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Settlement of commercial disputes: Revision of the UNCITRAL Arbitration Rules

Note by the Secretariat

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I. Introduction

1. At its thirty-ninth session (New York, 19 June-7 July 2006), the Commission agreed that, in respect of future work of the Working Group, priority be given to a revision of the UNCITRAL Arbitration Rules (1976) ("the UNCITRAL Arbitration Rules" or "the Rules").[1] In recognition of the success and status of the UNCITRAL Arbitration Rules, the Commission was generally of the view that any revision of the UNCITRAL Arbitration Rules should not alter the structure of the text, its spirit or its drafting style, and should respect the flexibility of the text rather than make it more complex.[2]

2. At its fortieth session (Vienna, 25 June-12 July 2007), the Commission noted that the UNCITRAL Arbitration Rules had not been amended since their adoption in 1976 and that the review should seek to modernize the Rules and to promote greater efficiency in arbitral proceedings. The Commission generally agreed that the mandate of the Working Group to maintain the original structure and spirit of the UNCITRAL Arbitration Rules had provided useful guidance to the Working Group in its deliberations to date and should continue to be a guiding principle for its work.[3]

3. At its forty-first session (New York, 16 June-3 July 2008), the Commission noted that the Working Group had decided to proceed with its work on the revision of the UNCITRAL Arbitration Rules in their generic form and to seek guidance from the Commission on whether, after completion of its current work on the Rules, the Working Group should consider in further depth the specificity of treaty-based arbitration and, if so, which form that work should take (A/CN.9/646, para. 69). After discussion, the Commission agreed that it would not be desirable to include specific provisions on treaty-based arbitration in the UNCITRAL Arbitration Rules themselves and that any work on investor-State disputes which the Working Group might have to undertake in the future should not delay the completion of the revision of the UNCITRAL Arbitration Rules in their generic form.[4] As to timing, the Commission agreed that the topic of transparency in investor-State treaty-based arbitration was worthy of future consideration and should be dealt with as a matter of priority immediately after completion of the current revision of the UNCITRAL Arbitration Rules.[5] That decision was reiterated by the Commission at its forty-second session (Vienna, 29 June-17 July 2009).[6]

4. At its forty-second session, the Commission noted that the Working Group had discussed a proposal aimed at expanding the role of the Secretary-General of the Permanent Court of Arbitration at The Hague under the UNCITRAL Arbitration Rules (A/CN.9/665, paras. 47-50). It was observed that the Rules could easily be adapted for use in a wide variety of circumstances covering a broad range of disputes and that one measure of the UNCITRAL Arbitration Rules' success in

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[1] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17), paras. 182-187.

[2] Ibid., para. 184.

[3] Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), part one, para. 175.

[4] Ibid., *Sixty-third session, Supplement No. 17* (A/63/17), para. 314.

[5] Ibid., para. 314.

[6] Ibid., *Sixty-fourth session, Supplement No. 17* (A/64/17), para. 299.

achieving broad applicability and in their ability to meet the needs of parties in a wide range of legal cultures and types of disputes had been the significant number of independent arbitral institutions that had declared themselves willing to administer (and that, in fact, administered) arbitrations under the UNCITRAL Arbitration Rules, in addition to proceedings under their own rules. It was also said that the proposal to expand the role of the Permanent Court of Arbitration under the Rules, if adopted, would constitute not a mere technical adjustment, but a change in the nature of the Rules and would run contrary to the guiding principles set by the Commission, that any revision of the Rules should not alter the structure of the text, its spirit or its drafting style and should respect the flexibility of the text rather than make it more complex.[7] It was further said that the Permanent Court of Arbitration had been established by the Convention for the Pacific Settlement of International Disputes to deal with disputes involving States and not to handle disputes arising in the context of commercial relations among private parties, which were said to be the primary focus of the UNCITRAL Arbitration Rules. Expanding the role of the Permanent Court of Arbitration, it was said, would appear as favouring the Court over other arbitral organizations, despite the Court having little experience in the area of private commercial disputes, as compared with other arbitration organizations that had jurisdiction over such cases.[8] The Commission was of the view that the establishment of any central administrative authority under the Rules would create a need for providing (in the Rules or in an accompanying document) guidance on the conditions under which such a central authority would perform its functions. The Commission agreed that the work on the revision of the Rules should not be delayed by additional work that would need to be done in that respect if the proposal to expand the role of the PCA were to be pursued.[9] In light of those policy principles, it was emphasized that the UNCITRAL Arbitration Rules should not contain a default rule, to the effect that one institution would be singled out as the default appointing authority and would be identified in the Rules as a provider of direct assistance to the parties.[10] After discussion, the Commission agreed that the existing mechanism on designating and appointing authorities, as designed under the 1976 version of the Rules, should not be changed.[11]

