Young ITA Newsletter

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Featured in this Issue

- 60 Second Interview with Harriet Foster Young ITA Internal Communications Co-Chair
- Updates from the Young ITA Regional Chairs
- Young ITA Event Reports
- Career Opportunities

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Contents

- 60 second Interview with Harriet Foster- Page 1
- Regional Updates – Page 2
- Reports from #YoungITA Talks – Page 19
- Job Opportunities – Page 32
- Newsletter Guidelines and Contact Information – Page 33

Get Involved

- **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 33 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.

60 Second Interview with Harriet Foster

Young ITA Internal Communications Co-Chair

What do you find most enjoyable about practicing in the arbitration field?

No two days are the same. While law is a main part of practice, there are also many elements of culture, politics and society, and seeing the juxtaposition of these elements fascinates me. On a more personal level, arbitration is very much a team sport and I enjoy building a solid rapport over the course of a case and being part of such a great network in the wider arbitration community (such as through the Young ITA).

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

Take every opportunity presented to you, be proactive and don't stop asking questions. I truly believe that we never stop learning and there is no such thing as a stupid question. Ultimately the fundamentals of the practice will become second nature to you. I would also say, at an individual level, that a career in arbitration can be demanding (and rewarding) so it is really important that you carve time out for yourself to do anything else you enjoy (which isn't work).

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

Venture away from central London and go to Sager & Wilde for wine and toasties, Plant Club for Italian vegan food and any outdoor concert in the summer (and wear a raincoat!).

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

The Okavango Delta, West Tanzania to trek with the chimpanzees or anywhere with animals!

What is your favourite thing to cook?

A takeaway pizza. Cooking is not one of my strong points.

REGIONAL UPDATES

United Kingdom

Reforms to the Arbitration Act 1996

In the UK, in late 2023, the Law Commission published its final recommendations for reform to the Arbitration Act 1996 (the "Act"), which included a draft bill to put these reforms into effect (the "Report"). On 21 November 2023, the draft bill began its progress through the UK Parliament and it is expected that the amended act will become law in 2024.

The reform to the Act is focussed on fine-tuning the legislation to maintain London's popularity as a major centre for international arbitration; and to ensure arbitration legislation is in line with the evolving priorities of arbitration users. This is in the context of other jurisdictions, such as Germany, Luxembourg and the UAE reforming their arbitration laws.

The Law Commission found the Act largely fit for purpose and recommended making changes in six key areas.

Codification of an arbitrator's duty of disclosure

The Report recommends the codification of the general principle under *Halliburton Company (Appellant) v Chubb Bermuda Insurance Ltd [2020] UKSC 48* of arbitrators having a continuing duty to disclose any circumstances which might reasonably give rise to justifiable doubts as to their impartiality. This duty of disclosure will now also extend to pre-appointment discussions.

Strengthening arbitrator immunity

The Report suggests reform so that an arbitrator cannot incur liability for resignation unless the resignation is shown to be unreasonable. In addition, an arbitrator should not incur any costs liability where there has been an application for their removal, unless the arbitrator has acted in bad faith.

REGIONAL UPDATES

United Kingdom update

Introduction of a power of summary disposal

The Report recommends that, subject to the agreement of the parties, a tribunal may issue an award on a summary basis (some commentators have asserted that this power is already implicit in the Act). This power would be subject to the usual test that there be "no real prospect of success".

A revised framework for challenges under section 67

The award of a tribunal can be challenged before the court under section 67 of the Act on the basis that the tribunal did not have jurisdiction. The current position under *Dallah Real Estate v Pakistan [2010] UKSC 46* is that if there is any challenge under section 67 then this must be by way of a full rehearing (with a party being able to introduce new evidence and arguments not run before the tribunal). The Law Commission proposes: (i) limits on any new grounds of objection, or any new evidence, unless it could not have been put before the tribunal; and (ii) limits on new evidence being heard unless if it is found to be in the interests of justice.

A new rule on the governing law of an arbitration agreement

Another proposed change is that the current law position, as set out in *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb [2020] UKSC 38*, is reformed so that the law which governs the arbitration agreement is the law that the parties expressly agree applies to the arbitration agreement or, if no such agreement is made, the law of the seat of the arbitration.

Clarification of court powers

While section 44 of the Act currently provides the court with power to make orders in support of arbitral proceedings, the Report recommends that the Act be

REGIONAL UPDATES

amended to: (i) confirm explicitly that this power extends to orders against third parties, and (ii) establish that the court's consent is not necessary for third parties appealing an order made against them. The Law Commission makes clear that the Act should not apply generally to emergency arbitrators, but that it should support court enforcement of the orders of emergency arbitrators.

At the heart of the Law Commission's reasoning behind the proposals is a desire to promote both the efficiency and the finality of arbitral proceedings within England and Wales. The question will be whether this reform alone will preserve the competitiveness of the UK as a place for arbitration with rising competition from other jurisdictions.

