Russian Arbitration Center

at the Russian Institute of Modern Arbitration

ARBITRATION DIGEST JANUARY 2023

CASE LAW DEVELOPMENTS

Singapore Court and Law Applicable to Arbitrability: Lex Arbitri Knockdown

The dispute arose out of 2006 shareholder agreement between Westbridge, a private equity firm, and Anupam Mittal, an Indian businessman. Mittal and his two cousins co-founded People Interactive, a company that created websites for marriage agencies. Mittal owns approximately 31% of People Interactive and 44% of the company is owned by Westbridge.

The relationship soured in 2017 when People Interactive failed to complete its planned initial public offering. In addition, Mittal accused Westbridge of trying to seize control of People Interactive, infringe on the rights of minority shareholders and disclose confidential information about the company to a competitor. In the spring of 2021, Mittal filed a petition to the National Company Law Tribunal in India (NCLT). Westbridge responded by applying to the Singapore courts, first for an *ex parte* urgent temporary injunction and then for a permanent injunction against Mittal.

The Singapore High Court sided with Westbridge and granted an injunction since recourse to the NCLT violated an arbitration clause in the shareholder agreement providing for ICC arbitration in Singapore.

During the proceedings, the question arose as to what law should determine arbitrability of a dispute at the pre-award stage. Mittal believed that claims regarding violation of minority shareholders' rights under Indian law applicable to the shareholder agreement could not be submitted to arbitration. The High Court, in turn, held that the law applicable at the pre-award stage was the Singapore law as the law of the seat of arbitration. Therefore, in the High Court's opinion, the dispute was arbitrable, and the respondent was entitled to an injunction.

The Singapore Court of Appeal upheld the injunction but disagreed with the High Court's finding that the law of the seat of arbitration should take precedence over the law applicable to the arbitration agreement.

The Court of Appeal stated that a two-stage approach should be applied: first, the courts should determine whether the dispute is arbitrable under the law applicable to the arbitration agreement, and if not, the anti-suit injunction should be denied, as it would violate international public policy. Second, even if the dispute is arbitrable under the law applicable to the arbitration agreement, the court must determine whether the dispute is arbitrable under Singapore law.

In determining the applicable law to the arbitrability, the Court of Appeal emphasized the importance of public policy, stating that public policy in the context of section 11 of the Singapore International Arbitration Act is not limited to domestic public policy. Thus, a dispute cannot be submitted to arbitration in Singapore if it is contrary to the public policy of the foreign jurisdiction relevant to the arbitration agreement, especially if choice of Singapore as the seat of arbitration is the only link to Singapore.

The Court of Appeal found that the parties' choice of Indian law for the main contract creates a presumption that Indian law is an implied choice of law governing the arbitration agreement. Still, the Court held that in this case the application of Indian law (which would render the dispute non-arbitrable) would violate an express intention of the parties to enter into an arbitration agreement. Thus, Singapore law has a more real and substantial connection to the arbitration agreement and therefore applies to it.

Read

How the Arbitral Award Crashed Against the Wall of Friendship

The Paris Court of Appeal overturned a partial award because of a eulogy written by Thomas Clay, the French arbitrator and academic, in honor of Emmanuel Gaillard after his sudden death, which raised doubts about Mr. Clay's independence and impartiality as president of the tribunal. The award was rendered in November 2020 in Douala International Terminal (DIT) v Port Autonome de Douala. In February 2021, Gaillard and his team moved to Gaillard Banifatemi Shelbaya Disputes where they continued to represent DIT in the dispute.

In the eulogy published in the famous French Dalloz, Clay mentioned the strong friendship with Gaillard and their regular meetings for 21 years. He also mentioned that before making any important decision, he consulted with Gaillard, whom Clay, in his words, admired.

The Paris Court of Appeal overturned the partial award on the grounds that Clay concealed his close relationship with Gaillard, which he had not disclosed in his declaration of independence, and which would not have come to light had it not been for Gaillard's death. This raised justifiable doubts about Clay's independence and impartiality.

