

# THE 5TH CARTAL CONFERENCE ON INTERNATIONAL ARBITRATION

*Riding New Tides : Arbitration in a Changing World*

9th-11th October, 2020

organised by

National Law University, Jodhpur

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# ABOUT THE CONFERENCE

The Centre for Advanced Research and Training in Arbitration Law [“CARTAL”] at National Law University, Jodhpur endeavours to further academic research and study in the field of arbitration and dispute resolution. Since its inception, CARTAL’s initiatives have provided an impetus to dialogue and discourse on arbitration in India. The workshops, guest lectures and conferences organized by CARTAL have furnished a platform for academicians, professionals and students to interact and discuss contemporary issues in arbitration law.

The theme for the 5th CARTAL Conference is “*Riding New Tides: Arbitration in a Changing World*” and it shall be hosted over a period of two days virtually from National Law University, Jodhpur in India. The decision to host virtually has been motivated by our commitment to our annual endeavour of offering an important platform for discussion, and therefore our efforts are directed towards ensuring that the shadow of the pandemic does not loom large.

In recent years, we have witnessed a rise in unprecedented challenges in arbitral practice across the globe in both the investment as well as the commercial setting. This in turn has been accompanied by a rise in efforts to develop best practices across the globe. The challenges of ensuring efficiency of arbitration, tackling new classes of disputes, and discovering lacunae in existing models have been further augmented by the outbreak of COVID-19 and the unanticipated consequences that are likely to follow. The Conference will aim to address some of these challenges and the solutions that have been presented, thereby moving towards harmony in arbitral practice.

## ABOUT CARTAL

CARTAL has been set up to promote research and scholarship in the field of arbitration. CARTAL is headed by Executive Director Dr. Nidhi Gupta, with Professor Martin Hunter acting as Honorary Chairman. CARTAL’s Board of Advisers include the most pre-eminent personalities in the field of arbitration such as Mr. Gary B. Born, Mr. Alexis Mourre, Mr. Emmanuel Gaillard and Prof. Gabrielle Kaufmann-Kohler. CARTAL comprises of a dedicated body of members, who are responsible for organisation of its events. The 1st CARTAL International Arbitration Conference, “*Arbitration at Crossroads*”, was held on 14th-15th October, 2016, addressing themes such as developments in international investment arbitration, transparency and confidentiality concerns, institutional arbitration in India, and the overhaul of India’s arbitration law. The 2nd CARTAL International Arbitration Conference, “*Looking East: Arbitration in the Asian Age*”, was held on 30th September-1st October, 2017, addressing themes such as arbitration across legal and economic cultures, the viability of the BRICS Dispute Resolution Forum, third party funding, and public policy. The 3rd CARTAL International Arbitration Conference, “*Winds of Change: Securing Harmony in Arbitral Practice*”, was held on 29th-30th September, 2018, addressing themes such as the Investment Court System by the EU, cross-institutional consolidation forwarded by SIAC, and the practice of guerrilla tactics in arbitration. The 4th CARTAL International Arbitration Conference, “*Navigating Murky Waters: Addressing Uncertainties in International Arbitration*” was held on 5th-6th October, 2019, addressing themes such as environmental and human rights concerns in international investment law, rules governing taking of evidence in international arbitration and institutional arbitration in India. The reports of the CARTAL Conferences can be found [here](#).

# MESSAGE FROM THE CHIEF PATRON PROF. DR. POONAM PRADHAN SAXENA



*Prof. Dr. Poonam Pradhan Saxena  
Vice-Chancellor, National Law University, Jodhpur  
Chief Patron, CARTAL*

As the COVID-19 pandemic is gaining an ever-tighter grip on our daily lives, we are seeing that many events are cancelled, postponed, or moved. We are committed to doing our part in keeping everyone safe, while at the same time encouraging academic discourse and discussion, and it is for this reason that we have decided to host the CARTAL Conference virtually this year. The organisational teams are, as always, in the midst of planning an intellectually stimulating and exciting experience, and we look forward to the participation of students, practitioners, and institutions in the field of arbitration, as we endeavour to thrive in this new and challenging world.

## SCHEDULE FOR THE CONFERENCE

<u>Panel</u>	<u>Topic</u>	<u>Date</u>	<u>Time</u>
Panel I	Entering a Data Driven World: The Way Forward for International Arbitration	October 9 (Friday)	5:00PM – 6:30PM (IST) 11:30AM – 1:00PM (UTC)
Panel II	State-State Investment Arbitration: A Viable Alternative to ISDS?	October 10 (Saturday)	5:00PM – 6:30PM (IST) 11:30AM – 1:00PM (UTC)
Panel III	The Rise of Effective Cross-Border Litigation and Mediation: Does Arbitration Still Wear the Crown?	October 11 (Sunday)	5:00PM – 6:30PM (IST) 11:30AM – 1:00PM (UTC)

## DETAILS OF THE CONFERENCE

Platform: Cisco Webex

Meeting Link: To Be Disclosed

To register for the 5th CARTAL Conference, kindly visit our [official website](#) or register [here](#).

