News and Notes from

Institute for TRANSNATIONAL ARBITRATION

The Institute for Transnational Arbitration

A Division of

The Center for American and International Law

Volume 38 | Second and Third Quarter 2022 | Number 2

INTRODUCING THE NEW MEMBERS OF THE ITA EXECUTIVE COMMITTEE

PROF. SUSAN FRANCK, Co-Chair of the Strategic Planning Committee, was previously on the Executive Committee and past Chair of the Academic Council, is a professor of law at American University Washington College of Law. She is an active member of the American Society of International Law, a member of the Chartered Institute of Arbitrators, and an elected member of the American Law Institute. Susan is an expert in international economic law, dispute settlement, and the empirical analysis of international law. Professor Franck's legal experience includes serving at the United Nations Conference on Trade and Development (UNTAD) and practicing in international dispute settlement with Wilmer, Cutler & Pickering (now Wilmer Hale) in Washington, DC and Allen & Overy in London. Professor Franck is the author of the 2019 Oxford University Press book, *Arbitration Costs: Myths and Realities in Investment Treaty Arbitration*, as well as the author of articles in prestigious journals including the American Journal of International Law, Duke Law Journal, and Emory Law Journal among others. While at UNCTAD, she organized the Joint Symposium on International Investment and Alternative Dispute Resolution, which involved innovative online pre-conference activities as well as an UNCTAD publication summarizing the online and in-person proceedings. Professor Franck received the "New Voices" award from the American Society of International Law (ASIL) for her groundbreaking empirical analysis of investment treaty arbitration.

ELINA MEREMINSKAYA returns to the Executive Committee as the new Americas Initiative Chair. Elina was previously an Executive Committee member when she served as the coeditor of ITA In Review. In the past, she has also served ITA as a moderator for the ITA Latin American Arbitration Forum. For more information about Elina see INTRODUCING THE NEW CHAIR OF THE AMERICAS INITIATIVE (page 4) as well as INTRODUCING THE NEW AMERICAS INITIATIVE LEADERSHIP STRUCTURE (page 5), where Elina discusses the Americas Initiative Committee's leadership.

NORADÈLE RADJAI, Co-Chair of the Membership Committee, is a partner in LALIVE's international arbitration team, specializing in commercial and investment arbitration in the energy (in particular oil and gas), telecommunications and construction sectors. Ms. Radjai has acted as counsel, advocate and arbitrator in over 50 international arbitration proceedings, both *ad hoc* and institutional (under most major international arbitration rules).

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INTRODUCING THE NEW MEMBERS OF THE ITA ACADEMIC COUNCIL

PROF. PETRA BUTLER is a Professor at Victoria University of Wellington Faculty of Law, Co-Director of the Centre for Small States, and a visiting professor at the Universities of Navarra (Spain) and Bahir Dar (Ethiopia). Petra specializes in domestic and international human rights, public and private comparative law, and international commercial law with an emphasis on international commercial contracts and dispute resolution. She has published extensively in those areas (including, together with Andrew Butler, *The New Zealand Bill of Rights Act 1990: a commentary* (2nd ed, Lexis Nexis, 2015) and together with the late Professor Peter Schlechtriem, *UN Law on International Sales* (2nd ed, forthcoming)). Petra has particular expertise in law reform and has most recently led the Commonwealth Secretariat study into international commercial arbitration. Petra is a fully qualified German and New Zealand lawyer. She is admitted as a barrister to the High Court of New Zealand and regularly advises private and public clients in her areas of expertise. Petra is New Zealand's CLOUT correspondent for the CISG and the United Nations Convention on the Use of Electronic Communications in International Contracts.

DR. KABIR DUGGAL is an attorney focusing on international investment arbitration, international commercial arbitration, and public international law matters, serving both as arbitrator and counsel. Dr. Duggal is also a Lecturer-in-Law at Columbia Law School, an adjunct Professor at Fordham Law School, and a Course Director and a Faculty Member for the Columbia Law School-Chartered Institute of Arbitrators Comprehensive Course on International Arbitration.

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Ms. Radjai was ranked as one of the top 5 arbitration partners globally under the age of 45 in Who's Who Legal: Future Leaders – Arbitration 2017 and is currently ranked in Who's Who Legal's global ranking for all arbitration practitioners. Ms. Radjai is Vice-Chair of the IBA Arbitration Committee (as well as former Co-Chair of its Corporate Counsel Subcommittee), a member of the Executive Committee on the Board of ASA (Swiss Arbitration Association), a member of the Pledge Steering Committee and the CPR European Advisory Board. She holds a Diploma in Law, with distinction, from the College of Law, London, and an LL.B., with honors, from King's College London (1999).

LAURA SINISTERRA, incoming Communications Committee Co-chair, is a Partner in Debevoise & Plimpton's International Dispute Resolution Group. She is based in New York and her practice focuses on international arbitration and international litigation. A Colombian national, Laura advises and represents private clients and States in a broad range of disputes under the rules of the major arbitral institutions, and frequently leads bilingual arbitrations in English and Spanish. She has particular experience in the mining and energy sectors, in which she regularly handles complex disputes arising out of Latin America. In addition to serving as Co-Chair of ITA's Communications Committee, Laura currently serves on the board of the Asociación Latinoamericana de Arbitraje (ALARB), as Vice Chair of the International Arbitration Committee of the ABA's International Law Section, and previously was the inaugural Chair of the ITA's Young Mentorship Program. She has been recognized as a Rising Star and Future Leader by The Legal 500 US, The Legal 500 Latin America and Who's Who Legal. She is admitted to the Bars of New York and Colombia.

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He also acts as a Consultant for the United Nations Office for Least Developed Countries on the creation of a novel "Investment Support Program." Dr. Duggal works closely with the U.S. Department of Commerce's Commercial Law Development Program (CLDP) and has undertaken capacity-building workshops in Georgia, Kosovo, and Bosnia & Herzegovina. He has also conducted training and capacity-building sessions for several Governments on public international law and dispute resolution matters. He serves on the Federal Republic of Somalia's New York Convention Task Force as well as the WTO Negotiating Team (International Board). He has published over 40 articles and has spoken at over 300 arbitration events all over the world. He is also the Co-Founder of REAL (Racial Equality for Arbitration Lawyers), a non-profit seeking to create greater representation in international arbitration. He is a graduate of the University of Mumbai, the University of Oxford (DHL-Times of India Scholar), the NYU School of Law (Hauser Global Scholar), the Leiden Law School (2019 CEPANI Academic Prize), and is currently pursuing an S.J.D. Degree from Harvard Law School.

GUILLERMO J. GARCIA SANCHEZ is an Associate Professor at Texas A&M University School of Law. His research and teaching focus on international energy law, investor-state dispute resolution, arbitration, and international transboundary resources. His research has featured in the Boston College Law Review, Harvard International Law Journal, Seton Hall Law Review, Houston Journal of International Law, Nevada Law Journal, and the Tulane Law Review.

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Before entering academia, Professor Garcia-Sanchez was an associate in the international arbitration department of Curtis, Mallet-Prevost, Colt & Mosle in Mexico City, and served as a legal advisor in the Mexican Ministry of Foreign Affairs. He received a B.A. in Law with honors, and a B.A. in International Relations from ITAM University in Mexico. Professor Garcia Sanchez also holds a Doctorate in Judicial Sciences (S.J.D.) and an LL.M. from Harvard Law School, and an LL.M. in International Law from the Fletcher School of Law and Diplomacy.

