Contentious and advisory cases before the ICJ

Explanatory Note

The figures preceding the titles of contentious cases in the following list are explained as follows:

[1] Case concluded by a judgment on the merits or on reparation.
[2] Case concluded by a judgment on an objection or a preliminary point.
[3] Case concluded by an order finding that the Court does not have jurisdiction.
[4] Case concluded by discontinuance before a judgment on the merits.
[5] Current case.

	Title	Dates
1	*Corfu Channel (United Kingdom* v. *Albania)*	1947-1949
1	*Fisheries (United Kingdom* v. *Norway)*	1949-1951
4	*Protection of French Nationals and Protected Persons in Egypt (France* v. *Egypt)*	1949-1950
1	*Asylum (Colombia/Peru)*	1949-1950
1	*Rights of Nationals of the United States of America in Morocco (France* v. *United States of America)*	1950-1952
1	*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia* v. *Peru)*	1950
1	*Haya de la Torre (Colombia* v. *Peru)*	1950-1951
1	*Ambatielos (Greece* v. *United Kingdom)*	1951-1953
2	*Anglo-Iranian Oil Co. (United Kingdom* v. *Iran)*	1951-1952
1	*Minquiers and Ecrehos (France/United Kingdom)*	1951-1953
2	*Nottebohm (Liechtenstein* v. *Guatemala)*	1951-1955
2	*Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom and United States of America)*	1953-1954
4	*Electricité de Beyrouth Company (France* v. *Lebanon)*	1953-1954
3	*Treatment in Hungary of Aircraft and Crew of United States of America (United States of America* v. *Hungary)*	1954
3	*Treatment in Hungary of Aircraft and Crew of United States of America (United States of America* v. *USSR)*	1954
3	*Aerial Incident of 10 March 1953 (United States of America* v. *Czechoslovakia)*	1955-1956
3	*Antarctica (United Kingdom* v. *Argentina)*	1955-1956
3	*Antarctica (United Kingdom* v. *Chile)*	1955-1956
3	*Aerial Incident of 7 October 1952 (United States of America* v. *USSR)*	1955-1956
2	*Certain Norwegian Loans (France* v. *Norway)*	1955-1957
1	*Right of Passage over Indian Territory (Portugal* v. *India)*	1955-1960
1	*Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands* v. *Sweden)*	1957-1958

	Title	Dates
2	*Interhandel (Switzerland* v. *United States of America)*	1957-1959
2	*Aerial Incident of 27 July 1955 (Israel* v. *Bulgaria)*	1957-1959
4	*Aerial Incident of 27 July 1955 (United States of America* v. *Bulgaria)*	1957-1960
4	*Aerial Incident of 27 July 1955 (United Kingdom* v. *Bulgaria)*	1957-1959
1	*Sovereignty over Certain Frontier Land (Belgium/Netherlands)*	1957-1959
1	*Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras* v. *Nicaragua)*	1958-1960
3	*Aerial Incident of 4 September 1954 (United States of America* v. *USSR)*	1958
4	*Barcelona Traction, Light and Power Company, Limited (Belgium* v. *Spain)*	1958-1961
4	*Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France* v. *Lebanon)*	1959-1960
3	*Aerial Incident of 7 November 1954 (United States of America* v. *USSR)*	1959
1	*Temple of Preah Vihear (Cambodia* v. *Thailand)*	1959-1962
2	*South West Africa (Ethiopia* v. *South Africa)*	1960-1966
2	*South West Africa (Liberia* v. *South Africa)*	1960-1966
2	*Northern Cameroons (Cameroon* v. *United Kingdom)*	1961-1963
2	*Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain)*	1962-1970
1	*North Sea Continental Shelf (Federal Republic of Germany/ Denmark)*	1967-1969
1	*North Sea Continental Shelf (Federal Republic of Germany/ Netherlands)*	1967-1969
1	*Appeal relating to the Jurisdiction of the ICAO Council (India* v. *Pakistan)*	1971-1972
1	*Fisheries Jurisdiction (United Kingdom* v. *Iceland)*	1972-1974
1	*Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland)*	1972-1974
2	*Nuclear Tests (Australia* v. *France)*	1973-1974
2	*Nuclear Tests (New Zealand* v. *France)*	1973-1974
4	*Trial of Pakistani Prisoners of War (Pakistan* v. *India)*	1973
2	*Aegean Sea Continental Shelf (Greece* v. *Turkey)*	1976-1978
1	*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*	1978-1982
1	*United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran)*	1979-1981
1	*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* [case referred to a Chamber]	1981-1984
1	*Continental Shelf (Libyan Arab Jamahiriya/Malta)*	1982-1985
1	*Frontier Dispute (Burkina Faso/Republic of Mali)* [case referred to a Chamber]	1983-1986

	Title	Dates
1	*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*	1984-1991
1	*Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya)*	1984-1985
4	*Border and Transborder Armed Actions (Nicaragua* v. *Costa Rica)*	1986-1987
4	*Border and Transborder Armed Actions (Nicaragua* v. *Honduras)*	1986-1992
1	*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* [case referred to a Chamber][44]	1986-1992
1	*Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy)* [case referred to a Chamber]	1987-1989
1	*Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)*	1988-1993
4	*Aerial Incident of 3 July 1988 (Islamic Republic of Iran* v. *United States of America)*	1989-1996
4	*Certain Phosphate Lands in Nauru (Nauru* v. *Australia)*	1989-1993
1	*Arbitral Award of 31 July 1989 (Guinea-Bissau* v. *Senegal)*	1989-1991
1	*Territorial Dispute (Libyan Arab Jamahiriya/Chad)*	1990-1994
2	*East Timor (Portugal* v. *Australia)*	1991-1995
4	*Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau* v. *Senegal)*	1991-1995
4	*Passage through the Great Belt (Finland* v. *Denmark)*	1991-1992
1	*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*	1991-2001
4	*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom)*	1992-2003
4	*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America)*	1992-2003
1	*Oil Platforms (Islamic Republic of Iran* v. *United States of America)*	1992-2003
1	*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*	1993-2007
5	*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*	1993-
1	*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)*[45]	1994-2002
2	*Fisheries Jurisdiction (Spain* v. *Canada)*	1995-1998

[44] The intervention of Nicaragua was admitted on 13 September 1990.
[45] The intervention of Equatorial Guinea was admitted on 21 October 1999.

	Title	Dates
2	*Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case*	1995
1	*Kasikili/Sedudu Island (Botswana/Namibia)*	1996-1999
4	*Vienna Convention on Consular Relations (Paraguay* v. *United States of America)*	1998
2	*Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon)*	1998-1999
1	*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/ Malaysia)*	1998-2002
1	*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*	1998-
1	*LaGrand (Germany* v. *United States of America)*	1999-2001
2	*Legality of Use of Force (Serbia and Montenegro* v. *Belgium)*	1999-2004
2	*Legality of Use of Force (Serbia and Montenegro* v. *Canada)*	1999-2004
2	*Legality of Use of Force (Serbia and Montenegro* v. *France)*	1999-2004
2	*Legality of Use of Force (Serbia and Montenegro* v. *Germany)*	1999-2004
2	*Legality of Use of Force (Serbia and Montenegro* v. *Italy)*	1999-2004
2	*Legality of Use of Force (Serbia and Montenegro* v. *Netherlands)*	1999-2004
2	*Legality of Use of Force (Serbia and Montenegro* v. *Portugal)*	1999-2004
3	*Legality of Use of Force (Yugoslavia* v. *Spain)*	1999
2	*Legality of Use of Force (Serbia and Montenegro* v. *United Kingdom)*	1999-2004
3	*Legality of Use of Force (Yugoslavia* v. *United States of America)*	1999
4	*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Burundi)*	1999-2001
5	*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*	1999-
4	*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Rwanda)*	1999-2001
5	*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia)*	1999-
2	*Aerial Incident of 10 August 1999 (Pakistan* v. *India)*	1999-2000
1	*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*	1999-2007
1	*Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium)*	2000-2002
1	*Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina)*	2001-2003

	Title	Dates
2	*Certain Property (Liechtenstein* v. *Germany)*	2001-2005
1	*Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*	2001-2012
1	*Frontier Dispute (Benin/Niger)* [case referred to a Chamber]	2002-2005
2	*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)*	2002-2006
2	*Application for Revision of the Judgment of 11 September 1992 in the Case concerning the* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador* v. *Honduras)* [case referred to a Chamber]	2002-2003
1	*Avena and Other Mexican Nationals (Mexico* v. *United States of America)*	2003-2004
4	*Certain Criminal Proceedings in France (Republic of the Congo* v. *France)*	2003-2010
1	*Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*	2003-2008
1	*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)*	2004-2009
1	*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)*	2005-2009
1	*Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations (Commonwealth of Dominica* v. *Switzerland)*	2006
1	*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*	2006-2010
1	*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France)*	2006-2008
5	*Maritime Dispute (Peru* v. *Chile)*	2008-
4	*Aerial Herbicide Spraying (Ecuador* v. *Colombia)*	2008-2013
1	*Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico* v. *United States of America)*	2008-2009
2	*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation)*	2008-2011
1	*Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*	2008-2011
1	*Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*[46]	2008-2012
1	*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*	2009-2012
4	*Certain Questions concerning Diplomatic Relations (Honduras* v. *Brazil)*	2009

[46] The intervention of Greece was admitted on 4 July 2011.

	Title	Dates
4	*Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)*	2009-2011
5	*Whaling in the Antarctic (Australia* v. *Japan : New Zealand intervening)*[47]	2010-
1	*Frontier Dispute (Burkina Faso/Niger)*	2010-2013
5	*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)*	2010-
1	*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*	2011-2013
5	*Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)*	2011-
5	*Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile)*	2013-
5	*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)*	2013-
5	*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*	2013-
5	*Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia)*	2013-

[47] By an order dated 6 February 2013, the Court decided that the Declaration of Intervention filed by New Zealand pursuant to Article 63, paragraph 2, of the Statute was admissible.

Advisory proceedings

Title	Dates
Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)	1947-1948
Reparation for Injuries Suffered in the Service of the United Nations	1948-1949
Interpretation of Peace Treaties with Bulgaria, Hungary and Romania[48]	1949-1950
Competence of the General Assembly for the Admission of a State to the United Nations	1949-1950
International Status of South West Africa	1949-1950
Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide	1950-1951
Effect of Awards of Compensation Made by the United Nations Administrative Tribunal	1953-1954
Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa	1954-1955
Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco	1955-1956
Admissibility of Hearings of Petitioners by the Committee on South West Africa	1955-1956
Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization	1959-1960
Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)	1961-1962
Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)	1970-1971
Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal	1972-1973
Western Sahara	1974-1975
Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt	1980
Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal	1981-1982
Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal	1984-1987
Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947	1988

[48] In these proceedings the Court rendered two Advisory Opinions dated 30 March 1950 and 18 July 1950, respectively.

Title	Dates
Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations	1989
Legality of the Use by a State of Nuclear Weapons in Armed Conflict	1993-1996
Legality of the Threat or Use of Nuclear Weapons	1994-1996
Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights	1998-1999
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory	2003-2004
Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo	2008-2010
Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development	2010-2012

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Index

The present index contains references to Articles of the Charter of the United Nations (C) and the Statute (S), and Rules (R) of the Court, and/or to pages of the present booklet *(p.)*. It only covers Chapter 8 in so far as it refers to the pages on which cases are summarized, by giving the titles of the various cases.

A

B

C

D

N

O

P

Q

R

S

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RULES OF COURT

Article 30 of the Statute of the International Court of Justice provides that "the Court shall frame rules for carrying out its functions". These Rules are intended to supplement the general rules set forth in the Statute and to make detailed provision for the steps to be taken to comply with them.

RULES OF COURT (1978)

ADOPTED ON 14 APRIL 1978 AND ENTERED INTO FORCE ON 1 JULY 1978[1]

PREAMBLE*

The Court,
Having regard to Chapter XIV of the Charter of the United Nations;
Having regard to the Statute of the Court annexed thereto;
Acting in pursuance of Article 30 of the Statute;
Adopts the following Rules.

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*Amendment entered into force on 14 April 2005.

[1] Any amendments to the Rules of Court, following their adoption by the Court, are now posted on the Court's website, with an indication of the date of their entry into force and a note of any temporal reservations relating to their applicability (for example, whether the application of the amended rule is limited to cases instituted after the date of entry into force of the amendment); they are also published in the Court's *Yearbook*. Articles amended since 1 July 1978 are marked with an asterisk and appear in their amended form.

PART I

THE COURT

SECTION A. JUDGES AND ASSESSORS

Subsection 1. The Members of the Court

Article 1

1. The Members of the Court are the judges elected in accordance with Articles 2 to 15 of the Statute.

2. For the purposes of a particular case, the Court may also include upon the Bench one or more persons chosen under Article 31 of the Statute to sit as judges *ad hoc*.

3. In the following Rules, the term “Member of the Court” denotes any elected judge; the term “judge” denotes any Member of the Court, and any judge *ad hoc*.

Article 2

1. The term of office of Members of the Court elected at a triennial election shall begin to run from the sixth of February[1] in the year in which the vacancies to which they are elected occur.

2. The term of office of a Member of the Court elected to replace a Member whose term of office has not expired shall begin to run from the date of the election.

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[1] This is the date on which the terms of office of the Members of the Court elected at the first election began in 1946.

Article 3

1. The Members of the Court, in the exercise of their functions, are of equal status, irrespective of age, priority of election or length of service.

2. The Members of the Court shall, except as provided in paragraphs 4 and 5 of this Article, take precedence according to the date on which their terms of office respectively began, as provided for by Article 2 of these Rules.

3. Members of the Court whose terms of office began on the same date shall take precedence in relation to one another according to seniority of age.

4. A Member of the Court who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence.

5. The President and the Vice-President of the Court, while holding these offices, shall take precedence before all other Members of the Court.

6. The Member of the Court who, in accordance with the foregoing paragraphs, takes precedence next after the President and the Vice-President is in these Rules designated the “senior judge”. If that Member is unable to act, the Member of the Court who is next after him in precedence and able to act is considered as senior judge.

Article 4

1. The declaration to be made by every Member of the Court in accordance with Article 20 of the Statute shall be as follows:

“I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.”

2. This declaration shall be made at the first public sitting at which the Member of the Court is present. Such sitting shall be held as soon as practicable after his term of office begins and, if necessary, a special sitting shall be held for the purpose.

3. A Member of the Court who is re-elected shall make a new declaration only if his new term is not continuous with his previous one.

Article 5

1. A Member of the Court deciding to resign shall communicate his decision to the President, and the resignation shall take effect as provided in Article 13, paragraph 4, of the Statute.

2. If the Member of the Court deciding to resign from the Court is the President, he shall communicate his decision to the Court, and the resignation shall take effect as provided in Article 13, paragraph 4, of the Statute.

Article 6

In any case in which the application of Article 18 of the Statute is under consideration, the Member of the Court concerned shall be so informed by the President or, if the circumstances so require, by the Vice-President, in a written statement which shall include the grounds therefor and any relevant evidence. He shall subsequently, at a private meeting of the Court specially convened for the purpose, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give, and of supplying answers, orally or in writing, to any questions put to him. At a further private meeting, at which the Member of the Court concerned shall not be present, the matter shall be discussed; each Member of the Court shall state his opinion, and if requested a vote shall be taken.

Subsection 2. Judges ad hoc

Article 7

1. Judges *ad hoc*, chosen under Article 31 of the Statute for the purposes of particular cases, shall be admitted to sit on the Bench of the Court in the circumstances and according to the procedure indicated in Article 17, paragraph 2, Articles 35, 36, 37, Article 91, paragraph 2, and Article 102, paragraph 3, of these Rules.

2. They shall participate in the case in which they sit on terms of complete equality with the other judges on the Bench.

3. Judges *ad hoc* shall take precedence after the Members of the Court and in order of seniority of age.

Article 8

1. The solemn declaration to be made by every judge *ad hoc* in accordance with Articles 20 and 31, paragraph 6, of the Statute shall be as set out in Article 4, paragraph 1, of these Rules.

2. This declaration shall be made at a public sitting in the case in which the judge *ad hoc* is participating. If the case is being dealt with by a chamber of the Court, the declaration shall be made in the same manner in that chamber.

3. Judges *ad hoc* shall make the declaration in relation to any case in which they are participating, even if they have already done so in a previous case, but shall not make a new declaration for a later phase of the same case.

Subsection 3. Assessors

Article 9

1. The Court may, either *proprio motu* or upon a request made not later than the closure of the written proceedings, decide, for the purpose of a contentious case or request for advisory opinion, to appoint assessors to sit with it without the right to vote.

2. When the Court so decides, the President shall take steps to obtain all the information relevant to the choice of the assessors.

3. The assessors shall be appointed by secret ballot and by a majority of the votes of the judges composing the Court for the case.

4. The same powers shall belong to the chambers provided for by Articles 26 and 29 of the Statute and to the presidents thereof, and may be exercised in the same manner.

5. Before entering upon their duties, assessors shall make the following declaration at a public sitting:

“I solemnly declare that I will perform my duties as an assessor honourably, impartially and conscientiously, and that I will faithfully observe all the provisions of the Statute and of the Rules of the Court.”

SECTION B. THE PRESIDENCY

Article 10

1. The term of office of the President and that of the Vice-President shall begin to run from the date on which the terms of office of the Members of the Court elected at a triennial election begin in accordance with Article 2 of these Rules.

2. The elections to the presidency and vice-presidency shall be held on that date or shortly thereafter. The former President, if still a Member of the Court, shall continue to exercise his functions until the election to the presidency has taken place.

Article 11

1. If, on the date of the election to the presidency, the former President is still a Member of the Court, he shall conduct the election. If he has ceased to be a Member of the Court, or is unable to act, the election shall be conducted by the Member of the Court exercising the functions of the presidency by virtue of Article 13, paragraph 1, of these Rules.

2. The election shall take place by secret ballot, after the presiding Member of the Court has declared the number of affirmative votes necessary for election; there shall be no nominations. The Member of the Court obtaining the votes of a majority of the Members composing it at the time of the election shall be declared elected, and shall enter forthwith upon his functions.

3. The new President shall conduct the election of the Vice-President either at the same or at the following meeting. The provisions of paragraph 2 of this Article shall apply equally to this election.

Article 12

The President shall preside at all meetings of the Court; he shall direct the work and supervise the administration of the Court.

Article 13

1. In the event of a vacancy in the presidency or of the inability of the President to exercise the functions of the presidency, these shall be exercised by the Vice-President, or failing him, by the senior judge.

2. When the President is precluded by a provision of the Statute or of these Rules either from sitting or from presiding in a particular case, he shall continue to exercise the functions of the presidency for all purposes save in respect of that case.

3. The President shall take the measures necessary in order to ensure the continuous exercise of the functions of the presidency at the seat of the Court. In the event of his absence, he may, so far as is compatible with the Statute and these Rules, arrange for these functions to be exercised by the Vice-President, or failing him, by the senior judge.

4. If the President decides to resign the presidency, he shall communicate his decision in writing to the Court through the Vice-President, or failing him, the senior judge. If the Vice-President decides to resign his office, he shall communicate his decision to the President.

Article 14

If a vacancy in the presidency or the vice-presidency occurs before the date when the current term is due to expire under Article 21, paragraph 1, of the Statute and Article 10, paragraph 1, of these Rules, the Court shall decide whether or not the vacancy shall be filled during the remainder of the term.

SECTION C. THE CHAMBERS

Article 15

1. The Chamber of Summary Procedure to be formed annually under Article 29 of the Statute shall be composed of five Members of the Court, comprising the President and Vice-President of the Court, acting ex officio, and three other members elected in accordance with Article 18, paragraph 1, of these Rules. In addition, two Members of the Court shall be elected annually to act as substitutes.

2. The election referred to in paragraph 1 of this Article shall be held as soon as possible after the sixth of February in each year. The members of the Chamber shall enter upon their functions on election and continue to serve until the next election; they may be re-elected.

3. If a member of the Chamber is unable, for whatever reason, to sit in a given case, he shall be replaced for the purposes of that case by the senior in precedence of the two substitutes.

4. If a member of the Chamber resigns or otherwise ceases to be a member, his place shall be taken by the senior in precedence of the two substitutes, who shall thereupon become a full member of the Chamber and be replaced by the election of another substitute. Should vacancies exceed the number of available substitutes, elections shall be held as soon as possible in respect of the vacancies still existing after the substitutes have assumed full membership and in respect of the vacancies in the substitutes.

Article 16

1. When the Court decides to form one or more of the Chambers provided for in Article 26, paragraph 1, of the Statute, it shall determine the particular category of cases for which each Chamber is formed, the number of its members, the period for which they will serve, and the date at which they will enter upon their duties.

2. The members of the Chamber shall be elected in accordance with Article 18, paragraph 1, of these Rules from among the Members of the Court, having regard to any special knowledge, expertise or previous experience which any of the Members of the Court may have in relation to the category of case the Chamber is being formed to deal with.

3. The Court may decide upon the dissolution of a Chamber, but without prejudice to the duty of the Chamber concerned to finish any cases pending before it.

Article 17

1. A request for the formation of a Chamber to deal with a particular case, as provided for in Article 26, paragraph 2, of the Statute, may be filed at any time until the closure of the written proceedings. Upon receipt of a request made by one party, the President shall ascertain whether the other party assents.

2. When the parties have agreed, the President shall ascertain their views regarding the composition of the Chamber, and shall report to the Court accordingly. He shall also take such steps as may be necessary to give effect to the provisions of Article 31, paragraph 4, of the Statute.

3. When the Court has determined, with the approval of the parties, the number of its Members who are to constitute the Chamber, it shall proceed to their election, in accordance with the provisions of Article 18, paragraph 1, of these Rules. The same procedure shall be followed as regards the filling of any vacancy that may occur on the Chamber.

4. Members of a Chamber formed under this Article who have been replaced, in accordance with Article 13 of the Statute following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached.

Article 18

1. Elections to all Chambers shall take place by secret ballot. The Members of the Court obtaining the largest number of votes constituting a majority of the Members of the Court composing it at the time of the election shall be declared elected. If necessary to fill vacancies, more than one ballot shall take place, such ballot being limited to the number of vacancies that remain to be filled.

2. If a Chamber when formed includes the President or Vice-President of the Court, or both of them, the President or Vice-President, as the case may be, shall preside over that Chamber. In any other event, the Chamber shall elect its own president by secret ballot and by a majority of votes of its members. The Member of the Court who, under this paragraph, presides over the Chamber at the time of its formation shall continue to preside so long as he remains a member of that Chamber.

3. The president of a Chamber shall exercise, in relation to cases being dealt with by that Chamber, all the functions of the President of the Court in relation to cases before the Court.

4. If the president of a Chamber is prevented from sitting or from acting as president, the functions of the presidency shall be assumed by the member of the Chamber who is the senior in precedence and able to act.

SECTION D. INTERNAL FUNCTIONING OF THE COURT

Article 19

The internal judicial practice of the Court shall, subject to the provisions of the Statute and these Rules, be governed by any resolutions on the subject adopted by the Court[1].

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[1] The resolution now in force was adopted on 12 April 1976.

Article 20

1. The quorum specified by Article 25, paragraph 3, of the Statute applies to all meetings of the Court.

2. The obligation of Members of the Court under Article 23, paragraph 3, of the Statute, to hold themselves permanently at the disposal of the Court, entails attendance at all such meetings, unless they are prevented from attending by illness or for other serious reasons duly explained to the President, who shall inform the Court.

3. Judges *ad hoc* are likewise bound to hold themselves at the disposal of the Court and to attend all meetings held in the case in which they are participating. They shall not be taken into account for the calculation of the quorum.

4. The Court shall fix the dates and duration of the judicial vacations and the periods and conditions of leave to be accorded to individual Members of the Court under Article 23, paragraph 2, of the Statute, having regard in both cases to the state of its General List and to the requirements of its current work.

5. Subject to the same considerations, the Court shall observe the public holidays customary at the place where the Court is sitting.

6. In case of urgency the President may convene the Court at any time.

Article 21

1. The deliberations of the Court shall take place in private and remain secret. The Court may however at any time decide in respect of its deliberations on other than judicial matters to publish or allow publication of any part of them.

2. Only judges, and the assessors, if any, take part in the Court's judicial deliberations. The Registrar, or his deputy, and other members of the staff of the Registry as may be required shall be present. No other person shall be present except by permission of the Court.

3. The minutes of the Court's judicial deliberations shall record only the title or nature of the subjects or matters discussed, and the results of any vote taken. They shall not record any details of the discussions nor the views expressed, provided however that any judge is entitled to require that a statement made by him be inserted in the minutes.

PART II

THE REGISTRY

Article 22

1. The Court shall elect its Registrar by secret ballot from amongst candidates proposed by Members of the Court. The Registrar shall be elected for a term of seven years. He may be re-elected.

2. The President shall give notice of a vacancy or impending vacancy to Members of the Court, either forthwith upon the vacancy arising, or, where the vacancy will arise on the expiration of the term of office of the Registrar, not less than three months prior thereto. The President shall fix a date for the closure of the list of candidates so as to enable nominations and information concerning the candidates to be received in sufficient time.

3. Nominations shall indicate the relevant information concerning the candidate, and in particular information as to his age, nationality, and present occupation, university qualifications, knowledge of languages, and any previous experience in law, diplomacy or the work of international organizations.

4. The candidate obtaining the votes of the majority of the Members of the Court composing it at the time of the election shall be declared elected.

Article 23

The Court shall elect a Deputy-Registrar: the provisions of Article 22 of these Rules shall apply to his election and term of office.

Article 24

1. Before taking up his duties, the Registrar shall make the following declaration at a meeting of the Court:

“I solemnly declare that I will perform the duties incumbent upon me as Registrar of the International Court of Justice in all loyalty, discretion and good conscience, and that I will faithfully observe all the provisions of the Statute and of the Rules of the Court.”

2. The Deputy-Registrar shall make a similar declaration at a meeting of the Court before taking up his duties.

Article 25

1. The staff-members of the Registry shall be appointed by the Court on proposals submitted by the Registrar. Appointments to such posts as the Court shall determine may however be made by the Registrar with the approval of the President.

2. Before taking up his duties, every staff-member shall make the following declaration before the President, the Registrar being present:

"I solemnly declare that I will perform the duties incumbent upon me as an official of the International Court of Justice in all loyalty, discretion and good conscience, and that I will faithfully observe all the provisions of the Statute and of the Rules of the Court."

Article 26

1. The Registrar, in the discharge of his functions, shall:

(a) be the regular channel of communications to and from the Court, and in particular shall effect all communications, notifications and transmission of documents required by the Statute or by these Rules and ensure that the date of despatch and receipt thereof may be readily verified;

(b) keep, under the supervision of the President, and in such form as may be laid down by the Court, a General List of all cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry;

(c) have the custody of the declarations accepting the jurisdiction of the Court made by States not parties to the Statute in accordance with any resolution adopted by the Security Council under Article 35, paragraph 2, of the Statute, and transmit certified copies thereof to all States parties to the Statute, to such other States as shall have deposited declarations, and to the Secretary-General of the United Nations;

(d) transmit to the parties copies of all pleadings and documents annexed upon receipt thereof in the Registry;

(e) communicate to the government of the country in which the Court or a Chamber is sitting, and any other governments which may be concerned, the necessary information as to the persons from time to time entitled, under the Statute and relevant agreements, to privileges, immunities, or facilities;

(f) be present, in person or by his deputy, at meetings of the Court, and of the Chambers, and be responsible for the preparation of minutes of such meetings;

(g) make arrangements for such provision or verification of translations and interpretations into the Court's official languages as the Court may require;

(h) sign all judgments, advisory opinions and orders of the Court, and the minutes referred to in subparagraph *(f)*;

(i) be responsible for the printing and publication of the Court's judgments, advisory opinions and orders, the pleadings and statements, and minutes of public sittings in cases, and of such other documents as the Court may direct to be published;

(j) be responsible for all administrative work and in particular for the accounts and financial administration in accordance with the financial procedures of the United Nations;

(k) deal with enquiries concerning the Court and its work;

(l) assist in maintaining relations between the Court and other organs of the United Nations, the specialized agencies, and international bodies and conferences concerned with the codification and progressive development of international law;

(m) ensure that information concerning the Court and its activities is made accessible to governments, the highest national courts of justice, professional and learned societies, legal faculties and schools of law, and public information media;

(n) have custody of the seals and stamps of the Court, of the archives of the Court, and of such other archives as may be entrusted to the Court[1].

2. The Court may at any time entrust additional functions to the Registrar.

3. In the discharge of his functions the Registrar shall be responsible to the Court.

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[1] The Registrar also keeps the Archives of the Permanent Court of International Justice, entrusted to the present Court by decision of the Permanent Court of October 1945 (*I.C.J. Yearbook 1946-1947*, p. 26). and the Archives of the Trial of the Major War Criminals before the International Military Tribunal at Nuremberg (1945-1946), entrusted to the Court by decision of that Tribunal of 1 October 1946; the Court authorized the Registrar to accept the latter Archives by decision of 19 November 1949.

Article 27

1. The Deputy-Registrar shall assist the Registrar, act as Registrar in the latter's absence and, in the event of the office becoming vacant, exercise the functions of Registrar until the office has been filled.

2. If both the Registrar and the Deputy-Registrar are unable to carry out the duties of Registrar, the President shall appoint an official of the Registry to discharge those duties for such time as may be necessary. If both offices are vacant at the same time, the President, after consulting the Members of the Court, shall appoint an official of the Registry to discharge the duties of Registrar pending an election to that office.

Article 28

1. The Registry shall comprise the Registrar, the Deputy-Registrar, and such other staff as the Registrar shall require for the efficient discharge of his functions.

2. The Court shall prescribe the organization of the Registry, and shall for this purpose request the Registrar to make proposals.

3. Instructions for the Registry shall be drawn up by the Registrar and approved by the Court.

4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar, so far as possible in conformity with the United Nations Staff Regulations and Staff Rules, and approved by the Court.

Article 29

1. The Registrar may be removed from office only if, in the opinion of two-thirds of the Members of the Court, he has either become permanently incapacitated from exercising his functions, or has committed a serious breach of his duties.

2. Before a decision is taken under this Article, the Registrar shall be informed by the President of the action contemplated, in a written statement which shall include the grounds therefor and any relevant evidence. He shall subsequently, at a private meeting of the Court, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give, and of supplying answers, orally or in writing, to any questions put to him.

3. The Deputy-Registrar may be removed from office only on the same grounds and by the same procedure.

PART III

PROCEEDINGS IN CONTENTIOUS CASES

SECTION A. COMMUNICATIONS TO THE COURT AND CONSULTATIONS

Article 30

All communications to the Court under these Rules shall be addressed to the Registrar unless otherwise stated. Any request made by a party shall likewise be addressed to the Registrar unless made in open court in the course of the oral proceedings.

Article 31

In every case submitted to the Court, the President shall ascertain the views of the parties with regard to questions of procedure. For this purpose he shall summon the agents of the parties to meet him as soon as possible after their appointment, and whenever necessary thereafter.

SECTION B. THE COMPOSITION OF THE COURT FOR PARTICULAR CASES

Article 32

1. If the President of the Court is a national of one of the parties in a case he shall not exercise the functions of the presidency in respect of that case. The same rule applies to the Vice-President, or to the senior judge, when called on to act as President.

2. The Member of the Court who is presiding in a case on the date on which the Court convenes for the oral proceedings shall continue to preside in that case until completion of the current phase of the case, notwithstanding the election in the meantime of a new President or Vice-President. If he should become unable to act, the presidency for the case shall be determined in accordance with Article 13 of these Rules, and on the basis of the composition of the Court on the date on which it convened for the oral proceedings.

Article 33

Except as provided in Article 17 of these Rules, Members of the Court who have been replaced, in accordance with Article 13, paragraph 3, of the Statute following the expiration of their terms of office, shall discharge the duty imposed upon them by that paragraph by continuing to sit until the completion of any phase of a case in respect of which the Court convenes for the oral proceedings prior to the date of such replacement.

Article 34

1. In case of any doubt arising as to the application of Article 17, paragraph 2, of the Statute or in case of a disagreement as to the application of Article 24 of the Statute, the President shall inform the Members of the Court, with whom the decision lies.

2. If a party desires to bring to the attention of the Court facts which it considers to be of possible relevance to the application of the provisions of the Statute mentioned in the previous paragraph, but which it believes may not be known to the Court, that party shall communicate confidentially such facts to the President in writing.

Article 35

1. If a party proposes to exercise the power conferred by Article 31 of the Statute to choose a judge *ad hoc* in a case, it shall notify the Court of its intention as soon as possible. If the name and nationality of the judge selected are not indicated at the same time, the party shall, not later than two months before the time-limit fixed for the filing of the Counter-Memorial, inform the Court of the name and nationality of the person chosen and supply brief biographical details. The judge *ad hoc* may be of a nationality other than that of the party which chooses him.

2. If a party proposes to abstain from choosing a judge *ad hoc*, on condition of a like abstention by the other party, it shall so notify the Court which shall inform the other party. If the other party thereafter gives notice of its intention to choose, or chooses, a judge *ad hoc*, the time-limit for the party which has previously abstained from choosing a judge may be extended by the President.

3. A copy of any notification relating to the choice of a judge *ad hoc* shall be communicated by the Registrar to the other party, which shall be requested to furnish, within a time-limit to be fixed by the President, such observations as it may wish to make. If within the said time-limit no objection is raised by the other party, and if none appears to the Court itself, the parties shall be so informed.

4. In the event of any objection or doubt, the matter shall be decided by the Court, if necessary after hearing the parties.

5. A judge *ad hoc* who has accepted appointment but who becomes unable to sit may be replaced.

6. If and when the reasons for the participation of a judge *ad hoc* are found no longer to exist, he shall cease to sit on the Bench.

Article 36

1. If the Court finds that two or more parties are in the same interest, and therefore are to be reckoned as one party only, and that there is no Member of the Court of the nationality of any one of those parties upon the Bench, the Court shall fix a time-limit within which they may jointly choose a judge *ad hoc*.

2. Should any party amongst those found by the Court to be in the same interest allege the existence of a separate interest of its own, or put forward any other objection, the matter shall be decided by the Court, if necessary after hearing the parties.

Article 37

1. If a Member of the Court having the nationality of one of the parties is or becomes unable to sit in any phase of a case, that party shall thereupon become entitled to choose a judge *ad hoc* within a time-limit to be fixed by the Court, or by the President if the Court is not sitting.

2. Parties in the same interest shall be deemed not to have a judge of one of their nationalities upon the Bench if the Member of the Court having one of their nationalities is or becomes unable to sit in any phase of the case.

3. If the Member of the Court having the nationality of a party becomes able to sit not later than the closure of the written proceedings in that phase of the case, that Member of the Court shall resume his seat on the Bench in the case.

SECTION C. PROCEEDINGS BEFORE THE COURT

Subsection 1. Institution of Proceedings

Article 38

1. When proceedings before the Court are instituted by means of an application addressed as specified in Article 40, paragraph 1, of the Statute, the application shall indicate the party making it, the State against which the claim is brought, and the subject of the dispute.

2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.

3. The original of the application shall be signed either by the agent of the party submitting it, or by the diplomatic representative of that party in the country in which the Court has its seat, or by some other duly authorized person. If the application bears the signature of someone other than such diplomatic representative, the signature must be authenticated by the latter or by the competent authority of the applicant's foreign ministry.

4. The Registrar shall forthwith transmit to the respondent a certified copy of the application.

5. When the applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case.

Article 39

1. When proceedings are brought before the Court by the notification of a special agreement, in conformity with Article 40, paragraph 1, of the Statute, the notification may be effected by the parties jointly or by any one or more of them. If the notification is not a joint one, a certified copy of it shall forthwith be communicated by the Registrar to the other party.

2. In each case the notification shall be accompanied by an original or certified copy of the special agreement. The notification shall also, in so far as this is not already apparent from the agreement, indicate the precise subject of the dispute and identify the parties to it.

Article 40

1. Except in the circumstances contemplated by Article 38, paragraph 5, of these Rules, all steps on behalf of the parties after proceedings have been instituted shall be taken by agents. Agents shall have an address for service at the seat of the Court to which all communications concerning the case are to be sent. Communications addressed to the agents of the parties shall be considered as having been addressed to the parties themselves.

2. When proceedings are instituted by means of an application, the name of the agent for the applicant shall be stated. The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, shall inform the Court of the name of its agent.

3. When proceedings are brought by notification of a special agreement, the party making the notification shall state the name of its agent. Any other party to the special agreement, upon receiving from the Registrar a certified copy of such notification, or as soon as possible thereafter, shall inform the Court of the name of its agent if it has not already done so.

Article 41

The institution of proceedings by a State which is not a party to the Statute but which, under Article 35, paragraph 2, thereof, has accepted the jurisdiction of the Court by a declaration made in accordance with any resolution adopted by the Security Council under that Article[1], shall be accompanied by a deposit of the declaration in question, unless the latter has previously been deposited with the Registrar. If any question of the validity or effect of such declaration arises, the Court shall decide.

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[1] The resolution now in force was adopted on 15 October 1946.

Article 42

The Registrar shall transmit copies of any application or notification of a special agreement instituting proceedings before the Court to: *(a)* the Secretary-General of the United Nations; *(b)* the Members of the United Nations; *(c)* other States entitled to appear before the Court.

Article 43[*1]

1. Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter.

2. Whenever the construction of a convention to which a public international organization is a party may be in question in a case before the Court, the Court shall consider whether the Registrar shall so notify the public international organization concerned. Every public international organization notified by the Registrar may submit its observations on the particular provisions of the convention the construction of which is in question in the case.

3. If a public international organization sees fit to furnish its observations under paragraph 2 of this Article, the procedure to be followed shall be that provided for in Article 69, paragraph 2, of these Rules.

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[*] Amendment entered into force on 29 September 2005.

[1] Article 43, paragraph 1, as amended, repeats unchanged the text of Article 43, as adopted on 14 April 1978.

Paragraphs 2 and 3 of the amended Article 43 are new.

Subsection 2. The Written Proceedings

Article 44

1. In the light of the information obtained by the President under Article 31 of these Rules, the Court shall make the necessary orders to determine, *inter alia*, the number and the order of filing of the pleadings and the time-limits within which they must be filed.

2. In making an order under paragraph 1 of this Article, any agreement between the parties which does not cause unjustified delay shall be taken into account.

3. The Court may, at the request of the party concerned, extend any time-limit, or decide that any step taken after the expiration of the time-limit fixed therefor shall be considered as valid, if it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views.

4. If the Court is not sitting, its powers under this Article shall be exercised by the President, but without prejudice to any subsequent decision of the Court. If the consultation referred to in Article 31 reveals persistent disagreement between the parties as to the application of Article 45, paragraph 2, or Article 46, paragraph 2, of these Rules, the Court shall be convened to decide the matter.

Article 45

1. The pleadings in a case begun by means of an application shall consist, in the following order, of: a Memorial by the applicant; a Counter-Memorial by the respondent.

2. The Court may authorize or direct that there shall be a Reply by the applicant and a Rejoinder by the respondent if the parties are so agreed, or if the Court decides, *proprio motu* or at the request of one of the parties, that these pleadings are necessary.

Article 46

1. In a case begun by the notification of a special agreement, the number and order of the pleadings shall be governed by the provisions of the agreement, unless the Court, after ascertaining the views of the parties, decides otherwise.

2. If the special agreement contains no such provision, and if the parties have not subsequently agreed on the number and order of pleadings, they shall each file a Memorial and Counter-Memorial, within the same time-limits. The Court shall not authorize the presentation of Replies unless it finds them to be necessary.

Article 47

The Court may at any time direct that the proceedings in two or more cases be joined. It may also direct that the written or oral proceedings, including the calling of witnesses, be in common; or the Court may, without effecting any formal joinder, direct common action in any of these respects.

Article 48

Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case permits.

Article 49

1. A Memorial shall contain a statement of the relevant facts, a statement of law, and the submissions.

2. A Counter-Memorial shall contain: an admission or denial of the facts stated in the Memorial; any additional facts, if necessary; observations concerning the statement of law in the Memorial; a statement of law in answer thereto; and the submissions.

3. The Reply and Rejoinder, whenever authorized by the Court, shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.

4. Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submissions previously made.

Article 50

1. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of the contentions contained in the pleading.

2. If only parts of a document are relevant, only such extracts as are necessary for the purpose of the pleading in question need be annexed. A copy of the whole document shall be deposited in the Registry, unless it has been published and is readily available.

3. A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

Article 51

1. If the parties are agreed that the written proceedings shall be conducted wholly in one of the two official languages of the Court, the pleadings shall be submitted only in that language. If the parties are not so agreed, any pleading or any part of a pleading shall be submitted in one or other of the official languages.

2. If in pursuance of Article 39, paragraph 3, of the Statute a language other than French or English is used, a translation into French or English certified as accurate by the party submitting it, shall be attached to the original of each pleading.

3. When a document annexed to a pleading is not in one of the official languages of the Court, it shall be accompanied by a translation into one of these languages certified by the party submitting it as accurate. The translation may be confined to part of an annex, or to extracts therefrom, but in this case it must be accompanied by an explanatory note indicating what passages are translated. The Court may however require a more extensive or a complete translation to be furnished.

Article 52[*1] [2]

1. The original of every pleading shall be signed by the agent and filed in the Registry. It shall be accompanied by a certified copy of the pleading, documents annexed, and any translations, for communication to the other party in accordance with Article 43, paragraph 4, of the Statute,

and by the number of additional copies required by the Registry, but without prejudice to an increase in that number should the need arise later.

2. All pleadings shall be dated. When a pleading has to be filed by a certain date, it is the date of the receipt of the pleading in the Registry which will be regarded by the Court as the material date.

3. The correction of a slip or error in any document which has been filed may be made at any time with the consent of the other party or by leave of the President. Any correction so effected shall be notified to the other party in the same manner as the pleading to which it relates.

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*Amendment entered into force on 14 April 2005.

[1]The agents of the parties are requested to ascertain from the Registry the usual format of the pleadings.

[2]The text of Article 52, as adopted on 14 April 1978, contained a paragraph 3 concerning the procedure to be followed where the Registrar arranges for the printing of a pleading; this paragraph has been deleted and the footnote to the Article has been amended. Former paragraph 4 has been renumbered and is now paragraph 3.

Article 53

1. The Court, or the President if the Court is not sitting, may at any time decide, after ascertaining the views of the parties, that copies of the pleadings and documents annexed shall be made available to a State entitled to appear before it which has asked to be furnished with such copies.

2. The Court may, after ascertaining the views of the parties, decide that copies of the pleadings and documents annexed shall be made accessible to the public on or after the opening of the oral proceedings.

Subsection 3. The Oral Proceedings

Article 54

1. Upon the closure of the written proceedings, the case is ready for hearing. The date for the opening of the oral proceedings shall be fixed by the Court, which may also decide, if occasion should arise, that the opening or the continuance of the oral proceedings be postponed.

2. When fixing the date for, or postponing, the opening of the oral proceedings the Court shall have regard to the priority required by Article 74 of these Rules and to any other special circumstances, including the urgency of a particular case.

3. When the Court is not sitting, its powers under this Article shall be exercised by the President.

Article 55

The Court may, if it considers it desirable, decide pursuant to Article 22, paragraph 1, of the Statute that all or part of the further proceedings in a case shall be held at a place other than the seat of the Court. Before so deciding, it shall ascertain the views of the parties.

Article 56

1. After the closure of the written proceedings, no further documents may be submitted to the Court by either party except with the consent of the other party or as provided in paragraph 2 of this Article. The party desiring to produce a new document shall file the original or a certified copy thereof, together with the number of copies required by the Registry, which shall be responsible for communicating it to the other party and shall inform the Court. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document.

2. In the absence of consent, the Court, after hearing the parties, may, if it considers the document necessary, authorize its production.

3. If a new document is produced under paragraph 1 or paragraph 2 of this Article, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.

4. No reference may be made during the oral proceedings to the contents of any document which has not been produced in accordance with Article 43 of the Statute or this Article, unless the document is part of a publication readily available.

5. The application of the provisions of this Article shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

Article 57

Without prejudice to the provisions of the Rules concerning the production of documents, each party shall communicate to the Registrar, in sufficient time before the opening of the oral proceedings, information regarding any evidence which it intends to produce or which it intends to request the Court to obtain. This communication shall contain a list of the surnames, first names, nationalities, descriptions and places of residence of the witnesses and experts whom the party intends to call, with indications in general terms of the point or points to which their evidence will be directed. A copy of the communication shall also be furnished for transmission to the other party.

Article 58

1. The Court shall determine whether the parties should present their arguments before or after the production of the evidence; the parties shall, however, retain the right to comment on the evidence given.

2. The order in which the parties will be heard, the method of handling the evidence and of examining any witnesses and experts, and the number of counsel and advocates to be heard on behalf of each party, shall be settled by the Court after the views of the parties have been ascertained in accordance with Article 31 of these Rules.

Article 59

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted. Such a decision or demand may concern either the whole or part of the hearing, and may be made at any time.

Article 60

1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain.

2. At the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party's final submissions. A copy of the written text of these, signed by the agent, shall be communicated to the Court and transmitted to the other party.

Article 61

1. The Court may at any time prior to or during the hearing indicate any points or issues to which it would like the parties specially to address themselves, or on which it considers that there has been sufficient argument.

2. The Court may, during the hearing, put questions to the agents, counsel and advocates, and may ask them for explanations.

3. Each judge has a similar right to put questions, but before exercising it he should make his intention known to the President, who is made responsible by Article 45 of the Statute for the control of the hearing.

4. The agents, counsel and advocates may answer either immediately or within a time-limit fixed by the President.

Article 62

1. The Court may at any time call upon the parties to produce such evidence or to give such explanations as the Court may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose.

2. The Court may, if necessary, arrange for the attendance of a witness or expert to give evidence in the proceedings.

Article 63

1. The parties may call any witnesses or experts appearing on the list communicated to the Court pursuant to Article 57 of these Rules. If at any time during the hearing a party wishes to call a witness or expert whose name was not included in that list, it shall so inform the Court and the other party, and shall supply the information required by Article 57. The witness or expert may be called either if the other party makes no objection or if the Court is satisfied that his evidence seems likely to prove relevant.

2. The Court, or the President if the Court is not sitting, shall, at the request of one of the parties or *proprio motu*, take the necessary steps for the examination of witnesses otherwise than before the Court itself.

Article 64

Unless on account of special circumstances the Court decides on a different form of words,

(a) every witness shall make the following declaration before giving any evidence:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth";

(b) every expert shall make the following declaration before making any statement:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief."

Article 65

Witnesses and experts shall be examined by the agents, counsel or advocates of the parties under the control of the President. Questions may be put to them by the President and by the judges. Before testifying, witnesses shall remain out of court.

Article 66

The Court may at any time decide, either *proprio motu* or at the request of a party, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Court may decide upon after ascertaining the views of the parties. The necessary arrangements shall be made in accordance with Article 44 of the Statute.

Article 67

1. If the Court considers it necessary to arrange for an enquiry or an expert opinion, it shall, after hearing the parties, issue an order to this effect, defining the subject of the enquiry or expert opinion, stating the number and mode of appointment of the persons to hold the enquiry or of the experts, and laying down the procedure to be followed. Where appropriate, the Court shall require persons appointed to carry out an enquiry, or to give an expert opinion, to make a solemn declaration.

2. Every report or record of an enquiry and every expert opinion shall be communicated to the parties, which shall be given the opportunity of commenting upon it.

Article 68

Witnesses and experts who appear at the instance of the Court under Article 62, paragraph 2, and persons appointed under Article 67, paragraph 1, of these Rules, to carry out an enquiry or to give an expert opinion, shall, where appropriate, be paid out of the funds of the Court.

Article 69

1. The Court may, at any time prior to the closure of the oral proceedings, either *proprio motu* or at the request of one of the parties communicated as provided in Article 57 of these Rules, request a public international organization, pursuant to Article 34 of the Statute, to furnish information relevant to a case before it. The Court, after consulting the chief administrative officer of the organization concerned, shall decide whether such information shall be presented to it orally or in writing, and the time-limits for its presentation.

2. When a public international organization sees fit to furnish, on its own initiative, information relevant to a case before the Court, it shall do so in the form of a Memorial to be filed in the Registry before the closure of the written proceedings. The Court shall retain the right to require such information to be supplemented, either orally or in writing, in the form of answers to any questions which it may see fit to formulate, and also to authorize the parties to comment, either orally or in writing, on the information thus furnished.

3. In the circumstances contemplated by Article 34, paragraph 3, of the Statute, the Registrar, on the instructions of the Court, or of the President if the Court is not sitting, shall proceed as prescribed in that paragraph. The Court, or the President if the Court is not sitting, may, as from the date on which the Registrar has communicated copies of the written proceedings and after consulting the chief administrative officer of the public international organization concerned, fix a time-limit within which the organization may submit to the Court its observations in writing. These observations shall be communicated to the parties and may be discussed by them and by the representative of the said organization during the oral proceedings.

4. In the foregoing paragraph, the term “public international organization” denotes an international organization of States.

Article 70

1. In the absence of any decision to the contrary by the Court, all speeches and statements made and evidence given at the hearing in one of the official languages of the Court shall be interpreted into the other official language. If they are made or given in any other language, they shall be interpreted into the two official languages of the Court.

2. Whenever, in accordance with Article 39, paragraph 3, of the Statute, a language other than French or English is used, the necessary arrangements for interpretation into one of the two official languages shall be made by the party concerned; however, the Registrar shall make arrangements for the verification of the interpretation provided by a party of evidence given on the party's behalf. In the case of witnesses or experts who appear at the instance of the Court, arrangements for interpretation shall be made by the Registry.

3. A party on behalf of which speeches or statements are to be made, or evidence given, in a language which is not one of the official languages of the Court, shall so notify the Registrar in sufficient time for him to make the necessary arrangements.

4. Before first interpreting in the case, interpreters provided by a party shall make the following declaration in open court:

“I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete.”

Article 71

1. A verbatim record shall be made by the Registrar of every hearing, in the official language of the Court which has been used. When the language used is not one of the two official languages of the Court, the verbatim record shall be prepared in one of the Court's official languages.

2. When speeches or statements are made in a language which is not one of the official languages of the Court, the party on behalf of which they are made shall supply to the Registry in advance a text thereof in one of the official languages, and this text shall constitute the relevant part of the verbatim record.

3. The transcript of the verbatim record shall be preceded by the names of the judges present, and those of the agents, counsel and advocates of the parties.

4. Copies of the transcript shall be circulated to the judges sitting in the case, and to the parties. The latter may, under the supervision of the Court, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the sense and bearing thereof. The judges may likewise make corrections in the transcript of anything they may have said.

5. Witnesses and experts shall be shown that part of the transcript which relates to the evidence given, or the statements made by them, and may correct it in like manner as the parties.

6. One certified true copy of the eventual corrected transcript, signed by the President and the Registrar, shall constitute the authentic minutes of the sitting for the purpose of Article 47 of the Statute. The minutes of public hearings shall be printed and published by the Court.

Article 72

Any written reply by a party to a question put under Article 61, or any evidence or explanation supplied by a party under Article 62 of these Rules, received by the Court after the closure of the oral proceedings, shall be communicated to the other party, which shall be given the opportunity of commenting upon it. If necessary the oral proceedings may be reopened for that purpose.

SECTION D. INCIDENTAL PROCEEDINGS

Subsection 1. Interim Protection

Article 73

1. A written request for the indication of provisional measures may be made by a party at any time during the course of the proceedings in the case in connection with which the request is made.

2. The request shall specify the reasons therefor, the possible consequences if it is not granted, and the measures requested. A certified copy shall forthwith be transmitted by the Registrar to the other party.

Article 74

1. A request for the indication of provisional measures shall have priority over all other cases.

2. The Court, if it is not sitting when the request is made, shall be convened forthwith for the purpose of proceeding to a decision on the request as a matter of urgency.

3. The Court, or the President if the Court is not sitting, shall fix a date for a hearing which will afford the parties an opportunity of being represented at it. The Court shall receive and take into account any observations that may be presented to it before the closure of the oral proceedings.

4. Pending the meeting of the Court, the President may call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects.

Article 75

1. The Court may at any time decide to examine *proprio motu* whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties.

2. When a request for provisional measures has been made, the Court may indicate measures that are in whole or in part other than those requested, or that ought to be taken or complied with by the party which has itself made the request.

3. The rejection of a request for the indication of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts.

Article 76

1. At the request of a party the Court may, at any time before the final judgment in the case, revoke or modify any decision concerning provisional measures if, in its opinion, some change in the situation justifies such revocation or modification.

2. Any application by a party proposing such a revocation or modification shall specify the change in the situation considered to be relevant.

3. Before taking any decision under paragraph 1 of this Article the Court shall afford the parties an opportunity of presenting their observations on the subject.

Article 77

Any measures indicated by the Court under Articles 73 and 75 of these Rules, and any decision taken by the Court under Article 76, paragraph 1, of these Rules, shall forthwith be communicated to the Secretary-General of the United Nations for transmission to the Security Council in pursuance of Article 41, paragraph 2, of the Statute.

Article 78

The Court may request information from the parties on any matter connected with the implementation of any provisional measures it has indicated.

Subsection 2. Preliminary Objections

Article 79[*] [1]

1. Any objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing as soon as possible, and not later than three months after the delivery of the Memorial. Any such objection made by a party other than the respondent shall be filed within the time-limit fixed for the delivery of that party's first pleading.

2. Notwithstanding paragraph 1 above, following the submission of the application and after the President has met and consulted with the parties, the Court may decide that any questions of jurisdiction and admissibility shall be determined separately.

3. Where the Court so decides, the parties shall submit any pleadings as to jurisdiction and admissibility within the time-limits fixed by the Court and in the order determined by it, notwithstanding Article 45, paragraph 1.

4. The preliminary objection shall set out the facts and the law on which the objection is based, the submissions and a list of the documents in support; it shall mention any evidence which the party may desire to produce. Copies of the supporting documents shall be attached.

5. Upon receipt by the Registry of a preliminary objection, the proceedings on the merits shall be suspended and the Court, or the President if the Court is not sitting, shall fix the time-limit within which the other party may present a written statement of its observations and submissions; documents in support shall be attached and evidence which it is proposed to produce shall be mentioned.

6. Unless otherwise decided by the Court, the further proceedings shall be oral.

7. The statements of facts and law in the pleadings referred to in paragraphs 4 and 5 of this Article, and the statements and evidence presented at the hearings contemplated by paragraph 6, shall be confined to those matters that are relevant to the objection.

8. In order to enable the Court to determine its jurisdiction at the preliminary stage of the proceedings, the Court, whenever necessary, may request the parties to argue all questions of law and fact, and to adduce all evidence, which bear on the issue.

9. After hearing the parties, the Court shall give its decision in the form of a judgment, by which it shall either uphold the objection, reject it, or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character. If the Court rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings.

10. Any agreement between the parties that an objection submitted under paragraph 1 of this Article be heard and determined within the framework of the merits shall be given effect by the Court.

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[*] Amendment entered into force on 1 February 2001. Article 79 of the Rules of Court as adopted on 14 April 1978 has continued to apply to all cases submitted to the Court prior to 1 February 2001.

[1] In Article 79, paragraph 1, as amended, the words “as soon as possible, and not later than three months after the delivery of the Memorial” have been substituted for the words “within the time-limit fixed for the delivery of the Counter-Memorial” contained in the text of this paragraph as adopted on 14 April 1978.

Paragraphs 2 and 3 of the amended Article 79 are new.

The former paragraphs 2 to 8 have been renumbered, respectively, as paragraphs 4 to 10.

Subsection 3. Counter-Claims

Article 80[*] [1]

1. The Court may entertain a counter-claim only if it comes within the jurisdiction of the Court and is directly connected with the subject-matter of the claim of the other party.

2. A counter-claim shall be made in the Counter-Memorial and shall appear as part of the submissions contained therein. The right of the other party to present its views in writing on the counter-claim, in an additional pleading, shall be preserved, irrespective of any decision of the Court, in accordance with Article 45, paragraph 2, of these Rules, concerning the filing of further written pleadings.

3. Where an objection is raised concerning the application of paragraph 1 or whenever the Court deems necessary, the Court shall take its decision thereon after hearing the parties.

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*Amendment entered into force on 1 February 2001. Article 80 of the Rules of Court as adopted on 14 April 1978 has continued to apply to all cases submitted to the Court prior to 1 February 2001.

[1] Article 80 of the Rules of Court as adopted on 14 April 1978 read as follows:

"*Article 80*

1. A counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court.

2. A counter-claim shall be made in the Counter-Memorial of the party presenting it, and shall appear as part of the submissions of that party.

3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Court shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings."

Subsection 4. Intervention

Article 81

1. An application for permission to intervene under the terms of Article 62 of the Statute, signed in the manner provided for in Article 38, paragraph 3, of these Rules, shall be filed as soon as possible, and not later than the closure of the written proceedings. In exceptional circumstances, an application submitted at a later stage may however be admitted.

2. The application shall state the name of an agent. It shall specify the case to which it relates, and shall set out:

(a) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;

(b) the precise object of the intervention;

(c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case.

3. The application shall contain a list of the documents in support, which documents shall be attached.

Article 82

1. A State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, signed in the manner provided for in Article 38, paragraph 3, of these Rules. Such a declaration shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings. In exceptional circumstances a declaration submitted at a later stage may however be admitted.

2. The declaration shall state the name of an agent. It shall specify the case and the convention to which it relates and shall contain:

(a) particulars of the basis on which the declarant State considers itself a party to the convention;

(b) identification of the particular provisions of the convention the construction of which it considers to be in question;

(c) a statement of the construction of those provisions for which it contends;

(d) a list of the documents in support, which documents shall be attached.

3. Such a declaration may be filed by a State that considers itself a party to the convention the construction of which is in question but has not received the notification referred to in Article 63 of the Statute.

Article 83

1. Certified copies of the application for permission to intervene under Article 62 of the Statute, or of the declaration of intervention under Article 63 of the Statute, shall be communicated forthwith to the parties to the case, which shall be invited to furnish their written observations within a time-limit to be fixed by the Court or by the President if the Court is not sitting.

2. The Registrar shall also transmit copies to: *(a)* the Secretary-General of the United Nations; *(b)* the Members of the United Nations; *(c)* other States entitled to appear before the Court; *(d)* any other States which have been notified under Article 63 of the Statute.

Article 84

1. The Court shall decide whether an application for permission to intervene under Article 62 of the Statute should be granted, and whether an intervention under Article 63 of the Statute is admissible, as a matter of priority unless in view of the circumstances of the case the Court shall otherwise determine.

2. If, within the time-limit fixed under Article 83 of these Rules, an objection is filed to an application for permission to intervene, or to the admissibility of a declaration of intervention, the Court shall hear the State seeking to intervene and the parties before deciding.

Article 85

1. If an application for permission to intervene under Article 62 of the Statute is granted, the intervening State shall be supplied with copies of the pleadings and documents annexed and shall be entitled to submit a written statement within a time-limit to be fixed by the Court. A further time-limit shall be fixed within which the parties may, if they so desire, furnish their written observations on that statement prior to the oral proceedings. If the Court is not sitting, these time-limits shall be fixed by the President.

2. The time-limits fixed according to the preceding paragraph shall, so far as possible, coincide with those already fixed for the pleadings in the case.

3. The intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.

Article 86

1. If an intervention under Article 63 of the Statute is admitted, the intervening State shall be furnished with copies of the pleadings and documents annexed, and shall be entitled, within a time-limit to be fixed by the Court, or by the President if the Court is not sitting, to submit its written observations on the subject-matter of the intervention.

2. These observations shall be communicated to the parties and to any other State admitted to intervene. The intervening State shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.

Subsection 5. Special Reference to the Court

Article 87

1. When in accordance with a treaty or convention in force a contentious case is brought before the Court concerning a matter which has been the subject of proceedings before some other international body, the provisions of the Statute and of the Rules governing contentious cases shall apply.

2. The application instituting proceedings shall identify the decision or other act of the international body concerned and a copy thereof shall be annexed; it shall contain a precise statement of the questions raised in regard to that decision or act, which constitute the subject of the dispute referred to the Court.

Subsection 6. Discontinuance

Article 88

1. If at any time before the final judgment on the merits has been delivered the parties, either jointly or separately, notify the Court in writing that they have agreed to discontinue the proceedings, the Court shall make an order recording the discontinuance and directing that the case be removed from the list.

2. If the parties have agreed to discontinue the proceedings in consequence of having reached a settlement of the dispute and if they so desire, the Court may record this fact in the order for the removal of the case from the list, or indicate in, or annex to, the order, the terms of the settlement.

3. If the Court is not sitting, any order under this Article may be made by the President.

Article 89

1. If in the course of proceedings instituted by means of an application, the applicant informs the Court in writing that it is not going on with the proceedings, and if, at the date on which this communication is received by the Registry, the respondent has not yet taken any step in the proceedings, the Court shall make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the list. A copy of this order shall be sent by the Registrar to the respondent.

2. If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Court shall fix a time-limit within which the respondent may state whether it opposes the discontinuance of the proceedings. If no objection is made to the discontinuance before the expiration of the time-limit, acquiescence will be presumed and the Court shall make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the list. If objection is made, the proceedings shall continue.

3. If the Court is not sitting, its powers under this Article may be exercised by the President.

SECTION E. PROCEEDINGS BEFORE THE CHAMBERS

Article 90

Proceedings before the Chambers mentioned in Articles 26 and 29 of the Statute shall, subject to the provisions of the Statute and of these Rules relating specifically to the Chambers, be governed by the provisions of Parts I to III of these Rules applicable in contentious cases before the Court.

Article 91

1. When it is desired that a case should be dealt with by one of the Chambers which has been formed in pursuance of Article 26, paragraph 1, or Article 29 of the Statute, a request to this effect shall either be made in the document instituting the proceedings or accompany it. Effect will be given to the request if the parties are in agreement.

2. Upon receipt by the Registry of this request, the President of the Court shall communicate it to the members of the Chamber concerned. He shall take such steps as may be necessary to give effect to the provisions of Article 31, paragraph 4, of the Statute.

3. The President of the Court shall convene the Chamber at the earliest date compatible with the requirements of the procedure.

Article 92

1. Written proceedings in a case before a Chamber shall consist of a single pleading by each side. In proceedings begun by means of an application, the pleadings shall be delivered within successive time-limits. In proceedings begun by the notification of a special agreement, the pleadings shall be delivered within the same time-limits, unless the parties have agreed on successive delivery of their pleadings. The time-limits referred to in this paragraph shall be fixed by the Court, or by the President if the Court is not sitting, in consultation with the Chamber concerned if it is already constituted.

2. The Chamber may authorize or direct that further pleadings be filed if the parties are so agreed, or if the Chamber decides, *proprio motu* or at the request of one of the parties, that such pleadings are necessary.

3. Oral proceedings shall take place unless the parties agree to dispense with them, and the Chamber consents. Even when no oral proceedings take place, the Chamber may call upon the parties to supply information or furnish explanations orally.

Article 93

Judgments given by a Chamber shall be read at a public sitting of that Chamber.

SECTION F. JUDGMENTS, INTERPRETATION AND REVISION

Subsection 1. Judgments

Article 94

1. When the Court has completed its deliberations and adopted its judgment, the parties shall be notified of the date on which it will be read.

2. The judgment shall be read at a public sitting of the Court and shall become binding on the parties on the day of the reading.

Article 95

1. The judgment, which shall state whether it is given by the Court or by a Chamber, shall contain:

the date on which it is read;
the names of the judges participating in it;
the names of the parties;
the names of the agents, counsel and advocates of the parties;
a summary of the proceedings;
the submissions of the parties;
a statement of the facts;
the reasons in point of law;
the operative provisions of the judgment;
the decision, if any, in regard to costs;
the number and names of the judges constituting the majority;
a statement as to the text of the judgment which is authoritative.

2. Any judge may, if he so desires, attach his individual opinion to the judgment, whether he dissents from the majority or not; a judge who wishes to record his concurrence or dissent without stating his reasons may do so in the form of a declaration. The same shall also apply to orders made by the Court.

3. One copy of the judgment duly signed and sealed, shall be placed in the archives of the Court and another shall be transmitted to each of the parties. Copies shall be sent by the Registrar to: *(a)* the Secretary-General of the United Nations; *(b)* the Members of the United Nations; *(c)* other Sates entitled to appear before the Court.

Article 96

When by reason of an agreement reached between the parties, the written and oral proceedings have been conducted in one of the Court's two official languages, and pursuant to Article 39, paragraph 1, of the Statute the judgment is to be delivered in that language, the text of the judgment in that language shall be the authoritative text.

Article 97

If the Court, under Article 64 of the Statute, decides that all or part of a party's costs shall be paid by the other party, it may make an order for the purpose of giving effect to that decision.

Subsection 2. Requests for the Interpretation or Revision of a Judgment

Article 98

1. In the event of dispute as to the meaning or scope of a judgment any party may make a request for its interpretation, whether the original proceedings were begun by an application or by the notification of a special agreement.

2. A request for the interpretation of a judgment may be made either by an application or by the notification of a special agreement to that effect between the parties; the precise point or points in dispute as to the meaning or scope of the judgment shall be indicated.

3. If the request for interpretation is made by an application, the requesting party's contentions shall be set out therein, and the other party shall be entitled to file written observations thereon within a time-limit fixed by the Court, or by the President if the Court is not sitting.

4. Whether the request is made by an application or by notification of a special agreement, the Court may, if necessary, afford the parties the opportunity of furnishing further written or oral explanations.

Article 99

1. A request for the revision of a judgment shall be made by an application containing the particulars necessary to show that the conditions specified in Article 61 of the Statute are fulfilled. Any documents in support of the application shall be annexed to it.

2. The other party shall be entitled to file written observations on the admissibility of the application within a time-limit fixed by the Court, or by the President if the Court is not sitting. These observations shall be communicated to the party making the application.

3. The Court, before giving its judgment on the admissibility of the application may afford the parties a further opportunity of presenting their views thereon.

4. If the Court finds that the application is admissible it shall fix time-limits for such further proceedings on the merits of the application as, after ascertaining the views of the parties, it considers necessary.

5. If the Court decides to make the admission of the proceedings in revision conditional on previous compliance with the judgment, it shall make an order accordingly.

Article 100

1. If the judgment to be revised or to be interpreted was given by the Court, the request for its revision or interpretation shall be dealt with by the Court. If the judgment was given by a Chamber, the request for its revision or interpretation shall be dealt with by that Chamber.

2. The decision of the Court, or of the Chamber, on a request for interpretation or revision of a judgment shall itself be given in the form of a judgment.

SECTION G. MODIFICATIONS PROPOSED BY THE PARTIES

Article 101

The parties to a case may jointly propose particular modifications or additions to the rules contained in the present Part (with the exception of Articles 93 to 97 inclusive), which may be applied by the Court or by a Chamber if the Court or the Chamber considers them appropriate in the circumstances of the case.

PART IV

ADVISORY PROCEEDINGS

Article 102

1. In the exercise of its advisory functions under Article 65 of the Statute, the Court shall apply, in addition to the provisions of Article 96 of the Charter and Chapter IV of the Statute, the provisions of the present Part of the Rules.

2. The Court shall also be guided by the provisions of the Statute and of these Rules which apply in contentious cases to the extent to which it recognizes them to be applicable. For this purpose, it shall above all consider whether the request for the advisory opinion relates to a legal question actually pending between two or more States.

3. When an advisory opinion is requested upon a legal question actually pending between two or more States, Article 31 of the Statute shall apply, as also the provisions of these Rules concerning the application of that Article.

Article 103

When the body authorized by or in accordance with the Charter of the United Nations to request an advisory opinion informs the Court that its request necessitates an urgent answer, or the Court finds that an early answer would be desirable, the Court shall take all necessary steps to accelerate the procedure, and it shall convene as early as possible for the purpose of proceeding to a hearing and deliberation on the request.

Article 104

All requests for advisory opinions shall be transmitted to the Court by the Secretary-General of the United Nations or, as the case may be, the chief administrative officer of the body authorized to make the request. The documents referred to in Article 65, paragraph 2, of the Statute shall be transmitted to the Court at the same time as the request or as soon as possible thereafter, in the number of copies required by the Registry.

Article 105

1. Written statements submitted to the Court shall be communicated by the Registrar to any States and organizations which have submitted such statements.

2. The Court, or the President if the Court is not sitting, shall:

(a) determine the form in which, and the extent to which, comments permitted under Article 66, paragraph 4, of the Statute shall be received, and fix the time-limit for the submission of any such comments in writing;

(b) decide whether oral proceedings shall take place at which statements and comments may be submitted to the Court under the provisions of Article 66 of the Statute, and fix the date for the opening of such oral proceedings.

Article 106

The Court, or the President if the Court is not sitting, may decide that the written statements and annexed documents shall be made accessible to the public on or after the opening of the oral proceedings. If the request for advisory opinion relates to a legal question actually pending between two or more States, the views of those States shall first be ascertained.

Article 107

1. When the Court has completed its deliberations and adopted its advisory opinion, the opinion shall be read at a public sitting of the Court.

2. The advisory opinion shall contain:

the date on which it is delivered;
the names of the judges participating;
a summary of the proceedings;
a statement of the facts;
the reasons in point of law;
the reply to the question put to the Court;
the number and names of the judges constituting the majority;
a statement as to the text of the opinion which is authoritative.

3. Any judge may, if he so desires, attach his individual opinion to the advisory opinion of the Court, whether he dissents from the majority or not; a judge who wishes to record his concurrence or dissent without stating his reasons may do so in the form of a declaration.

Article 108

The Registrar shall inform the Secretary-General of the United Nations, and, where appropriate, the chief administrative officer of the body which requested the advisory opinion, as to the date and the hour fixed for the public sitting to be held for the reading of the opinion. He shall also inform the representatives of the Members of the United Nations and other States, specialized agencies and public international organizations immediately concerned.

Article 109

One copy of the advisory opinion, duly signed and sealed, shall be placed in the archives of the Court, another shall be sent to the Secretary-General of the United Nations and, where appropriate, a third to the chief administrative officer of the body which requested the opinion of the Court. Copies shall be sent by the Registrar to the Members of the United Nations and to any other States, specialized agencies and public international organizations immediately concerned.

(Signed) Rosalyn HIGGINS,
President.

(Signed) Ph. COUVREUR,
Registrar.

CODE OF JUDICIAL ETHICS

ICC-BD/02-01-05

Table of contents

Preamble

The judges of the International Criminal Court;

Noting the solemn undertaking required by article 45 of the Rome Statute of the International Criminal Court (the "Statute") and rule 5 (1) (a) of the Rules of Procedure and Evidence (the "Rules");

Recalling the principles concerning judicial independence, impartiality and proper conduct specified in the Statute and the Rules;

Recognising the need for guidelines of general application to contribute to judicial independence and impartiality and with a view to ensuring the legitimacy and effectiveness of the international judicial process;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary (1985) and other international and national rules and standards relating to judicial conduct;

Mindful of the international character of the Court and the special challenges facing the judges of the Court in the performance of their responsibilities;

Have agreed as follows:

Article 1
Adoption of the Code

This Code has been adopted by the judges pursuant to regulation 126 and shall be read subject to the Statute, the Rules and the Regulations of the Court.

Article 2
Use of terms

In this Code of Judicial Ethics the terms "Court", "Statute", "Rules" and "Regulations" shall have the meaning attached to them in the Regulations of the Court.

Article 3
Judicial independence

1. Judges shall uphold the independence of their office and the authority of the Court and shall conduct themselves accordingly in carrying out their judicial functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

Article 4
Impartiality

1. Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions.
2. Judges shall avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest.

Article 5
Integrity

1. Judges shall conduct themselves with probity and integrity in accordance with their office, thereby enhancing public confidence in the judiciary.
2. Judges shall not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of their judicial functions.

Article 6
Confidentiality

Judges shall respect the confidentiality of consultations which relate to their judicial functions and the secrecy of deliberations.

Article 7
Diligence

1. Judges shall act diligently in the exercise of their duties and shall devote their professional activities to those duties.
2. Judges shall take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office.
3. Judges shall perform all judicial duties properly and expeditiously.
4. Judges shall deliver their decisions and any other rulings without undue delay.

Article 8
Conduct during proceedings

1. In conducting judicial proceedings, judges shall maintain order, act in accordance with commonly accepted decorum, remain patient and courteous towards all participants and members of the public present and require them to act likewise.
2. Judges shall exercise vigilance in controlling the manner of questioning of witnesses or victims in accordance with the Rules and give special attention to the right of participants to the proceedings to equal protection and benefit of the law.
3. Judges shall avoid conduct or comments which are racist, sexist or otherwise degrading and, to the extent possible, ensure that any person participating in the proceedings refrains from such comments or conduct.

Article 9
Public expression and association

1. Judges shall exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect judicial independence or impartiality.
2. While judges are free to participate in public debate on matters pertaining to legal subjects, the judiciary or the administration of justice, they shall not comment on pending cases and shall avoid expressing views which may undermine the standing and integrity of the Court.

Article 10
Extra-judicial activity

1. Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the Court, or that may affect or may reasonably appear to affect their independence or impartiality.
2. Judges shall not exercise any political function.

Article 11
Observance of the Code

1. The principles embodied in this Code shall serve as guidelines on the essential ethical standards required of judges in the performance of their duties. They are advisory in nature and have the object of assisting judges with respect to ethical and professional issues with which they are confronted.
2. Nothing in this Code is intended in any way to limit or restrict the judicial independence of the judges.

Resolution ICC-ASP/4/Res.1

Adopted at the 3rd plenary meeting on 2 December 2005, by consensus

ICC-ASP/4/Res.1
Code of Professional Conduct for counsel

The Assembly of State Parties,

Having regard to rule 8 of the Rules of Procedure and Evidence;

Having regard to rule 20, sub-rule 3;

Having regard to the consultations conducted by the Registrar with independent representative bodies of counsel or legal associations;

Recognizing the general principles governing the practice and ethics of the legal profession;

Recalling resolution ICC-ASP/3/Res.3, of 10 September 2004, whereby the Assembly of States Parties requested the Bureau of Assembly of States Parties to prepare an amended draft Code for adoption by the Assembly at its fourth session;

Having regard to the Report of the Bureau on the draft Code of Professional Conduct for counsel,[1] submitted pursuant to the above resolution;

Decides to adopt the Code of Professional Conduct for counsel, the text of which is annexed hereto.

[1] ICC-ASP/4/21.

Annex

Code of Professional Conduct for counsel

Contents

Code of Professional Conduct for counsel

Chapter 1
General provisions

Article 1
Scope

This Code shall apply to defence counsel, counsel acting for States, *amici curiae* and counsel or legal representatives for victims and witnesses practising at the International Criminal Court, hereinafter referred to as "counsel".

Article 2
Use of terms

1. Unless otherwise defined in this Code, all terms are used as defined in the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.

2. In this Code:

- "Court" refers to the International Criminal Court;
- "associate" refers to lawyers who practise in the same law firm as counsel;
- "national authority" refers to the bar association of which counsel is a member or any other organ competent to regulate and control the activity of lawyers, judges, prosecutors or professors of law, or other qualified counsel according to rule 22, paragraph 1, of the Rules of Procedure and Evidence;
- "client" refers to all those assisted or represented by counsel;
- "defence team" refers to counsel and all persons working under his or her oversight; and
- "agreement" refers to the oral or written legal relationship which binds counsel to his or her client before the Court.

Article 3
Amendment procedure

1. States Parties, judges, the Registrar, counsel and independent organizations representing lawyers' associations and counsel may submit proposals for amendments to this Code. Any proposal for amendments to this Code shall be submitted to the Registrar, together with explanatory material, in one or both working languages of the Court.

2. The Registrar shall transmit the proposals to the Presidency, together with a reasoned report prepared after consultation with the Prosecutor and, as appropriate, with any independent organization representing lawyers' associations and counsel.

3. Any proposal to amend this Code, submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar.

4. Any proposal to amend this Code, other than one submitted by one or more States Parties, shall be transmitted by the Presidency to the Assembly of States Parties together with any comments the Presidency may have, taking into account the report of the Registrar. In such circumstances, the Presidency shall provide the Assembly of States Parties with the Presidency's reasoned recommendations as to whether or not any such proposal should be adopted. If the Presidency recommends adoption, it shall submit a draft amendment in relation to that proposal to the Assembly of States Parties for the purpose of adoption.

5. Amendments to this Code shall be adopted by the Assembly of States Parties in accordance with article 112, paragraph 7, of the Statute.

Article 4
Primacy of the Code of Professional Conduct for counsel

Where there is any inconsistency between this Code and any other code of ethics or professional responsibility which counsel are bound to honour, the terms of this Code shall prevail in respect of the practice and professional ethics of counsel when practising before the Court.

Article 5
Solemn undertaking by counsel

Before taking office, counsel shall give the following solemn undertaking before the Court: "I solemnly declare that I will perform my duties and exercise my mission before the International Criminal Court with integrity and diligence, honourably, freely, independently, expeditiously and conscientiously, and that I will scrupulously respect professional secrecy and the other duties imposed by the Code of Professional Conduct for Counsel before the International Criminal Court".

Article 6
Independence of counsel

1. Counsel shall act honourably, independently and freely.

2. Counsel shall not:

   (a) Permit his or her independence, integrity or freedom to be compromised by external pressure; or

   (b) Do anything which may lead to any reasonable inference that his or her independence has been compromised.

Article 7
Professional conduct of counsel

1. Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings.

2. Counsel shall maintain a high level of competence in the law applicable before the Court. He or she shall participate in training initiatives required to maintain such competence.

3. Counsel shall comply at all times with the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and such rulings as to conduct and procedure as may be made by the Court, including the enforcement of this Code.

4. Counsel shall supervise the work of his or her assistants and other staff, including investigators, clerks and researchers, to ensure that they comply with this Code.

Article 8
Respect for professional secrecy and confidentiality

1. Counsel shall respect and actively exercise all care to ensure respect for professional secrecy and the confidentiality of information in accordance with the Statute, the Rules of Procedure and Evidence and the Regulations of the Court.

2. The relevant provisions referred to in paragraph 1 of this article include, inter alia, article 64, paragraph 6 (c), article 64, paragraph 7, article 67, paragraph 1 (b), article 68, and article 72 of the Statute, rules 72, 73, and 81 of the Rules of Procedure and Evidence and regulation 97 of the Regulations of the Court. Counsel shall also comply with the relevant provisions of this Code and any order of the Court.

3. Counsel may only reveal the information protected under paragraphs 1 and 2 of this article to co-counsel, assistants and other staff working on the particular case to which the information relates and solely to enable the exercise of his or her functions in relation to that case.