By Julia Wilson - Associate at Orrick, Herrington & Sutcliffe) London, UK

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Middle East

Dubai

No Nexus, No Freeze: Dubai Court Narrows Scope of its Jurisdiction to Grant Interim Relief in Support of Foreign Proceedings

The landmark decision in Sandra Holdings v Al Saleh signals a reversal of the DIFC Court's expansive approach to granting injunctive relief in support of foreign proceedings. The DIFC Court's power to grant interim relief in support of foreign proceedings is now clearly anchored to the jurisdictional gateways listed in Article 5 of the Judicial Authority Law.

REGIONAL UPDATES

Middle East update

Worldwide Freezing Order sought to prevent dissipation of assets located in Dubai

The case involved a dispute over assets allegedly taken from a Cayman-based entity. The claimants initiated proceedings in Kuwait, but also sought a worldwide freezing order (WFO) from the DIFC Court to prevent the respondents from dissipating assets located in Dubai. The claimants obtained an *ex parte* WFO, which the respondents did not acknowledge or comply with. The claimants then applied for contempt, and the respondents applied to set aside the WFO.

Court of First Instance follows Jones v Jones and exercises "exorbitant jurisdiction"

The Court of First Instance dismissed the set aside application and found the respondents in contempt, imposing significant sanctions. It followed the decision in *Jones v Jones*, which had controversially extended the DIFC Courts' jurisdiction in September 2022. The respondents appealed, arguing that the DIFC Court did not have jurisdiction to grant the WFO, because the respondents had no connection with the DIFC, and none of the jurisdictional gateways in the Judicial Authorities Law (JAL) were met. The claimants argued that the DIFC Court had a general power to grant interim relief, based on Article 32 of the Court Law, which is similar to Section 37 of the Senior Courts Act 1981 in England. This, the respondents argued, amounted to an "exorbitant jurisdiction".

Court of Appeal closes a door closes but the jurisdictional gateways remain open

The Court of Appeal agreed with the respondents and set aside the WFO and the contempt order. In doing so, it departed from *Jones*, holding that a party seeking interim relief from the DIFC Courts in support of foreign proceedings must first establish that the DIFC Court have jurisdiction under gateways set out in Article

REGIONAL UPDATES

5 of the JAL. The court confirmed that it does not have a general power to grant interim relief and distinguished the DIFC Court from other common law courts, such as the English Courts, which have inherent sovereign jurisdiction. Ultimately, the DIFC Court held that it does not have an equivalent statutory provision to Section 25 of the Civil Jurisdiction and Judgments Act 1982 in England, which allows the English Courts to grant interim relief in support of foreign proceedings. Therefore, a party seeking recognition of jurisdiction must discharge the burden of satisfying the court that it has jurisdiction according to the JAL.

Closing remarks

Litigants can now rely on a clear understanding of the DIFC Courts' jurisdiction for interim relief, including WFOs, to support cases in other countries. Notably, *Sandra* does not preclude the DIFC Court's ability to enforce judgments that have been issued; rather, it curtails the court's power to issue interim relief in aid of "anticipatory" foreign judgments.

By Bruno Rucinski – Associate at Allen & Overy LLP, Dubai, UAE

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Abu Dhabi

Abu Dhabi Launches New Arbitration Centre

On 1 February, the Abu Dhabi Chamber of Commerce and Industry launched its new arbitration centre, arbitrateAD. The new arbitration centre aligns with the Chamber's aim of fortifying Abu Dhabi's standing as a preeminent global hub for arbitration.

REGIONAL UPDATES

Middle East update

The Abu Dhabi Chamber of Commerce and Industry has replaced the existing Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC) with a new institution, the Abu Dhabi International Arbitration Centre (arbitrateAD).

Maria Chedid, who chairs Arnold & Porter's international arbitration practice, will lead arbitrate AD as its first female president in the Middle East. The new centre consists of fifteen eminent practitioners, with women making up nearly half of them. They include: former ICJ Judge and Jordanian Prime Minister, Judge Awn Shawkat Al-Khasawneh; ex-UK Attorney General, Lord Peter Goldsmith; AD-NOC's senior corporate counsel, Lara Hammoud; and renowned arbitrators Funke Adekoya from Nigeria, Byung-Chol (B.C.) Yoon from Korea, and Michael Schneider from Switzerland. Notably, arbitateAD's members are based in eleven countries, spanning the Middle East, Africa, Europe, Asia, and the Americas.

According to the Chamber of Commerce, ADCCAC will continue to handle the ongoing arbitrations under its rules, while new cases from 1 February 2024 will fall under the jurisdiction and rules of arbitrateAD. The rules of the new centre are yet to be released, but the Chamber of Commerce has appointed a seasoned governance team for arbitrateAD, headed by His Excellency Abdulla Mohamed Al Mazuri, the chairman of the Chamber of Commerce, who will also serve as the chairman of the board of the new centre.

The transition from ADCCAC to arbitrateAD is likely to be compared to the similar shift from the DIFC-LCIA to the Dubai International Arbitration Centre (DIAC) in 2021. Parties with contracts that refer disputes to ADCCAC should carefully review the implications of the transition provisions.

It is not clear whether arbitrateAD will have a default seat of arbitration in Abu Dhabi (or possibly ADGM) if the parties do not agree on one, as the DIAC rules

do for the DIFC. It is also unknown whether arbitrateAD will have any formal link with the ADGM Arbitration Centre.

