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ASCENSIO: H.: "Article 31 of the Vienna Convention on the Law of Treaties and International Investment Law", *ICSID Review—Foreign Investment Law Journal*, vol. 31, nº 2, 2016, pp. 366–387. The general rule on the interpretation of treaties as codified in Article 31 VCTL has received increasing attention in investment arbitration. It unfolds an objective method focused on the meaning of the text in order to frame interpreters' discretion. The elements and limits of such method are discussed here in the context of investment treaties, and illustrated by recent cases. The analyses also relies on the most recent works of the International Law Commission of the United Nations, notably on interpretation according to States' subsequent practice and according to other relevant rules of public international law. It is argued that the method of Article 31 VCTL is appropriate to reduce uncertainty in international investment law and arbitration, but that an overemphasis on systemic consistency as an objective of treaty interpretation involves risks.

BOHMER, L.M.: "Finality in ICSID Arbitration Revisited", *ICSID Review—Foreign Investment Law Journal*, vol. 31, nº 1, 2016, pp. 236–245. This article proposes to distinguish between two different types of finality in ICSID arbitration: pre–award finality, or the finality of interlocutory decisions, and post–award finality, or the finality of ICSID awards. Post–award finality is relatively well defined by the ICSID Convention through the principle of finality of awards, embedded in a self–contained system of review and shaped by a narrow definition of the term "award". To the contrary, the ICSID Convention does not explicitly address pre–award finality. A case can be made for or against pre–award finality in ICSID arbitration. This article argues that, as long as there is no extended finality of interlocutory decisions, both positions lead to the same outcome: the arbitral tribunal has the power to review interlocutory decisions before the final award is rendered, but arbitrators should exercise this power only under limited circumstances. It proposes to apply the criteria for the revision of an international decision developed by the International Court of Justice either directly or by analogy to determine whether or not to reconsider interlocutory decisions.

BONAFÉ, E. y METE, G.: "Escalated interactions between EU energy law and the Energy Charter Treaty", *J. World Energy Law Bus*, vol. 9, nº 3, 2016, pp. 174–188. The European Union (EU) has a recognized international legal personality and it has signed the Energy Charter Treaty (ECT) as a Regional Economic Integration Organization (REIO). As a result, the ECT, the EU and national legislation together establish different regulatory layers governing energy markets. Although those layers are in principle complementary, rules adopted in different periods and frameworks may cause inconsistencies in their implementation. The arbitral tribunal award on 21 January 2016 in the case Charanne and Construction v Spain, is only the latest illustration of the uneasy boundaries between the EU and ECT. This article will look into some of the dynamics and tensions between the EU internal energy market and policy and the ECT in the areas of transit, long–term contracts, renewable energy and external relations. The review of selected measures and case law will reveal the existence of tensions at regional and international levels and the way they are addressed to simultaneously accommodate regional and international legal orders. This article will help to understand what kind of

interactions are happening today between the EU and the ECT legal systems and will offer a particular view to explain and approach those relations.

BONNITCHA, J.: "Foreign Investment, Development and Governance. What international investment law can learn from the empirical literature on investment", *Journal of International Dispute Settlement*, vol 7, nº 1, 2016, pp. 31–54. Academic and policy debates about investment treaties are premised on assumptions about the benefits of foreign investment. There is a rich and sophisticated body of empirical literature that examines whether these assumptions are valid. A few notable exceptions aside, scholarship on investment treaties does not engage deeply with this literature. The central argument of this article is that scholars and policy–makers working on investment treaties can benefit from a deeper engagement with the wider empirical literature on the effects of investment. One central insight from the empirical literature is that increased foreign investment is not necessarily beneficial from a host state perspective. This article explores the implications of this insight for research on and debates about investment treaties. Other, more specific, insights from the empirical literature are also relevant to debates about the interpretation and reform of investment treaties.

