

Schedule

	Sunday May 23th	Monday May 24th	Tuesday May 25th	Wednesday May 26th
7:30				
8:00			CBAR's Breakfast at Sofitel	
9:00				
9:30		Working Program ICCA Day 01	Working Program ICCA Day 02	Working Program ICCA Day 03
10:00		Coffee-break		
10:30	Registration at Sofitel		Coffee-break	Coffee-break
11:00		Working Program ICCA Day 01	Working Program ICCA Day 02	Working Program ICCA Day 03
12:00				
13:00		Lunch	Lunch	
14:00				
14:30				YAP Program at Sofitel
15:00	Transfers to Sugar Loaf*	Working Program ICCA Day 01	Working Program ICCA Day 02	Coffee-break
16:00				
16:15				YAP Program at Sofitel
16:30				
17:00		Transfers to MAM		
17:30				
18:00	Opening Ceremony and Cocktail at The Sugar Loaf			
18:30			Transfers to NHM*	Transfer Sofitel - Pub
19:00		The Reception at MAM		
19:30				
20:00				Coquetel YAP at Descasados' Pub, Santa Teresa Hotel
20:30			Gala Dinner at National History Museum	
21:00	Transfers to Hotels Sofitel Copacabana Palace and Caesar Park	Transfers to Sofitel, Copacabana Palace and Caesar Park		Transfer Pub - Sofitel
21:30				
22:00				
23:00			Transfers to hotels Sofitel Copacabana Palace Caesar Park	

*From Sofitel, Copacabana Palace and Caesar Park



ICCA CONGRESS RIO 2010

Arbitration Advocacy in Changing Times

Hotel Sofitel, Rio de Janeiro, Brazil – May 23rd to May 26th – 2010



Organizing entity:



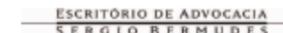
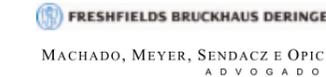
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Exhibitors



Speakers

Alejandro Escobar
Antonio Crivellaro
Arthur Marriott Q.C.
Audley Sheppard
Bernard Hanotiau
Carlos Alberto Carmona
Carlos Nehring
Claudia Frutos-Peterson
Claus von Wobeser
David Cairns
Diana C. Droulers
Doak Bishop

Donald Donovan
Dushyant Dave
Eduardo Zuleta
Emmanuel Gaillard
Francisco Orrego Vicuña
Guido Tawil
Guillermo Aguilar Álvarez
Jalal El Ahdab
John L. Gardiner
John Townsend
Josefa Sicard-Mirabal
Karim Hafez

Klaus Michael Sachs
Laurence Boisson de Chazournes
Luiz Olavo Baptista
Marinn Carlson
Meg Kinnear
Michael Pryles
Nigel Blackaby
Paul Friedland
Teresa Cheng
V.V. Veeder Q.C.
Yves Derains

Organizing Committee

Carlos Nehring Netto
Adriana Braghetta (CBAR President)
Eduardo Damião Gonçalves



Immediately following the ICCA Rio Congress, on May 26th, young arbitration practitioners (under 40) from all over the world will be gathering for the traditional YAP Conference. Join us!

Arbitration Advocacy in Changing Times

24th May 2010

9:00 Opening and Welcome

9:15 Effective advocacy in Arbitration

Chair: Arthur Marriott Q.C.-U.K.

Speakers: Donald Donovan-USA; Antonio Crivellaro-Italy; Carlos Alberto Carmona-Brazil

The recent proliferation of writing and training programs on advocacy testifies to the contemporary importance of this theme. For counsel advocacy means persuasive presentation, while for the tribunal the quality of the advocacy makes an enormous difference to its ability to assimilate the factual and legal issues and to decide the case confidently as well as to the time and cost of the proceeding. The complexity of claims, the volume of documentation, and the pressures of time present pressing forensic challenges. Pro forma jurisdictional objections and the proliferation of proceedings complicate the early stages of arbitrations. At the hearing, too often the documentary record is too large, the examination of witnesses poorly focussed, the legal foundation of the case not mature and there is excessive reference to rather than judicious selection of legal sources. This session looks at the expectations of advocacy and of counsel from the perspective of all the participants in the arbitral process.

