

# Young ITA Newsletter



## *Highlights of this Issue*

- ⚖️ 2024 Essay Competition Winners
- ⚖️ 60 Second Interview with Julianne Jaquith Programs Co-Chair
- ⚖️ Report on the Young ITA Global Forum
- ⚖️ Mentorship Program Highlights
- ⚖️ Regional Updates

# *Contributing Editors*

## **Editors:**

*Karima Sauma*, DJ Arbitraje  
*Ciara Ros*, Vinson & Elkins LLP  
*Thomas Innes*, Steptoe & Johnson UK LLP  
*Julianne Jaquith*, Quinn Emanuel Urquhart & Sullivan  
*Enrique Jaramillo*, Curtis, Mallet-Prevost, Colt & Mosle  
*Meredith Craven*, White & Case LLP  
*Philip Tan*, White & Case LLP  
*Harriet Foster*, Orrick, Herrington & Sutcliffe  
*Derya Durlu Gürzumar*, University of Neuchâtel  
*Mevelyn Ong*., Norton Rose Fulbright  
*Sylvia Sámano Beristain*, Hogan Lovells  
*Ruxandra Esanu*, Wordstone

## **Associate Editors:**

<i>Alexandra Einfeld</i> , Corrs Chambers Westgarth	<i>Magda Kofluk</i> , Stephenson Harwood
<i>Alice Wang</i> , Pinsent Masons	<i>Michael Fernandez</i> , Rivero Mestre
<i>Anne-Marie Doernenburg</i> , Nishimura & Asahi	<i>Nazly Duarte</i> , Bogoto Chamber of Commerce
<i>Daniel Allman</i> , Norton Rose Fulbright	<i>Robert Bradshaw</i> , Latham & Watkins
<i>Edith Twinamatsiko</i> , JOJOMA Advocates	<i>Rodrigo Barradas Muñiz</i> , Von Wobeser y Sierra, S.C.
<i>Eduardo Lobatón</i> , Hogan Lovells	<i>Ruediger Morback</i> , King & Spalding
<i>Georgios Fasfalis</i> , Linklaters	<i>Santiago Lucas Pena</i> , Bomchil
<i>Guilherme Piccardi</i> , Pinheiro Neto	<i>Shreya Jain</i> , Shardul Amarchand Mangaldas & Co
<i>Hamid Abdulkareem</i> , Three Crowns LLP	<i>Tiago Beckert Isfer</i> , Guandalini, Isfer e Oliveira Franco Advogados
<i>Juan Pomes</i> , Freshfields Bruckhaus Deringer	<i>Thomas Lane</i> , Latham & Watkins
<i>Juhi Gupta</i> , Shardul Amarchand Mangaldas & Co	<i>Željko Loci</i> , Moravčević Vojnović & Partners
<i>Karolina Czarnecka</i> , Queritius	

**Graphic Design:** *Louisa Lindsley*, University of St Andrews



# Contents

⚖️	2024 Essay Competition Winners.....	1
⚖️	60 Second Interview with Julianne Jaquith.....	2
⚖️	Report on the Young ITA Global Forum.....	3
⚖️	Young ITA Mentorship Program Highlights.....	9
⚖️	Reports from #YoungITA Talks.....	11
⚖️	Regional Updates.....	45
⚖️	Job Opportunities.....	64
⚖️	Newsletter Guidelines.....	65
⚖️	Contact Information.....	66

## 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 65 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.



# 2024 ESSAY COMPETITION WINNERS

*Young ITA and the Institute for Transnational Arbitration are pleased to announce the winners for the 2023–2024 Young ITA Writing Competition and Award*

*“New voices in International Arbitration”*

*1<sup>st</sup> place:*

NICOLAS CELY BUSTACARA

PhD student, University of Ottawa

*When Access to Justice Leads to Abuse of Justice: A Legal and Economic Analysis of Third-Party Funding in Investment Arbitration*

*2<sup>nd</sup> place:*

CHRIS LAI

Associate, LK Law, London

*Upholding Arbitral Integrity: A Case for Court-Ordered Anti-Suit Injunctions in Aid of Enforcing Foreign-Seated Arbitration Agreements*

*3<sup>rd</sup> place:*

YATING LIN

PhD candidate, University of Hong Kong

*“China Disequilibrium” in ISDS: An Interplay of China’s Trade-offs and Domestic Institutions to Investment Treaty Policy*

*4<sup>th</sup> place:*

DANIELLE ATTWOOD

Associate, Supreme Court of Victoria

*Rocks and Hard Places: The Predicament of Arbitrators in Investor-State Dispute Settlement in Times of Climate Change*





## 60 Second Interview with Julianne Jaquith

### *Programs Co-Chair*

#### **Why did you become an arbitration lawyer?**

I studied world politics and Spanish in college and always had an interest in international issues. One element that I love about international arbitration is the importance of cultural understanding and context in each dispute. Ultimately, the combination of international issues and cross-cultural understanding, and marshalling a complex factual narrative to tell a story to a Tribunal are my favorite aspects of arbitration.

#### **What top tips would you give to aspiring lawyers?**

Get as much exposure as you can to the law, and do as much as you can to get hands on experience early on. Volunteer for assignments early on, even if it's the first time you've taken on that particular task. Work hard at it, and ask questions. Once you have tried something and really immersed yourself in it, your substantive understanding as well as your understanding of the process will grow.

#### **What are your top three things to do in Houston?**

I'm relatively new to Houston, but I enjoy the restaurants, spending time outside walking/running (in the cooler months!) and spending time with my family and dogs.



#### **If you could learn to do anything, what would it be?**

I've been meaning to get back into tennis and now that I'm putting it in writing, I'm going to do it!

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

I enjoy the intensity of the work, but also the general collegiality of the community. Sometimes you are across the table from someone that you might work with on a future case. It's important to fight for the best result for your client, but also to be pleasant and collegial.

#### **If you could go anywhere in the world, where would it be?**

I've not been to Australia/New Zealand, so that's at the top of my list!



# Young ITA Global Forum

## Report from the Third Edition of the Young ITA Global Forum (2024)

The third edition of the Young ITA Global Forum was held on February 22, 2024. This annual event brings together members of Young ITA from all over the world, who serve as Regional Delegates from their respective regions to discuss and debate current issues related to the practice of international arbitration. The 2024 edition of the Young ITA Global Forum included around 50 Global Delegates hailing from each of Young ITA's regions.

This year's Global Forum began with welcome remarks from Young ITA Programs Co-Chair Thomas Innes (Partner at Steptoe International (UK) LLP), who noted the continuing success of the annual event since its inception in 2022. The Global Forum was held under the Chatham House Rules.

The first session of the forum focused on procedural issues submitted by the Regional Delegates, and was moderated by Chloe Baldwin

(Associate at Steptoe), Sylvia Samano (Associate at Hogan Lovells, and Young ITA Mentorship Co-Chair), and Cameron Sim (International Counsel at Debevoise & Plimpton).

The discussion started with a number of issues that tribunals would typically have to grapple with. The first topic was on how tribunals might deal with asymmetrical document requests (i.e. where one side submits well-crafted document requests while the other side submits poorly-made requests). Some participants noted that this would depend on the tribunal's background, where a tribunal from a civil law background might plead some sympathy to poorly-made requests, whereas one from a common law background would likely take the approach that the onus is on the party seeking documents to plead its case.

Participants then discussed the thorny issue of how tribunals can or should deal with respondents who



## Young ITA Global Forum

constantly seek to delay proceedings. It was observed that tribunals tend to give respondents a number of opportunities for extensions of time, unless the situation is urgent. One delegate suggested asking the tribunal, when giving a repeat extension of time, to warn the respondent that it would be the final extension (and that the next request would be rejected). Participants also discussed possibly including clauses on cost allocation in the Terms of Reference or other preliminary procedural documents.

Another topic was how *res judicata* applied where there has been a previous ruling that the tribunal lacked jurisdiction. Participants discussed whether such a ruling had *res judicata* effect, and whether the courts could step in to decide this question. It was observed that the scope of *res judicata* would also depend on the specific issues decided – for example, a jurisdictional ruling concerning fraud would likely get into the facts of the case, thus

attracting *res judicata* on a wider range of issues.

The discussion continued with participants exchanging their views on procedural tools, starting with summary dispositions. Participants referred to the role of courts (through national legislation) and arbitral institutions (through institutional rules) in summary dismissal proceedings. It was observed that summary dismissal procedures could save time and costs. One participant, for example, shared an experience of arbitrations involving back-to-back contracts, where such procedures were effectively employed. That said, participants also had experiences where going through summary dismissal procedures achieved the opposite result, of adding complexity (and thus time and costs) to the proceedings.

Another procedural tool that was debated was consolidation. Delegates exchanged views on consolidation under the 2021 ICC Arbitration Rules,



## Young ITA Global Forum

and in particular, the extent to which arbitrations across multiple agreements can be consolidated. For example, it was observed that under the new definition, there could be multiple ‘arbitration agreements’ which were the ‘same’, giving rise to the question of what scenarios these could cover. The debate also brought up the perennial issue of how to strike the right balance between efficiency and party autonomy.

“Delegates explored interesting questions on how AI might be regulated, so that stakeholders are clear on the effects of the use of AI.”

On the topic of efficiency, participants also commented on whether awards are excessively long, and if so, how to shorten them while ensuring that they can be validly enforced. It was observed that the answer would depend, on a large

extent, on local laws, and whether they require an exhaustive record of the proceedings. Participants posited that if there were a set of institutional rules that created page limits for awards, it would help mitigate the risk that the award be set aside or not enforced in the future. Delegates also talked about the distinction between investor-state and commercial arbitrations, in that parties would likely be more inclined to agree to shorter awards (and in general, procedures for efficiency reasons) in the context of commercial arbitrations, as compared to investor-state arbitrations.

Looking to the future, the discussion concluded with the use of AI in arbitration. In particular, delegates explored interesting questions on how AI might be regulated, so that stakeholders are clear on the effects of the use of AI. Participants discussed the use of AI to conduct document searches in discovery, and how such searches might be policed





## Young ITA Global Forum

to ensure that they are reasonably extensive. It was observed that litigants may need to explain the custodians and search terms before courts, while tribunals are typically less enthusiastic about going through such procedures.

The second session of the Global Forum was moderated by Ruxandra Esanu (Senior Associate at Wordstone and Young ITA Mentorship Co-Chair), Isuru Devendra (Associate at Latham & Watkins) and Mark Stadnyk (Senior Legal Counsel at thyssenkrup nucera). This session focused on issues regarding substantive law or policy, which had been submitted by Regional Delegates. This year, the substantive issues fell broadly into four overarching categories: (i) independence and impartiality of arbitrators; (ii) corruption; (iii) sanctions and (iv) ESG.

