

International Arbitration: Law and Practice by Gary B. Born (Kluwer Law International BV, The Netherlands, Wolters Kluwer, Law & Business, 2012, ISBN 978-90-411-4562-8), pp. xxviii + 480; price: \$41.00.

(Book Review)

By

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The market is inundated with a plethora of textbooks and reference works on international arbitration and one might wonder if the book under review was necessary at all. This reviewer is very much in the positive. This book brings a breath of fresh air to the field from a practitioner's perspective with many insightful observations of theoretical relevance. The author is a practitioner of high distinction and has written volumes on international arbitration and dispute resolution which have brought to bear on this recent work. It is assumed that the book is primarily intended for students of international arbitration, but practitioners, experienced academics and experts will equally benefit from it for its wealth of information and refreshing treatment of the topics concerned. Though the author does not claim the book to be a comprehensive treatment of the subject like his previous volumes, *i.e. magnum opus*, on the subject, it represents a crisp explanation of the principles and rules of international arbitration which can prove to be a boon for quick and clear understanding of the subject. Unlike many other textbooks available in the market, this one covers not only international commercial arbitration but also investor-state arbitration and state-to-state arbitration in one volume.

The book is divided into three parts. Part I is mainly concerned with international arbitration agreements (chapters 1-5), Part II with international arbitral proceedings (chapters 6-14), and Part III with international arbitral awards (chapters 15-17) and investor-state and state-to-state arbitration (chapter 18). At the end of the book, three annexes including respectively the New York Convention (1958), the UNCITRAL Model

Law on International Commercial Arbitration – 2006 Revisions and the UNCITRAL Model Law on International Commercial Arbitration (1985) are provided.

Chapter 1 basically outlines various introductory aspects of international arbitration such as the definition of international arbitration and various forms of alternative dispute resolution, reasons for international arbitration, popularity of international arbitration, contemporary international arbitration conventions and national arbitration legislation, ad hoc and institutional arbitration, elements of international arbitration, choice of law in international arbitration, investor-state arbitration touching on the ICSID convention and bilateral investment treaties and state-to-state arbitration. In this chapter the author provides a bird's eye view of international arbitration (leaving a worm's eye view for the latter chapters) and in this task he has done well by going through the basics of the subject in a lucid manner. It would have been, however, relevant to mention 'med-arb' as an alternative form of dispute resolution and also its usefulness (and for that matter of mediation) in the context of investor-state disputes.

The rest of Part I (chapters 2-5) explores the principal legal and practical issues arising from international arbitration agreements. As an arbitration agreement (either in the form of an arbitration clause or submission agreement / 'compromise') constitutes the foundation of arbitration, the author has touched upon various issues relating to such agreements in light of relevant international conventions, national arbitration legislation, case law, and the laws that may be applicable to various matters such as arbitration agreement, arbitral procedure and the merits of the dispute, etc. The author has raised and effectively discussed interesting issues concerning the formation, validity and interpretation of international arbitration agreements. In this context the principal issues such as consent to arbitration agreement, essential terms of such agreements, writing requirement, arbitrability and non-arbitrability issues, scope of arbitration agreements and the implications of arbitration agreements to non-signatory parties are dealt with in a concise manner. The chapters are an engaging exposition of the aspects and issues of international arbitration agreements which may be found valuable as the author critically discusses most recent developments on the subject concerned. However, a checklist for the drafting of an international arbitration agreement would have been more useful in this part of the book.

Part II consists of nine chapters dealing with international arbitration proceedings from practical points of view. There is little discussion of the theoretical strands of arbitral procedural law such as the *lex arbitri*, the *lex loci arbitri*, the theory of localization, delocalization or denationalization of arbitration, or procedural *lex mercatoria*, etc. The reader will not find much here of the theoretical underpinnings of the international arbitral procedural law as the author's overall approach here is an applied one. The author has carefully articulated various procedural issues that the arbitral tribunal may confront in its day-to-day running of the arbitration proceedings. He is mindful of the implications of the mandatory procedural rules of the seat of the arbitration while laying stress on the international nature of arbitration. It is fair to say that the author has not been swept over by the theoretical dogmas, rather he seems to be objective and close to what is happening on the ground in the real-life situations. Learners will find the diagram entitled "Key Procedural Events in many International Arbitrations" (p.159) useful for understanding the arbitral process. I think that more of this diagrammatic presentation of other aspects of arbitration would make the book more interesting as a practical teaching tool and could prove popular with learners in professional training programmes and short-period intensive courses on international arbitration, let alone regular postgraduate programmes. It is also advisable to include a short and useful bibliography at the end of each chapter of the book to enhance its greater utility. In future editions of the book the author might do well to bear it in mind. Generally, practitioners will find this part of the book very stimulating.

Part III is concerned with various aspects of international arbitral awards. Chapter 15 deals with the legal framework in which international arbitral awards stand and also the nature, types and other basics of awards. While dealing with the legal framework the author mentions here the New York Convention only and not the ICSID convention as well. It is understood that the author in this chapter is concerned with both international commercial and investor-state arbitral awards and some highlight of the ICSID convention along with the New York Convention would have been appropriate. The chapter also would have benefitted from a checklist of the elements of an arbitral award as a drafting aid. In the following two chapters (*i.e.* 16 and 17) the author has concentrated on various pertinent issues concerning annulment, recognition and enforcement of international arbitral awards. He tends to support the liberal view that

an arbitral award annulled in the place where it was made should not be declined recognition elsewhere as he maintains that a few early decisions that so declined “generally contained little analysis, apparently resting on the (mistaken) notion that such an award “ceased to exist”...”(p.341). In this respect he also derives inspiration from the fact that in a growing number of cases on the matter in Europe and the USA his contention is supported. It is noticeable that the public policy and mandatory law issues have received in these two chapters some sprinkled treatment (*e.g.* pp. 325, 394, 401-2, 404). Since these issues are now gaining increasing importance in international arbitration, a separate chapter dedicated to the nature, scope, types and their implications for international arbitration would do proper justice to the topic. The author’s use of the expression “international arbitral awards” tends to encompass both the terms “foreign” and “non-domestic” awards used in Art. I (1) of the New York Convention (pp. 370-71). Under the ICSID Convention an ICSID arbitral award can be described straightway as an international arbitral award because of the framework in which it occurs. Arguably, it remains questionable, however, whether the New York Convention awards can be literally described as such (*i.e.* international arbitral awards) despite that Convention’s use of the terms “foreign” and “non-domestic”, especially given the fact that the notion “non-domestic” itself has caused some troubles on various occasions as reflected in case law about the exact implication of it. Thus, some terminological confusion remains here which the author might like to clarify in a future edition of the book.

The last chapter of Part III focuses on investor-state and state-to-state arbitration. Here the author has made a considerate effort to cover relevant important aspects concisely which proves to be a good short introduction to the topics. While distinguishing investor-state arbitration from international commercial arbitration some highlight of the ongoing debate on the public-law nature of the former could be useful. The interpretations of umbrella clauses and various treaty standards of treatment (*e.g.* fair and equitable treatment, full protection and security, and international minimum standard, etc.) are still causing confusion and uncertainty in the arbitral jurisprudence. Investor-state arbitration is, however, an evolving (lately a fast growing) area of law and the discussion of many relevant aspects of this chapter will shine brighter in the future in the burning candles of the day!

Overall, it is an outstanding book for teaching purposes as well as for learning as it is concise, lucid, very informative and insightful: the authoritative text on international arbitration. Even experienced international arbitration practitioners will find it refreshing and a delight to read. Above all, the book is a good value for money!