

CHAPTER-6

UNCITRAL ARBITRATION RULES TO RESOLVE COMMERCIAL DISPUTES ALONG THE NEW SILK ROAD OF CHINA

*Jean A Berlie**

I INTRODUCTION

This chapter aims to study past arbitration of commercial disputes and compare previous arbitrations of the United Nations Commission on International Trade Law (UNCITRAL) to try to find how commercial conflicts along the New Silk Road should eventually be resolved.

International arbitration has a long history. The oldest historical facts on arbitration are probably the following cases of the *Lagash v Umma* in 2550 BC by King Mesilin of Kish and in 2100 BC the case of *Ur v Lagash*, in which the King of Uruk ordered one city to return territory sized by force from another¹. Tribunals included three to a large number of arbitrators in ancient time and throughout the Hellenic world for 500 years.

In 1923, initially under the auspices of the International Chamber of Commerce, major trading nations negotiated the Geneva Protocol on Arbitration Clauses in Commercial Matters².

We cannot forget the past history of China and its Land and Maritime Silk Road, so instead of quoting mainly “One Belt, One Road” (OBOR), I will simply mention New Silk Road. Since the Han Dynasty (206 BC–220 AD), China had a long history along the Silk Road, an ancient network of land and maritime trade routes, connecting China to Eurasia and the Sea. Historically it linked Chinese, Arabs and Armenians, as well as Bactrians, Greeks, and Georgians, and also Jews, Somalis, Syrians and Turkmens; nowadays the New Maritime and Land Silk Road is much more global. Many countries joined the New Silk Road, even Western countries such as Australia.

International arbitration is necessary when commercial and investment disputes occur. UNCITRAL’s arbitral rules, a good model for the New Silk Road, states that “where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules”. Subject to these Rules, the arbitral tribunal may conduct the arbitration. The question is: Does China accept to abide to the rules of

* PhD Researcher, The Education University of Hong Kong, Hong Kong.

¹ Lafont, ‘L’ arbitrage en Mésopotamie’ (2000) Rev. arb. 557; See also Gary B Born *International Commercial Arbitration* (Wolters Kluwer, Boston, 2009) Vol 1.

² Born above n 1, 9, 58-61.

the UNCITRAL commercial arbitration? The European Union, for example, is creating an Investment Tribunal System (ITS) with a permanent tribunal and an appeal tribunal. The European Union has already started a proposal with its trading partners towards the creation of a Multilateral Investment Court, using the ITS as a model³. Is it appealing to China? Arbitration is very important topic, but in legal citations it has not a good visibility, only one article is quoted by Mary M. Princes⁴. Of course, there are other arbitral institutions than the United Nations such as the International Chamber of Commerce (ICC) established in 1923.

The establishment of UNCITRAL constitutes one of the major achievements of the United Nations on 21 June 1985⁵. Currently it seems that China continues to be very involved with the United Nations and prefers to think to study dealing with UNCITRAL than with other arbitration rules. At present the New Silk Road study concerning UNCITRAL shows that: Chinese regulation using a comparative (mainly European Union-EU) and empirical analysis of regulation is also possible and could be combined with “sophisticated legal and institutional knowledge with systematic empirical methods [providing] reliable guidance to policy makers”⁶. The New Silk Road is very ambitious and aims to develop new capabilities such as information, logistics, finance and airports, economic and commercial as well as investment. Well accepted disputes resolution, arbitration and mediation along the “Road” will contribute to its development.

Arbitration is primarily a question of arbitrators. “Arbitrators should understand the many characteristics and potential challenges that distinguish international arbitration from domestic commercial arbitrations as well as the features they have in common”⁷. Concerning the New Silk Road and its legal future “the very nature of international arbitration dictates that arbitrators and counsel should be alert to consider innovative processes to transcend legal, language, and cultural barriers”⁸.

II COMMERCIAL DISPUTES

“Let us never forget that we are dealing here with arbitration between parties who approach matters from a business point-of-view and regard speed and finality as a value in truly “settling” a dispute”⁹.

However, globalization forces “position states as competitors in the market” and this may involve new type of disputes¹⁰. Disputes and conflicts are global and may occur on the New

³ Elsa Sardinha, ‘The new EU-led approach to investor-state arbitration: The Investment Tribunal System in the Comprehensive Economic Trade Agreement (CETA) and the EU-Vietnam Free Trade Agreement’ (2017) 32(3) ICSID Review 625-672.