Overall, the establishment of arbitrateAD aligns with recent developments in the arbitration scene in the region, following the UAE Federal Arbitration Law (2018) and subsequent amendments (2023), the Oman Commercial Arbitration Centre (2018) and the revised rules for both DIAC (2022) and the Saudi Centre for Commercial Arbitration (2023). The ADCCAC rules were last revised in 2013. As such, the establishment of arbitrateAD presents an optimum opportunity for Abu Dhabi to solidify its standing as a preeminent global hub for arbitration.

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South America

Argentina

Argentina's high courts continue to reinforce a pro-arbitration environment, solidifying the country's commitment to alternative dispute resolution mechanisms. In this sense, the National Court of Appeals in Civil matters (CAC) confirmed such pro-arbitration stance in a recent case, albeit indicating that arbitration is limited to subjects matter capable of settlement through that method.

On 19 August 2023, the CAC rendered a decision confirming the lack of arbitrability of consumer matters in Argentina. In *Gustavo Oscar Laurito v. Promotora Fiduciaria*, the plaintiff brought a claim before Argentina's local courts alleging

the breach of a real estate trust agreement by the defendant. The plaintiff was a beneficiary under the trust agreement and was to receive an apartment for personal use in a complex built by the defendant, the trustee to such agreement. However, he commenced judicial proceedings against the defendant claiming that he had not received the property in time despite having fully paid the sums agreed to the defendant.

In reply, the defendant argued that local courts did not have jurisdiction to hear the dispute since one of the provisions of the trust agreement established the obligation of the parties to solve their disputes through *ex aequo et bono* arbitration. However, the CAC did not share the defendant's view.

In its analysis, the CAC started by highlighting that the parties to a contract are free to choose arbitration as the applicable dispute resolution mechanism in their agreement, a right which, as the CAC assured, finds its basis in Argentina's national constitution. Yet, the CAC indicated that such right found its limits in certain matters that are excluded from arbitration. In this regard, the CAC brought up article 1651 of the Argentine Civil and Commercial Code (CCC).

Article 1651 of the CCC provides which matters are excluded from arbitration in Argentina. It includes among them those "*related to the user and consumer rights*". In this sense, the CAC considered that the relationship at issue between the plaintiff and the defendant was a "*consumer relationship*" in accordance with the Argentine consumer protection law, as the plaintiff was considered a consumer under such law. Therefore, it understood that the dispute resolution clause found in the trust agreement was not valid, and that the local courts had jurisdiction to hear the dispute.

REGIONAL UPDATES

Despite the final decision rendered by the CAC, this ruling confirms the Argentine courts' commitment to ensure the right of private parties to arbitrate their disputes, although it confirms the validity of the statutory exclusions to arbitrate certain sensitive matters such as consumer rights.

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Bolivia

In the framework of a commercial arbitral proceeding under the ICC Rules between a Spanish and a Bolivian Company, one of the parties filed an Amparo action before the Bolivian courts against an emergency award issued by an emergency arbitrator. The seat of the arbitration was Santiago de Chile, Chile, and Bolivian law was applicable to the merits of the dispute.

In a first-instance decision issued on 6 March 2020, the Departmental Court of Justice of La Paz, Bolivia granted the protection requested in the Amparo action. The Court stated that since Bolivian law was applicable to the merits of the dispute, although the seat of arbitration was in Chile, the Bolivian Constitutional Tribunal was the competent authority to reestablish the constitutional rights that were suppressed by the emergency award.

REGIONAL UPDATES

South America update

In the last instance the Bolivian Constitutional Tribunal through Constitutional Ruling (Sentencia Constitucional Plurinacional) 0288/2021-S4 dated 22 June 2021 determined that it was not vested with the authority to rule over the merits of the Amparo Action. This Tribunal asserted that it cannot assume jurisdiction over a constitutional action filed against a decision issued by a non-Bolivian authority outside the Bolivian territory.

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Brazil

Florida Judge Denies Dismissal in Brazilian Arbitration Case

On 2 August 2023, a Florida federal judge declined to dismiss a lawsuit seeking to confirm an arbitral award issued by a tribunal acting under the rules of the Center of Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC) against a Brazilian company.

In *Pistorello v. Ltda*, petitioners Ivanilde Pistorello and Augusto Grando, two Brazilian business owners, entered into an agreement with Supricel Participações LTDA (Supricel), a Brazilian company owned by Luis Guilherme Schnor, for the sale of their interests in two Brazilian freight companies in 2013.

After Supricel failed to pay the agreed price, Pistorello and Grando initiated an arbitration against Supricel for breach of the purchase and sale agreement. In 2019, the CAM-CCBC tribunal issued a 2.5 million Reais award in favor of Pistorello and Grando.

REGIONAL UPDATES

South America update

In 2021, Pistorello and Grando filed a petition to confirm the award against Supricel before the Florida federal court. The claim was also directed against Mr. Schnor on the basis that he had committed fraud by misusing funds that were due to satisfy the agreement to acquire properties in Orange and Osceola counties in Florida.

Respondents Schnor and Supricel sought to dismiss the suit, arguing inter alia that (i) the Petitioners failed to include another respondent party in the arbitration award which, pursuant to Federal Rule of Civil Procedure 19, should be considered an "*indispensable party*", and (ii) that Petitioners failed to attach to the case documents from various litigations in Brazil that were related to the arbitral award.

