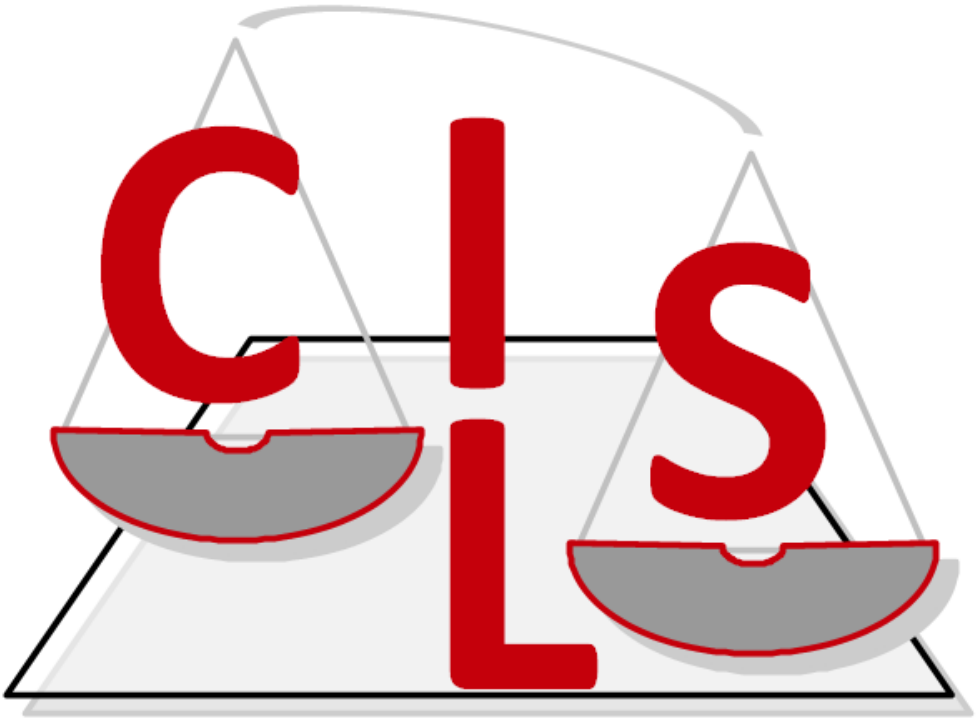


CENTER FOR INTERNATIONAL LEGAL STUDIES

9th Biennial

Arbitration Symposium

Hotel Schloss Leopoldskron, Salzburg, Austria

Chaired by:

Laurent Hirsch, HIRSCH, Geneva, Switzerland

and

Silvia Marchili, King & Spalding LLP, Houston, Texas, United States

General Information

Professional Sessions - Coffee Breaks

Sessions convene according to schedule on Thursday, 2 June, in the *Parker Hall* (One flight up at end of the Meierhof Lobby) in the Meierhof.

Coffee Breaks will take place in *Meierhof Lobby* (library).

Cocktail Reception - Palace Tour - Piano Concert

A welcome cocktail is hosted in the *Great Hall* (ground floor) and/or the *Terrace* (weather permitting) of Leopoldskron Palace. A tour of the palace will commence in the *Great Hall* and end in the *Marble Hall* with the opening dinner. The piano concert before Saturday's concluding dinner will also be held in the *Great Hall*.

Breakfasts - Lunches - Dinners

All breakfasts, lunches and dinners will be served in the *Marble Hall* of Leopoldskron Palace. Breakfasts are scheduled Friday, Saturday and Sunday, buffet lunches Thursday, Friday, and Saturday; and dinners Thursday and Saturday for registered delegates and guests. Dinner drinks, or wine or beer at lunch, are on the individual's tab.

After-Dinner Drinks - Bar Service - Free Evening

Bar service is hosted in the *Meierhof Café* at the entry to the Meierhof. Consumption is on the individual's tab.

Friday is a free evening: Restaurants near the Palace are *Marchart's* right next to the Meierhof (very nice Steaks and Thai food) and *Strasserwirt* (Austrian cuisine), about 5 minute walk; in the near vicinity are *Riedenburg* 4 min drive/20 min walk (Austrian cuisine), or *DaGiacomo* 3 min drive/15 min walk (Italian). For suggestions of restaurants in the Old Town, please talk to the Front Desk, there are too many to list.

Check Out

Check out time at the Leopoldskron Palace is at 10 AM. If you wish to check out later, please let the front desk know as soon as possible. Accommodation, meeting arrangements, and meals are charged to the CILS account. You will be asked to pay your incidentals (bar, mini bar, telephone, copies…)

Schedule

Thursday

Welcome Coffee: 10:30-11 AM

Afternoon Coffee: 4:25-4:45 PM

Tour of the Palace. 7:15 PM

Lunch: 12:30-1:50 PM

Cocktail Reception: 6:30 PM

Opening Dinner: 8:00 PM

Friday

Morning Coffee: 10:50-11:10 AM

Afternoon Coffee: 4:25-4:45 PM

Lunch: 12:45-1:45 PM

Saturday

Morning Coffee: 10:15-10:40 AM

Afternoon Coffee: 4:00-4:20 PM

Concluding Dinner: 7:45 PM

Lunch: 11:50-1:10 PM

Piano Concert: 6:45 PM

Thursday, 2 June **11-11:10 AM**

Symposium Opening

Chairpersons

Laurent Hirsch, HIRSCH, Geneva, Switzerland

FCIArb, Geneva-based sole practitioner handling international arbitration worldwide

Silvia Marchili, King & Spalding LLP, Houston, Texas, United States

Partner in the firm's International Arbitration Group; focusing on complex international arbitration cases involving both investment and commercial claims. Silvia regularly appears before international tribunals under ICSID Convention and other arbitration rules. She has also represented parties in commercial arbitrations governed by the ICC, LCIA, UNCITRAL, and IACAC/CIAC rules. Her cases have involved several sectors, including oil & gas, power, infrastructure, and aviation.

Thursday, 2 June **11:10 AM-12:25 PM**

1. Appointing Arbitrators, Conflicts and Challenges

The format of this panel is an introduction by the moderator (5 minutes) followed by a podium discussion concerted by the moderator with Q&A possible throughout the session (75 minutes).

Panel Chair

Christof Siefarth, GÖRG, Cologne, Germany - Partner; Dr. iur. (Cologne), LLM (University of Georgia, United States), Attorney-at-Law (New York); mainly representing foreign clients as counsel in international commercial arbitration proceedings, with an emphasis on distribution law disputes

Speakers:

Mark C. Hilgard, Mayer Brown LLP, Frankfurt am Main, Germany – head of litigation and arbitration practice Mayer Brown LLP, Germany. In national and international arbitral matters he sits as arbitrator (Chairman or Co-arbitrator) and also represents parties before arbitral tribunals. Mark's expertise includes proceedings related to M&A and contractual disputes, complex liability cases, cartel law as well as disputes related to plant engineering and construction.

Niels Schiersing, Copenhagen Chambers, Copenhagen, Denmark – FCIArb, Dual qualified as Advocate (Denmark) and Solicitor (England & Wales); Focuses on serving as arbitrator in international arbitrations and has served/is currently serving as arbitrator under the rules of e.g. the ICC, LCIA, SCC, DIA and in ad hoc arbitrations, including under the UNCITRAL Arbitration Rules; Investment arbitration experience both as counsel and arbitrator.

Benedetta Coppo, Chamber of Arbitration of Milan, Rome Branch Office, Rome, Italy - Benedetta joined the Milan Chamber of Arbitration in 2001, where she had been head of the arbitration department (2007-2013), administering both domestic and international arbitration proceedings. Since 2014, she leads the Rome branch office of the Chamber. She regularly lectures on arbitration and ADR.

Maria Vicien-Milburn, MVMA Maria Vicien-Milburn Arbitration, Paris, France - independent arbitrator; former General Counsel of UNESCO in Paris (2009-2014), and the former Director of the General Legal Division of the United Nations Office of Legal Affairs in New York (2004-2009). She directed the conduct of all litigation brought against the UN or UNESCO be it commercial, employment or criminal and selected outside counsel for these matters.

