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KEY DEVELOPMENTS UPDATE JUNE 2026

MESSAGE FROM KHAWAR QURESHI KC, HEAD OF MCNAIR INTERNATIONAL

In this edition of our update, the highlights include a decision from an ICSID Tribunal dismissing a claim against the United Mexican States, an ITLOS Special Chambers judgment, an ICJ Advisory Opinion on the right to strike under the ILO Convention and a number of English court decisions concerning the Arbitration Act 1996 and agreements to arbitrate.

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- **ICSID Tribunal dismisses the claims of a Canadian and a US company against United Mexican States on jurisdiction and merits grounds.** In *Espíritu Santo Holdings, LP and L1bre Holding, LLC v. United Mexican States (ICSID Case No. ARB/20/13),* the Tribunal dismissed all of the Claimants' claims, worth over USD 2 billion, on jurisdiction and merits grounds.

- **ITLOS Special Chamber delivers a judgment in the dispute between Marshall Islands and Equatorial Guinea.** *The M/T "Heroic Idun" (No. 2) Case (Marshall Islands/Equatorial Guinea)* is of particular relevance to the broader field of international dispute settlement.

- **ICJ Advisory Opinion on the right to strike under the ILO Convention.** The Advisory Opinion contains important considerations on the application of the rules of interpretation under Articles 31 and 32 of the Vienna Convention on the Law of Treaties ("VCLT").

- **Court of Appeal rules it has no jurisdiction to grant permission to appeal in section 68 of the Arbitration Act 1996 challenge.** In *K1 v B (No 2) [2026] EWCA Civ 26*, the issue arose on appeal as to whether the Court of Appeal had jurisdiction to grant permission to appeal, having regard to section 68(4) of the Arbitration Act 1996 ("AA 1996").

- **English High Court finds that assignees of an agreement to arbitrate will be bound.** In *Maxamcorp International SL v Eurotel LLC [2026] EWHC 666 (Comm),* the Commercial Court held that Maxam was entitled for the injunctive relief previously ordered to continue, further injunctive relief, as well as an associated order for alternative service.

- **English High Court finds challenge under section 69 of the Arbitration Act 1996 successful.** In *Trans Trade RK SA v Sebat Shipping and Trading Company [2026] EWHC 950*, the Commercial Court upheld Trans Trade's appeal under section 69 AA 1996 challenging a Tribunal Award rendered in Sebat Shipping's favour.

ICSID TRIBUNAL DISMISSES THE CLAIMS OF A CANADIAN AND A US COMPANY AGAINST UNITED MEXICAN STATES ON JURISDICTION AND MERITS GROUNDS.

Espíritu Santo Holdings, LP and L1bre Holding, LLC v. United Mexican States (ICSID Case No. ARB/20/13)

Introduction

In its final award dated 26 March 2026, the ICSID tribunal composed of Eduardo Jaramillo (president), Charles Poncet (claimant's arbitrator) and Raul Vinuesa (respondent's arbitrator) (together the "Tribunal"), dismissed the Claimants' claims, brought under NAFTA and worth over USD 2 billion, on jurisdiction and merits grounds.

Background

The Claimants' Mexican subsidiary was granted a concession in 2016 by the Secretary of Mobility of Mexico City concerning the installation of proprietary digital taximeters and the development of a mobile application allowing users to remotely request a taxi (the "L1bre System"). They alleged that after fulfilling their obligations and investing substantial capital, the concession was suspended following a political change of the mayoral administration in Mexico City in 2018.

The Respondent alleged that there was no binding concession, only a draft concession subject to further conditions. The concession was subsequently issued on 13 April 2018, but according to the Respondent was abandoned by the Claimants who were unable to produce a compliant system.

The Parties disagreed over the key documents such as the versions of the concession agreements and there were accusations of fabricated documents. The Claimants alleged a breach of Articles 1102, 1105 and 1110 of NAFTA.

Decision

The Tribunal determined that despite "*serious irregularities*" demonstrated by both the State and investor, the Claimants had entered into the concession in 2016 which was re-issued in 2018 with amendments. The Tribunal also determined that there was no suspension of the concession in 2018 and that in any event, the Claimants were not ready to install the L1bre System pursuant to the terms of the concession.

The Tribunal determined that there was no evidence that the Respondent "*destroyed*" the Claimants' investment or "*deprived*" them of the possibility of receiving revenues or monetising their rights under the concession. Instead, it was determined that the L1bre System was not ready to be implemented and was not functional in 2018. The failure of the L1bre System was therefore due to the Claimants' own actions.