CONDON, B.J.: "Mexican Energy Reform and NAFTA Chapter 11: Articles 20 and 21 of the Hydrocarbons Law and Access to Investment Arbitration", *J. World Energy Law Bus*, vol. 9, nº 3, 2016, pp. 203–218. Mexican energy reforms open the energy sector to foreign participation via different types of contracts, some of which may qualify as investments under North American Free Trade Agreement (NAFTA) Chapter 11. Mexican NAFTA reservations exclude some Mexican regulation from the scope of application of specific obligations in Chapter 11, such as those regarding performance requirements, most–favoured–nation treatment, and national treatment. However, Mexico's legislative restrictions on foreign investors' right to pursue investor–state arbitration are not covered by its NAFTA reservations and should not affect access to NAFTA Chapter 11 dispute settlement. Those restrictions are inconsistent with NAFTA Chapter 11 and Mexico cannot invoke its domestic laws to justify a violation of its international obligations. Moreover, Mexico's reservations do not prevent the application of obligations regarding fair and equitable treatment and expropriation.

DING, J.: "Enforcement in International Investment and Trade Law: History, Assessment, and Proposed Solutions", *Georgetown Journal of International Law*, vol. 47, 2016, pp. 1137–1165. In the process of globalization, international trade and investment are not only complementary but also inseparable to global economy. Trade and investment law have common roots but have taken diverging paths. They both arise from the same idea: the protection and treatment of aliens. However, with evolution, the trade regime today focuses on the macro–issues such as market access to increase systemic stability whereas the investment regime today focuses on the microissues of attracting individual investors and promoting cross border investments. The World Trade Organization (WTO) has proven to be a source of systemic stability with strong enforcement measures, whereas the investment law is in a fluid state. This Note tries to answer how to improve the effectiveness of compliance measures in international investment and trade law.

DUPONT, C y SCHULTZ, T.: "Towards a New Heuristic Model: Investment Arbitration as a Political System", *Journal of International Dispute Settlement*, vol. 7, nº 1, 2016. In this introduction to the Special Issue "Empirical Studies on Investment Disputes", we offer a new heuristic model to structure the thinking about investment arbitration. Investment arbitration is presented here as a political system in a sense inspired by David Easton's landmark theory: it transforms the input of key actors (namely states, investors, arbitrators, and arbitration institutions) into output (namely arbitral awards taken in the aggregate), with feedback loops from output to input, leading to or calling for adjustments or other reactions from these actors. We use this model to review some of the leading existing research and bring together key insights offered by the contributions to the issue.

FERNÁNDEZ ROZAS, J.C.: "La ordenación del arbitraje comercial internacional en América Latina y el Caribe: entre el particularismo y la unificación", *Revista Chilena de Derecho Internacional Privado*, vol. II, nº 2, 2016, pp. 40-57. Este artículo trata sobre todo del marco legal del arbitraje comercial internacional en América Latina y el Caribe y la influencia de la Comisión de las Naciones Unidas para el Derecho Mercantil Internacional en las leyes de arbitraje adoptadas por la mayoría de los países de la región, que han adoptado un modelo normativo moderna del arbitraje comercial internacional. También incorpora información sobre el marco jurídico en vigor para el arbitraje internacional en América Latina y el Caribe. Por último, muestra el esfuerzo importante en estos países para superar las tendencias nacionales e idiosincrasias formalistas en esta materia. A pesar de la resistencia negativa por los países de la región y de la defensa de un cierto particularismo en la actualidad no existe una actitud hostil hacia el arbitraje comercial internacional.

FERRARI, F. y ROSENFELD, F.: "Bridging the Gap Between Investment and Commercial Arbitration at the Enforcement Stage: Regime Interactions between the New York Convention and International Investment Law", *New York University Journal of Law & Business*, vol. 12, nº 2, 2016, pp. 295–316. The interaction between different regimes of public international law has attracted considerable scholarly attention in the last decade. Much of the academic discourse has focused on the abstract implications resulting from the diversification of international law and the proliferation of international dispute resolution mechanisms. While there appears to be consensus that fragmentation is an artifact that may involve both risks and opportunities, the concrete implications of this observation in practice are yet to be examined. Recent case law gives cause to do so with regard to the interaction of two distinct regimes, i.e., the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 19583 (New York Convention) and international investment law.

