



Asian Institute of International Financial Law (AIIFL) jointly with  
 USydney Law School  
*A follow-up symposium on 18 November 2018*

## Challenges and Opportunities for International Commercial Arbitration and Investor-State Dispute Settlement in the Asia-Pacific Region

15 July 2019 (Monday)  
 1:30 PM - 5:35 PM

New Venue: [Room 319, 3/F Cheng Yu Tung Tower](#)  
 The University of Hong Kong

Building on Reyes & Gu (eds), *The Developing World of Arbitration: A Comparative Study of Arbitration Reform in the Asia-Pacific* (Hart, 2018),<sup>i</sup> this symposium examines more recent challenges for international commercial arbitration (ICA), especially the proliferation of international commercial courts, the 2018 UN Convention on enforcement of mediated settlement agreements, and dispute resolution for the Belt & Road initiative. The main focus is on **Hong Kong** and **Singapore** (competing jurisdictions in the top “Stage 4” for ICA venues, as identified by Reyes & Gu), **Australia** (a “Stage 3” venue), **China** and **Japan** (“Stage 2” venues).

The symposium will also compare approaches in these jurisdictions to investor-state dispute settlement (ISDS). Building on Chaisse and Nottage (eds) *International Investment Treaties and Arbitration Across Asia* (Brill, 2018),<sup>ii</sup> participants will chart evolving treaty practices and high-profile ISDS cases (including eg in **Indonesia**), assess whether these do or might impact on public attitudes even towards ICA or other forms of arbitration, and explore alternatives or complements to ISDS.

### *Programme*

1:15	<b>Registration</b>	
1:30-1:40	<b>Workshop Welcome</b>	<b>Prof Shahla Ali</b> (HKU)/ <b>Prof Luke Nottage</b> (USydney)
1:40-2:00	“International Commercial Arbitration in <b>Australia</b> : Judicial Control over Arbitral Awards” <sup>iii</sup>	<b>Prof Luke Nottage</b> , (USydney) with Dr Nobumichi Teramura (Adelaide U) & James Morrison (ACICA)
2:00-2:20	“An <b>Australian</b> Perspective on Investment Treaty Negotiations and Investment Arbitration” <sup>iv</sup>	<b>Prof Chester Brown</b> (USydney)
2:20-2:40	“Developing <b>Japan</b> as a Regional Hub for International Dispute Resolution: Dream Come True or Daydream?” <sup>v</sup>	<b>Prof James Claxton</b> (Kobe U), with Prof Nottage and Dr Teramura

2:40-3:00	“Procedural Models to Upgrade BIT’s: <b>China’s</b> Experience” <sup>vi</sup>	<b>A/Prof Jeanne Huang</b> (USydney)
3:00-3:20	“ <b>China</b> and International Investment Arbitration: Chinese Arbitral Institutions and ISDS Rules” <sup>vii</sup>	<b>Prof Vivienne Bath</b> (USydney)
3:20-3:40	<b>Break</b>	
3:40-4:00	“ <b>China’s</b> Belt and Road Development and A New International Commercial Arbitration Initiative in Asia” <sup>viii</sup>	<b>A/Prof Weixia Gu</b> (HKU)
4:00-4:20	“International Commercial Arbitration and ISDS Developments in <b>Hong Kong</b> in the Context of the Belt and Road Initiative”	<b>Prof Shahla Ali</b>
4:20-4:40	“Can the <b>Singapore</b> International Commercial Court Play a Role in ISDS?”	<b>Anselmo Reyes</b>
4:40-5:25	<b>Panel discussion</b> (with brief presentations):  “ISDS in Recent Arbitration of International Investment Agreements Involving Asian countries” (Chiann Bao)  “Contract claims v Treaty claims: can the investor have it both ways?” (Olga Boltenko)	Including <b>Chiann Bao, Olga Boltenko, Dr Dean Lewis</b>
5:25-5:35	Closing Remarks	<b>Profs Ali &amp; Nottage</b>
6pm	Dinner by HKU at The Square in Exchange Square	Invited speakers

Updates/abstracts: via [http://blogs.usyd.edu.au/japaneselaw/2019/03/new\\_frontiers\\_intldr2.html](http://blogs.usyd.edu.au/japaneselaw/2019/03/new_frontiers_intldr2.html)

### **SPEAKER BIOS**

**Anselmo Reyes** practises as an arbitrator. He was Professor of Legal Practice at Hong Kong University from October 2012 to September 2018. Before that, he was a judge of the Hong Kong High Court from 2003-12, when he was in charge of the Construction and Arbitration List (2004-8) and the Commercial and Admiralty Lists (2008-12). He was Representative of the Hague Conference on Private International Law’s Regional Office Asia Pacific from April 2013 to July 2017. He became an International Judge of the Singapore International Commercial Court in January 2015 and an Overseas Bencher of the Inner Temple in October 2015.

