



***RCIL MONTHLY***  
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## ***INDIA – UNITED KINGDOM***

**28<sup>th</sup> January 2023**

**1. Impasse Broken to Continue FTA Talks With India: UK Minister**

Britain's trade secretary, in charge of negotiating an FTA with India, admitted on Tuesday that talks had reached "a bit of an impasse, which she broke last month by flying to Delhi." British Trade Secretary Kemi Badenoch said the deal was now "back on track", in an apparent reference to the Diwali 2022 deadline for a free trade deal set by former prime minister Boris Johnson, which was missed last October due to political unrest in Britain.

**16<sup>th</sup> January 2023**

**2. S Jaishankar meets FCDO Permanent Under-Secretary Philip Barton in Delhi**

In a joint outcome statement on the UK-India sixth round of FTA negotiations, the UK government's Department of International Trade said that detailed draft treaty text discussions were held across the 11 policy areas. The seventh round of official-level negotiations is due to take place in early 2023. Secretary of State for International Trade Kemi Badenoch visited India to initiate the sixth round of the UK-India FTA negotiations on December 12-13.

## ***INDIA – EUROPEAN UNION***

**23<sup>rd</sup> January 2023**

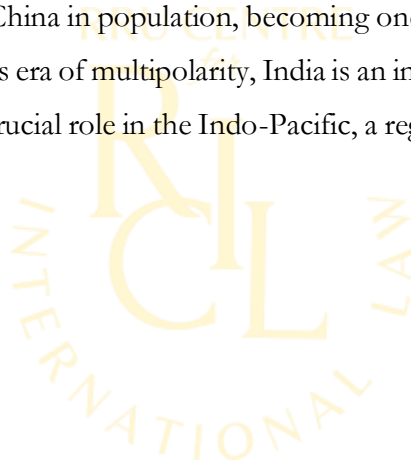
### **1. India-Germany Bilateral Trade and Investment Relations**

India is positioned as a pivotal partner for German and European foreign policymakers in the Indo-Pacific amid geopolitical and economic developments in the region. While Germany does not have a standalone trade agreement with India, it is its largest trade partner in the European Union (EU). At the same time, India is Germany's fourth largest trading partner in the Indo-Pacific region, albeit having much room for growth.

**19<sup>th</sup> January 2023**

### **2. Strategic Tech Cooperation Can Push Eu-India Ties To A Higher Level**

This year India will surpass China in population, becoming one of the world's largest consumer and industrial markets. In this era of multipolarity, India is an increasingly important geopolitical player. The country plays a crucial role in the Indo-Pacific, a region where China wields growing influence.



## ***INDIA – OTHER STATES***

**31<sup>st</sup> January 2023**

**1. India-Australia Defence Cooperation and Collaboration in the Indo-Pacific**

The significant rise in defence and security ties between India and Australia has led to an ease in dealing with their responsibilities in multilateral regional forums. The institutionalization of cooperation has also become more strategic.

**2. Roaring trade: India-UAE FTA utilization surges in December**

Exports benefiting from the India-UAE free trade pact accounted for about 60% of New Delhi's total non-oil shipments to Abu Dhabi in the December quarter, as against 22% in the July-September period, signifying a sharp pickup in the utilization of the pact, according to data indicated by certificates of origin.

**20<sup>th</sup> January 2023**

**3. India, Vietnam to begin talks on trade agreements**

India and Vietnam are set to begin talks on a potential trade agreement in an effort to boost bilateral trade and investment. A person familiar with the matter said a joint Indo-Vietnamese working group will be formed in the coming months to examine the feasibility of a trade pact.

# *GLOBAL ARBITRATION TRENDS*

## *MINING*

**19<sup>th</sup> January 2023**

**1. Three are in place to hear dispute over Kyrgyzstan's uranium mining ban**

An ICSID tribunal has been constituted to hear the claims in International Mining Company Invest (IMC Invest) v. Kyrgyzstan. The tribunal was finalized on January 13, 2023, with the parties' appointment of Juan Fernandez-Armesto as chair. The claimant previously appointed Stanimir Alexandrov, while Kyrgyzstan nominated Zachary Douglas.

