

Procedural Fairness in International Courts and Tribunals

19-20 September 2014
University of Surrey
Workshop Programme



British Institute of
International and
Comparative Law

Contents

Overview	3
Programme	4
Biographies	6
List of Participants	10
Organisers and Sponsors	11



Overview

A topical and timely subject for study, the question of procedural fairness entails the identification of fundamental principles inherent to the judicial and arbitral processes. Whilst the manifestation of such core standards of fairness will necessarily diverge according to the particular forum, the workshop aims to identify their essence with reference to the procedural issues arising in practice.

The aim of this workshop is to bring academics and practitioners together to initiate ground-breaking research into this novel topic. The workshop employs a **comparative approach** whereby participants will analyse the procedures and practices of various international courts and tribunals. It aims to identify patterns of **commonality and divergence** in the core standards of procedural fairness of international courts and to develop a holistic understanding of the nature of **procedural fairness** and the **challenges to its realisation** in the international judicial system.

In addition to the aforementioned themes, specific aspects of international judicial procedure will be explored alongside contributions on the theoretical question of the implications that fairness in international procedural law may have for general international law, such as its systemic traits, the 'humanisation' of international procedure and the responsibility of international courts and tribunals for failure to meet standards of fairness. The workshop brings together a range of expertise on international courts and tribunals with the aim of sharing experiences, generating fresh ideas for improvements to international judicial procedure and querying established conventions on the procedural nature of arbitration and adjudication in international dispute settlement. The workshop organisers are grateful for the participation of presenters at all career stages and wish all participants a stimulating and fruitful conference.

Programme

Day 1: 19 September 2014

09:00-09:30 Registration

09:30-09:40 Welcome

09:40-10:10 Opening Speech:

Mr Awn al-Khasawneh, former Judge, International Court of Justice

Procedural Fairness before International Courts – is the best the enemy of the better?

10:10-11:10 Procedural Fairness and the International Court of Justice

Chair: Ms Jill Barrett, Arthur Watts Senior Research Fellow in Public International Law, British Institute of International and Comparative Law

Panellist 1: Mr James G. Devaney, Ph.D. Candidate, European University Institute

Procedural Fairness and Fact-Finding before the International Court of Justice: How to Restyle the Respected Old Lady

Panellist 2: Professor Dai Tamada, Kobe University Centre for International Law,

'Case-Law' of the International Court of Justice: Procedural Fairness or Judicial Law-Making?

11:10-11:30 Coffee Break

11:30-12:30 Procedural Fairness in the WTO

Chair: Ms Clémentin Lietar, Volterra Fieta

Panellist 1: Professor Andrew Mitchell, University of Melbourne

Procedural Fairness in WTO Tribunals

Panellist 2: Professor Chi Carmody, University of Western Ontario

What is Fairness in WTO Law?

12:30-13:45 Procedural Fairness in Investment Arbitration

Chair: Dr Ernesto Féliz Jesús, Baker Botts LLP

Panellist 1: Mr N. Jansen Calamita, Senior Research Fellow in International Trade and Investment Law, British Institute of International and Comparative Law

Investment Treaty Arbitration and the Rule of Law: Concerns from a Formalist Perspective

Panellist 2: Dr David A. Collins, City University (London)

Improving the Legitimacy of ICSID Annulment Procedures

Panellist 3: Ms Emily Sipiorski, Martin Luther University Halle-Wittenberg

Procedural Fairness and Evidence: Applying the Principle in Good Faith

13:45-14:30 Lunch

14:30-15:45 Equality of Arms

Chair: Dr Rudy Baker, University of Surrey

Panellist 1: Mr Raymundo Tullio Treves, Permanent Court of Arbitration and IMPRS on Successful Dispute Resolution in International Law, Max Planck Institute (Heidelberg)

Equality of Arms and Inequality of Resources

Panellist 2: Dr M.I. (Masha) Fedorova, Radboud University Nijmegen

Contextualising Fairness in International Criminal Tribunals: Equality of Arms

15:45-16:00 Coffee Break

16:00-17:15 Fair Trial Principles and International Criminal Law

Chair: Dr Shahrzad Fouladvand, University of Hull

Panellist 1: Mr Dražan Djukić, Ph.D. Candidate, Tilburg University

The Right to Appeal a Criminal Conviction Imposed on Appeal

Panellist 2: Dr Triestino Mariniello, Edge Hill University

The Legality Principle in International Criminal Justice: Lessons on Fairness from the European Court of Human Rights?

