Proposal for

The 5th Annual CARTAL Conference on International Arbitration


October 11 – 12, 2020

Institutional Partners

National Law University, Jodhpur
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. In line with its objectives, the Centre proposes to organize the 5th CARTAL Conference on International Arbitration, 2020 [“Conference”]. CARTAL’s first international arbitration conference, ‘Arbitration at Crossroads’ held on 14th and 15th October, 2016, was organised in association with Baker McKenzie. This conference addressed themes including developments in international investment arbitration, transparency and confidentiality concerns in arbitration, institutional arbitration in India and the overhaul of India’s arbitration law. CARTAL’s 2nd International Arbitration conference, ‘Looking East: Arbitration in the Asian Age’, held on September 30th and October 1st, 2017 was also organised in association with Baker McKenzie. The conference hosted panel discussions on topics such as arbitration across legal and economic cultures, the viability of the BRICS Dispute Resolution Forum, third party funding and contours of public policy in arbitration. The 3rd CARTAL Conference, ‘Winds of Change: Securing Harmony in Arbitral Practice’ was held on September 29th and 30th, 2018, and included panel discussions on the investment court system, cross-institutional consolidation of arbitration and guerrilla tactics. CARTAL’s 4th Conference, held 5th and 6th October 2019 contained panel discussions covered by the theme ‘Navigating Murky Waters: Uncertainties in International Arbitration’, and involved discussions on human rights and environment protection concerns in investment arbitration, rules governing taking of evidence in international arbitration and institutional arbitration in India.

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.
1. **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.

2. **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.

3. 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.
PROPOSAL FOR ASSOCIATION

We invite the Vienna International Arbitral Centre [“VIAC”] to associate itself with the Conference as the Institutional Partner. As one of the leading institutions that focuses on dispute resolution, we are certain that the Conference would greatly benefit from the participation and expertise of VIAC. The name and logo of VIAC would be used wherever the title of the Conference would be employed. Thus, all banners, certificates and communication in connection with the Conference would bear the name and logo of VIAC along with the title of the Conference.

NATIONAL LAW UNIVERSITY, JODHPUR

National Law University, Jodhpur is one of the premier law universities in India whose endeavour is to develop legal professional skills par excellence. The University is situated in the vibrant state of Rajasthan. Jodhpur itself is a widely popular tourist destination, globally recognized for its majestic heritage and historical significance. The University has excelled in traditional legal education and inculcates an innovative hands-on approach to the study of emerging legal fields. To this end, the University and CARTAL regularly organize guest lectures and roundtable conferences on topical issues in arbitration.

The University enjoys an unparalleled reputation for its excellent hospitality and management capabilities and is fully equipped with the requisite facilities required for the organisation of such events, such as:

i. A world class auditorium with a seating capacity of 250 and equipped with the latest audio-visual facilities;

ii. Conference rooms equipped with modern video-conferencing facilities;

iii. On-campus accommodation for up to 15 dignitaries as well as up to 50 students from outstation universities;

iv. Round the clock availability of multi-cuisine food;

v. Frequent bus shuttle service connecting the University to the city of Jodhpur; and

vi. Arrangements with internationally renowned hotels in and around Jodhpur for accommodation at concessional rates.

In addition, the city of Jodhpur is well connected with daily connections by airways, railways and roadways.

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

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.

CARTAL

CARTAL has been set up by National Law University, Jodhpur 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. The Centre's Board of Advisers includes some of 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 Faculty members and students, who are responsible for organisation of the events hosted by the Centre.

INDIAN JOURNAL OF ARBITRATION LAW

The Centre publishes the Indian Journal of Arbitration Law ["IJAL"], a bi-annual, open-access student-run journal. The IJAL is widely recognized as the leading Indian dispute resolution journal and an excellent source of reference in the field. The IJAL endeavours to cover a wide range of subjects in the field of arbitration and, despite the nomenclature of being the ‘Indian’ Journal of Arbitration Law, has maintained a focus on transnational debates in international commercial arbitration and investment treaty arbitration. The IJAL has successfully published five volumes and continues to host contributions from globally renowned experts and is indexed on HeinOnline, Kluwer Arbitration and Westlaw.

More information about the journal, CARTAL, its Board of Advisers and members can be found at can be found at http://ijal.in.

ORGANISATIONAL EXPERIENCE & ASSOCIATIONS

CARTAL has successfully organized several events in the past and continues to do so with regular frequency.

i. **SCL-CiArb International Conference on Construction Law and Arbitration**

CARTAL joined as the Outreach Partner for the SCL-CiArb International Conference on Construction Law and Arbitration, held in December 2019, jointly organised by the Society for Construction Law, India and Chartered Institute of Arbitrators, India.


