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**CERTIFICATE IN INTERNATIONAL COMMERCIAL
AND INVESTMENT ARBITRATION – 7TH EDITION^{****}**

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1. The Certificate in International Commercial and Investment Arbitration: an overview

From the 21st to the 25th of September 2020, the Roma Tre University School of Law hosted the seventh edition of the Certificate in International Commercial and Investment Arbitration, organized by the University of Roma Tre together with the Italian Association for Arbitration (“AIA”), in partnership with the Milan Chamber of Arbitration (“CAM”) and the International Chamber of Commerce (“ICC”).

The Certificate started in 2014 and has been directed since its foundation by Prof. Maria Beatrice Deli, Domenico Di Pietro and Prof. Giacomo Rojas Elgueta. Since then, it has become a standing event for anyone wishing to gain theoretical and practical insights on international commercial and investment arbitration. A truly international program, over the past seven editions it has welcomed 63 Faculty members among leading academics, in-house counsel and practitioners, and over 190 Alumni coming from more than 40 countries in all five continents.

This year’s edition was confronted with a number of logistical and practical challenges. Clearly, due to the Covid-19 pandemic, the possibility of having an in-class presence was far from certain. Nonetheless, the Directors achieved delivering a hybrid edition, with 11 participants physically present at Roma Tre’s premises and 15 attending classes online.

Some of the speakers delivered their lectures remotely – especially since travelling to Rome was not an option in most cases – being nonetheless able to interact with the entire class, listening and answering to each question. The classic breaks and lunches that used to take place in between classes followed the same path, and so did the annual *aperitivo*, that was turned into a virtual networking event.

The Certificate is well structured into one week of classes, covering all crucial aspects of international commercial and investment arbitration. The first day is dedicated to the foundations of international arbitration, while the following days focus on the arbitration agreement, the arbitral proceedings, the peculiarities of investment treaty arbitration, and the arbitral award. Further, the 7th edition included for the first time a session on emergency procedures and a mock cross examination, as well as a roundtable on the most current issues presented by the Covid-19 pandemic. Finally, like every past edition, the program was closed by the prestigious University of Roma

Tre-UNIDROIT Annual International Arbitration Lecture.

2. *The Certificate's 7th edition*

The opening lecture was delivered by Prof. Manuel A. Gómez, Associate Dean for Graduate Studies and Global Engagement at the Florida International University. Joining from the other side of the globe, he introduced the 2020 Class to international arbitration with practical examples and fascinating insights driven by his professional experience. During his class, Prof. Gómez defined the three stages of the rise of a dispute: the *naming*, i.e., the identification of a perceived injury; the *blaming*, i.e., the classification of another subject as the responsible one; the *claiming*, i.e., the confrontation and request for remedy and rejection by the allegedly responsible party. He also explained what makes a controversy actually international and the role of arbitrators, as well as the contractual nature of this dispute resolution method and the legal framework around it.

After the opening lecture, Prof. Stefan Kröll also joined the Certificate virtually. Prof. Kröll is particularly well-known in the international arbitration community, being not only the Director of the Centre for International Dispute Resolution at Bucerius Law School, but also the Director of the Willem C. Vis Arbitration Moot. The *Vis*, as it is known, is one of the most important student competitions in the fields of international commercial law and arbitration with more than 350 participating universities every year – Roma Tre being one of them –. His lecture, concerning the core elements of international arbitration, gave the participants an in-depth comprehension of some fundamental principles, such as the doctrine of separability and *Kompetenz-Kompetenz*. Prof. Kröll also offered very interesting insights on the evolution that these principles are undergoing in the worldwide arbitration field, always with a dash of his classic German humor.

