



# **UNCITRAL and The Costs of International Arbitration**

**08.10.2013**

*Renaud Sorieul  
Secretary of UNCITRAL*

# Topics to be Covered

- **I. Introduction to UNCITRAL**  
(origin & mandate of UNCITRAL, Structure, Working methods, Achievement in the area of arbitration)
  
- **II. Regulating costs : the new review mechanism in the UNCITRAL Rules**

# Origin of UNCITRAL

- **Established in 1966**
- **Reasons:**
  - **Dramatic expansion of world trade**
  - **Need for uniform rules for international trade**
  - **Trade creates wealth**
  - **Trade is essential to the economic stability**
  - **Promotes world peace**

# Trade law and the UN



The UN... will employ international machinery for the promotion of the economic and social advancement of all peoples (Preamble of the UN Charter, 1945)



Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory... [MDG 8 – Target 12, 2000]

# Mandate of UNCITRAL

## *Facilitate International Trade*

- **Coordinate work of organizations in the field of international trade law**
- **Prepare and/or promote Conventions and Model Laws and ensure their uniform interpretation**
- **Collect and disseminate information on developments in the field of international trade law**

# The Role of UNCITRAL

## NOT INVOLVED IN

- **Settling disputes between States**
- **Settling disputes between private parties- therefore no practical experience in handling “tactics”**
- **Providing legal advice on disputes to parties**

## INVOLVED IN

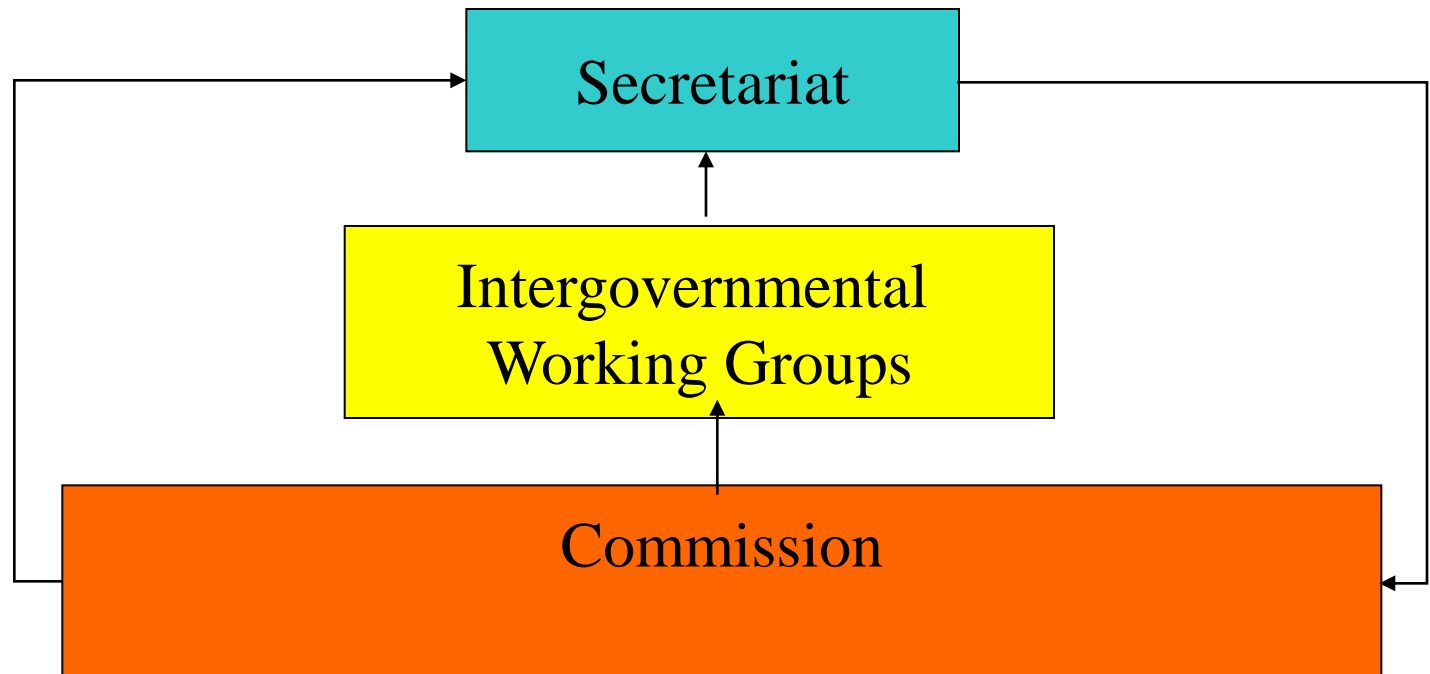
- **Promoting the unification & harmonization of the law of international trade and assisting in domestic law reform (*legislative work*)**
- **Strengthening uniform application & interpretation of the instruments adopted (*technical assistance*)**
- **Coordinating the work of other similar organizations (*cooperation with UN and non-UN bodies /organizations*)**

