

## 26 Summary – and a Look into the Future

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### 1) Five Topics

This Manual has tried to give an overview of five topics in the field of international dispute settlement:

- 1 **Supranational disputes** where one or more of the parties is likely to be a State. The areas chosen were those that it is hoped will be of particular interest to Commonwealth countries: territorial disputes, maritime delimitation disputes and investor-State disputes.
- 2 **Supranational dispute resolution bodies** dealing with such disputes. Four were chosen, again in the hope that they will be of particular interest to Commonwealth governments: the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA), the International Tribunal for the Law of the Sea (ITLOS) and the World Bank's International Centre for Settlement of Investment Disputes (ICSID Centre).

The dispute settlement methods considered in relation to supranational disputes – and the international dispute settlement bodies dealing with such disputes – were litigation, arbitration and mediation / conciliation.

- 3 **Dispute resolution in the area of international trade and commerce.** Here, four methods of dispute resolution were considered: litigation: but this time in the national rather than the international sphere; arbitration; various forms of alternative dispute resolution (ADR) – in particular, mediation / conciliation; and expert determination.
- 4 **Institutions and other bodies concerned with dispute resolution in international trade and commerce.** The international commercial arbitral institutions looked at included the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the American Arbitration Association (AAA). In addition, organisations concerned with international trade and commerce, in particular the United Nations, were also considered.

In an attempt to 'put some meat on the bones', various topics were illustrated by reference to decisions of the supranational dispute resolution bodies as well as to decisions of national courts, particularly in relation to the vitally important New York Convention and the UN Commission on International Trade Law (UNCITRAL) Model Law.

- 5 **Online dispute resolution.** After looking at commercial user developments in the form of eBay and SquareTrade, two particular areas were chosen – again in the hope that Commonwealth countries would find them useful. These are of great significance in the fields of international trade and commerce and international intellectual property: documentary credits and domain name disputes. The specific systems considered were the ICC's DOCDEX scheme and the Domain Name Dispute Resolution system of the World Intellectual Property Organization (WIPO).

The point was made early on in this book that the topics that the Manual has tried to cover are vast, and that any one of them would justify a learned work. The Manual has sought to do no more than give an overview of the various subjects and to highlight matters of particular importance. In that respect, it has indicated sources such as classic textbooks by learned academics and lawyers where detailed information can be obtained.

## 2) What Does the Future Hold? World Trade and Globalisation: the UN and the ICC

In the chapter dealing with the ICJ, the point was made that the number of disputes coming before the Court has increased in the last 15 years and that it is now resorted to by States from all corners of the world. These include many Commonwealth countries: Australia, Botswana, Cameroon, Canada, India, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Singapore, South Africa and Uganda.

Both the United Nations and the ICC have made it clear that world trade needs to expand. The increase in the use of the ICJ – and of the other courts and tribunals considered in the Manual – seems likely to continue as world trade increases.

### ***The United Nations***

In September 2000 the UN Millennium Declaration was adopted by 190 Heads of State and Government and passed unanimously by the members of the UN General Assembly. It grew out of a number of international development goals set in 1996 and reaffirmed the commitment of UN members to achieving significant, measurable improvements in people's lives.

Millennium Development Goal 8 is concerned with *"contributing to and upholding an open, equitable, rules based, predictable, and non-discriminatory multilateral trading system... [which] is also an important instrument for achieving other Goals."*<sup>121</sup>

At the request of UN Secretary-General Kofi Annan, the UN Millennium Project has identified practical strategies to eradicate poverty by scaling up investments in infrastructure and human capital. These strategies are described in the UN Millennium Project's Report *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*.<sup>122</sup>

Various task forces have identified the interventions and policy measures needed to achieve each of the Goals. In *Trade for Development*, the Task Force on Trade makes a strong case for a multilateral trading system that is more supportive of economic growth and poverty alleviation in developing countries. Trade expansion, it noted, is critical for the achievement of the UN Goals:

*"Openness to trade is associated with higher incomes and better economic performance. While there are differences of view about the magnitude and strength*

121 UN Millennium Project Task Force on Trade, *Trade for Development*, Earthscan, 2005. See [www.unmillenniumproject.org/reports/tf\\_trade.htm](http://www.unmillenniumproject.org/reports/tf_trade.htm).

122 Available at [www.unmillenniumproject.org/reports/index.htm](http://www.unmillenniumproject.org/reports/index.htm).

*of this relationship, the general direction of effect is not in doubt: no closed or isolated economy has performed better than those integrated into the world economy. Openness to trade gives firms and households access to world markets for goods, services, and knowledge – lowering prices, increasing the quality and variety of consumption goods, and fostering specialization of economic activity in areas where countries have a comparative advantage. Trade generates more investment and fosters higher knowledge. Trade is important for generating the positive externalities that are associated with learning through the diffusion and absorption of technology.”*

The Task Force also makes the following important points:

*“The transparency requirements of the trading system not only facilitate trade but help to promote good governance of trade policy by requiring countries to make information on trade-related policies publicly available – and hence contribute to global good governance.*

*“The trading system provides for the settlement of trade disputes in an orderly process of negotiation and adjudication, rather than by sheer weight of economic or trade power alone.”*

That latter statement perhaps summarises the areas that this Manual has tried to cover: systems and tribunals whose aim – through litigation, arbitration or ADR – is the fair and orderly resolution of international disputes in the areas of trade and commerce, intellectual property and investment.