Furthermore, the existence and implementation of Mi Taxi (an application for taxis issued by a government body in 2019) was also not considered to breach the expropriation and minimum standard of treatment obligations because there was no evidence that the Respondent developed Mi Taxi by "*taking*" or "*arbitrarily abusing*" any of Claimants' developments.

The evidence showed that: Mi Taxi's source code was different from the L1bre System; there were fundamental differences between the two apps; Mi Taxi was part of a larger project which had other functionalities; and Mi Taxi's implementation was not mandatory, whereas the L1bre System's was because it was intended to replace traditional taximeters whereas Mi Taxi was to co-exist alongside such devices.

In any event, the Claimants were never granted exclusive rights that would preclude the State from developing and releasing an app like Mi Taxi. The Tribunal noted that "*there are no grounds to conclude that there is a general assumption that the State cannot provide a similar or complementary service*".

Additionally, Mi Taxi could not be considered a suitable comparator for the purposes of the national standard treatment. Even if it was, there was no evidence of misconduct or less favourable treatment from the Respondent. In fact, the L1bre System was afforded more favourable treatment under the concession and was given as an order to the taxis rather than a choice.

Concluding observations

The award highlights the importance of (and difficulty in) identifying truly comparable domestic investors in like circumstances for the purpose of a national treatment claim (Article 1102 NAFTA).

The decision is available here.

ITLOS SPECIAL CHAMBER DELIVERS A JUDGMENT IN THE DISPUTE BETWEEN MARSHALL ISLANDS AND EQUATORIAL GUINEA

The M/T "Heroic Idun" (No. 2) Case (Marshall Islands/Equatorial Guinea

Introduction

The dispute concerns the boarding and detention of a vessel flying the flag of the Marshall Islands (the M/T Heroic Idun) by the authorities of Equatorial Guinea. The vessel was boarded in the Exclusive Economic Zone (the "EEZ") of São Tomé and Príncipe, following accusations of illegal activity when it was moored off the coast of Nigeria.

Background

The M/T Heroic Idun is a 336-meter Very Large Crude Carrier. On 7 August 2022, the vessel sailed towards the coasts of Nigeria to load crude oil. As the required authorisations were not in place, the vessel stationed around 10 nautical miles from the Akpo Offshore Terminal. The following day, the vessel was approached by a Nigerian ship, which had its Automatic Identification System ("AIS") turned off. The Master of the M/T Heroic Idun decided not to follow the Nigerian ship and to move into the EEZ of São Tomé and Príncipe out of concerns that it could be a pirate vessel.

The Nigerian authorities requested the intervention of Equatoguinean authorities to intercept the M/T Heroic Idun, which was suspected of being involved in illegal fuel supply operations and had raised a false piracy alarm. The vessel was intercepted on 12 August 2022, and it was ordered to follow an Equatoguinean naval vessel. The M/T Heroic Idun and its crew were detained for 92 days in Equatorial Guinea.

During this period, the Ministry of National Defence of Equatorial Guinea issued a fine of approximately USD 2 million against the Master of the M/T Heroic Idun for having illegally entered the water of Equatorial Guinea. The fine was promptly paid by the owner of the vessel. Nevertheless, the vessel and its crew were forcibly transferred to Nigeria, where they were detained until 27 May 2023, being the day of the conclusion of a plea bargain agreement.

In 2022, the Marshall Islands initiated the ITLOS proceedings to ascertain that Equatorial Guinea breached UNCLOS and seeking damages. In 2023, the parties agreed to transfer the case to a Special Chamber of ITLOS.

Decision

The judges of the Special Chamber had to examine three preliminary matters and held that: (i) a dispute existed between the parties regarding the interpretation and application of UNCLOS, as required by Article 283 of UNCLOS. However, the jurisdiction of the Special Chamber could not extend to claims based on external treaties and rules of international law, which may be considered only when interpreting UNCLOS; (ii) The Marshall Islands' claims were admissible and not barred by the so-called Monetary Gold principle. The subject matter of the claims only concerned the actions of Equatorial Guinea. Hence, its conduct could be assessed independently of that of Nigeria; and (iii) the exhaustion of the local remedies rule "*applies in cases of diplomatic protection where a State espouses the claims of its nationals*". The rule does not apply when a State claims direct injury.

