GD Goenka – CIArb (India) International Virtual Commercial Arbitration Moot Court Competition, 2021

GD Goenka University, Gurugram is part of the GD Goenka Group. GD Goenka University was established in 2013 under the Haryana Private Universities (Amendment) Act, 2013. The GD Goenka University School of Law offers Law Degree Programs at Undergraduate, Post Graduate and Doctoral levels and strives to open new vistas in the arena of law through clinical legal studies and research. With an objective to raise the standards of clinical legal education in India, the GD Goenka University, School of Law regularly hosts Moot Court Competitions and encourages law students from various Law Schools and Universities from across India and world to learn the art and skills of advocacy.

In November 2020, School of law, GD Goenka University successfully organized an arbitration moot court competition "GD Goenka – CIArb (India) International Virtual Commercial Arbitration Competition 2020" in association with CIArb (India) Chapter. The University is now organising the **Fifth edition of *"GD Goenka – CIArb (India) International Virtual Commercial Arbitration Competition 2021" in association with CIArb (India) Chapter on 20th-21st***

November. The event is expected to have participation from various Law Schools and Universities from across India & abroad.

The Registration for the Competition is open. **The registration fee is USD 11 /- only.**

You would also be pleased to know the Prizes for winners in various categories-

Winners- Rs 70,000/- (USD 935/-)

Runners Up- Rs 40,000/- (USD 534/-)

Best Speaker Male & Female- Rs 10,000/- each. (USD 133/- each)

Best Memorial- Rs 10,000/- (USD 133/-)

The link to the registration form, posters and brochure is found below.

Registration Form- https://forms.gle/ZwJpZKmsPNDJiwMN6

With Warm Regards,

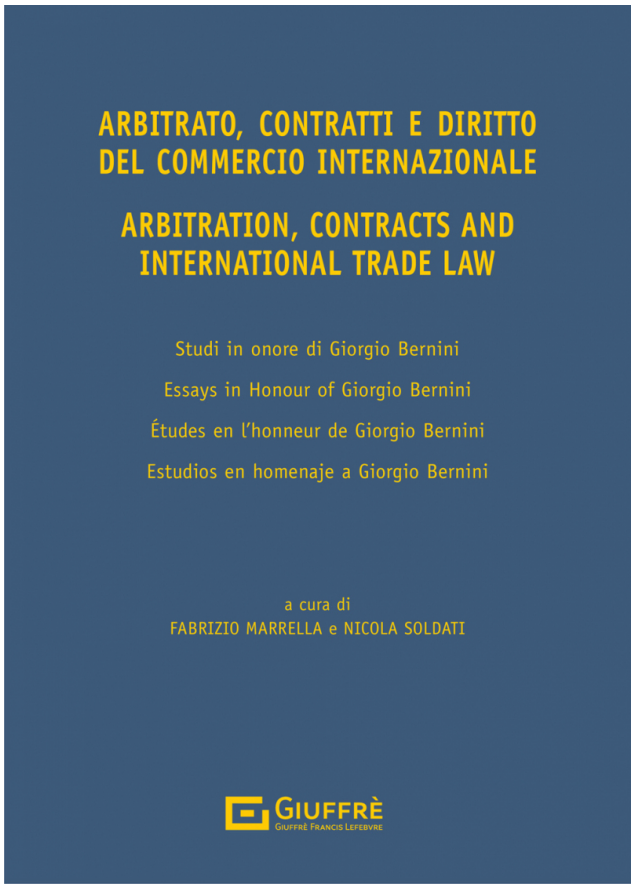
Prof. (Dr.) Tabrez Ahmad,

Vice Chancellor GD Goenka University &

Dean School of Law

Out now: Fabrizio Marrella / Nicola Soldati (eds.), “Arbitration, Contracts and International Trade

Law / Arbitrato, contratti e diritto del commercio internazionale. Essays in honor of Giorgio Bernini/ Studi in onore di Giorgio Bernini", Milan, Giuffré – Francis Lefebvre, 2021.



This book celebrates the work and scholarship of Professor Giorgio Bernini, Honorary President of ICCA, who held the chair of European Union Law, Arbitration and International Commercial Law at the University of Bologna for almost 30 years. A very successful international lawyer, he was the Italian Minister of Foreign Trade and a Member of the Italian Antitrust Authority. Bernini has built a long career in the study and practice of arbitration with a record of 450 cases. The book is divided into an introduction and two parts, to highlight

many of Bernini’s contributions to the Law.

