PARISBABYARBITRATION

BIBERON

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French and foreign courts' decisions

International arbitral awards and decisions

Interview with Adam Calloway

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FOREWORD

Paris Baby Arbitration is a Paris-based society and a networking group of students and young practitioners in international arbitration. Our aim is to promote accessibility and knowledge of this somewhat lesser-known field of law and industry within the student sphere.

Every month, our team publishes the Biberon. The Biberon is our newsletter in both English and French, designed to review and facilitate comprehension of the latest decisions and awards rendered by national and international courts, as well as arbitral tribunals.

In doing so, we hope to participate in keeping our community informed on the latest hot topics in international arbitration from our French perspective.

Dedicated to our primary goal, we also encourage students and young practitioners to actively contribute to the field by joining our team of writers. As such, Paris Baby Arbitration is proud to provide a platform for its members and wider community to share their enthusiasm for international arbitration.

To explore previously published editions of the Biberon and to subscribe for monthly updates, kindly visit our website: parisbabyarbitration.com (currently undergoing maintenance).

We also extend an invitation to connect with us on LinkedIn, and we welcome you to follow/share our latest news on LinkedIn and beyond.

Enjoy your reading!

Sincerely yours,
The Paris Baby Arbitration team

THIS MONTH'S THEMES

- **Paris, 13, February 2024, n°s 22/11815 and 22/11819, *Devas*** (assignment of rights given by an arbitral award which has been declared enforceable by an exequatur order in France; transfer of standing to the assignees as an ancillary right to the assigned rights; possibility for the assignees to intervene and join appellate proceedings against the exequatur order; inapplicability of the English procedural principles "*maintenance*" and "*champerty*" before French jurisdictions; only the Courts of Appeal, and not the *conseiller de la mise en état*, having jurisdiction over inadmissibility arguments based upon Article 1466 of the French Code of Civil Procedure)
- **Paris, 20 February 2024, n° 23/01616, *Siba Plast*** (a State party to appellate proceedings against an exequatur order in France; procedural irregularities as to form within the meaning of Article 114 of the French Code of Civil Procedure in case of an error in the denomination of the State's representative, and of an absence of such denomination)
- **Paris, 5 March 2024, n° 22/05167, *SOA*** (identical arbitration clauses in multiple distinct contracts; arbitration deemed international due to the cross-border transfer of funds resulting from the assignment of shares between two companies that have been registered in two different countries; choice of a foreign law to govern the contracts containing the arbitration clauses, yet inapplicability of said foreign law as regards the validity of arbitration clauses due to the application of French substantive rules; interpretation of the identical arbitration clauses as implying the parties' intention to submit all disputes flowing from the assignment to arbitration)
- ***Sodzawiczny v. Smith (Re Arbitration Claim)* [2024] EWCH 231 (Comm)** (scope of 'arbitral matter' under section 9 of the Arbitration Act 1996 and summary of the factors to take into account when assessing it; issues pertaining to enforcement of arbitral awards, stays of section 66 exequatur orders, and applications for anti-arbitration injunctions outside of the scope of 'arbitral matter'; examples given as to when anti-arbitration injunctions will be granted, such as in case of a "*Non-compliant Challenge*" consisting of challenging arbitral awards not before English courts as provided by the Arbitration Act 1996, but before another arbitral)
- ***Contax Partners Inc BVI v. Kuwait Finance House* [2024] EWCH 436 (Comm)** (order permitting enforcement of an arbitral award quashed on the basis that the arbitration agreement, arbitral proceedings and awards were fictitious and had been totally fabricated)
- **ECJ, 22 February 2024, *Mytilianaios AE v. DEI and Commission*, Cases C-701/21 P and C-739/21 P** (refusal to regard an arbitral award flowing from arbitral proceedings between a public law entity and a private person as state aid, provided that it resulted from a specific agreement (*compromise*) and not from a bilateral investment treaty)
- **ICSID, 22 December 2023, *Peteris Pildegovics and Sia North Star v. Kingdom of Norway*, ICSID Case No. ARB/20/11** (qualification of snow crabs as sedentary species within the meaning of Article 77(4) of the United Nations Convention on the Law of the Sea; *Monteray Gold* principle deriving from the ICJ's case law in the present of a question requiring to look into the rights and obligations of a third party state to the arbitral proceedings; jurisdiction of the arbitral tribunal, but limits as to the claims that it can decide upon)

Paris Court of Appeal, 13 February 2024, n° 22/11819, *Devas*

The case of Antrix v. Devas was once again in the spotlight (Paris Court of Appeal, 13 February 2024, n° 22/11814; Paris Court of Appeal, 13 February 2024, n° 22/11819).

On the facts, one should only know that, in the context of arbitration initiated by Mauritian investors which were shareholders in Indian company Devas Multimedia based upon the BIT concluded between India and Mauritius, two awards were rendered by an arbitral tribunal: a first award whereby it upheld jurisdiction and held that the Indian state was liable in principle, and a second award ruling upon the quantum of the Mauritian investors' damages.

Subsequently, the Mauritian investors applied to obtain enforcement of the awards before the Paris Judicial Tribunal, which was granted by two orders dated 25 May 2021. The Indian state then filed an appeal against these orders with the Paris Court of Appeal, notably arguing that the arbitral tribunal had exceeded its mandate.

However, in the meantime, the Mauritian investors concluded assignment agreements governed by English law with American companies, transferring to them their rights and actions stemming from the awards. As such, as assignees of those rights and actions arising from the awards for which the enforcement proceedings had been started, the American companies requested that they be able to voluntarily take part and intervene in each of the pending proceedings before the Paris Court of Appeal.

The Indian state argued against their intervention, saying that their request to do so was inadmissible. As for the American assignees, they put forward the idea whereby the Indian state's argument pertaining to the arbitral tribunal exceeding its mandate was inadmissible, on the basis of Article 1466 of the French Code of Civil Procedure (hereafter the "CPC") as applicable in international arbitration by virtue of Article 1506 of the CPC. Article 1466 provides that "[a] *party which, knowingly and without a legitimate reason, fails to object to an irregularity before the arbitral tribunal in a timely manner shall be deemed to have waived its right to avail itself of such irregularity*".

The present orders by the *conseiller de la mise en état* focused upon the Indian state's arguments on inadmissibility and were both rendered in identical terms and grounds.

On the one hand, the *conseiller de la mise en état* declared the American assignees' voluntary interventions admissible.

First, he ruled that "*if the contractual nature of arbitration precludes a third party, who was not a party to the arbitration proceedings, from intervening in setting aside proceedings against the award or in the appeal proceedings against the enforcement order, it does not, however, in principle, preclude the intervention of a person who has entered into the rights of one of the parties to the arbitration*" (at [23]).

While it is probably correct that, in principle, a third party to arbitral proceedings has, in the context of annulment proceedings or enforcement proceedings, neither standing to intervene nor a claim sufficiently connected to those of the parties to justify the admissibility of such a third party's intervention (*i.e.* conditions required for voluntary intervention as per Articles 325 and 554 of the CPC), the admissibility of such intervention should not be predicated upon their status as a party to the arbitral proceedings or a subrogating event.

