



L-R: ICCA-ASIL Task Force on Damages Co-chair Catherine Amirfar in Washington DC; ICCA-Queen Mary Task Force Co-chair Stavros Brekoulakis in Washington DC; Consultative Workshops on African Arbitral Practice Member Emilia Onyema in Cairo; ICCA President Donald Donovan in Beijing

## Around the world in 40 days

*From Cairo to Hong Kong, ICCA's Task Forces are going global.*

In the first half of 2017, ICCA's Task Forces have engaged with audiences in Cairo, Washington DC and Beijing. More than 20 members of ICCA's Working Group on African Arbitral Practice participated in the Working Group's Second Consultative Workshop on African Arbitral Initiatives on 3 April in Cairo, while on 28 April the ICCA-Tsinghua University Working Group on Chinese Arbitration Practice met in Beijing as part of a more extensive trip by Governing Board Members to Beijing and Hong Kong (including a colloquium with judges from across Asia as part of a New York Convention Roadshow event).

In between, on 11 April the ICCA-ASIL Task Force on Damages in International Arbitration convened a seminar together with ICSID in Washington DC to introduce the Task Force's work on a practical tool for analyzing damages issues, and the next day the ICCA-Queen Mary Task Force on Third-Party Funding discussed the progress of its report as part of the 14th Annual ITA-ASIL Conference, which focused on third-party funding this year.

ICCA looks forward to showcasing the work of its Task Forces as part of the ICCA 2018 Congress in Sydney in April next year. In the meantime, we look forward to meeting with our members at other similar events. ►

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Arbitration, Peace Palace,  
The Hague



# from the Executive Director



**P**aging through this first edition of ICCA's Newsletter for 2017 it is hard to miss the scope and depth of the "new" ICCA, opened to general membership in 2012 and now spanning 56 years of engagement with the arbitral community.

We have just celebrated our 40-year publishing history, with the publication of the 41st volume of the ICCA Yearbook in December 2016 (marked with a retrospective on the Yearbook on p. 3), and look forward to our 24th Congress in Sydney in 2018 (a tradition going back even further, to ICCA's founding in 1961). (An introduction to the Sydney Congress programme and to Australia as an arbitration venue is presented on pp. 8-9).

Our newer projects – on damages, third-party funding, arbitral practice in Africa, arbitral practice in China, skills training for young practitioners, and best practices in application of the New York Convention – build on and broaden this history, relying on input from arbitration practitioners in all corners of the globe (pp. 3-7). Further in this edition, we recall the significance of the 1981 Algiers Declarations, and introduce the five new Governing Board members who took office on 1 April 2017.

ICCA members on five continents continue to participate in our research projects, workshops, seminars and consultation fora, sharing innovative ideas that will shape the practice of international arbitration in times to come. We encourage all ICCA members to share your ideas and proposals with us, and look forward to seeing you at the ICCA Sydney Congress in April 2018. Please contact us at [bureau@arbitration-icca.org](mailto:bureau@arbitration-icca.org). ■

Lise Bosman



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# ICCA Projects & Publications

## 40 Years of the ICCA Yearbook

By Lauren Voges

**I**n 1976, ICCA published the first ICCA Yearbook Commercial Arbitration, compiled and edited by Professor Pieter Sanders, assisted by Professor Albert Jan van den Berg. In the introduction to this first edition, Prof. Sanders wrote, "This Yearbook is the first of a series of at least five..." **Forty years later, the Yearbook is 41 editions strong** and has opened the way to other ICCA publications, notably the International Handbook on Commercial Arbitration (first published in 1984), as well as the ICCA Congress series (from 1982) and the ICCA Guide to the 1958 New York Convention (launched in 2010).

"I started the idea of ICCA Publications and the first publication was the ICCA Yearbook," said Prof. Sanders in a 2011 interview with the current General Editor of the Yearbook and founding partner of Hanotiau & van den Berg, Albert Jan van den Berg. Prof. Sanders was appointed editor of the Yearbook during the 1975 ICCA Congress in New Delhi, or as he explained in the same interview, "I was not appointed to be the General Editor, I appointed myself!"

