

2015

Review of The UNCITRAL Arbitration Rules—A Commentary (Second Edition) by David D. Caron and Lee M. Caplan

Jawad Ahmad

Recommended Citation

Jawad Ahmad, *Review of The UNCITRAL Arbitration Rules—A Commentary (Second Edition) by David D. Caron and Lee M. Caplan*, 33 BERKELEY J. INT'L LAW. (2015).

Available at: <http://scholarship.law.berkeley.edu/bjil/vol33/iss1/10>

This Book Review is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of International Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

Review of The UNCITRAL Arbitration Rules—A Commentary (Second Edition) by David D. Caron and Lee M. Caplan

Jawad Ahmad*

INTRODUCTION

A key driver to international arbitration's success and popularity has been the inherent flexibility and freedom afforded to the parties on how their dispute is to be administered. On this basis, the choice of the arbitral procedural rules to be adopted is an important decision for the parties and can have severe implications on, for instance, the constitution of the arbitral tribunal and arbitrator challenges. More importantly, the choice between ad hoc rules and institutional rules (such as the International Chamber of Commerce (ICC) Rules of Arbitration or London Court of International Arbitration (LCIA) Rules) can make a substantial difference in how organized and efficient the arbitral proceedings may be. Ad hoc arbitration is driven by the parties and not administered by an institution, thus offering greater freedom for parties to determine all aspects of the arbitration process. This has its obvious setbacks, as it will require parties to cooperate in order to lift the arbitration proceedings off the ground. Ad hoc arbitration's primary benefit is that it enables party freedom and can be cost efficient.

The United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, the first version of which was issued in 1976 and the most recent in 2010, provide a truly comprehensive set of procedural rules geared towards ad hoc arbitration. And thus, at their core, the Rules respect procedural freedom by allowing parties to shape and adjust the arbitral proceedings to govern their dispute as they deem fit.

David D. Caron's¹ and Lee M. Caplan's² *The UNCITRAL Arbitration Rules—A Commentary* (Second Edition) provides a substantive analysis of the

* Associate (Foreign Lawyer) at Rajah & Tann Singapore LLP's International Arbitration Practice. LL.B. in European Legal Studies (Kent) (First Class Hons.); LL.M. (University of California, Berkeley, School of Law). Attorney-at-law (New York).

1. Professor Caron joined King's College London in May 2013, where he is currently the

2010 Rules and remains, arguably, the leading reference book on the subject. As opposed to adopting an article-by-article approach, the book structures the rules according to overall themes organized under six Parts, thus offering a comprehensive take on the particular rule in question and how it relates, if at all, to others. This situation-based approach is intended to provide the reader with a fuller understanding of how the situation or rule in question relates to the overall arbitral procedure.

Each Part contains its share of chapters, which deal with issues and rules in more detail. Each chapter deploys a similar structure: (1) the text of the relevant 2010 rule; (2) a commentary on that rule with reference to the *travaux préparatoires* of the Rules, international arbitration practice, and a comparison with the 1976 Rules; and (3) extracts from arbitral tribunal awards and procedural orders to understand the application of the rule in question.

The remainder of this book review will provide, first, a basic overview of the UNCITRAL Arbitration Rules and their significance to international arbitration practice and, second, a short summary of three topics that represent the major changes to the 2010 Rules from the 1976 Rules. The latter will draw on various chapters from the book in order to give the reader a flavor of the book's content. Brevity does not permit a thorough analysis of the commentary in each chapter.

Dean of the Dickson Poon School of Law. Previously, Professor Caron taught at the University of California, Berkeley, School of Law (where he also obtained his JD) as the C. William Maxeiner Distinguished Professor of Law (Emeritus).

After obtaining his JD in 1983, David served as legal assistant to Judges Richard M. Mosk and Charles N. Brower at the Iran-United States Claims Tribunal in The Hague. While in The Hague, he also obtained a Diploma from The Hague Academy of International Law in 1984, making him the twenty-fifth American to receive such a degree.

He also obtained a Doctorandus (International Law) from Leiden University in 1985 and a Dr. jur. in 1990. He practiced at the San Francisco firm of Pillsbury Madison & Sutro and was a senior research fellow at the Max Planck Institute for Comparative Public and International Law.

