PARISBABYARBITRATION

BIBERON

Monthly Arbitration Newsletter – English version

JANUARY 2022, No. 52

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*By **Jorge Escalona***

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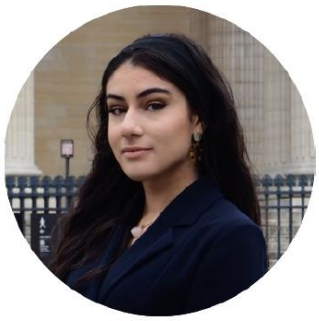

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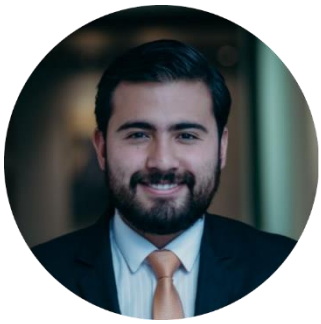

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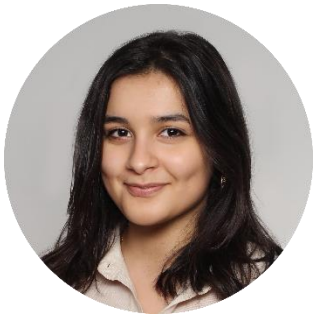

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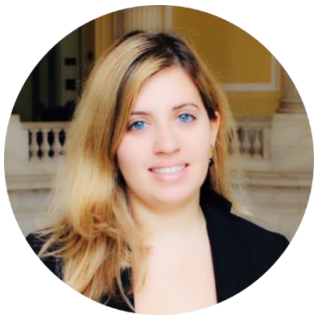

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FOREWORD

Paris Baby Arbitration is a Parisian association and an international forum aiming the promotion of young arbitration practice, as well as the accessibility and the popularizing of this field of law, still little known.

Each month, its team has the pleasure to present you the Biberon, an English and French newsletter, intended to facilitate the lecture of the latest and the most prominent decisions given by states and international jurisdictions, and the arbitral awards.

For this purpose, Paris Baby Arbitration encourages the collaboration and the contribution of the younger actors in arbitration.

Paris Baby Arbitration believes in work, goodwill and openness values, which explain its willingness to permit younger jurists and students, to express themselves and to communicate their passion for the arbitration.

Finally, you can find all the previously published editions of the Biberon and subscribe to receive a new issue each month on our website: **https://parisbabyarbitration.com/**

We also kindly invite you to follow us in our **LinkedIn** and **Facebook** pages and to become a new member of our Facebook group.

Enjoy reading!

FRENCH COURTS

COURT OF CASSATION

Court of cassation, 1st Civ., 12 January 2022, no. 20-17.116

By Juliette Leterrier

On 12 January 2022, the Court of Cassation overturned a decision of the Versailles Court of Appeal of 20 February 2020 concerning asset seizure carried out by the Union of Arab and French Banks (hereinafter "UBRF") on accounts opened in the names of the Iraqi companies Al Arabi Trading Company and Iraqi Airways. The Dutch company Instrubel had filed for protective seizures of assets based on two arbitral awards, rendered on 9 February 1996 and 22 March 2003 and granted the exequatur by an order of 20 March 2013.

Al Arabi Trading and Iraqi Airways, as well as the Republic of Iraq, then challenged this seizure before the enforcement judge. This appeal to the Court of Cassation follows a decision rendered on 20 February 2020 by the Versailles Court of Appeal rejecting the requests for cancellation of the seizures of the above-mentioned companies.

The plaintiffs presented two pleas to the Court of Cassation. The first part of the first plea concerns the ownership of the assets, subject of the seizure. The Court of Appeal held that the common defenses between the State of Iraq and the company Al Arabi Trading created a confusion of interests between them. The company would be a screen made up of the frozen economic wealth belonging to the State of Iraq, as defined by Regulation (EC) No. 1210/2003. Consequently, the plaintiffs recall that the seizure can only be exercised on the assets belonging to the debtor, thus to the company Al Arabi Trading. They consider that the Court of Appeal did not legally justify that the goods had been transferred to the State or that they could be presumed to be the owner.

The Court of Cassation rejects this argument, considering that the freeze rendered the funds unavailable as a precautionary measure without entailing either recognition or transfer of ownership to the Iraqi State.

The second part of the first argument concerns article 4 of the Code of Civil Procedure. In order to validate the seizures, the Court of Appeal argued that the company Al Arabi Trading had not provided proof of the lawfulness of its activities or of its independence from the Republic of Iraq. The plaintiffs argue that the court distorted the terms of the dispute because Instrubel had not raised the qualification of Al Arabi Trading as an emanation of the Iraqi State in its claims. Consequently, they consider that the court violated article 4 of the code of civil procedure.

The Court of Cassation contests the decision. It considers on the one hand that the Court of Appeal retained only a part of the criteria of qualification of emanation of a State and on the other hand that the qualification of emanation of the Iraqi State had not been supported by the company Instrubel.

Consequently, without ruling on the other grounds, the Court of Cassation annuls the decision of the Court of Appeal and sends the parties back to the Paris Court of Appeal.