The appointment of arbitrators is a crucial issue of international arbitral proceedings which is subject to controversial discussions. Strategic considerations play a decisive role, as well as conflicts, regulatory provisions and a growing clamour for diversity.

Based on an institutional, practitioner's (outside / in-house counsel's) and arbitrator's view, the panel will discuss various central issues and developments with the audience taking into account the different requirements of civil law and common law jurisdictions. Inter alia, the following topics will be addressed:

- Criteria for the appointment of the arbitrator/ chairman – Diversity in the selection process, such as the relevance of the requirement "neutral or third country nationality"; gender and age diversity
- Expectations of the parties – Legal representation, impartiality and confidentiality
- The IBA Guidelines on Conflicts of Interest in International Arbitration in recent case law
- Tactics/Expectations of the parties when appointing "their" arbitrator – and how arbitrators appointed deal with such expectations
- Challenging the appointment of an arbitrator, possible consequences of an unsuccessful challenge - impartiality or bias?

2. Ethics

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (7 to 10 minutes) and a Q&A session for the remaining (35-40 minutes)

Panel Chair

Teresa Giovannini, LALIVE SA, Geneva, Switzerland - Founding Partner; specializing in international arbitration (including setting aside proceedings with the Swiss Supreme Court), as well as art law; participated in more than 170 international arbitrations (115 as arbitrator, including 81 as presiding or sole arbitrator); member of the ICC Court of Arbitration

Speakers:

Lorraine de Germiny, LALIVE SA, Geneva, Switzerland – associate; Lorraine specializes in international arbitration, both investment treaty and commercial arbitration, and with particular experience in the energy and construction sectors.

Presentation: **Counsel Duties to Tell the Truth including Correction of Fact Witness Misstatements, Duty to Disclose Contrary Case Law**

Lorraine will consider a legal counsel's duties to an international arbitral tribunal, including, for instance, the duty to tell the truth (including the duties to correct fact witness misstatements and to disclose contrary case-law).

Carol Ludington, Ludington Ltd., Willernie, Minnesota, United States – CPA, Certified in Financial Forensics, a Certified Licensing Professional, ACIArb and member of the Forum for International Conciliation and Arbitration, with over thirty years' experience as a damages expert and consultant. She has served as a sole arbitrator and on arbitral panels, is trained as a mediator and often performs initial damages assessments.

Presentation: **Arb/Med, Med/Arb and Arb/Med/Arb: Ethical Issues**

Carol will explore whether an arbitrator may also serve as a mediator (med/arb, arb/med, and arb/med/arb) and potential solutions to the issues that this dual role creates.

David A. Lawson, Bonnard Lawson, Geneva, Switzerland - FCIArb, is a California lawyer and Of Counsel to the law firm, Bonnard Lawson, with offices in Geneva, Lausanne, Shanghai, Dubai, Luxembourg and Paris. He acts as counsel and as President/Arbitrator in Commercial International Arbitrations in Geneva and elsewhere under the rules of many arbitral institutions (ICC, Swiss Rules, LCIA, GAFTA, ICSID, SCC), as well as *ad hoc* arbitrations under the UNICTRAL Rules.

Presentation: **Advance Waivers of Conflict of interest: Use and Attempted Use by Arbitrators**

Claimant's desired Arbitrator, a respected Arbitrator in Geneva, confirms her independence and impartiality, but accepts to be nominated only: "if the Parties expressly agree that (a) as is accepted for a Barristers' chambers, other partners of her law firm may in the future accept instructions to act for or against either Party, and (b) in such case, she will have no duty to make any disclosure in connection with such future instructions, but she is free to do so in her own discretion." Is there any chance these conditions will be accepted by both Parties?

Michael Kotrly, Freshfields Bruckhaus Deringer LLP, London, England, United Kingdom - Senior Associate in the international arbitration group; Barrister and Solicitor (Ontario, Canada) with full rights of audience in the DIFC Courts; acts as counsel in international commercial and investor-state disputes; his practice currently focuses on the mining, oil and gas, and technology sectors.

Presentation: **Ethics and Third Party Funders**

Michael will explore the ethical issues that can arise in third party funding in international arbitration (and in particular the independence of counsel and where the interests of the client and the funder conflict) and how those issues can either be mitigated or exacerbated in funding arrangements as a matter of practice.

3. Due Process

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (12 minutes), with 2 minutes for another panel member to comment, and a Q&A session (10 minutes).

Panel Chair

Lawrence S. Schaner, Jenner & Block LLP, Chicago, Illinois, United States – FCIArb, Co-Chair of International Arbitration Practice; Mr. Schaner acts as counsel for parties in complex commercial disputes before arbitral tribunals and courts, and he regularly serves as an arbitrator. He is an Adjunct Professor at Northwestern University School of Law, where he teaches international arbitration; Editor of the IBA's journal *Dispute Resolution International*; a member of the ICC Commission on Arbitration; and the Midwest Chair of the ICC's US national committee.

Speakers:

Robert W. Wachter, Lee & Ko, Seoul, South Korea - Co-Head of the International Dispute Resolution Group. Mr. Wachter has experience as counsel in cases under the ICC, KCAB, VIAC, Swiss Chambers, SIAC, LCIA, SCC, JCAA, IATA and UNCITRAL arbitration rules. He has also lectured at Seoul National University School of Law and the Supreme Court of Korea (Judicial Research and Training Institute).

Presentation: ***Lex Proceduralia*** **and the** ***Magna Carta*****: Revisiting the Sources and Norms that Define the Due Process Requirements in International Arbitration**

Due process is a universally recognized requirement for an award to be enforceable under the New York Convention. Yet the Convention, national laws, institutional rules, and other legal sources define due process in different terms and without precise boundaries. This presentation will consider the sources of our notions of due process, the implications that follow from different definitions of the standard, and whether it is possible to distinguish "serious" violations of due process from "acceptable" violations.

Aren Goldsmith, Cleary, Gottlieb, Steen & Hamilton LLP, Paris, France – Mr. Goldsmith's practice focuses on international commercial and investment treaty matters; he has served as counsel in a wide variety of disputes and is also active as a member of the ICC Commission on Arbitration and ADR, where he is a member of the US Delegation, Rapporteur of the Joint Working Group of the ICC Commissions on Arbitration and Competition on Antitrust Follow-On Damages Actions and Vice Chairman of the Expatriate Committee (Europe) of ICC United States.

Presentation: **Due Process and the Taking and Presentation of Evidence in International Arbitration Proceedings**

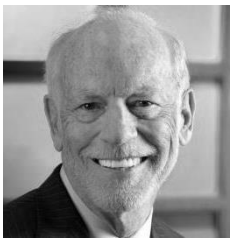
Mr. Goldsmith will highlight recurring due process issues in commercial and investment treaty arbitration related to the taking and presentation of evidence. Such issues include disputes related to the establishment of fair procedural calendars, access to and

production of evidence, control of bad faith evidentiary tactics, and the ensuring of equal opportunities to present and confront evidence and arguments, including in relation to eventual bases for adjudication by the arbitral tribunal.

Christina Cathey Schuetz, Clifford Chance LLP, London, England, United Kingdom - Senior Associate in the Litigation and Dispute Resolution department, where she specialises in commercial and investment treaty arbitrations. She has a particular focus on Central and Eastern European matters and is a co-founder and former Secretary of the Russian and CIS Arbitration Network. Amongst other languages, she speaks fluent Russian and German.

Presentation: **How Much Process Is Due in Summary and Preliminary Issues Proceedings?**

A recurrent complaint about international arbitration is that it no longer lives up to its promise of swift and cost-effective dispute resolution. Whilst numerous institutions now offer rules for expedited proceedings, the issue of efficiency of course also arises in regular proceedings. Ms Schuetz will survey attempts to introduce summary and preliminary issue adjudication into international arbitration and consider the extent to which proceedings can be shortened in these instances before efficiency conflicts with the obligation to accord due process.



