UNCITRAL
and
The Costs of International Arbitration

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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

Secretariat

Intergovernmental Working Groups

Commission
Regional Centre for Asia and the Pacific
Focus Area:
UNCITRAL Dispute Settlement Texts

- 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
- 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...

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

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
Disadvantages of international arbitration (No. of respondents)

- Expense: 40 respondents (1st choice), 16 (2nd choice), 14 (3rd choice)
- Time: 14 respondents (1st choice), 18 (2nd choice), 6 (3rd choice)
- National court intervention: 4 respondents (1st choice), 15 (2nd choice), 15 (3rd choice)
- Lack of appeal structure: 7 respondents (1st choice), 14 (2nd choice), 9 (3rd choice)
- No third party mechanism: 9 respondents (1st choice), 5 (2nd choice), 11 (3rd choice)

Legend:
- First choice
- Second choice
- Third choice
Therefore an international topic…

Reasonableness for costs

New review mechanism for costs of arbitrators
UNCITRALK 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

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Transparency & safeguards against possible abuse
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
Review mechanism of costs, Article 41

Para. (3): *promptly after constitution*

tribunal

Inform parties on proposal how to determine fees and expenses

Adjustments if necessary

Ask for Review

appointing authority

parties
Review mechanism of costs, Article 41

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

Inform parties on fixed fees and expenses

Adjustments if necessary

Tribunal

Parties

Ask for Review

Appointing authority
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 with clear organisation of the proceedings and hinder 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

Thank you!