

Michael Tselentis QC

SILK: 1989 (SENIOR COUNSEL, SOUTH AFRICA); 2003 (ENGLAND AND WALES) | CALL: 1978 (SOUTH AFRICA); 1995 (ENGLAND AND WALES)

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Languages: Afrikaans. Reading knowledge of French.



Overview

Michael's practice as an international arbitrator covers a wide field, which includes energy and natural resources (principally oil and gas, mining and minerals), shipping and commodities, commercial disputes (including agency, distribution/franchising, joint ventures, shareholder agreements and contractual disputes generally), investment arbitration (with a focus on mining disputes in Africa), insurance, construction and engineering.

He has been a full-time arbitrator since 2015 when he retired from advocacy work in order to concentrate on his arbitration practice. During a 36-year career, he appeared as leading counsel in many cases in these areas before trial and appellate courts in South Africa and England, and before arbitral tribunals, including a number of high-value international arbitrations in London, Paris and Singapore.

Before Michael relocated his practice to London in 1996, he was a leading commercial Silk at the Johannesburg Bar, with a specialisation in mining law, and held general retainers from the Anglo American and De Beers groups of companies. He was also an acting judge of the Supreme Court of South Africa, and was the Chairman of the Johannesburg Bar in 1993/1994.

Michael has been appointed in over 100 references as presiding arbitrator, tribunal member and sole arbitrator, principally (though by no means exclusively) in ICC, LCIA, PCA, SIAC, LMAA, HKIAC and ad hoc arbitrations under the UNCITRAL rules. Much of his arbitration work has an Asian or African focus. Arbitral seats have included London, Paris, Geneva, Singapore, Hong Kong, DIFC, Lagos, Cyprus, Dar Es Salaam, Johannesburg and Mauritius. His

Publications

- 'Singapore' in K Nairn and P Heneghan (eds), *Arbitration World* (5th edn, Sweet & Maxwell 2015) (co-author).

Panel memberships

- Arbitration Foundation of Southern Africa (AFSA).
- Asian Institute of ADR.
- Association of Arbitrators of Southern Africa.
- Australian Centre for International Commercial Arbitration (ACICA).
- Badan Arbitrase Nasional Indonesia (BANI).
- British Columbia International Commercial Arbitration Centre (BCICAC).
- BVI International Arbitration Centre (BVI IAC).
- Cairo Regional Centre for International Commercial Arbitration (CRCICA).
- Chartered Institute of Arbitrators' Presidential Panel.
- Chicago International Dispute Resolution Association (CIDRA).

appointments have involved a wide variety of governing laws, including the laws of England, France, Singapore, the Netherlands, Western Australia, Indonesia, Qatar, Kenya, Trinidad and Tobago, South Africa, Swazi, Lesotho, Angola, Tanzania, Zambia, Nigeria and international law.

His common law expertise is complemented by a wide experience of civil law systems, including South Africa, France, the Netherlands, Thailand, Romania, Finland, Russia, Azerbaijan and Kazakhstan.

[Download Michael's detailed arbitration CV.](#)

For convenience, details of his arbitration appointments, arbitration accreditations, and legal career generally appear in the sections below.

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Lectures / talks

- 'International Arbitration in the Resources and Energy Sectors': Coventry University Law School (28 November 2017).
- 'Pathological Arbitration Clauses in English Law': 2nd Oxford Symposium on International Commercial Arbitration, Wolfson College (17 November 2017).

Education

- University of Oxford, Magdalen College: Bachelor of Civil Law, First Class (1975) (Rhodes Scholar).
- University of Cape Town: BA, Distinction (1969); LLB, First Class Honours (1971).