In a special introductory section of the book, entitled ‘portraits of a pioneer’, some authors offer specific references to some of his many activities in the field: from the ICC Institute of World Business Law to the International Council for Commercial Arbitration, from the Italian Arbitration Association to his professional life as an international lawyer. Then, in the first part of the book, essays on Contract Law and International Trade Law have been collected. The second part is dedicated to arbitration in its many dimensions: domestic, international, commercial and investment Law.

The contributors are amongst the most highly qualified publicists of the various Nations, with the highest academic credentials and proven experience in the field: Yves Derains, Lise Bosman, Maria Beatrice Deli, Antonio Fraticelli, Guido Alpa, Alfonso-Luis Calvo Caravaca, Javier Carrascosa González, Roberto Ceccon, Gabriele Crespi Reghizzi, Abdel Hamid El Ahdab, H. Ercüment Erdem, Marcel Fontaine, Roy Goode, Kaj Hober, Ernst-Ulrich Petersmann, Fausto Pocar, Stefano Azzali, Ronald A. Brand, Sergio M. Carbone, Dominique Carreau, Claudio Consolo, Giorgio De Nova, Donald Francis Donovan, Romain Zamour, Ugo Draetta, José Carlos Fernandez Rozas, Emmanuel Gaillard, Maria Chiara Malaguti, Eleonora Finazzi Agrò, Fabrizio Marrella, Margaret L. Moses, William W. Park, Hassan Rahdi, Christoph Schreuer, Nicola Soldati, Shengchang Wang.

For further information please visit here:

UNCITRAL LAC DAY 2021 – 21

October 2021 (10:00 ARG time, 15:00 CEST time): International commercial mediation, expedited arbitration – in Spanish

The UNCITRAL LAC Day 2021 will take place online on Thursday 21 October 2021 at 10:00 Argentinian time and 15:00 CEST time (in Spanish). This event has been organised by UNCITRAL, the Organization of American States (OAS – OEA), Secretaría de Integración Económica Centroamericana / Secretariat for Central American Economic Integration (SIECA) and ASADIP.

The focus of the conference will be international commercial mediation and expedited arbitration. In particular, it will be discussed the work carried out by UNCITRAL's Working Group II: Dispute Settlement.

New Arbitration Rules of Zhuhai Court of International Arbitration

Against the background of "One Belt, One Road" initiative and the construction of Guangdong-Hong Kong-Macau Great Bay Area, after being elevated to be a national free trade zone a few years ago, Henqin Island located in Zhuhai City of Guangdong Province and neighboring Macau was re-labelled as the deeper integration (cooperation) area between Guangdong and Macau days before. To keep up with this political pace, the Zhuhai Court of International Arbitration (ZCIA) now regularly running its business in Henqing Island was established by the Zhuhai Arbitration Commission with the hope that international business people especially those pursuing Sino-Portuguese speaking countries trade could choose Henqin as the seat for their arbitration. In honor of the National Day of the People's Republic of China, Oct 1st, ZCIA publicized its updated arbitration rules yesterday. However, this time three versions of different languages were provided simultaneously ie Chinese, Portuguese and English, the last of which was translated by myself. For its latest arbitration rules, please see http://www.zhac.org.cn/?cat=3.

International Commercial

Arbitration in the European Union – Brussels I, Brexit and Beyond

With a comprehensive and informative manuscript, in *International Commercial Arbitration in the European Union – Brussels I, Brexit and Beyond* (Edward Elgar, 2020, 320 pp.: see here a previous announcement of the publication) Chukwudi Ojiegbe provides a wide-ranging overview of the status quo of international commercial arbitration in the European Union, also duly taking into account the effects arising, in this specific area of the law, from the withdrawal of the United Kingdom from the European Union.

By means of a detailed historical and policy-oriented reconstruction, the Author assesses the history of the Brussels I Recast as it pertains to the provision on the arbitration exclusion. With careful analysis, he considers the implications of the nuanced and debated interface between arbitration and litigation in accordance with the Brussels I Regime as well as the consequences of such interface for the EU exclusive external competence in aspects of international commercial arbitration. Against this background, and further contributing to this complex area of the law, he sets out the findings on the impact of the United Kingdom's withdrawal from the European Union.

