



INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

## ICCA EDINBURGH 2020 PRELIMINARY PROGRAMME

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**Sunday, 10 May 2020**

#### Opening Event

(details to come)

#### Registration

#### 25th ICCA Congress Opening Ceremony

Venue: (details to come)

#### Opening Cocktail Reception

#### After Party

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## DAY 1 – Monday, 11 May 2020

### **Breakfast**

(07.30AM – 08.30AM)

### **Morning – Session 1**

(09.00AM – 10.30AM)

Welcome Remarks  
Programme Overview  
Keynote Address

### **Plenary: Arbitration’s Age of Enlightenment?**

(details to come)

### **Coffee Break**

(10.30AM – 11.00AM)

### **Morning – Session 2**

(11.00AM – 12.30PM)

### **Plenary: Progress Made / Progress to be Made – Exploring the Ways Forward**

Inspired by Steven Pinker’s *Enlightenment Now* and Scottish Enlightenment philosopher David Hume’s empirical approach to analysing social phenomena, this panel is an effort to assess and understand the current state of the field of arbitration in the modern age, and the fundamental challenges facing international arbitration in the world of tomorrow. The session will conduct real time data collection in an effort to identify whether progress has been made when comparison is made with ICCA’s information gathering efforts of the past. It will then turn towards the future. Speakers will explore their personal “Top 3 List” of issues in international arbitration where change would provide a vital benefit and identify methods for implementing such change.

### **Lunch**

(12.30PM – 02.00PM)

## Afternoon – Session 1

(02.00PM – 03.30PM)

### Once Upon a Time in International Arbitration

These two panels shall revisit some of the classic cases of the past, and consider the development of the modern law of international economic relations. The first panel shall revisit three landmark decisions by the International Court of Justice and international arbitral tribunals that continue to prompt debate. The second panel will take as its starting point the International Law Commission’s 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, and consider how the law of State responsibility is evolving to address contemporary forms of State conduct.

#### Once Upon a Time in International Arbitration I: Three Classics Revisited

This panel will zoom in on three seminal cases that have shaped international arbitration: *Barcelona Traction*, *Abu Dhabi Oil*, and *Mitsubishi Motors*. Speakers will re-introduce these cases and explain why they have become classics. They are also encouraged to offer their views on how each one of these cases might be decided today. By looking at these well-known decisions, the panel session will allow participants to “travel back in time” with the benefit of a modern-day perspective. At the same time, discussions will highlight significant waypoints in the development of international arbitration, and illustrate the power of arbitrators/judges to develop the law.

#### Once Upon a Time in International Arbitration II: State Responsibility – Then and Now

The ILC Articles on State Responsibility have become a crucial point of reference for arbitration lawyers. Influential though they are, the Articles were primarily developed for inter-State relations, and may not be an easy fit for novel issues in contemporary arbitration such as the conduct of privatised State entities, central banks, and matters relating to economic deregulation more generally. Challenges to international investment arbitration have also led to calls for a new *lex mercatoria publica* that aligns international law with national conceptions of State liability, shaped by constitutional and administrative law. This panel session shall draw together the different strands of these developments so as to offer a vantage-point into the future.

### Coffee Break

(03.30PM – 04.00PM)

## Afternoon – Session 2

(04.00PM – 05.30PM)

### Arbitration’s Printing Press

Confidentiality has been seen as one of the cornerstones of international arbitration.

### Dispute Resolution Toolbox

Arbitration remains a tool among many for the resolution of international disputes. This panel

However, in reality the confidentiality of the process is often exaggerated. The panel shall introduce the present status of the law on confidentiality, and examine whether, more broadly, there should be more transparency in international arbitration. Should the default setting in arbitration be “confidential unless the parties agree otherwise”, or “transparent unless the parties agree on confidentiality”? Should this question be answered differently for contractual and treaty arbitration? In this age of instant and mass dissemination of information, should international arbitration use modern media to “change with the times” and, if so, how?

shall explore various types of dispute management tools to enhance the value proposition of international arbitration. The panel shall explore negotiation techniques, mediation/conciliation, early neutral evaluation, arbitration, and litigation and how these various tools might be employed together or separately to optimise the international dispute resolution process.

