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A REPORT ON THE “TALKING TO INSTITUTIONS LEADERS: WHAT DOES REFORM LOOK LIKE?” PANEL PRESENTATION

by Fransua Estrada

Delivered at the 18th ITA-ASIL Conference on March 23, 2021.

International commercial and investment arbitration is amid a substantial reform process. Several initiatives have been taken in various fora (such as the ICC, ICSID, and UNCITRAL) with the aim of improving the procedures at stake. This panel, while identifying some of the core features of these reform proposals, will discuss how arbitration may evolve as a result. The impact of the Covid-19 pandemic on arbitration will also be assessed. The reforms will be discussed from the perspective of their impact on approaches to international dispute settlement more broadly.

This year's ITA-ASIL conference featured a timely and important conversation with Secretary of UNCITRAL, Ms. Anna Joubin-Bret, Secretary-General of ICSID, Ms. Meg Kinnear, and Secretary-General of the ICC, Mr. Alexander G. Fessas, about the reforms within their respective institutions. The crux of this panel was to discuss what major reform initiatives would be implemented and, in general, why those changes are taking place. Throughout the discussion, the consensus, as Mr. Fessas put it, was that “time requires reform.” In essence, this panel demonstrated the effectiveness of intra-institutional cooperation and collaboration and the importance of moving forward with the reforms.

Ms. Joubin-Bret kicked off the discussion by referring to the metaphor of remodeling a home to describe UNCITRAL's reform efforts and the considerations put forth by Working Group III, with a key point being the installation of an appellate mechanism to the ISDS system, establishing a “second-level” of substantive review of arbitral tribunals' decisions. Though it is uncertain whether this mechanism will involve a second-instance court or a standing appellate court, Ms. Joubin-Bret noted that UNCITRAL has been devising the essential features of this long-discussed topic collaborating with ICSID and more than 450 individuals involved in its Working Group III.



ICSID, as Ms. Kinnear expressed, is “a procedural mechanism through which dispute settlement can get accomplished,” so it has focused its reform efforts on its protocols, with less emphasis on substantive reforms. Indeed, though the specific language may differ on paper, the proposals made to the ICSID Rules should be similar in practice to the recently amended ICC Rules. Both institutions strive to provide more transparency by requiring the disclosure of third-party funding to avoid conflicts of interest. Further, both the ICC and ICSID are materializing an expedited arbitration protocol, whereby, as Mr. Fessas noted, small and medium-sized businesses could “avail themselves of the benefits of international arbitration.” The goal is to provide a system through which parties can resolve their disputes expeditiously.

Overall, the panel discussion covered the important points of what the future of international arbitration would look like within these institutions. The reforms discussed attempt to facilitate the dispute resolution mechanisms in the near future and should positively impact to the users of UNCITRAL, ICSID, and the ICC arbitration.



FRANSUA ESTRADA is a recent graduate from the American University Washington College of Law specializing in international law.

INSTITUTE FOR TRANSNATIONAL ARBITRATION OF THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

The Institute for Transnational Arbitration (ITA) provides advanced, continuing education for lawyers, judges and other professionals concerned with transnational arbitration of commercial and investment disputes. Through its programs, scholarly publications and membership activities, ITA has become an important global forum on contemporary issues in the field of transnational arbitration. The Institute's record of educational achievements has been aided by the support of many of the world's leading companies, lawyers and arbitration professionals. Membership in the Institute for Transnational Arbitration is available to corporations, law firms, professional and educational organizations, government agencies and individuals.

A. Mission.

Founded in 1986 as a division of The Center for American and International Law, the Institute was created to promote global adherence to the world's principal arbitration treaties and to educate business executives, government officials and lawyers about arbitration as a means of resolving transnational business disputes.

B. *Why Become a Member?*

Membership dues are more than compensated both financially and professionally by the benefits of membership. Depending on the level of membership, ITA members may designate multiple representatives on the Institute's Advisory Board, each of whom is invited to attend, without charge, either the annual ITA Workshop in Dallas or the annual Americas Workshop held in a different Latin American city each year. Both events begin with the Workshop and are followed by a Dinner Meeting later that evening and the ITA Forum the following morning—an informal, invitation-only roundtable discussion on current issues in the field. Advisory Board Members also receive a substantial tuition discount at all other ITA programs.



Advisory Board members also have the opportunity to participate in the work of the Institute's practice committees and a variety of other free professional and social membership activities throughout the year. Advisory Board Members also receive a free subscription to ITA's quarterly law journal, *World Arbitration and Mediation Review*, a free subscription to ITA's quarterly newsletter, *News and Notes*, and substantial discounts on all ITA educational online, DVD and print publications. Your membership and participation support the activities of one of the world's leading forums on international arbitration today.

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The work of the Institute is done primarily through its Advisory Board, and its committees. The current practice committees of the ITA are the Americas Initiative Committee (comprised of Advisory Board members practicing or interested in Latin America) and the Young Arbitrators Initiative Committee (comprised of Advisory Board members under 40 years old). The ITA Advisory Board and its committees meet for business and social activities each June in connection with the annual ITA Workshop. Other committee activities occur in connection with the annual ITA Americas Workshop and throughout the year.

D. *Programs.*

The primary public program of the Institute is its annual ITA Workshop, presented each year in June in Dallas in connection with the annual membership meetings. Other annual programs include the ITA Americas Workshop held at different venues in Latin America, the ITA-ASIL Spring Conference, held in Washington, D.C., and the ITA-IEL-ICC Joint Conference on International Energy Arbitration. ITA conferences customarily include a Roundtable for young practitioners and an ITA Forum for candid discussion among peers of current issues and concerns in the field. For a complete calendar of ITA programs, please visit our website at www.cailaw.org/ita.

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The Institute for Transnational Arbitration publishes its acclaimed Scoreboard of Adherence to Transnational Arbitration Treaties, a comprehensive, regularly-updated report on the status of every country's adherence to the primary



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