

Paragraph 2

4. Under this paragraph, the arbitrators have full discretion, upon receipt of the request of a party for an additional award, to decide whether or not to make such an award. In addition, the arbitrators may make an additional award only if the omission in the award "can be rectified without any further hearing or evidence". Thus, the additional award would have to be based on the evidence that the arbitrators had before them at the time that they made their original, incomplete award.

Paragraph 3

5. In recognition of the fact that an "additional award" is an "award" within the meaning of these Rules, this paragraph applies the provisions of paragraphs 2 to 7 of article 27 to an additional award.

*Commentary on article 33**Paragraph 1*

1. This paragraph contains a non-exhaustive enumeration of items that are included in the "costs of arbitration". Pursuant to this paragraph, the costs of arbitration are to be fixed in the award and the fee charged by the arbitrators for their services, which forms part of such costs, must be stated separately.

2. Because of the great differences in the nature of disputes that may be referred to arbitration, in the length of arbitral proceedings, and in the demands made on and efforts required of the arbitrators as a consequence, it was not believed possible to develop a uniform schedule of fees for arbitrators.⁵ However, arbitrators, who were selected by the parties or by an appointing authority based on faith in their expertise and in their readiness to adjudicate the dispute with impartiality and fairness, may be expected to act reasonably in setting their own fees.

3. While, under subparagraph (a) of paragraph 1, the fee of the arbitrators must be stated separately in the award, all the other costs of arbitration may be combined into one figure. In cases where arbitrators

⁵ A note concerning a schedule of fees for arbitrators is contained in document A/CN.9/114, reproduced in this volume, part two, III, 4, *infra*.

were named by an appointing authority, the arbitrators may consult with that authority before setting their fees.

Paragraph 2

4. Similarly to provisions appearing in article 43 of the ECE Arbitration Rules and article VII, paragraph 7 of the ECAFE Arbitration Rules, paragraph 2 of this article lays down as the general rule that the costs of arbitration should be borne by the unsuccessful party, but authorizes the arbitrators to apportion these costs in a different manner whenever justified by the particular circumstances.

*Commentary on article 34**Paragraphs 1 and 2*

1. In *ad hoc* arbitration, it is customary for arbitrators to require an advance payment to cover the costs that will be incurred during the course of the arbitral proceedings. Paragraph 1 provides that each party is to make one half of such advance payment. Paragraph 2 authorizes the arbitrators to require supplementary deposits from the parties, in the light of developments during the arbitral proceedings, e.g., if the proceedings take longer than anticipated or the arbitrators decide that they will need the testimony of experts reporting to them on particular issues (article 24). Similar provisions are contained in article VI, paragraph 7 of the ECAFE Arbitration Rules, and article 28 of the ECE Arbitration Rules.

Paragraph 3

2. Under this paragraph, if a deposit required pursuant to paragraph 1 or 2 of this article is not paid in full within a specified period of time, the arbitrators must notify both parties and give to each party the opportunity to make the required payment. The rule in this paragraph is motivated by the practical consideration that a party who has fulfilled his own obligation by paying one half of the required deposit may have a strong interest in seeing that the arbitration proceeds to a conclusion and may therefore be willing to make the payment required of the other party. If the required payment is still not forthcoming, the arbitrators may either suspend or discontinue the arbitral proceedings.

3. Working paper prepared by the Secretariat: revised draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules); alternative draft provisions for the draft UNCITRAL Arbitration Rules (A/CN.9/113)

INTRODUCTION

Terms of reference

1. At its eighth session (1-17 April 1975) the United Nations Commission on International Trade Law considered a "Preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade" (A/CN.9/97; UNCITRAL Yearbook, Vol. VI: 1975, part two, III, 1). A summary of the Commission's deliberations at that session is set forth in the report of the Commission on the work of its eighth session (A/10017, annex I; UNCITRAL

Yearbook, Vol. VI: 1975, part one, II, 1). At the conclusion of its deliberations, the Commission decided to request the Secretary-General:

(a) To prepare a revised draft of these rules, taking into account the observations made on the preliminary draft in the course of its eighth session;

(b) To submit the revised draft arbitration rules to the Commission at its ninth session.

2. In response to that request the Secretariat has prepared two documents:

(a) Document A/CN.9/112* sets forth a revised draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules). That revised set of rules is based on the preliminary draft set of rules which the Commission examined at its eighth session, and takes into account the observations and suggestions made at that session. A commentary on the revised draft set of rules is contained in document A/CN.9/112/Add.1;**

(b) The present document sets forth alternative draft provisions in respect of certain articles, or paragraphs of certain articles, reflecting observations and suggestions made at the eighth session which are not incorporated in the text of the draft "UNCITRAL Arbitration Rules".

Arrangement of the text

3. The text contained in the present document is, as far as possible, set forth in a manner complementary to the presentation of the draft UNCITRAL Arbitration Rules in document A/CN.9/112.* In this connexion, the following may be noted:

(a) With the exception of article 2 *bis*, each draft article, and each paragraph of a draft article, set forth in the present document, bears the same number as the corresponding article and paragraph in the draft UNCITRAL Arbitration Rules dealing with the same subject-matter. Article 2 *bis* covers a special case not provided for in the draft UNCITRAL Arbitration Rules.

