Young ITA Newsletter

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- **Mentoring** – Updates on the current mentoring programme will be made on the Young ITA LinkedIn Page.
- **Events** – Please monitor the Young ITA LinkedIn Page for details of future Young ITA events, and be sure to join Young ITA for email announcements of future events here.
- **Reporting for Young ITA** – Please see page 19 of the newsletter for information on how to get involved with preparing pieces for the newsletter, or in reporting on Young ITA events in the future.

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60 Second Interview with Philip Tan, Young ITA Internal Communications Co-Chair

What would you say has been the most exciting experience in your practice so far?

Earlier this year, I did my first cross examination of a witness at a hearing. There was a lot of preparation leading up to the cross examination, in terms of revising drafts of the cross examination questions, and making sure that they are tightly honed. And, because it's not a very long cross examination, I had to make sure that I asked the best questions to get answers that I wanted and not let the witness go on and expand on their case. It was a fascinating experience—it involved a lot of adrenaline, a lot of lack of sleep, but I thought it went very well. I view that as what litigators and arbitration practitioners live for. That was definitely a very exciting moment for me.

Is there anybody who has mentored you in the arbitration field?

Throughout the past seven to eight years, I have been primarily working with Dr. Matthew Secomb, and I think he's an excellent mentor in all respects. He has let me gain responsibility over the years, ensured I get the kind of personal growth that I'm seeking, and helped me build my profile both internally within the firm as well as externally within the international arbitration community. Of course, there are plenty of other partners that I've worked with in the New York offices, D.C. offices, and various other offices as well, and I treasure that very much.

What are your top three places to visit or things to do in Singapore?

First on the list is Sentosa, an artificial island south of Singapore. It's a great place to relax and enjoy the beach. Second is to go on a heritage walking tour to understand Singapore's culture. And third, since Singapore is a melting pot of cultures and foods, eating at a hawker centre is the best experience to get a taste of all kinds of food.

If you could travel anywhere in the world, where would it be?

Patagonia or Antarctica, because of the beautiful scenery (and Antarctica's the only continent that I've not visited).

What advice would you have for young practitioners who are starting a career in arbitration?

Be open-minded. It's a very competitive field, so at the outset you might not do exclusively arbitration work, but all kinds of contentious work which will give you transferable skills. And, build a profile by getting involved in the arbitration community, like with the Young ITA for example.

Philip Tan, Internal Communications Co-Chair

To read more about each of our new co-chairs please click HERE.

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Western Europe Update

European Commission: The European Commission Tables

As widely reported, the European Commission has normally recommended a coordinated European Union (EU) withdrawal from the Energy Charter Treaty (ECT). Despite attempts to modernise the ECT, the proposed modernisation draft has failed to satisfy several EU Member States in view of climate change issues.

Lingering questions surround such withdrawal, particularly its implications under public international law. Who will ultimately determine the legality of the European Commission's withdrawal: the ECT Secretariat, the European Court of Justice, or the ECT tribunals themselves?

Echoes of Rockhopper v Italy: Some legal commentators believe that the final word lies with ECT tribunals, as illustrated in the case of *Rockhopper v Italy*. Italy unilaterally denounced the ECT in 2016, well before the current mass withdrawal movement. During the sunset period (i.e., the period in which, per the ECT, its protections remain applicable for 20 years post-unilateral denunciation) when Rockhopper brought its claim against Italy, the tribunal assumed its jurisdiction to hear the claim. This case sets a precedent in ECT arbitration that supports the applicability of the ECT's sunset clause. We believe tribunals may be best suited to address these complex questions.

Given this backdrop, an increase in ECT claims may be expected once the coordinated withdrawal occurs. Investors might be pushed to initiate these claims to obtain legal certainty. However, the UK has also signaled its intention to withdraw from the ECT, which favors the European Commission's plan. Before this, it was argued elsewhere that investors might seek to restructure their investments through jurisdictions outside the EU to obtain protections under the ECT. The UK was well positioned to attract these investors.

As the EU embarks on the path of withdrawal from the ECT, the legal ramifications under public international law will undoubtedly be under intense scrutiny.

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By Emilio Ruiz Pineda (Foreign Legal Expert, Linklaters LLP; emilio.ruizpineda@linklaters.com; Amsterdam/Netherlands) and Georgios Fasfalis (Managing Associate, Linklaters LLP; Young ITA Western Europe Co-Chair; georgios.fasfalis@linklaters.com; Amsterdam/Netherlands)

Germany

On 18 April 2023, the German Federal Ministry of Justice published a white paper (German only) on plans of a modernization of the German arbitration law. German arbitration law is based on the UNCITRAL Model Law, which is why several of the proposed changes follow earlier changes of the Model Law, such as waiving formal requirements for the conclusion of arbitration agreements in B2B contracts. Another proposed change is to allow the parties to submit arbitral awards drafted in the English language to German courts for annulment/enforcement proceedings without requiring them to translate the award into German. Apart from that, the law is to contain clarifications regarding the use of video conferencing in arbitration proceedings, on the possibility of publishing arbitral awards if the parties agree and on the possibility of setting aside manifestly illegitimate arbitral awards outside of annulment proceedings, for example for cases of corruption or a manifest disregard of the law. The white paper is currently under review *by* different legal professional organizations.

By Ruediger Morbach (Associate, King & Spalding; Young ITA Western Europe Co-Chair; RMorbach@kslaw.com; Frankfurt/Germany)

Italy

Italy has already finished its work on a reform of its arbitration law (called "*Riforma Cartabia*" after the former Italian Minister of Justice, Italian only). From 28 February 2023 on, arbitrations seated in Italy fall under the revised law. The reform touches a few core elements of the Italian arbitration law, which is not modelled after the UNCITRAL Model Law.

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The new rules give a request for arbitration in many regards the effect as a claim before a state court judge (for example regarding the statute of limitations). Arbitrators must make a declaration of independence and impartiality when being appointed. Arbitral tribunals can, from now on, issue interim measures if the parties give them this power (before, they could not). For cases in which the existence of an operative arbitration agreement is disputed, the reform eases the transition from litigation to arbitration proceedings (and vice versa). On a side note, arbitral awards can, from now on, only be challenged in annulment proceedings until six months after they were issued (instead of one year, as before the reform).

By Ruediger Morbach (Associate, King & Spalding; Young ITA Western Europe Co-Chair; RMorbach@kslaw.com; Frankfurt/ Germany)

Luxembourg: New arbitration law

In early 2023, the Luxembourg government adopted a new law to modernise its arbitration framework, bringing greater flexibility, speed, and confidentiality.

One of the changes to the arbitration law is the introduction of the function of a "*juge d'appui*" to assist and resolve procedural difficulties (e.g. constitution of the tribunal) or to assist in obtaining or preserving evidence.

Moreover, according to the new law, the Court of Appeal becomes the sole jurisdiction competent to hear disputes regarding the setting aside of arbitral awards rendered in Luxembourg.

In addition, enforcement of arbitral awards is not automatically suspended during the setting aside proceedings, although the Court of Appeal may suspend enforcement in certain cases.

Other key features of the new law include the promotion of expedited proceedings, the authorisation of remote hearings, and clearer powers for the tribunal in the event of non-participation by a party.

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It is expected that the new law would position Luxembourg as an attractive seat for arbitration.

By Emilio Ruiz Pineda (Foreign Legal Expert, Linklaters LLP; emilio.ruizpineda@linklaters.com; Amsterdam/ Netherlands) and Georgios Fasfalis (Managing Associate, Linklaters LLP; Young ITA Western Europe Co-Chair; georgios.fasfalis@linklaters.com; Amsterdam/ Netherlands).

Middle East Update

United Arab Emirates

In September 2023, the United Arab Emirates introduced significant amendments to its arbitration law (Federal Law No. 6 of 2018) with Federal Law No. 15 of 2023. These amendments are designed to enhance the UAE's status as an international arbitration hub by offering more flexibility and aligning the law with international standards.

