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# Kluwer Arbitration Blog

## Born and Arbitral Awards

Stephen M. Schwebel · Tuesday, February 24th, 2009

Part III of Born's treatise concerns International Arbitral Awards. He initially points out that some 90% of international arbitral awards are voluntarily complied with. "This reflects the parties' contractual undertakings to arbitrate and to comply with the resulting arbitral award, the efficacy of the arbitral process (which leaves the parties believing that their dispute has been fairly resolved), and the likelihood that the award can be coercively enforced....Nevertheless, not all international arbitral awards are voluntarily complied with. The ultimate test of any arbitration is therefore its ability to render an award which, if necessary, will be recognized and enforced in relevant national courts...Fortunately, in most cases, the recognition and enforcement of arbitral awards is straightforward and speedy." (At pp. 2327, 2328.)

He continues that: "...efforts to set aside or annul an international arbitral award frequently face substantial obstacles and succeed only in rare cases." (P. 2328.)

Chapter 21 discusses the legal framework applicable to international arbitral awards. Chapter 22 discusses the form and content of international arbitral awards. Chapter 23 discusses the correction, interpretation and supplementation of international arbitral awards. Chapter 24 examines the setting aside or annulment of international arbitral awards. Chapter 25 discusses the recognition and enforcement of international arbitral awards. Finally, Chapter 26 discusses the role of preclusion in international arbitration, including principles of *res judicata* and collateral (or issue) estoppel. It also examines the application of *lis pendens* and *stare decisis* principles in international arbitration.

The treatment throughout combines Born's lucid exposition and analysis with his perceptive evaluations. The reviewer finds himself in agreement with virtually every judgment. One of the very few conclusions which this reviewer questions is the statement that, "In general, simple interest (rather than compound interest) is awarded by arbitral tribunals" (at p. 2507). That is an accurate statement of predominant, indeed virtually uniform, past practice. But whether it is an accurate statement of current practice is debatable. Certainly in the field of investment arbitration, awards of compound interest are found more and more often. And they should be. The case for compound interest if the winning party is to be made whole is, in economic terms, unanswerable.

A remarkable aspect of this remarkable treatise is the wealth and comprehensiveness of its footnotes. Most every page is a treasure trove of pertinent references. The scholar and the practitioner are led by Born's text to the point, and the footnotes elaborate the multitude of references in support of the point.

This is not a work of light reading. It is a solid work of scholarship informed by the practitioner's pragmatic insight. But it nevertheless a pleasure to read, or rather, to work through, because of the felicity of its style and the quality of its substance. For years to come, it will be the pre-eminent work in its important, evolving field.

*Stephen M. Schwebel*

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The image shows a promotional graphic for Kluwer Arbitration Practice Plus. On the left, there is a blue background with white text. On the right, there is a screenshot of the software interface. The interface has a blue header with a white checkmark icon and the text 'Explore Practice Plus'. Below the header, there is a profile card for 'Gary B. Born' with a profile picture and some text. To the right of the profile card, there are three circular charts or gauges. At the bottom of the interface, there is a footer with the text 'Kluwer Arbitration' on the left and the 'Wolters Kluwer' logo on the right.

This entry was posted on Tuesday, February 24th, 2009 at 5:27 am and is filed under [Arbitration Awards](#), [Book Review](#)

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