



INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

ICCA EDINBURGH 2022 PRELIMINARY PROGRAMME

ICCA PROGRAMME COMMITTEE

Co-Chairs:

Cavinder Bull SC
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Committee:

Stephen L. Drymer
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Susan Franck
Alvaro Galindo
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Jean Kalicki
Elie Kleiman
Jan Kleinheisterkamp
Michelle MacPhee
Ziad Obeid
Shaneen Parikh
Lindy Patterson QC
John Rhie
Christian Tams
Galina Zukova

Sunday, 18 September 2022

Opening Event

Registration

25th ICCA Congress Opening Ceremony

6.00PM

Venue: EICC
The Exchange, 150 Morrison St, Edinburgh EH3 8EE

Opening Cocktail Reception

7.00PM

Venue: EICC
The Exchange, 150 Morrison St, Edinburgh EH3 8EE

DAY 1 – Monday, 19 September 2022, EICC

Breakfasts

(limited capacity – details to come)
(08.00AM – 09.00AM)

Morning – Session 1

(09.30AM – 11.00AM)

Welcome Remarks
Programme Overview
Keynote Address – Louise Arbour

Data Collection: Taking Stock of the International Arbitration Community
Susan Franck

Coffee Break

(11.00AM – 11.30AM)

Morning – Session 2

(11.30AM – 12.45PM)

Plenary: Arbitration's Age of Enlightenment...and Adaptation?

Through four very different presentations, this panel will recall the historic roots of international arbitration, query the modern day impact of Artificial Intelligence on arbitration and examine how States have on occasion pursued the path of enlightenment by submitting their disputes to international arbitration. The speakers will also address arbitration's versatility, creativity and the influence of the principle of loyalty, and review past successful initiatives of the international community and their contribution in restraining resort to unilateralism, protectionism and nationalism.

Moderator: Loretta Malintoppi

Speakers: Carole Malinvaud, Lucy Reed, Hi-Taek Shin, J. Christopher Thomas

Lunch

(12.30PM – 02.00PM)

Afternoon – Session 1

(02.00PM – 03.15PM)

Panel 1: Progress Made / Progress to be Made – Exploring the Ways Forward

Inspired by 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. 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.

Moderator: Susan Franck

Speakers: Diamana Diawara, Lucy Greenwood, James Hope

Afternoon – Session 2
(03.15PM – 04.30PM)

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.

Panel 2: 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.

Moderator: Galina Zukova

Speakers: George Bermann, Nagla Nassar, Jan Paulsson

Panel 3: 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.

Moderator: Christian Tams

Speakers: Alison Macdonald, Bruno Simma

Coffee Break
(04.30PM – 05.00PM)

Afternoon – Session 3
(05.00PM – 06.15PM)

Panel 4: Arbitration’s Printing Press: Drawing the Line Between Confidentiality and Transparency

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

Moderator: Ziad Obeid

Speakers: Paula Hodges, Anke Sessler, Mallory Silberman, Caroline Simson

Panel 5: Post Pandemic Dispute Resolution Toolbox

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

Moderator: Lindy Patterson

Speakers: Joyce Aluoch, Wolf von Kumberg, Elina Mereminskaya

DAY 2 – Tuesday, 20 September 2022, EICC

Breakfasts

(limited capacity – details to come)
(08.00AM – 09.00AM)

Morning – Session 1

(09.30AM – 9.45AM)

Guillermo Aguilar-Alvarez Prize Presentation

Morning – Session 2

(09.45AM – 11.00AM)

Panel 6: “State of the World” in 2022 – New Developments and Reform in International Investment Arbitration

The 2022 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 2022, with speakers assessing both the latest ICSID Rules amendments, 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.

Moderator: Jean Kalicki

Speakers: Tom Sikora, Anna Joubin-Bret, Meg Kinnear, Patience Okala

Coffee Break

(11.00AM – 11.30AM)

Morning – Session 3

(11.30AM – 12.45PM)

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.

