



## BOOK REVIEW: Handbook of Investment Arbitration

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Handbook of Investment Arbitration

This handbook provides parties, counsel and arbitrators with full guidance on how to deal with a BIT arbitration under the ICSID Arbitration Rules. Necessarily then, the book is a big one. Yet the guidance is direct, succinct and, on the whole, sufficient.

Above all, this book is unusually judicious in its selection of argument and authority and in the positions it adopts. Most admirably, it achieves that uniquely difficult task in international law of expounding a legal position with as much clarity as the legal sources will bear, but not building beyond. This is no colossus with feet of clay.

Its first part comprises an article-by-article commentary on the ICSID Convention, ICSID Institution Rules and ICSID Arbitration Rules. Its second part is a commentary on selected BITs that have frequently given rise to ICSID arbitrations.

Thus the first part deals essentially with ICSID jurisdiction and

procedure, while the second deals with BIT jurisdiction and the substantive issues of ICSID arbitration under BITs.

The book doesn't cover, or deals only tangentially with, the procedure under non-ICSID rules and the ICSID additional facility rules, and the substance of arbitrations arising under other instruments such as investment agreements and contracts. ICSID conciliation is also not a central concern of the book.

The book takes pains to set out the sources that will most authoritatively support each proposition. The result is a work that is forcefully shaped, and which proceeds with a vigorous sense of purpose.

Part 1 relies heavily on ICSID decisions and displays an experienced common law practitioner's virtuosity in deducing propositions from the case law, and weaving reasoning into the commentary. There is frequent and often extensive citation from the cases, and it is almost unerringly appropriate.

In relation to the ICSID Convention and its meaning, there is also frequent citation of the Report of the Executive Directors of the World Bank submitted on 18 March 1965 on the ICSID Convention, and of the *travaux préparatoires*.

In its commentary on the ICSID Arbitration Rules, the book also relies on general (often commercial) arbitration material – state court decisions, arbitration literature, arbitration laws and rules, etc. This is again appropriate in that the ICSID Arbitration Rules frequently raise issues common to any international arbitration. A lifetime's close and thorough acquaintance with the practice of international arbitration is particularly apparent in this section.

Wisely, the book separates its commentary on the ICSID arbitration instruments from that on the

substantive interpretation of international investment law. Again, the strength of Webster's treatment is commentary that relies on identified authoritative sources. Webster identifies as the nucleus of his sources a limited number of BITs:

*There are thousands of BITs in force around the world. Nevertheless, almost 40 per cent of the reported ICSID cases involve one of 10 countries: Argentina, Venezuela, Ecuador, Egypt, the Democratic Republic of Congo, Turkey, Senegal, Spain, Jordan and Pakistan. Those cases in turn involve in particular the following BITs: the US-Argentina BIT, the US-Ecuador BIT, the UK-Argentina BIT, the France-Argentina BIT, the Netherlands-Czech BIT. [page 647]*

Webster therefore builds his substantive commentary around these BITs, and the cases decided under them. This not only makes the material manageable, but it allows like cases to be compared with like. For almost invariably, every BIT has its own story (even where it is based on a model) and often particular phrasing.

The following major substantive matters are covered in the book: the concepts of investor, investment, and investment disputes; standards of protection; the defence of necessity; expropriation; and remedies. On every occasion, before examining the individual cases under the selected BITs, Webster provides introductory remarks presenting the topic, identifying issues, and justifying positions adopted.

The handbook will therefore be gratefully received as a reliable statement of the law of BIT arbitrations under the ICSID Rules.

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