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Recent Developments in the U.S. Arbitration Landscape (2025/2026)

– Some Normalcy in Disruptive Times –

I. Introduction

The United States remains a major forum in the global arbitration landscape. Anchored in the Federal Arbitration Act ("**FAA**") and the New York Convention, U.S. courts continue to adopt a generally pro-enforcement approach toward arbitration agreements and awards. Recent decisions have further clarified the scope of U.S. courts' jurisdiction over foreign sovereigns, reinforced the enforceability of arbitral awards, and delineated the boundaries of U.S. judicial power in an increasingly complex geopolitical environment.

This article – after a short description of the current judicial and political context (**Part II**) – surveys key U.S. arbitration law developments from 2024 to early 2026 of particular relevance to international practitioners.

At the jurisdictional level, the U.S. Supreme Court in *CC/Devas (Mauritius) Ltd. v. Antrix Corp.* held that no "minimum contacts" are required to establish personal jurisdiction over foreign states under the Foreign Sovereign Immunities Act ("**FSIA**") (**Part III**). In *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, the D.C. Circuit addressed enforcement of intra-EU investment awards under the FSIA arbitration exception (**Part IV**). The Second Circuit in *Molecular Dynamics, Ltd. v. Spectrum Dynamics Medical Ltd.* confirmed that U.S. courts lack jurisdiction to vacate foreign-seated awards (**Part V**).

Further decisions address the evidentiary standard for establishing sovereign consent to arbitration (*Global Voice Group S.A. v. Republic of Guinea*, **Part VI**) and the scope of discovery under 28 U.S.C. § 1782 following *ZF Automotive* (*Webuild S.p.A. v. WSP USA Inc.*, **Part VII**), a topic particularly popular with foreign practitioners whose jurisdiction does not provide for such expansive discovery. Finally, the U.S. Supreme Court has granted *certiorari* in *Jules v. Andre Balazs Properties* concerning post-referral jurisdiction of federal courts (**Part VIII**).

These developments reflect a continued textualist approach to the FAA and FSIA, limiting procedural challenges to arbitration while clarifying jurisdictional boundaries.

II. Current Judicial and Political Context

U.S. policy on investor-State dispute settlement ("**ISDS**") continues to evolve. While historically supportive of investment protection, recent years have seen increasing skepticism across the U.S. political spectrum (which is in line with similar developments in the EU and other parts of the world).[1] During the first Trump administration, investment protections were curtailed in the United States-Mexico-Canada Agreement ("**USMCA**"). Similar concerns have been expressed by members of Congress, including calls to reduce or eliminate ISDS mechanisms. This trend may affect the future scope of treaty protections for both U.S. investors abroad and foreign investors in the United States.

Notwithstanding the political headwinds against ISDS, U.S. courts continue to be an attractive forum for the enforcement of arbitral awards against foreign states and their instrumentalities.

A continuing divergence exists between U.S. and EU approaches to intra-EU investment arbitration.[2] Following *Achmea*[3] and *Komstroy*[4], EU institutions and courts have rejected such arbitrations as incompatible with EU law. By contrast, U.S. courts have generally held that EU law objections do not affect jurisdiction under the FSIA arbitration exception and have enforced awards accordingly, particularly in ICSID cases.

III. FSIA Does Not Require "Minimum Contacts" to Establish Personal Jurisdiction Over a Foreign State

On 5 June 2025, the U.S. Supreme Court issued a unanimous opinion in *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*,[5] clarifying that the FSIA does not require proof of "*minimum contacts*" with the United States before a court may exercise per-

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1 Wilske/Adams, What's Really Wrong With ISDS? – A Critical Analysis of Phantom Issues and Real Issues Triggered by Practice and Technological Development, 17 Contemporary Asia Arbitration Journal 1 (2024), 1–34.

2 Mihreteab Taye, Transatlantic Divergence in Arbitration: Contrasting Enforcement Approaches of the CJEU and the U.S. Courts, The International Lawyer, Volume 58, Number 3, 2025 (2025).

3 Slovak Republic v. Achmea BV, Case C-284/16, ECLI:EU:C:2018:158 (CJEU 2018).

4 Republic of Moldova v. Komstroy LLC, Case C-741/19, ECLI:EU:C:2021:655 (CJEU 2021) with a comment by Wilske/Ebert, EuGH: Investitionsschutz: Schiedsklausel im Vertrag über die Energiecharta innerhalb der EU nicht anwendbar, IWRZ 2021, 279–282.

5 CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd., 605 U.S. (2025) (Nos. 23–1201 and 24–17, decided June 5, 2025).

sonal jurisdiction over a foreign state. The Court held that once a statutory exception to foreign state immunity applies and service has been properly effected, personal jurisdiction is established under the FSIA. This decision removes a significant jurisdictional hurdle for claimants seeking to confirm or enforce arbitral awards against foreign states in U.S. courts.