- China International Economic and Trade Arbitration Commission (CIETAC).
- China Maritime Arbitration Commission (CMAC).
- Chinese European Arbitrators' Centre (CEAC).
- Dubai International Arbitration Centre (DIAC).
- Energy Arbitrators' List of the ICDR.
- Hainan International Arbitration Court (HIAC).
- Hong Kong International Arbitration Centre (HKIAC).
- Kuala Lumpur Regional Centre for Arbitration (KLRCAC).
- Pacific International Arbitration Centre (PIAC).
- Shanghai International Arbitration Centre (SHIAC).
- Singapore Chamber of Maritime Arbitration (SCMA).
- Singapore International Arbitration Centre (SIAC).

Professional memberships

- Anglo-Russian Law Association
- Asian Institute of ADR (Fellow)
- Association of Arbitrators of Southern Africa (Fellow)
- Australian Centre for International Commercial Arbitration (Fellow)
- Baltic Exchange
- CIArb (Chartered Arbitrator and Fellow)
- Chinese-European Legal Association
- Commercial Bar Association
- ICC (UK)
- Insurance and Reinsurance Arbitration Society (ARIAS)
- International Council for Commercial Arbitration (ICCA)
- LCIA
- LMAA (supporting member)
- Singapore Institute of Arbitrators (Fellow)
- Technology and Construction Bar Association

Example cases and appointments

His current (June 2019) references include the following:

- Tribunal member in two LCIA references between investors and African governments arising from alleged expropriations

and breaches of mine development agreements, with aggregate claims and cross-claims exceeding US\$38 billion.

- Presiding arbitrator in an ICC reference relating to a Farm-In Agreement, a Joint Operating Agreement and a Technical Services Agreement in respect of an offshore oil field (London seat; Nigerian law).
- Presiding arbitrator in an LCIA reference relating to the manufacture and supply of drill rig components (London seat; English law).
- Presiding arbitrator in an ad hoc reference under the UNICTRAL rules relating to a power sale agreement (London seat; Zambian law).
- Presiding Arbitrator in an LCIA reference relating to a purchase and sale agreement for the shares of a Southern African mining company (London seat; English law).
- Tribunal member in a US\$2 billion ICC reference relating to a hydro-electric project (Paris seat; Nigerian law).
- Tribunal member in an ad hoc reference under the UNCITRAL Rules arising out of a long-term petroleum supply contract (London seat; Zambian law).
- Member of an ICC Tribunal in a reference relating to a joint venture for telecommunications services in a middle-Eastern country (DIFC seat; English law).
- Member of two Tribunals (HKIAC and LCIA) in disputes relating to FPSO conversion contracts (London and Hong Kong seats; English law).
- Tribunal member in six consolidated LCIA references relating to an EPC contract for the construction of an FPSO and related commercial agreements (London seat; English and Nigerian law).

A more extensive list of his appointments appears in his arbitration CV and in the arbitration appointments link.

Arbitration appointments

His current and recent arbitration appointments include the following:

- Tribunal member in two LCIA investment arbitrations between investors and the government of an African country arising from alleged expropriations and breaches of mine development agreements, with aggregate claims and cross-claims exceeding US\$38 billion.
- Tribunal member in PCA Case 2016, Van Zyl and Others v Kingdom of Lesotho, an investment arbitration arising from the alleged expropriation of mining leases (Mauritius seat; Lesotho law).
- Presiding arbitrator in an ICC reference relating to a Farm-In Agreement, a Joint Operating Agreement and a Technical Services Agreement in respect of an offshore oil field (London seat; Nigerian Law).
- Presiding arbitrator in an LCIA reference relating to the manufacture and supply of drill rig components (London seat; English law).
- Presiding arbitrator in three Arbitration Foundation of South Africa references between mining interests and contractual counterparties (Johannesburg seat; Tanzanian law).
- Presiding arbitrator in an ad hoc reference under the UNCITRAL Rules relating to a power sale agreement (London seat; Zambian law).
- Presiding arbitrator in an LCIA reference relating to a property development project in Qatar (London seat; Qatari law).
- Presiding arbitrator in two consolidated LCIA references relating to oil and gas assets in the Black Sea (Geneva seat; English law).
- Presiding arbitrator in an ICC reference between French and Tanzanian interests under a road construction contract (Dar Es Salaam seat; Tanzanian law).
- Presiding arbitrator in an ICC reference under a contract for the provision of engineering services in Nigeria (Lagos seat; Nigerian law).
- Presiding adjudicator in a dispute under a port dredging contract (London seat; Kenyan law).
- Sole arbitrator in a SIAC reference relating to a mining venture in Indonesia (Singapore seat; Indonesian law).
- Sole arbitrator in two SIAC references between Australian and Chinese interests arising out of agreements for the sale of iron ore mining tenements in Western Australia (Singapore seat; Western Australian law).
- Sole arbitrator in an ad hoc reference relating to a tidal defence system and associated works in a harbour (London seat; English law).