FOGT, M.M.: "The Interaction and Distinction Between the Sales and Arbitration Regimes: the CISG and Agreements or Binding Practice to Arbitrate", *American Review of International Arbitration*, vol. 26, nº 3, 2015, pp. 365–406. The substantive law (*inter alia,* the CISG sales law) regime and the commercial arbitration regime are often applied simultaneously in the case of the international trade of goods, but there is a complicated interaction and a principal distinction between the two regimes. The complicated interaction arises from the fact that both regimes are based on the same premise that the parties have consented to the main contract and to arbitration and partly regulate the same issues, inter alia, the formal validity. As the arbitration regime lacks a specific contract formation regime, it is dependent on a substantive law which provides for such a regime. This dependency is crucial, as the very basis for the competence (power) of an arbitral tribunal is the mutual consent of the parties to arbitrate and so to oust jurisdiction of ordinary State courts – if there is no consent there is no power. The principal distinction derives from the principles of separability (or autonomy) of the arbitration agreement from the main contract. An arbitration agreement can (but need not) live a "life" of its own, but it still needs an applicable contract formation regime to determine the existence of consent to arbitrate. An analysis of the current stage of the relationship of the two regimes –the substantive sales law and the settlement of dispute regimes– is one of the core issues of international commercial law.

FRY, J.D. y REPOUSIS, O.G.: "Towards a New World for Investor–State Arbitration Through Transparency", *New York University Journal of International Law and Politics*, vol. 48, 2016, pp. 795–865. The 2014 United Nations Commission on International Trade Law (UNCITRAL) Rules on Transparency represent a major milestone in realizing that new world, with the 2015 United Nations Convention on Transparency in Treaty–Based Investor–State Arbitration (Mauritius Convention) following closely on its heels in terms of timing and content. It remains to be seen whether the Transparency Rules and the Mauritius Convention will achieve their desired goals of bringing genuine transparency to the field of investor–state arbitration, especially since strong forces oppose such changes. By identifying and analyzing the ways that states have incorporated –and more importantly,

failed to incorporate– provisions on transparency in their international investment agreements prior to the Transparency Rules and the Mauritius Convention, this Article shows the progressive nature of these two instruments. Indeed, the main core of transparency in investor–state arbitration emerged in the context of the North American Free Trade Agreement (NAFTA) and has been further advanced by such states as Canada and the United States.

GALLUS, N.: "Article 28 of the Vienna Convention on the Law of Treaties and Investment Treaty Decisions", *ICSID Review—Foreign Investment Law Journal*, vol. 31, nº 2, 2016, pp. 290–313. This article examines the "rule against retroactivity", its codification in Article 28 of the Vienna Convention on the Law of Treaties, and the application of investment treaties to events before the treaties entered into force. In particular, the article focuses on the application of the rule to events before the treaties entered into force, but after the entry into force of the obligation that is alleged to be breached.