1. Background

The FSIA is the sole basis for obtaining jurisdiction over a foreign state in U.S. courts.[6] Under the FSIA, foreign states are presumptively immune from jurisdiction unless one of the statutory immunity exceptions applies.[7] Those exceptions include, for example, cases involving commercial activity, expropriation of property, and the enforcement or confirmation of certain international arbitral awards (the so-called "**arbitration exception**"), including awards governed by the New York Convention, awards issued by ICSID tribunals under the ICSID Convention, and awards made pursuant to bilateral or multilateral investment treaties.[8] The court's subject-matter and personal jurisdiction is linked to those exceptions. The FSIA grants district courts subject-matter jurisdiction over claims against a foreign state that are covered by an immunity exception,[9] and personal jurisdiction where an immunity exception applies and service has been properly effected.[10]

Antrix Corporation Ltd. ("**Antrix**"), a corporation wholly owned by the Republic of India, entered into a satellite-leasing agreement with Devas Multimedia Private Ltd. ("**Devas**") under which Antrix would build and launch satellites and lease capacity to Devas for multimedia broadcasting services. When the Indian Government determined it needed additional satellite capacity for its own use, Antrix terminated the agreement under its force majeure clause. Devas initiated International Chamber of Commerce ("**ICC**") arbitral proceedings seated outside the U.S., arguing the force majeure was self-induced. The arbitral tribunal agreed and, in an award dated 14 September 2015, awarded Devas USD 562.5 million in damages plus interest.

Devas successfully confirmed the award in the U.S. District Court for the Western District of Washington ("**Washington District Court**"), invoking the FSIA's arbitration exception. On 4 November 2020, the Washington District Court entered a judgment of USD 1.29 billion (comprising the awarded amount plus accumulated interest) against Antrix.[11]

On appeal, the U.S. Court of Appeals for the Ninth Circuit ("**Ninth Circuit**") reversed the Washington District Court decision, holding that even where a FSIA exception applies, the claimant must establish that the defendant has sufficient "*minimum contacts*" with the United States, in line with *International Shoe Co. v. Washington*.[12] Applying that test, the Ninth Circuit found that Antrix lacked the requisite "*contacts*" with the United States and dismissed the proceeding.

2. Decision of the Supreme Court

The Supreme Court unanimously reversed the decision in an opinion by Justice Alito.[13] The Court held that the FSIA's arbitration exception does not impose an additional "*minimum contacts*" requirement to establish personal jurisdiction.

Rather, under the FSIA, personal jurisdiction over a foreign state exists where two conditions are met: (a) an exception to foreign state immunity applies, and (b) service has been effected in accordance with 28 U.S.C. § 1608. These requirements are exhaustive. The Court emphasized that the FSIA constitutes a comprehensive and self-contained jurisdictional regime, and that importing additional requirements from the general law of personal jurisdiction would be inconsistent with the statute's text and structure. The decision reinforces the U.S. Supreme Court's textualist approach to the FSIA, treating the statute's exceptions as the exclusive basis for jurisdiction over foreign sovereigns.

3. Implications and Outlook

For award creditors, *CC/Devas* removes a significant jurisdictional hurdle in proceedings to confirm or enforce awards against foreign states in U.S. courts. Where the arbitration exception applies and service is properly effected, U.S. courts will have subject-matter and personal jurisdiction. An award creditor therefore need not separately demonstrate a sufficient connection between the foreign state and the United States under the FSIA.

However, the U.S. Supreme Court did not decide whether the U.S. Constitution **independently** requires a showing of minimum contacts before a court may exercise personal jurisdiction. U.S. courts have traditionally required proof of minimum contacts for defendants entitled to due process protections under the Due Process Clause of the Fifth Amendment. In this respect, a distinction must be drawn between **foreign states** and **state-owned entities**. While foreign states themselves are generally not considered "*persons*" for the purposes of constitutional due process, U.S. courts of appeals have consistently held that state-owned corporations are entitled to such protection.[14]

Accordingly, further litigation before U.S. courts on the constitutional limits of personal jurisdiction is likely, particularly in proceedings against foreign state-owned corporations.

6 Argentine Republic v. Amerada Hess Shipping Corp., 488 U. S. 428, 434 (1989).
7 28 U.S.C. §§ 1604, 1605.
8 See 28 U.S.C. §§ 1605, 1605A, 1605B.
9 28 U.S.C. § 1330(a).
10 28 U.S.C. § 1330(b).
11 CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd., No. C18–1360JLR, *2020 WL 6735717 (W.D. Wash. Nov. 4, 2020).
12 International Shoe Co. v. Washington, 326 U. S. 310, 316 (1945).
13 CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd., 605 U.S. (2025) (Nos. 23–1201 and 24–17, decided June 5, 2025).
14 See e.g. Gater Assets Ltd. v. AO Moldovagaz, 2 F.4th 42, 65–66 (2d Cir. 2021).

In the meantime, the decision reinforces the United States' position as a pro-enforcement jurisdiction for investment arbitral awards, particularly when read alongside *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*[15] (discussed in **Part IV** below).

IV. Enforcement of Intra-EU Investment Awards Possible under the FSIA

In *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*,[16] the U.S. Court of Appeals for the District of Columbia Circuit ("**D.C. Circuit**") addressed a jurisdictional question of major significance for investor-State arbitration: whether U.S. courts have jurisdiction under the FSIA's arbitration exception to enforce intra-EU Energy Charter Treaty ("**ECT**") awards. The D.C. Circuit answered that question in the affirmative, resolving a divergence of approach across the district courts.

