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Recent French and foreign court decisions

Arbitral awards

Interview with Hélionor de Anzizu

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TABLE OF CONTENTS

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/**

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Enjoy reading!

FRENCH COURTS

COURT OF CASSATION

Court of cassation, Commercial Chamber, 26 January 2022, no. 20-23.394

By Ellen Treilhes

By judgment of 26 January 2022, the Commercial Chamber of the French Court of cassation dismissed an appeal lodged by DEL and Multifija against a judgment of the Rennes Court of Appeal of 20 October 2020 finding that it did not have jurisdiction, for the benefit of an arbitral tribunal constituted according to an arbitration clause inserted in a shareholders' agreement.

Multifijas' branch, *Diffusion équipements loisir*s ("DEL"), absorbed *Commercialisation équipement construction* ("CEC"), a former branch by way of a merger. In addition, Multifija holds, together with another company Sinagot, 5.07% of the capital of Fija.

On 26 February 2013, a shareholder agreement was signed between two shareholders of Multifija (Mr Y and Ms Z) and Sinagot. Multifija and CEC intervened in these acts. These shareholders' agreements contained an arbitration clause, which covered any disputes relating to the shareholders' agreement. Subsequently, Mr Y and Ms Z joined the company Aello, which was set up by the Thermador Groupe and included a shareholder director.

In April 2017, Multifija and DEL sued Mr Y and Ms Z, Aello and its shareholder director, as well as the Thermador Groupe for damages before the Rennes Commercial Court. The Claimants alleged that they were victims of unfair competition and parasitism. By judgment of 20 March 2018, the Rennes Commercial Court declared that it had jurisdiction to hear the dispute. The shareholder director of Aello as well as the company itself and the Thermador Groupe fought the judgment before the Rennes Court of Appeal on 3 February 2020 claiming the lack of jurisdiction of the national courts because of the arbitration agreement contained in the shareholders' agreement.

According to article 1448 of the French Code of Civil Procedure, they requested that the arbitral tribunal shall have exclusive jurisdiction to hear any dispute related to the shareholders' agreement and the unfair competition invoked by DEL and Multifija. The Respondents contest these arguments and request the Court of Appeal to stay the proceedings pending the arbitration award. They also claim that the arbitration clause was manifestly inapplicable to the dispute.

In its decision of 20 October 2020, the Court of Appeal considers that the decision on jurisdiction of the national courts does not depend on the award of the arbitral tribunal, and therefore that there is no reason to stay the proceedings. Secondly, it recalls that it is for the arbitral tribunal to rule on its jurisdiction when the dispute arises from an arbitration clause. As regards the merits of the case the Court of appeal emphasizes that the dispute is related to the possible breach of the non-competition and confidentiality obligations arising out of the

shareholders' agreement. Therefore, the arbitration agreement is not manifestly unenforceable and the court must refuse its jurisdiction to the benefit of the arbitral tribunal.

DEL and Multifija appealed to the French Court of cassation against the decision of the Rennes Court of Appeal. By judgment of 26 January 2022, the Commercial Chamber of the Court of cassation confirmed the Court of Appeals' decision, reaffirming the competence-competence principle and ordering Respondents to pay the costs.

Court of cassation, 1st Civil Chamber, 9 February 2022, no. 21-11.253

By Seung Pyo Hong

By decision of 9 February 2022, the Court of Cassation annuls a judgment of the Pau Court of Appeal rendered on 5 November 2020 concerning the application of article 36 of the arbitration rules of the International Chamber of Commerce (ICC) relating to advances for costs (Article 37 in the amended ICC Rules of Arbitration of 2021).

In the present case, the two parties to the dispute, *Tagli'apau* and *Ekip* on the one hand, and *Amrest Holdings SE*, *La Tagliatella SAS* and *Pastificio Services SLU* on the other hand, are respectively the franchisee and the franchisor by a franchise agreement on the catering activity concluded on 4 May 2011. Following the disputes relating to the franchise agreement, by a request for revisions of the contract for changes of economic conditions as well as compensation corresponding to the damages caused by the loss of margin by the franchisee, the franchisee initiated arbitral proceedings before the International Chamber of Commerce (ICC) in April 2016. The franchise agreement had provided for an arbitration clause in Article 20.7 of the franchise agreement.

However, when the attempt was made to resolve disputes by arbitration under the aegis of the ICC, the defendant refused to make provisional advances for costs of the arbitral proceedings.

Consequently, the Secretary General of the ICC International Court of Arbitration, after consultation with the arbitral tribunal, had invited the arbitral tribunal to suspend its activities with a reservation that the parties reserved the right to subsequently reintroduce the same claim in another proceeding (article 36.5 of the ICC Arbitration Rules).

Indeed, under the Arbitration Rules, the plaintiff had the option of paying the other party's share of the provisional advances for costs. However, given that substantial amount of the provisional advances for costs, and the franchisee's state of financial need (having entered into a safeguard procedure with a designated judicial liquidator since April 2016) the franchisee could not follow up on the arbitral procedure and the arbitration stopped at this stage.

The former franchisee and its judicial liquidator therefore reintroduced a proceeding in front of the French courts on 30 November 2018 requesting the termination of the franchise agreements of 4 May 2011 as well as of 29 April 2016. By judgment of 26 May 2020, the Pau Commercial Court declared that it lacked jurisdiction to hear the dispute to the benefit of an ICC arbitration tribunal. The franchisor had advanced a jurisdictional plea asking for the incompetence of the Commercial court by putting forward the arbitration clause as well as the remaining possibility

of reintroducing the arbitration proceedings before the ICC. The Pau Court of Appeal confirmed this judgment on 5 November 2020 declaring that the arbitration clause retained all its effects, and that the intervention of the Secretary General of the ICC International Court of Arbitration to suspend the arbitral proceeding was not worth the renunciation of the parties to the arbitration. The Pau Court of Appeal reasoned "…[F]*urthermore, the binding force of the arbitration clause is independent of the financial health of one of the signatory parties*."

However, the French Court of Cassation invalidated the Court of Appeals' reasoning. First, because the judge has an obligation not to distort the written submissions presented to him and second because of the principle of procedural fairness governing the parties' behavior in arbitration proceedings. Regarding the first argument, Article 36 of the ICC Rules provides that the provision for costs fixed by the ICC is due in equal parts by the plaintiff and the defendant. The Court of Cassation thus proceeds to a literal interpretation of this article and concludes that the franchisor cannot advance a jurisdictional plea against the State judge by its fact of not having advanced its part of the provision during the arbitral procedure. In other words, the non-payment of the provisional advances for costs due in equal parts by the claimant and the respondent consists in distorting the wording of the ICC Rules and thus constitutes an illegality. Second, the Court of Cassation upholds the principle of procedural loyalty governing the parties to an arbitration agreement. Indeed, the fact of franchisor caused the withdrawal of the request for arbitration by the ICC by not paying the part of its provisional advances for costs would prevent them from advancing a jurisdictional pleas in front of the State judge by invoking the arbitration clause. In other words, the provocation of the withdrawal of the request for arbitration by refusal of payment of provisional advances for costs is worth the renunciation of the arbitration procedure notwithstanding the existence of the arbitration clause.

Court of cassation, 1st Civil Chamber, 9 February 2022, no. 20-20.376

By Justine Dousset

On 9 February 2022, the Court of Cassation rejected an application to set aside the decision of the International Commercial Chamber of the Paris Court of Appeal of 3 June 2020 granting exequatur to the arbitral award of 27 December 2018.

In the present case, a contract was concluded on 6 March 2002 for the conversion of an Iranian gas field into underground storage between French company TCM FR and the Iranian Natural Gas Storage Company ("NGSC"). On 16 January 2014, NGSC terminated the contract, leading TCM FR to initiate arbitration proceedings against NGSC under the International Chamber of Commerce Rules of Arbitration. The arbitral award was rendered on 27 December 2018 in favor of the NGSC. TCM FR brought an action for annulment against the award in front of the French courts.

