

# Contents

<i>Table of Cases and Other Practice</i>	xxix
<i>List of Abbreviations</i>	xli
CHAPTER 1: INTRODUCTION	1
1 The Importance of the International Arbitral Process	1
2 The Origins and Structure of the Iran-US Claims Tribunal	3
3 The Tribunal's Use of the UNCITRAL Arbitration Rules	6
4 International Investment Agreements and the UNCITRAL Arbitration Rules	10
PART I: FUNDAMENTAL PRINCIPLES AND THE LEGAL FRAMEWORK WITHIN WHICH THE ARBITRAL TRIBUNAL OPERATES	13
Introduction	15
CHAPTER 2: GENERAL PROVISIONS AND PLACE OF ARBITRATION	17
1 Introduction	18
2 Scope of Application—Article 1	18
A Text of the UNCITRAL Rule	18
B Commentary	19
C Extracts from the Practice of NAFTA Tribunals	22
D Extracts from the Practice of Other Tribunals	23
(1) General and Article 1(1)	23
(2) Article 1(2)	24
3 General Provisions—Article 15	25
A Text of the UNCITRAL Rule	25

B	Commentary	25
	(1) Basic Principles—Article 15(1)	26
	(a) Arbitral Autonomy and its Limits	26
	(b) Confidentiality and Non-Disputing Party Participation in UNCITRAL Arbitration	33
	(c) The Nature of the Proceedings before the Iran-US Claims Tribunal	38
	(d) Concluding Remarks	44
	(2) Right to a Hearing—Article 15(2)	45
	(3) Communication of Documents—Article 15(3)	50
C	Extracts from the Practice of the Iran-US Claims Tribunal	51
	(1) General and Tribunal Rules, Article 15(1)	51
	(2) Tribunal Rules, Article 15(2)	58
D	Extracts from the Practice of NAFTA Tribunals	64
	(1) Article 15(1)—General	64
	(2) Article 15(1)— <i>Amicus</i> Submissions	66
E	Extracts from the Practice of Other Tribunals	74
4	Place of Arbitration—Article 16	76
A	Text of the UNCITRAL Rule	76
B	Commentary	77
	(1) Selection of the Place of Arbitration—Article 16(1)	77
	(a) Considerations to Be Taken into Account	77
	(b) Neutrality	78
	(c) Nature of the Local Law	80
	(d) Enforceability of the Award	87
	(e) Practical Considerations	92
	(f) Concluding Remarks	93
	(2) Selection of the Particular Locale, Special Meetings for Consultation and the Hearing of Witnesses	94
	(3) Special Meetings for the Inspection of Goods, Other Property or Documents	96
	(4) Where the Award Shall Be Made	97
C	Extracts from the Practice of the Iran-US Claims Tribunal	98
D	Extracts from the Practice of NAFTA Tribunals	99
E	Extracts from the Practice of Other Tribunals	114

CHAPTER 3: APPLICABLE LAW	121
1 Introduction	121
2 Applicable Law—Article 33	122
A Text of the UNCITRAL Rule	122
B Commentary	123
(1) The Main Rules—Article 33(1)	123
(a) The Principle of Party Autonomy and Its Application	123
(b) Choice of Applicable Law Where Not Designated by the Parties	130
(2) <i>Amiable compositeur</i> or <i>ex aequo et bono</i> —Article 33(2)	134
(3) Significance of the Contract and Trade Usages—Article 33(3)	136
(4) A Note on the Iran-US Claims Tribunal	138
C Extracts from the Practice of the Iran-US Claims Tribunal	140
(1) Tribunal Rules, Article 33(1)	140
(2) Tribunal Rules, Article 33(2)	157
(3) Tribunal Rules, Article 33(3)	157
(4) Other practice of the Iran-US Claims Tribunal	159
D Extracts from the Practice of NAFTA Tribunals	163
 PART II: ARBITRAL PROCEDURES TO CONTROL THE SELECTION AND CONDUCT OF ARBITRATORS	   165
Introduction	167
 CHAPTER 4: THE NUMBER AND SELECTION OF ARBITRATORS	  169
1 Introduction	169
2 The Number of Arbitrators—Article 5	170
A Text of the UNCITRAL Rule	170
B Commentary	170
3 Appointment of the Sole Arbitrator—Article 6	173
A Text of the UNCITRAL Rule	173
B Commentary	174
C Extracts from the Practice of the Iran-US Claims Tribunal	176

