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INTRODUCING THE NEW MEMBERS OF THE ITA EXECUTIVE COMMITTEE

PROF. CHARLES (CHIP) H. BROWER II, Advisory Board Senior Vice Chair for 2023-2024, is Professor of Law at Wayne State University and Of Counsel at Miller Canfield in Detroit. Before moving to Michigan in 2012, he was Croft Professor of International Law at the University of Mississippi. He has been a member of the ITA's Executive Committee for many years, serving as Vice Chair of the Institute, Chair of the Academic Council, and Chair or Co-Chair of several committees and task forces. Brower has served as arbitrator, counsel, or advocate in proceedings conducted under the American Arbitration Association ("AAA") Commercial Rules, the AAA International Rules, the Hong Kong International Arbitration Centre ("HKIAC") Rules, the International Chamber of Commerce ("ICC") Rules, and the Singapore International Arbitration Centre ("SIAC") Rules, as well as in advisory proceedings before the International Court of Justice. He has also served as an expert witness on the United States ("U.S.") law of international arbitration and litigation for high-value proceedings in Canadian courts. His scholarship on international commercial and investment treaty arbitration has been cited and quoted by federal courts in Canada and the U.S., most recently by the Eleventh Circuit's unanimous en banc opinion in *Corporación AIC, SA v. Hidroeléctrica Santa Rita SA*.

SYLVIA TONOVA, Co-Chair of the Communications Committee, has previously served on the Executive Committee in the same capacity. Sylvia is currently Co-Head of the Global International Arbitration Practice at Pinsent Masons and has extensive experience in international commercial and investment treaty arbitration. She helps clients manage high-value, complex, and politically sensitive disputes, focusing on the energy, mining, and infrastructure sectors, acting as both arbitration counsel and arbitrator. Her experience spans Europe and the Middle East, Africa, Latin America, and Asia in a range of industries, including mining, oil and gas, and energy. Sylvia was appointed to the International Centre for Settlement of Investment Disputes ("ICSID") Panel of Arbitrators by Bulgaria in 2016 and to the HKIAC List of Arbitrators in 2021. She currently serves on the International Bar Association's Arbitration Committee as conference quality officer and teaches investment treaty arbitration procedure at Roma Tre Law School.

CHRISTIAN LEATHLEY, Co-Chair of the Programs Committee, is the Head of the Latin America Group, as well as the U.S. Head of International Arbitration, at Herbert Smith Freehills LLP, New York. He is New York and English law qualified and appears as an advocate before arbitral tribunals in many different jurisdictions, in both English and Spanish. He has acted for and advised individuals, corporations, and sovereign states in cases arising from all major industry sectors, including under the rules of the ICC, ICSID, London Court of International Arbitration ("LCIA"), AAA (or "ICDR"), Court of Arbitration for Sport ("CAS"), and United Nations Commission on International Trade Law ("UNCITRAL"), as well as having litigation experience in the United Kingdom ("U.K."), U.S., and overseas. His sectoral experience includes the energy sector (oil and gas as well as renewables), mining, banking, infrastructure/construction, and telecommunications. He also frequently lectures on international arbitration and was formerly an adjunct professor at New York University School of Law, and a visiting professor at the University Of Pennsylvania School of Law. In addition, he has authored numerous books, articles, and other legal publications, including *International Dispute Resolution in Latin America: An Institutional Overview* (published by Kluwer Law International, new edition forthcoming).

SILVIA MARCHILI, Member at Large, is a partner at White & Case, where she focuses on complex international arbitration cases involving investment and commercial claims. She has first-chaired cases involving hundreds of millions of dollars in Latin America and Africa, in a variety of sectors, including oil and gas, power, infrastructure, and mining. With over 20 years of experience, she has obtained some of the largest ICSID Bilateral Investment Treaty awards ever received by foreign investors, mainly involving the oil and gas, power, and infrastructure sectors. An expert in investment arbitration, Silvia co-authored the treatise *Annulment Under the ICSID Convention* (Oxford University Press, 2012). She has previously served on the Executive Committee as a Co-Chair of the Membership Committee. While she was the Chair of Young ITA, Silvia relaunched the group, creating the mentorship program, the writing competition, and the regional representatives positions.

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ALLAN B. MOORE, Member at Large, is currently a partner at Covington & Burling where he practices in the areas of international arbitration and insurance coverage. He co-chairs the firm's Energy Industry Group and previously co-chaired the firm's Arbitration Practice Group for 10 years. Allan has helped clients recover more than $2 billion in commercial and insurance coverage disputes. He has previously served as a Co-Chair of the Membership Committee. Allan is also a former Member of the LCIA Court; a peer selected "Distinguished Neutral" for arbitration and mediation with the International Institute for Conflict Prevention and Resolution ("CPR"); a rostered arbitrator with the Institute for Energy Law ("IEL"); and a member of the CPR Council. He coaches law students in oral advocacy and is a frequent speaker on insurance coverage and arbitration topics.

ELLIOT FRIEDMAN, Vice Chair, is a partner in Freshfields' international arbitration group in New York and heads the firm's international arbitration practice in the Americas. His practice focuses on international commercial and investor-state arbitration. He has particular expertise in pharmaceutical, energy, financial services, and technology disputes, and has handled arbitration proceedings before almost every major arbitral institution. Elliot also represents companies in transnational litigation in U.S. courts, including the enforcement of arbitral awards. He was part of the team that successfully represented BG Group in the first ever case concerning a bilateral investment treaty to be considered by the U.S. Supreme Court.

KLAUS REICHERT, Vice Chair, specializes in international arbitration and has worked on, both as lead counsel and as arbitrator (frequently as chair), more than 250 international disputes across a broad spectrum of complex subject matters, industries, and governing laws involving parties (often sovereigns, or state-owned commercial entities) from all over the world. He has experience arising from multiple cases administered by ICSID, ICC, LCIA, ICDR and the Permanent Court of Arbitration ("PCA"). He has sat in most of the major arbitral venues with a significant focus on cases located in the U.S. He is a member of the CAS and the International Basketball Federation ("BAT") panel of arbitrators. He currently serves on the ITA Executive Committee as a Member-at-Large.