Key changes introduced by the amendment law include:

- **Arbitrator Independence and Membership Restrictions (Article 10)**: The amendment places a stricter requirement on arbitrators to maintain impartiality and independence. It expressly prohibits any direct relationship between an arbitrator and a party that could compromise their neutrality. The amendment also eases restrictions on arbitrators' membership, allowing members of controlling bodies within arbitration institutions to serve as arbitrators under specific conditions, such as governance regulations, party consent, and limitations on the number of cases handled.
- **Applicable Proceedings (Article 23)**: The amended law reinforces the parties' autonomy in determining the procedures to be followed in arbitration. It allows parties to select their preferred procedures, and in cases where no agreement is reached, the arbitration tribunal has the discretion to establish appropriate procedures, taking into account UAE law and international conventions.

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- **Remote Hearings and Use of Technology (Article 28)**: The amendment acknowledges the growing use of online platforms and tools for dispute resolution, emphasizing the option for virtual or remote arbitration proceedings. It also requires arbitration institutions to provide the necessary technology for remote hearings, adhering to UAE's technical standards and regulations.
- **Hearings and Evidence (Article 33)**: The amendment grants arbitrators the authority to decide whether to hold oral evidentiary hearings or proceed on a "document only" basis, offering more flexibility in conducting arbitration proceedings. This change aims to enhance efficiency and reduce overall arbitration costs.
- ***Foreign Evidentiary Rules***: The amendment provides the arbitration tribunal with discretion to determine the applicable evidentiary rules, as long as they do not conflict with UAE's public policy, addressing potential conflicts with foreign evidence laws.
- **Confidentiality**: The amendment expands the scope of confidentiality in arbitration proceedings, making the default position that arbitration hearings and proceedings are confidential, unless otherwise agreed by the parties.

These amendments intend to make UAE arbitration law more modern, flexible, and attractive to domestic and international parties, emphasizing the use of technology, arbitrator qualifications, and procedural autonomy. However, their practical application and interpretation in arbitration cases remain to be seen.

By Magda Kofluk (Managing Associate, Stephenson Harwood Middle East LLP; Magda.Kofluk@shlegal.com; Dubai/United Arab Emirates)

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North America Updates

United States: Recent Developments on the Interplay Between Disclosure and Arbitrator Partiality: Andes Petroleum Ecuador Ltd. v. Occidental Exploration and Production Company

It is not uncommon for the validity of an arbitral award to turn on a combination of an arbitrator's compliance with disclosure obligations and their impartiality. The interplay between these two principles was recently at play in a contract dispute over Ecuadorian hydrocarbon development between Andes Petroleum Ecuador Ltd. and Occidental Exploration and Production Company (OEPC).

In *Andes Petroleum Ecuador Ltd. v. Occidental Expl. & Prod. Co.*, No. 21-3039-CV, 2023 WL 4004686, at *1 (2d Cir. June 15, 2023), OEPC appealed the decision of the District Court for the Southern District to deny the motion to vacate the March 2021 arbitration award. On appeal, the Second Circuit affirmed the District Court's decision to dismiss OEPC's motion while ordering the latter to recalculate the interest.

Background

In 2000, OEPC and Andes entered into two contracts whereby OEPC assigned to Andes an interest in the rights to carry out hydrocarbon development in the Ecuadorian Amazon Region. In 2006 the parties amended one of those agreements by entering into a separate letter agreement.

In May 2006, the Republic of Ecuador terminated OEPC's, and OEPC commenced an arbitration proceeding against Ecuador before the International Centre for the Settlement of Investment Disputes (ICSID), seeking compensation for its losses. In 2016, OEPC reached a settlement agreement with Ecuador for approximately $980 million.

Invoking the 2006 letter agreement, Andes subsequently demanded that OPEC pay 40% of the amount received in the settlement arguing that the parties' agreement required such payment and initiated an arbitration before a

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three-person tribunal of the American Arbitration Association (AAA).

During the arbitrator selection process, Smit disclosed that he had a professional connection to one of Andes's counsel, Laurence Shore, from an unrelated prior arbitration and arbitration conferences. In 2018, after the OEPC-Andes arbitration panel was constituted, Smit and Shore were both appointed to a tribunal in a separate, unrelated arbitration. Neither Smit nor Shore disclosed their appointment, although it was listed publicly online.

The tribunal ruled for Andes and in its March 2021 Final Award ordered OEPC to pay.

Alleged Nondisclosure of a Relationship Does Not Warrant Vacatur

As pertinent here, OEPC moved to vacate the March 2021 Final Award on the ground of possible partiality due to an undisclosed relationship between the arbitrator appointed by OEPC, Robert Smit, and Andes' counsel, Laurence Shore. On 15 November 2021, the District Court rejected OEPC's petition.

On appeal to the Second Circuit, the Court of Appeals affirmed the decision of the District Court, noting that there was insufficient concrete evidence of establishing Smit's partiality based on his failure to disclose.[1] The Second Circuit explained that to establish evident partiality, there needed to be a "*material relationship*" from which "*a reasonable person could reasonably infer a connection between the undisclosed outside relationship and the possibility of bias for or against a particular arbitrating party*".[2] The Second Circuit concluded that OEPC's evidence demonstrated no more than the "*concurrent service*" of Smit and Shore, a relationship not material enough in this case and dismissed the allegation as mere speculation.[3]

OEPC also argued that the undisclosed relationship constituted a violation of the arbitrator's duty and, therefore, exceeded their powers. The Second Circuit court did not find this argument convincing either. The panel concluded that 9 U.S.C. § 10(a)(4) set a '"*high hurdle*" for vacating an arbitration decisi-

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-on and OPEC did not meet the threshold.[4]

The Second Circuit Court accepted OPEC's argument that the calculation of prejudgment interest was erroneous and remanded to the District Court to explain its calculation of prejudgment interest.

Recent Developments

The dispute does not end here as recent developments indicate OEPC's intent to challenge an arbitral award from 2023 in Andes's favor.[5] This suggests that the legal battle is far from concluded, and further developments may ensue.

By Zuo Yang (Student, Columbia Law School; zy2522@columbia.edu, New York/ United States)

South America Updates

Argentina

In a decision dated 13 June 2023, the Argentine Federal Court on Administrative Law Matters No. 3 issued a final judgment ordering the enforcement of an arbitral award rendered in the ICSID Arbitration No. ARB/07/26 *Urbaser S.A. y Consorcio de Aguas Bilbao Bizkaia, Bilbao Bizkaia Ur Partzuergoa v. Argentine Republic*.

Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Bizkaia Ur Patzuergoa (CABB) had obtained in December 2012 a favorable award against the Argentine Federal Government regarding ICSID's jurisdiction, within the framework of an arbitration initiated under the Argentina-Spain Bilateral Investment Treaty.

The ICSID arbitral tribunal regulated the legal fees and costs of the jurisdictional stage of the arbitration in its final award, issued in December 2016. The tribunal ordered Argentina to pay for all the costs incurred by Urbaser S.A. and CABB during the jurisdictional stage of the arbitration, in the amount of USD 1.047.000 plus interest.

Since the Republic failed to voluntarily pay the amount ordered in the award, Urbaser S.A. and CABB commenced enforcement proceedings before Argentine federal courts in late 2021.

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After 18 months of litigation, the Court issued a decision ordering the Argentine Federal Government to comply with the award.

The decision recognizes that ICSID awards are comparable to a final judgement rendered by a national court and that it is unnecessary to submit them to the "*exequatur*" procedure, a process through which foreign judgements are recognized as valid and enforceable in Argentina. The decision followed the Attorney General's Office's recommendation in this regard, where it rendered an opinion on the reach of arts. 53 and 54 of the ICSID Convention and reached the conclusion that "*being Argentina a state party to the ICSID Convention, an award rendered pursuant to the ICSID Convention's rules does not require the exequatur procedure to be executed.*"

This recognition of the "*direct*" enforceability of ICSID awards in Argentina is only the second of its kind by local courts, the first having occurred in 2015, where a National Court of Appeals revoked a first instance decision and recognized that ICSID awards rendered against Argentine investors are not subject to the "*exequatur*" procedure.

The Court also recognized that, when the debtor State does not comply voluntarily and in good faith with the obligation arising from an ICSID award, the successful party has the right to enforce the award in any State party to the ICSID Convention.

Finally, the Court stated *obiter dictum* that the obligations assumed under BITs can sometimes come into tension with human rights obligations assumed by the same State, highlighting the Tribunal's opinion in the final award where it stated that "*the BIT has to be construed in harmony with other rules of international law of which it forms part, including those relating to human rights*".

