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# The Resolver



Chartered  
Institute of  
Arbitrators  
**CI Arb**

News from the Chartered Institute of Arbitrators

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## Future perspectives of arbitration

An extract from the Patron's Address, presented at CI Arb's Conference in Malaysia, October 2008

**Karl-Heinz Böckstiegel**

WITH THE CONTINUING expansion of international trade and investment, the number of arbitration cases in general will also increase.

Changes in technology and in international trade and investment will lead to corresponding changes in international contract practice which, in turn, will be reflected in changes regarding the subjects of international arbitration. Compared to the traditional areas using arbitration, new kinds of contracts in fields such as telecommunication, the transfer of technology, genetic engineering, electronic commerce, entertainment and sports including sponsorship will present their specific demands to dispute settlement and probably take a relatively greater share of arbitration cases.

In a globalised economy, the growing relevance of intellectual property has not only led the World Intellectual Property Organization (WIPO) to create a highly sophisticated dispute settlement machinery with many creative ideas possibly relevant for other fields of business, but will lead to new kinds and new numbers of international disputes, as is already illustrated by the many domain name disputes. Also, the growing commercialisation of sports may lead to new arbitration bodies such as the Court of Arbitration for Sport (CAS) in which either sport federations or individual athletes appear as parties.

Parallel to this development of international commercial arbitration, one may have to take into account that, starting in the later part of the last Century, arbitral procedures have been used for the peaceful settlement of politically highly sensitive disputes. Though I would not expect arbitration to be the settlement solution in situations of political turmoil or military disputes, as a perspective for the new Century, it is comforting to see that at least in some politically sensitive international disputes arbitral procedures have

provided the basis for the peaceful settlement of international conflicts.

Regarding the disputing parties, private companies will, no doubt, continue to represent the greatest number of parties in international arbitration as they are the most numerous and significant players in international trade. However, as in history and particularly in the last Century, states, state institutions and state enterprises as well as international governmental organisations can be expected to participate in many ways and by many contracts in international trade and even more in the field of international investment, and consequently in arbitration proceedings.

Domestic arbitration does not exist in a vacuum, but is subject to and influenced by its national political, economic and legal environment as well as the practice of state courts and the usages of the national business community. For the different regions of the world, cultural differences will continue to play a role regarding the settlement of disputes.

For the Asian region, where previously mediation and conciliation were primarily used to solve disputes, a study of the Asian Development Bank confirmed that, as markets expand beyond the national frontiers, informal dispute settlement mechanisms become less reliable and formal institutions and procedures with powers of decision and enforcement more important. On the other hand, the Asian tradition may have an impact on arbitration in other parts of the world in promoting arbitral procedures in which an amicable settlement is pro-actively sought with the consent of the parties.

### In conclusion

First of all, I would expect a growing harmonisation between national arbitration laws. National legislators will continue to be pushed by their own constituencies, particularly their business communities, to adapt their respective legal frameworks to the demands of international business



**Karl-Heinz Böckstiegel**

practice for efficient dispute settlement machineries. This, and also the many similarities between the other modern national arbitration laws even if they do not follow the Model Law, has already led and will continue to lead to a harmonisation of national arbitration law to an even greater extent in the future.

My next prediction, though it may sound strange, is that international arbitration will become more international. With the growing number of international arbitration cases and the growing number of lawyers and arbitrators involved in international arbitration, I would expect them to become less dependent on their specific national particularities and more open and flexible to the specific needs of disputes in the international context.

In a more and more globalised economy and contract practice, regional differences will become less important. A globalisation of arbitration can also be noted as parties seem less and less to take the traditional approach of selecting arbitrators from their own legal background, but rather select arbitrators from any region of the world whom they consider best equipped for the particular case.

Finally, the often repeated truism that arbitration can only be as good as its arbitrators will also be valid in the future. In view of the fast growing numbers of cases, it may become increasingly difficult to find the best possible arbitrators for each individual case. On the other hand, this growing number of arbitration cases will

produce a growing number of lawyers experiencing international arbitration as counsel and a growing number of persons having some experience in the function of arbitrator. However, both in national arbitration, and even more so in international arbitration, it is not sufficient merely to select a good lawyer or a good jurist or a good engineer. If one wants to ensure the spe-

cific advantages of arbitration and ensure that the particular arbitration procedure does not become the practice ground for a new arbitrator to the detriment of the interests of the parties, acquaintance with and experience in the particular demands of arbitration and particularly international arbitration will continue to be indispensable. ■

## Message from the Director General

THE HIGH POINT of my second year as Director General was the Institute events in Malaysia, in October. The Malaysia Branch produced an outstanding international conference followed by the Board of Trustees meeting and CI Arb's third Congress. Following the award of the 2006 Charter and the many changes it initiated, I believe that, under Doug Jones's inspired leadership as Chairman of the Board of Trustees, the Institute has now all the mechanisms, procedures and processes in train to face the next decades of a turbulent 21st century with confidence. The revision to our 'Pathways to Fellowship' training progression across all the disciplines we represent – arbitration, mediation and adjudication – is now complete. After a period of much change on the training front, we well understand your calls for a period of stability to let the system bed down. We need, as ever, new members to enliven and broaden our network, so I do hope you will do your best to sign up your colleagues



**Michael Forbes Smith**

and peers to our training courses, and to let us know where new avenues for training appear. We have an exciting new scholarship and intern programme underway on the Learned Society front. In the relatively near future we will launch an improved membership benefit package. My Directors and I wish you a very Happy New Year and look forward to seeing as many of you as possible. ■

## Do you network online?

CI Arb has active groups on the professional and social networking sites LinkedIn ([www.linkedin.com](http://www.linkedin.com)) and Facebook ([www.facebook.com](http://www.facebook.com)). The groups are free to join and are open to all members worldwide.

Simply visit the site, sign-up, select and request to join the group today!



# CI Arb members play key role in new FDI moot competition

CI Arb AND ITS MEMBERS are closely involved with the two Willem C. Vis Moots (Vienna and Hong Kong) and with the ICC Mediation Moot in Paris. Such involvement represents an excellent demonstration of CI Arb's Learned Society role with the tremendous depth and breadth of expertise in the membership being deployed to help train the next generation of ADR lawyers. November 2008 saw the inaugural Foreign Direct Investment (FDI) Moot in Boston, Mass., and CI Arb members played key roles there.

Investor-State (FDI) arbitration has become common, complex and controversial, grabbing headlines in several countries and even becoming the subject of election debate in the USA. It is therefore wholly logical that there should be a Moot competition for such an important and fast-developing area of international law. Christian Campbell of the Centre for International Legal Studies (CILS; Salzburg) initiated the FDI Moot two years ago to promote practice-oriented legal education in this field. Professor Christopher Gibson of Suffolk University Law School (SULS; Boston) became co-director, and the co-founders of the FDI Moot were CILS, SULS, Pepperdine University School of Law, the Centre for Energy, Petroleum and Mineral Law & Policy (University of Dundee) and the Deutsche Institution für Schiedsgerichtsbarkeit (DIS). CI Arb members involved include Antonio Parra who serves on the FDI Moot's Advisory Board; Franz Schwarz and Alexander Lütgendorf who belong to its College of Arbitrators and Professor Jack Coe who represents Pepperdine on the FDI Moot's Founders Committee.

21 teams and nearly 90 students took part in 2008's inaugural compe-



Seated (left to right) Tim Nelson, Professor Lorz, Hew Dundas. Standing at left, Professor Gibson, at right Dr Campbell; in between are the two finalist teams

tion, with 20 teams, nearly 50 students and 18 coaches present at the oral hearings held at SULS. The teams were efficiently supported by the Suffolk staff, by Dr. Antonida Netzer of CILS and by the Suffolk International Law Students Association.

The 2008 case study (based on a 'real world' case) was a multi-layered claim arising out of an investment by a Gaulish company in a telecoms JV company in the Republic of Calpurnia alleging expropriation, failed repatriation of dividends, harassment of personnel etc etc. Calpurnia's defence hinged on the tribunal's having no jurisdiction under the Washington Convention 1965. Inter alia the Claimant relied, via an MFN provision of disputed applicability, on an article in the Calpurnia-Flatland BIT which Flatland had denounced.