KARIMA SAUMA, Chair YITA, is part of the arbitration team at DJ Arbitraje. She is an adjunct professor at the Latin American University for Science and Technology ("ULACIT") University and LEAD University in San José, and regularly acts as arbitrator, tribunal secretary, counsel, and legal expert in various types of cases. Previously, she was the Executive Director of the International Center for Conciliation and Arbitration of the Costa Rican-American Chamber of Commerce ("CICA"). Before joining CICA, she worked as an Advisor with the Dispute Settlement Team of the Costa Rican Ministry of Foreign Trade, where she was part of Costa Rica's defense team in claims filed under various treaties and free trade agreements. She was also a member of the negotiating team for treaties involving investment and dispute settlement provisions. Prior to joining the Ministry of Foreign Trade, she worked with the arbitration group at a well-known international firm in Washington, D.C.

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Karima received her J.D. with honors from the University of Costa Rica. She also holds an LL.M from Columbia Law School, where she was a Harlan Fiske Stone Scholar. She is admitted to practice law in Costa Rica and New York.

MIMI LEE, Chair of the In-House Counsel Committee, is Managing Counsel, Litigation Management with Chevron Upstream, based in San Ramon, California. Mimi has a demonstrated history of successfully leading a team handling high-profile, multidimensional, global legal issues balanced with significant commercial interests. Her team manages litigation, arbitration, pre-disputes, and investigations stemming from Chevron's International Upstream operations. The team's docket includes a variety of matters including commercial disputes, labor and employment, complex construction claims, coverage, tax, white collar, personal injury, and property damage. Mimi and her group interact with external counsel located all over the world and are responsible for ensuring that all litigation matters are handled efficiently and in a cost-effective manner. Prior to joining Chevron, Mimi was in private practice as a litigator. She was formerly a partner with Thelen Reid & Priest and later with McKenna Long & Aldridge.

GABRIEL COSTA, Co-Chair of the Membership Committee, is currently serving as Shell Group's Associate General Counsel Global Litigation for Latin America (all businesses) and the U.S. (upstream and integrated gas businesses), based in Rio de Janeiro, Brazil. Before joining the Shell Group, Gabriel worked in the litigation and arbitration practice groups at two of the largest Brazilian law firms in Porto Alegre and São Paulo and in the international arbitration practice group of a large U.S. law firm in New York. He is a Brazil-qualified lawyer and holds a LL.M degree from Northwestern University School of Law. Gabriel is a member of ICC International Arbitration Commission and an invested advocate for diversity, equity, and inclusion.

SARAH VASANI, Co-Chair of the Membership Committee, is Co-Head of International Arbitration at the global law firm of CMS. She is a seasoned international arbitration lawyer specializing in both international commercial arbitration and investor-state disputes. Sarah represents clients before all key arbitral institutions including the LCIA, ICC, ICDR, SIAC, HKAIC, DIAC ("Dubai International Arbitration Centre"), DIFC-LCIA, SCC ("Stockholm Chamber of Commerce"), ICSID, and in arbitrations conducted under the UNCITRAL Rules, and foreign investment laws. She is dual-qualified in England & Wales and the U.S. (Texas and Washington D.C.), is a Solicitor-Advocate of the Higher Courts of England and Wales, and works in both English and Spanish. In addition to advocating for her clients' interests before international tribunals, Sarah advises clients on investment protection and (re)structuring, and on strategies, options, and tactics for minimizing the prospects of full-blown disputes. She has particular experience in the energy sector, including oil and gas, renewables (including wind and solar), and other large-scale projects. Sarah has represented many of the leading global energy and construction companies. In addition to her work as counsel, Sarah regularly sits as arbitrator.

CATHERINE BRATIC, Co-Chair of the Programs Committee (Virtual Programs), is a Counsel in the international arbitration group of Hogan Lovells LLP and newly appointed as Programs Committee Co-Chair. Based in Houston, Texas, Catherine is dual-qualified in Texas and Paris, France, and specializes in the resolution of cross-border disputes. She regularly advises clients in complex, high-value disputes before international arbitral tribunals, as well as before national courts. She has been engaged in commercial disputes in the energy, technology, and life-sciences sectors, as well as in investment arbitrations. Catherine earned law degrees from Columbia University and the Institut d'Etudes Politiques de Paris. Prior to joining Hogan Lovells, Catherine clerked for the Hon. Lee H. Rosenthal, Chief Judge for the Southern District of Texas, and served as a legal fellow at UNESCO in Paris.

ROBERT LANDICHO, Co-Chair of the Strategic Planning Committee, is Counsel in Vinson & Elkins' Dubai office. He focuses on international energy and infrastructure disputes, including commercial arbitration, inter-state arbitration, investor-state arbitration, and national court litigation. Rob has represented clients or assisted in investor-state disputes at ICSID and under the UNCITRAL rules, as well as in commercial arbitrations under all of the major institutional rules, and in U.S. courts. Rob has experience with the U.S. Foreign Sovereign Immunities Act, act-of-state doctrine, admiralty and maritime disputes, and questions of jurisdiction over non-U.S. domiciled parties. Rob is admitted in Texas and has full rights of audience before the Dubai International Financial Centre Courts (Part I & II).

HAMID ABDULKAREEM, Co-Chair of the Diversity & Inclusion Task Force, counsel in the London office of Three Crowns, is an experienced arbitration practitioner and litigator, having regularly advised multinational companies on an extensive range of disputes, particularly within the energy and natural resources sector. He has played a lead role in multiple disputes arising from Nigeria's deep offshore production sharing contracts, resulting in successful outcomes for his clients. Hamid is also a current Young Africa Chair for the Institute for Transnational Arbitration, and a member of the Lagos Court of Arbitration's Young Arbitrators Network's Advisory Board. He is qualified in Nigeria and was educated at the London School of Economics and Political Science and the University of Ilorin, Nigeria.

2023 35TH ANNUAL ITA WORKSHOP AND ANNUAL MEETING – ON REMEDIES IN INTERNATIONAL ARBITRATION: WIELDING ARBITRAL POWER FOR EFFECTIVE REDRESS

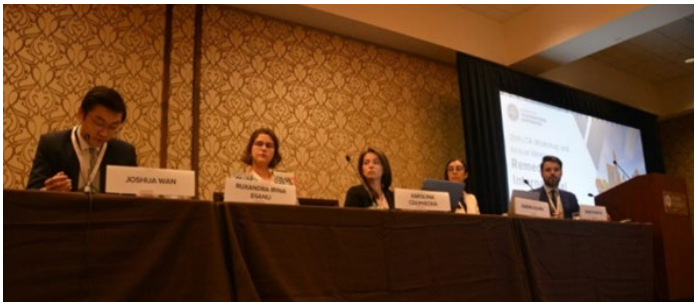
Conference Report by Rafael T. Boza (Pillsbury Winthrop Shaw Pittman LLP, Houston) and Lídia Rezende (Chaffetz Lindsey LLP, New York)

On June 14 through 16, 2023, the ITA held its 35th Annual ITA Workshop and Annual Meeting in Austin, Texas, USA. The ITA Workshop examined remedies in international arbitration, debating whether the current legal framework governing international arbitration meets the needs and expectations of its users with respect to remedies or whether systemic changes are needed to ensure that international arbitration can deliver effective redress for disputing parties.