Panellist 3: Miss Francesca Russo, Ph.D. Candidate, Sant'Anna School, Pisa.

Feeding a Trojan Horse for Procedural Fairness in the Dialogue between Strasbourg and The Hague

17:15-17:45 Roundtable Discussion (Panel Chairs)

19:00-23:00 Conference Dinner

21:00-21:30 Dinner Speech:

Professor Philippe Sands QC, University College London and Matrix Chambers

What is Procedural Fairness and is it Important?

Day 2: 20 September 2014

09:30-10:00 Tea and Coffee

10:00-10:20 Dr John Sorabji, Principal Legal Adviser to the Lord Chief Justice and the Master of the Rolls, University College London

Procedural Fairness in National Jurisdictions

10:20-11:20 Procedural Fairness and International Criminal Tribunals

Chair: Her Hon. Judge Joanna Korner CMG, QC

Panellist 1: Miss Sophie Rigney, Ph.D. Candidate, University of Melbourne

'To ensure that a trial is fair': The centrality and uncertainty of fairness in international criminal trials

Panellist 2: Dr Paolo Lobba, Università di Bologna

Redressing Unfairness in International Criminal Justice: Responsibility and Remedy for Violations of the Right to Liberty

11:20-11:40 Coffee Break

11:40-13:00 Evidentiary Fairness

Chair: Dr Andraž Zidar, Dorset Senior Research Fellow in Public International Law, British Institute of International and Comparative Law

Panellist 1: Mr Alexandros-Ioannis Kargopoulos, Ph.D. Candidate, Democritus University of Thrace and Judge of the Court of First Instance of Eritritania

Evidentiary Rights of the Defence before the International Criminal Court: In Search of Procedural Fairness in between Adversarial and Inquisitorial Perspectives

Panellist 2: Mr Marco Benatar, Vrije Universiteit Brussel

How Fair is the International Law of Evidence?

Panellist 3: Mr Georgios Andriotis, Université de Montréal

Protection of Witnesses vs Rights of the Accused in International Criminal Proceedings: A Comparative Study

13:00-14:00 Lunch

14:00-15:15 Victims' Rights

Chair: Dr Vassilis Tzevelekos, University of Hull

Panellist 1: Ms Anni Henriette Poes, Ph.D. Candidate, University of Glasgow

The Concept of a 'Fair Trial' at the International Criminal Court

Panellist 2: Miss Laura Marschner, Ph.D. Candidate, University of Zurich

Victim Participation and the Fairness of International Criminal Trials: A Zero-sum Game?

Panellist 3: Miss Abigail Bright, Doughty Street Chambers

Extradition Law, International Consensus and Procedural Fairness

15.15-15.30 Coffee Break

15.30-16:45 Procedural Fairness in International Courts: Views from the Bench

Chair: Mr Awn al-Khasawneh, former Judge, International Court of Justice

Panellist 1: Mr Phillip Weiner, former Judge, Court of Bosnia and Herzegovina and former prosecutor, International Criminal Tribunal for the Former Yugoslavia

Panellist 2: Professor Sir David Edward QC, University of Edinburgh and Blackstone Chambers, former Judge, Court of Justice of the European Union

Panellist 3: His Exc. Judge Paul Mahoney, European Court of Human Rights

16:45-17:15 Roundtable Discussion (Chairs of Panels)

Panellist Biographies

James Devaney

James Devaney is a PhD Candidate at the European University Institute in Florence and research assistant at the University of Glasgow. His doctoral research focuses on fact-finding before international courts and tribunals, and in particular before the International Court of Justice. However, James has an interest in and has published on a wide range of areas of international law including state immunity, genocide, self-defence and the use of force, the law of the sea and state succession to treaties.