In anticipation of a possible future recast of the Brussels I Regime, the Author argues in favour of the inclusion of specific rules that will allow the Member State court with jurisdiction under the Brussels I Regime the possibility of staying the litigation in favour of the arbitral tribunal. As he observes, the coordination between the jurisdiction of the courts of the Member States and arbitral tribunals would increase legal certainty, alleviating the problem of parallel court/arbitration proceedings and the risk of conflicting decisions.

Overall, this volume contributes clarity and advances the academic debate on the EU arbitration/litigation interface. By offering clear historical reconstructions and putting forth solutions to this longstanding problem, it will undoubtedly prove to be of interest to scholars and practitioners but it will also be a useful source for students who wish to deepen their understanding of this area of the law.

Nottingham Arbitration Talk on Wednesday 17 March 2021

Invitation by Dr Orsolya Toth, Assistant Professor in Commercial Law, University of Nottingham

The University of Nottingham Commercial Law Centre will hold its inaugural **Nottingham Arbitration Talk on Wednesday 17 March at 2-4 pm**. The Centre is delighted to welcome distinguished speakers to the event drawn from both academia and practice. The Keynote address will be given by Professor Sir Roy Goode, Emeritus Professor of Law at the University of Oxford. The speaker panel will host Angeline Welsh (Essex Court Chambers), Timothy Foden (Lalive) and Dr Martins Paparinskis (University College London).

The theme of the event will be 'Procedure and Substance in Commercial and Investment Treaty Arbitration'. It will address current and timeless issues, such as the influence of procedure on the parties' substantive rights, the recent phenomenon of 'due process paranoia' in arbitration and the current state of the system of investment treaty arbitration.

All welcome and free to attend. For detailed programme and registration please visit https://unclcpresents.eventbrite.co.uk

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Issue Arbitration and PIL – NIPR 2020/4

The fourth issue of 2020 of the Dutch PIL journal Nederlands Internationaal Privaatrecht is dedicated to Arbitration and conflicts of

laws.

Some of the papers are in English, others in Dutch.

Editorial

Peters & B. van Zelst (guest editors), Arbitration and conflicts of laws / p. 631-633

A.J. B?lohlávek, Determining the law governing obligations in arbitration and the applicability of the Rome I Regulation / p. 634-651

Factors specific to arbitration, and particularly the fact that the place of arbitration is often chosen as a neutral venue with no links to the domicile of the parties or to the subject of the dispute, also influence the procedures followed to determine the substantive law governing obligations. Even so, it is essential to employ a method for determining this law that is transparent, that excludes arbitrariness on the part of arbitrators, and that allows the parties to rely on a certain degree of predictability. Considering the growing importance of the seat of arbitration, which has seen the relevance of the theory of the anationality of arbitration decline in most cases, it is always necessary to assess the importance of the lex fori arbitri in determining the applicable substantive law. Unless the application of EU legislation, and hence also the Rome I Regulation, on the law applicable to obligations stems, as a matter of necessity, from the mandatory lex fori arbitri (which tends to be the exception), the application of the Rome I Regulation must always be kept to a minimum. There is therefore no reason why the Rome I Regulation cannot also be used in arbitral proceedings to determine the applicable law. Arguments such as the fact that this is a regulation applicable exclusively to civil litigation must be rejected.

Meški? & A. Gagula, *Lex mercatoria* and its limits in international arbitration / p. 652-668

This contribution aims to provide guidance on the usual steps an arbitrator undertakes when using lex mercatoria in international arbitration. The first step is the identification of rules that represent lex mercatoria and deserve such a qualification. It involves a discussion on the private international law analysis, especially absent a choice of law by the parties and its relationship to (potentially) applicable national law. The statistics presented in this paper show that parties in

an overwhelming majority of cases choose national law as the applicable law and that lex mercatoria needs to co-exist with national law. Here, the joint use of national law and lex mercatoria is discussed in the context of the example of construction arbitration as the most common area of international arbitration practice. The growing popularity of certain legal solutions of lex mercatoria in procedural or substantive matters followed by a codification trend contribute to an effect of a rebuttable presumption in the fields of its application. This triggers the question as to how the right to be heard can be preserved, especially when the initiative for the use of lex mercatoria does not come from the parties, but from the arbitral panel. The lack of a strict judicial review of the applicable law used in arbitration gives the arbitrators the power to find the right balance between the guidance offered by lex mercatoria and parties' expectations.