5. This note contains an annotated draft of revised UNCITRAL Arbitration Rules, based on the deliberations of the Working Group at its forty-sixth to fifty-second sessions.[12] This document covers draft articles 1 to 19 of the draft revised Rules.

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[7] Ibid., para. 294.

[8] Ibid., para. 295.

[9] Ibid., para. 296.

[10] Ibid., para. 297.

[11] Ibid., para. 293.

[12] At its forty-fifth session (Vienna, 11-15 September 2006), the Working Group identified areas where a revision of the UNCITRAL Arbitration Rules might be useful and gave preliminary indications as to various options to be considered in relation to proposed revisions, on the basis of documents A/CN.9/WG.II/WP.143 and A/CN.9/WG.II/WP.143/Add.1, in order to allow the Secretariat to prepare a draft of revised Rules taking account of such indications. The report of that session is referenced A/CN.9/614. At its forty-sixth (New York, 5-9 February 2007), forty-seventh (Vienna, 10-14 September 2007) and forty-eighth (New York, 4-8 February 2008) sessions, the Working Group discussed a draft of revised Rules, as contained in documents A/CN.9/WG.II/WP.145 and A/CN.9/WG.II/WP.145/Add.1. The reports of those sessions are referenced A/CN.9/619, A/CN.9/641 and A/CN.9/646, respectively. At its forty-ninth (Vienna, 15-19 September 2008), fiftieth (New York, 9-13 February 2009) and

Draft articles 20 to 43, as well as the annex to the draft Rules containing the model arbitration clause and the model statements of independence, are dealt with under document A/CN.9/703/Add.1.

6. The Commission may wish to note that, at the fifty-second session of the Working Group, the following draft provisions of the revised Rules have not been fully discussed, or disagreement remained: draft article 2 (see below, para. 8); draft article 6 (see below, para. 13); draft article 34, paragraph (2) (see document A/CN.9/703/Add.1, para. 16); and draft article 41, paragraphs (3) and (4) (see document A/CN.9/703/Add.1, para. 24).

II. Draft revised UNCITRAL Arbitration Rules

Section I. Introductory rules

7. **Draft article 1**[13] (article 1 of the 1976 version of the Rules)

Scope of application[*]

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. The parties to an arbitration agreement concluded after [*date of adoption by UNCITRAL of the revised version of the Rules*] shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after [*date of adoption by UNCITRAL of the revised version of the Rules*] an offer made before that date.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

[*] A model arbitration clause for contracts can be found in the annex to the Rules.

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fifty-first (Vienna, 14-18 September 2009) sessions, the Working Group carried out its second reading of draft articles 1 to 39 of the revised Rules on the basis of documents A/CN.9/WG.II/WP.151 and A/CN.9/WG.II/WP.151/Add.1. The reports of those sessions are referenced A/CN.9/665, A/CN.9/669 and A/CN.9/684, respectively. At its fifty-second session, the Working Group completed its third reading of the draft revised Rules, on the basis of documents A/CN.9/WG.II/WP.157, A/CN.9/WG.II/WP.157/Add.1 and A/CN.9/WG.II/WP.157/Add.2. The report of that session is referenced A/CN.9/688.

[13] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 22-34; A/CN.9/619 paras. 18-38; A/CN.9/646, paras. 71-78; A/CN.9/665, paras. 18-20; and A/CN.9/688, para. 60.

8. **Draft article 2**[14] (article 2 of the 1976 version of the Rules)

Notice and calculation of periods of time

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is:

(a) received if it is physically delivered to the addressee;

(b) deemed to have been received if it is delivered at the habitual residence, place of business, or is otherwise capable of being retrieved at an address previously designated by the addressee [for the purpose of receiving such a notice].