Dai Tamada

Professor Tamada holds a chair of public international law at Graduate School of Law in Kobe University. B.A. (Kyoto University, 1998), LLM (Kyoto University, 2000), PhD (Kyoto University, 2014). Assistant Professor (Kyoto University, 2003-2005), Associate Professor (Okayama University, 2005-2009), Associate Professor (Kobe University 2009-2013) and Professor (Kobe University 2014-). He specialises in procedural law of international courts and arbitration, international investment law and law of State responsibility. His recent publication includes *Legal Effects of the International Courts' Judgments* (Yuhikaku, Tokyo, 2012, vii+242pp). He organised a symposium on the Whaling case as a member of the Kobe University Centre for International Law (edu.kobe-u.ac.jp/ilaw/en/whaling_sympo2014.html), the outputs of which will be published in 2015. He works in METI (Ministry of Economy, Trade and Industry) and RIETI (Research Institute of Economy, Trade and Industry) for making comments on the economic policy of the Japanese government.

Andrew Mitchell

Andrew is Professor at Melbourne Law School, Australian Research Council Future Fellow, Assistant Director Research at the Melbourne School of Government, Director of the Global Economic Law Network, a member of the Indicative List of Panelists to hear WTO disputes, and a member of the Energy Charter Roster of Panelists. During the Fall 2014 Term he is also a Senior Emile Noel Fellow at New York University Law School. He has previously practised law with Allens Arthur Robinson (now Allens Linklaters) and consults for States, international organisations and the private sector. Andrew has taught law in Australia, Canada and the US and is the recipient of four major current grants from the Australian Research Council and the Australian National Preventive Health Agency. He has published over 100 academic books and journal articles and is a Series Editor of the Oxford University Press International Economic Law Series, an Editorial Board Member of the *Journal of International Economic Law* and a General Editor on the *Journal of International Dispute Settlement*. He has law degrees from Melbourne, Harvard and Cambridge.

Chi Carmody

Chi Carmody has taught at the University of Western Ontario Faculty of Law since 1999, where he teaches courses in public international law, international trade law and international business transactions. He also serves as Canadian Director of the Canada-United States Law Institute. He has been a visiting professor at Georgetown University Law Center and an Emile Noël Fellow at the Jean Monnet Center for Regional and International Economic Law & Justice, NYU Law School.

N Jansen Calamita

N Jansen Calamita joined the Institute as Director of the Investment Treaty Forum and Senior Research Fellow in September 2010. Mr Calamita also holds the post of Lecturer in International Law at the University of Birmingham Law School. Previously, Mr Calamita was a member of the Faculty of Law at the University of Oxford, a visiting fellow of Mansfield College, Oxford, and an Adjunct Professor at George Mason University in the United States.

Mr Calamita has served in the Office of the Legal Adviser in the U.S. Department of State (International Claims and Investment Disputes), representing the United States before the Iran-U.S. Claims Tribunal and in bilateral investment matters, and in the Office of Legal Affairs at the United Nations in Vienna as a member of the UNCITRAL Secretariat working on arbitration issues. Prior to joining the U.N, he was in private practice in New York, specializing in international arbitration and litigation. He is a graduate of the Boston University Law School (J.D. summa cum laude) and the University of Oxford (BCL). He is admitted to practice in the State of New York and the District of Columbia. His research is in general public international law and the international law of investment.

David Collins

Dr David Collins teaches and researches in the field of international economic law specializing in the law of the World Trade Organization and international investment law. He is a Fellow of the Institute for Globalisation and International Regulation at Maastricht University, a Visiting Professor at ESADE Law School and the ICSID case note editor for the *Manchester Journal of International Economic Law*. He has been a Visiting Fellow at a number of institutions including the Institute of International Economic Law of Georgetown University, the World Trade Institute of the University of Bern and Columbia Law School. His first book, *The BRIC States and Outward Foreign Direct Investment* was published by Oxford University Press in 2013.

