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31ST ANNUAL ITA WORKSHOP

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The Institute for Transnational Arbitration’s 31st Annual Workshop was held this year in Plano, Texas, just outside of Dallas. This year’s program explored the topic: “Expect the Unexpected: Adjudicating Changed Circumstances in Commercial and Treaty Arbitration.” Speakers from across the globe gathered to discuss the key issues in this area. Highlights included keynote addresses on the law of changed circumstances in commercial and treaty arbitrations, panels discussing the challenges that counsel face when anticipating changed circumstances in drafting contracts and arguing these doctrines in arbitrations, and a debate exploring when investment treaties can remedy injuries resulting from legislative and regulatory changes. Each of the panels and presentations is discussed more below.

Visit <http://www.cailaw.org/Institute-for-Transnational-Arbitration/Events/2019/ita-workshop.html> for more details.

A. A Tour Around the Arbitration World



The Workshop commenced with an informative “Tour Around the Arbitration World” moderated by Soledad O’Donnell of Mayer Brown. This Young ITA panel provided Workshop attendees with a survey of recent developments in four ITA regions: Africa, Asia, the European Union, and Latin America.

Africa

Demilade Isioma Elemo, Young ITA Regional Chair for Africa, reinforced that while Africa has a diverse jurisprudence and an increasing consciousness of arbitration (reflected by the proliferation of intra-Africa BITs), African arbitrators and counsel are still underrepresented in international arbitration. She also addressed updates to domestic investment laws in Namibia, Egypt, the Ivory Coast, and South Africa. As for recent developments in commercial arbitration, she discussed South Africa passing the International Arbitration Act, Angola becoming an official contracting state to the New York Convention, and Nigeria and the Organization for the Harmonization of Business Law in Africa (OHADA) reforming their arbitration provisions.

(See **WORKSHOP**, page 2)

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ITAFOR VIRTUAL CONFERENCE “ARBITRATION AND TECHNOLOGY”

FINAL REPORT

María Inés Corrá

M. & M. Bomchil, Buenos Aires

Between July 23 and August 2, 2019, ITAFOR conducted its first virtual conference on “Arbitration and Technology”, where the forum had the chance to debate on the impact of new technologies on the arbitral practice.

The virtual conference raised the attention of the forum participants and served to trigger a necessary debate with regard to the use of technology in arbitration and evidenced that the innovative technologies represent a relevant challenge for the practice.

We share below some of the main issues discussed in the conference:

Artificial intelligence and machine learning: technology for decision-making arbitration process

María del Mar Herrera spoke about Machine Learning or “Automatic Learning”, the technology that provides machines with learning capacity, using data and algorithms with the aim at recognizing patterns that allow an analysis that emulates the cognitive functions of a human being. With the development of Machine Learning, a number of technological applications have been created with the aim at applying it to the practice of law, and they have received the name of Legaltech.

The following are examples of the application of said technologies to law: the technology that allows the analysis of judicial precedents to predict with a high degree of likelihood, aspects such as the result of a process, or the technology already in use by some countries to help in the judicial decision-making process.

It was also highlighted the debate currently held by governments, scholars and technological companies on issues such as: the data protection behind the algorithms used, and the transparency and ethics in the use of said data; the need to inform about the methodology used; the vulnerability of the independence of arbitrators with the use of these technologies; if one of the parties involved would be left defenseless before the other for not being able to afford said technologies; and if this type of technologies really improves the quality of decision-making process. From the latter, it was highlighted that the decision-taking process of a judge or an arbitrator is not automatic, and it includes several legal assessments that do not correspond to an exact science.

In general terms, the participants considered that the root of the problem lies on the possible improper use of the technology (for unethical purposes) rather than on the technology itself. Likewise, there was a high consensus in the difficulty of establishing a balance between freedom and regulation, so that technological development and freedom of the parties to make their case are not discouraged.

(See **CONFERENCE**, page 2)

EXPERTS...IN THE NEWS



Sarah Kahloun



Anna Stockamore

Sustaining Member **Shearman & Sterling LLP** has designated **Sarah Kahloun** (Austin) and **Anna Stockamore** (Washington, D.C.) as additional representatives on the Advisory Board.



Dr. Azab Alaziz Alhashemi

Dr. Azab Alaziz Alhashemi (Arbitrator and Writer, Hamar) has joined ITA as an Academic/Government/Non-Profit Member.



Eduardo Bruera



Sara McBrearty



Charles B. Rosenberg



Francisco J. Battle

We are happy to welcome the following country reporters who have joined the ITA Arbitration Report Board of Reporters this quarter: **Eduardo Bruera** (King & Spalding LLP, Washington, D.C.) (Reporter for USA), **Sara McBrearty** (King & Spalding LLP, Houston) (Reporter for USA) and **Charles B. Rosenberg** (King & Spalding LLP, Washington, D.C.) (Reporter for USA) and **Francisco J. Battle** (Squire Patton Boggs, Santo Domingo) (Reporter for Dominican Republic).



