

PERMANENT COURT
OF ARBITRATION

OPTIONAL RULES
FOR ARBITRATION OF DISPUTES RELATING TO
NATURAL RESOURCES AND/OR
THE ENVIRONMENT

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INTRODUCTION

These Rules are based on the UNCITRAL Arbitration Rules¹ with changes in order to:

- (i) reflect the particular characteristics of disputes having a natural resources, conservation, or environmental protection component;²
- (ii) reflect the public international law element which pertains to disputes which may involve States and utilization of natural resources and environmental protection issues, and international practice appropriate to such disputes;
- (iii) indicate the role of the Secretary-General and the International Bureau of the Permanent Court of Arbitration (PCA) at The Hague;
- (iv) provide freedom for the parties to choose to have an arbitral tribunal of one, three or five persons;
- (v) provide for establishment of a specialized list of arbitrators mentioned in article 8(3) and a list of scientific and technical experts mentioned in article 27(5) of these Rules.³
- (vi) provide suggestions for establishing procedures aimed at ensuring confidentiality.

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 PCA, are available to States, international organizations, and private parties;

¹ Explanatory ‘Notes to the Text’ indicating changes from the UNCITRAL Arbitration Rules appear at page 205.

² Parties should in that connection bear in mind any legal or other issue that might affect the arbitrability of such disputes.

³ Parties may also choose from arbitrators listed as Members of the PCA. The choice of arbitrators is not limited to these lists.

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- (ii) The Rules may be used, *inter alia*, in relation to disputes between two or more States parties to a multilateral agreement relating to access to and utilization of natural resources concerning the interpretation or application of that agreement;
- (iii) The parties have complete freedom to agree upon any individual or institution to act as appointing authority. In order to provide a fail-safe mechanism to prevent frustration or delay of the arbitration, the Rules provide that the Secretary-General will act as the appointing authority if the parties do not agree upon the authority, or if the authority chosen does not act.

Mindful of the possibility of multiparty involvement in disputes having a conservation, natural resources, or environmental protection component, these Rules provide specifically for multiparty appointment of arbitrators.

Where the dispute is to be referred to an arbitral tribunal of three or more arbitrators, parties should particularly bear in mind that these Rules do not empower the appointing authority to appoint all arbitrators when multiple claimants or respondents fail to make a joint appointment. Such a provision, if desirable to the parties, may be added to the arbitration agreement.

Where arbitrations deal with technical questions, provision is made in article 24(4) for the submission to the arbitral tribunal of a document agreed to by the parties, summarizing and providing background to any scientific or technical issues which the parties may wish to raise in their memorials or at oral hearings.

The framers of existing and future agreements may need to determine the relationship between these Rules and those agreements, and may modify them as necessary. Modifications to these Rules or such agreements as to jurisdiction *ratione personae* may be especially necessary to allow for the participation of non-State actors.

A model clause that parties 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 page 241.

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FOR ARBITRATION OF DISPUTES RELATING TO
NATURAL RESOURCES AND/OR THE ENVIRONMENT

Effective June 19, 2001

SECTION I. INTRODUCTORY RULES

Scope of Application

Article 1

1. Where all parties have agreed in writing that a dispute that may arise or that has arisen between them shall be referred to arbitration under the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, such disputes shall be settled in accordance with these Rules subject to such modification as the parties may expressly agree upon in writing. The expression ‘agreed upon in writing’ includes provisions in agreements, contracts, conventions, treaties, the constituent instrument of an international organization or agency or reference upon consent of the parties by a court. The characterization of the dispute as relating to natural resources and/or the environment is not necessary for jurisdiction where all the parties have agreed to settle a specific dispute under these Rules.

2. Agreement by a party to arbitration under these Rules constitutes a waiver of any right of sovereign immunity from jurisdiction, in respect of the dispute in question, to which such party might otherwise be entitled. A waiver of immunity relating to the execution of an arbitral award must be explicitly expressed.

3. 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.

