

Conference explores the future of arbitration

Gary Born – a leading practitioner in the field of international arbitration – recently visited the Dean Rusk Center to take part in a conference examining the state of international commercial arbitration 50 years after the New York Convention, a document widely considered as the foundational instrument guiding international commercial dispute resolution.

The symposium, co-sponsored by the *Georgia Journal of International and Comparative Law*, featured Born as the keynote speaker and included several leaders in the field of arbitration, including Executive Director of Judicial Arbitration and Mediation Services Arbitration Practice Robert B. Davidson, President and CEO of the American Arbitration Association William K. Slate II and former Secretary General of the International Chamber of Commerce International Court of Arbitration Anne Marie Whitesell. Additionally, notable academics, such as Columbia University’s Monnet and Gellhorn Professor George A. Bermann and New York University’s Lipton Professor Linda J. Silberman, served as panelists.

Born, who marked the occasion by introducing his newly published treatise on international commercial arbitration, focused his remarks on the continued growth of commercial arbitration, especially at the international level, due in large part to the robustness and efficacy provided by the New York Convention.

“In 1993, the main institutions reported roughly 1,300 arbitrations. In 2007, the number was 3,200 – a fairly dramatic increase ... that, in fact, doesn’t come close to capturing the very significant increase in arbitrations at regional centers around the world,” Born said.

He added that the robust legal framework of the New York Convention has provided reason, over the last 20 years or so, for an increasing number of states – not typically categorized as developing and not historically in support of commercial arbitration – to basically give effect to international arbitration.

In addition to the relative efficiency, flexibility and enforceability provided by arbitration, Born posited that there may be

another, more fundamental reason that parties increasingly arbitrate and states increasingly give effect to international arbitration agreements: that arbitration is, in fact, an expression of party autonomy.

Furthermore, Born suggested that the “constitutional” nature of the documents – the New York Convention and the Federal Arbitration Act – forming the legal regime of arbitration, supports the position that these “constitutional instruments,” which essentially work, should not be readily amended or tinkered with. He suggested rather than legislatively revising these “constitutional” documents of arbitration, there is room – in the courts, in the restatements and in academia – for common law development of the principles of arbitration, both domestically and internationally.

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