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# ASA Bulletin

Founder: Prof. Pierre Lalive  
Editor in Chief: Matthias Scherer



Association Suisse de l'Arbitrage  
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# ASA BULLETIN

**Founder:** Professor Pierre LALIVE  
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Books related to the topics discussed in the Bulletin may be sent for review to the Editor (Matthias Scherer, LALIVE, P.O. Box 6569, 1211 Geneva 6, Switzerland).

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**ASA Bulletin**

Matthias SCHERER

Rue de la Mairie 35, CP 6569, CH-1211 Genève 6

Tel: +41 22 319 87 00 – Fax: +41 22 319 87 60

mscherer@lalive.ch

(For address changes please contact  
info@arbitration-ch.org/tel +41 22 310 74 30)

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# The Prague Rules: Competitor, Alternative or Addition to the IBA Rules on the Taking of Evidence in International Arbitration?

DUARTE G. HENRIQUES\*

## I. Introduction

Words can be spared to say that one of the current fundamental concerns regarding international arbitration is the time and cost that it is now associated with this mechanism to solve disputes. Many say that this reflects the increasing complexity of the disputes that are resolved by arbitration and that such complexity is a result of the importation of traditional “common law” litigation expedients. The typical US discovery and confrontational style that often surfaces in international arbitration has been pointed out as one of the major causes of such dissatisfaction.

Many others say that the problem lies elsewhere: weak arbitrators, who in turn rely exclusively on the existing sets of rules, which constricts them to obey strictly and rigorously to the “sacrosanct” commands of due process. As a consequence, every request or application is subject to a thorough exercise of the adversarial process, and most of those requests and applications are granted, lest there is a challenge of the arbitrators or an annulment of the award on its way.

This landscape has, of course, raised concerns related to the creeping and ever-growing paranoia on due process, which has turned many arbitrators the captives of the initiative and requests of the parties and, therefore, contributors to lengthy and costly proceedings.

On the other hand, it has also been pointed out that the derailing in arbitration proceedings is especially acute when it comes to the taking of evidence. Massive document production, countless witnesses and expert witnesses, lengthy memorials and other written pleadings are but a few examples of causes contributing to make the parties wish never to enter into an arbitration agreement again.

In this regard, the IBA Rules on the Taking of Evidence in International Arbitration have been playing a fundamental role in according arbitral tribunals with powers to conduct the case in a cost and time-effective manner. To some extent, the ICC Arbitration Commission Report on Controlling Time

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\* Lawyer and Arbitrator, BCH Lawyers.

and Costs in Arbitration (the second edition was published in 2012) complements the IBA Rules in such endeavour.

Those rules are the result of an intensive and thorough work done by a large group of experts in international arbitration, who drew from their experiences and knowledge gathered in many different jurisdictions and legal cultures. Given the composition of the “Working Party” and the list of “Members of the IBA Rules of Evidence Review Subcommittee”, the last thing one can say about the IBA Rules is that they are a typical “common law” product. They indeed strike a balance between “common law” and “civil law” traditions.

However, that is what is in writing, not what has been the practice. Thus, some crucial questions arise: What if granting more powers to arbitral tribunals, making them more pro-active and more in control of the conduct of proceedings, renders arbitration more expedited and more efficient? What if arbitral tribunals haven’t been as controlling and pro-active because the existing rules and legal framework simply do not leave arbitrators at ease in doing so? What if the parties themselves are not aware that they can and should accord more powers to arbitral tribunals, and that they are not comfortable in doing so because there is no set of rules that expressly points in that direction?

Those are, in my view, the fundamental issues that the Rules of Prague eventually address by setting forth a host of major principles to apply by arbitral tribunals. Known as such because their planned official launch in Prague, on 14 December 2018, the initiative of the Prague Rules is associated with a Russian Arbitration Association event in Moscow in April 2017, where the “creeping Americanisation of international arbitration” was pinpointed as one of the major causes of the increased time and costs in international arbitration.<sup>1</sup>

Let us then look at the Prague Rules and assess what they are, and what main advantages they hold.

