
ANNUAL LEGAL REVIEW OF 2025: KEY PRACTICE POINTS

Chaired by Sir Bernard Eder

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Seminar Outline

- Part 1: Arbitration and International Disputes Overview
- Part 2: Arbitration Act 1996 (“AA 1996”) cases
- Part 3: Investment Treaty decisions
- Part 4: Public International Law before the English Courts



Part 1: Arbitration and International Disputes

Overview

- In FY2025, ICSID registered 67 new cases (“the new ICSID arbitrations”) and administered 347 cases, the most ever administered in a single year.
- The 2 main bases of consent for the new ICSID arbitrations were BITs (45%, down from 53% in FY2024) and Contracts (21%, up from 6% in FY2024).
- The largest proportion of the new ICSID arbitrations were brought against States from Sub-Saharan Africa (24%, up from 10%), Central America & the Caribbean (19%, up from 12%) and South America (18%, down from 19%).
- The largest proportion of the new ICSID arbitrations were brought in oil/gas/mining (43%, up from 28%), construction (15%, up from 14%), and other industry (13%, up from 8%).
- Women accounted for 30% of ICSID arbitrator appointments in the new ICSID arbitrations (up from 29%). Western Europe still accounted for the most ICSID arbitrator appointments (39%) and South America (22%) continued to overtake North America (16%).
- The ICC and LCIA appear not to have yet published statistics for 2025.

Part 2: Arbitration Act 1996 cases

Overview (1)

- Around 68 reported judgments concerning AA 1996 provisions in 2025
- Anti-suit Injunctions and Anti-Anti Suit Injunctions considered
- Application of Issue Estoppel to prior determination by Court of Seat of existence Agreement to Arbitrate vis State Immunity
- Arbitration Act 1996 time-limits for challenges of award confirmed

Part 2: Arbitration Act 1996 cases

Overview (2)

- On 1 August 2025, the Arbitration Act 2025 entered into force, making significant changes to the AA 1996. These changes apply to arbitral proceedings commencing from 1 August 2025. Some of the main changes are:
 - **Governing law:** S.6A(1) implements the default rule that absent the parties' express agreement, the governing law of the arbitration agreement shall be the law of the seat of arbitration.
 - **Arbitrators' duty to disclose:** S.23A codifies an arbitrators' common law duty to disclose any circumstances which might reasonably raise justifiable doubts as to the individual's impartiality, and clarifies that such obligation will be based on what an arbitrator knows or "*ought reasonably to be aware*".
 - **Challenging the tribunal's jurisdiction under s.67:** Where the tribunal's jurisdiction has been challenged by a party and the tribunal has ruled on that, save in the interests of justice, any subsequent challenge under s.67 will not allow any new grounds of objection or new evidence, unless the applicant shows that, at the time the applicant took part in the proceedings, the applicant did not know and could not with reasonable diligence have discovered the ground.
 - **Court determination of jurisdiction of tribunal:** A new subsection (1A) is added to s.32, providing that the court cannot determine a preliminary point of jurisdiction if the tribunal has already ruled on its jurisdiction. A challenge to such a ruling may only be brought under s.67.

Part 2: Arbitration Act 1996 cases

Overview (2) (continued)

- **Summary disposal:** S.39A empowers arbitrators to summarily dispose of claims or issues, unless the parties agree otherwise. The test for using this power is the same as that for summary judgment in English court proceedings: no real prospect of success.
- **Orders against third parties under s.44:** The amendments clarify the court's powers exercisable in support of arbitral proceedings in respect of third parties – inserting after the words “*making orders*” in s.44(1) the words “*(whether in relation to a party or any other person)*”.
- **Arbitrators' immunity:** Arbitrators' immunity is now extended. The court may not order the arbitrator to pay costs in proceedings under this section unless any act or omission of the arbitrator in connection with the proceedings is shown to have been in bad faith. Further, an arbitrator's resignation per s.29(4) does not give rise to any liability for the arbitrator unless it is shown that the resignation was, in all the circumstances, unreasonable.
- **Emergency arbitrators:** Emergency arbitrators are now empowered to (i) issue peremptory orders and (ii) give permission for applications made under s.44. These reforms are aimed at improving the efficacy and enforceability of the emergency arbitral process.
- **Power to award costs despite no substantive jurisdiction:** Subject to any contrary agreement of the parties, it is irrelevant for the purposes of s.61(1) and the tribunal's right to award costs whether the tribunal has ruled, or a court has held, that the tribunal has no substantive jurisdiction or has exceeded its substantive concerning its right to award costs.

Part 2: Arbitration Act 1996 cases

KEY CASES

A. Anti-suit injunctions (ASI) and anti-anti-suit injunctions (AASI)

- ***Google LLC and anor v NAO Tsargrad Media and ors* [2025] EWHC 94 (Comm) (22/01/2025)**
- ***UniCredit Bank GmbH v RusChemAlliance LLC* [2025] EWCA Civ 99 (11/02/2025)**
- ***Star Hydro Power Limited v National Transmission & Despatch Company Limited* [2025] EWCA Civ 928 (24/07/2025)**

B. Tribunal's failure to deal with an issue "put" to it

- ***Kazakhstan v World Wide Minerals Ltd and ors* [2025] EWHC 452 (Comm) (28/01/2025)**

C. Time-bars to challenge

- ***Czech Republic v Diag Human SE and anor* [2025] EWCA Civ 588 (07/052025)**
- ***JSC Kazan Oil Plant v Aves Trade DMCC* [2025] EWHC 2713 (Comm)**
- ***Eronat v CNPC International (Chad) Ltd and anor* [2025] EWCA Civ 1054 (01/08/2025)**

D. Bias

- ***V and anor v K* [2025] EWHC 1523 (Comm) (19/06/2025)**

E. Damages – the *res inter alios acta* principle

- ***Skyros Maritime Corp v Hapag-Lloyd AG* [2025] EWCA Civ 1529 (28/11/2025)**

F. Implied Terms

- ***Pleon Limited v Leonis Yachting Limited ("The Maltese Falcon")* [2025] EWHC 3144 (Comm) (28/11/2025)**

