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COMMENTARIES ON PRIVATE INTERNATIONAL LAW

THE PILIG NEWSLETTER

Co-Chairs' Notes

We are pleased to present the newest Commentaries on Private International Law (Vol. 6, Issue 1), the newsletter of the American Society of International Law (ASIL) Private International Law Interest Group (PILIG). The primary purpose of our newsletter is to communicate global news on PIL. Accordingly, the newsletter attempts to transmit information on new developments on PIL rather than provide substantive analysis, in a non-exclusive manner, with a view of providing specific and concise information that our readers can use in their daily work. These updates on developments on PIL may include information on new laws, rules and regulations; new judicial and arbitral decisions; new treaties and conventions; new scholarly work; new conferences; proposed new pieces of legislation; and the like.

This issue has two sections. Section one contains Highlights on the application of the CISG in Latin American countries, and PIL and the protection of children. Section two reports on the recent developments on PIL in Africa, Asia, Europe, North America, Oceania, and South America.

We express our sincere appreciation to our 2023 editorial team, which consists of 17 editors from around the world. They are: AJoo Kim (Gateway Litigation PLLC), Charles Mak (University of Glasgow), Christos Liakis (National & Kapodistrian University of Athens), Cosmas Emeziem (Boston College Law School), Hongchuan Zhang-Krogman (Three Crowns LLP), Jane Willems (Tsinghua University School of Law), John Gaffney (Al Tamimi & Company, Abu Dhabi, UAE), Juan Pablo Gómez-Moreno (Adell & Merizalde), Karen Sief (Sorbonne University Abu Dhabi), Lamine Balde (Shanghai Jiao Tong University), Malak Nasreddine (Al Tamimi & Company, Abu Dhabi, UAE), Milana Karayanidi (Orrick Herrington & Sutcliffe LLP), Minerva Zang (University of Pennsylvania Law School), Miquela Kallenberger (University of California, College of the Law, San Francisco), Mukarrum Ahmed (Lancaster University & University of Aberdeen's Centre for Private International Law), Naimeh Masumy (Swiss International Law School), and Yao-Ming Hsu (National Cheng-Chi University).

We thank expert opinions contributed by Ms. Anna Mary Coburn (ChildRightsLaw Center, the US), Ms. Haitao Ye (Beijing Dacheng Law LLP, China), Professor Lukas Rademacher (Kiel University, Germany), Ms. Miranda Kaye (the University of Technology Sydney, Australia), Mr. Philippe Lortie (the Hague Conference on Private International Law Permanent Bureau, the Netherlands), and Professor Santiago Talero Rueda (Partner at Talero Rueda & Asociados, Bogota and Colombia) in our Highlights Section.

We are also grateful for the proof-reading and research work conducted by the University of Sydney Law School research assistants: Christina Shin and Di Wang.

The chief editors are PILIG Co-Chairs Carrie Shu Shang (California State Polytechnic University, Pomona) and Jeanne Huang (University of Sydney Law School, Australia).

PILIG is constantly looking forward to your suggestions to improve our services to our members. If you would like to contribute to the Newsletter, to propose an event idea, or bring our attention to an important private international law development in your region, please contact us at Carrie Shu Shang sshang@cpp.edu and Jie (Jeanne) Huang Jeanne.huang@sydney.edu.au.

*All names are listed in the given name alphabetic order. Disclaimer: all maps used in this Newsletter are for illustration purposes only with no political, legal, or other intentions.

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Highlights

Some Obstacles Regarding the Application of the CISG in Latin American Countries

Santiago Talero Rueda*

The United Nations Convention on Contracts for the International Sale of Goods (CISG) was adopted in a diplomatic conference held in Vienna in 1980 under the auspices of the UN General Assembly. The CISG is the result of long-standing efforts carried out by numerous international organizations, and finally led by the UN Commission on International Trade Law (UNCITRAL),[1] in order to harmonize the law applicable to contracts of this kind.[2] It has been deemed as one of the most successful instruments for the development of international trade.[3] Currently, 95 countries have adopted the CISG as their national law applicable to contracts for the international sale of goods[4], including several Latin American states.[5] These 95 countries may currently represent more than 80% of the international commerce worldwide.[6]

Some general scenarios about the application of the CISG

The application of the CISG to a sales contract, may arise from a wide range of expected and unexpected circumstances. For example, it may be applicable to the contract as a national law, when parties having their places of business in contracting states choose the law of one of their states to govern their business transaction.[7] In these cases, the CISG may become the *lex specialis* applicable to the contract despite the choice of a national applicable law, thereby replacing or displacing those local national rules that would otherwise be applicable (e.g., a national commercial code).[8]

It may also be characterized as a "non-national" system of law, as a result of being a neutral set of uniform rules promulgated by an international organization. Thus, when the parties enter into a contract of sale having an arbitration agreement, they may select the CISG as the applicable rules of law to their agreement, even if their places of business are not located in a CISG state.[9] In other words, party autonomy in international commercial arbitration allows the parties to choose non-national rules of law in relation to the merits of their dispute,[10] irrespective of the seller's and the buyer's location at the time of concluding the contract.

Conversely, the parties may exclude the CISG in cases where it would undoubtedly be applicable.[11] Thus, a Colombian seller and a Canadian buyer could choose the law of a non-CISG state (e.g., English law), despite having their places of business in CISG states.

When the parties do not choose any system of law to govern their sales contract, the CISG may also be applicable. A court of law, applying the conflict of laws rules of its forum, may decide that the contract is subject to the national law of a given country which has adopted the CISG, in which case it may apply the CISG as *lex specialis*.[12] The CISG endorses this possibility.[13] An arbitral tribunal may reach the same conclusion based on the flexible approach that most rules contain in this field.[14]

Despite the wide range of scenarios for the application of the CISG and of the latter's notable success, the case law on the matter has had a slow -but steady- development in Latin American countries. Argentina, Brazil, Chile and Mexico lead the number of CISG cases in the region.[15] Other countries like Colombia, Ecuador, Peru and Paraguay are lagging behind.[16] In stark contrast with the Latin American case law, countries like United States, Germany and France have reported a significant amount of CISG cases.[17]

A more robust growth of CISG case law in Latin America, may neither depend on the region's participation in international commerce, nor on the volume of sales between Latin American countries within their regional markets. It may depend on other legal or cultural circumstances, which are also present in other regions of the world.[18]

First issue: finding an implied exclusion of the CISG

The CISG may be directly applicable to a contract of sale if the seller and the buyer have their places in different Latin American CISG states. It may also apply if said parties, having their places of business in different Latin American CISG or non-CISG states, choose the national law of a CISG country.[19]

However, in one case an Argentinian buyer raised a claim against a Chilean seller, before a Chilean court, alleging the breach of contract and requesting the payment of damages[20]. Both parties based their submissions on the local Chilean law, without resorting to the CISG. The Chilean courts involved in the case -including the Supreme Court- dismissed the claim under local Chilean law. When the claimant contended belatedly that the CISG was applicable, it was held that, under the CISG,[21] the lack of reference to its provisions amounted to its exclusion.[22]

In this case, the different courts involved ignored the application of the CISG, which could have been the *lex specialis*. Under the well-known principle of *iura novit curia* in civil law countries -*the judge knows the law*-,[23] the competent courts should have ascertained the applicable law despite the parties 'silence during the judicial proceedings. In international matters, sometimes neither the state judge nor the parties know the law.[24] This could explain the wide interpretation given by the Chilean courts to the implied exclusion of the CISG, despite the growth of the Chilean CISG case law.[25]

Second issue: unnoticed non-application of the CISG

This is the case where the seller and the buyer have their places of business in two Latin American CISG countries. Thus, the CISG should be directly applicable as *lex specialis*, irrespective of the parties' silence as to the choice of applicable law, or of their express choice of the law of one of the two countries involved without excluding the application of the CISG.

It is a fact that during recent years most Latin American companies -many of them from CISG states- have targeted their exportations to their regional markets.[26] However, the scarce case law reported in various Latin American countries may indicate that those who intervene in regional contracts of sale may be inadvertently ignoring the CISG.

From a practical standpoint, in the Latin American region it is common to find that several state courts and companies involved in international trade — including local counsel — ignore the existence of the CISG as a *lex specialis* within their own national laws. Consequently, when the law chosen is the national law of one of the countries involved, companies *a priori* believe that their rights, duties and liabilities should be addressed under a civil or commercial code. The mere existence of the CISG comes as a surprise when their managers seek specific advice, either at the time of negotiating the contract or, most commonly, once a dispute has arisen as a result of a breach of contract. The courts, especially at the lower levels of the judiciary, are generally not familiar with uniform instruments of international trade.

Third issue: the "homeward trend"

Being a uniform instrument of international trade, the CISG provides that its interpretation must take account of the convention's international character and of the need to promote uniformity in its application and the observance of good faith in international trade.[27]

Even if a state court does not ignore the existence of the CISG, there is always a risk of the so-called "homeward trend" at the time of interpreting and applying the convention. This trend, which is not exclusive to Latin American courts, has been defined as the *"(...) tendency to think that the words we see are merely trying, in their awkward way, to state the domestic rule we know so well*".[28] As a result, the state judge may be tempted either to disregard the CISG as a whole despite knowing its applicability[29], or simply to "adapt" the CISG to domestic rules of law rather than to international standards.[30] This reluctance to applying the CISG turns into a sort of a *favor legis domesticae*.

Conclusion

The CISG has been adopted by numerous Latin American countries. There is a slow but steady growth in the CISG case law reported in the region. However, these numbers seem to contrast with the volume of international sale of goods contracts involving Latin American parties.

The scarce case law reported in various Latin American countries may be caused by different legal and cultural circumstances or barriers, most of which encompass the lack of familiarity with the CISG and the reluctance to apply its rules. These circumstances, which are not exclusive to Latin America, involve companies, legal practitioners and state courts. They include (i) the unnoticed non-application of the CISG both during contractual negotiations and also

once a dispute has arisen between the seller and the buyer; (ii) a potentially high number of cases where the CISG is impliedly excluded during judicial proceedings (e.g., when the parties have chosen the national law of a CISG to govern their contract); and (iii) a homeward trend which reacts against the application of international and uniform rules of international trade, like the CISG.

Overcoming the lack of familiarity with the CISG in the legal community, is necessary in order to solve these cultural and legal barriers. Law schools in the Latin American region should permanently address issues of international trade law. Legal practitioners and state courts should also become aware of the multiple digests and sources, specifically focused on the CISG, which facilitate the interpretation and application of its rules.

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[1] JOHN HONNOLD & HARRY FLECHTNER, UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED CONVENTIONS 4-10 (4th ed, 2009).

[2] It also applies (i) to long-term contracts for the supply of goods and (ii) to contracts for the sale of goods and services, in so far the preponderant part of the obligations of the party who furnishes the goods (the seller) does not consist in the supply of labor or other services. United Nations Convention on Contracts for the International Sale of Goods art. 3, Apr. 11, 1980, S. TREATY DOC. No.98-9, 1489 U.N.T.S.3. (1983).

[3] STEFAN KROLL, LOUKAS MISTELIS & PILAR PERALES-VISCASILLAS, UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS – COMMENTARY 19-20 (Stefan Kroll et al. eds., 2011).

[4] The CISG takes a formal approach regarding the internationality of a sales transaction. This international character is based on the location of the parties' principal places of business: CISG, *supra* note 2, art. 1.1.

[5] Some of the members of the CISG are Australia, Canada, China, France, Germany, Israel, Italy, Japan, Netherlands, Portugal, Republic of Korea, Russian Federation, Spain, Singapore, Switzerland, Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Peru, Paraguay, Uruguay and Venezuela, among many others: *Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)*, https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status (last visited May 29, 2023).

[6] ULRICH SCHROETER, "*Empirical Evidence of Courts' and Counsels' Approach to the CISG (with Some Remarks on Professional Liability)"* in INTERNATIONAL SALES LAW: A GLOBAL CHALLENGE 649-668 (Larry A. DiMatteo ed., 2014) stating that when the CISG had 83 members, they represented between 75% and 80% of the worldwide international commerce.

