



INTERNATIONAL CONFERENCE ON ARBITRATION DISCOURSE AND PRACTICE IN ASIA 2015

DATE 20-21.8.2015

VENUE AUDITORIUM
KUALA LUMPUR REGIONAL
CENTRE FOR ARBITRATION

Bangunan Sulaiman, Jalan Sultan Hishamuddin
50000 Kuala Lumpur, Malaysia

TIME 10.00AM-5.00PM
(Registration starts at 9.30am)

CONFERENCE FEE

Local	RM 600	Overseas	USD 300
Local student	RM 250	Overseas student	USD 200

The conference fee covers lunch, coffee and tea breaks, and proceadia.
For students, proof of student status is required.

ORGANISING COMMITTEE

- + Prof. Azirah Hashim, University of Malaya
- + Prof. Vijay K. Bhatia, President of the Association of LSP and Professional Communication for the Asia Pacific Region
- + Prof. Datuk Sundra Rajoo, Director of KLRCA
- + Mr. Philip Koh, Senior Partner at Mah-Kamariyah & Philip Koh
- + Prof. Mariacarla Giorgetti, University of Bergamo
- + Prof. Maurizio Gotti, University of Bergamo

WHO SHOULD ATTEND?

- + Arbitration Practitioners
- + Lawyers
- + Judges
- + Academics
- + Postgraduate Students
- + Linguistics Scholars and Students

The Centre for ASEAN Regionalism University of Malaya (CARUM) and Kuala Lumpur Regional Centre for Arbitration (KLRC) are pleased to invite you to the "International Conference on Arbitration Discourse and Practices in Asia 2015" to be held in Kuala Lumpur, Malaysia on August 20-21, 2015.

In the present-day globalization of trade and commerce, International Arbitration is being regarded as an economical and effective alternative to litigation for settling commercial disputes. This alternative dispute resolution method, with conciliation and mediation, has become widely adopted for the settlement of domestic and international disputes in Asia. Indeed, international business exchanges between and with Asian countries have increased enormously over the last few years and even the recent economic recession has not slowed down this growth.

As a natural consequence, this increase in business deals and contracts has brought about an increasing number of trade disputes that are being resolved through arbitration.

In order to explore the interrelations between discourses and practices in the field of arbitration in Asia, Centre for ASEAN Regionalism University of Malaya (CARUM) and Kuala Lumpur Regional Centre for Arbitration (KLRC) will be hosting an International Conference on Arbitration discourse and practices which is open to scholars and practitioners from different disciplinary and professional backgrounds. The conference will investigate the extent to which the 'integrity' of arbitration principles typical of international commercial arbitration practice is maintained in various Asian contexts, focusing in particular on arbitration norms and practices as they are influenced by local juridical, cultural and linguistic factors from a number of different perspectives, such as legal, discourse analytical, as well as arbitration practice.

This conference is organized in collaboration with a research project on Asian Arbitration Law / Discourse which is being conducted at the University of Bergamo (Italy) led by Professors Mariacarla Giorgetti and Maurizio Gotti, together with Professor Vijay Bhatia.

OBJECTIVE

The main objective of the ICAAD Conference is to analyze arbitration in action by undertaking a legal, contextual and discourse-based analysis of data drawn from arbitration practice.

THE PURPOSE OF THIS INTERNATIONAL CONFERENCE IS TO

- + Bring together researchers and practitioners in language and the law from around the world to participate in a dialogue about Mediation and collaboration in the context of Arbitration and Practices in Asia.
- + Provide opportunities for collaboration between arbitration practitioners, judges, law professional and academics from various fields including Arbitration, Mediation, Litigation and professionals who are interested in enhancing cooperation between judges and lawyers and cultures.



ONLINE REGISTRATION :

umconference.um.edu.my/ICAAD2015

Open until **15 July 2015**

Registration is only complete upon receipt of payment and your details.

Please send us the proof of payment (and proof of status if applicable) to ICAAD2015@gmail.com so that your registration can be confirmed as early as possible.

CONTACT :

ICAAD2015 Secretariat

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PRESENTERS' ABSTRACT TITLES

Mr. Panji Prasetyo

Challenges to Arbitration in Indonesia:
Identification of the Modus Operandi and Practical Solution

Dr. Subramanian Ramamurthy

East meets West: A discourse-based analysis of the
Singapore Arbitration Act

Anti-Arbitration Injunctions and Its Compatibility with the
Indian Arbitration and Conciliation Act, 1996: The Future
Directions for Indian Law and Policy

Dr. Christopher To

The Practice of Res Judicata and Issue Estoppel in
International Arbitration

Dr. Ulisse Belotti

A contrastive corpus-based analysis of Italian and
Singaporean arbitration practice narratives

Prof. Janet Ainsworth

The Structural Dynamics of Justice: Will the "Haves" come
out ahead of the "have-nots" in international arbitration?

