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We are proud to inform you about all the latest developments in the field of ADR!

“FMB” stands for “Future of Mediation in Belgium”. It is an initiative supported by AIA which has as its main objective creating a common communication platform for all stakeholders interested in mediation. Such consultation allows to evaluate the current situation regarding mediation in Belgium and to discuss appropriate measures (best practices, action plan, regulation, ...) with various stakeholders. The FMB meetings are moderated by the FMB Committee. If you would like your initiative to be discussed as well at the next meeting on **15 May** at the Palace of Justice in Brussels, please click the following [link](#) and send the AIA the form back.

SAVE THE DATE: Joint event on **INVESTMENT ARBITRATION**: AIA - SWEDISH CHAMBER OF COMMERCE - BRUSSELS DIPLOMATIC ACADEMY - **27 MAY**

Lastly, if you would like to become a cross-border mediator, check the following [website](#).

European Mediation Training for Practitioners of Justice (EMTPJ): training for certified cross-border mediators

EMTPJ 2015 Session

Now Open For Registrations - 25% early bird discount!



On the 17th-28th of August 2015, the [European Mediation Training for Practitioners of Justice](#) (EMTPJ) session will run for its 6th consecutive year. For more information about the EMTPJ please visit our [website](#).

The European Mediation Training for Practitioners of Justice is an 11-day intensive training course on cross-border mediation in civil and commercial matters. The training is unique because it is tailored to cover both theoretical and practical elements of mediation with a European perspective. Establishing such a training represented an important milestone for mediation as it allows participants to apply for accreditation in many jurisdictions, thereby creating truly **'European Mediators'**.

Don't miss this opportunity and register now! Please, send the AIA team an [email](#) for preliminary registration. Please find the registration form [here](#).

We encourage mediators who can demonstrate 200 hours of mediation experience and 20 mediation cases, to apply for the AIA's Qualifying Assessment Program (QAP) which will take place at the end of the EMTPJ 2015 session on the 30th of August 2015. Please visit our [website](#) for details.



Introductory mediation training 15-17 July 2015

3 day intensive training on mediation (15 bar points)

The first introductory mediation training in January was a huge success. We will therefore have another session in July. This course is ideal for mediators who wish to update their skills and knowledge and for all those who want to learn more about (facilitative) mediation.

The course is delivered over 3 days and consists of a series of lectures, trainings and role games.

Participants will receive a participation certificate and 15 bar points are awarded.

DAY 1: The model of a facilitative mediation (theory)

DAY 2: The model of a facilitative mediation (group exercises)

DAY 3: Role games en mediation interventions

Time schedule: every day from 10.00-17.30 (lunch break between 12.30 and 14.00h)

Professional/Private practice/Company Standard

Full package - 300 EUR*

*excl. VAT

Please send an [email](#) for details. Seats are allocated on a first come, first served basis.

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ADR News

The Association for International Arbitration introduces a new segment in its newsletter where it will cover all the latest and most recent news in the field of ADR worldwide!

- Both the new Dutch Arbitration Act and the new NAI Arbitration Rules have entered into force on 1 January 2015.

ADR professionals and experts are kindly invited to submit news related to ADR topics to AIA.

Sign up to become a member of AIA!



Membership of AIA takes the form of yearly subscriptions. All members benefit from a number of advantages available on the website!

The annual membership fee is 200 EUR, or 150 EUR for members under 40 years of age (VAT excluded). Fill in our online form at the bottom of our Membership page by clicking the signup button below.



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In partnership with:



AIA recommends to attend:

- Avoiding enforcement struggles: organized by Child Focus in collaboration with an international partnership: 26 - 27 February in Brussels
- **Arbitration and Mediation in Theory and Practice**” entitled: **"The State and ADR "**. The conference will be held on 17 April 2015 in the conference room of “HI-FI” hotel, in Nowy Tomyśl (Poland).
- LCIA symposium on International Commercial Arbitration, 28 February at the Four seasons hotel in Washington DC
- **Joint UNCITRAL-LAC Conference on Dispute Settlement**, taking place at the Slovenian Chamber of Commerce and Industry (Dimičeva 13, Ljubljana, Slovenia) on Tuesday, **24 March 2015**.
- Mediation workshop for experienced mediators in Tuscany, Italy, from 20-27 June 2015: Shifting the problem to mediating the moment

AIA mentoring program in Egypt

by Medhat El-Banna

Since the start of the program in Egypt the program coordinators had a target or rather a dream, which was to make a program that involve a peer-to-peer Mentoring in all fields of Alternative Dispute Resolution (ADR), and to promote this program, through all possible means, to become an umbrella that unite the Egyptian ADR experts through transferring the experience of the experienced ADR Experts to the less senior ADR practitioners which will increase the quality of the Egyptian ADR Community as a whole.

