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THE RISE OF MEDIATION AND OTHER FORMS OF ADR FOR THE RESOLUTION OF TELECOMMUNICATIONS/ NEW TECHNOLOGIES DISPUTES

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I. EXPLAINING THE RISE OF ADR IN TELECOMMUNICATIONS/ NEW TECHNOLOGIES DISPUTES

ICC Court of Arbitration
recorded its highest number
of arbitrations yet in 2016

3,099 parties

966 new cases

137 countries



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Globalisation

Evolution of the telecommunications sector

Resolution by specialist

Time factor

Enforcement around the world



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II. SPECIALISED ADR BODIES IN NEW TECHNOLOGY DISPUTES



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France: Electronic Communications Mediator

Silicon Valley: SVAMC

Germany: Association of Law and Informatics
(DGRI)



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III. CASE STUDIES: ADR & TELECOMMUNICATIONS/ NEW TECHNOLOGIES DISPUTES IN PRACTICE



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PRACTICAL ISSUES

Rules

Joinder of additional parties

Corruption

OHADA CCJA

17 countries

Own business rules

Supreme Court & arbitral
institution



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Practice Points

- Lack of legal precedents/ national regulation
- Present clear facts
- Expert evidence



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*Millicom
International
Operations
B.V. (MIO)
& Others*

v

*Republic of
Senegal*

- Mobile phone network
- Senegal started proceedings before Dakar Regional Court
- MIO filed ICSID proceedings
- Senegal's ICSID jurisdictional objections dismissed



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Cisco Systems

v

*Huawei
Technologies*

- Patents + copying of source code
- Huawei agreed to remove certain elements from products + to modify its technology



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*International
Business
Machines
Corporation
(IBM)*

v

*Fujitsu
Limited (FJ)*

- IBM claimed FJ copied operating systems. FJ refused to licence software to IBM
- Award (i) required FJ to purchase a licence from IBM (ii) allowed FJ to use IBM information to develop software (iii) allowed IBM to use FJ software



Apple
v
Samsung

- 50+ lawsuits in 9 countries
- 2014 – litigation costs outweigh research/ development
- Apple wins \$1 billion in 2012, later reduced to \$850 million
- Appeals, then second US case which gave Apple another \$114 million



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Queen Mary University (QMU) survey on Technology, Media, Telecoms and Disputes

North America: 31% of participants experienced > 20 disputes, with 38% valued at > \$100m

Europe: 29% of participants experienced > 20 disputes, with 41% valued at > \$100m



QMU survey continued...

71% of all participants globally had experienced > 20 disputes, with 83% valued over \$100m

Arbitration preferred dispute resolution method (43%)

Court litigation least desirable (15%)

QMU survey continued...

Reasons for choosing arbitration:

Enforceability (68%)

Avoiding litigation in foreign jurisdiction
(65%)

Confidentiality (60%)