⁴ See Mary Miles Prince, *Prince’s Dictionary of Legal Citations*, (9th edn, New York: William S. Hein 2017), 29. For the author, ‘A Companion to the *Blue book*, not a replacement’ (19th edn).

⁵ Gerold Herrmann, ‘The UNCITRAL Model Law on International Commercial Arbitration: Introduction and General Provisions’ in Petar Sarcevic (ed), *Essay on International Commercial Arbitration* (London/Dordrecht: Martinus Nijhoff, 1989) 3-26, 3.

⁶ Xu Wenming, Stephan E. Weishaar and Niels Philipsen ‘Introduction’ in Xu Wenming, Stephan E. Weishaar and Niels Philipsen (eds) *Regulatory Reform in China and the EU* (Cheltenham, UK 2017); See also Jonathan Klick, ‘Empirical Analysis of Regulations: The Promise of Field Experiments in China’ in Xu Wenming, Stephan E. Weishaar and Niels Philipsen (eds) *Regulatory Reform in China and the EU* (Cheltenham, UK 2017) 267.

⁷ James M. Gaitis (ed.), *The College of Commercial Arbitrators: Guide to the Best Practices in Commercial Arbitration* (2nd edn, New York: Juris 2010) 201.

⁸ *Ibid* 236.

⁹ Herrmann (n 5) 26.

Silk Road; “conflict is likely to emerge at two levels: externally, with the surrounding institutions that maintain the established order in society; and externally by positioning women’s [and men’s] needs and desires against those expressed by their close family/household members [and by their company in the case of commercial disputes]”¹¹. For that, this chapter will focus on commercial dispute cases to see how the global New Silk Road, and China, could eventually benefit from UNCITRAL legal structure. The UNCITRAL Arbitration Rules were prepared in consultation with lawyers from many countries and were published in final form in 1976. However, the history of UNCITRAL started on 19 November 2002 “amidst the vital discussions on global security and possible military intervention in Iraq spanning across the halls and offices of the United Nations’ (U.N.) Headquarters, when the General Assembly adopted Resolution 57/18”. It recommended that the UN Member States consider and enact the UNCITRAL Model Law on International Commercial Conciliation 2005.

Model Law is a valuable “method of settling disputes arising in international commercial relations [...] All States [should] give due consideration to the Model Law on International Commercial Arbitration”¹². UNCITRAL’s arbitration is generally rapid or urgent, to facilitate to conduct of the arbitral proceeding, it could be *interim* or provisional. “Whatever interim measures are available before the arbitral tribunal, the applicant must first apply before the arbitral tribunal before seeking the assistance of court”¹³. “That does not necessarily mean that the court cannot grant interim measures order in the first instance”¹⁴.

For speedy, efficient enforcement of foreign arbitration for a successful party enforcing the award is essential. A checklist of enforcement of awards is useful¹⁵:

Enforcement

Requirements

Enforcement of interim awards

Grounds for refusing an enforcement

Limitation periods

State immunity

Practical enforcement of award.

Commercial disputes are frequent but does not exclude the importance of investment disputes. Commerce is an activity on a large scale, this is why the term “commercial disputes” is preferred. UNCITRAL rules are not allied to any arbitral institution. The UNCITRAL Working Group on International Arbitration aims at remedying the absence of a virtually universal

¹⁰ Nelly P Stromquist, ‘Education as a Means for Empowering Women’ in Jane L. Parpart, et al. (eds) *Rethinking Empowerment* (London: Routledge 2002) 22-38, 29.

¹¹ Ibid 36.

¹² Haji H Sultan bin Abu Backer Hamid, *International Arbitration with Commentary to Malaysian Arbitration Act 2005* (Kuala Lumpur: Janab SDN. Bhd, c. 2016) 631.

¹³ See *Lady Muriel v Transorient Shipping Ltd* [1995] 2 HKC 320. See also Hamid (n11) 276.

¹⁴ See *Yenepoya Minearais and Granite.sn Ltd v Mahartashtra Apex Corp. Ltd* [2004] 2 Arb LR 47, (Kar)(DB) 277.