4	Appointment of a Three-Person Panel—Article 7	178
	A Text of the UNCITRAL Rule	178
	B Commentary	179
	(1) The Right of Each Party to Appoint an Arbitrator	179
	(2) The Appointment of the Presiding Arbitrator	180
	C Extracts from the Practice of <i>Ad Hoc</i> Tribunals	181
5	Appointment by the Appointing Authority—Article 8	182
	A Text of the UNCITRAL Rule	182
	B Commentary	182
	CHAPTER 5: THE CHALLENGE OF ARBITRATORS	185
1	Introduction	187
	A An Overview of the Challenges before the Iran-US Claims Tribunal	187
	(1) The Iranian Government Challenge of Nils Mangård—1982	187
	(2) The United States Government Challenge of Judges Kashani and Shafeiei—1983	188
	(3) The First Iranian Government Challenge of Judge Briner in Case No. 55, “ <i>Amoco Iran and The Islamic Republic of Iran</i> ”—1988	188
	(4) The Second Iranian Government Challenge of Judge Briner—1989	189
	(5) The Third Iranian Government Challenge of Judge Briner—1989	190
	(6) The US Claimant Challenge of Judge Noori in Case No. 248, “ <i>Carlson and Melli Industrial Group</i> ”—1990	190
	(7) The Iranian Government Challenge of Judge Arangio-Ruiz—1991	191
	(8) The Iranian Government Challenges of Judge Krzysztof Skubiszewski—1999	191
	(9) The US Government Challenge of Judge Bengt Broms—2001	192
	(10) The US Claimant Challenge of Judge Bengt Broms in connection with Case No. 485, “ <i>Frederica Lincoln Riahi</i> ”—2004	192

B	An Overview of Challenges before Other UNCITRAL Tribunals	193
	(1) Challenge Decision of 15 April 1993	193
	(2) Challenge Decision of 11 January 1995	194
C	The Exclusivity of the UNCITRAL Challenge Procedure	194
2	The Duty to Disclose—Article 9	199
	A Text of the UNCITRAL Rule	199
	B Commentary	200
	C Extracts from the Practice of the Iran-US Claims Tribunal	204
	(1) General	204
	(2) Disclosure by the US Arbitrators	205
3	The Grounds for Challenge—Article 10	209
	A Text of the UNCITRAL Rule	209
	B Commentary	210
	(1) Challenge on the Ground of Justifiable Doubts as to Impartiality or Independence—General Remarks on Article 10(1)	210
	(a) The Standard for Impartiality and Independence Is Objective	210
	(b) The Same Standard Applies to Party-Appointed and Non-Party-Appointed Arbitrators	211
	(c) Criteria Regarding and Examples of Justifiable Doubts	213
	(2) Challenge on the Ground of Justifiable Doubts as to Impartiality or Independence	214
	(a) The Meaning of “Impartiality” and “Independence”	215
	(b) When Are Doubts as to Impartiality or Independence Justified?	215
	(c) The Standard of Independence and Impartiality Does Not Vary Depending on the Stage of the Proceedings	224
	(d) A Failure to Disclose Under Article 9 May Give Rise to, but Does Not <i>Per Se</i> Establish, Justifiable Doubts as to Impartiality or Independence	225
	(e) Are There Any Limitations on the Circumstances Which May Be Used as the Basis for Justifiable Doubts?	227
	(3) Article 10(1) As Providing the Exclusive Grounds for Challenge	228