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 in the case of a State, or by any other means by which it can be ascertained that notice has reached its destination. 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 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 or parties initiating recourse to arbitration (hereinafter called the ‘claimant’) shall give to the other party or parties (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 any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency, or relationship out of, or in relation to which, the dispute arises;
- (d) the pertinent arbitration clause or separate arbitration agreement;
- (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

The parties may be represented or assisted by a person or persons of their choice. The name and address of that person or persons must be communicated in writing to the other party, to the International Bureau and to the arbitral tribunal after he/she 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 pursuant to the appointment procedure in articles 6 to 8.

Appointment of Arbitrators (Articles 6 to 8)

Article 6

1. If a sole arbitrator is to be appointed, any 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 thirty 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, the appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague (the 'Secretary-General').

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 all parties agree that the list-procedure should not be used, or used with such modifications as the parties may agree upon, 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 any of the parties the appointing authority shall communicate to all parties an identical list containing at least three names;
- (b) within thirty days after the receipt of this list, each party shall 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 where the parties have agreed upon the order of preference;
- (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.

5. Where the appointing authority proposes to appoint a person not suggested by the parties, the parties shall, before such appointment is made, be consulted by the appointing authority in regard to any possible objections on the grounds of justifiable doubts as to the proposed appointee's impartiality or independence or that he or she does not possess the requisite qualifications.

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 appointing authority shall be the Secretary-General. The first party may then request the appointing authority 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 remaining arbitrators and/or presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 6. Where the notice of arbitration names more than one claimant and the parties have not agreed upon a procedure of appointment, the claimants shall make a joint appointment of an arbitrator in their notice of arbitration. The appointment of the second arbitrator and the presiding arbitrator shall, subject to paragraph 5 of this article, take place in accordance with this article.

4. Where the notice of arbitration names more than one respondent and the parties have not agreed upon a procedure of appointment, the respondents shall jointly appoint an arbitrator. If, for whatever reason, the respondents do not make a joint appointment of an arbitrator within thirty days after receiving the notice of arbitration, the appointment of the second arbitrator shall take place in accordance with paragraph 2 of this article.

5. If, in the situation contemplated in paragraphs 3 and 4 above, 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, such arbitrator(s) shall be appointed by the 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 including copies of the documents mentioned in article 3, paragraph 3(c) and (d). The appointing authority may request from any party such additional 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 including reference to their previous experience in the field of arbitration.
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. For the purpose of assisting the parties and the appointing authority the Secretary-General will make available a list of persons considered to have expertise in the subject-matters of the dispute at hand for which these Rules have been designed.

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, and thereafter promptly, 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 or if he/she does not have the qualifications agreed by the parties in their arbitration agreement.
2. A party may challenge the arbitrator appointed by it only for reasons of which it 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 or parties, 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 its right to appoint or to participate in the appointment.

Article 12

1. If the other party or parties do 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 of the arbitrator being replaced. In the case of a three- or five-person tribunal, resignation by any arbitrator shall be addressed to the arbitral tribunal and shall not be effective

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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 is replaced, any hearings already held shall as far as necessary be repeated, unless the parties agree otherwise. If one of several arbitrators (including the presiding arbitrator) is replaced, unless the parties agree otherwise or the arbitral tribunal so decides, hearings already held shall not be repeated.

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 to present its case.

2. If any claimant or respondent 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 solely 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.
4. A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the arbitral tribunal, shall make an application to have the information classified as confidential by notice containing the reasons for which it considers the information confidential to the arbitral tribunal, with a copy to the other party.
5. The arbitral tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party or parties invoking its confidentiality. If the arbitral tribunal so determines, it shall decide and communicate in writing to the parties and the Registry under what conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.
6. The arbitral tribunal may also, at the request of a party or on its own motion, appoint a confidentiality advisor as an expert in accordance with article 27 in order to report to it, on the basis of the confidential information, on specific issues designated by the arbitral tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the arbitral tribunal.

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 shall inform the parties and the arbitral tribunal whether it is in a position to provide the secretariat and registrar services referred to in article 1, paragraph 3, 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 documents mentioned in article 3, paragraph 3(c) and (d), 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 between the parties;

- (d) the relief or remedy sought.

