REVIEW

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International Arbitration in the People's Republic of China: Commentary, Cases and Materials by Cheng Dejun, Michael J Moser and Wang Shengchang [Hong Kong: Butterworths Asia, 2nd ed, 2000. xiii + 1308 pp, casebound, HK$1,800]

When the first edition of this book was published early in 1995, it arrived at the beginning of a process of evolution in the law and practice of arbitration in China. China's first Arbitration Law had been promulgated on 31 August 1994 and was scheduled to take effect on 1 September 1995. Arbitration law in China had previously been fragmented between a number of different statutes, principally the Civil Procedure Law of 1991 and (on the international level) the Foreign Economic Contract Law of 1985. The Arbitration Law not only brought about a semblance of order but also legislated for a unitary system of arbitration law governing both domestic and international arbitrations conducted in China. The Arbitration Law was also more modern in outlook than its disparate predecessors, having been drafted partially under the influence of the UNCITRAL Model Law on International Commercial Arbitration and, as a result, more accessible.

International arbitration in China was at the time, and for several years to come, dominated by two arbitral bodies, the China International Economic and Trade Arbitration Commission (CIETAC) and the China Maritime Arbitration Commission (CMAC), whose predecessors had been established in the mid-1950s. These arbitration commissions not only had a complete monopoly over international arbitrations conducted in China, but arbitration law, both pre- and post-1995, also required arbitrations to be administered by these bodies. At the same time, however, there was nothing in any law that positively discouraged *ad hoc* arbitration or administered arbitration conducted under the auspices of another international arbitration body, such as the International Chamber of Commerce. In spite of this monopolistic position, CIETAC had shown itself to be responsive to criticism of its procedures. This was illustrated by the CIETAC Arbitration Rules 1994, which were drafted not only in anticipation of the 1995 reforms but also to address the reason why, in a rare instance, the then High Court of Hong Kong had refused to enforce a Chinese award under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958[1], to which China had acceded in 1987.

[1] *Paklito Investment Ltd v Klockner East Asia Ltd* [1993] 2 HKLR 39, in which enforcement was refused because a CIETAC tribunal had failed to give the parties an opportunity to make representations on the report of a tribunal-appointed expert. Article 40 of the 1994 Rules addressed this matter by requiring arbitral tribunals to copy such reports to the parties prior to making an award. See now article 40 of the CIETAC Arbitration Rules 2000.

By contrast, domestic arbitration[2] was a far more disparate system. Commercial arbitrations, which were conducted under Chapter 5 of the Economic Contract Law of 1981, were serviced by a system of Economic Contract Arbitration Commissions. Separate arbitral bodies administered disputes arising in relation to the Technology Contract Law of 1987 and the Labour Law of 1994. In addition, there were a number of other arbitral bodies that administered product quality, copyright contract, consumer and urban real estate disputes.

The intervening years have seen a confluence of other important developments. Firstly, systems of 'pre-reporting' were promulgated in 1995 and 1998, vesting a supervisory jurisdiction in the Supreme People's Court to ensure the proper and timeous handling of the enforcement of foreign awards by Intermediate and Higher People's Courts.[3] Secondly, a legal vacuum arose on 1 July 1997 with the transition of sovereignty, in that the New York Convention no longer availed the enforcement of Hong Kong/China awards. Whilst Chinese awards remained enforceable in Hong Kong through an action on the award, the legal basis for enforcing Hong Kong awards in China was by no means so clear. The *status quo ante* was only restored on 1 February 2000 when the *Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region*, a juridical assistance agreement concluded on 21 June 1999,[4] was given legislative effect on both sides of the border. Thirdly, the former arbitral bodies responsible for domestic arbitrations were replaced by a system of domestic arbitration commissions constituted in accordance with the Arbitration Law; the present count of such commissions is 144, with a potential total of 210 a possibility. Fourthly, competition in the provision of arbitration services by the arbitration commissions was introduced following a decision of the State Council in 1998 to vest the new domestic arbitration commissions with authority to hear international references as well as domestic ones. CIETAC responded by promulgating the 1998 edition of its Arbitration Rules, the highlight of which was an extension of its jurisdiction to domestic cases. Lastly, a modern and comprehensive Contract Law took effect on 1 October 1999, replacing the Foreign Economic Contract Law, the Economic Contract Law and the Technology Contract Law. Article 128 of the Contract Law provides generally for the conciliation and arbitration of contractual disputes.

