

OXFORD

REDFERN AND HUNTER ON
**INTERNATIONAL
ARBITRATION**
Student Version

Nigel Blackaby KC, Constantine Partasides KC
with
Alan Redfern



SEVENTH EDITION

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NIGEL BLACKABY KC
CONSTANTINE PARTASIDES KC
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FOREWORD BY ALAN REDFERN

A tribute to Martin Hunter; and a personal note.

Redfern and Hunter on International Arbitration is now a well-known treatise. It is read and cited by international lawyers, arbitrators, and judges, and it is taught and studied by teachers, students, and potential arbitrators across the world. But it would not have been written without Martin Hunter.

I first met Martin in the 1960s, when we were both young lawyers at Freshfields. It was then an old-established firm in the City of London, with sixteen or so partners, and it proudly traced its origins to its association with the Bank of England in the early eighteenth century. It is now a global law firm.

After training at Freshfields as a law graduate, I was appointed in 1963 as the firm's first litigation partner. My main task was to establish a litigation department, at a time when litigation was perceived as a somewhat dubious activity for a respectable City law firm. My introduction to the more acceptable world of arbitration began when I was instructed to act for a British company in a construction dispute that eventually led to an international arbitration at the Peace Palace at The Hague.

At about the same time, I was also asked to assist my firm's senior partner, Sir Charles Whishaw, in an international arbitration for the government of Kuwait, for whom Sir Charles had previously acted in the negotiation of oil concessions. I said that if I was to do this, I would need a good, qualified assistant. I was told that I could 'borrow' Martin Hunter, a newly-qualified solicitor who had just joined the firm's corporate department, on 'a short-term loan'. It was a loan that was never repaid; and it was the beginning of a long and memorable friendship between Martin and his wife Linda, and myself and my late wife, Marie-Louise.

Martin joined me as a litigation partner in 1967; and naturally he began to build his own litigation and arbitration practice within the firm. However, we still worked together from time to time, most notably in the well-known Aminoil arbitration in the late 1970s.¹ As the lead partner in that case, I was fortunate to have Martin helping me to prepare and present the case for the Kuwait government.

But what about Martin's life as a lawyer? It seems to me to have moved seamlessly through three different stages. First, there was Martin's role as a partner in what became an international law firm. Secondly, after Martin had retired from that firm in 1993, there was his practice as a counsel and arbitrator at the English bar. Finally (and this is probably what excited him most, and where his true legacy lies) Martin became an inspiring teacher of

¹ *Aminoil v Government of Kuwait* (1982) XXI ILM 976. Anyone who is interested can read about the case in *The British Year Book of International Law*: see Redfern, 'The Arbitration between the Government of Kuwait and Aminoil' (Oxford University Press, 1984), pp. 65–110.

international arbitration to young lawyers, not only in England but in other parts of the world, including India and Brazil.

As many readers will know, Martin died at his home at Walton-on-Thames in England, on 9 October 2021, after a long and debilitating illness. Throughout this agonising period, Martin was tirelessly and steadfastly supported by Linda, in sickness as in health.

Since his death, there have been many tributes to Martin, from his friends and colleagues around the world. They have highlighted his achievements and his friendships, and his unceasing contribution to the development and teaching of the law and practice of international arbitration. Amongst the most touching tributes are those from Martin's former students, with heart-warming and affectionate memories of someone whom they were proud to call their friend, their guide, and their mentor.

Martin had no children of his own, but he had a large and devoted following amongst his students and assistants. This included a coterie of young lawyers who were known as 'the M's'. One of them has written:²

Of Martin's many fascinating quirks, my favourites were the 'Friday clinic' and the community of M's he created. The clinic was a unique gathering centre where his past protégés, who had recently started careers in international arbitration, shared experience and lessons learned with a new generation of aspiring practitioners over a gin and tonic at a pub in Covent Garden. The first stop of the Friday clinic was always the local barber shop owned by Martin's good friend. The M's was a naming tradition (MII–MXXVIII) for his research assistants—of which I had the privilege of being one—which came from the fact that his first two research assistants shared his first name.