## **II. The overarching mindset: an alternative or addition, not a competition**

Arbitration is a parties’ work-product. There can be no legitimacy of arbitration and the arbitral tribunal will retain no competence to decide a

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<sup>1</sup> See Prague Rules on taking of evidence to launch in December 2018, by Practical Law Arbitration, available at <http://praguerules.com/upload/iblock/856/8563f3faf4c2236098577bedb329bdf8.pdf>, last accessed on 19 April 2018.

dispute if the parties have not agreed upon such a mechanism. The free will of the parties and their contractual freedom are the fundamental cornerstones of arbitration. As such, the arbitral tribunal should in principle be subject to the agreement of the parties in every aspect of the procedure. Consistently, virtually every arbitration legal framework – whether in ad hoc or institutional setting – provides for broad powers for the parties to tailor-make their procedure.

However, often (more often than not), when entering into an arbitration agreement, the parties are not in a position to establish all the provisions that are proven to be needed later on, simply because they cannot predict the future and the various nuances a proceeding will be subject to. Here and there, arbitration proceedings are sprinkled with hurdles and unexpected circumstances that the parties cannot agree upon, and a decision must be made.

On the other hand, once appointed, the arbitral tribunal must not remain captive of the parties' will, and must not accept every bargain that it is presented with. To some extent, the mandate that the parties grant to arbitrators is framed by their agreement, subject to the tribunal's acceptance and later competence of the arbitrators to decide the dispute. To think otherwise would be admitting that parties could always be in charge of the proceedings. Such understanding would lead to admitting that the arbitral tribunal is subject to the agreement of the parties when fixing the timeline, or scheduling hearings (or the length of those hearings, for that matter), just to name a few examples.

Ethical rules may also take part in the equation: most lawyers must be and remain independent as a matter of legal status applicable to their profession.

To some extent we can use a metaphor: arbitration is an automobile where the parties provide the car and the fuel, but the arbitrator is the driver.

Because of these two driving forces in arbitration – the parties' consent as the source of arbitration, on the one hand, and the powers granted to arbitrators, on the other – more often than not a clash appears along the way. Arbitrators want to manage the case expeditiously and cost-effectively, and parties want the case to be managed according to their interests, legal traditions and backgrounds, and particular strategies of the case. And the contrary may also happen: when parties want an expedited and time and cost-effective proceeding, they realise that a lazy tribunal has been appointed to decide their case.

There are two conflicting legal cultures in the conduct of arbitral proceedings (and also underlying those clashes in arbitration). Firstly, there is a culture that is fundamentally clinched on the parties' autonomy and thus more prone to an adversarial and confrontational approach. That is the typical "common law" approach to managing arbitration. Secondly, there is a culture



that accords more investigative and inquisitorial powers to the arbitral tribunal, leaving to the decision-maker the authority to decide virtually every aspect of the proceedings. That is a typical “civil law” approach.

The great divide between these two legal cultures is not only reflected in the way the case is managed but also and more importantly on the role that is assigned to the tribunal. Whereas some parties have the notion that the tribunal is supposed to decide their case using only the tools (that is, the facts and the law) that the parties must provide – a “common law” culture – other parties think that the tribunal should act as if it was a true state court judge, and therefore, the tribunal should take control of the investigation of facts and applicable law – a “civil law” culture.

For common law lawyers, arbitral tribunals are supposed to remain silent when they see a chance that the parties may settle the dispute, whereas for civil law lawyers the tribunal has a duty to facilitate and encourage the settlement of the dispute.

Again, in international arbitration, there is always the risk of appearing conflicting driving forces that may lead to serious disruptions, if not deadlocks, that render the decision process a task that is hard to accomplish.

In any case, arbitration is and will always be a product of the parties’ consent. Consistently, parties are allowed to choose from the outset the philosophy or legal culture the tribunal shall embrace.

