

**THE AMERICAN REVIEW
OF
INTERNATIONAL ARBITRATION**

Vol. XXXII – 2021

New York

2021

THE AMERICAN REVIEW OF INTERNATIONAL ARBITRATION

Vol. 32

2021

No. 4

ARTICLES

IURA NOVIT ARBITER: TRUTH OR FICTION?	<i>Chiann Bao</i>	403
SOME REFLECTIONS ON THE IMPACT OF COVID-19 ON INTERNATIONAL COMMERCIAL ARBITRATION	<i>Julio-Cesar Betancourt</i>	417
NATIONAL INTERNATIONAL COMMERCIAL ARBITRATION	<i>Franco Ferrari</i>	439

NOTES

SHOULD THERE BE IMPLIED CONFIDENTIALITY IN INVESTMENT TREATY ARBITRATION?	<i>Vanessa S. W. Tsang</i>	453
TIME TO TACKLE THE ELEPHANT IN THE ROOM? REPEATING THE CALL FOR GREATER INSTITUTIONAL ARBITRAL LIABILITY	<i>Jason P. H. Wong</i>	475

BOOK REVIEWS

SIMON KLOPSCHINSKI, CHRISTOPHER GIBSON AND HENNING GROSSE RUSE-KHAN, <i>THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS UNDER INTERNATIONAL INVESTMENT LAW</i>	<i>Ivan Levy</i>	503
--	------------------	-----

*A cumulative table of contents for Volume 32 appears at the back of this issue.

THE AMERICAN REVIEW OF INTERNATIONAL ARBITRATION

EDITORS IN CHIEF

GEORGE A. BERMANN
ROBERT H. SMIT

MANAGING EDITOR

KABIR A. N. DUGGAL

STUDENT EDITOR IN CHIEF

CLAIRE E HELLWEG

HEAD ARTICLES EDITOR

ESTHER LI SHUEN LOH

HEAD ONLINE EDITOR

LORENZO C MARTINEZ IV

GRADUATE EDITORS

ADITYA MARWAH, ASHISH VIRMANI, BOWEN ZHANG, CAMILA MACEDO SIMÃO,
CHRISTOPHER JAMES DILLON ZAMARRON, FRANCESCA SEBASTIANI,
GABRIEL TEIXEIRA ALVES, GUSTAVO FAVERO VAUGHN, JIHYUN YOON,
KRUTHI VENKATESH, MARIA VLACHOU, NICOLE CELORIO ACOSTA,
SAKSHI SRIVASTAVA, SAMARTH KHANNA, TARANG AGARWAL, TIANYI XU,
VARUN TYAGI, VLADA GURVICH, YIWEI LU

EDITORS

NATHAN GAYER DE MENA, OLIVIA LU, SOPHIE LOW,
WILLIAM PETER RUSSELL OLDFIELD, YANG CHEN, YONGMING WU

BOARD OF ADVISORS

ALEXANDER G. FESSAS	<i>Secretary General, ICC International Court of Arbitration</i>
AMERICO ZAMPETTI	<i>Head of the Economic Section, Delegation of the European Union to the U.N.</i>
CAROLYN LAMM	<i>Partner, White & Case LLP</i>
EDWARD KEHOE	<i>Partner, King & Spalding LLP</i>
FREDERIC SOURGENS	<i>Professor of Law, Washburn University School of Law</i>
IAN LAIRD	<i>Partner, Crowell & Moring LLP</i>
JACOMIJN VAN HAERSOLTE-VAN HOF	<i>Director General, London Court of International Arbitration</i>
JOHN FELLAS	<i>Independent Arbitrator</i>
JUSTIN D'AGOSTINO	<i>Executive Partner, Herbert Smith Freehills LLP</i>
LUKE SOBOTA	<i>Partner, Three Crowns LLP</i>
MARIA CHEDID	<i>Partner, Arnold & Porter Kaye Scholer LLP</i>
MARK WU	<i>Professor of Law, Harvard Law School</i>
MIRIAM HARWOOD	<i>Partner, Squire Patton Boggs</i>
NOIANA MARIGO	<i>Partner, Freshfields Bruckhaus Deringer US LLP</i>
PAOLO DI ROSA	<i>Partner, Arnold & Porter Kaye Scholer LLP</i>
PATRICIA SAIZ GONZALEZ	<i>Professor of International Arbitration, ESADE Law School</i>
SAMAA A. HARIDI	<i>Partner, Hogan Lovells</i>
SOPHIE LAMB, QC	<i>Partner, Latham & Watkins LLP</i>
TEDDY BALDWIN	<i>Partner, Steptoe & Johnson LLP</i>
TIMOTHY G. NELSON	<i>Partner, Skadden, Arps, Slate, Meagher & Flom LLP</i>

