E

ARB/LIC/CAI/98/5
ORIGINAL: English
DATE: March 3, 1998

CAIRO REGIONAL CENTRE
FOR INTERNATIONAL
COMMERCIAL ARBITRATION

مركز القاهرة الاقليمي
للتحكيم التجاري الدولي

WIPO ARBITRATION
AND MEDIATION CENTER

مركز الويبو للتحكيم
والوساطة

SEMINAR ON INTELLECTUAL PROPERTY LICENSING AND DISPUTE RESOLUTION

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the Cairo Regional Centre for International Commercial Arbitration

Cairo, March 9 and 10, 1998

CONDUCTING AN ARBITRATION: UNCITRAL RULES

Lecture by Mr. Jernej Sekolec

I. UNICTRAL texts relating to the conduct of proceedings for the settlement of disputes

The United Nations Commission on International Trade Law (UNCITRAL) is a prominent organization in the area of arbitration; however, neither the Commission nor its Secretariat assume any role in individual cases. Their work is limited to formulating contract rules or practice advice relating to arbitration and conciliation, as well as legislative provisions on international commercial arbitration.

UNCITRAL has prepared the following non-legislative texts on the conduct of proceedings for the settlement of commercial disputes: the UNCITRAL Arbitration Rules (1976); the UNCITRAL Conciliation Rules (1980); and the UNCITRAL Notes on Organizing Arbitral Proceedings (1996). This paper deals with these non-legislative texts.

As to legislative texts, the Commission adopted in 1985 the UNCITRAL Model Law on International Commercial Arbitration. In addition, it is currently monitoring, jointly with the International Bar Association, the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

A. UNCITRAL Arbitration Rules

The UNCITRAL Arbitration Rules were adopted by UNCITRAL on 28 April 1976. The Rules are of a contractual nature in the sense that their applicability depends on the agreement of the parties. A number of intergovernmental and non-governmental organizations, arbitration centers and experts participated during the preparatory stage. Before their adoption in 1976, the draft Rules were discussed in detail by the Vth International Arbitration Congress in New Delhi in 1975.[1]

The General Assembly of the United Nations adopted a resolution (no. 31/98 of 15 December 1976) in which it expressed the conviction that the establishment of rules for ad hoc arbitration that are acceptable in countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations.

1. Types of arbitration in which the Rules are used

One of the main reasons for the elaboration of the Rules was to provide modern contractual rules suitable for ad hoc arbitrations, i.e. arbitrations organized by the parties themselves without the administrative assistance of an arbitral institution. Such arbitrations were often resorted to without the parties having agreed on the rules of procedure, which was a possible source of difficulty when the participants in the arbitration had different views on how to carry out a particular stage of the proceedings. If the parties wish to preserve the ad

---

[1] Commented upon e.g. in Pieter Sanders, Commentary on UNCITRAL Arbitration Rules, Yearbook Commercial Arbitration, Volume II-1977, pp. 170-219; and Gerold Herrmann, UNCITRAL Conciliation and Arbitration Rules, Arbitration, Volume 55, No. 2, May 1989, pp. 85-91.

hoc nature of the arbitration and avoid such difficulties typical of ad hoc arbitrations, they can do so by subjecting the arbitration to the UNCITRAL Arbitration Rules.

Another reason for preparing the Rules was to offer a model set of arbitration rules to arbitral institutions. With the growing number of institutions that would adopt the Rules as their single or optional institutional rules, the parties would have a broader possibility to combine the benefits of an administrative arbitration with the benefits of universally known and acceptable arbitration rules.

Such an orientation to different types of arbitration, irrespective of whether an institution has a role in the administration of the arbitral proceedings, was possible in view of the fact that, as regards the procedural role of the arbitral tribunal, there is no essential difference between an ad hoc arbitration and an institutional arbitration.