In 2017, he received Harvard Law School's John Gallup Laylin Prize for his research on international judicial dialogues. In addition to joining ITA's Academic Council, Dr. Garcia Sanchez serves on the Executive Committee of the Association of American Law Schools ADR Section and is a member of the Association of International Energy Negotiators.

JOONGI KIM is a Professor at Yonsei Law School in Seoul, Korea. An ICC Court Member (alt) and ICC Institute of World Business Law Council Member, he sits on the editorial boards of International Investment Law and Arbitration (Brill), Asian Journal of Comparative Law (Cambridge University Press), Dispute Resolution International (IBA) and Korean Arbitration Review. His research focuses on international arbitration, international trade and investment, corporate governance and good governance, and his treatise, *International Arbitration In Korea* (Oxford University Press 2017), received the 11th Simdang International Trade and Business Research Award. He has served as a visiting professor at ESADE, Georgetown University, Keio, National University of Singapore, National Law School of India University (Bangalore), University of Florida, and University of Hong Kong. He has acted as a presiding or sole arbitrator under the rules of the GGGI, HKIAC, ICC, ICSID, JCAA, KCAB, QICCA, SIAC, UNCITRAL, and VIAC.

CHARLES T. KOTUBY JR. is a Professor of Practice and the Executive Director of the Center for International Legal Education at the University of Pittsburgh School of Law, and an Honorary Professor of Law at Durham Law School (UK). Previously a Partner in the Global Disputes practice of Jones Day in Washington, DC, he spent 20 years as an international law counsel representing multinational corporations and sovereign states in international arbitrations and litigations. He is Band 1-ranked by Chambers USA "for his . . . extensive multijurisdictional expertise" and has authored more than two dozen books, articles and book chapters over the last 20 years. An active arbitrator, Professor Kotuby is a Fellow in the Chartered Institute of Arbitrators and the Co-Chair of its Pennsylvania and Ohio Chapter. He is also active in international legal reform as a member of the United States Government Delegation to UNCITRAL Working Group III on Reforms to Investor-State Dispute Settlement and as well as of the U.S. State Department Advisory Committee on Private International Law. Prior to his time in private practice and academia, Professor Kotuby was a research fellow at the Max Planck Institute for Foreign and Private International Law in Hamburg, Germany, and a Law Clerk to the Honorable Joseph F. Weis on the United States Court of Appeals for the Third Circuit.

GIOVANNI ETTORE NANNI is a Professor of Civil Law for the undergraduate and postgraduate programs at the Law School of the Pontifícia Universidade Católica de São Paulo (PUC-SP), Brazil. He is an arbitrator in commercial disputes administered by local and international institutions and has experience in complex litigation and arbitration cases in a variety of industries, especially those involving construction, infrastructure, engineering, energy, oil and gas, insurance, and reinsurance matters, both in domestic and in international disputes, concerning private and public companies. He has a Habilitation (also known as *Livre-Docente*, "Privatdozent" or PD Dr.) (2020), a PhD (2003) and Master's degree (1998) in Civil Law from the Academy of American and International Law in The Center for American and International Law (Southwestern Institute for International and Comparative Law), Plano, Texas. He is also Editor-in-Chief of the 'Revista de Arbitragem e Mediação,' published by Thomson Reuters Brasil (Revista dos Tribunais) (2017-present).

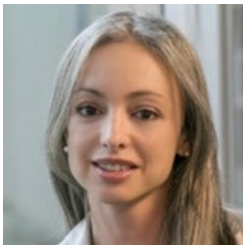
MERCY OKIRO is an Advocate of the High Court of Kenya, Commissioner of Oaths and Notary Public. She is an Accredited Tutor and Assessor of the Chartered Institute of Arbitrators (London) and the Nairobi Centre for International Arbitration (NCIA) and is an Adjunct Faculty Member at the Kenya School of Law and Strathmore University. She holds a Master of Arts degree in International Studies from the University of Nairobi and is awaiting a Master of Laws degree in International Commercial and Investment Arbitration from the Queen Mary University of London in 2022. Mercy was feted in 2019 as the "The Young African Arbitration Practitioner of the year 2019," was listed as one of Africa's Most Promising Young Arbitrators 2020 by the Association of Young Arbitrators, and was named runner-up ADR Practitioner of the Year in 2021 by the Law Society of Kenya, Nairobi Branch. She is a former ICC YAF representative and former Steering Committee Member of CIArb London Young Members Group. She currently serves as the Vice Chairperson of the Kenya Private Sector Alliance Gender Board and sits on various other private and public boards and committees.

PROF. EMILIA ONYEMA is a Professor of International Commercial Law at SOAS University of London where she teaches international commercial arbitration, international investment law and commercial law in a global context. She is qualified to practice law in Nigeria and as a Solicitor in England & Wales. She is also a Fellow of Chartered Institute of Arbitrators and sits as an independent arbitrator. She is a Board Member of the Africa Arbitration Association, and a Member of the CRCICA Advisory Committee, of the Lagos Court of Arbitration, of the BVI Centre Arbitration Committee, and is a LACIAC Court member, among others. She convenes the SOAS Arbitration in Africa conference series and leads the SOAS Arbitration in Africa biennial survey research project. She co-authored the *African Promise* and founded the Arbitration Fund for African Students (AFAS), a registered charitable organization in England. Her research interests focus on the development of international arbitration in Africa and the engagement of Africans in international arbitration. She has experience as presiding, co- and sole arbitrator, and acts as legal expert witness in international arbitration. She is the author of *International Commercial Arbitration and the Arbitrator's Contract*, (Routledge Cavendish, 2010) and her most recent publication: "African Participation in the ICSID System: Appointment and Disqualification of Arbitrators", ICSID Review – Foreign Investment Law Journal (2020).

INTRODUCING THE NEW CHAIR OF THE AMERICAS INITIATIVE

ELINA MEREMINSKAYA (Ph.D., LL.M., FCIArb) is a partner at Wagemann Lawyers & Engineers, an international boutique firm with its main seat in Santiago, Chile. She advises clients on dispute prevention and resolution in construction and infrastructure projects in mining, energy, public works, and other sectors. She regularly sits as arbitrator and belongs to the rosters of various arbitration centers, such as the CAM Santiago, Lima Chamber of Commerce, and ICDR, among others. In 2021, The Legal 500 included her in the Arbitration Power List – Latin America. Since 2020, she has been distinguished by Who's Who Legal as a Global Leader in two rankings: Arbitration and Construction. In 2021 and 2022, she was also recognized as a Thought Leader in Construction. After successfully acting as one of the moderators of the ITAFOR (discussion listsev co-created by the ITA), she was the Vice Chair of the Americas Initiative between 2020 and 2022. In June 2022, she was appointed as Chair of the Americas Initiative.

INTRODUCING THE NEW VICE CHAIRS OF THE AMERICAS INITIATIVE



ELIANA BARALDI, new Communications Vice Chair, holds a Master's Degree in International Law from University of São Paulo, Brazil. Her accomplishments include being the Founding Partner of Baraldi Mariani Advogados, former President of the Brazilian Bar Association Arbitration Chamber-CAMCA, São Paulo Chapter, and Visiting Professor at Auburn University, Alabama, and at Faculdades IBMEC, São Paulo. She has more than 25 years of experience as counsel and arbitrator in international and domestic arbitral proceedings, as well as in corporate court litigation, and is an author of national and international publications and lectures in Brazil and abroad.