[7] CISG, *supra* note 2, art. 1.1.a).

[8] A Korean court held that a contract of sale over some fabrics and components for a window shade, between a Korean seller and an American buyer, was subject to the CISG and not to the Korean laws, despite the fact that the parties had chosen Korean law to govern the agreement. The court highlighted that the CISG was the applicable *lex specialis*, within the national law of said country, to the transaction at hand: District Court of Korea. Decision of September 21, 2012, in: Republic Of Korea September 21, 2012 District Court | Institute of International Commercial Law (pace.edu); *logging in required*). Also: FRANCO FERRARI, *La Convención de las Naciones Unidas sobre los contratos de compraventa internacional de mercaderías y la ley aplicable al arbitraje comercial internacional: comentarios sobre tres supuestos comunes*, 8 Revista de Arbitraje Comercial y de Inversiones 687, 690-695, 704 (2015) (Fr.).

[9] That may be the case of an English seller and a Bolivian buyer. See SANTIAGO TALERO-RUEDA, ARBITRAJE COMERCIAL INTERNACIONAL: INSTITUCIONES BÁSICAS Y DERECHO APLICABLE 562-565 (2022) (Fr.).

[10] Several national laws and arbitration rules endorse this possibility. See, e.g., United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006* (Vienna: United Nations, 2008) art. 28(1), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf; French Code of Civil Procedure art. 1511; Spanish Arbitration Law (2003), art 34(2); Colombian Arbitration Law (2012), art. 101; Chilean Arbitration Law (1998), art. 28(1); Peruvian Arbitration Law (2008), art. 57(2); Argentinian Arbitration Law (2018), art. 79; Mexican Code of Commerce, art. 1445;

International Centre for Dispute Resolution (ICDR) Rules of Arbitration (March 1, 2021), art. 34(1), https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar; International Chamber of Commerce (ICC) Rules of Arbitration (Jan. 1, 2021), art. 21(1), https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/; The London Court of International Arbitration (LCIA) Rules (Oct. 1, 2020), art. 22(3), https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx; Hong Kong International Arbitration Centre (HKIAC) Rules of Arbittration, art. 36(1),https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2018; Chamber of Commerce of Lima (CCL) Rules of Arbitration (Jan. 1, 2017), art. 21(1), https://www.arbitrajeccl.com.pe/wp-content/uploads/2022/07/ARBITRATION-RULES-AND-STATUTES.pdf; Chamber of Commerce of Bogota Arbitration (CAC) Rules, art. 3.29.1, https://www.centroarbitrajeconciliacion.com/content/download/37204/file/Rules%20of%20procedure%20for%20international%20commercial%20arbitration.pdf; and Madrid International Arbitration Center (CIAM) Rules of Arbitration (Jan. 1, 2020), art. 26(1), https://madridarb.com/wp-content/uploads/2020/09/Arbitration-rules-EN.pdf, among many others.

[11] See: CISG, *supra* note 2, art. 6.

[12] For example, in a case between a Peruvian seller and a Spanish buyer, a Spanish court may apply article 4.1.a) of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of June 17, 2008 on the law applicable to contractual obligations (Rome I), which resorts to the law where the seller has his habitual residence (Peru). Since Peru has adopted the CISG in relation to contracts of this kind, the Spanish court may apply it as the *lex specialis* in order to solve the business dispute.

[13] CISG, *supra* note 2, art. 1.1.b).

[14] See, e.g., French Code of Civil Procedure, art. 1511; Spanish Arbitration Law (2003), art. 34(2); Colombian Arbitration Law (2012), art. 101; Peruvian Arbitration Law (2008), art. 57(2); Argentinian Arbitration Law (2018), art. 80; Mexican Code of Commerce, art. 1445; ICDR Rules (2021), art. 34(1) [as in reference 10]; ICC Rules, *supra* note 10, art. 21(1); LCIA Rules, *supra* note 10, art. 22(3); HKIAC Rules, *supra* note 10, art. 36(1); CCL Rules, *supra* note 10, art. 21(1); CAC Rules, *supra* note 10 art. 3.29.3; and CIAM Rules, *supra* note 10, art. 26(1), among many others.

[15] Courts in Argentina, Brazil, Chile and Mexico have issued 70, 17, 27 and 18 CISG decisions respectively. See: https://iicl.law.pace.edu/cisg/search/cases?case-terms=&exact_date=&start_date=&end_date=&descriptors=&jurisdiction%5B%5D=98; *(logging in required*).

[16] Ibid.

[17] Courts in United States, Germany and France have issued 399, 649 and 292 CISG decisions respectively. See: https://iicl.law.pace.edu/cisg/search/cases?case-terms=&exact_date=&start_date=&end_date=&descriptors=&jurisdiction%5B%5D=98; *(logging in required*).

[18] For example, there has been a so-called "homeward trend" in the application of the CISG by European or US courts. See, *inter alia*, Delchi Carrier SpA v. Rotorex Corp, 71 F.3d 1024 (2nd Cir, 1995); Playcorp Pty Ltd v Taiyo Kogyo Ltd [2003] VSC 108 (Austl.); Corte di Appello di Milano, 20 March, 1998 (Iti.); BRUNO ZELLER, *Analysis of The Cultural Homeward Trend in International Sales Law*, 10 VULJ 131,136 (2021).

[19] CISG, *supra* note 2, art. 1.

[20] Argentina and Chile are parties to the CISG, *supra* note 2.

[21] CISG, *supra* note 2, art. 6.

[22] Industrias Magromer Cueros y Pieles S.A. v. Sociedad Agrícola Sacor Ltda. Supreme Court of Chile. Decision of 22 September 2008 (Chile).

[23] *Iura novit curia* is neither the rule in common law jurisdictions nor in international commercial arbitration in most cases. See: GISELA KNUTS, *Jura Novit Curia and the Right to Be Heard - An Analysis of Recent Case Law*, 28 Arbitr. Int. 669, 671 (2012); RODRIGO JIJÓN & DANIELA PÁEZ, *Cabe la aplicación del principio iura novit curia en el arbitraje comercial?*, Revista Ecuatoriana de Arbitraje 161, 167-168 (2013); NIGEL BLACKABY & RICARDO CHIRINOS, *Consideraciones Sobre La Aplicación Del Principio Iura Novit Curia En El Arbitraje Comercial Internacional*, 6 Anuario Colombiano de Derecho Internacional [ACDI] 77, 82-84 (2013); and TALERO-RUEDA, op. cit 575-578..

[24] MARTIN DAVIES & DAVID V. SNYDER, INTERNATIONAL TRANSACTIONS IN GOODS, GLOBAL SALES IN COMPARATIVE CONTEXT 42 (2014).

[25] Some reported cases in Chile, address the scope of the reservations contained in arts. 12 and 96 of the CISG, whereby Chile declared that the CISG provisions allowing *"(…) a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing, would not apply where any party had his place of business in its territory*.":
UN, *supra* note 5.
[26] U.N. Economic Commission for Latin America and the Caribbean, Perspectivas del Comercio Internacional de América Latina y el Caribe [International Trade Outlook for Latin America and the Caribbean] (Jan. 2020), https://www.cepal.org/es/publicaciones/46613-perspectivas-comercio-internacional-america-latina-caribe-2020-la-integracion.
[27] CISG, *supra* note 2, art. 7.1.
[28] JOHN HONNOLD, *The Sales Convention in Action: Uniform International Words: Uniform Applications?*, 8 *J.L. & Com 207*, 208 (1988). For a criticism of the homeward trend, see: HARRY FLECHTNER & JOSEPH LOOKOFSKY, *Nominating Manfred Forberich: The Worst CISG Decision in 25 Years?*, *9 VJ* 199, 203 (2003).
[29] However, ZELLER. op.cit, 136, contends that ignoring or disregarding the application of the CISG amounts to the application of a wrong law, and not to a homeward trend as such.
[30] Sometimes it may be necessary to resort to domestic rules of law, but not as a result of a homeward trend in the interpretation of the CISG. This may take place within a gap-filling exercise (e.g. when the CISG provides that questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law: CISG, *supra* note 2, art. 7.2.)

Private International Law and Voices of Children

Christina Shin*

On June 1, 2023, International Children's Day, the American Society of International Law Private International Interest Group hosted an online webinar discussing the issue of children's welfare and voices in private international law (PIL) in collaboration with conflictoflaws.net. In the first part of the webinar, five experts were invited to share their views on the status quo, challenges, and potential solutions to protect the welfare of children in the international and transnational context. The second part of the webinar involved a roundtable discussion among the experts. This event was moderated by Dr. Jeanne Huang, Associate Professor at the Sydney Law School. The guest speakers were as follows:

- **Mr. Philippe Lortie**, co-head of the International Family and Child Protection Law Division at the Hague Conference on Private International Law Permanent Bureau. Mr. Lortie has more than 30 years of experience in the field of child protection.
- **Professor Lukas Rademacher**, Professor of Private Law, Private International Law, and Comparative Law at Kiel University, Germany. Professor Rademacher read law in Düsseldorf and Oxford and obtained a PhD in Münster. He wrote his postdoctoral thesis at the University of Cologne.
- **Ms. Miranda Kaye**, Senior Lecturer at the University of Technology Sydney. Ms. Kaye is a member of Hague Mothers, a project aiming to end the injustices created by the Hague Child Abduction Convention. She also has experience in public service (Law Commission of England and Wales) and as a practicing solicitor (family law in the UK).
- **Ms. Anna Mary Coburn**, former attorney for the US Government (USG) involving the Hague Children's Conventions and a Regional Legal Advisor and Foreign Service Officer for USAID. Ms. Coburn now has her own legal practice in private international family law, focusing on children's rights.
- **Ms. Haitao Ye**, lawyer at the Shanghai office of the Beijing Dacheng Law LLP specializing in marriage and family dispute resolution, as well as wealth inheritance and management. She is a former experienced judge in civil and commercial trials at the Shanghai Pudong New District People's Court.

Mr. Lortie opened the webinar by introducing the Hague Conference on Private International Law (HCCH), an intergovernmental organization with a mandate to develop

conventions to progressively unify the rules of PIL in all areas, including children's rights. Mr. Lortie's presentation covered three matters: the future of parent surrogacy, the 1996 Convention on Parental Responsibility and Protection of Children, and the 2007 Convention on the International Recovery of Child Support. After 10 years of working on its Parentage/Surrogacy Project, the HCCH has implemented a working group of state representatives to voice their views on the laws and policies of their respective states. According to Mr. Lortie, the HCCH's immediate mandate is to develop a single or two-instrument solution that applies to all children. Mr. Lortie explained that the recent US Supreme Court decision of *Golan v. Saada* emphasizes the benefits of being a party to the 1996 Convention, as it allows judges to order protective measures in urgent circumstances under Art. 11 (such as returning a child post-abduction). The US is currently not a party to the 1996 Convention. Moreover, Mr. Lortie pointed out that Australia is not yet a party to the 2007 Convention, despite NZ, the US, EU, and UK being parties (and Canada having signed). This Convention allows applications for child support and communications to occur securely over the Internet and aims to keep procedural costs low for the benefit of member states.

Professor Rademacher's presentation explored whether well-intentioned protective measures could cause more harm than good, by examining the German Constitutional Court's (FCC) highly controversial recent decision declaring the unconstitutionality of Germany's "Act to Combat Child Marriage". Under that Act, passed in 2017 partly as a response to the large number of refugees seeking asylum in Germany, marriages made under foreign law were voidable if one spouse was under 18 at the time of marriage and null and void if they were under 16. It also prevented courts from applying the public policy doctrine of *ordre public*. The FCC found that the Act violated the German Constitution's Article 6 on the basis that it disproportionately curtailed the freedom of marriage. Professor Rademacher explained that the FCC's ruling has been subject to misinterpretation – rather than endorsing child marriage, it highlights the nuanced balancing act required when considering a child's best interests. For example, the legislation did not regulate the consequences of a voided marriage – such as the minor spouse losing the legal protections of marriage, as well as rights arising from dissolution of the marriage (including financial claims). The FCC reasoned that these consequences ran counter to the purpose of protecting minors, as well as the protection of free choice. Professor Rademacher concluded that this FCC decision demonstrates that whilst legislatures may pass laws that delimit and regulate marriage, the most rigid laws may not necessarily be in the best interests of protecting children.