Together with subsequent rulings of the U.S. District Court for the District of Columbia ("**D.C. District Court**") enforcing awards against Spain, *NextEra* establishes a growing line of authority indicating that U.S. courts "*will not entertain EU law-based objections to award enforcement*".[17] The decision reinforces the attractiveness of the United States as an enforcement forum for intra-EU investment awards, although the enforcement landscape remains in flux pending potential review by the U.S. Supreme Court.

1. Background

Between 2019 and 2020, Dutch and Luxembourgish energy investors obtained multi-million euro awards against Spain under Article 26 of the ECT, following Spain's withdrawal of renewable energy subsidies. The investors then commenced enforcement proceedings before the D.C. District Court under the FSIA's arbitration exception.

Spain opposed enforcement by relying on the decisions of the Court of Justice of the European Union ("**CJEU**") in *Slovak Republic v. Achmea*[18] and *Moldova v. Komstroy*.[19] In those decisions, the CJEU held that intra-EU investor-state arbitration is incompatible with EU law insofar as it seeks to allow disputes to bypass national courts and EU judicial oversight. On that basis, Spain argued that no valid arbitration agreement existed between the intra-EU parties and that, as a consequence, the FSIA's arbitration exception did not apply and U.S. courts therefore lacked subject-matter jurisdiction.

This argument produced divergent first-instance decisions involving ECT awards against Spain in the D.C. District Court,[20] prompting consolidation on appeal before the D.C. Circuit.

2. Decision of the D.C. Circuit

On appeal, the D.C. Circuit held that, for purposes of the FSIA's arbitration exception, the relevant inquiry is whether an arbitration agreement **exists** – not whether objections raised by the respondent state (including those based on EU law) limit the scope or applicability of that agreement.[21]

In the court's view, Article 26 ECT constitutes a standing offer by the contracting state to arbitrate, capable of acceptance by an investor through the commencement of arbitration proceedings. Spain's EU law objection did not negate the **existence** of an arbitration agreement; it challenged whether that agreement extended to intra-EU disputes. The court characterized that issue as going to the scope or merits of the claim, rather than to jurisdiction under the FSIA. The FSIA's arbitration exception was therefore satisfied where the arbitral tribunal purported to act pursuant to the ECT.

The D.C. Circuit also rejected the anti-anti-suit injunctions sought by the investors to shield the U.S. enforcement proceedings from interference by EU courts. The court emphasized that such relief raises serious comity concerns and will only rarely be justified against a foreign sovereign. This reflects a *nuanced* **approach**[22]: while U.S. courts support the enforcement of arbitral awards, they exercise considerable caution before interfering in foreign judicial proceedings.

3. Practical Significance

This decision confirms that, at least in the D.C. Circuit, intra-EU objections do not defeat jurisdiction under the FSIA. In doing so, *NextEra* forms the first layer of what may be described as a "*two-layered firewall*" supporting the enforcement of intra-EU ICSID awards in the United States.[23] By characterizing EU law objections as going to the scope or merits of the arbitration agreement rather than its existence, the D.C. Circuit ensures that sovereign respondents cannot avoid U.S. jurisdiction at the threshold stage.

The second layer has emerged in subsequent enforcement decisions of the D.C. District Court,[24] which have confirmed

15 NextEra Energy Global Holdings BV v. Kingdom of Spain No. 23–7031, 2024 WL 3837484 (D.C. Cir. Aug.16, 2024).
16 NextEra Energy Global Holdings BV v. Kingdom of Spain No. 23–7031, 2024 WL 3837484 (D.C. Cir. Aug.16, 2024).
17 Mihreteab Taye, Transatlantic Divergence in Arbitration: Contrasting Enforcement Approaches of the CJEU and the U.S. Courts, The International Lawyer, Volume 58, Number 3, 2025 (2025), page 3.
18 Slovak Republic v. Achmea BV, Case C-284/16, ECLI:EU:C:2018:158 (CJEU 2018).
19 Republic of Moldova v. Komstroy LLC, Case C-741/19, ECLI:EU:C:2021:655 (CJEU 2021).
20 NextEra Energy Global Holdings B.V. v. Kingdom of Spain, 656 F. Supp. 3 d 201 (D.D.C. 2023); 9REN Holding S.À.R.L. v. Kingdom of Spain, No. 19-CV-01871 (TSC), 2023 WL 2016933 (D.D.C. Feb. 15, 2023); Blasket Renewable Invs., LLC v. Kingdom of Spain, 665 F. Supp. 3 d 1 (D.D.C. 2023).
21 NextEra Energy Global Holdings BV v. Kingdom of Spain No. 23–7031, 2024 WL 3837484 (D.C. Cir. Aug.16, 2024).
22 Mihreteab Taye, Transatlantic Divergence in Arbitration: Contrasting Enforcement Approaches of the CJEU and the U.S. Courts, The International Lawyer, Volume 58, Number 3, 2025 (2025), page 20.
23 Mihreteab Taye, Transatlantic Divergence in Arbitration: Contrasting Enforcement Approaches of the CJEU and the U.S. Courts, The International Lawyer, Volume 58, Number 3, 2025 (2025), page 20.
24 Susannah Moody, US Court Gives "Full Faith and Credit" to ICSID Awards against Spain", Global Arbitration Review, 13 August 2025.

that, for ICSID awards, enforcement will in practice follow once jurisdiction is established. Applying the ICSID Convention's full faith and credit regime, U.S. courts have rejected Spain's merits-based defenses, including those grounded in EU law, international comity, and foreign sovereign compulsion. Taken together, these decisions indicate that ICSID awards arising from intra-EU disputes are, as a practical matter, enforceable in the United States with minimal judicial review.

