

Nottingham Arbitration Talk on Wednesday 18 March 2020

News item by Dr Orsolya Toth, Assistant Professor in Commercial Law, University of Nottingham

The University of Nottingham Commercial Law Centre will hold its inaugural **Nottingham Arbitration Talk on Wednesday 18 March at 2 pm**. The Centre is delighted to welcome distinguished speakers to the event drawn from both academia and practice. The Keynote address will be given by Professor Sir Roy Goode, Emeritus Professor of Law at the University of Oxford. The speaker panel will host Angeline Welsh (Essex Court Chambers), Timothy Foden (Lalive) and Dr Martins Paparinskis (University College London).

The theme of the event will be 'Procedure and Substance in Commercial and Investment Treaty Arbitration'. It will address current and timeless issues, such as the influence of procedure on the parties' substantive rights, the recent phenomenon of 'due process paranoia' in arbitration and the current state of the system of investment treaty arbitration.

For detailed programme and registration please visit <https://unclcpresents.eventbrite.co.uk>

Milan Investment Arbitration Pre-Moot - 14-15 February 2020

Following an earlier post, here's a reminder of the First Edition of the **Milan Investment Arbitration Pre-Moot**.

Albert Henke prepared for this reason the following announcement:

On **February, 14 and 15, 2020** will take place in Milan the First Edition of the **Milan Investment Arbitration Pre-Moot**, an event jointly organized by the Law Firm DLA Piper, Milan, Università degli Studi of Milan and the European Court of Arbitration (Italian section). The Pre-Moot will be a chance for ten University teams from all around the world to test their advocacy skills in moot arbitration hearings, in preparation for the *Frankfurt International Arbitration Moot Competition*, the oldest and most prestigious student competition in the area of investment protection law, scheduled for the beginning of March 2020 in Frankfurt (<https://www.investmentmoot.org/news-2-2/>). The Pre-Moot will be introduced by a Conference hosted by Università degli Studi on the topic: “Outstanding issues and recent developments in international investment arbitration”. All the information in the attached flyer.

Investment Arbitration in Central and Eastern Europe

A collection of essays titled *Investment Arbitration in Central and Eastern Europe*, edited by Csongor István Nagy (University of Szeged, Hungary), has recently been published by Edward Elgar. See [here](#) for more information on the book, its contents and contributors.

As noted in the publisher’s blurb, Central and Eastern Europe (CEE) appears to be the testing ground for investment arbitration in Europe: the majority of the cases against EU Member States are proceedings launched against countries from the region. Despite their relevance, CEE experiences have not been analysed in a comprehensive manner. The book aims to fill this gap.

The introductory chapter, written by the editor, is titled *Intra-EU BITs after Achmea: A Cross-Cutting Issue* and can be downloaded via SSRN.

First Edition of the Milan Investment Arbitration Pre-Moot, February 14-15, 2020

The **First Edition of the Milan Investment Arbitration Pre-Moot** will take place in Milan on **February 14-15, 2020**, within the frame of the Frankfurt Investment Arbitration Moot Court (FIAC).

For more information, [click here](#).

The Hague Academy of International Law Centre for studies and research 2020 programme “Applicable law issues in international arbitration”

Prof. Jean-Marc Thouvenin, Secretary-General of The Hague Academy of International Law, kindly informs us about the Academy’s Centre for studies and research 2020 programme - highly recommended!

The Centre for studies and research of The Hague Academy of International Law welcomes applications for its 2020 programme on “Applicable law issues in international arbitration”.