2. If, after reasonable efforts, delivery of the notice under paragraph 1 failed, the notice is deemed to have been received if it is sent to the addressee's last known place of business or address.

3. Notice under paragraphs 1 (b) and 2 shall be delivered by any means of communication that provides a record of the information contained therein and of sending and receipt.

4. Notice shall be deemed to have been received on the day it is delivered under paragraph 1 or attempted to be delivered under paragraph 2.

5. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a 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.

Remarks on draft article 2, paragraphs (1) to (4)

9. The Commission may wish to note that the Working Group had discussed possible redrafting of article 2, paragraph (1) of the 1976 version of the Rules, which regulated when a notice, including a notification, communication or proposal could be deemed to have been received, with the aim to, inter alia, reflect contemporary practice and address the situation where a notice could not be delivered to the addressee in person. Paragraphs (1) to (4) seek to reflect the discussion of the Working Group.

10. **Draft article 3**[15] (article 3 of the 1976 version of the Rules)

Notice of arbitration

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[14] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 39-47; A/CN.9/619, paras. 44-50; A/CN.9/646, paras. 80-84 and A/CN.9/665, paras. 23-31; and A/CN.9/688, paras. 61-66.

[15] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 48-55; A/CN.9/619, paras. 51-57; A/CN.9/665, paras. 32-37 and 42; and A/CN.9/688, para. 60.

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party or parties (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;

(b) The names and contact details of the parties;

(c) Identification of the arbitration agreement that is invoked;

(d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

(e) A brief description of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

(a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(c) Notification of the appointment of an arbitrator referred to in article 9 or article 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

11. **Draft article 4**[16] (new article)

Response to the notice of arbitration

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).

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[16] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 56 and 57; A/CN.9/619, paras. 58-60; A/CN.9/665, paras. 32, 38-42 and 67; and A/CN.9/688, paras. 67-69.

2. The response to the notice of arbitration may also include:

(a) Any plea that an arbitral tribunal constituted under these Rules lacks jurisdiction;

(b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(d) Notification of the appointment of an arbitrator referred to in article 9 or article 10;

(e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

(f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

12. **Draft article 5**[17] (article 4 of the 1976 version of the Rules):

Representation and assistance

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

13. **Draft article 6**[18] (new article):

Designating and appointing authorities

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.

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[17] For discussions at previous sessions of the Working Group, see documents A/CN.9/619, paras. 63-68; A/CN.9/665, paras. 43-45; and A/CN.9/688, para. 60.

[18] For discussions at previous sessions of the Working Group, see documents A/CN.9/619, paras. 69-78; A/CN.9/665, paras. 46-56; and A/CN.9/688, paras. 14, 118 and 127. For discussions on the designating and appointing authorities at the forty-second session of the Commission, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 292-297.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

3. Where these Rules provide for a period within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. If the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, or fails to act within any other period provided by these Rules, any party may request the Secretary-General of the PCA to designate a substitute appointing authority. If the appointing authority refuses or fails to make any decision on the fees and expenses of the arbitrators under article 41, paragraph 4, any party may request the Secretary-General of the PCA to make that decision.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Remarks on draft article 6

14. The Commission may wish to note that draft article 6 is a new provision in the Rules, which contains the principle that the appointing authority could be appointed by the parties at any time during the arbitral proceedings. It also seeks to clarify for the users of the Rules the importance of the role of the appointing authority, particularly in the context of non-administered arbitration. Paragraph (4) seeks to reflect the discussion of the Working Group concerning the role of the designating and appointing authorities in the context of the determination of the fees and expenses of the arbitral tribunal. That provision was not fully considered by the Working Group at its fifty-second session. The Commission may wish to note proposals that were made with respect to the interplay between articles 6 and 41 (see paragraph 25 of document A/CN.9/703/Add.1).

Section II. Composition of the arbitral tribunal

15. **Draft article 7**[19] (article 5 of the 1976 version of the Rules):

Number of arbitrators

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with articles 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2 if it determines that, in view of the circumstances of the case, this is more appropriate.

