

# Association for International Arbitration In Touch

May 2014



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**International Conference "Entrusting Antitrust Issues to Arbitration"**

**LOCATION:** Court of Appeal of Brussels, Salle des Audiences Solennelles, Room 1.35, Place Poelart 1, Brussels, Belgium

**DATE:** 19th of May 2014 from 12:00 pm-20.30 pm

*The conference will be a unique event tackling challenging and specialised areas – competition law and arbitration. The major topics include:*

- Arbitration in merger control.
- EU competition law before arbitrators and the future of private antitrust enforcement in Europe.
- Court review of arbitral awards dealing with EU Competition Law issues.

Many of the leading experts in the field of antitrust arbitration will be present. Confirmed panellists and moderators are:

Janice Feigher (Castaldi Mourre & Partners),  
Bart Volders (Stibbe),  
Assimakis Komninos (White & Case),  
Gordon Blanke (Baker & McKenzie),  
Marc Blessing (Bär & Karrer),  
Iuliana Iancu (Hanotiau & van den Berg),  
Christoph Liebscher (Wolf Theiss),  
Luca Radicati di Brozolo (Catholic University of Milan),  
Renato Nazzini (King's College London),  
Manuel Penadés (London School of Economics / University of Valencia).

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**Enforcement and  
Recognition of Foreign  
Arbitral Awards in Turkey**

**Gas Price Arbitrations: A  
Practical Handbook**

**An Interview with Gunter  
Gaublomme : Director of  
the Brussels Diplomatic  
Academy**

**International Arbitration  
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Arbitrators' Independence,  
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Book Review:

Independence and  
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2014  
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We encourage mediators who can illustrate 200 hours mediation experience and 20 mediation cases, to apply for the AIA's Qualifying Assessment Program (QAP) which will take place at the end of the EMTPJ 2014 session on the 31st of August 2014. Please visit our [website](#) for details!



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- 1 Star = EMTPJ graduate
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- 3 Star = 100 mediations+

## Enforcement and Recognition of Foreign Arbitral Awards in Turkey

by Merve Duman

Enforcement and recognition of an arbitral award is essential for the completion of an arbitral proceeding. However, enforcement and recognition of foreign arbitral awards may cause some inconvenience for the parties such as: delay in the proceedings and extra costs. Here, the Convention on Recognition and Enforcement of Foreign Arbitral Awards (the "Convention") has a 'life-saving' role by setting out a general obligation for the Contracting States. According to the Convention, the general obligation of the Contracting States is to recognize foreign awards as binding and, to enforce them.

The Convention's title refers to the recognition and enforcement of "foreign arbitral awards". It would be useful to state the definition of foreign arbitral awards at this point. The arbitral awards which are to be considered "foreign" and hence, which fall under the Convention's field of application, is demarcated in Article I of the Convention. According to this definition, a foreign arbitral award is an award made in the territory of a State other than the State where recognition and enforcement are sought.

The convention is the principle source of authority for the enforcement of foreign arbitral awards in Turkey. Article 90 of the Turkish Constitution imputes international treaties, the force of law within the hierarchy of norms and is therefore considered as an internal law that takes precedence over other internal laws in force in Turkey.

The Convention is applicable to only (i) recognition and enforcement of awards made in the territory of another contracting state to the Convention and/or (ii) differences arising out of legal relationship, whether contractual or not, that are regarded as commercial under Turkish law.

Another key piece of legislation on the enforcement of arbitral awards in Turkey is the International Private and Procedural Law no. 5718 dated December 12, 2007 (the "IPPL"). The provisions of the IPPL are applicable only if the award has been decided by a non-contracting state to the Convention. It should be noted that the IPPL is a mechanism substantially parallel to the Convention. Moreover, article I of the IPPL explicitly sets forth that the IPPL shall be implemented without prejudice to the international treaties in force.