## DAY 2 – Tuesday, 12 May 2020

### **Breakfast**

(07.30AM – 08.30AM)

### **Morning – Session 1**

(09.00AM – 10.30AM)

#### **Plenary: “State of the World” in 2020 – New Developments and Reform in International Investment Arbitration**

The 2020 ICCA Congress arrives after several years of intense debate and dialogue over both the need for and the appropriate direction of potential reforms to investor-State dispute settlement procedures. While concrete steps have been taken by a number of institutions, States, and other stakeholders, these do not yet reflect a complete consensus on the best path forward. This panel will discuss the “state of the new world” as it has taken shape by early 2020, with speakers assessing both the latest ICSID Rules amendments (by then likely finalised and adopted), the state-of-play of UNCITRAL Working Group III discussions, and the innovations to ISDS procedures and dispute resolution bodies endorsed by select States or in particular regions through bilateral and multilateral accords. The panel will also assess the momentum for, and continuing obstacles to, the possible establishment of a broader permanent international investment court system.

### **Coffee Break**

(10.30AM – 11.00AM)

### **Morning – Session 2**

(11.00AM – 12.30PM)

#### **Regional Themes**

This session consists of two panels that shall take a round-the-world trip into current trends and pressing issues in each of the regions of the world. It shall explore present tensions between constitutionalism and populism in the Americas and Europe, and dynamism and consolidation in Asia, Africa and the Middle East. The first panel shall consider the theme of constitutionalism and populism, and the recent treatment of arbitration issues by courts in the Americas and Europe. The second panel shall consider the growing dynamism and consolidation of international arbitration in Asia, Africa and the Middle East, as the arbitration world becomes more multi-polar. China’s Belt and Road Initiative and India’s “Make in India” campaign, followed up by a full embrace of international arbitration by both of these fast-growing economies, holds promise of a new frontier for international arbitration even as growing investments in Africa and the Middle East promise new opportunities for arbitration growth in these regions.

**Regional Themes I: The Americas and Europe between Constitutionalism and Populism**

Actions of constitutionality in the context of arbitration are familiar features in Latin America, as are extensive discussions on the constitutionality of arbitration itself. Similarly, the European debate on the future of international arbitration has been increasingly shaped by quasi-constitutional questions such as those in the European Court of Justice’s judgment in *Achmea* and its opinions regarding the European Union’s new investment agreements. Often as unpredictable as its protagonists, populism is also bound to leave its mark on trade policies and arbitration. The fallout of sharpening political populism in Latin America, the United States and Europe alike will equally present potential new challenges to international arbitration – as also in a post-Brexit United Kingdom. This panel shall promote a cross-regional exploration and discussion: *des regards croisés* and a quest for underlying commonalities between European and Latin and North American developments in an attempt to form a better understanding of these dynamics, and where they may lead us.

**Regional Themes II: Asia, Africa and the Middle East: Dynamism and Consolidation**

Arbitration has become the preferred form of international commercial dispute resolution in the West, and is growing in popularity in the East and the South. Nothing symbolises this better than the rise of China and India and the newfound focus on Africa by countries around the world. Spurred by decades of hyper-fast growth, both China (with its monumental Belt and Road Initiative), and India (with the Government’s “Make in India” campaign), are poised to become the engines of the world over the next three decades. The emergence of new dispute resolution centres in China and India, as well as all along this new Silk Road, will herald a new age for eastern arbitration. Two of the main regional targets of Asian expansion and investments are Africa, another continent with great potential for innovation, and the Middle East, which has been at the forefront of Chinese investments in recent years. At the same time, significant reforms of the civil justice systems in Africa, and continued reforms in Middle Eastern countries, are necessary to render arbitration more effective and to integrate international best practices. This panel will identify and examine common trends as these regions emerge as arbitration powerhouses of the future.