I should explain why *Redfern and Hunter* would not have been written without Martin. In the early 1980s, Martin was asked if he would be interested in writing a book on international arbitration. He said yes, but not without me. I was very reluctant, and told Martin so. I said that as partners in Freshfields, we already had enough to do to develop the firm's practice in litigation and arbitration, without writing a book. Martin insisted. He persuaded me that we could write the book in our spare time, drafting and exchanging drafts with each other at weekends and holidays; and so, I agreed to do it.

Our first edition was published in 1986. This was at a time when international arbitration was undergoing a major transformation. From being 'a cottage industry, permeated by the culture of French and Swiss legal artisans, or specialists working in particular fields such as insurance or construction',³ international arbitration was becoming the leading method of resolving transnational disputes. In doing so, it was greatly helped by the fact that an ambitious project to create a worldwide law on international arbitration was moving nearer to fulfilment. In December 1985, the General Assembly of the United Nations adopted the Model Law on International Commercial Arbitration, as a code of law to be recommended to all member states. The Model Law now stands, with the New York Convention of 1958, as one of the twin pillars of international arbitration.

² Živa Filipič, 'In Memoriam Professor J. Martin Hunter' (2021) 3 ICC Dispute Resolution Bulletin 11–12.

³ William Park, in a tribute to Johnny Veeder KC, in (2021) 37(2) Arb Intl 417.

In the closing chapter of the first edition of this book,⁴ Martin and I suggested that the Model Law would accelerate the transformation of international arbitration. We thought that lawyers and arbitrators who were working under the Model Law, in whatever country they were based, would benefit greatly from being able to operate under an internationally accepted and harmonised legal system. We also thought that recognition and enforcement of awards by local or national courts would be treated with greater uniformity; and that this would enhance both the popularity and the effectiveness of international arbitration in the peaceful resolution of cross-frontier disputes.

As we then saw it, international arbitration was poised to become truly international. It would be broadly based, with less dependence on the existing major centres of arbitration. Applications to local or national courts in support of arbitrations would be dealt with on a uniform basis, in conformity with modern standards. Above all, arbitral tribunals would be entitled to adopt flexible procedures, designed by parties and arbitrators to meet the particular needs of each individual arbitration, without fear that awards would be nullified for failure to follow particular local or national rules of procedure.

As for the parties to an international arbitration, they would have the power to determine the procedure to be followed in their arbitration. They would also know that arbitrators were legally required to be independent and impartial, even if chosen by the parties themselves. Finally, the parties would know that they would be treated with equality; that each party would be given a proper opportunity to present its case; and that, if required, courts of law across the world would do their best to ensure that international arbitral awards were carried into effect.

That, more or less, was how Martin and I saw the future of international arbitration when we wrote the first edition of this book. It will be for our readers to decide to what extent our vision has come true.

The first edition was published more than a generation ago. Since then, there has been a vast expansion in the nature, scope, and practice of international arbitration. In working on this seventh edition, and in hoping to make it a worthy memorial to Martin, my co-authors and I have not simply updated the text, by adding new references and deleting the old. Instead, we have stood back and taken a fresh look at international arbitration. As practitioners and arbitrators, we have learnt much about it over the past years. We are conscious of the importance of its legal and historical background, and we reflect on this; but we have also done our best to portray international arbitration as it is today, not as it was when the first edition was written.

I have suggested that Martin's working life reached fulfilment as a teacher. My own professional life was centred firmly on my partnership in Freshfields Bruckhaus Deringer, as the firm had become known. But as we learn from Shakespeare, 'that old common arbitrator, Time, will one day end it',⁵ and relentlessly, retirement drew near. Some people look forward with eager anticipation to their retirement as an opportunity to pursue new interests or hobbies. For my part, I dreaded the prospect of leaving my practice as a lawyer.

⁴ Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (Sweet & Maxwell, 1986), p. 404.

⁵ *The Folio Shakespeare, Vol. IV, Troilus and Cressida* (1602) (The Folio Society, 1988), act 4.sc.7, pp. 108–110.

