

# Arbitration with States and State Entities under the ICC Rules

**Date:** September 10, 2012

**Venue:** Winston & Strawn LLP  
200 Park Avenue  
New York, NY

## **Objective:**

At a time when arbitrations involving state parties are on the rise, many arbitration practitioners are left to grapple with nuances that are specific to this area. Arbitrations involving state parties generate certain issues that do not arise in traditional commercial arbitration between two private parties. The Seventh Annual ICC New York Conference will bring together experts to discuss important topics that are unique to state-party arbitration, such as investment treaties, distinguishing contract rights from treaty rights, and the evolving role of arbitral institutions in this context.

## **International Court of Arbitration®**

The International Court of Arbitration® has a distinguished and long-standing history of international dispute resolution. In 2011 alone, it received 796 requests for arbitration from all over the world. Of the 2,293 parties in the cases filed with the International Court of Arbitration® in 2011, the United States was the country with the highest participation in ICC Arbitration, and the North American region captured the 5th most number of parties worldwide. States and state-owned entities comprised 10.2% of the parties in ICC arbitrations filed in 2011.

## **Who should attend**

Arbitrators, mediators, legal practitioners, in-house counsel, and academics who wish to know more about developments in arbitration involving states and state entities.



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# Program

September 10, 2012

**8:00 a.m. Registration and Continental Breakfast**

**9:00 a.m. Welcome and Introduction**

**9:10-10:40 a.m. An Institutional Perspective on Arbitration Involving State Parties**

At the dawn of a new rules regime, the ICC is poised to handle a wider variety of cases than ever before, including more cases involving parties that are states or state entities. The speakers on this panel will discuss the ICC Court's extensive experience handling matters involving states, as well as speak about the results of the ICC Commission's study on arbitration involving state parties. The panelists will also highlight other arbitral rules that are used for investment treaty arbitrations as well as the main mechanisms for the enforcement of investment arbitration awards.

*Discussion*

**10:40-11:00 a.m. Coffee Break**

**11:00-12:30 p.m. The Nuts and Bolts of Treaties: Negotiation, Ratification and Interpretation**

The legal rights included in bilateral and multi-lateral investment treaties are the product of long-term negotiations and strategy. In this panel, we will hear from individuals who participate in drafting, negotiating and finalizing these agreements, and we will learn how they navigate the ratification process. The panelists will address, among other things, how various legal protections and rights are incorporated into the agreements and how methods of application and interpretation have evolved over time. In addition, we will hear the practitioner's perspective on the art of treaty interpretation at the arbitration stage.

*Discussion*

**12:30-2:00 p.m. Lunch**

**2:00-3:30 p.m. The Fundamental Differences Between Treaty Rights and Contract Rights**

A core distinction that must be made when arbitrating with state parties is between claims arising under a treaty and those arising under an investment contract. Differentiating between the claims originating from these two sources will subsequently determine the proper legal rights at issue, the applicable law, the proper forum, and the potential liability of the host state. The speakers on this panel will discuss the distinguishing features of contracts and treaties and help practitioners navigate these nuanced issues, thereby protecting the soundness of the final award.

*Discussion*

**3:30-3:50 p.m. Coffee Break**

**3:50-5:50 p.m. Roundtable Discussion: Emerging Issues in Investment Arbitration**

What is the likely path for arbitrations involving state parties in the future? What emerging issues have garnered special attention? This panel will cover topics that include the growing prevalence of states bringing claims against investors, third-party funding, state-versus-state claims and poignant ethical issues that are specific to arbitrations involving state parties. We will hear from practitioners as well as from corporate counsel who will discuss and debate important topics in the practice of arbitration involving state parties.