Emily Sipiorski

Emily Sipiorski is a senior researcher and lecturer at the Institute for Economic Law at Martin Luther University, Halle, Germany. She is currently completing her PhD dissertation on the application of the principle of good faith by investment tribunals. She has a JD from Hamline University in St Paul, Minnesota and an MA in Central European Studies from Jagiellonian University, Krakow, Poland.

Sophie Rigney

Miss Sophie Rigney is a Ph.D. candidate at the University of Melbourne. Her research examines the use of the concept of fairness in procedural issues in international criminal trials. This thesis examines the links between fairness, the rights of the accused, and particular procedural rules governing the conduct of trials. This research is supported by an Australian Postgraduate Award. This project is based within the Asia Pacific Centre for Military Law at the University of Melbourne Law School. She is also presently undertaking the Graduate Certificate of Advanced Learning and Leadership (GCALL) through the University of Melbourne, in addition to my PhD studies.

Paolo Lobba

Paolo Lobba is a Research Fellow at the University of Bologna (Italy), under the supervision of Professor Luigi Stortoni. He holds a Ph.D. in Criminal Law and Procedure from Bologna University in co-tutelle with Humboldt-University Berlin, and has been admitted to the Italian Bar Association since 2011. He worked with the United Nations in Phnom Penh (Cambodia), where he assisted the Extraordinary Chambers in the Courts of Cambodia as Associate Legal Officer. In this capacity, he was assigned to the appellate proceedings in the Duch case, dealing especially with the issues of jurisdiction, illegal detention, sentencing and victims reparations. Thanks to a number of research grants, including a 10-month post-doctoral scholarship awarded by the German public institution 'DAAD', he worked with Professor Gerhard Werle at the Humboldt-University Berlin, addressing a wide range of international criminal law questions. His doctoral dissertation analysed the crime of Holocaust (and other serious crimes') denial in Europe, examining not only domestic legislation and case law but also relevant European Union acts and the jurisprudence of the European Court of Human Rights.

Dražan Djukić

Dražan Djukić is a PhD Researcher with the Department of European and International Public Law and focuses on International Criminal Law, Human Rights Law, and International Humanitarian Law.

Triestino Mariniello

Triestino Mariniello is Senior Lecturer in Law at the Department of Law and Criminology, Edge Hill University. His research interests focus on international criminal law, criminal justice and human rights, international humanitarian law and European criminal law. Triestino's academic writing has appeared in a variety of journals, including the *American Journal of International Law* and *Nordic Journal of International Law*. Triestino is a qualified barrister in Italy and he has served as a Visiting Professional and Associate Legal Officer at the Pre-Trial Division of the International Criminal Court, working on Situations in Sudan, Democratic Republic of Congo and Republic of Kenya.

Panellist Biographies

Masha Fedorova

Masha Fedorova is Assistant Professor at Radboud University Nijmegen. Her research focuses on human rights in criminal proceedings, (comparative) criminal law and procedure and supranational criminal law and procedure. The rights and responsibilities of and the interaction between the different participants in a criminal process and the fundamental principles of a fair and efficient process from national, supranational and comparative perspectives constitute the central elements in her research. In 2012 she obtained her PhD from Utrecht University's Netherlands Institute of Human Rights (SIM) where she wrote her dissertation on the principle of equality of arms in international criminal proceedings. She teaches criminal law and criminal procedure.

Alexandros-Ioannis Kargopoulos

Alexandros-Ioannis Kargopoulos is a First-Instance Judge (Protodikis) of the Civil/Criminal division in Greece since 2013, currently appointed to the Court of Rethimno as an investigative judge. Before being admitted to the Hellenic National School of Judiciary in 2012, he was a practicing criminal lawyer since 2008. He holds an LLB from the University of Kent (II.1), an LLM from UCL in Int'l and EU law, the Diploma of Human Rights from the Academy of EU law (EUI), and an LLM in Criminal Procedure from Democritus University Thrace with the highest Distinction (10), where he is currently enrolled as a Phd candidate. He has also published several journal articles and book chapters, both in Greek and in English, and some of his judgements appear in law journals.