**2. Dominican Republic May Face Arbitration Claim By Canadian Mining Company**

A Canadian mining company, GoldQuest, is reportedly considering lodging an arbitration claim against the Dominican Republic. On the company website, GoldQuest claims to be the "leading explorer in the Dominican Republic", focusing on gold and copper mining. The company claims to hold 19 exploration permits, as well as "one exploitation permit (under application)".

**26<sup>th</sup> January 2023**

**3. With Highest Number of Violent Conflicts Since Second World War, United Nations Must Rethink Efforts to Achieve, Sustain Peace, Speakers Tell Security Council**

Stressing that investments in development, people, human security and shared prosperity are also investments in peace, she noted, however, that such investments have fallen short in recent years. "When we fail to meet the development needs of our time, we fail to secure peace for our future," Dpty Secretray General said, urging the Council to consider the fundamental role of sustainable development in securing peace for current and future generations.

**4. Continuing Its 2023 Session, Non-Governmental Organizations Committee Recommends 1 Group for Status, Defers Action on 103 Others**

The 19-member Committee considers applications for consultative status and requests for reclassification submitted by non-governmental organizations (NGOs). Once an application has been reviewed and approved by the Committee it is considered recommended for consultative status. Organizations which were granted general and special status can attend meetings of the Council and issue statements, while those with general status can also speak during meetings and propose agenda items.

## 5. **Daily Press Briefing by the Office of the Spokesperson for the Secretary-General**

The Security Council had an [open debate](#) today on the theme of investing in people to enhance resilience against complex challenges. The Deputy Secretary-General, Amina Mohammed, [said](#) that rethinking our efforts towards achieving sustainable peace is an absolute necessity.

## *ENERGY*

**26<sup>th</sup> January 2023**

### 1. **Power Plant Investors Settle Icc Arbitration Dispute With Algerian State-Owned Entity**

The parties in an ICC arbitration dispute opposing the US-based General Electric (GE) and Greek-based Mytilineos and an Algerian state-owned entity, Societe Algerienne de Production de l'Electricite (SAPE), have decided to settle their dispute.

### 2. **Icsid Award Issued In High-Profile Ect Arbitration Against Croatia Comes To Light**

A heretofore unpublished award which was issued last year in the high-profile MOL Hungarian Oil v. Croatia ICSID arbitration has surfaced in the context of US enforcement proceedings. The ICSID arbitration proceeded before a tribunal of Franklin Berman (chair), William W. Park (claimant's appointee) and Brigitte Stern (respondent's appointee). The tribunal issued its Award on July 5, 2022, prompting divergent press releases from the parties regarding the outcome of the case.

**23<sup>rd</sup> January 2023**

### 3. **Tribunal Hearing Oil And Gas Company's Claim Against Nigeria Is Reconstituted For The Second Time**

The ICSID tribunal in Eni International et al. v. Nigeria has been reconstituted following the resignation of the respondent's original appointee, Kamal Hossain. The proceedings resumed with a full tribunal on January 17, 2023, with Nigeria nominating Zachary Douglas as replacement arbitrator. Mr. Douglas will be sitting alongside Laurent Levy (chair, appointed by the parties) and J. William Rowley (claimants' appointee).

**20<sup>th</sup> January 2023**

**4. Uncovered: Redacted Version Of Scc Award Against Georgia Reveals That Tribunal Dealt With One Additional Claim And Opted Against Awarding Compound Interest; Related Icsid Award And Dissent Remain Unpublished**

IAReporter has obtained a redacted copy of the Final Award previously handed down in the SCC (but ICSID-administered) Gardabani Holdings and others v. Georgia and others. While the September 9, 2022 Final Award has been heavily redacted, it reveals that the tribunal of Henri C. Alvarez (chair, appointed by the parties), Stanimir A. Alexandrov (claimants' nominee) and Zachary Douglas (respondents' appointee) dealt not only with issues that had been left for subsequent decisions at previous stages of the proceedings, but it also decided an additional compensation claim that had been raised by the claimants.

**19<sup>th</sup> January 2023**

**5. Usa Requests Bifurcation In 15 Billion USD Pipeline Dispute, Revealing Its Stance On Nafta Legacy Provision**

The USA has requested the bifurcation of the proceedings in the TC Energy & TransCanada v. USA ICSID arbitration, providing insight into the state's interpretation of the NAFTA legacy provision contained in the United States-Mexico-Canada Agreement (USMCA).