GEIGER, R.: "Les procedures d'arbitrage dans les accords d'investissement de l'Union européenne l'enjeu des traités transatlantiques", *Revue internationale de droit économique*, vol. 29, nº 3, 2015, pp. 451–465. Forte de la compétence exclusive en matière d'investissement international que lui avait confiée le Traité de Lisbonne, l'Union européenne s'est engouffrée dans la négociation de traités bilatéraux d'investissement dans diverses régions du monde. Selon la Commission, ces traités comporteront un dispositif ambitieux, combinant libéralisation du commerce dans les secteurs primaires, secondaires et tertiaires, convergence réglementaire et protection de l'investissement. Ces nouveaux traités devraient également servir de modèles pour remplacer les nombreux traités bilatéraux d'investissement conclus jusqu'à présent par les pays membres de l'Union. Parmi ces initiatives, les négociations transatlantiques (Canada, États–Unis) représentent l'enjeu le plus important, tant par leur ambition que par le volume des transactions concernées. Lancées en l'absence totale de transparence, ces négociations ont suscité de fortes préoccupations dans les milieux politiques et au sein de la société civile, la création envisagée d'un système d'arbitrage ad hoc investisseurs–États étant la pierre d'achoppement. Devant cette levée de boucliers contre la privatisation de la justice, la Commission cherche désormais à corriger le tir, en proposant une Cour arbitrale permanente dotée d'une instance d'appel. Sur la base de la jurisprudence de la Cour de justice européenne, sont examinés les problèmes que soulèverait une juridiction conférant un accès exclusif, accessible aux seuls investisseurs étrangers, pour des litiges susceptibles de porter sur l'interprétation de la règle nationale et communautaire. Un tel système, qu'il soit ad hoc ou permanent, est–il nécessaire entre des États qui jouissent de systèmes juridiques hautement développés et d'un pouvoir judiciaire indépendant ? Serait–il conforme au principe de l'égalité des citoyens devant la justice ? Porterait–il atteinte à la primauté du droit européen, valeur communautaire essentielle ?

HILL, J.: "The Exercise of Judicial Discretion in Relation to Applications to Enforce Arbitral Awards under the New York Convention 1958", *Oxford Journal of Legal Studies*, vol. 36, nº 2, 2016, pp. 304 ss. The New York Convention of 1958 establishes a simplified international regime for the cross–border enforcement of arbitral awards. However, arbitral awards are not entitled to automatic cross–border enforcement; national courts 'may' refuse enforcement in a narrow range of circumstances set out in article V NYC. The literature suggests that the use of 'may' in article V confers discretion on the enforcing court: even if one of the grounds which would justify non–enforcement is established by the award–debtor, the enforcing court has a residual discretion to enforce the award. On closer analysis, however, judicial decisions to enforce or refuse enforcement involve no more than 'weak' discretion (in Dworkinian terms). Even though the text of article V NYC leaves certain important questions unanswered, whether an award rendered in one country is enforced in another depends on the application of an established framework of rules and principles. This normative framework is not incomplete in a way that admits the operation of 'strong' discretion. Accordingly, traditional accounts of the operation of article V NYC which focus on the operation of judicial discretion give a misleading impression of how the NYC is applied in practice.

HINOJOSA SEGOVIA, R.: "El arbitraje y los errores legislativos", *El notario del siglo XXI. Revista del Colegio Notarial de Madrid*, nº 65, 2016, pp. 168–173: :La reciente Ley 42/2015, de 5 de octubre, ha modificado la Ley de Arbitraje para adecuar el régimen jurídico de la declinatoria a la nueva regulación del juicio verbal; así como ha incidido en la materia arbitral para establecer en las ejecuciones de laudos el control de oficio por el juez del carácter abusivo o no de las cláusulas arbitrales de los contratos entre un empresario o profesional y un consumidor o usuario en que se fundamenten aquellas resoluciones arbitrales, estableciendo un procedimiento contradictorio, aunque con una deficiente técnica legislativa; y ha suprimido la referencia que se hacía al arbitraje en el art. 415.1 III LEC en la regulación de la audiencia previa del juicio ordinario.

JACQUET, J.–M.: "Les lois de l'arbitrage", *Journal du droit international*, vol. 142, nº 1, 2015, pp. 1–12. Les lois de l'arbitrage sont de plus en plus nombreuses. Elles sont d'origines diverses. Quelle est exactement leur fonction par rapport à l'arbitrage international ? Deux constatations peuvent être faites. D'abord, le rôle des lois doit d'abord être situé par rapport à l'autonomie de l'arbitrage. Ensuite, dans la mesure où cette autonomie ne peut guère être mise en doute aujourd'hui, l'ensemble des lois de l'arbitrage tend à se constituer en un système de "régulation".