COURTS OF APPEAL

Paris Court of Appeal, 11 January 2022, no. 19/19201, *Rio Tinto France et Rio Tinto Alcan c. Alteo Gardanne*

By Samia Alami

In a decision dated 11 January 2022, the Paris Court of Appeal dismisses the appeal to set aside an arbitration award under the ICC on the grounds that a failure by the arbitrator to disclose information is not sufficient to characterize a lack of independence or impartiality.

In this case, Rio Tinto France (hereinafter "RTF"), a subsidiary of Rio Tinto Alcan (hereinafter "RTA"), transfers its production plant located in Gardanne to Alteo Gardanne (hereinafter "Alteo"). This transfer is made under the terms of three main contracts, including an environmental liability guarantee containing an arbitration agreement. Alteo thus replaces RTF as operator of the plant. Subsequently, Alteo is prescribed certain costly measures by two administrative orders. Considering that the costs of complying with these new requirements should be borne by RTA and RFT, Alteo approaches the latter, which refuse to compensate it.

Alteo files a request for arbitration against the two companies on 29 May 2017 before the CCI. The arbitration is based on the environmental liability guarantee and Alteo is seeking reimbursement of environmental damages in relation with the measures prescribed by the aforementioned prefectoral decrees as well as a declaratory award relating to the interpretation of certain provisions of the environmental guarantee.

On 26 June 2017, Alteo appoints Ms. R. as arbitrator, who signs her declaration of acceptance two weeks later. The opposing companies appoint Professor T as co-arbitrator. On 6 September 2017, the ICC confirms the appointment of Ms. R as co-arbitrator and hearings on the merits are held in December 2018. On 21 May 2019, Ms. R announces that she is leaving Hogan Lovells and setting up her own firm.

On 10 September 2019, the arbitral tribunal unanimously renders an award ordering RTF and RTA to pay Alteo various amounts and granting the declaratory claims.

On 11 October 2019, RTF and RTA file an application for annulment of the arbitral award. The claim alleges that the award was made by an irregularly constituted arbitral tribunal due to the conflict of interest that arose during the arbitration in the arbitrator appointed by Alteo and the failure to comply with his ongoing duty of disclosure in this regard. The companies state that Ms. R did not disclose that the structure in which she was associated before the award was made represented an important company of a group affiliated to Alteo in legal proceedings in London, and that these facts characterize an objective cause for annulment of the award.

The Paris Court of Appeal declares that the non-disclosure by the arbitrator of information that she should have declared is not sufficient to characterize a lack of independence or impartiality; it is also necessary that these elements be of such a nature as to cause a reasonable doubt in the minds of the parties. The Court observes that the lack of information from RTF and RTA was not such as to give rise to reasonable doubt as to the independence or impartiality of Ms. R.

The Paris Court of Appeal therefore dismisses the action for annulment of the arbitral award rendered on 10 September 2019 under the ICC Rules.

Paris Court of Appeal, 11 January 2022, no. 20/17923

By Sarah Lazar

By decision of 11 January 2022, the Paris Court of Appeal pronounces itself on two key points relating to the *res judicata* effect of an arbitral and a state decision. The Court reminded and reiterated that an arbitrator is not deprived of his or her jurisdiction, even if a state judge has previously claimed jurisdiction. Furthermore, the Court explains that the *res judicata* effect of a state judgement does not prevent the recognition of an arbitral award.

The Republic of Benin and Société Générale de Surveillance SA (hereinafter « Société SGS ») had concluded a services contract relating to the implementation of a customs valuation certification program on the 5 December 2014. This contract included an arbitration clause providing for arbitration (under the ICC). Shortly thereafter, the Republic of Benin decided to stop paying these invoices, claiming that the contract was null and void. Two parallel proceedings were opened. First, the State of Benin, which filed a lawsuit before the Cotonou Court of First Instance on the 13 February 2017. Then on the 31 January 2017, the company SGS, filed a request for arbitration based on the arbitration clause to obtain payment of the invoices. These two proceedings resulted in two contradictory decisions. On the one hand, the Cotonou Court of First Instance declared the disputed contract void. On the other hand, the Arbitral Tribunal, sitting in Ouagadougou (Burkina-Faso) issued a partial award on the 6 April 2018, declaring itself competent.

In response, the Republic of Benin filed an annulment application against the partial award. On the 21 September 2018, the Court of Appeal dismissed the appeal and declared in fine the validity of the partial award. However, after an appeal in cassation filed before the Common Court of Justice and Arbitration (“CCJA”) by the Republic of Benin, the partial award was finally set aside. However, the arbitral tribunal, which declared itself competent, had, in the meantime, rendered a final award in which it rejected the claim for invalidity of the disputed contract. At the same time, on the 12 March 12 the Cotonou Court of Appeal confirmed the judgment rendered by the Cotonou First Instance Court (on 13 February 2017) and rejected the objection of lack of jurisdiction, declaring the arbitration agreement null and void. The Cotonou Court of Appeal justifies its decision, by the fact that any request for the annulment of an administration contract can only be brought before the administrative judge, in that it falls within its exclusive jurisdiction. However, by order of the Tribunal de Grande Instance of Paris,

the final award was granted exequatur. The Republic of Benin appealed against the exequatur order on the 14 May 2019.

