



***RCIL MONTHLY***  
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***NEWSCOVERAGE***

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## ***INDIA – UNITED KINGDOM***

**25<sup>th</sup> February 2023**

### **1. India, U.K agree to make progress on trade pact.**

India and the U.K. have agreed to make further progress on the ongoing negotiations for a free trade agreement (FTA) and to swiftly organize the next bilateral Economic and Financial Dialogue soon. At the conclusion of U.K. Chancellor Jeremy Hunt's India visit for the G20 Finance Ministers and Central Bank Governors meeting, held under India's 2023 Presidency, the U.K.'s Treasury department said the Finance Minister held talks with Indian counterpart Nirmala Sitharaman with a focus on deepening bilateral economic and financial ties.



## ***INDIA – EUROPEAN UNION***

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

### **1. India-EU FTA very important goal: Jaishankar**

The free trade agreement that is under discussion between India and the European Union is a “very important goal,” said External Affairs Minister Dr. S Jaishankar on Tuesday. Speaking at the Inaugural Session of the CII India-Europe Business and Sustainability Conclave, Mr Jaishankar showcased India’s “fast-track” approach to negotiation for FTAs and said a trade pact between the two sides would be a “game-changer”.

### **2. India has become a global leader in climate change: EAM**

Ahead of the G20 Foreign Ministers Meeting in New Delhi, India has emphasized the importance of capacity building for sustainable India-Europe cooperation. Bilateral trade between India and the European Union (EU) exceeded US\$115 billion in 2021-22, making the EU one of India’s most significant trading partners.

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

### **3. Modi says India can be peacemaker in Ukraine**

During the wide-ranging talks between Prime Minister Narendra Modi and German Chancellor Olaf Scholz here on Saturday, both nations decided to ramp up ties in the security and defence sectors, strengthen the partnership in clean energy, boost trade ties and accelerate efforts to conclude an India-European Union (EU) free trade agreement (FTA). The two leaders also discussed the situation in Ukraine and the Indo-Pacific.

## *INDIA – CANADA*

18<sup>th</sup> February 2023

### 1. **Canada's Indo-Pacific Policy That Includes India As A Key Partner**

India and Canada held a bilateral meeting, known as the 'India-Canada Strategic Dialogue', prior to the G20 Foreign Ministers' meeting in March in New Delhi. During the meeting, India welcomed Canada's Indo-Pacific Strategy, which aligns with India's vision of a free, open, and inclusive Indo-Pacific.



## ***INDIA – OTHER STATES***

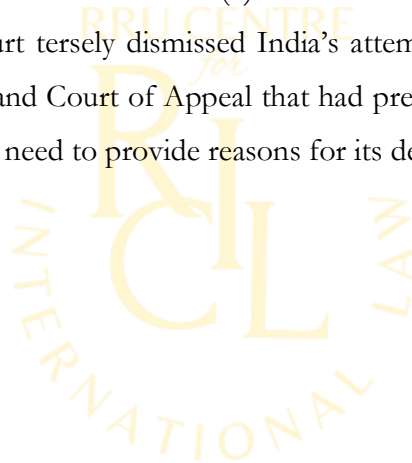
**28<sup>th</sup> February 2023**

**1. India, UAE working to finalise rupee-dirham arrangement for trade: Envoy**

India and the United Arab Emirates (UAE) are engaged in technical discussions to finalise a rupee-dirham arrangement for trade as part of the efforts to build on the free trade agreement signed by the two countries last year, UAE ambassador Abdalnasser Jamal Alshaali said in an interview.

**2. Dutch supreme court dismisses India's bid to set-aside cc/devas treaty award**

The Dutch Supreme Court has rejected India's bid to overturn an award on jurisdiction and the merits in the CC/Devas et al. v. India (1) arbitration dispute. In its February 3, 2023 Decision the Supreme Court tersely dismissed India's attempt to overturn judgments from The Hague District Court and Court of Appeal that had previously dismissed the state's set-aside application, seeing no need to provide reasons for its decision under Dutch law.



# ***GLOBAL ARBITRATION TRENDS***

## **1. JURISDICTIONAL CHALLENGES**

### **a. Mining**

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

#### **1. *Asiaphos V. China Tribunal Issues Its Award, With A Tribunal Majority Seeing No Scope To Rule On Existence Of Expropriation Under Arbitration Clause Limited To Disputes Involving The Amount Of Compensation For Expropriation***

An UNCITRAL tribunal in *AsiaPhos and Norwest Chemicals v. China* has issued its award, with a tribunal majority declining jurisdiction after finding that, under the applicable China-Singapore bilateral investment treaty (BIT), they could only rule on the amount of compensation owed on account of a previously established expropriation.