The Paris Court of Appeal on 3 June 2020 rejected the application to set aside the award, leading TCM FR to file an appeal in cassation against the decision of the Paris Court of Appeal.

In the present proceedings in front of the Court of cassation, TCM FR firstly criticizes that the Court of Appeal granted the exequatur of the award. They sustain that the award was subject to French law and that the award lacked sufficient legal reasoning since the Court failed to provide an explicit statement of reasons. The international embargo against Iran made it impossible to continue the contract under the conditions provided for, and by refusing any revision of the contract, NGSC caused the breach of the contract. In considering that the arbitrators did not disregard their mission and obligation to give reasons and that they "implicitly but necessarily" ruled on the consequences of the embargo on the contract, the Claimants alleged the violation by the judges of article 1529-3° of the French Code of Civil Procedure.

Secondly, TCM FR criticizes the decision of the Court of Appeal for considering the sanctions against Iran imposed by the UN Security Council and the Council of the European Union to be inapplicable *ratione materiae* and *ratione temporis* to the contract in question, even though these sanctions are a matter of international public policy and such a ground opens up an action for annulment of the recognition or enforcement of the arbitration award. TCM FR considered that the assessment of compliance with international public policy has to be made regarding the recognition and enforcement of the decision and not as regards the contract.

The Court of cassation dismissed the appeal, firstly by recognizing that the arbitral tribunal had examined each of TCM FR's claims and that it was right to consider the termination of the contract justified. Secondly, the Court of cassation, in considering the UN and European sanctions as French public policy laws, recognized that it was up to the Court of Appeal to assess the violation of international public policy according to the material and temporal scope of the provisions in question.

Thus, the Court of cassation holds that the Paris Court of Appeal legally justified its decision by considering that the contract does not fall within the scope of application of the sanctions.

COURTS OF APPEAL

Paris Court of Appeal, 1 February 2022, nos. 14/2022 and 15/2022

By Sarah Lazar

In a first decision of 1 February 2022, the Paris Court of Appeal states that the principle of nullity in French contract law does not require the restitution of advance payments (final award – no.14/2022). In a second decision, the Court recalls that the judgment of a state court falling in the field of exclusion of the "Brussels I Regulation" is not such as to prevent the enforcement of an arbitration award adopting a contrary solution (partial award – no.15/2022).

As regards the action for annulment of the final award, the Ministry of Justice of the Republic of Iraq (hereinafter the "Iraqi Government" - Claimant in the first judgment) and ARMAMENTIE E AEROSPAZIO SPA (hereinafter the "Armamentie company" - Respondent in the first judgment) concluded a supply contract for the sale of five naval helicopters intended to equip warships. The entry into force of the contract was conditional upon the Italian company

obtaining an export permit and the receipt of a deposit from the Iraqi Government. The contract was submitted to French law and provided for a negotiation period followed by arbitration in case of a dispute. An export permit was issued by the Italian Minister in relation to this contract. However, it was suspended following the various resolutions issued by the United Nations Security Council concerning the conflict between Iraq and Kuwait (Gulf War).

The Armamentie company sued the Iraqi Government before the Busto Arsizio courts in order to obtain the termination of the contract. The court rejected the Armamentie companies claim on the grounds that it had not followed the procedure of prior conciliation. By a judgment of 3 July 2012, the Milan Court of Appeal overruled the latter judgment and held that the embargo had rendered the dispute non-arbitrable, resulting in the termination of the contract. This decision was confirmed by a ruling of the Italian Court of Cassation of 22 September 2015. In the meantime, on 13 June 2013, the Iraqi Government filed for arbitration in order to obtain reimbursement of the damage it allegedly suffered due to the non-performance of contractual obligations by the Armamentie company.

On 30 November 2016, the arbitral tribunal issued a partial award (no. 15/2022) in which it declared that it has jurisdiction to hear the dispute. On 20 April 2017, the Armamentie company filed an application for annulment of this award. The arbitral tribunal rendered a second award on 7 June 2018 (the final award - no. 14/2022), in which it stated that the contract was void in the absence of the export permit, but no restitution of the sums of money, advanced by the Iraqi Government to Armamentie, was required.

The final award dismissed the Iraqi government's claim for damages. In reaction, an action for annulment was filed on 7 June 2018 before the Paris Court of Appeal against the final award.

According to the Iraqi Government, the arbitral tribunal failed to respect the principle of contradiction by applying rules of law that were not referred to by the parties, in particular Articles 1186 and 1187 of the French Civil Code. The Paris Court of appeal rejects the plea holding that the final award shows that the Iraqi Government repeatedly referred to these articles in its submissions.

Furthermore, the arbitral tribunal considered that the real cause for the termination of the supply contract was the government's decision (suspension of the export permit), and not the embargo (emanating from the UN Security Council resolutions). However, the arbitral tribunal rejects the claim for reimbursement of advance payments. Under French law, the principle of nullity of the contract does not require the return of the sums advanced. The Court of Appeal therefore rejects the Claimants' argument.

The Iraqi Government based its second plea on the violation by the arbitral tribunal of its mission by ruling *ultra petita* on claims that were not formulated by the Armamentie company. The arbitral tribunal decided to reject the Iraqi Government's claim for restitution purely and simply, apart from any claims made by Armamentie company. It appears from the award, according to the Court of Appeal, that Armamentie had expressly requested the tribunal to reject the Government of Iraq's claim for restitution. Consequently, the Court rejects this plea outright.

In the second proceedings, as regards the application to set aside the partial award, the Court of Appeal deals with the partial award (no. 15/2022) issued by the arbitral tribunal, ruling on its jurisdiction. Armamentie (the Claimant on jurisdiction) requests the Court of Appeal to annul the partial award of 30 November 2016, in which the arbitral tribunal declares itself competent. The Government of Iraq asks the Court to dismiss Armamentie company action for annulment.

The Italian company bases its argument foremost on the tribunals' disregard of public policy by considering that the recognition and enforcement of the partial award is contrary to international public policy. It also recalls that the solution of the partial arbitral award is contrary to the solution adopted by the Milan Court of Appeal, holding that the embargo had rendered the dispute non-arbitrable. According to Armamentie, the decision of the Milan Court of Appeal has *res judicata* in France. Consequently, the recognition or enforcement of an arbitral award that is irreconcilable with another decision previously rendered or recognized in France violates French international public policy.

The Court of Appeal noted that these two decisions adopt distinct solutions both on the question of the arbitrability of the dispute and on the reasons for the termination of the supply contract. However, it admits that the decision of the Milan Court of Appeal cannot benefit from immediate recognition and enforcement as foreseen by the Brussels I Regulation. According to the Paris Court of Appeal, the judgment of the Milan courts, ruling on the arbitrability of the dispute, falls within the exclusion provided for in Art. 1 §2 d) of the Brussels I Regulation. The decision of the Milan Court of Appeal cannot therefore prevent the enforcement of the partial arbitration award at issue. The appeal to set aside the partial award is consequently dismissed by the Paris Court of Appeal on 1 February 2022.

Paris Court of Appeal, 1 February 2022, no. 20/01433

By Gourzmi Oumaima

The company A plus Caraïbes ("APC") is a supplier of equipment for hotels, restaurants and beaches on Saint Martin's island.

Following a hurricane on 6 September 2017 which caused damage on the island and in the surrounding area, APC asked its insurer, GFA Caraïbes ("GFA"), to compensate it for its losses under the multi-risk policy for tradesmen and craftsmen which it took out on 14 October 2016 and obtained payment of EUR 22,705 in compensation for the direct material damage suffered.