**17<sup>th</sup> January 2023**

**6. Another Ect Award-Creditor Seeks Anti-Anti-Suit Injunction From Us Courts, In Reply To Spain's Efforts To Thwart World-Wide Enforcement Of The Award**

The investor in 9Ren v. Spain has asked the US District Court for the District of Columbia to enjoin Spain from pursuing an anti-suit injunction that would prevent it from enforcing a 42 million EUR ICSID award that it obtained in 2019, under the Energy Charter Treaty (ECT).

**13<sup>th</sup> January 2023**

**7. Dispute Over Enforcement Of Intra-Eu Icsid Award Against Spain Heats Up, As Both Parties To The Nextera V. Spain Arbitration Seek Anti-Suit Injunctions**

Spain's efforts to fight intra-EU investor-state arbitrations at the enforcement stage are heating up, as the state has requested the District Court of Amsterdam to issue an anti-suit injunction



directing the claimants in NextEra Energy Holdings and NextEra Spain Holdings v. Spain to refrain from pursuing enforcement of the underlying ICSID award in US courts.

### 12<sup>th</sup> January 2023

#### 8. **Saudi Arabian And Kuwaiti Conglomerates Reportedly Put Pakistan On Notice Of 400 Million Usd Dispute, Invoking The Oic Agreement**

The Saudi Arabia-based Al-Jomaih Group and the Kuwait-based National Industrial Group have reportedly put Pakistan on notice of a dispute under the 1981 Agreement on Promotion, Protection and Guarantee of Investment Agreements Amongst the Members States of the Organization of Islamic Conference (OIC Agreement).

### 11<sup>th</sup> January 2023

#### 9. **Looking Back: Tribunal Majority In Alapli V. Turkey Found That It Had No Jurisdiction – But Majority Arbitrators Disagreed On Whether Good Faith Considerations Or Lack Of Active Contribution By The Investor Should Fell The Icsid Claim**

The Alapli Elektrik v. Turkey award is notable because it includes three different lines of reasoning on jurisdiction, with the majority arbitrators seeing different grounds for declining jurisdiction, while the dissenter would have allowed the claim to move forward.

#### 10. **Japanese Investor Asks For Rectification Of Spanish Renewables Award**

The claimant in Eurus Energy v. Spain has asked for rectification of a 2022 award. ICSID registered the request for rectification on January 5, 2023. In the underlying November 14, 2022 Award, a tribunal of Anne Hoffmann (chair), Oscar Garibaldi (claimant's appointee) and Andrea Giardina (respondent's appointee) awarded 106 million EUR in damages to the Japanese claimant, after having found (in a March 2021 decision on jurisdiction and liability) that Spain had violated the Energy Charter Treaty (ECT) by introducing a claw-back component as part of its new incentives regime for renewable energy producers.

### 9<sup>th</sup> January 2023

#### 11. **Power Barge Investor Threatens Treaty Arbitration Against Ecuador**

A foreign-owned Ecuadorean company, Termoguayas Generation S.A., has reportedly threatened to bring a treaty-based arbitration claim against Ecuador. On January 20, 2006,

Termoguayas and Ecuador's national electricity commission (CONELEC) signed a concession contract for the operation of several power barges; this 2006 concession was completed by a January 5, 2007 contract for the construction of electricity lines (see here). Ultimately, Termoguayas was operating five power barges in Ecuador.

**3<sup>rd</sup> January 2023**

**12. An ICSID Tribunal Is In Place To Hear Ect Claim Brought By 36 Solar Investors In Spanish Photovoltaic Power Plants**

An ICSID tribunal has been constituted to hear the claims in the WOC Photovoltaik et al. v. Spain case, which is proceeding under the Energy Charter Treaty (ECT). The tribunal was finalized on December 27, 2022, with the parties' appointment of Juliet Blanch as chair. The claimants nominated August Reinisch, while Spain appointed Paul Sreenan.

