

### III. INTERNATIONAL COMMERCIAL ARBITRATION

#### 1. Report of the Secretary-General: revised draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules) (A/CN.9/112)\*

##### CONTENTS

	Page		Page
INTRODUCTION .....	157	Death or resignation of an arbitrator; incapacity of an arbitrator, or his failure to act (article 12) ..	163
(1) Terms of reference .....	157	Particulars on proposed arbitrators (article 13) ..	163
(2) Organization of the rules .....	159	SECTION III. ARBITRAL PROCEEDINGS .....	163
(3) The arbitration clause or agreement .....	159	General provisions (article 14) .....	163
(4) Possible additions to the basic model arbitration clause or separate arbitration agreement..	159	Place of arbitration (article 15) .....	163
(a) The appointing authority .....	159	Language (article 16) .....	163
(b) Number of arbitrators .....	159	Statement of claim (article 17) .....	163
(c) Place of arbitration .....	160	Statement of defence (article 18) .....	164
(d) Languages .....	160	Pleas as to the arbitrator's jurisdiction (article 19) ..	164
(e) Arbitration <i>ex aequo et bono</i> or as <i>amiables compositeurs</i> .....	160	Further written statements; supplementary documents or exhibits (article 20) .....	164
(f) Model arbitration clause or separate arbitration agreement .....	160	Time-limits (article 21) .....	164
INTERNATIONAL COMMERCIAL ARBITRATION RULES (REVISED DRAFT) .....	160	Hearings; evidence (article 22) .....	164
SECTION I. INTRODUCTORY RULES .....	160	Interim measures of protection (article 23) .....	164
Scope of application (article 1) .....	160	Experts (article 24) .....	165
Modification of the rules (article 2) .....	160	Failure to submit a statement; absence of a party (article 25) .....	165
Receipt of communications; calculation of periods of time (article 3) .....	160	Waiver of rules (article 26) .....	165
Notice of arbitration (article 4) .....	161	SECTION IV. THE AWARD .....	165
Representation (article 5) .....	161	Form and effect of the award (article 27) .....	165
SECTION II. APPOINTMENT OF ARBITRATORS .....	161	Applicable law (article 28) .....	165
Number of arbitrators (article 6) .....	161	Settlement or other grounds for discontinuance (article 29) .....	165
Appointment of sole arbitrator (article 7) .....	161	Interpretation of the award (article 30) .....	166
Appointment of three arbitrators (article 8) .....	162	Correction of the award (article 31) .....	166
Challenge of arbitrators (articles 9, 10 and 11) ..	162	Additional award (article 32) .....	166
		Costs (article 33) .....	166
		Deposit of costs (article 34) .....	166

##### INTRODUCTION

##### (1) Terms of reference

1. The United Nations Commission on International Trade Law (UNCITRAL) at its sixth session (April 1973) requested the Secretary-General:

"In consultation with regional economic commissions of the United Nations and centres of international commercial arbitration, giving due consideration to the Arbitration Rules of the United Nations Economic Commission for Europe and the ECAFE

Rules for International Commercial Arbitration, to prepare a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade;"<sup>1</sup>

2. The initial version of such draft arbitration rules was prepared by the Secretariat in consultation with Professor Pieter Sanders of the Netherlands who served as a consultant to the Secretariat on the subject. At the

<sup>1</sup> Report of the United Nations Commission on International Trade Law on the work of its sixth session, *Official Records of the General Assembly: Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 85 (UNCITRAL Yearbook, Vol. IV: 1973, part one, II, A).

\* 7 November 1975.

invitation of the Secretariat, the International Committee on Commercial Arbitration (formerly known as the International Organizing Committee) of the International Arbitration Congress, a body composed of representatives of centres of international commercial arbitration and of experts in this field, appointed a Consultative Group of four experts to consult with the Secretariat concerning the draft arbitration rules.<sup>2</sup> The Consultative Group submitted comments on two versions of the draft arbitration rules.