However, in the absence of an agreement on compensation for business interruption insurance, APC applied to the President of the Basse Terre High Court for the appointment of an arbitrator under the arbitration clause contained in the general terms and conditions of the insurance contract.

The sole arbitrator thus appointed by summary order of 18 September 2018, rendered a final award on 12 December 2019, which confirms its jurisdiction and rejects APC's claims, considering that the interruption or reduction in its activity was not due to the abnormal intensity

of a natural agent affecting the company's assets, and concludes that the arbitration costs should be shared equally between the parties.

In its appeal, APC asked the Court to overturn the award and to charge GFA with compensation for operating losses as well as the fees of the expert firm.

As regards the coverage of the operating loss, APC argued that the insurance contract included the existence of the legal guarantee of compensation for natural disasters as well as a guarantee of compensation for operating losses in the event of a natural disaster. It accused the arbitral tribunal of having based itself on the legislative provisions relating to compensation for natural disasters, which it considered to be suppletive, when the contractual guarantee for operating losses should be applied.

In response, GFA asked the Court to confirm the award in all its points and to rule that the interruption and/or reduction of APC's activity was not due to the abnormal intensity of a natural agent that affected the company's assets and that the insurance policy at issue was not intended to apply.

The defendant maintained that the compensation rules applicable to damage resulting from the occurrence of a natural disaster derive from Articles L 125-1 and following of the French Insurance Code and relies on case law of the Court of Cassation which held that compensation for indirect damage, such as operating losses, following a natural disaster does not fall within the scope of the above-mentioned provision.

Based on the provisions of the Insurance Code and the terms of the general conditions of the insurance contract concluded between the parties, the Court of Appeal considered the claim for compensation based on the contractual guarantee for operating losses, and not on the legal guarantee for natural disasters, made by APC company to be admissible and justified due to the loss of gross margin as a result of the interruption of its business due to the hurricane. The Court condemned GFA to pay the sum of 196,379 euros, thus overturning the arbitration award.

However, given that APC did not quantify its claim for reimbursement of the expert's fees, the Court rejects any claim for reimbursement.

ARITRAL AWARDS

PCA Case No. 2019-11, 31 January 2022, *Fernando Fraiz Trapote v. Bolivarian Republic of Venezuela*

By Facundo Marcone

On 31 January 2022, a PCA Tribunal decided that it does not have jurisdiction over a claim against Venezuela. The Tribunal holds the *Ratione Personae* objection to the dual nationality of the claimant.

The dispute arose between Fernando Fraiz Trapote ("Claimant") and the Bolivarian Republic of Venezuela ("Venezuela" or "Respondent"). The dispute involved investments over telecommunications, advertising, real estate and educational services in Venezuela. Claimant alleged that Venezuela expropriated its assets and business.

On 16 October 2018, Claimant initiated an arbitration under the UNCITRAL Rules against Venezuela under the Bilateral Investment Treaty entered between the Kingdom of Spain and the Bolivarian Republic of Venezuela ("BIT").

According to Respondent, the BIT does not apply to Claimant due to his dual nationality. This is because the BIT, interpreted in accordance with the 1969 Vienna Convention on the Law of Treaties ("VCLT"), does not offer protection to dual Venezuelan and Spanish nationals.

Respondent argued that the general principles of international law relating to equality between States, non-responsibility and dominant and effective nationality preclude Claimant from bringing an international arbitration before a State of which it is a national.

In the alternative, Respondent argued that the BIT prevents Claimant from bringing a claim under the BIT because he had only Venezuelan nationality at the time of his investments.

The parties disagreed on: (i) the application of the rules of interpretation of Article 31(1) VCLT; (ii) the textual interpretation of the concept of investor; (iii) the contextual interpretation of the BIT; (iv) the object and purpose of the BIT; and (v) compatibility with principles of international law.

The Tribunal analyzed: (a) the interpretation of the concept of "investors" in Article I.1.(a) of the BIT, pursuant to Article 31 VCLT and (b) Claimant's situation considering the concept of investors as determined by the Tribunal to render the award.

(a)The interpretation of the concept of "investors" in Article I.1.(a) of the BIT, pursuant to Article 31 VCLT.

The Tribunal considers that the BIT does not specify whether the term "national" includes dual nationals having the nationality of the host State. Thus, this issue must be resolved based on an analysis of the context and on the object and purpose of the BIT. As well as the interpretative guidelines established by Articles 31(2) and 31(3) of the VCLT.

The Tribunal asserts that the literal definition of "investors" in Article I.1(a) of the BIT neither includes nor excludes dual nationals. In the Tribunal's view, the silence of the BIT cannot be interpreted either way, based only on the text of Article I.1(a) of the BIT.

The Tribunal concludes that Article I.1(a) of the BIT does not include a special rule governing the treatment of dual nationals as investors. The Tribunal acknowledges the principle of effective and dominant nationality as a relevant rule of international law applicable to the interpretation of the term investor in Article I(1)(a) of the BIT. This is because the BIT does not contain specific rules to answer the question whether a dual national having the nationality of the host State may bring an arbitration against it.

The Tribunal asserts that the principle of effective and dominant nationality is consistent with the natural meaning, context, object, and purpose of an investment treaty. This is, to provide investors who have their place of business in one country with the assurance that they will be subject to an international jurisdiction protecting their investments in another country.

The BIT, interpreted pursuant to Article 31 VCLT and the relevant rules of international law, partially protects dual national investors. In particular, the Tribunal considers that a dual national may invoke the protection of the BIT, to the extent that it invokes its effective and dominant nationality, for the purpose of suing the State of its non-dominant nationality.

The Tribunal recognizes that other tribunals have reached different conclusions based on this BIT and in similar treaties. The Tribunal asserts that in international law there is no principle of binding precedent and precedents are not a source of international law under Article 38 of the Statute of the International Court of Justice.

(b) Claimant's situation under the concept of investors as determined by the Tribunal.

The Tribunal concludes that Claimant´s effective and dominant nationality is Venezuelan, thus, he is not protected by the BIT. The Tribunal considers that Claimant did not directly assert that its Spanish nationality is dominant. Claimant only asserted that the Spanish nationality was not merely formal and that it had real links with Spain. Further, the Tribunal analyzed several facts of the life and of the business made by Claimant to sustain that the Spanish nationality was not effective nor dominant.

Considering all the above, the Tribunal rejects its jurisdiction to hear the claim.

ICSID Case No. UNCT/20/3, 31 January 2022, *Westmoreland Mining Holdings, LLC v. Canada*

By Jorge Escalona

On 31 January 2022, the Tribunal in the ICSID Case No. UNCT/20/3 between Westmoreland Mining Holdings LLC ("Claimant" or "Westmoreland") and the Government of Canada ("Respondent" or "Canada") (collectively as the "Parties") rendered its award on jurisdictional objections. Claimant requested arbitration under Chapter 11 of the North American Free Trade Agreement ("NAFTA") and the UNCITRAL Arbitration Rules of 1976. The ICSID administered the case under the Parties' agreement.

The dispute arose from Claimant's ownership of numerous coal mines in Alberta, Canada, and the province's subsequent actions to phase out coal-fired power plants by 2030.

In April 2014, Westmoreland Coal Company ("WCC"), a company incorporated in the US, acquired assets from a Canadian company, including Prairie Mines & Royalty ULC ("Prairie"). A Canadian enterprise which owned several mine-mouth coal mines, including 3 in Alberta: the Genesee, Sheerness, and Paintearth Mines. At the time of the acquisition, a series of federal regulations were introduced to address greenhouse gas emissions from coal-burning power plants and ensure that all such facilities would be phased out over 50 years from the date of commissioning.

After the acquisition, Prairie was owned by Westmoreland Canada Holdings Inc. ("WCHI"), an Albertan entity owned by WCC (Prairie and WCHI are referred to as the "Canadian enterprises"). In parallel, in December 2014, specific lenders ("first-tier lien holders") provided WCC with a USD 700 million debt financing with a maturity date of 2020.