To that end, the Republic of Benin puts forward three pleas before the Court of Appeal. The Republic of Benin requests that the final arbitral award be annulled in order to recognize the effects of the Cotonou Court of First Instance's decision and to confer res judicata authority to this decision on French territory. Secondly, the Republic of Benin requests that the arbitral tribunal be declared incompetent. Finally, the Republic of Benin requests that the final arbitral award be judged as a violation of international public policy because it was pronounced by an arbitral tribunal that also lacked jurisdiction.

The Court of Appeals first responds to the requests for recognition of foreign decisions. The Court states that an international award is not attached to any state legal order. Therefore, its legality must be examined in the light of the rules applicable in the country where its recognition and enforcement are sought. Thus, the annulment of the final award by the Court of First Instance and the Court of Appeal of Ouagadougou has no effect on its recognition on French territory. This plea will therefore be rejected.

In a second plea, the Court of Appeal responds on the lack of jurisdiction of the arbitral tribunal and the violation of international public policy. It recalls that, by virtue of a substantive rule of international arbitration law, the arbitration clause is legally independent of the main contract that contains it. Thus, the Court of Appeal explains that a state judge, who declares himself competent to decide the dispute, cannot deprive an arbitrator of his jurisdiction. Consequently, this plea will also be rejected.

On the third plea, alleging violation of international public policy for failure to respect the res judicata effect of the Beninese and Burkina Faso decisions. The Court of Appeal answers that the authority of *res judicata* of the State judgment rendered by the Cotonou Court of First Instance and the Ouagadougou Court of Appeal does not prevent the recognition of the arbitral award rendered by the arbitral tribunal.

FOREIGN COURTS

Singapore Court of Appeal, 12 January 2021, SGCA [2022] 1

By Juan Pablo Gómez

On 12 January 2022, the Singapore Court of Appeal ("SGCA") issued a decision in favor of Defendant in a dispute brought by Plaintiff as part of a saga of procedures that started with an arbitral tribunal and ended before Singapore courts. The underlying dispute was an arbitration before the Singapore International Arbitration Centre ("SIAC"), under the rules of the same institution, decided in an award dated 25 October 2018. The case had been brought before the High Court of Singapore ("SGHC") which decided aside the award on 5 April 2021. The present dispute is an appeal filed by Plaintiffs before the SGCA against the ruling of the SGHC.

Main parties of the dispute are BZW, BZX ("Plaintiffs"), and BZV ("Defendant"). On 29 November 2012, the parties entered a ship-building contract ("Contract") under which Plaintiff would construct and deliver a vessel to Defendant by 31 May 2014 following the specifications agreed upon in the Contract and according to the standards of the American Bureau of Shipping ("ABS"). Later, the parties amended the Contract several times.

Plaintiffs failed to deliver the vessel on 31 May 2014. By the end of 2014, while the vessel was still under construction, Defendant entered into negotiations with a third party ("Buyer") to sell the vessel. Buyer met with the parties to agree on a series of specifications that would be required for it to purchase the vessel. On 2 February 2015, the parties entered into a supplemental agreement to incorporate Buyer's requirements ("SA2"). On 16 February 2015, Defendant and Buyer entered into an agreement to purchase the vessel.

Around 23 April 2015, Buyer informed Defendant that generators installed in the vessel did not conform to its specifications as they were rated IP23 and had to be rated IP44. When notified of this fact by Defendant, Plaintiffs asserted that including IP44 generators would take 11 months and then, on 30 April 2015 and 30 June 2015 respectively, Plaintiffs missed the delivery and canceling date agreed upon in the Contract. Defendant notified Plaintiffs of this but did not exercise its right to terminate the Contract. On 12 September 2015, the parties entered into another supplemental agreement to extend the new delivery date ("SA4").

On 22 September 2015, Plaintiffs delivered the vessel to Defendant, who accepted it, made full payment, and later delivered it to Buyer. Notwithstanding the delivery and acceptance of the vessel, Defendant brought claims against Plaintiffs before SIAC regarding a delay in delivery ("Delay Claim") and the installation of contractually inadequate generators ("Rating Claim"). Plaintiffs presented a counterclaim for additional works to the vessel.

The SIAC tribunal ruled that Plaintiffs were not in breach of the Contract by delivering the vessel with generators rated IP23 because Defendant confirmed that these generators were fit for purpose. Additionally, it dismissed Plaintiff's counterclaim as it found that Plaintiffs had indeed delayed the delivery of the vessel. Later, the SGHC decided to set aside the award as it considered that the SIAC tribunal had breached natural justice by adopting a defective chain of

reasoning. Particularly, the SGHC considered that, in dismissing the claims of Defendant on the Delay Claim and the Rating Claim, the tribunal had misapprehended the arguments of the parties and acted contrary to the principle of fair hearing. The SGHC also denied a request to remit the matter to the SIAC tribunal.

