

The background of the entire page is a photograph of the Washington State Capitol building, showing its iconic dome and classical architecture. A large, semi-transparent red diagonal shape is overlaid on the left side of the image, extending from the top left towards the bottom right.

WAW
4th Edition

**Washington
Arbitration Week
2023**

November 27 - December 1



Washington Arbitration Week

Washington D.C. is the epicenter of investment arbitration. It has the headquarters of the International Centre for Settlement of Investment Disputes (ICSID), law firms specialized in investment arbitration, public international law and international commercial arbitration, international organizations, United States federal agencies specialized in investment arbitration, embassies, vibrant law schools, NGOs and think tanks. Washington D.C. Arbitration Week (WAW) provides an organic D.C. forum in international arbitration for its legal community and the international and foreign community connected to it. WAW will further advance the analysis and discussion of developments reflected in arbitral awards, treaties and international instruments at the forefront of international arbitration.

WAW's panels will follow a dynamic format and foster an open discussion about the future of international arbitration. They will shed light on new arbitration techniques, focus on developments and evolving interpretations and views, and discuss the best practices for international arbitration in the new virtual reality.

WAW 2023 will be a showcase of international arbitration in Washington, D.C. On behalf of all of our supporters, panel speakers and moderators, we welcome newcomers and experienced practitioners alike to our city and arbitration community.

WAW Founders,

José Antonio Rivas & Ian A. Laird



Circle of Supporting Organizations



Circle of Law Firms



Circle of Experts



Program Editorial Team

José Antonio Ricas - Xtrategy LLP (Program Curator)

Ian A. Laird - Crowell & Moring (Program Curator)

Maria Lucia Casas - Xtrategy LLP

Juan Pablo Rodríguez - Xtrategy LLP

Caroline Green - Xtrategy LLP

Camilo Torres Casanova - Xtrategy LLP

Jesse Lieberfeld - Xtrategy LLP

Upasana Pandey - Georgetown University

Sara Saiz Abbott - Georgetown University

Raphaëlle Petit - Georgetown University

Frankie Collins - Case Western Reserve University

Munia El Harti Alonso - Concepción Global

Advisory Committee

Meg Kinnear - ICSID Secretary - General
Borzu Sabahi – Curtis Mallet-Prevost Colt & Mosle LLP
Charles B. Rosenberg, Squire Patton Boggs
Gaela Gehring Flores - Allen & Overy
Lee Caplan - Arent Fox LLP
Marinn Carlson, Independent Arbitrator
Kelby Ballena - Allen & Overy
Lucinda A. Low - Steptoe & Johnson
Petr Polášek - White & Case

WAW Founders & Executive Committee

José Antonio Rivas
Xtrategy LLP
Co-Chair of WAW

Ian A. Laird
Crowell & Moring LLP
Co-Chair of WAW

EVENT PROGRAM

Monday, Nov 27

- 9:00am - 10:15am EST Judges vs. Arbitrators? Assessment of International Arbitration Awards by the Judiciary After Nigeria v. P&ID
- 10:30am - 11:45am EST The Experience and Expectations of Diversity: A Conversation with Foreign Attorneys and Partners in US Law Firms and Boutiques, Academics and Students from Multiple Backgrounds
- 1:30pm - 2:45pm EST Practical Session: Drafting of Pleadings in Investment Arbitration
- 3:30pm - 4:45pm EST Technology Panel: Artificial Intelligence and New Gadgets for International Arbitration
- 5:30pm-6:45pm EST ECT Modernization or Collapse? Will the EU opposition against investment arbitration and the diverse views of EU member countries lead to ECT collapse or its modernization (with or without EU countries)? What could the outcome on the status of the ECT, precisely a multilateral charter “treaty” on “energy”, signify for the international rule of law, and for the global interest of environmental protection and sustainability in the midst of climate change, and investment in renewable energies?

Tuesday, Nov 28

- 9:00am - 10:15am EST International Investment Treaties and Provisions Sensitive to Climate Change, and the technology revolution: A close look at Aerospace, Seabed Mining Disputes, and the Environment.
- 10:30am - 11:45am EST The impact of global price volatility on calculating damages in international arbitration
- 1:00pm - 2:15pm EST The Ukraine Crisis and Post-War Scenarios
What are the next steps in the reconstruction of Ukraine? How will it be paid for? What role will Russia play in response to human rights violations, cultural property destruction or appropriation?
- 2:30pm - 3:45pm EST Next Generation Disputes: The Convergence of ESG, Labor, and Human Rights in International Arbitration and Beyond (Co-sponsored with Arbitral Women and BHRLA)

Wednesday, Nov 29

9:00am - 10:15am EST	Update and Status on Section 1782 of Title 28 of the United States Code (“Section 1782”)—allowing an “interested party” to a foreign proceeding to seek US-style discovery from a person or entity located in the United States—and ramifications for International Arbitration
10:30am - 11:45am EST	The Interplay between the ICJ/PCIJ Judgments and Investment Arbitration
1:00pm - 2:15 p.m. EST	“Implementation of the 2022 ICSID Rules of Arbitration, Lessons Learned and Challenges Ahead in the Global Reshuffling of Investment Dispute Resolution”.
3:00pm - 4:15pm EST	International Arbitration and the Challenges of Financial Services in the First Three Decades of the New Century
4:30pm 5:45 pm EST	Practical Session: Drafting the Procedural Order and the First Hearing: Workshop on investor-State and International Commercial Arbitration on How to Draft the Procedural Order
6:15pm - 7:30pm EST	5 Things to Think About When Initiating Your Arbitration (Co-sponsored by ICC YAAF)

Thursday, Nov 30

9:00am - 10:15am EST	Practical Session: Fact and Expert Witnesses, Witness Declarations and Witness Preparation for the Hearing
10:30am - 11:45am EST	Bifurcation (or trifurcation?) in Investment Arbitration – a success story? What have been the impacts on efficiency and costs?
12:15 p.m - 1:30 p.m EST	Alternative approaches to valuing damages in Investor-State Arbitration
3:00pm - 4:15pm EST	International Arbitration in the Era of Climate Change: Renewable Energies, Geoengineering and Critical Mineral Industry
4:30pm - 5:45pm EST	Funding of International Arbitration Proceedings, Enforcement of Awards, and Purchase of Awards in a More Technologically Advanced World and in the Midst of ISDS Reform. How Has Arbitration Financing Evolved in the Last Five Years with Technological Advances, ISDS Reform Negotiations, and Codification of Rules of Arbitration on Funding?