ERIC FRANCO, **new Membership Vice Chair**, is a lawyer, arbitrator, and lecturer. Eric has worked on construction and engineering projects and disputes in Latin America, Europe and Asia, as in-house counsel for owners and for an international contractor, as well as external counsel, arbitrator, and legal expert. Currently, Eric works as disputes global expert at the Engie Group and is general counsel of Engie in Peru. Eric sits regularly as arbitrator and acts as legal expert. He is also a lecturer on construction law and dispute resolution in Peru and visiting lecturer at Kings College London and Universidad de los Andes, Chile. As an arbitrator, Eric is involved mainly in construction and engineering disputes related to private and public works contracts for the construction of power plants, mineral processing plants, sewage projects, roads, hospitals, shopping malls, schools, buildings, and public private partnership contracts. He is recognized as a distinguished arbitrator by Arbitrator Intelligence and as a highly recommended arbitrator by Leaders League.

DYALÁ JIMÉNEZ, **new Policy Vice Chair**, is a Costa Rican national and specializes in international arbitration. She is frequently appointed as arbitrator in institutional and ad hoc arbitrations, both in commercial and investor-State disputes. She is a member of the ICSID panel of conciliators and arbitrators for Costa Rica and of the ICC International Court of Arbitration and the ICCA Governing Board. She served as Minister of Foreign Trade of Costa Rica from 2018 to 2020, representing Costa Rica before the World Trade Organization. Dyalá worked in Shearman & Sterling's Paris office in 1999 and at the International Chamber of Commerce for seven years. She also worked in two law firms in Santiago, Chile and in 2011 established DJ Arbitraje. Who's Who Legal and Chambers & Partners has highlighted her work. She is a Fulbright Scholar and alumnus of Georgetown University Law Center, author of numerous publications and taught at Lead University (Costa Rica) in 2017, as well as Universidad de Chile and the Heidelberg/Universidad de Chile LLM Programme, from 2004 to 2013. Dyalá is also a founding member of the ICC Latin American Arbitration Group, the International Arbitration Institute (IAI), and the Asociación Latinoamericana de Arbitraje (ALARB). She served as co-editor-in-chief of the ICC Bulletin and Vice President of the ICC ADR and Arbitration Commission briefly before her appointment as Minister in the Costa Rican government. Dyalá Jiménez works mainly in Spanish and English but is fluent in French and Portuguese.

MONTSERRAT MANZANO, new Programs Vice Chair, has a Master of Law from the University of Cambridge and specializes in international dispute resolution. She is a partner at Von Wobeser y Sierra, in Mexico City, where she focuses on international commercial and investment arbitration. Montserrat has participated in more than 60 international arbitration proceedings, either as counsel, arbitrator, and/or secretary, under the ICC, ICSID, UNCITRAL, LCIA, PCA, and CAM rules. She has broad experience applying regional and international law in various disputes, most of which involve public works contracts, energy, and oil and gas. Recognized for her expertise, she has been named Future Leader of Arbitration under 45 by Who's Who Legal and recognized in GAR 100, Legal 500, Benchmark Litigation, and Latin Lawyer 250. Montserrat speaks and writes regularly on arbitration-related issues and participates in diversity initiatives within her firm and beyond with ArbitralWomen, AbogadasMX, and the Cyrus R Vance Center for International Justice. She is a Member of the Steering Committee of DELOS, and a contributor to Revista de Arbitraje Comercial y de Inversiones (CIAMEN/CEU). She is the former Chair of the Young Arbitrators Initiative of ITA and former Steering Committee Member of YAWP Arbitral Women.

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INTRODUCING THE NEW AMERICAS INITIATIVE LEADERSHIP STRUCTURE

By Elina Mereminskaya (Wagemann Lawyers & Engineers, Santiago, Chile), Chair of the Americas Initiative

During the ITA Executive Committee's latest session held in Austin, TX, a new structure for the ITA's Americas Initiative (the "Americas Initiative" or "Initiative") was approved. The Americas Initiative has grown substantially since its inception in 2003. Originally focused on educational activities in Latin America, it was broadened by the inclusion of Canada in 2018. In 2021, a Caribbean Task Force was established to raise awareness of and promote the practice of international arbitration throughout the Caribbean. By that time, the Americas Initiative covered the Americas from North to South, and its mission was redefined to enrich knowledge, debate, and personal relationships within the international arbitration community in the Americas.

Such an overarching mission required a new leadership structure which came to life in June 2022. For a two-year term, I have been appointed Chair of the Americas Initiative. I am very pleased to assume this responsibility and glad to be supported by Eliana Baraldi (Baraldi Mariani Advogados, São Paulo, Brazil) as Communications Vice Chair; Eric Franco (Engie, Lima, Peru) as Membership Vice Chair; Montserrat Manzano (Von Wobeser y Sierra, S.C., Mexico City, Mexico) as Programs Vice Chair; and Dyalá Jiménez (DJ Arbitraje, San José, Costa Rica) as Policy Vice Chair. All the Vice-Chair positions are new and mirror the Strategic Priorities approved by the ITA for the period 2021-2024.

In the years to come, I would like to see more Latin American practitioners embedded in the rich ITA network. Since the Initiative began its activities, numerous Latin American professionals have acquired a significant degree of experience in international arbitration. Nowadays, many of them are leading voices in their respective jurisdictions for the promotion of international arbitration and adherence to the rule of law. It would be great to see more Latin American professionals getting closer to their English speaking North American colleagues in order to support intra-regional dialogue and exchange. For that purpose, our team will create a set of small-scale tools such as working groups and task forces that will foster direct interaction among practitioners. In the same vein, we are committed to implementing a series of smaller online events that would deliver different intra-regional perspectives on one particular topic. Montserrat Manzano, former Chair of the ITA's Americas Initiative, will lead this specific series of events and will be assisted by two officers: Marièle Coulet Díaz (White & Case, Mexico City) and Rosario Galardi (Freshfields Bruckhaus Deringer, Washington, DC).

Eliana Baraldi, Communications Vice Chair, is a Brazilian lawyer, allowing her to reach the Portuguese speaking community easily. The role of the Communications Vice Chair includes, among other tasks, to increase the presence of ITA and the Americas Initiative on ITAFOR, to review and edit contributions for publication, including ITA Review, News & Notes, the Kluwer Arbitration Blog, and the Global Arbitration Review (GAR). As Communications Vice Chair, Eliana also leads a team of two officers: Daniel Ávila II (Reed Smith, Houston, TX) and Milagros Rojas Blas (Transportation and Communications Ministry, Lima, Peru).

Eric Franco, as a member of the corresponding ITA Committee, will have among his tasks the development of a membership plan to increase Latin American and Canadian participation in ITA. Eric's role as an in-house lawyer as well as his experience sitting as an arbitrator positions him to comprehend and articulate different expectations and requests from the stakeholders of arbitration. This should translate into our improved capacity to generate appealing proposals to attract new members.

Dyalá Jimenez will hold the position of Policy Vice Chair. In addition to her trajectory as an arbitration practitioner, she has outstanding experience in the public sector as Minister of Foreign Trade in Costa Rica. Her main functions within the Initiative are to coordinate with state delegates and policymakers in Latin America and the Caribbean in order to support existing arbitration statutes and their implementation (*e.g.*, the New York Convention, the ICSID Convention, and the UNCITRAL Model Law) as well as to develop actions to advocate against the adoption of new laws and rules that roll back arbitration rights.