International arbitration has long been the most successful method for settling all

kind of international commercial disputes, and still is - notwithstanding the surrounding criticism - the leading method for settling disputes between foreign investors and the host state. One of the characteristics of international arbitration is that it to a large extent relies on an international or transnational legal framework. The effects of arbitration agreements and of arbitral awards, as well as the role of the courts regarding arbitration agreements and awards, are regulated in international conventions such as the New York or the ICSID Conventions. Furthermore, although there is room for specificities of national law, commercial arbitration acts are largely harmonised especially through the impact of the UNCITRAL Model Law. Similarly, even if arbitral institutions try to distinguish one from each other by providing for some specific tools, the essential content of arbitration rules does not vary. It can be said, consequently, that the transnational framework of arbitration is intended to create to the extent possible an autonomous system of dispute resolution, which can be applied in a uniform way irrespective of the country in which the proceedings take place or the award is sought enforced. The procedural autonomy of arbitration may also have an impact on how arbitral tribunals relate to the substance of the dispute.

As arbitral awards are final and binding, and domestic courts and ICSID annulment committees do not have the power to review them in the merits, arbitral tribunals enjoy a considerable flexibility in selecting and applying the rules of law applicable to the dispute, even though they are constrained to respect the will of the parties. Legal literature has strongly emphasized that this flexibility creates an expectation of delocalization: both from the procedural and from the substantive point of view, arbitration is described as a method for settling disputes that strives for uniformity on a transnational level and should not be subject to national laws. The autonomy and flexibility of arbitration, however, are not absolute. The international instruments that regulate arbitration either make, in some contexts, reference to national law or call for the application of (general or concrete) international law. Also, they do not cover all aspects of arbitration, thus leaving room for national regulation. Additionally, the restricted role that courts and ICSID ad hoc committees have in arbitration does not completely exclude that national law may have an impact. While court and committee control is not a review in the merits, application of the parameters for validity or enforceability of an award, even where these parameters are harmonised, may depend on national regulation.

Importantly, the definition of what disputes are arbitrable is left to national law. While the scope of arbitrability has been significantly expanded starting from the last two decades of the last century, there are signs now that it may be restricting. The scope of arbitrability may be looked upon as a measure of the trust that the legal system has in arbitration. From another perspective, it may represent the way in which States approach the settlement of international commercial disputes: intending to keep an exclusive power by means of the exclusion of private deciders, or adopting the role of controllers of the regularity of arbitration. As far as investment arbitration is specifically concerned, it is well known that States' attitudes are diverse and may change from time to time. In both cases, States' policy choices may have an impact on applicable law issues.

All the foregoing considerations, succinctly exposed, are the frame for the present topic. On such a basis, it is possible to develop two lists of issues to be individually addressed. The first list deals with the fundamental aspects of the topic. Among the issues included therein, some refer to all types of arbitration, while others are rather specific to either commercial or investment arbitration. The second list responds to the fact that the applicable law is not necessarily unitary. Indeed, according to the principle of severability, a different law may apply to the procedural aspects and to the substantive aspects of the dispute, and within these two categories there are further possibilities for severing the applicable law. Thus, one can wonder to which issues is it appropriate to apply international sources of law, to which issues is it appropriate to apply soft sources of law, to which is it appropriate to apply national sources of law, and to which issues is it appropriate to apply (or to create) transnational standards. Or a combination of these sources? On which basis may this selection be made, and what are its effects on the autonomy of arbitration, on the expectations of the parties and on the credibility and legitimacy of arbitration as an out-of-court judicial system that enjoys enforceability?

The general and specific above-mentioned questions may be discussed for each of the following issues:

I. General issues

1. Available rules of law regarding substantive issues - The strength of soft sources
2. Available rules of law regarding procedural issues - The scope and

- applicability of the *lex arbitri*
3. Selection of the applicable law by the parties (???)
 4. How do arbitrators ascertain the rules of law applicable to the merits?
 5. Overriding mandatory rules of a law not chosen by the parties
 6. How do arbitrators interpret international contracts?
 7. How do arbitrators interpret international treaties?
 8. Effects of precedents in arbitration
 9. *Iura novit arbiter*
 10. Control by domestic courts of the law applied to the merits
 11. Control by means of procedural public policy
 12. Misapplication of the law as manifest excess of powers of the tribunal under ICSID Convention

