



Schiefelbein Global Dispute Resolution Conference

Online | January 15, 2021

Continuing Education Materials & Reading List

Schiefelbein Global Dispute Resolution Conference

Reading List

New Space: Challenges and Opportunities

George Khoukaz, [ADR That Is out of This World: A Regime for the Resolution of Outer-Space Disputes](#), 2018 J. Disp. Resol. 265 (2018).

Susan Cone Kilgore, [Arbitration Rules for Disputes Arising from Outer Space Activity](#), 65 FED. LAW. 59 (2018).

COVID-19 Class and Mass Disputes

American Bar Association, [COVID-19 Class Actions Forecast](#), Summer 2020 Newsletter (2020)

Betsy Grey, [Causal Proof in the Pandemic](#), 10 Wake Forest L. Rev. Online 124 (2020)

Grant C. Killoran, Joseph D. Newbold & Erica N. Reib, [The New Wave of Litigation: An Early Report on COVID-19 Claims](#), 93 Wis. LAW. 18 (2020).

Erica Rutner, [The Class Action Fallout from COVID-19: A Proliferation of New Disputes](#), 18 Mass Torts Litig. 8 (2020).

Martin Woodward, [Experienced in Upheaval: Class Action Practitioners Can Be Valuable Resources during COVID](#), 30 Class Actions & Derivative Suits 1 (2020).

Top Class Actions, [A Complete Guide to Coronavirus Lawsuits & Legal Issues](#), December 22, 2020.

The University of Melbourne (AUS) Law has compiled a list of articles related to international legal COVID scholarship that they update regularly:

<https://law.unimelb.edu.au/centres/hlen/covid-19/scholarship>

Note: Some sources are paywalled but we could request copies.

Mediation the World Over

(Annotations by Andrea Gass)

S. I. Strong, [Realizing Rationality: An Empirical Assessment of International Commercial Mediation](#), 73 Wash. & Lee L. Rev. 1973 (2016).

This study of international mediation highlights the complaints about international arbitration, such as time and expense, and examines the promise of mediation to address those problems. It is a thorough examination of how and why mediation is used in the international context, and by whom.

Neil Andrews, [Mediation: International Experience and Global Trends](#), 4 J. Int'l & Comp. L. 217 (2017).

Discussing the key principles of mediation: voluntariness, neutrality, conscientious solution making, working with parties with binding authority, confidentiality, and finality. Commentators suggest additions such as ensuring parties are not forced to mediate and strengthened judicial authority to enforce agreements. It surveys the advantages of international mediation giving rise to its increasing popularity, including:

- Flexibility to control process privately
- Avoiding the harsh outcomes of trial
- Promotion of peaceful resolution and preservation of relationships
- Confidentiality (especially in contrast to public trial)
- Ability to consider matters beyond the scope of the law
- Cost savings

Governments also are increasingly encouraging or mandating that parties mediate. Optional: It then goes into depth on mediation trends in particular countries.

Stella Vettori, [Mandatory Mediation: An Obstacle to Access to Justice?](#), Afr. hum. rights law j. vol.15 n.2 Pretoria (2015)

Indigenous International Dispute Resolution

(Annotations by Andrea Gass)

Keith Harper, [Cobell v. Norton - Redressing a Century of Malfeasance](#), 33 HUM. Rts. 5 (2006).

Discusses a breach of trust lawsuit alleging deficient management of a trust among American Indians who reported lack of accounting, lack of records, and underpayment of leases. He calls for an end to this legacy of "incompetence and abuse."

Enrique Prieto-Rios et. al, [Foreign Investors and the Colombian Peace Process](#), 18 Int'l Community L. Rev. 223 (2016).

Discusses land re-distribution efforts in the wake of land theft and international regimes' impact on international arbitration of claims between land claimants and foreign investors, including Indigenous people, in post-Colonial counties such as Colombia.

Courtenay Barkelem & Enrique Alberto Prieto-Rios, [The Concept of "Indirect Expropriation," Its Appearance in the International System and Its Effects in the Regulatory Activity of Governments](#), 11 Civilizar 77 (2011).

Discusses the concept of compensation for "indirect expropriation," or regulation that limits activities on land, and its potential to impact efforts to protect Indigenous land rights. It briefly mentions dispute resolution mechanisms that were included in a past trade agreement.

Enrique Prieto-Rios, [Neoliberal Market Rationality: The Driver of International Investment Law](#), 3 Birkbeck L. Rev. 55 (2015).

"I will argue that neoliberalism is an ideological project that has played an essential part in shaping international investment law and creating a pro-investor regime with strong protection of property rights and contractual relationships, limiting the ability of host states to regulate in matters of public interest." The paper discusses how the neoliberal ideology has permeated

international investment law, which establishes dispute resolution principles, but it does not directly discuss Indigenous peoples.