**5:50 p.m. Closing Remarks**

**6:00 p.m. Cocktail Reception**

# Speakers

September 10, 2012

- **Gerald Aksen**, Independent Arbitrator, *New York*
- **Mark Beckett**, Partner, Latham & Watkins LLP, *New York*
- **George Bermann**, Professor of Law, Columbia Law School, *New York*
- **Janis H. Brennan**, Partner, Foley Hoag LLP, *Washington, DC*
- **Henry Burnett**, Partner, King & Spalding LLP, *New York*
- **Yves Derains**, Founding Partner, Derains & Gharavi, *Paris*
- **Claudia Frutos-Peterson**, International Counsel, Curtis, Mallet-Prevost, Colt & Mosle LLP, *Washington, DC*
- **Jason Fry**, Partner, Clifford Chance, *Paris* and Former Secretary General, International Court of Arbitration®, *Paris*
- **Jonathan Greenblatt**, Partner, Shearman & Sterling LLP, *New York*
- **Jean Engelmayer Kalicki**, Partner, Arnold & Porter LLP, *Washington, DC*
- **Jonathan Kallmer**, Counsel, Crowell & Moring LLP, *Washington, DC* and Former Deputy Assistant U.S. Trade Representative for Investment, Office of the U.S. Trade Representative (USTR)
- **Caline Mouawad**, Partner, King & Spalding LLP, *New York*
- **Lisa Bench Nieuwveld**, Counsel, Conway & Partners N.V., *Rotterdam*
- **Michael Ostrove**, Partner, DLA Piper, *Paris*
- **Patrick Pearsall**, U.S. State Department, Office of the Legal Adviser, *Washington, DC*
- **Laura Robertson**, Managing Counsel, ConocoPhillips, *Houston*
- **John Roesser**, Partner, Winston & Strawn LLP, *New York*
- **Eduardo Silva Romero**, Partner, Dechert LLP, *Paris*
- **Laurence Shore**, Partner, Gibson, Dunn & Crutcher, *New York*
- **Josefa Sicard-Mirabal**, Director, Arbitration & ADR, North America, International Court of Arbitration®, *New York*
- **Abby Cohen Smutny**, Partner, White & Case LLP, *Washington, DC*
- **Sylvie Tabet**, Deputy Director, Trade Law Bureau, *Ottawa*
- **Martin Valasek**, Partner, Norton Rose Canada LLP, *Montréal*

# Logistical and Registration Information

## Venue:

Winston & Strawn LLP  
200 Park Avenue  
New York, NY 10166

## How to register:

Please complete and return the registration form indicating method of payment to:

**Email:** [aay@iccwbo.org](mailto:aay@iccwbo.org)

**Mail:** ICC North America  
c/o United States Council for International Business  
1212 Avenue of the Americas, 21<sup>st</sup> Floor  
New York, NY 10036  
USA

**Tel:** +1 212 703 5044

**Fax:** +1 212 575 0327

**Website:** [www.iccnorthamerica.org](http://www.iccnorthamerica.org)

*Registration will be confirmed upon receipt of registration form and payment.*

## Registration fee:

**Until July 27, 2012:**

**After July 27, 2012**

**“Early bird special”**

☐ US \$375

☐ For USCIB members: US \$475

☐ For non-members: US \$575

## Registration Fee for Academics, Corporate Counsel, Sole Practitioners and Government Representatives:

☐ US \$300

*The fee includes working papers, continental breakfast, refreshments, lunch, and reception.*

## Travel and accommodation:

Travel and hotel expenses are not included. Participants are responsible for making their own travel arrangements and hotel reservations.

## Cancellation charge:

50% of the contribution to costs will be refunded if notice of cancellation is received in writing before **August 10, 2012**. Cancellations after this date are not refundable. However, registration may be transferred to another person from the same company or organization at no extra charge, provided that notice is sent to [aay@iccwbo.org](mailto:aay@iccwbo.org) prior to the conference.

# Registration Form

## Participant information:

Title (Dr/Ms/Mr/etc.): \_\_\_\_\_

Last name: \_\_\_\_\_

First name: \_\_\_\_\_

Position: \_\_\_\_\_ Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/state: \_\_\_\_\_ Zip code: \_\_\_\_\_

Country: \_\_\_\_\_ Email: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## Registration fee: *(Please check the appropriate box.)*

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## Method of payment:

By credit card: \_\_\_\_\_

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Signature: \_\_\_\_\_

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