



DAVID J. A. CAIRNS

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OVERVIEW

David is a leading international arbitrator. He has acted as sole, chair or party-appointed arbitrator under the rules of all major arbitral institutions and in a range of seats including London, New York, Paris, Washington DC, The Hague, Madrid, Bogotá, Miami, Geneva and Santiago de Chile. For many years he acted concurrently as counsel and an arbitrator but since 2020 he has acted exclusively as an international arbitrator.

His expertise includes investment treaty arbitrations, construction & infrastructure projects, concession contracts, mergers & acquisitions, joint ventures, and intellectual property disputes. His extensive experience covers the construction, energy, financial, mining, manufacturing, insurance, pharmaceutical, retail, real estate and sports sectors. A list of his arbitral appointments is attached.

David has been based in Madrid for over 25 years and has a particular focus on investment and infrastructure disputes in Latin America. Earlier in his career he practised in New Zealand, specialising in intellectual property and regulatory litigation, and in London.

He is an accredited UK mediator, a fellow of the Chartered Institute of Arbitrators in London, and a former member of the ICSID Panel of Conciliators. He occasionally accepts appointments as a mediator in international disputes.

David has published and spoken extensively on arbitration related topics. A list of his publications is attached.

He is fluent in Spanish and English and is a national of New Zealand and the United Kingdom.

PROFESSIONAL AND ACADEMIC QUALIFICATIONS

Professional

- 2002, Madrid, Abogado
- 2001, England and Wales (Solicitor-Advocate, Civil)
- 1984, New Zealand, Barrister & Solicitor, Non-practising

Academic

- Universidad San Pablo-CEU, Diploma-Spanish law for EU lawyers, 2006
- University of Cambridge, Ph.D, 1995 (Senior Research Scholar, Pembroke College)
- University of Toronto (Commonwealth Scholar), LLM, 1986
- University of Canterbury, LLB (Hons), 1982

PROFESSIONAL ASSOCIATIONS

- Member, London Court of International Arbitration
- List of candidates suitable for appointment as chairperson in arbitrations under EU trade agreements
- Member of the ICDR Panel of International Arbitrators
- Panel of Arbitrators of the Singapore International Arbitration Centre
- List of Arbitrators of the American Chamber of Commerce of Peru
- Panel of International Arbitrators, KCAB International, Seoul
- Panel of Arbitrators of the Arbitration Foundation of South Africa (AFSA)
- List of Arbitrators for the Court of Arbitration for Sport, Lausanne
- Fellow and Chartered Arbitrator, Chartered Institute of Arbitrators, London
- Society of Construction Law, London
- Australia-Spain Business Association, Madrid
- Club Español e Iberoamericano del Arbitraje, Madrid
- Club de Derecho de la Construcción y la Ingeniería (CDCI), Madrid
- Universidad Carlos III de Madrid: Masters in International Advocacy programme.

