

SECURITY FOR COSTS- A TREND FOLLOWED IN THE RAREST OF THE RARE CIRCUMSTANCES?

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INTRODUCTION

An arbitral has the power to grant interim which it may exercise at the request of a party unless otherwise agreed by the parties.¹ Interim measures which is a temporary measure² can be issued in the form of a procedural order or as an interim award. The reason behind granting interim measure is to protecting the parties from the harm or prejudice, that cannot be rectified post award.³

In the Courts, it is a practice that, the winning party gets the representation costs from the other party. Even in international arbitration, the tribunal grants representation costs but, it is post award after the party seeking for the same has certainly specified the costs. This is because the costs may depend on a number of facts. This is a principle of cost follows the event⁴, but, in an international arbitration as the award given by the tribunal is private and is not subject to public scrutiny like in the Courts and hence, there is flexibility in the proceedings. Deviating from the cost follows the event' rule, when a party is forced to arbitrate and it knows that the claims against it might not stand it asks for security for costs. Security of costs means, a party which initiates an arbitration i.e., the Claimant is asked to provide money to the respondent before the final award is passed. This money is requested by the respondent when he is confident about defending his claims and fears that the claimant will not be able to pay the costs⁵ because of which it will be forced to undergo loss.

The issue that has been debated over is whether security for costs is a valid form of interim measure. One view is that, it is not an interim measure unless it is given in the arbitration agreement as, arbitration is about party autonomy. The second argument is that, though security

¹ United Nations Commission on International Trade Law (UNCITRAL) Model Law, 1985, Art. 17.

² *Id.*

³ Lee Anna Tucker, *Interim Measures under Revised UNCITRAL Arbitration Rules: Comparison to Model Law Reflects both Greater Flexibility and Remaining Uncertainty*, 1 INT. COMMER. ARBITR. BRIEF 15–23 (2011).

⁴ Michabuhler Asabull, *Awarding Costs In International Commercial Arbitration: An Overview*, 2 ASA BULLEITIN 249–279 (2004).

⁵ Patricia Zivkovic, *SECURITY FOR COSTS IN INTERNATIONAL ARBITRATION: WHAT'S MISSING FROM THE DISCUSSION?* KLUWER ARBITRATION BLOG (2016), <http://arbitrationblog.kluwerarbitration.com/2016/11/09/security-for-costs-in-international-arbitration-whats-missing-from-the-discussion/> (last visited Oct 26, 2017).

for costs is not provided for in the arbitration agreement, as it is an interim measure the tribunal can allow security for cost if the *lex arbitri* or the law of the seat provides for it. But, it is only few arbitration rules that explicitly incorporate security for costs as an interim measure. Yet, it is believed that security for costs can be granted, in exceptional circumstances. So, in this research paper, the researcher will deal with the reasoning for such beliefs and conclude by providing what is the trend in international arbitration and also in India.

NO EXPRESS AGREEMENT

As arbitration is about parties' freedom, if the arbitration agreement contains a clause that, security for cost should be allowed, the tribunal might exercise its power to grant it. But, in practice, the parties rarely have a clause in their arbitration agreement providing for security for costs because parties do not think about something which seems to be a relatively minor procedural detail⁶. It is believed that, when the contracting parties did not intend to empower the tribunal to order security for costs, it should be allowed to. This is because, firstly, the agreement is a reflection of what the parties intend and parties cannot deviate from the agreement, which is binding on them.⁷ Secondly, it has been decided at several instances that, the scope of the tribunal is restricted by the agreement between the parties⁸ and even otherwise, the tribunal must refrain from entertaining a claim which is beyond the scope of the agreement since an award granted by the tribunal outside the scope of the agreement is a ground for non-enforcement of the award in certain circumstances.⁹ Art. V(1)(c) of the NYC recognises that an arbitral tribunal acting outside its mandate is cause for the non-enforcement of its award.

So, when such a clause is absent, the power of the tribunal to order security for costs should arise from the *lex arbitri* or institutional rules chosen by the parties.¹⁰

⁶ Noah Rubins, *In God We Trust, All Other Pay Cash: Security For Costs In International Commercial Arbitration*, 11 AM. REV. INT. ARBITR., 6 (2000).

