

Administered

deems appropriate concerning the fee suggested by the arbitrators;

(ii) The costs of administration as declared by the arbitral institution;

(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 the arbitrators deem that legal assistance was necessary under the circumstances of the case and 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.

2. The costs of arbitration shall, in general, be borne by the unsuccessful party. The arbitrators may, however, apportion the costs between the parties.

Commentary

1. Paragraph 1 gives a non-exhaustive enumeration of items that may be considered as included in the costs of arbitration. Concerning the fee of arbitrators, the general rule is that the fee is fixed by the arbitrators themselves. In the case of administered arbitration, however, the arbitrators must consult the arbitral institution concerning the amount of their fee and the arbitral institution may comment on the size of the fee proposed by the arbitrators.

It should be noted that the fee of the arbitrators must be stated separately in the award. All other costs of arbitration may be combined in one figure.

2. A provision similar to paragraph 2 may be found in article 43 of the ECE Rules and in article VII, paragraph 7, of the ECAFE Rules.

DEPOSIT OF COSTS

*Article 32**Non-administered*

1. Arbitrators, on their appointment, may require each party to de-

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1A. The arbitral institution may require, after consultation with

2. Report of the Secretary-General (addendum): observations on the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules) (A/CN.9/97/Add.1)*

NOTE BY THE SECRETARIAT

1. As was stated in the introductory part of the report of the Secretary-General setting forth a preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (A/CN.9/97, hereinafter referred to as the "preliminary draft"), any comments and observations regarding the preliminary draft received by the Secretariat would be placed before the Commission at its eighth session in a separate document.

* 6 March 1975.

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posit an equal amount as an advance for the costs of 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 the arbitrators shall notify the parties of the default and give an opportunity to either party 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.

Commentary

1. Requirement of a deposit for costs is customary. Pursuant to paragraph 1, each party shall pay one half of the advance payment. During the course of the arbitral proceedings and, in the light of the development of the proceedings, further deposits may be required (paragraph 2). If any of the required deposits, i.e. either the initial or a supplementary deposit, is not paid in full, both parties are notified and each has an opportunity to make the required payment (paragraph 3). This solution is a practical one since a party who has fulfilled his own obligations may have a strong interest that the arbitration proceed to a conclusion and may therefore be willing to make the payment required of the other party.

2. One advantage of administered arbitration is that the arbitral institution takes care of requiring and collecting the deposits for the costs of arbitration.

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the arbitrators, that each party deposit an equal amount as an advance for the costs of arbitration.

2A. During the course of the arbitral proceedings the arbitral institution may require supplementary deposits from the parties if requested to do so by the arbitrators.

3A. If the required deposits are not paid in full within 30 days the arbitral institution shall notify both the arbitrators and the parties of the default and give an opportunity to either party to make the required payment.

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

2. In accordance with the decision taken by the Commission at its sixth session, the preliminary draft was circulated to the regional economic commissions of the United Nations and to some 75 centres of Com-

mercial arbitration for observations. Owing to the fact that most of these centres were represented at the Fifth International Arbitration Congress (New Delhi, 7-10 January 1975), at which the preliminary draft was considered, and that they submitted their observations directly to the two working parties established by the Congress, few replies have been received by the Secretariat. The modifications in the preliminary draft resulting from the comments made at the New Delhi Congress are set forth in document A/CN.9/97/Add.2.*

3. The annexes to this note set forth the observations submitted by the Economic Commission for Europe, the International Chamber of Commerce and the Argentine Chamber of Commerce, and the text of the resolution on the draft UNCITRAL arbitration rules adopted by the Fifth International Arbitration Congress.

ANNEX I

Observations of the Economic Commission for Europe

[Original: French]

In your letter of 31 October 1974, you requested me to transmit to you, by 31 December 1974, any observations on the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL arbitration rules) (A/CN.9/97).

I note first of all that the preliminary draft largely takes into account prior international work in this field, including the Arbitration Rules of the Economic Commission for Europe. I therefore have no observations to make on the provisions of the preliminary draft relating to arbitration procedure proper.

