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

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

Costs

Article 33

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

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

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

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

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

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

(*f*) The compensation for legal assistance of the successful party if such compensation was claimed during the arbitral proceedings, but only to the extent that the compensation is deemed reasonable and appropriate by the arbitrators [and if it may be recovered under the applicable law at the place of arbitration].[112]

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

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

Deposit of costs

Article 34

1. . . .

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

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

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

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

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

[107] *Ibid.*, para. 212.
[108] *Ibid.*, para. 214.
[109] *Ibid.*
[110] This alternative text is based on A/10017, annex I, para. 215 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1), and on a suggestion made by a member of the Consultative Group.
[111] This alternative text is based on a suggestion made by a member of the Consultative Group.
[112] A/10017, annex I, para. 218 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).
[113] *Ibid.*, para. 222.
[114] *Ibid.*, para. 219.
[115] This alternative text is based on a suggestion made by a member of the Consultative Group.
[116] A/10017, annex I, para. 224 (UNCITRAL Yearbook, Vol. VI: 1975, part one, II, 1).
[117] *Ibid.*, para. 225.
[118] This alternative text is based on a suggestion made by a member of the Consultative Group.

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

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

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

* 1 April 1976.

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

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

3. A schedule of fees usually takes into account the amount of the claim and will provide for minimum and maximum rates, or for maximum rates only, based on such an amount. Arbitration rules that provide for a schedule also make provision for an administrative body which fixes the fees in accordance with the schedule and, under most arbitration rules, may do so with a large measure of discretion. Such discretion seems desirable in view of the length of time which a particular arbitration may take or of the complexity of the issues submitted for arbitration. In some instances, the administrative body may assess the arbitrators' remuneration outside the schedule.[3]

4. Since the UNCITRAL Arbitration Rules are designed to facilitate arbitration in all parts of the world and in respect of different kinds of cases, a fee schedule under the Rules would probably have to establish a wide margin between minimum and maximum rates so as to allow flexibility in determining the fees.[4] Therefore, the mere fact of a maximum rate being indicated in the schedule would not effectively inform the parties in advance what the cost of arbitration will be and would not necessarily, in every case, preclude the assessment of improper charges by arbitrators.

5. The effectiveness of a schedule of fees would thus seem to depend on the intervention of an independent body. As noted above, the only arbitration rules which include fee schedules are those administered by arbitration institutions. If the Commission were of the view that a schedule should be included in the Rules and be "administered" by an independent authority, consideration might be given to the possibility either of giving the appointing authority discretionary power to assess the remuneration of arbitrators in accordance with the schedule, or of providing that the arbitrators must fix their fees in accordance with the schedule after consultation with the appointing authority.

6. Under the Rules, there is an appointing authority

(*a*) When such authority has been designated in the arbitration clause or arbitration agreement;

(*b*) When the parties have failed to reach agreement on the choice of a sole arbitrator (article 7 (3) and (6)) or presiding arbitrator (article 8 (5) and (8)) or when, in the case of a three-member tribunal, a party fails to appoint an arbitrator (article 8 (3));

(*c*) When an appointing authority has been designated to make the decision on the challenge of an arbitrator (article 11 (1) (*c*)).

In all other cases, where no appointing authority exists because of one of the above circumstances, resort might be had to an appointing authority to be designated in accordance with the provisions of article 7 or 8 of the Rules.

Conclusions

7. In conclusion, the following options in connexion with the fixing of fees of arbitrators are submitted to the Commission for consideration:

(*a*) To maintain the present text of article 33 under which the arbitrators themselves fix their fees;

(*b*) To include in the Rules a schedule of fees, establishing minimum and maximum rates, or a maximum rate only, based on the amount of the claim and to add an additional provision to article 33 under which the arbitrators' fees are to be fixed by the appointing authority in accordance with the schedule or under which the arbitrators are to fix their fees after consultation with the appointing authority;

(*c*) Not to include a schedule of fees in the Rules but to add an additional provision to article 33 under which the arbitrators are to fix their fees after consultation with the appointing authority.

[3] For example, article 20, para. 3, of the Rules of Conciliation and Arbitration of the International Chamber of Commerce (1975 version) provides that "the ICC Court may fix the arbitrators' fees at a figure higher or lower than that which would result from the application of the annexed scale if in the exceptional circumstances of the case this appears to be necessary".

[4] For example, the schedule of fees set forth in appendix II of the ICC Rules establishes the following range between the minimum and maximum fees shown:

Sums in dispute (in thousands of U.S. dollars)	*Fees (in %) Minimum*	*Maximum*
Under 10	(min. $600)	10
from 10 to 50	1.5	6
from 50 to 200	0.8	3
from 200 to 600	0.5	2
from 600 to 1,500	0.3	1.5
from 1,500 to 3,000	0.2	0.6
from 3,000 to 10,000	0.1	0.3
over 10,000	0.1	0.15