## PANEL I

# ENTERING A DATA DRIVEN WORLD: THE WAY FORWARD FOR INTERNATIONAL ARBITRATION

The development of legal frameworks on data regulation and protection across jurisdictions has far-reaching consequences for the future of international arbitration. The enactment of laws such as Europe's General Data Protection Regulation ["GDPR"] has led to an increase in complex data related disputes. Thus, there are ongoing debates about their arbitrability, the suitability of international arbitration for their resolution, and the challenges associated with deciding this particular class of disputes. There has also been a rise in questions concerning applicability of data protection laws and the need for development of data protection rules in international arbitration, considering the huge amount of data processed during and after such proceedings. Moreover, in the absence of an international standard for data protection in arbitration proceedings, the norms for discovery, disclosure, and use of personal data remain ambiguous. The 2020 Public Consultation Draft of the ICCA-IBA Roadmap to Data Protection in Arbitration is a commendable step in this direction. It lists out the data protection principles applicable in arbitration and maps the flow of data in arbitration to lay down certain considerations for the parties and arbitral institutions, as data processors and controllers.

This Panel will explore the relevance of international arbitration for the resolution of data disputes; best practices for compliance with data protection rules by participants in the arbitral process; the responsibilities of an arbitral tribunal to ensure informed consent about data processing and security for personal data, procedural rules of discovery and disclosure of sensitive data, and the role of arbitral institutions from the perspective of data protection laws.

## PANELLISTS



### Prof. Dr. Jacomijn van Haersolte-van Hof

Prof. Dr. Jacomijn van Haersolte-van Hof is the Director-General of the London Court of Arbitration. Since joining the LCIA in 2014, she has remained active as an arbitrator. Prior to joining the LCIA, she had her own law firm in The Hague, called HaersolteHof. She graduated from Rijksuniversiteit Leiden (Master of Laws 1986; PhD 1992, doctoral thesis entitled: The UNCITRAL Rules, The Practice of the Iran-United States Claims Tribunal). She has advised and represented multinational companies in commercial, investment, and dispute matters; acting for and against foreign states. She has expertise in sales and general contract law, post-merger & acquisition disputes, energy law (including gas price review disputes), international law (investment law and immunity law), transport and commodities, shipbuilding (including off-shore), and insurance.

### Ms. Marily Paralika

Ms. Marily Paralika is the Partner and Head of the International Arbitration Practice at Fieldfisher, Paris. Prior to joining the same, she was a Senior Associate in the International Arbitration Group of White & Case in Paris, and a Deputy Counsel with the Secretariat of the ICC International Court of Arbitration. She holds a Master's degree in International Economic Law from the University Paris II Panthéon-Assas and an LLM in European and International Law from the University of Athens. She represents parties in the construction, engineering, energy and infrastructure sectors, both in commercial arbitrations and investor-state disputes.



## PANELLISTS



### Ms. Mélanie van Leeuwen

Ms. Mélanie van Leeuwen joined Derains & Gharavi as a Partner in 2011 and has been practising international arbitration exclusively. She has handled over 100 arbitrations as counsel and arbitrator concerning disputes arising out of international commercial contracts, cross-border investment, joint ventures, mergers & acquisitions, construction projects, and investment protection. She graduated from Erasmus University Rotterdam with a law degree in civil and international law. She is currently serving as vice-president of the ICC Commission on Arbitration; co-chair of the ICCA-IBA Joint Task Force on Data Protection in International Arbitration; member of the Arbitration Court of the Swiss Chambers' Arbitration Institution; member of the board of Paris, the Home of International Arbitration; and board member of the Swiss Arbitration Association.

### Moderator: Ms. Kristin Campbell-Wilson

Ms. Kristin Campbell-Wilson joined the Stockholm Chamber of Commerce as Deputy Secretary-General in December 2012. Prior to this Kristin had worked in litigation for 9 years, most recently as a member of the Litigation and Arbitration team at DLA Nordic in Stockholm. At DLA Nordic she worked extensively with arbitral proceedings – both institutional and ad-hoc – representing both domestic and international commercial clients in disputes relating to a wide range of sectors, including energy, mergers & acquisitions, reinsurance and intellectual property rights. She did her schooling from Stockholm University and Erasmus University Rotterdam.