Qualified and experienced in the field of international arbitration, he was counsel for Ethiopia before the Eritrea-Ethiopia Claims Commission, President of the International Centre for Settlement of Investments Disputes Tribunal in the matter of *Agua del Tunari v. The Republic of Bolivia*, and a member of the NAFTA Chapter 11 Arbitration Panels in the matters of *Glamis Gold v. The United States* and *Cargill Industries v. The United States of Mexico*.

2. Mr. Caplan is currently a partner at Arent Fox LLP in the firm's international arbitration and dispute resolution practice group in Washington D.C. Lee graduated from Vanderbilt University with a BA (*magna cum laude*, Phi Beta Kappa) in 1992 and thereafter obtained his Master of Law and Diplomacy from Tufts University, The Fletcher School of Law and Diplomacy in 1995. He then attended the University of California, Berkeley, School of Law for his JD, which he obtained in 2000.

Prior to joining Arent Fox, Lee represented the United States successfully in numerous arbitrations before the Iran-U.S. Claims Tribunal and worked closely with the U.S. Department of State's Investment Arbitration Team in matters relating to NAFTA and CAFTA-DR arbitration. He also served as a U.S. delegate to the UNCITRAL during the development of rules of transparency for use in investor-State arbitration.

I.
SUMMARY

A. The UNCITRAL Arbitration Rules

UNCITRAL was created in 1966 by the United Nations General Assembly as part “of the effort at that time to change the direction of the international economic order, to open it up to more actors.”³ Part of its mandate is to promote the adoption of new international conventions, model laws, and uniform laws to give effect to this international economic order, including the construction of an international arbitration framework.

To achieve this, the UNCITRAL has adopted a three-pronged approach to overcome the differences in States’ legal systems and cultures that may undermine the efficacy of international arbitration.⁴ The first prong was the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which provides a legal framework for national courts to respect arbitration agreements and ensure the recognition and enforcement—within limits—of awards rendered in other jurisdictions that are party to the New York Convention.⁵

The second prong was the creation of the 1976 Rules so as to provide a model for the process of the arbitration itself. Considering its intent to overcome the differences between States’ legal systems and cultures in their approaches towards arbitration as a dispute-resolution process, the Rules seek to reflect the balance amongst the many States that were involved.⁶ Interestingly, the “UNCITRAL Rules were recommended for use in a world where a number of arbitration institutions, such as the ICC, offered their own rules and administered arbitration proceedings in specific cities around the world.”⁷ In this regard, the Rules provided an alternative to institutional arbitration.

The history of the Rules cannot be understood without the significant role that the Iran-U.S. Claims Tribunal played in their application. In the aftermath of the 1979 Islamic Revolution in Iran, Iran-U.S. relations ventured into an economic and political crisis. Pursuant to several agreements, the American hostages were released on January 19, 1981, at the same time that the United States froze Iranian assets. One billion dollars of the frozen Iranian assets were to be adjudicated pursuant to international arbitration proceedings, and one of the settlement agreements provided for the procedural and substantive law framework that would settle the claims through arbitration. For the procedural

3. DAVID D. CARON & LEE M. CAPLAN, *THE UNCITRAL ARBITRATION RULES—A COMMENTARY* 2 (2d ed. 2013).

4. *Id.* at 1.

5. *Id.*

6. *Id.* at 4.

7. *Id.*

rules applying to the arbitral procedures, the negotiators turned to the Rules, which were prepared by leading experts from diverse legal systems.⁸ “If there had been concern in 1976 that the UNCITRAL Rules might not be used to any significant extent, the situation changed dramatically as the Tribunal began its work.”⁹

The Iran-U.S. Claims Tribunal developed a body of case law that illustrated the Rules’ intricacies and procedures. Furthermore, the Tribunal’s practices contributed to the development of the final prong in UNCITRAL’s work, the creation of the 1985 UNCITRAL Model Law on International Commercial Arbitration (the Model Law), which sought to harmonize national arbitration legislations by presenting itself as the ideal text or template for national legislatures to adopt.