A. Anti-suit injunctions (ASI) and anti-anti-suit injunctions (AASI)

Google LLC and anor v NAO Tsargrad Media and ors [2025] EWHC 94 (Comm) (22/01/2025) (Henshaw J)

- Google terminated the defendants' Google and YouTube accounts in compliance with US sanctions, leading the defendants to obtain judgments from the Russian Courts, which claimed exclusive jurisdiction under Article 248.1 of the Arbitrazh Procedural Code and ordered reinstatement of the accounts.
- The Russian judgments imposed unlimited and compounding “*astreinte* penalties” until the accounts were reinstated and were later pursued for enforcement in multiple jurisdictions outside Russia.
- Google sought AEIs and ancillary AASIs from the English High Court to prevent recognition or enforcement of these Russian judgments abroad.
- **The Commercial Court granted the Google entities a final AEI to restrain the enforcement of the “exorbitant” Russian judgments abroad, and AASI relief.**
 - The relevant contracts contained exclusive English jurisdiction or London-seated arbitration clauses. Therefore, the Russian judgments were obtained in breach of the parties' agreements. Breach of exclusive jurisdiction or arbitration agreements can justify AEIs. Weighing considerations of delay and comity, it was just and convenient to grant AEIs that would not interfere with enforcement within Russia.
 - The judgments which the defendants sought to enforce were for “*extravagant, indeed other-worldly, sums of money of a penal nature*”. AASI relief was therefore justified in this case and appropriate to protect interference with the English courts own process and use of its coercive powers.

A. Anti-suit injunctions (ASI) and anti-anti-suit injunctions (AASI)

UniCredit Bank GmbH v RusChemAlliance LLC [2025] EWCA Civ 99 (11/02/2025) (Sir Geoffrey Vos MR; Asplin LJ; Phillips LJ)

- UniCredit sought to vary or revoke a final ASI previously granted (at its request) against RusChemAlliance LLC (“RCA”) by the Court of Appeal and upheld by the Supreme Court.
- The underlying dispute concerned UniCredit's failure to honour payment obligations under several performance and advance payment bonds following the imposition of EU sanctions on Russia. Each bond was governed by English law and provided for ICC arbitration with a Paris seat.
- Following the Supreme Court’s ruling, RCA obtained a Russian court order prohibiting UniCredit from pursuing claims outside Russia, imposing severe financial penalties. Due to the imposition of the penalty and RCA’s disregard of the English court orders, UniCredit sought to vary or revoke the injunction.
- **The Court of Appeal granted UniCredit’s request to discharge the final ASI in its favour in order to avoid Russian court-imposed penalty:**
 - The court had authority under CPR 3.1(7) to revoke or vary the final ASI. This decision was influenced by the principle that injunctions can be modified in light of new and substantial changes in circumstances.
 - Forcing UniCredit to maintain the ASI (and thus risk massive penalties in Russia) would be unjust due to the severe financial penalties imposed by the Russian court and RCA’s non-compliance with the original court orders.

A. Anti-suit injunctions (ASI) and anti-anti-suit injunctions (AASI)

Star Hydro Power Limited v National Transmission & Despatch Company Limited [2025] EWCA Civ 928 (24/07/2025) (Peter Jackson LJ ; Phillips LJ; Andrews LJ)

- SHPL obtained an LCIA arbitral award (seated in London) against NTDC in relation to an agreement governed by Pakistani law. Before SHPL took any recognition or enforcement action, NTDC commenced proceedings in the Lahore High Court seeking partial recognition and enforcement of the award in relation to certain findings by the arbitrator.
- However, in reality, the application was a challenge to the arbitrator's jurisdiction as well as a challenge to his findings with regard to the contractually payable tariff. NTDC argued that the award was not enforceable pursuant to Article V of the NYC. SHPL sought an ASI preventing the continuance of the Lahore proceedings.
- **The Court of Appeal granted the ASI:**
 - The parties' agreement to the seat of an arbitration constituted an agreement as to the curial law of the arbitration agreement and was analogous to an exclusive jurisdiction clause in favour of the courts of the seat of the arbitration, being the courts with the supervisory jurisdiction over the arbitration proceedings.
 - Any challenges to a London-seated award had to be brought under sections 67-69 AA 1996. The NYC was concerned only with recognition and enforcement of an award; it did not provide for pre-emptive challenges to an award.
- On 06/11/2025, the Supreme Court (Lord Lloyd-Jones; Lord Sales; Lord Hamblen) granted NTDC permission to appeal. The appeal is due to be heard in June 2026.

B. Tribunal's failure to “deal with” an issue “put” to it

Kazakhstan v World Wide Minerals Ltd and ors [2025] EWHC 452 (Comm) (28/01/2025) (Bryan J)

- Kazakhstan faced investor-state arbitration with World Wide Minerals Ltd (“WWM”) over alleged breaches of a bilateral investment treaty. The tribunal initially found two narrow breaches known as the “Export License Breach” and the “Bankruptcy Breach”.
- On Kazakhstan’s first section 68 challenge, the High Court set aside parts of the award on causation and quantum, remitting these issues to the tribunal. During the remitted proceedings, Kazakhstan advanced its “Counterfactual Case” that WWM’s investment would have failed even without the Export Licence Breach.
- In its subsequent award, the tribunal did not explicitly address or decide on Kazakhstan's Counterfactual Case concerning the termination of the agreement, which prompted a further section 68 challenge by Kazakhstan.
- **The Commercial Court upheld Kazakhstan’s second section 68 challenge:**
 - The court analysed the award, concluding that the tribunal did not “*deal with*” or decide the Counterfactual Case at all, which was a central and potentially determinative issue that had been “*put to*” it.
 - The court noted that it was “*quite remarkable*” that in a 174-page award, loss and causation were only addressed in a single paragraph.
 - This failure constituted a serious irregularity causing substantial injustice under section 68(2)(d) AA 1996 since if Kazakhstan’s Counterfactual Case had been accepted it could have resulted in WWM recovering no damages.