However, the decision also noted that the Argentine Federal Government did not bring forth defenses based on public policy or human rights, highlighting that the ICSID award being enforced in this case only required the State to pay

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legal fees and costs of their failed jurisdictional objection.

On the basis of these arguments, the Court granted the enforcement of the award.

As the Federal Government did not appeal the judgment, the decision is final.

This is a groundbreaking precedent since it is the first proceeding in which the enforcement of an ICSID award is sought –and obtained– in Argentina.

This new precedent may clear the way for new perspectives regarding future enforcement of ICSID awards in proceedings in which Argentina is a party (Federal Court on Administrative Matters No. 3, Case No. 20642/2021, *Consorcio de Aguas Bilbao Bizkaia Bilbao Bizkaia Ur Partzuergoa y otro c/ EN-M Hacienda s/Proceso de ejecución*).

By Manuela Díaz (AYAP – Argentina Young Arbitration Practitioners; Associate, Marval, O'Farrell & Mairal; madz@marval.com.ar; Buenos Aires, Argentina).

Brazil

The arbitral tribunal does not have jurisdiction to analyze the merits of a contract termination imposed by the municipal public authority as sanction for non-conformities in a concession contract.

On 2 October 2023, in appeal nr. 1008052-51.2021.8.26.0286, the São Paulo State Court partially vacated an award where the arbitral tribunal affirmed its own jurisdiction to decide upon the validity of the administrative sanction to terminate the contract due to contractual non-conformity.

This case concerns the 30 years concession contract signed in 2007 between the Municipality of Itu and Águas de Itu Gestão Empresarial S/A (Águas de Itu), to operate public water supply and sanitary sewage services.

As a response to the 2014 water supply crisis, the Municipality of Itu rescinded the contract after an administrative procedure where it was found that the private contractor did not comply with its contractual obligations.

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Águas de Itu initiated an arbitration procedure demanding the recognition of the absence of any contractual non-conformity and sought to declare the nullity of the sanctions imposed by the Municipality of Itu, among other requests.

In its defense, the Municipality of Itu alleged that the arbitral tribunal has no jurisdiction to annul the termination of the contract because it is a police power of the state and a non-disposable right.

In turn, Águas de Itu responded that the administrative decision to terminate the concession is bound to the contract stipulations and dependent on the facts regarding its execution, thus the sanction is subject to the arbitration agreement.

The arbitral tribunal held that the question regarding termination is of a contractual nature and since it can be negotiated, it is arbitrable. Also, police powers are derived from law and not from contracts. Therefore, the arbitral tribunal considered itself to have jurisdiction to analyze all imposed sanctions.

Not satisfied with the outcome, the Municipality of Itu initiated an award annulment procedure before the local judge, unsuccessfully.

On appeal, the São Paulo State Court held that the public authorities' prerogatives (such as unilateral termination of a contract) are not disposable and are irreversible in arbitration procedures, but their patrimonial consequences are arbitrable. Hence, the arbitral award was partially set aside to exclude the arbitral tribunal's jurisdiction only regarding the validity of the sanction imposed and not its pecuniary repercussions.

This decision needs clarification as it is unclear if it allows the arbitral tribunal to consider unlawful the termination of the contract without nullifying the administrative act, in order to analyze the pecuniary requests of the claimant. In any case, it will probably be questioned before the Brazilian Superior Court of Justice and/or the Supreme Federal Court.

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By Tiago Beckert Isfer (tiago@giof.com.br, partner at Guandalini Isfer Oliveira Franco Advogados, Curitiba/Brazil)

***Paraguay*: The Paraguayan State Makes Their Arbitral Awards Public**

The State Attorney's Office (Procuraduría General de la República – PGR) has ordered the publication of arbitration awards involving the Paraguayan State as a party to proceedings. This measure was enacted by Resolution N. 265 and in compliance with Law N. 5.282/2014, which guarantees citizens free public access to public information to promote greater governmental transparency.

The awards were published on the official PGR website, which the public can easily access at the following link. A total of twenty-two awards were posted – thirteen against the Paraguayan State and nine in favor. The site also provides information regarding the subject matters, amounts in dispute, amounts awarded, whether the awards were recurred, the status of the awards, and the tribunal's composition in each case.

The PGR has made other efforts to improve the State and State entities' handling of arbitral-related matters, such as organizing and participating in diverse training courses for public servants and other events. The publication of awards shall also positively contribute to transparency and thereby help promote the growth of arbitration in the country.

By Belén Moreno (Altra Legal; bmoreno@altra.com.py; Asunción/Paraguay)

Asia-Pacific Updates:

India:

Stamp duty is a type of tax in India levied on certain legal instruments, usually involving the transfer of property or other assets, which is payable by the parties to such documents. Under Indian law, for an agreement to hold evidentiary value and be enforceable in law, stamp duty applicable on the agreement needs to be paid by the parties at the time of execution.

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Validity and enforceability of arbitration agreements contained in unstamped agreements has been a point of controversy in India for some time now due to differing decisions of various Courts.

On 25 April 2023, five-judges of the Supreme Court of India in *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. & Ors.*[6] (N.N. Global) held that:

a. An unstamped (or insufficiently stamped) instrument exigible to stamping is unenforceable, considered non-existent and is not a contract under Indian law, until it is sufficiently stamped as per the applicable stamp act.

b. An unstamped (or insufficiently stamped) arbitration agreement that attracts stamp duty cannot be acted upon until it is sufficiently stamped as per the applicable stamp act.

c. An arbitration agreement (even if it does not attract stamp duty under the applicable stamp act) contained in an unstamped instrument is non-existent under Indian law until the underlying unstamped instrument is sufficiently stamped.

Consequently, the substantive dispute and connected procedural issues (e.g., appointment of arbitrators by Courts) remain stalled till sufficient stamp duty is paid on the unstamped instrument / arbitration agreement. The delays in the arbitral process are further exemplified since belated payment of stamp duty on agreements is time consuming and could lead to legal / procedural complexities.

On 22 August 2023, the Delhi High Court in *Splendor Landbase Ltd. v. Aparna Ashram Society & Anr.*,[7] sought to streamline the process for curing stamp duty deficiencies that otherwise caused significant delays in arbitrator appointments by the Courts. The Court laid down the guidelines for expeditiously impounding the unstamped instrument and determining the stamp duty (and applicable penalties) payable. For example, these guidelines suggest that:

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a. Courts having the power to impound documents and determine applicable stamp duty (and penalties) must do so (where appropriate), instead to referring the issue revenue authorities (which is the longer alternative); and

b. Where the instrument is executed in one state but requires to be acted upon in another state, the instrument needs to be stamped only as per the first state (and not twice). That said, where the stamp duty payable on the instrument is higher in the second state, the differential amount needs to be paid as per the stamp act of the second state.

N.N. Global has had ramifications on the pro-arbitration trend in India and leaves certain questions unanswered. For instance, because of *N.N. Global*:

a. the question whether urgent interim reliefs can be granted under Section 9 of the Arbitration and Conciliation Act, 1996 (Act) in relation to an unstamped instrument / unstamped arbitration agreement remains to be settled by the Supreme Court; and

b. a recalcitrant respondent may delay the arbitral process by raising frivolous objections regarding deficiencies in stamp duty paid on an agreement.

In a significant development, on 26 September 2023, the Supreme Court "*having regard to the larger ramifications of [N.N. Global]*"[8] referred the issues decided in *N.N. Global* to a larger bench of seven-judges of the Court "*to reconsider the correctness of the view by a five-judge bench [in N.N. Global]*". The hearings before the seven-judge bench are expected to commence in October 2023.

By Pratik Singhvi (Senior Associate, Shardul Amarchand Mangaldas & Co.; pratik.singhvi@amsshardul.com; Mumbai/ India) and Ojaswi Shankar (Associate, Shardul Amarchand Mangaldas & Co.; ojaswi.shankar@amsshardul.com; Mumbai/ India).

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Singapore: What the SGCA's Ruling in Republic of India v. Deutsche Telekom means for Confidentiality of Arbitration Proceedings

Brief overview

The Singapore Court of Appeal (SGCA) in its recent judgment on 9 June 2023 in The Republic of India v. Deutsche Telekom AG,[9] analysed the availability of confidentiality protections after information regarding the arbitration is already available in the public domain.