- Tribunal member in six consolidated LCIA references relating to an EPC contract for the construction of an FPSO and related commercial agreements (London seat; English and Nigerian law).
- Tribunal member in an ad hoc reference under the UNCITRAL Rules relating to the supply of components for mining equipment to a global mining house (London seat; English law).
- Tribunal member in a US\$2 billion ICC reference relating to a hydro-electric project (Paris seat; Nigerian law).
- Tribunal member in an ad hoc reference under the UNCITRAL Rules relating to a US\$1 billion equity redetermination in respect of an offshore oil field (Lagos seat; Nigerian law).
- Tribunal member in an ad hoc reference under the UNCITRAL Rules arising out of a long-term petroleum supply contract (London seat; Zambian law).
- Member of an ICC Tribunal in a reference relating to a joint venture for telecommunications services in a middle-Eastern country (DIFC seat; English law).
- Member of an LCIA Tribunal in a reference relating to a shareholders' agreement for a digital pay TV platform in a Middle Eastern country (London seat; English law).
- Member of an ad hoc Tribunal sitting under UNCITRAL Rules in respect of a dispute relating to a pricing adjustment formula in a long-term coal supply contract (London seat; English law).
- Member of four Tribunals (ICC, LCIA and ad hoc) in references relating to deep-water oil drilling rigs and related commercial agreements (Paris and London seats; English law).
- Member of two Tribunals (HKIAC and LCIA) in disputes relating to FPSO conversion contracts (London and Hong Kong seats; English law).
- Presiding arbitrator, sole arbitrator or tribunal member in a number of institutional and ad hoc references relating to ship-building and ship-conversion contracts, floating production units, voyage charter, shipping, bills of lading, commodity contracts, guarantees and professional indemnity insurance policies (variety of seats and governing laws).

Other notable arbitration appointments include:

- Sole arbitrator in a US\$1 billion LCIA reference between hedge funds and their managers, investment managers and valuation agents, relating to the management of the funds, fraud by the investment manager, and the valuation of complex and illiquid securities.
- Presiding arbitrator in an ICC reference between USA and Trinidad and Tobago interests arising out of a contract for the provision of sub-sea horizontal directional drilling services and the installation of gas pipelines in the West Indies.
- Chairman of an ICC Tribunal in a reference between USA and Kuwaiti interests pursuant to an agreement for the distribution in the Middle East of computer software for hydrocarbon processing industries.
- Member of an ICC Tribunal in a reference between USA and South African interests relating to a licence agreement and proprietary technology in respect of mine-protected military vehicles.
- Member of an ICC Tribunal in a reference between two major brewery groups over a trademark licence agreement relating to the production of a beer brand in Southern Africa.
- Member of an ICC Tribunal in a reference between Romanian and South African interests under a contract governed by French law for the manufacture and marketing of motor vehicles.
- Sole arbitrator in an ICC reference relating to a dispute between Israeli and Dutch interests arising from a commercial venture in Eastern Europe.
- Member of an ICC Tribunal in a reference between a UK corporation and the government of an East African country under an agreement to render pre-shipment customs inspection verification services.
- Sole arbitrator appointed by the parties in 6 references (which were heard concurrently) between the South African oil and gas parastatal, Sasol, and the major international petroleum companies operating in the South African market arising out of agreements for the manufacture and marketing of petroleum products, LPG and natural gas in South Africa.
- Sole arbitrator appointed by the LCIA in a reference between a USA corporation and Jordanian interests in respect of a contract for the construction of water reticulation works in Jordan.
- Sole arbitrator in two references under the LMAA rules (which were heard concurrently) between the disponent owners of a bulk carrier, the demise charterers, and the sellers of a cargo of coal, arising from the loading of hot coal at a Mocambique port and an ensuing methane explosion on the vessel.
- Sole arbitrator in an LCIA reference under a distributorship agreement for medical diagnostic equipment between Netherlands and Kuwaiti interests.