For the purpose of enforcement of final awards by the parties, the request for recognition of a foreign arbitral award in Turkey should be filed before the competent Commercial Court of First Instance. The territorial jurisdiction of the Court may be determined by parties, provided that the agreement is in written form and that it clearly states that the designated court would have jurisdiction over the enforcement proceeding.

According to Article 4 of the Convention and Article 61 of the IPPL, at the time of the application of recognition and enforcement of the decision, the applicant shall provide the following documents to the Turkish Court:

## Gas Price Arbitrations: A Practical Handbook

Book Review by Olivia Staines



This handbook, written by leading arbitrators, international arbitration practitioners, industry experts and in-house counsel, provides a highly specific and comprehensive analysis of all the key features of international gas pricing disputes.

As highlighted in the foreword by Professor Jonathan Stern, of the Institute of Energy Studies at Oxford University, rapid changes in oil prices and the globalization of gas markets means that movements in supply, demand and prices of gas in different regions, have more instantaneous impacts on gas prices now than noted in previous years.

Two key examples provided are the collapse of demand in the established liquefied natural gas markets of Japan, Korea and Taiwan followed by substantial recovery within the subsequent year, and the recession in Europe, which has impacted on the energy and gas demand, particularly when linked with a significant rise in renewable energy capacity.

In consequence, there has been increasing pressure on pricing in long term gas sales agreements which has led to a substantial rise in the number of gas price review disputes. Numerous of these require an international arbitral tribunal to determine the outcome.

In light of this, the publication examines ten issues of interest to practitioners, namely: how to draft an effective price review clause, procedural issues arising in price review arbitrations, the trigger phase, confidentiality in gas price reviews, changes of circumstances as a price modifier, the arbitrator's role, the client's perspective, the role of the expert in price review arbitrations, the adjustment phase and the future for price reviews.

The strength of this publication lies in its original, thorough and extremely detailed analysis of the stages of the gas pricing dispute and the arbitral process as well as the perspective it gives on possible pricing developments in the future and the role of dispute resolution in this context.

The final chapter, written by Paul Griffin and Frances Van Eupen (Allen & Overy LLP), examines the stimulating question of the future for price reviews, within a clear and concise structure. The new era for the liquefied natural gas (LNG) market, case-law, scale, uncertainties in LNG contract arbitration, typical forms of price review clause, renegotiation and suggestions on improving the price review regime all make for a decidedly interesting read.

- a) The original or a duly certified copy of the arbitration agreement or the arbitration clause,
- b) The duly authenticated original award or a duly certified copy of the formal enforceable decision having binding force as an arbitration award, (hence, a request in relation to awards which do not finally settle the dispute may be denied by the Court),
- c) If the documents mentioned above are not in the official language of the Country in which the award is relied upon (here in Turkish), the applicant shall provide a (Turkish) notarized (or approved by a diplomatic or consular agent) official sworn translation of these documents.

The arbitral award, which is requested for recognition, should be final, enforceable or binding. These criteria are requirements set out by the Convention and have been adopted by the IPPL accordingly.

The competency of Turkish Courts is confined to determining whether the award meets with the conditions for enforcement as stipulated under the Convention and IPPL. The decision to be rendered upon examination may be (i) denial of the request (ii) partial acceptance of the award (iii) acceptance of the award.

Under Article 62 of the IPPL and the Article 5 of the New York Convention, recognition and enforcement of an arbitral award may be rejected if the competent authority (the Court) in Turkey, where recognition and enforcement is sought, finds that:

- a) There is an absence of an arbitration agreement or an arbitration clause;
- b) The subject matter of the dispute is not capable of settlement by arbitration under the laws of Turkey (such as matrimonial or civil status cases);
- c) The recognition or enforcement of the award would be contrary to the public policy and the general ethics of Turkey (such as matters of civil status again or military related issues).