¹⁵ David Howell, ‘Enforcement of Awards’ in Lawrence W Newman, et al (eds), *International Arbitration Checklist*, (New York: Baker & McKenzie 2004) 181-190, 181.

international instrument on the recognition and enforcement of foreign arbitral awards¹⁶. The UNCITRAL Working Group “declined to adopt any general conflicts rules”¹⁷. So, we have to look at past commercial disputes solved by UNCITRAL to see how UNCITRAL arbitration is useful to settle commercial disputes related to the New Silk Road. International arbitration is so important that India enacted the Arbitration Act of 1996 to fight the multiples opportunities of “impairing the efficacy of the arbitral process as an independent and alternative means of dispute resolution” with the previous Indian Arbitration Act of 1940.

On 15 and 16 May 2017, the Kuala Lumpur International Alternative Dispute Resolution Week (KLIAW 2017) international conference was held in Kuala Lumpur at the art premises, Bangunan Sulaiman. This important event along the New Silk Road aimed at reflecting developments and trends on the global international arbitration market in 2016. Speakers analyzed topical issues including prominent cases. It also analyzed trends and studies on the relevance of the arbitral world in Malaysia and Asia. The 3-day alternative dispute resolution (ADR) event was made up of ten sessions, nine breakout sessions and six social events. They include: the Inauguration of the KLRCA Arbitration Rules 2017, conferences covering heated areas such as “Breaking down the One Belt, One Road (OBOR)” and also aimed to “Reconciling Arbitral Regimes along the Silk Route’ (Kuala Lumpur 2017). It is a good example of the current importance of this question of international arbitration; other conferences will certainly continue to be linked to this study. Hong Kong International Arbitration (HKIAC) is well known in HKSAR but needs to include more arbitrators in its center. Other centers of arbitration in Hong Kong will take advantage of the new will of Mainland China progressing slowly towards more consideration of international arbitration and mediation. It is impossible to forecast more in 2018. The well attended conference of the Law Department of the City University of Hong Kong on 21 September 2018 on the Belt and Road in *Putonghua* also demonstrates the importance of international arbitration and mediation progressing slowly.

III ARBITRATION RULES AND PROCEEDINGS

“Arbitration [*L. arbitratio*] is a method for resolving disputes between parties in private, as an alternative to litigation in the courts. The parties agree to designate an independent third party [... UNCITRAL or another tribunal] to resolve the dispute between them and to be bound by their decision.”¹⁸. The UNCITRAL Arbitration Rules “are selected by parties either as part of their contract, or after a dispute arises, to govern the conduct of an arbitration intended to resolve a dispute or disputes between themselves”. “Under UNCITRAL rule 1 the agreement to arbitrate must be in writing”¹⁹.

The parties involved in a dispute cannot ask assistance services to UNCITRAL during their eventual disputes. UNCITRAL also does not provide any list of arbitrators or conciliators.

¹⁶ Andreas Carlevaris, ‘The enforcement of interim measures ordered by international arbitrators: Different legislative approaches and recent developments in the amendment of the UNCITRAL model law’ in Association for International Arbitration (ed), *Interim Measures in International Commercial Arbitration* (Antwerpen: Maklu 2017) 13.

¹⁷ Howard M. Holtzmann and Joseph E. Neuhaus, *A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary* (Boston: Kluwer 1989) 38.

¹⁸ Deacons, A Simple Guide to Arbitration in Hong Kong (*Deacons*, Hong Kong, n. d.) <http://www.deacons.com.hk/assets/Images/News%20and%20Insights/Publication/2014/201405_GuidetoArbitrationInHK_newVI.pdf> accessed on 21 November 2016.

¹⁹ Issak I Dore, *The UNCITRAL Framework for Arbitration in Contemporary Perspective* (Graham & Trotman/Martinus Nijhoff 1993) 40.

The conduct of arbitral proceedings includes the following elements directed at potential parties to a dispute²⁰:

Equal treatment of parties, rules of procedures, place of arbitration, commencement of arbitration, language, claim and defence, hearings and written proceedings, default of a party, expert appointed, court assistance in taking evidence. Article 18 establishes that each party must be treated with equality. The three rules of procedure are 1) the parties are free to agree on the arbitral procedure, 2) absence of agreement, the arbitral tribunal may conduct the arbitration, and 3) arbitral power's power includes: admissibility, relevance, materiality, and weight of evidence. Place of arbitration²¹: Article 20(1) provides that the parties are free to agree on the place of arbitration²². Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal.