The AIA Mentoring Program in Egypt is based on; Volunteer ADR Experts whom willing to donate their time and pass their experience (The Program Mentors), and New / less senior ADR practitioners and ADR students whom in need for professional guidance from their more senior colleagues (The Program Fellows). And the Program is based Mainly on Peer-to-Peer Mentoring and asking for professional Advices, which take place by a number of means of communication, i.e. e-mail, Skype, Phone Calls, office visits. In rare times, the program organize social event in which both Mentors and Fellows are invited in order to encourage networking and trust.

The program made a great success which could be attributed to; the wholehearted devotion of the AIA and its coordinators to unite the Egyptian ADR experts and practitioners under

one umbrella, and the support the program had gained from a number of National and International ADR institutes, for example the Middle East and North Africa forum at the International Court for Dispute Resolution INCODIR (an International ADR institute that works worldwide through its 9 forums), had encouraged all its newly qualified ADR practitioners to join the program as fellows and encourages its Senior ADR Experts to join the program as Mentors. A number of Egyptian ADR institutes also did the same, e.g. North Egypt Chamber for Dispute Resolution NECDR.

However, the program hadn't grow up without problems, a number of National ADR institutes had challenged the program since its first days, even some of them had attacked the program and asked ADR Students not to follow the program, even more some institutes had contacted the AIA Representative office in Egypt and ask them to stop the program or else. But the program had survived all those attacks as the Representative office in Egypt always report to the AIA in Brussels and ask for their advice and seek their wisdom, and by combining the wisdom of the representative office and the wisdom of the AIA in Brussels, the program was able to survive those attacks.

Today, we can see that the combined efforts of the AIA and its Representative office had gave it's fruit, the AIA mentoring program in Egypt is not only a brand of ADR Professional Mentoring, but rather is one of the Egyptian ADR Icons. With more than 500 fellows for the Program, and Mentors of great skill and experience in all fields of ADR, which includes former Ambassadors, Members of Egyptian Judicial Entities, university professors, and high ranked Egyptian Police Officers with great Mediation experience. Such mentors were one of the very important reasons why the program gained its golden credibility in Egypt. Also the formal and informal Support from Egyptian universities had helped in strengthen the program.

The Future plans of the AIA Mentoring program in Egypt are; to increase the number of the program Mentors, to decrease the pressure on them, without the sacrifice of their quality. Also increase the number of the program Fellows, in order to use the program as a mean-of-unity of the Egyptian ADR Experts and a life buoy in case of any new ADR Chaos in the Egyptian ADR Community, increase the collaboration between the AIA Mentoring program and the Egyptian Governmental entities as well as with the Egyptian NGOs and Civil Society, in order to avoid any future attacks against the program and strengthen the program more and more, and finally increase the program allies from the Egyptian ADR institutes in order to grantee the diversity of the program Fellows, and in order to achieve the reach-more policy.

Economic sanctions against the Russian Federation and their impact on the international arbitration community

by Andriy Stentsenko, intern at the Kuala Lumpur Regional Center for Arbitration, holder of the LL.M degree in International Commercial arbitration from Stockholm University

Introduction and determination of issues to be discussed

Just a few decades ago diplomatic pressure and military actions were the most common tools used by governments as the means of punishment or influence on other states to coerce them to take or refrain from taking of certain actions. Although the military potential and the effect of diplomacy still play significant roles in international politics, today's globalized world greatly enhanced the importance of international trade and economic relationships between states. The depth of economic connections as well as the dependence of certain states on the import of different goods and services may lead to the situation in which economic restrictions would cause even greater damage than military actions. Nowadays such restrictions are usually defined as "economic sanctions". Although economic embargoes has been occasionally applied by various countries since the start of the 20th century and even earlier, in the previous times application of such

measures was usually connected with open warfare hostilities. In the modern times, however, economic sanctions may be caused by the greater variety of political and social factors.