The Court noted that the praise of one academic by another academic, his reputation and influence on the arbitration, and the use of superlatives to describe him as a practitioner and person are common in such speeches. However, the Court was concerned about the "bond of friendship" described in the eulogy, and, in particular, by Clay consulting with Gaillard before making any major decision. Finally, a cause for concern was Clay's reference to a hearing in the case at hand, which he looked forward to, in order to hear Gaillard's "impressive arguments", whose accuracy and insight "captivated" Clay.

Read

Ex-husband Ruined Because of His Greed

After 11 years of marriage, James Maxwell and Lynne La Fontaine were left with a break-up in 2000 and a subsequent 9-year separation process: the couple had three children and Maxwell was expected to pay child and spousal support. However, the ex-husband refused to fulfill his obligations, therefore, La Fontaine sued him (*La Fontaine v Maxwell*, 2023 ONSC 91).

Following a 23-day hearing, the arbitrator ruled in favor of the mother and children, ordering the husband to pay almost USD 2 million retroactive and ongoing child support until the children are 22 years old. The arbitrator held that Maxwell, who claimed absence of any financial assets, deceived his accountants, experts as well as his and his wife's representatives regarding his actual financial situation. He tried in bad faith to hide from everyone the information that he was at the same time a trustee and the beneficiary of two family trusts, as well as the owner of a mansion in one of the most fashionable areas of Ottawa, a USD 4 million vacation home in Florida, and a luxury cottage in Lac McGregor in Quebec. Therefore, he was able to immediately satisfy his debt to La Fontaine and his own children.

Maxwell decided to take his chances in the courts by filing a motion with the Ontario Superior Court for stay of enforcement of the award.

However, having considered the criteria that must be met to satisfy the said motion, the Court refused Maxwell. First, the spouse, would not have suffered "irreparable harm" as a result of the award being enforced. On the contrary, the judge indicated that "Mr. Maxwell is undoubtedly a very wealthy man" and the Court had no doubt that "he has access to significantly more financial resources than what he claims before this court."

Second, when assessing the balance of convenience of the parties, the Court noted that due to many years of litigation with her ex-husband and non-payment of the support, La Fontaine got into huge debts. Her only significant asset, however, was her modest home, which was encumbered with a USD 395.000 mortgage and a USD 200.000 collateral mortgage to her former lawyer as security for outstanding legal fees – which, in the Court's view, stood in a quite poor contrast to the numerous luxury properties owned by Maxwell.

In these circumstances, the Court ruled that a proper balance would be reached if Maxwell pays USD 1.887.168 under the arbitral award, but effectively granted a partial stay of Maxwell's obligation to pay legal fees pending an appeal.

Read

Arbitration Under the German Competition Law: It Has Become Harder to Breath

The German highest court ruled that the courts can review arbitral awards related to the competition law on the merits.

It was decided following one of the disputes, in which the landlord wished to terminate the lease agreement for a basalt quarry and demanded from tenant to leave the quarry. When the case was heard in arbitration, even before the award was made, the landlord was fined by the German Federal Cartel Office based on the circumstances of the case. Meanwhile, in the award the tribunal held that termination of the contract did not violate German competition law.

The tenant applied to the Higher Regional Court of Frankfurt for annulment of the award, arguing that it violated German competition law and, therefore, German public policy. However, the Court rejected the application and refused to conduct a full examination of the award on the merits out of concern that party autonomy would be infringed.

As a result, the Federal Court of Justice found that improper application of the competition law by the arbitral tribunal violates public policy. The Federal Court overturned the lower court's decision and ruled that the arbitral awards were subject to unlimited factual and legal review by the German courts concerning application of German competition law.

The Federal Court referred to a decision from the 1960s, in which it ruled that European competition law was part of the German public policy. Moreover, since the fair competition rules are a fundamental pillar of the German economic and social order, the Court stated that it could not accept any misapplication of these rules by an arbitral tribunal.

Read

First-ever Arbitration under the 1979 Bern Convention

Azerbaijan initiated the first known inter-state arbitration under the Bern Convention on the Conservation of European Wildlife and Natural Habitats, accusing Armenia of destroying the environment and biodiversity.