The *first* issue considered by the SGCA is whether Defendant had filed its application to set aside the award within the time limit. Under Article 34(3) of the UNCITRAL Model Law, an "application" to set aside must not be made after three months from the date on which the applicant received the award. Plaintiffs argued that, as the deadline was 16 April 2019 and Defendant only presented an affidavit with an account of all the facts until 30 April 2019, the request was made out of time. According to the SGCA, what amounts to "application" is beyond the scope of the Model Law and therefore this must be interpreted in light of the procedural law of each jurisdiction.

The SGCA then concludes that Singapore law only requires that the main submission, known as the originating summons, is filed within the time limit, not an affidavit. In this regard, the SGCA makes a distinction between the "grounds for the application", which must be understood as causes of action that led to the application, and the "evidence relied on" by an applicant. Consequently, while the first is necessary for the submission to be made in time, the second is not.

The *second* issue that the SGCA evaluates is whether the SIAC tribunal had incurred in a breach of natural justice. Firstly, the SGCA disregards Plaintiff's allegation that, because the SGHC made a copious review of the facts and arguments of the SIAC arbitration and set aside due to a breach of natural justice must be "demonstrable clear", the SGHC made a mistake. Accordingly, Plaintiffs considered that the principle of fair hearing is only concerned with whether the parties had no reasonable opportunity to address a matter of the arbitration. Conversely, the SGCA considers that a decision to set aside may require a detailed review of the reasoning of the tribunal.

Secondly, while the SGCA agrees with Plaintiffs that a decision to set aside is not a review of the merits of the award, it considered that this was not the case. According to the SGCA, the SGHC had not considered whether the tribunal's reasoning was cogent or correct in matters of law. Nonetheless, as the SGHC identified that the tribunal had been manifestly incoherent in its decision, it would have been unacceptable in light of the principle of fair hearing to overlook such flaws. Specifically, the SGCA offers a detailed explanation of the SGHC's reasoning on how the SIAC tribunal failed to consider the essential issues of the parties' arguments for the Delay Claim and the Rating Claim.

The *third* issue decided by the SGCA is whether the SGHC should have remitted the matter to the SIAC tribunal. According to Plaintiffs, the SGHC had to remit the award to the SIAC tribunal, so it had a chance to eliminate the grounds for setting aside. In this regard, the SGCA highlights that the problems in the award were not isolated but systemic. Further, it adds that the SIAC tribunal might have been reluctant to reconsider its decision, a risk increased by the fact that the award had serious irregularities. Lastly, the SGCA determines that remission would not be convenient for the parties as to time and cost savings. Against this backdrop, the SGCA decides to dismiss the appeal.

Court of Justice of the European Union, 25 January 2022, C-638/19 P, *European Food and Others v. Commission*

By Juan Diego Niño-Vargas

On 25 January 2022, the Court of Justice of the European Union, set aside the judgment of the General Court of the European Union of 18 June 2019, which held that the European Commission (hereinafter the "Commission") lacked jurisdiction to review, under State aid law, the compensation by Romania to Swedish investors under an arbitration award of 11 December 2013 (No. ARB/05/20), issued under the aegis of the International Centre for Settlement of Investment Disputes (hereinafter "ICSID").

The origin of the dispute between, on the one hand, the Swedish investors, Messrs. Ioan and Viorel Micula, European Food, Starmill and Multipack, and, on the other hand, Romania, is the repeal by the latter of a tax incentives scheme as of 22 February 2005, before Romania's accession to the European Union.

On 28 July 2005, the Swedish investors requested to an arbitral tribunal, constituted in accordance with Article 7 of the bilateral investment treaty between Sweden and Romania, for compensation for the damage caused by the repeal of the said tax incentives scheme.

Romania acceded to the European Union on January 1, 2007.

By an award dated 11 December 2013, the arbitral tribunal found that Romania had breached the legitimate expectations of investors and ordered it to pay, by way of damages, the sum of approximately EUR 178 million.

During 2014, the Commission warned Romania that payment of the compensation awarded by the arbitral tribunal to the Swedish investors would be considered an illegal State aid.

However, Romania executed the arbitral award, in 2014, by offsetting taxes and, in 2015, by transferring the balance of the amount due directly to the investors.

On 30 March 2015, the Commission adopted the decision at issue under Articles 107(1) and 108 of the Treaty on the Functioning of the European Union (hereinafter the "TFEU"), by which it classified the compensation payment as a State aid incompatible with the internal market, prohibited any further payments under the arbitration award and ordered the recovery of the sums already paid to the Swedish investors.

Several actions were filed under Article 263 TFEU seeking to set aside of the decision at issue before the General Court of the European Union.

The General Court of the European Union annulled the decision at issue under Articles 107(1) and 108 TFEU. According to the General Court, the payment of the compensation in question was an advantage granted on 22 February 2005, the day the tax scheme was repealed, before Romania's accession to the European Union. Thus, European Union State aid law was not applicable *ratione temprois* in this case. Consequently, the Commission was not competent to examine either the arbitration award or the payment of the compensation under European Union State aid law.

The Commission appealed the judgement before the Court of Justice of the European Union, arguing that the General Court of the European Union erred in law on each of the grounds on which it annulled the decision at issue.

