



[arbitration-adr.org](http://arbitration-adr.org)

**CONTACT US:**

**146, Avenue Louise  
B-1050 Brussels  
Belgium**

**Fax: +32 2 646 24 31**

**Tel: +32 2 643 33 01**

**Email:**

**administration@arbitration-adr.org**

**Inside this month's issue:**

*AIA Upcoming Events* 1

*Sol and Sombra in Spain's New  
Mediation Law* 3

*Book Review: International Civil  
Litigation in United States Courts* 4

*Indian Arbitration Act and Ar-  
bitrations Involving Foreign Ele-  
ment* 5

*Book Review: Arbitration  
Advocacy in Changing Times* 6

*Report on the International ADR  
Conference, Nowy Tomysl, March  
16, 2012* 6

*Book Review: Energy Dispute  
Resolution: Investment Protection,  
Transit and the Energy Charter  
Treaty* 7

*AIA Recommends to Attend* 7

## AIA Upcoming Events

The Association for International Arbitration is proud to invite you to its upcoming:

### Seminars on International Arbitration

AIA in collaboration with the BICCS of the Vrije Universiteit Brussel will organize lectures and seminars on diverse topics of integral importance in the field of international arbitration. Sessions will be arranged on consecutive Fridays in the months of April and May, 2012 from 16:00 to 19:00 (see details below)

and

Conference on

### Arbitration in CIS countries: Current Issues

LOCATION: Brussels, Belgium

DATE: June 21, 2012

See details below and on [www.aiaconferences.com](http://www.aiaconferences.com)

and

### European Mediation Training For Practitioners of Justice

LOCATION: Brussels, Belgium

DATE: September 3-15, 2012

See details below and on [www.emtpj.eu](http://www.emtpj.eu)

## AIA UPCOMING EVENTS

### 1. Seminars on International Arbitration

The Association for International Arbitration (AIA) in collaboration with the Brussels Institute of Contemporary China Studies (BICCS) of the Vrije Universiteit Brussel (VUB) will organize lectures and seminars on diverse topics of integral importance in the field of international arbitration. Sessions will be arranged on consecutive Fridays in the months of April and May, 2012 from 16:00 to 19:00 at VUB Campus, Pleinlaan 5, 1050 Brussels, Belgium.

The first of these sessions is organized on April 20, 2012 and will be conducted by Mr. William E O'Brian Jr., an exponent in international business transactions, who will deliver a lecture on "Choice of law in arbitration". The participants will be provided with the opportunity to ask questions and initiate discussions upon delivery of the lecture;

Following this, on April 27, 2012 Mr. Philippe Denis, a reputed expert in arbitration law will conduct an interactive seminar on "International usages and UNIDROIT principles in international arbitration";

Subsequently, on May 4, 2012 Mr. Christian Leathley, a specialist in international commercial and investment arbitration, will conduct a seminar on "Investment Arbitration in Latin America: Regional Considerations";

Finally, on May 11, 2012 Mr. John Barnum, a renowned legal counsel specializing in international arbitration and commercial litigation will deliver a lecture followed by a questioning session on "Choices, Strategies and War Stories in International Commercial Arbitration".

Registration form: request at [events@arbitration-adr.org](mailto:events@arbitration-adr.org)

## 2. Arbitration in CIS Countries: Current Issues

On June 21, 2012 the Association for International Arbitration will host an international arbitration conference on Arbitration in CIS Countries: Current Issues. Speakers from various CIS jurisdictions will discuss a range of issues related to arbitration in the region. The participants will particularly focus on Russia, Kazakhstan and Ukraine.