Friday, Dec 1

- 9:00am - 10:15am EST The Geopolitics of UNCITRAL Group III: Representative Positions on Different Issues With more than five years into the discussions about ISDS reform, and the completion of the work on the Arbitrator Code of Conduct, where does Working Group III go next? Are we any closer to an international investment court?
- 10:30am - 11:45am EST Amicus Curiae, Local Community and Collective Interests in International Investment Arbitration
- 12:30 pm - 2:00 p.m. EST El primer nombramiento como árbitro en casos inversionista-Estado: logros y desafíos de cuatro mujeres árbitro y guía institucional (Co-sponsored with Club Español e Iberoamericano de Arbitraje "CEIA")
- 2:30 p.m. - 3:45 p.m. EST Dispute Resolution at International Organizations
How does the world of administrative tribunals and sanction boards in organizations such as the World Bank Group or the Inter-American Development Bank work in addressing disputes, developing and applying procedure, consideration of precedent, appointing adjudicators, and enforcing awards?

1. Judges vs. Arbitrators? Assessment of International Arbitration Awards by the Judiciary After Nigeria v. P&ID

November 27

📍 JAMS 1155 F St NW #1150, Washington, DC 20004

🕒 9:00am - 10:15am EST

In person + virtual

Moderator:



Nicole Silver

Panelists:



Judge Eduardo C. Robreno,
McCarter & English, LLP



Michael Evan Jaffe,
Pillsbury Winthrop



John Laird,
Crowell & Moring



Matthew H. Kirtland,
Norton Rose Fulbright
US LLP

This panel examines the interaction between judges and arbitrators in international arbitration cases, particularly when awards are challenged on the basis of fraud. The role of the judiciary in such instances is debated, with some advocating for greater judicial involvement in reviewing arbitral awards and others maintaining the importance of the finality of such awards. The recent Nigeria v. P&ID decision is used as a lens to examine the essential role that judges play in ensuring the rule of law in investment and international disputes, setting legal standards applied in arbitration cases, and preserving the legitimacy of the investor-State dispute settlement system – ISDS. Judicial views concerning the role and competency of arbitration tribunals to address questions of fraud will be examined, particularly given the limited avenues to obtain third-party disclosure traditionally available in international arbitration tribunals.

2. The Experience and Expectations of Diversity: A Conversation with Foreign Attorneys and Partners in US Law Firms and Boutiques, Academics and Students from Multiple Backgrounds

November 27

📍 JAMS 1155 F St NW #1150, Washington, DC 20004

🕒 10:30am - 11:45am EST

In person + virtual

Moderator:



Gaela Gehring Flores,
Allen & Overy

Panelists:



Kim Keenan,
JAMS



Rebecca Vélez,
HKA



Todd Weiler,
Independent International
Arbitrator



Claudia Frutos-Peterson,
Curtis, Mallet-Prevost,
Colt & Mosle LLP

This panel examines the experience and expectations of diversity in law firms and boutiques. The discussion involves foreign attorneys and partners, arbitrators, academics, and students from diverse backgrounds. The aim is to explore the diversity-related challenges individuals and organizations face, the role of diversity in attracting and retaining talent, the potential benefits of diversity for the legal profession, and particular considerations that law firms, providers of arbitration-related services, and arbitral institutions may be considering and implementing to foster racial, cultural, gender, and age-related diversity, as well as diversity and inclusion for people with disabilities. The panel may also discuss unconscious bias, cultural differences, the need for mentoring and sponsorship programs to support diverse attorneys, and the importance of diversity to enhance the quality of legal services and building stronger relationships with clients.

3. Practical Session: Drafting of Pleadings in Investment Arbitration

November 27

📍 Allen & Overy 1101 New York Ave NW, Washington, DC 20005

🕒 1:30pm - 2:45pm EST

In person + virtual

Moderator:



María Carolina Durán,
Baker Botts

Panelists:



Alexandre Meyniel,
Cartier Meyniel
Schneller



Nicolás Cordoba,
Freshfields Bruckhaus
Deringer



Ricardo Chirinos,
Covington & Burling LLP



Liz Snodgrass,
Three Crowns

In international arbitration, the written phase usually consists of a memorial, a counter memorial, a reply and a rejoinder. These written submissions will normally contain a statement of facts, legal submissions, and the request for relief. Often, they are accompanied by evidence, including witness statements, expert reports, and exhibits. In this session, various counsel will explain the main practical guidelines for effective drafting of memorials, counter-memorials, replies and rejoinders. Panelists will also discuss the possibility, advantages, and risks of applying restraint in pleadings by submitting shorter briefs.

4. Technology Panel: Artificial Intelligence and New Gadgets for International

November 27

📍 Allen & Overy 1101 New York Ave NW, Washington, DC 20005

🕒 3:30pm - 4:45pm EST

In person + virtual

Moderator:



Dmitri Evseev,
Founder of Arbitration
City Ltd

Panelists:



Kelby Ballena,
Allen & Overy



Catalina Brito,
Greenberg Traurig LLP



Luis M. Martinez,
International Centre for
Dispute Resolution



Elizabeth Chan,
Tanner De Witt

In response to Covid-19, legal counsel and arbitrators began to further rely on digital tools and various new technologies to conduct hearings, hold meetings, and produce evidence. Last year, ICC's Arbitration and ADR Commission updated their report on information technology (IT) in international arbitration. The updated report revealed that 93% of respondents believe technology has transformed arbitration by helping streamline processes and improving the cost-effectiveness of the process. The results also show that the use of technology tools in international arbitration would increase in the future, including a break from old practices such as hard copy filings, and the increased use of more underused forms of technology, such as e-briefs with hyperlinked exhibits.