After the lunch break, the traditional roundtable hosted by Certificate's sponsor ArbIt (the Italian forum for Arbitration and ADR) was held with Andrea Carlevaris (President of AIA and partner at BonelliErede) and Michelangelo Cicogna (partner at De Berti Jacchia Franchini Forlani), who focused on the determination of the place of arbitration and the applicable law. The speakers gave the audience a comprehensive understanding of these topics, as well as more in-depth considerations based on their

combined experiences. Notably, they listed the ten aspects that must always be considered when choosing the place of arbitration, which included the law, the Judiciary, the right of representation, the professional ethics, the enforceability of the award and the arbitrators' immunity from civil liability. Then, they also detailed the many different applicable laws relevant for arbitral proceedings.

To conclude the first day of seminars, Prof. Maria Beatrice Deli moderated a panel with representatives of three major arbitral institutions. The speakers were Benedetta Coppo, Head of the Rome branch office of CAM, Natalia Petrik, Legal Counsel at the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC"), and Gabriele Ruscalla, Counsel of the Italian-Swiss Team at the Secretariat of the ICC Court of Arbitration. The panel explained the peculiarities of institutional arbitration, as well as its convenience (in many instances) over *ad hoc* arbitration. Then, they presented some specific provisions of their respective institutions' arbitration rules. Moreover, the costs of institutional arbitration were addressed by stressing the countervailing advantages that each institution offers, such as emergency arbitrators and a revision of the final award before its communication. Naturally, remote hearings and online procedures were especially pondered by this panel, as arbitral institutions have quickly adopted these measures in response to the current pandemic – which has rendered physical proceedings very challenging, if not impossible in most cases.

The second day of classes was opened by the lecture of Dr. Sabine Konrad, partner at Morgan Lewis, who, together with associate Katrine Tvede, dealt with the arbitration agreement and its formal and substantive validity. Dr. Konrad explained in which cases an arbitral agreement is not binding for the parties, e.g., in cases of fraud, especially under the New York Convention. She interestingly made reference to the *Fiona trust v. Privalov* case decided by the House of Lords, in which the invalidity of the main contract – caused, in fact, by the allegation of a fraud – did not cause the arbitral agreement to be set aside, given the separability principle.

The following session was held by Niccolò Landi, founder of Studio Legale Landi in association with Beechey Arbitration, and Valentine Chessa, partner at CastaldiPartners, who connected from her office in Paris. Their class consisted of an in-depth analysis of arbitration agreements, and more specifically of how to analyze, select and draft them. Many aspects were considered, from the application of

institutional rules without the involvement of the issuing institution, to multi-tier, multi-party and even multi-contract arbitration clauses. Mr. Landi and Ms. Chessa also suggested a process for the drafting of a clause, starting with a basic core structure, to which further elements may be added in case of necessity (for example, regarding interim measures, document production, allocation of costs, legal privilege and confidentiality). To conclude, the speakers brought a series of pathological clauses to the attention of the participants, who were asked to point out the possible concerns and solutions.

In the afternoon, James Hosking, founding partner at Chaffetz Lindsey, addressed the intriguing issue of complex privity and non-signatory parties. He explained how in multi-party transactions the arbitral proceedings can in some instances be extended to third parties. He also drew the participants' attention to the very recent opinion of the Supreme Court of the United States, *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA*, that dealt with such complex issues. In that case the Court was asked to clarify whether the New York Convention conflicts with the domestic equitable estoppel doctrine permitting the enforcement of arbitration agreements against non-signatories.

To conclude the second day, Prof. Rojas Elgueta moderated a panel of in-house counsel from four leading multinational companies: Alma Forgo of Airbus, Rosanna Grosso of Siemens, Beatriz Saiz Marti of Enel and Marcello Viglino of WeBuild (the new group brand of Salini Impregilo). The discussion offered an alternative point of view on international arbitration and more in general on ADR: that of the users. Not surprisingly, all of the panelists agreed that multinational companies prefer avoiding national courts as much as possible. Indeed, all of them expressed their preference for multi-tier clauses that also include mediation and assisted negotiation, in order to avoid major costs especially when the value of the dispute is not high enough. On the contrary, there was not a shared view on the matter of the remote versus physical conduct of the arbitration proceedings, as some expressed a preference for remote hearings and others did not, probably due to the different nature of the disputes that usually involve their companies.