C. Time-bars to challenge

Czech Republic v Diag Human SE and anor [2025] EWCA Civ 588 (07/05/2025) (Males LJ; Popplewell LJ; Andrews LJ)

- Following arbitration under the Switzerland-Czech Republic BIT and the UNCITRAL Arbitration Rules 2010, the claimants (Mr. Stava and Diag) obtained an award for US\$ 350 million.
- CZR challenged the award under Sections 67 and 68 of the AA 1996, leading to multiple English court judgments in 2024 addressing jurisdictional issues, time bars under Section 73, and Mr. Stava’s control of Diag.
- Three appeals followed: (i) whether certain Section 67 challenges were time-barred by Section 73 AA 1996, (ii) whether Mr. Stava’s challenge was jurisdictional, and (iii) whether he retained control of Diag in 2011.
- **The Court of Appeal partially set aside the arbitral award:**
 - The first appeal was dismissed – no objection to the timing of CZR’s grounds of challenge was made by the claimants during the arbitration and the grounds of challenge were made in the time permitted by the tribunal.
 - The second appeal was dismissed – on a proper interpretation of the BIT, CZR’s objection relating to Mr. Stava’s disposal of his interest in his investment was not a jurisdiction issue for the purposes of Section 30 AA 1996.
 - The third appeal was allowed – Mr. Stava no longer directly or indirectly controlled Diag after the shares were placed into the trust. As a result, Diag no longer qualified as an “investor” for the purposes of the BIT. The result being that the award, as far as Diag was concerned, was set aside.

C. Time-bars to challenge

JSC Kazan Oil Plant v Aves Trade DMCC [2025] EWHC 2713 (Comm) (21/10/2025) (Bright J)

- The claimant brought a Section 69 AA 1996 appeal against a GAFTA appeal award and sought a declaration that it had done so in time or alternatively sought an extension of time under Section 80(5) AA 1996.
- The underlying dispute concerned a contract between the parties in respect of the sale and purchase of 48,000 mt crude oil.
- **The Court determined that the appeal was made out of time and declined the extension application:**
 - It had long been recognised that the time limit for challenges to a GAFTA appeal award should run from the date of the award rather than from the uncertain time of notification of the outcome, which itself might differ as between the parties.
 - This applies to all appeal awards and that the fact that GAFTA and FOSFA arbitrations offered two-tiered schemes did not lead to different conclusion in that respect.
 - Where there had been an award by a first-tier tribunal and that was appealed to the second-tier tribunal, then time started to count from the date of the appeal award as that was the award being challenged in court.
 - The delay of 15 days in bringing the Section 69 appeal was “*not enormous*” but “*nor is it trifling*”. It was principally attributed to: (i) the mistaken view of the claimant’s previous Russian counsel as to when time began to run, and (ii) a failure by newly instructed Russian counsel to seek English law advice as to the time period. The error was not “*forgivable*”. No extension of time would be granted.

C. Time-bars to challenge

Eronat v CNPC International (Chad) Ltd and anor [2025] EWCA Civ 1054 (01/08/2025) (Lewison LJ; Males LJ; Phillips LJ)

- Mr Eronat sought to appeal an arbitral award issued against him under section 69 AA 1996. The arbitration clause within the relevant contractual document permitted appeals to the court “*within thirty (30) days after the decision is rendered.*” Mr Eronat filed his appeal 30 days after receipt but 35 days after the award was made.
- The High Court held that the time limit ran from the date the award was made, not when it was received by the parties. It also found that the parties had excluded the right to seek an extension of time under Section 79 AA 1996 in the relevant contractual agreement.
- **The Court of Appeal upheld the High Court’s decision to refuse permission to appeal the arbitral award:**
 - The term “*rendered*” in the arbitration clause meant the date the award was made, not the date it was communicated to the parties. This interpretation aligned with the LCIA Rules and AA 1996, which distinguish between making and notifying an award.
 - The arbitration clause itself excluded the possibility of applying for an extension of time under section 79 AA 1996.
 - Even if an extension were possible, the High Court judge’s refusal to grant one was a proper exercise of discretion under Section 79 AA 1996 and no substantial injustice was shown.
 - Males LJ: “*I see nothing unfair or unreasonable in the parties having agreed a right of appeal which was subject to a time limit which might start running before they were aware of the terms of the award.*”

D. Bias

V and anor v K [2025] EWHC 1523 (Comm) (19/06/2025) (Calver J)

- The claimants challenged an LMAA arbitration award, alleging apparent bias after the arbitrator failed to disclose prior appointments by the defendant’s solicitors, Reed Smith LLP, in unrelated matters on behalf of other clients. They argued this gave rise to justifiable doubts as to impartiality.
- **The Court rejected the claimants’ challenge:**
 - The case concerned repeated instructions in unrelated arbitrations by the same law firm over a number of years as opposed to “*multiple appointments*” which concern the same or overlapping subject matter with only one common party, where the arbitrator may become privy to information in arbitration 1 which will be unknown to one of the parties in arbitration 2.
 - The custom/practice of the London maritime market to frequently appoint the same arbitrator in different cases was expressly stated in the LMAA Advice on Ethics. This would have been understood by regular participants in the London maritime market such as the parties in this case. Therefore, there was no legal duty upon the arbitrator to disclose previous instructions by Reed Smith for him to act as a LMAA arbitrator.
 - The court rejected the defendant’s reliance upon *Aiteo v Shell* noting that it was a “*relatively rare example of a challenge that succeeded*”. The court concluded that even if the arbitrator did have a duty to disclose his previous unrelated appointments by Reed Smith, his failure to disclose them would not lead the fair-minded and informed observer to conclude that there was a real possibility that he was biased.

E. Damages – the *res inter alios acta* principle

Skyros Maritime Corporation & Anor v Hapag-Lloyd AG [2025] EWCA Civ 1529 (28/11/2025) (Coulson LJ; Males, LJ; Andrews LJ)

- Two vessels hired under charter were returned late to the owners, who had entered into agreements for their sale as redelivery of the vessels approached. During the overrun periods, the charterers paid hire at the rates agreed in the charterparties. However, by this time, the rates which the market would have offered for the vessels were significantly higher than the charterparty rates.
- The owners argued they were entitled to the difference between those charterparty rates and the prevailing market rates for the days of late redelivery. The charterer contended that because the vessels would not – and under the memoranda of agreement could not – have been placed back on the market, no recoverable loss arose. The Tribunal determined in favour of the owners. An appeal was subsequently made under Section 69 AA 1996.
- **The Court of Appeal ruled in favour of the owners:**
 - Arrangements made by an owner for the further use of the vessel after redelivery (here they had intended on selling it) were independent of the circumstances giving rise to the breach and therefore ignored for damages purposes, this was the correct application of the principle of *res inter alios acta*.
 - Late redelivery meant that the owner had lost the opportunity to conclude a new fixture at the market rate.
 - The owner was entitled to damages for late redelivery in accordance with the normal measure, that is to say to recover the difference between the contract rate and the market rate for the period of the overrun, regardless of any arrangements which it made for the future use of the vessel.