(4) When May a Party-Appointed Arbitrator Be Challenged by the Party Who Appointed Him—Article 10(2)	231
C Extracts From the Practice of the Iran-US Claims Tribunal	231
(1) Tribunal Rules, Article 10(1)	231
(2) Tribunal Rules, Article 10(2)	238
D Extracts from the Practice of Other Tribunals	238
<b>4 The Initiation of the Challenge and the Potential for Agreement to the Challenge—Article 11</b>	<b>240</b>
A Text of the UNCITRAL Rule	240
B Commentary	241
(1) When Notice of Challenge Must Be Made—Article 11(1)	241
(2) To Whom Should Notice Be Sent; What Form Should Notice Take—Article 11(2)	246
(3) Procedure if Challenge is Accepted by Other Party or Challenged Arbitrator Withdraws—Article 11(3)	251
C Extracts from the Practice of the Iran-US Claims Tribunal	253
(1) Tribunal Rules, Article 11(1)	253
(2) Tribunal Rules, Article 11(2)	259
(3) Tribunal Rules, Article 11(3)	263
D Extracts from the Practice of NAFTA Tribunals	264
E Extracts from the Practice of Other Tribunals	264
<b>5 The Resolution of the Challenge—Article 12</b>	<b>265</b>
A Text of the UNCITRAL Rule	265
B Commentary	266
(1) Which Authority Shall Make the Decision on the Challenge if the Other Party Does Not Agree to the Challenge or the Challenged Arbitrator Does Not Withdraw—Article 12(1)	266
(2) Procedure for Appointing a Substitute Arbitrator if the Challenge Is Sustained—Article 12(2)	272
C Extracts from the Practice of the Iran-US Claims Tribunal	273
(1) Tribunal Rules, Article 12(1)	273
(2) Tribunal Rules, Article 12(2)	275
D Extracts from the Practice of NAFTA Tribunals	275

CHAPTER 6: RESIGNATION, FAILURE TO ACT, AND THE CONSEQUENCES OF THE REPLACEMENT OF AN ARBITRATOR	277
1 Introduction	277
2 Replacement of an Arbitrator—Article 13	278
A Text of the UNCITRAL Rule	278
B Commentary	279
(1) Resignation, Absence and Death—Article 13(1)	279
(a) Drafting History of the Rule	279
(b) Tribunal Practice on Article 13(1)	281
(2) Failure to Act—Article 13(2)	284
(a) Drafting History of the Rule	284
(b) Tribunal Practice on Article 13(2)	285
(c) A Note on Substitute Arbitrators	287
(d) A Note on Truncated Proceedings	287
(3) Tribunal Rules, Article 13(3)	297
(4) Tribunal Rules, Article 13(4)	298
(5) Tribunal Rules, Article 13(5)	298
C Extracts from the Practice of the Iran-US Claims Tribunal	299
(1) Tribunal Rules, Article 13(1)	299
(2) Tribunal Rules, Article 13(2)	299
(3) Tribunal Rules, Article 13(3)	318
(4) Tribunal Rules, Article 13(4)	319
(5) Tribunal Rules, Article 13(5)	319
D Extracts from the Practice of <i>Ad Hoc</i> Tribunals	321
3 Repetition of Hearings in the Event of the Replacement of an Arbitrator—Article 14	322
A Text of the UNCITRAL Rule	322
B Commentary	323
C Extracts from the Practice of the Iran-US Claims Tribunal	326
CHAPTER 7: THE APPOINTING AUTHORITY AND COMPOSITION UNDER THE UNCITRAL RULES	329
1 An Evaluation of the UNCITRAL Approach	329
2 The Office of the Appointing Authority	332

PART III: THE INITIATION OF THE ARBITRATION AND THE IDENTIFICATION AND CLARIFICATION OF THE ISSUES PRESENTED	337
<b>Introduction</b>	339
CHAPTER 8: THE NOTICE INITIATING ARBITRATION	341
<b>1 Introduction</b>	341
<b>2 The Notice Initiating Arbitration—Article 3</b>	342
A Text of the UNCITRAL Rule	342
B Commentary	342
(1) The Notice Requirement—Article 3(1)	342
(2) When Arbitration Proceedings Are Deemed to Have Commenced—Article 3(2)	343
(3) What Information Must Be Provided in the Notice of Arbitration—Article 3(3)	344
(4) Additional Information Provided in the Notice of Arbitration—Article 3(4)	345
(5) The Notice of Arbitration in the Iran-US Claims Tribunal	346
C Extracts from the Practice of NAFTA Tribunals	349
D Extracts from the Practice of Other Tribunals	350
CHAPTER 9: THE CHOICE OF LANGUAGE	351
<b>1 Introduction</b>	351
<b>2 The Choice of Language—Article 17</b>	352
A Text of the UNCITRAL Rule	352
B Commentary	352
(1) Determination of the Language of Arbitration—Article 17(1)	352
(2) Translation of Documents and Exhibits—Article 17(2)	359
C Extracts from the Practice of the Iran-US Claims Tribunal	363