A different outcome may arise for non-ICSID awards governed by the New York Convention. While *NextEra* confirms that jurisdiction will likewise be available under the FSIA, courts retain discretion to refuse recognition on New York Convention grounds. In particular, where an award has been set aside at the seat – potentially on the basis of *Achmea*-type reasoning – U.S. courts may decline enforcement notwithstanding the existence of jurisdiction.[25] The choice between ICSID and non-ICSID arbitration therefore remains of central strategic importance in structuring investment protection.

These developments underscore a widening transatlantic divergence. Awards that may be considered invalid within the European Union under EU law are nonetheless capable of recognition and enforcement in U.S. courts. Over time, this asymmetry may lead to changed enforcement strategies, increased forum shopping, and shifted investment flows.[26]

4. Outlook

The *NextEra* case is not yet the final word. In May 2025, Spain sought review of the D.C. Circuit's decision in the U.S. Supreme Court,[27] and in October 2025 the U.S. Supreme Court invited the Solicitor General to submit the views of the United States.[28] The Solicitor General's position will be closely watched, not least because the U.S. Government previously supported Spain's position before the D.C. Circuit. Whether that stance will be maintained under the current administration remains to be seen[29] – a development that European arbitration practitioners will need to monitor closely. For the time being, however, a U.S. seat, or enforcement in the United States as a secondary jurisdiction, may offer more reliable access to U.S. assets than enforcement in an EU member State that is increasingly aligned with the CJEU's restrictive approach.

V. No Jurisdiction for U.S. Courts to Vacate Foreign Arbitral Awards Despite Party Agreement

A significant jurisdictional question has now been resolved by the U.S. Court of Appeals for the Second Circuit ("**Second Circuit**") in *Molecular Dynamics, Ltd. v. Spectrum Dynamics Medical Ltd.*[30]: whether U.S. courts may vacate an arbitral award issued abroad where the parties have contractually agreed to subject the award to U.S. vacatur proceedings. The Second Circuit answered in the negative, reinforcing the extraterritorial limitations on U.S. judicial power over foreign arbitral awards.

1. Background

The dispute arose from a joint venture agreement between two companies incorporated under the laws of England and Wales – SDBM Limited ("**SDBM**") and Spectrum Dynamics Medical Limited ("**Spectrum**") – concerning the development of medical-imaging technology. The parties' arbitration clause designated a seat of arbitration in Switzerland but also included a provision purporting to grant the courts of New York exclusive jurisdiction over all matters concerning the arbitration.

Following an unfavorable arbitral award, SDBM filed an application to vacate the award in the U.S. District Court for the Southern District of New York ("**NY District Court**"), relying on the contractual provision and invoking the grounds for vacatur under Section 10 of the **FAA** (9 U.S.C. § 10). The NY District Court dismissed the application for lack of subject-matter jurisdiction, and SDBM appealed.

2. Decision of the Second Circuit Court of Appeals

On appeal, the Second Circuit affirmed the dismissal, holding that U.S. courts lack subject-matter jurisdiction to vacate awards rendered in a foreign country, regardless of any contrary agreement between the parties. The court's analysis turned on the scope of 9 U.S.C. § 203, which grants federal district courts original jurisdiction over any "*action or proceeding falling under the [New York] Convention*."

The Second Circuit held that the New York Convention "*simply does not speak to the type of action Plaintiffs-Appellants have brought*" – namely, an action seeking to vacate an award in a jurisdiction other than the seat of arbitration. The New York Convention distinguishes between "*primary jurisdiction*" (held by courts at the seat, which alone possess the power to set aside an award) and "*secondary jurisdiction*" (held by all other signatory states, whose authority is limited to granting or denying enforcement under Article V of the New York Convention). As the arbitration was seated in Switzerland, the NY District Court held only secondary jurisdiction and

25 See e.g. Mercuria Energy Group Limited v. Republic of Poland, where the D.C. District Court found jurisdiction under the FSIA's arbitration exception (citing NextEra) but nonetheless refused enforcement of a Swedish-seated SCC award that had been annulled in Sweden on Achmea grounds, giving effect to the New York Convention's provision permitting refusal of enforcement where an award has been set aside at the seat.

26 Mihreteab Taye, Transatlantic Divergence in Arbitration: Contrasting Enforcement Approaches of the CJEU and the U.S. Courts, The International Lawyer, Volume 58, Number 3, 2025 (2025)

27 Toby Fisher, US Supreme Court seeks US Government's Opinion in Intra-EU Saga, Global Arbitration Review, 7 October 2025.