I. Remedies Around the World: A Comparative Law Look at National Law Approaches to Contractual Remedies in International Arbitration (June 14, 2023)

Moderator: Mark Stadnyk (Squire Patton Boggs, Houston)

Panelists: Karolina Czarnecka (Queritius, Warsaw); Ruxandra Irina Esanu (Dechert LLP, Paris); Karima Sauma (DJ Arbitraje, San José); Joshua Wan (DLA Piper, New York)



Joshua Wan (DLA Piper, New York), Ruxandra Irina Esanu (Dechert LLP, Paris), Karolina Czarnecka (Queritius, Warsaw), Karima Sauma (DJ Arbitraje, San José), and Mark Stadnyk (Squire Patton Boggs, Houston)

The first Young ITA Roundtable explored national law approaches to contractual remedies in international arbitration. Panelists discussed divergent perspectives on non-monetary remedies, including restitution, suspension, specific performance, declaratory relief, reformation/gap-filling, injunctive relief, and damages.

Mr. Joshua Wan highlighted the influence of specific legal frameworks, such as the Federal Arbitration Act in the U.S., on the availability and effectiveness of non-monetary remedies. He noted that some jurisdictions favor monetary remedies, while others embrace a broader range of options. Mr. Wan referred to cases from the Southern District of New York and California where the courts confirmed awards involving non-monetary remedies to explain that U.S. courts tend to recognize and enforce non-monetary awards.

Ms. Karolina Czarnecka discussed challenges in enforcing equitable remedies across borders, and specifically in Poland. She explained that courts in Poland and other similar civil law countries resist enforcing awards granting non-monetary remedies and sometimes consider them to be against public policy, either because they exceed the arbitrator's authority or because they conflict with provisions of local law that do not allow for certain types of non-monetary remedies. Ms. Czarnecka emphasized the need for an efficient and harmonized enforcement regime.

Ms. Karima Sauma focused on the treatment of non-monetary remedies in investor-state arbitration. She highlighted the significance of party agreements and consent as a source of authority for granting such remedies. Ms. Sauma also provided examples of investment treaties recognizing a tribunal's power to grant non-monetary remedies and the cases in which the parties had received such exceptional relief.

Ms. Ruxandra Irina Esanu explored the French law approach to non-monetary remedies and the enforcement of such awards in different jurisdictions. She discussed the hierarchy of remedies under French law and the potential challenges in enforcing non-monetary remedies in French courts as well as internationally. She highlighted that French law provides for a hierarchy of remedies under Article 1217 of the French Civil Code, including suspension, specific performance, reduction, termination, and reparation of damages for non-performance. Ms. Esanu stressed the importance of strategic planning and consideration of the nuances of French law to maximize the chances of effective enforcement.

In conclusion, the panel shed light on the complex landscape of contractual remedies in international arbitration. They examined the availability and use of non-monetary remedies and emphasized the differences across myriad jurisdictions. The discussion provided valuable insights for practitioners and scholars navigating this multifaceted realm.

II. Beyond Monetary Damages: What Do Empirical Studies Tell Us About the Use of Non-Monetary Relief in International Arbitration? (June 14, 2023)

Moderator: Dr. Crina Baltag (Stockholm University, Stockholm)

Panelists: Paul Di Pietro (Counsel, ICC, New York); Ioana Knoll-Tudor (Jeantet, Paris); Mallory Silberman (Georgetown University Law Center, Washington, D.C.)

Paul Di Pietro (Counsel, ICC, New York), Dr. Crina Baltag (Stockholm University, Stockholm), Mallory Silberman (Georgetown University Law Center, Washington, D.C.), and Ioana Knoll-Tudor (Jeantet, Paris)

Dr. Crina Baltag highlighted the limited empirical research on non-monetary relief in international arbitration. She said only two surveys were noteworthy: (i) the 2008 Report from Queen Mary University of London ("Queen Mary Report"); and (ii) the 2011 Swiss Arbitration Association ("ASA") Research. For instance, the Queen Mary Report showed that monetary damages were awarded in 62% of cases, followed by declaratory relief (15%), specific performance (13%), contract adaptation (4%), and other types (6%).

Mr. Paul Di Pietro presented data from the ICC North America branch for 2022. Out of 48 awards rendered, 75% awarded both non-monetary and monetary relief, 19% awarded exclusively monetary relief, and 6% awarded exclusively non-monetary relief. However, he warned that this data pertained only to North America and that different jurisdictions may show different trends. Specific performance awards were not common, likely due to enforcement difficulties.

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Ms. Mallory Silberman discussed the lack of statistics on non-monetary relief in investment arbitrations, where studies primarily focus on monetary aspects. Non-monetary relief, such as orders for document production and findings of jurisdiction, is common but not extensively studied. The terms of art related to non-monetary relief are not frequently used or clearly defined.

Ms. Ioana Knoll-Tudor presented findings on non-monetary relief in Mergers and acquisitions ("M&A") arbitrations. The 2011 ASA Survey indicated that breaches of representations and warranties and price adjustment mechanisms often involve non-monetary relief. Specific performance clauses are increasingly included in M&A agreements, but award statistics show limited instances of specific performance. Declaratory relief was found in a small percentage of ICC awards in M&A cases.

Mr. Di Pietro discussed non-monetary relief in emergency arbitrations under the ICC Rules, where users typically seek non-monetary relief. The ICC North America handled over 210 applications since 2012, with common requests including refraining from calling bank guarantees, maintaining funding, and granting access to financial records. Urgency and irreparable harm are crucial factors in obtaining such relief, with arbitrators often refusing non-monetary relief if monetary damages can compensate for the harm. Approximately 50% of requests are dismissed and voluntary compliance is the norm.