The new leadership structure is very robust and will allow the Americas Initiative to pursue more lines of action. Evidently, all the members of the new leadership have strong ties with Latin America. While Latin America continues to be a focal point of the Americas Initiative, my vision is to work towards the creation of an ITA arbitration community comprised of top-quality professionals committed to the values of the international arbitration notwithstanding their seat.

Institute for TRANSNATIONAL ARBITRATION

YOUNG ITA GLOBAL FORUM 2022

Report by Ciara Ros, Vinson & Elkins, London, and Jorge Arturo Gonzalez, Aguilar Castillo Love, San José, Costa Rica

On February 22, 2022, the Young ITA Global Forum took place virtually, with 50 delegates attending, selected by the ITA from a pool of 3,000 applicants. The speakers were invited to discuss various procedural and substantive issues including: whether bifurcation improves efficiency; the future role of virtual hearings; and whether domestic bodies are seeking to undermine international arbitration in favour of local remedies.

A. Session 1: Procedural Issues

The participants first considered whether the bifurcation process improves efficiency and when it can be used most appropriately. It was noted that bifurcation may lead to 'mini-hearings' where parties seek to prematurely introduce merits arguments and is alternatively used as a tactic to delay proceedings. However, participants also argued that bifurcation is necessary in some circumstances, such as when a jurisdiction has different regulations governing domestic and international arbitration and bifurcation proceedings address which regulations shall apply. It was also argued that quantum bifurcation was desirable as it permits quantum experts to prepare reports on the key merits issues raised previously.

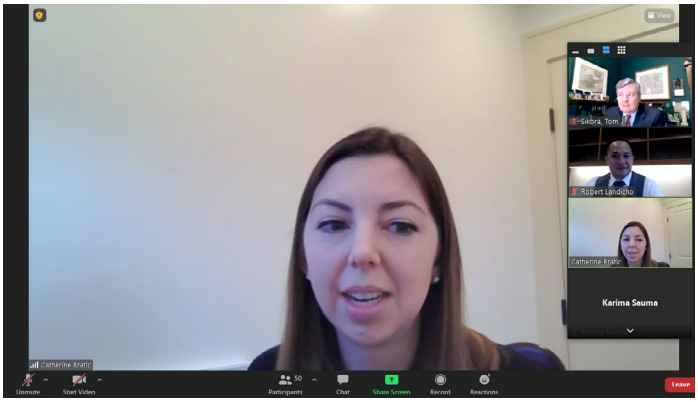
ITA Chair Tom J. Sikora (Senior Counsel, Exxon Mobil Corporation, Texas)

The next speaker invited discussion on the lack of formal, ethical regulation on counsel conduct in international arbitration to prevent the unscrupulous from engaging in tactics designed to delay and frustrate proceedings. One participant considered whether this is a problem arising from the increasing use of arbitration and the corresponding increase in less experienced parties. Other participants rejected this notion, pointing out that experienced counsel also engage in such tactics. However, they stated that tribunals should make additional efforts with inexperienced counsel to outline the expectations of their conduct and to limit undue procedural requests. Others concurred, believing it to be the responsibility of the tribunal to regulate conduct, to refuse unreasonable requests for extensions of time, and be willing to introduce cost sanctions during the arbitration in order to regulate conduct.

The next question raised the issue of a matter involving a cyber-attack initiated by one party to the proceedings on the other party and whether this resulted in sufficient damage to the targeted party to constitute grounds for the setting aside of the award and if due process could be recovered after such an attack. Another participant involved in the matter discussed and differentiated the malicious nature of the matter (a targeted attack by one party focused on communications with counsel relating to expert reports) from a scenario where a third party obtained relevant material and published it. It is clear that the cyberattack in this matter may have had a prejudicial effect on the targeted party, however it was noted that this kind of attack should not obscure other cyber-security concerns and procedural orders should outline protocol governing the safeguarding of data.

A participant sought views on whether virtual hearings have made arbitration a cheaper and more accessible process for parties. Participants raised the point that most law firms pursue an arbitration through one of the recognised centres, with legal and arbitral costs amounting to large sums regardless of whether the hearing is virtual or in person. In addition, virtual hearings outside of such a centre may suffer from unstable internet connections, and thus it was argued that virtual hearings do not necessarily improve access. However, it was generally agreed that there has been a shift to a hybrid form of arbitration, with smaller or procedural hearings taking place virtually or some experts giving evidence remotely whilst the tribunal and counsel are in one location. Cost and climate considerations were given as the primary reasons for this shift with merits based hearings considered likely to remain in person.

Differing jurisdictional approaches to confidentiality were discussed, as participants explored the idea of whether court proceedings relating to a confidential arbitration should be made public. In Brazil, it has traditionally been the case that such litigious proceedings would proceed under the same confidentiality as the arbitral proceedings. More recently, however, the courts of São Paulo have begun to question this practice and to deny requests for confidentiality of arbitration-related judicial proceedings. This has, in turn, inspired interesting discussions around the use of emergency arbitrators and choice of forum issues, such as seeking forum in other states. Another speaker told the Forum that court proceedings following an arbitration remain public in Mexico, though personal information is redacted. Yet another approach is found in Russia, where the default position is that judicial proceedings related to the arbitration are not confidential unless the parties successfully apply for the veil of confidentiality. The existence of trade secrets or other crucial confidential information will often necessitate that both sets of proceedings remain confidential.



Young ITA Chair Catherine Bratic (Hogan Lovells, Texas)

B. Session 2: Substantive Issues

The second session opened with the question of whether domestic bodies are seeking to undermine ad-hoc international arbitration in favour of local remedies. Participants highlighted the recent European Court of Justice (ECJ) cases of Slowakische Republik v. Achmea BV, République de Moldavie v. Komstroy LLC, and Republiken Polen v. PL Holdings Sàrl and the South African trend of withdrawing from bilateral investment treaties as evidence that would support this point. It was highlighted that this trend has developed from concerns over legitimacy and primacy, with the ECJ cases highlighting the primacy of European law over bilateral international agreements.

*(See **YOUNG ITA GLOBAL FORUM 2022** page 7)*

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However, other trade agreements do not favour local remedies, such as with the Investment Protocol of the African Free Trade Agreement envisaging a Pan-African Investment Court and the forthcoming Spain-Colombia Investment treaty contemplating a multilateral investment court, according to the UNCITRAL Working Group III.

One participant raised the interplay between human and investor rights in investor-state disputes. It was noted that there has been an increasing concern for human rights issues (see e.g., via the filing of amicus briefs and the Mauritius Convention) which is a positive development. However, the participant cautioned against increasing the scope of human rights considerations much further. Other participants stated that we should note the Hague Rules on Business and Human Rights and the UN Guiding Principles on Business and Human Rights, though there was discord on the issue of whether investor-state arbitration is the correct forum for human rights issues with some believing human rights treaties must be applied following the principle of systemic integration.