II. Specific cases of determination of the applicable law

1. Validity of the arbitration agreement and effects on non-signatories
2. Assignment of contract containing an arbitration clause
3. Qualification of the arbitrators
4. Production and admissibility of evidence
5. Legal privilege
6. Emergency arbitrator: procedural and substantive issues
7. Interim measures
8. Legal capacity to sign the disputed contract
9. Interests on the awarded amounts
10. Arbitrability
11. *Res iudicata*
12. Liability of arbitrators

The co-directors of the 2020 Centre (Prof. Giuditta Cordero-Moss (University of Oslo) & Prof. Diego Fernández Arroyo (Sciences Po, Paris)) invite applications from researchers including students in the final phase of their doctoral studies, holders of advanced degrees in law, political science, or other related disciplines, early-stage professors and legal practitioners. Applicants should identify the specific topic on which they intend to write. Participants will be selected during the spring of 2020, and will convene at The Hague from August 17 to September 4, 2020, to finalize their papers. The best articles will be included in a book to be published in the fall of 2021.

Further information is available [here](#).

Arbitration and Protest in Hong Kong

Authors: Jie (Jeanne) Huang and Winston Ma

Following the promulgation of the judicial interpretation by the Supreme People's Court ("SPC") on 26 September 2019, *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region* ("Arrangement") signed by Mainland China and Hong Kong on 2 April 2019 came into effect in Mainland China from 1 October 2019. This Arrangement provides mutual recognition and enforcement of interim measures between Hong Kong and Mainland China. It has generated broad coverage.[1] This post tries to add to the discussion by providing the first case decided under the Arrangement on 8 October 2019, and more broadly, the reflections on the continuing protests in Hong Kong and arbitration under "One Country, Two Systems".

1. Mutual recognition and enforcement of interim measures between Hong Kong and Mainland China

Hong Kong *Arbitration Ordinance* has long been allowing parties to arbitral proceedings in any place to apply to the courts of Hong Kong for interim measures. Interim measures include injunction and other measures for the purpose of maintaining or restoring the status quo pending determination of the dispute; taking action that would prevent, or refraining from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral proceedings; preserving assets; or preserving evidence that may be relevant and material to the resolution of the dispute. However, in contrast to the liberal Hong Kong counterpart, people's courts in Mainland China are conservative. Chinese law limits interim measures to property preservation, evidence preservation and conduct preservation. More important, Mainland courts generally only enforce

interim measures in support of arbitration administered by domestic or foreign-related arbitration institutions of the People's Republic of China (PRC). This is because Article 272 of *Chinese Civil Procedure Law* provides that where a party applies for a preservation measure, the foreign-related arbitral institution of PRC shall submit the party's application to the intermediate people's court at the place of domicile of the respondent or at the place where the respondent's property is located. Article 28 of Chinese Arbitration Law states that if one of the parties applies for property preservation, the arbitration commission shall submit to a people's court the application of the party in accordance with the relevant provisions of the *Civil Procedure Law*. Article 10 of *Chinese Arbitration Law* restricts arbitration institutions to those registered with the judicial administrative department of the relevant province, autonomous region or municipalities directly under the Central Government.[2]

There are few exceptions to the Mainland conservative approach. First, since 2017, *ad hoc* arbitration has been permitted in China's pilot free trade zones.[3] Therefore, Mainland courts are likely to issue interim measures in support of such *ad hoc* arbitration. Second, a party to a maritime arbitration seated outside of Mainland China can apply for property preservation to the Chinese maritime court of the place where the property is located.[4] However, the property to be preserved was limited to vessels, cargos carried by a vessel, and fuel and supplies of a vessel.[5]

The third exception is created by the recent Arrangement. Arbitral proceedings commenced both before and after 1 October 2019 are potentially caught by the Arrangement, under which property, evidence and conduct preservation orders could be granted by the courts in Mainland China to assist the Hong Kong arbitration.