In principle, the recognition and enforcement of an arbitral award may also be rejected at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, with proof that:

- a) The party, against whom the award is invoked, was not properly presented through the arbitration process;
- b) The party, against whom the award is invoked, was not given proper notice of the appointment of the arbitrator or the arbitration proceedings or, was otherwise unable to present his case;
- c) The party to the arbitration agreement was under legal incapacity or the said agreement is not valid under the law which the parties have subjected it to -or fails any indication thereon;
- d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or with the law to which the agreement is subjected and/or the law of the country where the arbitration took place;
- e) The part of the award that deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or that contains decisions on matters beyond the scope of the submission to arbitration;
- f) The award submitted for recognition and enforcement has not yet become binding on the parties, or has been set aside or suspended by a competent body.

After the decision on the recognition for enforcement is finalised, the award shall be treated as a final court decision under Turkish law. Parties may thereafter pursue the execution of the award in accordance with Turkish procedural law.

In conclusion, we highly recommend this guide to practitioners, in-house counsel and anyone else with an interest in this area. For more information on how to purchase this book, please visit the [link](#).

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### **International Arbitration as the Main Instrument to Solve Disputes between International Companies and Venezuela**

by Diego Leon Paez

During the presidential period of Hugo Chavez in Venezuela (1999-2013), a series of institutional and ideological changes affected the economic and social development of the country. One of these new political positions was the increasing tendency towards the expropriation and nationalization of multiple private companies dedicated to a wide range of industrial sectors including the oil, banking, telecommunications and energy sectors. These decisions were mainly motivated by political ideologies inclining towards socialism, rather than fuelled by economic strategic drives, which would supposedly create certain long-term benefits within the country.

What is certain is that these decisions have been the key generator of legal conflicts between the Venezuelan Government and private companies. The disputes which have arisen, have led many to seek alternatives to Venezuela's justice system which has been criticized for failing to offer impartiality, a crucial element pursued by the complainant parties. ADR offers a viable pathway to solving these conflicts. The World Bank, among other international institutions, has become a key player when it comes to having to intervene as a third impartial party in International Arbitration. Ultimately, it has become more important than ever for global companies and governments to

resolve their conflicts as swiftly and quietly as possible- in the interests of all those involved.

An interesting example to consider in this context is the rejection by the arbitration panel of the World Bank, of Venezuela's request to reconsider a previous ruling which concluded that the government's administration did not act in good faith or adequately compensate the U.S. Company ConocoPhillips for three major oil assets expropriated in 2007. According to various sources, the government provided more funds to pay in the case of expropriations and nationalizations than for the production of the petroleum state company PDVSA between 2007 and 2009 (US\$23.377 million against US\$21.931 million). Furthermore, this number does not include the 20+ cases in which the State did not reach an economic agreement with the nationalized companies (the majority of them: petroleum, mining and cement producers). Such issues have been brought to international arbitration.

In agreement with numerous managerial unions and non-governmental organizations, the government has expropriated or controlled 1.087 companies since 2003 and, only in the past year 497 were submitted to this process. Among them, hotel complexes, factories (glasses and fertilizers) and companies (lubricants for cars, carton and hardware stores, supermarkets, food chains, and a plant of petroleum drills). In other cases, like in 2007, foreign companies employed at the Oil Strip of Orinoco, the major reserve of crude oil in the world, were announced to accept the terms imposed by the State and remain minority partners, in order to not pursue a long term dispute. Other companies like ExxonMobil and ConocoPhillips did not accept the terms and arbitration cases arose before the International Center of Settlement of Investment Disputes (ICSID) accordingly. The latter is one the most onerous arbitration cases which Venezuela faces; it looks for an indemnification of US\$31.000 million.

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**Interview Gunter Gaublonne**  
Director of the Brussels Diplomatic Academy

**1. How did the Brussels Diplomatic Academy come about and what was the reasoning behind it?**

The past decades have witnessed an increasingly far reaching globalisation. Companies are forced to develop their business beyond national borders. The ever-increasing importance of international business also calls for a stronger role for economic diplomats since enterprises continue to need help and support from the diplomatic corps.

