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# Kluwer Arbitration Blog

## The Contents of the ASA Bulletin, Volume 39, Issue 1 (March 2021)

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We are happy to report that the latest issue of the ASA Bulletin is now available and includes the following articles and cases:

### ARTICLES

Felix DASSER, *Lessons from Echternach*

In his message, ASA President Felix DASSER looks at recent developments and observes that for every two steps forward in international arbitration, there is one step back.

Felix DASSER, Piotr WÓJTOWICZ, *Swiss International Arbitral Awards Before the Federal Supreme Court. Statistical Data 1989-2019*

Felix DASSER and Piotr WÓJTOWICZ present statistical data on challenges of international arbitral awards before the Swiss Federal Supreme Court over the period 1989-2019.

Pierre-Yves TSCHANZ, *Quelle mission pour les législateurs de l'arbitrage commercial international ?*

Pierre-Yves TSCHANZ discusses the task of legislators with respect to international commercial arbitration and examines how they should set about to achieve a coherent set of transnational rules that afford legal predictability to international commercial transactions.

James FREEMAN, Karolina LATASZ, *Non-identical twins: judicial assistance for obtaining evidence under sections 43 and 44 of the English Arbitration Act*

James FREEMAN and Karolina LATASZ examine the options for judicial assistance in obtaining evidence in support of arbitration proceedings under sections 43 and 44 of the English Arbitration Act in light of the decision of the English Court of Appeal in *A, B v C, D and E* [2020] EWCA Civ 409.

Jacques COVO, *The "Date of default" Concept of the FOSFA and GAFTA Agribusiness Standard*

### *Form Contracts as Basis for Examining the Consequences of a Repudiatory Breach*

The calculation of damages for breach of contract is specifically addressed by the standard forms of the international trade associations GAFTA and FOSFA in a key provision called “Default Clause” and is based on the “date of default”. Jacques COVO analyses the “date of default” concept by reference to the relevant case law of the English courts.

### *Daniela BARTSCH, Calderbank Offers – Powerful Weapon or Blunt Sword?*

Daniela BARTSCH presents “Calderbank offers”, *i.e.* dispute settlement proposals made “without prejudice save as to costs” that are intended to shift the allocation of costs, and considers their efficiency as a tool to enable parties to reduce and control costs in international arbitration.

### *Hanno WEHLAND, Iberdrola v. Guatemala – When Do Negative Jurisdictional Awards Have Res Judicata Effect in Investment Treaty Arbitrations?*

Hanno WEHLAND assesses the findings of the second tribunal constituted in the Iberdrola v. Guatemala case with regard to the application of the concept of res judicata under public international law.

### *Niklaus ZAUGG, Alex BARDIN, Business Human Rights – A New Field of Activity for Arbitration?*

Niklaus ZAUGG explains why arbitration could offer significant advantages to all parties involved in business human rights disputes.

### *Abhilasha VIJ, Arbitrator-Robot: Is A(I)DR the Future?*

Abhilasha VIJ explores the feasibility of using artificial intelligence (AI) for arbitral decision-making as well as the suitability of an Arbitrator-Robot (“ArBot”) and sets out the limitations of AI based arbitral decision-making as well as possible solutions to overcome these shortcomings.

## DECISIONS OF THE SWISS FEDERAL SUPREME COURT

- [4A\\_382/2018](#) of 15 January 2019 [*Right to be heard (surprise effect) – Boilerplate language in the award no proof for actual analysis of an argument by arbitral tribunal*]
- [5A\\_877/2018](#) of 25 October 2019 [*Enforcement proceedings – Set-off defense based on an arbitral award admissible*]
- [4A\\_247/2017](#) of 18 April 2018 [*No stay of arbitration or anti-suit injunction despite parallel court proceedings – No res iudicata effect of the court judgements – Equal treatment in the event of respondents’ (temporary) default – Duty to seek leave to respond to new arguments raised in post-hearing briefs*]
- [5A\\_942/2017 / 144 III 411](#) of 7 September 2018 [*Enforcement in Switzerland of foreign awards against a State – Immunity – Territorial link with Switzerland required – New York Convention*]
- [4A\\_444/2020](#) of 1 December 2020 [*Annulment request filed by email not admissible*]
- [4A\\_300/2020](#) of 24 July 2020 [*Grounds for challenging a partial award*]
- [4A\\_416/2020](#) of 4 November 2020 [*Termination order for one day delay in nomination of CAS arbitrator not excessively formalistic*]

- [4A\\_505/2017 of 4 July 2018](#) [*Arbitral Tribunal authorised to unilaterally change expert's terms of reference and carve out counterclaim*]
- [4A\\_93/2020 of 18 June 2020](#) [*Right to be heard*]

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The graphic features a dark background with white text and a circular icon. The icon depicts a central figure with a magnifying glass over it, surrounded by other smaller figures, all enclosed in a circle with a multi-colored border. The Wolters Kluwer logo is positioned at the bottom left of the graphic.

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