

FOREWORD: INTERNATIONAL DISPUTE RESOLUTION – DEMYSTIFYING THE NEW FRONTIER

As a trading nation and one that has always looked to the wider world, New Zealand's engagement internationally is key to the country's well-being and prosperity. As New Zealand's engagement grows in an increasingly complex and global world (for example, New Zealand's free-trade agreement with China, but also its membership in the Trans-Pacific Partnership Agreement), so does the potential for disputes and the need to resolve them fairly and efficiently. International dispute resolution is thus central to New Zealand's future.

Despite this, it seems that there is a lack of awareness, and understanding of issues in regard to international dispute resolution is not widespread. As some argue, this might be due partly to a lack of clients who engage in international transactions of a magnitude where dispute resolution becomes a major concern; but might also be due, as others argue, to the fact that the New Zealand court system is still efficient, predictable and cheap. Or it might just be (as one practitioner mentions) that New Zealand lags slightly behind international development. Equally, comparatively few academics research and teach in the area of international dispute resolution in New Zealand.

Against this backdrop, the New Zealand Law Foundation generously funded an initiative by the University of Auckland and Victoria University of Wellington to invite a leading figure in international dispute resolution to discuss important issues in international dispute resolution with New Zealand's business and legal community.¹ The importance of the annual lecture and the accompanying seminars and workshops lies, therefore, in making the legal community aware of issues which are at the forefront of debate internationally, thereby keeping the legal community abreast of international developments and providing an opportunity to discuss the arbitration issues for New Zealand with international leading experts in their field.

The inaugural New Zealand Law Foundation International Dispute Resolution lecture was given in Wellington on 7 November 2012 by Lucy Reed, partner at Freshfields Bruckhaus Deringer and co-head of its international arbitration group. The lecture was preceded by a seminar that featured a discussion on expert witnesses in arbitration and an examination of bribery in international commercial arbitration. In regard to the former, Schmidt-Ahrendts' article outlines the traditional "use" of expert witnesses, and goes on to present a solution to the problems encountered with both

¹ The organisers further acknowledge and are grateful for the support of the Arbitrators' and Mediators' Institute of New Zealand, Chapman Tripp, Russell McVeagh, and Bankside Chambers.

party-appointed and tribunal-appointed experts, a solution which he labels "expert teaming". The "expert teaming" instrument, according to Schmidt-Ahrendts, seeks to respond to the disadvantages and combine the advantages of both party-appointed and tribunal-appointed experts. The article outlines the appointment process and details the major advantages of "expert teaming".

Bribery and corruption cause particularly strong condemnation in most legal systems since they infringe societies' core values. Pavić's article discusses how international commercial arbitral tribunals, when encountering bribery, deal with the allegation of – or confirmed – bribery. The challenge for international commercial arbitration tribunals is that commercial arbitration is private in nature (attaining its legitimacy by the will of the parties) but in bribery cases is faced by a public and criminal law overlay. The article offers some thoughts on how to address those ensuing issues, discussing in particular the role of mandatory rules and public policy in international commercial arbitration.

The inaugural lecture shone light on another area of international arbitration: investment arbitration. Like international commercial arbitration, investment arbitration is a legal discipline only cherished and practised by very few in New Zealand and practised only outside New Zealand. New Zealand is currently party to only three international instruments that provide for binding investor-State dispute resolution, which probably accounts for New Zealand legal professionals' lack of practical experience with the subject matter. Notwithstanding the lack of activity in this area, investment regulation has been the focus of a vigorous campaign in New Zealand in regard to a proposed compulsory investor-State dispute resolution clause in the Trans-Pacific Partnership Agreement. Reed and Kirkness' article demystifies some of the myths surrounding investment treaties and investment treaty arbitration and outlines the benefits of an investment treaty regime for New Zealand – in particular New Zealand businesses. The authors point out that:²

The fact that New Zealand has signed so few treaties to date leaves it well-placed to make an informed assessment of the risks and opportunities of investment treaty arbitration unencumbered by an existing treaty practice.

The article offers some guidance as to what such an informed assessment should look like.

The seminar contributions, as well as the inaugural lecture, attest to the importance of being aware of international arbitration as a discipline of immense significance internationally. Their content encourages New Zealand academics and the legal profession alike to further engage with the discipline of international arbitration and test its value.

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2 Lucy Reed and Robert Kirkness "Old Seeland, New Netherland and New Zealand: Some Thoughts On The Possible "Discovery" of Investment Treaty Arbitration in New Zealand" (2012) 43 VUWLR 687.