(b) Where all the suggestions made at the eighth session of the Commission in respect of a particular article, or a paragraph of an article, are incorporated in the draft UNCITRAL Arbitration Rules, the text of that article or paragraph is not reproduced in this document.¹ Similarly, the text of an article or paragraph of an article, in respect of which no suggestions were made at the eighth session of the Commission, has also not been reproduced herein.

(c) Those observations and suggestions which have not been incorporated either in the draft UNCITRAL Arbitration Rules or in the text contained in this document, are noted in this document below each article.

(d) In some cases an observation or suggestion made in regard to a particular article or paragraph of the text set forth herein would, if adopted by the Commission, require consequential changes in other articles, or paragraphs of articles in the text. Such consequential changes are not reflected, since this would make the text complex and difficult to follow.

(e) Alternative suggestions are either entitled as such, or indicated by enclosing the language reflecting

* Reproduced in this volume, part two, III, 1, *supra*.

** Reproduced in this volume, part two, III, 2, *supra*.

¹ (a) Article 7, paragraph 3 of the text contained herein is identical with the first sentence of article 7, paragraph 3 of the draft UNCITRAL Arbitration Rules. It is nevertheless reproduced below because it forms a separate paragraph in the present text.

(b) Article 34, paragraphs 3 and 5, of the text contained herein are identical with article 34, paragraphs 2 and 4, of the draft UNCITRAL Arbitration Rules. They are nevertheless reproduced herein since the numbering of the paragraph differs.

each suggestion within square brackets, and placing the suggestions enclosed within square brackets in immediate sequence. In some cases, language has been placed within square brackets when a suggestion has been made that such language should either be introduced or deleted. In every case where language is enclosed within square brackets, or a suggestion or observation is incorporated in the text, foot-note references are given to the source of the particular observation or suggestion reflected therein. In most cases, this source is the summary of discussions by the Commission at its eighth session contained in the report of the Commission on the work of its eighth session (A/10017, annex I; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1). When a reference is made by a foot-note to a paragraph in that summary, that paragraph also reveals the exact nature of the observation or suggestion that has been made. In a few cases, indicated by appropriate foot-notes, certain provisions have been included at the suggestion of a member of the Consultative Group.

Schedule of fees for arbitrators

4. Article 33 in the present document deals with the costs of arbitration, and an alternative in paragraph 1 (a) of that article provides for the fee of arbitrators, to be stated separately, and to be fixed by the arbitrators themselves "in accordance with the schedule of fees for arbitrators set out in annex A of these Rules". In order to enable the Commission to consider certain difficulties which may arise in the drafting of such a schedule, a separate note on the question of a schedule of fees for arbitrators is contained in document A/CN.9/114.*

SECTION I. INTRODUCTORY RULES

Scope of application

[Article 1

1. These Rules shall apply when the parties to a contract, by an agreement [in writing]¹ which expressly refers to the UNCITRAL Arbitration Rules, have agreed that disputes arising out of a defined legal relationship existing between them² shall be settled in accordance with these Rules.

[2. "Parties" means physical or legal persons, including legal persons of public law.]³

[3. "Agreement in writing" means an arbitration clause in a contract or a separate arbitration agreement, including an agreement contained in an exchange of letters, signed by the parties, or in an exchange of telegrams or telexes.]⁴

4. "Disputes arising out of a defined legal relationship" includes disputes, existing or future, that arise out of, or relate to, a defined legal relationship existing

* Reproduced in this volume, part two, III, 4, *infra*.

¹ Report of UNCITRAL on the work of its eighth session, A/10017, annex I, para. 18 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

² *Ibid.*, para. 17.

³ *Ibid.*, para. 20.

⁴ *Ibid.*, para. 21.

between the parties,⁵ or its breach, termination or invalidity.]⁶

Note

The following suggestions are not presented as alternatives in the above text:

(a) To include a provision limiting the scope of the Rules to the arbitration of "disputes arising out of international trade transactions" (A/10017, annex I, paras. 3 and 16; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1);

(b) To include a provision defining the circumstances in which a person not a party to an arbitration clause or agreement might participate in an arbitration arising from such clause or agreement (A/10017, annex I, para. 19; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Modification of the Rules

Article 2

The parties may at any time agree [in writing]⁷ to modify any provision of these Rules, including any time-limits established by or pursuant to these Rules.

Administered arbitration

[Article 2 bis

Where the parties have agreed to select an arbitral institution to administer the arbitration, they shall be deemed to have selected the arbitration rules which such institution may have established for such purpose, unless they have expressly specified otherwise.]⁸

Receipt of communications;

Calculation of periods of time

Article 3

1. For the purpose of these Rules, a notice, notification, communication or proposal by one party to the other party or to the arbitrators shall be effective when received by the addressee.⁹

2. Failing proof to the contrary,¹⁰ it is presumed that a notice, notification, communication or proposal sent by telegram or telex, has been received [one day] [three days]¹¹ after it was sent, and a communication by registered mail [five] [eight]¹² days after it was sent.¹⁸

3. ...

Notice of arbitration

Article 4

1. ...