⁷ DENIS PHILIPPE & THE ASSOCIATION FOR INTERNATIONAL ARBITRATION, INTERIM MEASURES IN INTERNATIONAL COMMERCIAL ARBITRATION 28 (2007), https://books.google.co.in/books?id=_xnQRzeEeRkC&pg=PA28&lpg=PA28&dq=interim+measure+and+terms+of+reference&source=bl&ots=jPLBq_eymU&sig=U6VY-weleq02zQXHnQt9KUqiDM&hl=en&sa=X&ved=0ahUKEwiomoDY6pjXAhUEQ48KHde9DCsQ6AEIVjAI#v=onepage&q=interim%20measure%20and%20terms%20of%20reference&f=false (last visited Mar 27, 2018).

⁸ ICC Case No. 415.

⁹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Art. V(1)(c).

¹⁰ *Mavani v. Ralli Brothers Ltd.*, 1973, 1 All E.R. 468, 472.

INCLUSION IN THE LEX ARBITRI

Tribunal does not have jurisdiction to order security for costs, if no such power is granted by the *lex arbitri*. The UNCITRAL Model Law, which parties can choose as their *lex arbitri*, though has been amended several times, it does not have a mention about security for costs.¹¹ Further, in some of the Countries like France¹², Qatar¹³, India¹⁴ and some important international arbitration rules like UNCITRAL arbitration Rules¹⁵, International Chamber of Commerce Rules¹⁶, International Centre for Dispute Resolution¹⁷ talk about the power of arbitral tribunal to order interim measures but, they do not include security for cost as an interim measure. On the other hand, jurisdictions be it civil law or common law, be it the national courts or the arbitration rules, except England¹⁸, Singapore¹⁹, United States²⁰ it is nowhere explicitly given that interim measures include security for costs. Even in places where it is mentioned explicitly that security for cost can be granted, there is no clear guidance on what grounds justify an order for security for costs. That is because in unless the parties explicitly provide for security of cost or make a clear case, the parties are made liable for their costs irrespective of the decision of the case.²¹ In most of the *lex arbitri* rules where the tribunals are not given explicit powers, prefer not ordering payment for security for costs, because it is in no way causing a harm which cannot be rectified while passing the final award.²²

¹¹ UNCITRAL, *supra* note 1.

¹² Articles 1464 and 1509 of the French Code of Civil Procedure, 1806; *See also* Emmanuel Gaillard, *France Adopts New Law On Arbitration*, 245 N. Y. LAW J. (2011), http://www.shearman.com/~media/Files/NewsInsights/Publications/2011/01/France-Adopts-New-Law-On-Arbitration/Files/View-full-article-France-Adopts-New-Law-On-Arbit_/FileAttachment/IA012411FranceAdoptsNewLawOnArbitrationegaillard.pdf (last visited Mar 27, 2018).

¹³ Qatar Arbitration Act, 2017, Art. 9.

¹⁴ Indian Arbitration and Conciliation Act; *See also* Section 26 of Indian Institute of Arbitration and Mediation Rules, 2017, Sec. 17; *See also* Rebecca Furtado, SECURITY FOR COST INCURRED WHILE CONDUCTING ARBITRAL PROCEEDINGS IPLEADERS (2016), <https://blog.iplayers.in/security-cost-incurred-conducting-arbitral-proceedings/> (last visited Mar 28, 2018).

¹⁵ United Nations Commission on International Trade Law Arbitration Rules, 2010, Art. 26.

¹⁶ International Chamber of Commerce Rules, 2012, Art. 28.

¹⁷ International Centre for Dispute Resolution, 2009, Art. 24.

¹⁸ *See* England Arbitration Act, 1996, Art. 38; *See also* London Court of International Arbitration, 1998, Art. 25.

¹⁹ *See* Singapore International Arbitration Act, 1994, Art. 12(1)(a); *See also* Singapore International Arbitration Center Rules, 2010, Art. 27.

²⁰ Commercial Arbitration Rules and Mediation, Rule 37.

²¹ Michabuhler Asabull, *supra* note 5.

²² Belinda McRae, SECURITY FOR COSTS: A USEFUL PROCEDURAL TOOL? BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW 3 (2016), https://www.biicl.org/documents/1388_b_mcr_20essexst_securityforcosts.pdf?showdocument=1 (last visited Mar 28, 2018).

