

PERMANENT COURT OF ARBITRATION  
OPTIONAL RULES FOR ARBITRATING  
DISPUTES BETWEEN TWO STATES



OPTIONAL ARBITRATION RULES – TWO STATES

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## INTRODUCTION

These Rules have been elaborated for use in arbitrating disputes arising under treaties or other agreements between two States; they can be modified for use in connection with multilateral treaties. The Rules are based on the UNCITRAL Arbitration Rules with changes in order to:

- (i) reflect the public international law character of disputes between States, and diplomatic practice appropriate to such disputes;
- (ii) indicate the role of the Secretary-General and the International Bureau of the Permanent Court of Arbitration at The Hague, and the relation of these Rules with the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes; and
- (iii) provide freedom for the parties to choose to have an arbitral tribunal of one, three or five persons.

Experience in arbitrations since 1981 suggests that the UNCITRAL Arbitration Rules provide fair and effective procedures for peaceful resolution of disputes between States concerning the interpretation, application and performance of treaties and other agreements, although they were originally designed for commercial arbitration.

The Rules are optional and emphasize flexibility and party autonomy. For example:

- (i) the Rules, and the services of the Secretary-General and the International Bureau of the Permanent Court of Arbitration, are available for use by *all* States, and are not restricted to disputes in which both States are parties to either The Hague Convention for the Pacific Settlement of International Disputes of 1899 or that of 1907;
- (ii) the choice of arbitrators is not limited to persons who are listed as Members of the Permanent Court of Arbitration;
- (iii) States have complete freedom to agree upon any individual or institution as appointing authority. In order to provide a failsafe mechanism to prevent frustration of the arbitration, the Rules provide that the Secretary-General will designate an appointing authority if the parties do not agree upon the authority, or if the authority they choose does not act.

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A model clause that States may consider inserting in treaties or other agreements to provide for arbitration of future disputes and a model clause for arbitration of existing disputes are set forth at pages 231-232.

These Rules are also appropriate for use in connection with multilateral treaties, provided that appropriate changes are made in the procedures for choosing arbitrators and sharing costs. Guidelines to assist States in adapting these Rules for use in resolving disputes that may involve more than two parties are included at page 245.

Explanatory ‘Notes to the Text’ appear at pages 64-65.

**PERMANENT COURT OF ARBITRATION OPTIONAL RULES  
FOR ARBITRATING DISPUTES BETWEEN TWO STATES**

*Effective October 20, 1992*

SECTION I. INTRODUCTORY RULES

**Scope of Application**

*Article 1*

1. Where the parties to a treaty or other agreement have agreed in writing that disputes shall be referred to arbitration under the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree in writing.

2. The International Bureau of the Permanent Court of Arbitration (the 'International Bureau') shall take charge of the archives of the arbitration proceeding. In addition, upon written request of all the parties or of the arbitral tribunal, the International Bureau shall act as a channel of communication between the parties and the arbitral tribunal, provide secretariat services and/or serve as registry.

3. If on the date the arbitration commences either The Hague Convention for the Pacific Settlement of International Disputes of 1899 or The Hague Convention for the Pacific Settlement of International Disputes of 1907 is in force between the parties, the applicable Convention shall remain in force, and the parties, in the exercise of their rights under the Convention, agree that the procedures set forth in these Rules shall govern the arbitration as provided for in the parties' agreement.

**Notice, Calculation of Periods of Time**

*Article 2*

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received when it has been delivered to the addressee through diplomatic channels. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes 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-work day in the State of the addressee, the period is extended until the first work day which

follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

### **Notice of Arbitration**

#### *Article 3*

1. The party initiating recourse to arbitration (hereinafter called the ‘claimant’) shall give to the other party (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 addresses of the parties;
  - (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
  - (d) A reference to the treaty or other agreement out of or in relation to which the dispute arises;
  - (e) The general nature 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 (i.e., one, three or five), if the parties have not previously agreed thereon.
4. The notice of arbitration may also include the statement of claim referred to in article 18.

### **Representation and Assistance**

#### *Article 4*

Each party shall appoint an agent. The parties may also be assisted by persons of their choice. The name and address of the agent must be communicated in writing to the other party, to the International Bureau and to the arbitral tribunal after it has been appointed.

SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL

**Number of Arbitrators**

*Article 5*

If the parties have not previously agreed on the number of arbitrators (i.e., one, three, or five), and if within thirty days after the receipt by the respondent of the notice of arbitration the parties have not agreed on the number of arbitrators, three arbitrators shall be appointed.

**Appointment of Arbitrators (Articles 6 to 8)**

*Article 6*

1. If a sole arbitrator is to be appointed, either party may propose to the other:

- (a) The names of one or more persons, one of whom would serve as the sole arbitrator; and
- (b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.

2. If within sixty days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within sixty days of the receipt of a party's request therefor, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague (the 'Secretary-General') to designate an appointing authority.

3. The appointing authority shall, at the request of one of the parties, appoint the sole arbitrator as promptly as possible. In making the appointment the appointing authority shall use the following list-procedure, unless both 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) At the request of one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;

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- (b) Within thirty 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;
- (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.

4. In making the appointment, 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 as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

*Article 7*

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 tribunal. If five arbitrators are to be appointed, the two party-appointed arbitrators shall choose the remaining three arbitrators and designate one of those three as the presiding arbitrator of the tribunal.

2. If within thirty 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:

- (a) The first party may request the appointing authority previously designated by the parties to appoint the second arbitrator; or
- (b) If no such authority has been previously designated by the parties, or if the appointing authority previously designated refuses to act or fails to appoint the arbitrator within sixty days after receipt of a party's request therefor, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within sixty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the remaining arbitrators and/or presiding arbitrator, the

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remaining arbitrators and/or presiding arbitrator shall be appointed by an appointing authority in the same way as a sole arbitrator would be appointed under article 6.

*Article 8*

1. When an appointing authority is requested to appoint an arbitrator pursuant to article 6 or article 7, the party which makes the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the treaty or other agreement out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the treaty or other agreement. The appointing authority may request from either party such information as it deems necessary to fulfil its function.
2. Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.
3. In appointing arbitrators pursuant to these Rules, the parties and the appointing authority are free to designate persons who are not Members of the Permanent Court of Arbitration at The Hague.

**Challenge of Arbitrators (Articles 9 to 12)**

*Article 9*

A prospective arbitrator shall disclose to those who approach him/her in connection with his/her possible appointment any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him/her of these circumstances.

*Article 10*

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 him/her only for reasons of which he/she becomes aware after the appointment has been made.

*Article 11*

1. A party who intends to challenge an arbitrator shall send notice of its challenge within thirty days after the appointment of the challenged arbitrator has been notified to the

challenging party or within thirty days after the circumstances mentioned in articles 9 and 10 became known to that party.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his/her office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 6 or 7 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his/her right to appoint or to participate in the appointment.

#### *Article 12*

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made:

- (a) When the initial appointment was made by an appointing authority, by that authority;
- (b) When the initial appointment was not made by an appointing authority, but an appointing authority has been previously designated, by that authority;
- (c) In all other cases, by the appointing authority to be designated in accordance with the procedure for designating an appointing authority as provided for in article 6.

2. If the appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in articles 6 to 9 except that, when this procedure would call for the designation of an appointing authority, the appointment of the arbitrator shall be made by the appointing authority which decided on the challenge.

### **Replacement of an Arbitrator**

#### *Article 13*

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 to 9 that was applicable to the appointment or choice

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of the arbitrator being replaced. Any resignation by an arbitrator shall be addressed to the arbitral tribunal and shall not be effective unless the arbitral tribunal determines that there are sufficient reasons to accept the resignation, and if the arbitral tribunal so determines the resignation shall become effective on the date designated by the arbitral tribunal. In the event that an arbitrator whose resignation is not accepted by the tribunal nevertheless fails to participate in the arbitration, the provisions of paragraph 3 of this article shall apply.

2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his/her performing his/her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply, subject to the provisions of paragraph 3 of this article.

3. If an arbitrator on a three- or five-person tribunal fails to participate in the arbitration, the other arbitrators shall, unless the parties agree otherwise, have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of one arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, or award without the participation of an arbitrator, the other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the other arbitrators determine not to continue the arbitration without the non-participating arbitrator, the arbitral tribunal shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of articles 6 to 9, unless the parties agree on a different method of appointment.

