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Alexander J. BĚLOHLÁVEK, Naděžda ROZEHNALOVÁ, *Abuse of arbitration*, LexLata, 2024, ISBN 978-90-833234-3-5, € 135.00, 380 pp.

Articles: Jan DUBICKÝ, *Trends in the Prevention of Multiplication of Proceedings in Investment Arbitration*; Aleksei KOROCHKIN, *Managing Abusive Objections in International Commercial Arbitration: Recent Trends, Belarussian Reality and Suggestions for Prevention*; Elena V. KUDRYAVTSEVA, Sergey A. KUROCHKIN, *The Public Policy Exception under the New York Convention: Application in the Countries of the Eurasian Economic Union*, Roman MAKAROV, Anastasia MELNIKOVA, Yaroslava BRANOVSKAYA, *The Russian Experience of Countering the Abuse of Arbitration: the Results of Russian Arbitration Reform*, Yulia MULLINA, Sergey IVANOV, *Abuse of Arbitration: Russian Experience with the Arbitration Reform*, Silvia PETRUZZINO, *Application of Overriding Mandatory Rules by Arbitrators and the Risk of an Excess of Mandate Challenges*, Lucia SCRIPCARI, *Abuse of Process and Corporate Restructuring in the Context of Investment Arbitration*, Jan ŠAMLOT, *Criminal Law Aspects in Arbitration*; Danesh CHANDRAN VELAITHAM, Kho Yii TING, *The Malaysia-Sulu Wrangle: A Broad Study of its Footprints on International Commercial Arbitration*; Natalia N. VIKTOROVA, *Abuse of Rights by Foreign Investors in Investment Arbitration*, Angelika ZIARKO, Tadeusz ZBIEGIEŃ, *Award on Costs as a Tool to Counter Abuse of Procedure under Polish Law*.

Nigel BLACKABY, W. Michael REISMAN, *Arbitration Beyond Borders: Essays in Memory of Guillermo Aguilar Álvarez*, Wolters Kluwer, 2023, ISBN 978-94-035-2380-4, € 163.00, 505 pp.

Arbitration Beyond Borders elucidates the influential vision and work of the late Guillermo Aguilar Álvarez, one of the world's leading arbitral innovators. He has left the principles and practice of international arbitration with a rich legacy of insight and achievement. Thirty-two eminent arbitrators and scholars review the key issues that concerned him and to which he often lent new clarity, including the following:

- ethical standards for party representatives in international arbitration
- responsibilities of international arbitrators in the conduct of proceedings
- alternatives to investment arbitration

- corruption and « red flags » in international arbitration
- abuse of rights in restructuring to access investment protection
- foreign investment disputes under the United States–Mexico–Canada Agreement 2020
- the illegality defense in investor-State arbitration;
- arbitration and insolvency
- status of annulled awards in investment arbitration
- the arbitration « backlash »
- Some of the most compelling technical and political considerations facing international arbitration today have been analyzed in depth by this book.

Christian KLAUSEGGER, Peter KLEIN, Florian KREMSLEHNER et al, *Austrian Yearbook on International Arbitration 2024*, BECK, Stämpfli, Manz, 2024, ISBN 978-3-406-82417-3, € 128, 334 pp.

The Austrian Yearbook on International Arbitration is a collection of articles on current issues and hot topics in arbitration. It provides a comprehensive overview of recent developments in the field. The present 18th edition contains the following contributions:

Articles: Renato NAZZINI, Aleksander GHODE, *Adapting Arbitration to the Construction Sector: Ensuring Efficiency Through Arbitration Avoidance and Case Management Techniques*; Stephan WILSKE, *Diversity and Trigger Points in International Arbitration, When Good Intentions Turn into Intrusive Behavior and Trigger Counter-Productive Reactions*; Florian KREMSLEHNER, Robert KEIMELMAYR, Ann-Kathrin RESCHNY, *Necessary Joinders in « Austrian » Arbitrations*; Helmut ORTNER, Marion NOVAK, I *Determining the Standard of Proof in International Arbitration, Guidance for a Tailored Approach*; Maximilian Albert MÜLLER, *Transparency in Arbitration: Navigating Disclosure Obligations relating to Third Party Funding*; Peter MACHHERNDL, Lena MILACHER, *Of Unclean Hands and Forbidden Fruits: Shielding Secrets and Safeguarding Confidentiality in the Taking of Evidence in Arbitration*; Irene WELSER, Paul KREPIL, Samuel FAROKHNIA-MIMNAGH, *Obstructing Arbitral Proceedings at Their Beginning – A Bumpy Road (Not) to Take*; Tigran TER-MARTIROSYAN, *Shareholder and JV Disputes: Value of Control and Liquidity*; Nikolaus PITKOWITZ, Johanna KATHAN-SPATH and the 18 contributors, *The Vienna Propositions for Streamlining Arbitral Proceedings:*