Ms Kaye presented on Australia's recent amendment to the *Family Law Act* with respect to the Hague Abduction Convention (HAC), focusing on the potential unintended consequences of these changes on mothers fleeing the country due to domestic violence (DV). Under the HAC, children are generally returned to the left-behind parent with limited exceptions. Ms Kaye focused on one exception, HAC Article 13(1)(b), which gives courts discretion not to order a child's return where there is a 'grave risk' that it would 'expose the child to physical or psychological harm'. Whilst there is no explicit reference to DV, Ms. Kaye explained that Article 13(1)(b) is most widely used in such cases. She went on to examine the new Reg 16 of the *Family Law* (Child Abduction Convention) *Regulations 1986* which implements HAC Article 13(1)(b), expressing concern towards its wording that courts 'may' (not 'must') consider whether returning a child may expose them to family violence, giving courts a potentially detrimental discretion. Ms. Kaye also raised the issue of inequality of arms – in Australia, a HAC application is brought by a central authority, not the left-behind parent. With no means-testing, left-behind parents often have a considerable jurisdictional advantage with better legal advice at their disposal than taking parents, who rarely receive Legal Aid in HAC cases. Optimistically, the government recently allocated $18.4M of its Federal Budget to investing in children's protection, with $7.4M dedicated to balancing legal representation. Finally, Ms. Kaye discussed the voice of the child, noting that Reg 16(c)(3) imposes more onerous wording than the HAC, and additional evidential requirements. Ms. Kaye considered this in the context of a child's right to culture and connection to land, which, whilst of paramount importance in matters involving First Nations children, has proved difficult to translate in Hague cases.

Fourthly, Ms. Coburn shared her views on child participation in PIL proceedings. She began with an overview of the public international legal framework for children, for which the UN Convention on the Rights of the Child (UNCRC) and its Optional Protocols provide guiding principles. These three optional protocols concern children

in armed conflict (OPAC), the sale of children, child prostitution and pornography (OPSC) and a communications procedure allowing direct child participation in individual cases (OPIC). Ms. Coburn noted that although the US has not ratified the UNCRC, its laws provide for child participation in proceedings involving parties from states that have ratified it. Child participation in Hague matters is relevant in two areas: 1) where a child has agency to express their views in proceedings that affect them, and 2) children's direct involvement in the formation and implementation of instruments designed to protect their welfare. Ms. Coburn noted that whilst the US is not party to the UNCRC nor OPIC, the Supreme Court in *Golan v Saada* appeared to apply a best interest standard in considering whether to return a child to their place of habitual residence under the HAC due to grave risk of harm. Ms. Coburn concluded that continued efforts amongst IGOs demonstrate a trend towards more forceful support for children's rights and participation, such as the WHO–UNICEF–Lancet Commission which advocates for improving child participation in all countries.

Finally, Ms. Haitao Ye discussed the emerging issue of protecting children's civil rights in cross-border surrogacy. Ms. Ye framed this issue in the context of rapid technological developments in the reproductive space, as well as the emotional stakes involved for interested parties. She began by discussing China's first (ongoing) custody dispute, where a Chinese same-sex couple shared surrogate children who were born in the US but taken to China by one parent when the relationship deteriorated. Ms. Ye also discussed *Balaz* (2008) involving a German couple and an Indian surrogate mother, where neither country's domestic laws allowed the surrogate twins to obtain citizenship of either country. These disputes raise concerns about the lack of uniformity amongst surrogacy legislation, conflicting PIL principles of children's best interests and other domestic public interests and demonstrate the lag between current legislation and practical reality. *Balaz* illustrates the potential risk of surrogate children facing statelessness, which denies their access to certain rights such as welfare. Ms. Ye concluded by sharing her opinion that the current body of PIL is not ready to meet the challenges of transnational surrogacy, which poses the risk of commercial exploitation. Nonetheless, she suggested that joint efforts of the international community, such as establishing international and national central agencies to record, review and regulate transnational surrogacy should continue to further protect surrogate children.

In part two of the webinar, a roundtable discussion took place between the expert speakers on the core question: "How can we define the 'best interest' of a child?"

- Ms. Ye referred to a custody dispute case in the Shanghai No. 2 Intermediate People's Court, involving a German father and Chinese mother. Ms. Ye demonstrated that Chinese courts place paramount importance on a child's interests; in that case, the court considered factors such as the children's living and educational environment, parental income, nationality, and the best care that could be received from either party.
- Ms. Coburn opined that the US' failure to ratify UNCRC will become problematic as the PIL sector moves towards increasing child participation and their best interests. At a federal level, US courts are less likely to refer to children's best interests and right to participate. Moreover, although state courts interpret child protection principles that are similar to the UNCRC, they will not necessarily order protections that are not entrenched in statute.
- Ms. Kaye emphasized the significant difference between Australian Family Court matters (where a child's best interests are paramount) and Hague matters, where best interests are considered not in Australia, but in the country of habitual residence. She reiterated her concern that systematically, 'best interests' in Hague matters are not met in DV matters.
- Professor Rademacher drew attention to intersectional issues at play, noting that German court cases often implicate refugees and disproportionately impact young women. This is a Europe-wide issue that has resulted in stricter child marriage laws in countries like France and the Netherlands – however, he observed that these jurisdictions tend to have more flexible public policy approaches than Germany with respect to underage marriage.
- Mr. Lortie concluded the roundtable by agreeing with Ms. Kaye that DV adds difficulties to put in practice the principles and protections under the HAC and

UNCRC, resulting in wrongful removal and retention of children. He emphasized the importance of education and states' responsibilities to implement solutions to combat DV on a domestic level.

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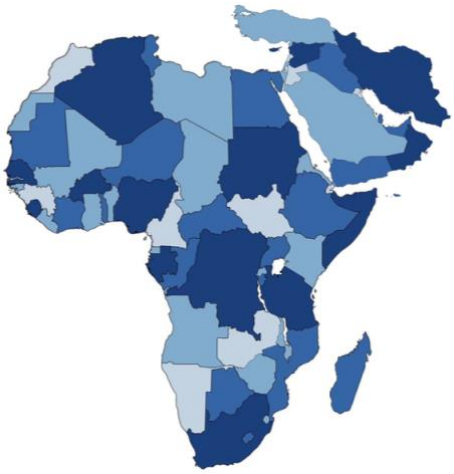
AFRICA & THE MIDDLE EAST

—Editors: Cosmas Emeziem, Lamine Balde, John Gaffney, Karen Seif, Kazim Sedat Sirmen, Malak Nasreddine, and Naimeh Masumy



Private international law in Africa and the Middle East has witnessed several significant developments in the first half of 2023. Along with a healthy number of investment agreements under negotiation, major legislative changes have been advanced with the aim of creating a modern legal structure that supports greater economic development. This is notably the case in Saudi Arabia, where a historic new civil law has been adopted, along with new rules for the local arbitral center. In the area of arbitration, the interplay between mainland and offshore courts was further clarified in a series of judgments. In addition, courts in Bahrain and Kuwait have considered the requirements for the enforcement of foreign judgments and arbitral awards in their respective jurisdictions. Last but not least, a number of exciting international events are scheduled to take part in the region in the last quarter of 2023.

International Conventions

Cabo Verde: Child Abduction Convention entered into force

On January 1, 2023, the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (1980 Child Abduction Convention) entered into force for Cabo Verde.

For the official announcement, please visit: https://www.hcch.net/en/news-archive/details/?varevent=890.

Botswana: the 1993 Adoption Convention and the 1980 Child Abduction Convention became effective

On February 1, 2023, the Convention of October 25, 1980 on the Civil Aspects of International Child Abduction (1980 Child Abduction Convention) entered into force for the Republic of Botswana following the deposit of its instrument of accession on November 14, 2022.

On March 1, 2023, the Convention of May 29, 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Adoption Convention) entered into force for the Republic of Botswana following the deposit of its instrument of accession on November 14, 2022.

For the official announcement, please visit: https://www.hcch.net/en/news-archive/details/?varevent=893;and https://www.hcch.net/en/news-archive/details/?varevent=898.

Türkiye and UAE: Signed a trade agreement

On March 3, 2023, Türkiye and the UAE signed a Comprehensive Economic Partnership Agreement ("CEPA"), a trade agreement aimed at strengthening economic cooperation between the two countries and increasing the value of trade between them to USD 40 billion over the next five years. The agreement is expected to be ratified in the second half of 2023.

For more information, please visit: https://www.reuters.com/world/middle-east/turkey-united-arab-emirates-sign-trade-agreement-2023-03-03/.

Senegal: Entry into force of the Apostille Convention

On March 23, 2023, the Hague Convention of October 5, 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention) entered into force for the Republic of Senegal. Senegal acceded to the Apostille Convention on July 13, 2022, and became the 124th Contracting State to the Convention.

The full text of the announcement may be found here: https://www.hcch.net/en/news-archive/details/?varevent=909.

Numerous investment treaties signed with MENA countries

Over the past 12 months, a number of investment treaties were signed by major countries of the MENA region. These include:

- a bilateral investment treaty between the UAE and Mozambique;
- bilateral investment treaties between the Philippines and the UAE, as well as the Philippines with Israel;
- a bilateral investment treaty between Türkiye and Uruguay;
- bilateral investment treaties between Qatar and Kazakhstan, as well as Qatar and Georgia;
- a bilateral investment treaty between Oman and Hungary.

National Legislation

Saudi Arabia: UNCITRAL Model Law on Cross-Border Insolvency

On December 16, 2022, Saudi Arabia issued the Rules of Cross-Border Bankruptcy Proceedings and became the 56th State which enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency.

For more information, please visit: https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status.

Benin: Promulgation of the Law amending the Dahomean Nationality Code

On December 20, 2022, the President of Benin promulgated the Law N°2022-32 of December 20, 2022, amending the 1965 Dahomean Nationality Code - Benin was formerly known as Dahomey. The new law sets out, inter alia, the conditions for granting, acquiring, declaring, losing and revoking nationality. It enshrines gender equality in access to Beninese nationality. Beninese women can now pass on their nationality to their offspring unconditionally, whereas they could only do so if the child's father was unknown or had no known nationality. They can also, through marriage, pass on their nationality to their non-Beninese husband.
The full text in Spanish to the Law amending the Dahomean Nationality Code may be found here: https://sgg.gouv.bj/doc/loi-2022-32/.

United Arab Emirates: Federal Decree Law No. 42 of 2022 repeals the former Civil Procedures Law ("CPL") effective from January 2, 2023

The new CPL came into force on January 2, 2023, by virtue of Federal Decree Law No. 42 of 2022, which repealed and replaced the former CPL set out in Federal Law No.11 of 1992.

The New CPL provides a number of significant changes to UAE civil procedures law, including (a) expanding the authority of supervising judges, who will now oversee the Case Management Office, (b) allowing trials, proceedings and judgments to be conducted in the English language (for certain circuits within the remits of specific cases), and (c) outsourcing the work undertaken by the Enforcement Court to external companies approved by the Minister of Justice (or the President of the Local Judiciary), which may lead to more dynamic enforcement measures and a quicker enforcement timeline.

United Arab Emirates: Dubai International Arbitration Centre (DIAC) launched its Metaverse for dispute resolution

On March 30, 2023, the DIAC announced its launch of Metaverse for dispute resolution. The Metaverse aims to provide a virtual reality space for parties to resolve disputes from anywhere in the world, eliminate the need for physical transportation, and further establish the sustainability and eco-friendliness of arbitration.

For more information, please visit: https://www.zawya.com/en/press-release/government-news/dubai-international-arbitration-centre-launches-its-metaverse-for-next-generation-dispute-resolution-gtl665he.

