

**Third South Pacific International Arbitration Conference:
De-Risking Investment in the South Pacific Region through a World Class
International Arbitration Disputes Regime
Sydney Opera House and via Zoom, 17 March 2021**

**Keynote Address of John W.H. Denton AO
Secretary General, International Chamber of Commerce (ICC)**

Hola! I'm speaking to you from Madrid, and I'm deeply sorry that I can't be live and in person in the South Pacific. I often think about my engagement with the South Pacific—how formative it has been in my life, and how much I have always enjoyed the company of my friends from the South Pacific. So I am sad in a way that I cannot be with you because of the challenges of the period and the world we live in now. None of us will be safe.

Many of you will know that I have been leading at the International Chamber of Commerce (ICC) to ensure the equitable access to vaccines for all. Without ensuring that is the case and that it happens in a timely manner, this context in which we operate will not end. We will not be able to move around. We will not be able to achieve the return to economic prospects that we sought so visibly before this pandemic. And so the ICC stands up for equitable access to vaccines, and it stands up for the South Pacific because it is just the right thing to do. In the end, that is what the ICC does.

Our goal is to enable businesses worldwide to secure peace, prosperity, and opportunity for all. Our mission is to make business work for everyone, every day, everywhere. What we do is we help grow the global economy. We enable trade, and we ensure it is done in a sustainable manner. All elements are so critical to the future of the South Pacific.

And I am also delighted to be able to share some time with you today because I respect so much the work of our friends at the Asian Development Bank and at the United Nations Commission On International Trade Law (UNCITRAL).

There is no doubt in my mind that a lot of the work we do, particularly in the South Pacific and in the Asia Pacific in general, would not be possible without a strong collaboration with the ADB. Let us face it. The work we are doing right now in Singapore on ensuring that we can take the whole trading world from analog to digital is enabled by our partnership with the Asian Development Bank. So I shout out to my friends there. And I shout out to the leadership of ADB in doing course of this process. You are showing some real innovation and leadership, which, frankly, has been lacking in some of the other regions. So as a regional development bank, I think the ADB has led.

And to my friends at UNCITRAL, let me make one observation. You have done the hard yards on putting together what we call the Model Laws to ensure that we can actually recognize legally a lot of the electronic transfer of documentations that we have before us. The digitization of the trading world is enabled by the work you did on giving legal status to a number of these documents. You have made it actually easy to do. The tragedy is that it took a crisis for us to be able to get the attention of world leaders to actually adopt those Model Laws; we could not have even had that opportunity if you had not done that work. So I shout out to you and I thank you for the work you have done.

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I hope you also find partnership with the ICC as we seek to take your pure work and apply it on a global basis through our Digital Standards Initiative in Singapore—something that you can also rightly say is a positive consequence of working with us. More importantly, the initiative is a positive consequence of the ICC, the ADB, and the UNCITRAL's understanding the challenging context we are in, and doing something to actually help restore global economic growth by doing the pieces of work that are so critical to get that moving—moving to digitization, moving to the recognition of electronic documentation to give them legal force, and frankly helping the real economy which is what we all do and it is something that I am just really proud of.

What we do to grow the global economy is to enable global trade and ensure that it is done sustainably. I think it is truly important when you think about what we do is how we do it. And one of the ways we do it is through respect for the law. The rule of law is a critical element and we do not only talk about how we do it by having a world leading arbitral body, such as the ICC courts of arbitration and the whole dispute resolution team. We also do it by ensuring that the court and the dispute resolution team operate in an effective way. So what we do, how we do it, and what enables us are all important.

Now, let me talk about what enables us to make certain that the world class international arbitration practice operates on a global basis. We are all world class and that is the truth. I am proud to say that the ICC courts of arbitration and the ICC dispute resolution processes are the number one global private international dispute resolution body. Our independence and our commitment to doing things globally—that we are available not just in the Northern hemisphere and the Southern hemisphere, but also in the South Pacific—are important to us. So it is really a great pleasure to be with you here.

Pursuing a global framework for international arbitration was one of the ICC's innovations to promote trade and investment. To enable trade and investment is what we do. But it has certainly not been our last. I think—as you would have heard from some of my other comments—the work we are doing with vaccines and the work we are doing with digitizing the whole global trading environment are all new innovations. These are all necessary to continue to achieve our mission of actually growing the global economy and enabling it for the world.

Looking back, the notion that an arbitral award issued in one country would be enforceable in more than 160 countries must have seemed like an ambitious stretch to my forebearers. But that is exactly what we have done. That is exactly what we, the ICC, and the international arbitration community, have achieved.

Having been integral to the production of the first draft of the New York Convention back in 1953—thankfully before I was born—the ICC continues to innovate and adapt the rules to the needs of business globally. We need to ensure all the time that the rules fit the context in which we operate and that we operate to actually make that context as well.

In January of this year, we introduced new rules to help future-proof ICC arbitration by specifically empowering tribunals to conduct digital proceedings in the manner they see fit. We needed to do that. We must do that. As I said, we need to ensure that we can operate in the context in which we find ourselves—in the context where the possibility of human contact and actually being able to meet and actually have wet signature documents provided is impossible because of the restrictions and the lockdowns. We needed to ensure that we are actually able to empower tribunals to conduct proceedings on a digital basis. We have done that—very successfully, I think.

We have also adopted and adapted the rules to reduce the usage of paper because we are serious about sustainability and diversity. Not only do we believe that arbitration should be

sustainable, but that part of sustainability is ensuring that it actually reflects the diversity of the world around us.