**EXCEPTIONAL CIRCUMSTANCES REQUIRING SECURITY FOR COSTS: POWER
HENCE GIVEN?**

The main purpose of granting an interim measure is to protect the rights of the requesting party from harm that cannot be rectified after the final award.²³ In this process, arbitral tribunals and national courts use widely differing criteria in deciding requests for security for costs although the most common approach has been to use factor-based discretion.²⁴ Ultimately, it should see to it that, no injustice is caused to the respondent if the security for costs are not paid and if such an order is made, it can result in oppressing the claimant who already has depleting resources. However, arbitral tribunals generally are not bound by decisions of the courts or other tribunals.²⁵ So, the requisites for a situation to be considered as an exceptional one, is different each time.

The party seeking such a measure has to establish that, the case of the other side is prima facie frivolous and that, the other party might be organising its own insolvency i.e., deliberately contributing to its financial difficulties.²⁶ The onus is on the requesting party to convince the tribunal that, the other party will not be able to pay the costs which means the claimant should have already been insolvent.²⁷ However, obtaining security for cost easy in international arbitration and the reason of existence of a third-party funder, will not qualify as an exceptional circumstance.²⁸ In a case where a party (respondent) sought security for cost on the basis that, the other party (claimant) was funded by a third party and hence, would not be able to pay in case the decision was against it. Though the tribunal agreed to it, it was hesitant to grant security for costs because the claimant's financial position was such that it would not be able to pay the respondent in the future, it would be paradoxical to ask the claimant to pay such a sum immediately.²⁹

²³ Lee Anna Tucker, *supra* note 3.

²⁴ Parkinson v. Triplan, [1973] 1 Q.B. 609.

²⁵ FRANK-BERND WEIGAND, PRACTITIONER'S HANDBOOK ON INTERNATIONAL COMMERCIAL ARBITRATION 458 (2 ed. 2009), https://books.google.co.in/books?id=Z-Bbba13DZAC&pg=PA458&lpg=PA458&dq=arbitral+tribunals+generally+are+not+bound+by+decisions+of+other+tribunals&source=bl&ots=p0n2bTpDCp&sig=42A-e_XGzLSrb7xun-GaQtazeCU&hl=en&sa=X&ved=0ahUKEwjFqdbywpfXAhUDMo8KHSZhBTgQ6AEIMDAC#v=onepage&q=arbitral%20tribunals%20generally%20are%20not%20bound%20by%20decisions%20of%20other%20tribunals&f=false (last visited Mar 29, 2018).

²⁶ ICC Case No. 12035.

²⁷ Oilex A.G. v. MM Mitsui, 669 F. Supp. 85 (S.D.N.Y. 1987).

²⁸ South American Silver Limited v. The Plurinational State of Bolivia, PCA Case No. 2013-15.

²⁹ Euro Gas v. Slovak Republic, ICSID Case No. ARB/14/14.

Generally, security for costs is granted only when the tribunal thinks that there is an inherent risk of non-recovery of the money or where serious abuse or misconduct has been proved by the party seeking this interim measure against its opponent³⁰. However, what these circumstances would be which the tribunal reckons as exceptional circumstances differs in each decision. In one unreported case, the tribunal had decided that where there is a clearly documented risk put forth by the party seeking security that, the other party will not have assets or means to pay for, if it loses the case would constitute an exceptional circumstance.

Moreover, the respondent requesting security for costs must come with clean hands to present his request. Such was the case in the *Westacre v. Jugoimport*³¹, where the tribunal denied the request for security for costs because the respondent had failed to pay his share of the advance costs of arbitration.

Arbitration proceedings that follow ICC Rules have a restrictive approach while granting security for costs.³² Insolvency is not sufficient, in itself, to form the basis of a request for security for costs' and that the party seeking security for costs should establish, on a prima facie basis, that the opposing party is 'organizing its own insolvency' or that it 'deliberately provoked its insolvency in order to avoid the financial risks related to the arbitral proceeding', or 'for any other fraudulent reason,³³ which is why in *Oilex A.G. v. MM Mitsui*³⁴ court ordered security for costs because the claimant had no assets or a proper business. Contradicting this, it was decided in one other instance that, even voluntary liquidation of a party is a risk to be taken in an international trade and it cannot be a ground for granting security for costs, unless the requesting party can prove that, the other party is doing so without good faith to avoid paying the costs of the requesting party.³⁵

³⁰ Commerce Group and San Sebastian Gold Mines, Inc. v. Republic of El Salvador, ICSID Case No. ARB/09/17 at 45 and 46, <http://www.italaw.com/sites/default/files/case-documents/italaw1087.pdf>. (last visited on Mar 29, 2018).

