

Manual of International Dispute Resolution

by **Anthony Connerty**

The Commonwealth Secretariat, 2007, 387 pages, £30, 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 Part I give a brief introduction and outline of the material which appears in each of the succeeding Parts 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 supra-national 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 Chapter 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 Part 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 Parts 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 Chapter 16 is litigation, which in

the author's view is "probably still the major international dispute resolution process in use". He wisely eschews anything more than a cursory look at the various reasons why litigation is used in cases involving a foreign element. An in-depth analysis of litigation would necessarily involve a consideration of different legal systems and a comparison of different national laws in order to extract common principles applicable to international dispute resolution. Such an ambitious exercise would not fit easily into the scheme and structure of this book. He chooses to concentrate instead on the role of the national courts as support machinery for the arbitral process with particular reference to the English Arbitration Act 1996. There is a useful discussion of national courts as a forum for challenging and enforcing international awards with illustrations from England (challenge), the USA (challenge) and China (enforcement).

Chapters 17 and 18 deal with international commercial arbitration. Although the subject is vast, the author succeeds in providing a comprehensive overview, highlighting important areas and charting the course of the arbitral process. Chapter 18 considers a number of international commercial arbitral bodies and their arbitration rules, particularly those of UNCITRAL. The discussion of dispute resolution bodies conveniently follows the same order as the dispute section in Chapter 17.

The author concludes his survey of international dispute resolution by an examination of the advantages and disadvantage of alternative dispute resolution (Chapter 19) and expert determination (Chapter 20). The discussion of the various types of ADR is illuminating and shows how varied and flexible ADR is as a dispute resolution mechanism which can stand alone or be combined with other dispute resolution processes such as arbitration or litigation. Part IV ends with expert determination illustrated by two cases in the English Commercial Court.

The substantive part of the book ends with the "Electronic Era" and considers online dispute resolution in the two specific areas of documentary credits and domain name disputes. This is a fascinating subject rarely treated in a book dealing with general forms of international dispute resolution. The author's historical introduction is followed by an identification of the significant features and discussion of the ICC DOCDEX System (Chapter 23) and the WIPO Domain Name Dispute Resolution System (Chapter 24).

The Epilogue gives a summary of the five topics considered in the book and a look into the future by the author who ends by stressing the need for a fair legal framework.

This is an excellent book, which more than fulfils the author's aim. His clearly defined structure, economy and clarity of language make this an extremely useful weapon in the practitioner's armoury. Anthony Connerty fully justifies the tribute paid by Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States, that "the genius of the Manual's plan is that it is entirely practical, laying out the foundations and mechanics of various dispute-resolution frameworks, explaining the relevant tribunals and arbitration organisations, and illustrating the application of these to specific types of disputes".