During its infancy, the ICCA Yearbook was a project developed almost solely by Sanders and van den Berg. In an interview published in the April 2016 ICCA Newsletter, van den Berg fondly recalls his role in shaping the Yearbook: "I became Piet Sanders' assistant... when he returned from the ICCA Congress in New Delhi [in



1975] he told me he'd made a proposal that ICCA should produce a yearbook on commercial arbitration to report on developments in arbitration worldwide and that I should assist him."

By 1977, van den Berg had been working on the Yearbook from the attic of Sanders' home in Schiedam, a suburb of Rotterdam, for two years. He went on to get his doctorate at Aix-en-Provence and in 1980 went into law firm practice. Through all this, he continued to work on the Yearbook (albeit not from Sanders' attic) and in 1986, took over the position of General Editor of ICCA Publications from Sanders.

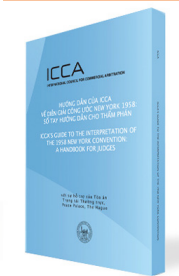
During its 40-year lifespan, the Yearbook has grown from a series of reports on developments in commercial arbitration to a prestigious periodical that includes **more than 2,000 reported decisions on the 1958 New York Convention**. "The Yearbook has a wide network of loyal correspondents and contributors, which allows for the publication of court decisions from a continually increasing number of jurisdictions, some of which are applying the New York Convention for the first time," explains Ms Silvia Borelli, Managing Editor of ICCA Publications. While many can proudly claim to have contributed to the Yearbook, few can claim a hand in the editorship of the publication. In its 40-year history, the Yearbook has had only two General Editors, Sanders, who passed away at the age of 100 in 2012, and van den Berg, and two Managing Editors, Judy Freedberg, followed by Borelli, who has held the position since 2007.



Top to bottom: Founding ICCA Yearbook General Editor Piet Sanders and current General Editor Albert Jan van den Berg

When prompted for comment on the Yearbook's 40-year anniversary, both van den Berg and Lise Bosman, ICCA Executive Director, commented on the enduring uniqueness of the Yearbook. **"Quality, detail and an ever-expanding reach are its trademark,"** added Borelli. Whether its unique nature or high-quality content are to thank for the Yearbook's graceful ascent into middle age, we look forward to the next 40 years of its journey through commercial arbitration. ■

## NEW ICCA PUBLICATIONS



**NOW AVAILABLE:**  
The Hebrew translation of ICCA's Guide to the 1958 New York Convention

**NOW AVAILABLE:**  
The Italian translation of the Young ICCA Guide on Arbitral Secretaries





► 11 April 2017

## The ICCA-ASIL-ICSID Seminar on Damages in International Arbitration, Washington DC

Report by ICCA-ASIL Task Force on Damages Rapporteurs, **Sonia Farber, Stefanie Pfisterer & Christel Tham**



**O**n 11 April 2017, ICCA, ASIL and ICSID jointly convened a seminar on damages in international arbitration, featuring the work of the ICCA-ASIL Task Force on Damages in International Arbitration. The Task Force comprises leading damages experts from around the world and is chaired by Catherine Amirfar of Debevoise & Plimpton and Gabrielle Nater-Bass of Homburger.



Following opening remarks by ICSID Secretary-General Meg Kinnear, the Co-chairs introduced the Task Force's ongoing work of creating a damages tool of practical application to be used by arbitrators and practitioners alike. Illustrating the need for consensus on wide-ranging legal and policy issues implicated by damages analyses, members of the Task Force then presented the "life-cycle of a damages case," with a focus on the most challenging issues arising in the procedural, legal and valuation contexts of a damages analysis.



During the afternoon session, participants and Task Force members divided into three working groups, focused on procedural, legal, and valuation issues, respectively. Participants were invited to provide their views on the subjects addressed by the Task Force members during the morning presentation, to identify areas of consensus, and to suggest topics of focus for the Task Force's future work. At the end of the afternoon session, each working group provided a short report on their discussions, including preliminary findings.

