



International Centre
for Dispute Resolution

A Division of the American Arbitration Association

The ICDR International Arbitration Reporter

News and Information from the International Centre for Dispute Resolution® (ICDR),
the International Division of the American Arbitration Association



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ICDR Updates

Staff Members Help Coach Student Teams Competing in Arbitration Moots

ICDR staff members are helping coach student teams from various law schools that are competing in international arbitration moots as part of the ICDR/AAA®'s mission to promote awareness of the benefits of international commercial arbitration.

The ICDR/AAA, one of the original sponsors of the inaugural Willem C. Vis International Commercial Arbitration Moot (Vis Moot) in 1993, organizes the Annual ICDR Practice Moot and Seminar. More than 140 people from around the world attended the 2011 practice moot, held in New York City on March 11. *(continued on page 3)*

IMI to Develop Inter-Cultural Competency Certification for Mediators

The International Mediation Institute (IMI) Independent Standards Commission's Inter-Cultural Taskforce (ICTF) has been reviewing comments on the draft criteria for the IMI Inter-Cultural Competency Certification of Mediators published in March as part of the international consultation process (www.IMImediation.org/intercultural-criteria). The ICTF, co-chaired by AAA panelist Professor Harold I. Abramson of Touro Law, recently met in Singapore to finalize the criteria and design modules of the demo training/assessment program for this certification. These will be shared with the Qualifying Assessment Programs for IMI Intercultural Certification (ICQAP). The pilot programs are planned for the U.S., Australia, Europe, Asia, and Africa later this year, with the collaboration of existing and candidate QAPs, including the AAA. The ICQAP is due to launch by the end of 2011.

ICDR Arbitration Awards Roundup

China

In an international trademark licensing dispute regarding clothing, sportswear, and furnishings before the International Centre for Dispute Resolution, the claimant licensor obtained an award against a Chinese licensee. After conducting hearings on liability, the claimant obtained an arbitral award confirming the termination of the license, finding that the licensee materially breached the license agreement, enjoining the licensee's activities in China, and dismissing the licensee's counterclaim. The claimant was awarded \$1.7 million in damages and attorneys' fees and costs and granted a permanent injunction, including an order to return or destroy all remaining inventory. The full award has been confirmed by the Shanghai Intermediate Court No. 1 and was transferred to the Shanghai Changning District People's Court for additional proceedings to locate the respondent's assets. The respondent has since voluntarily paid the claimant, and the inventory has been destroyed. The claimant's Chinese counsel told *Managing Trade Marks*: "We recommend to our clients to use arbitration if they have disputes, an arbitration award can more easily be enforced in China."

(From "Chinese Courts Confirm U.S. Arbitration Award," *Managing Trade Marks*, August 4, 2011 <http://www.managingip.com>, and "Enforcement Success for Designer Brand in China," *Global Arbitration Review*, August 17, 2011, <http://globalarbitrationreview.com>.)

Indonesia

The Central Jakarta District Court rejected a lawsuit challenging an arbitration award pursuant to the International Arbitration Rules of the International Centre for Dispute Resolution. The plaintiff had argued that the arbitration award, dated May 4, 2009, violated Law No.30/1999 on Arbitration and Alternative Dispute Resolution, Law No.4/2004 on Judicial Power, and the principle of decency and fairness.

The two parties entered into a sale and purchase of biodiesel in 2006. The plaintiff agreed to send 5,000 metric tons of biodiesel every month to the defendant. However, in 2007, there was a change in the price of biodiesel raw materials and the commodity export tax policy. The plaintiff considered the changes as "force majeure" events, and claimed to have informed the overseas buyers, including the defendant. The award was in favor of the defendant, which led to the challenge in the Indonesian courts.

(From "Jakarta Court Rejects the Cancellation of Arbitration Ruling," *Indonesia Today*, <http://m.theindonesiatoday.com/Indonesia/Today/Latest-News/Breaking-News/law/jakarta-court-rejects-cancellation-arbitration-ruling/>)

About the ICDR

The ICDR, established in 1996, provides a full range of conflict management services around the world. It has offices in the U.S., Mexico, Bahrain and Singapore, as well as a network of cooperative agreements throughout the world.

The ICDR Case Management Team, based in the centre's New York headquarters, comprises professionals from throughout the world, including Brazil, Colombia, Mexico, Italy, Ireland, Germany, Romania, Russia, Iran, Ghana and Sri Lanka. Team members are well versed with the differences between common and civil law practices. They speak a dozen languages, and they have been trained to handle cultural differences and positions that often accompany cross-border disputes.

For more information about ICDR services, go to: <http://www.icdr.org>.

For questions regarding this volume or additional information about the ICDR, please contact Luis Martinez, ICDR vice president, at Martinezl@adr.org.

