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Integration and international dispute resolution in Small States

KEYNOTE PANEL

DR EDWINI KESSIE

Dr Edwini Kessie has a Doctorate Degree in Law from the University of Technology, Sydney, Australia and Masters' Degrees in Law from the University of Toronto, Canada and the University of Brussels, Belgium and a Bachelor's Degree in Law from the University of Ghana. He is admitted as a solicitor of the Supreme Courts of England & Wales, New South Wales, Australia and Ghana. He has practised Corporate and Commercial Law in Sydney, Australia and International Trade Law and European Community Law in Brussels, Belgium.

Dr Kessie is on leave from the World Trade Organization, where he worked for over 18 years in different capacities. He has been the Chief Trade Adviser for the Forum Island Countries since 2012. In this capacity, he provides technical advice on a broad range of trade issues to the Forum Island Countries and support them in their PACER Plus negotiations with Australia and New Zealand.

Dr Kessie is also a part-time lecturer in international trade law at the World Trade Institute in Berne, Switzerland, the University of Lausanne, Switzerland, and at the Universities of Pretoria and Western Cape in South Africa. Dr Kessie has been a guest lecturer in many Universities around the world, including the London School of Economics and Columbia Law School in New York. Dr Kessie has participated in many international conferences on international trade and written a number of articles on international trade issues. His principal areas of interest are regional integration, trade and development and dispute settlement.

MELE TUPOU

Mele Tupou is currently the Chief Executive Officer of the Ministry of Justice, Tonga. Admitted as a Legal Practitioner in both Tonga and Fiji, Mele Tupou had worked as an academic staff of the University of the South Pacific and has had a career in law and the Government of Tonga as: Legal Officer for the Ministry of Justice; a prosecutor at the Crown Law Department; Principal Assistant Secretary for the Public Service Commission; and the Deputy Clerk for the Legislative Assembly of Tonga.

She holds a Bachelor of Arts Degree in law from the University of the South Pacific and a Masters Degree in Law specialising in Public International Law from Queen Mary University of London, United Kingdom.

ABSTRACT

Integration – The Main Issues the Small Pacific Island Countries are Facing

The need for integration is clear enough for small island communities lacking in market size and political clout. The realities though are the long distances and thin routes (high cost) and the absence of complementaries which makes it difficult to overcome the inclination to think and act nationally.

There are some obvious successes in regional integration including the University of the South Pacific and the fisheries bodies of Forum Fisheries Agency and Secretariat of the Pacific Community. At the sub-group levels the examples of Parties to the Nauru Agreement in empowering its membership vis-à-vis the distant fishing water nations; and of Melanesian Spearhead Group in the area of trade (including labour mobility) are worthy of note. A number of National Assessment Reports (NARs) support the idea of strengthening sub-regional or sub-grouping approaches in the Pacific.

On the other hand, the overall lack of implementation of regional agreements and decisions suggests that something is 'not quite right' (Pacific Plan Review Team). In terms of what needs improving – and one country did identify regional cooperation as an area where the Pacific was lagging behind (Fiji NAR) – one of the countries involved in the review of the Pacific Plan says that it's a framework that needs to be more clearly defined and identified with member states. Transport, an area of most need in regional integration, was identified as one where regional cooperation has not always worked. Another country says there are not clear linkages between regional and national development frameworks.[1]

Attempts to minimise challenges and for sustainable development include discussing and establishing international frameworks such as the SAMOA Pathway, the Sustainable Development Goals (SDGs), The Istanbul Plan of Action for Least Developed Countries and so forth. These frameworks are expected to garner support from the international community towards Small Island Developing States' (SIDS) sustainable development needs. But these frameworks do not necessarily have dedicated funding for implementing all the things being asked in the frameworks. At the end of the day, they are just frameworks. It is really about national governments localising those goals and working with their wide array of partners to achieve some of our sustainable needs.[2]

DR DAVID S BERRY

Dr David S Berry, BA (UT), LLB (UBC), LLM (Queen's), PhD (Edin), Barrister and Attorney-at-Law, is Dean of the Faculty of Law of the University of the West Indies, Cave Hill Campus. He teaches in the areas of general public international law and regional integration law, including a comparative course entitled 'Caribbean Integration Law'. He has written articles and chapters in the same fields as well as in the areas of the law of treaties, aboriginal law, philosophy of law and feminist theory. Dr Berry's most recent books are *Caribbean Integration Law* (Oxford University Press, 2014) and *Transitions in Caribbean Law: Lawmaking Constitutionalism and the Confluence of National and International Law* (co-edited with Tracy Robinson, Ian Randle Publishers, 2013).

1 https://sustainabledevelopment.un.org/content/documents/5189230Regional%20Synthesis%20Report_Final%20Draft_Clean_8July.pdf (pg 21-22)

2 https://www.sprep.org/climate-change/samoa-pathway-on-the-right-track-for-small-island-developing-states-sids

Dr Berry practices international law and has drafted treaties, provided legal advice, and served as counsel in cases before a number of regional tribunals. He also served as an ICSID arbitrator.

PROFESSOR FRANCESCO SCHURR

Francesco A Schurr is a Professor of Law and head of the Chair for Company, Foundation and Trust Law at the Institute for Financial Services, as well as Program Director of the Master of Laws (LLM) in Company, Foundation, and Trust Law at the University of Liechtenstein. Previously he was Professor for Private Law and Comparative Law at the Law School of the University of Innsbruck/Austria and Deputy Director of the Department of Italian Law. After completing his law studies at the Universities of Regensburg, Saarbrücken and Perugia he was admitted to the bar in Italy and Germany and obtained his PhD summa cum laude as well as his Habilitation from the University of Innsbruck. Francesco A Schurr has published numerous articles and books on Consumer Protection Law, Law of Foundations, Trust Law, Contracts and European Private Law. He had numerous visiting and adjunct professorships including those at the University of Padova/Italy, the Free University of Bolzano/Italy, the Riga Graduate School of Law in Latvia, the University of Bucharest/Romania as well as the Victoria University of Wellington/New Zealand.

ELIZABETH BAKIBINGA-GASWAGA

Elizabeth Bakibinga-Gaswaga, currently a Legal Adviser, Rule of Law Division at the Commonwealth Secretariat Headquarters, London, United Kingdom, is an Advocate/Attorney at Law with 16 years' standing. With 19 years' experience in legal, legislative and policy analysis work, she has served as Vice President of the Commonwealth Association of Legislative Counsel; Legal Officer in the United Nations' Department of Peacekeeping Operations; Principal Legislative Counsel at the Parliament of Uganda; and Lecturer in the post-graduate programme at Makerere University, Uganda, among others. While at the Parliament of Uganda, she advised on legal and policy aspects of a broad range of thematic areas. Ms. Bakibinga-Gaswaga is a member of the Institute of International Humanitarian Law and has initiated/participated in capacity building programmes worldwide as programme manager, trainer, presenter, rapporteur and resource person. She attended Boston University, Makerere University and the Norwegian Research Center for Computers and Law, University of Oslo, among others.

TIMOTHY LEMAY

Timothy Lemay is Principal Legal Officer and Head of the Legislative Branch of the International Trade Law Division/Office of Legal Affairs, the Secretariat of UNCITRAL (the United Nations Commission on International Trade Law) based in Vienna. He has also served as Secretary of UNCITRAL's Working Group III (Online Dispute Resolution). Before joining UNCITRAL in July 2009, he served as Chief of the Governance, Human Security and Rule of Law Section of UNODC (the United Nations Office on Drugs and Crime), prior to which he was Chief of UNODC's Global Programme against Money Laundering.