The first topic concerned whether an arbitrator's independence or impartiality is compromised if said arbitrator is repeatedly appointed by

the same law firm in different proceedings. This topic prompted discussions amongst the Regional Delegates on the desirability of repeat appointments in certain industries, such as maritime or insurance, and whether arbitral institutions can do more to 'vet' candidates, such as taking specific note of candidates who are, for example, slow in rendering awards or who receive poor feedback from parties on procedural aspects of proceedings.

The discussion then turned to the topical issue of corruption in arbitration and, specifically, the legal consequences of a finding of corruption in arbitration in light of the recent *Worley International Services v Ecuador* award. Regional Delegates considered whether this award marked a shift towards a global position that serious corruption will bar a claim outright for lack of jurisdiction or admissibility, and subsequently debated the issue of restitution of a



## Young ITA Global Forum

benefit of corruption through an arbitral award. The conversation then moved onto the extent to which the ‘clean hands’ principle, which is typically focused on the claimant’s investment, could extend to the actions of a State itself (whether through specific actions of a public official or through the State obtaining a wider benefit). In wrapping up the discussion on corruption, the question was raised as to what evidence is usually required to demonstrate that a signature on a key document was forged. In response, it was noted that the evidence required will depend on the specific complaint in dispute, such as whether the issue is the date of signature (requiring an ink dating expert) or the identity of the signatory (requiring a graphologist / handwriting expert).

The third substantive issue under consideration was how arbitrators should approach a breach of contract claim where such breach allegedly occurred due to the imposition of

international sanctions. The discussions touched upon the impact of mandatory laws on the effect of sanctions on contracts and potential consequences of sanctions on the enforcement of arbitral awards. Continuing on this topic, the discussion segued into the issue of whether an arbitrator can award any amounts, such as costs, in favour of a sanctioned party and the fact that this is highly jurisdiction specific.

“ Regional Delegates considered the extent to which ESG-related contractual obligations had been encountered in practice, these being a relatively new creature in commercial contracts. ”

Finally, Regional Delegates explored a number of ESG issues. Firstly, Regional Delegates considered the extent to which ESG-related



## Young ITA Global Forum

contractual obligations had been encountered in practice, these being a relatively new creature in commercial contracts. On this topic, the conversation touched on ESG clauses that had been observed in construction contracts (such as for the sustainable sourcing of construction materials) and attempts to regulate domestic carbon markets. Secondly, the question of how ESG-related defences, raised by a State, manifest themselves in international arbitration was deliberated. This discussion mainly focused on the concept of social licences to operate, on which arbitrators to date have not yet propounded a consistent position, with some tribunals considering them relevant to jurisdiction and liability, but others to causation and damages.

The Global Forum was closed with thanks being given to the moderators and all Regional Delegates for their fervent participation. The next Global Forum, being an annual Young ITA

event, is scheduled to be held in Q1 2025, with applications open for attendance at the end of this year.

**By Harriet Foster and Philip Tan,  
Young ITA Internal Communications  
Co-Chairs**

\*\*\*\*\*



## Mentorship Program Highlights

*With over 140 participants from all continents, the YITA Mentorship Program 2023–2024 has affirmed its significance as a vital platform for arbitration practitioners. The invaluable support of mentors and facilitators enables young practitioners to enhance their skills and broaden their professional networks. We invite ITA members to join this effort and contribute to the continued success and growth of our mentorship program.*

Some of the participants share their experience:

The Young ITA mentoring program has been a valuable opportunity to meet people with common goals. The best thing is that we all share the same passion, to create an arbitration community and thus expand the practice of arbitration, national and international, and to be able to dedicate ourselves to what we love.

My group consists of seven people of six different nationalities, including the mentor and facilitator. This contact with such a diverse multicultural group is valuable because it has allowed me to receive perspectives from people with different backgrounds and

education.

I had the opportunity to meet my mentor during a trip and we were able to talk in person about many issues. I appreciate that a lawyer of her international reputation took time out of her busy schedule to speak with her mentee, and I found this to be humbling and a commitment to the program.

“ The mentee experience in the Young ITA program has exceeded my expectations. It has been a space for personal, professional and academic growth. ”

The mentee experience in the Young ITA program has exceeded my expectations. It has been a space for personal, professional and academic growth.

Having an environment favorable to discussion, inclusion and questioning at this point in my career has boosted my profile and brought me closer to my personal goal.

By Juan Pablo Véliz Escobar,  
Guatemala, Associate at Aguilar



# Mentorship Program

Castillo Love

\*\*\*\*\*

Over the years, I have had the privilege to participate in the Young ITA Mentoring Program both as a mentee (2018) and as a group facilitator (2021, 2022, and 2023), making this my third term in the latter role.

The Young ITA Mentoring Program has been a transformative journey for me, both professionally and academically. It has not only expanded my network but also provided me with a platform to connect with like-minded individuals from across the Americas. These connections have blossomed into lasting friendships, enriching my personal and professional life.

One of the most valuable aspects of the program is the practical experience it offers. From discussing regional hot topics to assisting mentees in drafting their first academic article or preparing for their first international arbitration conference, the program equips you with the skills and knowledge needed to excel in the field of arbitration.

“ One of the most valuable aspects of the program is the practical experience it offers. ”

I wholeheartedly recommend that all Young ITA members seize the opportunity and apply for the program. Whether you choose to be a mentee or a group facilitator, I can assure you that the experience will be immensely rewarding, just as it has been for me.

By Julio Olórtegui, Perú, Associate at  
Rodrigo, Elías & Medrano Abogados

\*\*\*\*\*





## #YoungITATalks / Events

### #YoungITATalks: Vienna

#### My First Arbitration – From the Moot to the Real World

On 25 March 2024, #YoungITATalks Vienna held the captivating event, “*My First Arbitration – From the Moot to the Real World*” amidst the bustling rounds of the Vis Moot. The venue, graciously provided by Zeiler Floyd Zadkovich, offered a stunning backdrop of Vienna, attracting a multitude of participants, including “Mooties”, coaches, and seasoned arbitrators. The event, marked by insightful discussions and expert perspectives, heralded a significant discourse on the transition from moot court simulations to actual arbitration practice.

The event commenced with a warm welcome from **Rüdiger Morbach**, Co-Chair of Young ITA Western Europe, and **Ondrej Cech**, Senior Associate at Zeiler Floyd Zadkovich, setting the stage for an enriching dialogue.

The first panel, moderated by **Thomas Herbst**, an esteemed

attorney at Zeiler Floyd Zadkovich, delved into the parallels between the Vis Moot and professional arbitration practice. Esteemed attorneys such as **Ilka Beimel** (Noerr, Düsseldorf), **Emma Iannini** (King & Spalding, New York), and **Tamara Korešová** (Squire Patton Boggs, Prague) shared invaluable insights derived from their diverse experiences across international arbitration landscapes.

“ The panel discussions, interspersed with audience inquiries, provided a compelling narrative of Vis Moot's transformative influence on aspiring arbitration practitioners. ”

The discourse highlighted the intricate similarities and disparities between moot court exercises and real-world arbitration, emphasizing the significance of teamwork, legal research, and oral advocacy. Notably,



## #YoungITATalks / Events

while the Vis Moot provides a solid foundation, it can be distinguished from actual arbitral proceedings. For instance, the moot competition lacks client interaction, an evidence phase (including document production and cross-examination), and provides for limited procedural flexibility.

A focal point of discussion revolved around the frequency of CISG's application in real arbitrations, with varying experiences recounted by panelists, further illustrating the practical implications of moot court participation on professional trajectories. Despite minor discrepancies, the consensus prevailed on the substantial value Vis Moot adds to participants' careers, fostering a lifelong commitment to the field.

The subsequent panel, moderated by **Marleen Krüger** explored how Vis Moot serves as a gateway to careers in international arbitration. She herself was also a participant of the Vis Moot, who has since enjoyed a successful career.

Indeed, Marleen is now a partner at the world-renowned law firm Wilmer Hale in London.

Joined by panelists **Dimitra Tsakiri** (ICC, Paris), **Ondrej Cech** (Zeiler Floyd Zadkovich, Vienna), and **Piotr Wilinski** (Linklaters, Amsterdam), the discussion delved into how Vis Moot can pave the way for career opportunities in arbitration. The panelists, each exemplifying a unique career trajectory, shared personal anecdotes elucidating the transformative impact of Vis Moot participation on their professional journeys.

**Piotr Wilinski's** academic journey alongside his professional endeavors exemplified the symbiotic relationship between theory and practice, reinforcing the importance of scholarly engagement in navigating complex cases. He participated in the Vis Moot in 2007–2008, the event that launched him on the path of international arbitration. He also obtained his PhD in this field.



## #YoungITATalks / Events

The academic line continues to play a major role in his life after getting his PhD, teaching at several universities, regularly publishing and lecturing and being actively involved in several international arbitration organisations.

**Dimitra Tsakiri's** multijurisdictional trajectory underscored the transformative impact of Vis Moot on her career, complemented by academic pursuits enriching her expertise. She participated in the Vis Moot in 2015. She has also felt it important to develop her academic skills alongside her practical work. This is how she obtained her LL.M. degree at CIDS, which opened further opportunities for her accompanied by her excellent language skills in the field of international arbitration.

**Ondrej Cech's** transcontinental pursuit of legal education epitomized a holistic approach to professional development, accentuating the significance of diverse perspectives in arbitration practice. He participated in the Vis Moot in 2012. Even before graduating, he had already shown

a keen interest in the field of international arbitration and worked as an intern at the ICC International Court of Arbitration. He obtained his LL.M. degree from Columbia Law School in New York.

The panel discussions, interspersed with audience inquiries, provided a compelling narrative of Vis Moot's transformative influence on aspiring arbitration practitioners.

As participants savored delectable refreshments, the event culminated in a collective realization of Vis Moot's profound implications for shaping successful careers in international arbitration.

### Key Takeaways:

1. Vis Moot offers a comprehensive immersion into the dynamic realm of international arbitration, fostering invaluable networking opportunities and cross-border collaborations.
2. The experiential learning afforded by Vis Moot equips participants with practical skills indispensable in real arbitration



## #YoungITATalks / Events

settings.

3. Enhanced by academic pursuits and linguistic proficiency, Vis Moot lays a robust foundation for aspiring arbitration practitioners to embark on diverse career trajectories.
4. The synergy between academic engagement and practical experience is pivotal in navigating the complexities of international arbitration, facilitating enduring success in this evolving field.

In conclusion, "My First Arbitration – From the Moot to the Real World" encapsulated the transformative journey of "Mooties" into seasoned arbitration professionals, epitomizing the enduring legacy of Vis Moot in shaping the future of international arbitration.