(1) Tribunal Rules, Article 17(1)	363
(2) Tribunal Rules, Article 17(2)	366
D Extracts from the Practice of NAFTA Tribunals	374

CHAPTER 10: NOTICE AND THE CALCULATION OF PERIODS OF TIME 375

1 Introduction	375
2 Notice and the Calculation of Periods of Time—Article 2	376
A Text of the UNCITRAL Rule	376
B Commentary	377
(1) When Notice Becomes Effective—Article 2(1)	377
(a) The Drafting History of Article 2(1)	377
(b) Application of Article 2(1) by the Iran-US Claims Tribunal	380
(2) How to Calculate Periods of Time under the Rules—Article 2(2)	381
C Extracts from the Practice of the Iran-US Claims Tribunal	383
(1) Tribunal Rules, Article 2(1)	383
(2) Tribunal Rules, Article 2(2)	384
(3) Tribunal Rules, Article 2(3)	384
(4) Tribunal Rules, Article 2(4)	387
(5) Tribunal Rules, Article 2(5)	387

CHAPTER 11: STATEMENTS OF CLAIM AND DEFENCE 391

1 Introduction	392
2 The Statement of Claim—Article 18	393
A Text of the UNCITRAL Rule	393
B Commentary	394
(1) Submission of the Statement of Claim	394
(2) Contents of the Statement of Claim	395
(3) Sanctions for an Inadequate Statement of Claim	396
(4) A Note on the Iran-US Claims Tribunal	398
C Extracts from the Practice of the Iran-US Claims Tribunal	399
(1) Tribunal Rules, Article 18(1)	399

(2) Tribunal Rules, Article 18(2)	400
D Extracts from the Practice of NAFTA Tribunals	402
<b>3 The Statement of Defence—Article 19</b>	<b>406</b>
A Text of the UNCITRAL Rule	406
B Commentary	407
(1) Submission of the Statement of Defence	407
(2) Contents of the Statement of Defence	408
(3) Submission of Counter-Claims and Claims for the Purpose of Set-Off	409
(a) Preliminary Remarks	409
(b) The Counter-Claim or the Claim for a Set-Off Must Arise out of the Same Contract as the Main Claim	412
(4) Supplementary Provisions on Counter-Claims and Claims for the Purpose of Set-Off	415
C Extracts from the Practice of the Iran-US Claims Tribunal	416
(1) Tribunal Rules, Article 19(1)	416
(2) Tribunal Rules, Article 19(2)	418
(3) Tribunal Rules, Article 19(3)	419
(4) Tribunal Rules, Article 19(4)	437
D Extracts from the Practice of NAFTA Tribunals	437
 <b>CHAPTER 12: PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL</b>	 <b>443</b>
<b>1 Introduction</b>	<b>443</b>
<b>2 Pleas as to Jurisdiction—Article 21</b>	<b>444</b>
A Text of the UNCITRAL Rule	444
B Commentary	444
(1) The Extent of the Power of the Tribunal to Determine its Jurisdiction—Articles 21(1) and 21(2)	444
(2) Objections to the Existence or Validity of the Contract of Which the Arbitration Agreement is a Part— Article 21(2)	446
(3) When Objections Should be Raised—Article 21(3)	448
(4) When Objections Should be Ruled Upon as a Preliminary Question—Article 21(4)	449

