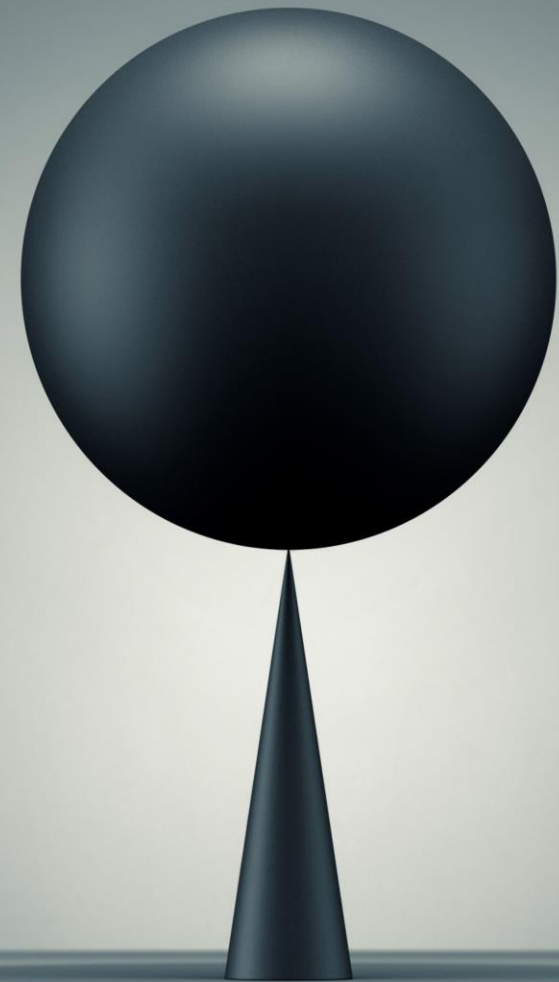


LALIVE

9th EFILA Annual  
Conference: New  
Frontiers in  
International  
Investment  
Arbitration

Panel 2: Geopolitical uncertainties and their impact  
on arbitration

Kevin Huber  
25 April 2024



# Practical impacts of geopolitical uncertainties on the conduct of an arbitration

## Recent impacts on proceedings

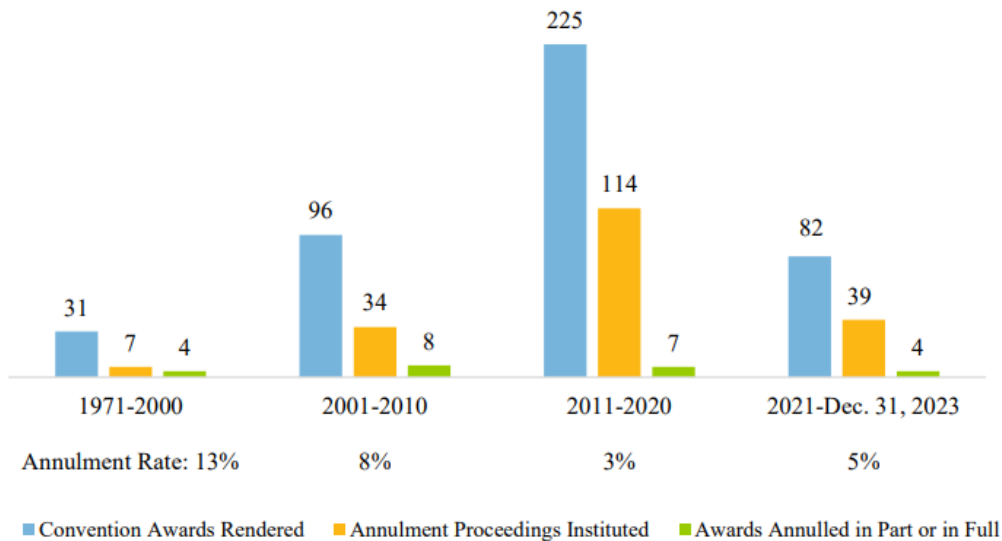
- + Suspension of proceedings
  - Costs?
  - Other conflicts?
- + Changing of counsel
  - Effects on proceedings?
  - Will this still occur?

## Effect on witnesses

- + Intimidated witnesses
  - Impact on cases?
  - Intimidated counsel?
  - Other conflicts?
- + Political issues restricting movement
  - Finnish example
  - Thinking ahead

# Do geopolitical uncertainties contribute to an increase in applications for annulments of arbitral awards?

**Rate of Annulment  
(as of December 31, 2023)**



ICSID, *Updated Background Paper on Annulment*, March 2024, p. 97

## Application Rate:

- + 1971-2000: 22%
- + 2001-2010: 35%
- + 2011-2020: 51%
- + 2021-2023: 48%

## Which side is applying?

- + Respondent files 62% of applications
- + While only about 48% of awards uphold claims in part or in full

# Do geopolitical uncertainties contribute to an increase in non-compliance with Awards?

The **International Rule of Law Compliance Index**, based on our Report, ranks the top 20 countries in terms of adverse ISDS Awards, which have not been paid. By refusing to pay those Awards, Respondent States fail to fulfil their international law obligations, thereby undermining the International Rule of Law.

In this context, it is particularly alarming to note that several EU Member States feature in the top 20 list (marked in red), thereby highlighting the fact that the Rule of Law standard within the EU is increasingly backsliding.<sup>6</sup>

## International Law Compliance Index 2023

Ranking	Country Name	Number of unpaid Awards	Total amount of unpaid Awards in USD
1	Venezuela	15	7.1 billion
2	Spain	15	1.3 billion
3	Russia	9	60.1 billion
4	Ukraine	4	142 million
5	Argentina	3	537 million
6	Kyrgyzstan	3	50 million
7	India	2	206 million
8	Italy	2	22 million
9	Ecuador	2	61 million
10	Kazakhstan	1	500 million
11	Czech Republic	1	300 million
12	Croatia	1	184 million
13	Poland	1	9.3 million
14	Turkey	1	1.3 million

N. Lavranos, *Report on Compliance with Investment Treaty Arbitration Awards 2023* (2nd updated edition), p. 4

## Increase in unpaid awards year over year:

- † Termination of intra-EU IIA;
- † Withdrawal from the ECT and failure to approve modernized ECT;
- † Concern over future of ISDS in the EU;
- † Non-compliance due to political factors?

## Will this unfortunate trend continue?

- † ...

# The use of sovereign assets to satisfy awards?

118TH CONGRESS  
1ST SESSION

## H. R. 4175

To authorize the Secretary of State to provide additional assistance to Ukraine using assets confiscated from the Central Bank of the Russian Federation and other sovereign assets of the Russian Federation, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2023

Mr. McCaul (for himself, Ms. Kaptur, Mr. Wilson of South Carolina, Mr. Cohen, Mr. Kean of New Jersey, Mr. Quigley, and Mr. Fitzpatrick) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Rules, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

### A BILL

To authorize the Secretary of State to provide additional assistance to Ukraine using assets confiscated from the Central Bank of the Russian Federation and other sovereign assets of the Russian Federation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Rebuilding Economic Prosperity and Opportunity for Ukrainians Act” or the “REPO for Ukrainians Act”.

## The REPO for Ukrainians Act:

- ✦ Part of the recent foreign aid funding passed by the US House;
- ✦ Seeks to use the seized Russian sovereign assets for re-construction in Ukraine;
- ✦ Unclear if award creditors will be able to utilise this Act;
- ✦ But parts of it are written broadly.



---

**Kevin HUBER**

Counsel

+44 20 3880 1540

khuber@lalive.law