[2. Arbitral proceedings shall be deemed to commence on the date on which such notice (hereinafter called "notice of arbitration") is delivered at the habitual residence or place of business of the respondent

or, if he has no such residence or place of business, at his last known residence or place of business.]¹⁴

3. The notice of arbitration shall include, but need not be limited to the following:

- (a) The names and addresses of the parties;
- (b) A reference to the arbitration clause or agreement that is invoked;
- (c) A reference to the contract out of or in relation to which the dispute arises;
- (d) The general nature of the claim and an indication of the amount involved, if any;
- [(e) The relief or remedy sought;]¹⁵
- (f) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

4. The claimant may state in the notice of arbitration that such notice also serves as his statement of claim. In such a case, the claimant:

(a) Shall annex to the notice of arbitration a copy of the contract referred to in subparagraph (c) of paragraph 2 above, and a copy of the arbitration agreement referred to in subparagraph (b) of paragraph 2 above if it is not contained in the contract;

(b) Shall include in the notice a statement of the facts supporting the claim, and the points at issue; and

(c) May annex to the notice all documents he deems relevant or may add a reference to the documents he will submit.¹⁶

Note

The following suggestions are not presented as alternatives in the above text:

(a) To specify the language in which the notice of arbitration must be given (A/10017, annex I, para. 25; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

(b) To specify the method by which the notice is to be transmitted by the claimant to the respondent (A/10017, annex I, para. 26; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Representation

Article 5

A party may be represented by a counsel or agent upon the communication of the name and address of such person to the other party. This communication is considered¹⁷ to have been given where the notice of arbitration, the statement of claim, the statement of defence, or a counter-claim is submitted on behalf of a party by a counsel or agent, unless the other party, promptly upon such submission, requests proof as to the authority of such counsel or agent to represent the party whom he claims to represent.¹⁸

⁵ *Ibid.*, para. 17.

⁶ *Ibid.*, para. 22.

⁷ *Ibid.*, para. 18.

⁸ *Ibid.*, para. 23.

⁹ *Ibid.*, para. 31.

¹⁰ *Ibid.*, para. 35.

¹¹ *Ibid.*, para. 36.

¹² *Ibid.*, para. 36.

¹³ *Ibid.*, para. 34.

¹⁴ *Ibid.*, para. 24.

¹⁵ *Ibid.*, para. 27 (third sentence from the end).

¹⁶ *Ibid.*, para. 27.

¹⁷ *Ibid.*, para. 30 (last sentence).

¹⁸ *Ibid.*, para. 30.

SECTION II. APPOINTMENT OF ARBITRATORS

*Number of arbitrators**Article 6*

If the parties have not previously agreed on the number of arbitrators (i.e., one or three), and if within 15 days after the receipt by the respondent of the claimant's notice of arbitration the parties have not agreed that there shall be three arbitrators, one¹⁹ arbitrator shall be appointed.

Note

The following suggestion is not presented as an alternative in the above text: that this article should require the number of arbitrators to be three when a substantial sum of money is at stake in the arbitration, and one when the sum involved in comparatively small (A/10017, annex I, para. 40; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

*Appointment of the sole arbitrator**Article 7*

1. If a sole arbitrator is to be appointed, such appointment shall be made having regard to such considerations as are likely to secure the appointment of an independent and impartial sole arbitrator.²⁰

2. ...

3. If on the expiration of this period of time the parties have not reached agreement on the choice of the sole arbitrator, or if before the expiration of this period of time the parties have concluded that no such agreement can be reached, the sole arbitrator shall be appointed by the appointing authority previously designated by the parties.

4. If the appointing authority previously designated is unwilling or unable to act as such, or if no such authority has been designated by the parties, the claimant shall apply for such designation to:²¹

(a) The Secretary-General of the Permanent Court of Arbitration at The Hague, or,

(b) [Here add an appropriate organ or body established under United Nations auspices.]

The authority mentioned under (a) or (b) may require from either party such information as it deems necessary to fulfil its function. It shall communicate to both parties the name of the appointing authority designated by it.

5. ...

6. The appointing authority shall appoint the sole arbitrator in such manner as it considers appropriate.²² The appointing authority may require from either party such information as it deems necessary to fulfil its function.

Article 8

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The parties²³ shall

¹⁹ *Ibid.*, para. 39.

²⁰ *Ibid.*, paras. 44, 47 and 48.

²¹ *Ibid.*, para. 49.

²² *Ibid.*, para. 53.

²³ *Ibid.*, para. 60.

jointly choose the third arbitrator who will act as the president of the arbitral tribunal.

2. The presiding arbitrator shall be appointed having regard to such considerations as are likely to secure the appointment of an independent and impartial presiding arbitrator.²⁴

3. ...

4. Within 15 days after the appointment of the second arbitrator, the claimant shall, by telegram or telex, propose to the respondent the names of one or more persons, one of whom would serve as the presiding arbitrator. The parties²⁵ shall endeavour to reach agreement on the choice of the presiding arbitrator within 30 days after the receipt by the respondent of the claimant's proposal.

5. If on the expiration of this period of time the parties have not agreed on the choice of the presiding arbitrator, or if before the expiration of this period of time the parties have concluded that no such agreement can be reached, the claimant shall request the two arbitrators to choose a presiding arbitrator.²⁶ The arbitrators shall endeavour to reach agreement on the choice of the presiding arbitrator within 15 days after the receipt by the arbitrators of the claimant's request.

