



CENTER FOR INTERNATIONAL
COMMERCIAL & INVESTMENT ARBITRATION

 Columbia Law School

Columbia Law School- Arbitration Newsletter

Issue 1, 31 March 2018

Foreword

In the wake of a prodigious increase in the volume of cross-border commercial transactions, arbitration has proven to be a functional and indispensable tool for dispute resolution on the international stage. It has transcended cultural divides based on legal traditions, outlasted judicial scepticism and proved its utility to global commerce. It is safe to say that international arbitration is here to stay.

International arbitration, not just as a method of dispute resolution but also as an area of substantive law, is fast evolving. This Newsletter attempts to serve as a repository of contemporary developments in the realm of international arbitration. It will aim to serve as a meeting place of ideas designed for arbitrators, counsel, law students, professors and researchers who are interested in the study and practice of international arbitration and are looking for opportunities to become involved. We are also proud to offer reader a regular contribution on developments in arbitration law in the EU from Mr. Quentin Declève, “*Updates from Brussels*”.

Columbia Law School has been a torch bearer of scholarship on arbitration. In the past, it has organized conferences and discussions that have instigated invigorating debates. The professors and students-past and present-of Columbia Law School have played an instrumental role in informing the discourse and practice of international arbitration. The Newsletter will present a montage of opinions on cutting-edge topics, upcoming opportunities, and a review of what professors and alumni are doing in the field of international arbitration at and outside Columbia Law School. It will also carry interviews of the who’s who of arbitration and blog posts on the developments shaping the world of arbitration.

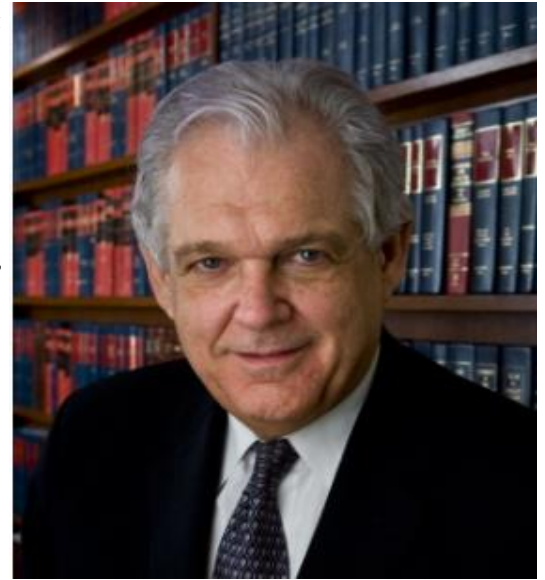
This Newsletter is prepared under the flagship of Center for International Commercial & Investment Arbitration (CICIA). The Center has become one of the most active research incubation centres in the realm of international arbitration, both commercial and investor-State, and with this new initiative, we welcome readers to be informed and explore the new avenues available for becoming associated with real time projects that would benefit the readers through greater information and ideas.

The Founder Editors of the newsletter, forward their special regards and thanks to Professor George A. Bermann and Professor Kabir Duggal, without whose guidance and constant support this Newsletter would not have seen the light of the day.

The Editor Board
CLS-Arbitration Newsletter

*Message from the
Director of CICA*

"With this inaugural issue of the Columbia Law School Arbitration Newsletter, the international-arbitration-minded students at Columbia Law School make their own very special contribution to the international arbitration community. This is only appropriate, given the truly outstanding talent and ambition among the JDs and LLMS who come to Columbia, helping to make it the foremost center for international arbitration study in the country. The Center for International Commercial and Investment Arbitration (CICA) at Columbia warmly welcomes this valuable initiative."



[Professor George A. Bermann](#)

Professor Bermann, who is the Jean Monnet Professor of EU law and Walter Gellhorn Professor of Law, is director for the Center for International Commercial and Investment Arbitration (CICA) at Columbia Law School. A Columbia Law School faculty member since 1975, Bermann teaches courses in transnational dispute resolution (international arbitration and litigation), European Union law, administrative law, and WTO law.

He is an affiliated faculty member of the School of Law of Sciences Po in Paris and the MIDS Masters Program in International Dispute Settlement in Geneva. He is also a visiting professor at the Georgetown Law Center. At the Law School, he founded both the European Legal Studies Center and the *Columbia Journal of European Law*, as well as CICA.

Bermann is an active international arbitrator in commercial and investment disputes; chief reporter of the ALI's Restatement of the U.S. Law of International Commercial Arbitration; co-author of the *UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (with Emmanuel Gaillard); chair of the Global Advisory Board of the New York International Arbitration Center (NYIAC); Council member of the AAA/ICDR; director of CPR; co-editor-in-chief of the *American Review of International Arbitration*; and founding member of the governing body of the ICC Court of Arbitration and a member of its standing committee.

