

January 2014



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AIA Upcoming Events

EMTPJ 2014 Registrations Now Open!

Micula Brothers v Romania: A Roadmap for Future Investors in Europe

The Evolution of International Arbitration Law in Chile, Some Pending Tasks

Mediation Proceedings under the Polish Criminal Procedure

Mediation in Belgium: An Overview of Confidentiality, Mediator Liability and Future Trends 2014

Brussels Diplomatic Academy

Interview with Johan Billiet, President of AIA

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Book Review : Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads

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Book Review: International Commercial Arbitration; Standard Clauses and Forms-Commentary

Feature: AIA Gold Sponsor Billiet and Co

AIA Upcoming Events:

Future of Mediation in Belgium (FMB) Session
LOCATION: Institute for European Studies (BICCS) Rome Room, Pleinlaan 5, 1050 Brussels, Belgium
DATE: 10th of February 2014 from 2pm-5pm
[click here to register](#)

Seminar on Collective Redress through ADR:
LOCATION: Institute for European Studies (BICCS) Rome Room, Pleinlaan 5, 1050 Brussels, Belgium
DATE: 12th of March 2014 from 2pm-5pm followed by a Networking cocktail
[click here to register](#)

EMTPJ 2014 Session Now Open For Registrations 25% early bird discount!



On the 18th-30th of August 2014, the European Mediation Training for Practitioners of Justice (EMTPJ) session will run for its 5th consecutive year. The EMTPJ is an 11 day intensive training course on cross border mediation in civil and commercial matters. The training is unique because it is tailored to cover both theoretical and practical elements of mediation with a European perspective.

Subjects include: Analysis of conflict theory and mediation, analytical study of conflict mediation methods, theory and practice of EU contract law in Europe, EU ethics in mediation, interventions in specific situations, theory and practice of EU Law and Mediation Acts, the function of party experts and counsel in civil and commercial mediation and international mediation.

What opportunities does the EMTPJ offer:

1. It is open to professionals from various different fields whether they have a background in mediation or not
 2. It is recognised by just under 20 mediation centers in and beyond Europe
 3. It offers a truly international learning environment with students and teachers travelling from all over the world to participate
 4. It is based in Brussels, the heart of Europe
 5. It is flexible, for those who are interested in part of the program but not everything, we offer EMTPJ continuous hours which allows participants to pick and choose subjects
 6. It provides a solid basis for students to build their own mediation practice
- If you would like to receive more information and register for this years session, follow the link <http://www.emtpj.eu/2014/default.htm>.

Micula Brothers v Romania: A Road-map for Future Investors in Europe

by Deepu Jojo

The ICSID tribunal has held that a State cannot shun liability towards investors by relying on EU obligations. This decision will have further implications on trade deals between the EU and candidate countries for EU accession. On 11 December 2013, the tribunal in *Ioan Micula, Viorel Micula S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L vs. Romania*, found that Romania breached the fair and equitable treatment standard under the Sweden-Romania BIT when it was in the process of joining the EU, by removing incentives given to investors. The panel ordered Romania to pay a total of US\$250 million.

This decision has raised questions regarding the supremacy of EU law. Candidate countries are required to acquiesce to EU law and in this case, the European Commission emphasized that Romania was required to terminate the incentives prematurely. Importantly, the ECJ in *MOX plant and Kadi* judgements rejected the idea that international law obligations could supersede or modify existing EU law obligations of EU Member States.

It has been widely criticized that the rulings in cases such as *FIAMMI* and *Fedon* shields the EU legal order from its international obligations. Hence the present award is a landmark one, as the ICSID tribunal has rejected the perception that EU obligations can be used by a State to escape from its liability when the State has not given due rights to investors based on a BIT.

In 1990, the Micula brothers built a series of drink factories outside Oradea, a remote and underdeveloped region in Romania. The Romanian government affirmed the importance of the Micula brothers business in the region and in 1999, granted numerous incentives (Emergency Government Ordinance 24/1998) for the development of the region. These incentives included exemptions from customs duties and taxes on machinery, raw materials, profit and agricultural land as well as subsidies.

The Micula brothers presumed that the incentives would be available to them during a 10 year period in *Ștei-Nucet-Drăgănești*, a disfavored region located in Bihor County, northwestern Romania. The Micula brothers had relied on these incentives and expanded their business under a ten-year plan to build an integrated food platform, incorporating several companies in the process.

Romania started the process of accession to the European Union in 2000. In order to join the EU, candidates are required to inter alia remove State aid. A candidate country has to adopt, implement and enforce all the *acquis communautaire* to be allowed to join the EU.

