



CI Arb New York News

Welcome



Welcome to the second edition of *CI Arb New York News*, the newsletter of the Chartered Institute of Arbitrators' New York Branch. Continue reading to learn about Branch activities and noteworthy arbitration and ADR developments.

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The More The Merrier?

Increase in Multiparty Arbitrations Spawns New Institutional Rules*

by Finley T. Harckham and Peter A. Halprin, MCI Arb / Anderson Kill

Over the last several years, the world's leading arbitral institutions have adopted new rules, recognizing that the growth in international arbitration has been accompanied by the increasing complexity

and sophistication of disputes. Institutional statistics reveal increases in disputes involving multiple parties, multiple contracts and multiple arbitration agreements. Parties to a dispute subject

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Chair's Message



Members of the New York Branch--

2015 is a very active year for our Branch: a year of successes -- both those which have occurred and are

yet to occur; a year of significantly enhanced visibility and a year of growth.

The Branch's joint course with Columbia Law School in International Commercial Arbitration given this past May was an overwhelming success, not just measured by unanimous student feedback, but also by the revenue the Branch and the Center for International Commercial and Investment Arbitration at Columbia Law School each netted from the course. See the report later in this newsletter.

But this was not the only success the Branch had in 2015. On February 25th, the Branch provided a highly acclaimed video-linked, multi-city luncheon program that addressed the UNIDROIT Principles. This program was the third in the series of the Branch's topical luncheon programs and is also described below.

Yet, three more events are coming in 2015.

The Branch has its annual Fall Reception on September 10th. On September 18th, the Branch is co-participating with the South East England Branch in a video-linked morning program addressing the use of technology in dispute resolution.

Our last event for 2015 is our Branch's centenary event. It is a joint video-linked conference with UNCITRAL/Vienna and will occur on October 21, 2015. The conference is directed to the UNICTRAL Guide to the New York Convention and other contemporary issues regarding the Convention. Its organizers have assembled an incredible group

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An Updated Instrument in the Arbitral Toolkit: The 2010 UNIDROIT Principles of International Commercial Contracts

by Stephanie Cohen, FCIArb



Professor Eckart Brödermann from the University of Hamburg addressing the participants via video-link from Frankfurt

On 25 February 2015, more than 100 arbitrators, practitioners, and scholars gathered at six video-linked offices of Squire Patton Boggs LLP in New York, London, Paris, Berlin, Frankfurt and Washington, D.C., for an introduction to, and cross-office discussion about the third edition of the UNIDROIT Principles of International Commercial Contracts (“2010 UNIDROIT Principles”),



From left to right: Neil B. Cohen, Richard L. Mattiaccio, and Professor Alejandro M. Garro addressing the participants from New York

a “soft law” restatement of international commercial contract law first published in 1994. Six professors who served as members or observers to the Working Group for the preparation of the 2010 UNIDROIT Principles and who hail from different countries and

legal backgrounds spoke from different offices about the UNIDROIT Principles as a bridge between the civil law and common law traditions:

- M. Joachim Bonell, Professor of Law Emeritus, University of Rome “La Sapienza” (Chair, UNIDROIT Principles Working Group);
- Alejandro M. Garro, Adjunct Professor of Law and Senior Research Scholar, Columbia Law Parker School of Foreign and Comparative Law;
- Eckart Brödermann, Partner, Brödermann Jahn Recht. mbH and member of the Faculty of Law at Hamburg University;
- Henry D. Gabriel, Professor of Law, Elon University School of Law;
- Bénédicte Fauvarque-Cosson, Professor of Law, University Panthéon-Assas, Paris II; and
- Neil B. Cohen, Jeffrey D. Forchelli Professor of Law, Brooklyn Law School.

The event was organized and moderated by the Chair of the CIArb New York Branch Programming Committee, Richard L. Mattiaccio, a Squire Patton Boggs LLP partner in New York who served as a Working Group observer.

In addition to examining how the 2010 UNIDROIT Principles can be incorporated into contracts and accepted around the world as internationally neutral rules for commercial agreements and relationships, the presenters touched upon the influence that the UNIDROIT Principles have had on national legislation and courts and how the Principles interact with and complement the United Nations Convention on Contracts for the International Sale of Goods (CISG). Other program highlights included discussion of important common law and civil

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Chair's Message

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of panelists. This event is also described below.

Through these efforts, our Branch continues to gain significant visibility for itself and also the Institute as a whole, not only in the international arbitration community in the New York area, but everywhere in the world our programs, attendees and collaboration reach. Our membership continues to grow along with our recognition as professionals realize the value that membership in the Institute, and particularly in our Branch, along with participation in its activities, makes to their careers.

