

Kluwer Arbitration Blog

Launch of Young International Arbitration Practitioners of New York

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In September 2015, the Young International Arbitration Practitioners of New York (YIAP-NY) was officially launched. Initiated by the International Arbitration Group at Herbert Smith Freehills New York LLP, YIAP-NY's membership is comprised of young lawyers from more than 14 law firms in the city, as well as young practitioners from arbitral institutions such as the International Chamber of Commerce (ICC) and the International Centre for Dispute Resolution (ICDR).

The organization is founded as a discussion group, bringing together international arbitration specialists who are under the age of 40 and who are based in New York City. The association will hold monthly meetings to discuss current issues, occasionally featuring guest speakers, with the aim of fostering a working dialogue amongst the rising generation of New York's arbitration professionals.

At its inaugural session, Marek Krasula, Deputy Counsel at the ICC New York (known as SICANA) gave a talk on general trends and insights from SICANA's first year in New York. He also highlighted some of the special features New York offers as a seat of arbitration and provided some statistics for SICANA, noting in particular:

- U.S. parties are the most frequent users of the ICC New York
- U.S. arbitrators are the second most frequent nationality for ICC arbitrators
- The fastest growing regions for the ICC New York's caseload include New York and Latin America

The establishment of YIAP-NY is reflective of the ever-vibrant arbitration community in New York, which continues to grow and be invigorated by the city's position as a bastion of experience with law firms, institutions, law schools, and clubs regularly hosting forums for practitioners and thought leaders. These events have provided for active debate and discussion, and highlight the wellspring of practical and academic knowledge that can be found in New York.

For instance, the [New York International Arbitration Center \(NYIAC\)](#) is a recently established non-profit organization that aims to promote New York as a leading venue for international arbitration. NYIAC has also begun building a collection of international arbitration decisions issued by courts in New York in its online "New York Case Law Library". While it is not an institution that administers cases, it does host arbitrations and programs in its hearing facilities.

Founded in 1996, the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA), will soon be celebrating its twentieth anniversary. Maintaining global case administration operations from its headquarters in New York, the ICDR-AAA remains a stalwart of the international arbitration community in New York City. In 2014, the ICDR had 259 cases with New York as the place of arbitration, bringing parties and Arbitrators from around the world to Manhattan.

In addition to organizations and initiatives promoting New York as an ideal location for international arbitration, and due to the jurisdiction's well tried and relatively predictable body of law, New York's role as a pre-eminent place of arbitration has had the expected effect of producing influential and ground breaking decisions in the field of arbitration. The Second Circuit courts have strongly supported arbitration and have consistently applied a policy of deferring to arbitrators whenever arbitral awards are challenged. See, e.g., *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 (2d Cir. 2003). This position follows several rulings of the United States Supreme Court promoting a federal policy in favor of arbitration as an alternative mode of dispute resolution. See, e.g., *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); and *Southland Corp. v. Keating*, 465 U.S. 1 (1983).

The Second Circuit has held that the "manifest disregard of the law" as an implied ground for vacating domestic arbitral awards under the Federal Arbitration Act also applies to foreign awards under the New York Convention. See, *Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" US, Inc.*, 126 F.3d 15 (2d Cir. 1997). Scholars and practitioners have suggested that the "manifest disregard of the law" ground for vacating arbitral awards makes New York a less desirable seat for international arbitration. This discussion led the New York City Bar Association to issue a [report](#) in 2012. In its report, the Committee on International Commercial Disputes noted that United States law, as applied by federal courts in New York, was "no less favorable to international arbitral awards than the laws of other major centers of international arbitration" and concluded that given the "strict requirements that the Second Circuit has laid down" and the "extreme infrequency with which the manifest disregard doctrine has been applied to vacate an international award," those concerns are "not well-founded." Indeed, to date, the Second Circuit has not vacated any foreign arbitral awards based on the manifest disregard ground.

New York also stands out as one of the first jurisdictions in the world to address the enforceability of relief granted by an emergency arbitrator. In *Yahoo! Inc. v. Microsoft Corporation*, the United States District Court for the Southern District of New York found that the equitable relief awarded by an emergency arbitrator was enforceable, even when it had the effect of "final permanent relief". The Court added that, "given the time-sensitive nature of the [ordered relief], the parties have a clear interest in enforcing the equitable award made by the Arbitrator as soon as possible." 983 F. Supp. 2d 310, 319 (S.D.N.Y. 2013). In denying the motion to vacate the Emergency Arbitrator's award, the court made reference to *ReliaStar Life Ins. Co. v. EMC Nat. Life Co.*, noting, "If the parties agreed to submit their dispute to arbitration, as the parties did here, a court will "uphold a challenged award as long as the arbitrator offers a barely colorable justification for the outcome reached." 564 F.3d 81, 86 (2d Cir.2009).

Decisions like *Yahoo!*, reassure users of international arbitration in New York that the New York courts will be more likely to enforce decisions made by emergency arbitrators. Also, it provides a greater degree of certainty for parties considering resorting to emergency arbitrator relief in New York as compared to other prominent arbitration venues like the United Kingdom, France, or

Switzerland where no decision has been issued as yet on the enforceability of awards issued by an emergency arbitrator.

It is all of these unique characteristics in confluence that make New York a dynamic environment within which YIAP-NY looks to make a contribution to the international arbitration community. Through its membership, YIAP-NY will certainly further the practice of arbitration both in New York and across the globe.

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