

# Kluwer Arbitration Blog

## 22nd ICC Miami Conference: Revisiting the Foundations of International Arbitration – Day 1

Nina Leguizamon · Sunday, January 12th, 2025

On December 2 and 3, 2024, the International Chamber of Commerce (“ICC”) hosted the 22nd ICC Miami Conference on International Arbitration, which brought together over 800 participants from all over the world to discuss critical developments in international arbitration in Latin America, making it the largest ICC conference ever held.

Honoring its title “Revisiting the foundations of International Arbitration”, the Conference explored new trends and updates from Latin America, analyzed procedural hurdles and arbitrator immunity, and debated whether some traditional features of ICC arbitration are still as essential today as they were decades ago. In true international fashion, this Latam-focused event was held in three official languages: English, Spanish and Portuguese, with many speakers effortlessly switching between the three, and with simultaneous translations available for all attendees.

### Welcome Remarks

[Alexander G. Fessas](#) (Secretary General, ICC International Court of Arbitration), delivered the opening speech acknowledging that dispute resolution has changed. He highlighted several key events reflecting these changes, including: (i) Mexico’s judicial reform; (ii) UK’s new Arbitration Act; and (iii) France’s intention to reform its arbitration act.

Mr. Fessas underscored the importance of navigating these changes and the ICC’s plans to: (i) develop and expand services, including opening overseas offices in Africa next year, and a new hearing center in Paris, which is [already operational](#); (ii) enhance operational efficiency by optimizing processes and applying AI in case management; and (iii) increase stakeholder engagement based on an arbitration landscape study and boost community development.

### Navigating the Global Business Landscape: Unveiling the ICC-Jus Connect-McCann Report on Cross-Cultural Business

[Claudia Salomon](#), President of the ICC International Court of Arbitration, discussed key findings from the ICC-Jus Connect-McCann Report on Cross-Cultural Business, emphasizing the importance of adapting to current and future trends. In her presentation, Ms. Salomon highlighted

the importance of remapping the world according to business culture, rethinking the success formula and reimagining dispute outcomes. These three points were later explored more in-depth in a roundtable discussion between [Jaime García Nieto](#) (Airbus General Counsel for Latin America & Caribbean), [Annie Lespérance](#) (Jus Mundi Head of Americas), and Claudia Salomon.

The speakers agreed on the importance of having cultural awareness and how understanding global differences is key for companies. Jaime García-Nieto highlighted that cultural training is extremely important for businesses and lawyers.

Another issue discussed was the involvement of lawyers in B2B relationships. The conclusion was clear: clients want lawyers involved early in the business relationship. Annie Lespérance noted that businesses want lawyers to bring rationality to the transaction. However, this involvement also means that, as added by Claudia Salomon, lawyers should also act as solution providers and conflict preventers

### **Updates From Around the Region**

Focusing on the current trends in Latin America, the panel “Updates from around the region” moderated by [Laura Sinisterra](#) (Partner, Debevoise & Plimpton LLP) provided insights on the latest trends in Mexico, Ecuador, Argentina, and Brazil.

[Elsa Ortega López](#) (Arbitrator and Head of Dispute Resolution Practice, Creel, García-Cuellar, Aiza y Enríquez) discussed the future of lithium projects within the context of the Sonora Project, a plan focused on lithium exploitation in the north of Mexico. Ms. Ortega López explained the emergence of this project, its scope, and its potential impact. She also reflected on how the judicial reform in Mexico may lead to an increase of commercial and investment arbitration.

[Hugo García Larriva](#) (Partner, CorralRosales) examined the recent Ecuador referendum results, including the recognition of international arbitration as a dispute resolution mechanism for investment disputes (reported [here](#)). Mr. García Larriva discussed the context of the referendum, its negative results with regards the recognition of international investment arbitration (as most citizens voted against this question), and how -going forward- the Ecuadorian government is looking for other options to attract investments even if the results of the referendum were negative.

[María Inés Corrá](#) (Partner, Bomchil) focused her intervention on the latest trends in Argentina as a consequence of the “*Régimen de incentivo para grandes inversiones*” (Incentives Regime for Large Investments) (also reported [here](#)). Under this regime, arbitration was selected as the applicable dispute resolution mechanism which, for local investors, could be conducted under the PCA, ICSID, or ICC rules and, for foreign investors, could be under the ICC or ICSID rules. This trend looks promising for Argentina, but it may come with challenges.