The judge found no merit to either of these arguments. According to the decision, Article V of the New York Convention lists seven grounds upon which a court can refuse to recognize or enforce a foreign arbitration award, and the two arguments presented by the Respondents did not fall under the enumerated grounds. As to the applicability of the New York Convention, the Court referred to Article I (1) of the Convention and stated that, since the parties are citizens of Brazil, the dispute arose out of a contract executed and performed in Brazil, arbitration took place in Brazil, and the award was issued in Brazil, the New York Convention should govern the dispute.

Respondents also presented a *forum non conveniens* defense on the basis that "*the American public does not have a particularly strong interest in having a Florida court decide this largely Brazilian transaction*" (referring generally to the arbitration and the business transaction conducted by the parties). The judge, however, disagreed, noting that Florida has an interest in the case since the property sought for recovery in satisfaction of the arbitration award is located in Florida.

REGIONAL UPDATES

This is a favourable precedent for the confirmation of Brazilian arbitration awards in the U.S. Even though the case is still ongoing, the decision is a positive signal for parties seeking enforcement of awards within the American legal system.

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Ecuador

There are two new developments that are worth mentioning.

First, the Constitutional Court of Ecuador issued the decision No. 2822-18-EP in September 2023, dealing with whether a previous annulment decision should be overturned since it was wrong to find that the award did not comply with Civil Procedure evidentiary rules. Ratifying the mandatory nature of evidentiary rules agreed by the parties in arbitral proceedings (such as the IBA Rules on Evidence), the Court overturned the decision, also clarifying that the formalism surrounding Civil Procedure evidentiary rules may not be transferable to arbitration. For the Court, arbitration should remain a "flexible" procedure.

Second, the Court's decision No. 2-2023-TI/23, declared the unconstitutionality of the Ecuador-Costa Rica FTA's ISDS provision, which allowed foreign investors to initiate ICSID or UNCITRAL arbitration. This is aligned with the Court's previous rulings regarding the constitutionality of BITs which, under Ecuadorian Law, are deemed unconstitutional pursuant to the prohibition in Article 422 of the Constitution.

REGIONAL UPDATES

In practical terms, the decision has the effect of precluding Ecuador from concluding treaties providing for ICSID arbitration, despite of the state's recent ratification of the Washington Convention. Pursuant to the exception of Article 422, treaty based ISDS is allowed if the arbitration is seated in Latin America.

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Paraguay

Paraguayan Senate approves the Host Country Agreement with the Permanent Court of Arbitration (PCA)

The Paraguayan Senate ratified the draft legislation approving the Host Country Agreement (the Agreement) between the Paraguayan Government and the PCA on November 23.

The draft bill establishes the legal framework for PCA-administered proceedings to be carried out in Paraguay on an ad hoc basis, without PCA's physical presence.

Paraguay compromises to ensure that arbitrators, mediators, committee members, PCA staff, and participants in arbitration proceedings can function under conditions similar to those guaranteed by the PCA.

The Agreement enables cooperation between Paraguay and the PCA, ensuring

REGIONAL UPDATES

It also regulates privileges and immunities granted by the Host State to arbitrators and participants, including specific tax exemptions and immunity, under certain conditions.

The proposed legislation aims to enhance Paraguay's global arbitration standing by attracting cases, promoting effective dispute resolution methods, and raising the country's international profile as an arbitration forum. This will strengthen the cooperation between the PCA and local institutions, thus providing access to dispute resolution mechanisms administered by the PCA.

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Asia-Pacific

India

Partial setting aside of arbitral awards

In a landmark judgment, the Delhi High Court in *NHAI v. Trichy Thanjavur Expressway Limited* (2023 SCC OnLine Del 5183), decided that courts possess the authority to partially set-aside awards, provided that the segment being annulled is autonomous and distinct, and its annulment would not adversely impact the remaining findings of the tribunal. This decision hinges on the principle of separability of an award outlined in the proviso to Section 34 (2)(a)(iv) of the Indian Arbitration Act, 1996 (Arbitration Act). This proviso states: "*Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside*".

REGIONAL UPDATES

The Delhi High Court expanded the application of this proviso to other grounds for setting aside an award under Section 34 of the Arbitration Act, such as violation of fundamental policy of India or failure to grant opportunity to a party to present its case. It further distinguished partial set aside of an award from modification of an award, which was prohibited in the Indian Supreme Court's decision of *Project Director, National Highways v. M Hakeem* (2021) (9 SCC 1). The Delhi High Court explained that partial setting aside, unlike modification, of an award does not entail a court substituting a tribunal's decision with its own.

The court also discussed the UNCITRAL Model Law, noting that its initial drafts included the power for courts to set aside awards either in whole or in part. It opined that the absence of such express provision in the final draft of the Model Law does not imply a deliberate or reasoned decision against partial annulment.

Notably, partial annulment of awards is not alien to the international arbitration jurisprudence. Article 52 of the ICSID Convention read with Rule 54 permits a party to apply for full or partial annulment of an award. French, Canadian, Swedish, and Austrian courts have also partially set aside awards on grounds such as the tribunal deciding issues beyond the scope of submission to arbitration, making certain findings based on fraudulent evidence, or committing procedural errors.