## PANEL II

### STATE-STATE INVESTMENT ARBITRATION: A VIABLE ALTERNATIVE TO ISDS?

With the increase in international investment disputes, concerns regarding the effectiveness and legitimacy of Investor-State Dispute Settlement [“ISDS”] have also been growing. Over the last decade, ISDS has also suffered from uncertainty caused by political shocks such as Brexit, the NAFTA renegotiations and the recent outbreak of Coronavirus. Considering this, the United Nations Commission on International Trade Law [“UNCITRAL”] has constituted a Working Group to attempt a revamp of the system. Amidst calls for reform, the proposal to replace ISDS with State-State Investment Arbitration [“SSIA”] is gaining renewed attention.

Under the SSIA mechanism, it is the Home State, on behalf of an investor, and not the investor directly, that initiates investment-treaty related claims against Host States. This potentially allows States to filter out unmeritorious and controversial claims. Despite its inclusion in several international investment agreements, the SSIA clause has rarely been invoked. However, State to State Dispute Settlement mechanisms, which predate ISDS, are regaining focus, as reflected by their inclusion in the India-Brazil and United States-Mexico-Canada Agreements. This trend is likely to continue with COVID-19, as States will be faced with myriad claims against pandemic measures, combined with the challenge of recreating favourable investment climates. In these uncertain times, the SSIA mechanism appears a suitable tool as it seeks to overcome the problem of multiplicity of similar claims by different investors overburdening States; as well as inconsistencies in treaty interpretation under the ISDS, which have been a major drawback of investor-State arbitrations.

In light of the above, this panel would examine the advantages and drawbacks of SSIA; its potential as a viable alternative to ISDS when compared with the other proposed models; and the interplay between SSIA and ISDS.

## PANELLISTS



### Dr. Romesh Weeramantry

Dr. Romesh Weeramantry joined the Clifford Chance Asia Team in Singapore as a Counsel in 2013. Before that, he had worked as a Professor of Law at the University of Hong Kong. He specialises in complex arbitrations involving cross-border commercial or joint venture disputes and foreign investment treaty claims. He is a General Arbitration Editor of the Hong Kong White Book; a General Editor of the Asian Dispute Review; a member of the Editorial Board of the ICSID Review; and a member of the IBA Sub-Committee on Investment Treaty Arbitration. He did his early education from the Monash University and the King’s College London, and has his PhD from the Queen Mary University of London.

### Mr. David Gaukrodger

Mr. David Gaukrodger is Senior Legal Adviser at the OECD Investment Division. He leads OECD analysis on investment treaties and supports an investment roundtable that regularly gathers OECD, G20 and other governments. His current work has focussed on addressing business responsibilities and investment treaties, the balance of investor protection and the right to regulate, and investor-state dispute settlement. He recently managed the discussion and adoption of a communication on Harnessing Freedom of Investment for Green Growth involving delegates from 37 countries. Mr. Gaukrodger was previously a Special Counsel with Sullivan & Cromwell LLP in New York and represented clients in arbitration and litigation proceedings. He graduated from Sciences Po Paris with a “mention lauréat” (top 5% of his class) and obtained law degrees with distinction from the University of Toronto and the Université de Paris I.



## PANELLISTS



### Dr. Catharine Titi

Dr. Catharine Titi, Dr iur., FCIArb, is a tenured Research Associate Professor at the French National Centre for Scientific Research (CNRS)-CERSA, University Paris II Panthéon-Assas, France. She serves on the Steering Committee of the Academic Forum on ISDS which contributes to the discussions in Working Group III of the UNCITRAL and on the Academic Council of the Institute for Transnational Arbitration of the Center for American and International Law. She is also co-chair of the ESIL Interest Group on International Economic Law and serves on the Editorial Board of the Yearbook on International Investment Law & Policy. Dr. Titi is a Fellow of the Chartered Institute of Arbitrators, she sits on the panel of arbitrators of the Court of Arbitration for Art, and is appointed to the roster of the USMCA Annex 31-B panellists. She holds a PhD from the University of Siegen in Germany (Summa cum laude, Rolf H. Brunswig PhD Prize) and has previously been a consultant at the UNCTAD. In 2016, Dr. Titi was awarded the prestigious Smit-Lowenfeld Prize of the International Arbitration Club of New York for the best article published in the field of international arbitration.