The seminar closed with remarks from ICCA President Donald Francis Donovan, who urged participants to remain actively engaged in the Task Force's efforts to promote

a more robust and harmonized approach to damages in international arbitration. ►



LEFT: Members of the ICCA-ASIL Task Force: Back row (L-R): Patrick Pearsall, Alexis Maniatis, Guido Santiago Tawil, Hilary Heilbron, Jennifer Vanderhart and Irmgard Marboe; Front row (L-R): Sarah Grimmer, Mark Kantor, Gabrielle Nater-Bass, Kathleen Paisley, Catherine Amirfar, Adriana San Roman, Swee Yen Koh; RIGHT: The first panel discussing procedural



**Rukia Baruti**

ICCA Member, Participant in 2nd Consultative Workshop on African Arbitral Practice

“As an African working to enhance and raise awareness of African legal expertise, I appreciate the role of this forum in bringing African initiatives together to strengthen our capabilities in meeting the need for arbitration-related technical assistance in Africa.”



**Ismail Selim**

ICCA Member, Participant in 2nd Consultative Workshop on African Arbitral Practice

“As Africa's oldest arbitration centre, CRCICA was honored to host the Workshop. Discussions embraced various institutional collaborations. In all aspects of inter-African initiatives, CRCICA is always ready to foster cooperation and build bridges with our African sisters and brothers.”



**Kathleen Paisley**

ICCA Member, Member in ICCA-ASIL Task Force on Damages

“I was extremely impressed by the quality of the discussion at the seminar. I have spent a significant part of my career promoting rigour in the damages analysis in complex commercial and investor-State arbitrations, and it was exciting to see the enthusiasm and knowledge exhibited at the Workshop.”

► 3 April 2017

## The Second Consultative Workshop on African Arbitral Initiatives, Cairo



Report by ICCA Executive Director **Lise Bosman**

**I**CCA's Working Group on African Arbitral Practice met in Cairo on 3 April, taking forward the work of the First Consultative Workshop on African Arbitral Initiatives launched in May 2016 on the fringes of the ICCA Mauritius Congress, with cooperation from UNCITRAL and the PCA. With the goal of enhancing cooperation among the many active African arbitral initiatives on the continent and promoting use of arbitration in Africa and among African arbitrators, the Second Consultative Workshop discussed cooperation in the areas of education and training, access to online resources, and provision of technical assistance.

ICCA's Working Group includes Governing Board members 'Funke Adekoya, Mohamed Abdel Raouf and Abdulqawi Yusuf, as well as Executive Director Lise Bosman, all African nationals. ►



L-R: Mohamed Abdel Raouf and Ismail Selim, immediate past and present heads of CRCICA, hosting the Workshop in Cairo



Participants of the Workshop: Back row (L-R): Mohamed Abdel Raouf, Leyou Tameru, Túlio Di Giacomo Toledo, Lawrence Muiruri Ngugi, Sani L. Mohammed, Hicham Zegrari, Fui Tsikata, Tim Lemay, Ismail Selim, Ndanga Kamau, Lise Bosman, Tunde Ogunseitan, Tsegaye Laurendeau, Rose Rameau, Rukia Baruti; Front row (L-R): Thierry Ngoga Gakuba, Gaston Kenfack Douajni, Emilia Onyema, Sola Adegbonmire, 'Funke Adekoya, Bayo Ojo, Fidèle Masengo



**Loretta Malintoppi**

ICCA Governing Board Member, Participant in ICCA-ASIL Task Force on Damages

“This was an outstanding Seminar; interactive, informative and useful. Thanks to its innovative format, it allowed participants to learn from each other, and from the excellent leaders of the Task Force, by sharing their experiences and expertise on valuation and compensation in a very constructive manner.”



**Todd Weiler**

ICCA Member, Participant in ITA-ASIL Conference

“What explains the growth in third party funding over the past decade? I blame the central banks for inflating the global monetary supply. I also thank them, because alternative sources of funding are sorely needed to ensure access to justice, especially when the respondent is a State.”



**Arif Ali**

ICCA Member, Participant in ITA-ASIL Conference

“While certain conference topics have been juiced dry, third party funding is not one of them. This event was substantive and engaging. Future discussions need to consider a broader range of participants and perspectives, especially from developing or emerging jurisdictions and under-represented communities.”



