

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

WAW
5th Edition

**Washington
Arbitration Week
2024**

December 2 - December 6

**Subject to changes.*



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 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.

The fifth edition of Washington Arbitration Week – WAW 2024 will be a showcase of international arbitration in Washington, D.C. On behalf of our sponsors and supporters, panel speakers and moderators, we welcome newcomers and experienced practitioners alike to our city and arbitration community.

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José Antonio Rivas & Ian A. Laird**



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Co-Chair of WAW

Event Program

Monday, Dec 2

Morning

8:30 Am - 8:50 Am	-Breakfast-	wiley
9:00 Am - 10:15 Am	If Not Investor-State Treaty Arbitration, Then What? Can Investment Contracts Replace Investment Treaties Including Bilateral Investment Treaties and Free Trade Agreements with Investment Chapters?	wiley
10:30 Am - 11:45 Am	How is the Withdrawal of European States from the Energy Charter Treaty Affecting Arbitration, Compliance with the International Rule of Law and Enforcement of Awards?	wiley
12:15 Pm - 1:30 Pm	Expert Witnesses and Gender Equality: The Evolving Landscape -Lunch Panel-	COVINGTON

Afternoon

2:30 Pm - 3:45 Pm	Features and Challenges of International Construction Arbitration and Multiparty Construction Disputes.	pillsbury
4:00 Pm - 5:15 Pm	What Will Be the Impact of the US Elections in Investment Arbitration?	pillsbury
5:30 Pm - 7:00 Pm	Networking Session	pillsbury

Tuesday, Dec 3

Morning

8:00 Am - 8:45 Am	-Continental Breakfast-	HK>A
9:00 Am - 10:15 Am	How Forensic and Financial Tools and Experts Can be Used to Assist with Jurisdictional and Causation Topics?	HK>A
10:30 Am - 11:45 Am	Corruption, Fraud and Violations of General Principles of Law in International Arbitration.	HK>A

Afternoon

1:00 Pm - 2:15 Pm	The D.C. Universe: The Power Players of Enforcement in Investment and ICSID Arbitration, and International Commercial Arbitration Awards.	Step toe
2:30 Pm - 3:45 Pm	Causation In ISDS arbitration: What is the Proper Causation Inquiry under International Law? What Must a Claimant Prove in Terms of Liability and Damages?	Step toe
4:00 Pm - 5:15 Pm	Progress of UNCITRAL Working Group III: The Elephant in the Room: Appellate Facility v Multilateral Investment Court; and the Status of the Advisory Centre on International Investment Law.	Step toe

Wednesday, Dec 4

Morning

9:00 Am - 11:45 Am

Workshop for Counsel and Arbitrators on Quantum and Cross Examination of Damages Experts: How to Conduct an Effective Cross-Examination.



Afternoon

12:00 Pm - 12:45 Pm

-Lunch-

**Hughes
Hubbard
& Reed**

1:00 Pm - 2:15 Pm

Time to Update the New York Convention to Ensure Efficiency and Fairness in the Enforcement of Arbitral Awards?

**Hughes
Hubbard
& Reed**

2:30 Pm - 3:45 Pm

The Future is Here: Arbitration in Space and Aviation Law

**Hughes
Hubbard
& Reed**

4:15 Pm - 5:30 Pm

Inside the Arbitrators' Chambers: Best Practices of Arbitrators in ICSID Proceedings.






5:45 Pm - 7:45 Pm

Welcoming Reception








Thursday, Dec 5

Morning


- | | | |
|---------------------|---|---|
| 8:30 Am - 8:50 Am | -Continental Breakfast- |  |
| 9:00 Am - 10:15 Am | The Tech Revolution in International Arbitration: The Impact and Use of AI on Lawyering and Adjudicating. |  |
| 10:30 Am - 11:45 Am | Are Dissenting Opinions in Arbitration Useful? How May Dissenters Contribute to Move the Law Forward in International Investment Arbitration? |  |


Afternoon

- | | | |
|-------------------|--|--|
| 1:30 Pm - 2:15 Pm | -Sustainability Walk Through Washington D.C.- |  |
| 2:30 Pm - 3:45 Pm | Expedited Proceedings in International Investment and International Commercial Arbitration: Features and Steps that Parties, Counsel and Arbitrators Must Bear in Mind and Take. |  |
| 4:00 Pm - 5:15 Pm | Remedies in Investment Arbitration: the Good, the Bad the Ugly. | 
 |
| 5:30 Pm - 7:00 Pm | Reception. |  |



Friday, Dec 6

Morning

9:00 Am - 10:15 Am State Defense in Investment Arbitration led by International In-House Counsel. **BAKER BOTTS** 

10:30 Am - 11:45 Am Non-Disputing Party Submissions, Amicus Curiae and Challenges of Non-Disputing Parties to Access Confidential Information. **BAKER BOTTS** 

Afternoon

12:00 Pm - 1:15 Pm Going Solo: Tips on Launching your Career as an Independent Practitioner
-Lunch Panel - **ICC**  **YAAF**
BAKER BOTTS 

1:30 Pm - 2:45 Pm Business and Human Rights in International Commercial and Investment Arbitration: How to Make it Right? **Arnold&Porter**

3:00 Pm - 4:15 Pm International Arbitration in the Era of Climate Crisis: COP 28, Oil and Gas Decommissioning, the Upcoming ICJ Advisory Opinion on Climate Change, and the Fund to Compensate Environmental Damages. **Arnold&Porter**

4:30 Pm - 6:00 Pm -Cocktail- **Arnold&Porter**

If Not Investor-State Treaty Arbitration, Then What? Can Investment Contracts Replace Investment Treaties Including Bilateral Investment Treaties and Free Trade Agreements with Investment Chapters?

Monday, December 2

🕒 9:00 am – 10:15 am EST

📍 Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036.