ARBITRAL APPOINTMENTS

A. As Presiding Arbitrator

- President of an ICSID tribunal in an arbitration under the Energy Charter Treaty arising from investments in the Spanish renewable energy sector (*Spanish Solar 1 Limited and Spanish Solar 2 Limited v. Kingdom of Spain*, ICSID Case No. ARB/21/39);
- President of an ICSID tribunal in an arbitration relating to a highway concession in Peru (*Desarrollo Vial de los Andes S.A.C. v. Republic of Peru*, ICSID Case No ARB/20/18);
- President of an ICSID tribunal in an arbitration arising from a concession contract for the construction and operation of a major infrastructure development in Lima (*Metro de Lima Linea 2 S.A. v Republic of Peru*, ICSID Case No. Arb/17/3);
- President of a tribunal established pursuant to the Kuwait-Turkey BIT and the UNCITRAL Arbitration Rules in relation to claims of expropriation and breach of the FET standard in respect of the rights of a foreign shareholder (*Waleed Y J H Aljarallah v TMSF & Ministry of Justice/ The Republic of Turkey*, PCA Case No. 2020-04);
- President of an ICC tribunal in an arbitration arising from the acquisition of a Spanish banking entity, with the seat in Madrid and subject to Spanish law;
- President of an ICC tribunal in an arbitration arising from a joint venture to develop the technology for a concession in Mexico, with the seat in New York and subject to the laws of New York and the State of Delaware;
- President of an ICC tribunal in a dispute between Mexican and North American parties under New York law arising from a real estate joint venture in Mexico;
- President of an ICDR-AAA tribunal in a dispute subject to New York law between US and Chilean parties relating to the telecommunications sectors in various Latin American jurisdictions;
- President of a tribunal established pursuant to the Rules of the Court of Arbitration for Sport arising from a management agreement for a major sporting event under English law with the seat in London;
- President of an Arbitral tribunal established pursuant to the rules of the Arbitration Foundation of South Africa (AFSA) relating to a supply contract for a thermal power plant in Ghana, subject to English law and with the seat in Johannesburg;
- President of an ICC tribunal in a dispute between Mexican and Italian parties arising from a joint venture in the manufacturing sector in Mexico;
- President of an Arbitral tribunal pursuant to the rules of the Madrid Court of Arbitration in a construction arbitration relating to a biomass plant in Huelva;
- President of an ICC tribunal in a dispute arising from a pharmaceuticals joint venture under Spanish law;
- President of an ICC tribunal in a dispute arising from an acquisition transaction in the insurance sector under Spanish law;

- President of an ICC tribunal in an arbitration arising from a warranty insurance policy in relation to the acquisition of a Spanish corporation by a Dutch investor;
- President of a tribunal established under the rules of the Madrid Court of Arbitration and relating to the termination of a distribution contract in the consumer healthcare sector.

B. As a Party-Appointed Arbitrator:

- NAFTA/USMCA arbitration alleging a denial of justice in relation to litigation in the financial services sector in Mexico (*Cyrus Capital Partners, L.P. and Contrarian Capital Management, LLC v. United Mexican States*, ICSID Case No. ARB/23/33);
- NAFTA/USMCA arbitration raising issues of denial of justice, a failure to provide full protection and security, and unlawful expropriation in respect of investments in the manufacturing sector in Mexico (*Arbor Confections Inc., Mark Alan Ducorsky and Brad Ducorsky v. United Mexican States*, ICSID Case No. ARB/23/25);
- Investor-State arbitration pursuant to the Switzerland-Bolivia BIT and the UNCITRAL Arbitration Rules arising from the nationalization of the Bolivian pensions system (*Zurich Insurance Company Ltd & Zurich South America Invest AB v. Plurinational State of Bolivia*, PCA Case No. 2021-05);
- NAFTA arbitration arising from claims of denial of justice affecting real estate developments in Mexico (*Lion Mexico Consolidated L.P v United Mexican States*, ICSID Case No. ARB (AF)/15/2);
- ICC arbitration between a Chinese hydropower constructor and a Latin American state entity with the seat in Santiago de Chile;
- ICC arbitration relating to services in the mining sector, subject to the law of Colombia with the seat in Bogotá;
- ICC arbitration arising from the modernization of the Talara Refinery in Peru, subject to Spanish law and with the seat in Miami;
- ICC arbitration arising from the construction of a combined cycle plant in Mozambique subject to English law with the seat in Madrid;
- ICC arbitration arising from EPC turnkey contracts for the construction of a mineral processing plant in Morocco subject to English law with the seat in London;
- ICDR arbitration arising from an infrastructure project in Colombia, subject to Colombian law with the seat in Bogotá;
- ICC arbitration arising from an EPC Contract for port facilities in Montevideo, subject to Uruguayan law;
- Two LCIA arbitrations relating to long-term supply contracts in the renewable energy sector under English law with the seat in London;
- LCIA arbitration arising from the sale and purchase of a nickel mining company in the Dominican Republic, subject to English law with the seat in London;
- Investor-State arbitration pursuant to the Spain-Cuba BIT arising from a manufacturing joint venture between an investor and a state entity.