**Repetition of Hearings in the Event of the Replacement of an Arbitrator**

*Article 14*

If under articles 11 to 13 the sole arbitrator or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

SECTION III. ARBITRAL PROCEEDINGS

**General Provisions**

*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 its case.
2. If either party so requests at any appropriate stage of the proceedings, 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.
3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party and a copy shall be filed with the International Bureau.

**Place of Arbitration**

*Article 16*

1. Unless the parties have agreed otherwise, the place where the arbitration is to be held shall be The Hague, The Netherlands. If the parties agree that the arbitration shall be held at a place other than The Hague, the International Bureau of the Permanent Court of Arbitration shall inform the parties and the arbitral tribunal whether it is willing to provide the secretariat and registrar services referred to in article 1, paragraph 1, and the services referred to in article 25, paragraph 3.
2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
3. After inviting the views of the parties, the arbitral tribunal may meet at any place it deems appropriate for the inspection of property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
4. The award shall be made at the place of arbitration.

## **Language**

### *Article 17*

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 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.

## **Statement of Claim**

### *Article 18*

1. Unless the statement of claim was contained in the notice of arbitration, within a period of time to be determined by the arbitral tribunal, the claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators. A copy of the treaty or other agreement and of the arbitration agreement if not contained in the treaty or agreement, shall be annexed thereto.
2. The statement of claim shall include a precise statement of the following particulars:
  - (a) The names and addresses of the parties;
  - (b) A statement of the facts supporting the claim;
  - (c) The points at issue;
  - (d) The relief or remedy sought.

The claimant may annex to its statement of claim all documents it deems relevant or may add a reference to the documents or other evidence it will submit.

## **Statement of Defence**

### *Article 19*

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators.
2. The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim (art. 18, para. 2). The respondent may annex to its statement the documents on which it relies for its defence or may add a reference to the documents or other evidence it will submit.
3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same treaty or other agreement or rely on a claim arising out of the same treaty or other agreement for the purpose of a set-off.
4. The provisions of article 18, paragraph 2, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

## **Amendments to the Claim or Defence**

### *Article 20*

During the course of the arbitral proceedings either party may amend or supplement its claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

## **Pleas as to the Jurisdiction of the Arbitral Tribunal**

### *Article 21*

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
2. The arbitral tribunal shall have the power to determine the existence or the validity of the treaty or other agreement of which an arbitration clause forms a part. For the

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purposes of article 21, an arbitration clause which forms part of the treaty or agreement and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the treaty or agreement. A decision by the arbitral tribunal that the treaty or agreement is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award.

### **Further Written Statements**

#### *Article 22*

The arbitral tribunal shall, after inviting the views of the parties, decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the period of time for communicating such statements.

### **Periods of Time**

#### *Article 23*

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed ninety days. However, the arbitral tribunal may set longer time limits, if it concludes that an extension is justified.

### **Evidence and Hearings (Articles 24 and 25)**

#### *Article 24*

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall

decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in its statement of claim or statement of defence.

3. At any time during the arbitral proceedings the arbitral tribunal may call upon the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine. The tribunal shall take note of any refusal to do so as well as any reasons given for such refusal.

*Article 25*

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least thirty days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The International Bureau shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal and the International Bureau at least thirty days before the hearing or such longer period before the hearing as the arbitral tribunal may determine.

4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

### **Interim Measures of Protection**

#### *Article 26*

1. Unless the parties otherwise agree, the arbitral tribunal may, at the request of either party, take any interim measures it deems necessary to preserve the respective rights of either party.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

### **Experts**

#### *Article 27*

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his/her inspection any relevant documents or goods that he/she may request of them. Any dispute between a party and such expert as to the relevance and appropriateness of the required information or production shall be referred to the arbitral tribunal for decision.
3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his/her report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 25 shall be applicable to such proceedings.

### **Failure to Appear or to Make Submissions**

#### *Article 28*

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate its claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate its statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

### **Closure of Hearings**

#### *Article 29*

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

### **Waiver of Rules**

#### *Article 30*

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

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SECTION IV. THE AWARD

**Decisions**

*Article 31*

1. When there are three or five arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his/her own, subject to revision, if any, by the arbitral tribunal.

**Form and Effect of the Award**

*Article 32*

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.
2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three or five arbitrators and any one of them fails to sign, the award shall state the reason for the absence of the signature(s).
5. The award may be made public only with the consent of both parties.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the International Bureau.