As it happened, Tony (later Lord) Grabiner KC, with whom I had worked on cases for Eurotunnel⁶ when the Channel Tunnel between France and England was being constructed, suggested that when I retired, I might qualify as a member of the English Bar and join his chambers at One Essex Court, to help establish an international arbitration practice. I did this and I was subsequently joined by two other former solicitors from leading City firms, Andrew Foyle and Christopher Styles KC, and by former members of the judiciary, including Lord Neuberger, who retired from his position as the President of the United Kingdom Supreme Court in 2017, and who then started practising as an arbitrator from One Essex Court.

My membership of chambers brought me into contact with many lawyers, seniors and juniors, from whom I learnt much. They included Liz (later Lady) Gloster, Ian Glick KC, Anna Boase KC, and Peter Leaver KC, who, as well as acting as an international arbitrator, was for a time the Chairman of the Board of Directors of the London Court of International Arbitration (LCIA).

I myself was a non-executive Director of the LCIA for several years; and from July 2002 to December 2014, I was a member of the Court of Arbitration of the International Chamber of Commerce (ICC), first as the UK representative and then as a Vice-President of the ICC Court. This appointment involved preparing for and attending the monthly meetings of the Court in Paris which, in the words of one of my US colleagues, we did ‘on our own dime’.

It also involved occasionally chairing meetings of the Comité Restraint which, for a lawyer, was the ‘engine room’ of the ICC Court. In this context, I would particularly like to express my thanks to Professor Anne Marie Whitesell, who was Secretary-General of the Court from 2001 until 2007 and with whom I later had the pleasure of sitting as an arbitrator; to my friend John Beechey CBE, who was President of the ICC Court in challenging times, from January 2009 to June 2015; to another friend, Jeffrey Hertzfeld, an American lawyer in Paris with whom I sat in several arbitrations; and to the young, talented, and multilingual counsel at the ICC Court, including Dr. Maria Hauser-Morel who, during her time at the ICC, headed a case management team with which I worked in my last case as President of an ICC tribunal.

Finally, I must thank Simon Weber, a research assistant and a good and loyal friend to Martin. Simon had carried out research for Martin which was intended for the first chapter of this book and he then greatly assisted me when I was obliged to take over responsibility for that chapter.

The lawyers to whom I have referred, and others that are too numerous to mention, have all contributed in one way or another to my knowledge of international arbitration. The essence of much of that knowledge is distilled in my contribution to this new edition of *Redfern and Hunter*.

Alan Redfern
London, 2022

⁶ There were a series of disputes between Eurotunnel, the owner of the Channel Tunnel, and TML, the Anglo-French consortium that was responsible for its construction, including two international arbitrations and a case in the House of Lords, as the UK Supreme Court was then called.

PREFACE

We dedicate this seventh edition to the memory of one of the two great men whose name it bears, Professor Martin Hunter, whom the arbitration world lost in 2021.

Martin Hunter was one of a kind. He was a genuine arbitration visionary, who imagined earlier than anyone else that international arbitration could be a specialist area of commercial legal practice. Together with his extraordinary friend Alan Redfern, he built the first such specialist team at their old firm of Freshfields, and they hired a talented young fellow called Jan Paulsson to lead that practice internationally. After law firm life, Martin developed a career as a leading international arbitrator, who applied his energy, and his legal and commercial acumen, to dispense arbitral justice at the very highest level. He believed in the importance of international arbitration, which he would declare with total conviction was critical to world peace and progress. Of course he would say this with a twinkle in his eye that was a clue that he took what he said much less seriously than he wanted you to take it.

