



LAWTOPICS

March 2010

International Dispute Resolution Practice

International Litigation & Arbitration Update

The 26th Joint Colloquium on International Arbitration

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On November 20, 2009, the 26th Joint Colloquium on International Arbitration took place in Washington, D.C. The event was co-sponsored by the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association (AAA), the International Court of Arbitration of the International Chamber of Commerce (ICC), and the International Centre for the Settlement of Investment Disputes (ICSID).

Outstanding arbitration practitioners and attendees from various backgrounds contributed to a most lively discussion of the topic: “Adapting Arbitration to a Changing World,” – tackling this main theme from the perspectives of: (i) the institutions; (ii) the players; (iii) the issues; and (iv) the instruments.

The three co-sponsoring institutions of the Colloquium first gave an overview on their caseload and the handling of the cases in 2009, with a particular focus on case timelines. Overall, the institutions drew a positive picture, promising to keep up the good work of the past and working on further amelioration with regard to time. Meg Kinnear, the ICSID secretary-general, related that the 2006 amendment of ICSID’s arbitration rules has generally been well received; they have made consideration of amicus *briefs* easier. John Beechey, Chairman of the ICC International Court of Arbitration in Paris, pointed out that the client focus of ICC has grown stronger. ICC also has observed that clients long for more transparency in the arbitration procedure; and also that courts have become more and more inclined to review the awards. Also, according to John Beechey, a change of the ICC rules was imminent in order to make them more modern and adapted to a changed world. The American Arbitration Association’s president, William K. Slate II, briefly spoke about the new National Task Force on Issues related to the arbitration of consumer debt collection disputes, which is a current hot topic in arbitration.

With regard to the player’s perspective, traditional and recurring questions dominated the agenda, such as the issues of cost, speed and efficiency of arbitration proceedings, document and information exchange, as well as post-award issues. Even though arbitration is still reputed to be faster as well as less costly than regular litigation, statistics speak another language: the costs of today’s arbitration proceedings easily amount to millions of dollars and the average arbitration proceedings last three to five years. During the discussion about document and information exchange, it became again

apparent that a careful drafting of the respective arbitration clause ultimately will also pay off in this respect, regardless of which arbitration rules are used. The topic of provisional measures and fast track arbitration also were discussed. One of the major concerns with regard to fast-track arbitration is whether such proceedings present an increased risk of annulment of the award and/or whether the respective award is met with a resistance against enforcement. Presentations and talks on the roles of arbitrators, parties and third parties were also given. The issue of third-party funding has become more important over the years, giving rise to confidentiality issues as well as potentially resulting in more litigation, thus prolonging the overall arbitration procedure.

“The issues” on the agenda included topics such as the financial crisis, the arbitrability of political issues, human rights considerations in international arbitration, as well as corruption. The conference concluded with a discussion on “the instruments”, including a lecture on a hypothetical draft convention on the International Enforcement of Arbitration Agreements and Awards by Albert van den Berg, stimulating discussion, certainly due to the importance of this topic in daily arbitration practice. Jason Fry spoke about arbitration rules in general, with a particular focus on the rising number of multi-party cases and the difficulty of drafting new rules with regard to this phenomenon. Thus, any arbitration practitioner’s creativity will be asked in the future to deal with such issues. The last presentation of the Colloquium was given by Mark Clodfelter who spoke about Model BITs as means of investment protection and their relationship to arbitration.

The next Joint Colloquium on International Arbitration will be held in Paris in November 2010.

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Mr. Eren advises and represents clients in New York courts, before ICSID, and in other international dispute resolution fora, and also before U.S. Government agencies such as the U.S. Treasury Department, the U.S. Justice Department, and the U.S. State Department.

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