Conference speakers include:

- ⇒ Vladimir Khvalei, Partner, Baker & McKenzie, Moscow; Vice-President of the International Court of Arbitration of the ICC
- ⇒ Maria J. Pereyra, Counsellor, Legal Affairs Division, WTO
- ⇒ Natalia Petrik, Legal Counsel, the SCC
- ⇒ Timur Aitkulov, Partner, Clifford Chance LLP, Moscow
- ⇒ Roman Zykov, PhD, LL.M, Senior Associate, Hannes Snellman (Helsinki, Moscow)
- ⇒ Valery Zhakenov, Partner, BMF Group LLP; Head of Arbitration Court under Chamber of Commerce and Industry of the Republic of Kazakhstan
- ⇒ Andrey Astapov, Managing Partner, Astapov Lawyers International Law Group
- ⇒ Yaraslau Kryvoi, Dr., Senior Lecturer at the University of West London
- ⇒ Igor Sierov, LL.M, Associate, ARBITRADE Attorneys-at-law
- ⇒ Dmitry Davydenko, PhD, Director of the Institute of Private International and Comparative Law (Moscow, Russia); Senior Associate, Muranov Chernyakov & Partners, Moscow
- ⇒ Dilyara Nigmatullina, LL.M, Manager, Association for International Arbitration, Of Counsel, Billiet&Co

Conference moderators include:

- ⇒ Edouard Bertrand, Of Counsel, Campbell, Philippart, Laigo & Associés, Paris
- ⇒ Geert Van Calster, Prof. Dr., Partner, DLA Piper UK LLP, Brussels
- ⇒ Johan Billiet, President, Association for International Arbitration, Senior Partner, Billiet&Co

### Preliminary program

8.30 – 9.00 Registration

9.00 – 11.15 General Policy of CIS Countries Towards Arbitration

- ⇒ Recommendations to non-CIS parties when choosing arbitration in CIS countries
- ⇒ General policy of Russia towards arbitration
- ⇒ General policy of Ukraine towards arbitration
- ⇒ Arbitration in Kazakhstan: contemporary status and perspectives of development

11.15 – 11.45 coffee-break

11.45 – 13.00 Specific Issues in Arbitration in CIS Countries (part 1)

- ⇒ Arbitrability of corporate and real estate disputes under Russian law

⇒ Bribery and Russia-related Arbitration

13.00 – 14.30 lunch

14.30 – 15.30 Specific Issues in Arbitration in CIS Countries (part 2)

⇒ Interim measures at the stage of recognition and enforcement of international arbitral awards on the territory of Ukraine: practical concerns

⇒ Enforcement of the arbitral award annulled in the country where it was rendered (experience of Russia)

15.30 – 16.00 coffee-break

16.00 – 18.00 Sector-Specific Arbitration

⇒ Arbitration in the Energy Sector involving parties from CIS countries

⇒ Investment Disputes at the SCC involving parties from CIS countries

⇒ WTO dispute settlement system and the CIS experience

18.00 – 19.00 Reception

More information about the conference and the registration form are available on [www.iaconferences.com](http://www.iaconferences.com)

## 3. European Mediation Training For Practitioners of Justice



After two years of success, Association for international Arbitration (AIA) is proud to announce the third edition of its European Mediation Training for Practitioners of Justice (EMTPJ). AIA initiated the EMTPJ project in the year 2010, with the support of the European commission and in collaboration with the HUB University of Brussels, Belgium and Warwick University, United Kingdom.

EMTPJ is recognized by the Belgian Federal Mediation Commission according to the Belgian Law of February 21, 2005 and the decision of February 1, 2007 concerning the settlement of the conditions and the procedure for the recognition of training institutes and of trainings for recognized mediators.

The program is accredited by mediation centres and has attracted many prominent and experienced mediators. The EMTPJ course is unique because it brings together attendees from all over the world, creating a multinational and multicultural environment that fosters exchange of different perspectives, experiences and gives possibility to form a genuine international mediation outlook. Upon successful completion of EMTPJ, students may apply for accreditation at mediation centres worldwide.

EMTPJ 2012 is a two-week training program that will take place this year from 3<sup>rd</sup> to 15<sup>th</sup> of Sep-



tember. In line with previous training courses, the EMTPJ 2012 program aims to introduce and promote the concept of European mediators in civil and commercial matters. The course will consist of 100 hours of intensive training sessions including an assessment day, which will cover the following essential topics: conflict theory and mediation, intervention in specific situations, theory and practice of contract law in Europe, EU ethics in mediation, analytical study of conflict resolution methods, the stages in mediation process, and practical training sessions.