6. If on the expiration of this period of time the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority previously designated by the parties. If the appointing authority previously designated is unwilling or unable to act as such, or if no such authority has been designated by the parties, the claimant shall apply for such designation to either of the authorities mentioned in article 7, paragraph 4.²⁷ The authority applied to may require from either party such information as it deems necessary to fulfil its function. It shall communicate to both parties the name of the appointing authority designated by it. The appointing authority may require from each party such information as it deems necessary to fulfil its function.

7. ...

8. The appointing authority designated under paragraph 6 of this article shall appoint the presiding arbitrator in such manner as it considers appropriate.²⁸

*Challenge of arbitrators (articles 9-11)**Article 9*

ALTERNATIVE A

1. Either party may challenge an arbitrator, including a sole arbitrator or a presiding arbitrator,²⁹ irrespective of whether such arbitrator was:

Originally proposed or appointed by him, or

Appointed by an appointing authority, or

²⁴ *Ibid.*, paras. 44, 47-48 and 56.

²⁵ *Ibid.*, para. 60.

²⁶ *Ibid.*

²⁷ *Ibid.*, paras. 49 and 58.

²⁸ *Ibid.*, paras. 53 and 64.

²⁹ *Ibid.*, para. 69 (last sentence).

Chosen by both parties or by the other arbitrators, only⁸⁰ if such arbitrator has a financial or personal interest in the outcome of the arbitration or a [close]⁸¹ family [or commercial]⁸² tie with a party or a party's counsel or agent.

ALTERNATIVE B

1. Either party may challenge a sole arbitrator or a presiding arbitrator,⁸³ irrespective of whether such arbitrator was:

Originally proposed by him, or

Appointed by an appointing authority, or

Chosen by both parties or by the other arbitrators, if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

[2. The circumstances mentioned in paragraph 1 of this article include any financial or personal interest] [any direct financial or personal interest]⁸⁴ of an arbitrator in the outcome of the arbitration or a [close]⁸⁵ family [or commercial]⁸⁶ tie of an arbitrator with a party or with a party's counsel or agent.]⁸⁷

3. An arbitrator, once appointed or chosen, shall disclose to the parties any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.⁸⁸

Note

The following suggestion is not presented as an alternative in the above text:

To distinguish in paragraph 2 of this article between "absolute" grounds for challenge (e.g. specified close family ties, or direct financial or personal interest of an arbitrator in the outcome of the dispute) and "relative" grounds, which require proof both of the existence of the grounds and of the fact that they give rise to justifiable doubts as to the arbitrator's impartiality or independence (A/10017, annex I, para. 71; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Article 10

[1. The challenge of an arbitrator shall be made within 30 days after his appointment has been communicated to the challenging party or within 30 days after the circumstances mentioned in article 9 became known to that party.]⁸⁹

2. The challenge shall be notified to the other party and to the arbitrator who is challenged. The notification [shall be in writing and]⁴⁰ shall state the reasons for the challenge.

3. ...

Article 11

1. If the other party does not agree to the challenge

⁸⁰ *Ibid.*, para. 73.

⁸¹ *Ibid.*, para. 71.

⁸² *Ibid.*

⁸³ *Ibid.*, para. 69 (third sentence).

⁸⁴ *Ibid.*, para. 71.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, para. 70.

⁸⁸ *Ibid.*, para. 75.

⁸⁹ *Ibid.*, para. 78.

⁴⁰ *Ibid.*, para. 80.

and the challenged arbitrator does not withdraw, the decision on the challenge shall be made:

(a) By the competent court having jurisdiction [at the place of arbitration] [at the place of residence of the challenged arbitrator]⁴¹ or

(b) If there is no competent court having jurisdiction at such place, by the president of the chamber of commerce [at the place of arbitration] [at the place of residence of the challenged arbitrator].⁴²

2. The decision of the competent court or the president of the chamber of commerce is final.⁴³ If, in the cases mentioned under subparagraphs (a) and (b) of paragraph 1, the competent court or the president of the chamber of commerce sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in article 7 or 8.

Death or resignation of an arbitrator

Incapacity of an arbitrator, or his failure to act

Article 12

1. ...

2. ...

3. If the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated [unless a verbatim record was kept of those hearings].⁴⁴ If any other arbitrator is replaced, such prior hearings may be repeated at the discretion of [the remaining arbitrators who participated in those hearings] [the party by whom or on whose behalf the substitute arbitrator is appointed under article 8].⁴⁵

Note

The following suggestions are not presented as alternatives in the above text:

(a) To add a provision "to the effect that, where an arbitrator resigns or ceases to act, he must give his reasons for such action" (A/10017, annex I, para. 89; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

(b) To consider the advisability of adding definitions of the terms "incapacity" and "resignation" (A/10017, annex I, para. 91; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

(c) To provide that "where the arbitral tribunal consisted of a sole arbitrator, a decision as to the holding of a rehearing should be made by the new sole arbitrator" (A/10017, annex I, para. 92; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Particulars on proposed arbitrators

Article 13

...

SECTION III. ARBITRAL PROCEEDINGS

General provisions

Article 14

1. Subject to these Rules [and subject to any agreements by the parties],⁴⁶ the arbitrators may conduct the

⁴¹ *Ibid.*, para. 85.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*, para. 92.

⁴⁵ *Ibid.*, para. 94.

⁴⁶ *Ibid.*, para. 97.

arbitration in such manner as they consider appropriate, provided that the parties are treated with [absolute]⁴⁷ equality and with fairness.

