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INTERNATIONAL COMMERCIAL ARBITRATION

Recommendations concerning administrative services provided  
in arbitrations under the UNCITRAL Arbitration Rules

Note by the Secretary-General

1. The United Nations Commission on International Trade Law, at its twelfth session, requested the Secretary-General to prepare, if possible in consultation with interested international organizations, guidelines for administering arbitration under the UNCITRAL Arbitration Rules, or a check-list of issues which may arise when the UNCITRAL Arbitration Rules are used in administered arbitration. 1/
2. Pursuant to this request, the Secretariat prepared a note entitled "Issues relating to the use of the UNCITRAL Arbitration Rules and the designation of an appointing authority" (A/CN.9/189), taking into account the views expressed by the Commission and information obtained in consultative meetings with members of the International Council for Commercial Arbitration and representatives of the International Chamber of Commerce. The Commission, after a brief exchange of views at its thirteenth session, discussed in more detail at its fourteenth session the draft administrative guidelines set forth in that note. 2/
3. The Commission, at its fourteenth session, 3/ agreed that the issuance of guidelines in the form of recommendations could serve a useful purpose in assisting institutions willing to act as appointing authority or to provide administrative services in cases conducted under the UNCITRAL Arbitration Rules. In support

1/ Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), para. 71, sub-para. 2(a).

2/ Report of the United Nations Commission on International Trade Law on the work of its fourteenth session, Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17), paras. 53-58.

3/ Ibid., para. 54.

of this, it was stated that such guidelines might help to avoid disparity in the application of these Rules by different institutions and to enhance the parties' certainty as to what procedures to expect. Furthermore, it was agreed that such guidelines should be addressed not only to arbitral institutions but also to other bodies, e.g. chambers of commerce, which might also be willing to act as appointing authority or to provide administrative services as envisaged under the guidelines. In addition, some general amendments and specific proposals were made in respect of the draft text of the guidelines prepared by the Secretariat. <sup>4/</sup>

4. The Commission, on 23 June 1981, adopted the following decision:

"The United Nations Commission on International Trade Law

1. Decides that it would be desirable to issue guidelines in the form of recommendations to arbitral institutions and other relevant bodies, such as chambers of commerce, in order to assist them in adopting procedures for their acting as appointing authority or providing administrative services in cases to be conducted under the UNCITRAL Arbitration Rules;

2. Requests the Secretary-General to prepare, in the light of the views expressed during the discussion, a further note with a revised text of the draft guidelines and any explanations thereof, and to submit that note to the next session." <sup>5/</sup>

5. Pursuant to that request, the Secretariat submits this note setting forth a revised draft text of recommendations concerning administrative services provided in arbitrations under the UNCITRAL Arbitration Rules (see annex). The draft recommendations have been prepared with due regard to the observations and suggestions made by the Commission.

6. The Commission may wish to consider these draft recommendations in detail and finalize them at this session. The Commission may also wish to consider the manner in which the recommendations, as adopted, should be distributed. For example, it might request the Secretary-General to transmit the recommendations to all arbitral institutions and other interested bodies (e.g. chambers of commerce) known to him. In addition, it might request the Secretary-General to transmit copies of the recommendations to Governments suggesting that the recommendations be distributed to all interested institutions or bodies in their respective countries.

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<sup>4/</sup> Ibid., paras. 55-58.

<sup>5/</sup> Ibid., para. 59.