After intense preliminary competition and hard-fought elimination rounds, the Final took place on 2 November 2008 in SULS' very impressive purpose-built Moot Courtroom, in front of an international tribunal comprising Professor Alexander Lorz (Düsseldorf University), Tim Nelson (Skadden Arps) and Hew Dundas,

CI Arb Past President. Murdoch School of Law (Perth, Australia) representing the Claimant, edged out Pepperdine School of Law (Malibu, California) to win the inaugural FDI Moot and the Skadden, Arps, Slate, Meagher & Flom LLP Trophy. On the facts of the case study, the Claimant appeared to have an uphill task to establish jurisdiction and that that extra challenge gave Murdoch the opportunity to edge ahead despite Pepperdine's persuasive arguments. Third place was taken jointly by teams from New York University Law School (NYU) and the University of Belgrade, Serbia. The Thomas Wälde Advocacy Prize was won by Gunjan Sharma (NYU) and the OUP Awards for best Memoranda were won by NYU (Claimant) and University of Wisconsin Law School (Respondent).

Significantly, over 40 highly regarded international arbitration and investment regulation practitioners and academics contributed their time to serve as arbitrators in the oral rounds including CI Arb members: Mark Kantor (USA), Joseph McCarthy-Mbadugah (Nigeria), Stephen Mau (Hong Kong), Professor Susan Franck (USA) and Hew Dundas (Scotland). ■

## The International Mediation Institute "Grandfathering" Scheme

The International Mediation Institute (IMI) began to operate its mediator certification scheme on 1 January, 2009. Until 30 June, 2009 (but not thereafter), experienced commercial mediators will be able to gain IMI Certification via the IMI "Experience Qualification Path" and include their mediator profile on the IMI website without undertaking a test. This is a

kind of "grandfathering" start to the scheme. Mediators may apply for IMI certification via the "Experience Qualification Path" if they are either a Mediation Fellow of CI Arb or endorsed as an experienced practising mediator and an active CI Arb mediator panel member of good standing. There is a third experience qualification path that involves producing a log of at

least 10 mediations in the last two years and two written references from prior users in different mediations where the provider of the reference attests to the applicant's competency as a mediator based upon actual prior experience. Full details of the scheme and its requirements can be found on the IMI website at:

[www.imimmediation.org](http://www.imimmediation.org) ■

## Record number of universities to face off in the 4th ICC International Commercial Mediation Competition

ON 7-12 FEBRUARY 2009, teams from 40 universities in 19 countries will hone their skills in a challenging series of mediation rounds in Paris. The teams hail from academic institutions in the US, UK, Belarus, China, Ukraine, Thailand, Poland, India, Brazil, Turkey, Germany, France, Singapore,

Sweden, Ireland, Switzerland and Canada. Last year, 30 teams competed from legal institutions in 16 countries.

Inaugurated in 2006 to educate the mediators of tomorrow, this year's competition receives generous support from Clifford Chance and CI Arb.

Students will compete in a mock

international mediation, a unique chance to test their problem-solving skills and meet experts from diverse legal and professional backgrounds. The teams act as counsel and parties in front of professional mediators, using ICC Rules to resolve a given business problem. ■

## Law reports

### ADJUDICATION

Finding deeper pockets in tough times

Julian Bailey of CMS Cameron McKenna comments on the decision in *Kier Regional Ltd v City & General (Holborn) Ltd (No.2)* [2008] EWHC 2454 (TCC). The case provides guidance on how to seek third party debt orders. In this case, a contractor who was successful in an adjudication sought a third party debt order from companies it thought owed a substantial amount of money to the employer. The TCC did not grant the order, but this was primarily because the contractor could not establish that the third parties actually owed money to the employer. Bailey explains that where a debt is presently owing, the court has a broad discretion as to whether it will order a third party to pay money directly to the judgment creditor. He also goes on to indicate the cases in which a third party order may be refused, namely where the third party would suffer real prejudice were the order to be made, and where a judgment debtor goes into liquidation. Bailey concludes by saying that *As the clamour for cash is heightened with the downturn in the economy, legal routes to recovery such as adjudication and in turn third party debt orders should be used increasingly*. Full article available at:

<http://www.mondaq.com/article.asp?articleid=68510>

### ADJUDICATION

How detailed must a claim be?

In *VGC Construction Ltd v Jackson Civil Engineering Ltd* [2008] EWHC 2082 (TCC), the TCC decided on how detailed or defined a claim must be before it can be adjudicated. In this case, VGC fell into dispute with Jackson over its final account. VGC's disputed payment application contained a line item for £300,000 entitled "delay and disruption", without any further detail. The dispute was adjudicated in favour of VGC. In response to enforcement proceedings, Jackson argued that it was entitled to a £300,000 deduction against the adjudicator's decision because the "delay and disruption" claim was too vague and uncertain to be submitted to adjudication. It also argued that new information was considered concerning the delay and disruption claim during the adjudication. The Court rejected these arguments holding, first, that one-line claims can provide sufficient basis for commencing adjudication, particularly if the surrounding circumstances show (as they did here) that the recipient had a fair idea as to what the claim was about and, secondly, that Jackson had sufficient time to address the new information. Aidan Steensma of CMS Cameron McKenna comments that this case affirms the courts' robust and pragmatic approach to the enforcement of adjudicators' decisions. Full article available to Law-Now™ subscribers at: <http://www.law-now.com>

### INTERNATIONAL ARBITRATION

English Court of Appeal decision confirms the ability of courts to enforce part of an international arbitration award

In *Nigerian National Petroleum Corporation v IPCO (Nigeria) Limited*, the Court of Appeal ruled that the English courts have the power to enforce parts of international arbitration awards under the New York Convention and the English Arbitration Act 1996. In this case, a contractual dispute arose concerning the execution of a project and it was referred to arbitration in Lagos under the provisions of the contract. IPCO was ultimately awarded 152 million dollars on its claims. While proceedings before the Nigerian Federal High Court to set aside the award were outstanding, IPCO applied for enforcement in England. The English High Court gave judgment for the enforcement of the award in respect of two of IPCO's six heads of claim. NNPC appealed the decision arguing that the Court had no jurisdiction to enforce part of the award, and that the Court must wait until the Nigerian proceedings had been determined before considering enforcement. Richard Haynes of SALANS reports on this case and considers that this decision confirms a flexible and pragmatic approach to the enforcement of arbitration awards. Full article available at:

<http://www.mondaq.com/article.asp?articleid=68846>

### ARBITRATION

Arbitration in consumer contracts comes under threat

Samantha Landsberry of CMS Cameron McKenna comments on the case of *Mylcrist Builders Limited v Mrs G Buck* [2008] EWHC 2171 (TCC), which concerned an arbitration clause in a building contract. The contract was a standard form, and was not individually negotiated. A dispute (concerning just over £5,000) arose between the builder and Mrs Buck. The builder referred it to arbitration. Mrs Buck played no role in the arbitration, and an award was made against her. The builder tried to enforce the award in the TCC, but the court refused to do so. The Court decided that the Unfair Terms in Consumer Contracts Regulations 1999 applied to the contract. The Court held that the arbitration clause operated unfairly against Mrs Buck, thus contravening the Regulations. Landsberry warns that commercial parties and contract drafting bodies should think twice, if they do not already, before including arbitration clauses in contracts that are or may be concluded with consumers. She concludes by saying that, where more than £5,000 is at stake, a reference to arbitration and a signature on the dotted line still will not be enough to bind a consumer to arbitration. Suppliers need to take real care to signpost the arbitration clause and its effect. Full article available to Law-Now™ subscribers at: <http://www.law-now.com>

## CI Arb mediators accredited in Greece

CI Arb DIRECTOR GENERAL, Michael Forbes Smith was guest of honour at a presentation in Athens of certificates to the first group of CI Arb mediators accredited in Greece. The presentation was attended by representatives from The Ministry of Development, Parliament, Ministry of Justice, Hellenic Chambers of Commerce, The National Federation of Greek Commerce, General Confederation of Professional Craftsmen of Northern Greece, The Association of SA and Limited Companies and The Hellenic Mediation and Arbitration Centre.

The training was written and delivered by Amanda Bucklow and her training partner, Charles Middleton-Smith, specifically to reconcile the requirements of the Greek market and the accreditation criteria of the Institute.

Amanda and Charles, both members of mediation chambers In Place of Strife, trained and mentored 23 participants from a variety of backgrounds including representatives from leading law firms, commercial organisations and the University of Athens. 20 candidates attended the assessment days and 16 were accredited. The candidates received their certificates at the presentation on 19 December 2008.

*"This has been such a rewarding*

*project. Our group of participants was extremely committed to the training and practice. Indeed, the assessors commented on the fact that this was the best prepared group they had ever assessed. What has made this project so successful is the interest and willingness of government, commercial and legal stakeholders to engage with us through HMAAC to develop many of the necessary supporting elements, such as the mediation pledge and drafting the mediation law."* said Amanda. *"This is only the second time the Institute has conducted an accreditation for mediators outside the UK. It was important that the process was consistent with the existing high standards while at the same time being appropriate for the practice of mediation in Greece. I would like to thank everyone at the Institute for their tremendous support in achieving this."*

The presentation was the culmination of a year long initiative which was sponsored by the Greek Ministry of Development as part of their policy for improving the competitiveness of Greek businesses within the European Union and as an early implementation in Greece of the EU Directive on mediation.