Azerbaijan's claim under Convention relates to the Nagorno-Karabakh region and adjacent territories in the South Caucasus. The Azerbaijan's Ministry of Foreign Affairs says that in "liberating" the territories three years ago, Azerbaijan uncovered "shocking evidence" of Armenia's destruction and its inability to protect the environment. Azerbaijan is seeking an order from the arbitration tribunal to cease all ongoing violations of the Bern Convention by Armenia and to pay full compensation for environmental damage in "previously occupied territories."

The Bern Convention, under which Azerbaijan filed its request for arbitration, was signed in 1979 and entered into force in 1982. Its "Settlement of Disputes" section states that disputes "concerning the interpretation or application of this Convention" will be referred to a panel of three arbitrators. The parties shall designate arbitrators within three months. Otherwise, the issue will be referred to the European Court of Human Rights in Strasbourg, that may also designate the third arbitrator if the two arbitrators designated by the parties do not reach an agreement.

The Convention stipulates that the arbitration tribunal shall "draw up its own Rules of Procedure".

Read

A State Court Imposing Interim Measures Prior to Having Recourse to Arbitration

The Saint Petersburg and the Leningrad Region Commercial Court heard the request of RusChemAlliance LLC for the interim measures in connection with the applicant's intention to file a claim against the transnational company Linde in the Hong Kong Arbitration Centre (HKIAC).

The claims of RusChemAlliance LLC concern construction of a gas processing plant in the Leningrad Region. To implement this project, RusChemAlliance LLC made an advance payment to Linde of approximately EUR 1 billion. However, in the summer of 2022, Linde suspended construction of the plant due to the EU sanctions. Failing to initiate continuation of the works, RusChemAlliance LLC terminated the contract and demanded return of the advance payment, as well as compensation for losses, which Linde refused.

The judge of the Commercial Court satisfied the application of RusChemAlliance LLC, prohibiting Linde from divesting its interest in its Russian subsidiaries, and forbidding all subsidiaries to dispose property in excess of 5% of the book value of their assets. In the Court's view, the sanctions may make it impossible to further enforce the arbitral award abroad, while Linde promised to sell Russian assets, which creates obstacles to the enforcement of the award in Russia. The Court also agreed with the valuation of the assets in respect of which the applicant requested to impose interim measures.

According to the Court's ruling, once the interim measures are imposed, the claimant must send a pre-arbitration claim to the potential respondents in accordance with the arbitration clause and, at the end of the period for pre-arbitration dispute settlement procedure, file a notice of arbitration with the HKIAC.

Read

Japanese Company Denied a Writ of Execution

In the arbitration digest of September 2022, we already discussed the ICC award, according to which the Russian companies UAT and Avtosvet were ordered to pay JPY 187.8 million, interest at 6% per annum, EUR 45.000 of arbitration costs as well as USD 21.465 and JPY 177.5 million in arbitration costs and expenses.

Subsequently, the Japanese company Koito Manufacturing Co, Ltd (Koito) applied to the Ulyanovsk Region Commercial Court for recognition and enforcement of the award. The case reached the Russian Supreme Court that disagreed with the conclusions of the court of first instance and cassation court which sided with the Japanese company. As a result, the Supreme Court reversed the rulings of the lower courts and remanded the case for a new trial to the court of the first instance.

The Ulyanovsk Region Commercial Court, during the second consideration of the case, refused to issue a writ of execution. According to the Court, the applicant did not provide evidence necessary to confirm that Avtosvet LLC has a debt to the Japanese company. The Court also found that the case file has no originals or duly certified copies of the memorandum of understanding, as well as evidence of the former director general's authority to sign this document on behalf of Avtosvet LLC.

Read

INVESTMENT ARBITRATION NEWS

Canada Strikes Against Immunity

In its first judgment on sovereign immunity from claims for enforcement of awards in investor-state arbitration, the Quebec Superior Court denied India a sovereign immunity (*CC/Devas (Mauritius) Ltd. c. Republic of India*, 2022 QCCS 4785).

The long-standing dispute between India and investors against successors of the Mauritanian company Devas Multimedia, on which two awards have already been rendered, shows no end.

The dispute arose after Antrix, the Indian space corporation, concluded a contract with Devas Multimedia to build two satellites for the company and provide digital multimedia services using the S-band for 20 years. However, after 6 years, it turned out that payment for services was inadequately low, and India itself needed the S-band for national security purposes. Investigation commission concluded that this situation arose due to a procedural error. On this basis, the Indian Government decided to terminate the contract, which led the parties to arbitration in the Netherlands.