# Membership of UNCITRAL

## ➤ 60 member States

- Elected by the UN General Assembly for a term of 6 years
- Every 3 years terms of half the members expire
- Ensure representation of the world's various geographic regions and its principal economic and legal systems

# Organization and Methods of Work





# Regional Centre for Asia and the Pacific

## Focus Area:



# UNCITRAL Dispute Settlement Texts

- 2013 Rules on Transparency in Treaty-based Investor-State Arbitration.
- 2012 Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules (2010)
- 2010 UNCITRAL Arbitration Rules (as revised in 2010)
- 2006 Recommendation regarding the interpretation of article II (2), and article VII (1), of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)
- 2002 UNCITRAL Model Law on International Commercial Conciliation
- 1996 UNCITRAL Notes on Organizing Arbitral Proceedings
- 1985 UNCITRAL Model Law on International Commercial Arbitration (amended in 2006)
- 1982 Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules (1976)
- 1980 UNCITRAL Conciliation Rules
- 1976 UNCITRAL Arbitration Rules
- 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards

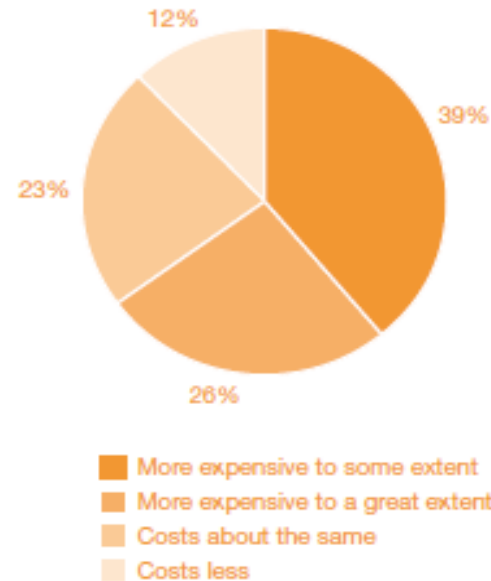
# Cost as a matter of concern...

## Cost

10.1 Perception: International arbitration is considered to be less costly than transnational litigation.

FALSE

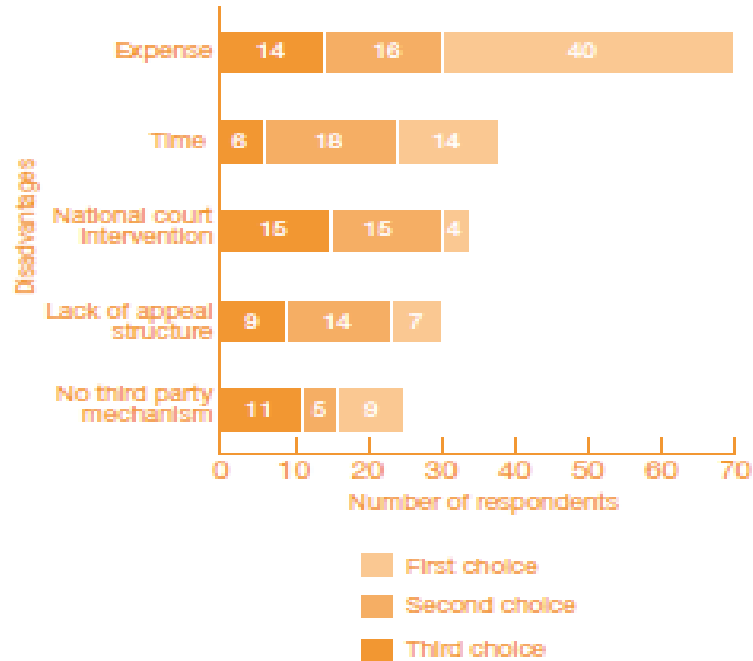
Is international arbitration more expensive than transnational litigation?



