

Book Reviews

Pervasive Problems in International Arbitration

by **Loukas A. Mistelis and Julian D.M. Lew**

Kluwer Law International, 2006, 391 pages, £80.00, ISBN 9041124500

Reviewed by Sophie Nappert

Countless invitations to attend seminars and conferences are a fact of the international arbitration practitioner's life. High on the preferred list are the conferences of The School of International Arbitration at Queen Mary London, which examine topical questions, offer the right mix of practical and scholarly issues and attract the very best speakers on international arbitration today. The papers gathered in this book are evidence that the symposium held in London on April 10–12, 2005, under the banner "Pervasive Problems in International Arbitration", was no exception. The editors state that the symposium drew 320 participants from 71 countries.

It is to the great benefit of the international arbitration community that, in the delightful words of Professor Pieter Sanders (p.2), "Many fairy godmothers well known in the world of international arbitration stood at the cradle of the School [of International Arbitration]". One can only deplore the delay of over two years between the seminar and the publication of the papers. Whilst this does not detract from the overall usefulness of the book, inevitably some topics have been overtaken by developments.

The contributors read like a *Who's Who* of the most respected and authoritative voices in the field: Donald Francis Donovan and Alexander K.A. Greenawalt, Pierre Mayer, Catherine Kessedjian, V.V. Veeder Q.C., Klaus Sachs, Henri Alvarez, William W. Park, Wang Shengchang and Cao Lijun, Ali Yesilirmak, Emmanuel Gaillard, Nigel Blackaby, Matthew Weiniger, Gabrielle Kaufmann-Kohler, Bernard Hanotiau, Stephen Jagusch and Anthony Sinclair, Paul Friedland, Norah Gallagher and Stefan Kröll all provided contributions covering the wide spectrum of Arbitration and Policy Issues (Pt I), National and International Regulation of International Arbitration (Pt II), International Arbitration and State Parties (Pt III) and International Arbitration and Third Parties (Pt IV).

Many contributions open with: "The organisers set me the daunting task..." and indeed the speakers tackle the unsettled issues of the arbitrability of mandatory rules, the effect of international public policy in international arbitration; the determination and application of relevant national and international law and rules; the transparency of international arbitration; cost control and effective case management (Pt I); autonomy of the international arbitration process; the procedural soft law of international arbitration; the role of national courts and *lex fori* in international commercial arbitration; provisional measures; anti-suit injunctions (Pt II); a comparative analysis of investment arbitration versus commercial arbitration; jurisdictional challenges in BIT arbitrations; the interpretation of treaties (Pt III); the group of companies doctrine; issues of assignment and the impact of third parties on international arbitration; the *amicus* role; parallel proceedings *res judicata* and its funders; and arbitration and insolvency proceedings (Pt IV).

The book is carefully edited, with numbered paragraphs for easy reference. It is clearly intended for research purposes but is also extremely useful as an overview of burning issues at a given point in time. It is regrettable that the transcription of foreign language citations is sometimes inaccurate. Yet readers will recognise the unmistakable voices of the speakers and one can only agree with Catherine Kessedjian's opening remark on the determination and application of relevant national and international law and rules, that: "It is very difficult to be original on a subject such as the one which the editors asked us to study". Yet she and others take up the challenge with relish and great success.

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There are several text books currently on the market providing highly developed analyses of burning issues in international arbitration. Why should the busy practitioner or arbitrator turn to this one? Foremost because it provides an insightful snapshot, from some of the best brains in the business, of issues that remain controversial, but also because its perspective is truly transnational and multi-jurisdictional. The snapshot format is digestible to the reader whilst also allowing for a certain depth of analysis. Kudos, therefore, to the School of International Arbitration for its continued foresight and for participating in such a large measure to the advancement of international arbitration. As a postscriptum, the words of Wang Shengchang in this book are a sobering reminder that other pervasive issues in the world of arbitration remain unresolved. No doubt readers will see his contribution as bearing special significance and their thoughts will turn to him, as have this reviewer's.

Manual of International Dispute Resolution

by **Anthony Connerty**

The Commonwealth Secretariat, 2007, 387 pages, £30.00,

ISBN13: 97880850928372

Reviewed by Nicholas Padfield Q.C.

Anthony Connerty has written this book at the request of the Commonwealth Secretariat. It is effectively divided into two parts: disputes between States (supranational disputes) and their resolution by supranational bodies; and international commercial disputes and their resolution by international bodies.

Part I is an overview of "Dispute Avoidance and Resolution". The author rightly begins with the avoidance of a dispute as the first stage in the dispute resolution process. Negotiation to prevent a disagreement escalating into a dispute is touched on briefly as the most obvious method of dispute avoidance. Other avoidance mechanisms mentioned are "partnering", where the contracting parties involved in a project agree to co-operate in good faith to achieve through teamwork their mutual objectives, and various other forms of alternative dispute resolution. The chapters in Pt I give a brief introduction and outline of the material which appears in each of the succeeding Pts II-V. A useful Dispute Resolution Chart is included which shows at a glance the types of disputes covered by the book, and the applicable dispute resolution bodies and international conventions.

Part II considers supranational dispute resolution and deals with predominantly inter-State disputes. Territorial, maritime delimitation and investor-State disputes are the selected areas for discussion, as well as the Vienna Convention on the Law of Treaties, and the 1982 Convention on the Law of the Sea (UNCLOS III) is of special application. Investor-State disputes and investment treaty arbitration are dealt with in Ch.9. The twin objectives of the attraction of inward investment into the host state and the protection of that investment are discussed and explained by reference to the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID or Washington Convention) and to a specific bilateral investment treaty.

Part III deals with the applicable supranational dispute resolution bodies. The International Court of Justice, the Permanent Court of Arbitration, the International Tribunal for the Law of the Sea and the International Centre for Settlement of Investment Disputes are dealt with in the same order as the disputes in Pt II to which they apply. The treatment of each begins with an introduction, historical perspective, and basic overview, followed by a commentary on the relevant provisions and procedural rules. The practical benefit of this very clearly defined structure makes easily accessible and intelligible the mass of material which the author has marshalled. Comparisons between different types of dispute and their resolution can consequently readily be made.

Having dealt with supranational dispute resolution in Pts II and III, the author next deals with international commercial disputes where the dispute is between nationals of States and not States themselves. The starting point in Ch.16 is litigation, which in the author's