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Christoph Müller | Sébastien Besson |
Antonio Rigozzi (Eds)

New Developments in International Commercial Arbitration 2022



Stämpfli Editions

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Preface

This book contains the written contributions of the speakers at the thirteenth conference on New Developments in International Commercial Arbitration, organized by the CEMAJ (Research Center on Alternative and Judicial Dispute Resolution Methods) of the University of Neuchâtel on 4 November 2022.

The goal of both the conference and this book is to provide practitioners, academics and students with an in-depth analysis of the latest developments in international commercial arbitration. That is why the New Developments conferences are not dedicated to a specific theme. The only common denominator of the different contributions is the novelty of their subject matters.

SÉBASTIEN BESSON and ANTONIO RIGOZZI examine the main amendments to Chapter 12 of the Swiss Private International Law Act (PILA), which entered into force on 1 January 2021. They present the changes which were chiefly aimed at clarifying the wording of the statute and codifying the Swiss Supreme Court's case law. They also analyse in more depth those amendments which have substantively improved the former legal framework and conclude with a critical assessment of the 2021 Reform.

CLARISSE VON WUNSCHHEIM examines the role of arbitration as a dispute resolution mechanism in the context of "shared economy" transactions. She looks at the concept of "shared economy" and how it interacts with arbitration as a commercial dispute resolution mechanism and the Swiss legal framework. She also examines key challenges that arise in this context such as the issue of the arbitrability of such disputes and of the validity of arbitration agreements related to such disputes. She concludes by exploring the interesting

question of whether it is time for a new approach to semi-compulsory arbitration.

CLAUDE RAMONI reflects on various jurisdictional issues in connection with CAS arbitration at the occasion of the Olympic Games. After presenting Rule 61 of the Olympic Charter and the CAS Divisions dealing with Olympic disputes, he examines the timing issue, the costs issue, the “field of play” doctrine as well as specific issues relating to anti-doping proceedings. He concludes his analysis by suggesting that the ICAS should consider creating a permanent CAS Emergency Division, based on a model similar to the CAS Ad hoc Division.

FLAVIO PETER presents an overview of the arbitration-related rulings handed down by the Swiss Federal Supreme Court from August 2020 to July 2022. He highlights the clarifications and evolution of the case law. This survey is particularly helpful for practitioners who wish to bring themselves up-to-date on the most recent developments of the Swiss Federal Supreme Court’s decisions concerning international arbitration.

MAXIMIN DE FONTMICHEL’S contribution reflects on new developments regarding the effectiveness of the arbitration agreement from both a French and comparative point of view. He examines French law’s struggle to strike a balance between the support of the absolute efficiency of the arbitration agreement, on the one hand, and more protective solutions, on the other hand.

LAURENT HIRSCH presents landmark Swiss Federal Supreme Court cases in international arbitration. His review confirms that the Swiss Federal Supreme Court case law has been consistent, pragmatic and arbitration friendly. After examining the pre-arbitration law period and the Concordat, he focuses on the case law with respect to the arbitration agreement, due process, and public policy as well as the waiver of annulment action and the availability of revision. He concludes that the

Swiss Federal Supreme Court started building the foundation of arbitration law very early on, that this Court's case law is very liberal, and that the Court was ready, when clarity was needed, to build solutions outside the wording of the statute.

The practical bearing and the variety of the topics addressed in this book serve to evidence the dynamic nature of the law and practice of international commercial arbitration, and thus the importance of keeping abreast of significant developments across jurisdictions and practice areas in the field, which is what the New Developments conference is all about.

We are grateful to the authors, who have provided their written contributions well before the conference, thus allowing us to distribute this book during the conference itself – a brand label of this arbitration event. Early publication clearly constitutes an added value for a book devoted to recent developments in a constantly evolving field such as that of international arbitration.

The organization of the conference and the timely publication of this book would not have been possible without the valuable support of Sabrina Pearson-Wenger, scientific collaborator and PhD candidate at the Neuchâtel Faculty of Law, of Scott Greinig, teaching assistant and PhD candidate at the Neuchâtel Faculty of Law, and of Carine Magne, of the Secretariat of the Neuchâtel Faculty of Law, to whom we are very grateful.

Neuchâtel, October 2022

Christoph Müller Sébastien Besson Antonio Rigozzi

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