How the impact of the energy transition will affect private and commercial arbitration and what disputes may arise was another question raised by a participant. New regulatory disputes were seen as one obvious development, whilst new actors in the sector may be more willing to arbitrate in comparison to existing players whose focus is often on preserving existing commercial relationships. Discussion turned to the Energy Charter Treaty (ECT) and the movement to persuade states to leave the treaty as it may restrict nations from fully transitioning to green energy due to the requirement to compensate investors who may be negatively affected by such transitional actions. However, it was noted that renewable energy investors have also been able to rely upon the ECT to protect their "green" interests.

Participants pondered whether Section 1782 applications - which allow parties to proceedings outside of the United States to apply to a U.S. court to obtain evidence for use in the non-U.S. proceeding - should cover commercial/investment treaty tribunals and whether it would be helpful to give this benefit to parties outside from U.S.. It was mentioned that an interest in judicial economy and not overwhelming U.S. courts would militate against the need to rely on such applications, while another participant stated that, if parties agree to arbitrate in other countries, then there is no expectation to go to the U.S. as each jurisdiction has similar discovery tools. One participant suggested that the tribunal has a role to play in that; should they tell parties not to make applications in the U.S. under Section 1782 since courts are unlikely to grant such applications in any event.

ITA Programs Committee Co-Chair, Robert Landicho (Vinson & Elkins, Texas)

There was an interesting discussion of the immunity of arbitrators and arbitral institutions in different jurisdictions. In Brazil, there has been a recent trend whereby parties have challenged awards by filing legal claims against arbitrators and arbitral institutions. These attacks are, for the most part, based on alleged breaches of independence/impartiality principles or of due process during the arbitration. These circumstances have raised questions about the level of immunity that arbitrators and arbitral institutions enjoy (or should enjoy) under Brazilian law. A similar trend is found in Colombia, a jurisdiction in which arbitrators can be criminally prosecuted and, as indicated by America Movil v. Colombia, the State itself can be liable for an arbitrator's decision under international law. Conversely, in India, the government and the Supreme Court of India provide immunity to the arbitrators to the extent that they are acting in good faith.

Participants then moved on to discuss the admissibility and probative value of evidence in commercial arbitration from criminal proceedings that have not yet concluded. International human rights tribunals have labelled this evidence inadmissible. A participant suggested that the starting point should be to allow the evidence, provided that the requirements of relevance, materiality, etc. are met. Concern was raised that there is no general consensus on this issue, as some rules give discretion to the tribunal on whether to admit this evidence or not.

Lastly, the issue of quantum in investment arbitration was explored. It was alluded to that claims for values of over $1 billion are increasing, which is interesting given that such claims affect any given state's ability to spend the funds on other matters. The Discounted Cash Flow (DCF) method, according to participants, is problematic and is invoked in "mega claims." More generally, in non-expropriation ISDS claims, quantum issues remain more difficult because there is no standard approach to quantum. It is equally problematic that UNCITRAL has not even taken the issue as part of the scope of its reforms. Indeed, one participant more generally suggested that, since July 1927 when the "full reparation" standard arose, it has been become established doctrine that the harmful effects of the international wrong must be erased. The difficulty in this, they suggested, is that these are not procedural issues but are rather more substantive and so pose the question of whether one can depart from full reparation. This would rely on states to reform treaties. Interestingly, the idea of tribunal-appointed quantum experts was widely popular.

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U.S. SUPREME COURT NARROWS FEDERAL JURISDICTION TO ADDRESS POST-AWARD PROCEEDINGS

Report by Elizabeth J. Dye & Alexis N. Wansac, Pillsbury Winthrop Shaw Pittman LLP, Houston & Washington, D.C.

Badgerow v. Walters, No. 20-1143. In an 8-1 decision, the Supreme Court held that federal jurisdiction to confirm or vacate an arbitration award must exist independent of the underlying controversy. It is insufficient that the underlying claim the parties arbitrated arose under federal law.

On November 2, 2021, the Supreme Court of the United States heard oral arguments in *Badgerow v. Walters*, a case involving the question of whether federal courts have subject-matter jurisdiction to confirm or vacate arbitration awards in cases where the only basis for jurisdiction is that the underlying dispute involved federal law.

When Denise Badgerow began her employment with REJ Properties in January 2014, she signed an employment agreement in which she agreed to arbitrate any disputes between herself and the three principals of REJ Properties. In January 2016, Badgerow was terminated. Badgerow subsequently filed an arbitration proceeding against REJ Properties, seeking damages for gender discrimination, violation of Louisiana's whistleblower statute, and tortious interference of contract. The arbitration panel dismissed all of Badgerow's claims.

Badgerow filed a petition to vacate the arbitration award in state court. The defendants removed the action to federal court. Badgerow then asked the district court to remand the action, claiming the federal court lacked jurisdiction. The district court denied Badgerow's motion to remand, concluding that it had subject-matter jurisdiction over the case because the Federal Arbitration Act (FAA) required district courts to "look through" to the underlying dispute to determine jurisdiction. Thus, according to the district court, it had jurisdiction to confirm or vacate the arbitration award because the underlying dispute involved federal law. The U.S. Court of Appeals for the Fifth Circuit affirmed the district court's finding of jurisdiction.

At the Supreme Court, the dispute focused on the district court's ability to "look through" when deciding whether it has jurisdiction under the FAA's Sections 9 (to confirm an award) or 10 (to vacate an award). The "look through" analysis was first applied to Section 4 of the FAA, which provides the framework for compelling a party to arbitrate a dispute that is the subject of an agreement to arbitrate. Related to Section 4, in 2009, the Supreme Court decided *Vaden v. Discover Bank*, which addressed whether a party may enforce an arbitration agreement in federal court involving parties of the same state. In *Vaden*, the Supreme Court held that a "federal court may 'look through' a Section 4 petition to determine whether it is predicated on an action that 'arises under' federal law[.]" 129 S. Ct. 1262, 1265 (2009). Thus, with respect to Section 4 of the FAA, so long as the underlying action arises under federal law, a federal court may maintain jurisdiction over a petition to enforce an agreement to arbitrate.

A Circuit Split – Resolved with *Badgerow*

Following *Vaden*, a circuit split developed regarding whether the same "look through" analysis applies to applications to confirm an arbitration award under Section 9 of the FAA, to vacate an award under Section 10 of the FAA, or to modify an award under Section 11 of the FAA.

The Minority Approach: On one side of the split were courts declining to apply the "look through" approach set out in *Vaden* to applications for motions brought under Sections 9, 10, or 11, *i.e.,* the Third and Seventh Circuits. *See Goldman v. Citigroup Glob. Markets Inc.*, 834 F.3d 242, 252 (3d Cir. 2016); *Magruder v. Fid. Brokerage Services LLC*, 818 F.3d 285, 288 (7th Cir. 2016).

The Majority Approach: On the other side were courts extending the "look through" approach to motions brought under Sections 9, 10, or 11, finding federal subject-matter jurisdiction exists where the underlying arbitration proceeding would have been subject to federal jurisdiction but for the arbitration clause. The First, Second, and Fourth Circuits took this view. *See Ortiz-Espinosa v. BBVA Secs. of Puerto Rico, Inc.*, 852 F.3d 36, 47 (1st Cir. 2017); *Doscher v. Sea Port Group Secs., LLC*, 832 F.3d 372, 381 (2d Cir. 2016); *McCormick v. Am. Online, Inc.*, 909 F.3d 677, 679 (4th Cir. 2018). The Fifth Circuit joined the majority view in *Quezada v. Bechtel OG & C Constr. Services, Inc.*, 946 F.3d 837, 843 (5th Cir. 2020).