Dr. Baltag asked if declaratory relief and specific performance incentivize settlement. Ms. Silberman noted limited data on settlement recorded in ICSID awards, while Ms. Knoll-Tudor mentioned that the 2008 Queen Mary Report showed that 43% of settlements occurred before the first hearing, 31% of settlements occurred between the first hearing and hearing on the merits, and 26% of settlements occurred just before the award is rendered.

To conclude, Dr. Baltag mentioned an empirical research study conducted in 2022 on the vacatur and enforcement of commercial arbitration awards in courts (Roger P. Alford et al., *Empirical Analysis of National Courts Vacatur and Enforcement of International Commercial Arbitration Awards*, 39 J. Int'l Arb. 299 (2022)), which found that in about 20% of cases the most successful grounds for vacatur is the tribunal exceeding its mandate. In several cases, the vacating or enforcing courts questioned the type of relief awarded.

III. Workshop Dialogue: What Do Users Need From Remedies? (June 15, 2023)

Speakers: Mimi M. Lee (Chevron Upstream, San Ramon); Tomasz J. Sikora (Exxon Mobil Corporation, Houston)

Tomasz J. Sikora (Exxon Mobile Corporation, Houston)

Mr. Tomasz J. Sikora and Ms. Mimi Lee discussed non-monetary relief in international arbitration from their perspective as in-house counsel. They addressed whether damages are sufficient and when alternative remedies are more appropriate. Ms. Lee noted that while damages are necessary to assess the magnitude of a dispute, they can prolong conflicts in long-term contracts and damage relationships. Mr. Sikora agreed, citing difficulties in establishing damages for long-term contracts due to unpredictable factors like commodity pricing and political environments.

The speakers then commented on various forms of non-monetary relief. Ms. Lee highlighted injunctive relief as a valuable option, allowing parties to pause and seek settlement. Mr. Sikora discussed specific performance, noting it may be appropriate when damages are hard to estimate and when moral hazards may arise from under-compensation. Ms. Lee mentioned declaratory relief as a means to preserve contractual relations and expedite dispute resolution, especially in cases involving bureaucratic host governments. Mr. Sikora addressed reformation, a form of declaratory relief that allows parties to rectify long-term contracts and continue their performance. He indicated that he has a favorable view of reformation as it can be helpful in long-term contracts, allowing the parties to continue performing despite changed circumstances.

Both speakers emphasized the value of non-monetary relief to promote flexibility and creativity in crafting remedies tailored to particular circumstances instead of burdening a party with substantial damages. Ms. Lee concluded that to find mutually beneficial solutions, it is essential to consider the available relief options, as well as the context and impact of those options.

IV. Money Talks, But Action Speaks Louder Than Words: Some Observations On Non-Monetary Remedies In International Arbitration (June 15, 2023)

Speaker: Abby Cohen Smutny (White & Case LLP, Washington, D.C.)

Abby Cohen Smutny (White & Case LLP, Washington, D.C.)

In her keynote speech, Ms. Abby Cohen Smutny discussed the importance of non-monetary remedies and provided a framework for their discussion. She highlighted that while monetary remedies are often used as a form of justice, arbitration should aim to provide remedies beyond merely financial ones. Ms. Smutny outlined five key attributes of a remedy: adequacy; accessibility; proportionality; enforceability; and finality. She also explained that there are instances where monetary remedies fail to fulfill these purposes.

The range of remedies an arbitrator may award depends upon the arbitrator's source of authority, and some variation is expected. Non-monetary awards are an option at least in theory. In the commercial context, arbitral tribunals have broad authority to craft a remedy to suit a particular purpose. However, the law imposes many conditions to obtain a non-monetary remedy. The International Institute for the Unification of Private Law ("UNIDROIT") Principles of International Commercial Contracts are indicative. Article 7.2.2. provides that a party may request specific performance unless: (i) performance is impossible in law or in fact; (ii) performance or enforcement is unreasonably burdensome or expensive; (iii) the party may reasonably obtain performance from another source; (iv) performance is of an exclusively personal character; and (v) the party entitled to performance waived its right to request such a remedy by inaction.

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Similar considerations arise in public international law. The International Law Commission's Articles on State Responsibility of 2001 highlight three available remedies for injury caused by a state's unlawful conduct: (i) restitution; (ii) compensation; and (iii) satisfaction. Restitution is preferred, followed by compensation, and satisfaction is rarely awarded. Ms. Smutny invited the audience to imagine a system of dispute resolution that worked the other way around. She noted that investor-state tribunals do not often award satisfaction even though they have accepted that declaring a conduct as unlawful may be seen as satisfaction. Similarly, practice reveals that restitution is most often not available and usually not awarded, and some tribunals have questioned whether restitution can ever be available in the investor-state context.

Some recent investment treaties offer the state the choice between specific performance and monetary damages. For instance, the Canada-Venezuela Bilateral Investment Treaty allows for damages to be paid instead of restitution. While some tribunals have awarded restitution with compensation as a backup, others have questioned the availability of restitution in investor-state cases. Few tribunals have granted non-monetary remedies in such disputes.

Ms. Smutny explained that enforcing non-monetary awards is easier in commercial contexts. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly, the "New York Convention") New York Convention requires contracting states to recognize and enforce both monetary and non-monetary arbitral awards. In contrast, Article 54 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (commonly, the ICSID Convention) only obliges Contracting States to enforce pecuniary obligations but remains silent on non-monetary awards.

Ms. Smutny concluded by emphasizing the need to reexamine the legitimacy and effectiveness of remedies, as there may be alternative ways to address disputes that cannot be resolved through monetary means.

V. The Full Scope of Arbitral Power to Award Relief (June 15, 2023)

Moderator: Dr. Diane Desierto (University of Notre Dame Law School, Notre Dame)

Panelists: Prof. Charles H. Brower II (Wayne State University, Detroit); James E. Castello (King & Spalding International LLP, Paris); Isabelle Michou (Quinn Emanuel Urquhart & Sullivan, LLP, Paris); Sarah Vasani (CMS Cameron McKenna Nabarro Olswang LLP, London)

Dr. Diane Desierto (University of Notre Dame Law School, Notre Dame), Prof. Charles H. Brower II (Wayne State University, Detroit), James E. Castello (King & Spalding International LLP, Paris), Isabelle Michou (Quinn Emanuel Urquhart & Sullivan, LLP, Paris), and Sarah Vasani (CMS Cameron McKenna Nabarro Olswang LLP, London)

This panel aimed to explore the inherent power of arbitral tribunals to grant appropriate relief while considering the sources, limits, and due process considerations associated with discretionary remedies.