► 29 April - 1 May 2017

## ICCA visit to Beijing

Report by ICCA Governing Board Member **Teresa Cheng**

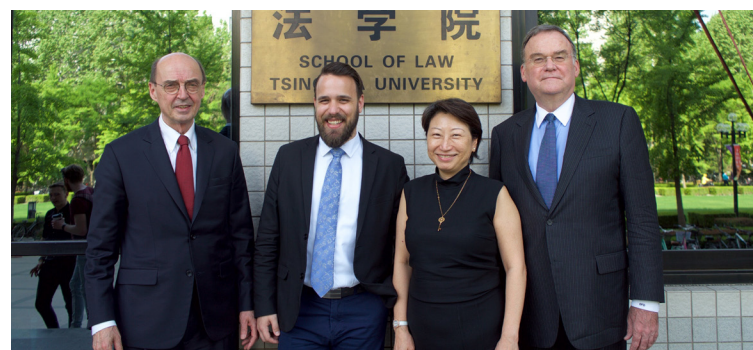


After a successful seminar in Washington DC in April 2017, ICCA President Donald Donovan travelled to Beijing. Together with immediate past ICCA president Albert Jan van den Berg and ICCA Governing Board Member Teresa Cheng, Mr Donovan met with representatives of the China Ministry of Foreign Affairs, the Supreme People's Court (SPC), the China Ministry of Commerce ("MOFCOM"), the Beijing Arbitration Commission (BAC) and the China International Economic and Trade Arbitration Commission (CIETAC). The meetings served as an opportunity for these organisations and ICCA to discuss the latest issues on international arbitration in China.

The discussions laid down an excellent basis for the ICCA-Tsinghua University Working Group to continue to conduct projects which seek to enhance and further develop arbitration law and practice in China.

### ICCA-Tsinghua University Meetings

The ICCA-Tsinghua University Working Group on Chinese Arbitration Practice held a meeting on 28 April to review the projects they are currently working on. This meeting was followed by an event on 29 April, coorganized by ICCA, Tsinghua Law School and the "Belt and Road" Research Centre of the SPC. The event, *30 Years of Experience of the New York Convention in China* launched the first product of the ICCA-Tsinghua University Working Group: the *Compendium of Chinese Arbitration Laws*. Senior Judge Liu Jingdong, Associate Chief Judge of the Civil Division No. 4 of the SPC, said that he welcomed ICCA's visit and thanked ICCA for its efforts in promoting the knowledge and use of arbitration in China. Judge Jingdong encouraged Chinese arbitration practitioners, academics and the young generation to join the international arbitration community through platforms like ICCA and Young ICCA.



Top to bottom: Albert Jan van den Berg, Francis Levesque, Teresa Cheng and Donald Donovan at Tsinghua Law School; ICCA's visit to the Supreme People's Court



### Hot and spicy topics

Participants were also given an introduction to ICCA and Young ICCA by Mr Donovan himself. Prof. van den Berg gave a lecture on the "New York Convention: Getting to 60 or the New 40" and Judge Shen Hongyu of the Civil Division No. 4 of the SPC spoke on "Chinese Judicial Practice on the New York Convention Revisited: 30 years after China's accession." A panel of judges of the SPC and PRC lawyers then engaged in a discussion on "Hot and Spicy Topics" on the application of the New York Convention in China. The event also featured a Young ICCA Skills Training Workshop on "Arbitration Agreements: Drafting Skills and Pitfalls."

The day concluded with an address by Prof. Cheng SC, IADS Course Director. Prof. Cheng expressed her thanks to the speakers and discussed the progress of the database of the New York Convention cases in China, a project undertaken by IADS under the guidance of the ICCA-Tsinghua Working Group.

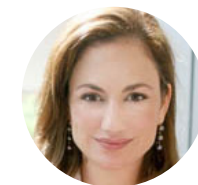
### Hong Kong New York Convention Roadshow

On 1 May, ICCA and the Asian Academy of International Law co-organized a NYC Roadshow at the HKIAC in Hong Kong. Judges from 11 Asian jurisdictions attended. The day concluded with a dinner hosted for the judges and other VIPs at the Government House with the Chief Executive of Hong Kong as the Guest of Honour.