### Moderator: Dr. Prabhash Ranjan

Dr. Prabhash Ranjan is a Senior Assistant Professor at the Faculty of Law, South Asian University in New Delhi. His areas of expertise include international investment law, international trade law and intellectual property rights. He has numerous publications and lectures on these topics and allied areas. He completed his early education from the University of Delhi and later attained his LLM from the University of London and PhD from King's College London.





## PANEL III

### THE RISE OF EFFECTIVE CROSS-BORDER LITIGATION AND MEDIATION: DOES ARBITRATION STILL WEAR THE CROWN?

International Arbitration has reigned as the most preferred mode for the resolution of cross-border disputes for several years now, by virtue of perceived neutrality of arbitral tribunals in comparison to domestic courts, confidentiality/privacy, ease of enforcement and efficiency. However, recently, international arbitration has been criticised for being both expensive and time-consuming. These criticisms – though not severe enough to discourage the use of arbitration completely – must still be examined against the backdrop of recent developments in other modes of dispute resolution, to re-evaluate the appeal of arbitration for cross-border disputes in the future. In addition to the prevailing criticisms, there are also concerns about the impact of pandemic-induced economic changes on the future preference for arbitration.

The most significant developments in dispute resolution, which may potentially impact the usage of arbitration, came in the form of two recent instruments that endeavour to promote the use of mediation and litigation for the resolution of international disputes. The United Nations Convention on International Settlement Agreements Resulting from Mediation 2015 [“Singapore Mediation Convention”] provides a framework for the enforcement of mediated settlements, the lack of which has been one of the primary reasons parties decided against mediation for the resolution of cross-border commercial disputes. Similarly, the Hague Conference on Private International Law has adopted the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [“Hague Judgments Convention”], which seeks to establish a regime for enforcement of civil and commercial judgements, mirroring the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards [“New York Convention”].

Additionally, the possibilities of mediation are being explored in investor-state disputes by the Investor-State Mediation Taskforce, 2013. In light of the above, this panel will discuss the suitability of different forms of dispute resolution for commercial/investment related disputes in different sectors, the problems plaguing international arbitration today as well as its undeniable benefits, the role of the above-mentioned Conventions and similar instruments in promoting international mediation and litigation, possible interaction between the different modes of dispute resolution for effective resolution of international disputes, and the changes that must be brought to the arbitral process to ensure that international arbitration retains its premier position in commercial dispute resolution.

## PANELLISTS

### Ms. Edna Sussman, Esq.

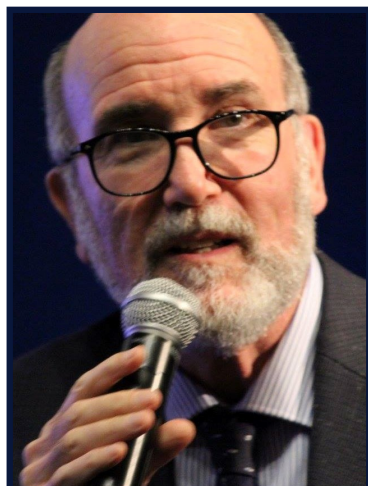
Ms. Edna Sussman, Esq. is an independent arbitrator and mediator and the Distinguished ADR Practitioner in Residence at the Fordham University School of Law. Formerly a partner at White & Case LLP, she has extensive experience serving both as an arbitrator (as chair, sole or co-arbitrator) and a mediator in well over 400 domestic and international complex commercial disputes concerning a wide range of subject matters including finance and banking, intellectual property, environment, telecommunication and aviation among others. Ms. Sussman is the chair/director of the New York International Arbitration Center and serves as a director of the AAA-ICDR Foundation. She also sits on the Board of the American Arbitration Association. She is the co-director of the annual Fordham International Arbitration and Mediation Conference. Ms. Sussman has lectured and published widely on arbitration and mediation topics and serves as one of the few trainers for mediation and arbitration for the International Centre for Dispute Resolution and the American Arbitration Association.



## PANELLISTS

### Mr. Paul Eric Mason

Mr. Paul Eric Mason is a U.S. lawyer based in Miami and Rio de Janeiro. He has acted as mediator, arbitrator, and counsel in commercial disputes between parties from Asia, Europe, Russia, and North, South and Central America. He has served as a mediator and arbitrator at ADR institutions in Beijing, Florence, Geneva, London, New York, Paris, and Vienna among others. He is the first mediator to be certified in Brazil by the International Mediation Institute. He has testified at the Brazilian Senate Commission considering the draft of the new mediation law. Mr. Mason has taught workshops on Negotiation, Mediation and Arbitration at the PUC-Minas Law School in Belo Horizonte, Brazil, the Moscow Finance and Law University (MFUA) in Moscow, and the Florida International University Law School (Miami). He has also authored several articles and chapters on arbitration and mediation and is also the creator and General Editor of the book 'International Commercial Arbitration Practice: 21st Century Perspectives' (2010). Mr. Mason received his B.A. from Yale University, his M.A. with Distinction in International Relations from Johns Hopkins University – Paul Nitze School of Advanced International Studies, Washington DC and Bologna Italy, and his J.D. from University of Maine.