The course lecturers for EMTPJ 2012 are: Mr. Eugene Becker, Mr. Johan Billiet, Mr. Philipp Howell-Richardson, Mr. Philippe Billiet, Mr. Alessandro Bruni, Mr. Andrew Colvin, Mr. Frank Fleerackers, Dr. Paul R Gibson, Ms. Lenka Hora Adema, Mr. Willem Meuwissen, Ms. Linda Reijkerker, Mr. Arthur Trossen, and Mr. Jacques de Waart.

For registration and a more detailed program of the course schedule, logistical information and lecturers, please visit the website: [www.emtpj.eu](http://www.emtpj.eu).

If you have any further questions, please feel free to contact us at: [emtpj@arbitration-adr.org](mailto:emtpj@arbitration-adr.org).

## Sol and Sombra in Spain's New Mediation Law by Clifford J. Hendel

The February issue of the AIA newsletter contained an article titled "*Plotting a Future for Commercial Mediation in Spain*". In the article, the context for the development of commercial mediation in Spain has been discussed (noting the content of the then-pending draft law), brief reflections on the likely near-term future of the institution of commercial mediation in Spain have been provided and some ways of accelerating towards that future have been suggested.

It came as a surprise in early March, that Spain's new government (the right-of-center Partido Popular) enacted – or perhaps imposed – a mediation law with immediate effect. By "imposed", the use of the fast-track Spanish legislative process of the Royal Decree-Law is meant, by which legislation is promulgated by executive order subject only to fast-track parliamentary review which typically results in little or no change in the legislation. Designed for urgent or emergency measures, the use of the Royal Decree-Law route for passing the mediation law was justified in this instance by concerns of EU sanctions for Spain (the former left-of-center government had let some nine months pass after the date established by the EU Mediation Directive (2008/52/EC) of May 21, 2011 for transposition into Spanish law). The use of the Royal Decree-Law process was apparently viewed as the best way to put an end to the risk of an embarrassing (and potentially) costly EU disciplinary proceeding against Spain.

Whether this is indeed a constitutionally-sufficient justification is an interesting question, which has been the subject of some polemic in local legal circles. Leaving this debate to more appropriate fora, this article will provide a brief appraisal of the law, pointing out some of its highlights, defects and key changes from the prior government's draft.

### Philosophy

The law's lengthy and somewhat pedagogical statement of motives describes mediation as being built on three pillars, identified as "de-judicialization" (favoring private and consensual resolution of disputes and leaving resolution by the over-crowded courts to be a last resort), "de-legalization" (favoring relational considerations over strictly

legal considerations) and "de-judicialization" (leaving to the parties the form and content of their ultimate agreement).

### Scope

While the scope of the Directive is limited to transnational civil and commercial disputes, the Spanish law will be applicable to all civil and commercial disputes (transnational or not) in which one of the parties has its domicile in Spain and the mediation takes place in Spain. In this regard, the law is reminiscent of the Spanish arbitration law, i.e., in being essentially "monist" in nature (with the same rules applying for domestic as for international matters) and in applying geographic criteria for determining scope of application.

Still, the concrete, consensual and typically pre-established nature of the seat of an international commercial arbitration makes it easier to know where an arbitration is or will be taking place than would seem to be the case with a mediation, which may "take place" virtually and not physically, or in various jurisdictions and without a unique and formal "seat". For this very reason, the UNCITRAL Model Law avoids, as "artificial" (according to the commentary), the use of the idea of the place of mediation. This could be considered as a first example in which the monist, all-inclusive nature of the legislation may make it inapt or overly-cumbersome insofar as commercial and particularly international commercial matters are concerned.

