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Seize the Opportunity to Work with the AIA

Are you a student or recent graduate with a background in international dispute resolution and/or international law?

If so, be quick to apply for an internship at the Association for

CONTACT US:
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International Arbitration!
The AIA offers developmental internships for a period of 2 months.

For more information regarding the qualifications required for the internship position, upcoming application deadlines and how to apply, please check our website.

Upcoming Events

Lecture title: "***Overview of existing dispute settlement mechanisms and explanation on how to make a conflict diagnosis for the incorporation of such mechanisms into an efficient conflict management policy***."
Organiser: Brussels Diplomatic Academy (VUB department)
Content: This lecture aims to give an overview of the numerous ways in which parties to a conflict can obtain a solution or a termination of their conflict. The lecture will explain dispute resolution mechanisms such as mediation, conciliation, arbitration, direct negotiation, expert determination, partnering, dispute review board, mini-trial, baseball arbitration, bounded arbitration, med-arb, arb-med, arb-med-arb, etc. Consequently, the lecture will focus on how to make a conflict diagnosis in order to identify the best dispute resolution mechanism for a given conflict scenario. Particular emphasis will be put on mediation and how mediation is to be distinguished from other dispute resolution mechanisms.
Language: English
Lecturer: Philippe Billiet
Location: Brussels Diplomatic Academy, Pleinlaan 2, 1050 Brussels
Date & Time: 18th October 2018 (2pm – 6pm)
Cost: 50 EUR (incl VAT) per participant
Registration: Please send an email to bda@vub.be

The Added Value of Experts in Alternative Dispute Resolution

Date: 19 October 2018
Time: 2PM-5PM
Location: Grote Aula iE net – Desguinlei 214 te 2018 Antwerpen
Content: In order to avoid long litigation proceedings, the Chambre d'Arbitrage d'Experts developed arbitration, conciliation, mediation and expert determination procedures. The seminar investigates which roles experts can fulfil and what additional values they can render in these kind of proceedings.
Cost: 150 EUR (+ 50% reduction for members of AKD, IE-NET, AIA, ABEX and KGSO)
Organisor: Chambre d'Arbitrage d'Experts (AKD) & Association For International Arbitration (AIA)
Registration: Please send an email to administration@arbitration-adr.org

Attend the 4th Annual EFILA Lecture in Brussels on 25 Oct 2018 at the Press Club! Read More Below.

1. AIA recommends attending the 4th Annual EFILA Lecture in Brussels on 25 Oct 2018 at the Press Club. The lecture will be a key event and will be delivered by Prof. George Bermann, Columbia University NY, the topic will be "Recalibrating the European Union—International Arbitration Interface".

2. Prof. George A. Bermann has a J.D. and a B.A. from Yale University and an LL.M. from Columbia Law School. He holds honorary degrees from the Universities of Fribourg in Switzerland, Versailles-St. Quentin in France and Universidad César Vallejo in Peru. He is an affiliated faculty member of the School of Law of Sciences Po in Paris and the MIDS Masters Program in International Dispute Settlement in Geneva. He is also a visiting professor at the Georgetown Law Center. At the Law School, he founded both the European Legal Studies Center and the Columbia Journal of European Law.

Prof. Bermann is an active international arbitrator in commercial and investment disputes; chief reporter of the ALI's Restatement of the U.S. Law of International Commercial Arbitration; co-author of the UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; chair of the Global Advisory Board of the New York International Arbitration Center (NYIAC); co-editor-in chief of the American Review of International Arbitration; and founding member of the governing body of the ICC Court of Arbitration and a member of its standing committee. He has been a visiting scholar at the European Commission Legal Service in Brussels; the French Conseil d'Etat; the Max Planck Institute for Foreign Public Law and International Law in Heidelberg, Germany; and Princeton University's Center for International Studies

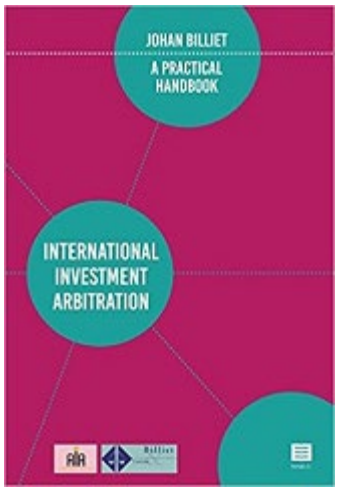
3. Date: 25 October 2018, Venue: Brussels Press Club Europe, Rue Froissart 95, 1040, Brussels, Registration: https://www.eventbrite.co.uk/e/4th-efila-annual-lecture-by-prof-george-a-bermann-tickets-46911882704?aff=ebdssbdestsearc

AIA Publications

The AIA strives to unite the global community in the field of ADR. It seeks to provide reliable educational information on arbitration and mediation matters in order to further the responsible and informed usage of ADR in the international business sector. In addition to organizing conferences, the AIA regularly publishes books on a range of ADR related issues.