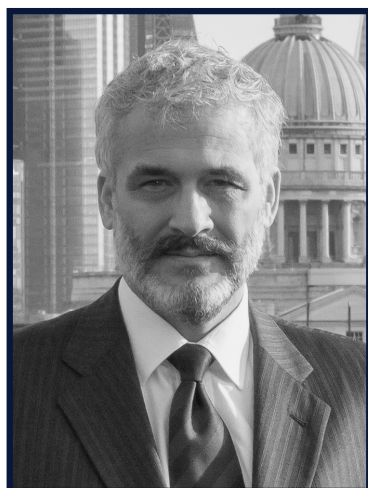
### Prof. Katia Fach Gómez

Prof. Katia Fach Gómez teaches Conflict of Laws, International Arbitration and International Business Transactions at the University of Zaragoza in Spain. She was Adjunct Professor at Fordham University, Visiting Scholar at Columbia Law School, and Pre and Post-Doctoral Grantee at the Max-Planck Institut in Germany. She has also lectured at numerous European and Latin American Universities. She graduated *summa cum laude* from the University of Zaragoza, holds a European Ph.D. *summa cum laude* in International Environmental Law, and an LL.M. *summa cum laude* from Fordham University. As a member of various European, national and regional research projects, she has authored several books and book chapters. Her articles have appeared in a number of international peer-reviewed law reviews such as Yearbook on International Investment Law & Policy, Law & Business Review of the Americas, Swiss Yearbook of Private International Law, Zeitschrift für Gemeinschaftsprivatrecht and, Rabels Zeitschrift für internationales und europäisches Recht. She is also an external reviewer for a number of international legal journals. Admitted to the Spanish bar, she has been involved in various international litigation and arbitration cases in USA and Europe, and has chaired several panels at the Consumer Arbitration Court of Zaragoza.



### Prof. Robert G. Volterra

Prof. Robert G. Volterra advises and represents governments, international organisations and private clients on a wide range of international law issues. He regularly appears as counsel and advocate before international courts and tribunals, including the International Court of Justice. He sits as adjudicator in international disputes around the world, including in State-to-State disputes, investor-State arbitrations and commercial arbitrations. In relation to BIT arbitrations, he represents both investors and governments, in equal measure, and he is regularly appointed by both investors and governments to sit as an arbitrator at ICSID, the PCA and other major international arbitration institutions. The global legal directories have ranked Prof. Volterra and his practice in the top tier for more than 25 years.



### Moderator: Ms. Sherina Petit

Ms. Sherina Petit is a Partner at Norton Rose Fulbright in London and heads the international arbitration practice across Asia, Europe, and the Middle East. She also heads the firm's India practice. Ms. Petit specialises in international commercial and investment arbitration, alternative-dispute resolution, litigation, and regulatory investigations and ranked in all the leading legal directories. Ms. Petit is ranked in all the leading legal directories with expertise in several sectors including energy, construction, oil & gas, aviation, trade, pharmaceuticals, commodities, finance and technology. She sits on the board of the LCIA, the ICC Indian Arbitration Group, and the SIAC Users Council. She is also on the executive board of the European Federation of Investment Law and Arbitration, having recently retired as its Chairperson. Ms. Petit is also on the Steering Committee of the Pledge for Equal Representation for Women in Arbitration. She has authored chapters of numerous books and articles on arbitration. Ms. Petit obtained her Bachelor of Laws degree in India and her Master of Law degree at King's College London. She is qualified as a solicitor in England and Wales.



# ORGANISING COMMITTEE

## Executive Director

Dr. Nidhi Gupta

## Co-Convenors

Meha Tandon	Pragya Singh
editors@ijal.in	editors@ijal.in
+91-9873284358	+91-7906509311

## Joint Organising Secretaries

D. Suchit Reddy	Aditya Singh Chauhan
+91-9849109749	+91-8287841988

## Deputy Organising Secretary

Devika Sreekumar

## Members

Aditya Suresh Isha Sen Vivek Krishnani  
Ishrita Bagchi Jayesh Kumar Singh  
Jehan Jhaveri Varsha Divakar Aryan Yashpal Rishika Arya  
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