To those of you who have not yet attended our events: do so. You have a choice of three in the fall. Come and benefit from the discussion, networking with new colleagues and good company of your friends in the Branch.

Above all, the Branch would not be a success without you. Our Branch continues to grow, in terms of its membership and resources, and offer more programs and events (both those that it originates and those in which it is asked to participate by and with other organizations worldwide whether in the Institute or outside it) -- all to drive continued and increasing value to its members. Yet, the Branch needs your help. While I greatly appreciate the time and effort expended by many of you already, more people are needed to assist. Please volunteer to serve on any of the Branch committees. Your assistance would greatly facilitate and guide further development of the Branch and, no doubt, provide you with considerable satisfaction in doing so, along with outstanding opportunities for professional networking and development.

I now look forward to seeing each of you at one of our upcoming events. In the meantime, let me extend my very best wishes to each of you for a terrific second half to 2015.

Pete Michaelson, FCI Arb, C. Arb
Chair, NY Branch CI Arb

The More the Merrier?

Continued from pg. 1

to arbitration are also increasingly seeking interim and emergency measures relating to their disputes.

Adapting to this new reality, arbitral institutions that have changed their rules on these points include the American Arbitration Association/International Centre for Dispute Resolution (AAA/ICDR), International Court of Arbitration at the International Chamber of Commerce (ICC), and London Court of International Arbitration (LCIA).

Those who will find the new rules regarding multiparty practice to be of particular interest include companies involved in ventures with multiple partners (including parents and subsidiaries), policyholders with large insurance programs involving multiple insurance companies, and cedents with reinsurance programs including multiple reinsurers. Often, these types of claimants seek to have a single proceeding cover the entire program in dispute rather than moving forward in individual proceedings against each member of a program. In addition to the obvious cost savings in having a single proceeding, it may also be most efficient and avoid inconsistent determinations where common factual or legal issues feature in the dispute.

New Institutional Approaches to Multiparty Arbitrations

AAA/ICDR Rules

The 2014 AAA/ICDR Rules contained a number of changes over prior versions of the Rules. [1] Most importantly, for the purposes of this article, Article 7 (Joinder) and Article 8 (Consolidation) were added to the Rules.

Under Article 7, "A party wishing to join an additional party to the arbitration shall submit to the Administrator a notice of Arbitration against the additional party." [2] The rule also requires that notice be provided to the additional party

and all other parties at the same time. [3] However, critically, it should be noted that Article 7 provides that “No additional party may be joined after the appointment of any arbitrator, unless all parties, including the additional party, otherwise agree.”[4]

Article 8 features rules governing consolidation of disputes, providing:

At the request of a party, the Administrator may appoint a consolidation arbitrator, who will have the power to consolidate two or more arbitrations pending under these Rules, or these and other arbitration rules administered by the AAA or ICDR, into a single arbitration where:

- a. the parties have expressly agreed to consolidation; or
- b. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
- c. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the consolidation arbitrator finds the arbitration agreements to be compatible.[5]

Article 8, which requires detailed study by any party seeking to consolidate under the rules, further provides that the Consolidation Arbitrator may take into account all relevant circumstances including: applicable law; whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed; the progress already made in the arbitrations; whether the arbitrations raise common issues of law and/or facts; and whether the consolidation of the arbitrations would serve the interests of justice and efficiency.[6]

ICC Rules

The ICC revised its Arbitration Rules in 2012 to address, among other things, “disputes involving multiple contracts and parties.”[7] To that end, the ICC added Articles 7-10 covering multiple parties, multiple contracts and consolidation.

Under Article 7 (Joinder of Additional Parties), “A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party.”[8] No additional party may be joined after the confirmation or appointment of any arbitrator unless all parties, including the additional party, agree.[9]

Articles 8 and 9 apply, respectively, to “claims between multiple parties” and “multiple contracts.” As to arbitration with multiple parties, claims may be made by any party against any other party provided that “no new claims may be made after the Terms of Reference are signed or approved by the Court without authorization of the arbitral tribunal.”[10] As to arbitration with multiple contracts, “claims arising out of or in connection with more than one contract may be made in a single arbitration irrespective of whether such terms are made under one or more than one arbitration agreement under the Rules.”[11]