- Sole arbitrator in an LCIA reference relating to the establishment and operation of a t20 cricket league in a prominent cricketing jurisdiction.
- Sole arbitrator in an LCIA reference relating to loan and guarantee agreements.
- Sole arbitrator in an LCIA reference between South African and Israeli interests arising out of joint venture and shareholders' agreements for the manufacture of automotive components.
- Sole arbitrator in an ad hoc reference between UK and Canadian interests arising from contractual, accounting and tax disputes under a contract for the sale of shares in a platinum group metals processing venture.
- Sole arbitrator in a dispute between South African and Botswana interests relating to the exploitation of forestry reserves.
- Sole arbitrator in an Arbitration Foundation of Southern Africa reference relating to the preparation and implementation of closing date accounts in respect of the sale of a South African supermarket group.
- Sole arbitrator in two consolidated ICC references under a Software Agreement and Services Agreement between Swiss and South African interests.
- Member of an Appeal Tribunal in a dispute under special risks insurance for damage caused by forest fires.
- Sole arbitrator in an ICC reference arising from a JOA in respect of a hydrocarbon block in Columbia.
- Member of an ICC Tribunal in a reference between USA and UAE interests pursuant to a jet fuel and diesel supply contract.
- Member of an LCIA Tribunal in a reference between Chinese, Japanese and Singaporean interests pursuant to a long-term iron ore supply contract.
- Member of an LCIA Tribunal in a dispute between commodity traders and the Swaziland Sugar Association arising from ethyl alcohol supply contracts.
- Member of an LCIA Tribunal in a reference between Swiss and Indonesian interests relating to coal supply contracts.
- Sole arbitrator appointed by the London Commercial Court in two ad hoc references between the government of a West African country and a Korean corporation relating to contracts for the supply of heavy equipment.
- A number of references relating to the supply, off-take and out-turn/delivery of crude oil and petro-chemical products.

Arbitration accreditations

- Chartered Arbitrator (UK), 2008.

Fellowships:

- The Chartered Institute of Arbitrators (UK) (FCIArb).
- The Singapore Institute of Arbitrators (FSIArb).
- The Australian Centre for International Commercial Arbitration.
- The Association of Arbitrators of Southern Africa.

Arbitration Panel Memberships:

- Arbitration Foundation of Southern Africa (AFSA).
- Australian Centre for International Commercial Arbitration (ACICA).
- Badan Arbitrase Nasional Indonesia (BANI).
- British Columbia International Commercial Arbitration Centre (BCICAC).
- BVI International Arbitration Centre (BVI IAC).
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- Chicago International Dispute Resolution Association (CIDRA).
- China International Economic and Trade Arbitration Commission (CIETAC).

- China Maritime Arbitration Commission (CMAC).
- Chinese European Arbitrators' Centre (CEAC).
- Dubai International Arbitration Centre (DIAC).
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- Kuala Lumpur Regional Centre for Arbitration (KLRCAC).
- Pacific International Arbitration Centre (PIAC).
- Shanghai International Arbitration Centre (SHIAC).
- Singapore Chamber of Maritime Arbitration (SCMA).
- Singapore International Arbitration Centre (SIAC).