👤 In person + virtual

wiley

Moderator:



Josh Simmons
Partner, Wiley Rein

Panelists:



Ucheora Onwuamaegbu
International Attorney,
ArentFox Schiff



Michael Rodriguez
Associate, Hughes
Hubbard & Reed



Jonathan Ulrich
Of Counsel, Paul Hastings



James Mendenhall
Partner, Sidley Austin
LLP

In the ongoing debate over the future of investment protection, the question arises: if not investor-State treaty arbitration, then what? This panel considers the potential of investment contracts as a viable alternative to traditional investment treaties, including bilateral investment treaties and free trade agreements with investment chapters. Unlike treaties that offer broad protections for foreign direct investment, investment contracts are tailored to specific projects, establishing clear rights and obligations between the host State and the investor. These contracts can incorporate sustainable development obligations, encouraging investors to contribute to essential sectors such as health, education, and infrastructure, and consider internal public policy objectives of the State in industries such as oil & gas, renewable energies, and mining.

Could investment contracts become instruments that effectively align the interest of foreign investors and the host State's development priorities? Furthermore, by embedding specific responsibilities within the contract, these agreements might address criticisms of the one-sided nature of the investor-state dispute settlement mechanism, fostering a more equitable framework for resolving disputes. The reciprocal nature of investment contracts may create greater procedural and substantive balance, as the host State or State-owned company could easily identify contractual obligations that shall be performed by foreign investors, and the legal recourse—including direct investment contract claims and counterclaims—that the host State or State-owned company could pursue.

However, considering that there are over 3,300 investment treaties according to UNCTAD, with 2,222 currently in force, is such a transition realistic or even feasible? Is it desirable? Who can definitively claim that investment treaties have not provided protection to foreign investors while simultaneously attracting foreign investments under the framework of international law?

Are the public policy objectives of host States more effectively integrated into broader instruments like investment treaties or into more specific agreements such as investment contracts? This panel will address these critical questions by examining the desirability and implications of transitioning from a treaty-based system to a contract-centric framework, highlighting the potential benefits and challenges that may arise in the sphere of international investment.

How is the Withdrawal of European States from the Energy Charter Treaty Affecting Arbitration, Compliance with the International Rule of Law and Enforcement of Awards?

Monday, December 2

🕒 10:30 am – 11:45 am EST

📍 Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036.

👤 In person + virtual

wiley

Moderator:



Liz Snodgrass
Partner, Three Crowns

Panelists:



Gene Burd
Partner, Pierson
Ferdinand



Timothy G. Nelson
Partner, Skadden



Paul M. Levine
Partner, BakerHostetler

The withdrawal of European states from the Energy Charter Treaty (ECT) is set to significantly affect investment, arbitration, and the enforcement of international arbitration awards. As countries exit the treaty, investors in the energy sector may encounter increased uncertainty regarding asset protection, potentially leading to a decline in foreign direct investment in Europe. This change could prompt companies to reassess their long-term strategies, particularly in renewable energy, where legal frameworks are less clear.

The European Court of Justice's ruling in *Komstroy v. Moldova*, which deemed intra-EU disputes under the ECT incompatible with EU law, complicates the enforcement of arbitration awards. This ruling may lead EU courts to refuse enforcement of awards from intra-EU arbitration claims, creating further uncertainty for investors. The emphasis on the ECJ's interpretation undermines established arbitration mechanisms like ICSID and UNCITRAL, causing investors to doubt the reliability of international arbitration within the EU. This situation could diminish the credibility of arbitration mechanisms and lead to non-compliance with awards, destabilizing the system. Countries might turn to alternative frameworks like the proposed Multilateral Investment Court. However, this shift could raise tensions in fulfilling international legal obligations and enforcing awards.

This scenario could erode the credibility of arbitration mechanisms and result in non-compliance with awards, destabilizing the current system. Countries may turn to alternative dispute resolution frameworks, such as the proposed Multilateral Investment Court or the Investment Court System (ICS) under the EU-Canada Comprehensive Economic and Trade Agreement (CETA). However, this transition could create tensions in upholding international legal obligations and enforcing awards, raising broader concerns about the effectiveness of global investment protection agreements in an evolving geopolitical context. Meanwhile, enforcement of ECT awards against European states varies by jurisdiction. In the UK, courts have upheld the enforceability of intra-EU ICSID awards despite EU law objections, as seen in the *Achmea* case. Similarly, Australian courts have also recognized and enforced such awards, notably in the case of *Antin v. Spain*. The situation in the US is less clear, with pending appeals. Some cases like *NextEra v. Spain* have allowed enforcement, while others, such as *Blasket*, have denied it based on EU law. A consolidated ruling on this matter is expected soon.

This panel will address critical questions regarding the impact of ECT withdrawal on investment arbitration, challenges for investors in enforcing awards against European states, and the evolving global investment landscape. Experts will provide insights into these issues and the future of international investment and arbitration.

Expert Witnesses and Gender Equality: The Evolving Landscape.

Monday, December 2

- 🕒 12:15 pm – 1:30 pm EST - **Lunch Panel** -
- 📍 Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, DC 20001-4956.
- 👤 In person + virtual

COVINGTON

Moderator:



Clovis Trevino
Partner, Covington & Burling LLP

Panelists:



Julie Carey
Senior Managing Director,
Nera



Tyler Khoury
Director, HKA



Juli Saitz
Senior Managing Director,
FTI Consulting



Jamie Hagerbaumer
Associate, Brattle

The Equal Representation in Arbitration (ERA) pledge, introduced in 2015, sought to address gender inequality by promoting the fair representation of women in arbitral appointments. In light of similar concerns within expert witness roles, the Equal Representation for Expert Witnesses (ERE) pledge was launched in May 2022. This initiative aims to enhance the visibility and representation of women as expert witnesses throughout the dispute resolution community. The goal is to achieve proportional representation and full parity, whilst also encouraging women to aspire to expert witness roles.

