



Advancing Global and Regional Impact of the UNICITRAL Model Law on International Commercial Arbitration

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1.

Underpinning Research



Basic Information

Title of Publication:	<i>UNCITRAL Model Law on International Commercial Arbitration: A Commentary</i> , pp. 1-1144
Citation:	(2020) Cambridge University Press. Cambridge, United Kingdom. ISBN: 978-1-108-633376
Author:	Ilias Bantekas, Pietro Ortolani, Shahla Ali , Manuel A. Gomez, Michael Polkinghorne
My contribution:	484 pages (9 chapters - 187 pages; preliminaries - 130 pages; index - 167 pages) and overall organisation



Comments

Alexis Mourre (President of the ICC International Court of Arbitration): *“A truly international treatise where theory meets actual practice... critically an instructive and in-depth analysis..”*

Gloria M. Alvarez (reviewer in the Journal of International Arbitration): *“One of the highlights of 2020 is, without a doubt, the publication of UNCITRAL Model Law on International Commercial Arbitration: A Commentary...The Commentary delivers a titanic, eloquent, and straightforward analysis on the theory and practice of the UNCITRAL Model Law.”*



Comments Continued and Citation Numbers

Professor Emmanuel Gaillard (University Paris XII): *“We now have the pleasure of a commentary that does justice to the significant achievements of the UNCITRAL Model Law. A diverse group of authors thoroughly analyse each of its 36 articles, comparing each one’s application in various jurisdictions, without ever losing sight of the Model Law’s initial raison d’être. An enlightening and accessible treatise that is fundamental to a proper understanding of this increasingly widespread legal text.”*

Citation Numbers

- **SSRN:** viewing 1,079 times and downloading 348 times
- **Cambridge’s Metrics data:** 1,763 full text HTML views, 19,102 PDF views, 42,388 book summary views



References to the Underpinning Research

- Gloria Maria Alvarez, 'Book Review: UNCITRAL Model Law on International Commercial Arbitration: A Commentary. Cambridge University Press, March 2020', 37, Journal of International Arbitration, Issue 6, pp. 827-834
- <http://researchblog.law.hku.hk/2020/04/new-book-uncitral-model-law-on.html>
- <https://www.llmadr.law.hku.hk/post/new-book-uncitral-model-law-on-international-commercial-arbitration-a-commentary>
- <https://www.wildy.com/isbn/9781108498234>
- <https://www.cambridge.org/core/books/uncitral-model-law-on-international-commercial-arbitration/CC3C5F7998BB5C3E645A4F51DD471465#fndtn-information>



2. **Details of the Impact**



Summary of the Impact

The Underpinning Research contributed to revisions and developments in China's revised arbitration law through a synthesis of comparative judicial application in diverse jurisdictions – including new provisions in the Chinese Draft Arbitration Law on provisions relating to:

1. Party Autonomy
2. Ad Hoc Arbitration
3. Pro Arbitration posture
4. Interim Measures



Knowledge to be Exchanged & Engagement Process

The Underpinning Research was shared with committee members serving on China's Arbitration Law drafting group including Jiang LiLi and also David Fu.



Chinese Draft Arbitration Law 2021: Comments from the Chinese Arbitral Legal Community

Jiang LiLi (Chief Expert on the China Arbitration Law Drafting Committee):

“The Commentary on UNCITRAL has been received. Thank you for your help! As you said, China's arbitration law is being revised. As the chief expert, I undertake the main task. Recently, The CPPCC National Committee will hold a special session on the revision of the arbitration law, I am responsible for assisting in preparing meeting materials and expert opinions. In this process, your book provides me a good reference. I focus on the contents of chapters 16 and 17 much more now, because the revision of the arbitration law absorbs many contents of this part.”



Chinese Draft Arbitration Law 2021: *Comments from the Chinese Arbitral Legal Community*

David Fu (prominent Chinese arbitrator previously with Sherman and Sterling and member at the CSRC):

“As China plans to adapt its arbitration law to its increasingly internationalized arbitration market, this book undoubtedly provides an essential reference for those who wish to have a better understanding of the UNCITRAL Model Law, the lingua franca of national legal framework for international commercial arbitration.” Further, Mr. Arthur Dong, an arbitration partner with Jun He law firm appreciated reading the publication and noted that “UNCITRAL Model Law is definitely a very important reference in the process of amending the China Arbitration Law.”