Until now, and in what the conduct of international arbitration proceedings is concerned, that choice has been framed and somehow constricted by the adversarial approach reflected in the IBA Rules on the Taking of Evidence in International Arbitration (the version of 2010). Some complain that those Rules have been applied in a more “common law” fashion in spite of having been drafted with the most possible “neutral” spirit. The criticism is that the IBA Rules are more adversarial than “inquisitorial” and somehow restrict the powers of the arbitral tribunal. It is still not very clear to me whether the so-called “due process paranoia” is a result or the cause of such adversarial approach in applying the IBA Rules, but it is indisputable that this anathema is floating around in many practitioners’ minds.

Arguably, there should be a set of written rules that allows the parties to choose that they want the tribunal to be (more) in control of the case (and at all times), even if in doing so the panel must use its powers in a (more) proactive and inquisitive manner.

That is precisely the mindset of the Prague Rules, as we will see below.

However, it must be stated very clearly that the Prague Rules are not a competitor of the IBA Rules on Taking Evidence in International Arbitration.

To the contrary, not only may the Prague Rules supplement the IBA Rules – and vice-versa – but, more importantly, they play a fundamental role in according the parties with more options with a tailor-made process to fit their interests and needs. More options in international arbitration is, of course, a way to promote its use.

Thus, my support to the Prague Rules is not a criticism of the IBA Rules but rather, and fundamentally, a promotion of different options and different mindsets in the international decision-making process.

Ultimately, one should never forget that it is for the parties to decide how the case should be conducted before it starts.

Others may point out different (or more salient) features when reading the Prague Rules but, in my view, the “civil law” mindset of the Prague Rules is found in four fundamental areas of the conduct of proceedings in international arbitration, which I will address below. Indeed, when addressing the role that arbitral tribunals play and the manner in which they do so, the Prague Rules generally foresee that they will act in a pro-active fashion (III), invested in broad and inquisitorial powers (IV) to conduct the proceedings. Further, arbitral tribunals may also apply legal provisions not invoked by the parties on their own motion (“*jura novit curia*”) (V), and facilitate the settlement in becoming mediators (VI). I will now address these features, which may be done in drawing a comparison with the IBA Rules on the Taking of Evidence in International Arbitration.

### **III. Active role of the arbitral tribunal**

The first major and crucial difference between the IBA Rules and the Prague Rules is, whereas the former relies, to a larger extent, on the agreement of the parties as to the “efficient, economical and fair process for the taking of evidence” (Article 2(1) of the IBA Rules), the latter grants broader powers to the tribunal to conduct the case and to have a proactive role in doing so (Article 2(1) of the Prague Rules).

Indeed, while the tribunal is entitled, and even encouraged, to “identify to the Parties, as soon as it considers it to be appropriate”, any issues that it deems “relevant to the case and material to its outcome” and / or that may be appropriate to issue a preliminary determination” (Article 2(3) of the IBA Rules), the role of the tribunal seems to be confined to an “indication” following a “consultation” to the parties.

On the other hand, according to the Prague Rules, the Tribunal “shall hold a case conference management without any unjustified delay after

receiving the case file “at which it shall “clarify with the Parties their respective positions with regard to:

- i. the relief sought by the Parties;
- ii. the facts which are not in dispute between the Parties and the facts which are disputed;
- iii. the legal grounds on which the Parties base their position” (Article 2.3(a) of the Prague Rules).

The Tribunal shall also “fix a procedural timetable” (Article 2.3(b) of the Prague Rules).

At the same time, whereas the IBA Rules encourage the tribunal to identify to the parties issues that may be relevant to the case and material to its outcome, or that otherwise may justify a preliminary determination (Art. 2(3) IBA Rules), the Prague Rules not only oblige the tribunal to make such clarifications, but also and more importantly accord the tribunal the power to indicate to the parties the evidence that it would consider to be appropriate to prove the parties positions as regards the disputed facts (Article 2.4(i) of the Prague Rules), as well as the “the actions which could be taken by the Parties and the Arbitral Tribunal to ascertain the factual and legal basis of the claim and the defence” and “its preliminary view on allocation of the burden of proof between Parties” (Article 2.4.(ii) and (iii) of the Prague Rules).

In other words, it is clear that the Prague Rules are drafted to lead the tribunal to tread a much more active role than a simple observation of the adversarial and party-dependent conduct of the case.