This panel will explore the evolving landscape of gender equality in expert witness representation. It will assess the progress made since the ERE pledge's inception, consider ongoing challenges, and discuss the key actions required to ensure fair and equitable representation going forward. Our WAW panelists, which will include experts, arbitrators and counsel among others, will discuss, from their experience, how the progress and evolution towards expert witness and gender equality may be impacting international arbitration, how are tribunals, parties, and counsel reacting to having expert witness from more diverse backgrounds. May such greater diversity among expert witnesses help to further advance the fairness, efficiency, and justice of the arbitral process? The panel will feature leading voices from the legal, arbitral, and expert witness arenas, who will share their experiences and insights on advancing gender diversity.

Features and Challenges of International Construction Arbitration and Multiparty Construction Disputes.

Monday, December 2

🕒 2:30 pm – 3:45 pm EST

📍 Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth
Street NW, Washington, DC 20036-3006.

👤 In person + virtual

pillsbury

Moderator:



Gregory M. Williams
Sidley Austin LLP

Panelists:



Lillian Khoury
Associate, Steptoe LLP



Josh M. Lindsay
Partner, Crowell & Moring
LLP



Derrick Carson
Partner, Pillsbury LLP



Gayathri Shetty
Senior Manager,
Exponent

In international construction arbitration, one of the main challenges is navigating the complexities of joinder, consolidation, and related issues. Given the large number of participants usually involved in construction projects, it is often necessary to determine which parties should be included in proceedings and whether related arbitrations should be combined. Another challenge involves the sheer number of claims—sometimes reaching into the hundreds—associated with construction projects. This includes determining how to manage claims with varying characteristics and quantum, when to pursue litigation, and how to handle overlapping claims and counterclaims. These decisions are crucial due to the interconnected nature of construction disputes, where multiple parties and intertwined issues frequently arise.

This panel will examine the distinctive features and challenges of managing multiparty construction disputes and discuss the best approaches to addressing these issues in arbitration.

What Will Be the Impact of the US Elections in Investment Arbitration?

Monday, December 2

🕒 4:00 pm – 5:15 pm EST

📍 Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036-3006.

👤 In person + virtual

pillsbury

Moderator:



Marinn Carlson
Independent Arbitrator

Panelists:



Richard Deutsch
Partner, Pillsbury Winthrop
Shaw Pittman LLP



Gaela Flores
Partner, Hughes Hubbard
& Reed



Samantha Atayde
Partner, RRH
Consultores

The US presidential elections are closer day by day. By the time WAW commences, the world will be either adjusting to the possibility of Donald Trump's second term or witnessing Kamala Harris making history as the first female President in the US. The new President will face significant challenges, including ongoing regional conflicts such as Russia's invasion of Ukraine and the expanding conflict in the Middle East. Additionally, the fallout from a fraudulent election in Venezuela will add to the complexities in the Americas.

In recent years, the US, like much of the world, has made little progress in promoting free trade. While the US has focused on incentivizing domestic production, both Europe and China have implemented their own measures and subsidies. In the field of International Arbitration, the transition from NAFTA to the USMCA effectively ended the possibility of US investors submitting investment arbitration claims against Canada and vice versa. Nonetheless, US investors continue to depend on a robust network of bilateral investment treaties and free trade agreements to safeguard their interests through international adjudication. Although the US is not actively engaged in investment treaty negotiations, unlike the European Union, there seems to be no agenda to dismantle the current investment arbitration system.

What position will the new President likely take regarding investment arbitration? Could the framework established by the USMCA be replicated in future treaties, or was it a one-off arrangement? Will the energy transition and renewable energy become central themes in a new generation of US investment treaties? Some predict that the US might abandon investment treaties altogether, opting instead to encourage corporate negotiations between US investors and host states, as well as their state-owned enterprises. Will the new administration align with Europe's ambition to establish another international court for investment disputes, or will it maintain the current system of international arbitration? Additionally, how might the new US government address the ongoing series of favourable investment awards sought by investors against European and other states? These questions and more will be explored in this WAW panel discussion.

How Forensic and Financial Tools and Experts Can be Used to Assist with Jurisdictional and Causation Topics?

Tuesday, December 3

🕒 9:00 am – 10:15 am EST

📍 HKA 2020 K Street, NW, Suite 650, Washington, DC

👤 20006.

In person + virtual



Moderator:



Katie Hyman
Partner, Womble Bond
Dickinson.

Panelists:



Mathew Drossos
Partner, White & Case



Sencer Ecer
Senior Vice President,
Compass Lexecon



Laura Connor Smith
Partner, HKA



Glenn R. George
Partner, Bates White
Economic Consulting

Jurisdiction is a critical issue in ISDS proceedings, as it helps determine whether an investment falls under treaty protection. Forensic and quantum experts play vital roles by (i) tracing the flow of funds used for investments, (ii) identifying ownership of these resources, and (iii) detecting any signs of fraud or corruption. They also assess how external factors might disrupt the causal relationship between an event and the claimed damages.

This panel will explore how forensic, and quantum experts assist claimants and respondents in establishing or challenging jurisdiction and causation, and how their expertise can be applied in judicial contexts beyond ISDS. For example, their analysis could provide crucial evidence in civil cases involving financial disputes or fraud investigations.

Corruption, Fraud and Violations of General Principles of Law in International Arbitration.

Tuesday, December 3

🕒 10:30 am – 11:45 am EST

📍 HKA 2020 K Street, NW, Suite 650, Washington, DC 20006.