I think there would be no doubt in anyone's mind that decisions that are being taken as to the composition of the courts reflect our desire to ensure diversity is actually recognized and represented within the ICC courts of arbitration. We just do not talk about it. We actually do it, and it is actually a remarkable feature of our constantly changing, innovating courts of arbitration.

The new rules that we have adopted are particularly well-tied to the context of the pandemic, and will ultimately aid to ensure that ICC arbitration remains a leading force adapted to the demands of the global economy and designed with you, the users, in mind. One of the strengths I have found with the ICC courts of arbitration and the whole dispute resolution area is its openness to change and its recognition that being number one is not a God-given right. We have to work to maintain that position, and we work to maintain that position by constantly innovating, thinking about the needs of the community that we serve, trial and testing, pioneering, and doing what we want to do as well by living up to our promises of diversity. These changes are some of the steps we have taken to upgrade and make resilient the trading infrastructure on which the whole global economy depends.

Building on our long-standing leadership in the field of trade finance, for example, we are working to digitize today's paper-based trading processes and modernize the use of standardized letters of credit (which, by the way, we also first introduced back in 1933). We are also working on one of our signature services, the ICC incoterms—which we have launched actually in the middle of the Great Depression in 1936, when the world was tearing itself apart—as an instrument that could continue to unite the world through commerce. We launched that in 1936, and one of our challenges now is to ensure that this signature service is fit for the modern age. How do we ensure smart incoterms operate? How do we ensure that we can develop an Application Programming Interface (API) to actually support and enable incoterms? This is one of the things we are working on at the moment and part of the constantly changing focus that we have at the ICC.

Do not forget that one of our values is actually pioneering. Do not forget that another one of our values is connectedness. We need to remain connected to the communities we serve. We need to continue to pioneer. We need to liberate ourselves from the past and ensure that we are ready, fit, and able for the future. It is another one of our values, and always, our primal value is to be generous to each other, generous to the communities we serve, and generous to the history of the ICC, and hopefully by doing so, we create a stronger future as well.

We see all these investments as part of the evolution of our ongoing mission which is to ensure that business works for everyone, every day, everywhere. These innovations are all the more important as the pandemic has highlighted the fragility of global trade. Providing struggling economies hit hard by the pandemic will require that we use all available tools to jumpstart economic activity, and international arbitration is a proven force for growth.

A 2016 study by researchers at the IFC and the University of Valencia, including Dr. Paniagua who is on the first panel, looked econometrically at the connection between signing the New York Convention and inward foreign direct investment. The study showed that the impact was positive and significant. In fact, foreign direct investment grows five-fold in the years after countries joined the Convention.

Embedding international arbitration into national legal frameworks then sends a strong signal that businesses can rely on effective dispute resolution to support their investment. Just as property rights are a pillar of the modern economy, de-risking investment requires that companies have confidence in a stable and efficient business environment.

A study recently conducted by the Commonwealth Secretariat found that small and medium-sized enterprises (SMEs) undoubtedly boost the real economy. We want to make certain that SMEs continue to flourish. SMEs, particularly in the Pacific, account for over 90% of economic activity; on a global basis, they account for similar amount in terms of global trading sector. But these SMEs are hesitant to invest abroad. Why? Due to uncertainty about the legal systems that operate in other economies, in other countries. So effective dispute resolution helps to address these basic concerns harbored by businesses, large and small, operating across borders.

More and more countries in the South Pacific are joining the New York Convention. We are so pleased that the recent signatories include Fiji, Papua New Guinea, and Timor-Leste. Welcome aboard, Timor-Leste! I know that in signing, one of the signals that you send to the global business community is that Timor-Leste is open for business and open for foreign direct investment.

I will note that several South Pacific islands have yet to do so. If we need to continue the support, or you need help from us to argue the case with your respective governments and practitioners, please let us know and we will be happy to arm you with the advocacy tools required.

The reality is that countries considering adopting the New York Convention can take comfort that, when globally applied, arbitration is the most welcome method of dispute resolution. One of the myths about arbitration is that it is for someone else. The fact of the matter is, arbitration—the way we apply it under the ICC Rules and the process we take—means that it is for *you*. Global influence, regional significance, and local impact—that is what we do at the ICC. We need to ensure and we do ensure that it is locally relevant as well.

Arbitration is a global framework. It is also tight tailored to be relevant at the local level and have an impact there, where a small firm expanding operations can have the same swift recourse to justice as a larger firm leveraging a global footprint. In fact, one of the pillars that we are working on at the moment with our Save Our SMEs campaign is how to ensure rapid and effective access to dispute resolution for SMEs at a low cost. We think it is critical to get the real economy moving. ICC's Rules enable this in dispute resolution: firstly, by administering a proceeding in the language in which the users desire to conduct it; secondly, by ensuring the tribunal rules based on the legal system chosen by the parties; and, thirdly, by guaranteeing that the procedures governing the actual process will be the ones that the parties have agreed to.

Global influence, regional relevance, and local impact. It is the opportunity that is provided by utilizing and understanding the way the ICC courts of arbitration dispute resolution operate. But it is also critical to understand the importance of acceding to the New York Convention and the benefits that actually accrue to economies.

When we talk about the challenges that this conference will be focusing on, we do think that part of the future lies in actually having an effective recourse to dispute resolution. And we at the ICC stand ready, willing, and able to ensure that the world class service we deliver is relevant, tailored, and effective for you. Please never hesitate to ask for our help. Never hesitate to ask for our support; for example, if there are issues you need to argue with your government or with other regulatory bodies to ensure that the benefits of having access to justice through arbitration are available.

Thank you for your time. Again, I am sorry I cannot be with you. Enjoy the rest of the conference, and I look forward to the moment when we can all be together again. Thank you!