*Professors at
Columbia Law School*



Professor Oliver Thomas Johnson, Jr.

A judge of the Iran-United States Claims Tribunal in The Hague and former partner at Covington & Burling LLP from 1980. Before entering to private practice, he acted as Legal Adviser of the United States Department of State.



Professor Kabir Duggal

“Future Leader”
Who’s Who Legal
Senior Associate,
Baker McKenzie, New York.



Professor Karl P. Sauvant, Ph.D.

Resident Senior Fellow at the Columbia Center on Sustainable Investment (CCSI). Senior Fellow at the International Centre for Trade and Sustainable Development. He has served as director of the United Nations Conference on Trade and Development's Investment Division.



Professor Robert Smit

Former Partner, Simpson Thacher and Bartlet LLP, New York. Listed as one of the leading international arbitration lawyers in the world by Chambers Global, Chambers USA, International Who’s Who of Business Lawyers, among others.

*Professors at
Columbia Law School*



Professor Viren Mascarenhas

Ranked as “one of the most highly regarded future leaders of arbitration in the Americas”
Who’s Who Legal 2018

Partner, King & Spalding LLP, New York



Professor Rahim Maloo

Ranked as “one of the leading international arbitration lawyers in the world” by
Law360, Chambers & Partners and Who’s Who Legal.

Partner, Gibson, Dunn & Crutcher LLP, New York.



Professor Alejandro Garro

He is an adjunct professor of law and senior research scholar of the Parker School of Foreign and Comparative Law of Columbia University. He is also Honorary Professor at the National University of Buenos Aires School of Law (UBA)



Professor Ian Laird

Recognized as a leading practitioner in the arbitration field by the International Who's Who Legal: Arbitration 2017

Partner, Crowell & Moring, Washington, D.C.

Updates from Brussels:

*What was 2017 and what to
expect from 2018*

“Dear Readers,

*The first column gives me the
opportunity to summarize some key
arbitration highlights from 2017 and to
discuss what 2018 is likely to offer.*

*Crucial developments have taken place
in the field of arbitration over the last
couple of months. Give it a read.”*



First, in May 2017, the Court of Justice of the European Union (the CJEU) held that [the European Union was not entitled to include ISDS provisions in its future trade agreements without requesting the involvement of its Member States](#). Then, in July, UNCITRAL agreed to consider a possible reform of the existing ISDS mechanisms.

Meanwhile, in the U.S., courts confirmed that annulled arbitral awards remain enforceable when their annulment is "*repugnant to fundamental notions of what is decent and just*" (D.C. Circuit in [Getma](#)). Additionally, SCOTUS ruled that the Federal Arbitration Act pre-empted a state-law rule requiring that [a power of attorney expressly refer to arbitration in order to allow an attorney-in-fact to bind his or her principal to an arbitration agreement](#).

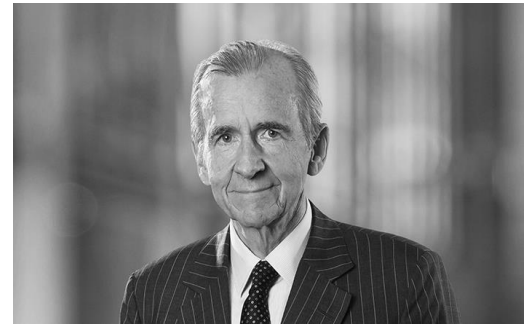
On the other side of the Pacific, the issue of third party funding gained greater attention after Hong Kong and Singapore both adopted provisions in this field. In the meantime, OHADA (*Organization for the Harmonization of Business Law in Africa*) [adopted and updated its Uniforms Acts on arbitration and mediation](#).

All in all, investment arbitration will remain a hot topic in Europe in 2018, as the CJEU is expected to hand down some important decisions regarding (i) [the validity of intra-EU BITs](#), and (ii) [the compatibility \(with EU law\) of the investment court system provided for in the EU-Canada Free Trade Agreement](#). In the U.S., arbitration practitioners will look carefully to the upcoming SCOTUS Opinion in [Epic System](#), a case which will provide Justice Gorsuch's first opportunity to express his views on arbitration since he joined the Court.

Mr. Quentin Declève is an associate at [Van Bael & Bellis](#), a leading, Brussels-based independent law firm which specializes in European and international law. Quentin Declève litigates at both domestic and international levels and has, in particular, developed an expertise in the field of EU litigation (including EU sanctions and restrictive measures and EU competition) and international litigation and arbitration. He is the author and editor of the [International Litigation Blog](#).

Meet the Alumni:**Mr. Christopher Sappala**
Partner, White & Case LLP

Mr. Christopher Seppälä, who founded White & Case's arbitration practice in Paris in 1988, specializes in international construction claims and disputes in relation to civil engineering, industrial (including nuclear) and building projects, as well as claims under contracts in the oil and gas industry.

