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Comparative Law of International Arbitration
by **Jean-François Poudret and Sébastien Besson**
Sweet & Maxwell, 2007, 925 pages, £370.00, ISBN 978-0-421-93210-4
Reviewed by Steven A. Certilman

Jean-François Poudret and Sébastien Besson have seized upon the success of their well-received 2002 book published in French, *Droit Comparé de l'Arbitrage International*, to offer us an English second edition. Poudret is an Honorary Professor of the University of Lausanne and Besson an attorney in Geneva. The book has been ably translated through the combined efforts of Professor Stephen V. Berti of Zurich and attorney Annette Ponti of Geneva.

Its stated purpose is to compare the solutions established by various national legal schemes to the main questions that arise in international arbitration. This, of course, means highlighting

the similarities and differences as a stopping point toward multi-national harmonisation. Weighing in at 925 pages, the book delivers broad insight, from practical nuts and bolts to published cases and their underlying approaches and philosophies to steamy academic debate and urgings for change to interpretative views of leading practitioners. A bit of humour is also not out of the question.

This book, it must be said, is Euro-centric. Its focus is:

> "the analysis and comparison of the main international treaties in the field of arbitration, the UNCITRAL Model Law and the laws of seven European countries: Germany, Great Britain, Belgium, France, Italy, Holland and Sweden, as well as the laws of Switzerland" (a distinction the basis for which eludes me).

While references to the laws of other countries are more-than-occasionally made, I feel obliged to express my hope for a third edition that broadens the geographic scope to be more inclusive and thereby presents a fuller comparison of international law.

The book is a compendium of thought built upon the authors' tireless collection and organisation of countless articles and other writings, a one-stop shop for the current state of thinking on the many evolving, as well as the fully debated, issues in international arbitration. Perhaps with some exasperation, the authors express the view that the differences "remain more numerous and important than some arbitration practitioners would like to admit." They wave the banner for harmonisation and offer concrete proposals which will further debate and perhaps lead to harmonised European, if not global solutions.

One of the more interesting and surprising topics treated is this: What is Arbitration? Apparently, none of the national laws under comparison contains a definition, so a definition may be obtained only inferentially from the codes of civil procedures of some of the compared countries. Even the New York Convention leaves a definition to the prevailing winds. The authors review the definitions offered by a number of scholars, all fundamentally unvaried but each with its own slant, and then they add their own. To what extent do these minor variations reflect the values and approaches to the process imparted by each writer's national law? I am reminded of the lyric from *The Sound of Music*, "How do you hold a moonbeam in your hand?".

Every tome has its most revealing moments, its kernels of core insight into a fundamental perspective of the authors. Poudret and Besson reveal that they do not:

> "share the opinion of those who promote the total autonomy of arbitration based upon the principle of the sole will of the parties and the absence of all state control."

Well put! Closure of this debate may well bring a cascade of other solutions and invigorate a long march toward global harmonisation.

In a wry observation with respect to a particular High Court of England decision which establishes a laissez-faire approach for English courts in requests for orders in aid of third party disclosure in arbitrations, the authors note that it "illustrates that English arbitration law becomes more and more complex for continental lawyers as time passes!" Lest English practitioners be in any way offended by the observation, the view is more than counter-balanced by the authors' laudatory view that the Arbitration Act 1996 "is certainly the most comprehensive arbitration statute today".

A few sections in this book merit mention. There is a new section on anti-suit injunctions, a topic that is as unsettled as it is timely. Electronic arbitration is discussed, albeit briefly. The general conclusions chapter at the book's end contains many thought-provoking observations which make this book a standout in the study of international arbitration, including an overview of both the similarities and the differences among the selected national arbitration statutes.

Where the venerable *Law and Practice of International Commercial Arbitration* by Redfern and Hunter is a detailed guide of black letter law and practice for practitioners, Poudret and Besson have given us a work which satisfies the needs of academics and practitioners alike by offering practical guidance over a thorough range of practice topics while, in doing so, fuelling many of the ongoing debates in the international arbitration field. I hope, in the next edition, the authors treat in greater detail their views on the topic of arbitrator duty of disclosure, a topic only briefly addressed.

Mercifully for the environment, rather than including the complete texts of the many international treaties and laws on which it focuses, the book's appendix now includes their internet addresses for download on demand. This is a decision which must be applauded. The publishers note with some apparent pride that "No natural forests were destroyed to make this product; only farmed timber was used and replanted". Noble, indeed, but perhaps the publishers would consider being as kind to the eyes as they are to the environment. The book is printed in a font only a myopic millipede could appreciate. One cannot single out this book, as there has been a trend of late among legal publishers to reduce font sizes, perhaps as a method of avoiding the need for an additional volume. Nevertheless, considering the average age of arbitration practitioners and others who are likely within the target market for this book, I suspect a somewhat larger font would be greatly appreciated. Until then, nothing a good pair of reading glasses will not cure.