The popularity of the Rules cannot be overstated. After the work of the Iran-U.S. Claims Tribunal, their prominence spread widely and influenced the institutional arbitral rules of regional arbitral centers—for instance, the Cairo International Commercial Arbitration Centre, the Kuala Lumpur Regional Centre, and the Hong Kong International Arbitration Centre—and formed the procedural rules for the administration of disputes under investment treaties.¹⁰

B. Changes Introduced by the 2010 Rules

The movement to revise the 1976 Rules came from leading international arbitration practitioners starting with Pieter Sanders’s article “Has the Moment Come to Revise the UNCITRAL Rules of Arbitration?” published in *Arbitration International* in 2004.¹¹ This was followed by a study by Jan Paulsson and Georgios Petrochilos submitted to UNCITRAL to guide its work.¹² These combined influences resulted in the Working Group II of UNCITRAL commencing work on the revision of Rules in the fall of 2006.¹³

At the outset, it was agreed that the spirit and text of the UNCITRAL Arbitration Rules would not be affected, and the objective was to align the Rules with current international arbitration practices. Some believed that the Rules should maintain their universal application to various types of disputes. In this regard, the popularity of the 1976 Rules in governing investment-treaty disputes triggered a debate on the extent to which the revision should accommodate this growing field of international arbitration. This was, however, tabled, as the UNCITRAL Commission believed that including specific provisions on treaty-

8. *Id.* at 5.

9. *Id.*

10. *Id.* at 6–7.

11. *Id.* at 8.

12. JAN PAULSSON & GEORGIOS PETROCHILOS, REVISION OF THE UNCITRAL ARBITRATION RULES, A REPORT (2006).

13. CARON & CAPLAN, *supra* note 3, at 8.

based arbitrations would delay the completion of the revision of the UNCITRAL Arbitration Rules. The Commission agreed to address this issue in the future, in particular rules regarding transparency.¹⁴

Before embarking on the consultation and revision process, the Working Group II, as a guiding principle, “cautioned against any unnecessary amendments or statements being included in the *travaux préparatoires* that would call into question the legitimacy of prior applications of the Rules in specific cases.”¹⁵ As such, the objective of the revision was to adapt to the changes of the last thirty years and avoid making the Rules complex. It is in light of this guiding principle that the changes in the 2010 Rules must be understood.

I. Modernization of the Rules

Since the introduction of the 1976 Rules, the decades that followed saw technological advancements in the means of communication between commercial parties and the use of digital information (such as electronic documents and emails).¹⁶ This development became relevant with respect to document production. In light of the growing use of electronic evidence, it was common for recalcitrant parties to request extensive electronic documents, thus increasing costs and creating an unreasonable burden on the producing party to disclose documents.¹⁷

Under the 1976 Rules, Article 15(1) granted the parties an unrestricted opportunity to present their case: “[s]ubject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at *any stage* of the proceedings

14. After discussion, the Commission agreed that it would not be desirable to include specific provisions on treaty-based arbitration in the UNCITRAL Arbitration Rules themselves and that any work on investor-State disputes that the Working Group might have to undertake in the future should not delay the completion of the revision of the UNCITRAL Arbitration Rules in their generic form. As to timing, the Commission agreed that the topic of transparency in treaty-based investor-State arbitration was worthy of future consideration and should be dealt with as a matter of priority immediately after completion of the current revision of the UNCITRAL Arbitration Rules. As to the scope of such future work, the Commission agreed by consensus on the importance of ensuring transparency in investor-State dispute resolution.

Annotated Provisional Agenda, U.N. Comm’n on Int’l Trade L., Working Group II (Arbitration and Conciliation), 53rd Sess., Oct. 4–8, 2010, ¶ 7, U.N. Doc. A/CN.9/WG.II/WP.15 (July 21, 2010).

15. Rep. of the Working Group on Arbitration and Conciliation on the Work of its Forty-Fifth Session, U.N. Comm’n on Int’l Trade L., 45th Sess., Sept. 11–15, 2006, ¶ 16, UN Doc. A/CN.9/614 (2006).

16. Daria Kozłowska, *The Revised UNCITRAL Arbitration Rules Seen Through the Prism of Electronic Disclosure*, 28 J. INT’L ARB. 51, 51 (2011).