ANNEX

Revised draft

RECOMMENDATIONS CONCERNING ADMINISTRATIVE SERVICES PROVIDED  
IN ARBITRATIONS UNDER THE UNCITRAL ARBITRATION RULES

Introductory note

1. The United Nations Commission on International Trade Law (UNCITRAL) adopted, at its fifteenth session (1982), the following recommendations in order to assist arbitral institutions and other relevant bodies, such as chambers of commerce, in adopting procedures in connexion with their acting as appointing authority or providing administrative services in cases to be conducted under the UNCITRAL Arbitration Rules.
2. The UNCITRAL Arbitration Rules were adopted by the Commission in 1976, after extensive consultations with arbitral institutions and arbitration experts. In the same year, the General Assembly of the United Nations, in its resolution 31/98, recommended the use of these Rules in the settlement of disputes arising in the context of international commercial relations.
3. Since then, the UNCITRAL Arbitration Rules have become well known and are widely used around the world. Not only do contracting parties increasingly refer to these Rules in their arbitration clauses or agreements, but the Rules have also been accepted or adopted by arbitral institutions and similar bodies in a variety of ways.
4. One way in which the UNCITRAL Arbitration Rules have been accepted is that arbitral bodies have drawn on them in preparing their own institutional arbitration rules. This has taken two different forms. One has been to use the UNCITRAL Arbitration Rules as a drafting model, either in full (e.g., the 1978 Rules of Procedure of the Inter-American Commercial Arbitration Commission) or in part (e.g., the 1980 Procedures for Arbitration and Additional Rules of the International Energy Agency Dispute Settlement Centre).
5. The other form has been to adopt the UNCITRAL Arbitration Rules as such, maintaining their name, and to include in the statutes or administrative rules of an institution a provision that disputes referred to the institution shall be settled in accordance with the UNCITRAL Arbitration Rules, subject to any modifications set forth in those statutes or administrative rules. Prime examples of institutions adopting this approach are the two arbitration centres established under the auspices of the Asian-African Legal Consultative Committee (see Rule I of the Rules for Arbitration of the Kuala Lumpur Regional Arbitration Centre; articles 4 and 11 of the Statutes of the Cairo Centre for International Commercial Arbitration). In addition, a provision similar to the one described above was included in the "Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States of America and the Government of the Islamic Republic of Iran" of 19 January 1981 (article III, paragraph 2).
6. In addition to the above cases, all of which concern an arbitral body's own and only rules, the UNCITRAL Arbitration Rules have been accepted by a number of institutions which have their own established arbitration rules

as an alternative set of rules for optional use by parties. These institutions have, in different forms, declared their willingness to act as appointing authority and to provide other administrative services in arbitrations under the UNCITRAL Arbitration Rules if parties to an arbitration so wish.

7. Such willingness has been declared, for example, by the American Arbitration Association, which has adopted a specific set of administrative "Procedures for Cases under the UNCITRAL Arbitration Rules". These Procedures set forth in detail how the American Arbitration Association would perform the functions of an appointing authority and provide administrative services in conformity with the UNCITRAL Arbitration Rules. They also include model clauses and a fee schedule for these two kinds of services. The Arbitration Institute of the Stockholm Chamber of Commerce is also prepared to act as appointing authority and to provide administrative services in arbitrations conducted under the UNCITRAL Arbitration Rules. This facility has already been incorporated in the first international arrangement to include the UNCITRAL Arbitration Rules, i.e. the "Optional Arbitration Clause for use in contracts in U.S.A. - U.S.S.R. Trade - 1977 (Prepared by American Arbitration Association and U.S.S.R. Chamber of Commerce and Industry)". Other institutions willing to provide the above services include, for example, the Foreign Trade Arbitration of the Federal Economic Chamber, Belgrade, Yugoslavia (Rules of 9 November 1981) and the London Court of Arbitration (1981 International Arbitration Rules).

Possible ways for institutions to offer services for cases under the UNCITRAL Arbitration Rules

8. In view of the promising trend in favour of the use of the UNCITRAL Arbitration Rules, the Commission invites those arbitral institutions and other relevant bodies, such as chambers of commerce, which have not yet done so, to consider the possibility of offering services for cases conducted under the UNCITRAL Arbitration Rules. It further recommends that institutions, in adopting or applying the UNCITRAL Arbitration Rules, should, as far as possible, refrain from modifying them. Parties who agree to the use of the UNCITRAL Arbitration Rules by referring to them in an arbitral clause or agreement, or by submitting a dispute to an institution whose own institutional rules or statutes refer to these Rules, rely on the uniform application of the Rules. This is particularly apparent, for example, in the case of an international trading firm which has been involved in a number of arbitrations administered under the UNCITRAL Arbitration Rules and which thereby has gained familiarity with and confidence in the use of the Rules. Another example is the situation in which parties to a contract agree to use these Rules in arbitration under the contract, but postpone the selection of the administering body to the time when a dispute arises. In these and similar situations, the parties have an interest in the uniform application of the UNCITRAL Arbitration Rules irrespective of which particular institution is to administer the arbitration. In order to protect the interests of parties who rely on the UNCITRAL Arbitration Rules, and to promote the certainty of the parties with respect to the application of these Rules, institutions are requested to leave, as much as possible, the Rules unchanged and to adopt administrative procedures which implement the Rules and which are in conformity with them.