Interested in the lectures given on 29 April? Keep a lookout for the speakers' papers on the ICCA website and the IADS website. ►

► 12 April 2017

## The ITA-ASIL Conference on Third-Party Funding, Washington DC



Report by ICCA-Queen Mary Task Force Co-chairs **Catherine Rogers and Stavros Brekoulakis**

The draft report of the ICCA-Queen Mary Task Force on Third-Party Funding was the focus of this year's ITA-ASIL conference in Washington DC in April 2017. After openings from Abbey Cohen Smutny (ITA Chair) and Lucinda Low (ASIL President), William W. ("Rusty") Park kicked off proceedings as keynote speaker. Professor Catherine Rogers provided an overview of the structure of the Task Force's work and the draft report.

The event consisted of two panels. The first panel, moderated by Ruth Teitelbaum (Tenor Capital Management Company, L.P.), included Erika Levin (The Judge Americas LLC), Steve Jones (Arthur J. Gallagher), and Professor Victoria Sahani (Washington & Lee University, School of Law). The panel discussed some of the key findings of the draft report.

Professor Stavros Brekoulakis introduced and moderated the second panel, which addressed legal, ethical, and regulatory considerations surrounding third-party funding. Jeffrey Commission (Vannin Capital), and Kim Rooney (Chair of the Hong Kong Law Reform Commission's Subcommittee on Third Party Funding for Arbitration) served as panelists. The audience weighed in with a range of thoughtful questions about the draft report. Stay tuned for the posting of the Task Force report for public comment in September. ■



L-R: Keynote speaker William W. Park, Project Co-chair Catherine Rogers and ASIL President Lucinda Low.

## NYC Roadshows report

### Ecuador, February 2017

On 23 February 2017, a Judicial dialogue on the 1958 New York Convention was held in Quito, Ecuador at the Judiciary Council. The event was attended by 35 judges of the provincial courts of Ecuador and the speakers were Julieta Ovalle, Eduardo Siqueiros, Marcelo Torres, and Alvaro Galindo.

Ms Patricia Andrade, Director of the Judiciary Academy of Ecuador, addressed the importance of creating awareness of the New York Convention among local judges:

"The General Organic Code of Processes is a body of legislation that transformed the Ecuadorian procedural system in non-criminal matters, which has implemented orality as its most remarkable principle. This profound element of transformation of the system demands an unprecedented amount of academic training in Ecuador. For this reason the Judiciary Academy partnered with ICCA for appellate level judges and instructors of the Judiciary Academy to participate in the International Roadshow "Convention for the Recognition and Enforcement of Foreign Arbitral Awards – the New York Convention", which was presented by ICCA to contribute to the awareness and correct application and interpretation of the Convention, in accordance with the best international practices included in the General Organic Code of Process."

The event was a great success thanks to the active participation of the judges and good quality presentations delivered by the speakers. ■



Top to bottom: (L-R) Patricia Andrade, Nestor Arbito and Alvaro Galindo; (L-R) Julieta Ovalle, Eduardo Siqueiros and Marcelo Torres



# G'day, Sydney!

Looking ahead to the 2018 ICCA Congress in Sydney.

## The arbitration hotspot

Australia as an arbitration opportunity by Host Committee Member and ACICA Secretary General **Deborah Tomkinson**



Growing trade throughout the Asia-Pacific region, including with the United States and Africa, uniquely position Australia as an attractive venue for international commercial arbitration between

trading partners in this region. It is Australia's neutrality in these circumstances that acts as an important draw card, providing an alternative for parties from the United States, Europe, Africa, the Pacific and Asia to the traditional seats of Singapore and Hong Kong.

Australia's geographical proximity to Asia and the Pacific, multiple time zone advantages, multicultural society and reputation as a liberal democracy and transparent economy put Australia in a convincing position to offer high-quality dispute resolution services to the international market. With a contemporary legislative framework, modern

institutions, a sophisticated legal profession and an independent and supportive judiciary, Australia presents a safe and neutral forum for international commercial arbitration.