By Tímea Csajági, Wolf Theiss  
Hungary, Budapest

\*\*\*\*\*



## #YoungITATalks / Events

### #YoungITATalks: Washington D.C.

The #YoungITATalks series continued its successful run with the panel “Mastering Cross-Examination: Strategies for Effective Hearings” held on 26 February 2024, in Washington, D.C. The event was presented by Young ITA and the Georgetown International Arbitration Society (GIAS) and kindly sponsored by Freshfields Bruckhaus Deringer as part of the 12<sup>th</sup> Annual GIAS International Arbitration Month.

The distinguished guest speakers were **Juliya Arbisman**, Partner at Reed Smith, **Deborah Baum**, Partner at Pillsbury, **Kenneth Figueroa**, Partner and Co-Chair of the Latin America Practice at Foley Hoag, and **Ezequiel Vetulli**, Senior Associate at Freshfields Bruckhaus Deringer. The panel was moderated by **Nazly Duarte**, Young ITA Co-Chair for South America.

*From left to right: Deborah Baum, Juliya Arbisman, Nazly Duarte, Kenneth Figueroa, and Ezequiel Vetulli.*



Juliya Arbisman kicked off the panel by stating the number one rule of cross-examination: “know your case”, with which all panelists strongly agreed. Ms. Arbisman helpfully enumerated the aspects of a case that become even more relevant at a cross-examination hearing:

- Knowing how much time needs to be devoted to each factual and legal issue.
- Knowing the logistics of the hearing and being mindful of the schedule established by the arbitral tribunal.





## #YoungITATalks / Events

- Knowing the facilities and services (such as interpretation and electronic bundling) that will be used during the hearing.
- Knowing the law of the seat of the arbitration, which governs matters pertaining to the production of evidence and coaching and sequestration of witnesses, for instance.

Ezequiel Vetulli complemented Ms. Arbisman by stressing the importance of knowing the witness being cross-examined. He encouraged practitioners to consider the extent of the witness's knowledge of facts and to ask themselves a few strategic questions:

- What is this witness's role in the case?
- How far do you want to go in your cross-examination?
- Should you limit the cross-examination to the contents of the witness statement?

Mr. Vetulli also offered advice on the use of technology during cross-examination, as it can help the attorney show relevant documents to the witness and draw the tribunal's attention to specific points. For instance, once the witness has been questioned and given an answer, the attorney can use technology to highlight portions of a document that directly contradict the witness to impeach the testimony and undermine the witness's credibility.

Deborah Baum offered refreshing takes on cross-examination. First, she pushed back on the notion of following a strict script, because the attorney conducting cross-examination must closely watch and listen to the witness and adjust her questioning accordingly. Second, she suggested that the rule that an attorney must always know the answer when posing a question to a witness must be broken sometimes, as there are situations where any answer given by the witness can be helpful.



## #YoungITATalks / Events

Moreover, Ms. Baum shared insights from her court practice, commenting on a case where she cross-examined a notoriously hostile witness. Her success in that examination led her to conclude that an attorney can “get a lot more by being polite in any situation, either in court or in arbitration.”



*Moderator and Young ITA Co-Chair for South America Nazly Duarte asking the panelists about how junior associates can stand out at hearings.*

Kenneth Figueroa agreed with Ms. Baum when it comes to not being too attached to a script. Although having a script can help an attorney stay in control of the examination, it is also important to be flexible and

consider the tribunal’s reactions. As a practical matter, Mr. Figueroa urged practitioners to consider the benefits of closed-ended questions that result in “yes or no” answers which will be reflected on the records. This type of questioning can be more successful than striving for a “gotcha” moment.

“ Ms. Arbisman and Ms. Baum agreed that junior associates are the ones who know the case best, so they should be ready to think critically about it, offer their views, and demonstrate a deep knowledge of the case files on the spot. ”

Turning to the cross-examination of experts, Mr. Figueroa cautioned attorneys to keep in mind that experts are more knowledgeable when it comes to technical issues and that they are more likely than fact witnesses to be used to cross-examination techniques.



## #YoungITATalks / Events



Nevertheless, he encouraged attorneys to address the “meat” of technical reports instead of focusing on undermining an expert’s credentials, an approach he has found arbitrators to dislike.

*Georgetown Law students conducting a mock cross-examination.*

To conclude the panel, Nazly Duarte asked how junior associates can stand out at cross-examination hearings. Ms. Arbisman and Ms. Baum agreed that junior associates are the ones who know the case best, so they should be ready to think critically about it, offer their views, and demonstrate a deep knowledge of the case files on the spot.

Mr. Vetulli agreed and added that associates play an important role in researching the witness’s profile and preparing dynamic scripts that consider the witness’s potential answers.

A short mock cross-examination by Georgetown Law students followed. The panelists offered insightful feedback on their performance and this brief exercise helped the audience spot common mistakes in cross-examinations. All in all, attendants had the unique opportunity to hear practical advice from top practitioners in the field of international arbitration.

**By Maria Eduarda Carames Vieira,  
Georgetown University, Washington,  
D.C.**

\*\*\*\*\*



## #YoungITATalks / Events

### #YoungITATalks: Paris

**Advocacy Panel – Ms. Spinelli (le 16), Noah Rubins KC (Freshfields) and Philippa Charles (Twenty Essex), moderated by Ciara Ros (Vinson & Elkins RLLP)**

Julie Spinelli (le 16), Noah Rubins KC (Freshfields) and Philippa Charles (Twenty Essex) formed a lively panel moderated by Ciara Ros (Vinson & Elkins RLLP), to share their tips on the art of advocacy. In an insightful discussion, the panel shared their dos and don'ts on the art of advocacy from their own experiences.

The consensus amongst the panel was that, to get started as an effective advocate, one must first become an excellent second chair during a hearing. This requires you to know the case inside out, actively listening and gauging the Tribunal, the witness/expert and the other side's reactions and having an exhaustive knowledge of the documents. Mr. Rubins KC remarked that one way to grab

an advocacy opportunity is to become an "expert" on a more obscure or difficult part of a case. He noted that early in his career, he focused on the quantum issues, earning him the nickname of "quantum boy". Ms. Charles reminded participants that it is not always apparent to everyone that one is ready to take the risk and do the advocacy, so it is important to put yourself out there and demand the opportunities.

In terms of cross-examination preparation, the panel advised the participants to start with the bigger picture. Who is this expert/witness, how does their evidence fit within the case, what is the purpose of their evidence, what arguments will be made during the openings? This will allow the drafter to determine which points should be made during the cross-examination. Once you have determined all the points to make, it is about mapping the evidence, from document to



## #YoungITATalks / Events

document (or other type of evidence). Ms. Charles reminded the participants of the important point that the formatting of the questions will depend on a number of factors, such as whether the arbitrators are civil/common law lawyers and whether the witness/expert will require simultaneous interpretation.

The panel briefly examined the differences between having a civil law versus common law arbitral tribunal. Ms. Spinelli shared that arbitrators with a civil law background often give more weight to the documentary evidence and may assume witness evidence cannot be trusted. Arbitrators with a civil law background may also be less patient with carefully crafted lines of questioning and less tolerant of any aggressive cross-examination undertones.

Going back a few procedural steps, the panel considered the question of witness evidence, and particularly how much of it should be introduced. Mr. Rubins KC was quick to answer, “as little as

possible”, with the remainder of the panel largely agreeing.

In terms of the differences between cross-examining witnesses of fact and experts, the panel explained that the cross-examination can be more aggressive with an expert, as they should be aware of the consequences of misrepresenting evidence to the tribunal. For that same reason, tribunals are less protective of experts.



It is possible to know the evidence of a fact witness better than the witness him/herself; however, that is not possible with experts. For experts, Mr. Rubins KC explained that it is about focusing on selected pieces of information and diving into the psychological aspect, such as determining what drives that





## #YoungITATalks / Events

particular expert, his ego or his emotions.

Finally, the panel emphasised the importance of preparing the witnesses, by presenting them with all the documents but also making sure that they spend the time reviewing and reading the relevant documents. Ms. Spinelli noted that it had helped her witnesses to attend a mock cross-examination to understand the case and how their evidence fit within the wider matrix.

**By Elena Guillet, Vinson & Elkins LLP**

\*\*\*\*\*



## #YoungITATalks / Events

### #YoungITATalks: Paris

#### Ask Me Anything: with Roland Ziadé and Sarah Vasani

This year during Paris Arbitration Week Young ITA held an insightful session on 20 March 2024 at Linklaters, where esteemed arbitration professionals – Sarah Vasani and Roland Ziadé – engaged in an informal and open dialogue with young practitioners eager to develop their careers in the field.



The event was moderated by Karolina Czarnecka, Ruediger Morbach, and Georgios Fasfalis who fostered a candid conversation. The moderators encouraged attendees to delve into various aspects of international arbitration and career progression in the legal profession.

Roland Ziadé, Partner at Linklaters and Global Co-Head of International Arbitration, shared his extensive experience, having acted as counsel and arbitrator in numerous international arbitration cases across different jurisdictions. Sarah Vasani, Partner at CMS, Co-Head of International Arbitration contributed her expertise, specializing in international commercial arbitration and investor-state disputes, offering insights from her work across different jurisdictions.

The conference was characterized by its interactive nature, transitioning from a traditional speech format to a dynamic conversation driven by audience questions. Moderators skilfully navigated the discussion, inspiring insightful inquiries and fostering engaging discourse.

Attendees raised diverse topics, including work-life balance, mental health management, and career advancement strategies, and asked for observations on the arbitration



## #YoungITATalks / Events

community's evolution. The speakers offered practical insights and personal anecdotes, enriching the

“Balancing professional commitments with personal life emerged as a central theme, with strategies such as effective scheduling, prioritization, and learning to say 'no' emphasized.”

conversation with their unique perspectives.

Balancing professional commitments with personal life emerged as a central theme, with strategies such as effective scheduling, prioritization, and learning to say 'no' emphasized. Sarah Vasani noted “This is a marathon not a sprint”, and



highlighted the significance of enjoying the career journey and cherishing moments of progress, rather than solely focusing on rapid career advancement at the expense of personal well-being.

A light-hearted comparison between working cultures in Paris and London elicited laughter, while also touching on serious issues such as mental health awareness and support within legal organizations. The speakers emphasized the need to destigmatize mental health discussions and foster a supportive work environment.

Career development tips ranged from acquiring diverse expertise to building networks and seeking mentorship opportunities. The transition from counsel to arbitrator

**YOUNG ITA  
ASK ME ANYTHING!**

with:  
**SARAH VASANI**  
**ROLAND ZIADÉ**

**Linklaters**  
**PwC**  
**YOUNG ITA**

MODERATED BY:  
KAROLINA CZAMBRICKA  
RUEDEGER MORRISCH  
GEORGIOS FASFAUS

**20 MARCH 2024**  
12:00 - 14:00 CET  
Linklaters LLP, 25 rue de Marignan, 75008 Paris



## #YoungITATalks / Events

was explored, highlighting the value of first-hand experience in understanding case dynamics as well as cost considerations.

