Kluwer Arbitration Blog

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Maxi Scherer (WilmerHale & Queen Mary University of London) · Saturday, July 28th, 2018

We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

Cherie Blair, CBE, QC, Ema Vidak-Gojkovic & Marie-Anaïs Meudic-Role, *The Medium Is the Message: Establishing a System of Business and Human Rights Through Contract Law and Arbitration*

This article seeks to paint a picture of an emerging system of business and human rights (BHR) law by following certain developmental trends across normative, substantive and procedural realms. These trends show that there is acknowledgment for the concept of corporate responsibility for BHR, and that the lines between 'soft' and 'hard' law are becoming blurred. Through contractual and arbitral mechanisms, a binding system of law is taking shape.

At the forefront of recent trends, international arbitration is increasingly becoming a procedural venue of choice for BHR disputes. Furthermore, arbitration promises to offer an environment that will both kindle the evolution of substantive rights and permit their enforcement and effective redress. The medium, indeed, is the message.

Paul Lefebvre & Dirk De Meulemeester, *The New York Convention: An Autopsy of Its Structure and Modus Operandi*

The purpose of the New York Convention is to facilitate the enforcement of arbitral awards. It introduces different regimes, i.e. the regime provided by the New York Convention itself, and the two regimes referred to by Article VII.1 of the New York Convention. Little attention has so far been given to those different regimes and, especially, to the possibility of an interaction between those regimes and whether or not such should be authorized. The aim of this contribution is to highlight that the New York Convention is structured and worded precisely to avoid interferences between those different regimes which each operate independently, even if complemented by provisions of domestic law. It is the enforcing party's privilege to choose between the different regimes. However, in order to respect the rights of defence of the party against whom the award is enforced, this choice should be express, in toto, final and binding for the judge. Failure to expressly opt for a regime leads to the application of the New York Convention regime. Such an approach

offers not only the advantage of clarity and simplicity as far as the applicable rules are concerned, but also enhances the equality between foreign and domestic awards, and puts an end to the nineteenth century era of bilateral treaties.

Tamás Szabados, *EU Economic Sanctions in Arbitration*

Sometimes, the application of the economic sanctions imposed by the European Union (EU) arises in arbitration proceedings. This article examines the extent to which unilateral EU sanctions are applied uniformly in arbitration. Opting for arbitration between the parties instead of court proceedings, as well as the selection of a particular arbitration venue, may be used to avoid the application of EU sanctions. Although arbitral tribunals have considerable freedom in deciding whether to give effect to EU economic sanctions, which involves an inherent uncertainty in terms of their claim for uniform application, the fact that the parties choose arbitration does not necessarily exclude their application. EU sanctions constitute the public policy of the Member States. The potential for the annulment of the arbitral award by a competent court in an EU Member State or the denial of the recognition and enforcement of the arbitral award in the EU may therefore be an incentive for the arbitrators not to disregard these sanctions and may discourage the parties from choosing arbitration or a particular location for arbitration only to escape the application of EU sanctions.

Stepan Puchkov, *Psycholawgy: What Dispute Resolution Practitioners Overlook?*

This article brings to the readers' attention several particular subconscious 'blinders' together with their potential implications in the field of dispute resolution and offers practical recommendations in relation thereto from both the counsel and judge/arbitrator perspective.

The article does not aim to provide the readers with an exhaustive theoretical background of the psychology of decision-making. Instead, it will put into the spotlight only 'blinders' that (1) are likely to emerge in dispute resolution; (2) are easy to explain and exemplify without going too deeply into psychology; (3) suggest very concrete practical inferences; and (4) can be used to produce tips for practitioners.

Finally, it is suggested that it may be the time to rethink the approach to dispute resolution by taking more account of non-legal influences affecting disputes' outcomes, which might in some cases be as influential as blackletter law.

Michael Kotrly & Barry Mansfield, *Recent Developments in International Arbitration in England and Ireland*

This article considers developments in international arbitration in England and Ireland by way of a review of arbitration-related judgments rendered in 2017 by the countries' respective courts.

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