The first award rendered in 2016 stated that India had breached its obligations under the 1998 India-Mauritius BIT by unlawfully terminating the contract. The second award of 2020 awarded the investors USD 111 million plus interest as compensation for their subsequent losses.

While seeking to challenge both awards in the courts of the seat of arbitration, India also intended to obtain sovereign immunity from jurisdiction of the Canadian courts under the State Immunity Act, as investors immediately attempted to enforce the award in Canada. For that purpose, India even reached out to the Canadian Ministry of Foreign Affairs. In January 2022, India received a letter from the Minister of Foreign Affairs and a certificate confirming its status as a foreign state, which created a strong presumption in its favor.

Investors also did not stand aside and had carefully examined the law in question. The law, in turn, provides for two exceptions to sovereign immunity, namely undertaking of commercial activities and waiver.

After considering facts of the case, the Court ruled that the enforcement proceedings were not “new or different” from the arbitration proceedings in which India actively participated, and the awards, in the words of the Court, “result directly from [India’s] failure to honor its contractual obligations and undertakings under the BIT.” And while the Devas agreement with Antrix has never constituted a commitment undertaken by India, the Court did not agree that India “cannot be considered to be engaged in commercial activities” because in this way India promoted investment in its territory. Accordingly, “the nature, purpose and whole context of [India’s] actions leading to the arbitration under the BIT are commercial in nature.”

Moreover, by consenting to international arbitration, states agree to be bound by the tribunal’s orders against them and necessarily waive claims of jurisdictional immunity of the state.

Thus, the Quebec Superior Court has joined other courts in finding that the State Immunity Act does not prevent enforcement of awards in Canada against a foreign country.

Read

Is the State Responsible for the Obligations of the Insurgent Group

An interesting legal issue in investment arbitration came from Africa. A subsidiary of Fattouch Investment, the Lebanese holding company, obtained a license to carry out telecommunications activities in South Sudan and later became the country's largest mobile operator.

However, the conflict arose with regard to the fact that the company received this license back in the days when South Sudan as a state did not exist, and on its territory was a civil war between the government forces of Sudan and the Sudan People's Liberation Army that issued the license in question.

Subsequently, the Sudan People's Liberation Army won and founded the state of South Sudan that was recognized by the world community and became a member of the UN. At the same time, the new government deemed "foreign" the license that allowed the investor to operate in the country without paying any taxes and fees, as well as demanded from the investor to pay for a new license. The investor did not agree with the government's request and filed a notice of arbitration. According to some South Sudanese officials, the arbitral tribunal has already ruled in favor of investors awarding USD 1 billion. However, it is denied by some news sources, which indicate that the proceedings are still ongoing.

Read

Get Arbitration as a Bonus to a Contract

The High Court of England and Wales is going to hear a case of setting aside an arbitral award against Nigeria for USD 11 billion. The dispute between Nigeria and the investor has been going on since 2012, when the latter initiated an arbitration over problems with the execution of the contract to supply Nigeria with electricity. The arbitral tribunal ruled in favor of the investor, recovering USD 6.6 billion from the respondent, and due to the accrual of interest this amount has now increased to USD 11 billion.

However, Nigeria insists that the contract with investor was concluded because of the bribes paid by the company representatives to Nigerian officials. The judge of the High Court also saw indications that the arbitral award is flawed. He pointed out to the prima facie reasons to believe that the contract was entered into through corrupt schemes and was part of a plan to defraud Nigeria. The judge also believes that the circumstances of the case indicate that evidence submitted in arbitration was falsified and lawyers were bribed during the proceedings.

Several witnesses, including Nigerian officials, are scheduled to testify during the court hearing. The former director of the investor will also testify, and it is interesting to note that he plans to provide testimony via videoconference from a confidential location.

Read

Uranium Mining Ban Led to Arbitration

An American company filed a request for arbitration with the International Center for Settlement of Investment Disputes (ICSID) against the Republic of Kyrgyzstan. The company's claims relate to moratorium introduced by Kyrgyzstan on the search, exploration and production of uranium in its territory. After the moratorium was imposed, the claimant lost its license to develop uranium deposits, which, in his view, amounted to expropriation of his assets. The value of the claim is USD 63 million.