4. Subject to paragraph 3 of this article, counsel may only disclose the information protected under paragraphs 1 and 2 of this article, where such disclosure is provided for by a particular provision of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court or this Code or where such disclosure is ordered by the Court. In particular, Counsel shall not reveal the identity of protected victims and witnesses, or any confidential information that may reveal their identity and whereabouts, unless he or she has been authorized to do so by an order of the Court.

Article 9
Counsel-client relationship

1. Counsel shall not engage in any discriminatory conduct in relation to any other person, in particular his or her client, on grounds of race, colour, ethnic or national origin, nationality, citizenship, political opinions, religious convictions, gender, sexual orientation, disability, marital status or any other personal or economic status.

2. In his or her relations with the client, counsel shall take into account the client's personal circumstances and specific needs, in particular where counsel is representing victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

3. Where a client's ability to make decisions concerning representation is impaired because of mental disability or for any other reason, counsel shall inform the Registrar and the relevant Chamber. Counsel shall also take the steps necessary to ensure proper legal representation of the client according to the Statute and the Rules of Procedure and Evidence.

4. Counsel shall not engage in any improper conduct, such as demanding sexual relations, coercion, intimidation, or exercise any other undue influence in his or her relations with a client.

Article 10
Advertising

Counsel may advertise provided the information is:

(a) Accurate; and

(b) Respectful of counsel's obligations regarding confidentiality and privilege.

Chapter 2
Representation by counsel

Article 11
Establishment of the representation agreement

The agreement is established when counsel accepts a request from a client seeking representation or from the Chamber.

Article 12
Impediments to representation

1. Counsel shall not represent a client in a case:

(a) If the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation; or

(b) In which counsel was involved or was privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear. The lifting of this impediment may, however, at counsel's request, be ordered by the Court if deemed justified in the interests of justice. Counsel shall still be bound by the duties of confidentiality stemming from his or her former position as a staff member of the Court.

2. In the case of paragraph 1 (a) of this article, where consent has been obtained after consultation, counsel shall inform the Chamber of the Court seized with the situation or case of the conflict and the consent obtained. Such notice shall be provided in a manner consistent with counsel's duties of confidentiality pursuant to article 8 of this Code and rule 73, sub-rule 1 of the Rules of Procedure and Evidence.

3. Counsel shall not act in proceedings in which there is a substantial probability that counsel or an associate of counsel will be called to appear as a witness unless:

(a) The testimony relates to an uncontested issue; or

(b) The testimony relates to the nature and value of legal services rendered in the case.

4. This article is without prejudice to article 16 of this Code.

Article 13
Refusal by counsel of a representation agreement

1. Counsel has the right to refuse an agreement without stating reasons.

2. Counsel has a duty to refuse an agreement where:

(a) There is a conflict of interest under article16 of this Code;

(b) Counsel is incapable of dealing with the matter diligently; or

(c) Counsel does not consider that he or she has the requisite expertise.

Article 14
Performance in good faith of a representation agreement

1. The relationship of client and counsel is one of candid exchange and trust, binding counsel to act in good faith when dealing with the client. In discharging that duty, counsel shall act at all times with fairness, integrity and candour towards the client.

2. When representing a client, counsel shall:

(a) Abide by the client's decisions concerning the objectives of his or her representation as long as they are not inconsistent with counsel's duties under the Statute, the Rules of Procedure and Evidence, and this Code; and

(b) Consult the client on the means by which the objectives of his or her representation are to be pursued.

Article 15
Communication between counsel and the client

1. Counsel shall provide the client with all explanations reasonably needed to make informed decisions regarding his or her representation.

2. When counsel is discharged from or terminates the agreement, he or she shall convey as promptly as possible to the former client or replacement counsel any communication that counsel received relating to the representation, without prejudice to the duties which subsist after the end of the representation.

3. When communicating with the client, counsel shall ensure the confidentiality of such communication.

Article 16
Conflict of interest

1. Counsel shall exercise all care to ensure that no conflict of interest arises. Counsel shall put the client's interests before counsel's own interests or those of any other person, organization or State, having due regard to the provisions of the Statute, the Rules of Procedure and Evidence, and this Code.

2. Where counsel has been retained or appointed as a common legal representative for victims or particular groups of victims, he or she shall advise his or her clients at the outset of the nature of the representation and the potential conflicting interests within the group. Counsel shall exercise all care to ensure a fair representation of the different yet consistent positions of his or her clients.

3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either:

(a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or

(b) Seek the full and informed consent in writing of all potentially affected clients to continue representation.

Article 17
Duration of the representation agreement

1. Counsel shall advise and represent a client until:

(a) The case before the Court has been finally determined, including all appeals;

(b) Counsel has withdrawn from the agreement in accordance with article 16 or 18 of this Code; or

(c) A counsel assigned by the Court has been withdrawn.

2. The duties of counsel towards the client continue until the representation has ended, except for those duties which subsist under this Code.

Article 18
Termination of the representation

1. With the prior consent of the Chamber, counsel may withdraw from the agreement in accordance with the Regulations of the Court if:

(a) The client insists on pursuing an objective that counsel considers repugnant; or

(b) The client fails to fulfil an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled.

2. Where counsel withdraws from the agreement, he or she remains subject to article 8 of this Code, as well as any provisions of the Statute and the Rules of Procedure and Evidence relating to confidentiality.

3. Where counsel is discharged by the client, counsel may be discharged in accordance with the Regulations of the Court.

4. Where counsel's physical or mental condition materially impairs his or her ability to represent the client, counsel may be withdrawn by the Chamber at his or her request or at the request of the client or the Registrar.

5. In addition to complying with the duties imposed by article 15, paragraph 2, of this Code, counsel shall convey to replacement counsel the entire case file, including any material or document relating to it.

Article 19
Conservation of files

Following the termination of the representation, counsel shall keep files containing documents and records of work carried out in fulfilment of the agreement for five years. Counsel shall allow the former client to inspect the file unless he or she has substantial grounds for refusing to do so. After this time counsel shall seek instructions from the former client, his or her heirs or the Registrar on the disposal of the files, with due regard to confidentiality.

Article 20
Counsel's fees

Prior to establishing an agreement, counsel shall inform the client in writing of the rate of fees to be charged and the criteria for setting them, the basis for calculating the costs, the billing arrangements and the client's right to receive a bill of costs.

Article 21
Prohibitions

1. Notwithstanding article 22, counsel shall not accept remuneration, in cash or in kind, from a source other than the client unless the client consents thereto in writing after consultation and counsel's independence and relationship with the client are not thereby affected.

2. Counsel shall never make his or her fees contingent on the outcome of a case in which he or she is involved.

3. Counsel shall not mix funds of a client with his or her own funds, or with funds of counsel's employer or associates. Counsel shall not retain money received on behalf of a client.

4. Counsel shall not borrow monies or assets from the client.

Article 22
Remuneration of counsel in the framework of legal assistance

1. The fees of counsel where his or her client benefits from legal assistance shall be paid exclusively by the Registry of the Court. Counsel shall not accept remuneration in cash or in kind from any other source.

2. Counsel shall neither transfer nor lend all or part of the fees received for representation of a client or any other assets or monies to a client, his or her relatives, acquaintances, or any other third person or organization in relation to which the client has a personal interest.

3. Counsel shall sign an undertaking to respect the obligations under this article when accepting the appointment to provide legal assistance. The signed undertaking shall be sent to the Registry.

4. Where counsel is requested, induced or encouraged to violate the obligations under this article, counsel shall advise the client of the prohibition of such conduct.

5. Breach of any obligations under this article by Counsel shall amount to misconduct and shall be subject to a disciplinary procedure pursuant to this Code. This may lead to a permanent ban on practising before the Court and being struck off the list of counsel, with transmission to the respective national authority.

Chapter 3
Relations with the Court and others

Article 23
Communications with the Chambers and judges

Unless the judge or the Chamber dealing with a case permits counsel to do so in exceptional circumstances, counsel shall not:

(a) Make contact with a judge or Chamber relative to the merits of a particular case other than within the proper context of the proceedings; or

(b) Transmit evidence, notes or documents to a judge or Chamber except through the Registry.

Article 24
Duties towards the Court

1. Counsel shall take all necessary steps to ensure that his or her actions or those of counsel's assistants or staff are not prejudicial to the ongoing proceedings and do not bring the Court into disrepute.

2. Counsel is personally responsible for the conduct and presentation of the client's case and shall exercise personal judgement on the substance and purpose of statements made and questions asked.

3. Counsel shall not deceive or knowingly mislead the Court. He or she shall take all steps necessary to correct an erroneous statement made by him or her or by assistants or staff as soon as possible after becoming aware that the statement was erroneous.

4. Counsel shall not submit any request or document with the sole aim of harming one or more of the participants in the proceedings.

5. Counsel shall represent the client expeditiously with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings.

Article 25
Evidence

1. Counsel shall at all times maintain the integrity of evidence, whether in written, oral or any other form, which is submitted to the Court. He or she shall not introduce evidence which he or she knows to be incorrect.

2. If counsel, while collecting evidence, reasonably believes that the evidence found may be destroyed or tampered with, counsel shall request the Chamber to issue an order to collect the evidence pursuant to rule 116 of the Rules of Procedure and Evidence.

Article 26
Relations with unrepresented persons

1. When required in the course of representation, counsel may communicate with and meet an unrepresented person in the client's interest.

2. When counsel communicates with unrepresented persons he or she shall:

(a) Inform them of their right to assistance from counsel and, if applicable, to their right to legal assistance; and

(b) Without infringing upon the confidentiality of counsel-client privilege, inform them of the interest that counsel represents and the purpose of the communication.

3. If counsel becomes aware of a potential conflict of interest in the course of a communication or meeting with an unrepresented person, he or she shall, notwithstanding paragraph 1 of this article, refrain immediately from engaging in any further contact or communication with the person.

Article 27
Relations with other counsel

1. In dealing with other counsel and their clients, counsel shall act fairly, in good faith and courteously.

2. All correspondence between counsel representing clients with a common interest in a litigated or non-litigated matter and who agree on exchanging information concerning the matter, shall be presumed confidential and privileged by counsel.

3. When counsel does not expect particular correspondence between counsel to be confidential, he or she shall state clearly at the outset that such correspondence is not confidential.

Article 28
Relations with persons already represented by counsel

Counsel shall not address directly the client of another counsel except through or with the permission of that counsel.

Article 29
Relations with witnesses and victims

1. Counsel shall refrain from intimidating, harassing or humiliating witnesses or victims or from subjecting them to disproportionate or unnecessary pressure within or outside the courtroom.

2. Counsel shall have particular consideration for victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled.

Chapter 4
Disciplinary regime

Article 30
Conflict with other disciplinary regimes

Subject to article 38 of this Code, the present chapter is without prejudice to the disciplinary powers of any other disciplinary authority that may apply to counsel subject to this Code.

Article 31
Misconduct

Counsel commits misconduct when he or she:

(a) Violates or attempts to violate any provisions of this Code, the Statute, the Rules of Procedure and Evidence and the Regulations of the Court or of the Registry in force imposing a substantial ethical or professional duty on him or her;

(b) Knowingly assists or induces another person to commit any misconduct, referred to in paragraph (a) of this article, or does so through the acts of another person; or

(c) Fails to comply with a disciplinary decision rendered pursuant to this chapter.

Article 32
Liability for conduct of assistants or other staff

1. Counsel shall be liable for misconduct under article 31 of this Code by his or her assistants or staff when he or she:

(a) Orders or approves the conduct involved; or

(b) Knows or has information suggesting that violations may be committed and takes no reasonable remedial action.

2. Counsel shall instruct his or her assistants or staff in the standards set by this Code.

Article 33
The Commissioner

1. A Commissioner responsible for investigating complaints of misconduct in accordance with this chapter shall be appointed for four years by the Presidency. The Commissioner shall be chosen from amongst persons with established competence in professional ethics and legal matters.

2. The Commissioner shall not be eligible for re-appointment. A Commissioner who is involved in an investigation when his or her mandate expires shall continue to conduct such an investigation until it is concluded.

Article 34
Filing a complaint of misconduct

1. Complaints against counsel regarding misconduct as referred to in articles 31 and 32 of this Code may be submitted to the Registry by:

(a) The Chamber dealing with the case;

(b) The Prosecutor; or

(c) Any person or group of persons whose rights or interests may have been affected by the alleged misconduct.

2. The complaint shall be made in writing or, if the complainant is unable to do so, orally before a staff member of the Registry. It shall identify the complainant and the counsel against whom the complaint is made and shall describe in sufficient detail the alleged misconduct.

3. The Registrar shall transmit the complaint to the Commissioner.

4. The Registrar may, on his or her own initiative, make complaints to the Commissioner regarding the misconduct referred to in articles 31 and 32 of this Code.

5. All complaints shall be kept confidential by the Registry.

Article 35
Limitation period

The right to file a complaint against counsel for misconduct shall lapse five years after the termination of the representation agreement.

Article 36
Composition and management of the Disciplinary Board

1. The Disciplinary Board shall comprise three members, two of whom shall be permanent and one *ad hoc*.

2. The members of the Disciplinary Board shall perform their functions under this Code in an independent and impartial manner.

3. The Registry shall make appropriate arrangements for the elections, provided for in paragraph 4 of this article, in consultation with counsel and, as appropriate, national authorities.

4. The two permanent members, as well as one alternate member who may serve as a replacement in accordance with paragraph 10 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.

5. The *ad hoc* member shall be a person appointed by the national authority competent to regulate and control the activities of counsel subject to the disciplinary procedure.

6. The permanent members shall not be eligible for re-election.

7. Notwithstanding paragraph 4 of this article, at the first election one of the permanent members shall be selected by lot to serve for a term of six years.

8. After each election and in advance of the first meeting of the newly-elected Disciplinary Board, the permanent and alternate members shall elect one of the permanent members as a chairperson.

9. All members of the Disciplinary Board shall have the same rights and votes. The Disciplinary Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 10 of this article shall have the same rights and votes as permanent and *ad hoc* members serving on the same case.

10. If one of the permanent members is unavailable to deal with the case or serve on the Disciplinary Board, the chairperson or, where the chairperson is the permanent member concerned, the other permanent member, shall request the alternate member to serve as a replacement on the Disciplinary Board.

11. Permanent members or the alternate member whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined including all appeals.

12. The Registrar shall appoint a staff member of the Registry who will render secretariat services to the Disciplinary Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry and, subject to article 44, paragraph 12 of this Code, solely as the secretariat of the Disciplinary Board.

Article 37
Preliminary procedures

1. If the complaint filed meets the requirements in article 34 of this Code, the Commissioner shall forward it to counsel subject to the disciplinary procedure, who shall submit a response within sixty days from the date the complaint is forwarded.

2. The response shall indicate whether the alleged misconduct has been or is the subject of a disciplinary procedure before the national authority. If so, it shall include:

(a) The identity of the national authority deciding on the alleged misconduct; and

(b) A certified communication by the national authority stating the alleged facts that are the basis of the disciplinary procedure before it.

Article 38
Complementarity of disciplinary measures

1. The disciplinary procedure in this Code shall be applied by the Disciplinary Board.

2. The *ad hoc* member of the Disciplinary Board shall serve as the contact point with the relevant national authority for all communication and consultation regarding the procedure.

3. Counsel subject to the disciplinary procedure shall request the national authority dealing with the matter to inform the Disciplinary Board of the progress of any national disciplinary procedure concerning the alleged misconduct and of its final decision, and shall take all measures necessary to facilitate such communication.

4. When the alleged misconduct is the basis of a disciplinary procedure which has already been initiated before the relevant national authority, the procedure before the Disciplinary Board shall be suspended until a final decision is reached regarding the former procedure, unless:

(a) the national authority does not respond to communications and consultations in accordance with paragraph 2 of this article within a reasonable time;

(b) the Disciplinary Board considers that the information received is not satisfactory; or

(c) the Disciplinary Board considers that, in the light of the information received, the national authority is unable or unwilling to conclude the disciplinary procedure.

5. As soon as it receives the decision of the national authority, the Disciplinary Board shall:

(a) declare the procedure closed, unless the decision adopted does not adequately address a complaint of misconduct under this Code; or

(b) declare that the decision of the national authority does not cover or only partially covers the misconduct brought before the Disciplinary Board and that therefore the procedure is to be continued.

6. In the case of paragraphs 3 and paragraph 4 (b) of this article, the Disciplinary Board may ask counsel subject to the disciplinary procedure to provide detailed information about the procedure, including any minute or evidence which might have been submitted.

7. A decision by the Disciplinary Board based on this article may be appealed before the Disciplinary Appeals Board.

Article 39
Disciplinary procedure

1. The Commissioner conducting the investigation may dismiss a complaint without any further investigation if he or she considers on the basis of the information at his or her disposal that the allegation of misconduct is unfounded in fact or in law. He or she shall notify the complainant accordingly.

2. Should the Commissioner consider otherwise, he or she shall promptly investigate the counsel's alleged misconduct and decide either to submit a report to the Disciplinary Board or to bring the procedure to an end.

3. The Commissioner shall take into consideration all evidence, whether oral, written or any other form, which is relevant and has probative value. He or she shall keep all information concerning the disciplinary procedure confidential.

4. The Commissioner may try to find an amicable settlement if he or she deems it appropriate. The Commissioner shall report the outcome of any such efforts to reach an amicable settlement to the Disciplinary Board, which may take it into consideration. Any amicable settlement shall be without prejudice to the competence or powers of the Disciplinary Board under this Code.

5. The report of the Commissioner shall be submitted to the Disciplinary Board.

6. The Disciplinary Board hearing shall be public. However, the Disciplinary Board may decide to hold a hearing or parts of it in closed session, in particular to safeguard the confidentiality of information in the report of the Commissioner or to protect victims and witnesses.

7. The Commissioner and the counsel subject to the disciplinary procedure shall be called and heard. The Disciplinary Board may also call and hear any other person deemed useful for the establishment of the truth.

8. In exceptional cases, where the alleged misconduct is of such a nature as to seriously prejudice the interests of justice, the Commissioner may lodge an urgent motion with the Chamber before which the counsel who is the subject of the complaint is appearing, so that it may, as appropriate, declare a temporary suspension of such counsel.

Article 40
Rights of counsel subject to the disciplinary procedure

1. Counsel subject to the disciplinary procedure shall be entitled to assistance from other counsel.

2. Counsel shall have the right to remain silent before the Disciplinary Board, which may draw any inferences it deems appropriate and reasonable from such silence in the light of all the information submitted to it.

3. Counsel shall have the right to full disclosure of the information and evidence gathered by the Commissioner as well as the Commissioner's report.

4. Counsel shall be given the time required to prepare his or her defence.

5. Counsel shall have the right to question, personally or through his or her counsel, any person called by the Disciplinary Board to testify before it.

Article 41
Decisions by the Disciplinary Board

1. The Disciplinary Board may conclude the procedure finding no misconduct on the basis of the evidence submitted to it or finding that counsel subject to disciplinary procedure committed the alleged misconduct.

2. The decision shall be made public. It shall be reasoned and issued in writing.

3. The decision shall be notified to counsel subject to the disciplinary procedure and to the Registrar.

4. When the decision is final, it shall be published in the Official Journal of the Court and transmitted to the national authority.

Article 42
Sanctions

1. When misconduct has been established, the Disciplinary Board may impose one or more of the following sanctions:

(a) Admonishment;

(b) Public reprimand with an entry in counsel's personal file;

(c) Payment of a fine of up to €30,000;

(d) Suspension of the right to practise before the Court for a period not exceeding two years; and

(e) Permanent ban on practising before the Court and striking off the list of counsel.

2. The admonishment may include recommendations by the Disciplinary Board.

3. The costs of the disciplinary procedure shall be within the discretion of the Disciplinary Board.

Article 43
Appeals

1. Sanctioned counsel and the Commissioner shall have the right to appeal the decision of the Disciplinary Board on factual or legal grounds.

2. The appeal shall be notified to the secretariat of the Disciplinary Board within thirty days from the day on which the decision has been delivered.

3. The secretariat of the Disciplinary Board shall transmit the notification of the appeal to the secretariat of the Disciplinary Appeals Board.

4. The Disciplinary Appeals Board shall decide on the appeal according to the procedure followed before the Disciplinary Board.

Article 44
Composition and management of the Disciplinary Appeals Board

1. The Disciplinary Appeals Board shall decide on appeals against decisions of the Disciplinary Board.

2. The members of the Disciplinary Appeals Board shall perform their functions under this Code in an independent and impartial manner.

3. The Registry shall make appropriate arrangements for the elections provided for in paragraph 5 of this article, in consultation with counsel and, as appropriate, national authorities.

4. The Disciplinary Appeals Board shall comprise five members:

(a) The three judges of the Court who take precedence under regulation 10 of the Regulations of the Court, not including:

(i) the judges dealing with the case from which the complaint subject to the disciplinary procedure arose; or

(ii) any members or former members of the Presidency who appointed the Commissioner.

(b) Two persons elected in accordance with paragraph 5 of this article.

5. The two members of the Disciplinary Appeals Board referred to in paragraph 4 (b) of this article, as well as an alternate member who may serve as a replacement in accordance with paragraph 6 of this article, shall be elected for four years by all counsel entitled to practise before the Court. They shall be chosen from amongst persons with established competence in professional ethics and legal matters.

6. If one of the elected members is unavailable to deal with the case or serve on the Disciplinary Appeal Board, the chairperson shall request the alternate member to serve as a replacement on the Disciplinary Appeals Board.

7. The functions of members of the Disciplinary Appeals Board are incompatible with those of members of the Disciplinary Board.

8. The elected members shall not be eligible for re-election.

9. The judge who takes precedence among the three judges referred to in paragraph 4 (a) of this article shall be the chairperson of the Disciplinary Appeals Board.

10. All members of the Disciplinary Appeals Board shall have the same rights and votes. The Disciplinary Appeals Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph 6 of this article shall have the same rights and votes as other members serving on the same case.

11. Members whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined.

12. The staff member of the Registry appointed by the Registrar pursuant to article 36, paragraph 12, of this Code to provide secretariat services to the Disciplinary Board shall also act as the secretariat of the Disciplinary Appeals Board. Once appointed, the relevant staff member of the Registry shall act at arm's length from the Registry.

Chapter 5
Final provisions

Article 45
Entry into force

This Code and any amendments to it shall enter into force 30 days after their adoption by the Assembly of States Parties in accordance with article 112, paragraph 2, of the Rome Statute.

Article 46
Publication

The Code adopted by the Assembly of States Parties shall be published in the Official Journal of the Court.

UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

IT/32/Rev.50
8 July 2015

Original:
English & French

The Hague
The Netherlands
8 July 2015

RULES OF PROCEDURE AND EVIDENCE

RULES OF PROCEDURE AND EVIDENCE

(Adopted On 11 February 1994)
(As Amended 5 May 1994)
(As Further Amended 4 October 1994)
(As Amended 30 January 1995)
(As Amended 3 May 1995)
(As Further Amended 15 June 1995)
(As Amended 6 October 1995)
(As Further Amended 18 January 1996)
(As Amended 23 April 1996)
(As Amended 25 June and 5 July 1996)
(As Amended 3 December 1996)
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(As Amended 10 July 1998)
(As Amended 4 December 1998)
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(As Amended 30 May 2006)
(As Amended 13 September 2006)
(As Amended 12 July 2007)
(As Amended 28 February 2008)
(As Amended 4 November 2008)
(As Amended 22 July 2009)

(As Amended 10 December 2009)
(As Amended 8 December 2010)
(As Amended 20 October 2011)
(As Amended 28 August 2012)
(As Amended 19 November 2012)
(As Amended 22 May 2013)
(As Amended 8 July 2015)

CONTENTS

PART ONE
GENERAL PROVISIONS

Rule 1
Entry into Force
(Adopted 11 Feb 1994)

These Rules of Procedure and Evidence, adopted pursuant to Article 15 of the Statute of the Tribunal, shall come into force on 14 March 1994.

Rule 2
Definitions
(Adopted 11 Feb 1994)

(A) In the Rules, unless the context otherwise requires, the following terms shall mean:

Rules:	The Rules of Procedure and Evidence in force; (Amended 25 July 1997)
Statute:	The Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993;
Tribunal:	The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.

* * *

Accused:	A person against whom one or more counts in an indictment have been confirmed in accordance with Rule 47; (Amended 25 July 1997)
Ad litem Judge:	A Judge appointed pursuant to Article 13 *ter* of the Statute; (Amended 12 Apr 2001)
Arrest:	The act of taking a suspect or an accused into custody pursuant to a warrant of arrest or under Rule 40; (Amended 25 July 1997)
Bureau:	A body composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers;
Defence:	The accused, and/or the accused's counsel; (Amended 17 Nov 1999)
Investigation:	All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence, whether before or after an indictment is confirmed; (Amended 25 July 1997)
Parties:	The Prosecutor and the Defence; (Amended 17 Nov 1999)
Permanent Judge:	A Judge elected or appointed pursuant to Article 13 *bis* of the Statute; (Amended 12 Apr 2001)
President:	The President of the Tribunal;
Prosecutor:	The Prosecutor appointed pursuant to Article 16 of the Statute;
Regulations:	The provisions framed by the Prosecutor pursuant to Rule 37 (A) for the purpose of directing the functions of the Office of the Prosecutor; (Amended 30 Jan 1995, amended 12 Nov 1997)
State:	(i) A State Member or non-Member of the United Nations;

(ii) an entity recognised by the constitution of Bosnia and Herzegovina, namely, the Federation of Bosnia and Herzegovina and the Republic Srpska; or

(iii) a self-proclaimed entity de facto exercising governmental functions, whether recognised as a State or not;

(Amended 30 Jan 1995, amended 12 Dec 2002)

Suspect: A person concerning whom the Prosecutor possesses reliable information which tends to show that the person may have committed a crime over which the Tribunal has jurisdiction; (Amended 30 Jan 1995, amended 12 Nov 1997)

Transaction: A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan;

Victim: A person against whom a crime over which the Tribunal has jurisdiction has allegedly been committed.

(B) In the Rules, the masculine shall include the feminine and the singular the plural, and vice-versa.

Rule 3
Languages
(Adopted 11 Feb 1994)

(A) The working languages of the Tribunal shall be English and French.

(B) An accused shall have the right to use his or her own language. (Amended 12 Nov 1997)

(C) Other persons appearing before the Tribunal, other than as counsel, who do not have sufficient knowledge of either of the two working languages, may use their own language. (Amended 30 Jan 1995, amended 12 Nov 1997)

(D) Counsel for an accused may apply to the Presiding Judge of a Chamber for leave to use a language other than the two working ones or the language of the accused. If such leave is granted, the expenses of interpretation and translation shall be borne by the Tribunal to the extent, if any, determined by the President, taking into account the rights of the defence and the interests of justice.

(E) The Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages.

(F) If:

(i) a party is required to take any action within a specified time after the filing or service of a document by another party; and

(ii) pursuant to the Rules, that document is filed in a language other than one of the working languages of the Tribunal,

time shall not run until the party required to take action has received from the Registrar a translation of the document into one of the working languages of the Tribunal. (Amended 25 July 1997)

Rule 4
Meetings away from the Seat of the Tribunal

(Adopted 11 Feb 1994)

A Chamber may exercise its functions at a place other than the seat of the Tribunal, if so authorised by the President in the interests of justice.

Rule 5
Non-compliance with Rules

(Adopted 11 Feb 1994, amended 30 Jan 1995)

(A) Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the Trial Chamber shall grant relief if it finds that the alleged non-compliance is proved and that it has caused material prejudice to that party. (Amended 12 Nov 1997)

(B) Where such an objection is raised otherwise than at the earliest opportunity, the Trial Chamber may in its discretion grant relief if it finds that the alleged non-compliance is proved and that it has caused material prejudice to the objecting party. (Amended 12 Nov 1997)

(C) The relief granted by a Trial Chamber under this Rule shall be such remedy as the Trial Chamber considers appropriate to ensure consistency with the fundamental principles of fairness. (Amended 12 Nov 1997)

Rule 6
Amendment of the Rules
(Adopted 11 Feb 1994)

(A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor or the Registrar and shall be adopted if agreed to by the majority of the permanent Judges composing the Tribunal, at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges. (Amended 4 Dec 1998, amended 12 Apr 2001, amended 8 July 2015)

(B) An amendment to the Rules may be otherwise adopted, provided it is unanimously approved by the permanent Judges. (Amended 12 Apr 2001)

(C) Proposals for amendment of the Rules may otherwise be made in accordance with the Practice Direction issued by the President. (Amended 4 Dec 1998)

(D) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment, but shall not operate to prejudice the rights of the accused or of a convicted or acquitted person in any pending case. (Amended 4 Dec 1998, amended 1 Dec 2000, amended 13 Dec 2000)

Rule 7
Authentic Texts
(Adopted 11 Feb 1994)

The English and French texts of the Rules shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute and the Rules shall prevail.

PART TWO
PRIMACY OF THE TRIBUNAL

Rule 7 *bis*
Non-compliance with Obligations
(Adopted 25 July 1997)

(A) In addition to cases to which Rule 11, Rule 13, Rule 59 or Rule 61 applies, where a Trial Chamber or a permanent Judge is satisfied that a State has failed to comply with an obligation under Article 29 of the Statute which relates to any proceedings before that Chamber or Judge, the Chamber or Judge may advise the President, who shall report the matter to the Security Council. (Amended 12 Apr 2001)

(B) If the Prosecutor satisfies the President that a State has failed to comply with an obligation under Article 29 of the Statute in respect of a request by the Prosecutor under Rule 8, Rule 39 or Rule 40, the President shall notify the Security Council thereof.

Rule 8
Request for Information
(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 12 Nov 1997)

Where it appears to the Prosecutor that a crime within the jurisdiction of the Tribunal is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, the Prosecutor may request the State to forward all relevant information in that respect, and the State shall transmit such information to the Prosecutor forthwith in accordance with Article 29 of the Statute.

Rule 9
Prosecutor's Request for Deferral
(Adopted 11 Feb 1994)

Where it appears to the Prosecutor that in any such investigations or criminal proceedings instituted in the courts of any State:

(i) the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;

(ii) there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or

(iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

the Prosecutor may propose to the Trial Chamber designated by the President that a formal request be made that such court defer to the competence of the Tribunal.
(Amended 30 Jan 1995)

Rule 10
Formal Request for Deferral

(Adopted 11 Feb 1994)

(A) If it appears to the Trial Chamber seised of a proposal for deferral that, on any of the grounds specified in Rule 9, deferral is appropriate, the Trial Chamber may issue a formal request to the State concerned that its court defer to the competence of the Tribunal. (Amended 30 Jan 1995)

(B) A request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Tribunal.

(C) Where deferral to the Tribunal has been requested by a Trial Chamber, any subsequent trial shall be held before another Trial Chamber. (Amended 3 May 1995, amended 17 Nov 1999)

Rule 11
Non-compliance with a Request for Deferral

(Adopted 11 Feb 1994, amended 25 July 1997)

If, within sixty days after a request for deferral has been notified by the Registrar to the State under whose jurisdiction the investigations or criminal proceedings have been instituted, the State fails to file a response which satisfies the Trial Chamber that the State has taken or is taking adequate steps to comply with the request, the Trial Chamber may request the President to report the matter to the Security Council.

Rule 11 *bis*
Referral of the Indictment to Another Court

(Adopted 12 Nov 1997, amended 30 Sept 2002)

(A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a bench of three Permanent Judges selected from the Trial Chambers (hereinafter referred to as the "Referral Bench"), which solely and exclusively shall determine whether the case should be referred to the authorities of a State:

(i) in whose territory the crime was committed; or

(ii) in which the accused was arrested; or
(Amended 10 June 2004)

(iii) having jurisdiction and being willing and adequately prepared to accept such a case,
(Amended 10 June 2004)

so that those authorities should forthwith refer the case to the appropriate court for trial within that State. (Amended 30 Sept 2002, amended 11 Feb 2005)

(B) The Referral Bench may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out. (Amended 30 Sept 2002, amended 10 June 2004, amended 11 Feb 2005)

(C) In determining whether to refer the case in accordance with paragraph (A), the Referral Bench shall, in accordance with Security Council resolution 1534 (2004)[1], consider the gravity of the crimes charged and the level of responsibility of the accused. (Amended 30 Sept 2002, amended 28 July 2004, amended 11 Feb 2005)

(D) Where an order is issued pursuant to this Rule:

(i) the accused, if in the custody of the Tribunal, shall be handed over to the authorities of the State concerned;

[1] U.N. Doc. S/RES/1534 (2004).

(ii) the Referral Bench may order that protective measures for certain witnesses or victims remain in force;
(Amended 11 Feb 2005)

(iii) the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment;

(iv) the Prosecutor may send observers to monitor the proceedings in the national courts on her behalf.

(Amended 30 Sept 2002)

(E) The Referral Bench may issue a warrant for the arrest of the accused, which shall specify the State to which he is to be transferred to trial. (Amended 30 Sept 2002, amended 11 Feb 2005)

(F) At any time after an order has been issued pursuant to this Rule and before the accused is found guilty or acquitted by a national court, the Referral Bench may, at the request of the Prosecutor and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral within the terms of Rule 10. (Amended 30 Sept 2002, amended 11 Feb 2005)

(G) Where an order issued pursuant to this Rule is revoked by the Referral Bench, it may make a formal request to the State concerned to transfer the accused to the seat of the Tribunal and the State shall accede to such a request without delay in keeping with Article 29 of the Statute. The Referral Bench or a Judge may also issue a warrant for the arrest of the accused. (Amended 30 Sept 2002, amended 11 Feb 2005)

(H) A Referral Bench shall have the powers of, and insofar as applicable shall follow the procedures laid down for, a Trial Chamber under the Rules. (Amended 11 Feb 2005)

(I) An appeal by the accused or the Prosecutor shall lie as of right from a decision of the Referral Bench whether or not to refer a case. Notice of appeal shall be filed within fifteen days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision. (Amended 11 Feb 2005)

Rule 12

Determinations of Courts of any State

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 10 July 1998)

Subject to Article 10, paragraph 2, of the Statute, determinations of courts of any State are not binding on the Tribunal.

Rule 13

Non Bis in Idem

(Adopted 11 Feb 1994, amended 30 Jan 1995)

When the President receives reliable information to show that criminal proceedings have been instituted against a person before a court of any State for a crime for which that person has already been tried by the Tribunal, a Trial Chamber shall, following *mutatis mutandis* the procedure provided in Rule 10, issue a reasoned order requesting that court permanently to discontinue its proceedings. If that court fails to do so, the President may report the matter to the Security Council.

PART THREE
ORGANIZATION OF THE TRIBUNAL

Section 1: The Judges

Rule 14
Solemn Declaration
(Adopted 11 Feb 1994)

(A) Before taking up duties each Judge shall make the following solemn declaration:

"I solemnly declare that I will perform my duties and exercise my powers as a Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 honourably, faithfully, impartially and conscientiously". (Amended 12 Nov 1997)

(B) The declaration shall be signed by the Judge and witnessed by, or by a representative of, the Secretary-General of the United Nations. The declaration shall be kept in the records of the Tribunal. (Amended 12 Nov 1997)

(C) A Judge whose service continues without interruption after expiry of a previous period of service shall not make a new declaration. (Amended 12 Nov 1997)

Rule 15
Disqualification of Judges
(Adopted 11 Feb 1994, amended 15 June 1995, amended 25 June 1996, amended 5 July 1996, amended 25 July 1997, amended 17 Nov 1999)

(A) A Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.

(B) (i) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial or appeal upon the above grounds. The Presiding Judge shall confer with the Judge in question and prepare a report which shall include any

comments or material provided by the challenged Judge. The Presiding Judge shall present this report to the President. (Amended 30 Jan 1995, amended 8 July 2015)

(ii) Following the report of the Presiding Judge, the President shall, if necessary, appoint a panel of three Judges to report to him its decision on the merits of the application. The panel shall be provided with the report prepared by the Presiding Judge. If the decision is to uphold the application, the President shall assign another Judge to sit in the place of the Judge in question. (Amended 8 July 2015)

(iii) The decision of the panel of three Judges shall not be subject to interlocutory appeal.

(iv) If the Judge in question is the President, the responsibility of the President in accordance with this paragraph shall be assumed by the Vice-President or, if he or she is not able to act in the application, by the permanent Judge most senior in precedence who is able to act.

(Amended 21 July 2005)

(C) The Judge of the Trial Chamber who reviews an indictment against an accused, pursuant to Article 19 of the Statute and Rules 47 or 61, shall not be disqualified for sitting as a member of the Trial Chamber for the trial of that accused. Such a Judge shall also not be disqualified for sitting as a member of the Appeals Chamber to hear any appeal in that case. (Amended 6 Oct 1995, amended 2 July 1999, amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000, amended 12 Dec 2002, amended 21 July 2005)

(D) (i) No Judge shall sit on any appeal in a case in which that Judge sat as a member of the Trial Chamber. (Amended 10 July 1998, amended 4 Dec 1998, amended 1 Dec 2000, amended 13 Dec 2000, amended 12 Dec 2002, amended 21 July 2005)

(ii) No Judge shall sit on any State Request for Review pursuant to Rule 108 *bis* in a matter in which that Judge sat as a member of the Trial Chamber whose decision is to be reviewed. (Amended 10 July 1998)

Rule 15 *bis*
Absence of a Judge

(Adopted 17 Nov 1999)

(A) If

(i) a Judge is, for illness or other urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
(Amended 1 Dec 2000, amended 13 Dec 2000)

(ii) the remaining Judges of the Chamber are satisfied that it is in the interests of justice to do so,

those remaining Judges of the Chamber may order that the hearing of the case continue in the absence of that Judge for a period of not more than five working days. (Amended 12 Dec 2002)

(B) If

(i) a Judge is, for illness or urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
(Amended 1 Dec 2000, amended 13 Dec 2000)

(ii) the remaining Judges of the Chamber are not satisfied that it is in the interests of justice to order that the hearing of the case continue in the absence of that Judge, then

(a) those remaining Judges of the Chamber may nevertheless conduct those matters which they are satisfied it is in the interests of justice that they be disposed of notwithstanding the absence of that Judge, and
(b) the remaining Judges of the Chamber may adjourn the proceedings.

(Amended 29 Mar 2006)

(C) If a Judge is, for any reason, unable to continue sitting in a part-heard case for a period which is likely to be longer than of a short duration, the remaining Judges of the Chamber shall report to the President who may assign another Judge to the case and order either a rehearing or continuation of the proceedings from that point. However, after the opening statements provided for in Rule 84, or the beginning of the presentation of evidence pursuant to

Rule 85, the continuation of the proceedings can only be ordered with the consent of all the accused, except as provided for in paragraphs (D) and (G). (Amended 12 Dec 2002, amended 29 Mar 2006)

(D) If, in the circumstances mentioned in the last sentence of paragraph (C), an accused withholds his consent, the remaining Judges may nonetheless decide whether or not to continue the proceedings before a Trial Chamber with a substitute Judge if, taking all the circumstances into account, they determine unanimously that doing so would serve the interests of justice. This decision is subject to appeal directly to a full bench of the Appeals Chamber by either party. If no appeal is taken from the decision to continue proceedings with a substitute Judge or the Appeals Chamber affirms that decision, the President shall assign to the existing bench a Judge, who, however, can join the bench only after he or she has certified that he or she has familiarised himself or herself with the record of the proceedings. Only one substitution under this paragraph may be made. (Amended 12 Dec 2002, amended 29 Mar 2006)

(E) For the purposes of paragraphs (C) and (D), due consideration shall be given to paragraph 6 of Article 12 of the Statute. (Amended 29 Mar 2006)

(F) Appeals under paragraph (D) shall be filed within seven days of filing of the impugned decision. When such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from the filing of the written decision.
(Amended 29 Mar 2006)

(Amended 12 Dec 2002)

(G) If, in a trial where a reserve Judge has been assigned in accordance with Rule 15 *ter*, a Judge is unable to continue sitting and a substitute Judge is not assigned pursuant to paragraphs (C) or (D), the trial shall continue with the reserve Judge replacing the Judge who is unable to continue sitting.
(Amended 29 Mar 2006)

(H) In case of illness or an unfilled vacancy or in any other similar circumstances, the President may, if satisfied that it is in the interests of justice to do so,

authorise a Chamber to conduct routine matters, such as the delivery of decisions, in the absence of one or more of its members.

Rule 15 *ter*
Reserve Judges
(Adopted 29 Mar 2006)

(A) The President may, in the interests of justice, assign a reserve Judge to sit with a Trial Chamber in a trial.

(B) A reserve Judge shall be present at each stage of a trial to which that Judge has been assigned.

(C) A reserve Judge may pose questions which are necessary to the reserve Judge's understanding of the trial. (Amended 8 Dec 2010)

(D) A reserve Judge shall be present, but shall not vote, during any deliberations in a trial.

Rule 16
Resignation
(Adopted 11 Feb 1994)

A Judge who decides to resign shall communicate the resignation in writing to the President who shall transmit it to the Secretary-General of the United Nations.

Rule 17
Precedence
(Adopted 11 Feb 1994)

(A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.

(B) The Presiding Judges of the Trial Chambers shall take precedence according to age after the President and the Vice-President.

(C) Permanent Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age. (Amended 12 Apr 2001)

(D) In case of re-election, the total period of service as a Judge of the Tribunal shall be taken into account.

(E) *Ad litem* Judges shall take precedence after the permanent Judges according to the dates of their appointment. *Ad litem* Judges appointed on the same date shall take precedence according to age. (Amended 12 Apr 2001)

Section 2: The Presidency

Rule 18
Election of the President
(Adopted 11 Feb 1994)

(A) The President shall be elected for a term of two years, or such shorter term as shall coincide with the duration of his or her term of office as a Judge. The President may be re-elected once. (Amended 12 Nov 1997)

(B) If the President ceases to be a member of the Tribunal or resigns from office before the expiration of his or her term, the permanent Judges shall elect from among their number a successor for the remainder of the term. (Amended 12 Nov 1997, amended 12 Apr 2001)

(C) The President shall be elected by a majority of the votes of the permanent Judges composing the Tribunal. If no Judge obtains such a majority, the second ballot shall be limited to the two Judges who obtained the greatest number of votes on the first ballot. In the case of equality of votes on the second ballot, the Judge who takes precedence in accordance with Rule 17 shall be declared elected. (Amended 12 Apr 2001)

Rule 19
Functions of the President
(Adopted 11 Feb 1994)

(A) The President shall preside at all plenary meetings of the Tribunal. The President shall coordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on the President by the Statute and the Rules. (Amended 12 Nov 1997)

(B) The President may from time to time, and in consultation with the Bureau, the Registrar and the Prosecutor, issue Practice Directions, consistent with the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Tribunal. (Amended 25 July 1997)

Rule 20
The Vice-President
(Adopted 11 Feb 1994)

(A) The Vice-President shall be elected for a term of two years, or such shorter term as shall coincide with the duration of his or her term of office as a permanent Judge. The Vice President may be re-elected once. (Amended 12 Nov 1997, amended 12 Apr 2001)

(B) The Vice-President may sit as a member of a Trial Chamber or of the Appeals Chamber.

(C) Rules 18 (B) and (C) shall apply *mutatis mutandis* to the Vice-President. (Amended 1 Dec 2000, amended 13 Dec 2000)

Rule 21
Functions of the Vice-President
(Adopted 11 Feb 1994, amended 12 Nov 1997, amended 1 Dec 2000, amended 13 Dec 2000)

Subject to Rule 22 (B), the Vice-President shall exercise the functions of the President in case of the latter's absence or inability to act.

Rule 22
Replacements
(Adopted 11 Feb 1994)

(A) If neither the President nor the Vice-President remains in office or is able to carry out the functions of the President, these shall be assumed by the senior permanent Judge, determined in accordance with Rule 17 (C). (Amended 12 Apr 2001, amended 12 July 2001)

(B) If the President is unable to exercise the functions of Presiding Judge of the Appeals Chamber, that Chamber shall elect a Presiding Judge from among its number. (Amended 12 Nov 1997)

(C) The President and the Vice-President, if still permanent Judges, shall continue to discharge their functions after the expiration of their terms until the election of the President and the Vice-President has taken place. (Amended 12 July 2001)

Section 3: Internal Functioning of the Tribunal

Rule 23
The Bureau
(Adopted 11 Feb 1994)

(A) The Bureau shall be composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers.

(B) The President shall consult the other members of the Bureau on all major questions relating to the functioning of the Tribunal.

(C) The President may consult with the *ad litem* Judges on matters to be discussed in the Bureau and may invite a representative of the *ad litem* Judges to attend Bureau meetings. (Amended 12 Apr 2001)

(D) A Judge may draw the attention of any member of the Bureau to issues that the Judge considers ought to be discussed by the Bureau or submitted to a plenary meeting of the Tribunal.

(E) If any member of the Bureau is unable to carry out any of the functions of the Bureau, these shall be assumed by the senior available Judge determined in accordance with Rule 17. (Amended 25 Feb 1999)

Rule 23 *bis*
The Coordination Council
(Adopted 1 Dec 2000, amended 13 Dec 2000)

(A) The Coordination Council shall be composed of the President, the Prosecutor and the Registrar.

(B) In order to achieve the mission of the Tribunal, as defined in the Statute, the Coordination Council ensures, having due regard for the responsibilities and the independence of any member, the coordination of the activities of the three organs of the Tribunal.

(C) The Coordination Council shall meet once a month at the initiative of the President. A member may at any time request that additional meetings be held. The President shall chair the meetings.

(D) The Vice-President, the Deputy Prosecutor and the Deputy Registrar may *ex officio* represent respectively, the President, the Prosecutor and the Registrar.

Rule 23 *ter*
[Deleted]

(Adopted 1 Dec 2000, amended 13 Dec 2000, deleted 8 Dec 2010)

Rule 24
Plenary Meetings of the Tribunal

(Adopted 11 Feb 1994)

Subject to the restrictions on the voting rights of *ad litem* Judges set out in Article 13 *quater* of the Statute, the Judges shall meet in plenary to:

(i) elect the President and Vice-President;

(ii) adopt and amend the Rules;

(iii) adopt the Annual Report provided for in Article 34 of the Statute;

(iv) decide upon matters relating to the internal functioning of the Chambers and the Tribunal;

(v) determine or supervise the conditions of detention;

(vi) exercise any other functions provided for in the Statute or in the Rules.

(Amended 12 Apr 2001)

Rule 25
Dates of Plenary Sessions

(Adopted 11 Feb 1994)

(A) The dates of the plenary sessions of the Tribunal shall normally be agreed upon in July of each year for the following calendar year.

(B) Other plenary meetings shall be convened by the President if so requested by the majority of the permanent Judges composing the Tribunal, and may be convened whenever the exercise of the President's functions under the Statute

or the Rules so requires. (Amended 12 Nov 1997, amended 4 Dec 1998, amended 12 Apr 2001, amended 8 July 2015)

Rule 26
Quorum and Vote

(Adopted 11 Feb 1994)

(A) The quorum for each plenary meeting of the Tribunal shall be the majority of the permanent Judges composing the Tribunal. (Amended 4 Dec 1998, amended 12 Apr 2001, amended 8 July 2015)

(B) Subject to Rules 6 (A), (B) and 18 (C), the decisions of the plenary meetings of the Tribunal shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge acting in the place of the President shall have a casting vote. (Amended 12 Apr 2001)

Section 4: The Chambers

Rule 27
Rotation
(Adopted 11 Feb 1994)

(A) Permanent Judges shall rotate on a regular basis between the Trial Chambers and the Appeals Chamber. Rotation shall take into account the efficient disposal of cases. (Amended 12 Apr 2001)

(B) The Judges shall take their places in their new Chamber as soon as the President thinks it convenient, having regard to the disposal of part-heard cases.

(C) The President may at any time temporarily assign a member of a Trial Chamber or of the Appeals Chamber to another Chamber.

Rule 28
Reviewing and Duty Judges
(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 23 Apr 1996, amended 12 Nov 1997)

(A) On receipt of an indictment for review from the Prosecutor, the Registrar shall consult with the President. The President shall refer the matter to the Bureau which shall determine whether the indictment, prima facie, concentrates on one or more of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal. If the Bureau determines that the indictment meets this standard, the President shall designate one of the permanent Trial Chamber Judges for the review under Rule 47. If the Bureau determines that the indictment does not meet this standard, the President shall return the indictment to the Registrar to communicate this finding to the Prosecutor (Amended 17 Nov 1999, amended 12 Apr 2001, amended 6 Apr 2004)

(B) The President, in consultation with the Judges, shall maintain a roster designating one Judge as duty Judge for the assigned period of seven days. The duty Judge shall be available at all times, including out of normal Registry hours, for dealing with applications pursuant to paragraphs (C) and (D) but may refuse to deal with any application out of normal Registry hours if not satisfied as to its urgency. The roster of duty Judges shall be published by the Registrar. (Amended 12 Nov 1997, amended 17 Nov 1999, amended 12 Apr 2001, amended 11 Mar 2005)

(C) All applications in a case not otherwise assigned to a Chamber, other than the review of indictments, shall be transmitted to the duty Judge. Where accused are jointly indicted, a submission relating only to an accused who is not in the custody of the Tribunal, other than an application to amend or withdraw part of the indictment pursuant to Rule 50 or Rule 51, shall be transmitted to the duty Judge, notwithstanding that the case has already been assigned to a Chamber in respect of some or all of the co-accused of that accused. The duty Judge shall act pursuant to Rule 54 in dealing with applications under this Rule. (Amended 17 Nov 1999, amended 21 Dec 2001)

(D) Where a case has already been assigned to a Trial Chamber:

(i) where the application is made out of normal Registry hours, the application shall be dealt with by the duty Judge if satisfied as to its urgency;

(ii) where the application is made within the normal Registry hours and the Trial Chamber is unavailable, it shall be dealt with by the duty Judge if satisfied as to its urgency or that it is otherwise appropriate to do so in the absence of the Trial Chamber.

In such case, the Registry shall serve a copy of all orders or decisions issued by the duty Judge in connection therewith on the Chamber to which the matter is assigned. (Amended 17 Nov 1999, amended 21 Dec 2001)

(E) During periods of court recess, regardless of the Chamber to which he or she is assigned, in addition to applications made pursuant to paragraph (D) above, the duty Judge may:

(i) take decisions on provisional detention pursuant to Rule 40 *bis*;

(ii) conduct the initial appearance of an accused pursuant to Rule 62.

The Registry shall serve a copy of all orders or decisions issued by the duty Judge in connection therewith on the Chamber to which the matter is assigned. (Amended 14 July 2000, amended 21 Dec 2001)

(F) The provisions of this Rule shall apply *mutatis mutandis* to applications before the Appeals Chamber. (Amended 21 Dec 2001)

Rule 29
Deliberations

(Adopted 11 Feb 1994)

The deliberations of the Chambers shall take place in private and remain secret.

Section 5: The Registry

Rule 30
Appointment of the Registrar

(Adopted 11 Feb 1994, amended 10 July 1998, amended 12 Apr 2001)

The President shall seek the opinion of the permanent Judges on the candidates for the post of Registrar, before consulting with the Secretary-General of the United Nations pursuant to Article 17, paragraph 3, of the Statute.

Rule 31
Appointment of the Deputy Registrar and Registry Staff

(Adopted 11 Feb 1994)

The Registrar, after consultation with the Bureau, shall make recommendations to the Secretary-General of the United Nations for the appointment of the Deputy Registrar and other Registry staff.

Rule 32
Solemn Declaration

(Adopted 11 Feb 1994)

(A) Before taking up duties, the Registrar shall make the following declaration before the President:

> "I solemnly declare that I will perform the duties incumbent upon me as Registrar of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and the Rules of Procedure and Evidence of the Tribunal".

(Amended 12 Nov 1997)

(B) Before taking up duties, the Deputy Registrar shall make a similar declaration before the President. (Amended 12 Nov 1997)

(C) Every staff member of the Registry shall make a similar declaration before the Registrar.

Rule 33
Functions of the Registrar

(Adopted 11 Feb 1994)

(A) The Registrar shall assist the Chambers, the plenary meetings of the Tribunal, the Judges and the Prosecutor in the performance of their functions. Under the authority of the President, the Registrar shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication. (Amended 12 Nov 1997)

(B) The Registrar, in the execution of his or her functions, may make oral and written representations to the President or Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary. (Amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000)

(C) The Registrar shall report regularly on his or her activities to the Judges meeting in plenary and to the Prosecutor. (Amended 1 Dec 2000, amended 13 Dec 2000)

Rule 33 *bis*
Functions of the Deputy Registrar

(Adopted 1 Dec 2000, amended 13 Dec 2000, amended 19 Nov 2012)

(A) The Deputy Registrar shall exercise the functions of the Registrar in the event of the latter's absence from duty or inability to act or upon the Registrar's delegation.

(Amended 19 Nov 2012)

(B) The Deputy Registrar shall in particular:

(i) take all appropriate measures so that the decisions rendered by the Chambers and Judges are executed, especially sentences and penalties;

(ii) make recommendations regarding the missions of the Registry which affect the judicial activity of the Tribunal.

Rule 33 *ter*
Functions of the Head of Chambers
(Adopted 19 Nov 2012)

The Head of Chambers shall, under the authority of the President, administer the Chambers Legal Support Section. In particular, in conjunction with the administrative services of the Registry, the Head of Chambers shall oversee the assignment of appropriate resources to the Chambers with a view to enabling them to accomplish their mission.

Rule 34
Victims and Witnesses Section
(Adopted 11 Feb 1994)

(A) There shall be set up under the authority of the Registrar a Victims and Witnesses Section consisting of qualified staff to:

(i) recommend protective measures for victims and witnesses in accordance with Article 22 of the Statute; and

(ii) provide counselling and support for them, in particular in cases of rape and sexual assault.

(Amended 2 July 1999)

(B) Due consideration shall be given, in the appointment of staff, to the employment of qualified women.

Rule 35
Minutes
(Adopted 11 Feb 1994, amended 12 Nov 1997)

Except where a full record is made under Rule 81, the Registrar, or Registry staff designated by the Registrar, shall take minutes of the plenary meetings of the Tribunal and of the sittings of the Chambers, other than private deliberations.

Rule 36

Record Book

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 12 Nov 1997)

The Registrar shall keep a Record Book which shall list, subject to any Practice Direction under Rule 19 or any order of a Judge or Chamber providing for the non-disclosure of any document or information, all the particulars of each case brought before the Tribunal. The Record Book shall be open to the public.

Section 6: The Prosecutor

Rule 37
Functions of the Prosecutor
(Adopted 11 Feb 1994)

(A) The Prosecutor shall perform all the functions provided by the Statute in accordance with the Rules and such Regulations, consistent with the Statute and the Rules, as may be framed by the Prosecutor. Any alleged inconsistency in the Regulations shall be brought to the attention of the Bureau to whose opinion the Prosecutor shall defer. (Amended 30 Jan 1995, amended 12 Nov 1997)

(B) The Prosecutor's powers and duties under the Rules may be exercised by staff members of the Office of the Prosecutor authorised by the Prosecutor, or by any person acting under the Prosecutor's direction. (Amended 25 July 1997, amended 12 Nov 1997)

Rule 38
Deputy Prosecutor
(Adopted 11 Feb 1994)

(A) The Prosecutor shall make recommendations to the Secretary-General of the United Nations for the appointment of a Deputy Prosecutor. (Amended 12 Nov 1997)

(B) The Deputy Prosecutor shall exercise the functions of the Prosecutor in the event of the latter's absence from duty or inability to act or upon the Prosecutor's express instructions. (Amended 25 July 1997, amended 12 Nov 1997)

PART FOUR
INVESTIGATIONS AND RIGHTS OF SUSPECTS

Section 1: Investigations

Rule 39
Conduct of Investigations
(Adopted 11 Feb 1994)

In the conduct of an investigation, the Prosecutor may:

(i) summon and question suspects, victims and witnesses and record their statements, collect evidence and conduct on-site investigations;

(ii) undertake such other matters as may appear necessary for completing the investigation and the preparation and conduct of the prosecution at the trial, including the taking of special measures to provide for the safety of potential witnesses and informants;
(Amended 30 Jan 1995)

(iii) seek, to that end, the assistance of any State authority concerned, as well as of any relevant international body including the International Criminal Police Organization (INTERPOL); and

(iv) request such orders as may be necessary from a Trial Chamber or a Judge.

Rule 40
Provisional Measures
(Adopted 11 Feb 1994)

In case of urgency, the Prosecutor may request any State:

(i) to arrest a suspect or an accused provisionally;
(Amended 4 Dec 1998)

(ii) to seise physical evidence;

(iii) to take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness, or the destruction of evidence.

The State concerned shall comply forthwith, in accordance with Article 29 of the Statute. (Amended 30 Jan 1995)

Rule 40 *bis*
Transfer and Provisional Detention of Suspects

(Adopted 23 Apr 1996)

(A) In the conduct of an investigation, the Prosecutor may transmit to the Registrar, for an order by a Judge assigned pursuant to Rule 28, a request for the transfer to and provisional detention of a suspect in the premises of the detention unit of the Tribunal. This request shall indicate the grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a summary of the material upon which the Prosecutor relies.

(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:

(i) the Prosecutor has requested a State to arrest the suspect provisionally, in accordance with Rule 40, or the suspect is otherwise detained by State authorities;

(ii) after hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction; and

(iii) the Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.

(C) The order for the transfer and provisional detention of the suspect shall be signed by the Judge and bear the seal of the Tribunal. The order shall set forth the basis of the application made by the Prosecutor under paragraph (A), including the provisional charge, and shall state the Judge's grounds for

making the order, having regard to paragraph (B). The order shall also specify the initial time-limit for the provisional detention of the suspect, and be accompanied by a statement of the rights of a suspect, as specified in this Rule and in Rules 42 and 43. (Amended 12 Apr 2001)

(D) The provisional detention of a suspect shall be ordered for a period not exceeding thirty days from the date of the transfer of the suspect to the seat of the Tribunal. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another permanent Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing of the Prosecutor and the suspect assisted by counsel, to extend the detention for a period not exceeding thirty days, if warranted by the needs of the investigation. At the end of that extension, at the Prosecutor's request, the Judge who made the order, or another permanent Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing of the Prosecutor and the suspect assisted by counsel, to extend the detention for a further period not exceeding thirty days, if warranted by special circumstances. The total period of detention shall in no case exceed ninety days, at the end of which, in the event the indictment has not been confirmed and an arrest warrant signed, the suspect shall be released or, if appropriate, be delivered to the authorities of the requested State. (Amended 25 July 1997, amended 12 Nov 1997, amended 1 Dec 2000, amended 13 Dec 2000, amended 12 Apr 2001)

(E) The provisions in Rules 55 (B) to 59 *bis* shall apply *mutatis mutandis* to the execution of the transfer order and the provisional detention order relative to a suspect.

(F) After being transferred to the seat of the Tribunal, the suspect, assisted by counsel, shall be brought, without delay, before the Judge who made the order, or another permanent Judge of the same Trial Chamber, who shall ensure that the rights of the suspect are respected. (Amended 12 Nov 1997, amended 12 Apr 2001)

(G) During detention, the Prosecutor and the suspect or the suspect's counsel may submit to the Trial Chamber of which the Judge who made the order is a member, all applications relative to the propriety of provisional detention or to the suspect's release. (Amended 12 Nov 1997)

(H) Without prejudice to paragraph (D), the Rules relating to the detention on remand of accused persons shall apply *mutatis mutandis* to the provisional detention of persons under this Rule. (Amended 1 Dec 2000, amended 13 Dec 2000)

Rule 41
Retention of Information

(Adopted 11 Feb 1994, amended 12 Nov 1997, amended 1 Dec 2000, amended 13 Dec 2000)

Subject to Rule 81, the Prosecutor shall be responsible for the retention, storage and security of information and physical material obtained in the course of the Prosecutor's investigations until formally tendered into evidence.

Rule 42
Rights of Suspects during Investigation

(Adopted 11 Feb 1994)

(A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect understands:

(i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it; (Amended 30 Jan 1995)

(ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and (Amended 30 Jan 1995)

(iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence. (Amended 30 Jan 1995)

(Amended 12 Nov 1997, amended 21 July 2005)

(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel. (Amended 12 Nov 1997)

Rule 43
Recording Questioning of Suspects

(Adopted 11 Feb 1994)

Whenever the Prosecutor questions a suspect, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

(i) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;
(Amended 6 Oct 1995, amended 12 Nov 1997, amended 21 July 2005)

(ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;
(Amended 6 Oct 1995)

(iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
(Amended 12 Nov 1997)

(iv) a copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes;
(Amended 30 Jan 1995, amended 12 Dec 2002)

(v) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and
(Amended 12 Dec 2002)

(vi) the tape shall be transcribed if the suspect becomes an accused.
(Amended 12 Dec 2002)

(Amended 6 Oct 1995)

Section 2: Of Counsel

Rule 44
Appointment, Qualifications and Duties of Counsel

(Adopted 11 Feb 1994, amended 25 July 1997)

(A) Counsel engaged by a suspect or an accused shall file a power of attorney with the Registrar at the earliest opportunity. Subject to any determination by a Chamber pursuant to Rule 46 or 77, a counsel shall be considered qualified to represent a suspect or accused if the counsel satisfies the Registrar that he or she:

(i) is admitted to the practice of law in a State, or is a university professor of law;

(ii) has written and oral proficiency in one of the two working languages of the Tribunal, unless the Registrar deems it in the interests of justice to waive this requirement, as provided for in paragraph (B);

(iii) is a member in good standing of an association of counsel practicing at the Tribunal recognised by the Registrar;

(iv) has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel;

(v) has not been found guilty in relevant criminal proceedings;

(vi) has not engaged in conduct whether in pursuit of his or her profession or otherwise which is dishonest or otherwise discreditable to a counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the International Tribunal or the administration of justice, or otherwise bring the International Tribunal into disrepute; and

(vii) has not provided false or misleading information in relation to his or her qualifications and fitness to practice or failed to provide relevant information.

(Amended 12 Nov 1997, amended 1 Dec 2000, amended 13 Dec 2000, amended 14 July 2000, amended 13 Dec 2001, amended 12 July 2002, amended 28 July 2004)

(B) At the request of the suspect or accused and where the interests of justice so demand, the Registrar may admit a counsel who does not speak either of the two working languages of the Tribunal but who speaks the native language of the suspect or accused. The Registrar may impose such conditions as deemed appropriate, including the requirement that the counsel or accused undertake to meet all translations and interpretation costs not usually met by the Tribunal, and counsel undertakes not to request any extensions of time as a result of the fact that he does not speak one of the working languages. A suspect or accused may seek the President's review of the Registrar's decision. (Amended 14 July 2000, amended 28 July 2004)

(C) In the performance of their duties counsel shall be subject to the relevant provisions of the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Tribunal, the Host Country Agreement, the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel adopted by the Registrar and approved by the permanent Judges. (Amended 25 July 1997, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001, amended 28 July 2004)

(D) An Advisory Panel shall be established to assist the President and the Registrar in all matters relating to defence counsel. The Panel members shall be selected from representatives of professional associations and from counsel who have appeared before the Tribunal. They shall have recognised professional legal experience. The composition of the Advisory Panel shall be representative of the different legal systems. A Directive of the Registrar shall set out the structure and areas of responsibility of the Advisory Panel. (Amended 14 July 2000)

Rule 45
Assignment of Counsel

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 12 Nov 1997)

(A) Whenever the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel. Such assignments shall be treated in accordance with the procedure established in a Directive set out by the Registrar and approved by the permanent Judges. (Amended 14 July 2000, amended 12 Apr 2001)

(B) For this purpose, the Registrar shall maintain a list of counsel who:

(i) fulfil all the requirements of Rule 44, although the language requirement of Rule 44 (A)(ii) may be waived by the Registrar as provided for in the Directive;

(ii) possess established competence in criminal law and/or international criminal law/international humanitarian law/international human rights law;

(iii) possess at least seven years of relevant experience, whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings; and

(iv) have indicated their availability and willingness to be assigned by the Tribunal to any person detained under the authority of the Tribunal lacking the means to remunerate counsel, under the terms set out in the Directive.

(Amended 25 June 1996, amended 5 July 1996, amended 14 July 2000, amended 28 July 2004)

(C) The Registrar shall maintain a separate list of counsel who, in addition to fulfilling the qualification requirements set out in paragraph (B), are readily available as "duty counsel" for assignment to an accused for the purposes of the initial appearance, in accordance with Rule 62. (Amended 10 July 1998, amended 14 July 2000, amended 28 July 2004)

(D) The Registrar shall, in consultation with the permanent Judges, establish the criteria for the payment of fees to assigned counsel. (Amended 12 Apr 2001, amended 12 Dec 2002)

(E) Where a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the Chamber may, on application by the Registrar, make an order of contribution to recover the cost of providing counsel. (Amended 30 Jan 1995, amended 14 July 2000, amended 28 July 2004)

(F) A suspect or an accused electing to conduct his or her own defence shall so notify the Registrar in writing at the first opportunity. (Amended 30 Jan 1995, amended 12 Nov 1997)

Rule 45 *bis*
Detained Persons

(Adopted 25 June 1996, amended 5 July 1996)

Rules 44 and 45 shall apply to any person detained under the authority of the Tribunal.

Rule 45 *ter*
Assignment of Counsel in the Interests of Justice

(Adopted 4 Nov 2008)

The Trial Chamber may, if it decides that it is in the interests of justice, instruct the Registrar to assign a counsel to represent the interests of the accused.

Rule 46
Misconduct of Counsel

(Adopted 11 Feb 1994, amended 13 Dec 2001)

(A) If a Judge or a Chamber finds that the conduct of a counsel is offensive, abusive or otherwise obstructs the proper conduct of the proceedings, or that a counsel is negligent or otherwise fails to meet the standard of professional competence and ethics in the performance of his duties, the Chamber may, after giving counsel due warning:

(i) refuse audience to that counsel; and/or

(ii) determine, after giving counsel an opportunity to be heard, that counsel is no longer eligible to represent a suspect or an accused before the Tribunal pursuant to Rule 44 and 45.

(Amended 12 Nov 1997, amended 13 Dec 2001, amended 28 July 2004)

(B) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in the counsel's State of admission or, if a university professor of law and not otherwise admitted to the profession, to the governing body of that counsel's University. (Amended 12 Nov 1997, amended 28 July 2004)

(C) Under the supervision of the President, the Registrar shall publish and oversee the implementation of a Code of Professional Conduct for defence counsel. (Amended 14 July 2000)

PART FIVE
PRE-TRIAL PROCEEDINGS

Section 1: Indictments

Rule 47
Submission of Indictment by the Prosecutor
(Adopted 11 Feb 1994, amended 25 July 1997)

(A) An indictment, submitted in accordance with the following procedure, shall be reviewed by a Judge designated in accordance with Rule 28 for this purpose. (Amended 25 July 1997)

(B) The Prosecutor, if satisfied in the course of an investigation that there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime within the jurisdiction of the Tribunal, shall prepare and forward to the Registrar an indictment for confirmation by a Judge, together with supporting material. (Amended 12 Nov 1997)

(C) The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.

(D) The Registrar shall forward the indictment and accompanying material to the designated Judge, who will inform the Prosecutor of the date fixed for review of the indictment. (Amended 30 Jan 1995, amended 25 July 1997)

(E) The reviewing Judge shall examine each of the counts in the indictment, and any supporting materials the Prosecutor may provide, to determine, applying the standard set forth in Article 19, paragraph 1, of the Statute, whether a case exists against the suspect. (Amended 25 July 1997)

(F) The reviewing Judge may:

(i) request the Prosecutor to present additional material in support of any or all counts;
(Amended 10 July 1998, amended 2 July 1999)

(ii) confirm each count;

(iii) dismiss each count; or

(iv) adjourn the review so as to give the Prosecutor the opportunity to modify the indictment.

(Amended 25 July 1997)

(G) The indictment as confirmed by the Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal. If the accused does not understand either of the official languages of the Tribunal and if the language understood is known to the Registrar, a translation of the indictment in that language shall also be prepared, and shall be included as part of each certified copy of the indictment. (Amended 12 Nov 1997)

(H) Upon confirmation of any or all counts in the indictment,

(i) the Judge may issue an arrest warrant, in accordance with Rule 55 (A), and any orders as provided in Article 19 of the Statute, and
(Amended 1 Dec 2000, amended 13 Dec 2000)

(ii) the suspect shall have the status of an accused.

(Amended 25 July 1997)

(I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing an amended indictment based on the acts underlying that count if supported by additional evidence. (Amended 25 July 1997)

Rule 48
Joinder of Accused
(Adopted 11 Feb 1994)

Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.

Rule 49
Joinder of Crimes
(Adopted 11 Feb 1994)

Two or more crimes may be joined in one indictment if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused.

Rule 50
Amendment of Indictment
(Adopted 11 Feb 1994)

(A) (i) The Prosecutor may amend an indictment:

(a) at any time before its confirmation, without leave;
(Amended 17 Nov 1999, amended 14 July 2000)

(b) between its confirmation and the assignment of the case to a Trial Chamber, with the leave of the Judge who confirmed the indictment, or a Judge assigned by the President; and
(Amended 10 July 1998, amended 17 Nov 1999, amended 14 July 2000)

(c) after the assignment of the case to a Trial Chamber, with the leave of that Trial Chamber or a Judge of that Chamber, after having heard the parties.
(Amended 17 Nov 1999, amended 14 July 2000)

(ii) Independently of any other factors relevant to the exercise of the discretion, leave to amend an indictment shall not be granted unless the Trial Chamber or Judge is satisfied there is evidence which satisfies the standard set forth in Article 19, paragraph 1, of the Statute to support the proposed amendment.
(Amended 10 July 1998, amended 17 Nov 1999, amended 14 July 2000, amended 28 July 2004)

(iii) Further confirmation is not required where an indictment is amended by leave.
(Amended 28 July 2004)

(iv) Rule 47 (G) and Rule 53 *bis* apply *mutatis mutandis* to the amended indictment.

(Amended 18 Jan 1996, amended 3 Dec 1996, amended 12 Nov 1997, amended 10 July 1998)

(B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further

appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges. (Amended 18 Jan 1996)

(C) The accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence. (Amended 18 Jan 1996, amended 12 Nov 1997, amended 10 July 1998)

Rule 51
Withdrawal of Indictment

(Adopted 11 Feb 1994)

(A) The Prosecutor may withdraw an indictment:

(i) at any time before its confirmation, without leave;
(Amended 12 Dec 2002)

(ii) between its confirmation and the assignment of the case to a Trial Chamber, with the leave of the Judge who confirmed the indictment, or a Judge assigned by the President; and
(Amended 12 Dec 2002)

(iii) after the assignment of the case to a Trial Chamber, by motion before that Trial Chamber pursuant to Rule 73.
(Amended 12 Dec 2002)

(Amended 3 Dec 1996, amended 12 Nov 1997)

(B) The withdrawal of the indictment shall be promptly notified to the suspect or the accused and to the counsel of the suspect or accused. (Amended 12 Nov 1997)

Rule 52
Public Character of Indictment

(Adopted 11 Feb 1994)

Subject to Rule 53, upon confirmation by a Judge of a Trial Chamber, the indictment shall be made public.

Rule 53
Non-disclosure
(Adopted 11 Feb 1994)

(A) In exceptional circumstances, a Judge or a Trial Chamber may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order. (Amended 25 June 1996, amended 5 July 1996)

(B) When confirming an indictment the Judge may, in consultation with the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused.

(C) A Judge or Trial Chamber may, in consultation with the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice. (Amended 30 Jan 1995)

(D) Notwithstanding paragraphs (A), (B) and (C), the Prosecutor may disclose an indictment or part thereof to the authorities of a State or an appropriate authority or international body where the Prosecutor deems it necessary to prevent an opportunity for securing the possible arrest of an accused from being lost. (Amended 4 Dec 1998, amended 12 Apr 2001)

Rule 53 *bis*
Service of Indictment
(Adopted 12 Nov 1997)

(A) Service of the indictment shall be effected personally on the accused at the time the accused is taken into custody or as soon as reasonably practicable thereafter.

(B) Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment certified in accordance with Rule 47 (G).

Section 2: Orders & Warrants

Rule 54
General Rule

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 6 Oct 1995)

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Rule 54 *bis*
Orders Directed to States for the Production of Documents

(Adopted 17 Nov 1999)

(A) A party requesting an order under Rule 54 that a State produce documents or information shall apply in writing to the relevant Judge or Trial Chamber and shall:

(i) identify as far as possible the documents or information to which the application relates;

(ii) indicate how they are relevant to any matter in issue before the Judge or Trial Chamber and necessary for a fair determination of that matter; and

(iii) explain the steps that have been taken by the applicant to secure the State's assistance.

(B) The Judge or Trial Chamber may reject an application under paragraph (A) *in limine* if satisfied that:

(i) the documents or information are not relevant to any matter in issue in the proceedings before them or are not necessary for a fair determination of any such matter; or

(ii) no reasonable steps have been taken by the applicant to obtain the documents or information from the State.

(Amended 12 Apr 2001)

(C) (i) A decision by a Judge or a Trial Chamber under paragraph (B) or (E) shall be subject to:

(a) review under Rule 108 *bis*; or
(b) appeal.
(Amended 21 July 2005)

(ii) An appeal under paragraph (i) shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(a) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
(b) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(Amended 21 July 2005)

(Amended 12 Apr 2001, amended 13 Dec 2001, amended 12 Dec 2002)

(D) (i) Except in cases where a decision has been taken pursuant to paragraph (B) or paragraph (E), the State concerned shall be given notice of the application, and not less than fifteen days' notice of the hearing of the application, at which the State shall have an opportunity to be heard. (Amended 12 Apr 2001)

(ii) Except in cases where the Judge or Trial Chamber determines otherwise, only the party making the application and the State concerned shall have the right to be heard. (Amended 13 Dec 2001)

(E) If, having regard to all circumstances, the Judge or Trial Chamber has good reasons for so doing, the Judge or Trial Chamber may make an order to which this Rule applies without giving the State concerned notice or the opportunity to be heard under paragraph (D), and the following provisions shall apply to such an order:

(i) the order shall be served on the State concerned;

(ii) subject to paragraph (iv), the order shall not have effect until fifteen days after such service;

(iii) a State may, within fifteen days of service of the order, apply by notice to the Judge or Trial Chamber to have the order set aside, on the grounds that disclosure would prejudice national security interests. Paragraph (F) shall apply to such a notice as it does to a notice of objection;
(Amended 12 Apr 2001)

(iv) where notice is given under paragraph (iii), the order shall thereupon be stayed until the decision on the application;

(v) paragraphs (F) and (G) shall apply to the determination of an application made pursuant to paragraph (iii) as they do to the determination of an application of which notice is given pursuant to paragraph (D);
(Amended 12 Apr 2001)

(vi) the State and the party who applied for the order shall, subject to any special measures made pursuant to a request under paragraphs (F) or (G), have an opportunity to be heard at the hearing of an application made pursuant to paragraph (E)(iii) of this Rule.
(Amended 12 Apr 2001)

(Amended 12 Apr 2001)

(F) The State, if it raises an objection pursuant to paragraph (D), on the grounds that disclosure would prejudice its national security interests, shall file a notice of objection not less than five days before the date fixed for the hearing, specifying the grounds of objection. In its notice of objection the State:

(i) shall identify, as far as possible, the basis upon which it claims that its national security interests will be prejudiced; and

(ii) may request the Judge or Trial Chamber to direct that appropriate protective measures be made for the hearing of the objection, including in particular:

(a) hearing the objection in camera and *ex parte*;
(b) allowing documents to be submitted in redacted form, accompanied by an affidavit signed by a senior State official explaining the reasons for the redaction;
(c) ordering that no transcripts be made of the hearing and that documents not further required by the Tribunal be returned

directly to the State without being filed with the Registry or otherwise retained.

(Amended 12 Apr 2001)

(G) With regard to the procedure under paragraph (F) above, the Judge or Trial Chamber may order the following protective measures for the hearing of the objection:

(i) the designation of a single Judge from a Chamber to examine the documents or hear submissions; and/or

(ii) that the State be allowed to provide its own interpreters for the hearing and its own translations of sensitive documents.

(Amended 12 Apr 2001)

(H) Rejection of an application made under this Rule shall not preclude a subsequent application by the requesting party in respect of the same documents or information if new circumstances arise.

(I) An order under this Rule may provide for the documents or information in question to be produced by the State under appropriate arrangements to protect its interests, which may include those arrangements specified in paragraphs (F)(ii) or (G). (Amended 12 Apr 2001)

Rule 55
Execution of Arrest Warrants

(Adopted 11 Feb 1994)

(A) A warrant of arrest shall be signed by a permanent Judge. It shall include an order for the prompt transfer of the accused to the Tribunal upon the arrest of the accused. (Amended 12 Nov 1997, amended 12 Apr 2001)

(B) The original warrant shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal. (Amended 12 Nov 1997)

(C) Each certified copy shall be accompanied by a copy of the indictment certified in accordance with Rule 47 (G) and a statement of the rights of the accused set forth in Article 21 of the Statute, and in Rules 42 and 43 *mutatis mutandis*. If the accused does not understand either of the official languages of the Tribunal and if the language understood by the accused is known to the

Registrar, each certified copy of the warrant of arrest shall also be accompanied by a translation of the statement of the rights of the accused in that language. (Amended 12 Nov 1997)

(D) Subject to any order of a Judge or Chamber, the Registrar may transmit a certified copy of a warrant of arrest to the person or authorities to which it is addressed, including the national authorities of a State in whose territory or under whose jurisdiction the accused resides, or was last known to be, or is believed by the Registrar to be likely to be found. (Amended 30 Jan 1995, amended 18 Jan 1996, amended 25 July 1997, amended 12 Nov 1997)

(E) The Registrar shall instruct the person or authorities to which a warrant is transmitted that at the time of arrest the indictment and the statement of the rights of the accused be read to the accused in a language that he or she understands and that the accused be cautioned in that language that the accused has the right to remain silent, and that any statement he or she makes shall be recorded and may be used in evidence. (Amended 30 Jan 1995, amended 18 Jan 1996, amended 25 July 1997, amended 12 Nov 1997)

(F) Notwithstanding paragraph (E), if at the time of arrest the accused is served with, or with a translation of, the indictment and the statement of rights of the accused in a language that the accused understands and is able to read, these need not be read to the accused at the time of arrest. (Amended 12 Nov 1997, amended 12 Apr 2001)

(G) When an arrest warrant issued by the Tribunal is executed by the authorities of a State, or an appropriate authority or international body, a member of the Office of the Prosecutor may be present as from the time of the arrest. (Amended 12 Nov 1997)

Rule 56
Cooperation of States

(Adopted 11 Feb 1994, amended 18 Jan 1996)

The State to which a warrant of arrest or a transfer order for a witness is transmitted shall act promptly and with all due diligence to ensure proper and effective execution thereof, in accordance with Article 29 of the Statute.