28 Toby Fisher, US Supreme Court seeks US Government's Opinion in Intra-EU Saga, Global Arbitration Review, 7 October 2025.

29 See Jason Horowitz, Trump Threatens to End Trade With Spain, New York Times, 3 March 2026 ("'Spain has been terrible, in fact I told Scott to cut off all dealings with Spain,' Mr. Trump said referring to Scott Bessent, the secretary of the Treasury.").

30 Molecular Dynamics, Ltd. v. Spectrum Dynamics Medical Limited, 143 F.4th 70, 77–78 (2 d Cir. 2025).

lacked the power to vacate the award. Critically, the court also held that parties cannot contractually confer subject-matter jurisdiction where Congress has not done so.

3. Implications and Outlook

The decision confirms that the seat of arbitration remains the determinative factor in identifying whether U.S. courts may entertain applications to set aside an award. For parties negotiating arbitration agreements, contractual provisions purporting to grant vacatur jurisdiction to courts other than those at the seat are unlikely to be effective in the United States. Parties seeking U.S. judicial oversight of an arbitral award should therefore designate a U.S. seat of arbitration. The decision reflects a clear policy rationale: discouraging forum-shopping for vacatur jurisdiction.

The court did not, however, rule on the **validity** of an arbitration clause that designates one country as the seat of arbitration and another as the venue for vacatur proceedings. The implication is that a court at the seat – in this case, Switzerland – may itself need to consider whether an arbitration agreement providing for this type of a split arrangement is enforceable under the law governing the arbitration agreement.

The court also left open whether a New York designation as the governing law of the arbitration might itself be sufficient to establish New York as the seat, even where the parties intended to hold hearings abroad. These open questions will provide fertile ground for further litigation.

VI. Sovereign Immunity and Consent to Arbitrate: Minister's Signature Not Enough to Establish State Consent to Arbitrate

On 18 February 2025, the D.C. District Court dismissed the action brought by Global Voice Group S.A. ("**GVG**") to recognize and enforce an ICC arbitral award against the Republic of Guinea ("**Guinea**").[31] The court dismissed the action on the ground that Guinea had not consented to arbitration and was therefore protected by sovereign immunity.

1. Background

In 2009, GVG entered into a Partnership Agreement ("**Agreement**") with the Postal and Telecommunications Regulatory Authority of Guinea ("**PTRA**") to provide and install telecommunications control tools for the benefit of Guinea. The Agreement identified only the PTRA and GVG as "Parties," although Guinea's Minister of Telecommunications also signed the contract. Article 17 of the Agreement contained an arbitration clause providing for ICC arbitration in Paris. Following payment disputes, GVG commenced ICC arbitration in December 2016 against both the PTRA and Guinea. Guinea contested the tribunal's jurisdiction, arguing it was not a party to the Agreement. Applying French law, the tribunal rejected that argument and found Guinea jointly and severally liable, awarding GVG more than USD 21 million. The Paris Court of Appeal upheld the award in September 2021, and France's Cour de Cassation dismissed a further challenge in July 2024.

In July 2022, GVG filed suit in the D.C. District Court seeking enforcement of the award against Guinea in the United States.

2. Decision of the Federal District Court

The D.C. District Court analyzed two potential exceptions to Guinea's sovereign immunity under the FSIA: the arbitration exception (28 U.S.C. § 1605(a)(6)) and the implied waiver exception (28 U.S.C. § 1605(a)(1)).

As to the arbitration exception, the court held that this required evidence that the foreign state itself had "*made*" the arbitration agreement. GVG argued that the court should defer to the ICC tribunal's own determination that Guinea was a party to the agreement. The court rejected this, drawing on the Supreme Court's ruling in *First Options of Chicago, Inc. v. Kaplan (1995)*, which requires "*clear and unmistakable evidence*" before a court will defer to an arbitrator's determination of its own jurisdiction. The court found that the Minister's signature alone did not establish Guinea's consent, as the Agreement's text defined "Parties" as GVG and the PTRA, and not Guinea. The contextual evidence of Guinea's involvement relied upon by the French courts under French contract law was held to be insufficient under the FSIA framework.

As to implied waiver, GVG contended that Guinea had waived its immunity by virtue of being a signatory to the New York Convention. The court noted that the D.C. Circuit has never formally adopted such a rule in a published decision, and declined to do so here.

3. Implications and Outlook

This decision is instructive in several respects. It reinforces the principle that U.S. courts will independently assess whether a foreign state consented to arbitration before accepting jurisdiction under the FSIA, rather than deferring to the arbitral tribunal's (or foreign courts) own jurisdictional findings. This stands in contrast to the approach taken by the French courts in the same dispute, which applied broader principles of French contract law to find Guinea bound by the arbitration agreement.

