

Review of the UNCITRAL Arbitration Rules

- 1 The United Nations Commission on International Trade Law (UNCITRAL) is in the process of reviewing the UNCITRAL Arbitration Rules.
- 2 The UNCITRAL Arbitration Rules (**the Rules**) are widely used in commercial disputes and they feature prominently in several investment treaties, notably bilateral investment treaties and the Energy Charter Treaty.
- 3 The Rules are being reviewed for the first time since their adoption in 1976. The mandate given to the Working Group tasked with reviewing the Rules is that the revision should not alter the structure of the existing text, its spirit or drafting style and that it should respect the flexibility of the text and not make it overly complex.
- 4 The review seeks generally to bring the Rules in line with modern practice – e.g. to make provision for electronic communications, cater for multi-party disputes, and consolidation. The review, however, is of particular interest in that it will also, for the first time, examine the Rules not only in the context of commercial arbitration, for which they were originally drafted, but also taking into account the particular features of investment treaty claims involving a State party, a more recent development.
- 5 In this context, two NGO's have been granted observer status to the Working Group¹, on the basis of their particular focus on investment claims.
- 6 Issues such as the confidentiality of the proceedings, the publication of pleadings, orders and awards, and the participation of third parties to the arbitration process, which have taken on increasing importance in investment arbitration, will be part of the Working Group's discussions once its work on the current Rules is completed. For the time being, however, broad support was expressed for a review that sought to identify "common denominators" applicable to all types of arbitration, irrespective of the subject-matter of the dispute, rather than seek to deal with specific situations.
- 7 There is also consideration of an expanded role for the Permanent Court of Arbitration (PCA), notably to act as default appointing authority in the event that the parties have not designated another appointing authority. The current Rules entrust the Secretary-General of the Permanent Court of Arbitration with the task of designating, upon request of a party to arbitration proceedings, an "appointing authority" for the purpose of appointing arbitrators and ruling on challenges to arbitrators.

¹ They are: The International Institute for Sustainable Development (IISD) and the Center for International Environmental Law (CIEL).

8 The UNCITRAL Secretariat estimates that the revision process should be completed by mid-2008.

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