Rule 57
Procedure after Arrest

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 12 Nov 1997)

Upon arrest, the accused shall be detained by the State concerned which shall promptly notify the Registrar. The transfer of the accused to the seat of the Tribunal shall be arranged between the State authorities concerned, the authorities of the host country and the Registrar.

Rule 58
National Extradition Provisions

(Adopted 11 Feb 1994, amended 6 Oct 1995)

The obligations laid down in Article 29 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused or of a witness to the Tribunal which may exist under the national law or extradition treaties of the State concerned.

Rule 59
Failure to Execute a Warrant or Transfer Order

(Adopted 11 Feb 1994, amended 18 Jan 1996)

(A) Where the State to which a warrant of arrest or transfer order has been transmitted has been unable to execute the warrant, it shall report forthwith its inability to the Registrar, and the reasons therefor.

(B) If, within a reasonable time after the warrant of arrest or transfer order has been transmitted to the State, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer order and the Tribunal, through the President, may notify the Security Council accordingly.

Rule 59 *bis*
Transmission of Arrest Warrants

(Adopted 18 Jan 1996)

(A) Notwithstanding Rules 55 to 59, on the order of a permanent Judge, the Registrar shall transmit to an appropriate authority or international body or the Prosecutor a copy of a warrant for the arrest of an accused, on such terms as the Judge may determine, together with an order for the prompt transfer of the accused to the Tribunal in the event that the accused be taken into custody

by that authority or international body or the Prosecutor. (Amended 25 June 1996, amended 5 July 1996, amended 12 Nov 1997, amended 12 Apr 2001)

(B) At the time of being taken into custody an accused shall be informed immediately, in a language the accused understands, of the charges against him or her and of the fact that he or she is being transferred to the Tribunal. Upon such transfer, the indictment and a statement of the rights of the accused shall be read to the accused and the accused shall be cautioned in such a language. (Amended 12 Nov 1997)

(C) Notwithstanding paragraph (B), the indictment and statement of rights of the accused need not be read to the accused if the accused is served with these, or with a translation of these, in a language the accused understands and is able to read. (Amended 12 Nov 1997, amended 12 Apr 2001)

Rule 60
Advertisement of Indictment

(Adopted 11 Feb 1994, amended 25 July 1997, amended 12 Nov 1997)

At the request of the Prosecutor, a form of advertisement shall be transmitted by the Registrar to the national authorities of any State or States, for publication in newspapers or for broadcast via radio and television, notifying publicly the existence of an indictment and calling upon the accused to surrender to the Tribunal and inviting any person with information as to the whereabouts of the accused to communicate that information to the Tribunal.

Rule 61
Procedure in Case of Failure to Execute a Warrant

(Adopted 11 Feb 1994)

(A) If, within a reasonable time, a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, the Judge who confirmed the indictment shall invite the Prosecutor to report on the measures taken. When the Judge is satisfied that:

(i) the Registrar and the Prosecutor have taken all reasonable steps to secure the arrest of the accused, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to them to be; and

(Amended 18 Jan 1996, amended 12 Nov 1997)

(ii) if the whereabouts of the accused are unknown, the Prosecutor and the Registrar have taken all reasonable steps to ascertain those whereabouts, including by seeking publication of advertisements pursuant to Rule 60,
(Amended 18 Jan 1996, amended 12 Nov 1997, amended 4 Dec 1998)

the Judge shall order that the indictment be submitted by the Prosecutor to the Trial Chamber of which the Judge is a member. (Amended 3 May 1995, amended 18 Jan 1996, amended 12 Nov 1997, amended 4 Dec 1998)

(B) Upon obtaining such an order the Prosecutor shall submit the indictment to the Trial Chamber in open court, together with all the evidence that was before the Judge who initially confirmed the indictment. The Prosecutor may also call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge. In addition, the Trial Chamber may request the Prosecutor to call any other witness whose statement has been submitted to the confirming Judge. (Amended 30 Jan 1995, amended 25 July 1997)

(C) If the Trial Chamber is satisfied on that evidence, together with such additional evidence as the Prosecutor may tender, that there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment, it shall so determine. The Trial Chamber shall have the relevant parts of the indictment read out by the Prosecutor together with an account of the efforts to effect service referred to in paragraph (A) above. (Amended 12 Apr 2001)

(D) The Trial Chamber shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States. Upon request by the Prosecutor or *proprio motu*, after having heard the Prosecutor, the Trial Chamber may order a State or States to adopt provisional measures to freeze the assets of the accused, without prejudice to the rights of third parties. (Amended 23 Apr 1996)

(E) If the Prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Tribunal in accordance with Article 29 of the Statute, the Trial Chamber shall so certify. After consulting the Presiding Judges of the Chambers, the President shall notify the Security Council thereof in such manner as the President thinks fit. (Amended 18 Jan 1996)

Rule 62
Initial Appearance of Accused

(Adopted 11 Feb 1994, amended 12 July 2007)

(A) Upon transfer of an accused to the seat of the Tribunal, the President shall forthwith assign the case to a Trial Chamber. The accused shall be brought before that Trial Chamber or a Judge thereof without delay, and shall be formally charged. The Trial Chamber or the Judge shall:

(i) satisfy itself, himself or herself that the right of the accused to counsel is respected;
(Amended 17 Nov 1999)

(ii) read or have the indictment read to the accused in a language the accused understands, and satisfy itself, himself or herself that the accused understands the indictment;
(Amended 12 Nov 1997, amended 17 Nov 1999, amended 24 June 2003)

(iii) inform the accused that, within thirty days of the initial appearance, he or she will be called upon to enter a plea of guilty or not guilty on each count but that, should the accused so request, he or she may immediately enter a plea of guilty or not guilty on one or more count;
(Amended 4 Dec 1998)

(iv) if the accused fails to enter a plea at the initial or any further appearance, enter a plea of not guilty on the accused's behalf;
(Amended 15 June 1995, amended 12 Nov 1997, amended 4 Dec 1998)

(v) in case of a plea of not guilty, instruct the Registrar to set a date for trial; (Amended 30 Jan 1995)

(vi) in case of a plea of guilty:

(a) if before the Trial Chamber, act in accordance with Rule 62 *bis*, or
(Amended 17 Nov 1999)

(b) if before a Judge, refer the plea to the Trial Chamber so that it may act in accordance with Rule 62 *bis*;
(Amended 17 Nov 1999)

(Amended 30 Jan 1995, amended 12 Nov 1997)

(vii) instruct the Registrar to set such other dates as appropriate.
(Amended 30 Jan 1995)

(Amended 12 Nov 1997, amended 17 Nov 1999, amended 12 Apr 2001, amended 17 July 2003)

(B) Where the interests of justice so require, the Registrar may assign a duty counsel as within Rule 45 (C) to represent the accused at the initial appearance. Such assignments shall be treated in accordance with the relevant provisions of the Directive referred to in Rule 45 (A). (Amended 28 July 2004)

(C) Within 30 days of the initial appearance, if the accused has not retained permanent counsel or has not yet elected in writing to conduct his or her own defence in accordance with Rule 45 (F), permanent counsel shall be assigned by the Registrar. Should the Registrar be unable to appoint permanent counsel within the time-limit, he will seek an extension from the Trial Chamber. (Amended 12 July 2007)

Rule 62 *bis*
Guilty Pleas
(Adopted 12 Nov 1997)

If an accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty and the Trial Chamber is satisfied that:

(i) the guilty plea has been made voluntarily;

(ii) the guilty plea is informed;
(Amended 17 Nov 1999)

(iii) the guilty plea is not equivocal; and

(iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case,

the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing. (Amended 10 July 1998, amended 4 Dec 1998)

Rule 62 *ter*
Plea Agreement Procedure
(Adopted 13 Dec 2001)

(A) The Prosecutor and the defence may agree that, upon the accused entering a plea of guilty to the indictment or to one or more counts of the indictment, the Prosecutor shall do one or more of the following before the Trial Chamber:

(i) apply to amend the indictment accordingly;

(ii) submit that a specific sentence or sentencing range is appropriate;

(iii) not oppose a request by the accused for a particular sentence or sentencing range.

(B) The Trial Chamber shall not be bound by any agreement specified in paragraph (A).

(C) If a plea agreement has been reached by the parties, the Trial Chamber shall require the disclosure of the agreement in open session or, on a showing of good cause, in closed session, at the time the accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty.

Rule 63
Questioning of Accused
(Adopted 11 Feb 1994, amended 3 Dec 1996)

(A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused's counsel is present.

(B) The questioning, including any waiver of the right to counsel, shall be audio-recorded or video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused in accordance with Rule 42 (A)(iii).

Rule 64
Detention on Remand

(Adopted 11 Feb 1994, amended 25 July 1997, amended 12 Nov 1997)

Upon being transferred to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside of the host country. The President may, on the application of a party, request modification of the conditions of detention of an accused.

Rule 65
Provisional Release

(Adopted 11 Feb 1994)

(A) Once detained, an accused may not be released except upon an order of a Chamber. (Amended 14 July 2000)

(B) Release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person. The existence of sufficiently compelling humanitarian grounds may be considered in granting such release. (Amended 30 Jan 1995, amended 17 Nov 1999, amended 13 Dec 2001, amended 20 Oct 2011)

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others. (Amended 12 Nov 1997)

(D) Any decision rendered under this Rule by a Trial Chamber shall be subject to appeal. Subject to paragraph (F) below, an appeal shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, the appeal shall be filed within seven days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
(Amended 10 July 1998)

(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision. (Amended 10 July 1998)

(Amended 25 July 1997, amended 12 Nov 1997, amended 10 July 1998, amended 17 Nov 1999, amended 14 July 2000, amended 1 Dec 2000, amended 13 Dec 2000, amended 21 July 2005)

(E) The Prosecutor may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecutor intends to appeal the decision, and shall make such an application at the time of filing his or her response to the initial application for provisional release by the accused. (Amended 17 Nov 1999)

(F) Where the Trial Chamber grants a stay of its decision to release an accused, the Prosecutor shall file his or her appeal not later than one day from the rendering of that decision. (Amended 17 Nov 1999)

(G) Where the Trial Chamber orders a stay of its decision to release the accused pending an appeal by the Prosecutor, the accused shall not be released until either:

(i) the time-limit for the filing of an appeal by the Prosecutor has expired, and no such appeal is filed;
(Amended 21 July 2005)

(ii) the Appeals Chamber dismisses the appeal; or

(iii) the Appeals Chamber otherwise orders.
(Amended 21 July 2005)

(Amended 17 Nov 1999, amended 21 July 2005)

(H) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been released or is for any other reason at liberty. The provisions of Section 2 of Part Five shall apply *mutatis mutandis*. (Amended 25 July 1997)

(I) Without prejudice to the provisions of Rule 107, the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period if it is satisfied that:

(i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be;

(ii) the appellant, if released, will not pose a danger to any victim, witness or other person, and

(iii) special circumstances exist warranting such release.

The provisions of paragraphs (C) and (H) shall apply *mutatis mutandis*.

(Amended 14 July 2000, amended 1 Dec 2000, amended 13 Dec 2000)

Rule 65 *bis*
Status Conferences
(Adopted 25 July 1997)

(A) A Trial Chamber or a Trial Chamber Judge shall convene a status conference within one hundred and twenty days of the initial appearance of the accused and thereafter within one hundred and twenty days after the last status conference:

(i) to organize exchanges between the parties so as to ensure expeditious preparation for trial;

(ii) to review the status of his or her case and to allow the accused the opportunity to raise issues in relation thereto, including the mental and physical condition of the accused.

(Amended 4 Dec 1998, amended 17 Nov 1999, amended 12 Apr 2001, amended 17 July 2003)

(B) The Appeals Chamber or an Appeals Chamber Judge shall convene a status conference, within one hundred and twenty days of the filing of a notice of appeal and thereafter within one hundred and twenty days after the last status conference, to allow any person in custody pending appeal the opportunity to raise issues in relation thereto, including the mental and physical condition of that person. (Amended 17 Nov 1999)

(C) With the written consent of the accused, given after receiving advice from his counsel, a status conference under this Rule may be conducted

(i) in his presence, but with his counsel participating either via tele-conference or video-conference; or

(ii) in Chambers in his absence, but with his participation via tele-conference if he so wishes and/or participation of his counsel via tele-conference or video-conference.

(Amended 12 Dec 2002)

Rule 65 *ter*
Pre-Trial Judge

(Adopted 10 July 1998, amended 17 Nov 1999)

(A) The Presiding Judge of the Trial Chamber shall, no later than seven days after the initial appearance of the accused, designate from among its members a Judge responsible for the pre-trial proceedings (hereinafter "pre-trial Judge"). (Amended 17 Nov 1999, amended 12 Apr 2001, amended 17 July 2003)

(B) The pre-trial Judge shall, under the authority and supervision of the Trial Chamber seised of the case, coordinate communication between the parties during the pre-trial phase. The pre-trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial.

(C) The pre-trial Judge shall be entrusted with all of the pre-trial functions set forth in Rule 66, Rule 67, Rule 73 *bis* and Rule 73 *ter*, and with all or part of the functions set forth in Rule 73. (Amended 17 Nov 1999, amended 12 Apr 2001, amended 12 Dec 2003)

(D) (i) The pre-trial Judge may be assisted in the performance of his or her duties by one of the Senior Legal Officers assigned to Chambers.

(ii) The pre-trial Judge shall establish a work plan indicating, in general terms, the obligations that the parties are required to meet pursuant to this Rule and the dates by which these obligations must be fulfilled.

(iii) Acting under the supervision of the pre-trial Judge, the Senior Legal Officer shall oversee the implementation of the work plan and shall keep the pre-trial Judge informed of the progress of the discussions between and with the parties and, in particular, of any potential difficulty. He or she shall present the pre-trial Judge with reports as appropriate and shall communicate to the parties, without delay, any observations and decisions made by the pre-trial Judge.

(iv) The pre-trial Judge shall order the parties to meet to discuss issues related to the preparation of the case, in particular, so that the Prosecutor can meet his or her obligations pursuant to paragraphs (E)

(i) to (iii) of this Rule and for the defence to meet its obligations pursuant to paragraph (G) of this Rule and of Rule 73 *ter*.

(v) Such meetings are held *inter partes* or, at his or her request, with the Senior Legal Officer and one or more of the parties. The Senior Legal Officer ensures that the obligations set out in paragraphs (E) (i) to (iii) of this Rule and, at the appropriate time, that the obligations in paragraph (G) and Rule 73 *ter*, are satisfied in accordance with the work plan set by the pre-trial Judge.

(vi) The presence of the accused is not necessary for meetings convened by the Senior Legal Officer.

(vii) The Senior Legal Officer may be assisted by a representative of the Registry in the performance of his or her duties pursuant to this Rule and may require a transcript to be made.

(Amended 12 Apr 2001)

(E) Once any existing preliminary motions filed within the time-limit provided by Rule 72 are disposed of, the pre-trial Judge shall order the Prosecutor, upon the report of the Senior Legal Officer, and within a time-limit set by the pre-trial Judge and not less than six weeks before the Pre-Trial Conference required by Rule 73 *bis*, to file the following:

(i) the final version of the Prosecutor's pre-trial brief including, for each count, a summary of the evidence which the Prosecutor intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused; this brief shall include any admissions by the parties and a statement of matters which are not in dispute; as well as a statement of contested matters of fact and law;
(Amended 12 Apr 2001)

(ii) the list of witnesses the Prosecutor intends to call with :

(a) the name or pseudonym of each witness;
(b) a summary of the facts on which each witness will testify;
(c) the points in the indictment as to which each witness will testify, including specific references to counts and relevant paragraphs in the indictment;
(Amended 12 Apr 2001)
(d) the total number of witnesses and the number of witnesses who will testify against each accused and on each count;

(Amended 12 Apr 2001)

(e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and

(Amended 12 Apr 2001, amended 13 Sept 2006)

(f) the estimated length of time required for each witness and the total time estimated for presentation of the Prosecutor's case.

(Amended 12 Apr 2001)

(iii) the list of exhibits the Prosecutor intends to offer stating where possible whether the defence has any objection as to authenticity. The Prosecutor shall serve on the defence copies of the exhibits so listed.

(Amended 12 Apr 2001, amended 13 Dec 2001)

(Amended 17 Nov 1999, amended 12 Apr 2001, amended 12 July 2001)

(F) After the submission by the Prosecutor of the items mentioned in paragraph (E), the pre-trial Judge shall order the defence, within a time-limit set by the pre-trial Judge, and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing the factual and legal issues, and including a written statement setting out:

(i) in general terms, the nature of the accused's defence;

(ii) the matters with which the accused takes issue in the Prosecutor's pre-trial brief; and

(iii) in the case of each such matter, the reason why the accused takes issue with it.

(Amended 17 Nov 1999, amended 12 Apr 2001)

(G) After the close of the Prosecutor's case and before the commencement of the defence case, the pre-trial Judge shall order the defence to file the following:

(i) a list of witnesses the defence intends to call with:

(a) the name or pseudonym of each witness;

(b) a summary of the facts on which each witness will testify;

(c) the points in the indictment as to which each witness will testify;

(Amended 12 Apr 2001)

(d) the total number of witnesses and the number of witnesses who will testify for each accused and on each count;

(Amended 12 Apr 2001)

(e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and

(Amended 12 Apr 2001, amended 13 Sept 2006)

(f) the estimated length of time required for each witness and the total time estimated for presentation of the defence case; and

(Amended 12 Apr 2001)

(ii) a list of exhibits the defence intends to offer in its case, stating where possible whether the Prosecutor has any objection as to authenticity. The defence shall serve on the Prosecutor copies of the exhibits so listed.

(Amended 13 Dec 2001)

(Amended 17 Nov 1999)

(H) The pre-trial Judge shall record the points of agreement and disagreement on matters of law and fact. In this connection, he or she may order the parties to file written submissions with either the pre-trial Judge or the Trial Chamber. (Amended 17 Nov 1999)

(I) In order to perform his or her functions, the pre-trial Judge may *proprio motu*, where appropriate, hear the parties without the accused being present. The pre-trial Judge may hear the parties in his or her private room, in which case minutes of the meeting shall be taken by a representative of the Registry. (Amended 17 Nov 1999, amended 12 Apr 2001)

(J) The pre-trial Judge shall keep the Trial Chamber regularly informed, particularly where issues are in dispute and may refer such disputes to the Trial Chamber.

(K) The pre-trial Judge may set a time for the making of pre-trial motions and, if required, any hearing thereon. A motion made before trial shall be determined before trial unless the Judge, for good cause, orders that it be deferred for determination at trial. Failure by a party to raise objections or to make requests which can be made prior to trial at the time set by the Judge shall constitute waiver thereof, but the Judge for cause may grant relief from the waiver. (Amended 12 Apr 2001)

(L) (i) After the filings by the Prosecutor pursuant to paragraph (E), the pre-trial Judge shall submit to the Trial Chamber a complete file consisting of all the filings of the parties, transcripts of status conferences and minutes of meetings held in the performance of his or her functions pursuant to this Rule.

(ii) The pre-trial Judge shall submit a second file to the Trial Chamber after the defence filings pursuant to paragraph (G). (Amended 17 Nov 1999, amended 12 Apr 2001)

(M) The Trial Chamber may *proprio motu* exercise any of the functions of the pre-trial Judge. (Amended 17 Nov 1999)

(N) Upon a report of the pre-trial Judge, the Trial Chamber shall decide, should the case arise, on sanctions to be imposed on a party which fails to perform its obligations pursuant to the present Rule. Such sanctions may include the exclusion of testimonial or documentary evidence. (Amended 12 Apr 2001)

Section 4: Production of Evidence

Rule 66
Disclosure by the Prosecutor
(Adopted 11 Feb 1994)

(A) Subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands

(i) within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused; and
(Amended 12 Nov 1997)

(ii) within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all transcripts and written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, and Rule 92 *quater*; copies of the statements of additional prosecution witnesses shall be made available to the defence when a decision is made to call those witnesses.
(Amended 12 Nov 1997, amended 10 July 1998, amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Sept 2006)

(Amended 30 Jan 1995, amended 3 Dec 1996, amended 12 Nov 1997, amended 10 July 1998)

(B) The Prosecutor shall, on request, permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused. (Amended 30 Jan 1995, amended 12 Nov 1997, amended 17 Nov 1999)

(C) Where information is in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the Trial Chamber sitting in camera to be relieved from an obligation under the Rules to disclose that information. When making such application the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential. (Amended 30 Jan 1995, amended 10 July 1998, amended 17 Nov 1999)

Rule 67
Additional Disclosure

(Adopted 11 Feb 1994, amended 12 Dec 2003, amended 28 Feb 2008)

(A) Within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 98 *bis*, but not less than one week prior to the commencement of the Defence case, the Defence shall:

(i) permit the Prosecutor to inspect and copy any books, documents, photographs, and tangible objects in the Defence's custody or control, which are intended for use by the Defence as evidence at trial; and

(ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, or Rule 92 *quater*, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses.

(Adopted 28 Feb 2008)

(B) Within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*:

(i) the defence shall notify the Prosecutor of its intent to offer:

(a) the defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;

(b) any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence; and

(ii) the Prosecutor shall notify the defence of the names of the witnesses that the Prosecutor intends to call in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with paragraph (i) above.

(C) Failure of the Defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences.

(D) If either party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that party shall immediately disclose that evidence or material to the other party and the Trial Chamber. (Amended 13 Dec 2001)

Rule 68
Disclosure of Exculpatory and Other Relevant Material

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 12 July 2001, amended 12 Dec 2003, amended 28 July 2004)

Subject to the provisions of Rule 70,

(i) the Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence;

(ii) without prejudice to paragraph (i), the Prosecutor shall make available to the defence, in electronic form, collections of relevant material held by the Prosecutor, together with appropriate computer software with which the defence can search such collections electronically;

(iii) the Prosecutor shall take reasonable steps, if confidential information is provided to the Prosecutor by a person or entity under Rule 70 (B) and contains material referred to in paragraph (i) above, to obtain the consent of the provider to disclosure of that material, or the fact of its existence, to the accused;

(iv) the Prosecutor shall apply to the Chamber sitting *in camera* to be relieved from an obligation under paragraph (i) to disclose information in the possession of the Prosecutor, if its disclosure may prejudice further or ongoing investigations, or for any other reason may be contrary to the public interest or affect the security interests of any State, and when making such application, the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential;

(v) notwithstanding the completion of the trial and any subsequent appeal, the Prosecutor shall disclose to the other party any material referred to in paragraph (i) above.

Rule 68 *bis*
Failure to Comply with Disclosure Obligations

(Adopted 13 Dec 2001)

The pre-trial Judge or the Trial Chamber may decide *proprio motu*, or at the request of either party, on sanctions to be imposed on a party which fails to perform its disclosure obligations pursuant to the Rules.

Rule 69
Protection of Victims and Witnesses

(Adopted 11 Feb 1994)

(A) In exceptional circumstances, either party may apply to a Judge or Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal. (Amended 13 Dec 2001, amended 28 Aug 2012)

(B) In the determination of protective measures for victims and witnesses, the Judge or Trial Chamber may consult the Victims and Witnesses Section. (Amended 15 June 1995, amended 2 July 1999, amended 13 Dec 2001)

(C) Subject to Rule 75, the identity of the victim or witness shall be disclosed within such time as determined by the Trial Chamber to allow adequate time for preparation of the Prosecution or Defence. (Amended 28 Aug 2012)

Rule 70
Matters not Subject to Disclosure

(Adopted 11 Feb 1994)

(A) Notwithstanding the provisions of Rules 66 and 67, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under those Rules.

(B) If the Prosecutor is in possession of information which has been provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin

shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused. (Amended 4 Oct 1994, amended 30 Jan 1995, amended 12 Nov 1997)

(C) If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document or other material so provided, the Trial Chamber, notwithstanding Rule 98, may not order either party to produce additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance. A Trial Chamber may not use its power to order the attendance of witnesses or to require production of documents in order to compel the production of such additional evidence. (Amended 6 Oct 1995, amended 25 July 1997)

(D) If the Prosecutor calls a witness to introduce in evidence any information provided under this Rule, the Trial Chamber may not compel that witness to answer any question relating to the information or its origin, if the witness declines to answer on grounds of confidentiality. (Amended 6 Oct 1995, amended 25 July 1997)

(E) The right of the accused to challenge the evidence presented by the Prosecution shall remain unaffected subject only to the limitations contained in paragraphs (C) and (D). (Amended 6 Oct 1995, amended 12 Apr 2001)

(F) The Trial Chamber may order upon an application by the accused or defence counsel that, in the interests of justice, the provisions of this Rule shall apply *mutatis mutandis* to specific information in the possession of the accused. (Amended 25 July 1997)

(G) Nothing in paragraph (C) or (D) above shall affect a Trial Chamber's power under Rule 89 (D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. (Amended 6 Oct 1995, amended 12 Apr 2001)

Section 5: Depositions

Rule 71
Depositions

(Adopted 11 Feb 1994, amended 10 July 1998)

(A) Where it is in the interests of justice to do so, a Trial Chamber may order, *proprio motu* or at the request of a party, that a deposition be taken for use at trial, whether or not the person whose deposition is sought is able physically to appear before the Tribunal to give evidence. The Trial Chamber shall appoint a Presiding Officer for that purpose. (Amended 17 Nov 1999)

(B) The motion for the taking of a deposition shall indicate the name and whereabouts of the person whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the circumstances justifying the taking of the deposition. (Amended 17 Nov 1999)

(C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the person whose deposition is being taken.

(D) Deposition evidence may be taken either at or away from the seat of the Tribunal, and it may also be given by means of a video-conference. (Amended 17 Nov 1999)

(E) The Presiding Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. The Presiding Officer shall transmit the record to the Trial Chamber.

Rule 71 *bis*
[Deleted]

(Adopted 17 Nov 1999, deleted 12 July 2007)

Section 6: Motions

Rule 72
Preliminary Motions

(Adopted 11 Feb 1994, amended 10 July 1998, amended 4 Dec 1998, amended 21 July 2005, amended 12 July 2007)

(A) Preliminary motions, being motions which

(i) challenge jurisdiction;

(ii) allege defects in the form of the indictment;

(iii) seek the severance of counts joined in one indictment under Rule 49 or seek separate trials under Rule 82 (B); or

(iv) raise objections based on the refusal of a request for assignment of counsel made under Rule 45 (C)

shall be in writing and be brought not later than thirty days after disclosure by the Prosecutor to the defence of all material and statements referred to in Rule 66 (A)(i) and shall be disposed of not later than sixty days after they were filed and before the commencement of the opening statements provided for in Rule 84. Subject to any order made by a Judge or the Trial Chamber, where permanent counsel has not yet been assigned to or retained by the accused, or where the accused has not yet elected in writing to conduct his or her defence in accordance with Rule 45 (F), the thirty-day time-limit under this Rule shall not run, notwithstanding the disclosure to the defence of the material and statements referred to in Rule 66 (A)(i), until permanent counsel has been assigned to the accused. (Amended 12 July 2007)

(B) Decisions on preliminary motions are without interlocutory appeal save

(i) in the case of motions challenging jurisdiction;
(Amended 25 June 1996, amended 5 July 1996, amended 23 Apr 2002)

(ii) in other cases where certification has been granted by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the

opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

(Amended 25 June 1996, amended 5 July 1996, amended 25 July 1997, amended 12 Nov 1997, amended 23 Apr 2002)

(Amended 30 Jan 1995, amended 12 Nov 1997)

(C) Appeals under paragraph (B)(i) shall be filed within fifteen days and requests for certification under paragraph (B)(ii) shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision.

If certification is given, a party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify. (Amended 12 Nov 1997, amended 10 July 1998, amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000, amended 23 Apr 2002)

(D) For the purpose of paragraphs (A)(i) and (B)(i), a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to:

(i) any of the persons indicated in Articles 1, 6, 7 and 9 of the Statute;

(ii) the territories indicated in Articles 1, 8 and 9 of the Statute;

(iii) the period indicated in Articles 1, 8 and 9 of the Statute;

(iv) any of the violations indicated in Articles 2, 3, 4, 5 and 7 of the Statute.

(Amended 1 Dec 2000, amended 13 Dec 2000)

Rule 73
Other Motions

(Adopted 11 Feb 1994, amended 12 Nov 1997, amended 12 Apr 2001, amended 13 Dec 2001, amended 23 Apr 2002)

(A) After a case is assigned to a Trial Chamber, either party may at any time move before the Chamber by way of motion, not being a preliminary motion, for appropriate ruling or relief. Such motions may be written or oral, at the discretion of the Trial Chamber. (Amended 12 Nov 1997)

(B) Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. (Amended 12 Apr 2001, amended 23 Apr 2002)

(C) Requests for certification shall be filed within seven days of the filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

If certification is given, a party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify. (Amended 12 Nov 1997, amended 10 July 1998, amended 12 Apr 2001, amended 23 Apr 2002)

(D) Irrespective of any sanctions which may be imposed under Rule 46 (A), when a Chamber finds that a motion is frivolous or is an abuse of process, the Registrar shall withhold payment of fees associated with the production of that motion and/ or costs thereof. (Amended 8 Dec 2004)

Section 7: Conferences

Rule 73 *bis*
Pre-Trial Conference

(Adopted 10 July 1998, amended 17 Nov 1999, amended 17 July 2003)

(A) Prior to the commencement of the trial, the Trial Chamber shall hold a Pre-Trial Conference.

(B) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(i), the Trial Chamber may call upon the Prosecutor to shorten the estimated length of the examination-in-chief for some witnesses. (Amended 17 Nov 1999, amended 12 Apr 2001)

(C) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(i), the Trial Chamber, after having heard the Prosecutor, shall determine

(i) the number of witnesses the Prosecutor may call; and

(ii) the time available to the Prosecutor for presenting evidence.

(Amended 17 Nov 1999, amended 12 Apr 2001, amended 17 July 2003)

(D) After having heard the Prosecutor, the Trial Chamber, in the interest of a fair and expeditious trial, may invite the Prosecutor to reduce the number of counts charged in the indictment and may fix a number of crime sites or incidents comprised in one or more of the charges in respect of which evidence may be presented by the Prosecutor which, having regard to all the relevant circumstances, including the crimes charged in the indictment, their classification and nature, the places where they are alleged to have been committed, their scale and the victims of the crimes, are reasonably representative of the crimes charged. (Amended 17 July 2003, amended 30 May 2006)

(E) Upon or after the submission by the pre-trial Judge of the complete file of the Prosecution case pursuant to paragraph (L)(i) of Rule 65 *ter*, the Trial Chamber, having heard the parties and in the interest of a fair and expeditious trial, may direct the Prosecutor to select the counts in the indictment on which to proceed. Any decision taken under this paragraph may be appealed as of right by a party. (Amended 30 May 2006)

(F) After commencement of the trial, the Prosecutor may file a motion to vary the decision as to the number of crime sites or incidents in respect of which evidence may be presented or the number of witnesses that are to be called or for additional time to present evidence and the Trial Chamber may grant the Prosecutor's request if satisfied that this is in the interests of justice. (Amended 17 Nov 1999, amended 12 Apr 2001, amended 17 July 2003)

Rule 73 *ter*
Pre-Defence Conference

(Adopted 10 July 1998, amended 17 Nov 1999)

(A) Prior to the commencement by the defence of its case the Trial Chamber may hold a Conference.

(B) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(ii), the Trial Chamber may call upon the defence to shorten the estimated length of the examination-in-chief for some witnesses. (Amended 17 Nov 1999, amended 12 Apr 2001)

(C) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(ii), the Trial Chamber, after having heard the defence, shall set the number of witnesses the defence may call. (Amended 17 Nov 1999, amended 12 Apr 2001)

(D) After commencement of the defence case, the defence may, if it considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called. (Amended 12 Apr 2001)

(E) After having heard the defence, the Trial Chamber shall determine the time available to the defence for presenting evidence. (Amended 12 Apr 2001)

(F) During a trial, the Trial Chamber may grant a defence request for additional time to present evidence if this is in the interests of justice. (Amended 12 Apr 2001)

PART SIX
PROCEEDINGS BEFORE TRIAL CHAMBERS

Section 1: General Provisions

Rule 74
Amicus Curiae
(Adopted 11 Feb 1994)

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

Rule 74 *bis*
Medical Examination of the Accused
(Adopted 10 July 1998, amended 12 Apr 2001)

A Trial Chamber may, *proprio motu* or at the request of a party, order a medical, psychiatric or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Bureau.

Rule 75
Measures for the Protection of Victims and Witnesses
(Adopted 11 Feb 1994, amended 12 July 2007, amended 28 Feb 2008)

(A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused. (Amended 15 June 1995, amended 2 July 1999)

(B) A Chamber may hold an in camera proceeding to determine whether to order:

(i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as: (Amended 12 Nov 1997)

(a) expunging names and identifying information from the Tribunal's public records; (Amended 1 Dec 2000, amended 13 Dec 2000)
(b) non-disclosure to the public of any records identifying the victim or witness; (Amended 28 Feb 2008)
(c) giving of testimony through image- or voice- altering devices or closed circuit television; and
(d) assignment of a pseudonym;

(ii) closed sessions, in accordance with Rule 79;

(iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television. (Amended 30 Jan 1995)

(C) The Victims and Witnesses Section shall ensure that the witness has been informed before giving evidence that his or her testimony and his or her identity may be disclosed at a later date in another case, pursuant to Rule 75 (F). (Amended 12 Dec 2002)

(D) A Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.

(E) When making an order under paragraph (A) above, a Judge or Chamber shall wherever appropriate state in the order whether the transcript of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in other proceedings before the Tribunal or another jurisdiction. (Amended 12 July 2007)

(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures:

(i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal ("second proceedings") or another jurisdiction

unless and until they are rescinded, varied, or augmented in accordance with the procedure set out in this Rule; but

(ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings. (Amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001, amended 12 July 2002, amended 12 July 2007)

(G) A party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply:

(i) to any Chamber, however constituted, remaining seised of the first proceedings; or

(ii) if no Chamber remains seised of the first proceedings, to the Chamber seised of the second proceedings. (Amended 12 July 2002)

(H) A Judge or Bench in another jurisdiction, parties in another jurisdiction authorised by an appropriate judicial authority, or a victim or witness for whom protective measures have been ordered by the Tribunal may seek to rescind, vary, or augment protective measures ordered in proceedings before the Tribunal by applying to the President of the Tribunal, who shall refer the application: (Amended 28 Feb 2008)

(i) to any Chamber, however constituted, remaining seised of the first proceedings;

(ii) if no Chamber remains seised of the first proceedings, to a Chamber seised of second proceedings; or,

(iii) if no Chamber remains seised, to a newly constituted Chamber. (Amended 12 July 2007)

(I) Before determining an application under paragraph (G)(ii), (H)(ii), or (H)(iii) above, the Chamber shall endeavour to obtain all relevant information from

the first proceedings, including from the parties to those proceedings, and shall consult with any Judge who ordered the protective measures in the first proceedings, if that Judge remains a Judge of the Tribunal. (Amended 12 July 2002, amended 12 Dec 2002, amended 12 July 2007)

(J) The Chamber determining an application under paragraphs (G) and (H) above shall ensure through the Victims and Witnesses Section that the protected victim or witness has given consent to the rescission, variation, or augmentation of protective measures; however, on the basis of a compelling showing of exigent circumstances or where a miscarriage of justice would otherwise result, the Chamber may, in exceptional circumstances, order *proprio motu* the rescission, variation, or augmentation of protective measures in the absence of such consent. (Amended 12 July 2007, amended 28 Feb 2008)

(K) An application to a Chamber to rescind, vary, or augment protective measures in respect of a victim or witness may be dealt with either by the Chamber or by a Judge of that Chamber, and any reference in this Rule to "a Chamber" shall include a reference to "a Judge of that Chamber". (Amended 12 July 2002)

Rule 75 *bis*
Requests for Assistance of the Tribunal in Obtaining Testimony

(Adopted 8 Dec 2010)

(A) A Judge or Bench in another jurisdiction or parties in another jurisdiction authorised by an appropriate judicial authority ("Requesting Authority") may request the assistance of the Tribunal in obtaining the testimony of a person under the authority of the Tribunal in ongoing proceedings in the jurisdiction of the Requesting Authority involving violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

(B) Requests pursuant to paragraph (A) shall be submitted to the President of the Tribunal, who shall refer the application to a specially appointed Chamber composed of three Judges of the Tribunal ("Specially Appointed Chamber").

(C) Requests under paragraph (A) shall not be granted if granting the request may prejudice ongoing investigations or proceedings before the Tribunal.

(D) The Specially Appointed Chamber, having heard the parties to the proceedings before the Tribunal, may grant a request pursuant to paragraph (A) after having verified that:

(i) granting the request will not prejudice the rights of the person under the authority of the Tribunal;

(ii) provisions and assurances are in place for observing any protective measures granted by the Tribunal to the person under its authority;

(iii) granting the request will not pose a danger or risk to any victim, witness, or other person; and

(iv) no overriding grounds oppose granting the request.

(E) The assistance will be rendered by way of video-conference link. If legal provisions in the jurisdiction of the Requesting Authority do not allow for the testimony to be received by way of video-conference link, the Specially Appointed Chamber may consider to render the assistance by way of granting the Requesting Authority access to the person to be heard on the premises of the Tribunal or the transfer of the person under Rule 75 *ter*.

(F) Upon order of the Specially Appointed Chamber, the Registrar shall co-ordinate the arrangements for the video-conference link and be present during the hearing.

(G) A Judge of the Specially Appointed Chamber shall be present during the hearing and shall ensure that Rule 75 *bis* (D)(i)–(iii) is respected.

(H) The questioning of the person to be heard shall be conducted directly by, or under the direction of, the Requesting Authority in accordance with its own laws.

(I) For purposes of this Rule, "person under the authority of the Tribunal" means an accused or convicted person detained on the premises of the detention unit of the Tribunal.

(J) No decision taken under this Rule or Rule 75 *ter* is subject to appeal.

(K) The President may in all cases request any document or additional information from the Requesting Authority.

Rule 75 *ter*
Transfer of Persons for the Purpose of Testimony in Proceedings Not Pending Before the Tribunal

(Adopted 8 Dec 2010)

(A) The Specially Appointed Chamber, considering the transfer of a person under Rule 75 *bis* (E), shall not grant such transfer unless:

(i) the person under the authority of the Tribunal has been duly summoned to testify;

(ii) the person under the authority of the Tribunal has provided his consent to the transfer;

(iii) the host country and the State to which the person under the authority of the Tribunal is to be transferred have been given the opportunity to be heard;

(iv) the State to where the person is to be transferred ("Requesting State") has provided written guarantees to the Tribunal as to the return of the transferred person within a stipulated period; the non-transfer of the person to a third State; the appropriate location of detention; and immunities from prosecution and service of process for acts, omissions, or convictions prior to the person's arrival in the territory of the Requesting State;

(v) the transfer of such person will not extend the period of the person's detention as foreseen by the Tribunal; and

(vi) there are no overriding grounds for not transferring the person to the territory of the Requesting State.

(B) The Specially Appointed Chamber may impose such conditions upon the transfer of the person under the authority of the Tribunal as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the person for trial thereafter and the protection of others.

(C) For purposes of this Rule, "person under the authority of the Tribunal" means an accused or convicted person detained on the premises of the detention unit of the Tribunal.

(D) If necessary, the Specially Appointed Chamber may issue a warrant of arrest to secure the presence of a person who has been transferred under this Rule. The provisions of Section 2 of Part Five shall apply mutatis mutandis.

(E) At any time after an order has been issued pursuant to this Rule, the Specially Appointed Chamber may revoke the order and make a formal request for the return of the transferred person.

Rule 76
Solemn Declaration by Interpreters and Translators

(Adopted 11 Feb 1994)

Before performing any duties, an interpreter or a translator shall solemnly declare to do so faithfully, independently, impartially and with full respect for the duty of confidentiality.

Rule 77
Contempt of the Tribunal

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 25 July 1997, amended 12 Nov 1997, amended 13 Dec 2001)

(A) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who

(i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;

(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber; (Amended 4 Dec 1998)

(iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;

(iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; or

(Amended 4 Dec 1998, amended 13 Dec 2001)

(v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.
(Amended 4 Dec 1998, amended 13 Dec 2001)

(Amended 10 July 1998, amended 12 Nov 1997, amended 13 Dec 2001)

(B) Any incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the Tribunal with the same penalties. (Amended 4 Dec 1998, amended 13 Dec 2001)

(C) When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may:

(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt;

(ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings; or

(iii) initiate proceedings itself.

(Amended 12 Nov 1997, amended 10 July 1998, amended 4 Dec 1998, amended 13 Dec 2001)

(D) If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may:

(i) in circumstances described in paragraph (C)(i), direct the Prosecutor to prosecute the matter; or

(ii) in circumstances described in paragraph (C)(ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.

(Amended 13 Dec 2001)

(E) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule. The time limit for entering a plea

pursuant to Rule 62(A), disclosure pursuant to Rule 66(A)(i), or filing of preliminary motions pursuant to Rule 72(A) shall each not exceed ten days. (Amended 13 Dec 2001, amended 22 July 2009)

(F) Any person indicted for or charged with contempt shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 45. (Amended 12 Nov 1997, amended 13 Dec 2001)

(G) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both. (Amended 4 Dec 1998, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001)

(H) Payment of a fine shall be made to the Registrar to be held in a separate account.

(I) If a counsel is found guilty of contempt of the Tribunal pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to represent a suspect or accused before the Tribunal or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both. (Amended 13 Dec 2001)

(J) Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(Amended 12 Nov 1997, amended 10 July 1998, amended 4 Dec 1998, amended 1 Dec 2000, amended 13 Dec 2000)

(K) In the case of decisions under this Rule by the Appeals Chamber sitting as a Chamber of first instance, an appeal may be submitted in writing to the President within fifteen days of the filing of the impugned decision. Such appeal shall be decided by five different Judges as assigned by the President.

Where the impugned decision is rendered orally, the appeal shall be filed within fifteen days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Appeals Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(Amended 12 July 2002)

Rule 77 *bis*
Payment of Fines

(Adopted 2 July 1999)

(A) In imposing a fine under Rule 77 or Rule 91, a Chamber shall specify the time for its payment. (Amended 13 Dec 2001)

(B) Where a fine imposed under Rule 77 or Rule 91 is not paid within the time specified, the Chamber imposing the fine may issue an order requiring the person on whom the fine is imposed to appear before, or to respond in writing to, the Tribunal to explain why the fine has not been paid. (Amended 13 Dec 2001)

(C) After affording the person on whom the fine is imposed an opportunity to be heard, the Chamber may make a decision that appropriate measures be taken, including:

(i) extending the time for payment of the fine;

(ii) requiring the payment of the fine to be made in instalments;

(iii) in consultation with the Registrar, requiring that the moneys owed be deducted from any outstanding fees owing to the person by the Tribunal where the person is a counsel retained by the Tribunal pursuant to the Directive on the Assignment of Defence Counsel;
(Amended 17 Nov 1999)

(iv) converting the whole or part of the fine to a term of imprisonment not exceeding twelve months.

(Amended 17 Nov 1999, amended 13 Dec 2001)

(D) In addition to a decision under paragraph (C), the Chamber may find the person in contempt of the Tribunal and impose a new penalty applying Rule 77 (G), if that person was able to pay the fine within the specified time and has wilfully failed to do so. This penalty for contempt of the Tribunal shall be additional to the original fine imposed. (Amended 12 Apr 2001, amended 13 Dec 2001)

(E) The Chamber may, if necessary, issue an arrest warrant to secure the person's presence where he or she fails to appear before or respond in writing pursuant to an order under paragraph (B). A State or authority to whom such a warrant is addressed, in accordance with Article 29 of the Statute, shall act promptly and with all due diligence to ensure proper and effective execution thereof. Where an arrest warrant is issued under this Sub-rule, the provisions of Rules 45, 57, 58, 59, 59 *bis*, and 60 shall apply *mutatis mutandis*. Following the transfer of the person concerned to the Tribunal, the provisions of Rules 64, 65 and 99 shall apply *mutatis mutandis*. (Amended 12 Apr 2001, amended 13 Dec 2001)

(F) Where under this Rule a penalty of imprisonment is imposed, or a fine is converted to a term of imprisonment, the provisions of Rules 102, 103 and 104 and Part Nine shall apply *mutatis mutandis*.

(G) Any finding of contempt or penalty imposed under this Rule shall be subject to appeal as allowed for in Rule 77 (J).

Rule 78
Open Sessions
(Adopted 11 Feb 1994)

All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.

Rule 79
Closed Sessions
(Adopted 11 Feb 1994)

(A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:

(i) public order or morality;

(ii) safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or

(iii) the protection of the interests of justice.

(B) The Trial Chamber shall make public the reasons for its order.

Rule 80
Control of Proceedings
(Adopted 11 Feb 1994)

(A) The Trial Chamber may exclude a person from the courtroom in order to protect the right of the accused to a fair and public trial, or to maintain the dignity and decorum of the proceedings.

(B) The Trial Chamber may order the removal of an accused from the courtroom and continue the proceedings in the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may warrant the removal of the accused from the courtroom.

Rule 81
Records of Proceedings and Evidence
(Adopted 11 Feb 1994)

(A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.

(B) The Trial Chamber, after giving due consideration to any matters relating to witness protection, may order the disclosure of all or part of the record of

closed proceedings when the reasons for ordering its non-disclosure no longer exist. (Amended 1 Dec 2000, amended 13 Dec 2000)

(C) The Registrar shall retain and preserve all physical evidence offered during the proceedings subject to any Practice Direction or any order which a Chamber may at any time make with respect to the control or disposition of physical evidence offered during proceedings before that Chamber. (Amended 25 July 1997)

(D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registrar, may be authorised at the discretion of the Trial Chamber.

Rule 81 *bis*
Proceedings by Video-Conference Link

(Adopted 12 July 2007)

At the request of a party or *proprio motu,* a Judge or a Chamber may order, if consistent with the interests of justice, that proceedings be conducted by way of video-conference link.

Section 2: Case Presentation

Rule 82
Joint and Separate Trials
(Adopted 11 Feb 1994)

(A) In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately. (Amended 12 Nov 1997)

(B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 83
Instruments of Restraint
(Adopted 11 Feb 1994, amended 4 Dec 1998)

Instruments of restraint, such as handcuffs, shall be used only on the order of the Registrar as a precaution against escape during transfer or in order to prevent an accused from self-injury, injury to others or to prevent serious damage to property. Instruments of restraint shall be removed when the accused appears before a Chamber or a Judge.

Rule 84
Opening Statements
(Adopted 11 Feb 1994, amended 12 Nov 1997)

Before presentation of evidence by the Prosecutor, each party may make an opening statement. The defence may, however, elect to make its statement after the conclusion of the Prosecutor's presentation of evidence and before the presentation of evidence for the defence.

Rule 84 *bis*
Statement of the Accused
(Adopted 2 July 1999)

(A) After the opening statements of the parties or, if the defence elects to defer its opening statement pursuant to Rule 84, after the opening statement of the Prosecutor, if any, the accused may, if he or she so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.

(B) The Trial Chamber shall decide on the probative value, if any, of the statement.

Rule 85
Presentation of Evidence
(Adopted 11 Feb 1994)

(A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

(i) evidence for the prosecution;

(ii) evidence for the defence;

(iii) prosecution evidence in rebuttal;

(iv) defence evidence in rejoinder;

(v) evidence ordered by the Trial Chamber pursuant to Rule 98; and
(Amended 10 July 1998)

(vi) any relevant information that may assist the Trial Chamber in determining an appropriate sentence if the accused is found guilty on one or more of the charges in the indictment.
(Amended 10 July 1998)

(B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine such witness in chief, but a Judge may at any stage put any question to the witness.

(C) If the accused so desires, the accused may appear as a witness in his or her own defence.

Rule 86
Closing Arguments

(Adopted 11 Feb 1994, amended 12 Nov 1997)

(A) After the presentation of all the evidence, the Prosecutor may present a closing argument; whether or not the Prosecutor does so, the defence may make a closing argument. The Prosecutor may present a rebuttal argument to which the defence may present a rejoinder. (Amended 10 July 1998)

(B) Not later than five days prior to presenting a closing argument, a party shall file a final trial brief. (Amended 10 July 1998, amended 1 Dec 2000, amended 13 Dec 2000)

(C) The parties shall also address matters of sentencing in closing arguments. (Amended 10 July 1998)

Rule 87
Deliberations

(Adopted 11 Feb 1994)

(A) When both parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.

(B) The Trial Chamber shall vote separately on each charge contained in the indictment. If two or more accused are tried together under Rule 48, separate findings shall be made as to each accused.

(C) If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused. (Amended 10 July 1998, amended 1 Dec 2000, amended 13 Dec 2000)

Rule 88

[Deleted]

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 12 Nov 1997, deleted 10 July 1998)

Rule 88 *bis*

[Deleted]

(Adopted 12 Nov 1997, deleted 10 July 1998)

Section 3: Rules of Evidence

Rule 89
General Provisions

(Adopted 11 Feb 1994)

(A) A Chamber shall apply the rules of evidence set forth in this Section, and shall not be bound by national rules of evidence. (Amended 1 Dec 2000, amended 13 Dec 2000)

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

(E) A Chamber may request verification of the authenticity of evidence obtained out of court.

(F) A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form. (Amended 1 Dec 2000, amended 13 Dec 2000)

Rule 90
Testimony of Witnesses

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 25 July 1997, amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000)

(A) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth".

(B) A child who, in the opinion of the Chamber, does not understand the nature of a solemn declaration, may be permitted to testify without that formality, if the Chamber is of the opinion that the child is sufficiently mature to be able to report the facts of which the child had knowledge and understands the duty

to tell the truth. A judgement, however, cannot be based on such testimony alone. (Amended 30 Jan 1995)

(C) A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.

(D) Notwithstanding paragraph (C), upon order of the Chamber, an investigator in charge of a party's investigation shall not be precluded from being called as a witness on the ground that he or she has been present in the courtroom during the proceedings. (Amended 25 July 1997, amended 1 Dec 2000, amended 13 Dec 2000)

(E) A witness may object to making any statement which might tend to incriminate the witness. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony. (Amended 30 Jan 1995, amended 1 Dec 2000, amended 13 Dec 2000)

(F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to

(i) make the interrogation and presentation effective for the ascertainment of the truth; and

(ii) avoid needless consumption of time.

(Amended 10 July 1998)

(G) The Trial Chamber may refuse to hear a witness whose name does not appear on the list of witnesses compiled pursuant to Rules 73 *bis* (C) and 73 *ter* (C). (Amended 12 Apr 2001)

(H) (i) Cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of that case.

(ii) In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel

appears which is in contradiction of the evidence given by the witness.

(iii) The Trial Chamber may, in the exercise of its discretion, permit enquiry into additional matters.

(Amended 10 July 1998, amended 17 Nov 1999)

Rule 90 *bis*
Transfer of a Detained Witness

(Adopted 6 Oct 1995)

(A) Any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the detention unit of the Tribunal, conditional on the person's return within the period decided by the Tribunal.

(B) The transfer order shall be issued by a permanent Judge or Trial Chamber only after prior verification that the following conditions have been met:

(i) the presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;

(ii) transfer of the witness does not extend the period of detention as foreseen by the requested State.

(Amended 12 Apr 2001)

(C) The Registrar shall transmit the order of transfer to the national authorities of the State on whose territory, or under whose jurisdiction or control, the witness is detained. Transfer shall be arranged by the national authorities concerned in liaison with the host country and the Registrar. (Amended 12 Nov 1997)

(D) The Registrar shall ensure the proper conduct of the transfer, including the supervision of the witness in the detention unit of the Tribunal; the Registrar shall remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the detention of the witness in the detention unit and, as promptly as possible, shall inform the relevant Judge or Chamber. (Amended 12 Nov 1997)

(E) On expiration of the period decided by the Tribunal for the temporary transfer, the detained witness shall be remanded to the authorities of the requested State, unless the State, within that period, has transmitted an order of release of the witness, which shall take effect immediately.

(F) If, by the end of the period decided by the Tribunal, the presence of the detained witness continues to be necessary, a permanent Judge or Chamber may extend the period on the same conditions as stated in paragraph (B). (Amended 12 Apr 2001)

Rule 91
False Testimony under Solemn Declaration

(Adopted 11 Feb 1994)

(A) A Chamber, *proprio motu* or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so. (Amended 25 July 1997)

(B) If a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may:

(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or (Amended 13 Dec 2001)

(ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating proceedings for false testimony. (Amended 13 Dec 2001)

(C) If the Chamber considers that there are sufficient grounds to proceed against a person for giving false testimony, the Chamber may:

(i) in circumstances described in paragraph (B)(i), direct the Prosecutor to prosecute the matter; or

(ii) in circumstances described in paragraph (B)(ii), issue an order in lieu of an indictment and direct *amicus curiae* to prosecute the matter.

(Amended 13 Dec 2001)

(D) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

(E) Any person indicted for or charged with false testimony shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 45. (Amended 13 Dec 2001)

(F) No Judge who sat as a member of the Trial Chamber before which the witness appeared shall sit for the trial of the witness for false testimony.

(G) The maximum penalty for false testimony under solemn declaration shall be a fine of 100,000 Euros or a term of imprisonment of seven years, or both. The payment of any fine imposed shall be paid to the Registrar to be held in the account referred to in Rule 77 (H). (Amended 18 Jan 1996, amended 25 July 1997, amended 12 Nov 1997, amended 4 Dec 1998, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001)

(H) Paragraphs (B) to (G) apply *mutatis mutandis* to a person who knowingly and willingly makes a false statement in a written statement taken in accordance with Rule 92 *bis* or Rule 92 *quater* which the person knows or has reason to know may be used as evidence in proceedings before the Tribunal. (Amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001, amended 13 Sept 2006)

(I) Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

(Amended 1 Dec 2000, amended 13 Dec 2000)

Rule 92
Confessions
(Adopted 11 Feb 1994)

A confession by the accused given during questioning by the Prosecutor shall, provided the requirements of Rule 63 were strictly complied with, be presumed to have been free and voluntary unless the contrary is proved.

Rule 92 *bis*
Admission of Written Statements and Transcripts in Lieu of Oral Testimony
(Adopted 1 Dec 2000, amended 13 Dec 2000, amended 13 Sept 2006)

(A) A Trial Chamber may dispense with the attendance of a witness in person, and instead admit, in whole or in part, the evidence of a witness in the form of a written statement or a transcript of evidence, which was given by a witness in proceedings before the Tribunal, in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

(i) Factors in favour of admitting evidence in the form of a written statement or transcript include but are not limited to circumstances in which the evidence in question:

(a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
(b) relates to relevant historical, political or military background;
(c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
(d) concerns the impact of crimes upon victims;
(e) relates to issues of the character of the accused; or
(f) relates to factors to be taken into account in determining sentence.

(ii) Factors against admitting evidence in the form of a written statement or transcript include but are not limited to whether:

(a) there is an overriding public interest in the evidence in question being presented orally;

(b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or

(c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

(B) If the Trial Chamber decides to dispense with the attendance of a witness, a written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and

(i) the declaration is witnessed by:

(a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or

(b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and

(ii) the person witnessing the declaration verifies in writing:

(a) that the person making the statement is the person identified in the said statement;

(b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;

(c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and

(d) the date and place of the declaration.

The declaration shall be attached to the written statement presented to the Trial Chamber.

(C) The Trial Chamber shall decide, after hearing the parties, whether to require the witness to appear for cross-examination; if it does so decide, the provisions of Rule 92 *ter* shall apply.

Rule 92 *ter*
Other Admission of Written Statements and Transcripts
(Adopted 13 Sept 2006)

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

(i) the witness is present in court;

(ii) the witness is available for cross-examination and any questioning by the Judges; and

(iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

(B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

Rule 92 *quater*
Unavailable Persons
(Adopted 13 Sept 2006)

(A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92 *bis*, if the Trial Chamber:

(i) is satisfied of the person's unavailability as set out above; and

(ii) finds from the circumstances in which the statement was made and recorded that it is reliable.

(B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

Rule 92 *quinquies*
Admission of Statements and Transcripts of Persons Subjected to Interference

(Adopted 10 Dec 2009)

(A) A Trial Chamber may admit the evidence of a person in the form of a written statement or a transcript of evidence given by the person in proceedings before the Tribunal, where the Trial Chamber is satisfied that:

(i) the person has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect;

(ii) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion;

(iii) where appropriate, reasonable efforts have been made pursuant to Rules 54 and 75 to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness; and

(iv) the interests of justice are best served by doing so.

(B) For the purposes of paragraph (A):

(i) An improper interference may relate *inter alia* to the physical, economic, property, or other interests of the person or of another person;

(ii) the interests of justice include:

(a) the reliability of the statement or transcript, having regard to the circumstances in which it was made and recorded;

(b) the apparent role of a party or someone acting on behalf of a party to the proceedings in the improper interference; and

(c) whether the statement or transcript goes to proof of the acts and conduct of the accused as charged in the indictment.

(iii) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

(C) The Trial Chamber may have regard to any relevant evidence, including written evidence, for the purpose of applying this Rule.

Rule 93
Evidence of Consistent Pattern of Conduct

(Adopted 11 Feb 1994)

(A) Evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice. (Amended 18 Jan 1996)

(B) Acts tending to show such a pattern of conduct shall be disclosed by the Prosecutor to the defence pursuant to Rule 66. (Amended 30 Jan 1995)

Rule 94
Judicial Notice

(Adopted 11 Feb 1994)

(A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

(B) At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or of the authenticity of documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings. (Amended 10 July 1998, amended 8 Dec 2010)

Rule 94 *bis*
Testimony of Expert Witnesses

(Adopted 10 July 1998)

(A) The full statement and/or report of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge. (Amended 14 July 2000, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001, amended 13 Sept 2006)

(B) Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:

(i) it accepts the expert witness statement and/or report; or
(Amended 13 Sept 2006)

(ii) it wishes to cross-examine the expert witness; and

(iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the statement and/or report and, if so, which parts.
(Amended 12 Dec 2002, amended 13 Sept 2006)

(Amended 13 Dec 2001, amended 13 Sept 2006)

(C) If the opposing party accepts the statement and/or report of the expert witness, the statement and/or report may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.
(Amended 13 Sept 2006)

Rule 94 *ter*
[Deleted]
(Adopted 4 Dec 1998, amended 17 Nov 1999, deleted 1 Dec 2000, deleted 13 Dec 2000)

Rule 95
Exclusion of Certain Evidence
(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 12 Nov 1997)

No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

Rule 96
Evidence in Cases of Sexual Assault
(Adopted 11 Feb 1994)

In cases of sexual assault:

(i) no corroboration of the victim's testimony shall be required;

(ii) consent shall not be allowed as a defence if the victim

(a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or

(b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;

(Amended 3 May 1995)

(iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;

(Amended 30 Jan 1995)

(iv) prior sexual conduct of the victim shall not be admitted in evidence.

Rule 97
Lawyer-Client Privilege

(Adopted 11 Feb 1994)

All communications between lawyer and client shall be regarded as privileged, and consequently not subject to disclosure at trial, unless:

(i) the client consents to such disclosure; or

(ii) the client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

Rule 98
Power of Chambers to Order Production of Additional Evidence

(Adopted 11 Feb 1994, amended 25 July 1997)

A Trial Chamber may order either party to produce additional evidence. It may *proprio motu* summon witnesses and order their attendance.

Section 4: Judgement

Rule 98 *bis*
Judgement of Acquittal

(Adopted 10 July 1998, amended 17 Nov 1999, amended 8 Dec 2004)

At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

Rule 98 *ter*
Judgement

(Adopted 10 July 1998)

(A) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present, subject to the provisions of Rule 102 (B). (Amended 10 July 1998, amended 12 Apr 2001)

(B) If the Trial Chamber finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it, it shall make a specific finding to that effect in its judgement. The Trial Chamber may order restitution as provided in Rule 105.

(C) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

(D) A copy of the judgement and of the Judges' opinions in a language which the accused understands shall as soon as possible be served on the accused if in custody. Copies thereof in that language and in the language in which they were delivered shall also as soon as possible be provided to counsel for the accused.

Rule 99
Status of the Acquitted Person
(Adopted 11 Feb 1994, amended 12 Nov 1997)

(A) Subject to paragraph (B), in the case of an acquittal or the upholding of a challenge to jurisdiction, the accused shall be released immediately. (Amended 12 Apr 2001)

(B) If, at the time the judgement is pronounced, the Prosecutor advises the Trial Chamber in open court of the Prosecutor's intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, on application in that behalf by the Prosecutor and upon hearing the parties, in its discretion, issue an order for the continued detention of the accused, pending the determination of the appeal. (Amended 10 July 1998)

Section 5: Sentencing and Penalties

Rule 100
Sentencing Procedure on a Guilty Plea

(Adopted 11 Feb 1994, amended 10 July 1998)

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence. (Amended 25 June 1996, amended 5 July 1996)

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102 (B).

Rule 101
Penalties

(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 10 July 1998, amended 1 Dec 2000, amended 13 Dec 2000)

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life. (Amended 12 Nov 1997)

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.
(Amended 30 Jan 1995, amended 10 July 1998)

(Amended 10 July 1998)

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal. (Amended 30 Jan 1995)

Rule 102
Status of the Convicted Person

(Adopted 11 Feb 1994)

(A) The sentence shall begin to run from the day it is pronounced. However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64. (Amended 10 July 1998)

(B) If, by a previous decision of the Trial Chamber, the convicted person has been released, or is for any other reason at liberty, and is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for the convicted person's arrest. On arrest, the convicted person shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed. (Amended 12 Nov 1997)

Rule 103
Place of Imprisonment

(Adopted 11 Feb 1994)

(A) Imprisonment shall be served in a State designated by the President of the Tribunal from a list of States which have indicated their willingness to accept convicted persons. (Amended 10 July 1998)

(B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed.

(C) Pending the finalisation of arrangements for his or her transfer to the State where his or her sentence will be served, the convicted person shall remain in the custody of the Tribunal. (Amended 4 Dec 1998)

Rule 104
Supervision of Imprisonment
(Adopted 11 Feb 1994)

All sentences of imprisonment shall be supervised by the Tribunal or a body designated by it.

Rule 105
Restitution of Property
(Adopted 11 Feb 1994)

(A) After a judgement of conviction containing a specific finding as provided in Rule 98 *ter* (B), the Trial Chamber shall, at the request of the Prosecutor, or may, *proprio motu*, hold a special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate. (Amended 25 July 1997, amended 10 July 1998, amended 12 Apr 2001)

(B) The determination may extend to such property or its proceeds, even in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty.

(C) Such third parties shall be summoned before the Trial Chamber and be given an opportunity to justify their claim to the property or its proceeds.

(D) Should the Trial Chamber be able to determine the rightful owner on the balance of probabilities, it shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate. (Amended 30 Jan 1995)

(E) Should the Trial Chamber not be able to determine ownership, it shall notify the competent national authorities and request them so to determine.

(F) Upon notice from the national authorities that an affirmative determination has been made, the Trial Chamber shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate. (Amended 30 Jan 1995)

(G) The Registrar shall transmit to the competent national authorities any summonses, orders and requests issued by a Trial Chamber pursuant to paragraphs (C), (D), (E) and (F). (Amended 30 Jan 1995, amended 12 Apr 2001)

Rule 106
Compensation to Victims

(Adopted 11 Feb 1994)

(A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.

(B) Pursuant to the relevant national legislation, a victim or persons claiming through the victim may bring an action in a national court or other competent body to obtain compensation. (Amended 12 Nov 1997)

(C) For the purposes of a claim made under paragraph (B) the judgement of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury. (Amended 12 Apr 2001)

PART SEVEN
APPELLATE PROCEEDINGS

Rule 107
General Provision
(Adopted 11 Feb 1994)

The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

Rule 108
Notice of Appeal
(Adopted 11 Feb 1994, amended 30 Jan 1995, amended 25 July 1997, amended 12 Nov 1997, amended 10 July 1998, amended 2 July 1999, amended 17 Nov 1999, amended 13 Dec 2001)

A party seeking to appeal a judgement shall, not more than thirty days from the date on which the judgement was pronounced, file a notice of appeal, setting forth the grounds. The Appellant should also identify the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal.

Rule 108 *bis*
State Request for Review
(Adopted 25 July 1997)

(A) A State directly affected by an interlocutory decision of a Trial Chamber may, within fifteen days from the date of the decision, file a request for review of the decision by the Appeals Chamber if that decision concerns issues of general importance relating to the powers of the Tribunal. (Amended 2 July 1999)

(B) The party upon whose motion the Trial Chamber issued the impugned decision shall be heard by the Appeals Chamber. The other party may be heard if the Appeals Chamber considers that the interests of justice so require. (Amended 17 Nov 1999)

(C) The Appeals Chamber may at any stage suspend the execution of the impugned decision. (Amended 17 Nov 1999)

(D) Rule 116 *bis* shall apply *mutatis mutandis*.

Rule 109
Record on Appeal

(Adopted 11 Feb 1994, amended 12 Nov 1997, amended 1 Dec 2000, amended 13 Dec 2000)

The record on appeal shall consist of the trial record, as certified by the Registrar.

Rule 110
Copies of Record

(Adopted 11 Feb 1994)

The Registrar shall make a sufficient number of copies of the record on appeal for the use of the Judges of the Appeals Chamber and of the parties.

Rule 111
Appellant's Brief

(Adopted 11 Feb 1994, amended 12 Nov 1997, amended 10 July 1998, amended 17 Nov 1999, amended 13 Dec 2001, amended 21 July 2005)

(A) An Appellant's brief setting out all the arguments and authorities shall be filed within seventy-five days of filing of the notice of appeal pursuant to Rule 108. Where limited to sentencing, an Appellant's brief shall be filed within thirty days of filing of the notice of appeal pursuant to Rule 108.

(B) Where the Prosecutor is the Appellant, the Prosecutor shall make a declaration in the Appellant's brief that disclosure has been completed with respect to the material available to the Prosecutor at the time of filing the brief.

Rule 112
Respondent's Brief

(Adopted 11 Feb 1994, amended 17 Nov 1999, amended 13 Dec 2001, 21 July 2005)

(A) A Respondent's brief of argument and authorities shall be field within forty days of filing of the Appellant's brief. Where limited to sentencing, a Respondent's brief shall be filed within thirty days of filing of the Appellant's brief.

(B) Where the Prosecutor is the Respondent, the Prosecutor shall make a declaration in the Respondent's brief that disclosure had been completed with respect to the material available to the Prosecutor at the time of filing the brief.

Rule 113
Brief in Reply
(Adopted 11 Feb 1994, amended 21 July 2005)

An Appellant may file a brief in reply within fifteen days of filing of the Respondent's brief. Where limited to sentencing, a brief in reply shall be filed within ten days of filing of the Respondent's brief.

Rule 114
Date of Hearing
(Adopted 11 Feb 1994)

After the expiry of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties.

Rule 115
Additional Evidence
(Adopted 11 Feb 1994, amended 12 July 2002)

(A) A party may apply by motion to present additional evidence before the Appeals Chamber. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed, and must be served on the other party and filed with the Registrar not later than thirty days from the date for filing of the brief in reply, unless good cause or, after the appeal hearing, cogent reasons are shown for a delay. Rebuttal material may be presented by any party affected by the motion. Parties are permitted to file supplemental briefs on the impact of the additional evidence within fifteen days of the expiry of the time limit set for the filing of rebuttal material, if no such material is filed, or if rebuttal material is filed, within fifteen days of the decision on the admissibility of that material.
(Amended 30 Sept 2002, amended 21 July 2005)

(B) If the Appeals Chamber finds that the additional evidence was not available at trial and is relevant and credible, it will determine if it could have been a decisive factor in reaching the decision at trial. If it could have been such a factor, the Appeals Chamber will consider the additional evidence and any rebuttal material along with that already on the record to arrive at a final judgement in accordance with Rule 117.

(C) The Appeals Chamber may decide the motion prior to the appeal, or at the time of the hearing on appeal. It may decide the motion with or without an oral hearing.

(D) If several defendants are parties to the appeal, the additional evidence admitted on behalf of any one of them will be considered with respect to all of them, where relevant.

Rule 116
[Deleted]

(Adopted 11 Feb 1994, deleted 12 Nov 1997)

Rule 116 *bis*
Expedited Appeals Procedure

(Adopted 30 Jan 1995, amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000)

(A) An appeal under Rule 72 or Rule 73 or appeal from a decision rendered under Rule 11 *bis,* Rule 54 *bis*, Rule 65, Rule 73 *bis* (E), Rule 77 or Rule 91 shall be heard expeditiously on the basis of the original record of the Trial Chamber. Appeals may be determined entirely on the basis of written briefs. (Amended 12 Nov 1997, amended 17 Nov 1999, amended 14 July 2000, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001, amended 21 July 2005, amended 30 May 2006)

(B) Rules 109 to 114 shall not apply to such appeals.

(C) The Presiding Judge, after consulting the members of the Appeals Chamber, may decide not to apply Rule 117 (D). (Amended 25 July 1997, amended 17 Nov 1999, amended 1 Dec 2000, amended 13 Dec 2000)

Rule 117
Judgement on Appeal

(Adopted 11 Feb 1994)

(A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal together with such additional evidence as has been presented to it.

(B) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended. (Amended 30 Jan 1995)

(C) In appropriate circumstances the Appeals Chamber may order that the accused be retried according to law. (Amended 30 Jan 1995)

(D) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present. (Amended 30 Jan 1995)

Rule 118
Status of the Accused following Appeal

(Adopted 11 Feb 1994)

(A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.

(B) Where the accused is not present when the judgement is due to be delivered, either as having been acquitted on all charges or as a result of an order issued pursuant to Rule 65, or for any other reason, the Appeals Chamber may deliver its judgement in the absence of the accused and shall, unless it pronounces an acquittal, order the arrest or surrender of the accused to the Tribunal. (Amended 12 Nov 1997)

PART EIGHT
REVIEW PROCEEDINGS

Rule 119
Request for Review
(Adopted 11 Feb 1994)

(A) Where a new fact has been discovered which was not known to the moving party at the time of the proceedings before a Trial Chamber or the Appeals Chamber, and could not have been discovered through the exercise of due diligence, the defence or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to that Chamber for review of the judgement. If, at the time of the request for review, any of the Judges who constituted the original Chamber are no longer Judges of the Tribunal, the President shall appoint a Judge or Judges in their place. (Amended 12 July 2001)

(B) Any brief in response to a request for review shall be filed within forty days of the filing of the request. (Amended 12 July 2002)

(C) Any brief in reply shall be filed within fifteen days after the filing of the response. (Amended 12 July 2002)

Rule 120
Preliminary Examination
(Adopted 11 Feb 1994, amended 12 July 2001)

If a majority of Judges of the Chamber constituted pursuant to Rule 119 agree that the new fact, if proved, could have been a decisive factor in reaching a decision, the Chamber shall review the judgement, and pronounce a further judgement after hearing the parties.

Rule 121
Appeals
(Adopted 11 Feb 1994)

The judgement of a Trial Chamber on review may be appealed in accordance with the provisions of Part Seven.

Rule 122
Return of Case to Trial Chamber
(Adopted 11 Feb 1994)

If the judgement to be reviewed is under appeal at the time the motion for review is filed, the Appeals Chamber may return the case to the Trial Chamber for disposition of the motion.

PART NINE
PARDON AND COMMUTATION OF SENTENCE

Rule 123
Notification by States
(Adopted 11 Feb 1994, amended 5 May 1994, amended 12 Nov 1997)

If, according to the law of the State of imprisonment, a convicted person is eligible for pardon or commutation of sentence, the State shall, in accordance with Article 28 of the Statute, notify the Tribunal of such eligibility.

Rule 124
Determination by the President
(Adopted 11 Feb 1994, amended 12 Apr 2001, amended 11 Feb 2005)

The President shall, upon such notice, determine, in consultation with the members of the Bureau and any permanent Judges of the sentencing Chamber who remain Judges of the Tribunal, whether pardon or commutation is appropriate.

Rule 125
General Standards for Granting Pardon or Commutation
(Adopted 11 Feb 1994)

In determining whether pardon or commutation is appropriate, the President shall take into account, inter alia, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.

PART TEN
TIME

Rule 126
General Provisions
(Adopted 12 Nov 1997, amended 13 Dec 2001, amended 22 May 2013)

(A) Where the time prescribed by or under these Rules for the doing of any act is to run as from the occurrence of an event, that time shall begin to run as from the date of the event.

(B) Where the Rules, or the practice Directions and Directives issued under the Rules, prescribe that the time for the doing of any act is to run from the filing of a relevant document, that time shall begin to run as from the date of the distribution of the document. (Adopted 22 May 2013)

(C) Should the last day of a time prescribed by a Rule or directed by a Chamber fall upon a day when the Registry of the Tribunal does not accept documents for filing it shall be considered as falling on the first day thereafter when the Registry does accept documents for filing. (Amended 12 July 2002)

Rule 126 *bis*
Time for Filing Responses to Motions
(Adopted 13 Dec 2001)

Unless otherwise ordered by a Chamber either generally or in the particular case, a response, if any, to a motion filed by a party shall be filed within fourteen days of the filing of the motion. A reply to the response, if any, shall be filed within seven days of the filing of the response, with the leave of the relevant Chamber.

Rule 127
Variation of Time-limits
(Adopted 12 Nov 1997)

(A) Save as provided by paragraph (C), a Trial Chamber or Pre-Trial Judge may, on good cause being shown by motion,

(i) enlarge or reduce any time prescribed by or under these Rules;

(ii) recognize as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired. (Amended 1 Dec 2000, amended 13 Dec 2000, amended 21 July 2005)

(B) In relation to any step falling to be taken in connection with an appeal, the Appeals Chamber or Pre-Appeal Judge may exercise the like power as is conferred by paragraph (A) and in like manner and subject to the same conditions as are therein set out. (Amended 1 Dec 2000, amended 13 Dec 2000, amended 21 July 2005)

(C) This Rule shall not apply to the times prescribed in Rules 40 *bis* and 90 *bis*.

* * *

TRIBUNAL RULES OF PROCEDURE

3 May 1983

- **INTRODUCTION AND DEFINITIONS**

1. The Tribunal Rules which follow are organized in the following manner:

- First, as to each Article, the text of the UNCITRAL Arbitration Rules is set forth.
- Second, as to each Article, the text of any modifications to the UNCITRAL Rules made by the Tribunal is set forth. Such modifications have been made within the framework of the Algiers Declarations and specifically pursuant to Article III, paragraph 2 of the Claims Settlement Declaration.*[1]*
- Third, various Articles include notes to indicate how the Tribunal will implement or interpret the UNCITRAL Arbitration Rules, as modified.

2. The Tribunal Rules incorporate the UNCITRAL Rules and Administrative Directives 1, 2, 3 and 4 previously issued by the Tribunal, with certain modifications to each.
3. The following definitions apply for the purpose of the Tribunal Rules:
   a. "Algiers Declarations" means the two Declarations of the Government of the Democratic and Popular Republic of Algeria, dated 19 January 1981.
   b. "Arbitral tribunal" means either the Full Tribunal or a Chamber, depending on whichever is seised of a particular case or issue.
   c. "Arbitrating party" means, in a particular case, the party or parties initiating recourse to arbitration (the claimant), or the other party or parties (the respondent). The term "arbitrating party" also means one of the two Governments when, in a particular case, it is a claimant or respondent, or when it refers a dispute or question to the Tribunal pursuant to the Algiers Declarations.
   d. "Chamber" means a panel of three members composed by the President of the Tribunal from among the nine members of the Full

1 Article III Paragraph 2 of the Claims Settlement Declaration :
2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out. The UNCITRAL rules for appointing members of three-member tribunals shall apply mutatis mutandis to the appointment of the Tribunal.

Tribunal, pursuant to his powers under Article III, paragraph 1 of the Claims Settlement Declaration. [2]

e. "Claims Settlement Declaration" means the "Declaration of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States and the Government of the Islamic Republic of Iran", dated 19 January 1981.
f. "Full Tribunal" means the nine members Tribunal.
g. "Member" as used in the Tribunal Rules shall have the same meaning as "arbitrator" where used in the UNCITRAL Rules.
h. "National", "Iran", and the "United States" shall have the same meanings as defined in Article VII of the Claims Settlement Declaration. [3]
i. "President" means the President of the Tribunal.
j. "Presiding arbitrator" or "presiding member" means the President of the Tribunal or the Chairman of a Chamber, as the case may be.
k. "Registrar" means the Registrar of the Tribunal and includes any deputy of, or other person authorized by, the Registrar, the President, or the Full Tribunal to perform a function for which the Registrar is responsible.

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2 Article III Paragraph 1 of the Claims Settlement Declaration:
1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this Agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

3 Article VII Paragraph 1 of the Claims Settlement Declaration:
For the purpose of this Agreement:
1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.

l. "Secretary-General" means the Secretary-General of the Tribunal and includes any deputy of, or other person authorized by, the Secretary-General, the President, or the Full Tribunal to perform a function for which the Secretary-General is responsible.

m. "Tribunal" means the Iran-United States Claims Tribunal established within the framework of and pursuant to the Algiers Declarations.

n. "Tribunal Rules" means these Rules, as they may from time to time be modified or supplemented by the Full Tribunal or the two Governments.

o. "The two Governments" means the Government of the Islamic Republic of Iran and the Government of the United States of America.

p. "UNCITRAL Arbitration Rules" and "UNCITRAL Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law which are the subject of Resolution 31/98 adopted by the General Assembly of the United Nations on 15 December 1976.

- SECTION I: INTRODUCTORY RULES

ARTICLE 1: SCOPE OF APPLICATION

1. Within the framework of the Algiers Declarations, the initiation and conduct of proceedings before the arbitral tribunal shall be subject to the following Tribunal Rules which may be modified by the Full Tribunal or the two Governments.

2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

3. The Claims Settlement Declaration constitutes an agreement in writing by Iran and the United States, on their own behalf and on behalf of their nationals submitting to arbitration within the framework of the Algiers Declarations and in accordance with the Tribunal Rules.

ARTICLE 2: NOTICE, CALCULATION OF PERIODS OF TIME

1. All documents must be filed with the Tribunal. Filing of a document with the Tribunal shall be deemed to have been made when it is physically received by the Registrar.