The following morning, Baiju Vasani, partner at Ivanyan & Partners in Moscow, held a lecture on the selection, appointment and powers of arbitrators. He stressed, in the first place, the utmost importance that the selection of arbitrators has

in the proceedings. A number of aspects concerning the arbitration and the award depend directly on the arbitrators, from the enforceability of the decision to the efficiency of the proceedings. The cornerstone of an informed selection is the research on any possible fact related to the future arbitrator, in order to identify someone with the expertise necessary to understand profoundly the issue and possibly the appointing party's point of view. Even though impartiality is a requirement for arbitrators, he mentioned that attorneys and arbitrators may know each other without breaching impartiality provisions. Furthermore, Mr. Vasani also made reference to the need for greater diversity in arbitrators' ranks, and then concluded by explaining the powers of arbitrators in general.

Afterwards, Prof. Marco Torsello of the University of Verona, also partner at ArbLit, gave a lecture about the arbitrators' independence and impartiality. Prof. Torsello explained how independence and impartiality differ, the former being the absence of a close personal, financial or professional relationship between the arbitrator and any of the parties of the arbitration or its counsel, while the latter being the lack of bias towards the parties. He also drew the participants' attention to the IBA Guidelines on Conflicts of Interest in International Arbitration, that provide a series of waivable and non-waivable circumstances, which can be used to understand in what instances there may be a greater risk of lack of impartiality and independence. He went on to describe in detail the arbitrators' duty to disclose and what it entails, as well as how to challenge an allegedly biased arbitrator. In conclusion, he also mentioned the possibility that an award be set aside in case of the arbitrators' bias.

Wednesday afternoon session opened with the class held by Andrew G. Paton, partner at De Berti Jacchia Franchini Forlani. Mr. Paton introduced the participants to the core of the arbitration proceedings, its procedural structure and organization. Underlining the relevance of flexibility in international arbitration and the broad discretion given to the arbitral tribunal, Mr. Paton compared Article 19 of the UNCITRAL Model Law on International Commercial Arbitration with Article 816-*bis* of the Italian Code of Civil Procedure, highlighting the analogous deference given to the parties' choice of the procedures to be followed, and, if missing, to the arbitrators' power to organize the arbitration as they consider appropriate. Starting with recommendations for an efficient case management conference, and finishing with

suggestions on how to plan in advance the evidentiary hearings, throughout his presentation Mr. Paton stressed what should be the ultimate goal of the proceedings: to allow the parties to fully present their case, considering their fair and reasonable expectations, in a timely and cost-efficient manner.

The last presentation of the day shifted the focus on evidence. Ferdinando Emanuele, partner at Cleary Gottlieb Steen & Hamilton LLP, joined the session online from his office. His presentation began with an introduction to the IBA Rules on the Taking of Evidence in International Arbitration, a codification of best practices regarding the gathering of evidence both from civil law and common law traditions. Mr. Emanuele continued his presentation by analyzing three of the most important evidentiary tools under the IBA Rules: document production, fact witnesses, and expert witnesses. Along with theoretic illustrations of the IBA Rules governing the various types of evidence, Mr. Emanuele gave the participants flashes of real-life experiences, such as a practical example of a “Redfern Schedule”.

Following the end of Wednesday sessions, the classic annual *aperitivo* was held, though in an innovative way, due to the social distancing imposed by Covid-19. The Directors, together with the sponsor of the event Cleary Gottlieb Steen & Hamilton LLP, decided to transform the *aperitivo* into a virtual networking event. Both in-class and online participants had the opportunity to introduce themselves and chat with Carlo Santoro, partner at Cleary Gottlieb, as well as asking him for career-oriented advice.