F. Implied Terms

Pleon Limited v Leonis Yachting Limited (“The Maltese Falcon”) [2025] EWHC 3144 (Comm) (28/11/2025) (Robin Knowles J)

- Leonis purchased the yacht “The Maltese Falcon” on an “*as is*” basis after conducting a sea trial and survey (“Agreement for Sale”).
- Separately, the parties agreed to an “Agreement for Access” under which Pleon was allowed access to and use of the yacht for a period after sale, with Leonis warranting that the yacht would be “*in full working order and...be seaworthy*” (clause 3.3). However, during the post-sale access period the yacht became unseaworthy because of pre-existing maintenance issues. Pleon commenced arbitration against Leonis for loss resulting from that breakdown.
- The tribunal by majority (Sir Bernard Eder dissented) concluded that an implied term should be included to qualify Leonis’ obligations under clause 3.3 of the Agreement for Access in light of the practical impossibility of Leonis delivering the yacht under the Agreement for Access in a condition other than which it had been delivered to them under the Agreement for Sale.
- **The Court allowed Pleon’s appeal for reasons “*not identical with those of the majority or the minority of the Tribunal*”:**
 - The parties had agreed to express terms which left the risk of improper maintenance with Leonis.
 - Given that the contractual purpose of clause 3.3 was to allocate risk and by understanding it in this way, it was clear that there was no lack of business efficacy and no room for the implied term; the risk that the yacht was unseaworthy fell to Leonis as the buyer and not the seller.

Part 2: Arbitration Act 1996 cases

Panel Questions

1. Have the amendments to the Arbitration Act 1996 struck the correct balance?
2. Is the decision of the Court of Appeal in UniCredit consistent with the rationale for a final anti-suit injunction or does it undermine the same?
3. Are you detecting any changes in clients' attitudes towards choice of seat and governing law provisions for arbitration matters?

Part 3: Investment Treaty decisions

KEY CASES:

A. Rule 41 of the ICSID Arbitration Rules

- ***Dekanoidze and anor v Georgia* (ICSID Case No. ARB/23/45) (Decision on the Respondent's Objection under Arbitration Rule 41) (20/01/2025)**

B. Document production – privilege

- ***Ruby River Capital LLC v Canada* (ICSID Case No. ARB/23/5) (Procedural Order 9 – Decision on Request for Production of Documents Identified as privileged) (24/01/2025)**

C. Abuse of process – *res judicata*

- ***Frenkel v Croatia* (ICSID Case No. ARB/20/49) (Award) (29/01/2025)**

D. Annulment

- ***Pawlowski AG and anor v Czech Republic* (ICSID Case No. ARB/17/11 – Annulment Proceeding) (Decision on Annulment) (07/03/2025)**

E. Bifurcation

- ***Klesch Group Holdings Limited and ors v Denmark* (ICSID Case Nos. ARB/23/48 and ARB/23/49) (Decision on Bifurcation) (08/04/2025)**

F. Non-disputing party submission

- ***Glencore International AG v Colombia* (ICSID Case No. ARB/21/30) (Procedural Order 4) (23/04/2025)**

Part 3: Investment Treaty decisions

G. Security for costs

- *Lotus Proje Akaryakit Enerji Madencilik Telekomunikasyon Insaat Sanayi Taah Ve Tic AS v Turkmenistan* (ICSID Case No. ARB/24/13) (Procedural Order 3 – Decision on the Respondent’s Request for Security for Costs) (28/04/2025)

H. Interpretation of Trade Agreement between the EU and the UK

- *The European Union v The United Kingdom of Great Britain and Northern Ireland* (PCA Case No 2024-45) (Ruling) (28/04/2025)

I. State responsibility

- *Lupaka Gold Corp v Peru* (ICSID Case No. ARB/20/46) (Award) (30/06/2025)

J. Diplomatic premises / treaty interpretation

- *Spentech Engineering Limited v United Arab Emirates* ICSID Case No. ARB/24/16) (Award) (28/07/2025)

A. Rule 41 of the ICSID Arbitration Rules

Dekanoidze and anor v Georgia (ICSID Case No. ARB/23/45) (Decision on the Respondent's Objection under Arbitration Rule 41) (20/01/2025) (Judith Levine (president); Hamid Gharavi; Attila Tanzi)

- The dispute arose out of an alleged investment of Mr. Dekanoidze in TG Trade. In 2005, TG Trade acquired a majority stake in Tbilisi Electrical Car Repair Works. Mr. Dekanoidze alleged that TG Trade eventually had to relinquish this stake to the factory's original owner, following a State-assisted campaign of harassment. In 2014, TG Trade initiated court proceedings in Georgia. While it prevailed before a Tbilisi First Instance Court, this was reversed on appeal, an outcome upheld by Georgia's Supreme Court.
- The claimants alleged that this judgment amounted to breaches of the BIT's fair and equitable treatment and effective means standards, as well as an expropriation.
- Georgia raised three objections under Rule 41(3) of the ICSID Arbitration Rules:
 - Mr. Dekanoidze was still a Georgian national at the relevant time;
 - Mr. Dekanoidze did not own TG Trade either as a matter of fact or law; and
 - Since Mr. Dekanoidze did not qualify as an "*investor*", neither did TG Trade.
- **The Tribunal held that:**
 - The test under Rule 41(3) implies a high threshold, and expedited proceedings are ill-suited to resolve legal issues that were not sufficiently clear-cut, but rather were "*novel, difficult and complex*".
 - The arbitrators were, thus, satisfied that the objections raised by Georgia entailed complex legal issues that could not serve as a ground to find that the claims manifestly lacked legal merits.