In substance, the Commission argued that the General Court was wrong to held that the investors' right to be compensated was acquired by 22 February 2005, the date on which the repeal of the tax incentive scheme entered into force, and thus on a date prior to Romania's accession to the European Union. The Commission argued that the appropriate date to consider was the date on which the investors were able to receive the compensation payment and thus a date after accession.

The investors argued that these challenges by the Commission were inadmissible as they related to findings of fact, whereas the Court of Justice of the European Union only reviews points of law.

On the admissibility, the Court of Justice of the European Union dismissed the plea raised by the Swedish investors. The Court of Justice recalled that it has jurisdiction to exercise its control since the General Court defined the legal nature of the facts and draw legal consequences from them.

On the merits, the Court of Justice of the European Union followed the Commission's appeal.

The Court of Justice indicated that State aids are considered to have been granted on the day on which its beneficiaries acquire the right to receive it, under Article 107(1) TFEU. In the present case, the Court of Justice noted that the Swedish investors' right to receive the aid was acquired with certainty only up to the day the arbitration award was rendered by 11 December 2013, i.e., after Romania's accession to the European Union.

Thus, the Court of Justice held that the General Court had erred in law, first, in assessing the date on which the alleged State aid was granted and, second, in holding that the Commission lacked jurisdiction *ratione temporis* to adopt the decision at issue under Article 108 TFEU.

The Court of Justice did not rule on the question of whether the compensation granted by Romania to the Swedish investors constituted State aid, since the General Court ruled only on the Commission's jurisdiction without ruling on the merits of the matter.

Finally, the Court of Justice of the European Union also considered the General Court of the European Union erred in law in its assessment of the applicability of the Court's judgment of 6 March 2018 (No. C-284/16, Slovakia v. Achmea BV).

Indeed, the General Court stated that the *Achmea* judgement was irrelevant in the case at hand. However, it results from the *Achmea* case law that Member States have agreed to exclude from the jurisdiction of their courts, including investment treaty arbitration, disputes that may concern the interpretation or application of European Union law. In the present case, the compensation obtained by the Swedish investors had been obtained in the context of a bilateral investment treaty between two Member States. Therefore, the Court of Justice concluded, following *Achmea* case law, that as of Romania's accession to the European Union, the European Union's dispute resolution system substituted the arbitration procedure in question, which from that time onwards lacked any force.

Consequently, the Court of Justice of the European Union set aside the judgment under appeal and referred the case back to the General Court of the European Union for a new ruling on the matter.

ARITRAL AWARDS

ICSID Case No. ARB/20/2, 23 December 2021, *Hope Services LLC v. Republic of Cameroon*

By Katerina Nikolaou

On 23 December 2021, an ICSID Tribunal decides that it does not have jurisdiction to hear the claims against Cameroon with regard to the objections to the jurisdiction submitted by Respondent.

The dispute concerns the investment that the Claimant alleges to have made in Cameroon, with regard to the development and operation of an integrated IT platform designed to mobilize resources abroad in order to finance public development projects at the national level and to contribute to the growth of developing countries. It arose, firstly from the arrest of the General Manager of the Claimant, Mr. Jean-Emmanuel Foumbi, his detention until 2015, the appropriation of the Platform by the Cameroonian government during Mr. Foumbi's detention and the subsequent collapse of the Hope Group. Secondly, the controversy at issue focused on the Defendant's breaches of the Treaty which, according to the Claimant, resulted in an unlawful expropriation of the Claimant's investment, a breach of the obligation to accord the investment fair and equitable treatment and full protection and security, and a breach of the obligation to respect contractual commitments relating to the investment.

The Tribunal considers the question of the authenticity of the documents. In turn, it addresses the question of the DOB clause, the existence of an investment and of a protected investor owning and controlling the investment and finally the question of abuse of rights.

Regarding the question of the authenticity of the documents submitted by the Claimant, the Tribunal presumes the authenticity of the Disputed Documents, but it will not rule on this point. If further the Tribunal finds that it must decline jurisdiction, the question of the authenticity of the Disputed Documents will not require further investigation.

The Tribunal holds that the Claimant has failed to establish that it has an investment within the meaning of the Treaty or the Convention and that, as a result, this Tribunal does not have jurisdiction to rule on its substantive claims in the present arbitration

The ICSID tribunal finally orders the Defendant to reimburse the Claimant and rejects all other applications raised.

INTERVIEW WITH ANTOINE WEBER

1. **Hi Antoine, thanks for answering our questions this month. Can you briefly recall your background?**

It is my pleasure and honor to answer your questions. I am dual French-Bulgarian national. After high school, I applied to Science Po but fortunately I did not pass the enrollment exams. I say fortunately because I firmly believe that it positively impacted my career path. I started my law studies with two years at the University Strasbourg (my hometown), followed by an Erasmus exchange at King's College London.

I was lucky enough to pursue a Masters' Degree in European and International Law in Madrid at the Pontificia Comillas University (ICADE). During this academic year, I participated in the Vis Moot. The challenge of the memorials' filing, and the oral pleadings were my Eureka moment that led me to focusing on international arbitration.

