

CALL FOR PAPERS

Center on International Commercial Arbitration

Symposium on Salient Issues
in International Arbitration

DOES A TRANSNATIONAL LEGAL ORDER EXIST IN INTERNATIONAL ARBITRATION?

Wednesday, November 10, 2021

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Call for Papers for the Symposium on Salient Issues in International Arbitration

On Wednesday, November 10, 2021, the Center on International Commercial Arbitration will hold the fifth *Symposium on Salient Issues in International Arbitration*. The topic of this Symposium will be:

Does a Transnational Legal Order Exist in International Arbitration?

The Symposium is organized by the Center on International Commercial Arbitration at American University Washington College of Law under the direction of Professor Horacio A. Grigera Naón, and the Institut Suisse de Droit Comparé, represented by Professors Krista Nadakavukaren Schefer and Rodrigo Polanco Lazo. The Symposium is co-sponsored by the following institutions: UNIDROIT (Roma), Hague Conference on Private International Law (The Hague), Bucerius Law School (Hamburg), Escuela Libre de México (México), and Tsinghua University School of Law (Beijing). The Symposium is also supported by Transnational Dispute Management (TDM) as media partner.

Explanation of the Topic and the Scope of this Call for Papers

Background

Legal rules or laws applicable in international arbitrations—particularly those governing the merits of the dispute—have traditionally been the subject of passionate debate among international commercial arbitration scholars and practitioners. From the 19th century notion of “rules of conflict,” to interest analysis doctrines that started in the 1960s, or the exploration of “transnational” or “comparative law” approaches, the search for the most appropriate legal rules for international commercial dispute resolution has been always present. Part and parcel of such search has been - and always remains - the question if and how solutions more or less detached from national legal systems interact with public policy notions or mandatory rules found in national legal orders. In this latter respect, such solutions must take into account the existence of national sovereigns possibly having competing claims to regulate the same matters under their own laws applied by their own courts.

Such theoretical and practical questions are not limited to commercial arbitration. They are also present in arbitrations arising out of bilateral or multilateral investment treaties in a public international law setting. International legal sources, such as Article 38 of the Statute of the International Court of Justice or Article 42 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, become particularly relevant in such contexts. Not excluding the consideration of national laws and principles, these sources leave open the need of addressing issues that are similar to those facing commercial arbitration.

A complete analysis of the role of national law in international arbitration should not be limited to questions of the applicable substantive law . It may also cover procedural rules, including jurisdictional questions, of international arbitral dispute resolution.

In this Symposium we will take stock of the current state of the debates prompted by commercial and public international arbitration from a procedural and substantive legal perspective. We wish to inquire if international arbitration should be—or can realistically become—subject to a transnational legal order.

Encouragement of innovative and diverse approaches to the topic

Authors who participate in this Symposium may consider a wide array of issues arising out of international commercial arbitration, investment arbitration, as well as other forms of international arbitration under rules of public international law.

Submissions may address either theoretical or practical issues. For example, the papers may inquire if it is possible to speak today of a genuine “transnational legal order” or if the substantive rules of international arbitration are too fragmented and unstructured to receive such a label. Submissions may also consider the efficiency and desirability of other alternative sources of law governing international arbitration. One of the central areas that may be explored is the assessment, general outreach and application of the *UNIDROIT Principles of International Commercial Contracts* or the *2015 Hague Principles on Choice of Law in International Commercial Contracts*.

Areas that may be explored within the context of the general Symposium topic include (but are not limited to):

- a) whether applicable law solutions in arbitration coincide with the solutions in national courts and the extent to which national legal rules and laws affect international arbitral outcomes. This may be examined not only in connection with the merits, but also as to the legal regime governing the arbitration agreement or the arbitral procedure. Consideration of the latter may extend to confidentiality and transparency matters and evidentiary rules applying in international arbitral proceedings.
- b) the interaction of national law with other sources of arbitral decision-making, such as public policy and international mandatory rules of law (*lois de police*) or the contribution of traditional conflict-of-laws methodologies to the formation of such substantive rules, as well as their validity and interpretation;
- c) the use of references to “transnational law” in the determination of international arbitration cases.