Meanwhile, on 22 November 2015, Alberta announced its Climate Leadership Plan ("Plan"), which introduced provisions to phase out greenhouse gas emissions and air pollutants produced by coal-fired electricity generation by 2030. Up to 25 years earlier than under previous federal regulations. There were around 18 coal-fired generating units in Alberta, 6 of which were expected to operate beyond 2030, which now had to transition to other fuel sources or technologies. These 6 were supplied by 3 coal mines: Sheerness, Genesee, and Highvale (the first 2 being owned or part-owned by Prairie).

At the same time, an independent government expert was hired to advise Alberta on the best options to achieve the Plan's goals. He recommended voluntary Transition Payments ("Transition Payments") to be made to the 3 companies which owned the 6 coal-fired generation plants with remaining life beyond 2030 ("Alberta Companies"). For such purposes, on 24 November 2016, Alberta announced it had entered into Off-Coal Agreements with each of the companies ("Off-Coal Agreements"), in which it would make the Transition Payments subject to certain conditions.

Despite the above, no payment was offered to WCC since (according to Canada) the Transition Payments were made in respect of capital at risk of stranding relating to affected coal-fired generation units and not in respect of any interest in any coal mine. At the same time, WCC became in debt and unable to pay the first-tier lien holders; it even filed for bankruptcy in the US on 9 October 2018. The same day, WCC and the first-tier lien holders entered into a Restructuring agreement.

At around the same time, on 19 November 2018, WCC filed a Notice of Arbitration and Statement of Claim against Canada under NAFTA Chapter 11, claiming damages of more than CAD 470 million. It challenged the measures introduced through the Plan and Alberta's decisions to make the Transition Payments ("NAFTA Claim"). Nonetheless, its financial situation worsened. They had to agree with the first-tier lien holders to sell certain assets, including the NAFTA Claim. However, for such purposes, they decided on a particular acquisition vehicle, which provided for the incorporation of Westmoreland on 31 January 2019 and its acquisition of WCC's assets, such as the Canadian Enterprises.

Consequently, on 13 May 2019, Westmoreland, WCHI, and Prairie filed a written notification with Canada seeking its agreement that Westmoreland substitution amends WCC's Notice of Arbitration as Claimant. Therefore, on 23 July 2019, WCC withdrew its NAFTA Claim, and Westmoreland filed a Notice of Arbitration against Canada on its behalf under NAFTA Article 1116. The breaches identified were (i) Alberta's decision in the Plan to phase out emissions from coal-fired electricity generation by 2030 in breach of NAFTA Article 1105, and (ii) Alberta's decision to make the Transition Payments in breach of NAFTA Articles 1102 and 1105 ("Challenged Measures"). It sought damages exceeding CAD 470 million.

Since the proceedings were bifurcated, the award decided over Canada's jurisdictional objections concerning (i) that Claimant was not a protected investor at the time of Canada's alleged breaches as required by NAFTA articles 1116(1) and 1117(1); (ii) that Claimant did not make out a prima facie damages claim under NAFTA Articles 1116(1) and 1117(1); and (iii) that the Challenged Measures do not "relate to" the Claimant or its investment under NAFTA Article 1101(1).

Canada argued that since Westmoreland was constituted on 31 January 2019, and its first investment in Canada was made on 15 March 2019, the Tribunal's jurisdiction ratione temporis is limited to claims arising out of a breach and consequential loss that occurred after that date and not before. Furthermore, it argued that neither Westmoreland nor its investments could have been treated in an unfair or discriminatory manner when they did not even exist then.

Additionally, it stated that Westmoreland was created by WCC's first-tier lien holders and not by WCC. Consequently, it is not a successor entity to WCC to bring a claim on its behalf. Finally, it asserted that since Westmoreland's losses referred to in its Notice of Arbitration crystallized before it was incorporated and became an investor of a party, it cannot show any damage, even on a prima facie basis.

Claimant argued that (i) Prairie is a mining enterprise in Alberta, qualifying under the definition of investment under NAFTA; (ii) that Prairie was owned at all material times by WCC at the time of the Challenged Measures and Westmoreland at the time the arbitration was commenced; and (iii) that there was no abuse of process in the restructuring of WCC. It emphasized that since it emerged as the successor company to WCC due to its restructuring, it is merely a new manifestation of WCC. It contended that even if found not to be the same entity as WCC, an assignment or transfer of a claim is permitted where there has been a continuity of interest between transferor and transferee. Finally, it argued that it suffered its loss, disputing that the Off Coal Agreements damaged Prairie and its American investor by removing Prairie's customers prematurely and shortening Prairie's coal mines time horizon for between 6 to 25 years.

The Tribunal establishes that a fundamental question is whether, to bring a claim under NAFTA Chapter 11, Westmoreland must have owned or controlled the investment at the time of the alleged breach. The Tribunal provides that if the answer to the question is positive, it will be necessary to determine whether Westmoreland is the same entity as WCC, even in a new corporate form, failing which Westmoreland's claim must fail for lack of jurisdiction *ratione temporis*.

The Tribunal states that if the answer is 'no,' it will fall to be determined whether WCC's NAFTA claim has been successfully assigned or otherwise transferred to Westmoreland such that Westmoreland has the standing to bring its claim against Canada. The Tribunal relied on *Phoenix Action Limited v. Czech Republic* reasoning where it was declared that *"it does not need extended explanation to assert that a tribunal has no jurisdiction ratione temporis to consider claims arising prior to the date of the alleged investment, because the treaty cannot be applied to acts committed by a State before the claimant invested in the host country."* (award, p. 51).

The Tribunal finds that construction of Articles 1101(1), 1116(1), and 1117(1) of the NAFTA, is that only the party which owned or controlled the investment at the time of the alleged treaty breach has jurisdiction ratione temporis to bring a claim. The Tribunal accepts Canada's submission that the challenged measure must *"directly address, target, implicate, or affect the claimant or have a direct and immediate effect on the claimant."* (award, p. 54).

The Tribunal reasons that since the first-tier lien holders put into motion a process by which they could purchase certain of WCC's assets, including the Canadian Enterprises (in an arm's-length transaction, with no successor liability) it cannot be said that Westmoreland is WCC's successor.

Ultimately, the Tribunal struggles to comprehend how Westmoreland can show it has suffered any loss independent of that loss suffered by WCC. Given all the above, it decides that (i) Westmoreland was not a protected investor at the time of the alleged breaches as required by NAFTA Articles 1101(1), 1116(1) and 1117(1); (ii) that Westmoreland has not made out a prima facie damages claim under NAFTA Articles 1116(1) and 1117(1); and (iii) that the Challenged Measures do not "relate to" Westmoreland or its investment according to NAFTA Article 1101(1). Therefore, it dismisses Westmoreland's claims in their entirety and orders each party to bear its own legal and proceedings costs.

ICSID Case No. ARB/16/18, 1 February 2022, *Infracaptial v. Spain*

By Nadina Akhmedova

On 1 February 2022, ICSID Tribunal ("Tribunal") dismissed the request of the Kingdom of Spain ("Respondent" or "Spain") to reconsider the Decision on Jurisdiction, Liability and Directions on Quantum as of 13 September 2021 ("Decision"). The Tribunal closely examined two grounds for reconsideration submitted by Respondent, namely (i) the lack of jurisdiction to hear a dispute under the Energy Charter Treaty ("ECT") which does not extend to intra-EU investments; and (ii) the lack of applicable law. In its decision the Tribunal rules that Respondent's claim for reconsideration of the Decision is admissible, however rejected both of its arguments and dismisses the request in its entirety.