Indeed, the Prague Rules have left behind a confrontational model on the conduct of arbitration. This confrontational model is reflected in many aspects of the IBA Rules, such as the requests for document production, generally submitted to a procedure resembling the “Redfern Schedule” (Article 3(3) of the IBA Rules) and subject to the adversarial procedure of “admissibility and assessment of evidence” (Article 9 of the IBA Rules). The philosophy underpinning the IBA Rules goes so far as to provide some level of detail in what the conduct of the “evidentiary hearing” is concerned (Article 8).

By contrast, the model of the Prague Rules is more flexible, as it leaves to the tribunal the power to conduct the arbitration and many of its aspects. To be sure, in the Prague Rules the tribunal must consult the parties in making procedural decisions that may have an impact on the due process. But at the same time, the tribunal’s power is not confined within the boundaries of the parties’ agreements.

As a consequence of the broad powers granted to the arbitral tribunal, it is for the tribunal to decide in which manner the hearing should be held and conducted.

Contrary to the detailed provisions of the IBA Rules, the Prague Rules established only a general principle that when requested by one of the parties or when the tribunal finds it appropriate, the hearing will “be conducted in a cost-effective manner, including by means of electronic communication” (Article 8 of the Prague Rules). This open provision allows the tribunal to determine in which particular and specific conditions the hearing will be held. As we know, the hearing is one of the procedural steps where most tribunals fail in conducting the case in a time and cost-effective fashion, and where one can witness the ability and command of arbitrators in performing that task. Consequently, this provision relies immensely on the experience and skills of the tribunal in that conduct.

It goes without saying that each case is a single case, and no general rule may be laid down in the conduct of the arbitration, particularly in regard to the conduct of a hearing. Therefore, it is not advisable to ink down a procedural timetable or a fixed script before the tribunal is acquainted with all the particulars of the case. Setting forth a precise and detailed rule regarding the conduct of a hearing beforehand may require amendments and adaptations to each particular case. Thus, the provision of the Prague Rules in this respect allows a broader flexibility in adapting the various phases – especially the hearing – to the needs of the case.

#### **IV. Broad and inquisitorial powers**

Furthermore, in requesting the tribunal to take an active role in the conduct of the proceedings, the Prague Rules provide that the tribunal shall have power to “upon consultation with the Parties, at any stage of arbitration and on its own motion:

- i. request any of the Parties to produce relevant documentary evidence or make fact witnesses identified by the Arbitral Tribunal available for testimony during the hearing;
- ii. appoint one or more experts or instruct any of the Parties to appoint an expert, including on legal issues;
- iii. order site inspections; and
- iv. take other actions, which it deems appropriate, for the purposes of fact-finding” (Article 3.2 of the Prague Rules).

It is true that under the IBA Rules, the arbitral tribunal enjoys the power to “order any Party to provide for, or to use its best efforts to provide for, the appearance for testimony at an Evidentiary Hearing of any person, including one whose testimony has not yet been offered” (Article 4(10) of the IBA Rules).

Those witnesses may not only be third-parties to the case but also parties’ representatives, officers and / or employees (Article 4(2) of the IBA Rules).

According to the IBA Rules, the tribunal also enjoys the power to “appoint one or more independent Tribunal-Appointed Experts to report to it on specific issues designated by the Arbitral Tribunal” (Article 6(1) of the IBA Rules), as well as it may “inspect or require the inspection by a Tribunal-Appointed Expert or a Party-Appointed Expert of any site, property, machinery or any other goods, samples, systems, processes or Documents, as it deems appropriate” (Article 7 of the IBA Rules).

The same power applies to documentary evidence (Article 3.10 of the IBA Rules).

Under these Rules, the arbitral tribunal has also the power to “exclude from evidence or production any Document, statement, oral testimony or inspection”, on its own motion or at the request of a party (Article 9.2 of the IBA Rules).

The comparison of these two sets of rules leads us to conclude that there are no substantial divergences between them regarding the power that arbitral tribunals enjoy in ordering the production of evidence, except perhaps that the Prague Rules grant the tribunal the power to take any other action that it may find appropriate – which may be too little or too much.