On the other hand, and in view of the constitutional structure of the Spanish state in which significant governmental and legislative attributes are "devolved" to the various regional entities (Autonomous Communities), the law purports to set out a mere framework for the operation of mediation without limiting or prejudicing regional legislation to develop or supplement the framework in areas of their competence. The fact that a large number of Autonomous Communities had already enacted mediation legislation (generally but not always, limited to concrete areas such as consumer and family matters) before the Royal Decree-Law was enacted on the national scale, and the less-than-perfect articulation of the dividing line between the respective competences of the national government and those of the regions, suggests a possibility for confusion and inefficiency in this regard in going forward.

### Voluntary but Bureaucratic Nature

As with the draft circulated by the prior government, the Royal Decree-Law trumpets the primacy of the voluntary nature of mediation that it conceives. Indeed, it removes a much-criticized feature of that draft pursuant to which small claims (of less than €6,000) would mandatorily need to pass through mediation before being brought to court.

The law evidences in many areas a somewhat lighter regulatory hand than the prior draft. For example, the prior draft included requirements as to the maintenance of a central register of qualified mediators and the suggestion of detailed requirements (university degree, etc) in order to accede to this register, the law in contrast eliminates the concept of the register and the requirement of a university degree. However, the possibility of such a register is mentioned as within the eventual scope of contemplated implementing regulations. Vague requirements as to training or accreditation which are included in the law offer comparatively little guidance (or solace) to the would-be mediator, and the suggestion of specific requirements

as to mediation training and the providers of such training could be viewed as excessive. In these areas in particular, it would seem that the regulatory hand remains at least potentially heavy. The law could be said in this regard to have opted to "kick the can down the road", leaving to the future regulation of various important and thorny issues of detail.

Thus, the general tonic of the law is rather (some would say) heavy-handed or bureaucratic. An example, shared again with the Spanish arbitration law, is the amorphous and questionably practical requirement that the mediator maintain professional liability insurance or similar security for his conduct. Since liability for an arbitrator's or mediator's conduct is limited to cases of gross negligence or willful misconduct, and since such events are generally non-insurable, the insurance requirements in either context (and the similar requirement for institutions) would seem a dead letter. Indeed, in light of the mediator's merely facilitative role, the insurance requirement seems unfounded and has been criticized as potentially violative of EU rules regarding freedom of services. Another example is found in the somewhat detailed requirements for the initial constitutive session and the minutes to be prepared as a result. The law maintains the aspirational statement that the process should be concluded as rapidly as possible and with the minimum number of sessions, but eliminating the six-month deadline contained in the draft.

## Other

As with the draft, the law maintains a certain parallel treatment (for enforcement purposes) of a mediation agreement and an arbitral award, although naturally only the latter can benefit from the provisions of the New York Convention. This aspect, manifested by way of example in the requirement that the mediator sign the eventual agreement and that it be notarized in order to accelerate its execution, has been criticized as reflecting an inaccurate view as to what, in essence, the mediation agreement is: a settlement agreement between the parties and only facilitated (not crafted, ratified or guaranteed) by the mediator, and not a judicial or quasi-judicial instrument.

The law specifically contemplates that Spain's chambers of commerce - local or regional bodies typically active in administering and promoting arbitration as an alternative to judicial resolution of disputes - shall be authorized and encouraged to act in the context of mediation. The speed and enthusiasm with which the chambers of commerce pick up the mediation ball could be a good litmus test to measure the interest of the Spanish business community in general in exploring and developing the institution.

The law incorporates the principal aspects of the Directive, including provisions as to confidentiality, suspension of statute of limitations or prescription periods, and the like.

## Conclusion - Shades of Grey

Without doubt, the practitioners of commercial dispute resolution (and particularly international and alternative dispute resolution) will be frustrated with and critical of both the content of the Royal Decree-Law and the rapid and non-consultative manner in which it was enacted. They will argue that mediation needs detailed regulation much less than it needs visibility, and that visibility will come from confidence and confidence from practice (and not from regulation). They will argue that the lighter the regulatory hand is,

the better. They will argue that the lofty, aspirational rhetoric of the statement of motives (and the three claimed pillars on which mediation, as conceived by the law, is stated to be built) may not be accomplished - and may even be obstructed - by the details of the legislation. And they will argue that the legislative process chosen for enactment of the law is particularly unfortunate, if not to say abusive.