Touting the minority approach and pointing out that the FAA does not itself confer subject-matter jurisdiction, Badgerow argued – successfully – that the "look through" analysis is limited to Section 4. She noted that Section 4 expressly authorizes federal filings, whereas Sections 9 and 10 do not.

On March 31, 2022, the Supreme Court Adopted the Minority Approach

Writing for the majority and siding with the minority approach, Justice Elena Kagan resolved the circuit split in favor of Badgerow through reasoning that emphasized the importance of following a textual approach to resolve the issue underlying this case:

"Sections 9 and 10 of the FAA contain none of the statutory language on which *Vaden* relied. So under ordinary principles of statutory construction, the look-through method should not apply . . . . That holds true for jurisdictional questions, as federal "district courts may not exercise jurisdiction absent a statutory basis." *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 552 (2005). Because a statutory basis for look-through jurisdiction is lacking in Sections 9 and 10, the Court cannot reach the same result here as in *Vaden.*

[T]he jurisdiction Congress confers may not "be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). Those bedrock principles prevent us from pulling look-through jurisdiction out of thin air—from somehow finding, without textual support, that federal courts may use the method to resolve various state-law-based, non-diverse Section 9 and 10 applications. The look-through rule is a highly unusual one: It locates jurisdiction not in the action actually before the court, but in another controversy neither there nor ever meant to be. We recognized that rule in *Vaden* because careful analysis of Section 4's text showed that Congress wanted it applied to petitions brought under that provision. *See* 556 U.S., at 62-65. But Congress has not so directed in Sections 9 and 10."

Badgerow v. Walters, No. 20-1143, 2022 WL 959675, at *5-6 (U.S. Mar. 31, 2022).

In announcing the decision in *Badgerow*, the Supreme Court rejected policy arguments for reading the FAA uniformly – "even the most formidable policy arguments cannot overcome a clear statutory directive." *Id.* at *8.

*(See **U.S. SUPREME COURT NARROWS FEDERAL JURISDICTION TO ADDRESS POST-AWARD PROCEEDINGS** page 9)*

*(Cont'd from **U.S. SUPREME COURT NARROWS FEDERAL JURISDICTION TO ADDRESS POST-AWARD PROCEEDINGS** page 8)*

Practical Impact

In a narrow sense, the effect of *Badgerow* is that where diversity or federal question jurisdiction is lacking, applications to confirm, vacate, or modify an arbitration award related to domestic arbitrations will be confined to state court proceedings. The FAA does not provide an independent basis for federal subject-matter jurisdiction over petitions to confirm, vacate, modify or enforce domestic arbitration awards. Thus, absent diversity jurisdiction (28 U.S.C. §1332(a)) or federal question jurisdiction based on a statute other than the FAA, a federal court will not have jurisdiction to hear and determine applications to confirm, vacate, or modify an arbitration award under Part 1 of the FAA (9 U.S.C. §§1-16).

Of course, if a district court were to compel arbitration of a claim initially brought in court based on federal question jurisdiction under Section 4, and the court proceedings were stayed (not dismissed), arguably – the decision in *Badgerow* notwithstanding – the district court would retain subject-matter jurisdiction to hear and determine applications to confirm, vacate, modify or enforce the arbitration award. *DiMercurio v. Sphere Drake Ins., PLC*, 202 F.3d 71, 77-78 (1st Cir. 2000) (noting that a court retains jurisdiction over a case while it is stayed for arbitration). Conversely, if the case is dismissed, *Badgerow* instructs that the court will not have subject-matter jurisdiction based on the nature of the underlying dispute.

Further, while the Court's decision in *Badgerow* resolves a split as to FAA issues involving domestic arbitrations, it does not apply in cases where the underlying dispute falls under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) or the Inter-American Convention on International Commercial Arbitration. *See* 9 U.S.C. §§201-203, 207 and §§301-302, 304. In contrast to the situation involving domestic arbitrations, for disputes falling under either of the above-mentioned Conventions, Title 9 establishes independent federal district court subject-matter jurisdiction to compel arbitration as well as hear applications to confirm (or decline to confirm) an award. *See* 9 U.S.C. §203 ("An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States … shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy."); *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 932 (2d Cir. 1983); *Zhang v. Dentons U.S. LLP*, 2021 WL 2392169, at *3 (C.D. Cal. June 11, 2021). The independent statutory basis for federal jurisdiction over international arbitration disputes in Chapters 2 and 3 of the FAA was not at issue in *Badgerow*.

Thus, while there are some avenues to have a federal court address issues of recognizing, vacating, modifying and enforcing awards in domestic arbitration situations, the procedural posture of the case can be determinative to whether the court has subject-matter jurisdiction to address applications to confirm, vacate, modify or enforce an arbitration award.

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INSTITUTE FOR TRANSNATIONAL ARBITRATION EXPERTS... IN THE NEWS UPDATES

Supporting Member **Analysis Group, Inc.** has designated Vice President **Mark Berberian** (Chicago, IL) as their under 40 representative on the Advisory Board.

Supporting Member **Mayer Brown LLP** has designated **Jennifer Huang** (New York, NY) as their under 40 representative on the Advisory Board.

Benjamin Hughes of Fountain Court Chambers (Singapore) has joined ITA as an Associate Member.

Sustaining Member **Sullivan & Cromwell LLP** has designated **Mevelyn Ong** (New York, NY) as an under 40 representative on the Advisory Board.

Supporting Member **Chaffetz Lindsey LLP** has designated **Gretta Walters** (New York, NY) as a member on the Advisory Board.

Kelby Ballena (Allen & Overy, Washington, DC) is the new Media Editor for ITA In Review.

Grace Cheng (Field Court Chambers, London) is now registered with the Dubai International Financial Centre (DIFC) Courts' Register of Legal Practitioners – Part II (registered individual with rights of audience before the DIFC Courts). Grace is a barrister in London, a qualified Hong Kong solicitor, and has been granted rights of audience before the Astana International Finance Centre (AIFC) Court in Kazakhstan. She also sits as an arbitrator and adjudicator.

Stephan Wilske gave a lecture at Bucerius Law School (Hamburg, Germany) on the occasion of the Hamburg International Arbitration Days 2022 on "The Phenomenon of the Ailing Arbitrator and its Legal, Practical and Tactical Consequences" (April 4, 2022)."

On March 23, 2022, Young ITA Members **Cristian Gallorini** and **Takashi Yokoyama** were speakers in front of a Study Group on Investor-State Arbitration at the Japan International Dispute Resolution Centre (JIDRC) in Tokyo, Japan, where they presented an analysis of the SCC arbitration case, Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine (SCC Case No. V 2015/092). The presentation was part of a series of monthly meetings that are organized by the JIDRC and aim to discuss a case report article on investment arbitration before its publication. Their Japanese article titled "Case Analysis on Littop, Bridgemont and Bordo v. Ukraine" is expected to be published in the Japan Commercial Arbitration Journal on June 10, 2022.