In brief, economic sanctions can be described as various trade bans and barriers, restrictions on financial transactions and other economic penalties imposed by the country on one other country or a group of countries. As examples from the recent history, it is appropriate to mention the sanctions of international community against Libya, North Korea and Iran. The topic of the given article, however, concerns more recent and significant events, which is the imposition of economic sanctions against the Russian Federation by the USA, European Union as well as a number of other countries. In particular, the purpose of the paper is to analyze the consequences of such sanctions for the international commercial arbitration practice involving Russian companies as well as overall impact on the international arbitration community.

Sanctions and possible resulting international arbitration disputes involving Russian parties

The causes, substance and consequences of the sanctions

The recent Russian's actions in Ukraine has caused USA, EU as well as a number of other countries to introduce economic sanctions against it. The first wave of such sanctions came with the annexation of the Crimea region from Ukraine in March 2014. Orchestration of the warfare by Russia in the Eastern Ukraine during June-September 2014 provoked the subsequent batches of economic sanctions. In particular, certain Russian politicians and businessman became subjects to travel bans as well as assets freezing. The most substantial part of sanctions, however, concerns various restrictions and bans regarding the cooperation in the financial, military, energy and some other sectors. For instance, the sanctions prohibit supply of arms and military equipment as well as the technologies for the deep-water oil and gas exploration. A number of Russian banks were restricted to access EU and US financial markets.

The described measures will obviously make a serious impact on the future trade and other economic, political and military cooperation between the Russian companies and institutions and those from the countries supporting the sanctions. Another implication, which is significant in the context of the given article, is the impact of the sanctions on the various commercial contracts concluded before the sanctions were introduced but performance of which subsequently became legally impossible or complicated when the sanctions entered into force. The latter basically means that some contracts entered with Russian parties for the supply of military equipment and other items falling with the scope of sanctions may be refused to be performed by the suppliers from EU, USA, Canada and other countries supporting the relevant measures against the Russian Federation. Probably the most well-known example of the latter situation that has already took place is the deal between Russia and France for the purchase of two Mistral class helicopter carriers. Although initially the French side was declaring that it would perform the contract anyway, in September 2014, after the new escalation of the conflict in the Eastern Ukraine, France stated that it decided to suspend the performance of the contract. No particular solution has been found so far and thus it remains unclear how this situation will be resolved.

Commercial deals impacted by the sanctions and resulting dispute resolution

In view of the situation described above, there is quite high probability that non-performance of

the Mistral deal as well as other contracts tainted by sanctions may result in claims raised by the Russian parties. It is not difficult to guess that a big part of such contracts contain arbitration clauses and thus the arising disputes will fall within the jurisdiction of the arbitral tribunals rather than state courts. The major part of such disputes is likely to concern claims by the Russian parties for the damages caused by non-performance of the contractual obligations or for the specific performance of such obligations by parties constrained by the sanctions, which prohibit the performance.

The key issue that may arise in connection with initiation of the arbitration proceedings by the Russian parties is whether such disputes will be legally capable of being settled by arbitration in view of the imposed economic sanctions. In other words, the question to be analyzed is whether the fact that the underlying contract is tainted by sanctions influences arbitrability of disputes arising out of such contract. The reason for the concern is that the dispute may be declared non-arbitrable by the arbitral tribunal on the public policy grounds, i.e. that arbitrating disputes arising out of the transactions prohibited by sanctions is contrary to the applicable rules of public policy. As demonstrated below, the relevant precedents exist in international arbitration practice.