Tim joined the UN in 1995 following a career as a lawyer in Canada in private practice, with the Attorney General of Nova Scotia and latterly with Canada's Department of Justice in Toronto. He is a graduate of Dalhousie Law School and a member of the International Bar Association as well as several bar associations in Canada.

PROFESSOR BALDUR ÞÓRHALLSSON

Baldur Þórhallsson is Head and Professor at the Faculty of Political Science at the University of Iceland. He is also Jean Monnet Chair in European Studies and Programme and Research Director at the Centre for Small States at the University. His research focus is primarily on small state studies, European integration and Iceland's foreign policy. He has published extensively in international journals and contributed to several academic books. He has written two books on Small States in Europe: *Iceland and European Integration: on the Edge* and *The Role of Small States in the European Union*. He holds a PhD (1999) and MA (1994) in Political Science from the University of Essex in England. In 2002, Baldur established a Centre for Small State Studies at the University of Iceland in association with colleagues around the globe and re-established the Icelandic Institute of International Affairs. He was Chair of their Board until 2011. Baldur has taught on Small States at several Universities and was 'Class of 1955' Visiting Professor of International Studies at Williams College (MA, USA) in the fall semester 2013. Baldur is currently working on a number of research projects related to Iceland's external affairs and Small States in European integration and teaching two courses on Small States in Europe.

STEVEN FINIZIO

Steven Finizio is a partner in the International Arbitration Practice at Wilmer Cutler Pickering Hale and Dorr LLP. His practice includes international arbitration and alternative dispute resolution, general commercial litigation, and internal investigations, focusing on complex commercial and regulatory issues. He advises clients frequently on international law and treaty issues. He also serves as an arbitrator. Mr Finizio has taught international arbitration at a number of universities and is on the faculty at the Cologne Academy of Arbitration and the Africa International Legal Awareness (AILA) annual International Treaty Law and Arbitration Programme. He speaks regularly on international arbitration at conferences and seminars. He is co-author (with Duncan Speller) of *A Practical Guide to International Commercial Arbitration: Assessment, Planning and Strategy* (Sweet & Maxwell 2010, second edition forthcoming), as well as co-author of 'International Commercial Arbitration' in *The Law of Transnational Business Transactions* and Contributing Editor to the *International Comparative Legal Guide to International Arbitration* (Global Legal Group).

COMMERCIAL RELATIONS WITH SMALL STATES

DR DAVID S BERRY

ABSTRACT

Enforcement of Regional Economic Integration: The Potential of the Caribbean Court of Justice

The Caribbean Court of Justice's (CCJ's) jurisdiction to interpret and apply CARICOM's Revised Treaty of Chaguaramas (RTC) makes real the possibility of judicial enforcement of the CARICOM Single Market and Economy (CSME). Acting under its original (treaty-interpreting) jurisdiction, the CCJ has issued a number of important judgments in its first eight cases. These judgments lay the foundations for a strong regional integration jurisprudence, one that may be compared with the seminal jurisprudence of the European Court of Justice.

In his talk Dr Berry will introduce the RTC and CARICOM's CSME. He will explain the RTC framework within which the CCJ operates and highlight the important role of the Court in enforcing Community law. He will focus briefly on two controversial topics: (1) whether CARICOM Member States should engage in closer cooperation regimes, similar to the EU, and (2) whether there is need for increased national implementation of CSME rules through judicial enforcement. He will conclude by suggesting that CARICOM Member States, and CARICOM nationals, must engage more actively in the CSME regime in order for it to be successful.

DR JAN YVES REMY

Dr Jan Yves Remy advises governments and private stakeholders on international trade matters, with a focus on dispute settlement under the auspices of the World Trade Organization (WTO). Her recent representations include matters involving sovereign governments engaged in high-profile ongoing disputes at the panel and appellate stages of WTO dispute settlement. She volunteers for a number of pro bono and community events.

Prior to joining Sidley Austin, Jan Yves worked for six years as a legal officer with the Appellate Body Secretariat of the WTO in Geneva, where she provided legal advice and support to Members of the Appellate Body in their disposition of appeals of trade matters conducted under the WTO's dispute settlement mechanism. The experience was invaluable in to her understanding of how the legal agreements of the WTO are interpreted and applied, and in gaining an intimate knowledge of the inner workings of the World Court, as well as build an important network among practitioners in the field. During her tenure at the WTO, she delivered seminars on WTO law and procedure to government trade officials.

Before joining the WTO, Jan Yves served for two years as a services trade analyst at the Caribbean Negotiating Machinery, where she assisted in coordinating the negotiating positions of Caribbean governments and advised and represented them in multilateral, bilateral and regional negotiations. She has continued her interest and involvement in the Caribbean legal and trade spheres, and has completed a doctoral thesis on Caribbean regional integration through the examination of the role of the Caribbean Court of Justice in advancing Caribbean integration, and by comparing the Court with other regional integration courts serving different economic integration communities. The thesis manuscript will be published by the end of the year.

ABSTRACT

The Experience of Small States in WTO Dispute Settlement

According to standard economic literature, Small States face particular constraints because of their size. While more open to trade, they are also more dependent on trade, and, as a result more vulnerable to changes in trade policies.

Since the establishment of the WTO, Small States have been involved – directly as complainants, and indirectly as third parties – in a number of WTO cases. The evidence suggests strongly, and not surprisingly, that Small States opt to participate only in those disputes that actually or potentially threaten their important export interests. The evidence also suggests that for those disputes against developed countries in which Small States have been involved, the impact of WTO panel and Appellate Body decisions on their economies has been substantial.

Using specific WTO cases, the presentation will make the case that Small States have been disproportionately affected by decisions rendered by WTO panels and the Appellate Body. The case will also be made that, in light of the importance of these disputes – and even appreciating the limitations they face as regards financial and human resources – Small States should engage more actively in the WTO dispute settlement process, by inter alia creating more home-grown capacity to successfully identify and pursue WTO disputes, and to participate in the ongoing negotiations for reform of the WTO's dispute settlement system.

DR GEORGE BARKER

Dr George Barker is currently Director of the Centre for Law and Economics at the Australian National University (ANU), a Visiting Fellow of the British Institute of International and Comparative Law London and Visiting Fellow at the London School of Economics. He gained a DPhil in Economics from Oxford University in 1992, and holds both a Bachelor of Laws and Master of Economics. He is past President of the Australian Law and Economics Association, and a Founder of the Law and Economics Association of New Zealand. He was awarded the Olin Fellowship in Law and Economics at Cornell University in 2000, was Visiting Fellow at Oxford University Law School 2008, was elected an Honorary Fellow of the Law and Economics Association of NZ in 2009, was a Visiting Fellow and Research Associate at the Centre for Law and Economics at University College London from 2010–2015. He is on the Editorial Board of the European Journal of Law and Economics, and is the editor of Asia Pacific Law and Economics Review. Dr Barker was a member of the Governing Board of Wolfson College, Oxford University from 1990–1992, Chief Analyst and Economic Advisor at the NZ Treasury, and Board member of LECG Asia-Pacific Ltd (1997–2005), Celtic Pacific Ltd, and Upstart Investments Ltd (1999–2003), KEA Global and past Chairman of KEA Australia (2001–2010). Dr Barker has testified in Europe, North America and the Asia Pacific Region before ministers, courts and regulatory agencies on intellectual property law, competition law, market design, regulatory policy, and on corporate, contract and tort law liability and damages. He recently was the lead economic advisor on the design of a uniform competition and consumer law, enforcement and dispute resolution mechanism for Pacific Island Forum Countries. He has authored books, articles and given expert economic testimony on a wide range of matters involving the economic analysis of law, including litigation funding, collective redress, intellectual property (Copyright, Patent, & Trade Mark), trade law including the Effects of China joining the WTO (Cambridge University Press 2003),

competition law, regulation of utilities and network industries, taxation law, insurance and financial market reform, contract and tort damages and liability issues, insolvency, corporate securities actions, the civil and criminal justice system, the regulation of industry (including communications, energy, electricity, gas, water, transport, mining, pharmaceutical, film, music, media and cultural industries); public law and finance, and social policy (including education, health, welfare).