I was then enrolled in the MACI at the University of Versailles – Paris Saclay, which does not need any introduction. I was part of a dynamic class (the class of 2016/2017 "Pieter Sander"). Some of the members of this class are the founders of Paris Baby Arbitration. Many of my classmates are now international arbitration practitioners and, by the way, were or will be on the cover of the Biberon.

After my Masters, I did two six-month internships in Paris at Gide Loyrette Nouel and King & Spalding respectively, which confirmed my desire to become an international arbitration lawyer. After passing the French bar exam and taking part in the Advanced Program at the Paris Bar Training Centre, I joined Dentons as in intern in 2020 where I had the privilege to be hired as an associate following this internship and spent two amazing years in this great firm. As to my current position, I kindly invite the readers to refer to my answer to the next question.

2. **Can you tell us a bit more about the new Honlet Legum Arbitration Boutique you have joined recently? Does the activity mainly focus on arbitration, or do you also deal with international litigation matters?**

Honlet Legum Arbitration was launched in Paris in January 2022. I am one of the two first associates at the firm. As its name indicates, the firm was founded by Jean-Christophe Honlet and Barton Legum, former partners, and co-heads of the international arbitration group of the firm Dentons, where I started my career. I was honored to be offered the opportunity to follow them in their new professional venture.

Dentons is the biggest law firm in the world when it comes to professionals and offices. The firm is in constant growth. Under these circumstances, the founders of Honlet Legum Arbitration, when they were partners at Dentons, were regrettably forced to turn down appointments because of conflicts of interest. The boutique structure with fewer risks of conflicts of interest will allow them to accept such appointments.

As its name indicates too, Honlet Legum Arbitration concentrates exclusively on international arbitration. Our work focus on both business-to-business disputes (international commercial arbitration) and disputes between investors and States under international investment treaties, spanning a wide range of sectors of the economy and many different applicable laws and arbitration rules. The partners serve also as arbitrators or legal experts. As presiding arbitrators, they might suggest the appointment of one the firm's associate as secretary to arbitral tribunal. We also represent our clients in arbitration-related litigation before national courts — such as applications to set aside an arbitral award, to seize and sell assets to satisfy an award or for a court to appoint an arbitrator.

I take this interview as an opportunity to point out that we have two interns' positions on a rolling basis (January-June and July-December). Applicants may send their CVs and Cover letters to my email address (antoine.weber@honletlegum.com) with their availabilities.

3. You are part of the last generation of lucky pre-Brexit people who had the chance to participate in the Erasmus Program with the University of King's College in London, can you tell us about this experience and if you think it helped you to enter the world of Arbitration later on?

I was indeed lucky to take part in the Erasmus exchange Program with a British university and especially with King's College London.

I discovered a new way of studying: only four majors during the year, seminars that were led by the Professors themselves and numerous discussions during classes. It was a great contrast with my experience as a law student at the University of Strasbourg. This experience obviously helped me to improve my English and got me used to work in English.

As indicated in my first answer, it is the Vis Moot that was my eureka moment when I felt that international arbitration was for me. However, this year at King's still impacts my day-to-day practice as I am often reminded of the public international law course when working on investment arbitration matters.

4. Who inspired you the most in your career and why?

I honestly cannot name a person in particular that inspired me the most. I try to find my inspiration from great professionals such as lawyers, artists, sportsmen… I also find my inspiration from the path of some of my relatives, even though I am the first of them to pursue a career as an attorney.

5. If you could change one thing in the Arbitration sector, what would it be?

I believe that arbitrators should have greater discretion regarding the conduct of the arbitration. I sometimes infer from their behaviors that arbitrators might at times censor themselves because they fear the perspective of annulment proceeding or challenges. For instance, it would be useful if arbitrators gave their preferences as to which witnesses/experts they would be inclined to examine during the hearing. I sense that he examination of certain witnesses/experts is sometimes not necessary in the eyes of the tribunal, but it nonetheless does endeavor to indicate the lack of relevance of such examination to the parties. The big picture behind my suggestion would be to have the tribunals and the parties concentrate on relevant and material issues as identified by the tribunal, be it during the hearing or other steps of the arbitration.

6. Do you have any advice for students starting out in this field?

It is a truism that a career in international arbitration involves a lot of sacrifices. My fist advice would be that you need to be certain about your career goals. You should specify the levels of sacrifices that you would be ready to make. The best way to measure it would be through internships where you could witness the life of arbitration practitioners.

Speaking of internships, I would advise students to not give up on their pursuit of internships. You should be persistent, send a maximum of applications and make your best efforts to improve the quality of your applications (CVs, cover letters). While a CV does not show all the qualities of an applicant, a CV that is plagued with typos demonstrates a lack of attention to details. Alas, we still receive many applications that tend to show a lack of rigor. Hence, I am taking this opportunity to insist that each application must be thoroughly prepared.

Another advise would be to always keep improving your English if you are non-native speaker. English fluency is simply imperative.

Lastly, risking again to sound like Captain Obvious, I want to remind young practitioners that the arbitration community in Paris is a small circle. It is therefore crucial to make a good impression at all times, notably during internships because a good or a bad reputation is easy to build, and it may precede you for better or for worse.

