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The Legal Frameworks that Govern International Business Arbitration and Notable Arbitration Cases in The Past Decade

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Abstract

This paper focuses on the legal frameworks that govern international business arbitration and notable arbitration cases in the past decade.

The article first interests in the meaning of arbitration, international arbitration, and how it works. Secondly, it analyzes the application of the law in international commercial arbitration. Lastly, it shows two notable arbitration cases in the past decade to present specific international arbitration cases.

Keywords: international arbitration, legal frameworks, notable arbitration cases.

1. Introduction

Arbitration is a process in which parties to a dispute agree to have a neutral person or panel reach a binding decision that settles their dispute based on previously agreed-upon norms and rules[1].

International arbitration is similar to domestic court litigation but instead of taking place before a domestic court, it takes place before private adjudicators known as arbitrators. It is a consensual, neutral, private, and enforceable means of international dispute resolution, which is typically faster and less expensive than domestic court proceedings. Unlike domestic court judgments, international arbitration awards can be enforced in nearly all countries of the world, making international arbitration the leading mechanism[2].

1. International Arbitration: What it is and How it Works. https://www.pon.harvard.edu/daily/international-negotiation-daily/international-arbitration-what-it-is-and-how-it-works/ (last visited Nov, 21, 2023).
2. International Arbitration Information by Aceris Law LLC. https://www.international-arbitration-attorney.com/what-is-international-arbitration/ (last visited Nov, 21, 2023).

There are three main types of international arbitration, writes Salacuse in the Negotiation Journal[3]. The three types have principles and processes in common, and often the same people serve as arbitrators or legal counsel in all three types. But the details of the types of international arbitration vary based on the nature of the participants and the rules they have agreed to apply to their dispute. Each type of international arbitration will be considered in turn.

1.1. Interstate arbitration

In interstate arbitration, nations, represented by their governments, resolve their disputes through arbitration. Though interstate arbitration is essentially a legal process, viewing it only in legal terms "overlooks its tactical and strategic importance in enabling contending states under appropriate conditions to settle significant international conflicts," writes Salacuse in the Negotiation Journal[4]. To take one example, the Red Sea Islands Arbitration between Eritrea and Yemen was aimed at settling competing claims to some uninhabited rocks in the Red Sea. But the international arbitration had the broader advantage of providing "a face-saving way to end a dangerous military confrontation in 1995 that threatened an important global trade route," according to Salacuse.

Despite its potential power as a means of resolving international conflict, interstate arbitration is little used and "remains a largely forgotten item at the bottom of the dispute settlement toolbox, overlooked in books, articles, and courses in conflict resolution," Salacuse writes. He argues that international peacemakers and the programs that train them should pay more attention to the ability of interstate arbitration to "give diplomacy a helping hand."

1.2. Investor-state arbitration

Investor-state arbitration is "a revolutionary innovation in international litigation," writes Salacuse in the International Lawyer[5]. This fast-growing category of international arbitration adjudicates between nations and private foreign investors, such as foreign nationals or companies.

Investor-state arbitration came about in the second half of the 20th century through nation's negotiations of bilateral and multilateral investment treaties. In these treaties, nations make commitments regarding how they will treat investors and investments from other states and agree to enforcement mechanisms, particularly arbitration of disputes with foreign investors.

Investor-state arbitration gives foreign investors the right to "sue a host government for compensation before an international arbitration tribunal when they have been aggrieved by that government's actions," according to Salacuse. As such, it marks a "radical departure" from earlier methods of settling such disputes, which required investors to rely on "diplomatic protection" from their home countries. By 2021, investors had sued 124 governments in over 1,100 cases brought to investor-state arbitration. Many, though not most, of these international arbitration cases, resulted in an arbitration award totaling hundreds of millions of dollars, writes Salacuse.

1.3. International commercial arbitration

International commercial arbitration, the most common form of international arbitration, occurs between parties based in different countries. Most commercial arbitration cases involve contractual disputes between corporations.

Businesses from different countries generally prefer to arbitrate their dispute rather than adjudicate them in the courts of one side or another. This is because they believe an international tribunal is likely to be more independent of national prejudices and more knowledgeable about international business practices than an ordinary national court of law would be.