**Professor Chester Brown** is Professor of International Law and International Arbitration at the University of Sydney Law School, and the Co-Director of the Sydney Centre for International Law. He is also a Barrister at 7 Wentworth Selborne Chambers, Sydney, and an Overseas Associate of Essex Court Chambers, London. He teaches and researches in the fields of public international law, international dispute settlement, international arbitration, and international investment law. He also maintains a practice in these fields, and has been involved as counsel in proceedings before the International Court of Justice, the Iran-United States Claims Tribunal, inter-State and investor-State arbitral tribunals, as well as in inter-State conciliation proceedings and international commercial arbitrations.

**Chiann Bao** is an independent arbitrator and a member of Arbitration Chambers in Hong Kong and London. As a New York-qualified Mandarin speaking attorney, Ms. Bao has spent almost fifteen years working in international arbitration in London, New York and Hong Kong. In private practice, Ms. Bao focused on complex international arbitration and litigation, acting as counsel or arbitrator for corporates and state-owned enterprises in a range of disputes in sectors including technology, shareholder and joint venture disputes, finance, joint venture, real estate, construction, and general contractual disputes. She advised clients on all aspects of the arbitral process under the major arbitral rules, including UNCITRAL, ICC, HKIAC, SIAC, and CIETAC.

From 2010 to 2016, Ms. Bao served as Secretary-General of the Hong Kong International Arbitration Centre, where she managed hundreds of arbitrations before tribunals in Asia, with a specific focus in China. During her tenure, HKIAC was recognized as the most frequently used arbitral institution outside of Europe, most improved institution and ranked as the third best arbitral institution worldwide by the 2015 International Arbitration Survey, conducted by Queen Mary University of London. Ms. Bao was instrumental in overseeing key initiatives such as the revision of the HKIAC Administered Arbitration Rules, the establishment of the tribunal secretary accreditation program, and the opening of the HKIAC Seoul and Shanghai offices.

Ms. Bao currently serves as Vice President of the International Chamber of Commerce (ICC) Court of Arbitration and is a member of the ICC Belt and Road Commission. She regularly speaks and writes on the topic of international arbitration and is a co-author to "A Guide to the HKIAC Rules," published by Oxford University Press. She is a frequent lecturer and taught at the University of Hong Kong as an adjunct professor from 2014-2016.

**Dr. Dean Lewis** is a practicing lawyer based in Hong Kong for 35 years. Dean is co-head of Pinsent Masons International Arbitration Practice and is particularly interested in the UNCITRAL Model Law and how it has helped the development of a harmonious approach to jurisprudence in those jurisdictions that have adopted it. This interest culminated in his book: "The Interpretation and Uniformity of the UNCITRAL Model Law on International Commercial Arbitration: Focusing on Australia, Hong Kong and Singapore

**Professor James Claxton** is a Professor of Law at Kobe University in Japan as well as an independent arbitrator and mediator. He teaches and researches in the fields of international investment law, business and human rights, and international dispute settlement. Previously, he was legal counsel at the International Centre for Settlement of Investment Disputes (ICSID) in Washington and attorney in the international arbitration practices of law firms in Paris. James regularly advises dispute resolution institutions in Asia and is a member of various working groups devoted to improving international dispute resolution systems.

**Dr. Jeanne Huang** is an Associate Professor at the University of Sydney Law School. Her previous positions include Senior Lecturer at the University of New South Wales in Australia, Associate Professor and Associate Dean at Shanghai University of International Business and Economics School of Law in China. She was awarded Pujiang Rencai (Pujiang Scholar) in 2011 and Shuguang Xuezhe (Dawn Scholar) in 2013 by Shanghai Education Committee.

She obtained her Doctor of Juridical Science (S.J.D.) degree from Duke University School of Law in the US in 2010. She was a Foreign Research Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg, Germany, and also

had research experience at The Hague Academy of International Law, and the Academy of International Arbitration Law, Paris, France.

She teaches and researches in the fields of private international law, e-commerce regulation, international investment law and dispute resolution (international litigation and arbitration). She has published four books including *Interregional Recognition and Enforcement of Civil and Commercial Judgments: Lessons for China from US and EU Laws*, published by Hart Publishing in 2014. Her articles have appeared in many peer-reviewed law journals, such as *Journal of Private International Law* and *Journal of International Economic Law*. Eleven of her articles are indexed by SSCI. Her research has been heavily funded by China National Social Science Fund (equivalent to Australia ARC Fund), China Ministry of Education, the China Law Society, Shanghai Government Development and Research Center Fund, and Shanghai Philosophy and Social Science Fund. In 2015, she won the First Prize of Excellent Scholarship awarded by the China Society of Private International Law and the Nomination Award of the Dong Biwu Prize for Youth Research in Law.