John B. Pinney, Graydon Head, Cincinnati, Ohio, United States - senior trial lawyer whose practice focusses on international dispute resolution, including litigation and arbitration both within and outside of the United States. He also teaches international commercial arbitration as an adjunct professor at the University of Cincinnati College of Law.

Presentation: **Procedural and Substantive Due Process Issues in Consumer and Employment Related Arbitration, with Commentary on Recent United States Supreme Court Arbitration Decisions**

Ordinarily “due process” is viewed as being mainly a procedural issue – is the procedure fair so as to allow for a “fair” outcome based on the merits of the dispute? However, where the process, which may be facially “fair,” imposes hurdles that restrict certain types of claimants from having any reasonably effective remedy at all, the United States courts consider such hurdles as potentially infringing on the claimant’s “substantive” due process rights. This has become a problem in the United States because companies are increasingly imposing arbitration provisions in consumer and employment contracts of adhesion for the purpose of preventing claimants (i.e. typically consumers and employees) from having any effective remedy due to the costs of an individual arbitration as well as inclusion of an anti-class action provision. In a series of U.S. Supreme Court cases, the practice requiring arbitration of such disputes has been upheld, which cases have generated substantial criticism by commentators and also the introduction of proposed regulations and legislation banning arbitration for consumer and certain employment disputes. There is also concern that, if some of the proposed regulations and legislation is adopted, there could be a significant effect on international commercial arbitration in the United States. The presentation will focus on these developments in the United States but will also touch on how similar issues are addressed in other countries as well.

4. Multiparty

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 minutes) including comments by each speaker on the previous presentation (2 minutes) and a Q&A session (15-20 minutes).

Panel Chair

Günther J. Horvath, Freshfields Bruckhaus Deringer LLP, Vienna, Austria – partner and head of the dispute resolution practice of Freshfields Vienna; Günther specializes in international commercial arbitration with a primary focus on corporate law, post-M&A matters, energy, industrial engineering and construction.

Speakers:

James Castello, King & Spalding LLP, Paris, France - Partner in the firm's International Arbitration Group based in Paris; For much of his nearly 30 years in legal practice, he has focused on international arbitration (both commercial and investor-State; under institutional rules as well as in *ad hoc* proceedings).

Presentation: **Possibilities for Joinder in International Arbitration**

As the number of multi-party disputes has increased in recent decades so, too, has the importance of 'joinder' in international arbitration. When one of the persons or companies implicated in a multi-party dispute is not initially included as a party to the arbitration, it may subsequently become clear that the absent party should be "joined" into the arbitration in order to avoid multiple arbitrations concerning the same dispute and the risk of possibly inconsistent awards. Whether such joinder is possible – and, if so, how – is usually governed by the applicable arbitration rules. Until less than 20 years ago, no set of arbitral rules even referred to the possibility of joinder. Then, in 1998, a new edition of the LCIA Rules expressly provided for joinder for the first time, and in the subsequent 18 years most other major arbitration rules have adopted their own such provisions.

Constantin Eschlböck, Forum for International Conciliation and Arbitration (FICA), Vienna, Austria – FCIArb; Member of the Dispute Board Federation and Certified EFFAS Financial Analyst. He is also a member of the ethics council of the Vienna Bar. Constantin is also dispute resolution practitioner and before founding his law firm Eschlboeck Dispute Resolution in Summer 2012 he practised with the dispute resolution departments of various international law firms.

Presentation: **Class Actions in Arbitration?**

Class Actions – in as much as they were considered in the past at all – have hardly been given thought to be settled by means of alternative dispute resolution, let alone arbitration. Too great were the concerns of – particularly – consumers (and their lawyers) involved that their procedural and miscellaneous protection generally afforded by the

state courts would be disregarded. The public discussion on TTIP also drew the picture of arbitrators belonging to a guild of snooty corporate lawyers in double cuffed shirts and three piece suits who would after secret deliberation behind closed doors in posh old boys' clubs eventually render *'bespoke awards '* – thus complying with their attire and the presumed duty to 'those above'. Can we, however, show that ADR in terms of *'appropriate dispute resolution'* can after all contribute to develop satisfactory means to calm the stormy waters of consumer disputes before the next tidal wave of (consumer) claims pours down on the judicial system?

Vanessa Liborio Garrido de Sousa, Orrick, Herrington & Sutcliffe LLP, Geneva, Switzerland – Managing Partner; She practices primarily in the area of international litigation and arbitration, with a particular focus on complex, high-value disputes involving major infrastructure construction projects, consortia and joint venture agreements, sales of goods, collateral management agreements, aviation and consultancy agreements.

Presentation: **Consolidation and Timing under Different Arbitration Rules**

This presentation will discuss the consolidation of arbitral proceedings. Specifically, what is the mechanism for consolidation and how do the various arbitration rules differ in their requirements? Moreover, what are the main issues at stake; notably, how does timing factor in? Finally, what are the recent developments to take note of?

Alma Zadic, Freshfields Bruckhaus Deringer LLP, Vienna, Austria – Senior Associate; LLM (Columbia University) Attorney-at-Law (New York); Alma specializes in international commercial arbitration particularly energy disputes, complex commercial and investment arbitrations.

Presentation: **Joining Non-Signatories to Arbitration Proceedings – The Issue of Consent**

An arbitration agreement generally binds those who have signed the arbitration agreement. With the increase of complex multi-party and multi-contract arbitrations in recent decades the question of extending the arbitration agreement to non-signatories has drawn particular attention. Numerous theories have developed by arbitral tribunals and courts allowing third parties that have not signed the arbitration agreement to join in arbitration proceedings. Whether a third-party can join the arbitration and under what circumstances will be analyzed during this presentation.

Friday, 3 June **8:30-9:45 AM**

5. Users' Concerns, Guidelines and Best Practices

In this interactive panel the speakers will address and debate the topics listed on the next page in relation to Users' Concerns, Best Practices and Guidelines. The audience will be expected to participate in the discussions and will also have an opportunity to vote on controversial issues.

Panel Chair

Nikolaus Pitkowitz, Graf & Pitkowitz, Vienna, Austria - Founding Partner; FCIArb; Vice-President of Vienna International Arbitral Centre; Vice-chair of the International Arbitration Committee of the Section of International law of the American Bar Association; His practice, which has always been international with a strong focus on CEE. He acted as party counsel and arbitrator in a multitude of international arbitrations and litigations, among others as counsel in the largest ever pending Austrian arbitration.

Speakers:

C. Ryan Reetz, Bryan Cave LLP, Miami, Florida, United States - Managing Partner; his international litigation and arbitration practice includes both commercial and sovereignty-related disputes; adjunct at Emory and University of Navarra law schools; chair-elect of Miami International Arbitration Society; co-author of *Public Purpose in International Law: Rethinking Regulatory Sovereignty in the Global Era* (Cambridge 2015).

Silvia Pavlica Dahlberg, Advokatfirman Vinge KB, Gothenburg, Sweden - focusses her work on international arbitration and cross-border matters including investor-state arbitration. Counsel in arbitrations seated in various jurisdictions and under several different rules, including SCC, ICC and ad hoc. Also experience from arbitration-related court proceedings.

Stefan Gerlach, SchneiderGeiwitz & Partner, Munich, Germany – of counsel; Rechtsanwalt, LLM; will join Porr Deutschland GmbH as Head of Legal and Head of Dispute Resolution Group with 15 June 2016, main focus on (international) infrastructure projects and the resolution of related disputes, specializing in international arbitration, certified mediator.

José Ricardo Feris, ICC International Court of Arbitration, Paris, France - serves as ICC International Court of Arbitration Deputy Secretary General and Co-Chair of ICC Young Arbitrators Forum. He holds an LL.B. (Pontificia Universidad Católica Madre y Maestra, Dominican Republic) and an LL.M. (New York University). He has previously served at the International Court of Justice as law clerk, has worked for the Legal Advisor to the President of the Dominican Republic.

Users' Concerns

Legitimate (or illegitimate) critique by users on certain practices applied in arbitration

1. General on Users' Concerns:

   How to encourage, find (identify) and respond to user concerns?