As a result, most contracts between corporations from different countries contain a dispute resolution clause

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3. Jeswald W. Salacuse , Interstate Arbitration: "… Settling Disputes Which Diplomacy Has Failed to Settle" Negotiation Journal/Volume 38, Issue 2 /p. 179-197.
4. Id.
5. Jeswald W Salacuse, Anatomy of an investor-state arbitration: The case of Aguas Argentinas, INTERNATIONAL LAWYER, Journal Article.

specifying that any disputes arising under the contract will be handled through arbitration rather than litigation, writes Charles Bjork in an article for the Georgetown University Law Library. The parties can and should specify the forum for the arbitration, procedural rules, and governing law when negotiating their initial contract. The types of law applied in arbitration include both procedural and substantive international treaties and national laws, as well as the procedural rules of the relevant arbitral institution.

2. The Legal Frameworks

The various laws, rules, and guidelines governing the arbitral process will be dealt with extensively in later chapters, but a brief overview is in order. One way to envision the regulatory framework of arbitration is in the form of an inverted pyramid. The point is facing down, and at that point is the arbitration agreement, which affects only the parties to it. This agreement is the underpinning for the regulatory framework governing the private dispute resolution process. If the arbitration agreement is not valid, then the framework becomes irrelevant, because there is no legal basis for arbitration.

On the pyramid above the arbitration agreement, the framework expands in terms of scope and applicability beyond the immediate parties. At one step above are the arbitration rules chosen by the parties. These rules, which apply to the arbitrations of all the parties who choose them, may be varied in a particular case by the arbitration agreement. Frequently, a rule will contain a provision that says, “unless otherwise agreed in writing by the parties.” This means that the rule is not mandatory, but rather a default rule that will apply if the parties have not reached their own agreement on the particular topic[6]. Therefore, if the parties have agreed on a particular matter, their agreement will trump the arbitration rules, unless the particular rule is considered mandatory by the institution.

At the next level of the pyramid are the national laws. Both the arbitration law of the seat of the arbitration (the lex arbitri) and substantive laws will come into play, and they are likely to be different national laws. Many countries have adopted as their arbitration law the UNCITRAL Model Law on International Commercial Arbitration[7]. The Model Law is meant to work in conjunction with the various arbitration rules, not to conflict with them. Thus, the Model Law also has many provisions that are essentially default provisions: that is, they apply “unless the parties have agreed otherwise.” If the parties have chosen arbitration rules that provide for a process or rule that is different from the Model Law, normally the arbitration rules will govern, because they represent the parties’ choice of how to carry out the arbitration, that is, they indicate how the parties have “otherwise agreed.”

The substantive law chosen by the parties is the national law that will be used to interpret the contract, determine the merits of the dispute, and decide any other substantive issues. If the parties have not chosen a substantive law, then the tribunal will determine the applicable substantive law.

At the next step above the national laws in the regulatory pyramid is international arbitration practice, which tends to be utilized to various degrees in all arbitrations. This includes various practices that have developed in international arbitration, some of which have been codified as additional rules or guidelines. There are, for example, rules that have been developed by the International Bar Association on the Taking of Evidence, and Rules of Ethics. The IBA has also produced Guidelines on Conflicts of Interest in International Arbitration. The American Arbitration

6. See, e.g., LCIA Rules, art. 17.1 (“The initial language of the arbitration shall be the language of the Arbitration Agreement, unless the parties have agreed in writing otherwise. . . . ”).
7. UNCITRAL is the United Nations Commission on International Trade Law. Its mandate is to further the progressive harmonization and unification of the law of international trade. The following countries, territories, or states within the United States have adopted the UNCITRAL Model Law on International Commercial Arbitration: Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Bulgaria, Cambodia, Canada, Chile, in China: Hong Kong Special Administrative Region, Macau Special Administrative Region; Croatia, Cyprus, Denmark, Egypt, Germany, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Ireland, Japan, Jordan, Kenya, Lithuania, Madagascar, Malta, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Oman, Paraguay, Peru, the Philippines, Poland, Republic of Korea, Russian Federation, Singapore, Spain, Sri Lanka, Thailand, Tunisia, Turkey, Ukraine, within the United Kingdom of Great Britain and Northern Ireland: Scotland; in Bermuda, overseas territory of the United Kingdom of Great Britain and Northern Ireland; within the United States of America: California, Connecticut, Illinois, Louisiana, Oregon and Texas; Zambia, and Zimbabwe. Available at http://www.uncitral.org/uncitral/en/uncitral. texts/arbitration/1985Model arbitration status.html. See Appendix Bfor text of 1985 UNCITRAL Model Law.