While it was clear from the outset that the Rules would be of great significance to ad hoc arbitration, their acceptance by arbitral institutions has also been very favorable. The manner in which institutions accepted the Rules has been different. Some institutions accepted the Rules as their only rules for conducting arbitrations. Among these are, for example, all institutions members of the Inter-American Commercial Arbitration Commission (IACAC), Regional Center for Arbitration in Cairo and the Regional Center for Arbitration in Kuala Lumpur (both centers operate under the auspices of the Asian-African Legal Consultative Committee, which has taken steps to establish such centers elsewhere in Africa and Asia), Hong Kong International Arbitration Center, Spanish Court of Arbitration, Australian Center for International Commercial Arbitration, Melbourne, and Australian Commercial Disputes Center, Sidney.

In the second group of institutions are those that are prepared, if the parties so agree, to appoint an arbitrator according to the procedure in the Rules and to provide administrative services in the conduct of the arbitral proceedings. If there is no such agreement by the parties, the case will be subject to the rules of the institution. In this group are institutions such as the American Arbitration Association; Arbitration Court of Commerce and Industry of Bulgaria; Arbitration Court of the Chamber of Commerce of Poland; Arbitration Court of the Chamber of Commerce in Stockholm; Arbitration of the Federal Chamber of Commerce of Vienna; British Columbia International Commercial Arbitration Center(Vancouver); Canadian Arbitration, Conciliation and Amiable Composition Center; Channel Islands Arbitration Center; Indian Council of Arbitration; International Court of Arbitration for Marine and Inland Navigation, Gdynia; Italian Arbitration Association; London Court of International Arbitration.

In the third group are the institutions that are prepared to act as an appointing authority according to the UNCITRAL Arbitration Rules. Such institutions are, for example, the Arbitration Institute of the Chamber of Commerce of Oslo; Association of Swiss Chambers of Commerce; Chamber of Commerce in Zurich; Euro-Arab Chambers of Commerce; German Arbitration Institute; International Chamber of Commerce; Japan Commercial Arbitration Association; Netherlands Arbitration Institute.

The above lists are not complete. The readiness of an institution to act under the UNCITRAL Arbitration Rules is not subject to any duty to notify this to UNCITRAL. There are certainly many more institutions that provide administrative assistance under the Rules.

In view of the contractual nature of the UNCITRAL Arbitration Rules, parties are free to modify them. This possibility is expressly mentioned in article 1(2) of the Rules. In principle, no objection may be raised against an amendment to the Rules by the parties, since the result would be consistent with the maxim of the autonomy of the parties. It should be added, however, that the parties should in their interest carefully consider any deviation from the Rules so as to avoid disruption of the procedure by an amendment that is not suited to the system of the Rules.

Special attention should be paid to cases in which an arbitral institution has declared itself ready to administer arbitrations under the UNCITRAL Arbitration Rules, and yet has modified these Rules in some respect. In such a case the party may not be aware that the rules under which the arbitration is to be conducted are a modified version of the UNCITRAL Arbitration Rules. In addition, depending on the nature of the amendments, the parties may not be able to rely on comments or their knowledge or experience relating to the original text of the Rules without first analyzing the consequences of the modification. A frustrated expectation of the parties that the arbitration would be subject the UNCITRAL Arbitration Rules or the need for an analysis of the amended text would be contrary to the idea of transparency of rules governing arbitration. It therefore appears desirable that the modifications of the Rules by arbitral institutions be as minimal as possible and that the parties be made aware of the modifications.

The experience regarding the reception of the UNCITRAL Arbitration Rules by arbitral institutions has shown that there might be situations where the rules of the institution were represented as being based on the UNCITRAL Arbitration Rules, while the text of the rules departed in a significant way from the text of the UNCITRAL Rules. To discourage that, the Commission adopted in 1982 the "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules".

The Recommendations describe various ways in which an arbitral institution may administer or participate in the administration of arbitral proceedings conducted under the UNCITRAL Rules. For each of the ways the Recommendations advise the institutions on how to express the procedures that deviate from the UNCITRAL Rules. The essence of the advice is to restrict the modifications to those that are necessary as a result of the involvement of the institution in the administration of arbitral proceedings (such modifications may concern, for instance, the appointing authority, the authority to decide on the challenge or replacement of an arbitrator or costs of proceedings). If any such modification is considered necessary, the Recommendations urge the institution to clearly indicate the modifications. An appropriate way of doing so would be to specify the provision of the UNCITRAL Arbitration Rules involved by words such as: "In lieu of the provision of article ... of the UNCITRAL Arbitration Rules the following provision shall apply ...". Such an indication 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 the provisions of the UNCITRAL Arbitration Rules in order to discover any disparity between them.