2 That is, arbitration of disputes among Chinese individuals and Chinese legal persons, the latter including foreign investment enterprises, such as equity joint ventures and wholly foreign-owned enterprises.

3 This jurisdiction resulted in part from a *Work Report* by the former President of the Supreme People's Court, Justice Ren Jianxin, to the National Conference on Politics and Law in December 1992. Justice Ren acknowledged publicly what critics of China arbitration had been saying for some time: that the effectiveness of arbitration in China, particularly with regard to the enforcement of foreign arbitral awards, was beset by problems arising from local protectionism, corruption and unjustified Party or administrative interference in the judicial process.

4 'The 1999 Arrangement'.

The second edition of Cheng, Moser & Wang is therefore a welcome and timely addition to the reference sources available to China practitioners and academics. The first edition swiftly made its mark as the only quality commentary on China arbitration in the English language. This was to be expected, as all three authors are experienced CIETAC arbitrators. The second edition continues this venerable tradition. Like its predecessor, the new edition also continues to strike three balances — and to strike them well. Firstly, it is a useful reference tool for both experienced practitioners and an invaluable introduction to novices in the field. Secondly, the new edition provides academics and students with a treasure trove of source materials in both the English and the Chinese languages that will facilitate research and commentary in a rapidly growing area of comparative law. Thirdly, the book combines the attributes of a well-written textbook with those of a comprehensive cases and materials sourcebook.

The book is set out as follows. *Part I* provides commentary on the Arbitration Law and on the system of international arbitration in the PRC, with particular reference to CIETAC and CMAC and the provisions of their arbitration rules with regard to such matters as the arbitration agreement, jurisdictional decisions, conflict of law rules, the conduct of arbitral proceedings, interim measures of protection and the making and issuance of awards. Relevant provisions of the new Contract Law are discussed throughout. The Chinese tradition of combining mediation with arbitration is also briefly but concisely discussed, drawing attention to the services provided in this regard by CIETAC, CMAC, the Beijing Conciliation Centre and local mediation centres established nationwide. This part of the book also discusses the enforcement of Chinese and foreign arbitral awards in China, of CIETAC and CMAC awards overseas and in Hong Kong and of Hong Kong awards in China. Although the law is stated as at 1 January 2000, the book anticipates the enactment on both sides of the border of the 1999 Arrangement on the enforcement of China/Hong Kong awards in early 2000.

Part II of the book contains summaries of cases handled by CIETAC and CMAC, broken down into subject groups, while *Part III* sets out a representative selection of anonymised awards made by both arbitration commissions (in CMAC's case, the awards are semi-anonymised as they identify the subject vessels in question by name). These two parts of the book serve to disprove once again the notion that it is invariably inappropriate, on privacy and confidentiality grounds, to report awards.

Part IV of the book discusses domestic arbitration and also contains an introduction to the court system of the PRC. A brief but useful comparison is given between the system of domestic arbitration prior to the Arbitration Law and the system since 1995 and as between the former disparate contract laws and the new Contract Law.

Part V of the book sets out the source materials, which divide into CIETAC and CMAC materials, legislation relevant to international arbitration, mediation and conciliation, domestic arbitration, international treaties and conventions and other materials, the last of which includes the 1999 Arrangement. Of particular interest to those who are about to go to arbitration in China are the lists of CIETAC and CMAC arbitration panel members. This part also has a useful historical perspective in that it continues to contain some former rules and administrative provisions relating to CIETAC and its predecessors and excerpts from the relevant pre-Contract Law substantive laws under which CIETAC, CMAC and the former domestic arbitration commissions decided references.

This reviewer has only one criticism of the book, which relates to presentation and is, regrettably, a somewhat serious one. The 'Materials' section (Part V) is difficult to use. An outline list of contents, subject-divided as indicated above, is set out at pages xii-xiii. A detailed list of contents for this part is set out at pages 381-386. Although the reader can see from the detailed list what materials are contained in each subject division, the outline list has to be consulted first to see where each subject division begins. To make matters worse, the detailed list of contents in this edition, unlike its predecessor, does not then tell the reader the page within each subject division at which particular materials may be found. This makes using the 'Materials' section a difficult and time-consuming occupation and greatly detracts from the book's user-friendliness. Users who regularly consult particular materials are advised to insert bookmarks or 'Post it' notes in this section for ease and speed of reference. This should not have to be: publisher please note.

This criticism apart, this is a book which can be wholeheartedly recommended to all who are interested in and seek to understand PRC arbitration.

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