As of today, the parties have already constituted an arbitral tribunal. Claimant appointed Prof. Stanimir Alexandrov as a co-arbitrator, the Republic of Kyrgyzstan, in turn, appointed Prof. Zachary Douglas as a co-arbitrator. The president of the arbitral tribunal, Prof. Juan Fernández-Armesto, was jointly chosen by the parties.

Read

Complex Expropriation Scheme? Investment Tribunal Sided with Peru

The PCA tribunal has dismissed a USD 627 million claim filed by Panamericana Television SA and the Schutz family against Peru in connection with the alleged expropriation of a media company involved in a corruption scandal.

Panamericana SA's majority shareholders, members of the Schutz family with Swiss citizenship, filed a notice of arbitration against Peru in 2019, alleging that their investments were expropriated after a Peruvian court appointed Panamericana minority shareholder Delgado Parker as the company's court administrator in 2001. The reason for the appointment was a scandal over a video in which the former head of the Panamericana, Schutz Landazuri, was bribed by the Peruvian presidential adviser, Alberto Fujimori.

Under the leadership of the appointed court administrator, Panamericana had accumulated substantial debt, and the company's ratings and revenues have plummeted. In 2008, a Peruvian court decided to dismiss Delgado Parker and put the company under control of Schutz's son Landazuri. Schutz Jr argued that the Panamericana should not be held liable for unpaid taxes incurred under Delgado Parker's leadership. In 2014, the Peruvian Constitutional Court upheld Schutz's position, ruling that if Panamericana were to pay the disputed taxes, it would be tantamount to "judicial expropriation".

However, the tribunal ruled in its final award that Delgado Parker's actions could not be attributed to Peru and, therefore, did not constitute a breach of the Peru-Switzerland BIT. The tribunal dismissed Panamericana's claim in its entirety and was critical of claimant's argument that the transfer of control to Delgado Parker amounted to expropriation. The Tribunal awarded USD 129.000 towards the costs of Peru. The arbitration was conducted under UNCITRAL Rules.

Read

How the “Free City” of Libreville Tried to Get Rid of the Award

The French Court of Cassation dismissed Gabon’s and Libreville’s request to discontinue the appeal of a lower court’s judgment to set aside the award in *Webcor and Grand Marché de Libreville v Gabon and Libreville*, finding that the investors’ failure to remove a lien on Gabon-owned immovable property imposed under the award was not sufficient to discontinue the appeal.

The ICC tribunal ordered the respondents to pay investors around EUR 100 million due to the breach of several construction contracts, as a result of which the investors were allowed to impose a lien on two real estate assets owned by the respondents. The Paris Court of Appeal overturned the award since the investors’ wedding gift to the mayor of Libreville was indicative of a corrupt conspiracy and constitute a ground for overturning the award on public policy grounds. The judgment of the Court of Appeal also ordered the investors to pay EUR 50.000 to the respondents in costs.

As a result, the investors appealed this judgment to the Court of Cassation. Then, Libreville filed an application for discontinuation of the appeal under Article 1009-1 of the French Code of Civil Procedure (CCP) that allows the French courts to discontinue the appeal if the applicant does not prove that he complied with the decision under appeal. The French Court of Cassation found that the non-removal of the encumbrance on real estate is not enough for Article 1009-1 of the CCP to apply, since the decision of the Court of Appeal only ordered investors to pay EUR 50.000.

Nevertheless, the Court of Cassation noted that the judgment of the Court of Appeal could be considered as a basis for removing a lien on immovable property.

Read

An Anxious Investor and the ICSID Tribunal’s Refusal to Issue an Order Protecting Integrity of Arbitration

Hearing *Riverside Coffee v Nicaragua*, the ICSID tribunal dismissed the claimant’s request for an order protecting the integrity of the arbitration that, in claimant’s view, was infringed by a Nicaraguan court order allegedly seizing the property in question. The dispute arose with regard to occupation by the paramilitary forces of a plantation (the Hacienda Santa Fe) owned by a claimant’s subsidiary since mid-2018, allegedly with the support of local police, municipalities and the central government.