They may well be right. Still in all, the Directive needed to be transposed, law has at least lightened to some extent the burden of the more restrictive draft and evidences that the new government is anxious to take, and to be seen to be taking, action to unblock the courts in a fashion similar to that of many of its European peers.

Time will tell if there is more "sol" than "sombra" in the new Spanish legislation. On first review, there seems to be a good amount of each.

## Book Review: International Civil Litigation in United States Courts

By Ian de Lombaert



The fifth edition of this comprehensive book is published by Wolters Kluwer Law & Business and is justified by the dramatic changes in the law governing international civil litigation in the United States, as well as by the latest decisions of the United States Supreme Court rendered after the previous edition. These recent decisions had an impact

on personal jurisdiction, sovereign immunity and extraterritoriality. The authors also did not neglect the importance of international aspects in relation to international civil litigation. Even though, the focus of the fifth edition is on United States law, a comparative study of foreign law, especially European law, is a new inclusion to the recent edition.

This book has been authored by reputed jurists such as Gary B. Born and Peter B. Rutledge.

Gary B. Born is regarded as a worldwide renowned authority on international commercial arbitration and international litigation. He is the Chair of the International Arbitration Practice Group and tops the list of leading international arbitration practitioners. He is also a member of the American Law Institute and has published numerous works on international litigation and international arbitration.

Peter B. Rutledge is a professor of law at the University of Georgia School of Law. In the teaching and research he concentrates on international dispute resolution, arbitration, international business transactions and the United States Supreme Court. Before entering the teaching arena, he has worked at prominent international law firms.

Comprised of four parts and thirteen chapters, this book offers a complete overview of cases and materials, commentaries and notes.

The first part, *Judicial Jurisdiction*, examines the jurisdiction of United States courts over the subject matter and parties to international disputes. This section also deals with the foreign sovereign immunity and jurisdiction of

United States courts over foreign states. The international facet of this part considers the angle of European solutions and how the abovementioned issues were addressed during negotiations regarding creation of an international convention on jurisdiction and judgments under the auspices of the Hague Conference on Private International Law, which at the end did not come into existence.

When dealing with international disputes, the *Choice of Forum*, which is the title of the second part, is of particular importance. There can be large differences in approaching a wide number of issues between jurisdictions and this can have far-reaching consequences, especially when one of the jurisdictions concerned is the United States of America. Both on the federal and state level, related devices have been put in place to permit litigants to influence the choice of law. The discussion of these devices constitutes the second part of the book, namely the *forum non conveniens* doctrine, forum selection agreements, *lis pendens* stays and anti-suit injunctions.

Part three discusses United States rules governing both *legislative jurisdiction and choice of law* in international cases. First, restrictions on the legislative jurisdiction of United States courts, imposed both by the United States Constitution and international law are tackled. Second, the choice of law rules used by United States courts is examined. Finally, the focus has been put on two specialized choice of law rules that have particular significance in United States civil litigation, namely the act of state doctrine and the foreign sovereign compulsion doctrine.

In the final part, *International Judicial Assistance*, the most significant aspects of this topic are examined. The chapters in this section deal with the service of United States process abroad in international disputes, the rules concerning the taking of evidence abroad and the discovery of materials outside the United States, the discussion about recognition and enforcement of foreign judgments, and finally with international commercial arbitration, focusing specifically on the assistance that United States courts provide to the arbitral process.

In conclusion, while offering a broad and inclusive coverage, the text is presented in an accessible framework which is understandable, easy to refer and explanative. The fifth edition of *International Civil Litigation in United States Courts* is a commendable reference material and a must-have for legal practitioners and students who wish to enrich their knowledge in this field.

This book is available for purchase at [www.kluwerlaw.com](http://www.kluwerlaw.com) for €105. The members of AIA receive a 10% discount.