A particularly notable recommendation emerged regarding networking within the arbitration community. While networking is crucial for career advancement, the speakers emphasized the quality of connections over quantity. The speakers' recommendation underlined the importance of networking with peers of similar age and experience level. Building a network within one's age group fosters genuine connections and mutual support.

By engaging with individuals who are at similar career stages, practitioners can exchange valuable insights, tips, and opportunities tailored to their respective needs and challenges. This peer-to-peer networking approach facilitates authentic relationships that endure beyond fleeting interactions at conferences or events.

The speakers highlighted the significance of cultivating a network that evolves alongside one's career journey. Unlike sporadic encounters with senior professionals, a network of peers offers sustained support throughout one's professional trajectory. From sharing job opportunities to providing support during challenging times, these connections become invaluable assets that accompany individuals throughout their entire careers.



As young professionals navigate the complexities of the legal landscape, having a reliable network of peers to lean on can be immensely reassuring. Whether seeking advice on case strategies or navigating career transitions, the collective wisdom of a peer network becomes an invaluable resource.



## #YoungITATalks / Events

By heeding this recommendation to network within their own age cohort, arbitration practitioners can forge meaningful connections that transcend mere professional associations. These relationships evolve into a trusted support system, enabling individuals to navigate the intricacies of their careers with confidence and resilience. As young professionals embark on their arbitration journeys, nurturing these peer connections promises long-term benefits for their professional development and personal growth.

As the session drew to a close, speakers reflected on the evolution of the arbitration community, noting positive trends such as increased

diversity and opportunities for the new generation. However, challenges such as declining public support for investor-state dispute settlement (ISDS) and the energy transition's impact on arbitration were acknowledged.

In conclusion, the Young ITA event provided valuable insights into the multifaceted world of international arbitration and legal careers. Beyond professional advice, the event emphasized the importance of holistic well-being and fostering a supportive community within the legal profession.





## #YoungITATalks / Events

As attendees departed with newfound knowledge and inspiration, the conference served as a testament to the collaborative spirit and continuous learning ethos of the arbitration community.

**By Paula Eiben-Działoszyńska**  
(France, Paris, Sciences Po Law School, LLM Candidate in Transnational Arbitration and Dispute Settlement)

\*\*\*\*\*



## #YoungITATalks / Events

### Young ITA Roundtable at the 2nd Annual Conference on International Arbitration in the Mining Sector

On 6 March 2024, the 2nd Annual Conference on International Arbitration in the Mining Sector kicked off with the Young ITA Roundtable. The event began with a welcome by current Young ITA Vice Chair, Ciara Ros (Vinson & Elkins RLLP).

The first panel, “A (Mock) Case Analysis – Strategies for Key Decision Points in a Mining Arbitration,” was moderated by Robert Reyes Landicho (Vinson & Elkins LLP), with Alexis Foucard (Clifford Chance LLP) and Rainbow Willard (Willard Arbitration LLC) as panelists. The panel walked through a mining arbitration fact pattern, stopping at key decision points and asking the audience to vote on what they would do before sharing their own thoughts.

The panel began by showing a graph illustrating that the minerals required for the renewable energy transition are very geographically concentrated. Mr. Foucard was of

the view that this will increase the number of mining arbitrations, while Ms. Willard pointed out that the sites of dispute may change as different countries ramp up extraction.

Mr. Landicho then introduced the fact pattern, which involved a US mining company and a local subsidiary investing in the fictional country of Copperania. In the scenario, the claimants owned the right to three mining concessions which were then terminated.

The first issue was whether to bring an ICSID or ICC claim, or both. Most of the audience voted for both, which Ms. Willard agreed was preferable if the client has the money and staying power. Factors to consider include the arbitrator, the ability to settle (e.g., an ICSID arbitration may exert more pressure on the State), and the ability to enforce an award.

Second, the speakers discussed bifurcation. The panelists agreed with



## #YoungITATalks / Events

the audience that the fictional ICC tribunal should not order bifurcation, noting that issues like corruption are best dealt with during the merits phase. They also opined that it is generally best not to bifurcate quantum as it can be intertwined with the merits, especially in a complex mining arbitration.

The speakers then discussed whether to use an untested expert. Ms. Willard noted that as a US lawyer, it is not a problem to work with a new expert before they testify, and it may even be refreshing for a tribunal to hear from someone who is not a professional expert. Mr. Foucard shared that he tests new experts through interviews, and that this question may turn on what the expert is speaking to. For example, an untested quantum expert may be riskier than an expert speaking to a narrower issue.

The final topic was late disclosure of third-party funding. Mr. Foucard noted that this issue is now largely settled as there are ICC rules requiring disclosure.

After a coffee break, Emily Sherkey (Torys LLP) moderated a discussion with Chris Milburn (Secretariat Advisors) and Carla Chavich (Compass Lexecon) entitled “The Quantum Quandary: Quantifying Damages In Mining Arbitration.”

The focus of the panel was on the role of experts in international arbitrations and featured Mr. Milburn and Ms. Chavich’s thoughts and stories on how experts can best work with counsel and clients.

On the first topic – the expert’s instructions – the panelists agreed that it can cause problems when both sides’ experts receive completely different instructions from counsel. They also noted the risk when a tribunal defines a scenario that was not put forward by the parties, but fails to ask for further expert evidence.

Ms. Sherkey then asked the panel how they manage their independence when dealing with counsel and client expectations. Mr. Milburn replied that both experts and counsel have a role



## #YoungITATalks / Events

to play in managing client expectations: counsel should explain the process, including how the tribunal is likely to view the issues, while the expert should be able to explain his or her models and numbers. Ms. Chavich agreed that experts can and should explain their assumptions and valuations, describing it as educating the client on the fact it is important to put forward a defensible case.

The speakers then had some concrete tips for how counsel can best help experts throughout the process, including:

- Be organized and responsive.
- Send the expert one copy of drafts with everyone's comments included.

Coordinate the various experts and ensure there are no inconsistencies. On the substantive topics raised by Ms. Sherkey, the experts agreed on the value of the DCF valuation method, especially given its use in the real-world and the ability to tailor it to a specific project. Ms.

Chavich said she hoped tribunals would overcome their reticence in relying on this method for pre-operational projects and noted that it is the expert's role to identify and value the risks in a project.

Finally, in response to a question from the audience, the panelists agreed that hot-tubbing (when experts from both sides give concurrent evidence) can be useful and effective, especially where the tribunal has key issues on which it seeks clarity.



**By Natasha Williams**

\*\*\*\*\*



## #YoungITATalks / Events

### #YoungITA Talk – Middle East Webinar

On 21 February 2024, Young ITA hosted a #YoungITATalks webinar titled “Excellence in Ethics: Arbitrator Compliance in MENA’s Arbitration.” We heard from a panel of speakers, including Mrs. **Fatima Balfaqeeh**, Mr. **Ahmed Ouerfelli**, and Dr. **Mahmood Hussain**, with Mr. **Ibrahim Ati** as the moderator of the panel.

Mrs. Fatima Balfaqeeh spoke about the new amended law in the United Arab Emirates, UAE Federal Decree Law 15/2023, and the changes that this new law brings regarding arbitrators’ relationships with the parties and compliance with the new rules regarding conflicts.

The law was issued on 4 September 2023 to amend the UAE Federal Arbitration Law.

Article 10 of the UAE law previously did not take a position on an arbitrator having a prior relationship with a party to the arbitration. Previously, the UAE law simply required that the arbitrator be a

physical person who was not a minor, incapacitated, bankrupt, convicted of a felony or misdemeanor, or a member of the Board of Trustees of the Arbitration Institution administering the case.

Now, Article 10 also prohibits the appointment of an arbitrator with a direct relationship to any of the parties to the arbitration that could prejudice the arbitrator’s impartiality. On the other hand, Article 10 now allows a member of the Board of Trustees of the Arbitration Institution administering the case to act as arbitrator so long as they are not acting as the Chair, the parties acknowledge in writing the nature of the arbitrator’s connection with the institution and confirm there is no objection, and a governance system is implemented to avoid the arbitrator’s exploitation of their connection.

Mr. Ibrahim Ati, acting as moderator, then asked Mr. Ahmed Ouerfelli about arbitrator practices in North Africa. As Mr. Ahmed Ouerfelli explained, the



## #YoungITATalks / Events

laws in North Africa are much less specific. There are many new arbitral institutions being established in the region, however the rules are vaguer.

On the issue of whether a member of the board of an arbitral institution could be appointed as an arbitrator, there are many ambiguous situations. Fortunately, courts have made clear that an arbitrator's duty to disclose is a very key obligation, and the sanction for failure to disclose results is the annulment of the award. However, clarity is needed around the relationships permitted between arbitrator and counsel.

Specifically, clarity is needed as to what it means, in the ICC and other institutional rules, that an arbitrator must disclose "any facts."

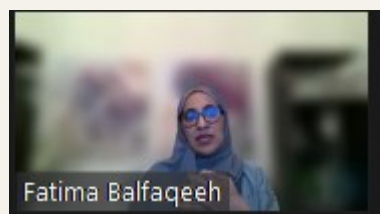
Finally, Mr. Ibrahim Ati asked Dr. Mahmood Hussain about the

UAE's current arbitration model analysis and what his personal vision is for optimal arbitrator compliance standards.

Dr. Mahmood Hussain pointed out that the Middle East is extremely diverse, which can present difficulties. Specifically, in Dubai alone, there is civil law and sharia law, as well as the Dubai International Financial Centre, which is based on common law.

When we consider the "code of conduct" for arbitrators, Dr. Mahmood Hussain noted, we always talk about an arbitrator's duty to disclose. However, when we look across all arbitral institutions, the code of conduct goes far beyond this.

Dr. Mahmood Hussain recalled issues he has experienced and has heard of with arbitrators failing to respond or





## #YoungITATalks / Events

communicate with counsel or the co-arbitrators.

Further, there may be issues where co-arbitrators are combative with one another or, generally engage in behavior that is not ideal or appropriate for an arbitration. These, along with a host of other issues, should be considered and addressed in relation to an arbitrator's code of conduct.

**By Kylie P. Terry, Vinson & Elkins LLP**

\*\*\*\*\*



## #YoungITATalks / Events

### #YoungITATalks: Energy transitions in MENA

#### Navigating Dynamics and Arbitration in the Region amidst Global Sustainability Goals

On 29 February 2024, the highly anticipated YoungITATalks webinar on “Energy Transitions in MENA: Navigating Dynamics and Arbitration in the Region amidst Global Sustainability Goals” brought together a distinguished panel to dissect the intricacies of arbitration during the energy transition.