Amanda, who recently became one of the first Mediation Fellows of the Institute, worked closely with Dr Ioanna Anastassopoulou, Director of

The Hellenic Mediation and Arbitration Centre (HMAAC), to develop a comprehensive strategy with the Ministry of Development for mediation practice in Greece. Dr Anastassopoulou is also an accredited mediator who trained outside Greece in 2006 and has since been the energy behind this initiative.

Charles said, *"One of the criticisms levelled at mediation training, especially in undeveloped markets, is that newly accredited mediators have an uphill struggle to get their practice moving against a background of relative ignorance. The joy for me therefore, in this case, has been that Amanda and I have been able to use our mediation skills comprehensively to engage others who need to play a role in developing the use of mediation in Greece. This has been an outstanding example of what can be achieved by many in a relatively short period of time given the leadership, motivation and the skills."*

Discussions with and contributions from many interested parties including the Ministry of Justice, The Athens Bar and Law Societies, professional trade bodies, Chambers of Commerce and others were an essential part of designing a mediation model for Greece and the appropriate training to support that model.

At the same time as the presenta-



From left to right: Eleftherios Stavropoulos, Special Secretary, Ministry of Development; Georgios Kassimatis, President, Union of Hellenic Chambers of Commerce; Dimitrios Armenakis, President, National Confederation of Greek Commerce; Stavros Kalafatis, Under Secretary, Ministry of Development.

tion of certificates a Mediation Pledge was signed by representatives of all the participating ministries and commercial organisations. The government is currently consulting on a new mediation law which is intended to place mediation firmly in the heart of business.

Following the presentation, there was a reception hosted by Nicholas Papapolitis and his father John Papapolitis of Papapolitis & Papapolitis Law Firm.

CI Arb was chosen ahead of several other European accreditation bodies because of the Institute's international presence and global reputation for dispute resolution. The Director General spoke of the Institute's com-

mitment to international dispute resolution and welcomed the opportunity to support The Hellenic Mediation and Arbitration Centre in developing the mediation profession in Greece.

*"I'd like to congratulate the Ministry of Development and the other departments of the Greek government for starting this initiative which I think is the first of its kind, that I know of, in Europe. I think it is a very strong indication of Greece's determination to move forward as a competitive member of the European Union. Considerable credit is also due to the efforts and commitment of the Hellenic Mediation and Arbitration Centre lead by Dr Ioanna Anastassopoulou and supported by Amanda and Charles."* ■

## North American Branch Chair, Ann Ryan Robertson named one of 30 'extraordinary women'

ANN RYAN ROBERTSON'S professional focus on international business law and her dedication to her award-winning moot court program has led to her inclusion in Texas Lawyer's 2008 list of "Extraordinary Women in Texas Law."

The publication recently named Ms. Robertson to its list of 30 honourees, and stated, *"As the catalyst for the University of Houston Law Centre's participation in a major international moot court competition, Ann Ryan Robertson is giving the next generation of Texas lawyers the world -- complete with its foreign legal systems, court opinions and styles of advocacy."*

Since 2002 she has coached the University of Houston Law Centre team at the prestigious Willem C. Vis International Arbitration Moot Competition held each year in Vienna, Austria and Hong Kong.

*"The idea of a 'global economy' has become reality over the past 20 years,"* Ms. Robertson said. *"I regularly see the varying legal systems and the related challenges that arise in international dispute resolution. In coaching the University of Houston*



Ann Ryan Robertson

international arbitration moot team, I have tried to introduce the intricacies and rigors of an international dispute resolution practice to the students. To have been honoured by Texas Lawyer for my work is gratifying because it reaffirms my belief that the practice of law requires a global vision."

Ms. Robertson has extensive trial, appellate and arbitration experience representing parties in complex business disputes involving personal and subject jurisdiction, breach of con-

tract, Uniform Commercial Code, business torts, partnership, banking, and oil and gas, among other issues. A member of the ICC Commission on Arbitration, she also recently was selected to Chair the North American Branch of the Chartered Institute of Arbitrators, a recognized world leader in providing training and qualifications in arbitration, mediation and adjudication.

Thomas R. Ajamie, managing partner of Ajamie LLP, said, *"Our firm and our clients are proud of Ann. We are pleased that Texas Lawyer has recognized her excellence by including her in this elite group of Texas lawyer honourees who have positively impacted government, nonprofits, law firms, academia, and the corporate world."*

Ms. Robertson holds a J.D. and a LL.M. in International Economic Law from the University of Houston Law Centre. She is a member of the U.S.-Mexico Bar Association, the International Bar Association, and the College of the State Bar of Texas. She also serves on the executive board of the University of Houston Law Centre Alumni Association. ■

## Civil Mediation Council Registration Scheme

ON 20 JANUARY 2009 London Branch members met at Landmark Chambers, London, to discuss the proposed CMC Registration Scheme. Stephen Bickford Smith chaired the meeting. Paul Rose, the branch PRO, a chartered surveyor and an experienced mediator, introduced the subject by setting out the main features of the scheme, and drawing attention to the terms of the documents and the address by Sir Henry Brooke. Dr Mark Hoyle was also on the panel leading the discussion. Richard Rodger and Tony Marks represented Bloomsbury Square.

A lively debate ensued, to which experienced mediators contributed. The greatly predominant feeling of the meeting was that the proposed registration scheme was deficient:

- ◆ Many of the proposed provisions were unduly prescriptive, otiose or impracticable. Particular concern was felt about terms requiring the mediation to be facilitative, or affecting the privacy of the mediation process
- ◆ The requirement of 3 mediations in 12 months for registration was too onerous
- ◆ The proposal to allow the CMC to

suspend registered mediators for up to 3 months was draconian.

Some concern was also felt about the insurance provisions, (particularly where a mediator was already required to carry insurance by other professional bodies), and more generally about the duplication of regulation by CMC and such other bodies.

A further point which was widely expressed was that the proposals in their current form were being attempted to be forced through to meet the deadline changes in ACAS and employment law mediation due to be introduced in April 2009. There was a strong view that they were not as drafted appropriate for commercial mediation, and that further consultation was needed.

Hew Dundas, deputy chairman of the branch and former president of the Chartered Institute, suggested the scheme operated by the Scottish Mediation Network offered a preferable model for regulation of individual mediators.

Tony Marks promised to incorporate the views of the meeting in the Institute's response to the CMC's ongoing consultation. ■

# Is Latin America turning its back on arbitration?

Arbitration experts led an Iberian Lawyer Master Class in Buenos Aires recently, sponsored by Kluwer Law International and CI Arb, organised to coincide with the International Bar Association's Annual Conference, to debate the challenges facing the arbitration community in Latin America

Scott Appleton,  
Iberian Legal Group

The Master Class was opened by **Teresa Cheng SC**, the then President of CI Arb who stated that while certain Latin American countries are adopting new instruments to promote the use of arbitration in international disputes, especially those involving investment disputes, others are heading in a different direction – terminating or narrowing the scope of existing commitments to arbitration.

*“Some countries are approving new pro-arbitration approaches, for example, Peru’s Free-Trade Agreement with the USA, while others such as the members of the Alternativa Bolivariana para Las Américas y El Caribe (ALBA) have, over the last year, announced measures to limit investors’ recourse to international arbitration.”*

In addition, some countries are evaluating and implementing a wide spectrum of options, ranging from constitutional reforms or amendments of legislative provisions against ICSID, she stated.

The Washington DC International Centre for Settlement of Investment Disputes (ICSID), affiliated to the World Bank, is the primary arbitral body for bilateral investment treaty (BITs) and inter-state arbitrations (ISAs) within the Americas.

**José I Astigarraga**, who moderated the event, clarified the scope of the debate: *“Despite the high profile talk among some regional leaders of abandoning trade and bilateral investment treaties, notably Venezuela, Bolivia and Ecuador, what is actually*

*“Despite the high profile talk among some regional leaders of abandoning trade and bilateral investment treaties, notably Venezuela, Bolivia and Ecuador, what is actually happening behind the rhetoric?”*

**José I Astigarraga, Miami**

*happening behind the rhetoric? Also, are any of the issues that surround BITs spilling over into private commercial arbitration?”*

**Claus Von Wobeser** based in Mexico City stated that despite the headlines, Latin America remains a big user of arbitration and inevitably parties may have both good and bad experiences across the region.