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Robert KOLB, *The Law of Treaties,* Elgar, 2024, ISBN: 978-1-0353-4451-2, £ 36.95, 366 pp.

Presenting up-to-date case law and a freshly updated bibliography, this second edition of The Law of Treaties is a valuable addition to contemporary international law scholarship. It offers clarity on complicated cases and questions whilst maintaining a highly readable style.

This timely second edition offers both theoretical and practical insights into the modern law of treaties. Chapters include new additions based on recent legal developments, such as updated information on the invalidity of treaties, and provides precise legal analyses through the integration of modern treaty practice.

Nikos LAVRANOS, *International Arbitration and EU Law, Second Edition*, Elgar, 2024, ISBN 978-1-03531-656-4, £ 215.00, 616 pp.

In this substantially revised and updated second edition, LAVRANOS examines the intersection of EU law and international arbitration based on the experience of leading practitioners in both commercial and investment treaty arbitration law. This second edition covers relevant new developments in law and practice, and tracks the ever-increasing influence of EU law and the jurisprudence of the Court of Justice of the EU (CJEU) in international arbitration.

Key Features:

– An analysis of the relevance of EU law on the validity of international agreements to arbitrate

- Consideration of the impact of EU law on challenges, recognition and enforcement of international commercial awards, and the relationship between anti-suit relief, EU law and the New York Convention
- An introduction to the complex areas in which the EU regime and international investment arbitration laws intertwine, through a review of the development of the EU's investment policy
- An examination of the impact of EU law on specific issues in international investment arbitration including the Energy Charter Treaty, procedural issues (both ICSID and non-ICSID), damages, taxation, and the proposed Multilateral Investment Court and international taxation
- Discussion of proposals to support climate responsive international investment and commercial arbitration regime
- An analysis of alternative dispute settlement mechanisms in investment treaties

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Hans MOOIJ, *International Tax Disputes, Arbitration, Mediation and Dispute Management*, Elgar, 2024, ISBN 978-1-0353-1703-5, £145, 332 pp.

Bringing together global experts from diverse legal backgrounds, this comprehensive book offers an analysis of the complexity of resolving and preventing international tax disputes, covering arbitration, mediation, and dispute management.

Analyzing the myriad challenges involved in international tax disputes, this book critically examines the OECD Two Pillar framework, the tax treaty Mutual Agreement Procedures, the OECD MLI arbitration rules, BIT investment arbitration on tax issues, as well as the EU Dispute Resolution Process.

Part I, Arbitration: Ubaldo GONZÁLEZ DE FRUTOS, *International tax arbitration: what it means and how it has evolved*; John F. AVERY JONES, *The case for reasoned baseball arbitration*; Kim S. JACINTO-HENARES, *Developing countries' position on arbitration*; Parthasarathi SHOME, *Dispute management − arbitration in India*; Eleonora Lozano RODRÍGUEZ, *Tax arbitration – recent developments in Latin America*; Enrique BOLADO MUÑOZ, Juan Carlos TRUJILLO BARROSO, *Arbitration as a dispute resolution mechanism in tax treaties: a Mexican perspective*; H. David ROSENBLOOM, *Reflections on the 'A' word*; Catalina HOYOS-JIMÉNEZ, *A call and outline for action to build trust in tax arbitration*; Rita M. CORREIA DA CUNHA, *Tax arbitration in Portugal: private justice in the*

public interest; Rita N. HALABI, *Mind the gap – key arbitration provisions the MLI's drafters missed*; Rhys Kieran BANE, *The EU Dispute Resolution Directive*.

Daniel RIETIKER, *Défendre athlètes, joueurs, clubs et supporters*, Éditions du Conseil de l'Europe, 2024, ISBN 978-92-871-9377-3, € 49.00, 260 pp.

The book from Prof. Rietiker,[1] published in English and French, is a masterpiece that comes *« à point nommé »*.