Both presentations of Thursday morning focused on investment treaty arbitration. Co-Directors Maria Beatrice Deli and Giacomo Rojas Elgueta delivered the first lecture on the international protection enjoyed by individuals and companies investing in a foreign State. After a historical *excursus* from the Second International Peace Conference of the Hague of 1907, which established a horizontal inter-State procedure for foreign investment protection, to the subsequent birth of bilateral treaties for the promotion and protection of investment (“BIT”s) and the Convention on the Settlement of Investment Disputes between States and Nationals and Other States of 1965 (“ICSID Convention”), Prof. Deli proceeded to cover the notions of investor and investment that are found in investment treaties and, in particular, as provided by Article 25 of the ICSID Convention. On the other hand, Prof. Rojas Elgueta’s presentation focused on the substantive standards of protection that are granted to

foreign investors. In particular, he illustrated the inconsistent fashion in which they have been applied by arbitral tribunals through a case study of the so-called “Italian Renewable Energy Saga,” in which both the umbrella clause and the fair and equitable treatment standard were involved.

The procedure and various stages of an investment treaty dispute were covered by Sylvia Tonova, partner at Jones Day in London. Ms. Tonova began her presentation by analyzing the 2019 data indicating the percentages of arbitration proceedings brought by investors from developed countries and of those initiated against the European Union as an economic group. Then, she described the three typical stages of a dispute: *pre-arbitration*, *arbitration*, and *post-arbitration*. Focusing on the arbitration stage, Ms. Tonova provided a detailed outline of an ICSID arbitration proceeding, starting with the Request for Arbitration addressed to the ICSID Secretary General, and finishing with the issuance of the arbitral award within 120 days after the closure of the proceedings. Ms. Tonova concluded her presentation with a discussion of selected procedural issues, such as a comparison between ICSID and UNCITRAL Arbitration Rules regarding the arbitral tribunal’s power to grant provisional measures and the requirements for such an order.

Thursday afternoon session was entirely dedicated to what is ultimately sought when an international arbitration proceeding is started: the award. The first to take the floor was Paolo Marzolini, name partner at Patocchi & Marzolini, who delivered a lecture on the deliberation of arbitral awards and on drafting techniques. After explaining the different categories of awards that may be issued – such as *consent* awards, *default* awards, *additional* awards, and awards rendered *ex aequo et bono* – Mr. Marzolini outlined the several components of a typical one: the introductory part, a summary of the proceedings and of the dispute, the operative part of the award, etc. He emphasized how important it is to have a *clear*, *accurate*, and *comprehensive* award, both in view of its correct enforceability and of possible challenges. Talking about challenges, Mr. Marzolini concluded his presentation with an examination of the most common grounds on which arbitral awards can be challenged.

Thursday last session was held by Dr. Kabir Duggal, senior associate at Arnold & Porter Kaye Scholer LLP and a Lecturer in Law at the Columbia School of Law, who managed to bring his irresistible humor into his lecture on the enforcement of awards

made in an international arbitration. He began by reconnecting with the previous session, firstly listing the specific features of ICSID awards and introducing the few specific grounds of annulment under Article 52 of the ICSID Convention. Further, Dr. Duggal continued with an illustration of the requirements needed to enforce an award under the ICSID Convention, as compared to the ones generally required by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”). Lastly, Dr. Duggal concluded with a discussion on how courts of most countries offer different interpretations of the exceptions under the New York Convention and of other relevant provisions.

The last day of the Certificate opened with the newly introduced lecture on emergency arbitration held by Gustav Flecke-Giammarco, partner at Seven Summits Arbitration. Mr. Flecke-Giammarco addressed the new trends in emergency arbitration, focusing on the ICC’s rationale for introducing a new emergency procedure in 2012, in addition to the Pre-Arbitral Referee already established in 1990. Emergency arbitration is meant to constitute a “safe harbor” for those parties that may need urgent interim or conservatory measures and cannot await the constitution of a typical arbitral tribunal; according to the new ICC procedure, an order – which will be replaced by a subsequent final award – will usually be issued within 20 days of the filing of the application for an emergency arbitration. The rapidity of this procedure has already begun to be appealing to an always increasing number of practitioners, as demonstrated by the constantly growing volume of applications submitted to the Secretariat of the ICC.

