Arbitrators' characterizations of their preferred interpretive approach are not mere rhetoric. The analysis of published awards above shows that arbitrators tend to follow a relatively consistent interpretive approach, regardless of the governing law. This approach is characterized by invocation of the subjective intention of the parties, an emphasis on reading the contractual text in its commercial context and an inclusive approach to extrinsic evidence of the parties' intentions.

In a recent article, Lévy and Robert-Tissot reach largely the same conclusion. After acknowledging that arbitrators are bound by the interpretive rules in the governing law, they conclude that, 'In reality, by applying his common sense, experience, and personal convictions, the arbitrator determines the true intention of the parties.' This approach is often justified by citations to general principles of international commercial law, whether codified or uncodified. Their article is mostly descriptive rather than normative, but Lévy and Robert-Tissot do eventually endorse the interpretive method described: 'Done properly, reaching solutions by interpreting the parties' intentions rather than by sophisticated juridical reasoning deserves praise....'

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66 Interview with the author, 29 May 2012.
67 A very elementary guide; literally, a 'guide for fools' or 'guide for asses'
68 Interview with the author, 7 June 2012.
69 Ibid, 11 July 2012 (emphasis added).
70 ICC Case No 12745, (2010) XXV YB Comm Arb 40 [26]–[27].
71 In that article, they describe my previously-published findings as unsurprising. Lévy and Robert-Tissot (n 2) 888 ('Il n’y a pas lieu de s’en étonner.').
72 Ibid 891 (author’s translation) ('En réalité, en appliquant sa logique, son expérience et son intime conviction, l'arbitre recherche la volonté réelle des parties. Il s'agit là d'une règle émergente en arbitrage international.'). One interviewee, with an extensive record in both scholarship and practice, concurred: 'If you look at what arbitrators do, they tend not to resort, or not always to resort, to the contract interpretation rules, but simply to try and focus on the real intent of the parties.' Interview with the author, 11 July 2012.
Referring Principles:

IV.5.1 - Intentions of the parties