



# PCA hosts launch of Hague Rules for business and human rights disputes

20 January 2020

*An event at the Permanent Court of Arbitration marked the launch of the Hague Rules on Business and Human Rights Arbitration. **Fabio Santacroce** and **Caterina Benini** of ArbLit in Milan report.*

On 12 December, the PCA hosted a [symposium](#) at the Peace Palace in The Hague for the launch of [the Hague Rules on Business and Human Rights Arbitration](#). The Hague Rules are the result of a five-year long project by a team of academics, practitioners and other stakeholders, chaired by **Bruno Simma**, a judge at the Iran-US Claims Tribunal and former judge of the International Court of Justice.

As pointed out by **Jan Eijsbout** of Maastricht University and **Judge Simma** in their opening remarks, the Hague Rules are specifically designed for the arbitration of disputes concerning the impact of business activities on human rights. They have two overarching purposes:

- consistent with principle 31 of [the United Nations Guiding Principles on Business and Human Rights](#), they offer persons whose human rights are affected by business activities an additional grievance mechanism, particularly valuable when other avenues for remedy are either unavailable or inadequate; and
- they provide businesses with an additional tool to comply with pillar II and principles 11 and 13 of the UN Guiding Principles, which impose on them the duty to respect human rights as part of their corporate social responsibility.

**Steven Ratner** of the University of Michigan Law School and **Ursula Kriebaum** of the University of Vienna then addressed the “tensions” inherent in the arbitration of human rights disputes: the need to safeguard party autonomy, which is the cornerstone of any arbitration; and the need to make sure that human rights are enforced, which is a quintessentially public law interest. The Hague Rules seek to reconcile those two tensions by amending the UNCITRAL Arbitration Rules, which are taken as a model, to cater for certain specific features of business and human rights disputes. For instance, specific rules are contemplated for cost allocation and third-party funding to mitigate the potential economic imbalance between the parties, the handling of mass or collective claims and the participation of third parties such as states and NGOs. Arbitrators need to possess specific qualifications. The arbitral tribunal is also required to satisfy itself, before issuing the award, that it will be compatible with the human rights of the persons involved in the dispute.

A panel of experts in human rights and international arbitration, chaired by **Anne Van Aaken** of Hamburg University, discussed the strengths and weaknesses of the Hague Rules, and how their use could be promoted within the international arbitration community. **Catherine Kessedjian** of Paris-II University welcomed the provision that allows the parties, also after the commencement of the arbitration, to resort to a different dispute resolution mechanism, such as mediation, since this could help arbitral tribunals “nudge” the parties towards a more efficient means for the resolution of their dispute. **Massimo Benedettelli** of the University of Bari Aldo Moro and ArbLit in Milan underscored that human rights disputes are in principle arbitrable notwithstanding their “public law” dimension, the real issue being whether businesses will submit to arbitral jurisdiction in this field. In principle, the Hague Rules, and more generally the arbitration of business and human rights disputes, should be appealing for at least those multinational corporations that, for reputational, regulatory or market reasons, present themselves as human-rights compliant. One way in which the Hague

Rules may be adopted in practice is through unilateral offers to arbitrate, which corporations may include in public documents, such as their ethical codes. Consumers and other stakeholders affected by human rights breaches committed by the corporation itself or its subsidiaries would then be able to initiate arbitration proceedings pursuant to the Hague Rules on the basis of those unilateral offers.

**Adam Smith-Anthony** of Omnia Strategy in London spoke about the potential for growth of arbitration of business and human rights disputes in light of certain recent developments in the English courts, which have asserted jurisdiction over human rights-related torts committed abroad by subsidiaries of English companies. Two NGO representatives – **Egbert Wesselink** of Pax and **Mariette van Huijstee** of the Centre for Research on Multinational Corporations (SOMO) – expressed their concern that the victims of human rights violations may be unfamiliar with arbitration and that a strategy needs to be devised to raise awareness among all the relevant stakeholders about the avenues available to resolve business and human rights disputes.

The symposium was closed by **Claes Cronstedt**, a former partner of Baker McKenzie in Stockholm and one of the pioneers of business and human rights arbitration, who welcomed the adoption of the Hague Rules and thanked the PCA for hosting the event.

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