In parallel, the use and exploration of applications based on artificial intelligence has been exploding, creating possibilities for greater efficiency, challenges to monitor its use, and raising the ever-lasting question of what tasks—in arbitration, in our case—remain uniquely reserved for humans, and how to prevent abuse of AI technologically and ethically.

This panel will explore new technologies in International Arbitration that allow users to gain an advantage to develop their practice, communicate with others, and present better filings and hearings. This panel will also explore the basic and complex uses of artificial intelligence in international arbitration, the potentially appropriate technological means, if any, to monitor its use, and any appropriate ethical guidelines that may prevent abuse when relying on AI in international arbitration.

5. ECT Modernization or Collapse?

November 27

📍 Allen & Overy 1101 New York Ave NW, Washington, DC 20005
🕒 5:30pm - 6:45pm EST (Allen & Overy is offering a reception after the panel)
In person + virtual

Moderator:



Patrick W. Pearsall,
Allen & Overy

Panelists:



Alexandre de Gramont,
Dechert LLP



Prof. Dr. Nikos Lavranos,
European Federation of
Investment Law and
Arbitration



Christopher Weil,
Mintz



Dorieke Overduin,
Sovereign Arbitration
Advisors

The modernization of the Energy Charter Treaty has been on the table since 2017 and the adoption of a modernized text was scheduled for November 22nd, 2022. Nonetheless, the voting process has been postponed indefinitely due to a massive exodus of withdrawals from EU countries. Paradoxically, countries such as France, Germany, Spain, Netherlands, Slovenia and Luxembourg have announced their withdrawal even though initially the European Commission pushed for a modernization of the ECT.

The available text of the Modernized ECT aims towards balancing investor protection and host States sovereignty. Moreover, it proposes the inclusion of sustainable development and CSR provisions, as well as the creation of a novel flexibility mechanism that will allow Parties to exclude investment protection for fossil fuels in the urge to fight climate change and environmental degradation. Nonetheless, in the eyes of various EU members, these provisions are not enough to meet the objectives set out in the Paris Agreement. Therefore, as noted before, a coordinated and massive withdrawal of EU countries from the ECT might occur soon. In any event, since the adoption of reforms to the ECT requires unanimous voting, the Modernized ECT might never see the light, instead we might see the collapse of the treaty.

In light of *Achmea* with regard to enforcement of an investment arbitration award based on an intra-EU bilateral investment treaty, and *Komstroy* concerning the enforcement of an ECT award—and the European Union Court of Justice (“ECJ”) and European Commission opposition to enforcement in the territory of any EU Member State, as well as outside of EU territories—a hot topic is the survival clauses of intra-EU BITs and the ECT. The collapse of the ECT on its own does terminate the international law obligation to respect investors’ rights during the period established by such clause of the ECT. Reaching agreement of reform of the ECT cannot be oblivious to the will of non-EU Member States of such treaty, and their potential desire to maintain the protection of their nationals as investors in the EU. Even if reform leading to amendment of the survival clause of the ECT were achieved, there remains the question of whether rights granted to private parties such as investors—and exercised in investment arbitrations—can be deleted under the international rule of law as if the rights had never existed.

An additional issue is the rationale of high courts of non-EU States—notably in the United Kingdom and Australia, both common law systems—when deciding that despite the opposition of the EU Commission and ECJ, international investment arbitration awards are under applicable international law enforceable in their respective territories. Such issue may be inseparable from the much-awaited developments in United States Courts and upcoming hearings in early 2024 concerning enforcement of investment arbitration awards against Spain and Romania. Finally, there is the question of where to seek enforcement and through what practical asset tracing means, given what some might qualify as the recalcitrant position EU against enforcement in EU territory of international awards.

6. International Investment Treaties and Provisions Sensitive to Climate Change, and the technology revolution: A close look at Aerospace, Seabed Mining Disputes, and the Environment. How can new investment treaties become international instruments equipped for the new frontier in human, climate, and technology evolution?

November 28

📍 Baker Botts 700 K St NW, Washington, DC 2000

🕒 9:00am - 10:15am EST

In person + virtual

Moderator:



José Antonio Rivas,
Xstrategy LLP

Panelists:



Christian Dippon,
NERA



Chloe Baldwin,
Steptoe



Maria Banda,
Gibson Dunn



Mahnaz Malik,
Twenty Essex

In the wake of the Paris Agreement and the evidence of climate change on daily life regardless of geographical location around the world, new-generation investment treaties have further developed environmental protection provisions. Developments in aerospace and deep-seabed mining technology are being pushed further by investments from private companies and States. In parallel, the corporate world is being influenced by UN Guidelines on Business and Human Rights and there are slow ramifications seen in a handful of investment treaties that have binding obligations for investors to respect human rights, including environmental or climate-change related obligations.

This panel aims to explore the new provisions on climate change and environmental protection, seabed mining and aerospace, and human rights, that may be considered in investment treaties and model investment treaties, so as to analyze those fields and advance—substantively—the new boundaries of investment treaties by encouraging and protecting investments in conformity with environmental, and human rights protection, as well as technically tuned with the progress made in aerospace and seabed mining.

The underlying question remains whether these international instruments are or could be well-equipped for the new frontier in technology, climate change and human rights, so as to promote and protect much needed qualified investments.

7. The impact of global price volatility on calculating damages in international arbitration

November 28

📍 Baker Botts 700 K St NW, Washington, DC 20001

🕒 10:30am - 11:45am EST

In person + virtual

Moderator:



Dr. Borzu Sabahi,
Curtis Mallet-Prevost
Colt & Mosle LLP

Panelists:



Sveta Ksenofontova,
Cornerstone



Tim Hart,
HKA



Natalia Maria Szlarb,
Wiley Rein



Seabron Adamson,
CRA

Calculating damages in disputes over long-term investment projects is challenging for parties and tribunals. Evidence from damages experts often relies on models of projected cash flows of the business. Whether experts—and ultimately parties and tribunals—should take into account price spikes, which are so recurrent in the volatile markets, when calculating damages for violations of international treaty or contract obligations? Why it may be crucial to consider price volatility? And, how should the price volatility be considered?