Factual Background

Deutsche Telekom AG (DT), a German company and former Devas Multimedia Private Limited (Devas) shareholder, was in an agreement with Antrix Corporation Ltd. (Antrix), an Indian state-owned entity, for leasing communication satellites. After the agreement terminated, DT commenced arbitration proceedings in Geneva, alleging violation of India-Germany bilateral investment treaty. Thereafter, with the final award issued in DT's favour, DT commenced enforcement proceedings in Singapore and obtained an *ex parte* order allowing DT the leave to enforce the final award. DT requested that enforcement proceedings commencing in Singapore be held privately, with party identities concealed, court files sealed, and judgment details redacted. Proceedings were transferred to the Singapore International Commercial Court (SICC), which dismissed India's attempt to set aside the Leave Order allowing DT the leave to enforce the final award. India then appealed SICC's dismissal.

DT commenced enforcement against India in USA and Germany, meanwhile, Antrix initiated winding-up proceedings against Devas in 2021 before India's National Company Law Tribunal (NCLT), subsequently upheld by the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court of India. The SGCA's judgment is summarised and analysed below:

I. Loss of Confidentiality

India justifying court intervention by asserting that third parties misused arbitration-related information to negatively portray India. DT advocated for open justice since the dispute hinged on matters of public interest.

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The SGCA noted that the parties were involved in several legal proceedings, with significant information available on the internet. Additionally, decisions of the Indian judicature to wind up Devas were publicly available, further eroding confidentiality.[10] Hence, SGCA found that once information has entered the public domain, the principle of confidentiality no longer applies. [11]

SGCA relied upon *Re Tay Quan Li Leon*,[12] wherein Singapore High Court, while balancing privacy and open justice in arbitration under the [Singapore] International Arbitration Act, acknowledged its power to issue sealing orders but stressed their infrequent use to maintain public confidence in the judicial system. The SGCA opined that parties opt for arbitration owing to its private nature. Rather than asserting that it lacks inherent confidentiality, it aligns better with parties' expectations to consider the proceedings confidential, with disclosures allowed in accepted circumstances.[13]

Further, the SGCA emphasized that arbitration proceedings are private by default[14] but highlighted the court's ability to initiate open hearings without party requests.[15] Where necessary, the court can issue directions[16] to safeguard parties' confidentiality interests, in alignment with the UNCITRAL Model Law on International Commercial Arbitration.

II. Inherent powers of Court

The SGCA held that the inherent powers of the court must be exercised judiciously based on the touchstone of necessity. Open justice entails scrutiny of all parties' conduct, and a party's wish to avoid negative exposure does not justify departing from this principle.

Though Singapore law recognises both privacy and confidentiality as foundational tenets, the principle of open justice would not outweigh the need to preserve confidentiality in international arbitration.[17] Concluding, it is likely in India's interest to apprise the public of its perspective, considering the controversy surrounding DT's enforcement efforts.

Concluding remarks:

- The SGCA stated that privacy is the default position under the IAA, suggesting that explicit confidentiality agreements would better

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- serve parties' expectations than relying on a vague implied duty.
- The Singapore law provides that if a matter is deemed legally significant, the court may authorise publication of written judgements (in redacted form) in legal journals. Where, however, a party reasonably wishes privacy, the court may give directions for sanitised publications.
- While some jurisdictions recognise implied confidentiality, disclosure of material is permissible with consent, by order/leave of the court, or in the interests of justice. For example, in Hong Kong, there is a stipulation of an express duty of confidentiality under the Arbitration Ordinance. (Cap. 609).

By Kartikey Mahajan (Partner, Khaitan and Co; kartikey.mahajan@khaitanco.com; Singapore); Satjit Singh Chhabra (Associate, Khaitan and Co; satjit.chhabra@khaitanco.com; Singapore); Aayushi Singh (Associate, Khaitan and Co; aayushi.singh@khaitanco.com; Singapore).

[1] Andes Petroleum Ecuador Ltd. v. Occi dental Expl. & Prod. Co., No. 21-3039-CV, 2023 WL 4004686 (2d Cir. June 15, 2023).

[2] Id. (citing Scandinavian Reinsurance Co. Ltd. v. St. Paul Fire & Marine Ins. Co., 668 F.3d 60, 72 (2d Cir. 2012)).

[3] Id.

[4] Id.

[5] Id.

[6] 2023 SCC Online SC 495.

[7] 2023 SCC Online Del 5148.

[8] *Bhaskar Raju and Ors. v. Dhar maratnakara Rai Bahadur Arcot Nar ainswamy Mudaliar Chattram and Other Charities*, Supreme Court, Curative Peti tion (C) No. 000044 of 2023, Order dated 26 September 2023.

[9] The Republic of India v. Deutsche Tele kom AG, [2023] SGCA(I) 4.

[10] ¶37, Supra note 9.

[11] ¶28, Supra note 9; Dorsey James Michael v World Sport Group Pte Ltd [2014] 2 SLR 208.

[12] Re Tay Quan Li Leon [2022] 5 SLR 896.

[13] ¶17, Myanmar Yaung Chi Co. v Win Win Nu [2003] 2 SLR 547.

[14] Section 22(1) of the Singapore Interna tional Arbitration Act.

[15] ¶16, Supra note 9.

[16] Section 23 of the Singapore International Arbitration Act.

[17] AAY and others v. AAZ [2010] SGHC 350.

[18] Sect. 57(4), Arbitration Act; Sect. 23(4), IAA. Examples can be seen in VV and an other v. VW [2008] SGHC 11; ABC Co v. XYZ Co Ltd [2003] SGHC 107.

[19] Emmott v Michael Wilson & Partners [2008] EWCA Civ 184.

#YoungITATalks / Events

Young ITA @ ICAL: 20 Years of Energy Arbitration in Stockholm

As autumn comes, what better way to start the active return to work than with Young ITA @ ICAL: 20 Years of Energy Arbitration in Stockholm, held on 30 August 2023, at Delphi in Stockholm itself. The event, as the name suggests, was dedicated to energy arbitration, through which attendees were guided by well-known speakers. **Nadja Al Kanawati**, **Dr. Crina Baltag**, **Natalia Petrik**, **Emilio Timpanaro**, and **Diora Ziyaeva** covered a wide range of topics and were moderated by **Polina Permyakova**.

The conversation started from the perspective of the SCC by Natalia Petrik. From 2000 to 2010, energy arbitration was characterized by limited cases, mainly involving CIS countries, focusing on gas and oil deliveries, and occasionally touching upon PSA's and BIT's.

However, from 2010 to 2023, the energy arbitration landscape experienced a significant shift, with a surge in international energy cases, particularly in Sweden, involving disputes related to emerging green technologies. The future of energy arbitration is predicted to be influenced by global reforms and geopolitical environment, with greater EU involvement and reduced presence from CIS and Asian nations. The growing diversity of disputes reflects the changing energy industry's focus on sustainability and environmental concerns.

But has the energy transition agenda affected our energy consumption patterns? The panelists' answer was positive, as Dr Crina Baltag moved to the key changes and initiatives.

Sweden aims to achieve 100% renewable electricity production by 2040 without banning nuclear power, while maintaining low CO2 emissions.

With a shift in energy sources, including biofuel supply and reduced crude oil and petroleum, Sweden phased out coal in 2021 and uses nuclear, hydro, thermal, solar, and wind power.

For example, the information on using one's body head as an energy source in daily life is scarcely found elsewhere. Sweden is developing electric roads to encourage population transition towards electric vehicles, while the EU's 2035 requirement for zero CO2 emissions in new cars could impact renewable energy technologies, as well as the discovery of Europe's largest rare mineral deposit in Kiruna.

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How will those initiatives and discoveries affect commercial and investment treaty energy disputes? There will be disputes over rare minerals essential for the transition to clean energy, the phase out of fossil fuel energy investments, and, of course, a significant increase in energy construction projects leading to construction disputes.

Moving along the session, ESG issues were mentioned, and the way they arise in commercial and investment treaty energy disputes was covered.

While ESG provisions often serve as aspirational goals, highlighting the global commitment to responsible and sustainable investment practices, what is truly fascinating is how states have begun to leverage these ESG provisions in their favor, as mentioned by Diora Ziyaeva. The noble aspirations are now highly effective defense techniques, that can easily change the dynamic of an investor-state dispute, raising issues of admissibility, substantive rights, or even turning tables as counterclaims and declaring contributory fault.

