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The guide to specialist  
international arbitration  
practices 2017

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# White & Case

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People in <i>Who's Who Legal</i>	15
Pending cases as counsel	322
Value of pending counsel work	US\$124 billion
Treaty cases	36
Current arbitrator appointments	53 (of which 22 are as sole or chair)
Lawyers sitting as arbitrator	21

## Now defending Russia in a US\$12 billion treaty case

White & Case has regularly appeared in the top two or three of the GAR 30 table since the first edition. In 2015, it took the number-one spot for the first time. Like Freshfields Bruckhaus Deringer, the firm has “big names”, lots of offices and a history as a pioneer in this area.

Unlike Freshfields, and unlike several other leading international arbitration practices, White & Case is looking much the same in terms of personnel as it has for years. It hasn't suffered any major defections to new entrants recently. As such, it's shining rather more than usual. So how did it get to this enviable position?

White & Case was one of the first US law firms to do extensive work overseas. During the First World War, it handled all the legal work for the supply of munitions to Britain and France (France made founding partner Justin DuPratt White a Knight of the Legion of Honour in gratitude). Today's international arbitration practice grew from those origins. As a result of its early foreign work, international disputes began to arrive on its doorstep. In the 1950s, it worked on the famous *Saudi Arabia v Aramco* dispute (a young associate named Stephen Schwebel took part). This was followed by other cases.

In the 1970s, things kicked off after one Charles N Brower (today a renowned international arbitrator) founded an office in Washington, DC, leading to early ICSID work (the firm has now worked on more than 100 cases there). Indeed, the practice has proved a particular pioneer in investor-state work. Its credits include:

- the first ICSID case against a Latin American state (*Santa Elena v Costa Rica*);
- one of the largest ICSID awards on record (US\$877 million in *CSOB v Slovakia*);
- defending the first Energy Charter Treaty case (*AES v Hungary*) and the first ECT case to reach a merits award (*Plama v Bulgaria*); and
- bringing one of the earliest NAFTA cases (*Mondev v United States*).

The practice now offers more than 160 lawyers working around the globe, including a number of spots where rivals aren't on the ground.

Though a lot of work is for sovereigns, there are some niche areas associated with particular offices. In Paris and London, there's a heavy focus on project and construction work. Christopher Seppälä in Paris is long-standing legal adviser to the International Federation of Consulting Engineers (FIDIC), and Phillip Capper in London is also revered on construction matters.

Meanwhile, in Mexico City and Washington, DC, areas of special interest are investor-state work and Latin America. Jonathan Hamilton, a partner in DC, edits a website on Latin American arbitration law.

Rivals will occasionally suggest it's peculiar that White & Case offices seem to have a narrow focus, adding that they “don't see them in the market” as a competitor in the way they see some of the other practices in this book. But few would dispute that White & Case is a formidable opponent whatever the type of arbitration. And there's some evidence that individual White & Case offices are broadening their sphere of activity. Paris now spends a lot of time on energy work, thanks to Michael Polkinghorne, while London (aided by other relevant offices) is building a name in Russia-related work, thanks to David Goldberg.

It's also worth noting that, of the top practices, White & Case is one of the least male-dominated: senior female partners include Carolyn Lamm (a recent past president of the American Bar Association), Abby Cohen Smutny, Andrea Menaker, Ank Santens and Anne-Véronique Schlaepfer.

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## Network

Of the firm's 40 offices, 20 are home to international arbitration names. As well as the usual centres – London, Paris, New York, DC, Stockholm, Hong Kong and Singapore – the list includes Mexico City, Miami, Frankfurt and Moscow. The practice also now has a presence in Geneva and Seoul.

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## Who uses it?

Or reuses it. White & Case is blessed with a list full of clients that return. That's partly down to working for so many states, as they tend to be loyal. But, still, it's a useful quality to have.

Some regular government clients are Bulgaria, the Philippines, Peru, Uzbekistan and Georgia, as well as various Ukrainian state entities including Naftogaz. Russia is using it to help resist enforcement of the US\$50 billion Yukos awards in the United States, and recently retained it on another high-profile treaty case (see below). On the corporate side, it's done work for Hochtief, Alstom, Eni, Hong Kong's Hutchison Port Holdings and India's Jindal Steel & Power, among many others.

In recent years, the practice has picked up more of a following in Eastern Europe and Latin America, including one of the world's richest individuals (in eastern Europe) for whom it conducted a monumental dispute (now settled). The practice is also very popular with big construction firms. In that realm, clients have it acting on one of the world's largest current disputes (about a next-generation nuclear reactor) as well as on some of the bigger issues arising from the project to enlarge the Panama Canal.

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## Track record

Some of its “greatest hits” were mentioned above. As those would indicate, White & Case has a reputation around the market as a fearsome and creative opponent. In fact, in ICSID work, a survey by consulting firm Credibility International recently assessed White & Case as the “winningest” law firm at ICSID. Although the survey can be critiqued (a couple of firms from eastern Europe do surprisingly well in its methodology), White & Case's record is hard to argue with.