*“The issue is what impact will the stance of certain governments have on the viability of arbitration in disputes across the region and how may this impact on the enforcement of arbitral awards?”*

The increasing enthusiasm for arbitration in countries such as Colombia, Mexico and Peru, and the Central American Free Trade Agreement (CAFTA), are clearly positive developments, he said.

*“But the decision of Ecuador to terminate BITs with eight states across the region, the nationalisation of international companies’ operations by the Venezuelan government, and the creation of ALBA, which may limit international arbitration, clearly sends out a much different message.”*

It is important therefore to distinguish between the approaches of different countries, emphasised Vancouver based **Henri Alvarez**. *“It is not possible to make assumptions. Mexico, for example, has played by the rules even when decisions have gone against it. Peru is taking different approaches under different BITs. But even the ALBA countries, such as Ecuador or Bolivia, acknowledge the importance of arbitration although they may want to find a different way of doing things.”*

**Guido Santiago Tawil** from Buenos Aires, suggested that the prevailing economic crisis may prove an important test of countries’ commitment to BITs and inter-state agreements (ISAs). *“We have not yet seen the impact but it will likely be very big.”*

Relevant, he believes, will be the question of enforcement of awards and the interplay of Articles 53 and 54 (concerning recognition and enforcement) of ICSID. *“Within the region, Brazil remains a non-signatory to ICSID while the only country in which there have been significant issues with the enforcement of awards is Argentina.”*

**Gilberto Giusti** believes that within Brazil there is an increasing awareness and use of arbitration, and a willingness among judges to enforce arbitral awards emanating from commercial disputes.

*“But Brazil’s position as a non-signatory to ICSID is beginning to cause concern. Brazil is no longer merely a recipient of international investment. We are now seeing our own businesses expand across the region and feeling the negative effects of not having recourse to ICSID.”*

The business and arbitration communities are though beginning to bring pressure on the Brazilian government to protect investments abroad. *“The government may not yet*

*“Brazil’s position as a non-signatory to ICSID is beginning to have a negative impact as it is no longer merely a recipient of international investment”*

**Gilberto Giusti, São Paulo**

*be willing to commit to change but in the medium-term I think the current position will be re-evaluated,”* he said

Some, such as **Bill Rowley QC**, from Toronto, question how much pressure is needed and how many investments by Brazilian companies will need to go bad before change is effected.

Brazil’s 2010 Presidential elections may prove the catalyst, said Giusti. *“We believe that there may be a change in the political scenery, and that these issues will become more pressing as Brazilian multinationals play increasing emphasis on operations elsewhere in Latin America and increasingly Africa.”*

Von Wobeser highlighted again the Mexican experience. *“Since joining NAFTA, foreign investment into the country has increased to US\$60bn (€47bn). We have learnt that paying out arbitral awards is good for business. Mexico is also not a signatory to ICSID, although it does have in place a large number of BITs, but is now considering membership because of the strong signal it sends out to investors.”*

Washington DC based **Nigel Blackaby** questioned how negative it would be if a country left ICSID. *“The issue is important but clearly less so if that country has BITs in place that offer alternative courses of actions, such as UNCITRAL or the ICC. ICSID is presumed superior to UNCITRAL but this is now being challenged.”*

The United Nations Commission on International Trade Law (UNCITRAL) was established in 1966 to promote and harmonise trade law. Bolivia, which has announced an intention to leave ICSID, he notes, has nonetheless accepted UNCITRAL in a number of BIT disputes.

The process may not always be ideal but in the early stages it is considerably quicker than through ICSID and the process is determined by the law of the seat, which can be negotiated.”

## Commercial arbitration

When it comes to assessing the viability of private commercial arbitration across Latin America, **Oliver J Armas** from New York believes it remains in



*“pretty good shape”.*

There is a growing awareness of the process among even junior lawyers and while there may be sporadic enforcement issues there is, he believes, an increasing embracing of the process by commercial judges.

*“Nonetheless what we see occurring with BITs raises concerns. There is a lack of confidence around investing in particular countries, and even in private disputes anecdotal evidence that judges are facing political pressure in some instances.”*

There may also be a perception among clients outside of the region that matters are in fact worse than they really are, believes José I Astigarraga. *“The high profile issues within specific countries inevitably impacts on the decision of CEOs and General Counsel, even if in reality they may not actually be ‘big’ issues.”*

Paris-based **Yves Derains** admits to being an optimist. *“We see clients from Italy, Germany and France who are happy to have arbitrations in these countries and can see through the misplaced negativity. The starting position is always to avoid having to come up in front of a judge in a domestic court.”*

Armas agrees. *“There will always be a party who does not accept a decision and will seek to avoid enforcement or their obligations. It is important however to also spread the good news, to allay clients’ concerns.”*

In response, Giusti highlighted that despite some adverse judgments against arbitral awards in the Brazilian lower courts, almost all have been overturned on appeal. *“The Brazilian upper courts are now very well disposed to arbitration and where there is an excellent technical understanding of the issues involved.”*

## Education

To continue to promote arbitration across the region a process of education must be undertaken, suggests **Audley Sheppard** from London. *“Many commercial lawyers have outdated fears or perceptions. But also, arbitration clauses must not be inserted as an afterthought and that partic-*

*ularly for Latin American agreements there is an understanding of the most accommodating seats.”*

Alvarez agrees. *“Lawyers must have an awareness of the differing stand points of certain governments, of the degree of public understanding, and the differing benefits of BIT and UNCITRAL processes – which is though hard enough for the specialists to agree on.”*

But education needs also to spread beyond merely law firms to include all the “consumers” of arbitration, suggested Barcelona based **Ramon Mullerat**, as well as to include the judges and the company general counsel.

**José Mariá Alonso**, President of the Club Español de Arbitraje, suggests that while it pays not to make predictions, especially about the future, there is a certainty that the prevailing economic crisis will raise new types of disputes, between states and companies.

*“As regards Latin America, there has to be an awareness of the differing positions taken by ‘populist’ governments, where the common view which prevail in certain countries is that international companies have somehow illegally exploited countries’ assets, and this has to be dealt with through arbitration but before national courts – and the more pragmatic view held by many more governments that arbitration helps encourage investment, and thus economic growth.”*

Nonetheless many US and European companies see that Latin America is now the place to go. *“Investment is growing, and my personal opinion is that a few bad decisions will have little negative effect. Arbitration is not an option for most multinational companies, it is a must.”*

In his conclusion, Astigarraga observed that two themes seemed to emerge: first, that there exists a disconnect between perception and reality, with anti-arbitration developments in specific countries shaping perceptions about arbitration in the region generally, and second, that careful distinction must be made between countries in the region, as the state of arbitration varies markedly from country to country. ■

## CI Arb Presidency moves 9,500km

CONTINUING TO REACH-out globally in 2009, CI Arb will see a change from "SC" to "QC" as Senior Counsel, Teresa Cheng, based in Hong Kong, hands-over the CI Arb Presidency to Queen's Counsel, John Campbell who is based in Scotland.

John was elected as CI Arb's Vice-President in 2007, he took office as Deputy-President in 2008 and now steps forward to steer CI Arb through the challenges that 2009 is likely to present.

A law student from the Highlands, John became a solicitor in 1978 before qualifying as an Advocate in 1981, a Barrister in 1990 and becoming a QC in 2000. He acts as an arbitrator, mediator and adjudicator and is a highly-regarded specialist in planning, property and construction related disputes. Famously, John was counsel to the Inquiry in the high-profile Hollywood Inquiry, investigating the cost of the Scottish Parliament Building in 2003.

With an established CI Arb pedigree, John takes the Presidency having first become a member in 1993. He previously held the Chairmanship of CI Arb's Board of Management as well as the Board of Trustees, and in 2001 he led CI Arb's Scottish Branch.

Commenting on his appointment, Michael Forbes Smith, CI Arb's Director General said, "John's taking of office comes at an important time for CI Arb. In 2009 the Institute will need to react to the changing economic landscape. Continuing Teresa's welcome contribution, John's wealth of experience and cool-headed decision making will help ensure that the Institute's objective focus is maintained and the breadth of its operations is expanded."

Having been asked what he hopes to achieve during his presidency, John said, "In a period when the number of disputes is expected to increase, I hope to use my ambassadorial position in as many places as possible to highlight the absolute need to use suitably qualified and experienced professionals to manage the efficient resolution of commercial and other disputes."

Some of John's first duties as President in 2009 will be to represent CI Arb at the IBA's Arbitration Day in February, be a judge at the VisEast Moot in Hong Kong in March (where he also hopes to contribute to a Branch Meeting) and will follow that up with a visit to the UNCITRAL Meeting in Vienna a few days later. ■

## US arbitrator and mediator takes the lead

US ATTORNEY, Steven Certilman commenced his appointment on 1 January 2009 following his election to the position of Chairman of CI Arb's Board of Trustees. Practicing from Connecticut and New York, Steven is an international expert in the field of alternative dispute resolution (ADR) and brings a wealth of experience and expertise to the position.