JARROSSON, Ch.: "Le statut juridique de l'arbitrage administraté", *Revue de l'arbitrage*, 2016, nº 2, 2016, pp. 445-469. A l'occasion du 40e anniversaire de l'Association française d'arbitrage, il a paru utile de faire le point sur le statut juridique de l'arbitrage lorsqu'il se déroule sous l'égide d'un centre d'arbitrage. On s'aperçoit que le droit – c'est-à-dire surtout la jurisprudence – a « saisi » la matière et a progressivement élaboré un régime juridique pour ce contrat particulier, au fur et à mesure des réponses apportées aux diverses actions en responsabilité intentées contre ces institutions. L'activité des institutions d'arbitrage se déroule le cas échéant sous le contrôle du juge étatique qui a su trouver l'équilibre entre la nécessité d'un tel contrôle et la juste protection de la liberté et de la souplesse dont l'arbitrage a besoin. A cet égard, la vigilance reste de mise, afin que la pratique des centres d'arbitrage ne devienne pas elle-même la source d'une réglementation excessive.

KORZUN, V.: "Arbitrating antitrust claims: from suspicion to trust", *New York University Journal of International Law and Politics*, vol 48, 2016, pp. 867–931. This Article examines the evolving role of international commercial arbitration in the enforcement of domestic antitrust laws. It first explores how antitrust claims and issues arise in international arbitrations. It then describes three phases in the evolution of domestic courts' attitude toward the adjudication of antitrust claims by international arbitral tribunals. Initially, national courts—like courts of the United States prior to the U.S. Supreme Court's pathmarking 1985 decision in Mitsubishi v. Soler—were suspicious of private adjudication of antitrust claims, cognizant of the public values implicated by antitrust law. A remarkable but unnoticed transformation has since ensued. Now, the national courts of most developed economies accept (and even mandate) adjudication of antitrust claims by private international arbitral tribunals. This transformation may be predictive of future acceptance of international arbitral tribunals as trustworthy forums for dispute resolution of other "public" subject matters. This Article concludes by suggesting how international arbitrators should discharge their new role and how domestic courts might police it.

LI, F.: "The Divergence of Post–Award Remedies in ICSID and Non–ICSID Arbitration: A Perspective of Foreign Investors' Interests", Chinese Journal of Comparative Law, vol. 4, nº 1, 2016, pp. 98 ss. Post–award remedies have been regarded as being the most discrepant proceedings in International Centre for Settlement of Investment Disputes (ICSID) and non–ICSID arbitration, which relate to essential issues ranging from the risks of challenge of awards to the fate of annulment. Given that the hurdles that foreign investors encounter at the stage of ICSID annulment and non–ICSID vacatur proceedings are significantly disparate, investors have had to weigh prudently the potential risks and

the relevant drawbacks entrenched in the different genres of arbitration. However, given the relatively decentralized framework, the various standards of review, and the non–nullity effect of annulment in non–ICSID arbitration, it has not entailed a more remarkable degree of uncertainty, inconsistency, and unpredictability.

LORCA NAVARRETE, A.M.: "A la búsqueda de la anulación del laudo arbitral por vulneración del orden público económico", *Diario la Ley*, nº 8615, 2015: Habría que tener en cuenta que el arbitraje no trasciende más allá de las partes que en su momento negociaron someter sus singulares y específicas controversias a arbitraje y que, por lo mismo, la vulneración de lo «público» en el buen "orden" del arbitraje, como sinónimo de "notorio, patente, manifiesto, visto o sabido por todos", no posee la homonimia con "ese" otro concepto de "o público" que desea tutelar que con el arbitraje no se produzca "menoscabo alguno de la Justicia del Estado, que debe seguir ofreciendo a todos una efectiva tutela jurídica de sus derechos". De lo que se desprende que el concreto supuesto de vulneración del orden público económico como motivo de anulación del laudo arbitral deba ubicarse en una criminación extremadamente excepcional.