I wonder, however, whether the procedure for the appointment of arbitrators in *ad hoc* arbitration, in the event of disagreement between the parties on this question, might not be facilitated by being more closely linked to the United Nations system. That would mean firstly that, in order to determine the appointing authority in cases where the agreement between the parties determines neither the appointing authority nor the place of arbitration, the claimant could address himself either to the appointing authority of the country in which the respondent has his habitual residence or place of business, or to the authorities designated by the rules for the purpose of appointing the arbitrators or administering the procedure. However, the function of "authority of last resort" could probably best be assumed by the Secretary-General of the United Nations, either directly or through a representative.

I should be very pleased to learn what you think of this idea and beg you to accept, Sir, etc.

(Signed) Janez STANOVNIK
Executive Secretary
Economic Commission for Europe

ANNEX II

Observations of the International Chamber of Commerce

[Original: French]

1. The International Chamber of Commerce wishes first of all to express its warmest thanks to the Legal Counsel of the United Nations for having invited it to comment on the preliminary draft arbitration rules of UNCITRAL (A/CN.9/97). This approach can only strengthen the co-operation between UNCITRAL and ICC, which is already particularly close in the field of international payments.

2. In view of its delay in expressing its initial reaction to a draft whose importance it recognizes, the International Chamber of Commerce wishes to confine its comments to the question of the appropriateness of the draft, so that UNCITRAL at its eighth session may have material which it can use to form an opinion on the conditions in which further action could be taken on the preliminary draft.

With regard to the question of appropriateness, ICC considers that a strict distinction should be drawn between *ad hoc* arbitration, which was the only type of arbitration considered by UNCITRAL at its sixth session, and administered arbitration, which is now covered by the preliminary draft.

(a) The difficulties to which *ad hoc* arbitration gives rise at the international level, *inter alia*, because of the inadaptability of national rules of civil procedure that are applicable in the absence of or in opposition to special stipulations by the parties, make particularly appropriate the adoption of international rules as precise as they are complete. Accordingly, ICC stands ready to co-operate with UNCITRAL in a detailed study of the content of such rules.

(b) The appropriateness of establishing international rules for arbitration administered by an institution deserves more careful study. The existence of arbitral institutions which have adopted rules of their choice and whose satisfactory operation proves that they are able to meet a requirement of international trade, prevents any assertion that there is a gap to be filled in this area, as there is in the sphere of *ad hoc* arbitration.

3. In any event, in the case of both *ad hoc* arbitration and administered arbitration, it is the views of the economic circles which are the real users of arbitration which must be of decisive importance in the final analysis. In this regard, the International Chamber of Commerce suggests that subsequent work should be carried out in close co-operation with arbitration centres which have a thorough practical experience of international arbitration and with organizations representing the economic circles which use arbitration. Such co-operation is essential for a careful study of the conditions and consequences of the establishment of rules applicable to international arbitration, i.e. both *ad hoc* arbitration and arbitration administered by an institution. To this end, ICC expresses the wish that a study group, similar in structure to the UNCITRAL study group on international payments, should be set up; ICC stands ready to participate fully in the work of such a study group.

ANNEX III

Observations of the Argentine Chamber of Commerce

[Original: Spanish]

We refer to your note of 31 October 1974, requesting our views on the draft rules for commercial arbitration, to be considered by UNCITRAL at its eighth session in April 1975.

With the advice of a specialist, Mr. Jaime Malamud, President of our Advisory Council, Co-ordinator of the Trade Law Committee of that Council, and a member of our Arbitration Tribunal, we have studied with great interest the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade, together with the comments explaining the idea behind the drafting and practical application of those rules.

In view of the short time at our disposal (your note was received by the Argentine Chamber of Commerce on 9 December, and it was requested that a reply should reach the United Nations before the end of the year), we shall not comment on each individual article. Moreover, such comments are unnecessary for the simple reason that the text as a whole seems to us adequate and of great value for the promotion of commercial arbitration.

The precedents considered and the undisputed ability of the drafters have produced clear and specific rules to ensure that the arbitration procedure provides the maximum safeguard for

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

the parties concerned. Nothing has been overlooked—from the arbitration clause and its scope to the award, its interpretation, where necessary, and its possible correction, and finally the costs and their deposit by the parties.

We feel that this draft, which is practical and will be well received and utilized in the business world, should be adopted by UNCITRAL at its eighth session.