ICDR Updates

Staff Members Help Coach Student Teams... *(continued from page 1)*

The participants included 12 teams from six countries and over 40 arbitrators. It was the fourth year of the practice moot, an educational event designed to help student teams competing at the Vis Moot to improve their advocacy skills and prepare for the competition.

In addition to organizing the practice moot, a number of ICDR staff members, coach teams from Columbia Law School, Harvard Law School, New York University School of Law, Rutgers School of Law, and University of Montevideo (Uruguay).

Impressive results came out of these efforts in the 2011 Vis Moot in Vienna, where 255 teams from over 60 countries competed. The University of Montevideo team, a first-time participant, won 2nd place for Best Oral Team, and Harvard won 3rd place for Best Claimant's Memorandum. The teams coached by ICDR staffers also won honorable mentions for Best Oral Team and Best Individual Oralist (Harvard and Rutgers).

In the past four years, Vis Moot teams co-coached by ICDR staffers have consistently performed well: 3rd place for Best Claimant's Memorandum (NYU, Hong Kong 2010); final round participant in the Best Oral Team category and honorable mentions for Best Individual Oralist for four team members (Harvard, Vienna 2010); honorable mention for Best Claimant's Memorandum, Best Oral Team, and Best Individual Oralist for one team member (Rutgers, Vienna 2010); final round participant in the Best Oral Team category and an honorable mention for Best Individual Oralist for one team member (NYU, Vienna 2009); 2nd place for Best Claimant's

Memorandum, quarter finalist as Best Oral Team, and honorable mentions for Best Individual Oralist for two team members (NYU, Vienna 2008); honorable mentions for Best Respondent's Memorandum, Best Oral Team, and Best Individual Oralist for two team members (NYU, Hong Kong 2008).

One ICDR staff member has co-coached NYU's Foreign Direct Investment Moot (FDI Moot) team that has succeeded in all three competitions held to date: 1st place for highest ranked team, 1st place for Best Respondent's Memorial, 1st and 2nd place for Best Oral Advocate, 2nd Best Oral Team, (Malibu, CA, 2010), 2nd place for highest ranked team, 2nd place for Best Respondent's Memorial, 3rd place for best Claimant's Memorial (Frankfurt, Germany, 2009), 1st place for Best Claimant's Memorial, 1st place for Best Oral Advocate, 3rd place for highest ranked team, honorable mention for Best Oral Advocate for second team member (Boston, MA, 2008).

This year, a staff member is preparing a team from Columbia Law School for the Latin American moot, a competition held in Spanish. It will take place in September 2011 in Buenos Aires, Argentina. Over 50 teams are expected to compete this year. University of Montevideo won the first competition, and came in second during last year's competition.

The ICDR/AAA regularly sends staff members to serve as arbitrators at the Vis Moots in Vienna and Hong Kong, the global FDI Moot, and the Latin American Moot, as well as other practice moots in the U.S. and abroad.

ICDR, CANACO Announce New Hearing Rooms in Mexico City

The ICDR and the Mediation and Arbitration Commission of the Mexico City National Chamber of Commerce (CANACO) recently announced the availability of hearing rooms at the ICDR office in Mexico City. The facilities offer wireless access to the Internet, three large hearing rooms, and two smaller rooms for mediation caucuses. The ICDR has had a growing number of international cases in the past few years with participants from Mexico and this provides users with another convenient location for their hearings.

For more information about the hearing rooms, contact the ICDR.
Contact information is available at <http://www.adr.org/sp.asp?id=29073>.

Spotlight:

ICDR's Asian/Middle Eastern Desk

The ICDR's Asian/Middle Eastern Desk manages all international arbitration and mediation cases involving parties from those areas of the world. The team is led by Supervisor Michael Namias, a 22-year veteran of the AAA who began his service as a commercial tribunal administrator in the New York regional office in 1989. He joined the ICDR as a supervisor in 2002. With his customer service and case management experience, he has provided leadership and direction to the entire department throughout his tenure.

The Asian/Middle Eastern team is composed of case managers (listed below) with advanced education and experience in this field.

- Brigitte Omane, who is from Ghana and is the team's most senior case manager, holds a master's degree in international relations. She is currently studying law.
- Govinda Jayasinghe, who is licensed to practice law in his home country of Sri Lanka, as well as in New York, previously served as an intern to AAA President William K. Slate II and SVP John Emmert.
- Neda Shahghasemi, who hails from Iran, is licensed to practice law in New York. She recently coached the 2011 William C. Vis Moot team from the University of Montevideo (Uruguay) to a second-place finish in Vienna.
- Charlene Warner, who is licensed to practice law in New York and in her home country of the Philippines, is a recent addition to the team. She is a former counsel with the Singapore International Arbitration Centre.

The team works closely with ICDR Senior Vice President Mark Appel, who is responsible for business development in the Middle East, and Michael Lee, previously a case manager for the Asian/Middle Eastern Desk who now covers business development in Asia.