C	Extracts From The Practice of The Iran-US Claims Tribunal	451
	(1) Tribunal Rules, Article 21(1)	451
	(2) Tribunal Rules, Article 21(2)	451
	(3) Tribunal Rules, Article 21(3)	452
	(4) Tribunal Rules, Article 21(4)	452
D	Extracts from the Practice of NAFTA Tribunals	456
E	Extracts from the Practice of <i>Ad Hoc</i> Tribunals	462
 CHAPTER 13: AMENDMENTS TO THE CLAIM OR DEFENCE		 465
1	Introduction	465
2	Amendments to the Claim or Defence—Article 20	466
	A Text of the UNCITRAL Rule	466
	B Commentary	466
	(1) General Remarks	466
	(2) The Amendment Must Not Fall Outside the Scope of the Arbitration Clause or Agreement	468
	(3) Grounds for Rejecting an Amendment: Delay, Prejudice or Other Circumstances	470
	(4) Procedural Questions	474
C	Extracts from the Practice of the Iran-US Claims Tribunal	475
D	Extracts from the Practice of NAFTA Tribunals	491
E	Extracts from the Practice of <i>Ad Hoc</i> Tribunals	494
 CHAPTER 14: FURTHER WRITTEN STATEMENTS AND TIME LIMITS ON SUBMISSION		 497
1	Introduction	497
2	Further Written Statements—Article 22	498
	A Text of the UNCITRAL Rule	498
	B Commentary	498
	C Extracts from the Practice of the Iran-US Claims Tribunal	503
	D Extracts from the Practice of NAFTA Tribunals	515
	E Extracts from the Practice of <i>Ad Hoc</i> Tribunals	517
3	Time Limits on Submission—Article 23	518
	A Text of the UNCITRAL Rule	518

B	Commentary	518
C	Extracts from the Practice of the Iran-US Claims Tribunal	523
 CHAPTER 15: THE QUESTION OF INTERIM MEASURES		531
1	Introduction	531
2	Interim Measures—Article 26	532
A	Text of the UNCITRAL Rule	533
B	Commentary	533
(1)	Conditions for the Ordering and Contents of Interim Measures—Article 26(1)	533
(a)	Interim Measures Must Be Requested by a Party	533
(b)	Interim Measures Must Be Necessary in Respect of the Subject Matter of the Dispute	534
(c)	Which Types of Interim Measures May Be Granted	539
(2)	The Form of a Decision on Interim Measures and the Costs of Such Measures—Article 26(2)	540
(3)	Relations Between the Arbitral Tribunal and Municipal Courts in Question Concerning Interim Measures	543
C	Extracts from the Practice of the Iran-US Claims Tribunal	546
(1)	Tribunal Rules, Article 26(1)	546
(2)	Tribunal Rules, Article 26(2)	558
(3)	Tribunal Rules, Article 26(3)	560
 PART IV: THE PRESENTATION OF THE CASE: EVIDENCE AND HEARINGS		561
	Introduction	563
 CHAPTER 16: EVIDENCE		565
1	Introduction	565
2	Evidence—Article 24	567
A	Text of the UNCITRAL Rule	567
B	Commentary	568
(1)	Burden of Proof—Article 24(1)	568

(2) Summary of Evidence to be Delivered to the Arbitral Tribunal and the Other Party—Article 24(2)	572
(3) Production of Documents—Article 24(3)	574
(a) General Remarks	574
(b) Arbitral “Discovery” at the Request of a Party	576
(c) “Enforcement” of Production Orders	578
C Extracts from the Practice of the Iran-US Claims Tribunal	580
(1) Tribunal Rules, Article 24(1)	580
(2) Tribunal Rules, Article 24(2)	592
(3) Tribunal Rules, Article 24(3)	592
D Extracts from the Practice of NAFTA Tribunals	601
E Extracts from the Practice of <i>Ad Hoc</i> Tribunals	603
CHAPTER 17: THE HEARINGS	605
1 Introduction	606
2 The Hearings—Article 25	606
A Text of the UNCITRAL Rule	606
B Commentary	608
(1) Notice of Hearing—Article 25(1)	608
(2) Notice of Witnesses—Article 25(2)	610
(a) Main Contents of the Provision	610
(b) “Witnesses” within the Meaning of Article 25(2)	611
(3) Translation of Oral Statements, Record of the Hearing—Article 25(3)	613
(4) The Conduct of the Hearing—Article 25(4)	616
(a) Hearings Normally Held <i>In Camera</i>	616
(b) Retirement of Witnesses	617
(c) The Manner of Witness Examination	617
(5) Written Witness Statements—Article 25(5)	619
(6) Admissibility, Relevance, Materiality and Weight of the Evidence—Article 25(6)	621
C Extracts from the Practice of the Iran-US Claims Tribunal	624
(1) Tribunal Rules, Article 25(1)	624
(2) Tribunal Rules, Article 25(2)	626
(3) Tribunal Rules, Article 25(3)	634
(4) Tribunal Rules, Article 25(4)	635