But Martin was so much more than a world-class international arbitrator. Above all else, he was an extraordinarily kind and generous mentor, long before the term mentoring had become fashionable. His father was a teacher, and Martin loved to teach arbitration. But it wasn't just arbitration that he liked to teach; he was passionate in helping young lawyers more generally to find the right path. And so, for the last two decades of his life, he combined the practice of arbitration with extensive teaching at universities around the world; not just at arbitration's traditional centres in the United Kingdom and the United States, but at the frontiers of arbitration's future, in places like Orissa State in India, and universities throughout Brazil, where he introduced generations of lawyers to the law and practice of arbitration. And he didn't just limit his teaching to arbitration or the lecture hall. With the unfailing help and constant support of his partner in life, Linda Hunter, Martin introduced an extraordinary number of young lawyers from all over the world to the Hunters' enthusiastic philosophy of life, and gave them a push that changed numerous destinies.

For us, over the last fifteen years, Martin was a brilliant co-author, with encyclopaedic knowledge of our field, a powerfully simple writing prose, and the kind of personality that would not allow co-authors to get away with missed deadlines! But above all, he was a friend, who gave us the example of his limitless enthusiasm for life.

Just as we began work on the seventh edition with Martin, so we completed it thinking of him. With his and Alan's help, we have attempted to stay faithful to the original genius of *Redfern and Hunter* as an elegantly written, easily comprehensible synthesis of arbitration law and practice. The task of synthesis has become both more difficult and more important over time. Today, there are far more voices in the world of arbitration producing much more noise, and any modern commentary on the field must take that into account. But *Redfern and Hunter* was not intended to be an exhaustive encyclopaedia of arbitral sources

or precedents. And the heart of the arbitral process, despite the growing number of accoutrements, remains as true today as it was in 1986 when the first edition was published: an independent dispute resolution process to assist international business and states in which private individuals selected by the parties would hear their disputes and render a binding decision enforceable throughout the world. So whilst we take care to address the proliferating novelties in the arbitration world—whether the ever stronger influence of investment arbitration, the arrival of the emergency arbitrator, the development of soft law on conflicts, ethics, and evidence, or the growing jurisprudence on arbitrator challenges—we have sought to ensure that these novelties do not overshadow the essence of the arbitral process. This, in turn, has allowed us to keep our promise of a single-volume work.

The product of our approach involves much that is new, combined with an essence that will be immediately recognisable to those of you familiar with earlier editions. As Alan and Martin have always demanded, our work on the seventh edition has involved much more than mere updating. To stay alive, this book, like any living organism, must regenerate. And so, whole passages have gone and new ones have appeared. But our structure remains untouched. It follows an international arbitration chronologically through its life with a brief parenthesis to look at the influence of arbitration pursuant to investment treaties. As befits a work whose authors learned their trade as advocates and arbitrators, it has a strong practical focus. For this, it draws on the authors' cumulative century of experience in international arbitration. And this edition expands further its international scope, drawing more deeply from arbitration's new centres: from China to Canada, from Singapore to Brazil, and from the Middle East to Sub-Saharan Africa.

Finding the time for a work of this scope is a challenging task for busy practitioners and those challenges appear only to grow over time. We have been particularly grateful that Alan has continued to play a critical lead role, maintaining the pen on two key chapters and reviewing all others to make sure we undertook a comprehensive review and didn't sit on our laurels. Alan has made sure that stale authorities have been unceremoniously abandoned in favour of fresher examples whilst maintaining an eagle eye for inconsistencies and inelegance of expression. He is also singlehandedly responsible for keeping the pressure on us to finish the book. Alan's lifetime of experience and wisdom, together with other lasting legacies such as the Redfern Schedule, were deservedly recognised when he was awarded the GAR Lifetime Achievement Award in 2021. He was always supported in his work and so much else, particularly when perfect French language skills were required to dissect the complexities of French case law, by his wife Marie-Louise, who—like Linda Hunter—was always very generous with both of us. One of the greatest pleasures of producing this seventh edition has been the excuse to retain frequent contact with Alan who has generously hosted us on several occasions at his home in London for editorial meetings to isolate us from the cares of the office. As all who know him will attest, he combines insight and experience with humour and humility in equal doses, and has been a dear friend and mentor to both of us through most of our careers.