The claimant reached out to the tribunal, arguing that the order of the Nicaraguan court was aimed at circumventing the tribunal’s exclusive jurisdiction and was tantamount to a judicial seizure of Hacienda Santa Fe. The claimant requested that respondent shall immediately disclose any judicial or administrative actions taken against the investor or its investment since filing of the notice of arbitration, as well as produce the court file on the arrest of the Hacienda Santa Fe. It is noteworthy that the claimant’s request was not formalized as a request for provisional measures, but it was based on Articles 43 and 44 of the ICSID Convention.

In Nicaragua’s view, the claimant’s request was procedurally unfounded and constituted an attempt to seek injunctive relief under the ICSID Convention and the ICSID Arbitration Rules without satisfying the relevant legal standards. The tribunal found that the court order giving rise to the claimant’s request did not aim to seize the claimant’s property, but aimed to protect it during the arbitration proceedings, especially since the

court order recognized that the property was registered in favor of a claimant's subsidiary. Thus, the tribunal dismissed the claimant's request for an order to protect the integrity of the arbitration and the respondent's disclosure request as well, noting that the claimant would have the opportunity to request relevant materials at the document production stage.

Read

ARBITRATION NEWS

Survey of Energy Disputes Arbitration

The School of International Arbitration, Queen Mary University of London, with the support of Pinset Masons, has published results of its survey on resolution of energy disputes in arbitration.

The survey touches upon the main types of disputes, risks and issues that the energy sector is currently facing or will encounter in the future. Most respondents cited volatility in commodity and energy prices as the key reason for the disputes. The main problem faced by energy sector is the fluctuating cost of the necessary resources (costs of the raw materials and energy unit prices) to develop, operate and maintain energy projects, which leads to commercial uncertainty and more disputes.

Nearly three-quarters of respondents (73%) chose Europe as the region where most likely amount of the energy disputes will increase. 36%, 29% and 27% of respondents chose Asia, the Middle East and Africa respectively. London and Singapore were chosen as the most popular seats of arbitration.

Read

Empirical Study: Provisional Measures in Investment Arbitration

BIICL and White & Case revealed results of an empirical study on provisional measures in investor-state arbitration. The study consists of three parts, examining developments since 2019, when such a study was first conducted. The first part is dedicated to the new practice (160 decisions) and the impact of the recent amendments to the ICSID Rules on the issue in question. The second part is devoted to how effective such provisional measures are, including the average amount of time for arbitrators to adopt such decisions, as well as to the security of costs, etc. The third part examines how the results of the study have changed compared to the conclusions drawn in 2019.

The study did not reveal any major changes in the types of provisional measures requested by the parties, or the criteria applied by arbitrators, other than an upturn in the number of requests for security of costs and an increase in the significance of the proportionality criterion.

Read

East Timor Has Become the 172nd State Party to the New York Convention

By joining the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, East Timor became its 172nd state party. The Convention will enter into force for East Timor on 17 April 2023.

Read

ICDR Published Guidelines for Tribunal Secretaries

The Guidelines are dedicated to the prospective duties of the tribunal secretary. In particular, appointment of the secretary should be limited only to such complex proceedings where it would increase the efficiency of the arbitration and reduce costs. At the same time, the dispute shall be resolved only by the arbitral tribunal and not by the secretary.

Read

Unicorns of International Arbitration: Mute Off Thursdays Released a Guide of Women Arbitrators

Mute Off Thursdays, an initiative designed to promote gender equality in international arbitration, has released a guide of female arbitrators. The compendium features women practitioners in international arbitration from around the world, indicating their experience, specialization, and skills. The guide also provides for the cultural and ethnic characteristics of the arbitrators.

The compendium can become a unique tool providing women arbitrators with opportunities to expand their professional network as well as access more projects and appointments in arbitration.

Lucy Greenwood, an independent arbitrator, gave the guide an original title. She heard at one of the arbitration conferences that “finding a qualified female candidate is like finding a unicorn.” According to Mute Off Thursdays, the guide can help to solve this problem.