The event featured esteemed experts such as Prof. **Mohamed S. Abdel Wahab** (Zulficar & Partners Law Firm, Cairo, Egypt), **Jessica Beess und Chrostin** (King & Spalding New York), **Jalal El Ahdab** (Bird & Bird Paris) and **Chérine Ftouki** (Independent Consultant, London).

The distinguished panel brought a wealth of experience and expertise to unravel the complexities of energy transitions in the MENA region, discussing trends, causes of disputes, and potential avenues

for resolution. The discussion was poised to delve into the intricate dynamics of the MENA region, global sustainability goals, and the crucial role of arbitration in this evolving landscape.

#### Introductory keynote about trends and causes of energy disputes:

The event commenced with Dr. Abdel Wahab's comprehensive analysis of the causes of energy disputes in the MENA region, emphasizing issues such as failures in energy plant design and construction, delays in fast-track projects, cash flow and mobilization challenges, and the bureaucratic hurdles in licensing processes. Regional conflicts within and beyond MENA, coupled with the aftermath of events like the Arab Spring, have further compounded these energy-related complexities.

Notably, the finite reserves of fossil fuels, ranging from oil and natural gas to coal and phosphorus (with projections of 45–180 years),



## #YoungITATalks / Events

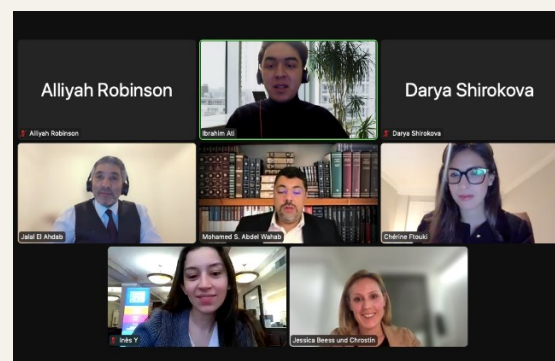
underscore the pressing need for a transition to renewable energy sources.

Building on these insights, the region is actively responding to the imperative for renewable energy. Ambitious projects, including Qatar's Al Kharsaah solar panel project, Jordan's aim to generate 50% of electricity from renewables by 2030, Kuwait's proposed 5GW solar power complex, Saudi Arabia's collaboration with Apple for a substantial solar power plant, and the UAE's visionary plan for the world's largest single-site solar park, all signify a concerted shift towards sustainable alternatives.

Nevertheless, the transition to renewables is not without its challenges. Dr. Abdel Wahab anticipates a new wave of energy disputes, particularly centered around construction, operations, and supply and demand for renewable sources. The interdisciplinary nature of renewable energy projects, incorporating technologies like smart grids and energy storage, necessitates careful management

and coordination, potentially giving rise to disputes. These capital-intensive projects, spanning disciplines like construction and project finance, are reflected in the MENA region accounting for 10–12% of worldwide disputes, particularly in fossil fuel arbitrations.

As the MENA region strides towards a cleaner and more diversified energy landscape, addressing these potential disputes becomes paramount. Effective governance, transparent contract management, and international collaboration will be key in navigating the complexities associated with large-scale renewable energy projects. In doing so, the region can foster a successful and sustainable transition to a future powered by renewable sources.



## #YoungITATalks / Events

### Opportunities for foreign investors in the MENA's renewables market

Next, Ms. Jessica Beess und Chrostin led the webinar participants in a dynamic exploration of MENA's renewable energy frontiers. She described a realm where sunlight holds the key – a region contributing a staggering quarter of the world's solar energy.

Ms. Beess und Chrostin guided participants through historical European arbitration cases and into the jurisdictional twists and turns of the MENA region. Participants learned how jurisdictional differences within MENA, like arbitration laws varying between onshore UAE federal law and offshore DIFC/ADGM rules, impact the selection of dispute seats. Ms. Beess und Chrostin's call for exhaustive research on the jurisdictional difference within the MENA region was key to unlocking hidden treasures within the region.

In particular, Saudi Arabia's arbitration framework illustrated perfectly the type of in-depth legal research recommended when drafting clauses or considering dispute options in the region. The panelists outlined comprehensive arbitration rules and requirements specific to Saudi Arabia. Arbitration stands as a viable option for dispute resolution among private entities operating in the Kingdom of Saudi Arabia (KSA).

However, it's crucial to highlight that government entities within KSA are obligated to secure prior approval from the Ministry of Finance before incorporating arbitration clauses into their contracts. Agreements with the Public Investment Fund were noted to have their own particularities, including a hierarchy of preferred foreign laws with the law of England and Wales topping the list.



## #YoungITATalks / Events

### Environmental aspects

Mr. Jalal El Ahdab provided a wealth of insightful information and perspectives on the important topic of energy, environmental and climate change disputes in the Middle East region. He began by outlining that climate change litigation is on the rise globally, with over 2000 cases analyzed in a recent report from the past year alone.

Contrary to assumptions, over 50% of these cases concluded with outcomes favorable to supporting climate action. When considering global sustainability goals as part of the Paris Agreement, questions arise around how to properly define and value energy assets as the transition to renewable sources progresses.

The speaker's experience drafting early arbitration agreements for complex wind farm projects, involving numerous stakeholders like investors, governments and technology owners, demonstrated the longstanding complexity around facilitating dispute resolution in

this evolving field. Procedurally, he noted arbitration itself can pose new challenges from an environmental standpoint, like the energy intensiveness of extensive document usage and travel requirements historically.

Even utilizing technological solutions like virtual hearings and artificial intelligence carry uncertainties around their own carbon footprint if adopted widely. Appointing expert arbitrators knowledgeable on climate issues also requires balancing policy interests with concerns around potential bias.

Mr. Jalal El Ahdab closed by highlighting a case where a State is challenging an energy arbitration award through national courts, raising issues of competition and State aid as the market transitions away from oil and gas.



## #YoungITATalks / Events

### Key drivers and challenges

Finally, Ms. Chérine Ftouki highlighted that the ongoing energy transitions across the Middle East and North Africa region are driven by both the impacts of climate change as well as economic considerations. Climate vulnerability – such as desertification and water stress – according to the IPCC, are jeopardizing stability. This represents a major driver alongside protecting hydrocarbon exports and creating new revenue streams.

Many North African countries such as Morocco and Egypt have significant solar and wind energy potential. However renewables currently only make up around 6–7% of electricity generation, with hydropower concentrated in countries like Egypt, Sudan and Morocco accounting for approximately 7%. Commitments under the Paris Agreement through NDCs submitted by most MENA states are intensifying renewable targets with Morocco standing out for recent large wind and solar additions. Sudan also plans to use traditional bioengineering.

Saudi Arabia and the UAE are emerging as leaders in renewable energy deployment, with the UAE achieving 7% renewable electricity share by 2020 surpassing Gulf neighbors and Saudi Arabia targeting 30% electricity from renewables by 2030 through its multi-tiered approach.

While energy transitions are clearly underway across the region, policies and incentives still need strengthening to fully decarbonize energy systems given limited comprehensive policies currently supporting wider renewable use beyond power generation. Further scaling of initiatives, pilots and programs across sectors can help countries progress on commitments and address climate impacts jeopardizing regional stability.

### Conclusion

In conclusion, the panel discussion highlighted the complex causes of energy disputes in the MENA region and emphasized the urgent need to transition to renewable energy





## #YoungITATalks / Events

sources due to finite fossil fuel reserves. The active response in the form of ambitious renewable projects underscores a positive shift. However, challenges in dispute resolution mechanisms, jurisdictional differences, and the environmental impact of renewable transitions call for careful consideration. As the region strives towards a cleaner energy landscape, effective governance and international collaboration are pivotal for ensuring a successful and sustainable transition.

**By Ines Ayadi, LL.M Candidate at  
Cardozo School of Law, New York,  
USA**

\*\*\*\*\*



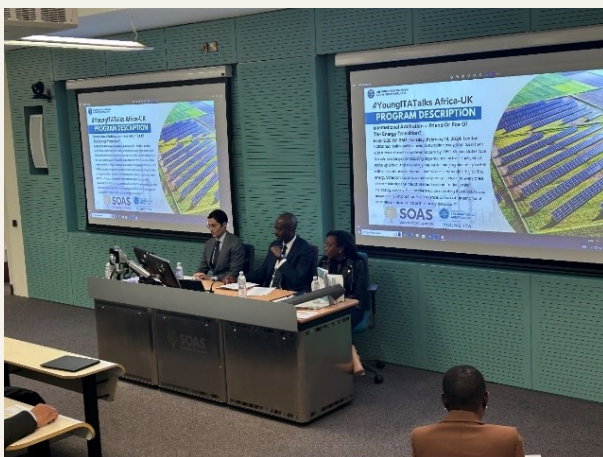
# #YoungITATalks / Events

## #YoungITATalks: London

### International Arbitration – Friend or Foe of the Energy Transition

On 13 February 2024, Young ITA Africa and UK hosted a debate which considered whether international arbitration was a friend or foe of the energy transition.

In the first session, moderated by Young ITA Africa Co-Chair, **Hamid Abdulkareem**, the speakers debated whether treaty protections for investors stand in the way of the energy transition.



Arguing for the motion, **Victoria Nalule** explained how two common clauses in investment treaties – stabilisation clauses and sunset clauses – prevent States from

taking steps to address the climate crisis in the short and long term. She explained that some stabilisation clauses exempt existing foreign investors from the terms of any new regulations, whilst sunset clauses maintain treaty protections for investors for a certain period of time, even after a treaty is terminated. Ms. Nalule also observed how recent cases have contributed to the perception that the ISDS system favours foreign investors in disputes against countries in the global south, and queried whether countries really have the appetite to transition to a low carbon economy.

**Farouk El-Hosseney**, arguing against the motion, began by citing a recent report in which the International Renewable Energy Agency stated that cumulative investments needed had to reach US\$44 trillion by 2030 if the world is to stay on the 1.5°C pathway. That is beyond the means of any one State or group of local investors, and therefore cross border investment is required. In order to create an



## #YoungITATalks / Events

auspicious environment for investment and attract foreign investors, States must be seen to comply with their treaty obligations which seek to uphold the principles of fairness, equity and a respect for the rule of law. Mr. El-Hosseny argued that this is how to facilitate the levels of sustainable investment that are required to drive the energy transition.



In the second session, moderated by Alexandre Genest, the speakers debated whether the ISDS system needs a total overhaul or only light reform.