For parties seeking to enforce awards against sovereign states in the U.S., the decision underscores the importance of ensuring that the state's consent to arbitration is clearly established in the agreement itself. Evidence of consent derived solely from conduct or contextual involvement will not suffice. And,

31 Global Voice Group S.A. v. Republic of Guinea, No. 22-cv-2100 (JMC) (D.D.C. Feb. 18, 2025).

indeed, when entering into an arbitration agreement with a sovereign state, private parties should analyze both whether that government even has the authority to conclude an arbitration agreement and whether the acting person has the authority to consent to arbitration.[32]

VII. Post-ZF *Automotive*: Discovery in ICSID Arbitrations Also Ruled Out under 28 U.S.C § 1782

In our previous article,[33] we reported that the U.S. Supreme Court had resolved the long-standing divergence in the interpretation of 28 U.S.C. § 1782 in *ZF Automotive U.S., Inc. v. Luxshare, Ltd.*[34] That decision excluded private commercial and *ad hoc* investment arbitral tribunals from the reach of broad U.S. discovery powers. A recent decision of the Second Circuit has confirmed and extended this approach to arbitrations administered by ICSID.

1. Background

In *Webuild S.p.A. v. WSP USA Inc.*,[35] the Italian construction group Webuild S.p.A. ("**Webuild**") had commenced an ICSID arbitration against the Republic of Panama under the Italy-Panama BIT (2009) in connection with claims relating to an infrastructure project for the expansion of the Panama Canal. In 2022, Webuild and another investor in the project sought broad discovery under § 1782 from WSP, an advisor to Panama and the Panama Canal Authority on the project. The discovery was sought for use in the ICSID arbitration.

The District Court for the Southern District of New York ("**Southern District of New York District Court**") initially granted the discovery application in May 2022. Following the *ZF Automotive* ruling, that order was vacated.

2. Second Circuit Decision

On appeal, Webuild sought to reinstate the discovery order, arguing that ICSID arbitral tribunals are distinguishable from the private commercial and *ad hoc* panels excluded by *ZF Automotive*. Webuild relied on ICSID's institutional character as a permanent body established by sovereign treaty, the involvement of member states in the appointment of arbitrators and in ICSID's funding, the treaty-based source of ICSID tribunal jurisdiction, and the unique enforcement and annulment regime under the ICSID Convention.

The Second Circuit rejected all of these arguments and affirmed the Southern District of New York District Court. The court held that, notwithstanding ICSID's institutional distinctiveness, each ICSID arbitral tribunal exists solely by consent of the parties and has no official link to any government. The tribunal in Webuild's case was funded jointly by the parties, its members were privately selected, and no governmental entity participated in or oversaw its operation. Sovereign consent through a BIT does not transform an arbitral tribunal into a governmental body. ICSID's post-award mechanisms – annulment committees and mandatory recognition by member states – guarantee finality but do not constitute exercises of state authority.

Finding "*no principled basis*" to distinguish ICSID tribunals from the UNCITRAL panel excluded in *ZF Automotive*, the Second Circuit confirmed that § 1782 discovery is unavailable for ICSID arbitrations.

3. Implications

The decision closes what had been a potential gap in the *ZF Automotive* framework. Parties and counsel who had hoped that ICSID's unique institutional profile might bring it within the scope of § 1782 now have a clear answer that it does not. This is of direct relevance to European investors pursuing ICSID claims against states with U.S.-sited evidence or U.S.-based witnesses, who may have contemplated § 1782 as a tool to bolster their evidentiary position. That tool is no longer available.

The Second Circuit left open the theoretical possibility that some future ICSID configuration – perhaps one in which a governmental body plays a more direct role in constituting or overseeing a specific tribunal – might be treated differently. In practice, this caveat is likely to be of limited relevance. The effect of *Webuild* is to cement a narrow, text-based interpretation of § 1782 that forecloses discovery assistance not only for private commercial arbitrations, but for virtually all investor-state proceedings, regardless of the institutional framework under which they are conducted.

VIII. Pending U.S. Supreme Court Proceedings To Watch: Jules v. Andre Balazs Properties — Federal Court Jurisdiction Over Arbitral Awards After Remand

On 5 December 2025, the U.S. Supreme Court granted *certiorari* in *Jules v. Andre Balazs Properties*,[36] accepting a case with significant implications for the scope of the FAA. The case raises the question of whether a federal court that had jurisdiction over a claim when a lawsuit was originally filed, but then stayed the case pending arbitration, may later confirm or

32 Fridman/Jaffe, What to look out for when entering into arbitration agreements with sovereign states, The Global Legal Post, 4 January 2022; see also Gary Born, International Commercial Arbitration Vol. I, p.772 (3rd ed. 2021) ("Not infrequently, states attempt to disavow their international arbitration agreements, citing national constitutional or legislative provisions restricting the power of government entities to conclude binding arbitration agreements.").