9. Of course, this request does not mean that the particular organizational structure and needs of a given institution should be neglected. However, such specific features often relate to matters not regulated in the UNCITRAL Arbitration Rules. For example, there are no special provisions in these Rules

concerning the various possible facilities and procedures for providing administrative services or on such particular matters as fee schedules. Nor are there special rules on the organizations of a body acting as appointing authority (e.g. specifying which organ is to perform a task entrusted to such authority under the Rules). It should, therefore, be possible to adopt administrative procedures which are tailored to the particular needs and organization of the institution without modifying the UNCITRAL Arbitration Rules.

10. If in exceptional circumstances an institution deems it necessary to adopt an administrative procedure which modifies the UNCITRAL Arbitration Rules, it is recommended that every effort be made to refrain from making substantive changes in the Rules. Also, it is strongly suggested that any administrative procedure which modifies a provision of these Rules should clearly indicate the modification which is made. An appropriate way of doing so is to specify the provision which it replaces, as was done, for example, in the Rules for Arbitration of the Kuala Lumpur Regional Arbitration Centre (opening words of Rule 8: "In lieu of the provisions of article 41 of the UNCITRAL Arbitration Rules the following provisions shall apply: ..."). This specification would be of great help to the reader and potential user who would otherwise have to embark on a comparative analysis of the administrative procedures and all provisions of the UNCITRAL Arbitration Rules in order to discover any disparity between them.

11. An arbitral institution might wish to consider whether to accept the UNCITRAL Arbitration Rules as its own and only institutional rules or as an alternative set of rules for optional use by parties. The first approach may commend itself when a new institution is created. The second approach may be appropriate for national arbitral bodies with institutional rules which are primarily intended for domestic arbitrations. Even an institution which already has rules for international commercial arbitration could enhance its appeal by broadening its range of services to include arbitration under the UNCITRAL Rules.

12. Although such latter arbitral institutions normally have administrative procedures for cases conducted under their own rules, it is recommended that they establish special administrative procedures for cases under the UNCITRAL Rules. This is advisable for the sake of clarity and parties' certainty, even if these special procedures for cases under the UNCITRAL Rules are, in substance, similar to the procedures for cases governed by other rules of that institution.

13. An institution willing to provide services for arbitrations conducted under the UNCITRAL Arbitration Rules is invited to make its willingness known to the interested public and to describe in detail the services offered and the relevant administrative procedures.\*

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\* In an introductory part, the institution may wish to provide, in addition to the customary description of its aims and traditional activities, some information regarding the UNCITRAL Arbitration Rules. In particular, it may state that these Rules were adopted in 1976, after extensive deliberations, by the United Nations Commission on International Trade Law; that this Commission consists of 36 member States representing the different legal, economic and social systems and geographic regions of the world; that in the preparation of these Rules, various interested international organizations and leading arbitration experts were consulted; that the General Assembly of the United Nations has recommended the use of these Rules for inclusion in international commercial contracts; and that these Rules have become widely known and been accepted around the world.

Possible contents of administrative procedures

I. Offer of services

14. Services which may be provided in connexion with arbitrations conducted under the UNCITRAL Arbitration Rules are the performance of the functions of an appointing authority as specified in the UNCITRAL Arbitration Rules, and the provision of administrative services of a technical, secretarial nature. These services could be provided not only by arbitral institutions but also by other bodies, in particular chambers of commerce or trade associations.