In addition, she works as an arbitrator at the Hong Kong International Arbitration Center, Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center), Nanjing Arbitration Commission and Xi'an Arbitration Commission. She also serves as expert witness on issues of private international law and Chinese law in courts in Australia and the US.

**Dr Luke Nottage** specialises in comparative and transnational business law (especially arbitration and product safety law), with a particular interest in Japan and the Asia-Pacific. He is Professor of Comparative and Transnational Business Law at Sydney Law School, founding Co-Director of the Australian Network for Japanese Law (ANJeL), and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney (CAPLUS). Luke studied at Kyoto University (LLM) and Victoria University of Wellington (BCA, LLB, PhD), and first taught at the latter and then Kyushu University Law Faculty, before arriving at the University of Sydney in 2001. He has held fellowships at other leading institutions in Japan and Australia as well as Canada, Germany, Italy and Thailand. Publications include *Product Safety and Liability Law in Japan* (Routledge, 2004), *International Arbitration in Australia* (Federation Press, 2010, eds), *Foreign Investment and Dispute Resolution in Asia* (Routledge, 2011, eds), *International Investment Treaties and Arbitration Across Asia* (Brill, 2018, eds), *Contract Law in Japan* (Kluwer, 2019, with Hiroo Sono et al), and 11 other books.

Luke has or had executive roles in the Australia-Japan Society (NSW), the Law Council of Australia's International Law Section, the Australian Centre for International Commercial Arbitration, and the Asia-Pacific Forum for International Arbitration. Luke is also a Rules committee member of ACICA and listed on the Panel of Arbitrators for the AIAC (formerly KLRCA), BAC, JCAA, KCAB, NZIAC, SCIA and TAI. Luke serves on Working Group 6 (examining arbitrator neutrality) for the Academic Forum on ISDS. He has consulted for law firms world-wide, the EC, the OECD, the UNDP, ASEAN and the Japanese government; and has made numerous public Submissions to the Australian government on investment treaties, arbitration and consumer law reform. He qualified as a lawyer in New Zealand in 1994 and in New South Wales in 2001.

## **Olga Boltenko**

Chairperson, ICC Hong Kong Commercial Law and Practice Committee

Ms. Boltenko is a registered foreign lawyer with Fangda Partners in Hong Kong. She specialises in investment arbitration. She has acted as legal counsel in numerous investor-state disputes, including under the auspices of the Permanent Court of Arbitration, and as tribunal secretary in dozens of commercial disputes, both ad hoc and institutional (including SIAC, ICC, HKIAC, SCC), in a wide array of industries including oil and gas, infrastructure, construction, telecommunications and pharmaceuticals. She is an adjunct lecturer at the University of Hong Kong. She chairs the ICC Hong Kong Commercial Law and Practice Committee. She is listed as arbitrator on the HKIAC list of arbitrators, and on the AIAC, SIAC, and CIETAC panels of arbitrators.

**Dr. Shahla Ali** is Professor and Associate Dean (International) and Deputy Director of the LLM in Arbitration and Dispute Resolution in the Faculty of Law at the University of Hong Kong. Her research and practice center on questions of governance, development and the resolution of cross-border disputes in the Asia Pacific region. Shahla is the author of *Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice* (Edward Elgar, 2018), *Governing Disasters: Engaging Local Populations in Humanitarian Relief* (CUP, 2016); *Consumer Financial Dispute Resolution in a Comparative Context* (CUP, 2013) and *Resolving Disputes in the Asia Pacific Region* (Routledge, 2010) and writes for law journals in the area of comparative ADR. She has consulted with USAID, IFC/World Bank and the United Nations on issues pertaining to access to justice, peace process negotiation training and land use conflict resolution. She serves as a bilingual arbitrator (English/Chinese) with CIETAC, HKIAC (ADNDRC), SIAC and is a member of the IBA Drafting Committee for Investor-State Mediation Rules, the DOJ Mediation Regulatory Framework Sub-Committee, the UN Mediation Roster and the FDRC Appointments Committee. Prior to HKU, she worked as an international trade attorney with Baker & McKenzie LLP in its San Francisco, California office. She received her JD and PhD from UC Berkeley in Jurisprudence and Social Policy and BA from Stanford University.

