferrante
Mr. Mark Littman, Q.C.
Mr. Alain Plantery
Dr. José Luis Siqueiros
Prof. Dr. Heinz Strobach
Dr. habil. Tadeusz Szurski
Prof. Tanq Houzhi
International Arbitration 2006: Back to Basics?

Wednesday, May 31st, 2006

17:00 - 18:00 Opening Ceremony Location: Quebec Court of Appeal Address: 100 Notre-Dame Street East

DAY ONE - Thursday, June 1st, 2006

09:00 - 09:15 Opening Address

09:15 - 10:45 Working Group A: Re-Examining the Arbitration Agreement

1. The arbitration agreement: still autonomous?

The autonomy of the arbitration agreement is a well established doctrine under many legal systems. But doctrinal differences remain, and the widespread acceptance of the doctrine may mask important differences in scope and application.

Moderator: Werner Meis
Baier Lambert Vienna

Reporter: Philippe Leboulangé
Leboulangé & Associés Paris

Commentators: Joseph E. Neuhaus
Sullivan & Cromwell New York

J. Brian Casey
Baker & McKenzie LLP Toronto

Gilberto Giusti
Pinheiro Neto Avogados São Paulo

Working Group B: Contemporary Practice in the Conduct of the Proceedings

1. Document production

After the 1999 IBA Rules, there appears to be broader acceptance of document production in international arbitration. Yet there also remains vigorous disagreement about the appropriate scope and general utility of document production, with some arguing that it threatens the efficiency of the arbitral process and others that it is essential to a fair and just resolution of factual disputes. Is it possible to take a systematic approach to the question of document production, or are the issues necessarily case-specific and hence the debate incapable of resolution?

Moderator: Arthur Marriott
LeBoeuf Lamb Greene & McRae London

Participants: James H. Carter
Sullivan & Cromwell New York

Dominique Brown-Berset
Lalive & Partners Geneva

Wang Sheng Chang
China International Economic and Trade Arbitration Commission (CIETAC) Beijing

Hans van Houtte
Institute for International Trade Law Leuven

Guillermo Aguilar Alvarez
SAI Law & Economics Mexico City

10:45 - 11:15 Break

11:15 - 12:45 2. Jurisdiction to determine jurisdiction: the effect of arbitral authority and the timing of judicial review

Arbitrators' authority to determine their own jurisdiction is also widely accepted. Beyond the starting point of arbitral authority in the first instance, however, national law reflects an enormous range of approaches on critical issues, such as the timing of national court review and the effect to be accorded by a reviewing court to the arbitral determination.

2. Fact testimony

Oral hearings are devoted primarily to hearing witnesses. Live witness testimony is commonplace, and crossexamination well accepted. Yet important issues on the topic are debated every day in arbitral proceedings.
### Working Group A:

11:15 - 12:45 (continued)

<table>
<thead>
<tr>
<th>2. Jurisdiction to determine jurisdiction: (cont'd)</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the United States, the First Options decision has given rise to great confusion as to the allocation of judicial and arbitral authority. What are the current regimes found in national law? What is the optimal solution? Does the New York Convention contemplate, or make possible, a uniform approach?</td>
</tr>
</tbody>
</table>

**Moderator:** Loukas Mistelis  
University of London  
London

**Reporter:** William W. Park  
Boston University School of Law  
Boston

**Commentators:**  
Paulo Aragao  
Barbosa, Mussnich & Aragao  
São Paulo  
Hirohiko Tatsuka  
Nishimura & Partners  
Tokyo  
Virginie Colaiuta  
Orrick, Herrington & Sutcliffe LLP  
Paris

---

### Working Group B:

11:15 - 12:45 (cont’d)

<table>
<thead>
<tr>
<th>2. Fact testimony (cont’d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would it be useful to develop detailed guidelines on procedures (foundation, scope of cross), modes of questioning (leading questions, arguments through witnesses), and function of witness statements (do they preclude live summary or supplemental direct). As a matter of sheer advocacy, how are live witnesses most effectively presented?</td>
</tr>
</tbody>
</table>

**Moderator:** The Honourable Marc Lalonde  
Stikeman Elliott  
Montréal

**Participants:**  
Lucy Reed  
Freshfields Bruckhaus Deringer LLP  
New York  
Laurent Levy  
Schellenberg Wittmer  
Geneva  
Luiz Olavo Baptista  
L.O. Baptista Advogados Associados  
São Paulo  
Bernardo M. Cremades  
B. Cremades y Asociados  
Madrid  
Michael Hwang  
Singapore