Read

Claudia Annacker Talked About the Main Challenges of Investment Arbitration

As part of her lecture in Prague at the Investment Treaty Arbitration Conference, Claudia Annaker, partner at Dechert, shared her opinion on the existing shortcomings in the resolution of investment disputes and on possible ways to resolve these problems.

Claudia paid attention to the significant “fragmentation” of the system of investment arbitration. This negative trend is the result of a more frequent use of *ad hoc* arbitration in resolving investment disputes. Investment treaty clauses, often very different, give arbitrators more latitude in interpreting the terms of the treaty which result in the same dispute being resolved differently in many cases.

The second problem lies in clauses that allow an investor to bring the same claim to different dispute resolution forums. To get rid of this uncertainty, the speaker suggested conclusion of “fork-in-the-road”

clauses (the investor must make the final choice in favor of one forum) or clauses waiving investor's right to bring the same claim to another arbitration.

Claudia also touched upon fragmentation in interpretation of the investment treaties' provisions. In her opinion, if the parties to the treaty agreed in advance on an interpretation of the disputed terms and provisions being binding on the arbitrators, then this would contribute to uniformity of practice and greater coherence.

Finally, the speaker suggested moving away from the international practice of concluding bilateral investment treaties and suggested conclusion of multilateral investment agreements instead. It will reduce the existing fragmentation and the number of conflicts.

Read

Legal Writing and Gender-Neutral Language

The use of gender-neutral language is an important aspect of inclusiveness in today's society, and the law is no exception. However, many lawyers involved in the preparation of legal documents are familiar with a problem that quite often bewilders – the need to use pronouns and words that designate or express a person's gender.

Tamara Ramsey shared tips on how to overcome this challenge in English, where the masculine gender has historically predominated as a default reference for a person of any gender. In particular, below are some practical solutions:

- Ask participants in advance to indicate their preferred prefixes (Mr./Ms./Mrs./Mx. or others) and/or pronouns (he/him, she/her, they/them, etc.);
- Replace gender-specific words with gender-neutral vocabulary or remove them altogether ("to address his personal business") if the meaning does not change;
- Use plural pronouns and adjectives (they/them), which becomes increasingly common in both informal and formal writing;
- Use the pronoun "one" instead of "he", "she", "they";
- In compound sentences, the "who" construction can be used (e.g., "a person who does something");
- The sentence can be reformulated so that it uses the noun in the plural form (for example, instead of "the lawyer must inform if she does something", use "the lawyers must inform if they do something") or repeat ("the lawyer must inform that the lawyer…").

In Russian, such tips are, certainly, mostly inapplicable, at least because the past tense verbs in the third person are frequently used to indicate gender in the singular.

Read

ADR for Cultural Property Disputes

The question of who owns cultural property – whether it be states, museums, or individuals – has been a contentious issue throughout history since this truly sensitive issue is on the verge of political and cultural considerations. Determining the origin of these objects is often challenging and assessing the rights of those who claim them can be just as complicated.

Typically, local courts handle such disputes that, for obvious reasons, rather prioritize the interests of their state. Moreover, often the issue of returning lost cultural property to its homeland was resolved by peaceful negotiations, but this process can take a long time and is not always successful.

It seems that an alternative approach to resolving these disputes can be to resort to the ADR methods (such as mediation and arbitration), which are confidential, neutral, flexible and tailor-made, and based on international law.

Among the international legal instruments devoted to the protection of cultural property are:

- The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. However, the Convention does not have retroactive effect, and therefore the restitution of artifacts and antiquities seized during the colonial era through diplomatic channels remains outside of the scope of its application which is a shortcoming;

- Fortunately, the Intergovernmental Committee for Return and Restitution, established in 1978, fills in the gaps of the 1970 UNESCO Convention by being applicable to property lost before the entry of this Convention into force;

- The World Intellectual Property Organization offers mediation on request to resolve art and cultural heritage disputes.

- Finally, in 2018, the Netherlands Institute of Arbitration created the Court for Arbitration for Art that handles disputes over cultural property.

Read

2023 Revised SCC Arbitration Rules

On 1 January 2023, amendments to the Arbitration Rules of the Stockholm Chamber of Commerce came into force. Among the changes are, in particular, an increase in the amount of the arbitration fee, updated rules for the expedited arbitration and provisions for the settlement of disputes through mediation.