Friday morning session continued with another novelty of this 7th edition: a mock simulation of a witness’ cross examination. Aimed at offering the participants a realistic experience of one of the most fascinating parts of an arbitration hearing, the simulation was conducted by Martin Gusy (partner and head of the U.S. International Arbitration practice at K&L Gates) as counsel, Cecilia Carrara (partner at Legance) as arbitrator, and Irene Petrelli (partner at Curtis, Mallet-Prevost, Colt & Mosle) as witness. Before performing the simulation, the panelists illustrated several useful techniques to reach the counsel’s main goal of undermining the credibility of the witness, and the do’s and don’ts that should be respected when cross-examining a witness. In particular, the latter included avoiding being too aggressive or too mild, asking long and discussive questions, or not listening to the actual witness’ responses and thus missing targets of

opportunity. The mock trial simulation succeeded in providing the Certificate's participants with a closer look at the atmosphere surrounding a real-life cross examination – especially in pandemic times, with counsel (Mr. Gusy) being connected remotely and the arbitrator and witness (Dr. Carrara and Ms. Petrelli) being in the same location – and an understanding of the dynamics and the tactics underlying the formulation of each question.

In the afternoon, the Certificate opened to external attendees for two special sessions. The first was a roundtable focusing on Covid-19's impact on international arbitration, moderated by Co-Director Domenico Di Pietro, who connected from Miami. The first to take the floor was Laura Bergamini, Legal Counsel at ICSID, who started by illustrating the impact that the Covid-19 pandemic has had on ICSID arbitrations, and then explained how ICSID proceedings have adjusted to the “new normal.” Through an increased use of IT tools – as an example, ICSID has eliminated the need for any paper filings by adopting the electronic filing as its exclusive procedure, and has introduced a virtual dispatch of its rulings – ICSID has been able to provide fully remote sessions and hearings.

The second panelist to speak was William W. Burke-White, Inaugural Director and Richard Perry Professor at the Perry World House and Law Professor at the University of Pennsylvania. Prof. Burke-White analyzed the topic of State liability under investment treaties during the Covid-19 era, especially focusing on whether States may be held liable for the measures adopted in response to the pandemic and on what defenses and options they may have to avoid liability. Prof. Burke-White anticipated that, due to the introduction of governmental orders imposing citizens to stay home and closing commercial activities and transportation links, there may be the possibility for States to face – among others – fair and equitable treatment claims, full protection and security claims, national treatment claims, and indirect expropriation claims.

The roundtable was closed by Roma Tre University's Professor Vincenzo Zeno-Zencovich, who expressed his considerations on the issue of inconsistency of arbitral decisions. Prof. Zeno-Zencovich presented Article 50 of the ICSID Convention, which provides for a very limited review of awards, contrasting it to the prospect of having arbitral tribunals taking different views and finding different solutions to similar fact patterns. By contrast, he introduced the European Union Commission's

recommendation for a Council decision authorizing the opening of negotiations for a Convention establishing a multilateral court for the settlement of investment disputes, and Article 8.28 of the Comprehensive Economic and Trade Agreement between Canada and the European Union, which establishes an Appellate Tribunal to review arbitral awards rendered under the dispute resolution Section of the Agreement. Notably, the grounds upon which the Appellate Tribunal may uphold, modify, or reverse an award are, first, errors in the application or interpretation of the applicable law and, second, manifest errors in the appreciation of the facts, including the appreciation of relevant domestic law. In conclusion, according to Prof. Zeno-Zencovich, the issue of inconsistency may be resolved by the introduction of a stable permanent tribunal in lieu of the several *ad hoc* tribunals.