### ***The International Chamber of Commerce***

The ICC has produced a Report – *Standing up for the Global Economy* – that looks at the importance of world trade from the perspective of businesses.<sup>123</sup>

In the Preface to the Report, the Secretary-General of the ICC, Maria Livanos Cattai, says that companies *“are in a unique position to observe and help shape today’s global economy. They are at the heart of international trade and investment, engaging in business across borders and linking economies together into a more interconnected world.”*

The purpose of the Report *“is to provide a business perspective on some of the main issues and concerns raised by globalization. Is it pushing governments to the sidelines? Is it a threat to jobs? Is it helping to overcome poverty, or creating more? How can the changes arising from globalization be managed?”*

The Secretary General says that globalisation *“has already brought unprecedented improvements in material welfare to billions of people. The evidence suggests that the global economy of today offers an unparalleled opportunity to raise living standards across the world. That disparities between rich and poor are still too big is undeniable. But those who sincerely want to alleviate the poverty of millions in the developing world should focus on practical ways to harness the potential of globalization instead of making globalization a scapegoat.”*

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123 The Report can be viewed at: [www.iccwbo.org/home/statements\\_rules/statements/2004/Globalization%20paper%2004](http://www.iccwbo.org/home/statements_rules/statements/2004/Globalization%20paper%2004).

Ms Livanos Cattai goes on to say that there are two key elements in the Report that she wishes to highlight as *“promising avenues in the quest for a more inclusive global economy: the vast potential for increased South-South trade and the key importance of good governance. A more open world economy and more effective governments are by no means contradictory goals.”*

The Report stresses the importance of openness to foreign trade and investment, and the need for *“a sufficiently comprehensive, transparent and non-discriminatory legal framework to operate modern commercial operations (including company law, bankruptcy law, competition law, protection of property rights including intellectual property), and free access to an impartial judicial system to redress wrongs and settle disputes”*.

Again, these are points that this Manual has tried to make.

### **3) The Need for a Fair Legal Framework**

Both the United Nations, operating on an inter-governmental level, and the ICC, concerned with the international business community, make the point that a fair legal framework is vital to the development of world trade. The Task Force on Trade emphasises that: *“The creation of an enabling environment for markets to develop requires the rule of law (both an appropriate set of laws, in particular for protecting property rights and resolving contractual disputes, and the fair and effective enforcement of those laws), as well as investment in the basic infrastructure that underpins the whole economy (energy, roads, water, and telecommunications, as well as health and education) ....”*

The Task Force also states that:

*“Economically sound and legally fair multilateral rules protect the weaker players from the protectionism of the strong and help to create a more level playing field for trade – say, for example, by banning export subsidies in industrial sectors (more easily or massively used by rich countries) or ‘voluntary’ export restraints (more easily imposed on others by large economies).*

*“The most favored nation (MFN) principle protects smaller players by preventing larger players from carving up world markets among them. MFN spreads the benefits of deals made between major players to all members of the trading system. It also prevents countries from using trade to punish or reward individual countries for political reasons.*

*“Sound rules give predictability to world trade, enabling necessary investments to be made by traders and investors.*

*“Sound multilateral rules reinforce domestic reform efforts and provide a means of locking in reforms and undermining pressures for policy reversal by powerful vested interests. As certain interests have more influence in politics than value in economics, the domestic political process will sometimes choose import protection even when it does not serve the national economic interest – hence the value of international obligations in the making of national trade policy.”*

In the Preface to *Standing up for the Global Economy*, the Secretary-General of the ICC echoes this point. She says that, more than ever “*globalization requires the enforcement of the rule of law, the encouragement of innovation, the development of efficient infrastructure, the improvement of education and social programmes, and greater political and economic stability in order for countries to seize all the opportunities that the world economy can offer*”.

A fair legal framework, operating in the context of international tribunals, is vital to the harmonious operation of international trade and commerce, and to the settlement of disputes in those areas. Harmonious international relations are also vital in the other areas considered in the Manual: land and maritime boundary disputes and investor-State disputes.

In dealing with the five chosen topics in the field of international dispute settlement, the Manual has attempted to cover systems and tribunals whose aim – through litigation, arbitration or ADR – is the fair and orderly resolution of supranational disputes and international commercial disputes. In doing so it has sought to take a view from within the Commonwealth, looking at the world beyond the Commonwealth.