The Society of Construction Arbitrators

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April 2025 – SCA Arbitration law update bulletin

The English Court of Appeal in *Nigeria LNG Ltd v Taleveras Petroleum* determines that the dispositive section of an award is the appropriate starting point for interpreting the relief granted

As Members will know each jurisdiction has the sovereign authority to define the elements of an arbitral award rendered within its territory or according to its laws. Even jurisdictions adopting the Model Law on International Commercial Arbitration may differ in their interpretation of what constitutes an arbitral award, influenced by evolving jurisprudence. Consequently, it is impractical and unnecessary to cover all jurisdictions' requirements for arbitral awards in this note, as detailed reports on national jurisdictions are provided in leading texts.

However, understanding the essentials of what constitutes an arbitral award is beneficial, particularly based on key legal instruments like the New York Convention and the Model Law. While there is a general consensus on what defines an arbitral award, differences exist, especially at the boundaries.

An arbitral award is a decision made by an arbitral tribunal, not by an arbitral institution or court. It addresses specific requests by the parties and is final and binding, possessing *res judicata* effect. Unlike procedural orders or interim measures, an award cannot be revised by the tribunal post-issuance, except for correcting specific errors. Awards are subject to court review in setting-aside and enforcement proceedings. The distinction between procedural and substantive questions is not crucial, as tribunals may issue awards on procedural matters like jurisdiction. In summary, an arbitral award is a tribunal's final, binding decision on a specific party request, subject to court review.

The Court of Appeal in *Nigeria LNG Ltd v Taleveras Petroleum Trading DMCC* on 16 April 2025 has affirmed a Commercial Court ruling that an indemnity outlined in the dispositive section of an award, labelled "Award," is enforceable and not dependent on conditions mentioned in earlier sections.

Key issues in the case were: -

- Interpretation of arbitral awards under English law
- The function and primacy of the dispositive section in an arbitral award
- The extent to which reasoning sections of awards can constitute operative orders
- The importance of form and structure in award construction
- Judicial deference to arbitral autonomy and clarity.

The arbitration involved a sales contract that was not fulfilled between the award creditor, Televeras, and the award debtor, NLNG, where Televeras was granted lost profits. The dispositive section of the award also required NLNG to indemnify Televeras for any liabilities it incurred in arbitrations initiated by Televeras' on-sale buyers. In the Commercial Court, before HHJ Pelling KC, NLNG unsuccessfully argued that the indemnity was contingent upon the tribunal in those arbitrations endorsing its applicability, as stated in paragraph 607 of the award's "Analysis" section, which specified:

"*The Tribunal further orders that … any eventual enforcement of this indemnity be subject to the endorsement of [the tribunal in the third-party arbitrations] as to its applicability in the context of any award and, in particular, any consent award, made in … those proceedings*."

In delivering the leading judgment that upheld the lower court's interpretation, Phillips LJ noted:

- The dispositive section of the award was meticulously drafted, with orders arranged logically. It was clearly intended to function like a court order following a reasoned judgment, providing a self-contained and comprehensive statement of the relief granted.

- The lower court's method of interpreting the award was beyond reproach. Given the nature of the arbitration and the arbitrators' expertise, the judge correctly viewed the clear structure of the award, with its final dispositive section containing distinct orders, as the primary reference point. However, the judge also considered paragraph 607 to determine if it "augmented the orders in the [dispositive section]" in context, concluding that it did not.

- Although paragraph 607 mentioned "further orders," it did not address any subject matter omitted from the dispositive section. The issue of endorsement was explicitly addressed but limited to cases involving a consent award. While earlier sections of the award could aid in interpretation, there was no justification for extending that requirement to all cases. The two provisions were inconsistent, and the dispositive section took precedence.

See https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2025/457.html&query=(Nigeria)+AND+(LNG)+AND+(Ltd)+AND+(v)+AND+(Taleveras)+AND+(Petroleum)+AND+(Trading)+AND+(DMCC)

Thus, Nigeria's bid to overturn a $380m award to oil trading firms Glencore and Vitol was unanimously rejected by the three-member Appeal Court panel in London. The ruling ordering Nigeria to pay oil trading firms Glencore and Vitol, is the latest in a string of lawsuits since the case began in January 2021.