Originally, the claim was brought against Spain by Infracapital F1 S.à r.l. and Infracapital Solar B.V. ("Claimants"), both of which are EU-incorporated legal entities, for alleged violation of the ECT. The tribunal rendered Decision on 13 September 2021 upon examination of issues on

jurisdiction and liability of Respondent under Article 10(1) of the ECT. The tribunal however did not take into consideration the earlier ruling of the Court of Justice of the European Union ("CJEU") in case Republic of Moldova v. Komstroy LLC ("Komstroy Judgment") which was issued earlier on 2 September 2021. The Komstroy Judgement addressed the question of the compatibility with EU Law of the possible submission to arbitration of intra-EU investment disputes under the ECT. In light of the previous Slovak Republic v. Achmea case ("Achmea"), the CJEU ruled that the ECT forms part of EU law and an arbitral tribunal must apply EU law in framework of Article 26(6) of ECT; at the same time, intra-EU investment arbitration is not allowed.

In October 2021 Respondent filed request for reconsideration of the Decision contending that it was "manifestly erroneous" and that Komstroy Judgement classified as a new fact which would have a decisive power on the Decision. Respondent challenged jurisdiction of the tribunal under the ECT on the basis that the dispute relates to intra-EU investments.

Prior to examining the raised substantial grounds for reconsideration, the Tribunal addresses the issue of admissibility of Respondent's request under Article 44 of the ICSID Convention. The Tribunal draws a distinction between awards constituting *res judicata* and decisions, which are binding within the scope of the proceedings in question. The Tribunal arrives at a conclusion that the threshold for review of arbitral awards set out in Article 51 should apply by analogy to preliminary decisions. Even though the Tribunal acknowledges that the CJEU Komstroy Judgement may be considered as a new fact, it rejects its decisive effect on the Decision and determines it irrelevant to the issue of jurisdiction.

First issue considered by the Tribunal is whether EU law is applicable for the purpose of determining the jurisdiction. In support of Claimant's arguments, the Tribunal establishes that the ECT applies only to the merits of the dispute and observes that the jurisdictional issues "are not necessarily applicable to the merits of the case".

In the second question concerning the interpretation of Article 26 of ECT, the Tribunal applies the Vienna Convention on the Law of Treaties ("VCLT") and concludes that the jurisdiction of the tribunal derives from the ECT. Notwithstanding Respondent's arguments that there is an implied "disconnection clause" in the ECT, the Tribunal notes that Spain had an opportunity to make a reservation to ECT, however it would have needed to be expressed. The Tribunal emphasizes that the ECT contains an express clause on "irrevocable consent" which was undertaken by EU signatory states and dismisses Respondent's arguments on autonomy and primacy of EU law.

Third, the Tribunal analyzes the relevance of Komstroy Judgement and determines that notwithstanding the factual novelty of this ruling, the issues raised by the CJEU therein were already submitted by the parties and concludes that this Judgement does not contain any material facts which could affect the Decision.

Fourth, the Tribunal holds that declining jurisdiction on the basis of the Komstroy Judgement would be improper in relation to Claimants, since it was issued several years after initiating arbitration proceedings. Furthermore, the Tribunal notes that Spain provided its consent for

arbitration in 2016 and it cannot be invalidated retroactively following the emergence of the Komstroy Judgement.

Lastly, the Tribunal emphasizes irrelevance of the Komstroy Judgement to applicable law of the dispute and dismisses Respondent's Request for reconsideration.

INTERVIEW WITH HELIONOR DE ANZIZU

1. **Hi Hélionor, thanks for accepting our invitation and for answering our questions for this months' edition. Can you briefly recall your background for our readers?**

Thank you very much for your kind invitation!

Sure! I am a French and Spanish citizen, with a French mother and a Spanish father. I grew up in Barcelona, Spain. I attended the French school (*Lycée Français de Barcelone*) and passed both the French Baccalaureate and the Spanish *Selectividad*.

Growing up, I have had the chance to be surrounded by lawyers. Both of my parents are lawyers and I honestly learned a lot from them professionally. From my father, I have learned the importance of organization, rigor and attention to detail; from my mother, I understood the promises and perils of finding my own way within the legal environment, to never undermine my capabilities, and to be true to myself. So, once I finished high school, I decided to leave Barcelona and to move to Paris to start my legal career.

I first specialised in international business law and private international law. It was only during my second year of master degree that I discovered the field of international arbitration, right before passing the French Bar (I am qualified in Paris, pending swear in). Thereafter, I did internships with international arbitration teams in Paris and Geneva. During those internships, I worked on international investment law and public international law cases, learning from amazing lawyers and building life-long professional relationships. It is during these experiences that I first learned about the interlinkage between ISDS with human rights and international environmental law. The latter was fascinating to me, and my gut simply told me that I had to dig into it!

I personally tried to find ISDS experts that had a deep hands-on experience on international environmental law, but unfortunately there are not many. It was while searching for these experts that I then found CIEL and their work on international economic law and environmental law (see for example, D. Hunter, S. Porter, International Environmental Law and Foreign Direct Investment; or D. Zaelke, R. Housman, G. Stanley, Frictions between international trade agreements and environmental protections; or the legal brief on the Minimum Standard of Treatment) and amicus curiae (see for example, CIEL's amicus curiae submission in *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12). That was it! I decided to apply for an internship!

My initial idea was to stay at CIEL for 3 months before returning to private practice. However, I soon discovered that CIEL was dedicating more and more attention to ISDS and trade. It was very exciting to intern at CIEL and participate in this evolution: I think I ended up being the go-person for those queries. One day, my boss approached me and asked me if I wanted to stay as Staff. And here I am!

Alongside my work at CIEL, I also really like researching, teaching and mentoring. Today, I am an aspiring academic, in the first steps of getting a PhD degree in international law. I have the incredible privilege to have the kind support of two amazing co-supervisors: Prof. Laurence Dubin from the Sorbonne University in Paris, and Makane Moïse Mbengue from the University of Geneva. My PhD research relates to the issue of fossil fuels phaseout and international investment law. A topic that is part of my day-to-day work at CIEL.

2. For those who don't know CIELs' work, could you please explain to our readers the functioning of the Center for International Environmental Law and the projects in which you are involved on a daily basis?

CIEL was founded in 1989 at a time when international environmental law was actively under construction. It first opened its offices in Washington DC, and in 1995 CIEL opened an office in Geneva to focus on the WTO. CIEL's presence in Geneva and Washington D.C. also permitted a coordinated effort to shape trade policy at the WTO and in the world's two most powerful trading blocs - NAFTA and the European Union. Some of the first legal experts in environment & trade/investment law came from CIEL, so there is a lot of institutional history. For the anecdote, CIEL attorneys submitted amicus in landmark decisions in ISDS (i.e. CIEL's amicus curiae submission in *Methanex v. United States*) and the WTO (i.e. CIEL's amicus curiae submission in the *Shrimp-Turtle* case).

Besides its trade and ISDS work, the Center covers a large number of topics within international environmental law and human rights. It would be difficult to give you a full overview of what the organization does today, because there are so many things! But in summary, CIEL engages in legal and policy advocacy, through involvement in litigation, intergovernmental negotiations, and other policymaking processes, and publishes research and analysis on a range of topics at the intersection of environment and human rights. My colleagues participate in various multilateral negotiation processes, sharing legal expertise, analysis, and input with other civil society partners as well as government delegations. While CIEL does not typically lead litigation, the organization supports litigation before national and international courts and tribunals as well as complaints to non-judicial grievance mechanisms, through amicus briefs, expert submissions, strategic advice, and other involvement. The organization works to advance human rights and environmental protection on a large range of topics, from plastic pollution, to climate finance, fossil fuel phaseout, toxics and chemicals regulation, illegal logging, and geoengineering, to mention a few.