33 Wilske/Krapfl, Schiedsgerichtsbarkeit in der US-amerikanischen Rechtsprechung, IWRZ 2023, 210 (211) et seq.

34 ZF Automotive US, Inc. v. Luxshare, Ltd., 596 U.S. 619, 142 S.Ct. 2078, 213 L.Ed.2 d 163 (2022).

35 Webuild S.p.A. v. WSP USA Inc., 108 F.4th 138 (2 d Cir. 2024).

36 Jules v. Andre Balazs Properties, No. 25–83, cert. granted Dec. 5, 2025.

vacate an arbitral award if there is no other independent basis for federal jurisdiction at that later stage.[37]

1. Background

Adrian Jules, a former employee of the Chateau Marmont hotel in Los Angeles, sued hotelier André Balazs and related companies in federal court in New York, alleging that his termination violated federal and California employment laws. Because the employment contract contained an arbitration clause, the court stayed the lawsuit under Section 3 of the FAA and referred it to arbitration. After the arbitration concluded with an award against Jules, he sought to vacate the award before the same federal court that had stayed the litigation. The Second Circuit upheld the district court's decision declining jurisdiction, finding that the FAA does not itself confer jurisdiction and that Jules's motion to vacate disclosed no independent federal jurisdictional basis.

2. Significance

The Supreme Court's grant of *certiorari* signals an intention to address a genuine circuit split on the question of "*continuing jurisdiction*" after a referral to arbitration. The Second Circuit's position is that once a case is referred to arbitration, the federal court's original jurisdictional basis does not automatically reattach when an award is subsequently challenged. Other circuits have reached different conclusions. The Court's eventual decision will have significant practical implications for domestic arbitration in the United States. If courts cannot exercise continuing jurisdiction over award confirmation and vacatur proceedings absent an independent jurisdictional basis, parties may be required to establish an alternative jurisdictional pathway.

For European practitioners, the case illustrates that U.S. federal jurisdiction over arbitration-related proceedings — including the seemingly straightforward task of confirming an award — involves layers of procedural analysis that have no parallel in civil law systems. The question of whether a court retains jurisdiction after referring a dispute to arbitration may not arise in Germany or France, but it is a question that U.S. parties (including U.S. subsidiaries of European companies) and their counsel must navigate carefully.

IX. Conclusion

The cases surveyed in this article confirm that the U.S. judiciary's textualist, pro-enforcement approach to the FAA and the FSIA continues to strengthen, progressively removing procedural hurdles for award creditors. The widening transatlantic divergence on intra-EU investment awards and the narrowing of § 1782 discovery are developments of direct strategic significance for European practitioners. Despite certain legal and political developments in the U.S.,[38] European arbitration practitioners might have more concerns regarding arbitration in the European Union than in the U.S. Indeed, European arbitration appears to be – in the now famous words of Canada's Prime Minister Mark Carney – "*in the midst of a rupture*",[39] with the CJEU driven by a desire for greater jurisdictional authority, a surprising skepticism toward established principles of public international law, and an apparent underestimation of the broader political consequences, according to quite some arbitration practitioners analyzing the CJEU's jurisprudence from a public international law perspective.[40]

Looking ahead, the evolving geopolitical and trade landscape will continue to shape U.S. arbitration law. For the European arbitration community, a thorough understanding of U.S. procedural rules and the strategic selection of seat, institutional framework, and enforcement forum has never been more important.

Zusammenfassung

Die Vereinigten Staaten sind nach wie vor ein wichtiges Forum in der globalen Schiedslandschaft. Verankert im *Federal Arbitration Act* und der New York Konvention, verfolgen die US-Gerichte weiterhin einen allgemein durchsetzungsfreundlichen Ansatz gegenüber Schiedsvereinbarungen und Schiedssprüchen. Jüngste Entscheidungen, über die wir hier im Detail berichten, haben den Umfang der Zuständigkeit von US-Gerichten gegenüber ausländischen Staaten weiter geklärt, die Vollstreckbarkeit von Schiedssprüchen in den Vereinigten Staaten gestärkt und die Grenzen der richterlichen Befugnisse in einem zunehmend komplexen geopolitischen Umfeld abgesteckt.

Die in diesem Artikel untersuchten Fälle bestätigen, dass der textualistische, vollstreckungsfreundliche Ansatz der US-Justiz in Bezug auf den *Federal Arbitration Act* und den *Foreign Sovereign Immunities Act* weiter zunimmt und die verfahrensrechtlichen Hürden für Gläubiger von Schiedssprüchen schrittweise abgebaut werden. Die zunehmende transatlantische Divergenz bezüglich intra-EU Investitionsschiedssprüchen und die Einschränkung der *Discovery* nach

37 Sasha Hill, SCOTUS Review: Can Federal Courts Exercise Jurisdiction on Arbitration Awards After Staying a Case?, International Institute for Conflict Prevention and Resolution (17 November 2025); Ronald Mann, Court to consider ability of federal courts to confirm arbitration awards, SCOTUSblog (25 March 2026), https://www.scotusblog.com/2026/03/justices-to-consider-ability-of-federal-courts-to-confirm-arbitration-awards/.

38 See the editorials of Norbert A. Röttgen and Danyal Bayaz in TLJ 2/2026, 59–61 and 62–64 dealing with "The New U.S. Security Strategy – a Historic Rupture" and "Time for the Student to Become a Master – a Roadmap for Transatlantic Relations in a New World".

39 See Austen, Canada's Prime Minister Says There Has Been a 'Rupture' in the World Order, New York Times, 20 January 2026.