Assoc. Prof. Girolamo Tessuto

East meets West: A discourse-based analysis of the
Singapore Arbitration Act

Mr. Ashok Kumar Singh and Mr. Nishtha Sharma

Production And Discovery Of Documents In Arbitration
In India

Mr. Jae Sung Lee

Recent arbitration law reforms in Asia and challenges

Mrs. Jaby C. Ruangsawasdi

The World of Party Autonomy, the Role of "Good"
Arbitrators and Justice in the System of International
Investment Arbitration

Dr. Shahrizal M Zin MCI Arb

Legalization of International Arbitration in Asia: Paving
the Way for Cultural Homogenization?

Prof. Mariacarla Giorgetti

Arbitration in Hong Kong

Dr. Patrizia Anesa

A multidisciplinary approach to the investigation of
arbitration in India

Prof. Maurizio Gotti

Linguistic and Cultural Aspects of China's Arbitration Law

Prof. Stefania Maria Maci

"It is amply clear that there is no convincing evidence to
infer that". Evidentiality in Indian Arbitral awards

Dr. Tarja Salmi-Tolonen

Observations on the concepts of impartiality and
independence

Mrs. Béatrice Castellane

Do Arbitrators and Counsels speak the same Language?

Dr. Rajesh Sharma

Emerging Trends in Dispute Settlement Mechanism in the
FTAs of Asia

Dr Charu Sharma & Mr. Gajinder Kumar

Exploring the trends in Environmental Arbitration vs
Commercial Arbitration legal jurisprudence in India

Dr. LIU, Xiaochun & Dr. CHEN, Rui

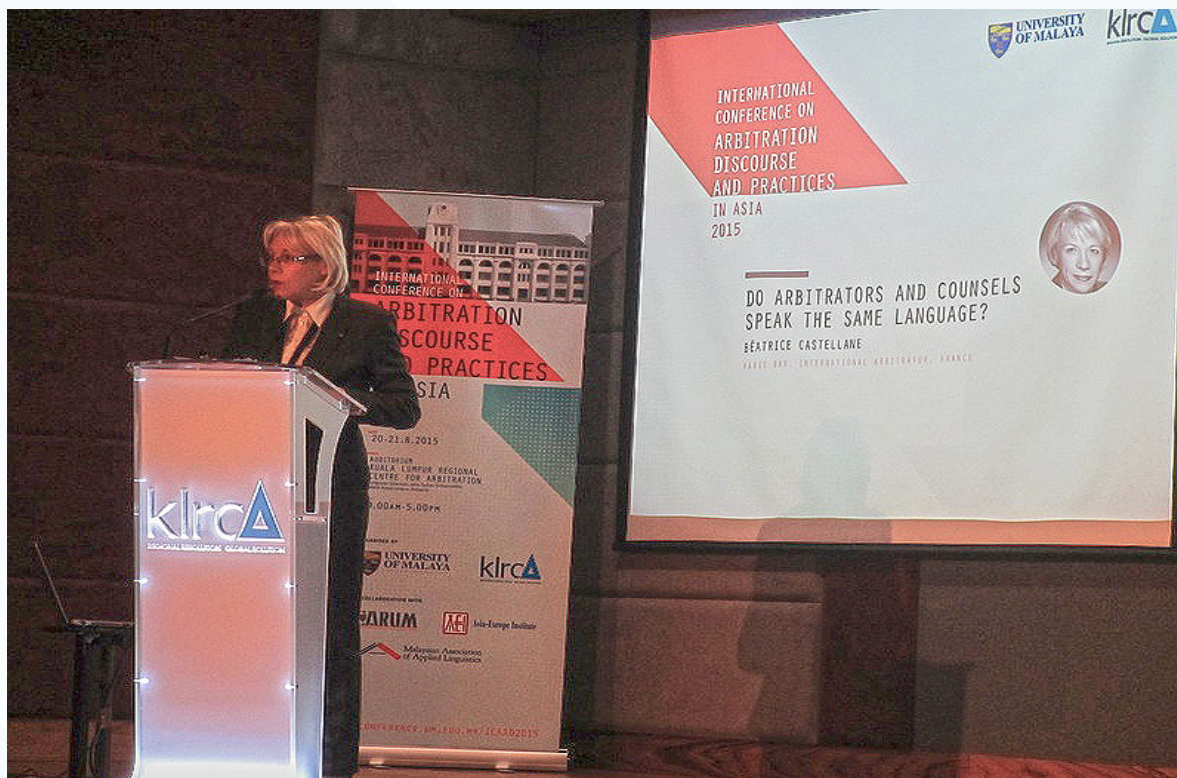
Opportunities for International Legal Professionals in
China Pilot Free Trade Zone



KLRCa - Arbitration days 20-21 / 08 / 2015

Contribution Beatrice Castellane¹

Do Arbitrators and Counsel speak the same Language?