---

12:45 - 14:15  
**Lunch**

14:15 - 15:30

<table>
<thead>
<tr>
<th>3. Control of jurisdiction by injunctions issued by national courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>National courts appear increasingly willing to give effect to their determination of arbitral jurisdiction by enjoining proceedings before arbitral tribunals and other national courts. How severe a problem are these anti-arbitration and anti-suit injunctions? Under what circumstances, if any, is it appropriate for a court to enjoin the parties from pursuing an arbitration or, conversely, enjoin a judicial proceeding in violation of an agreement to arbitrate? How should an arbitral tribunal treat such an order?</td>
</tr>
</tbody>
</table>

---

3. Evidentiary privileges

Evidentiary privileges yield complex choice of law questions in international arbitration and litigation. Is there an established framework for analysis of what privilege law applies? Is there a risk of procedural unfairness when parties are subject to regimes of privilege that differ in their restrictiveness? Is there a customary law of privilege in arbitral proceedings? What can parties do to protect themselves from being compelled to disclose privileged material?
<table>
<thead>
<tr>
<th>Time</th>
<th>Working Group A</th>
<th>Working Group B</th>
</tr>
</thead>
<tbody>
<tr>
<td>14:15 - 15:30 (continued)</td>
<td>3. Control of jurisdiction by injunctions issued by national courts (cont’d)</td>
<td>3. Evidentiary privileges (cont’d)</td>
</tr>
<tr>
<td>Reporter</td>
<td>Julian D.M. Lew&lt;br&gt;20 Essex Court London</td>
<td>Reporter: Henri Alvarez&lt;br&gt;Fasken Martineau DuMoulin LLP&lt;br&gt;Vancouver</td>
</tr>
<tr>
<td>Commentators</td>
<td>José I. Astigarraga&lt;br&gt;Astigarraga Davis Miami&lt;br&gt;Pierre A. Karrer Zürich</td>
<td>Commentators: Eduardo Siqueiros&lt;br&gt;Barrera, Siqueiros &amp; Torres Landa, S.C.&lt;br&gt;Mexico City&lt;br&gt;Mathieu de Boisséon&lt;br&gt;Darrois Villey&lt;br&gt;Maillot Et Broquier&lt;br&gt;Paris&lt;br&gt;John Bowman&lt;br&gt;Fulbright &amp; Jaworski LLP&lt;br&gt;Houston</td>
</tr>
<tr>
<td>15:30 - 16:00</td>
<td><strong>Break</strong></td>
<td></td>
</tr>
<tr>
<td>16:00 - 17:30</td>
<td>4. Protection of jurisdiction by injunctions issued by arbitral tribunals</td>
<td>4. Arbitral provisional measures: the actual practice</td>
</tr>
<tr>
<td>In light of the issuance of anti-suit and anti-arbitration injunctions by national courts, when is it appropriate for an arbitral tribunal to enjoin a party from commencing parallel proceedings? What is the basis of its authority to do so?</td>
<td><strong>UNCITRAL’s work on model legislative texts governing tribunal-issued provisional measures, court-issued provisional measures in aid of arbitration, and court enforcement of tribunal-issued provisional measures reflects the increased importance of the topic. As UNCITRAL nears the completion of its work, it is time to turn the discussion away from the model text and back to actual practice. In what circumstances do parties actually ask an arbitral tribunal for provisional measures, and in what circumstances, and to what ends, do tribunals issue them?</strong></td>
<td></td>
</tr>
<tr>
<td>Moderator</td>
<td>Margrete Stevens&lt;br&gt;International Centre for Settlement of Investment Disputes&lt;br&gt;Washington, D.C.</td>
<td>Moderator: Faiil S. Nariman&lt;br&gt;New Delhi</td>
</tr>
<tr>
<td>Reporter</td>
<td>Emmanuel Gaillard&lt;br&gt;Shearman &amp; Sterling LLP&lt;br&gt;Paris</td>
<td>Reporter: Kaj I. Hobér&lt;br&gt;Mannheimer Swartling&lt;br&gt;Stockholm</td>
</tr>
<tr>
<td>Commentators</td>
<td>Paul Friedland&lt;br&gt;White &amp; Case LLP&lt;br&gt;New York&lt;br&gt;Toby Landau&lt;br&gt;Essex Court Chambers&lt;br&gt;London</td>
<td>Commentators: José Maria Abascal&lt;br&gt;Aba Abogados&lt;br&gt;Mexico City&lt;br&gt;Neil Kaplan&lt;br&gt;Essex Court Chambers&lt;br&gt;London&lt;br&gt;Marc Blessing&lt;br&gt;Bar &amp; Karrer&lt;br&gt;Zürich</td>
</tr>
</tbody>
</table>
### Working Group A:

**Re-Examining the Arbitration Agreement (cont’d)**

**5. Applicable law: consensus or confusion?**

Notwithstanding the centrality of the issue, there remain differing approaches to determining the law governing the arbitration agreement. Does a contractual choice of law clause automatically control? What role is played by the law of the seat? Can parties denationalize their arbitration agreement? Are general principles of international arbitration law and practice relevant either directly or as tools of interpretation?

**Moderator:** Ivan Szasz  
Squire, Sanders & Dempsey LLP  
Budapest

**Reporter:** Klaus Peter Berger  
University of Cologne  
Cologne

**Commentators:**  
- Yasuhei Taniguchi  
Matsuo & Kosugi  
Tokyo  
- Karyl Nairn  
Skadden, Arps, Slate, Meagher & Flom LLP  
London  
- Carlos Alberto Carmona  
University of São Paulo  
São Paulo

---

### Working Group B:

**Contemporary Practice in the Conduct of Proceedings (cont’d)**

**5. Legal Experts**

There are many ways in which it is useful to speak of experts as a single class, but the best case for distinguishing among them may be in the case of legal experts. After all, though perhaps not trained in the law of the specific jurisdiction, all or most of the advocates and arbitrators in the proceeding will at least be lawyers. Does it then make sense to hear discussion of legal issues by way of "expertise" instead of simple advocacy? Indeed, as a practical matter, is it even possible to distinguish the two?

**Moderator:** Karl-Heinz Bockstiegel  
Cologne

**Participants:**  
- Pierre Lalive  
Lalive & Partners  
Geneva  
- Andrew John Rogers  
Sydney  
- Stephen R. Bond  
White & Case LLP  
Paris  
- Kap-You (Kevin) Kim  
Bae, Kim & Lee  
Seoul  
- Arnoldo Wald  
Wald e Associados  
São Paulo

---

**Break**

---

### 11:00 - 12:30

**6. Jurisdiction over non-signatories: national contract law or international arbitral practice?**

The "group of companies" theory has been heavily criticized as lacking a basis in law, and it has been rejected in several jurisdictions. Is there anything left? Is the same result available via traditional contract doctrines, such as agency and estoppel? Is a comparative or transnational approach helpful, or are these questions solely a matter for the governing law?

---

**6. Damages and technical experts**

Are there specific lessons that can be drawn with respect to other specific categories of experts? For example, do the broad parallels in damages principles under many national legal systems allow us to identify more specific guidelines in the elicitiation of financial and economic testimony on those issues? For another example, does our experience in specific industries - for example, construction arbitration - allow us to draw lessons about the use of technical experts?
11:00 - 12:30
(continued)
6. Jurisdiction over non-signatories: (cont’d)

Moderator: Ulf Franke
Stockholm Chamber of Commerce
Stockholm

Reporter: Bernard R. Hanotiau
Hanotiau & van den Berg
Brussels

Commentators: John M. Townsend
Hughes Hubbard & Reed LLP
Washington, D.C.

Anne-Marie Whitesell
Int'l Chamber of Commerce
Paris

Babak Barin
Woods & Partners
Montréal

12:30 - 14:00
Lunch

14:00 - 15:30
7. Treaties as agreements to arbitrate

Moderator: Gabrielle Kaufmann-Kohler
Schellenberg Wittmer
Geneva

Commentator: Brigitte Stern
Université de Paris I
Paris

a. International law as the governing law
White private, commercial arbitration agreements are generally interpreted in light of the applicable national law, treaty arbitration agreements are interpreted in light of international law as set out in the Vienna Convention. How have arbitral tribunals applied these rules? How can a tribunal properly interpret a clause in light of its “object and purpose” when only one of the drafting parties is a party to the proceeding? Should the non-participating State party be invited to comment on issues of treaty interpretation?

