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# Kluwer Arbitration Blog

## Take-Aways from the 1st ICC Argentine Arbitration Day 2023 (Part I)

Martin Cammarata (Marval, O’Farrell & Mairal) and Juan Jorge (Curtis, Mallet-Prevost, Colt & Mosle )  
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The first edition of the ICC Argentine Arbitration Day was held on March 13, 2023, and featured a series of side events during March 12 and March 14. This long-awaited edition, hosted during the Centenary of the ICC International Court of Arbitration, proposed an ambitious schedule both in terms of content and speakers. The aim of the event was crystal clear: to think “outside the box” while discussing recent developments in international arbitration.

We address below the most relevant discussions held during the event.

### Welcomes

The event opened with an institutional welcome from [Mario Grinman](#) (President of the Argentine Chamber of Commerce and Services, Buenos Aires). He highlighted the long practice of the ICC and its institutional strength, which allowed the ICC to celebrate its first centenary despite having gone through some very difficult times marked by pandemics, wars, and other global challenges.

Following Mr. Grinman, [Marcelo Elizondo](#) (Chair of ICC Argentina, Buenos Aires), and [Patricia Ferraz](#) (ICC Dispute Resolution Services Director of Arbitration and ADR for Latin America) made some brief opening remarks. They stated that today’s international trade is characterized by the emergence of new technologies that allow the growth of sophisticated commercial networks. In turn, these commercial synergies can lead to conflicts between starting companies over groundbreaking issues in a high volatile context. Accordingly, both stressed the important role of the ICC in providing dispute resolution and dispute prevention services accessible to all parties in an efficient manner.

### Dialogue with Sandra González

The first panel was preceded by a dialogue between [Sandra González](#) (Vice-President of the ICC International Court of Arbitration and Partner of Ferrere, Montevideo) and [María Inés Corrá](#) (President of the Commission on Arbitration and ADR of ICC Argentina and Partner of Bomchil, Buenos Aires). Throughout the entire conversation, Ms. González emphasized the [ICC Centenary](#)

[Declaration](#) and its ten “ambitious principles” contained therein, along with the new proactive leadership of Claudia Salomon, which she described with the hashtag “#GetThingsThan”.

Ms. González pointed out that the ICC immediate agenda is focused on having a “client mind-set” and on understanding new trends in the business world. She stressed that the ICC holds numerous meetings with all types of users in order to gain a detailed understanding of the problems that companies face today.

Ms. González also called for a “deconstruction” of the myth that arbitration only applies to complex cases. In this regard, she added that the ICC mechanism is suitable both for international and domestic cases with varying degrees of complexity. Also, she remarked that the ICC has been working on the implementation of technology to reduce costs and provide faster responses, seeking to generate a further increase in the number of cases administered by the ICC.

Regarding the development of the ICC in Latin America, Ms. González underscored the growing number of arbitrations related to a diverse range of jurisdictions and industries. To continue this trend, she pointed up the importance of “consolidating” local and international arbitration legal frameworks, as well as integrating the different Latin America National Committees of the ICC.

## **Panel I – New Horizons of Arbitration**

The first panel of the day, moderated by [Verónica Sandler Obregon](#) (Professor and Independent Arbitrator, Buenos Aires), mainly explored the interaction among arbitration and ADR methods around the following question: are these “dispute resolution” or “problem solving” methods? The spotlight was placed on the different resources that can be used for an ongoing arbitration to successfully embrace mediation and negotiation, among other alternative dispute resolution methods throughout the proceedings.

Speakers [Leandro Caputo](#) (Partner of CDC Abogados, Buenos Aires) and [Ana Vermal](#) (Member of the ICC International Court of Arbitration and Partner of Proskauer, Paris) shared the view that the arbitration community can step out of its comfort zone and use the tools provided by the various alternative methods. In this sense, they suggested that:

- parties should avoid being overconfident in their case’s strengths, as this prevents them from pursuing alternative methods that may ultimately be more suitable.
- Parties should avoid falling into an automatic arbitral process structure. Rather, they should make an effort to use the multiple tools available for conducting a more expeditious and cost-efficient process, taking advantage of the flexibility provided by arbitration rules and practices.
- Arbitral tribunals should analyze the details of the claims as soon as possible to provide an early determination of facts. As such, they can shape the arbitration proceeding and allow the use of alternative methods.
- if the parties decide to engage in mediation, the arbitrator appointed to the main proceeding should not attend – nor participate in – the mediation proceedings. Rather, an impartial third party should act as mediator.

Finally, [Federico Deyá](#) (Legal Central Head of Mercado Libre, Buenos Aires) addressed the development of alternative methods and arbitration, especially related to consumer relations. He considered that one of the main challenges today is to find an efficient solution for e-commerce

technology disputes. For instance, Mercado Libre faces around 150,000 disputes per year. Given that in most cases the amount in dispute is less than US \$30, Mr. Deyá said that traditional solutions do not meet *now* the specific needs of the parties, but he was optimistic that the future development of alternative methods and arbitration may change this reality.

## Panel II – Developments in State-Party Arbitrations

Panel II, under the dynamic moderation of [Ignacio Minorini Lima](#) (Partner of Bruchou Funes de Rioja, Buenos Aires), addressed project finance, ESG and energy transition, and the experience of the ICC in cases involving States and State entities.

From the outset of the panel, [Claudia Frutos-Peterson](#) (Managing Partner of Curtis, Mallet-Prevost, Colt & Mosle, Washington DC) and [Silvia Marchili](#) (Partner of White & Case, Miami) engaged in a captivating debate. While both agreed that investment treaties are the starting point for analyzing whether project finance is protected, Dr. Frutos-Peterson warned that their proliferation could lead to a multiplicity of claims against States (with the costs that this would imply), and called for a more balanced system between investors and States. Ms. Marchili considered that the discussion was more theoretical than practical, as there are few cases involving multiple claims or concerning States' counterclaims for investors' alleged breaches.

[Ignacio Zapiola](#) (Manager of Litigation and International Affairs of YPF S.A., Buenos Aires) referred to the growing amount of ICC cases involving States or State entities. To explain this growth, he mentioned three main factors:

1. a more “inclusive” look at the ICC, consisting of listening to the specific concerns of States and designing suitable solutions for them (translated into several provisions in the new [ICC Rules of Arbitration](#) addressing disputes involving States, such as articles 13(4), 21(2) and 29(5));
2. a tendency to extend jurisdiction in favor of arbitral tribunals in commercial contracts involving States or State entities; and
3. a general acceptance that States should have (and do have) a more active participation in the market, which naturally results in more disputes involving them.

Finally, the panel addressed the “latent” issues of ESG and energy transition. Mr. Zapiola observed that the last ten years have witnessed an exponential growth of discussions on ESG in the corporate world and predicted that, in the near future, it will no longer be possible to obtain international protection if these types of standards are not met.

If you would like to see more details on the coverage of the 1st ICC Argentine Arbitration Day 2023 (Panels III – Debate on Economic Sanctions: A High Impact Phenomenon; IV – Corruption Issues in Arbitration: Lessons Learnt; V – Argentina As a Seat of International Arbitration; and the Closing Keynote Speech addressed by Carlos F. Rosenkrantz – The Role of Judges in Arbitration: Nullity, Recognition and Enforcement of Awards) please see **Part II** of this post.

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