### 2006 International Arbitration Study: Corporate Attitudes and Practices, p.19

From: Queen Mary, School of International Arbitration  
[http://www.arbitrationonline.org/docs/IAstudy\\_2006.pdf](http://www.arbitrationonline.org/docs/IAstudy_2006.pdf)

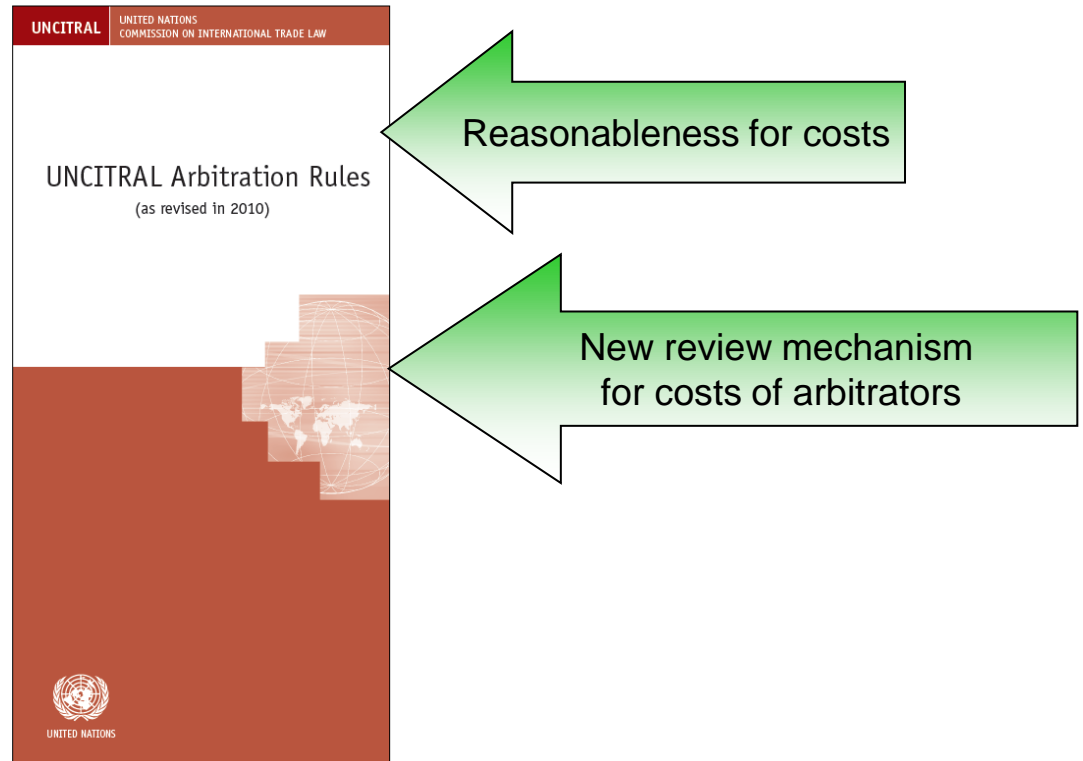
**Disadvantages of international arbitration  
(No. of respondents)**



**2006 International Arbitration Study:  
Corporate Attitudes and Practices, p.7**

From: Queen Mary, School of International Arbitration  
[http://www.arbitrationonline.org/docs/IAstudy\\_2006.pdf](http://www.arbitrationonline.org/docs/IAstudy_2006.pdf)

# Therefore an international topic...



# UNCITRAL Arbitration Rules

- Adopted in 1976, revised in 2010
- Designed for world wide use
- Contractual rules that apply only when the parties have so agreed
- Cover procedural issues
- Mandatory provisions of applicable law prevail over Rules