Indeed, while EU competition law continues to play an important, albeit controversial, role in sports law,[2] the European Convention on Human Rights (the "Convention") has now assumed its rightful place in this field, in particular in the wake of the seminal Pechstein/Mutu,[3] Ali Riza,[4] Platini[5] and Semenya's[6] cases.

There is now no doubt that international federations, adjudicatory bodies, tribunals/courts, in particular the Court of Arbitration for Sport ("CAS"), as well as sports practitioners should be better acquainted with the European Court of Human Rights' (the "Court") case law (as pointed out by the Court itself in the Semenya's case – being noted that this case is still pending, since it has been referred to the Grand Chamber on 6 November 2023).[7]

Prof. Rietiker's book provides essential tools to tackle these complex issues in the context of sports disputes. It offers an in-depth and practical analysis of the Convention's procedural and substantive requirements to defend athletes, players, clubs and supporters' human rights.

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1 Prof. Rietiker is a Senior Lawyer at ECtHR, Adjunct Professor at University of Lausanne and Suffolk University Law School (Boston MA).

2 *See* recently: Court of Justice of the European Union, European Superleague Company, Case C-333/21, Judgment of 21/12/2023; International Skating Union v Commission, Case C-124/21 P, Judgment of 21/12/2023; Lassana Diarra and FIFPRO v. FIFA and URBSFA, Case C-650/22, Judgment of 4/10/2024.

3 European Court of Human Rights, Mutu and Pechstein v. Switzerland, Applications 40575/10 and 67474/10, Judgment of 2/10/2018.

4 European Court of Human Rights, Ali Riza and Others v. Turkey, Application 30226/10, Judgment of 28/01/2020.

5 European Court of Human Rights, Michel Platini contre la Suisse, Requête no 526/18, Judgment of 5/3/2020.

6 European Court of Human Rights, Semenya v. Switzerland, Application 10934/21, Judgment of 11.7.2023.

7 *Id.*, para. 166.

The book starts with the presentation of the theoretical framework (Part I), i.e. the unique characteristics of the sports movement and *lex sportiva*, on one hand, and the scope of human rights application, on the other. This study then examines how these two fields may overlap and addresses two key issues within this context:

First, who bears the responsibility for ensuring compliance with human rights in the field of sports?

Indeed, sports are governed by private-law sports-governing bodies. As a matter of principle, the Convention is not directly applicable to such entities, since the Convention imposes obligations towards States. The Signatories nonetheless have both negative and positive obligations to ensure compliance with the Convention, including by the sports-governing bodies located in their jurisdiction (as this is the case for the Swiss Confederation in respect of international sports federations based in Switzerland). Therefore, Signatories have the obligation, under the Convention, to put in place a legislative framework that enables the protection of such fundamental guarantees, as confirmed in the Platini[8] and in the Semenya cases,[9] as well as in the Mutu/Pechstein case.[10]

Second, what is the jurisdictional/extraterritorial scope of the Court regarding human violations committed abroad?

This question was of essence in the Semenya case, which involved a South-African athlete. Another layer of complexity stems from the fact that the sports federation concerned (the former International Association of Athletics Federations; now: World Aquatics) is based in Monaco (and not in Switzerland). Can Switzerland be held liable for the (purported) violation of the Convention committed by a (foreign) sports federation against an athlete from a non-signatory country? The answer is affirmative: the Court's jurisdiction over Switzerland was triggered by the Swiss Federal Supreme Court's review of the CAS award in that case. This applies *a fortiori* in cases of "forced" arbitration such as sports disputes, where athletes have no other choice but to adjudicate their claims against sports federation before the CAS.[11]

Part II contains, in turn, an in-depth analysis of the Court's case law related to the following (recurring) issues in sports, i.e.:

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8 *See supra* note 5, paras. 59-62.
9 *See supra* note 6, para. 164.
10 *See supra* note 3, paras. 92 ss.
11 *Id.*, paras. 103 et seq. *See also supra* note 6, paras. 36-38.

- Access to a court, fair trial and other procedural guarantees (Articles 6, 7 and 8 Convention);
- Privacy in the fight against doping (Article 8 Convention and Article 2 of Protocol No. 4);
- Freedom of expression of players and athletes (Article 10 Convention);
- Human rights of fans, in particular in the fight against hooliganism.