Consistent with the principle of full reparation from the PCIJ in *Chorzow*, “reparation must, as far as possible wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”. At what point in time the affected asset should be valued? Choosing the time of the valuation may be crucial as prices of assets may vary significantly within short periods of time.

The discussion of whether to consider and how to consider price volatility in the calculation of damages adds to the discussion of whether the valuation of the investments or assets affected by the unlawful act should be done right before the breach by the respondent took place, for example right before the expropriation occurred, or at the time of the award.

Are there means to consider price volatility? Are there methods to mitigate or account for abrupt changes in prices that might even have historical support so that a tribunal could be inclined to follow certain approaches for their predictive and/or non-speculative value, over other approaches? These and more questions will be explored by this WAW panel

8. The Ukraine Crisis and Post-War Scenarios. What are the next steps in the reconstruction of Ukraine? How will it be paid for? What role will Russia play in response to human rights violations, cultural property destruction or appropriation?

November 28

Covington & Burling 850 10th St NW, Washington, DC 20001

1:00pm - 2:15pm EST
In person + virtual

Moderator:



Marney Cheek,
Covington & Burling LLP

Panelists:



Sirshar Qureshi,
PwC



Luke Wochensky,
Pillsbury Winthrop
Pittman



Gene M. Burd,
FisherBroyles

The world awaits the end of the Ukraine-Russia war. When the armed conflict does end, international humanitarian and investment law could function as very useful tools for Ukraine to mitigate loss, human rights violations, and cultural property destruction. International armed conflict laws on occupation and property destruction may inform the post-war legal framework. International human rights treaties and the International Criminal Court could serve as helpful instruments for penalizing perpetrators. Investment law through the Russian-Ukraine BIT might cover and help to recover losses suffered by foreign investors.

This panel aims to untangle post-conflict scenarios from the Ukraine-Russia war. One advantage of international law is its large scope. The panel will discuss the range of mechanisms available to Ukraine, whether through investor-State arbitration, human rights tribunals, or other proceedings before the ICJ. The underlying questions are whether international law holds enough power to influence the behavior of Russia in current times or to comply with any judgements or awards resulting from these mechanisms? Or whether a realistic approach would be that they rest for posterity waiting for a completely different geopolitical reality yet to come.

9. Next Generation Disputes: The Convergence of ESG, Labor, and Human Rights in International Arbitration and Beyond (Co-sponsored with Arbitral Women and BHRLA)

November 28

📍 Covington & Burling 850 10th St NW, Washington, DC 20001
🕒 2:30pm - 3:45pm EST
In person + virtual

Moderator:



Cherine Foty,
Senior Associate
Covington & Burling LLP

Panelists:



Clovis Trevino,
Partner Covington &
Burling LLP



Somesha Ferdinand,
Former Global Head of
Compliance, CIB at Natixis
Corporate & Investment
Banking



Maria Lucia Casas,
Senior Associate
Xstrategy LLP



Shanda Galloway Botts,
SVP, Ethics and Compliance,
Employment Law & Litigation
at AARP

Elizabeth Donnelly,
Attorney Adviser for the
United States National
Contact Point, U.S. State
Department

During the last years, the focus on the impact of foreign investment on human rights and Environmental, Social, and Governance (“ESG”) standards has increased. The discussion has evolved around the responsibilities of companies during its operations on environmental protection, labor standards, and human rights.

References to Human Rights, Corporate Social Responsibility (“CSR”) and ESG standards are now not only being included in corporate policies of big companies, but also on commercial contracts and national legislations. Such references derive from soft law guidelines from international organizations such as the OECD and the United Nations. States have also included references to human rights in their investment treaties as soft law, exceptions, and very few as binding obligations. Examples of this are the 2016 Nigeria–Morocco BIT and the Economic Community of Western African States (ECOWAS) Supplementary Act. The increase in Human Rights, CRS and ESG-related obligations in instruments of domestic and international law might increase the number of disputes related to those areas.

This panel will discuss, among others: The various initiatives that companies and international organizations are implementing to secure that enterprises comply with CRS and ESG Standards; how treaties could incorporate provision on investors’ behavior that include obligations to respect international human rights standards?; and whether arbitration is an appropriate means of resolving Human Rights and ESG disputes, or whether there are alternative means such as mediation to successfully resolve these types of disputes.

10. Update and Status on Section 1782 of Title 28 of the United States Code (“Section 1782”)—allowing an “interested party” to a foreign proceeding to seek US-style discovery from a person or entity located in the United States—and ramifications for International Arbitration

November 29

📍 Greenberg Traurig LLP 2101 L St NW STE 1000, Washington, DC 20037
🕒 9:00am - 10:15am EST
In person + virtual

Moderator:



Teddy Baldwin,
Alliance Partners Law

Panelists:



Daniel Pulecio-Boek,
Greenberg Traurig,
LLP



Michael Rodriguez,
Allen & Overy



Evan Glassman,
Steptoe & Johnson

John L. Murino,
Crowell & Moring LLP

A powerful tool for participants in international litigation lies in the US Code. Pursuant to Section 1782 of Title 28 USC, interested parties in an international or foreign litigation can request US-style discovery in the US district in which documents could be located as evidence. This provision, which was included in US procedural law to assist parties in litigation taking place abroad and to promote judicial cooperation between the US and other countries, has led to significant debate about its scope and applicability. For instance, does this section allow for the request of US-style discovery of documents that are not in the US? What if these documents are held by a US-based entity, with subsidiaries abroad? What is the exact meaning of international, or foreign litigation? Does it include international arbitration? Competing decisions of US Courts have concluded that interested parties may have different prerogatives, thus creating a need for clarification.

As cross-border litigation involving US parties has risen, parties have significantly increased their reliance on Section 1782. Approximately 200 petitions relying on Section 1782 are filed annually. In June 2022, the Supreme Court took the first step. From analyzing the term 'tribunal', the Court concluded that Section 1782 does not apply to international private arbitration outside of the US.

This panel will discuss how SCOTUS's most recent decision has impacted international arbitration. It will explore additional issues related to Section 1782, for example the meaning of the term tribunal and who, if anyone, may submit a request for discovery related to an international arbitration—either party in the dispute or the arbitral tribunal itself?