The EU has previously stated that the *acquis communautaire* is necessary for the proper functioning of the internal market including the creation of a level playing field for investors. Romania had to therefore align its State aid law with the *acquis communautaire*, the European body of law as it existed at the time and comprising the EC's objectives, substantive rules, policies and, in particular, the primary and secondary legislation and case law – all of which form part of the legal order of the European Union.

The effect of adapting the *acquis communautaire* by re-

moving state aid, would enable the companies in Romania to withstand the competitive pressures of the internal market resulting from the full and direct application of the competition *acquis communautaire* upon accession. As a result, in 2005 Romania withdrew the incentives which it gave to the Micula brothers and introduced import tariffs. The Micula brothers filed a claim at ICSID in September 2006. The main contention brought by the Micula brothers was that there was a violation of the fair and equitable treatment standard contained in Article 2(3) of the Sweden-Romania BIT.

According to this standard, there should have been a consistent and stable legal environment, amplification of economic co-operation, promotion and protection of investment between Sweden and Romania. The European Commission intervened as an *amicus curiae* on behalf of Romania confirming that it required Romania to terminate the incentives prematurely. The European Commission had submitted that the BIT's European context and origin should be taken into account.

The European Commission pointed out that the ECJ recommended interpreting intra-EU BITs in light of EU law. The Commission also contended that as per Article 30(3) of the Vienna Convention on the Law of Treaties, the tribunal was directed to apply the EU's state aid law as opposed to provisions of the BIT that would prove incompatible with the EC Treaty.

The tribunal in this case, held that Romania's decision to revoke the incentives was reasonably tailored to the pursuit of a rational policy, specifically EU accession. There was an appropriate correlation between that objective and the measure adopted to achieve it. However, Romania's actions, for the most part appropriately and narrowly tailored in pursuit of a rational policy, were seen to be unfair or inequitable in this case. The tribunal concluded that Romania undermined the Claimants' legitimate expectations with respect to the continued availability of the incentives until the 1st of April 2009.

The tribunal found that Romania did not act in bad faith, but the manner in which Romania carried out that termination of the Emergency Government Ordinance 24/1998 regime in order to obtain EU accession, was not sufficiently transparent to meet the fair and equitable treatment standard.

The tribunal considers that transparency means that all relevant legal requirements for the purpose of initiating, completing and successfully operating investments made, or intended to be made, under the BIT should be capable of being readily known to all affected investors of another party. The tribunal found that Romania breached the fair and equitable treatment obligation by failing to inform the claimants in a timely manner that the Emergency Government Ordinance 24/1998 regime would be ended prior to its stated date of expiry.

The award lays out a future road-map for investors who claim that they have not received fair and equitable treatment from governments that alter legislation and promises made to fit EU trade policy. This award further reaffirms the international obligations of a state under a bilateral investment treaty.

The Evolution of International Arbitration Law in Chile, Some Pending Tasks

by Daniel Morgado

While domestic arbitration has been around in Chile for some time, international arbitration remains a relatively new concept. Chile was one of the first countries in Latin America to ratify the New York Convention (which entered into force on December 3, 1975), but it was not until 2004 that Chile enacted the UNCITRAL Model Law in full, taking a crucial step towards the development of international arbitration in Chile. It was Law Number 19,971 (International Commercial Arbitration Law) that many hailed to be an important advance for Chilean regulation because the former law was based on the formal Code of Civil Procedure, issued in 1903.

When the Arbitration Law entered into force, the forecast was positive. The aim? perhaps to convert Chile into a regional center for international arbitration. Additionally, several arbitrations were held under the auspices of the International Chamber of Commerce (ICC) and Chile's primary domestic arbitration institution, the Arbitration and Mediation Center of Santiago (CAM Santiago). The latter opened a special facility for international commercial arbitration in 2006. [Felipe Ossa y Jacob Stoehr, Five Years after the Enactment of the Model Law, Chilean Courts Continue to Support International IBA Arbitration News, March, 2010, p.165].

One of the most important characteristics of the new procedure was the limitations on the intervention of national courts in international arbitration procedures, but this feature is divided in two ways. First, the conduct of no intervention, which is a manifestation of the restrictions expressly ruled in the International Commercial Arbitration Law. Up to this point, Chile has been an example for Latin America. The second way is expressed by an interpretation task of national courts.