- What does advocacy mean for counsel from common law and civil law jurisdictions?
- The parties in arbitration and their collaboration with counsel in order to achieve a persuasive presentation;
- Advocacy before arbitral institutions. Transparency in their decisions (appointments; recognition of the prima facie existence of an arbitral agreement; provision of funds and the effects of counterclaims; challenges; scrutiny of awards);
- What do arbitral tribunals want? The effective presentation of the factual and legal issues and their assimilation by the tribunal.

10:30 Break

11.00 Strategic Management in Commencing an Arbitration:

Chair: Yves Derains-France

Speakers: John Townsend-USA; Karim Hafez-Egypt; Meg Kinnear-Canada; V.V. Veeder Q.C.-U.K.

How can the advocate maximise the possibilities of success when drafting the arbitration clause or preparing the Request for Arbitration? Arbitration offers not only the possibility of forum shopping for the best seat or arbitral institution, but also for the preferred qualities of the decision-maker and even for the language of the proceeding. When is it best to concentrate efforts on the arbitral proceeding itself, and when are multiple fronts-other forms of ADR and/or other forums-preferable? When is it best to seek to separate jurisdictional, merits and liability issues? What can forensic aggression achieve and when is aggression counterproductive? For example, what are the advantages and disadvantages of multiple and obstructive jurisdictional objections, anti-suit

injunctions or the now not uncommon practice of seeking to pre-empt or even hijack the choice of language in an arbitration by appointing lawyers or arbitrators incapable of dealing with the evidence and applicable law in its original language?

This session looks at the major strategic decisions faced at the outset of any new or potential arbitration.

- The fundamental choices: arbitral seat; applicable law; ad hoc or institutional arbitration (and which institution); choice of arbitrators; language of the arbitration;
- The costs of arbitration and party payments;
- Jurisdictional objections, contract and treaty claims; the proliferation of proceedings;
- The implications of multi-tier dispute resolution clauses;
- The strategic use of national courts to support or challenge arbitral proceedings. Anti-suit injunctions;
- The use and abuse of the media by parties and counsel in international arbitration;
- Settlement discussions. How and when and what are the potential roles for the arbitral tribunal.

13:30 Lunch

15:00 Effective Advocacy in the Written and Procedural Phases of Arbitration

Chair: Carlos Nehring-Brazil

Speakers: Nigel Blackaby-U.K.; Jalal El Ahdab-Lebanon/France; Guillermo Aguilar Álvarez-Mexico; Diana C. Droulers-Venezuela; John L. Gardiner-Ireland

Modern international arbitration involves substantial written advocacy. There has developed a standardized procedure of full written submissions with documentary evidence attached, supported by written witness statements. This procedure has achieved wide acceptance, but is not free of unresolved cultural issues. Discovery and disclosure of evidence are an established part of this procedure, although in a more limited form than in common law jurisdictions. The use of written witness statements is justified by arbitral efficiency but raises disquiet as to the role of lawyers in the preparation of these statements. This session explores the proactive use of the flexibility of arbitral procedure as a tool of advocacy, and examines the characteristics of effective written advocacy.

- Effective written submissions;
- Managing discovery;
- Witness statements and depositions;
- Information technology and advocacy.

17:00 Close of Day 1

25th May 2010

9:00 Experts: Neutrals or Advocates?

Chair: Bernard Hanotiau-Belgium

Speakers: Klaus Michael Sachs-Germany; Dushyant Dave-India; Paul Friedland-USA

Experts have a prominent role in international arbitration, particularly in the assessment of damages. In most legal systems experts are presumed to be independent, but in reality their reports are

often drafted in close consultation with counsel, and at times they even participate in the strategic management of the arbitration. The result can be self-serving expert evidence, such as the imaginative quantification of the *lucrum cessans*. At the same time, there are calls for more direct instruction of experts by the tribunal, including the mandatory early meeting of experts, confrontation of experts, and the greater use of tribunal appointed experts. These proposals place the experts closer to the tribunal than to counsel, but create a risk of delegation of parts of the decision to an expert.