ICDR Young & International

The ICDR Young & International (Y&I) is a networking group for arbitration and ADR practitioners under the age of 40. The International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA), established the organization in 2004.

The ICDR Y&I has become a preeminent group for young arbitration practitioners, academics, and government lawyers, to meet, exchange ideas, and learn from peers and more senior ADR practitioners. It has over 1,850 associates from 90 countries and has organized 47 education and networking events in 21 cities around the world.

The ICDR Y&I operates on both a global and regional basis. It cooperates with other international or regional organizations in Europe, the Middle East, Africa, Asia, Australia, and the Americas. The group is currently co-chaired by Nicole Dolenz, Adrián Magallanes, Lucy Martinez, and Noradèle Radjai. Past Executive Board members include James Boykin, Martin Gusy, James Hosking, Alexandra Johnson Wilcke, Reza Mohtashami, Franz Schwarz, and Jonathan Sutcliffe. The group is also represented by a 17-member Global Advisory Board, established in 2007 to better serve the organization's geographically diverse membership.

The ICDR Y&I recently held its seventh anniversary program in Vienna to coincide with the Willem C. Vis Moot. Registration was at an all-time high. The topic, whether arbitration is appropriate for mass claims, was very well received and resulted in a lively debate between the moderators, panelists, and audience.

Upcoming programs will take place in Moscow (September 13), Miami (September 14), Buenos Aires (September 15), Washington, D.C. (October 12), New York (November 17), and Sao Paulo (November 28).

Membership and ICDR Y&I sponsored events are free of charge. For more information, go to: www.icdr.org.

ICDR Translation Committee Helps Increase Global Accessibility to Rules

The ICDR continues to work on increasing global accessibility to its rules and guidelines with the help of its Translation Committee, composed of senior international arbitration practitioners and ICDR staff members.

The committee was responsible for the translation of the ICDR Dispute Resolution Procedures and the ICDR Guidelines for Arbitrators Concerning Exchanges of Information from English to the following languages: Spanish, German, Chinese, French, Portuguese, and Italian. The committee is currently working on

the translation of both documents to Arabic. It is also translating the ICDR Guide to Drafting International Dispute Resolution Clauses into all six languages mentioned, and the exchange of information guidelines into Spanish and German.

The ICDR has recognized and commended the efforts of the current and founding members of the committee. The ICDR recently announced the new and continuing Translation Committee members: Julie Bédard (partner at Skadden, Arps, Slate, Meagher & Flom LLP and the new chair of the Translation Committee), Steven

K. Andersen (ICDR vice president and director of the translation committee), Christian P. Alberti (ICDR assistant vice president), Michelangelo Cicogna (partner at De Berti Jacchia Franchini Forlani), Eduardo Damião Gonçalves (partner at Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados), Jia (Jessica) Fei (partner at Herbert Smitt LLP), Salvador Fonseca (partner at Chadbourne & Parke LLP), Jean-Pierre Harb (partner at Baker McKenzie SCP) and Dietmar W. Prager (counsel at Debevoise & Plimpton LLP).

ICDR, IBA Hold Joint Program

The ICDR and the IBA's Arbitration Committee presented a joint program in New York on June 13. The program was sold out, with over 212 people from 29 nations attending. The title of the program was "Four Roundtables in Times Square – Putting the Spotlight on International Arbitration on Broadway."

The panels focused on a number of important and timely issues relating to international arbitration. The first panel, moderated by Judith Gil, co-chair of the IBA's Arbitration Committee, discussed the legal architecture underpinning international arbitration. The panel examined the allocation of responsibility between international and national arbitration, and how

various countries strike the balance in different ways.

The second panel, moderated by Paul Friedland, vice chair of the IBA's Arbitration Committee, focused on procedural flash points recognizing that procedural flexibility is one of international arbitration's great virtues, but that it may lead to frustration and misunderstanding when parties differ over how to address key procedural issues. For example, whether it is now time for the party-appointed method for selecting arbitrators to be eliminated and is there now an internationally accepted practice of document disclosure and privilege.

The third panel, moderated by ICDR/AAA President and CEO Bill Slate, discussed saving time and lowering

costs in arbitration. Mr. Slate said that the ICDR/AAA has spent the last 15 months examining this subject, both internally from the institutional perspective and also with advocates and arbitrators, to explore the issues and the possible remedies for saving time and money during the arbitration process. The fourth and final panel of the day, moderated by Mark Friedman, co-chair of the IBA Arbitration Committee, provided an overview as to what really makes a tribunal work. The discussion covered the perspectives held by leading international arbitrators and what they believe works and what doesn't, including effective advocacy and how to manage an international arbitration efficiently.