B. Document production – privilege

Ruby River Capital LLC v Canada (ICSID Case No. ARB/23/5) (Procedural Order 9 – Decision on Request for Production of Documents Identified as privileged) (24/01/2025) (Carole Malinvaud (president); Barton Legum; Zachary Douglas KC)

- The claimant alleged that Canada had violated NAFTA, invoked through the USMCA’s legacy investment clause, due to the treatment given to Ruby River Capital’s investment in a natural gas liquefaction complex that would have been built in the port of Saguenay, Québec. The claimant specifically challenged a 2021 decision by Québec’s authorities to deny environmental permits for the project.
- The claimant contended that the measures adopted by Canada effectively halted the LNG plan project and lead to a *de facto* cancellation of an associated project for a pipeline.
- Canada invoked “political sensitivity” under article 9.2(f) of the IBA Rules in respect to 324 documents requested by the claimant.
- **The Tribunal considered that:**
 - The political sensitivity of documents must be weighed against the claimant’s interest in obtaining the production of the requested documents.
 - In particular, the Tribunal noted that the respondent’s concerns could have an effect of “*stymying the full and frank discussion essential to effective collective decision-making at the level of government cabinets*”. At the same time, it accepted the legitimacy and compelling nature of the concern articulated by the claimant that it should be able to access documents that shed light of the relevant government decisions (and thus relevant to its arguments as to arbitrariness/discrimination).
 - The Tribunal concluded that the claimant’s requests no. 4, 5, 8 to 10, 12 and 28 were at the core of the claimant’s case.

C. Abuse of process – *res judicata*

Frenkel v Croatia (ICSID Case No. ARB/20/49) (Award) (29/01/2025) (Monica Pinto (president); Stanimir Alexandrov; Zachary Douglas KC)

- The underlying dispute relates to a project for the development of a golf resort with luxury apartments and a hotel on Mount Srđ in the Croatian city of Dubrovnik: the Razvoj Golf Course Project.
- The claimant alleged that Croatia had breached its BIT with Israel through a series of measures that affected the project, including the revocation of the project’s environmental permit by a local administrative court and the cancellation of the Concession Agreement.
- The Project had previously been the subject of another ICSID claim launched in 2017 by the claimant’s Dutch investment vehicle, Elitech, and its Croatian subsidiary, Razvoj Golf, under the country’s BIT with the Netherlands
- **By majority (Stanimir Alexandrov dissenting) the Tribunal held the claims were inadmissible:**
 - Most claims raised by the claimant were precluded under the *res judicata* doctrine, considering there was a “*privity of interest*” between the parties in the two sets of arbitrations, the legal and factual grounds for the claims were almost identical, and the reliefs sought were similar.
 - The majority decided that the *res judicata* doctrine also applied to two umbrella clause claims that the *Elitech* tribunal had purported to dismiss on jurisdictional grounds, opining that this assessment was wrong, and the grounds in reality pertained to the merits.
 - In any event, the majority added that the claims would also have been dismissed for amounting to an abuse of process.

D. Annulment

Pawłowski AG and anor v Czech Republic (ICSID Case No. ARB/17/11 – Annulment Proceeding) (Decision on Annulment) (07/03/2025) (Jacomijn van Haersolte-van Hof (president); Yoshimi Ohara; David Pawlak)

- In 2017, the claimants filed an ICSID claim against the Czech Republic, asserting that the state had breached the BIT by modifying a zoning plan that applied to land that the claimants had purchased for the purpose of developing a residential real estate project in the borough of Benice in Prague, Czech Republic.
- In November 2021, the Tribunal found a breach of the FET standard but declined to award any damages as the claimants had neither substantiated the damages linked to the breach nor proved causation.
- In 2022, the claimants filed for partial annulment of the award under Article 52(1) of the ICSID Convention on the basis of two grounds:
 - a serious departure from a fundamental rule of procedure (Article 52(1)(d));
 - a failure to state reasons (Article 52(1)(e)).
- **The Annulment Committee held:**
 - Annulment is an exceptional remedy and is not equivalent to an appeal. Only “*fundamental*” contradictions could justify the annulment of an award.
 - The right to be heard did not require the tribunal to justify why certain arguments or evidence presented by the claimants were not considered.
 - A failure to assess events cumulatively did not amount to a failure to address a specific question, nor did it breach the right to be heard.

E. Bifurcation

Klesch Group Holdings Limited and ors v Denmark (ICSID Case Nos. ARB/23/48 and ARB/23/49) (Decision on Bifurcation) (08/04/2025) (Cavinder Bull SC (president); O Thomas Johnson; Jorge Vinuales)

- The claimants had simultaneously lodged a trio of arbitration proceedings against Denmark, Germany, and the EU, invoking the protection of the ECT. The claimants alleged that the Respondents breached the ECT by adopting a windfall profits levy in EU Council Regulation 2022/1854 and later implementing it in Denmark and Germany, where Klesch had invested in refinery ventures.
- The respondents filed a single request for bifurcation raising the following four objections:
 - A: the “intra-EU” objection;
 - B: under EU Law, only the EU should be named a respondent;
 - C: the claims under Article 10 of the ECT fall under the ECT’s tax carve-out;
 - D: the claims falling under Article 10 must fail due to the ECT’s essential security interests provision.
- **By majority (Jorge Vinuales dissenting), the Tribunal dismissed the bifurcation application:**
 - A: the majority declined to bifurcate, stressing that this is the first time the intra-EU objection had been raised against the EU itself.
 - B: the majority considered that all three arbitrations needed to be considered together, and there was no evidence that either the scope of the tribunal’s inquiry or the burden on the parties would be significantly reduced through bifurcation.
 - C and D: the majority noted that, even if upheld, these objections would leave the expropriation claim to be resolved.