Professor Charles Brower expressed the need for better conceptual tools and guidance on the selection of remedies in international arbitration. Using a "wind rose" graphic, he illustrated the differing views on remedies based on geographical and legal backgrounds. In particular, he mentioned Gary Born's emphasis on party autonomy and the arbitral agreement and Peter Ashford's focus on hurdles arising from enforceability of non-monetary awards.

Ms. Isabelle Michou agreed with Mr. Gary Born, stating that the analysis of arbitration powers begins with the arbitral agreement. She believed that ad-hoc arbitrators have only the powers granted by the parties and considered the prayer for relief as a determining factor of the arbitrator's authority.

Ms. Sarah Vassani highlighted the lack of detailed remedy provisions in arbitral agreements as a significant issue. She acknowledged the goal of arbitration is to provide an effective and efficient resolution, and mentioned Section 38 of the English Arbitration Act, which grants tribunals the power to tailor remedies to suit each case. She proposed considering both Mr. Born's party autonomy perspective and Peter Ashford's enforceability concerns. The panel also discussed the flexibility of arbitral tribunals in crafting remedies beyond those requested by the parties, as long as due process safeguards are in place.

Referring to cases such as *Caratube International Oil Company LLP v. Republic of Kazakhstan* and *BayWa r.e. Renewable Energy GmbH v. Spain*, the panelists consistently emphasized the importance of due process and ensuring fairness in any remedies awarded.

The panel then identified key factors for determining non-monetary relief, including the prayer for relief and the tribunal's power to grant requested relief. They emphasized that the governing law and applicable international treaties can shape the tribunal's authority. They also highlighted the significance of arbitration agreements, which can expressly grant or restrict the tribunal's power to award certain types of relief. Careful consideration of these factors is crucial to assessing arbitral power and ensuring remedies align with due process principles.

In conclusion, the panel acknowledged the limitations in available tools and data, as well as the complex dynamics that influence arbitral tribunals' authority in granting relief. By considering constraints and influences from various sources, the panelists emphasized the delicate balance between flexibility and due process.

VI. "Resolved, That Arbitrators Can and Do Award Effective Redress to Disputing Parties" (June 15, 2023)

Moderator: Noradèle Radjai (LALIVE, Geneva)

Debaters: John Crook (George Washington University School of Law, Washington, D.C.); Lucinda A. Low (Steptoe & Johnson LLP, Washington, D.C.)

John Crook (George Washington University School of Law, Washington, D.C.), Lucinda A. Low (Steptoe & Johnson LLP, Washington, D.C.), and Noradèle Radjai (LALIVE, Geneva)

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This lively debate started with Ms. Noradèle Radjai asking the audience to vote on the question: "arbitrators can and do award effective remedies (including non-monetary remedies), as compared with national courts." 59% of the audience agreed and 41% disagreed. In defending the majority opinion, Ms. Lucinda Low argued that arbitration offers an array of useful remedies that can provide multiple forms of effective redress if parties and arbitrators elect to use them. We are too inclined to think of one remedy and should not lose sight of the various available options to harness the inherent flexibility of arbitration. Users have needs that are often not satisfied simply with monetary relief, and studies have shown there is a wide range of circumstances warranting non-monetary relief, including the validity of a contract, setting prices going forward, specific performance that provides forward-looking remedies, an order not to divulge a secret, and restoration of the *status quo*.

Mr. John Crook defended the minority opinion. He cautioned users to be skeptical that parties will comply with the award voluntarily, even more so when compelled to act or refrain from acting. A declaratory judgement or specific performance order, while potentially sufficient to end a dispute on paper, requires parties to abide by the result; otherwise, arbitration does not accomplish much. The winning party may commence another arbitration, but the objective of efficiently resolving the dispute will be lost by then.

Ms. Low also defended non-monetary remedies in the context of investment arbitration. She explained that other types of relief may be more appropriate when the relationship has not completely broken down and the state may be open to ideas to salvage it. Thoughtful counsel can and do frame requests that are appropriate for the circumstances of the case. Mr. Crook disagreed by saying that "there is room, but not very much." By the time a dispute reaches arbitration, there is not much to save or much disposition on the part of the state to abide by an order from the tribunal. For example, there is a very low likelihood that a nationalizing state will privatize a national resource.

The debaters also touched upon enforcement issues and arbitrators' powers. Mr. Crook emphasized that there are enforcement challenges, particularly with ICSID awards since the ICSID Convention only requires enforcement of pecuniary remedies. Ms. Low disagreed by saying that there are tools available to obtain enforcement, and those tools can be used effectively. She also emphasized that arbitrators typically have the same powers as courts, if not broader, to tailor specific remedies. Further, under the UNIDROIT principles, specific performance is the preferred remedy and it must be ordered unless an exception applies.

At the end of the debate, Ms. Radjai took another audience vote. The audience continued to be divided, with 58% agreeing and 42% disagreeing with the position.

VII. How the Arbitral Process Affects the Availability and Effectiveness of Monetary and Non-Monetary Relief (June 15, 2023)

Moderator: Thomas Voisin (Quinn Emanuel Urquhart & Sullivan, LLP, Paris)

Panelists: Roberto J. Aguirre Luzi (King & Spalding LLP, Houston); Stephen P. Anway (Squire Patton Boggs, New York/Washington, D.C.); Caline Mouawad (Chaffetz Lindsey LLP, New York); Anne Véronique Schlaepfer (White & Case LLP, Geneva)

Thomas Voisin (Quinn Emanuel Urquhart & Sullivan, LLP, Paris), Roberto J. Aguirre Luzi (King & Spalding LLP, Houston), Caline Mouawad (Chaffetz Lindsey LLP, New York), Stephen P. Anway (Squire Patton Boggs, New York/Washington, D.C.), and Anne Véronique Schlaepfer (White & Case LLP, Geneva)

The panel examined the tools available to expedite the arbitration process and addressed associated challenges. Mr. Voisin explained the characteristics of arbitration, emphasizing the parties' freedom in organizing proceedings and the arbitrators' broad powers to ensure due process.

Mr. Anway discussed four tools to enhance the effectiveness of non-monetary relief: summary disposition; bifurcation; fast track arbitration clauses and rules; and the role of counsel and arbitrators. These tools can accelerate dispute resolution while considering process effectiveness.