Arguing for the motion, Kamal Shah gave an overview of the ISDS system and some key statistics around the energy transition. Mr. Shah laid out some of the frustrations with

the current system, including perceptions of bias against developing countries, its susceptibility to abuse and fraud (citing P&ID as a recent example) and inflated claims. He explained why these issues have led several countries to take steps to exempt certain industries (particularly those relating to natural resources) from resolution in the ISDS system or withdraw from investment treaties altogether. Notwithstanding the above, Mr. Shah cautioned against ‘throwing the baby out with the bathwater’ and argued that there are solutions to each of those problems, such as educating arbitrators on how to identify fraud.

Mr Shah also stressed to State parties the importance of instructing/nominating experienced counsel/arbitrators and ensuring that cases are managed effectively. Mr. Shah further questioned whether alternative proposals, such as the establishment of a multilateral investment court, would really be an improvement on the current system,



## #YoungITATalks / Events

considering the many unresolved questions surrounding those proposals.

“ Ms. Tarawali argued that minor reforms will not be sufficient to remedy ISDS’ perception issues, and the reforms that have already taken place have not gone far enough. ”

Arguing against the motion, Naomi Tarawali cited a lecture by Alexis Mourre in which he stated that the arbitration community has lost the battle of public opinion and to a large extent, the battle of legitimacy of the ISDS system.

Some of the key issues highlighted were the duration of arbitration proceedings, the asymmetrical nature of the system and issues with transparency. Ms. Tarawali argued that minor reforms will not be sufficient to remedy ISDS’ perception issues, and the reforms that have already taken place have not gone

far enough. She continued that local communities in developing countries which often feel the worst impacts of climate change, are also the people who tend to be sceptical of the ISDS system. In order to convince them of the utility of the system, proposals for comprehensive reform must be considered. One example is the establishment of a multilateral trade court, although any new forum will need to ensure that it addresses the flaws with the current system.



The debates were followed by a drinks reception sponsored by Steptoe and kindly hosted by SOAS.

By Afolarin Awosika, Vinson & Elkins, London

\*\*\*\*\*



# #YoungITATalks / Events

## #YoungITATalks: Belgrade

### What comes after the Vis Moot: Starting steps in practicing arbitration

On 17 March 2024, Young ITA Eastern Europe Co-Chair Zeljko Loci (Moravcevic Vojnovic and Partners in cooperation with Schoenherr) introduced the #YoungITATalks on-site conference in Belgrade, titled "What comes after the Vis Moot: Starting steps in practicing arbitration".

The panel included the speakers Mr Thomas Innes (Steptoe LLP), Mr Selim Can Bilgin (Kabine Law), Mr Milivoje Mitrovic (Pestalozzi Attorneys at Law) and Mrs Dragana Nikolic (Moravcevic Vojnovic and Partners in cooperation with Schoenherr), and was moderated by Zeljko Loci.

As the topic was geared towards a younger audience, students and mooties, the speakers illuminated crucial insights into early experiences, skills, qualifications and tips tailored specifically for the beginner practitioners.



### Motivation to pursue career

First, the speakers discussed what initially motivated them to pursue a career in arbitration. While half of the panel found motivation from participating in and coaching teams at the Vis Moot competition, the other half, who had instead opted to participate in the Jessup competition, described finding motivation for an arbitration career elsewhere.

Selim Can Bilgin emphasized that taking part in Jessup competition instead of the Vis Moot competition was a pure luck and a coincidence.





## #YoungITATalks / Events



### Difficulties at the beginning

Next, the speakers discussed challenges they faced early in their arbitration practices. According to Dragana Nikolić, starting to practice arbitration as a trainee at prominent law firms in London and Paris presented its challenges. Namely, grasping team organisation and the task reorganisation required time. Nevertheless, the experience gained therein was highly beneficial for her further development.

### Present arbitration market

The speakers noted that because the arbitration field has been developing rapidly over the past five to ten years, opportunities to practice arbitration are equally expanding rapidly. The increased competition requires

young people interested in pursuing the field to consider how to tailor their skills to be the best fit for a future employer.

### Misconceptions in arbitration

Next, the speakers discussed common misconceptions in arbitration. Thomas Innes and Selim Can Bilgin noted that in several recent cases, they have seen a greater importance attributed to the arbitral rules, as compared to the contractual governing law.



They emphasized that, in addition to procedural elements such as the arbitration rules, the substantive law governing the contract is an essential part of the puzzle required for a complete understanding of the case.





## #YoungITATalks / Events

Additionally, they noted that oftentimes the outcome of the case depends on most of the facts, instead of the rules and norms.

### Qualifications and skills

Turning to practical tips on how young practitioners can build their resumes and profiles, Zeljko Loci stressed about the significance of acquiring various professional qualifications and skills for practitioners' future engagements. Selim Can Bilgin stated that obtaining a LL.M. degree outside of the home-country is crucial for many beginning practitioners. The experience, understanding of transnational cases and law, and meeting a diverse group of attorneys are all very significant.



Milivoje Mitrovic additionally underscored that, once hired by a law firm, patience is a key attribute practitioner should keep in mind when performing and finalizing tasks.

### Networking tips and tricks

Finally, all the panellists concurred that beyond acquiring international education, involvement in arbitration organisations, such as the Young ITA, Young ICCA and others, is important for connecting with peers who share similar perspectives and objectives. Additionally, Thomas Innes and Dragana Nikolić noted that mentorships programmes, such as the one provided by the Young ITA, can offer valuable insights for the young individual looking not only to network, but also receive guidance from those who traversed a similar path.



## #YoungITATalks / Events

For anyone seeking to enter the arbitration scene, writing concise articles or blog reports can offer an opportunity to improve your knowledge of the field, while requiring less time investment than, for example writing a long article or book chapter.



Regardless of individual circumstances, anyone can engage in arbitration as long as they maintain strong determination and willpower.

**By Zeljko Loci, LLM Candidate at  
University of Belgrade, Faculty of Law  
and Associate at Moravčević Vojnović  
and Partners in cooperation with  
Schoenherr**

\*\*\*\*\*



# REGIONAL UPDATES

## *Middle East*

### *Dubai*

#### Unpacking arbitrateAD's New Arbitration Rules

On 1 February 2024, the Abu Dhabi Chamber of Commerce and Industry launched its new arbitration centre, arbitrateAD. This update summarises some of the key features of arbitrateAD's Arbitration Rules ("arbitrateAD Rules"). It also compares the new rules with: (i) the 2013 ADCCAC Arbitration Rules ("ADCCAC Rules"), which have been supplanted by the arbitrateAD Rules; and (ii) the 2022 DIAC Arbitration Rules ("DIAC Rules"), which are the rules of the other main arbitral institution in the region.

#### Scope and Temporal Application

Under the ADCCAC Rules, parties could arbitrate their dispute at the ADCCAC but under another arbitral institution's rules. However, this could give rise to uncertainties as to which rules prevailed when the ADCCAC Rules and the other arbitral institution's rules did not align. Now, however, the arbitrateAD Rules

confirm that they will apply by default where parties agree to refer their dispute to arbitration: (i) under the arbitrateAD Rules; (ii) to the arbitrateAD centre; (iii) or to the Abu Dhabi Chamber of Commerce. Notably, parties may agree otherwise. These provisions mirror those found in the DIAC Rules (substituting references to "arbitrateAD" and "Abu Dhabi Chamber of Commerce" with "DIAC" and "Dubai Chamber of Commerce and Industry", respectively). In addition, ADCCAC will continue to administer cases which commenced before 1 February 2024 under the ADCCAC Rules.

#### A Stand-Alone Court of Arbitration

The arbitrateAD Rules establish a stand-alone, independent Court of Arbitration (the "Court"). This Court is responsible for supervising the proceedings administered by arbitrateAD and ensuring adherence to the arbitrateAD Rules. In particular,



## REGIONAL UPDATES

### *Middle East*

the Court is responsible for the appointment and replacement of arbitrators, resolving challenges to arbitrators or arbitration agreements, deciding on joinder and consolidation requests, and scrutinising arbitral awards before they are rendered by the tribunals. The establishment of the Court reflects the structure adopted by DIAC, as well as other arbitral institutions, such as the ICC, SIAC, and SCCA. Its institution should enhance the credibility and global enforceability of the awards.

#### **Multiple Parties, Multiple Contracts, Joinder and Consolidation**

Another key difference between the ADCCAC Rules and the arbitrateAD Rules is that the latter allows multi-party and multi-contract arbitrations, joinder and consolidation, subject to certain conditions. Of note, the Court may determine if claims arising out of multiple contracts can proceed via a single arbitration. The arbitrateAD Rules outline the factors that the Court must consider when coming to its decision, which include the

efficiency and expeditiousness of the proceedings. The arbitrateAD Rules permit joinder of a third party to the proceedings where all parties agree or where the Court is satisfied that the additional party is *prima facie* subject to the arbitrateAD's jurisdiction, notwithstanding the tribunal's authority to decide any question as to its jurisdiction later. The arbitrateAD Rules also permit the consolidation of multiple claims into a single arbitration in certain circumstances, for example where all claims asserted in the arbitrations are subject to the same arbitration agreement. These new rules are in line with the DIAC Rules, as well as the recently updated rules of the LCIA, ICC and SCCA.

#### **Initial Case Management Conference ("CMC")**

The ADCCAC Rules do not provide for a preliminary meeting or case management conference. Under the arbitrateAD Rules, a case management conference must be held within 21 days following the



## REGIONAL UPDATES

### *Middle East*

transmission of the case file to the tribunal to deal with various procedural issues, including establishing a procedural timetable for the proceedings, discussing early resolution of the dispute or reaching a settlement. Under the DIAC Rules, the tribunal must contact the parties no later than 15 days after the transmission of the file to the tribunal to set a date for a preliminary meeting.

#### **Summary Dismissal**

The ADCCAC Rules did not contain provisions for summary dismissal of claims or defences that are manifestly without legal merit, manifestly inadmissible or outside of the tribunal's jurisdiction. The arbitrateAD Rules, however, grant the tribunal power to summarily dismiss such claims. Any application for early dismissal must be granted or denied within 30 days of its filing, though the tribunal may extend this deadline by up to 15 days. Notably, the DIAC Rules are silent on summary dismissal. However, tribunals under the DIAC Rules have

considered and granted summary dismissal applications, on the basis that the tribunal must ensure that the arbitration is conducted expeditiously, diligently and in a cost-efficient manner.

#### **Emergency Arbitrators**

Under the ADCCAC Rules, there were no express provisions for emergency arbitrators. Disputes prior to the constitution of the tribunal would be ruled upon by the ADCCAC Committee. Under the arbitrateAD Rules, parties may seek urgent preliminary or precautionary measures prior to the tribunal's constitution by filing an application to appoint an emergency arbitrator. The Court is required to appoint an emergency arbitrator within one day of receipt of the application and proof of payment of the fee. The emergency arbitrator must rule on the application within ten days from the date of their appointment, though this timeframe can be extended in exceptional circumstances.