Qatar: The enactment of Law No. 21 of 2021 on Establishing the Investment and Commerce Court

On April 4, 2022, Qatar Law No. 21 of 2021 on Establishing the Investment and Commerce Court (the "Investment and Commerce Court Law") came into force. The Investment Court Law establishes a specialized judicial system for commercial suits and stipulates a specialized regime aimed at fostering efficiency by setting out faster procedures for submissions, adjournments, appeal submissions, and issuance of judgments.

The Investment and Commerce Court will be comprised of two levels – the First Instance Circuit and the Appellate Circuit. The Investment Court Law also establishes an electronic system for I&C Court that digitalizes and further expedites the court process.

For more information, please visit: https://www.diwan.gov.qa/briefing-room/news/general/lg/2021/october/19/lg07?sc_lang=en

Mozambique: Adoption of a New Private Investment Law

On May 4, 2023, the Mozambique Parliament passed a new Private Investment Law, which repeals and replaces the 1993 Investment Law. The new law, Number 8/2023, incorporates several measures to attract foreign direct investment and promote national direct investment, including tax benefits, accessible land, streamlined procedures for licenses and permits, and protection against expropriation. Besides, Decree No. 10/2023 of March 31, effective as of May 1, 2023, removes the entry visa requirement for 29 countries to, inter alia, incentivize investors from these countries to explore business opportunities within Mozambique.

The full text in Portuguese to the New Private Investment Law may be found here: https://www.mef.gov.mz/index.php/sobre-ministerio/cartas-de-servicos/1902-lei-de-alteracao-da-tabela-salarial-unica-tsu-e-lei-de-investimentos-2023/file
The full text to the Decree may be found here: https://furtherafrica.com/2023/04/29/mozambique-to-roll-out-visa-exemption-implementation/#jp-carousel-53741.

Saudi Arabia: New Civil Transactions Law, a legislative breakthrough

On June 14, 2023, the Saudi Arabian cabinet approved the new Civil Transactions Law. The new law is a major pillar

of legal reforms announced to align the legislative system with the needs of modern life, while maintaining a balance with Islamic Shari'a. The Civil Transactions Law covers all matters related to contracts, torts and forms of ownership.

For more information, please visit: https://saudigazette.com.sa/article/633364.

Saudi Arabia: The Saudi Center For Commercial Arbitration Adopts New Arbitration Rules

The Saudi Center for Commercial Arbitration (SCCA) has modernized its arbitration rules ("SCCA Rules 2023") with the view of serving as a central regional hub for dispute resolution within the region and beyond. The new set of rules contains two new procedural features. They introduce two new grounds for party challenges to the appointment of an arbitrator in addition to the grounds stipulated in the SCCA Rules of 2016: 1) where the arbitrator has failed to perform his or her duties, and 2) where the arbitrator manifestly does not possess the qualifications agreed to by the parties. The new version of SCCA Rules contains detailed and expansive provisions for the appointment of an emergency arbitrator to award interim relief prior to constitution of the tribunal. In this regard, a time limit for issuing an interim award or order is set, at no later than 15 days from the transmission of the file to the emergency arbitrator. Another innovative feature of the SCCA Rules is express authorization for foreign legal practitioners and legal counsel to assist and represent parties. Finally, the Rules adopt an enhanced and modern approach to consolidation, reflecting international best practice.

For more information, please visit: https://sadr.org/ADRServices-arbitration-arbitration-rules?lang=en.

National Case Law

South Africa: The Supreme Court of Appeal declared unconstitutional and invalid a provision under which South African citizens automatically lose their nationality if they fail to apply to retain it before becoming citizens of another country

On June 13, 2023, the South African Supreme Court of Appeal (SCA), in *Democratic Alliance v The Minister of Home Affairs and another*, declared unconstitutional and invalid Section 6(1)(a) of the 1995 South African Citizenship Act (Act). The Act provides for the automatic loss of citizenship when a South African adult acquires the citizenship or nationality of another country through a voluntary and formal action without having first obtained ministerial authorization to retain its citizenship. The Act was challenged by the Democratic Alliance, whose arguments were initially rejected by the Pretoria High Court before being granted leave to appeal to the Supreme Court of Appeal. On appeal, the SCA ruled in favor of the Democratic Alliance and held that the Act was unconstitutional and invalid from its promulgation. It further held that citizens who had lost their citizenship under the Act were deemed not to have lost it.

For more information, please visit: http://www.saflii.org/za/cases/ZASCA/2023/97.html.

United Arab Emirates: The Court of Competent Jurisdiction for the Enforcement of ICC Awards

In a judgment issued by the onshore Abu Dhabi Court of Cassation on 18 January 2023 on the ratification of an award issued by an arbitral tribunal under the rules of arbitration of the International Chamber of Commerce ("ICC"), the court declined jurisdiction in favor of the Abu Dhabi Global Market Courts ("ADGM Courts").

The Abu Dhabi Court of Cassation upheld the Court of Appeals decision that had held that the ADGM had sole jurisdiction over arbitrations seated in the ADGM.

The judgment suggests that, as a matter of UAE law, parties arbitrating under the ICC Rules in Abu Dhabi will be deemed to have chosen the ADGM as the seat of arbitration by virtue of the location of the ICC Representative Office within the ADGM.

Abu Dhabi Global Market: ADGM Court of First Instance accepts jurisdiction over an application to set aside an ICC Arbitral Award issued in Abu Dhabi

In case A6 v B6 before the ADGM Court of First Instance, the Claimant filed its application to set aside an arbitral award issued by an arbitral tribunal under the rules of arbitration of the ICC (after the Claimant's failed application to the Abu Dhabi Courts, as summarized above).

On 13 March 2023, the ADGM Court of First Instance found that the parties had opted into the jurisdiction of the ADGM Courts.

This is notable as the first court judgment where the ADGM Courts assume supervisory jurisdiction over an arbitration seated in onshore Abu Dhabi.

For more information, please visit: https://www.adgm.com/documents/courts/judgments/2023/2023-march/adgmcfi-2022-238---judgment-of-justice-stone-sbs-kc-13032023-sealed.pdf

Kuwait: Enforcement of Foreign Judgments and Arbitral Awards

In a case before the Kuwaiti Courts, the Applicant requested the recognition and enforcement of a foreign arbitral award issued by an arbitral tribunal under the arbitration rules of the Dubai International Arbitration Centre ("DIAC").

The Kuwaiti Court of First Instance recognized and held that the foreign award was enforceable. The Appellant appealed the decision before the Kuwaiti Court of Appeal on the basis that (a) the foreign award was not considered final, and (b) the Appellant was not duly notified of the foreign award. The Kuwaiti Court of Appeal determined that (a) the foreign award was considered *res judicata*, and (b) both parties were properly notified. The Kuwaiti Court of Appeal upheld the lower court's decision to recognize and enforce the foreign award in Kuwait.

This judgment is under appeal at the Kuwaiti Court of Cassation.

Bahrain: Enforcement of a foreign judgment upon a branch of a multinational financial institution

In a judgment issued on 27 July 2022 by the Bahraini Courts, the Applicant sought to enforce and execute a foreign Court judgment against a local branch of a major European banking institution in Bahrain (i.e., the Responden. The Respondentt challenged the enforcement of the judgment and argued that the local branch of the bank was a separate legal entity from the parent bank based in Europe.

The Bahraini Court of Cassation held that the foreign judgment thus was not enforceable and stayed all enforcement proceedings against the Respondent. This judgment established a new precedent in Bahrain on the impact of corporate structures on enforcement.

Association and Events

Regional Conference on the Hague Conference on Private International Law and the Relevance of its Work for Southern Africa

On February 7 and 8, 2023, the Permanent Bureau of the Hague Conference on Private International Law, the South African Department of International Relations and Cooperation and the Finnish Ministry of Justice held a regional conference entitled "The HCCH and the relevance of its work for Southern Africa" at the University of Pretoria, South Africa. The event, which also welcomed Namibia and Tanzania, as well as other States from the Southern African Development Community, provided participants with a unique opportunity to learn more about the HCCH and its work, including some of its most relevant Conventions, and allowed delegates to engage with experts from across Southern Africa and discuss regional experiences and perspectives.

For more information see: https://www.hcch.net/en/news-archive/details/?varevent=894.

A UNIDA mission to Burundi to speed up the process of the country's accession to OHADA

From June 26 to July 18, 2023, a delegation from the Association for the Unification of Law in Africa (UNIDA) will be on a mission to Burundi. The mission aims to speed up the process of Burundi joining the Organisation for the Harmonisation of Business Law in Africa (OHADA). Burundi's accession to OHADA will, inter alia, improve the country's legal and judicial business environment, attract foreign investment, increase economic exchanges and ensure effective free trade at a regional and continental level.

The full text of the announcement in French may be found here: https://www.ohada.com/actualite/6817/en-route-vers-ladhesion-du-burundi-a-lohada-une-mission-de-lunida-pour-accelerer-le-processus.html

Hilary Clinton at Resolve in ADGM (Abu Dhabi) in March 2023

On March 6, 2023, the ADGM held the second edition of RESOLVE, Abu Dhabi's International Dispute Resolution Forum. Following panel discussions from attorneys, along with stakeholders from strategic industry sectors and government entities, Hilary R. Clinton held a fireside chat. Ms. Clinton emphasized the critical role played by attorneys in steadily upholding the rule of law and the positive impact on public order and economic prosperity.

For more information, please visit: https://www.adgm.com/media/announcements/former-us-secretary-of-state-hillary-clinton-remarks-on-abu-dhabis-growing-falcon-economy.

***UNCTAD's World Investment Forum* in Abu Dhabi**

Between October 16 and 20, 2023, the 8th World Investment Forum of the United Nations Conference on Trade and Development ("UNCTAD") will be held in Abu Dhabi. This year's theme of "Investing in sustainable development" will provide a unique opportunity for policymakers and other key players to collaborate on finding solutions to global challenges that build on trade liberalization and sustainable investments.

For more information, please visit: https://unctad.org/press-material/countries-meet-abu-dhabi-unctads-world-investment-forum.

COP28 taking place in Dubai in November 2023

The United Nations Climate Change Conference is scheduled to take place in Dubai from November 30 to December 12, 2023. The UAE was the first country in the region to ratify the Paris Convention, and is dedicated to implementing best environmental and sustainable practices in developing its economy.

For more information, please visit: https://www.cop28.com/en/.

ASIA

—Editors: Hongchuan Zhang-Krogman, Jane Willems, Ajoo Kim, Milana Karayanidi, and Yao-Ming Hsu

International Conventions

Azerbaijan: Joined the Hague Service Convention

On February 17, 2023 Azerbaijan joined the Convention of November 15, 1965 on the Service of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

The Convention will become effective for Azerbaijan on September 1, 2023.

For the status table of the Convention, please visit https://www.hcch.net/en/instruments/conventions/status-table/?cid=17.

China: Acceded to the 1961 Apostille Convention

On March 8, 2023, China deposited its instrument of accession to the 1961 Apostille Convention (Convention Abolishing the Requirement of Legalisation for Foreign Public Documents). The 1961 Apostille Convention, which has 124 Contracting Parties, will enter into force for China on November 7, 2023. The Convention is already in force in Hong Kong and Macao SAR.

China's Declaration under the Convention can be found here:https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=914&disp=resdn.

Pakistan: The Apostille Convention entered into force

On March 9, 2023, the Convention of 5 October, 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (1961 Apostille Convention) entered into force for the Islamic Republic of Pakistan.

For the official announcement, please visit https://www.hcch.net/en/news-archive/details/?varevent=903.

China: MOU on cooperation between the SPC of China and the SPC of Singapore on Information on Foreign Law

On April 3, 2022, the Memorandum of Understanding on Cooperation (MOU) on Information on Foreign Law signed by the Supreme People's Court of the PRC and the Supreme Court of the Republic of Singapore became effective. The MOU supports the request of a court of either state to seek information and opinions on the other state's domestic law and judicial practice in civil and commercial matters. The MOU was signed on December 3, 2021.

A full text of the MOU can be found here: https://english.court.gov.cn/pdf/AnnouncementofChina%27stopcourtandtheMoUonCooperationbetweentheSupremePeople%27sCourtofthePeople%27sRepublicofChinaandtheSupremeCourtoftheRepublicofSingaporeonInformationonForeignLaw.pdf.