3. Thereafter, draft rules entitled "Preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade" (reproduced in document A/CN.9/97)\* were circulated for comments to the regional commissions of the United Nations and to some 75 centres of international commercial arbitration. These draft rules were also considered at the Fifth International Arbitration Congress held at New Delhi, India, from 7 to 10 January 1975. The comments made and the modifications suggested at that meeting regarding the draft rules were reproduced in document A/CN.9/97/Add.2.\* The Fifth International Arbitration Congress also adopted a resolution on the draft arbitration rules, by which it endorsed the principles of the preliminary draft set of rules, and encouraged UNCITRAL, in the light of comments made on this draft, to finalize the rules and make them available for use at the earliest possible date.<sup>3</sup>

4. Owing to the fact that most centres of international commercial arbitration were represented at the Fifth International Arbitration Congress, and that they submitted their observations directly to the two working groups established at that congress, few replies were received by the Secretariat from these centres. Replies were received from the Economic Commission for Europe, the International Chamber of Commerce, and the Argentine Chamber of Commerce (all reproduced in A/CN.9/97/Add.1);\* the Government of Norway, the Hungarian Chamber of Commerce, the Inter-American Commercial Arbitration Commission and the Inter-American Development Bank (all reproduced in A/CN.9/97/Add.3);\* and the Commission of the European Communities (reproduced in A/CN.9/97/Add.4).\*

5. The "Preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade", together with the comments and replies referred to above, were placed before the eighth session of the Commission (Geneva, 1-17 April 1975) for consideration. At that session, the Commission was agreed that, in considering the preliminary draft arbitration rules, it would concentrate on the basic concepts under-

lying the draft and on the major issues dealt with in the individual articles thereof. The Commission was further agreed that, at that session, it should not reach final conclusions on matters of substance, and that the main purpose of its deliberations was to have a general debate on the preliminary draft as a whole. 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 1).<sup>4</sup> 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.

6. In response to that request, the Secretariat, in consultation with Professor Pieter Sanders, who has continued to serve as a consultant to the Secretariat on the subject, has prepared two documents.<sup>4</sup> The present document sets forth an integrated text of draft arbitration rules, which is based on the preliminary draft set of rules which the Commission examined at its eighth session and which takes into account observations and suggestions made at that session.<sup>5</sup> A second document (A/CN.9/113)\*\* sets forth a text which, on certain issues, contains provisions which reflect observations and suggestions not retained in the integrated text. This text is sometimes presented in the form of alternative provisions.

7. In drafting the rules, the following international conventions were taken into account:

New York 1958	Convention on the Recognition and Enforcement of Foreign Arbitral Awards
Geneva 1961	European Convention on International Commercial Arbitration
Washington 1965	Convention on the Settlement of Investment Disputes between States and Nationals of Other States

The following existing rules were also given special consideration:

ECE Rules	Arbitration rules of the United Nations Economic Commission for Europe, 1966
ECAFE Rules	Rules for international commercial arbitration of the United Nations Economic Commission for Asia and the Far East (now the United Nations Economic and Social Commission for Asia and the Pacific), 1966

\* Reproduced in UNCITRAL Yearbook, Vol. VI: 1975, part two, III.

<sup>2</sup> The Consultative Group was composed as follows:

(a) Dr. Carlos A. Dunshee de Abranches, Director-General of the Inter-American Commercial Arbitration Commission;

(b) Professor Tokusuke Kitagawa, Tokyo Metropolitan University;

(c) Mr. Donald B. Straus, President of the Research Institute of the American Arbitration Association;

(d) Professor Heinz Strohbach, Court of Arbitration of the Chamber of Commerce of the German Democratic Republic.

<sup>3</sup> The text of the resolution is reproduced in A/CN.9/97/Add.1, annex IV.

\* Reproduced in UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1.

\*\* Reproduced in this volume, part two, III, 3, *infra*.

<sup>4</sup> The Secretariat gratefully acknowledges the assistance given to it by Professor Pieter Sanders in the preparation of the two documents.

<sup>5</sup> A commentary on the integrated text of draft arbitration rules is set forth in A/CN.9/112/Add.1, reproduced in this volume, part two, III, 2, *infra*.