The global shift towards ESG has led to a surge in demand for critical minerals, crucial for industries like electric vehicle manufacturing, renewable energy, and advanced technologies. Critical minerals like lithium, cobalt, nickel, and rare earth elements are in high demand worldwide, with most found in Australia, Eurasia, and Latin America.

Court cases involving individuals, environmental organizations, and governments are increasing, with international law remaining unaffected due to sovereignty concerns.

Environmental accords could impact mining, and internal regulations like The EU Critical Raw Materials Act play a vital role. However, the journey to reduce fossil fuels is just beginning, and real modernization of energy treaties in many ways is yet to come.

Analyzing the potential problems arising in resolving disputes related to energy and ESG clauses, the speakers could not avoid a crucial conversation about the role that commercial arbitration directly plays in this matter. Nadja Al Kanawati pointed out that the issue in that regard is not whether the arbitration is suited to be the method of dispute resolution, but rather suited to what kind of issues.

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As ESG clauses would continue to be included into contracts, such contractual issues undoubtedly do provide a bright future for commercial arbitration.

Finally, the session was concluded by Emilio Timpanaro with an insightful discussion on arbitration in relation to oil and gas activities and any visible changes in that regard. And while the industry is often sensitive to market conditions and, relatedly, geopolitics, the speakers concluded that the future of arbitration will remain stable, as natural gas will remain a key fuel for decades, alongside renewables, and the traditional contractual breaches will need to be fixed.

Although panelists have noted many obstacles and inevitable changes along the way, the future of arbitration in the energy field seems bright and full.

By Eva Tuchkova, Stockholm University, Stockholm.

#YoungITA Talks: South America
Oral advocacy skills seminar: oral arguments

On September 14, 2023, Nazly Duarte Gomez (Young ITA for South America Co- Chair – Spanish-speaking), Santiago Peña (Young ITA for South America Co- Chair – Spanish-speaking) Flavio Javier Loza Vargas (Alumni Arbitration representative) and Jazmín Escalante (Competencia Internacional de Arbitraje representative) presented #YoungITATalks: South America, *"Oral advocacy skills seminar: oral arguments"*.

The seminar was divided into two different sections.

The conference

The first part of the seminar was conducted by **Sofía Vargas** (Case Manager at *the Arbitration Center of Mexico*) as moderator and three recognized speakers: **Alfredo Bullard** (Partner at *Bullard, Falla, Ezcurra*), **Margarita Sánchez** (Partner at *Miller & Chevalier*) and **Diana Correa** (Partner at *DC International*).

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During the conference, the speakers discussed the characteristics and main objectives of oral arguments, providing guidance based on their extensive experience in international arbitration.

In particular, the speakers referred to opening and closing statements as the "*last words*" of counsel to the arbitral tribunal before deliberation and explained that counsel should present their case in an efficient and assertive manner to the tribunal. To do this, the speakers emphasized the relevance of using wisely and properly any available tool to help to maintain the tribunal's attention.

For example, the speakers assessed the use of presentation tools such as power point and recommended avoiding long and small text and using colors and images, instead, in order to keep the attention of the tribunal.

The speakers also assessed the relevance of considering "the *human factor*" during the hearings. They explained that most hearings take long days and several hours per day and that parties should consider the Tribunal's attention span, when scheduling the time and extension of the hearings. This factor is more relevant on virtual hearings since the tribunal may be even located in different time zones.

Further, the speakers elaborated on how the arbitral tribunal shall use the Procedural Order No. 1 to regulate the closing argument's hearing, but also at the same time shall have enough flexibility to adapt the procedures to the particularities of each case.

Finally, the speakers gave their suggestions on how to prepare opening and closing statements.

The practical case

The second part of the seminar consisted in a practical case by which the attendees were divided in four groups to prepare opening statements, rebuttal and surrebuttal, considering the current case of the "*Competencia Internacional de Arbitraje*" (International Arbitration Moot) co-organized by the University of Buenos Aires and the University of Rosario de Bogotá.

The case concerned a dispute arisen between *Colphone Holdings S.A.* and *Colphone de Costa Dorada SRL* (as Claimants) and Joaquín Castañeda, Ruth Sandra Briosa de Castañeda and José

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María Castañeda (as Respondents) by virtue of a contract for the purchase for the shares of *JOADA*, a cellphone company owned by Respondents.

The exercise consisted in preparing oral arguments, considering the recommendations made by the speakers in the first part of the seminar.

Each group was assigned with a mentor for guidance during the preparation. The teams first discussed arguments and allegations in private and selected one member to proceed with presentation in front of the speakers and the attendees.

The four attendees proceeded then with their presentation and later received feedback from the mentors.

The event allowed attendees to become aware of the challenges that both arbitrators and counsel will face when dealing with oral arguments. It also provided insights on how to overcome those challenges in the best possible way.

All the speakers made it clear that the key to a high-quality oral argument is to use it wisely to present the main elements of the case and in an efficient way.

By Candela Rodríguez Misol, Bomchil, Montevideo, Uruguay

International Arbitration Generates Discourse to Kick Off AtlAS in Grand Fashion

On 2 October 2023, the Atlanta community welcome Young ITA to kick off the Atlanta International Arbitration Society's ("AtlAS") 12th Annual Conference at the midtown office of Kilpatrick Townsend & Stockton. Christopher Smith, the AtlAS Vice President, and Meredith Craven, the Young ITA Representative, began the event with opening remarks, addressing an audience that consisted of members ranging from students at Emory Law to arbitrators with decades of experience.

Panel 1: Commencing an Arbitration: Practical Insight into the Initiation of an International Arbitration Proceeding

The first panel was moderated by Grace Haider (Associate, K&L Gates) and consisted of Abbey Hawthorne (Deputy Director, ICC Arbitration and ADR), Nicholas Hill (Partner, McGuireWoods), and Julianne Jaquith (Senior Associate,Quinn Emmanuel).

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The panel discussed various considerations that normally arise in commencing international arbitration, both in the submission of a claim as well as in arbitral selection.

Jaquith commenced the discussion, detailing various evidentiary matters a claimant involved in investor-state arbitration must evaluate before submitting a claim for their client. Stressing the importance of obtaining familiarity with the factual background, Jaquith detailed how counsel should analyze the treaty itself, potential avenues for further discovery, and reconciling the interests of the client with the goal of arbitration. Hill chimed in, explaining that while investor-state arbitration tends to be more straightforward, commercial arbitration grapples with the difficulty of establishing procedural matters such as choice of law for arbitration.

Hawthorne brought her expertise as Deputy Director of the ICC office in New York and spoke on both client interests. She discussed how surveys performed by the ICC found that often, when clients choose to arbitrate, it is not solely to recover damages, and it is for some other purpose that counsel must investigate. Finally, Haidar advised attendees that clients often tend to be unaware of the exorbitant costs that are involved in filing such claims, stressing the importance of transparency.

On the topic of arbitrator selection, panelists expressed differing views. While all panelists agreed that it is important to investigate arbitrator backgrounds before their selection, they differed in the philosophy of whether parties should appoint non-neutral arbitrators to represent their party. Hill's experience, stemming from insurance arbitration, was more amenable to the concept of both parties being able to pick arbitrators tailored to their argument, while other panelists were more familiar with picking neutral arbitrators.

Further, Hawthorne discussed the importance of an institution in arbitrator selection, as the ICC attempts to promote diversity in arbitrator selection by selecting more diverse candidates as options for arbitration proceedings.

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Jaquith noted, however, that while the ICC promotes diverse candidates, the parties fail to select diverse options to this date. Haidar informed the audience how a tool on the ICC website allows counsel to filter through possible arbitrators for selection. Hawthorne added on, urging registration for future arbitrators through the United States Council for International Business to add members to the list. Members of the audience were active participants in this discussion and debated with panelists throughout the afternoon.

Panel 2: Key Issues in the Ethics of International Arbitration Practice

The second panel was moderated by Erin Collins (Associate, DLA Piper) and consisted of Eric Lenier Ives (Associate, White & Case), Mevelyn Ong (Associate, Sullivan & Cromwell), and M. Laughlin Allen (Associate, McGuireWoods). This panel discussed ethical considerations in arbitrator performance, expert preparation, and counsel acting as arbitrators in other proceedings.