Shehata, Overriding mandatory rules and international commercial arbitration: the Swiss and French perspectives / p. 669-686

T*he treatment of overriding mandatory rules has always been the subject of multiple studies, especially in the field of international commercial arbitration. The fact that most arbitration jurists agree that arbitration does not have a lex fori is an essential reason for making this discussion a captivating one. Further, if we couple this lack of a lex fori in commercial arbitration with the arbitrators' duty to render enforceable awards, then we face an extremely intriguing dilemma in this regard.*

Instead of reviewing how arbitral tribunals deal with this conundrum, I try to explore this issue through the lens of selected national reviewing courts (i.e., Swiss and French Courts). In my opinion, the review by the national courts represents the end game and should prove critical in guiding future arbitral tribunals in how they should treat overriding mandatory rules at the earlier stage of issuing their arbitral awards.

Ernste, Het toepasselijke bewijsrecht in arbitrage / p. 687-698

This article focuses on the applicable law of evidence, including the law that is applicable to the allocation of the burden of proof in the case of (international) arbitration with the seat of arbitration being in the Netherlands. In international arbitration, the applicable arbitration law, including the applicable law of evidence, shall be determined by the lex arbitri. The Dutch Arbitration Act is

applicable if the seat of arbitration is in the Netherlands. An arbitral tribunal has to decide with respect to the allocation of the burden of proof whether it applies the law of the arbitral seat (based on the theory that the burden of proof is procedural) or the law governing the underlying substantive issues (based on the theory that the burden of proof is substantive). According to Dutch Arbitration law, the allocation of the burden of proof is procedural. As a result, an arbitral tribunal is not bound by rules regarding the allocation of the burden of proof laid down in the law governing the underlying substantive issues.

Zilinsky, Toepasselijk recht op de bindende kracht en de rechtsgevolgen van arbitrale uitspraken / p. 699-714

This contribution focuses on the res judicata of arbitral awards. What is actually the purpose of the res judicata of an arbitral award? Should an arbitrator or a court verify ex officio whether an arbitral award had become res judicata or should this be invoked by the parties? As the parties are free to determine the manner in which and by whom dispute resolution takes place, the question arises as to which applicable law should determine the issue of an arbitral award becoming res judicata. Although the existing instruments, such as the 1958 New York Convention, deal with the recognition and enforcement of arbitral awards, these instruments leave this question unanswered. These instruments are based on the principle that the Contracting States recognize the arbitral awards and that a recognized arbitral decision is binding. This contribution discusses the different approaches to determining the res judicata effect of an arbitral award.

Peters, Enkele gedachten over de toepasselijkheid van het beginsel van *ius curia novit* in gerechtelijke procedures in verband met arbitrage en de gevolgen daarvan voor arbitrage / p. 715-730

It is often assumed that arbitrators are not obliged to apply conflict of laws rules or to add to the legal grounds ex officio, but this is not necessarily true. In this publication the author sets out that arbitrators, under specific circumstances, should have regard to the rules that the national courts should apply in annulment proceedings and should not consider themselves to be bound by the parties' submissions. In this respect, the arbitrators should have an understanding of the scope of annulment proceedings and the application of the principle of ius curia novit in these proceedings, which are also discussed in this publication.

Van Zelst, Het recht van toepassing op de aansprakelijkheid van arbiters / p. 731-747

This article investigates and challenges existing notions of private international law aspects of the liability of arbitrators. The starting point of the inquiry is a succinct comparative analysis of how the role of the arbitrator is viewed and which standards apply to arbitrator liability in various jurisdictions. The article proceeds with an analysis of the applicability of the Rome I Convention, finding that Rome I applies to the contractual liability of an arbitrator. Subsequently, the article assesses how Rome I's substantive provisions – Article 4 more specifically – should be applied. It concludes that the law of the habitual residence (of each) of the arbitrator(s) applies to contractual claims vis-a-vis the arbitrator(s).