Steven's dispute resolution practice blends both mediation and arbitration. This broad skill base provides a balanced perspective and complements CI Arb's objective of advancing the interests of the global dispute resolution community. Steven's long-standing connection with ADR the United States is also set to provide support for continued growth of CI Arb's

North American Branch during 2009.

"Steven's extensive experience, both as an ADR practitioner and as a Board member at CI Arb, is a major boon for us." CI Arb Director General, Michael Forbes Smith, says, "In particular, with his expertise across a range of ADR techniques he will provide valuable oversight for our plans for the coming year."

A Chartered Arbitrator and CI Arb Fellow, Steven entered the ADR field in 1988 and serves as arbitrator and mediator in domestic and international cases with a specialty in information technology and intellectual property. He is a member of many major ADR panels worldwide and is a published author, speaker and trainer on ADR topics. ■

## Introduction of the Panel Appointment Certificate Scheme

UNDER THE CHARTER and Bye-Laws of the Institute, CI Arb is required to set up and maintain a Panel Appointments Certificate ("PAC") Scheme.

The purpose of the PAC Scheme is to demonstrate publicly that the holder of a PAC is, in all respects, considered to be competent in the field of non-court dispute resolution, on a continuing basis, and as such is suitable for Presidential appointments or nominations.

At the time of writing, the Institute's Panels Management Group is about to launch the PAC Scheme. The Scheme will only apply to existing members of the Arbitration, Mediation and Adjudication Presidential Panels, and to any new members of such Pan-

els as and when they are appointed. Panel Members will be required to complete a full electronic Curriculum Vitae (CV) before they are eligible to receive appointments on the Panels. Individual letters will be sent to Panel Members advising them as to what steps they need to take.

The PAC will be valid for a period of five years (for the first tranche some members will receive a PAC lasting four years). Panel Members will need to undertake CPD training during the period of their PAC. It will be a pre-condition of renewal that a Panel Member has undertaken sufficient CPD. Again further information on the CPD requirements will be sent to Panel Members. ■

## "Making the Right Choice" in Malaysia

ON 20 & 21 OCTOBER CI Arb's Malaysia Branch hosted a hugely successful international dispute resolution conference in Kuala Lumpur. More than 150 delegates and speakers from 20 countries discussed, shared and exchanged views and experiences on a wide-range of ADR topics.

In each area the speakers displayed unparalleled knowledge and wisdom regarding their chosen subjects: the overwhelming majority were members of the Institute, demonstrating the breadth and expertise that the Institute offers the world of dispute resolution as the professional body dedicated to facilitating and promoting "...worldwide the determination of disputes by arbitration and alternative means of private dispute resolution" (Royal Charter 2006).

The Institute was honoured to welcome the Prime Minister of Malaysia, YAB Dato Seri Abdullah bin Haji Ahmad Badawi, to give the Keynote opening address which underlined the Malaysian Government's strong support for arbitration.

Among the hot topics were addresses by Prof. Phillip Capper on the changing face of dispute resolution and Ms. Teresa Cheng's advice on



how to stay relevant in the face of the changes to the global dispute resolution scene. A high point was the masterly historic review of international arbitration's development over the last 50 years from the Institute's Patron, Professor Karl-Heinz Böckstiegel, (see details on front page) demonstrating the clarity and focus which has made him one of the world's outstanding international arbitrators.

Finally, and again taking a very practical view of 'Making the Right Choice', an amusing, splendidly acted, staged resolution of the same dispute in parallel by mediation, arbitration and litigation, brought the conference to a good-humoured but highly impressive

conclusion. All in all, one of the few recent international dispute resolution conferences that can truthfully be said to have been worth every penny.

The success of this conference in attracting participants and speakers from 20 countries is a testament of CI Arb's extensive global network and more importantly the untiring effort of the organising committee ably led by Mr. Chong Thaw Sing, the Immediate Past Chairman of Malaysia Branch and Ms. Sitpah Selvaratnam. Some of the papers from the Kuala Lumpur conference will be published in the May edition of *Arbitration – The International Journal of Arbitration, Mediation and Dispute Management*". ■

## Trustees and CI Arb's 2008 Congress gather in Malaysia

WITH THE NUMBER of CI Arb Branches now standing at 33, CI Arb's global governance structure is ever more important, as is its consultative approach and democratic procedures.

As CI Arb members from all over the world were due to attend the international dispute resolution conference organised by the Institute's Malaysia Branch held in Kuala Lumpur on 21-22 October, Kota Kinabalu, Malaysia was selected as the venue for the Autumn meeting of the Board of Trustees (23-24 October 2008) and the third biennial Congress meeting on 24-25 October.

CI Arb's Board of Trustees, responsible for setting CI Arb's policy and strategy, comprises 12 Trustees – 6 from the UK and 6 Regional Trustees, one each from the Americas, Europe, Middle East/Indian Sub Continent, Africa, Australasia and East Asia. Trustees are elected by members to serve a 4 year term, with elections being held on a 2-yearly rotating basis so that half the Trustees continue in office. The President and the Chairman of the Board of Management have ex-officio non-voting rights on the Board, so then President Teresa Cheng (Hong Kong) and Peter Rees (UK) joined the Trustees in debating the Institute's strategy for 2010-2015, and reviewing the past and future performance of The Executive. John Campbell (Scotland) was invited to attend as an Observer, as incoming President.



Having reviewed operational matters, The Board conducted its formal business of electing a Chairman (Steven Certilman, North America) for 2009, a Deputy Chairman (Colin Wall, East Asia), an Honorary Treasurer (Roy Sherlock, Ireland re-elected) and deciding who should represent the Board of Trustees on the Board of Management (Richard Morris, UK and Roy Sherlock).

Following the Trustees' Meeting, CI Arb's biennial Congress served as the platform for branch chairmen to debate and brainstorm issues affecting the branches around the world. The views distilled from this meeting provided an invaluable input to the Institute's future policy and management. Another important order of business of the Congress was the election of the Deputy President and Vice-President for 2009. Mr. Joe Behan from the Irish Branch and Prof. Doug Jones from the Australian Branch were elected to the respective offices and will join John Campbell QC (Scotland) whose Presidential year commenced

on 1 January 2009.

The meeting also provided a valuable networking opportunity for Branch officers, and CI Arb's Congress in Kota Kinabalu had created a visible impact in the Sabah legal and arbitral fraternities. The 2008 Congress was widely reported in the local press. Without doubt this is a rare opportunity for Kota Kinabalu to host such an august congregation of CI Arb Branch Chairmen and Trustees. In support of this event, the State government of Sabah hosted the Congress dinner, attended by the Sabah State Attorney-General, the CI Arb's Trustees and Branch Chairs.

Special thanks are due to Mr. Chong Thaw Sing, Malaysian Branch Immediate Past Chairman and Ms. Catherine Chau, Sabah Chapter Convenor for organizing these events.

**NOTICE:** The next Board of Trustees meeting will be held at Bloomsbury Square, London on 14-15 May 2009. The Institute's AGM will be held on Thursday 14 May, and notices will be sent out to all members in accordance with the Bye-Laws. ■



## The Americas



IT IS WITH GREAT pleasure that I, John Bassie, announce that the Board of Trustees of the Chartered Institute of Arbitrators has approved the formation of the Caribbean Branch of the Chartered Institute of Arbitrators. The Caribbean Branch has come forth from the Caribbean Chapter of the Institute which was formed in Kingston, Jamaica in November 2007. The Chapter has grown from strength to strength in its relatively short existence. The Chapter has held two workshops in 2008. The first workshop was an introductory course that led to Associate membership. The second workshop and seminar was geared towards both Associate and Member levels of membership. This workshop consisted of a seminar on the UNCITRAL Model Law, an introduction to award writing and some role playing. Both workshops were led by Mr. Jeffrey Elkinson FCI Arb, Chairman of CI Arb's Bermuda Branch, and he was assisted by myself. As a result of these workshops and seminars the membership level has increased substantially.

The Caribbean Branch will consist of members from the following Islands and territories: Trinidad and Tobago,

## Caribbean Branch gets go-ahead



From left to right: John Bassie, Chairman, CI Arb Caribbean Branch; Hon. Chief justice Mrs. Zalia McCalla, OJ; Mr. Earl Jarrett, CD, JP; Mr. Maurice Stoppi, FCI Arb CD; Mr. Jeffrey Elkinson, Chairman, CI Arb Bermuda Branch and Mrs. Donna Parchment-Brown, Chief Executive Officer of The Dispute Resolution Foundation.