ABSTRACT

Small States and Economic Regulation: A Review of Regional and Sub-regional Arrangements, Policy and Regulatory Frameworks: Some key features, lessons and experiences

Small States face critical decisions both on what substantive legal rules to adopt on economic regulation, and what procedural arrangements to adopt for enforcement. This paper focuses mainly on competition and consumer law (CCL) with some passing reference to related issues in anti dumping law (ADL) at the end. The research on CCL was commissioned by the Pacific Islands Forum (PIF) to inform the development of the implementation roadmap for PIF, and reviews and collates key features of relevant policy and legislative frameworks, lessons and experiences from other comparable regions/sub-regions that have successfully implemented regional approaches to economic regulation, including:

CARICOM The Caribbean Community and Common Market)

COMESA The Common Market of East and Southern Africa)

MERCOSUR The Southern Common Market

SADC The Southern African Development Community

SEACF The Southern and East African Competition Forum

WAEMU The West African Economic and Monetary Union

In separate sections the paper first identifies the broad lessons and experiences from the review; Second identifies and provides a broad overview of the history and nature of several relevant regional approaches to economic regulation; and third provides a more detailed review and collation of the key features of relevant policy and legislative frameworks for The Caribbean Community and Common Market (CARICOM) As we shall see in the second section regional approaches to economic regulation and in particular Regional Competition and Consumer Law Arrangements (RCCLA) have become increasingly common. The paper concludes at this stage however that CARICOM is probably the most directly comparable region to the Pacific Islands Forum and therefore of greatest interest, given it covers 14 member states, 80% of which are small Island states, with relatively low per capita income. Thus of the potentially relevant regional approaches to economic regulation, we have focused our detailed review and collation of the key features of relevant policy and legislative frameworks on CARICOM

Finally on Anti Dumping Law the paper reviews the fundamental economic rationale for anti-dumping actions, and how it relates to competition law in Small States. The focus is on a recent WTO decision (European Union – ADDD on Biodiesel from Argentina WT/DS473 – circulated 29 March) which identifies when you can depart from using the actual costs recorded in the accounting records of an exporter. It remains an unadopted report at the moment with significant implications. The deadline for EU to appeal has not yet passed.

PROFESSOR SUSAN FARRAN

Sue Farran is Professor of Laws at Northumbria University Law School, an Adjunct Professor at the University of the South Pacific and an Associate of the Centre for Pacific Studies, St Andrews University. Sue's main area of interest is the impact development has on economic, social, cultural and human rights. She is particularly interested in the complexities of plural legal systems, the use of comparative methodology to address new and emerging legal issues and the interface of different legal systems. Much of her research uses Pacific Island case studies to explore wider and more global themes such as the rights of indigenous people to determine their own futures, children's rights and the challenges posed by the different and often conflicting agendas of aid, trade, and state sovereignty in the context of small island developing states. Recent publications include: *Weaving Intellectual Property Policy in Small Island Developing States* with Miranda Forsyth (2015) and *Human Rights Perspective on the Protection of Traditional Knowledge and Intellectual Property: a View from Island States in the Pacific* in Geiger (ed), *Research Handbook on Human Rights and Intellectual Property* (2015).

ABSTRACT

Intellectual Property Consequences – a View From the Pacific

The close link between aid and trade means that for developing countries dependent to a greater or lesser extent on financial support from external sources autonomy in determining the frameworks to support trade commercial relations with external partners are severely constrained. The agenda is driven largely by developed economies using laws with which they are most familiar and which consequently become part and parcel of trade agreements. For those countries which are persuaded to sign up to the WTO – and this includes several Pacific Island States, this means incurring obligations to comply with TRIPS and TRIPS Plus agreements. Even for those countries outside the WTO, regional trading agreements with developed economies such as Australia and New Zealand (PACER and the proposed PACER-PLUS), or the European Union (EU-ACP Agreements) include intellectual property expectations. Historically, the intellectual property laws introduced into the legal systems of Small States were directed at protecting the commercial interests of colonisers, not the interests of indigenous people. They were rarely used, poorly understood and expensive to implement. Post-independence many of these laws remain. Others have been modified and in recent years some attempts, albeit with limited success, have been made to bring within the same intellectual property umbrella indigenous perceptions of intellectual property, traditional knowledge and expressions of traditional culture. Among the underpinning difficulties are the failure of regional initiatives, tensions between different stakeholders, conflicting agendas at ministerial and local levels, fundamental misunderstandings about rights to intellectual property and lack of resources to implement or enforce legislative initiatives. In attempting to both protect and preserve indigenous intellectual property and foster creative industries, promote tourism and utilise natural resources – including a wealth of biodiversity, for commercial advantage, Small States face a number of dilemmas. This presentation looks at recent developments in Pacific Island Small States triggered by commercial relations and draws attention to some of the challenges that arise when the law tries to encompass very different value systems within national frameworks informed by international imperatives.

AGNIESZKA ASON

Agnieszka Ason is an energy disputes lawyer and academic holding Polish and German law degrees: MA (summa cum laude), University of Warsaw; LLM (summa cum laude) and PhD Candidate (Konrad Adenauer Foundation Scholar), Freie Universität Berlin. Agnieszka is affiliated with the Institute for Energy and Regulatory Law and currently teaches energy arbitration in a specialised energy law master's programme in Berlin. She has previously delivered presentations on various energy, environmental and Arctic issues, most recently in Oxford (2015, UK Energy Law & Policy Association Conference), Reykjavik, Iceland (2015, Arctic Circle Assembly), Malmö, Sweden (2015, World Maritime University Conference) and Toyama, Japan (2015, Arctic Science Summit Week).

ABSTRACT

Integrated Energy Programmes of Small Island Developing States

Small Island Developing States (SIDS) share similar sustainable development challenges, including remoteness, susceptibility to natural disasters, fragile environments and limited resources. This paper focuses on the last challenge. In particular, it demonstrates that due to SIDS' dependence on imported fossil fuels, the energy prices in many of them are globally among the highest. Consequently, as this paper argues, the energy sector is the principal source of economic vulnerability of these countries. Although modern research has produced commercially feasible supply alternatives, existing technologies are not always adaptable to the needs of local communities. Admittedly, low-lying SIDS are well-aware of the risks of climate change and they are fully committed to counteract devastating environmental developments which might question their prosperity, or even existence, in the upcoming decades. Many small islands have already adopted joint projects to assist them in transforming their national energy sectors into catalysts for sustainable growth. Focusing on 'integrated energy programmes', this paper assesses progress of the most recent initiatives and provides a roadmap for the role of international community in the development and support of renewable energy projects of SIDS.

JAMES BRIDGEMAN

James Bridgeman is a practicing Barrister, Chartered Arbitrator and certified mediator. He holds practicing certificates as Barrister both in Ireland and in England and Wales. His practice, with a focus on civil and commercial litigation, international arbitration and ADR is based at the Law Library Dublin and Lamb Chambers London.