ICSID – PROPOSED AMENDMENTS TO ITS DIFFERENT RULES

By Jorge Escalona

On 20 January 2022, ICSID proposed resolutions on its amended rules to its governing body – the Administrative Council – for a vote of acceptance. It constitutes a significant breakthrough in the five-year-long undertaking to modernize and renovate ICSID's primary rules for resolving international investment disputes. The project of adapting and reforming ICSID rules has progressed significantly since October 2016, stemming the most comprehensive, transparent, and meaningful rule amendment process to date.

The submitted amendments are the most all-inclusive in ICSID's 55-year history. They portray extensive and exhaustive dialogue with ICSID Member States and the public, with proposals proceeded in a series of six working papers released over five years. Up to now, ICSID rules and regulations have been amended three times – the most recent in 2006. It is essential to note that the ICSID Convention rules and regulations were adopted back in 1967 and the Additional Facility Rules back in 1978. The ICSID rules provide procedures for arbitration, conciliation, fact-finding, and mediation; since there are the only rules of procedure that have been particularly designed for disputes among foreign investors and Host States.

As mentioned, ICSID initiated the current – and fourth – amendment process in October 2016. For clarity, ICSID rules and regulations comprise (1) Administrative and Financial Regulations, (2) Institution Rules, (3) Arbitration and Conciliation Rules under the ICSID Convention, (4) Arbitration and Conciliation under the ICSID Additional Facility, (5) Fact-Finding Rules and (6) ICSID Mediation Rules.

Notably, ICSID seeks to modernize its procedural rules through the proposed amendments by achieving a more user-friendly and well-run dispute resolution process. In addition, these amendments include matters that Member States and the public put up during the consultative period. Among those topics are strengthening higher transparency in the conduct and result of proceedings, brand new disclosure requirements for third-party funding, and accelerated arbitration rules for parties seeking to shorten their procedural calendar further.

Mainly, there are significant changes in the amendments, such as (1) achieving greater transparency in the conduct and outcome of proceedings. For instance, the proposed text of the new Rule 62 of ICSID Arbitration Rules, provides that absent a clear objection in 60 days, a party will be deemed to have consented to the publication of the award. Another crucial aspect moves toward (2) mandating disclosure of third-party funding. Remarkably, Rule 14 of ICSID Arbitration Rules, establishes a definition for third-party funding, determines that parties must disclose the names and addresses of entities and persons from which they are receiving funding directly or indirectly; and if the funder is a juridical person, parties must also disclose who controls the funder.

Another highlighting addition is the inclusion of (3) "Special Procedures" concerning: (i) applications for dismissal of claims for a manifest lack of legal merit, (ii) bifurcation of

proceedings, (iii) preliminary objections, and (iv) provisional measures. Above all, the preliminary objections procedure under the amendments is more thoroughly developed. The amended regulations establish a 240-day deadline after the last submission of the proceeding for the Tribunal to decide on preliminary objections. Uniformly, they provide for a provisional measures' procedure, demanding the Tribunal to consider the urgency and necessity of the measures and the effect of the measures on each party before deciding on them.

Furthermore, the amendments expand on (4) due process rights, third-party representation, and counterclaims by allowing submissions and participation of non-disputing parties and providing for the publication of awards, orders, and decisions. Strikingly, the amendments permit "ancillary claims" (counterclaims) if they arise of the same subject matter of the dispute, and the claim is within the scope of the parties' consent and jurisdiction of the ICSID. Experts have perceived this rule as a win for States; since they would be capable of reclaiming their procedural rights to a fair defense and seeking compensation from investors when, for example, an investor has breached a national or international law regarding human rights, environmental protection, and international labor standards.

Moreover, the amendments address (5) conflicts of interest in investor-State arbitration. They stipulate that a party may file for disqualification of an arbitrator within 21 days of the constitution of the Tribunal or from the day it should have known the ground for disqualification. Moreover, while the disqualification process is pending, the arbitration proceedings will be suspended unless the parties agree otherwise. For this purpose, the arbitrator challenge procedure will be expedited, and arbitrators who are not being challenged will decide on the matter within 30 days of the last written submission.

In a similar vein, they introduce new rules on (6) awarding costs and (7) propose broader access to the ICSID Additional Facility Rules. The amendments require tribunals to evaluate certain factors when allocating costs, which include: (i) the outcome of the proceeding or any part of it, (ii) the conduct of the parties during the proceeding, (iii) the complexity of the issues, and (iv) the reasonableness of the costs claimed. Specialists have perceived that this change significantly modifies the current standard practice in ISDS, where various tribunals have characteristically required the parties to bear their costs. On top of that, the amendments lay down a new procedure for the Tribunal to provide security for costs, by weighting in numerous factors.

Regarding point (7), the amended rules propose granting access to ICSID arbitration and conciliation through the ICSID Additional Facility Rules to parties where either the claimant and the respondent are not ICSID Member States or nationals of a Member State. At last, the amendments state that all filings will be electronic unless there are special reasons to maintain paper filing. Closely, to provide a more efficient service, the amended regulations specify timelines for several phases of the proceedings for the first time. In other cases, reduce the timing associated with specific stages. Awards, for instance, will have to be rendered no later than 240 days after the last submission.