³¹ ICC Case No. 7047.

³² See generally ICC Case No. 12035, ICC Case No. 12393 and ICC Case No. 12853.

³³ ICC Case No. 12305.

³⁴ 669 F. Supp. 85 (S.D.N.Y. 1987).

³⁵ Michabuhler Asabull, *supra* note 5.-It is a 1997 decision an arbitral tribunal of the Geneva Chamber of Industry and Commerce.

In *WU v Hellard*³⁶, it was held that, in the order for security for costs is usually given when the claimant is a resident of a non-convention country or has changed his address after the proceedings have commenced, to evade paying the amount or has put his assets in a risky state which would make it difficult to enforce an award of costs against the claimant. These circumstances are not exhaustive and if a claim falls under any of these circumstances also, it would not mandate the tribunal to order security for costs.³⁷ It would merely, ‘trigger an inquiry’ into the financial position and behaviour, of the party from whom security is sought.³⁸

Financial Situation and Commercial Risk

The requesting party also has to show that, the current financial situation of the party from whom it is claiming security for costs, is different from the time when the parties entered into arbitration agreement³⁹ or any other material change. However, this material change should have been commercially unforeseeable and not something which can be easily anticipated in the business.⁴⁰ In *A. S.p.A. v. B AG*⁴¹, security for costs was requested on the grounds that claimant had initiated liquidation after the arbitration proceedings commenced. But, the tribunal refused to grant security for costs by stating that, it was a ‘normal commercial risk’ in an international trade. Moreover, there is always a possibility that, the financial position of the claimant is bad due to the respondent’s actions.⁴²

Instances in International Centre for Settlement of Investment Dispute

Firstly, the International Centre for State Investment Dispute Convention does not mention expressly mention, security for costs as a measure. So, it is presumed that the Convention does not provide for security as an interim measure.⁴³ Secondly, the tribunals do not accept hypothetical claims which are not in line with the subject matter. That is why tribunals decline to

³⁶ EWHC (Ch.) (25 November 2013).

³⁷ *Zeitoun v Economical Insurance Group*, (2009), 257 O.A.C. 29 (CA).

³⁸ *Stojanovic v Bulut*, 2011 ONSC 874 (Master) at para 5.

³⁹ ICC Case no. 10032.

⁴⁰ ICCA-Queen Mary Task Force on Third Party Funding In International Arbitration, SECURITY FOR COSTS AND COSTS INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION 4 (2015), http://www.arbitration-icca.org/media/6/09700416080661/tpf_taskforce_security_for_costs_and_costs_draft_report_november_2015.pdf (last visited Mar 30, 2018).

⁴¹ Switzerland 21 September 1998, HG 960527/O.

⁴² *Inna Uchkunova*, SECURITY FOR COSTS IN ICSID ARBITRATION KLUWER ARBITRATION (2017), <http://arbitrationblog.kluwerarbitration.com/2015/02/10/security-for-costs-in-icsid-arbitration/?print=print> (last visited Mar 30, 2018).

⁴³ *Pey Casado v. Republic of Chile*, ICSID Case No. ARB/98/2 (provisional measures of 25 September 2001) at 80, 81 and 86.

grant security for cost when the basis for the request was, the claimant's claims are worthless and would eventually lose the dispute because the tribunal will have to assess the merits in the case at an early stage which is not equitable.⁴⁴ Moreover, the tribunals have also made it clear that the claimant will not have to establish its financial standing before the merits of the case are looked into because by being a signatory to the ICSID Convention, there is always an assumed risk that a party may turn out to be indigent.⁴⁵ But, some tribunals have opined that, the touchstone for granting of security should not be very high but, mere necessity or exigency.⁴⁶ But, what constitutes exceptional circumstance or necessity is equivocal. While evaluating the necessity, tribunals try to balance the interests of both the parties by considering, if the security is not ordered will the damage caused to the respondent be much higher than the damage caused to the claimant if ordered?⁴⁷ Nevertheless, security will be granted, if the claimant has a record of not complying with the orders of the tribunal⁴⁸ or if he is depriving himself of the assets to avoid paying costs. One additional circumstance under ICSID is that, if the party from who the security has been demanded has his assets in a state which is not a member state of ICSID and hence, it would be difficult to enforce the order.⁴⁹

Is Third party funding an extraordinary circumstance?