Doing otherwise would imply requiring additional conditions to those provided by Articles 325 and 554 CPC, which are to apply in the context of appeal proceedings against enforcement orders and annulment proceedings (at [21]-[24]).

Therefore, it may seem risky to assert in such general terms that, in the absence of subrogation, voluntary intervention would not be possible due to the contractual nature of arbitration, although the Paris Court of Appeal already ruled so regarding forced intervention (Paris Court of Appeal, 18 September 2003, *Gaz. Pal.* 22 May 2004, p. 12).

More specifically regarding the American assignees's intervention's admissibility, the decision by the *conseiller de la mise en état* is easily justifiable. Indeed, the subrogating effect stemming from the assignment of a right necessarily entails that of all actions that belonged to the assignor. As such, it correspondingly grants the assignee, when applicable, standing to intervene in any proceedings initiated prior to the assignment (§ 28). The exception consisting in "the *parties' intention to limit or prohibit the possibility of such a transfer of rights*" (at [23]) equally makes sense.

On the facts, it was held that such an intention could not implicitly result from the mere requirement of having the investor's status as provided by the BIT which conditioned its applicability and the possibility to start arbitral proceedings thereunder (at [31]). Consequently, the *conseiller de la mise en état* concluded that the assignee of rights arising from an arbitral award does have standing to intervene during appeal proceedings against the enforcement order, even if the host State did not consent to arbitration with said assignee (as a non-investor) under the BIT. The decision is to be contrasted with one rendered by the Paris Court of Appeal in the absence of subrogation (Paris Court of Appeal, 24 September 2019, n° 17/14143, which ruled that the voluntary intervention of some third parties – which were not assignees of rights arising from an arbitral award – was inadmissible as they did not qualify as investors under the applicable BIT).

Moreover, the *conseiller de la mise en état* further justified this ruling, on the basis that the contrary would potentially infringe upon the American assignees' "*right of access to appellate jurisdictions*", should their intervention be deemed inadmissible (at [24]). Although this reason makes sens, it may seem superfluous considering that subrogation is enough of an explanation already for this decision.

Second, the *conseiller de la mise en état* dismissed the arguments raised by the Indian state regarding the validity and enforceability of the assignment agreements.

He considered that the assignment agreements governed by English law did not constitute a sham, *i.e.* an act performed "*with the intention of giving third parties or the tribunal the impression of creating, between the parties, legal rights and obligations different from the real (when applicable) legal rights and obligations that the parties intend to create*," since the Indian state failed to provide evidence of an intent to deceive, which is inherent to shams (from [35] to [37]).

The *conseiller* then rejected not only another argument based upon a contravention to the English law doctrines of “*maintenance*” and “*champerty*”, as they are procedural principles which are not to receive application before French jurisdictions (at [40]), but also an argument based upon the absence of any real standing due to a fraud allegedly committed by the American assignees during the arbitration. Since this second argument pertained to the substance of the case, he ruled that it fell within the Court of Appeal' panel's jurisdiction (at [41]).

Finally, the claim based upon the violation of Mauritian overriding mandatory provisions (“*lois de police*”) was also deemed irrelevant, since it did not lead to a violation of French international public policy as well (at [42]).

On the other hand, the *conseiller de la mise en état* considered that the plea of inadmissibility raised by the assignees, which was based upon Article of the 1466 CPC, "*does not pertain to the admissibility of the appeal but to that of a ground for annulment put forward in support of the argument that enforcement should be denied*" (at [47]). Consequently, the *conseiller* referred the examination of this ground “*linked to the merits of the application*” (at [47]) to the Court of Appeal's panel (at [48]).

Contribution by Rayan Fadel

Paris Court of Appeal, 20 February 2024, n° 23/01616, *Siba Plast*

In a judgment issued on 20 February 2024, the International Commercial Chamber of the Paris Court of Appeal (hereafter "ICCP-CA") dismissed an application to set aside an order of the *conseiller de la mise en état* (pre-trial judge) of 19 October 2023 concerning an application to set aside an appeal against an order granting enforcement of an arbitral award.

Following the Libyan revolution and in the context of the restructuring and development of the Libyan State Judicial Police, the Libyan National Transitional Council (hereafter "NTC") and the company Giacorosa entered into a number of commercial contracts and amendments, which were subsequently transferred to the Tunisian company Siba Plast.

Siba Plast then initiated *ad hoc* arbitration proceedings, alleging that the Libyan State had failed to fulfil its obligations to perform said contracts and amendments. In an award rendered on 28 November 2014, the arbitral tribunal upheld all of Siba Plast's claims and ordered the Libyan State to pay various sums.

After obtaining an exequatur order in France, Siba Plast seized bank accounts belonging to emanations of the Libyan State. The latter then lodged an appeal against the exequatur order, which Siba Plast challenged on the grounds that it was belated.

Following the rejection of its request, Siba Plast sought, *inter alia*, the annulment of the statement of appeal of the exequatur order filed by the Supreme Judicial Council, alleging a lack of capacity to bring legal proceedings and a lack of authority from this entity to represent the State of Libya.

With regard to the lack of capacity to bring proceedings, the Court indicated that pursuant to Articles 112, 114 and 117 of the French Code of Civil Procedure, a lack of capacity to bring proceedings constitutes an irregularity as to substance which undermines the validity of the disputed act, but only if it pertains to the person starting proceedings, *i.e.* the State of Libya. The Court stated that an error in the designation of a party does not affect its capacity to bring proceedings. The Court of Appeal observed that in this case, Siba Plast was not contesting Libya's capacity to bring proceedings, but the irregular designation, in the statement of appeal, of the body or emanation representing said State. The ICCP-CA therefore considered that this was an irregularity as to form which should have been raised *in limine litis* and which was now inadmissible.

With regard to the lack of power, the Court began highlighting that the failure to designate the body legally representing a legal entity in a procedural document constitutes an irregularity as to form. The ICCP-CA observed that Siba Plast was not challenging the authority of the State of Libya itself, but the authority that it allegedly had given to the Supreme Judicial Council, as well as the designation of the representative of the State of Libya in the statement of appeal. The Court noted that the statement of appeal was made in the name of Libya and that it clearly mentioned two legally existing bodies representing the State. In addition, it noted that the exhibits submitted as evidence and Libyan law confirmed that the entities could duly represent the State of Libya. Accordingly, the Court held that the irregularity alleged by Siba Plast was as to form, so that it should have been raised *in limine litis* and which was therefore no longer admissible at this stage of the proceedings.

Finally, the Court specified that in any event, Siba Plast's claim was ill-founded as, even if there was an irregularity as to substance, the entities in question had their own authority and capacity to bring proceedings.

Consequently, the Paris Court of Appeal dismissed Siba Plast's application to set aside the order dated 19 October 2023.