(Signed) Arnaldo MUSICH
Vice-President

(Signed) Alfredo CERVI
Executive Secretary

ANNEX IV

Resolution on the draft UNCITRAL arbitration rules adopted by the Fifth International Arbitration Congress (New Delhi, 7-10 January 1975)

[Original: English]

WHEREAS

The United Nations Commission on International Trade Law (UNCITRAL) requested its secretariat to prepare draft rules for optional use in *ad hoc* arbitration relating to international trade and to submit such rules for the Commission's eighth session (April 1975); and

The Commission requested that such rules be prepared in consultation (*inter alia*) with centres of international com-

mercial arbitration, and consequently its secretariat invited the International Council for Commercial Arbitration (ICCA) to establish a representative group for consultation in the preparation of the rules; and

Following extensive consultation with the above group, a preliminary draft of such rules was issued by the Secretary-General on 4 November 1974, and was made available for consultation at this Congress; and

Views expressed in the further consultation during this Congress will be communicated to the Commission and will be given consideration in the further elaboration of the proposed rules:

BE IT RESOLVED THAT THE CONGRESS

Believes that the preparation by UNCITRAL of such rules is a valuable project that will facilitate arbitration and thereby will aid world trade;

Appreciates the opportunity for consultation in the preparation of the rules, and supports UNCITRAL's current programme for widespread consultation, with special reference to the views of parties who will make use of arbitration in all countries, including both developing and developed;

Endorses the principles of the preliminary draft of the rules and encourages 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.

3. Report of the Secretary-General (addendum): suggested modifications to the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules) (A/CN.9/97/Add.2)*

INTRODUCTION

1. In November 1974 a report of the Secretary-General set forth a preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (A/CN.9/97,** hereinafter referred to as the "preliminary draft").

2. As was explained in the introduction to the above document, this preliminary draft was prepared pursuant to a decision taken by the United Nations Commission on International Trade Law (UNCITRAL) at its sixth session. Under this decision, the Secretary-General was requested to prepare such a draft set of arbitration rules "in consultation with regional economic commissions of the United Nations and centres of international commercial arbitration". Accordingly, the preliminary draft of November 1974 has been given widespread circulation and been transmitted, with a request for comments, to the above-mentioned regional economic commissions and to over 70 centres of commercial arbitration. In addition, as part of such consultation, the preliminary draft was made available for consideration at the Fifth International Arbitration Congress (New Delhi, India, 7-10 January 1975) and was the subject of intensive consideration by the First and Second Working Parties of that Congress.¹

3. Written comments that have so far been re-

ceived in response to the above-mentioned circulation of the preliminary draft are set forth separately in a note by the Secretary-General (A/CN.9/97, Add.1).† That note also sets forth the full text of a resolution adopted by acclamation at the above-mentioned Fifth International Arbitration Congress and which states that the Congress "Endorses the principles of the preliminary draft of the rules and encourages UNCITRAL, in the light of the comments made on this draft, to finalize the rules and make them available for use at the earliest possible date".

4. The discussions at the Congress, while giving general approval to the preliminary draft, also provided valuable suggestions as to points in regard to which the draft should be modified or clarified in the light of experience and practice with international commercial arbitration. These modifications and clarifications are indicated in this report. The discussions at the Congress also included various suggestions of a stylistic nature and other suggestions that did not receive widespread support. Such suggestions are not dealt with in this report, but have been noted by the Secretariat for further consideration together with comments which will be received in the future in response to the transmittal of November 1974 and in the light of any comments or decision by the Commission at its eighth session.

MODIFICATIONS IN THE PRELIMINARY DRAFT

A. Agreement by the parties as to the seat of arbitration

5. The introduction to the preliminary draft sets forth a model arbitration clause which recommends

* 6 March 1975.

** Reproduced in this Yearbook, part two, III, 1.

¹ The First Working Party of the Congress devoted all of its meetings, held on 7, 8 and 9 January, to a review of the preliminary draft. The Second Working Party included consideration of relevant portions of the preliminary draft within its topic dealing with the presentation of evidence in international commercial arbitration.

† Reproduced in this Yearbook, part two, III, 2.