### **b. Energy**

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

#### **2. *SCC tribunal hearing under-the-radar ECT claim against Poland upholds jurisdiction over intra-EU dispute and finds breach of effective means standard***

SCC tribunal hearing the *Mercuria Energy Group v. Poland* arbitration has issued its award, concluding that Poland breached the Energy Charter Treaty (ECT). As we previously revealed, the Cyprus-based claimant argued that Poland had breached the ECT in relation to the treatment of the company's local subsidiary, through prolonged administrative proceedings.

**7<sup>th</sup> February 2023**

#### **3. *SCC tribunal upholds jurisdiction and finds Spain liable for ECT breach in intra-EU Dispute***

A tribunal constituted under the Stockholm Chamber of Commerce (SCC) in the *Triodos Sivac II v. Spain* arbitration issued its award a few months ago, upholding jurisdiction, finding

a breach of the Energy Charter Treaty (ECT), and awarding an undisclosed number of damages to the Luxembourg-based claimant.

## **2. AMICUS CURIAE INTERVENTIONS**

### **a. Energy**

**06<sup>th</sup> February 2023**

#### **1. ICSID Tribunal (Partially) Grants European Commission's Request to Intervene In Intra-EU Arbitration Against Germany**

An ICSID tribunal hearing the Mainstream Renewable Power et al. v. Germany case has partially granted the European Commission's (EC) request to intervene as a non-disputing party. In the February 1, 2023 Decision on the EC's Application to Intervene as a Non-Disputing Party, the tribunal of Wendy J. Miles (chair), Charles Poncet (claimants' appointee) and Antolin Fernandez Antuna (respondent's appointee) authorized the EC to submit one written submission on the intra-EU issue, capped at 30 pages.

## **3. COMPLIANCE, ANNULMENT AND COURT REVIEW OF AWARDS**

### **a. Mining**

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

#### **1. Paris Court Of Appeal Sets Aside Treaty Award That Declined Jurisdiction Over Beneficiaries of Trust**

The individual claimants in Rikita Mehta, Prenay Agarwal and Vinita Agarwal v. Uruguay have convinced the Paris Court of Appeal that the tribunal erred when declining jurisdiction over their case. The underlying award has thus been set aside.

### **b. Energy**

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



- 1. Ad Hoc Committee in Watkins V. Spain Finds No Flaws In The Rejection Of The Intra-Eu Objection, and Confirms Validity Of Award Despite Error In The Quantification Of Damages**

An ICSID ad hoc committee in Watkins Holdings et al. v. Spain recently dismissed Spain's annulment application in an intra-EU dispute initiated in 2015. In the Decision, the committee of Lawrence Boo (chair), Olufunke Adekoya and Dyala Jimenez Figueres fully rejected Spain's grounds of annulment. In particular, the committee found no excess of powers in the tribunal's decision to exercise jurisdiction in an intra-EU dispute under the Energy Charter Treaty (ECT).

**15th February 2023**

- 2. ICSID invites Spain to Comply with Renewable Energy Award**

One of ICSID's Deputy Secretary-Generals, Gonzalo Flores, has sent a letter to Spain, asking the state to comply with the Antin Infrastructure Services Luxembourg and Antin Energia Termosolar v. Spain award. After recalling the case's procedural history, Mr. Flores emphasized that, pursuant to Article 53 of the ICSID Convention, the award and annulment decision are "final and binding for the parties".

**7th February 2023**

- 3. ICSID Tribunal In Sevilla Beheer V. Spain Rejects Request For Reconsideration Based On Recent Set-Aside Decisions In Other Intra-Eu Disputes**

An ICSID tribunal in Sevilla Beheer and others v. Spain has unanimously rejected a second request for reconsideration of its previous dismissal of the intra-EU objection, seeing no exceptional circumstances that would justify reviewing its decision on jurisdiction.