• Introduction

1. Arbitrators and Counsels generally speak the same language, since the parties have often already agreed on the language of arbitration and have thus chosen their arbitrators with this in mind. If the language of arbitration has not been chosen, it becomes the arbitrator's task to designate the appropriate language.
 - **The linguistic problems in arbitration may, if not adequately mastered, have adverse consequences on the fairness of the proceedings.**
2. For instance, the translation by the arbitral tribunal itself in the language of the arbitration of a number of passages of the annexes to an expert report it has ordered is a violation of due process by denying the possibility to the parties an access to the full document written in another language on which the arbitral tribunal relies in the award². The award, in this case, was set aside due to violation of the adversarial principle.
 - **Avoiding risks of misunderstanding by clearly defining the terms of the proceedings, thus ensuring that the legal concepts are understood by all.**
3. Beyond the challenge of mastering the language of arbitration, arbitrators and counsels also speak the same language because, even if they come from different legal cultures, because they generally take the time to avoid risks of misunderstanding by clearly defining the terms of the proceedings, thus ensuring that the legal concepts are understood by all. Arbitrators also should tailor their answer to the particular circumstances of the case, rather than imposing a universal method to every case.

¹ Beatrice Castellane, International Arbitrator, Avocat at the Paris Bar – France, Former Member of the Council of the Bar, beatrice.castellane@wanadoo.fr www.cabinet-castellane-avocats.fr

² French Supreme Court, Civ 1, 18 March 2015, n°13-22.391

- **Choice of the arbitrators – Independence and impartiality cannot work in an international context without neutrality - Nationality**
4. Arbitrators are generally directly chosen by the parties. When this is not the case and arbitrators are appointed on their behalf by an arbitral institution or a court, the communication with the counsel and parties will be difficult when the arbitral tribunal lacks neutrality. Independence and impartiality of the arbitrators are, as we know, prerequisites for the validity of the award. Independence and impartiality cannot work in an international context without neutrality. It is a recognized arbitral practice that the sole arbitrator or president of the arbitral tribunal should be of a nationality other than those of the parties (unless the parties of course agree otherwise). Neutrality in this context is protective of an internationally minded arbitral tribunal, possessing knowledge and familiarity with international arbitration. On the converse, an arbitral tribunal with a majority of arbitrators of the same nationality as one of the parties would appear culturally biased and very unlikely to create the satisfactory conditions of sufficient trust to enable the necessary dialogue which should take place with counsel.
- **The help of the arbitration institutions**
5. When arbitrators or counsels are not experienced in arbitration, problems of communication may be numerous. The services of an arbitration institution (such as KLRCA) for guiding less experienced counsels and arbitrators become all the more important for the parties.
- **If the arbitrators have productive conversations with the counsels, they will be speaking the same language and their procedural decisions will be accepted.**
6. If the arbitrators have productive conversations with the counsels, they will be speaking the same language and their procedural decisions will be accepted. They will avoid disturbing the counsels' strategy. Arbitrators must first listen to the parties, and give clear instructions in their procedural orders. It is widely accepted that by arbitration rules (for example Article 10 of KLRCA Arbitration Rules) and contemporary legislation on arbitration that arbitral tribunals enjoy broad discretion and flexibility in the conduct of arbitral proceedings. The arbitral tribunal is certainly under no obligation to draft procedural rules for all issues which may never arise (UNCITRAL Notes on Organizing Arbitral Proceedings, Introduction, n° 12). This should not relieve the arbitral tribunal from consulting the parties before taking decisions on the organization of the proceedings. Discretion and flexibility do not mean that the arbitration proceedings take place in a total vacuum. It may otherwise happen that the unfolding of the arbitral procedure may infringe upon the parties' procedural rights and opportunity to present their case.
 7. There should not be any discretionary power of the arbitral tribunal to decide, for example, over requests for suspension of the proceedings without a motivation. Adoption or modifications of the procedural timetable should not be decided by the chair of the arbitral tribunal alone, more particularly when the deadline for submissions is extended ex officio by the arbitral tribunal before its expiration. This would cause an imbalance between the parties. An arbitral tribunal should always provide the parties with explanations and make reasoned decisions on the organization of the proceedings. This also helps the arbitrators to foster understanding between the parties that recognize that arbitrators have taken into consideration their views rather than simply imposing a solution.
- **Arbitrators must know how to listen and how to explain, speaking the language of the counsels and the parties.**
8. Arbitrators must know how to listen and how to explain. It is important that the unsuccessful party understands the Tribunal's decision. Arbitrators should speak the language of the counsels and the parties. In my view, there is a permanent obligation on the arbitral tribunal to indicate and explain the manner in which it intends to proceed. Parties must understand the decisions of the arbitral tribunal. This represents a serious guarantee for the parties' natural rights of justice, namely, access to arbitral justice and prevention of arbitrary decisions.
- **The answer to the question *Do Arbitrators and Counsel speak the same Language* is...**
9. Finally, the answer to the question *Do Arbitrators and Counsel speak the same Language* is... Yes under certain conditions and behavior to respect by the arbitrators, the counsels and the parties.

Thank you very much for your attention

Béatrice CASTELLANE
Avocat at the Paris Bar
Former Member of the Council of the Bar