2. All documents filed in a particular case shall be served upon all arbitrating parties in that case through the Agents. The Registrar shall promptly deliver copies to the offices of each of the two Agents in The Hague, except for a filing Agent. Each Agent shall be responsible for transmitting one copy to each concerned arbitrating party in his country or to the representative designated by each such arbitrating party to receive documents on its behalf.

3. The filing of documents with the Tribunal shall constitute service on all of the other arbitrating parties in the case and shall be deemed to have been received by said arbitrating parties when it is received by the Agent of their Government.

4. Notwithstanding the provisions of paragraphs 1-3 of Article 2, when the arbitral tribunal has so permitted in a particular case, service of written evidence may be effected by actual delivery to the representative of an arbitrating party during a hearing or a pre-hearing conference in that case. The Secretary-General shall make a record of such service which shall be signed by him. A copy of each document so served, together with such record of service, shall be delivered by the Secretary-General to the Registrar after the hearing or pre-hearing conference at which service was so made.

5. The Registrar may refuse to accept any document which is not received within the required time period or which does not comply with the Algiers Declarations or with the Tribunal Rules. [4] Any such refusal by the Registrar is, upon objection by an arbitrating party concerned within thirty days of notification of refusal, subject to review by the arbitral tribunal.

Notes to Article 2

1. 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 the document is received. If the last day of such period is an official holiday or a non-business day at the seat of the arbitral tribunal, the period is extended until the first business day which follows. Official holidays and non business days occurring during the running of the period of time are included in calculating the period. The Secretary-General will issue a list of such days.

2. Twenty copies of all documents shall be filed with the Registrar, unless a smaller number is determined by the arbitral tribunal. In the event that there are more than two arbitrating parties in a case, a sufficient number of additional copies shall be filed to permit service on all arbitrating parties in the case. Also, the arbitral tribunal, or the Registrar, may at any time require a party which files a document to submit additional copies.

3. Exhibits and written evidence, other than those annexed to the Statement of Claim or Statement of Defence, shall be submitted in such manner and number of copies as the arbitral tribunal may determine in each case based

4 Article III, paragraph 4 of the Claims Settlement Declaration:
4. No claim may be filed with the Tribunal more than one year after the entry into force of this Agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

on the nature and volume of the particular exhibit or written evidence and any other relevant circumstances.

4. Upon the filing of a document, the Registrar shall note on all copies the date received. The Registrar shall issue a receipt to the arbitrating party which filed the document. In all instances in which the Registrar is required to deliver copies to the Agents, he will secure a written receipt of such delivery, which will be kept in the case file and be available for inspection or copying by any arbitrating party in that case.

5. All documents filed with the Registrar are to be submitted on paper 8½ inches x 11 inches or on A-4 size paper (21 cm x 29.5 cm), or on paper no larger than A-4. If a document, exhibit or other written evidence cannot conveniently be reproduced on paper no larger than A-4, it is be folded to A-4 size, unless the Registrar permits otherwise in special circumstances.

6. Upon filing a Statement of Claim, the Registrar shall assign an identifying number to the claim, and the case shall be assigned to the Full Tribunal or by lot to a Chamber.

Thereafter, all documents filed in the case, including the award, shall have a caption stating:

i. The names of the parties,
ii. The case number assigned by the Registrar, and
iii. The number of the Chamber seised of the case; otherwise the caption shall state "Full Tribunal."

7. At least two copies in English and two copies in Farsi of all documents mentioned in Article 17, Note 3 and filed with the Tribunal shall be manually signed by the arbitrating party submitting them or by its representative. Exhibits and annexes to documents need not be signed. If a document is presented without such signatures, it shall be accepted for filing, but the filing party shall be notified and required promptly to submit two manually signed copies in each language.

ARTICLE 3: NOTICE OF ARBITRATION

No Notice of Arbitration pursuant to Article 3 of the UNCITRAL Rules is to be given.

ARTICLE 4: REPRESENTATION AND ASSISTANCE

The Parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party; such communication must specify whether the appointment is being made for purposes of representation or assistance.

Notes to Article 4

1. As used in Article 4 of the UNCITRAL Rules, the term "parties" means the arbitrating parties.

2. For the purpose of a particular case, the two Governments may each appoint representatives in addition to their Agents and each of the other arbitrating parties may appoint representatives. An appointed representative shall be deemed to be authorized to act before the arbitral tribunal on behalf of the appointing party for all purposes of the case and the acts of the representative shall be binding upon the appointing party. A representative is not required to be licensed to practice law. Parties who appoint a representative shall file with the Registrar notice of appointment in such form as the Registrar may require.

3. Arbitrating parties may also be assisted in proceedings before the arbitral tribunal by one or more persons of their choice. Persons chosen to assist who are not also appointed as representatives are not deemed to be authorized to act before the arbitral tribunal on behalf of the appointing party, to bind the appointing party or to receive notices, communications or documents on behalf of the appointing party. Any such assistant is not required to be licensed to practice law.

- SECTION II: COMPOSITION OF THE

ARTICLE 5: ARBITRAL TRIBUNAL - NUMBER OF MEMBERS

The composition of Chambers, the assignment of cases to various Chambers, the transfer of cases among Chambers and the relinquishment by Chambers of certain cases to the Full Tribunal will be provided for in orders issued by the President pursuant to his powers under Article III, paragraph 1 of the Claims Settlement Declaration.*[5]*

ARTICLES 6 – 8: APPOINTMENT OF MEMBERS

Article 6

1. If a sole arbitrator is to be appointed, either 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

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5 Article III, paragraph 1 of the Claims Settlement Declaration :
1. An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.

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, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.

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 both parties agree that the list-procedure should not be used 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 one of the parties the appointing authority shall communicate to both parties an identical list containing at least three names;
b) Within fifteen days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his 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;
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 and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

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.

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 he 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 thirty days after receipt of a party's request therefore, the first party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate the appointing authority. The first party may then request the appointing authority so designated to appoint the second arbitrator. In either case, the appointing authority may exercise its discretion in appointing the arbitrator.

3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by an 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, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfill 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.

Note to Articles 6 — 8

As used in Articles 6, 7 and 8 of the UNCITRAL Rules the terms "party" and "parties" refer to the one or both of the two Governments, as the case may be.

ARTICLES 9 – 12: CHALLENGE OF MEMBERS

Article 9

A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

When any member of the arbitral tribunal obtains knowledge that any particular case before the arbitral tribunal involves circumstances likely to give rise to justifiable doubts as to his impartiality or independence with respect to that case, he shall disclose such circumstances to the President and, if the President so determines, to the arbitrating parties in the case and, if appropriate, shall disqualify himself as to that case.

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.

2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article 11

1. A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen 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, 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 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 his right to appoint or to participate in the appointment.

Article 12

1. If the other party does 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.

Notes to Articles 9-12

1. As used in Articles 9, 10, 11 and 12 of the UNCITRAL Rules, with respect to the initial appointment of a member the terms “party” and “parties” mean one or both of the two Governments, as the case may be. After the initial appointment, the terms “party” and “parties” mean the arbitrating party or parties, as the case may be. Arbitrating parties may challenge a member only on the basis of the existence of circumstances which give rise to justifiable

doubts as to the member's impartiality or independence with respect to the particular case involved, and not upon any general grounds which also relate to other cases. Challenges on such general grounds may only be made by one of the two Governments.

2. In applying paragraph 1 of Article 11 of the UNCITRAL Rules, the period for making a challenge to a member of a Chamber to which a case has been assigned shall be fifteen days after the challenging party is given notice of the Chamber to which the case has been assigned, or after the circumstances mentioned in Articles 9 and 10 of UNCITRAL Rules became known to that party. In the event the case is relinquished by the Chamber to the Full Tribunal, the period for challenging a member who is not a member of the relinquishing Chamber shall be fifteen days after the challenging party is given notice of the relinquishment, or after the circumstances mentioned in Articles 9 and 10 of the UNCITRAL Rules became known to that party.

3. In the event a member withdraws with respect to a particular case or if the challenge is sustained, he shall continue to exercise his functions as a member for all other cases and purposes except in respect of that particular case.

4. In the event that a member of a Chamber is challenged with respect to a particular case and withdraws, or if the challenge is sustained, the President will order the transfer of the case to another Chamber.

5. In the event the Full Tribunal is seised of a particular case and a member is challenged with respect to that case and withdraws, or if the challenge is sustained, a substitute member shall be appointed to the Full Tribunal for the purposes of that case in accordance with the procedure set forth in Article III of the Claims Settlement Declaration as was used in appointing the member being substituted. An appointing authority, if needed, shall be designated as provided in Article 12 of the UNCITRAL Rules.

6. Disclosure statements filed as to each member shall be made available by the Registrar to each arbitrating party in each case.

ARTICLE 13: REPLACEMENT OF A MEMBER

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.

2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

In applying the provisions of this paragraph, if the President, after consultation with the other members of the Full Tribunal, determines that the failure of a member to act or his impossibility to perform his functions is due to a temporary illness or other circumstances expected to be of relatively short duration, the member shall not be replaced but a substitute member shall be appointed for the temporary period in accordance with the same procedures as are described in Note 5 to Articles 9-12.

3. In the event of the temporary absence of the President, the senior other member of the Tribunal not appointed by either of the two Governments shall act as President of the Tribunal and as Chairman at the meetings of the Full Tribunal. Seniority shall be based on the date of appointment, or for members appointed on the same date shall be based on age.

4. A substitute member appointed for a temporary period shall continue to serve with respect to any case in which he has participated in the hearing, notwithstanding the member for whom he is a substitute is again available and may work on other Tribunal cases and matters.

5. After the effective date of a member's resignation he shall continue to serve as a member of the Tribunal with respect to all cases in which he had participated in a hearing on the merits, and for that purpose shall be considered a member of the Tribunal instead of the person who replaces him.

Note to Article 13

Iran may, in advance, appoint up to three persons, to be available to act as a substitute member for a temporary period for a specified member, or members, of the Tribunal appointed by Iran; and the United States may, in advance, appoint up to three persons, to be available to act as a substitute member for a temporary period for a specified member, or members, of the Tribunal appointed by the United States. The members of the Tribunal appointed by Iran and the United States may select, in advance, by mutual agreement, a person to act as substitute for a temporary period for any of the remaining one third of the members of the Tribunal.

ARTICLE 14: REPETITION OF HEARINGS IN THE EVENT OF REPLACEMENT OR SUBSTITUTION OF A MEMBER

If a member of the Full Tribunal or of a Chamber is replaced or if a substitute is appointed for him, the arbitral tribunal shall determine whether all, any part or none of any previous hearings shall be repeated.

- SECTION III: ARBITRAL PROCEEDINGS

ARTICLE 15: GENERAL PROVISIONS

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 of presenting his case.

2. If either party so requests at any 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 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.

Notes to Article 15

1. As used in Article 15 of the UNCITRAL Rules, the terms "party" and "parties" mean the arbitrating party or parties, as the case may be.

2. In applying paragraph 2 of Article 15, the arbitral tribunal shall determine without hearing any written requests or objections of the concerned arbitrating parties with respect to procedural matters unless it grants or invites oral argument in special circumstances.

3. In complying with paragraph 3 of Article 15, an arbitrating party shall follow the procedures set forth in Article 2 of the Tribunal Rules.

4. The arbitral tribunal may make an order directing the arbitrating parties to appear for a pre-hearing conference. The pre-hearing conference will normally be held only after the Statement of Defence in the case has been received. The order will state the matters to be considered at the pre-hearing conference.

5. The arbitral tribunal may, having satisfied itself that the statement of one of the two Governments — or, under special circumstances, any other person -who is not an arbitrating party in a particular case is likely to assist the tribunal in carrying out its task, permit such Government or person to assist the tribunal by presenting oral or written statements.

ARTICLE 16: PLACE OF ARBITRATION

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

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. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other 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.

Note to Article 16

As used in Article 16, paragraphs 1 and 2 of the UNCITRAL Rules, the term "parties" means the two Governments. As used in Article 16, paragraph 3 of the UNCITRAL Rules, the term "parties" means the arbitrating parties.

ARTICLE 17: LANGUAGE

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.

Notes to Article 17

1. As used in Article 17 of the UNCITRAL Rules, the term "parties" means the two Governments.

2. In accordance with an agreement of the Agents, English and Farsi shall be the official languages to be used in the arbitration proceedings, and these languages shall be used for all oral hearings, decisions and awards.

3. In accordance with the provisions of Article 17 of the UNCITRAL Rules, the following documents filed with the Tribunal shall be submitted in both English and Farsi, unless otherwise agreed by the arbitrating parties:

a) The Statement of Claim and its annexes.
b) The Statement of Defence, and any counter-claim, including any annexes.
c) The reply (including any annexes) to any counter-claim.
d) Any further written statement (e.g. reply, rejoinder, brief), including any annexes, which the arbitral tribunal may require or permit an arbitrating party to present.
e) Any written request to the arbitral tribunal to take action or any objection thereto.
f) Any Challenge to a member.

4. The arbitral tribunal shall determine in each particular case what other documents, documentary exhibits and written evidence, or what parts thereof, shall be submitted in both English and Farsi.

5. Any disputes or difficulties regarding translations shall be resolved by the arbitral tribunal.

ARTICLE 18: STATEMENT OF CLAIM

Article 18 of the UNCITRAL Rules is modified to read as follows:

1. A party initiating recourse to arbitration before the Tribunal (the "claimant") shall do so by filing a Statement of Claim. Each Statement of Claim shall contain the following particulars:

a) A demand that the dispute be referred to arbitration by the Tribunal;
b) The names, nationalities and last known addresses of the parties;
c) A reference to the debt, contract (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights out of or in relation to which the dispute arises and as to which the Tribunal has jurisdiction pursuant to Article II, paragraphs 1 and 2 of the Claims Settlement Declaration; ***[6]***
d) The general nature of the claim and an indication of the amount involved, if any;
e) A statement of the facts supporting the claim;
f) The points at issue;
g) The relief or remedy sought;
h) If the claimant has appointed a lawyer or other person for purposes of representation or assistance in connection with the claim, the name

6 Article II of the Claims Settlement Declaration:
1. An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.
2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

and address of such person and an indication whether the appointment is for purposes of representation or assistance;

i) The name and address of the person to whom communications should be sent on behalf of the claimant (only one such person shall be entitled to be sent communications).

2. It is advisable that claimants (i) annex to their Statements of Claim such documents as will serve clearly to establish the basis of the claim, and/or (ii) add a reference and summary of relevant portions of such documents, and/or (iii) include in the Statement of Claim quotations of relevant portions of such documents.

3. No priority for the scheduling of hearings or the making of awards shall be based on the date of filing the Statement of Claim.

Notes to Article 18

1. No claims with respect to which the Tribunal has jurisdiction within the framework of the Algiers Declarations and pursuant to paragraphs 1 and 2 of Article II of the Claims Settlement Declaration may be filed before October 20, 1981.

2. All Statements of Claim with respect to matters as to which the Tribunal has jurisdiction pursuant to paragraphs 1 and 2 of Article II of the Claims Settlement Declaration [7] which are filed between October 20, 1981 and November 19, 1981 will be deemed to have been filed simultaneously as of October 20, 1981. All such claims filed between November 20, 1981 and December 19, 1981 will be deemed to have been filed simultaneously as of November 20, 1981. All such claims filed between December 20, 1981 and January 19, 1982 will be deemed to have been filed simultaneously as of December 20, 1981.

ARTICLE 19: STATEMENT OF DEFENCE

1. Within a period of time to be determined by the arbitral tribunal with respect to each case, which should not exceed 135 days, the respondent shall file its Statement of Defence. However, the arbitral tribunal may extend the time limits if it concludes that such an extension is justified.

7 Id, note 6

2. The Statement of Defence shall reply to the particulars (e), (f) and (g) and include the information required in (h) and (i) of the Statement of Claim (see Article 18, paragraph 1 of the Tribunal Rules). It is advisable that Respondents (i) annex to their Statement of Defence such documents as will clearly serve to establish the basis of the defence, and/or (ii) add a reference and summary of relevant portions of such documents, and/or (iii) include in the Statement of Defence quotations of relevant portions of such documents.

3. In the 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 rely on a claim for the purpose of a set-off, if such counter-claim or set-off is allowed under the Claims Settlement Declaration.

4. The provisions of Article 18, paragraph 1 shall apply to a counter-claim or claim relied on for purpose of a set-off.

Notes to Article 19

1. In determining and extending periods of time pursuant to this Article, the arbitral tribunal will take into account

i. The complexity of the case,
ii. Any special circumstances, including demonstrated hardship to a claimant or respondent, and
iii. Such other circumstances as it considers appropriate.

In the event that the arbitral tribunal determines that a requirement to file a large number of Statements of Defence in any particular period would impose an unfair burden on a respondent to a claim or counter-claim, it will in some cases extend the time periods based on the abovementioned factors or by lot.

2. In the event of a counter-claim or claim relied on for the purpose of a set-off, the claimant against whom it is made will be given the right of reply, and the provisions of paragraph 2 of Article 19 of the Tribunal Rules shall apply.

ARTICLE 20: AMENDMENTS TO THE CLAIM OR DEFENCE

During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment 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 in such a manner that the amended claim falls outside the jurisdiction of the arbitral tribunal.

Note to Article 20

As used in Article 20 of the UNCITRAL Rules, the term "party" means the arbitrating party.

ARTICLE 21: PLEAS AS TO THE JURISDICTION OF THE TRIBUNAL

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 the contract of which an arbitration clause forms a part. For the purposes of article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract 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 counterclaim.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

ARTICLE 22: FURTHER WRITTEN STATEMENTS

The arbitral tribunal shall 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 periods of time for communicating such statements.

Note to Article 22

As used in Article 22 of the UNCITRAL Rules, the term "parties" means the arbitrating parties.

ARTICLE 23: PERIODS OF TIME

The periods of time fixed by the arbitral tribunal for the communication of written statements (excluding the Statement of Defence) should not exceed 90 days. However, the arbitral tribunal may extend the time-limits if it concludes that an extension is justified.

ARTICLE 24: EVIDENCE AND HEARINGS

1. Each party shall have the burden of proving the facts relied on to support his 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 his statement of claim or statement of defence.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

Note to Article 24

As used in Article 24 of the UNCITRAL Rules, the terms "party" and "parties" mean the arbitrating party or parties, as the case may be.

ARTICLE 25: EVIDENCE AND HEARINGS

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 he intends to present, the subject upon and the languages in which such witnesses will give their testimony.

3. The arbitral tribunal shall make arrangements 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 at least fifteen days before the hearing.

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. 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.

Notes to Article 25

1. As used in Article 25 of the UNCITRAL Rules, the terms "party" and "parties" mean the arbitrating party or parties, as the case may be, except that, as used in paragraph 4 of Article 25, the term "parties" means the two Governments and the arbitrating parties.

2. The information concerning witnesses which an arbitrating party must communicate pursuant to paragraph 2 of Article 25 of the UNCITRAL Rules is not required with respect to any witnesses which an arbitrating party may later decide to present to rebut evidence presented by the other arbitrating party. However, such information concerning any rebuttal witness shall be communicated to the arbitral tribunal and the other arbitrating parties as far in advance of hearing the witness as is reasonably possible.

3. With respect to paragraph 3 of Article 25 of the UNCITRAL Rules, the Secretary-General shall make arrangements for a tape-recording or stenographic record of hearings or parts of hearings if the arbitral tribunal so determines. If the arbitral tribunal determines that a transcript shall be made of any such tape-recording or stenographic record, the arbitrating

parties in that case, or their authorized representatives, shall be permitted to read the transcript.

4. Any arbitrating party in the case may make a stenographic record of the hearings, or parts of the hearings, and, in that event, shall make a transcript thereof available to the arbitral tribunal without charge. Arbitrating parties are not permitted to make tape-recordings of hearings or other proceedings.

5. Notwithstanding the provisions of paragraph 4 of Article 25, the arbitral tribunal may at its discretion permit representatives of arbitrating parties in other cases which present similar issues of fact or law to the present to observe all or part of the hearing in a particular case, subject to the prior approval of the arbitrating parties in the particular case. The Agents of the two Governments are permitted to be present at pre-hearing conferences and hearings.

6. In applying paragraph 4 of Article 25 of the UNCITRAL Rules, the following provisions shall determine the manner in which witnesses are examined:

a) Before giving any evidence each witness shall make the following declaration: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth."
b) Witnesses may be examined by the presiding member and the other members of the arbitral tribunal. Also, when permitted by the arbitral tribunal, the representatives of the arbitrating parties in the case may ask questions, subject to the control of the presiding member.

7. The Secretary-General shall draft minutes of each hearing. After each member of the arbitral tribunal present at the hearing has been given the opportunity to comment on the draft minutes, the minutes, with any corrections approved by a majority of members who were present, shall be signed by the presiding member and the Secretary-General. The arbitrating parties in the case, or their representatives, shall be permitted to read such minutes.

ARTICLE 26: INTERIM MEASURES OF PROTECTION

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of 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.

Note to Article 26

As used in Article 26 of the UNCITRAL Rules, the term "party" means the arbitrating party.

ARTICLE 27: EXPERTS

1. The arbitral tribunal may 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 inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

The expert shall invite a representative of each arbitrating party to attend any site inspection, and, when the arbitral tribunal so determines, a representative of each arbitrating party shall be invited to attend other inspections made by the expert.

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 on which the expert has relied in his report.

4. At the request of either 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 either 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.

Notes to Article 27

1. As used in Article 27 of the UNCITRAL Rules, the terms "party" and "parties" mean the arbitrating party or parties, as the case may be.

2. Every expert, before beginning the performance of his duties, shall make the following declaration:

"I solemnly declare upon my honour and conscience that I will perform my duties in accordance with my sincere belief and will keep confidential all matters relating to the performance of my task."

ARTICLE 28: DEFAULT

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his 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 his 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 make the award on the evidence before it.

Note to Article 28

As used in Article 28 of the UNCITRAL Rules, the term "parties" means the arbitrating parties.

ARTICLE 29: CLOSURE OF HEARINGS

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 in made.

Note to Article 29

As used in Article 29 of the UNCITRAL Rules, the terms "party" and "parties" mean the arbitrating party or parties, as the case may be.

ARTICLE 30: WAIVER OF RULES

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

Note to Article 30

As used in Article 30 of the UNCITRAL Rules, the term "party" means the arbitrating party.

ARTICLE 31: DECISIONS

1. When there are three 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 own, subject to revision, if any, by the arbitral tribunal.

Notes to Article 31

1. Any award or other decision of the arbitral tribunal pursuant to paragraph 1 of Article 31 shall be made by a majority of its members.

2. The arbitral tribunal shall deliberate in private. Its deliberations shall be and remain secret. Only the members of the arbitral tribunal shall take part in the deliberations. The Secretary-General may be present. No other person may be admitted except by special decision of the arbitral tribunal. Any question which is to be voted upon shall be formulated in precise terms in English and Farsi and the text shall, if a member so requests, be distributed before the vote is taken. The minutes of the private sittings of the arbitral tribunal shall be secret.

ARTICLE 32: FORM AND EFFECT OF AWARD

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. Any arbitrator may request that his dissenting vote or his dissenting vote and the reasons therefore be recorded.

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. When there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

5. All awards and other decisions shall be made available to the public, except that upon the request of one or more arbitrating parties, the arbitral tribunal may determine that it will not make the entire award or other decision public, but will make public only portions thereof from which the

identity of the parties, other identifying facts and trade or military secrets have been deleted.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

7. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by law.

Note to Article 32

As used in Article 32 of the UNCITRAL Rules, the term "parties" means the arbitrating parties.

ARTICLE 33: APPLICABLE LAW

1. The arbitral tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the arbitral tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

2. The arbitral tribunal shall decide *ex aequo et bono* only if the arbitrating parties have expressly and in writing authorized it to do so.

Note to Article 33

Paragraph 1 of the modified text of Article 33 corresponds to Article V of the Claims Settlement Declaration.*[8]*

ARTICLE 34: SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

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

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8 Article V of the Claims Settlement Declaration :
The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

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 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 by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraph 2 and 4 to 7, shall apply.

Note to Article 34

As used in Article 34 of the UNCITRAL Rules, the terms "party" and "parties" mean the arbitrating party or parties, as the case may be.

ARTICLE 35: INTERPRETATION OF THE AWARD

1. Within thirty days after the receipt of the award, either party, with notice to the other party, 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 7, shall apply.

Note to Article 35

As used in Article 35 of the UNCITRAL Rules, the term "party" means the arbitrating party.

ARTICLE 36: CORRECTION OF THE AWARD

1. Within thirty days after the receipt of the award, either party, with notice to the other party, 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 7, shall apply.

Note to Article 36

As used in Article 36 of the UNCITRAL Rules, the term "party" means the arbitrating party.

ARTICLE 37: ADDITIONAL AWARD

1. Within thirty days after the receipt of the award, either party, with notice to the other party, 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 7, shall apply.

Note to Article 37

As used in Article 37 of the UNCITRAL Rules, the term "party" means the arbitrating party.

ARTICLE 38: COSTS

1. The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:

a) The costs of expert advice and of other special assistance required for a particular case by the arbitral tribunal;
b) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
c) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.

2. The Full Tribunal shall fix the fees and expenses of the Tribunal which, in accordance with Article VI, paragraph 3 of the Claims Settlement Declaration, shall be borne equally by the two Governments. ***[9]***

Note to Article 38

As used in Article 38 of the UNCITRAL Rules, the term "party" means the arbitrating party.

ARTICLE 39: COSTS

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the Permanent Court of Arbitration at The Hague, and if that authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

3. If such appointing authority has not issued a schedule of fees for arbitration in international cases, any party may at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal in fixing its fees shall take

9 Article VI, paragraph 3 of the Claims Settlement Declaration:
3. The expenses of the Tribunal shall be borne equally by the two governments.

such information into account to the extent that it considers appropriate in the circumstances of that case.

4. In cases referred to in paragraphs 2 and 3, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

Note to Article 39

As used in Article 39 of the UNCITRAL Rules, the terms "party" and "parties" mean one or both of the two Governments, as the case may be.

ARTICLE 40: COSTS

1. Except as provided in paragraph 2, the costs of arbitration referred to in paragraphs 1(a) and 1(b) of Article 38 shall in principle be borne by the unsuccessful party. 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. With respect to the costs of legal representation and assistance referred to in article 38, paragraph 1(c) the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings, it shall fix the costs of arbitration referred to in article 38 in the text of that order.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

Note to Article 40

As used in Article 40 of the UNCITRAL Rules, the terms "party" and "parties" mean the arbitrating party or parties, as the case may be.

ARTICLE 41: DEPOSIT OF COSTS

1. During the course of its proceedings the Full Tribunal may from time to time determine the costs referred to in paragraph 2 of Article 38 and may request each of the two Governments to deposit equal amounts as advances for such costs.

2. The arbitral tribunal may request each arbitrating party to deposit an amount determined by it as advances for the costs referred to in paragraph 1(a) of Article 38.

3. If the required deposits are not paid in full within the time fixed by the arbitral tribunal, 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 or may take such action to permit continuation of the proceedings as is appropriate under the circumstances of the case.

4. The Secretary-General shall transmit monthly, quarterly and annual financial statements to the Full Tribunal and to the Agents. The accounts of the Tribunal shall be audited annually by an independent qualified accountant approved by the Full Tribunal. The Secretary-General shall transmit copies of the audit report to the Full Tribunal and to the Agents. At the request of either Agent, the annual audit shall be reviewed by an Audit Committee composed of three professionally qualified persons, one appointed by each Agent and one by the President. The Audit Committee shall submit its report to the Full Tribunal, to the Agents, and to the Secretary-General.

5. After the termination of the work of the Tribunal, it shall, after a final audit render an accounting to the two Governments of the deposits received and return any unexpended balance to the two Governments.

Note to Article 41

1. As used in paragraph 3, insofar as it refers to deposits made pursuant to paragraph 1 of Article 41 of the UNCITRAL Rules, the term "parties" means the two Governments; insofar as it refers to deposits made pursuant to paragraph 2 that term means the arbitrating parties.

ITLOS/8
17 March 2009

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

RULES OF THE TRIBUNAL

CONTENTS

RULES OF THE TRIBUNAL

Adopted on 28 October 1997
(amended on 15 March and 21 September 2001 and on 17 March 2009)

PREAMBLE

The Tribunal,

Acting pursuant to article 16 of the Statute of the International Tribunal for the Law of the Sea, Annex VI to the United Nations Convention on the Law of the Sea,

Adopts the following Rules of the Tribunal.

PART I

USE OF TERMS

Article 1

For the purposes of these Rules:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982, together with the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea, Annex VI to the Convention;

(c) "States Parties" has the meaning set out in article 1, paragraph 2, of the Convention and includes, for the purposes of Part XI of the Convention, States and entities which are members of the Authority on a provisional basis in accordance with section 1, paragraph 12, of the Annex to the Agreement relating to the implementation of Part XI;

(d) "international organization" has the meaning set out in Annex IX, article 1, to the Convention, unless otherwise specified;

(e) "Member" means an elected judge;

(f) "judge" means a Member as well as a judge *ad hoc;*

(g) "judge *ad hoc*" means a person chosen under article 17 of the Statute for the purposes of a particular case;

(h) "Authority" means the International Seabed Authority;

(i) "certified copy" means a copy of a document bearing an attestation by or on behalf of the custodian of the original or the party submitting it that it is a true and accurate copy thereof.

PART II

ORGANIZATION

Section A. The Tribunal

Subsection 1. The Members

Article 2

1. The term of office of Members elected at a triennial election shall begin to run from 1 October following the date of the election.

2. The term of office of a Member elected to replace a Member whose term of office has not expired shall run from the date of the election for the remainder of that term.

Article 3

The Members, in the exercise of their functions, are of equal status, irrespective of age, priority of election or length of service.

Article 4

1. The Members shall, except as provided in paragraphs 3 and 4, take precedence according to the date on which their respective terms of office began.

2. Members whose terms of office began on the same date shall take precedence in relation to one another according to seniority of age.

3. A Member who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence.

4. The President and the Vice-President of the Tribunal, while holding these offices, shall take precedence over the other Members.

5. The Member who, in accordance with the foregoing paragraphs, takes precedence next after the President and the Vice-President of the Tribunal is in these Rules designated the “Senior Member”. If that Member is unable to act, the Member who is next after him in precedence and able to act is considered as Senior Member.

Article 5

1. The solemn declaration to be made by every Member in accordance with article 11 of the Statute shall be as follows:

> "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously".

2. This declaration shall be made at the first public sitting at which the Member is present. Such sitting shall be held as soon as practicable after his term of office begins and, if necessary, a special sitting shall be held for the purpose.

3. A Member who is re-elected shall make a new declaration only if his new term is not continuous with his previous one.

Article 6

1. In the case of the resignation of a Member, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of the letter.

2. In the case of the resignation of the President of the Tribunal, the letter of resignation shall be addressed to the Vice-President of the Tribunal or, failing him, the Senior Member. The place becomes vacant on the receipt of the letter.

Article 7

In any case in which the application of article 9 of the Statute is under consideration, the Member concerned shall be so informed by the President of the Tribunal or, if the circumstances so require, by the Vice-President of the Tribunal, in a written statement which shall include the grounds therefor and any relevant evidence. He shall subsequently, at a private meeting of the Tribunal specially convened for the purpose, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give and of supplying answers, orally or in writing, to any questions put to him. The Member concerned may be assisted or represented by counsel or any other person of his choice. At a further private meeting, at which the Member concerned shall not be present, the matter shall be discussed; each Member shall state his opinion, and if requested a vote shall be taken.

Subsection 2. Judges *ad hoc*

Article 8

1. Judges *ad hoc* shall participate in the case in which they sit on terms of complete equality with the other judges.

2. Judges *ad hoc* shall take precedence after the Members and in order of seniority of age.

3. In the case of the resignation of a judge *ad hoc*, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of the letter.

Article 9

1. The solemn declaration to be made by every judge *ad hoc* in accordance with articles 11 and 17, paragraph 6, of the Statute shall be as set out in article 5, paragraph 1, of these Rules.

2. This declaration shall be made at a public sitting in the case in which the judge *ad hoc* is participating.

3. Judges *ad hoc* shall make the declaration in relation to each case in which they are participating.

Subsection 3. President and Vice-President

Article 10

1. The term of office of the President and that of the Vice-President of the Tribunal shall begin to run from the date on which the term of office of the Members elected at a triennial election begins.

2. The elections of the President and the Vice-President of the Tribunal shall be held on that date or shortly thereafter. The former President, if still a Member, shall continue to exercise the functions of President of the Tribunal until the election to this position has taken place.

Article 11

1. If, on the date of the election to the presidency, the former President of the Tribunal is still a Member, he shall conduct the election. If he has ceased to be a Member, or is unable to act, the election shall be conducted by the Member exercising the functions of the presidency.

2. The election shall take place by secret ballot, after the presiding Member has declared the number of affirmative votes necessary for election; there shall be no nominations. The Member obtaining the votes of the majority of the Members composing the Tribunal at the time of the election shall be declared elected and shall enter forthwith upon his functions.

3. The new President of the Tribunal shall conduct the election of the Vice-President of the Tribunal either at the same or at the following meeting. Paragraph 2 applies to this election.

Article 12

1. The President of the Tribunal shall preside at all meetings of the Tribunal. He shall direct the work and supervise the administration of the Tribunal.

2. He shall represent the Tribunal in its relations with States and other entities.

Article 13

1. In the event of a vacancy in the presidency or of the inability of the President of the Tribunal to exercise the functions of the presidency, these shall be exercised by the Vice-President of the Tribunal or, failing him, by the Senior Member.

2. When the President of the Tribunal is precluded by a provision of the Statute or of these Rules either from sitting or from presiding in a particular case, he shall continue to exercise the functions of the presidency for all purposes save in respect of that case.

3. The President of the Tribunal shall take the measures necessary in order to ensure the continuous exercise of the functions of the presidency at the seat of the Tribunal. In the event of his absence, he may, so far as is compatible with the Statute and these Rules, arrange for these functions to be exercised by the Vice-President of the Tribunal or, failing him, by the Senior Member.

4. If the President of the Tribunal decides to resign the presidency, he shall communicate his decision in writing to the Tribunal through the Vice-President of the Tribunal or, failing him, the Senior Member. If the Vice-President of the Tribunal decides to resign the vice-presidency, he shall communicate his decision in writing to the President of the Tribunal.

Article 14

If a vacancy in the presidency or the vice-presidency occurs before the date when the current term is due to expire, the Tribunal shall decide whether or not the vacancy shall be filled during the remainder of the term.

Subsection 4. Experts appointed under article 289 of the Convention

Article 15

1. A request by a party for the selection by the Tribunal of scientific or technical experts under article 289 of the Convention shall, as a general rule, be made not later than the closure of the written proceedings. The Tribunal may consider a later request made prior to the closure of the oral proceedings, if appropriate in the circumstances of the case.

2. When the Tribunal decides to select experts, at the request of a party or *proprio motu*, it shall select such experts upon the proposal of the President of the Tribunal, who shall consult the parties before making such a proposal.

3. Experts shall be independent and enjoy the highest reputation for fairness, competence and integrity. An expert in a field mentioned in Annex VIII, article 2, to the Convention shall be chosen preferably from the relevant list prepared in accordance with that annex.

4. This article applies *mutatis mutandis* to any chamber and its President.

5. Before entering upon their duties, such experts shall make the following solemn declaration at a public sitting:

> "I solemnly declare that I will perform my duties as an expert honourably, impartially and conscientiously and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Subsection 5. The composition of the Tribunal for particular cases

Article 16

1. No Member who is a national of a party in a case, a national of a State member of an international organization which is a party in a case or a national of a sponsoring State of an entity other than a State which is a party in a case, shall exercise the functions of the presidency in respect of the case.

2. The Member who is presiding in a case on the date on which the Tribunal meets in accordance with article 68 shall continue to preside in that case until completion of the current phase of the case, notwithstanding the election in the meantime of a new President or Vice-President of the Tribunal. If he should become unable to act, the presidency for the case shall be determined in accordance with article 13 and on the basis of the composition of the Tribunal on the date on which it met in accordance with article 68.

Article 17

Members who have been replaced following the expiration of their terms of office shall continue to sit in a case until the completion of any phase in respect of which the Tribunal has met in accordance with article 68.

Article 18

1. Whenever doubt arises on any point in article 8 of the Statute, the President of the Tribunal shall inform the other Members. The Member concerned shall be afforded an opportunity of furnishing any information or explanations.

2. If a party desires to bring to the attention of the Tribunal facts which it considers to be of possible relevance to the application of article 8 of the Statute, but which it believes may not be known to the Tribunal, that party shall communicate confidentially such facts to the President of the Tribunal in writing.

Article 19

1. If a party intends to choose a judge *ad hoc* in a case, it shall notify the Tribunal of its intention as soon as possible. It shall inform the Tribunal of the name, nationality and brief biographical details of the person chosen, preferably at the same time but in any event not later than two months before the time-limit fixed for the filing of the counter-memorial. The judge *ad hoc* may be of a nationality other than that of the party which chooses him.

2. If a party proposes to abstain from choosing a judge *ad hoc*, on condition of a like abstention by the other party, it shall so notify the Tribunal, which shall inform the other party. If the other party thereafter gives notice of its intention to choose, or chooses, a judge *ad hoc*, the time-limit for the party which had previously abstained from choosing a judge may be extended up to 30 days by the President of the Tribunal.

3. A copy of any notification relating to the choice of a judge *ad hoc* shall be communicated by the Registrar to the other party, which shall be requested to furnish, within a time-limit not exceeding 30 days to be fixed by the President of the Tribunal, such observations as it may wish to make. If within the said time-limit no objection is raised by the other party, and if none appears to the Tribunal itself, the parties shall be so informed. In the event of any objection or doubt, the matter shall be decided by the Tribunal, if necessary after hearing the parties.

4. A judge *ad hoc* who becomes unable to sit may be replaced.

5. If the Tribunal finds that the reasons for the participation of a judge *ad hoc* no longer exist, that judge shall cease to sit on the bench.

Article 20

1. If the Tribunal finds that two or more parties are in the same interest and are therefore to be considered as one party only, and that there is no Member of the nationality of any one of these parties upon the bench, the Tribunal shall fix a time-limit within which they may jointly choose a judge *ad hoc*.

2. Should any party among those found by the Tribunal to be in the same interest allege the existence of a separate interest of its own or put forward any other objection, the matter shall be decided by the Tribunal, if necessary after hearing the parties.

Article 21

1. If a Member having the nationality of one of the parties is or becomes unable to sit in any phase of a case, that party is entitled to choose a judge *ad hoc* within a time-limit to be fixed by the Tribunal, or by the President of the Tribunal if the Tribunal is not sitting.

2. Parties in the same interest shall be deemed not to have a Member of one of their nationalities upon the bench if every Member having one of their nationalities is or becomes unable to sit in any phase of the case.

3. If a Member having the nationality of one of the parties becomes able to sit not later than the closure of the written proceedings in that phase of the case, that Member shall resume the seat on the bench in the case.

Article 22

1. An entity other than a State may choose a judge *ad hoc* only if:

(a) one of the other parties is a State Party and there is upon the bench a judge of its nationality or, where such party is an international organization, there is upon the bench a judge of the nationality of one of its member States or the State Party has itself chosen a judge *ad hoc*; or

(b) there is upon the bench a judge of the nationality of the sponsoring State of one of the other parties.

2. However, an international organization or a natural or juridical person or state enterprise is not entitled to choose a judge *ad hoc* if there is upon the bench a judge of the nationality of one of the member States of the international organization or a judge of the nationality of the sponsoring State of such natural or juridical person or state enterprise.

3. Where an international organization is a party to a case and there is upon the bench a judge of the nationality of a member State of the organization, the other party may choose a judge *ad hoc*.

4. Where two or more judges on the bench are nationals of member States of the international organization concerned or of the sponsoring States of a party, the President may, after consulting the parties, request one or more of such judges to withdraw from the bench.

Section B. The Seabed Disputes Chamber

Subsection 1. The members and judges *ad hoc*

Article 23

The members of the Seabed Disputes Chamber shall be selected following each triennial election to the Tribunal as soon as possible after the term of office of Members elected at such election begins. The term of office of members of the Chamber shall begin to run from the date of their selection. The term of office of members selected at the first selection shall expire on 30 September 1999; the terms of office of members selected at subsequent triennial selections shall expire on 30 September every three years thereafter. Members of the Chamber who remain on the Tribunal after the expiry of their term of office shall continue to serve on the Chamber until the next selection.

Article 24

The President of the Chamber, while holding that office, takes precedence over the other members of the Chamber. The other members take precedence according to their precedence in the Tribunal in the case where the President and Vice-President of the Tribunal are not exercising the functions of those offices.

Article 25

Articles 8 and 9 apply *mutatis mutandis* to the judges *ad hoc* of the Chamber.

Subsection 2. The presidency

Article 26

1. The Chamber shall elect its President by secret ballot and by a majority vote of its members.

2. The President shall preside at all meetings of the Chamber.

3. In the event of a vacancy in the presidency or of the inability of the President of the Chamber to exercise the functions of the presidency, these shall be exercised by the member of the Chamber who is senior in precedence and able to act.

4. In other respects, articles 10 to 14 apply *mutatis mutandis*.

Subsection 3. *Ad hoc* chambers of the Seabed Disputes Chamber

Article 27

1. Any request for the formation of an *ad hoc* chamber of the Seabed Disputes Chamber in accordance with article 188, paragraph 1 (b), of the Convention shall be made within three months from the date of the institution of proceedings.

2. If, within a time-limit fixed by the President of the Seabed Disputes Chamber, the parties do not agree on the composition of the chamber, the President shall establish time-limits for the parties to make the necessary appointments.

Section C. Special chambers

Article 28

1. The Chamber of Summary Procedure shall be composed of the President and Vice-President of the Tribunal, acting ex officio, and three other Members. In addition, two Members shall be selected to act as alternates.

2. The members and alternates of the Chamber shall be selected by the Tribunal upon the proposal of the President of the Tribunal.

3. The selection of members and alternates of the Chamber shall be made as soon as possible after 1 October in each year. The members of the Chamber and the alternates shall enter upon their functions on their selection and serve until 30 September of the following year. Members of the Chamber and alternates who remain on the Tribunal after that date shall continue to serve on the Chamber until the next selection.

4. If a member of the Chamber is unable, for whatever reason, to sit in a given case, that member shall be replaced for the purposes of that case by the senior in precedence of the two alternates.

5. If a member of the Chamber resigns or otherwise ceases to be a member, the place of that member shall be taken by the senior in precedence of the two alternates, who shall thereupon become a full member of the Chamber and be replaced by the selection of another alternate.

6. The quorum for meetings of the Chamber is three members.

Article 29

1. Whenever the Tribunal decides to form a standing special chamber provided for in article 15, paragraph 1, of the Statute, it shall determine the particular category of disputes for which it is formed, the number of its members, the period for which they will serve, the date when they will enter upon their duties and the quorum for meetings.

2. The members of such chamber shall be selected by the Tribunal upon the proposal of the President of the Tribunal from among the Members, having regard to any special knowledge, expertise or previous experience which any of the Members may have in relation to the category of disputes the chamber deals with.

3. The Tribunal may decide to dissolve a standing special chamber. The chamber shall finish any cases pending before it.

Article 30

1. A request for the formation of a special chamber to deal with a particular dispute, as provided for in article 15, paragraph 2, of the Statute, shall be made within two months from the date of the institution of proceedings. Upon receipt of a request made by one party, the President of the Tribunal shall ascertain whether the other party assents.

2. When the parties have agreed, the President of the Tribunal shall ascertain their views regarding the composition of the chamber and shall report to the Tribunal accordingly.

3. The Tribunal shall determine, with the approval of the parties, the Members who are to constitute the chamber. The same procedure shall be followed in filling any vacancy. The Tribunal shall also determine the quorum for meetings of the chamber.

4. Members of a chamber formed under this article who have been replaced, in accordance with article 5 of the Statute, following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached.

Article 31

1. If a chamber when formed includes the President of the Tribunal, the President shall preside over the chamber. If it does not include the President but includes the Vice-President, the Vice-President shall preside. In any other event, the chamber shall elect its own President by secret ballot and by a majority of votes of its members. The member who, under this paragraph, presides over the chamber at the time of its formation shall continue to preside so long as he remains a member of that chamber.

2. Subject to paragraph 3, the President of a chamber shall exercise, in relation to cases being dealt with by that chamber and from the time it begins dealing with the case, the functions of the President of the Tribunal in relation to cases before the Tribunal.

3. The President of the Tribunal shall take such steps as may be necessary to give effect to article 17, paragraph 4, of the Statute.

4. If the President of a chamber is prevented from sitting or acting as President of the chamber, the functions of the presidency of the chamber shall be assumed by the member of the chamber who is the senior in precedence and able to act.

Section D. The Registry

Article 32

1. The Tribunal shall elect its Registrar by secret ballot from among candidates nominated by Members. The Registrar shall be elected for a term of five years and may be re-elected.

2. The President of the Tribunal shall give notice of a vacancy or impending vacancy to Members, either forthwith upon the vacancy arising or, where the vacancy will arise on the expiration of the term of office of the Registrar, not less than three months prior thereto. The President of the Tribunal shall fix a date for the closure of the list of candidates so as to enable nominations and information concerning the candidates to be received in sufficient time.

3. Nominations shall be accompanied by the relevant information concerning the candidates, in particular information as to age, nationality, present occupation, academic and other qualifications, knowledge of languages and any previous experience in law, especially the law of the sea, diplomacy or the work of international organizations.

4. The candidate obtaining the votes of the majority of the Members composing the Tribunal at the time of the election shall be declared elected.

Article 33

The Tribunal shall elect a Deputy Registrar; it may also elect an Assistant Registrar. Article 32 applies to their election and terms of office.

Article 34

Before taking up their duties, the Registrar, the Deputy Registrar and the Assistant Registrar shall make the following solemn declaration at a meeting of the Tribunal:

> "I solemnly declare that I will perform my duties as Registrar (Deputy Registrar or Assistant Registrar as the case may be) of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Article 35

1. The staff of the Registry, other than the Registrar, the Deputy Registrar and the Assistant Registrar, shall be appointed by the Tribunal on proposals submitted by the Registrar. Appointments to such posts as the Tribunal shall determine may, however, be made by the Registrar with the approval of the President of the Tribunal.

2. The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

3. Before taking up their duties, the staff shall make the following solemn declaration before the President of the Tribunal, the Registrar being present:

> "I solemnly declare that I will perform my duties as an official of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Article 36

1. The Registrar, in the discharge of his functions, shall:

(a) be the regular channel of communications to and from the Tribunal and in particular shall effect all communications, notifications and transmission of documents required by the Convention, the Statute, these Rules or any other relevant international agreement and ensure that the date of dispatch and receipt thereof may be readily verified;

(b) keep, under the supervision of the President of the Tribunal, and in such form as may be laid down by the Tribunal, a List of cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry;

(c) keep copies of declarations and notices of revocation or withdrawal thereof deposited with the Secretary-General of the United Nations under articles 287 and 298 of the Convention or Annex IX, article 7, to the Convention;

(d) keep copies of agreements conferring jurisdiction on the Tribunal;

(e) keep notifications received under article 110, paragraph 2;

(f) transmit to the parties certified copies of pleadings and annexes upon receipt thereof in the Registry;

(g) communicate to the Government of the State in which the Tribunal or a chamber is sitting, or is to sit, and any other Governments which may be concerned, the necessary information as to the persons from time to time entitled, under the Statute and the relevant agreements, to privileges, immunities or facilities;

(h) be present in person or represented by the Deputy Registrar, the Assistant Registrar or in their absence by a senior official of the Registry designated by him, at meetings of the Tribunal, and of the chambers, and be responsible for preparing records of such meetings;

(i) make arrangements for such provision or verification of translations and interpretations into the Tribunal's official languages as the Tribunal may require;

(j) sign all judgments, advisory opinions and orders of the Tribunal and the records referred to in subparagraph (h);

(k) be responsible for the reproduction, printing and publication of the Tribunal's judgments, advisory opinions and orders, the pleadings and statements and the minutes of public sittings in cases and of such other documents as the Tribunal may direct to be published;

(l) be responsible for all administrative work and in particular for the accounts and financial administration in accordance with the financial procedures of the Tribunal;

(m) deal with inquiries concerning the Tribunal and its work;

(n) assist in maintaining relations between the Tribunal and the Authority, the International Court of Justice and the other organs of the United Nations, its related agencies, the arbitral and special arbitral tribunals referred to in article 287 of the Convention and international bodies and conferences concerned with the codification and progressive development of international law, in particular the law of the sea;

(o) ensure that information concerning the Tribunal and its activities is accessible to Governments, the highest national courts of justice, professional and learned societies, legal faculties and schools of law and public information media;

(p) have custody of the seals and stamps of the Tribunal, of the archives of the Tribunal and of such other archives as may be entrusted to the Tribunal.

2. The Tribunal may at any time entrust additional functions to the Registrar.

3. In the discharge of his functions the Registrar shall be responsible to the Tribunal.

Article 37

1. The Deputy Registrar shall assist the Registrar, act as Registrar in the latter's absence and, in the event of the office becoming vacant, exercise the functions of Registrar until the office has been filled.

2. If the Registrar, the Deputy Registrar and the Assistant Registrar are unable to carry out the duties of Registrar, the President of the Tribunal shall appoint an official of the Registry to discharge those duties for such time as may be necessary. If the three offices are vacant at the same time, the President, after consulting the Members, shall appoint an official of the Registry to discharge the duties of Registrar pending an election to that office.

Article 38

1. The Registry consists of the Registrar, the Deputy Registrar, the Assistant Registrar and such other staff as required for the efficient discharge of its functions.

2. The Tribunal shall determine the organization of the Registry and shall for this purpose request the Registrar to make proposals.

3. Instructions for the Registry shall be drawn up by the Registrar and approved by the Tribunal.

4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar and approved by the Tribunal.

Article 39

1. The Registrar may resign from office with two months' notice tendered in writing to the President of the Tribunal. The Deputy Registrar and the Assistant Registrar may resign from office with one month's notice tendered in writing to the President of the Tribunal through the Registrar.

2. The Registrar may be removed from office only if, in the opinion of two thirds of the Members, he has either committed a serious breach of his duties or become permanently incapacitated from exercising his functions. Before a decision to remove him is taken under this paragraph, he shall be informed by the President of the Tribunal of the action contemplated, in a written statement which shall include the grounds therefor and any relevant evidence. When the action contemplated concerns permanent incapacity, relevant medical information shall be included. The Registrar shall subsequently, at a private meeting of the Tribunal, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give and of supplying answers, orally or in writing, to any questions put to him. He may be assisted or represented at such meeting by counsel or any other person of his choice.

3. The Deputy Registrar and the Assistant Registrar may be removed from office only on the same grounds and by the same procedure as specified in paragraph 2.

Section E. Internal functioning of the Tribunal

Article 40

The internal judicial practice of the Tribunal shall, subject to the Convention, the Statute and these Rules, be governed by any resolutions on the subject adopted by the Tribunal.

Article 41

1. The quorum specified by article 13, paragraph 1, of the Statute applies to all meetings of the Tribunal. The quorum specified in article 35, paragraph 7, of the Statute applies to all meetings of the Seabed Disputes Chamber. The quorum specified for a special chamber applies to all meetings of that chamber.

2. Members shall hold themselves permanently available to exercise their functions and shall attend all such meetings, unless they are absent on leave as provided for in paragraph 4 or prevented from attending by illness or for other serious reasons duly explained to the President of the Tribunal, who shall inform the Tribunal.

3. Judges *ad hoc* are likewise bound to hold themselves at the disposal of the Tribunal and to attend all meetings held in the case in which they are participating unless they are prevented from attending by illness or for other serious reasons duly explained to the President of the Tribunal, who shall inform the Tribunal. They shall not be taken into account for the calculation of the quorum.

4. The Tribunal shall fix the dates and duration of the judicial vacations and the periods and conditions of leave to be accorded to individual Members, having regard in both cases to the state of the List of cases and to the requirements of its current work.

5. Subject to the same considerations, the Tribunal shall observe the public holidays customary at the place where the Tribunal is sitting.

6. In case of urgency the President of the Tribunal may convene the Tribunal at any time.

Article 42

1. The deliberations of the Tribunal shall take place in private and remain secret. The Tribunal may, however, at any time decide in respect of its deliberations on other than judicial matters to publish or allow publication of any part of them.

2. Only judges and any experts appointed in accordance with article 289 of the Convention take part in the Tribunal's judicial deliberations. The Registrar, or his Deputy, and other members of the staff of the Registry as may be required shall be present. No other person shall be present except by permission of the Tribunal.

3. The records of the Tribunal's judicial deliberations shall contain only the title or nature of the subjects or matters discussed and the results of any vote taken. They shall not contain any details of the discussions nor the views expressed, provided however that any judge is entitled to require that a statement made by him be inserted in the records.

Section F. Official languages

Article 43

The official languages of the Tribunal are English and French.

PART III

PROCEDURE

Section A. General provisions

Article 44

1. The proceedings consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Tribunal and to the parties of memorials, counter-memorials and, if the Tribunal so authorizes, replies and rejoinders, as well as all documents in support.

3. The oral proceedings shall consist of the hearing by the Tribunal of agents, counsel, advocates, witnesses and experts.

Article 45

In every case submitted to the Tribunal, the President shall ascertain the views of the parties with regard to questions of procedure. For this purpose, he may summon the agents of the parties to meet him as soon as possible after their appointment and whenever necessary thereafter, or use other appropriate means of communication.

Article 46

Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case permits.

Article 47

The Tribunal may at any time direct that the proceedings in two or more cases be joined. It may also direct that the written or oral proceedings, including the calling of witnesses, be in common; or the Tribunal may, without effecting any formal joinder, direct common action in any of these respects.

Article 48

The parties may jointly propose particular modifications or additions to the Rules contained in this Part, which may be applied by the Tribunal or by a chamber if the Tribunal or the chamber considers them appropriate in the circumstances of the case.

Article 49

The proceedings before the Tribunal shall be conducted without unnecessary delay or expense.

Article 50

The Tribunal may issue guidelines consistent with these Rules concerning any aspect of its proceedings, including the length, format and presentation of written and oral pleadings and the use of electronic means of communication.

Article 51

All communications to the Tribunal under these Rules shall be addressed to the Registrar unless otherwise stated. Any request made by a party shall likewise be addressed to the Registrar unless made in open court in the course of the oral proceedings.

Article 52

1. All communications to the parties shall be sent to their agents.

2. The communications to a party before it has appointed an agent and to an entity other than a party shall be sent as follows:

(a) in the case of a State, the Tribunal shall direct all communications to its Government;

(b) in the case of the International Seabed Authority or the Enterprise, any international organization and any other intergovernmental organization, the Tribunal shall direct all communications to the competent body or executive head of such organization at its headquarters location;

(c) in the case of state enterprises or natural or juridical persons referred to in article 153, paragraph 2 (b), of the Convention, the Tribunal shall direct all communications through the Government of the sponsoring or certifying State, as the case may be;

(d) in the case of a group of States, state enterprises or natural or juridical persons referred to in article 153, paragraph 2 (b), of the Convention, the Tribunal shall direct all communications to each member of the group according to subparagraphs (a) and (c) above;

(e) in the case of other natural or juridical persons, the Tribunal shall direct all communications through the Government of the State in whose territory the communication has to be received.

3. The same provisions apply whenever steps are to be taken to procure evidence on the spot.

Article 53

1. The parties shall be represented by agents.

2. The parties may have the assistance of counsel or advocates before the Tribunal.

Section B. Proceedings before the Tribunal

Subsection 1. Institution of proceedings

Article 54

1. When proceedings before the Tribunal are instituted by means of an application, the application shall indicate the party making it, the party against which the claim is brought and the subject of the dispute.

2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Tribunal is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.

3. The original of the application shall be signed by the agent of the party submitting it or by the diplomatic representative of that party in the country in which the Tribunal has its seat or by some other duly authorized person. If the application bears the signature of someone other than such diplomatic representative, the signature must be authenticated by the latter or by the competent governmental authority.

4. The Registrar shall forthwith transmit to the respondent a certified copy of the application.

5. When the applicant proposes to found the jurisdiction of the Tribunal upon a consent thereto yet to be given or manifested by the party against which the application is made, the application shall be transmitted to that party. It shall not however be entered in the List of cases, nor any action be taken in the proceedings, unless and until the party against which such application is made consents to the jurisdiction of the Tribunal for the purposes of the case.

Article 55

1. When proceedings are brought before the Tribunal by the notification of a special agreement, the notification may be effected by the parties jointly or by any one or more of them. If the notification is not a joint one, a certified copy of it shall forthwith be communicated by the Registrar to any other party.

2. In each case the notification shall be accompanied by an original or certified copy of the special agreement. The notification shall also, insofar as this is not already apparent from the agreement, indicate the precise subject of the dispute and identify the parties to it.

Article 56

1. Except in the circumstances contemplated by article 54, paragraph 5, all steps on behalf of the parties after proceedings have been instituted shall be taken by agents. Agents shall have an address for service at the seat of the Tribunal or in the capital of the country where the seat is located, to which all communications concerning the case are to be sent.

2. When proceedings are instituted by means of an application, the name of the agent for the applicant shall be stated. The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent.

3. When proceedings are brought by notification of a special agreement, the party or parties making the notification shall state the name of its agent or the names of their agents, as the case may be. Any other party to the special agreement, upon receiving from the Registrar a certified copy of such notification, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent if it has not already done so.

Article 57

1. Whenever proceedings are instituted on the basis of an agreement other than the Convention, the application or the notification shall be accompanied by a certified copy of the agreement in question.

2. In a dispute to which an international organization is a party, the Tribunal may, at the request of any other party or *proprio motu*, request the international organization to provide, within a reasonable time, information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. If the Tribunal considers it necessary, it may suspend the proceedings until it receives such information.

Article 58

In the event of a dispute as to whether the Tribunal has jurisdiction, the matter shall be decided by the Tribunal.

Subsection 2. The written proceedings

Article 59

1. In the light of the views of the parties ascertained by the President of the Tribunal, the Tribunal shall make the necessary orders to determine, *inter alia*, the number and the order of filing of the pleadings and the time-limits within which they must be filed. The time-limits for each pleading shall not exceed six months.

2. The Tribunal may at the request of a party extend any time-limit or decide that any step taken after the expiration of the time-limit fixed therefor shall be considered as valid. It may not do so, however, unless it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views within a time-limit to be fixed by the Tribunal.

3. If the Tribunal is not sitting, its powers under this article may be exercised by the President of the Tribunal, but without prejudice to any subsequent decision of the Tribunal.

Article 60

1. The pleadings in a case begun by means of an application shall consist, in the following order, of: a memorial by the applicant and a counter-memorial by the respondent.

2. The Tribunal may authorize or direct that there shall be a reply by the applicant and a rejoinder by the respondent if the parties are so agreed or if the Tribunal decides, at the request of a party or *proprio motu*, that these pleadings are necessary.

Article 61

1. In a case begun by the notification of a special agreement, the number and order of the pleadings shall be governed by the provisions of the agreement, unless the Tribunal, after ascertaining the views of the parties, decides otherwise.

2. If the special agreement contains no such provision, and if the parties have not subsequently agreed on the number and order of pleadings, they shall each file a memorial and counter-memorial, within the same time-limits.

3. The Tribunal shall not authorize the presentation of replies and rejoinders unless it finds them to be necessary.

Article 62

1. A memorial shall contain: a statement of the relevant facts, a statement of law and the submissions.

2. A counter-memorial shall contain: an admission or denial of the facts stated in the memorial; any additional facts, if necessary; observations concerning the statement of law in the memorial; a statement of law in answer thereto; and the submissions.

3. A reply and rejoinder shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.

4. Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submissions previously made.

Article 63

1. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of the contentions contained in the pleading. Parties need not annex or certify copies of documents which have been published and are readily available to the Tribunal and the other party.

2. If only parts of a document are relevant, only such extracts as are necessary for the purpose of the pleading in question or for identifying the document need be annexed. A copy of the whole document shall be filed in the Registry, unless it has been published and is readily available to the Tribunal and the other party.

3. A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

Article 64

1. The parties shall submit any pleading or any part of a pleading in one or both of the official languages.

2. A party may use a language other than one of the official languages for its pleadings. A translation into one of the official languages, certified as accurate by the party submitting it, shall be submitted together with the original of each pleading.

3. When a document annexed to a pleading is not in one of the official languages, it shall be accompanied by a translation into one of these languages certified as accurate by the party submitting it. The translation may be confined to part of an annex, or to extracts therefrom, but in this case it must be accompanied by an explanatory note indicating what passages are translated. The Tribunal may, however, require a more extensive or a complete translation to be furnished.

4. When a language other than one of the official languages is chosen by the parties and that language is an official language of the United Nations, the decision of the Tribunal shall, at the request of any party, be translated into that official language of the United Nations at no cost for the parties.

Article 65

1. The original of every pleading shall be signed by the agent and filed in the Registry. It shall be accompanied by a certified copy of the pleading, any document annexed thereto and any translations, for communication to the other party. It shall also be accompanied by the number of additional copies required by the Registry; further copies may be required should the need arise later.

2. All pleadings shall be dated. When a pleading has to be filed by a certain date, it is the date of receipt of the pleading in the Registry which will be regarded by the Tribunal as the material date.

3. If the Registrar arranges for the reproduction of a pleading at the request of a party, the text must be supplied in sufficient time to enable the pleading to be filed in the Registry before expiration of any time-limit which may apply to it. The reproduction is done under the responsibility of the party in question.

4. The correction of a slip or error in any document which has been filed may be made at any time with the consent of the other party or by leave of the President of the Tribunal. Any correction so effected shall be notified to the other party in the same manner as the pleading to which it relates.

Article 66

A certified copy of every pleading and any document annexed thereto produced by one party shall be communicated by the Registrar to the other party upon receipt.

Article 67

1. Copies of the pleadings and documents annexed thereto shall, as soon as possible after their filing, be made available by the Tribunal to a State or other entity entitled to appear before the Tribunal and which has asked to be furnished with such copies. However, if the party submitting the memorial so requests, the Tribunal shall make the memorial available at the same time as the counter-memorial.

2. Copies of the pleadings and documents annexed thereto shall be made accessible to the public on the opening of the oral proceedings, or earlier if the Tribunal or the President if the Tribunal is not sitting so decides after ascertaining the views of the parties.

3. However, the Tribunal, or the President if the Tribunal is not sitting, may, at the request of a party, and after ascertaining the views of the other party, decide otherwise than as set out in this article.

Subsection 3. Initial deliberations

Article 68

After the closure of the written proceedings and prior to the opening of the oral proceedings, the Tribunal shall meet in private to enable judges to exchange views concerning the written pleadings and the conduct of the case.

Subsection 4. Oral proceedings

Article 69

1. Upon the closure of the written proceedings, the date for the opening of the oral proceedings shall be fixed by the Tribunal. Such date shall fall within a period of six months from the closure of the written proceedings unless the Tribunal is satisfied that there is adequate justification for deciding otherwise. The Tribunal may also decide, when necessary, that the opening or the continuance of the oral proceedings be postponed.

2. When fixing the date for the opening of the oral proceedings or postponing the opening or continuance of such proceedings, the Tribunal shall have regard to:

(a) the need to hold the hearing without unnecessary delay;

(b) the priority required by articles 90 and 112;

(c) any special circumstances, including the urgency of the case or other cases on the List of cases; and

(d) the views expressed by the parties.

3. When the Tribunal is not sitting, its powers under this article shall be exercised by the President.

Article 70

The Tribunal may, if it considers it desirable, decide pursuant to article 1, paragraph 3, of the Statute that all or part of the further proceedings in a case shall be held at a place other than the seat of the Tribunal. Before so deciding, it shall ascertain the views of the parties.

Article 71

1. After the closure of the written proceedings, no further documents may be submitted to the Tribunal by either party except with the consent of the other party or as provided in paragraph 2. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document within 15 days of receiving it.

2. In the event of objection, the Tribunal, after hearing the parties, may authorize production of the document if it considers production necessary.

3. The party desiring to produce a new document shall file the original or a certified copy thereof, together with the number of copies required by the Registry, which shall be responsible for communicating it to the other party and shall inform the Tribunal.

4. If a new document is produced under paragraph 1 or 2, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.

5. No reference may be made during the oral proceedings to the contents of any document which has not been produced as part of the written proceedings or in accordance with this article, unless the document is part of a publication readily available to the Tribunal and the other party.

6. The application of this article shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

Article 72

Without prejudice to the provisions of these Rules concerning the production of documents, each party shall communicate to the Registrar, in sufficient time before the opening of the oral proceedings, information regarding any evidence which it intends to produce or which it intends to request the Tribunal to obtain. This communication shall contain a list of the surnames, first names, nationalities, descriptions and places of residence of the witnesses and experts whom the party intends to call, with indications of the point or points to which their evidence will be directed. A certified copy of the communication shall also be furnished for transmission to the other party.

Article 73

1. The Tribunal shall determine whether the parties should present their arguments before or after the production of the evidence; the parties shall, however, retain the right to comment on the evidence given.

2. The Tribunal, after ascertaining the views of the parties, shall determine the order in which the parties will be heard, the method of handling the evidence and examining any witnesses and experts and the number of counsel and advocates to be heard on behalf of each party.

Article 74

The hearing shall, in accordance with article 26, paragraph 2, of the Statute, be public, unless the Tribunal decides otherwise or unless the parties request that the public be not admitted. Such a decision or request may concern either the whole or part of the hearing, and may be made at any time.

Article 75

1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings or merely repeat the facts and arguments these contain.

2. At the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party's final submissions. A copy of the written text of these, signed by the agent, shall be communicated to the Tribunal and transmitted to the other party.

Article 76

1. The Tribunal may at any time prior to or during the hearing indicate any points or issues which it would like the parties specially to address, or on which it considers that there has been sufficient argument.

2. The Tribunal may, during the hearing, put questions to the agents, counsel and advocates, and may ask them for explanations.

3. Each judge has a similar right to put questions, but before exercising it he should make his intention known to the President of the Tribunal.

4. The agents, counsel and advocates may answer either immediately or within a time-limit fixed by the President of the Tribunal.

Article 77

1. The Tribunal may at any time call upon the parties to produce such evidence or to give such explanations as the Tribunal may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose.

2. The Tribunal may, if necessary, arrange for the attendance of a witness or expert to give evidence in the proceedings.

Article 78

1. The parties may call any witnesses or experts appearing on the list communicated to the Tribunal pursuant to article 72. If at any time during the hearing a party wishes to call a witness or expert whose name was not included in that list, it shall make a request therefor to the Tribunal and inform the other party, and shall supply the information required by article 72. The witness or expert may be called either if the other party raises no objection or, in the event of objection, if the Tribunal so authorizes after hearing the other party.

2. The Tribunal may, at the request of a party or *proprio motu*, decide that a witness or expert be examined otherwise than before the Tribunal itself. The President of the Tribunal shall take the necessary steps to implement such a decision.

Article 79

Unless on account of special circumstances the Tribunal decides on a different form of words,

(a) every witness shall make the following solemn declaration before giving any evidence:

> "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth";

(b) every expert shall make the following solemn declaration before making any statement:

> "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief".

Article 80

Witnesses and experts shall, under the control of the President of the Tribunal, be examined by the agents, counsel or advocates of the parties starting with the party calling the witness or expert. Questions may be put to them by the President of the Tribunal and by the judges. Before testifying, witnesses and experts other than those appointed under article 289 of the Convention shall remain out of court.

Article 81

The Tribunal may at any time decide, at the request of a party or *proprio motu*, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Tribunal may decide upon after ascertaining the views of the parties. The necessary arrangements shall be made in accordance with article 52.

Article 82

1. If the Tribunal considers it necessary to arrange for an inquiry or an expert opinion, it shall, after hearing the parties, issue an order to this effect, defining the subject of the inquiry or expert opinion, stating the number and mode of appointment of the persons to hold the inquiry or of the experts and laying down the procedure to be followed. Where appropriate, the Tribunal shall require persons appointed to carry out an inquiry, or to give an expert opinion, to make a solemn declaration.

2. Every report or record of an inquiry and every expert opinion shall be communicated to the parties, which shall be given the opportunity of commenting upon it.

Article 83

Witnesses and experts who appear at the instance of the Tribunal under article 77, paragraph 2, and persons appointed by the Tribunal under article 82, paragraph 1, to carry out an inquiry or to give an expert opinion, shall, where appropriate, be paid out of the funds of the Tribunal.

Article 84

1. The Tribunal may, at any time prior to the closure of the oral proceedings, at the request of a party or *proprio motu,* request an appropriate intergovernmental organization to furnish information relevant to a case before it. The Tribunal, after consulting the chief administrative officer of the organization concerned, shall decide whether such information shall be presented to it orally or in writing and fix the time-limits for its presentation.

2. When such an intergovernmental organization sees fit to furnish, on its own initiative, information relevant to a case before the Tribunal, it shall do so in the form of a memorial to be filed in the Registry before the closure of the written proceedings. The Tribunal may require such information to be supplemented, either orally or in writing, in the form of answers to any questions which it may see fit to formulate, and also authorize the parties to comment, either orally or in writing, on the information thus furnished.

3. Whenever the construction of the constituent instrument of such an intergovernmental organization or of an international convention adopted thereunder is in question in a case before the Tribunal, the Registrar shall, on the instructions of the Tribunal, or of the President if the Tribunal is not sitting, so notify the intergovernmental organization concerned and shall communicate to it copies of all the written proceedings. The Tribunal, or the President if the Tribunal is not sitting, may, as from the date on which the Registrar has communicated copies of the written proceedings and after consulting the chief administrative officer of the intergovernmental organization concerned, fix a time-limit within which the organization may submit to the Tribunal its observations in writing. These observations shall be communicated to the parties and may be discussed by them and by the representative of the said organization during the oral proceedings.

4. In the foregoing paragraphs, “intergovernmental organization” means an intergovernmental organization other than any organization which is a party or intervenes in the case concerned.

Article 85

1. Unless the Tribunal decides otherwise, all speeches and statements made and evidence given at the hearing in one of the official languages of the Tribunal shall be interpreted into the other official language. If they are made or given in any other language, they shall be interpreted into the two official languages of the Tribunal.

2. Whenever a language other than an official language is used, the necessary arrangements for interpretation into one of the official languages shall be made by the party concerned. The Registrar shall make arrangements for the verification of the interpretation provided by a party at the expense of that party. In the case of witnesses or experts who appear at the instance of the Tribunal, arrangements for interpretation shall be made by the Registrar.

3. A party on behalf of which speeches or statements are to be made, or evidence is to be given, in a language which is not one of the official languages of the Tribunal shall so notify the Registrar in sufficient time for the necessary arrangements to be made, including verification.

4. Before entering upon their duties in the case, interpreters provided by a party shall make the following solemn declaration:

> “I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete”.

Article 86

1. Minutes shall be made of each hearing. For this purpose, a verbatim record shall be made by the Registrar of every hearing, in the official language or languages of the Tribunal used during the hearing. When another language is used, the verbatim record shall be prepared in one of the official languages of the Tribunal.

2. In order to prepare such a verbatim record, the party on behalf of which speeches or statements are made in a language which is not one of the official languages shall supply to the Registry in advance a text thereof in one of the official languages.

3. The transcript of the verbatim record shall be preceded by the names of the judges present, and those of the agents, counsel and advocates of the parties.

4. Copies of the transcript shall be circulated to the judges sitting in the case and to the parties. The latter may, under the supervision of the Tribunal, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the meaning and scope thereof. The judges may likewise make corrections in the transcript of anything they have said.

5. Witnesses and experts shall be shown that part of the transcript which relates to the evidence given or the statements made by them, and may correct it in like manner as the parties.

6. One certified copy of the corrected transcript, signed by the President of the Tribunal and the Registrar, shall constitute the authentic minutes of the hearing. The minutes of public hearings shall be printed and published by the Tribunal.

Article 87

Any written reply by a party to a question put under article 76 or any evidence or explanation supplied by a party under article 77 received by the Tribunal after the closure of the oral proceedings shall be communicated to the other party, which shall be given the opportunity of commenting upon it. The oral proceedings may be reopened for that purpose, if necessary.

Article 88

1. When, subject to the control of the Tribunal, the agents, counsel and advocates have completed their presentation of the case, the President of the Tribunal shall declare the oral proceedings closed. The agents shall remain at the disposal of the Tribunal.

2. The Tribunal shall withdraw to consider the judgment.

Section C. Incidental proceedings

Subsection 1. Provisional measures

Article 89

1. A party may submit a request for the prescription of provisional measures under article 290, paragraph 1, of the Convention at any time during the course of the proceedings in a dispute submitted to the Tribunal.

2. Pending the constitution of an arbitral tribunal to which a dispute is being submitted, a party may submit a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention:

(a) at any time if the parties have so agreed;

(b) at any time after two weeks from the notification to the other party of a request for provisional measures if the parties have not agreed that such measures may be prescribed by another court or tribunal.

3. The request shall be in writing and specify the measures requested, the reasons therefor and the possible consequences, if it is not granted, for the preservation of the respective rights of the parties or for the prevention of serious harm to the marine environment.

4. A request for the prescription of provisional measures under article 290, paragraph 5, of the Convention shall also indicate the legal grounds upon which the arbitral tribunal which is to be constituted would have jurisdiction and the urgency of the situation. A certified copy of the notification or of any other document instituting the proceedings before the arbitral tribunal shall be annexed to the request.

5. When a request for provisional measures has been made, the Tribunal may prescribe measures different in whole or in part from those requested and indicate the parties which are to take or to comply with each measure.

Article 90

1. Subject to article 112, paragraph 1, a request for the prescription of provisional measures has priority over all other proceedings before the Tribunal.

2. The Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date for a hearing.

3. The Tribunal shall take into account any observations that may be presented to it by a party before the closure of the hearing.

4. Pending the meeting of the Tribunal, the President of the Tribunal may call upon the parties to act in such a way as will enable any order the Tribunal may make on the request for provisional measures to have its appropriate effects.

Article 91

1. If the President of the Tribunal ascertains that at the date fixed for the hearing referred to in article 90, paragraph 2, a sufficient number of Members will not be available to constitute a quorum, the Chamber of Summary Procedure shall be convened to carry out the functions of the Tribunal with respect to the prescription of provisional measures.

2. The Tribunal shall review or revise provisional measures prescribed by the Chamber of Summary Procedure at the written request of a party within 15 days of the prescription of the measures. The Tribunal may also at any time decide *proprio motu* to review or revise the measures.

Article 92

The rejection of a request for the prescription of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts.

Article 93

A party may request the modification or revocation of provisional measures. The request shall be submitted in writing and shall specify the change in, or disappearance of, the circumstances considered to be relevant. Before taking any decision on the request, the Tribunal shall afford the parties an opportunity of presenting their observations on the subject.

Article 94

Any provisional measures prescribed by the Tribunal or any modification or revocation thereof shall forthwith be notified to the parties and to such other States Parties as the Tribunal considers appropriate in each case.

Article 95

1. Each party shall inform the Tribunal as soon as possible as to its compliance with any provisional measures the Tribunal has prescribed. In particular, each party shall submit an initial report upon the steps it has taken or proposes to take in order to ensure prompt compliance with the measures prescribed.

2. The Tribunal may request further information from the parties on any matter connected with the implementation of any provisional measures it has prescribed.

Subsection 2. Preliminary proceedings

Article 96

1. When an application is made in respect of a dispute referred to in article 297 of the Convention, the Tribunal shall determine at the request of the respondent or may determine *proprio motu*, in accordance with article 294 of the Convention, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded.

2. The Registrar, when transmitting an application to the respondent under article 54, paragraph 4, shall notify the respondent of the time-limit fixed by the President of the Tribunal for requesting a determination under article 294 of the Convention.

3. The Tribunal may also decide, within two months from the date of an application, to exercise *proprio motu* its power under article 294, paragraph 1, of the Convention.

4. The request by the respondent for a determination under article 294 of the Convention shall be in writing and shall indicate the grounds for a determination by the Tribunal that:

(a) the application is made in respect of a dispute referred to in article 297 of the Convention; and

(b) the claim constitutes an abuse of legal process or is *prima facie* unfounded.

5. Upon receipt of such a request or *proprio motu*, the Tribunal, or the President if the Tribunal is not sitting, shall fix a time-limit not exceeding 60 days within which the parties may present their written observations and submissions. The proceedings on the merits shall be suspended.

6. Unless the Tribunal decides otherwise, the further proceedings shall be oral.

7. The written observations and submissions referred to in paragraph 5, and the statements and evidence presented at the hearings contemplated by paragraph 6, shall be confined to those matters which are relevant to the determination of whether the claim constitutes an abuse of legal process or is *prima facie* unfounded, and of whether the application is made in respect of a dispute referred to in article 297 of the Convention. The Tribunal may, however, request the parties to argue all questions of law and fact, and to adduce all evidence, bearing on the issue.

8. The Tribunal shall make its determination in the form of a judgment.

Subsection 3. Preliminary objections

Article 97

1. Any objection to the jurisdiction of the Tribunal or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing within 90 days from the institution of proceedings.

2. The preliminary objection shall set out the facts and the law on which the objection is based, as well as the submissions.

3. Upon receipt by the Registry of a preliminary objection, the proceedings on the merits shall be suspended and the Tribunal, or the President if the Tribunal is not sitting, shall fix a time-limit not exceeding 60 days within which the other party may present its written observations and submissions. It shall fix a further time-limit not exceeding 60 days from the receipt of such observations and submissions within which the objecting party may present its written observations and submissions in reply. Copies of documents in support shall be annexed to such statements and evidence which it is proposed to produce shall be mentioned.

4. Unless the Tribunal decides otherwise, the further proceedings shall be oral.

5. The written observations and submissions referred to in paragraph 3, and the statements and evidence presented at the hearings contemplated by paragraph 4, shall be confined to those matters which are relevant to the objection. Whenever necessary, however, the Tribunal may request the parties to argue all questions of law and fact and to adduce all evidence bearing on the issue.

6. The Tribunal shall give its decision in the form of a judgment, by which it shall uphold the objection or reject it or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character. If the Tribunal rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings.

7. The Tribunal shall give effect to any agreement between the parties that an objection submitted under paragraph 1 be heard and determined within the framework of the merits.

Subsection 4. Counter-claims

Article 98

1. A party may present a counter-claim provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Tribunal.

2. A counter-claim shall be made in the counter-memorial of the party presenting it and shall appear as part of the submissions of that party.

3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Tribunal shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings.