Mr. Aguirre Luzi highlighted the differences between commercial and investment arbitration, emphasizing the importance of non-monetary relief in investor-state cases. He mentioned that non-monetary remedies can aid in repairing relationships and avoiding investment loss.

Ms. Schlaepfer explored the question of whether arbitral tribunals or courts are better suited for granting interim relief. She suggested that courts may be more effective in certain cases, while arbitral tribunals focus on preserving the *status quo*.

Regarding emergency arbitrators, Mr. Luzi noted their limited use in investment arbitrations compared to provisional measures. Emergency arbitrators are employed tactically at early stages of proceedings.

Ms. Mouawad proposed ways to improve efficiency in arbitration, focusing on the constitution of the tribunal, proceeding measures, and the arbitration schedule. She suggested shortening challenges and implementing expedited proceedings and preliminary issues.

Mr. Voisin raised concerns about standardized rules limiting freedom in arbitration. However, the panelists stressed the importance of utilizing available tools without compromising fundamental arbitration principles.

The panelists acknowledged the value of tribunals promptly rendering arbitration awards for non-monetary relief, highlighting the need for a balanced approach that ensures a timely resolution while maintaining the integrity of the process.

*(See **35TH ANNUAL ITA WORKSHOP** page 8)*

*(Cont'd from **35TH ANNUAL ITA WORKSHOP** page 7)*

VIII. Enforcement and Other Issues Arising From Awards Granting Non-Monetary Remedies (June 15, 2023)

Moderator: Klaus Reichert SC (Brick Court Chambers, London)

Panelists: Steven K. Davidson (Steptoe & Johnson LLP, Washington, D.C.); Barton Legum (Honlet Legum Arbitration, Paris); Franz T. Schwarz (WilmerHale, London)

Klaus Reichert SC (Brick Court Chambers, London), Barton Legum (Honlet Legum Arbitration, Paris), Steven K. Davidson (Steptoe & Johnson LLP, Washington, D.C.), and Franz T. Schwarz (WilmerHale, London)

The second afternoon workshop panel—a Tylney Hall-style discussion–followed a more conservative approach, prompting each panelist to provide additional details on each of the topics that they discussed.

The panel began by discussing the increasing trend in Bilateral Investment Treaties ("BITs") of granting tribunals the authority to order restitution and the right of states to provide compensation instead. Mr. Barton Legum defended this trend, pointing out that investment law and non-monetary awards can infringe upon state sovereignty while recognizing that specific performance can be less economically expensive to implement. Allowing states to choose between specific performance and compensatory damages strikes a balance and promotes sovereignty, as it saves taxpayers from funding damages and allows the state to preserve policy decisions.

Mr. Steven Davidson focused on the enforceability of non-monetary obligations in national courts, specifically in light of the interplay between the New York Convention and the ICSID Convention. There is a well-known debate regarding whether non-monetary awards issued by ICSID tribunals are enforceable, as the ICSID Convention only requires contracting states to enforce pecuniary obligations. In the U.S., courts have generally upheld the power to enforce non-monetary relief, except when contrary to public policy. However, Mr. Davidson explained that when it comes to enforcing ICSID awards through the New York Convention in the U.S., the implementing statute may prevent such enforcement, although the issue has yet to be tested in courts. Nevertheless, Article 53 of the ICSID Convention states that any award is "final and binding," implying that non-monetary obligations are likely to have *res judicata* effect and be recognized similarly to monetary relief, even though enforcement is not expressly required.

Lastly, Mr. Franz Schwarz discussed declaratory relief and *res judicata*. He categorized declaratory relief into two types: (i) standalone relief that is self-executing; and (ii) relief that is prejudicial to performance and included within an order. The latter type raises concerns, especially in jurisdictions where a party can directly seek an order without first obtaining declaratory relief. Mr. Schwarz cautioned against this approach, citing a recent Swiss case involving partner compensation in two related arbitrations. In the first arbitration, the partner argued that the firm paid less than it should have but lost—the tribunal, interpreting the contractual payment criteria, found that the partner had failed to perform. The partner afterwards started a second arbitration requesting the same deficit for subsequent years and won as the tribunal interpreted the provision differently. The law firm challenged the award on grounds of public policy (*res judicata*). The Swiss court, however, dismissed the challenge stating that the law firm should have asked the first tribunal for declaratory relief on the provision's proper interpretation. This case thus shows that even when requesting an order, parties should carefully assess whether to also pursue declaratory relief.

In summary, the panel discussed the trend of granting tribunals the authority to order restitution or compensatory damages in BITs, the enforceability of non-monetary obligations in national courts, and considerations surrounding declaratory relief and *res judicata*.

IX. The Era of Arbitral Reform: How Effective Is the *Status Quo* From the Standpoint of Arbitral Remedies? (June 15, 2023)

Moderator: Rachael Kent (WilmerHale, Washington, D.C.)

Panelists: Julie Bédard (Skadden, Arps, Slate, Meagher & Flom LLP, New York/São Paulo); Prof. George A. Bermann (Columbia University School of Law, New York); Teresa Garcia-Reyes (Baker Hughes, Houston); David W. Rivkin (Arbitration Chambers, New York/London)

Rachael Kent (WilmerHale, Washington, D.C.), David W. Rivkin (Arbitration Chambers, New York/London), Teresa Garcia-Reyes (Baker Hughes, Houston), and Prof. George A. Bermann (Columbia University School of Law, New York)

The Workshop's concluding panel assessed the effectiveness of non-monetary remedies in dispute resolution and the need for reform. Mr. David Rivkin opined that there is reluctance among international arbitrators and counsel to fully utilize such remedies, citing limitations imposed by treaties and contracts. He emphasized the importance of understanding and actively utilizing existing mechanisms rather than pursuing wholesale reform.

Ms. Teresa Garcia-Reyes agreed, attributing such reluctance to external counsel and arbitrators. She highlighted that users often desire prompt decisions and efficient resolutions, which frequently involve non-monetary relief. Ms. Garcia-Reyes asserted that the necessary tools for effective dispute resolution already exist; the challenge lies in arbitrators utilizing them.

Prof. George Bermann questioned whether tribunals actually consider if they have the authority to issue non-monetary relief. He posited whether arbitrators would grant relief if they considered it to be appropriate and postulated that arbitrators are not "reluctant" because they do not normally question the issue.