2. Specific on Users' Concerns:

   What are serious user concerns. E.g. Time & Costs; Transparency; Selection and Quality of Arbitrators; Predictability; Ethics (guerilla tactics); Splitting the baby

3. Whose arbitration is it anyway?

Best Practices

Standards applied by arbitrators and counsel to provide users the highest level of efficiency and fairness.

4. What makes a certain practice a "best" practice?
5. What are current best practices?
6. Controversial: Detailed or short PO-1?

Guidelines

Documented (perceived) best practices

7. When should a best practice be put into a guideline?
8. Pros and cons of guidelines?
9. How to deal with the flood of guidelines? Where to find guidelines?
10. Which Guidelines are useful which are not – A "Rotten tomatoes" review of guidelines
11. Did we bury flexibility?

6. Energy

The format of this panel is an introduction by the moderator (5 minutes), two individual presentations of the first two, and one concerted presentation by the ultimate two speakers (10 to 15 minutes) and a Q&A session (20 minutes)

Panel Chair

Timothy G. Nelson, Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, United States – Partner; Tim specialises in international litigation and arbitration and represents clients in a variety of cross-border disputes, including investor-state arbitration, international commercial arbitration and litigation before the US Courts

Speakers:

Barbara Helene Steindl, Vienna, Austria – Barbara is a New York attorney-at-law and an Austrian lawyer. She represents parties in commercial and investment arbitration matters under all major arbitration rules, in particular involving energy, cross-border trade & distribution, plant construction and IT. Also, she occasionally choses to sit as a Chairlady or Sole Arbitrator. She is a member of the ICC Commission on Arbitration.

Michele Sabatini, ARBLIT – Radicati di Brozolo Sabatini Benedettelli, Milan, Italy - Founding Partner; He focuses on commercial and investment arbitration and international litigation; regularly assists and advises in complex arbitrations on contracts involving private and public parties and different sets of rules (ICC, UNCITRAL, LCIA, EDF). As to investment treaty arbitration, Michele is currently co-representing foreign investors in UNCITRAL proceedings on a renewable energy dispute against the Czech Republic.

Achille Ngwanza, JUS AFRICA, Paris, France - Lecturer in various European and African Universities, Consultant of African Petroleum Institute, International Arbitrator, Chairman of OHADA working Group of Comité Français de l'Arbitrage, Paris.

Joachim Kuckenburg, K_AB - Kuckenburg Bureth Boineau et Associés, Paris, France - Partner; Rechtsanwalt; FCIArb; international arbitration practitioner, acting as arbitrator and counsel, mainly in international sales, post M&A, distribution, engineering, infrastructure and mining with a strong focus on the MEA countries (Middle-East and Africa)

Energy disputes cover a wide variety of topics, including contractual disputes, project/shareholder disputes, financing issues, gas pricing/repricing arbitrations, upstream/reservoir issues, LNG production and sale disputes and investor-state claims

(including renewables cases and expropriation claims). Collectively, our panelists possess extensive experience in oil and gas-related disputes and we intend to cover a number of topics of contemporary relevance.

1. Stabilization Clauses

Stabilization clauses have long been a feature of modern long-term contracts in the energy field. Typically found in contracts between large operators and host-state governments, such clauses have been controversial in some quarters and have attracted significant academic attention of late. One recent study by Peter Cameron has concluded that the classic notion of stabilisation as a kind of "freezing" of contract terms over long periods of time has been in decline, and is probably not enforceable. Does this view conform with practical experience and recent arbitral jurisprudence in the field? What tools are available to operators as they seek to attain long-term predictability in their operations? How do arbitrators approach the issue of stabilization?

Principal speaker: Barbara-Helene Steindl

2. "Fair and Equitable Treatment under the Energy Charter Treaty: Disputes over the Repeal of the Incentives for Renewable Energy Sources"

In recent years, numerous ICSID, UNCITRAL and SCC claims have been brought by investors in the renewables sector seeking redress under the Energy Charter Treaty (and/or other investment instruments), arising from the repeal or termination of government incentives designed to foster activity in non-traditional energy sectors such as solar. Many if not all such claims have been against European states (particularly Spain, Italy and the Czech Republic) and most present novel issues concerning the "fair and equitable treatment" standard found in most modern BITs – as well as article 10(1) of the Energy Charter Treaty. How will such claims fare? Will they lead to an expansion of the FET standard? Has the pendency of these claims placed undue pressure on the Energy Charter framework?

Principal speaker: Michele Sabatini

3. Non-Disputant Stakeholders in Investment Arbitration – Oil, Gas and Extractive Concessions

The position of "third parties" or community interests in investor-state arbitration has given rise to much debate, and, in some instances, potential treaty reform. When a long-term oil or gas concession becomes the subject of a treaty dispute (e.g., in the event of a challenge to government measures that affect or adjust such concessions, and/or in the event of outright expropriation), what role, if any, can non-disputants play in such cases? Are we likely to see more involvement by community representatives and/or NGOs in investor-state arbitration? Is the "non-disputing party submission" likely to become a recurring feature of such cases?

Principal speakers/colloquy: Joachim Kuckenburg and Achille Ngwanza

7. Construction

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 to 15 minutes) and a Q&A session (20 minutes).

Panel Chair:

Bernd Ehle, LALIVE SA, Geneva, Switzerland – Partner; FCIArb; specializing in international arbitration; PhD (Heidelberg), LLM (Northwestern University); lecturer on *International Construction Contracts* at the LLM program at University of Fribourg

Speakers:

Lukas Klee, Metrostav a.s., Prague, Czech Republic - Head of the legal department; international construction lawyer and arbitrator; author of the book *International Construction Contract Law* (2014)

Presentation: ***Lex Constructionis* – a *Lex Mercatoria* for the Construction Industry?**

Mainly as a result of the constant development in the individual segments of business, the law of international merchants is broken down into individual domains. There are opinions according to which it is necessary to modify certain *lex mercatoria* principles, because the construction industry has its specifics and the public interest often conflicts with business here. There are several principles that are typical to international construction contracts such as the admissibility of 'directed variations' that do not constitute a breach of contract, the allocation of unforeseeable geotechnical risk to the employer, and the construction methods and processes risk to the contractor. Damage compensation claims should be thoroughly scrutinized, but not refused because of the difficulty of documenting them. Proactivity and good faith should be protected.

Virginie Colaiuta, Pinsent Masons LLP, London, England, United Kingdom – Partner; Virginie acts as counsel in international arbitration proceedings, also based on bilateral and multilateral investment treaties, arising out of construction and energy projects. She is admitted to practise in Paris, New York and England & Wales. She is the Publications Officer of the IBA International Construction Projects Committee Presentation and Editor of the IBA magazine *Construction Law International*.

Presentation: **Investment Treaty Protection of Construction Projects: Fair and Equitable Treatment**

There is an increased risk of government interference in capital-intensive infrastructure projects. Companies operating outside of their home country may rely on bilateral and multilateral investment treaties in order to protect their business against government interference and unfair measures attributable to the host State. Investment treaties define

the substantial protections and whether foreign companies and individuals may commence arbitration proceedings directly against the host State in the event of a violation by the State of its promises. The protection offered by investment treaties may extend to situations for which the companies may not have viable contractual remedies. An analysis of the claims presented by contractors in investment arbitration cases may show some solutions to recurrent concerns of construction companies operating on an international level.

Jacob C. Jørgensen, Burmeister & Wain Scandinavian Contractor A/S, Allerød, Denmark – in-house counsel; FCIArb; LL.M. in International Commercial Law (University of Cambridge Jesus College); BA and MA in Law from the University of Copenhagen; Jacob is a qualified Danish attorney and specializes in cross border litigation, international arbitration and construction law; editor and co-author of the book *Delay Clauses in International Construction Contracts* (2010).

Presentation: **Preventing and Resolving Time Delay Disputes – Recent Experiences**

How can the risk of delays flowing from the default of key component suppliers be mitigated, regulated and resolved in relation to major power plant projects? Securing the right to use intellectual property and ensuring the continued engagement of the suppliers' key employees are crucial issues when mitigating the risk of these types of delays in projects where time is always of the essence and the level of liquidated damages in EPC contracts is often very significant. Concepts known from M&A transactions may be utilised as an alternative to more traditional risk mitigation methods.