**THE AMERICAN REVIEW
OF
INTERNATIONAL ARBITRATION**

**CUMULATIVE TABLE OF CONTENTS TO
VOLUME XXXII – 2021**

ARTICLES—BY TITLE

ARBITRATION IN A CHANGING WORLD	<i>Caline Mouawad</i>	1
AFTER <i>FIRST OPTIONS</i> : DELEGATION RUN AMOK	<i>George A. Bermann</i>	15
DOMESTIC PROCEEDINGS IN INVESTMENT ARBITRATION AND POSSIBLE STRATEGIES TO MITIGATE POTENTIAL CLASHES	<i>Wei Shen and Yilu Zhang</i>	41
FDI PROTECTION AND ENERGY TRANSITION: ARE ISDS ADJUDICATORS EQUIPPED WITH THE NEEDED DEVICES TO EASE THE TRANSITION?	<i>Yosra Abid</i>	75
IURA NOVIT ARBITER: TRUTH OR FICTION?	<i>Chiann Bao</i>	403
A LIBERAL PUSH AND THE SOVEREIGN PULL: RECOGNITION, ENFORCEMENT, AND EXECUTION IN THE ICSID CONVENTION	<i>Ylli Dautaj and Maxime Chevalier</i>	281
THE LIN-GANG FRAMEWORK PLAN IN THE SHANGHAI FREE-TRADE ZONE: A STEPPING STONE FOR REFORM OF INTERNATIONAL ARBITRATION IN CHINA	<i>Jie Zheng and Maud Piers</i>	361
NATIONAL INTERNATIONAL COMMERCIAL ARBITRATION	<i>Franco Ferrari</i>	439
RELATIVITY OF CONTRACTS AND SEVERABILITY OF THE ARBITRATION CLAUSE IN MULTI-CONTRACT TRANSACTIONS: A COMPARATIVE ANALYSIS	<i>Aldo Berlinguer and Maria Veronica Saladino</i>	313
SOME REFLECTIONS ON THE IMPACT OF COVID-19 ON INTERNATIONAL COMMERCIAL ARBITRATION	<i>Julio-Cesar Betancourt</i>	417
TAKING STOCK OF THE VALIDITY AND LEGAL IMPACT OF TRADITIONAL STABILIZATION CLAUSES IN INTERNATIONAL INVESTMENT LAW	<i>Abdallah Abuelfutuh Ali</i>	119

THIRD PARTY FUNDING IN THE UNITED STATES: A SYSTEMATIC JUDICIAL ANALYSIS	<i>Mohamed Sweify</i>	173
TRANSFORMATIVE TECHNOLOGY AND ARBITRATION'S EMERGING FUTURE	<i>Philip D. O'Neill, Jr.</i>	337

NOTES

THE NEW POLITICAL RISK INSURANCE: AN END TO CORPORATE NATIONALITY AND A SUBSTITUTE FOR INVESTMENT ARBITRATION	<i>Rebecca Lamb</i>	245
SHOULD THERE BE IMPLIED CONFIDENTIALITY IN INVESTMENT TREATY ARBITRATION?	<i>Vanessa S. W. Tsang</i>	453
TIME TO TACKLE THE ELEPHANT IN THE ROOM? REPEATING THE CALL FOR GREATER INSTITUTIONAL ARBITRAL LIABILITY	<i>Jason P. H. Wong</i>	475