C. As Sole Arbitrator:

- LCIA arbitration in a dispute arising from a Chinese investment in a Canadian technology corporation subject to the law of British Columbia;
- Two ICC arbitrations involving financial derivatives under Spanish law;
- ICC arbitration relating to a joint venture contract governed by Spanish law for the participation in a major public works contract in Qatar;
- ICC arbitration involving an international carriage of goods contract between German and Spanish companies;
- arbitration arising from a management buy-out contract between Swedish and Spanish parties pursuant to the rules of the Madrid Court of Arbitration;
- arbitration arising from the acquisition by an Italian investor of a Spanish corporation in the pharmaceutical sector (Madrid Court of Arbitration/Spanish law);
- dispute under Spanish law between a foreign investor and a prior-owner of mining rights in relation to the re-opening of a major Spanish mine;
- arbitration relating to the termination of a real estate joint venture in Cape Verde pursuant to the rules of the Madrid Court of Arbitration;
- Various CAS arbitrations, particularly relating to football disputes involving transfer agreements, agents' remuneration, training compensation, and football club insolvency;
- Four arbitrations relating to domain name rights pursuant to the WIPO Expedited Arbitration Rules with seats in Geneva.

D. As Counsel (Selected cases only)

- Counsel to a Spanish constructor in an ICSID arbitration arising from an infrastructure project (highway reconstruction) in Honduras (*Elsamex S.A. c. República de Honduras*, ICSID Case No. ARB/09/4);
- Counsel in two ICSID annulment proceedings (*Blue Bank International & Trust (Barbados) Ltd. v Bolivarian Republic of Venezuela*, ICSID Case No. Arb/12/20 and *Compañía de Aguas del Aconquija SA y Vivendi Universal v. República Argentina*, ICSID Case No. ARB/97/3);
- Representing the owner of a heavy fuel oil plant in El Salvador in DAB hearings and subsequent ICC arbitrations arising from disputes with a European contractor/operator pursuant to EPC (FIDIC Yellow Book) and Operation & Maintenance contracts (English law; New York);
- Representing a Spanish investor in Panama in two ICC arbitrations arising from the construction of a hydroelectric plant (FIDIC Silver Book; Panamanian law);
- Representing a Spanish constructor in ICC arbitrations in New York arising from two turnkey contracts for the construction of heavy plants in the Netherlands and Argentina (Dutch & Argentine law; New York);
- Representing a Swiss contractor in an ICC arbitration in Paris relating to two turnkey contracts for the construction of fish canning plants in Libya (Libyan law; Paris);

- Representing Spanish suppliers in an ad hoc arbitration involving a Middle Eastern state construction company arising from the procurement contracts for an industrial plant (Iranian law);
- Counsel in an ICC arbitration between French and Spanish telecommunications companies relating to the excavation of a fibre-optics communication trench in Spain (Spanish law; Madrid);
- Representing a Spanish bank in an ICC arbitration arising from the call on performance bonds of a Spanish supplier to a petrochemical construction project in Nigeria (French/Spanish law; Paris);
- Representing a New Zealand state corporation in an ad hoc arbitration with an English constructor arising from civil engineering works for railways and telecommunications infrastructure (New Zealand law; Wellington).

PUBLICATIONS

David J. A. Cairns is author or co-author of the following publications:

A. Books

- The Remedies for Trademark Infringement, Carswell & Co, Toronto, 1988;
- Advocacy and the Making of the Adversarial Criminal Trial, Oxford University Press, 1998.