#### **4. ARBITRAL CHALLENGES AND RECUSAL**

**22<sup>nd</sup> February 2023**

- 1. After Meeting in Vienna, Members of UNCITRAL Working Group On ISDS Are Still Unsure About Scope Of Double-Hatting Prohibition In Code Of Conduct For Arbitrators**

The UNCITRAL Secretariat has released a report on the latest discussions of Working Group III, which is tasked with reforming investor-state dispute settlement (ISDS), following a round of negotiations that took place in Vienna in January 2023. The February 7, 2023 report notably reveals that the parties to the Working Group are ready to adopt most of the Code of Conduct for Arbitrators (CoC) jointly developed by UNCITRAL and the ICSID Secretariat, with minor adjustments to either the CoC or the accompanying Commentary

## 5. INTERIM MEASURE DECISION

### a. Mining

3<sup>rd</sup> February 2023

#### 1. [NAFTA legacy tribunal declines to grant provisional measures aimed at preventing PEMEX subsidiary from calling on performance bond](#)

An ICSID tribunal in *Finley Resources et al. v. Mexico* in January 2022 declined to grant interim measures to protect the claimants' 41 million USD performance bond during the pendency of the arbitration proceedings. The January 26, 2022 Interim Measures Decision was rendered last year, but it was only recently made public by ICSID, shedding light on its underlying reasons.

### b. Energy

22<sup>nd</sup> February 2023

#### 1. [Nagorno-Karabakh Dispute Between Armenia and Azerbaijan – Which Has Given Rise to Investor-State Arbitration Threats – Sees Provisional Measures Orders from The International Court of Justice](#)

The International Court of Justice (ICJ) has issued two orders on interim measures in parallel cases opposing Armenia and Azerbaijan, in which each state is claiming that the other state breached the International Convention on the Elimination of all forms of Racial Discrimination (CERD) in the aftermath of the 2020 Nagorno-Karabakh war.

## 6. SETTLEMENT OF DISPUTED CLAIMS

## **a. Energy**

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

### **1. Costa Rica Announces Settlement of Hydropower Dispute At ICSID**

Costa Rica's government-owned electricity institute, Instituto Costarricense de Electricidad (ICE), has announced that the parties in the treaty-based Enel Colombia and Enel Green Power Costa Rica v. Costa Rica ICSID case have agreed to settle their dispute.

## **7. TREATY MAKING**

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

### **1. Chile Joins Pacific Free-Trade Agreement – but excludes Investor-State Arbitration Through Side Letters with New Zealand**

On February 21, 2023, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entered into force for Chile – the latest state to join this multilateral treaty covering most countries around the Pacific rim. While the treaty itself was signed and entered into force in 2018, Chile only opted to ratify it last year

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

### **2. Venezuela Signs New BIT with Colombia; While States Agree To Investor-State Arbitration, Treaty Is Characterized By Unorthodox Drafting And Innovative Approach To Investor Protection**

Venezuela and Colombia have recently signed a new bilateral investment treaty (BIT). This development represents a stark departure from Venezuela's hitherto critical stance on investor-state arbitration, illustrated by Venezuela's decisions over the past decade to denounce both the ICSID Convention and several of its bilateral investment treaties.

**15<sup>th</sup> February 2023**

### **3. Energy charter treaty secretariat sends letter to EU parliament to clarify modernised text and urge EU not to block modernisation process**

The Secretariat of the Energy Charter Treaty (ECT) has sent a letter to the Parliament of the European Union (EU) in response to the latter's resolution calling for a coordinated withdrawal of EU states.

**4. Text Of First Ever Bit Concluded by Jersey Surfaces, As the Self-Governing UK Dependency Signals That More Investment Protection Treaties Are in The Pipeline**

The government of Jersey has published the text of its bilateral investment treaty (BIT) with the United Arab Emirates (UAE) – the first ever BIT concluded by this self-governing UK Crown Dependency. The BIT is a rare instance of an investment treaty concluded by a self-governing political entity that does not have the status of an independent state. (Such treaties are nonetheless not unprecedented – see, e.g., the BITs concluded by Hong Kong.)

**8. MISCELLANEOUS**

**a. Mining**

**15<sup>th</sup> February 2023**

**1. ICSID Tribunal Hearing Tanzanian Gold Mining Dispute Declines To Order State To Honour Advance On Costs Obligation**

The International Centre for Settlement of Investment Disputes (ICSID) has released a batch of procedural orders (POs) issued in the Winshear Gold v. Tanzania arbitration.

**7<sup>th</sup> February 2023**

**2. Gold Mining Company Lodges Long-Foreshadowed Arbitration Claim Against Ghana**

The Australian company Cassius Mining has disclosed today that its Ghana-based subsidiary has initiated arbitration proceedings against Ghana, thus lodging a claim that the miner has been foreshadowing for several years.