40 See Brower, How the European Union Acts as an Empire of Yore Seeking to Destroy International Arbitration Globally, TLJ 5/2025, 193–195: see also Wilske, Du sollst keine anderen (Schieds-)Gerichte neben mir haben! – Von alttestamentarischer Eifersucht und verlorenem Rechtsschutz für Investoren in EU-Mitgliedsstaaten –, RIW 5/2018, p. 1; Wilske/Krahn, Eine Klatsche für den EuGH für ausschließlich ergebnisorientierte und nicht völkerrechtskonforme Auslegung von Völkervertragsrecht, IWRZ 2024,171–172.

Section U.S.C. 1782 sind Entwicklungen von unmittelbarer strategischer Bedeutung für europäische Praktiker. Trotz der bekannten rechtlichen und politischen Entwicklungen in den USA dürfen europäische Schiedspraktiker mehr Bedenken hinsichtlich der Schiedsgerichtsbarkeit in der Europäischen Union haben als in den USA. In der Tat scheint die europäische Schiedsgerichtsbarkeit – in den mittlerweile berühmten Worten des kanadischen Premierministers Mark Carney – "*in the midst of a rupture*" zu sein, wobei der EuGH von dem Wunsch nach größerer gerichtlicher Autorität, einer überraschenden Skepsis gegenüber etablierten Prinzipien des Völkerrechts und einer scheinbaren Unterschätzung der weitreichenden politischen Konsequenzen seiner Rechtsprechung angetrieben wird. Dies ist zumindest die Meinung einiger Schiedspraktiker, die die Rechtsprechung des EuGH aus der Perspektive des Völkerrechts analysieren.

Mit Blick auf die Zukunft wird das US-Schiedsrecht sicherlich weiterhin geprägt werden durch die sich entwickelnde geopolitische Lage und den internationalen Handel. Für die europäische Schiedsgerichtsbarkeit war ein gründliches Verständnis der US-Verfahrensregeln und die strategische Wahl des Schiedsortes, des institutionellen Rahmens und des Vollstreckungsforums noch nie so wichtig wie heute.

Stephan Wilske

Claudia Krapfl

Tara O'Brien

Geeignet zum Selbststudium mit Lernerfolgskontrolle (§ 15 FAO)

Constantin Frank-Fahle/Marcel Trost/Roland Falder*

Evakuierung statt Einsatz: Arbeitgeberpflichten bei der Rückholung entsandter Mitarbeiter in geopolitischen Krisenlagen

Der Ausbruch militärischer Konflikte in der Golfregion – zuletzt der Iran-Krieg am 28.2.2026 – stellt entsendende Unternehmen vor eine bislang vielfach unterschätzte Frage: Welche konkreten Pflichten treffen den deutschen Arbeitgeber, wenn im Einsatzstaat eine akute Sicherheitslage entsteht und eine geordnete Evakuierung oder überstürzte Ausreise entsandter Mitarbeiter erforderlich wird? Aufbauend auf einen Beitrag der Autoren in der vorhergehenden Ausgabe der IWRZ zu den allgemeinen Arbeitgeberpflichten bei Auslandseinsätzen widmet sich die vorliegende Darstellung – auch aus Anlass der Aktualität des Iran-Krieges – den spezifischen Handlungspflichten in Krisensituationen: von der Lagebeobachtung und Krisenvorsorge über die Evakuierungspflicht und ihre Grenzen bis hin zu vergütungsrechtlichen Konsequenzen und Haftungsrisiken. Dabei zeigt sich, dass die arbeitsrechtliche Fürsorgepflicht im Krisenfall keine Abschwächung, sondern eine erhebliche Intensivierung erfährt – und Unternehmen ohne eingespielte Krisenprotokolle erheblichen Haftungsrisiken ausgesetzt sind.

I. Einleitung und Anlass

Die bereits länger zu beobachtende zunehmende Präsenz deutscher Unternehmen im Nahen und Mittleren Osten, insbesondere in den Staaten des Golfkooperationsrats („**GCC**"), hat sich in den vergangenen Jahren noch intensiviert, da es sich um einen bedeutsamen Wachstumsmarkt handelt. Mit dem Ausbruch des Iran-Krieges und der damit einhergehenden Eskalation der geopolitischen Lage in der Region hat das Auswärtige Amt weitreichende Reise- und Sicherheitshinweise für die betroffenen Staaten erlassen.[1] Dies hat viele entsendende Unternehmen in eine Situation gebracht, für die sie organisatorisch und rechtlich nicht hinreichend vorbereitet waren: Innerhalb kürzester Zeit musste entschieden werden, ob und unter welchen Bedingungen entsandte Mitarbeiter (und/oder ggf. deren Angehörige) aus dem Einsatzstaat ausreisen sollen oder müssen.

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1 Auswärtiges Amt, Reise- und Sicherheitshinweise Iran, abrufbar unter: www.auswaertiges-amt.de (zuletzt abgerufen: 30.3.2026). Allgemein hierzu auch: Frank-Fahle/Trost, Militärische Eskalation am Golf: Rechtliche Folgen für Verträge, Lieferketten und Arbeitnehmerentsendungen, RIW 2026, Heft 4, Die erste Seite.