**Lunch**

(12.30PM – 01.30PM)

**Afternoon – Session 1**

(01.30PM – 03.00PM)

**The Sociology of Arbitration**

This panel shall invite ICCA participants to step outside the box, and consider sociological perspectives on the field of international arbitration. That arbitration is such a “field”, with its own actors, institutions, routines and

**Young Practitioners and our Future**

For this panel, young practitioners from various jurisdictions will come together to lead discussions on interesting, innovative and provocative initiatives in the international arbitration arena. Participants will engage in

rituals (of which the ICCA Congress is one), now is difficult to dispute. The question is what arbitration practitioners can learn from a dialogue with sociology, and how this can enhance the community's efforts to ensure that arbitration fulfils its purpose optimally. To explore this perspective, the panel will feature a keynote by a leading sociologist, who will offer a bird's eye view of international arbitration, as perceived by a sociologist. This will be followed by comments from two actors in the arbitration field.

"speed-conferencing" in small groups, where teams of talented and energetic practitioners who are future arbitration leaders will facilitate the sharing of views and thoughts on various aspects of the latest developments in arbitration. Topics of interest such as the proliferation of young entrepreneurs in the business of arbitration, young practitioners' use of technology, and new-age arbitral institutions, will take centre stage. The panel may also involve an interview involving a renowned arbitration practitioner and a young practitioner, as well as a discussion of the findings from the "speed-conferencing" sessions.

### **Coffee Break**

(03.00PM – 03.30PM)

### **Afternoon – Session 2**

(03.30PM – 05.00PM)

#### **New Frontiers**

As arbitration develops in the modern world, so it is faced with new frontiers in legal developments. This session looks at two types of new frontiers: the new technological frontier, as arbitration now operates in an age of ever accelerating technological advances; and various new substantive frontiers, which will increasingly have an impact on dispute settlement going forward.

#### **New Frontiers I: Arbitration in the Age of Technology**

International arbitration now operates in an age of ever accelerating technological advances. Artificial intelligence, blockchain technology and digitalisation more generally may change the face of the arbitrations of tomorrow. The panel will bring together scientists and arbitration lawyers to discuss how these changes may impact arbitration, the challenges that they will bring, and how those challenges may be overcome.

#### **New Frontiers II: The Subject Matters of the Disputes of Tomorrow**

New global issues are emerging in the modern world. These may include: climate change and environmental issues, the law of the sea (particularly concerning overlapping entitlements/claims in undelimited maritime areas), water resource scarcity, and human rights initiatives. This panel will explore how these new issues may impact the subject matter of the international disputes of tomorrow.

## DAY 3 – Wednesday, 13 May 2020

### Breakfast

(07.30AM – 08.30AM)

### Morning – Session 1

(08.45AM – 10.00AM)

#### Renaissance Arbitrator

The Enlightenment involved cross-fertilisation across different disciplines. In the same way, this panel will ask the question: what can lawyers and arbitrators learn from disciplines outside the law and arbitration?

This session will explore the answer to this question with the aid of speakers from non-legal fields, who may have lessons to offer to practitioners of arbitration.

#### Different Perspectives

What does arbitration look like today from the outside? This panel shall explore the answer to that question from the perspective of the commercial users of arbitration, national or international regulators who are increasingly coming into contact with the arbitration process, and national court judges who are often called upon to exercise supervisory jurisdiction over an arbitration, or to enforce arbitral awards.

### Coffee Break

(10.00AM – 10.30AM)

### Morning – Session 2

(10.30AM – 11.45AM)

#### Plenary: The Great Debate: “A World Without Investment Arbitration?”

The institution of ISDS is under attack. As the world of arbitration reacts to that attack, it is not yet clear whether it will lead only to reform or to extinction of the system as we know it today. In this great debate, two speakers will offer different answers to the fundamental question of whether the world would be better with or without investment arbitration.

### Closing Session

(11.45AM – 12.15PM)

Closing Keynote Address

Introduction to the 26th ICCA Congress to be held in Hong Kong

Closing Remarks