International business, however, requires multidisciplinary knowledge on a broad set of techniques since import, export and investment need to be mastered from various angles: legal, tax, finance, insurance, marketing and HR etc. Not only business people need to have a comprehensive understanding of these topics but also, the people who support them: lawyers, civil servants, consultants and – last but not least – diplomats, especially economic diplomats.

That's why the Vrije Universiteit Brussel decided to respond to the educational needs resulting from this economic development by establishing the Brussels Diplomatic Academy. Our location is also key, Brussels after all is – a city with the second largest concentration of diplomats after Washington DC and home to many multinationals.

As such, our Academy – which provides a clear focus on business diplomacy and international entrepreneurship – will prepare students for a career in diplomacy and international business. In addition we offer a comprehensive range of topical seminars and executive courses to diplomats and business people.

**2. What are the main features of this Academy and who is it specifically catered to?**

Whereas most diplomatic academies concentrate on political diplomacy, our focus is on economic diplomacy and international business since both are closely related.

Economic diplomats, often denominated as Commercial Counselors, can at best be described as business facilitators or business initiators. They need to pave the way for their home country's companies. Their task goes far beyond networking only. More than ever before, they need to consider the strategy of the company or at least they should have a thorough understanding of export, investment, entry modes, transfer pricing, market analysis, financing techniques and so on. This implies a solid knowledge of international entrepreneurship. Furthermore, economic diplomats have to safeguard and defend their country's economic and trade interests.

For companies going global, on the other hand, it is advisable to have a basic understanding of the various domains economic diplomats are dealing with, like international trade law, international investment law, international tax law, international public procurement and so on. This optimizes business development because of the possibility to fight against non tariff barriers and dumping practices, or to optimally make use of international tenders, bilateral investment agreements and

Venezuela, as a new strategy to fight against the continuing disputes presented against it, has withdrawn from this institution in 2012, when the government questioned its impartiality and argued the "right of the Venezuelan people" to decide strategic orientations. Nevertheless, the Government must still answer for the cases presented before this date. More than 20 active disputes have been noted in that context.

In conclusion, with a new government aligned with the Chavez ideals of the last decade, it is necessary to remark that the tendency of increased numbers of disputes is becoming more apparent. Other South American countries with a left-wing political position such as Bolivia, Ecuador and Argentina on a minor scale are seeing this also.

Although it is an isolated phenomenon for some specific governments, the amount of disputes is clearly increasing, which offers a great amount of work for international key players in International Arbitration.

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**Book Review: Independence and Impartiality of Arbitrators 2014**

by Olivia Staines



Volume 4 of The Czech (& Central European) Yearbook of arbitration 2014 is published by Juris and edited by Alexander J Bělohávek, Naděžda Rozehnalová and Filip Černý. It examines the issue of Independence and Impartiality of Arbitrators in four sections.

The first two are highly analytical and comprise articles and an overview of the relevant case-law in the area. The last two are also highly informative, incorporating a book review and a news and reports section for those who wish to be updated on developments in the field. Specifically in the news and reports section of this volume, focus is given to amendments to the new Romanian Code of Civil Procedure in arbitration, the development of arbitration in Romania from 2010 onwards in the Court of International Commercial Arbitration and the creation of the Russian Arbitration Association.

In terms of academic articles, the volume touches on a wide array of issues. To begin with, namely:

*Legal Mechanisms of E-justice for Ensuring Independence and Impartiality of Arbitrators in Light of International Practice, Liability of Arbitrators and Subjective and Objective Impartiality of Arbitrators and Appointing Authorities as a Part of Procedural Public Policy (Ordre Public) in Arbitration.*

In addition, the question of the extent to which EU Law impacts an arbitrator's independence and impartiality is inspected. This provides an interesting contrast to other key issues which are brought into the fold such as the: Features of Independence and Impartiality of Arbitrators in Insurance Matters, The Impartiality of Arbitrators in the Italian System considering the Code of Civil Procedure and Arbitration Institutional Rules, Construction Dispute Boards, Application of the Reasonableness Standard in Continental Courts and Arbitral Tribunals and a Comparison of Arbitrators' Independence and Impartiality with

agreements to avoid double taxation.