(5) Tribunal Rules, Article 25(5)	636
(6) Tribunal Rules, Article 25(6)	637
D Extracts from the Practice of NAFTA Tribunals	645
E Extracts from the Practice of <i>Ad Hoc</i> Tribunals	648
<b>3 Closure of the Hearing—Article 29</b>	<b>650</b>
A Text of the UNCITRAL Rule	650
B Commentary	650
(1) Closure of the Hearing—Article 29(1)	650
(2) Reopening of the Hearing—Article 29(2)	652
C Extracts from the Practice of the Iran-US Claims Tribunal	655
(1) Tribunal Rules, Article 29(1)	655
(2) Tribunal Rules, Article 29(2)	656
D Extracts from the Practice of NAFTA Tribunals	662
E Extracts from the Practice of <i>Ad Hoc</i> Tribunals	662
<b>CHAPTER 18: EXPERTS</b>	<b>663</b>
<b>1 Introduction</b>	<b>663</b>
<b>2 Experts—Article 27</b>	<b>664</b>
A Text of the UNCITRAL Rule	664
B Commentary	665
(1) General Comments	665
(2) Appointment and Terms of Reference—Article 27(1)	667
(a) Appointment	667
(b) Terms of Reference	670
(3) The Provision of Relevant Information to the Expert— Article 27(2)	671
(4) The Expert's Report—Article 27(3)	673
(5) Expert Hearings—Article 27(4)	675
(6) A Note on Party-Appointed Experts	676
C Extracts from the Practice of the Iran-US Claims Tribunal	677
(1) Tribunal Rule, Article 27(1)—Appointment and Terms of Reference	677
(a) The <i>Shain Shaine Ebrahimi</i> Case	677
(b) The <i>Arco Exploration</i> Case	682
(c) The <i>Starrett Housing</i> Case	685

(d) The <i>Richard D Harza</i> Case	687
(e) The <i>Behring International</i> Case	693
(2) Tribunal Rules, Article 27(2)—Provision of Relevant Information	696
(3) Tribunal Rules, Article 27(3)—Expert Report	699
(a) The <i>Shain Shaine Ebrahimi</i> Case	699
(b) The <i>Arco Exploration</i> Case	700
(c) The <i>Behring International</i> Case	701
(d) The <i>Richard D Harza</i> Case	702
(e) The <i>Starrett Housing</i> Case	702
(4) Tribunal Rules, Article 27(4)—Expert Hearing	704
D Extracts from the Practice of NAFTA Tribunals	706
E Extracts from the Practice of <i>Ad Hoc</i> Tribunals	706
PART V: DEFAULT AND WAIVER	709
Introduction	711
CHAPTER 19: DEFAULT	713
1 Introduction	713
2 Default—Article 28	714
A Text of the UNCITRAL Rule	714
B Commentary	714
(1) General Comments	714
(2) Failure to File Initial Written Submissions—Article 28(1)	718
(3) Failure to Appear at a Hearing—Article 28(2)	719
(4) Failure to produce documentary evidence—Article 28(3)	720
C Extracts from the Practice of the Iran-US Claims Tribunal	721
(1) General and Tribunal Rules, Article 28	721
(2) Tribunal Rules, Article 28(2)	724
(3) Tribunal Rules, Article 28(3)	727
D Extracts from the Practice of <i>Ad Hoc</i> Tribunals	731