17. *Id.* at 51.

each party is given a *full opportunity* of presenting his case.”¹⁸ The words “any stage” and “full opportunity” gave a party ammunition to demand the disclosure of voluminous electronic documents.¹⁹ Therefore, Article 17(1) of the 2010 Rules (equivalent to Article 15(1) under the 1976 Rules) softened the language so as to avoid “a party . . . hav[ing] unreasonable expectations concerning its rights under the Rules.”²⁰ Article 17(1) of the 2010 Rules states:

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an *appropriate stage* of the proceedings each party is given a *reasonable opportunity* of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute.²¹

Thus, parties no longer had a “full opportunity” but “a reasonable opportunity” to present their case and this could no longer be provided “at any stage” but “at an appropriate stage” of the arbitration determined by the arbitral tribunal. Additionally, the second sentence under Article 17(1) is entirely new and expressly requires the tribunal to conduct the proceedings in a fair and efficient manner. While some delegates argued during drafting that this was implicit, it was felt that expressly acknowledging this would provide the tribunal “leverage” when responding to parties or another arbitrator while acting under the Rules.²²

One of the significant changes in the 2010 Rules was recognition of the widespread range of disputes that the 1976 Rules had been applied to. As a result, Article 1(1) of the 2010 Rules refers to disputes “in respect of a defined legal relationship, whether contractual or not.” Thus the scope of application of the 2010 Rules is wider and not restricted to a “contract” as previously provided for in the 1976 Rules.²³ This broadening of scope was intentional, allowing the inclusion of noncontractual disputes, such as trademark infringements or noncontractual issues on State responsibility under investment treaties.²⁴

Article 1(2) of the 2010 Rules removes the 1976 Rules’ requirement that arbitration agreements be concluded in writing. It recognized the commercial reality that arbitration agreements do not necessarily need to be in writing in

18. *Id.* at 53 (emphasis added).

19. *Id.* at 54 (“Especially in an era of electronic communication where, in case of a dispute, enormous amounts of electronic evidence can be produced, the full opportunity for the parties to present their case at any stage of the proceedings could easily lead to high costs and lengthy procedures. Moreover, under the previous Rules, the arbitral tribunal had few tools to restrict dilatory tactics of the parties obstructing the proceedings.”).

20. CARON & CAPLAN, *supra* note 3, at 59.

21. UNCITRAL Arbitration Rules (as revised in 2010), G.A. Res. 65/22, U.N. Doc. A/RES/65/22, art. 17(1) (Jan. 10, 2010) (emphasis added).

22. CARON & CAPLAN, *supra* note 3, at 59.

23. *Id.* at 24.

24. *Id.* at 18.

order for the Rules to apply. The book provides useful commentary on the attitudes of the delegates at the Working Group discussions: “some delegates cautioned against the change, citing some of the same reasons as the original drafters of the [1976] Rules, clarity and conformity.”²⁵ Further, delegates highlighted that removing the writing requirement was preferable in light of the growing number of national arbitration legislations that omitted this requirement in arbitration agreements.²⁶

With the prominence of the Internet and wireless technology, Article 2(1) of the 2010 Rules also relaxed the 1976 Rules’ requirement that notices be delivered physically. Under the 2010 Rules, notices may now be delivered by “any means of communication,” thus including electronic communication.²⁷ However, this rule is limited by Article 2(2) of the 2010 Rules, which only permits delivery by electronic means if the address provided has been designated by the parties or authorized by the tribunal for this specific purpose.²⁸ While it was the intention of the 2010 Rules to reflect modern developments in the means of communication, it was important to include this condition under Article 2(2) of the 2010 Rules in order to “avoid unfair surprise.”²⁹

Article 28(4) of the 2010 Rules also gives the tribunal discretion to conduct the examination of witnesses (including experts) through means of telecommunication (including videoconference). “The term ‘telecommunication’ is deliberately broad to ensure that the rule applies when new forms of communication are developed and utilized in arbitration.”³⁰ Although not specifically provided for in the Rules, “[t]he arbitral tribunal has authority to determine the admissibility, relevance, materiality and weight of any evidence provided remotely by telecommunication under Article 27(4).”³¹

2. Institutionalization

Broadening the role of the appointing authority under the 2010 Rules is a significant change from the 1976 Rules: “[w]ithout an appointing authority to make necessary appointments, the process of arbitration would come to a halt.”³²

25. *Id.* at 19.

26. *Id.*

27. *Id.* at 395.

28. *Id.* at 399.