Bahamas, Barbados, Anguilla, Antigua, Guyana, Jamaica, Turks and Caicos and the Virgin Islands. It will also incorporate any other island or territory within the Caribbean Community (CARICOM). The Branch will be headquartered in Jamaica. Presently the Caribbean Chapter is being hosted at the Dispute Resolution Foundation in Kingston, Jamaica and for the moment the Branch will continue to be hosted there. At present the steering Committee consists of Maurice

Stoppi FCI Arb Secretary, Donna Parchment Brown ACI Arb Treasurer and myself as Chairman Pro Tem.

The Caribbean Branch of the Chartered Institute of Arbitrators will continue to serve both the domestic and regional peoples and various groups within the region. It is the Branch's clear intention and mandate to continue to build a world class organization to promote and assist in the growth of arbitration and other methods of dispute resolution. ■

## Europe



## A modern European perspective on dispute resolution

CI Arb's EUROPEAN BRANCH held its Autumn Conference in the Peace Palace, The Hague in The Netherlands on Saturday 1 November 2008.

Preceded by a Gala Dinner and welcome reception the previous evening, in the Kurhaus Hotel in Scheveningen, the Conference was held in the recently constructed Academy Hall of the Peace Palace, and the European Branch is greatly indebted to the Carnegie Foundation for permitting the use of its premises.

The Conference theme was **"A Modern European Perspective on Dispute Resolution"** and speakers from Spain (Mercedes Tarrazon), Italy (Cecilia Carrara), Germany (Gerhard Wegen) and The Netherlands (Shawn Conway) each gave an insight into how their respective countries are facing up to the challenges of dispute resolution in the 21st Century.

In addition, Pierrick Le Goff, Legal Counsel at Alstom Turbo Machinery in Switzerland, also gave the modern view of dispute resolution from the perspective of today's company boardrooms. Further contributions were generously given by Judith Levine, Legal Counsel for the Permanent Court of Arbitration who provided a background to the establishment of the Peace Palace and the work of the PCA, and by Bruce Meyerson, Past Chair of the Dispute Resolution Section of the American Bar Association,



who updated the Conference on the previous day's Mediation Leadership Summit. Furthermore, Irena Vanenkova, Operations Director of the International Mediation Institute presented an update on the progress of the IMI, the objectives of which had been enthusiastically endorsed by the European Branch at its earlier Conference in Trier in Spring 2007.

During lunch, John Tackaberry QC entertained delegates with amusing examples of his experiences in resolving disputes in various parts of the world, and in the afternoon session, "The Great Debate" was held on the subject of whether or not lawyers provide value to the dispute resolution process. Advocating that lawyers do

provide such value was Dr. Susanne Kratzsch and Alison Woodward, while the other side of the motion was supported by Stuart Ness and Mark Castell. Unsurprisingly in view of the composition of the audience, the Conference overwhelmingly voted in favour of the motion that lawyers do provide value in the dispute resolution process!

The Conference's keynote address was given by Dr. Nikolaus Pitkowitz, who spoke on the 2008 European Union Mediation Directive, and the Conference was chaired by Dr. Axel Reeg. A vote of thanks was extended to Stuart Ness for organising the Conference, and the Branch looks forward to its next meeting in Milan on 20 and 21 March 2009. ■

## East Asia



## East Asia news

YET AGAIN THE East Asia region comprising the Thailand, Malaysian and East Asia Branches (EAB) have experienced a busy period, dominated by Congress held in Kota Kinabalu in Sabah, Malaysia.

The EAB also held a two-day conference in November 2008, in cooperation with the Society of Construction Law – Hong Kong. The theme of the two-day conference was Time and Dispute Resolution in Construction Contracts and the EAB hosted day two of the conference on dispute resolution matters. Sir Vivian Ramsey, Judge

in charge of the Technology and Construction Court and the then President, Teresa Cheng, gave keynote addresses.

EAB was also very fortunate to have a presentation by Lord Woolf, who addressed a distinguished audience over around 100 members and guests on *"The Importance of Mediation in Arbitration in the Pursuit of Justice"*. The talk drew its inspiration from Lord Woolf's recently published book *"The Pursuit of Justice"*. A transcript of Lord Woolf's talk will appear in the May edition of *"Arbitration"*. ■

## UK: Western Counties Branch



## Networking for young construction professionals

ON 5 MARCH 2009, there will be a "Phase One" networking event in Bristol, for young construction professionals. Phase One is a networking club aimed at new professionals across the construction industry. It offers people in the first ten years of a career in construction, engineering, architecture, surveying or construction law, the chance to bridge interdisciplinary barriers and make contacts that will stand them in good stead as they progress within their organisations. It is also an opportunity for individuals to have a look around new buildings in the area and discuss their merits, and to broaden their knowledge of the industry by listening to and questioning distinguished speakers on key issues and

developments. The forthcoming event will field speakers on the topic of construction disputes – how to avoid them and how to resolve them.

The event is being organised by Building magazine and is sponsored by Contract and Construction Consultants (Southern) Limited and CI Arb's Western Counties Branch. It is anticipated that the event will be very well subscribed, so if you wish to attend, it is advisable to register early.

Registration can be effected at [www.building.co.uk/phaseone](http://www.building.co.uk/phaseone) or for more information, please contact Morwenna Crichton, Secretary of the Chartered Institute of Arbitrators Western Counties Branch at 65 Woodland Road, Clifton, Bristol, BS8 1UL, or Tel: (0117) 925 9001. ■

## UK: East Anglia Branch



## East Anglian members published

TWO officers of CI Arb's East Anglia Branch committee spent the long winter months last year drafting two new books for the construction industry which were published in August 2008 by Wiley Blackwell. The books were launched recently at a breakfast seminar held at the RIBA on 20 November 2008, attended by over 55 delegates. The branch Chairman, Dr John Keane, co-authored **'Delay Analysis in Construction Con-**

**tracts'** with Anthony Caletka, which is a practical guide to this frequently complex subject. The branch deputy Chairman, Peter Barnes, co-authored with Matthew Davies **Subcontracting Under the JCT 2005 Forms**. This is a follow up to Peter's successful first publication on this topic in 2007. Peter Barnes and John Keane will be delivering an evening talk to CI Arb members at the East Anglia Branches' Hatfield event in spring 2009.. ■



From left to right: Anthony Caletka, John Keane, Peter Barnes & Matthew Davies.

**UK: North West Branch****Arbitration demonstrated in the North West**

THE NORTH WEST Branch of the Chartered Institute of Arbitrators presented a demonstration of scenes from an arbitration for students from Dr Peter Fenn's post-graduate course at the University of Manchester Institute of Science and Technology and Brodie McAdam's students at the University of Salford. Kevin Hayes acted as arbitrator; Derek Pye was counsel for the Claimant; Paul Jensen was counsel for the Respondent; Mike Cummings was expert architectural witness; Keith Miller, Brodie McAdam, John Dillon and Bob Lockhart played the parts of witnesses of fact; Dr Daniel Brawn guided the proceedings.

The team presented key scenes from a typical dispute about a construction project that went wrong. The hearing focused on liability only – quantum was to be dealt with at a separate hearing.

Participants were provided with a chronology, the pleadings, a statement

of agreed facts and the witness statements (which stood as evidence in chief). Counsel presented their opening speeches and legal arguments, they cross-examined and re-examined the four witnesses of fact, they put questions to the architectural expert, and made their closing submissions. The arbitrator then gave his decision (in favour of the claimant). Daniel Brawn prepared the audience for each scene beforehand, and afterwards explained what had happened and why.

The target audience was people about to start their careers, who may have studied something of arbitration and would like to see how it works in practice. The hope was to foster interest in arbitration, and indeed private dispute resolution in general, and to sow seeds for future membership of the Institute. If any member is interested in using the scenario, the papers are available from Daniel Brawn at [danielbrawn@kuits.com](mailto:danielbrawn@kuits.com)

**UK: London Branch****CIARB London Branch programme 2009**

CIARB's LONDON BRANCH has a full programme of events lined up for 2009. Future events include:-

- **March:** Arbitration and Islamic Law, *Chair:* Nicholas Padfield QC, *Speakers:* Dr Mark Hoyle & Deborah Ruff
- **April:** Court Annexed Mediation, *Speakers include:* Judge Birtles & Anthony Connerty

- **23 April:** CIARB London Branch AGM, *Guest speaker:* Toby Landau QC
- **May:** Scheme arbitrations, A joint seminar with IDRS Limited
- **1 July:** The Annual Mediation Seminar at Clyde & Co

For more information or to attend please contact: Paul Rose at [prose@crawford.co.uk](mailto:prose@crawford.co.uk)

**OBITUARIES**

IT IS WITH GREAT SADNESS that the Chartered Institute of Arbitrators informs members of the death of Dr. Mohamed Aboul-Enein. A Fellow since joining the Institute in 1995, Dr. Aboul-Enein, who was in Washington DC attending the International Federation of Commercial Arbitration Institutions (IFCAI) Council Meeting, died on 15 November 2008 following a tragic road accident.