The Australian Centre for International Commercial Arbitration (ACICA) was established in 1985 as an independent, not-for-profit organisation with the objective to promote and facilitate efficient resolution of commercial disputes throughout Australia and internationally by arbitration and mediation. ACICA provides a wide range of dispute resolution and educative services to assist parties to manage and resolve disputes effectively. The ACICA Rules 2016 are world standard, providing an advanced, efficient and flexible framework for the conduct of arbitrations supported by the administrative services provided by ACICA. The Rules include emergency arbitrator provisions, provisions on consolidation and joinder, confidentiality and an expedited process for lower value or urgent matters.

Further info on arbitration in Australia can be found at [acica.org.au](http://acica.org.au), by contacting the ACICA Secretariat at [secretariat@acica.org.au](mailto:secretariat@acica.org.au) or by joining us in Sydney for the 2018 ICCA Congress. ■

ICCA President-elect Gabrielle Kaufmann-Kohler shares why you should attend #ICCA2018Sydney



Why should you attend #ICCA2018Sydney? To meet all of your arbitration friends at once? To make new ones in ICCA's vast global community? To enjoy Sydney? Certainly good reasons. But there is much more to ICCA Congresses.

They analyze and drive the evolution of international dispute settlement; they make a difference. By attending, you are part of it; you make a difference.

## Ready to register?

Early Bird registration for ICCA 2018 Sydney is now available via [www.icca2018sydney.com](http://www.icca2018sydney.com). Registration can be submitted online and must be completed by 1 November 2017 to benefit from the Early Bird rate. Rates will increase after this date. ICCA Members are eligible for an additional 10% discount on both Early Bird and Standard rates.

Category	Early Bird	Standard (1 Nov 2017)
ICCA Member	AUD 2,340.00	AUD 2,610.00
Non-member	AUD 2,600.00	AUD 2,900.00

## Insights into the 2018 Congress Programme

by Programme Committee Chairs  
**Jean Kalicki and Mohamed Abdel Raouf**



The theme for ICCA 2018 is *Evolution and Adaptation*, why this theme?

**Jean & Mohamed:** Arbitration has never been a static field. What we recognize today as the leading structures, norms, practices and expectations are not what a user of dispute resolution services 30 years ago would have recognized. As the needs and concerns of users have changed, the field has adapted, although not always as quickly or fundamentally as some might wish.



Today, with a myriad criticisms being sounded about investment arbitration and certain aspects of commercial arbitration, publicly by civil society and more quietly among users, we felt it was important for the ICCA community to step back and think more comprehensively about adaptability. Are there new reforms or initiatives that should be considered to address the evolving needs of users and the main areas of criticism? What are the drivers for change, what are the obstacles, and what are the risks? The goal is to encourage a constructive debate about the future of the field, not to engage in hand-wringing or over-defensiveness about the past or present.

Which part of the programme are you looking forward to?

**Jean:** It's hard to choose, but given my particular background in public international law, I am especially looking forward to our two-part closing plenary on "New Frontiers in International Arbitration," which will think creatively about ways in which arbitration might contribute to resolving disputes arising in connection with new areas of transnational norms, or involving groups or individuals in civil society who previously have not

ICCA features

participated in the process. I'm also excited for the lunch-time "Ted Talks" conversation on the first day, which will feature leading arbitrators offering their personal reflections on the past, present and future of the field. Finally, the "New Voices" panel, which is composed entirely of young practitioners selected through a competitive process that focuses on topics of fresh interest or involving emerging jurisdictions.

**Mohamed:** The Program is extremely rich and one should not miss any of the plenary sessions. If I were to choose, I would be especially looking forward to discussing the advantages and drawbacks of party autonomy in choosing decision-makers and whether it should be revisited. I am also particularly interested in the session on "Efficiency and the Lessons to be Learned from Other Dispute Resolution Frameworks", which will explore recent innovations in efficiency and transparency adopted by commercial courts, specialized arbitration regimes, and other dispute resolution frameworks, and the extent to which these innovations could (or should) be applied in arbitration. Finally, I am very much interested in the session on "Technology as Disruption", which will look at how arbitration professionals should protect against the risk of hacking, and how cyber-security should be maintained or, potentially, sanctioned?

Why should practitioners attend this Congress?