***Could you spare some words on your journey from Columbia Law School to becoming a partner at White & Case LLP, Paris.***

On a personal level, I had an international background - European and U.S. - before I got involved in international arbitration. I went to Columbia Law School, as you know, and thereafter worked with a Wall Street law firm, doing mainly securities work and mergers and acquisitions. The important thing was that I got excellent and very rigorous training in the practice of law there - especially in the importance of attention to detail. I had very hard taskmasters. This initial training has, I believe, been invaluable to me in the rest of my career as it is in your first years of practice after law school that you learn to be a lawyer and to be either a good one or - in some cases, I am afraid - not such a good one. The habits you learn in those early years tend to stay with you for a lifetime. Thus, those years are absolutely critical.

After four years in New York, I moved to Paris as I had lived there as a child and wanted to work there in the field of international business law. Shortly after I arrived in Paris, in the early 1970s, it just happened that, as is well known, the world price of oil quadrupled leading to a construction boom in the oil producing countries, notably the Middle East. As a consequence, I found myself increasingly involved in construction projects in the Middle East and in the disputes, which quite often arose from them. Thus, my practice changed progressively from corporate work, which it had been initially in New York and Paris, to international construction and arbitration. Thereafter, in 1988, I was invited to join White & Case in Paris and start their international arbitration practice there. I have been working in this field at this firm since then.

You have practiced in the field of arbitration for years; how would you describe the changes and developments the field has witnessed and importance of arbitration as a dispute resolution tool.

When I started in the international arbitration field in the early 1970s, arbitration was a little-known field of practice. Those few of us who were doing it were nearly all general practitioners, and arbitration was just a side-line. But in subsequent decades arbitration has developed into a

sophisticated and important practice area in Paris, London, Switzerland and elsewhere. It has now become, some claim, the principal means of resolving international commercial disputes.

What we, as lawyers, need to keep in mind is that the law and the needs of clients are always changing. Therefore, a lawyer needs to remain attuned to business trends and be ready to adapt his or her practice to the changing needs of the market place. Over 40 or 50 years of practice, he or she may need to change his or her specialties several times- sometimes radically - to meet the new demands of clients and business and to remain useful.

What would be your advice to young practitioners who are trying to make a career in international arbitration, given that it is a very niche practice area?

For those wishing to practice in the international arbitration field, a student needs to acquire litigation experience, which can be acquired domestically or internationally. Having litigation skills (that is, in advocacy and the examination and cross-examination of witnesses, etc.) prepares a lawyer well for arbitration. Familiarity with, if not expertise in, both the common law and civil law systems (both substantive and procedural law) is also a great asset. It is further, of course, highly desirable to have a good knowledge of different languages (I would particularly recommend now Spanish and Mandarin which, together with English, are I believe the world's main languages today).

It helps a lot if you can find intellectual satisfaction in your chosen field of practice as I have been lucky to do in the fields of international construction and arbitration. It makes it so much easier to work when it is a pleasure to do so!

Finally, I would advise any young person beginning in a job at a high-pressure law firm to give particular attention to his/her health. For a profession that is as demanding as the practice of law, it is essential to stay healthy, which requires - in my view - enjoying some mental and/or physical diversion each day. I would myself advise, for example, a minimum average of one hour of physical exercise each day. But each person must decide what they want to do in this respect for themselves.

Meet the Alumni:**Mr. Abhinav Bhushan**
Director, South Asia, ICC

Mr. Abhinav Bhushan, is the Director, South Asia, ICC Arbitration & ADR International Court of Arbitration, International Chambers of Commerce (ICC).



Could you spare some words on your journey from Columbia Law School to becoming a Director, South Asia, ICC Arbitration & ADR International Court of Arbitration, ICC.

From early on in my academic career, I was fascinated by alternative dispute resolution mechanisms (e.g., arbitration and mediation), and how they could empower people from different cultures and legal jurisdictions to find a common forum outside of national courts, which are often perceived as “biased” against the foreign party. Coincidentally, the first matter I ever worked on involved an international arbitration seated in London. At the time, I was interning at Mulla & Mulla Cragie Blunt & Caroe (“Mulla”), where I remained between 2003 and 2008. After graduating from Government Law College, Mumbai (GLC), I worked as an associate for two years on multiple arbitration matters while at Mulla. Persistence, good recommendations, a good score at GLC and luck helped me get into Columbia Law School in New York. At Columbia, I was taught by Professor Rob Smit in his Advanced International Commercial Arbitration Seminar and Professor Horatia Muir Watt at her Transnational Litigation and Arbitration Lecture.

After completing my LLM at Columbia in 2011, I took stock of my journey to pursue my education and build a career – from Saharanpur, to Dehradun, Kota, Mumbai, and New York. The patterns that flowed confirmed that I had two passions: international experiences and arbitration. Thus, international arbitration was the logical career choice. The next step would be to find a job during the continuing economic crisis in 2011 – which would position me as close as possible to my desired career.