2. If either party so requests, the arbitrators shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitrators shall decide whether to hold such hearings or whether the proceedings shall be conducted solely on the basis of documents and other written materials, [without prejudice to any inspection of goods or of other property that the arbitrators may consider appropriate during the course of the arbitral proceedings].⁴⁸

3. Even in the absence of a request from one or both parties, the arbitrators should, as a rule, hold oral hearings for the presentation of evidence.⁴⁹ The arbitrators may exclude evidence that a party offers to present by witnesses at a hearing, provided that the arbitrators unanimously decide that such proposed evidence is irrelevant.⁵⁰

4. Any document or information supplied to the arbitrators by one party shall not be acted upon by the arbitrators unless such document or information is shown to have also been communicated to the other party.⁵¹

Place of arbitration

Article 15

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitrators [having regard to the exigencies of the arbitration].⁵²

2. [The arbitrators may determine the locale of the arbitration within the country or city agreed upon by the parties.]⁵³ [They may hear witnesses and hold interim meetings for consultation among themselves at any place they deem appropriate, having regard to the exigencies of the arbitration.]⁵⁴

3. ...

4. ...

Note

The following suggestions emanating from the Fifth International Arbitration Congress held at New Delhi in January 1975 were not presented as alternatives in the above text:

(a) To substitute "seat of arbitration" for the term "place of arbitration" (A/10017, annex I, para. 106; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1);

(b) To require that the arbitrators determine the place of arbitration "at the commencement of the arbitration proceedings" (A/10017, annex I, para. 106; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

⁴⁷ *Ibid.*, para. 98.
⁴⁸ *Ibid.*, para. 100.
⁴⁹ *Ibid.*, para. 101.
⁵⁰ *Ibid.*, para. 102.
⁵¹ *Ibid.*, para. 104.
⁵² *Ibid.*, para. 105.
⁵³ *Ibid.*, para. 107.
⁵⁴ *Ibid.*, para. 108.

Language

Article 16

1. Subject to a prior agreement by the parties, the arbitrators shall, promptly after their appointment, determine, after consultation with the parties, the language or languages to be used in the proceedings, paying special regard to the language of the contract, the language used in correspondence between the parties,⁵⁵ as well as the language abilities of the arbitrators,⁵⁶ the parties and their counsel.⁵⁷ This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings should take place, to the language or languages to be used in such hearings.

2. ...

[3. The arbitrators shall make the necessary arrangements for the translation of documents into the language or languages used in the arbitral proceedings. They shall also make the necessary arrangements for providing, at all hearings, interpretation into such language or languages.]⁵⁸

Note

The following suggestion is not presented as an alternative in the above text:

To consider the amalgamation of articles 13 and 15 in document A/CN.9/97 (UNCITRAL Yearbook, Vol. VI: 1975, part two, III, 1) (corresponding to articles 14 and 16 in document A/CN.9/112*) into a single article (A/10017, annex I, para. 115; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Statement of claim

Article 17

1. Within a period of time to be determined by the arbitrators, the claimant shall communicate his statement of claim in writing to the respondent and to each of the arbitrators. [Copies of all relevant documents]⁵⁹ [Copies of all relevant documents on which the claimant relies to support his claim]⁶⁰ together with a copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

2. The statement of claim shall include the following particulars:

- (a) The names and addresses of the parties;
- (b) A full statement of the facts and a summary of the evidence supporting these facts;⁶¹
- (c) The points at issue [in the view of the claimant];⁶²
- (d) The relief or remedy sought [including a claim for payment of interest];⁶³

* Reproduced in this volume, part two, III, 1, *supra*.

⁵⁵ *Ibid.*, para. 111.

⁵⁶ *Ibid.*, para. 112.

⁵⁷ *Ibid.*, para. 113.

⁵⁸ *Ibid.* It may be considered, whether, if paragraph 3, in the alternative text above for article 16, were adopted, paragraph 2 in that article could then be deleted.

⁵⁹ A/10017, annex I, para. 117 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

⁶⁰ *Ibid.*, para. 116.

⁶¹ *Ibid.*, paras. 119 (last sentence) and 117.

⁶² *Ibid.*, para. 120.

⁶³ *Ibid.*, para. 121.

(e) A reference to the documents which the claimant intends to present in support of his claim].⁶⁴

3. During the course of the arbitral proceedings the claimant may⁶⁵ [supplement or alter] [modify]⁶⁶ his claim, provided the respondent is given the opportunity to exercise his right of defence in respect of the change. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement,⁶⁷ or of the subject-matter of the claim raised in the notice of arbitration.⁶⁸

Note

The following suggestions are not presented as alternatives in the above text:

(a) To empower the arbitrators "to require the submission to them of all documents relevant to the points at issue after these points had been clarified" (A/10017, annex I, para. 116; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1);

(b) To clarify that "a statement of the facts supporting the claim" and "the points at issue" have to be included in the statement of claim only to the extent that they are known to the claimant at the time the statement of claim is prepared (A/10017, annex I, para. 122; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1);

(c) To require that the claimant bear any expense incurred by the respondent due to an amendment of the claim, unless the arbitrators decide otherwise (A/10017, annex I, para. 132; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Statement of defence

Article 18

1. ...