F. Non-disputing party submission

Glencore International AG v Colombia (ICSID Case No. ARB/21/30) (Procedural Order 4) (23/04/2025) (Sabina Sacco (president); Bernard Hanotiau; Donald McRae)

- The Claimant lodged its case in relation to the suspension of a mining project. The judicially-ordered suspension was a response to fears that the diversion of the nearby Bruno Creek would impact the water supply of local communities.
- In Procedural Order 3, the Tribunal determined a request by two groups and a lawyers' association that represented these communities in local proceedings to file non-disputing party ("NDP") submissions. In the Tribunal's view, the petitioners could bring a unique perspective to the proceedings, given the communities' relation with the Bruno Creek and their role as plaintiffs in local proceedings. Hence, the communities were allowed to file NDP submissions limited to the factual issues.
- **In Procedural Order 4, the Tribunal ruled that:**
 - In order for the NDP submission to provide some assistance to the tribunal, the NDPs must be allowed to draw legal conclusions related to the issues in dispute as opposed to just summarising the previous judgment which would have been superfluous.
 - However, the communities' NDP submission had, to some extent, strayed beyond the scope of Procedural Order 3, and touched on legal issues on which the NDPs had not been invited to comment. Accordingly, comments made by the NDPs on those issues were struck out.

G. Security for costs

Lotus Proje Akaryakit Enerji Madencilik Telekomunikasyon Insaat Sanayi Taah Ve Tic AS v Turkmenistan (ICSID Case No. ARB/24/13) (Procedural Order 3 – Decision on the Respondent’s Request for Security for Costs) (28/04/2025) (Meg Kinnear (president); Lucy Greenwood; John Townsend)

- This case, brought under the ECT, followed earlier proceedings in which the claimant’s parent’s claims, arising from various contracts in the energy and construction sectors, had been found to manifestly lack legal merit.
- **In Procedural Order 3, the Tribunal held that:**
 - Turkmenistan’s request for security for costs fell to be reviewed under Article 53 of the 2022 ICSID Arbitration Rules and past jurisprudence on security for costs should be treated with caution given the new standalone test in the 2022 Rules.
 - Neither the bankrupt claimant nor its third-party funder had identified sufficient resources to comply with a potential adverse costs award in favour of Turkmenistan.
 - The Tribunal considered that the balance of harm arising from a security for costs favoured Turkmenistan and ordered the claimant to post a security of its choice, in the amount of USD 2 million.
 - Finally, the claimant did not indicate what form of security it could provide. Accordingly, the Tribunal left the claimant with a choice between posting a guarantee, depositing funds in escrow, or securing after-the-event insurance.

H. Interpretation of Trade Agreement between the EU and the UK

The European Union v The United Kingdom of Great Britain and Northern Ireland (PCA Case No 2024-45) (Ruling) (28/04/2025) (Penelope Jane Ridings (Chairperson); H  l  ne Ruiz Fabri; David Unterhalter)

- The case was lodged by the EU in October 2024 under the 2021 Trade and Cooperation Agreement (“TCA”) signed by the parties and Euratom, following the UK’s withdrawal from the EU. The EU contested the UK’s decision to impose a ban on the fishing of sand eels in some parts of the North Sea and Scottish waters. This was the first ruling under the TCA’s dispute settlement system.
- **The Tribunal found that:**
 - The UK’s prohibition did not breach its obligation to regulate fishing in light of the “*best available scientific advice*”, and that it complied with the non-discrimination principle.
 - However, while the Tribunal was ready to accept that the ban in the Scottish waters had given sufficient heed to the principle of proportionality, the arbitrators also found that this was not the case with respect to the English waters.
 - According to the Tribunal, the UK had failed to give consideration to the rights and interests of the EU when opting for the ban in the English waters, with the result that the TCA’s principle of applying a proportionate measure had been violated.

I. State responsibility

Lupaka Gold Corp v Peru (ICSID Case No. ARB/20/46) (Award) (30/06/2025) (John Crook (president); Oscar Garibaldi; Gavan Griffith KC)

- The claimant initiated these proceedings in 2020, claiming that Peru had failed to comply with its international obligations in relation to the blockade and occupation by a rural community of a gold mining site in which it had invested, ultimately causing the collapse of its venture.
- In 2018, the rural community temporarily occupied the mine and subsequently initiated a permanent blockade of the site's access road, which remained in place for the entire duration of the claimant's investment. Despite the conclusion of an agreement, the tensions rapidly resumed and the rural communities took control of the mine, removed the claimant's personnel by force and started to independently exploit the gold reserve.
- **The Tribunal held that:**
 - The conduct of the rural community could be attributed to the state based on Articles 4 and 5 of the ILC's Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA") – the conduct of the rural community could be regarded as an organ of the State under Peruvian law or, in the alternative, as an entity exercising governmental authority. The group had been actively supported (and armed) by the State over a concerted period of time.
 - Peru had failed to take any effective measures to protect the project in violation of the full protection and security ("FPS") protection.
 - Accordingly, Peru's conduct (including its inaction) amounted to, *inter alia*, an indirect expropriation of the claimant's investment.

J. Diplomatic premises / treaty interpretation

Spentech Engineering Limited v United Arab Emirates (ICSID Case No. ARB/24/16 (Award) (28/07/2025) (Loretta Malintoppi (president); Christopher Greenwood; Christopher Adebayo Ojo)

- The claimant lodged this arbitration on 26 April 2024, alleging breaches of the Kenya-UAE BIT in relation to a construction project. The contracts involved the undertaking of construction work for the UAE's Embassy in Mogadishu, Somalia. The claimant alleged that the staff of the UAE Embassy in Somalia invaded the claimant's working premises and took various items of property. The UAE asserted that the claimant's claims were manifestly without legal merit under Rule 41 of the ICSID Arbitration Rules.
- **The Tribunal summarily dismissed the claims on the basis of lack of qualifying “investment” in the UAE's territory:**
 - Article 1(1)(a) of the BIT defined the term investment by reference to assets in the territory of a contracting party. For the Tribunal, the territorial requirement in the BIT referred to the “*geographic*” definition of territory.
 - The Tribunal adopted the reasoning of the tribunal in *SGS v Philippines* that “*the construction of an embassy in a third state, or the provision of security services to such an embassy, would not involve investments in the territory of the State whose embassy it was*”.
 - The Tribunal considered the central focus of the work was in Somalia and concluded that it was a common ground that UAE embassy premises in Somalia were not Emirati territory.