He is a Trustee of the Chartered Institute of Arbitrators and a member of the ICSID panel of arbitrators and conciliators nominated by the Irish government. He has received appointments in international disputes from WIPO (Geneva), ICC (Paris), ClArb (London), NAF (Minneapolis, MN), CAC (Prague), KLRCA (Kuala Lumpur), and Nominet (Oxford). In 2010 he was appointed by DG Justice of the EU Commission to the expert group advising on the revision of the Brussels I Regulation and arbitration. In August 2014 he was appointed by the Central Bank of Ireland as a member of the quasi-judicial panel to carry out investigations of regulated entities under the Administrative Sanctions Procedure. In November 2014 he was appointed by the Council of the EU as a member of the panel of 15 arbitrators for the Protocol on Cultural Cooperation to the Free Trade Agreement between the EU and the Republic of Korea (Council Decision 2014/794/EU).

SMALL STATES AS FINANCIAL CENTRES

PROFESSOR GORDON WALKER

Professor Walker was previously Professor of Law (1999–2015) and Dean of Law (2004–7) at La Trobe University, Melbourne, Australia. In March 2015, he was appointed Emeritus Professor, La Trobe University. Professor Walker is Visiting Professor, University of Houston Law Center, Adjunct Professor at Texas Tech University School of Law, and Adjunct Professor at University of Waikato School of Law.

Since 2006, he has advised the Asian Development Bank, where he is designated as International Business Law Expert.

ABSTRACT

Regional Frameworks for the Supervision and Regulation of Financial Entities

Fiji – a small island developing state in the South Pacific – presents unique challenges for sustainable development. Fiji originally acceded to the Millennium Development Goals (the MDGs) but progress in the attainment of the goals has been limited; Fiji has failed to mobilise its domestic resources and improve its economic growth. Most enterprises in Fiji remain capital constrained Micro-and-Small Enterprises (MSEs) and, to a lesser extent, Small-and Medium-sized Enterprises (SMEs). The new Sustainable Development Goals (SDGs), which replaced the MDGs in 2015, explicitly target this sector.

In this paper, the SDG development in Fiji will be considered in light of financing gaps in the country. The key focus of the analysis is on how these financing gaps may be closed. SDG policy will be linked with law reform proposals to show how law reform can contribute to sustainable development. More specifically, we the Fijian Companies Act 2015 will be considered to highlight ways in which the fund raising provisions of the Act can be amended or superseded to enhance MSE/SME access to capital.

FRANCOISE HENDY-YARDE

Author of *Tax Diplomacy: An Introduction to Tax Treaties*, Françoise Hendy-Yarde is a lawyer, international treaties negotiator, diplomat, former university lecturer in law; foreign legal consultant; and most recently a member of the Governance Committee of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD GF). The OECD GF is a multinational body with a constituency of 133 countries, charged with ensuring global compliance with the international tax reform agenda.

Françoise is a leading, influential authority on the international tax dialogue often couched in terms such as 'tax avoidance', 'tax evasion', 'secrecy and tax havens', 'fair tax', 'illicit financial flows', 'automatic exchange of information', and most recently the 'Panama Papers'. For almost two decades, Francoise has been the 'face' of Caribbean Small State International Business and Financial Service Centres and through her work on International Tax Diplomacy continues to be engaged with the OECD, FATF, EU, G20, IMF, UN and various private sector organisations concerned with the content, pace and motivation behind international tax reform.

Based in London for the past five years at the Barbados High Commission as the country's Special Advisor on International Business, Trade and Investment, Francoise has occupied several national, regional and international positions concerned with the maintaining competitivenesses of legitimate Small State International Business and Financial Services.

ABSTRACT

Tax Law

Both the OECD and the UN nations through their model tax treaties have signalled a retreat from the use of the Competent Authority Mechanism as the means of resolving tax disputes arising under tax treaties in favour of investment treaty-styled international arbitration. Small States have not fared well with this method of dispute settlement and so the question is: What is the value added of replacing the Competent Authority Mechanism with International Arbitration to resolve Bilateral Tax Disputes?

PROFESSOR FRANCESCO SCHURR

ABSTRACT

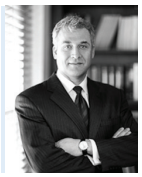
Influence of Big States on Small States

The relative size and capacities of states impact legislative developments in various jurisdictions in different ways. This paper will focus on the manner in which big states can influence the (in particular private) law of Small States. In order to assess the impact of such influence, the different forms this influence may take will be discussed: one distinction may be made between direct and indirect influence. The influence may be classed as direct where the law in a larger state directly impacts that of the smaller state, e.g. where legal principles developed in a larger state are transplanted or adopted by the smaller state. Indirect influence, on the other hand, may be exercised via supranational institutions or organisations. Another distinction between chosen and forced influence may also be highlighted. Due to considerations of sovereignty, influence is often regarded as negative. This is, however, not always the case. There are namely situations in which a smaller state may deliberately permit the influence of a big state upon its jurisdiction, e.g. where this leads to advantages such as greater efficiency. In other cases, the influence may be less welcome, but forced upon the smaller state due to its size, lack of resources and weaker negotiating position.

In order to be able to assess the advantages and disadvantages of legal influence of big states upon Small States, the distinctions made above will be illustrated using various examples. First, three small jurisdictions which have been legally influenced by big states will be discussed: Jersey and Guernsey in the English-speaking world, San Marino in the Italian-speaking world and Liechtenstein in the German-speaking world. Jersey, Guernsey, San Marino and Liechtenstein are not merely Small States, but may be classed as micro-states, which – despite their nimbleness and flexibility – are exponentially exposed to legal and economic challenges due to their geographical and demographical size. The relations in the fields of commercial and financial relations between these small jurisdictions and their big neighbouring states have had a strong influence on the shape of the Small States' private legislation. Second, the influence exercised more generally by big states at a European and international level and the impact upon Small States will be discussed. Such influence may take the form of legislation or may be more informal through its impact on academic discussions and work.

Finally, it should be noted that the question of big states' influence on Small States intimates that this is a one-way street. This presumption must clearly be rebutted. There appears to be sufficient evidence to suggest that it is possible for Small States to legally influence big states. Such influence can be observed at supranational, i.e. European or international level, where Small States may implement specific strategies. It can, however, also be observed at national level, especially where Small States make legislative changes in order to gain a specific reputation as financial centres, e.g. in the field of the law of trusts.

CONCLUDING SPEECH



PROFESSOR ROBERT VOLTERRA

Robert Volterra is a partner of Volterra Fietta, the world's only dedicated public international law firm. He teaches international boundary disputes and international foreign investment law as Visiting Professor at University College London and Visiting Senior Lecturer at King's College London. Robert's practice has been ranked for two decades in the top tier for public international law by the legal directories. He advises and represents governments, international organisations and private clients on a wide range of public international law issues, including international boundaries, sovereign and diplomatic immunities, the Law of the Sea, transboundary resources and bilateral investment treaties.

Robert has advised and represented Small States in the Americas, Africa, Europe and Asia, including the Caribbean and Pacific regions. He was lead counsel and co-agent of Barbados in its Annex VII UNCLOS arbitration against Trinidad. He represented Bahrain before the International Court of Justice. He was on the legal team of Antigua and Barbuda in its WTO case against the USA. He has advised Dubai on a number if matters, including the creation of the DIFC. His client list of Small States also includes Grenada, the Eastern Caribbean States, Macedonia, Bahrain, St Kitts and Nevis, Djibouti, the UAE, and the Pacific Island Forum States.

DISPUTE RESOLUTION INVOLVING STATES

STEPHEN FIETTA

Stephen Fietta is the principal and founder of Fietta, an international law firm based in London. He has practised at the forefront of public international law, both within government and private practice, for almost 20 years. Over that time, he has advised a number of Small States and others that are economically or otherwise disadvantaged as against their neighbours.