On the merits, the Special Chamber ruled that Equatorial Guinea breached its obligations to guarantee freedom of navigation in international waters and to respect the flag State's exclusive jurisdiction. The Marshall Islands further claims were rejected. The above breaches resulted in the commission of a continuing wrongful act that, according to the majority, extended over 92 days. In particular, the Special Chamber held that "*the treatment of the crew, by Equatoguinean authorities, during their detention, including their forced transfer to a third State [Nigeria], was in violation of the rights of the Marshall Islands under*" UNCLOS.

The Special Chamber ordered Equatorial Guinea to pay around USD 14.4 million to the Marshall Islands in compensation for both material and non-material damage deriving from the Respondent's breaches of UNCLOS.

Concluding observations

The judgement importantly reinforces the importance of freedom of navigation and exclusive flag state jurisdiction.

The judgement is available here.

ICJ ADVISORY OPINION ON THE RIGHT TO STRIKE UNDER THE ILO CONVENTION

Right to Strike under ILO Convention No. 87

Introduction

On 21 May 2026, the ICJ issued its Advisory Opinion on the right to strike of workers and their organisations under the 1948 Freedom of Association and Protection of the Right to Organise Convention ("ILO Convention No. 87" or "Treaty"). The request originated from a disagreement within International Labour Organisation's ("ILO") constituent bodies concerning the interpretation of the Treaty.

Background

In November 2023, the ILO referred the matter to the ICJ, requesting it to settle a long-standing debate over the interpretation of the ILO Convention No. 87. Namely, whether the Treaty protects the right to strike despite containing no express reference to it.

The ICJ was requested to provide an urgent Advisory Opinion on the following question: "*Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?*"

Decision

Unanimously, the ICJ found no grounds to refuse rendering the opinion. The Court noted that, in 1946, the ILO had been duly authorised by the General Assembly to request Advisory Opinions from the ICJ "*on legal questions arising within the scope of its activities other than questions concerning the mutual relationships of the Organization and the United Nations or other specialized agencies.*" The Court found that the ILO's request met the ICJ Statute's requirements.

On the merits of the request, the Court addressed the question submitted to it by referring to Articles 31 and 32 of the Vienna Convention on the Law of Treaties ("VCLT"). At the outset, the ICJ noted that, while the VCLT had been adopted after the entry into force of the ILO Convention No. 87, those articles reflected customary international law rules applicable also to pre-existing treaties.

On Article 31(1)(a) of the VCLT, the judges acknowledged that the Treaty "*does not contain an explicit reference to the right to strike*". However, the Court considered that the absence of such a provision "*does not necessarily mean that the issue is excluded"* from the treaty. In the view of the Court, "*strike action is capable of falling within the ordinary meaning of the term 'activities' and, thus, within the scope of Convention No. 87*". Furthermore, the ICJ found that the object and purpose of the Treaty (namely, guarantee freedom of association as a means of improving labour conditions and achieving sustained progress) supported the inclusion of the right to strike under its scope.

Moving to Article 31(1)(b) of the VCLT, the ICJ considered the position elaborated by the ILO supervisory bodies and concluded that they did not constitute subsequent agreement and/or practice under the meaning of the VCLT.

Turning to Article 31(3)(c) of the VCLT, the judges held that "*relevant rules applicable in the relations between the parties*" need not be binding on all parties to the treaty being interpreted. On this basis, the Court relied on certain provisions of the ICESCR and the ICCPR, which protect the right to strike, and concluded that its protection is encompassed in the protection of the freedom of association provided in the ILO Convention No. 87.

The judges also analysed the *travaux préparatoires* of the Treaty, the pronouncements of the ILO's supervisory bodies, and the decisions of regional human rights courts and concluded that the protection of the right to strike was encompassed in the protection of the freedom of association.

The Court decided, by ten votes to four, that the interpretative process under Articles 31 and 32 of the VCLT led to the conclusion that the right to strike was protected under the ILO Convention No. 87.

Concluding observations

The landmark advisory opinion settles a long-running dispute between workers and employers worldwide.

The decision is available here.