The scope of the Arrangement confines to arbitral proceedings seated in Hong Kong and administered by institutions or permanent offices meeting the criteria under Article 2 of the Arrangement. Six qualified institutions have been listed on 26 September 2019, being Hong Kong International Arbitration Centre ("HKIAC"), ICC Hong Kong, CIETAC Hong Kong, Hong Kong Maritime Arbitration Group, eBRAM International Online Dispute Resolution Centre and South China International Arbitration Centre (Hong Kong). Future applications will also be considered and the list may be subject to alteration.

Articles 3-5 of the Arrangement set out the procedural requirements for applying to the courts in Mainland China for interim measures. Since time is of essence, application can be made by a party to the arbitration directly to the relevant Mainland Chinese court before an arbitration is accepted by an arbitration institution.[6] If the arbitration has been accepted, the application should be submitted by the arbitration institution or representative office.[7]

Article 8 of the Arrangement further reflects the importance of timeliness by demanding the requested court to make a decision after examining the application “expeditiously”. Nevertheless, the Arrangement is silent on the specific time limit applicable to the court’s examination process. Pursuant to Article 93 of the *Chinese Civil Procedure Law*, the court is to make an order within 48 hours after receiving an application for property preservation prior to the commencement of arbitration; Furthermore, Article 4 of the *Provisions of the SPC on Several Issues concerning the Handling of Property Preservation Cases by the People’s Courts* demands the court to make an order within 5 days after the security is provided, and within 48 hours in cases of emergency.

The first case decided under the Arrangement demonstrates how “expeditiously” a people’s court can make a decision. In the morning of 8 October 2019, the Shanghai Maritime Court received a property preservation application submitted by HKIAC. In this case, the arbitration applicant is a maritime company located in Hong Kong and the respondent is a company in Shanghai. They concluded a voyage charter party which stated that the applicant should provide a vessel to transport coal owned by the respondent from Indonesia to Shanghai. However, the respondent rescinded the charter party and the applicant claimed damages. Based on the charter party, they started an *ad hoc* arbitration and ultimately settled the case. According to the settlement agreement, the respondent should pay the applicant USD 180,000. However, the respondent did not make the payment as promised. Consequently, the respondent brought an arbitration at the HKIAC according to the arbitration clause in the settlement agreement. Invoking the Arrangement, through the HKIAC, the applicant applied to the Shanghai Maritime People’s Court to seize and freeze the respondent’s bank account and other assets. The Shanghai Court formed a collegial bench and issued the property preservation measure on the same date according to the Arrangement and *Chinese Civil Procedure Law*.

2. Protests in Hong Kong

As the first and so far the only jurisdiction with the special Arrangement through which parties to arbitration can directly apply to Mainland Chinese courts for interim measures, Hong Kong has been conferred an irreplaceable advantage while jockeying to be the most preferred arbitration seat for cases related to Chinese parties. Arbitration that is *ad hoc* or seated outside Hong Kong cannot enjoy the benefits of the Arrangement. Parties to an arbitration seated in Hong Kong are encouraged to select one of the listed institutions to take advantage of the Arrangement. Meanwhile, the Arrangement also attracts prominent international arbitration institutions to establish permanent offices in Hong Kong.

One may argue that the Arrangement is the necessary consequence of the “One Country, Two Systems” principle and the increasingly close judicial assistance between Mainland China and Hong Kong. Especially in the context of China’s national strategy to develop the Greater Bay Area, the notion of “one country, two systems, three jurisdictions” makes Hong Kong the only common-law jurisdiction to deal with China-related disputes.[8]

However, to what extent may the recent protests negatively impact on the arbitration industry in Hong Kong? Notably, London and Paris have also experienced legal uncertainty (Brexit in the UK) and protests (Yellow vests movement in France) in recent years. Nevertheless, the Hong Kong situation is more severe than its western counterparts in two aspects. First, currently, the protestors have impacted on the traffic inside Hong Kong. Last month, they even blocked the Hong Kong airport. It is not surprising that parties may want to move the hearings outside of Hong Kong just for the convenience of traffic, if the arbitration is still seated in Hong Kong. Second, the continuation of protests and the uncertainty of the Chinese government’s counter-measures may threaten parties’ confidence in choosing Hong Kong as the seat for arbitration. The Arrangement brings an irreplaceable advantage to Hong Kong to arbitrate cases related with Chinese parties. However, this significance should not be over-assessed. This is because by choosing a broad discovery and evidence rule, parties and tribunals have various means to deal with the situation where a party wants to hide a key evidence. Arbitration awards can be recognized and enforced in all jurisdictions ratified the New York Convention. Therefore, the value of the

Arrangement is mainly for cases where the losing party only has assets in Mainland China for enforcement.