CHAPTER 20: WAIVER	739
1 Introduction	739
2 Waiver—Article 30	740
A Text of the UNCITRAL Rule	740
B Commentary	740
(1) General Comments	740
(2) The Criteria for Waiver	741
(a) Knowledge of Non-Compliance	741
(b) Continuation with the Proceedings	742
(c) Promptness of the Objection	743
C Extracts from the Practice of the Iran-US Claims Tribunal	743
D Extracts from the Practice of <i>Ad Hoc</i> Tribunals	744
PART VI: THE AWARD	745
Introduction	747
CHAPTER 21: DECISIONS	749
1 Introduction	749
2 Decisions—Article 31	750
A Text of the UNCITRAL Rule	750
B Commentary	750
(1) Awards and Other Decisions by Majority Vote—Article 31(1)	750
(a) General Comments	750
(b) The Practice of Deliberating and Drafting Awards by the Iran-US Claims Tribunal	755
(2) Decision-Making on Procedural Questions—Article 31(2)	756
(a) The Meaning of “Questions of Procedure”	759
(b) Revision	761
(3) Confidentiality of Deliberations—Article 31, Note 2 of the Tribunal Rules	762
(a) The Scope of the Rule of Confidentiality	763
(b) Enforcing the Rule of Confidentiality	766



C	Extracts from the Practice of the Iran-US Claims Tribunal	769
	(1) Tribunal Rules, Article 31(1)	769
	(2) Tribunal Rules, Article 31(2)	774
	(3) Tribunal Rules, Article 31, Note 2—Confidentiality of Deliberations	775
D	Extracts from the Practice of NAFTA Tribunals	785
E	Extracts from the Practice of <i>Ad Hoc</i> Tribunals	785
 CHAPTER 22: FORM AND EFFECT		 789
1	Introduction	790
2	Form and Effect—Article 32	791
	A Text of the UNCITRAL Rule	791
	B Commentary	791
	(1) Types of awards—Article 32(1)	791
	(2) The Award is “Final and Binding” and the Parties Must “Carry Out the Award without Delay”—Article 32(2)	797
	(3) Written Award and Designation of the Date and Place of the Award’s Making—Articles 32(2) and 32(4)	803
	(4) Obligation to Sign and Failure to Sign the Award— Article 32(4)	804
	(a) General comments on the <i>travaux préparatoires</i>	805
	(b) Practical Matters Regarding the Statement of Reasons for the Absence of an Arbitrator’s Signature	809
	(5) Statement of Reasons for the Award and Dissenting Opinions—Article 32(3)	811
	(6) Publication of the Award—Article 32(5)	817
	(7) Copies of the Award to the Parties—Article 32(6)	819
	(8) Filing and Registration of the Award—Article 32(7)	821
C	Extracts from the Practice of the Iran-US Claims Tribunal	822
	(1) Tribunal Rules, Article 32(1)—Types of Awards	822
	(2) Tribunal Rules, Article 32(2)—Final and Binding Award	823
	(3) Tribunal Rules, Articles 32(3) and 32(4)—Date, Place, and Signature	824
	(4) Tribunal Rules, Article 32(3)—Reasons for the Award	825
	(5) Tribunal Rules, Article 32(4)—Failure to Sign the Award	826
	(a) Statements of Reasons for Failure to Sign the Award	826

(b) Improper Statements of Reasons and Post-Award Exchanges	834
(6) Tribunal Rules, Article 32(5)—Publication of the Award	839
D Extracts from the Practice of NAFTA and Other Tribunals	844
(1) Article 32(1)—Types of Awards	844
(2) Article 32(2)—Final and Binding	845
(3) Articles 32(2) and 32(4)—Date, Place, and Signature	848
(4) Article 32(4)—Failure to Sign the Award	849
(5) Article 32(7)—Filing and Registration of an Award	850
CHAPTER 23: SETTLEMENT AND OTHER GROUNDS FOR TERMINATION	853
1 Introduction	853
2 Settlement and Other Termination—Article 34	854
A Text of the UNCITRAL Rule	854
B Commentary	854
(1) Settlement—Article 34(1)	854
(a) Types of Settlement Agreements and the Practice of Awards on Agreed Terms	854
(b) Discretion to Record a Settlement Agreement	857
(c) Pre-Settlement Negotiations	860
(2) Other Grounds for Termination—Article 34(2)	862
(a) Continuation of the Arbitration Is “Unnecessary” or “Impossible”	862
(b) “Justifiable Grounds for Objection”	864
(3) Technical Requirements for Awards on Agreed Terms—Article 34(3)	865
C Extracts from the Practice of the Iran-US Claims Tribunal	866
(1) Tribunal Rules, Article 34(1)	866
(2) Tribunal Rules, Article 34(2)	874
CHAPTER 24: POST-AWARD PROCEEDINGS	879
1 Introduction	880
2 Interpretation of the Award—Article 35	880
A Text of the UNCITRAL Rule	880