11. The Interplay between the ICJ/PCIJ Judgments and Investment Arbitration

November 29

📍 Greenberg Traurig, LLP 2101 L St NW STE 1000, Washington, DC 20037

🕒 10:30am - 11:45am EST

In person + virtual

Moderator:



Kiran N. Gore,
The George Washington
University

Panelists:



Clara Brillembourg,
Foley Hoag



H el ene Ruiz Fabri,
Sorbonne Law School



Jose Antonio Rivas,
Xstrategy LLP



Yannick Radi,
UCLouvain Faculty of Law



Reza Eftekhari,
IUSCT

Investment arbitration cannot be catalogued as a self-contained regime. Instead, it is part of public international law. ISDS tribunals have frequently considered and applied the reasonings of the ICJ and PCIJ judgements in their awards. In fact, ICSID tribunals have shown particular deference towards ICJ case law (for instance, in *Azurix v. Argentina*), have consistently relied on the definition of dispute provided in the PCIJ judgement of the *Mavrommatis* case, and have referred over a hundred times (including in *Crystallex v. Venezuela* and *El Paso v. Argentina*) to the *Elettronica Sicula S.p.A (ELSI)* ICJ judgment when addressing issues of arbitrary measures and legitimate expectations.

On its part, the ICJ has briefly addressed issues regarding standards contained in international investment law, such as legitimate expectations and fair and equitable treatment. In *Obligation to Negotiate Access to the Pacific Ocean*, the ICJ briefly stated that the doctrine of legitimate expectations does not exist in general international law, and therefore the existence of such obligation might be limited to *lex specialis* agreed upon by Contracting States of particular investment treaties that include such an obligation. In its recent decision on *Certain Iranian Assets*, the ICJ delved on the standards of full protection and security and fair and equitable treatment, and further explained that the obligation to respect a party's legitimate expectations is not part of customary international law. These ICJ judgments are obviously observed by investment arbitration practitioners for advocacy purpose to either support State-defense arguments or distinguish the ICJ case law from investment arbitration awards and the rights created for investors by investment treaties

This panel will address the interplay between ICJ/PCIJ judgments and investment arbitration case law, exploring the influence of the World Court in investor-State arbitration and vice-versa. Our WAW panelists will consider whether the influence of investment arbitration on the jurisprudence of the ICJ may reach a greater level of recognition than *lex specialis*, and whether the influence of ICJ judgments will become deeper, or whether there is a chance that investment tribunals might resist and diverge by falling outside of the scope of public international law and ICJ case law. Panelists will also discuss the difference and interplay in advocacy approaches between ICJ and investment arbitration, the treatment by the ICJ of the concept of legitimate expectations, and the effect that such approach may have in investment arbitration.

12. "Implementation of the 2022 ICSID Rules of Arbitration, Lessons Learned and Challenges Ahead in the Global Reshuffling of Investment Dispute Resolution".

November 29
📍 ICSID 1225 Connecticut Ave., N.W. Washington D.C.
🕒 1:00pm -2:15 p.m. EST
In person + virtual

Moderator:



Martina Polasek,
ICSID

Panelists:



Alex B. Kaplan,
ICSID



Marinn Carlson,
Independent Arbitrator



Antonio Parra



Ian A. Laird,
Crowell & Moring

The 2022 ICSID Rules and Regulations came into force on July 1, 2022, after six years of collaboration with stakeholders including, among others, State officials and legal counsel. They were designed to make the administration of ICSID cases more efficient and transparent and to ensure ICSID's facilities are accessible to a broader range of cases.

The amendments can be divided into three categories: (1) increasing transparency, (2) reducing the time and costs of the proceedings, and (3) updating the rules to regulate established practices in international arbitration, such as security for costs and third-party funding.

This panel will discuss the implementation and impact of the new ICSID rules after more than a year has passed since they came into effect.

13. International Arbitration and the Challenges of Financial Services in the First Three Decades of the New Century

November 29
📍 Dechert LLP 1900 K St NW, Washington, DC 20006
🕒 3:00pm - 4:15pm EST
In person + virtual

Moderator:



Courtney Hikawa,
Norton Rose Fullbright

Panelists:



David L. Attanasio,
Dechert LLP



Floriane Lavaud,
Debevoise & Plimpton LLP



Michael Seelhof,
Seelhof Consulting LLC



Thomas C. White,
Sullivan & Cromwell LLP

The 2008 financial crisis, the COVID-19 pandemic; recent inflation in the US, Europe and Asia, measures taken by multiple central banks to cool inflation; bank failures as seen in the US from Signature Bank and Silicon Valley Bank, and the Credit Suisse take over; and implementation of macro-prudential measures in banking to avoid systemic crisis, constitute financial sector phenomena or State acts that may continue to give rise to investment arbitration claims from banking and financial institutions. Crises in the financial sector and prudential measures to prevent or mitigate them may give rise to arbitration as observed in Addiko v. Slovenia, Croatia, and Montenegro, Ping An v. Belgium, and Gramercy v. Peru.

Additionally, bondholders or owners of similar financial instruments may also submit investment arbitration claims arguing that sovereign debt default and the host State's failure to honor its sovereign bond commitments constitute violations of investment treaty standards. Here, however, before getting to substantive issues of expropriation without compensation and fair and equitable treatment, among others, jurisdictional issues are central: Are sovereign bonds protected investments? Are loans? May investment treaties exclude sovereign debt from the definition of investment? Is the purchase of sovereign bonds an investment in the territory of the sovereign?

This panel, in addition to discussing how investor-State arbitration related to financial services may arise, the various fact patterns, jurisdictional questions and substantive treaty violations involved, will consider threshold requirements that investment arbitration tribunals may demand to reach adverse award against the State.