B. Articles/Book Chapters

1. Spanish Arbitral Law and Practice

- *Arbitral Legitimacy and Spanish Financial Regulation* Spain Arbitration Review, Nº 31/2018, pp.53-71;
- National Report-Spain in *The ICCA International Handbook on Commercial Arbitration* (KluwerLaw International, Supplement Nº 120, February 2022);
- *Spain's Consolidated Arbitration Law* (2012) Spain Arbitration Review, Nº 13, 49-73 (translation of Ley 60/2003 de 23 de diciembre with 2009 and 2011 legislative amendments; previously published as Spain's New Arbitration Act [2004] 7 International Arbitration Law Review 39-48;
- *The Spanish Application of the UNCITRAL Model Law on International Commercial Arbitration* (2006) 22 Arbitration International 573-595.

2. Investment Arbitration

- *Contract and Treaty Claims and Choice of Forum in Foreign Investment Disputes* in Bernardo M. Cremades and Julian D.M. Lew (ed) *Parallel State and Arbitral Procedures in International Arbitration* (ICC Publication 692, 2005) at 13-41 (also published in Spanish as *La seguridad jurídica de las inversiones extranjeras: la protección contractual y de los Tratados*);
- *The Brave New World of Global Arbitration* (2002) 3 The Journal of World Investment 173-210 (also published in Spanish as *El Arbitraje en la Encrucijada entre la Globalización y sus Detractores*);
- *Supreme Decree Nº 28701: President nationalises all aspects of production and sale of hydrocarbons in Bolivia* [2006] 9 International Arbitration L. R. N37-N42;
- *Introductory Note to Salini Costruttori S.p.A v The Hashemite Kingdom of Jordan, Decision on Jurisdiction* 44 ILM 569-572 (2005);
- *Confidentiality and State Party Arbitrations* (2002) New Zealand Law Journal 125.

3. International Commercial Arbitration

- *Transnational Public Policy and the Internal Law of State Parties* Arab Journal of Arbitration, Vol.10, September 2007, pp. 27-36; *Transnational Dispute Management*, March 2009, Volume 6, Issue 1;
- *Corruption, International Public Policy and the Duties of Arbitrators* Dispute Resolution Journal, November 2003, 100-107;

- *Transnational Public Policy in International Arbitral Decision-Making: The Cases of Bribery, Money laundering, and Fraud* in Kristine Karsten and Andrew Berkeley (ed) *Arbitration: Moneylaundering, Corruption and Fraud* (ICC Publication 651, 2003) at 65-91 (also published in Spanish as *Orden Público Transnacional en el Arbitraje Internacional (Cohecho, Blanqueo de Capitales y Fraude Contable)*);
- *Introductory Note to European Court of Justice: Allianz SpA v West Tankers Inc*; 48 ILM 485 (2009).

4. Arbitral Practice & Advocacy

- *The Premises of Witness Questioning in International Arbitration* in Andrea Menaker ed. *International Arbitration and the Rule of Law: Contribution and Conformity* (ICCA Congress Series Nº 19, Kluwer Law International, The Netherlands, 2017) pp. 302-321;
- *Expertise in International Arbitration* TDM 4 (2013), www.transnational-dispute-management.com;
- *Advocacy and the Functions of Lawyers in International Arbitration* in M. Á. Fernández-Ballesteros & David Arias Liber Amicorum Bernardo Cremades (Wolters Kluwer España, 2010) pp. 291-307;
- *Oral Advocacy and Time Control in International Arbitration* in A. J. Van den Berg ed. *Arbitration Advocacy in Changing Times* (ICCA Congress Series Nº 15, Kluwer Law International, The Netherlands, 2011) pp. 181-201;
- *Preparation for Cross-Examination* *Revista de Arbitragem e Mediação*, Vol. 34, 2012, pp.337-349;
- *Cross-Examination in International Arbitration: Is it Worthwhile?* in Lawrence W. Newman & Ben H. Sheppard Jr. eds. *Take the Witness: Cross-Examination in International Arbitration* (Juris, 2010) pp. 223-242;
- *England's Procedural Revolution and Procedures Under Woolf* (2000) *New Zealand Law Journal* 323 and 395.