Furthermore, as Brussels is home to the European institutions, international organisations and many multinationals, the Brussels Diplomatic Academy has access to a broad network of diplomats, civil servants and business people. This feature definitely contributes to the quality of our programmes.

Last but not least there is our educational philosophy aimed at an immediate return. We want our programmes to be versatile and hands-on so that the participant will be able to implement them immediately in their professional life.

**3. You have some interesting seminars scheduled including a Master-class in Investment Arbitration, what makes these events unique?**

The concept of our Diplomatic Academy is to act as a center of expertise on the various topics related to international business and economic diplomacy. This is made possible by bringing together both academics and practitioners that are expert in their domain. As such, we are able to offer solid academic research together with a practical orientation. Needless to say that this is exactly the approach business people and diplomats are looking for. Another unique feature is that we depart from the professional needs our target audience is experiencing, making our training topics highly relevant.

**4. In particular, your class on arbitration is highly anticipated as its focus is rather distinctive, what is the target group and why should they subscribe to the course?**

The law on foreign investment protection is one of the fastest developing and intellectually challenging branches of international law with high practical relevance. Investment arbitration is predicted to be a major factor in the development of the global economic system.

The number of investment disputes before international arbitral tribunals has increased significantly over the last decades and reflects the notable preferences of the international business community for resolving international investment disputes. Acquaintance with the legal regime for investment arbitration and case law has now become indispensable for anyone seeking to have a full picture of arbitration or enhance his knowledge in the international dispute resolution domain.

In the course of the seminar, we will examine the fundamental notions relevant to investment arbitration and critically review a number of major cases. This seminar is especially relevant to government officials, diplomats, private investors and executives who are involved in investment decision-making processes.

**5. As the Director of the Brussels Diplomatic Academy, where would you like to see the Brussels Diplomatic Academy headed in the foreseeable future?**

My ultimate aim is that our Academy becomes *the* reference for solid academic and practically oriented courses worldwide in international business and economic diplomacy, be it for future diplomats and business people, as for the current business people, diplomats, lawyers, consultants and civil servants.

That of State Court Judges in Austria and Germany.

Interestingly, the independence and impartiality of mediators is also brought to light as well as the challenge of arbitrators and the impact on the functioning of Arbitral Tribunals. Finally, reference is made to the Revised UNCITRAL Arbitration Rules.

The case law is of particular interest because it provides three areas of study:

The Case Law of the Czech Courts on Independence and Impartiality of Arbitrators and on Appointment of Arbitrators, The Supreme Court Judgments and Decisions of Appellate Courts in Poland and Current Case Law of the Slovak National Courts regarding Arbitration.

We therefore recommend this volume to those conducting research on the issues outlined, to those practicing in this field and, to those who wish to read more on the development of impartiality and independence of arbitrators in the Czech and Central European area.

For more information on how to purchase this book, please visit the [link](#).

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**Support the Future of Mediation In Belgium (FMB) Initiative!**

The FMB initiative is an initiative that aims to provide a joint communication platform to all mediation stakeholders, thereby offering them the opportunity to contribute to identifying best practices (including legal amendments) and setting out a common action plan for the enhancement and promotion of Mediation in Belgium.

To this end, Belgian mediation stakeholders gather periodically (at least twice a year) in the form of brainstorming sessions and/or working groups. The meetings are held in English, Dutch and French (without simultaneous translation).

Each session is moderated by members of the FMB working group, currently composed of Benoit SIMPELAERE, Bernard CASTELAIN, Ivan VEROUGSTRAETE, Jef MOSTINCKX, Johan BILLIET, Philippe BILLIET, Willem MEUWISSEN and Barbara GAYSE representative of the Federale Bemiddelingscommissie- Commission Fédérale de Médiation.