Other professional affiliations:

- Baltic Exchange (arbitrator member).
- Chinese-European Legal Association (CELA).
- Commercial Bar Association (COMBAR).
- International Council for Commercial Arbitration (ICCA).
- ICC (UK).
- Insurance and Reinsurance Arbitration Society (ARIAS).
- LMAA (supporting member).
- LCIA.
- Technical Bar Association (TECBAR).

Legal career

His arbitration work is informed by his broad experience as Counsel in commercial disputes, both in South Africa (1978-2000) and the United Kingdom (1996-2015), the main features of which are the following:

International Arbitration

He was leading Counsel in a number of high-value international arbitrations, which included:

Two long-running International Chamber of Commerce arbitrations before Singapore Tribunals on behalf of the Claimants, operators of pulp and paper and electricity generation plants in Thailand who sought substantial damages (in the form of lost pulp and paper production and diminished electricity generation) from the Finnish designers/suppliers of biomass-fuel fluidised bed power boilers on the grounds of defective design and unsuitability for burning locally-sourced biomass fuels, and negligent erection supervision.

An LCIA arbitration before a Paris Tribunal between Russian and Nigerian interests arising from an offshore oil prospecting licence granted by the Nigerian Government and ensuing commercial agreements.

An arbitration under UNCITRAL Rules before a London Tribunal between the operator of an oil and gas plant in Kazakhstan and a contractor, which raised issues relating to the proper performance of welding work on small-bore piping, quantification of loss and damage, and VAT liabilities under the laws of Kazakhstan.

An arbitration before a London Tribunal between the main contractor and a sub-contractor in respect of the design and installation of sub-sea flow-lines in an oil and gas field off the South African coast, the conversion of an oil tanker into an FPSO, and its installation on site.

Expert determination proceedings before an Australian QC under the laws of Western Australia between a leading mining house and commodity trader arising from an economic hardship clause in an iron ore supply contract and the collapse of the iron ore market in 2008.

An arbitration before a London Tribunal between the national shipping corporations of Iran and Azerbaijan, arising from a joint shipping venture in the Caspian Sea and the break-up of the Soviet Union which raised issues as to state succession and continuity of corporate legal personality under English conflict of laws and the laws of the USSR, Azerbaijan and Russia.

An arbitration before a London Tribunal between a leading commodity trader and the governmental purchasing agency of a European country relating to alleged breach of contract and fraud in respect of 32 cargoes of crude oil.

Two references between the insured interests and underwriters of aircraft hull and liability policies arising from aircraft accidents.

Commercial

He has considerable experience as an advocate in this field, both in South Africa and England, including a large amount of advisory work. He also has a considerable number of reported cases, particularly in the South African High Court and Appellate Division on a range of commercial issues, which include marine and non-marine insurance issues, schemes of arrangement under the South African Companies Act, subordination agreements and personal liability of company directors, the assignability of future and contingent rights, the concurrence of contractual and tortious remedies for pure economic loss, unjustified enrichment, the effect of bribery on contractual obligations, the recognition and enforcement of foreign judgments, vicarious liability for the negligence of independent contractors, the validity of discretionary trusts, insolvency issues, rights of pre-emption, conditions of auction, the stay of legal proceedings in favour of arbitration, exchange control issues, and the fiduciary duties of trustees and the liability of trustees' professional advisers for professional negligence. A list of his reported cases is available on request.

Mining and Energy

He specialised in mining law while in practice in South Africa, and held general retainers from the Anglo American Corporation, De Beers Mining Corporation, and their subsidiary and associated companies.

He was Counsel in a number of South African High Court and Appellate Division cases relating to a wide variety of mining-law issues. A list of his reported cases is available on request. His expertise in this field was acknowledged by his appointment as an expert witness on South African mining law on behalf of the investors in *Piero Foresti v The Government of the Republic of South Africa* (2008), a BIT case under ICSID Rules.

