

Foreword

“Read on” she said with a mysterious smile, “you will not regret reading this book.” As she was right about the previous book on arbitration, I followed her advice. All the same, I thought, what is so special about it, apart from the size?

I started reading Part One “The Moslem Arbitration Law.” As I proceeded, it was as if I was driving the car with her when the GPS system was guiding me. I could not resist the dialogue with the GPS voice:

“Turn right after 200 meters.”

“Correct.”

“Keep on driving on this road.”

“Yes.”

“On the roundabout, take the fourth exit on the right.”

“One, two, three . . . four, yes.”

“You will arrive at your destination after 200 meters.”

“Where?”

“At the next exit, turn around.”

“There is no exit.”

“Turn here.”

“Missed it.”

“Next light, turn left.”

“You have arrived at your destination” the digital voice concluded.

Taking over from the GPS voice, she smiled again, this time less mysteriously: “You see. Part One guides you to where you should be. It is fail safe. It’s special, isn’t it?” I didn’t disagree with her.

The book having caught my interest, I kept on reading the following Parts. They describe the law and practice of arbitration in many Arab countries. They brought back memories about the part of my life in the Middle East. The great time I spent as a post graduate student in Lebanon at the Faculté internationale de droit

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comparé in 1974. The year I worked in Saudi Arabia in 1982—probably the best of my professional life. One of the many things I did there was to write a national report on arbitration in Saudi Arabia for the International Handbook on Commercial Arbitration. At the time, it was pretty difficult to obtain the source materials. Even if I had obtained them, they were not always uniform. It had taken quite some effort for me to get all the information and to write the report. A number of years later, inexplicably, my mentor, the then General Editor of the Handbook, simply substituted my name with that of Nancy Turck (now Chief Legal Counsel at the International Energy Agency), who had also worked in the same law firm in Saudi Arabia. As she is a dear friend of mine and also active in arbitration in Saudi Arabia (at least, at that time), I didn't object, but it is still one of those mysteries in my life.

Continuing reading country by country, I recalled the arbitration cases. The Pyramids case in Egypt. That was the first case I worked with Jan Paulsson. My task was to have the ICC award, which Jan had won so gloriously, enforced in the Netherlands. Mission accomplished on July 12, 1984. Two hours later on the same day, the French Cour d'appel annulled the award. The arbitration in Syria where both the Secretary-General of the Permanent Court of Arbitration and the Syrian Conseil d'Etat had the same idea of appointing me a presiding arbitrator in an UNCITRAL arbitration. The arbitrations about hotels in Egypt. The reservoir estimating in Egypt. The pipelines in Yemen. The fire fighting of the enflamed oil wells in Kuwait. Commission business in Qatar. The remodeled beaches and disappearing islands in Dubai. Natural gas in Algeria. The fish processing plant in Morocco. The Islamic financing by Arab banks and Arab investors. They were all memorable cases. The book continues on memory lane with many other cases.

"Wake up, you are dreaming," she observed. "Back to reality. Can Western arbitrators ever act in an arbitration in Arab countries?" she asked me.

"Why not?" I said.

"Well, you know, that arbitrator who sat in the UAE and did not administer an oath of the witnesses, apparently because they did not do that in his home country" she answered.

"Oh, him. But he could have avoided the problem by simply reading the UAE arbitration law and knowing some basics of Islamic law."

"Hmmm" she reacted. And then: "Can I be arbitrator in the Arab world?"

"In a number of countries, yes. Take as an example Lebanon."

"But in others?" she asked.

"To my knowledge, many of them, yes, but some, no. But, I suggest that you think about it this way: in my native country women were allowed to be arbitrators only as of 1953. No doubt, such changes will happen in the Arab countries as well. Allow them time. And in international arbitration in the West, less than 10% of the arbitrators are female. May be you should focus on that imbalance first."

She gazed in the distance, neither approving nor disapproving of what I had just said. Another worrisome look appeared: "Do you think that there is a crisis between the Middle East and European arbitration specialists?"

"What crisis?" I asked.

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“Well, they seem not to understand each other. Lord Asquith [of Bishopstone] refused to apply the law of Abu Dhabi in a case, stating the ‘it would be fanciful to suggest that in this very primitive region there is any settled body of legal principles applicable to the construction of modern commercial instruments’. There are some others who express the same view. Those awards have upset the Arab world. Frankly, I don’t understand it: I find that the region has a rich cultural heritage and is populated by smart people. But, on the other hand, I heard a story from reliable sources that an Arab arbitrator called the party that had appointed him with the question ‘What can I do for you?’ ”

“The English arbitrator and the others you refer to said that in cases in the 1950’s and it will certainly not be repeated today. Moreover, as Ibrahim Fadlallah analyzed persuasively in his seminal Freshfields lecture of 2008 about Arbitration Facing Conflicts of Culture, Lord Asquith could have arrived at the same result without the reference to the primitive region. Fadlallah did that with respect to two other infamous awards of the 1950’s as well. On the other hand, the Arab arbitrator also has to learn a lesson. Imperfections, yes; crisis, no,” I replied.

“I am not so sure” she said. “I have also read Fadlallah’s lecture. I noted that an English Court of Appeal opined in 2004 that Shari’a law chosen by the parties could not be applied as he found it was a non-national system of law that therefore would not fall under the Rome Convention of 1980.”

“Yes” I answered, “But Fadlallah also stated that the grounds for that judgment were hardly convincing. I tend to agree with him.”

“I read that too, and here I agree with you.”

After a long reflective silence, “Keep on reading.”

I did. A few days later she asked: “Did you like the book?”

“Oh, yes, very much so, and Dr. Abdul Hamid El Ahdab and Dr. Jalal El Ahdab are to be highly commended for all the effort they put into it,” I answered, adding: “but in a given case I would check a country with local counsel.”

“As always,” she concluded with a bright smile.

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