Georgios Andriotis

Georgios holds a B.A. in Political Studies and Diplomacy from the University of Macedonia (Thessaloniki, Greece), an M.A. in International and Public Affairs from the University of Hong Kong (Hong Kong S.A.R.), an LL.B. from Université de Montréal (Canada) as well as an LL.M. in Public International Law from Leiden University (Netherlands) as a Leiden University Fund Scholar.

Georgios has interned and worked for various international organizations including the Special Court for Sierra Leone, the UN-International Criminal Tribunal for the former Yugoslavia, and the OECD Anti-Corruption Division. Georgios has also worked for Wayne Jordash, Q.C., a renowned human rights and international criminal law expert in a case before the International Court of Justice. In that capacity, he represented the Republic of Serbia as legal adviser in the case *Croatia v. Serbia*.

In 2010, Georgios was named McGill Echenberg Human Rights Fellow by the McGill Centre for Human Rights and Legal Pluralism. While a law student at Université de Montréal, Georgios worked as Research Assistant for Prof. Konstantia Koutouki. After his law degree, Georgios completed a traineeship with Shearman & Sterling's International Arbitration Group in Paris. Georgios is the Program Coordinator for CISDL's Natural Resources Program, under the lead of Prof. Koutouki, an expert in international sustainable development law.

Anni Pues

Anni Pues is a German lawyer and since 1999 member of the Bar in Cologne, Germany. The bar additionally awarded her the title of "Fachanwältin für Strafrecht" (specialist lawyer for criminal law). For more than 11 years, she led an independent law practice jointly with a small team of highly specialized colleagues. Her work as a criminal defence and human rights lawyer covered a broad range of topics, e.g. terrorism, organized crime, transnational criminal cases, extradition cases and asylum claims. She successfully defended clients various judicial levels including the European Court of Justice. She holds law degrees from the Universities of Bonn and Glasgow. Currently she is focussing on her PhD in international criminal law, analysing the role of the Prosecutor at the International Criminal Court. In particular because of her practical expertise she has also strong research interests in European criminal law, human rights law and comparative aspects of law.

Laura Marschner

Laura Marschner studied law at the University of Zurich (Master of Law), the Humboldt University in Berlin (First Juridical State Examination), the University of Geneva (Certificat de droit transnational) and the University of Regensburg. Since December 2010 she is a doctoral researcher at the University of Zurich. Her thesis focuses on witness evidence in international criminal trials and is part of the project "Psychology, Mental Health and Law: Integrating Psychological Knowledge in the Khmer Rouge Trials" (funded by the Swiss Network for International Studies).

Abigail Bright

Abigail Bright is a barrister at Doughty Street Chambers specialising in extradition and criminal appeals. Her legal career began in 2006 as an academic lawyer in the law faculties at UCL and the University of Oxford. *Pro bono* appointments as follows: Legal officer, MIND: forensic mental health pathways, trained in mental health advocacy, 2008-9; Secretary, the *Oxford Pro Bono Publico*, University of Oxford, 2008-9; Panel member, Oxford Transitional Justice Research; Case digester for the *Administrative Court Digest* (2006-8); Editor-in-Chief, *UCL Jurisprudence Review* (2006-7).

John Sorabji

Dr. Sorabji is the Principal Legal Adviser to the Lord Chief Justice and Master of the Rolls. In addition to his work for the Lord Chief Justice and Master of the Rolls he is a Senior Fellow at University College London's Judicial Institute and an Honorary Professor in its Faculty of Law, where he lectures on Principles of Civil Justice. He is also an assistant editor of both the *Civil Justice Quarterly* and the *International Journal of Procedural Law*. Dr. Sorabji is a Founding Member of the European Law Institute and a Member of the ELI Executive Committee. He also serves on the Council Composition Committee and Projects Committee.

