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## AIA Upcoming Events

- New AIA postgraduate degree program at the VUB University of Brussels in International Business Arbitration. Registration is now open for the 2010-2011 Academic year. More information can be obtained from our official brochure, which you may download at [www.arbitration-adr.org](http://www.arbitration-adr.org)
- Conference on The Most Favored Nation Treatment of Substantive Rights organized by the Association for International Arbitration in Brussels, Belgium. October 22, 2010

For further information on conferences organized by the Association for International Arbitration in Brussels, Belgium, please visit our web site

<http://www.arbitration-adr.org>

## Inside this month's issue:

*AIA Upcoming Events* 1

*The EMTPJ—First Impressions* 1

*ICSID: Who Pays the Costs of the Arbitration?* 2

*Togo Ban Lifted after CAS Mediation* 4

*Across the Pond: Three Recent Developments in U.S. Arbitration Law* 5

*ALA's October Conference on MFN Treatment of Substantive Rights* 7

## The EMTPJ - First Impressions

The European Mediation Training Scheme for Practitioners of Justice (EMTPJ) took place this summer at the University of Warwick. The course marked the first time since the passage of the EU Directive on Mediation that professionals from around the world have been brought together to be trained as a new class of mediators.



The two-week course was held at the University of Warwick and covered cross-border mediation in civil and commercial matters. During one of the longest mediation courses ever—an intense 92 hours—students were immersed in an extensive, multidisciplinary curriculum that covered both theory and practice.

I entered the course with very little background in mediation, aside from a basic understanding of the process and a genuine fascination with the idea behind it. Before arriving I only had the brochure to prepare myself. In it, the course schedule was outlined in eight-hour work days, essentially breaking down the topics into chapters that built off one another and incorporated everything from courses on theories of ethics and negotiation to a series of mock mediations. It also showcased the ten, highly reputable lecturers who would be teaching the different courses. What appeared to be an experiment in pedagogy was soon confirmed to be a uniquely stimulating and comprehensive program.

Each day's lectures and activities were necessarily dynamic because the student body hailed from over 12 different countries, bringing different perspectives and areas of expertise to the discussion. The goals of each student varied: there were

practicing mediators looking to practice internationally, lawyers seeking to gain their first exposure to the field, professionals wishing to become better conflict managers, and bold students exploring new options for their future careers.

The learning environment became partially horizontal when different people offered clarification on the specific mediation rules and processes performed in their jurisdictions. This was necessary because the EU Commission sponsored the EMT PJ course to bring legal minds together as never before and thereby become one of the premiere developments rising from the EU Directive on Mediation.

The ultimate goal is to enhance and integrate the different mediation cultures of the EU member states into one, legally sound method of international dispute resolution. To do so, students must undergo an intense reconfiguration of the ways in which they view conflict, negotiation, and justice. As we all soon learned, there is no room for strict definitions in the new age of European mediation.

With such intense instruction I have emerged from this experience with a profound understanding of the practice of mediation. For example, I learned bargaining strategies, methods of building rapport, how to conduct a proper conflict analysis, and the ways in which culture affects negotiation, not to mention the step-by-step process of how mediations unfold.

Since completing the two-week program, I have already become accredited at the local mediation center in my community. In just one short month, I am already a practicing commercial mediator. As I prepare for my first case I will carry with me the knowledge, experience, and confidence that I have acquired as a pupil of the European Mediation Training Scheme for Practitioners of Justice.

By Brady Collins, EMT PJ Alumnus

## ICSID: Who Pays the Costs of the Arbitration?

ICSID Tribunals' decisions on allocation of costs between Claimants and Respondents have varied widely, depending on the arbitrators' perceptions and principles incorporated into the analysis. According to some commentators, many awards have required the parties to share the costs of the Center and the arbitrators' fees equally and to bear their own legal and other expenses.

In the recent case *Foresti v South Africa*, the Tribunal's approach to costs is of particular interest. In this case, the Tribunal supported the idea that the degree of success of each party should be a factor relevant to the decision on costs.