MENDENHALL, J.E.: "Assessing Security Risks Posed by State–Owned Enterprises in the Context of International Investment Agreements", *ICSID Review—Foreign Investment Law Journal*, vol. 31, nº 1, pp. 36–44. There has been much debate in recent years about the treatment of State–owned enterprises (SOEs) in international investment agreements (IIAs). The discussion has touched on questions such as attribution (whether to attribute the actions of SOEs to the State), ensuring that States do not create an unlevel playing field by providing preferential treatment to SOEs, and the extent to which outbound investments by SOEs present unique national security risks to the host State. This article focuses on the last of these questions and takes the position that no new rules are needed in IIAs to address the security risks posed by SOE investments. At the same time, tribunals may be called upon to elaborate upon the factors that should be taken into account in assessing whether a SOE investment presents a security risk and, if so, the extent to which the host State is entitled to take measures to mitigate that risk without running afoul of the substantive obligations it has undertaken through an IIA. This article shall draw heavily on the practice and procedures of the Committee on Foreign Investment in the United States (CFIUS), which is the US government committee charged with reviewing the national security implications of transactions that might result in control of a US business by a foreign person or entity. While the CFIUS process has been criticized for lack of transparency, CFIUS has explained at some length its general methodology and the factors it has taken into account. It therefore provides a good example of how at least one major State has sought to grapple with the security risks that might be posed by foreign investment, in general, and investment by SOEs, in particular.

MENÉTREY, S.: "Quelle place pour l'arbitrage au sein du marché européen de la justice", *Revue internationale de droit économique*, vol. 29, nº 4, 2015, pp. 441–450. Arbitration is excluded from the scope of European judicial law instruments, in particular the Brussels I regulation. This exclusion does not prevent collisions with EU law neither competition between arbitrators and national judges. Does the competition between private arbitrators and national judges should be regulated by EU law in a market of justice or should be remain outside EU regulation?.

PAPARINSKIS, M.: "Circumstances Precluding Wrongfulness in International Investment Law", *ICSID Review—Foreign Investment Law Journal*, vol. 31, nº 2, 2016, pp. 484–503. The systemic role of circumstances precluding wrongfulness, both in international investment law and in international law more generally, is neither central nor, at least in the form in which they are currently expressed, likely to be of great practical importance in most cases. But circumstances precluding wrongfulness have played an important role in some international investment disputes, and provide an excellent illustration for how blackletter international law works, particularly in relation to countermeasures

and necessity. If these decisions are anything to go by, future developments will be of great interest to both practitioners and academic commentators, and directly touch upon the systemic pulse of international investment law and law of State responsibility.

PEINHARDT, C. y ALLEE, T.: "Political Risk Insurance as Dispute Resolution", Journal of International Dispute Settlement, vol. 7, nº 1, 2016. International arbitration may be the pinnacle of investor–state dispute settlement, but how are most disputes settled without involving international tribunals? In this article, we investigate the potential of political risk insurers to resolve investor–state disputes. Despite the increasing provision of political risk insurance by private companies, public entities continue to play central roles in insuring their firms' foreign investments, in large part due to their alleged advantages in dispute resolution. We analyse a new data set of claims from the United States' Overseas Private Investment Corporation (OPIC), which offers coverage in over 150 developing countries and is backed by the full faith and credit of the American government. We find some, limited evidence that bilateral economic ties between the United States and the host country enhance time to settlement, and we call for more research on investor–state disputes that never make it to arbitration.

PÉREZ BERENGEN, J.C.: "La incorporación a los estatutos sociales de la cláusula arbitral: notas sobre la constitucionalidad del sistema", *Diario La Ley*, nº 8634, 2015: La vinculación de la minoría al acuerdo societario de incorporar una clausula arbitral a los estatutos puede poner en entredicho su constitucionalidad, en la medida en que se compromete la libertad del ausente o disidente, valor superior del ordenamiento jurídico (art. 1.1 CE) asociado históricamente a la institución arbitral, y su derecho a la tutela judicial efectiva, derecho fundamental de carácter prestacional y asimismo principio general del ordenamiento jurídico comunitario.