Report: Meg Kinnear
Trade Law Bureau (JLT)
Department of International Trade Canada
Ottawa

Working Group B:

6. Damages and technical experts (cont’d)

Moderator: John Beechey
Clifford Chance
London

Participants: Michael E. Schneider
Lalve & Partners
Geneva

Gerald Aksen
Thelen, Reid & Priest LLP
New York

Nael G. Bunni
McMillan Binck
Mendelsohn
Dublin

J. William Rowley
Heuking Kühn Lüer Wojtek
Düsseldorf

Wolfgang Kühn
MONTREAL 06

ICCA
DAY THREE - Saturday, June 3rd, 2006

Working Group C (Plenary):

*International Arbitration and the Generation of Legal Norms*

| Moderator: | Donald Francis Donovan  
| Debevoise & Plimpton LLP  
| New York |

09:00 - 10:30

a. Commercial arbitration and transnational public policy

There appears to be wide agreement that transnational public policy may provide the basis for an arbitrator's rulings as to particular issues - indeed, may compel a particular ruling in a particular case. But there is no such agreement, and in fact there has been little work, on the source of that authority or obligation. Further, if an arbitrator has the authority or obligation to apply transnational public policy, how does he or she determine its content?

| Reporter: | Michael Reisman  
| Yale Law School  
| New Haven |

| Commentators: | Catherine Kessedjian  
| Université Panthéon-Assas Paris II  
| Paris |

| Alan Redfern  
| One Essex Court  
| London |

10:30 - 11:00  

Break

11:00 - 12:30

b. Treaty arbitration and international law

*With the Iran-United States Claims Tribunal, the sheer quantum of law generated by international arbitration tribunals on matters of international law exploded. In the era of BIT arbitration, the pace has not slackened. What effects have the awards of international arbitral tribunals had on the development of international law? Is arbitration involving private parties a reliable process for filling out and, in some cases, generating standards that govern sovereign states and their ability to pursue their national interest?*

| Reporter: | Jan Paulsson  
| Freshfields Bruckhaus Deringer  
| Paris |

| Commentators: | Francisco Orrego Vicuña  
| Universidad de Chile  
| Santiago |

| Rudolf Dolzer  
| University of Bonn  
| Bonn |

12:30 - 13:00  

Closing Ceremony

Closing Remarks: Gerold Herrmann  
President  
International Council for Commercial Arbitration
<table>
<thead>
<tr>
<th>Time</th>
<th>Working Group A</th>
<th>Working Group B</th>
</tr>
</thead>
<tbody>
<tr>
<td>14:00 - 15:30 (continued)</td>
<td>7. Treaties as agreements to arbitrate (cont’d)</td>
<td>7. Techniques for eliciting expert testimony (cont’d)</td>
</tr>
<tr>
<td></td>
<td>b. Effect of related dispute resolution regimes (e.g. fork-in-the-road provisions, contractual agreements)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The prevailing interpretation of most fork-in-the-road provisions is that they are implicated only when the same claim is made in local courts and then brought to an arbitral tribunal. Has the death knell sounded for these provisions? As more and more treaty claims are brought that are intertwined with contractual arrangements, the effect of contractual forum selection clauses on treaty arbitration agreements is of increasing importance. When determining arbitral jurisdictions, how do these regimes intersect?</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Participants: David W. Rivkin Debevoise &amp; Plimpton LLP New York</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ahmed S. El-Kosheri Cairo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dushyant Dave New Delhi</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Martin Hunter Essex Court Chambers London</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Claus von Wobeser von Wobeser y Sierra, S.C. Mexico City</td>
</tr>
<tr>
<td>15:30 - 16:00</td>
<td>Break</td>
<td></td>
</tr>
<tr>
<td>16:00 - 17:30</td>
<td>8. Oral argument</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Oral argument is one of the great challenges and, it must be said, greatest satisfactions of the arbitration practitioner. But setting aside the stories and the tradition, what actually works, and what doesn’t? Do sophisticated tribunals need argument, or just answers? And how does oral argument intersect with written submissions?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Issues of scope: subject matter (e.g. contract/treaty)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Have BIT practice, arbitral decisions, and scholarship generated useful principles on issues of interpretation and substantive scope?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d. Issues of scope: parties (e.g. ownership and control criteria)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Similarly, can we yet derive general guidance on the identity of parties encompassed by specific clauses?</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Teresa Cheng Des Voeux Chambers Hong Kong</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Albert Jan van den Berg Hanotiau &amp; van den Berg Brussels</td>
</tr>
<tr>
<td></td>
<td></td>
<td>David A.R. Williams Bankside Chambers Auckland</td>
</tr>
<tr>
<td></td>
<td></td>
<td>L. Yves Fortier Ogilvy Renault Montréal</td>
</tr>
</tbody>
</table>