Andrew Burr ArbDB Chambers, London, England, United Kingdom - MA (Cantab), ACIArb, FFAVE (Master), Adjudicator, arbitrator, barrister and mediator with over thirty years' experience in construction and technology matters, editor of *Construction Law Journal;* author of the fifth edition of *Delay and Disruption in Construction Contracts.* He assisted with the revision of the ICC's Dispute Board Rules and is co-chair of the sub-committee advising the Beijing Arbitration Commission on the revision of its Dispute Board Rules.

Presentation: **DABs under FIDIC: Practical Problems and Pragmatic Solutions**

The fact that most construction disputes are resolved by way of private arbitration means that there is a dearth of judicial authority regarding the interpretation of the FIDIC clause 20 dispute resolution procedures. Recently, however, courts in Singapore, Switzerland, South Africa and the United Kingdom have issued decisions on this topic and the ICC has helpfully published a series of redacted arbitral decisions thereon; Andrew reviews the effect of these various decisions.

8. Damages

The format of the Panel will consist of a brief presentation by a panelist on one of the topics set out below, followed by a brief discussion and audience comments/questions on that topic, before proceeding to the next topic/presentation, with each following the same format.

Panel Chair

Craig Miles, King & Spalding LLP, Houston, Texas, United States - Partner in the International Arbitration Group; practice focuses on representing foreign investors in disputes with host governments, primarily before ICSID, and private parties in commercial disputes before the ICC, AAA, and other domestic and international arbitral institutions.

Speakers:

Richard E. 'Rory' Walck, Global Financial Analytics LLC, Reston, Virginia, United States - Partner and co-founder, specializing in damages and valuation in international investment treaty and commercial arbitration.

Roula Harfouche, Accuracy, London, England, United Kingdom - Partner in the Forensics, Litigation & Arbitration practice; testifying expert specialising in contentious valuations and the assessment of quantum issues in international arbitration (commercial and investment treaty) and litigation cases.

Alan M. Anderson, Alan Anderson Law Firm LLC, Minneapolis, Minnesota, United States - FCIArb; Fellow and member of the Council of the Australian Centre for International Commercial Arbitration (ACICA); member - Forum for International Conciliation & Arbitration (FICA); JD (Cornell University), LLM (University of London); PhD (King's College London); specializing in complex commercial litigation and international arbitration.

Irmgard Marboe, University of Vienna, Faculty of Law, Vienna, Austria - professor of international law at the Department of European, International and Comparative Law, author of numerous publications on the calculation of compensation and damages in international investment law, Co-Editor-In-Chief of the Journal of *Damages in International Arbitration*.

The Panel will address best practices in the use of damages experts and explore recent trends and key contested issues in damages valuation and analysis. Topics to be addressed include the following:

1. the importance of understanding the damages claim, analysis and calculations from the outset; their use in connection with potential early resolution of disputes; and counsel's best use of their damages experts (e.g., instructions and information to provide to the expert, cooperation with the expert, "pressure" on the expert, etc.)

2. navigating the damages experts' reports (e.g., major points to look out for when reviewing an expert report; the methods experts commonly use to increase/decrease values and damages, such as country risk; how to spot points where experts have been put under pressure by their counsel/client, etc.)

3. how to determine the correct valuation date, whether tribunals are totally free in its determination, and whether parties can/should "agree" on it

4. recent developments in quantitative analysis that tribunals may see creeping into damage presentations (e.g., Monte Carlo analysis, decision tree analysis, real options valuation, etc.)

5. exploring the most effective tools for tribunals to bridge the quantum gap between the experts

9. Corruption

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 minutes) and a Q&A session (30 minutes).

Panel Chair

David Caron, The Iran-United States Claims Tribunal, The Hague, Netherlands - Judge, Iran-United States Claims Tribunal; Member of Chambers, 20 Essex Street; Professor of International Law, The Dickson Poon School of Law, King's College London; Arbitrator in over 25 arbitrations: party appointed and President in ICC, UNCITRAL ad hoc and other major rules; appointed in investment arbitration as President and as party appointed by claimant investor and by respondent state.

Speakers:

Andreas Schregenberger, Homburger AG, Zurich, Switzerland - associate; Andreas specialises in international arbitration and litigation. He acts as counsel in complex proceedings before arbitral tribunals and state courts. Furthermore, he represents clients in internal investigations and enforcement proceedings by Swiss and foreign authorities; foreign arbitration lawyer in Vienna, Austria from 2013 to 2015; member of the ICC Arbitration and ADR Commission since 2015.

Presentation: **Compliance or Red Flags Arguments**

When it comes to tender procedures in more or less developed countries, multinational corporations may enter into contractual arrangements with parties that offer certain benefits in negotiations with the local government. These arrangements are often designated as service or agency agreements, the multinational corporation acting as principal and the supporting party acting as agent. If the tender is later awarded to the principal, the agent would claim its remuneration pursuant to the contractual arrangement, arguing in a more or less substantiated fashion that the award to the principal was due to its support before the local government. In order to avoid any payment obligation towards the agent, the principal may raise the argument that any contractual arrangement with the agent would in fact not comply with its compliance policies, i.e. that the service or agency agreement would constitute a “Red Flag”. This may be against the background that the agent is not able to provide any “proper” evidence of the alleged support before the local government. In terms of such Red Flag arguments, a number of delicate questions arise: Is the Red Flag argument a substantial argument, and if yes, under what legal concept? How is the relevant law established, and do international standards come into play? What impact does the Red Flag argument, and its legal implication under the service or agency contract respectively, has on the contract between the principal and the local government? What standards apply to substantiation and evidence underlying the Red Flag argument? These and more aspects of frequently raised arguments that are based on compliance concerns will be addressed.

Annet van Hooft, Bird & Bird AARPI, Paris, France - co-heads the International Dispute Resolution Group at Bird & Bird where she specializes in commercial arbitration. She is a Vice President of the ICC Commission on Arbitration and ADR and the author of a handbook on ICC Arbitration under the 2012 Rules.

Presentation: **Effects of Corruption in Commercial Arbitration: Should There be Any?**

In this presentation Annet will discuss whether (allegations of) bribery in relation to the procurement of a contract should have an impact on the validity of the contract itself, or whether they should be ignored (cf. National Iranian Oil Company v Crescent Petroleum Company International Ltd (4 March 2016, EWHC 510 (Comm)).

Todd Weiler, Investment Treaty Arbitration, London, Ontario, Canada - a Canadian barrister and solicitor, and academic who has practiced exclusively in the field of investor-State arbitration since 1998

Presentation: **The Merits of Corruption as a Jurisdictional Objection in Investment Treaty Arbitration [Or Lack Thereof]**

One of the ways in which arbitrators in recent investor-State disputes have addressed allegations of corruption, on the part of the investor, has been to entertain objections to jurisdiction on the basis of non-compliance with local law. In such cases, reliance is typically had on the "in accordance with local laws" clause often found in investment treaties. This is a dubious doctrine because it is based upon an ahistorical premise. Preliminary hearings are no place for consideration of allegations of corruption, which should always be reserved for the merits.

Johannes Koepp, Baker Botts (UK) LLP, London, England, United Kingdom - Partner; PhD (Hamburg) *magna cum laude*; LLM/DEA (Geneva/Lausanne) *avec mention*; first qualified in Germany and now admitted in England and Wales; practice focuses on international arbitration, both commercial and investor-State; particularly experienced in multijurisdictional disputes arising out of energy, joint ventures, telecommunications and financial services.

Presentation: **Issues of Corruption at the Tribunal Level**

Are arbitrators entitled (or even obliged) to consider and resolve corruption issues *sua sponte*? Are arbitrators entitled (or even obliged) to report their suspicions of corruption to regulatory authorities?

10. Parallel Proceedings and *Res Judicata*

For most issues, the format will be interactive and will consist in very short presentations by one speaker followed by reactions from other speakers.