Read

ICC International Court of Arbitration Celebrates its 100th Anniversary

This year marks 100 years since the establishment of ICC International Court of Arbitration in 1923. By the anniversary, a Declaration on Dispute Prevention and Resolution was adopted, containing principles to which the ICC intends to adhere in the future. Among these principles are access to justice and the rule of law, independence and neutrality, transparency, training and capacity building, technology, *etc.*

Read

ADR EVENTS

XIII Moscow Vis Pre-Moot

The XIII Moscow Pre-Moot for the XXX Willem C. Vis International Commercial Arbitration Moot will take place online on 10-12 March 2023.

On 31 January 2023, the registration of teams was closed. Organizing Committee is pleased to announce that it has received more than 60 applications from teams from all over the world: Russia, Belarus, Kyrgyzstan, UK, Italy, Turkey, Egypt, India, Malaysia, Tanzania, China, Iran, UAE, etc.

At the Pre-Moot Young IMA traditionally organizes a lecture, this year dedicated to "Establishing Jurisdiction: Legislative Approval and Other Mandatory Requirements for Conclusion of an Arbitration Agreement". Sean Yates (UAE, Outer Temple Chambers) and Dr. Anna Kozyakova, legal advisor and researcher, PhD at the Georg-August University of Göttingen (Germany), moderating the lecture, will help to understand this complicated legal question. The lecture will take place on 10 March 2023 at 18:00 Moscow time with registration available on the website.

Since Vis Moot and most pre-moots take place in-person this year, teams are in special need of additional funding. Petrol Chilikov Law Firm will award the winning team of the XIII Moscow Pre-Moot with USD 1.000 prize.

Organizing Committee also invites experts in international commercial arbitration to take part in the Pre-Moot. Please register as an arbitrator on the website.

Read

Results of the Research Competition "New Perspective on Dispute Resolution"

In 2022, Young IMA held II Research Competition "New Perspective on Dispute Resolution". This year, young researchers from various regions of Russia submitted over 40 papers for consideration.

The papers were evaluated by the Council of three members – Maria Andrianova (PhD, Associate Professor, Acting Head of the Department of International Private and Civil Law named after S.N. Lebedev, MGIMO), Elena Burova (Senior Associate at Ivanyan and Partners, Young IMA Co-Chair) and Pavel Sementsov (Head of Sementsov.pro Law Practice, Young IMA Co-Chair).

After a thorough review, the Council announced the following winners and runners-up:

- The winner – "The Supremacy of Consent: a Domestic View on the Relationship of Substantive Succession and the Extension of an Arbitration Agreement from a Comparative Perception." Authors: Arseny Shevelev, Georgy Shevelev.

- Runner-up – “The Arbitrator’s Discretion in Determining and Applying Substantive Law in Institutional Arbitration.” Author: Sergey Ivanov.

- Runner-up – “Cultural Aspects of International Arbitration.” Author: Ksenia Stepanova.

Additionally, the Council commended several papers that did not make it to the top, but were recognized for their unique and original topics and well-researched content:

- “Some Aspects of Logical Analysis in the Theory of ADR (why Non-State Dispute Resolution Institutions are Possible)”. Author: Daniel Gerk.

- “Arbitrability of Inheritance Disputes: a Legal Oxymoron or a Viable Idea?” Author: Irina Serenkova.

- “Initiating Bankruptcy on Debt Subject to Arbitration Agreement”. Author: Alena Ilchenko.

The winning and runner-up papers will be published on the Young IMA website. Moreover, on 20 January 2023, the authors presented results of their studies at a conference, where they answered questions from the Council and guests of the event.

Read

2023 RIMA Winter Academy on International Arbitration

On 16-27 January 2023, the Russian Institute of Modern Arbitration held its traditional Winter Academy on International Arbitration.

For two weeks, the participants discussed issues of international arbitration and human rights, the relationship between arbitration, state justice and other ADR methods, and the peculiarities of arbitration in various regions and areas. Special attention was paid to development of representative’s skills: for example, the students participated in a seminar on cross-examination of witnesses, as well as in a moot court, on the last day on the Academy.

Read

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