Born in Egypt in 1933, Dr. Aboul-Enein rose to become a prominent international professor of law and arbitrator. He received his LLB from Cairo University in 1954, his LLM from the University of California (Berkeley) in 1963 and his S.J.D. from S.M.U., Dallas, Texas in 1967. Dr. Aboul-Enein joined the Egyptian Judiciary in October 1954. He continued his career until he was promoted to Senior Vice President of the Constitutional Court of

**Dr. Mohamed Aboul-Enein FCI Arb (1933–2008)**

Egypt up to 1998. Frequently to be found in the middle of a dispute, Dr. Aboul-Enein acted as Chairman, Sole and Co-Arbitrator in countless international cases.

In February 1999 he was elected as founding Chairman of CIARB's Cairo Branch. Dr. Aboul-Enein was also the Director of the Cairo Regional Centre for International Commercial Arbitration (CRCIA) was elected Secretary General of the Arab Union of International Arbitration in 1997 and was Vice President of IFCAI. Following the introduction of CIARB's revised Royal Charter in 2005, he ably represented members in the Middle East and Indian Sub-Continent as elected Trustee.

Teresa Cheng, SC, the then president, expressed her profound sadness at the passing of Dr. Aboul-Enein, noting his invaluable contribution to the

development of international arbitration and the Institute. "Through his dedication to the development of international arbitration, and the leading role he has played in the Chartered Institute's Cairo Branch, the Institute and the arbitration community have greatly benefited. He was a respected and devoted Trustee of CIARB and has contributed to the steady and stable growth of the Institute. He will be fondly remembered by the Institute and the international arbitration community."

The former Chairman of the Board of Trustees, Doug Jones AM, in passing his condolences to Dr. Aboul-Enein's family on behalf of the Board, said, "He was a wise and able Trustee whose advice and guidance will be sorely missed by all at the Institute."

Dr. Aboul-Enein is survived by his wife and three grown up children. ■

**Corbett Haselgrove-Spurin FCI Arb (1951-2008)**

ON 27 DECEMBER 2008 the Institute sadly lost one of its most dedicated and colourful members when Corbett Spurin passed away after a short illness.

Corbett was well known in dispute resolution circles both in the UK and around the world and his many friends in the Institute will be much saddened at his passing.

As well as practicing in dispute resolution, with maritime, insurance and construction matters being within his compass, Corbett established an enviable reputation in academic circles, through his work at the University of Glamorgan, where he was instru-

mental in the establishment of one of the first LLM programmes in dispute resolution, and through his regular case note updates on arbitration, adjudication and on mediation, which was a particular passion. His interests were global; he often lectured around the world, and was a leading light in the National Mediation Academy and the National Association for Dispute Resolution, both based in Texas.

Corbett was a stalwart of the Wales Branch, both as a committee member and, since 2005, as its Chairman. Many members will, no doubt, recall his attendance at successive Congresses (most recently in

Malaysia, where he also had many close friends and colleagues); his intervention in debates being always energetic and thought-provoking.

Though his later career was devoted to the law, in which he achieved both Bachelor and Masters degrees, his early life embraced more diverse interests including a period as a teacher of classical guitar, at which he excelled.

Corbett Spurin was also a very committed family man, and the condolences of all at the Institute have been passed to his children Paul, Karina and Vikki, and his grand-children Nathan, Emily and Isaac. ■

**Welcome**

AS CIARB CONTINUES TO GROW, it is delighted to welcome the following individuals who have joined its ranks in the fourth quarter of 2008.

**Australia**

Dr A A Aibinu  
Dr H Bilbey  
Dr C W Brown  
Mr A R Campisi  
Mr F M Douglas QC  
Mr P Greenham  
Mr H Werksman  
Mr P Wood  
**Bahamas**  
Ms B M Cooper-Rousseau  
Mrs K Cunningham  
**Bahrain**  
Mr M Abdel Ghaffar  
Mr K Abdulghaffar  
Mrs A Abul  
Advocate K E Adeeb  
Mrs S Ahmed  
Mr k Ajaji  
Mr K Al Ameen  
Mr M Al Amer  
Mr O Al Ashoor  
Mr Al Dhahrani  
Mr H Al Gaidoom  
Mr A Al Haddad  
Mr M A Al Hajji  
Mr M Al Hammadi  
Mr S M Al Khalifa  
Mrs M Al Kuwary  
Mr M Al Nahash  
Mr N Al Sayed  
Mr A Al Shamlawi  
Mr M Al Watani  
Mr R A Alarayedh  
Mr M Al-Asfoor  
Mr A Alashraf  
Mr M Al-Boainain

Mr A Al-Boainain  
Judge S Algattan  
Mr S Alhaiki  
Mr A Aljabal  
Mr A Alkaabi  
Mr K Alkhalifa  
Mr H Al-Khalifa  
Mr A Al-Khalifa  
Miss M Al-Khalifa  
Mr A Alkoohaji  
Mrs A AlMashaiqri  
Mrs H Almezza  
Mr F A Almudaifa  
Mr M Almuzaini  
Mr O Alofi  
Mr A Alqaheri  
Mrs A Alqarainees  
Mr Alromaihi  
Miss S Al-Satrawi  
Mr A Alshowaiku  
Miss F Alwadak  
Mr H Alzayani  
Mr E Alzayed  
Mr M Aman  
Mr S Asbool  
Mr H Bedaiwi  
Ms S Bu Hamood  
Mr W R K Buallay  
Miss F Ghaith  
Mrs M Ghareeb  
Mr A M Ghunaim  
Mr N Hamza  
Mr Hassaw  
Mrs R Hijazi  
Mr A Husain  
Mr A K E Izzeddin  
Mr A Jassim  
Mr A S Khalaf

Mr Y Khalat  
Mr F H Khalifa  
Mr E Khalil Al-Sayegh  
Miss S Khamis  
Mr W J MacPherson  
Mr M Mohamed  
Mrs A Mubarak  
Mr K Mujairan  
Mr A Nayem  
Mrs H Qarooni  
Mr L Qarooni  
Mrs N Radhi  
Mr F G J Rafia  
Mr A Saad  
Mr S Sahwan  
Mrs J Sayed Ahmed  
Mrs L Shaikh Abdullah  
Ms M Showaiter  
Mrs s Taher  
Mr M Wing  
Mr Y Z Zainal  
**Canada**  
Mr J S Darche  
Mr J A Hand  
Mr P J M Harquail  
Mr W J Kenny  
Professor V Krishna  
Mr T Lowman  
Mr A W Moreira  
Mr J D Vallis  
**China**  
Mr C Dong  
**Cyprus**  
Mr M Kyriakides  
**Egypt**  
Mr A M Gowayed  
Mr M Shaqweer  
Eng I Tawfik

**Germany**  
Ms M C Misu  
Mr R Werth  
Dr M A Wittinghofer  
**Hong Kong**  
Mr S K Chan  
Mr C Y Chan  
Ms K W Cheung  
Mr K K H Chung  
Mr C W A Fan  
Ms H Y P Man  
Mr W S W Ng  
Mr K W Tong  
Mr E Y C Tsoi  
Mr E Wong  
Mr S K M Wong  
**India**  
Mr K C Jhinga  
Dr R Karapattu  
Subramanian  
Mr P J Kavalam  
Mr K D Singh  
**Ireland**  
Mr J Hillis  
Mr C Irwin  
Ms Y Kiernan  
Mr R Martin  
Mr M B O'Connor  
Mr T O'Muire  
**Italy**  
Dr A Bruni  
**Jamaica**  
His Honour G Burton  
Ms M M Macaulay  
Ms A M N Mulendwe  
**Japan**  
Mr K Fujimi  
Mr H Tsukamoto

Mr S Voll  
**Jordan**  
Miss A Aseel  
Mr F Ghozlan  
**Kazakhstan**  
Mr D Abdrakhmanov  
Mr S Azhenov  
Mrs A Bralina  
Ms S Darzhanova  
**Kenya**  
Mr K Mbutia  
Ms P Mugenyi  
Miss N M Muniafu  
Miss A K Mwaniki  
Mr C M Njoroge  
Mr J O Okeyo  
Ms K E Ruria  
**Macau**  
Ms A R Fernandes Martins  
**Malaysia**  
Mr R Abdul Kadir  
Mr Z Ismail  
Mr R Nadesan  
Ms A S Packianathan  
**Mauritius**  
Ms S Abdul Carrim  
Mr S Angoh  
Mr M C I Bundhoo  
Mrs N Mamode Ally  
Mr I Mamoojee  
Mr L E Wilson Ribot  
**Mexico**  
Mr R D Campos  
**Netherlands**  
Mr T van den Bosch  
**Nigeria**  
Mrs V A Akunesiobike  
Mr E A Anyanwu