Since her return from George Washington University in 2020 after pursuing a S.J.D., **Nudrat Piracha** has laid the foundation for the first global law firm in Islamabad, Pakistan. Ms. Piracha is a senior partner at Samdani & Qureshi and also established the International Centre for Appropriate Dispute Resolution and Prevention (Pvt.) Ltd (ICADRP), in Pakistan (an access to justice project) to facilitate access to justice through ADR, to provide a successful blend for improved access to justice and court services, and to promote women in the practice of ADR. Ms. Piracha was awarded the Best ADR Lawyer Award in late 2021 by the Ministry of Law and Justice Pakistan, Group Development, Pakistan Women in Law Initiative. She was also recently appointed the country reporter for Pakistan by ICCA. Ms. Piracha has since served on the 8 member committee constituted by Pakistan for advising on international law and 12 member committee constituted to advise on investor-state arbitration regime in Pakistan. In June 2021, she published the book "Toward Uniformly Accepted Principles for Interpreting MFN Clauses: Striking a Better Balance between State Sovereignty and the Protection of Investors" (Published in June 2021 by Kluwer International Arbitration).

Professor Chiara Giorgetti has been named Senior Fellow at Columbia Law School's International Claims and Reparations Project, where she will advise Ukraine on international claims and reparations. She has also been designated by the Republic of San Marino to the ICSID Panels of Conciliators and Arbitrators. She has published two edited volumes: Beyond Fragmentation: Cross-Fertilization, Cooperation and Competition among International Courts and Tribunals, with Prof. Mark Pollack (CUP) and Whither the West? International Law in Europe and the United States, with Prof. Guglielmo Verdirame, KC (CUP).

Gary McGowan of McGowan Arbitration and Dispute Resolution was recognized in the 29th edition of *The Best Lawyers in America* for his work in Arbitration and Mediation.

From January 19, 2022 onwards, the **Center for Arbitration and Conciliation of the Bogotá Chamber of Commerce (CCB)**, an arbitral institution member of ITA, started administering expedited arbitration proceedings under the 2021 UNCITRAL Expedited Arbitration Rules. CCB was the first arbitral institution in South America to administer international arbitration proceedings under different versions of the UNCITRAL Rules and has now officially become the first arbitral institution in Latin America to offer administration services under the novel set of expedited rules. For more information, please contact the Head of International Arbitration at CCB and ITA Advisory Board Member, Santiago Diaz-Cediel, at santiago.diaz@ccb.org.co.

The Institute for Transnational Arbitration

A Division of THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

SCOREBOARD
OF ADHERENCE TO TRANSNATIONAL ARBITRATION TREATIES

(as of October 31, 2022)

ABBREVIATIONS

NY United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly, 1958 New York Convention)
ICSID Convention on the Settlement of Investment Disputes (1965)
IA Inter-American Convention on International Commercial Arbitration (commonly, Panama Convention) (1975)
USBIT United States Bilateral Investment Treaty
TIP US Treaties with Investment Protection Provisions
ECT Energy Charter Treaty (1998)
MC United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (commonly, Mauritius Convention) (2017)

SYMBOLS

S Signed, but not ratified
R Ratified, acceded or succeeded
A Subscribed, but not signed, ratified or paid
(*) Capital-exporting country under MIGA
N/A Not applicable

CHANGES FROM PREVIOUS ISSUE

NY Turkmenistan (R)
ICSID Angola (R) Kyrgyzstan (R)
IA None.
USBIT Updated.

ECT None.
MC None.

TIP None.

NATION	NY[1]	ICSID[2]	ECT[3]	IA	USBIT	TIP[4]	MC
Afghanistan	R	R	R			R	
Albania	R	R	R		R		
Algeria	R	R				S	
Andorra	R						
Angola	R	R				S	
Antigua and Barbuda	R					R[23]	
Argentina	R	R		R	R	R	
Armenia	R	R	R		R	S	
Australia	R	R	S			R / S[19]	R
Austria	R	R	R				
Azerbaijan	R	R	R		R		
Bahamas	R	R				R[23]	
Bahrain	R	R			R	R / S[24]	
Bangladesh	R	R			R		
Barbados	R	R				R[23]	
Belarus	R	R	S[20]		S		
Belgium	R	R	R				S
Belize	R	S				R[23]	R
Benin	R	R				S[22] / R[29]	R
Bhutan	R						
Bolivia[6]	R			R		S[31]	R
Bosnia and Herzegovina[7]	R	R	R				
Botswana	R	R				R[26]	
Brazil	R			R		R	
Brunei Darussalam	R	R				R / R[27]/S[19]	
Bulgaria	R	R	R		R		
Burkina Faso	R	R				S[22] / R[29]	
Burundi	R	R				R[25] / R[30]	
Cambodia	R	R				R / R[27]	
Cameroon	R	R			R		R
Canada	R	R				R[8] / S[19]/S[21]	R

Cape Verde	R	R				S[22]	
Central African Republic	R	R					
Chad		R					
Chile	R	R		R		R / S[19]	
China (People's Republic)[9]	R	R					
Colombia	R	R		R		R / S[31]	
Comoros	R	R				R[30]	
Congo		R			R		S
Congo (Democratic Republic of)		R			R	R[30]	
Cook Islands	R						
Costa Rica	R	R		R		R[10]	
Côte d'Ivoire	R	R				S[22] / R[29]	
Croatia[7]	R	R	R		R		
Cuba	R						
Cyprus	R	R	R				
Czech Republic	R	R	R		R		
Denmark[11]	R	R	R				
Djibouti	R	R				R[30]	
Dominica	R					R[23]	
Dominican Republic	R	S		R		R[10]	
Ecuador	R	R		R		S[31]	
Egypt	R	R			R	R / R[30]	
El Salvador	R	R		R	S	R[10]	
Equatorial Guinea							
Eritrea						R[30]	
Estonia	R	R	R		R		
Eswatini		R				R[26] / R[30]	
Ethiopia	R	S				R[30]	
Fiji	R	R					
Finland	R	R	R				S
France[12]	R	R	R				S
Gabon	R	R					S
Gambia		R				S[22]	R
Georgia	R	R	R		R	R	
Germany	R	R	R				S
Ghana	R	R				R / S[22]	
Greece	R	R	R				
Grenada		R			R	R[23]	
Guatemala	R	R		R		R[10]	
Guinea	R	R				S[22]	
Guinea-Bissau		S				S[22] / R[29]	
Guyana	R	R				R[23]	
Haiti	R	R			S	R[23]	
Holy See (Vatican City)	R						
Honduras	R	R		R	R	R[10]	
Hungary	R	R	R				
Iceland	R	R	R			S	
India	R						
Indonesia	R	R				R[27]	
Iran	R						
Iraq	A	R				S	R
Ireland	R	R	R				
Israel	R	R				R	
Italy	R	R					S
Jamaica	R	R			R	R[23]	
Japan	R	R	R			S[19]	
Jordan	R	R	R		R	R	
Kazakhstan	R	R	R		R	R[28]	
Kenya	R	R				R[25] / R[30]	