AIA members can purchase AIA publications at a 25% reduced rate!

Below is the most recent publication:



Johan Billiet, A Practical Handbook on International Investment Arbitration, 2016

After an explanatory introduction into the area of investment arbitration, differentiating it from

commercial arbitration and state to state arbitration, this handbook examines the legal framework and the general course of international investment arbitration proceedings. Relevant and recent case law in this area is relied upon, and contemporaneous controversial topics, such as the future of Intra-EU BITs and FTAs as well as the link between vulture funds and investment arbitration are also discussed.

Price: € 85 (VAT and shipping costs inside EU included)

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Articles

The Treasure Island of Arbitration

by Patricia Albuquerque Pimentel

"*And I was going to sea myself, to sea in a schooner, with a piping boatswain and pig-tailed singing seamen, to sea, bound for an unknown island, and to seek for buried treasure!*"[1]

Treasure Island, the celebrated book by Robert Louis Stevenson, tells an enthralling tale about the adventurous quest of Jim Hawkins on board of the *Hispaniola* in search for the lost treasure of the Great Captain Flint. Although the book was published in 1883, to this day it continues to stir popular imagination, after all, who doesn't want to find a hidden treasure?

However, tales of hidden treasures don't appear only in books. In arbitration, we also have our own hidden treasures[2], just waiting to be discovered if not by Jim Hawkes than by arbitrators and lawyers all over the world. One of those treasures are the decisions on challenges to arbitrators. Much like Jim who was going to an unknown island, many lawyers go into arbitration without knowledge regarding decisions on challenges to arbitrators[3], since "*published decisions on challenges to arbitrators are almost as rare as unicorns*."[4]

Arbitral institutions play a key role in the development of arbitral jurisprudence. Through the systematic publication of decisions on challenges to arbitrators, while protecting the identity of the parties, the institutions can analyse, compare and generate best practices to adopt on such sensitive issues as, for example, the independence and impartiality of the arbitrators. All of this would contribute to the creation of greater credibility,transparency, uniformity and efficiency of arbitration

as a whole, mitigating damages resulting from bad experiences. A good example is the LCIA Court, which publishes decisions regarding arbitrator challenges in ways of digests and removes the identity of the information to preserve confidentiality.

Furthermore, arbitral jurisprudence would have echoed the jurisprudence of the state courts. This point is of the utmost importance, either because of the benefit it would bring to the application of the law by the judiciary, or because competition from jurisprudence would greatly benefit the assertion of the arbitration itself before the courts of the States and the community at large.

Lastly, pursuant to the end of Treasure Island, after the treasure is found and shared in equal measure by the whole crew, Jim provide us with an important lesson: "*All of us had an ample share of the treasure and used it wisely or foolishly, according to our natures*."[5] In that way, it is possible to conclude that in arbitration, once the treasure is discovered, many lawyers, parties and arbitrators also may use it foolishly or wisely, making the practice of arbitration worse or better. We hope for the latter.

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[1] LOUIS STEVENSON, Robert. *Treasure Island*. London: Ed. Penguin Classics, 1999, p. 44.
[2] According to Antonio Pinto Leite, the confidentiality of arbitral decisions constitutes hidden treasure in the depths of the ocean of law (PINTO LEITE, António. "*Papel das Instituições de Arbitragem na Construção da Jurisprudência Arbitral – a Procura das Melhores Práticas*". Brazilian Arbitration Review, Volume XI Issue 41, 2014, pp. 107 – 123.)
[3] Ibid pp. 107 – 123.
[4] LEGUM, B., *"Investor-State Arbitrator Disqualified for Pre-Appointment Statements on Challenged Measures". Arbitration International*, Volume XXI, Issue 2, 2005, p. 241.
[5] LOUIS STEVENSON, Robert. *Treasure Island*. London: Ed. Penguin Classics, 1999, p. 220

The role and status of tribunals' secretaries

by Amir Fekri

Current intentional arbitration encounters certain issues that bring about novel nuances which sometimes result in challenges to arbitral awards. The role of tribunal secretaries and its limits in international arbitration is currently one of most hot-debated subjects amongst arbitral institutions and practitioners. There is no doubt that the use of tribunal secretaries makes arbitration more time efficient and cost effective, but at the same time, the main concern of arbitration community is the delegation of decision-making authority of arbitrators to a secretary that may breach the *intuiti*

personae principle. This article is aimed to analyze the last changes concerning the secretary's role and to delineate an optimal solution to make sure that ultimately an award will be enforceable and able to meet the contemporary challenges of international arbitration.