See https://www.youtube.com/watch?v=AeLC3gu2zII

State Immunity and the Court of Appeal view on the importance of the words "wholly enforceable"

In *General Dynamics United Kingdom Ltd v The State of Libya* [2025] EWCA Civ 134, the English Court of Appeal dismissed an appeal against a decision of the Commercial Court to grant an award creditor a final charging order over Libyan-owned assets in London, finding that the state had waived its right to immunity from execution.

The *General Dynamics* decision addresses an important issue regarding state immunity, specifically whether a state entity can invoke section 13(2)(b) of the State Immunity Act 1978 ("SIA") to avoid enforcement of an arbitration award or judgment. The Court of Appeal unanimously decided that Libya could not rely on section 13(2)(b) of the SIA because it had consented within the contract to the enforcement of an award against its assets, agreeing that any award would be "fully enforceable." (Contrast this case with *CC/Devas (Mauritius) Ltd and Others v the Republic of India* – below - which held ratifying the NYC does not equate to a waiver of state immunity).

The reasoning of Phillips LJ, who delivered the leading judgment, is not detailed here, as all three judges agreed that Libya had provided written consent to the enforcement of an award against its assets. This consent was evident in the arbitration clause, which included the term “wholly enforceable.”

In the shipping industry (as often in construction), arbitration clauses, such as those in shipbuilding contracts, often state that any arbitration award will be “final and binding.” While these terms do not typically preclude the right to appeal, it is less common for clauses to specify that the award will be “wholly enforceable.”

Given that contracts in the shipping sector and construction are frequently made between private (or non-state) companies and state or state-controlled entities, this decision suggests that including the term “wholly enforceable” could be beneficial for facilitating enforcement actions. I set out a bit more detail below.

Summary of Facts:

On 5 May 2008, GDUK entered into a contract with Libya to supply a Tactical Communications and Information System for £84 million. The contract was governed by Swiss law. Clause 32 stipulated that any disputes would be resolved through arbitration under the Rules of Arbitration of the International Chamber of Commerce (“ICC”), and that the arbitration panel’s decision would be “final, binding and wholly enforceable.”

It was agreed that clause 32 represented Libya’s written agreement to submit disputes to arbitration, as per section 9 of the SIA, meaning Libya was not immune from the adjudicative jurisdiction of UK courts regarding this arbitration. The appeal focused on whether Libya also consented, under section 13(3) of the SIA, to the enforcement against its property of any ICC arbitration award.

Section 13 of the SIA states:

"*(2) Subject to subsections (3) and (4) below -*

…

(b) the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale.

(3) Subsections (2) and 2(A) above do not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection."

The argument that Libya consented only to the recognition of the award, rather than its enforcement, was dismissed. Hence the use of the term “*wholly enforceable*” had indicated that Libya consented to the entire enforcement process, including recognition in any jurisdiction where enforcement was sought.

Libya had committed to the ICC Rules, which include an obligation “to carry out any award without delay.” This commitment has been interpreted in at least two major jurisdictions as constituting a waiver of immunity from execution. Within this framework, Libya’s agreement in clause 32 that an award would

be “wholly enforceable” can be understood to include all necessary waivers for the award to be both enforced and executed.

Consequently, the Court of Appeal dismissed the appeal.

See https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2025/134.html&query=(General)+AND+(Dynamics)+AND+(United)+AND+(Kingdom)+AND+(Ltd)+AND+(v)+AND+(The)+AND+(State)+AND+(of)+AND+(Libya)+AND+(.2025.)+AND+(EWCA)+AND+(Civ)+AND+(134)

Simply ratifying the New York Convention does not waive a state's immunity from the jurisdiction of English courts when enforcing an award under the NYC.

The Commercial Court in England in *CC/Devas (Mauritius) Ltd and Others v the Republic of India* [2025] EWHC 964 (Comm) has determined that ratifying the 1958 New York Convention (NYC) does not equate to a waiver of state immunity or consent to the jurisdiction of English courts under section 2(2) of the State Immunity Act 1978 (SIA).