15. It is recommended that the administrative procedures of the institution distinguish clearly between the functions of an appointing authority as envisaged under the UNCITRAL Arbitration Rules and other administrative assistance of a technical, secretarial nature. The institution should declare whether it is offering both or only one of these types of service. When offering both types the institution may declare its willingness to provide only one of these services in a given case, if so requested.

16. The distinction between these two types of services is also of relevance to the question of which party may request these services. On the one hand, an institution may act as appointing authority under the UNCITRAL Arbitration Rules only if it has been so designated by the parties, whether in the arbitral clause or in a separate agreement. An institution should so state in its administrative procedures, possibly with the additional provision (as a rule of interpretation) that it would also act as appointing authority if the parties submit a dispute to it without specifically designating it as the appointing authority. On the other hand, administrative services of a technical, secretarial nature might be requested not only by the parties, but also by the arbitral tribunal (cf. article 15, paragraph (1) and article 38, paragraph (c) of the UNCITRAL Arbitration Rules).

17. In order to assist parties, the institution may wish to set forth in its administrative procedures model arbitration clauses covering the above services. The first part of any such model clause should be identical with the model clause of the UNCITRAL Arbitration Rules:

"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 as at present in force."

The agreement as to the services which are requested should follow. For example:

"The appointing authority shall be the XYZ-Institution."

or:

"The XYZ-Institution shall act as appointing authority and provide administrative services in accordance with its administrative procedures for cases under the UNCITRAL Arbitration Rules."

As suggested in the UNCITRAL Model Arbitration Clause, the following note may be added:

"Note-Parties may wish to consider adding:

- (a) The number of arbitrators shall be ... (one or three);
- (b) The place of arbitration shall be ... (town or country);
- (c) The language(s) to be used in the arbitral proceedings shall be ..."

## II. Functions as appointing authority

18. An institution which is willing to act as appointing authority under the UNCITRAL Arbitration Rules should specify in its administrative procedures the various functions of an appointing authority envisaged by these Rules which it will perform. It might also describe the manner in which it intends to perform these functions.

### (a) Appointment of arbitrators

19. The UNCITRAL Arbitration Rules envisage various possibilities concerning the appointment of an arbitrator by an appointing authority. Under article 6, paragraph (2), the appointing authority may be requested to appoint a sole arbitrator, in accordance with certain procedures and criteria set forth in article 6, paragraphs (3) and (4). Further, it may be requested, under article 7, paragraph (2), to appoint the second of three arbitrators. Finally, it may be called upon to appoint a substitute arbitrator under article 11, 12 and 13 (successful challenge and other reasons for replacement).

20. For each of these cases, the institution may indicate details as to how it would select the arbitrator in accordance with the UNCITRAL Arbitration Rules. In particular, it may state whether it maintains a panel or list of arbitrators, from which it would select appropriate candidates, and may provide information on the composition of such panel. It may also specify which person or organ within the institution would in fact make the appointment (e.g. president, director, secretary or a committee).

### (b) Decision on challenge of arbitrator

21. Under article 10 of the UNCITRAL Arbitration Rules, any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to this impartiality or independence. When such a challenge is contested (e.g. if the other party does not agree to the challenge or the challenged arbitrator does not withdraw), the decision on the challenge is to be made by the appointing authority according to article 12, paragraph (1). If the appointing authority sustains the challenge, it may also be called upon to appoint the substitute arbitrator.

22. The institution may indicate details as to how it would make the decision on such a challenge in accordance with the UNCITRAL Arbitration Rules. In particular, it may state which person or organ within the institution would make the decision. The institution may also wish to identify any code of ethics or other written principles which it would apply in ascertaining the independence and impartiality of arbitrators.

(c) Replacement of arbitrator

23. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the appointing authority may, under article 13, paragraph (2), be called upon to decide on whether such a reason for replacement exists, and it may be involved in appointing a substitute arbitrator. What has been said above in regard to the challenge of an arbitrator applies also to such cases of replacement of an arbitrator.