The panel and audience debated extensively on the matter of arbitral disclosures, attempting to reconcile the line for when an arbitrator should disclose any potential conflict. Ives directed much of the discussion, cautioning arbitrators from engaging in compromising ex parte communications and discussing the role of the institution in arbitrator disclosure. Allen argues that issues with arbitrator disclosure could be resolved through the arbitration agreement itself, as differing institutions tend to have different disclosure rules. Further, she lamented the lack of options available for counsel in arbitration to pursue recourse in the case of undue influence.

On the topic of expert preparation, Ives lays the groundwork, stressing the IBA Guidelines on Party Representation as a guide. Ong presented her unique view as a British attorney, where her obligations to the country do not allow her to prepare witnesses in the same manner that attorneys from other jurisdictions may do so. However, Collins does note that many expert reports do state any instructions received by their counsel. Allen issues a general caution, arguing that preparing witnesses too much may destroy their credibility in the eyes of arbitrators.

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Finally, the panelists discuss the rising issue of competing obligations for counsel that acts as arbitrators in a later, unrelated proceeding. Ives once again lays the groundwork, explaining the UNCITRAL Code of Conduct, as well as informing the audience that the IBA is currently revising the 2014 guidelines released by their organization, which bans the practice of "double hatting." However, Allen states that such a ban does have an unequal effect on young arbitrators and cautions the use of such rules.

The two panels organized by Young ITA provided the audience and panelist alike a chance to debate, discuss and connect with individuals across the arbitration community. Conversations were not limited solely to the coffee chats, rather the panels often presented an opportunity to have open conversation between the panelists and the audience. At its conclusion, the event allowed for every member to walk away from the event, learning something valuable from their attendance no matter their role.

By Shashaank Rajaramann, JD Candidate at the Emory University School of Law, Atlanta, GA

#YoungITA Talks: Enforcement of Investor State Awards against India

On 10 October 2023, Young ITA hosted a panel discussion on the enforcement of treaty awards against India, moderated by Shreya Jain (Shardul Amarchand Mangaldas & Co. and Young ITA's India co-chair). Panelists comprised Mr. Zal Andhyarujina, Sr. Counsel and Mr. Arvindran Manoosegaran, an investment manager at Omni Bridgeway.

Ms. Jain opened the discussion by providing an overview of the investment treaty awards passed against India, followed by targeted global efforts to enforce these awards.

She noted India's track record of challenging enforcement of treaty awards, including by filing set aside proceedings before various jurisdictions.

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She described India's approach in resisting *Cairn Energy's* award before courts in various jurisdictions, and how the award holders' successful attempts in some jurisdictions eventually factored into India's agreement to settle.

In discussing India's approach, Ms. Jain also explained that there is no observed pattern in India's response to various treaty awards passed against it. For example, she compared India's voluntary compliance with *White Industries* award, with its strenuous resistance to enforcement in other cases.

Against this background, Ms. Jain invited Mr. Andyharujina to elaborate on these changing developments.

Mr. Andhyarujina started by noting that treaty arbitrations are a species of public international law and agreed that there's no set pattern in India's response to investment treaty awards. He reasoned that perhaps this is because there isn't enough material to analyse and formulate a pattern, given the dearth of ISDS awards.

More broadly, Mr. Andhyarujina noted that all states who are signatory to investment treaties, including India, should strive to honour treaty obligations and to make investment treaty awards easy and convenient to enforce.

He stated that India, in general, is a complex jurisdiction to pursue enforcement, and this is worsened for treaty awards given the uncertainty arising from their nature as a species of public international law. He noted that India's reservation when signing on to the New York Convention contemplated that India's recognition and enforcement of awards was limited to 'commercial' arbitration. This reservation poses obstacles in enforcing treaty awards within India. He suggested this may be resolved by courts adopting a wider view of what constitutes 'commercial' arbitration.

Ms. Jain then pointed out the rapidly growing third-party funding market and asked Mr. Manoosegaran how funders decide which claim is worth investing in, and what factors are relevant to making such decisions.

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Mr. Manoosegaran noted that, primarily, merits of a case are the first thing that funders consider, along with the respondent states' historical approach to enforcement. A state that is prone to resistance of awards tends to give funders pause.

He noted that another crucial thing to consider is the length of time within which funders will see their return (the temporal aspect) and that enforcement efforts have an impact on the temporal aspect.

He pointed out that in some cases, funders prefer smaller/more modest claims because states may be less reluctant to satisfy awards arising from such claims.

Mr. Manoosegaran discussed ways in which funders identify state assets and assess the availability and viability of state assets during enforcement.

Funders have a tendency to monitor the assets of states who have a poor/ unpredictable record in complying with awards, particularly assets located outside the state's jurisdiction. States employ creative methods to thwart enforcement such as diverting monies to state-owned entities or withdrawing monies from its bank accounts in foreign states.

Mr. Andhyarujina chimed in to note that domestic awards are enforced against India quite often. A good number of these domestic awards carry substantial sums as damages. In his experience, states are often the first ones to pay out such awards. As such, he wondered why there was a difference in India's approach towards domestic awards and investment treaty awards.

Ms. Jain opened the floor to audience questions.

An audience member pointed out that there are a number of cases where enforcement is met with active resistance. Do these pervasive attempts at resistance paint a gloomy picture for the investors?

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Mr. Manoosegaran answered that such resistance can be answered by maintaining an 'equality of arms' with the state. Investors must focus on targeting states' pressure points to counter the states' attempts at resisting enforcement of treaty awards. Mr. Andhyarujina disagreed that efforts to resist enforcement painted a gloomy picture and was hopeful that discussions are being held to change this attitude of resisting enforcement.

Another audience member suggested the possibility of out-of-court mechanisms to resolve investor disputes. The panel closed by noting that it was an excellent suggestion and there was a lot to gain from such an approach.

By Shivani Sanghavi, Shardul Amarchand Mangaldas & Co., Mumbai

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#YoungITA Talks: Advancing your Career in Arbitration After an LL.M. Program

On 19 October 2023, Young ITA North America Co-Chair Michael A. Fernandez (Rivero Mestre LLP) introduced the first session of "#YoungITATalks: Advancing your Career in Arbitration After an LL.M. Program" in New York, New York, hosted by the AAA-ICDR and sponsored by Chaffetz Lindsey.

During the panel, Lídia Rezende (Chaffetz Lindsey LLP), Preeti Bhagnani (White & Case LLP), Rafael Carlos del Rosal Carmona (AAA-ICDR), and Katie Gonzalez (Cleary Gottlieb Steen & Hamilton LLP), discussed their own career paths and shared valuable insights for LL.M. candidates on what they can expect from their law school experience and how they can advance their career afterward.

The event was envisioned as an opportunity early in the semester for LLM students to meet with seasoned practitioners have a frank conversation on what challenges international students face and share advice.

First, the speakers addressed the matter of course selection and engagement in associations. The overall conclusion was that, although it depends on any student's background, the course selection does come into play as a matter of marketing oneself. After all, taking courses is a way of demonstrating interest in a given topic.

Joining related associations is another way of displaying commitment to pursuing a career in a particular area.

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Simply being on the group's mailing list is useful to be aware of events happening that relate to the topic. However, it is better to actively engage in those affinity groups, as a matter of making yourself memorable.

Conversely, becoming too engrossed in associations is not helpful at all if a student neglects classes for that purpose. The speakers agreed that grades do matter to future employers. A student's performance in class reflects not only their academic strength but also their time management skills because grades tend to reflect how well LLM students planned their year. Besides, because lawyers are required to write and conduct legal analyses on a regular basis, a good way to assess if a student can perform as a lawyer is to see how well they did in class.

In assessing prospective candidates, employers also rely on a student's recommendations. Because there's not much information employers can gather only from a resumé, having someone reach out on behalf of a student can be very helpful. References can come from different sources – e.g., law professors, contacts in a student's home jurisdiction, and local practitioners. Getting involved with the community and showcasing one's skills are ways of getting good recommendations.