Commencement of arbitration: Unless otherwise agreed by the parties, the arbitral proceedings commence "on the date of which a request for that dispute is received by the respondent". Language²³: The parties are free to agree on the language. Failing so, the arbitral tribunal shall determine the language(s). On claim and defence²⁴, within the period of time agreed between the parties or by the arbitral tribunal, the claimant shall state the facts supporting his claim. Unless otherwise agreed by the parties, either party may amend or supplement his claim.

Hearings and written proceedings²⁵: "A hearing involves the members of the tribunal meeting as a body". The arbitral tribunal shall decide to hold oral hearings. The parties shall be given sufficient advance notice of any hearing. Any expert report shall be communicated to the parties.

Default of a party²⁶: Unless otherwise agreed by the parties, default if the claimant fails to communicate his statement of claim, in which case the arbitral tribunal shall terminate the proceedings more over for failing to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it. Unless agreed by the parties, the arbitral tribunal may appoint expert(s) who shall deliver written or oral report²⁷.

Two cases of Recognition Assistance in Foreign Insolvency Proceedings:

1. "A Korean Liquor Company was affiliated to a company in Hong Kong (AHK). In 2003 one of its creditors filed a petition for compulsory liquidation under the rules of a Hong Kong court. In July 2003 a liquidator was designated for AKH. In order to preserve its assets in Japan, AKH needed a decision from a Japanese court. A

²⁰ UNCITRAL Arbitration Rules 2010. See also Holtzmann (n 17) 564-5.

²¹ Holtzmann (n 17) 592-3.

²² Petar Sarcevic, "The Setting Aside and Enforcement of Arbitral Awards Under the UNCITRAL Model Law" in Petar Sarcevic (ed), *Essay on International Commercial Arbitration* (London/Dordrecht: Martinus Nijhoff 1989) 177-196, 182.

²³ Holtzmann (n 17) 628.

²⁴ Ibid 643.

²⁵ Ibid 670. See also Edward Jacobs, *Tribunal Practice and Procedure. Tribunal Under the Tribunals Courts and Enforcement Act 2007* (4th edn, London: Legal Action Group 2016) 341.

²⁶ Holtzmann (n 17) 698.

²⁷ Ibid 734.

recognition decision was particularly necessary for AHK to claim repayment against a debtor located in Japan and the right to bring a lawsuit. On the same day, when the petition was filed, the court recognized AKH's insolvency proceedings and issued an administrative order designating AHK's provisional liquidator as the recognized trustee.

2. Azabu Tatemono ran a domestic and international business related to real estate. After the collapse of Japan economy, Tatemono sold all of his property assets in Japan. When the petition was filed in Hawaii, in 2005, Tatemono's only remaining property holding was a Hyatt hotel in Hawaii. Tatemono owned no real property in Japan but had considerable bank deposits in his country. In order to preserve the asset, it needed to extend the effect of the automatic stay under Chapter 11 (the US plan) to Japan. The buyer of the above hotel asked the debtor to file under the Corporate Reorganization Law in Japan. Doing so the buyer wanted to make sure that the effect of debt forgiveness under Chapter 11 was executed properly in Japan. The buyer thought that to file dual proceedings in Japan and to make and confirm the same plan as one under Chapter 11 was safer than depending only on recognition of foreign proceedings.

IV OTHER CASES OF ARBITRATION

The historical Silk Road from Xinjiang reached Persia, now called Iran; an example of award using UNCITRAL and article 33 is the relevant case of *Iran-U.S. claims*²⁸:

First, Article 3-1, states that "The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable [33-2]. The arbitral tribunal shall decide as "*amiable compositeur*" or "*ex aequo et bono*" only if the parties have expressly authorized the arbitral tribunal to do so".

In the case *American Bell International Inc. v Iran*, 31 May 1984²⁹ "while referring to "principles of law acknowledged in many legal systems", the Tribunal considered that limitation of liability clauses will not be given effect in an instance of a default when that default arose through an international wrong or gross negligence on the part of the party invoking the limitation. [...] the principle of waiver as a general principle was also recognized in *Phillips Petroleum Co. Iran v Iran* 29 June 1989³⁰. The Tribunal held that "regardless of the extent to which Iranian law or international law may be relied upon in the interpretation of the [agreement] Tribunal is in no doubt that the theory of preclusion, whether based upon concepts of acquiescence, estoppel, or waiver, is available as a general principle of law".