He was the leading counsel for Impala Platinum in their high-profile dispute with the Royal Bafokeng Nation which challenged Impala Platinum's rights to mine platinum group metals in Bophuthatswana, in the period 1996-1999 (*Bafokeng Tribe v Impala Platinum Ltd and Others* 1999 (3) SA 517 (BH)). He was also a member of Impala Platinum's legal team in the 1988-1989 litigation with the Royal Bafokeng Nation (*Bafokeng Tribe v Impala Platinum Limited and Others*, High Court of Bophuthatswana Judgment delivered on 30 May 1989).

Shipping and Commodities

His experience as Counsel in this field includes a number of arbitrations, London Commercial Court and Admiralty Court cases relating to disputes under demise, time, and voyage charters, bills of lading and shipbuilding contracts, including two references arising from sulphur corrosion damage to the holds of bulk carriers, and an arbitration arising from the sinking of a bulk carrier as a result of the fluidization of a fluorspar cargo.

His reported cases in this field include *Standard Chartered Bank v Dorchester LNG*, (The "Erin Schulte") [2013] EWHC 808 (Comm) and [2014] EWCA Civ 1382 (the provisions of COGSA, 1992 relating to the delivery of indorsed bills of lading and title to sue, the rights of a confirming bank under letters of credit, and the legal nature of a beneficiary's claims under such letters); *Macieo Shipping Ltd v Clipper Shipping Lines Ltd* ("The Clipper Sao Luis") [2000] 1 Lloyd's Rep. 645 (fire damage to cargo; liability for negligence of stevedores); *Seawind Tankers Corporation v Bayoil SA* [1999] 1 Lloyd's Rep. 211 (CA) (whether winding up proceedings competent on the basis of claims for freight and diversion expenses notwithstanding cross-claims for damages); *Marine Trade SA v Pioneer Freight Futures Co Ltd & Armada Singapore Pte Ltd* [2009] EWHC 2656 (Comm) (derivatives (forward freight agreements) and construction issues relating to the 1992 ISDA Master Agreement); *North Sea Energy Holdings BV v Petroleum Authority of Thailand* [1999] 1 Lloyd's Rep. 483 (CA) (disputes under a crude oil supply agreement and claim for damages on the basis of a "loss of chance"); *Toepfer v Societe Cargill* [1998] 1 Lloyd's Rep. 379 (CA) (anti-suit injunctions); and *Savage and Lovemore Mining (Pty) Ltd v International Shipping Co (Pty) Ltd* 1987 (2) SA 149 (W) (conformity of shipping documents presented under CIF sales of steam coal and effect of contravention of statutory export control scheme on seller's right to recover the purchase price).

Insurance

He has advised in a number of insurance disputes involving South African and UK insurers/insureds and reinsurance interests under both English and South African law, including asbestosis and silicosis claims.

He has also advised in a broad variety of insurance disputes, including liability and professional indemnity cases, and has appeared in a number of reported South African insurance cases, and in two arbitration references between the insured interests and the underwriters of hull and liability policies arising out of aircraft accidents.

Recommendations

He is a highly respected member of the Bar who has decades of experience in litigating energy issues, and increasingly focuses his practice in acting as an arbitrator. He is highly knowledgeable on upstream oil and gas contracts, licencing disputes, and mining transactions. Strengths: he has a formidable intellect and is a worthy opponent. [Chambers UK Bar 2016](#)

Michael Tselentis QC is highly rated for energy and mining disputes. Experienced at the South African Bar and in African mining matters generally. He is very user-friendly and a stickler for detail. Delivers great results. [Chambers Global 2015](#)

Michael Tselentis QC acts in litigation and arbitration and sits as an arbitrator in energy disputes. He has an internationally focused practice and appears in matters connected to areas such as oil and gas and mining. Strengths: very solid and very thorough, he leaves no stone unturned and has excellent analytical qualities. [Chambers UK Bar 2015](#)