## Indian Arbitration Act and Arbitrations Involving Foreign Element

by Viplav Sharma

The applicability of Part-I of the (Indian) Arbitration and Conciliation Act, 1996 ("**the Act**") to Arbitration Agreements governed by foreign law, i.e., law other than Indian Law and to foreign seated arbitrations, has been a question of debate for a long time, especially in view of the decisions of the Supreme Court of India in *Bhatia International v Bulk Trading SA*, [(2002) 4 SCC 105] ("*Bhatia International*"). Part-I of the (Indian) Arbitration and Conciliation Act, 1996 details the provisions relating to arbitration law.

A broader holding in *Bhatia International* was that in an arbitration not taking place in India, some or all of the provi-

sions of Part I may be excluded by an express or implied agreement of the parties:

"32. To conclude, we hold that the provisions of Part I would apply to all arbitrations and to all proceedings relating thereto. Where such arbitration is held in India the provisions of Part I would compulsorily apply and parties are free to deviate only to the extent permitted by the derogable provisions of Part I. In case of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rule will not apply."**[Emphasis added]**

Part I of the Act was clearly not intended to apply to arbitrations outside India, which is evidently clear from Section 2 (2) of the Act, which provides that Part I "shall apply where the place of arbitration is in India". Although the Act does not expressly provide that Part I shall not apply where the place of arbitration is not in India, that must necessarily follow. Section 1(2) of the Act provides that it extends to the whole of India (subject to certain exceptions relating to the State of Jammu & Kashmir). Since the Act's territorial scope is limited to India, Part I is inapplicable outside India, unless parties by contract expressly choose to apply one or more provisions of Part I in an arbitration outside India, or where although the seat of arbitration is in India, an arbitration sitting for convenience (such as witness examination) is held outside India. However, the above-mentioned observations in *Bhatia International* have led to a substantial debate as to the applicability of Part-I of the Act in cases where the same has not been "expressly" excluded by the agreement of parties. In other words, what would constitute "implied" exclusion of Part-I of the Act and whether choice of a foreign law to govern the arbitration agreement or of a seat of arbitration outside India would constitute "implied" exclusion of Part-I of the Act? This issue had attained a complex shape, especially in view of several conflicting judgments of the courts in India.

Recently, there have been two decisions of the Supreme Court of India, which have sought to clarify the issue. First, in *Videocon Industries Limited v Union of India and Anr.*, [(2011) 6 SCC 161], the arbitration agreement was governed by the Laws of England. The Supreme Court of India held that such choice of a foreign law by the parties necessarily implied that the parties had agreed to exclude the provisions of Part I of the Act.

Second, in *Yograj Infrastructure Ltd. v Ssang Yong Engineering and Construction Co. Ltd.*, (2011) 9 SCALE 567, the seat of arbitration was Singapore and the "Singapore International Arbitration Centre (SIAC) Rules" were applicable. However, the governing law of the contract was the Indian Law. The Supreme Court, while dealing with the applicability of the provisions of Part I of the Act, to the proceedings being conducted by the Arbitrator in Singapore, in accordance with the "Singapore International Arbitration Centre (SIAC) Rules", held thus:

"In the instant case, Section 2(2) of the 1996 Act, in fact, indicates that Part I would apply only in cases where the seat of arbitration is in India. This Court in *Bhatia International* (supra), while considering the said

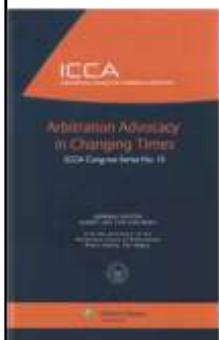


provision, held that in certain situations the provision of Part I of the aforesaid Act would apply even when the seat of arbitration was not in India. In the instant case, once the parties had specifically agreed that the arbitration proceedings would be conducted in accordance with the SIAC Rules, which includes Rule 32, the decision in Bhatia International and the subsequent decisions on the same lines, would no longer apply in the instant case where the parties had willingly agreed to be governed by the SIAC Rules."

The above-mentioned two decisions would go a long way in demystifying the uncertainty surrounding the question as to what would constitute "implied" exclusion of Part-I of the Act, and it is anticipated that the same would serve as a guide to the courts in India, in the future, while deciding issues relating to "implied" exclusion of Part-I of the Act.