A problem occurs when national judges have to take a decision between two legislations that have validity in Chile, and in a famous pronouncement, the Supreme Court was in favour of the traditional law over the new modern Law. This was the case of EDFI International S.A. v. ENDESA International S.A. and YPF S.A., 4390-2010, where The Supreme Court of Justice rejected the enforcement of an award issued by an Arbitral Tribunal, under the rules of ICC seated in Buenos Aires, Argentina.

The award was set aside by an Argentinean Appeals Court and then EDFI International S.A. asked if it would be recognised and enforced in Chile. Although, the court's decision was right because according to the New York Convention those awards must be set aside according to the Article V, 1) (e), the decision was based on Article 246 of the Code of Civil Procedure, which sets forth that "...the award authenticity and effectiveness shall be proved by its approval by a superior court of the seat of the arbitration" [Felipe Nazar, Enforcement in Chile of International Arbitration Awards Vacated in the Seat of the Arbitration, P.3 in http://www.camsantiago.cl/articulos_online_2.htm].

Such inconsistency could be dangerous in two ways. First, it avoids the application of the modern law, which is forward looking, but has the same standing as the Code of Civil Procedure, and second, it is a demonstration of the underlying hostility against international commercial arbitration be-

cause when the courts decide to apply a general law over a specific regulation, they are showing a lack of legal certainty, consequently it generates ambiguity for the users of international commercial arbitration.

This problem is based on the civil procedural system, because the Civil Procedural Code is not prepared to receive the evolution of the new century and it doesn't have the flexibility to face changes in commercial relationships. However, the changes are evolving because in Chile there are two important legal reforms which will see the light shortly. They are the complete reform of the civil system of procedural law (bulletin number 8197-07 in Deputy's Chamber) and the reform for the internal arbitration system which is under preliminary discussion. Both reforms help Chile to be attractive as a seat of arbitration. At the same time, they help to consider arbitration from the beginning of the legal reforms and not only as later partial modifications.

Furthermore, not every characteristic of the Chilean arbitration system is wrong. Indeed there are several cases to confirm that the national courts have taken the right decisions. For example, D'Arcy Masius Benton & Bowles Inc (Chile) Ltda v Otero Lathrop Miguel, File No 865-06, Santiago Court of Appeal, 25 May 2006, D'Arcy Masius Benton & Bowles Inc (Chile) Ltda v Carlos Eugenio Jorquera Malschafsky, File No 88-06, Santiago Court of Appeals, 3 May 2006 and finally, Blue Water Maritime v Astilleros Marco Chilena Ltda, 26th Civil Court of Santiago, File No 24011-2009, 24 August 2009. In all of those cases Chile shows great maturity in the subject, but it doesn't solve the underlying problems. We have to understand that the phenomenon produced by the spreading of arbitration allows us to be more specific in our criticism and more rigorous in our analysis.

Then the lesson is clear. It is necessary to move more than one law to locate Chile as an attractive seat of international arbitration in the region. In this context, the beginning is auspicious but the most important is the evolution which is appearing under the civil procedural reforms, not only for the influence of the national arbitration regulation but for the importance of the national courts evolution to be prepared for new challenges in the context of arbitration both local and international.

They are a cornerstone in the evolution of arbitration through a harmonious legal system. That's why the new reforms are calling to be the solution for different problems and basis on which to talk seriously about the option of moving towards becoming a Centre of Arbitration in Latin America. It is not an easy task, but Chile would be prepared for this challenge. To finish, we have to remember that the number of arbitration cases in Latin America are increasing dramatically, even managing to overtake the numbers of arbitration cases which were filed by the United States and Canada together via the ICC Arbitration procedure during recent years.

Mediation Proceedings under the Polish Criminal Procedure

by Monika Ziobro

Mediation is an attempt to achieve a settlement agreement which will satisfy both parties involved in a criminal dispute. In such circumstances, disputes arising from crimes such as theft, assault, robbery, battery or damage to property are the main contenders for submission to the mediation process and are regulated by the Polish Penal Code. In

criminal cases, perpetrator-victim mediation has a crucial function because it can influence the degree of the punishment given, providing for the possibility of a conditional discontinuance of the proceedings or discontinuance of the proceedings altogether. It takes the form of a voluntary negotiation with the assistance of a neutral third person – the mediator.

The focal point of mediation in criminal cases is to consider the victim, his feelings, (anger, sadness, fear, humiliation, shame) and to potentially understand the behavior of the perpetrator in order to come to an arrangement on compensation or redress in the future. The mediator supports the mediation process, mitigates the mental and emotional strain of the parties and helps to solve the dispute without imposing a solution on the parties.