[João Bosco Lee](#) (Partner, JBLEE Advogados) discussed the [Resp 2101901/SP](#) from the Brazilian Superior Court of Justice on the duty to disclose. This decision notes that: (i) an arbitrator’s failure to disclose a fact that may raise doubt about his impartiality and independence does not, by itself, indicate bias or lack of independence; and (ii) for an undisclosed fact to justify the annulment of an arbitral award, it must clearly undermine the party’s trust and affect the arbitrator’s independence and impartiality. While not a final decision, it seems to be a step in the right direction.

## **A Sprint or a Marathon, Overcoming Procedural Hurdles Before (Or at the Stage Of) the Constitution of the Arbitral Tribunal?**

In this panel moderated by [María Angélica Burgos](#) (Partner, Burgos Dispute Resolution), [Ana Serra e Moura](#) (Deputy Secretary General of the ICC International Court of Arbitration), [Pedro Metello de Nápoles](#) (Partner, PLMJ), [Katherine Menéndez de la Cuesta](#) (Partner, Holland & Knight), and [Christian Albanesi](#) (Partner and Head of Latin American Arbitration, Linklaters) discussed different issues that may impact the constitution of arbitral tribunals. The speakers examined pathological arbitration agreements, specific agreements that may interfere with the constitution of arbitral tribunals, how geopolitics may impact the constitution of arbitral tribunals and the complexities that may arise from the involvement of multiple parties in the proceedings. The panelists provided several examples of aspects that parties should consider to avoid creating pathological clauses, such as establishing certain qualification requirements for arbitrators may lead to an unenforceable arbitration agreement. Also, the panel remarked the importance of drafting arbitration agreements compatible with fundamental principles of arbitration, for example providing both parties with equality of arms at the moment of appointing the arbitral tribunal.

## **Exercising Jurisdiction and Enforcing DAB Decisions in Latin America**

This panel moderated by [Gustavo Scheffer da Silveira](#) (Partner, Tauil & Chequer Advogados), allowed [Ricardo Barreiro-Deymonnaz](#) (Partner, Barreiro Abogados) to discuss jurisdictional issues such as interim relief powers of emergency arbitrations and dispute adjudication boards, a topic that highlighted the importance of timely dispute resolution to safeguard projects. Also, [Marcela Paz Radovic Córdova](#) (Director, Radovic y Asociados SpA) analyzed the complexities related to the enforceability of decisions made by Dispute Adjudication Boards. For example, she compared how the enforcement of these decisions may vary depending on the system under which the decision was issued. To illustrate this point, a comparison was made between the characteristics of the 1999 FIDIC Contracts, 2017 FIDIC Contracts and the ICC Dispute Board Rules. She also offered recommendations to increase the possibilities of improving chances of enforcing these decisions, such as including contractual provisions in which parties are required to comply with decisions issued by the Dispute Board.

## **Behind the Scenes: Mock ICC Court Session on Draft Award Scrutiny**

This session featured a mock ICC Court Session, where Members of the ICC Court and Secretariat led an interactive mock plenary session where conference attendees were invited to become new Court members, contributing to the scrutiny of a mock draft award. Under the guidance of President Salomon, the speakers explained the scrutiny process and proceeded to demonstrate a mock award that was made available to all attendees through the ICC DRS mobile app. After the Secretariat (represented by [Paul di Pietro](#) and [Raphael Lang](#)) presented the award to the Court, the Court members proceeded to provide comments, flagging various issues that may cause any issues at the enforcement stage. For example: the vagueness of the arbitration agreement, the incompleteness of information and analysis that led to the application of a specific law, the discrepancies in the currencies, where the Claimant is seeking payment in USD but the tribunal

awards an amount in EUR, and the lack of reasoning behind the tribunal's finding that only two out of four deliveries were defective in the fact pattern analyzed.

## Conclusion

All the sessions held during the first day of the conference remarked an overall positive panorama for arbitration in Latin America. The region has shown interesting developments, most of them favorable towards arbitration, that will expand and contribute to the practice in different countries. However, with these developments new complexities also arise, and the panelist were also able to provide the audience with knowledge that will help lawyers to assess new challenges and successfully navigate through them.

After an evening of entertainment in Miami's pleasant weather, the conference continued the next morning with additional insightful discussions.

*Follow along and see all of Kluwer Arbitration Blog's coverage of the 22nd ICC Miami Conference [here](#).*

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