ICC Rules	Roles of conciliation and arbitration of the ICC, 1975
Inter-American Arbitration Commission Rules	Rules of procedure of the Inter-American Commercial Arbitration Commission
American Arbitration Association Rules	Commercial arbitration rules of the American Arbitration Association
USSR Chamber of Commerce Rules	Rules of procedure of the Foreign Trade Arbitration Commission at the USSR Chamber of Commerce

Attention has also been given to the provisions of various other arbitration rules.

### (2) Organization of the rules

#### 8. The Rules are divided into four sections:

- Section I Introductory rules (articles 1 to 5);
- Section II Appointment of arbitrators (articles 6 to 13);
- Section III Arbitral proceedings (articles 14 to 26);
- Section IV The award (articles 27 to 34).

9. Pursuant to the Commission's decision taken at its eighth session referred to in paragraph 1 above, the proposed rules are designed for arbitration where, in accordance with the agreement of the parties, a dispute is submitted for decision to a sole arbitrator or to a three-member arbitral tribunal established specifically (*ad hoc*) for settling the dispute in question.

### (3) The arbitration clause or agreement

10. An agreement to submit disputes to arbitration is normally concluded before a dispute has arisen, and is contained in a clause of the contract (the arbitration clause) or in a separate arbitration agreement. Less frequently, the arbitration agreement is concluded in a separate document after a dispute has arisen. An arbitration clause or separate arbitration agreement should be carefully drafted, since it serves as the legal basis for the arbitration. It may be noted that arbitrators are incompetent to act beyond the scope of the arbitration clause or separate arbitration agreement.

11. It may also be noted that, under article 1, paragraph 1, of the rules, applicability of the rules depends on an express reference to them, in writing, in the arbitration clause or separate arbitration agreement. A simple reference in an arbitration clause or in a separate arbitration agreement that all disputes that may arise out of the contract will be settled according to the UNCITRAL arbitration rules will suffice.

12. However, since an inappropriate or incomplete arbitration clause or separate arbitration agreement may lead to difficulties and delays in the arbitral proceedings, the text set forth below is recommended. This text clearly determines the scope of the arbitration clause or separate arbitration agreement, and, by giving the arbitrators authority to decide on a wide range of disputes, reduces the possibility of allegations that disputes connected with the contract fall outside the competence of the arbitrators. The text of this basic model arbitra-

tion clause or separate arbitration agreement is as follows:

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL arbitration rules which the parties declare to be known to them. Judgement upon the award made by the arbitrator(s) may be entered by any court having jurisdiction thereof."

13. The last sentence of the text set forth above has been added to facilitate the practice in some jurisdictions of seeking judicial enforcement not of the arbitral award, but of a judgement based on the award entered by a court having jurisdiction.

### (4) Possible additions to the basic model arbitration clause or separate arbitration agreement

14. An arbitration clause or separate arbitration agreement may contain more than the mere agreement by the parties to submit certain categories of disputes to arbitration under the rules. In the course of an arbitration certain questions may arise which the parties could have resolved by incorporating appropriate provisions in the arbitration clause or separate arbitration agreement. By setting forth provisions which seek to resolve these problems, the model arbitration clause or separate arbitration agreement will also draw the attention of the parties to these potential problems. Possible additions concern the following:

#### (a) The appointing authority

15. The rule provide that, in certain cases, arbitrators shall be appointed by "an appointing authority". Appointment is by an appointing authority when the parties fail to reach agreement on the choice of a sole arbitrator (article 7, paras. 3 and 6) or presiding arbitrator (article 8, paras. 5 and 8), and when, in the case of a three-member arbitral tribunal, a party fails to appoint an arbitrator (article 8, para. 3). The rules also provide that a decision on the challenge of an arbitrator shall be made by an appointing authority (article 11, para. 1). The rules authorize the parties to agree on the designation of an appointing authority, which may either be a physical person or an institution. They may agree on the designation of an appointing authority in the arbitration clause or separate arbitration agreement, or at a later stage, after the dispute to be referred to arbitration has arisen. The rules also prescribe a procedure for designation of an appointing authority where the parties fail to make such a designation (article 7, para. 4, and article 8, paras. 3 and 6). However, since the designation of an appointing authority by the parties prior to the commencement of arbitral proceedings can expedite both the appointment of arbitrators and the decision on possible challenges, it is recommended that the appointing authority should be designated in the arbitration clause or separate arbitration agreement by adding the following thereto:

"The parties also agree that:

"(i) the appointing authority shall be . . . . ."  
[name of person or institution].