Stephen advises sovereign States and private clients on a many contentious and non-contentious public international law issues, including: the protection of international investments under bilateral and multilateral investment treaties, State sovereignty over natural resources; transboundary pipeline projects and the Energy Charter Treaty; sovereign and diplomatic immunity; State responsibility; international environmental law; and human rights. He has advised on cases before the International Court of Justice, International Tribunal for the Law of the Sea, European Court of Justice, European Court of Human Rights, World Trade Organization and the domestic courts of jurisdictions around the world.

A substantial part of Stephen's practice concerns the Law of the Sea. He has advised sovereign States, energy interests and other entities on maritime delimitation issues covering all continents. He was counsel for Barbados in the first-ever maritime boundary delimitation arbitration proceeding under UNCLOS (against Trinidad and Tobago, decided in 2006).

ABSTRACT

Experiences of Small States in State-to-State Dispute Resolution

Small States have been active users of international dispute resolution mechanisms like the International Court of Justice (ICJ) and those provided by the UN Convention on the Law of the Sea (UNCLOS). These mechanisms offer the promise of a level playing field in international disputes, whether the subject-matter relates to nuclear non-proliferation, environmental protection, territorial sovereignty or maritime delimitation. Before an independent and impartial court or tribunal, inequalities between disputing parties in terms of geopolitical power, trade and investment opportunities and military power are all irrelevant.

A cursory review of ICJ and UNCLOS cases involving Small States indicates that, notwithstanding their more limited budgets for pursuing legal proceedings, Small States have enjoyed success (to various degrees) over their larger rivals in many of the cases they have taken to international dispute resolution mechanisms. Mauritius (v UK), Timor-Leste (v Australia), Djibouti (v France), Saint Vincent and the Grenadines (v Guinea-Bissau) and Nauru (v Australia) are all pertinent examples. Philippines v PRC may soon prove to be another example of a relatively smaller and less powerful State resorting to international dispute resolution as a means of achieving an outcome that would otherwise have been unachievable. The relative success of Small States in such fora may help explain the growing popularity of those mechanisms among those States, including, recently, with the Marshall Islands (which has brought proceedings at the ICJ against India, Pakistan, and the UK).

An area where Small States have particularly benefited from the use of international dispute settlement mechanisms has been in the establishment of maritime boundaries with larger neighbours. Barbados, for example, brought the first ever maritime boundary arbitration under UNCLOS (against Trinidad and Tobago) and stated after the award that the government had been 'vindicated' in doing so. The award secured Barbadian fisheries access to what Trinidad and Tobago had claimed as part of its exclusive economic zone and allowed Barbados to proceed with offshore hydrocarbon licensing.

This paper will provide some highlights of the experiences of Small States in international dispute resolution over recent years, across a series of different subject matter, contexts and judicial and arbitral fora. It will discuss the benefits that international dispute resolution offers to Small States in particular, together with an assessment of which fora are best suited for the resolution of such disputes, whether between Small States exclusively or between Small States and large, powerful states such as UN Security Council P5 members.

BRIAN MCGARRY

Brian McGarry is Director of the Centre for Diplomacy and International Security at the London Centre of International Law Practice, a network of counsel and experts providing capacity-building and consultative services within developing States. He is also appointed Lecturer for the Geneva LLM in International Dispute Settlement (MIDS) at the Graduate Institute of International and Development Studies. Brian is completing a Ph.D. at the University of Geneva on third-party intervention in State-to-State adjudication, and publishes and presents regularly on topics related to investor-State and commercial practice. Prior to his current work, he was Visiting Scholar at the Lauterpacht Centre for International Law at the University of Cambridge, Arbitral Assistant at the Brussels offices of Professor Albert Jan van den Berg, and Assistant Legal Counsel at the Permanent Court of Arbitration in The Hague. Brian is an Irish and American dual national, and is admitted to the bar in New York.

ABSTRACT

Cost-Efficiency in State-to-State Dispute Resolution

While cost-saving measures have taken on systemic importance to parties and institutions in international dispute resolution involving private parties, they have surfaced in more varied ways in State-to-State dispute resolution. Utilising examples from practice, this paper identifies three such paths.

First, State-to-State dispute resolution institutions such as the International Court of Justice, International Tribunal for the Law of the Sea, and Permanent Court of Arbitration have each established trust funds for dispersing grants to applicant States on an ad hoc basis, thus mitigating the overall cost of arbitration. Discussion will focus on the extent to which the different regulations governing these three mechanisms have impacted utilisation of each forum, and will include analogy to the 'intra-State' example of the Abyei Arbitration.

Second, while the use of UN-affiliated fora in State-to-State disputes offers obvious cost savings vis-à-vis arbitration as regards the operational expenses of the adjudicative body and registry, States nevertheless remain responsible for their legal costs and may seek a number of means to defray these expenses. These range from exclusive reliance on government lawyers to other approaches raising distinct third-party funding concerns, from funding through regional organisations to the involvement of private industries which may have an interest in the resolution of boundary disputes. In this context, contrasts may be drawn to the approach of the World Trade Organization vis-à-vis the establishment of the Advisory Centre on World Trade Organization Law and the participation of external law firms and technical experts in its operations.

Finally, in State-to-State arbitration a number of approaches have been utilised to reduce tribunal fees and operational expenses. Consent to these methods raises tactical questions for the parties. These methods include those borrowed from arbitration involving private parties (such as foreclosing certain procedural options through terms of reference), as well as uniquely State-to-State approaches, such as the mutatis mutandis application to three-member tribunals of procedural rules intended for five-member tribunals (e.g. under the UN Convention on the Law of the Sea).

Taken in combination, these approaches to cost-efficiency demonstrate both the variant procedural dynamics applicable to dispute resolution between sovereigns, as well as the abiding need to innovate feasible forms of State-to-State dispute resolution in order to preserve international peace and security.

DR LAUGE POULSEN

Lauge Poulsen is a Lecturer in International Political Economy at University College London (UCL). He holds a PhD in International Relations from the London School of Economics and works on the politics of international law, foreign investment and energy. Prior to joining UCL, Lauge was a Postdoctoral Research Fellow based at University of Oxford, Nuffield College, where he remains a Senior Research Associate at the Global Economic Governance Program.

Lauge has been a visiting scholar at the Economic Studies Division of the Brookings Institution and the Law Department at the London School of Economics as well as a Senior Research Fellow at the Department of Politics and International Studies at the School of Oriental and African Studies, University of London.

He has advised both developed and developing countries on their foreign investment policies and appeared before committees at the House of Lords, House of Commons, and the European Parliament.

DOMINIC ROUGHTON

Dominic is the Global Head of Public International Law at Herbert Smith Freehills.

He is widely recognised as having a 'highly distinguished practice' that focuses in particular on international boundary disputes, sovereignty, the Law of the Sea, treaty negotiation and interpretation, as well as State-to-State and investor State dispute resolution procedures, and for which the leading legal directories describe him as being 'sought out by governments to advise them on politically sensitive inter-state disputes'.

Dominic also advises upon commercial matters particularly within the energy and mining sectors. Described as a 'serious arbitration practitioner' who is 'particularly recommended for bilateral investment treaty disputes, especially in the energy sector', after spending 12 years in Japan, Dominic has gained a particular insight into disputes with an Asian angle, particularly for oil companies with interests in Asia, and for Asian oil companies with interests outside Asia and in particular in Africa and in the Middle East.

Dominic sits as arbitrator and has acted as counsel under the auspices of many of the main arbitral institutions, including the ICC, LCIA, SCC, SIAC, JCAA, CIETAC as well as in pure ad hoc and UNCITRAL references. Many of Dominic's cases have involved jurisdictional disputes concerning parallel proceedings before other arbitral tribunals and in national courts in the United States, England and in offshore jurisdictions.