Similar examples from the past

In fact, the today's situation with the sanctions against Russia is not a new one. Similar consequences were taking place in connection with sanctions against Iran, Libya and Iraq. Thus, it is appropriate to discuss how the resulted arbitration disputes were dealt with in that cases. For instance, invasion of Iraq in Kuwait was followed by introduction of international sanctions against Iraq. Soon thereafter the dispute between Italian company *Fincantieri-Cantieri and Ministry of Defense of Iraq* has arose. The underlying contract concerned the supply of corvettes by the Italian party and Italian courts stated that the dispute may not be resolved by arbitration. The court referred to the sanctions against Iraq and ruled that the legal resolution of such dispute would lead to the result forbidden by embargo legislation (e.g. restitution if the claim were to be accepted).[1] In other cases, however, arbitrators accepted jurisdiction despite the sanctions in place and the relevant state courts confirmed such decisions. Such outcome took place in case *La Compagnie Nationale Air France v. Libyan Arab Airlines*, which arise after the UN Security Council imposed sanction on Libya following Lockerbie bombing organized by Libyan individuals. The underlying contract concerned supply of the aircraft components by the French party (Air France), which subsequently refused to perform it due to the measures against Libya prohibiting supply of the aircraft components. The Libyan party initiated arbitration proceedings and the ad hoc UNCITRAL arbitral tribunal, with its seat in Montreal, ruled that the dispute is arbitrable despite the sanctions in place. Canadian courts subsequently upheld the tribunal's award. Another interesting precedent is case *Ministry of Defense of Iran v Cubic Defense Systems*. *It is similar to the situation with the Russian sanctions and the above-mentioned Mistral case in the sense that the sanctions against Iran were imposed by a number of individual states rather than by the UN Security Council. The ICC tribunal sitting in Switzerland declared the dispute arbitrable and rendered the award in favor of the Iranian company. On the enforcement stage the US courts rejected the respondent's arguments and confirmed the award.*

Meaning of the previous arbitration practice and the sanctions against Russia

The above overview of the arbitration practice suggests that no consistent approach has been

established so far as regards to the resolutions of the disputes arising out of commercial contracts falling under the regime of economic sanctions. Arbitral tribunal's decision regarding arbitrability of the dispute depends on the circumstances of each particular case as well as the law of the arbitration seat. The same applies to the state courts of the arbitration seat in control of the arbitration proceedings. The particular sanctions regime also plays a significant role. If the sanctions are imposed by the UN (like in Iraq and Libya cases), it is more likely than the party may encounter problems when submitting the relevant contractual dispute to arbitration. However, in case the sanctions were introduced by certain individual states only, the problem may arise only if the arbitration is held in one of such states. This was the mentioned situation with the US sanctions against Iran following the Iranian revolution.

As to the current measures against Russia, the sanctions were imposed by the US, EU and a number of other individual states rather than the UN, which rendered just a declaratory decision^[2] in this respect but did not take any substantive actions. Therefore, in certain respects the Russian situation resembles those with Iran and thus it may be suggested that risks for Russia exist only if the arbitration is held in one of the states supporting the sanctions. The arising problem, however, is that the majority of leading arbitration institutions and legal seats, including those traditionally used by Russia, are located in the states that approved the sanctions. The possible implications and solutions regarding this situation are discussed in the next section of the article.

Looking into the future. Impact of the sanctions on the international arbitration practice and new perspectives for the emerging arbitration markets

Terms of the majority of contracts entered by the Russian parties regarding the supply of armament, certain types of equipment and technologies as well other items prohibited by sanctions are not available in the public domain. It means that it is not known what kind of dispute resolution clauses are contained in those contracts. However, the assumption can be made that many of them indicate SCC (traditional choice for the Russian parties), ICC, LCIA as well as Swiss Chamber's Arbitration Institution. All those institutions are located in the states that introduced sanctions against Russia. The same applies to the choice of arbitration seat.

Commonly the arbitration is held in the state neutral to both parties and which has arbitration-friendly legal environment. In practice, this often happens to be the state where the arbitration institution is located, i.e. Sweden (SCC), England (LCIA), etc.

The above means that in case the performance of relevant contracts is refused due to sanctions and the Russian parties decide to resort to arbitration, there is a quite high probability that the arbitration will be held in the jurisdiction that is a part to the sanctions regime. It is a well-known fact that the choice of the arbitration seat is usually made at the stage the parties sign the principal contract including the arbitration clause. Thus, unless the parties subsequently agree to modify the clause and agree for an alternative seat (that is highly unlikely), there are no other options for the Russian parties rather than follow the prescribed contractual dispute resolution mechanism and thus encounter all the associated problems.

