

# THE 4<sup>TH</sup> CARTAL CONFERENCE ON INTERNATIONAL ARBITRATION

5th & 6th October, 2019

“NAVIGATING MURKY WATERS:  
ADDRESSING UNCERTAINTIES IN  
INTERNATIONAL ARBITRATION”

NATIONAL LAW UNIVERSITY, JODHPUR

*Institutional Partners*



## ORGANIZERS

The Centre for Advanced Research & Training in Arbitration Law (**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 in the year 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 in the year 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 in the year 2018, addressing themes such as the Investment Court System by the European Union, cross-institutional consolidation forwarded by SIAC, and the practice of guerrilla tactics in arbitration. The reports of the 1st, 2nd and 3rd CARTAL Conferences can be found at [here](#), [here](#) and [here](#) respectively.

The Centre publishes the Indian Journal of Arbitration Law (**IJAL**), a bi-annual, open-access journal. The IJAL is widely recognized as the leading Indian dispute resolution journal and an excellent source of reference in the field and endeavours to cover a wide range of subjects in the field of arbitration, maintaining a focus on transnational debates in international commercial arbitration and investment treaty arbitration. The IJAL has successfully published seven volumes and continues to host contributions from globally renowned experts and is indexed on HeinOnline, Kluwer Arbitration and Westlaw.

## ABOUT THE CONFERENCE

The theme for the 4th CARTAL International Arbitration Conference is "*Navigating Murky Waters: Addressing Uncertainties in International Arbitration*," and it shall be hosted over a period of two days at National Law University, Jodhpur in India. The conference will maintain its focus on three themes: The Indian government's concern for promoting India as a seat for international arbitration and the shift towards institutional arbitration in India as a step in the above direction; the increasing importance of human rights and environment protection in international investment arbitration; and the efforts for harmonisation of the rules of taking evidence resulting into emergence of the new Prague Rules on Taking of Evidence.

## PANEL I: TOWARDS INSTITUTIONAL ARBITRATION IN INDIA

The 2018 Amendment Bill was introduced in the Lok Sabha, however, with the dissolution of the 16th Lok Sabha, the Bill lapsed. With the view of making India a preferred arbitral seat, the Arbitration and Conciliation (Amendment) Bill, 2019 (**‘2019 Bill’**) has been introduced in the Rajya Sabha. The 2019 Bill is based on the recommendations of the High-Level Committee constituted under the chairmanship of Justice B.N. Srikrishna. The 2019 Bill clarifies that the very objective of the amendment is to promote institutional arbitration by creating an independent, statutory body to govern the arbitral process – the Arbitration Council of India. However, the composition, power and the functions to be performed by the body as stipulated in the 2019 Bill are drastically different to what was proposed in the Srikrishna Committee Report, 2017. The 2019 Bill has drawn criticism because the proposed Council is a purely government-appointed body. This significantly lowers its credibility, especially since the government is the biggest litigant in India. Another criticism is that the Council’s excessive power to frame regulations will take away from party autonomy. This Panel shall cover the changes proposed in the 2019 Bill such as the shift towards institutionalisation sought to be brought through the constitution of an arbitration council. Major or expected changes across other jurisdictions, including, *inter alia*, those mirroring such attempts at institutionalisation may also be compared.

## PANEL II: HUMAN RIGHTS AND ENVIRONMENT PROTECTION CONCERNS IN INTERNATIONAL INVESTMENT

The Investor-State Dispute Settlement (**‘ISDS’**) mechanism has often suffered attacks on its legitimacy. Some commentators are of the view that the International Investment Agreements (**‘IIA’**) unduly favour investors (especially the corporate giants) over the host State and fail to provide guidance as to how issues of human rights and environment protection should be addressed in the context of investment protection and promotion. Tribunals have also been reluctant to open the ISDS door to these concerns. However, recent IIAs (such as the Netherlands Model BIT) have taken a positive approach towards addressing human rights and environmental concerns. They acknowledge that investors have an obligation to make and maintain their investments in accordance with host State laws. States are also increasingly of the view that while attracting foreign investment is attractive, States must not relax their public health, safety, human rights and environmental measures simply to attract these investments. Further, two arbitral decisions have come to light wherein host States have submitted counterclaims based on human rights and environmental law: *Urbaser v. Argentina* and *Burlington v. Ecuador*. Investment arbitration is also being used by investors to enforce environmental obligations of the State, such as in *Allard v. Barbados*, *Bilcon v. Canada* and *Mesa v. Canada*.

