The Portuguese Arbitration Day in Beijing – Why Portuguese matters in “One Belt, One Road” Programme

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With Manuel Castelo-Branco, Carlos Aguiar, Francisco Prol, Paula Costa e Silva, Carlos Alberto Carmona, Duarte G. Henriques, Sofia Vale, João Ribeiro-Bidaoui, and João Vilhena Valério

The massive programme of investments that will take place under the “One Belt, one Road” (OBOR) initiative of the People’s Republic of China leaves no one indifferent.

With the aim of connecting Asia, Europe and Africa along five different routes of investment and promotion of cooperation, the OBOR initiative will liaise 68 countries with China, spanning from economies as diverse as Uzbekistan, Poland, Nepal, Ethiopia, Albania and Afghanistan. Out of these 68 beneficiary countries, only one is a member of the “CPLP” (the Portuguese-Speaking Countries Community): East Timor.

It has already been stated by Chinese authorities that the OBOR initiative will pump around USD 990 billion into the various countries, at a pace of USD 150 billion a year. To be sure, although Portugal and other Portuguese-speaking countries are not yet covered by the OBOR initiative, it has been reported that the Chinese and the Portuguese Governments have already started negotiations to make Portugal a member of this partnership with China. This will, of course, mean that every other Portuguese-speaking country will benefit immensely from this partnership.

The OBOR program will generate many investments where the Portuguese-speaking countries can be involved and actively engaged. Investments do not always unfold as desired and can ultimately lead to cross-border disputes. When it comes to international disputes, there is little doubt that arbitration

is the best mechanism to handle them if a settlement (through mediation, negotiation, or other alternative means to resolve disputes) is not possible.

For these reasons, it is imperative that those who are involved in the dispute resolution arena can understand the differences between the Chinese and the Portuguese-speaking countries' legal settings related to arbitration.

With this general background in mind, the China Arbitration Week, with the generous support of CIETAC, hosted the first "Portuguese Arbitration Day" in Beijing this last 18 September.

With the aim of conveying to the participants the best picture of the Portuguese-Speaking countries' arbitration landscape, the "Portuguese-Speaking Delegation" presented two panels. The first panel, moderated by Rita Assis Ferreira (PLMJ), was devoted to the most important topics of arbitration in Portugal. The second panel, moderated by João Vilhena Valério (BeecheyArbitration), followed suit to approach the arbitration setting in Brazil, Angola, and Iberia, the latter from a Portuguese-speaking practitioner viewpoint. The session was concluded with an intervention by João Ribeiro-Bidaoui (Head of the UNCITRAL Regional Centre for Asia and the Pacific) on the "Implementation of UNCITRAL standards in Portuguese-speaking jurisdictions".

The following are the highlights of each of their interventions. Rita Assis Ferreira opened the floor of the discussion referring to the fundamental perspectives of the Chinese/Portuguese-speaking countries' jurisdictions concerning dispute resolution, and particularly arbitration. Manuel Castelo Branco addressed the topic of Cross-Border Disputes, Cultural Aspects of China-Portuguese Arbitration and Institutional vs Ad Hoc Arbitration. In turn, Paula Costa e Silva's presentation focused on the intricacies and the issues arising from disclosure and conflicts of interest of arbitrators and from the impartiality and independence required from each decision maker. Carlos Aguiar addressed the current topic of resolving corporate disputes using arbitration and the latest developments of Portugal in this respect, including the new draft bill on "Arbitration in Corporate Disputes". In concluding the works of this panel, Duarte G. Henriques spoke about arbitration in intellectual property disputes.

All the presentations focused on crucial aspects of the interplay between China and Portugal, with particular relevance to aspects of institutional and ad hoc proceedings, arbitrability requirements, and legal facets of all these subject-matters.

As to the second panel, João Vilhena Valério opened the discussion highlighting that Portuguese ranks sixth in the list of most widely spoken languages in the world, with around 250 million current speakers. He added that China has firmly taken a decision to 'go global' and, in that context, it has been investing in countries where Portuguese is officially spoken. He then invited the members of the panel to shed light on the challenges and opportunities that arbitration faces in their relevant jurisdictions.

Firstly, João Ribeiro-Bidaoui, from UNCITRAL, provided an overview of legislative developments on international commercial arbitration among the Portuguese-speaking jurisdictions, with reference to the standards by the United Nations Commission on International Trade Law. Then, Carlos Alberto Carmona, from Brazil, referred to the growing investments of Chinese companies in his country, specially in the sectors of energy, infrastructure, ports and transportation. China is today the most important partner of Brazil and several companies have been incorporated to develop business all over the country. As it is natural in the life of the companies, there will be some quarrels and the best way to solve disputes is arbitration. Carmona highlighted some important aspects of Brazilian domestic an international arbitration, showing how convenient it is to choose Brazil as the venue for the dispute. He concluded his presentation demonstrating how friendly Brazil is to arbitration, even when the State (directly or indirectly) is involved in the dispute. Sofia Vale, from Angola, stressed that

China has been one of the most important business partners for Angola for the past 15 years, with trade flows amounting to more than USD 15 billion in 2015, also ranking as the largest foreign investor in Angola over the past year. Sofia then proceed to explain the Angolan legal framework applicable to different sectors, and more particularly to the arbitration setting, also addressing the major challenges for the development of arbitration in this African country. Lastly, Francisco Prol, from Spain, focused on the topic of the Iberian Peninsula as a bridge between China and Latin America.

The foregoing headlines of the public event coupled with the considerations about the historical cooperation and long-standing relationships between the People's Republic of China and the Portuguese-Speaking countries, particularly Portugal, evidence that Portuguese-speaking jurisdictions have a lot to learn from China's arbitration practice, especially in what the institutional perspective is concerned. But also that China can benefit immensely from the experience that the Portuguese-speaking countries' arbitration setting may provide to China when implementing the vast and long investment programme of "One Belt, One Road". Again, given that the Portuguese is the sixth most spoken language in the world, there is little doubt that sooner or later a dispute arising in the context of the "OBOR" programme will have Portuguese as the language of the proceedings, and likely one of the legal systems where the Portuguese is the official language will be called upon as the law applicable to the merits of the dispute.