BOOK REVIEWS

PRABHASH RANJAN, <i>INDIA AND BILATERAL INVESTMENT TREATIES: REFUSAL, ACCEPTANCE, BACKLASH.</i> NEW DELHI: OXFORD UNIVERSITY PRESS, 2019	<i>Rishab Gupta and Shreya Jain</i>	399
SIMON KLOPSCHINSKI, CHRISTOPHER GIBSON AND HENNING GROSSE RUSE-KHAN, <i>THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS UNDER INTERNATIONAL INVESTMENT LAW.</i> OXFORD: OXFORD UNIVERSITY PRESS, 2021	<i>Ivan Levy</i>	503

ARTICLES—BY AUTHOR

FDI PROTECTION AND ENERGY TRANSITION: ARE ISDS ADJUDICATORS EQUIPPED WITH THE NEEDED DEVICES TO EASE THE TRANSITION?	<i>Yosra Abid</i>	75
TAKING STOCK OF THE VALIDITY AND LEGAL IMPACT OF TRADITIONAL STABILIZATION CLAUSES IN INTERNATIONAL INVESTMENT LAW	<i>Abdallah Abuelfutuh Ali</i>	119
IURA NOVIT ARBITER: TRUTH OR FICTION?	<i>Chiann Bao</i>	403
SOME REFLECTIONS ON THE IMPACT OF COVID-19 ON INTERNATIONAL COMMERCIAL ARBITRATION	<i>Julio-Cesar Betancourt</i>	417

AFTER <i>FIRST OPTIONS</i> : DELEGATION RUN AMOK	<i>George A. Bermann</i>	15
RELATIVITY OF CONTRACTS AND SEVERABILITY OF THE ARBITRATION CLAUSE IN MULTI-CONTRACT TRANSACTIONS: A COMPARATIVE ANALYSIS	<i>Aldo Berlinguer and Maria Veronica Saladino</i>	313
A LIBERAL PUSH AND THE SOVEREIGN PULL: RECOGNITION, ENFORCEMENT, AND EXECUTION IN THE ICSID CONVENTION	<i>Ylli Dautaj and Maxime Chevalier</i>	281
NATIONAL INTERNATIONAL COMMERCIAL ARBITRATION	<i>Franco Ferrari</i>	439
ARBITRATION IN A CHANGING WORLD	<i>Caline Mouawad</i>	1
TRANSFORMATIVE TECHNOLOGY AND ARBITRATION'S EMERGING FUTURE	<i>Philip D. O'Neill, Jr.</i>	337
THIRD PARTY FUNDING IN THE UNITED STATES: A SYSTEMATIC JUDICIAL ANALYSIS	<i>Mohamed Sweify</i>	173
DOMESTIC PROCEEDINGS IN INVESTMENT ARBITRATION AND POSSIBLE STRATEGIES TO MITIGATE POTENTIAL CLASHES	<i>Wei Shen and Yilu Zhang</i>	41
THE LIN-GANG FRAMEWORK PLAN IN THE SHANGHAI FREE-TRADE ZONE: A STEPPING STONE FOR REFORM OF INTERNATIONAL ARBITRATION IN CHINA	<i>Jie Zheng and Maud Piers</i>	361

NOTES

THE NEW POLITICAL RISK INSURANCE: AN END TO CORPORATE NATIONALITY AND A SUBSTITUTE FOR INVESTMENT ARBITRATION	<i>Rebecca Lamb</i>	245
SHOULD THERE BE IMPLIED CONFIDENTIALITY IN INVESTMENT TREATY ARBITRATION?	<i>Vanessa S. W. Tsang</i>	453
TIME TO TACKLE THE ELEPHANT IN THE ROOM? REPEATING THE CALL FOR GREATER INSTITUTIONAL ARBITRAL LIABILITY	<i>Jason P. H. Wong</i>	475

BOOK REVIEWS

- PRABHASH RANJAN, *INDIA AND BILATERAL INVESTMENT TREATIES: REFUSAL ACCEPTANCE, BACKLASH*, NEW DELHI: OXFORD UNIVERSITY PRESS, 2019 *Rishab Gupta and Shreya Jain* 399
- SIMON KLOPSCHINSKI, CHRISTOPHER GIBSON AND HENNING GROSSE RUSE-KHAN. *THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS UNDER INTERNATIONAL INVESTMENT LAW*, OXFORD: OXFORD UNIVERSITY PRESS, 2021 *Ivan Levy* 503