Under Article 10 (Consolidation of Arbitrations), which, like Article 8 in the AAA/IDCR rules, should be a focal point for any party seeking to consolidate under the rules, the Court may consolidate arbitrations pending under the ICC Rules under the following circumstances:

- a. the parties have agreed to consolidation; or
- b. all of the claims in the arbitration are made under the same arbitration agreement; or
- c. where the claims in the arbitrations are

made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.[12]

In determining whether to consolidate, the Court may take into account any circumstance it considers to be relevant, including whether arbitrators have been confirmed or appointed in the arbitrations and whether the same or different arbitrators were already confirmed or appointed.[13]

LCIA Rules

The 2014 LCIA Rules also contain express provisions regarding joinder and consolidation.[14]

In Article 22 (Additional Powers), the LCIA Rules provide the Arbitral Tribunal with the power to decide, among others, the following issues:

viii. to allow one or more persons to be joined in the arbitration as a party provided any such person and the applicant party have consented to such joinder in writing following the Commencement or (if earlier) in the Arbitration Agreement; and thereafter to make a single final award, or separate awards, in respect of all parties so implicated in the arbitration;

ix. to order, with the approval of the LCIA Court, the consolidation of the arbitration with one or more other arbitrations into a single arbitration subject to the LCIA Rules where all the parties to the arbitrations to be consolidated so agree in writing;

x. to order, with the approval of the LCIA Court, the consolidation of the arbitration with one or more other arbitration subject

to the LCIA Rules commenced under the same arbitration agreement or any compatible arbitration agreement(s) between the same disputing parties, provided that no arbitral tribunal has been formed by the LCIA Court for such other arbitration(s) or, if already formed, that such tribunal(s) is(are) composed of the same arbitrations;[15]

Conclusion

Rules pertaining to multiparty arbitration were also recently adopted by, among others, the Hong Kong International Arbitration Centre in the latest iterations of their rules.[16]

Given this trend, parties to arbitration agreements may seek to invoke the rules, where applicable, to seek to join parties to arbitrations or to seek to consolidate arbitrations. In institutions where such rules have not yet been expressly included, parties may seek to persuade tribunals that they have the power to join or consolidate arbitrations on the basis of the trend.

Careful attention must be paid, however, to the rules that apply in a given situation. In particular, timing requirements can bar a party seeking to add additional parties to an active or contemplated arbitration (or to consolidate arbitrations). Accordingly, parties seeking to add additional parties to an active or contemplated arbitration (or to consolidate arbitrations) should do so as early as possible in the proceeding.

Likely claimants who may want to have a single proceeding with a number of parties should pay careful attention to the applicable arbitral rules when drafting a dispute resolution clause. While an express pre-dispute agreement for all parties to participate in a single arbitration is ideal for a potential claimant seeking to include all potential parties in a dispute, the use of arbitral rules that expressly contemplate multiparty proceedings can assist in the absence of an express agreement.

As noted above, claimants as well as respondents can benefit from the invocation of such

multiparty provisions to ensure the efficient resolution of disputes.

* This article was previously published in *Metropolitan Corporate Counsel*, May 2015.

[1] "The New ICDR International Arbitration Rules," Paul Friedland & John Templeman, available online at: http://images.go.adr.org/Web/AmericanArbitrationAssociation/%7Ba522394f-fbe3-41ef-874f-e085f5806c08%7D_ICDR_Procedures_Changes.pdf. In this commentary, Mr. Friedland and Mr. Templeman note that the old Rules had no prior provisions addressing, among other things, joinder or consolidation.

[2] International Dispute Resolution Procedures (including Mediation and Arbitration Rules) – Rules Amended and Effective June 1, 2014, International Centre for Dispute Resolution, at Art. 7(1), available online at: http://images.go.adr.org/Web/AmericanArbitrationAssociation/%7B882b243b-d143-4be5-89e0-6aa7f3125560%7D_ICDR_Rules.pdf

[3] *See id.*

[4] *See id.*

[5] *See id.* at Art. 8(1).

[6] *See id.* at Art. 8(3).

[7] Arbitration Rules: Rules of Arbitration of the International Chamber of Commerce (in force from 1 January 2012) at Forward, available online at: <http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Mediation/Rules/2012-Arbitration-Rules-and-2014-Mediation-Rules-ENGLISH-version>

[8] *See id.* at Art. 7(1).

[9] *See id.*

[10] *See id.* at Art. 8(1).

[11] *See id.* at Art. 9.

[12] *See id.* at Art. 10.