John Buckley

Advisory Board Member **John Buckley** (Williams & Connolly LLP, Washington, D.C.) became an Elected Member of the American Law Institute this August and has been named to the Advisory Council of the International Institute for Conflict Prevention and Resolution. He also recently published the "U.S.A." chapter in *"The International Comparative Legal Guide: International Arbitration 2019 (16th ed, ICGL)."*



Clifford Hendel

Associate Member **Clifford Hendel** (IDR, Madrid) was recently appointed Deputy Chairman of the Dispute Resolution Chamber (DRC) of the **Fédération Internationale de Football Association (FIFA)**. The DRC is FIFA's internal organ that decides by arbitration disputes relating to the international status and transfer of players, contractual disputes of an international dimension, and disputes on training compensation and solidarity contributions. The post complements his role as one of seven arbitrators of the Basketball Arbitral Tribunal (BAT), the innovative and fast-growing arbitral body created several years ago by FIBA to resolve quickly and efficiently – by sole arbitrators deciding in equity – contractual disputes in the world of international basketball involving players, agents, coaches and clubs.



Enrique Jaramillo

Associate Member **Enrique Jaramillo** (IHS Markit, Houston) has returned to Houston, Texas after spending a year in Calgary, Alberta. In Houston, he will continue his international energy law practice with IHS Markit.



Kevin O'Gorman

Advisory Board Member **Kevin O'Gorman** (Norton Rose Fulbright US, Houston) has been named to the Board of Trustees of the Center for American and International Law, the parent organization of the ITA.



Prof. Jeswald W. Salacuse

Prof. Jeswald W. Salacuse (The Fletcher School of Law and Diplomacy, Medford), Distinguished Professor at the Fletcher School of Law and Diplomacy, Tufts University, has written and produced a new two-hour educational film: "Master Class on Investor-State Arbitration: What is it? How does it Work?" The course consists of two modules. The first discusses the conceptual and historical foundations of investor-state arbitration and the second, "Anatomy of and Arbitration," examines in depth a real investor-state dispute that arose as a result of Argentina's efforts to modernize its water and sewage system by granting a consortium of foreign investors a concession. Professor Salacuse served as Tribunal President in the case. The Harvard Program on Negotiation (PON) is distributing the course. For more information on the Master Class and to obtain a copy of the film, please consult the PON website at <https://www.pon.harvard.edu/shop/master-class-on-international-investor-state-arbitration/>



Mark P. Smith

Mark P. Smith (CAIL, Dallas) was named President of the ITA's parent organization, The Center for American and International Law by the organization's Board of Trustees. Smith has held a variety of leadership roles at CAIL for the past 30 years—including Director of ITA from 1993-1999—and most recently served as the organization's Interim President.



David J. Stute

David J. Stute (Pillsbury Winthrop Shaw Pittman LLP, Washington, D.C.), an international arbitration associate in Pillsbury Winthrop Shaw Pittman's Washington, D.C. office, will be publishing an article, "28 U.S.C. Section 1782—Looking for Consensus," in the December issue of the LCIA's *Arbitration International*.



Tomas Vail

Tomas Vail (Vail Dispute Resolution, London), Inaugural UK Chair of the Young ITA, has launched Vail Dispute Resolution, an independent disputes practice based in London advising clients on investor-state and international commercial arbitration. With a decade of arbitration experience, Tomas Vail is recognized by Who's Who Legal and Legal 500 UK as a leading arbitration practitioner.



Ioannis Vassardanis

Ioannis Vassardanis (Ioannis Vassardanis & Partners, Athens), ITA's Reporter for Greece and Managing Partner at Ioannis Vassardanis & Partners, has been appointed as Secretary General of the French-Hellenic Chamber of Commerce and Industry until the summer of 2021. The French-Hellenic Chamber of Commerce and Industry provides support to Greek and French companies wishing to expand their business activities in the French and Greek markets accordingly and promotes commercial collaboration between the two countries.



Stephan Wilske

Stephan Wilske (Gleiss Lutz, Stuttgart), ITA's Reporter for Turkey, was a Speaker at the 2019 Taipei International Conference on Arbitration and Mediation where he presented a paper on "International Arbitration and its Dark Sides, in Particular Corruption: What Arbitral Institutions Could and Should Do to Tackle Such Unwelcome Issues." The paper will be published in the November 2019 Issue of *Contemporary Asia Arbitration Journal*. Since September 2019, Mr. Wilske has been a member of the new ICC Task Force "Addressing Issues of Corruption in International Arbitration."