This panel shall address the question of whether international arbitration proceedings provide a suitable platform to address human rights and environmental concerns. It shall also delve into whether such concerns can be used by both States and investors as potential “swords” and will seek to bring clarity into such claims due to the limited jurisprudence available on these issues.

## PANEL III: TAKING OF EVIDENCE IN INTERNATIONAL ARBITRATION: PRAGUE RULES VERSUS IBA RULES

The taking of evidence in international arbitration has largely been guided by the International Bar Associations Rules on the Taking of Evidence in International Arbitration (**‘IBA Rules’**), which have been accused of having a common-law tilt. In light of this criticism, the Inquisitorial Rules on the Taking of Evidence in International Arbitration (**‘Prague Rules’**) were released as a response to the “*creeping Americanisation of international arbitration.*” The idea behind these rules is to increase efficiency in international arbitration and reduce costs. These rules, as the name suggests, are inquisitorial in nature and the approach taken is one of fact-finding, as opposed to the adversarial approach taken in the IBA Rules. The Prague Rules promote a more active role for arbitral tribunals and can be used either as a binding document or as guidelines. The Prague Rules differ from the IBA Rules in matters such as document production, where a narrower and more restrictive approach is followed. Further, the Prague Rules also embody the view that the usefulness of fact witnesses and party-appointed experts is doubtful, keeping in mind that many of these procedural features are not known or used in non-common law jurisdictions. This panel will address the differences between the two sets of rules, including whether the Prague Rules are a significant departure from the IBA Rules at all; and which approach is better for parties and arbitrators to adopt.

### CONFIRMED PANELISTS

#### **Ms. Meriam Al-Rashid**

*Partner, Dentons, New York*

Ms. Al-Rashid focuses on issues pertaining to international investment and commercial arbitration, human rights, and risk management, covering various industries across the globe, including infrastructure, oil and gas, mineral resources, hospitality and real estate. She also acts as arbitrator on commercial and investor-state disputes primarily involving parties from the Middle East and North Africa. She has represented parties from numerous jurisdictions in disputes and transactions, and in arbitrations administered by leading arbitral institutions.

#### **Ms. Julianne Hughes-Jennett**

*Partner, Hogan Lovells, London*

Ms. Jennett’s has experience in complex, high-value commercial disputes, under the rules of leading arbitral institutions, focusing in particular on emerging markets in the natural resources, life sciences, TMT, Diversified Industries and Financial Institution sectors. She has also been appointed to the ICC Commission on Arbitration and ADR as a member of the Task Force on Emergency Arbitrator proceedings.

**Mr. Thomas Snider**

*Partner, Al Tamimi & Co., Dubai, United Arab Emirates*

Mr. Snider is experienced in international commercial and investment arbitration. His experience covers a wide range of disputes, including oil-and-gas, construction, automobile manufacturing, shareholder disputes, and joint-venture disputes. He was a member of the legal team representing the Ethiopian Government before the Eritrea-Ethiopia Claims Commission. He is also a member of the Court of Arbitration of the SIAC and has been recognised multiple times in Who's Who Legal's Future Leaders – Arbitration.

**Ms. Hazel Tang**

*Counsel, International Chamber of Commerce, Singapore*

Ms. Hazel has served as an arbitrator in leading arbitral institutions. Previously, she has worked as the centre director at Singapore International Mediation Centre, and partner at Rajah & Tann Asia. She was also based in China for a period as the Representative of their Shanghai office.

**Ms. Shaneen Parikh**

*Partner, Cyril Amarchand Mangaldas, Mumbai*

Ms. Parikh specialises in dispute resolution, including arbitration, and corporate and commercial litigation. Her experience covers a wide range of disputes, including commercial contracts, joint venture, technical collaboration and shareholder agreements, infrastructure, power and construction, and commercial financing transactions.

**Ms. Payal Chawla**

*Founder, JusContractus, New Delhi*

Ms. Chawla has previously served as in-house Counsel with Coca-Cola and as Head of Legal for Reckitt Benckiser and as partner with HSA Advocates. She founded JusContractus in May, 2013. She has also been named as the thinkers to watch out for in 2015 by Forbes India.

**Ms. Dilber Devitre**

*Associate, Homburger AG, Zürich, Switzerland*

Dilber Devitre's practice focuses on international arbitration. She has frequently acted as a secretary to arbitral tribunals and has worked on several international arbitration mandates.

**Mr. Harshad Pathak**

*Senior Associate, P&A Law Offices, Delhi*

Mr. Pathak is an India-qualified lawyer with commercial arbitration, investment treaty arbitration, and civil litigation as his core practice areas. He is an alumnus of the Master in International Dispute Settlement (MIDS), Geneva and the National Law University, Delhi.





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