The Brainstorming event which was held on 27/06/2013 in the Brussels Palace of Justice, resulted in the first FMB report. The FMB meeting held on the 10<sup>th</sup> of February 2014 at the Institute for European Studies (IES), resulted in the second FMB report. Both reports are available via our [website](#).

To read the first FMB report [click here](#).

To read the second FMB report [click here](#).

The FMB project was created with the support of AIA IVZW ([www.arbitration-adr.org](http://www.arbitration-adr.org)).

For those interested in joining or sponsoring the Initiative, please send an email to the [AIA team](#)!

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**Arbitrators' Independence, Impartiality and Challenge under ICSID Arbitration Rules: The concept of "manifest lack of qualities"**

by Merve Duman

It is a fundamental principle in international arbitration that every arbitrator must be and remain independent and impartial of the parties and the dispute. In order to provide a neutral arbitral proceeding to the parties, the rules of institutions such as International Centre for Settlement of Disputes Convention ("ICSID") Arbitration Rules provide some standards for impartiality and independence of arbitrators in the arbitral proceedings. It must be noted that those rules also set out that arbitrators must be and remain impartial and independent throughout the arbitral proceedings. Furthermore, where there is a lack of impartiality and independence of an arbitrator, parties have the right to request to challenge the arbitrator under those rules.

Regarding the disqualification of arbitrators under ICSID Arbitration Rules, article 9 of ICSID Arbitration rules refers to article 57 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention"). Article 57 of the ICSID Convention provides that "a party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV."

Article 14(1) of the ICSID Convention provides that "persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators."

It is also clear from article 14(1) that a (prospective) arbitrator must have the qualifications, which are high moral character and recognized competence and the possibility to be relied upon to exercise independent judgment. Likewise, it is set out in article 40(2) that "arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14." However, what is not clear is the standard applicable to the disqualification of arbitrators. Meanwhile article 14(1) defines qualifications that an arbitrator must possess, article 57 does not include any descriptive wording of which circumstances should be considered as manifest lack of those qualities. This leaves a considerable amount of discretion to the tribunal to interpret the term "manifest lack of required qualities" and apply the standard which is interpreted by them for the disqualification of arbitrators and causes the differences in interpretation and application of this standard. In this case, it is possible to say that there is no unique and certain standard for the disqualification of arbitrators. In order to reflect the profundity of the problem, it would be essential to include the application of manifest lack of required qualities in the various cases by various tribunals in different disputes.

Clients look to Billiet & Co Lawyers for excellence, a creative and individual approach to solving problems, and a deep understanding of Belgian and European law.

Billiet & Co Lawyers is a member of the IPG international network of law firms and other collaboration networks. In this way they frequently assist clients in other jurisdictions, thanks to their close collaboration with local experts.

For more information: visit the [Billiet and Co website](#).

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**4 Day Seminar on Investment Arbitration  
Brussels Diplomatic Academy**

VUB University, Brussels

The Brussels Diplomatic Academy has organised a 4 day Seminar on Investment Arbitration. During the course of the seminar, fundamental notions relevant to investment arbitration will be analysed and a number of major cases will be reviewed in a critical manner.

We highly recommend the event to:

- investors and diplomats involved in economic diplomacy
- government officials responsible for negotiations of investment treaties and involved in representing a state in dispute resolution proceedings
- lawyers and in-house counsel
- civil servants involved in state's investment policies.

This is an unique opportunity and therefore not to be missed!