Since 2005, Dominic has been ranked by *Asia Pacific Legal 500* as a leading individual in dispute resolution and has been specifically recognised by *Chambers Global*, since 2007, as a leading individual in public international law, international arbitration and international disputes. He is also listed in Eli Lauterpacht's *Who's Who of Public International Law.*

N JANSEN CALAMITA

N Jansen Calamita is Senior Research Fellow and Director of the Investment Treaty Forum at the British Institute of International and Comparative Law. He has previously held posts on the law faculties of the University of Oxford and the University of Birmingham, and been a visiting fellow of Institute of European and Comparative Law (University of Oxford) and the University of Vienna.

Prior to entering academia, Mr Calamita served in the Office of the Legal Adviser in the US Department of State (International Claims and Investment Disputes Division) and as a member of the UNCITRAL Secretariat. He began his career in private practice in New York. He holds a Juris Doctor magna cum laude (Boston) and a Bachelor of Civil Law (Oxford). He continues to advise governments on matters relating to foreign investment and international dispute resolution.

Mr Calamita's research is in general public international law, the international law of investment, and international dispute settlement. He is a Consultative Expert to the United Nations Conference on Trade and Development and a member of the editorial board of the Yearbook of International Law and Policy (Oxford University Press).

KEYNOTE SPEECH

International Commercial Arbitration: Law for Small States?

GARY BORN

Gary Born is Chair of the International Arbitration Practice Group at Wilmer Cutler Pickering Hale and Dorr LLP and is one of the world's pre-eminent authorities on international commercial arbitration and international litigation. He has served as counsel in over 650 arbitrations, including several of the largest arbitrations in ICC and ad hoc history, and has sat as arbitrator in more than 200 institutional and ad hoc arbitrations.

Mr Born has published a number of leading works on international arbitration, international litigation and other forms of dispute resolution. He is the author of *International Commercial Arbitration* (Second Edition, Kluwer 2014), the leading treatise in the field, which has received the American Society of International Law's Certificate of Merit for High Technical Craftsmanship and OGEMID's Book of the Year award for 2009. He is an Honorary Professor of Law at the University of St Gallen, Switzerland and Tsinghua University, Beijing, and teaches regularly at law schools in Europe, Asia and North and South America.

Mr Born is President of the Singapore International Arbitration Centre (SIAC) Court of Arbitration, a member of the International Advisory Board of the Hong Kong International Arbitration Centre (HKIAC), a member of the International Arbitration Committee of the Korean Commercial Arbitration Board (KCAB), a member of the Global Advisory Board of the New York International Arbitration Center (NYIAC), and a member of the Jerusalem Arbitration Center's Court of Arbitration.

He is a member of the American Law Institute and of the Board of Trustees of the British Institute for International and Comparative Law. He has served on the Executive Council of the American Society of International Law, the Advisory Committee of the ALI's Restatement of US International Arbitration Law, the Advisory Committee of the ALI Restatement of US Foreign Relation Law (Fourth) and as co-chair of the ABA International Section, Committee on International Aspects of Litigation.

B2B DISPUTE RESOLUTION

International Litigation

JUSTICE WINSTON ANDERSON

The Honourable Winston Anderson is a judge of the Caribbean Court of Justice. He earned a Bachelor of Laws from the University of the West Indies in 1983 and has a Doctorate in Philosophy from Cambridge University in London, majoring in International and Environmental Law. In 1988, he completed a course of training at the Inns of Court School of Law in London and was called to the Bar of England and Wales, as a Barrister of the Honourable Society of Lincoln's Inn. Justice Anderson was appointed general counsel of the Caribbean Community (CARICOM) Secretariat on secondment from the University of West Indies for 2003–2006. In 2006 he was appointed professor in the Faculty of Law, University of West Indies and was called to the Bar of Jamaica in February 2007. Following his return to the Faculty of Law in 2006, he was appointed CLIC executive director.

Justice Anderson was elevated to the Bench of the Caribbean Court of Justice at King's House, Kingston, Jamaica, on June 15 2010. He was sworn in by His Excellency the Governor General of Jamaica, Sir Patrick Allen.

BARBARA DOHMANN QC

Barbara Dohmann QC (1987) is a commercial lawyer at Blackstone Chambers London. She has appeared in Bermuda, Gibraltar, Singapore, Brunei, Grand Cayman, the Bahamas. Barbara is a member of the BVI Bar, has given expert evidence to courts in the USA, Ireland, France, Germany, Austria, Dubai. She is a judge of the Civil and Commercial Court in Qatar, a member Lord Chancellor's Advisory Committee on private international law and a member of the Special Committee of the LME and of its arbitration and appeals panel. Barbara has acted as ICC and LCIA arbitrator, CEDR accredited mediator and was previously Recorder and deputy High Court Judge. She was COMBAR Chairman 1999–2001.

ALEX LAYTON QC

Alexander Layton QC is a practicing barrister at 20 Essex St in London. His practice covers a wide range of commercial and other disputes, many of which involve questions of private international law or arbitration, as well as aspects of public international law and state immunity. He is an occasional author and lecturer, being the joint General Editor of European Civil Practice and a Visiting Professor at King's College London. He is a Bencher of the Middle Temple, an FCIArb and a past chairman of trustees of the British Institute of International and Comparative Law.

ABSTRACT

Alex Layton's talk will provide an overview of the bases on which Small States with common law systems accept adjudicatory jurisdiction over foreign defendants in civil and commercial cases, and on which they recognise and enforce foreign judgments. It will then contrast these with the provisions of the 2005 Hague Convention on Choice of Court Agreements.

International Commercial Arbitration

DESLEY HORTON

Desley Horton is a Senior Associate based in the London office of Wilmer Cutler Pickering Hale and Dorr LLP.

Desley specialises in international arbitration and has represented clients in arbitration proceedings conducted under all the main institutional rules as well as ad hoc arbitrations. She has advised private clients and States in multiple jurisdictions on disputes across a range of industries. Desley also has litigation experience, particularly with clients based in the South Pacific and Australia.

Prior to practising in London, Desley was a barrister at a leading chambers in Auckland, New Zealand. Before that, she practised as a solicitor at a large law firm in New Zealand. Desley has also recently completed her LLM at Stanford Law School.

She is admitted to practise as a barrister and solicitor in New Zealand and as an attorney in New York.

ABSTRACT

International Commercial Arbitration in Pacific Island States

The use of alternative dispute resolution (ADR) mechanisms is not uncommon in Pacific Island countries (PIC). In a number of Pacific nations, ADR methods are recognised as an important component of customary law. As a means of resolving commercial disputes, arbitration is used to varying degrees depending on the jurisdiction. Arbitrations are usually domestic, and are often used in specific sectors – for example, as a tool for resolving labour and industrial disputes.

There are good reasons for PICs to encourage the growth of international arbitration in their region. International arbitration provides an opportunity for PIC to increase their attractiveness to foreign investors by ensuring there is a robust, effective and unbiased system for resolving disputes. The virtues of arbitration are well-known. In contrast to litigation before local courts, arbitration can provide increased certainty over procedure, confidentiality, neutrality of forum, greater party autonomy (including the flexibility to select the applicable rules and seat of arbitration), ease of enforcement and the ability to select arbitrators with specific expertise.

There are several potential obstacles, however, to the growth of international arbitration in PICs. These obstacles include the judiciary and legal practitioners' lack of familiarity with arbitral practice and procedure, difficulties with enforceability (only three PICs are parties to the New York Convention), and in more serious cases, concerns about the independence of the judiciary and political instability.