**2<sup>nd</sup> February 2023**

**1. Cement Investor Files For Annulment Of Award That Dismissed Claims Under ICSID Rule 41(5) Due To Manifest Lack Of Consent To Arbitrate By Iraq**

The claimant in AHG Industry v. Iraq has requested the annulment of the underlying award. ICSID registered the annulment application on February 2, 2023. German claimant filed for arbitration in 2020, protesting a take-over by armed combatants of a cement plant located in the city of Kirkuk. (A similar claim with respect to a PVC and HDPE pipe plant in the city of Erbil was withdrawn during the arbitration.)

## **b. Energy**

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

### **1. Wintershall Says It Is Looking Into Legal Claims Against Russia In Relation To Expropriation Of Its Russian Assets**

During its annual press conference, the German oil and gas company Wintershall Dea has announced that as part of its plan to exit Russia, the company will look into all available legal claims against Russia – in a context where an investment treaty is seemingly applicable.

**23 February 2023**

### **2. Navigating Russia Ukraine war sanctions regime, SCC tribunal hearing dispute with Rosneft subsidiary decides to continue the arbitration and proceeds to issue an award; Russian court responds with anti-arbitration injunction**

A Russian commercial court has recently issued an injunction directed against an arbitration pitting First National Petroleum (FNP) against Russia's Tyumenneftegaz (TNG), before the Stockholm Chamber of Commerce (SCC). The tribunal thus proceeded to issue a December 19, 2022 Award, in which it found that the claims were admissible and that TNG had not been denied an opportunity to defend itself due to the sanctions regime.

**22<sup>nd</sup> February 2023**

### **3. ICSID Annulment Committee is in Place to Hear Venezuela's Bid to Overturn Billion-Dollar Award**

An ICSID ad hoc committee has been constituted to hear Venezuela's request for annulment of the award in *Agroinsumos et al. v. Venezuela*. The committee was constituted on February

21, 2023. It is composed of Felipe Bulnes Serrano (chair), Dyala Jimenez Figueres, and Katherine Gonzalez Arrocha

**4. French gas major is involved in arbitration against Gazprom over gas delivery dispute**

Engie, a French gas company whose largest shareholder is the French state, has disclosed the initiation of arbitral proceedings against Gazprom Export LLC – the sales arm of Russian hydrocarbon producer Gazprom. The arbitration was disclosed in Engie’s consolidated 2022 accounts. According to Engie, the dispute arose from Gazprom Export’

**5. Three Are Named to Hear Hydro Energy Claim Against Panama**

An ICSID tribunal has been constituted to hear the claims in Yoram Moussaieff v. Panama. The tribunal was finalized on February 21, 2023, with the parties’ appointment of Joseph Tirado as chair. The claimant had previously nominated Horacio A. Grigera Naon, while Panama had appointed Osvaldo C. Guglielmino.

**21<sup>st</sup> February 2023**

**6. UK Court Dismisses Crescent’s Request For A Security In Its Dispute With The National Iranian Oil Company, Revealing Arbitrator Challenge In Second Arbitration Between The Parties**

The UK’s High Court of Justice has dismissed a request made by the claimant in the Crescent v. National Iranian Oil Company (NIOC) case that NIOC’s right to appeal a set-aside judgment should be conditioned on NIOC posting part of the judgment debt as a security.

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

**7. ICSID committee dismisses requests for reconsideration of previous decisions on stay of enforcement and on Venezuela’s representation**

An ICSID ad hoc committee in ConocoPhillips Petrozuata, ConocoPhillips Hamaca, and ConocoPhillips Gulf of Paria v. Venezuela has dismissed two requests for reconsideration filed by Venezuela’s Maduro government, leaving intact its previous decisions on the lifting of the award’s stay of enforcement and on Venezuela’s representation.

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

**8. US court enjoins Spain from pursuing anti-suit injunctions aimed at preventing investors from enforcing intra-EU ECT awards**

The US District Court for the District of Columbia has enjoined the Kingdom of Spain from carrying on with a set of proceedings in the Netherlands and Luxembourg aimed at preventing the investors in *9Ren v. Spain* and *NextEra v. Spain* from enforcing the underlying ICSID award.

**15<sup>th</sup> February 2023**

**9. Three Are in Place to Hear Contract Arbitration Between Oil and Gas Investors And Cameroon**

An ICSID tribunal has been constituted to hear the claims in *Cameroon Oil Transportation Co. et al. v. Cameroon*. The tribunal was finalized on February 6, 2023, with the appointment of Pierre Bienvenu as chair. Mr. Bienvenu was nominated by his co-arbitrators, Thomas Clay (claimants' appointee) and Téa-Corinne Kinta (respondent's appointee).