*(See **35TH ANNUAL ITA WORKSHOP** page 9)*

*(Cont'd from **35TH ANNUAL ITA WORKSHOP** page 8)*

Ms. Rachael Kent asked whether arbitration proceedings are occasionally too slow for non-monetary remedies. The panel generally agreed, acknowledging the need for higher efficiency. They debated whether the remedies should determine the procedure followed by the parties.

Ms. Garcia-Reyes emphasized the crucial role of arbitral institutions in meeting users' needs and incorporating tools like summary adjudication into their rules. However, Prof. Bermann suggested considering approaches such as expert determination for effective resolution in specific disputes. The panelists stressed the importance of exploring diverse methods beyond arbitration to tailor the approach to each case's unique requirements.

Ms. Kent then asked about the impact of *functus officio* and whether arbitral tribunals are limited by the *lex loci contractus* in awarding remedies. Prof. Bermann argued that tribunals cannot "hang around" to monitor cases for an extended period, while Mr. Rivkin suggested short time frames could be workable. Ms. Garcia-Reyes expressed concerns about the tribunal's limited ability to enforce orders, potentially requiring parties to seek court intervention.

Prof. Bermann asked whether the laws governing remedies should be considered substantive or procedural in nature and whether the tribunals' powers to order remedies are confined to those allowed by the applicable law chosen by the parties. The panel discussed the transfer of sensitivities from investment arbitration to commercial arbitration and emphasized the need for careful consideration of each case's specific circumstances to determine the appropriate relief.

The issue of enforceability was then addressed, with Prof. Bermann asserting that compliance with awards is the norm. Ms. Garcia-Reyes stressed that if parties request non-monetary remedies, the tribunal should grant them, as the parties assume the risk of enforceability. The panel encouraged practitioners and arbitrators to consider the broader implications of chosen remedies and contract provisions to achieve optimal outcomes.

The panel acknowledged the complexities surrounding non-monetary remedies in commercial and investment arbitration. They emphasized the importance of considering the specific circumstances, applicable rules, and available remedies to achieve optimal outcomes in dispute resolution.

In closing, Ms. Kent quoted an article by Edson Sunderland entitled *A Modern Evolution in Remedial Rights—The Declaratory Judgment*, 16 MICH. L. REV. 69-89 (1917) for the proposition that "[t}o ask the court merely to say whether you have certain contract rights as against the defendant is a very different thing from demanding damages or an injunction against him. When you ask for a declaration of right only, you treat him as a gentleman. When you ask coercive relief, you treat him as a wrongdoer. That is the whole difference between diplomacy and war." On that basis, the panel asked the audience to carefully assess the adequacy of conventional and non-conventional remedies to resolve disputes efficiently and to ensure that international arbitration remains a preferred mechanism for dispute resolution.

ZAMBIA'S LUSAKA INTERNATIONAL ARBITRATION CENTER: A SCORE FOR INTERNATIONAL ARBITRATION

Article by Andrew M. Matakala (Reagan Blankfein Gates Legal Practitioners, Zambia)

1. Status Quo

The Zambian Courts, being the traditional fora for dispute resolution and faced with other administrative challenges, have become overwhelmed by the number of cases they receive. The resulting delays inconvenience litigants and also prejudice the financial interests of litigants, especially in commercial disputes. To address this situation, the commercial division of the High Court for Zambia was established to handle commercial disputes. However, the commercial division has also been plagued by a couple of challenges and overwhelmed by cases, and is consequently, slowly but steadily, also experiencing delays in resolving cases.

2. Lusaka International Arbitration Center

In making further strides to promote alternative dispute resolution mechanisms, particularly arbitration in Zambia, the Law Association of Zambia together with the Chartered Institute of Arbitrators ("CIArb") - Zambia, launched the Lusaka International Arbitration Center ("LIAC") on February 8, 2023. The LIAC was incorporated as a company on June 12, 2023, and once it is operational, the LIAC is expected to offer real time resolution of domestic and international commercial disputes as an alternative to the Courts, which are a traditional forum for dispute resolution.

3. LIAC's Projected Impact on Arbitrating Parties and Zambia

Zambia is a developing country with considerable investment activities on the rise, especially in the construction sector. Because disputes can be expected to arise in commercial transactions, it is only prudent to strengthen alternative dispute resolution mechanisms and platforms like LIAC. As explained further below, the operations of LIAC are likely to be beneficial.

LIAC's operations would open up Zambia as a new and fertile territory for international arbitration, which will boost investment and trade in the country, and subsequently in the African continent. Moreover, the LIAC would meet the common need amongst investors and business entities for confidential, expedited resolution of disputes. The LIAC is expected to be an accessible arbitral platform for parties and could offer the parties a guarantee of confidentiality.

Furthermore, LIAC will offer the arbitrating parties access to expert arbitrators who are familiar with the complexities of the industries of the arbitrating parties. This is especially relevant where parties in their arbitration agreement specify that the arbitration should be conducted according to the developed trade practices in a particular industry. Having industry experts will be advantageous to the parties, because the law will be adaptable to, or considered in light of, the usual practice in a particular trade, which may not be the same in traditional courts that may have limited appreciation of the particular industry practices of the litigants.

In conclusion, it is highly anticipated that LIAC will be a productive hub for international arbitration that can offer effective and expeditious resolution of disputes. The hope is that the LIAC will be the go-to place for parties, especially investors, to have their commercial disputes expeditiously resolved. Importantly, LIAC will be better placed to complement the already established mechanisms of dispute resolution by handling disputes relating to commerce, trade, industry, or any action of a business nature.

INTRODUCING THE FINAL REPORT AND RECOMMENDATIONS OF THE ITA CARIBBEAN TASK FORCE

Report by Calvin Hamilton (Arbitra International, London), Hon. Barry Leon (33 Bedford Row Chambers, London), and Theominique D. Nottage (Chartered Institute of Arbitrators, London)

In August 2023, the ITA published the **"**Final Report and Recommendations of the ITA Caribbean Task Force." The Report includes the Caribbean Task Force's conclusions and its recommendations on how the ITA can assist to develop and enhance arbitration in the Caribbean.

It recommends the following five "Initial ITA Priorities in and for the Caribbean":

- Model Law implementation;
- Capacity building among legal practitioners;
- Judicial education and training in arbitration;
- Assisting legal educators in the Caribbean; and
- Raising the profile of Caribbean arbitration in the Americas.