Mediation proceedings give parties the option to decide in their own case. Mediation hopefully helps them to recognize and better understand the position of the other party. It looks to facilitate the relation between both the victim and the defendant in a crime so as to promote a society with less injustice, danger and threat. The benefit: where parties are able to agree on a satisfactory outcome with the assistance of a mediator, there is no official 'loser'. There is speedy redress for damage and possible compensation awarded to the victim for non-pecuniary damage.

Legal basis

The mediation process has its roots in the Polish Criminal Procedure following the emergence of "restorative justice". Its emphasis is on repairing the harm caused by criminal behavior. Conversely, mediation was included in the criminal procedure because of the fact that Poland as a European Union country is obliged to follow EU law. The most influential aspect on that point was the Council Framework Decision 2001/220/JHA of 15th March 2001 on the standing of victims in criminal proceedings (replaced by the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012) and the Communication from the Council of Europe: Recommendation No. R (99) from 19th of September 1999. Currently, mediation in the Polish Criminal Law system is regulated by the Code of Criminal Procedure (article 23a, 40-42, 492-494, 619 § 2; further: CPC), specifically in article 53 of the Polish Penal Code and Regulation of the Ministry of Justice from the 13th of June 2003.

Characteristics

Mediation is a process which is voluntary, confidential and neutral. Information which was collected during the mediation process cannot be used either by the mediator or for the use of future criminal proceedings. The Court, and in preliminary proceedings, a public prosecutor or even the police may bring a case to mediation following initiative taken on behalf of the victim and the accused (art. 23a § 1 CPC).

The main premises which qualify the case for a mediation proceeding are: a) when the victim is identified (mediation cannot be made in the case of victimless crimes, for instance in the case of possession of a gun without a license) and b) potential criminality—mediation should not be referred to in mafia cases connected to organized crime where the offender was repeatedly punished. The other important features are the ones which describe both the characteristics of the perpetrator and the victim.

It is inadequate to start the mediation in cases in which the

perpetrator is highly demoralized and demonstrates aggression and or a low level of empathy. With regard to the victim, mediation should not be commenced if his/her position is too demanding and intolerant, which illustrates a slim chance of reaching a consensus. Ultimately, for a criminal case to be successful in a mediation, both parties need to have their psychological health because both will need to act individually with full awareness of all the required procedures during the mediation. If it is the wish of one party and the other does not disagree, then an attorney may be present.

Technical problems could arise when there are a large number of victims or offenders. In such cases mediation is ill advised. The legal qualification of the crime is also of no importance when it comes to starting a mediation procedure. Practice shows that the most successful mediations are in crimes such as battery, bodily injury and punishable threat but it does not mean that mediation cannot take place following crimes such as robbery with the use of a dangerous weapon. Mediation can be applied here and can be also successful, as this type of alternative dispute resolution in particular, depends wholeheartedly on the will of the parties.

In cases where one of the parties does not agree to either initiate or continue the mediation, the process must be stopped. Where it is a Court which submits a case to mediation, it appoints an institution or trustworthy person signed up to a district court list of regular mediators (every district court has its own list of mediators). It is worth mentioning that a judge, prosecutor, advocate, solicitor, people hired in such institutions, people excluded from the criminal process on the basis of article 40-42 CPC or a person involved with either party (for example fiancé) cannot be a mediator. After the case has been referred to mediation, the mediator contacts the perpetrator and victim to explain the goals of the whole process and provide them with their rights. The mediation can be in a form of face-to-face meetings (direct confrontation) as well as in the form of indirect contact whereby the mediator passes on messages.

After the mediation, there is an obligation to write a protocol with all the important settlements. The content of the arrangements which have been made is not subject to compulsory execution. In addition, it should be underlined that the content of a protocol cannot be used as evidence in a case. The content includes information about the number of mediation meetings, dates and places and it includes the personal data of the parties as well as the result (whether the mediation was successful or not).

After establishing a protocol, the mediator submits it to the Court. The result of the mediation is summarized in a protocol and its positive effect is a potentially significant factor that is taken into account by the Court while the penalty is being inflicted. The Perpetrator's reconciliation with a victim, his apologies (preferably together with an agreed method of redressing the damage) and repentance obviously give a positive image of the perpetrator in the eyes of Court. In cases concerning private prosecution, the positive effect of mediation can lead to discontinuance of the criminal proceedings. In cases of public prosecution, even if the parties reach a mutual understanding between themselves, the charges will not be dropped.

Mediation can be initiated at every level of criminal procedure – in the preliminary procedure as well as in the court procedure. It should not last more than one month but this

period is instructive which means it can be prolonged under certain circumstances.