Subsection 5. Intervention

Article 99

1. An application for permission to intervene under the terms of article 31 of the Statute shall be filed not later than 30 days after the counter-memorial becomes available under article 67, paragraph 1, of these Rules. In exceptional circumstances, an application submitted at a later stage may however be admitted.

2. The application shall be signed in the manner provided for in article 54, paragraph 3, and state the name and address of an agent. It shall specify the case to which it relates and shall set out:

(a) the interest of a legal nature which the State Party applying to intervene considers may be affected by the decision in that case;

(b) the precise object of the intervention.

3. Permission to intervene under the terms of article 31 of the Statute may be granted irrespective of the choice made by the applicant under article 287 of the Convention.

4. The application shall contain a list of the documents in support, copies of which documents shall be annexed.

Article 100

1. A State Party or an entity other than a State Party referred to in article 32, paragraphs 1 and 2, of the Statute which desires to avail itself of the right of intervention conferred upon it by article 32, paragraph 3, of the Statute shall file a declaration to that effect. The declaration shall be filed not later than 30 days after the counter-memorial becomes available under article 67, paragraph 1, of these Rules. In exceptional circumstances, a declaration submitted at a later stage may, however, be admitted.

2. The declaration shall be signed in the manner provided for in article 54, paragraph 3, and state the name and address of an agent. It shall specify the case to which it relates and shall:

(a) identify the particular provisions of the Convention or of the international agreement the interpretation or application of which the declaring party considers to be in question;

(b) set out the interpretation or application of those provisions for which it contends;

(c) list the documents in support, copies of which documents shall be annexed.

Article 101

1. Certified copies of the application for permission to intervene under article 31 of the Statute, or of the declaration of intervention under article 32 of the Statute, shall be communicated forthwith to the parties to the case, which shall be invited to furnish their written observations within a time-limit to be fixed by the Tribunal or by the President if the Tribunal is not sitting.

2. The Registrar shall also transmit copies to: (a) States Parties; (b) any other parties which have to be notified under article 32, paragraph 2, of the Statute; (c) the Secretary-General of the United Nations; (d) the Secretary-General of the Authority when the proceedings are before the Seabed Disputes Chamber.

Article 102

1. The Tribunal shall decide whether an application for permission to intervene under article 31 of the Statute should be granted or whether an intervention under article 32 of the Statute is admissible as a matter of priority unless in view of the circumstances of the case the Tribunal determines otherwise.

2. If, within the time-limit fixed under article 101, an objection is filed to an application for permission to intervene, or to the admissibility of a declaration of intervention, the Tribunal shall hear the State Party or entity other than a State Party seeking to intervene and the parties before deciding.

Article 103

1. If an application for permission to intervene under article 31 of the Statute is granted, the intervening State Party shall be supplied with copies of the pleadings and documents annexed and shall be entitled to submit a written statement within a time-limit to be fixed by the Tribunal. A further time-limit shall be fixed within which the parties may, if they so desire, furnish their written observations on that statement prior to the oral proceedings. If the Tribunal is not sitting, these time-limits shall be fixed by the President.

2. The time-limits fixed according to paragraph 1 shall, so far as possible, coincide with those already fixed for the pleadings in the case.

3. The intervening State Party shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.

4. The intervening State Party shall not be entitled to choose a judge *ad hoc* or to object to an agreement to discontinue the proceedings under article 105, paragraph 1.

Article 104

1. If an intervention under article 32 of the Statute is admitted, the intervenor shall be supplied with copies of the pleadings and documents annexed and shall be entitled, within a time-limit to be fixed by the Tribunal, or the President if the Tribunal is not sitting, to submit its written observations on the subject-matter of the intervention.

2. These observations shall be communicated to the parties and to any other State Party or entity other than a State Party admitted to intervene. The intervenor shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.

3. The intervenor shall not be entitled to choose a judge *ad hoc* or to object to an agreement to discontinue the proceedings under article 105, paragraph 1.

Subsection 6. Discontinuance

Article 105

1. If at any time before the final judgment on the merits has been delivered the parties, either jointly or separately, notify the Tribunal in writing that they have agreed to discontinue the proceedings, the Tribunal shall make an order recording the discontinuance and directing the Registrar to remove the case from the List of cases.

2. If the parties have agreed to discontinue the proceedings in consequence of having reached a settlement of the dispute and if they so desire, the Tribunal shall record this fact in the order for the removal of the case from the List, or indicate in, or annex to, the order the terms of the settlement.

3. If the Tribunal is not sitting, any order under this article may be made by the President.

Article 106

1. If, in the course of proceedings instituted by means of an application, the applicant informs the Tribunal in writing that it is not going on with the proceedings, and if, at the date on which this communication is received by the Registry, the respondent has not yet taken any step in the proceedings, the Tribunal shall make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the List of cases. A copy of this order shall be sent by the Registrar to the respondent.

2. If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Tribunal shall fix a time-limit within which the respondent may state whether it opposes the discontinuance of the proceedings. If no objection is made to the discontinuance before the expiration of the time-limit, acquiescence will be presumed and the Tribunal shall make an order recording the discontinuance of the proceedings and directing the Registrar to remove the case from the List of cases. If objection is made, the proceedings shall continue.

3. If the Tribunal is not sitting, its powers under this article may be exercised by the President.

Section D. Proceedings before special chambers

Article 107

Proceedings before the special chambers mentioned in article 15 of the Statute shall, subject to the provisions of the Convention, the Statute and these Rules relating specifically to the special chambers, be governed by the Rules applicable in contentious cases before the Tribunal.

Article 108

1. When it is desired that a case should be dealt with by one of the chambers which has been formed in accordance with article 15, paragraph 1 or 3, of the Statute, a request to this effect shall either be made in the document instituting the proceedings or accompany it. Effect shall be given to the request if the parties are in agreement.

2. Upon receipt by the Registry of this request, the President of the Tribunal shall communicate it to the members of the chamber concerned.

3. Effect shall be given to a request that a case be brought before a chamber to be formed in accordance with article 15, paragraph 2, of the Statute as soon as the chamber has been formed in accordance with article 30 of these Rules.

4. The President of the Tribunal shall convene the chamber at the earliest date compatible with the requirements of the procedure.

Article 109

1. Written proceedings in a case before a chamber shall consist of a single pleading by each party. The time-limits concerning the filing of written pleadings shall be fixed by the chamber, or its President if the chamber is not sitting.

2. The chamber may authorize or direct the filing of further pleadings if the parties are so agreed, or if the chamber decides, *proprio motu* or at the request of one of the parties, that such pleadings are necessary.

3. Oral proceedings shall take place unless the parties agree to dispense with them and the chamber consents. Even when no oral proceedings take place, the chamber may call upon the parties to supply information or furnish explanations orally.

Section E. Prompt release of vessels and crews

Article 110

1. An application for the release of a vessel or its crew from detention may be made in accordance with article 292 of the Convention by or on behalf of the flag State of the vessel.

2. A State Party may at any time notify the Tribunal of:

(a) the State authorities competent to authorize persons to make applications on its behalf under article 292 of the Convention;

(b) the name and address of any person who is authorized to make an application on its behalf;

(c) the office designated to receive notice of an application for the release of a vessel or its crew and the most expeditious means for delivery of documents to that office;

(d) any clarification, modification or withdrawal of such notification.

3. An application on behalf of a flag State shall be accompanied by an authorization under paragraph 2, if such authorization has not been previously submitted to the Tribunal, as well as by documents stating that the person submitting the application is the person named in the authorization. It shall also contain a certification that a copy of the application and all supporting documentation has been delivered to the flag State.

Article 111

1. The application shall contain a succinct statement of the facts and legal grounds upon which the application is based.

2. The statement of facts shall:

(a) specify the time and place of detention of the vessel and the present location of the vessel and crew, if known;

(b) contain relevant information concerning the vessel and crew including, where appropriate, the name, flag and the port or place of registration of the vessel and its tonnage, cargo capacity and data relevant to the determination of its value, the name and address of the vessel owner and operator and particulars regarding its crew;

(c) specify the amount, nature and terms of the bond or other financial security that may have been imposed by the detaining State and the extent to which such requirements have been complied with;

(d) contain any further information the applicant considers relevant to the determination of the amount of a reasonable bond or other financial security and to any other issue in the proceedings.

3. Supporting documents shall be annexed to the application.

4. A certified copy of the application shall forthwith be transmitted by the Registrar to the detaining State, which may submit a statement in response with supporting documents annexed, to be filed as soon as possible but not later than 96 hours before the hearing referred to in article 112, paragraph 3.

5. The Tribunal may, at any time, require further information to be provided in a supplementary statement.

6. The further proceedings relating to the application shall be oral.

Article 112

1. The Tribunal shall give priority to applications for release of vessels or crews over all other proceedings before the Tribunal. However, if the Tribunal is seized of an application for release of a vessel or its crew and of a request for the prescription of provisional measures, it shall take the necessary measures to ensure that both the application and the request are dealt with without delay.

2. If the applicant has so requested in the application, the application shall be dealt with by the Chamber of Summary Procedure, provided that, within five days of the receipt of notice of the application, the detaining State notifies the Tribunal that it concurs with the request.

3. The Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date, within a period of 15 days commencing with the first working day following the date on which the application is received, for a hearing at which each of the parties shall be accorded, unless otherwise decided, one day to present its evidence and arguments.

4. The decision of the Tribunal shall be in the form of a judgment. The judgment shall be adopted as soon as possible and shall be read at a public sitting of the Tribunal to be held not later than 14 days after the closure of the hearing. The parties shall be notified of the date of the sitting.

Article 113

1. The Tribunal shall in its judgment determine in each case in accordance with article 292 of the Convention whether or not the allegation made by the applicant that the detaining State has not complied with a provision of the Convention for the prompt release of the vessel or the crew upon the posting of a reasonable bond or other financial security is well-founded.

2. If the Tribunal decides that the allegation is well-founded, it shall determine the amount, nature and form of the bond or financial security to be posted for the release of the vessel or the crew.

3. Unless the parties agree otherwise, the Tribunal shall determine whether the bond or other financial security shall be posted with the Registrar or with the detaining State.

Article 114

1. If the bond or other financial security has been posted with the Registrar, the detaining State shall be promptly notified thereof.

2. The Registrar shall endorse or transmit the bond or other financial security to the detaining State to the extent that it is required to satisfy the final judgment, award or decision of the competent authority of the detaining State.

3. The bond or other financial security shall be endorsed or transmitted, to the extent that it is not required to satisfy the final judgment, award or decision, to the party at whose request the bond or other financial security is issued.

Section F. Proceedings in contentious cases before the Seabed Disputes Chamber

Article 115

Proceedings in contentious cases before the Seabed Disputes Chamber and its *ad hoc* chambers shall, subject to the provisions of the Convention, the Statute and these Rules relating specifically to the Seabed Disputes Chamber and its *ad hoc* chambers, be governed by the Rules applicable in contentious cases before the Tribunal.

Article 116

Articles 117 to 121 apply to proceedings in all disputes before the Chamber with the exception of disputes exclusively between States Parties and between States Parties and the Authority.

Article 117

When proceedings before the Chamber are instituted by means of an application, the application shall indicate:

(a) the name of the applicant and, where the applicant is a natural or juridical person, the permanent residence or address or registered office address thereof;

(b) the name of the respondent and, where the respondent is a natural or juridical person, the permanent residence or address or registered office address thereof;

(c) the sponsoring State, in any case where the applicant is a natural or juridical person or a state enterprise;

(d) the sponsoring State of the respondent, in any case where the party against which the claim is brought is a natural or juridical person or state enterprise;

(e) an address for service at the seat of the Tribunal;

(f) the subject of the dispute and the legal grounds on which jurisdiction is said to be based; the precise nature of the claim, together with a statement of the facts and legal grounds on which the claim is based;

(g) the decision or measure sought by the applicant;

(h) the evidence on which the application is founded.

Article 118

1. The application shall be served on the respondent. The application shall also be served on the sponsoring State in any case where the applicant or respondent is a natural or juridical person or a state enterprise.

2. Within two months after service of the application, the respondent shall lodge a defence, stating:

(a) the name of the respondent and, where the respondent is a natural or juridical person, the permanent residence or address or registered office address thereof;

(b) an address for service at the seat of the Tribunal;

(c) the matters in issue between the parties and the facts and legal grounds on which the defence is based;

(d) the decision or measure sought by the respondent;

(e) the evidence on which the defence is founded.

3. At the request of the respondent, the President of the Chamber may extend the time-limit referred to in paragraph 2, if satisfied that there is adequate justification for the request.

Article 119

1. Within two months after service of the application in accordance with article 118, paragraph 1, where the respondent is a State Party in a case brought by a natural or juridical person sponsored by another State Party in a dispute referred to in article 187, subparagraph (c), of the Convention, the respondent State may make an application in accordance with article 190, paragraph 2, of the Convention for the sponsoring State of the applicant to appear in the proceedings on behalf of the applicant.

2. Notice of an application under paragraph 1 shall be communicated to the applicant and its sponsoring State. If, within a time-limit fixed by the President of the Chamber, the sponsoring State does not indicate it will appear in the proceedings on behalf of the applicant, the respondent State may designate a juridical person of its nationality to represent it.

3. Within two months after service of the application in accordance with article 118, paragraph 1, on the sponsoring State of a party, such State may give written notice of its intention to submit written or oral statements in accordance with article 190, paragraph 1, of the Convention.

4. Upon receipt of such a notice, the President of the Chamber shall fix the time-limit within which the sponsoring State may submit its written statements. The sponsoring State shall be notified of such time-limit. It shall also be notified of the date of the hearing. The written statements shall be communicated to the parties and to any other sponsoring State of a party.

5. At the request of the respondent or a sponsoring State, the President of the Chamber may extend a time-limit referred to in this article, if satisfied that there is adequate justification for the request.

Article 120

1. When proceedings are brought before the Chamber by the notification of a special agreement, the notification shall indicate:

(a) the parties to the case and any sponsoring States of the parties;

(b) the subject of the dispute and the precise nature of the claims of the parties, together with a statement of the facts and legal grounds on which the claims are based;

(c) the decisions or measures sought by the parties;

(d) the evidence on which the claims are founded.

2. The notification shall also provide information regarding participation and appearance in the proceedings by sponsoring States Parties in accordance with article 190 of the Convention.

Article 121

1. The Chamber may authorize or direct the filing of further pleadings if the parties are so agreed or the Chamber decides, *proprio motu* or at the request of a party, that these pleadings are necessary.

2. The President of the Chamber shall fix the time-limits within which these pleadings are to be filed.

Article 122

Proceedings by the Council on behalf of the Authority under article 185, paragraph 2, of the Convention shall be instituted by means of an application in accordance with article 162, paragraph 2 (u), of the Convention. The application shall be accompanied by a certified copy of the decision or resolution of the Council upon which it is based and the full records of all discussions within the Authority on the matter.

Article 123

1. When a commercial arbitral tribunal, pursuant to article 188, paragraph 2, of the Convention, refers to the Chamber a question of interpretation of Part XI of the Convention and the annexes relating thereto upon which its decision depends, the document submitting the question to the Chamber shall contain a precise statement of the question and be accompanied by all relevant information and documents.

2. Upon receipt of the document, the President of the Chamber shall fix a time-limit not exceeding three months within which the parties to the proceedings before the arbitral tribunal and the States Parties may submit their written observations on the question. The parties to the proceedings and the States Parties shall be notified of the time-limit. The States Parties shall be informed of the contents of the submission.

3. The President of the Chamber shall fix a date for a hearing if, within one month from the expiration of the time-limit for submitting written observations, a party to the proceedings before the arbitral tribunal or a State Party gives written notice of its intention to submit oral observations.

4. The Chamber shall give its ruling in the form of a judgment.

Section G. Judgments, interpretation and revision

Subsection 1. Judgments

Article 124

1. When the Tribunal has completed its deliberations and adopted its judgment, the parties shall be notified of the date on which it will be read.

2. The judgment shall be read at a public sitting of the Tribunal and shall become binding on the parties on the day of the reading.

Article 125

1. The judgment, which shall state whether it is given by the Tribunal or by a chamber, shall contain:

(a) the date on which it is read;

(b) the names of the judges participating in it;

(c) the names of the parties;

(d) the names of the agents, counsel and advocates of the parties;

(e) the names of the experts, if any, appointed under article 289 of the Convention;

(f) a summary of the proceedings;

(g) the submissions of the parties;

(h) a statement of the facts;

(i) the reasons of law on which it is based;

(j) the operative provisions of the judgment;

(k) the decision, if any, in regard to costs;

(l) the number and names of the judges constituting the majority and those constituting the minority, on each operative provision;

(m) a statement as to the text of the judgment which is authoritative.

2. Any judge may attach a separate or dissenting opinion to the judgment; a judge may record concurrence or dissent without stating reasons in the form of a declaration. The same applies to orders.

3. One copy of the judgment, signed by the President and by the Registrar and sealed, shall be placed in the archives of the Tribunal and other copies shall be transmitted to each party. Copies shall be sent to: (a) States Parties; (b) the Secretary-General of the United Nations; (c) the Secretary-General of the Authority; (d) in a case submitted under an agreement other than the Convention, the parties to such agreement.

Subsection 2. Requests for the interpretation or revision of a judgment

Article 126

1. In the event of dispute as to the meaning or scope of a judgment, any party may make a request for its interpretation.

2. A request for the interpretation of a judgment may be made either by an application or by the notification of a special agreement to that effect between the parties; the precise point or points in dispute as to the meaning or scope of the judgment shall be indicated.

3. If the request for interpretation is made by an application, the requesting party's contentions shall be set out therein, and the other party shall be entitled to file written observations thereon within a time-limit fixed by the Tribunal or by the President if the Tribunal is not sitting.

4. Whether the request is made by an application or by notification of a special agreement, the Tribunal may, if necessary, afford the parties the opportunity of furnishing further written or oral explanations.

Article 127

1. A request for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Tribunal and also to the party requesting revision, always provided that such ignorance was not due to negligence. Such request must be made at the latest within six months of the discovery of the new fact and before the lapse of ten years from the date of the judgment.

2. The proceedings for revision shall be opened by a decision of the Tribunal in the form of a judgment expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

Article 128

1. A request for the revision of a judgment shall be made by an application containing the particulars necessary to show that the conditions specified in article 127, paragraph 1, are fulfilled. Any document in support of the application shall be annexed to it.

2. The other party shall be entitled to file written observations on the admissibility of the application within a time-limit fixed by the Tribunal or by the President if the Tribunal is not sitting. These observations shall be communicated to the party making the application.

3. The Tribunal, before giving its judgment on the admissibility of the application, may afford the parties a further opportunity of presenting their views thereon.

4. If the Tribunal decides to make the admission of the proceedings in revision conditional on previous compliance with the judgment, it shall make an order accordingly.

5. If the Tribunal finds that the application is admissible it shall fix time-limits for such further proceedings on the merits of the application as, after ascertaining the views of the parties, it considers necessary.

Article 129

1. If the judgment to be revised or to be interpreted was given by the Tribunal, the request for its revision or interpretation shall be dealt with by the Tribunal.

2. If the judgment was given by a chamber, the request for its revision or interpretation shall, if possible, be dealt with by that chamber. If that is not possible, the request shall be dealt with by a chamber composed in conformity with the relevant provisions of the Statute and these Rules. If, according to the Statute and these Rules, the composition of the chamber requires the approval of the parties which cannot be obtained within time-limits fixed by the Tribunal, the request shall be dealt with by the Tribunal.

3. The decision on a request for interpretation or revision of a judgment shall be given in the form of a judgment.

Section H. Advisory proceedings

Article 130

1. In the exercise of its functions relating to advisory opinions, the Seabed Disputes Chamber shall apply this section and be guided, to the extent to which it recognizes them to be applicable, by the provisions of the Statute and of these Rules applicable in contentious cases.

2. The Chamber shall consider whether the request for an advisory opinion relates to a legal question pending between two or more parties. When the Chamber so determines, article 17 of the Statute applies, as well as the provisions of these Rules concerning the application of that article.

Article 131

1. A request for an advisory opinion on a legal question arising within the scope of the activities of the Assembly or the Council of the Authority shall contain a precise statement of the question. It shall be accompanied by all documents likely to throw light upon the question.

2. The documents shall be transmitted to the Chamber at the same time as the request or as soon as possible thereafter in the number of copies required by the Registry.

Article 132

If the request for an advisory opinion states that the question necessitates an urgent answer the Chamber shall take all appropriate steps to accelerate the procedure.

Article 133

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States Parties.

2. The Chamber, or its President if the Chamber is not sitting, shall identify the intergovernmental organizations which are likely to be able to furnish information on the question. The Registrar shall give notice of the request to such organizations.

3. States Parties and the organizations referred to in paragraph 2 shall be invited to present written statements on the question within a time-limit fixed by the Chamber or its President if the Chamber is not sitting. Such statements shall be communicated to States Parties and organizations which have made written statements. The Chamber, or its President if the Chamber is not sitting, may fix a further time-limit within which such States Parties and organizations may present written statements on the statements made.

4. The Chamber, or its President if the Chamber is not sitting, shall decide whether oral proceedings shall be held and, if so, fix the date for the opening of such proceedings. States Parties and the organizations referred to in paragraph 2 shall be invited to make oral statements at the proceedings.

Article 134

The written statements and documents annexed shall be made accessible to the public as soon as possible after they have been presented to the Chamber.

Article 135

1. When the Chamber has completed its deliberations and adopted its advisory opinion, the opinion shall be read at a public sitting of the Chamber.

2. The advisory opinion shall contain:

(a) the date on which it is delivered;

(b) the names of the judges participating in it;

(c) the question or questions on which the advisory opinion of the Chamber is requested;

(d) a summary of the proceedings;

(e) a statement of the facts;

(f) the reasons of law on which it is based;

(g) the reply to the question or questions put to the Chamber;

(h) the number and names of the judges constituting the majority and those constituting the minority, on each question put to the Chamber;

(i) a statement as to the text of the opinion which is authoritative.

3. Any judge may attach a separate or dissenting opinion to the advisory opinion of the Chamber; a judge may record concurrence or dissent without stating reasons in the form of a declaration.

Article 136

The Registrar shall inform the Secretary-General of the Authority as to the date and the time fixed for the public sitting to be held for the reading of the opinion. He shall also inform the States Parties and the intergovernmental organizations immediately concerned.

Article 137

One copy of the advisory opinion, signed by the President and by the Registrar and sealed, shall be placed in the archives of the Tribunal, others shall be sent to the Secretary-General of the Authority and to the Secretary-General of the United Nations. Copies shall be sent to the States Parties and the intergovernmental organizations immediately concerned.

Article 138

1. The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.

2. A request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal.

3. The Tribunal shall apply *mutatis mutandis* articles 130 to 137.

(*Signed*)
THOMAS A. MENSAH,
President

(*Signed*)
GRITAKUMAR E. CHITTY,
Registrar

FIRST SCHEDULE

Rule 2

CODE OF ETHICS

Application

1.—(1) This Code of Ethics applies to every registered foreign lawyer.

(2) This Code of Ethics applies, with the necessary modifications, to —

(*a*) every foreign lawyer who is granted restricted registration; and

(*b*) every registered law expert,

as it applies to a registered foreign lawyer.

[S 696/2018 wef 01/11/2018]

Definitions

2. In this Code of Ethics, unless the context otherwise requires —

"client" means either of the following persons:

(*a*) any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ, a registered foreign lawyer, a foreign lawyer who is granted restricted registration, or a registered law expert;

(*b*) any person who is or may be liable to pay the costs of any of the following persons:

(i) a registered foreign lawyer;

(ii) a foreign lawyer who is granted restricted registration;

(iii) a registered law expert;

(iv) the law practice of a registered foreign lawyer or a foreign lawyer who is granted restricted registration;

(v) the law practice, or any other institution or organisation, that employs or is affiliated with a registered law expert;

[S 696/2018 wef 01/11/2018]

"Court" means —

(*a*) the Singapore International Commercial Court constituted as a division of the High Court under section 18A of the Supreme Court of Judicature Act (Cap. 322); or

FIRST SCHEDULE — *continued*

(*b*) the Court of Appeal, when constituted to hear any relevant appeal;

"registered foreign lawyer" means a foreign lawyer who is granted full registration;

[S 696/2018 wef 01/11/2018]

"witness" includes an expert witness.

Duties to Court and client

3. Every registered foreign lawyer —

(*a*) has a duty of loyalty to each client whom the registered foreign lawyer represents; and

(*b*) has an obligation to present the client's case to the Court in a manner which is consistent with the interests of justice and the ethical responsibilities of the registered foreign lawyer.

Party representation

4. A registered foreign lawyer who represents a client in any relevant proceedings or relevant appeal —

(*a*) must, at the earliest opportunity, inform the Court and every other party to the proceedings or appeal of the identity of the registered foreign lawyer and that the registered foreign lawyer represents the client; and

(*b*) must promptly inform the Court and every other party to the proceedings or appeal of any change in such representation.

Acting when material witness

5.—(1) Where after a registered foreign lawyer acts for a client in a matter, it becomes known or apparent to the registered foreign lawyer that the registered foreign lawyer will be required to give evidence material to the determination of any contested issue before the Court in that matter —

(*a*) the registered foreign lawyer must cease to act in that matter; but

(*b*) the law practice of which the registered foreign lawyer is a member, or any other member of that law practice, may continue to represent the client, unless doing so would prejudice the administration of justice.

(2) Where before a registered foreign lawyer acts for a party in a matter, it becomes known or apparent to the registered foreign lawyer that the registered foreign lawyer will be required to give evidence material to the determination of any contested issue before the Court in that matter —

(*a*) the registered foreign lawyer must not act for any party in that matter; but

(*b*) the law practice of which the registered foreign lawyer is a member, or any other member of that law practice, may represent a party in that matter, unless doing so would prejudice the administration of justice.

Relationship with Court or client

6.—(1) A registered foreign lawyer must not appear before the Court in a matter where —

(*a*) by reason of the registered foreign lawyer's relationship with a judge of the Court or any individual sitting with the Court, the impartial administration of justice may appear to be prejudiced; or

(*b*) by reason of the registered foreign lawyer's relationship with a client, it will be difficult for the registered foreign lawyer to maintain the professional independence of the registered foreign lawyer.

(2) Where sub-paragraph (*a*) or (*b*) of sub-paragraph (1) applies, the registered foreign lawyer must notify the Court of the relationship referred to in the applicable sub-paragraph, and cease to participate in the whole, or such part, of the matter as the Court may direct.

Communication with Court

7.—(1) Subject to sub-paragraph (2), a registered foreign lawyer must not have any ex parte communication with the Court, or with a judge of the Court, concerning any relevant proceedings or relevant appeal —

(*a*) which are or is, or will be, before the Court; and

(*b*) in respect of which the registered foreign lawyer represents any party or any other interested person.

(2) A registered foreign lawyer may have ex parte communications with the Court, in relation to any ex parte application for relief, in accordance with any practice directions issued in respect of ex parte applications.

(3) If, despite paragraph (1), a registered foreign lawyer has any ex parte communication with the Court, or with a judge of the Court, regarding any issue in any relevant proceedings or relevant appeal which are or is, or will be, before the Court, the registered foreign lawyer must inform every other party to the proceedings or appeal of the communication, and the circumstances of the communication, as soon as possible.

FIRST SCHEDULE — *continued*

Submissions to Court

8.—(1) A registered foreign lawyer must not knowingly make any false submission of fact or law to the Court.

(2) If a registered foreign lawyer learns that the registered foreign lawyer has made a false submission of fact or law to the Court, the registered foreign lawyer must promptly correct the submission, unless the registered foreign lawyer is precluded from doing so by any obligation to maintain confidentiality or any privilege as between the registered foreign lawyer and a client.

(3) A registered foreign lawyer must not in any way knowingly mislead or attempt to mislead —

(*a*) the Court;

(*b*) any solicitor, any other registered foreign lawyer or any witness in any relevant proceedings or relevant appeal; or

(*c*) any officer of, or any other person or organisation involved in or associated with, the Court.

Evidence

9.—(1) A registered foreign lawyer must not present any evidence which the registered foreign lawyer knows to be false.

(2) Where a registered foreign lawyer is or becomes aware that a client will give, or has given, false evidence to the Court —

(*a*) the registered foreign lawyer may cease to act for the client; or

(*b*) if the registered foreign lawyer continues to act for the client, the registered foreign lawyer must conduct the case in a manner that does not perpetuate the falsehood.

(3) Where a registered foreign lawyer is or becomes aware that a witness for a client will give, or has given, false evidence to the Court —

(*a*) the registered foreign lawyer must promptly advise the client of —

(i) the need to take such remedial measures as may be appropriate in the circumstances; and

(ii) the consequences of failing to take such measures;

(*b*) unless the registered foreign lawyer is precluded from doing so by any obligation to maintain confidentiality or any privilege as between the registered foreign lawyer and the client, the registered foreign lawyer —

(i) must promptly take such remedial measures as may be appropriate in the circumstances; or

(ii) may cease to act for the client, if the circumstances so warrant.

(4) For the purposes of sub-paragraph (3), the appropriate remedial measures may include one or more of the following measures:

(*a*) advising the witness to testify truthfully;

(*b*) taking reasonable steps to deter the witness from giving false evidence;

(*c*) urging the witness to correct or withdraw the false evidence;

(*d*) correcting or withdrawing the false evidence.

Information exchange and disclosure

10.—(1) A registered foreign lawyer must, as soon as practicable, inform a client of the need to preserve, so far as reasonably possible, every document which is potentially relevant to any relevant proceedings or relevant appeal to which the client is a party.

(2) The registered foreign lawyer must not make any application or request for the discovery or production of any document, or raise any objection to any such application or request, for an improper purpose, such as to harass or to cause delay.

(3) The registered foreign lawyer must explain to the client the need to produce, and the potential consequences of failing to produce, any document which the client has undertaken, or has been ordered, to produce.

(4) The registered foreign lawyer must advise the client to take, and must assist the client in taking, reasonable steps to ensure —

(*a*) that reasonable efforts have been made to search for each document that the client has undertaken, or has been ordered, to produce; and

(*b*) that the client produces —

(i) every document which the client relies on;

(ii) every document which the client is requested to produce (not being a document which the client objects to producing, for instance, on the ground of privilege); and

(iii) every document which the client is ordered by the Court to produce.

(5) The registered foreign lawyer must not suppress or conceal, or advise a client to suppress or conceal, any document which has been requested for by any other

FIRST SCHEDULE — *continued*

party to the relevant proceedings or relevant appeal, or which the client has undertaken, or has been ordered, to produce.

(6) If, during the course of the relevant proceedings or relevant appeal, the registered foreign lawyer becomes aware of the existence of any document which should have been but was not produced, the registered foreign lawyer must advise the client of the need to produce the document and of the consequences of failing to do so.

(7) In this paragraph, "document" includes an electronic document that would, unless preserved under sub-paragraph (1), be deleted in accordance with a document retention policy or in the ordinary course of business.

Approaching of potential witness

11.—(1) Before seeking any information from a potential witness, a registered foreign lawyer must inform the potential witness of —

(*a*) the identity of the registered foreign lawyer;

(*b*) the identity of the party whom the registered foreign lawyer represents; and

(*c*) the reason for which the information is sought.

(2) The registered foreign lawyer must inform the potential witness that the potential witness has the right —

(*a*) to inform or instruct the potential witness' own legal counsel about the communication between the registered foreign lawyer and the potential witness; and

(*b*) to discontinue that communication.

Preparation of witness' affidavit, etc.

12.—(1) A registered foreign lawyer may —

(*a*) assist any witness in the preparation of the witness' affidavit or witness statement; and

(*b*) assist any expert witness in the preparation of the witness' expert report.

(2) A registered foreign lawyer must ensure that —

(*a*) any affidavit or witness statement prepared with the assistance of the registered foreign lawyer and submitted by a witness reflects the witness' own account of the relevant facts, events and circumstances; and

(*b*) any expert report prepared with the assistance of the registered foreign lawyer and submitted by an expert witness reflects the expert witness's own analysis and opinion.

(3) A registered foreign lawyer must not invite or encourage any witness (including an expert witness) to give false evidence.

Communication with witness

13.—(1) Subject to sub-paragraph (2), a registered foreign lawyer may meet or interact with any witness in order to discuss and prepare the witness' prospective testimony in any relevant proceedings.

(2) Except with the leave of the Court, a registered foreign lawyer must not interview a witness called on behalf of a client in any relevant proceedings before the Court (called in this sub-paragraph the relevant witness), or discuss with the relevant witness the evidence of the relevant witness or any other witness, while the relevant witness is under cross-examination in those proceedings.

Respect for Court and related responsibilities

14.—(1) A registered foreign lawyer must always be respectful to the Court.

(2) When participating in any relevant proceedings, a registered foreign lawyer must always be courteous to the Court and to every other person involved in those proceedings.

(3) When acting for a client in any relevant proceedings before the Court, a registered foreign lawyer —

(*a*) must not express the registered foreign lawyer's personal opinion of the client's conduct or allow the registered foreign lawyer's personal feelings to affect the registered foreign lawyer's duty to the Court;

(*b*) must not knowingly or recklessly advance any submission, opinion or proposition which the registered foreign lawyer knows, or ought reasonably to know, is contrary to the law;

(*c*) must disclose to the Court every relevant fact, item of evidence, item of information or other matter which the registered foreign lawyer is required by law to disclose to the Court in those proceedings; and

(*d*) must disclose to the Court every relevant legal authority (including every adverse legal authority), and every procedural irregularity, of which the registered foreign lawyer is aware.

(4) A registered foreign lawyer must honour the terms of any professional undertaking given to the Court, a solicitor, a person admitted under section 15 of the Act, any other registered foreign lawyer, a client or any other person.

FIRST SCHEDULE — *continued*

(5) A registered foreign lawyer must not give an undertaking to the Court, unless the registered foreign lawyer —

(*a*) believes that the undertaking is necessary; and

(*b*) is convinced (at the time the undertaking is given) that the registered foreign lawyer is able to honour the undertaking.

(6) A registered foreign lawyer must not publish, and must not take any step which may lead to the publication of, any material concerning any current relevant proceedings or relevant appeal, whether or not on behalf of a client, if such publication —

(*a*) amounts to contempt of the Court; or

(*b*) is calculated to interfere with the fair trial of the proceedings or the fair hearing of the appeal, or to prejudice the administration of justice.

Duty to rectify contravention of Code of Ethics

15. Where a registered foreign lawyer has unknowingly contravened any provision of this Code of Ethics, and the registered foreign lawyer subsequently becomes aware of the contravention, unless the registered foreign lawyer is precluded from doing so by any obligation to maintain confidentiality or any privilege as between the registered foreign lawyer and a client, the registered foreign lawyer must —

(*a*) disclose the contravention to the Court; and

(*b*) take reasonable steps to rectify the contravention.

Code of Ethics to prevail over foreign rules on ethics or professional conduct

16. Where a registered foreign lawyer acts in any relevant proceedings before the Court, the registered foreign lawyer must comply with the provisions of this Code of Ethics, despite any provision to the contrary in any rules of ethics or professional conduct to which the registered foreign lawyer is subject in any other state or territory in which the registered foreign lawyer is duly authorised or registered to practise law.

DISPUTE SETTLEMENT: RULES OF CONDUCT

WT/DSB/RC/1
(96-5267)
11 December 1996

Rules of conduct for the understanding on rules and procedures governing the settlement of disputes

I. Preamble back to top

Members,

Recalling that on 15 April 1994 in Marrakesh, Ministers welcomed the stronger and clearer legal framework they had adopted for the conduct of international trade, including a more effective and reliable dispute settlement mechanism;

Recognizing the importance of full adherence to the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and the principles for the management of disputes applied under Articles XXII and XXIII of GATT 1947, as further elaborated and modified by the DSU;

Affirming that the operation of the DSU would be strengthened by rules of conduct designed to maintain the integrity, impartiality and confidentiality of proceedings conducted under the DSU thereby enhancing confidence in the new dispute settlement mechanism;

Hereby establish the following Rules of Conduct.

II. Governing Principle back to top

1. Each person covered by these Rules (as defined in paragraph 1 of Section IV below and hereinafter called "covered person") shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies pursuant to the dispute settlement mechanism, so that through the observance of such standards of conduct the integrity and impartiality of that mechanism are preserved. These Rules shall in no way modify the rights and obligations of Members under the DSU nor the rules and procedures therein.

III. Observance of the Governing Principle back to top

1. To ensure the observance of the Governing Principle of these Rules, each covered person is expected (1) to adhere strictly to the provisions of the DSU; (2) to disclose the existence or development of any interest, relationship or matter that that person could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that person's independence or impartiality; and (3) to take due care in the performance of their duties to fulfil these expectations, including through avoidance of any direct or indirect conflicts of interest in respect of the subject matter of the proceedings.

2. Pursuant to the Governing Principle, each covered person, shall be independent and impartial, and shall maintain confidentiality. Moreover, such persons shall consider only issues raised in, and necessary to fulfil their responsibilities within, the dispute settlement proceeding and shall not delegate this responsibility to any other person. Such person shall not incur any obligation or accept any benefit that would in anyway interfere with, or which could give rise to, justifiable doubts as to the proper performance of that person's dispute settlement duties.

Notes:

1. These working procedures, as adopted by the TMB on 26 July 1995 (G/TMB/R/1), currently include, inter *alia*, the following language in paragraph 1.4: "In discharging their functions in accordance with paragraph 1.1 above, the TMB members and alternates shall undertake not to solicit, accept or act upon instructions from governments, nor to be influenced by any other organisations or undue extraneous factors. They shall disclose to the Chairman any information that they may consider likely to impede their capacity to discharge their functions on an *ad personam* basis. Should serious doubts arise during the deliberations of the TMB regarding the ability of a TMB member to act on an *ad personam* basis, they shall be communicated to the Chairman. The Chairman shall deal with the particular matter as necessary". back to text

2. Pending adoption of the Staff Regulations, members of the Secretariat shall make disclosures to the Director-General in accordance with the following draft provision to be included in the Staff Regulations: "When paragraph VI:4(c) of the Rules of Conduct for the DSU is applicable, members of the Secretariat would disclose to the Director-General of the WTO the information required in paragraph VI:2 of those Rules, as well as any information regarding their participation in earlier formal consideration of the specific measure at issue in a dispute under any provisions of the WTO Agreement, including through formal legal advice under Article 27.2 of the DSU, as well as any involvement with the dispute as an official of a WTO Member government or otherwise professionally, before having joined the Secretariat. The Director-General shall consider any such disclosures in deciding on the assignment of members of the Secretariat to assist in a dispute. When the Director-General, in the light of his

IV. Scope back to top

1. These Rules shall apply, as specified in the text, to each person serving: (a) on a panel; (b) on the Standing Appellate Body; (c) as an arbitrator pursuant to the provisions mentioned in Annex "1a"; or (d) as an expert participating in the dispute settlement mechanism pursuant to the provisions mentioned in Annex "1b". These Rules shall also apply, as specified in this text and the relevant provisions of the Staff Regulations, to those members of the Secretariat called upon to assist the panel in accordance with Article 27.1 of the DSU or to assist in formal arbitration proceedings pursuant to Annex "1a"; to the Chairman of the Textiles Monitoring Body (hereinafter called "TMB") and other members of the TMB Secretariat called upon to assist the TMB in formulating recommendations, findings or observations pursuant to the WTO Agreement on Textiles and Clothing; and to Standing Appellate Body support staff called upon to provide the Standing Appellate Body with administrative or legal support in accordance with Article 17.7 of the DSU (hereinafter "Member of the Secretariat or Standing Appellate Body support staff"), reflecting their acceptance of established norms regulating the conduct of such persons as international civil servants and the Governing Principle of these Rules.

2. The application of these Rules shall not in any way impede the Secretariat's discharge of its responsibility to continue to respond to Members' requests for assistance and information.

3. These Rules shall apply to the members of the TMB to the extent prescribed in Section V.

V. Textiles Monitoring Body back to top

1. Members of the TMB shall discharge their functions on an *ad personam* basis, in accordance with the requirement of Article 8.1 of the Agreement on Textiles and Clothing, as further elaborated in the working procedures of the TMB, so as to preserve the integrity and impartiality of its proceedings(1).

VI. Self-Disclosure Requirements by Covered Persons back to top

1.(a) Each person requested to serve on a panel, on the Standing Appellate Body, as an arbitrator, or as an expert shall, at the time of the request, receive from the Secretariat these Rules, which include an Illustrative List (Annex 2) of examples of the matters subject to disclosure.

(b) Any member of the Secretariat described in paragraph IV:1, who may expect to be called upon to assist in a dispute, and Standing Appellate Body support staff, shall be familiar with these Rules.

2. As set out in paragraph VI:4 below, all covered persons described in paragraph VI.1(a) and VI.1(b) shall disclose any information that could reasonably be expected to be known to them at the time which, coming within the scope of the Governing Principle of these Rules, is likely to affect or give rise to justifiable doubts as to their independence or impartiality. These disclosures include the type of information described in the Illustrative List, if relevant.

3. These disclosure requirements shall not extend to the identification of matters whose relevance to the issues to be considered in the proceedings would be insignificant. They shall take into account the need to respect the personal privacy of those to whom these Rules apply and shall not be so administratively burdensome as to make it impracticable for otherwise qualified persons to serve on panels, the Standing Appellate Body, or in other dispute settlement roles.

4. (a) All panelists, arbitrators and experts, prior to confirmation of their appointment, shall complete the form at Annex 3 of these Rules. Such information would be disclosed to the Chair of the Dispute Settlement Body ("DSB") for consideration by the parties to the dispute.

(b) (i) Persons serving on the Standing Appellate Body who, through rotation, are selected to hear the appeal of a particular panel case, shall review the factual portion of the Panel report and complete the form at Annex 3. Such information would be disclosed to the Standing Appellate Body for its consideration whether the member concerned should hear a particular appeal.

(ii) Standing Appellate Body support staff shall disclose any relevant matter to the Standing Appellate Body, for its consideration in deciding on the assignment of staff to assist in a particular appeal.

(c) When considered to assist in a dispute, members of the Secretariat shall disclose to the Director-General of the WTO the information required under

consideration, including of available Secretariat resources, decides that a potential conflict of interest is not sufficiently material to warrant non-assignment of a particular member of the Secretariat to assist in a dispute, the Director-General shall inform the panel of his decision and of the relevant supporting information." Back to text

3. Pending adoption of the Staff Regulations, the Director-General would act in accordance with the following draft provision for the Staff Regulations: "If paragraph VIII:11 of the Rules of Conduct for the DSU governing the settlement of disputes is invoked, the Director-General shall consult with the person who is the subject of the evidence and the panel and shall, if necessary, take appropriate disciplinary action". back to text

4. Appropriate adjustments would be made in the case of appointments pursuant to the Agreement on Subsidies and Countervailing Measures. back to text

paragraph VI:2 of these Rules and any other relevant information required under the Staff Regulations, including the information described in the footnote(2).

5. During a dispute, each covered person shall also disclose any new information relevant to paragraph VI:2 above at the earliest time they become aware of it.

6. The Chair of the DSB, the Secretariat, parties to the dispute, and other individuals involved in the dispute settlement mechanism shall maintain the confidentiality of any information revealed through this disclosure process, even after the panel process and its enforcement procedures, if any, are completed.

VII. Confidentiality back to top

1. Each covered person shall at all times maintain the confidentiality of dispute settlement deliberations and proceedings together with any information identified by a party as confidential. No covered person shall at any time use such information acquired during such deliberations and proceedings to gain personal advantage or advantage for others.

2. During the proceedings, no covered person shall engage in *ex parte* contacts concerning matters under consideration. Subject to paragraph VII:1, no covered person shall make any statements on such proceedings or the issues in dispute in which that person is participating, until the report of the panel or the Standing Appellate Body has been derestricted.

VIII. Procedures Concerning Subsequent Disclosure and Possible Material Violations back to top

1. Any party to a dispute, conducted pursuant to the WTO Agreement, who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by covered persons which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time and on a confidential basis, submit such evidence to the Chair of the DSB, the Director-General or the Standing Appellate Body, as appropriate according to the respective procedures detailed in paragraphs VIII:5 to VIII:17 below, in a written statement specifying the relevant facts and circumstances. Other Members who possess or come into possession of such evidence, may provide such evidence to the parties to the dispute in the interest of maintaining the integrity and impartiality of the dispute settlement mechanism.

2. When evidence as described in paragraph VIII:1 is based on an alleged failure of a covered person to disclose a relevant interest, relationship or matter, that failure to disclose, as such, shall not be a sufficient ground for disqualification unless there is also evidence of a material violation of the obligations of independence, impartiality, confidentiality or the avoidance of direct or indirect conflicts of interests and that the integrity, impartiality or confidentiality of the dispute settlement mechanism would be impaired thereby.

3. When such evidence is not provided at the earliest practicable time, the party submitting the evidence shall explain why it did not do so earlier and this explanation shall be taken into account in the procedures initiated in paragraph VIII:1.

4. Following the submission of such evidence to the Chair of the DSB, the Director-General of the WTO or the Standing Appellate Body, as specified below, the procedures outlined in paragraphs VIII:5 to VIII:17 below shall be completed within fifteen working days.

Panelists, Arbitrators, Experts

5. If the covered person who is the subject of the evidence is a panelist, an arbitrator or an expert, the party shall provide such evidence to the Chair of the DSB.

6. Upon receipt of the evidence referred to in paragraphs VIII:1 and VIII:2, the Chair of the DSB shall forthwith provide the evidence to the person who is the subject of such evidence, for consideration by the latter.

7. If, after having consulted with the person concerned, the matter is not resolved, the Chair of the DSB shall forthwith provide all the evidence, and any additional information from the person concerned, to the parties to the dispute. If the person concerned resigns, the Chair of the DSB shall inform the parties to the dispute and, as the case may be, the panelists, the arbitrator(s) or experts.

8. In all cases, the Chair of the DSB, in consultation with the Director-General and a sufficient number of Chairs of the relevant Council or Councils to provide an odd number, and after having provided a reasonable

opportunity for the views of the person concerned and the parties to the dispute to be heard, would decide whether a material violation of these Rules as referred to in paragraphs VIII:1 and VIII:2 above has occurred. Where the parties agree that a material violation of these Rules has occurred, it would be expected that, consistent with maintaining the integrity of the dispute settlement mechanism, the disqualification of the person concerned would be confirmed.

9. The person who is the subject of the evidence shall continue to participate in the consideration of the dispute unless it is decided that a material violation of these Rules has occurred.

10. The Chair of the DSB shall thereafter take the necessary steps for the appointment of the person who is the subject of the evidence to be formally revoked, or excused from the dispute as the case may be, as of that time.

Secretariat

11. If the covered person who is the subject of the evidence is a member of the Secretariat, the party shall only provide the evidence to the Director-General of the WTO, who shall forthwith provide the evidence to the person who is the subject of such evidence and shall further inform the other party or parties to the dispute and the panel.

12. It shall be for the Director-General to take any appropriate action in accordance with the Staff Regulations(3).

13. The Director-General shall inform the parties to the dispute, the panel and the Chair of the DSB of his decision, together with relevant supporting information.

Standing Appellate Body

14. If the covered person who is the subject of the evidence is a member of the Standing Appellate Body or of the Standing Appellate Body support staff, the party shall provide the evidence to the other party to the dispute and the evidence shall thereafter be provided to the Standing Appellate Body.

15. Upon receipt of the evidence referred to in paragraphs VIII:1 and VIII:2 above, the Standing Appellate Body shall forthwith provide it to the person who is the subject of such evidence, for consideration by the latter.

16. It shall be for the Standing Appellate Body to take any appropriate action after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard.

17. The Standing Appellate Body shall inform the parties to the dispute and the Chair of the DSB of its decision, together with relevant supporting information.

18. Following completion of the procedures in paragraphs VIII:5 to VIII:17, if the appointment of a covered person, other than a member of the Standing Appellate Body, is revoked or that person is excused or resigns, the procedures specified in the DSU for initial appointment shall be followed for appointment of a replacement, but the time periods shall be half those specified in the DSU(4). The member of the Standing Appellate Body who, under that Body's rules, would next be selected through rotation to consider the dispute, would automatically be assigned to the appeal. The panel, members of the Standing Appellate Body hearing the appeal, or the arbitrator, as the case may be, may then decide after consulting with the parties to the dispute, on any necessary modifications to their working procedures or proposed timetable.

19. All covered persons and Members concerned shall resolve matters involving possible material violations of these Rules as expeditiously as possible so as not to delay the completion of proceedings, as provided in the DSU.

20. Except to the extent strictly necessary to carry out this decision, all information concerning possible or actual material violations of these Rules shall be kept confidential.

IX. Review back to top

1. These Rules of Conduct shall be reviewed within two years of their adoption and a decision shall be taken by the DSB as to whether to continue, modify or terminate these Rules.

ANNEX 1a

Arbitrators acting pursuant to the following provisions:

- Articles 21.3(c); 22.6 and 22.7; 26.1(c) and 25 of the DSU;
- Article 8.5 of the Agreement on Subsidies and Countervailing Measures;

- Articles XXI.3 and XXII.3 of the General Agreement on Trade in Services.

ANNEX 1b

Experts advising or providing information pursuant to the following provisions:

- Article 13.1; 13.2 of the DSU;
- Article 4.5 of the Agreement on Subsidies and Countervailing Measures;
- Article 11.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures;
- Article 14.2; 14.3 of the Agreement on Technical Barriers to Trade.

ANNEX 2 back to top

ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

This list contains examples of information of the type that a person called upon to serve in a dispute should disclose pursuant to the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Each covered person, as defined in Section IV:1 of these Rules of Conduct has a continuing duty to disclose the information described in Section VI:2 of these Rules which may include the following:

(a) financial interests (e.g. investments, loans, shares, interests, other debts); business interests (e.g. directorship or other contractual interests); and property interests relevant to the dispute in question;

(b) professional interests (e.g. a past or present relationship with private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);

(c) other active interests (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);

(d) considered statements of personal opinion on issues relevant to the dispute in question (e.g. publications, public statements);

(e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).

ANNEX 3 back to top

Dispute Number: _____

WORLD TRADE ORGANIZATION

DISCLOSURE FORM

I have read the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Rules of Conduct for the DSU. I understand my continuing duty, while participating in the dispute settlement mechanism, and until such time as the Dispute Settlement Body (DSB) makes a decision on adoption of a report relating to the proceeding or notes its settlement, to disclose herewith and in future any information likely to affect my independence or impartiality, or which could give rise to justifiable doubts as to the integrity and impartiality of the dispute settlement mechanism; and to respect my obligations regarding the confidentiality of dispute settlement proceedings.

Signed: **Dated:**

ANNEX 2

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Members hereby *agree* as follows:

Article 1

Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

Article 2

Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

3. The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.

4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.[1]

Article 3

General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

4. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.

5. All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.

6. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.

7. Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. The provision of compensation should be resorted to only if the immediate withdrawal of the measure

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[1]The DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision.

is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures.

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

9. The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

10. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

11. This Understanding shall be applied only with respect to new requests for consultations under the consultation provisions of the covered agreements made on or after the date of entry into force of the WTO Agreement. With respect to disputes for which the request for consultations was made under GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply.[2]

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

Article 4

Consultations

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

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[2]This paragraph shall also be applied to disputes on which panel reports have not been adopted or fully implemented.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.[3]

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements[4], such Member

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[3]Where the provisions of any other covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such other covered agreement shall prevail.

[4]The corresponding consultation provisions in the covered agreements are listed hereunder: Agreement on Agriculture, Article 19; Agreement on the Application of Sanitary and Phytosanitary Measures, paragraph 1 of Article 11; Agreement on Textiles and Clothing, paragraph 4 of Article 8; Agreement on Technical Barriers to Trade, paragraph 1 of Article 14;

may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

Article 5

Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

Agreement on Trade-Related Investment Measures, Article 8; Agreement on Implementation of Article VI of GATT 1994, paragraph 2 of Article 17; Agreement on Implementation of Article VII of GATT 1994, paragraph 2 of Article 19; Agreement on Preshipment Inspection, Article 7; Agreement on Rules of Origin, Article 7; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Article 30; Agreement on Safeguards, Article 14; Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 64.1; and any corresponding consultation provisions in Plurilateral Trade Agreements as determined by the competent bodies of each Agreement and as notified to the DSB.

Article 6

Establishment of Panels

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.[5]

2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

Article 7

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

> "To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.

3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

Article 8

Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

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[5]If the complaining party so requests, a meeting of the DSB shall be convened for this purpose within 15 days of the request, provided that at least 10 days' advance notice of the meeting is given.

3. Citizens of Members whose governments[6] are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

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[6]In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

Article 9

Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

Article 10

Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.

4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

Article 11

Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Article 12

Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.

2. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

3. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 9 of Article 4, if relevant.

4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

5. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.

6. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

9. When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country

Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 8 and 9 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.

Article 13

Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

Article 14

Confidentiality

1. Panel deliberations shall be confidential.

2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

3. Opinions expressed in the panel report by individual panelists shall be anonymous.

Article 15

Interim Review Stage

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.

2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time-period set out in paragraph 8 of Article 12.

Article 16

Adoption of Panel Reports

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.

2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.

4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting[7] unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

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[7]If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 1 and 4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.

Article 17

Appellate Review

Standing Appellate Body

1. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

5. As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

12. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding.

13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members.[8] This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

Article 18

Communications with the Panel or Appellate Body

1. There shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.

2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 19

Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned[9] bring the measure into conformity with that agreement.[10] In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

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[8]If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[9]The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

[10]With respect to recommendations in cases not involving a violation of GATT 1994 or any other covered agreement, see Article 26.

2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20

Time-frame for DSB Decisions

Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

Article 21

Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

3. At a DSB meeting held within 30 days[11] after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.[12] In such arbitration, a guideline for the arbitrator[13] should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

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[11]If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

[12]If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

[13]The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.

5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

6. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved. At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

(b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

(c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

(d) in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

(e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

(f) for purposes of this paragraph, "sector" means:

(i) with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;[14]

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

(g) for purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

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[14]The list in document MTN.GNS/W/120 identifies eleven sectors.

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator[15] appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

7. The arbitrator[16] acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to

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[15]The expression"arbitrator" shall be interpreted as referring either to an individual or a group.

[16]The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator.

compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.[17]

Article 23

Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

Article 24

Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel

[17]Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail.

is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25

Arbitration

1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.

4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards.

Article 26

1. *Non-Violation Complaints of the Type Described in Paragraph 1(b) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

(a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;

(b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;

(c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;

(d) notwithstanding the provisions of paragraph 1 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

2. *Complaints of the Type Described in Paragraph 1(c) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(c) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been circulated to the Members. The dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:

(a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;

(b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27

Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

3. The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.

APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

(A) Agreement Establishing the World Trade Organization

(B) Multilateral Trade Agreements

Annex 1A:	Multilateral Agreements on Trade in Goods
Annex 1B:	General Agreement on Trade in Services
Annex 1C:	Agreement on Trade-Related Aspects of Intellectual Property Rights
Annex 2:	Understanding on Rules and Procedures Governing the Settlement of Disputes

(C) Plurilateral Trade Agreements

Annex 4:	Agreement on Trade in Civil Aircraft
	Agreement on Government Procurement
	International Dairy Agreement
	International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES CONTAINED IN THE COVERED AGREEMENTS

Agreement	*Rules and Procedures*
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7
Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

APPENDIX 3

WORKING PROCEDURES

l. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.

2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.

3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a)	Receipt of first written submissions of the parties:		
	(1) complaining Party:	_____	3-6 weeks
	(2) Party complained against:	_____	2-3 weeks
(b)	Date, time and place of first substantive meeting with the parties; third party session:	_____	1-2 weeks
(c)	Receipt of written rebuttals of the parties:	_____	2-3 weeks
(d)	Date, time and place of second substantive meeting with the parties:	_____	1-2 weeks
(e)	Issuance of descriptive part of the report to the parties:	_____	2-4 weeks
(f)	Receipt of comments by the parties on the descriptive part of the report:	_____	2 weeks
(g)	Issuance of the interim report, including the findings and conclusions, to the parties:	_____	2-4 weeks
(h)	Deadline for party to request review of part(s) of report:	_____	1 week
(i)	Period of review by panel, including possible additional meeting with parties:	_____	2 weeks
(j)	Issuance of final report to parties to dispute:	_____	2 weeks
(k)	Circulation of the final report to the Members:	_____	3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

APPENDIX 4

EXPERT REVIEW GROUPS

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.

4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

WORLD TRADE ORGANIZATION

WT/AB/WP/6*
16 August 2010

(10-4339)

Appellate Body

WORKING PROCEDURES

FOR

APPELLATE REVIEW

This document replaces the *Working Procedures for Appellate Review* circulated 4 January 2005. It is a consolidated, revised version, and reflects amendments to Rules 6 (3), 18(1), 18(2), 18(4), 21(1), 22(1), 23(1), 23(3), 23(4), 24(1), 24(2), 27(1), 32(1), and 32(2), and Annexes I and III, as discussed in WT/AB/WP/W/10 and WT/AB/WP/W/11. The *Working Procedures for Appellate Review* consolidated in this document will be applied to appeals initiated on or after 15 September 2010.

*__NOTE CONCERNING DOCUMENT NUMBER:__ A Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body was originally issued on 10 April 2003 as document WT/AB/WP/6. For technical reasons (explained in WT/AB/WP/W/9), that Communication was re-issued as document WT/AB/WP/W/7.

Definitions

1. In these *Working Procedures for Appellate Review*,

"appellant"
means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20;

"appellate report"
means an Appellate Body report as described in Article 17 of the DSU;

"appellee"
means any party to the dispute that has filed a submission pursuant to Rule 22 or paragraph 4 of Rule 23;

"consensus"
a decision is deemed to be made by consensus if no Member formally objects to it;

"covered agreements"
has the same meaning as "covered agreements" in paragraph 1 of Article 1 of the DSU;

"division"
means the three Members who are selected to serve on any one appeal in accordance with paragraph 1 of Article 17 of the DSU and paragraph 2 of Rule 6;

"documents"
means the Notice of Appeal, any Notice of Other Appeal and the submissions and other written statements presented by the participants or third participants;

"DSB"
means the Dispute Settlement Body established under Article 2 of the DSU;

"DSU"
means the *Understanding on Rules and Procedures Governing the Settlement of Disputes* which is Annex 2 to the *WTO Agreement*;

"Member"
means a Member of the Appellate Body who has been appointed by the DSB in accordance with Article 17 of the DSU;

"other appellant"
means any party to the dispute that has filed a Notice of Other Appeal pursuant to paragraph 1 of Rule 23;

"participant"
means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20, a Notice of Other Appeal pursuant to Rule 23 or a submission pursuant to Rule 22 or paragraph 4 of Rule 23;

"party to the dispute"
means any WTO Member who was a complaining or defending party in the panel dispute, but does not include a third party;

"proof of service"
means a letter or other written acknowledgement that a document has been delivered, as required, to the parties to the dispute, participants, third parties or third participants, as the case may be;

"Rules"
means these *Working Procedures for Appellate Review;*

"*Rules of Conduct*"
means the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes* as attached in Annex II to these Rules;

"*SCM Agreement*"
means the *Agreement on Subsidies and Countervailing Measures* which is in Annex 1A to the *WTO Agreement;*

"Secretariat"
means the Appellate Body Secretariat;

"service address"
means the address of the party to the dispute, participant, third party or third participant as generally used in WTO dispute settlement proceedings, unless the party to the dispute, participant, third party or third participant has clearly indicated another address;

"third participant"
means any third party that has filed a written submission pursuant to Rule 24(1); or any third party that appears at the oral hearing, whether or not it makes an oral statement at that hearing;

"third party"
means any WTO Member who has notified the DSB of its substantial interest in the matter before the panel pursuant to paragraph 2 of Article 10 of the DSU;

"WTO"
means the World Trade Organization;

"*WTO Agreement*"
means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh, Morocco on 15 April 1994;

"WTO Member"
means any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations that has accepted or acceded to the WTO in accordance with Articles XI, XII or XIV of the *WTO Agreement;* and

"WTO Secretariat"
means the Secretariat of the World Trade Organization.

PART I

MEMBERS

Duties and Responsibilities

2. (1) A Member shall abide by the terms and conditions of the DSU, these Rules and any decisions of the DSB affecting the Appellate Body.

(2) During his/her term, a Member shall not accept any employment nor pursue any professional activity that is inconsistent with his/her duties and responsibilities.

(3) A Member shall exercise his/her office without accepting or seeking instructions from any international, governmental, or non-governmental organization or any private source.

(4) A Member shall be available at all times and on short notice and, to this end, shall keep the Secretariat informed of his/her whereabouts at all times.

Decision-Making

3. (1) In accordance with paragraph 1 of Article 17 of the DSU, decisions relating to an appeal shall be taken solely by the division assigned to that appeal. Other decisions shall be taken by the Appellate Body as a whole.

(2) The Appellate Body and its divisions shall make every effort to take their decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by a majority vote.

Collegiality

4. (1) To ensure consistency and coherence in decision-making, and to draw on the individual and collective expertise of the Members, the Members shall convene on a regular basis to discuss matters of policy, practice and procedure.

(2) The Members shall stay abreast of dispute settlement activities and other relevant activities of the WTO and, in particular, each Member shall receive all documents filed in an appeal.

(3) In accordance with the objectives set out in paragraph 1, the division responsible for deciding each appeal shall exchange views with the other Members before the division finalizes the appellate report for circulation to the WTO Members. This paragraph is subject to paragraphs 2 and 3 of Rule 11.

(4) Nothing in these Rules shall be interpreted as interfering with a division's full authority and freedom to hear and decide an appeal assigned to it in accordance with paragraph 1 of Article 17 of the DSU.

Chairman

5. (1) There shall be a Chairman of the Appellate Body who shall be elected by the Members.

(2) The term of office of the Chairman of the Appellate Body shall be one year. The Appellate Body Members may decide to extend the term of office for an additional period of up to one year. However, in order to ensure rotation of the Chairmanship, no Member shall serve as Chairman for more than two consecutive terms.

(3) The Chairman shall be responsible for the overall direction of the Appellate Body business, and in particular, his/her responsibilities shall include:

(a) the supervision of the internal functioning of the Appellate Body; and
(b) any such other duties as the Members may agree to entrust to him/her.

(4) Where the office of the Chairman becomes vacant due to permanent incapacity as a result of illness or death or by resignation or expiration of his/her term, the Members shall elect a new Chairman who shall serve a full term in accordance with paragraph 2.

(5) In the event of a temporary absence or incapacity of the Chairman, the Appellate Body shall authorize another Member to act as Chairman *ad interim*, and the Member so authorized shall temporarily exercise all the powers, duties and functions of the Chairman until the Chairman is capable of resuming his/her functions.

Divisions

6. (1) In accordance with paragraph 1 of Article 17 of the DSU, a division consisting of three Members shall be established to hear and decide an appeal.

(2) The Members constituting a division shall be selected on the basis of rotation, while taking into account the principles of random selection, unpredictability and opportunity for all Members to serve regardless of their national origin.

(3) A Member selected pursuant to paragraph 2 to serve on a division shall serve on that division, unless:

(a) he/she is excused from that division pursuant to Rule 9 or 10;
(b) he/she has notified the Chairman and the Presiding Member that he/she is prevented from serving on the division because of illness or other serious reasons pursuant to Rule 12; or
(c) he/she has notified his/her intentions to resign pursuant to Rule 14.

Presiding Member of the Division

7. (1) Each division shall have a Presiding Member, who shall be elected by the Members of that division.

(2) The responsibilities of the Presiding Member shall include:

(a) coordinating the overall conduct of the appeal proceeding;
(b) chairing all oral hearings and meetings related to that appeal; and
(c) coordinating the drafting of the appellate report.

(3) In the event that a Presiding Member becomes incapable of performing his/her duties, the other Members serving on that division and the Member selected as a replacement pursuant to Rule 13 shall elect one of their number to act as the Presiding Member.

Rules of Conduct

8. (1) On a provisional basis, the Appellate Body adopts those provisions of the *Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes*, attached in Annex II to these Rules, which are applicable to it, until *Rules of Conduct* are approved by the DSB.

(2) Upon approval of *Rules of Conduct* by the DSB, such *Rules of Conduct* shall be directly incorporated and become part of these Rules and shall supersede Annex II.

9. (1) Upon the filing of a Notice of Appeal, each Member shall take the steps set out in Article VI:4(b)(i) of Annex II, and a Member may consult with the other Members prior to completing the disclosure form.

(2) Upon the filing of a Notice of Appeal, the professional staff of the Secretariat assigned to that appeal shall take the steps set out in Article VI:4(b)(ii) of Annex II.

(3) Where information has been submitted pursuant to Article VI:4(b)(i) or (ii) of Annex II, the Appellate Body shall consider whether further action is necessary.

(4) As a result of the Appellate Body's consideration of the matter pursuant to paragraph 3, the Member or the professional staff member concerned may continue to be assigned to the division or may be excused from the division.

10. (1) Where evidence of a material violation is filed by a participant pursuant to Article VIII of Annex II, such evidence shall be confidential and shall be supported by affidavits made by persons having actual knowledge or a reasonable belief as to the truth of the facts stated.

(2) Any evidence filed pursuant to Article VIII:1 of Annex II shall be filed at the earliest practicable time: that is, forthwith after the participant submitting it knew or reasonably could have known of the facts supporting it. In no case shall such evidence be filed after the appellate report is circulated to the WTO Members.

(3) Where a participant fails to submit such evidence at the earliest practicable time, it shall file an explanation in writing of the reasons why it did not do so earlier, and the Appellate Body may decide to consider or not to consider such evidence, as appropriate.

(4) While taking fully into account paragraph 5 of Article 17 of the DSU, where evidence has been filed pursuant to Article VIII of Annex II, an appeal shall be suspended for fifteen days or until the procedure referred to in Article VIII:14-16 of Annex II is completed, whichever is earlier.

(5) As a result of the procedure referred to in Article VIII:14-16 of Annex II, the Appellate Body may decide to dismiss the allegation, to excuse the Member or professional staff member concerned from being assigned to the division or make such other order as it deems necessary in accordance with Article VIII of Annex II.

11. (1) A Member who has submitted a disclosure form with information attached pursuant to Article VI:4(b)(i) or is the subject of evidence of a material violation pursuant to Article VIII:1 of Annex II, shall not participate in any decision taken pursuant to paragraph 4 of Rule 9 or paragraph 5 of Rule 10.

(2) A Member who is excused from a division pursuant to paragraph 4 of Rule 9 or paragraph 5 of Rule 10 shall not take part in the exchange of views conducted in that appeal pursuant to paragraph 3 of Rule 4.

(3) A Member who, had he/she been a Member of a division, would have been excused from that division pursuant to paragraph 4 of Rule 9, shall not take part in the exchange of views conducted in that appeal pursuant to paragraph 3 of Rule 4.

Incapacity

12. (1) A Member who is prevented from serving on a division by illness or for other serious reasons shall give notice and duly explain such reasons to the Chairman and to the Presiding Member.

(2) Upon receiving such notice, the Chairman and the Presiding Member shall forthwith inform the Appellate Body.

Replacement

13. Where a Member is unable to serve on a division for a reason set out in paragraph 3 of Rule 6, another Member shall be selected forthwith pursuant to paragraph 2 of Rule 6 to replace the Member originally selected for that division.

Resignation

14. (1) A Member who intends to resign from his/her office shall notify his/her intentions in writing to the Chairman of the Appellate Body who shall immediately inform the Chairman of the DSB, the Director-General and the other Members of the Appellate Body.

(2) The resignation shall take effect 90 days after the notification has been made pursuant to paragraph 1, unless the DSB, in consultation with the Appellate Body, decides otherwise.

Transition

15. A person who ceases to be a Member of the Appellate Body may, with the authorization of the Appellate Body and upon notification to the DSB, complete the disposition of any appeal to which that person was assigned while a Member, and that person shall, for that purpose only, be deemed to continue to be a Member of the Appellate Body.

PART II

PROCESS

General Provisions

16. (1) In the interests of fairness and orderly procedure in the conduct of an appeal, where a procedural question arises that is not covered by these Rules, a division may adopt an appropriate procedure for the purposes of that appeal only, provided that it is not inconsistent with the DSU, the other covered agreements and these Rules. Where such a procedure is adopted, the division shall immediately notify the parties to the dispute, participants, third parties and third participants as well as the other Members of the Appellate Body.

(2) In exceptional circumstances, where strict adherence to a time-period set out in these Rules would result in a manifest unfairness, a party to the dispute, a participant, a third party or a third participant may request that a division modify a time-period set out in these Rules for the filing of documents or the date set out in the working schedule for the oral hearing. Where such a request is granted by a division, any modification of time shall be notified to the parties to the dispute, participants, third parties and third participants in a revised working schedule.

17. (1) Unless the DSB decides otherwise, in computing any time-period stipulated in the DSU or in the special or additional provisions of the covered agreements, or in these Rules, within which a communication must be made or an action taken by a WTO Member to exercise or preserve its rights, the day from which the time-period begins to run shall be excluded and, subject to paragraph 2, the last day of the time-period shall be included.

(2) The DSB Decision on "Expiration of Time-Periods in the DSU", WT/DSB/M/7, shall apply to appeals heard by divisions of the Appellate Body.

Documents

18. (1) No document is considered filed with the Appellate Body unless the document is received by the Secretariat within the time-period set out for filing in accordance with these Rules.

Official versions of documents shall be submitted in paper form to the Appellate Body Secretariat by 17:00 Geneva time on the day that the document is due. Participants, parties, third participants and third parties shall, by the same deadline, also provide to the Appellate Body Secretariat an electronic copy of each document. Such electronic copy may be sent via electronic mail to the Appellate Body

Secretariat's electronic mail address, or brought to the Appellate Body Secretariat on a data storage device such as a CD-ROM or USB flash drive.

(2) Except as otherwise provided in these Rules, every document filed by a party to the dispute, a participant, a third party or a third participant shall on the same day be served on each of the other parties to the dispute, participants, third parties and third participants in the appeal, in accordance with paragraph 4.

(3) A proof of service on the other parties to the dispute, participants, third parties and third participants shall appear on, or be affixed to, each document filed with the Secretariat under paragraph 1 above.

(4) A document shall be served by the most expeditious means of delivery or communication available, including by:

(a) delivering a copy of the document to the service address of the party to the dispute, participant, third party or third participant; or
(b) sending a copy of the document to the service address of the party to the dispute, participant, third party or third participant by facsimile transmission, expedited delivery courier or expedited mail service.

Electronic copies of documents served shall also be provided on the same day, either by electronic mail, or through physical delivery of a data storage device containing an electronic copy of the document.

(5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its documents (including typographical mistakes, errors of grammar, or words or numbers placed in the wrong order). The request to correct clerical errors shall identify the specific errors to be corrected and shall be filed with the Secretariat no later than 30 days after the date of the filing of the Notice of Appeal. A copy of the request shall be served upon the other parties to the dispute, participants, third parties and third participants, each of whom shall be given an opportunity to comment in writing on the request. The division shall notify the parties to the dispute, participants, third parties and third participants of its decision.

Ex Parte Communications

19. (1) Neither a division nor any of its Members shall meet with or contact one party to the dispute, participant, third party or third participant in the absence of the other parties to the dispute, participants, third parties and third participants.

(2) No Member of the division may discuss any aspect of the subject matter of an appeal with any party to the dispute, participant, third party or third participant in the absence of the other Members of the division.

(3) A Member who is not assigned to the division hearing the appeal shall not discuss any aspect of the subject matter of the appeal with any party to the dispute, participant, third party or third participant.

Commencement of Appeal

20. (1) An appeal shall be commenced by notification in writing to the DSB in accordance with paragraph 4 of Article 16 of the DSU and simultaneous filing of a Notice of Appeal with the Secretariat.

(2) A Notice of Appeal shall include the following information:

(a) the title of the panel report under appeal;
(b) the name of the party to the dispute filing the Notice of Appeal;
(c) the service address, telephone and facsimile numbers of the party to the dispute; and
(d) a brief statement of the nature of the appeal, including:

(i) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
(ii) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
(iii) without prejudice to the ability of the appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

Appellant's Submission

21. (1) The appellant shall, on the same day as the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the other parties to the dispute and third parties.

(2) A written submission referred to in paragraph 1 shall:

(a) be dated and signed by the appellant; and
(b) set out:

(i) a precise statement of the grounds for the appeal, including the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel, and the legal arguments in support thereof;
(ii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and
(iii) the nature of the decision or ruling sought.

Appellee's Submission

22. (1) Any party to the dispute that wishes to respond to allegations raised in an appellant's submission filed pursuant to Rule 21 may, within 18 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the appellant, other parties to the dispute and third parties.

(2) A written submission referred to in paragraph 1 shall:

(a) be dated and signed by the appellee; and
(b) set out:

(i) a precise statement of the grounds for opposing the specific allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel raised in the appellant's submission, and the legal arguments in support thereof;
(ii) an acceptance of, or opposition to, each ground set out in the appellant's submission;
(iii) a precise statement of the provisions of the covered agreements and other legal sources relied on; and
(iv) the nature of the decision or ruling sought.

Multiple Appeals

23. (1) Within 5 days after the date of the filing of the Notice of Appeal, a party to the dispute other than the original appellant may join in that appeal or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel. That party shall notify the DSB in writing of its appeal and shall simultaneously file a Notice of Other Appeal with the Secretariat.

(2) A Notice of Other Appeal shall include the following information:

(a) the title of the panel report under appeal;
(b) the name of the party to the dispute filing the Notice of Other Appeal;
(c) the service address, telephone and facsimile numbers of the party to the dispute; and either

(i) a statement of the issues raised on appeal by another participant with which the party joins; or
(ii) a brief statement of the nature of the other appeal, including:

(A) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
(B) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
(C) without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

(3) The other appellant shall, within 5 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 of Rule 21 and serve a copy of the submission on the other parties to the dispute and third parties.

(4) The appellant, any appellee and any other party to the dispute that wishes to respond to a submission filed pursuant to paragraph 3 may file a written submission within

18 days after the date of the filing of the Notice of Appeal, and any such submission shall be in the format required by paragraph 2 of Rule 22.

(5) This Rule does not preclude a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule from exercising its right of appeal pursuant to paragraph 4 of Article 16 of the DSU.

(6) Where a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule exercises its right to appeal as set out in paragraph 5, a single division shall examine the appeals.

Amending Notices of Appeal

23*bis*. (1) The division may authorize an original appellant to amend a Notice of Appeal or an other appellant to amend a Notice of Other Appeal.

(2) A request to amend a Notice of Appeal or a Notice of Other Appeal shall be made as soon as possible in writing and shall state the reason(s) for the request and identify precisely the specific amendments that the appellant or other appellant wishes to make to the Notice. A copy of the request shall be served on the other parties to the dispute, participants, third participants and third parties, each of whom shall be given an opportunity to comment in writing on the request.

(3) In deciding whether to authorize, in full or in part, a request to amend a Notice of Appeal or Notice of Other Appeal, the division shall take into account:

(a) the requirement to circulate the appellate report within the time-period set out in Article 17.5 of the DSU or, as appropriate, Article 4.9 of the *SCM Agreement*; and,
(b) the interests of fairness and orderly procedure, including the nature and extent of the proposed amendment, the timing of the request to amend a Notice of Appeal or Notice of Other Appeal, any reasons why the proposed amended Notice of Appeal or Notice of Other Appeal was not or could not have been filed on its original date, and any other considerations that may be appropriate.

(4) The division shall notify the parties to the dispute, participants, third participants, and third parties of its decision. In the event that the division authorizes an amendment to a Notice of Appeal or a Notice of Other Appeal, it shall provide an amended copy of the Notice to the DSB.

Third Participants

24. (1) Any third party may file a written submission containing the grounds and legal arguments in support of its position. Such submission shall be filed within 21 days after the date of the filing of the Notice of Appeal.

(2) A third party not filing a written submission shall, within the same period of 21 days, notify the Secretariat in writing if it intends to appear at the oral hearing, and, if so, whether it intends to make an oral statement.

(3) Third participants are encouraged to file written submissions to facilitate their positions being taken fully into account by the division hearing the appeal and in order that participants and other third participants will have notice of positions to be taken at the oral hearing.

(4) Any third party that has neither filed a written submission pursuant to paragraph 1, nor notified the Secretariat pursuant to paragraph 2, may notify the Secretariat that it intends to appear at the oral hearing, and may request to make an oral statement at the hearing. Such notifications and requests should be notified to the Secretariat in writing at the earliest opportunity.

Transmittal of Record

25. (1) Upon the filing of a Notice of Appeal, the Director-General of the WTO shall transmit forthwith to the Appellate Body the complete record of the panel proceeding.

(2) The complete record of the panel proceeding includes, but is not limited to:

(a) written submissions, rebuttal submissions, and supporting evidence attached thereto by the parties to the dispute and the third parties;
(b) written arguments submitted at the panel meetings with the parties to the dispute and the third parties, the recordings of such panel meetings, and any written answers to questions posed at such panel meetings;
(c) the correspondence relating to the panel dispute between the panel or the WTO Secretariat and the parties to the dispute or the third parties; and
(d) any other documentation submitted to the panel.

Working Schedule

26. (1) Forthwith after the commencement of an appeal, the division shall draw up an appropriate working schedule for that appeal in accordance with the time-periods stipulated in these Rules.

(2) The working schedule shall set forth precise dates for the filing of documents and a timetable for the division's work, including where possible, the date for the oral hearing.

(3) In accordance with paragraph 9 of Article 4 of the DSU, in appeals of urgency, including those which concern perishable goods, the Appellate Body shall make every effort to accelerate the appellate proceedings to the greatest extent possible. A division shall take this into account in drawing up its working schedule for that appeal.

(4) The Secretariat shall serve forthwith a copy of the working schedule on the appellant, the parties to the dispute and any third parties.

Oral Hearing

27. (1) A division shall hold an oral hearing, which shall be held, as a general rule, between 30 and 45 days after the date of the filing of a Notice of Appeal.

(2) Where possible in the working schedule or otherwise at the earliest possible date, the Secretariat shall notify all parties to the dispute, participants, third parties and third participants of the date for the oral hearing.

(3) (a) Any third party that has filed a submission pursuant to Rule 24(1), or has notified the Secretariat pursuant to Rule 24(2) that it intends to appear at the oral hearing, may appear at the oral hearing, make an oral statement at the hearing, and respond to questions posed by the division.

(b) Any third party that has notified the Secretariat pursuant to Rule 24(4) that it intends to appear at the oral hearing may appear at the oral hearing.

(c) Any third party that has made a request pursuant to Rule 24(4) may, at the discretion of the division hearing the appeal, taking into account the requirements of due process, make an oral statement at the hearing, and respond to questions posed by the division.

