

THE UNCITRAL ARBITRATION RULES

A COMMENTARY
SECOND EDITION

DAVID D. CARON
LEE M. CAPLAN

OXFORD

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A Commentary

*(With an Integrated and Comparative Discussion of the
2010 and 1976 UNCITRAL Arbitration Rules)*

Second Edition

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OXFORD COMMENTARIES ON
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Chambers, London; Emeritus Fellow,
All Souls College, Oxford.

The UNCITRAL Arbitration Rules

To Susan, my partner in all things – DDC

To Christina, for all her love and support – LMC

Preface

This project arises out of our experiences, initially, as Legal Assistants at the Iran–US Claims Tribunal and, subsequently, as arbitration counsel, as scholars, as life-long students of international dispute resolution, and as a governmental representative to UNCITRAL. Our careers have witnessed the emergence of the 1976 UNCITRAL Rules through the work of the Iran–US 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.

This commentary takes a unique approach. In addition to a commentary on the Rules based on their drafting history, the corpus of Iran–US Claims Tribunal practice, and the ever-growing practice of investor–state arbitrations constituted in accordance with the UNCITRAL Rules, this work reproduces the extracts from the procedural decisions of these various sources. Our experiences have repeatedly shown that new issues, issues of first impression, continue to arise in arbitration. For this reason, we believe access to the procedural decisions themselves is essential. Some of these decisions have been reprinted in various sources, but many have not. In preparing this study, thousands of procedural orders and decisions have been reviewed and many of those orders are easily available only in this volume. It is our hope that this study's dual function of analysis and access will lead to a more refined system of arbitral procedure, provide a sounding board for parties and arbitrators who seek to understand the issues before them, and promote further the arbitration regime we both feel is essential to more complex systems of order and interdependence.

The authors have greatly benefited from the assistance of many throughout their work on the second edition of this Commentary. We particularly wish to thank three research assistants for their outstanding and dedicated assistance in completing this revision: Preeti Khanna (LLM 2012 Berkeley), Rebecca Callaway (JD 2010 Berkeley) and Brittney Lovato (JD 2013 Berkeley). Many other students have assisted since the first edition of this Commentary: Anderson Berry, Hugh Carlson, Stephan Pages, Alexandra Widman, Luke Hagelberg, Shaina Johnson, Louise Balsan, Elliot Schackleford, Felix Mormann and Rodrigo Gil. Their interest and energy have been a constant source of inspiration.

David D. Caron, Berkeley
Lee M. Caplan,¹ Washington DC
March 2013

¹ The contributions to this book by Lee M. Caplan are a product of his own personal views and not those of the US Government.

List of Abbreviations

AAA	American Arbitration Association
AJIL	American Journal of International Law
ASEAN	Association of Southeast Asian Nations
BITs	Bilateral Investment Treaties
CERD	Committee on the Elimination of Racial Discrimination
FTAs	free trade agreements
IBA	International Bar Association
ICC	International Chamber of Commerce
ICDR	International Centre for Dispute Resolution
ICJ	International Court of Justice
ICLQ	International Comparative Law Quarterly
ICSID	International Centre for the Settlement of Investment Disputes
IAs	international investment agreements
ILM	International Legal Materials
ILR	International Legal Reports
LCIA	London Court of International Arbitration
NAFTA	North American Free Trade Agreement
PCA	Permanent Court of Arbitration
UNCITRAL	United Nations Commission on International Trade Law

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