The flourish of arbitration in Hong Kong is closely related to Mainland China. However, Hong Kong, if losing its social stability due to the protests, will lose its arbitration business gradually. In the Chinese Records of the Grand Historian (Shiji by Han dynasty official Sima Qian), there is a famous idiom called “cheng ye xiao he bai ye xiao he”.^[9] It means the key to one’s success is also one’s undoing. It is the hope that Mainland China and Hong Kong can find a solution quickly so that the arbitration industry in Hong Kong can continue to be prosperous. This is more important than the implementation of the Arrangement.

Authors:

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[1] E.g.
http://arbitrationblog.kluwerarbitration.com/2019/07/24/arrangement-concerning-mutual-assistance-in-court-ordered-interim-measures-interpretations-from-a-mainland-china-perspective-part-i/?_ga=2.249539525.310814453.1570572449-887368654.1570572449.

[2] There are different opinions regarding whether Article 10 and 28 of Chinese Arbitration Law restrict the interim measures to arbitration administered by Chinese arbitration institutions. See the judgment of [2016] E 72 Cai Bao No. 427 issued by Wuhan Maritime Court. In this case, the Ocean Eleven Shipping Corporation initiated an arbitration in HKIAC against Lao Kai Yuan Mining Sole Co., Ltd. The applicant was a company in South Korea and the respondent a Chinese company. The parties had disputes over a voyage charter party. In order to ensure the enforcement of the coming award in Mainland China, the applicant applied to Wuhan Maritime Court to freeze USD 300,000 in the respondent’s bank

account or seizure, impound or freeze other equivalent assets. The People's Insurance Company provided equivalent insurance for the applicant's property preservation application. Wuhan Maritime Court permitted the property preservation application according to Article 28 of Chinese Arbitration Law and Article 103 of the Civil Procedure Law. However, this case is inconsistent with majority cases where Chinese courts rejected to issue interim measures for arbitration administered by ad hoc or arbitration institutions registered outside of Mainland China.

[3] SPC Opinions on Providing Judicial Safeguard for the Building of Pilot Free Trade Zones, Fa Fa [2016] No. 34, <http://www.court.gov.cn/fabu-xiangqing-34502.html>.

[4] Art. 21(2) of the Interpretation of the SPC on the Application of the Special Maritime Procedure Law of the PRC, Fa Shi [2003] No. 3.

[5] Ibid., art. 18.

[6] Art. 3 of the Arrangement.

[7] Ibid., art. 2.

[8] China has made the economic integration between the Grater Bay Area a national strategy. The Grater Bay Area includes Hong Kong, Macao and Guangdong Province <https://www.bayarea.gov.hk/sc/outline/plan.html>.

[9]

<https://en.wiktionary.org/wiki/%E6%88%90%E4%B9%9F%E8%90%A7%E4%BD%95%E4%BC%8C%E8%B4%A5%E4%B9%9F%E8%90%A7%E4%BD%95>.

Due Process in International

Commercial Arbitration- October 18, 2019 New York University

Conference on Due Process in International Commercial Arbitration will be held on 18 Oct 2019 at the New York University Lester Pollack Colloquium Room, organised by NYU Centre for Transnational Litigation, Arbitration and Commercial Law.

