

Kluwer Arbitration Blog

5th Annual Congress on Arbitration, 12-13 October, Buenos Aires

Juan Pablo Argentato · Monday, November 22nd, 2010

Here in the southern hemisphere, more precisely at Buenos Aires, Argentina, the 5th Annual Congress on Arbitration took place on the afternoon of Tuesday 12 and morning of Wednesday 13, October, co-organized by two institutions: CARAT and the Arbitral Tribunal of the Stock Market of Buenos Aires. Present at the event were a number of prestigious guests, and the opening included a brief address by a member of the Supreme Court of Justice. Speakers were of a very high standard, from different Latin American countries, and representatives the ICC were also present. Relying solely on my notes I can offer only a short introduction to some of the topics that were discussed during the Congress under the theme “Arbitration on the bicentennial [of the 1810 Revolution, which led to the independence of Argentina in 1816], present and future”:

Firstly, the project for the creation of an Argentinean Arbitration Law that is currently before the Congress was discussed (arbitration rules in Argentina are still found in the procedural codes) and criticized, in particular in relation to the possibility of parties to agree to an award that was not motivated by the arbitrators; a point which leads us to think that the project requires substantial further amendment and that several years are likely to go by before we have our own Arbitration Law. Also addressed on the first day were the subjects of arbitrability, participation of non-signatories, and arbitrators’ independence. Regarding the independence of arbitrators, US law firm practitioner Ignacio Suárez Anzorena highlighted two simple but interesting ideas: first, that if a professional arbitrator detects bias in another arbitrator, he immediately excludes the biased arbitrator from the decision-making process, and in that case, 2 against 1 equal 0 for the party that appointed the biased arbitrator; second, if a party-appointed arbitrator consults the party regarding the different candidates to fulfill the position of President of the Tribunal (common practice), the correct procedure would be to let the other arbitrator know that he may also consult the party that appointed him, which immediately avoids any transparency issues that may arise in the future. Early on Wednesday morning, the Permanent Secretary of the Arbitral Tribunal of the Stock Market, Jorge A. Rojas gave an excellent presentation on the appeals against the Award and its very limited nature, going back to the essence of words and exploring arbitration in Roman times. An analysis of the Arbitration Clause followed, along with a panel on The Future of Arbitration, with insight given into Peruvian Arbitration Law and the Arbitration system in Brazil. Héctor Alegría, gave a very interesting talk, marking the high level of responsibility of the arbitrators in the future of arbitration. Another distinguish practitioner, Julio Cesar Rivera, argued the point that applicable law should be applied by arbitrators in Argentina (in the same way as is applied by judges), which brought the Congress to a close, but not without a presentation from the ICC representative and a final word on “Arbitration and Environmental Law” by the Congress

organizer, Fernando Aguilar.

Overall, a very interesting and dynamic Congress – including an excellent drinks reception on Tuesday evening – which we hope will be repeated next year and in which we encourage your participation if you're nearby.


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