

## **INTRODUCTION TO THE UNCITRAL NOTES ON ORGANIZING ARBITRAL PROCEEDINGS**

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A basic characteristic of all leading international commercial arbitration rules is that they provide great flexibility for arbitrators to determine how each case will be conducted. This is a valuable feature because it permits the rules to be used in all legal systems, in many different kinds of transactions, and in widely varying cultures.

Thus, for example, a key provision of the American Arbitration Association's International Arbitration Rules states that:

Subject to these rules, the [arbitral] tribunal may conduct the arbitration in whatever manner it considers appropriate, provided the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.<sup>1</sup>

This is based on the UNCITRAL Arbitration Rules which include substantially identical wording.<sup>2</sup> Similarly, the London Court of International Arbitration Rules state that “. . . the tribunal shall have the widest possible discretion” to conduct the proceedings in a manner which it considers to be the most efficient and effective in the particular circumstances of each case,<sup>3</sup> and other rules, such as those of the

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1. American Arbitration Association International Arbitration Rules, Mar. 1, 1991, art. 16, 17 Y.B. COM. ARB. 310, 316 (1992). The same wording appears in the most recent text of the rules, as amended and effective April 1, 1997.

2. See United Nations Commission on International Trade Law Arbitration Rules, Dec. 15, 1976, art. 15, 15 I.L.M. 701, 707.

3. London Court of International Arbitration Rules, Jan. 1, 1985, art. 5.2, 24 I.L.M. 1137, 1138.

International Chamber of Commerce,<sup>4</sup> have provisions to the same effect. These provisions are consistent with many national laws which also permit arbitrators wide discretion in determining how to conduct cases.<sup>5</sup>

While such flexibility in arbitration rules and laws is valuable in that it provides latitude for arbitrators to take into account the circumstances of particular cases, it can leave parties and their lawyers uncertain concerning the specific procedures that the arbitrators will choose to follow. The problem is acute in international commercial arbitration because there are likely to be three arbitrators, each from a different country, and there may also be lawyers from different countries. These participants often have different legal backgrounds and, consequently, varying expectations as to procedural details.

In 1993, the United Nations Commission on International Trade Law (UNCITRAL) undertook a project to help solve this practical problem. The approach was to prepare the UNCITRAL Notes on Organizing Arbitral Procedures which provides a checklist for parties and arbitrators of procedural matters that it would be useful to consider early in the proceeding in order to assist in the orderly planning of arbitrations and so as to give lawyers timely advance information needed in preparing their cases. The task was completed in May 1996 after three years of discussion and drafting by delegates and observers from more than fifty countries, representing a wide range of legal, social, and economic systems, and by experts from a number of nongovernmental organizations. Thus, the Notes drew on a deep reservoir of actual experience in conducting arbitrations. As is typical in UNCITRAL projects, vital tasks of research, writing, and coordination were performed by its Secretariat, led by the Secretary, Dr. Gerrold Hermann, with a major role being played by Dr. Jernej Sekolec.

It is important to recognize that the Notes do not establish any legal requirements binding on parties and arbitrators. Their only purpose is to remind participants in arbitration of some nineteen topics that it might be useful to discuss in order to facilitate planning the arbitral process. Thus, there is no legal requirement that the checklist be used, and, if it is used, it is subject to modification at the discretion of the arbitral tribunal. Arbitrators using the list may consult with the parties at any stage of the proceedings in person, by conference telephone calls, by

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4. International Chamber of Commerce New Rules of Conciliation and Arbitration, Jan. 1, 1989, art. 11, 28 I.L.M. 231, 239.

5. See, e.g., UNCITRAL Model Law on International Commercial Arbitration, Sept. 1985, art. 19, 24 I.L.M. 1302, 1307.

electronic means, or in written communications. While this will be typically done early in the case, further consultations on some of the items may also be useful at one or more later stages.

The Notes are intended for universal application, and their use is not restricted to cases conducted under the UNCITRAL Arbitration Rules. The checklist provides helpful guidelines for cases under other arbitration rules, and indeed, are especially useful in “ad hoc” arbitrations in which the parties have not agreed to any established rules.

The text of the Notes which appears *infra* has recently been published by the United Nations in a booklet that is accompanied by a separate removable folder that lists the nineteen topics in the checklist and can be used as a convenient pocket agenda. The folder (which is not reprinted herein) has substantially the same text as the “List of matters for possible consideration in organizing arbitral proceedings” which is also found in the full text of the Notes.

The Editors of the *Tulane Journal of International and Comparative Law* perform a valuable service in publishing the Notes and thus helping practicing lawyers and arbitrators to conduct international commercial arbitration more efficiently and effectively.