

McNAIR CHAMBERS – QUARTERLY UPDATE – AUTUMN 2015

Welcome to the third McNair Chambers quarterly round-up, in which we provide a summary of some key judicial and arbitral decision handed down in recent months in the dispute resolution sector. For a more detailed consideration of the cases listed below, please see the **Publications** section of the McNair Chambers website.

Summary

One of the most significant developments since our Summer update has been the agreement between Iran and the E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy), which was signed on 14 July 2015 in Vienna. In exchange for commitments by Iran relating to its nuclear programme, the negotiating parties agreed to lift multilateral and national sanctions imposed on Iran. The UK Foreign & Commonwealth Office has published updated guidance on doing business with Iran following the agreement, but has emphasized that the sanctions remain in effect for now.

Arbitration proceedings between Croatia and Slovenia have also been in the headlines, following the release of transcripts of tapped telephone conversations between the Slovenian appointed arbitrator and Slovenian agent, which appear to show them colluding in an attempt to influence the arbitral tribunal. This has resulted in the resignation of multiple arbitrators and a purported termination of the arbitral process by Croatia.

There have been few judgments from the English courts since our Summer update, due to the legal break in England. With the reopening of the Courts, we can expect a number of key judgments over the next few months.

Recent Developments

- ICSID issued its most recent case statistics, which showed 28 new cases being registered in the first six months of 2015. If this rate continues, it seems that the number of cases registered in 2015 will exceed the 38 registered in 2014 (the lowest since 2011).
- The General Court of the EU has continued to hand down judgments in respect of entities challenging their sanctions listing, despite the agreement between Iran and the E3/EU+3, including decisions relating to the Ministry of Energy of Iran, the Iranian Aluminium Co, and also companies allegedly connection to the National Iranian Oil Company.
- On 20 July 2015, Samsung Engineering Co., Ltd. registered an ICSID claim against the Sultanate of Oman, naming the respondents as the Minister of Justice and the Minister of Oil and Gas, Muscat, Sultanate of Oman. Press reports indicate that the dispute concerns an oil refinery plant deal worth \$1bn.

Iran Sanctions

- On 14 July 2015, Iran and the E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the

European Union for Foreign Affairs and Security Policy) reached agreement on the Joint Comprehensive Plan of Action (JCPOA). In exchange for commitments by Iran relating to its nuclear programme, the negotiating parties agreed to lift multilateral and national sanctions imposed on Iran.

Arbitration

- Arbitration proceedings between Croatia and Slovenia to resolve maritime and land boundary disputes between the two countries have been seriously disrupted by recent allegations of bias and collusion by the Slovenian-appointed arbitrator and Slovenia's representative. Transcript of tapped telephone conversations appears to show the arbitrator and agent discussing how to influence the arbitral tribunal. Following a series of resignations by arbitrators and replacement arbitrators, and a purported withdrawal and termination of the arbitration agreement by Croatia, the arbitration proceedings (which have been ongoing for over three years) have been thrown into jeopardy.
- On 6 July 2015, the Bar Council published an Information Note regarding barristers in international arbitration, in which it considered concerns expressed in relation to cases in which a barrister appears before a barrister from the same chambers sitting as an arbitrator, in the context of international arbitrations. The Information Note once again highlights the importance of full disclosure in cases of actual or potential conflicts of interest. Clients should ensure that where their legal representative is from the same chambers as a sitting or prospective arbitrator, full disclosure is made to both the arbitrator and the other party.

Public international law

- In a dispute between Italy and India arising out of the killing of two Indian fishermen by two Italian marines on board the *Enrica Lexie* ship, following a request by Italy to the International Tribunal on the Law of the Sea, a majority of the arbitral tribunal made an order for provisional measures applying to both parties. In a decision handed down on 24 August 2015, the Tribunal ordered both Italy and India to suspend all court proceedings and refrain from initiating new ones which might aggravate or extend the dispute submitted to the arbitral tribunal or might jeopardize or prejudice the carrying out of any decision which the arbitral tribunal may render; but declined to prescribe provisional measures in respect of the situation of the two Marines involved in the dispute.
- By a decision handed down on 28 July 2015 in *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Republic of Iraq* [2015] EWCA Civ 835, the English Court of Appeal held, in the course of dismissing an appeal against a decision setting aside third party debt orders and receivership orders made in the course of efforts to enforce an arbitration award, that the State Organisation for Marketing of Oil (created by the Republic of Iraq) was not entitled to state immunity.

English Law and Procedure

- In a decision handed down on 23 July 2015 in *Michael Wilson & Partners Ltd v Sinclair* [2015] EWCA Civ 774, the English Court of Appeal gave guidance on relief from sanctions following the cases of *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537 and *Denton v TH White Ltd* [2014] EWCA Civ 906.

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