Dutch court uses Venezuela-Barbados BIT's MFN clause to uphold agreement to UNCITRAL arbitration (Hague Court of Appeal)

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *Venezuela v VUS (ECLI:NL:GHDHA:2025:2281)*, the Hague Court of Appeal rejected Venezuela's application to set aside a series of UNCITRAL arbitration awards rendered in favour of a Barbadian investor under the Venezuela-Barbados BIT. The court used the BIT's MFN clause to make available the more favourable dispute resolution provisions of another Venezuelan BIT and uphold the tribunal's jurisdiction. The decision confirms that Dutch courts accept that an arbitration agreement in another BIT can be invoked by application of an MFN clause.

Jurjen de Korte, OSK Advocaten

The Hague Court of Appeal has rejected a challenge by Venezuela to an investment treaty arbitration award in which the tribunal relied on the Venezuela-Barbados BIT's most-favoured nation (MFN) clause to give access to the arbitration provisions in another BIT.

In 2013, a Barbadian oil company, VUS, commenced UNCITRAL arbitration proceedings in The Hague against Venezuela pursuant to the BIT, claiming certain unpaid dividends. Venezuela argued that the arbitral tribunal lacked jurisdiction on the basis that the BIT did not provide for UNCITRAL arbitration. However, the tribunal dismissed the objection in an interim award. It then rendered a 2021 partial award on jurisdiction and liability, followed by a final award on quantum in 2022, in which it awarded VUS more than USD100 million in principal and interest.

In 2023, Venezuela applied to the Hague Court of Appeal to have the award set aside, repeating its argument as to lack of jurisdiction.

The Hague Court of Appeal dismissed the set aside application.

The court reviewed the issue of jurisdiction in full and came to essentially the same conclusion as the arbitral tribunal. Article 8 of the BIT did not permit UNCITRAL arbitration following Venezuela's withdrawal from the ICSID Convention. The court held that, on its proper interpretation, that article, which provided for UNCITRAL arbitration where the ICSID Additional Facility was not available, pertained only to the period before Venezuela's accession to the ICSID Convention.

However, the Court of Appeal held that the MFN clause contained in article 3 of the BIT allowed an investor to invoke a more favourable dispute resolution clause contained in any other Venezuela BIT because it referred explicitly to the dispute resolution clause of article 8 of the BIT. In the court's judgment, the Venezuela-Ecuador BIT contains a more favourable dispute resolution clause because that provides for UNCITRAL arbitration in any situation where ICSID arbitration is unavailable.

Therefore, a valid agreement to UNCITRAL arbitration existed and Venezuela's set-aside claim was dismissed.

Although the Court of Appeal arrived at the same decision as the tribunal, its analysis appears rather convoluted. It could have achieved the same result by not interpreting the second sentence of article 8 of the BIT as limited to the period before accession to the ICSID Convention, as was clearly the intention of Venezuela under the BIT with Ecuador.

Case: *Venezuela v VUS (ECLI:NL:GHDHA:2025:2281) (The Hague Court of Appeal) (28 October 2025)*.

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