(See, for example, *Société European Gas Turbines SA v. Westman International Ltd*, 2 Revue de l'arbitrage 359 (1994) (Paris C.A.) (France); *The United Mexican States v. Metalclad Corporation*, 2001 BCSC 664 (Canada); Case T 968-18 (Ciclomulsion), Decision of the Supreme Court dated 30 April 2019 (Sweden); OGH, Decision of the Supreme Court dated 10 December 2008, 7 Ob 219/08v (Austria)).

REGIONAL UPDATES

The Delhi High Court also referenced several Indian Supreme Court decisions which support the concept of partial annulment as obiter dicta. The definitive stance of the Indian Supreme Court on this aspect is yet to be firmly established. The acceptance of the Delhi High Court's approach by other Indian states and the Indian Supreme Court will be a critical development in the evolution of arbitration jurisprudence, both in India and internationally.

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Western Europe

France

Enforcement of awards involving French SOEs: the end of an era?

The recent French administrative supreme court's (*Conseil d'Etat*) refusal to enforce the award in the *Ryanair v SMAC* case, after ten years of proceedings, has raised a number of questions on what is typically viewed as a very pro-arbitration jurisdiction.

Ryanair sought enforcement of the favourable LCIA award, obtained from an arbitral tribunal seated in London, against SMAC, a French state-owned entity (SOE). The *Conseil d'Etat* denied enforcement on the grounds that the SOE, as a matter of French public policy, could not enter into an arbitration agreement.

Historically, the approach with respect to French SOEs was simple. While there is a French public policy rule by which French SOEs are prohibited from entering in-

REGIONAL UPDATES

As such, the *Ryanair v SMAC* decision was unexpected, as the *Conseil d'Etat* applied the French public policy rule, disregarding the international arbitration exception, and denying enforcement. Since this case, some commentators have suggested that this could be the end of the *Galakis* test and, with it, the presence of French SOEs in international arbitration. However, the court's reasoning in the *Ryanair* case offers a much more nuanced outcome. The only reason why the French public policy rule applied was because the subject matter of the dispute concerned a French public procurement contract, and thus submitted to specific French administrative law rules. Therefore, it cannot be said to apply across the board, and it will depend on the specific facts of each case.

Furthermore, even where the prohibition to French SOEs entering into arbitration agreements seems applicable, there may be other exceptions. The first exception to this general prohibition is a law or decree that allows the French SOE to enter into an arbitration agreement (which is widely the case in the railway, construction and energy sectors). The second exception is that of an international treaty-based authorisation – for example, where France and another country in which the other party is incorporated are both parties to a treaty such as the 1961 Geneva Convention.

In short, the *Ryanair v SMAC* decision is a slight road bump in the arbitration landscape for SOEs in France, but this case was particularly fact specific and, accordingly, this decision should not put an end to the pro-arbitration environment offered by this jurisdiction.

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#YoungITATalks / Events

#YoungITATalks: UK

Sanctions Disputes and Arbitration: Untangling the Web

On 22 November 2023, Young ITA UK, in partnership with Latham & Watkins, organised a panel discussion on sanctions disputes and arbitration. The panel was moderated by Young ITA Regional Co-Chairs, **Robert Bradshaw** and **Thomas Lane**, who set the scene noting that sanctions are not a new issue; they have just become more complicated in recent years. Robert reminded us that in 2014 the European Union's restrictive measures against Russia over Crimea were set out in a document merely 10 pages long and targeting only 21 individuals. Today, that same document spans over 600 pages and the measures target over 800 individuals and entities. This statistic is a good illustration of complexity of today's issue of sanctions, as the panellists confirmed during the session.

Katie Palms (DLA Piper, London) introduced the issue of sanctions explaining that financial and trade sanctions are the two main types, and that there are three key features of sanctions which need to be kept in mind:

1. Sanctions are restrictions on economic activity which are intended to have an economic effect;

2. Sanctions are instruments of national law; and

3. Sanctions are imposed for the purposes of international foreign policy and can be used, among others, as tools for reaching an objective.

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#YoungITATalks / Events

#YoungITATalks UK

Sunny Mann (Baker McKenzie, London) discussed the regulatory aspect of sanctions, namely the extraterritorial reach of various regulations and his experience with sanctions-related cases. He explained that whilst the UK and the EU largely look at conduct within their own territory, or conduct of entities domiciled within their territory, the US takes a more expansive approach. For example, the US applies its sanctions in the same way as the UK and the EU, but additionally its sanctions reach transactions carried out in US dollars, transactions carried out through US banks or even transactions to which a party is merely a US green-card holder. Most interestingly, the audience learned that no sector is off limits through an example of a case in the healthcare sector, and that this time the issue of sanctions is more political, and the authorities are more aggressive in their requests for information.

Regarding the effects of sanctions on disputes, **Charles Claypoole** (Latham & Watkins, London) touched on the complexity arising from interaction of multiple jurisdictions in a single transaction. He used an example of a contract which involves parties domiciled in two different jurisdictions, operating based on a contract governed by a third law and with an arbitration agreement seated in the fourth jurisdiction. Mr Claypoole noted that these complex issues are being teased out at the moment and the web will continue to untangle with time and with incoming decisions by arbitral tribunals and domestic courts, some of which are dealing with these challenges for the first time.