👤 In person + virtual



Moderator:



Kenneth B. Reisenfeld,
Partner, Baker & Hostetler
LLP

Panelists:



Kenneth J. Katrovil
Partner, HKA



Prof Dr. Yannick Radi
Professor of International
Law, UCLouvain



Jen Cherner
Partner, Mintz Group



Stephen R. Benz
Associate, Baker &
Hostetler LLP

Corruption, fraud, and other violations of the principle of good faith in global trade and investment presents significant challenges for international commercial and investment arbitration tribunals. In their pursuit of profit, parties may engage in illegal conduct to secure, procure, or execute contracts. While such practices are condemned within international arbitration, questions remain about the system's ability to address instances where corruption or fraud occurred either at the inception of an investment or during its operation. What does it mean for a system if corruption, fraud, or even money laundering at the outset of an investment results in a lack of jurisdiction to sanction both the investors and government officials involved in the unlawful scheme? Moreover, what recourse do tribunals have when such unlawful acts arise during the investment's operation?

Cases such as *World Duty Free v. Kenya*, which dealt with corruption in an investment contract arbitration, *Metal Tech v. Uzbekistan*, related to corruption in an investment treaty arbitration, and *Inceysa v. El Salvador*, where fraud was established at the time of the investment, underscore the serious consequences of these issues. Additionally, the recent case of *Vale v. BSG Resources* has also sparked considerable discussion, as the tribunal had to apply a high evidentiary threshold to allegations of corruption.

This panel aims to examine rulings and developments in investor-State arbitration cases. It will also focus on international commercial arbitration case law. The discussion will address violations of the general principle of good faith related to corruption, fraud, and other unlawful acts in the procurement or operation of foreign investments. The WAW panel will explore questions concerning the standard of proof, the implications of findings of fraud or corruption depending on when those unlawful acts occurred, and whether tribunals have any discretion in their rulings. This includes considerations related to the formulation of their awards and the damages they impose, all in the pursuit of addressing corruption, fraud, and other breaches of general principles of law.

The D.C. Universe: The Power Players of Enforcement in Investment and ICSID Arbitration, and International Commercial Arbitration Awards.

Tuesday, December 3

🕒 1:00 pm – 2:15 pm EST

📍 Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

👤 In person + virtual

Steptoe

Moderator:



Meg Kinnear,
Low & Kinnear Dispute
Resolution

Panelists:



Celeste Salinas Quero
Legal Counsel, ICSID



Steven K. Davidson
Partner, Steptoe



Sam Taylor
Head of Corporate
Intelligence, Americas,
S-RM



Rosario Galardi
Associate, Freshfields US
LLP

In international arbitration, winning an award is merely the first step; the real challenge lies in enforcing it across borders. The June 2024 ICSID background paper, “Compliance and Enforcement with ICSID Awards,” underscores the effectiveness of the ICSID Convention regime in investment arbitration. Research from the ICSID Secretariat indicates that domestic courts predominantly recognize and enforce ICSID awards without assessing their merits or jurisdiction, while limiting sovereign immunity defenses to the execution phase.

For the ICSID Convention, and in general for the international arbitration system, both commercial and investor-State, to function effectively, it is vital that States, investors and disputing parties comply with awards. When compliance fails, it is the responsibility of domestic courts and other competent authorities to enforce these awards. Consequently, successful compliance and enforcement are essential for maintaining party confidence in international arbitration.

This panel will discuss the findings of the ICSID background paper and analyze recent trends in D.C. Circuit opinions regarding the enforcement of investor-state and international commercial awards, among others in the cases of CIMEX, S.A., No. 21-7127 (D.C. Cir. 30 July 2024) and Titan Consortium 1, LLC v. Argentine Republic, No. 21-CV-2250, 2024 WL 3858821 (D.D.C. 19 August 2024). Additionally, it will examine the implications of federal appellate decisions interpreting the Foreign Sovereign Immunities Act, and will share strategies and tools for effective enforcement, including the area of investigation and asset tracing.

Causation In ISDS arbitration: What is the Proper Causation Inquiry under International Law? What Must a Claimant Prove in Terms of Liability and Damages?

Tuesday, December 3

🕒 2:30 pm – 3:45 pm EST

📍 Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

👤 In person + virtual

Steptoe

Moderator:



Charles B. Rosenberg
Partner, Squire Patton Boggs

Panelists:



Chloe Baldwin
Associate, Steptoe



Christopher Goncalves
Managing Director, BRG



Simon Consedine
Partner, Three Crowns



Vinita Juneja
Senior Managing Director,
Nera

Establishing a causal link between the alleged breach of the applicable instrument and the injury sustained is a critical aspect of determining the respondent's liability. Causation is also essential for discussing the existence and the amount of damages. Thus, it is vital for both parties in the dispute and the tribunal to clearly understand the burden and standard of proof required to establish causation.

This panel will explore various interpretations of causation in international law, particularly within the context of Investor-State Dispute Settlement (ISDS). It will examine the applicability of the "but for" causation standard, the two-tiered framework of factual and legal causation, and the relevant standards of proof.

Progress of UNCITRAL Working Group III: The Elephant in the Room: Appellate Facility v Multilateral Investment Court; and the Status of Advisory Centre on International Investment Law.

Tuesday, December 3

🕒 4:00 pm – 5:15 pm EST

📍 Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

👤 In person + virtual

Steptoe

Moderator:



Lee M. Caplan Partner,
ArentFox Schiff LLP.

Panelists:



Jeremy K. Sharpe
International Arbitrator



Hugo Romero
Partner, HHR Consultores



Honorable Judge
Charles N. Brower



Professor Don Wallace JR.
Professor of Law,
Georgetown Law

The UNCITRAL Working Group III continues its efforts to reform the investor-State dispute settlement system, which remains a central point of discussion and concern for Member States. Since its establishment in 2017, the Working Group has achieved considerable progress, including the recent draft statute for an Advisory Center on International Investment Dispute Resolution. This initiative aims to help states prevent international investment disputes and offer training to enhance their capacity, ultimately reducing both the occurrence of disputes and the associated damages.