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- END -

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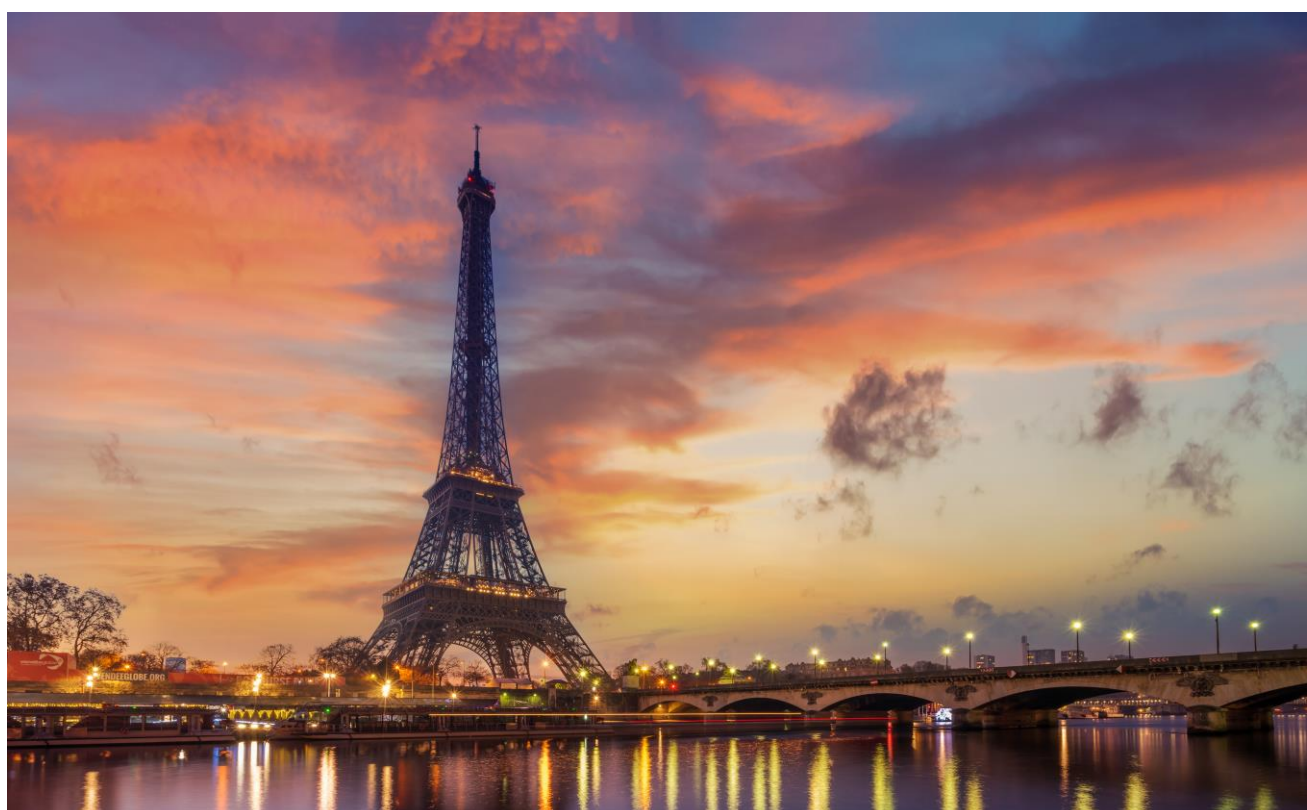
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Events

CI Arb International Arbitration Conference 2017 – Paris

Date: Thursday 7 – Friday 8 December 2017

Venue: Paris Marriott Champs Elysees Hotel, Paris, 75008, France



We are delighted to announce that CI Arb's third and final international conference this year will be taking place in Paris this December.

This meeting will discuss the **Synergy and Divergence between Civil Law and Common Law in International Arbitration** from both a European and American angle. The two-day conference will showcase lectures and panel discussions led by experts from across the world.

The event provides an incredible opportunity to engage with specialists within the dispute resolution field, network with other members of the ADR community and forge new business relationships.

CPD Points (applied for): 10

To be accredited by the Bar Standards Board



Join the conversation:
#CIArbParis

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EVENTS

Programme*

DAY ONE

8.00 **Registration and Coffee**

9.00 **Welcome and Opening Comments**

Romain Dupeyré (Master of Ceremony), Partner, DWF (France) AARPI
Anthony Abrahams, Director General, Chartered Institute of Arbitrators
Nayla Comair-Obeid, President, Chartered Institute of Arbitrators
Alexis Mourre, President, ICC International Court of Arbitration

9.20 **Keynote Speech**

Speaker to be confirmed

9.40 **Panel Discussion 1: The Role of Legislation in Developing and Sustaining an Arbitration Friendly Seat**

Chair: Lord Keen of Elie QC, Advocate General for Scotland

- **The Model Law as a case study: Have the different countries adopted the ML? If not, why not?**
To be addressed by all speakers
- **Features and specificities of modern arbitration legislation**
Laetitia Avia, Députée de la 8e circonscription de Paris
- **Immunity of arbitrators, challenges, liability and fees**
Lord Peter Goldsmith QC PC, Partner, Debevoise & Plimpton LLP
- **Setting aside arbitral awards**
Felix Dasser, Partner, Homburger (Zurich)
- **London Principles on a safe seat and its impact on legislation**
Janet Walker, Professor, Osgoode Hall Law School, York University (Ontario)
- **American legislative perception to arbitration**
John D. Daley, Deputy Assistant Legal Adviser, U.S. Department of State

