



ILA Committee on Conflict of Laws in International Arbitration

Webinar

18 February 2025



Dr. Nikolaus Pitkowicz

Pitkowicz & Partners
Vienna
Co-Chair of the Committee



Wendy Lin

WongPartnership LLP
Singapore
Co-Chair of the Committee



Dr. Mariel Dimsey

CMS
Hong Kong
Co-Rapporteur of the Committee



Prof. Matthias Lehmann

University of Vienna
Radboud University Nijmegen
Co-Rapporteur of the Committee

Committee Officers

Agenda

- I. Introduction of the ILA
- II. Introduction of the Committee
- III. Committee Mandate and Phases
 - First Phase:** **Methodology**
 - Second Phase:** **Principles**
 - Third Phase:** **Law Creation**
- IV. Next steps and timing
- V. How to become an ILA member
- VI. Q&A

Introduction of the ILA

- Established 1873
- Objectives: study, clarification and development of international law
- 5,422 Members
- 68 Branches
- 82nd Biennial Conference: **17-21 August 2026 in Vienna**

www.ila-hq.org

Introduction of the Committee

Impetus behind the Committee

- Conflict of laws issues – arise at every stage of arbitration; different sources / approaches provide different answers
- Harmonisation will greatly benefit arbitration practitioners

Composition of the Committee

- 50 members from branches around the world

Committee Mandate, Phase 1

Methodology

18 February 2025

First Phase – Methodology (1/3)

- How should arbitrators approach conflict-of-laws issues generally?
- Starting point: Rudimentary conflicts rules of the *lex loci arbitri* (e.g. Art 28 MAL)
- Possible approaches:
 - Apply law chosen by the parties (party autonomy)
 - Follow general conflicts rules of the place of arbitration (*lex loci arbitri*)
 - Use general principles of private international law (comparative approach)
 - Use general principles of international arbitration (autonomous approach)
 - Designate the governing law without conflicts rules (direct approach)
 - Others?

First Phase – Methodology (2/3)

Sources of conflicts rules:

- Customary international law
- International treaties
- National laws
- Institutional rules
- Case law and practice (of arbitral tribunals and state courts)
- Comparative law
- Transnational law

First Phase – Methodology (3/3)

Characterisation -

How to shoehorn arbitration issues into conflicts categories?

- Arbitration agreement – substantive contract or procedural agreement?
- Arbitrability – validity of the arbitration agreement, capacity, public policy?
- Attorney–client privilege – procedure, capacity, contract?
- Document production – procedure, public policy, standalone category?

Committee Mandate, Phase 2

Principles

18 February 2025

Second Phase – Principles (1/3)

Principles underlying the methodology

- Develop high-level principles based on the methodology examined.
- Challenge: high-level principles that are sufficiently specific and nuanced to be relied on in arbitral awards.
- Aim:
 - Aligning public interest with needs of arbitration
 - Identification of specific "problem areas" with solutions offered

Second Phase – Principles (2/3)

Derive principles from diverse sources:

- International law
 - Instruments/sources already containing explicit/implicit conflict-of-law rules
- Domestic law
 - Both statute and case law
- Soft law instruments
 - Guidance on applicable law in conflicts situation
- Arbitral practice
 - Particularly arbitral awards
 - Guidance on applicable law in conflicts situation

Second Phase – Principles (3/3)

Objectives

- Short and concise
- Plain drafting
- Jurisdiction neutral

Committee Mandate, Phase 3

From Soft Law to Hard Law

18 February 2025

Third Phase – Law Creation

Further steps

Develop

- Treaties
- Model law
- Institutional rules

on conflict-of-laws issues in arbitration

Next steps and timing

18 February 2025

Next steps and timing

Year	Achievement
Early 2025	Webinar on the theme and mandate of the Committee
2025	Developing and distributing questionnaire, collecting responses and analysing data
2026	Developing general methodology
2027 – 2028	Developing principles
2029 – 2030	Developing rules (treaties, model laws, arbitration rules)



How to become a member

18 February 2025

How to Become a Committee Member(1/2)

First Step: ILA Membership

- Apply to the local branch
- No local branch → direct international membership with Headquarter

www.ila-hq.org

How to Become a Committee Member (2/2)

Second Step: Membership of the Arbitration Committee

- Nomination by ILA Branch
- Relevant expertise
- Active contribution
- Submission of **nomination form** and **CV**

www.ila-hq.org/en_GB/committees

?

?

Questions?

?

?

?

Thank you!

Nikolaus Pitkowitz | Wendy Lin | Mariel Dimsey | Matthias Lehmann