RADICATI DI BROZOLO, L.G.: "Autonomia negoziale e ruolo del diritto materiale nell'arbitrato internazionale e interno", *Rivista dell'arbitrato*, vol. 26, nº 1, 2016, pp. 1–32. Using international arbitration as a point of departure, this article studies the extent of the freedom of the parties to determine the substantive regime of commercial relations and the respective roles of "the law" and party autonomy. The article begins by studying the breadth of party autonomy to determine the rules applicable to the merits, which in international arbitration is complete and allows parties to eliminate the application of national law altogether, with the sole exception of overriding mandatory rules and international public policy. It analyzes the freedom of the parties to choose non–national rules, the wisdom of such a choice compared to the choice of national law depending on the circumstances, the possibility to apply such rules in the absence of an express designation by the parties. The article also discusses the way in which national law is to be applied in arbitration and shows — taking into consideration the nature and purposes of arbitration and in particular the implications of the New York Convention and of the abandonment of court review of the application of the law by the arbitration, and the possible expectations of the parties — that arbitrators do not necessarily apply it in the same way as national judges. The article pleads for a less dogmatic conception of the role of the "law", and shows that in international arbitration there is a reversal of the traditional hierarchy between the law and party autonomy, because the parties are entirely free to determine the legal framework of the relations between them, and to fashion them as they please outside the traditional boundaries of domestic "simple" mandatory rules (albeit respecting overriding mandatory rules and public policy). The author shows that this state of things is the natural consequence of the acceptance of arbitration by States and of the need to ensure an efficient system of transnational justice, and that it does not compromise State interests and the general good, which are always safeguarded by overriding mandatory rules and public policy. The article concludes that similar considerations apply to domestic arbitration, in relation to which there is no convincing reason to constrict party autonomy within the bounds of the law as traditionally understood, and contests the wisdom of agreeing to the review of the application of the law by the arbitrators as permitted by Article 829(3) of the Italian Code of Civil

Procedure, which defeats the crucial purposes of arbitration. One of the article's overarching themes is that arbitrators have a very serious responsibility when it comes to identifying and applying the rules governing the merits. Although their task is to decide applying the law and they exercise a judicial function, because they operate in a different context and under a different framework and premises, arbitrators cannot invariably assume that they must simply mimic national courts but must take due account the context in which they operate.

REDFERN, A. y O'LEARY, S.: "Why it is Time for International Arbitration to Embrace Security for Costs", *Arbitration International*, vol. 32, nº 2, 2016, pp. 397-413. An application for security for costs is a highly effective weapon in the armoury of a defence lawyer. Yet a real or perceived hostility towards such applications in international arbitration seems to have made defence lawyers unwilling to make them, even where it would have been appropriate to do so. The emergence of third party funders, and the increasing trend for international arbitrators to award costs to the winning party, has led arbitration lawyers and arbitral institutions to re-examine the position. They are right to do so. It is time for applications for security for costs to be welcomed in international arbitration as a proper and potentially valuable interim measure of protection.

SÁNCHEZ RODRÍGUEZ, A.J.: "Acceso de los órganos arbitrales nacionales al procedimiento prejudicial del TJUE", *Revista General de Derecho Europeo*, nº 35, 2015: Respecto a la admisibilidad de cuestiones prejudiciales presentadas por órganos arbitrales, el Tribunal de Justicia de la Unión Europea (TJUE) tiene en cuenta un conjunto de datos como el origen legal del organismo, su permanencia, su independencia, el carácter obligatorio de su jurisdicción, el carácter contradictorio del procedimiento, y la aplicación de normas jurídicas. A este respecto, sostiene que un tribunal arbitral convencional no constituye un órgano jurisdiccional de un Estado miembro, pues las partes no están obligadas, de hecho o de Derecho, a dirimir sus diferencias a través del arbitraje, y las autoridades públicas del Estado miembro de que se trate no están implicadas en la elección de la vía arbitral y no pueden intervenir de oficio en el desarrollo del procedimiento ante los árbitros. Esta interpretación, excesivamente restrictiva, entendemos que debería revisarse.