The case involved a dispute where Mauritian investors filed claims against India under the Mauritius-India bilateral investment treaty, which were pursued in an UNCITRAL arbitration based in The Hague. The investors received a favourable award and were granted permission to enforce it under section 101 of the Arbitration Act 1996. India sought to overturn this permission, arguing it was immune from the jurisdiction of the English courts under section 1 of the SIA, and that section 9 of the SIA did not apply to waive this immunity because India had not consented to arbitration of the underlying dispute. The investors contended that by ratifying the NYC, India had, under article III of the NYC, consented to the court's jurisdiction through a prior written agreement as defined in section 2(2) of the SIA. Article III essentially mandates that contracting states enforce arbitral awards according to the procedural rules of the territory where the award is invoked. The court ordered a preliminary determination on this issue.

Sir William Blair, serving as a High Court judge, concluded that India's ratification of the NYC did not, by itself, constitute consent to jurisdiction through "prior written agreement" under section 2(2). This situation differs from cases under the ICSID Convention, as seen in *Infrastructure Services Luxembourg SARL and another v Kingdom of Spain* [2024] EWCA Civ 1257. There was no evidence that the drafters of the NYC intended to exclude arguments based on immunity, and legal commentary supported the view that state immunity arguments were not barred. According to English law's criteria for waiver, ratifying article III alone did not waive state immunity. Additionally, since state immunity is a procedural rule under both English and international law, the reference to "rules of procedure" in article III maintains state immunity.

In summary: -

1. There is no evidence that the drafters of the New York Convention intended to exclude immunity-based arguments in enforcement actions against states, and most commentary supports the view that such arguments are not excluded.

2. According to the established classification of state immunity in both English and international law, the mention of "rules of procedure" in Article III of the NYC maintains state immunity.

3. Under English law's criteria for waiver, India's ratification of Article III of the NYC does not, by itself, constitute a waiver of state immunity.

See https://www.bailii.org/ew/cases/EWHC/Comm/2025/964.html

French Court of Appeal refuses to prevent call by Kuwait under guarantees given in construction contract - state immunity, jurisdiction, applicable law

In *Rizzani de Eccher and others v BNP Paribas and another* (RGs nos 24/20656; 24/20639; 24/20638) In 2011, a consortium of companies - Obrascón Huarte Lain S.A., Rizzani de Eccher S.p.A, and Trevi S.p.A (hereafter referred to as Obrascón, Rizzani, and Trevi), along with Kuwait Boodai Constructions through a joint venture, won a tender issued by the Ministry of Public Works of Kuwait for the construction of an elevated highway and other related infrastructure to replace the old [Address 8] in [Locality 6] (Kuwait).

BNP Paribas issued several on-demand guarantees in favour of the Ministry of Public Works of Kuwait, at the request of the joint venture, for a total value of approximately 122.8 million euros.

Regarding guarantee no. 04761IGK1100031, BNP Paribas committed to pay, upon first written demand, the sum of 24,242,000 Kuwaiti dinars concerning contract ref. RA/167 Construction, Completion, and Maintenance of roads, viaducts, stormwater drainage, sewers, and other services for [Address 8], despite any objections from the joint venture Obrascón Huarte Lain S.A., Rizzani de Eccher S.p.A, and Trevi S.p.A.

By an arbitral award dated 15 December 2022, the arbitral tribunal, seized under bilateral investment treaties, rejected the claims of Obrascón, Rizzani, and Trevi.

Obrascón, Rizzani, and Trevi filed an annulment application against this arbitral award in March 2023 before the ICSID annulment committee.

The Paris Court of Appeal[1] (COA) has now upheld a decision to deny injunctive relief that would have prevented French bank BNP Paribas (BNPP) from making payments to Kuwait under bank guarantees.

The consortium of contractors had sought injunctive relief to stop BNPP from fulfilling Kuwait's payment demands under bank guarantees related to the 2011 construction project, which later became the subject of an ICSID arbitration won by Kuwait. Kuwait aimed to draw on advance payment and performance guarantees, but not retention guarantees, while award annulment proceedings were

[1] Cour d'appel de Paris which sits beneath the Cour de cassation.

ongoing. In December 2024, the Paris Tribunal of Commerce (TOC) denied the request for injunctive relief on grounds of admissibility.