[13] *See id.*

[14] LCIA Arbitration Rules effective 1 October 2014, LCIA, available online at: <http://www.lcia.org/media/download.aspx?MediaId=379>. Article 22.1(h) of the prior iteration of Rules contained a more limited joinder provision. See LCIA Arbitration Rules effective 1 January 1998, at Art. 22.1(h), available online at: http://www.lcia.org/Dispute_Resolution_Services/LCIA_Arbitration_Rules.aspx.

[15] *See id.* at Article 22.1.

[16] HKIAC Administered Arbitration Rules 2013, HKIAC, Art. 27-29, available online at <http://www.hkiac.org/en/arbitration/arbitration-rules-guidelines/hkiac-administered-arbitration-rules-2013>.

UNIDROIT Conference

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Professor Bénédicte Fauvarque-Cosson, from Panthéon-Assas Paris II, addressing the participants via video-link from Paris.

law concepts in the Principles, the new Hardship provisions, and the new, highly detailed provisions relating to plurality of obligors and obligees (e.g., joint and several liability).

Program co-sponsors included ICC/SICANA, Inc., the New York International Arbitration Center, the College of Commercial Arbitrators, and the CIArb Washington, D.C. Chapter and European Branch.



Video display of linked venues from New York

The speakers' presentations, including presentation graphics, are available for free viewing through the New York Branch's website at <http://ciarbnyc.org/the-2010-unidroit-principles-of-international-commercial-contracts/>

CIArb New York Branch Website

www.ciarbny.org

We are pleased to announce that the New York Branch now its own web site: www.ciarbny.org. The site provides information on the Institute and the Branch, the Branch's events and programs, and includes a membership directory. All members have exclusive control over his/her listing in the membership directory.

We take this opportunity to congratulate, Branch member, Steve Certilman, on a masterful job in designing the site. For more information about the site or to make any comments or suggestions, please send a message to info@ciarbny.org.



Annual New York Branch Fall Reception

It is a pleasure to report that almost a hundred members and supporters, representing a cross-section of the New York international arbitration community attended the CIArb New York Branch's second kick-off reception last October. Our special thanks to co-sponsors the New York International Arbitration Center, the College of Commercial Arbitrators and the CIArb Washington, D.C. Chapter and European Branch.

We hope to welcome even more members and supporters at the next reception this September 10th. See below for details about this year's reception.



A Successful Joint Columbia Law School and New York Branch Course on International Commercial Arbitration

This course, which occurred over the span of a full week, provided a systematic and comprehensive examination of the law and practice of international commercial arbitration. The course involved both lecture and interactive segments and was jointly provided by Columbia University School of Law, through its Center for International Commercial and Investment Arbitration, and the New York Branch of the Chartered Institute of Arbitrators. The course was held at the New York International Arbitration Center at 150 E. 42nd St.

Professor George Bermann of Columbia Law School, Peter Michaelson, Chair of the New York Branch and Thomas Halket, Vice Chair of the New York Branch were the course directors.

The course, essentially parallel in scope and depth to a graduate level law program on international commercial arbitration, provided separate 90-minute sessions on history, overview and institutions; legal framework and jurisdictional issues; separability and allocation of competence; arbitration agreement; illegality, arbitrability and other factors relating to the nature of the dispute; arbitral seat; appointment of and challenges to arbitrators; arbitral

institutions and rules; non-signatories and multi-parties; emergency relief and interim measures; the preliminary conference; choice of law; procedural issues, such as discovery, evidence and confidentiality; the merits hearing; deliberation and award; annulment; recognition and enforcement; ethics; and emerging issues.

Our students, numbering 34, came from around the world, specifically: Australia, Canada, Cypress, Djibouti, France, Haiti, Mexico, Nigeria, Qatar, Singapore, Thailand, Trinidad and the U.S.

The faculty was drawn from the best arbitrators, advocates and academics, mostly but not exclusively, in the New York international arbitration community, specifically:

- Gerald Aksen, Independent Arbitrator, New York;
- Catherine Amirfar, Counselor on International Law, U.S. State Department, Washington, DC;
- Julie Bédard, Skadden, Arps, Slate, Meagher & Flom, LLP, New York;
- Prof. George A. Bermann, Director, Center for International Commercial and Investment

Arbitration, Columbia Law School, New York;