Contribution by Valentine Menou

Paris Court of Appeal, 5 March 2024, n° 22/05167, *SOA*

On 5 March 2024, the Paris Court of Appeal dismissed the application for annulment filed by Ms. P. Z. and Ms. T. E. (hereafter the "Claimants") against an arbitral award dated 28 January 2022 rendered in Paris by a sole arbitrator in accordance with the Mediation and Arbitration Rules of the *Centre de Médiation et d'Arbitrage de Paris* (hereafter "CMAP").

Until 27 October 2016, Ms. Z. held 49% of SIGASECURITE's shares, a company incorporated under Ivorian law, whild Ms. E. held the remaining 51%. The defendant company SOA (hereafter the "Defendant"), also incorporated under Ivorian law, was wholly owned by Luxembourg company OVERSEAS SARL.

On 27 October 2016, a share transfer agreement (hereafter the "Transfer Agreement") was entered into by the Claimants on the one hand, and Mr. HX and OVERSEAS SARL on the other, whereby the Claimants was to assign 80% of SIGASECURITE's share capital to the assignees. The Transfer Agreement provided for the distribution of dividends and contained an arbitration clause. On the same day, a shareholders' agreement was also signed, which included the terms of the share transfer, the terms of governance of the company and another arbitration clause. On 16 October 2017, the Defendant acquired shares in SIGASECURITE held by Mr. HX. On 16 May 2018, the Defendant acquired shares in SIGASECURITE held by OVERSEAS SARL. As such, the share capital of SIGASECURITE was thus being held in the amount of 80% by the Defendant, and 20% by Ms. E.

The Claimants sought payment of the dividends allegedly due for the 2015 financial year and sued SIGASECURITE before the Abidjan Commercial Court. The Defendant voluntarily intervened in the proceedings and argued that the state court lacked jurisdiction, relying upon the arbitration clause in the Transfer Agreement. The Ivorian courts did not, however, decline jurisdiction.

On 5 January 2021, the Defendant initiated arbitration proceedings against the Claimants. On 28 January 2022, the sole arbitrator rendered an award, in which she upheld jurisdiction and ruled in favour of the Defendant.

On 28 February 2022, the Claimants applied for the annulment of the award on the grounds that it violated domestic public policy (Article 1492 5° of the French Code of Civil Procedure) and international public policy (Article 1520 5° thereof).

During the annulment proceedings, the court ruled upon whether that the arbitration was international, whether the arbitrator lacked jurisdiction, and whether there was contravention of public policy.

First, regarding whether the arbitration was international, the Claimants alleged that the dispute did not relate to any transfer of funds, goods or persons across borders, but solely to the distribution of dividends which was to be made, based upon the articles of association, by SIGASECURITE for the benefit of the Claimants domiciled in Côte d'Ivoire for Ivorian activities not involving any contribution of foreign funds. The Defendant submitted that the dispute related to the interpretation of the Transfer Agreement between OVERSEAS SARL, a Luxembourg company, and the Claimants, which, by definition, involved a transfer of capital between Luxembourg and Côte d'Ivoire, the object of the dispute not being the distribution of dividends prior to the Transfer Agreement but the application of an article of the Transfer Agreement.

The Court decided that the objet of the dispute was the interpretation of the article of the Transfer Agreement and that the transaction necessarily involved a cross-border transfer of funds, so that the arbitration was international.

Second, regarding whether the arbitrator lacked jurisdiction, the Claimants argued that the arbitration was domestic and that the arbitration agreements did not expressly provide for the law applicable to the arbitration, but that since the arbitration was seated in Paris, French law should apply. The Claimants alleged that, based upon the presence of the dispute in Côte d'Ivoire and the fact that Ivorian law was applicable to the economic transaction, the law applicable to the validity of the arbitration clauses was Ivorian law, which provides that arbitration agreements should be null and void under Ivorian Law n° 93-671, save when they are concluded between commercial parties. As for the Defendant, it highlighted that under French arbitration law, the principle of validity of arbitration agreements should apply, provided that the arbitration agreement was freely entered into by the parties and did not violate French public policy.

The Court decided that the three contracts provided for arbitration clauses that submitted the dispute to a sole arbitrator, seated in Paris, deciding on the merits in application of French law in accordance with the CMAP Mediation and Arbitration Rules. As such, since the arbitration was international, the French international arbitration law substantive rule ("*règle matérielle*") whereby arbitration agreements are valid in principle was to apply, thso that the Court rejected the Claimants' argument.

Third, regarding whether the arbitrator lacked jurisdiction, the Claimants alleged that the arbitrator based his jurisdiction upon the arbitration agreements contained in the three contracts, which were not applicable to the dispute, as Ms. Z. was not a party to the shareholders' agreement and the distribution of dividends was governed exclusively by the articles of association and not by the Transfer Agreement. The Defendant replied that the Claimants could not claim anything based upon the articles of association, as the right to be paid dividends was extinguished following the transfer of their shares.

The Court decided that the arbitration agreement was legally independent from the main contract. It ruled, as per the parties' common intention, that the objet of the dispute related to the interpretation of the Transfer Agreement, but also to the contractual breaches allegedly by Ms. Z. based upon that same agreement. *Ratione materiae*, the three contracts contained arbitration clauses drafted in identical terms, while *ratione personae*, the shareholders' agreement was signed in the presence of Ms. Z., who was aware of the arbitration clause and did not object to it, so that the Court rejected this argument.

Fourth, regarding whether there was a violation of public policy, the Claimants submitted that the Defendant had committed a fraud, by instrumentalising the arbitration for the sole purpose of enriching itself to their detriment, as it was to be able to enjoy the fruits of the profits for a period during which it did not hold shareholding in the company. The Defendant asserted that in the absence of proof of a common intention to conduct any such fraudulent transaction, the Claimants' legal foundations were artificial.

The Court decided that the Claimants' allegations were not sufficient to qualify as an instance of fraud likely to lead to the annulment of the award, as there was no evidence to establish that the arbitrator's decision was affected by fraud.

The Court dismissed the Claimants' application for annulment of the award of 28 January 2022 and ordered the Claimants to pay the Defendant 20,000 euros under Article 700 of the Code of Civil Procedure and to pay the costs.

Contribution by Rola Makke

Judgement from the High Court of England and Wales, 7 February 2024, *Sodzawiczny v. Smith (Re Arbitration Claim)* [2024] EWHC 231 (Comm)

In a decision dated 7 February 2024, the High Court gave interesting insights into the scope of "*matters*[s] *which under the* [arbitration] *agreement* [are] *to be referred to arbitration*" (hereafter "Arbitral Matters") under section 9 Arbitration Act 1996, in the context of an application for an anti-arbitration injunction.

On the facts, Mr. Sodzawiczny (hereafter the "Claimant") claimed that he had concluded an oral contract with Mr. Ruhan in 2006, whereby the former would help the latter launch a data centre business in consideration for a share of the profits. The Claimant also claimed that they agreed in 2012 that the Claimant would receive a share of the proceeds of the business' sale to be paid into an offshore trust structure in the Isle of Man administered on Mr. Ruhan's behalf by his lawyers as trustees.