### Background

The International Center for Settlement of Investment Disputes (ICSID) received a request for the institution of arbitration proceedings under the Additional Facility Arbitration Rules

against the Republic of South Africa (2006). The request was filed by eight claimants including (i) seven Italian nationals; and (ii) a company incorporated in Luxembourg. The proceedings were brought pursuant to the provisions of the Agreement between the Government of the Republic of South Africa and the Government of the Italian Republic for the Promotion and Protection of Investments (1997) and the Agreement between the Republic of South Africa and the Belgo-Luxembourg Economic Union on the Reciprocal Promotion and Protection of Investments (1998).

The Claimants alleged that the Respondent was in breach of the BITS' prohibition on expropriation. In addition to their allegations of expropriation, the Claimants argued that the Mineral and Petroleum Resources Development Act and the Mining Charter breached the Respondent's fair and equitable treatment and national treatment obligations under the Italy and Luxembourg BITS. The Respondent denied the allegations, and each party offered detailed arguments in favor of its position.

During the proceedings, the parties found a way to resolve the dispute without an award on the merits. Throughout the many months over which the arbitration unfolded, both the Claimants and the Respondent explored ways in which they could best fulfill their respective roles in the development of the new economy of South Africa, and their efforts brought them to a point where their interests were sufficiently closely aligned for there to be no advantage in pursuing these arbitral proceedings any further. There was, however, no consensus as to the principles governing the costs of arbitration.

In 2009, the Claimants sought the Respondent's consent to discontinue the proceedings. The Respondent filed its Response, in which it indicated that it did not consent to the Claimants' request for discontinuance. However, in its response, the Respondent asked the Tribunal to issue a default award, not on the merits, but rather only with respect to fees and costs. This was largely due to the disagreement between the Claimants and the Respondent concerning the characterization of the termination of the disputes.

The Claimants argued that the Respondent had given them what they wanted and that they were therefore the successful parties. The Respondent maintained that the Claimants had abandoned their claims and were accordingly the unsuccessful party. The Tribunal concluded unanimously that it could decide the question of costs by an exercise of its discretion, and it issued an award.

### Award

#### *Degree of Success*

The Tribunal noted that the fact that both sides placed considerable weight in their submissions on the question of the extent to which each side had 'succeeded' in these proceedings reflected at least an underlying agreement that the degree of success of each party is a factor relevant to the decision on costs. The Tribunal mentioned that this was correct in principle. Next, the Tribunal stressed that arbitrations such as these were concerned with the entitlements of the Parties: what Par-



ties were entitled to demand, or to refuse, and what they were not. In principle, if one Party was entitled to something and that thing was improperly withheld, its remedy should be both what it was entitled to and the costs which that party had to incur in order to obtain its entitlement through the arbitration. Conversely, if one party was entitled to withhold something, and was obliged to defend itself in arbitral proceedings against a demand for that thing, it should not have to bear the costs of defending its right to withhold the thing.

But the Tribunal noted that it had not ruled on the question of the extent to which the Parties were or were not entitled to the various rights that they claimed. In this case there were no real winners or losers. Therefore, there could not be a simple application of the principle that "costs follow the event." In any event, the Tribunal concluded that it could define the boundaries within which "success" and "failure" would be evaluated and make its own estimate of the degree of "success" of each Party.

#### *Success in the Context of Arbitration.*

The Tribunal mentioned that the question of "success" should be evaluated within the confines of the arbitration, and not within the broader context of the dispute between the parties. To explain the difference between the two the Tribunal gave the following example: "Investor X brings a claim in an arbitration against State Y for \$100m for an alleged expropriation of an oil concession. State Y offers to X a 25-year gas concession if it abandons the claim for \$100m, and X accepts the offer. X may consider the gas concession to be worth \$110m, and think that it has had a great success in its dealing with State Y – and, moreover, that it has managed to preserve its relationship with State Y. What X cannot say, however, is that it 'won' or 'succeeded' in the arbitration."