14. Practical Session: Drafting the Procedural Order and the First Hearing: Workshop on investor-State and International Commercial Arbitration on How to Draft the Procedural Order

November 29

📍 Dechert LLP, 1900 K St NW, Washington, DC 20006

🕒 4:30pm 5:45 pm EST

In person + virtual

Moderator:



Charles B. Rosenberg,
Squire Patton Boggs

Panelists:



Staci Gelman,
Crowell and Moring



Simon Consedine,
Three Crowns



José Ignacio García Cueto,
Clifford Chance

This workshop provides guidance on how to draft a procedural order that is efficient, practical, and tailored to the specific needs of the case at issue. The first procedural order (PO1) is an essential document outlining the steps to be taken during the arbitration and the applicable procedural rules. Effective drafting of PO1 is crucial for orderly arbitral proceedings that can save time and costs for the parties involved.

The workshop covers various topics, including the structure and content of the procedural order, the allocation of time for each stage of the arbitration process, and the use of technology in arbitration. The first hearing will also be discussed, as well as the importance of setting the tone for the arbitration process. The workshop aims to equip participants with necessary skills and knowledge to draft effective procedural orders and conduct efficient first hearings in investor-state and international commercial arbitration.

15. 5 Things to Think About When Initiating Your Arbitration (Co-sponsored by ICC YAAF)

November 29

📍 Dechert LLP 1900 K St NW, Washington, DC 20006
🕒 6:15pm - 7:30pm EST
(Dechert is offering a reception after the panel)
In person + virtual

Moderator:



Diogo Manuel Pereira,
De Almeida Pereira PLLC

Panelists:



Ankita Ritwik,
Gibson Dunn



Tatiana Sainati,
Wiley Rein



Mike Losco,
Dechert LLP



Juan Pedro Pomés,
Freshfields

Join us for an interactive roundtable discussion focused on common issues that practitioners face when commencing an ICC arbitration. Panelists will provide five practical and strategic tips for how to best plan for and initiate an arbitration—and avoid common pitfalls. For example, what should be your strategic considerations when drafting a request for arbitration? And how should client expectations and settlement considerations influence your pre-arbitration planning? Time will also be reserved for questions from the audience.

16. Practical Session: Fact and Expert Witnesses, Witness Declarations and Witness Preparation for the Hearing

November 30

📍 Crowell & Moring 1001 Pennsylvania Avenue NW, Washington, DC 20004
🕒 9:00am - 10:15am EST
In person + virtual

Moderator:



Ashley Riveira,
Crowell & Moring

Panelists:



Andrew Ness,
JAMS



Miguel Nakhle,
Compass Lexecon



Chris Polson,
PwC



Michael Guiffré,
Crowell & Moring

Appearing as a witness and facing a possible cross-examination can be intimidating. In order to prevent your witness from feeling unfamiliar, anxious, or stressed, in certain jurisdictions, including in the US, counsel for either party customarily prepares the witness so as to envisage what to expect and be ready to withstand the might of opposing counsel during cross-examination. Importantly, however, there is no international arbitration rule on witness preparation in international arbitration—and the lawfulness and appropriateness of witness preparation varies from jurisdiction to jurisdiction. Most institutional arbitration rules provide little guidance concerning witness preparation. In some jurisdictions, mock testimony and cross-examination is normal and widely used, while in other jurisdictions, excessive witness preparation can be seen as unduly influencing a witness and potentially tainting their testimony.

This panel will touch on the International Bar Association's Rules on the Taking of Evidence in International Arbitration, which have gained broad acceptance since their introduction in 1999, and the other guidelines practitioners use when preparing and working with fact witnesses.

As there is no international consensus on working with witnesses in their preparation, through experience by counsel, this panel will aim at identifying best practices and pitfalls in the process of witness preparation, including the drafting of the witness declaration, and the preparation for the hearing through practical insights.

17. Bifurcation (or trifurcation?) in Investment Arbitration – a success story? What have been the impacts on efficiency and costs?

November 30

📍 Crowell & Moring 1001 Pennsylvania Avenue NW, Washington, DC 20004

🕒 10:30am - 11:45am EST

In person + virtual

Moderator:



Ian A. Laird,
Crowell & Moring

Panelists:



Jennifer Haworth McCandless,
Baker Botts



Jeffery Commission,
Burford



Rafael Boza,
Pillsbury Winthrop Shaw
Pittman



Lindsey D. Schmidt,
Gibson Dunn



Kenneth B. Reisenfeld,
BakerHostetler

Bifurcation often refers to the separation of arbitral proceedings into jurisdictional and a merits (or liability) phases. Trifurcation would further separate the merits into merits and quantum phases. Arbitral proceedings that are bifurcated (or trifurcated) contrast with one-stage arbitral proceedings (combining jurisdiction, merits and quantum). Bifurcation has been contested in terms of efficiency and costs. When requested, tribunals must consider whether splitting the process into more than one phase will either result in the loss of efficiency (or increase in costs), or the impossibility to adjudicate part of the claims of the dispute, given potential strong uniformity between the preliminary and merits questions of the case. Academics and practitioners generally conclude that there is no single answer to the dilemma of bifurcation (let alone trifurcation), but evaluations should be made on a case-by-case basis.

According to an ICSID study about the efficiency of arbitration proceedings in 2018, the average duration of a case in the Centre, after the constitution of the tribunal, is three years and seven months. Nonetheless, regarding 29 cases that were bifurcated into merits and jurisdiction phases, a contrasting reality appeared: Cases dismissed on preliminary grounds concluded in approximately two years on average; but cases that entered the merits phase took an average of over five years. Thus, the question of efficiency is up for discussion. "Trifurcating" cases adds an additional layer of complexity. Moreover, matters related to the submission of complex evidence, the practice of hearings, the closeness between the merits of the case and the damages to be awarded are all factors weighing into the discussion.

This panel will discuss the performance of tribunals following a single phase of arbitral proceedings integrating jurisdiction, merits and quantum, on the one hand; and the performance of tribunals bifurcating or trifurcating their proceedings. Instead of taking a simplistic approach assuming that the claimant would always favor a single phase of integrated proceedings, and respondent would always be inclined to request bifurcation (or trifurcation), the panel will consider the nuances that the facts of a case may have to determine, from a strategic standpoint, what may be more convenient for efficiency, good order and persuasion by counsel before the tribunal, and by the tribunal to conduct the arbitration.

