

UNUSUAL PARTIES IN INTERNATIONAL ARBITRATION

Dealing with States, State Entities and International Organisations

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ASA Below 40 Seminar
Zurich, 21 October 2011



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1. Introduction

- ❑ **Defining States, State entities (SEs) & international organizations (IGOs)**

- ❑ **Arbitration?**
 - ❑ State-to-State arbitration
 - ❑ IGO-to-IGO arbitration
 - ❑ State-IGO arbitration
 - ❑ Private party-State/SE/IGO arbitration

2. Issues of substance

❑ Privileges and immunities

- ❑ Understanding immunity: Immunity from jurisdiction vs. immunity from execution
- ❑ State immunity: Shrinking or expanding?
- ❑ Do SEs enjoy State immunity?
- ❑ IGO immunity: Where to look and what to expect

❑ Law applicable

- ❑ State and SE arbitrations: International or domestic law?
- ❑ IGO arbitrations: 'Law? What Law?'

Practical tips #1: Interacting with your client

❑ General issues

- ❑ Civil service as a self-contained world
- ❑ Status & Suspicion: The oddity that is private practice lawyers

❑ Decision-making process – States & SOEs

- ❑ When States are just too big: multiple clients, conflicting instructions & ownership issues
- ❑ When States are just too small: centralized decision-making, lack of resources & availability issues

Practical tips #1: Interacting with your client

❑ Decision-making process: IGOs

- ❑ Understanding the structure of IGOs: Member States vs. the Secretariat
- ❑ Understanding the rationale of IGO actions: Politics and financing

❑ Decision-making process: generally

- ❑ Political interference: Grand bargains and backdoor arrangements
- ❑ Cultural issues: Client's failure to understand its best interest?

Practical tips #2: How to run your arbitration

❑ Conflicts of interest

- ❑ What conflict? States, government agencies and other State entities
- ❑ '*L'Etat c'est moi*' – managing conflicts of interest with PEPs

❑ Managing costs

- ❑ Cultural issues: Can States and IGOs understand attorney fees?
- ❑ IGOs: How to arbitrate a EUR 50,000 dispute with a three-member tribunal

Practical tips #2: How to run your arbitration

- ❑ **Case management (select issues)**
 - ❑ When and why hiring local counsel helps
 - ❑ Civil servants as witnesses: dealing with hierarchy and non-disclosure obligations
- ❑ **Enforcement**
 - ❑ Enforcing on behalf of State & IGO clients: too good to be true?
 - ❑ Enforcing against States & IGOs: not an easy road

Thank you!

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