First, performing administrative tasks is the most recognizable of secretary roles. This general function of a secretary performing administrative tasks has been supported by some of the rules of the arbitral institutions.[1] Nevertheless, it is not an exaggeration to say that nowadays there are very few commentators, who conservatively equate the tribunal's secretary to clerks of public courts and limit the role of tribunal secretaries to merely administrative functions. According to this concept, the role of a tribunal secretary cannot go beyond administrative and organizational functions in the narrow sense, such as the organization of meetings and exchanges of correspondence between the arbitrators and the parties. However, this approach seems to be outdated in the current conditions of business and the caseload of arbitrators, which requires expeditious responses of all concerned parties.

In fact, in the last two decades, arbitral institutions have done several attempts to determine the role of a tribunal's secretary and broadly comply with the novel needs of international arbitration. For instance, International Chamber of Commerce in August 2012 published a Note on the Appointment, Duties and Remuneration of Administrative Secretaries to provide guidance on the issue. Besides routine administrative tasks that a secretary should be in charge of, the Note mentions other tasks, such as attending hearings, meetings and deliberations, as well as conducting legal or similar research. Taking the most extreme position amongst all the existing rules, International Council for Commercial Arbitration in 2014 published Young ICCA Guide on Arbitral Secretaries that states in Article 3(1): with appropriate direction and supervision by the arbitral tribunal, an arbitral secretary's role may legitimately go beyond the purely administrative.

According to Article 3 of the Guide, the secretary is charged to perform such tasks as researching questions of law, summarizing the parties' submissions and evidence, as well as drafting appropriate parts of the award. This range of activities is unprecedentedly excessive and, without the direct consent of the parties, may result in violating the arbitrator's mandate and in a challenge to the award. The problem is that, for instance, by performing legal research or summarizing submissions, based on his or her mindset, knowledge and personal experience, a secretary inevitably involves his own way of thinking into formulating relevant parts of evidence that ultimately may have a significant influence on the resolution of a dispute on the merits. As well, Article 1(4) of Guide asserts: It shall be the responsibility of each arbitrator not to delegate any part of his or her personal mandate to any other person, including an arbitral secretary. Notwithstanding the mentioned article, accepting such tasks as conducting legal research is always accompanied with a potential risk of delegating personal mandate to a secretary and in the end, making changes in the final award based on the secretary's conclusions.

Ultimately, 26 October 2017 has become a turning point for the rules on the issue with the adoption by the London Court of International Arbitration of the Notes of Arbitrators. Pursuant to the Notes, the tasks of a secretary vary from mere administrative to substantive, such as preparing first drafts or sections of awards. However, an arbitral tribunal has definite obligation to propose the secretary's tasks to the parties. Thus, the parties concerned have full discretion to choose to what extent the secretary's tasks should be performed. On the other hand, the Notes admit that all tasks of the

secretary must be performed under supervision of arbitral tribunal and by default, in no circumstances may an Arbitral Tribunal delegate its fundamental decision-making function. In addition, statement of independence and consent to appointment declared by a secretary to the parties provides both the parties and the tribunal with the secure environment. This approach seems to create a proper equilibrium between the arbitral tribunal and the parties. The arbitral tribunal shall comprehensively control the tasks of the secretary designated by the parties and shall leave no stone unturned to make sure that the tribunal's mandate is not breached[2]. As well, the parties bear the burden of responsibility, based on their choice to delineate the secretary's tasks, and neither losing party nor the court where the wining party seeks the enforcement of the award will be able to challenge the award and set it aside.

The Arbitration community has been trying to establish the uniform rules delineating the role of the tribunal secretary and to define to what extent the arbitral tribunal is able to delegate its function to the secretary without prejudice to the resulting award. Arbitral institutions as well have played a crucial role in this trend by adopting new rules on the scope of the secretaries' role. Notwithstanding some discrepancies amongst the adopted rules, more attention should be paid to the parties' choice and consent to the secretary's duties. This regulation shall be based on the parties' freedom of agreement and discretion to choose the secretary as well as the secretary's range of functions. Amongst existing rules, the LCIA Notes of Arbitrators are quite comprehensive to ensure legitimacy and enforceability of the awards as far as the role of the secretary is concerned.

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[1] Tracy Timlin, The Swiss Supreme Court on the use of Secretaries and Consultants in the arbitral process, 8 Y.B. Arb & Mediation, 268 (2016)
[2] LCIA Notes for Arbitrators, 26 October 2017.