Upon the sale of the totality of the business in 2012, it was found that the trust's assets had been fraudulently transferred by the lawyers to Dr. Smith and Dr. Cochrane (hereafter the "Defendants") in 2013 and 2014 in breach of the lawyers' fiduciary duties. This incident led to negotiations between the Claimant and a company controlled by Dr. Smith called Pro Vinci, which culminated in a series of agreements between the Claimant, Mr. Ruhan's lawyers and Dr. Cochrane (but not the other Defendant Dr. Smith), including a settlement agreement, whereby Pro Vinci was to pay £12 million to the Claimant in instalments. The agreement contained an LCIA arbitration agreement.

In 2018, the Claimant started proceedings before English courts against Mr. Ruhan's lawyers and Dr. Smith, which were stayed under section 9 Arbitration Act 1996 due to the LCIA arbitration agreement.

The Claimant then started LCIA arbitration proceedings against Mr. Ruhan's lawyers and Dr. Smith, which resulted in partial and final awards issued in 2020 in favour of the Claimant and ordering the opposing parties to pay damages for fraudulent breach of trust and dishonest assistance. The awards were later made into court judgments pursuant to section 66 Arbitration Act 1996 in 2021.

Due to his failing to meet the criteria for a challenge of the awards before English courts under the Arbitration Act 1996, Dr. Smith filed a Request for Arbitration to the LCIA in his name and Dr. Cochrane's name in 2023 in order to set aside the awards, in addition to other positive claims against the Claimant. In response, the Claimant applied for enforcement of the awards and for an anti-arbitration injunction (hereafter the "AAI") before the High Court, while the Defendants counterclaimed by applying, *inter alia*, for a stay of legal proceedings of both enforcement and the AAI proceedings under section 9 Arbitration Act 1996.

In other words, the main question was whether English courts should grant an AAI in case of arbitral proceedings initiated to challenge a prior arbitral award rendered between the same parties.

In his judgement, Foxton J first considered the Defendants' application for a stay of proceedings, before turning to the Claimant's application for an AAI.

Regarding the application for a stay of proceedings, the Defendants needed to establish that the enforcement proceedings and the AAI application had been brought in respect of Arbitral Matters, as required by section 9 (at [52]).

Foxton J started by recalling the recent UK Supreme Court case of *Republic of Mozambique v. Privinvest Shipbuilding SAL (Holding) [2023]* UKSC 32 (summarised in our November 2023 Biberon's edition), which has become the relevant authority and guidance in the UK as regards the concept of Arbitral Matter under section 9 (at [53]).

According to this case, in determining the scope of the Arbitral Matter in a given case, (i) one must "*focus upon "the substance of the dispute", taking into account defences which reasonably foreseeably* [sic] *will be raised*", (ii) an Arbitral Matter does not necessarily "*encompass the whole dispute raised in court proceedings*", (iii) it must, however, be a "*substantial issue*" which not only is "*legally relevant to a claim or defence, or foreseeable defence*", but also "*susceptible to determination "as a discrete dispute"*"", meaning that it must be an "*essential element of the claim or defence, and not simply a "mere issue of question" that might fall for decision*", (iv) what is comprised in the Arbitral Matter must be ascertained using judgement and common sense, and not mechanically, and (v) one should have regard to "*the context in which the matter arises in the legal proceedings*".

Applying these principles and specifically the last one, he ruled that the following matters could not qualify as Arbitral Matters, and fell within English courts' jurisdiction:

- Applications to enforce arbitral awards (considering the tribunal becomes *functus officio* after issuing its final award), even more so if they have been made into judgments pursuant to section 66 Arbitration Act 1996 (at [54]); and
- Applications for an AAI (following two precedents) (from [55] to [57]).

Having established that none of the matters were Arbitral Matters falling within an arbitral tribunal's exclusive jurisdiction under the LCIA arbitration agreement, Foxton J denied the application for a stay of proceedings.

However, for the sake of completeness, he still went on to explain whether he was bound to stay the proceedings. In particular, he recalled the circumstances in which English courts could refuse to stay:

- When "*the arbitration agreement is null and void, inoperative, or incapable of being performed*" (as provided by section 9(4)) (at [59]); and
- When the stay of proceedings is "*frivolous or vexatious*" (*Sheffield United Football Club v. West Ham United Football Club plc* [2008] EWHC 2855 (Comm)), or sought without a "*real and proper purpose*" (*Lombard North Central plc v. GATX Corporation* [2012] EWHC 1067 (Comm)) (at [61]).

Regarding the application for an AAI, Foxton J recalled well-established case law which identified the two grounds upon which AAIs may be granted: (i) where the pursuit of the arbitration would infringe the AAI applicant's legal or equitable rights, and (ii) where it would be so "*vexatious and oppressive*", that English courts would have to intervene to prevent the wrong of vexatious, oppressive and unconscionable conduct (at [63]).

He then went on to rationalise the circumstances in which AAI applications are usually granted into 3 categories:

- 1st category: when the parties have agreed not to arbitrate a matter at all or to bring it in a specific forum (whether it be before a state court or arbitral tribunal), but arbitration was initiated in non-compliance of that agreement (at [66]).

In particular, he identified a specific instance where AAIs would be granted, *i.e.* when the parties have agreed that a dispute should be resolved by arbitration seated in England and Wales (and as such agreed to English courts' supervisory jurisdiction), yet the losing party then seeks to challenge the award outside of the avenues provided by the Arbitration Act 1996. He referred to this instance as a "*Non-Compliant Challenge*" (at [67]).

Furthermore, since that category aims to protect any of the AAI applicant's rights (and not necessarily *contractual* ones), it also encompasses instances where an AAI would help protect the applicant's *legal* right to challenge an award pursuant to the Arbitration Act 1996, against a newly-initiated arbitration (*Minister of Finance (Incorporated) 1Malaysia Development Berhad v. International Petroleum Investment Company Aabar Investments PJS* [2019] EWCA Civ 2080) (at [68]).

- 2nd category: when the arbitral tribunal has no jurisdiction to decide the dispute, but not because the parties have agreed to have the dispute adjudicated in some other forum (at [70]), although this category concerns only exceptional cases (at [72]) due to the principle of *kompetenz-kompetenz* enshrined in section 30 of the Act (at [71]).
- 3rd category: when the arbitral tribunal has jurisdiction to hear a case, but would be re-litigating matters already determined by a prior arbitral award or court judgement in doing so (at [75]), although it additionally requires, in the specific case of a prior arbitral award, that English courts not be led to grant a section 9 stay of proceedings, as it would otherwise contravene the New York Convention 1958 and Arbitration Act 1996's principle to give effect to arbitration agreements (at [76]).

Foxton J noted, however, that re-litigating a dispute before another arbitral tribunal after a prior award could amount to a Non-Compliant Challenge falling within the first category (at [79]), when doing so would be "*sufficiently fundamental and substantial as to be fairly characterised as an attempt to challenge the earlier award*" in a way not prescribed by the Arbitration Act 1996 (at [78]). In that case, he explained that English courts should be more inclined to grant an AAI (at [80]).