#YoungITATalks / Events

#YoungITATalks UK

Finally, the panel highlighted an obvious, but often missed, issue: commercial reality is very different to law school, and companies cannot only consider the legality of a transaction during their decision-making process. Lawyers should not underestimate the importance of third parties involved, such as the client's banks and insurers, because even if a transaction is lawful, a bank or an insurer may not allow for it to happen. Four aspects of a company must always be aligned: the legal, the commercial, the reputational and the financial – only then may a company move forward with any transaction, and lawyers should always keep that in mind when advising clients.

The conclusion of this interesting panel could be summarised as follows: at the moment, the only certainty is that the issue of sanctions is messy, and the web will keep untangling for years to come.

By Stela Negran – Associate at LALIVE, London, UK

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YOUNG ITA

#YoungITATalks / Events

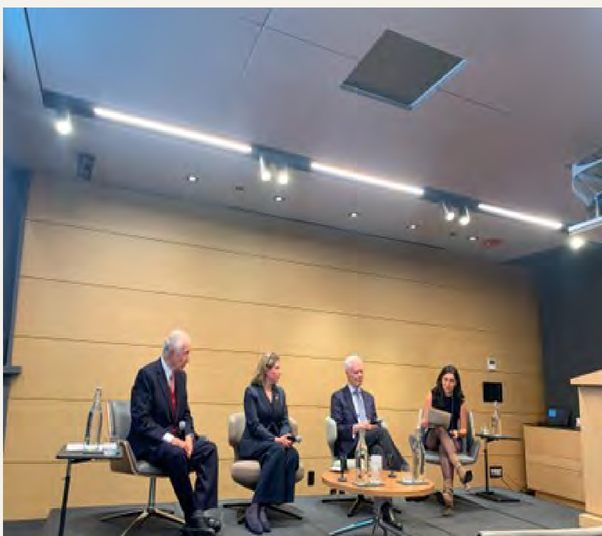
#YoungITATalks: Mexico

Current State of Affairs of Investment Arbitration + End of the Year Toast

On 6 December 2023 #YoungITATalks Mexico, held the "*Current State of Affairs of Investment Arbitration + End of the Year Toast*" event.

The conference started with a warm welcome extended to all participants by **Galo Martinez**, an associate at Creel, García-Cuéllar, Aiza y Enríquez, S.C. Mr. Martinez offered a brief overview of pivotal developments in the field of international arbitration, encompassing both investor-state and commercial disputes. Notable highlights included the first notifications of claims against Mexico under the USMCA and the adoption of the UNCITRAL code of conduct for arbitrators.

Following the introductory remarks, **Ana Sofia Mosqueda** from Galicia Abogados, moderator for this event, provided a brief presentation, outlining the impressive backgrounds of the panel's speakers.



Mr. Sepulveda, a former judge and president of the ICJ Court, provided invaluable insights from his time in the ICJ. He delved into the complexities of cases he oversaw, shedding light on difficult issues, such as determining the constitutive elements of genocide as a crime against humanity or the existence of a State's prerogative to raise national security concerns

to justify actions taken against private entities. Sepulveda illuminated the rigorous deliberation process within the ICJ, underscoring the steps taken to streamline decisions and secure majority support while upholding the legal value of the decisions. He highlighted the usual observance of decisions by member states, but he did refer to the case when the United States refused to acknowledge the Avena case ruling, deeming it an unfortunate event from public international law perspective.

Eduardo Siqueiros, one of Mexico's most recognized arbitrators, shared his insights on US-Iran tribunals in which he participated as a young lawyer, acknowledging their pivotal role in challenging the notion that states were immune to lawsuits from private entities. He emphasized the tribunals' significance as a cornerstone for the investment arbitration system and its standards, notably discussing the evolution of the right to full compensation in cases of expropriation as a right under international law. Mr. Siqueiros also recounted his unexpected involvement in the Waste Management v. Mexico case, three weeks prior to the jurisdictional hearing and without any prior background on investment arbitration, highlighting the landmark decision that ensued in jurisdictional aspects but, more importantly, he used this experience to emphasize on the value of seizing opportunities at the time and the form in which they come. He also referred to the importance of taking every opportunity as a way of entering into the international arbitration world.

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Lastly, Ms. **Sofia Gomez**, partner at Creel, García-Cuéllar, Aiza y Enríquez, S.C., reflected on her experiences, reminding the audience of the uniqueness and complexity inherent in each arbitration. Highlighting her varied roles within arbitration, from institution member to counsel and arbitrator, she accepted that the most challenging was the arbitrator's role. She stressed the difficulty of not only reaching definitive decisions amidst compelling arguments presented by skilled lawyers on both sides but also effectively communicating the reasoning and rationale behind her decisions to the involved parties. Ms. Gomez also emphasized the significance of negotiation techniques as invaluable soft skills cultivated across her roles, stressing the essence of active listening, adept questioning, and effective communication.