11.10 **Coffee Break**

11.30 **Panel Discussion 2: What the Client Wants - Strategic Choices in Drafting Arbitration Agreements**

Chair: Jason Fry, Partner, Clifford Chance (Paris)

- **Choice between ad hoc and institutional arbitration: Is there a civil/common law divergence?**
Bénédicte Wautelet, General Counsel, Le Figaro
- **Are international or regional institutions more favourable?**
Alma Forgó, Head of Commercial Litigation & Arbitration, Airbus Group (Toulouse)
- **Are there favourable institutions for certain disputes or certain states?**
Christophe Lobier, Senior Litigation Counsel, GE Energy Connections
- **Time and cost: Effective dispute management**
Alison Pearsall, Legal Counsel, Shell (Paris)
- **Essential elements in drafting arbitration clauses (including choice of applicable law, seat and language of the arbitration)**
Pierrick Le Goff, General Counsel, Alstom (France)

13.00 **Lunch**

14.00 **Panel Discussion 3: The Perspective from Arbitral Institutions on Building the Synergy between Civil and Common Law**

Chair: Alexis Mourre, President, ICC International Court of Arbitration

- **Role of arbitral institutions in bridging the gap between civil and common law**
Claire de Tassigny Schuetze, Senior Legal Counsel, Permanent Court of Arbitration
- **The influence of UNCITRAL Arbitration Rules**
Audley Sheppard QC, Chairman, The London Court of International Arbitration (LCIA) Board
- **What role should arbitral institutions have at inception and during the arbitration proceedings?**
Sasha A. Carbone, Associate General Counsel, American Arbitration Association
- **Should institutional rules be legal system neutral?**
Annette Magnusson, Secretary General, Arbitration Institute of the Stockholm Chamber of Commerce
- **New trends in arbitration rules**
Diego P. Fernández Arroyo, Professor of International and Comparative Law, School of Law of Sciences Po, Paris
- **What is the difference between local, regional and international institutions?**
To be addressed by all speakers

15.30 **Coffee Break**

Programme*

15.50 **Panel Discussion 4: The Art of Advocacy - The Civil and Common Law Styles**

Co-Chairs: Ann Ryan Robertson, International Partner, Locke Lord (Texas)

Axel Reeg, Partner, Reeg Rechtsanwälte (Germany)

- **The true role of counsel: rights, obligations and tactics**
Derek Wood CBE QC, Falcon Chambers Arbitration (London)
- **Written pleadings and ascertaining the content of the applicable laws**
Wendy J. Miles QC, Partner, Debevoise & Plimpton (London)
- **Weighing the evidence: experts and witnesses v. documentary evidence**
Georges Affaki, Partner, Affaki Société d'Avocats (Paris)
- **Cross examination and oral pleadings**
Pierre Mayer, Mayer Pierre Cabinet d'Avocats (Paris)
- **Fees and costs**
Laurence Shore, Partner, BonelliErede (Milan)

17.20 **Open Forum: Civil-Common Law Divergence and Convergence – The Telecommunications and New Technologies Case Study**

Chair: Elie Kleiman, Partner, Freshfields Bruckhaus Deringer (Paris)

- **Public-private partnerships in the telecommunication industry and the common law/civil law dichotomy**
Tom Cunningham, Principal, Tom Alan Cunningham PLLC (Texas)
- **Security, privacy and evidence**
Michael Polkinghorne, Partner, White & Case (Paris)
- **Electronic disclosure in international arbitration**
Julian D. M. Lew QC, 20 Essex Street (London)
- **Rise of mediation and other forms of ADR for the resolution of telecommunications/new technologies disputes**
Béatrice Castellane, Partner, Cabinet Castellane Avocats (Paris)
- **Telecommunications and IP rights**
Thomas D. Halket, Adjunct Professor of Law, Fordham University School of Law