Panel 7: 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.

Moderator: Francisco González de Cossío

Speakers: Julie Bédard, Markus Burgstaller, David Edward, Eduardo Zuleta

Panel 8: 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.

Moderator: Shaneen Parikh

Speakers: Ndanga Kamau, Darius Khambata, Emilia Onyema, Sun Wei

Lunch
(12.45PM – 02.00PM)

Afternoon – Session 1
(02.00PM – 03.15PM)

Panel 9: 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 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.

Moderator: Eleonora Coelho

Speakers: Florian Grisel, Malcolm Langford, Janet Walker

Panel 10: 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 “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 will also share and discuss the findings from the “speed-conferencing” sessions.

Moderator: Yuet Min Foo

Speakers: Julian Bordaçahar, Elizabeth Chan, Arie Eernisse, Elena Gutierrez, Iuliana Iancu, Jonathan Lim, Belinda McRae, Melissa Ordonez, Nesreen Osman, Naomi Tarawali, Siddharth Thacker, Nhu Hoang Tran Thang

Coffee Break
(03.15PM – 03.45PM)

Afternoon – Session 2
(03.45PM – 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.

Panel 11: New Frontiers I: Arbitration in the Age of [Post-pandemic] 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.

Moderator: Fabien Gélinas

Speakers: Julie Raneda, Ji En Lee, Maxi Scherer, Mimi Zou

Panel 12: New Frontiers II: The Subject Matters of the Disputes of Tomorrow

New global issues are emerging in the modern world. These include: climate change and environmental protection, global data storage and the cloud, access to ever scarcer water resources, energy and mining transition and human rights initiatives. This panel will explore how these new issues may impact the subject matter of tomorrow's international arbitrations.

Moderator: Nigel Blackaby

Speakers: Ginta Ahrel, Değer Boden, Rodman Bundy, Peter Cameron

Congress Gala Dinner (separate ticket required)

6.30PM

Venue: National Museum of Scotland
Chambers St, Edinburgh EH1 1JF

Young ICCA Reception (open to all Congress delegates)

11.00PM

Venue: National Museum of Scotland
Chambers St, Edinburgh EH1 1JF

DAY 3 – Wednesday, 21 September 2022, EICC

Breakfasts

(limited capacity – details to come)
(08.00AM – 09.00AM)

Morning – Session 1

(09.30AM – 10.45AM)

Panel 13: 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 subject is particularly timely as the issues being decided by arbitration increasingly require an understanding of areas outside the law including complex technical and scientific issues, forward-looking damages issues requiring the application of sophisticated economic and finance models, the application of cybersecurity and data protection principles during the proceedings, and the impact this may have on good case management. The speakers will consider how this impacts what is expected from arbitrators and arbitral tribunals. We will also consider how debiasing techniques can contribute to the continued effectiveness of arbitration. The panel will also share experience gained from other forms of dispute resolution and reflect on how a holistic dispute resolution approach may improve arbitration from the drafting of the dispute resolution agreement to the conduct of the proceedings.

Moderator: Elie Kleiman

Speakers: Bruno Guandalini, Janey L. Milligan, Kathleen Paisley, Melanie van Leeuwen

Panel 14: 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.

Moderator: Alvaro Galindo

Speakers: Patrick Baeten, Mariam Gotsiridze, Lord Hodge

Coffee Break

(10.45AM – 11.15AM)

Morning – Session 2
(11.15AM – 12.15PM)

Panel 15: The Great Debate: “A World Without Investment Arbitration?”

The institution of ISDS is under attack. As the world of arbitration reacts, it is not yet clear what reforms will ultimately look like – or whether we’ll see the 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.

Moderator: Jan Kleinheisterkamp

Speakers: Carolyn Lamm, Toby Landau

Commentator: Ong Chin Heng

Closing Session
(12.15PM – 1.15PM)

Closing Keynote Address – Lord Carloway
Introduction to the 26th ICCA Congress to be held in Hong Kong
Closing Remarks