Before the COA, Kuwait and BNPP raised two jurisdictional objections, which were unsuccessful: Kuwait's claim of immunity from jurisdiction and the TOC's alleged lack of jurisdiction over the dispute.

The COA dismissed the consortium's argument that Kuwait could not claim immunity because it was only an intervening party, not a respondent. The COA found that although the consortium's claims were directed solely at BNPP, they had directly involved Kuwait. However, the COA agreed that Kuwait was not immune from suit because no claim was made against it, and the commercial nature of the guarantees indicated that Kuwait was not acting in a sovereign capacity.

The COA also confirmed the TOC's territorial and material jurisdiction over the dispute, specifically affirming that the President of the TOC had the authority to decide on the request for provisional measures to block payment under the guarantees.

On the merits, the COA determined that by invoking French substantive rules on bank guarantees in their pleadings (specifically, Article 2321 of the French Civil Code), the parties had implicitly chosen French law as the applicable law under Article 3 of the Rome I Regulation (593/2008/EC). According to Article 2321 of the FCC, the COA ruled that Kuwait's call on the advance payment and performance guarantees was neither abusive nor fraudulent, and the financial impact on the consortium was irrelevant. Regarding the retention guarantees, the COA found that since its power to enjoin payment was limited to fraudulent or abusive calls, and Kuwait had not called on these guarantees, BNPP could not be prohibited from paying them.

These decisions reaffirm established principles regarding state immunity, jurisdiction, applicable law, and financial guarantees in construction contracts.

See https://www.italaw.com/cases/5412

The 2025 Queen Mary University of London and White & Case International Arbitration Survey

https://www.qmul.ac.uk/arbitration/research/2025-international-arbitration-survey/

The 2025 Queen Mary University of London and White & Case International Arbitration Survey gathered insights from over 2,400 respondents and 117 interviews from the global arbitration community.

It reaffirms Singapore's status as a top choice for international arbitration, sharing the leading position with London.

Singapore's success appears largely due to its adaptability and commitment to adopting global best practices and innovations.

Otherwise here is a summary of the key insights from the QMU/W&C 2025 International Arbitration Survey, presented with a focus on the main points and using graphics to enhance understanding:

2025 International Arbitration Survey Highlights

1. Popularity of Arbitration:

- **87%** of respondents prefer international arbitration for resolving cross-border disputes.
- **London** and **Singapore** are the top choices for arbitration seats globally, with strong regional preferences for local seats.

2. Arbitral Rules:

- **ICC Rules** are the most preferred, followed by **HKIAC** and **SIAC Rules**.
- Regional preferences show a tendency towards local rules, with **DIAC** and **AAA-ICDR** also popular.

3. Efficiency in Arbitration:

- Key issues impacting efficiency include adversarial approaches and lack of proactive case management.
- **Expedited procedures** and **early determination** are seen as effective solutions.

4. Confidentiality vs. Transparency:

- **90%** of respondents oppose public hearings in commercial arbitration.
- **59%** support publishing redacted awards in Investor-State Dispute Settlement (ISDS) cases.

5. AI in Arbitration:

- **90%** expect increased AI use for research and document review.
- Main drivers: **time savings** (54%) and **cost reduction** (44%).
- Concerns include **AI errors** and **bias** (51%).

Conclusion: The survey highlights the evolving landscape of international arbitration, with a focus on efficiency, confidentiality, and the integration of AI. While AI is seen as a game-changer, concerns about accuracy and ethical implications remain.

The European Union (“EU”) has recently passed laws regulating the use of AI, which sets out that legal decision-making is a high-risk activity that should remain human-driven and not be replaced by AI tools. On the other hand, ancillary procedures may be carried out by AI tools. The full impact of this new legislation on arbitration will need to be better understood, particularly as other countries adopt similar laws.

The arbitration and judicial community are poised to adapt to these changes, balancing innovation with traditional values.

The Technology and Construction Court, King's College London, TECSA, TECBAR, the Society of Construction Law and the Society for Computers & Law seminars, two so far and a third in July, have already explored the legal industry's use of AI in dispute resolution, looking at how AI is used throughout the lifecycle of a dispute in litigation, and what we can expect to see in the near future. It is coming at us fast!

