BOOK REVIEW

THE DANUBIA FILES: AWARD WRITING LESSONS FROM THE VIS MOOT

EDITED BY LOUISE BARRINGTON, NAPOLEÃO CASADO FILHO AND CLAUDIO FINKELSTEIN

Outskirts Press, 2013

ISBN 9781478711797
ISBN 9781432798833

BENJAMIN HAYWARD*

I GLOBAL ARBITRATION, REGIONAL ARBITRATION, AND VINDOBONA, DANUBIA

International commercial arbitration is commonly reported to be the preferred means of resolving international business disputes,¹ an assertion supported by

* Lecturer in Law, Deakin University; Coach of Deakin University’s Willem C Vis International Commercial Arbitration Moot and Vis (East) Moot teams.
empirical evidence. At the global level, a number of jurisdictions are renowned as places-of-choice for international arbitral proceedings. Statistics published by the International Chamber of Commerce (‘ICC’) show that Switzerland, France and the United Kingdom are consistently among the most common seats of ICC arbitration.\(^3\) In the Asia-Pacific region, both Hong Kong and Singapore are the recognised leaders in the field.\(^4\)

Arbitration is said to be ‘the new black’ in Australian law.\(^5\) The Rudd and Gillard Labor governments’ policy platforms included aspirations to elevate Australia’s standing as a seat for arbitration in the region.\(^6\) Amongst the numerous advantages of attracting arbitration activity is that it is thought to make a valuable contribution to local economies.\(^7\) An element of competition for arbitration business may be observed between jurisdictions and institutions around the world — if parties are unsatisfied with an arbitration environment, they ‘may simply opt to go elsewhere’.\(^8\) This is borne out in practice. For example, in ICC arbitration, despite the primacy of Switzerland, France and


\(^8\) Chief Justice Warren, above n 4, 5.
the United Kingdom as arbitral seats, 2012 saw arbitrations conducted in 92 cities across 59 states.9

Against this background, it may be easy to overlook the humble ‘Vindobona, Danubia’ as a seat of arbitration. That is, unless one is familiar with the Willem C Vis International Commercial Arbitration Moot, held annually in Vienna,10 and the Vis (East) Moot, held annually in Hong Kong.11 In these events, collectively referred to here as ‘the Vis Moot’, law students from around the world argue a hypothetical legal case involving international sale of goods and international commercial arbitration issues in the context of an arbitration held in the (fictional)12 seat of Vindobona, Danubia. In the Vis Moot, Vindobona, Danubia has ‘the status of an arbitral Mecca’.13

II THE WILLEM C VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT, AND THE DANUBIA FILES

The Vis Moot today stands out as the world’s premier private international law mooting competition. The Vienna event is now in its 21st year, and the Hong Kong event in its 11th year. The Vis Moot is inherently international — in the 2012/13 competition 290 universities participated in Vienna,14 while in Hong Kong 93 teams took part.15 Even in the very first Moot in 1993/94 nine states from both common law and civil law legal traditions were represented.16 The Vis Moot has, over its first 20 years, given more students

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12 Though strictly a fictional seat, as a matter of history, ‘Vindobona is the Roman name for Vienna’: Mistelis, above n 7, 364.
13 Ibid.
than could be counted a truly ‘unique’ educational experience, and has inspired Professor Jeffrey Waincymer to initiate, launch and promote the Bergsten Program, an educational capacity-building initiative. The Danubia Files is itself directly born out of the Vis Moot event. Its editors, Louise Barrington, Napoleão Casado Filho and Claudio Finkelstein, all have a long-standing relationship with the event. In particular, Louise Barrington is and has been the Director of the Vis (East) Moot in Hong Kong since its inception.

The Danubia Files is not the first text inspired by the Vis Moot. In 2008, Janet Walker’s The Vis Book was published, containing contributions by a number of individuals having long-standing involvement in the event, and providing a very interesting insight into what has now become a private international law institution. Festschrifths have been published in honour of both Eric Bergsten and the late Albert Kritzer, two names very well known, alongside Michael Sher and Willem Vis himself, as drivers of the Vis Moot initiative. Further, a number of scholarly articles have considered the Vis Moot as an educational endeavour — which is after all the primary purpose of the event. However,
"The Danubia Files" is different from all of these previous works. In essence, "The Danubia Files" provides what students of the Vis Moot over six specific years of competition have long waited for — the final word on the cases that they spent so long studying, researching and then arguing. In "The Danubia Files", eminently qualified expert authors provide mock arbitral awards for the hypothetical cases hotly debated in the 14th to 19th Vis Moots.25 And given the general principle in international commercial arbitration that awards are not subject to review on the merits,26 it might be said with tongue in cheek that these six cases can now, finally, be treated as resolved.

III POINTS OF INTEREST AND RELEVANCE TO THE AUSTRALIAN LEGAL ENVIRONMENT

At this stage, the reader may be forgiven for assuming that "The Danubia Files" is a text with a niche audience. Of course, the text will be of most interest to those having some association with the Vis Moot. Nevertheless, it has a number of points of interest that extend beyond this community and some particular points of relevance to the Australian legal environment.

