

The 3rd CARTAL Conference on International Arbitration



Winds of Change: Securing Harmony in Arbitral Practice

29th - 30th September, 2018

Institutional Partners



INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION*



THE CONFERENCE

The Centre for Advanced Research and Training in Arbitration Law ('**CARTAL**') at National Law University, Jodhpur endeavours to further academic research and study in the field of arbitration and dispute resolution. Since its inception, CARTAL's initiatives have provided an impetus to dialogue and discourse regarding arbitration in India. The workshops, guest lectures and conferences organized by CARTAL have provided a platform for academicians, professionals and students to interact and discuss contemporary issues in arbitration law. In line with its objectives, the Centre is organizing the '3rd CARTAL Conference on International Arbitration, 2018' ('**Conference**'). CARTAL's first international arbitration conference, 'Arbitration at Crossroads' in 2016, was organised in association with Baker McKenzie. This conference addressed themes including developments in international investment arbitration, transparency and confidentiality concerns in arbitration, institutional arbitration in India and the overhaul of India's arbitration law. CARTAL's 2nd International Arbitration conference, 'Looking East: Arbitration in the Asian Age', held in association with Baker McKenzie. The conference hosted panel discussions on topics such as arbitration across legal and economic cultures, the

viability of the BRICS Dispute Resolution Forum, third party funding and contours of public policy in arbitration.

The theme for the 3rd CARTAL Conference is "*Winds of Change: Securing Harmony in Arbitral Practice*" and it shall be on 29th and 30th September, 2018 at National Law University, Jodhpur in India. In recent years, we have witnessed a rise in conflicts in arbitral practice across the globe in both the investment and the commercial setting. This, in turn, has been accompanied by a rise in the efforts to achieve symmetry between diverse practices across the globe. The Conference will aim to address some of these conflicts and the solutions that have been presented, thereby moving towards harmony in arbitral practice.

Panel I: The Investment Court System: For Better or For Worse?

In November 2015 the European Union ('EU') presented to the United States a new proposal for settling the disputes brought forward by investors against the host state under the Transatlantic Trade and Investment Partnership which came to be known as the Investment Court System ('ICS'). The ICS represents the EU's effort to move away from the traditional ad hoc settlement of disputes under the Investor State Dispute Settlement ('ISDS') mechanism, and to set up a permanent multilateral investment court for effective disposal of claims of investors. The

ICS promises to be a more transparent, coherent and fair system than the existing ISDS mechanism. The ICS is comparable to domestic and international courts in terms of its structure and composition as it would be composed of a Tribunal of First Instance and an Appeal Tribunal. However, many arbitration practitioners have criticised the ICS proposal as suffering from the same infirmities as the ISDS system, thereby touting the ICS model as another ISDS mechanism under the guise of a new name. The critics contend that despite the nomenclature, the ICS is based on the arbitration model and still lacks the enforcement of a court. Similarly, appointment of judges to the Investment Court as well as their qualifications are concerns that remain unresolved.

This panel seeks to address issues relating to the viability of the ICS proposal- whether it can be a full-fledged replacement to the existing ISDS mechanism, and whether India should consider adopting the ICS mode of settlement of disputes in its bilateral investment treaty negotiations.

Panel II: Cross Institutional Consolidation of Arbitration: The Road Ahead

Many institutions contain provisions for consolidation of multiple proceedings being conducted under their aegis. However, in case parties subject themselves to different

institutional rules, there will be multiple proceedings on the same factual matrix and possibly, conflicting decisions. To this end, the Singapore International Arbitration Centre ('SIAC') has put forward a proposal for cross-institutional consolidation. The SIAC proposal contains two suggested mechanisms: a standalone mechanism to address the timing of consolidation applications, the appropriate decision-maker (i.e. the institution(s) or the tribunal) and the applicable criteria to determine when arbitral proceedings are sufficiently related to warrant cross-institution consolidation. A joint committee appointed from members of the Courts or Boards of the concerned arbitral institutions would be mandated to decide the applications, with a specific committee being appointed for each application. An alternative mechanism is that the proceedings should be administered only by one institution applying its own arbitration rules. The institutions can agree on objective criteria (such as the number of disputes subject to the different rules or the time of commencement of the first proceeding) to determine which institution should administer the consolidated dispute. The arbitral institutions will have to amend their rules to pave the way for a cross-institutional mechanism, and the parties by agreeing to the application of the rules would also include this mechanism. The SIAC, however, has considered the possibility of making it an 'opt-in' mechanism for a transition period.