## Book Review: Arbitration Advocacy in Changing Times

by Anand Ayyappan Udayakumar



This book is the fifteenth volume in the International Council for Commercial Arbitration (ICCA) Congress Series and contains the proceedings of the XX International Arbitration Congress organized in Rio de Janeiro, Brazil from May 23-26, 2010 which is celebrated as the first ICCA Congress to be held in South America. This text has been published by Kluwer Law International and is edited by Mr. Albert Jan Van Den Berg with the assistance of the Permanent Court of Arbitration, Peace Palace, The Hague.

The different chapters enumerate the topics addressed and discussed by the Panels during the course of the Congress sessions. The summary of these chapters is as follows:

- ⇒ Effective advocacy in arbitration - Deals with transnational advocates, expectations related to them, international arbitration as a transnational justice system, and responds to the question of whether advocacy in international arbitration is an art, a science or a technique.
- ⇒ Strategic management in commencing arbitration - Throws light on how strategic management can aid in promoting peace before conflict by integrating alternative methods of dispute resolution into the arbitration process, and the importance of using media in investor-state arbitration.
- ⇒ Effective advocacy in the written and procedural phases of arbitration - Discusses written advocacy, discovery in international arbitration as a foreign creature for civil lawyers and witness preparation as a key to effective advocacy in international arbitration.
- ⇒ Experts: Neutrals or Advocates? - Elaborates on whether experts should be treated as neutrals or

advocates, analyses protocol on expert teaming as a new approach to expert evidence and on discoverability of communications between counsel and party-appointed experts in international arbitration.

- ⇒ The hearing - Deals with oral advocacy and time control in international arbitration, the examination and cross-examination of witnesses, the effective use of legal sources, the relative merits of oral argument and post-hearing briefs.
- ⇒ Advocacy after the issue of the arbitral award - Provides details on post-award advocacy as the relationship between interim and final awards, correction and clarification of arbitral awards, and ICSID annulment procedure as a balancing exercise between correctness and finality.
- ⇒ Arbitration advocacy and constitutional law - Deals with the fundamental rights and international arbitration, the internationalization of administrative contracts, arbitration and the Calvo doctrine, mandatory rules on what lawyers are to do, and state immunity, public policy and international commercial arbitration.
- ⇒ Keynote address: advocacy and ethics in international arbitration - Elaborates on ethics in international arbitration, the compelling need for a code of ethics in international arbitration, and the international code of ethics for lawyers practising before international arbitral tribunals.

On perusing the text, it is inferable that the Congress analysed in detail each of these topics and considered the current trends in arbitration advocacy. The Panels comprised reputed international arbitration practitioners and academics originating from diverse locations around the world.

The book also contains a list of session reporters, participants of the Congress, and ICCA officers and members. This text is an extremely informative compilation on arbitration advocacy and is a must-have for practitioners and students of international arbitration.

This book is available for purchase at [www.kluwerlaw.com](http://www.kluwerlaw.com). The members of AIA receive a 10% discount.

## Report on the International ADR Conference, Nowy Tomyśl, March 16, 2012

The International Conference from the series "Arbitration and Mediation in Theory and Practice" under the title "Unification Tendencies in ADR and the Divergences of National Legal Systems" was held in Nowy Tomyśl, Poland on March 16, 2012. The conference was organized by the Arbitration Court of the Nowy Tomyśl Chamber of Commerce and hosted at Hotel HI-FI.

This event attracted prominent ADR academics and professionals from Poland, Belgium, Russia, Germany, China, Ukraine, Kazakhstan and Lithuania and was attended by more than 150 participants. The conference was conducted in English, Polish and Russian, and the simultaneous translation into



each of the three languages was provided.

The intensive conference day was split into three sessions, namely Unification Tendencies in ADR, Peculiarities of National Legal Systems and Specific Questions of ADR.