Part 3: Investment Treaty decisions

Panel Questions

1. Is the ISCID Annulment process fit for purpose? If not, how can it be modified to ensure that it addresses serious irregularity in the arbitral process?
2. Is Rule 41 of the ICSID Rules an empty gesture?
3. Should third party funders be required to provide security for costs as a default position in Investment Treaty claims?

Part 4: PIL before the English Courts

KEY CASES

A. State Immunity Act

- *Spain v Lorenzo* [2025] EWCA Civ 59 (29 January 2025) Bean LJ; Baker LJ; Andrews LJ (Supplementary Judgment).
- *Hulley Enterprises Limited and ors v The Russian Federation* [2025] EWCA Civ 108 (12 February 2025)
- *General Dynamics United Kingdom Limited v Libya* [2025] EWCA Civ 134 (19 February 2025)
- *Royal Embassy of Saudi Arabia v Costantine* [2025] UKSC 9 (6 March 2025)

B. Treaty Interpretation

- *CC/Devas (Mauritius) Ltd and ors v India* [2025] EWHC 964 (Comm) (17 April 2025)
- *Republic of Korea v Elliott Associates LP* [2025] EWCA Civ 905 (17 July 2025)

A. State Immunity Act – Section 4(2)

Spain v Lorenzo [2025] EWCA Civ 59 (29/01/2025) (Bean LJ; Baker LJ; Andrews LJ) (Supplementary Judgment)

- This decision supplemented a former decision of the Court of Appeal ([2024 EWCA Civ 1602]) in which the court invited further submissions on whether a declaration should be made that Section 4(2)(a) SIA 1978 was incompatible with the ECHR.
- In its earlier judgment, the Court of Appeal dismissed Spain's appeal - rejecting its claim to immunity from a former employee's allegations of discrimination and constructive dismissal at its UK embassy. Holding that embassy roles not involving sovereign authority are not immune under SIA 1978 and that the former employee was not involved in the exercise of sovereign authority. The Court of Appeal also affirmed her right to legal recourse despite her Spanish nationality. The Court of Appeal also provided views on when a role at an Embassy will be considered an exercise of sovereign authority and rejected the notion that her dual citizenship (Spain/UK) inherently made her role sovereign in nature.
- **The Court of Appeal declared that section 4(2)(a) was incompatible with Article 6:**
 - In its supplementary judgment, the Court of Appeal accepted that following its earlier judgment, section 4(2)(a) was incompatible with Article 6. However, it accepted the argument of the Secretary of State, that the conclusions reached in the earlier judgment did not support a declaration of incompatibility in respect of A1P1 (Article 1 First Protocol ECHR).
 - The Court of Appeal also endorsed the observations of Baroness Hale in *R(Wright) v Secretary of State for Health* [2009] UKHL 3, that the court when making a declaration of incompatibility, should not advise as to what needs to be done to bring legislation into line with the requirements of the ECHR.

A. State Immunity Act – Issue Estoppel

Hulley Enterprises Limited and ors v The Russian Federation [2025] EWCA Civ 108 (12/01/2025) (Lewison LJ; Males LJ; Zacaroli LJ)

- In 2014, Hulley obtained arbitral awards against Russia for breaches under the Energy Charter Treaty, amounting to over \$50 billion. Following numerous actions across different courts, the Hague Court of Appeal and the Dutch Supreme Court upheld the awards and dismissed Russia’s argument that it never consented to the arbitrations.
- The Court of Appeal was required to consider whether an English court can treat a foreign court’s decision as giving rise to issue estoppel or if it must determine the issue independently.
- Russia argued that issue estoppel should not apply in determining state immunity and contended that the English Court must decide the issue afresh (*de novo*). Additionally, Russia asserted that even if issue estoppel applies generally, special circumstances should preclude its application here; given ongoing fraud challenges abroad and potential references to the CJEU - resulting in a lack of *res judicata*.
- Hulley argued that the exceptions to state immunity under the SIA 1978 can be determined using ordinary English legal principles, including issue estoppel. They contended that the Dutch Court's prior determination that Russia agreed to arbitrate should preclude Russia from re-arguing the point.
- **The Court of Appeal held that Russia was precluded from re-arguing the arbitration agreement issue due to issue estoppel arising from the Dutch Court's decision:**
 - The Court reasoned that the principle of issue estoppel deals with the finality of litigation and prevents parties from re-litigating issues already decided by a court of competent jurisdiction. The Court found that issue estoppel applies even in determinations of state immunity under the SIA 1978, provided the foreign judgment meets the conditions for recognition under section 31 of the Civil Jurisdiction and Judgments Act 1982. Therefore, the exception in Section 9 SIA 1978 was engaged.
- On 27 June 2025, the UK Supreme Court (Lord Lloyd-Jones; Lord Stephens; Lord Richards) refused permission to appeal on the basis that the application does not raise an arguable point of law.

A. State Immunity Act – Section 13(3)

General Dynamics United Kingdom Limited v Libya [2025] EWCA Civ 134 (19/02/2025) (Lewison LJ; Phillips LJ; Zacaroli LJ)

- A contract between GDUK and Libya (governed by Swiss law) contained an arbitration agreement providing for disputes to be governed pursuant to ICC arbitration and stated “*the decision of the arbitration panel shall be final, binding and wholly enforceable*” (clause 32).
- Following a dispute, an ICC arbitral tribunal issued an award of £16 million against Libya in 2016 - this was recognised in the UK under Section 101 AA 1996.
- GDUK obtained an order in 2018 to enforce the award as a judgment in England. A final charging order was made in favour of GDUK over property owned by Libya. Libya's application to discharge an interim charging order made on a without notice basis had been dismissed. Libya appealed the decision, challenging the interpretation of the contract's arbitration clause and the application of Section 13(3) SIA 1978. Libya argued that “clear words” were required for a state to waive immunity against execution, and that “wholly enforceable” alone was insufficient.
- **The Court of Appeal dismissed Libya's appeal, holding that clause 32 amounted to Libya's written consent under Section 13(3) SIA 1978 to the enforcement of the arbitration award against its property:**
 - There is no requirement in the SIA for the State to have provided its consent with “*clear words*” or to even use the word consent.
 - Section 13(3) requires determining whether the state gave written consent from construing the words used according to the applicable law. Applying Swiss law principles, the Court found Libya's agreement that the award was “*wholly enforceable*” expressed consent to enforcement, including execution against its property.
- On 25 March 2025, the UK Supreme Court (Lord Lloyd-Jones; Lord Sales; Lord Stephens) refused permission to appeal on the basis that the application does not raise a point of law which is arguable or of general public importance.