Mediation in juvenile cases

Mediation in criminal cases is of special importance for young people and underage criminals who commit their first offence. Such circumstances are regulated by an additional Act dated the 26th of October 1982 on Juvenile Delinquency Proceedings. The victim or underage person who commits a crime which is prohibited by Polish Penal Law can come up with the initiative for mediation.

At every level of criminal procedure, the Family Court can bring a case before a mediator with the case records when it deems it is justified. It is forbidden for a Court to disclose to the mediator any data covered by state secrecy, professional secrecy, information about the state of juvenile health and information on his criminal records. During the proceedings, the underage criminal, his parents or curator and the victim will be present.

Mediation in those cases should finish within a 6 week time frame and it is during this period of time in which the mediator should deliver the summary of the mediation proceeding to the Court. If the mediation is successful the results might include: a) that the victim withdraws the prosecution, b) that the Court may use milder juvenile educational measures and limit the offender's detention in a juvenile center and c) that the offender is treated with more leniency during their stay (eg: more visiting hours etc).

Currently, mediation in criminal proceedings is financed by the Polish Treasury and the costs are then calculated in the final judgment (see: art. 619 § 2 CPC). In cases where parties signed up for mediation procedures themselves (without the referral of a Court, Prosecutor or Police), they are obliged to defray expenses before the mediation procedure begins.

Mediation in Belgium:

An Overview of Confidentiality, Mediator Liability and Future Trends 2014

by Olivia Staines

The present Law on Mediation is incorporated into Part 7 of the Belgian Judicial Code (hereinafter BJC) from Chapters I-III and Articles 1724-1737. Under this law, any dispute that can be the subject matter of a settlement agreement may be submitted to mediation. Chapter II clarifies that in the event of voluntary mediation; the parties and the mediator must arrange and sign a mediation protocol setting up the rules for the conduct of the mediation as well as its duration. Importantly, s.2 of the aforementioned chapter stipulates that the protocol must contain a restatement of the principle of confidentiality of all communications exchanged during the mediation.

Only in cases where mediation is conducted by the accredited mediator may the settlement agreement be submitted for homologation to the competent court. Chapter III, Article 1737, emphasizes that in court instigated mediation no appeal is possible against any court decision ordering the mediation, extending its duration or putting an end to the mediation.

Confidentiality

The Belgian legislator has recognized that confidentiality is a key condition to successful mediation proceedings. Chapter I, Article 1728 of the BJC deals with details pertaining to confidentiality.

Article 1728 of the BJC states that: All documents and communications made during and for the purpose of mediation are confidential. They cannot be referred to in judicial, administrative or arbitral proceedings or in any other dispute resolution procedure and are not admissible as evidence, not even as an extrajudicial testimony. If one of the parties violates the duty of confidentiality, the judge or the arbitrator decides whether any damages may be granted. If confidential documents have been disclosed they are ex officio excluded from the proceedings. There is no specific sanction under Article 1728 of the BJC, but a civil action under Article 1382 of the Belgian Civil Code can be initiated.

The mediator may not be called upon by the parties as a witness in civil or administrative proceedings relating to facts with which he or she has become acquainted in the course of the mediation process. If the mediator violates the duty of confidentiality then Article 1728, section 1 of the BJC in conjunction with article 458 of the Belgian Criminal Code are applicable to the mediator. The mediator is bound by professional secrecy.

With regard to experts, they are bound by the duty of confidentiality under s1(1) and s 1 (3).

The new CEPANI rules on mediation came into effect on 1 January 2013. Article 10 stipulates that all communications between the parties and the mediator are confidential. This provision does not cover pre-existing documents or documents obtained by a party outside of the context of the mediation and that are communicated in the context and for the purposes of the mediation between the parties, to the mediator or by the mediator to the parties or to one of the parties. However, if the documents were specifically communicated as confidential during the mediation process, documents cannot subsequently be used by the parties for purposes outside the mediation. The rules therefore reiterate and emphasize the importance of confidentiality in the mediation process.

Mediator liability and sanctions

One of the conditions to become an accredited mediator is to present the guarantees of independence and impartiality necessary to practice mediation. The Code of Conduct for accredited mediators stipulates in section 3 that the mediator has to be independent and impartial. If the situation of lack of independence or impartiality arises, the mediator is obliged to inform the parties about it and will have to retire from the mediation or have a written statement from the parties underlining that they still wish to continue nonetheless. Failing to adhere to the obligation of independence and impartiality may expose a mediator to sanctions under Article 1727 S.6, number 7 of the Judicial Code.