Our ability to ensure we were fully briefed on developments before putting pen to paper is due to the assistance of many talented international arbitration practitioners we have come to know and respect throughout the world, in addition to a pool of young and talented lawyers who gave us a great deal of their free time to participate with enthusiasm for

the research for this project. First and foremost, we are particularly grateful to the last of Martin's mentorees, Simon Weber, who worked tirelessly to ensure we received Martin's comments and insights during very difficult times. There are too many names from our own teams to mention but they include (in alphabetical order) Alex Alonso, Matheus Bastos Oliveira, Yosr Bouassida, Mihir Chattopadhyay, Oscar Collins, Zara Desai, Rosario Galardi, Santiago Gatica, Brianna Gorence, Maanas Jain, Kimberley Larkin, Virginie Lassez, Maria Paz Lestido, Elliot Luke, Rodrigo Millan, Nicola Peart, Laura França Pereira, Diego Perez, Pedro Ramirez, Julian Rotenberg, Diego Rueda, Luiza Saldanha, Madeline Snider, Joe Spadafore, Ezequiel Vetulli, Paige von Mehren, Geoff Watt, and Jeff Yiu.

Finally, we thank our families for their unfailing support. This book is not written in place of our professional demands, but in hundreds of hours stolen from other parts of our lives. Without the support of Maria and Patricia, Nayeli, Artemis (and Perla), we wouldn't have advanced beyond our first edition as an author team and yet we are now proud to have completed our seventh edition.

A traditional book format relies on a production process that is less immediate than we have come to expect in an internet world. As a consequence, we had to put pens down by a certain date. The date for this edition is April 2022.

Nigel Blackaby KC and Constantine Partasides KC
April 2022

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LIST OF ABBREVIATIONS

AAA	American Arbitration Association, New York (Established 1926)
AAA Rules	AAA Commercial Arbitration Rules and Mediation Procedures, in force 1 October 2013
ABA	American Bar Association, Chicago (Established 1878)
ABQB	Alberta Court of Queen's Bench (Canada)
AC	<i>Law Reports Appeal Cases</i> , published by the Incorporated Council of Law Reporting for England and Wales
ACICA	Australian Centre for International Commercial Arbitration, Sydney (Established 1985)
AD	<i>New York Supreme Court Appellate Division Reports</i>
ADGM	Abu Dhabi Global Market
ADR	alternative dispute resolution
ADRLJ	<i>Arbitration and Dispute Resolution Law Journal</i> , published by Sweet & Maxwell
ALI	American Law Institute, Philadelphia, PA (Established 1923)
All ER	<i>All England Law Reports</i> , published by LexisNexis
Am J Comp L	<i>American Journal of Comparative Law</i> , published by University of Michigan Law School
Am Rev Intl Arb	<i>American Review of International Arbitration</i> , published by Juris
Arab League Investment Agreement	Unified Agreement for the Investment of Arab Capital in the Arab States, Arab League
Arb Intl	<i>Arbitration International</i> , published by the LCIA
Arb LM	<i>Arbitration Law Monthly</i> , published by Sweet & Maxwell
Arb LR	<i>Arbitration Law Reports and Review</i> , published by Oxford University Press
ARIAS	Aida Reinsurance and Insurance Arbitration Society, Mount Vernon, NY (Established 1994)
art./Art.	article (domestic)/Article (supranational)
ASA	Association Suisse de l'Arbitrage [Swiss Arbitration Association], Basel (Established 1974)
ASA Bulletin	<i>Bulletin of the Swiss Arbitration Association</i> , published by Kluwer Law International
ASEAN	Association of Southeast Asian Nations, Bangkok (Established 1967)
Asian Intl Arb J	<i>Asian International Arbitration Journal</i> , published by Kluwer Law International
BGHZ	<i>Entscheidungen des Bundesgerichtshofes in Zivilsachen</i> , published by Carl Heymanns Verlag
Bing	<i>Bingham's Common Pleas Reports</i> , published in English Reports
BIT	bilateral investment treaty
BJIL	<i>Berkeley Journal of International Law</i> , published by University of California, Berkeley, School of Law
BR	<i>Bankruptcy Reporter</i> (US), published by West Publishing