**Jean:** We hope the programme and the setting will sell itself! Provocative discussions, a chance to see old friends and make new ones in our warm and welcoming international community, in a fantastic city with memorable social events organized by the Sydney Host Committee. Hopefully that should be enough to entice. If really needed, I could tap dance. (Or rather, not.)

**Mohamed:** The ICCA Congresses offer practitioners a unique opportunity to have serious discussions and lively debates on topical issues in international commercial and investment arbitration. I was fortunate to participate in the last three Congresses and can safely say that attending an ICCA Congress is a highlight for practitioners specializing in international arbitration. ■





## Meet the new Governing Board Members

### From Young ICCA

Report by Young ICCA Global Events Director  
**Camilla Gambarini**

In the first quarter of 2017, Young ICCA welcomed several new members to the team: Ms Nhu-Hoang Tran Thang (new Co-Chair); Mr Panos Chalkias, Ms Charis Tan and Ms Rubin Mukkam-Owuor (Events Coordinators); and Ms Camilla Gambarini (Global Events Director). 2017 kicked off with a host of Young ICCA Skills Training Workshops in Kuala Lumpur, Kosovo, Milan and Lahore. We have also introduced a new workshop format. Where the original format focuses on the practical aspects of international arbitration, our new format revolves around mock cases where workshop attendees are able to engage in oral advocacy exercises. Going forward, we will use both formats interchangeably. The second half of 2017 will see Young ICCA Skills Training Workshops take place in Madrid, Prague, Cairo and Stockholm, to name a few. We're also working on organizing workshops in Los Angeles, Queenstown, San José, Paris, Kiev, Abuja, Moscow and Singapore. Look out for a Young ICCA workshop in your area and follow [www.arbitration-icca.org/YoungICCA/](http://www.arbitration-icca.org/YoungICCA/) for more info on Young ICCA activities. ■



Top to bottom: Young ICCA Workshop in Kuala Lumpur (January 2017); Young ICCA Workshop in Lahore (April 2017)

ICCA appointed five new Governing Board Members on 1 April 2017. We asked them to tell us what they're hoping to contribute to ICCA.



**Juan Fernández-Armesto**

Arbitrator, Armesto & Asociados

"For many years now I have been fighting in favour of more transparency: investment arbitration has already embraced a high degree of transparency, but commercial arbitration has to change its general attitude from one of secrecy to one of openness."

**Vera van Houtte**  
Independent Arbitrator; Vice-President,  
ICC Court of Arbitration



"I hope to contribute to ICCA's efforts to make arbitration accessible to all possible users and interested practitioners, also in countries where it is still to develop. Reaching out to young practitioners and potential users, with respect for local culture and with an open and critical mind, will simultaneously enhance the arbitration governance and practice guidance which ICCA strives to give in a continuously changing world."



**Vladimir Khvalei**

Partner and Head of CIS Dispute Resolution Practice Group, Baker & McKenzie; Vice-President, ICC International Court of Arbitration

"ICCA, with its unique composition of outstanding arbitration practitioners from around the world, is perfectly placed to address the current challenges in international arbitration. One of the problems that certainly requires attention from the arbitration community is the minimal ethical standards of arbitration institutions. With the growth of arbitration, we see more new arbitration institutions being established, not only internationally, but domestically too. My plan is to bring this issue to ICCA's attention."

**Loretta Malintoppi**

Arbitrator, 39 Essex Chambers



"I am delighted to be joining the Governing Board of ICCA at such an important juncture for international dispute settlement. I hope to contribute in two main ways: by working on innovative proposals to confront the different challenges currently facing international dispute resolution; and by assisting in mentoring/training the next generation of international arbitration practitioners."



**Zia Mody**

Founder and Senior Partner, AZB & Partners; Deputy Chairman and a Non-Executive Director, HSBC Asia Pacific Board

"India is one of the most important arenas for arbitration today. I hope my experience in being part of some of the most significant actions here will provide members with a useful insight into the region. Since I also lead the transaction practice at the firm, I can also report on how the arbitral developments of the day are dovetailing into the practice and preference of commercial parties in their contracts. I will also be looking to emphasize the importance of ICCA at all relevant fora within the region." ■

## Historic documents in arbitration

A closer look at

# The Algiers Declarations



Our regular column on historic documents in arbitration is written for this edition by former Iran-US Claims Tribunal Legal Adviser **Bridie McAsey**.

