

Kluwer Arbitration Blog

KluwerArbitration ITA Arbitration Report, Volume No. XXII, Issue No. 7 (July 2022)

Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Thursday, August 15th, 2024

The Institute of Transnational Arbitration (ITA), in collaboration with the **ITA Board of Reporters**, is happy to inform you that the latest *ITA Arbitration Report* was published: a free email subscription service available at [KluwerArbitration.com](https://www.kluwerarbitration.com) delivering timely reports on awards, cases, legislation, and current developments from over 60 countries and 12 institutions. To get your free subscription to the ITA Arbitration Report, click [here](#).

The ITA Board of Reporters have reported on the following awards.

[A. & Anor v. B. \(HKIAC's Decision Not to Proceed with a Single Arbitration Under Multiple Contracts\), HKIAC Case ID CD2023/08/01, 1 August 2023](#)

Hong Kong International Arbitration Centre, ITA Reporter for the Hong Kong International Arbitration Centre (HKIAC)

In an arbitration under the 2018 HKIAC Administered Arbitration Rules (the '2018 Rules') where the Claimants initiated a single arbitration under multiple contracts, HKIAC determined not to proceed with a single arbitration under all three invoked contracts due to the incompatibility of the arbitration clauses. HKIAC decided to inform the Claimants that a single arbitration under two of the invoked contracts may proceed and invited the Claimants to amend their Notice of Arbitration in the captioned matter.

[A. v. B. & Ors \(HKIAC's Non-Confirmation of the First Co-Arbitrator Designated by Claimant\), HKIAC Case ID CD2023/09/01, 1 June 2023](#)

Hong Kong International Arbitration Centre, ITA Reporter for the Hong Kong International Arbitration Centre (HKIAC)

In this case, the first co-arbitrator designated by Claimant had been previously designated by

Claimant and served as co-arbitrator in a related CIETAC arbitration, where a favourable award was issued. HKIAC noted that the designation of the first co-arbitrator may give rise to concerns regarding predisposition and prejudgment of matters in dispute and there was no mitigating factor since Respondent could not be presumed to have agreed to such appointment. In light of this, HKIAC decided not to confirm the overlapping arbitrator as the first co-arbitrator as per Claimant's designation.

[A. v. B. & Anor \(Determination of Fees\), HKIAC Case ID CD2023/09/02, 1 July 2023](#)

Hong Kong International Arbitration Centre, ITA Reporter for the Hong Kong International Arbitration Centre (HKIAC)

In this case, HKIAC upheld the fees of the former presiding arbitrator and former tribunal secretary following a request for reduction of the fees by one of the parties.

[A. & Anor v. B. & Anor \(HKIAC's Prima Facie Power to Proceed\), HKIAC Case ID CD2023/09/03, 1 August 2023](#)

Hong Kong International Arbitration Centre, ITA Reporter for the Hong Kong International Arbitration Centre (HKIAC)

Claimants and Respondents signed the Memorandum to record the parties' transition arrangement from the First Charterparty to the Second Charterparty. Claimants commenced the arbitration pursuant to (i) the Second Charterparty and (ii) the Memorandum. HKIAC was of the view that it had *prima facie* power to proceed with the arbitration under the 2018 Rules and granted Claimants' application for commencing a single arbitration pursuant to Article 19.5 of the 2018 Rules.

[Corp B v. Corp A & Corp A v. Corp C \(Consolidation of Arbitrations\), HKIAC Case ID CD2024/06/01, 1 June 2024](#)

Hong Kong International Arbitration Centre, ITA Reporter for the Hong Kong International Arbitration Centre (HKIAC)

In this matter, HKIAC refused the consolidation of the two arbitrations on the ground that not all of the requirements under Article 28.1(c) of the 2018 Rules had been satisfied.

[Nachingwea U.K. Limited \(UK\), Ntaka Nickel Holdings Limited \(UK\) and Nachingwea Nickel Limited \(Tanzania\) v. Tanzania \(Award\), ICSID Case No. ARB/20/38, 14 July 2023](#)

Heiko Heppner, Diona Ziyaeva, Daniel Wisheart, and Thomas W. Davis, Dentons, ITA Reporters for the International Centre for Settlement of Investment Disputes (ICSID)

In *Nachingwea et al. v. Tanzania*, the Tribunal upheld jurisdiction over an investment that was

purportedly ‘inactive’ under the relevant investment treaty, ruling against previous case law. In so doing, it found that Tanzania had unlawfully expropriated a mining retention license held by a group of foreign companies.