Risa Schwartz, [*Toward a Trade and Indigenous Peoples' Chapter in a Modernized NAFTA*](#), Centre for International Governance Innovation (2016).

Discusses Canada's progressive approach to inclusion of Indigenous people in international trade to protect Indigenous rights as well as Indigenous participation in commerce. The author argues that Canada should press forward with a plan that will benefit not only Indigenous people but international investors who will benefit from economic certainty.

Risa Schwartz & Judy Whiteduck, [*A Proposal for a Joint Declaration on Trade and Indigenous Peoples*](#), Centre for International Governance Innovation (2020).

Risa Schwartz, [*Developing a Trade and Indigenous Peoples Chapter for International Trade Agreements*](#), in *INDIGENOUS PEOPLES AND INTERNATIONAL TRADE* (John Borrows, ed.), Cambridge University Press (2020).

John Borrows, [*Indigenous Legal Traditions in Canada*](#), 19 Wash. J.L. & Pol'y 167 (2005).

Discusses the role of indigenous dispute resolution customs in relatively accommodating Canada, and the decentralized form of decision making that Indigenous dispute resolution sometimes takes. It is important to note that "Indigenous" is a blanket term that encompasses many distinct cultures, and they are not inflexible doctrines frozen in time. But some traditions involve authority vested not only in elite judges, enabling relatively powerless members of communities to influence decisions. (See Page 195.) Equal protection is a flexible concept to accommodate these differences in legal regimes. (See Page 212.)

Scott Brown et. al, [*Alternative Dispute Resolution Practitioners Guide*](#)

Provides a useful summary of a variety of alternative dispute resolution methods including variations based on indigenous practices. (See Appendix A.)

Sarah Ciftci & Deirdre Howard-Wagner, [*Integrating Indigenous Justice into Alternative Dispute Resolution Practices; A Case Study of the Aboriginal Care Circle Pilot Program in Nowra*](#), 16 Australian Indigenous L. Rev. 81 (2012).

Discusses improving dispute resolution involving Aboriginal people in Australia, New Zealand, and Canada, involving adjustments to the system to produce more equitable outcomes for aboriginal people rather than incorporation of actual Aboriginal dispute resolution mechanisms. Care circles are entrenched in the dominant legal system, involving an impartial mediator overseeing discussions between parties in disputes. It's an evolving program and the authors conclude it has numerous advantages over the traditional adversarial dispute resolution models.

Marie Cornu, [*New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution*](#), 17 Int'l J. Cultural Property 1 (2010).

Discusses the increasing prevalence of ADR methods such as mediation and arbitration concerning the return of artifacts to claimants including indigenous peoples. It tends to foster more settlements that acknowledge the legitimate interests on both sides of the disputes, fostering compromises such as shared ownership rights, lending, and creation of replicas.

Dejo Olown, [Indigenous Approaches to Conflict Resolution in Africa: A Study of the Barolong People of the North-West Province, South Africa](#), 1 J. L. Judicial System 10 (2018).

Describes approaches of mediation, adjudication, and diplomacy to foster relationship building to foster a harmonious resolution that can preserve peace and also prevent future conflicts.

Carlo Osi, [Understanding Indigenous Dispute Resolution Processes and Western Alternative Dispute Resolution, Cultivating Culturally Appropriate Methods in Lieu of Litigation](#), 10 Cardozo J. Conflict Resol. 163 (2008).

Discusses the practice of traditional and modern forms of ADR among Indigenous communities, with a section describing where Indigenous peoples stand amid globalization. A major international problem is the appropriation of indigenous knowledge and culture without permission. The World Intellectual Property Organization helps Indigenous peoples protect their rights to traditional knowledge such as medicines and cultural heritage including artistic expressions, using mediation. Indigenous methods tend to strive for group consensus as well as maintenance of good relations with other community members.

Sergio Puig, [International Indigenous Economic Law](#), 52 U.C. Davis L. REV. 1243 (2019).

The author argues that to protect Indigenous rights, interests, and participation, international economic law must incorporate the values of social and economic justice from human rights law. It discusses how international economic law can be molded into a more effective “shield” to protect Indigenous interests from international economic agreements and a “sword” to fight laws of the states in which Indigenous people reside.

Sukhsimranjit Singh, [Access to Justice and Dispute Resolution Across Cultures](#), 88 Fordham L. Rev. 2407 (2020).

Discusses the goal of cultural groups to use frameworks of justice that reflect their values, and raises the question of whether more of the many, diverse cultural groups must recognize newly granted rights to establish that access to justice has advanced.