One particularly contentious proposal is the establishment of an appellate body that would allow arbitration decisions to be appealed, or a multilateral investment court envisioned as a permanent judicial institution with fixed judges. Both initiatives seek to improve the system's predictability, uniformity, coherence, and ability to rectify inconsistent decisions, which are common criticisms of the ISDS mechanism. Key discussions on these topics are scheduled for September 2024. Could either of these institutions be better suited to create a more balanced system with greater consistency, or is this an unrealistic expectation given the thousands of different investment treaties currently in force?

This panel aims to explore the implications of establishing an appellate facility or a multilateral investment court, a topic that has sparked division and debate. For proponents, these proposals could address perceived deficiencies in the ISDS system, while opponents might view them as creating a white elephant which, given the characteristics of the ISDS system with more than 3,000 investment treaties—similar and yet different—, with great difficulty might be able to deliver sufficient consistency in a cost-effective manner.

Workshop for Counsel and Arbitrators on Quantum and Cross Examination of Damages Experts: How to Conduct an Effective Cross-Examination.

Wednesday, December 4

- 🕒 9:00 am – 11:45 am EST
- 📍 PwC 655 New York Ave NW, Washington, D.C. 20001
- 👤 In person + virtual



We are delighted to announce that as part of the Washington Arbitration Week, we will be holding an interactive expert witness cross-examination training session, co-organised with PricewaterhouseCoopers (PwC). This half-day event, co-organised with PwC, will provide a unique opportunity for lawyers to practice cross-examination of a quantum expert based on a mock investment arbitration case.

The aim of the course is to provide the lawyers with the opportunity to cross-examine a quantum expert in a safe environment, in front of a panel of experienced arbitrators, who will provide feedback to the teams. It offers a unique opportunity for lawyers to enhance their skills and confidence in cross-examining quantum experts, as well as to network with peers and experts in the field of international arbitration.

Time to Update the New York Convention to Ensure Efficiency and Fairness in the Enforcement of Arbitral Awards?

Wednesday, December 4

🕒 1:00 pm – 2:15 pm EST

📍 Hughes Hubbard & Reed 1775 Street, N.W., Washington, DC 20006-2401.

👤 In person + virtual

**Hughes
Hubbard
& Reed**

Moderator:



James Boykin
Partner, Hughes Hubbard
& Reed

Panelists:



Bjorn Arp
Adjunct Professor, American
University Washington
College of Law



Alexander Bedrosyan
Associate, Lewis Baach
Kaufmann Middlemiss
PLLC



Joseph L. Choe
Associate, Skadden



Dana MacGrath
Independent Arbitrator

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) is a cornerstone of international arbitration. Adopted in 1958, it is the most widely recognized instrument in international trade law, with 172 independent States currently as signatories. Its success is reflected not only in this extensive acceptance but also in the significant growth of global trade since its inception. Two key principles established by the Convention are the enforcement of arbitration agreements (Article II) and the recognition of foreign arbitration awards (Article V). These principles uphold party autonomy by requiring national courts to honor arbitration agreements and by providing a structured process for recognizing foreign arbitral awards, albeit with limited exceptions. Undoubtedly, the New York Convention has enhanced the resolution of cross-border disputes. However, it has also faced substantial criticism and calls for reform. The rapid evolution of global trade, advancements in technology, and the increasing complexity of disputes have highlighted both the strengths and limitations of the Convention.

Judges and arbitrators globally have noted challenges such as inconsistent judicial interpretations and differing standards across jurisdictions, highlighting the need for updates to the New York Convention. For example, it is argued that the ambiguity surrounding certain concepts, like the public policy exception for resisting the enforcement of arbitral awards, can allow national courts to bypass the Convention's framework and objectives. This panel will explore perspectives on whether and how the New York Convention could be revised to ensure its continued effectiveness and fairness in the modern arbitration landscape.

The Future is Here: Arbitration in Space and Aviation Law.

**Hughes
Hubbard
& Reed**

Wednesday, December 4

- 🕒 2:30 pm – 3:45 pm EST
- 📍 Hughes Hubbard & Reed 1775 Street, N.W., Washington, DC 20006-2401.
- 👤 In person + virtual

Moderator:



Diego Durán de la Vega
Partner, Hughes Hubbard
& Reed.

Panelists:



Petr Polasek
Partner, White & Case



Abdulla Abuwasel
Deputy Managing Partner,
Wasel Wasel



Laurie Sussman
Consultant, Former
Associate General
Counsel, Boom Supersonic



Kate González
Senior Legal Counsel,
Airbus Americas



Kenneth Hodgkins
President, International
Space Enterprise
Consultants, Co-Chair
Hague Institute of Global
Justice




As space law evolves rapidly, this panel will examine the crucial intersection of arbitration and the expanding space economy. With the sector's value surging to USD 424 billion and projected to hit USD 1 trillion by 2040, the involvement of private companies and individuals in space activities brings both remarkable opportunities and significant legal challenges. Issues like insufficient regulation and congested orbits are increasingly leading to disputes, including the risk of satellite collisions.

The 2011 Optional Rules for Arbitration of Disputes Relating to Outer Space Activities, established by the Permanent Court of Arbitration, provide a timely framework to address these challenges. By accommodating both states and private entities, these rules represent a significant advancement in international space law, ensuring that arbitral awards are binding and offering tailored mechanisms for resolution. As developments such as space tourism and satellite launches reshape the industry, understanding these arbitration rules, as well as alternative international arbitration options is crucial for navigating the legal complexities of this dynamic frontier. What is or could be the appropriate arbitration framework for disputes related to space activities? The Optional Rules? Traditional international commercial arbitration rules? Are there rules more suited for space related disputes? Are investment arbitration rules based on contracts or treaties ill-suited to solve those disputes?