In addition the issue contains a case note

X.P.A. van Heesch, Samenloopperikelen bij het aannemen van bevoegdheid o.g.v. Verordening Brussel I-bis. Hoge Raad 17 juli 2020, ECLI:NL:HR:2020:1280, *NIPR* 2020, 487 (*V Marine Fuels/Dexhon c.s.*) / p. 748-759

This article discusses the judgment of the Dutch Supreme Court dated 17 July 2020, ECLI:NL:HR:2020:1280. In this case, the Dutch Supreme Court answered the question of whether the Dutch Court had jurisdiction based on Article 5 of the Arrest Convention when the Court of Casablanca had arrested the ship in question. Even though Article 5 of the Arrest Convention does not grant explicit exclusive jurisdiction to the court of the forum arresti, exclusive jurisdiction can be assumed based on the interpretation of the Arrest Convention. The author then explains the relation between the Brussels I-bis Regulation and Conventions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments (specialized Conventions). The general rule regarding this relation is laid down in Article 71 Brussels I-bis Regulation and entails that the Brussels I-bis Regulation does not affect any specialized Conventions to which the Member States are parties. The Court of Justice of the European Union has provided two restrictions to this rule. These two restrictions entail that Article 71 Brussel I-bis Regulation (i) only applies to aspects that the specialized Convention governs and not to aspects that the specialized Convention does not govern and (ii) can only apply if the specialized Convention does not compromise the principles which underline judicial cooperation in the European Union (such as

the free movement of judgments, predictability as to the courts having jurisdiction and legal certainty for litigants). In the legal literature, ideas differ on how to interpret this last restriction, which is set out by the author as well. Finally, the author construes whether the Dutch Supreme Court should have applied the two restrictions on Article 71 Brussels I-bis Regulation before it ruled that the Dutch Court did not have jurisdiction in this case.

Milan Investment Arbitration Week: 15-20 February 2021

From 15 to 20 February 2021, Università degli Studi di Milano and the European Court of Arbitration, in cooperation with the Law Firms BonelliErede and DLA Piper Italy, organize the first edition of the "**Milan Investment Arbitration Week**" (MIAW), a series of different events (conferences, round-table debates, legal competitions), held in streaming and related to international investment law and arbitration. Renowned Italian and foreign experts from academia, legal profession and arbitral institutions will address from different angles some of the most relevant topics related to the field. In addition, MIAW will include two legal competitions: the second edition of the Milan Investment Arbitration Pre-Moot and the first edition of the Construction Arbitration Moot, with the participation of several Universities from all around the world. Detailed information available here.

New Year, "New" ICC Arbitration Rules

The latest amendments to the International Chamber of Commerce ("ICC") Arbitration Rules enter into force today, providing for a restyling to the 2012 rules (as earlier amended in 2017). The restyling aims to fine-tune the current rules by increasing flexibility, efficiency and transparency of the ICC arbitrations and taking in the practice that the International Court of Arbitration ("Court") has meanwhile developed and consolidated.

This post briefly lists the main novelties.

1.Multi-party disputes (and disputes arising out of multi-tier contracts) will profit from an improved **joinder** and **consolidation** regime. The new rules entitle the tribunal, once constituted and upon request of a party addressed to the Secretariat, to join third parties after considering "all the relevant circumstances", provided that the additional parties accept the constitution of the tribunal and agree to the Terms of Reference, where applicable (Article 7 (5)). Among the circumstances to be taken into account, the tribunal shall assess *prime facie* its jurisdiction over the additional party, the timing of the request for joinder, possible conflicts of interest and the impact of the joinder on the proceedings. As regards consolidation, it is also available in the case of two or more ICC arbitrations in which the disputed claims are made under multiple arbitration agreements (Article 10 (b)).

2.Yesterday a year closed which saw arbitration increasingly making use of **virtual hearings** and **electronic filings,** thereby experiencing a process of digitalization against the backdrop of the pandemic. Many benefits for the "good administration of arbitration" easily came into light, compared with the difficulties for arbitrators, parties and staff to personally meet.

Admittedly, the ongoing efforts to make arbitration resilient in these dramatic days should result in getting it more efficient (and cheaper) also in the upcoming post-pandemic era.

In this vein, the new ICC rules allow the tribunal to decide, after consulting the parties, that hearings can be conducted remotely (Article 26 (1)), thereby easing

the proceedings conduct and adding to efficiency in the light of the circumstances of the case. The option for electronic submission is acknowledged for the Request for Arbitration, the Answer and any written communication.

3.Any revision, even the slightest, in the realm of arbitration always attempts to strengthen **transparency, equality of parties, and enforceability of the awards**.