(4) The Presiding Member may set time-limits for oral arguments.

Written Responses

28. (1) At any time during the appellate proceeding, including, in particular, during the oral hearing, the division may address questions orally or in writing to, or request additional memoranda from, any participant or third participant, and specify the time-periods by which written responses or memoranda shall be received.

(2) Any such questions, responses or memoranda shall be made available to the other participants and third participants in the appeal, who shall be given an opportunity to respond.

(3) When the questions or requests for memoranda are made prior to the oral hearing, then the questions or requests, as well as the responses or memoranda, shall also be made available to the third parties, who shall also be given an opportunity to respond.

Failure to Appear

29. Where a participant fails to file a submission within the required time-periods or fails to appear at the oral hearing, the division shall, after hearing the views of the participants, issue such order, including dismissal of the appeal, as it deems appropriate.

Withdrawal of Appeal

30. (1) At any time during an appeal, the appellant may withdraw its appeal by notifying the Appellate Body, which shall forthwith notify the DSB.

(2) Where a mutually agreed solution to a dispute which is the subject of an appeal has been notified to the DSB pursuant to paragraph 6 of Article 3 of the DSU, it shall be notified to the Appellate Body.

Prohibited Subsidies

31. (1) Subject to Article 4 of the *SCM Agreement*, the general provisions of these Rules shall apply to appeals relating to panel reports concerning prohibited subsidies under Part II of that *Agreement*.

(2) The working schedule for an appeal involving prohibited subsidies under Part II of the *SCM Agreement* shall be as set out in Annex I to these Rules.

Entry into Force and Amendment

32. (1) These Rules entered into force on 15 February 1996, and have subsequently been amended as indicated in Annex III.

(2) The Appellate Body may amend these Rules in compliance with the procedures set forth in paragraph 9 of Article 17 of the DSU. The Appellate Body will announce the date on which such amendments come into force. The document number for each revised version of these Rules, and the date upon which each version entered into force and succeeded the previous version, are indicated in Annex III.

(3) Whenever there is an amendment to the DSU or to the special or additional rules and procedures of the covered agreements, the Appellate Body shall examine whether amendments to these Rules are necessary.

ANNEX I

TIMETABLE FOR APPEALS[1]

	General Appeals	Prohibited Subsidies Appeals
	Day	Day
Notice of Appeal[2]	0	0
Appellant's Submission[3]	0	0
Notice of Other Appeal[4]	5	2
Other Appellant's Submission[5]	5	2
Appellee's Submission[6]	18	9
Third Participant's Submission[7]	21	10
Third Participant's Notification[8]	21	10
Oral Hearing[9]	30 – 45	15 – 23
Circulation of Appellate Report	60 – 90[10]	30 – 60[11]
DSB Meeting for Adoption	90 – 120[12]	50 – 80[13]

[1]Rule 17 applies to the computation of the time-periods below.
[2]Rule 20.
[3]Rule 21(1).
[4]Rule 23(1).
[5]Rule 23(3).
[6]Rules 22 and 23(4).
[7]Rule 24(1).
[8]Rule 24(2).
[9]Rule 27.
[10]Article 17.5, DSU.
[11]Article 4.9, *SCM Agreement*.
[12]Article 17.14, DSU.
[13]Article 4.9, *SCM Agreement*.

ANNEX II

RULES OF CONDUCT FOR THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

I. Preamble

Members,

Recalling that on 15 April 1994 in Marrakesh, Ministers welcomed the stronger and clearer legal framework they had adopted for the conduct of international trade, including a more effective and reliable dispute settlement mechanism;

Recognizing the importance of full adherence to the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and the principles for the management of disputes applied under Articles XXII and XXIII of GATT 1947, as further elaborated and modified by the DSU;

Affirming that the operation of the DSU would be strengthened by rules of conduct designed to maintain the integrity, impartiality and confidentiality of proceedings conducted under the DSU thereby enhancing confidence in the new dispute settlement mechanism;

Hereby establish the following Rules of Conduct.

II. Governing Principle

1. Each person covered by these Rules (as defined in paragraph 1 of Section IV below and hereinafter called "covered person") shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of proceedings of bodies pursuant to the dispute settlement mechanism, so that through the observance of such standards of conduct the integrity and impartiality of that mechanism are preserved. These Rules shall in no way modify the rights and obligations of Members under the DSU nor the rules and procedures therein.

III. Observance of the Governing Principle

1. To ensure the observance of the Governing Principle of these Rules, each covered person is expected (1) to adhere strictly to the provisions of the DSU; (2) to disclose the existence or development of any interest, relationship or matter that that person could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that person's independence or impartiality; and (3) to take due care in the performance of their duties to fulfil these expectations, including through avoidance of any direct or indirect conflicts of interest in respect of the subject matter of the proceedings.

2. Pursuant to the Governing Principle, each covered person, shall be independent and impartial, and shall maintain confidentiality. Moreover, such persons shall consider only issues raised in, and necessary to fulfil their responsibilities within, the dispute settlement proceeding and shall not delegate this responsibility to any other person. Such person shall not incur any obligation or accept any benefit that would in anyway interfere with, or which could give rise to, justifiable doubts as to the proper performance of that person's dispute settlement duties.

IV. Scope

1. These Rules shall apply, as specified in the text, to each person serving: (a) on a panel; (b) on the Standing Appellate Body; (c) as an arbitrator pursuant to the provisions mentioned in Annex "1a"; or (d) as an expert participating in the dispute settlement mechanism pursuant to the provisions mentioned in Annex "1b". These Rules shall also apply, as specified in this text and the relevant provisions of the Staff Regulations, to those members of the Secretariat called upon to assist the panel in accordance with Article 27.1 of the DSU or to assist in formal arbitration proceedings pursuant to Annex "1a"; to the Chairman of the Textiles Monitoring Body (hereinafter called "TMB") and other members of the TMB Secretariat called upon to assist the TMB in formulating recommendations, findings or observations pursuant to the WTO Agreement on Textiles and Clothing; and to Standing Appellate Body support staff called upon to provide the Standing Appellate Body with administrative or legal support in accordance with Article 17.7 of the DSU (hereinafter "Member of the Secretariat or Standing Appellate Body support staff"), reflecting their acceptance of established norms regulating the conduct of such persons as international civil servants and the Governing Principle of these Rules.

2. The application of these Rules shall not in any way impede the Secretariat's discharge of its responsibility to continue to respond to Members' requests for assistance and information.

3. These Rules shall apply to the members of the TMB to the extent prescribed in Section V.

V. Textiles Monitoring Body

1. Members of the TMB shall discharge their functions on an *ad personam* basis, in accordance with the requirement of Article 8.1 of the Agreement on Textiles and Clothing, as further elaborated in the working procedures of the TMB, so as to preserve the integrity and impartiality of its proceedings.[1]

VI. Self-Disclosure Requirements by Covered Persons

1. (a) Each person requested to serve on a panel, on the Standing Appellate Body, as an arbitrator, or as an expert shall, at the time of the request, receive from the Secretariat these Rules, which include an Illustrative List (Annex 2) of examples of the matters subject to disclosure.

(b) Any member of the Secretariat described in paragraph IV:1, who may expect to be called upon to assist in a dispute, and Standing Appellate Body support staff, shall be familiar with these Rules.

2. As set out in paragraph VI:4 below, all covered persons described in paragraph VI.1(a) and VI.1(b) shall disclose any information that could reasonably be expected to be known to them at the time which, coming within the scope of the Governing Principle of these Rules, is likely to affect

[1]These working procedures, as adopted by the TMB on 26 July 1995 (G/TMB/R/1), currently include, *inter alia*, the following language in paragraph 1.4: "In discharging their functions in accordance with paragraph 1.1 above, the TMB members and alternates shall undertake not to solicit, accept or act upon instructions from governments, nor to be influenced by any other organisations or undue extraneous factors. They shall disclose to the Chairman any information that they may consider likely to impede their capacity to discharge their functions on an *ad personam* basis. Should serious doubts arise during the deliberations of the TMB regarding the ability of a TMB member to act on an *ad personam* basis, they shall be communicated to the Chairman. The Chairman shall deal with the particular matter as necessary".

or give rise to justifiable doubts as to their independence or impartiality. These disclosures include the type of information described in the Illustrative List, if relevant.

3. These disclosure requirements shall not extend to the identification of matters whose relevance to the issues to be considered in the proceedings would be insignificant. They shall take into account the need to respect the personal privacy of those to whom these Rules apply and shall not be so administratively burdensome as to make it impracticable for otherwise qualified persons to serve on panels, the Standing Appellate Body, or in other dispute settlement roles.

4. (a) All panelists, arbitrators and experts, prior to confirmation of their appointment, shall complete the form at Annex 3 of these Rules. Such information would be disclosed to the Chair of the Dispute Settlement Body ("DSB") for consideration by the parties to the dispute.

(b) (i) Persons serving on the Standing Appellate Body who, through rotation, are selected to hear the appeal of a particular panel case, shall review the factual portion of the Panel report and complete the form at Annex 3. Such information would be disclosed to the Standing Appellate Body for its consideration whether the member concerned should hear a particular appeal.

(ii) Standing Appellate Body support staff shall disclose any relevant matter to the Standing Appellate Body, for its consideration in deciding on the assignment of staff to assist in a particular appeal.

(c) When considered to assist in a dispute, members of the Secretariat shall disclose to the Director-General of the WTO the information required under paragraph VI:2 of these Rules and any other relevant information required under the Staff Regulations, including the information described in the footnote.[**]

5. During a dispute, each covered person shall also disclose any new information relevant to paragraph VI:2 above at the earliest time they become aware of it.

6. The Chair of the DSB, the Secretariat, parties to the dispute, and other individuals involved in the dispute settlement mechanism shall maintain the confidentiality of any information revealed through this disclosure process, even after the panel process and its enforcement procedures, if any, are completed.

[**]Pending adoption of the Staff Regulations, members of the Secretariat shall make disclosures to the Director-General in accordance with the following draft provision to be included in the Staff Regulations:

"When paragraph VI:4(c) of the Rules of Conduct for the DSU is applicable, members of the Secretariat would disclose to the Director-General of the WTO the information required in paragraph VI:2 of those Rules, as well as any information regarding their participation in earlier formal consideration of the specific measure at issue in a dispute under any provisions of the WTO Agreement, including through formal legal advice under Article 27.2 of the DSU, as well as any involvement with the dispute as an official of a WTO Member government or otherwise professionally, before having joined the Secretariat.

The Director-General shall consider any such disclosures in deciding on the assignment of members of the Secretariat to assist in a dispute.

When the Director-General, in the light of his consideration, including of available Secretariat resources, decides that a potential conflict of interest is not sufficiently material to warrant non-assignment of a particular member of the Secretariat to assist in a dispute, the Director-General shall inform the panel of his decision and of the relevant supporting information."

VII. Confidentiality

1. Each covered person shall at all times maintain the confidentiality of dispute settlement deliberations and proceedings together with any information identified by a party as confidential. No covered person shall at any time use such information acquired during such deliberations and proceedings to gain personal advantage or advantage for others.

2. During the proceedings, no covered person shall engage in *ex parte* contacts concerning matters under consideration. Subject to paragraph VII:1, no covered person shall make any statements on such proceedings or the issues in dispute in which that person is participating, until the report of the panel or the Standing Appellate Body has been derestricted.

VIII. Procedures Concerning Subsequent Disclosure and Possible Material Violations

1. Any party to a dispute, conducted pursuant to the WTO Agreement, who possesses or comes into possession of evidence of a material violation of the obligations of independence, impartiality or confidentiality or the avoidance of direct or indirect conflicts of interest by covered persons which may impair the integrity, impartiality or confidentiality of the dispute settlement mechanism, shall at the earliest possible time and on a confidential basis, submit such evidence to the Chair of the DSB, the Director-General or the Standing Appellate Body, as appropriate according to the respective procedures detailed in paragraphs VIII:5 to VIII:17 below, in a written statement specifying the relevant facts and circumstances. Other Members who possess or come into possession of such evidence, may provide such evidence to the parties to the dispute in the interest of maintaining the integrity and impartiality of the dispute settlement mechanism.

2. When evidence as described in paragraph VIII:1 is based on an alleged failure of a covered person to disclose a relevant interest, relationship or matter, that failure to disclose, as such, shall not be a sufficient ground for disqualification unless there is also evidence of a material violation of the obligations of independence, impartiality, confidentiality or the avoidance of direct or indirect conflicts of interests and that the integrity, impartiality or confidentiality of the dispute settlement mechanism would be impaired thereby.

3. When such evidence is not provided at the earliest practicable time, the party submitting the evidence shall explain why it did not do so earlier and this explanation shall be taken into account in the procedures initiated in paragraph VIII:1.

4. Following the submission of such evidence to the Chair of the DSB, the Director-General of the WTO or the Standing Appellate Body, as specified below, the procedures outlined in paragraphs VIII:5 to VIII:17 below shall be completed within fifteen working days.

Panelists, Arbitrators, Experts

5. If the covered person who is the subject of the evidence is a panelist, an arbitrator or an expert, the party shall provide such evidence to the Chair of the DSB.

6. Upon receipt of the evidence referred to in paragraphs VIII:1 and VIII:2, the Chair of the DSB shall forthwith provide the evidence to the person who is the subject of such evidence, for consideration by the latter.

7. If, after having consulted with the person concerned, the matter is not resolved, the Chair of the DSB shall forthwith provide all the evidence, and any additional information from the person concerned, to the parties to the dispute. If the person concerned resigns, the Chair of the DSB shall inform the parties to the dispute and, as the case may be, the panelists, the arbitrator(s) or experts.

8. In all cases, the Chair of the DSB, in consultation with the Director-General and a sufficient number of Chairs of the relevant Council or Councils to provide an odd number, and after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard, would decide whether a material violation of these Rules as referred to in paragraphs VIII:1 and VIII:2 above has occurred. Where the parties agree that a material violation of these Rules has occurred, it would be expected that, consistent with maintaining the integrity of the dispute settlement mechanism, the disqualification of the person concerned would be confirmed.

9. The person who is the subject of the evidence shall continue to participate in the consideration of the dispute unless it is decided that a material violation of these Rules has occurred.

10. The Chair of the DSB shall thereafter take the necessary steps for the appointment of the person who is the subject of the evidence to be formally revoked, or excused from the dispute as the case may be, as of that time.

Secretariat

11. If the covered person who is the subject of the evidence is a member of the Secretariat, the party shall only provide the evidence to the Director-General of the WTO, who shall forthwith provide the evidence to the person who is the subject of such evidence and shall further inform the other party or parties to the dispute and the panel.

12. It shall be for the Director-General to take any appropriate action in accordance with the Staff Regulations.[***]

13. The Director-General shall inform the parties to the dispute, the panel and the Chair of the DSB of his decision, together with relevant supporting information.

Standing Appellate Body

14. If the covered person who is the subject of the evidence is a member of the Standing Appellate Body or of the Standing Appellate Body support staff, the party shall provide the evidence to the other party to the dispute and the evidence shall thereafter be provided to the Standing Appellate Body.

15. Upon receipt of the evidence referred to in paragraphs VIII:1 and VIII:2 above, the Standing Appellate Body shall forthwith provide it to the person who is the subject of such evidence, for consideration by the latter.

16. It shall be for the Standing Appellate Body to take any appropriate action after having provided a reasonable opportunity for the views of the person concerned and the parties to the dispute to be heard.

17. The Standing Appellate Body shall inform the parties to the dispute and the Chair of the DSB of its decision, together with relevant supporting information.

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[***]Pending adoption of the Staff Regulations, the Director-General would act in accordance with the following draft provision for the Staff Regulations: "If paragraph VIII:11 of the Rules of Conduct for the DSU governing the settlement of disputes is invoked, the Director-General shall consult with the person who is the subject of the evidence and the panel and shall, if necessary, take appropriate disciplinary action".

18. Following completion of the procedures in paragraphs VIII:5 to VIII:17, if the appointment of a covered person, other than a member of the Standing Appellate Body, is revoked or that person is excused or resigns, the procedures specified in the DSU for initial appointment shall be followed for appointment of a replacement, but the time-periods shall be half those specified in the DSU.[****] The member of the Standing Appellate Body who, under that Body's rules, would next be selected through rotation to consider the dispute, would automatically be assigned to the appeal. The panel, members of the Standing Appellate Body hearing the appeal, or the arbitrator, as the case may be, may then decide after consulting with the parties to the dispute, on any necessary modifications to their working procedures or proposed timetable.

19. All covered persons and Members concerned shall resolve matters involving possible material violations of these Rules as expeditiously as possible so as not to delay the completion of proceedings, as provided in the DSU.

20. Except to the extent strictly necessary to carry out this decision, all information concerning possible or actual material violations of these Rules shall be kept confidential.

IX. Review

1. These Rules of Conduct shall be reviewed within two years of their adoption and a decision shall be taken by the DSB as to whether to continue, modify or terminate these Rules.

[****]Appropriate adjustments would be made in the case of appointments pursuant to the Agreement on Subsidies and Countervailing Measures.

ANNEX 1a

Arbitrators acting pursuant to the following provisions:

- Articles 21.3(c); 22.6 and 22.7; 26.1(c) and 25 of the DSU;
- Article 8.5 of the Agreement on Subsidies and Countervailing Measures;
- Articles XXI.3 and XXII.3 of the General Agreement on Trade in Services.

ANNEX 1b

Experts advising or providing information pursuant to the following provisions:

- Article 13.1; 13.2 of the DSU;
- Article 4.5 of the Agreement on Subsidies and Countervailing Measures;
- Article 11.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures;
- Article 14.2; 14.3 of the Agreement on Technical Barriers to Trade.

ANNEX 2

ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

This list contains examples of information of the type that a person called upon to serve in a dispute should disclose pursuant to the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Each covered person, as defined in Section IV:1 of these Rules of Conduct has a continuing duty to disclose the information described in Section VI:2 of these Rules which may include the following:

(a) financial interests (e.g. investments, loans, shares, interests, other debts); business interests (e.g. directorship or other contractual interests); and property interests relevant to the dispute in question;

(b) professional interests (e.g. a past or present relationship with private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);

(c) other active interests (e.g. active participation in public interest groups or other organisations which may have a declared agenda relevant to the dispute in question);

(d) considered statements of personal opinion on issues relevant to the dispute in question (e.g. publications, public statements);

(e) employment or family interests (e.g. the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, business associates or immediate family members).

ANNEX 3

Dispute Number: _____

WORLD TRADE ORGANIZATION
DISCLOSURE FORM

I have read the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the Rules of Conduct for the DSU. I understand my continuing duty, while participating in the dispute settlement mechanism, and until such time as the Dispute Settlement Body (DSB) makes a decision on adoption of a report relating to the proceeding or notes its settlement, to disclose herewith and in future any information likely to affect my independence or impartiality, or which could give rise to justifiable doubts as to the integrity and impartiality of the dispute settlement mechanism; and to respect my obligations regarding the confidentiality of dispute settlement proceedings.

Signed: Dated:

ANNEX III

Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review*

Document Number	**Effective Date**	**Rules Amended**	**Working Documents/Explanatory Texts**	**Minutes of Principal DSB Meeting(s) at which Amendments were Discussed**
WT/AB/WP/1	15 February 1996	N/A	WT/AB/WP/W/1	31 January 1996, WT/DSB/M/10 and 21 February 1996, WT/DSB/M/11
WT/AB/WP/2	28 February 1997	Rule 5(2) and Annex II	WT/AB/WP/W/2, WT/AB/WP/W/3	25 February 1997, WT/DSB/M/29
WT/AB/WP/3	24 January 2002	Rule 5(2)	WT/AB/WP/W/4, WT/AB/WP/W/5	24 July 2001, WT/DSB/M/107
WT/AB/WP/4	1 May 2003	Rules 24 and 27(3), with consequential amendments to Rules 1, 16, 18, 19, and 28, and Annex I	WT/AB/WP/W/6, WT/AB/WP/W/7	23 October 2002, WT/DSB/M/134
WT/AB/WP/5	1 January 2005	Rules 1, 18, 20, 21, 23, 23 *bis*, and 27, and Annexes I and III	WT/AB/WP/W/8, WT/AB/WP/W/9	19 May 2004, WT/DSB/M/169
WT/AB/WP/6	15 September 2010	Rules 6(3), 18(1), 18(2), 18(4), 21(1), 22(1), 23(1), 23(3), 23(4), 24(1), 24(2), 27(1), 32(1), and 32(2), and Annexes I and III; additional technical amendments to Spanish and French versions only	WT/AB/WP/W/10, WT/AB/WP/W/11	18 May 2010, WT/DSB/M/283

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CJI/doc. 238/07

PRINCIPIOS DE ÉTICA JUDICIAL

(presentado por la doctora Ana Elizabeth Villalta Vizcarra)

I. MANDATOS

Durante su 66º período ordinario de sesiones, celebrado en Managua, Nicaragua, del 28 de febrero al 11 de marzo de 2005, el Comité Jurídico Interamericano aprobó la inclusión dentro de los temas en consideración de los "Principios de ética judicial", decidiendo postergar la elección de su relator para el próximo período ordinario de sesiones.

La Asamblea General de la Organización de los Estados Americanos-OEA, en su 35º período ordinario de sesiones celebrado en Fort Lauderdale, Estados Unidos de América, en junio de 2005, por resolución AG/RES. 2069 (XXXV-O/05), denominada "Observaciones y recomendaciones al informe Anual del Comité Jurídico Interamericano", resolvió alentar las iniciativas que pueda adoptar el Comité Jurídico para realizar estudios con otros organismos del sistema interamericano y en particular con el Centro de Estudios de Justicia de las Américas (CEJA), en distintos aspectos tendientes al fortalecimiento de la administración de justicia y de la ética judicial.

En cumplimiento de la anterior resolución el Comité Jurídico Interamericano durante su 67º período ordinario de sesiones, celebrado en Rio de Janeiro, Brasil, en agosto de 2005, recibió a los doctores Juan Enrique Vargas Viancos, Secretario del Centro de Estudios de Justicia de las Américas (CEJA), y Rodolfo Vigo, Ministro de la Corte Suprema de la Provincia de Santa Fe, República Argentina, Representante del CEJA, con quienes se mantuvo un diálogo y un intercambio de ideas en relación al tema, estableciéndose que la ética judicial es uno de los medios para fortalecer a los poderes judiciales y que esta temática había sido abordada en las Cumbres Iberoamericanas de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, así en la VI Cumbre celebrada en Santa Cruz de Tenerife, Canarias, España, en mayo de 2001, se aprobó el Estatuto de Juez Iberoamericano; en la VII Cumbre celebrada en Cancún, México, en noviembre de 2002, se adoptó la Carta de Derechos de las Personas ante la Justicia y en la VIII Cumbre, realizada en Copán, Honduras y San Salvador, El Salvador, en junio de 2004, se emitió la Declaración Copán-San Salvador, constituyendo una de sus áreas temáticas la Ética Judicial.

En esta reunión con los representantes del CEJA, el Comité Jurídico Interamericano optó por establecer principios generales de derecho en materia de ética judicial para los Estados, quedando a la espera de que el CEJA contara con un documento más concreto sobre "Principios de ética judicial" sobre el cual el Comité Jurídico se pueda pronunciar.

Durante su 68º período ordinario de sesiones, celebrado en Washington, D.C., Estados Unidos de América, en marzo de 2006, el Comité Jurídico Interamericano designó como relator del tema "Principios de ética judicial" al doctor José Manuel Delgado Ocando, para presentar su informe durante el 69º período ordinario de sesiones del Comité Jurídico, en Rio de Janeiro, Brasil, en agosto de 2006.

En vista de que el doctor José Manuel Delgado Ocando no pudo presentarse al 69º período ordinario de sesiones del Comité Jurídico Interamericano, ya que por razones de salud renunció a ser miembro del mismo, el Presidente del Comité Jurídico procedió a hacer un resumen verbal del informe que preparó el doctor Delgado Ocando, titulado "Notas preliminares sobre principios de ética judicial" (CJI/doc. 221/06), en la sesión de trabajo del 11 de agosto de 2006 en la que se analizó este tema, presentando los antecedentes del mismo, destacando el esfuerzo de recopilación de los instrumentos internacionales en materia de ética judicial; explicó el planteamiento por parte del relator respecto a los conceptos de ética y moral, así como los principios y reglas que rigen en la materia y la manera en la cual se abordaron los principios internacionalmente aceptados en materia de ética judicial; describió también los

resultados obtenidos en la VI Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, y explicó además el análisis del relator en cuanto a los principios de ética judicial y de los códigos en la materia existentes en algunos países de las Américas y posteriormente dio lectura a las conclusiones del doctor Delgado Ocando contenidas en su informe, con especial énfasis en el análisis del efecto que puede o no tener la promulgación de códigos de Ética Judicial sobre la independencia del Poder Judicial.

Una vez presentado el informe, el Presidente abrió un espacio para el diálogo del mismo entre los miembros del Comité Jurídico Interamericano. Concluido esto, se mencionó que debido a la renuncia del doctor Delgado Ocando era necesario nombrar a un nuevo relator del tema designándose en dicha reunión como relatora del tema a la doctora Ana Elizabeth Villalta Vizcarra.

En cumplimiento de esta designación y de las resoluciones antes mencionadas, es que la suscrita como relatora del tema, presenta en este 70º período ordinario de sesiones del CJI, el siguiente informe:

II. ANTECEDENTES

a) Principios de ética judicial

Estos tienen su principal antecedente en el Séptimo Congreso de las Naciones Unidas sobre la Prevención del Delito y el Tratamiento del Delincuente, celebrado en Milán, Italia, en septiembre de 1985, en el que se establecieron los Principios Básicos relativos a la Independencia Judicial, los cuales fueron confirmados por la Asamblea General de Naciones Unidas en su resolución A/RES/40/32 de 29 de noviembre de 1985.

Estos principios han sido retomados posteriormente por los Foros y Congresos Judiciales e incluidos en los Códigos de Ética Judicial adoptados por algunos de los países americanos.

El Código de Ética de los Estados Unidos de América se fundamenta en los siguientes Principios: [1]

- Los jueces deberán mantener la integridad e independencia del poder judicial.
- Los jueces deberán evitar la incorrección y la apariencia de incorrección en todas sus actividades.
- Los jueces deberán desempeñar los deberes de su cargo en forma imparcial y con diligencia.
- Los jueces pueden realizar actividades extrajudiciales para perfeccionar la ley, el régimen jurídico y la administración de justicia.
- Los jueces deberán ordenar sus actividades extrajudiciales de manera de reducir al mínimo el riesgo de conflicto con sus deberes judiciales.
- Los jueces deberán someter informes periódicamente sobre la compensación recibida por actividades relacionadas con la ley y extrajudiciales; y
- Los jueces deberán abstenerse de actividades políticas".

Estos Principios del Séptimo Congreso de las Naciones Unidas fueron también confirmados en el Proyecto del Código de Bangalore sobre la conducta judicial de 2001, los cuales han sido relacionados en el informe del doctor José Manuel Delgado Ocando, denominado "Notas Preliminares sobre Principios de Ética Judicial"[2].

En la VI Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, celebrada en Santa Cruz de Tenerife, Canarias, España en mayo de 2001, en la que se adoptó el Estatuto del Juez Iberoamericano en el que se considera que el Poder Judicial debe evolucionar hacia la consecución o consolidación de su independencia, no como privilegio de los jueces, sino como derecho de los ciudadanos y garantía del correcto funcionamiento del Estado Constitucional y Democrático de Derecho que asegure una justicia accesible, eficiente y previsible y en el cual en el capítulo relativo a la "Ética Judicial" también se retoman estos principios, en sus artículos: 37 - Servicio y respeto a las Partes; 38 - Obligación de independencia; 39 - Debido proceso; 40 - Limitaciones en la averiguación de la

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1 KENNEDY, Anthony. *La ética judicial y el imperio del derecho*. Juez del Tribunal Supremo de los Estados Unidos de América.
2 DELGADO OCANDO, José Manuel. *Notas preliminares sobre principios de ética judicial* (CJI/doc. 221/06).

verdad; 41 - Motivación; 42 - Resolución en plazo razonable; 43 - Principio de Equidad, y 44 - Secreto Profesional, y cuyos textos son los siguientes[3]:

Art. 37 - Servicio y respeto a las partes

En el contexto de un Estado constitucional y democrático de Derecho y en el ejercicio de su función jurisdiccional, los jueces tienen el deber de trascender el ámbito de ejercicio de dicha función, procurando que la justicia se imparta en condiciones de eficiencia, calidad, accesibilidad y transparencia, con respeto a la dignidad de la persona que acude en demanda del servicio.

Art. 38 - Obligación de independencia

El juez está obligado a mantener y defender su independencia en el ejercicio de la función jurisdiccional.

Art. 39 - Debido proceso

Los jueces tiene el deber de cumplir y hacer cumplir el principio del debido proceso, constituyéndose en garantes de los derechos de las partes y, en particular, velando por dispensarles un trato igual que evite cualquier desequilibrio motivado por la diferencia de condiciones materiales entre ellas y, en general, toda situación de indefensión.

Art. 40 - Limitaciones en la averiguación de la verdad

Los jueces habrán de servirse tan sólo de los medios legítimos que el ordenamiento pone a su alcance en la persecución de la verdad de los hechos en los casos de que conozcan.

Art. 41 - Motivación

Los jueces tienen la inexcusable obligación, en garantía de la legitimidad de su función y de los derechos de las partes, de motivar debidamente las resoluciones que dicten.

Art. 42 - Resolución en plazo razonable

Los jueces deben procurar que los procesos a su cargo se resuelvan en un plazo razonable. Evitarán o, en todo caso, sancionarán las actividades dilatorias o de otro modo contrarias a la buena fe procesal de las partes.

Art. 43 - Principio de equidad

En la resolución de los conflictos que lleguen a su conocimiento, los jueces, sin menoscabo del estricto respeto a la legalidad vigente y teniendo siempre presente el trasfondo humano de dichos conflictos, procurarán atemperar con criterios de equidad las consecuencias personales, familiares o sociales desfavorables.

Art. 44 - Secreto profesional

Los jueces tienen obligación de guardar absoluta reserva y secreto profesional en relación con las causas en trámite y con los hechos o datos conocidos en el ejercicio de su función o con ocasión de ésta.

No evacuarán consulta ni darán asesoramiento en los casos de contienda judicial actual o posible.

La relevancia del Estatuto del Juez Iberoamericano es normar los principios fundamentales de ética judicial que son: la independencia, la imparcialidad, la objetividad, la probidad, el profesionalismo y la excelencia en el ejercicio de la judicatura.

En la VII Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, celebrada en Cancún, México en noviembre de 2002, se adoptó la Carta de Derechos de las Personas ante la Justicia en el Espacio Judicial Iberoamericano, considerando que es un derecho fundamental de la población tener acceso a una justicia independiente, imparcial, responsable, eficiente, eficaz y equitativa.

En esta Carta se establece que las personas tienen derecho a una justicia moderna y accesible a todas las personas, que sea transparente, comprensible, atenta con todas las personas, responsable ante el ciudadano, ágil y tecnológicamente avanzada, que proteja a los

[3] *Estatuto del Juez Iberoamericano.* VI Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia. Santa Cruz de Tenerife, Canarias, España, mayo de 2001.

más débiles (víctimas, poblaciones indígenas, niño y adolescente, personas con discapacidades)[4].

b) Código de Ética Judicial

En la VIII Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia celebrada en Copán, Honduras y en San Salvador, El Salvador, en junio de 2004, en la que se emitió la Declaración Copán-San Salvador se introdujo dentro de sus áreas temáticas el tema de "Ética Judicial" donde se reiteró que los principios fundamentales que inspiran la actitud ética de los jueces son la independencia judicial, la imparcialidad, la objetividad, la probidad, el profesionalismo y la excelencia en el ejercicio de la judicatura, mediante el cultivo de las virtudes judiciales, en ese sentido, la VIII Cumbre, reiteró como Principios Éticos Básicos para todos los juzgadores iberoamericanos los ya establecidos en la II Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, que tienen su reflejo en el Estatuto del Juez Iberoamericano y en la Carta de Derechos de las Personas ante la Justicia en el Espacio Iberoamericano, debiéndose realizar todos los esfuerzos necesarios para que se aprueben e implanten dichos Principios en la normativa interna de todos los países de Iberoamérica, en particular en aquellos donde todavía no existe un código de ética, promoviendo en éstos su creación.

En los Estados en donde existen estos códigos conviene revisar el texto de los mismos, a efecto de promover que las normas que rigen la ética de los jueces se acoplen al Principio de Independencia, así como dar a conocer los principios de ética que se consagran en estos Códigos en los programas de capacitación existentes e impulsar la elaboración de un Código Modelo Iberoamericano de Ética Judicial[5].

Estos códigos son necesarios para el fortalecimiento integral del Poder Judicial, indispensables para su buen funcionamiento así como para restaurar su credibilidad y legitimidad.

Es en la XIII Cumbre Judicial Iberoamericana, celebrada en Santo Domingo, República Dominicana en junio de 2006, que se aprueba el Código Modelo Ibero-Americano de Ética Judicial, el cual en su Parte I, consagra los Principios de Ética Judicial Iberoamericana, siendo estos: la independencia, la imparcialidad, la motivación, el conocimiento y capacitación, la justicia y equidad, la responsabilidad institucional, la cortesía, la integridad, la transparencia, el secreto profesional, la prudencia, la diligencia y la honestidad profesional, y en la Parte II de dicho Código se establece la Comisión Iberoamericana de Ética Judicial que se integra por nueve miembros y un Secretario Ejecutivo, elegidos por un período de cuatro años con posibilidad de reelección, siendo estos cargos honoríficos.

Esta Comisión tiene como funciones: asesorar a los diferentes Poderes Judiciales y Consejos de la Judicatura Iberoamericanos o a la propia Cumbre Judicial Iberoamericana, en materia de Ética Judicial; facilitar la discusión, difusión y desarrollo de la ética judicial, a través de publicaciones o de la realización de cursos, seminarios, diplomados y demás encuentros académicos y fortalecer la conciencia ética judicial de los impartidores de justicia iberoamericanos[6].

En este Código en lo relativo a la independencia judicial se establece que:

> Las Instituciones que, en el marco del Estado constitucional, garantizan la independencia judicial no están dirigidas a situar al juez en una posición de privilegio. Su razón de ser es la de garantizar a los ciudadanos el derecho a ser juzgados con parámetros jurídicos, como forma de evitar la arbitrariedad y de realizar los valores constitucionales y salvaguardar los derechos fundamentales.

En cuanto a la imparcialidad expresa:

> Art. 9º - La imparcialidad judicial tiene su fundamento en el derecho de los justiciables a ser tratados por igual y, por tanto, a no ser discriminados en lo que respecta al desarrollo de la función jurisdiccional.

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[4] *Carta de Derechos de las Personas ante la Justicia en el ámbito judicial Iberoamericano*, VII Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, noviembre de 2002.

[5] XIII Cumbre Judicial Iberoamericana. Santo Domingo, República Dominicana, 21 y 22 de junio de 2006.

[6] XIII Cumbre Judicial Iberoamericana, Santo Domingo, República Dominicana, 21 y 22 de junio de 2006.

> Art. 10 - El juez imparcial es aquel que persigue con objetividad y con fundamento en la prueba la verdad de los hechos, manteniendo a lo largo de todo el proceso una equivalente distancia con las partes y con sus abogados, y evita todo tipo de comportamiento que pueda reflejar favoritismo, predisposición o prejuicio.

Esta Comisión tuvo su Reunión Constitutiva en la ciudad de Buenos Aires, República de Argentina el día primero de septiembre de 2006, en la que se emitió la declaración final denominada Reunión Constitutiva de la Comisión Iberoamericana de Ética Judicial. Esta reunión se integró por los miembros titulares de la Primera Comisión Iberoamericana de Ética Judicial y por su Secretario Ejecutivo.

En esta reunión dicha Comisión asumió el reto de cumplir fielmente las obligaciones que les asigna el Código Modelo Iberoamericano de Ética Judicial, de difundirlo y enriquecerlo, así como de fortalecer la conciencia ética judicial de los impartidores de justicia de Iberoamérica. Se comprometió también a impulsar las iniciativas y proyectos aprobados en esta reunión constitutiva, consistentes en la creación de una biblioteca virtual Iberoamericana de Ética Judicial, en la institución del Premio Iberoamericano al Mérito Judicial, en la promoción de un concurso de trabajos en torno al Código Iberoamericano de Ética Judicial y la creación de cursos virtuales y presenciales de ética judicial para formación de jueces.

Esta Comisión está integrada por representantes de: la República Federativa de Brasil, la República de Costa Rica, la República de Chile, la República de El Salvador, del Reino de España, de los Estados Unidos Mexicanos, de la República Portuguesa, del Estado Libre Asociado de Puerto Rico, de la República Oriental del Uruguay y como Secretario Ejecutivo el doctor Rodolfo Luís Vigo de la República Argentina.

Esta Comisión también elaboró las normas provisionales para su funcionamiento, esto es lo relativo al quórum, sus reuniones tanto ordinarias como extraordinarias y sus acuerdos, así como normas de procedimiento.

III. EL PRINCIPIO DE INDEPENDENCIA JUDICIAL

Por este principio los jueces son independientes en el ejercicio de sus funciones jurisdiccionales y se encuentran tan sólo sometidos a la Constitución y a la ley, con estricto respeto al principio de jerarquía normativa, estando a su vez los otros Poderes del Estado y en general, todas las autoridades, instituciones y organismos nacionales e internacionales, así como todas las organizaciones sociales, económicas y políticas obligadas a respetar y hacer efectivo este Principio.

A su vez el Poder Judicial debe evolucionar a la consolidación de su independencia, no como privilegio de los jueces, sino como derecho de los ciudadanos y garantía del correcto funcionamiento del Estado Constitucional Democrático de Derecho que asegure una justicia accesible, eficiente y previsible.

La Independencia Judicial constituye además una garantía a los justiciables de ser juzgados con parámetros jurídicos y salvaguardando sus derechos fundamentales, por lo que la justicia debe estar en manos de jueces de clara idoneidad técnica, profesional y ética, haciéndose necesario que cuenten con un instrumento que norme sus derechos, deberes, condiciones y requisitos que han de acompañarlos y orientarlos en el ejercicio de sus delicadas tareas.

La Independencia Judicial, la administración efectiva e imparcial de la justicia y la confianza de la ciudadanía en su sistema judicial contribuyen a afianzar y consolidar las bases democráticas de nuestra sociedad. Al promover una judicatura independiente, se garantiza que los juzgadores sean defensores del constitucionalismo y del principio de legalidad.

Los cánones en materia de ética judicial son normas mínimas de conducta que deben cumplir celosamente quienes tienen la encomienda de impartir justicia, sirviendo de estructura para la reglamentación de la conducta judicial, fortaleciendo de manera prioritaria la independencia judicial como pilar de la sociedad democrática, garantizando el eficiente desempeño de los operadores de justicia al estimularlos para ser: laboriosos, imparciales, independientes, prudentes, serenos, sensibles, estudiosos y cuidadosos en la interpretación de la ley.

Para garantizar la autonomía e independencia efectiva (funcional y financiera) del Poder Judicial, es aconsejable que todos los países tengan previsto en sus Constituciones un porcentaje del Presupuesto General del Estado destinado al Poder Judicial, de conformidad a las particularidades de cada país para cubrir sus necesidades garantizando de esta manera la independencia económica del Poder Judicial.

En la Constitución de la República de El Salvador de 1983 se regula expresamente en el artículo 172, el Principio de la Independencia Judicial cuando dice en su inciso tercero: "Los Magistrados y Jueces, en lo referente al ejercicio de la función jurisdiccional, son independientes y están sometidos exclusivamente a la Constitución y a las leyes"[7].

En ese mismo artículo de la Constitución de El Salvador relativo al órgano judicial, con el objeto de garantizar la autonomía e independencia efectiva del mismo se destina a dicho órgano un porcentaje del presupuesto general del Estado y así el inciso final del artículo 172 literalmente expresa: "El Órgano Judicial dispondrá anualmente de una asignación no inferior al seis por ciento de los ingresos corrientes del presupuesto del Estado"[8].

En el artículo 186 de la Constitución de El Salvador en el que se establece la carrera judicial, también se hace relación al Principio de la Independencia Judicial tanto en el nombramiento de los magistrados de la Corte Suprema de Justicia, como todo lo relativo a su actuación, siendo su texto el siguiente:

> Art. 186 - Se establece la carrera judicial[9]
>
> Los Magistrados de la Corte Suprema de Justicia serán elegidos por la Asamblea Legislativa para un período de nueve años, podrán ser reelegidos y se renovarán por terceras partes cada tres años. Podrán ser destituidos por la Asamblea legislativa por causas específicas, previamente establecidas por la ley. Tanto para la elección como para la destitución deberá tomarse con el voto favorable de por lo menos de dos tercios de los Diputados electos.
>
> La elección de los Magistrados de la Corte Suprema de Justicia, se hará de una lista de candidatos, que formará el Consejo Nacional de la Judicatura en los términos que determinará a la ley, la mitad de la cual provendrá de los aportes de las entidades representativas de los Abogados de El Salvador y donde deberán estar representados las más relevantes corrientes del pensamiento jurídico.
>
> Los magistrados de las Cámaras de Segunda Instancia, los Jueces de Primera Instancia y los Jueces de Paz integrados a la carrera judicial, gozarán de estabilidad en sus cargos.
>
> La ley deberá asegurar a los jueces protección para que ejerzan sus funciones con toda libertad, en forma imparcial y sin influencia alguna en los asuntos que conocen; y los medios que les garanticen una remuneración justa y un nivel de vida adecuado a la responsabilidad de sus cargos.
>
> La Ley regulará los requisitos y la forma de ingresos a la carrera judicial, las promociones, ascensos, traslados, sanciones disciplinarias a los funcionarios incluidos en ella y las demás cuestiones inherentes a dicha carrera.

Por el Principio de Independencia Judicial, el Juzgador debe poner de manifiesto que no recibe influencias directas o indirectas de ningún otro poder público o privado interno o externo al Poder Judicial, por lo que, el Juez tiene el derecho y el deber de denunciar cualquier intento de perturbación a su independencia y a su vez de ser respaldados por los órganos superiores o de gobierno del Poder Judicial.

Los medios de comunicación social pueden atentar contra el Principio de Independencia Judicial al influir en el contenido de las resoluciones judiciales, en condiciones que excedan al legítimo derecho a la libertad de expresión e información.

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7 *Constitución de la República de El Salvador*, 1983, Capítulo III – Órgano Judicial, art. 172.
8 *Ibid*.
9 *Constitución de la República de El Salvador*, 1983, Capítulo III – Órgano Judicial, art. 186, reformada por el DL nº 64, del 31 de octubre de 1991.

En ese sentido, tanto el sistema judicial como los medios de comunicación social deben ser independientes e imparciales, y regir sus actuaciones con niveles de profesionalidad y ética aceptables contribuyendo así, a la gobernabilidad democrática.

En razón de lo anterior, las normas de ética judicial que rigen a los operadores de justicia deben no solamente acoplarse al Principio de Independencia Judicial, sino que fortalecerlo, consolidando de esta manera la sociedad democrática.

La Independencia Judicial en ningún momento debe impedir el acceso a la justicia, entendiendo ésta como "el derecho fundamental que tiene toda persona para acudir y promover la actividad de los órganos encargados de prestar el servicio público de impartición de la justicia, con la finalidad de obtener la tutela jurídica de sus intereses a través de una resolución pronta, completa e imparcial, ya que es derecho fundamental de las personas tener acceso a una justicia independiente, imparcial, responsable, eficiente, eficaz y equitativa"[10].

Esta relación de balance entre la Independencia Judicial y el acceso a la justicia fue tratada en la VII Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, en noviembre de 2002, en la cual se emite la Declaración de Cancún en la que se aprueba la noción de acceso a la justicia y la Carta de Derechos de las Personas ante la Justicia en el Espacio Judicial Iberoamericano.

IV. RECOMENDACIONES

Los Códigos de Ética Judicial para que sean verdaderamente eficientes deben ser elaborados por la propia judicatura, con equidad e independencia a fin de afrontar y resolver sus propios problemas, solamente de esta manera los cánones de ética judicial no afectarán el "Principio de la Independencia Judicial".

En este mismo sentido, es a la propia judicatura a quien le corresponde la ejecución y supervisión del cumplimiento de los códigos de ética judicial, a fin de que éstos sean eficientes y eficaces.

Es también importante que cualquier mecanismo que censure y amoneste a los jueces esté en manos de la judicatura, debiendo ésta a su vez observar una ética suficientemente fuerte para su corrección.

La Ética Judicial proyectada al Juzgador es un medio complementario del derecho a los fines de la excelencia del servicio judicial y apela principalmente a la conciencia del Juez para racionalmente comprometerlo a ser mejor.

Un Poder Judicial que cuenta con un Código de Ética está más legitimado para exigir de las otras profesiones vinculadas a su servicio una respuesta equivalente para sus integrantes. Los Códigos de Ética también constituyen una herramienta en manos de la sociedad, para evaluar éticamente a los jueces ya sea para reprocharles su conducta o para reconocer su excelencia judicial.

Actualmente en la región tanto la autoridad política en un contexto general, como la autoridad judicial en uno particular, están afrontando una visible crisis de legitimidad haciéndose necesario que la ciudadanía recupere la confianza en sus instituciones. Por lo que la adopción de un Código de Ética Judicial implica, un mensaje que los mismos Poderes Judiciales envían a la sociedad reconociendo la inquietud que provoca esta crisis y el empeño de asumir un compromiso fuerte por la excelencia en la prestación de servicio de justicia, así como el afrontar la responsabilidad ética de los miembros del Poder Judicial.

La XIII Cumbre Judicial Iberoamericana, celebrada en República Dominicana en junio de 2006, integrada por los Poderes Judiciales y Consejos de la Judicatura de Iberoamérica aprobó y promulgó el Código Iberoamericano de Ética Judicial, que recoge el acervo ético de la identidad Iberoamericana y que compromete al Juzgador a su excelencia con el fin de fortalecer la calidad del servicio público de la justicia.

Este Código se centra en regular tanto los "Principios de la Ética Judicial Iberoamericana" como la "Comisión Iberoamericana de Ética Judicial".

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[10] *Declaración de Cancún*. VII Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia, Cancún, México, 27 al 29 de noviembre de 2002.

Considerando que ya se cuenta con un código de ética judicial a nivel de Iberoamérica y del cual forman parte muchos de los Estados del Continente Americano, sería oportuno tomarlo como base para la elaboración de un código que regule los Principios de Ética Judicial en el ámbito Interamericano.

Este Código al igual que el Iberoamericano podría normar los principios de ética judicial únicamente para Juzgadores, es decir, a nivel jurisdiccional debiendo ser elaborado y promulgado por la propia judicatura, así como ejecutado y supervisado por ella misma con el objeto de asegurar y garantizar su independencia e imparcialidad.

Si se considera la conveniencia de contar con un Código de Ética Judicial en el Sistema Interamericano, sería conveniente que en su elaboración se pudiera contar con el Centro de Estudios de Justicia de las Américas (CEJA), por su relación directa con los Poderes u Órganos Judiciales de los Estados miembros de la Organización de los Estados Americanos (OEA).

Un Código de Ética Judicial de las Américas vendría a fortalecer a los Poderes u Órganos Judiciales de los Estados miembros de la OEA, siempre y cuando en el mismo se preserve y se tenga un balance con la Independencia Judicial, además contribuiría a consolidar el Estado Democrático Constitucional de derecho de la región.

Ahora bien, podría también considerarse la conveniencia de elaborar un Código de Ética Judicial, que rija no solamente para los Poderes Judiciales sino también que regulara a todos los demás operadores de justicia en el sistema judicial, por lo que normaría a Procuradores, Fiscales y demás agentes involucrados con el sector Justicia.

La existencia de un Código de Ética Judicial en la región, contribuiría además prevenir y combatir la corrupción, ya que fortalecería la probidad del sistema judicial, haciendo más transparente la tarea de impartir justicia.

En razón de lo anterior, sería conveniente que este tema de los “Principios de Ética Judicial”, si el Comité Jurídico Interamericano resuelve la conveniencia de elaborar un Código de Ética Judicial para el Sistema Interamericano, se realice conjuntamente con el Centro de Justicia de las Américas (CEJA) por su vinculación con los poderes u órganos judiciales de la región, a efecto de que estos, contribuyan directamente en la elaboración del mismo.

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CÓDIGO IBEROAMERICANO DE ÉTICA JUDICIAL

Reformado el 2 de abril de 2014 en la XVII Reunión Plenaria de la Cumbre Judicial Iberoamericana, Santiago, Chile

I. *La actualidad de la Ética Judicial en Iberoamérica*

En nuestro espacio geográfico y cultural se asiste en los últimos años a la sanción de Códigos de Ética Judicial o reglamentaciones particulares análogas (hasta la fecha se han establecido en 15 países) con contenidos y diseños institucionales diversos. La misma Cumbre Judicial Iberoamericana ha avalado esa alternativa incluyendo en el *Estatuto del Juez Iberoamericano,* aprobado en Canarias en el año 2001, un capítulo dedicado específicamente a la "Ética Judicial". En sintonía con esos antecedentes, en la *Carta de Derechos de las Personas ante la Justicia en el Espacio Judicial Iberoamericano* (Cancún, 2002), se reconoció *"un derecho fundamental de la población a tener acceso a una Justicia independiente, imparcial, transparente, responsable, eficiente, eficaz y equitativa".* Esa realidad motivó que en la Declaración Copán-San Salvador, 2004, los Presidentes de Cortes y Tribunales Supremos de Justicia y de Consejos de la Judicatura pertenecientes a los países que integran Iberoamérica aprobaron la siguiente declaración:

> *Primera: Reiterar como principios éticos básicos para los juzgadores iberoamericanos los ya establecidos en la Segunda Cumbre Iberoamericana de Cortes y Tribunales Supremos de Justicia, que tiene su reflejo en el* Estatuto del Juez Iberoamericano y en la Carta de Derechos del Ciudadano *frente a la justicia.*
>
> *Segunda: Realizar todos los esfuerzos necesarios para que se aprueben e implanten dichos principios en la normativa de todos los países de Iberoamérica, en particular en aquellos donde todavía no existe un Código de Ética, promoviendo su creación.*
>
> *Tercera: Revisar el texto de los Códigos de Ética que ya existen, a efecto de promover que las normas que rigen la ética de los jueces se acoplen al principio de independencia respecto a cualquier otra autoridad y respecto de cualquiera de las partes involucradas en los procesos judiciales concretos, y a los principios derivados de aquel.*
>
> *Cuarta: Dar a conocer en su respectiva judicatura los principios de ética que se consagran en cada uno de sus Códigos de Ética Judicial e integrarlos a los programas de capacitación existentes en cada país.*
>
> *Quinta: Difundir entre los justiciables, a través de distintos medios informativos, sus*

II. *El Código Modelo como fruto del desarrollo regional de la ética judicial*

La identidad de Iberoamérica cuenta con rasgos visibles y explicaciones históricas extendidas pero, sobre todo, Iberoamérica aparece en el mundo globalizado del presente como un espacio que interactúa con otras culturas, sin perder por ello sus propias características que la tornan peculiar. En ese marco, los Poderes Judiciales Iberoamericanos han ido construyendo -trabajosa, pero exitosamente- una realidad que, por encima de las particularidades nacionales, exhibe rasgos comunes desde los cuales es posible ir delineando políticas de beneficio mutuo. En la configuración de la ética judicial Iberoamericana hay rasgos comunes con otras experiencias análogas que ofrecen distintos espacios culturales, pero también algunas características distintivas que expresan aquella identidad. La realización de un *Código Modelo Iberoamericano* supone un nuevo tramo de ese camino que ya se ha ido recorriendo y posibilita que la región se presente al mundo desde una cierta tradición, pero también como un proyecto inacabado, que sin suprimir las individualidades nacionales, descubre y ofrece una riqueza común.

III. *El* Código Modelo *como compromiso institucional con la excelencia y como instrumento para fortalecer la legitimación del Poder Judicial*

A pesar de aquella decisión de la Cumbre Judicial Iberoamericana y del contexto señalado que la respalda, dado que persisten voces judiciales escépticas o desconfiadas, se hace necesario justificar este empeño en la aprobación de un *Código Modelo Iberoamericano de Ética Judicial.* En último término, se trata de, a partir de las exigencias que el propio Derecho plantea a la actividad judicial, profundizar en las mismas y añadir otras, de cara a alcanzar lo que podría llamarse el "mejor" juez posible para nuestras sociedades. La ética judicial incluye los deberes jurídicos que se refieren a las conductas más significativas para la vida social, pero pretende que su cumplimiento responda a una aceptación de los mismos por su valor intrínseco, esto es, basada en razones morales; además, completa esos deberes con otros que pueden parecer menos perentorios, pero que contribuyen a definir la excelencia judicial. De lo cual se sigue que la ética judicial supone rechazar tanto los estándares de conducta propios de un "mal" juez, como los de un juez simplemente "mediocre" que se conforma con el mínimo jurídicamente exigido. A este respecto, corresponde advertir que la realidad actual de la autoridad política en general, y de la judicial en particular, exhibe una visible crisis de la legitimidad que conlleva en los que la ejercen el deber de procurar que la ciudadanía recupere la confianza en aquellas instituciones. La adopción de un Código de Ética implica un mensaje que los mismos Poderes Judiciales envían a la sociedad reconociendo la inquietud que provoca esa débil legitimidad y el empeño en asumir voluntariamente un compromiso fuerte por la excelencia en la prestación del

"responsabilidad", "sanción", "deber" etc., ella es asumida no con aquella carga, sino como términos que permiten ser utilizados en el campo ético con las particularidades que esta materia implica.

IV. *La ética judicial y la necesidad de armonizar los valores presentes en la función judicial*

Cabe recordar que en el Estado de Derecho al juez se le exige que se esfuerce por encontrar la solución justa y conforme al Derecho para el caso jurídico que está bajo su competencia, y que ese poder *e imperium* que ejerce procede de la misma sociedad que, a través de los mecanismos constitucionales establecidos, lo escoge para tan trascendente y necesaria función social, con base en haber acreditado ciertas idoneidades específicas. El poder que se confiere a cada juez trae consigo determinadas exigencias que serían inapropiadas para el ciudadano común que ejerce poderes privados; la aceptación de la función judicial lleva consigo beneficios y ventajas, pero también cargas y desventajas. Desde esa perspectiva de una sociedad mandante se comprende que el juez no solo debe preocuparse por "ser", según la dignidad propia del poder conferido, sino también por "parecer", de manera de no suscitar legitimas dudas en la sociedad acerca del modo en el que se cumple el servicio judicial. El Derecho ha de orientarse al bien o al interés general, pero en el ámbito de la función judicial adquieren una especial importancia ciertos bienes e intereses de los justiciables, de los abogados y de los demás auxiliares y servidores de la justicia, que necesariamente han de tenerse en consideración. La ética judicial debe proponerse y aplicarse desde una lógica ponderativa que busca un punto razonable de equilibrio entre unos y otros valores: si se quiere, entre los valores del juez en cuanto ciudadano y en cuanto titular de un poder, cuyo ejercicio repercute en los bienes e intereses de individuos concretos y de la sociedad en general.

V. *La ética judicial como apelación al compromiso íntimo del juez con la excelencia y con el rechazo a la mediocridad*

El Derecho puede ser visto como una regulación de la conducta por parte de autoridades legitimadas para ello, que cabe usar para juzgar formalmente *ex post facto* aquellos comportamientos que la violan. Las normas éticas pueden ser usadas también con esa función, pero en el "enjuiciamiento" ético no hay ninguna razón que pueda esgrimir el denunciado por una falta contra la ética que quede fuera de la deliberación; dicho de otra manera, un Tribunal de Ética puede aceptar razones que serían inaceptables si actuara como un tribunal jurídico. Mientras que en el Derecho las formas generales mediante las que se determina la responsabilidad son indisponibles y esencialmente orientadas hacia el pasado, en la ética se tornan flexibles, puesto que lo primordial es modificar el futuro comportamiento del juez y lograr la excelencia. Para la ética profesional, podría llegar a

existiera una conciencia ética firme e integral por parte del profesional, sin duda se tornarían irrelevantes buena parte de los deberes jurídicos.

VI. *El* Código Modelo *como explicitación de la idoneidad judicial y complemento de las exigencias jurídicas en el servicio de justicia*

En las tradiciones de las antiguas profesiones, al señalar quienes estaban autorizados para ejercerlas y como debían prestarse los servicios correspondientes, se filtraban reclamos a la conciencia ética profesional, por lo que las violaciones respectivas incluían la perdida de la posibilidad de seguir prestándolo. De ahí que en la tarea judicial se tuviera en cuenta originalmente cierta idoneidad ética y se previeran mecanismos de destitución cuando se incurría en mal desempeño. El ejercicio de la función judicial no debe, obviamente, ser arbitrario, pero en ocasiones es inevitable que el juez ejerza un poder discrecional. Esa discrecionalidad judicial implica innegables riesgos que no pueden solventarse simplemente con regulaciones jurídicas, sino que requieren el concurso de la ética. Parece así adecuado que, a la hora de plantearse el nombramiento o la promoción de los jueces, o de enjuiciar su conducta en cuanto jueces, se tengan en cuenta aquellas cualidades o hábitos de conducta que caracterizan a la excelencia profesional y que van más allá del mero cumplimiento de las normas jurídicas. Las constituciones contemporáneas contienen un marco general de aquella dimensión ética implicada en el servicio judicial, especialmente cuando indican quienes pueden ser jueces o cuando procede su destitución. De ese modo, la ética judicial encuentra asidero constitucional, en cuanto supone una explicitación de aquellos enunciados constitucionales.

VII. *El* Código Modelo *como instrumento esclarecedor de las conductas éticas judiciales*

La formulación de un Código de Ética Judicial puede ser una fuente muy importante de clarificación de conductas. Obviamente, porque un Código de Ética Judicial, como cualquier ordenamiento, supone una división de la conducta que pretende regular en lícita e ilícita y, de esta manera, sirve de guía para sus destinatarios. Pero también porque, en ocasiones, dentro de las conductas éticamente admisibles, los Códigos optan, por razones de oportunidad y de coordinación, por un determinado curso de acción, de entre varios posibles; por ejemplo, a pesar de que en principio podría haber diversas opciones para establecer el modo en que es éticamente autorizado que el juez se reúna con los abogados de las partes, el hecho de que un Código escoja una de ellas despeja las dudas que legítimamente pueden suscitarse entre sus destinatarios.

VIII. *El* Código Modelo *como respaldo de la capacitación permanente del juez y como título para reclamar los medios para su cumplimiento*

Al mismo tiempo que un Código clarifica conductas, las facilita en tanto se le provee al juez de

perjudicados. No solo el juez sabe a qué atenerse, sino también aquellos vinculados a su servicio. Pero dado que la ética no puede exigir conductas imposibles, el Código simultáneamente se constituye en una fuente de razones a las que puede apelar el juez en el cumplimiento de sus exigencias. De ese modo, si un Código reclama capacitación, es necesario que se le brinde a sus destinatarios los medios para acceder a la misma: si éstos no existieran, sería difícil exigir responsabilidad por eventuales incumplimientos.

IX. *El Código Modelo como estímulo para fortalecer la voluntad del juzgador y como pauta objetiva de calidad ética en el servicio de justicia*

El Código puede también ser visto como un instrumento para fortalecer la voluntad del juez, en tanto determina conductas y consagra eventuales responsabilidades éticas ante su infracción. Asimismo, al proveer criterios y medidas determinadas con las que juzga la calidad ética del servicio, el Código dota de cierta objetividad al concepto de "excelencia judicial". Ello vale no solo para los propios jueces, sino también para la sociedad que ha conferido el poder y que puede, a partir del Código, evaluar éticamente a los jueces tanto para reprocharles su conducta como para reconocer su excelencia.

X. *Del* Código Modelo de Ética Judicial *a la ética de las otras profesiones jurídicas*

Un Poder Judicial que cuenta con un Código de Ética está más legitimado para exigir de las otras profesiones vinculadas a su servicio una respuesta equivalente para sus integrantes. Es obvio que, más allá de la centralidad del juez en el servicio de justicia, la excelencia ética en el mismo también depende de otras profesiones, por lo que resulta coherente y conveniente extender esa preocupación más allá del ámbito estrictamente judicial. La falta de ética judicial remite en ocasiones a otras deficiencias profesionales, especialmente la de abogados, fiscales, procuradores e, incluso, docentes jurídicos; un reclamo integral de excelencia debe incorporar a esos otros espacios profesionales, y el Código de Ética Judicial habilita para que el mismo Poder Judicial lo impulse.

XI. Un Código Modelo *como fruto de un dialogo racional y pluralista*

El Código de Ética Judicial que se propone busca la adhesión voluntaria de los distintos jueces iberoamericanos atentos a la conciencia profesional que exigen los tiempos actuales y trata por ello de presentarse como el fruto de un "dialogo racional" en el que se ha otorgado un considerable peso a las razones procedentes de los códigos ya existentes. Sería inadecuado que el presente Código surgiera como un emprendimiento desarraigado en el tiempo y en el espacio o como un mero acto de voluntad de la autoridad con competencia para ello. Por el contrario, su fortaleza y eficacia dependerán de la prudente fuerza racional que logre traducir en su articulado y de que, consiguientemente, sea capaz de

quehacer judicial. El Código debe ser una permanente y dinámica interpelación a la conciencia de sus destinatarios para que, desde el compromiso de la excelencia, logre encarnarse históricamente en aquellos que han aceptado prestar un servicio demandado por la sociedad.

XII. Los principios éticos como núcleos concentrados de ética judicial

Desde la lectura comparada de los Códigos de Ética Judicial vigentes es posible identificar ciertas exigencias centrales que muestran una importante concentración del modo en que se pretende la prestación del servicio de justicia de manera excelente o completa. Esos núcleos concentradores de la ética judicial reciben distintos nombres, pero parece aconsejable insistir -de conformidad con los documentos iberoamericanos ya aprobados- en la denominación de "principios", dado que ellos reclaman cierto perfil intrínseco valioso cuya concreción histórica queda sujeta a posibilidades y circunstancias de tiempo y lugar. Los "principios éticos" configuran el repertorio de las exigencias nucleares de la excelencia judicial, pero como tales pueden justificar diferentes normas en donde se especifiquen distintas conductas en relación a determinadas circunstancias. Así, por ejemplo, la independencia es inequívocamente uno de esos "principios", y desde ella es posible delinear normas que, de manera más concreta, modalicen conductas exigibles. Esos principios, al procurar modelar el ideal del mejor juez posible, no solo reclaman ciertas conductas sino que alientan que, tras la reiteración de las mismas, se arraiguen en hábitos beneficiosos, facilitadores de los respectivos comportamientos y fuente de una más sólida confianza ciudadana.

XIII. Las proyecciones de los principios en Normas o Reglas éticas

El *Código Modelo Iberoamericano de Ética Judicial* ofrece así un catálogo de principios que en buena medida ya han sido receptados en Códigos vigentes en Iberoamérica. Estos principios ordenan genérica y concentradamente la excelencia judicial, y posibilitan que otras normas vayan concretando ese ideal, a tenor de cambiantes y variadas circunstancias de tiempo y lugar. Cabe advertir que estos principios pueden ser reconstruidos con el lenguaje propio de las virtudes -como se hace en algunos Códigos Iberoamericanos-, en tanto la habitualidad de las conductas pertinentes consolida disposiciones para la excelencia en el servicio judicial.

XIV. La experiencia iberoamericana en materia de faltas éticas y asesoramiento ético judicial

Con independencia de que se estime conveniente alentar y procurar que las exigencias de los Códigos Éticos no queden libradas a la sola voluntad de los destinatarios, una lectura comparativa de los distintos sistemas vigentes en Iberoamérica en materia de

existen países que han optado por establecer Tribunales de Ética Judicial *ad doc* que juzgan de manera particular las faltas a sus respectivos Códigos de Ética, mientras que en otros los Tribunales de Ética se limitan a declarar la existencia de una falta ética, pero dejan a los órganos disciplinarios habituales la decisión final que eventualmente pueda adoptarse. Además, hay países en que las faltas éticas se encuentran incluidas dentro del régimen jurídico disciplinario que aplican los órganos administrativos o judiciales competentes. Y, finalmente, otros que confían la eficacia del Código a la voluntad individual de sus destinatarios. Por otro lado, además de Tribunales de Ética, algunos Códigos han previsto la existencia de Comisiones de Consultas Éticas a las que se pueden remitir dudas o cuestiones con el propósito de recabar una opinión que puede o no ser reservada; de esta manera, al mismo tiempo que se presta un servicio de asesoramiento, se van enriqueciendo y concretando las exigencias éticas generales establecidas por los principios.

XV. Comisión Iberoamericana de Ética Judicial

Partiendo de esta diversificada experiencia institucional, el *Código Modelo* propone la creación de una Comisión Iberoamericana de Ética Judicial. Sus funciones principales son las de asesorar a los diferentes Poderes Judiciales cuando estos lo requieran y la de crear un espacio de discusión, difusión y desarrollo de la ética judicial en el ámbito iberoamericano. La Comisión estará integrada por nueve miembros que habrán de estar vinculados directa o indirectamente al quehacer judicial.

PARTE I

Principios de la Ética Judicial Iberoamericana

CAPITULO I

Independencia

ART. 1 °.- Las instituciones que, en el marco del Estado constitucional, garantizan la independencia judicial no están dirigidas a situar al juez en una posición de privilegio. Su razón de ser es la de garantizar a los ciudadanos el derecho a ser juzgados con parámetros jurídicos, como forma de evitar la arbitrariedad y de realizar los valores constitucionales y salvaguardar los derechos fundamentales.

ART. 2º.- El juez independiente es aquel que determina desde el Derecho vigente la decisión justa, sin dejarse influir real o aparentemente por factores ajenos al Derecho mismo.

ART. 3°.- El juez, con sus actitudes y comportamientos, debe poner de manifiesto que no recibe influencias -directas o indirectas- de ningún otro poder público o privado, bien sea externo o interno al orden judicial.

ART. 4º.- La independencia judicial implica que al juez le esta éticamente vedado participar de cualquier manera en actividad política partidaria.

ART. 5°.- El juez podrá reclamar que se le reconozcan los derechos y se le suministren los medios que posibiliten o faciliten su independencia.

ART. 6°.- El juez tiene el derecho y el deber de denunciar cualquier intento de perturbación de su independencia.

ART. 7º.- Al juez no solo se le exige éticamente que sea independiente sino también que no interfiera en la independencia de otros colegas.

ART. 8°.- El juez debe ejercer con moderación y prudencia el poder que acompaña al ejercicio de la función jurisdiccional.

CAPITULO II

Imparcialidad

ART. 9°.- La imparcialidad judicial tiene su fundamento en el derecho de los justiciables a ser tratados por igual y, por tanto, a no ser discriminados en lo que respecta al

ART. 10.- El juez imparcial es aquel que persigue con objetividad y con fundamento en la prueba la verdad de los hechos, manteniendo a lo largo de todo el proceso una equivalente distancia con las partes y con sus abogados, y evita todo tipo de comportamiento que pueda reflejar favoritismo, predisposición o prejuicio.

ART. 11.- El juez está obligado a abstenerse de intervenir en aquellas causas en las que se vea comprometida su imparcialidad o en las que un observador razonable pueda entender que hay motivo para pensar así.

ART. 12.- El juez debe procurar evitar las situaciones que directa o indirectamente justifiquen apartarse de la causa.

ART. 13.- El juez debe evitar toda apariencia de trato preferencial o especial con los abogados y con los justiciables, proveniente de su propia conducta o de la de los otros integrantes de la oficina judicial.

ART. 14.- Al juez y a los otros miembros de la oficina judicial les está prohibido recibir regalos o beneficios de toda índole que resulten injustificados desde la perspectiva de un observador razonable.

ART. 15.- El juez debe procurar no mantener reuniones con una de las partes o sus abogados (en su despacho o, con mayor razón, fuera del mismo) que las contrapartes y sus abogados puedan razonablemente considerar injustificadas.

ART. 16.- El juez debe respetar el derecho de las partes a afirmar y contradecir, en el marco del debido proceso.

ART. 17.- La imparcialidad de juicio obliga al juez a generar hábitos rigurosos de honestidad intelectual y de autocrítica.

CAPITULO III

Motivación

ART. 18.- La obligación de motivar las decisiones se orienta a asegurar la legitimidad del juez, el buen funcionamiento de un sistema de impugnaciones procesales, el adecuado control del poder del que los jueces son titulares y, en último término, la justicia de las resoluciones judiciales.

ART. 19.- Motivar supone expresar, de manera ordenada y clara, razones jurídicamente validas, aptas para justificar la decisión.

ART. 20.- Una decisión carente de motivación es, en principio, una decisión arbitraria, solo tolerable en la medida en que una expresa disposición jurídica justificada lo permita.

ART. 21.- El deber de motivar adquiere una intensidad máxima en relación con decisiones privativas o restrictivas de derechos, o cuando el juez ejerza un poder discrecional.

ART. 22.- El juez debe motivar sus decisiones tanto en materia de hechos como de Derecho.

ART. 23.- En materia de hechos, el juez debe proceder con rigor analítico en el tratamiento del cuadro probatorio. Debe mostrar en concreto lo que aporta cada medio de prueba, para luego efectuar una apreciación en su conjunto.

ART. 24.- La motivación en materia de Derecho no puede limitarse a invocar las normas aplicables, especialmente en las resoluciones sobre el fondo de los asuntos.

ART. 25.- La motivación debe extenderse a todas las alegaciones de las partes, o a las razones producidas por los jueces que hayan conocido antes del asunto, siempre que sean relevantes para la decisión.

ART. 26.- En los tribunales colegiados, la deliberación debe tener lugar y la motivación expresarse en términos respetuosos y dentro de los márgenes de la buena fe. El derecho de cada juez a disentir de la opinión mayoritaria debe ejercerse con moderación.

ART. 27.- Las motivaciones deben estar expresadas en un estilo claro y preciso, sin recurrir a tecnicismos innecesarios y con la concisión que sea compatible con la completa comprensión de las razones expuestas.

CAPITULO IV

Conocimiento y Capacitación

ART. 28.- La exigencia de conocimiento y de capacitación permanente de los jueces tiene como fundamento el derecho de los justiciables y de la sociedad en general a obtener un servicio de calidad en la administración de justicia.

ART. 29.- El juez bien formado es el que conoce el Derecho vigente y ha desarrollado las capacidades técnicas y las actitudes éticas adecuadas para aplicarlo correctamente.

ART. 30.- La obligación de formación continuada de los jueces se extiende tanto a las materias específicamente jurídicas como a los saberes y técnicas que puedan favorecer el mejor cumplimiento de las funciones judiciales.

ART. 31.- El conocimiento y la capacitación de los jueces adquiere una especial intensidad en relación con las materias, las técnicas y las actitudes que conduzcan a la máxima protección de los derechos humanos y al desarrollo de los valores constitucionales.

ART. 32.- El juez debe facilitar y promover en la medida de lo posible la formación de los otros miembros de la oficina judicial.

ART. 33.- El juez debe mantener una actitud de activa colaboración en todas las actividades conducentes a la formación judicial.

ART. 34.- El juez debe esforzarse por contribuir, con sus conocimientos teóricos y prácticos, al mejor desarrollo del Derecho y de la administración de justicia.

CAPITULO V

Justicia y Equidad

ART. 35.- El fin último de la actividad judicial es realizar la justicia por medio del Derecho.

ART. 36.- La exigencia de equidad deriva de la necesidad de atemperar, con criterios de justicia, las consecuencias personales, familiares o sociales desfavorables surgidas por la inevitable abstracción y generalidad de las leyes.

ART. 37.- El juez equitativo es el que, sin transgredir el Derecho vigente, toma en cuenta las peculiaridades del caso y lo resuelve basándose en criterios coherentes con los valores del ordenamiento y que puedan extenderse a todos los casos sustancialmente semejantes.

ART. 38.- En las esferas de discrecionalidad que le ofrece el Derecho, el juez deberá orientarse por consideraciones de justicia y de equidad.

ART. 39.- En todos los procesos, el uso de la equidad estará especialmente orientado a lograr una efectiva igualdad de todos ante la ley.

ART. 40.- El juez debe sentirse vinculado no sólo por el texto de las normas jurídicas vigentes, sino también por las razones en las que ellas se fundamentan.

CAPITULO VI

Responsabilidad institucional

ART. 41.- El buen funcionamiento del conjunto de las instituciones judiciales es condición necesaria para que cada juez pueda desempeñar adecuadamente su función.

ART. 42.- El juez institucionalmente responsable es el que, además de cumplir con sus obligaciones específicas de carácter individual, asume un compromiso activo en el buen

ART. 43.- El juez tiene el deber de promover en la sociedad una actitud, racionalmente fundada, de respeto y confianza hacia la administración de justicia.

ART. 44.- El juez debe estar dispuesto a responder voluntariamente por sus acciones y omisiones.

ART. 45.- El juez debe denunciar ante quien corresponda los incumplimientos graves en los que puedan incurrir sus colegas.

ART. 46.- El juez debe evitar favorecer promociones o ascensos irregulares o injustificados de otros miembros del servicio de justicia.

ART. 47.- El juez debe estar dispuesto a promover y colaborar en todo lo que signifique un mejor funcionamiento de la administración de justicia.

CAPITULO VII

Cortesía

ART. 48.- Los deberes de cortesía tienen su fundamento en la moral y su cumplimiento contribuye a un mejor funcionamiento de la administración de justicia.

ART. 49.- La cortesía es la forma de exteriorizar el respeto y consideración que los jueces deben a sus colegas, a los otros miembros de la oficina judicial, a los abogados, a los testigos, a los justiciables y, en general, a todos cuantos se relacionan con la administración de justicia.

ART. 50.- El juez debe brindar las explicaciones y aclaraciones que le sean pedidas, en la medida en que sean procedentes y oportunas y no supongan la vulneración de alguna norma jurídica.

ART. 51.- En el ámbito de su tribunal, el juez debe relacionarse con los funcionarios, auxiliares y empleados sin incurrir -o aparentar hacerlo- en favoritismo o cualquier tipo de conducta arbitraria.

ART. 52.- El juez debe mostrar una actitud tolerante y respetuosa hacia las críticas dirigidas a sus decisiones y comportamientos.

CAPITULO VIII

Integridad

ART. 53.- La integridad de la conducta del juez fuera del ámbito estricto de la actividad jurisdiccional contribuye a una fundada confianza de los ciudadanos en la judicatura.

ART. 54.- El juez íntegro no debe comportarse de una manera que un observador razonable considere gravemente atentatoria contra los valores y sentimientos predominantes en la sociedad en la que presta su función.

ART. 55.- El juez debe ser consciente de que el ejercicio de la función jurisdiccional supone exigencias que no rigen para el resto de los ciudadanos.

CAPITULO IX

Transparencia

ART. 56.- La transparencia de las actuaciones del juez es una garantía de la justicia de sus decisiones.

ART. 57.- El juez ha de procurar ofrecer, sin infringir el Derecho vigente, información útil, pertinente, comprensible y fiable.

ART. 58.- Aunque la ley no lo exija, el juez debe documentar, en la medida de lo posible, todos los actos de su gestión y permitir su publicidad.

ART. 59.- El juez debe comportarse, en relación con los medios de comunicación social, de manera equitativa y prudente, y cuidar especialmente de que no resulten perjudicados los derechos e intereses legítimos de las partes y de los abogados.

ART. 60.- El juez debe evitar comportamientos o actitudes que puedan entenderse como búsqueda injustificada o desmesurada de reconocimiento social.

CAPITULO X

Secreto profesional

ART. 61.- El secreto profesional tiene como fundamento salvaguardar los derechos de las partes y de sus allegados frente al uso indebido de informaciones obtenidas por el juez en el desempeño de sus funciones.

ART. 62.- Los jueces tienen obligación de guardar absoluta reserva y secreto profesional en relación con las causas en trámite y con los hechos o datos conocidos en el ejercicio de su función o con ocasión de ésta.

ART. 63.- Los jueces pertenecientes a órganos colegiados han de garantizar el secreto de las deliberaciones del tribunal, salvo las excepciones previstas en las normas jurídicas vigentes y atendiendo a los acuerdos dictados sobre la publicidad de sus sesiones, guardando un justo equilibrio entre el secreto profesional y el principio de transparencia

ART. 64.- Los jueces habrán de servirse tan solo de los medios legítimos que el ordenamiento pone a su alcance en la persecución de la verdad de los hechos en los actos de que conozcan.

ART. 65.- El juez debe procurar que los funcionarios, auxiliares o empleados de la oficina judicial cumplan con el secreto profesional en torno a la información vinculada con las causas bajo su jurisdicción.

ART. 66.- El deber de reserva y secreto profesional que pesa sobre el juez se extiende no solo a los medios de información institucionalizados, sino también al ámbito estrictamente privado.

ART. 67.- El deber de reserva y secreto profesional corresponde tanto al procedimiento de las causas como a las decisiones adoptadas en las mismas.

CAPITULO XI

Prudencia

ART. 68.- La prudencia está orientada al autocontrol del poder de decisión de los jueces y al cabal cumplimiento de la función jurisdiccional.

ART. 69.- El juez prudente es el que procura que sus comportamientos, actitudes y decisiones sean el resultado de un juicio justificado racionalmente, luego de haber meditado y valorado argumentos y contraargumentos disponibles, en el marco del Derecho aplicable.

ART. 70.- El juez debe mantener una actitud abierta y paciente para escuchar o reconocer nuevos argumentos o críticas en orden a confirmar o rectificar criterios o puntos de vista asumidos.

ART. 71.- Al adoptar una decisión, el juez debe analizar las distintas alternativas que ofrece el Derecho y valorar las diferentes consecuencias que traerán aparejadas cada una de ellas.

ART. 72.- El juicio prudente exige al juez capacidad de comprensión y esfuerzo por ser objetivo.

CAPITULO XII

Diligencia

ART. 73.- La exigencia de diligencia está encaminada a evitar la injusticia que comporta una decisión tardía.

ART. 74.- El juez debe procurar que los procesos a su cargo se resuelvan en un plazo razonable.

ART. 75.- El juez debe evitar o, en todo caso, sancionar las actividades dilatorias o de otro modo contrarias a la buena fe procesal de las partes.

ART. 76.- El juez debe procurar que los actos procesales se celebren con la máxima puntualidad.

ART. 77.- El juez no debe contraer obligaciones que perturben o impidan el cumplimiento apropiado de sus funciones específicas.