Throughout the first session the speakers addressed, among others, the following issues: UNCITRAL Arbitration Rules after changes in 2010, unification tendencies and the risk of overregulation of the arbitration procedure, changes to Russian legislation further to UNCITRAL Model Law on International Commercial Arbitration as amended in 2006, unification tendencies and national differences in commercial mediation and new ICC Rules of Arbitration.

The panel of the second session discussed peculiarities of the arbitration and mediation in Germany, Ukraine and Kazakhstan and ADR in China.

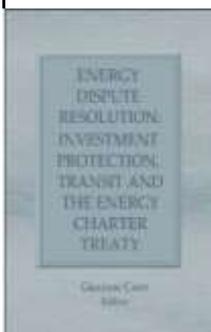
The focus of the third and final session was on such topics as arbitral awards, agreements resulting from the mediation procedure and their execution, interim measures in arbitral proceedings in Germany, the place of arbitration in Polish Law, evidence in the arbitral proceedings, recognition and enforcement of foreign arbitral awards in Lithuania, and regulation of arbitration fees in legislation of Eastern and Central European countries.

On behalf of the conference participants, we would like to thank the organizers for bringing together ADR practitioners and academics and creating the atmosphere, fostering extensive exchange of experience between the speakers and the audience.



## Book Review: Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty

by Charline Hoever



Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty, edited by Graham Coop, is a post-conference publication of the 'investment protection and transit issues in energy dispute resolution' conference held on October 22<sup>nd</sup> and 23<sup>rd</sup>, 2009. This text has been published by JurisNet, LLC, USA.

This book consists of a wide spectrum of

essays on the Energy Charter Treaty (ECT) and is structured into four parts.

The first part outlines the recent developments, awards and decisions in ECT Investment Arbitrations. The chapters in this part provide a thorough description of the topic under consideration and additionally present an insight into the future of arbitration under the ECT.

The second part addresses the correlation between the ECT, Lisbon Treaty and BITs. The chapters herein discuss various complications in investment protection, foreign direct investment and responsibility of the EU under the ECT.

Part three focuses on provisional applications of the ECT in light of cases such as Yukos, Petrobart v. Kyrgyzstan, and Kardassopoulos v. Georgia.

The last part discusses the problems arising out of the East-West transit for the ECT and possible arbitration regimes for gas transit disputes.

This book includes a CD which contains the Energy Treaty and documents related to it, the ICSID Convention and its Regulations and Rules, ICSID Additional Facility Rules, SCC Arbitration Rules of 2010, and the UNCITRAL Arbitration Rules of 2010. Overall, this book is highly recommended and represents an invaluable resource for students, academics and lawyers focusing on Energy, Investment Law and/or International Arbitration.

The book: Energy Dispute Resolution: Investment Protection, Transit and the Energy Charter Treaty is available for purchase at: [http://www.jurispub.com/cart.php?m=product\\_detail&p=10152](http://www.jurispub.com/cart.php?m=product_detail&p=10152)

### *AIA Recommends to attend*

## Latin American Arbitration Congress (Lima, April 23 & 24, 2012)

"Arbitration in Latin America, Growth Crisis? New and Old problems" is the title with which the Peruvian Arbitration Institute – IPA in Spanish, - supported by the Peruvian Section of the Spanish Arbitration Club, is presenting the VI<sup>th</sup> edition of the renowned Latin American Arbitration Congress to be held in Lima on April 23<sup>rd</sup> and 24<sup>th</sup> of this year. The Congress will be conducted in English and Spanish, and the simultaneous translation into each of the two languages will be provided.

Following the success of previous years, the Latin American Arbitration Congress has become the most important academic and professional activity in relation to arbitration in South America, not only for the richness of its topics but also for getting together renowned arbitrators, representatives of prestigious firms around the world, judges, lawyers, business people and state representatives.

For further information, please feel free to contact the VI<sup>th</sup> Latin American Arbitration Congress President, Carlos A. Soto ([csoto@munizlaw.com](mailto:csoto@munizlaw.com); [csoto@peruarbitraje.org](mailto:csoto@peruarbitraje.org))