2. Characteristics of the Rules

(a) Universal acceptability

One of the most important characteristics of the UNCITRAL Arbitration Rules is their world-wide acceptability. This is borne out by numerous reports of arbitrators and parties involved in arbitrations, academic comments and lists of institutions using the Rules. Several factors contributed to such a universal acceptability. First, the drafters of the Rules took into account all relevant international normative texts on international commercial arbitration. Furthermore, views of organizations and experts from different parts of the world were heard during the preparatory stage. Their views were particularly useful in highlighting the positive and negative experience with the use of existing arbitration rules. Moreover, the Rules are written in a clear language using expressions that are understandable in different legal systems.

In addition to being acceptable in different systems, the Rules have proven to be effective in arbitrations in which the participants come from States with different legal or social traditions. Proof of this aspect of the acceptability of the Rules is found in the thousands of arbitration cases that have been completed or are conducted on the basis of the UNCITRAL Arbitration Rules since 1981 at the Hague between parties from the Islamic Republic of Iran and the United States of America on the basis of an agreement involving the two countries.

(b) Prevalence of mandatory provisions of law

One of the established principles under which a State is prepared to respect the result of an arbitral proceeding that has taken place in its territory or under its procedural law is that the parties and the arbitrators did not violate the rules of the applicable procedural law which cannot be derogated from. This principle is reflected in article 1(2) of the Rules:

"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."

(c) Independence from non-mandatory provisions of law

It is in the nature of a non-mandatory provision of law that it binds its addressees insofar as they have not in the given case derogated from the provision by excluding its applicability or by providing another solution for the case. The UNCITRAL Arbitration Rules exclude in a general way the obligation to follow the non-mandatory provisions of law governing the conduct of the arbitral proceedings. This is expressed by article 15(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 any stage of the proceedings each party is given a full opportunity of presenting his case."

The formulation of article 15(1), however, also indicates the limits of the discretionary right of the arbitral tribunal in the conduct of the proceedings. The limit is defined by the

introductory phrase: "Subject to these Rules", which means that the arbitral tribunal's discretion does not extend to questions that are settled in the Rules. If the tribunal considers that it would be appropriate to deviate from a provision of the Rules, it may suggest to the parties to agree to a modification of the Rules.

The principle of independence of the arbitral procedure from non-mandatory law on the conduct of proceedings has a significant practical value in international arbitration. In such arbitration it is frequent that some or all participants are not familiar with all aspects of the law of the place of arbitration. It is important to such participants, who may not know the language of the applicable law, not to be obliged to embark on a research of the local law.

(d) Self-contained system of rules

The Rules are formulated in such a way that they constitute a self-contained system of rules which provides a contractual basis for arriving at an answer to all issues regarding the conduct of the proceedings. This concept in the Rules results from the combination of (a) provisions on particular procedural issues, (b) the above-mentioned general provision of article 15 empowering the arbitral tribunal to conduct the arbitration, subject to the Rules and the principle of equality of the parties, "in such manner as it considers appropriate", and (c) the already mentioned clause in article 1(2) stating in essence that the arbitration is subject to any mandatory rules.

This means that in the absence of a specific provision in the Rules the answer should be arrived at by the interpretation of the Rules (bearing in mind the mandatory provisions of the applicable arbitration law), and that in such an interpretation the non-mandatory provisions of the applicable law may only serve as a non-obligatory guideline.