Article 11 (7) compels parties to disclose any **third-party funder** (referred to as "any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration"). This will assist arbitrators in complying with their duties of impartiality and independence, while lessening the deal of information that parties habitually keep confidential. The aim to reinforce transparency, impartiality and independence also marks the contents of Article 17 (2) and Article 13 (6). The first empowers the tribunal to "take any measure necessary to avoid a **conflict of interest**" stemming from a change in party representation. The tribunal will act so only after giving an opportunity to the parties to comment in writing within a suitable period of time. Article 13 (6) takes care of impartiality and independence in the appointment of arbitrators in **investment arbitration**, requiring the prospected arbitrators not to have the same nationality of any party.

Transparency also underpins the amendment of Appendices I and II, which respectively gather the Statute and the Internal Rules of the Court. Particularly, Appendix II features new Article 5, which governs the communication from the Court of the reasons of its decisions. Only exceptionally may the Court refuse such communication.

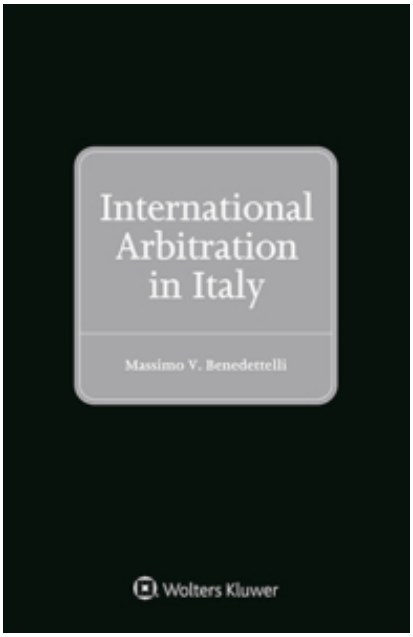
With the view to protecting the equality of parties and the validity of the award, the Court may exceptionally **appoint each member of the tribunal** (Article 12 (9)). This power aims to discourage practices which threaten the validity of the tribunal constitution, such as drafting arbitration agreements with one-sided clauses for the appointment of the members.

4.A clarification has been inserted as to the tribunal's power to render "**additional awards**" in case of claims that it "omitted to decide" (Article 36 (3)). Parties have to apply to the Secretariat for an additional award only in respect of "claims made in proceedings".

5.Finally, **fast track arbitration** will be open to more transactions as the maximum dispute value to trigger expedited procedures raises from 2 to 3 US$ million for arbitration agreements concluded as of today. The chance to opt-in for applying the expedite procedure to higher-value disputes remains, as it does the opt-out and the Court's assessment, upon request of a party, that the expedite procedure is inappropriate in the circumstances.

In the light of foregoing, it is apparent that, even if no full-blown revision unfolds to the arbitration community's eyes, the listed "adjustments" are designed to benefit parties, arbitral tribunal and staff in the short and long term.

Massimo V. Benedettelli, International Arbitration in Italy



Arbitration community lacked a comprehensive guide in English to move through the multiple and multifaceted connections between arbitration and the Italian

legal system: *International Arbitration in Italy* fills in this gap, addressing both international commercial and investment arbitration.

The book deeply depicts said connections, raising interpretative problems and providing solutions with the view to building a coherent system against the backdrop of the author's thought about the phenomenon of the arbitration taken as a whole.

This approach qualifies the entire analysis elaborated on in 12 Chapters, which start with the focus on what international arbitration is and what its grounds are, then moving on how arbitration "dialogues" with the different sources of Italian law, and what the principles for the right interpretation of this law are.

The book proceeds on "traditional" topics pertaining to a handbook of international commercial arbitration (the interplay between arbitration and national courts, the arbitration agreement, the arbitral tribunal, the arbitral proceedings, the provisional measures, the law applicable to the merits, the costs of arbitration, the different awards, related challenges, recognition and enforcement) with a closing attention to investment arbitration.

International Arbitration in Italy also includes three useful appendices which gather the main provisions of Italian law on arbitration (1), the rules of arbitration of the Milan Chamber of Arbitration (2) and the list of the Bilateral Investment Treaties in force for Italy (3).

Given its well-balanced theoretical and practical approach, the book will stimulate the scientific debate while helping practitioners to handle even the trickiest cases featuring interactions between international arbitration and Italian law.