The claimant shall annex to its statement of claim all documents it relies upon or 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 or each of the respondents 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, or a claim for a set-off, arising out of, or in connection with, any of the items mentioned in article 3, paragraph 3(c).
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 any party may amend or supplement its claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement 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 or supplemented in such a manner that the resulting 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 any legal instrument of which an arbitration clause forms a part. For the purposes of this article, an arbitration clause which forms part of such instrument and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of such instrument. A decision by the arbitral tribunal that the instrument 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 or deal with its determination *motu proprio* of its own jurisdiction as a preliminary question. However, the arbitral tribunal in its discretion 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 sixty 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 arbitral tribunal shall take into account any refusal to do so as well as any reasons given for such refusal.
4. The arbitral tribunal may request the parties jointly or separately to provide a non-technical document summarizing and explaining the background to any scientific, technical or other specialized information which the arbitral tribunal considers to be necessary to understand fully the matters in dispute.

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 in consultation with the parties 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 other 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. Taking account of the views expressed by the parties, 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 any party and having obtained the views of all the parties, take any interim measures including provisional orders with respect to the subject-matter of the dispute it deems necessary to preserve the rights of any party or to prevent serious harm to the environment falling within the subject-matter of the dispute.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require appropriate security for 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. After having obtained the views of the parties, the arbitral tribunal may upon notice to the parties 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, subject to the provisions for confidentiality in article 15, paragraphs 4 to 6, 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 subject to article 15, paragraphs 4 and 5, on which the expert has relied in his/her report.

4. At the request of any 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 any 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.

5. The Secretary-General will provide an indicative list of persons considered to have expertise in the scientific or technical matters in respect of which these Rules might be relied upon. In appointing one or more experts pursuant to paragraph 1 above, the arbitral tribunal shall not be limited in its choice to any person or persons appearing on the indicative list of experts.

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 draw appropriate inferences from such failure and 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 nevertheless proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

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.

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. Separate or dissenting opinions (if any) shall be in writing and signed by the dissenting arbitrator or arbitrators.

6. The award may be made public only with the consent of all the parties.
7. Copies of the award signed by the arbitrators shall be communicated to the parties by the International Bureau.

Applicable Law

Article 33

1. In resolving the dispute, the arbitral tribunal shall apply the law or rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the national and/or international law and rules of law it determines to be appropriate.
2. This provision shall not prejudice the power of the arbitral tribunal to decide a case *ex aequo et bono*, if the parties expressly 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 after receiving the views of the parties thereon, 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, any party, with notice to the other party or parties, may request that the arbitral tribunal give an interpretation of the award.
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, any party, with notice to the other party or parties, 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, any party, with notice to the other party or parties, 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;
- (b) the travel and other reasonable 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 fees and expenses of the Secretary-General 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.

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 correction 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, and disbursed by it for such costs, including, *inter alia*, fees to the arbitrators, the Secretary-General and the International Bureau.
2. Security for the costs of interim measures shall be directed to the International Bureau and disbursed by it upon order from the arbitral tribunal.
3. During the course of the arbitral proceedings the International Bureau may request supplementary deposits from the parties.
4. 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.
5. 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 involving international organizations and States, and diplomatic practice appropriate to such disputes:

Article 1, paras. 1 and 2
Article 2, paras. 1 and 2
Article 3, para. 3(c) and (d)
Article 4
Article 6, para. 4
Article 8, para. 1; para. 3 (added)
Article 13, paras. 1 and 2
Article 16, para. 3
Article 22
Article 24, para. 3
Article 25, para. 4
Article 26, paras. 1 and 2
Article 27, paras. 1, 2 and 3
Article 32, paras. 5 and 6 (renumbered); para. 7 (deleted)
Article 34, para. 2
Article 38, para. (e) (deleted)
Article 39, paras. 2 and 3 (deleted); para. 4 (renumbered and modified)

Throughout the Rules, whenever reference is made to a State or an international organization, 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:

Article 1, para. 3 (added)
Article 4
Article 6, para. 2; para. 5 (added)
Article 7, para. 2(b)
Article 15, para. 3
Article 16, para. 1
Article 25, para. 3
Article 27, para. 5 (added)
Article 32, para. 7 (added)

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Article 34, para. 3
Article 38, sub-para. (f) (renumbered and modified)
Article 41, para. 1; para. 2 (added); para. 3 (deleted); UNCITRAL para. 2
(renumbered and modified)