ART. 78.- El juez debe tener una actitud positiva hacia los sistemas de evaluación de su desempeño.

CAPITULO XIII

Honestidad profesional

ART. 79.- La honestidad de la conducta del juez es necesaria para fortalecer la confianza de los ciudadanos en la justicia y contribuye al prestigio de la misma.

ART. 80.- El juez tiene prohibido recibir beneficios al margen de los que por Derecho le correspondan y utilizar abusivamente o apropiarse de los medios que se le confíen para el cumplimiento de su función.

ART. 81.- El juez debe comportarse de manera que ningún observador razonable pueda entender que se aprovecha de manera ilegítima, irregular o incorrecta del trabajo de los demás integrantes de la oficina judicial.

ART. 82.- El juez debe adoptar las medidas necesarias para evitar que pueda surgir cualquier duda razonable sobre la legitimidad de sus ingresos y de su situación patrimonial.

PARTE II

Comisión Iberoamericana de Ética Judicial

ART. 83.- La Comisión Iberoamericana de Ética Judicial tiene por objeto:

a) Asesorar a los diferentes Poderes Judiciales y Consejos de la Judicatura Iberoamericanos o a la propia Cumbre Judicial cuando lo soliciten sus representantes. Asimismo resolverá las consultas que Comisionados o Delegados formulen en torno a si el comportamiento de servidores públicos de órganos *impartidores de justicia respetan o no la Ética Judicial, así como cuando órganos de*

Ética Judicial internos de cada nación hayan resuelto temas de esa naturaleza y se pida su opinión a la Comisión Iberoamericana.

b) Facilitar la discusión, difusión y desarrollo de la ética judicial a través de publicaciones o de la realización de cursos, seminarios, diplomados y demás encuentros académicos.

c) Fortalecer la conciencia ética judicial de los impartidores de justicia iberoamericanos.

ART. 84.- La Comisión estará integrada por nueve miembros y un secretario ejecutivo, elegidos por un período de cuatro años con posibilidad de reelección. Los cargos serán honoríficos. Se contará además con Delegados, cuya designación y atribuciones se establecerán en el Estatuto del Delegado ante la Comisión Iberoamericana de Ética Judicial.

ART. 85.- Cada órgano integrante de la Cumbre Judicial Iberoamericana podrá proponer a un candidato por cada vacante de la Comisión, debiendo acompañar el respectivo *currículo vitae*.

ART. 86.- Los candidatos deberán estar vinculados directa o indirectamente con el quehacer judicial, contar con una amplia trayectoria profesional y gozar de reconocido prestigio. Podrán provenir de la magistratura, la abogacía o la actividad académica y estar en activo o jubilados.

ART. 87.- Integraran la Comisión Iberoamericana de Ética Judicial aquellos candidatos que obtengan el consenso en la Asamblea Plenaria de la Cumbre Judicial, y de no ser posible, el mayor número de votos de los miembros presentes.

ART. 88.- La Secretaría Permanente de la Cumbre Judicial Iberoamericana propondrá a la Asamblea Plenaria el candidato a ocupar la Secretaria Ejecutiva de la Comisión Iberoamericana de Ética Judicial, debiendo obtener el consenso o la mayoría de votos a que se refiere el artículo anterior.

ART. 89.- El candidato a la Secretaria Ejecutiva de la Comisión Iberoamericana de Ética Judicial podrá ser de cualquier nacionalidad de los países iberoamericanos y deberá cumplir con los mismos requisitos que los miembros de la Comisión.

ART. 90.- El Secretario Ejecutivo de la Comisión tendrá las siguientes funciones:

a) Propiciar y convocar a las sesiones ordinarias y extraordinarias de la Comisión Iberoamericana de Ética Judicial.

b) Recibir, tramitar y archivar las solicitudes de asesoría, consultas o cualquier otro documento. Estas solicitudes, además de lo indiciado en el artículo 92, podrán ser formuladas por el Secretario Ejecutivo o por cualquier

Iberoamérica para su resolución por parte de los Comisionados o incluso para la elaboración de manuales de buenas prácticas vinculados con los fines de la Comisión.

c) Levantar actas de las sesiones de la Comisión.

d) Rendir cuentas a los miembros de la Comisión en Reunión Ordinaria a la que se convocará anualmente y a la Cumbre Judicial Iberoamericana, por escrito, cada año, y mediante comparecencia cuando tenga lugar la Cumbre, y en cada oportunidad que se le solicite. A las reuniones de la Comisión se convocará a los Delegados de los países que no sean en ese momento Comisionados, en los términos del Estatuto del Delegado. Se podrá convocar, a iniciativa de uno o más comisionados, a Talleres Regionales para tratar temas relacionados con las funciones de la Comisión.

e) Coordinarse con las Secretarias Permanente y *Pro-Tempore*.

f) Ejecutar y notificar las decisiones de la Comisión Iberoamericana de Ética Judicial.

g) Participar en las deliberaciones de la Comisión Iberoamericana con voz, pero sin voto.

ART. 91.- El domicilio de la Comisión Iberoamericana de Ética Judicial será el de la Secretaria Ejecutiva.

ART. 92.- Las solicitudes de asesoría o cualquier otra petición de los órganos integrantes de la Cumbre Judicial Iberoamericana o los de la propia Cumbre Judicial, así como de la Comisión Iberoamericana de Ética Judicial o sus miembros, deberán dirigirse a la Secretaría Ejecutiva.

ART. 93.- Una vez recibida una solicitud o petición, la Secretaria Ejecutiva, en el plazo de 72 horas, deberá ponerla en conocimiento de los integrantes de la Comisión Iberoamericana de Ética Judicial.

ART. 94.- La Comisión Iberoamericana deberá pronunciarse en el plazo de 90 días naturales o corridos, contados a partir de la recepción de la solicitud o petición.

ART. 95.- Los dictámenes, las recomendaciones, las asesorías o cualquier pronunciamiento de la Comisión Iberoamericana en ningún caso tendrán fuerza vinculante para los Poderes Judiciales o Consejos de la Judicatura ni para la propia Cumbre Judicial.

The Code of Ethics for Arbitrators in Commercial Disputes

Approved by the American Bar Association House of Delegates on February 9, 2004
Approved by the Executive Committee of the Board of Directors of the AAA

The Code of Ethics for Arbitrators in Commercial Disputes was originally prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association and a special committee of the American Bar Association. The Code was revised in 2003 by an ABA Task Force and special committee of the AAA. Both the original 1977 Code and the 2003Revision have been approved and recommended by both organizations.

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called “arbitrators,” although in some types of proceeding they might be called “umpires,” “referees,” “neutrals,” or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the

time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.

Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone, to appoint one arbitrator (a "party-appointed arbitrator") and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators – including any party-appointed arbitrators – to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process.

Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.

CANON I. AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS.

A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate.

B. One should accept appointment as an arbitrator only if fully satisfied:

(1) that he or she can serve impartially;
(2) that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;
(3) that he or she is competent to serve; and
(4) that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.

C. After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.

D. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.

E. When an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement, procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.

F. An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

G. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.

H. Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.

I. An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.

Comment to Canon I

A prospective arbitrator is not necessarily partial or prejudiced by having acquired knowledge of the parties, the applicable law or the customs and practices of the business involved. Arbitrators may also have special experience or expertise in the areas of business, commerce, or technology which are involved in the arbitration. Arbitrators do not contravene this Canon if, by virtue of such experience or expertise, they have views on certain general issues likely to arise in the arbitration, but an arbitrator may not have

prejudged any of the specific factual or legal determinations to be addressed during the arbitration.

During an arbitration, the arbitrator may engage in discourse with the parties or their counsel, draw out arguments or contentions, comment on the law or evidence, make interim rulings, and otherwise control or direct the arbitration. These activities are integral parts of an arbitration. Paragraph D of Canon I is not intended to preclude or limit either full discussion of the issues during the course of the arbitration or the arbitrator's management of the proceeding.

CANON II. AN ARBITRATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP LIKELY TO AFFECT IMPARTIALITY OR WHICH MIGHT CREATE AN APPEARANCE OF PARTIALITY.

A. Persons who are requested to serve as arbitrators should, before accepting, disclose:

(1) Any known direct or indirect financial or personal interest in the outcome of the arbitration;
(2) Any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;
(3) The nature and extent of any prior knowledge they may have of the dispute; and
(4) Any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.

C. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D. Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.

E. Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.

F. When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.

G. If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:

(1) An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or
(2) In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.

H. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:

(1) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
(2) Withdraw.

CANON III. AN ARBITRATOR SHOULD AVOID IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY IN COMMUNICATING WITH PARTIES.

A. If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of paragraphs B and C.

B. An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:

(1) When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:

(a) may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and
(b) may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.

(2) In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;

(3) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party-appointed arbitrator. Submission of routine written requests for payment of compensation and expenses in accordance with such arrangements and written communications pertaining solely to such requests need not be sent to the other party;

(4) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the status of the arbitrator (i.e., neutral or non-neutral), as contemplated by paragraph C of Canon IX;

(5) Discussions may be had with a party concerning such logistical matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express the party's views; or

(6) If a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.

C. Unless otherwise provided in this Canon, in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to every other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.

CANON IV. AN ARBITRATOR SHOULD CONDUCT THE PROCEEDINGS FAIRLY AND DILIGENTLY.

A. An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

B. The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.

C. The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.

D. If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.

E. When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, including expert testimony.

F. Although it is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of mediation, or other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.

G. Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

Comment to paragraph G

Paragraph G of Canon IV is not intended to preclude one arbitrator from acting in limited circumstances (e.g., ruling on discovery issues) where authorized by the agreement of the parties, applicable rules or law, nor does it preclude a majority of the arbitrators from proceeding with any aspect of the arbitration if an arbitrator is unable or unwilling to participate and such action is authorized by the agreement of the parties or applicable rules or law. It also does not preclude ex parte requests for interim relief.

CANON V. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

C. An arbitrator should not delegate the duty to decide to any other person.

D. In the event that all parties agree upon a settlement of issues in dispute and request the arbitrator to embody that agreement in an award, the arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

CANON VI. AN ARBITRATOR SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT OFFICE.

A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon.

C. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

D. Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, such as receiver or trustee, nor should a panel of arbitrators appoint one of their number to such an office.

CANON VII. AN ARBITRATOR SHOULD ADHERE TO STANDARDS OF INTEGRITY AND FAIRNESS WHEN MAKING ARRANGEMENTS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES.

A. Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to standards of integrity and fairness in making arrangements for such payments.

B. Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:

(1) Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be established. Except for arrangements for the compensation of party-appointed arbitrators, all parties should be informed in writing of the terms established.
(2) In proceedings conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, communication related to compensation should be made through the institution. In proceedings where no institution has been engaged by the parties to administer the arbitration, any communication with arbitrators (other than party appointed arbitrators) concerning payments should be in the presence of all parties; and
(3) Arbitrators should not, absent extraordinary circumstances, request increases in the basis of their compensation during the course of a proceeding.

CANON VIII. AN ARBITRATOR MAY ENGAGE IN ADVERTISING OR PROMOTION OF ARBITRAL SERVICES WHICH IS TRUTHFUL AND ACCURATE.

A. Advertising or promotion of an individual's willingness or availability to serve as an arbitrator must be accurate and unlikely to mislead. Any statements about the quality of the arbitrator's work or the success of the arbitrator's practice must be truthful.

B. Advertising and promotion must not imply any willingness to accept an appointment otherwise than in accordance with this Code.

Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating advertisements conforming to these standards in any electronic or print medium, from making personal presentations to prospective users of arbitral services conforming to such standards or from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or fee arrangements.

CANON IX. ARBITRATORS APPOINTED BY ONE PARTY HAVE A DUTY TO DETERMINE AND DISCLOSE THEIR STATUS AND TO COMPLY WITH THIS CODE, EXCEPT AS EXEMPTED BY CANON X.

A. In some types of arbitration in which there are three arbitrators, it is customary for each party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by agreement either of the parties or of the two arbitrators, or failing such agreement, by an independent institution or individual. In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator.

B. Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators, referred to in this Code as "Canon X arbitrators," are not to be held to the standards of neutrality and independence applicable to other arbitrators. Canon X describes the special ethical obligations of party-appointed arbitrators who are not expected to meet the standard of neutrality.

C. A party-appointed arbitrator has an obligation to ascertain, as early as possible but not later than the first meeting of the arbitrators and parties, whether the parties have agreed that the party-appointed arbitrators will serve as neutrals or whether they shall be subject to Canon X, and to provide a timely report of their conclusions to the parties and other arbitrators:

(1) Party-appointed arbitrators should review the agreement of the parties, the applicable rules and any applicable law bearing upon arbitrator neutrality. In reviewing the agreement of the parties, party-appointed arbitrators should consult any relevant express terms of the written or oral arbitration agreement. It may also be appropriate for them to inquire into agreements that have not been expressly set forth, but which may be implied from an established course of dealings of the parties or well-recognized custom and usage in their trade or profession;
(2) Where party-appointed arbitrators conclude that the parties intended for the party-appointed arbitrators not to serve as neutrals, they should so inform the parties and the other arbitrators. The arbitrators may then act as provided in Canon X unless or until a different determination of their status is made by the parties, any administering institution or the arbitral panel; and
(3) Until party-appointed arbitrators conclude that the party-appointed arbitrators were not intended by the parties to serve as neutrals, or if the party-appointed arbitrators are unable to form a reasonable belief of their status from the foregoing sources and no decision in this regard has yet been made by the parties, any administering institution, or the arbitral panel, they should observe all of the obligations of neutral arbitrators set forth in this Code.

D. Party-appointed arbitrators not governed by Canon X shall observe all of the obligations of Canons I through VIII unless otherwise required by agreement of the parties, any applicable rules, or applicable law.

CANON X. EXEMPTIONS FOR ARBITRATORS APPOINTED BY ONE PARTY WHO ARE NOT SUBJECT TO RULES OF NEUTRALITY.

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by this Code except those from which they are specifically excused by Canon X.

A. *Obligations under Canon I*

Canon X arbitrators should observe all of the obligations of Canon I subject only to the following provisions:

(1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and
(2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. *Obligations under Canon II*

(1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and
(2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. *Obligations under Canon III*

Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:

(1) Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;
(2) Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3).
(3) If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;
(4) Canon X arbitrators may not at any time during the arbitration:

(a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;
(b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or
(c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.

(5) Unless otherwise agreed by the arbitrators and the parties, a Canon X arbitrator may not communicate orally with the neutral arbitrator concerning any matter or issue arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. If a Canon X arbitrator communicates in writing with the neutral arbitrator, he or she shall simultaneously provide a copy of the written communication to the other Canon X arbitrator;

(6) When Canon X arbitrators communicate orally with the parties that appointed them concerning any matter on which communication is permitted under this Code, they are not obligated to disclose the contents of such oral communications to any other party or arbitrator; and

(7) When Canon X arbitrators communicate in writing with the party who appointed them concerning any matter on which communication is permitted under this Code, they are not required to send copies of any such written communication to any other party or arbitrator.

D. *Obligations under Canon IV*
Canon X arbitrators should observe all of the obligations of Canon IV.

E. *Obligations under Canon V*
Canon X arbitrators should observe all of the obligations of Canon V, except that they may be predisposed toward deciding in favor of the party who appointed them.

F. *Obligations under Canon VI*
Canon X arbitrators should observe all of the obligations of Canon VI.

G. *Obligations Under Canon VII*
Canon X arbitrators should observe all of the obligations of Canon VII.

H. *Obligations Under Canon VIII*
Canon X arbitrators should observe all of the obligations of Canon VIII.

I. *Obligations Under Canon IX*
The provisions of paragraph D of Canon IX are inapplicable to Canon X arbitrators, except insofar as the obligations are also set forth in this Canon.

AMERICAN BAR ASSOCIATION/COLLEGE OF COMMERCIAL ARBITRATORS ANNOTATIONS TO THE CODE OF ETHICS FOR ARBITRATORS IN COMMERCIAL DISPUTES

Introduction

The Code of Ethics for Arbitrators in Commercial Disputes was originally proposed in 1977 by a joint committee consisting of a special committee of the American Arbitration Association and a special committee of the American Bar Association. It was revised in 2003 by an ABA Task Force and a special committee of the AAA. The Revised Code was approved and recommended by both organizations in 2004. It provides ethical guidance for many types of arbitration, but does not apply to labor arbitration, which is generally conducted under the Code of Professional Responsibility for Arbitrators in Labor-Management Disputes.

Various aspects of the conduct of arbitrators, including some matters covered by the Code, may also be governed by agreements of the parties to arbitration, arbitration rules to which they have agreed, applicable law, or other applicable ethics rules. By its terms the Code does not take the place of or supercede such laws, agreements or rules, and should be read in conjunction with other ethical rules. By its terms the Code also does not establish new or additional grounds for judicial review of arbitration awards.

Although the Code has been referred to for guidance and has been cited by many courts (and has been adopted in part by some) it does not have the force of law and cannot in itself provide a basis for judicial decision.

" … The arbitration rules and code do not have the force of law. If (defendant-appellee) is to get the arbitration award set aside it must bring itself within the statute [9 U.S.C. Sec. 10(b)] and the federal rule …" *Merit Insurance Company vs. Leatherby Insurance Company,* 714 F.2d 673, 681 (7th Cir. 1983), Posner, J.

This Annotation provides citations to judicial decisions and other published writings which cite the 1977 or 2004 Codes from 1981 through July 1, 2013. It does not cite to the numerous court cases and writings that have considered issues encompassed by the Codes without referring to it.

Arbitrator ethical guidance may be found in sources in addition to the Code, such as portions of the Revised Uniform Arbitration Act, and the rules and standards of various domestic and international institutional arbitration administrative bodies. Some states, particularly California, have codified ethical principles or standards, see, for instance,: Cal.Code.Civ.Proc Section 1281.9, Ethics Standards for Neutral Arbitrators in Contractual Arbitrations, Division VI, California Rules of Court Appendix A (rev. 2003). See generally, College of Commercial Arbitrators Guide to Best Practices in Commercial Arbitration (2d Ed. 2010).

The authors hope to augment the Annotation from time to time following its publication. The initial Annotation was prepared by a committee comprising members of the Arbitration Committee of the Section of Dispute Resolution of the ABA and of the Ethics Committee of the College of Commercial Arbitrators. Principally involved were:

Edna Sussman and Kurt L. Dettman, Co-Chairs, Arbitration Committee of the ABA Section of Dispute Resolution

Robert A. Holtzman, Chair, Ethics Committee of the College of Commercial Arbitrators

David Brainin, Judith Meyer, Bruce Meyerson and Carroll Neecemann, Committee Members and Editors

The Committee extends particular thanks to Jonnese S. Crandol and Rajeev Raghavan, law students at Stetson University College of Law and University of Michigan Law School respectively, for their legal research and identification of the cases and articles cited, and to David Moora, Director of the American Bar Association Section of Dispute Resolution, Matthew Conger, Section Staff Attorney, and Jeffrey D. Hoyle, Section Law Clerk for their coordination and supervision of the research project and invaluable technical support.

Text of the Code of Ethics for Arbitrators in Commercial Disputes Effective March 1, 2004 and Annotations

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all

such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called "arbitrators," although in some types of proceeding they might be called "umpires," "referees," "neutrals," or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.

Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone, to appoint one arbitrator (a "party-appointed arbitrator") and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators – including any party-appointed arbitrators – to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process.

Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.

Annotation to Preamble

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H&R Block Tax Services LLC v. Wild, 2011 U.S. Dist. LEXIS 124693

Although two of three arbitrators were party-appointed, all served as neutrals pursuant to the Code's establishment, as noted in the Preamble, of "a presumption of neutrality for all arbitrators, including party-appointed arbitrators."

CANON I. AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS.

A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate.

B. One should accept appointment as an arbitrator only if fully satisfied:

(1) that he or she can serve impartially;
(2) that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;
(3) that he or she is competent to serve; and
(4) that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.

C. After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.

D. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.

E. When an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement,

procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.

F. An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

G. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.

H. Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.

I. An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.

Comment to Canon I

A prospective arbitrator is not necessarily partial or prejudiced by having acquired knowledge of the parties, the applicable law or the customs and practices of the business involved. Arbitrators may also have special experience or expertise in the areas of business, commerce, or technology which are involved in the arbitration. Arbitrators do not contravene this Canon if, by virtue of such experience or expertise, they have views on certain general issues likely to arise in the arbitration, but an arbitrator may not have prejudged any of the specific factual or legal determinations to be addressed during the arbitration.

During an arbitration, the arbitrator may engage in discourse with the parties or their counsel, draw out arguments or contentions, comment on the law or evidence, make interim rulings, and otherwise control or direct the arbitration. These activities are integral parts of an arbitration. Paragraph D of Canon I is not intended to preclude or limit either full discussion of the issues during the course of the arbitration or the arbitrator's management of the proceeding.

Annotation to Canon I

Frisch's Restaurants, Inc. v. Fortney & Weygandt, Inc., Ohio App. 2008, 2008 WL 3586901

Arbitrator who had received two referrals from a party's law firm prior to the arbitration and three additional referrals while it was pending was not disqualified absent any showing of partiality or extensive impropriety.

Arbitrator who had received two referrals from a party's law firm prior to the arbitration and three additional referrals while it was pending should have disclosed them in accordance with Canon IIA, but failure to do so did not demonstrate extensive impropriety warranting vacatur of the award.

Eckstein v. Kaiser Foundation Health Plan, Inc., Cal.Ct. Appeal, 2007 (unpublished) 2007 Cal.App.Unpub LEXIS 6994

Arbitrator in case in which Kaiser Foundation Health Plan was a party was not disqualified by personal membership in the Plan.

Arbitrator in case in which Kaiser Foundation Health Plan was a party was not required to disclose personal membership in Plan.

Barcon Associates, Inc. v. Tri-County Asphalt Corp., 86 N.J. 179, 430 A.2d 214 (1981)

Existence of substantial and on-going business relationship between party-appointed non-neutral arbitrator and appointing party, which relationship included services

rendered and payments made during the arbitration, created an impermissible appearance of partiality.

Failure of party-appointed non-neutral arbitrator to disclose substantial on-going business relationship with appointing party was improper.

Every arbitrator, whether party-appointed or "neutral", is required to disclose to the parties, prior to the commencement of the arbitration proceedings, any relationship or transaction that he has had with the parties or their representatives, and any other facts which would suggest to a reasonable person that the arbitrator is interested in the outcome of the arbitration or which might reasonably support an inference of partiality.

Greenspan v. LADT, LLC, 185 Cal.App.4th 1413, 111 Cal.Rptr.3d 468 (2010)

On appeal from order confirming arbitration award:

A reasonable person aware of the fact that a party had initiated a lawsuit against an arbitrator who was immune from liability under state law would view the arbitrator to be impartial and not subject to disqualification.

Where the applicable rule so provides, an arbitrator's decision as to the scheduling of deadlines and the timeliness of the award is authorized and not subject to judicial review.

Aetna Casualty & Surety Company v. Grabbert, 590 A.2d 88 (R.I. 1991)

Service as a party-appointed non-neutral arbitrator pursuant to a contingent fee arrangement confers a direct financial interest in the award violative of Canon I, in that such interest would tend to destroy public confidence in the integrity of the arbitration process.

Party-appointed non-neutral arbitrator's failure to disclose his contingent fee arrangement violated Canon II.

The award of the three arbitrator panel having been unanimous, no causal nexus existed between the party-appointed arbitrator's improper conduct and the ultimate award.

Merit Insurance Company vs. Leatherby Insurance Company, 714 F.2d 673 (7th Cir. 1983)

District Court vacated arbitration award in reinsurance dispute on ground neutral arbitrator failed to disclose that fourteen years earlier he had worked for a different insurer under president of claimant, either in initial disclosures or when president appeared as witness. Seventh Circuit reversed, concluding that the relationship was

not so intimate as to cast serious doubt on arbitrator's impartiality. Statutory test is existence of evident partiality, not violation of ethical disclosure obligations. Court considered affidavits of co-arbitrators denying any indications of partiality.

Brandeis Instel Limited vs. Calabrian Chemicals Corporation, 656 F.Supp. 160 (S.D.N.Y. 1987)

District Court entered judgment on an arbitration award in a proceeding administered by the London Metal Exchange, rejecting the argument that a panel comprised of prominent and experienced members of the specific business community in which the dispute arose, who knew and transacted business with each other and with the party that was a member of the Exchange, was necessarily biased. No appearance of bias arose from the fact that in such a community the wakes of the parties often cross.

Metropolitan Property and Casualty Insurance Company vs. J. C. Penney Casualty Insurance Company and Daniel J. McNamara, 780 F.Supp. 885 (D.Conn. 1991)

Claimant sought an injunction against Respondent and its party-appointed arbitrator based on undisclosed extensive, substantive pre-appointment communications between Respondent and the arbitrator. In dicta the court observed that the arbitrator, although not expected to be neutral, was subject to the ethical obligation to participate in the arbitration process in a fair, honest and good-faith manner and that his alleged failure to disclose ex parte activities violated the rule that an arbitrator must disclose at the time of his appointment any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial arbitrator. Lacking diversity jurisdiction, the District Court remanded the case to state court.

Graceman vs. Goldstein, 93 Md.App.658, 613 A.2d 1049 (Ct. of Special Appeals of Md., 1992)

Trial court order vacating an arbitration award for evident partiality was reversed. The finding of partiality was based on observed sympathetic conversations regarding a claimant's health between the arbitrator and the claimant, that the arbitrator was seen driving to and from the airport with the claimants, and that claimants' attorney prepared an affidavit for the arbitrator to sign. The affidavit, being post-award, could not be considered to be evident partiality during the hearing or in making the decision. The remaining matters were known to the respondents at the time and, having remained silent, they could not be heard to object on these bases after the award against them issued.

Reeves Brothers, Inc. vs. Capital-Mercury Shirt Corp., 962 F.Supp. 408 (S.D.N.Y. 1997)

The District Court confirmed an arbitration award by a panel convened by the General Arbitration Council of the Textile and Apparel Industries and administered by American Arbitration Association. Before appointment one arbitrator disclosed

that he had been employed by a bank of which claimant was a customer. At the hearing another arbitrator disclosed that a witness seen entering the room was an old and close business associate. Respondent sought removal of both arbitrators, but the Association denied both requests. The Court defined "evident partiality" as "more that a mere appearance of bias" and held that it would be found where a reasonable person would have to conclude that an arbitrator was partial.

MCI Telecommunications Corporation vs. Matrix Communications Corporation, 135 F.3d 27 (1st Cir. 1998)

A motion to set aside an order compelling an arbitration to be administered by JAMS, on the ground that claimant had concealed an agreement with JAMS that provided a close working arrangement between the two companies, was denied. None of the contacts between claimant and JAMS involved the arbitrators who are deciding cases. The suggestion that an arbitrator on the JAMS panel would have an inherent bias toward claimant as JAMS' customer is contradicted by respondent's express assurance that it did not doubt the impartiality of the arbitrator in the case.

Morgan Phillips, Inc. vs. JAMS/Endispute, 140 Cal.App.4th 795, 44 Cal.Rptr.3d 782 (2006)

The tendered defense of arbitral immunity in a suit against the arbitrator and the institutional administrator of the arbitration for breach of contract by withdrawing and refusing to issue an award was rejected. Withdrawal from the arbitration for no stated ethical reason following evidence and argument and refusal to render an award is a breach of the contractual duty to conduct a binding arbitration and is conduct not integral to the arbitration process; it is, rather, a breakdown of the process and not immunized.

William C. Vick v. North Carolina Farm Bureau Federation, 123 N.C.App.97, 472 S.E.2d 346 (N.C. 1996)

An arbitration award was vacated based on numerous disclosed and undisclosed non-trivial relationships between a neutral arbitrator and a party and the party's counsel. These relationships were likely to affect impartiality or reasonably create an appearance of partiality or bias.

Annotation to Canon I, Paragraph B

Borst v. Allstate Insurance Company, 291 Wis.2d 361, 717 NW2d 42 (2006)

Appeal from order denying motion to vacate award. Reversed

Court adopts rule that all arbitrators, including party-appointed arbitrators, are presumed impartial unless the parties contract or applicable rules provide for non-neutral arbitrators.

Evident partiality arising from a relationship between an arbitrator and a party cannot be avoided simply by full disclosure at the outset.

Arbitrator who had substantial ongoing attorney-client relationship with party that selected arbitrator was evidentially partial as a matter of law, such that award had to be vacated.

Evidence of substantial ongoing attorney-client relationship between arbitrator who was expected to be neutral and party would cause a reasonable person to have serious doubts about the impartiality of the arbitrator.

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Alim v. KBR (Kellogg, Brown & Root)-Halliburton, 331 S.W.3d 178 (Tex.App, 2011)

Arbitrator's false answer to question contained in disclosure form regarding whether a party representative had appeared before him in any prior arbitration created a reasonable impression of partiality requiring vacatur of award.

Dealer Computer Services, Inc. v. Michael Motor Company, Inc., 2010 WL 5464266 (S.D.Texas 2010)

On cross-motions to confirm and vacate arbitration award, award vacated. Party-appointed neutral arbitrator disclosed that she had previously served as a member of a three arbitrator panel in an arbitration involving the same appointing party, but failed to disclose that the earlier case involved the same form contract, the same issues of liability and damages, and testimony of the same expert witness, nor did she disclose that she had expressly accepted the expert witness testimony and ruled for the appointing party on all issues. Her failure to disclose the nature and extent of these connections with the appointing party and its case significantly compromised her ability to act impartially and constituted evident partiality.

CANON II. AN ARBITRATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP LIKELY TO AFFECT IMPARTIALITY OR WHICH MIGHT CREATE AN APPEARANCE OF PARTIALITY.

A. Persons who are requested to serve as arbitrators should, before accepting, disclose:

(1) Any known direct or indirect financial or personal interest in the outcome of the arbitration;
(2) Any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective

arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;

(3) The nature and extent of any prior knowledge they may have of the dispute; and

(4) Any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.

C. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D. Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.

E. Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.

F. When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.

G. If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:

(1) An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or

(2) In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.

H. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:

(1) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
(2) Withdraw.

Annotation to Canon II

Lee Korland, *What an Arbitrator Should Investigate and Disclose: Proposing a New Test for Evident Partiality Under the Federal Arbitration Act,* 53 Case Western Law Review 815 (2002-2003)

Law review comment collecting and analyzing federal and state court decisions relating to prospective arbitrator disclosure.

Lifecare International Corporation v. CD Medical, Inc., 68 F.3d 429 (11th Cir. 1995)

In accordance with Canon II the arbitrator should have disclosed his strongly held personal outrage over refusal of an attorney in the law firm representing a party, who was not himself involved in the arbitration, to agree to a postponement; but his failure to make this disclosure did not establish a reasonable impression of partiality.

In accordance with Canon II the arbitrator should have conducted a sufficient inquiry to determine, and should have disclosed, that before he joined a law firm a party interviewed the firm for the purpose of obtaining representation in the subject dispute and had retained the firm to review an amendment to the distributorship agreement between the parties; but his failure to do so did not create a reasonable impression of partiality.

Frisch's Restaurants, Inc. v. Fortney & Weygandt, Inc., Ohio App. 2008, 2008 WL 3586901

Arbitrator who had received two referrals from a party's law firm prior to the arbitration and three additional referrals while it was pending was not disqualified absent any showing of partiality or extensive impropriety.

Arbitrator who had received two referrals from a party's law firm prior to the arbitration and three additional referrals while it was pending should have disclosed them in accordance with Canon IIA, but failure to do so did not demonstrate extensive impropriety warranting vacatur of the award.

Betz v. Pankow, 31 Cal.App.4th 1503, 38 Cal.Rptr.2d 107 (1995)

Attorney/arbitrators are required to make reasonable efforts to inform themselves of past financial, business or professional relationships which might reasonably create an impression of partiality or bias, but have not failed to make such efforts if they do not have access to files of prior law firms that might reveal past relationships and had no personal knowledge of them.

Attorney/Arbitrator who was previously a member of a law firm that had represented business entities in which an arbitration party was a principal in a single protracted litigation while he was with the firm, who had no knowledge of the representation and, having moved to a competing firm, had no access to its conflict records, cannot be faulted for failing to disclose facts of which he was unaware.

Eckstein v. Kaiser Foundation Health Plan, Inc., Cal.Ct. Appeal, 2007 (unpublished) 2007 Cal.App.Unpub LEXIS 6994

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Failure of party-appointed non-neutral arbitrator to disclose substantial on-going business relationship with appointing party was improper.

Every arbitrator, whether party-appointed or “neutral”, is required to disclose to the parties, prior to the commencement of the arbitration proceedings, any relationship or transaction that he has had with the parties or their representatives, and any other facts which would suggest to a reasonable person that the arbitrator is interested in the outcome of the arbitration or which might reasonably support an inference of partiality.

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Service as a party-appointed non-neutral arbitrator pursuant to a contingent fee arrangement confers a direct financial interest in the award violative of Canon I, in that such interest would tend to destroy public confidence in the integrity of the arbitration process.

Party-appointed non-neutral arbitrator's failure to disclose his contingent fee arrangement violated Canon II.

The award of the three arbitrator panel having been unanimous, no causal nexus existed between the party-appointed arbitrator's improper conduct and the ultimate award.

Safeco Insurance Company of America vs. Stariha, 346 N.W. 2d 663 (Minn.App. 1984)

Court declined to vacate award in uninsured motorist arbitration where neutral arbitrator had served as an attorney for the law firm that represented respondent in the arbitration in earlier declaratory relief litigation. The attorney-client relationship was neither long-standing nor repeated. Court states general rule that a remote and unrelated attorney-client relationship between a neutral arbitrator and counsel for one of the parties is not a basis to vacate an arbitration award for undue means or evident partiality. Court admitted evidence of arbitrator deliberations demonstrating absence of partiality.

Metropolitan Property and Casualty Insurance Company vs. J. C. Penney Casualty Insurance Company and Daniel J. McNamara, 780 F.Supp. 885 (D.Conn. 1991)

Claimant sought an injunction against Respondent and its party-appointed arbitrator based on undisclosed extensive, substantive pre-appointment communications between Respondent and the arbitrator. In dicta the court observed that the arbitrator, although not expected to be neutral, was subject to the ethical obligation to participate in the arbitration process in a fair, honest and good-faith manner and that his alleged failure to disclose ex parte activities violated the rule that an arbitrator must disclose at the time of his appointment any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial arbitrator. Lacking diversity jurisdiction, the District Court remanded the case to state court.

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The District Court confirmed an arbitration award by a panel convened by the General Arbitration Council of the Textile and Apparel Industries and administered by American Arbitration Association. Before appointment one arbitrator disclosed that he had been employed by a bank of which claimant was a customer. At the hearing another arbitrator disclosed that a witness seen entering the room was an old and close business associate. Respondent sought removal of both arbitrators, but the Association denied both requests. The Court defined "evident partiality" as "more that a mere appearance of bias" and held that it would be found where a reasonable person would have to conclude that an arbitrator was partial.

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A motion to set aside an order compelling an arbitration to be administered by JAMS, on the ground that claimant had concealed an agreement with JAMS that provided a close working arrangement between the two companies, was denied. None of the contacts between claimant and JAMS involved the arbitrators who are deciding cases. The suggestion that an arbitrator on the JAMS panel would have an inherent bias toward claimant as JAMS' customer is contradicted by respondent's express assurance that it did not doubt the impartiality of the arbitrator in the case.

Morgan Phillips, Inc. vs. JAMS/Endispute, 140 Cal.App.4th 795, 44 Cal.Rptr.3d 782 (2006)

The tendered defense of arbitral immunity in a suit against the arbitrator and the institutional administrator of the arbitration for breach of contract by withdrawing and refusing to issue an award was rejected. Withdrawal from the arbitration for no stated ethical reason following evidence and argument and refusal to render an award is a breach of the contractual duty to conduct a binding arbitration and is conduct not integral to the arbitration process; it is, rather, a breakdown of the process and not immunized.

Sunkist Soft Drinks, Inc. vs. Sunkist Growers, Inc., 10 F3d 753 (11th Cir. 1993)

The District Court denied a motion to vacate an arbitration award based on pre- and post-appointment communications between claimant and its party-appointed arbitrator. The court recognized the commonplace predisposition of party-appointed non-neutral arbitrators toward the parties appointing them and found this consistent with the prevailing ethical rules.

Positive Software Solutions, Inc. vs. New Century Mortgage Corporation, 476 F.3d 278 (5th Cir. 2007)

The District Court ruling vacating an arbitration award based in undisclosed co-counsel status between counsel in the arbitration and the arbitrator in a case that had concluded seven years earlier was reversed. The standard is that in nondisclosure cases, an award may not be vacated because of trivial or insubstantial prior relationships between the arbitrator and the parties to the proceeding. The "reasonable impression of bias" standard is to be interpreted practically rather than with utmost rigor.

William C. Vick v. North Carolina Farm Bureau Federation, 123 N.C.App.97, 472 S.E.2d 346 (N.C. 1996)

An arbitration award was vacated based on numerous disclosed and undisclosed non-trivial relationships between a neutral arbitrator and a party and the party's counsel.

These relationships were likely to affect impartiality or reasonably create an appearance of partiality or bias.

Annotation to Canon II Generally and to Canon II, Paragraph A

Merit Insurance Company vs. Leatherby Insurance Company, 714 F.2d 673 (7th Cir. 1983)

District Court vacated arbitration award in reinsurance dispute on ground neutral arbitrator failed to disclose that fourteen years earlier he had worked for a different insurer under president of claimant, either in initial disclosures or when president appeared as witness. Seventh Circuit reversed, concluding that the relationship was not so intimate as to cast serious doubt on arbitrator's impartiality. Statutory test is existence of evident partiality, not violation of ethical disclosure obligations. Court considered affidavits of co-arbitrators denying any indications of partiality.

Annotation to Canon II, Paragraphs A, F

Dadeland Square, Ltd. V. Gould, 763 So.2d 524 (Fla.App. 2000)

Where arbitrator disclosed personal relationships with party and counsel and offered the opportunity to make further inquiry a party who failed to object or inquire waived its right to object to the arbitrator based on the relationships.

Where a party with knowledge of prospective arbitrator's personal interests and relationships nevertheless desires that individual to serve as arbitrator, that person may properly serve (citing former comment to Canon II, present Canon II, Subd. F).

Annotation to Canon II, Paragraph F

Borst v. Allstate Insurance Company, 291 Wis.2d 361, 717 NW2d 42 (2006)

Appeal from order denying motion to vacate award. Reversed

Court adopts rule that all arbitrators, including party-appointed arbitrators, are presumed impartial unless the parties contract or applicable rules provide for non-neutral arbitrators.

Evident partiality arising from a relationship between an arbitrator and a party cannot be avoided simply by full disclosure at the outset.

Arbitrator who had substantial ongoing attorney-client relationship with party that selected arbitrator was evidentially partial as a matter of law, such that award had to be vacated.

Evidence of substantial ongoing attorney-client relationship between arbitrator who was expected to be neutral and party would cause a reasonable person to have serious doubts about the impartiality of the arbitrator.

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Capobianco v. Vulcan, Inc., 2011 WL 1364537 (Wash.App. 2011)
Note: unpublished opinion, See RCWA 2.06.0040

On cross-motions to confirm and vacate arbitration award, award confirmed, judgment affirmed on appeal. Undisclosed pre-appointment communications between party-appointed arbitrator and appointing parties' counsel regarding appointment and nature of case, including review of draft demand, and post-appointment submission of invoices, were consistent with Canon III B (1), (3) and demonstrated neither misconduct nor evident partiality. Such communications were not relationships requiring disclosure pursuant to Canon II A (2).

Pacificawest General Contracting, Inc. v. Calvada Development, Inc. 2011 WL 856810 (Cal.App. 2011) Note: See Unpublished Opinion, Rules 8.1105, 8.1110 and 8.1115, Cal.Rules of Court

Cross-motions to confirm and vacate arbitration award, award confirmed, on appeal, relevant portions of judgment affirmed. The arbitrator was not required to disclose past participation in local bar association activities with attorney for a party. Refusal to postpone hearing while application to court to disqualify arbitrator was pending did not exceed arbitrator's powers.

Ashley v. Hart, 2011 WL 6821009 (Haw.App.2011) Note: Unpublished disposition, See HI R RAP Rule 35

Arbitrator consultation with another attorney in her office (including review of draft of award), without prior notice to or consent of parties, and *ex parte* non-ministerial communications with counsel for one party, may constitute prejudicial misconduct. Case remanded for evidentiary hearing regarding contents of communications.

Alim v. KBR (Kellogg, Brown & Root)-Halliburton, 331 S.W.3d 178 (Tex.App, 2011)

Arbitrator's false answer to question contained in disclosure form regarding whether a party representative had appeared before him in any prior arbitration created a reasonable impression of partiality requiring vacatur of award.

Dealer Computer Services, Inc. v. Michael Motor Company, Inc., 2010 WL 5464266 (S.D.Texas 2010)

On cross-motions to confirm and vacate arbitration award, award vacated. Party-appointed neutral arbitrator disclosed that she had previously served as a member of a

three arbitrator panel in an arbitration involving the same appointing party, but failed to disclose that the earlier case involved the same form contract, the same issues of liability and damages, and testimony of the same expert witness, nor did she disclose that she had expressly accepted the expert witness testimony and ruled for the appointing party on all issues. Her failure to disclose the nature and extent of these connections with the appointing party and its case significantly compromised her ability to act impartially and constituted evident partiality.

Marik v. Keele, 2010 WL 4724231 (Cal.App. 2010) Note: Not officially published, see Rules 8.1105, 8.1110 and 8.1115, Cal. Rules of Court

Appeal from judgment confirming arbitration award, judgment affirmed. Arbitrator, a retired judge, failed to disclose that two years before his selection to serve as arbitrator, he was publicly admonished by the Commission on Judicial Performance, based on a pervasive pattern of bias, prejudgment, *ex parte* communications and abuse of judicial authority in two matters, and had been privately admonished in three other matters some years before. Following Haworth v. Superior Court (2010) 50 Cal.4th 371, court holds that the conduct referred to did not suggest a predisposition for or against any of the parties, or that he could not be fair to a litigant such as the appellant in the subject action.

Disclosure was thus not required. Further, the information was readily available from public sources.

Benjamin, Weill & Mazer v Kors, Cal.App.4th (May 5, 2011). Opinion following grant of petition for rehearing, original opinion at 189 Cal.App.4th 126 (2010).

On cross-applications to confirm and vacate arbitration award, judgment confirming award reversed. In arbitration between attorney and client relating to legal fees, arbitrator failed to disclose that in his capacity as an attorney in private practice he engaged generally in the representation of lawyers and law firms in cases involving professional responsibility and fee disputes, and at the time of the arbitration represented a law firm in a fee dispute case before the California Supreme Court and another law firm in a high profile fee dispute. Finding that the arbitration should have been conducted under the California Arbitration Act and not the statutory scheme relating to non-binding attorney-client arbitration, the Court held that the arbitrator's disclosure obligations arose under the Arbitration Act and implementing Standards. The ongoing nature of the arbitrator's practice and his substantial relationships with lawyers and law firms in fee dispute matters were thus required subjects of disclosure.

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Skidmore Energy, Inc. vs. Maxus (U.S.) Exploration Company, 345 S.W.3d 672, 2011 Tex.App.LEXIS 5237 (Tex.App. 2011)

Where arbitrator provided an oath or undertaking of impartiality in accordance with Code, his failure to disclose that corporation for which he served as outside director and in which he owned stock, unknown to the arbitrator, engaged in intermittent and insubstantial business transactions with a party did not violate oath or warrant vacation of award.

Cricket Communications, Inc. v. All You Can Talk Partners, Inc., 2011 U.S. Dist. LEXIS 116907

The losing party alleged that the arbitrator knew or may have known the prevailing party's chief financial officer professionally from some time preceding the arbitration and that he had not disclosed the possible acquaintanceship. This did not evidence partiality or corruption on the part of the arbitrator or result in the award being procured by fraud or undue means. The CFO was not a witness or otherwise involved in the arbitration, and arbitrators are not required to disclose the alleged "attenuated and speculative connection" with an individual who was not involved in the arbitration.

CANON III. AN ARBITRATOR SHOULD AVOID IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY IN COMMUNICATING WITH PARTIES.

A. If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of paragraphs B and C.

B. An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:

(1) When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:
   (a) may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and
   (b) may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.

(2) In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;

(3) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party-appointed arbitrator. Submission of routine written requests for payment of compensation and expenses in accordance with such arrangements and written communications pertaining solely to such requests need not be sent to the other party;
(4) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the status of the arbitrator (i.e., neutral or non-neutral), as contemplated by paragraph C of Canon IX;
(5) Discussions may be had with a party concerning such logistical matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express the party's views; or
(6) If a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.

C. Unless otherwise provided in this Canon, in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to every other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.

Annotation to Canon III

Metropolitan Property and Casualty Insurance Company vs. J. C. Penney Casualty Insurance Company and Daniel J. McNamara, 780 F.Supp. 885 (D.Conn. 1991)

Claimant sought an injunction against Respondent and its party-appointed arbitrator based on undisclosed extensive, substantive pre-appointment communications between Respondent and the arbitrator. In dicta the court observed that the arbitrator, although not expected to be neutral, was subject to the ethical obligation to participate in the arbitration process in a fair, honest and good-faith manner and that his alleged failure to disclose ex parte activities violated the rule that an arbitrator must disclose at the time of his appointment any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial arbitrator. Lacking diversity jurisdiction, the District Court remanded the case to state court.

Graceman vs. Goldstein, 93 Md.App.658, 613 A.2d 1049 (Ct. of Special Appeals of Md., 1992)

Trial court order vacating an arbitration award for evident partiality was reversed. The finding of partiality was based on observed sympathetic conversations regarding a claimant's health between the arbitrator and the claimant, that the arbitrator was seen driving to and from the airport with the claimants, and that claimants' attorney prepared an affidavit for the arbitrator to sign. The affidavit, being post-award, could not be considered to be evident partiality during the hearing or in making the decision. The remaining matters were known to the respondents at the time and, having remained silent, they could not be heard to object on these bases after the award against them issued.

Sunkist Soft Drinks, Inc. vs. Sunkist Growers, Inc., 10 F3d 753 (11th Cir. 1993)

The District Court denied a motion to vacate an arbitration award based on pre- and post-appointment communications between claimant and its party-appointed arbitrator. The court recognized the commonplace predisposition of party-appointed non-neutral arbitrators toward the parties appointing them and found this consistent with the prevailing ethical rules.

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Capobianco v. Vulcan, Inc., 2011 WL 1364537 (Wash.App. 2011)
Note: unpublished opinion, See RCWA 2.06.0040

On cross-motions to confirm and vacate arbitration award, award confirmed, judgment affirmed on appeal. Undisclosed pre-appointment communications between party-appointed arbitrator and appointing parties' counsel regarding appointment and nature of case, including review of draft demand, and post-appointment submission of invoices, were consistent with Canon III B (1), (3) and demonstrated neither misconduct nor evident partiality. Such communications were not relationships requiring disclosure pursuant to Canon II A (2).

CANON IV. AN ARBITRATOR SHOULD CONDUCT THE PROCEEDINGS FAIRLY AND DILIGENTLY.

A. An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.

B. The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.

C. The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.

D. If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.

E. When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, including expert testimony.

F. Although it is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of mediation, or other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.

G. Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

Comment to Canon IV paragraph G

Paragraph G of Canon IV is not intended to preclude one arbitrator from acting in limited circumstances (e.g., ruling on discovery issues) where authorized by the agreement of the parties, applicable rules or law, nor does it preclude a majority of the arbitrators from proceeding with any aspect of the arbitration if an arbitrator is unable or unwilling to participate and such action is authorized by the agreement of the parties or applicable rules or law. It also does not preclude ex parte requests for interim relief.

Annotation to Canon IV

Secretaries to International Arbitration Tribunals, 17 Am.Rev.Int'l Arb. 575 (2006)

International arbitration panels frequently employ individuals to serve as administrators, assistants, researchers or secretaries. Although rare in domestic practice, such employment is consistent with Canons V and VI, provided that the duty to decide may not be delegated, the parties are informed, and the individual agrees to observe the requirement of arbitral confidentiality.

Greenspan v. LADT, LLC, 185 Cal.App.4th 1413, 111 Cal.Rptr.3d 468 (2010)

On appeal from order confirming arbitration award:

A reasonable person aware of the fact that a party had initiated a lawsuit against an arbitrator who was immune from liability under state law would view the arbitrator to be impartial and not subject to disqualification.

Where the applicable rule so provides, an arbitrator's decision as to the scheduling of deadlines and the timeliness of the award is authorized and not subject to judicial review.

Merit Insurance Company vs. Leatherby Insurance Company, 714 F.2d 673 (7th Cir. 1983)

District Court vacated arbitration award in reinsurance dispute on ground neutral arbitrator failed to disclose that fourteen years earlier he had worked for a different insurer under president of claimant, either in initial disclosures or when president appeared as witness. Seventh Circuit reversed, concluding that the relationship was not so intimate as to cast serious doubt on arbitrator's impartiality. Statutory test is existence of evident partiality, not violation of ethical disclosure obligations. Court considered affidavits of co-arbitrators denying any indications of partiality.

Morgan Phillips, Inc. vs. JAMS/Endispute, 140 Cal.App.4th 795, 44 Cal.Rptr.3d 782 (2006)

The tendered defense of arbitral immunity in a suit against the arbitrator and the institutional administrator of the arbitration for breach of contract by withdrawing and refusing to issue an award was rejected. Withdrawal from the arbitration for no stated ethical reason following evidence and argument and refusal to render an award is a breach of the contractual duty to conduct a binding arbitration and is conduct not integral to the arbitration process; it is, rather, a breakdown of the process and not immunized.

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Shaffer v. Merrill, Lynch, Pierce, Fenner & Smith. Inc., 2011 WL 1225888 (N.D. CA 2011)

On cross-motions to vacate and to correct and confirm arbitration award, award corrected and confirmed. Vacatur was sought on the ground that the arbitrator engaged two private research attorneys to assist him and initially failed to disclose that he had done so. While better practice would have been to disclose his intent to engage such assistants in advance and to afford the parties the opportunity to object, neither the initial nondisclosure nor such use of assistants constituted misconduct or breach of contract.

Pacificawest General Contracting, Inc. v. Calvada Development, Inc. 2011 WL 856810 (Cal.App. 2011) Note: See Unpublished Opinion, Rules 8.1105, 8.1110 and 8.1115, Cal.Rules of Court

Cross-motions to confirm and vacate arbitration award, award confirmed, on appeal, relevant portions of judgment affirmed. The arbitrator was not required to disclose past participation in local bar association activities with attorney for a party. Refusal

to postpone hearing while application to court to disqualify arbitrator was pending did not exceed arbitrator's powers.

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Barbara Minkowitz vs. Ron S. Israeli, 2013 N.J. Super. LEXIS 144 (N.J. Super 2013).

Where arbitrator acted, in effect, as a mediator, and entered arbitration awards based on agreements reached during mediation, such awards were deemed in excess of his power as arbitrator and therefore must be vacated.

CANON V. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

C. An arbitrator should not delegate the duty to decide to any other person.

D. In the event that all parties agree upon a settlement of issues in dispute and request the arbitrator to embody that agreement in an award, the arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

Annotation to Canon V

Secretaries to International Arbitration Tribunals, 17 Am.Rev.Int'l Arb. 575 (2006)

International arbitration panels frequently employ individuals to serve as administrators, assistants, researchers or secretaries. Although rare in domestic practice, such employment is consistent with Canons V and VI, provided that the duty to decide may not be delegated, the parties are informed, and the individual agrees to observe the requirement of arbitral confidentiality.

Merit Insurance Company vs. Leatherby Insurance Company, 714 F.2d 673 (7th Cir. 1983)

District Court vacated arbitration award in reinsurance dispute on ground neutral arbitrator failed to disclose that fourteen years earlier he had worked for a different insurer under president of claimant, either in initial disclosures or when president appeared as witness. Seventh Circuit reversed, concluding that the relationship was

not so intimate as to cast serious doubt on arbitrator's impartiality. Statutory test is existence of evident partiality, not violation of ethical disclosure obligations. Court considered affidavits of co-arbitrators denying any indications of partiality.

Morgan Phillips, Inc. vs. JAMS/Endispute, 140 Cal.App.4th 795, 44 Cal.Rptr.3d 782 (2006)

The tendered defense of arbitral immunity in a suit against the arbitrator and the institutional administrator of the arbitration for breach of contract by withdrawing and refusing to issue an award was rejected. Withdrawal from the arbitration for no stated ethical reason following evidence and argument and refusal to render an award is a breach of the contractual duty to conduct a binding arbitration and is conduct not integral to the arbitration process; it is, rather, a breakdown of the process and not immunized.

CANON VI. AN ARBITRATOR SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT OFFICE.

A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon.

C. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

D. Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, such as receiver or trustee, nor should a panel of arbitrators appoint one of their number to such an office.

Annotation to Canon VI

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Ashley v. Hart, 2011 WL 6821009 (Haw.App.2011) Note: Unpublished disposition, See HI R RAP Rule 35

Arbitrator consultation with another attorney in her office (including review of draft of award), without prior notice to or consent of parties, and *ex parte* non-ministerial communications with counsel for one party, may constitute prejudicial misconduct. Case remanded for evidentiary hearing regarding contents of communications.

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Northwestern National Insurance Company vs. Insco, Ltd., 2011 U.S.Dist.LEXIS 113626 (S.D.N.Y. 2011)

Arbitrator who disclosed contents of written communications among panel made in the course of their deliberations to counsel for a party violated Canon VI (c); attorneys who received such communications disqualified.

Northwestern National Insurance Company vs. Insco, Ltd., 2011 U.S.Dist.LEXIS 132107 (S.D.N.Y. 2011)

Reconsideration of 2011 U.S.Dist.Lexis 113626 denied. Arbitrator who disclosed contents of written communications among panel made in the course of their deliberations to counsel for a party violated Canon VI (c); attorneys who received such communications disqualified.

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Delaware Coalition for Open Government, Inc. vs. The Honorable Leo E. Strine, Jr. et al, ___ F.3d ___ (3rd Cir. 2013 [No. 12-3859, filed October 23, 2013] , dissent at slip opinion, page 6.

An arbitration process for business disputes as an alternative to civil litigation, utilizing the justices and facilities of the Delaware Chancery Court [10 Del. Code Ann., tit. 10, Sec. 349 (2009). Del. Ch. R. 96 – 98], and denying public access to the proceedings and their records, violated the U. S. Constitution First and Fourteenth Amendment rights of public access to trials. Confidentiality is an attribute of private arbitration but may not be imposed in proceedings utilizing court facilities and personnel and deriving their legitimacy and authority from the state.

CANON VII. AN ARBITRATOR SHOULD ADHERE TO STANDARDS OF INTEGRITY AND FAIRNESS WHEN MAKING ARRANGEMENTS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES.

A. Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to standards of integrity and fairness in making arrangements for such payments.

B. Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:

(1) Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be established. Except for arrangements for the compensation of party-appointed arbitrators, all parties should be informed in writing of the terms established.
(2) In proceedings conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, communication related to compensation should be made through the institution. In proceedings where no institution has been engaged by the parties to administer the arbitration, any communication with arbitrators (other than party appointed arbitrators) concerning payments should be in the presence of all parties; and
(3) Arbitrators should not, absent extraordinary circumstances, request increases in the basis of their compensation during the course of a proceeding.

Annotation to Canon VII

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Plastic Recovery Technologies, Co. vs. Samson, 2011 U.S.Dist.LEXIS 82937 (N.D.Ill, 2011)

Since Code does not preclude such communications, using "should" rather than "must", arbitrator's discussion about fees with parties in administered arbitration was not a violation; if it were to be deemed a technical violation it would not justify setting aside award for evident partiality.

CANON VIII. AN ARBITRATOR MAY ENGAGE IN ADVERTISING OR PROMOTION OF ARBITRAL SERVICES WHICH IS TRUTHFUL AND ACCURATE.

A. Advertising or promotion of an individual's willingness or availability to serve as an arbitrator must be accurate and unlikely to mislead. Any statements about the quality of the arbitrator's work or the success of the arbitrator's practice must be truthful.

B. Advertising and promotion must not imply any willingness to accept an appointment otherwise than in accordance with this Code.

Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating advertisements conforming to these standards in any electronic or print medium, from making personal presentations to prospective users of arbitral services conforming to such standards or from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or fee arrangements.

CANON IX. ARBITRATORS APPOINTED BY ONE PARTY HAVE A DUTY TO DETERMINE AND DISCLOSE THEIR STATUS AND TO COMPLY WITH THIS CODE, EXCEPT AS EXEMPTED BY CANON X.

A. In some types of arbitration in which there are three arbitrators, it is customary for each party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by agreement either of the parties or of the two arbitrators, or failing such agreement, by an independent institution or individual. In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator.

B. Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators, referred to in this Code as "Canon X arbitrators," are not to be held to the standards of neutrality and independence applicable to other arbitrators. Canon X describes the special ethical obligations of party-appointed arbitrators who are not expected to meet the standard of neutrality.

C. A party-appointed arbitrator has an obligation to ascertain, as early as possible but not later than the first meeting of the arbitrators and parties, whether the parties have agreed that the party-appointed arbitrators will serve as neutrals or whether they shall be subject to Canon X, and to provide a timely report of their conclusions to the parties and other arbitrators:

(1) Party-appointed arbitrators should review the agreement of the parties, the applicable rules and any applicable law bearing upon arbitrator neutrality. In reviewing the agreement of the parties, party-appointed arbitrators should consult any relevant express terms of the written or oral arbitration agreement. It may also be appropriate for them to inquire into agreements that have not been expressly set forth, but which may be implied from an established course of dealings of the parties or well-recognized custom and usage in their trade or profession;
(2) Where party-appointed arbitrators conclude that the parties intended for the party-appointed arbitrators not to serve as neutrals, they should so inform the parties and the other arbitrators. The arbitrators may then act as provided

in Canon X unless or until a different determination of their status is made by the parties, any administering institution or the arbitral panel; and

(3) Until party-appointed arbitrators conclude that the party-appointed arbitrators were not intended by the parties to serve as neutrals, or if the party-appointed arbitrators are unable to form a reasonable belief of their status from the foregoing sources and no decision in this regard has yet been made by the parties, any administering institution, or the arbitral panel, they should observe all of the obligations of neutral arbitrators set forth in this Code.

D. Party-appointed arbitrators not governed by Canon X shall observe all of the obligations of Canons I through VIII unless otherwise required by agreement of the parties, any applicable rules, or applicable law.

Annotation to Canon IX

Barcon Associates, Inc. v. Tri-County Asphalt Corp., 86 N.J. 179, 430 A.2d 214 (1981)

Existence of substantial and on-going business relationship between party-appointed non-neutral arbitrator and appointing party, which relationship included services rendered and payments made during the arbitration, created an impermissible appearance of partiality.

Failure of party-appointed non-neutral arbitrator to disclose substantial on-going business relationship with appointing party was improper.

Every arbitrator, whether party-appointed or "neutral", is required to disclose to the parties, prior to the commencement of the arbitration proceedings, any relationship or transaction that he has had with the parties or their representatives, and any other facts which would suggest to a reasonable person that the arbitrator is interested in the outcome of the arbitration or which might reasonably support an inference of partiality.

Borst v. Allstate Insurance Company, 291 Wis.2d 361, 717 NW2d 42 (2006)

Appeal from order denying motion to vacate award. Reversed

Court adopts rule that all arbitrators, including party-appointed arbitrators, are presumed impartial unless the parties contract or applicable rules provide for non-neutral arbitrators.

Evident partiality arising from a relationship between an arbitrator and a party cannot be avoided simply by full disclosure at the outset.

Arbitrator who had substantial ongoing attorney-client relationship with party that selected arbitrator was evidentially partial as a matter of law, such that award had to be vacated.

Evidence of substantial ongoing attorney-client relationship between arbitrator who was expected to be neutral and party would cause a reasonable person to have serious doubts about the impartiality of the arbitrator.

Aetna Casualty & Surety Company v. Grabbert, 590 A.2d 88 (R.I. 1991)

Service as a party-appointed non-neutral arbitrator pursuant to a contingent fee arrangement confers a direct financial interest in the award violative of Canon I, in that such interest would tend to destroy public confidence in the integrity of the arbitration process.

Party-appointed non-neutral arbitrator's failure to disclose his contingent fee arrangement violated Canon II.

The award of the three arbitrator panel having been unanimous, no causal nexus existed between the party-appointed arbitrator's improper conduct and the ultimate award.

Metropolitan Property and Casualty Insurance Company vs. J. C. Penney Casualty Insurance Company and Daniel J. McNamara, 780 F.Supp. 885 (D.Conn. 1991)

Claimant sought an injunction against Respondent and its party-appointed arbitrator based on undisclosed extensive, substantive pre-appointment communications between Respondent and the arbitrator. In dicta the court observed that the arbitrator, although not expected to be neutral, was subject to the ethical obligation to participate in the arbitration process in a fair, honest and good-faith manner and that his alleged failure to disclose ex parte activities violated the rule that an arbitrator must disclose at the time of his appointment any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial arbitrator. Lacking diversity jurisdiction, the District Court remanded the case to state court.

Sunkist Soft Drinks, Inc. vs. Sunkist Growers, Inc., 10 F3d 753 (11th Cir. 1993)

The District Court denied a motion to vacate an arbitration award based on pre- and post-appointment communications between claimant and its party-appointed arbitrator. The court recognized the commonplace predisposition of party-appointed non-neutral arbitrators toward the parties appointing them and found this consistent with the prevailing ethical rules.

Positive Software Solutions, Inc. vs. New Century Mortgage Corporation, 476 F.3d 278 (5th Cir. 2007)

The District Court ruling vacating an arbitration award based in undisclosed co-counsel status between counsel in the arbitration and the arbitrator in a case that had concluded seven years earlier was reversed. The standard is that in nondisclosure cases, an award may not be vacated because of trivial or insubstantial prior relationships between the arbitrator and the parties to the proceeding. The "reasonable impression of bias" standard is to be interpreted practically rather than with utmost rigor.

2010 - 2011 Supplement

Capobianco v. Vulcan, Inc., 2011 WL 1364537 (Wash.App. 2011)
Note: unpublished opinion, See RCWA 2.06.0040

On cross-motions to confirm and vacate arbitration award, award confirmed, judgment affirmed on appeal. Undisclosed pre-appointment communications between party-appointed arbitrator and appointing parties' counsel regarding appointment and nature of case, including review of draft demand, and post-appointment submission of invoices, were consistent with Canon III B (1), (3) and demonstrated neither misconduct nor evident partiality. Such communications were not relationships requiring disclosure pursuant to Canon II A (2).

Dealer Computer Services, Inc. v. Michael Motor Company, Inc., 2010 WL 5464266 (S.D.Texas 2010)

On cross-motions to confirm and vacate arbitration award, award vacated. Party-appointed neutral arbitrator disclosed that she had previously served as a member of a three arbitrator panel in an arbitration involving the same appointing party, but failed to disclose that the earlier case involved the same form contract, the same issues of liability and damages, and testimony of the same expert witness, nor did she disclose that she had expressly accepted the expert witness testimony and ruled for the appointing party on all issues. Her failure to disclose the nature and extent of these connections with the appointing party and its case significantly compromised her ability to act impartially and constituted evident partiality.

CANON X. EXEMPTIONS FOR ARBITRATORS APPOINTED BY ONE PARTY WHO ARE NOT SUBJECT TO RULES OF NEUTRALITY.

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by this Code except those from which they are specifically excused by Canon X.

A. *Obligations under Canon I*
Canon X arbitrators should observe all of the obligations of Canon I subject only to the following provisions:

(1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and
(2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. *Obligations under Canon II*

(1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and
(2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. *Obligations under Canon III*
Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:

(1) Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;
(2) Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3).
(3) If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;
(4) Canon X arbitrators may not at any time during the arbitration:
    (a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;
    (b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or

(c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.

(5) Unless otherwise agreed by the arbitrators and the parties, a Canon X arbitrator may not communicate orally with the neutral arbitrator concerning any matter or issue arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. If a Canon X arbitrator communicates in writing with the neutral arbitrator, he or she shall simultaneously provide a copy of the written communication to the other Canon X arbitrator;

(6) When Canon X arbitrators communicate orally with the parties that appointed them concerning any matter on which communication is permitted under this Code, they are not obligated to disclose the contents of such oral communications to any other party or arbitrator; and

(7) When Canon X arbitrators communicate in writing with the party who appointed them concerning any matter on which communication is permitted under this Code, they are not required to send copies of any such written communication to any other party or arbitrator.

D. *Obligations under Canon IV*
Canon X arbitrators should observe all of the obligations of Canon IV.

E. *Obligations under Canon V*
Canon X arbitrators should observe all of the obligations of Canon V, except that they may be predisposed toward deciding in favor of the party who appointed them.

F. *Obligations under Canon VI*
Canon X arbitrators should observe all of the obligations of Canon VI.

G. *Obligations Under Canon VII*
Canon X arbitrators should observe all of the obligations of Canon VII.

H. *Obligations Under Canon VIII*
Canon X arbitrators should observe all of the obligations of Canon VIII.

I. *Obligations Under Canon IX*
The provisions of paragraph D of Canon IX are inapplicable to Canon X arbitrators, except insofar as the obligations are also set forth in this Canon.

Annotation to Canon X

Barcon Associates, Inc. v. Tri-County Asphalt Corp., 86 N.J. 179, 430 A.2d 214 (1981)

Existence of substantial and on-going business relationship between party-appointed non-neutral arbitrator and appointing party, which relationship included services

rendered and payments made during the arbitration, created an impermissible appearance of partiality.

Failure of party-appointed non-neutral arbitrator to disclose substantial on-going business relationship with appointing party was improper.

Every arbitrator, whether party-appointed or "neutral", is required to disclose to the parties, prior to the commencement of the arbitration proceedings, any relationship or transaction that he has had with the parties or their representatives, and any other facts which would suggest to a reasonable person that the arbitrator is interested in the outcome of the arbitration or which might reasonably support an inference of partiality.

Aetna Casualty & Surety Company v. Grabbert, 590 A.2d 88 (R.I. 1991)

Service as a party-appointed non-neutral arbitrator pursuant to a contingent fee arrangement confers a direct financial interest in the award violative of Canon I, in that such interest would tend to destroy public confidence in the integrity of the arbitration process.

Party-appointed non-neutral arbitrator's failure to disclose his contingent fee arrangement violated Canon II.

The award of the three arbitrator panel having been unanimous, no causal nexus existed between the party-appointed arbitrator's improper conduct and the ultimate award.

Metropolitan Property and Casualty Insurance Company vs. J. C. Penney Casualty Insurance Company and Daniel J. McNamara, 780 F.Supp. 885 (D.Conn. 1991)

Claimant sought an injunction against Respondent and its party-appointed arbitrator based on undisclosed extensive, substantive pre-appointment communications between Respondent and the arbitrator. In dicta the court observed that the arbitrator, although not expected to be neutral, was subject to the ethical obligation to participate in the arbitration process in a fair, honest and good-faith manner and that his alleged failure to disclose ex parte activities violated the rule that an arbitrator must disclose at the time of his appointment any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial arbitrator. Lacking diversity jurisdiction, the District Court remanded the case to state court.

Sunkist Soft Drinks, Inc. vs. Sunkist Growers, Inc., 10 F3d 753 (11th Cir. 1993)

The District Court denied a motion to vacate an arbitration award based on pre- and post-appointment communications between claimant and its party-appointed arbitrator. The court recognized the commonplace predisposition of party-appointed

non-neutral arbitrators toward the parties appointing them and found this consistent with the prevailing ethical rules.

MODEL STANDARDS OF CONDUCT FOR MEDIATORS

AMERICAN ARBITRATION ASSOCIATION
(ADOPTED SEPTEMBER 8, 2005)

AMERICAN BAR ASSOCIATION
(APPROVED BY THE ABA HOUSE OF DELEGATES AUGUST 9, 2005)

ASSOCIATION FOR CONFLICT RESOLUTION
(ADOPTED AUGUST 22, 2005)

SEPTEMBER 2005

The Model Standards of Conduct for Mediators
2005

The Model Standards of Conduct for Mediators was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution[1]. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.[2] Both the original 1994 version and the 2005 revision have been approved by each participating organization.[3]

Preamble

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

These Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

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[1] The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

[2] Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

[3] The 2005 version to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association of Conflict Resolution on August 22, 2005 and the Executive Committee of the American Arbitration Association on September 8, 2005.

The use of the term “shall” in a Standard indicates that the mediator must follow the practice described. The use of the term “should” indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term “mediator” is understood to be inclusive so that it applies to co-mediator models.

These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these other sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities, should alert mediators to the fact that the Standards might be viewed as establishing a standard of care for mediators.

STANDARD I. SELF-DETERMINATION

A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator’s duty to conduct a quality process in accordance with these Standards.

2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where

appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

STANDARD II. IMPARTIALITY

A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.

B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.

1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.

3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.

C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

STANDARD III. CONFLICTS OF INTEREST

A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.

C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.

E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.

F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator

competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.

3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.

B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

STANDARD V. CONFIDENTIALITY

A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.

1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.

2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.

3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.

B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.

D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

STANDARD VI. QUALITY OF THE PROCESS

A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.

1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.

2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.

3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.

4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.

5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.

6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.

7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.

8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.

9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.

B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

STANDARD VII. ADVERTISING AND SOLICITATION

A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.

1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.

2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.

B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.

C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

STANDARD VIII. FEES AND OTHER CHARGES

A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.

1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.

2. A mediator's fee arrangement should be in writing unless the parties request otherwise.

B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.

1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.

2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.

3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.

4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.

5. Assisting newer mediators through training, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

IBA Guidelines on Party Representation in International Arbitration

Adopted by a resolution of
the IBA Council
25 May 2013
International Bar Association

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the legal profession®

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About the IBA Arbitration Committee

Established as a Committee of the International Bar Association's Legal Practice Division, which focuses on the laws, practise and procedures relating to the arbitration of transnational disputes, the Arbitration Committee currently has over 2,600 members from 115 countries, and membership is increasing steadily.

Through its publications and conferences, the Committee seeks to share information about international arbitration, promote its use and improve its effectiveness.

The Committee has published several sets of rules and guidelines, which have become widely accepted by the arbitration community as an expression of arbitration best practises, such as the IBA Rules on the Taking of Evidence in International Arbitration, as revised in 2010, the IBA Guidelines on Conflicts of Interest in International Arbitration, which are currently under revision, and the IBA Guidelines on Drafting Arbitration Agreements. The Committee also publishes a newsletter twice a year and organises conferences, seminars and training sessions around the globe.

The Committee maintains standing subcommittees and, as appropriate, establishes task forces to address specific issues.

At the time of the issuance of these Guidelines the Committee has – in addition to its Task Force on Counsel Conduct – three subcommittees, namely, the Investment Treaty Arbitration Subcommittee, the Conflicts of Interest Subcommittee and the Young Arbitration Practitioners Subcommittee.

The Guidelines

Preamble

The IBA Arbitration Committee established the Task Force on Counsel Conduct in International Arbitration (the 'Task Force') in 2008.

The mandate of the Task Force was to focus on issues of counsel conduct and party representation in international arbitration that are subject to, or informed by, diverse and potentially conflicting rules and norms. As an initial inquiry, the Task Force undertook to determine whether such differing norms and practises may undermine the fundamental fairness and integrity of international arbitral proceedings and whether international guidelines on party representation in international arbitration may assist parties, counsel and arbitrators. In 2010, the Task Force commissioned a survey (the 'Survey') in order to examine these issues. Respondents to the Survey expressed support for the development of international guidelines for party representation.

The Task Force proposed draft guidelines to the IBA Arbitration Committee's officers in October 2012. The Committee then reviewed the draft guidelines and consulted with experienced arbitration practitioners, arbitrators and arbitral institutions. The draft guidelines were then submitted to all members of the IBA Arbitration Committee for consideration.

Unlike in domestic judicial settings, in which counsel are familiar with, and subject, to a single set of professional conduct rules, party representatives in international arbitration may be subject to diverse and potentially conflicting bodies of domestic rules and norms. The range of rules and norms applicable to the representation of parties in international arbitration may include those of the party representative's home jurisdiction, the arbitral seat, and the place where hearings physically take place. The Survey revealed a high degree of uncertainty among respondents regarding what rules govern party representation in

international arbitration. The potential for confusion may be aggravated when individual counsel working collectively, either within a firm or through a co-counsel relationship, are themselves admitted to practise in multiple jurisdictions that have conflicting rules and norms.

In addition to the potential for uncertainty, rules and norms developed for domestic judicial litigation may be ill-adapted to international arbitral proceedings. Indeed, specialised practises and procedures have been developed in international arbitration to accommodate the legal and cultural differences among participants and the complex, multinational nature of the disputes. Domestic professional conduct rules and norms, by contrast, are developed to apply in specific legal cultures consistent with established national procedures.

The IBA Guidelines on Party Representation in International Arbitration (the 'Guidelines') are inspired by the principle that party representatives should act with integrity and honesty and should not engage in activities designed to produce unnecessary delay or expense, including tactics aimed at obstructing the arbitration proceedings.

As with the International Principles on Conduct for the Legal Profession, adopted by the IBA on 28 May 2011, the Guidelines are not intended to displace otherwise applicable mandatory laws, professional or disciplinary rules, or agreed arbitration rules that may be relevant or applicable to matters of party representation. They are also not intended to vest arbitral tribunals with powers otherwise reserved to bars or other professional bodies.

The use of the term guidelines rather than rules is intended to highlight their contractual nature. The parties may thus adopt the Guidelines or a portion thereof by agreement. Arbitral tribunals may also apply the Guidelines in their discretion, subject to any applicable mandatory rules, if they determine that they have the authority to do so.

The Guidelines are not intended to limit the flexibility that is inherent in, and a considerable advantage of, international arbitration, and parties and

arbitral tribunals may adapt them to the particular circumstances of each arbitration.

Definitions

In the IBA Guidelines on Party Representation in International Arbitration:

'Arbitral Tribunal' or *'Tribunal'* means a sole Arbitrator or a panel of Arbitrators in the arbitration;

'Arbitrator' means an arbitrator in the arbitration;

'Document' means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means;

'Domestic Bar' or *'Bar'* means the national or local authority or authorities responsible for the regulation of the professional conduct of lawyers;

'Evidence' means documentary evidence and written and oral testimony.

'Ex Parte Communications' means oral or written communications between a Party Representative and an Arbitrator or prospective Arbitrator without the presence or knowledge of the opposing Party or Parties;

'Expert' means a person or organisation appearing before an Arbitral Tribunal to provide expert analysis and opinion on specific issues determined by a Party or by the Arbitral Tribunal;

'Expert Report' means a written statement by an Expert;

'Guidelines' mean these IBA Guidelines on Party Representation in International Arbitration, as they may be revised or amended from time to time;

'Knowingly' means with actual knowledge of the fact in question;

'Misconduct' means a breach of the present Guidelines or any other conduct that the Arbitral Tribunal determines to be contrary to the duties of a Party Representative;

'Party' means a party to the arbitration;

'Party-Nominated Arbitrator' means an Arbitrator who is nominated or appointed by one or more Parties;

'Party Representative' or *'Representative'* means any person, including a Party's employee, who appears in an arbitration on behalf of a Party and makes submissions, arguments or representations to the Arbitral Tribunal on behalf of such Party, other than in the capacity as a Witness or Expert, and whether or not legally qualified or admitted to a Domestic Bar;

'Presiding Arbitrator' means an arbitrator who is either a sole Arbitrator or the chairperson of the Arbitral Tribunal;

'Request to Produce' means a written request by a Party that another Party produce Documents;

'Witness' means a person appearing before an Arbitral Tribunal to provide testimony of fact;

'Witness Statement' means a written statement by a Witness recording testimony.

Application of Guidelines

1. *The Guidelines shall apply where and to the extent that the Parties have so agreed, or the Arbitral Tribunal, after consultation with the Parties, wishes to rely upon them after having determined that it has the authority to rule on matters of Party representation to ensure the integrity and fairness of the arbitral proceedings.*

2. *In the event of any dispute regarding the meaning of the Guidelines, the Arbitral Tribunal should interpret them in accordance with their overall purpose and in the manner most appropriate for the particular arbitration.*

3. *The Guidelines are not intended to displace otherwise applicable mandatory laws, professional or disciplinary rules, or agreed arbitration rules, in matters of Party representation. The Guidelines are also not intended to derogate from the arbitration agreement or to undermine either a Party representative's primary duty of loyalty to the party whom he or she represents or a Party representative's paramount obligation to present such Party's case to the Arbitral Tribunal.*

Comments to Guidelines 1–3

As explained in the Preamble, the Parties and Arbitral Tribunals may benefit from guidance in matters of Party Representation, in particular in order to address instances where differing norms and expectations may threaten the integrity and fairness of the arbitral proceedings.

By virtue of these Guidelines, Arbitral Tribunals need not, in dealing with such issues, and subject to applicable mandatory laws, be limited by a choice-of-law rule or private international law analysis to choosing among national or domestic professional conduct rules. Instead, these Guidelines offer an approach designed to account for the multi-faceted nature of international arbitral proceedings.

These Guidelines shall apply where and to the extent that the Parties have so agreed. Parties may adopt these Guidelines, in whole or in part, in their arbitration agreement or at any time subsequently.

An Arbitral Tribunal may also apply, or draw inspiration from, the Guidelines, after having determined that it has the authority to rule on matters of Party representation in order to ensure the integrity and fairness of the arbitral proceedings. Before making such determination, the Arbitral Tribunal should give the Parties an opportunity to express their views.

These Guidelines do not state whether Arbitral Tribunals have the authority to rule on matters of Party representation and to apply the Guidelines in the absence of an agreement by the Parties to that effect. The Guidelines neither recognise nor exclude the existence of such authority. It remains for the Tribunal to make a determination as to whether it has the authority to rule on matters of Party representation and to apply the Guidelines.

A Party Representative, acting within the authority granted to it, acts on behalf of the Party whom he or she represents. It follows therefore that an obligation or duty bearing on a Party Representative is an obligation or duty of the represented Party, who may ultimately bear the consequences of the misconduct of its Representative.