Republic of Korea: Tentative deal on bilateral investment agreement with Serbia

On April 26, 2023, Korea and Serbia tentatively agreed to sign a bilateral investment (BIT) to promote investments in the two countries. The agreement provides a legal framework for the protection of Korean investment in Serbia for non-commercial risks and the promotion of mutual investment. The agreement, upon ratification by both countries, will help strengthen the two countries' economic cooperation and business opportunities for companies. To date, Korea has 83 BITs in force.

For more information, please visit: https://bnn.network/breaking-news/south-korea-and-serbia-reach-tentative-deal-on-bilateral-investment-treaty-in-belgrade/;https://www.koreaherald.com/view.php?ud=20230427000264.

Singapore: Joined the Hague Service Convention

Singapore deposited its instrument of accession to the Hague Convention of November 15, 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters on May 16, 2023, and the Convention will enter into force on December 1, 2023 for Singapore. Singapore will implement the obligations under the Convention through amendments to the Rules of Court 2021, the Singapore International Commercial Court Rules 2021, and the Family Justice Rules, which will be implemented at the same time when the Convention enters into force for Singapore. The Convention provides a more simplified process for parties to effect service in other contracting states. There are currently 81 contracting parties.

The full text of the Convention can be found here: https://www.hcch.net/en/instruments/conventions/full-text/?cid=17; the press release from the Singapore Ministry of Law can be found here: here: https://www.mlaw.gov.sg/news/press-releases/singapore-accedes-to-service-convention/#:~:text=Singapore%20on%2016%20May%20deposited,Party%20to%20the%20Service%20Convention.

For the status table of the Convention, please visit https://www.hcch.net/en/instruments/conventions/status-table/?cid=17.

Taiwan: U.S.-Taiwan Initiative on 21st Century Trade

On May 18, 2023, the United States and Taiwan, under the auspices of the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO), concluded negotiations on the U.S.-Taiwan Initiative on 21st Century Trade.

This initiative covers the areas of customs administration and trade facilitation, good regulatory practices, services domestic regulation, anticorruption, and small and medium-sized enterprises. According to these provisions, U.S. businesses will be able to export more products to Taiwan, through more transparent and streamlined regulatory procedures. This initiative can also facilitate investment and economic opportunities in both markets, particularly for small- and medium-sized enterprises. Once signed, this Initiative will deepen the trading partnership and enhance U.S.-Taiwan trade flows, promoting innovation and inclusive economic growth for workers and businesses.

For more information, please visit: https://ustr.gov/sites/default/files/2023-05/AIT-TECRO%20Trade%20Agreement%20May%202023.pdf.

Republic of Korea: Forging three new trade partnerships

During the first half of 2023, the Korean government announced its desire to sign a Trade and Investment Promotion Framework (TIPF) with more than 20 countries in 2023 including joining the Indo-Pacific Economic Framework and the Digital Economy Partnership Agreement. To date, Korea has signed TIPFs with the United Arab Emirates, Dominican Republic, and Bahrain.

For more information, please visit https://en.yna.co.kr/view/AEN20230111004500320.

National and Regional Legislation

Republic of Korea: Amendment of the Act on Private International Law

On July 5, 2022, the Republic of Korea's amended Act on Private International Law (formerly named the Conflict of Laws Act) went into effect. By revising seven provisions and introducing thirty-five new provisions, the amendment is regarded as a comprehensive effort of modernization. The amended Act, in essence, stipulates Korean courts' jurisdiction over matters with foreign/international elements, specifies the standard of "substantial connection", and provides whether Korean courts can stay a domestic proceeding upon request by a disputing party or at its own discretion when there is a parallel proceeding before a domestic court of another State.

For more information, please visit: https://www.legalbusiness.co.uk/disputes-yearbook-2022/sponsored-briefing-catching-up-with-the-world-korea-updates-its-conflict-of-laws/;https://www.lexology.com/library/detail.aspx?g=f9eccec4-4d7b-4d80-9a79-0124fee32438.

Hong Kong: The United Nations Convention on Contracts for the International Sale of Goods (CISG) came into effect

On December 1, 2022, the Sale of Goods (United Nations Convention) Ordinance (Cap. 641) to implement the United Nations Convention on Contracts for the International Sale of Goods (CISG) came into effect in the Hong Kong Special Administrative Region. Hong Kong passed the Ordinance on September 29, 2021.

The full text of the ordinance can be found here: https://www.elegislation.gov.hk/hk/cap641.

Hong Kong: Third Party Funding in Arbitration

On December 16, 2022, Hong Kong's enacted new sections of Part 10B of the Arbitration (Cap. 609), Hong Kong's new regime permitting Outcome Related Fee Structures ("ORFS") in arbitration and related court or mediation proceedings, came into force, together with the Arbitration (Outcome Related Fee Structures for Arbitration) Rules (Cap. 609, Section 98ZM) to regulate the new agreements.

The full text of the ordinance and of the Rules can be found here: https://www.elegislation.gov.hk/hk/cap609?xpid=ID_1657179430116_006.

China: Draft Law on Foreign State Immunity

In December 2022, China published the draft Foreign Relations Law and the draft Foreign States Immunities Law. The Draft Foreign States Immunities Law contains a commercial activities exception to immunity of jurisdiction in Chinese courts in litigation involving states arising from commercial activities that do not constitute an exercise of sovereign authority, and an exception to immunity of execution to enforce an effective judgment of a PRC court, where the property of the foreign state is used for commercial activities, is connected to the litigation, and is located in PRC territory. The Draft Foreign States Immunities Law also contains provisions as to the waiver of immunity of jurisdiction and of waiver of immunity of execution.

The full text of the draft can be found here: https://www.chinalawtranslate.com/en/PRC-Foreign-State-Immunity-Law-(Draft)/.

Japan: Amended the Arbitration Act

In April 2023, Japan amended the Arbitration Act to harmonize with the latest UNCITRAL Model Law and to promote international arbitration in Japan for cross-border commercial disputes.

For more information, please visit: https://www.moj.go.jp/EN/kokusai/kokusai03_00003.html .

Singapore: Consolidation of regime relevant to the enforcement of foreign judgments

The regime for the enforcement of foreign judgments in Singapore is now consolidated under the Reciprocal Enforcement of Foreign Judgments Act ("REFJA"). Previously, the enforcement of foreign judgments regime was split between the REFJA and the Reciprocal Enforcement of Commonwealth Judgments Act ("RECJA"), with the RECJA governing prescribed Commonwealth countries, and the REFJA covering all others. The reciprocating Commonwealth countries under the RECJA have been transferred to the REFJA, and the RECJA was repealed from March 1, 2023. A judgment registered under the REFJA would have the same force and effect of a judgment issued by the Singapore courts.

The full text of the Act can be found here: https://sso.agc.gov.sg/act/refja1959.

National and Regional Case Law

China: Guiding Cases 200 and 201 on international arbitration

On December 27, 2022, Supreme People's Court published the 36th batch of Guiding Cases which include 6 cases focussing on arbitration (Cases 196-21l).

Guiding Case 200 concerned the recognition and enforcement under the 1958 New York Convention of an ad-hoc arbitral award rendered in Sweden. In this case, the Chinese party, contested the Swedish Party's application on several grounds under Article V(1) of the 1958 NYC, including in particular, whether the arbitral award was beyond the scope of arbitration agreed by the parties. The issue was the parties' understanding of the arbitration clause which provided that "disputes should be settled by

expedited arbitration in Sweden", The court noted that when Svensk Honugsforadling AB first applied for arbitration before the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), Changli Bee objected that the SCC arbitration rules did not apply alleging that the parties had agreed to expedited arbitration proceedings in Sweden, which led the SCC to reject the case for lack of jurisdiction. The court considered that the subsequent arbitration decided by an ad-hoc arbitration tribunal was in line with the consent of the parties and decided to enforce the award.

S*vensk Honugsforadling AB v Nanjing Changli Bees Product Co., Ltd.*, which had been issued by the Nanjing Intermediate People's Court, (2018) Su 01 Xie Wai Ren No. 8, can be found here: https://www.lawinfochina.com/display.aspx?lib=case&id=7136.

Guiding Case 201 concerned the recognition under the 1958 New York Convention of a decision issued by the Players' Status Committee of FIFA in Switzerland, in a labor dispute between a Serbian coach and a Chinese football team. The enforcing court held that under the dispute resolution clause the parties agreed that the dispute would be (i) first submitted to the Player Status Committee, or to other internal bodies of FIFA, for resolution, or (ii) to the Court of Arbitration for Sport, if FIFA does not have jurisdiction. The court held that the decision Player Status Committee, which the applicant sought to enforce against the Chinese club, did not constitute an arbitral award within the meaning of Article I of the 1958 New York Convention, as the decision resulted from a mediation and under rules which did not exclude other judicial remedies.

Dragan Cocotovich v. Shanghai Envoy Restaurant Management Co., deliberated and adopted by the Judicial Committee of the Supreme People's Court can be found here:https://www.lawinfochina.com/display.aspx?lib=case&id=7137.

Hong Kong: Law governing a jurisdiction clause

On January 19, 2023, the Hong Kong judgment rendered by the Court for First Instance, in *China Railway (Hong Kong) Holdings Limited v Chung Kin Holdings Company Limited* [2023] HKCFI 132, applied the English law principles set in *Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb* [2020] 1 WLR 4117, in the context of determining the governing law of an arbitration, to determine the law governing a jurisdiction clause. The issue before the court was whether the contracts underlying the dispute contained an exclusive jurisdiction clause in favor of Wuhan Mainland China, which excluded the jurisdiction of Hong Kong courts. The court held that the choice of law clause under the main contract, which pointed to Hong Kong law, also applied to the dispute resolution clause. It also held that under Hong Kong law, the jurisdiction clause was non-exclusive, and accordingly the stay of the proceedings in Hong Kong in favor of the Court of Wuhan should not be granted.

The judgment can be found here: https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=150040&currpage=T.

Association and Events

9th Journal of Private International Law Conference

From August 3 to 5, 2023, the Journal of Private International Law will be holding its 9th Conference at the Yong Pung How School of Law of Singapore Management University.

For more information, please visit: https://site.smu.edu.sg/9th-journal-private-international-law-conference-2023#home.

AMERICAS

Central, South America & Mexico

—Editor: Luiz Philipe de Oliveira and Juan Pablo Gómez-Moreno

During the first half of 2023, Latin America witnessed significant developments in international conventions and arbitration. Chile's ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), as well as similar measures from Uruguay, demonstrated the region's commitment to these agreements. In contrast, Honduras made headlines by announcing its intention to withdraw from ICSID, citing concerns about investment claims not aligning with relevant treaties. This year alone, Honduras has faced six investment arbitrations.

Regulatory changes have also taken place in prominent arbitral centers across the region, such as Colombia and Mexico, as they announced updates to their arbitration rules. Notably, enforcement proceedings in US courts regarding awards from investment arbitrations against countries like Ecuador, Venezuela, and Peru have become increasingly frequent. Interestingly, cases where states are pursuing amounts owed by investors in similar proceedings have also emerged.

International Conventions

Uruguay: Uruguay submitted to New Zealand its application for accession to the CPTPP

On November 30, 2022, Uruguay formally submitted its application for accession to the CPTPP to New Zealand.

For more information, please visit the website in Spanish: https://www.gub.uy/ministerio-relaciones-exteriores/comunicacion/noticias/uruguay-presento-solicitud-ingreso-cptpp.

Chile: Chile sent to New Zealand the instrument of ratification of the CPTPP

On December 22, 2022, Chile sent its instrument of ratification of the CPTPP to New Zealand. After being approved by the Chilean House of Representatives, the ratification faced significant opposition and underwent several years of deliberation before receiving approval from the Senate on October 11, 2022. To ratify the CPTPP, the Chilean Government entered into side letters with New Zealand, Malaysia, and Mexico, specifically excluding itself from the ISDS mechanism of the treaty.