Two cases in 1954 and 1984 are relevant cases, which may happen on the New Silk Road also³¹:

In the 1954 Case *Kwei Tek chao v British Traders & Shippers Ltd*³², Queen's Bench Division, chemicals were sold CIF (cost, insurance and freight), to be shipped in London in October. In fact they were shipped in November, but owing to a fraud, which had nothing to do

²⁸ Jacamijn J van Hof, *Commentary on UNCITRAL Arbitration: The Application by the Iran-U.S. Claims Tribunal* (Boston: Kluwer 1991) 258-259.

²⁹ Award No. ITL 41-48-3, 6 Iran-U.S. C.T.R.

³⁰ Award No. 425-39-2, 21 Iran-U.S. C.T.R. 79.

³¹ M A Clarke, et al, *Commercial Law: Text, Cases and Materials* (5th edn, Oxford University Press 2017) 551.

³² [1954] 2 QB 459.

with the sellers, the bills of lading transferred to the buyers had been shipped in October. On arrival the buyers stored the goods [...] having lost their original planned [...] market. [...] One issue turned on whether, accepted the documents, they could have rejected the goods.

Devlin J held: Here, therefore is a right to reject documents [...] A CIF contract puts a number of obligation upon the seller [...] he must put on board at the port of shipment goods in conformity with the contract prescription [...] the seller has not put on board goods which conform to the contract description, and therefore he has broken that obligation. He has also made it impossible to send forward a bill of lading [...]. Thus the same act can cause two breaches of two independent obligation [...]. The buyer, by accepting the documents, not only loses his right to reject the documents, but also his right to reject the goods, but that would be because he had waived in advance reliance on the date of shipment. This case confirms that the buyer has two rights to reject: He may refuse to take up the documents if they are not in conformity with the contract, and he may reject the goods even after having accepted the documents, if he later discovers a breach on the seller's part.

In the 1984 Case *Berger & Co Inc v Gill & Duffus SA*³³, the House of Lords held: "Berger contracted to sell Gill & Duffus 500 tonnes of Argentine bolita beans CIF Le Havre. The contract provided for payment to be made against shipping documents, and also a certificate given by independent assessors [...] to the quality of the beans [at the final port of discharge]. The ship first unloaded only 445 tonnes at Le Havre [and the remaining 55 tonnes to Rotterdam and reached Le Havre two weeks later]. The buyers were accordingly guilty of a repudiation breach which did not discharge the sellers from their obligation to deliver the 55 tonnes and debarred the buyers from any right [...].The buyers were held liable in damages for non-acceptance in respect of the entire 500 tonnes".

Case 906: UNCITRAL arbitration (final award) in Singapore between White Industries Australia limited (claimant) and the Republic of India (respondent).

The "Respondent" or "India" has breached its obligations to White Industries Australia Limited ("Claimant" or "White") arising under The Agreement on the Promotion and Protection of Investments, made in New Delhi on 6 February 1999. The Claimant alleged that the Respondent has breached its obligations under four Articles of the BIT (Bureau International du Travail), as a result of which it has suffered loss and damage in the amount of A\$8,769,469.07. Respondent denied each of the alleged breaches of the BIT.

On 8 March 2011, the Parties confirmed the appointment of the Tribunal pursuant to Article 12.3(c)(i), of the BIT, comprising the Hon. Charles N. Brower as co-arbitrator (on the nomination of Claimant), Mr Christopher Lau as co-arbitrator (on the nomination of Respondent) and Mr J. William Rowley as presiding over India's subsidiary, Central Mine Planning and Design Institute Limited ("CMPDI") undertook extensive drilling in the region where the Piparwar mine would subsequently be located and produced a report for the development of an open cast mine.

White prevailed and the Tribunal concluded that each party should bear its own costs with the exception of those relating to Claimant's witness fees and expenses. As to the latter, India shall pay these fees and expenses in the amount of A\$ 86,249.82.

³³ [1984] AC 382, 552.