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

Article 3, para. 3(g)
Article 5
Article 7, paras. 1 and 3; paras. 4 and 5 (added)
Article 13, paras. 1 and 2; para. 3 (added)
Article 31, para. 1
Article 32, para. 4

(iv) Time limit modifications:

Article 5
Article 6, para. 3(b)
Article 7, paras. 2(b) and 3
Article 11, para. 1
Article 23
Article 25, paras. 2 and 3
Article 35, para. 1
Article 36, para. 1
Article 37, para. 1
Article 41, para. 4

(v) Other modifications:

Article 3, para. 4
Article 6, para. 3, 3(b) and 3(c)
Article 8, para. 2
Article 9
Article 10, para. 1
Article 14
Article 15, paras. 2, 4, 5 and 6 (added)
Article 16, para. 1
Article 18, paras. 1 and 2
Article 19, para. 3
Article 21, paras. 2 and 4
Article 24, para. 4 (added)
Article 28, para. 3
Article 31, para. 2
Article 32, new para. 5 (added)

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Article 33, paras. 1 and 2; para. 3 (deleted)
Article 34, para. 3
Article 35, para. 2
Article 36, para. 2
Article 37, para. 3
Article 38, paras. (a) and (b)
Article 39, para. 1
Article 40, para. 1; para. 2 (deleted); para. 3 (re-numbered); para. 4 (renumbered
and modified)
Headings preceding articles 28 and 33

PERMANENT COURT
OF ARBITRATION

OPTIONAL RULES
FOR CONCILIATION OF DISPUTES RELATING TO
NATURAL RESOURCES AND/OR
THE ENVIRONMENT

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INTRODUCTION

The Rules are based primarily on the PCA Conciliation Rules and UNCITRAL Conciliation Rules¹ with changes in order to:

- (i) reflect the public international law element which pertains to disputes which may involve States, utilization of natural resources and environmental protection issues, and international practice appropriate to such disputes;
- (ii) reflect the particular characteristics of disputes having a natural resources conservation or environmental protection component;
- (iii) indicate the role of the Secretary-General and the International Bureau of the Permanent Court of Arbitration (PCA) at The Hague; and
- (iv) provide freedom for the parties to choose to have a conciliation commission of one, three, or five persons.

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 PCA, are available for use by private parties, other entities existing under national or international law, international organizations, and States;
- (ii) The Rules may be used in relation to disputes between two or more States parties to a multilateral agreement relating to access to and utilization of natural resources concerning the interpretation or application of that agreement;
- (iii) The parties are free to choose conciliators from the PCA Panel of Arbitrators constituted under the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, or Members of the PCA;

¹ Other procedures consulted were the WIPO Mediation Rules, the ICSID Conciliation Rules, conciliation procedures in the United Nations Convention on the Law of the Sea, the United Nations Convention on Biological Diversity, and the Rotterdam Convention. The PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment also provided guidance for the development of these rules. See the Introduction to the PCA Optional Conciliation Rules at pages 151-153, for additional general information on the use of conciliation procedures.

- (iv) The parties are free to choose expert witnesses from the PCA Panel of Scientific and Technical Experts constituted under the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment;
- (v) The choice of conciliators or experts is not limited to PCA Panels;
- (vi) The parties have complete freedom to agree upon any individual or institution to make appointments. In order to provide a failsafe mechanism to prevent frustration or delay of the conciliation, the Rules provide that the Secretary-General will make appointments if the parties do not agree upon such a person or institution, or if that person or institution chosen does not act.

Mindful of the possibility of multiparty involvement in disputes having a conservation or environmental component, these Rules provide specifically for multiparty choice of conciliators and sharing of costs. In the case of multiparty conciliation, all other articles should be interpreted in an analogous fashion. The framers of existing and future agreements may need to determine the relationship between these Rules and such agreements, and may modify them as necessary. Modifications to these Rules or such agreements as to jurisdiction *ratione personae* may be especially necessary to allow for the participation of non-state actors.

In some places these Rules refer to an ‘obligation to conciliate.’ This reference was intended to ensure harmony between these Rules and existing agreements that might require compulsory conciliation, or court decisions requiring parties to conciliate.