29. *Id.* at 400 (citing James Castello, *Unveiling the 2010 UNCITRAL Arbitration Rules*, DISP. RESOL. J., May–July 2010, at 21, 147–48).

30. *Id.* at 609.

31. *Id.* at 610.

32. *Id.* at 149.

The 2010 Rules expand the role of an appointing authority into, amongst others, three new areas: (1) the appointing authority may, at the request of a party, decide that a sole arbitrator be appointed if it determines that, in view of the circumstances, this is more appropriate (Article 7(2) of the 2010 Rules); (2) in exceptional circumstances and upon request by a party, the appointing authority may, after giving the parties and the remaining arbitrators an opportunity to express their views, appoint a substitute arbitrator and, thus, deny a party the right to appoint its own substitute (Article 14(2) of the 2010 Rules); and (3) pursuant to the request of a party, the appointing authority may review and adjust both the tribunal's proposal and determination of its fees and expenses (Article 41 of the 2010 Rules).

Article 6 of the 2010 Rules, which deals with the designation and appointment of authorities, is largely unchanged from the 1976 Rules in several respects. There are, however, some useful revisions. Previously, the Permanent Court of Arbitration (PCA) was given a limited role to act in the constitution of the arbitral tribunal and address challenges to an arbitrator. However, Article 6(2) of the 2010 Rules specifically identifies the Secretary-General of the PCA as the designating authority of the appointing authority if the parties do not reach an agreement on the appointing authority within thirty days. Also, Article 6(1) expressly states that the Secretary-General of the PCA may serve as the appointing authority. As such, the addition expressly clarifies that while the Secretary-General of the PCA may act as the designating authority, the Secretary-General may also be chosen to serve directly as the appointing authority.³³

The logic behind the designating authority choosing the appointing authority is to ensure that the arbitral proceedings are not subjected to undesired delay tactics. It also provides parties with the certainty (and security) that the Rules do provide for some degree of oversight to the proceedings.

During the discussions to revise the Rules, delegates considered a more defined role for the PCA in the appointing process, in the interest of certainty and predictability.³⁴ Some delegates proposed the Secretary-General of the PCA as the default appointing authority in the event that the parties could not reach consensus. However, as the authors explain, some delegates expressed “[c]oncerns . . . that [this proposal] did not sufficiently take into account the ‘multi-regional applicability of the UNCITRAL Arbitration Rules’ and would ‘centraliz[e] all cases where the parties had not designated an appointing authority in the hands of one organization.’”³⁵ Other delegates also believed that it would not be useful in domestic and regional arbitration.³⁶

33. *Id.* at 150.

34. *Id.*

35. *Id.*

36. *Id.* at 150–51.

In light of the expansive role of the appointing authority, “the 2010 Rules resemble more institutional rules in that they rely on a third party (other than a national court) for procedural decision-making support.”³⁷ Despite the wide role of the appointing authority, the 2010 Rules still remain true to party autonomy and the adjustments’ only purpose was to avoid halts to the arbitral proceedings and permit intervention in certain circumstances.

3. Interim Measures

The ability to obtain effective and immediate interim measures in international arbitration is an important consideration for parties involved in the dispute. Interim measures are “designed to protect parties or property during the pendency of international arbitration proceedings.”³⁸ Such powers are very significant and largely depend upon the national arbitration legislation.

The provision on interim measures under the 2010 Rules—Article 26—is significantly wider compared to its 1976 predecessor. While Article 26 of the 1976 Rules was thin on the types of interim measures that could be granted and, in particular, the standard to grant such measures, the new Article 26 of the 2010 Rules is detailed. The authors note that “[i]n one respect, the dramatic expansion of the article runs counter to the guiding principles the Working Group adopted, namely ‘any revision of the UNCITRAL Arbitration Rules should not alter the structure of the text, its spirit and drafting style and that it should respect the flexibility of the text rather than make it more complex.’”³⁹ Interestingly, “Article 26 of the 2010 Rules does not so much track the 1976 Rules as it tracks, with some deviations, Article 17 of the Model Law, as amended.”⁴⁰ In this regard, the expansion was a response to the need to mirror those national arbitration laws based on the 2006 Model Law so as to make a national court “comfortable enforcing interim measures if the law authorizing such measures was absolutely clear about the scope of the arbitrator’s power.”⁴¹

The fact that the 2010 Rules are more detailed as to the scope of the arbitrator’s power to grant interim measures can also be a “guidepost” to arbitrators whose tribunal was constituted under the 1976 Rules when they exercise their discretion. In this regard, the 2010 Rules are persuasive in making

37. Sarah Grimmer, *The Expanded Role of the Appointing Authority under the UNCITRAL Arbitration Rules 2010*, 28(5) J. INT’L ARB. 501, 516 (2011).

38. GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION 2525 (2d ed. 2014).

39. CARON & CAPLAN, *supra* note 3, at 515.

40. *Id.*

41. *Id.* at 515–16 (citing J. Castello, *Generalizing About the Virtues of Specificity: The Surprising Evolution of the Longest Article in the UNCITRAL Model Law*, 6 WORLD ARB. AND MEDIATION REV. 7 (2012) and J. Castello, *Unveiling the 2010 UNCITRAL Arbitration Rules*, DISP. RESOL. J., May–July 2010).

up for the lack of specificity under the 1976 Rules on the type of interim measures that arbitrators may grant.⁴²

II. DISCUSSION

The 2010 Rules are still a relatively recent addition to the international arbitration practice and their application will be closely observed over time. That being said, a new version of the UNCITRAL Arbitration Rules came into effect on April 1, 2014, so as to establish a link to the recently adopted UNCITRAL Rules on Transparency. The Rules on Transparency, which are the result of a three-year effort by the Working Group II, represent a major development in making investor-State arbitrations more accessible and open to the public.

One of the most heated debates during the preparation of the Rules on Transparency concerned their scope of application with respect to existing and future treaties (i.e. those concluded after the Rules of Transparency's effective date).⁴³ The majority of delegates from Working Group II supported the "opt in" approach. This view called for the application of the Rules on Transparency only when the parties to the investment treaty or those in the underlying dispute expressly agreed to their applicability.⁴⁴ This would have made the Rules on Transparency a "stand-alone" set of rules rather than an integrated part of the UNCITRAL Arbitration Rules.⁴⁵ The minority of delegates advocated for the "opt-out" approach, which called for a presumption that the Rules on Transparency applied to the arbitration unless the parties to the investment treaty expressly opted out.⁴⁶ Thus, insofar as an investment treaty made a general reference to the "UNCITRAL Arbitration Rules," it would mean, subject to the rules on treaty interpretation, that the Rules on Transparency applied to the dispute.⁴⁷ This approach would have ensured that the Rules on Transparency applied to disputes arising out of existing and future treaties.⁴⁸

A compromise, however, was struck. With respect to future treaties, the Rules on Transparency will apply by default unless the parties to the treaty expressly opt out of their application. With respect to existing treaties, the Transparency Rules will not apply unless one of the following situations occurs:

- (a) The disputing parties voluntarily agree to the application of the Transparency Rules with respect to the arbitration between them; or

42. The Authors opine that "[i]n all likelihood, the detail of the 2010 Rules will come to influence the way discretion is used under the 1976 Rules." *Id.* at 532.

43. *Id.* at 23.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

- (b) The State parties to the treaty agree to the application of the Transparency Rules after the effective date when the Transparency Rules come into force.⁴⁹

How the Rules on Transparency will affect other provisions under the 2010 or 1976 Rules is not yet clear. Given the movement towards more transparency, parties that are more commercially sensitive may alter how they draft their pleadings and evaluate the degree of documentary material on which they will rely.⁵⁰ Overall, the Rules on Transparency defer a large degree of decision making to the arbitral tribunal. This is particularly the case with respect to determining whether information is confidential or protected, or whether the publication of certain information would jeopardise the integrity of the arbitral process. The disputing parties will be consulted, but the final decision will rest with the arbitral tribunal.

By the end of the book one can appreciate the level of sophistication and precision employed in finalizing the 2010 Rules. Navigating the Rules and the various situations in which they become relevant, the book provides in-depth coverage useful for any practitioner engaged in the field. In particular, the careful selection of extracts from the workings of the Iran-U.S. Claims Tribunal, arbitrations under Chapter 11 of the North American Free Trade Agreement, and other ad hoc tribunals make for excellent sources on how the Rules are applied in practice.