In Part III, Prof. Rietiker then takes a prospective approach by identifying and analysing the following issues that may arise before the Court in the future, particularly for vulnerable groups:

- Discrimination (*see* notably Article 14 of the Convention and Protocol No. 12);
- Violence and sexual abuse;
- Protection of athletes and players against hate speech;
- Trafficking in human beings.

Part IV outlines the procedural requirements for filing an application before the Court. This chapter contains very useful practical insights for practitioners and summarises the main procedural requirements before the Court. This includes the requirement to file the application (only) through the dedicated application form to interrupt the 4-month deadline to seize the Court. [One may note in passing that the Court's procedural stance in this respect may appear quite (over-)formalistic… and not necessarily in line with the objectives of Article 6 § 1 Convention…]

What is Prof. Rietiker's conclusion on the relevance of the Convention in sports matters?

Even if sports-governing bodies enjoy a wide autonomy, Signatories States nevertheless have a positive obligation to ensure compliance with the Convention. As shown in recent decisions, the Court may play an increasingly significant role in sports disputes, in particular acting as a watchdog for the protection of athletes, players, clubs and fans and all other constituencies involved in sports. Its case law will become more relevant in these field, while certain issues will need closer scrutiny, such as discrimination against certain groups of athletes or players, including disabled athletes, as well as intersex/transgender athletes.

Prof. Rietiker's book is a must read. Thanks to his work, all stakeholders, including sports federations, judges and arbitrators, as well as

practitioners, will now be better equipped to protect the fundamental rights of athletes in sports matters.

FABRICE ROBERT-TISSOT

Pierre TERCIER, Rita TRIGO TRINDADE, Damiano CANAPA, *Code des obligations II (CO II)*, Helbing, 2024, ISBN 978-3-7190-4496-1, CHF 798.00, 4559 pp.

Nommé à juste titre « Le pilier de la doctrine romande en la matière », le Commentaire romand « CO II » occupe une place de choix dans le paysage doctrinal suisse et constitue pour tout juriste un ouvrage de référence utile et original en droit des obligations et des sociétés. Sa troisième édition propose une mise à jour complète, qui tient compte des importantes évolutions législatives et jurisprudentielles récentes ainsi que des principaux développements doctrinaux.

La nouvelle édition intègre en particulier les nouveautés introduites par la révision du droit de la société anonyme et par celle du droit du registre du commerce, dont la plupart des dispositions sont entrées en vigueur au 1er janvier 2023.

Nouvellement réparti en deux volumes, l'ouvrage comprend un commentaire complet et concis des articles 530 à 1186 du Code des obligations et des articles 120 à 141 de la loi sur l'infrastructure des marchés financiers (LIMF), ainsi que des introductions à la loi sur la fusion (LFus) et à la loi sur les titres intermédiés (LTI).

- Le premier commentaire article par article en langue française du nouveau droit de la SA
- Rédigé par près d'une cinquantaine d'autrices et auteurs reconnus et spécialisés dans chacune des matières commentées, issus des milieux de la recherche et de la pratique
- Structure systématique éprouvée des Commentaires romands
- Publication en deux volumes pour une utilisation plus aisée

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Hellwig TORGGLER, Friederike SCHÄFER, Venus Valentina WONG, Florian MOHS, Lukas WEDL, *Schiedsgerichtsbarkeit, Deutschland – Österreich – Schweiz*, Nomos, Verlag Österreich, Schulthess, 2024, ISBN 978-3-7046-9388-4, € 198.00, 823 pp.

Earlier this year, the third edition of the publication with the sweeping title « Schiedsgerichtsbarkeit » came out, only seven years after the second edition. As the subtitle clarifies, the book deals with arbitration in general, but focuses strongly on the three German speaking countries Germany, Austria and Switzerland. As the

forewords of the second and third edition already clarified, the purpose is to compare the laws, regulations, rules and practices in those three countries.

Originally edited by Hellwig TORGGLER, the group of editors has in the meantime grown to five, the number of contributing authors to 51 (all are well-known and seasoned arbitration practitioners from the three countries), and the page count from 690 to 823.