The text’s six substantive chapters in Part II contain the text of the mock awards for the 14th to 19th Vis Moots.27 Irrespective of their relationship to those six specific Vis Moot problems, these mock awards are valuable illustrations to any student of international arbitration, or international dispute resolution in general, of award writing style and technique. With some

125. See also the nine individual chapters comprising Part III (Legal Education) of the festschrift for Eric Bergsten — Kröll et al, above n 7, 685–842.
25 In the Vis (East) Moot in Hong Kong, these were the 4th to 9th Moots.
27 Barrington et al, above n 19, 37–298.
exceptions, drawn principally from ICC practice, international commercial arbitral awards are usually confidential and access to primary texts is often difficult or impossible to obtain. The six mock awards in *The Danubia Files* provide an interesting and realistic illustration of award writing, by 18 authors (a three member panel for each of the six awards) who are eminently qualified to write such awards.

Part I of the text extends its educational endeavours further by providing three chapters of particular interest to those seeking further insight into the award writing process. First, Louise Barrington sets out in a concise but thorough 14-page chapter a ‘how-to’ guide for drafting an international arbitration award with reference to the *New York Convention*, the *Model Law* and ICC practice. Following this, a checklist for the drafting of international arbitral awards is presented which draws upon the experience of both the ICC and the Chartered Institute of Arbitrators. Finally, a second ‘how-to’ guide is included, prepared by Pierre Karrer, which is particularly practical given its straightforward question-and-answer style of presentation.

In these respects, *The Danubia Files* is faithful to the vision of the Vis Moot as first and foremost an educational endeavour, and lives up to its stated objective of providing ‘award writing lessons’.

In the Australian context, *The Danubia Files* is an interesting stimulus for reflection on the current state of the law and some ongoing law reform initiatives. As noted above, arbitration is said to be ‘the new black’ in Australia. Each of the six mock awards in *The Danubia Files* concerns issues arising under the *CISG* and the *Model Law*, as well as issues involving the *New York Convention*, all three of which have been adopted by Australia, and have been given effect by domestic legislation. Further, one of

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28 Sanitised extracts of ICC awards, often relating to a particular theme, are published in a dedicated section of the *ICC International Court of Arbitration Bulletin*. ICC awards are also sometimes published, in their full and unedited form, in *Mealey’s International Arbitration Report*. Other reporting of arbitral awards (including ad hoc awards and awards of other institutions) does occur, but on a more sporadic basis.

29 Barrington et al, above n 19, 1–36.


31 Barrington et al, above n 19, 15–18.

32 Ibid 19–36.


34 Garnett and Nottage, above n 5, 31.

these mock awards (the ‘pumps file’ from 2009/10)\(^{36}\) is drafted pursuant to the arbitration rules of the Australian Centre for International Commercial Arbitration (‘ACICA’)\(^{37}\) (the principal Australian arbitral institution with respect to international commercial disputes). For this reason, though the cases themselves are both international and hypothetical, the legal analysis has direct relevance to Australian law.

In addition, *The Danubia Files* is an interesting text in the Australian context, given the ongoing review into Australian contract law initiated by the Attorney-General’s Department in 2012.\(^{38}\) While, at the time of writing, no specific proposals have been formulated as a result of this review, the public consultation documentation published in 2012 raises for discussion the internationalisation of Australian contract law, using the *CISG* as a source of inspiration.\(^{39}\) This proposal has received some support (particularly from the academic community) in the subsequent literature.\(^{40}\) The consistent failure of some Australian courts and practitioners to properly understand the *CISG* is well documented,\(^{41}\) and was even noted in the Attorney-General’s Discussion

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\(^{36}\) Barrington et al, above n 19, 201–42.


To the extent that *The Danubia Files* adds to the corpus of *CISG* literature and provides a practical illustration of the *CISG*’s application, it will be a useful resource for the purpose of this review (should it progress any further following the change of federal government in September 2013).

Finally, and perhaps not as widely known as this contract law review, the Standing Council on Law and Justice (formerly the Standing Committee of Attorneys-General) is currently conducting a public consultation in relation to private international law — concerning matters of jurisdiction, choice of forum and choice of law. These three matters are, of course, the bread and butter of Vis Moot problems; in particular, applicable law issues and disputes frequently arise in the context of the Vis Moot. Once again, *The Danubia Files* is an interesting point of reflection with respect to this consultation, given its inherently international outlook, and given that the purpose of the consultation is closely tied to the policy of promoting cross-border trade.

**IV CONCLUSION**

*The Danubia Files* is a practical, interesting and insightful text. While squarely framed around the Vis Moot, it is far from being a text of purely niche interest and is a valuable contribution to the literature on, and education in, international commercial arbitration and international dispute resolution in general. While this is perhaps not immediately apparent, it is also an important stimulus for reflection upon both the current state of Australian law, and on present law reform initiatives.

*The Danubia Files* will be both appreciated and enjoyed by ‘[m]ooties’, those interested in international commercial arbitration, ‘*CISG* enthusiasts’.

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43 For the most extensive online open-access collection of scholarly material concerning the *CISG*, including (at the time of writing) 1569 texts as well as 10 105 citations – see Pace Law School, *Albert H Kritzer CISG Database* (7 October 2013) Institute of International Commercial Law <http://www.cisg.law.pace.edu>.


45 Ibid.

and also all those interested in learning from the great practical and academic experience of the eminently qualified array of individual authors represented within this edited work.