In the present case, some elements of the Claimants' claim were abandoned rather than "settled"; and while the new rights given to the Claimants by the Respondent may be regarded by the Claimants as being sufficient to warrant a commercial decision not to proceed further with this arbitration, those rights did not rectify or even address every element of the claim.

#### *Possible Approaches*

The Tribunal considered that in most situations where an arbitration is terminated, the best course is for the Parties to agree upon a settlement of all aspects of the claim, including costs. Failing that, the Tribunal accepted that in principle the recovery of costs should be an element in the calculation of the compensation due to a successful litigant who was unlawfully deprived of its rights; and, conversely,

there should be no question of establishing a system in which any and all investors can initiate claims against a host State knowing that whether they win or lose the tribunal will order the Respondent State to pay the investor's costs. However, the Tribunal concluded that the present case fell between those two poles, and it did not find broad questions of policy to be of much help in deciding exactly what reallocation (if any) of costs should be ordered.

In the end, the Tribunal opted for a decision that it considered to be based upon a principle which was itself fair and resilient. The Tribunal decided to require the Claimant to make a contribution to the costs incurred by the Respondent. The rationale behind this view was the result of a combination of (i) the fact that it was the Claimant who sought the discontinuance of the proceedings under Article 50 of the Additional Facility Rules and that the Respondent opposed discontinuance, (ii) the fact that the Claimants abandoned some of their claims, and (iii) the view that the Claimants pressed ahead with the arbitration at a time and in circumstances where it was in a position to avert the need for some part of the Parties' expenditures.

#### *Comment*

The Tribunal's reasoning does not coincide with the investment arbitration tradition of dividing the costs evenly between the parties. On the contrary, the Tribunal's arguments support the idea that "costs follow the event", as a matter of principle. It will be very interesting to see if this approach is applied in future investment treaty arbitrations where winners and losers are more clearly defined.

Additionally, the Tribunal's approach reinforces the view that while claimants in investment arbitrations are in principle entitled to the costs necessarily incurred in the vindication of their legal rights (if they are successful), they cannot expect respondent States to carry the costs of defending claims that are abandoned. Finally, the degree of success must be determined based on the strict terms of the claim and the boundaries of the arbitration-not on the overall result of the dispute.

The decision is available at:

[http://icsid.worldbank.org/ICSID/FrontServlet?request=CasesRH&actionVal=showDoc&docId=DC1651\\_En&caseId=C90](http://icsid.worldbank.org/ICSID/FrontServlet?request=CasesRH&actionVal=showDoc&docId=DC1651_En&caseId=C90)

## TOGO BAN LIFTED AFTER CAS MEDIATION

In January, as you may recall, the Confederation of African Football (CAF) banned the Togo National Football team from participating in the next two Africa Cup of Nations Competitions. The reason given for the ban was "political interference," (a cardinal sin as far as football is concerned!) which the team supposedly engaged in when it withdrew, on the orders of its government, from a tournament in Angola after a fatal attack on the team's bus.

After a successful mediation of the dispute between CAF and the Togo National Football Federation, in which the latter agreed that it had not complied with the CAF Regulations, the President, Issa Hayatou, and the Executive Committee of CAF lifted the ban.

The mediation was led by the FIFA President, Sepp Blatter, after both parties agreed to interrupt a case that was pending before the Court of Arbitration of Sport (CAS) - the so-called "supreme court of world sport"- which is based in Lausanne, Switzerland.

*"I am very pleased that we have been able to find a solution which is satisfactory for both parties,"* said Blatter, adding: *"The success .... is for the entire football community, in particular for African football. This shows that we can solve internal disputes within the football family for the benefit of all those who are involved in our game, and in particular for the players."*

In addition to arbitration of sports-related disputes, the CAS offers a mediation service, which was introduced on 18 May, 1999. As Ousmane Kane, the former Senior Counsel to the CAS who, during his tenure, was responsible for mediation, has remarked:

*"The International Council of Arbitration for Sport took the initiative to introduce mediation alongside arbitration. As the mediation rules encourage and protect fair play and the spirit of understanding, they are made to measure for sport."*

Article 1, para. 1 of the CAS Mediation Rules defines mediation in the following terms:

*"CAS Mediation is a non-binding and informal procedure, based on a mediation agreement in which each party undertakes to attempt in good faith to negotiate with the other party, and with the assistance of a CAS mediator, with a view to settling a sports-related dispute."*

The CAS has published a 'Mediation Guide' Booklet, and there are currently some 65 CAS mediators, a group that includes the author of this article.