This event will discuss the topics addressed in the national reports drafted on the basis of a questionnaire prepared by Professors Franco Ferrari, Dietmar Czernich, and Friedrich Rosenfeld. The ultimate goal behind the national reports and the discussion that will take place at the conference is to provide the necessary background information for the preparation of a set of guidelines on due process in international arbitration. The purpose of these guidelines is twofold. On the one hand, they will identify the appropriate standard of due process that arbitrators should apply in international arbitration proceedings. On the other hand, they will contain recommendations on how arbitrators can respond to misuses of due process by recalcitrant parties. To this end, they will identify appropriate case management techniques that help to ensure the efficiency of the proceedings. For further information, please find the Due Process Conference Program October 2019.

Rethinking Choice of Law and International Arbitration in Cross-border Commercial Contracts

*Written by Gustavo Becker**

During the *26th Willem C. Vis Moot*, Dr. Gustavo Moser, counsel at the London Court of International Arbitration and Ph.D. in international commercial law from

the University of Basel, coordinated the organization of a seminar regarding choice of law in international contracts and international arbitration. The seminar's topics revolved around Dr. Moser's recent book *Rethinking Choice of Law in Cross-Border Sales* (Eleven, 2018) which has been globally recognized as one of the most useful books for international commercial lawyers.

On April 15th, taking place at Hotel Regina, in Vienna, the afternoon seminar involved a panel organized and moderated by Dr. Moser and composed of Prof. Ingeborg Schwenzer, Prof. Petra Butler, Prof. Andrea Bjorklund, and Dr. Lisa Spagnolo. The panel addressed three core topics in the current scenario of cross-border sales contracts: Choice of law and Brexit, drafting choice of law clauses, and CISG status and prospects.

The conference started with a video presentation in which Michael McIlwrath (*Baker Hughes, GE*) addressed his perspectives on how Brexit might impact decisions from companies regarding choice of law clauses in international contracts, its effects on the recognition of London as the leading seat for dispute resolution, and the position of English law as the most applicable law in international contracts.

In Mr. McIlwrath's perspective, in spite of Brexit, London will still remain a significant place for international dispute resolution as it adopts globally recognized commercial law principles, is an arbitration friendly state and enjoys a highly praised image as a safe seat for international cases. However, in order to try to predict the impact of Brexit in international dispute resolution, Mr. McIlwrath collected data released by arbitral institutions and found that in the years leading up to the Brexit vote, London did not grow as a seat of arbitration significantly. Considerable growth nonetheless has been seen outside the traditional centers of international arbitration. Therefore, the big issue involving Brexit, in Mr. McIlwrath's view, is the uncertainty that companies will face with the UK's unsettled political future. For this reason, the revision of contract policies is now likely to be undertaken and the choice of English law in international contracts might be affected.

Prof. Schwenzer pointed out that the whole discussion about Brexit and its effects on international dispute resolution depends primarily on the type of Brexit that will be chosen and the agreements between Europe and Great Britain. In her point of view, one of the main questions is whether the UK will join the Lugano

Convention, which would make the enforcement of English court decisions easier in European State-members. Prof. Schwenger also highlighted that, in terms of choice of law, there will be uncertainty issues regarding the regulations that have been imported from Europe and are now part of the English legal system. The problem might be how these rules will be developed further as the Court of Justice of the European Union will no longer be responsible for interpreting this part of English law.

Furthermore, Prof. Bjorklund stated that, whilst the choice of English law will require more caution after Brexit, the well-recognized security related to arbitration in the UK is likely to continue as long as the New York Convention, the English Arbitration Act, and the arbitration friendly character of English commercial courts will not likely change. However, in the point of view of an international arbitration counsel, certainly, the “*risks of arbitrating in the UK*” will leave some room for parties to choose arbitration in other places rather than in London or - at least - to start rethinking the classic choice for English-seated arbitration.

Concerning the choice of English law, Prof. Butler reminded the audience of two important regulations which should be analyzed in the context of Brexit: Rome I for deciding which contract law is applicable in international cases, and the Brussels Regulation to define which court is entitled to decide a case and how to enforce and recognize foreign decisions within the EU. According to Prof. Butler, under the first Brexit bill, the statutes signed within the EU regime would still apply. However, subject to confirmation from the English government, the development of these laws might no longer be applicable.