Panel Chair

Sébastien Besson, Lévy Kaufmann-Kohler, Geneva, Switzerland - Partner; He represents companies before arbitral tribunals and state courts in commercial disputes, and serves as arbitrator or legal expert. He published numerous contributions in the field of international arbitration, including *Comparative Law of International Arbitration* (2007, co-authored with Professor Jean-François Poudret). He is a part time Professor at the University of Neuchâtel and teaches in different programs including the Geneva *Master in International Dispute Settlement*.

Speakers:

Jérôme Lehucher, Curtis, Mallet-Prevost, Colt & Mosle LLP, Paris, France - Partner; focuses his practice on investor-state arbitration, international commercial arbitration and international oil & gas transactions; has notably acted as Counsel for Central Asian and Latin American states, state-owned entities and private sector companies in ICSID, UNCITRAL and ICC arbitration proceedings in the energy, agricultural and pharmaceutical sectors with disputed amounts ranging from USD50 million to over USD2 billion; has also advised clients in connection with the renegotiation of petroleum contracts and annulment proceedings.

Duncan Speller, Wilmer Hale, London, England, United Kingdom - Partner in the firm's Litigation/Controversy Department; barrister; member of the International Arbitration Practice Group. He practices International Arbitration and English High Court Litigation; having represented clients in numerous institutional and *ad hoc* arbitrations, sited in both common and civil law jurisdictions.

Luc Demeyere, contrast – European & Business Law, Zaventem, Belgium - senior counsel. He acts as counsel and as President / Arbitrator in ICC, Cepani, NAI, DIS and ad hoc arbitrations. Member of Board of Directors of Cepani. Publications also on conflict management, and lectures on negotiation and mediation at Antwerp University.

Veronika Korom, Shearman & Sterling LLP, Paris, France – senior associate in the firm's International Arbitration Group. She has experience in international arbitrations under UNCITRAL, ICSID, SCC and ICC Rules, with a particular focus on investment disputes and disputes involving issues of EU law. She has also advised on annulment and set-aside proceedings, domestic enforcement proceedings, and on proceedings in the General Court of the EU. She is a lecturer in international business law and international arbitration at the Dauphine University in Paris and the Pázmány Péter University in Budapest.

Parallel proceedings and *res iudicata* have become a major issue in international arbitration and these principles regularly impact the conduct of the arbitral proceedings or of subsequent court proceedings related to the award.

The Panel will discuss the legal framework governing these issues. It will also identify the most important precedents that provide guidance in various jurisdictions. The difference between common law and civil law jurisdictions will be addressed as well as the possibility to try a find common ground for avoiding discrepancies. Abuse of process and estoppel will also be covered.

The Panel will endeavour to make appropriate distinctions and to present clear scenarios in order to avoid confusion on the proper scope of application of the different principles at stake (e.g. *lis pendens*, *res iudicata*).

11. Multi-tier and ADR

The panel starts with an introduction by the moderator (5 minutes), followed by 10-minute presentations by each speaker (40 minutes) and a subsequent Debate (10 or 15 minutes), concluding with a Q&A session (10 or 15 minutes)

Panel Chair

Bennar Aydogdu, BennArb Law Firm, Bursa, Turkey - Founder; specialized in international arbitration; arbitrator and counsel; member of the Board of Management- Chartered Institute of Arbitrators (CIArb); member of the ICC Turkey Arbitration Working Group; Vice President -Union of Turkish Bars Arbitration Center; Vice President - BTSO Arbitration and Mediation Center; member of the CIArb Practice and Standards Committee; CIArb approved faculty member; tutor on international arbitration.

Speakers:

Manuel Arroyo, meyerlustenberger | lachenal, Zurich, Switzerland - Partner; main contact for international arbitration; Counsel/arbitrator in over 50 international arbitrations; former law clerk to the Swiss Federal Supreme Court; Sole editor/co-author of the most comprehensive treatise on international arbitration in Switzerland (*Arbitration in Switzerland – The Practitioner's Guide*, Kluwer, 2013). LLM in International Commercial Arbitration Law (Stockholm), Dr. iur./Attorney-at-Law (Basel), MCIArb

Presentation: **Best (and Worst) Practices of Arbitral Tribunals when Dealing with Objections that the Pre-Arbitral Dispute Resolution Tier was not Complied with.**

Respondents frequently raise the argument that the pre-arbitral dispute resolution tier (be it an amicable settlement, conciliation or mediation phase) was not (or not fully) complied with. As a result, the jurisdiction of the arbitral tribunal *ratione temporis* is contested. In such a scenario, there are several options as to how an arbitral tribunal can proceed. Some are good, some are bad, and it is these best and worst practices we will address.

Rodrigo Garcia da Fonseca, Fonseca e Salles Lima, Rio de Janeiro, Brazil - Partner; Practice focused in dispute resolution, mainly in commercial arbitrations, both as counsel and arbitrator. Experience in international and domestic cases under different rules, in several areas (corporate disputes, infrastructure projects, concessions and PPPs, construction, energy, oil and gas, etc). Member of the lists of arbitrators of various Brazilian institutions

Presentation: **ADR and Multi-Tiered Clauses: Latest Developments**

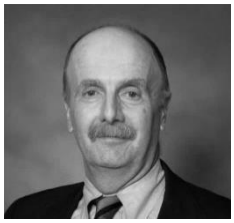
Arbitration is nowadays a well settled means of dispute resolution, used in many jurisdictions, with a known track record and an active community of experienced practitioners. However, the use of other ADR techniques is growing. Multi-tiered Clauses are being employed in various ways and in different kinds of contracts. Negotiation, mediation

and dispute boards, for example, are often used before arbitration or even court litigation. The legal landscape and the culture of dispute resolution are changing, and lawyers and businesses need to be aware of where they may go.

Stefano Paolo Catelani, DuPont, Geneva, Switzerland - EMEA Corporate and Lead Counsel at DuPont de Nemours International Sarl. Former President of the Geneva based Association of International Business Lawyers (AIBL). Frequent lecturer on International Business law and active member in several professional and trade associations.

Presentation: **Advantages and Risks of ADR and Multi-Tiered Clauses from the Point of View of Users**

Corporations normally share the view that 'winning in courts is not the same as winning in business' and that a fair settlement is normally preferable to a protracted and expensive litigation sometimes even when the end result of such litigation is favorable. That is the reason why corporations tend to favor so called Step Clauses provided they are carefully drafted to avoid dangerous pitfalls. Step Clauses are in fact part of a broader attitude to try to accelerate dispute resolution by leaving the door open to settlements before, during and sometimes even after the conclusion of an arbitration/litigation procedure. One of the roles of the in-house counsel is precisely that of remaining vigilant in order to identity any opportunity to settle during the whole process, since when the conflict arises until when the award or court decision is enforced.



John B. 'Jack' Tieder, Watt Tieder, McLean, Virginia, United States - Founding Partner of the afore mentioned International Construction Law Firm, headquartered in Washington, D.C. with offices throughout the United States. He is the head of the International Practice Group and guides all international activities of the firm. His personal practice is international construction arbitration both as counsel and as an arbitrator. He also provides expert legal opinions on various construction law issues.

Presentation: **Dispute Resolution under the FIDIC Terms of Contract**

The disputes procedure in the various FIDIC forms of Contract has evolved significantly since the first FIDIC edition. The history of this evolution will be outlined and the issue of whether it has led to a faster and fairer means of the ultimate dispute resolution of construction claims will be addressed.

12. Case Management

The format of this panel is an introduction by the moderator, presentations by the speakers and a Q&A session.

Panel Chair

Jan-Michael Ahrens, Siemens AG - LC CB LIT, Erlangen, Germany - Senior Counsel Litigation; Jan-Michael Ahrens holds a doctorate in law (Freiburg), LLM (Geneva and Lausanne) and bar admissions in Germany, Switzerland and England and Wales.