3. The 7th University of Roma Tre-UNIDROIT Annual International Arbitration Lecture

Like every year, the University of Roma Tre-UNIDROIT Annual International Arbitration Lecture was the Certificate's *grand finale*. Year after year, the Annual Lecture has been an occasion to listen to the most prominent experts in the world discussing crucial topics in international arbitration, ranging from substantive standards of protection in international investment law, to the finality of arbitral awards, to the use of the UNIDROIT Principles of International Commercial Contracts and the role of mandatory rules in international arbitration. This year, world-famous arbitrator and President of the Governing Board of the International Council for Commercial Arbitration ("ICCA") Lucy Reed delivered a lecture titled "Flying Solo: From *Arthur Andersen*, to Codes of Conduct, to Covid-19 Virtual Hearings."¹

While the current situation made it impossible to hold the Annual Lecture at the UNIDROIT's splendid headquarters (and take the traditional Class portrait in their garden overlooking the Roman roofs), Prof. Maria Chiara Malaguti – the newly

¹ Lucy Reed's lecture "as delivered" and the link to the video recording of the 7th University of Roma Tre-UNIDROIT Annual International Arbitration Lecture are available at the following website: <www.arbitrationcertificate.com/wp-content/uploads/2020/08/Roma-Tre-Publication-Version-1.pdf>.

appointed President of the UNIDROIT – and Prof. Andrea Zoppini of Roma Tre University joined the Certificate’s in-class participants and Co-Directors at Roma Tre School of Law’s *Sala del Consiglio*. Further, over 100 external participants connected remotely.

Prof. Malaguti delivered the welcoming remarks on behalf of the UNIDROIT, stressing how this was one of the first occasions for her to appear in her capacity of President of this institution. Conversely, she pointed out, this was not the first Annual Lecture she had attended, given the relevance of this event over the years. Prof. Malaguti thus renewed the UNIDROIT’s commitment in continuing its profitable cooperation with Roma Tre University, underlining the relevance of international arbitration as a tool for the use of soft law and, specifically, of the UNIDROIT Principles of International Commercial Contracts. Prof. Malaguti concluded her remarks hinting at the future of soft law and, in particular, at whether the room for its application will broaden as a result of the changing interplay between public and private law, and what will be the role of arbitrators in its use.

On behalf of the University of Roma Tre, Prof. Zoppini then introduced this year’s speaker, Ms. Lucy Reed, reminding the most noteworthy accomplishments in her highly varied and distinguished career in the fields of international arbitration and international law. Prof. Zoppini then commented on Ms. Reed’s selected topic, drawing from his personal experience to stress the different nature of the experience of sitting in a virtual hearing rather than in a physical hearing, before leaving the floor to the speaker.

Ms. Reed first congratulated the recipients of the Certificate in International Commercial and Investment Arbitration and offered a virtual toast to the program’s Directors, complimenting their vision and flexibility in bringing the Certificate’s seventh edition to life amidst global uncertainty. She also expressed her regret for not being able to deliver the lecture in Rome and for the isolation we are all forced to in the new Covid-19 world, which gave her the chance to introduce the *fil rouge* of her lecture – the arbitrators’ isolation and the challenges that they are faced with as individuals – which unfolded through three different topics.

The starting point of Ms. Reed’s lecture was a twist on the seminal *Arthur Andersen* arbitration, which this year turned 20 years old, with an emphasis on the perspective of the sole arbitrator. The famous case concerned two business units of the then largest accounting firm in the world and involved the 140 member firms around

the world, as well as the umbrella entity based in Geneva. Ms. Reed stressed the magnitude of the case – with claimants seeking to terminate the inter-firm agreements that tied the global organization together and billions of dollars at stake – to give a sense of the responsibility that, pursuant to the applicable arbitration agreement, was attributed to a sole arbitrator, Dr. Guillermo Gamba Posada.

The attendees' attention was drawn in particular to the arbitrator's analysis of the applicable law, based on a choice-of-law clause which provided that disputes related to the inter-firm agreements were not to be decided pursuant to the substantive law of any jurisdiction, but rather taking into account "general principles of equity." Out of many possible approaches he could take in order to define the content of those principles, Dr. Gamba Posada decided to turn to the UNIDROIT Principles of International Commercial Contracts. Among others, he applied Article 5.4 of the Principles, finding that the umbrella entity had a duty to exercise its best efforts to ensure cooperation, coordination and compatibility among the member firms' practices, and Article 7.3.1(2), setting out the criteria to determine whether the umbrella entity's breach of the latter duty amounted to a "fundamental breach of contract." Dr. Gamba Posada found that it did, and that claimants were thereby legitimated to terminate the inter-firm agreements – which meant breaking up one of the biggest business in the world –.