On the facts, he was satisfied that Dr. Smith had brought a Non-Compliant Challenge (at [83]), as he infringed the Claimant's legal right under the Arbitration Act 1996 to have the awards only challenged in accordance therewith (at [85]) when he started a new arbitration as a way to challenge the awards (at [83]).

Foxton J also added that another reason for granting an AAI could be found in the fact that Dr. Smith sought to bring positive claims against the Claimant in addition to merely challenging the awards. However, as Dr. Smith was not privy to the settlement agreement containing the LCIA arbitration agreement, the arbitral tribunal would have no jurisdiction to hear the case, thereby corresponding to a category 2 AAI (at [88] and [89]). Despite the principle of *kompetenz-kompetenz*, Foxton J was satisfied that it was appropriate to grant an AAI rather than leave the LCIA arbitral tribunal to rule on its own jurisdiction (at [91]), notably since the overall effect of the arbitration was to bring a Non-Compliant Challenge (at [89]).

Finally, it was held that the AAI should also be granted against Dr. Cochrane (at [105]), given that she was found to be acting wholly at Dr. Smith's direction and for his purposes in lending her name to the Request for Arbitration (as she was privy to the settlement agreement containing the LCIA arbitration agreement, but not him) (at [103]).

Overall, Foxton J refused to stay the proceedings, and granted an AAI against both the Defendants.

Contribution by Yoann Lin

Judgement from the High Court of England and Wales, 29 February 2024, *Contax Partners Inc BVI v. Kuwait Finance House* [2024] EWCH 436 (Comm)

In a judgment dated 29 February 2024, the High Court set aside an Order for enforcement of an arbitral award on the basis that the underlying arbitration agreement, proceedings and the arbitral award were a fabrication.

On 21 June 2023, the Contax Partners Inc BVI (hereafter the "Claimant") applied to the High Court for an order seeking to enforce a Kuwaiti arbitral award (hereafter the "Award") dated 28 November 2022 under section 66 Arbitration Act 1996 against the Defendants, which were all companies within the Kuwait Finance House group. The claim form was signed by Hamza Adesanu, a solicitor at H&C Associates, who represented the Claimant.

According to the witness statement of Mr. Adesanu attached to this application, the Claimant had been attempting to liquidate a Gold Investment account held by the Defendants since September 2019, and claimed that €53 million was owed to it. This had been the subject of an arbitration under the Kuwait Chamber of Commerce and Industry Commercial Arbitration Centre (hereafter the "KCAC") resulting in the 28 November 2022 Award. The Defendant had sought to appeal the Award, but the Commercial Court of Appeal in Kuwait had already endorsed it.

An additional witness statement, purportedly by M. Filippo Fantechi, Managing Director of the Claimant, was attached to the application stating that the KCAC arbitration had been suggested by the CEO of Kuwait Finance House, on the basis of an arbitration agreement allegedly signed on 31 August 2021. This witness statement exhibited supporting documents, including the supposed arbitration agreement in Arabic, with an English translation, the Award and a decision of the Kuwait Commercial Court of Appeal dated 1st February 2023.

The application came before Butcher J in August 2023, "*on a without notice basis*", who made an order dated 9 August 2023 (hereafter the "August Order"), giving the Claimant leave to enforce the Award 28 days after the rendering of said Order, provided that the Defendants were properly served the order and had not applied to set it aside within that time.

H&C Associates, acting on the Claimant's behalf, claimed to have served the order at the London office of one of the Defendants. After the 28 days had lapsed, H&C Associates applied for Third Party Debt Orders (hereafter "TPDOs") for the sum of £70,634,614.04 against four banks, in which the Defendants had accounts. The TPDOs were apparently signed by Mr. Fantechi as the creditor. Interim TPDOs were made on 1 October 2023 by Master Stevens, that Mr. Johan van Huyssteen, as an Associate of H&C Associates, certified as regards the truth of their content. On 27 October 2023, Master Stevens made a final TPDO against one of the banks for the payment of £3,176,376.30.

The Defendants claimed to have only become aware of the proceedings as a result of the freezing of their bank accounts pursuant to the interim TPDOs. On 2 November 2023, they applied to the Court to prevent any payment under the TPDOs until they could apply to set aside the August Order, on the basis of the following reasons: (i) it "*had not been validly served on them*", (ii) "*there was never an arbitration at all*", as it was a fabrication, with large parts of its words having been taken from Picken J's judgement in *Manoukian v Société Générale de Banque au Liban SAL* [2022] EWHC 669 (QB), and (iii) someone claiming to be Mr. Fantechi had met with and informed their solicitors that he had no knowledge of the arbitration. Henshaw J made an order to suspend the enforcement pending set aside proceedings.

A few days later a Notice of Change was filed, indicating that H&C Associates had ceased to act for the Claimant, which would have to act for itself. It also gave an email address for legal service and a postal address in Boston, USA. Then an Application Notice was issued, purportedly on behalf of the Claimant, seeking to set aside Henshaw J's order.

The Defendants issued their applications to set aside the August Order on 10th November 2023 and served them on the Claimant's newly notified email address that same day. These applications were supported by a witness statement from Mr. Thomas of law firm Jones Day, stating that the Defendants had instructed him that the arbitration proceedings were a fabrication. This was supported by a comparison between parts of the Award and Picken J's *Manoukian* judgment, a letter from the Secretariat General of the KCAC stating that no case against the Defendants had been brought before it, and letters from the Kuwait Ministry of Justice and its Court of First Instance, confirming that there was no record of any proceedings between the parties since 2000. Additional witness statements were also submitted by Mr. Raed Ajawi and Mr. Rashid Alkhan, who had allegedly given evidence during the arbitration, claiming that they had no knowledge of the arbitration, and by a partner at law firm Charles Russell Speechleys LLP giving evidence that he had contacted Counsel for the Defendants in the arbitral and Court of Appeal proceedings and, additionally, one of the Claimant's expert witnesses, who both confirmed that they were neither aware of nor participated in the proceedings. A final witness statement by Mr/ Fantechi, dated 9 November 2023, stated he had been unaware of a claim against the Defendants, nor authorised the proceedings, nor instructed H&C Associates.

A first hearing for the setting aside of the August Order was held before Butcher J on 17 November 2023 at which the supposed Claimant was not represented, although Counsel did appear on behalf of Mr. Fantechi, instructed by Druces LLP. At this hearing, the Court made available to the Defendants documents that they had not previously had access to and set aside the TPDOs, "*on the limited but sufficient basis that the August Order had not been properly served*".

In the early hours of 30 January 2024, the Court and Defendants received another email from the supposed Claimants, enclosing two witness statements and stating that Mr. David Kinnear would represent them at the hearing later that day.