Kiribati							
Korea (Republic) (South)	R	R				R	
Kosovo		R					
Kuwait	R	R				S / S[24]	
Kyrgyzstan	R	R	R		R	R[28]	
Lao People's Democratic Republic	R					R / R[27]	
Latvia	R	R	R		R		
Lebanon	R	R				S	
Lesotho	R	R				R[26]	
Liberia	R	R				R/S[22]	
Libyan Arab Jamahiriya						S / R[30]	
Liechtenstein	R		R				
Lithuania	R	R	R		R		
Luxembourg	R	R	R				S
Madagascar	R	R				R[30]	S
Malawi	R	R				R[30]	
Malaysia	R	R				R / R[27] / S[19]	
Maldives	R					R	
Mali	R	R				S[22] / R[29]	
Malta	R	R	R				
Marshall Islands	R						
Mauritania	R	R					
Mauritius	R	R				R / R[30]	R
Mexico	R	R		R		R[8]/S[19]/S[21]	
Micronesia		R					
Moldova	R	R	R		R		
Monaco	R						
Mongolia	R	R	R		R	R	
Montenegro	R	R	R				
Morocco	R	R			R	R	
Mozambique	R	R			R	R	
Myanmar (Burma)	R					S / R[27]	
Namibia		S				R[26]	
Nauru		R					
Nepal	R	R					
Netherlands[13]	R	R	R				S
New Zealand[14]	R	R				R / S[19]	
Nicaragua	R	R		R	S	R[10]	
Niger	R	R				S[22] / R[29]	
Nigeria	R	R				R	
North Macedonia[7]	R	R	R				
Norway	R	R	S				
Oman	R	R				R / S[24]	
Pakistan	R	R					
Palau	R						
Panama	R	R		R	R	R	
Papua New Guinea	R	R					
Paraguay	R	R		R		S	
Peru	R	R		R		R / R[18]/S[19] / S[31]	
Philippines	R	R					
Poland	R		R		R	R[27]	
Portugal	R	R	R				
Qatar	R	R				S / S[24]	
Romania	R	R	R		R		
Russian Federation	R	S	S		S		
Rwanda	R	R			R	R / R[25]	
Saint Kitts and Nevis		R				R[23]	
Saint Lucia		R				R[23]	
St. Vincent and the Grenadines	R	R				R[23]	

Samoa		R					
San Marino	R	R					
Sao Tome and Principe	R	R					
Saudi Arabia	R	R				R / S[24]	
Senegal	R	R			R	S[22] / R[29]	
Serbia[7]	R	R					
Seychelles	R	R				R[30]	
Sierra Leone	R	R				S[22]	
Singapore	R	R				R / R[27]	
Slovakia	R	R	R		R		
Slovenia[7]	R	R	R				
Solomon Islands		R					
Somalia		R				R[30]	
South Africa	R					R / R[26]	
South Sudan		R				R[25]	
Spain	R	R	R				
Sri Lanka	R	R			R	R	
Sudan	R	R				R[30]	
Suriname						R[23]	
Sweden	R	R	R				S
Switzerland	R	R	R			R	R
Syrian Arab Republic	R	R					S
Taiwan							
Tajikistan	R		R			R[28]	
Tanzania	R	R				R[25]	
Thailand	R	S				R / R[27]	
Timor Leste		R					
Togo		R				S[22] / R[29]	
Tonga	R	R					
Trinidad and Tobago	R	R			R	R[23]	
Tunisia	R	R			R	R[30]	
Turkey	R	R	R		R	S	
Turkmenistan	R	R	R			R[28]	
Tuvalu							
Uganda	R	R				R[25] / R[30]	
Ukraine	R	R	R		R	S	
United Arab Emirates	R	R				S / S[24]	
United Kingdom[15]	R	R	R				S
United States of America[16]	R	R		R	N/A	N/A	S
Uruguay	R	R		R	R	R	
Uzbekistan	R	R	R		S	R[28]	
Vanuatu							
Venezuela	R			R			
Vietnam	R					R /S[19] / R[27]	
West Bank and Gaza[17]	R						
Yemen		R	R			R	
Zambia	R	R				R[30]	
Zimbabwe	R	R				R[30]	

Notes: (1) Extends to metropolitan and overseas constituent territorial subdivisions but not to overseas dependent territories. Consult UNCITRAL for definitive status, as well as for the reservations to the Convention. (2) Extends to metropolitan and overseas constituent territorial subdivisions and to overseas dependent territories unless specifically excluded. (3) 1991 European Energy Charter was signed by the US. European Union and EURATOM have ratified the ECT. (4) Treaties signed or ratified by the US with provisions on investments. (5) See also 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. (6) ICSID Convention entered into force for Bolivia on July 23, 1995. On May 2, 2007, Bolivia denounced the ICSID Convention, with effect on November 3, 2007. The Government of Bolivia delivered notice to the United States on June 10, 2011, that it was terminating the "Treaty Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment." As of June 10, 2012 (the date of termination), the treaty ceases to have effect, except that it continues to apply for another 10 years to covered investments existing at the time of termination. (7) As of 4 February 2003, The Federal Republic of Yugoslavia has changed its name to "Serbia and Montenegro." Montenegro declared itself independent from Serbia on June 3, 2006. Bosnia & Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Slovenia are separated successor states to parts of the former Yugoslavia and have succeeded to the NY. The Former Yugoslav Republic of Macedonia changed its name to the Republic of North Macedonia on 12 February 2019. (8) Included in the North American Free Trade Agreement among the United States, Canada and Mexico. (9) NY: includes Hong Kong Special Administrative Region. (10) Included in the Dominican Republic - Central America - United States Free Trade Agreement. (11) NY: includes Faeroe Islands and Greenland. (12) NY: includes, inter alia, French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, and St. Pierre and Miquelon. (13) NY: includes Aruba and Netherlands Antilles. (14) ICSID Convention: excludes Cook Islands, Niue and Tokelau. (15) NY: includes Bermuda, Cayman Islands, Gibraltar, Guernsey, Isle of Man, and British Virgin Islands. ICSID Convention: excludes British Indian Ocean Territory, Pitcairn Islands, British Antarctic Territory and Sovereign Base Areas of Cyprus. ICSID Convention: continues to include Hong Kong Special Administrative Region. (16) NY: includes, inter alia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and US Virgin Islands. (17) West Bank and Gaza are not recognized as states by the United States. (18) United States - Peru Trade Promotion Agreement. (19) Trans-Pacific Partnership signed on February 4, 2016. (20) The State has signed the ECT and it applies it provisionally, under Art. 45 of the ECT. (21) USMCA signed on November 30, 2018. (22) Economic Community of West African States (ECOWAS) – US Trade and Investment Framework Agreement ('TIFA') signed on August 5, 2014. (23) Caribbean Community (CARICOM) – US TIFA, in force on May 28, 2013. (24) Gulf Cooperation Council – US Framework Agreement signed on September 25, 2012. (25) East African Community – US TIFA, entered into force on July 16, 2008. (26) Southern African Customs Union – US TIFA, entered into force on July 16, 2008. (27) Association of South-East Asian Nations (ASEAN) – US TIFA, entered into force on August 25, 2006. (28) Central Asia – US TIFA, entered into force on June 1, 2004. (29) West African Economic and Monetary Union (WAEMU) – US TIFA, entered into force on April 24, 2002. (30) Common Market for Eastern and Southern Africa (COMESA) - US TIFA, entered into force on October 29, 2001. (31) Andean Community (ANCOM) – US Trade and Investment Council signed on October 30, 1998.

SOURCES:

This issue was compiled by Co-Editors Crina Baltag and Monique Sasson of The Institute for Transnational Arbitration based on the following sources: United Nations; ICSID; UNCITRAL; Organization of American States; Energy Charter Secretariat; UNCTAD and the Office of the United States Trade Representative. The Scoreboard is designed to be a convenient reference and it is not intended to be relied on as legal advice. Please consult the sources directly to confirm the status of any particular ratifications, reservations, changes, special conditions or new developments.

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