

Arbitration and Legal Reasoning

16-17 November 2016

Hosted by the Centre for Law and Society in a Global Context and
the School of International Arbitration

Organised by Stavros Brekoulakis and Maks Del Mar

Aims

1. To examine arbitral decision-making and reasoning in the broad context of the historical and social development of international arbitration.
2. To identify the purposes, functions, sources and extra-legal influences on reason-giving in arbitration.
3. To identify and critically discuss the use of various modes, devices and techniques of reasoning in commercial and investment arbitration.
4. To establish a network of scholars and practitioners interested in developing a theoretical and historical account of arbitral reasoning.

About

This conference will offer the first systematic, multi-disciplinary analysis of legal reasoning in international arbitration. It will do so by examining: 1) the purposes and functions of reason-giving in arbitration; 2) the sources of reason-giving in arbitration; 3) the various influences, including extra-legal influences, on the making of arbitral decisions, and thus consideration of the virtues (and vices) of arbitrators; and 4) the modes and devices of reasoning employed by arbitrators in two different contexts: commercial and investment arbitration. The conference will examine these themes by bringing together arbitration practitioners and scholars with theorists and historians of legal reasoning

An important aim of the event is to identify what is unique about legal reasoning in international arbitration, which necessitates: 1) an examination of the historical development of international arbitration, and the social and political contexts in which it operates; and 2) comparative analysis with other contexts of legal reasoning, including domestic and other international adjudication.

Output

Apart from the event itself and the establishment of a network, a special issue or edited collection of the papers is planned.

Draft Program

16 November 2016

11am – 1pm

Panel 1 – The Purpose(s) and Function(s) of Reason-Giving in Arbitration

This introductory session will examine the purpose and function of legal reasoning, with special attention to the uniqueness of the arbitration context, including considering issues such as:

- *Is reasoning in arbitration necessary at all (at the beginning, most arbitral decisions in England were not reasoned—in certain types of arbitration (such as commodities) reasoning is still neither desirable nor necessary);*
- *Historical development of legal reasoning: as stated, originally arbitration was very informal and most awards unreasoned. Today, reasoning becomes increasingly longer. In investment arbitration in particular, awards run over hundreds of pages.*
- *What is the purpose of reasoning: to persuade the losing party? To show compliance with the law? To prevent annulment by courts?*
- *How does legal reasoning differ on the basis of the legal background of the decision-makers: e.g. public law background/focus (investment arbitration) v private law background/focus (commercial arbitration)*

Chair: Maks Del Mar (Queen Mary University of London)

Speakers:

- Alec Stone Sweet (NUS)
- Elaine Mak (Rotterdam)
- VV Veeder (Essex Court Chambers)
- Joost Pauwelyn (Graduate Institute in Geneva & Georgetown Law)
- Professor Richard Kreindler (Cleary Gottlieb Steen & Hamilton)

1pm – 2pm

Lunch

2pm to 4pm

Panel 2 – The Sources of Reason-Giving in Arbitration

Here we examine the possible sources of reason-giving in arbitration, including:

- *Precedent*
- *Rules v legal principles*
- *Policies, Public interest and public order*
- *Sources of law (custom, case law, civil code/text)*

Chair: David Caron (KCL)

Speakers:

- Paul Schiff Berman (George Washington)
- Alan Rau (Texas)
- Sophie Nappert (3 Verulam Buildings)
- Andrea Bjorklund (McGill University)

4pm to 4.30pm
Afternoon tea

4.30 – 6.30pm

Panel 3 – The Virtues and Vices of Arbitrators: Influences, Values, Ideologies

This panel will consider the following issues:

- *What roles do value/ideologies or morality play in arbitral reasoning?*
- *Are they made explicit in justifications by arbitrators or not? And if they are not should they be?*

Chair: Stavros Brekoulakis (Queen Mary University of London)

Speakers:

- Amalia Amaya (UNAM)
- Bryant Garth (UCI – Irvine)
- Thomas Schultz (KCL)
- Catherine Rogers (Penn State & Queen Mary University of London)
- Daphna Kapeliuk (Goldfarb Seligman)

6.30pm – 7.30pm
Drinks

7.30pm
Dinner

17 November

10am – 12pm

Panel 4 – Modes, Devices and Techniques of Reasoning in Commercial Arbitration

This panel will look at how commercial arbitrators may go about giving reasons:

- *Teleological/purposive interpretation*
- *Contextual interpretation*
- *Historical / evolutive*
- *Analytical*
- *Analogical reasoning*
- *Consequences of legal reasoning: Backward-looking or forward-looking*

Chair: Julian Lew (20 Essex St. and Queen Mary University of London)

Speakers:

- Audley Sheppard (Clifford Chance)
- Stacie Strong (Missouri University)
- Dominique Hascher (Supreme Court France)
- Humphrey Lloyd (Atkin Chambers and Queen Mary University of London)
- Loukas Mistelis (Queen Mary University of London)

12pm – 1pm
Lunch

1pm to 3pm

Panel 5 – Modes, Devices and Techniques of Reasoning in Investment Arbitration

Here we continue the theme of modes, devices and techniques of reasoning, but in the specific context of investment arbitration, and thus including for instance:

- *The role of Vienna Convention in investment arbitration: this may lead the discussion to the wider question of whether arbitrators, when deciding, should contribute to the law (systemic interpretation) or merely decide on the facts (no systemic effects of arbitral awards), which may also bring the issue of precedent again*

Chair: Anna Joubin Bret (International Investment Lawyer)

Speakers:

- Susan Franck (W&L)
- Stephan Schill (University of Amsterdam)
- Doak Bishop (King & Spalding) **[NB: add him instead of Blackaby]**
- Federico Ortino (KCL)

3pm
Departure