Consideration should be given to the method of implementing and enforcing a settlement agreement. UNCITRAL has recently considered various methods in the Report of the Working Group on Arbitration on the work of its thirty-fifth session (A/CN.9/506 2001). One method is that the settlement agreement could be stipulated to be binding and enforceable as a contract. Another is for an arbitral tribunal to be appointed to record the settlement agreement in the form of an arbitral award on agreed terms. Parties could also adapt the present rules to stipulate that the settlement agreement be binding and final as an arbitral award, however consideration must first be given to possible legislative changes necessary to render settlement agreements final and binding as arbitral awards.

Parties may choose to include a clause allowing for the option of referring the dispute being conciliated to arbitration; a model clause for this purpose is set forth at page 243.

**PERMANENT COURT OF ARBITRATION OPTIONAL RULES
FOR CONCILIATION OF DISPUTES RELATING TO
NATURAL RESOURCES AND/OR THE ENVIRONMENT**

Effective April 16, 2002

Scope of Application

Article 1

1. These Rules apply to conciliation of disputes relating to natural resources and/or the environment. For the purposes of these Rules, ‘conciliation’ means a process whereby parties request a third person, or a panel of persons, to assist them in their attempt to reach an amicable settlement of their dispute relating to natural resources and/or the environment. The characterization of the dispute as relating to the environment or natural resources is not necessary for application of these Rules, where all the parties have agreed to settle a specific dispute under these Rules.

2. Such disputes shall be conciliated in accordance with these Rules subject to such modification as the parties may, at any time, expressly agree upon in writing, unless such modification is excluded by the agreement under which the dispute arises or the agreement to conciliate. The expression ‘agree upon in writing’ includes provisions in agreements, contracts, conventions, treaties, the constituent instrument of an international organization or agency or reference upon consent of the parties by a court. For the purposes of this and all following articles, ‘writing’ may include electronic methods of communication in accordance with accepted international practice.

Commencement of Conciliation Proceedings

Article 2

1. The party² initiating conciliation shall send to the other party, with a copy thereof to the International Bureau of the Permanent Court of Arbitration (the ‘International Bureau’) a written invitation to conciliate under these Rules, including as appropriate:

- (a) the names, addresses and telephone, or other communication references of the parties to the dispute and of the representative of the party filing the invitation;

² Words used in the singular include the plural and vice-versa as the context may require.

- (b) a reference to the agreement under which this invitation arose;
 - (c) a reference to any rule, decision, agreement, contract, convention, treaty, or instrument of an organization or agency, under which the dispute arises;
 - (d) a reference to the general nature of the dispute which led to the invitation.
2. (a) Conciliation proceedings commence when the other party accepts the invitation to conciliate, or when the invitation reaches the other party in the event there is an obligation to conciliate.
- (b) If the party initiating conciliation does not receive a reply within thirty days from the date on which it sends the invitation, or within such longer period of time as specified in the invitation, it may elect to treat this as a rejection of the invitation to conciliation. The initiating party shall inform the other party of any such decision.
3. The International Bureau shall take charge of the archives of the conciliation commission (as meant in article 4) unless the parties otherwise agree. In addition, upon written request of the parties or the conciliation commission, the International Bureau shall act as a channel of communication between the parties and the conciliation commission, provide administrative and secretariat services, and/or serve as Registry.

Number of Conciliators³

Article 3

There shall be one conciliator unless the parties agree on three or five conciliators. As a general rule, where there is more than one conciliator, they ought to act jointly.

Appointment of Conciliators

Article 4

1. (a) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator within sixty days after commencement of the conciliation proceedings;

³ In this and all following articles, the term ‘conciliator’ applies to a sole conciliator or all conciliators where more than one are appointed, and the term ‘conciliation commission’ means a sole conciliator or all conciliators where more than one are appointed.