2. The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim (article 17, para. 2). The respondent shall annex to his statement [copies of all relevant documents]⁶⁹ [copies of all relevant documents on which he relies to support his defence]⁷⁰ [a reference to the documents which he intends to present in support of his defence].⁷¹

3. In his statement of defence, or at a later stage in the arbitral proceedings if the arbitrators decide that the delay was justified under the circumstances,⁷² the respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off. The respondent may also raise as a counter-claim or set-off a claim arising out of another contract concluded between the parties in the course of the same transaction, provided

⁶⁴ *Ibid.*, para. 116.

⁶⁵ *Ibid.*, para. 125.

⁶⁶ *Ibid.*, paras. 127-129.

⁶⁷ *Ibid.*, para. 130.

⁶⁸ *Ibid.*, para. 131.

⁶⁹ This alternative corresponds to the alternative text above for article 17, paragraph 1, at foot-note 59 therein.

⁷⁰ Corresponds to the alternative text above for article 17, paragraph 1, at foot-note 60 therein.

⁷¹ Corresponds to the alternative text above for article 17, paragraph 2 (e), at foot-note 64 therein.

⁷² A/10017, annex I, para. 135 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

that such other contract contains an arbitration clause in identical language or is covered by the same arbitration agreement.⁷³

4. ...

Note

The following suggestion is not presented as an alternative in the above text:

"that it would be desirable that the Rules should contain provisions relating to the consolidation of hearings in appropriate cases" (A/10017, annex I, para. 137; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Pleas as to arbitrator's jurisdiction

Article 19

1. [The arbitrators shall have the power to rule on objections that they have no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement]⁷⁴ [and on any objections alleging that the arbitrators exceeded their terms of reference].⁷⁵

[2. The arbitrators shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of article 19, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrators that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.]⁷⁶

3. ...

4. In general, arbitrators should rule on a plea concerning their jurisdiction as a preliminary question. However, when warranted by exceptional circumstances, the arbitrators may proceed with the arbitration and rule on such a plea in their final award.⁷⁷

Further written statements

Supplementary documents or exhibits

Article 20

...

Note

The following suggestion is not presented as an alternative: that "where a counter-claim was raised in the statement of defence and the claimant replied, the respondent should be given the right to answer" (A/10017, annex I, para. 149; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Time-limits

Article 21

...

Hearings, evidence

Article 22

1. ...

⁷³ *Ibid.*, paras. 136 and 140 (last sentence).

⁷⁴ *Ibid.*, para. 141.

⁷⁵ *Ibid.*, para. 144.

⁷⁶ *Ibid.*, para. 147.

⁷⁷ *Ibid.*, para. 145.

2. If witnesses are to be heard, at least 15 days before the hearings each party shall communicate to the arbitrators and to the other party the names and addresses of the witnesses he intends to present and the language in which such witnesses will give their testimony. [A party may present experts as witnesses to testify on points at issue.]⁷⁸

3. ...

4. ...

5. ...

6. The arbitrators shall determine the admissibility, relevance and materiality of the evidence offered. [When permitted under the law applicable at the place of arbitration, arbitrators have the discretion to depart from the legal rules of evidence.]⁷⁹

Interim measures of protection

Article 23

1. [At the request of either party, and with notice to the other party,⁸⁰ the arbitrators may take any interim measures they deem necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.]⁸¹ [and the issuance of orders to a party to take an interim action in relation to the goods forming the subject-matter of the dispute.]⁸²

2. ...

3. A request for interim measures or for the enforcement of interim measures taken by the arbitrators pursuant to paragraph 1⁸³ may also be addressed to a judicial authority. Such a request shall not be deemed incompatible with the arbitration clause or separate arbitration agreement, or as a waiver of that arbitration clause or separate arbitration agreement.

Experts

Article 24

...

Note

The following suggestion is not presented as an alternative: that "if provision were made for the appointment of experts by the parties, the relationship of the evidence of such experts to that of experts appointed by the arbitrators might need to be clarified" (A/10017, annex I, para. 168; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Failure to submit a statement

Absence of a party

Article 25

1. ...

2. ...

3. If one of the parties fails to appear at a hearing duly called under these Rules, without showing sufficient

⁷⁸ *Ibid.*, para. 167.

⁷⁹ *Ibid.*, para. 159.

⁸⁰ *Ibid.*, para. 164.

⁸¹ *Ibid.*, para. 162 (third sentence).

⁸² *Ibid.*, para. 165.

⁸³ *Ibid.*, para. 163.

cause for such failure, the arbitrators shall have power to proceed with the arbitration, and such proceedings shall be deemed to have been conducted in the presence of all parties. [If both parties fail to appear at a hearing duly called under these Rules, the arbitrators shall call a second hearing; if both parties also fail to appear at such second hearing, the arbitrators [shall] [may] issue an order for the discontinuance of the arbitral proceedings.]⁸⁴

4. ...

Waiver of Rules

Article 26

A party who knows or should have known⁸⁵ that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

SECTION IV. THE AWARD

Form and effect of the award

Article 27

1. ...

2. ...

3. ...

4. An award shall be signed by the arbitrators, and it shall contain the date on which the place where the award was made. When there are three arbitrators, the failure of an arbitrator other than the presiding arbitrator⁸⁶ to sign the award shall not impair the validity of the award. The award shall state the reason for the absence of an arbitrator's signature, but it [may] [shall not] include any dissenting opinion.⁸⁷

5. ...