COURT OF APPEAL RULES IT HAS NO JURISDICTION TO GRANT PERMISSION TO APPEAL IN SECTION 68 OF THE ARBITRATION ACT 1996 CHALLENGE

K1 v B (No 2) [2026] EWCA Civ 261

Introduction

K1 sought permission to appeal against a decision by Mr Justice Knowles which refused K1's application to amend its challenge to an arbitration award made in favour of B. The issue arose on appeal as to whether the Court of Appeal had jurisdiction to grant permission to appeal, having regard to section 68(4) AA 1996, which states: "*The leave of the court is required for any appeal from a decision of the court under this section*".

Background

B was engaged by a law firm who was acting on behalf of K1 in a legal dispute, to provide "*business intelligence services*" to the firm. The "*intelligence services*" consisted of B making deliberately misleading inquiries in order to obtain desired information from people. That information was then passed onto K1 and companies associated with it, who were all able to successfully deploy the information in various arbitrations and receive favourable awards.

B commenced arbitration against K1 and others alleging that they were obliged to pay B 2% of the amounts received in settlement of the arbitrations – having supplied 'useful' information to parties. The Tribunal issued an award in favour of B. K1 subsequently brought a section 67 challenge. While that challenge was ongoing, K1 sought to amend its case to include a section 68 challenge, arguing that the award had been obtained in a manner contrary to public policy because the underlying contract involved fraudulent or illegal conduct. The amendment was made out of time and was refused on the basis that it did not fall under section 68(2)(g).

K1 argued that section 68(4) should not prevent it from seeking permission to appeal from the Court of Appeal because: (i) the wording in the consent order (approved by the judge) effectively allowed it to seek permission from the Court of Appeal; and (ii) the High Court's decision was not truly under section 68 because it concerned whether section 68 applied at all (i.e. a jurisdictional issue).

Decision

With regard to (i): the Court held that the limitation on the Court of Appeal's power arose from statute and a consent order could not override that statutory limitation.

As to point (ii): the Court reasoned that the consequence of this argument would be to undermine the finality which section 68(4) was intended to bring. The Court further added that the relief available under section 68 requires an applicant both to establish the existence of one of the closed list of irregularities in section 68(2), and that any such irregularity has caused substantial injustice. In relation to both of those matters, the issue of whether they are made out in any particular case does not constitute a preliminary issue of jurisdiction.

Concluding Observations

This case reinforces the strict limits on appellate review in arbitration matters under AA 1996.

The judgment is available in full here.

ENGLISH HIGH COURT FINDS THAT ASSIGNEES OF AN AGREEMENT TO ARBITRATE WILL BE BOUND

Maxamcorp International SL v Eurotel LLC [2026] EWHC 666 (Comm)

Introduction

By a judgment handed down on 13 March 2026, the Commercial Court held at the return hearing that Maxam was entitled for the injunctive relief previously ordered to continue, further injunctive relief, as well as an associated order for alternative service.

Background

Maxam is a Spanish company holding four direct subsidiaries in Russia. It entered into a number of supply agreements containing LCIA, HKIAC and IAC arbitration agreements with those subsidiaries. Certain of those assigned rights under those agreements to Eurotel (amongst others), which Maxam alleged were "invalid". Thereafter, Eurotel commenced proceedings against Maxam in Russia.

Accordingly, Maxam sought an interim anti-suit injunction ("ASI") and anti-enforcement injunction ("AEI") to prevent Eurotel from pursuing the proceedings in Russia (and elsewhere) in breach of the arbitration agreements. These were both granted after Maxam's without notice application. At the return date hearing, Maxam sought: (i) for the initial ASI and AEI relief to continue; (ii) for further injunctive relief requiring Eurotel to adjourn, stay or otherwise defer any consideration of the merits of its claims in the Russian proceedings; and (iii) to be granted permission to serve further documents on Eurotel's lawyers in the Russian proceedings.

Decision

The Court upheld Maxam's claims entirely.

As to the ASI, the Court considered the position of Eurotel in respect of the arbitration agreements and whether these would still bind Eurotel (as assignee but a non-signatory). It was determined that they would. In effect Maxam's claim was one for quasi-contractual ASI relief and case law well establishes that arbitration clauses have the same effect as an exclusive jurisdiction clause ("EJC"): where a contract includes an EJC, the assignee of that contract must enforce the assigned rights in accordance with the EJC or otherwise be restrained by an ASI.

Further, the Court found that Eurotel had indeed breached the arbitration agreements by initiating proceedings in Russia. The supply agreements, and the arbitration agreements therein, entered into between Maxam and the assignor (before the rights were assigned to Eurotel), are incorporated by reference in the assignor's general terms and conditions.