#### (b) Number of arbitrators

16. Under article 6 of the rules, the parties may decide whether their dispute is to be heard by a sole ar-

bitrator or by a three-member arbitral tribunal. The parties may agree on the number of arbitrators in the arbitration clause or separate arbitration agreement, or they may agree on the number once the particulars of the dispute being referred to arbitration are known. Where the required number of arbitrators can be determined at the time of the conclusion of the arbitration clause or separate arbitration agreement, the inclusion of that number in the arbitration clause or separate arbitration agreement may expedite the arbitral proceedings. Such inclusion may be in the following terms:

"The parties also agree that:

"The number of arbitrators shall be . . . ." (one or three).

(c) *Place of arbitration*

17. Under article 15, paragraph 1, the place where the arbitration is to be held is the place agreed upon by the parties. If there has been no such agreement, it is the place determined by the arbitrators. Further, under article 15, paragraph 4, the award has to be made at the place of arbitration. At the time that the parties conclude the agreement to arbitrate they may not wish to choose the place of arbitration, since the identity of the most suitable place of arbitration may depend on the nature and circumstances of the particular dispute that will be submitted to arbitration. Where it is possible to choose the place of arbitration at the time of the conclusion of the agreement to arbitrate, such choice may be added to the arbitration clause or separate arbitration agreement in the following terms:

"The parties also agree that:

"The place of arbitration shall be . . . ." (town or country).

(d) *Languages*

18. Under paragraph 1 of article 16, the language or languages to be used in the arbitration proceedings is determined by agreement between the parties. In the absence of such agreement, the arbitrators make the determination under the provision of that paragraph. The parties may find it convenient to determine this question in the arbitration clause or separate arbitration agreement in the following terms:

"The parties also agree that:

"The language(s) to be used in the arbitral proceedings shall be . . . ." (language(s)).

(e) *Arbitration ex aequo et bono or as amiables compositeurs*

19. Under article 28, paragraph 3, arbitrators can decide a dispute referred to them *ex aequo et bono* or as *amiables compositeurs* only if the parties have expressly authorized the arbitrators to do so and the arbitration law of the country where the award is to be made permits such arbitration. The parties may wish to authorize the arbitrators, in the arbitration clause or separate arbitration agreement, to so decide.

(f) *Model arbitration clause or separate arbitration agreement*

20. In the light of the observations made above, the following wording is proposed for adoption as the arbitration clause or separate arbitration agreement:

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL arbitration rules which the parties declare to be known to them. Judgement upon the award made by the arbitrator(s) may be entered by any court having jurisdiction thereof.

"The parties also agree that:

"(a) The appointing authority shall be . . . . . (name of person or institution);

"(b) The number of arbitrators shall be . . . . . (one or three);

"(c) The place of arbitration shall be . . . . . (town or country);

"(d) The language(s) to be used in the arbitral proceedings shall be . . . . .;

"[(e) Authorization, if considered desirable, for the arbitrators to act *ex aequo et bono* or as *amiables compositeurs*]."

INTERNATIONAL COMMERCIAL ARBITRATION RULES  
(REVISED DRAFT)

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 which expressly refers to the UNCITRAL Arbitration Rules, have agreed that disputes arising out of that contract shall be settled in accordance with these Rules.

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

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. "Disputes arising out of that contract" includes disputes, existing or future, that arise out of, or relate to, a contract concluded between the parties or its breach, termination or invalidity.

MODIFICATION OF THE RULES

*Article 2*

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

RECEIPT OF COMMUNICATIONS; CALCULATION  
OF PERIODS OF TIME

*Article 3*

1. For the purposes of these Rules a notice, notification, communication or proposal by one party to the other party is deemed to have been received on the day on which it is delivered at the habitual residence or place of business of the other party, or if that party has no such residence or place of business, at his last known residence or place of business.

