Kamal Hossain did his doctorate at Oxford on the timeless subject of sovereignty. It should have been published, but it is still sometimes cited. Later I got to know the man himself – extraordinarily modest for someone with such achievements, a lawyer of complete integrity at home and abroad. Later still I recommended him as an ad hoc judge, whereupon he proceeded to issue a joint concurring opinion with the other party’s ad hoc judge – I think the first time this has ever occurred. It was conspicuously fair, sensible and constructive, like the man himself.

1 Introduction

The regulatory framework of international commercial arbitration involves three instruments at the general multilateral level:

- The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958;
- The UNCITRAL Model Law on International Commercial Arbitration of 1985;

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1 Thanks to Federica Paddeu and Rowan Nicholson, Research Associates, Lauterpacht Centre for International Law, for their help in the preparation of this chapter.
4 330 UNTS 3.
• The UNCITRAL Arbitration Rules of 1976, revised in 2010.6

The New York Convention was based on the Geneva Protocol on Arbitration Clauses of 19237 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927.8 Since it is a widely ratified international convention there is no hope of amendment until after the next world war. The Model Law was first adopted in 1985; it was amended in several important respects in 2006.9

The UNCITRAL Arbitration Rules are a widely used set of arbitration rules: they are the only major set of general arbitration rules not associated with a specific arbitration institution. Of course, they do not have the force of law; they apply only if and to the extent they are incorporated in the agreement to arbitrate. In 2010 UNCITRAL adopted a revision of the 1976 Arbitration Rules, intended to reflect current arbitral practice. The revised Rules are in consequence not particularly innovative. The Arbitration Rules remain general in scope, applicable to all sorts of arbitrations, having avoided including provisions dealing with specific types of arbitral proceedings, in particular, investor-state arbitrations.

There is also, of course, the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965 (the ICSID Convention),10 which in theory sets up a distinct regime for international investment arbitration involving States or State entities. But in practice the ICSID system has no monopoly of such arbitrations: at least a third of investment arbitrations are conducted under the UNCITRAL Rules or similar sets of rules, and not under the ICSID Convention. These and other overlaps raise the question of the relationship between the three components of the regulatory framework. The modest purpose of this chapter is to review the current state of play with the revised UNCITRAL Rules.

2 Key Issues

Specifically, I will deal with the following: (1) broader subject-matter jurisdiction; (2) requirement of an agreement in writing; (3) applicable law;

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7 27 LNTS 157.

8 92 LNTS 301.


10 575 UNTS 159.