Association and the American Bar Association have also produced a Code of Ethics for Arbitrators. UNCITRAL has produced Notes on Organizing Arbitral Proceedings, "to assist arbitration practitioners by providing an annotated list of matters on which an arbitral tribunal may wish to formulate decisions during arbitral proceedings. . . . " [8]Although the Notes do not impose any obligation on the parties or the tribunal, they potentially contribute to harmonizing arbitration practice.

Arbitrators and parties may agree that some of these international practices will be followed, or arbitrators may simply use them as guidelines. International arbitrators are a relatively small group, and international practices both those that are codified by various international organizations and those that are merely known and shared in the arbitration community as good practices – tend to create a relatively coherent system of procedures.

Finally, at the top of the inverted pyramid are any pertinent international treaties.

For most international commercial arbitrations, the New York Convention will be the relevant treaty because it governs the enforcement of both arbitration agreements and awards, and because so many countries are parties to the Convention[9]. In addition to the New York Convention, three other important conventions are the Inter-American Convention on International Commercial Arbitration (the Panama Convention)[10], the European Convention on International Commercial Arbitration[11], and the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "Washington Convention" or the "ICSID Convention")[12].

The Panama Convention, which has been ratified or adopted by fourteen South or Central American countries and by the United States and Mexico, is similar in intent and effect to the New York Convention. It has been influential in making arbitration much more acceptable in Latin American countries.

The European Convention supplements the New York Convention in the contracting states. It provides for several general issues concerning the party's rights in arbitration and also provides specific limited reasons for when the setting aside of an award under the national law of one Contracting State can constitute a ground for refusing to recognize or enforce an award in another Contracting State[13]. The European Convention's effect on awards that have been set aside will be discussed more fully in Chapter IO[14].

The Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States is also known as the ICSID Convention because the Convention created the International Center for the Settlement of Investment Disputes (ICSID). The ICSID Convention was promoted by the World Bank, which wanted to encourage investors to make investments in developing countries. Historically, investors could not bring any kind of action against a government and had to depend upon their government to take up their cases against a foreign gov-

8. Available at www.uncitral.org.
9. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, UNDOC/E/CONF.26/8/Rev.1 ("New York Convention"). Available at www.uncitral.org. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
10. O.A.S. Ser. A20 (S.E.P.E.F.), 14 I. L. M. 336 (1975).
11. 484 U.N.T.S. 349 (1961).
12. 575 U.N.T.S. 159,T.I.A.S.6090, 17 U.S.T.1270 (1965).
13. European Convention on International Commercial Arbitration (1961), 484 U.N.T.S. 349,art. IX. Not all EU countries are parties to the Convention, and some distinctly non-European countries are parties, such as Cuba and Burkina Faso. List of countries available at http://untreaty.un.org/sample/EnglishInternetBible/partI/ chapterXXII/treaty2.htm.
14. See infra,Chapter 10,Section 10(D)(5)(f).

ernment. The ICSID Convention provides the opportunity for the country and the investor to arbitrate any dispute directly, either under an arbitration agreement in a state contract, or by a bilateral investment treaty that includes a clause whereby the state consents to arbitrate with investors covered by the treaty. The ICSID Convention, and treaty arbitrations generally, will be discussed more fully in Chapter II.

Thus, as seen above, the regulatory framework for international commercial arbitration includes private agreements, agreed-upon rules, and international practice, as well as national laws and international conventions. Although parties have substantial autonomy to control the arbitration process, the supplementation and reinforcement of the process by both national and international laws help ensure that the process functions fairly and effectively. The regulatory framework also gives parties confidence that they will have a reasonable method of recourse when problems develop in their international business transactions.