Finally, with the amended rules, an entirely new set of Mediation Rules and Fact-Finding Rules expand the choice of dispute resolution procedures available to States and investors. They will be available for all matters related to an investment involving a State, based on consent.

Regarding the amendment's approval, ICSID members are expected to cast a vote by 21 March 2022, and if approved, the rules will enter into force on 1 July 2022. The ICSID Convention Arbitration and Conciliation Rules and the Institution Rules require the approval of two-thirds of the Administrative Council for the rules to be amended. A majority of the votes cast must adopt the amended Additional Facility Rules for Arbitration and Conciliation Proceedings and the standalone rules for Fact-Finding and Mediation.

NEXT MONTHS' EVENTS

On Demand Bonds in the Construction Industry (CIOB Event)

8 February 2022, 7pm - 8:30pm (UAE)

ONLINE or in-person at the Abu Dhabi Golf Course.

Register here: https://events.ciob.org/ehome/200234584

Assessing Damages in the midst of the COVID-19 pandemic

9 February 2022, 3pm-4.30pm (GMT)

ONLINE

Register here:
https://onlinexperiences.com/scripts/Server.nxp?LASCmd=AI:4;F:QS!10100&ShowUUID=D73EACFB-244B-4C6D-B964-2A4A7783B08D&Referrer=https%3A%2F%2Fwww.linkedin.com%2F

ARBinBRIEF: S1 : E8 - Evaluation Witness Evidence

9 February 2022, 3pm– 3.30pm (CET)

ONLINE

Register here: https://www.eventbrite.com/e/arbinbrief-s1-e8-amani-khalifa-rukia-baruti-tickets-254885809317

International Arbitration Juniors: Arbitration Toolkit – Nailing the Argumentation Prowess

9 February 2022, 7pm (CET)

ONLINE

Register here:
https://www.linkedin.com/feed/update/urn:li:activity:6894964804885577728?commentUrn=urn%3Ali%3Acomment%3A%28activity%3A6894964804885577728%2C6894965219962277888%29

7th Conference on International Arbitration and the UN Convention on Contracts for the International Sale of Goods (CISG)

10 February 2022, 9am - 1pm (Mexico GMT-6)

ONLINE

Register here: https://sites.google.com/up.edu.mx/cisg7thconference/

DIAC/CIArb Hybrid Event – How to Get Your First Appointment as an Arbitrator

10 February 2022, 1.30pm (CET)

ONLINE

Register here: https://dubaichamber.zoom.us/webinar/register/WN_wMCT8r3yR1-vmutHesV1pg

5th Annual Conference on Energy Arbitration & Dispute Resolution in Middle East & Africa, Panel Session 1 on "Which Seat to Choose? Impact of Developments in the Middle East"

10-11 February 2022, 11.30am-12.45pm (BST)

Exchange House, Primrose Street London EC2A 2EG

Register here: https://www.internationallawsummits.org/

NYU School of Law / Sciences Po Law School: Second Intergenerational Arbitration Symposium Current issues of international arbitration

11 February 2022, 4pm - 7.20pm (CET)

ONLINE

Register here :
https://docs.google.com/forms/d/e/1FAIpQLScfl0vrbULwpKyP8TgUqzDRwoxUtF7RE5LmQUjUEeWG4lAw2g/viewform

Program of the event: https://www.sciencespo.fr/ecole-de-droit/sites/sciencespo.fr.ecole-de-droit/files/IGAS2_11Feb2022-Programme.pdf

Professor Eduardo Zuleta on "The Constitution and Arbitration: A Shield or a Sword?" by Delos

16 February 2022, 5pm - 6pm (CET)

ONLINE

Register here: https://delosdr.org/tagtime/

Secretariat and DSK Legal Present Global Webinar Series on Media Entertainment and Sports Disputes

17 February 2022, 5pm - 6.30pm (Indian time GMT+5:30)

ONLINE

Register here: https://secretariat-intl.zoom.us/webinar/register/WN_3VcRALIQT1-yxQ0nUk43bw

Arbitration Happy Hour: Season 2, Episode 6: Quantum Calculations & Risk Assessment - An In House Perspective

17 February 2022, 6pm - 7pm (CET)

ONLINE

Register here: https://us02web.zoom.us/meeting/register/tZYpde-rrTIuGdFbigfUPzPuqzOBHDgbeNlm

Arbitration 101: Understanding the International Arbitration Legal Framework (Virtual Edition)

24-25 February 2022, 9.30am- 5.30pm (SGT)

ONLINE

Register here: https://www.siac.org.sg/SIAC2020/component/rseventspro/join/33-arbitration-101-understanding-the-international-arbitration-legal-framework?Itemid=101

7th Annual Qatar International Arbitration Virtual Summit

2 March 2022, 08.55am - 12.45pm (AST)

ONLINE

Register here: https://legalplus-asia.com/events/qatar-mena-7th-annual-international-arbitration-virtual-summit/