Tribunal's operative decision: Therefore, according to this decision together with interest on at the rate of 8 percent per annum from the date of this award until the date of payment. Whether a decision by an arbitral tribunal constitutes an arbitral award is determined primarily on the basis of the law of the State where recognition and enforcement are sought, according to several court decisions. To compare with ICC in 1984, 94 percent of the awards "are said to be executed without enforcement proceedings"; the awards in other arbitral institutions there is a high percentage of self-executed arbitral awards to avoid negative publicity damages, the parties prefer an award in order to avoid its publication and to be blacklisted³⁴.

Finding good examples of cases of past and fair arbitration is useful to try to build harmony along the New Silk Road. The following Hong Kong's High Court arbitration case is not linked to UNCITRAL, but at least is a "Chinese" case in colonial Hong Kong which became the Hong Kong Special Administrative Region of China (HKSAR) on 1 July 1997, twenty years ago:

Gilman Engineering LTD v Ho Shek On Simon

High Court — Action NO 5233 of 1986 Liu J.

16, 17, 23 October, 13 November 1986

Intellectual Property — Confidential Information — Ex-employee's duty of confidentiality towards ex-employer — Implied terms of employment — Whether duty of confidentiality extended to post-employment period — Type of information to which duty would extend — Whether prima facie right to protection established

1. After 14 years of service with the plaintiff, the defendant tendered his resignation. At one time, the defendant was a departmental manager. His division was autonomous.
2. There were 18 companies with which the plaintiff was concerned.
3. The defendant denied all charges of impropriety and disclaimed any intention to induce or procure breaches of the plaintiff's agency agreements. The defendant pressed for further information in relation to other 12 companies so as to delineate the parameter of any understanding which he may have to give in respect of these 12 companies.
4. A former employee would only be bound not to use or disclose trade secrets and information of a highly confidential nature while the employment subsisted. His obligation after the contract of employment would not extend to cover information which were trade secrets while the employment subsisted. After employment it is not anymore a clear breach of the duty of good faith. *Faccenda Chicken v Fowler* [1986] FSR 291 applied.
5. The names of the 18 companies with which the plaintiff was concerned could not be regarded collectively as if there had been some list. *Baker v Gibbons* [1972] 2 All FR 759 applied.
6. The plaintiff's application in regard to the alleged materials was unsustainable without further particulars and the defendant's request for further information in respect of the 12 companies was necessary and reasonable. There was no

³⁴ Sarcevick (n 22) 191.

way in which the court determine whether there was any serious question to be tried as the plaintiff had not even disclosed any prima facie right to be protected.

V CONCLUSION

Infrastructure is one of the most essential investments for the New Silk Road. China is pushing its New Silk Road and in 2016 established the Asian Infrastructure Investment Bank (AIIB), centered in Beijing, a new multilateral development bank according to international standards³⁵.

The arbitration cases mentioned here try to show the importance of acceptable arbitration for China and the countries which have already accepted to be part of the New Silk Road. China has already highly qualified arbitrators such as Li Yanbing (Vice Chairman of China-ASEAN Legal Cooperation Center (CALCC) and Deputy Director of Hainan Arbitration Commission). Hu Yong's wish is to revise China's Arbitration Law (CAL) to introduce more practices from the UNCITRAL Model Law, the *International Chamber of Commerce (ICC) Arbitration Rules* and essential "principles of modern arbitration"³⁶. International arbitration and mediation are progressing in Mainland China, and the creation of the Shenzhen Court of International Arbitration (SCIA) certainly confirms China's will to progress.

Concerning arbitration, the EU experience, the process and challenges involved in the creation of the Comprehensive Economic and Trade Agreement (CETA) and the EU-Vietnam Free Trade Agreement are good examples for China to follow for the acceptance of the New Silk Road and the new possibility for China to find its way among established arbitration tribunals such as UNCITRAL.

Choosing Hong Kong as the seat of the Belt and Road disputes arbitration was proposed by King & Wood Mallesons³⁷. Hong Kong has a reputation for a strong legal system, rule of law and judicial independence. HKSAR is more global than Macau, but the role of MSAR will increase when the giant bridge Hong Kong-Zhuhai-Macau will be in service. Macau was already the first point of globalization, when silver came from Mexico to Manila and finally to Macau to pay silk in the 17th century and following centuries. In the coming years, Hong Kong, Macau, and Guangzhou, the hub of the Pearl River Delta, will be developed. The Mega-region will become the future Greater Bay Area, including Guangzhou, the two SARs, two SEZs, and nine cities. The international Chambers of Commerce in the region are already highly interested by this giant project of the Greater Bay Area linked to the Belt and Road Initiative. However, no clear documents show that arbitration and mediation are essential for its future.