Although, to date, there have not been many CAS mediations, the ones that have been held have been successful. Mediation lends itself particularly to the settlement of sports disputes because the process is confidential - sports bodies

and persons prefer to settle their disputes "within the family of sport". Mediation is also relatively quick and inexpensive.

In any case, mediation is a "without prejudice" process, which allows the parties full rein in any subsequent arbitration or court proceedings that may have to be brought in the event that the mediation is not successful.

As the Togo case clearly shows, as far as the sporting world is concerned, mediation is proving to be a popular and effective way of settling sports disputes, which, in view of the global economic importance of sport, are on the increase. The case also illustrates the need for give and take - compromise - if mediation is to be successful.

But, as former Lord Chancellor of Great Britain and Northern Ireland, Lord Irvine of Lairg, has pointed out, mediation, although generally successful, is "not a panacea for all disputes." For example, it is not appropriate in doping cases - the CAS Mediation Rules expressly exclude mediation in such cases - or in cases where injunctive relief is sought. In other words, to use a sporting metaphor, it is a case of "horses for courses".

By Ian Blackshaw

*Professor Ian Blackshaw is an International Sports Lawyer and Fellow of the TMC Asser International Sports Law Centre in The Hague. He is also a CAS Mediator and the author of a recent Book on "Sport, Mediation and Arbitration" published by the TMC Asser Press. He may be contacted by e-mail at [ian.blackshaw@orange.fr](mailto:ian.blackshaw@orange.fr). Print Sponsor.*

## ACROSS THE POND

### Three Recent Developments in U.S. Arbitration

AIA opened an office in New York in the summer of 2010 to better reach audiences outside of the European community and foster healthy transatlantic dialogue about ADR. The New York office is run by Eugene Becker, who is passionate about the promotion of ADR and fostering a transatlantic dialogue in the field.

Although we are based in Europe, we understand the importance of keeping up with developments in the United States. In addition to having the largest economy in the world, the U.S. is home to international business centers like New York, Washington D.C., and Miami, as well as the American Arbitration Association (AAA), one of the most prestigious arbitral institutions in the world.

There are, to be sure, important distinctions between European arbitration and U.S. arbitration. In particular, arbitration in the U.S. often seems closer to litigation, particularly with respect to procedural matters like discovery and the taking of expert testimony. Understanding these differences, and the U.S.'s distinct approach to arbitration—both domestic and international—will strengthen transatlantic dialogue.

With this goal in mind, we are currently working on improving AIA's U.S. website (<http://www.arbitration-adr.org/about/>). The new website will have a distinctly American feel—in addition to the tiny flag in the corner, there will be links to new cases, arbitral awards, and leading blogs. We will also provide links to upcoming arbitration conferences in the U.S., and we are hoping to develop partnerships with U.S. organizations that share our commitment to the improvement of transatlantic dialogue and international arbitration.

The following provides a sample of what to expect on the website. Three recent cases—one in the Supreme Court and two in New York—have caused a stir in arbitration circles. The *Stolt-Nielsen* case could potentially have a great impact on whether courts will allow class action arbitrations to proceed absent an express agreement among the parties. The *Chevron* case, with its fascinating factual history, reads like a novel but ultimately boils down to the definition of a "foreign tribunal" for purposes of discovery. Finally, the *Nachami* case seemingly adapts an overly narrow interpretation of a AAA arbitration clause. We have provided links to all these articles, and will keep you updated as developments arise.

#### I. Class Actions—*Stolt-Nielsen v. AnimalFeeds*

In a 5 to 3 decision (Justice Sotomayor did not participate), the Supreme Court held that, absent an express contractual agreement among the parties, an arbitration panel may not hear a claim on behalf of or against a class.