In *RSM v. Saint Lucia*, security for costs was ordered by the tribunal based on the circumstances and one of the important reasons being the third-party funding received by the claimant. But, it is considered that this case is an exception that security for costs should be granted when there is a third-party funding. In *South American Silver case*,⁵⁰ it was mentioned that the tribunal granted security because the claimant previously also had not complied with the orders of the tribunal, had not disclosed about the third-party funding and also admitted that it did not have financial stability. So, third-arty funding is not a ground for ordering security. In *Euro Gas v. Slovak*⁵¹ also the tribunal opined that third party funding is highly followed by the business world and is not an exceptional circumstance.

⁴⁴ Maffezini v. Spain, ICSID Procedural Order No. 2 of 28 October 1999, paras. 18, 24-25.

⁴⁵ Pey Casado, *supra* note 45.

⁴⁶ *Ceskoslovenska obchodni banka, A.S. v. Slovak Republic*, Procedural Order No. 3 of 5 November 1998, p.2.

⁴⁷ *Burimi S.R.L. v. Albania*, ICSID Case No. ARB/11/18 at 35.

⁴⁸ *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10 at 82.

⁴⁹ *RSM Production Corporation et al. v. Granada*, ICSID Case No. ARB/05/14.

⁵⁰ *South American*, *supra* note 30.

⁵¹ *Euro Gas*, *supra* note 31.

The report of the ICCA-Queen Mary Third Party Funding⁵², suggested that, the financial situation of a claimant should be ascertained from its financial records. A third-party funding agreement can also be reviewed along with the financial records but, it does not indicate that a party is impecunious. Now a days, huge companies who are financially stable, use third party funding to offset risk. So, if the claimant has it a third-party funder, it does not mean that, he has a burden to prove his creditworthiness if the respondent demands for security. If the respondent requests for security because the claimant has a third-party funder, it becomes an essential element for the tribunal to scrutinize but is in no way is a ground for granting security for costs.

ANALYSING THE SITUATION

Based on the above instances it can be deciphered that, tribunals are mostly hesitant to order security for costs unless there is an extreme risk because there is no clear guidance on the issue, the, discretion is on the tribunal.⁵³ What constitutes a ground for ordering security for costs in a case might not be so in the other case. This can violate the idea of neutrality when the parties have consensually entered into an arbitration agreement without providing for any clause of security for costs.⁵⁴ This can cause hardships to various parties and even the tribunal especially when there are no uniform rules. While granting an interim measure, the tribunal has to keep in mind that, instead of facilitating the resolution of dispute between the parties, security for cost may cause delay in the proceedings and also increase the costs of arbitration, because the arbitration cannot be continued without paying the sum ordered and hence affect the purpose of arbitration.⁵⁵ It also has other negative effects like unintentionally misjudging the parties before the final award which goes against the principle of equal treatment of the parties.⁵⁶ Moreover, the security of costs ordered has to be in line with the subject matter of the dispute.

⁵² ICCA-Queen Mary Task Force on Third Party Funding In International Arbitration, *supra* note 42 at 17.

⁵³ Jean Baptiste Pessey, WHEN TO GRANT SECURITY FOR COSTS IN INTERNATIONAL COMMERCIAL ARBITRATION INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION AND RESOLUTION (2011), <http://www.cpradr.org/news-publications/articles/2011-05-06-when-to-grant-security-for-costs-in-international-commercial-arbitration-the-complex-quest-for-a-uniform-test-2011-writing-contest-winner> (last visited Mar 31, 2018).

⁵⁴ Rubins, *supra* note 8 at 55; Jean Baptiste Pessey, *supra* note 55.

⁵⁵ Inforica v. CGI Information Systems, [2008] O.J. No. 4695.

⁵⁶ Netherlands Arbitration Institute (NAI) Case No. 1694.