## REGIONAL UPDATES

### *Middle East*



#### Third Party Funding

There were no provisions for third party funding in the ADCCAC Rules. The arbitrateAD Rules expressly permits third party funding. This is provided parties disclose “*as soon as is reasonably possible*” to the Case Management Office, all other parties and tribunal (if constituted) of the existence and identity of any third party who is funding the claims or defences subject to arbitration. This is consistent with the DIAC Rules, as well as the rules for the ICC, SIAC, HKIAC and SCCA.

#### Nine-Month Time Frame for Issuing Awards

The ADCCAC Rules specified that tribunals were required to make an award on the merits within six months from the date on which the file was received by the sole arbitrator or president of the tribunal. This timeframe could be extended by up to three months on its own motion or upon a party’s request. The arbitrateAD Rules require that tribunals make an award on the merits within nine months of the initial CMC. This timeframe may be extended upon joint request of the parties. The new rules establish a relatively longer, default timeframe





## REGIONAL UPDATES

### *Middle East*

for issuing a final award than that set out by the ADCCAC Rules, and under the current DIAC Rules (six months from the date of the file's transmission to the Tribunal by DIAC).

#### **Expedited Proceedings**

The ADCCAC Rules did not provide for an expedited procedure. Under the arbitrateAD Rules, there is an expedited procedure which stipulates that an award must be issued within four months from the date the case file is submitted to the Tribunal. This expedited procedure will apply by default where the value of the dispute (i.e. the aggregate of all claims and counterclaims) does not exceed AED 9 million (which is equivalent to approximately USD 2.4 million). Notably, the tribunal can apply this expedited procedure for disputes which exceed this sum and can disapply the procedure where it would otherwise apply by default if, *inter alia*, the parties agree. The key features of the expedited procedure are that the request for arbitration

is consolidated with the statement of claim and answer is consolidated with the statement of defence. Further, a sole arbitrator will preside over the arbitration. This sole arbitrator has the discretion to decide that the dispute will be resolved solely on documentary evidence (i.e. without a merits hearing). Notably, the expedited procedure is available under the DIAC Rules, but it is intended for disputes where the value does not exceed AED 1 million (circa USD 270,000).

#### **Digitisation**

In contrast with the ADCCAC Rules, the arbitrateAD Rules implement a digital approach to communication and case management. For example, first, the default rule for communication between the parties, tribunal and arbitrateAD Secretariat is email. Secondly, the tribunal has considerable discretion to determine whether to conduct the hearings remotely. Thirdly, awards may be signed electronically by the tribunal where the tribunal deems it



# REGIONAL UPDATES

## *Middle East*

appropriate, taking into account all relevant circumstances, including the applicable law(s). These provisions mirror the provisions in the DIAC Rules.

### **Seat**

Under the ADCCAC Rules, there were no clear provisions regarding default seat. The arbitrateAD Rules provide that, unless the parties have agreed otherwise, the default seat will be the ADGM. This mirrors the DIAC Rules. Further, the arbitrateAD Rules clarify that any reference to the “*place of arbitration*” will be a reference to the seat and that an award will be deemed to have been made in the seat of the arbitration, regardless of where the proceedings were conducted.

### **Language**

Under the ADCCAC Rules, the default language was Arabic. The arbitrateAD Rules confirm that, unless the parties have agreed otherwise, the Case Management Office or tribunal (once

constituted) will determine the language of the arbitration proceedings. Similar provisions are found under the DIAC Rules.

### **Summary**

The changes reflect the region’s overarching ambition of becoming a significant forum for resolving international disputes in the MENA region and globally. The changes are likely to bolster the attractiveness of the ADGM as a seat of arbitration. They also coincide with other steps taken in the region, such as the 2023 amendments to the Federal Arbitration Law.

**By Bruno Rucinski (Associate, Allen & Overy, Dubai, UAE)**

**(Bruno.Rucinski@AllenOvery.com)**

\*\*\*\*\*



## REGIONAL UPDATES

### *Middle East*

#### *Saudi Arabia*

The inaugural Riyadh International Disputes Week (RIDW) took place during the week of 3 March 2024, bringing together legal professionals, experts, and practitioners from around the world.

It was organised by the Saudi Centre for Commercial Arbitration (SCCA), a not-for-profit organization established by a Saudi minister council decision in 2014.

RIDW attracted almost 5000 attendees representing more than 79 jurisdictions, creating a dynamic platform for cross-cultural exchange and collaboration.

featured dozens of world-class events related to the resolution of commercial, construction, sport as well as investment disputes.

Its flagship event, the SCCA 3rd International Conference and Exhibition featured five panel discussions with seven subtopics and 30 speakers and was attended by 1200 delegates.

YoungITA proudly hosted the 1<sup>st</sup> Riyadh Vis Moot event kindly sponsored by MDisputes and organised by Magda Kofluk (Young ITA Middle East Chair, Stephenson Harwood), Giovanna Micheli

It



(MDisputes) and Fatima Ashri (Baker



## REGIONAL UPDATES

### *Middle East*

McKenzie).

A stellar lineup of professors and international arbitration practitioners shared their thoughts at the seminar and arbitrated a showcase round. Special thanks for offering their valuable time go to: Prof. Stefan Kröll, Bucerius Law School, Vis Moot Director, (Hamburg, Germany); Prof. Franco Ferrari, New York University School of Law (New York, USA); Prof. Loukas Mistelis FCIArb, Queen Mary University of London, Clyde & Co (London, UK); Christian P. Alberti, SCCA (Riyadh, KSA); Jessica Beess und Chrostin, King & Spalding LLP (New York, USA); James Hosking, Founding Partner Chaffetz Lindsey LLP (New York, USA); Michael Patchett-Joyce FCIArb, Barrister 36 Commercial (London, UK) and Prof. Dr. Zlatan Meskic, College of Law, Prince Sultan University(Riyadh, KSA).

“ RIDW has also cemented the impressive strides taken by the KSA over the past few years.

”

During RIDW, the SCCA made significant strides by signing several crucial agreements, further solidifying its position as a key player in the global dispute resolution landscape.

- Memorandum of Understanding (MOU) to complete a Host Country Agreement between the Kingdom of Saudi Arabia, represented by the Ministry of Foreign Affairs, and the Permanent Court of Arbitration.
- General arrangements agreement between SCCA and the International Centre for Settlement of Investment Disputes (ICSID).
- Hosting Agreement with the Chartered Institute of Arbitrators (CIArb) for its new Saudi Arabia Branch.

MOU between SCCA and the Singapore International Arbitration Centre (SIAC).

These agreements underscore SCCA's commitment to enhancing international cooperation and facilitating efficient and effective



## REGIONAL UPDATES

### *Middle East*

dispute resolution mechanisms, further cementing Saudi Arabia's position as a trusted arbitration destination. In fact, an SCCA study of Saudi arbitration-related case law between 2017–2022 revealed that out of 131 annulment applications brought in Saudi courts, 92% were denied and only 3.8% were granted (for violations of Shari'a law and public policy).

RIDW has also cemented the impressive strides taken by the KSA over the past few years. Their goal has been to establish a robust arbitration framework, in alignment with their broader Vision 2030 commitment to create an environment encouraging foreign investments. KSA implemented reforms across various fronts, including national legislation, international instruments, and institutional rules. For example:

- In February 2023, Saudi Center for Commercial Arbitration (SCCA) expanded its reach to the Dubai International Financial

Centre (DIFC), solidifying its presence in the region.

- SCCA published updated Arbitration Rules in May 2023 following a comprehensive review of the 2016 rules aimed at enhancing efficiency, reducing costs, and optimizing the arbitration process. In particular, the 2023 Rules advocated for leveraging technology, such as: electronically transmitting documents; presenting evidence through digital platforms; and, electronically signing awards. The purpose being to mitigate the impact on the environment and enhance efficiency. Furthermore, small claims disputes falling below a specific threshold are automatically governed by the Online Dispute Resolution Procedure Rules.
- In November 2023, SCCA signed a Memorandum of Understanding (MOU) with the Saudi Ministry of Foreign Affairs, aiming to promote institutional



## REGIONAL UPDATES

### *Middle East*

arbitration in the KSA and include SCCA arbitration clauses in Ministry-related contracts.

- Regarding national legislation, the primary reform is the introduction of the new Saudi Civil Transactions Law, which became effective on 16 December 2023, codifying principles of Shari'a law which is expected to increase transparency and predictability.

In June 2023, significant changes were also made to the Government Tenders and Procurement Law of the Kingdom of Saudi Arabia including the approval of a model arbitration agreement in government contracts, designating the Saudi Center for Commercial Arbitration (SCCA) as the administering body for disputes arising from such contracts.

RIDW24 not only celebrated Saudi Arabia's legal advancements in line in Vision 2030 but also reaffirmed SCCA as a world-class dispute resolution center. Next addition of RIDW will take place in March 2025.

By Magda Kofluk (Managing Associate, Stephenson Harwood Middle East LLP; Dubai, United Arab Emirates)

(Magda.Kofluk@shlegal.com)

\*\*\*\*\*





## REGIONAL UPDATES

### *South America*

#### *Argentina*

On 27 December 2023, the brand-new Government of Argentina sent a law proposal to the Legislative called “*Bases y Puntos de Partida para la Libertad de los Argentinos*” (freely translated as “Basis and Starting Points for the Freedom of Argentines”) (the “Proposal”). This bill proposed changes in the regulatory framework of arbitration.

“ Overall, it seems the Proposal’s objective is to promote and create a more friendly environment towards arbitration. ”

In Chapter VII – Dispute Settlement, article 29, the Proposal authorizes the Executive Branch of the government to establish conciliation, settlements, and/or arbitrations seated in Argentina or any other country for any present or future dispute in

which any agency or entity of the Central Administration is part of. Additionally, such article authorizes the Executive Branch to sign arbitration agreements, arbitration clauses, and agree to foreign jurisdictions for dispute settlement, among other things.

The Proposal seems to settle a controversial matter in Argentina; that is, whether the National State can be part of arbitration or any foreign jurisdiction. One is to consider article 116 of Argentina’s National Constitution which provides for the exclusive jurisdiction of the domestic courts, subject to minimal exceptions. Over the years, scholars and jurisprudence have said that as long as there is a law in place and the matter is merely commercial, the State would be able to extend the jurisdiction to an international forum or an arbitration tribunal. Nevertheless, the Proposal goes one step further and authorizes the



## REGIONAL UPDATES

### *South America*

Executive Branch to sign and include these types of provisions without a law. Such regulation would not affect the international commitments and jurisdictions agreed by Argentina in the Multilateral and Bilateral Investment Treaties in force with other countries or Investment Contracts.