The Rules cover arbitral proceedings in a comprehensive manner not only by giving the arbitral tribunal a wide procedural discretion but also by providing specific rules when this is useful because of certainty and predictability. These specific rules were not necessarily known and widely used in all parts of the world, but were adapted to the needs of international cases and crafted in such a way (e.g. by allowing a reasonable degree of discretion to the arbitral tribunal) that they are acceptable everywhere. For example, The Rules contain specific provisions on the manner of giving notices; initiation of arbitral proceedings by giving a notice of arbitration; process of appointment, challenge and replacement of arbitrators by the parties or the appointing authority; statements of claim and defense and their amendments; pleas as to the jurisdiction of the arbitral tribunal; submission of a summary of the documents and other evidence that the parties intend to present; advance communication of the subject upon which witnesses will give testimony; ordering interim measures of protection; appointment by the arbitral tribunal of experts and the presentation by the parties of expert witnesses; the procedures enabling the arbitral tribunal to continue the proceedings when a party, duly invited, fails to appear at a hearing or fails to produce evidence; the manner of reaching decisions by the arbitral tribunal; the form and effect of the award; the law applicable to the substance of the dispute; costs and deposit of costs.

B. UNCITRAL Conciliation Rules

The consideration of the UNCITRAL Arbitration Rules would not be complete without discussing conciliation as a complementary method of settlement of commercial disputes. Such a discussion is pertinent because a good number of international commercial disputes are resolved by conciliation.

In a given dispute, conciliation proceedings may precede the arbitral proceedings or arbitral proceedings may be suspended, with the agreement of the parties, in order to carry out a conciliation. In either case, the parties may have to deal with the possible influence of the conciliation proceedings on the arbitration proceedings.

In some regions conciliation has a long tradition as a means for settling disputes among merchants. In view of the fact that this tradition has been maintained or even strengthened in some trades or regions, commercial persons are well advised to consider the particular features of conciliation and resort to it whenever it is likely that it will end the dispute.

It seems that commercial parties do not resort to conciliation in all cases where conciliation would promise to yield good results. A low interest in conciliation in some areas or trades is often a result of a lack of experience or a lack of knowledge of essential features of this method of dispute settlement.

Little has been done to propagate the advantages of conciliation and dispel some misconceptions about it. For example, it is sometimes assumed that the time and effort to be devoted by a conciliator to the dispute should generally be more limited in comparison with the time and effort to be spent by an arbitrator; as a result it is in some cases expressly provided, or it is assumed, that conciliators perform their tasks without remuneration. In addition, curricula of universities largely ignore conciliation; it appears that academics see too few legal issues in conciliation that could be analyzed by the use of concepts of procedural law.

Another reason why it may be useful for commercial persons to pay more attention to conciliation is that arbitration may not always present a method that is cheap, quick and free of formalities. There have been reports of successful conciliations in important and complex international commercial disputes.

Conciliation may be a useful method where the disagreement is not a result of the lack of contract loyalty of one party, but of a deficient or incomplete contract. In such a case both parties may feel that a greater precision of the contract would eliminate the difficulty, but at the same time they may not be able to agree on how to amend the contract. In such a case the contract may not yet have been breached and, even if it has been breached, the complete solution of the case often requires a decision on the supplementation or modification of the contract rather than a decision on a monetary claim of one party against the other. Arbitration proceedings may not be appropriate for such a supplementation or modification of the contract. The reason is that, on the one hand, arbitrators tend to limit their work to a claim arising from a breach of contract, and are reluctant to conduct discussions on future relations between the parties, even if according to the applicable law it would be possible to empower them to assume such a role. On the other hand, the applicable law may not allow the

arbitrators to determine a contract term even if both parties wish them to do so, or the applicable law may be unclear on the point, which may make the nature and status of such an arbitration legally uncertain.

Moreover, it often occurs that parties in dispute wish a third person of their confidence to assist them in arriving at a settlement of the dispute. When this is the case, conciliation appears as the most appropriate method.

In all such circumstances the UNCITRAL Conciliation Rules present a modern conciliation regime suitable for resolving international commercial disputes.