For more information, please visit the website in Spanish: https://www.subrei.gob.cl/sala-de-prensa/noticias/detalle-noticias/2022/12/22/chile-deposit%C3%B3-en-nueva-zelandia-instrumento-de-ratificaci%C3%B3n-del-cptpp.

Belize: Acceded to the UN Electronic Communications Convention

On January 19, 2023, Belize acceded to the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (the "Electronic Communications Convention"). It will enter into force for Belize on August 1, 2023.

For the status table of the Convention, please visit: https://uncitral.un.org/en/texts/ecommerce/conventions/electronic_communications/status.

Colombia: Colombia and Venezuela signed a bilateral investment treaty

On February 3, 2023, Colombia and Venezuela signed a treaty aimed at promoting and protecting investments between the two countries. Notably, the parties approached the negotiations with caution, considering the criticisms surrounding investment treaties and drawing from past experiences with investor-state disputes. Their focus was on creating a treaty that would preserve the states' ability to take actions in key sectors while also preventing potential disputes. As a result, this treaty offers more limited protections compared to traditional instruments, reflecting a deliberate effort to strike a balance between safeguarding state interests and fostering investment cooperation.

For more information, please visit the website in Spanish: https://www.mincit.gov.co/prensa/noticias/comercio/colombia-y-venezuela-firmaron-acuerdo-inversion.

El Salvador: The Evidence Convention entered into force

On March 20, 2023, the Convention of March 18, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (1970 Evidence Convention) entered into force for the Republic of El Salvador following the deposit of its instrument of accession on January 19, 2023.

For the official announcement, please visit: https://www.hcch.net/en/news-archive/details/?varevent=908.

Uruguay: Ratified the Singapore Convention on Mediation

On March 28, 2023, Uruguay ratified the Singapore Convention on Mediation. The Convention will come into effect for Uruguay on September 28, 2023.

For the status table of the Convention, please visit https://www.singaporeconvention.org/jurisdictions.

Honduras: Honduras threatens to withdraw from ICSID

On June 1, 2023 Honduras threatened to withdraw from the ICSID Convention due to an alleged breach of law and procedure from the Centre in the administration of a US$ 11 billion arbitration initiated by the American company Próspera. According to the government, the investor didn't exhaust domestic remedies and, in consequence, the Centre should have refused to register the claim.

The full text of the announcement may be found here: https://twitter.com/SEFINHN/status/1664100510603902978.

Paraguay: Acceded to the Service and Evidence Conventions

On June 23, 2023, Paraguay deposited its instrument of accession to the Convention of November 15, 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965 Service Convention) and the Convention of March 18, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (1970 Evidence Convention). The Service Convention will enter into force for Paraguay on January 1, 2024 subject to the Article 28 procedure. The Evidence Convention will enter into force for Paraguay on August 22, 2023.

For the official announcement, please visit https://www.hcch.net/en/news-archive/details/?varevent=923.

National Legislation

Mexico: The Arbitration Center of Mexico changed its arbitration rules

On December 1, 2022, the Mexico Arbitration Center changed its arbitration rules. The new rules introduce various changes such as expedited arbitration, disclosure

obligations, the authority of arbitrators to appoint secretaries, and the determination of the stage at which the dispute will be defined, among other aspects.

The full text of the new Rules in Spanish may be found here: https://camex.com.mx/wp/wp-content/uploads/2022/12/Reglas-de-Arbitraje-del-CAM-2022.pdf.

Colombia: Arbitration Center of the Bogota Chamber of Commerce amended rules for arbitrators appointment

Since February 7, 2023, the Arbitration and Mediation Center of the Bogota Chamber of Commerce has implemented the international system of lists as the primary mechanism for selecting international arbitrators.

For more information, please visit the website in Spanish: https://ciarglobal.com/centro-de-arbitraje-de-la-camara-de-bogota-adopta-sistema-internacional-de-tribunales/.

Bahamas: Enacted new Arbitration and Alternative Dispute Resolution Legislation

In March 2023, the Bahamas' Minister of Economic Affairs, Sen. the Hon. Michael B. Halkitis, announced that the International Commercial Arbitration Bill 2023 and the Arbitration (Amendment) Bill 2023 were finalized and would soon be available for limited public consultations before enactment. These Bills aim to incorporate the UNCITRAL Model Law on International Commercial Arbitration.

The Bills laid in Parliament can be found at: https://www.transnational-dispute-management.com/downloads/bahamasicabill2023.pdf; https://www.transnational-dispute-management.com/downloads/bahamasarbitrationamendmentbill2023.pdf.

Colombia: Colombian Government is seeking to amend arbitration to avoid interrupting infrastructure projects

On April 25, 2023, Guillermo Reyes, former Minister of Transport, announced the Government's intention to reform the operations of arbitral tribunals handling disputes between private companies and state entities. The aim is to prevent these conflicts from stalling projects and to expedite their resolution. The Minister emphasized the need for more efficient processes and reduced timeframes for such disputes.

For more information, please visit the website in Spanish: https://ciarglobal.com/colombia-gobierno-quiere-reformar-el-arbitraje-para-evitar-paralizar-obras/.

Mexico: Issued the National Code of Civil and Family Procedures

On June 7, 2023, Mexico published the National Code of Civil and Family Procedures in Mexico's Official Gazette of the Federation. The Code reformed the civil and family procedures in Mexico.

The Code in Spanish is available at https://www.dof.gob.mx/nota_detalle.php?codigo=5691385&fecha=07/06/2023#gsc.tab=0.

Brazil: Implemented Law recognizing cryptocurrency as a means of payment

On June 19, 2023, Brazil's Law 14.478/22 was implemented, establishing a regulatory framework for the cryptocurrency market and outlining penalties in the case of virtual assets fraud or money laundering.

The Law in Portuguese is available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/Lei/L14478.htm.

National Case Law

Guatemala: Guatemala gets enforcement of the IC Power award in New York

On December 20, 2022, a US judge ruled that IC Power must pay Guatemala the awarded amount of nearly US$2 million in relation to a tax issue that impacted two of its subsidiaries.

The full text of the decision is not available.

Brazil: Sao Paulo Tribunal annuls arbitration clause

On December 22, 2022, a Sao Paulo Tribunal invalidated an arbitration clause in a franchise agreement due to one of the parties lacking financial resources. The Tribunal cited jurisprudence from the Superior Tribunal of Justice of Brazil, which allows for the removal of an arbitration clause when a party's economic incapacity is proven. The Tribunal determined that there was a demonstrated lack of financial resources that would prevent the franchisee from covering the costs of arbitration, thus violating the right to access justice.

The full text of the decision in Portuguese may be found here:https://www.conjur.com.br/dl/afasta-clausula-arbitral.pdf.

Venezuela: Venezuelan National Assembly removes Juan Guaidó as Interim President

On December 30, 2022, former deputies of the Venezuelan National Assembly removed the Interim Government of Juan Guaidó, causing uncertainty in ongoing arbitral proceedings where Guaidó had been recognized as the legitimate head of state. A commission of five members was appointed to handle Venezuela's foreign assets, including Citgo, a US-based petroleum refinery. Guaidó was permitted to participate as counsel in enforcement proceedings pursued by investors seeking assets such as Citgo. This situation has led to confusion regarding the legal representation of the country in future proceedings.

For more information, please visit: https://www.reuters.com/world/americas/venezuela-opposition-removes-interim-president-guaido-2022-12-31/.

Peru: A US hedge fund seeks to enforce award against Peru

On March 14, 2023, US Hedge Fund Gramercy filed a petition with the US District Court for the District of Columbia seeking recognition and enforcement of an award issued by a Paris-seated arbitral tribunal on December 6, 2022. The tribunal awarded the fund damages totaling over US$33 million, alleging that Peru has failed to make any payment. Gramercy's petition aims to secure the enforcement of the award and hold Peru accountable for the outstanding amount owed.

The full text of the petition may be found here: https://www.italaw.com/sites/default/files/case-documents/italaw171267.pdf.

Ecuador: A US Court rejects Ecuador's fiscal claim regarding the Perenco Award

On April 20, 2023, the United States District Court for the District of Columbia A US court denied Ecuador's requests to reduce the award amount in favor of the petrol company Perenco, which pertains to unpaid taxes, and has ordered its enforcement. Ecuador sought compensation of over US$50 million in tax debt from Perenco. The court rejected the claim, stating that the matter involves controversial and substantial issues that should have been addressed before the ICSID arbitral tribunal rather than the court.

The full text of the decision may be found here: https://jusmundi.com/en/document/decision/en-perenco-ecuador-limited-v-republic-of-ecuador-memorandum-opinion-of-the-united-states-district-court-for-the-district-of-columbia-thursday-16th-march-2023#decision_46549.

Venezuela: A US Court enforces ICSID award against Venezuela

On May 15, 2023, the US District Court of Columbia upheld an ICSID award of US$430 million in favor of a tortilla maker, Valores Mundiales and Consorcio Andino, subsidiaries of the Gruma Group. The award stemmed from a 2011 decree by Hugo Chávez, which placed their corn and wheat milling companies under state control. Despite claims

by the Interim Government of Juan Guaidó of a due process violation, Judge Ana Reyes dismissed these arguments and confirmed the award.

The full text of the decision is not available.

North America

—Editor: Carrie Shu Shang & Miquela Kallenberger

International Convention

Canada: Acceded to the 1961 Apostille Convention

On May 12, 2023, Canada deposited its instrument of accession to the *Convention of October 5, 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (1961 Apostille Convention).

For the official announcement, please visit: https://www.hcch.net/en/news-archive/details/?varevent=914.

National Case Law

United States: Supreme Court decided Foreign Sovereign Immunities Act (FSIA) immunities in criminal cases

On April 19, 2023, the Supreme Court ruled unanimously in *Turkiye Halk Bankasi A.S. v. United States* that the Foreign Sovereign Immunities Act (FSIA) does not protect Halkbank from criminal prosecution in U.S. courts. The majority opinion concluded that the FSIA applies solely to civil actions but remanded the case for the Second Circuit to determine whether common law bars prosecution of a state-owned commercial enterprise. The decision is in line with The Supreme Court's repeated observation that courts traditionally deferred to the decisions of the political branches on whether to take jurisdiction over actions against foreign sovereigns.

For a full text of the case opinion, please visit: https://www.supremecourt.gov/opinions/22pdf/21-1450_5468.pdf.

United States: Supreme Court decided cases concerning terrorism liabilities of social media companies

On May 18, 2023, the U.S. Supreme Court issued opinions in *Twitter, Inc. v. Taamneh* and *Golzalez v. Google LLC*. It held that the plaintiffs' allegations that these social media companies had aided and abetted ISIS in terrorist attacks abroad failed to state a claim under the *Justice Against Sponsors of Terrorism Act* (JASTA). Both cases involved terrorist attacks by members of ISIS. In both cases, plaintiffs alleged that social media companies helped ISIS recruit new members by amplifying ISIS content and promoting that content to social media users. In *Taamneh*, the Court held that plaintiffs failed to state a claim under JASTA. In *Gonzales*, the court granted cert. to consider the scope of immunity under Section 230(c) of the Communications Decency Act.

The U.S. Supreme Court decision can be found here: https://www.supremecourt.gov/opinions/22pdf/21-1496_d18f.pdf and https://www.supremecourt.gov/opinions/22pdf/21-1333_6j7a.pdf.

United States: Supreme Court decides Yegiazaryan v. Smagin (Extraterritoriality)

On June 22, 2023, the United States Supreme Court delivered their decision as to whether a foreign plaintiff has a legal right to bring a Racketeer Influenced and Corrupt Organizations Act (RICO) action when they suffer an injury to intangible property. In other words, can a foreign plaintiff with no connection to the United States allege a "domestic" injury sufficient to maintain a RICO action based only on injury to intangible property? In this case, the court found the allegations of domestic injury to be sufficient to satisfy a RICO claim. The court adopted a "context specific" test instead of a bright-line approach and stated that they and other courts should examine whether the circumstances surrounding the alleged injury and racketeering took place in the United States.