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- Silver

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In the Amco v. Indonesia case, which is the earliest interpretation of the term “manifest”, the deciding co-arbitrators interpreted it as a synonym for quasi-certain or highly probable by stating that:

*“Article 57 requires, first, that facts be alleged –and necessarily, that they be proven by the party who files the proposal to disqualify –which indicate lack of said quality: that means that as apparently conceded by the Respondent, the mere feeling of ‘non-reliability’ does not suffice, since it has to be based on facts; second, that those facts should indicate a manifest lack of the required quality.*

*Now, considering the highly interesting semantic remarks presented by the Claimant, the undersigned note that in the Random House Dictionary, there are four several synonymous words of ‘manifest’, three of them being ‘evident’, ‘obvious’, ‘plain’. That means that the facts referred to in Article 57 have to indicate not a possible lack of the quality, but a quasi-certain, or to go as far as possible, a highly probable one.” (KAREL DAELE, CHALLENGE AND DISQUALIFICATION OF ARBITRATORS IN INTERNATIONAL ARBITRATION 218-219, Kluwer Law International (2012))*

Moreover, in the Suez v. Argentina judgment in 2008, the deciding co-arbitrators showed the same application of “manifest lack” of required qualification as in the Amco v. Indonesia case. Nevertheless, in another dispute in early 2008, the standard applicable to disqualification was applied by ruling that:

*“Implicit in Article 57 and its requirement for a challenger to allege a fact indicating a manifest lack of qualities required of an arbitrator by Article 14, is the requirement that such lack be proven by the challenge of the contested arbitrator’s lack of independence or impartiality is not sufficient to disqualify the contested arbitrator.” (KAREL DAELE, CHALLENGE AND DISQUALIFICATION OF ARBITRATORS IN INTERNATIONAL ARBITRATION 220, Kluwer Law International (2012))*

A different approach that considers the manifest lack of required qualifications as part of a reasonable doubt standard were adopted in Vivendi v Argentina I and it was stated that:

*“A question arises with respect to the term ‘manifest lack of the qualities required’ in Article 57 of the Convention. This might be thought to set a lower standard for disqualification than the standard laid down, for example, in Rule 3.2 of the IBA Code of Ethics, which refers to an ‘appearance of bias’. The term ‘manifest’ might imply that there could be circumstances which, though they might appear to a reasonable observer to create an appearance of lack of independence or bias, do not do so manifestly. In such a case, the arbitrator might be heard to say that, while he might be biased, he was not manifestly biased and that he would therefore continue to sit. As will appear, in light of the object and purpose of Article 57, we do not think this would be a correct interpretation.” ( Compañía de Aguas del Aconquija S.A. & Vivendi Universal v. Argentine Republic, ICSID Case No. ARB/97/3, ¶ 20 (Decision on the challenge to the President of the Committee 2001))*

Furthermore, one commentator pointed out that “the ‘reasonable doubt’ standard, also adopted by the UNCITRAL Rules and the IBA Guidelines on Conflicts of Interest in International Arbitration, is the appropriate standard.” (KAREL DAELE, CHALLENGE AND DISQUALIFICATION OF ARBITRATORS IN INTERNATIONAL ARBITRATION 220, Kluwer Law International (2012)) However, according to other commentators, “the requirement that the lack of qualities must be ‘manifest’ impose a relatively heavy burden of proof

- Company logo on screen at our events
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- Gold Sponsor title published in AIA’s monthly newsletter accompanied by 100 words

Contact the AIA Team via [email](#) for details!

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**AIA Media Partner and Supporter of the KLRCA International Arbitration Conference**



On the 19th-21<sup>st</sup> of June 2014, the Kuala Lumpur Regional Centre for Arbitration (KLRCA) will host its International Arbitration Conference in Kuching, Sarawak.

The event will feature eminent arbitration experts from across the globe to deliberate the foundations of arbitration, scrutinize the current state of the practice and form a road map for the future in line with the theme:

“Reflecting the Past, Building the Future”.

The conference expects to attract over 400 delegates from all over the world and is set to have a critical look at core issues by eminent experts in international arbitration.

There is complimentary entry to the Rain forest World Music Festival. For more information on attending this event, please visit the KLRCA [website](#).

