

# CONTENTS

<i>List of Figures</i>	page xiv
<i>List of Tables</i>	xx
<i>Foreword by Emmanuel Gaillard</i>	xvii
<i>Acknowledgments</i>	xx
1 General Introduction	1
1.1 Background and Justification	1
1.1.1 Setting the Stage: The Current Landscape of International Commercial Arbitration	2
1.1.2 Literature Gap and Reassessments	5
1.1.3 Reassessing Some Aspects of <i>Dealing in Virtue</i>	9
1.2 Objectives and Arguments	13
1.2.1 The Three Ages of International Commercial Arbitration	13
1.2.2 The Pendulum Movement between Anxiety and Renewal	15
1.2.3 The Ongoing Tension between the State and the Mercatocracy	17
1.3 Sources and Caveats	19
1.3.1 Sources	20
1.3.2 Caveats	22
<b>PART I The Age of Aspirations</b>	
2 Introduction to the Age of Aspirations	31
2.1 Different Ways of Writing a History of International Commercial Arbitration	32
2.2 Methodological Pitfalls in Studying the Ancient Origins of International Arbitration	36

x	CONTENTS
	2.2.1 Far-Fetched Historical Parallels 38
	2.2.2 A Linear History? 39
	2.3 Conclusion 41
3	Genealogy of International Commercial Arbitration 42
	3.1 Introduction 42
	3.2 Two Threads: Commodity Market Arbitration and State-to-State Arbitration 44
	3.2.1 Arbitration within Local Trade Associations 45
	3.2.2 Arbitration between States 50
	3.3 The Impact of These Mechanisms on Modern Arbitration Practice 57
	3.3.1 Developing Key Features of Modern International Arbitration Practice 57
	3.3.2 An Arbitral Consciousness 62
	3.4 Conclusion 66
4	The Arbitration Clause Saga in French Law and the Emergence of a Special Regime for International Commercial Arbitration 67
	4.1 Introduction 67
	4.2 From Renewal to Anxiety: Changing Attitudes toward Arbitration in Eighteenth- and Nineteenth-Century France 69
	4.2.1 The French Revolution's Fervor toward Arbitration 69
	4.2.2 The Backlash against Arbitration 71
	4.3 From Anxiety to Renewal: Overcoming <i>Prunier</i> to Create a Pro-Arbitration Regime 76
	4.3.1 Legislative Efforts to Set Aside the <i>Prunier</i> Rule 77
	4.3.2 Louis-Dreyfus's "Propaganda" Efforts and the Rise of the Mercatocracy 79
	4.3.3 Strengthening the Legal Regime for International Commercial Arbitration 82
	4.4 Conclusion 85

## CONTENTS

xi

**PART II The Age of Institutionalization**

- 5 Introduction to the Age of Institutionalization 89
  - 5.1 A Gap in the Literature 91
  - 5.2 Why the Lack of Research? 93
- 6 The Construction of a Coherent Framework for International Commercial Arbitration 96
  - 6.1 Introduction 96
  - 6.2 The Origins of the International Chamber of Commerce and Its Court of Arbitration 98
    - 6.2.1 The Atlantic City Conference 98
    - 6.2.2 The Founding of the International Chamber of Commerce 105
    - 6.2.3 The Birth of the ICC Court of Arbitration 112
  - 6.3 The ICC's Efforts to Build a Coherent Framework for International Commercial Arbitration 116
    - 6.3.1 Territorialism in the Age of Institutionalization: The Geneva Framework 117
    - 6.3.2 From Territorialism to Internationalism: The Genesis of the 1958 New York Convention 124
    - 6.3.3 A New "Internationalist" Legal Consciousness 132
  - 6.4 Conclusion 140
- 7 The Development of the ICC Arbitration System 154
  - 7.1 Introduction 154
  - 7.2 Establishment of the ICC Arbitration System 156
    - 7.2.1 Precedents 156
    - 7.2.2 The ICC's Codification Efforts 159
  - 7.3 Evolution of the ICC Arbitration System 172
    - 7.3.1 Changing Trends in Case Characteristics 172
    - 7.3.2 Shift from Conciliation to Arbitration 176
    - 7.3.3 Shift from Equity to Law 182
  - 7.4 Conclusion 188

PART III **The Age of Autonomy**

- 8 Introduction to the Age of Autonomy 193
  - 8.1 Defining Profession and Professionalization 195
  - 8.2 The Professionalization of International Commercial Arbitration 196
    - 8.2.1 Technical, Specialized Knowledge 196
    - 8.2.2 Training and Professional Associations 197
    - 8.2.3 A Distinct Culture of International Commercial Arbitration 199
  - 8.3 Conclusion 201
- 9 *Lex Mercatoria* and the Birth of the French School of International Arbitration 202
  - 9.1 Introduction 202
  - 9.2 The Intellectual History of *Lex Mercatoria* 204
    - 9.2.1 Clive Schmitthoff's and Berthold Goldman's Inaugural Insights 204
    - 9.2.2 Expanding the Horizon of *Lex Mercatoria* 215
  - 9.3 The Emergence of the French School of International Arbitration 219
    - 9.3.1 Framing the French School of International Arbitration as a School of Thought 219
    - 9.3.2 Key Features of the French School of International Arbitration 221
  - 9.4 From Renewal to Anxiety: The Quarrels over *Lex Mercatoria* 227
    - 9.4.1 Ascertaining the Content and Methods of *Lex Mercatoria* 227
    - 9.4.2 Images of War 230
  - 9.5 Conclusion 232
- 10 The Second Generation of the French School of International Arbitration and the Quarrel over the Arbitral Legal Order 233

CONTENTS

xiii

10.1	Introduction	233
10.2	Renewal in the French School of International Arbitration	234
10.2.1	From the First to the Second Generation	234
10.2.2	From <i>Lex Mercatoria</i> to the Quest for an Autonomous Legal Order	237
10.3	The Debate over the Delocalization of Arbitral Awards	240
10.3.1	The Fate of Awards Set Aside in the Country of the Seat	241
10.3.2	Renewal and Anxiety in the Debate over the Delocalization of Awards	250
10.3.3	Salient Features of the Delocalization Controversy	256
10.4	The Theorization of – and Quarrel over – the Arbitral Legal Order	259
10.4.1	The Theorization of the Arbitral Legal Order	259
10.4.2	Critical Examination of the Theory of the Arbitral Legal Order	264
10.5	Conclusion	270
11	General Conclusion	272
11.1	The Tripartite Division of the Modern History of International Commercial Arbitration	272
11.2	Renewal and Anxiety	275
11.3	The Ongoing Tension between the State and the Mercatocracy	277
11.4	A New “Age of Disruption” in the History of International Commercial Arbitration?	278
	<i>Bibliography</i>	281
	<i>Index</i>	341