Upcoming ICDR Events

ICDR 9th Annual Miami International Arbitration Conference

September 14-16, 2011

The conference will bring together some of the world's international arbitration experts to discuss and debate a variety of evolving topics including ethics, arbitrator selection, and corporate dispute policies.

This year's program will provide in-house and outside counsel with guidance on corporate best practices in international arbitration and will include a report on the ICDR's groundbreaking *Dispute-Wise Business Management* study on how in-house counsel effectively use arbitration and mediation.

For the finale of the conference, there will be a quick-moving session covering key legal and practice developments pertaining to various countries in the Americas. Conference attendees will have the opportunity to listen, compare, and analyze the international dispute resolution landscape as presented by highly respected expert representatives from each country invited.

This year's conference will offer extra activities. On Wednesday, September 14, attendees can sign up for a golfing event and also attend later that afternoon a program organized by the ICDR Young & International.

For more information about the conference, go to:
<http://www.aaauonline.org/courseSection.aspx?course=234>

Alternatives to Litigation in a Civil Society

October 11, 2011

This conference, to be held in Dublin, is scheduled on the day before the American Bar Association International Law Section (which is expected to draw 1200 attendees) begins its meetings, and is sponsored by the ICDR with Trinity College Dublin, with support from the ABA, the Irish legal community and the Corporate Counsel International Arbitration Group, will address issues surrounding the creation of a modern dispute resolution culture in developing economies. Speakers will include several justice ministers, a chief Justice from Ireland's Supreme Court, a representative of a major funding institution, and corporate counsel from leading multinational corporations. This program is aimed at policy makers and multinational business and law firm leaders.

To view the conference brochure and registration information, go to: **<http://www.aaauonline.org/courseSection.aspx?course=297>**

Eighth Annual Seminar: How to Handle Agency and Distribution Issues in International Commercial Arbitration

October 11- 13, 2011

The ICDR/AAA is sponsoring this three-day intensive seminar, to be held at American University Washington College of Law in Washington, D.C.

The program, based on a mock arbitration case, will provide critical skills and practical insights into handling distribution and agency Issues primarily from the perspective of the arbitration rules of the ICDR.

To view the conference brochure and registration information, go to:

<http://www.aaauonline.org/courseSection.aspx?course=314>

Upcoming ICDR Events *(continued)*

AAA-ICDR/ICC/ICSID 28th Annual Joint Colloquium

November 18, 2011

Three of the industry's leading international administrative institutions have sponsored this colloquium since 1983. Each year, these organizations identify world-renowned international arbitrators and practitioners to discuss significant topics in the field of international commercial arbitration.

This year's program will cover the following topics:

- Recent institutional developments in AAA-ICDR, ICC, and ICSID
- Time and cost issues and initiatives: The view from the stakeholders and the impact on the process
- Pre- and post-case legal activity: The traditional concept of *functus officio* may be outdated
- The corporate world and international dispute resolution: A corporate roundtable

CLE and ACE Credit will be available.

ICDR & AMCHAM Conference

November 29, 2011

The ICDR and the Arbitration Center of American Chamber of Commerce of São Paulo (AMCHAM) will jointly present this program in São Paulo, Brazil. The event will bring transactional and alternative dispute resolution attorneys together to explore the business legal framework and conflict management options for Brazil's booming economy.

Topics include:

- Mergers and acquisitions as the market continues to expand in Brazil, requiring practitioners to remain current on recent legislative changes that can impact these transnational deals.
- Exchange of information/discovery practice for arbitration and litigation cases seated in Brazil, including the use of discovery in the U.S. for assistance to tribunals seated in Brazil. This panel will explore the latest issues, options, and the impact on costs regarding the discovery phase of these processes.
- How companies are exploring various options in structuring their investment vehicles using the available tax treaties and minimizing their taxable income, especially in light of recent legislative changes and court decisions.
- Foreign investment in Brazil, including infrastructure projects, the PPP laws and ADR options, with perspectives from U.S. and Brazilian transactional and ADR lawyers.

CLE and ACE credit will be available.

ICDR International Arbitrator Symposia

The ICDR has scheduled three international arbitrator symposia for members of its international panel of arbitrators. These one-day programs led by experienced international arbitrators will focus on the ICDR administrative system and best practices and for arbitrators appointed to an ICDR case. The members of the international roster will receive additional information on how to register for these programs, which are scheduled as follows:

- **Dubai, U.A.E. – November 1, 2011**
- **New York, New York, USA – November 17, 2011**
- **Scottsdale, Arizona, USA – March 8, 2012**

The ICDR will also be conducting an international arbitrator tax training program in Washington, D.C., on December 9, 2011. This program is for members of the ICDR's newly formed international tax treaty roster.

For questions regarding this volume or additional information about the ICDR, please contact Luis Martinez, ICDR vice president, at Martinezl@adr.org.



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