Speakers:

Christopher Koch, Landolt & Koch, Geneva, Switzerland – Partner; specialized in international commercial arbitration. Christopher has over 25 years of experience in international arbitration. Commencing as Counsel with the ICC international Court of arbitration, Christopher has acted as Sole Arbitrator, Co-arbitrator and Chairman and as Party counsel in numerous arbitrations under a variety of Rules. He holds law degrees from Geneva and New York Universities and is admitted to the bar in both locations.

Presentation: **"To Manage or Not to Manage that is the Question!"- The Tribunal's Role in Managing Arbitral Proceedings**

Should the parties or the tribunal manage the arbitration? The answer may depend on what procedural tradition a person is from. Those steeped in the adversarial tradition prevailing in the common-law, are likely to take a less active role in shaping the process, leaving it up to the parties to determine with what speed and diligence they wish to conduct their arbitration. On the other hand, Arbitrators from an inquisitorial background, as can be found in most civil law jurisdictions, may tend to take more direct influence in managing and shaping the arbitral process. Does the contractual or quasi-judicial nature of arbitration have any bearing in defining the tribunal's managerial powers? How do those powers coexist with the concept of party autonomy? Since procedural agreements between the parties often reflect their counsel's interests more than those of their clients, the question is how arbitrators can speed up the pace of the proceedings. Paying closer attention to time limits set out in institutional arbitration rules might be one way of achieving that end.

Zsolt Okányi, CMS Cameron McKenna LLP, Budapest, Hungary - Partner of Dispute Resolution and serves at the firm's Head of Arbitration in Central Eastern Europe, with a doctorate in law (Budapest), LL.M. (Yale) and bar admissions in Hungary and New York.

Presentation: **Case Management – The Perspective of the Counsel**

A large portion of arbitration costs are party costs, including in particular lawyers' fees. The parties' manner of presenting their cases therefore has a significant impact on cost. In order to safeguard the quality of outcomes, measures aiming to improve efficiency will affect the presentation of cases by the parties and therefore require the experience of arbitrators and institutions. For their part, outside counsel are primarily interested in winning a case, and in practice this often proves more important to clients than clients' generic interest in efficiency. As for-profit organizations, law firms can and will contribute to the effective management of arbitration proceedings if they have an own interest in it (e.g. through fee arrangements) or if they are so required by their clients, by the institutional rules or by the arbitrators. Predictability and transparency of proceedings can facilitate counsel's planning of its resources and thus increase efficiency.

Steffen Pihlblad, The Danish Institute of Arbitration, Copenhagen, Denmark – Secretary-General; responsible for the case management of approximately 800 arbitration proceedings with almost all possible procedural constellations and situations, many different commercial subject matters and jurisdictions as well as a range of industrial sectors; scrutiny of approximately 400 arbitral awards; lecturer on the Danish Arbitrator Education and on International Dispute Settlement at the LLM program in Geneva (MIDS).

Presentation: **Case Management – the Perspective of the Institution**

What Do Institutions Actually Do, and What Should the Institutions Do in order to Promote "Case Management" in the Future? Examples on different provisions that aim to promote a timely and cost-effective management of the arbitration:

- Requiring arbitrators to disclose caseload
- Use of e-mails as the method of communication
- Copying the institution on all correspondence
- Requirements for comprehensive opening statements from the parties
- Provisions on the number of arbitrators

How do such provisions work? Are time and money saved? How can provisions on case management be enforced by the institutions? Any space for improvements?

13. Investment Arbitration, Investment, Jurisdiction, Fair and Equitable Treatment

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 minutes) and a Q&A session (30 minutes).

Panel Chair

Rostislav Pekar, Squire Patton Boggs,v.o.s., Prague, Czech Republic – Rostislav is co-head of Squire Patton Boggs' global investment arbitration practice and head of litigation and international dispute resolution in the Czech Republic.

Speakers:

Maja Stanivuković, Stanivukovic PR Arbitar, Novi Sad, Serbia - president of the Belgrade Arbitration Center, professor of Private International Law at Novi Sad University, LL.M. Cornell University, Ph.D. Novi Sad University, independent arbitrator experienced in investment, construction and energy arbitration.

Presentation: "**Grandfather Clauses, Vested Rights and Legitimate Expectations" Commentary of one aspect of the already famous *Micula Case***

In *Micula v. Romania*, the ICSID tribunal by majority decision upheld Claimant's FET claim based on breach of investors' legitimate expectations. The presentation will focus on the impact of domestic legal order on the interpretation of legitimate expectations. Underlying the *Micula* Award is a different understanding of legitimate expectations that the one prevailing in EU State Aid Law. What influence if any should domestic legal order have on the interpretation of this standard by investment arbitrators? Another issue of importance discussed in the Award is the meaning of a statutory "grandfathering clause" providing investors with a promise or immutability of the legal regime existing at the time when they invested. In Romanian law, similar to some other South-Eastern laws, this grandfathering clause is linked to another vague concept of vested rights. The concept of vested rights in the domestic legal order might influence the scope of protection of investor's legitimate expectations based on such promise.

Deva Villanúa Gómez, Armesto & Asociados, Madrid, Spain - Deva is a Partner in the afore mentioned international arbitration boutique, specialised in acting as arbitrators only in commercial and investment arbitrations. Deva has been involved in more than 100 arbitrations. She regularly sits as arbitrator and as Administrative Secretary to Arbitral Tribunals.

Presentation: **Indirect Expropriation: Are we on the same page?**

The term 'indirect expropriation' is polysemic: a regulatory measure tantamount to expropriation, a creeping expropriation, a direct expropriation without transfer of the title, or any expropriatory act on an indirect investment. The presentation will deal with the different scenarios in which all these 'indirect expropriations' arise.

Laurent Niddam, Budapest, Hungary - FCIArb; Laurent is an independent arbitrator and arbitration lawyer focusing on international commercial arbitration, sport arbitration and investment protection. He is a Member of the Tribunal of the *Fédération Equestre Internationale* and of the Court of Arbitration for Sport (CAS). He teaches graduate and post-graduate courses on international arbitration, investment protection, international commercial law and the law of international contracts.

Presentation: **Small Claims in Protection of Foreign Investments**

Colm Ó hOisín, Senior Counsel, Dublin, Ireland - Wide ranging practice at the Bar of Ireland and also member of Bar of England and Wales. Experienced arbitrator in both domestic and international arbitration. President of Arbitration Ireland, Designated by the Irish Government to the Panel of Conciliators and Arbitrators of ICSID.

Presentation: **Is the Bad Press for Investment Arbitration Justified?**

Ximena Herrera-Bernal, Shearman & Sterling LLP, London, England, United Kingdom - Counsel in the firm's International Arbitration and Public International Law Groups. JD Los Andes University, Harvard LLM, University of Oxford Academic Visitor Public International Law and Law of the Sea. Experience in investment treaty arbitration under both bilateral and multilateral treaties as well as commercial arbitration.

14. Investment Arbitration: Present Challenges, An Appeal and Alternative Remedies for Breaches of Investment Treaties

The format of this panel is an introduction by the moderator (5 minutes) and subsequent five positions by all panel members (5 minutes) followed by a podium discussion concerted by the panel chair

Panel Chair and Speaker:

Mauro Rubino-Sammartano, LawFed BRSA, Milan, Italy - is a Chartered Arbitrator, he presides the European Court of Arbitration, has taught arbitration at the Universities of Padua and Milan, lectures and writes on arbitration and mediation, is admitted to the Milan and Paris Bars and is a door tenant of a set of barristers chambers in London. His latest book on arbitration is the 3rd edition of *International Arbitration : Law and Practice*, Juris 2014

Presentation: **Ad Hoc Committee vs Intra Arbitration Appellate Proceedings**

The problems caused by limiting the challenge of an ICSID Award to a mere annulment by the Ad Hoc Committee (which may have to be followed by another first instance arbitral proceedings) are analysed and discussed compared to the full de novo review of the first instance award provided for by the intra-arbitration appellate proceedings which are available under the arbitration rules of the European Court of Arbitration

Speakers:

Luciana Ricart, Curtis, Mallet-Prevost, Colt & Mosle LLP, London, England - associate; LLM (NYU); works in investor- state arbitration and in public international law contentious and non-contentious work; She has represented governments and state-owned entities in ICSID, SCC, ICC and UNCITRAL arbitration proceedings and has advised these entities on topics such as enforcement of arbitral awards, sovereign immunity, treaty interpretation and territorial sovereignty disputes.