List of Participants

Awn Al-Khasawnei

International Court of Justice

Georgios Andriotis

Universite de Montreal

Larisa Babiy

Jill Barrett

BIICL

Marco Benatar

Free University of Brussels

Abigail Bright

Doughty Street Chambers

Chi Carmody

University of Western Ontario

David Collins

The City Law School

James Devaney

EUI

Dražan Djukić

Tilburg University

David Edward

University of Edinburgh and Blackstone Chambers

Masha Fedorova

Radboud University Nijmegen

Ernesto Feliz Jesus

Baker Botts LLP

Tiziana Filletti

University of Malta

Shahrzad Fouladvand

University of Hull

Mariko Fukasaka

Sergei Golubok

Joanna Gomula

Lauterpacht Centre for International Law

Mohammad Hadi Zakerhossein

Tilburg Law School

N. Jansen Calamita

BIICL

Alexandros-Ioannis Kargopoulos

Democritus University of International Law

Joanna Korner QC

International Criminal Tribunal for the former Yugoslavia

Clementine Lietar

Volterra Fietta

Paolo Lobba

University of Bologna

Paul Mahoney

European Court of Human Rights

Triestino Mariniello

Edge Hill University

Laura Marschner

University of Zurich

Andrew Mitchell

University of Melbourne

Rowena Moffatt

University of Oxford

Abimbola Olowofoyeku

Brunel University

Prina Patel

Edwards Wildman Palmer UK LLP

Anni Pues

University of Glasgow

Sophie Rigney

Melbourne Law School

Francesca Russo

Sant' Anna School

Philippe Sands

University College London and Matrix Chambers

Julian Scheu

International Investment Law Centre Cologne

Emily Sipiorski

Martin Luther University

John Sorabji

University College London

Dai Tamada

Kobe University

Raymundo Tullio Treves

Max Planck Institute

Vassilis Tzevelekos

University of Hull

Philip Weiner

ICTY

Andraž Zidar

BIICL

Organisers and Sponsors



The McCoubrey Centre for International Law was set up in memory of the late Professor Hilaire McCoubrey with the aim of promoting a better understanding of international law, which encompasses higher standards of humanity, ecology, democracy, peace, sustainability and fairness. Professor McCoubrey taught in the Law School for a number of years and his vision is still present in the current LLM programmes and our internationally regarded research.



**British Institute of
International and
Comparative Law**

BIICL is an independent research institute and membership organisation specialising in international and comparative law. It is unique in the UK and one of the foremost bodies of its kind around the world. The Institute is renowned for its applied research, events, training and publications.



**UNIVERSITY OF
SURREY**

The Surrey International Law Centre ('SILC') is a research group of the School of Law of the University of Surrey. Comprising both members of the School of Law and external members, the mission of the SILC is to facilitate research and teaching in both public international law and private international law. In particular, the SILC aims to support collaborative work amongst its members and with other research groups both within the University and with partner institutions in academia and in other sectors.



The Institute of Advanced Studies at the University of Surrey hosts small-scale, scientific and scholarly meetings of leading academics from all over the world to discuss specialist topics away from the pressure of everyday work. The events are multidisciplinary, bringing together scholars from different disciplines to share alternative perspectives on common problems.

Organising Committee

Dr Arman Sarvarian – Lecturer in Law and Director of the Surrey International Law Centre, University of Surrey

Dr Filippo Fontanelli – Lecturer in Law, University of Edinburgh

Dr Rudy Baker – Lecturer in Law, University of Surrey

Dr Vassilis Tzevelekos – Lecturer in Public International Law, University of Hull

Dr Andraž Zidar – Dorset Senior Research Fellow in Public International Law, British Institute of International and Comparative Law

Professor Makane Mbengue – Université de Genève

Professor Sir Mike Aaronson CBE – Professorial Research Fellow, School of Politics, University of Surrey

Faculty of Business, Economics and Law

University of Surrey
Guildford, Surrey GU2 7XH UK

www.surrey.ac.uk

Every effort has been made to ensure the accuracy of the information contained in this brochure at the time of going to press. The University reserves the right, however, to introduce changes to the information given including the addition, withdrawal or restructuring of degree programmes.