However, besides the fact that the Prague Rules allow the tribunal to seek from parties the clarification on points of fact and law, and also on the relief sought (Article 2.3 of the Prague Rules), the cornerstone of the Prague Rules, as opposed to the IBA Rules, is the way in which the tribunal is entitled to do so: without relieving the parties from their burden of proof, the tribunal shall have an active role (Article 3.1 of the Prague Rules).

This role goes so far as to accord the tribunal with the power to raise and decide points of law not addressed by the parties (Article 7 “*Jura Novit Curia*”), as we will see below.

## V. *Jura Novit Curia*

It is beyond any doubt that the power of the arbitral tribunal to investigate points of law on its motion is one of the most controversial issues in international arbitration. The IBA Rules do not contain a single provision to the effect of allowing the tribunal to act in such an “inquisitive” manner and leaves to the parties the burden of doing their “homework”.

Conversely, the Prague Rules provide that the arbitral tribunal “can apply legal provisions not pleaded by the Parties if it finds it necessary” (Article 7.2 of the Prague Rules). In so doing, the arbitral tribunal “shall seek the Parties’ views on the legal provisions it intends to apply” (Article 7.2).

The tribunal is also entitled to apply legal provisions not pleaded by the parties “by virtue of public policy considerations” (Art. 7.3 of the Prague Rules).

Insofar as this provision reflects a general principle that arbitral tribunals may investigate “ex officio” points of law, that they may apply legal provisions not invoked by the parties when public policy issues are at stake, and also that it serves as a warning sign to the parties that the tribunal is entitled – if not bound – to use those powers, one cannot but support its inclusion in the Prague Rules.

In fact, while some national courts have annulled decisions made by arbitral tribunals that applied legal provisions that were not alleged by the parties<sup>2</sup>, in other jurisdictions it is understood that arbitral tribunals have the inherent power to investigate and apply legal provisions not invoked by the parties (provided that the parties are heard before the decision is made):

“in Switzerland, the right to be heard concerns particularly factual findings. The parties’ right to be invited to express their position on legal issues is recognized only to a limited extent. Generally, according to the principle *jura novit curia*, state or arbitral tribunals are free to assess the legal relevance of factual findings and they may adjudicate based

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<sup>2</sup> See for instance the decision of the Cour d’Appel of Paris of 19 June 2008 (Gouvernement de la République arabe d’Egypte v. Société Malicorp Ltd., available at <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000019225667&fastReqId=1461511314&fastPos=8>, last accessed on 15 April 2018), and the decision of the French Cour de Cassation of 29 June 2011 (*Overseas Mining Investments Limited v. Société Commercial Caribbean Niquel*, available at [https://www.courdecassation.fr/jurisprudence\\_2/premiere\\_chambre\\_civile\\_568/785\\_29\\_20477.html](https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/785_29_20477.html), last accessed on 15 April 2018).

on different legal grounds from those submitted by the parties.”<sup>3</sup>

Notwithstanding the fact that in most cases the annulment of arbitral awards is related to the circumstance that the decision-maker applied legal provisions without giving the parties an opportunity to be heard (that was the case of the French decisions cited), there remains no doubt that the inclusion of a provision such as that of Article 7 of the Prague Rules performs a pedagogic and preventive function. At the same time, it also provides a regulatory framework that accommodates understandings such as that of the Swiss courts.

However, this salient feature of the Prague Rules must be properly framed. On the one hand, as it results clearly from its wording, the arbitral tribunal must always consult the parties beforehand, and it must seek the parties’ views on the legal provisions it intends to apply before doing so. The non-compliance with this procedure will entail (and reinforce) the violation of due process duties that bound the arbitral tribunal. On the other hand, it is primarily up to the parties to make their case, and they cannot rest on the assumption that the arbitral tribunal will supplement the parties’ negligence or laziness in “doing their homework”: “generally, a Party has a burden to prove a legal position on which it relies” (Article 7.1 of the Prague Rules).