6. ...

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitrators,⁸⁸ [the arbitrators] [the sole or presiding arbitrator]⁸⁹ shall comply with this requirement within the period of time required by that law

Applicable law

Article 28

1. The arbitrators shall apply the law or the rules⁹⁰ [agreed to by the parties] [determined or clearly indicated by the parties]⁹¹ as applicable to the substance of the dispute.

Alternative A

2. Failing such [agreement] [determination or indication] by the parties, the arbitrators shall apply the law determined by the conflict of laws rules applicable

⁸⁴ *Ibid.*, paras. 171-172.

⁸⁵ *Ibid.*, para. 174.

⁸⁶ *Ibid.*, para. 177.

⁸⁷ *Ibid.*, para. 179.

⁸⁸ *Ibid.*, para. 184.

⁸⁹ *Ibid.*, para. 184.

⁹⁰ *Ibid.*, para. 186 (subpara. (e)).

⁹¹ *Ibid.*, para. 186.

[at the place of arbitration] [at the place of business of the respondent] [at the place of business of the claimant].⁹²

Alternative B

2. Failing such [agreement] [determination or indication] by the parties, the arbitrators shall apply the law determined by the conflict of laws rules that the arbitrators deem applicable, taking into account the terms of the contract and the usages of the trade.⁹³

3. The arbitrators shall decide *ex aequo et bono* or as *amiables compositeurs* only if the parties have expressly authorized the arbitrators to do so and if a decision by the arbitrators on such basis is not repugnant to the arbitration law applicable at the place of arbitration.⁹⁴

[4. In any case, the arbitrators, in deciding the substance of the dispute, shall give importance to the mandatory provisions of the law governing the substance of the dispute, to the express terms of the contract, and to the usages of the trade in that order.⁹⁵]⁹⁶

Note

The following suggestion is not presented as an alternative in the above text:

that paragraph 1 of this article should read "the parties shall be free to determine, by agreement, the law to be applied by the arbitrators to the substance of the dispute" (A/10017, annex I, para. 186 (d)).

Settlement or other grounds for discontinuance

Article 29

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitrators shall either issue an order for the discontinuance of the arbitral proceedings or, if requested by both parties,⁹⁷ record the settlement in the form of an arbitral award on agreed terms. The arbitrators are not obliged to give reasons for such an award. [However, the arbitrators shall refuse to record the settlement in the form of an arbitral award on agreed terms if such settlement is unlawful or contrary to public policy at the place of arbitration.]⁹⁸ If, before the award is made, the continuance of the arbitral proceedings becomes unnecessary or impossible for any other reason, the arbitrators shall inform the parties of their intention to issue an order for the discontinuance of the proceedings. The arbitrators shall have the power to issue such an order unless a party objects to the discontinuance.

2. ...

3. ...

⁹² *Ibid.*, para. 188.

⁹³ *Ibid.*, para. 190. If this proposal were adopted, it is suggested that para. 4 of article 28 could then be deleted.

⁹⁴ *Ibid.*, para. 192.

⁹⁵ *Ibid.*, para. 193.

⁹⁶ It should be noted that the suggestion to delete para. 4 of this article is linked to adding at the end of para. 2 of this article the words "taking into account the terms of the contract and the usages of the trade" (A/10017, annex I, para. 190; UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

⁹⁷ A/10017, annex I, para. 194 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

⁹⁸ *Ibid.*, para. 195.

Interpretation of the award

Article 30

[1. [Within 30 days after the receipt of the award,]⁹⁹ either party, with notice to the other party, may request that the arbitrators give [an authentic interpretation]¹⁰⁰ [a clarification]¹⁰¹ of the award. Such [interpretation] [clarification] shall be binding on the parties.

2. The [interpretation] [clarification] shall be given in writing and communicated to the parties¹⁰² within 45 days after the receipt of the request, and the provisions of article 27, paragraphs 3 to 7, shall apply.]¹⁰³

Correction of the award

Article 31

1. [Within 30 days after the receipt of the award,]¹⁰⁴ either party, with notice to the other party, may request the arbitrators to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitrators may [within 30 days after the communication of the award]¹⁰⁵ make such corrections on their own initiative.

2. Such corrections shall be in writing and shall be signed by the sole arbitrator or, if there was an arbitral tribunal of three members, by the presiding arbitrator after consultation with the other arbitrators. The provisions of article 27, paragraphs 5, 6 and 7, shall apply.

Note

The following suggestions are not presented as alternatives in the above text:

(a) to provide that the periods of 30 days specified in paragraph 1 of this article should commence "from the day fixed in the award for the performance by the parties of their obligations thereunder" (A 10017, annex I, para. 208;) UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1);

(b) to delete the article dealing with the interpretation of awards (article 30 in A/CN.9/112)* and to add a reference to the present article on the correction of awards (article 31 in A/CN.9/112)* to cover interpretations and clarifications (A/10017, annex I, para. 205 (last sentence), UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

Additional award

Article 32

[1. Within 30 days after the receipt of the award, either party, with notice to the other party, may request the arbitrators to make an additional award as to claims presented in the arbitral proceedings but omitted from the award due to the mistake or negligence of the arbitrators.]¹⁰⁶

2. If the arbitrators consider the request for an additional award to be justified and consider that the

* Reproduced in this volume, part two, III, 1, *supra*.