Looking at the recent past, big White & Case wins include:

- establishing jurisdiction for tens of thousands of Italian bondholders to bring a collective ICSID claim against Argentina (the famous *Abaclat* case), eventually securing them a US\$1.35 billion settlement;
- a US\$740 million ICSID win for Canadian mining company Gold Reserve against Venezuela;
- helping the Philippines triumph in a long-running ICSID dispute over an airport terminal, by having the case thrown out twice;

- winning the complete dismissal of a €322 million ICSID claim against Hungary over a lakeside casino resort that never got built;
- helping a Lebanese-owned company win US\$550 million against the Republic of the Congo (and defending the award against corruption allegations in the French courts);
- obtaining a US\$295 million payout for Siemens and its South Korean partner to end a decade-long ICC dispute with Mexico's Pemex over a refinery upgrade;
- the first dismissal of a treaty claim at ICSID because of corruption (*Metal-Tech v Uzbekistan*);
- knocking out the bulk of a “bet the company” treaty claim against Uzbekistan (investor Oxus Gold won only US\$10 million of the US\$1.3 billion it was seeking);
- a US\$40 million win for SGS against Paraguay thanks to a treaty's “umbrella clause” (the company had failed in two similar cases against Pakistan and the Philippines, using other counsel); and
- helping Peru to bring the first ICSID case by a Latin American state as part of a larger dispute that ended with a US\$40 million payout to the government.

### Recent events

Partner David Goldberg in London was instructed by Russia to defend it in a US\$12 billion investment treaty claim by French-Russian businessman Sergei Pugachev – once known as “the Kremlin's banker”. White & Case also continues to help Russia to resist enforcement of the US\$50 billion Yukos awards in the UK, US and German courts – and has been involved in gathering evidence in support of Russia's allegations that the claimants acquired their stake in Yukos through corrupt means.

It helped Peru to knock out an US\$800 million treaty claim by the US's Renco Group relating to environmental pollution in the Andes. The firm was able to show that the investor hadn't complied with a requirement to waive its right to pursue parallel litigation (the case may yet be refiled, however).

For US power company TECO, it succeeded in annulling part of an ICSID award from 2013 that had denied a US\$222 million claim against Guatemala for future losses resulting from an electricity tariff review – thus allowing the investor to submit its claim to a new ICSID tribunal. (Part of the award requiring Guatemala to pay US\$21 million was left intact.)

It helped client Gold Reserve agree a US\$770 million settlement with Venezuela that would allow the company to continue operating in the country. The Paris Court of Appeal upheld the ICSID award around the same time.

For duty-free investor Flemingo, it won a €20 million treaty claim against Poland over the termination of leases for shops at a Warsaw airport.

White & Case continued its representation of Finnish power utility TVO in a €5.8 billion ICC arbitration with Areva and

Siemens over the construction of a nuclear power plant in Finland. The case has had 48 days of hearings over the past two years. TVO reported a largely favourable partial award on factual issues in late 2016 but a final award is not expected for some time yet. (Three Crowns, Shearman & Sterling and Baker & McKenzie are the opposing counsel.)

It filed two new ICC claims worth US\$2.3 billion on behalf of Spanish-Italian engineering consortium GUPC against the Panama Canal Authority – meaning it is now involved in four pending arbitrations relating to the cost of the canal's expansion, with a combined value of US\$5.7 billion.

It was instructed by four Uzbek state entities for an ICSID claim against Kyrgyzstan over the operation of a tourist resort. Other clients in pending ICSID cases include mining company Gabriel Resources (against Romania); and France's Engie in a €750 million Energy Charter Treaty claim against Hungary.

David Goldberg has meanwhile been representing one of the Micula brothers in efforts to enforce an ICSID award against Romania. In January 2017, the High Court in London blocked an attempt by the state to set aside the registration of the award – though enforcement has been stayed pending other court proceedings in Europe.

A survey of future leaders in arbitration by GAR's sister title Who's Who Legal identified 26 names from White & Case.

Mark Clarke joined the firm as a partner from Ashurst. There were also 11 partner promotions – including Damien Nyer in New York; Kirsten Odynski and Elizabeth Oger-Gross in Paris; and others in DC, London, Doha and Abu Dhabi.

Partner Jason Yardley left for Jenner & Block in London, while Rikard Wikström in Stockholm moved to Roschier

### Client comment

Ivan Kondov from Bulgaria's Ministry of Finance says he's used White & Case on “the eight most important international arbitration matters involving Bulgaria in the last 10 years”. In all of those he was impressed by the firm's “good strategic judgement, strong argumentation and diligent approach to every matter”. The firm is “simply the best [we] have worked with”, he adds.

Doug Belanger of Gold Reserve interviewed six firms before selecting White & Case for its hard-fought claim against Venezuela. “What they promised is what they delivered,” he says. Their professionalism was “unparalleled” and their prosecution of the case “was superb from beginning to end”.

Belanger estimates the company spent “over US\$20 million” to receive an award of US\$740 million. “To say we were pleased would be an understatement.”

Pericles Stroubos, senior legal counsel at Aegean Motorway, calls White & Case “one of the best legal firms in construction arbitration.” He extols “the level of detail in their work” and says he would recommend the firm “without the slightest hesitation”