**TELECOMMUNICATION**

**23<sup>rd</sup> January 2023**

**1. Latvia Could Face Treaty Claim Over Telecoms Dispute**

Latvia could reportedly be facing a claim under its bilateral investment treaty (BIT) with the USA, in relation to a dispute over the provision of 5G telecommunications services. According to a January 18, 2023 local news report, the US-based company Providence Equity Partners invested in Latvian telecommunications companies Bite Latvija and Unistars. Providence Equity Partners claims that Bite is a "leading mobile operator in the Baltic countries".

**19<sup>th</sup> January 2023**

**2. Peru's Supreme Court Fines Spanish-Owned Telecoms Company In Income Tax Dispute, Giving Rise To Speculations About An Additional Icsid Claim**

The Spanish-owned telecommunications company Telefonica del Peru (TdP) has disclosed that Peru's Supreme Court ordered it to pay significant fines in a dispute with Peru's fiscal authorities, a development that takes place while TdP's parent is already involved in an ICSID arbitration with Peru (Telefonica v. Peru).

**12<sup>th</sup> January 2023**

**3. Peru Claims Victory In Treaty Dispute With Television Broadcaster**

An UNCITRAL tribunal hearing the Panamericana Television (Pantel) et al. v. Peru case has dismissed all claims and awarded costs to the respondent, according to a press release from Peru.

**10<sup>th</sup> January 2023**

**4. Three Are In Place To Hear Telecoms Arbitration Under China-Saudi Arabia Bit**

An ICSID tribunal has been constituted to hear the claims in PCCW Cascade (Middle East) v. Saudi Arabia. The tribunal was finalized on January 9, 2023, with the parties' appointment of Laurent Levy as chair. The claimant nominated Stanimir A. Alexandrov, while the respondent appointed Jean E. Kalicki.

**9<sup>th</sup> January 2023**

**5. Canadian Court Dismisses India's Sovereign Immunity Defence In Devas Enforcement Proceedings – Opining That Fraud Allegations Are Irrelevant At This Stage**

The claimants in CC/Devas v. India have been authorised to carry on with the enforcement of a 2020 treaty award before Canadian courts, which found that the state was not entitled to rely on its sovereign immunity in these proceedings.

***MISCELLANEOUS***

**24<sup>th</sup> January 2023**

**1. Why a coordinated withdrawal from the Energy Charter Treaty is inevitable**

The ECT is an international agreement dating from the 1990s with the EU and its member states among the contracting parties. Among other functions, the treaty enables energy investors to sue for compensation before international arbitration tribunals if political measures or laws have an adverse effect on their profits. And this is the case even if these measures serve the legitimate objectives of protecting the environment and climate.

**17<sup>th</sup> January 2023**

**2. DCCI calls for private, public collab to improve investment climate**

Both the private and public sectors should work together for continuous improvement of a pro-investment climate in Bangladesh to enhance both local and foreign investment, said Barrister Md Sameer Sattar, president of the Dhaka Chamber of Commerce and Industry (DCCI).

**12<sup>th</sup> January 2023**

**3. Regime Interaction in Investment Arbitration: Climate Law, International Investment Law and Arbitration**

Nearly 30 years have passed since world leaders signed the UN Framework Convention on Climate Change (“UNFCCC”), agreeing to combat “dangerous human interference with the climate system.” For many of those years, nobody seemed to take that commitment very seriously. But things look different now: climate law has hit its stride.

**11<sup>th</sup> January 2023**

**4. Komstroy V. Moldova Ect Award Is Set Aside In Paris**

The arbitral award in Komstroy (formerly Energoalians) v. Moldova has been set aside at the seat, with the Paris Court of Appeal ruling that the arbitration tribunal lacked jurisdiction under the Energy Charter Treaty (ECT).

**6<sup>th</sup> January 2023**

**5. Adoption of a New Global Biodiversity Framework – Key Takeaways for Global Organizations and Financial Firms**

On 19 December 2022, representatives from 188 countries adopted a new agreement at the United Nations (“UN”) Biodiversity Conference in Montreal, Canada, to guide global action on nature.[1] The agreement, the Kunming-Montreal Global Biodiversity Framework (“GBF”), is the result of several years of negotiations under the auspices of the UN Convention on Biological Diversity (“CBD” or the “Convention”),[2] the first summit having taken place in Kunming, China, in October 2021.

**Next Issue: 1 March 2023**

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