18.50 **Drinks reception**

DAY TWO

8.30 **Registration and Coffee**

9.00 **Welcome Address**

Laurence Burger, Chair, European Branch, Chartered Institute of Arbitrators

Jalal El Ahdab, Chair, Paris Chapter, Chartered Institute of Arbitrators

9.15 **Panel Discussion 5: The New Global Order and Arbitration**

Chair: Teresa Cheng GBS SC JP, Chair, Hong Kong International Arbitration Centre

- **The EU-Canada Comprehensive Economic and Trade Agreement (CETA) and arbitration**
Antonio Crivellaro, Partner Emeritus, BonelliErede (Milan)
- **How Investment Treaty Arbitration Can Best Serve Its Goals?**
David W. Rivkin, Partner, Debevoise & Plimpton (New York)
- **Impact of Brexit on arbitration**
Nigel Rawding QC, Partner, Freshfields Bruckhaus Deringer (London)
- **Investment arbitration in search of its new frontiers**
Benoît Le Bars, Partner, Lazareff Le Bars (Paris)
- **Delocalisation of arbitral awards**
Speaker to be confirmed

10.45 **Coffee Break**

11.15 **Panel Discussion 6: Judicial Intervention, Perceptions and Reactions - The Civil and Common Law Approaches**

Chair: Sir Vivian Ramsey QC, Judge, Singapore International Commercial Court

- **Judicial approaches to arbitration**
Lord Neuberger of Abbotsbury, President, Supreme Court of the United Kingdom

Programme*

- **Judicial appointments in arbitration**
Rosemary Barkett, Former US Circuit Judge of the US Court of Appeals for the Eleventh Circuit and Judge of the Iran-US Claims Tribunal
 - **Challenges to arbitrators: judicial perceptions (including immunity of arbitrators)**
Nicolas von Werdt, Judge, Federal Supreme Court of Switzerland
 - **Annulment of arbitral awards**
Dominique Hascher, Judge, French Cour de Cassation
 - **Enforcement and recognition of awards, decisions and orders**
Thomas Pfeiffer, Former judge at the Court of Appeal (Oberlandesgericht) Hamm and Director of Heidelberg Centre for International Dispute Resolution
- 12.50 **Address of Chartered Institute of Arbitrators Deputy President**
James Bridgeman, Practising barrister, Chartered Arbitrator and certified mediator
- 13.00 **Lunch**
- 14.00 **Panel Discussion 7: Arbitrators - The Civil and Common Law Styles**
Chair: Carole Malinvaud, Partner, Gide Loyrette Nouel (Paris)
- **The role of arbitrators between facts, law and justice**
Speaker to be confirmed
 - **Immunity of arbitrators**
Alan Redfern, One Essex Court (London)
 - **Assessment of evidence from a civil law perspective**
Ibrahim Fadlallah, Independent arbitrator and Emeritus Professor of Law, University of Paris
 - **Role in ascertaining the content of the applicable law**
Lawrence Newman, Of Counsel, Baker & McKenzie LLP (New York)
 - **Tribunal dynamics**
Elliott Geisinger, Partner, Schellenberg Wittmer (Geneva)
 - **Experts: party appointed/tribunal appointed**
To be addressed by all speakers
 - **Merits of civil v common/burden of education**
To be addressed by all speakers
- 15.30 **Coffee Break**
- 16.00 **Panel Discussion 8: The Civil-Common Law Dichotomy: Practical Solutions to Current Problems**
Chair: Phillip Capper, Partner, White & Case (London)
- **Approach to factual and legal issues**
Reza Mohtashami, Partner, Freshfields Bruckhaus Deringer (Paris)
 - **Approaches to choice of arbitrators**
Karl-Heinz Böckstiegel, Independent arbitrator and Former Patron of the Chartered Institute of Arbitrators
 - **The decision-making process**
Alexander G. Fessas, Secretary General, ICC International Court of Arbitration
 - **The role of academics in bridging the gap between common law and civil law**
Mohamed S. Abdel Wahab, Head of Arbitration, Zulficar & Partners (Cairo)
 - **Adversarial and inquisitorial techniques**
Lucy Greenwood, Principal, GreenwoodArbitration (Texas)
 - **Document production**
Speaker to be confirmed
- 17.30 **Concluding remarks**
Pierre Tercier, Emeritus Professor, University of Fribourg
George A. Bermann, Professor of Law, Columbia Law School, and director, Center for International Commercial and Investment Arbitration (CICIA)
- 18.15 **Closing remarks and end of meeting**
Nayla Comair-Obeid, President, Chartered Institute of Arbitrators

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CI Arb YMG rate:	£300 / €350

Please note that early bird rates expire on 12 October 2017

For more information or to book online please visit the events page www.ciarb.org/events