On my side, I work across programs and focus almost exclusively on international investment law and international trade law. The work is very diverse, from treaty negotiation, advocacy, ISDS reform, amicus submissions and capacity building. As an example, I regularly support communities affected by foreign investment projects, and submit amicus curiae briefs before investment arbitration tribunals. I also advocate for a better integration of international environmental, climate change and human rights law in international investment law and trade law. In this context, I have appeared in U.N. fora, including the WTO.

3. Within CIEL, you have a rather exceptional position for a lawyer working in arbitration since your organization participates as an expert in the negotiation of international multilateral agreements. Can you tell us a little more about this particularity of practicing public international law?

In the context of trade and investment, colleagues at CIEL have been particularly active on NAFTA, GATS, and TTIP negotiations. More importantly, CIEL attorneys have been involved in the negotiations of a large number of Multilateral Environmental Agreements (e.g. CITIES, the Basel Convention, the UNFCCC, the Paris Agreement etc.). I personally have been involved in the pre-negotiations of a new agreement on plastics. Reading the text of a treaty and 'experiencing the treaty' from the inside is quite different. When you experience treaty negotiations you understand the intention behind the text, the purpose and the policy and environmental need behind the negotiation. You also better navigate the technicalities of a specific topic. Think that environmental and human rights questions in practice are quite complex. This is very useful if you want to better understand how public international law works in practice. In the context of investment disputes, (i) it also allows you to place concrete disputes in the context of broader debates and developments in international law; and (ii) it is also relevant in the context of treaty interpretation.

4. You recently submitted an amicus curiae brief in an ISDS case. According to you, which is the role of a lawyer when acting in this function and what are, in your opinion, the advantages and disadvantages of acting as such?

I personally think lawyers can have different roles in this particular context.

Firstly, lawyers can represent and support affected communities. Despite having much at stake in foreign investment projects and in the outcome of ISDS disputes, local communities and their rights are often invisible under the current ISDS system (I invite you to read the report presented last year at the U.N. General Assembly by U.N. Working Group on Business and Human Right). Some of the cases I work involve foreign investment projects that pose an environmental and/or economic risk to local communities and/or indigenous people. In this context, it is important to help arbitration tribunals understand the broader impacts of an investment project. On occasions, both the State and the investor are perpetrators of human rights violations. In some cases, investors even invoke protection

under international investment agreements not to be held accountable for human rights abuses. In this context, lawyers can help affected communities and NGOs bring this into an ISDS case (see the Dissenting Opinion of P. Sands in Odyssey v. Mexico). They can also help place a dispute in the context of broader debates and developments in international law. Amicus curiae offers the opportunity to provide a different perspective, and bring this into the attention of the tribunal.

Secondly, compared to litigation, international arbitration is a 'different beast': lawyers who are experts or have experience in the ISDS system can help affected communities understand (i) how the ISDS system works, (ii) what does an ISDS claim means (think that for them, an ISDS claims appears often after having long opposed to an investment project that has impacted their lives and their livelihoods) and (iii) what they can do in this context (e.g. amicus curiae submissions).

Thirdly, a growing number of investment claims are currently on their way against States due to the adoption of environmental measures and climate change related measures (e.g. phase out measures). In this context, part of lawyers' - and my - work is and will be to ensure that climate, human rights and environmental objectives are not undermined or poorly interpreted in ISDS disputes.

5. Do you think that arbitration has a role to play in the process of environmental protection and if so, how could climate awareness be improved?

It certainly plays a role. There are more and more ISDS cases that are directly or indirectly related to an environmental question. In practice, besides cases related to environmental pollution, investors also challenge environmental measures such as moratoriums on fracking, bans on offshore oil drilling, energy phase-outs, or the refusal of environmental permits. Some wonder if ISDS is the appropriate fora. It may not be, but the truth is that those cases are happening now and tribunal's decisions will have bigger impacts and consequences than what we think.

On climate change more specifically, I personally think that the interconnection between climate change and international arbitration is more complex that what we think. It will certainly take us a little more time to have a full picture. We know that the fossil fuel industry is the most significant contributor to climate change. The consequences of burning fossil fuels become increasingly evident, policy-makers across the globe are taking actions to curb emissions. However, these actions will impact foreign investments in the fossil fuel industry. Because investment agreements (i) are not initially designed to address climate issues, (ii) generally lack environmental and human rights provisions, (iii) or contain provisions that may, in practice, seem inefficient or insufficient, I think there is an urgent need to update the ISDS system and better allocate the protection of the environment, human rights, and climate change.

I also hope to see more environmental and human rights legal experts and scholars getting involved at ICSID, not only because it is important to place environmental and human rights considerations at the heart of investment law discussion (which also needs to be done in other foras and fields of law), but also because tribunals have to deal with domestic and international environmental law issues. Environmental law is highly technical and it is easy to get greenwashed if you don't have some experience and expertise (e.g. by strengthening false solutions regarding net zero or on circular economy). Legal and technical expertise in this particular field is therefore essential. Unfortunately, I think there are not many attorneys that combine both expertises and I really hope there will be more in the future: as we say, Earth needs a good lawyer!

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

Regarding this specific field of ISDS and the environment and human rights: I think it is important to note that there is going to be an increasing demand for legal experts and work in this area of law. As of today, compared to law firms, there are not so many institutions that specialize in this, but they exist! If you are interested in getting involved, contact people working in this particular field, try to get an internship, publish an article, or do pro bono work. The more you explore, the more you will find there is a lot you can do!

More generally: I think it is very important for you to join the field with a clear mind: who I am and what do I want to achieve professionally? This is not an easy question, and its answer will develop the more you explore and understand the world we live in. So, take your time and always **be true to yourself**. Another piece of advice would be, whatever you do, **try to be the best**. My father told me this over and over again and it has made a whole difference for me. To me, to be the best doesn't mean to know everything but to always try to be sharp, a hard worker, inspiring, committed and resilient. Remember also that this is a marathon, not a sprint and take care of the little details. People will see it, recognise it and help you.

NEXT MONTHS' EVENTS

March 9th, Beyond LIBOR: Challenges, Developments and Opportunities in the LIBOR

ONLINE

Website: https://2go.iccwbo.org/beyond-libor-challenges-developments-and-opportunities-in-the-libor-transition.html#description

March 10th, ICC YAF: Going Around North Asia Chapter 2nd Webinar

ONLINE

Webinar discussing the must-knowns before commencing arbitration in Mainland China, Taiwan, and Japan.

Website: https://2go.iccwbo.org/icc-yaf-going-around-north-asia-chapter-2nd-webinar.html

March 14th, International commercial arbitration in the Middle East

Centre Panthéon – Salle des fêtes, 12 place du Panthéon 75005 Paris

Event organized by the Institut des Hautes Etudes Internationales (IHEI) of the Panthéon-Assas University, led by Mrs. Nayla COMAIR-OBEID, Professor at the Lebanese University.

Website: https://ihei.u-paris2.fr/fr/evenements/arbitrage-commercial-international-au-moyen-orient

March 16th, ICC YAF: Top 10 Tips on How to Match Arbitration With Businesses' Expectations

ONLINE

Webinar featuring in-house counsel, arbitrators and outside counsel who will share ten practical tips on how to better align the arbitration process with businesses 'evolving expectations.

Website: https://2go.iccwbo.org/icc-yaf-top-10-tips-on-how-to-match-arbitration-with-businesses-expectations.html

March 16th, ICC YAF: Meet your ICC Case Management Team – Italy and Switzerland

ONLINE

Interactive event featuring members of the Secretariat's "ICA6" case management team.

Website: https://2go.iccwbo.org/icc-yaf-meet-your-icc-case-management-team-italy-and-switzerland.html

March 17th, ICC YAF: Dialogue with SCIA and SCIAHK on Appointment Issues and Governing Law

ONLINE

Online seminar on the issues of appointment of arbitrators and governing law in international arbitration.