**Professor Vivienne Bath** is Professor of Chinese and International Business Law at Sydney Law School and Director of the Centre for Asian and Pacific Law at the University of Sydney. Her teaching and research interests are in international business and economic law, private international law and Chinese law. She has first class honours in Chinese and in law from the Australian National University, and an LLM from Harvard Law School. She has also studied in China and Germany and has extensive professional experience in Sydney, New York and Hong Kong, specialising in international commercial law, with a focus on foreign investment and commercial transactions in China and the Asian region. Representative publications include: R Burnett and V Bath, *Law of International Business in Australasia* (Sydney, Federation Press 2009); V Bath, 'Foreign investment, the national interest and national security – foreign direct investment in Australia and China,' (2012) 34 *Sydney Law Review* 5-34, "Overlapping Jurisdiction and the Resolution of Disputes before Chinese and Foreign Courts," (2015-2016) 17 *Yearbook of International Private Law* 111-150 and "The South and Alternative Models of Trade and Investment Regulation – Chinese outbound investment and approaches to international investment agreements" , in Fabio Morosini and Michelle Ratton Sanchez Badin (eds), *Recalibrating International Investment Law: Global South Initiatives*, Cambridge University Press, 2018.

**Dr. Weixia Gu** is Associate Professor at Law Faculty, HKU. Her research interests are in international arbitration and private international law. She serves as Co-Director of the Master of Common Law Programme at the Faculty of Law. Her research interests are in arbitration and commercial dispute resolution, conflict of laws, civil justice, and cross-border legal issues, with a particular focus on China, Hong Kong and Asia. She is an Articles Editor of the Hong Kong Law Journal.

Bilingual in English and Chinese, she has published widely in her specialized fields in both languages. Her recent works include *The Developing World of Arbitration: A Comparative Study of Arbitration Reform in the Asia Pacific* (Hart, 2018, co-edited with Professor Anselmo Reyes); *Arbitration in China: The Regulation of Arbitration Agreements and Practical Issues* (Sweet & Maxwell, 2012) and *Legal Development and Interaction in Greater China* (China Review Academic Press, 2009, co-edited with Professor Xianchu Zhang). Prior to joining the Law Faculty, Dr Gu was the youngest recipient in Hong Kong of the Fulbright Award from the United States Department of State and had been selected as an Honorary Young Fellow of the New York University. She had also held visiting scholar posts at Cornell and Fordham Universities where she researched and taught on commercial arbitration.



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<sup>i</sup> <https://www.bloomsbury.com/au/the-developing-world-of-arbitration-9781509910199/> (introductory chapter at <https://ssrn.com/abstract=3183550>)

<sup>ii</sup> <https://brill.com/view/title/36129> (introduction partly at <https://ssrn.com/abstract=2862272>)

<sup>iii</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3379494](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3379494). See also

<http://arbitrationblog.kluwerarbitration.com/2018/09/20/australias-incapacity-international-commercial-arbitration/>.

<sup>iv</sup> See also: Nottage, Luke R. and Ubilava, Ana, Costs, Outcomes and Transparency in ISDS Arbitrations: Evidence for an Investment Treaty Parliamentary Inquiry (August 6, 2018). *International Arbitration Law Review*, Vol. 21, Issue 4, 2018; Sydney Law School Research Paper No. 18/46. Available at SSRN: <https://ssrn.com/abstract=3227401>; Kawharu, Amokura and Nottage, Luke R., Renouncing Investor-State Dispute Settlement in Australia, Then New Zealand: Déjà Vu (February 1, 2018). Sydney Law School Research Paper No. 18/03. Available at SSRN: <https://ssrn.com/abstract=3116526>

<sup>v</sup> Claxton, James and Nottage, Luke R. and Teramura, Nobumichi, Developing Japan as a Regional Hub for International Dispute Resolution: Dream Come True or Daydream? (December 11, 2018). *Journal of Japanese Law*, Issue 47, 2019 (Forthcoming); Sydney Law School Research Paper No. 19/01. Available at SSRN: <https://ssrn.com/abstract=3299097>

<sup>vi</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3087837](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3087837)

<sup>vii</sup> Abstract: In 2017, the China International Economic and Trade Arbitration Commission (CIETAC) and a number of other Chinese arbitration institutions issued rules to facilitate the hearing of international investment disputes involving states and investors under the auspices of CIETAC and other arbitration institutions. This paper looks at these rules and considers their relevance and utility in the context of the Belt and Road and China's practice in relation to investment, both domestically and internationally.

<sup>viii</sup> 'China's Belt and Road Development and A New International Commercial Arbitration Initiative in Asia' 51(5) *Vanderbilt J Trans L*, <https://www.vanderbilt.edu/jotl/2018/11/chinas-belt-and-road-development-and-a-new-international-commercial-arbitration-initiative-in-asia/>