**Applicable Law**

*Article 33*

1. The arbitral tribunal shall apply the law chosen by the parties, or in the absence of an agreement, shall decide such disputes in accordance with international law by applying:

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- (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- (b) International custom, as evidence of a general practice accepted as law;
- (c) The general principles of law recognized by civilized nations;
- (d) Judicial and arbitral decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the arbitral tribunal to decide a case *ex aequo et bono*, if the parties agree thereto.

### **Settlement or Other Grounds for Termination**

#### *Article 34*

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated to the parties by the International Bureau. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraphs 2 and 4 to 6, shall apply.

### **Interpretation of the Award**

#### *Article 35*

1. Within sixty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.

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2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 6, shall apply.

**Correction of the Award**

*Article 36*

1. Within sixty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 6, shall apply.

**Additional Award**

*Article 37*

1. Within sixty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 6, shall apply.

**Costs (Articles 38 to 40)**

*Article 38*

The arbitral tribunal shall fix the costs of arbitration in its award. The term ‘costs’ includes only:

- (a) The fees of the arbitral tribunal;

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- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague and the International Bureau.

*Article 39*

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.
2. When a party so requests, the arbitral tribunal shall fix its fees only after consultation with the Secretary-General of the Permanent Court of Arbitration who may make any comment he/she deems appropriate to the arbitral tribunal concerning the fees.

*Article 40*

1. Each party shall bear its own costs of arbitration. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39, paragraph 1, in the text of that order or award.
3. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

**Deposit of Costs**

*Article 41*

1. The International Bureau following the commencement of the arbitration, may request each party to deposit an equal amount as an advance for the costs referred to in article 38, paragraphs (a), (b), (c) and (e). All amounts deposited by the parties pursuant to this paragraph and paragraph 2 of this article shall be directed to the International Bureau,

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and disbursed by it for such costs, including, *inter alia*, fees to the arbitrators, the Secretary-General and the International Bureau.

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

4. After the award has been made, the International Bureau shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

NOTES TO THE TEXT

These Rules are based on the UNCITRAL Arbitration Rules, with the following modifications:

- (i) Modifications to reflect the public international law character of disputes between States, and diplomatic practice appropriate to such disputes:

Article 1, para. 1  
Article 2, para. 2  
Article 4  
Article 8, paras. 1 and 2  
Article 13, paras. 1 and 2; para. 3 (added)  
Article 15, para. 2  
Article 23  
Article 24, para. 3  
Article 27, para. 2  
Article 32, para. 7 (deleted)  
Article 33  
Article 39, para. 1; paras. 2 and 4 (deleted); para. 3 (renumbered)  
Article 41, para. 4

Throughout the Rules, the words ‘treaty or other agreement’ are substituted for ‘contract’.

Throughout the Rules, time limits placed upon the parties have been made twice as long, e.g., ‘thirty days’ substituted for ‘fifteen days,’ ‘sixty days’ substituted for ‘thirty days’, with the exception of article 7, paragraph 2.

Throughout the Rules, whenever reference is made to a State, the words ‘it’ and ‘its’ are substituted for ‘he’, ‘him’ and ‘his’, respectively; whenever reference is made to a person the words ‘he/she’, ‘him/her’ and ‘his/her’ are substituted for ‘he’, ‘him’ and ‘his’, respectively.

- (ii) Modifications to indicate the functions of the Secretary-General and the International Bureau of the Permanent Court of Arbitration, and the relationship of the Rules to the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes:

Article 1, para. 2; para. 3 (added)  
Article 3, para. 4  
Article 8, para. 1; para. 3 (added)  
Article 15, para. 3

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Article 16, paras. 1 and 3  
Article 25, para. 3  
Article 32, para. 6  
Article 34, para. 3  
Article 38, para. (a); para. (e) (deleted); para. (f) (renumbered)  
Article 41, para. 1; para. 3 (deleted); paras. 4 and 5 (renumbered)

- (iii) Modifications to provide freedom for the parties to choose to have an arbitral tribunal of one, three or five persons:

Article 5  
Article 7, paras. 1 and 3  
Article 13, para. 3 (added)  
Article 31, para. 1  
Article 32, para. 4

- (iv) Other modifications:

Article 18, para. 2  
Article 22  
Article 26, para. 1  
Headings preceding articles 28 and 33