Website: https://2go.iccwbo.org/icc-yaf-dialogue-with-scia-and-sciahk-on-appointment-issues-and-governing-law.html

March 17th, ICC YAF Career Session: Pursuing a career in arbitration

ONLINE

Virtual roundtable, organized together with Católica School of Law, to learn about the different career paths that arbitration can offer, directly from three prominent alumni who carved successful careers in arbitration, each with a distinctive perspective to share.

Website: https://2go.iccwbo.org/icc-yaf-career-session-pursuing-a-career-in-arbitration.html

PARIS ARBITATION WEEK

Official PAW 2022 Calendar Link: https://parisarbitrationweek.com/calendar/

Monday, 28 March 2022

- **10:30 – 11:30 - The Rise of Cryptocurreny**
  Hong Kong International Arbitration Centre
  ONLINE
  Registration: https://hkiac.glueup.com/event/51900/register/

Tuesday, 29 March 2022

- **8:30 – 10:30 – The impact of Russian sanctions on international commercial arbitration: from arbitrability to enforcement**
  Jeantet
  IN PERSON AND ONLINE
  Registration Link to come

- **9:00 – 10:30 – Esports and Arbitration**
  K&L Gates
  IN PERSON AND ONLINE
  Registration Link to come

- **9:00 – 11:00 – Construction Arbitration: Hot topics and Issues in 2022**
  Kroll
  IN PERSON AND ONLINE
  Registration Link to come

- **9:30 – 11:00 – Stranded assets and disputes**
  FTI Consulting/Shearman & Sterling
  IN PERSON AND ONLINE
  Registration Link to come

- **10:30 – 11:45 - What role can we realistically expect disputes, and in particular, international arbitration to play in the fight against climate change?**
  Addleshaw Goddard
  ONLINE
  Registration:
  https://register.gotowebinar.com/register/2614703943518062094?source=Invitation

- **10:30 – 12:30 – The expansion of public policy and international arbitration**
  Jones Day
  ONLINE AND IN PERSON

Registration: https://jonesday-ecommunications.com/63/7067/landing-pages/rsvp-blank.asp

- **12:00 – 14:30 – Quantifying damages in a time of disruption (e.g. scarcity of commodities, climate change/ESG, geopolitics and the metaverse)**
  HKA
  IN PERSON
  Registration Link to come

- **13:30 – 15:00 – Improving the process of construction projects delay analysis to serve the arbitrators better**
  Leynaud & Associés
  ONLINE
  Registration: https://teams.microsoft.com/registration/QzXykvA11EOwxQGdHBL-ww,0znJM0KVDkG7gAG9hLjJDw,2f4M1zCWSUqHNTABcorZBQ,I2DhL5jYy0CIKhZexq2aLw,oYGXrwQw90mjf6vxlUQb8w,tNUVaSzuc0a8eVqJQ8mhQw?mode=read&tenantId=92f23543-35f0-43d4-b0c5-019d1c12fec3

- **14 :30 – 16 :30 – Resolving life sciences disputes : prescription or over the counter**
  Reed Smith
  ONLINE
  Registration Link to come

- **16:00 – 20:30 – Sports Disputes**
  Accuracy
  ONLINE AND IN PERSON
  Registration Link to come

- **16:30 – 18:00 – Space Arbitration: Disputes Over Satellites and More**
  Holland & Knight / Space Arbitration Association
  ONLINE AND IN PERSON
  Registration Link to come

- **17:00 – 19:00 – Climate Change and the Ennvironment – Can Insurance be the deciding factor for real change**
  DACB France
  IN PERSON
  Registration Link to come

- **17:30 – 21:00 – Courts and arbitration – a Middle Eastern perspective**
  White & Case
  IN PERSON
  Registration Link to come

- **17:30 – 21:00 – Reform of the English Arbitration Act: lessons from France and beyond**
  Herbert Smith Freehills
  ONLINE AND IN PERSON
  Registration Link to come

- **18:00 – 23:00 – Arbitration quo vadis: an infromat cocktail discussion with Lucy Reed**
  Freshfields
  ONLINE AND IN PERSON
  Registration Link to come

- **18:00 – 19:30 – Verso un nuovo diritto dell'arbitrato in Italia / Vers un nouveau droit de l'arbitrage en Italie**
  Associazione Italiana per l'Arbitrato – Sezione francese / Association italienne pour l'arbitrage – Section française
  IN PERSON
  Registration Link to come

- **18:30 – 20:00 – The UNCITRAL Model Law in practice – the use of precedent from other model law countries in the High Court in Ireland**
  Arbitration Ireland
  IN PERSON
  Registration: https://ti.to/Arbitration%20Ireland/paw-2022-event

- **18:30 – 20:30 - International arbitration: the mechanics of persuasion and how decisions are made**
  Hogan Lovells
  ONLINE AND IN PERSON
  Registration: https://www.hoganlovells.com/en/events/international-arbitration-the-mechanics-of--persuasion-and-how-decisions-are-made

- **19:00 – 23:00 – Celebrate PAW at Musée Guimet with Eversheds Sutherland**
  Eversheds Sutherland
  IN PERSON
  Registration Link to come

Wednesday, 30 March 2022

- **8 :30 – 10 :30 – China, Hong Kong, Singapore : what's new in the Asian arbitration landscape?**
  DS Avocats
  ONLINE AND IN PERSON
  Registration:
  https://docs.google.com/forms/d/e/1FAIpQLSeuB6bJuncnSpir8EbUz29sFxE-uk4QF-j9pBLx_6JeLmiMjg/viewform

- **8 :30 – 10 :30 – Différends fiscaux et arbitrage investisseur-Etat**
  EY Société d'Avocats
  IN PERSON
  Registration :
  https://info.ey.com/index.php/email/emailWebview?mkt_tok=NTIwLVJYUC0wMDMAAAGC6V53g_lg0bdId0xMnOqD4veYinGLZ0kkdCMD8GtMdY8TK8qy4rx0mg

3QJEMVUFwnWD2Tv_YzAAxXKHp8EUfslSAyIjoTLUnFYRVUMgdmfJau1bo&md_id=84612

- **9:00 – 11:00 – Fast & Furious: best practices in arbitration from a corporate counsel's perspective**
  Freshfields
  ONLINE AND IN PERSON
  Registration Link to come

- **9:30 – 12:00 – Energy security and disputes in Central Eastern Europe. What's next?**
  Queritius
  IN PERSON
  Registration Link to come

- **9:00 – 11:00 – Good faith in Construction**
  Kroll
  ONLINE AND IN PERSON
  Registration Link to come

- **9:00 – 18:00 – ICC Institute of World Business Law Training – Oral Advocacy in International Arbitration**
  ICC
  ONLINE AND IN PERSON
  Registration: https://2go.iccwbo.org/icc-european-conference-on-international-arbitration.html#programme

- **10:00 – 12:00 – Heating up: the role of climate change in post-M&A arbitration**
  Fieldfisher
  ONLINE AND IN PERSON
  Registration: https://info.fieldfisher.com/159/5205/landing-pages/rsvp-form--paris-arbitration-week-event---wednesday-30-march-2022.asp?sid=blankform

- **10:30 – 14:00 – Energy Transition in Latin America**
  Dechert LLP
  IN PERSON
  Registration Link to come

- **11:00 – 12:30 - Technical assistant to the tribunal, a (welcome) new feature in complex arbitrations?**
  White & Case
  ONLINE AND IN PERSON
  Registration: https://news.whitecase.com/219/18855/landing-pages/web-registration.asp

- **11:30 – 14:00 - Collaborative resolution of construction disputes: perspectives from the Owner, Contractor, Counsel and Expert**
  Accuracy
  ONLINE AND IN PERSON
  Registration Link to come