The Report outlines the diversity of the Caribbean region and covers what is happening in arbitration in the Caribbean. The Report also discusses the opportunities that exist as arbitration becomes more prominent in the region, and as Caribbean arbitration practitioners become more active and prominent on the world stage.

The Caribbean Task Force consulted with a wide-range of stakeholders throughout the Caribbean in "focus group meetings," meeting with arbitrators, arbitration counsel (of different seniorities), Attorneys General and other national government ministers, academics and educators, and arbitration and other organizations and institutions.

As the Report explains:

> "…ITA desires to team up with Caribbean practitioners and organizations to support their initiatives, create opportunities, and identify synergies. As we said to many of the people with whom we met, ITA is not looking to come to the Caribbean to tell people what to do or how to do it, but rather to support existing and new initiatives, and undertake initiatives (perhaps together with others) that practitioners and others in the Caribbean would like to pursue. Finally, we worked to build an understanding of and support for the roles that the America's Initiative may be able to play in the development of arbitration in the Caribbean."

The ITA and its Americas Initiative–through the Caribbean Task Force's leaders Calvin Hamilton, Hon. Barry Leon, and Theominique Nottage–welcome thoughts on the Final Report and Recommendations, and on priorities and ideas for implementation.

The ITA's Americas Initiative has enjoyed tremendous success over the past two decades in Latin America. More recently, it has added additional parts of the Americas to its focus, including the Caribbean, beginning with the Caribbean Task Force, and Canada, with an annual "ITA Conference on International Arbitration in the Mining Sector" in Toronto in March.

The "Final Report and Recommendations of the ITA Caribbean Task Force" is available here.

INSTITUTE FOR TRANSNATIONAL ARBITRATION EXPERTS…IN THE NEWS UPDATES

Sustaining Member **Freshfields Bruckhaus Deringer LLP** has designated **Juan Pomés** as an Advisory Board representative under 40.

Sustaining Member **King & Spalding LLP** has designated **Dr. Ruediger Morbach** as an Advisory Board representative under 40.

Sustaining Member **White & Case** has designated **Meredith Craven** as an Advisory Board representative under 40.

Sponsoring Member **Orrick, Herrington & Sutcliffe LLP** has designated **Hagit M. Elul** as their Advisory Board Representative.

Sponsoring Member **Hughes Hubbard & Reed, LLP** has designated **Tamara Kraljic** as their Advisory Board Representative.

Sponsoring Member **Gregor Wynne Arney, PLLC** has designated **Thomas M. Gregor** as their Advisory Board Representative.

Sponsoring Member **Shardul Amarchand Mangaldas & Co.** has designated **Shreya Jain** as their Advisory Board Representative.

Sponsoring Member **Baker & O'Brien, Inc.** has designated **Tim Rooney** as their Advisory Board Representative.

Supporting Member **Hogan Lovells LLP** has designated **Eduardo Lobatón Guzmán** as an Advisory Board representative under 40.

Supporting Member **Dechert LLP** has designated **Ruxandra Irina Esanu** as an Advisory Board representative under 40.

Supporting Member **Boies Schiller Flexner LLP** has designated **Andrei Yakovlev** as a member of the Advisory Board.

Supporting Member **JAMS, Inc.** has designated **Prof. Hiro Aragaki** as a member of the Advisory Board.

Alice Wang of Pinsent Masons has joined ITA as an Associate Member.

Thomas Lane of Latham & Watkins (London) LLP has joined ITA as an Associate Member.

Harriet Foster of Orrick, Herrington & Sutcliffe LLP has joined ITA as an Associate Member.

Edith Twinamatsiko of Jojoma Advocates has joined ITA as an Associate Member.

Magda Kofluk of Stephenson Harwood Middle East LLP has joined ITA as an Associate Member.

Tiago Beckert Isfer of GIOF Advogados has joined ITA as an Associate Member.

Arbitral Institution Member **Center of Arbitration and Conciliation of the Bogota Chamber of Commerce (CCB) LLP** has designated **Nazly Duarte Gomez** as their Advisory Board Representative.

Andrew Farthing of Apple Inc. has joined ITA as a Correspondent Member.

Gábor Damjanovic of Forgó, Damjanovic & Partners Law Firm has joined ITA as a Correspondent Member.

Independent Arbitrator **Richard L. Mattiaccio** has joined ITA as a Correspondent Member.

Mauricio Gomm of GST LLP has joined ITA as a Correspondent Member.

Željko Loci of University of Belgrade Faculty of Law has joined ITA as an Academic / Government / Non-profit Member.

Dr. Kevin W. Gray of Columbia Law School has joined ITA as an Academic / Government / Non-profit Member.

Diora Ziyaeva of Dentons LLP has joined ITA as an Associate Member.

Thomas Vail of Vail Dispute Resolution has joined the Communications Committee as a member

Kieu Anh Vu, (Member, Young ITA) Managing Partner of **KAV Lawyers** in Vietnam, was recently appointed as Vice President, cum the Chairman of the Advisory Board of the Middle Commercial Arbitration Center ("MCAC") and as the Chief of the Representative Office of this Center in Ho Chi Minh City. He is also the Representative for North Asia Chapter of ICC Young Arbitration & ADR Forum ("YAAF"), Deputy Chairman of Advisory Board of MCAC, Southern Trade Arbitration Center ("STAC"). Vu is also an arbitrator at Thailand Arbitration Center ("THAC"), Thai Arbitration Institute ("TAI"), Asian International Arbitration Center ("AIAC"), and other arbitration institutes in Vietnam.

The Institute for Transnational Arbitration

A Division of THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

SCOREBOARD
OF ADHERENCE TO TRANSNATIONAL ARBITRATION TREATIES

(as of September 31, 2023)

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 between States and Nationals of Other States (commonly, ICSID Convention 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	Timor Leste (R)
ICSID	None.
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			R		S
Congo (Democratic Republic of)	R	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[32]				S
Gabon	R	R					S
Gambia		R				S[22]	R
Georgia	R	R	R		R	R	
Germany	R	R	R[33]				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[34]				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[35]		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					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	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 the United States of America (US or USA). 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 US 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. (32) France withdrawal from the Energy Charter Treaty shall take effect on 8 December 2023. (33) Germany withdrawal from the Energy Charter Treaty shall take effect on 21 December 2023. (34) Luxembourg withdrawal from the Energy Charter Treaty shall take effect on 17 June 2024. (35) Poland withdrawal from the Energy Charter Treaty shall take effect on 29 December 2023.

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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