Even when the tribunal is satisfied that security for costs can be granted, the amount it orders has to be reasonable. Thereby, the tribunal would have to exercise great care and judgement while ordering security for costs⁵⁷ so that, the amount it orders does not oppress the claimant and should be just enough for the respondent to be assured that there would be no injustice caused to him. The aim of granting should be to prevent potential or irreparable harm to the claimant. So, it is said that, even when security for cost is provided it should always be about securing the award but, not the entire costs of arbitration.⁵⁸

But, the researcher thinks, the other side of the coin is that, by claiming for security the respondent can prevent the claimant from coming forth with frivolous and untenable claims. It can also be said that, in the recent times institutional rules are including security for costs because, if the claimant refuses to enforce the award because it does not have the means to do so and on the other hand, the tribunal did not grant security to the respondent either because it is not mentioned in the agreement or the *lex arbitri* does not allow for it, the whole purpose of having an arbitration will be futile. In 2017, International Chamber of Commerce (ICC) included security for costs in its rules.

Even in the *Report of the 37th Session of UNCITRAL Working Group II on Arbitration of 2002* it was said that, it is essential to analyse if an arbitral tribunal should have the power to order security for costs and if it has under what circumstances it should be exercise the power. But, it did not decide any grounds and even otherwise also no law or institutional rules came up with any uniform grounds under which security for costs can be granted.

⁵⁷ ICC Case No. 10032.

⁵⁸ LAWRENCE W. NEWMA & COLIN ONG, INTERIM MEASURES IN INTERNATIONAL ARBITRATION 414 (2014), https://books.google.co.in/books?id=Ga7IAwAAQBAJ&pg=PA414&lpg=PA414&dq=measures+providing+a+preliminary+means+of+security+for+assets+out+of+which+an+award+may+be+satisfied&source=bl&ots=sCnJdIL6LW&sig=ZuRzXgy_f1o4D1bvphAgGkha664&hl=en&sa=X&ved=0ahUKEwjy8pvtq5bXAhWItf8KHARvDEEQ6AEILzAC#v=onepage&q=measures%20providing%20a%20preliminary%20means%20of%20security%20for%20assets%20out%20of%20which%20an%20award%20may%20be%20satisfied&f=false (last visited Mar 31, 2018).

CONCLUSION

Whether, it is explicitly mentioned in the arbitration rules or not, security for cost is given only when all the right circumstances exist where the tribunal feels the utmost need for such a measure.⁵⁹ It is mostly a trend followed in common law countries. Arbitrators from a civil law jurisdiction might order security for costs depending on the above-mentioned circumstances but, the researcher will not be wrong in saying that, they might be less inclined towards this idea.

So, firstly uniform non-exhaustive or indicative criterion under which security for costs should can be ordered should be developed. As per researcher's point of view, UNCITRAL Model Law working group should develop these criterions.

Secondly, the tribunal should see to it that the purpose of arbitration is served, which is speedy remedy and also reap benefits of arbitration which does not mandate strict procedural compliances

The claimant complies with the award as otherwise the respondent will have to go to the judiciary for rescue which will make the entire arbitration proceeding otiose and jeopardise the effectiveness of the arbitration. So, if the tribunal can sense that the circumstances are such that, the claimant will default payment security for costs can be granted. But, when an arbitration tribunal is graining an interim measure, it should always further the idea of fairness in conducting the arbitration.⁶⁰ Interests of every party should be treated with equal importance.⁶¹ So, while granting security, it should not include the costs of a lawyer and all other costs incurred as this might amount to highly pre-judging the merits of the case. Initially only necessary amount should be given that to deposited with the tribunal and later, as it is done in the Courts, the concept of 'cost follows the event' should be followed if the respondent wins the case. Thus, a balance can be struck.

⁵⁹ Christopher Parker, A GLOBAL PERSPECTIVE ON AVAILABILITY OF SECURITY FOR COSTS AND CLAIM IN INTERNATIONAL ARBITRATION MIRAGE OR OASIS? HERBERT SMITH FREEHILLS (2017), <https://www.herbertsmithfreehills.com/latest-thinking/a-global-perspective-on-availability-of-security-for-costs-and-claim-in> (last visited Mar 31, 2018).

⁶⁰ Fabricio Fortese & Lotta Hemmi, *Procedural Fairness and Efficiency in International Arbitration*, 3 SOC. SCI. RES. NETW. (2015), <https://papers.ssrn.com/abstract=2611337> (last visited Feb 1, 2018).

⁶¹ *Id.*