- **12:00 – 14:00 – Arbitration in Western and Northern Africa: institutional perspectives and legal developments?**
  Reed Smith/AfricArb
  ONLINE
  Registration: https://www.reedsmith.com/en/events/2022/03/paw-2022-arbitration-in-western-and-northern-africa

- **14:30 – 16:00 - Disputes in the Caribbean Energy Sector: Past, Present and Future**
  BVI International Arbitration Centre / Energy Disputes Arbitration Center
  ONLINE AND IN PERSON
  Registration : https://www.eventbrite.com/e/disputes-in-the-caribbean-energy-sector-past-present-and-future-tickets-287954117517

- **16:00 – 19:30 - Le contrôle des sentences arbitrales par la chambre internationale de la Cour d'appel de Paris**
  Paris Place d'Arbitrage
  ONLINE AND IN PERSON
  Registration : https://my.weezevent.com/paw-2022-paris-place-darbitrage-colloque

- **16:30 – 18:30 – 5th Lusophones' Arbitration Meeting: Res Judicata in international Arbitration – Lusophones' Perspectives**
  Derains & Gharavi
  ONLINE AND IN PERSON
  Registration: http://www.derainsgharavi.com/2022/03/5th-edition-of-the-lusophones-arbitration-meeting/

- **17:00 – 19:00 - EU State aid law and arbitration after the new Micula judgment of the CJEU**
  Gide Loyrette Nouel, ESSEC and EFILA
  IN PERSON
  Registration : https://www.eventbrite.nl/e/eu-state-aid-law-and-arbitration-recent-developments-in-the-ecj-case-law-tickets-265191062607?aff=ebdssbdestsearch&keep_tld=1

- **18:00 – 23:00 - Arbitrability: Decoding the Present and Predicting the Future**
  Clyde & Co
  IN PERSON
  Registration Link to come

- **18:30 – 21:00 - Entitlement and the fine line of analysis for an expert witness**
  FTI Consulting
  ONLINE AND IN PERSON
  Registration: https://events.fticonsulting.com/entitlementandthefinelineofana

- **20:30 – 02:00 – Young Arbitration Cruise**
  PAW Board
  IN PERSON
  Registration Link to come

Thursday, 31 March 2022

- **8:30 – 10:00 – Default in arbitration**
  AFA/CEPANI
  IN PERSON
  Registration Link to come

- **9:00 – 16:00 – GAR Live: Construction Disputes 2022**
  GAR
  IN PERSON
  Registration: https://events.globalarbitrationreview.com/event/4d97d68f-4949-464d-ad3d-50bc1b5216f4/websitePage:645d57e4-75eb-4769-b2c0-f201a0bfc6ce?RefId=SOCIAL1-P

- **10:30 – 12:30 - Challenges in funding investment treaty arbitrations**
  Fieldfisher
  ONLINE AND IN PERSON
  Registration : https://info.fieldfisher.com/163/5206/landing-pages/rsvp-form---challenges-in-funding-investment-treaty-arbitrations---thursday-31-march-2022.asp?sid=blankform

- **10:30 – 12:30 - Contrôle des sentences et corruption : l'exception française ?**
  Jones Day
  ONLINE AND IN PERSON
  Registration : https://jonesday-ecommunications.com/63/7068/landing-pages---french/rsvp-blank---french.asp

- **10:30 – 12:00 - Damages in construction arbitration**
  Pinsent Masons
  ONLINE
  Registration:
  https://updates.pinsentmasons.com/REACTION/Home/RSForm?RSID=dTLx6o_wRH9oi1KDZwueDqgL59OJQdqRJSaPjTytn8xrSRFhvE32cD0qGkGAfU9G

- **12:30 – 14:30 - Human rights, ESG and arbitration at a crossroad**
  Hogan Lovells
  ONLINE AND IN PERSON
  Registration: https://www.hoganlovells.com/en/events/human-rights-esg-and-arbitration-at-a-crossroad

- **14:00 – 17:00 - Contentieux miniers et continent africain : rente, environnement et droits de l'Homme**
  Gide Loyrette Nouel and l'Académie Africaine pour la Pratique du Droit International
  ONLINE AND IN PERSON
  Registration : https://www.gide.com/fr/actualites/journee-annuelle-du-droit-international-en-afrique

- **14:30 – 16:30 – Sports Arbitration**
  BVI International Arbitration Centre

ONLINE AND IN PERSON
Registration Link to come

- **14:30 – 16:30 - The EU Green Deal Beyond Borders: Perspectives from the East (Turkey, Ukraine and Western Balkans)**
  Shearman & Sterling / Ukrainian Arbitration Association
  ONLINE AND IN PERSON
  Registration Link to come

- **15:00 – 17:30 - Renewable Energies and Arbitration**
  Three Crowns
  ONLINE AND IN PERSON
  Registration: https://www.threecrownsllp.com/three-crowns-to-host-renewable-energies-and-arbitration-event-as-part-of-paris-arbitration-week/

- **16:30 – 18:30 - Komstroy, PL Holdings, Energy and Investment Arbitration in the EU and Worldwide**
  Brown Rudnick
  ONLINE AND IN PERSON
  Registration Link to come

- **16:30 – 20:30 - Energy security and disputes beyond Eastern Europe**
  Winston & Strawn
  ONLINE AND IN PERSON
  Registration Link to come

- **17:00 – 18:00 - The New Space Race: Risks and Opportunities**
  Debevoise & Plimpton
  ONLINE
  Registration: https://www.debevoise.com/insights/events/2022/03/the-new-space-race-risks-and-opportunities

- **18:30 – 20:00 - Financement des procédures arbitrales : étendue, enjeux et conséquences des obligations de transparence**
  Deminor Recovery Services / UGGC Avocats
  ONLINE AND IN PERSON
  Registration Link to come

- **18:30 – 20:00 - Investment Arbitration as an Avenue of Combatting Internet Censorship ?**
  Derains & Gharavi
  ONLINE AND IN PERSON
  Registration Link to come

Friday, 1st April 2022

- **10:00 – 12 :30 - Blockchain, NFTs and the metaverse: Is arbitration ready to verse into a new universe?**
  Bird & Bird
  ONLINE AND IN PERSON

Registration Link to come

- **10:30 – 12:00 - Timebars in construction contracts: Civil Law / Common Law comparison**
  International Chapter : AFDCI
  ONLINE
  Registration: https://teams.microsoft.com/registration/QzXykvA11EOwxQGdHBL-ww,0znJM0KVDkG7gAG9hLjJDw,2f4M1zCWSUqHNTABcorZBQ,1NSVjMJX30yLfNwGDTYY1A,8HHhY3_yUk-zU9Cpl-cV0Q,6IExGsyLEWVB5SYWfa_FQ?mode=read&tenantId=92f23543-35f0-43d4-b0c5-019d1c12fec3

- **11:30 – 14:30 - Monetization of arbitral awards: contractual structure and potential issues at the enforcement stage**
  Darrois, Villey, Maillot, Brochier
  ONLINE AND IN PERSON
  Registration: https://www.eventbrite.fr/e/billets-dvmb-conference-monetization-of-arbitral-awards-291168411557

- **14:00 – 15:30 - The rise of arbitration in post M&A Disputes**
  CMS
  ONLINE AND IN PERSON
  Registration Link to come

- **14:30 – 16 :00 - Belt and Road Initiative: update and perspectives**
  Pinsent Masons/AfricArb
  ONLINE AND IN PERSON
  Registration:
  https://updates.pinsentmasons.com/REACTION/Home/RSForm?RSID=dTLx6o_wRH9oi1KDZwueDoiMdEvgcLV9mOlcOl6SDq0lsZLYa9E3oDxeNyYJZUai

- **15:00 – 17:00 - Blockchain Arbitration and the Resolution of Cryptocurrency Disputes**
  Brown Rudnick
  ONLINE AND IN PERSON
  Registration Link to come