OPTIONAL CONCILIATION RULES – NATURAL RESOURCES AND ENVIRONMENT

- (b) In conciliation proceedings with three conciliators, each party appoints one conciliator within sixty days after commencement of conciliation proceedings, communicating the name of the conciliator to the other party and the International Bureau, and within thirty days thereafter, the two conciliators thus appointed shall choose a third conciliator to act as president of the conciliation commission;
 - (c) In conciliation proceedings with five conciliators, each party appoints two conciliators within sixty days after commencement of conciliation proceedings, communicating the names of the conciliators to the other party and the International Bureau, and within thirty days thereafter, the four conciliators thus appointed shall choose a fifth conciliator to act as president of the conciliation commission;
 - (d) If after sixty days, as set out in sub-paragraphs (a), (b) and (c) above, the parties have not agreed on a sole conciliator, or a party has not appointed its conciliator, the Secretary-General of the Permanent Court of Arbitration (the ‘Secretary-General’) shall notify the parties and make such appointment within thirty days;
 - (e) In addition, if after thirty days, as set out in sub-paragraphs (b) and (c) above, the party-appointed conciliators have not chosen a president, the Secretary-General shall notify the parties and make such appointment within thirty days.
2. Parties may enlist the assistance of an appropriate institution or person in connection with the appointment of conciliators. In particular,
- (a) A party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or
 - (b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.
 - (c) If the person or institution enlisted in this article refuses to act or fails to appoint the conciliator within sixty days of a party’s request therefor, the parties shall endeavour to reach agreement on the name of a conciliator within thirty days.
 - (d) If, after thirty days, as set out in sub-paragraph (c) above, the parties have not agreed on a sole conciliator, or a party has not appointed its conciliator, the Secretary-General shall make such appointment within thirty days.
3. Parties may also enlist the assistance of the Secretary-General in connection with the appointment of conciliators. In particular:
- (a) A party may request the Secretary-General to designate an institution or person to perform the function set forth in paragraph 2(a) of this article;

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- (b) The parties may request the Secretary-General to designate an institution or person to perform the function set forth in paragraph 2(b) of this article; or
 - (c) The Secretary-General may be the ‘person’ performing the functions set forth in paragraphs 2(a) and (b) of this article, pursuant to a request or agreement.
 - (d) When designated as appointing authority, the Secretary-General will make appointments within thirty days after such designation.
4. For the purpose of assisting the parties and the person or institution performing the functions set out in paragraphs 2(a) and (b) of this article, the Secretary-General will make available a list of persons considered to have expertise in the subject-matter of the dispute at hand.
5. (a) In disputes between more than two parties, parties having the same interest shall appoint their conciliator to the commission jointly by agreement pursuant to this article.
- (b) Where two or more parties cannot reach agreement on the appointment of a conciliator or conciliators within a period of sixty days after commencement of conciliation, the conciliator shall then be appointed within thirty days by the Secretary-General.
6. In recommending or appointing individuals to act as conciliator, the institution or person making such appointments shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole, third, or fifth conciliator, shall take into account the need of appointing a conciliator of a nationality other than the nationalities of the parties. The parties may request that the conciliator sign an impartiality declaration indicating any past or present professional, business, or other relationships with the parties.

Submission of Statements to Conciliator

Article 5

1. The conciliator, upon appointment, shall request each party to submit a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of its statement to the other party and the International Bureau.
2. The conciliator may request each party to submit a further written statement of its position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of its statement to the other party and the International Bureau.

3. At any stage of the conciliation proceedings the conciliator may request that a party submit additional information.

Representation and Assistance

Article 6

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party, the conciliator, and to the International Bureau; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

Role of Conciliator

Article 7

1. The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
2. The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties and the circumstances surrounding the dispute, including any previous practices between the parties. The conciliator will make proposals to preserve the respective rights of the parties, and to prevent and/or mitigate serious harm to the environment falling within the subject-matter of the dispute.
3. The conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the relevant law and circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and any special need for a speedy settlement of the dispute.
4. The conciliator may propose the appointment of one or more experts to report on specific issues, after having obtained the views of the parties. The conciliator may enlist the services of the Secretary-General who will provide an indicative list of persons considered to have expertise in the scientific or technical matters in respect of which these Rules might be relied upon.
5. 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.

Communication Between Conciliator and Parties

Article 8

1. The conciliator may meet with the parties, or may communicate with them orally or in writing. The conciliator may communicate with the parties together or with each of them separately, subject to prior notification of the intention to meet separately with the other party.
2. The conciliator shall fix the location of any meetings after consulting with the parties. The conciliator may request the International Bureau to arrange for the place where such meetings will be held.