2. For the purposes of calculating a period of time prescribed under these Rules, such period shall begin to run on the day on which a notice, notification, communication or proposal is received, and that day shall be counted as the first day of such period. If the last day of such period is an official holiday or non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

#### NOTICE OF ARBITRATION

##### *Article 4*

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") notice that an arbitration clause, or a separate arbitration agreement concluded by them is invoked.

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.

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;
- (f) A proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

#### 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 deemed 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.

## 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 only one arbitrator, three arbitrators shall be appointed.

#### APPOINTMENT OF THE SOLE ARBITRATOR

##### *Article 7*

1. If a sole arbitrator is to be appointed, such arbitrator shall be of a nationality other than the nationality of the parties.

2. 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 sole arbitrator. The parties shall endeavour to reach agreement on the choice of the sole arbitrator within 30 days after the receipt by the respondent of the claimant's proposal.

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 not such agreement can be reached, the sole 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, by telegram or telex, propose to the respondent the names of one or more institutions or persons, one of whom would serve as the appointing authority. The parties shall endeavour to reach agreement on the choice of the appointing authority within 15 days after the receipt by the respondent of the claimant's proposal.

4. If on the expiration of this period of time the parties have not reached agreement on the designation of the appointing authority, the claimant shall apply for such designation to:

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

(b) [Here add an appropriate organ or body to be 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. The claimant shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen, and a copy of the arbitration agreement if it is not contained in the contract.

6. The appointing authority shall appoint the sole arbitrator according to the following list-procedure:

The appointing authority shall communicate to both parties an identical list containing at least three names;

Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;

After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties.

If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

The appointing authority may require from either party such information as it deems necessary to fulfil its function.

#### APPOINTMENT OF THREE ARBITRATORS

##### *Article 8*

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the president of the arbitral tribunal.

2. The presiding arbitrator shall be of a nationality other than the nationality of the parties.

3. If within 15 days after the receipt of the claimant's notification of the appointment of an arbitrator, the respondent has not, by telegram or telex, notified the claimant of the arbitrator he appoints, the claimant shall:

(a) If the parties have previously designated an appointing authority, request that authority to appoint the second arbitrator,

(b) 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, apply for such designation to either of the authorities mentioned in article 7, paragraph 4.

The appointing authority may exercise its discretion in appointing the second arbitrator.

4. If within 15 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding 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 parties 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 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, by telegram or telex, propose to the respondent the names of one or more institutions or persons, one of whom would serve as the appointing authority. The parties shall endeavour to reach agreement on the choice of the appointing authority within 15 days after the receipt by the respondent of the claimant's proposal.

6. If on the expiration of this period of time the parties have not reached agreement on the designation of the appointing authority, the claimant shall apply to either of the authorities mentioned in article 7, paragraph 4, for the designation of an appointing authority. 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 ap-

pointing authority may require from either party such information as it deems necessary to fulfil its function.

7. The claimant shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen, and a copy of the arbitration agreement if it is not contained in the contract.

8. The appointing authority shall appoint the presiding arbitrator in accordance with the provisions of article 7, paragraph 6.

#### CHALLENGE OF ARBITRATORS

##### *Article 9*

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

Originally proposed or appointed by him, or

Appointed by the other party or 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 of an arbitrator in the outcome of the arbitration or a family tie or any past or present commercial tie of an arbitrator with a party or with a party's counsel or agent.

3. A prospective arbitrator shall disclose to those who approach him in connexion with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

##### *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.

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

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In both cases a substitute arbitrator shall be appointed or chosen pursuant to the procedures applicable to the appointment or choice of an arbitrator as provided in article 7 or 8.

##### *Article 11*

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:

(a) When the initial appointment was made by an appointing authority, by that authority;

(b) When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;

(c) In all other cases, by the appointing authority to be designated in accordance with the provisions of article 7 or 8.

2. If, in the cases mentioned under subparagraphs (a), (b) and (c) of paragraph 1, the appointing authority 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 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

#### DEATH OR RESIGNATION OF AN ARBITRATOR; INCAPACITY OF AN ARBITRATOR, OR HIS FAILURE TO ACT

##### Article 12

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, 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.

2. In the event that an arbitrator is incapacitated or fails to act, the procedure in respect of the challenge and replacement of an arbitrator as provided in articles 10 and 11 shall apply.