This panel will explore the implications of the growing number of actors in space, the pressing need for effective dispute resolution, and the essential role arbitration plays in creating a secure environment for future exploration and commercialization.

Inside the Arbitrators' Chambers: Best Practices of Arbitrators in ICSID Proceedings.

Wednesday, December 4

-  4:15 pm – 5:30 pm EST
-  ICSID 1225 Connecticut Ave., N.W. Washington D.C.
-  In person + virtual



Moderator:



Anna Holloway
Senior Counsel ICSID

Panelists:



Eduardo Zuleta
Independent Arbitrator



Lucinda Low
Senior Counsel, Steptoe



Lindsay Gastrell
Member of Arbitration
Chambers



Ian Laird
Partner, Crowell & Moring



Stanimir Alexandrov
Independent Arbitrator

Arbitrators are the driving force behind global dispute resolution, much like judges are to domestic courts. However, their decision-making processes and the best practices for ensuring a fair and efficient outcome often remain unclear. This panel aims to unlock the door to the arbitrators' chambers and witness the arbitral decision-making process, offering a rare, behind-the-scenes look at the strategies employed by leading arbitrators in ICSID proceedings.

Featuring a distinguished panel of ICSID arbitrators and expert practitioners, this session will dive deep into how arbitrators handle the complexities of cross-border investment disputes, balance competing interests, and ensure fair, timely and reasoned outcomes. The panel will provide first-hand insights into tribunal dynamics, decision-making techniques, and effective management of procedural challenges.

The Tech Revolution in International Arbitration: The Impact and Use of AI on Lawyering and Adjudicating.

Thursday, December 5

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



Moderator:



Annie Lesperance
Head of Americas at Jus Mundi

Panelists:



Kelby Ballena
Paralegal Specialist,
Hughes Hubbard & Reed



Jeffrey M. Senger
Esq, FCI Arb (JAMS)



Elizabeth Dye
Senior Associate, Pillsbury

As disputes become increasingly international, complex, and urgent, the arbitration landscape is adapting through the integration of advanced technologies. The legal industry, previously slow to embrace such innovations, is now experiencing a significant transformation. While tools like e-mail and digital data management have already revolutionized legal practices, the COVID-19 pandemic further accelerated the adoption of online technologies.

In this context, artificial intelligence (AI) is emerging as a key player in international arbitration. AI is improving the efficiency and effectiveness of arbitration by streamlining document review, enhancing predictive analytics, and optimizing case management. Additionally, it is advancing legal research, ensuring compliance, strengthening data security, and providing essential decision support.

This panel will explore the significant impact and utilization of AI in arbitration. It will discuss how these technologies are fundamentally altering the practices of lawyering and adjudication, assessing their potential to transform dispute resolution and improve procedural efficiency. Panelists may also address hard questions related to ethical and professional responsibility standards for lawyers and adjudicators on the use of AI. What AI may do? Research, analysis, recounting the procedural history in a case? Should AI stay away from analyzing the case and offering a solution? What role might AI have in the development of international arbitration in the years to come?

Are Dissenting Opinions in Arbitration Useful? How May Dissenters Contribute to Move the Law Forward in International Investment Arbitration?

Thursday, December 5

🕒 10:30 am – 11:45 am EST

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

👤 In person + virtual



Moderator:



Ian A. Laird
Partner, Crowell & Moring
LLP

Panelists:



Dr. Todd Weiler
Independent arbitrator



Mallory B. Silberman
Adjunct Professor of Law,
Georgetown Law



Isha Jain
Special Legal Consultant,
Three Crowns LLP



Chuck Kotuby
Of Counsel, Three
Crowns

Dissenting opinions in arbitration, particularly within the realm of international investment arbitration, continue to spark debate. While some critics regard dissents as an unwelcome influence from common law, others see them as an essential mechanism for the evolution of legal norms. The issue of whether dissenting opinions signal a fragmented and ineffective tribunal or rather a robust and dynamic decision-making process remains unresolved. Despite the criticism, dissenting opinions might be contributing to the development of international law and arbitration by challenging prevailing perspectives and offering alternative interpretations.

This panel will examine the multifaceted role of dissenting opinions in international investment and commercial arbitration. It will consider their impact on the effectiveness of tribunals, the perception of arbitral legitimacy, the real or perceived risk of requests for annulment and the ongoing development of international law. The panel will explore whether dissents serve as a constructive check on arbitral authority, constructively help towards the evolution of investment arbitration or, instead, undermine the coherence of tribunal decisions.

Expedited Proceedings in International Investment and International Commercial Arbitration: Features and Steps that Parties, Counsel and Arbitrators Must Bear in Mind and Take.

Thursday, December 5

🕒 2:30 pm – 3:45 pm EST

📍 Freshfields US LLP, 700 13th Street, NW, Washington, DC 20005-3960.

👤 In person + virtual



Moderator:



Lee Rovinescu Partner,
Freshfields

Panelists:



Joe Tirado
JAMS



Rafael Carlos del Rosal
Carmona
International Case Counsel,
ICDR/AAA



Natalia Maria Szlarb
Associate, Wiley Rein LLP

Arbitration can serve as an efficient and cost-effective means of resolving disputes within a private and impartial framework. For less complex issues or cases involving smaller amounts, expedited arbitration can be especially attractive, particularly when parties seek a substantive ruling rather than a compromised settlement. Many leading arbitration rules now include provisions for expedited arbitration, which typically feature accelerated timelines, simplified procedures, reduced costs, minimal or no hearings, and a focus on delivering swift awards. Among these rules, the 2022 ICSID Rules allow for expedited arbitration, contingent on mutual consent from both parties. The AAA/ICDR has its own framework that focuses on minimizing costs and timelines, while the ICC includes expedited procedures that are automatically applicable to certain disputes unless parties expressly agree to opt out. Each of these frameworks has unique features that cater to different needs in the arbitration process.