Disclosure of Information

Article 9

When the conciliator receives information concerning the dispute from a party, the conciliator *may* disclose the substance of that information to the other party in order that the other party may present an explanation. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

Co-operation of Parties with Conciliator

Article 10

The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide information and attend meetings.

Suggestions by Parties for Settlement of Dispute

Article 11

Each party may, on its own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

Settlement Agreement

Article 12

1. When it appears to the conciliator that elements of a settlement exist which would be acceptable to the parties, the conciliator will formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
2. If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.
3. The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.
4. The conciliator may propose the establishment of an implementation committee upon written agreement of the parties to the settlement agreement, to assist the parties in implementing the settlement agreement. If the parties agree on the establishment of an implementation committee, the parties may request the assistance of the conciliator in any aspect of its establishment. The implementation committee may:
 - (a) request the parties to provide periodic reports on implementation to the committee and parties to the settlement agreement;
 - (b) review reports provided by the parties and communicate results of the review to other parties to the settlement agreement;
 - (c) monitor implementation of the settlement agreement according to procedures to be determined by the parties;
 - (d) determine a list of indicative measures meant to facilitate implementation and propose such measures to a party determined not to be meeting its obligations under the terms of the settlement agreement.

Confidentiality

Article 13

Unless the parties agree otherwise, or disclosure is required by a court or tribunal of competent jurisdiction, the conciliator, the parties and all other persons involved in the conciliation shall respect the confidentiality of the conciliation and may not use or disclose to any outside party any information concerning, or obtained in the course of, the

conciliation. ‘Information’ for the purpose of this article includes, but is not limited to, views expressed, suggestions, arguments and admissions made, and positions taken by the parties or the conciliator during the conciliation. Each such person shall sign an appropriate confidentiality agreement and shall keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

Termination of Conciliation Proceedings

Article 14

The conciliation proceedings are terminated:

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration, unless there is an obligation to conciliate, in which case the procedure of the underlying agreement will prevail.

Resort to Arbitral or Judicial Proceedings

Article 15

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in its opinion, such proceedings are necessary for the preservation of and/or the interim protection of its rights.

Competence of the Conciliation Commission

Article 16

Where there is an obligation to conciliate, a disagreement as to whether the conciliation commission has competence shall be decided by the conciliation commission. Any objection that the conciliation commission has no competence shall be raised as early as possible, and in any case not later than the date of the submission of the written statement mentioned in article 5, paragraph 1.

Costs

Article 17

1. Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties. All costs related to the conciliation proceedings should be reasonable in amount. The term ‘costs’ includes only:

- (a) the fee of the conciliator;
- (b) the travel and other expenses of the conciliator;
- (c) the travel and other expenses of witnesses requested by the conciliator with the consent of the parties;
- (d) the costs of any expert advice requested by the conciliator with the consent of the parties;
- (e) the cost of any assistance provided pursuant to article 2, paragraph 3 and article 4, paragraphs 2 and 3 of these Rules;
- (f) the costs of any services of the Secretary-General and the International Bureau of the Permanent Court of Arbitration.

2. The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

Deposits

Article 18

1. The conciliator, upon appointment, may request each party to deposit an equal amount as an advance for the costs referred to in article 17, paragraph 1, which are expected to be incurred.
2. During the course of the conciliation proceedings the conciliator may request supplementary deposits in an equal amount from each party. Before agreeing to provide initial or supplementary deposits, the parties may request an estimate of the costs including items listed in article 17, paragraph 1(a) to (f).
3. If the required deposits under paragraphs 1 and 2 of this article are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.
4. Upon termination of the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.
5. The conciliator may request the International Bureau to perform the functions set out in paragraphs 1 to 4 of this article.

Role of Conciliator in Other Proceedings

Article 19

The parties and the conciliator undertake that, unless the parties agree otherwise, the conciliator will not act as an arbitrator or as a representative or counsel of a party or other person involved in the conciliation, 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.

Admissibility of Evidence in Other Proceedings

Article 20

Subject to the general provisions of article 13, the parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings:

OPTIONAL CONCILIATION RULES – NATURAL RESOURCES AND ENVIRONMENT

- (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 its willingness to accept a proposal for settlement made by the conciliator.