The Centre for Advanced Research and Training in Arbitration Law and IJAL organised a two-day international conference on international arbitration, “Winds of Change: Securing Harmony in Arbitral Practice” at National Law University, Jodhpur (India) on September 29 – 30, 2017. The Conference was institutionally supported by ICC, VIAC, HKIAC, AAA, UNCC India, AFIA, AIAC, CIArb, MCIA, The Bar Association of India and SILF. EBC and SCC Online were the knowledge partners. The Conference saw participation from panellists from across the globe as well as students from all over the country. A detailed report of the conference can be found here.


The Centre for Advanced Research and Training in Arbitration Law and IJAL, along with Baker & McKenzie organised a two-day international conference on international arbitration, “Looking East: Arbitration in the Asian Age”, at National Law University, Jodhpur (India) on September 30 – October 1, 2017. The Conference was institutionally supported by UNCITRAL, ICC, SIAC, KLRCA, HKIAC, MCIA, AFIA and ICDR. SCC Online and EBC were the knowledge partners. The Conference saw participation from panellists from across the globe as well as students from all over the country. A detailed report of the conference can be found here.

v. The First Annual CARTAL Conference on International Arbitration – “Arbitration at Crossroads”

The Centre for Advanced Research and Training in Arbitration Law and IJAL, along with Baker & McKenzie organised a two-day international conference on the state of arbitration, “Arbitration at Crossroads”, at National Law University, Jodhpur (India) on October 15-16, 2016. The Conference was institutionally supported by ICC, SIAC, HKIAC, MCIA and CIArb. The Society of Indian Law Firms was the principal sponsor. The Conference was a resounding success with panellists who were experts in international arbitration and participants from law schools across the country. A detailed report of the conference can be found here.

vi. The Annual Gary B. Born National Essay Writing Competition on International Arbitration

The Centre for Advanced Research and Training in Arbitration Law and IJAL organised a two-day international conference on international arbitration, “Navigating Murky Waters: Addressing Uncertainties in International Arbitration”, at National Law University, Jodhpur (India) on October 5th-6th, 2019. The Conference was institutionally supported by VIAC, ICC, AFIA, CIArb, MCIA, The Bar Association of India, SILF, EBC and SCC Online. The Conference saw participation from panellists from across the globe as well as students from all over the country. A detailed report of the conference can be found here.
The Centre is currently organizing an annual essay writing competition with the support and patronage of Mr. Gary B. Born. The competition has been conceived to encourage law students to write on forward looking issues such as the prospects of making India an arbitration hub, mandatory arbitration policies for employment disputes, and arbitration in Europe post the Achmea decision.

vii. Special Lecture Series:

CARTAL has regularly invited experts to deliver lectures on topical issues in arbitration. Most recently, in February 2020, Professor (Dr.) Petra Butler addressed the students of National Law University, Jodhpur on the findings of the Commonwealth Study on International Arbitration, where she shared results of her study for the first time since its conception. Since its inception, the Centre has hosted several distinguished speakers including Justice Madan B. Lokur, Mr. Ajay Thomas, Mr. Gary Born, Mr. Rishab Gupta, Professor Loukas Mistelis, Professor Martin Hunter, Mr. Shishir Dholakia, Mr. Promod Nair and Prof. Prabhash Ranjan.

CARTAL has also organized round table discussions from time to time. In 2012, Prof. Martin Hunter chaired a discussion on the topic ‘Can India become the hub of international commercial arbitration’ and, in 2013, Mr. Hiroo Advani led the discussion on ‘Running Arbitration from beginning to end’.

viii. Monthly Bulletins

CARTAL religiously publishes monthly bulletins to keep students of National Law University, Jodhpur apprised of latest developments in commercial and investment arbitration.

ix. Arbitration Training Workshop:

CARTAL organized a one-day Arbitration Training Workshop on arbitral procedure and award writing in association with the Chartered Institute of Arbitrators (CIarb) India Branch and Advani & Co. in 2012.

x. Mediation Training Workshop:

The Centre in collaboration with BRIDGE Mediation LLC, USA organized a workshop on mediation in October 2012.
Roles & Responsibilities

CARTAL will assume the responsibility for administering the Conference and ensuring proper utilization of the assistance extended towards the organization of the Conference. Other responsibilities, such as sending of invitations to other law schools, co-ordination with conference participants, organization of panel discussions and lectures, accommodation and hospitality would be jointly handled by CARTAL and National Law University, Jodhpur.

CARTAL will invite a few select eminent practitioners and academicians as well as representatives from premier law schools in India. To this end, CARTAL will also assume the responsibility of publicizing the Conference.

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