The described situation is likely to have an impact on the worldwide arbitration practice. Although not much can be done regarding the contractual arrangements made by the Russian parties in the past, the future arrangements will probably be influenced by the hostile attitude in

the leading arbitration jurisdictions in the EU countries. This means that the Russian companies may start to search for the alternative arbitration venues located in the states, which do not support the sanctions against the Russian Federation. In case such scenario develops, the negative consequences for the EU arbitration market is inevitable. For instance, disputes involving Russian parties traditionally form a substantial part of the SCC yearly caseload.[3] Of course, not all the international commercial deals entered by the Russian companies fall within the sanctions regime. However, considering the traditional types of Russian export and import, the overall amount of such deals is significant.

It is also interesting to note one particular recent development in connection with the discussed topic. JSC Rosneft, one of the largest Russian companies and the number one public company in the world in terms of oil production, has apparently come up with the proposal to introduce certain changes into the Russian arbitration legislation.[4] According to those changes, Russian companies entering international commercial contracts shall be explicitly prohibited to opt for the arbitration in the states, which introduced sanctions against Russia. Only litigation and arbitration in Russia or arbitration in the states that did not introduce sanctions should remain the available methods of dispute resolution for the international commercial transactions involving Russian companies.

Although at the moment the above initiative is raised by just one particular company, it should be noted that this company is controlled by the Russian government. Thus, it can be assumed that the initiative indirectly represents the position of the government as well. In case such changes are indeed introduced into the Russian legislation, this will signify a big shift in the worldwide market of international arbitration. The traditional leading arbitration hubs will be deprived of not only the disputes arising out of the deals affected by sanctions, but of all kind of cases where the Russian company is a party. On the other hand, the new emerging arbitration markets may face an increased caseload. Asia region is probably the first that comes into mind in this context. Singapore, Hong Kong and Malaysia has already become recognized venues for the high quality arbitration services. In addition to the progressive legislation and arbitration-friendly court systems, SIAC, HKIAC and KLRCA are the modern institutions able to handle efficiently all kinds of commercial disputes.

Overall, the described events and subsequent developments is a bright example of how the political interactions between governments impact the international law in general and international commercial dispute resolution in particular. It is still rather unclear how the current situation will be eventually resolved. Obviously, the international legal community would only benefit if Russia stops its aggressive actions and sanctions are subsequently lifted. However, it is first of all Russia itself that can decide whether to start demonstrating respect towards international law and territorial integrity of other states or continue to sustain the results of the sanctions and move into the further isolation.

[1] Authority of Domestic Courts and Arbitral Tribunals to Give Effect to Trade Sanctions in Mercédeh Azeredo da Silveira , Trade Sanctions and International Sales: An Inquiry into International Arbitration and Commercial Litigation, (© Kluwer Law International 2014) p. 89.

[2] Resolution of the UN General Assembly on the Territorial integrity of Ukraine dated 24 March 2014.

[3] <http://www.sccinstitute.com/statistik-2.aspx>.

[4] Rosneft shuns traditional seats over sanctions, Clemmie Spalton, 29 October 2014, Global Arbitration Review (<http://globalarbitrationreview.com/news/article/33117/%20rosneft-shuns-traditional-seats-sanctions>).

Support the Federation of Belgian Arbitration Centers In Belgium (FBA) Initiative!

The FBA initiative is an initiative that aims to provide a joint communication platform to all arbitration institutes.

Contact [us](#) to stay informed about the latest updates on FBA.

new: BLOG on future of mediation in Belgium

The FMB initiative is an initiative that aims to provide a joint communication platform to all mediation stakeholders, thereby offering them the opportunity to contribute to identifying best practices (including legal amendments) and setting out a common action plan for the enhancement and promotion of Mediation in Belgium. The FMB Committee got an assignment of the **Belgian Ministry of Justice** to identify existing initiatives related to mediation. Please fill in the [form](#) and [send](#) it back to the AIA team.

To read the first FMB report [click here](#).

To read the second FMB report [click here](#).

The FMB project was created with the support of AIA IVZW (www.arbitration-adr.org).

The new FMB session will take place **[15 May 2015 at the Palais de Justice, Brussels](#)**