## VI. Settlement facilitation

A similar significant divide exists on the role of the tribunal in facilitating and encouraging settlements. Whereas it may be unthinkable for a “common law” arbitrator to initiate such an endeavour without risking a challenge, a “civil law” arbitrator might feel otherwise. For instance, it is well known that German arbitrators often open the door for parties to engage in discussions for settling the case, usually encourage that settlement, and here and there act as mediators or conciliators in pending arbitrations.

Whereas the IBA Rules do not provide for any rule regarding the possible role of settlement facilitator<sup>4</sup>, the Prague Rules contain express provisions to that effect.

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<sup>3</sup> See the decision of the Swiss Federal Tribunal 4A\_554/2014 of 15 April 2015, ASA Bull. 2/2015, p. 411.

<sup>4</sup> Notwithstanding, the topic is expressly address in another IBA setting: IBA Guidelines on Conflicts of Interest in International Arbitration, Standard (4) Waiver by the Parties: “*An arbitrator may assist the parties in reaching a settlement of the dispute, through*

Indeed, “at all stages of the proceedings, the Arbitral Tribunal shall assist the Parties in reaching an amicable settlement of the dispute” (Article 9.1). By itself, this provision does not imply an active role of the arbitral tribunal in encouraging and facilitating a settlement. That provision is, however, to be found in Article 9.2, which states that:

“To the extent permissible under *lex arbitri*, in order to assist in an amicable settlement of the dispute, the Arbitral Tribunal, upon obtaining consent from all of the Parties, shall be entitled to express its preliminary views with regard to the Parties’ respective positions. The expression of such preliminary views should not be considered as pre-judgment or serve as a ground for disqualification of any member of the Arbitral Tribunal.”

In my opinion, expressing a preliminary view is the crux of the matter and precisely the point where a decision maker takes more risks of being challenged (or the award eventually annulled). Notwithstanding, the Prague Rules provide an exception and prevention to that risk.

The Prague Rules go even further and establish a possible role of mediator:

“To the extent permissible under *lex arbitri* and upon the written consent of all Parties, the Arbitral Tribunal or any of its members may also act as a mediator” (Article 9.3).

If the parties do not reach an agreement to settle the case, then the tribunal (or the arbitrator) may only retain its mandate if the parties grant a written consent. Otherwise, it must be discharged of its duty and be replaced according to the applicable rules of arbitration.

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*conciliation, mediation or otherwise, at any stage of the proceedings. However, before doing so, the arbitrator should receive an express agreement by the parties that acting in such a manner shall not disqualify the arbitrator from continuing to serve as arbitrator. Such express agreement shall be considered to be an effective waiver of any potential conflict of interest that may arise from the arbitrator’s participation in such a process, or from information that the arbitrator may learn in the process. If the assistance by the arbitrator does not lead to the final settlement of the case, the parties remain bound by their waiver. However, consistent with General Standard 2(a) and notwithstanding such agreement, the arbitrator shall resign if, as a consequence of his or her involvement in the settlement process, the arbitrator develops doubts as to his or her ability to remain impartial or independent in the future course of the arbitration.”*



## VII. Conclusion

There is an unquestionable profusion of rules, regulations and instruments (such as guides and “tips”) in international arbitration. Because international arbitration touches upon different legal cultures and diverse legal systems, it is of the human nature to think of those instruments as a fundamental tool to provide consistency and to level the playing field.

However, the lack of diversity of tools may result in a crystallisation of the international practice and may thus produce an adverse effect: many may feel reluctant in accepting and using such tools, and many more may reject them vigorously.

That is what is happening in a number of arbitration communities of the “civil law” realm, where a severe resistance – and rejection – of the IBA Rules has surfaced.

Consequently, the Prague Rules on the Taking Evidence bring a new perspective in providing parties, counsel, arbitrators and institutions in international arbitration with a new set of rules that grant broader and more proactive powers to arbitral tribunals, making them more comfortable in the driving seat.

On the other hand, most likely the dissatisfaction that many have shown as to the time and cost of arbitration is related to the lack of powers that parties fail to grant to the individuals they choose to decide their dispute.

Arbitration is and will always be a product of the parties’ consent, so why not use that pillar as a source of legitimacy for arbitrators to use more extensively, more proactively, and thus more efficiently the powers to conduct the case?