- d) the role of the judiciary, and the importance of uniform and autonomous interpretation of the relevant international instruments, in the development of a transnational legal order.

Encouragement of diverse methodologies

Research may be based on an analysis of judicial and/or arbitral practice or other legal instruments and sources, on a review of existing scholarship, or based on empirical data analysis.

The Symposium encourages novel scholarship that critically analyses and discusses how courts of justice and arbitral tribunals worldwide address some of the normative challenges in a world with ever changing values and socioeconomic realities.

Take Part in the Debate!

This call for papers is open to scholars and practitioners with an interest in international arbitration, where in the field of commercial or investment arbitration. This Symposium aims to be a forum of critical and innovative discussion about the current challenges international arbitration is facing and to propose solutions for those challenges.

Procedure and Timeline for the Call for Papers

To submit a paper, the authors should email an attachment in Microsoft Word or PDF containing the advanced draft of their articles together with an abstract of between 300 and 600 words to arbitration@wcl.american.edu. **The deadline for submission of articles is June 15, 2021.** Submissions received thereafter will not be considered.

Papers should be 10,000 to 20,000 words (including footnotes) in length and reflect original research that has not been previously published. Please include the author's name, title of the paper, institutional affiliation, contact information, and three to five keywords.

It is also possible to formulate proposals for fully formed panels. Panels should be formulated around a common theme and include a confirmed list of panel members, abstracts for each presenter, and other required information to identify the scope and subject matter of the panel. Panel proposals should reflect a diverse background of professionals who are not related to each other. Please include the words "Panel Proposal" in the subject line of your email.

Each scholar may make only one submission. Both individual and co-authored

submissions will be accepted. The Symposium's Program Committee will assign individual and co-authored submissions to thematic panels according to subject area.

Selection of papers and notification: The authors of the selected proposals will be notified by July 15, 2021 of their acceptance to submit and present their paper at the Symposium on Wednesday, November 10, 2021 (depending on the development of the COVID-19 crisis panels may be held virtually). There is no cost to register for the conference but participants are responsible for securing their own funding for travel, lodging, and other incidental expenses.

Submission of Final Revised Papers for Publication: The final, revised papers, ready for publication, are due by December 15, 2021. This gives panelists the opportunity to include observations and comments received during the Symposium.

Academic Program Committee of the 2021 Symposium

- Dr. Horacio Grigera Naón, Director, Center on International Commercial Arbitration, AUWCL
- Dr. Björn Arp, Fellow, Center on International Commercial Arbitration, and Assistant Director, International Curriculum Development, AUWCL
- Dr. Krista Nadakavukaren Schefer, Vice-Director of the Institut Suisse de Droit Comparé, Lausanne (Switzerland)
- Dr. Rodrigo Polanco Lazo, Conseiller juridique, droits hispanophones, Institut Suisse de Droit Comparé, Lausanne (Switzerland)
- Dr. Ignacio Tirado, Secretary General, UNIDROIT, Roma (Italy)
- Dr. Christophe Bernasconi, Secretary General of the Hague Conference on Private International Law (The Hague)
- Dr. Stefan Kröll, Bucerius Law School, Hamburg (Germany)
- Dr. Alejandro Ogarrío España, Escuela Libre de México (Mexico)
- Dr. Jane Willems, Tsinghua University School of Law, Beijing (China)

About the Biannual Symposium

The Symposium on Salient Issues in International Arbitration is organized biannually by the Center on International Commercial Arbitration. The purpose to present a global perspective of current developments in international arbitration throughout the world. The symposium hosts prominent speakers and generates a dialogue about salient issues in international commercial arbitration, as well as current developments in BIT and ICSID arbitration, in the Americas, Europe, Africa, the Middle East, and East Asia.

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