At the final hearing, the Defendants sought to set aside the August Order on the grounds that the arbitration claim had been commenced without authority, and that the Award did not exist. Mr. Kinnear and Mr. Michael Reason made submissions, saying that Contax Partners LLC, registered on 16 October 2023, had been assigned Contax BVI's debt arising under the August Order.

In the present decision, Butcher J first analysed the question the authority for the Claimant to bring the proceedings. On this point, he found that it was unclear who had and was exercising authority on behalf of the Claimant at the material times, partly due to uncertainty as to Mr. Fantechi's role and what instructions he was truly giving prior to November 2023. He noted that had this been the sole basis for the setting aside of the August Order, it would have been a triable issue.

Butcher J then went on to look at the question to whether the Award was genuine, deciding that there was no real doubt that it was a fabrication and that it was not a triable issue.

In his analysis, Butcher J first looked at the arbitration agreement, finding that the evidence did not prove the existence of the arbitration agreement prior to June 2023. He then went on to look at the Award itself, analysing five heads in particular: (i) the language of the Award, (ii) Kuwaiti law, (iii) the Kuwaiti judgment, (iv) positive evidence, and finally (v) negative evidence.

As regards the language of the Award (i), he compared the language used in the Award with that used by Picken J in the *Manoukian* case, providing multiple examples of passages which had been copied and adapted from *Manoukian*. He found some aspects to be particularly important: the form of the two decisions (including the use of standard and defined terms, the similar syntax and punctuation), and the issues raised in the factual and expert evidence. In his opinion, such a comparison did not require expert evidence in this case, noting that it would be inconceivable for two cases to be so similar.

As regards Kuwaiti law (ii), he found that the Award did not comply with requirements thereof, especially Article 183 of the Kuwaiti Civil Procedure Law, which suggested that the Award had not been issued by the KCAC.

As regards the Kuwaiti judgment (iii), while it was claimed to be an original, he thought that it seemed unlikely that it was a true judgment, since it was not in Arabic as required by Kuwaiti law, and its format closely followed that of an English court order, as well as apparent inconsistencies relating to the identity of the presiding judges and some court titles.

As regards positive evidence (iv), Butcher J looked at the evidence adduced, and found that it suggested that the individuals supposed to have been involved in the arbitration had not been so involved, and that no arbitration or dispute had been raised before the KCAC or Court of Appeal.

Finally, as regards negative evidence (v), he noted also that none of the documents produced during the purported arbitration or Kuwaiti judgment had been produced before the English courts.

As a result, Butcher J concluded from the evidence that no arbitration agreement existed and that no arbitration had occurred. Furthermore, the Award and the Kuwaiti judgments were held to be fabrications. Therefore, he rendered an order to set aside the August Order, noting that a number of serious questions relating to the responsibility and potential culpability for the fabrications needed further investigation, as the case involved allegations of fraud to the court and others.

Contribution by Léandre Stevens

ECJ, 22 February 2024; *Mytilianaios AE v. DEI and Commission Cases* C-701/21 P and C-739/21 P

Does an award rendered by an arbitral tribunal whose existence is provided by law, but whose resort is based upon the parties' consent to submit the dispute to arbitration after it arose, constitute unlawful state aid? This was the question put to the European Court of Justice in its Mytilinaios decision of 22 February 2024.

The case originally concerned a dispute between Mytilinaios (a metallurgical production company, the largest consumer of electrical energy) and DEI (the main Greek electricity supplier, which was controlled in majority by the Greek state at the time). The two companies had signed a framework agreement providing for the electricity supply tariff from 2010 to 2013, as well as the details for the amicable settlement of a debt which had been building up over the period from 2008 to 2010. Upon failing to agree on a contract draft that was to be negotiated under the framework agreement, the two companies entered into an arbitration agreement (a *compromis*) on 16 November 2011, submitting their dispute to the arbitral tribunal of the Regulatory Authority for Energy (hereafter the "RAE"). Such resort to arbitration was made possible for operators in the energy sector under Greek Law n° 4001/2011 pertaining to the operation of energy markets, in the presence of an agreement between the parties.

On 31 October 2013, the arbitral tribunal rendered its award, and set a favourable tariff for Mytilinaios. As a result, on 23 December 2013, DEI lodged a complaint with the Commission, claiming that the energy supply tariff set by the arbitral award was arguably below market cost, so that the award constituted unlawful state aid. The Commission initially shelved the complaint. Following a challenge of this decision, the Commission then deemed that there was no state aid, in that the arbitration proceedings were consistent with the practices of a prudent investor. DEI appealed against the Commission's decisions.

Simultaneously, DEI applied for annulment of the award before Greek courts, which was rejected by a ruling dated 18 February 2016 from the Athens Court of Appeal..

Following lengthy proceedings, the General Court of the European Union (hereafter the "General Court") ruled in favour of DEI in its decision dated 22 September 2021 (GCUE, *DEI v. Commission*, 22 September 2021, Cases T-639/14 RENV, T-352/15 and T-740/17). In the General Court's view, a parallel was to be drawn between the activity of the permanent arbitral tribunal of the RAE and that of the ordinary Greek courts, so that the Commission was supposed to ascertain whether the content of the arbitral award could possibly constitute state aid. The Commission should have had to "*conduct complex economic and technical assessments*" before ruling out any serious doubts as to the absence of state aid.

Mytilinaios appealed against the decision of the General Court and asked the Court of Justice of the European Union (hereafter "Court of Justice") to set it aside.

The Court of Justice upheld the appeal and annulled the General Court's decision.

On the one hand, there was a debate as to the criteria used by the General Court to not only equate the RAE arbitral tribunal to an ordinary state court, but also to distinguish it from any other conventional arbitral tribunal.

The General Court had identified five criteria in this respect: (1) the arbitral tribunal was to replace ordinary courts; (2) the arbitrators were to be selected from a list established by the President of the RAE; (3) proceedings before the arbitral tribunal were to be governed primarily by the provisions of the Hellenic Code of Civil Procedure, and secondarily by RAE's arbitration rules; (4) the awards rendered by the arbitral tribunal were to be legally binding, have *res judicata* and be enforceable; and (5) the awards could be appealed before ordinary state courts.

Mytilinaios and the Commission disputed the relevance of these criteria, in particular as regards the mandatory jurisdiction of the arbitral tribunal (at [71]-[84]). Similarly, Advocate General Mr. Szpunar highlighted that none of these criteria could be used to actually distinguish the arbitral tribunal under the RAE provided for by the aforementioned Greek law from any other conventional arbitral tribunal. The Court of Justice concluded likewise, by holding that the RAE arbitral tribunal was no different from any other convention arbitral tribunal, save the obligation to select arbitrators from a list established by the RAE's president. Yet, the mere requirement of selecting arbitrators from a list was a purely procedural element which could not affect the nature of said arbitral tribunal, so that it could not in and of itself equate the RAE arbitral tribunal to any ordinary state court (at [103]).

On the other hand, and in line with the arguments put forward by Mytilinaios and the Commission, the Court of Justice steered the debate regarding the arbitral tribunal's mandatory jurisdiction towards the question as to whether or not that arbitral tribunal's jurisdiction "*depend[ed] solely on the will of the parties*" (at [104]). It concluded that the General Court had erred in law by failing to ascertain this element.