Presentation: **The General Landscape of Investment Arbitration**

Luciana's presentation will explore the current features and elements of Investor-State Dispute Settlement (ISDS), the deficiencies and challenges that mainly Respondent States have seen in this system which has led them to propose reforms to the system or new systems and whether the several proposals address these shortcomings or create more.

Nikos Lavranos, Global Investment Protection AG, Zug, Switzerland – Head of Legal Affairs, Dr. jur., LLM, legal consultant on all aspects of investment arbitration, and Secretary General of EFILA (Brussels).

Presentation: **The EU Position and EU Law**

The EU is pushing the boundaries by its investment court system (ICS) proposal. It intends to create a sui generis system of dispute resolution,

which is more favourable to States at the expense of investors. The EU also places EU law as the supreme law of the land regarding the recognition and enforcement of arbitration awards within the EU. Essentially, the EU is establishing a new hierarchy of law.

Sophie Nappert, 3 Verulam Buildings, London, England, United Kingdom - Sophie is a dual-qualified lawyer in Canada and in the UK. She is an arbitrator in independent practice, based in Gray's Inn, London. In 2015 she delivered the inaugural Annual Lecture of EFILA on the topic of *Escaping from Freedom? The Dilemma of an Improved ISDS Mechanism*, which won the 2016 GAR Award for Best Speech or Lecture. Sophie is the peer-nominated Moderator of OGEMID.

Presentation: **How Can One Expect that the EU Position Would Work, Including What it is Planned to be Used Out of the ICSID Arbitration**

What is the hierarchy, if any, of the ICS vis-à-vis existing ISDS tribunals; its authority, if any; and the precedential value of its rulings, if any. The uncertainty bred by these questions will be present for a considerable time until the ICS finds its footing and develops its jurisprudence. During that time the ICS will be no more than yet another ISDS forum, further fragmenting the field, and almost certainly weakening the status and authority of the New York Convention.

John P Gaffney, Al Tamimi & Co., Abu Dhabi, United Arab Emirates - Senior Associate; LLM (Amsterdam); specializing in international arbitration in various areas, including construction, corporate/commercial, energy, investment treaty, IP, and telecommunications matters under variety of rules (DIAC, ADCCAC, ICC, LCIA, UNCITRAL); arbitrator in DIAC cases and WIPO name disputes and an Expert in ICC Expertise proceedings; Case Notes Editor of EIAR; ICCA Ambassador (2016).

Presentation: **State Courts and the Proposed New Investment First Instance and Appellate Decisions**

John will endeavor to address various situations which may arise in the relationships between state courts and the new investment court, including the relationship between proceedings before state courts and proceedings before, and decisions by, the investment courts, enforcement of the investment court's decisions by the state courts of the contracting parties, enforcement by courts in countries which are not contracting parties, and the impact of annulment proceedings.

15. Look into the Future – Opportunities and Challenges to Arbitration

The format of this panel is an introduction by the moderator (5 minutes), four presentations by the speakers (10 minutes) and a Q&A session (30 minutes).

Panel Chair

Frédéric Bachand, McGill University, School of Law, Montréal, Québec, Canada - Associate Professor of Law and Norton Rose Fulbright Scholar in International Arbitration and Commercial Law (McGill University); international arbitrator; Advocate Emeritus (Ad. E.), Quebec Bar

Speakers:

Martin Doris, Chinese University of Hong Kong, Faculty of Law, Hong Kong, China (SAR) - Assistant Professor; Co Director of the CUHK Mediation Institute and Director of the Centre for Financial Regulation and Economic Development; PhD (EUI, Florence), LLB (QUB Belfast), FCIArb, FHKIArb, FHEA. CEDR accredited mediator.

Presentation: **Disrupting International Arbitration - Innovation, technology and the ongoing battle with costs and delays**

This paper addresses three topical and related issues that are currently receiving renewed attention the role of technology in international arbitration, arbitrator evaluation and the role of institutions in dealing with delays in the submission of awards. With the continued emphasis on cost savings and efficiency in international arbitration, it does remain odd that the advantages of incorporating new technologies into arbitral practice have not been fully realized. In recent years there has been much analysis of the potential of Online Dispute Resolution (ODR), particularly for the resolution of low value business-to-consumer disputes, yet the future role for technology in large-scale international arbitration remains unclear and its disruptive potential in the field of arbitration itself requires further critical assessment. Similarly, arbitrator evaluation is a modern trend that merits much closer analysis, as does the ongoing work of arbitral institutions aimed at addressing delays in the submission of awards.

Jorge Perez-Vera, Total Marketing Services, Paris, France - Jorge is senior legal in-house counsel at Total Marketing & Services (new business and portfolio management, legal department) in Paris.

Presentation: **Is Arbitration a Universal Institution?**

Although arbitration is clearly an alternative way to deliver justice alongside the ordinary courts it is not evolving in a similar manner in all countries. Significant disparities remain, e.g. different manners and tempos to enforce international arbitration treaties, multiple national practices and regulations, and significant disparities among arbitration institutions and systems. From a user's perspective, the fact that arbitration is not a completely coordinated process leads to limited choices in terms of institutions, arbitrators, applicable laws and also high costs. It also occasionally means

preferring other dispute resolution methods or resorting to national courts. Looking ahead, users might wish to focus on: supporting the development of arbitration centers and institutions; insisting on the importance of a reliable judiciary in all countries; educating the next generation of arbitrators; and highlighting the importance of specialized arbitrators.

Walt Sapronov, Sapronov & Associates, PC, Atlanta, Georgia, United States – Shareholder, has represented enterprise, broadband and mobile provider clients - both in the U.S. and abroad- in telecoms transactions, regulation, privacy and dispute management for over thirty years. He has been named in *Georgia Super Lawyers* and in the most recent edition of *International Who's Who Legal - TMT/ Telecoms and Media*.

Presentation: **Class Action Defenses Under Evolving US and EU Privacy Disputes**

In recent years, both US and EU regulators have been increasingly aggressive with privacy enforcement within their respective jurisdictions. The enforcement trend follows expanded privacy protections adopted by US regulators, such as the FCC's recently announced "net neutrality" privacy rules, as well as the extra-territorial reach of EU data protection authorities following the invalidation of a trans-Atlantic accord (the so-called "EU Safe Harbor") that had hitherto governed cross-border privacy protections. This governmental enforcement trend has created a template for class action litigants seeking damages for those same privacy violations under private causes of action. In the US, well established case law supports a defense to such class action exposure through the use of binding arbitration agreements with class action disclaimers ("cut-off clauses"). This discussion examines this privacy litigation trend, the no-class action arbitration defense, and their implications for crossborder privacy disputes involving parties in the US and the EU.

Charlotte Villeneuve, Hanotiau & van den Berg, Brussels, Belgium - specializes in international trade law and international arbitration, and has acted as administrative secretary to the arbitral tribunal in numerous commercial, investment treaty and sports arbitrations, under the rules of various institutions, as well as in ad hoc cases. She has recently been nominated as arbitrator in CEPANI and ad hoc cases.

Presentation: **The Impact of EU Law on the Future of Arbitration**

Although arbitration has been evolving smoothly and independently for the last 50 years, it has recently faced harsh criticism in the media and public opinion. People wonder who are these arbitrators? What legitimacy do they have to deal with public policy disputes? While these critics appeared in the course of discussions relating to ISDS in the context of the Transatlantic Trade and Investment Partnership, the reality is that they also concern private and commercial law. Indeed, beyond these criticisms, there is an increasing interaction between EU law and arbitration, which, in the end, and under certain circumstances, may have an impact on what arbitral tribunals can do, and the way they conduct their cases. This presentation will grapple with the implications of these issues for the future of arbitration.

Symposium Closing

Laurent Hirsch, HIRSCH, Geneva, Switzerland, and
Silvia Marchili, King & Spalding, Houston, Texas, United States.