An accredited mediator is obliged to cover his or her mediation activity with professional liability insurance. This follows from the guidelines for the introduction of a file to obtain accreditation as a mediator, which the Federal Mediation Commission drafted (hereinafter FMC). In order to obtain a licence a mediator has to submit a request with the FMC.

It shall be accompanied by, inter alia, a certificate stating that the activity of the mediator is covered by a professional liability insurance or a certificate issued by an authorised insurer, showing that the professional liability will be covered from the date on which the approval to the mediator is granted. However, accreditation can be temporarily or permanently withdrawn if the mediator no longer meets the requirements of article 1726 of the BJC. There are specific sanctions for violation of the Code of Conduct for accredited mediators and a procedure for the imposition of such sanctions, which is regulated by the Decision of the 25 September 2008 on the application of sanctions ('*Décision du 25 Septembre 2008 relative à la procédure de retrait d'agrément, à la détermination des sanctions qui découlent du code de bonne conduite et à la procédure d'application de ces sanctions*').

As follows from the decision, the failure of a mediator to meet obligations under the law or decisions of the FMC can trigger his or her appearance before the civil or criminal courts. Additionally, any similar failure can lead to a procedure initiated by the General Commission of the FMC in accordance with article 1727, section 6(4) and (7) of the BJC. The sanctions that the FMC could impose are:

- A warning;
- A reprimand;
- A temporary withdrawal of the accreditation for a period of one month to one year; or
- A permanent withdrawal of the accreditation.

Ultimately, it is for the General Commission to withdraw, either temporarily or definitively, the accreditation of mediators who do not satisfy the conditions of Article 1726 of the BJC.

Future Trends

The Future of Mediation in Belgium (FMB) initiative aims to set out a common action plan for the enhancement and promotion of mediation in Belgium. During the very first FMB session, representatives from key Belgian mediation stakeholders were present including from the Belgian Federal Mediation Commission, AIA IVZW, Belmed and the (legal) insurance sector. The sessions have also attracted independent mediators, private and public mediation providers, politicians, providers of mediation trainings, ADR centers, experts, judges, particular industries, lawyers, in-house counsels, ombudsmen, business organisations and consumer organisations.

To this end, Belgian mediation stakeholders meet regularly, minimum twice a year, to brainstorm and discuss proposals and possibilities for reform. The meetings are held in English, Dutch and French. For more information on the FMB, visit the [AIA's website](#).

[Launch of The Brussels Diplomatic Academy 4 Day Seminar on Investment Arbitration](#)

VUB University, Brussels

The Brussels Diplomatic Academy has organised a 4 day Seminar on Investment Arbitration. During the course of the seminar, fundamental notions relevant to investment arbi-

tration will be analysed and a number of major cases will be reviewed in a critical manner.

We highly recommend the event to:

- investors and diplomats involved in economic diplomacy
- government officials responsible for negotiations of investment treaties and involved in representing a state in dispute resolution proceedings
- lawyers and in-house counsel
- civil servants involved in state's investment policies.

This is an unique opportunity and therefore not to be missed!

[More information](#)



Vrije
Universiteit
Brussel



[Interview with Johan Billiet](#)

President of AIA

1. What inspired you to establish the Association for International Arbitration?

I have been working as a lawyer for more than 36 years and I had to spend a lot of time representing clients in court. Also, I have served as a deputy judge for 25 years. During that time I have seen so many cases where time and money were simply wasted for fights in courts. If the parties had someone who could make them think about their cases from a different angle, they would most probably be able to reach a 'win-win' outcome.

Over time, I realised that I was not the only one who wanted to learn how to solve disputes out of court for the benefit of all involved. I concluded that forming an association promoting alternative dispute resolution was the best way to achieve this aim. This is how the Association for International Arbitration was born in 2001.

2. What are the main goals of AIA?

Our main goal is to promote the use of ADR and the quality of ADR proceedings in Belgium and internationally.

To achieve that aim, AIA regularly organises conferences and seminars on a wide range of ADR issues and we are actively involved in the organisation of various educational events internationally. Moreover, AIA collaborates with ADR institutions throughout the world. For example, we are actively involved in mediation through the European Network of Mediation Centres.

In addition, AIA encourages and promotes scholarship and publication in the field of ADR. For example, we invite our members and, in particular, young practitioners to submit their works for publication in our monthly newsletter 'In Touch'.

3. Why should practitioners interested in alternative dispute

resolution join AIA?