3. Notable Arbitration Cases

3.1. Hulley Enters Ltd v. Russian Fed'n

3.1.1. Case summary

Yukos shareholders v. Russia are several international courts and arbitral cases seeking compensation from the government of Russia to the former shareholders of Yukos based on the claim that Russian courts were not acting in good faith in launching tax evasion criminal proceedings against Yukos, which led to the bankruptcy of the company.

The Yukos Oil Company's former shareholders and management filed a series of claims in courts and before arbitration panels in various countries, seeking compensation for their expropriation. The largest, for over $100 billion, was filed at the international Permanent Court of Arbitration in The Hague in 2007[15] and resulted in the arbitrators awarding Yukos majority shareholders over US$50 billion in damages. This decision was appealed by Russia and overturned by the Hague's district court, before being upheld by the Court of Appeal of the Hague[16]. On 5 November 2021, the Dutch Supreme Court struck down the order for Russia to pay $50 billion to former shareholders and referred the case back to the Amsterdam Court of Appeal[17].

The case concerns the claimant's stake in the Russian oil company Yukos, which declared bankruptcy in 2006. in 2004, the claimant initiated international investment arbitration proceedings against Russia under Article 26 of the Energy Charter Treaty, claiming that Russia's conduct constituted an expropriation. on 18 july 2014, the Netherlands-based arbitral tribunal rendered three essentially similar awards, ruling that Russia was ordered to pay more than $50 billion in compensation to shareholders. Russia applied to the Dutch courts to set aside the arbitral awards on a number of grounds, while sniping at Yukos shareholders' enforcement applications elsewhere. Enforcement proceedings in the U.S. began in 2014. in 2015, Russia filed a motion to dismiss the Yukos shareholders' application for enforcement of the award for lack of subject matter jurisdiction, citing Russia's immunity under the Foreign Sovereign Immunities Act (FSIA). in 2016, proceedings were stayed pending the conclusion of the Dutch setting aside proceeding. in November 2021, the Dutch Supreme Court rejected essentially all of Russia's grounds of appeal (the remaining grounds were unrelated to jurisdiction), and the U.S. court then resumed hearing the case. Russia argued that the enforcement proceedings should be dismissed. First, its foreign sovereign immunity precluded the district court from exercising jurisdiction ratione material; second, there was no basis for jurisdiction to enforce the award under the New York Convention. Third, there was no arbitration agreement between the parties covering the dispute in question, and the district court should have re-examined the existence of such an agreement.

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15. Gregory L. White (September 21, 2011), European Rights Court Delivers Split Yukos Ruling.
16. Puertas, Omar. "The Yukos Appeal Decision on the Role of Arbitral Tribunal's Secretaries".
17. AFP, Danny Kemp for (2021-11-05). "Russia Wins Latest Round of $50-Bln Yukos Case"

3.1.2. United States court judgments and their rationale

The D.C. District Court held that a foreign state is presumptively immune from the jurisdiction of U.S. courts unless the district court determines that one of the exceptions to the Foreign Sovereign Immunities Act (FSIA) applies. Under Belize Social Dev. Ltd. v. Gov't of Belize, 794 F.3d 99 (D.C. Cir. 2015), if a plaintiff asserts that the court has jurisdiction under the Foreign Sovereign Immunities Act (FSIA), it is up to the defendant's foreign state to prove that the plaintiff's claim does not fall within an exception to the FSIA. Creighton Ltd. v. Gov't of State of Qatar, 181 F.3d 118 (D.C. Cir. 1999), on the other hand, states that for a foreign arbitral award to be enforceable against a sovereign state, there must be a legal basis (e.g., the New York Convention) upon which the award can be enforced by a U.S. court and the foreign state may not be entitled to immunity.LLC SPC Stileks v. Republic of Moldova, 985 F.3d 871 (D.C. Cir. 2021), on the other hand, makes it clear that for the arbitration exception to the Foreign Sovereign Immunities Act (FSIA) to apply and to establish a court's jurisdiction over a foreign sovereign, there must be an arbitration agreement, an arbitral award, and an international treaty governing the award. The shareholders of Yukos in this case bear the burden of proof for their claim that the arbitration exception to the Foreign Sovereign Immunities Act applies.