Moreover, the speakers suggested ways an LLM candidate – especially one interested in arbitration – can grow their network organically. Generally, students should prefer organizing events, becoming research assistants, and reaching out to practitioners they have met before at an event, over cold emailing busy attorneys or cornering them for long periods of time at a conference. When reaching out to a practitioner, students should make the message as personal as possible. Especially if there is no nexus between them, the student should include a brief explanation as to why they have chosen to contact someone specifically and not any other practitioner in the field or the firm.

The speakers highlighted there is no one set career path for people interested in arbitration. In this sense, international students should be open-minded and reasonable in their pursuits. The panelists went on to say that LLMs should be mindful of hiring criteria in applying for a job – especially language and bar requirements – but bear in mind that candidates can always reach out to recruiters to find out if some-

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-thing is a hard requirement or not. Another good strategy for candidates to understand the job description is to seek insights from current and former employees in that particular role.

Finally, the speakers shared guidance on the topic of interviews. They recalled that the purpose of an interview is not to test a candidate's knowledge. Rather, the best interviews are conversations that flow effortlessly with a candidate being able to weave their experiences into the dialogue. Mostly, interviewers want to get to know the candidate as a person and see how well prepared they are for the interview. Therefore, it is always a good idea for candidates to research the employer thoroughly beforehand and come prepared with questions about the law firm to demonstrate their interest and commitment.

By Maria Fernanda Garcia Bastos, LLM Candidate at NYU School of Law, New York, United States of America

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YoungITA Talks: Advancing your career in Arbitration after an LLM Program

The second session of the "#YoungITATalks: Advancing your Career in Arbitration After an LL.M. Program" took place on October 25, 2023, in Washington, D.C., at the offices of Freshfields Bruckhaus Deringer. The event began with welcome remarks by Juan Pedro Pomes (Young ITA North America Vice Chair, Freshfields Bruckhaus Deringer) and the introduction of the panelists by the moderator, María Julia Milesi (Freshfields Bruckhaus Deringer).

During the panel, Florencia Villaggi (Burford Capital), Alvaro Peralta (US Department of State, Office of the Legal Adviser), Lucas Solimano (Foley Hoag) and Eduardo Mathison (Crowell & Moring LLP), discussed their transition from law school to work life in the United States. Each of them briefly shared their different backgrounds prior to their J.D. or LL.M. programs and explained what sparked their decision to pursue a career in arbitration.

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The speakers then discussed their strategies when deciding which courses to take during their law studies. Those who already had previous experience in arbitration and were familiar with these proceedings opted for substantive courses, such as "contractual law," as they believed that these topics could be broadly applied. By contrast, those who did not have experience in arbitration focused mainly on dispute resolution courses to gain more knowledge on this field.

Next, the panelists suggested that attendees engage in complementary activities to enhance skills and foster connections during their studies. Eduardo Mathison recalled that during his LL.M. he participated in a Moot Court competition and that he organized the first arbitration month at Georgetown Law with his fellows. Florencia Villaggi encouraged students to learn or improve a language, since this may be a decisive factor for employers when deciding who to hire. Alvaro Peralta also suggested to focus on research and the publications of papers.

Turning to the job search in the United States, Eduardo Mathison mentioned that during his LL.M. he applied to the job fair organized by the New York University. Alvaro Peralta recalled that he applied to many law firms until he finally joined his top choice and encouraged attendees to persevere in the process. Florencia Villaggi recommended starting the job search as soon as possible, since the market is very competitive and the recruitment process tends to be lengthy. María Julia Milesi then emphasized the importance of market needs, pointing out that a candidate may have a great CV, but its profile may not meet the needs of a certain market. She stressed that conducting research when looking for a job can be helpful to make sure one has the right profile for the positions being applied for. She also referred to the importance of differentiating from other candidates within the recruiting process and indic-

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-ated that those who have previous experience should emphasize and explain this in more detail, including, for example, their experience in the underlying industry of the disputes in which they were involved. As for the New York Bar, the speakers agreed that, while it is not essential, it is worth taking the exam since it can open more doors when looking for a job.

The panelists then discussed the different options available in the job market, noting that career paths are not always linear. Lucas Solimano explained that, in his case, he worked for an arbitrator for almost ten years in Chile and then moved to the United States to work for a law firm. Alvaro Peralta encouraged attendees to look for alternatives to law firms and referred to different options that students should consider, such as arbitral institutions and third-party funders. Other alternatives, such as academia and working as a tribunal secretary, were also mentioned.

The conversation moved on to the relevance of networking and it was noted that attending events and meeting people is key. María Julia Milesi referred to the importance of establishing contacts, not only to find a job, but also in the longer-term, as these connections can later help to get clients. Lucas Solimano pointed out that practitioners should be careful not to exaggerate their participation in events and ensure a balance to prevent people from wondering whether the candidate engaged in any substantive work, apart from networking activities.

The panel continued with a Q&A session. When asked about the importance of advocacy skills, María Julia Milesi pointed out that they are crucial and noted that they are a skill that is learned with years of experience. Eduardo Mathison stressed the importance of writing skills, explaining that they are always a “work in progress”.

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After the lively panel discussion, the audience had the opportunity to engage with the speakers at a networking reception.

By Florencia Wajnman, LLM Candidate at Georgetown University Law Centre, Washington D.C., United States

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#YoungITA Talks: Roles of Young Associates in Big Investment Cases: Is there a place for you?

The Lichtenstein Palace in Prague stands as one of the Czech Republic's most significant and exquisite venues for welcoming important foreign dignitaries. Throughout its storied history, this palace has accommodated distinguished guests, including the late Queen Elizabeth II, the current King of the United Kingdom, Charles III, Spanish King Juan Carlos, and Japanese Emperor Akihito just to name few. Its Golden Hall routinely serves as a platform for significant press conferences held by the Czech Government. However, on October 25, 2023, the grandeur of the Lichtenstein Palace was abuzz with the presence of arbitration enthusiasts and professionals who gathered to partake in the Young ITA Talks event, titled "The Role of Young Associates in Big Investment Cases: Is there a place for you?"

The event commenced with opening remarks from Dr. Jaroslav Kudrna, the Head of International Arbitration and Investment Protection at the Ministry of Finances of the Czech Republic, and Dr. Crina Baltag, the Vice-Chair of the Academic Council of ITA. Following their warm welcome, Matej Pustay, a partner at Squire Patton Boggs, assumed the role of moderator and introduced a distinguished panel of experts. Notably, this panel comprised international dispute resolution partners from prominent law firms across Europe, including René Ciencala (Urban & Hejduk, Prague), Julien Fouret (Eversheds Sutherland, London), Anna Kozmenko (Schellenberg Wittmer, Zurich), Mária Poláková (Squire Patton Boggs, Prague), and Sylvia Tonova (Pinsent Masons, London).

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Attempting to encapsulate the entirety of the evening's discussions in a brief report is a formidable task. Consequently, we will present a selection of key insights that emerged during the event.

The panelists began by sharing their personal journeys into the realm of international arbitration, and it quickly became apparent that no two paths were alike. Some actively sought involvement through moot court competitions and internship opportunities, while others found themselves drawn into this domain when a senior partner at their firm unexpectedly enlisted their assistance. The panel encouraged aspiring arbitration practitioners in the audience to engage with conferences and events like Young ITA Talks. Networking and conversing with seasoned professionals in such settings provide young practitioners with invaluable insights into the firms and institutions they may wish to join, leaving a positive and lasting impression.

The panel's discussion then revolved around the traits expected of young arbitration professionals. Strikingly, none emphasized the need for extensive arbitration expertise. Instead, soft skills and enthusiasm emerged as the decisive factors, including a passion for international arbitration, meticulous work ethic, adherence to deadlines, and a dedication to personal growth. Julien Fouret explicitly advised young practitioners not to specialize too early in their careers but to explore different areas before deciding on a specialization.

The acquisition of hard skills, such as legal writing, was deemed a process that evolves over time, necessitating years of practice and mentorship from senior colleagues. Furthermore, Mária Poláková emphasized that each partner may have distinct preferences for writing styles, with some favoring concise and lucid prose, while others prefer eloquent narratives. Thus, understanding the preferences of one's superiors becomes crucial.

René Cienciala offered intriguing insights into the relationship between young associates and partners. He recommended that young associates "manage the partner" and "treat the partner as a client." While this advice may initially appear contradictory, the panel wholeheartedly concurred. To succeed and become a valuable team member, one must simplify a partner's tasks, thereby enabling them to –

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streamline the client's experience. Understanding a partner's preferences, anticipating their needs, and having a proactive approach to cooperation fosters a more harmonious working relationship and establishes one's reputation as a valuable team member.

