

Kluwer Arbitration Blog

News About the Journal of International Arbitration

Maxi Scherer (WilmerHale & Queen Mary University of London) · Friday, September 18th, 2015

Queen Mary University of London & Wilmer Cutler Pickering Hale and Dorr LLP

The Journal of International Arbitration was created over thirty years ago to “*exchange ideas, share experiences and learn from each other of the practical problems encountered in arbitration proceedings*”. Since then, the issues raised in, and problems faced by, the international arbitration community have evolved significantly. While arbitration has further established itself as the preferred means of resolving international commercial disputes, it has also gained increased significance in other areas, such as investor-State disputes, thus creating new challenges.

Throughout the significant changes in the field of international arbitration, the Journal has continued to remain at the forefront of innovative and thought-provoking writing. One of the main reasons for this lies in its truly global reach. The Journal is indebted to my predecessor, Dr Michael Moser, and I am committed to continue promoting regional diversity and global impact.

As you will see below, the current issue of the Journal, among other things, examines referrals by arbitral tribunals to the European Court of Justice, discusses “myths and realities” of international commercial arbitration in Latin America, and elaborates on non-discrimination between foreign and domestic investments in countries of the Association of South-East Asian Nations (ASEAN).

The Journal’s global reach is also supported by its Advisory Board, which includes some of the most prominent arbitration practitioners and academics around the globe (Dominique Brown-Berset, Horacio A Grigera Naón, Bernard Hanotiau, Michael Hwang, Gabrielle Kaufmann-Kohler, Wolfgang Kühn, Toby Landau, Lucy Reed, Samir A Saleh, Audley Sheppard, Abby Cohen Smutny, Dorothy Udeme Ufot, V.V. Veeder), in addition to its previous General Editor (Michael Moser) and Assistant General Editor (Friven Yeoh). The Journal further benefits from the assistance of Dominique Hascher and Sylvie Picard Renaut (responsible for the Notes section), an Editorial Board (Niuscha Bassiri, Marie Berard, Christopher Boog, Darius Chan, Kate Davies, Mariel Dimsey, Gustav Flecke-Giammarco, Remy Gerbay, Aren Goldsmith, Samaa Haridi, Johannes Koepp, Simon Manner, Stefan Riegler, Stephan Schill, Anna-Maria Tamminen, Korinna von Trotha, Tania Voon, Thomas Walsh, Hanno Wehland) as well as a team of Assistant Editors (Michael Howe, Valeriya Kirsey, Victoria Narancio). I personally thank all those involved for their enthusiasm and encouragement in this venture.

As one of the new features, I will post the content of the current issue of the Journal in regular posts on the Kluwer Arbitration Blog. You will find a list of the contents of the current issue at the end of this message, and can click on the hyperlinks which will lead you to the relevant parts in the

Kluwer Arbitration database.

Finally, I encourage everyone who would like to contribute to the Journal or has comments or suggestions as to its developments to get in touch with me at: EditorJOIA@kluwerlaw.com.

I look forward to hearing from you!

Maxi Scherer, General Editor

Volume 32 (2015) Issue 4:

ARTICLES SECTION

Jürgen BASEDOW, EU Law in International Arbitration: Referrals to the European Court of Justice

Abstract: While the courts of Member States are enabled or even required to submit preliminary questions concerning the interpretation of EU law to the Court of Justice of the European Union, such referrals have traditionally been held inadmissible where made by arbitral tribunals. The article highlights a gradual softening of the Court of Justice's position on this matter, which would allow arbitral tribunals in investment protection proceedings to address the Court of Justice already at present. It further outlines some fundamental changes in the overall environment of commercial arbitration which should lead to a reversal of the Court's position also in this field.

Chong YEE LEONG & N. VIVEKANANDA , Non-discrimination Between Foreign and Domestic Investment in ASEAN

Abstract: The first version of the current Association of South-East Asian Nations (ASEAN) was formed in August 1967. Since then, ASEAN has grown from a political conglomeration into a strong economic community of ten nations. As ASEAN looks forward to late 2015 for the full establishment of the ASEAN Economic Community (AEC), the article examines the legal instruments forming the foundation of ASEAN, particularly the ASEAN Comprehensive Investment Agreement (ACIA) 2009. The article examines ASEAN's instruments and vision in the context of an important international law protection granted to foreign investors: that of against discrimination, embodied typically in national treatment and most favoured nation (MFN) standards of protection in international investment treaties. The article studies interpretations and understanding of these standards from other jurisdictions in arbitrations arising from similar bilateral and multilateral investment and trade agreements. It also analyses the dispute resolution processes applicable to the ACIA, and how these standards can be and are being implemented in ASEAN today.

Andrés JANA L., International Commercial Arbitration in Latin America: Myths and Realities

Abstract: The article addresses the past and present of international commercial arbitration in Latin America. Differentiating between international commercial arbitration and investment arbitration and reviewing the evolution of international arbitration in the region, it shows that most Latin American countries today have embraced a modern normative architecture of international commercial arbitration. A number of countries seem to be particularly successful forerunners on that path. The legal framework has been adjusted and judicial decisions make an effort to

overcome formalistic and idiosyncratic domestic trends. The authors argue that Latin America's negative attitude towards international commercial arbitration has been rather a myth that has no room in today's reality.

NOTES SECTION

Felipe NAZAR PAGANI & José Ignacio GARCÍA CUETO, *Tidewater v. Venezuela – Property Rights Capable of Expropriation in a Company Operating Under Short-Term Contracts*

BOOK REVIEW

Klaus VORPEIL, Book Review – Arbitration in Germany: The Model Law in Practice, by Karl-Heinz Böckstiegel, Stefan Michael Kröll and Patricia Nacimiento (eds)


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