[Red Eagle Exploration Limited v. Republic of Colombia \(Award\), ICSID Case No. ARB/18/13, 28 February 2024](#)

Cody Anthony, Ana Restrepo Londoño, Shalin Shah, and Diara Ziyaeva, Dentons, ITA Reporters for the International Centre for Settlement of Investment Disputes (ICSID)

The award concerns claims of expropriation and violations of minimum standards of treatment under the Free Trade Agreement between Canada and the Republic of Colombia, dated November 21, 2008 and entered into force on August 15, 2011. The award is interesting in light of its similarities and differences with earlier mining-disputes in the region analyzed by ICSID—particularly the Eco Oro decision.

[First Majestic Silver Corp. v. United Mexican States \(Decision on Provisional Measures\), ICSID Case No. ARB/21/14, 26 May 2023](#)

Charles H. Brower, II, ITA Reporter for the North American Free Trade Agreement (NAFTA)

In NAFTA Chapter 11 proceedings conducted under the ICSID Convention, the tribunal granted one of the claimant’s four requests for provisional measures.

[First Majestic Silver Corp. v. United Mexican States \(Decision on Revocation of Provisional Measures\), ICSID Case No. ARB/21/14, 1 September 2023](#)

Charles H. Brower, II, ITA Reporter for the North American Free Trade Agreement (NAFTA)

In NAFTA Chapter 11 proceedings conducted under the ICSID Convention, the tribunal declined to revoke its recommendation of provisional measures because respondent could not establish any material change of circumstances.

[First Majestic Silver Corp. v. United Mexican States \(Decision on Preliminary Objection to Jurisdiction\), ICSID Case No. ARB/21/14, 20 December 2023](#)

Charles H. Brower, II, ITA Reporter for the North American Free Trade Agreement (NAFTA)

In NAFTA Chapter 11 proceedings conducted under the ICSID Convention, the tribunal rejected the respondent’s request for bifurcation because the jurisdictional objection could be examined separately from, but concurrently with, ongoing proceedings on merits. In addition, the tribunal rejected the jurisdictional objection because the claimant had not violated the waiver required by NAFTA Article 1121 by commencing a second arbitration against Mexico.

TC Energy Corp. and TransCanada Pipelines Ltd. v. United States of America (Decision on Bifurcation), ICSID Case No. ARB/21/63, 13 April 2023

Charles H. Brower, II, ITA Reporter for the North American Free Trade Agreement (NAFTA)

In NAFTA Chapter 11 proceedings conducted under the ICSID Convention, the tribunal allowed ordered bifurcation of the proceedings because the respondent's jurisdictional objections were *prima facie* serious and involved only legal questions sounding in treaty interpretation and related principles of public international law.

Koch Industries, Inc. and Koch Supply & Trading, L.P. v. Canada (Award), ICSID Case No. ARB/20/52, 13 March 2024

Charles H. Brower, II, ITA Reporter for the North American Free Trade Agreement (NAFTA)

In NAFTA Chapter 11 proceedings conducted under the ICSID Convention and the legacy provisions of the USMCA, a tribunal held that it lacked jurisdiction over a claim involving the cancellation of emissions allowances without compensation. In so doing, the tribunal held that the emissions allowances did not qualify as investments for purposes of NAFTA Article 1139 because they were not 'property' for purposes of Ontario law and did not constitute 'interests' arising from the commitment of capital in Ontario to economic activity in Ontario. Also, the tribunal rejected arguments that jurisdiction could be established by estoppel. Finding that the investor had pursued a 'very close' and 'novel' case in good faith, the tribunal concluded that each side should bear their own legal expenses as well as half the cost of the proceedings.

Ruby River Capital LLC v. Canada (Decision on Suspension of Proceedings), ICSID Case No. ARB/23/5, 9 April 2024

Charles H. Brower, II, ITA Reporter for the North American Free Trade Agreement (NAFTA)

In NAFTA Chapter 11 proceedings conducted under the ICSID Convention and the legacy provisions of the USMCA, a tribunal denied the respondent's request to suspend the proceedings pending the decisions of two other tribunals regarding the scope of the USMCA's legacy provisions. In so doing, the tribunal emphasized that the respondent had not acted in a timely manner. Also, suspension would offer no obvious benefits, delay the proceedings, and confer an unfair advantage on the respondent.

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