18. Alternative approaches to valuing damages in Investor-State Arbitration

November 30

📍 Crowell & Moring 1001 Pennsylvania Avenue NW, Washington, DC 20004

🕒 12:15 p.m - 1:30 p.m EST

In person + virtual

Moderator:

Panelists:



Ian Clemmence,
PwC



Julie Carey,
NERA



Melissa Stear Gorsline,
Jones Day



Tiago Duarte-Silva,
Charles River Associates



Mark Kantor,
Independent Arbitrator

International customary law requires States to provide full reparation to investors for harm caused by internationally wrongful acts. The goal of full reparation is to wipe out all the consequences of the illegal act. BITs and multilateral treaties routinely include standards for calculating damages in cases of lawful expropriation. However, in the case of a breach of a treaty such as an unlawful expropriation or breaches of fair and equitable treatment, full protection and security, or non-discrimination treatment, there is no indication on which valuation standard the tribunal should use in assessing the damages due.

This panel, relying on PricewaterhouseCoopers 2023 - PwC Damages Study, will discuss statistics on the damages requested by claimants, those proposed by respondents in their defense, and those actually awarded by arbitrations tribunals. The panel will bring the perspective of quantum experts, arbitrators, and counsel in trying to understand the use of different methods in calculating damages. It will discuss various approaches to valuing damages in investor-State arbitration, including income-based approaches (discounted cash flow (DCF) analysis, adjusted present value, capitalized cash flow), assets-based approaches (e.g., sunk costs), and market-based approaches (comparable company's method, comparable transactions method).

Additionally, the panel may shed some light on the methods to calculate quantum that experts and tribunals may prefer as they might be a better fit with certain types of investments or projects, as characterized by their duration and industry.

19. International Arbitration in the Era of Climate Change: Renewable Energies, Geoengineering and Critical Mineral Industry

November 30

📍 White & Case 701 13th St NW # 600, Washington, DC 20005

🕒 3:00pm - 4:15pm EST

In person + virtual

Moderator:

Panelists:



Dara Brown,
White & Case



Petr Polásek,
White & Case



Garrett Rush,
Secretariat



José Alberro,
FTI



Kenneth Kratovil,
HKA

Climate change is one of the greatest threats to the natural environment. The dangers posed by climate change have prompted scientists to turn to geoengineering. Geoengineering is defined as the intentional large-scale manipulation of the environment which has the potential of reducing climate change effects. While various geoengineering methods promise significant benefits, the benefits to the environment may be offset by the potential harm that can be caused by it. Risks associated with geoengineering include environmental disruptions such as droughts, permanent damage to the ozone layer etc.

Climate change is one of the greatest threats to the natural environment. The dangers posed by climate change have prompted scientists to turn to geoengineering. Geoengineering is defined as the intentional large-scale manipulation of the environment which has the potential of reducing climate change effects. While various geoengineering methods promise significant benefits, the benefits to the environment may be offset by the potential harm that can be caused by it. Risks associated with geoengineering include environmental disruptions such as droughts, permanent damage to the ozone layer etc.

This panel may discuss the issue of liability and quantum calculations when it comes to damages caused by climate-change and geoengineering projects. How would the international law regime address climate engineering intervention gone wrong? How would the international law regime address damages caused by actions or omissions affecting the environment and/or by climate change?

The panel may also discuss whether BITs and ISDS are effective tools to facilitate sustainable development and “climate-positive” actions. Moreover, the panel will examine the role of international arbitration in the resolution of international disputes related to climate change.

20. Funding of International Arbitration Proceedings, Enforcement of Awards, and Purchase of Awards in a More Technologically Advanced World and in the Midst of ISDS Reform. How Has Arbitration Financing Evolved in the Last Five Years with Technological Advances, ISDS Reform Negotiations, and Codification of Rules of Arbitration on Funding?

November 30
📍 White & Case 701 13th St NW # 600, Washington, DC 20005
🕒 4:30pm - 5:45pm EST
In person + virtual

Moderator:



William Marra,
Certum Group

Panelists:



Jeffery Commission,
Burford



Celeste Owens,
Gallagher



Kristen Young,
White & Case



Sam Taylor,
S-RM



Lisa Snow,
Snowbridge Global
Advisory

During the last decade, the industry of third party funding (TPF) arbitration —both international commercial and investor-State—has grown significantly. The evolution of, and limitations to, third-party funding in international arbitration, which remains an active industry, is now influenced by various procedural and regulatory initiatives from States and arbitration centers, and the ongoing discussions by the Working Group III of UNCITRAL.

Though the initial rationale for TPF is access to justice for impecunious clients with claims that could be successful before international tribunals—as teams of underwriters and arbitration advisors may conclude after running due diligence analyses—, financially solid companies also use TPF to diversify risk and monetize claims.

This panel may explore, from the funder, counsel, damages expert, asset recovery, and insurer perspectives: How the general requirements to fund any legal dispute might be fulfilled, the due diligence performed before funding becomes a reality, the interaction between the funder and the funded party during the course of the arbitration, the role of asset tracing in the enforcement of an arbitral award and the application of new technologies for enforcement of awards, as well as insurance products offered to cover risks against adverse costs and failure to enforce arbitral awards.

21. The Geopolitics of UNCITRAL Group III: Representative Positions on Different Issues

With more than five years into the discussions about ISDS reform, and the completion of the work on the Arbitrator Code of Conduct, where does Working Group III go next? Are we any closer to an international investment court?

December 1

📍 Wiley Rein, Wiley Rein LLP, 2050 M Street NW. Washington, DC 20036
🕒 9:00am - 10:15am EST
In person + virtual

Moderator:



Marinn Carlson,
Independent Arbitrator

Panelists:



Margie-Lys Jaime,
Professor of Law, University of
Panama; Panama's representative
at UNCITRAL Working Group III



Jae Sung Lee,
UNCITRAL



Karin L. Kizer,
US Department of State



Josh Simmons,
Wiley Rein

Between October 9th and 13th, the United Nations Commission on International Trade Law Working Group III met again in Vienna to discuss possible reforms to the Investor-State Dispute Settlement (ISDS) system. Negotiations in ISDS reform have been carried out for some years now, and that has led to the adoption of instruments like a draft code of conduct for arbitrators and draft provisions on mediation. Nonetheless, challenging initiatives, such as the creation of an advisory centre on international investment law and the revision of possible general procedural requirements for arbitration, are still within the docket of negotiators from several countries.

