

The 1st Frankfurt Investment Arbitration Moot Court

By Christina Pfaff*

A. Introduction: The Frankfurt Investment Arbitration Moot Court

In April 2006, the Wilhelm Merton Centre for European Integration and International Economic Order of Johann Wolfgang Goethe University, Frankfurt organised a symposium in celebration of the 40th anniversary of the Convention on the Settlement of Investment Disputes (ICSID)^{1,2} At the symposium, young and up-and-coming scholars, together with experienced experts from both the profession and academia, discussed a broad range of issues relating to investment protection before a substantial audience. Frankfurt is also home to the Frankfurt International Arbitration Center (FIAC),³ founded in 2005 as a joint venture between the Frankfurt Chamber of Commerce and Industry (Frankfurt CCI) and the Deutsche Institution für Schiedsgerichtsbarkeit (DIS). Under an agreement between ICSID and DIS, the FIAC serves as a cooperation facility for ICSID arbitrations. It is one of only two cooperation facilities in Europe.

Shortly after the symposium, Dr. Sabine Konrad of Dewey & LeBoeuf approached the Merton Centre with the idea of holding a moot court that focused on investment treaty arbitration, the Frankfurt Investment Arbitration Moot. In retrospect, this was a natural development. What better location than Frankfurt for the first international moot court focussing on this fast growing and rapidly developing area of international law?

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¹ 14 October 1966, BGBl. 1969 II, 1191; also available at: <http://icsid.worldbank.org/ICSID/Index.jsp>.

² Conference: The International Centre for the Settlement of Investment Disputes (ICSID) Taking Stock after 40 Years, Schriften zur Europäischen Integration und Internationalen Wirtschaftsordnung, Bd. 7; http://www.merton-zentrum.uni-frankfurt.de/Startseite/Vergangene_Veranstaltungen/Tagungen/ICSID.html.

³ http://www.frankfurt-main.ihk.de/english/legal_matters/disputeregulation/fiac/index.html.

The concept of this moot competition is to focus exclusively on investment protection and investment arbitration so as to encourage law students to develop an interest in the subject. International investment protection law is one of the most fascinating and intellectually challenging areas of international law, and is of immense practical relevance. However, foreign investment protection law and investment arbitrations are rarely, if at all, addressed in the curricula of law faculties, particularly in the civil law countries.

A moot court as an extracurricular activity offers many interesting insights to the participating teams and greatly benefits students. Participation in a moot improves not only legal, linguistic and interpersonal skills, but also offers a platform from which to establish contact with international arbitrators and institutions from the field. Participants train in important techniques of dispute resolution, skills that they will need in their professional futures. These tools are put to the test in the pleading session before arbitral tribunals composed of internationally recognized experts.

For international law firms, participation in a moot can be a decisive factor when selecting prospective associates. A moot court is not only limited to professional matters, but also offers an opportunity to build friendships and cultural exchanges. As V.V. Veeder, QC, an arbitrator of the Moot's final, told the Global Arbitration Review (GAR), the Moot's focus on oral advocacy makes it "an excellent exercise for the students. Every student interested in going into the field of arbitration should participate in this moot."⁴

The Wilhelm Merton Centre, together with the Frankfurt Chamber of Commerce and Industry, embraced the idea proposed by Dr. Sabine Konrad to organise a moot court on investment protection law. As a result, the first Frankfurt Investment Arbitration Moot was held from 14 to 16 February 2008, hosted by the FIAC. The FIAC offers excellent facilities for the conduct of domestic and international arbitration procedures and alternative dispute resolution. The FIAC is a perfect setting for an investment arbitration moot court where ICSID arbitrations can be held, under Article 63(a) of the ICSID Convention.

⁴ GLOBAL ARBITRATION REVIEW (GAR), 19 February 2008: *Halle-Wittenberg wins First Frankfurt Moot*, available at: <http://www.globalarbitrationreview.com/news/article/4327/halle-wittenberg-wins-first-frankfurt-moot> (last visited 29 May 2009, registration required).

B. An Overview of the Frankfurt Investment Arbitration Moot Court

The Frankfurt Investment Arbitration Moot Court competition is unique insofar as it is the first moot in the world to deal exclusively with investment arbitration and focus solely on oral advocacy. The competition is conducted as follows:

Every year in September, the legal dispute, called “the case-study”, is published on the homepage of the Frankfurt moot.⁵ The case study contains all relevant information relating to an investment dispute between two parties. Legal issues raised by the problem are typically questions of general international law as well as of investment protection law. Within about four months, the students prepare skeleton arguments for both parties. This includes the identification of the relevant legal issues and the substantive law governing the dispute. These skeleton arguments (rather than full written memoranda as required in other moots) are submitted to the moot organisers. They should not be longer than 15 pages and have to contain an outline of party's arguments.

In the pleadings, the last phase of the moot, the skeleton memoranda produced by the teams serve as the basis for the party's oral argument. The student teams will learn to act as counsel before an arbitral tribunal. Eventually, all the teams meet in Frankfurt am Main in order to plead their case against the other participating teams in the general rounds of the moot. In the course of the moot, the teams plead several times and have to represent both sides. The best four teams from the general rounds advance to the semi-finals. The final is held on the following day. The moot ends with a prize-giving ceremony for the winning team, the best advocate and the runners-up team.