The content of the book and the sequence of topics do not contain any surprises. It starts with a relatively short general introduction to arbitration and other dispute resolution mechanisms, followed by a longer discussion and introduction to ad hoc and (in particular) institutional arbitration. The arbitration rules presented in depth are those of DIS, VIAC, the ICC and the Swiss Rules, which makes sense because those are the ones primarily used in the German speaking countries. The book then introduces the reader to the classical topics arbitration clause, arbitrability, applicable law, jurisdiction, preliminaries of an arbitral proceeding, conduct of proceedings, the award and termination of the proceedings, interim measures, challenge proceedings, and finally the execution of arbitral awards. The topics are presented in a very concise manner, and the contributions are the result of the collaboration of authors from all three countries, thereby not only presenting the similarities, but also the existing, although sometimes minimal, differences between the various jurisdictions. As is to be expected from the excellent cast of contributors, the quality of the texts is outstanding. In most instances, the authors find the right balance be-tween being concise and exhaustive, without embarking on unnecessary aca-demic discussions without real practical value. Overall, the publication delivers exactly what the practitioner is looking for.

Some questions arise: Have the editors considered to publish in English, given that many of the arbitrations conducted particularly in Austria and Switzerland are in English, and more and more non-German speaking counsel represent parties in those proceedings? What is the benefit for the reader of covering three countries in one book, as opposed to consulting a publication discussing either German, Austrian or Swiss arbitration, if one is involved in a proceeding in one of those countries?

In my view, the intrinsic value of comparing these three countries is that this enlarges the cake, i.e. there is more case law and more literature that one can draw conclusions from, which is an advantage because, unfortunately, a lot of issues arising in arbitration proceedings are never actually dealt with by judicial authorities; it is therefore sometimes difficult to ascertain the applicable standards. Moreover, a look across the border can often be helpful to develop a practice where none has existed, and to consult countries with very similar le-gal traditions of course makes sense.

There can be no doubt that this publication will be an important addition to treatises and commentaries focusing on one country only, because it puts relevant

topics into a broader perspective, and it deserves a central place on the shelves of practitioners not only in Germany, Austria and Switzerland.

DANIEL HOCHSTRASSER

Melanie TRITTEN, *Les contrats complexes et les complexes de contrats*, Schulthess, 2024, ISBN 978-3-7255-8992-0, CHF 69.00, 362 pp.

Dans la pratique, des contrats juridiquement indépendants sont régulièrement amenés à interagir. En particulier, il est fréquent que plusieurs contrats portent sur le même objet ou qu'un contrat isolé ne puisse, à lui seul, atteindre le but recherché par les parties en présence. Dans de tels cas, les effets de chaque contrat peuvent déborder de leur strict cadre d'exécution.

Cette thèse examine les conditions pour qu'une dépendance objective entre des contrats distincts, généralement d'ordre économique, puisse être traduite en une dépendance juridique, ainsi que les conséquences concrètes d'une telle liaison. Dans ce cadre, elle distingue les contrats liés conclus entre les deux mêmes parties (contrats complexes) et ceux conclus entre des parties différentes (complexes de contrats). TRITTEN touche également à la problématique de l'extension de clauses arbitrales au sein d'un groupe de contrats.

Franz WERRO, *Le droit des contrats*, Stämpfli, 2024, ISBN 978-3-7272-5034-7, CHF 139.00, 850 pp.

Le présent ouvrage traite le droit des contrats à partir des arrêts du Tribunal fédéral. Les arrêts choisis abordent la vie du contrat, de sa formation jusqu'à sa fin et au-delà. Ils permettent d'illustrer concrètement le droit des contrats nommés et innommés les plus courants. Par ailleurs, des notes et des questions accompagnent chaque arrêt et permettent d'en mesurer la portée. Dans sa 3e édition revue et corrigée, le livre servira les besoins des étudiants, à qui il tiendra lieu d'outil d'apprentissage. Il rendra service également aux praticiennes à qui il offrira un aperçu de l'essentiel de la jurisprudence du Tribunal fédéral. En plus de celle de l'arrêt, une bibliographie sélective fournit aussi des pistes utiles pour une étude plus approfondie de la matière.

BOOKS RECEIVED*

Lucien W. VALLONI, Thilo PACHMANN, *Sportrecht in a nutshell*, 2 Auflage, Dike, 2024, ISBN: 978-3-03891-515-7, CHF 48.00, 234 pp.

Christina PERRY, *Good Faith in Contract Law*, Edward Elgar, 2024, ISBN 978 1 80392 965 1, £150.00, 268 pp.

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* These books may be reviewed in a future edition of the Bulletin.