The U.S. Supreme Court opinion can be found here: https://www.supremecourt.gov/opinions/22pdf/22-381_d1of.pdf.

United States: D.C. District Court Decides against Nigeria's motion to dismiss an arbitration enforcement action

In Zhongshan Fucheng Industrial Investment Co. v. Federal Republic of Nigeria, the U.S. District Court for the District of Columbia rejected Nigeria's motion to dismiss a Chinese investor's action to enforce a $55 million arbitral award. The court held that the award was "commercial" for purposes of the New York Convention and that the Foreign Sovereign Immunities Act's (FSIA) arbitration exception gave the court jurisdiction.

EUROPE

—Editors: Mukarrum Ahmed, Charles Mak, Christos Liakis, Minerva Zang

International Conventions

European Union: Council Decision concerning the accession of the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019

The Hague Judgments Convention 2019 will come into force on September 1, 2023 between EU Member States (except Denmark) and Ukraine. Under the terms of the Convention, it will apply to the enforcement of judgments in proceedings commenced after that date. In essence, the Hague Judgments Convention 2019 complements the Hague Choice of Court Convention 2005 by allowing enforcement of judgments in a broader range of cases via the use of jurisdictional filters. It applies to judgments where the court assumed jurisdiction under a non-exclusive choice of court agreement, including a unilateral or asymmetric choice of court agreement. Its material scope is also wider than the Hague Convention 2005, applying, for instance, to consumer and employment contracts. The European Commission has adopted the view that the Hague Conventions 2005 and 2019, and not the Lugano Convention 2007, are the way forward for civil and commercial judicial cooperation between the EU and the UK.

The Council Decision can be found here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D1206

Ukraine: Ratified the Choice of Court Convention

On April 28, 2023, Ukraine deposited its instrument of ratification of the Convention of June 30, 2005 on Choice of Court Agreements (2005 Choice of Court Convention).

For the official announcement, please visit https://www.hcch.net/en/news-archive/details/?varevent=912.

Malta: Ratified the Convention of January 13， 2000 on the International Protection of Adults (2000 Protection of Adults Convention)

On March 8, 2023, H.E. Mr Mark Pace, Ambassador of the Republic of Malta to the Kingdom of the Netherlands, deposited Malta's instrument of ratification of the 2000 Protection of Adults Convention. The Convention will enter into force for Malta on July 1, 2023.

Montenegro: Signed the 2019 Judgments Convention

On April 21, 2023, H.E. Mr Marko Kovač, Minister of Justice, signed, on behalf of Montenegro, the Convention of July 2, 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention). The 2019 Judgments Convention will enter into force in September 2023, and for Montenegro only after the deposit of instrument of ratification (pursuant to Art. 28(2)).

For the official announcement, please visit https://www.hcch.net/en/news-archive/details/?varevent=911.

Georgia: Signed the Child Support Convention and its Protocol

On May 25, 2023, H.E. Mr Rati Bregadze, Minister of Justice, signed, on behalf of Georgia, the Convention of November 23, 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention) and the Protocol of November 23, 2007 on the Law Applicable to Maintenance Obligations (2007 Maintenance Obligations Protocol). The 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol will enter into force for Georgia further to the deposit of instruments of ratification.

For the official announcement, please visit https://www.hcch.net/en/news-archive/details/?varevent=918.

North Macedonia: Signed the 2019 Judgments Convention

On May 16, 2023, H.E. Mr Krenar Lloga, Minister of Justice for North Macedonia, signed, on behalf of the Republic of North Macedonia, the Convention of July 2, 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention). The 2019 Judgments Convention will enter into force in September 2023, and for North Macedonia only after the deposit of an instrument of ratification (pursuant to Art. 28(2) of the Convention).

For the official announcement, please visit https://www.hcch.net/en/news-archive/details/?varevent=915.

The United Kingdom: Agreement on the Privileges and Immunities of INTERPOL on the Territory of the United Kingdom of Great Britain and Northern Ireland

On February 2, 2023, the United Kingdom and the International Criminal Police Organization - INTERPOL concluded an agreement on the privileges and immunities of INTERPOL on the territory of the United Kingdom of Great Britain and Northern Ireland

The Agreement can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145313/MS_3.2023_UK_Interpol_Agreement_Privileges_Immunities.pdf.

UK-Georgia: Agreement on the Readmission of Persons Residing without Authorisation

This agreement was presented to the Parliament in February 2023. It provides a framework for Georgia and the United Kingdom to manage the readmission of persons residing without authorization in either country. The agreement is not yet in force. Both the United Kingdom and Georgia must complete their own domestic processes for the agreement to come into effect. After approval by both legislatures, the terms of the agreement will be actionable

The Agreement can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1135115/CS_Georgia_1.2023_Agreement_Readmission_Persons_Residing_Without_Authority.pdf.

For the official announcement, please visit https://www.hcch.net/en/news-archive/details/?varevent=904.

UK-Japan: Agreement on the Facilitation of Reciprocal Access and Cooperation

The United Kingdom and Japan have concluded an agreement concerning the facilitation of reciprocal access and cooperation between the Self-Defense Forces of Japan and the Armed Forces of the United Kingdom. This agreement is aimed at fostering enhanced military cooperation between the two nations. The agreement has been signed and both countries are making efforts to bring the agreement into force as soon as practicable. The status of domestic ratification in both countries is currently unknown.

The Agreement can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1137171/CS_Japan_1.2023_Agreement_Facilitation_SelfDefense_Armed_Forces.pdf.

European Union

EU: Enhancing the protection of the fundamental rights of individuals

In its Opinion released on October 13, 2022, the European Data Protection Supervisor ('EDPS') supported the commencement of negotiations for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law ('Convention'). The EDPS perceived the Convention as an essential opportunity to supplement the European Commission's proposed Artificial Intelligence Act by improving the protection of individuals' basic rights, such as the right to privacy and the protection of personal data.

The EDPS can be found at: https://edps.europa.eu/press-publications/press-news/press-releases/2022/ai-convention-stronger-protection-fundamental-rights-necessary_en.

EU: European Commission proposed a recognition of parenthood between Member States which is currently being discussed in the Council.

In December 2022, the EU Commission introduced a Regulation proposal aimed at standardizing the rules of private international law concerning parenthood across the EU. Aligned with the EU Strategy on the Rights of the Child, the proposal prioritizes the best interests and rights of the child. The proposal presents a groundbreaking opportunity for the EU to adopt a private international law instrument that encompasses the creation of family status, rather than solely addressing its effects. Its objective is to offer legal clarity for diverse family structures facing cross-border situations within the EU, whether due to relocation, travel, etc. A key aspect of the proposal is the recognition of parenthood established in one EU Member State across all other Member States, without the need for any special procedures.
Full text of the proposal can be found here: https://commission.europa.eu/document/928ae98d-d85f-4c3d-ac50-ba13ed981897_en.

European Parliament Study on Ensuring Efficient Cooperation with the UK in civil law matters: Situation after Brexit and Options for Future Cooperation

Released in March 2023, this study is commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee. It analyzes the implications of Brexit in relation to the profile of judicial cooperation in civil matters.

The study can be found here: https://www.europarl.europa.eu/RegData/etudes/STUD/2023/743340/IPOL_STU(2023)743340_EN.pdf.

EU: Parliament adopts new law to fight global deforestation

On April 19, 2023, in order to combat climate change and the decline of biodiversity, the EU released a new legislation that mandates companies to verify that the products they sell in the EU have not contributed to deforestation and forest degradation such as cattle, cocoa, coffee, and charcoal. Additionally, companies will also be obligated to ensure that these products adhere to legislation of the country of production such as human rights and the rights of affected indigenous people.

The adopted text can be found here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0109_EN.html.
The list of deforestation-free products can be found here: https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2023)747086.

EU: The Council of the EU approved a compromise version of the proposed EU Artificial Intelligence (AI) Act

On May 11, 2023, EU Internal Market Committee and Civil Liberties Committee approved a preliminary proposal for negotiations regarding the establishment of regulations for AI. It is a significant regulatory initiative, marking the first major attempt by a regulator to enact a law specifically addressing AI. It received 84 votes in favor, 7 votes against, and 12 abstentions. Members of the European Parliament seek to guarantee that AI systems are governed by individuals, adhere to safety measures, exhibit transparency, and environmental sustainability. They revised the list of regulations to encompass prohibitions on invasive and discriminatory applications of AI systems.

Full amendment can be found here: https://www.europarl.europa.eu/resources/library/media/20230516RES90302/20230516RES90302.pdf.
The updates of the act can be found here: https://www.europarl.europa.eu/news/en/press-room/20230505IPR84904/ai-act-a-step-closer-to-the-first-rules-on-artificial-intelligence#:~:text=AI%20systems%20with%20an%20unacceptable,behaviour%2C%20socio%2Deconomic%20status%2C.

European Union Case Law

Case C-590/21 Charles Taylor Adjusting (Opinion of Advocate General M. Jean Richard de la Tour)

This is a reference for a CJEU preliminary ruling from the Areios Pagos (Supreme Court of Greece) on the issue of the compatibility of the right to damages for breach of settlement and exclusive choice of court agreements with EU public policy in the recognition and enforcement of The Alexandros T litigation. Advocate General Richard de la Tour's opinion in Charles Taylor Adjusting confirms the characterization of an English judgment awarding damages for breach of settlement and exclusive choice of court agreements as a 'quasi anti-procedural injunction' ("quasi" injonctions anti-procédure en français) and therefore contrary to public policy.

The Opinion in French can be found here: https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:62021CC0590.

Case C-700/20 London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain EU:C:2022:488 (Grand Chamber)

This is a reference for a CJEU preliminary ruling from the Queen's Bench Division (Commercial Court) of the English High Court, concerning the Brussels I Regulation (EC) No 44/2001. The CJEU decided that Article 34(3) of the Brussels I Regulation must be interpreted as meaning that a judgment entered by a court of a Member State in terms of an arbitral award does not constitute a "judgment", within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that Regulation, in particular as regards the relative effect of an arbitration agreement included in the insurance contract in question and the rules on *lis pendens* contained in Article 27 of that Regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State. Article 34(1) of the Brussels I Regulation must be interpreted as meaning that, in the event that Article 34(3) of that Regulation does not apply to a judgment entered in terms of an arbitral award, the recognition or enforcement of a judgment from another Member State cannot be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in terms of an arbitral award.

It is significant to observe that the ruling applies only in the context of domestic awards and cannot affect the application of the New York Convention 1958. Notwithstanding, the decision is likely to have some implications for the interface between litigation and arbitration within the EU. Although the decision was rendered under the Brussels I Regulation, the CJEU's reasoning remains relevant to the Brussels Ia Regulation. In terms of practical ramifications, it is clear that the approach adopted by the CJEU ensures that the avoidance of the specter of irreconcilable judgments (and parallel proceedings) underpinning the Brussels regime encroaches upon arbitration proceedings followed by a judgment rendered in terms of the arbitral award. It does so by relegating the *res judicata* effect acquired by the judgment entered in terms of an arbitral award. The CJEU's approach suggests that Member State court judgments should trump judgments merely recognizing an arbitral award at least in cases where to do otherwise would involve the right to an effective 'remedy' being denied to an aggrieved party. This will clearly make it more difficult to resist the recognition of Member State court decisions which are irreconcilable and inconsistent with decisions issued in parallel arbitration proceedings.

The judgment can be found here: https://curia.europa.eu/juris/document/document.jsf;jsessionid=133608E0BFFC14B4B7C66BB82A27DD90?text=&docid=261144&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21198252.

