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A Tale of Two Titans: Fireside Chat on the Rule of Law with the Presidents of the ICC Court and the IBA

Borja Perez-Puente (Clifford Chance) · Wednesday, June 14th, 2023

On Europe Day (9 May), which marks the anniversary of the first step towards the creation of the European Union, Madrid witnessed a one-of-a-kind fireside chat with [Claudia Salomon](#) (President of the ICC International Court of Arbitration) and [Almudena Arpón de Mendivil](#) (President of the IBA). The chat, which was hosted by IE University and moderated by [Alfonso Iglesia](#) (Cuatrecasas), addressed the importance of the rule of law and the key role that the ICC Court and the IBA have in advancing it.

This post summarizes the views exchanged throughout the fireside chat, which *inter alia* covered the concept of the rule of law, the risks threatening the rule of law throughout the world, the actions undertaken by the ICC Court and the IBA to defend it, and the impact which technology, ESG, diversity and public perception have on the rule of law.

[Marie José Garot](#) (IE Law School) opened the session by noting that the rule of law is a core value of society and an [essential principle of the EU](#), which seeks to achieve freedom, democracy, equality, the rule of law, peace and stability in its member states. Ms. Garot further emphasized that such a principle ensures equality and the respect of human rights, and that arbitration and academic institutions play a key role in upholding it.

[Jordi Sellarés](#) (ICC Spain) then introduced the main speakers, intertwining their impressive CVs and experience with references to the epic etymology of their names. Where Ms. Salomon was named after kings and queens of old, Ms. Arpón was closer to Parsifal and the Arthurian legend.

The first question was then posed by Mr. Iglesia: which elements define the rule of law? Two proposals were highlighted by Ms. Salomon: (i) the [OECD's definition](#) that no one should be above the law; and (ii) the [World Justice Program's proposal](#) that justice should be delivered by representatives and neutrals reflecting the makeup of the communities they serve. Ms. Arpón followed up by challenging the listeners to imagine a country without the rule of law and concluded that it is only when you have it that democracy can operate and human rights can be protected.

The rule of law is, however, not to be taken for granted, as a number of risks threaten it. Concerns were expressed over the gradual erosion of this principle, both in far-off and closer countries. For Ms. Arpón, the way forward should involve familiarizing individuals with their rights from a younger age, so as to avoid drifting into a “*rule of lawlessness*”. Ms. Salomon added that we must

not only think at a high level. She reflected on how we have seen incredible stories about Ukrainian lawyers striving to do the mundane [amidst a war](#), and referred to further challenges such as [corruption](#) and excessive delays in serving justice.

When asked what the IBA was doing to promote the rule of law, Ms. Arpón remarked that the defense of this principle is at the core of the IBA's activities. Some of these activities specifically target the promotion of the rule of law, with [dedicated campaigns](#) and the creation of a [specialized forum](#), while others seek more broadly to contribute to a better administration of justice. Ms. Salomon recalled that the ICC Court was created to give access to justice and that it has been unwavering at striving for that goal. Notably, the ICC Court continues to administer proceedings arising not only from Ukrainian claims, but also from Russian claims.

Other topics touched upon throughout the chat included [the impact of technology and AI](#) on the rule of law, the relationship between the rule of law and the activity of states and state-owned entities, the [challenges posed by ESG](#), and the efforts undertaken [by the ICC Court](#) and [by the IBA](#) to promote diversity and inclusion *inter alia* as an essential requirement to the legitimacy of arbitration.

Lastly, Mr. Iglesia brought the importance of trust and public perception of justice to the attention of the panelists. Ms. Arpón commented on how the rule of law relies on a common understanding of its benefits, and on how such understanding can disappear if it is not reflected in fair laws and the proper enforcement of justice. Transparency, accountability and adequate checks and balances were, in her view, necessary safeguards. Ms. Salomon illustrated the efforts which the ICC Court is making in this regard (for example, see [here](#)) and how it is implementing a “*transparency 2.0*” intended to facilitate the parties' understanding of the Court's rules, materials and processes.

Work is still to be done in the coming years. The [ICC Court's centenary declaration](#) set out a number of goals which the Court aims to meet with a client mindset focused on the parties' experience. The IBA has identified five areas of work including ESG, gender equality, technology, the need to highlight contributions of the legal profession to society and, not least, preparing the legal profession for the future.

The discussion led into a Q&A session, with a notable question from [Santiago Rodríguez](#) (Uría Menéndez) on how the ICC Court intended to face the challenge of reaching its diversity goals while respecting the parties' decisions on arbitrator appointments. Ms. Salomon acknowledged that the ICC Court nominates only 25% of the appointed arbitrators, which is why it takes everyone to reach such goals – including in-house and external counsel.

[Patricia Saiz](#) (ESADE) delivered insightful closing remarks, praising the pivotal actions undertaken by the ICC Court in facilitating the peaceful resolution of disputes and granting access to justice and by the IBA in defending the independence of the legal profession and the judiciary. The rule of law has an essential role in society and democracy, and we must do everything we can to protect and promote it. She also reminded the audience that arbitrators have an important role to play in enforcing the rule of law by fairly and impartially holding parties to their agreements and by creating an environment of certainty and predictability where businesses can flourish, economies thrive and societies prosper.

[Soledad Atienza](#) (Dean of IE Law School and Co-President of the LGSL) brought the event to conclusion, noting that protecting the rule of law also requires educating and training the next

generations of the legal profession, which is what the IE Law School endeavors to do through a global, diverse and multidisciplinary approach. However, the *academia* cannot do this on its own and should continue to join forces with professional entourages and institutions such as the IBA and the ICC Court.

The depth of the speakers' insights matched the seriousness of the subject matter of the chat, and the discussion conveyed both assurance and causes for concern. Recent crises have shown not only that the rule of law is of the essence for the peaceful progress of a country, but also that it can be threatened by external factors such as an armed invasion and internal factors such as a loss of legitimacy arising from corruption or the lack of representativeness of the judiciary. At times like these, efforts like those undertaken by the ICC Court and the IBA are welcome and necessary.


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This entry was posted on Wednesday, June 14th, 2023 at 8:12 am and is filed under [IBA](#), [ICC](#), [ICC Arbitration](#), [Rule of Law](#)

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