In this respect, the Court of Justice drew a distinction between the present case and that of *Micula* (ECJ, *Commission v. Eurofood SA*, 25 January 2022, Case C-638/19), which did not concern a conventional arbitral tribunal, but an arbitration founded upon a bilateral investment treaty. Indeed, as the Court highlighted, the difference between the two lies in the fact that conventional arbitration is not based upon a treaty in which states "*generally and in advance agre*[e] *to exclude from the jurisdiction of their own courts disputes* (...)", but upon a "*specific agreement reflecting the freely expressed wishes of the parties concerned*" (at [109]).

In other words, the decisive criterion (underlying the classification of arbitral awards as state aid) is the will of the parties, and not any formal distinction between commercial and investment arbitration.

This reasoning was further reinforced by paragraphs [113] and [114]: "*in order to know whether that decision had conferred an advantage on Mytilinaios, it had been necessary to ascertain whether a private operator, under normal market conditions would have taken that decision [to conclude an arbitration agreement] under the same conditions*" (at [113]). The Court of Justice, however, observed that the situation might have been different, had it been "*a scheme imposed by the Greek State on the undertakings concerned in order to use that procedure to circumvent the rules in the field of State aid*"; yet on the facts, "*DEI* [had] *not claimed that the conclusion of the arbitration agreement with Mytilinaios had been imposed on it, against its will, by the Greek State in order to grant Mytilinaios State aid*" (at [114]).

Contribution by Iulian Chetreanu

ICSID, 22 December 2023, Peteris Pildegovics and Sia North Star v. Kingdom of Norway, ICSID Case No. ARB/20/11

In the first ICSID case brought against the Kingdom of Norway, e an arbitral tribunal rendered an award in which it dismissed Claimants' claims on the merits.

SIA North Star's main activity was fishing snow crabs in the Barents Sea. This sea is a marginal sea of the Arctic Ocean shared, *inter alia,* between Norwegian waters, the waters of the Russian Federation, the Svalbard Fisheries Protection Zone and the "*loophole*" (an area located in the High Seas, and whose seabed is divided between the extended continental shelf of Norway and that of the Russian Federation).

SIA North Star acquired several vessels registered under the Latvian flag and obtained several fishing licenses from the Government of Latvia authorising its ships to take snow crabs around Svalbard and in the "*loophole*". Therefore, SIA North Star began to fish snow crabs in these zones as of August 2014, before being fined several times by the Kingdom of Norway. Specifically in 2017, pursuant to the Svalbard Treaty, one of SIA North Star's vessels was fined for harvesting snow crabs in the waters around Svalbard.

As a result, Claimants filed a criminal complaint to challenge Norway's refusal to permit its vessels to fish snow crabs on the continental shelf around Svalbard. All the claims were dismissed by the Swedish Supreme Court, which ruled that the matter should was to be solved through a civil action. Therefore, the Claimants brought a civil action on the same legal grounds. Similarly, the Supreme Court however dismissed the appeal and concluded that the Norwegian Ministry of Trade had correctly interpreted the treaty.
Following this decision, the Claimants filed request for arbitration on 18 March 2020 on the basis of Article IX of the bilateral investment treaty between concluded between the Kingdom of Norway and the Republic of Latvia, as well as Article 25 of the ICSID Convention.

On the merits, the Claimants argued that Norway had breached various BIT standards by failing to give their investments a fair and reasonable treatment and protection, for the following reasons: Norway allegedly (i) failed to accept such investments in accordance with its laws, (ii) treated those investments less favourably than those made by investors from third states, (iii) unlawfully expropriated the Claimants' investments, and (iv) forced the Claimants to bring civil proceedings as the only way for the Claimants' case before Norwegian criminal courts to proceed.

The determination of the classification of snow crabs as a sedentary or non-sedentary specifies within the meaning of Article 77(4) of United Nations Convention on the Law of the Sea had important implications in this case. Non-sedentary species fall within the jurisdiction of a coastal state only in its territorial waters and exclusive economic zone (EEZ). Given that the "*loophole*" lies beyond the EEZs of Norway and the Russian Federation, if snow crabs were considered to be non-sedentary, then neither state would have any rights over the "*loophole*" snow crab fishery. Conversely, if snow crabs were classified as a sedentary species, then the "*loophole*" snow crabs would fall under the continental shelf jurisdiction of Norway and the Russian Federation.

In this case, the Claimants asserted that Norway's classification of snow crab as a sedentary species, subject to continental shelf jurisdiction, contradicted its previous stance, and thus impacting their fishing rights in the Barents Sea and violating specifically the obligation to provide fair and equitable treatment. The arbitral tribunal ruled that Norway's reclassification of snow crab was based upon valid scientific consensus, and not an abrupt change.

The second main legal issue concerned the *Monterary Gold* principle, according to which an arbitral tribunal does not have jurisdiction to settle disputes between states without their consent, and as such, does not have jurisdiction to take a decision on any matter involving any third state who was not involved in the dispute and did not consent to the arbitral tribunal's jurisdiction. In this case, a significant aspect of the Claimants' argument involved the argument whereby Norway encouraged the Russian Federation to claim sovereign rights over snow crabs in the "*loophole*", or collaborated with them to prevent EU crabbers from accessing the area. Therefore, ruling on diplomatic relations between the two states would have implied ruling on the Russian Federation's deeds without its consent, which would have been contrary to the *Monetary Gold* principle.

In this instance, the arbitral tribunal determined that this principle did not preclude an arbitral tribunal from upholding jurisdiction, but only circumscribed what the tribunal could decide upon. Therefore, the arbitral tribunal ruled that it had jurisdiction over the dispute, yet limited its ability to deal with only aspects of Claimant's case which did not involve rights and obligations of third state parties, *i.e.* in this case, those of the Russian Federation. On the other hand, the arbitral tribunal made it clear that it could not have heard the case, had the rights and obligations of any third state constituted the very subject matter of the dispute. In any case, the arbitral tribunal ruled that Norway's actions did not instigate the Russian Federation's deeds, relieving Norway of responsibility for the latter's actions.

Ultimately, the arbitral tribunal dismissed the Claimants' arguments in their entirety and ordered them to pay the sum of USD 1,407,031.11 to the Defendant.

Contribution by Axel Audren

INTERVIEW WITH ADAM CALLOWAY

1. **To begin with, could you tell us about your background and the reasons as to why you chose international arbitration as a career option?**

To be honest, I didn't really choose arbitration *per se* – I just naturally gravitated towards it without too much thought through several life choices, starting with my LL.B. in the UK, followed by my choice to cross the Channel and continue my studies in France. A key choice that put me on the path to a career in international arbitration was that of my Master's degree, in particular the M2 in International Business Law, under the direction of Prof. Daniel Cohen. Arbitration was a big focus of the course, and I think I found myself drawn to it as a subject as it promised to take greater advantage of my language and legal knowledge skillset (a blend of civil/common law). I then ended up doing an internship at Pinsent Masons in the CAD (Construction Advisory & Disputes) department, followed by an internship in the ENR (Energy and Natural Resources) department at Reed Smith and the rest is history.

