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LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION

by

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1986

FOREWORD

Arnold McNair and Hersch Lauterpacht in their 1929 preface to the series of the *Annual Digest of International Law Cases* said the work was "prompted by the suspicion that there is more international law already in existence and daily accumulating than this world dreams of!"

Today one might say much the same of the law and practice of international commercial arbitration. International commercial disputes do not fit into the orthodox moulds of dispute procedures. Frequently involving both a sovereign state and a "foreign" corporation, they lie astraddle the frontiers of international law and domestic law and raise questions that do not fit into the categories of private international law either. Not least they raise peculiar problems of enforcement.

Yet it is because this institution of the international commercial contract crosses back and forth between what were supposed only recently to be wholly different and even barely related systems of law that it is able to fulfil a role that, judging only from the sheer volume of international commercial arbitration in modern times, is of great importance to international trade and the movement of investment and skills across international frontiers. No businessman in his right mind seeks litigation. Nevertheless, it is of great importance, as a last resort, to have the possibility of the settlement of these disputes according to accepted and predictable rules of law and equity.

That of course—the existence of accepted and predictable rules of law and equity—is the crux of the matter. On many of the questions that arise—applicable law, whether as proper law or the *lex arbitri*; jurisdiction questions of many kinds; nationalisation; compensation; revision of contracts; the meaning of many of the standard clauses of contract—there have been sharp differences of opinion about the law, particularly between what may conventionally, but not always very accurately, be described as developed and developing States. Not so long ago, indeed, commercial arbitration tended to be regarded with suspicion in the Third World. But attitudes have been changing rapidly. The days when a western judge could bring himself to suppose that a developing state had no commercial law of its own are long since passed. In this process of evolution it is not surprising that case law has shown itself uncommonly well adapted to developing new rules and practices better suited to the conditions of the modern world, and to finding new and reasonable accommodations between the reasonable needs of both host state and foreign investor. The fact of the matter is that there is now to hand a great body of practice, precedent and experience taking shape as a new and elaborate kind of international mercantile law.

This valuable study of that evolving international commercial law is written by two authors who not only know how to tackle the essentially academic problems of systematising a body of law by reasoned exposition, but have the great asset of very considerable hard practical experience in this field to draw upon. It is a book for the beginner because it introduces

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