References

Arbitration Rules 2010 <https://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010_e.pdf> accessed 17 November 2017.

³⁵ Charlie Campbell, 'The New Silk Road' in *Time* (13 November 2017) 20-27, 25.

³⁶ Hu Yong and Xiao Xiaowei. 'Incorporation of UNCITRAL Model Law on International Law on International Commercial Arbitration in Perspective of China' (March 2014) 9-1 *Frontiers of Law in China* 82-104, 96, 104.

³⁷ King & Wood Mallesons 'Case Study: Belt and Road disputes - Choosing Hong Kong as the Seat of Arbitration' (18 July 2017) <<http://china-trade-research.hktdc.com/business-news/article/The-Belt-and-Road-Initiative/Case-study-Belt-and-Road-disputes-Choosing-Hong-Kong-as-the-seat-of-arbitration/obor/en/1/1X000000/1X0AAU5D.htm>> accessed on 21 November 2017.

Billiet, Johan, 'Introduction by the President of the Association for International Arbitration, Mr Johan Billiet' in Association for International Arbitration (ed), *Interim Measures in International Commercial Arbitration* (Antwerpen: Maklu 2007) 9-11.

Born, Gary B, *International Commercial Arbitration* (Boston: Wolters Kluwer 2009) Vol 1, lvi+1738.

Campbell, Charlie, 'The New Silk Road' in *Time* (13 November 2017) 20-27.

Carlevaris, Andreas, 'The Enforcement of Interim Measures Ordered by International Arbitrators: Different Legislative Approaches and Recent Developments in the Amendment of the UNCITRAL Model Law' in Association for International Arbitration (ed), *Interim Measures in International Commercial Arbitration* (Antwerpen: Maklu 2017).

Caron, David D, L M Caplan and M Pellonpaa (eds), *The UNCITRAL Arbitration Rules. A Commentary* (Oxford University Press 2006).

Case 906: Case of UNCITRAL Arbitration in Singapore, final award (case 906) <<https://www.italaw.com/sites/default/files/case-documents/ita0906.pdf>> accessed 19 November 2017.

Clarke, M A, et al, *Commercial Law: Text, Cases and Materials* (5th edn, Oxford University Press 2017).

Deacons, A Simple Guide to Arbitration in Hong Kong (*Deacons*, Hong Kong, n. d.) <http://www.deacons.com.hk/assets/Images/News%20and%20Insights/Publication/2014/201405_GuidetoArbitrationInHK_newVI.pdf> accessed on 21 November 2016.

Dore, Issak I, *The UNCITRAL Framework for Arbitration in Contemporary Perspective* (Graham & Trotman/Martinus Nijhoff 1993).

Gaitis, James M. (ed.), *The College of Commercial Arbitrators: Guide to the Best Practices in Commercial Arbitration* (2nd edn, New York: Juris 2010) 350 p.

Gilman Engineering LTD v Ho Shek On Simon Hong Kong's High Court arbitration, 1986 (Hong Kong University Law Department Teaching Document).

Hamid, Dr Haji H. Sultan bin Abu Backer, *International Arbitration with Commentary to Malaysian Arbitration Act 2005* (Kuala Lumpur: Janab SDN Bhd, c. 2016).

Hayes, Paul J. 'The China Syndrome: Rethinking Arbitration on the One Belt, One Road' (2017) <<https://www.39essex.com/wp-content/uploads/2017/05/2017-KLIAW-OBOR-Harmonisation-of-Arbitration-Rules-PJHayes-170515.pdf>> accessed on 18 November 2017.

Herrmann, Gerold 'The UNCITRAL Model Law on International Commercial Arbitration: Introduction and General Provisions' in Petar Sarcevic (ed), *Essay on International Commercial Arbitration* (London/Dordrecht: Martinus Nijhoff 1989) 3-26.

Hof, Jacamijn J van, *Commentary on UNCITRAL Arbitration: The Application by the Iran-U.S. Claims Tribunal* (Boston: Kluwer 1991).