Professional life - Career graph: In 2012, I was fortunate to join the ICC as a deputy counsel in the Commonwealth Team. Interestingly, despite India contributing to a large portion of the ICC’s case load, I was the first Indian lawyer to be hired by the ICC Secretariat. For four years, I worked on arbitrations arising from all over the world and, more particularly, common law countries. In January 2016, I relocated to Singapore when I was promoted to my current position as the Director of South Asia for ICC Arbitration and ADR.

You have practiced in the field of arbitration for years; how would you describe the changes and developments the field has witnessed and importance of arbitration as a dispute resolution tool.

Arbitration has its roots amongst the business community in Europe. It then seeped into other parts of the world and today, in my view, it is the most robust mechanism to resolve commercial

disputes, specially, those which have a cross border element. As the economies of the world have transgressed from the West to the East and from the North to the South, we see a rapid rise in trade and cross border investments in the developing countries (Brazil, Africa, Asia etc.). Unsurprisingly, this economic activity has also brought a fair share of cross border disputes, majority of which are bring resolved by arbitration. Consequently, the legal landscape and legislations of developing countries vis-à-vis arbitration is rapidly changing. For instance, concepts like Security for costs, Third Party Funding, have been brought into practice and legislations. The adoption of UNCITRAL Model Rules in drafting arbitration legislations is another indicator of the increase of practice of arbitration. Today, the practice of arbitration is largely divided between the developed and developing countries.

I would describe the changes to be pro-arbitration and continuously evolving. Although, the growth/development of arbitration is not homogenous globally, the intention to promote commercial arbitration certainly is.

What would be your advice to young practitioners who are trying to make a career in international arbitration, given that it is a very niche practice area?

Arbitration offers many exciting prospects. Most commercial contracts today include an arbitration clause – which means that most disputes arising out of modern commercial relationships will be resolved through domestic and international arbitration. This highlights the importance of arbitration and the fantastic career options it provides. Take courses in private/public international law, international commercial arbitration and participating in arbitration conferences & events is a sure way to demonstrate an interest and get noticed in this field and gain the necessary academic background. An LL.M. with a focus on arbitration from a good university goes a long way to boost your credibility as an arbitration enthusiast. In this regard, and keeping the bias of an alumnus aside, CLS offers an excellent palette of arbitration courses and should be a top choice for students who wish to pursue a career in international arbitration.

Another important factor is to get your research and articles published. Ultimately, the objective is to distinguish oneself in the practice area – which requires an ability to embrace rejection with persistence and resilience. In the race to do well, it is critical to be patient and to work hard. Be prepared to be rejected by potential employers (many times) but continue striving to build your career in international arbitration.

Event Calendar

03 April 2018 Tuesday	4-7 April 2018 Wednesday- Saturday	04 April 2018 Wednesday	11 April 2018 Wednesday
<u>ISDS: The Wild, Wild West of International Law</u>	<u>ASIL Annual Meeting</u>	<u>The Center for American and International Law: Diversity and inclusion in International Arbitration</u>	<u>Cutting -Edge topics in Commercial Arbitration</u>
12 April 2018 Thursday	13 April 2018 Friday	17 April 2018 Thursday	17-21 April 2018 Tuesday to Saturday
<u>CPR: Best Practices for Resolving Government Disputes in Washington</u>	<u>New York International Law Review Symposium</u>	<u>CCMA Cisep/Fiesp Brazilian Arbitration Day in NYC</u>	<u>American Bar Association (ABA): 2018 Annual Conference of the Section of International Law.</u>
23-27 April 2018 Monday- Friday	25 April 2018 Wednesday	26 April 2018 Thursday	5-7 June Tuesday- Thursday
<u>UNCITRAL Working Group III: ISDS Reform</u>	<u>2018 Annual Grand Central Forum & Kaye Lecture</u>	<u>Exploring Intra-Tribunal Dynamics and Decision Making: Part I, The Tribunal's crystal Ball</u>	<u>HKIAC tribunal Secretary Training Programme</u>

Founder Editors



Columbia Law School and New York, in terms of experience in arbitration, has so much to offer and we wanted to create a platform that brings all that in one place: projects, research opportunities, internships, events, and networking; and this Newsletter not only endeavours to provide such a platform but is also a step towards forming a well-informed arbitration community. We would also like to thank our colleagues, Mr. Aladin Masri, Neeraj RS, Rohit Vaidyanathan and Ravi Mahto for all their help."

--[Ms. Shweta Sharma](#) and [Mr. Fabian Zetina](#)

LL.M. '18 candidates at Columbia Law School.

They hold keen interest in the field of arbitration and focuses their work and learning in Investment and Commercial Arbitration.

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