Ms. Reed remarked the courage that it must have taken for Dr. Gamba Posada to apply the UNIDROIT Principles, which had then been in place for only three years (having the Principles been first released in 1994, and the *Arthur Andersen* arbitration begun in 1997), in one of the most significant commercial disputes ever brought. The speaker pointed out that this brave decision may not have been possible, and a compromise solution may rather have been sought, had the tribunal been composed of three arbitrators rather than one arbitrator "flying solo". However, she pointed out that, by using the UNIDROIT Principles, the sole arbitrator in the *Arthur Andersen* case was not entirely on his own, rather reaching out to a "ground crew below him" comprising the international practitioners and scholars who had spent more than a decade researching, negotiating and drafting the Principles.

The second topic covered by Ms. Reed was the surging demand for codes of conduct for international arbitrators, largely as a result of controversy around investment treaty arbitration. While agreeing with the late Johnny Veeder – according to whom

unless arbitration practitioners regulated themselves, others, who do not know international arbitration, would do so – the speaker expressed her discomfort with those codes of conduct that include bright-line rules, such as the Draft Code of Conduct or Adjudicators in Investor-State Dispute Settlement released earlier this year by the Secretariats of ICSID and UNCITRAL.

In particular, Ms. Reed focused on the rules regulating arbitrator capacity, firmly opposing the establishment of a fixed number of cases that an arbitrator should accept in order to ensure her availability. In this regard, she referred to what she called the “David Caron Rule of X,” that is, David Caron’s proposal that each arbitrator should set a number – X – as the upper limit of cases that she deems to be capable of responsibly sitting on at the same time, based on a number of variables depending on individual circumstances. Ms. Reed supported this idea, particularly because it places within the individual arbitrator – again, “flying solo” – the responsibility of fixing her own X.

Finally, Lucy Reed turned to her last topic – the personal isolation in which even arbitrators on three-member tribunals find themselves in virtual hearings. Ms. Reed introduced the topic by mentioning a project that ICCA is currently collaborating with – co-edited by Roma Tre University’s Professor (and Certificate’s Co-Director) Giacomo Rojas Elgueta, together with Faculty members James Hosking and Yasmine Lahlou – that aims at investigating whether a right to a physical hearing exists in international arbitration through a comparative approach.

Like Prof. Zoppini in his introductory remarks, Ms. Reed emphasized the profoundly different experiences that physical and virtual hearings are. In particular, virtual hearings cannot reproduce the personal dynamic by which, in physical hearings, the arbitrators get to know and trust each other, exchange views and possibly influence each other. While this may not have an impact on the dispositive outcome of an arbitration – as the arbitrators will still be capable of carrying out robust deliberations – the professional and personal camaraderie that forms an essential part of the arbitrator’s role is inevitably lost. Ms. Reed concluded with an invitation to arbitrators to remember that they are nonetheless “flying” in three-member formation, with all the cooperation and coordination skills that that requires, and – by analogy – to recipients of the Certificate to nurture the bonds created over the past week.

Prof. Zoppini took the floor again to thank the speaker and share his experience,

having noted that online meetings tend to exaggerate hierarchy by making the directive powers of chairmen even deeper, and prompting a debate on whether any correctives should be put in place. Finally, the floor was opened for questions, with former Secretary General of the ICC Court of Arbitration (and Faculty member) Andrea Carlevaris sharing an anecdote related to the *Arthur Andersen* case – being at the time a legal counsel at the ICC Secretariat, he remembered notifying it to the parties *brevi manu* on a Friday night after the stock markets closed, press awaiting outside the ICC headquarters in Paris – and commenting on Dr. Gamba Posada’s use of the UNIDROIT Principles as a tool of equity rather than as a governing law.