Holtzmann, Howard, M and Joseph E Neuhaus, *A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary* (Boston: Kluwer 1989).

Howell, David, 'Enforcement of Awards' in Lawrence W Newman, et al (eds), *International Arbitration Checklist* (New York: Baker & McKenzie 2004) 181-190.

Hu Yong and Xiao Xiaowei. 'Incorporation of UNCITRAL Model Law on International Law on International Commercial Arbitration in Perspective of China' (March 2014) 9-1 *Frontiers of Law in China* 82-104.

King & Wood Mallesons 'Case Study: Belt and Road disputes - Choosing Hong Kong as the Seat of Arbitration' (18 July 2017) <<http://china-trade-research.hktdc.com/business-news/article/The-Belt-and-Road-Initiative/Case-study-Belt-and-Road-disputes-Choosing-Hong-Kong-as-the-seat-of-arbitration/obor/en/1/1X000000/1X0AAU5D.htm>> accessed on 21 November 2017.

Kuala Lumpur 2017: Kuala Lumpur meeting 15-16 May 2017 <<https://klrca.org/uploads/089cf53331556299a0667ded9571d868.pdm>> accessed on 18 November 2017 & <<https://klrca.org/announcements-announcements-details.php?id=149>> accessed 25 November 2017.

Jacobs, Edward, *Tribunal Practice and Procedure. Tribunal Under the Tribunals Courts and Enforcement Act 2007* (4th edn, London: Legal Action Group 2016).

Klick, Jonathan, 'Empirical Analysis of Regulations: The Promise of Field Experiments in China' in Xu Wenming, Stephan E. Weishaar and Niels Philipsen (eds) *Regulatory Reform in China and the EU* (Cheltenham, UK 2017) 267-273.

Nayak, Julius. 'Interim Measures in International Commercial Arbitration in India' in Association for International Arbitration (ed), *Interim Measures in International Commercial Arbitration*. (Antwerpen: Maklu 2007).

Prince, Mary Miles, *Prince's Dictionary of Legal Citations* (9th edn, New York: William S. Hein 2017). For the author, 'A Companion to the *Blue Book*, Not a Replacement' (19th ed.).

Private Disputes: UNCITRAL and Private Disputes / Litigation: <http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration_faq.html> accessed on 19 November 2017.

Sarcevick, Petar, 'The Setting Aside and Enforcement of Arbitral Awards Under the UNCITRAL Model Law' in Petar Sarcevick (ed), *Essay on International Commercial Arbitration* (London/Dordrecht: Martinus Nijhoff 1989) 177-196.

Sardinha, Elsa, 'The new EU-led approach to investor-state arbitration: The Investment Tribunal System in the Comprehensive Economic Trade Agreement (CETA) and the EU-Vietnam Free Trade Agreement' (2017) 32(3) *ICSID Review* 625-672.

Schill, Stephan W, *International Investment Law and Comparative Public Law* (Oxford: Oxford University Press 2010).

Schill, Stephan W 'Deference in Investment Treaty Arbitration: Towards A Public Law Understanding of the Relationship Between Investment Treaty Tribunals and Host States' (2014) *Dispute Prevention and Resolution Special Issue*, Gujarat National Law University, 81-110.

Schill, Stephan, Rainer Hofmann and Christian Tams (eds) *International Investment Law and the Global Financial Architecture*, (Elgar Publishing, 2015) and Kulick, Andreas, 'Review' (2011) 22 *European Journal of Investment Law* 909-927.

Stromquist, Nelly P 'Education as a Means for Empowering Women' in Jane L. Parpart, et al (eds) *Rethinking Empowerment* (London: Routledge 2002) 22-38.

UNCITRAL, *Digest of Case Law on the Model Law on International Commercial Arbitration* (2012).

Wang Huiyao and Lu Miao 'China Goes Global: How China's Overseas Investment is Transforming its Business Enterprises' (Springer Link) <https://link.springer.com/content/pdf/10.1007%2F978-1-137-57813-6_8.pdf> accessed 25 September 2017.

Xu Wenming, Stephan E. Weishaar and Niels Philipsen 'Introduction' in Xu Wenming, Stephan E. Weishaar and Niels Philipsen (eds) *Regulatory Reform in China and the EU* (Cheltenham, UK 2017).