Amongst other benefits, our members always receive the latest updates on the developments in the field of ADR. Each month we publish and distribute a newsletter read by 50,000 people. Interested members also have an opportunity to submit their articles for publication either in our newsletter or in our book series. Our website has 300 unique visitors daily. Also, we regularly circulate email alerts about interesting events. AIA members also get visibility: they may create a professional profile on our website. Further, they receive free tickets to certain AIA events and networking cocktails. They also have free access to our library which contains all the latest publications on ADR.

4. What are the most successful projects of AIA?

One of the most successful AIA's trainings is the European Mediation Training for Practitioners of Justice (EMTPJ) which was launched in 2010 following a grant provided by the European Commission and a Qualifying Assessment Program (QAP) for mediators under the International Mediation Institute (IMI). The EMTPJ is a multicultural two-week training course which meets the different mediation criteria in EU member states and in a number of non-EU jurisdictions. It thus enables successful participants to obtain appointments as mediators both within and outside Europe. It is open to all. On the other hand, the Association's Qualifying Assessment Program approved by IMI gives experienced mediators with at least 200 hours mediation experience and 20 mediation cases the opportunity to become an IMI certified mediator with the online profile freely searchable through the IMI's open search engine.

The AIA book series has also been quite successful. Usually, the book is based on the results of a conference or a seminar. However, we also organise a call for papers and then choose the best for publication.

5. AIA recently launched the European Network of Mediation Centres. What are the main goals of the Network?

The most important goal is to bring together all institutions which are involved in mediation across Europe. The Network aims at the sharing of information and good practices in order to promote the use of mediation, to increase the quality of mediation and mediators and to enhance general public awareness to choose ADR as a method to resolve disputes on both a domestic and international level. Euresolve was brought to life recently and looks to develop into a platform to launch crossborder mediation.

6. Does AIA open for young practitioners and students?

Yes, AIA is open to both young practitioners and students. We have a special discount for members who are under 40. Also, we have an internship programme for students who want to get some experience in ADR. Moreover, AIA actively supports and promotes the Young Arbitrators in Belgium blog.

7. What are the future plans of AIA?

The main plan is to keep promoting ADR further. In on February 10, 2014, AIA organises the second session of the "Future of Mediation in Belgium" (FMB) initiative at the Institute for European Studies, Pleinlaan 5, 1050 Brussels. Then, on March 12, 2014, we hold a seminar on Collective Redress through ADR. We have Jacek Garstka, Legislative Officer at the European Commission, who will speak about collective re-

dress on an EU level. Also, Augusta Maciulevičiūtė, Senior Legal Officer from BEUC, the European Consumers Organisation, will address the impact of collective redress mechanisms on consumers. After we will have a round table discussion with specialists from Sweden, Spain and Belgium on class arbitration and the role of mediation in class actions.

In the long-term, we plan to develop a programme for courses on investment arbitration and negotiations. All our events can be found on the AIA website for those interested in attending. www.arbitration-adr.org/activities.

AIA CALL FOR SPONSORSHIP PART- NERS 2014

The Association for International Arbitration is seeking Sponsorship Partners from the 31st of January 2014 to the 31st of December 2014. In particular AIA offers the following Sponsorship Packages: Bronze, Silver and Gold.

• Bronze

- 100 words of company information in AIA Network Booklet and on website under Sponsorship Partners tab, title: 'AIA Bronze Partners'
- Partnership status visible at AIA events and on promotional material
- Company logo on AIA website
- Company logo on screen at our events
- Company logo in AIA's monthly newsletter 'In Touch'
- 3 free passes for company delegates to AIA events [excluding EMTPJ training]

• Silver

- ½ a page in AIA Network Booklet and on website under Sponsorship Partners tab, title: 'AIA Silver Partners'
- Partnership status visible at AIA events and promotional material
- Company logo on AIA website
- Company logo on screen at our events
- Possibility to distribute promotional materials at events in participants' handouts
- 6 free passes for company delegates to AIA events [excluding EMTPJ training]
- Opportunity to host own AIA event (topic, time and venue to be agreed)

• Gold

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Book Review:

Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads

by Deepu Jojo



Regulating Dispute Resolution, ADR and Access to Justice at the Crossroads is a very interesting book on the area of regulation of dispute resolution. This book is exhaustive in the sense that it covers all the varieties of dispute resolution such as negotiation, mediation, conciliation, expert opinion, mini-trial, ombudsman procedure, arbitration and court adjudication. When it comes to dispute resolution one of the major issues at hand is the handling of transnational disputes and the author provides a guide for regulation in this area. The extensive research conducted by the author is evident as he incorporates a wealth of Dispute resolution knowledge from about 12 jurisdictions.