3. If the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated. If any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

#### PARTICULARS ON PROPOSED ARBITRATORS

##### Article 13

Where, in connexion with the appointment of arbitrators, the names of one or more persons are proposed by the parties or by an appointing authority, their full names, addresses and their nationality shall be furnished, together with, as far as possible, a description of their qualifications for appointment as arbitrator.

### SECTION III. ARBITRAL PROCEEDINGS

#### GENERAL PROVISIONS

##### Article 14

1. Subject to these Rules, the arbitrators may conduct the arbitration in such manner as they consider appropriate, provided that the parties are treated with 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.

3. All documents or information supplied to the arbitrators by one party shall at the same time be communicated by that party to the other party.

#### 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.

2. The arbitrators may determine the locale of the arbitration within the country or city agreed upon by the parties. 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.

3. The arbitrators may meet at any place they deem appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. The award shall be made at the place of arbitration.

#### LANGUAGE

##### Article 16

1. Subject to an agreement by the parties, the arbitrators shall, promptly after their appointment, determine the language or languages to be used in the proceedings. 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. Arbitrators may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitrators.

#### 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. 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 statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought.

The claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents he will submit.

3. During the course of the arbitral proceedings, the claim may, with the permission of the arbitrators, be supplemented or altered, provided the respondent is given the opportunity to exercise his right of defence in respect of the change.

## STATEMENT OF DEFENCE

*Article 18*

1. Within a period of time to be determined by the arbitrators, the respondent shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.

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 may annex to his statement the documents on which he relies for his defence or may add a reference to the documents he will submit.

3. In his statement of defence 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.

4. The provisions of article 17, paragraph 2 and 3, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

## 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.

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.

3. A plea that the arbitrators do not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim. If such a plea is raised at a later stage, the arbitrators may nevertheless admit the plea, provided the delay in raising it is justified under the circumstances.

4. The arbitrators may rule on such a plea as a preliminary question, or they may proceed with the arbitration and rule on it in their final award.

## FURTHER WRITTEN STATEMENTS; SUPPLEMENTARY DOCUMENTS OR EXHIBITS

*Article 20*

1. The arbitrators shall decide what further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them, and shall fix the periods of time for communicating such statements. However, if the parties agree on a further exchange of written statements, the arbitrators shall receive such statements.

2. If in the statement of defence a counter-claim is raised, the arbitrators shall afford the claimant an opportunity to present a written reply to such claim.

3. At any time during the arbitral proceedings the arbitrators may require the parties to produce supplementary documents or exhibits within such a period of time as the arbitrators shall determine.

## TIME-LIMITS

*Article 21*

The periods of time fixed by the arbitrators for the communication of written statements should not exceed 45 days, and in the case of the statement of claim, 15 days. However, the arbitrators may extend the time-limits if they conclude that an extension is justified.

## HEARINGS, EVIDENCE

*Article 22*

1. In the event of an oral hearing, the arbitrators shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least 15 days before the hearing 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.

3. The arbitrators shall make arrangements for the interpretation of oral statements made at a hearing and for a verbatim record of the hearing if either is deemed necessary by the arbitrators under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the arbitrators at least 15 days before the hearing.

4. Hearings shall be held *in camera* unless the parties agree otherwise. With the consent of the parties, the arbitrators may permit persons other than the parties and their counsel or agent to be present at the hearing. The arbitrators may require the retirement of any witness or witnesses during the testimony of other witnesses. Arbitrators are free to determine the manner in which witnesses are interrogated.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitrators shall determine the admissibility, relevance and materiality of the evidence offered.

## INTERIM MEASURES OF PROTECTION

*Article 23*

1. At the request of either party, 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.

2. Such interim measures may be established in the form of an interim award. The arbitrators shall be entitled to require security for the costs of such measures.

3. A request for interim measures may also be addressed to a judicial authority. Such a request shall not be deemed incompatible with the arbitration agreement, or as a waiver of that agreement.



## EXPERTS

*Article 24*

1. The arbitrators may appoint one or more experts to report to them, in writing, on specific issues to be determined by the arbitrators. A copy of the expert's terms of reference, established by the arbitrators, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such experts as to the relevance of the required information or production shall be referred to the arbitrators for decision.