The Commission adopted the UNCITRAL Conciliation Rules at its annual session in 1980. The United Nations General Assembly recommended in resolution no. 35/52 of 4 December 1980 the use of the UNCITRAL Conciliation Rules "in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation". In that resolution the General Assembly recognized the value of conciliation as a method of an amicable settlement of disputes arising in international commerce, and it expressed the view that the Rules are acceptable in countries with different legal, social and economic systems.[2]

Some characteristics of the UNCITRAL Conciliation Rules

The following description of the main features of the UNCITRAL Conciliation Rules emphasizes those provisions that are designed to reduce or eliminate some difficulties commonly attributed to conciliation proceedings. One such difficulty is in particular that the parties commencing a conciliation have no assurance that the dispute will be settled finally. Another difficulty is connected with the apprehension that proposals, concessions or similar statements made by a party during a conciliation that failed to end the dispute might be used in a subsequent court or arbitral proceedings against the party who made them.

(a) Independent and active role of conciliator

One important characteristic of the Conciliation Rules is contained in the provisions directing the conciliator to be independent from the parties and to be active in the conduct of the proceedings. Such provisions emphasize the difference between conciliation and negotiations of the parties and their representatives, which normally take place when a dispute arises. This difference is important because conciliation proceedings that would not be more conducive to a settlement than the negotiations of the parties would not be especially useful. The provisions of this kind are contained in particular in articles 5 and 7.

Article 7 provides that the conciliator (or a panel of conciliators if the parties so agree) assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. Furthermore, the provision requires the conciliator to be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the

---

[2] For a commentary, see e.g. Gerold Herrmann, Commentary on the UNCITRAL Conciliation Rules, Yearbook Commercial Arbitration, Volume VI - 1981, pp. 170-190.

circumstances surrounding the dispute, including any previous business practices between the parties. The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute. The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

According to article 5, the conciliator is expected to request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Furthermore, the conciliator may at any stage of the proceedings request a party to submit to him such additional information as the conciliator deems appropriate.

(b) "Legal barrier" between conciliation and any subsequent arbitration or court proceedings

The next important characteristic of the Conciliation Rules is reflected in the provisions designed to prevent circumstances from an unsuccessful conciliation to affect adversely the interests of a party in any subsequent arbitration or court proceedings. Such provisions are contained in articles 19 and 20.

According to article 19, the parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

According to article 20, each party undertakes not to rely on or introduce as evidence in arbitral or judicial proceedings: (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute; (b) admissions made by the other party in the course of the conciliation proceedings; (c) proposals made by the conciliator; (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator. The scope and effect of article 20 is broadened by the rule that the parties' renouncement to rely on the above-mentioned views, admissions, proposals and facts extends to any subsequent arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings.

(c) Voluntary nature of conciliation

A further significant characteristic of the Conciliation Rules is its voluntary nature, most markedly reflected in articles 2 and 15. According to these provisions, a conciliation commences only by agreement of both parties, and each party may, at any time, by a written declaration, terminate the conciliation proceedings. As a settlement between the parties is more likely in a voluntary procedure, the principle of articles 2 and 15 is logical and useful.

The same principle is reflected also in the model conciliation clause, which the parties are suggested to use in agreeing on a conciliation governed by the UNCITRAL Conciliation Rules. The model clause does not establish an obligation of the parties to commence a

conciliation. The clause only establishes a procedural regime for the commencement, conduct and termination of the conciliation if, and as long as, the parties so wish.

However, during the conciliation proceedings, the parties undertake not to initiate any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation. A party is permitted to initiate such arbitral or judicial proceedings only if in its opinion such proceedings are necessary for preserving its rights (art. 16). For example, the initiation of arbitral or judicial proceedings may serve the purpose of interrupting the running of the limitation period.

(d) Flexibility, informality and pragmatism of proceedings

In addition, it is of great practical importance that the Conciliation Rules enable the participants to conduct the proceedings in an informal, flexible and pragmatic manner. The Rules lay down only essential contours of the proceedings and leave broad possibilities to the parties and the conciliator to adapt the proceedings to the circumstances of the case. Only in a limited number of cases do the Rules provide for a written form of an action by a party.