C. The First Frankfurt Investment Arbitration Moot Court

The first Frankfurt Investment Moot Court was hosted by the Frankfurt CCI and sponsored by international law firms Dewey & LeBoeuf, Hughes Hubbard and Mannheimer Swartling, Fraport AG and Oxford University Press. It started on 14 February 2008 with a reception at the CCI. The participants were welcomed by Hans-Reinhart Grünbaum on behalf of the host, Professor Dr. Alexander Lorz, Deputy Minister at the Ministry of Higher Education, Science and the Arts in the German state of Hessen and himself an expert on International Investment Law, Professor Dr. Ingwer Ebsen, Vice-President of the Johann Wolfgang Goethe University Frankfurt am Main, and Prof. Dr. Rainer Hofmann, Director of the

⁵ Frankfurt Investment Arbitration Moot Court, <http://www.investmentmoot.org>.

Wilhelm Merton Centre. The highlight of the reception was the most instructive and impressive keynote address of Professor Derek Roebuck (Institute of Advanced Legal Studies, University of London) who spoke on arbitration and dispute resolution in Egypt in the first century BC. Subsequently, the teams drew lots that determined the schedule of hearings for the following day.

Nine teams from Australia, the Czech Republic, Germany, Switzerland and the United Kingdom participated in the 2007/ 2008 Frankfurt Investment Arbitration Moot. With up to four members per team, some forty students took part in the competition. Over the course of the general rounds, the semi-finals and the final, the problem was argued before nineteen separate panels of three arbitrators each.

The participants in the 2007/2008 Frankfurt Investment Arbitration Moot Court faced an enormous challenge with the legal dispute written by Dr. Sabine Konrad. As Judge Simma remarked in GAR: "This year's moot court problem was particularly thought-provoking as it showed an interesting potential conflict between the rules of general international law and the interests of investment protection in a case of state succession."⁶ It was based on historic events at the end of the Roman Republic. On 23 February 34 BC, Cleopatra VII of Egypt approved a royal decree granting tax exemptions and privileges to Publius Canidius Crassus Consularis, a general of Marc Antony. After the Battle of Actium, Cleopatra committed suicide and Canidius Crassus was executed.

Friday started with the general rounds of the competition. All nine teams delivered an outstanding performance. After a tough six hours of hearing sessions, the composition of the semi-finals was announced. In the first semi-final, the team of the Swiss University of St. Gallen (Nicolas Guyot, Lukas Rusch and Simon Staehelin) prevailed over the University of Freiburg's team (Annika Böttcher and Nikolas Gillen). The president of the first semi-final tribunal was Kaj Hober, with Ahmed El-Kosheri and Veijo Heiskanen as co-arbitrators. In the second semi-final, presided over by Antonio Parra with Hans van Houtte and Michael Collins on the bench, the University of La Trobe of Australia (James Mc Donald and Patrick Brady) was defeated by the team from the University of Halle-Wittenberg (Grit Töpfer, Clemens Wackernagel and Jürgen Bering).

Saturday morning commenced with a Round-table of eminent practitioners, government representatives and investors on "Access to *Travaux Préparatoires* in Investment Treaty Arbitration". The discussions were led by Professor Emmanuel

⁶ GAR, *supra*, note 4.

Gaillard of Shearman & Sterling, Antonio Parra, former Deputy Secretary General of ICSID and V.V. Veeder, QC of Essex Court Chambers.

In the meantime, the finalists had the opportunity to make their final preparations for their particular roles in the final hearing. The assignation of the teams was decided by drawing the lots: Halle-Wittenberg won and chose to argue on behalf of the respondent. The well-attended final took place on Saturday afternoon in the Lichthof of the CCI, before Professor Emmanuel Gaillard as president, and Professor Karl-Heinz Böckstiegel and V.V. Veeder, QC as co-arbitrators. Approximately 40 students and participants, together with a large number of lecturers, arbitrators and guests, watched the two teams battle. For both teams it was the sixth time that they had argued the problem in two days, having considered every issue from both sides before reaching the finals.

The performances of each team's counsel were remarkable and made for an exciting final. Both teams met the top of professional standards in international investment arbitration. Gaillard was quoted in GAR as saying: "The excellent quality of the teams made it a great pleasure to preside over the final. We gave them a hard time but they stood up to the test."⁷

The winner of the moot was Halle Wittenberg University. The bench felt that this team showed a marginally better standard of advocacy and so won a scholarship for a three-week course in the summer programme of The Hague Academy on Public and Private International Law, sponsored by Dewey & LeBoeuf. The team of St. Gallen University were congratulated as close runners-up. The prize for the best individual oral advocacy during the semi-finals and finals, a scholarship to the Queen Mary School for International Arbitration, sponsored by Dewey & LeBoeuf also, was awarded to Lukas Rusch of St. Gallen University by Judge Bruno Simma of the International Court of Justice, who was impressed by the excellent quality of his advocacy. Oxford University Press had sponsored the prize for the running-up team, a collection of seminal books on international investment law. Professor Rainer Hofmann, Director of the Wilhelm Merton Centre, concluded the moot court proceedings.

⁷ *Id.*

D. Conclusion

As means of promoting international investment arbitration and international investment protection law, the moot court was a remarkable success. The participants agreed that the simulation had been a great stimulus for their studies and that many valuable lessons about investment arbitration had been learnt. The extraordinary composition of each arbitral tribunal contributed enormously to the professional atmosphere and matched the high quality of the participants' performances. As Professor Böckstiegel told GAR: "I am looking forward to the first alumni of the Frankfurt Investment Arbitration Moot joining the arbitral community in a few years' time. I am convinced that all of them will do very well."⁸

The organisers of the Moot, the Wilhelm Merton Centre and the Frankfurt am Main Chamber of Commerce and Industry, wish to thank sponsors, arbitrators and the participating teams for their contribution and to express their sincere gratitude to the members of their staff whose strong commitment contributed very considerably to the event's success. The 2nd Frankfurt Investment Arbitration Moot Court will be held from 4 to 6 March 2009.⁹

⁸ *Id.*

⁹ <http://www.investmentmoot.org> (last visited 29 May 2008).