- James H. Carter, Wilmer Hale, LLP, New York
- Rocio Digon, Counsel, SICANA Inc. /ICC International Court of Arbitration, New York;
- Eugene Farber, Farber, Pappalardo & Carbonari and Adjunct Professor of Law; Pace Univ. School of Law, New York;
- Prof. Franco Ferrari, Professor of Law, New York Univ. School of Law, New York;
- Louis B. Kimmelman, Sidley Austin LLP and Adjunct Professor of Law, Brooklyn Law School, New York;
- Richard Naimark, Senior Vice President, International Centre for Dispute Resolution, New York;
- Sophie Nappert, 3VB -- Three Verulam Buildings, London;
- Timothy G. Nelson, Skadden, Arps, Slate, Meagher & Flom LLP, New York;
- Natalie Reid, Debevoise & Plimpton, LLP, New York
- Robert Smit, Simpson Thacher & Bartlett, LLP, New York
- John M. Townsend, Hughes Hubbard & Reed LLP, Washington, DC; and
- Anne-Marie Whitesell, Professor of Law, Georgetown Univ. Law Center, Washington, DC and Former Secretary General, ICC International Court of Arbitration.

Ms. India Johnson, President and CEO of the AAA, was the keynote speaker at the formal dinner held at the University Club on Wednesday, May 13.



Prof. Bermann addressing class and signage with sponsors



Class getting ready for breakout session



Lunch gathering



Faculty member Eugene Farber addressing class



Lunch gathering

Third Annual New York Branch Fall Reception

Thursday
September 10, 2015
5:30 p.m. – 7:30 p.m.

A social event for CI Arb members and all friends who are active in arbitration, to celebrate the third year of the CI Arb New York Branch

Hosted by:

Squire Patton Boggs
30 Rockefeller Plaza, 23rd Floor
New York, NY 10112

R.S.V.P. to Richard Mattiaccio at
[*richard.mattiaccio@squirepb.com*](mailto:richard.mattiaccio@squirepb.com)

This reception is complimentary and open to all. Timely responses will help to ensure sufficiency of provisions as well as ease of entry.



Sponsored Events

4th Annual GAR Live New York

Full-day
September 24, 2015

7 World Trade
Center, New York
City

To register, please
visit
www.GlobalArbitrationReview.com/NewYork2015

Inaugural American Bar Association Construction Industry ADR Summit

Oct 8-9, 2015

Hilton Austin,
Austin, Texas

www.americanbar.org/groups/construction_industry.html



FRIDAY, SEPTEMBER 18, 2015

Alston & Bird LLP | 90 Park Avenue | New York, NY

Alston & Bird invites you to join our video-linked international conference with the South East England Branch.

Breakfast & Networking begins at 8:00 a.m.

SESSION 1: 8:30 a.m. - 10:30 a.m.

Perspectives on the present and future use of technology in dispute resolution.

SESSION 2: 10:45 a.m. - 12:30 p.m.

The session will include a remote arbitration witness examination, conducted by video-link, with our colleagues in the South East Branch in Canterbury, England.

Tom Halket, New York Branch Vice Chair, will be participating from Canterbury.

The State Bar of New York has approved this program for 4.5 CLE accreditation hours.

Space is limited, so RSVP today to: Lindsey.Fisher@alston.com

This program is sponsored by:



www.alston.com

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The New York Convention: Back for the Future

October 21, 2015

The Great Hall of
The Association of the Bar of the City of New York
42 West 44th Street
New York, NY
9:00 a.m. to 1:00 p.m.

This New York Branch Centenary event will address the UNCITRAL Guide to the New York Convention and feature speakers from both New York and Vienna. Speakers in New York currently include Professor Emmanuel Gaillard and Dr. Yas Banifatemi, both of Shearman and Sterling's Paris office, and Professor George Bermann of Columbia Law School. The Vienna speakers currently include Mr. Santiago Villalpando, Head of the U.N. Treaty Section, as well as Mr. Renaud Sorieul and Ms. Corinne Montineri, both of UNCITRAL.

The event will feature video-linked conference venues in New York City and UNCITRAL's offices in Vienna. A separate audience will be present at each venue. The event will be free, streamed onto the Internet for remote attendance, recorded and posted for subsequent free access through the New York Branch and UNCITRAL websites.

An optional ticketed, paid lunch at the Princeton Club in Midtown Manhattan will immediately follow the conference for those at the New York venue and will feature Mr. Gerald Aksen (International Arbitrator and former General Counsel of the AAA) as its keynote speaker.

Co-sponsors include:

Center for International Commercial and Investment Arbitration at Columbia Law School
Debevoise & Plimpton
International Arbitration Club of New York
International Commercial Disputes Committee of the New York City Bar Association
New York International Arbitration Center



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CI Arb New York News

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evolving to resolve