The Proposal also modifies article 1649 of the Civil and Commercial Code of Argentina (Title V– Justice, article 387 of the Proposal), which defines what an arbitration agreement is. The proposed amendment eliminates the phrase “[...] of private law in which public policy is not compromised” from the definition of arbitration in the referred Code. In 2015, when the Civil and Commercial Code entered into force, various scholars heavily criticized it due to the inclusion of such phrase, as they argued that it was confusing and added legal uncertainty.

Overall, it seems that the Proposal’s objective is to promote and create

a more friendly environment towards arbitration. Nonetheless, it should be taken into account that the Proposal’s amendment is part of a much more comprehensive reform that includes 664 articles and profound modifications. Recently, part of Argentina’s Legislative Power rejected much of the Proposal, for which reason the President decided to withdraw it. Nowadays, the Proposal is not in force, and it is still unclear if any additional amendments affecting arbitration will be proposed or taken in the near future.

**By Fernando Ayala (Board Member of AYAP; Buenos Aires, Argentina / Washington DC, USA)**  
(fga14@georgetown.edu)

\*\*\*\*\*



## REGIONAL UPDATES

### *South America*

#### *Paraguay*

#### **Mota Engil v. Paraguay – “Metrobús” case**

The case *Mota Engil v. Paraguay* (“Metrobús” case) had great national repercussions, as it dealt with the famous (and failed) “Metrobús” project, consisting of a public transport system considered innovative by some, and, at the same time, criticized by part of the population.

The final award was issued at the end of 2023, by the PCA (“Permanent Court of Arbitration”) tribunal, composed of José Emilio Nunes Pinto (president), Guido Tawil and Claus von Wobeser.

The arbitral tribunal found Paraguay liable for certain contractual breaches and awarded approximately USD 16 million to Mota Engil (out of a total claimed of approximately USD 40 million). On the other hand, the tribunal awarded damages to Paraguay (almost USD 100,000), derived from certain defects in the works executed by Mota Engil.

The arbitral tribunal also

concluded that the Ministry of Public Works (Ministerio de Obras Públicas y Comunicaciones – MOPC) terminated the contract correctly.

The final award is published on the official website of the State Attorney’s Office (Procuraduría General de la República – PGR) (which can be accessed [here](#)).

On 5 February 2024, the State Attorney’s Office filed an application for setting aside the final award issued in the “Metrobús” case. This application will be decided by Paraguayan judicial courts, since the seat of the arbitration is Asunción, Paraguay.

**By Felicita Argaña (Altra Legal);  
Asunción/Paraguay  
(fargana@altra.com.py)**

\*\*\*\*\*



# REGIONAL UPDATES

## *South America*

### *Peru*

On 8 March 2024, the Constitutional Court – the supreme body of interpretation and control of constitutionality in the country – issued a ruling in which it partially granted a habeas corpus lawsuit filed against “Rutas de Lima SAC” – concessionaire of an important road infrastructure in the city of Lima.

Through this decision, the Constitutional Court ordered the suspension of one of the tolls under the concession, based on two central premises:

- The fundamental right to free movement of the residents of the area and the users who circulate on the road would have been violated.
- There are accusations of alleged corruption in the signing of the contract and its addendums, which are being investigated in criminal proceedings. Thus, the Constitutional Court considered that there is a constitutional duty

to repress and combat corruption, declaring the suspension of toll collection until a final decision is issued about the corruption allegations.

This decision sets a precedent for the intervention of judicial bodies in matters subjected to arbitration in concession contracts executed with the Peruvian State. The Constitutional Court assumed jurisdiction to suspend the enforcement of a concession contract. This is despite the fact that it contains an arbitration agreement, by virtue of which these matters should be submitted to national or international arbitration, depending on the amount of the claims.



## REGIONAL UPDATES

### *South America*

Rutas de Lima and Brookfield (its main shareholder) publicly announced that they are evaluating the initiation of legal actions, including possible actions for violations against the Peruvian State claiming for the rights and guarantees of Brookfield as an investor.

By Sonia Queija (Lima Very Young Arbitration Practitioners; Lima, Perú)  
(sonia.queija@rebaza-alcazar.com)

& Sergio Tafur Scaglia (EMAPE; Lima, Perú) (sscaglia9473@gmail.com)

\*\*\*\*\*



## REGIONAL UPDATES

### *Asia-Pacific*

#### *Singapore*

### SGHC Rules on what constitutes a “Step in the Proceedings” – Analysing *Beltran v. Terraform*

The General Division of the High Court of the Republic of Singapore (SGHC) in the matter of [\*Beltran, Julian Morena and another v. Terraform Labs Pte Ltd and others\* \[2023\] SGHC 340](#), recently dismissed an appeal against the decision of the Assistant Registrar denying a stay in favor of arbitration. This ruling is significant on what actions constitute a “step in the proceedings,” indicating submission to Singapore courts’ jurisdiction.

#### **Background to the Dispute**

Terraform Labs (**Terraform**) is a Singapore-incorporated company in the business of developing software and applications. Terraform operate the Terra blockchain and creates apps for the broader Terra Ecosystem, which provides a platform for Terraform’s development and sale of decentralized financial products and services – the central feature being TerraUSD, the

cryptocurrency tokens issued by Terraform among the several projects and platforms built atop the Terra blockchain in Anchor Protocol. ‘Anchor Protocol’ is a lending and borrowing platform that allows users to stake TerraUSD in consideration for promised returns calculated on an annualized yield basis. The growth of the Terra Ecosystem was supported by Luna Foundation Guard Ltd (**Luna**) through the building of reserves to buttress the stability of TerraUSD.

Julian Moreno Beltran and Douglas Gan, on behalf of 375 claimants who had purchased TerraUSD, filed a class action lawsuit against Terraform, Luna and the founders of Terraform and Anchor Protocol. The claimants sought relief against the defendants for inducing them through misrepresentations to purchase TerraUSD, stake it on the Anchor Protocol and continue to hold on to their staked TerraUSD despite a sharp





## REGIONAL UPDATES

### *Asia-Pacific*

decline in value. The claimants assert that as a result, they suffered significant damages totalling close to US\$66 million.

Terraform's and the Anchor Protocol's websites contained clauses providing for disputes to be resolved exclusively by arbitration seated in Singapore and conducted pursuant to the SIAC Rules. Terraform's 'terms of use' also stated that there shall be no authority for any claims to be arbitrated on a class or representative basis.

Terraform filed a pre-case conference questionnaire and its defence. The defence addressed Terraform's jurisdictional challenge, its defence on the merits of the claims and counterclaim for various declarations. Pertinently, the defence also contained a reservation that it was filed 'without prejudice' to Terraform's contention that the court had no jurisdiction and that its filing was "not to be construed as a submission to the jurisdiction of the Court". The other defendants filed similar defences.

Following the filing of the defence, Terraform, its founder and Luna submitted a request for a stay of the lawsuit. The Assistant Registrar denied Terraform's request for a stay, citing the company's inability to establish a sufficient presumption that it and the Claimants had a legitimate arbitration agreement. As an alternative, the Assistant Registrar ruled that Terraform had already engaged in several steps of the proceedings and had thus submitted to the court's jurisdiction, even if it could be demonstrated that a valid arbitration agreement *prima facie* existed.

#### **Taking a Step in the Proceedings**

The SGHC dismissed the Defendants' appeal and found that Terraform had taken steps in the proceedings amounting to submission to the jurisdiction of the Singapore courts.

Under [Section 6\(1\)](#) of Singapore's International Arbitration Act 1994 (IAA), any party to an arbitration agreement may seek a stay of proceedings before "delivering any



## REGIONAL UPDATES

### *Asia-Pacific*

pleading (other than a pleading asserting that the court does not have jurisdiction in the proceedings) or taking any other step in the proceedings.” The question before the SGHC was whether Terraform had taken steps in the court proceedings within the meaning of Section 6(1) of the IAA which would preclude it from obtaining a stay in favour of arbitration. The SGHC analyzed various precedents and noted that in assessing whether an act constitutes a “step in the proceedings”, the court should consider the actions of the defendant as a whole and in “a practical and commonsensical way.”

According to the ruling of the SGHC, some activities do not qualify as a “step in the proceedings,” such as requests for facts only for the purpose of determining jurisdiction. Nonetheless, it is believed that defendants who use the legal system to challenge the proceedings or who seek information that suggests a defence have taken this action. In some situations, applications regarding the propriety of

proceedings cannot be in conflict with a jurisdictional challenge. For example, a striking-out application, as demonstrated in [\*Maniach Pte Ltd v. L Capital Jones Ltd and another\* \[2016\] 3 SLR 801](#), may not be considered a “step in the proceedings” if grounded in a preliminary issue that must be resolved before addressing jurisdictional concerns.

“ The SGHC found that this substantive defence, in addition to other unrelated procedural processes, contradicted Terraform’s jurisdictional argument, even though it included an unambiguous reservation of rights. ”

By filing its Pre-Case Conference Questionnaire and its Defence, Terraform had contested the merits of the plaintiff’s allegations in addition to bringing up jurisdictional concerns. The SGHC found that this



## REGIONAL UPDATES

### *Asia-Pacific*

substantive defence, in addition to other unrelated procedural processes, contradicted Terraform's jurisdictional argument, even though it included an unambiguous reservation of rights.

**By Kartikey Mahajan (Partner, Khaitan and Co., Singapore)**  
([kartikey.mahajan@khaitanco.com](mailto:kartikey.mahajan@khaitanco.com))

**Bhavya Chengappa (Senior Associate, Khaitan and Co, Bangalore)**  
([bhavya.chengappa@khaitanco.com](mailto:bhavya.chengappa@khaitanco.com))

**& Aayushi Singh (Associate, Khaitan and Co, New Delhi)**  
([aayushi.singh@khaitanco.com](mailto:aayushi.singh@khaitanco.com))

\*\*\*\*\*



## Job Opportunities

### *In Collaboration with Careers in Arbitration*

#### #CAREERS IN ARBITRATION

[Associate](#) (Swiss-qualified), Fortior Law (Geneva)

[Deputy Counsel](#) (Swiss-Italian Team), ICC (Paris)

[Intern](#), Freshfields Bruckhaus Deringer (Vienna)

[Intern](#), Hughes Hubbard & Reed (Paris)

[Senior Associate/Partner](#), Blackstone & Gold (Singapore)

[Senior Marketing & BD Advisor](#), Hogan Lovells, London

[Solicitor](#), Fortior Law (London or Geneva)

[Stagiaire/Intern](#), Ashurst (Paris)

[Trainee/Research Assistant](#), Linklaters, Frankfurt



# 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 (mevelyn.ong@hotmail.com)
- ⚖️ **Thought Leadership Co-Chair** – Derya Durlu Gürzumar (deryadurlu@gmail.com)
- ⚖️ **External Communications Co-Chair** – Enrique Jaramillo (ejaramillo@curtis.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)