This panel will examine the practical steps that parties, counsel, and arbitrators should take when engaging in expedited arbitration. It will cover strategies for effectively managing the expedited process, addressing potential challenges, and ensuring that the arbitration remains fair and efficient. Panelists will share their insights on expedited arbitration, the strengths and limitations of different expedited arbitration rules, and how they may or may not contribute to achieving prompt and cost-effective resolutions possibly for small and medium size disputes, while maintaining the integrity of the arbitral process.

Remedies in Investment Arbitration: the Good, the Bad and the Ugly.

Thursday, December 5

🕒 4:00 pm – 5:15 pm EST

📍 Freshfields US LLP, 700 13th Street, NW, Washington, DC 20005-3960.

👤 In person + virtual



Moderator:



Caroline Richard
Partner, Freshfields

Panelists:



Mark Kantor
Independent Arbitrator



Carla Chavich
Executive Vice President,
Compass Lexecon



Karthik Nagarajan
Assistant General Counsel,
Kimberly-Clark



Chris Polson
Partner, PwC

In investment arbitration, damages are the primary remedy. However, they are often discussed on the last day of the hearing, typically in a rushed manner. This panel will examine the implications of addressing damages at this late stage and whether this hurried approach is justified, particularly in light of *South32 v. Colombia*, where the tribunal prioritized evidence regarding damages first and then structured the proceeding around it.

The panel will also analyze the majority decision to award future damages in *South32 v. Colombia*. While characterized as "exceptional, [but] not unique," this decision has sparked considerable debate. Professor Andrés Jana Linetzky's dissent criticized this approach, arguing that the future damages are uncertain and inconsistent with the terms of the bilateral investment treaty. The panel will explore the implications of such decisions and their broader impact on investment arbitration practices.

Moreover, assessing interest is also a vital component in determining fair compensation, but it presents significant complexities. The *Chorzów Factory* case and the Draft Articles on State Responsibility highlight the importance of achieving full compensation, yet practical challenges remain. Key considerations include choosing suitable interest rates—such as LIBOR versus government bond rates—establishing the starting date for interest accrual and deciding whether to apply compounding. This panel will also explore the different types of interest used in damage calculations and the intricacies associated with their application.

State Defense in Investment Arbitration led by International In-House Counsel.

Friday, December 6

- 🕒 9:00 am – 10:15 am EST
- 📍 Baker Botts LLP 700 K St NW, Washington, DC 2000.}
- 👤 In person + virtual

BAKER BOTTS LLP

Moderator:



María Carolina Durán
Special Counsel, Baker
Botts LLP

Panelists:



Giovanni Vega
Former Deputy Director
of International Legal
Defence and Chief of the
Investment Arbitration
Group at the Colombian
National Legal Defence
Agency



Marat Umerov
Counsel, Curtis



David Bigge
Chief of Investment
Arbitration, U.S.
Department of State



Vanessa Rivas Plata
President of the Special
Commission that
Represents Peru in
International Investment
Disputes

As investor-state arbitration disputes continue to escalate worldwide, sovereign states are adopting various defense models to manage these claims. Approaches range from fully outsourcing defense to external counsel to hybrid models that combine external expertise with in-house legal teams, as well as a model of defense led entirely by the state's internal international counsel. Each model presents unique dynamics that influence a state's ability to protect its interests while navigating complex legal and policy landscapes.

However, relying heavily on in-house counsel for investor-state arbitration can present challenges. International arbitration might require specialized skills such as language fluency, some familiarity with common law, and extensive experience in international disputes. These requirements can be difficult for in-house teams to consistently fulfill – potentially affecting their effectiveness in handling arbitration cases. On the other hand, utilizing in-house counsel offers distinct advantages, particularly in integrating legal expertise with local policy-related knowledge to align defense strategies with national objectives.

The panel will explore the potential challenges and strengths of a defense led by in-house international counsel. Key questions include: How can in-house counsel ensure consistency across multiple arbitration cases? What role can they play in reshaping BITs and preventing future disputes? How can they balance national sovereignty with compliance in international legal frameworks? Panelists will offer their insights, share experiences, and provide practical guidance on overcoming challenges and maximizing the strategic position of in-house counsel in investor-state arbitration.

Non-Disputing Party Submissions, Amicus Curiae and Challenges of Non-Disputing Parties to Access Confidential Information.

Friday, December 6

🕒 10:30 am – 11:45 am EST

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

👤 In person + virtual

BAKER BOTTS LLP

Moderator:



José Antonio Rivas SJD
Xstrategy LLP/
Georgetown Law

Panelists:



Alvaro Peralta Attorney,
U.S. Department of State



Pedro Ramirez
Senior Associate,
Freshfields US LLP



Mahmoud Abuwaseel
Managing Director, Wasel
& Wasel



Jennifer Haworth
McCandless
Partner, Baker Botts LLP

In investment arbitration, third parties are currently limited to submitting amicus curiae briefs, which tribunals often overlook. A notable instance is the *Glamis Gold v. United States* case, where the tribunal accepted an amicus brief but ultimately disregarded its contents in the final award. The exclusion of third-party rights within the ISDS framework has faced considerable criticism, particularly regarding its implications for human rights and environmental protections.

During the 37th Session of the Working Group III on Investor-State Dispute Settlement Reform, the necessity for greater third-party participation was highlighted, as it could facilitate the consideration of crucial social issues and enhance the legitimacy of the arbitration process. In addition, non-disputing parties encounter significant challenges in accessing confidential information, which limits their ability to contribute meaningfully to cases that directly affect communities and the environment.

This panel will address these pressing matters by examining current practices surrounding non-disputing party submissions, the role of amicus curiae briefs in influencing tribunal decisions on issues of law, and the specific obstacles non-disputing parties face in obtaining necessary information. By fostering a dialogue on potential reforms and best practices, the panel aims to explore how to create a more inclusive and equitable approach to investment arbitration that better serves the interests of all stakeholders involved.