In the present case, the Yukos shareholders had fulfilled their obligation to submit the arbitral award, and Russia's challenge to the application of the New York Convention had been rejected, although it had been made. On the issue of the existence of the elements of an arbitration agreement, the Court held that the facts of the case demonstrated the existence of an arbitration agreement between the parties for the following reasons: Russia was a signatory to the Energy Charter Treaty, which provided for an arbitration mechanism, and the parties had been "actively participating" in arbitration under the Treaty for a period of up to ten years. The parties had chosen to delegate to the arbitral tribunal issues relating to jurisdiction under the Energy Charter Treaty. This is demonstrated in two ways: first, by the agreement to adopt the 1976 UNCITRAL Arbitration Rules, which provide in Article 21 that the arbitral tribunal is empowered to rule on its jurisdiction, including any objections to the existence or validity of the arbitration agreement. The second is that Russia wrote to the arbitral tribunal in 2005 to make clear that it had decided to "accept the jurisdiction of this Arbitral Tribunal to determine its jurisdiction ..." ("accept the jurisdiction of this Arbitral Tribunal to determine its jurisdiction ...")

To find that the parties had not referred the issue of jurisdiction to the arbitral tribunal would essentially mean that Russia could renege on the issue of jurisdiction "despite having expressly agreed to arbitrate". The arbitral tribunal's finding that an arbitration agreement existed between the parties was not only well-reasoned but also binding on the district court. If the agreement between the parties assigns to the arbitrator the responsibility for determining whether a dispute is arbitrable, the court has no authority to rule on the issue, regardless of its view of the arbitrator's jurisdictional ruling.

Accordingly, the district court rejected Russia's claim for a de novo review of the existence of an arbitration agreement between the parties, finding that such a review was not only unnecessary but also inappropriate. To establish jurisdiction under the Foreign Sovereign Immunities Act, a district court must treat an international treaty (in this case, the Energy Charter Treaty) as an ordinary contract, and it is sufficient if the parties agree that the arbitrator will decide the jurisdictional issue in the dispute. The factual question of whether an arbitration agreement exists is precisely the issue that the parties are entrusted to and for the arbitral tribunal to decide.

The district court further rejected Russia's other arguments regarding the non-existence of an arbitration agreement (the history of ratification of the Energy Charter Treaty in Russia, procedural aspects of the arbitration proceedings, and fraud allegedly committed by the shareholders before the arbitration proceedings). All of these arguments were presented to and rejected by the arbitral tribunal.

Ultimately, the district court denied Russia's motion, ruling that the arbitration exception to the Foreign Sovereign Immunities Act applied and that the New York Convention provided a basis for enforcing the award. After rejecting Russia's sovereign immunity defense, the district court directed that the case be continued to review how the shareholders had applied for relief as well as Russia's alternative motion to deny confirmation of the award.

3.1.3 Analysis

This case is the latest chapter in a series of cross-border enforcement battles over the $50 billion Yukos arbitral

award. The application to set aside the Yukos award in the Dutch courts is still ongoing.2023 On 1 November, the Commercial Division of the UK High Court also issued a judgement finding that Russia could not invoke sovereign immunity to resist the enforcement of the Yukos award in the UK[18].

The D.C. District Court's treatment of this case differs from its previous case, Blasket Renewable Invs., LLC, v. Kingdom of Spain, 2023 WL 2682013 (D.D.C. Mar. 29, 2023), in which it refused to enforce an Energy Charter Treaty award against Spain on the grounds that there was no valid arbitration agreement under EU law and therefore the court could not enforce the award. In that case, the District Court in Washington refused to enforce an Energy Charter Treaty award against Spain on the grounds that there was no valid arbitration agreement under EU law and therefore the court could not enforce the award. This result is markedly different from the present case. The reason why the District Court in that case was not bound by the arbitral tribunal's decision on jurisdiction was that the European Court of Justice held that the EU Treaties prohibited arbitration between EU Member States and EU nationals, in other words, that Spain was not entitled to enter into an arbitration agreement. Consequently, the arbitral tribunal was also not authorized to decide on its jurisdiction. In the present case, there was no similar impediment to the conclusion of an arbitration agreement in Russia, and the power of the arbitral tribunal to decide on its jurisdiction was not similarly limited, hence the very different results.