Thereafter, the Court turned to the delay in Maxam seeking relief. It noted that where an arbitration clause, or other agreement, is relied on not to sue abroad delay is to be considered in the context that the defendant has breached contract and should not benefit from the same. Moreover, the length of the delay is less important than the extent to which the foreign proceedings have progressed. In this light, the Court was satisfied that Maxam's delay is explicable and justified with Maxam not having taken a "wait and see" approach and only seeking ASI/AEI relief upon further developments in the Russian proceedings.

As to the AEI, the Court referred to the fact that anti-enforcement relief has been granted in other cases where proceedings have been brought in Russia in breach of arbitration agreements. As to the instant case, Maxam seeks an AEI because of the risk that the Russian Courts may refuse to accept the withdrawal or discontinuance of claims brought by Eurotel and proceed to a judgement against Maxam, which Eurotel could enforce in Russia and elsewhere. In these circumstances, the Court deemed it appropriate to grant the AEI.

Concluding observations

The judgement is another reminder that where parties have agreed to arbitrate disputes then parties must comply – this includes assignees.

The decision is available here.

ENGLISH HIGH COURT FINDS CHALLENGE UNDER SECTION 69 OF THE ARBITRATION ACT 1996 SUCCESSFUL

Trans Trade RK SA v Sebat Shipping and Trading Company [2026] EWHC 950

Introduction

By a judgement handed down on 28 April 2026, the Commercial Court upheld Trans Trade's appeal under section 69 AA 1996 challenging a Tribunal Award rendered in Sebat Shipping's favour.

Background

Sebat Shipping and Trans Trade entered into a voyage charterparty for the carriage of cargo by vessel from Romania to Germany. The vessel's master tendered a notice of readiness ("NOR") albeit this was before the vessel was an "*arrived ship*", thus the NOR was invalid. Sebat Shipping therefore commenced arbitration proceedings against Trans Trade claiming demurrage in Romania and Germany, an indemnity, and for discharge port expenses pursuant to the charterparty. Trans Trade counterclaimed. The Tribunal's Award upheld Sebat Shipping's claim for demurrage and port discharge port expenses but dismissed the claim for an indemnity as well as Trans Trade's counterclaim.

Pursuant to section 69 AA 1996, Trans Trade sought leave to appeal on two points of law: namely (i) when does laytime start to run where the owners of a vessel serve an invalid NOR and there is no agreement, waiver or estoppel to the effect that an invalid NOR is treated as valid; and (ii) when did laytime start to run, if at all, on the facts found by the Tribunal.

This leave was granted with the Court reasoning that the Tribunal's decision on the first question of law was "*obviously wrong*" and that as regards the second "*it is further arguable that the Tribunal was obviously wrong*".

Decision

The Court upheld Trans Trade's claim there had been an error of law when it concluded laytime began to run upon the commencement of cargo operations despite the NOR being invalid when tendered.

As to the legal issue the Tribunal determined, the Court disagreed with Sebat's Shipping's contention that the Tribunal's decision was based on Trans Trade having waived the NOR's invalidity by election or the principle of "*deemed waiver*". The Tribunal did not determine an issue of waiver but as a matter of law determined where a NOR was tendered prematurely and thus was invalid, laytime ran from the commencement of cargo operations as if a valid NOR had been tendered at that point.

As such, when the Tribunal held that laytime commenced despite the invalid NOR, and regardless of the issue of waiver, the Tribunal erred as a matter of law as to the effect of the invalid NOR. Further, the Tribunal erred as a matter of law on the principle of "*deemed waiver*". In the Court's judgement, there is no such principle insofar as it relies on a "*less rigorous test of waiver than an actual waiver*". In this regard, the Court did not understand Sebat Shipping's argument that Trans Trade is "*deemed*" to have waived the invalidity. There is either waiver because the waiving party had knowledge of the underlying facts to his choice, it acted unequivocally and it did not lack the actual or ostensible authority needed for waiver, or not.

Finally, Sebat Shipping contended that the "*correctly formulated*" application of the principle of waiver, amongst other things, should be remitted to the Tribunal for further consideration. However, given the Court's finding that the Tribunal did not address the issue of waiver, this was not needed.

Concluding observations

The judgement illustrates the Court's deference to the arbitral process but shows a challenge under section 69 AA 1996 will be successful depending on the facts of the case.

The decision is available here.