Going Solo: Tips on Launching your Career as an Independent Practitioner -Lunch Panel-



BAKER BOTTS LLP

Friday, December 6

🕒 12:00 pm – 1:15 pm EST

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

👤 In person + virtual

Moderator:



Tom Villalon
Associate, Three Crowns

Panelists:



Diogo Manuel Pereira
Almeida Pereira



Diana Tsutieva
Partner, Foley Hoag



Kiran Gore
Law Offices of Kiran N.
Gore PLLC



Julia E. Sullivan
Independent Arbitrator

Are you an international arbitration practitioner contemplating becoming an arbitrator? Are you transitioning from counsel in a big law firm into solo practice? Or are you a student eager to pursue your own unique, independent practice? If so, this panel is for you!

Our panelists will share their experiences and provide practical guidance on "going solo" as counsel and/or an independent arbitrator. They will discuss the essential steps for make a transition into your own practice, including acquiring relevant experience, developing a client base, investing in vital skills (not all of them traditional "legal" skills), networking effectively, and getting yourself noticed by clients and parties. Additionally, you will learn about panelists' motivations for pursuing a solo practice or an arbitrator career, the challenges they have encountered, and what they might have approached differently throughout their journeys.

WAW and ICC YAAF present this invaluable opportunity to gain insights and guidance for your own career path in arbitration. Be sure not to miss it!

Business and Human Rights in International Commercial and Investment Arbitration: How to Make it Right?

Friday, December 6

🕒 1:30 pm - 2:45 pm EST

📍 Arnold & Porter LLP 601 Massachusetts Ave, NW,

👤 Washington, DC 20001-3743

In person + virtual

Arnold & Porter

Moderator:



Katia Yannaca-Small
Senior International Arbitration
Advisor, Arnold & Porter LLP

Panelists:



Cherine Foty
Senior Associate,
Covington



Carlos Bernal
Former Justice of the
Colombian Constitutional
Court



Janet Withttaker
Senior Counsel, Clifford
Chance



Douglass Cassel
Counsel, King & Spalding

Human rights increasingly influence both the public and private sectors as international trade becomes more intertwined with corporate responsibility and sustainability. Consequently, investors must consider committing capital to projects that adhere to labor, environmental, and human rights standards. Balancing these considerations with commercial interests poses challenges, particularly in international commercial and investment arbitration.

In the private sector, multinational corporations are facing growing demands to address the human rights implications of their supply chains, working conditions, and environmental impacts. Some international commercial arbitrations may involve disputes related to labor and environmental rights. In investment treaty arbitration, which is governed by public international law, human rights and public interest may carry significant weight, especially since applicable laws often encompass public international law. There appears to be a gradual but steady movement toward integrating human rights, environmental protection, and sustainable development into bilateral investment treaties. For example, the 2016 BIT between Nigeria and Morocco included provisions for human rights protections.

This panel aims to explore the challenge of reconciling investor rights with the obligations of states and investors to respect human rights. It will also examine how economic growth in commercial arbitration can align with transparent and responsible practices that protect and promote human rights.

International Arbitration in the Era of Climate Crisis: COP 28, Oil and Gas Decommissioning, the Upcoming ICJ Advisory Opinion on Climate Change, and the Fund to Compensate Environmental Damages.

Friday, December 6

🕒 3:00 pm – 4:15 pm EST

📍 Arnold & Porter LLP 601 Massachusetts Ave, NW,

👤 Washington, DC 20001-3743.

In person + virtual

Arnold & Porter

Moderator:



Katelyn Horne
Senior Associate, Arnold & Porter LLP

Panelists:



Sara Marzal
Legal Counsel, ICSID



Alayna Tria
Associate Director, BRG



Adriana Espinel
Of Counsel Xstrategy LLP



David L. Attanasio
Partner, Womble Bond Dickinson

In the context of the climate crisis, international arbitration is becoming increasingly significant as the global shift away from fossil fuels gains momentum. With COP 28 focusing on accelerating the transition to renewable energy, arbitration is expected to play a vital role in resolving disputes between states and investors in sectors such as oil, gas, and energy infrastructure. Notable cases like *Portigon AG v. Kingdom of Spain* (ICSID Case No. ARB/17/15) and *Uniper SE v. Kingdom of the Netherlands* (ICSID Case No. ARB/21/22) exemplify the legal complexities that arise as countries strive to fulfill their climate commitments while managing the phase-out of fossil fuel assets.

Additionally, the upcoming ICJ advisory opinion on climate change could offer crucial legal guidance on states' obligations to mitigate environmental harm, potentially impacting future arbitration decisions. Key questions revolve around the legal responsibilities of states in addressing climate change under international law, including issues like responsibility for transboundary harm and the rights of future generations. The ICJ will examine whether international law mandates that states prevent or mitigate such harm, focusing on the principles of due diligence and precaution, as well as the interpretation of the Paris Agreement and its binding implications for states. Furthermore, the proposed establishment of a fund to compensate for environmental damages, discussed at recent climate summits, could significantly reshape the arbitration landscape by providing financial resources for affected communities and creating a framework for resolving climate-related disputes. As global efforts to combat climate change intensify, international arbitration may prove to be a crucial tool for managing the legal challenges stemming from the energy transition and ensuring accountability in environmental protection.

This panel will address whether the existing network of international investment treaties poses a limitation to the energy transition due to potential liabilities arising from regulatory changes moving from fossil fuels to renewables. Or, could this framework offer the necessary assurances to investors financing the trillions of dollars required for renewable energy projects? Additionally, what legal mechanisms should be prioritized to ensure the fund for compensating environmental damages is effective, and how can arbitration facilitate a transparent and equitable distribution of resources to affected communities?