Mr B M Ekipiroro  
Mr A J Elachi  
Mr O Eriata  
Mr G A Gom  
Mr G O Ibiwoye  
Ms A O Igweonu  
Mrs K M Kida  
Mr P Madaki  
Mr J I Nwume  
Ms E E Ogbebor  
Miss A O Ogun  
Mr O O Ogunsulire  
Chief S I Oladokun  
Mr L A Olarewaju  
Mr O R Olorumfemi  
Mr I D Onyesoh  
Miss A O Opawale  
Ms A G Oyarekhua  
Engr F A Somolu  
Mr T H Wale-Ogunsola  
**Pakistan**  
Mr M A A Sindhu  
**Qatar**  
Mr A F Ibrahim  
**Russia**  
Mr T Bagylly  
Mr M Batmanov  
Mr V Buriyanov  
Mr A Kashin  
Mr V Krasnov  
Mr E Malikov  
Mr D Somovidis  
Mr R Yankovskiy  
Mr V Zhaglovskiy  
**Singapore**  
Mr T Chandru  
Dr H K Koh  
Ms Y Y S Kwan  
Mr K C Lim

**South Africa**  
Mr A N Chukwurah  
Mr M Naidoo  
Mr P H Pieters  
**Switzerland**  
Dr R Asariotis  
**Thailand**  
Mr N Nerngchamnonng  
**Trinidad & Tobago**  
Mr A Ali  
**Uganda**  
Mr S E Bayo  
**Ukraine**  
Mr A Astapov  
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Mr P Rabbitte



**Disclaimer:** The contents of this publication are not intended to be a substitute for either general or specific legal advice on individual matters, and readers are strongly encouraged to seek competent legal advice.

## North East Branch events

### Liquidated Damages – Exploding the Myths

On 14th October 2008, Dr Hamish Lal, a Partner from the London office of Dundas & Wilson LLP, exploded some of the myths concerning the operation of liquidated damages. In a thought provoking presentation that he made to the CIARB North East Branch in Leeds, Hamish dealt with three principle issues. First the test as to whether liquidated damages can be construed as a penalty or are compensatory and if compensatory, is this a myth created by public policy. Second, whether liquidated damages can be avoided because the contractual mechanism does not apply. Alternatively, can the event that gives rise to the application of liquidated damages simply be a trigger event that is a term of an underly-

ing contract. Finally, whether it is a myth that the exclusive remedy that liquidated damages purport to provide in the event of a delay, can always apply to breaches of contract in which damages may also arise as a consequence of a party's failure to proceed regularly and diligently.

### A Construction Law Update

On 2nd December 2008, Jonathan Selby a Barrister from Keating Chambers gave an insight into a range of cases in the form of a Construction Law Update to the North East Branch in Leeds. The topics discussed included non payment as a repudiatory breach, which the Court of Appeal considered in *Alan Auld v Rick Pollard* [2008] BLR 419. Guidance on the giving of opinion evidence by non-expert witnesses, derived from the long run-

ning saga over Wembley between Multiplex and Cleveland Bridge. A contrast in the dominant cause approach to 'extensions of time' endorsed in *Steria v Sygma* [2008] BLR 79 and reviewed in *City Inn v Shepherd* [2008] BLR 269. A pragmatic approach to compliance with the Pre-Action Protocol in *Orange v Hoare Lee* [2008] EWHC 223 (TCC); whether the supervisory role of the Architect over the employees of others constitutes vicarious liability in *Biffa Waste* [2008] EWCA Civ 1257 and cases concerning interest referred to in *Lerich v Maurice* [2008] UKPC 8 and *Sempre Metals Ltd* [2008] UKHL 34.

If you want to be included on our circulation list for future events or would like a copy of the paper for either of the above two seminars please contact - Andrew Essam, Chairman CIARB NE Branch – [andrew@constructioncontractsolutions.co.uk](mailto:andrew@constructioncontractsolutions.co.uk)

## Member benefits update

CIARB IS DELIGHTED to provide an Update on the forthcoming launch of a new member benefits scheme, scheduled to go live in April this year. The collective buying power of the membership has been used to help negotiate and bring access to a host of excellent deals on products and services, which we believe will be relevant to members both at home and at work in the UK.

Areas covered include travel, insurance, leisure and business, and many of the offers will have price promises attached, guaranteeing best deals in the whole of the UK.

There should be something for everyone within the scheme, and we believe that some members may even save the cost of their membership via

everyday use of the benefits alone. The scheme will evolve over time in response to members' needs and feedback, and we will 'cull' any offers which are not capturing the interest of the membership. Equally, if there are new services which you would like to see, let us know!

Access to the scheme will be exclusively available to members, and we look forward to receiving your feedback and suggestions.

For further information, watch this space and the Members' Area of the website. A name for the scheme is currently being sought. Your suggestions would be welcome, please email ideas to Sue McLaughlin ([smclaughlin@ciarb.org](mailto:smclaughlin@ciarb.org)) before the end of February.

## CIARB professional training diary – March - July 2009

Courses to be held at CIARB, 12 Bloomsbury Square, London.

<b>International Arbitration</b>		
Introduction to International Arbitration	2 March	£549 + VAT
Introduction to International Arbitration	4 June	£549 + VAT
<b>Adjudication</b>		
Introduction to Adjudication	5 March	£549 + VAT
Introduction to Adjudication	9 June	£549 + VAT
Module 2 Adjudication – Law of Adjudication	20 April	£1,549 + VAT
Accelerated route to Fellow	20-22 April	£2,299 + VAT
<b>Arbitration</b>		
Introduction to Arbitration	12 March	£549 + VAT
Introduction to Arbitration	1 June	£549 + VAT
Accelerated Route to Membership	22-23 May	£1,299 + VAT
Accelerated Route to Fellowship	8-9 May	£2,299 + VAT
Peer Interview – Arbitration	9 April	£249 + VAT
Peer Interview – Arbitration	9 July	£249 + VAT
<b>Commercial Mediation</b>		
Introduction to Commercial Mediation	13 March	£549 + VAT
Introduction to Commercial Mediation	12 June	£549 + VAT
Module 1 Mediation – Commercial Mediation Training	10-12 March & 17-18 March	£2,595 + VAT
Module 1 Mediation – Commercial Mediation Training	2-4 June & 9-10 June	£2,595 + VAT
Module 2 Mediation – Mediation Accreditation Assessment	24-25 March	£1,295 + VAT
Module 2 Mediation – Mediation Accreditation Assessment	16-17 June	£1,295 + VAT
Peer Interview – Mediation	31 March	£249 + VAT
Peer Interview – Mediation	26 May	£249 + VAT
<b>Workplace Mediation</b>		
Introduction to Workplace Mediation	2-3 April	£749 + VAT
Workplace Mediation Training and Accreditation Assessment	15-17 April	£1,549 + VAT

For further information about the CIARB Pathways programme, please visit [www.ciarb.org/pathways](http://www.ciarb.org/pathways)

If you have any questions or wish to book a course or workshop: **T: + 44 (0)20 7421 7439** or **E: [education@ciarb.org](mailto:education@ciarb.org)**

## New expertise for CIARB's education and training team



From left to right: Anita Phillips, Karen Cheel, James Luton and Randalle Roberts.

THE NEW YEAR brings in positive change for the education and training function of the Research and Development Department for CIARB, with new staff and new expertise.

The role of the education and training function is to formulate and implement policy relating to learning and assessment, supported by a range of courses within the field of non-court dispute resolution leading to membership of CIARB. We offer a range of services from in-house training to single places on specific courses with the flexibility to meet employer needs. Our aim is to assist organisations in becoming more efficient and effective through committed and motivated staff. CIARB education and training

enables candidates to keep abreast of changes in the legal environment, develop their knowledge and skills, meet industry peers and exchange ideas.

Our dedicated and friendly education team - Anita Phillips, Karen Cheel, James Luton and Randalle Roberts are here to provide any assistance you may require. The team are all very experienced in different areas of education from course administration, research, development, quality assurance through to statistical analysis.

For further information on CIARB courses, products and services, please contact the education team by email on [education@ciarb.org](mailto:education@ciarb.org) or phone **+44 (0) 20 7421 7439**

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