In any case, my initial gut instinct wasn't wrong – the mix of common law and civil law often found in international arbitration is not only theoretically interesting but have significant implications in practice. It also happens to be incredibly intellectually stimulating and keeps me on my toes. As for the specific sector I find myself in, the international aspects of the construction projects I work on have led me to meet people from all walks of life and take me all over the world. What more could I ask for?

2. **You have been working at Reed Smith LLP for over 6 years as a jurist within its Energy and Natural Resources department, specialising in international commercial arbitration and with some experience in construction law. Can you tell us more about Reed Smith's Paris team?**

Right, take note anyone seeking an internship in arbitration at Reed Smith, as what I'm going to say here is going to be very useful. As the teams at Reed Smith tend to be organised by sector, it's not particularly clear that there are, in fact, two distinct teams at Reed Smith that dabble in arbitration: the transport team and the ENR (Energy and Natural Resources) team. I'm part of the latter, and despite the very sector-specific title, we work in the international construction sector more widely.

We're a relatively small team, made up of two partners (Peter Rosher and Clément Fouchard), two senior associates (Erwan Robert and Vanessa Thieffry), myself and mid-level associate Mathilde Adant. We also work very closely with our interns.

We all come from relatively different walks of life, but are a tight-knit team and work well together.

3. **What is your day-to-day work like in this law firm? What reasons have led you to become a jurist, as opposed to an *avocat*/solicitor/barrister?**

My day-to-day depends heavily on where the various cases I work are in relation to their respective procedural calendars. One day I could be sifting through thousands of documents provided by the opposing party following a gruelling exchange of Redfern Schedules (which sounds tedious but is an incredibly important step in the process where you can really reap the rewards of well-focused document requests), another day I can find myself jumping from meeting to meeting with fact and expert witnesses. Sometimes, these moments overlap (intense!), sometimes there are calmer moments where I can find a bit of time to do a bit of business development (writing articles and the like). One thing I cannot say is that things get boring.

Also, it's not all work and no play – I'd be remiss not to mention that I'm also guitarist in the Reed Smith band called 'Reed My Lips'. Fun fact (and I'm not normally one to gloat), but we also just won the Lawrocks! Competition that took place during the Paris Arbitration Week.

Many people ask me why I haven't taken the bar exam (in Paris or elsewhere), and what difference it makes in my daily work, etc. As for my daily work, compared to my colleagues, my tasks don't differ in the slightest! And for the curious (those wanting to know the why), to be honest, timing is everything. Once I started working, I was already on the treadmill so to speak, and taking out a chunk of time to study for and pass the Paris bar exam wasn't a real option (but might be in the near future). That being said, I think it's important to point out that my case is relatively exceptional (I don't want to give people false hope – crack on and pass the bar, it'll stand you in good stead).

4. **Could you tell us about a case that you have worked on that made a particular impression on you?**

I can't really get into the details, due to obvious confidentiality reasons, so I'll keep my response a little more generic.

It all depends on your definition of "leaving an impression". If you mean traumatised, then I guess sometimes, at the outset of a project, things can be daunting: international construction projects tend to be incredibly complex and disputes often turn on either technical issues or complex problems such as delay and disruption. But that's what's great about the field I work in.

If you mean left a positive impression, then it's hard to pick just one. I really enjoy getting into the nitty-gritty with construction projects, from learning how roads are built to how a nuclear power plant operates. This is really at the heart of my day to day work and, fortunately, is something I enjoy. As I said in an earlier response, this profession really keeps you on your toes.

5. **You began your university studies by reading an LL.B. in England, before studying French, European and international business law at Panthéon-Assas University. In your opinion, is it useful to have common law knowledge and reflexes in international arbitration? What do you think are the influences of common law upon the practice of international arbitration?**

I think I've already sown the seeds of my answer to the first part of this question throughout my previous answers, but in short, yes. I'd say our case load is typically split right down the middle, and I personally find myself working on both civil law and common law cases. It's also for this reason that we also try to ensure that at least one of our interns has a decent amount of exposure to common law systems.

As for the second part of the question, I think the practical influences are immense. I won't go into detail here, and I apologise for the shameless plug, but I'll invite you to check out my (somewhat recent) article on one particular area where common law traditions have had a particularly evident impact: witness evidence. It's called "*Common Law Influence in International Commercial Arbitration: Re-Examining Fact Witness Statements in Light of Recent Developments*" and was published in the International Business Law Journal in April 2022. If you don't have access and want to read it – just shoot me an email.

7. **You have recently co-authored several articles pertaining to the Law Commission's plans to modernise the Arbitration Act 1996 in the UK, in particular so as to cope with the rise of new arbitration centres around the world. Can you tell us about some of the major changes to be brought about by the forthcoming reform?**

The changes are relatively widespread and transversal, touching a number of different subjects, with varying goals so it's difficult to discuss the changes in a short answer. The articles I co-authored have honed in on some of the key changes, which range from the English courts' powers in support of arbitral proceedings to arbitrators' duty of disclosure and immunity. For a more detailed answer, you'll have to read my articles (as well as the others in the series) on the subject!

NEXT MONTH'S EVENTS

11 April: Conference "La compliance et les normes ESG dans l'arbitrage commercial international" (in French)

Organised by Master 2 Arbitrage et Commerce International (MACI) of University Paris-Saclay

Where ? At August Debouzy – 7 rue de Téhéran, 75008 Paris

Website: https://www.helloasso.com/associations/association-du-master-2-arbitrage-et-commerce-international-de-l-universite-paris-saclay-universite/evenements/la-compliance-et-les-normes-esg-dans-l-arbitrage-commercial-international (paid event, mandatory sign-up)

19 April: 41st Conférence "Contracts with States in International Investment Law"

Organised by the British Institute of International and Comparative Law

Where ? British Institute of International and Comparative Law – Charles Clore House, 17 Russell Square, London WC1B 5JP, United Kingdom or online

Website: https://www.biicl.org/events/11852/forty-first-itf-public-conference-contracts-with-states-in-international-investment-law (paid event, mandatory sign-up)

LAW PROFILER

INTERN
ALEM & ASSOCIATES

INTERNATIONAL ARBITRATION
Start date: July 2024
Duration: 6 months
Location: Abu Dhabi

INTERN
NORTON ROSE FULBRIGHT

LITIGATION & ARBITRATION
Start date: July 2024
Duration: 6 months
Location: Paris

INTERN
WATSON FARLEY & WILLIAMS

LITIGATION & ARBITRATION
Start date: January 2025
Duration: 6 months
Location: Paris

INTERN
SQUIRE PATTON BOGGS

LITIGATION, INSURANCE & ARBITRATION
Start date: July 2024, January 2025 and July 2025
Duration: 6 months
Location: Paris