A. State Immunity Act – Section 1(2)

Royal Embassy of Saudi Arabia v Costantine [2025] UKSC 9 (06/032025) (Lord Lloyd-Jones; Lord Briggs; Lord Hamblen; Lord Leggatt; Lord Burnett)

- The Respondent, a Lebanese and British national who was employed in administrative roles, brought claims against the Royal Embassy of Saudi Arabia (Cultural Bureau) (“Embassy”) for religious discrimination and harassment.
- The Embassy claimed State Immunity under SIA 1978. The Employment Tribunal rejected the Embassy’s immunity claim, finding the Respondent’s roles were purely administrative and not exercises of sovereign authority.
- The Embassy’s case was dismissed by the Court of Appeal without determining the merits following its failure to attend the hearing. Appeal was made to the Supreme Court.
- **The Supreme Court unanimously dismissed the Embassy’s appeal:**
 - The Supreme Court agreed with the Embassy that pursuant to section 1(2) SIA 1978, the Court of Appeal was under a duty to consider whether state immunity applied notwithstanding the failure of the Embassy to attend its own appeal. This was deemed an error of law. However, the Supreme Court determined that had the issue been addressed by the Court of Appeal, they would have concluded that the Embassy was not entitled to immunity.
 - The Supreme Court, applying *Benkharbouche* [2017] UKSC 62, determined that the employment involved no exercise of sovereign authority entitling the state to immunity. When determining the distinction between sovereign and non-sovereign acts, they opined “*This will require an examination of the nature of the relationship between the parties to the contract of employment and the functions which the employee is employed to perform... The outcome will depend on the proximity of each employee’s role to the governmental functions of the mission.*”[70].

B. Treaty Interpretation – State Immunity and the New York Convention

CC/Devas (Mauritius) Ltd and ors v India [2025] EWHC 964 (Comm) (17/04/2025) (Sir William Blair)

- The case concerns the enforcement of arbitration awards in favour of the claimants against India under a BIT. India terminated a contract between Indian companies relating to a satellite communications project, leading to arbitration proceedings by investors under the BIT. The arbitral tribunal issued awards in favour of the claimants, which were sought to be enforced in England.
- India claimed state immunity from the jurisdiction of English Courts in relation to the enforcement proceedings. The key issue was whether India's ratification of the NYC constituted consent to the jurisdiction of the English Courts under Section 2(2) SIA 1978.
- The Claimants argued that Article III of the NYC contains express consent from India to English Courts recognising and enforcing arbitral awards under the NYC, thereby constituting a “prior written agreement” under Section 2(2) SIA.
- India contended that ratification of the NYC alone does not constitute an express, unequivocal waiver of state immunity, and that Article III preserves immunity by referring to the “rules of procedure” of the enforcing state.
- **The Court determined that ratification alone of the New York Convention 1958 did not constitute “prior written agreement” by India to submit to the jurisdiction of the English Courts for enforcement of the arbitration awards against it:**
 - The Court reasoned that: (i) the drafting history and commentary on the NYC indicated no intention to preclude immunity-based arguments against enforcement by states; (ii) the reference to “rules of procedure” in Article III preserved state immunity under established principles of English and international law; and (iii) a waiver of state immunity must be “*expressed in a clear and recognisable manner, as by an unequivocal agreement*” and ratification alone was insufficient to constitute a waiver of state immunity.

B. Treaty Interpretation – Offer to Arbitrate

Republic of Korea v Elliott Associates LP [2025] EWCA Civ 905 (17/07/2025) (Bean LJ; Phillips LJ; Falk LJ)

- On 23 June 2023, Elliot obtained an arbitral award against Korea determining that the Korean authorities improperly influenced the National Pension Service’s vote on a merger involving a company in which Elliott had invested, in a manner contrary to Elliot’s wishes and interests.
- The Tribunal determined that, Korea’s acts were “measures” for the purposes of Article 11.1(1) (Scope and Coverage) (which began “This Chapter applies to measures...”). Korea challenged the award for lack of jurisdiction under Section 67 AA 1996 arguing that Article 11.1(1) provided jurisdictional requirements or preconditions which must be satisfied in order for there to be an offer to arbitrate.
- The Commercial Court dismissed Korea’s challenge, finding that the FTA contained a freestanding offer to arbitrate under Article 11.16 that was not conditional on Article 11.1(1) being satisfied. The court further asserted that the question of whether an English court could overturn a tribunal’s interpretation of a treaty engaged issues of national policy.
- **The Court of Appeal upheld Korea’s Section 67 challenge and reversed the decision of the Commercial Court:**
 - The Court adopted the “*straightforward approach to interpretation*” as set out in Articles 31 and 32 VCLT.
 - The “*required focus [was] on the “ordinary meaning” of the words used, interpreted in their context and in light of the object and purpose of the treaty*”.
 - On that basis, it was held that the meaning of the words “*This Chapter*” in Article 11.1(1) meant that it was clear that the “Scope and Coverage” provision in Article 11.1(1) applied to the whole of Chapter 11, including the offer to arbitrate in Article 11.16.
 - The Court of Appeal also dismissed the notion that, when considering whether a treaty imposes conditions on a state’s offer to arbitrate, the Court is required to consider issues of national policy.

Part 4: PIL before the English Courts

Panel Questions

1. Is the decision of the Court of Appeal in the *Hulley Enterprises* case glossing over the potential for different Courts to operate at differing qualitative levels, in terms of the integrity and/or robustness of their decision making?
2. Are some commentators justified in contending that the “fact sensitive” enquiry identified by the Supreme Court in the *Saudi Embassy* case is yet a further illustration of the Court’s limiting the scope for States to invoke Immunity?
3. Are you observing any trends in terms of greater interest on the part of judgment creditors to pursue sovereign assets for enforcement purposes in the light of recent Court decisions?



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