The Algiers Declarations were made in 1981 to resolve the crisis in relations between Iran and the United States arising out of the detention of 52 hostages in the US embassy in Tehran. The Declarations were recorded by Algeria (acting as intermediary) on 19 January 1981. The most well-known parts of the Algiers Declarations are the General Declaration and Claims Settlement Declaration (CSD), but, as discussed below, there was much more to the Algiers Declarations. The General Declaration set out each state's undertakings and the principles of the deal struck, and the CSD established the Iran-United States

Claims Tribunal (IUSCT), still in existence some 36 years later.

The essence of the bargain underlying the Algiers Declarations was that Iran would secure the release of the hostages, and the United States would take several actions aimed at 'restoring the financial position' of Iran to that which existed before the hostage crisis. The US was to immediately transfer USD 7.955 billion in Iranian government funds that had been blocked in the US by executive order at the beginning of the hostage crisis, and this transfer triggered the release of the hostages. The US also agreed to terminate litigation against Iran in US courts with respect to cases that were within the IUSCT's jurisdiction; to return to Iran the property of the former Shah and his family, as well as certain other Iranian property; and to not interfere in Iranian internal affairs.

Accompanying the General Declaration and the CSD (only 10 pages between them) are over 40 pages of technical and escrow agreements and undertakings relating to financial matters and transfer of funds. These 40 pages were the output of what has been dubbed the 'Bankers' Channel' of negotiations, in which private banks that held blocked Iranian funds were directly involved. The banks were necessarily involved because the return of Iranian funds required their assistance. Additionally, Iran had several loans outstanding, and the banks were thus keen that some of the Iranian funds held on deposit were applied to pay off the loans. Negotiations via the Bankers' Channel involved a herculean effort on the part of private lawyers, who worked with the authorization of, but mostly separate from, the government-to-government channel.

Commentary today, and particularly that in the arbitration world, tends to focus on the IUSCT. However, contemporary accounts reveal that a vast amount of time was spent working out the financial aspects of the deal that was ultimately enshrined in



The Small Court Room of the Peace Palace in The Hague where the Iran-US Claims Tribunal held its first meeting in July 1981.

the Algiers Declarations, and that comparatively little time was spent discussing the design of the Tribunal. Although the Algiers Declarations contain detailed jurisdictional grants and sketch out the basic terms of the IUSCT's operation, its functioning was largely left to the then-infant UNCITRAL arbitration rules, or was to be determined once the IUSCT commenced its work. Nonetheless, in the IUSCT the Algiers Declarations created a unique and quite remarkable, multifunctional international dispute resolution body. It provided an interstate dispute resolution process; a forum for private claimants to arbitrate against states; and a mass claims process by virtue of the number of private cases.

The Algiers Declarations themselves are remarkable for their conclusion amidst strained circumstances, including the hostage crisis itself, the Iran-Iraq war and the pressure to memorialize an agreement before President Reagan took office (the Algiers Declarations were signed the day before Reagan's inauguration in January 1981). The extensive direct involvement of private actors via the 'Bankers' Channel' is also remarkable, in what was then still a relatively state-centric international law environment.

For those who want to learn more, see John E. Hoffman, 'The Bankers' Channel' in *American Hostages in Iran* (Yale University Press, 1985) and 'Making History: The Iran Hostage Crisis' (Shearman and Sterling's 'Making History' series, available at: <https://www.youtube.com/user/ShearmanSterling>). ■

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### by ICCA Members

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**N. Bassiri & M. Draye**, *Arbitration in Belgium – A Practitioner's Guide*, Kluwer Law International, 2016, 688 p.

**Massimo Benedettelli**, "Applying the UNIDROIT Principles in International Arbitration: An Exercise in Conflicts" 33 *Journal of International Arbitration*, (2016, no. 6) pp. 653–686

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5 *Indian Journal of Arbitration Law*, (2017, no. 2) pp. 93–122

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