#### Background

Petitioners, a group of shipping companies that provide "parcel tankers" (vessels that carry small amounts of liquid) entered into a contract with AnimalFeeds, a company that supplies raw ingredients to animal feed producers. The parties used a "Charter Party," a standard form contract that is often used in maritime transactions.

More specifically, they used a "Vegoilvoy" form, a type of Charter Party that typically includes an arbitration clause. Here, the parties agreed that, in the event of a dispute, arbitration would take place in New York, under the Federal Arbitration Act (FAA). The contract, however, was silent as to whether class action claims would be permitted.

In 2003, a Department of Justice investigation revealed that petitioners were involved in an illegal price-fixing scheme. Two years later, AnimalFeeds brought an arbitration claim against petitioners on behalf of all direct purchasers of parcel tank transportation services. Before this claim could be heard, the tribunal had to determine whether it had the authority to preside over a class action claim pursuant to Rules 3-7 of the American Arbitration Association's Supplementary Rules for Arbitration. The panel answered in the affirmative, on the ground that there was no evidence that the parties intended to preclude class action claims. Subsequently, the panel agreed to stay the proceedings so that AnimalFeeds could file an appeal in the Southern District of New York to have the award vacated.

The District Court vacated the award, holding that the panel had acted in "manifest disregard" of the law because it had failed, as a threshold matter, to conduct a choice of law analysis. The Appellate Court reversed, finding that the decision was not made in manifest disregard of the law because petitioners cited no authority that prevented class actions.

The Supreme Court granted *cert* to determine whether the award should be vacated.

#### Outcome

Justice Alito, writing for the majority, began by laying out the standard for judicial review of arbitral awards. The threshold is extremely high: the petitioner must show that the arbitrators effectively applied "their own brand of industrial justice." (citing *Major League Baseball Players Assn. v. Garvey*, 532 U.S. 504, 509 (2001)).

In conducting his analysis, Justice Alito started with the premise that an arbitrator's only task is to interpret and enforce contracts—he should not make decisions based on his conception of "sound public policy." In this case, the arbitrators clearly overstepped their bounds. To begin with, they never answered the threshold question of which law to apply. There were at least three obvious options—the FAA, federal maritime law, and NY case law—but the arbitrators did not choose among them. Instead, Justice Alito wrote, they simply substituted their own conception of what the proper rule was and applied it. This not only was an abuse of power—it undermined the principle of consent.

The dissent, written by Justice Ginsburg, and joined by Justices Stevens and Breyer, made four main arguments. First, the issue was not ripe for review. Under the doctrine of justiciability a court cannot exercise power unless there is an actual case or controversy. Here, the court acted prematurely. Second, the majority substituted its own judgment for that of experienced arbitrators who were hand-picked by the parties themselves. Third, the court exceeded the FAA's strict limitations on review of judicial awards. And fourth, the parties themselves asked the panel to rule on the class action question. The majority opinion, ironically, would undermine the



parties' autonomy and consent.

#### Comments

On balance, the dissenters seem to have the stronger argument. The majority's opinion goes against the principle that it repeatedly extols—consent of the parties as the basis for arbitration. As the dissent notes, the parties themselves expressly agreed to submit the class action question to arbitration. This agreement carries with it the implied understanding that the tribunal's decision would be accepted.

Ultimately, this case is about the proper role of arbitrators—and arbitration more generally—and the proper line between arbitration and litigation. The typical benefits associated with arbitration—consent, finality, efficiency—can only be upheld if the arbitrators are allowed some degree of autonomy. Decisions like this one threaten to undermine, if not destroy completely, that autonomy.

The full text of the case can be found at:

<http://www.supremecourt.gov/opinions/09pdf/08-1198.pdf>

## II. Discovery—*In re Application of Chevron Corp.*

The District Court for the Southern District of New York held that outtakes from a documentary film commissioned by plaintiffs' counsel were discoverable under 28 U.S.C. Sec. 1782. The decision turned on whether an ICSID tribunal constitutes a foreign tribunal for purposes of Sec. 1782 discovery. The court answered in the affirmative.