This panel will address issues such as the whether the power to consolidate lies with the tribunal or with arbitral institutions, the standards for consolidation of arbitrations as well as the various enforcement considerations of awards rendered under such systems.

Panel III: Guerrilla Tactics in International Arbitration: Where to draw the line?

Parties to international business transactions are often driven by a desire to preserve their business relationship and therefore, prefer the friendly atmosphere of arbitral proceedings. However, subscribers to international arbitration increasingly complain about the length, cost, and more recently, the tactics adopted by lawyers in the course of arbitral proceedings. These complaints reveal that arbitration has fallen victim to its own success. Adverse conduct by parties/attorneys/lawyers in the course of arbitration proceedings may otherwise be regarded as bad behaviour. However, the term guerrilla tactic is often used to describe those actions which are perceived as more hostile practices displayed by parties in arbitration in an attempt to gain a better advantage over the opposing party. Till date, there is a lack of a clear definition of guerrilla tactics in international arbitration. This accounts for why conduct identified by some attorneys as ‘guerrilla tactics’ would be defended by others as legitimate strategy, or even as part of an attorney’s obligation to

diligently represent the client’s interest. Efforts to stop a tribunal from being formed, the problem of the arbitrator who, out of misguided loyalty to the party that appointed him/her, resigns at a late stage in the case, the “walkout” by a party, could all be examples of guerrilla tactics. Although most modern arbitration rules are intended to foreclose the best-known forms of non-cooperation, the process is never complete, because human ingenuity has a way of coming up with new ones.

The panel will address questions such as who should be charged with the responsibility of regulating such guerrilla tactics, the difference in the employment of guerrilla tactics in international commercial arbitration and the ISDS mechanism and the possibility of whether such tactics can constitute grounds for setting aside or annulment of the award to create a deterrence effect for the parties.

Participants

The Conference will be attended by select students from top national law schools across India. Further, CARTAL will invite a limited number of practitioners and academicians to attend the Conference as delegates.

NATIONAL LAW UNIVERSITY, JODHPUR

National Law University, Jodhpur is one of the premier law universities in India whose

endeavour is to develop legal professional skills par excellence. The University is situated in the vibrant state of Rajasthan. Jodhpur itself is a widely popular tourist destination, globally recognized for its majestic heritage and historical significance. The University has excelled in traditional legal education and inculcates an innovative hands-on approach to the study of emerging legal fields.

The University enjoys an unparalleled reputation for its excellent hospitality and management capabilities and is fully equipped with the requisite facilities required for the organisation of such events, such as:

- i. A world class auditorium with a seating capacity of 250 and equipped with the latest audio-visual facilities;
- ii. Conference rooms equipped with modern video-conferencing facilities;
- iii. On-campus accommodation for up to 15 dignitaries as well as up to 50 students from outstation universities;
- iv. Round the clock availability of multi-cuisine food;
- v. Frequent bus shuttle service connecting the University to the city of Jodhpur; and
- vi. Arrangements with internationally renowned hotels in and around Jodhpur for accommodation at concessional rates.

In addition, the city of Jodhpur is well connected with daily connections by airways, railways and roadways.

CARTAL

The Centre for Advanced Research & Training in Arbitration Law ('**CARTAL**') has been set up by National Law University, Jodhpur to promote research and scholarship in the field of arbitration. CARTAL is headed by Ms. Nidhi Gupta, the Executive Director, with Professor Martin Hunter acting as Honorary Chairman. The Centre's Board of Advisers includes some of the most pre-eminent personalities in the field of arbitration such as Mr. Gary B. Born, Mr. Alexis Mourre, Mr. Emmanuel Gaillard and Prof. Gabrielle Kaufmann-Kohler. CARTAL comprises of a dedicated body of faculty members and students, who are responsible for organisation of the events hosted by the Centre.

INDIAN JOURNAL OF ARBITRATION LAW

The Centre publishes the Indian Journal of Arbitration Law ('**IJAL**'), a bi-annual, open-access student-run journal. The IJAL is widely recognized as the leading Indian dispute resolution journal and an excellent source of reference in the field. The IJAL endeavours to cover a wide range of subjects in the field of arbitration and, despite the nomenclature of being the 'Indian' Journal of Arbitration Law, has maintained a focus on transnational debates in international commercial arbitration and investment treaty arbitration. The IJAL has successfully published five volumes and

continues to host contributions from globally renowned experts and is indexed on HeinOnline, Kluwer Arbitration and Westlaw.

More information about the journal, CARTAL, its Board of Advisers and members can be found at <http://ijal.in>.

