Admissibility in International Arbitration: Chimera or Chameleon (or not)?

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Winnie Ma's questions for Michael Hwang

1. As demonstrated in your paper, we can indeed "accurately describe the legal principles without making reference to the term *admissibility*". However, in light of the growing recognition of the distinction between jurisdictional objections and admissibility objections (e.g. Hong Kong case of *C v D* and CIArb Practice Guideline on Jurisdictional Challenges), would you agree that admissibility of claim is at least an established category of non-jurisdictional objections?

2. Have the preconditions in multi-tiered dispute resolution clauses become an established category of non-jurisdictional objections, regardless of whether they should be characterised or classified as admissibility of claim?

   Or would you prefer to interpret them on a case-by-case basis, by applying the test of whether the precondition would impinge upon the objecting party's *consent* to the arbitration (or whether the objecting party intended the precondition to be a *condition* to its consent to arbitrate)?

3. Another approach might be: if the objection does not fall within the established but non-exhaustive categories of jurisdictional objections (e.g. the existence, validity or scope of arbitration agreement, the identity or standing of the parties), then such objection would be non-jurisdictional, unless it would impinge upon the objecting party's consent to arbitrate?

4. What is your view on the policy reason for treating preconditions in multi-tiered clauses as non-jurisdictional and therefore non-reviewable?

   For instance, paragraph 51 of the Hong Kong case of *C v D* states: "It would not be conducive to swift dispute resolution if controversies regarding procedural conditions… are regarded as jurisdictional questions, opening the way for duplicated arguments in court proceedings."

5. Your main criticism of the *tribunal versus claim test* is that it provides inadequate guidance on *when* or *how* an objection attacks the tribunal or the claim. However, Paulsson's test also focuses on "whether the success of the objection necessarily negates *consent* to the forum", which resonates with your recommended test. Can the two tests be merged, reconciled or harmonised as follows:

If the objection impinges upon the objecting party's *consent* to arbitrate, then it attacks the *tribunal* and is therefore *jurisdictional*. However, if the objection does not impinge upon the objecting party's consent to arbitrate, then it attacks the *claim* and is therefore *non-jurisdictional*.

6. Can you please provide further guidance on *when* or *how* an objection would impinge upon the objecting party's consent to arbitrate, especially in the context of interpreting a precondition in a multi-tiered clause?

7. The last statement in your conclusion states: "*The implication of the above is that the tribunal's ability to dismiss the proceedings extends not only to jurisdictional objections, but also to non-jurisdictional objections regarding the conduct of the arbitration*." Can you please elaborate on the implications of this implication? Does it have any relevance for early dismissal or early determination (as provided in various institutional arbitration rules)?