Dr. Spagnolo added that whether a country joins an international instrument sometimes has little to do with rational factors and are often “emotional”. In this sense, one of the arguments that the political environment seems to emphasize nowadays under the notion of nationalism is the maintenance of sovereignty. According to Dr. Spagnolo, this is a dangerous consideration to be emphasized in an environment that relies on commercial sense and needs basic guarantees of international harmonization, such as the enforcement of foreign awards or the application of a uniform law.

Regarding the topic “drafting choice of law clauses”, Mr. McIlwrath highlighted the “emotional” features involving the choice of law. In his opinion, as Dr. Moser

has demonstrated in his book, many choices of law decisions are driven by factors such as how many times a specific law had already been applied by a law firm or what law the attorneys involved in that contract were already familiar with. Considering this, Mr. McIlwrath understands that Brexit can make lawyers rethink the application of English law, even though this might be dependant upon whether financial institutions and companies currently based in London will or will not move away from the UK.

Prof. Schwenger highlighted that what Dr. Moser has found in his research regarding the emotional aspect of the choice of law is a proving fact of what she has experienced in practice: choice of law decisions are mostly emotionally charged and seldom rational. One example is that even though Swiss law is arguably the second most chosen law in international contracts, in Prof. Schwenger's view, Swiss law is not predictable: in core areas of contract law, such as limitation of liability, Swiss law is not advantageous for commercial contracts in her opinion. Prof. Schwenger added that this shows that lawyers seldom analyze the pros and cons of laws deeply before applying them in international commercial contracts.

Concluding the panel discussions, Dr. Moser brought up the topic "CISG status and prospects". While discussing this matter, all the panelists agreed upon the urgent need of global initiatives to increase awareness and improve knowledge of the CISG for both young lawyers who are sitting for the bar exam, and for judges who will face international commercial cases and might not be familiar with the CISG or even prepared to apply its set of provisions.

*With contributions from Gustavo Moser

Conference on "Access to Justice"

and Arbitration”, London, 7 June 2019

On 7 June 2019, the School of Law at Royal Holloway, University of London and the School of Law at Middlesex University organise a conference on the topic of “Access to Justice and Arbitration”. The conference is hosted at Royal Holloway.

The aim of the conference is to initiate a focused debate about access to justice in arbitration that would enable a larger public discussion about the specific role of access to justice in arbitration.

The full programme will be published shortly. For further information and registration see [here](#) and [here](#).

Alan Uzelac on the current challenges to investor-state arbitration in Europe

Prof. Uzelac has published recently an article on the current challenges to investor-state arbitration in Europe. The article comes almost as a birthday present, to celebrate one year after the CJEU published its famous *Achmea* ruling. The summary of the article reads as follows:

This paper addresses the current challenges to investor-state arbitration in Europe. Two parallel developments are outlined: the current change in the EU policy towards arbitration provisions in multilateral and bilateral investment treaties, and the consequences of the Achmea case decided by the Court of Justice of the European Union in March 2018. The author analyses the critical arguments behind the current European anti-arbitration stance and concludes that while some of them (but not all) may have some foundation, a sufficient number of

reasons speak against the radical dismantling of the system of international investment arbitration. An analysis of the proposed alternatives shows that they fail to deliver viable solutions for diagnosed problems. In particular, the replacement of ad hoc tribunals by a multilateral investment court (MIC) seems to be a step in the wrong direction. The ISDS has played an important role in the global fostering of international investment by securing a basically fair system of dispute resolution in a very specific field. Its deficiencies are not beyond repair; on the other hand, the alternatives offered suffer from flaws that are the same or much more troubling. The author concludes that the consequences of the 'change of tide' in the approach to investor-state dispute resolution are likely to be detrimental to the very goals of those who advocate the abandoning of investment arbitration.

The article was published in the journal *Access to Justice in Eastern Europe* (AJEE), and is available in full text [here](#).