That is, in my view, the goal of the Prague Rules, which make use of fewer (and at the same time more abstract and open) provisions than other instruments. However, fewer and more open provisions are a synonym of broader powers, and most likely more efficiency. Less is more.

Taking the Prague Rules as an alternative, if not as an addition, to other instruments is a positive development that will certainly promote the use of arbitration and will make parties and other actors of the arbitration realm more comfortable with this means to solve disputes.

Duarte G. HENRIQUES, *The Prague Rules: Competitor, Alternative or Addition to the IBA Rules on the Taking of Evidence in International Arbitration?*

### **Summary**

One of the current fundamental concerns regarding international arbitration is the time and cost that it is associated with it. Many say that this reflects the increasing complexity of the disputes that are resolved by arbitration and that such complexity is a result of the importation of traditional “common law” litigation expedients. Many others say that the problem lies elsewhere: weak arbitrators, who in turn rely exclusively on the existing sets of rules, which require them to obey strictly and rigorously the “sacrosanct” commands of due process.

This landscape has raised concerns related to the creeping and ever-growing paranoia on due process, which has turned many arbitrators the captives of the initiative and requests of the parties and, therefore, contributors to lengthy and costly proceedings.

On the other hand, it has also been pointed out that the derailing of arbitration proceedings is especially acute when it comes to the taking of evidence.

In this regard, the IBA Rules on the Taking of Evidence in International Arbitration have been playing a fundamental role. They strike a balance between “common law” and “civil law” traditions.

However, that is what is in writing, not what has been the practice. Thus, some crucial questions arise: What if granting more powers to arbitral tribunals, making them more pro-active and more in control of the conduct of proceedings, renders arbitration more expeditious and more efficient? What if arbitral tribunals have not been as controlling and pro-active because the existing rules and legal framework simply do not leave arbitrators at ease in doing so? What if the parties themselves are not aware that they can and should accord more powers to arbitral tribunals, and that they are not comfortable in doing so because there is no set of rules that expressly points in that direction?

Those are the fundamental issues that the “Rules of Prague” eventually address by setting forth a host of major principles to apply by arbitral tribunals.

The Prague Rules may be found at [www.pragerules.com](http://www.pragerules.com).

### **Submission of Manuscripts**

Manuscripts and related correspondence should be sent to the Editor. At the time the manuscript is submitted, written assurance must be given that the article has not been published, submitted, or accepted elsewhere. The author will be notified of acceptance, rejection or need for revision within eight to twelve weeks. Manuscripts may be drafted in German, French, Italian or English. They should be submitted by e-mail to the Editor (**mscherer@lalive.ch**) and may range from 3,000 to 8,000 words, together with a summary of the contents in English language (max. ½ page). The author should submit biographical data, including his or her current affiliation.

### **Aims & Scope**

Switzerland is generally regarded as one of the World's leading place for arbitration proceedings. The membership of the Swiss Arbitration Association (ASA) is graced by many of the world's best-known arbitration practitioners. The Statistical Report of the International Chamber of Commerce (ICC) has repeatedly ranked Switzerland first for place of arbitration, origin of arbitrators and applicable law.

The ASA Bulletin is the official quarterly journal of this prestigious association. Since its inception in 1983 the Bulletin has carved a unique niche with its focus on arbitration case law and practice worldwide as well as its judicious selection of scholarly and practical writing in the field. Its regular contents include:

- Articles
- Leading cases of the Swiss Federal Supreme Court
- Leading cases of other Swiss Courts
- Selected landmark cases from foreign jurisdictions worldwide
- Arbitral awards and orders under various auspices including the ICC and the Swiss Chambers of Commerce ("Swiss Rules")
- Notices of publications and reviews

Each case and article is usually published in its original language with a comprehensive head note in English, French and German.

### **Books and Journals for Review**

Books related to the topics discussed in the Bulletin may be sent for review to the Editor in Chief (**Matthias SCHERER, LALIVE, P.O.Box 6569, 1211 Geneva 6, Switzerland**).