The pragmatism of the UNCITRAL Conciliation Rules is reflected, for example, in articles 9 and 10. Article 9 allows the conciliator to meet or communicate separately with a party. Article 10 provides an exception to the principle audiatur et altera pars: when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

C. UNCITRAL Notes on Organizing Arbitral Proceedings

Arbitration laws and rules typically allow the arbitral tribunal broad discretion and flexibility in the conduct of arbitral proceedings (e.g. art. 19 of the UNCITRAL Model Law on International Commercial Arbitration and art. 15 of the UNCITRAL Arbitration Rules).

Such discretion is useful in that it enables the arbitral tribunal to take procedural decisions that take into account the circumstances of the case, the expectations of the parties and the need for a just and cost-efficient resolution of the dispute.

Many arbitrators have developed their own personal checklists, notes or methods for organizing arbitral proceedings, based on their personal experience or observation of others. Experienced counsel likewise tend to follow patterns that they are used to. Some practitioners tend to import procedures and habits used in courts into arbitration, while others use eclectic procedural styles, depending on their own view and experience as to which procedures are most effective. To some extent the tendency to use principles of court procedures in arbitration is justified, because the ultimate purpose and the basic principles in both types of proceedings are the same. On the other hand, the two types of proceedings are different in many important respects, some of which make arbitration the preferred alternative to State justice. Nevertheless, the inspiration that arbitration practitioners draw from methods used in court proceedings remains considerable.

As a consequence, the preferred procedural styles in international arbitration differ widely, depending on the experience, views and legal backgrounds of the arbitrators, in particular the presiding arbitrator. Arbitration practices differ among legal systems as well as among practitioners. The inclination among practitioners to use uniform methods of conducting arbitrations is lower than their tendency to favor unified arbitration laws and rules.

Such differences in arbitration practice make it advisable for the arbitral tribunal to make sure that all participants understand how the proceedings will be conducted and that they are able to prepare themselves accordingly for the various stages of the proceedings. If the parties are surprised by the manner in which the proceedings are conducted or are unprepared because they have not received sufficient guidance from the arbitral tribunal, the quality of the proceedings is bound to suffer, there will be misunderstandings, delays and extra costs. By sensible organization of the proceedings such difficulties may be avoided or reduced.

In order to assist practitioners in such organizing and planning arbitral proceedings, UNCITRAL decided to prepare a non-binding text that could be used in particular where the participants in the arbitration case have different legal backgrounds and have different procedural expectations. That decision led to the adoption in 1996 of the Notes on Organizing Arbitral Proceedings.

The central feature of the Notes is an *aide-mémoire*, or a checklist, of procedural matters that may arise in a proceeding and on which the arbitral tribunal may wish to formulate appropriate decisions on organizing arbitral proceedings. The list covers a broad range of typical situations that may arise in an arbitration. In many arbitrations, however, only a limited number of the matters mentioned in the list will need to be considered. It will depend on the circumstances of the case at which stage or stages of the proceedings it would be useful to consider matters concerning the organization of the proceedings.

The text, in its Introduction prepared by the Commission, stresses that it is in no way binding on the arbitrators or the parties. If it is decided to use the Notes, the text leaves the discretion of the arbitrators and the autonomy of the parties untouched, so that practitioners may refer to the Notes to the extent they consider appropriate, and are free to adapt the ideas from the Notes to the proceedings at hand. Thus, the text may be used in the context of any type of arbitration: ad hoc or administered by an arbitral institution, and irrespective of the type of arbitration rules governing the proceedings. In any case, in using the Notes, it should be borne in mind that the discretion of the arbitral tribunal in organizing the proceedings is limited by arbitration rules that the parties may have agreed upon and by the law applicable to the arbitral procedure. When an arbitration is administered by an arbitral institution, various matters discussed in the Notes are likely to be covered by the rules and practices of the institution.

The Notes are drafted in such a way that they do not seek to harmonize disparate practices, evaluate and compare them in order to steer the arbitrators in conducting arbitral proceedings, or recommend any particular method as good practice.