National Case Law

***United Kingdom: The resurgence of Anti-Suit Injunctions in relation to proceedings before EU Member State courts in QBE Europe SA/NV and Anor v. Generali España de Seguros y Reaseguro* [2022] EWHC 2062 (Comm) and *Ebury Partners Belgium SA/NV v Technical Touch BV & Anor* [2022] EWHC 2927 (Comm).**

In *QBE Europe SA/NV and Anor v. Generali España de Seguros y Reaseguro*, an anti-suit injunction was granted to enforce an English arbitration agreement where contrary court proceedings were commenced in Spain. The central issue in the case was the nature of the proceedings. It was the defendant's position that it's cause of action was an independent legal remedy under Spanish law. Hence, it was not subject to any dispute resolution obligations that might be found in the insurance policy. The English court rejected that argument, finding that the letter and purpose of the Spanish statute was not to create a new and independent legal relationship but merely to enable the victim to enforce directly against the insurer the same obligations as those that could have been enforced by the insured. The exercise of that right came within the scope of the obligation to arbitrate in England. The English court also rejected considerations of comity, describing this as 'a factor of little or no weight'. Regardless of the public policy considerations underpinning the Spanish statute, there was an obvious imperative in upholding the contractual obligation to arbitrate. The judge cited the decision of Longmore LJ in *The Yusuf Cepnioglu* [2016] EWCA Civ 386 that the 'invocation of comity in cases of this kind is not particularly apposite because it is never clear which country should give way to which'. Following the UK's withdrawal from the EU, English courts will in the interests of upholding an English arbitration or

choice of court agreement be unconstrained by the principle of mutual trust that underpins the Brussels-Lugano regime.

The judgment can be found here: https://www.bailii.org/ew/cases/EWHC/Comm/2022/2062.html.

Ebury Partners Belgium SA/NV v Technical Touch BV & Anor confirms that English courts can now grant anti-suit injunctions to restrain proceedings in EU Member State courts brought in breach of an English exclusive choice of court agreement. The case concerned an agreement between two Belgian entities for the provision of foreign exchange currency services. The defendants had ticked the box on the claimant's online application form to agree to the claimant's terms and conditions including an English exclusive choice of court agreement and an English choice of law agreement. When a dispute arose over a failure to make payment, the defendants commenced proceedings in the Belgian courts in breach of the exclusive choice of court agreement, seeking a declaration of non-liability. The claimant brought proceedings in the English court and applied for an anti-suit injunction against the defendants to restrain the Belgian proceedings. The judge granted the anti-suit injunction. The decision contains useful guidance on some of the principles relevant to whether the court will exercise its discretion to grant such relief. An applicant must establish with a 'high degree of probability' that there is a choice of court agreement which governs the dispute in question. The court will ordinarily exercise its discretion to restrain proceedings commenced in breach of a choice of court agreement unless the defendant can show strong reasons to refuse the relief, and the burden is on the defendant to show this. The defendants could not show strong reasons in this case. The judge also dealt with the defendants' argument that an anti-suit injunction would not be recognized by the Belgian court and therefore might not be effective. He observed that it is not the habit of the English court in considering whether it will make an order to contemplate the possibility that it will not be obeyed.

The judgment can be found here: https://www.bailii.org/ew/cases/EWHC/Comm/2022/2927.html.

France: The Cour de Cassation refers issues of the validity of asymmetric choice of court agreements to CJEU* in *Cour de cassation, civile, Chambre civile 1, 13 avril 2023, 22-12.965, Publié au bulletin.

On April 13, 2023, the French Cour de Cassation referred the following questions to the CJEU:

i. Is the validity of a unilateral choice of court agreement governed by EU law or national law? This question arises from the phrasing of Article 25 of the Brussels Ia Regulation, which states that the substantive validity of a choice of court agreement should be governed by the law of the chosen Member State. The CJEU will have to interpret the ambit of this provision. It is accepted that grounds such as a defect in consent relate to substantive validity, but the issue is whether it should be given a wider scope, to include the asymmetrical consequences of such agreements.
ii. If the CJEU decides that EU law applies, does EU law prohibit such agreements? This second question will require the court to engage with the French courts' jurisprudence emanating from the *Banque de Rothschild* decision (Cass., civ. 1ère, September 26, 2012, No. 11-26.022). In particular, it is likely to consider whether there is a requirement that choice of court agreements identify the designated courts by reference to objective factors. It may also address the issue of whether an asymmetry between the contracting parties should limit the use of unilateral choice of court agreements, outside the particular context of consumer, employment and insurance contracts.
iii. If the CJEU decides that national law applies, which state's law should be applied when the choice of court agreement indicates multiple chosen courts, or exclusively designates one court whilst allowing the counterparty to commence litigation in any other court of competent jurisdiction?

The reference in French can be found here: https://www.legifrance.gouv.fr/juri/id/JURITEXT000047454833?fonds=JURI&page=1&pageSize=10&query=société+agora&searchField=ALL&searchType=ALL&tab_selection=all&typePagination=DEFAULT.

Association and Events

9th Journal of Private International Law Conference 2023

The Journal of Private International Law Conference will be held at the Singapore Management University from August 3 to 5, 2023. Further information on the conference can be found here: https://site.smu.edu.sg/9th-journal-private-international-law-conference-2023#home.

The Hague Academy of International Law – Summer Courses

The Hague Academy of International Law's Summer Courses will be held on-site from July 10, 2023 to August 18, 2023. The Summer Courses consist of two three-week courses, one on Public International Law and another on Private International Law. Further information on The Hague Academy is found here: https://www.hagueacademy.nl/programmes/the-summer-courses/.

2023 ESIL Annual Conference on "Is International Law Fair?"

The 18th Annual Conference of the European Society of International Law will take place in Aix-en-Provence in France from August 31 to September 2, 2023. The main conference will be preceded by various workshops organized by the Society's Interest Groups on August 30 - 31, 2023. The general theme of the conference is 'Is International Law Fair?'.

Further information on the conference is found here: https://esil-sedi.eu/2023-esil-annual-conference-on-is-international-law-fair-aix-en-provence-31-august-2-september-2023/.

Recent Scholarly Works

Ulrich Magnus and Peter Mankowski (eds.), Brussels Ibis Regulation, https://www.otto-schmidt.de/brussels-ibis-regulation-commentary-9783504080174.

OCEANIA

—Editor: Jie (Jeanne) Huang

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International Conventions

Australia and New Zealand: Endorsed a Declaration against Trade-related Economic Coercion and Non-Market Policies and Practices

On June 9, 2023, the governments of Australia, Canada, Japan, New Zealand, the United Kingdom and the United States of America endorsed a Joint Declaration Against Trade-Related Economic Coercion and Non-Market Policies and Practices at a Ministerial meeting in Paris.

The official text of the joint declaration can be found here: https://www.foreignminister.gov.au/minister/penny-wong/media-release/joint-declaration-against-trade-related-economic-coercion-and-non-market-policies-and-practices.

Australia: Australia-United Kingdom Free Trade Agreements entered into force

On May 31, 2023, the Australia-United Kingdom Free Trade Agreements (A-UKFTA) entered into force. A-UKFTA is considered a gold standard trade agreement that represents a once-in-a-generation deal for Australia.

The official text of the agreement can be found here: https://www.dfat.gov.au/trade/agreements/in-force/aukfta/official-text.

The media release may be found here: https://www.trademinister.gov.au/minister/don-farrell/media-release/uk-trade-deal-delivers-today.

Palau and Federated States of Micronesia: Renewed Compact of Free Association with the U.S.

On May 22, 2023, Palau signed the U.S.-Palau 2023 Agreement following the Compact of Free Association Section 432 Review. The agreement solidifies the ongoing partnership and cooperation between the two nations in matters relating to economic support.

On May 23, 2023, Federated States of Micronesia (FSM) signed three agreements related to the U.S.-FSM Compact of Free Association: (1) an Agreement to Amend the Compact, as Amended, (2) a new Fiscal Procedures Agreement, and (3) a new Trust Fund Agreement.

The media release may be found here: https://www.state.gov/secretary-blinken-witnesses-the-signing-of-the-u-s-palau-2023-agreement-following-the-compact-of-free-association-section-432-review/; https://www.state.gov/signing-of-the-u-s-fsm-compact-of-free-association-related-agreements/.

Australia: Entered into Audio-Visual Co-production Agreement with India

On March 10, 2023, Prime Minister Anthony Albanese and Indian Prime Minister Narendra Modi made a significant announcement regarding a bilateral Audio-visual Co-production Agreement.

The news report can be found here: https://www.trademinister.gov.au/minister/don-farrell/media-release/australia-india-audio-visual-co-production-agreement.

National Case Law

***Australia: Yin v Wu* [2023] VSCA 130**

On June 1, 2023, the Court of Appeal of the Victoria Supreme Court overturned a previous ruling which had affirmed the enforcement of a Chinese judgment by an Associate Justice of the Supreme Court. This is mainly because the Chinese proceeding served the defendant by "public announcement", which was considered not to afford the defendant due process of law.

The full text of the judgment can be found here: https://jade.io/article/1031737.

New Zealand: Maritime Mutual Insurance Association (NZ) Limited v Silica Sandport Inc, Sri Commodities Import and Export Inc [2023] NZHC 793

On April 14, 2023, the New Zealand High Court issued an anti-suit injunction against defendants on the basis that the proceedings in Guyana were commenced in breach of an arbitration agreement. The Court held that it was not a strong reason to refuse relief even if a statutory cause of action in the amended statement of claim in the Guyana proceeding were outside the scope of the arbitration agreement and needed to be determined by the relevant jurisdiction provided for in that statute.

The full text of the judgment can be found here: https://www.justice.govt.nz/jdo_documents/workspace___SpacesStore_9a3fa9c9_ea38_4c74_bf39_63a828078d0b.pdf.

Australia: Kingdom of Spain v Infrastructure Services Luxembourg [2023] HCA 11

On April 12, 2023, the High Court of Australia unanimously dismissed Spain's appeal and enforced an ICSID award against it. The Court distinguished "recognition", "enforcement", and "execution" in Articles 53, 54, and 55 of the ICSID Convention and held that Spain's agreement to the ICSID Convention amounted to a waiver of foreign State immunity from the jurisdiction of Australian courts to recognize and enforce, but not to execute, that award.

The full text of the judgment can be found here: https://eresources.hcourt.gov.au/showCase/2023/HCA/11.

New Zealand and Australia: Kea Investments Limited v Wikeley Family Trustee Limited, Kenneth David Wikeley, and Eric John Watson

In a series of litigations between the plaintiff and the defendants in the UK, US, Australia, and New Zealand, on March 10, 2023, the High Court of New Zealand held that further steps by the defendants seeking to enforce a default Kentucky judgment would be unconscionable, meeting the oppressive and vexatious requirement for interim anti-enforcement injunction. The New Zealand Court has jurisdiction and is the appropriate forum to hear the dispute.

The full text of the [2023] NZHC 466 judgment can be found here: https://www.justice.govt.nz/jdo_documents/workspace___SpacesStore_eb417c26_4916_40c8_a9a2_5a8989b6559f.pdf.

On April 12, 2023, the Supreme Court of Queensland granted *ex parte* reliefs favoring the plaintiff under the Trans-Tasman Proceedings Act 2010 (Cth) to support the New Zealand proceeding.

The full text of the [2023] QSC 79 judgment can be found here:https://www.queenslandjudgments.com.au/caselaw/qsc/2023/79/pdf.

Australia: Carnival plc v Karpik (The Ruby Princess) [2022] FCAFC 149

The dispute centered on class action proceedings brought against two cruise companies for loss or damage allegedly suffered by passengers and their relatives during COVID-19. On September 2, 2022, the majority of the Full Court of the Federal Court of Australia applied the *Eleftheria* principles for the exclusive jurisdiction clauses, reversed the primary judge's decision, and granted a stay of the Australian proceedings. The majority held that the US proceedings would hear the Australia Consumer Law claim, class action waiver (relating to Australian proceedings) was not contrary to public policy, and the exclusive jurisdiction clauses in favor of US courts were not unfair.

The full text of the judgment can be found here: http://www.austlii.edu.au/cgi-bin/sign.cgi/au/cases/cth/FCAFC/2022/149.

Association and Events

The Australia International Arbitration Conference 2023, serving as the flagship event for Australian Arbitration Week, is scheduled to take place on October 9, 2023 in Perth, Australia. This conference is a collaborative effort between the Australian Centre for International Commercial Arbitration (ACICA) and Chartered Institute of Arbitrators (Australia).

More information can be found here: https://aaw.acica.org.au.