# UNCITRAL Arbitration Rules 2010

## The Award

### Provisions on Costs, Articles 40-43

1976 Rules: Costs fixed by arbitrators

→ 2010 Rules: review mechanism



Transparency & safeguards against possible  
abuse

# UNCITRAL Arbitration Rules 2010

## The Award

### Definition of costs, Article 40

- Costs shall be fixed in the final award, and, if appropriate, in another decision
- Requirement of reasonableness of fees and expenses

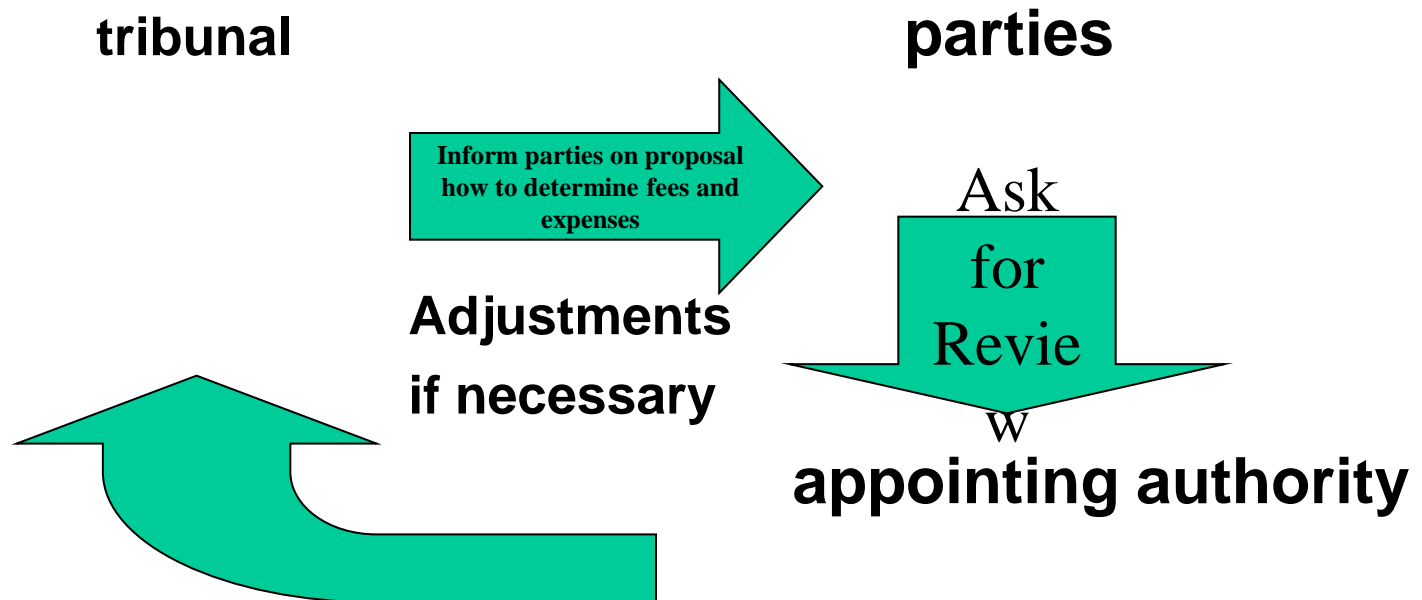


# UNCITRAL Arbitration Rules 2010

## The Award

### Review mechanism of costs, Article 41

Para. (3): *promptly after constitution*

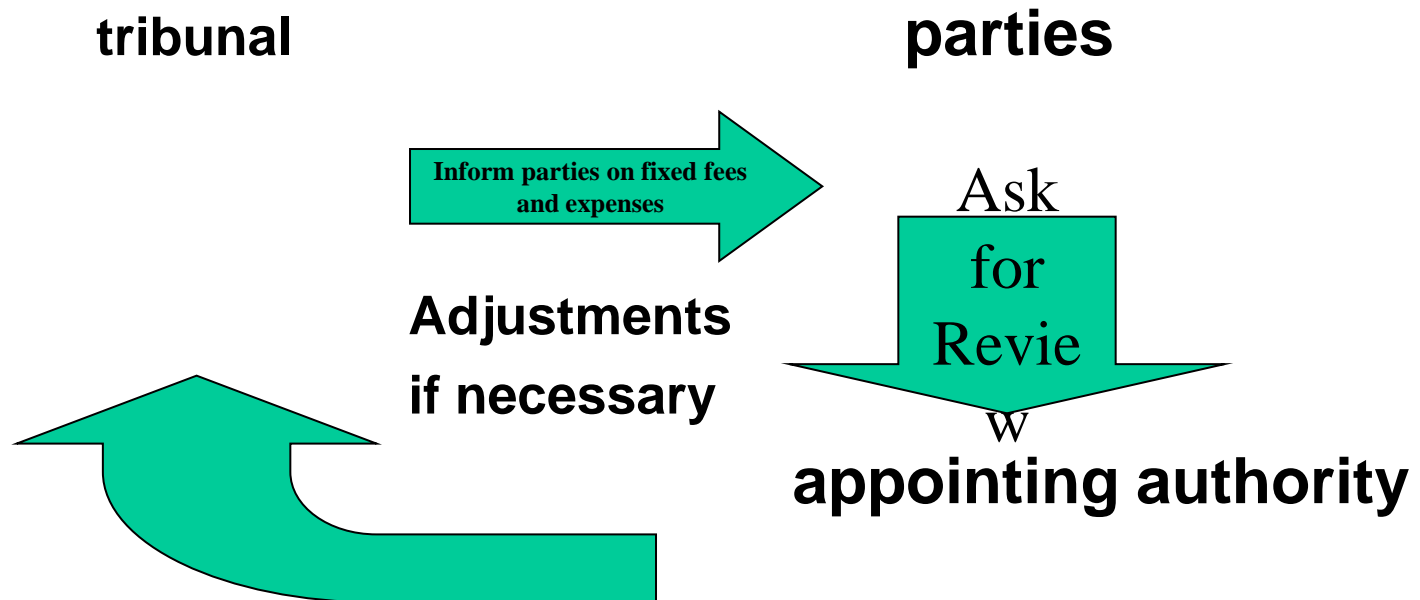


# UNCITRAL Arbitration Rules 2010

## The Award

### Review mechanism of costs, Article 41

Para. (4): *after fixing of the fees*



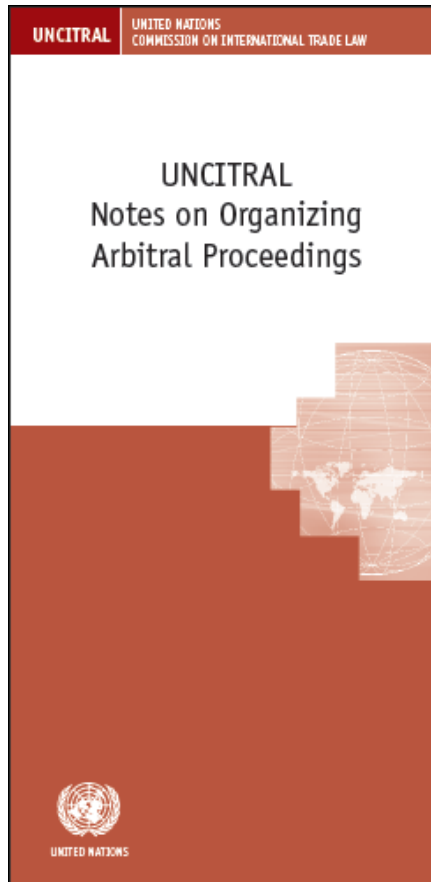
# UNCITRAL Arbitration Rules 2010

## The Award

### Allocation of costs, Article 42

- Paragraph (1): Costs shall be borne by the unsuccessful party or parties
- Paragraph (2): Determination in the final award or any other decision of *any amount that a party may have to pay to another party as a result of the decision on the allocation of costs*

# UNCITRAL Notes on Organizing Arbitral Proceedings



Designed to assist arbitrators  
clear organisation of the proceedings  
hinders delay-tactics

**Annotated list**

*for example:*

- \*Arbitration rules
- \*Language of proceedings
- \*Place of arbitration

- **Non-binding text, but “aide-memoire”**

**For more information  
about the Arbitration Rules  
or other texts of UNCITRAL  
visit our website at**

[www.uncitral.org](http://www.uncitral.org)

**Thank you!**