Desley will cover both the advantages to PICs from the greater use of international arbitration, as well as some of the practical impediments which exist.

CONWAY BLAKE

Conway Blake is an associate in the International Dispute Resolution Group at Debevoise & Plimpton LLP in London. His practice focuses on international arbitration, public international law and commercial litigation.

He represents clients in a range of contentious matters, including investor-state arbitration, public international law disputes and commercial arbitrations governed by various substantive laws and conducted under the major arbitral rules. His litigation practice focuses on representing corporates, sovereigns and international organisations, particularly in disputes raising issues of public law and public international law. While his practice spans a number of geographical regions, he has recently been involved in some of the most high profile international arbitration and investment disputes in the Caribbean, including before the Caribbean Court of Justice.

Prior to entering legal practice, he lectured in public international law at King's College London and served as a consultant on international law to several NGOs. He writes and lectures in the areas of public international law and international dispute settlement.

ABSTRACT

International Commercial Arbitration Involving Small States

International commercial arbitration is not merely a neutral mechanism for 'commercial men' to resolve their legal disputes. Rather, the system of international commercial arbitration holds out a promise to States, and particularly to developing States, of engendering and promoting economic progress. This 'promise' is implicit in the rules, discourses and practices of international commercial arbitration. In this paper, I will consider the implications of international commercial arbitration's promise for Small States, and in particular, the so-called Small Island Developing States in the Caribbean basin.

The paper argues that Small States, while initially sceptical about commercial arbitration, have increasingly come to embrace the regime, including by enacting modern arbitral statutes and seeking to establish arbitral centres. It suggests that the softening of this historical ambivalence is in no small part due to prevailing narratives and ideas about international commercial arbitration's economic potential. While remaining agnostic about this new attitude to the international arbitral regime, the paper argues that Small States should not lose sight of the unique challenges that face them generally, and particularly in the context of international dispute settlement. It concludes by offering some suggestions as to how Small States may seek to ensure that international commercial arbitration's promise does not ultimately prove illusory.

PROFESSOR JACK GRAVES

Professor Jack Graves is a faculty member at Touro Law Center, where he teaches Contracts, Business Law, Arbitration, and Digital Lawyering (technology-leveraged legal service delivery). Graves writes on domestic and international commercial law and arbitration, including his two most recent books – *Learning Contracts* (West 2014), which provides significant coverage of the CISG in a primary first-year Contracts text, and *The ABCs of the CISG* (ABA 2013), directed at general business lawyers. Graves also serves as Director of Digital Legal Education at Touro, leading initiatives to add online offerings of traditional law courses, as well as innovative new courses in 'digital lawyering.'

He is currently working on turning his teaching textbook on International Sales Law & Arbitration into an interactive online course for fully asynchronous delivery. Graves brings a multi-dimensional perspective to his work, with a unique blend of experiences in business management, commercial and corporate law practice, and legal education.

ABSTRACT

The Bilateral Arbitration Treaty Regime – the Answer for SMEs in Small States

A few years ago, I suggested arbitration as a default mechanism for resolving international commercial disputes,[3] and Gary Born more fully developed the idea by proposing a specific regime for bilateral arbitration treaties (BATs) that would make arbitration the default rule within their scope.[4] More recently, Petra Butler and Campbell Herbert pointed out that arbitration was uniquely valuable in providing access to justice to small and medium-sized enterprises, doing so in the context of a relatively small country, New Zealand.[5] I very much agree with Dr Butler and Mr Herbert that arbitration, as a default rule, would be uniquely beneficial to small and mid-sized enterprises (SMEs), and propose to add (1) further support for the basic premise; and (2) further thoughts for realising this benefit.

Virtually every global legal system allows parties to choose, as a matter of contract, either courts or arbitration as a final and binding means of dispute resolution. However, SMEs are particularly likely to draft agreements that fail to address dispute resolution. The parties may fail to recognise the need when concluding an agreement, or may even consider the idea unseemly in the context of a common commercial undertaking. Thus, the 'default' rule regarding dispute resolution is particularly important to an SME. As Dr Butler points out, arbitration provides a variety of obvious benefits to the SME over court adjudication. However, international arbitration also provides increasingly effective opportunities to resolve disputes at significantly lower costs by using available technology.

A typical arbitration proceeding involving an international commercial dispute will involve individuals from at least three countries (two parties and an arbitrator from a 'neutral' country). To the extent it may involve additional arbitrators or witnesses, the geographic complexity is multiplied. This geographic complexity may add, in a variety of ways, to the time and cost required to resolve the dispute. However, the use of technology can dramatically reduce such time and costs, allowing complete resolution of a dispute, including any necessary hearing(s), from the 'desktops' of each of the participants involved (parties, counsel, witnesses, arbitrator(s)). An SME from a small country has a much improved opportunity to participate in global commerce when it has a quick, efficient, and cost-effective process for resolving its commercial disputes. Appropriate use of technology can significantly enhance that process.

3 Jack Graves, *Court Litigation over Arbitration Agreements: Is it Time for a New Default Rule?* 23 AM. REV. OF INT'L ARB. 113 (2012)

4 Gary Born, *BITS, BATS and Buts*, (Kiev Arbitration Days 2012, Kiev, 15, 16 November 2012); see also Gary Born at University of Pennsylvania Law School 'BITS, BATs and Buts – Reflections on International Arbitration' YouTube video <http://youtube/ZdRjW-cPQB_s >.

5 Petra Butler and Campbell Herbert, *Access to Justice v Access to Justice for Small and Medium-Sized Enterprises: The Case for a Bilateral Arbitration Treaty*, 26 NEW ZEALAND UNIVERSITIES L. REV. 186 (2014).

International Mediation

GEOFF SHARP

Geoff is one of *Who's Who Legal* Top 10 Global Commercial Mediators for 2013, 2014 and 2015.

He is a door tenant of Brick Court Chambers and mediates in New Zealand and the Asia Pacific. He is one of New Zealand's busiest commercial mediators being voted by the profession the inaugural Mediator of the Year in 2012.

Geoff has a particular connection with Singapore. He mediates there often and is a member of Singapore Mediation Centre's International Panel of Mediators (SMC), Singapore International Mediation Centre Panel of Mediators (SIMC) and also the Dispute Resolution and Compensation Panel of the National Electricity Market of Singapore.

He is honoured to be a past LEADR fellow and the first Australasian to be elected a Distinguished Fellow of the International Academy of Mediators.

He is admitted to the New Zealand Bar, the Supreme Court of Victoria, the High Court and Federal Court of Australia.

Geoff has trained mediators and lawyers in New Zealand, Samoa and the Cook Islands, Australia, USA, Europe, United Arab Emirates, Malaysia, Hong Kong, Singapore and Thailand and has consulted widely to the New Zealand Government on aspects of public sector mediation.

ABSTRACT

Commercial Mediation in the Asia Pacific

When businesses in Small States are involved in commercial disputes with foreign parties they face many well known barriers to expeditious resolution – not least time and cost, to say nothing of the potential loss of valuable cross-border relationships that have taken years to build.

Others will outline the almost insurmountable hurdles faced by businesses in Small States if they are required to resolve matters by cross-border litigation and the distinct advantages of including in their contract a clear pathway by which any disputes between them are to be dealt with, usually by avoiding local courts and including some form of alternative dispute resolution.

Often a well drafted dispute resolution clause will have three tiers – requiring first direct discussions between the parties at CEO level in an attempt to resolve matters and if not successful, mediation and if no agreement in that forum final resolution by binding arbitration.

Including such a clause at the start of the trading relationship has obvious advantages when disputes arise. Often however small businesses simply do not include such clauses in their documentation and find themselves embroiled in complex cross-border litigation by default involving multiple proceedings in different jurisdictions with teams of lawyers to match.