⁹⁹ *Ibid.*, para. 202.

¹⁰⁰ *Ibid.*, para. 200.

¹⁰¹ *Ibid.*, para. 201.

¹⁰² *Ibid.*, para. 204.

¹⁰³ *Ibid.*, para. 205.

¹⁰⁴ *Ibid.*, para. 207.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, para. 210.

omission can be rectified without any further hearing or evidence, they shall complete their award within 60 days after the receipt of the request.

3. When an additional award is made, the provisions of article 27, paragraphs 2 to 7, shall apply.¹⁰⁷

Costs

Article 33

1. The arbitrators shall fix the costs of arbitration in their award. The term "costs" includes:

(a) The fee of the arbitrators, to be stated separately and to be fixed by the arbitrators themselves [in accordance with the schedule of fees for arbitrators set out in annex A of these Rules]¹⁰⁸ [taking into account the amount in dispute and the duration of the arbitral proceedings.]¹⁰⁹ [When an appointing authority has been designated, the arbitrators shall fix their fees after consultation with that appointing authority. Such authority may make any comment it deems appropriate concerning the fee the arbitrators are suggesting for themselves];¹¹⁰

(b) The fee charged and costs incurred by the appointing authority in connexion with its services, except for any portion that had been paid previously;¹¹¹

(c) The travel and other expenses incurred by the arbitrators;

(d) The costs of expert advice and of other assistance required by the arbitrators;

(e) The travel expenses of witnesses, to the extent such expenses are approved by the arbitrators;

(f) The compensation for legal assistance of the successful party if such compensation was claimed during the arbitral proceedings, but only to the extent that the compensation is deemed reasonable and appropriate

¹⁰⁷ *Ibid.*, para. 212.

¹⁰⁸ *Ibid.*, para. 214.

¹⁰⁹ *Ibid.*

¹¹⁰ This alternative text is based on A/10017, annex I, para. 215 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1), and on a suggestion made by a member of the Consultative Group.

¹¹¹ This alternative text is based on a suggestion made by a member of the Consultative Group.

4. Note by the Secretariat: draft UNCITRAL Arbitration Rules; schedule of fees of arbitrators (A/CN.9/114)*

1. This note examines the feasibility, in the context of the draft UNCITRAL Arbitration Rules,¹ of establishing a schedule of fees which would set the upper and lower limits of the arbitrators' remuneration for their services. The draft Rules, in article 33, paragraph 1, provide that the arbitrators themselves fix their fees, and the commentary states that arbitrators may be expected to act reasonably in setting the amount thereof. Moreover, in most countries, if overcharge is alleged,

* 1 April 1976.

¹ The revised draft UNCITRAL arbitration rules are set forth in A/CN.9/112, and the commentary thereon in A/CN.9/112/Add.1 (both reproduced in this volume, part two, III, 1 and 2, *supra*).

by the arbitrators [and if it may be recovered under the applicable law at the place of arbitration].¹¹²

2. Arbitrators shall keep the costs of arbitration as low as possible and they shall not be entitled to any additional remuneration for interpreting or correcting their award, or for making an additional award pursuant to article 32 of these Rules.¹¹³

3. The costs of arbitration shall [ordinarily]¹¹⁴ be borne by the unsuccessful party. The arbitrators may, however, apportion the costs between the parties if they consider that apportionment is reasonable.

Deposit of costs

Article 34

1. ...

2. An appointing authority, upon its designation as such, may require each party to deposit an amount equal to half its fee.¹¹⁵

3. During the course of the arbitral proceedings the arbitrators may require supplementary deposits from the parties.

4. If the deposits required under paragraphs 1 and 2 of this article are not paid in full within 30 days after the communication of the demand, the arbitrators shall notify both parties of the default and give to each party an opportunity to make the payment required of him or of the other party.¹¹⁶ If, nevertheless, a required payment is even then not made, the arbitrators may order the suspension or discontinuance of the arbitral proceedings.¹¹⁷

5. The arbitrators shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

6. A designated appointing authority may be authorized by the arbitrators to perform the functions described in paragraphs 1, 3, 4 and 5 of this article.¹¹⁸

¹¹² A/10017, annex I, para. 218 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

¹¹³ *Ibid.*, para. 222.

¹¹⁴ *Ibid.*, para. 219.

¹¹⁵ This alternative text is based on a suggestion made by a member of the Consultative Group.

¹¹⁶ A/10017, annex I, para. 224 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).

¹¹⁷ *Ibid.*, para. 225.

¹¹⁸ This alternative text is based on a suggestion made by a member of the Consultative Group.

the arbitrators' decision as to their fees may be submitted to a court.

2. During the discussion of the preliminary draft Rules which contained a provision similar to paragraph 1 of article 33, the view was expressed that there should be a limitation on the power of the arbitrators to settle for themselves what they considered a proper remuneration for their services, and the suggestion was made that the Rules should set out a scale of fees which would impose a ceiling on the fees payable.²

² See Report of the United Nations Commission on International Trade Law on the work of its eighth session, *Official Records of the General Assembly, Thirtieth Session, Supplement No. 17* (A/10017), paras. 213-215 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).