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**AIA Media Partner and Supporter of the 3rd DIS Baltic Arbitration Days 2014**

The event will take place on Thursday 26th and Friday 27th of June in Riga’s Graduate School of Law, Latvia. Business executives, in-house counsel, dispute resolution practitioners, arbitrators, contract negotiators, attorneys in law firms, academics and students are



qualities must be manifest imposes a relatively heavy burden of proof on the party making the proposal". (CHRISTOPH H. SCHREUER ET AL, THE ICSID CONVENTION: A COMMENTARY, CUP, 1202 (2<sup>nd</sup> ed., 2009))

The approach adopted in the Conoco Phillips Co. v. Venezuela case shows that the reasonable doubt standard does not apply to the disqualification under ICSID Arbitration Rules.

In conclusion, as it appears from the aforementioned, the standard applicable to the disqualification of arbitrators under the ICSID Rules is not clear. In order to make a clear conclusion concerning the compatibility of the "reasonable doubt" standard with the provisions of the ICSID Convention and ICSID Arbitration Rules on arbitrators' disqualification, it would not be wrong to say that there is a lack of certainty regarding the applicability of the "reasonable doubt" standard.

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### The Association of Mediation Assessors, Trainers and Instructors (AMATI)



In the second week of March a group of well-known UK based mediation trainers launched a new association for mediation trainers and assessors. Within the space of a few short weeks its membership has grown to over 100, with initial invitations to join focused on IMI Certified Mediators and the coaches of the ICC 9<sup>th</sup> International Student Mediation Competition in Paris.

The Director of AMATI, Professor Andrew Goodman, says the idea for an association grew from the need to improve and standardise mediation training, to get the smaller and more isolated trainers talking to each other, including internationally, to look at new training methodology, and to assist training organisations and regulatory bodies world-wide offer public assurance to users about the way in which mediators are trained and qualified. The concerns are generic, and mediation trainers from every field – civil, commercial, family, workplace/employment and community – are welcome.

The new Advisory Board thus far will consist of Professor Hal Abramson (USA), Dr Greg Bond (D), Amanda Bucklow (UK), Jane Gunn (UK), Phillip Howell-Richardson (UK), Alan Limbury (AUS), Charles Middleton-Smith (UK), David Owen QC (UK), Paul Randolph (UK), Thomas P. Valenti (USA) and Juanita Wijnands (NL). There will be some significant additional names to the Board in due course, with members also having offered their services as regional directors as far away as Brazil and the Philippines.

AMATI can be reached at [www.amati.org.uk](http://www.amati.org.uk) and e-mailed at [info@amati.org.uk](mailto:info@amati.org.uk). It can be followed on Twitter® @AMATIorguk on Facebook® and has a LinkedIn® group.

AMATI intends working with any organisation that can benefit from its services. The association will be holding its first event in London on September 22<sup>nd</sup> at the International Dispute Resolution Centre in Fleet Street, and will be the first major conference on the future of mediation training. Details will follow in a future issue of AIA news.

Membership of AMATI is by invitation only. However members of AIA and our readers are free to seek an invitation or to register their interest by emailing [info@amati.org.uk](mailto:info@amati.org.uk)

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negotiators, attorneys in law firms, academics and students are recommended to attend.

International Enforcement of Arbitral Awards, Arbitration in Transport and Shipping Related Disputes will be examined.

For more information contact Ms. Indra Simson at [indra.simsone@bnt.eu](mailto:indra.simsone@bnt.eu) or call +371 67 77 05 04

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### AIA Recommends

Transnational Dispute Management



(TDM, ISSN 1875-4120) is a comprehensive and innovative information service on the management of international disputes, with a focus on the rapidly evolving area of investment arbitration, but also in other significant areas of international investment (such as oil, gas, energy, infrastructure, mining, utilities etc).

It deals both with formal adjudicatory procedures (mainly investment and commercial arbitration), but also mediation/ADR methods, negotiation and managerial ways to manage transnational disputes efficiently. See [www.transnational-dispute-management.com](http://www.transnational-dispute-management.com) for more information.

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