B	Commentary	881
C	Extracts from the Practice of the Iran-US Claims Tribunal	885
D	Extracts from the Practice of NAFTA Tribunals	891
E	Extracts from the Practice of Other Tribunals	892
3	<b>Correction of the Award—Article 36</b>	894
A	Text of the UNCITRAL Rule	894
B	Commentary	895
C	Extracts from the Practice of the Iran-US Claims Tribunal	898
	(1) Request for Correction Granted	898
	(2) Request for Correction Denied	900
4	<b>Additional Award—Article 37</b>	908
A	Text of the UNCITRAL Rule	908
B	Commentary	908
C	Extracts from the Practice of the Iran-US Claims Tribunal	911
	(1) Request for Additional Award Granted	911
	(2) Request for Additional Award Denied	911
5	<b>The Finality of Awards and the Inherent Power to Reconsider</b>	914
A	Commentary	914
B	Extracts from the Practice of the Iran-US Claims Tribunal	919
	(1) Limited Power of Review	919
	(2) Revision to Address Fraud or Corruption	921
C	Extracts from the Practice of NAFTA Tribunals	924
D	Extracts from the Practice of Other Tribunals	925
	<b>CHAPTER 25: THE COSTS OF ARBITRATION</b>	927
1	<b>Introduction</b>	928
2	<b>The Costs of Arbitration—Article 38</b>	928
A	Text of the UNCITRAL Rule	928
B	Commentary	929
	(1) Costs Defined	929
	(2) The Duty to Fix the Costs of Arbitration	933
	(3) Note on the Costs of the Iran-US Claims Tribunal	934
C	Extracts from the Practice of NAFTA Tribunals	935
D	Extracts from the Practice of <i>Ad Hoc</i> Tribunals	936

3 Arbitrators' Fees—Article 39	941
A Text of the UNCITRAL Rule	941
B Commentary	942
C Extracts from the Practice of NAFTA Tribunals	946
4 Apportionment of Costs—Article 40	947
A Text of the UNCITRAL Rule	947
B Commentary	947
(1) Apportioning and Awarding Costs	947
(2) “The Circumstances of the Case”	951
(a) The Success of the Parties	951
(b) The Conduct of the Parties	952
(c) The Nature of the Parties	953
(3) Requirements for Making a Claim for Costs	954
C Extracts from the Practice of the Iran-US Claims Tribunal	956
(1) Tribunal Rules, Article 40(1) and (2)—General	956
(2) Article 40(1) and (2)—“Circumstances of the Case”	960
(a) The Success of the Parties	960
(b) The Conduct of the Parties	962
D Extracts from the Practice of NAFTA Tribunals	966
E Extracts from the Practice of <i>Ad Hoc</i> Tribunals	976
5 Deposit of Costs—Article 41	982
A Text of the UNCITRAL Rule	982
B Commentary	983
(1) The Request for Deposits	983
(2) Consultation with the Appointing Authority	985
(3) Failure to Make Requested Deposits	986
(4) The Right to an Accounting and the Return of Unexpended Deposits	987
C Extracts from the Practice of the Iran-US Claims Tribunal	988
D Extracts from the Practice of NAFTA Tribunals	992
E Extracts from the Practice of <i>Ad Hoc</i> Tribunals	993
<i>Select Bibliography</i>	995
<i>Appendices</i>	1009
<i>Index</i>	1049