**14<sup>th</sup> February 2023**

**10. ICSID Award and Dissent in Dispute Between Russian-Owned Electricity Companies and Georgia Come To Light, As Claimants Seek Enforcement In Multiple Jurisdictions; Arbitrators Disagree On Double Recovery And Interpretation Of Umbrella Clause**

An ICSID award issued a few months ago in the *Gardabani Holdings and Silk Road v. Georgia* treaty arbitration has surfaced in the context of US enforcement proceedings. Two claimants, both fully owned subsidiaries of the Russian energy company Inter RAO, turned to ICSID arbitration in 2017. The claimants argued that Georgia had breached its bilateral investment treaty (BIT) with the Netherlands in relation to a dispute over the claimants' rights to raise tariffs for the sale of electricity generated at their Georgian power plants.

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

**11. Japan prevails in its first known treaty arbitration**

In a heretofore unreported development, the tribunal in *Shift Energy v. Japan* recently issued its award, with a tribunal majority dismissing all claims. A tribunal of Andres Rigo Sureda (chair), Stanimir A. Alexandrov (claimant's appointee) and Zachary Douglas (respondent's appointee) was constituted to hear this claim, which proceeded under the UNCITRAL Rules but was administered by ICSID.

**10th February 2023**

**12. Energy Company Threatens Kazakhstan with ECT Arbitration**

A Cayman Islands registered energy company, Tethys Petroleum, has threatened Kazakhstan with treaty-based arbitration proceedings, over a dispute regarding the extension of certain subsurface and licencing rights.

**8<sup>th</sup> February 2023**

**13. ECT Award Creditors Target Oil Spill Debt in Favour of Spain, While UK Court Rejects Eu Commission's Application to Intervene**

A UK court has recently dismissed a request from the European Commission to be joined as a party or intervene as *amicus curiae* in an enforcement action in the *Antin Infrastructure Services and Antin Termosolar v. Spain* case, while the investors target a sizeable judgment compensating Spain for an oil spill incident.

**7th February 2023**

**14. ICC Award Stemming from Yemeni Oil Concession Dispute Surfaces, As State Seeks to Collect Compensation From American Consortium Partner**

A series of decisions by the tribunal in *Ministry of Oil and Minerals of Yemen v. Nexen et al.* have surfaced in the context of US enforcement proceedings, shedding light on the reasons that led the ICC tribunal to award nearly 10 million USD in damages to the state, in a dispute over a terminated oil concession.

**3rd February 2023**



**15. Baywa V. Spain Committee Lifts Stay of Enforcement of ICSID Award, Seeing No Risk Of Non-Recoupment**

A decision on the stay of enforcement of an ICSID award in BayWa r.e. AG and Baywa r.e. Asset Holding GmbH v. Spain\* has recently surfaced in the context of US enforcement proceedings, revealing that the committee found that Spain had failed to prove a risk of non-recoupment.

**16. Spanish Courts Decline to Further Intervene in Multi-Billion-Dollar Arbitration Dispute Between Heirs of Defunct Sultanate and Malaysia**

The Spanish courts have recently issued several decisions related to the Heirs of the Sultan of Sulu v. Malaysia arbitration, effectively washing their hands of this high-stakes dispute. The Spanish courts have recently issued several decisions related to the Heirs of the Sultan of Sulu v. Malaysia arbitration, effectively washing their hands of this high-stakes dispute.

**17. NAFTA Legacy Tribunal Declines to Grant Provisional Measures Aimed At Preventing Pemex Subsidiary From Calling On Performance Bond**

An ICSID tribunal in Finley Resources et al. v. Mexico in January 2022 declined to grant interim measures to protect the claimants' 41 million USD performance bond during the pendency of the arbitration proceedings. The January 26, 2022 Interim Measures Decision was rendered last year, but it was only recently made public by ICSID, shedding light on its underlying reasons.

**c. Telecom**

9<sup>th</sup> February 2023

**1. German Court Grants Application for Partial Enforcement Of Deutsche Telekom V. India Award, As Neither Fraud Allegations Nor Bit's Unique Wording On Enforcement Sway The Judges**

The Higher Regional Court of Berlin (Kammergericht, or KG) has granted the investor's request for partial enforcement of the Deutsche Telekom (DT) v. India UNCITRAL award. In the Judgment, the court first found that DT's enforcement application was admissible, notably dismissing India's argument that a unique provision found in Article 9(2)(b)(v) of the underlying Germany-India bilateral investment treaty (BIT) – which provides that awards shall

be enforced in accordance with the national laws of the respondent state – could be interpreted as implying that “only enforcement in India would be possible according to the conditions applicable there.