As part of an international organization, WG III is still subject to international political dynamics. This panel will explore the role that geopolitics plays in the negotiations to reform the ISDS process. Thus, questions will be raised about the influence of States, the type of reforms that they have proposed, and the margin of negotiation that States and their representatives may have. Moreover, interesting debates may happen around the bloc formation that occurs in each region of the globe, as well as the concerns that have appeared between developed and developing countries, countries involved in armed conflicts, and the influence of other international actors to reach final agreements.

22. Amicus Curiae, Local Community and Collective Interests in International Investment Arbitration

December 1

📍 Wiley Rein LLP, 2050 M Street NW. Washington, DC 20036
🕒 10:30am - 11:45am EST
In person + virtual

Moderator:



José Antonio Rivas,
Xstrategy LLP

Panelists:



María Camila Rincón,
Foley Hoag



Vanessa Rivas Plata Saldarriaga,
Ministry of Economy and Finances (Peru)



María Carolina Durán,
Baker Botts

As investment disputes continue to grow every year based on ICSID and other statistics, there remain concerns about transparency and public scrutiny, including by interested local communities, in investment arbitration proceedings. Amicus curiae and local community considerations might play a significant role in identifying social, local community, and environmental interests that may be crucial to explain the acts of the host State, that might help its defense, and that the Tribunal might consider in the investment arbitration proceedings. High-profile arbitrations, including AES v. Hungary and Bear Creek, have generated public attention due to decisions that considered amicus curiae from civil society groups or international organizations.

This panel will analyze the role that local communities and civil society may have in investment arbitration through filing amicus curiae, or even by filing submissions that rely upon erga omnes obligations under public international law—on environmental protection or fundamental human rights—attempting to legitimize their intervention in investment arbitration proceedings. The fine balance between a politically motivated proceeding and arbitration that gives justified deference to public participation will be discussed. With concepts like a ‘social license’ in mining as developed by case law, it remains to be seen how much of a role local community and collective interests may and should play in investment arbitration proceedings.

23. El primer nombramiento como árbitro en casos inversionista-Estado: logros y desafíos de cuatro mujeres árbitro y guía institucional (Co-sponsored with Club Español e Iberoamericano de Arbitraje “CEIA”) This will be the first Spanish session in WAW

December 1

📍 Miller & Chevalier, 900 16th NW, Black Lives Matter Plaza, NW Washington D.C.
🕒 12:30pm - 2:00pm EST (A light lunch will be served)
In person + virtual

Moderator:



Margarita Sánchez,
Miller & Chevalier
(U.S)

Panelists:



Rainbow Willard,
Willard Arbitration
(U.S)



Margie-Lys Jaime,
Árbitro independiente,
Profesora de Derecho,
Universidad de Panamá



Natalí Sequeira,
Líder de Equipo
y Consejera Jurídica,
CIADI



Mélanie Riofrio Piché,
Árbitro independiente,
Riofrio IDR
(Ecuador/España)



Sabina Sacco,
Árbitro independiente,
Sabina Sacco Arbitration
(Chile/Suiza)



Deva Villanúa,
Árbitro independiente,
Devarb (España)



Dyalá Jimenez,
Árbitro Independiente,
DJ Arbitraje
(Costa Rica)

Con el fin de visibilizar nuevas caras y promover mayor diversidad en el arbitraje hispanoparlante en la comunidad de arbitraje en Washington D.C. Estados Unidos y el mundo, este panel del Washington Arbitration Week (WAW)—la Semana de Arbitraje de Washington D.C.—coorganizado por el Capítulo DC/NY del CEIA y apoyado por el CEIA Mujeres persigue dos objetivos: (i) Educar a la comunidad arbitral acerca del procedimiento (formal e interno) de nombramientos de árbitros en casos inversionista-Estado; y (ii) tener un debate con mujeres árbitros para intercambiar experiencias y recomendaciones de cara a los primeros nombramientos. Lo anterior será desplegado a partir de las historias de cuatro mujeres excepcionales con experiencia en arbitraje de inversión y algunos lineamientos del CIADI, la institución líder en arbitraje inversionista-Estado.

24. Dispute Resolution at International Organizations

How does the world of administrative tribunals and sanction boards in organizations such as the World Bank Group or the Inter-American Development Bank work in addressing disputes, developing and applying procedure, consideration of precedent, appointing adjudicators, and enforcing awards?

December 1

📍 Miller & Chevalier, 900 16th NW, Black Lives Matter Plaza, NW Washington D.C.

🕒 2:30pm - 3:45pm EST

In person + virtual

Moderator:



Jeffrey A. Lehtman,
Miller & Chevalier

Panelists:



Maria Lapetina,
Miller & Chevalier



Jonathan Shapiro,
Shapiro Advisors LLC



Brian D. Patterson,
IMF

Tomás Solís,
Greenberg Traurig, LLP

Vanessa Durán,
IADB

International organizations and multilateral development banks have several dispute resolution mechanisms at their disposal, including a series of internal processes and proceedings used to identify, investigate, and sanction potential misconduct by borrowers and other third parties (e.g., whether borrowers have engaged in prohibited practices). The World Bank Sanctions Board, for example, is an independent administrative tribunal that makes decisions based on sanctionable misconduct in development projects. Similarly, the Inter-American Development Bank's Sanctions System aims to stop fraud and corruption in IDB-Group financed projects. In addition to these internal mechanisms, international organizations and multilateral development banks may become parties to external proceedings, such as civil litigation, either as litigants seeking to resolve commercial disputes with borrowers, or as third parties responding to discovery requests or other requests for information.

This panel will examine how international organizations and multilateral development banks address disputes through internal and external proceedings. From the make-up of the independent tribunal or sanctions board in internal sanctions proceedings to strategic considerations involved in commercial litigation, international organizations and their various stakeholders must navigate complex legal issues distinct from more traditional commercial actors. This panel will seek to address the diversity of these issues, including a discussion of recent court precedent relating to the immunities enjoyed by international organizations.