3.2. Yamal-lNG JSC v. Baker Hughes Rus Infra LLC

3.2.1. Case summary

The applicant in this case, Yamal-LNG JSC, is a sanctioned Russian enterprise. The respondent, Baker Hughes Rus Infra LLC, is the Russian subsidiary of an American oilfield services company. The contract between the parties provided for ICC arbitration. The Claimant intends to initiate an ICC-administered international commercial arbitration with the International Chamber of Commerce (ICC) under Article 10.2 of the Contract, and on 9 August 2023 applied to the Arbitration Court of the Yamal-Nenets Autonomous Okrug of Russia for preliminary interim measures for the seizure of Baker Hughes's cash, movable and immovable property in the amount equivalent to $50,703, at the exchange rate of the Central Bank of the Russian Federation (CBRF). 534.03 United States dollars (USD), including the cash balance on Baker Hughes' account and cash to be received in the future. The claimant asserted that if preliminary interim measures were not granted, the arbitral award would not be enforceable because: 1. the respondent was acting in bad faith, which demonstrated that, under the pretext of unlawful and unilateral sanctions imposed by an unfriendly State, it did not intend in principle to fulfill its obligations towards its Russian counterparties, which, taking into account the center of the respondent's economic interests, meant that it was not possible to enforce the arbitral award outside Russia 2. there is a high probability that the Respondent will continue to disregard the Claimant's rights and legitimate interests, will not contribute to the mitigation of the Claimant's losses and will not act to voluntarily compensate for them; 3. the Respondent is actively disposing of its assets in Russia and refuses to take part in projects in Russia, which means that future arbitral awards may not be effectively enforced in Russia. If the preliminary interim measures requested by the Claimant were not granted, the Claimant would not be able to recover all the damages it had suffered from the Respondent's property for the reasons mentioned above. Therefore, the non-granting of the interim measures could result in significant losses for the Claimant.

The Claimant plans to commence an international commercial arbitration administered by it at the ICC under Article 10.2 of the Contract. Previously, on 29 March 2023, it filed a claim against the Respondent, requesting the Respondent to 1) return the advance payment of USD 11,021,710.31 (including VAT) for undelivered parts; 2) return the cost of repair services paid in advance, but not rendered, in the amount of USD 6,505,186.93 (including VAT); and 3) pay compensation for the 12 dry gas seals valued at USD 1,000,000.00 (including VAT), which had been wrongfully withheld and given to the Respondent for repair. dry gas seals valued at USD 1,445,360.76 (excluding VAT); 3. compensation for the loss of a substitute transaction for the purchase of 12 dry gas seals by OAO Yamal LNG for USD 155,951.41 (excluding VAT); 4. compensation for the value of the blades in the first stage of the blade set in the amount of USD 17,683.62 (excluding VAT); and 5. the return of funds transferred to Respondent of

18. Hulley Enterprises Limited and others v The Russian Federation [2023] EWHC 2704 (Comm) (1 November 2023) (Cockerill J).

47341938.52 roubles (including VAT) to compensate for the customs duties under the contract. In addition, as a result of the Respondent's serious breaches of its obligations, the Claimant gave the Respondent notice of termination of the contract and filed a claim for compensation of USD 31,557,641.17 against the Respondent.

3.2.2 The Court's judgment and its reasoning

The court held that: under article 90 (1) of the Arbitration Procedure Code of the Russian Federation, the arbitral tribunal may, at the request of the parties to the case, take urgent interim measures to safeguard the claimant's claims or property interests. Under Article 90 (2), interim measures were permitted if the absence of an interim measure might make it difficult or impossible to enforce a judicial act, as well as to prevent significant prejudice to the claimant. At the same time, the interim measure must fulfill the required conditions, i.e. be directly related to the matter in dispute, proportionate to the required conditions, necessary and sufficient to ensure the execution of the judicial act or to prevent damage. The application for interim measures must contain the grounds for the application. When filing an application for interim measures, the applicant must state the need for the interim measure and provide evidence to substantiate the existence of a real threat of future failure to carry out the judicial act or of causing substantial prejudice to the judicial act.