Finally, the panel addressed the event's central question: the role of young associates in big investment cases. This was divided into two distinct phases: the written phase and the hearing phase. In the written phase, young associates typically engage in tasks such as reviewing evidence and identifying relevant documents and arguments. As they gain experience, they gradually transition to working with witnesses on their statements. Drafting the memorandum itself typically becomes a responsibility later in their careers. Conversely, during the hearing phase, main pleadings are predominantly argued by partners and senior associates. The panel acknowledged that junior associates might lack the experience and, as Sylvia Tonova put it, "a personal gravitas that comes with age" essential for this phase, potentially jeopardizing the client's case. Additionally, the age gap between young associates and older arbitrators might affect the persuasiveness of their arguments.

Nonetheless, the panel unanimously affirmed that if young associates prove their worth during the written phase, they will earn their place at the hearing. Initially, their responsibilities might include tasks like keeping their colleagues caffeinated, distributing documents, or preparing presentations for the next day. With increasing experience, they may have the opportunity to cross-examine experts or present portions of an opening statement. Regardless of their role, they will be integrated into the team. After all, it is widely acknowledged that lawyers function optimally with their much-needed caffeine fix, so even if this is your only task at the hearing, you have your share in the overall success.

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Following the panel discussion, participants had the opportunity to engage with the panelists in a more informal setting during a coffee break, putting into practice the newly acquired understanding of the importance of networking. It was a fitting conclusion to an exceedingly successful event.

By Jan Šlehofer, Squire Patton Boggs, Prague

Young ITA Writing Competition and Award

YoungITA and the Institute for Transnational Arbitration are pleased to invite submissions for the 2023-2024 Young ITA Writing Competition and Award:

"*New voices in International Arbitration*"

Eligible Participants: Only Members of Young ITA (including academics, practitioners and students) are eligible to submit their papers to the Young ITA Writing Competition. Membership in Young ITA is free of charge and is limited to persons under 40 years old. To become a member, click here.

Topic: The submitted papers should address issues related to any topic in the field of international commercial or investment arbitration.

Submission Guidelines: The papers must be submitted via email under subject line "Young ITA Competition" by on or before **January 15, 2024**. The submitted papers must be original, not published elsewhere, and have between 5,000 and 15,000 words, including footnotes. (Competitors may withdraw their papers no later than January 15, 2024, i.e., the submission deadline).

The papers must be written in English, submitted in Word and PDF format, and comply with a widely used citation standard. The papers may be co-authored. Information about the author(s), including their affiliation (if applicable) and their contact details should be stated on a cover page in a separate document, and not on the paper itself.

Selection of the Winning Paper: The papers shall be judged by two panels. The First Panel shall select the best three or more papers to be submitted to the Second Panel for a final decision.

Prize: The Competition winner will be announced no later than May 1, 2024 and will receive a prize of USD $3,000, selected books published by Wolters Kluwer and up to USD $1,500 reimbursement for reasonable expenses to travel to TBD to receive the award at the ITA Workshop and Annual Meeting in June 2024. The winning paper will be published in the ITA journal "ITA in Review".

For questions, please contact Mevelyn Ong, Young ITA Thought Leadership Co-Chair, and ITA Coordinator Alliyah Robinson, using the subject line "Young ITA Competition".

Job Opportunities

in collaboration with Careers in Arbitration

Organization	Position	Location	Link	Deadline
Alem & Associates	Intern	Abu Dhabi / Beirut	https://www.linkedin.com/feed/update/urn:li:activity:7113514147215990785	No deadline identified
Arbridge Chambers	Associate	New Delhi	https://www.linkedin.com/feed/update/urn:li:activity:7108022443620847616	No deadline identified
Clifford Chance	Trainee	Frankfurt	https://www.linkedin.com/feed/update/urn:li:activity:7111229883623567361	No deadline identified
Clyde & Co	Senior Associate	Cairo	https://www.linkedin.com/feed/update/urn:li:activity:7116379369735864321	No deadline identified
David Lim & Partners	Associate / Senior Associate	Singapore	https://www.linkedin.com/feed/update/urn:li:activity:7112918643524427776	No deadline identified
INTEGRITES	Associate	Kyiv	https://www.linkedin.com/feed/update/urn:li:activity:7110219285557309440	No deadline identified
Kennedys	Advocate	Brussels	https://www.linkedin.com/feed/update/urn:li:activity:7112920084968271873	No deadline identified
LALIVE	Trainee / Intern	Switzerland / England	https://www.linkedin.com/feed/update/urn:li:activity:7111228820556247040	Several, first being 30 April 2024
Lévy Kaufmann-Kohler	Associate / Senior Associate	Geneva	https://www.linkedin.com/feed/update/urn:li:activity:7108697566225002496	No deadline identified

Job Opportunities

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Organization	Position	Location	Link	Deadline
Loyens & Loeff	Associate	Brussels	https://www.linkedin.com/feed/update/urn:li:activity:7115402791824547840	No deadline identified
Norton Rose Fulbright	Senior Associate	Sydney	https://www.linkedin.com/feed/update/urn:li:activity:7116376952558473216	No deadline identified
Sarantitis	Lawyer	Athens	https://www.linkedin.com/feed/update/urn:li:activity:7116378817262178304	No deadline identified
Sayenko Kharenko	Associate	Kyiv	https://www.linkedin.com/feed/update/urn:li:activity:7116024552693854208	No deadline identified
Schoenherr Attorneys at Law	Intern	Vienna	https://www.linkedin.com/feed/update/urn:li:activity:7116377885820493825	No deadline identified
Squire Patton Boogs	Intern	Paris	https://www.linkedin.com/feed/update/urn:li:activity:7111240448291024896	No deadline identified
Stephenson Harwood	Associate	Hong Kong	https://www.linkedin.com/feed/update/urn:li:activity:7111239549418123266	No deadline identified
Teynier Pic	Intern	Paris	https://www.linkedin.com/feed/update/urn:li:activity:7109871755367702529	No deadline identified
Westerberg & Partners	Associate	Stockholm	https://www.linkedin.com/feed/update/urn:li:activity:7111235345030995968	No deadline identified

YOUNG ITA

Newsletter Guidelines

The Young ITA Newsletter is the quarterly publication of Young ITA, and has a global readership of students, young practitioners, academics, and professionals from different sectors.

Young ITA welcomes written content covering recent developments, new laws or regulations, recent court cases or arbitral awards in your region, webinar/conference reports or any other material that may be of interest to Young ITA readership.

All content submitted must:

- not have been previously published;
- include the author(s)'s name, email address, firm/affiliation and city/country; and
- be authored by members of Young ITA.

Written content submitted must:

- be between 300-500 words;
- be submitted in MS word format;
- acknowledge all sources, while keeping endnotes to a minimum; and
- include a short abstract of one/two sentences and up to five keywords.

Contributors are encouraged to submit their contributions at least two months prior to the publication month of the next issue (e.g. submissions for the Winter issue should be delivered by the end of November). Factors considered for publication of the respective contribution include, among others, relevance, timeliness, quality, and consistency with these guidelines.

Content should be submitted to the Young ITA Thought Leadership and Internal Communications Co-Chairs.

Young ITA also welcomes volunteers to act as reporters for future Young ITA events. Please contact our External Communications Co-Chairs for more information about, or to register your interest in, acting as a reporter for a future Young ITA event (whether virtual or in-person).

Contact Information

Please contact any of the following Young ITA Board Members if you wish to provide any comments, contributions or material for the Young ITA Newsletter.

- **Thought Leadership Co-Chair** – Mevelyn Ong (ongm@sullcrom.com)
- **Thought Leadership Co-Chair** – Derya Durlu Gürzumar (deryadurlu@gmail.com)
- **External Communications Co-Chair** – Enrique Jaramillo (enrique.jaramillo@lockelord.com)
- **External Communications Co-Chair** – Meredith Craven (meredith.craven@whitecase.com)
- **Internal Communications Co-Chair** – Philip Tan (philip.tan@whitecase.com)
- **Internal Communications Co-Chair** – Harriet Foster (hfoster@orrick.com)