16. **Draft article 8**[20] (article 6 of the 1976 version of the Rules)

Appointment of arbitrators (articles 8 to 10)[21]

1. If the parties have agreed that a sole arbitrator is to be appointed, and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator, the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;

(b) 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 it objects and numbered the remaining names on the list in the order of its preference;

(c) 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;

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[19] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 59-61; A/CN.9/619, paras. 79-83; A/CN.9/665, paras. 57-67; and A/CN.9/688, paras. 71 and 72.

[20] For discussions at previous sessions of the Working Group, see documents A/CN.9/619, para. 84; A/CN.9/665, para. 68; and A/CN.9/688, para. 70.

[21] Corresponding to articles 6 to 8 of the 1976 version of the Rules.

(d) 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.

17. **Draft article 9**[22] (article 7 of the 1976 version of the Rules)

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 presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8, paragraph 2.

18. **Draft article 10**[23] (new article)

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal, and in doing so, may revoke any appointment already made, and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

19. **Draft article 11**[24] (article 9 of the 1976 version of the Rules)

Disclosures by and challenge of arbitrators[**] (articles 11 to 13)[25]

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to

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[22] For discussions at previous sessions of the Working Group, see documents A/CN.9/619, para. 85; A/CN.9/665, para. 69; and A/CN.9/688, para. 70.

[23] For discussions at previous sessions of the Working Group, see documents A/614, para. 62, A/CN.9/619, paras. 86-93; A/CN.9/665, paras. 70 and 71; A/CN.9/688, paras. 73 and 74.

[24] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 64 and 65, A/CN.9/619, para. 95; A/CN.9/665, paras. 73 and 74; and A/CN.9/688, para. 70.

[25] Corresponding to articles 9 to 12 of the 1976 version of the Rules.

the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

** Model statements of independence pursuant to article 11 can be found in the annex to the Rules.

20. **Draft article 12**[26] (articles 10 and 13 (2) of the 1976 version of the Rules)

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

21. **Draft article 13**[27] (articles 11 and 12 of the 1976 version of the Rules)

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

22. **Draft article 14**[28] (article 13 (1) of the 1976 version of the Rules)

Replacement of an arbitrator

1. Subject to paragraph (2), in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the

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[26] For discussions at previous sessions of the Working Group, see documents A/CN.9/619, para. 100; A/CN.9/665, para. 81; and A/CN.9/688, para. 70.

[27] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 66, A/CN.9/619, paras. 101-105; A/CN.9/665, paras. 82-102; and A/CN.9/688, paras. 75 and 76.

[28] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 63, 67-74, A/CN.9/619, paras. 106-112; A/CN.9/665, paras. 103-117; and A/CN.9/688, paras. 77-82.

arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

23. **Draft article 15**[29] (article 14 in the 1976 version of the Rules):

Repetition of hearings in the event of the replacement of an arbitrator

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

24. **Draft article 16**[30] (new article)

Exclusion of liability

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority, the Secretary-General of the PCA and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

25. **Draft article 17**[31] (article 15 of the 1976 version of the Rules)

General provisions

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given an opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional

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[29] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 75; A/CN.9/619, para. 113; A/CN.9/665, para. 118; and A/CN.9/688, para. 70.

[30] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 136; A/CN.9/646, paras. 38-45; and A/CN.9/688, paras. 45-48 and 70.

[31] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 76-86; A/CN.9/619, paras. 114-136; A/CN.9/665, paras. 119-135; and A/CN.9/688, paras. 84-91.

timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal 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 arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall at the same time be communicated by that party to all other parties, except for communications referred to in article 26, paragraph 9.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

26. **Draft article 18**[32] (article 16 of the 1976 version of the Rules)

Place of arbitration

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

27. **Draft article 19**[33] (article 17 of the 1976 version of the Rules)

Language

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its 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 take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents

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[32] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 87-90; A/CN.9/619, paras. 137-144; A/CN.9/665, paras. 136-139; and A/CN.9/688, para. 83.

[33] For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 91; A/CN.9/619, para. 145; A/CN.9/665, paras. 140 and 141; and A/CN.9/688, para. 83.

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 arbitral tribunal.

Annex

Table of concordance

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*Model arbitration clause for contracts

**Model statements of independence pursuant to article 11 of the Rules