Details of the Impact Achieved

The Underpinning Research contributed to revisions and developments in China's Arbitration law reform through a synthesis of comparative judicial application in diverse jurisdictions – including new provisions in the Chinese Draft Arbitration Law on provisions relating to:

1. Party Autonomy
2. Ad Hoc Arbitration
3. Pro Arbitration posture
4. Interim Measures

These impacts will be described below:



Chinese Draft Arbitration Law 2021: *Party Autonomy*

Parties now have autonomy to determine the validity of an arbitration agreement in the absence of specific reference to a particular arbitration institution

- Art.7(5) Model Law
- Underpinning Research Art.7 (Ali, et al, 2020, Article 7 Chapter, starting on p112-140)

Parties can now agree on the place of arbitration

- Art.27 Draft Arbitration Law 2021
- Art.20(1) Model Law
- Underpinning Research Art.20 (Ortolani, et al, 2020, Article 20 Chapter, starting on p565-590)



Chinese Draft Arbitration Law 2021: *Party Autonomy Continued*

Parties can now decide on the applicable rules of procedure

- Art.30 Draft Arbitration Law 2021
- Art.19(1) Model Law
- Underpinning Research Art.19 (Gomez & Ullah, et al, 2020, Article 19 Chapter, starting on p539-564)

Parties can now discuss and agree on the mode of receipt of written communications

- Art.34 Draft Arbitration Law 2021
- Proviso to Art.3(1) Model Law
- Underpinning Research Art.20 (Bantekas, et al, 2020, Article 3 Chapter, starting on p50-70)



Chinese Draft Arbitration Law 2021: *Party Autonomy Continued*

Parties can now select arbitrators and decide on their requisite credentials

- Art.50 Draft Arbitration Law 2021
- Art.10(1), 11(2) Model Law
- Underpinning Research Art.10, 11 (Bantekas, et al, 2020, Article 10 Chapter, starting on p178-186) (Ali & Repousis, et al, 2020, Article 11 Chapter, starting on p187-205)

Parties can now request an arbitral tribunal to give effect to a mediation agreement reached prior to the commencement of the arbitration

- Art.69 Draft Arbitration Law 2021
- Art.30(1) Model Law
- Underpinning Research Art.30 (Polkinghorne & Satija, et al, 2020, starting on p772-804)



Chinese Draft Arbitration Law 2021: *Ad hoc Arbitration*

Art.91 Draft Arbitration Law 2021 allows parties to submit their “foreign-related commercial dispute” to ad hoc arbitration - arbitration not administered by an institution

- Underpinning Research (Ali et al, 2020, p 28, 29, 30, 104, 151, 183, 196, 239, 242, 599, 601, 626, 752, 824, 829)

Gloria Alvarez noted in her view that the Underpinning Research identifies party autonomy as a key compass of the UNICITRAL Model Law and recognises party equality in the arbitration process as a key component



Chinese Draft Arbitration Law 2021: *More Pro-arbitration Posture*

Draft Arbitration Law 2021 endorses the doctrine of competence-competence - arbitral tribunals have the capacity to rule on their own jurisdictions

- Underpinning Research Art.16 (Ali et al, 2020, Article 16, pp. 292-313)

Arbitral tribunals can now on their own motion gather evidence considered necessary and when the situation requires, seek help from courts

- Art.61 Draft Arbitration Law 2021
- Art.27 Model Law
- Underpinning Research Art.27 (Ali & Repousis, et al, 2020, Article 27 Chapter, starting on p718-731)



Chinese Draft Arbitration Law 2021: *More Pro-arbitration Posture Continued*

On parties' application, foreign arbitral awards can now be recognised and enforced by Chinese courts

- Art.87 Draft Arbitration Law 2021
- Art.35(1) Model Law
- Underpinning Research Art.35 (Ortolani, et al, 2020, Article 35 Chapter, starting on p899-926)



Chinese Draft Arbitration Law 2021: *Interim Measures*

Arbitral tribunal's power to grant interim relief is now expanded and parties can seek to protect their interests during the course of arbitration proceedings

- Art.43 Draft Arbitration Law 2021
- Art.17, 17A Model Law
- Underpinning Research Art.17, 17A (Ali, et al. 2020, pp. Article 17 314-342, and 17A 343-372)

Gloria Alvarez noted in her view that the Underpinning Research argues that court-ordered interim measures can be important to ensure the effectiveness of arbitrations since arbitral tribunals may then be able to respond to parties' needs effectively



Virtual Hearings in the Global Level

The Underpinning Research also contributed to procedural innovations at the global level in the context of virtual hearings

- The Model Law defines the seat as a juridical notion with no geographical link, giving parties ample opportunity to meet outside the seat
- Arbitrators have the freedom to meet 'elsewhere' so this in principle permits remote hearings
- Following the principle of party autonomy, arbitral tribunals have the power to organise procedural matters

Thank you