In brief, the conference offered a profound exploration into the multifaceted landscape of international arbitration, with esteemed speakers providing invaluable insights derived from their rich experiences. From deliberative processes within the ICJ to landmark decisions in investment arbitration, the event illuminated the complexities and evolution of this field. The anecdotes shared by the speakers underscored not only the legal intricacies but also the importance of seizing opportunities, navigating roles, and honing soft skills such as negotiation techniques.

By Sofia Jaramillo - von Wobeser, Mexico

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#YoungITATalks: Mexico

Do’s and Don’t’s en audencias

On January 29, 2024, José Pablo Véliz from Aguilar Castillo Love introduced the #YoungITAMéxico panel on "Do's and Dont's en audiencias" (Do's and Dont's in hearings), featuring renowned speakers: Elisa Legorreta (Cuatrecasas), María Eugenia Ferreyra (Durán Abogados), and Sandro Espinoza (ARBANZA).

Throughout the event, these distinguished speakers shared their insights on effective practices (and pitfalls to avoid) in arbitration hearings, with a specific focus on Moot hearings. Drawing from diverse backgrounds as arbitrators, academics, and party attorneys, the speakers offered invaluable knowledge spanning from the academic to the practical, combining practical advice with strategies applicable in moot court hearings and real-life proceedings.

The discussion delved into practical advice, emphasizing the importance of thorough preparation for a hearing. It was stressed that a proper audience must be prepared at least one month in advance, ensuring readiness of witnesses, documents, and opening and closing statements. Notably, regarding opening statements, the speakers provided key insights from various perspectives, highlighting the foundational role of in-depth research before entering the arbitration process.

The panelists emphasized the crucial role of in-depth research and provided valuable advice for young lawyers to strategically focus on a specific area of interest within arbitration. This targeted specialization not only enhances expertise but also attracts specific cases and clients aligned with the lawyer's chosen domain. By establishing themselves as experts in a particular field, young lawyers can position themselves for success in the dynamic field of arbitration.

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Insights for preparing opening statements encompassed anticipating proceedings for months, crafting memorable scripts to leave a lasting impression on arbitrators, and adhering to witness preparation following IBA guidelines. The collective wisdom offered a comprehensive understanding of the complexities involved in delivering impactful opening statements.

Sandro Espinoza emphasized the paramount importance of honesty and transparency in crafting opening statements. Mooties and participants alike were cautioned against concealing relevant information because it could create a lack of trust from arbitrators, with a focus on persuasion through clarity and sincerity to construct a compelling narrative, emphasizing the need for truthfulness not only towards arbitrators but also towards oneself.

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Elisa Legorreta echoed Espinoza's ideals on truthfulness, adding that it is equally important not to discredit opposing party lawyers in opening statements, avoiding personal attacks and striving to maintain a reasonable tone, recognizing that both parties' lawyers are advocating for their clients' interests.

Shifting focus to closing arguments, practical advice was shared for mooties and colleagues alike. The significance of expressing oneself effectively and appearing natural in front of the Arbitral Tribunal was underscored. Making references to earlier statements, revisiting key points, and noting questions from the Arbitral Tribunal were highlighted as contributors to a persuasive closing argument. While the use of supporting materials is optional, some Arbitral Tribunals permit both oral and written presentations, but it is advised never to forgo the oral presentation, as the power to empathize and convince is significantly enhanced in verbal delivery.

The panel's speakers concluded by offering tips for mooties going forward. Elisa Legorreta advised being as natural as possible, stressing that a credible case is one narrated genuinely from the heart, likely to resonate with arbitrators long after the hearing concludes. The recommendation is to approach it with authenticity, enjoyment, and a mindset of continuous learning.

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María Eugenia Ferreyra encouraged participants to leverage the moot experience for com munity-building and maximizing learning opportunities, highlighting these events as opportunities for expanding networks and learning from others. Sandro Espinoza acknowledged the emotional intensity of moots, emphasizing the importance of proper rest before competitions, asserting that no amount of preparation will yield optimal results without sufficient rest and support from those around you.

The overarching advice from the panel's speakers and moderator is to savor the experience, extract valuable lessons, always give your best, and strive for continuous improvement. They underscored the importance of not merely viewing it as a competition but as a transformative journey offering unparalleled opportunities for personal and professional growth.

By Tamara Capdevila - Student, Monterry University, Mexico

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#YoungITATalks: South America

Taller de Interrogatorios y Contrainterrogatorios a Expertos

On 2 November 2023 Young ITA South America Co-Chairs Nazly Duarte Gomez (Legal Lead, Graphite), Santiago Lucas Peña (Bomchill), and Maria Camila Rincón (Foley Hoag LLP) of the Latin American Interest Group of the American Society of International Law introduced the #YoungITATalks South America webinar "*Taller de Interrogatorios y Contrainterrogatorios a Expertos*".

During the event, Nicole Duclos (Covington & Burling LLP), José Manuel García Represa (Dechert LLP), and Irma Rivera Ramírez (Brigard Urrutia), with Sol Czerwonko (Debevoise & Plimpton) serving as the moderator discussed the key characteristics and objectives of an examination, as well as recommendations, practical tips, and insights from the panelists' experience that enable the efficient conduct of an expert's examination and cross-examination.