This session looks at the effective use of experts in international arbitration and their optimum relationship with the tribunal, counsel and the parties.

- The role of experts in international arbitration.
- Independence of experts. Relationships with counsel and the tribunal.
- Imaginative quantification of the *lucrum cessans*.
- Conferencing of experts.
- The experts in the decision-making process of the arbitral tribunal.

11:00 Break

11:30 The Hearing

Chair: Emmanuel Gaillard-France

Speakers: David Cairns-New Zealand; Marinn Carlson-USA; Claus von Wobeser-Mexico; Alejandro Escobar-Chile

How significant is oral advocacy in international arbitration and how culturally specific is this significance? There is no doubt that an oral hearing is usually essential for due process, but its contribution to arbitral efficiency is often more ambiguous. Who should decide how much oral evidence and legal argument should take place, and what standards should be applied? Is a 'chess clock' approach appropriate or should the tribunal evaluate the significance of counsel's use of its time in the presentation of the case at the hearing? What are the appropriate standards for the questioning of witnesses and the use of legal sources? What are the limits of the discretion of counsel and what ethical standards should apply to their advocacy?

This session considers the best practices for both counsel and arbitrators during the oral phase of the arbitration.

- The examination and cross-examination of witnesses;
- The effective use of legal sources: How much is too much and what is the role for *iura novit curia*?
- Advocacy and time control in international arbitration;
- The relative merits of oral argument and post-hearing briefs.

13:30 Lunch

15:00 Advocacy after the issue of the Arbitral Award

Chair: Michael Pryles-Australia

Speakers: Audley Sheppard-New Zealand; Luiz Olavo Baptista-Brazil; Eduardo Zuleta-Colombia; Claudia Frutos-Peterson-Mexico

The objective of international arbitration is a final and enforceable award. However, increasingly the parties continue their dispute after the issue of the award, exploiting every opportunity to modify or nullify the award or to re-argue the issues. There has been an increase in the use of correction and clarification

procedures. There are periodic calls for the introduction of appeals procedures in arbitration. Annulment procedures are now a commonplace sequel to an ICSID award. As always there are strategies of challenge, delay and obstruction to the enforcement of awards in national courts, and these same strategies have now started to appear in the ICSID framework. This session looks at the question of post-award advocacy, and particularly the strategic issues raised for advocates by the issue of a favourable or unfavourable award, and how advocacy changes when the dispute ceases to involve contested factual issues and moves to the challenge or enforcement of an award.

- The relationship of interim and final awards: *res judicata* concerns;
- Correction and clarification of awards;
- Advocacy in annulment proceedings;
- Exequatur and the execution of awards;
- The enforcement of awards against a state or state entity.

17:00 Close of Day 2

26th May 2010

9:00 Arbitration Advocacy and Constitutional law

Chair: Francisco Orrego Vicuña-Chile

Speakers: Laurence Boisson de Chazournes-Switzerland; Guido Tawil-Argentina; Teresa Cheng-Hong Kong; Josefa Sicard-Mirabel-Dominican Republic

Fundamental rights are playing an increasing role in international arbitration. Constitutional law has been the traditional means for enforcing such rights under domestic law, but on occasions these procedures are put to a use that has strategic motives rather than the genuine protection of rights. The challenge of arbitral awards on constitutional grounds or the abuse of habeas corpus are among the new issues that need to be examined in this light. The primacy of domestic law under the Calvo Clause has also on occasions been invoked in the context of constitutional developments. Norms concerning public policy, national and transnational, are beginning to appear more frequently in both commercial and investment arbitration.

This session reviews these developments, and considers how issues of constitutional law and transnational public policy might be used effectively by advocates as sources of norms in international arbitration.

- Fundamental rights and international arbitration. Arbitral awards and constitutional law.
- The Calvo clause: rhetorical relic or timeless aspiration?
- The 'international' administrative contract and arbitration.
- Compliance with local legal requirements.
- The role of transnational public policy. Corruption and money laundering in commercial and investment relations.

11:00 Break

11:30 Keynote Address: Advocacy and Ethics in International Arbitration

Doak Bishop-USA

Close of Conference