Whether the parties have had the foresight to include a dispute resolution clause in the documentation recording their trading relationship or not, cross-border mediation presents as an attractive option to small businesses from small countries facing a dispute, often with a better resourced party on the other side.

An independent and qualified neutral mediator can be arranged quickly at a fraction of the cost of international litigation or arbitration and mediation allows parties to focus on the commercial differences between them rather than frame the dispute in legal terms as one would in litigation or arbitration.

A variety of administering institutions (ICC, SIMC and others) can assist in convening parties with the minimum of fuss and provide them with the required information about mediation or the parties can simply arrange an ad hoc mediation themselves.

Geoff will cover the advantages of cross-border mediation for businesses in Small States as well as some of the practical elements of international mediation.

MICHEL KALLIPETIS QC

Michel was the former Head of Littleton Chambers, and has 40 years' experience as a practising barrister in the field of general commercial, professional negligence and employment work. He is now a full time mediator and recognised in The Legal Directories as an expert in his field in Mediation both in the UK and internationally. He is a Distinguished Fellow and a director of the International Academy of Mediators. He was the first Chairman of the England and Wales Bar Council ADR Committee, a member of the working party which drafted the EU Code of Practice for Mediators, and gave expert opinion to JURI, the legal service committee of the European Parliament, prior to its adopting the European ADR Directive. In 2012 he was invited to join the Singapore Mediation Centre's International Panel of Mediators. Michel is a founder member of Independent Mediators Ltd. He is a Grade A advocacy trainer and has conducted advocacy training in England and Wales, South Africa, Pakistan, Jamaica, Trinidad, the Bahamas, Hong Kong and Singapore.

ABSTRACT

Mediation in the Channel Islands

Experience
Range of disputes and the wide distribution of Small States.

General problems
Finding a true neutral.

Trusting clients to a competitor.

Confidentiality and commercially sensitive information.

Lawyers and their Clients personal and different difficulties with local mediator.

'Home grown' mediators may not have the necessary breadth of experience required for the dispute, and their 'style' is too familiar for some.

Difficulties with mediators in Small States still be in practising as attorneys, solicitors or members of the Bar.

Particular problems
Local laws and customs.

Local social and personal customs and traits.

Summary
This will be an in-depth look at some of the problems encountered by some of the most experienced mediators with hints on how to deal with them.

PROFESSOR NADJA ALEXANDER

Professor Nadja Alexander is an award winning author and educator, a conflict intervention professional, and an independent adviser on mediation policy to international bodies and national governments.

Nadja has worked in conflict resolution settings in more than 30 countries across Africa, Asia, Europe, the Americas and Oceania. *Who's Who Legal* has identified her as 'highly sought after' for her expertise in cross-cultural disputes. In terms of Small States, Nadja has worked extensively in the Melanesia and Polynesia, primarily in Papua New Guinea, Vanuatu, Fiji, the Solomon Islands and Samoa. She also sits on international commercial mediation panels in Singapore, Hong Kong, Samoa and Australia.

In terms of her academic profile, Nadja is Director of the Singapore International Dispute Resolution Academy, and holds university appointments in the United States and Australia. She has taught mediation at universities and in corporate settings all over the world and in 2015 was a Humboldt Fellow at the Max Planck Institute in Germany.

Nadja has published more than 10 books and 100 papers on conflict resolution and her work has appeared in the English, German, Russian, French, Arabic and Chinese languages. Nadja is editor of the international book series, *Global Trends in Dispute Resolution* and co-editor of the *Kluwer Mediation Blog*. Her major legal work, *International Comparative Mediation: Legal Perspectives*, won the CPR Award for Outstanding ADR book (New York 2011).

Nadja has been engaged as an dispute resolution adviser by international organisations such as the EU Commission, the International Finance Corporation, US Aid and other agencies. She is a member of the Independent Standards Board of the International Mediation Institute and Vice-Chair of the IBA Mediation Committee.

Described as a practical thinker and a thinking practitioner, Nadja is known for the passion, energy and creativity she brings to her various roles.

TONY WILLIS

Tony Willis is an eminent commercial mediator, based in London practising in the UK as well as many other jurisdictions. He has been practising as a mediator for more than 20 years – and for the last 17 years full-time, after a long and successful career as a litigation partner in Clifford Chance where he was a full-time managing partner (1987–1989) and led the litigation practice (1990–1997). Since his call to the Bar in 2004 he has practised from Brick Court Chambers.

For several years Tony Willis has been recognised by all the independent legal directories as being at the top of his field. He has won the 2012, 2013, 2014, and 2015 *Who's Who Legal* awards for Global Commercial Mediator of the Year. He has mediated in the UK and elsewhere in Europe and in jurisdictions such as New York, Hong Kong, the Bahamas, Ireland, Romania, the United Arab Emirates, Jersey and Guernsey.

ORGANISERS

DR PETRA BUTLER

Dr Petra Butler is Associate Professor at the Victoria University of Wellington School of Law and Co-Director of the Centre for Small States at Queen Mary University of London. Petra specialises in domestic and international human rights, public and private comparative law, and private international law with an emphasis on international commercial contracts. She has published extensively in those areas, including, together with Andrew Butler, The New Zealand Bill of Rights Act 1990: a commentary and, together with the late Professor Peter Schlechtriem, UN Law on International Sales. As a fully qualified German and New Zealand lawyer, Petra advises public and private clients in her areas of expertise and has been involved in some of New Zealand's recent high profile cases. She is a member of a number of advisory boards of human rights NGOs.

Petra is New Zealand's CLOUT correspondent for the CISG and the United Nations Convention on the Use of Electronic Communications in International Contracts. Petra has held visiting appointments inter alia at the Chinese University of Political Science and Law (Beijing), the University of Melbourne, Bucerius Law School (Hamburg), Universidad de Navarra (Pamplona), the University of Montevideo, Hamid bin Khalifa University (Doha), and Northwestern University Law School (Chicago). She is a former Scholar-in-Residence at Wilmer Cutler Pickering Hale and Dorr LLP in London.

DR EVA LEIN

Dr Eva Lein is the Herbert Smith Freehills Senior Research Fellow in Private International Law at BIICL, leading the private international law department. She joined the Institute in 2009. Her fields of expertise are private international law, comparative law and European private law. Eva is a qualified German lawyer and has been lecturing in various countries. She is Honorary Senior Lecturer at Queen Mary University of London; at Queen Mary University of London, Institute in Paris; and a Visiting Professor at Université Paris II Panthéon-Assas. She also regularly speaks at international conferences and seminars.

Eva has published extensively on topical issues of private international law with a special focus on international litigation, collective redress and European conflict of laws. Recent publications include the commentary *The Brussels I Regulation Recast*, Oxford University Press 2015, 836 pages (with A Dickinson, University of Oxford) and *Collective Redress in Europe – Why and How?*, BIICL 2015 (with D Fairgrieve, M Otero Crespo and V Smith).

RHONSON SALIM

Rhonson is currently a Lecturer in Law at the Open University Law School. He previously worked as a Teaching Fellow in Law at Coventry University London Campus. Rhonson's research interests are in the areas of private international law (especially within the Anglo-Caribbean region), unjust enrichment and international arbitration. Rhonson is particularly interested in jurisdiction, choice of law, recognition and enforcement issues. Prior to teaching, Rhonson worked as a research assistant for the Private International Law Programme of the British Institute of International and Comparative Law. His work at BIICL involved research on a variety of issues in private international law and international arbitration. His current research work looks at the process of integration in Small States and collective redress within the EU.