### Background

Five events form the backdrop to this case:

#### (1) The *Aguinda* Litigation

In 1993, a group of Ecuadorean residents brought a class action claim against Texaco. The plaintiffs alleged that, between 1964 and 1992, Texaco's oil explorations damaged Ecuador's rivers and rain forests. They brought claims on several theories of liability, including negligence, strict liability, and equity. After nine years of litigation (and an interim settlement), the case was dismissed on *forum non conveniens* grounds.

#### (2) The *Lago Agrio* Litigation

A group of Ecuadorean plaintiffs, including several from the *Aguinda* case, brought a claim against ChevronTexaco (Texaco became a wholly owned subsidiary of Chevron in 2001) in Lago Agrio, Ecuador. They claimed, *inter alia*, that ChevronTexaco violated a 1999 environmental law. The court ordered an independent investigation of damages, to be conducted by a group of expert witnesses.

#### (3) Criminal Charges against TexPet Representatives

The Government of Ecuador (GOE) filed a criminal complaint against two TexPet representatives (TexPet was a subsidiary of Texaco), alleging that they had falsified public documents and violated environmental laws. Subsequently, the District Prosecutor decided that there was not enough evidence against them. In 2006, however, Rafael Vincente Correa Delgado was elected president on a socialist platform that was openly hostile toward foreign oil com-

panies. He immediately appointed a new District Prosecutor, who reinstated the criminal charges.

#### (4) "Crude," the Documentary

In 2005, Plaintiff's counsel asked Joseph Berlinger, an award winning filmmaker, to make a documentary about the case, from the Plaintiffs' point of view. The documentary, "Crude," was released in 2009.

#### (5) International Arbitration

In 2009, Chevron brought an ICSID claim, under the UNCITRAL Rules, against GOE. Chevron claimed that GOE had abused the criminal justice system and violated the U.S.-Ecuador BIT.

Chevron filed an application with the U.S. District Court for the Southern District of New York to obtain the "outtakes" (i.e. deleted scenes) from the documentary, in connection with the *Lago Agrio* litigation, the criminal charges, and the international arbitration. Specifically, Chevron argued that the following deleted scenes should be obtained through discovery:

- ⇒ Footage of a meeting between Plaintiffs' counsel and the expert witness. This would presumably show a conflict of interest, since the expert witness was supposed to be "independent."
- ⇒ "Pressure Tactics" used by Plaintiffs' counsel to influence the judge.
- ⇒ Meetings between Plaintiffs' representatives and the Ecuadorian government.

### Outcome

The purpose of Sec. 1782 is to facilitate the discovery process between U.S. and foreign tribunals. The rule, then, only applies when the information that a party is seeking to obtain would be used by a foreign tribunal.

The decision largely turned on what constitutes a "foreign tribunal." Respondents argued that Congress did not intend Sec. 1782 to apply to tribunals established by private parties. The judge quickly dismissed this argument, pointing out that the tribunal was not established by private parties—rather, it was established pursuant to the Washington Convention and the U.S.-Ecuador BIT. In any event, case law is clear on the point: ICSID tribunals do constitute "foreign tribunals" for purposes of Sec. 1782.

Moreover, the judge held that allowing the outtakes would be consistent with the purposes of Sec. 1782, and is comfortably within the court's discretion. The judge also dismissed Respondents' claims of journalistic privilege.

Having decided that the request for discovery was consistent with the formal requirements and discretionary guidelines of Sec. 1782, the judge ruled that the outtakes could be obtained.

### Comments

The judge's arguments are well-reasoned and compelling. Clearly, an ICSID tribunal is not a private tribunal. On the contrary, it is consistent with



Sec. 1782's definition of "foreign tribunal." Moreover, as the judge points out, allowing discovery is consistent with the rationale behind the rule. Ultimately, what matters is disclosure. Where, as here, there is reason to believe that one of the parties engaged in improper behavior, the court should, at a minimum, be able to review the evidence.