The book is divided into two parts, the first part dealing with the fundamental issues and the second part dealing with the regulation of dispute resolution. There are a total of 15 chapters in the book, 3 chapters in the first part and 12 chapters in the second part.

Through the first part, the author gives a guide for regulating dispute resolution in civil and commercial matters. The author strives for clarity as he realizes that over-regulation should be avoided. The structures and principles which are mentioned are essentially recommendations for the regulation of dispute resolution but not for the practice of it.

The author also deals with questions such as whether regulation of dispute resolution can be based on principles and if it is indeed possible to develop such principles on a sound methodical basis. The author through this strives to see if meaningful lawmaking is possible. The author thus realizes that by being able to contribute to a just dispute resolution system, principle regulation is able to foster freedom, equality and efficiency. The author also uses Taxonomy to facilitate coherent, intelligible, systematic and reasoned law making and standard setting. He also does a comparison on Negotiation, Mediation, Conciliation, Arbitration and Adjudication to see which one suits the parties best.

Through the second part, the author deals with the regula-

tion of dispute resolution in countries such as Austria, Belgium, Wales, Denmark, France, Germany, Italy, Japan, Netherlands, Norway, Switzerland and the United States. One could say that a thorough work has been done by the author in covering all these jurisdictions and pertinent questions relating to dispute resolution in each specific jurisdiction have been dealt with well. In the book the social reality of dispute resolution has been analyzed and conclusions are drawn by the author regarding the policy choices, regulatory strategies and the practice of conflict resolution, the author aims to achieve an integration of theory and practice.

Whether it be how the traditionally litigation prone Austria is slowly changing into an ADR embracing country, or what the bumps are in the road for a successful ADR mechanism being implemented in Italy, the author has managed to cover some of the most important issues with respect to each specific jurisdiction.

The publication as a whole can be described as an extremely handy one and would merit close and thoughtful reading by any audience in the field of dispute resolution.

For more information see [Hart Publishing's page](#) about the book.

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Book Review: International Commercial Arbitration: Standard Clauses and Forms- Commentary

by Monika Ziobro



For centuries, states, businesses and individuals have used arbitration as a preferred mechanism to resolve disputes at the international level. With international commerce becoming extensively global and more complex, many lawyers have begun specializing in alternative dispute resolution (ADR). As a result, these lawyers need a comprehensive handbook with practical information to support their theoretical knowledge. Nicole Conrad, Peter Munch, and Jonathan Black-Branch have provided a comprehensive text for lawyers practicing ADR in their book, *International Commercial Arbitration: standard clauses and forms: commentary*.

The text offers nearly 900 pages of commentary to provide practitioners with a general model of international commercial arbitration and also more extensive analysis for use in different jurisdictions. Additionally, the book provides practical guidelines to help steer clients through arbitral proceedings. Readers can find a full range of sample clauses, documents and forms with regard to specific countries, such as: Austria, China, England and Wales, Germany, Hong Kong, India, Malaysia, Singapore, Sweden, Switzerland, and the United Arab Emirates (specifically Dubai).

The text is divided into 17 chapters and contains detailed information about the UNCITRAL Rules and the International Chamber of Commerce (ICC) Rules, which contains full details of arbitration institutions in France. There is also detailed information about and the WIPO Center, which is the administrative body for the two sets of WIPO arbitration rules (the WIPO Arbitration Rules and the WIPO Expedited Arbitration Rules). Finally, the book presents a comprehensive guide to institutional arbitration rules in Asia, introducing readers to the current rules of the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre, China International Economic and Trade Arbitration Commission, and the Kuala Lumpur Regional Centre for Arbitration.

International Commercial Arbitration: standard clauses and forms: commentary contains a full range of information about arbitration rules in different countries and various jurisdictions. Thus, it is particularly useful for professionals who are practicing domestic commercial arbitration and wish to extend their knowledge to the international level. The book is an extremely well-written resource and should find its place in the hands of business people as well as international law practitioners.

This excellent publication was written by leading practitioners in the field of international commercial arbitration. Nicole Conrad is a professor and the deputy head of the centre for competition and commercial law at the Zurich University of Applied Sciences (ZHAW) School of Management and Law. Peter Munch is a professor at ZHAW at the School of Management and Law. Jonathan Black-Branch is a professor of international law at Royal Holloway University in London.

For more information see [Hart Publishing's page](#) about the book.

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