Under Article 99 (1) of the Code of Arbitration Procedure of the Russian Federation, an arbitration court has the right, at the request of an organization or a citizen, to take a preliminary interim measure to secure the claimant's property interests pending the initiation of arbitration. Under Article 99 (2), the arbitration court adopts preliminary interim measures following the rules set out in Chapter 8 and observes the special features set out in this article. According to article 99 (3), an application for the preservation of property shall be filed with the arbitration court at the address of the claimant, at the location of the funds or other property in respect of which the claimant applies for the preservation of property, and at the location of the place where the claimant's rights have been violated.

Under the interpretation of paragraph 13 of resolution No. 11 of the Plenum of the Supreme Arbitration Court of the Russian Federation of 9 December 2002 "On several issues in the course of the development of the Arbitration Procedure Code of the Russian Federation", the application of the preliminary interim measures provided for in article 99 is permissible where the grounds referred to in Article 90 (2) exist and the failure to take such measures may make it difficult or impossible to carry out a judicial act.

The Plenum of the Supreme Arbitration Court of the Russian Federation, in paragraph 9 of its resolution No. 55 of 12 October 2006, "On the application of interim measures by arbitration courts", stated that, in applying interim measures, the arbitration court proceeds from the fact that, according to article 90 (2) of the Arbitration Procedure Code of the Russian Federation, the adoption of an interim measure is permissible at any stage of the proceedings if one of the following reasons exists: 1) if the failure to take such measures might make it difficult or impossible to enforce judicial acts, including in anticipation of their enforcement outside the Russian Federation; and 2) to prevent significant prejudice to the claimant.

In assessing the applicant's claim under article 90 (2), the arbitral court shall pay particular attention to the following: 1. the reasonableness and validity of the applicant's request for an interim measure; 2. the likelihood that the applicant will suffer significant loss if the interim measure is not granted; the balance of the various interests of the stakeholders; and 3. the prevention of encroachment on the public interest and the interests of third parties in the granting of the interim measure.

In the present case, the Court assessed the arguments and evidence put forward by the applicant, took into account the circumstances of the case and the nature of the provisional measures requested, and, based on an analysis of the legal rules referred to above, concluded that it was necessary to take the preliminary provisional measures requested by the applicant. The Court considers that the measures requested by the applicant are justified and reasonable in the light of the circumstances enumerated by the applicant, are related to the subject matter of the application that the applicant intends to make, and are aimed at preserving the existing state of relations between the parties (the status quo ante) and at preventing the infringement of the interests of third parties. The Court noted that the seizure was valid for 15 working days from the date of the decision (i.e. until 31 August 2023). For the sequestration to continue, Yamal LNG must apply to the ICC within this period. Baker Hughes has until 10 September 2023 to appeal the court's decision.

3.2.3. Analysis

This case provides valuable lessons for sanctioned enterprises in applying for property preservation before initiating international commercial arbitration abroad. The main points of review of an application for interim measures in Russia are the reasonableness and effectiveness of the interim measure; the likelihood that the applicant will suffer significant losses if the interim measure is not granted; the balance of interests of stakeholders; and the prevention of infringement of the public interest and the interests of third parties. These points of review are not fundamentally different from the practice in other countries or jurisdictions. In this case, the application for pre-arbitration property preservation was a preliminary interim measure with higher requirements than an application for an interim measure, and the sanctioning of the case and the stripping of the respondent's assets were sufficient to prove that failure to take these measures could make it difficult or impossible to effectively enforce future decisions, so the Russian court granted the application. This point can also serve as a reference for the relevant judicial practice in China.

4. Conclusions

This research paper is regarded in three parts. First, I explained what arbitration is, what international arbitration is, and how international arbitration works. The second part presented the legal frameworks that govern international arbitration. In the last part, I used two recently notable cases to analyze international arbitration.

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