The full text of this case can be found at:

<http://arblog.lexmarc.us/wp-content/uploads/2010/05/chevron-1782-decision.pdf>

### III. AAA Arbitration—*Nachami v. By-Design*

In a recent decision the Appellate Division, First Department, an intermediate New York State appellate court, held that an arbitration provision contained in an employment contract that an arbitration "shall be rendered in accordance with the commercial rules of the American Arbitration Association" was only "a choice of law clause" and was not an agreement that the arbitration be administered by the American Arbitration Association. *Nachami v. By-Design, LLC*, 74 A.D.3d 478 (1st Dept. 2010), 2010 NY App. Div. Lexis 4744.

*Nachami* seems to overlook that an agreement that provides for arbitration in accordance with or pursuant to the rules of the AAA, incorporates those rules into the agreement. *Life Receivables Trust v. Goshawk Syndicate 102 at Lloyd's*, 66 A.D.3d 495 (1st Dept. 2009), 2009 N.Y. App. Div. Lexis 7188. Rule 2 of the AAA's commercial rules states that where the parties agree to arbitration under the AAA's rules, they authorize the AAA to administer the arbitration.

The decision in *Nachami* is also at odds with non-binding federal appellate decisions which have touched on the matter. *Your Research Corp. v. Landgarten*, 927 F.3d 119 (2d Cir. 1991); *Prostyakov v. Masco Corp.*, 513 F.3d 719 (7th Cir. 2008).

AIA would like to thank Eugene Becker and Stephen Marcus, attorneys practicing in New York, for contributing the comment on the *Nachami v. By-Design* Case.

## AIA'S OCTOBER CONFERENCE

### MFN Treatment of Substantive Rights

On Friday 22 October 2010, the AIA is hosting a conference on contemporary issues in investment arbitration. This year's topic is the effect of Most Favored Nation (MFN) clauses on

parties' substantive rights. We also have a number of speakers who will present on investment arbitration in China.

The operation and effect of the MFN clause has recently been the subject of considerable attention in the context of jurisdictional rights. Relatively little attention, however, has been given to its operation *vis-avis* substantive rights. To address this gap, the AIA's Investment Arbitration Group, established in 2009, has invited several leading scholars and practitioners to present their research in an interactive forum. This research will also be published in a journal that will be sent to all conference participants before the conference.

In addition to the focus on MFN treatment, we also have an exciting program of speakers who will address investment arbitration in China, a topic of increasing relevance as China's growing role on the international stage prompts all practitioners to understand how to enforce rights under Chinese investment treaties. The various generations of Chinese investment treaties have also often relied substantially on MFN clauses.

Finally, in order to address current issues in investment arbitration, a separate session will focus on discrete topics of contemporary relevance. This is a session the AIA intends to continue at future investment arbitration conferences.

The one-day conference already enjoys the participation of the following confirmed speakers:

Professor Tony Cole, Assistant Professor of Law, Warwick Law School, University of Warwick, England

Karel Daele, Partner at MKONO & CO Advocates in Association with Denton Wilde Sapte, Dar es Salam, Tanzania (Counsel to the Government of Tanzania)

Diego Brian Gosis, Of Counsel at the International Affairs Directorate, Procuracion del Tesoro de la Nacion, Government of the Republic of Argentina

Thomas Henquet, Senior Jurist/Legal Counsel, International Law Division, Legal Affairs Department, Ministry of Foreign Affairs, The Netherlands

Christian Leathley, LL.M. (NYU), Attorney-at-Law (New York), Solicitor (England and Wales), Counsel, Curtis, Mallet-Prevost, Colt & Mosle LLP (New York)

Dr Stephen Schill, LL.M (NYU) Rechtsanwalt, Attorney-at-Law, New York, Senior Research Fellow, Max Planck Institute for Comparative Public Law and International Law

### AIA's Member E-Book!

AIA is creating an E-Book that will contain profiles of all our members.

The profiles will include the following information:

Contact Details; Educational Background; Professional Background; and Areas of Expertise