Arbitration Act 2025

In the largest legislative development in the field of arbitration in England for thirty years, the English Arbitration Bill received Royal Assent on 24 February 2025 and was enacted as the Arbitration Act 2025 (the **Act**)

Background and legislative journey
The Act is a pivotal legislative update aimed at refining the arbitration framework established by the Arbitration Act 1996. This reform is the culmination of extensive consultations some of which this Society actively participated and recommendations by the Law Commission, which began its review process in March 2021. The Commission's goal was to address evolving needs in arbitration practice, ensuring that London remains at the forefront of international arbitration.

The recommendations were published in September 2023, followed by the introduction of the Arbitration Bill in November 2023 and the writer, Professor Uff, Rowan Planterose and Christopher Dancaster amongst others met with the Law Commission that autumn. After thorough deliberation and input from the arbitration community, the Act received Royal Assent on **24 February 2025**, marking a significant milestone in the evolution of arbitration law in the UK.

Key Changes and their implications

1. ***Applicable Law (Section 6A):***
    - Clarification of Governing Law: The 2025 Act provides clarity on the law applicable to arbitration agreements. It specifies that unless the parties explicitly agree on a governing law for the arbitration agreement, the default will be the law of the arbitration seat. This resolves ambiguities highlighted in cases like Enka v Chubb, where the Supreme Court grappled with the applicable law in the absence of explicit agreement.

    - Impact on drafting: This change underscores the importance of precise drafting in arbitration agreements. Parties are encouraged to explicitly state the governing law for both the contract and the arbitration agreement to avoid unintended legal interpretations.

2. **Impartiality and Duty of Disclosure (Section 23A):**
   - Enhanced transparency: The Act mandates that arbitrators disclose any circumstances that might reasonably question their impartiality[2]. This aligns with global trends towards transparency and is consistent with standards set by leading arbitral institutions like the LCIA.

   - Professional standards: This requirement reinforces the professional standards expected of arbitrators, ensuring that parties have confidence in the neutrality of the arbitration process.

3. **Arbitrator Immunity (Sections 24(5A), 25, and 29):**
   - Protection from liability: The Act extends immunity to arbitrators, protecting them from liability when resigning, unless the resignation is deemed unreasonable. This provision aims to prevent undue pressure on arbitrators and supports their ability to make impartial decisions without fear of litigation.

   - Encouraging robust decision-making: By safeguarding arbitrators from costs orders unless bad faith is involved, the Act encourages arbitrators to make decisions based on merit rather than external pressures.

4. **Summary Disposal Powers (Section 39A):**
   - Efficiency in Proceedings: The Act empowers tribunals to issue summary awards when a party's claim or defence lacks a real prospect of success. This provision is designed to streamline proceedings and reduce the time and costs associated with meritless claims.

   - Comparison with international standards: While the Act uses the "no real prospect of success" standard, which may be seen as less stringent than the "manifestly without merit" standard used by some institutions, it provides a practical tool for enhancing procedural efficiency.

5. **Empowering Emergency Arbitrators (Section 41A and 44):**

   - Enforceability of Orders: The Act strengthens the role of emergency arbitrators by making their orders enforceable through the courts. This addresses previous concerns about the effectiveness of emergency relief and provides parties with confidence in obtaining urgent interim measures.

   - Increased use of emergency arbitration: With clearer enforceability, parties may be more inclined to utilize emergency arbitration provisions, knowing that such orders will be supported by the legal system.

[2] As we have seen a former Court of Appeal judge's failure to disclose her links with Freshfields led to a decision she helped make in an international arbitration being set aside. See *Aiteo Eastern E & P Company Limited v Shell Western Supply and Trading Limited* [2024] EWHC 1993 (Comm). This case should be analyzed in the context of the foundational principles established in *Halliburton Co. v. Chubb Bermuda Insurance Ltd* [2020] UKSC 48.

6. **Court Powers and Third Parties (Section 44):**
    - Clarification of court authority: The Act clarifies that English courts can issue orders in support of arbitration against third parties, such as interim injunctions. This resolves previous uncertainties and ensures that courts can effectively assist in the arbitration process.