The panel, initiated by Sol Czerwonko, started by exploring Irma Rivera's insights on expert selection. She emphasized the importance of a client's clear understanding of the necessity, type, and number of experts. While the client makes the decision, legal assistance is crucial. Effective communication skills, both verbal and written, are vital for experts to establish an assertive connection with the tribunal, client, and legal team. She also highlighted the need for experts to allocate time for addressing client and legal team requests, emphasizing expertise not only in the subject matter but also in arbitration.

Taking the discussion to a deeper level, Sol Czerwonko asked Irma Rivera about the strategic considerations when collaborating with an expert. She emphasized that experts should be familiar with the established rules for presenting their expertise. The language used should be reasonably technical while maintaining

clarity, particularly in addressing crucial aspects of the dispute.

Shifting the focus, Sol Czerwonko queried **José Manuel García** about the purpose of an expert's presentation during examination. He explained that the objective varies based on different roles. For the presenting party, the goal is to influence the case theory, aligning the expert's purpose with the presenting party's objectives while maintaining the appearance of independence. Effective communication between the expert and the tribunal is crucial for building confidence and balancing information asymmetry. The party cross-examining the expert aims to focus on new evidence, arguments, updates, or responses to other expert reports to formulate pertinent questions later.

Moving forward, Sol Czerwonko also inquired about best practices in direct examination. José Manuel García highlighted the distinction between formal and substantive good practices. In terms of formal practices, he emphasized the importance of a clear presentation, providing a printed report, considering the presentation's background, and keeping it reasonably brief. Substantively, it is crucial to identify agreements and disagreements, demonstrate their relevance to the case theory, and clarify that the expert's role is analytical and technical, not centered on winning the case.

Later, directing the attention to key considerations for preparing expert examinations, Sol Czerwonko questioned **Nicole Duclos** about her insights. Nicole Duclos distilled it into three aspects. First, the need to examine the expert is contingent on whether the expert report has impacted the case theory. Second, understanding the case theory, case facts, the expert report, and the expert is crucial. Third, determining areas of attack involves assessing credibility, qualifications, definition

of issues in dispute, exploration of assumptions, examination of methodology, and scrutiny of the data used to draw conclusions.

Finally, to close the theoretical session, Sol Czerwonko asked Nicole Duclos to highlight the principles of cross-examination. She emphasized that: (i) familiarity with the tribunal is essential, as not every approach is universally applicable, (ii) knowing when to conclude is crucial, (iii) brevity is key—have a specific objective and adhere to it, (iv) clarity is decisive, (v) employ concise and direct questions, (vi) refrain from posing questions without answers in the record, (vii) actively listen to responses, allowing flexibility in questioning, (viii) avoid asking experts to repeat their previous statements, (ix) save closing remarks for the appropriate opportunity.

During the practical session, two distinct examinations were conducted. Felipe Ayala, representing the Claimant, examined Maria Camila Rincón, who played the role of the expert in the first session. In the second examination, Isabella Lorduy, representing the Respondent, questioned Santiago Lucas Peña, who assumed the role of the expert.

In the concluding remarks, the panelists reviewed the examinations conducted during the practical session, offering recommendations. These included: (i) emphasizing that the lawyer should avoid conflicts with the expert, (ii) advocating for assertive communication over aggression, (iii) underscoring the examiner's role in controlling the examination, not the expert, and (iv) highlighting the importance of modulating the voice tone to capture the tribunal's attention.

By José Oswaldo Cubillos Martinez - Centro de Arbitraje y Conciliación de la Cámara de Comercio de Bogotá, josecm_204@hotmail.com

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Associate	Drew & Napier	Singapore	https://www.linkedin.com/feed/update/urn:li:activity:7160183631947177984
Associate / Senior Associate	Drew & Napier	Singapore	https://www.linkedin.com/feed/update/urn:li:activity:7160183042316095488
Foreign Qualified Lawyer	Eldwick Law	London	https://www.linkedin.com/feed/update/urn:li:activity:7156922587149647872
Student Lawyer / Research Assistant	Hogan Lovells	Munich	https://www.linkedin.com/feed/update/urn:li:activity:7162724815500472320
Associate	Hogan Lovells	Munich	https://www.linkedin.com/feed/update/urn:li:activity:7156926770644942848
Stagiaire / Intern	Hogan Lovells	Paris	https://www.linkedin.com/feed/update/urn:li:activity:7162722957365075968
Deputy Counsel	ICC	Paris	https://www.linkedin.com/feed/update/urn:li:activity:7159088571918729216
Associate	Lévy Kaufmann-Kohler	Geneva	https://www.linkedin.com/feed/update/urn:li:activity:7161481761594544128
Stagiaire / Intern (first semester of 2025)	Norton Rose Ful-bright	Paris	https://www.linkedin.com/feed/update/urn:li:activity:7162723962454536192
Associate	Shutts & Bowen LLP	Miami	https://www.linkedin.com/feed/update/urn:li:activity:7159538116733620225
International Law Fellowship Program	United Nations	The Hague	https://www.linkedin.com/feed/update/urn:li:activity:7163461530032787458
Junior Paralegal	White & Case LLP	Paris	https://www.linkedin.com/feed/update/urn:li:activity:7156924536368603136

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.