ORGANISATIONAL EXPERIENCE & ASSOCIATIONS

CARTAL has successfully organized several events in the past and continues to do so with regular frequency.

- i. The Second Annual CARTAL Conference on International Arbitration- *“Looking East: Arbitration in the Asian Age”*

CARTAL and IJAL, along with Baker & McKenzie organised a two-day international conference on international arbitration, “Looking East: Arbitration in the Asian Age”, at National Law University, Jodhpur (India) in 2017. The Conference was institutionally supported by UNCITRAL, ICC, SIAC, KLRCA, HKIAC, MCIA, AFIA and ICDR. SCC Online and EBC were the knowledge partners. The Conference saw participation from panellists from across the globe as well as students from all over the country. A detailed report of the conference can be found [here](#).

- ii. The First Annual CARTAL Conference on International Arbitration – *“Arbitration at Crossroads”*

CARTAL and IJAL, along with Baker & McKenzie organised a two-day international conference on the state of arbitration, “Arbitration at Crossroads”, at National Law University, Jodhpur (India). The Conference was institutionally supported by ICC, SIAC, HKIAC, MCIA and CIArb. The Society of Indian Law Firms was the principal sponsor. The Conference was a resounding success with panellists who were experts in international arbitration and participants from law schools across the country. A detailed report of the conference can be found [here](#).

- iii. The Annual Gary B. Born National Essay Writing Competition on International Arbitration

The Centre has been organizing an annual essay writing competition with the support and patronage of Mr. Gary B. Born since 2016. The competition has been conceived to encourage law students to write on forward looking issues such as the prospects of a bilateral arbitration treaty, desirability of arbitration of public law claims and ten year review of the UNCITRAL Model Law on International Arbitration.

- iv. Special Lecture Series:

CARTAL has regularly invited experts to deliver lectures on topical issues in arbitration. Most recently, Mr. Sivaramakrishnan M.S., practising advocate at the Karnataka High Court, delivered lectures on the issue of

‘Joinders, Consolidation and Multi-Party Arbitrations’ and in 2016, Mr. Ajay Thomas, former Registrar of the London Court of International Arbitration (India), was invited to deliver a lecture on the ‘Future of Institutional Arbitration in India’.

CARTAL has also organized round table discussions from time to time. In 2012, Prof. Martin Hunter chaired a discussion on the topic ‘Can India become the hub of international commercial arbitration’ and, in 2013, Mr. Hiroo Advani led the discussion on ‘Running Arbitration from beginning to end’.

CONFIRMED PANELLISTS

Ms. Françoise Lefevre (*Partner, Dispute Resolution, Linklaters, Brussels*)

Dr. Gordon Blanke (*Partner, International Commercial and Investment Arbitration at DWF (Middle East) LLP, Dubai*)

Mr. Paolo Marzolini (*Partner, Patocchi and Marzolini, Geneva*)

Mr. Jonathan Lim (*Senior Associate, Wilmer Hale, London*)

Ms. Mariana Zhong (*Associate, Dechert LLP, Beijing*)

Ms. Jane Rahman (*Senior Counsel, Arbitration Team at Al Tamimi & Co., Dubai*)

Mr. Guillaume Croisant (*Associate, Linklaters, Brussels*)

Mr. Maanas Jain (*Senior Associate, Three Crowns, London*)

Mr. Aditya Singh (*Associate, White and Case, Singapore*)

Datuk Professor Sundra Rajoo (*Director, Asian International Arbitration Centre*)

Mr. Pranav Mago (*Head, South Asia, Singapore International Arbitration Centre*)

CONTACT

Ms. Nidhi Gupta - *Executive Director, CARTAL*

nidhinlu@ijal.in | +91-9610116169

Ms. Aashna Agarwal - *Co-Convenor of the Conference and Editor-in-Chief, IJAL*

editors@ijal.in | +91-9636208664

Mr. Siddhant Nair - *Co-Convenor of the Conference and Editor-in-Chief, IJAL*

editors@ijal.in | +91-7073649339

Ms. Prakrati Shah - *Joint Organising Secretary of the Conference and Executive Editor, IJAL*

editor.cartal@gmail.com | +91-9610169968

Ms. Shalina Abhale - *Joint Organising Secretary of the Conference and Executive Editor, IJAL*

editor.cartal@gmail.com | +91-9799969729

Mr. Riyan Vatcha - *Joint Organising Secretary of the Conference and Managing Editor, IJAL*

editor.cartal@gmail.com | +91-9928011296