    - Broader jurisdictional reach: By extending court powers to third parties, the Act enhances the ability of arbitral tribunals to enforce procedural orders and maintain the integrity of the arbitration process.

7. **Jurisdictional challenges (Section 67):**
    - Streamlined procedures: The Act introduces a new procedure to limit full re-hearings of jurisdictional challenges, which can be costly and time-consuming. This change aims to improve cost-efficiency and procedural fairness.

    - Judicial oversight: While the Act sets the framework, the Civil Procedure Rule Committee will develop detailed rules to ensure that jurisdictional challenges are handled efficiently, balancing the need for thorough review with the desire to avoid unnecessary duplication of proceedings.

Implementation and future considerations

The 2025 Act will be implemented through Regulations by the Secretary of State, and it applies to arbitral proceedings commenced **after** the amendments come into force. It does not affect proceedings initiated before this date, ensuring a smooth transition for ongoing cases.

While the Act is not a radical overhaul, it represents a thoughtful evolution of the existing framework, addressing contemporary challenges and reinforcing London's status as a leading arbitration venue. As technology and global business practices continue to evolve, further updates may be necessary to keep pace with new developments, such as the integration of AI in arbitration processes.

Overall, the 2025 Act enhances the efficiency, transparency, and effectiveness of arbitration in England and Wales, ensuring that the jurisdiction remains competitive in the international arbitration landscape.

For construction the Act introduces several changes that could significantly impact how construction disputes are managed and resolved in England and Wales. These changes aim to streamline the arbitration process, making it more efficient and aligning it with international standards, which is particularly relevant for the construction industry where disputes are often complex and costly.

Key impacts on construction law:

1. Summary dismissal process:
    - The Act introduces a summary dismissal process allowing tribunals to dismiss claims, defences, or issues with "no real prospect of success" (section 39A). This can expedite

the resolution of unsubstantiated claims, saving time and costs, which is crucial in construction disputes that are typically document-heavy and technically complex.

2. Emergency Arbitrator's powers:
    - The Act allows for the appointment of emergency arbitrators who can issue peremptory orders for interim measures (section 41A). This provides a theoretically faster route for obtaining urgent relief (although in the writer's experience TCC and Commercial Court judges can move with great alacrity), enhancing the reliability of arbitration as a dispute resolution method in construction contracts, where timely decisions can be critical.

3. Jurisdictional Challenges:
    - The Act makes it harder to bring jurisdictional challenges by preventing the court from considering new grounds or evidence not presented to the tribunal, except under a "reasonable diligence" test. This discourages tactical delays often seen in construction disputes and promotes cost-efficiency by reducing unnecessary litigation.

4. Clarification on preliminary jurisdiction questions:
    - Section 32 of the 1996 Act has been clarified to prevent its use after a tribunal has ruled on its jurisdiction, directing parties to use section 67 for challenges. This clarification helps streamline the process and reduce delays caused by jurisdictional disputes.

Implications for the Construction:

- Efficiency and cost-effectiveness: The changes are designed to make arbitration more efficient and cost-effective, which could encourage more construction parties to choose arbitration over litigation, especially for cross-border disputes.

- Flexibility: Arbitration certainly offers more flexibility than litigation, particularly in handling technical and complex construction disputes. The new Act enhances this flexibility, potentially making arbitration a more attractive option compared to the Technology and Construction Court (TCC).

- Encouragement of Arbitration: With the new efficiencies introduced by the 2025 Act, parties may be more inclined to include arbitration clauses in their contracts, particularly for projects where the Housing Grants, Construction and Regeneration Act 1996 (HGCRA) does not apply.

- Limitations: Despite these improvements, litigation may still be preferred for larger, multi-party construction projects involving multiple contracts, where the court's ability to consolidate proceedings and manage complex cases is advantageous.

Thus, the Arbitration Act 2025 could enhance the appeal of arbitration in the construction industry by addressing some of the inefficiencies and complexities that have historically been associated with the process. This could just lead to a greater adoption of arbitration as a preferred method of dispute

resolution in construction contracts.

Simon Tolson
27 April 2025