3. Upon receipt of the expert's report, the arbitrators shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties and their counsel or agent shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 22 shall be applicable to such proceedings.

## FAILURE TO SUBMIT A STATEMENT; ABSENCE OF A PARTY

*Article 25*

1. If the claimant, within the period of time determined by the arbitrators under article 17, fails to communicate his statement of claim, the arbitrators may afford the claimant a further period of time to communicate his statement of claim. If, within such further period of time, he fails to communicate his statement of claim without showing sufficient cause for such failure, the arbitrators shall issue an order for the discontinuance of the arbitral proceedings.

2. If the respondent, within the period of time determined by the arbitrators under article 18, fails to communicate his statement of defence without showing sufficient cause for such failure, the arbitrators may proceed with the arbitration.

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

4. If one of the parties, after having been duly notified, fails without showing sufficient cause, to submit documentary evidence when an award is to be made solely on the basis of documents and other written materials, the arbitrators may make the award on the evidence before them.

## WAIVER OF RULES

*Article 26*

A party who knows 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. In addition to making a final award, the arbitrators shall be entitled to make interim, interlocutory, or partial awards.

2. An award shall be binding upon the parties. An award shall be made in writing and shall state the reasons upon which it is based, unless both parties have expressly agreed that no reasons are to be given.

3. When there are three arbitrators, an award shall be made by a majority of the arbitrators.

4. An award shall be signed by the arbitrators. When there are three arbitrators, the failure of one arbitrator 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.

5. The award may only be made public with the consent of both parties.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitrators.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered, the arbitrators 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 designated by the parties as applicable to the substance of the dispute. Such designation must be contained in an express clause, or unambiguously result from the terms of the contract.

2. Failing such designation by the parties, the arbitrators shall apply the law determined by the conflict of laws rules that the arbitrators deem applicable.

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 the arbitration law of the country where the award is to be made permits such arbitration.

4. In any case, the arbitrators shall take into account the terms of the contract and the usages of the trade.

## 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 and accepted by the arbitrators, 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. 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. The arbitrators shall, in the order for the discontinuance of the arbitral proceedings or in the arbitral award on agreed terms, fix the costs of arbitration as specified under article 33. Unless otherwise agreed to by the parties, the arbitrators shall apportion the costs between the parties as they consider appropriate.

3. Copies of the order for discontinuance of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitrators to the parties. Where an arbitral award on agreed terms is made, the provisions of article 27, paragraph 7, shall apply.

#### INTERPRETATION OF THE AWARD

##### Article 30

1. Within 30 days after the receipt of the award, either party, with notice to the other party, may request that the arbitrators give an interpretation of the award. Such interpretation shall be binding on the parties.

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

#### CORRECTION OF THE AWARD

##### Article 31

1. Within 30 days after the receipt of the award, 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 make such corrections on their own initiative.

2. Such corrections shall be in writing, and the provisions of article 27, paragraphs 6 and 7, shall apply.

#### 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.

## 2. Report of the Secretary General: revised draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules) (addendum): commentary on the draft UNCITRAL Arbitration Rules (A/CN.9/112/Add.1)\*

#### SECTION I

##### Commentary on article 1

#### Introduction

1. The purpose of the UNCITRAL Arbitration Rules is to facilitate arbitration of disputes arising out

\* 12 December 1975.

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

#### 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;

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

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

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

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

(f) Any fees charged by the appointing authority for its services.

2. The costs of arbitration shall in principle 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. The arbitrators, on their appointment, may require each party to deposit an equal amount as an advance for the costs of the arbitration.

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

3. If the required deposits are not paid in full within 30 days after the communication of the request, the arbitrators shall notify the parties of the default and give to either party an opportunity to make the required payment.

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

of international trade transactions. This object is made clear in the title: "International commercial arbitration rules", and from certain provisions of the Rules appropriate to international arbitration, such as the provisions that a sole arbitrator and a presiding arbitrator shall be of a nationality, other than that of the parties (article 7, para. 1, and article 8, para. 2).