The Notes do not attempt to be a manual of instructions on how to conduct an arbitration. Arbitral practice, and in particular international practice, is so varied that it could

not be expressed in a manual. It would be an extremely difficult and delicate task to present all possible procedural solutions and explain properly the underlying considerations. Such a text, apart from being long and unwieldy, would also likely meet with opposition, inasmuch as it would probably be understood as an attempt to steer practice, as giving undue prominence to certain procedural styles, or as interfering with the discretion of the arbitral tribunal or the autonomy of the parties.

Thus, the Notes are limited to brief annotations to a list of matters that may come up during arbitral proceedings and on which the arbitral tribunal may wish to formulate appropriately-timed decisions on organizing arbitral proceedings. That list of such procedural matters covered by the Notes is the following: possible agreement on a set of arbitration rules; determination of the language of proceedings; determination of the place of arbitration; administrative services that may be needed for the arbitral tribunal to carry out its functions; deposits in respect of costs; confidentiality of information relating to the arbitration and possible agreement thereon; routing of written communications among the parties and the arbitrators; the use of telefax and other electronic means of sending documents; arrangements for the exchange of written submissions; practical details concerning written submissions and evidence, such as the method of submission, number of copies and numbering; defining the points at issue and the order of deciding the issues; defining relief or remedy sought; possible settlement negotiations and their effect on scheduling proceedings; documentary evidence; physical evidence other than documents; evidence of witnesses; evidence of experts and expert witnesses; hearings; multi-party arbitration; possible requirements concerning filing or delivering the award.

The Notes have been published in the six languages of the United Nations: Arabic, Chinese, English, French, Russian and Spanish. The UNCITRAL Secretariat has received many positive reactions to the Notes, and they promise to be widely used in many parts of the world.

II. CONCLUSION

The UNCITRAL Arbitration Rules are among the most successful unification instruments not only in the area of arbitration but in the entire field of international trade law. They have contributed decisively to the facilitation of the settlement of international disputes by arbitration. The UNCITRAL Conciliation Rules present an attractive alternative where the participation of an active, independent and impartial person is likely to lead to an efficient settlement of the dispute. The UNCITRAL Notes on Organizing Arbitral Proceedings are an optional, non-binding text that may be used in order to facilitate the efficient conduct of international arbitrations.

It is important to bear in mind that, despite their great usefulness, these texts cannot eliminate all obstacles to a fair and speedy settlement of disputes. The Arbitration Rules and the Conciliation Rules are contractual texts and, as a result, their good functioning depends on the mandatory national provisions in national laws on the arbitral procedure.

National laws on arbitral procedure may be deficient in several respects. Firstly, there may be mandatory provisions that constitute an undue obstacle in establishing or carrying out

an arbitration as agreed by the parties. Even if such a provision is non-mandatory, this may be a source of difficulty in that the parties might not displace it by agreement because they were not aware of it or because they were reluctant to deal with details of procedure at the time of entering into the arbitration agreement. Furthermore, national laws may lack a minimum set of provisions that would give answers to the principal procedural questions that may arise in an arbitration.

It is the purpose of the UNCITRAL Model Law on International Commercial Arbitration to provide a modern and universally acceptable legislative framework for the conduct of arbitral proceedings. Jurisdictions that have so far enacted laws that follow the Model Law are the following: Australia, Bahrain, Bermuda, Bulgaria, Canada, Cyprus, Egypt, Guatemala, Hong Kong Special Administrative Region, Hungary, India, Iran (Islamic Republic of), Kenya, Lithuania, Malta, Mexico, New Zealand, Nigeria, Oman, Peru, Russian Federation, Scotland, Singapore, Sri Lanka, Tunisia, Ukraine, within the United States of America: California, Connecticut, Oregon and Texas; and Zimbabwe.

Information about the work of UNCITRAL in the area of settlement of disputes and other areas may be obtained from the International Trade Law Branch of the United Nations Office of Legal Affairs, which functions as the substantive Secretariat of UNCITRAL. Its address is: Vienna International Center, P.O. Box 500, A-1400 Vienna, Austria; telephone: (43 1) 21345 4060, fax: (43 1) 21345 5813 (some time in 1998 the number 21345 will change to 26060); e-mail: uncitral@unov.un.or.at; internet homepage: http://www.un.or.at/uncitral.

[End of document]