The book does not provide an extensive comparison between the UNCITRAL Arbitration Rules and other arbitral rules, legislation, and treaties. However, the book does reference these instruments to shed light on the Rules. In this regard, the book has a “Table of Instruments”, which provides a list organized according to various legal instruments (Other Institutions’ Rules, National Legislation, UNCITRAL Instruments, and others). This table assists the reader in identifying the relevant pages of the book where a particular provision under the legal instrument was discussed. For instance, the book provides useful commentary and comparisons between the Rules and the default provisions under the Model Law. This comparison adds another layer of analysis on why, for instance, additional details were added to the Rules in light of the default position under the Model Law.

49. In the case of a multilateral treaty, the transparency rules will apply if the home State of the investor and respondent State agree to their applicability.

50. Deborah Wilkie, *UNCITRAL Unveils New Transparency Rules—Blazing a Trail Towards Transparency in Investor-State Arbitration?*, KLUWER ARBITRATION BLOG (July 25, 2013), <http://kluwarbitrationblog.com/blog/2013/07/25/uncitral-unveils-new-transparency-rules-blazing-a-trail-towards-transparency-in-investor-state-arbitration/> (“On a more practical level, it will also be interesting to see whether this increased transparency has any impact on the way that the parties draft their pleadings, or perhaps to limit the documents they refer to, in order to avoid potential disclosure requests.”).

Even if practitioners are engaged in an arbitration pursuant to another set of arbitral rules, it is not uncommon to refer to the UNCITRAL Arbitration Rules as an influential guide, given the international effort involved in preparing them. For instance, while most arbitral rules recognize the power of an arbitral tribunal to award interim measures⁵¹, the 2010 Rules are unique in that they go further and list the conditions for granting such measures (Article 26(3) of the 2010 Rules). So in circumstances where the applicable arbitral rules and the *lex loci arbitri* are silent on the standard arbitral tribunals should adopt in granting interim measures, Article 26(3) of the 2010 Rules and the commentary in the book provide an invaluable source of guidance.

The key appeal of the book is that it succinctly summarizes the major debates arising out of the plethora of Working Group II documents on the 2010 Rules. This makes the book a powerful source for any practitioner or arbitrator seeking to substantiate their reasons on why a particular course of action should be deployed in the arbitration proceedings. In this regard, the book provides a quick means of access to the *travaux préparatoires*.

Both authors have seen the growing prominence of the UNCITRAL Rules throughout their careers and witnessed the application and refinement of the Rules:

Our careers have witnessed the emergence of the 1976 UNCITRAL Rules through the work of the Iran-U.S. Claims Tribunal's practice, its widespread designation as a basis for arbitration in bilateral investment treaties and its subsequent use in arbitrations brought under those treaties, and the global influence the Rules have played on the Rules adopted by Arbitration Centers in cities around the world and by global institutions offering arbitration services. For us, it has always been clear that the practice regarding the UNCITRAL Rules of Arbitral Procedure, if analyzed and accessible, would be very significant.⁵²

Given both authors' extensive experience, the book is arguably one of the authoritative texts on the subject. For the above reasons, the book serves as a key reference source for any practitioner or arbitrator engaged with the Rules. It can also serve as a useful source for understanding procedural issues arising under other arbitral rules, given the Rules' immense popularity and prominence in the field of international arbitration.

51. INTERNATIONAL CHAMBER OF COMMERCE, ARBITRATION RULES art. 28 (2012), available at <http://www.iccwbo.org/Data/Documents/Business-Services/Dispute-Resolution-Services/Mediation/Rules/2012-Arbitration-Rules-and-2014-Mediation-Rules-ENGLISH-version/>; *SIAC Rules 2013*, art. 26, SINGAPORE INT'L ARB. CTR., <http://www.siac.org.sg/our-rules/rules/siac-rules-2013> (last visited Jan. 24, 2015); LONDON COURT OF INTERNATIONAL ARBITRATION, ARBITRATION RULES art. 25 (2014), available at <http://www.lcia.org/media/download.aspx?MediaId=379>; STOCKHOLM CHAMBER OF COMMERCE, ARBITRATION RULES art. 32 (2010), available at http://sccinstitute.com/media/40120/arbitrationrules_eng_webbversion.pdf.

52. CARON & CAPLAN, *supra* note 3, at vii.