24. The situation is different with regard to those cases of replacement covered by paragraph (1) of article 13. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, the only task which may be entrusted to an appointing authority is to appoint a substitute arbitrator.

(d) Assistance in fixing fees of arbitrators

25. Under the UNCITRAL Arbitration Rules, the arbitral tribunal fixes its fees, which shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case. In this task, the arbitral tribunal may be assisted by an appointing authority in three different ways:

(i) If the appointing authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case (article 39, paragraph (2));

(ii) In the absence of such a schedule of fees, the appointing authority may provide, upon a party's request, a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators (article 39, paragraph (3));

(iii) In cases referred to under (i) and (ii), when a party so requests and the appointing authority consents, the arbitral tribunal shall fix its fees only after consultation with the appointing authority, which may make any comment it deems appropriate to the arbitral tribunal concerning the fees (article 39, paragraph (4)).

26. An institution willing to act as appointing authority may indicate, in its administrative procedures, any relevant details in respect of these three possible ways of assistance in fixing fees. In particular, it may state whether it has issued a schedule of fees as envisaged under (i). The institution might also declare its willingness to perform the function envisaged under (ii), if it has not issued a fee schedule, and to perform the function under (iii).

(e) Advisory comments regarding deposits

27. Under article 41, paragraph (3) of the UNCITRAL Arbitration Rules, the arbitral tribunal shall fix the amounts of any initial or supplementary deposits only after consultation with the appointing authority, which may make any pertinent comment it deems appropriate, if a party so requests and the appointing authority consents to perform this function. The institution may wish to indicate in its administrative procedures its general willingness to do so.

28. It should be noted that, under the UNCITRAL Arbitration Rules, this kind of advice is the only task relating to deposits which an appointing authority may be requested to fulfill. Thus, if an institution offers to perform any other function (e.g. to hold deposits, to render an accounting thereof), it should be pointed out that this is a modification of article 41 of the UNCITRAL Arbitration Rules.

### III. Administrative services

29. An institution which is prepared to provide administrative services of a technical, secretarial nature may describe in its administrative procedures the various services offered. Such services may be rendered upon request of the parties or the arbitral tribunal.

30. In describing the various services, the institution should specify those services which would not be covered by its general administrative fee and which, therefore, would be billed separately (e.g. interpretation services). The institution may also wish to indicate which of the services it can provide itself, with its own facilities, and which it might merely arrange to be rendered by others.

31. The following list of possible administrative services, which is not intended to be exhaustive, may assist institutions in considering and publicizing which services it may offer:

- (i) Forwarding of written communications of a party or the arbitrators;
- (ii) Assisting the arbitral tribunal in establishing the date, time, and place of hearings, and giving advance notice to the parties (cf. article 25, paragraph (1) UNCITRAL Arbitration Rules);
- (iii) Providing, or arranging for, meeting rooms for hearings or deliberations of the arbitral tribunal;
- (iv) Arranging for stenographic transcripts of hearings;
- (v) Assisting in filing or registering arbitral awards in those countries where such filing or registration is required by law;
- (vi) Providing secretarial or clerical assistance in other respects.

### IV. Administrative fee schedule

32. The institution may wish to state the fees which it charges for its services. It might reproduce its administrative fee schedule or, in the absence thereof, indicate the basis for calculating its administrative fees.

33. In view of the two possible categories of services an institution may offer, it is recommended that the fee for each category be stated separately. Thus, if an institution offers both categories of service, it may indicate its fees for the following three functions:

- (i) acting as appointing authority and providing administrative services;
- (ii) acting as appointing authority only;
- (iii) providing administrative services without acting as appointing authority.

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(In addition to the information and suggestions set forth herein, assistance may be obtained from the Secretariat of the Commission (International Trade Law Branch, Office of Legal Affairs, United Nations, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria). The Secretariat could, for example, provide any interested institution with copies of the institutional rules or administrative procedures of a given other institution. It may also, if so requested, assist in the drafting of an administrative provision or make suggestions in this regard.)