Party Representation

4. *Party Representatives should identify themselves to the other Party or Parties and the Arbitral Tribunal at the earliest opportunity. A Party should promptly inform the Arbitral Tribunal and the other Party or Parties of any change in such representation.*

5. *Once the Arbitral Tribunal has been constituted, a person should not accept representation of a Party in the arbitration when a relationship exists between the person and an Arbitrator that would create a conflict of interest, unless none of the Parties objects after proper disclosure.*

6. *The Arbitral Tribunal may, in case of breach of Guideline 5, take measures appropriate to safeguard the integrity of the proceedings, including the exclusion of the new Party Representative from participating in all or part of the arbitral proceedings.*

Comments to Guidelines 4–6

Changes in Party representation in the course of the arbitration may, because of conflicts of interest between a newly-appointed Party Representative and one or more of the Arbitrators, threaten the integrity of the proceedings. In such case, the Arbitral Tribunal may, if compelling circumstances so justify, and where it has found that it has the requisite authority, consider excluding the new Representative from participating in all or part of the arbitral proceedings. In assessing whether any such conflict of interest exists, the Arbitral Tribunal may rely on the IBA Guidelines on Conflicts of Interest in International Arbitration.

Before resorting to such measure, it is important that the Arbitral Tribunal give the Parties an opportunity to express their views about the existence of a conflict, the extent of the Tribunal's authority to act in relation to such conflict, and the consequences of the measure that the Tribunal is contemplating.

Communications with Arbitrators

7. *Unless agreed otherwise by the Parties, and subject to the exceptions below, a Party Representative should not engage in any Ex Parte Communications with an Arbitrator concerning the arbitration.*

8. *It is not improper for a Party Representative to have Ex Parte Communications in the following circumstances:*

   (a) *A Party Representative may communicate with a prospective Party-Nominated Arbitrator to determine his or her expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest.*

   (b) *A Party Representative may communicate with a prospective or appointed Party-Nominated Arbitrator for the purpose of the selection of the Presiding Arbitrator.*

   (c) *A Party Representative may, if the Parties are in agreement that such a communication is permissible, communicate with a prospective Presiding Arbitrator to determine his or her expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest.*

   (d) *While communications with a prospective Party-Nominated Arbitrator or Presiding Arbitrator may include a general description of the dispute, a Party Representative should not seek the views of the prospective Party-Nominated Arbitrator or Presiding Arbitrator on the substance of the dispute.*

Comments to Guidelines 7–8

Guidelines 7–8 deal with communications between a Party Representative and an Arbitrator or potential Arbitrator concerning the arbitration.

The Guidelines seek to reflect best international practices and, as such, may depart from potentially diverging domestic arbitration practices that are more restrictive or, to the contrary, permit broader Ex Parte Communications.

Ex Parte Communications, as defined in these Guidelines, may occur only in defined circumstances, and a Party Representative should otherwise refrain from any such communication. The Guidelines do not seek to define when the relevant period begins or ends. Any communication that takes place in the context of, or in relation to, the constitution of the Arbitral Tribunal is covered.

Ex Parte Communications with a prospective Arbitrator (Party-Nominated or Presiding Arbitrator) should be limited to providing a general description of the dispute and obtaining information regarding the suitability of the potential Arbitrator, as described in further detail below. A Party Representative should not take the opportunity to seek the prospective Arbitrator's views on the substance of the dispute.

The following discussion topics are appropriate in pre-appointment communications in order to assess the prospective Arbitrator's expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest: (a) the prospective Arbitrator's publications, including books, articles and conference papers or engagements; (b) any activities of the prospective Arbitrator and his or her law firm or organisation within which he or she operates, that may raise justifiable doubts as to the prospective Arbitrator's independence or impartiality; (c) a description of the general nature of the dispute; (d) the terms of the arbitration agreement, and in particular any agreement as to the seat, language, applicable law and rules of the arbitration; (e) the identities of the Parties, Party Representatives, Witnesses, Experts and interested parties; and (f) the anticipated timetable and general conduct of the proceedings.

Applications to the Arbitral Tribunal without the presence or knowledge of the opposing Party or Parties may be permitted in certain circumstances, if the parties so agreed, or as permitted by applicable law. Such may be the case, in particular, for interim measures.

Finally, a Party Representative may communicate with the Arbitral Tribunal if the other Party or Parties fail to participate in a hearing or proceedings and are not represented.

Submissions to the Arbitral Tribunal

9. *A Party Representative should not make any knowingly false submission of fact to the Arbitral Tribunal.*

10. *In the event that a Party Representative learns that he or she previously made a false submission of fact to*

the Arbitral Tribunal, the Party Representative should, subject to countervailing considerations of confidentiality and privilege, promptly correct such submission.

11. *A Party Representative should not submit Witness or Expert evidence that he or she knows to be false. If a Witness or Expert intends to present or presents evidence that a Party Representative knows or later discovers to be false, such Party Representative should promptly advise the Party whom he or she represents of the necessity of taking remedial measures and of the consequences of failing to do so. Depending upon the circumstances, and subject to countervailing considerations of confidentiality and privilege, the Party Representative should promptly take remedial measures, which may include one or more of the following:*

    (a) advise the Witness or Expert to testify truthfully;

    (b) take reasonable steps to deter the Witness or Expert from submitting false evidence;

    (c) urge the Witness or Expert to correct or withdraw the false evidence;

    (d) correct or withdraw the false evidence;

    (e) withdraw as Party Representative if the circumstances so warrant.

Comments to Guidelines 9–11

Guidelines 9–11 concern the responsibility of a Party Representative when making submissions and tendering evidence to the Arbitral Tribunal. This principle is sometimes referred to as the duty of candour or honesty owed to the Tribunal.

The Guidelines identify two aspects of the responsibility of a Party Representative: the first relates to submissions of fact made by a Party Representative (Guidelines 9 and 10), and the second concerns the evidence given by a Witness or Expert (Guideline 11).

With respect to submissions to the Arbitral Tribunal, these Guidelines contain two limitations to the principles set out for Party Representatives. First, Guidelines 9 and 10 are restricted to false submissions of fact. Secondly, the Party Representative must have actual knowledge of the false nature of the submission,

which may be inferred from the circumstances.

Under Guideline 10, a Party Representative should promptly correct any false submissions of fact previously made to the Tribunal, unless prevented from doing so by countervailing considerations of confidentiality and privilege. Such principle also applies, in case of a change in representation, to a newly-appointed Party Representative who becomes aware that his or her predecessor made a false submission.

With respect to legal submissions to the Tribunal, a Party Representative may argue any construction of a law, a contract, a treaty or any authority that he or she believes is reasonable.

Guideline 11 addresses the presentation of evidence to the Tribunal that a Party Representative knows to be false. A Party Representative should not offer knowingly false evidence or testimony. A Party Representative therefore should not assist a Witness or Expert or seek to influence a Witness or Expert to give false evidence to the Tribunal in oral testimony or written Witness Statements or Expert Reports.

The considerations outlined for Guidelines 9 and 10 apply equally to Guideline 11. Guideline 11 is more specific in terms of the remedial measures that a Party Representative may take in the event that the Witness or Expert intends to present or presents evidence that the Party Representative knows or later discovers to be false. The list of remedial measures provided in Guideline 11 is not exhaustive. Such remedial measures may extend to the Party Representative's withdrawal from the case, if the circumstances so warrant. Guideline 11 acknowledges, by using the term 'may', that certain remedial measures, such as correcting or withdrawing false Witness or Expert evidence may not be compatible with the ethical rules bearing on counsel in some jurisdictions.

Information Exchange and Disclosure

12. *When the arbitral proceedings involve or are likely to involve Document production, a Party Representative should inform the client of the need to preserve, so far as reasonably possible, Documents, including electronic*

Documents that would otherwise be deleted in accordance with a Document retention policy or in the ordinary course of business, which are potentially relevant to the arbitration.

13. *A Party Representative should not make any Request to Produce, or any objection to a Request to Produce, for an improper purpose, such as to harass or cause unnecessary delay.*

14. *A Party Representative should explain to the Party whom he or she represents the necessity of producing, and potential consequences of failing to produce, any Document that the Party or Parties have undertaken, or been ordered, to produce.*

15. *A Party Representative should advise the Party whom he or she represents to take, and assist such Party in taking, reasonable steps to ensure that: (i) a reasonable search is made for Documents that a Party has undertaken, or been ordered, to produce; and (ii) all non-privileged, responsive Documents are produced.*

16. *A Party Representative should not suppress or conceal, or advise a Party to suppress or conceal, Documents that have been requested by another Party or that the Party whom he or she represents has undertaken, or been ordered, to produce.*

17. *If, during the course of an arbitration, a Party Representative becomes aware of the existence of a Document that should have been produced, but was not produced, such Party Representative should advise the Party whom he or she represents of the necessity of producing the Document and the consequences of failing to do so.*

Comments to Guidelines 12–17

The IBA addressed the scope of Document production in the IBA Rules on the Taking of Evidence in International Arbitration (*see* Articles 3 and 9). Guidelines 12–17 concern the conduct of Party Representatives in connection with Document production.

Party Representatives are often unsure whether and to what extent their respective domestic standards of professional conduct apply to the process of

preserving, collecting and producing documents in international arbitration. It is common for Party Representatives in the same arbitration proceeding to apply different standards. For example, one Party Representative may consider him- or her-self obligated to ensure that the Party whom he or she represents undertakes a reasonable search for, and produces, all responsive, non-privileged Documents, while another Party Representative may view Document production as the sole responsibility of the Party whom he or she represents. In these circumstances, the disparity in access to information or evidence may undermine the integrity and fairness of the arbitral proceedings.

The Guidelines are intended to address these difficulties by suggesting standards of conduct in international arbitration. They may not be necessary in cases where Party Representatives share similar expectations with respect to their role in relation to Document production or in cases where Document production is not done or is minimal.

The Guidelines are intended to foster the taking of objectively reasonable steps to preserve, search for and produce Documents that a Party has an obligation to disclose.

Under Guidelines 12–17, a Party Representative should, under the given circumstances, advise the Party whom he or she represents to: (i) identify those persons within the Party's control who might possess Documents potentially relevant to the arbitration, including electronic Documents; (ii) notify such persons of the need to preserve and not destroy any such Documents; and (iii) suspend or otherwise make arrangements to override any Document retention or other policies/practises whereby potentially relevant Documents might be destroyed in the ordinary course of business.

Under Guidelines 12–17, a Party Representative should, under the given circumstances, advise the Party whom he or she represents to, and assist such Party to: (i) put in place a reasonable and proportionate system for collecting and reviewing Documents within the possession of persons within the Party's control in order to identify Documents

that are relevant to the arbitration or that have been requested by another Party; and (ii) ensure that the Party Representative is provided with copies of, or access to, all such Documents.

While Article 3 of the IBA Rules on the Taking of Evidence in International Arbitration requires the production of Documents relevant to the case and material to its outcome, Guideline 12 refers only to potentially relevant Documents because its purpose is different: when a Party Representative advises the Party whom he or she represents to preserve evidence, such Party Representative is typically not at that stage in a position to assess materiality, and the test for preserving and collecting Documents therefore should be potential relevance to the case at hand.

Finally, a Party Representative should not make a Request to Produce, or object to a Request to Produce, when such request or objection is only aimed at harassing, obtaining documents for purposes extraneous to the arbitration, or causing unnecessary delay (Guideline 13).

Witnesses and Experts

18. *Before seeking any information from a potential Witness or Expert, a Party Representative should identify himself or herself, as well as the Party he or she represents, and the reason for which the information is sought.*

19. *A Party Representative should make any potential Witness aware that he or she has the right to inform or instruct his or her own counsel about the contact and to discontinue the communication with the Party Representative.*

20. *A Party Representative may assist Witnesses in the preparation of Witness Statements and Experts in the preparation of Expert Reports.*

21. *A Party Representative should seek to ensure that a Witness Statement reflects the Witness's own account of relevant facts, events and circumstances.*

22. *A Party Representative should seek to ensure that an Expert Report reflects the Expert's own analysis and opinion.*

23. *A Party Representative should not invite or encourage a Witness to give false evidence.*

24. *A Party Representative may, consistent with the principle that the evidence given should reflect the Witness's own account of relevant facts, events or circumstances, or the Expert's own analysis or opinion, meet or interact with Witnesses and Experts in order to discuss and prepare their prospective testimony.*

25. *A Party Representative may pay, offer to pay, or acquiesce in the payment of:*

    (a) expenses reasonably incurred by a Witness or Expert in preparing to testify or testifying at a hearing;

    (b) reasonable compensation for the loss of time incurred by a Witness in testifying and preparing to testify; and

    (c) reasonable fees for the professional services of a Party-appointed Expert.

Comments to Guidelines 18–25

Guidelines 18–25 are concerned with interactions between Party Representatives and Witnesses and Experts. The interaction between Party Representatives and Witnesses is also addressed in Guidelines 9–11 concerning Submissions to the Arbitral Tribunal.

Many international arbitration practitioners desire more transparent and predictable standards of conduct with respect to relations with Witnesses and Experts in order to promote the principle of equal treatment among Parties. Disparate practises among jurisdictions may create inequality and threaten the integrity of the arbitral proceedings.

The Guidelines are intended to reflect best international arbitration practise with respect to the preparation of Witness and Expert testimony.

When a Party Representative contacts a potential Witness, he or she should disclose his or her identity and the reason for the contact before seeking any information from the potential Witness (Guideline 18). A Party Representative should also make the potential Witness aware of his or her right to inform or instruct counsel about this contact and involve such

counsel in any further communication (Guideline 19).

Domestic professional conduct norms in some jurisdictions require higher standards with respect to contacts with potential Witnesses who are known to be represented by counsel. For example, some common law jurisdictions maintain a prohibition against contact by counsel with any potential Witness whom counsel knows to be represented in respect of the particular arbitration.

If a Party Representative determines that he or she is subject to a higher standard than the standard prescribed in these Guidelines, he or she may address the situation with the other Party and/or the Arbitral Tribunal.

As provided by Guideline 20, a Party Representative may assist in the preparation of Witness Statements and Expert Reports, but should seek to ensure that a Witness Statement reflects the Witness's own account of relevant facts, events and circumstances (Guideline 21), and that any Expert Report reflects the Expert's own views, analysis and conclusions (Guideline 22).

A Party Representative should not invite or encourage a Witness to give false evidence (Guideline 23).

As part of the preparation of testimony for the arbitration, a Party Representative may meet with Witnesses and Experts (or potential Witnesses and Experts) to discuss their prospective testimony. A Party Representative may also help a Witness in preparing his or her own Witness Statement or Expert Report. Further, a Party Representative may assist a Witness in preparing for their testimony in direct and cross-examination, including through practise questions and answers (Guideline 24). This preparation may include a review of the procedures through which testimony will be elicited and preparation of both direct testimony and cross-examination. Such contacts should however not alter the genuineness of the Witness or Expert evidence, which should always reflect the Witness's own account of relevant facts, events or circumstances, or the Expert's own analysis or opinion.

Finally, Party Representatives may pay, offer to pay or acquiesce in the payment of reasonable compensation to a Witness for his or her time and a reasonable fee for the professional services of an Expert (Guideline 25).

Remedies for Misconduct

26. *If the Arbitral Tribunal, after giving the Parties notice and a reasonable opportunity to be heard, finds that a Party Representative has committed Misconduct, the Arbitral Tribunal, as appropriate, may:*

    (a) admonish the Party Representative;

    (b) draw appropriate inferences in assessing the evidence relied upon, or the legal arguments advanced by, the Party Representative;

    (c) consider the Party Representative's Misconduct in apportioning the costs of the arbitration, indicating, if appropriate, how and in what amount the Party Representative's Misconduct leads the Tribunal to a different apportionment of costs;

    (d) take any other appropriate measure in order to preserve the fairness and integrity of the proceedings.

27. *In addressing issues of Misconduct, the Arbitral Tribunal should take into account:*

    (a) the need to preserve the integrity and fairness of the arbitral proceedings and the enforceability of the award;

    (b) the potential impact of a ruling regarding Misconduct on the rights of the Parties;

    (c) the nature and gravity of the Misconduct, including the extent to which the misconduct affects the conduct of the proceedings;

    (d) the good faith of the Party Representative;

    (e) relevant considerations of privilege and confidentiality; and

    (f) the extent to which the Party represented by the Party Representative knew of, condoned, directed, or participated in, the Misconduct.

Comments to Guidelines 26-27

Guidelines 26–27 articulate potential remedies to address Misconduct by a Party Representative.

Their purpose is to preserve or restore the fairness and integrity of the arbitration.

The Arbitral Tribunal should seek to apply the most proportionate remedy or combination of remedies in light of the nature and gravity of the Misconduct, the good faith of the Party Representative and the Party whom he or she represents, the impact of the remedy on the Parties' rights, and the need to preserve the integrity, effectiveness and fairness of the arbitration and the enforceability of the award.

Guideline 27 sets forth a list of factors that is neither exhaustive nor binding, but instead reflects an overarching balancing exercise to be conducted in addressing matters of Misconduct by a Party Representative in order to ensure that the arbitration proceed in a fair and appropriate manner.

Before imposing any remedy in respect of alleged Misconduct, it is important that the Arbitral Tribunal gives the Parties and the impugned Representative the right to be heard in relation to the allegations made.

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IBA International Principles on Conduct for the Legal Profession

Adopted on 28 May 2011
by the International Bar Association

the global voice of
the legal profession

This Commentary is dedicated
to the memory of Steve Krane,
former President of the New York State Bar,
who assisted greatly with its earlier versions
and sadly died during its final drafting.

The IBA wishes to thank the following for their
contribution to the
International Principles on Conduct for the Legal Profession

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Contents

International Principles on Conduct for the Legal Profession

Lawyers throughout the world are specialised professionals who place the interests of their clients above their own, and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the courts, and the legitimate aspiration to maintain a reasonable standard of living. Between these elements there is often tension. These principles aim at establishing a generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world. In addition, the purpose of adopting these International Principles is to promote and foster the ideals of the legal profession. These International Principles are not intended to replace or limit a lawyer's obligation under applicable laws or rules of professional conduct. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind.

1. **Independence**
   A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.

2. **Honesty, integrity and fairness**
   A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.

3. **Conflicts of interest**
   A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation.

4. **Confidentiality/professional secrecy**
   A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

5. **Clients' interest**
   A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

6. **Lawyers' undertaking**
   A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.

7. **Clients' freedom**
   A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.

8. **Property of clients and third parties**
   A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property.

9. Competence

A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

10. Fees

Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.

Commentary on IBA International Principles on Conduct for the Legal Profession

Adopted by the International Bar Association
at the Warsaw Council Meeting
28 May 2011

Introduction

1 The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice. By embodying all these elements, the lawyer, who faithfully serves a client's interests and protects the client's rights, also fulfils the functions of the lawyer in society – which are to forestall and prevent conflicts, to ensure that conflicts are resolved in accordance with recognised principles of civil, public or criminal law and with due account of rights and interests, to negotiate and draft agreements and other transactional necessities, to further the development of the law, and to defend liberty, justice and the rule of law

2 The International Principles consist of ten principles common to the legal profession worldwide. Respect for these principles is the basis of the right to a legal defence, which is the cornerstone of all other fundamental rights in a democracy.

3 The International Principles express the common ground which underlies all the national and international rules which govern the conduct of lawyers, principally in relation to their clients. The General Principles do not cover in detail other areas of lawyer conduct, for instance regarding the courts, other lawyers or the lawyer's own bar.

4 The International Principles take into consideration:
- national professional rules from states throughout the world;

- the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990;
- the Universal Declaration of Human Rights.

5 It is hoped that the Principles and this Commentary will be of help, for instance, to bars that are struggling to establish their independence and that of their members in emerging democracies, and to lawyers and bars to understand better the issues arising in cross-border situations as a consequence of conflicting national rules and regulations.

6 It is hoped that the Principles will increase understanding among lawyers, decision makers and the public of the importance of the lawyer's role in society, and of the way in which the principles by which the legal profession is regulated support that role.

7 The IBA urges judges, legislators, governments and international organisations to strive, along with lawyers and bars, to uphold the principles set out in the International Principles. However, no statement of principles or code of ethics can provide for every situation or circumstance that may arise. Consequently, lawyers must act not only in accordance with the professional rules and applicable laws in their own state (and maybe also the rules and laws of another state in which they are practising), but also in accordance with the dictates of their conscience, in keeping with the general sense and ethical culture that inspires these International Principles.

8 The Appendix to this Commentary contains definitions of some of the terms contained in it.

1. Independence

1.1 General principle

A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.

1.2 Explanatory note

It is indispensable to the administration of justice and the operation of the Rule of Law that a lawyer act for the client in a professional capacity free from direction, control or interference. If a lawyer is not guaranteed independence and is subject to interference from others, especially those in power, it will be difficult for the lawyer fully to protect clients. Therefore, the guarantee of a lawyer's independence is an essential requirement for the protection of citizens' rights in a democratic society. The requirement of independence calls upon the individual practicing lawyer, government and civil society to give priority to the independence of the legal profession over personal aspirations and to respect the need for an independent legal profession. Clients are entitled to expect independent, unbiased and candid advice, irrespective of whether or not the advice is to the client's liking.

Independence requires that a lawyer act for a client in the absence of improper conflicting self-interest, undue external influences or any concern which may interfere with a client's best interest or the lawyer's professional judgment.

Circumstances in which a lawyer's independence will or may be at risk or impaired include:

- the involvement of the lawyer in a business transaction with a client absent proper disclosure and client consent;

- where the lawyer becomes involved in a business, occupation or activity whilst acting for a client and such an interest takes or is likely to take precedence over the client's interest;
- unless otherwise authorised by law, knowingly acquiring an ownership, possessory or security interest adverse to the client; and
- holding or acquiring a financial interest in the subject matter of a case which the lawyer is conducting, whether or not before a court or administrative body, except, where authorised by law, for contingent fee agreements and liens to secure fees.

The fact that lawyers are paid by a third party must not affect their independence and professional judgement in rendering their services to the client.

Independence of a lawyer requires also that the process for the lawyer's admission to the bar, professional discipline, and professional supervision in general, are organised and carried out in a manner that guarantees that administration of the legal profession is free from undue or improper influence, whether governmental, by the courts or otherwise.

1.3 International implications

While the principles of independence of the lawyer and of the legal profession are undisputed in all jurisdictions adhering to, and striving for, the improvement of the Rule of Law, the respective regulatory and organisational frameworks vary significantly from jurisdiction to jurisdiction. In certain jurisdictions, the bars enjoy specific regulatory autonomy on a statutory and sometimes constitutional basis. In others, legal practice is administered by the judicial branch of government and/or governmental bodies or regulatory agencies. Often the courts or statutory bodies are assisted by bar associations established on a private basis. The various systems for the organisation and regulation

of the legal profession should ensure not only the independence of practicing lawyers but also administration of the profession in a manner that is itself in line with the Rule of Law. Therefore, decisions of the Bars should be subject to an appropriate review mechanism. There is an ongoing debate as to the extent to which governmental and legislative interference with the administration and conduct of the legal profession may be warranted. Lawyers and bars should strive for and preserve the true independence of the legal profession and encourage governments to avoid and combat the challenges to the Rule of Law.

Some jurisdictions hold certain types of activities and the handling of certain matters by members of the bar as incompatible with their independent practice; others see no conflict at all. As regards employment of a lawyer admitted to the bar, it is allowed in some jurisdictions and prohibited in others for a lawyer to be employed by another lawyer or a third party (in-house or corporate counsel). Of those jurisdictions that allow a lawyer to be employed, some jurisdictions acknowledge the privileges of a lawyer (protection of independence and confidentiality) only in those cases where the lawyer works for a client other than the lawyer's employer, while other jurisdictions grant this protection also for work performed for the employer.

Differences in jurisdictional approach should be taken into account in cases of cross-border or multi-jurisdictional practice. Every lawyer is called upon to observe applicable rules of professional conduct in both home and host jurisdictions (Double Deontology) when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice. Every international law firm will have to examine whether its entire organisation is in conformity with such rules in every jurisdiction in which it is established or engaged in the provision of legal services. A universally accepted framework for determining proper conduct in the event of

conflicting or incompatible rules has yet to be developed, although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

2. Honesty, integrity and fairness

2.1 General principle

A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.

2.2 Explanatory note

Trust in the legal profession requires that every member of the legal profession exemplifies personal integrity, honesty and fairness.

A lawyer shall not knowingly make a false statement of fact or law in the course of representing a client or fail to correct a false statement of material fact or law previously made by the lawyer. Lawyers have an obligation to be professional with clients, other parties and counsel, the courts, court personnel, and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution. Lawyers should be mindful that while their duties are often carried out in an adversarial forum, lawyers should not treat the court, other lawyers, or the public in a hostile manner. Nevertheless, it is also true that there are different standards expected towards the client, the court or a professional colleague since the lawyer has different responsibilities towards each category. The expression of these responsibilities varies jurisdiction by jurisdiction.

2.3 International implications

A lawyer who appears before or becomes otherwise engaged with a court or tribunal must comply with the rules applied by such court or tribunal.

Cross-border cooperation between lawyers from different jurisdictions requires respect for the differences that may exist between their respective legal systems, and the relevant rules for the regulation of the legal profession.

A lawyer who undertakes professional work in a jurisdiction where the lawyer is not a full member of the local profession shall adhere to applicable law and the standards of professional ethics in the jurisdiction of which the lawyer is a full member, and the lawyer shall practice only to the extent this is permitted in the host jurisdiction and provided that all applicable law and ethical standards of the host jurisdiction are observed.

3. Conflicts of interest

3.1 General principle

A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation.

3.2 Explanatory note

Trust and confidence in the legal profession and the rule of law depends upon lawyers' loyalty to clients. Rules regarding conflicts of interest vary from jurisdiction to jurisdiction. The definition of what constitutes a conflict also differs from jurisdiction to jurisdiction, including (but not exhaustively) whether information barriers are permitted at all, and also whether conflict of interest prohibitions cover all the law firm or whether information barriers can help. Generally, a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, a third person or by a personal interest of the lawyer. Notwithstanding the existence of conflict of interest, in some jurisdictions a lawyer may represent the client if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal, and each affected client gives informed consent, confirmed in

writing. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not use information relating to the representation to the disadvantage of the former client except when permitted by applicable law or ethics rules.

In some jurisdictions, certain potentially conflicting situations may be permitted subject to proper disclosure to and, to the extent permitted by applicable law or ethics rules, consent by all parties involved, provided always that disclosure may be made without breaching confidentiality obligations. Without prejudice to additional duties, if a conflict becomes apparent only after the lawyer's work has commenced, some jurisdictions require the conflicted lawyer to withdraw from the case in its entirety and in respect of all clients concerned; others require withdrawal from representing one client only, but not all of them.

In addition, legal and professional conduct conflict of interest must be clearly distinguished from commercial conflict of interest. A lawyer should be entitled to defend the interests of or represent a client in a case even if that client is a competitor or its interests conflict with the commercial interests of another present or former client, not involved or related in that particular case assigned to the lawyer. Also, a lawyer may defend the interests of or represent a client against another client in any circumstance where the latter, whether in negotiating an agreement, or in another legal action or arbitration, has chosen to place its interests for those cases with another lawyer; however, in such cases, the first-mentioned lawyer will have to comply with all other applicable rules of professional conduct, and in particular with rules of confidentiality, professional secrecy and independence.

In upholding the interests of clients, lawyers must not allow their own interests to conflict with or

displace those of their client. A lawyer must not exercise any undue influence intended to benefit the lawyer in preference to that of a client. A lawyer must not accept instructions or continue to act for a client, when the lawyer becomes aware that the client's interest in the proceedings would be in conflict with the lawyer's own interest.

3.3 International implications

The differences in national rules on conflicts of interest will have to be taken into account in any case of cross-border practice. Every lawyer is called upon to observe the relevant rules on conflicts of interest when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice. Every international law firm will have to examine whether its entire organisation complies with such rules in every jurisdiction in which it is established and engaged in the provision of legal services. A universally accepted framework for determining proper conduct in the event of conflicting or incompatible rules has yet to be developed, although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

4. Confidentiality/ professional secrecy

4.1 General principle

A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

4.2 Explanatory note

The right and duty of a lawyer to keep confidential the information received from and advice given to clients is an indispensable feature of the rule of law and another element essential to public trust and confidence in the administration of justice and the independence of the legal profession.

The principles of confidentiality and professional secrecy have two main features. On the one hand there is the contractual, ethical and frequently statutory duty on the part of the lawyer to keep client secrets confidential. The statutory duty is sometimes in the form of an evidentiary attorney-client privilege; this differs from the lawyer's obligations under applicable rules of professional conduct. Such obligations extend beyond the termination of the attorney-client relationship. Most jurisdictions respect and protect such confidentiality obligations, for example, by exempting the lawyer from the duty to testify before courts and other public authorities as to the information the lawyer has gathered from clients, and/or by affording lawyer-client communications special protection.

On the other hand, there are manifest situations in which the principles of confidentiality and professional secrecy of lawyer-client communications no longer apply in full or in part. Lawyers can not claim the protection of confidentiality when assisting

and abetting the unlawful conduct of their clients. Some jurisdictions also allow or require a lawyer to reveal information relating to the representation of the client to the extent the lawyer reasonably believes it necessary to prevent reasonably certain crimes resulting, for example in death or substantial bodily harm, or to prevent the client from committing such a crime in furtherance of which the client has used or is using the lawyer's services. Recent legislation imposing special duties upon lawyers to assist in the prevention of criminal phenomena such as terrorism, money laundering or organised crime has led to further erosion of the protection of the lawyer's duty of confidentiality. Many bars are opposed in principle to the scope of this legislation. Any encroachment on the lawyer's duty should be limited to information that is absolutely indispensable to enable lawyers to comply with their legal obligations or to prevent lawyers from being unknowingly abused by criminals to assist their improper goals. If neither of the above is the case and a suspect of a past crime seeks advice from a lawyer, the duty of confidentiality should be fully protected. However, a lawyer cannot invoke confidentiality/professional secrecy in circumstances where the lawyer acts as an accomplice to a crime.

Jurisdictions differ on the scope of protection and its geographical extension. In some jurisdictions clients may waive the lawyer's obligation of confidentiality and professional secrecy, but in others clients may not. In some jurisdictions, the obligation can be broken for self-defence purposes in judicial proceedings. Apart from client waiver, such self-defence and any requirements imposed by law, the lawyer's obligation of confidentiality and professional secrecy is usually without time limit. The obligation also applies to assistants, interns and all employed within the law firm. In any event, lawyers shall be under a duty to ensure that those who work in the same law firm, in whatever capacity, maintain the obligation of confidentiality and professional secrecy.

Law firms or associations raise different aspects of the duty of confidentiality and professional secrecy. The basic and general rule must be that any information or fact known by a lawyer in a law firm is held to be known by the entire organisation, even if that organisation is present in different branches and countries. This means that extraordinary measures must be adopted within the organisation if a lawyer is involved in a case that should be considered as strictly confidential even beyond the general standards of the professional secrecy principle.

Lawyers should also take care to ensure that confidentiality and professional secrecy are maintained in respect of electronic communications, and data stored on computers. Standards are evolving in this sphere as technology itself evolves, and lawyers are under a duty to keep themselves informed of the required professional standards so as to maintain their professional obligations.

The extent to which clients may waive the right to confidentiality is subject to differing rules in different jurisdictions. Those rules limiting the ability to waive argue that clients frequently cannot properly assess the disadvantages of issuing such a waiver. Restrictions on waivers are of paramount importance to protect against a court or governmental authority putting inappropriate pressure on a client to waive his or her right to confidentiality.

Finally, lawyers should not benefit from the secrets confided to them by their clients.

4.3 International implications

Although there is a clear common goal behind the various regimes governing the duty of confidentiality and its protection, national rules differ substantially. While civil law countries entitle and oblige the lawyer not to testify, and protect the lawyer against search and seizure, common law countries protect the confidentiality of certain attorney-client

communications, even if, for example, privileged correspondence is found with a client suspected of having committed a criminal offence.

Lawyers engaged in cross-border practice and international law firms will have to investigate all rules that may be of relevance and will have to ensure that information to which they gain access and the communication in which they are engaged will in fact enjoy the protection of confidentiality.

Generally, the national rules of all relevant jurisdictions must be complied with (Double Deontology). But national rules sometimes do not address the issue of how to deal with conflicting rules. If the conflicting rules are broadly similar, then the stricter rule should be complied with. There is, however, no universally accepted solution for those cases where the rules contradict each other (for instance secrecy protection versus reporting obligation), although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

Likewise, national rules as to the ability of a client to waive confidentiality vary, and the applicable rule or rules will have to be determined individually in every case.

A special international consideration arises from the fact that some jurisdictions permit employment of a lawyer admitted to the Bar, while others do not permit employment of in-house counsel. Accordingly, the question arises how jurisdictions that do not recognise in whole or in part the duty of confidentiality on the part of in-house counsel deal with foreign in-house counsel who enjoy that protection in their home jurisdiction.

5. Clients' interests

5.1 General principle

A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

5.2 Explanatory note

This means that lawyers in all of their dealings with the courts, by written or oral form, or by instructing an advocate on the client's behalf, should act with competence and honesty.

Lawyers should serve their clients competently, diligently, promptly and without any conflict to their duty to the court. They should deal with their clients free of the influence of any interest which may conflict with a client's best interests; and with commitment and dedication to the interest of the client. A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures may be required to vindicate a client's cause or endeavour.

Lawyers should maintain confidentiality. They should also provide all relevant information to their clients, in order to protect their clients' interests and advise them competently, subject to any contrary law or ethics rule.

Lawyers must not engage in, or assist their client with, conduct that is intended to mislead or adversely affect the interest of justice, or wilfully breach the law.

Lawyers' duty to safeguard clients' interests commences from their retainer until their effective release from the case or the final disposition of the whole subject matter of the litigation. During that

period, they are expected to take such steps and such ordinary care as clients' interests may require.

Even if not required by the applicable law of a jurisdiction, it is considered good practice in many jurisdictions for lawyers to ensure that they secure in the interest of their clients adequate insurance cover against claims based on professional negligence or malpractice.

6. Lawyers' undertaking

6.1 General principle

A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.

6.2 Explanatory note

A lawyer's undertaking is a personal promise, engagement, stipulation and responsibility, as well as a professional and legal obligation. A lawyer must therefore exercise extreme caution when giving and accepting undertakings. A lawyer may not give an undertaking on behalf of a client if they do not have a prior mandate, unless they are requested to do so by another lawyer representing that client. A lawyer should not give or request an undertaking that cannot be fulfilled, and must exercise due diligence in this regard. This therefore requires that a lawyer has full control over the ability to fulfil any undertaking given. Ideally, a lawyer should provide a written confirmation of an undertaking in clear and unambiguous terms, and in a timely manner – if the lawyer does not intend to accept personal responsibility this should be made clear in the undertaking. Breaches of undertakings adversely affect both the lawyer's own reputation as being honourable and trustworthy, as well as the reputation and trustworthiness of the legal profession as a whole.

In those jurisdictions in which undertakings are not recognised as described here, lawyers should nevertheless exercise the same extreme caution in engaging themselves in the way outlined.

7. Clients' freedom

7.1 General principle

A lawyer shall respect the freedom of clients to be represented by the lawyer of their
choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.

7.2 Explanatory note

The client may issue an instruction or mandate to the lawyer, instructing the transfer of all papers and files to another lawyer. The lawyer is under an obligation to comply with the instruction or mandate, subject to any lawful right of retention or lien. A lawyer should not withdraw from representation of a client except for good cause or upon reasonable notice to the client, and must minimize any potential harm to the client's interests, and (where appropriate or required) with the permission of the court. A lawyer should do everything reasonable to mitigate the consequences of the change of instructions.

8. Protection of property of clients and third parties

8.1 General principle

A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property.

8.2 Explanatory note

A lawyer shall hold property of clients or third parties that is in the lawyer's possession in connection with a representation separate from the lawyer's own business or personal property. Client or third-party funds should be held in a separate bank account and not commingled with the lawyer's own funds. Property other than funds should be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved after termination of a representation to the extent required by applicable law or professional regulations. The lawyer should ascertain the identity, competence and authority of the third person that is transferring the possession of the property or the funds.

Upon receiving funds or other property in which a client or third person has an interest, the lawyer shall promptly notify the client or third person. Except as permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. A lawyer cannot use a client's property or client's funds in order to set off or compensate any outstanding payment of the lawyers' professional fees or expenses unless so is authorised by law or in writing by the client.

9. Competence

9.1 General principle

A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

9.2 Explanatory note

As a member of the legal profession, a lawyer is presumed to be knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf or to procure that somebody else either in or outside the law firm will do it.

Competence is founded upon both ethical and legal principles. It involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied, and includes competent and effective client, file and practice-management strategies.

A lawyer must consider the client's suggestion to obtain other opinions in a complex matter or from a specialist, without deeming such requests to be a lack of trust.

10. Fees

10.1 General principle

Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.

10.2 Explanatory note

The basis for the claim of a lawyer to fees for services performed may be contractual or statutory. The lawyer shall make a clear and transparent arrangement on fees with the client jointly with the giving and taking of instructions. If permitted by law or applicable rules of professional conduct, such arrangement may contain an agreement on the limitation of the lawyer's liability.

On whatever basis a fee arrangement is made, it shall be reasonable. Reasonableness is normally determined with a view to the nature of the assignment, its difficulty, the amount involved, the scope of work to be undertaken and other suitable criteria. The lawyer shall strive to achieve the most cost effective resolution of the client's dispute.

The lawyer's invoices shall be submitted in accordance with the agreement with the client and statutory rules, if any.

Where permitted, a lawyer may require the payment of reasonable deposits to cover the likely fees and expenses as a condition to commencing or continuing his or her work. As mentioned in Principle 7, the lawyer may have a lawful right of retention or lien if the client instructs the lawyer to transfer all the papers and files to another lawyer. A lawyer shall also hold separate from the lawyer's own business or personal property any legal fees and expenses that a client has paid in advance, to be withdrawn by the lawyer only as those fees are earned or expenses are incurred. If a dispute arises between the client and the lawyer as to the lawyer's entitlement to withdraw

funds for fees or expenses, then, subject to applicable law, the disputed portion of the funds must be held separate until the dispute is resolved. The undisputed portion of the funds shall be promptly distributed to the client.

If a lawyer engages or involves another lawyer to handle a matter, the responsibility for such other lawyer's fees and expenses shall be clarified among the client and the lawyers involved beforehand. In the absence of such clarification and depending on applicable law the lawyer so having involved another lawyer may be liable for the latter lawyer's fees and expenses.

10.3 International implications

When engaging in cross-border practice, the lawyer should investigate whether arrangements on fees, payments of deposits and limitations of liability are permitted under all applicable rules and, if relevant, the rules which govern the responsibility for fees of other lawyers who may become involved. In particular, a contingency fee or *pactum de quota litis* is permitted in certain jurisdictions provided certain requirements are met but prohibited as a matter of public policy in other jurisdictions.

In some jurisdictions, it is not appropriate for a lawyer to ask another lawyer or a third party for a fee, or to pay a fee to another lawyer or a third party for referring work.

Appendix

Definitions

Bar An officially recognised professional organisation consisting of members of the legal profession that is dedicated to serving its members in a representative capacity to maintain the practice of law as profession, and, in many countries possessing regulatory authority over the bar in its jurisdiction. Membership in the bar may be compulsory or voluntary.

Client-lawyer confidentiality Subject to specific exceptions, the lawyer's ethical duty of confidentiality prohibits a lawyer from disclosing information relating to the representation of or advice given to a client from any source, not just to communications between the lawyer and client, and also requires the lawyer to safeguard that information from disclosure. The principle of confidentiality is greater in scope than the legal professional privilege. Matters that are protected by the legal professional privilege are also protected by the principle of confidentiality; the converse, however, is not true.

Confirmed in writing Informed consent provided via a writing from the person from whom such consent is sought or a writing that a lawyer promptly transmits to that person confirming an oral informed consent. The written consent may take the form of a tangible or electronic record. It may consist of handwriting, typewriting, printing, photocopy, photograph, audio or video recording, and electronic communication such as an e-mail or Twitter message.

Court/tribunal An entity, whether part of the judicial, legislative or executive branch of government, including an arbitrator in a binding arbitration proceeding, administrative agency or other body,

acting in an adjudicative capacity. This entity acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Informed consent Agreement by a person to allow something to happen in response to a proposal by a lawyer after the lawyer has made full disclosure of the facts, material risks of, and reasonably available alternatives to the proposed course of action.

Knowingly Actual knowledge of the fact in question. Knowledge may be inferred from the circumstances.

Legal profession The body of lawyers qualified and licensed to practice law in a jurisdiction or before a tribunal, collectively, or any organised subset thereof, and who are subject to regulation by a legally constituted professional body or governmental authority.

Legal professional privilege An evidentiary privilege that protects a lawyer from being compelled to disclose certain communications between a lawyer and a client in a judicial or other proceeding where a lawyer may be called as a witness.

Professional secrecy The handling of information about a client received during the course of the representation from the client or other sources that the lawyer may not be able to disclose, regardless of client consent. This principle is effective in many civil law jurisdictions.

Reasonable or reasonably In reference to a lawyer's actions, the level of conduct of a prudent and competent lawyer.

Reasonably believes or reasonable belief A belief by a prudent and competent lawyer in a fact or set of facts that is appropriate under the circumstances in which that belief exists.

Secrets Information gained by the lawyer in the course of a representation that the client specifically requests that the lawyer not reveal or information the nature of which would be potentially embarrassing or detrimental to the client if revealed.

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IBA Guidelines on Conflicts of Interest in International Arbitration

Approved on 22 May 2004 by the Council of the
International Bar Association

Contents

Introduction

1. Problems of conflicts of interest increasingly challenge international arbitration. Arbitrators are often unsure about what facts need to be disclosed, and they may make different choices about disclosures than other arbitrators in the same situation. The growth of international business and the manner in which it is conducted, including interlocking corporate relationships and larger international law firms, have caused more disclosures and have created more difficult conflict of interest issues to determine. Reluctant parties have more opportunities to use challenges of arbitrators to delay arbitrations or to deny the opposing party the arbitrator of its choice. Disclosure of any relationship, no matter how minor or serious, has too often led to objections, challenge and withdrawal or removal of the arbitrator.
2. Thus, parties, arbitrators, institutions and courts face complex decisions about what to disclose and what standards to apply. In addition, institutions and courts face difficult decisions if an objection or a challenge is made after a disclosure. There is a tension between, on the one hand, the parties' right to disclosure of situations that may reasonably call into question an arbitrator's impartiality or independence and their right to a fair hearing and, on the other hand, the parties' right to select arbitrators of their choosing. Even though laws and arbitration rules provide some standards, there is a lack of detail in their guidance and of uniformity in their application. As a result, quite often members of the international arbitration community apply different standards in making decisions concerning disclosure, objections and challenges.
3. It is in the interest of everyone in the international arbitration community that international arbitration proceedings not be hindered by these growing conflicts of interest issues. The Committee on Arbitration and ADR of the International Bar Association appointed a Working Group of 19 experts[1] in international arbitration from 14 countries to study, with the intent of helping this decision-making process, national laws, judicial decisions, arbitration rules and practical considerations and applications regarding impartiality

and independence and disclosure in international arbitration. The Working Group has determined that existing standards lack sufficient clarity and uniformity in their application. It has therefore prepared these Guidelines, which set forth some General Standards and Explanatory Notes on the Standards. Moreover, the Working Group believes that greater consistency and fewer unnecessary challenges and arbitrator withdrawals and removals could be achieved by providing lists of specific situations that, in the view of the Working Group, do or do not warrant disclosure or disqualification of an arbitrator. Such lists – designated Red, Orange and Green (the 'Application Lists') – appear at the end of these Guidelines.[2]

4. The Guidelines reflect the Working Group's understanding of the best current international practice firmly rooted in the principles expressed in the General Standards. The Working Group has based the General Standards and the Application Lists upon statutes and case law in jurisdictions and upon the judgment and experience of members of the Working Group and others involved in international commercial arbitration. The Working Group has attempted to balance the various interests of parties, representatives, arbitrators and arbitration institutions, all of whom have a responsibility for ensuring the integrity, reputation and efficiency of international commercial arbitration. In particular, the Working Group has sought and considered the views of many leading arbitration institutions, as well as corporate counsel and other persons involved in international arbitration. The Working Group also published drafts of the Guidelines and sought comments at two annual meetings of the International Bar Association and other meetings of arbitrators. While the comments received by the Working Group varied, and included some points of criticisms, the arbitration community generally supported and encouraged these efforts to help reduce the growing problems of conflicts of interests. The Working Group has studied all the comments received and has adopted many of the proposals that it has received. The Working Group is very grateful indeed for the serious considerations given to its proposals by so many institutions and individuals all over the globe and for the comments and proposals received.

5. Originally, the Working Group developed the Guidelines for international commercial arbitration. However, in the light of comments received, it realized that the Guidelines should equally apply to other types of arbitration, such as investment arbitrations (insofar as these may not be considered as commercial arbitrations).[3]
6. These Guidelines are not legal provisions and do not override any applicable national law or arbitral rules chosen by the parties. However, the Working Group hopes that these Guidelines will find general acceptance within the international arbitration community (as was the case with the IBA Rules on the Taking of Evidence in International Commercial Arbitration) and that they thus will help parties, practitioners, arbitrators, institutions and the courts in their decision-making process on these very important questions of impartiality, independence, disclosure, objections and challenges made in that connection. The Working Group trusts that the Guidelines will be applied with robust common sense and without pedantic and unduly formalistic interpretation. The Working Group is also publishing a Background and History, which describes the studies made by the Working Group and may be helpful in interpreting the Guidelines.
7. The IBA and the Working Group view these Guidelines as a beginning, rather than an end, of the process. The Application Lists cover many of the varied situations that commonly arise in practice, but they do not purport to be comprehensive, nor could they be. Nevertheless, the Working Group is confident that the Application Lists provide better concrete guidance than the General Standards (and certainly more than existing standards). The IBA and the Working Group seek comments on the actual use of the Guidelines, and they plan to supplement, revise and refine the Guidelines based on that practical experience.
8. In 1987, the IBA published Rules of Ethics for International Arbitrators. Those Rules cover more topics than these Guidelines, and they remain in effect as to subjects that are not discussed in the Guidelines. The Guidelines supersede the Rules of Ethics as to the matters treated here.

Notes

1 The members of the Working Group are: (1) Henri Alvarez, Canada; (2) John Beechey, England; (3) Jim Carter, United States; (4) Emmanuel Gaillard, France, (5) Emilio Gonzales de Castilla, Mexico; (6) Bernard Hanotiau, Belgium; (7) Michael Hwang, Singapore; (8) Albert Jan van den Berg, Belgium; (9) Doug Jones, Australia; (10) Gabrielle Kaufmann-Kohler, Switzerland; (11) Arthur Marriott, England; (12) Tore Wiwen Nilsson, Sweden; (13) Hilmar Raeschke-Kessler, Germany; (14) David W. Rivkin, United States; (15) Klaus Sachs, Germany; (16) Nathalie Voser, Switzerland (Rapporteur); (17) David Williams, New Zealand; (18) Des Williams, South Africa; (19); Otto de Witt Wijnen, The Netherlands (Chair).

2 Detailed Background Information to the Guidelines has been published in *Business Law International* at BLI Vol 5, No 3, September 2004, pp 433-458 and is available at the IBA website www.ibanet.org

3 Similarly, the Working Group is of the opinion that these Guidelines should apply by analogy to civil servants and government officers who are appointed as arbitrators by States or State entities that are parties to arbitration proceedings.

Part I: General Standards Regarding Impartiality, Independence And Disclosure

(1) General Principle

Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so during the entire arbitration proceeding until the final award has been rendered or the proceeding has otherwise finally terminated.

Explanation to General Standard 1:

The Working Group is guided by the fundamental principle in international arbitration that each arbitrator must be impartial and independent of the parties at the time he or she accepts an appointment to act as arbitrator and must remain so during the entire course of the arbitration proceedings. The Working Group considered whether this obligation should extend even during the period that the award may be challenged but has decided against this. The Working Group takes the view that the arbitrator's duty ends when the Arbitral Tribunal has rendered the final award or the proceedings have otherwise been finally terminated (eg, because of a settlement). If, after setting aside or other proceedings, the dispute is referred back to the same arbitrator, a fresh round of disclosure may be necessary.

(2) Conflicts of Interest

(a) *An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator if he or she has any doubts as to his or her ability to be impartial or independent.*

(b) *The same principle applies if facts or circumstances exist, or have arisen since the appointment, that, from a reasonable third person's point of view having knowledge of the relevant facts, give rise to justifiable doubts as to the arbitrator's impartiality or*

independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard (4).

(c) *Doubts are justifiable if a reasonable and informed third party would reach the conclusion that there was a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.*

(d) *Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence if there is an identity between a party and the arbitrator, if the arbitrator is a legal representative of a legal entity that is a party in the arbitration, or if the arbitrator has a significant financial or personal interest in the matter at stake.*

Explanation to General Standard 2:

(a) It is the main ethical guiding principle of every arbitrator that actual bias from the arbitrator's own point of view must lead to that arbitrator declining his or her appointment. This standard should apply regardless of the stage of the proceedings. This principle is so self-evident that many national laws do not explicitly say so. See eg Article 12, UNCITRAL Model Law. The Working Group, however, has included it in the General Standards because explicit expression in these Guidelines helps to avoid confusion and to create confidence in procedures before arbitral tribunals. In addition, the Working Group believes that the broad standard of 'any doubts as to an ability to be impartial and independent' should lead to the arbitrator declining the appointment.

(b) In order for standards to be applied as consistently as possible, the Working Group believes that the test for disqualification should be an objective one. The Working Group uses the wording 'impartiality or independence' derived from the broadly adopted Article 12 of the UNCITRAL Model Law, and the use of an appearance test, based on justifiable doubts as to the impartiality or independence of the arbitrator, as provided in Article 12(2) of the UNCITRAL Model Law, to be applied objectively (a 'reasonable third person test'). As described in the Explanation to General Standard 3(d), this standard should apply regardless of the stage of the proceedings.

(c) Most laws and rules that apply the standard of justifiable doubts do not further define that standard. The Working Group believes that this General Standard provides some context for making this determination.

(d) The Working Group supports the view that no one is allowed to be his or her own judge; ie, there cannot be identity between an arbitrator and a party. The Working Group believes that this situation cannot be waived by the parties. The same principle should apply to persons who are legal representatives of a legal entity that is a party in the arbitration, like board members, or who have a significant economic interest in the matter at stake. Because of the importance of this principle, this non-waivable situation is made a General Standard, and examples are provided in the non-waivable Red List.

The General Standard purposely uses the terms 'identity' and 'legal representatives.' In the light of comments received, the Working Group considered whether these terms should be extended or further defined, but decided against doing so. It realizes that there are situations in which an employee of a party or a civil servant can be in a position similar, if not identical, to the position of an official legal representative. The Working Group decided that it should suffice to state the principle.

(3) Disclosure by the Arbitrator

(a) *If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them.*

(b) *It follows from General Standards 1 and 2(a) that an arbitrator who has made a disclosure considers himself or herself to be impartial and independent of the parties despite the disclosed facts and therefore capable of performing his or her duties as arbitrator. Otherwise, he or she would have declined the nomination or appointment at the outset or resigned.*

(c) *Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure.*

(d) *When considering whether or not facts or circumstances exist that should be disclosed, the arbitrator shall not take into account whether the arbitration proceeding is at the beginning or at a later stage.*

Explanation to General Standard 3:

(a) General Standard 2(b) above sets out an objective test for disqualification of an arbitrator. However, because of varying considerations with respect to disclosure, the proper standard for disclosure may be different. A purely objective test for disclosure exists in the majority of the jurisdictions analyzed and in the UNCITRAL Model Law. Nevertheless, the Working Group recognizes that the parties have an interest in being fully informed about any circumstances that may be relevant in their view. Because of the strongly held views of many arbitration institutions (as reflected in their rules and as stated to the Working Group) that the disclosure test should reflect the perspectives of the parties, the Working Group in principle accepted, after much debate, a subjective approach for disclosure. The Working Group has adapted the language of Article 7(2) of the ICC Rules for this standard.
However, the Working Group believes that this principle should not be applied without limitations. Because some situations should never lead to disqualification under the objective test, such situations need not be disclosed, regardless of the parties' perspective. These limitations to the subjective test are reflected in the Green List, which lists some situations in which disclosure is not required. Similarly, the Working Group emphasizes that the two tests (objective test for disqualification and subjective test for disclosure) are clearly distinct from each other, and that a disclosure shall not automatically lead to disqualification, as reflected in General Standard 3(b).
In determining what facts should be disclosed, an arbitrator should take into account all circumstances known to him or her, including to the extent known the culture and the customs of the country of which the parties are domiciled or nationals.

(b) Disclosure is not an admission of a conflict of interest. An arbitrator who has made a disclosure to the parties considers himself or herself to be impartial and independent of the parties, despite the disclosed facts, or else he or she would have declined the nomination or resigned. An arbitrator making disclosure thus feels capable of performing his or her duties. It is the purpose of disclosure to allow the parties to judge whether or not they agree with the evaluation of the arbitrator and, if they so wish, to explore the situation further. The Working Group hopes that the promulgation of this General Standard will eliminate the misunderstanding that disclosure demonstrates doubts sufficient to disqualify the arbitrator. Instead, any challenge should be successful only if an objective test, as set forth above, is met.

(c) Unnecessary disclosure sometimes raises an incorrect implication in the minds of the parties that the disclosed circumstances would affect his or her impartiality or independence. Excessive disclosures thus unnecessarily undermine the parties' confidence in the process. Nevertheless, after some debate, the Working Group believes it important to provide expressly in the General Standards that in case of doubt the arbitrator should disclose. If the arbitrator feels that he or she should disclose but that professional secrecy rules or other rules of practice prevent such disclosure, he or she should not accept the appointment or should resign.

(d) The Working Group has concluded that disclosure or disqualification (as set out in General Standard 2) should not depend on the particular stage of the arbitration. In order to determine whether the arbitrator should disclose, decline the appointment or refuse to continue to act or whether a challenge by a party should be successful, the facts and circumstances alone are relevant and not the current stage of the procedure or the consequences of the withdrawal. As a practical matter, institutions make a distinction between the commencement of an arbitration proceeding and a later stage. Also, courts tend to apply different standards. Nevertheless, the Working Group believes it important to clarify that no distinction should be made regarding the stage of the arbitral procedure. While there are practical concerns if an arbitrator must withdraw after an arbitration has commenced, a distinction based on the stage of arbitration would be inconsistent with the General Standards.

(4) Waiver by the Parties

(a) *If, within 30 days after the receipt of any disclosure by the arbitrator or after a party learns of facts or circumstances that could constitute a potential conflict of interest for an arbitrator, a party does not raise an express objection with regard to that arbitrator, subject to paragraphs (b) and (c) of this General Standard, the party is deemed to have waived any potential conflict of interest by the arbitrator based on such facts or circumstances and may not raise any objection to such facts or circumstances at a later stage.*

(b) *However, if facts or circumstances exist as described in General Standard 2(d), any waiver by a party or any agreement by the parties to have such a person serve as arbitrator shall be regarded as invalid.*

(c) *A person should not serve as an arbitrator when a conflict of interest, such as those exemplified in the waivable Red List, exists. Nevertheless, such a person may accept appointment as arbitrator or continue to act as an arbitrator, if the following conditions are met:*

  (i) *All parties, all arbitrators and the arbitration institution or other appointing authority (if any) must have full knowledge of the conflict of interest; and*

  (ii) *All parties must expressly agree that such person may serve as arbitrator despite the conflict of interest.*

(d) *An arbitrator may assist the parties in reaching a settlement of the dispute at any stage of the proceedings. However, before doing so, the arbitrator should receive an express agreement by the parties that acting in such a manner shall not disqualify the arbitrator from continuing to serve as arbitrator. Such express agreement shall be considered to be an effective waiver of any potential conflict of interest that may arise from the arbitrator's participation in such process or from information that the arbitrator may learn in the process. If the assistance by the arbitrator does not lead to final settlement of the case, the parties remain bound by their waiver. However, consistent with General Standard 2(a) and notwithstanding such agreement, the arbitrator shall resign if, as a consequence of his or her involvement in the settlement process, the arbitrator develops doubts as to his or her ability to remain impartial or independent in the future course of the arbitration proceedings.*

Explanation to General Standard 4:

(a) The Working Group suggests a requirement of an explicit objection by the parties within a certain time limit. In the view of the Working Group, this time limit should also apply to a party who refuses to be involved.

(b) This General Standard is included to make General Standard 4(a) consistent with the non-waivable provisions of General Standard 2(d). Examples of such circumstances are described in the non-waivable Red List.

(c) In a serious conflict of interest, such as those that are described by way of example in the waivable Red List, the parties may nevertheless wish to use such a person as an arbitrator. Here, party autonomy and the desire to have only impartial and independent arbitrators must be balanced. The Working Group believes persons with such a serious conflict of interests may serve as arbitrators only if the parties make fully informed, explicit waivers.

(d) The concept of the Arbitral Tribunal assisting the parties in reaching a settlement of their dispute in the course of the arbitration proceedings is well established in some jurisdictions but not in others. Informed consent by the parties to such a process prior to its beginning should be regarded as effective waiver of a potential conflict of interest. Express consent is generally sufficient, as opposed to a consent made in writing which in certain jurisdictions requires signature. In practice, the requirement of an express waiver allows such consent to be made in the minutes or transcript of a hearing. In addition, in order to avoid parties using an arbitrator as mediator as a means of disqualifying the arbitrator, the General Standard makes clear that the waiver should remain effective if the mediation is unsuccessful. Thus, parties assume the risk of what the arbitrator may learn in the settlement process. In giving their express consent, the parties should realize the consequences of the arbitrator assisting the parties in a settlement process and agree on regulating this special position further where appropriate.

(5) Scope

These Guidelines apply equally to tribunal chairs, sole arbitrators and party-appointed arbitrators. These Guidelines do not apply to non-neutral arbitrators, who do not have an obligation to be independent and impartial, as may be permitted by some arbitration rules or national laws.

Explanation to General Standard 5:

Because each member of an Arbitral Tribunal has an obligation to be impartial and independent, the General Standards should not distinguish among sole arbitrators, party-appointed arbitrators and tribunal chairs. With regard to secretaries of Arbitral Tribunals, the Working Group takes the view that it is the responsibility of the arbitrator to ensure that the secretary is and remains impartial and independent.

Some arbitration rules and domestic laws permit party-appointed arbitrators to be non-neutral. When an arbitrator is serving in such a role, these Guidelines should not apply to him or her, since their purpose is to protect impartiality and independence.

(6) Relationships

(a) *When considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists or whether disclosure should be made, the activities of an arbitrator's law firm, if any, should be reasonably considered in each individual case. Therefore, the fact that the activities of the arbitrator's firm involve one of the parties shall not automatically constitute a source of such conflict or a reason for disclosure.*

(b) *Similarly, if one of the parties is a legal entity which is a member of a group with which the arbitrator's firm has an involvement, such facts or circumstances should be reasonably considered in each individual case. Therefore, this fact alone shall not automatically constitute a source of a conflict of interest or a reason for disclosure.*

(c) *If one of the parties is a legal entity, the managers, directors and members of a supervisory board of such legal entity and any person having a similar controlling influence on the legal entity shall be considered to be the equivalent of the legal entity.*

Explanation to General Standard 6:

(a) The growing size of law firms should be taken into account as part of today's reality in international arbitration. There is a need to balance the interests of a party to use the arbitrator of its choice and the importance of maintaining confidence in the impartiality and independence of international arbitration. In the opinion of the Working Group, the arbitrator must in principle be considered as identical to his or her law firm, but nevertheless the activities of the arbitrator's firm should not automatically constitute a conflict of interest. The relevance of such activities, such as the nature, timing and scope of the work by the law firm, should be reasonably considered in each individual case. The Working Group uses the term 'involvement' rather than 'acting for' because a law firm's relevant connections with a party may include activities other than representation on a legal matter.

(b) When a party to an arbitration is a member of a group of companies, special questions regarding conflict of interest arise. As in the prior paragraph, the Working Group believes that because individual corporate structure arrangements vary so widely an automatic rule is not appropriate. Instead, the particular circumstances of an affiliation with another entity within the same group of companies should be reasonably considered in each individual case.

(c) The party in international arbitration is usually a legal entity. Therefore, this General Standard clarifies which individuals should be considered effectively to be that party.

(7) Duty of Arbitrator and Parties

(a) *A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) about any direct or indirect relationship between it (or another company of the same group of companies) and the arbitrator. The party shall do so on its own initiative before the beginning of the proceeding or as soon as it becomes aware of such relationship.*

(b) *In order to comply with General Standard 7(a), a party shall provide any information already available to it and shall*

perform a reasonable search of publicly available information.

(c) *An arbitrator is under a duty to make reasonable enquiries to investigate any potential conflict of interest, as well as any facts or circumstances that may cause his or her impartiality or independence to be questioned. Failure to disclose a potential conflict is not excused by lack of knowledge if the arbitrator makes no reasonable attempt to investigate.*

Explanation to General Standard 7:

To reduce the risk of abuse by unmeritorious challenge of an arbitrator's impartiality or independence, it is necessary that the parties disclose any relevant relationship with the arbitrator. In addition, any party or potential party to an arbitration is, at the outset, required to make a reasonable effort to ascertain and to disclose publicly available information that, applying the general standard, might affect the arbitrator's impartiality and independence. It is the arbitrator or putative arbitrator's obligation to make similar enquiries and to disclose any information that may cause his or her impartiality or independence to be called into question.

PART II: Practical Application of the General Standards

1. The Working Group believes that if the Guidelines are to have an important practical influence, they should reflect situations that are likely to occur in today's arbitration practice. The Guidelines should provide specific guidance to arbitrators, parties, institutions and courts as to what situations do or do not constitute conflicts of interest or should be disclosed.
   For this purpose, the members of the Working Group analyzed their respective case law and categorized situations that can occur in the following Application Lists. These lists obviously cannot contain every situation, but they provide guidance in many circumstances, and the Working Group has sought to make them as comprehensive as possible. In all cases, the General Standards should control.
2. The Red List consists of two parts: 'a non-waivable Red List' (see General Standards 2(c) and 4(b)) and 'a waivable Red List' (see General Standard 4(c)). These lists are a non-exhaustive enumeration of specific situations which, depending on the facts of a given case, give rise to justifiable doubts as to the arbitrator's impartiality and independence; ie, in these circumstances an objective conflict of interest exists from the point of view of a reasonable third person having knowledge of the relevant facts (*see* General Standard 2(b)). The non-waivable Red List includes situations deriving from the overriding principle that no person can be his or her own judge. Therefore, disclosure of such a situation cannot cure the conflict. The waivable Red List encompasses situations that are serious but not as severe. Because of their seriousness, unlike circumstances described in the Orange List, these situations should be considered waivable only if and when the parties, being aware of the conflict of interest situation, nevertheless expressly state their willingness to have such a person act as arbitrator, as set forth in General Standard 4(c).

3. The Orange List is a non-exhaustive enumeration of specific situations which (depending on the facts of a given case) in the eyes of the parties may give rise to justifiable doubts as to the arbitrator's impartiality or independence. The Orange List thus reflects situations that would fall under General Standard 3(a), so that the arbitrator has a duty to disclose such situations. In all these situations, the parties are deemed to have accepted the arbitrator if, after disclosure, no timely objection is made. (General Standard 4(a)).
4. It should be stressed that, as stated above, such disclosure should not automatically result in a disqualification of the arbitrator; no presumption regarding disqualification should arise from a disclosure. The purpose of the disclosure is to inform the parties of a situation that they may wish to explore further in order to determine whether objectively — ie, from a reasonable third person's point of view having knowledge of the relevant facts — there is a justifiable doubt as to the arbitrator's impartiality or independence. If the conclusion is that there is no justifiable doubt, the arbitrator can act. He or she can also act if there is no timely objection by the parties or, in situations covered by the waivable Red List, a specific acceptance by the parties in accordance with General Standard 4(c). Of course, if a party challenges the appointment of the arbitrator, he or she can nevertheless act if the authority that has to rule on the challenge decides that the challenge does not meet the objective test for disqualification.
5. In addition, a later challenge based on the fact that an arbitrator did not disclose such facts or circumstances should not result automatically in either non-appointment, later disqualification or a successful challenge to any award. In the view of the Working Group, non-disclosure cannot make an arbitrator partial or lacking independence; only the facts or circumstances that he or she did not disclose can do so.
6. The Green List contains a non-exhaustive enumeration of specific situations where no appearance of, and no actual, conflict of interest exists from the relevant objective point of view. Thus, the arbitrator has no duty to disclose situations falling within the Green List. In the opinion of the Working Group, as already expressed in the Explanation to General Standard 3(a), there should be a limit to disclosure, based on reasonableness; in some situations, an objective test should prevail over the purely subjective test of 'the eyes of the parties.'
7. Situations falling outside the time limit used in some of the Orange List situations should generally be considered as falling in the Green List, even though they are not specifically stated. An arbitrator may nevertheless wish to make disclosure if, under the General Standards, he or she believes it to be appropriate. While there has been much debate with respect to the time limits used in the Lists, the Working Group has concluded that the limits indicated are appropriate and provide guidance where none exists now. For example, the three-year period in Orange List 3.1 may be too long in certain circumstances and too short in others, but the Working Group believes that the period is an appropriate general criterion, subject to the special circumstances of any case.
8. The borderline between the situations indicated is often thin. It can be debated whether a certain situation should be on one List of instead of another. Also, the Lists contain, for various situations, open norms like 'significant'. The Working Group has extensively and repeatedly discussed both of these issues, in the light of comments received. It believes that the decisions reflected in the Lists reflect international principles to the best extent possible and that further definition of the norms, which should be interpreted reasonably in light of the facts and circumstances in each case, would be counter-productive.
9. There has been much debate as to whether there should be a Green List at all and also, with respect to the Red List, whether the situations on the Non-Waivable Red List should be waivable in light of party autonomy. With respect to the first question, the Working Group has maintained its decision that the subjective test for disclosure should not be the absolute criterion but that some objective thresholds should be added. With respect to the second question, the conclusion of the Working Group was that party autonomy, in this respect, has its limits.

1. Non-Waivable Red List

1.1. There is an identity between a party and the arbitrator, or the arbitrator is a legal representative of an entity that is a party in the arbitration.

1.2. The arbitrator is a manager, director or member of the supervisory board, or has a similar controlling influence in one of the parties.

1.3. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

1.4. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

2. Waivable Red List

2.1. Relationship of the arbitrator to the dispute

- 2.1.1 The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
- 2.1.2 The arbitrator has previous involvement in the case.

2.2. Arbitrator's direct or indirect interest in the dispute

- 2.2.1 The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
- 2.2.2 A close family member[4] of the arbitrator has a significant financial interest in the outcome of the dispute.
- 2.2.3 The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

2.3. Arbitrator's relationship with the parties or counsel

- 2.3.1 The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
- 2.3.2 The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
- 2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.
- 2.3.4 The arbitrator is a manager, director or member of the supervisory board, or has a similar controlling influence, in an affiliate[5] of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
- 2.3.5 The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
- 2.3.6 The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
- 2.3.7 The arbitrator regularly advises the appointing party or an affiliate of the appointing party, but neither the arbitrator nor his or her firm derives a significant financial income therefrom.
- 2.3.8 The arbitrator has a close family relationship with one of the parties or with a manager, director or member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or with a counsel representing a party.
- 2.3.9 A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

3. Orange List

3.1. Previous services for one of the parties or other involvement in the case

- 3.1.1 The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.
- 3.1.2 The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.
- 3.1.3 The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.[6]
- 3.1.4 The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of

one of the parties in an unrelated matter without the involvement of the arbitrator.

3.1.5 The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

3.2. Current services for one of the parties

3.2.1 The arbitrator's law firm is currently rendering services to one of the parties or to an affiliate of one of the parties without creating a significant commercial relationship and without the involvement of the arbitrator.

3.2.2 A law firm that shares revenues or fees with the arbitrator's law firm renders services to one of the parties or an affiliate of one of the parties before the arbitral tribunal.

3.2.3 The arbitrator or his or her firm represents a party or an affiliate to the arbitration on a regular basis but is not involved in the current dispute.

3.3. Relationship between an arbitrator and another arbitrator or counsel.

3.3.1 The arbitrator and another arbitrator are lawyers in the same law firm.

3.3.2 The arbitrator and another arbitrator or the counsel for one of the parties are members of the same barristers' chambers.[7]

3.3.3 The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.

3.3.4 A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.

3.3.5 A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

3.3.6 A close personal friendship exists between an arbitrator and a counsel of one party, as demonstrated by the fact that the arbitrator and the counsel regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organizations.

3.3.7 The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.

3.4. Relationship between arbitrator and party and others involved in the arbitration

3.4.1 The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.

3.4.2 The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

3.4.3 A close personal friendship exists between an arbitrator and a manager or director or a member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert, as demonstrated by the fact that the arbitrator and such director, manager, other person, witness or expert regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organizations.

3.4.4 If the arbitrator is a former judge, he or she has within the past three years heard a significant case involving one of the parties.

3.5. Other circumstances

3.5.1 The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.

3.5.2 The arbitrator has publicly advocated a specific position regarding the case that is being arbitrated, whether in a published paper or speech or otherwise.

3.5.3 The arbitrator holds one position in an arbitration institution with appointing authority over the dispute.

3.5.4 The arbitrator is a manager, director or member of the supervisory board, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

4. Green List

4.1. Previously expressed legal opinions

4.1.1 The arbitrator has previously published a general opinion (such as in a law review article or public lecture) concerning an issue which also arises in the arbitration (but this opinion is not focused on the case that is being arbitrated).

4.2. Previous services against one party

4.2.1 The arbitrator's law firm has acted against one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.

4.3. Current services for one of the parties

4.3.1 A firm in association or in alliance with the arbitrator's law firm, but which does not share fees or other revenues with the arbitrator's law firm, renders services to one of the parties or an affiliate of one of the parties in an unrelated matter.

4.4. Contacts with another arbitrator or with counsel for one of the parties

4.4.1 The arbitrator has a relationship with another arbitrator or with the counsel for one of the parties through membership in the same professional association or social organization.

4.4.2 The arbitrator and counsel for one of the parties or another arbitrator have previously served together as arbitrators or as co-counsel.

4.5. Contacts between the arbitrator and one of the parties

4.5.1 The arbitrator has had an initial contact with the appointing party or an affiliate of the appointing party (or the respective counsels) prior to appointment, if this contact is limited to the arbitrator's availability and qualifications to serve or to the names of possible candidates for a chairperson and did not address the merits or procedural aspects of the dispute.

4.5.2 The arbitrator holds an insignificant amount of shares in one of the parties or an affiliate of one of the parties, which is publicly listed.

4.5.3 The arbitrator and a manager, director or member of the supervisory board, or any person having a similar controlling influence, in one of the parties or an affiliate of one of the parties, have worked together as joint experts or in another professional capacity, including as arbitrators in the same case.

A flow chart is attached to these Guidelines for easy reference to the application of the Lists. However, it should be stressed that this is only a schematic reflection of the very complex reality. Always, the specific circumstances of the case prevail.

Notes

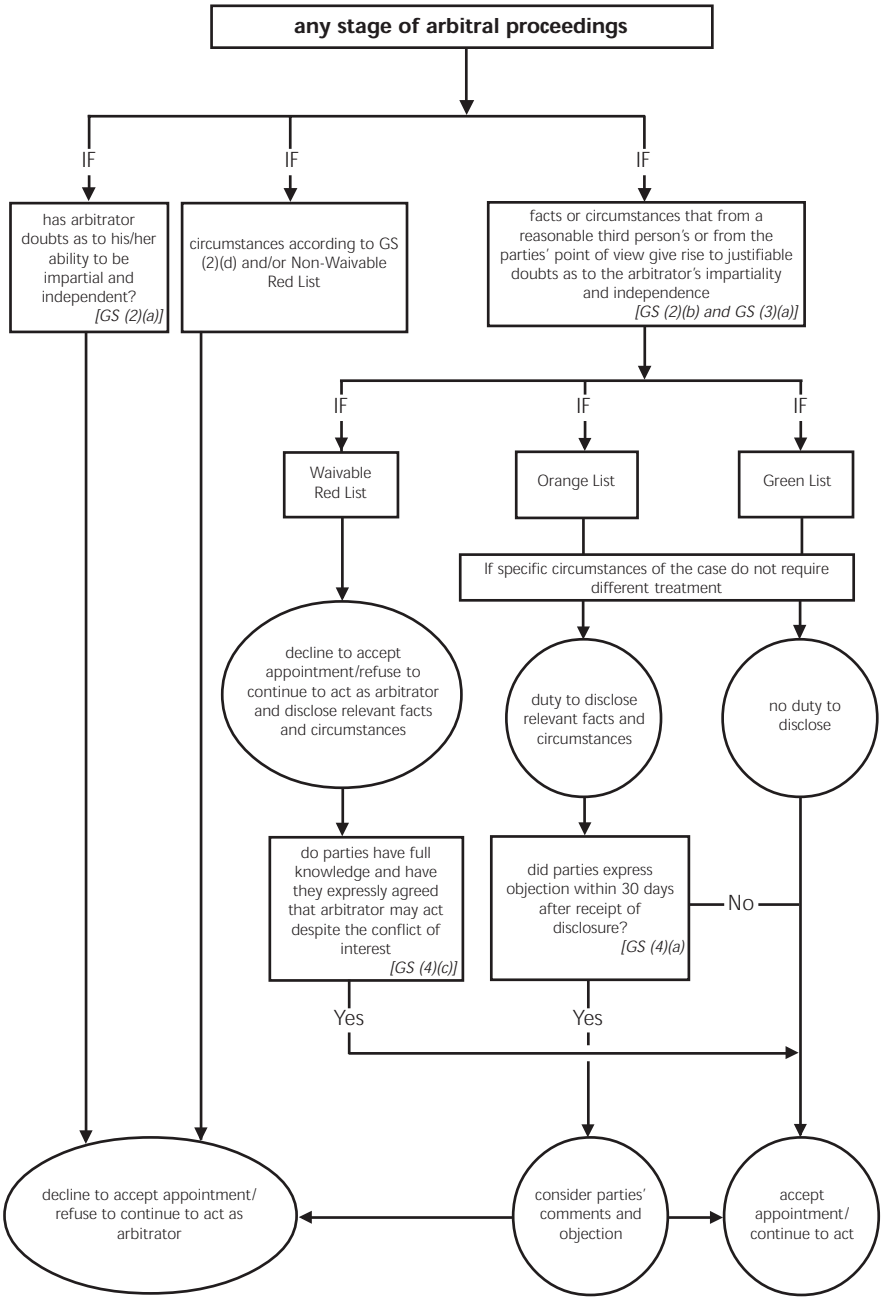
4 Throughout the Application Lists, the term 'close family member' refers to a spouse, sibling, child, parent or life partner.

5 Throughout the Application Lists, the term 'affiliate' encompasses all companies in one group of companies including the parent company.

6 It may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialized pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, no disclosure of this fact is required where all parties in the arbitration should be familiar with such custom and practice.

7 Issues concerning special considerations involving barristers in England are discussed in the Background Information issued by the Working Group.

Flow chart IBA Guidelines on Conflicts of Interest in International Arbitration



International
Bar Association

International Code of Ethics

First adopted 1956;
this edition 1988

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Rules

1 A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all ethical standards which apply to lawyers of the country where he is working.

2 Lawyers shall at all times maintain the honour and dignity of their profession. They shall, in practice as well as in private life, abstain from any behaviour which may tend to discredit the profession of which they are members.

3 Lawyers shall preserve independence in the discharge of their professional duty. Lawyers practising on their own account or in partnership where permissible, shall not engage in any other business or occupation if by doing so they may cease to be independent.

4 Lawyers shall treat their professional colleagues with the utmost courtesy and fairness. Lawyers who undertake to render assistance to a foreign colleague shall always keep in mind that the foreign colleague has to depend on them to a much larger extent than in the case of another lawyer of the same country. Therefore their responsibility is much greater, both when giving advice and when handling a case.
For this reason it is improper for lawyers to accept a case unless they can handle it promptly and with due competence, without undue interference by the pressure of other work. To the fees in these cases Rule 19 applies.

5 Except where the law or custom of the country concerned otherwise requires, any oral or written communication between lawyers shall in principle be accorded a confidential character as far as the Court is concerned, unless certain promises or acknowledgements are made therein on behalf of a client.

6 Lawyers shall always maintain due respect towards the Court. Lawyers shall without fear defend the interests of their clients and without regard to any unpleasant consequences to themselves or to any other person.
Lawyers shall never knowingly give to the Court incorrect information or advice which is to their knowledge contrary to the law.

7 It shall be considered improper for lawyers to communicate about a particular case directly with any person whom they know to be represented in that case by another lawyer without the latter's consent.

8 A lawyer should not advertise or solicit business except to the extent and in the manner permitted by the rules of the jurisdiction to which that lawyer is subject. A lawyer should not advertise or solicit business in any country in which such advertising or soliciting is prohibited.

9 A lawyer should never consent to handle a case unless: (a) the client gives direct instructions, or, (b) the case is assigned by a competent body or forwarded by another lawyer, or (c) instructions are given in any other manner permissible under the relevant local rules or regulations.

10 Lawyers shall at all times give clients a candid opinion on any case.
They shall render assistance with scrupulous care and diligence. This applies also if they are assigned as counsel for an indigent person.
Lawyers shall at any time be free to refuse to handle a case, unless it is assigned by a competent body.
Lawyers should only withdraw from a case during its course for good cause, and if possible in such a manner that the client's interests are not adversely affected.
The loyal defence of a client's case may never cause advocates to be other than perfectly candid, subject to any right or privilege to the contrary which clients choose them to exercise, or knowingly to go against the law.

11 Lawyers shall, when in the client's interest, endeavour to reach a solution by settlement out of court rather than start legal proceedings. Lawyers should never stir up litigation.

12 Lawyers should not acquire a financial interest in the subject matter of a case which they are conducting. Neither should they, directly or indirectly, acquire property about which litigation is pending before the Court in which they practice.

13 Lawyers should never represent conflicting interests in litigation. In non-litigation matters, lawyers should do so only after having disclosed all conflicts or possible conflicts of interest to all parties concerned and only with their consent. This Rule also applies to all lawyers in a firm.

14 Lawyers should never disclose, unless lawfully ordered to do so by the Court or as required by Statute, what has been communicated to them in their capacity as lawyers even after they have ceased to be the client's counsel. This duty extends to their partners, to junior lawyers assisting them and to their employees.

15 In pecuniary matters lawyers shall be most punctual and diligent.
They should never mingle funds of others with their own and they should at all times be able to refund money they hold for others.
They shall not retain money they receive for their clients for longer than is absolutely necessary.

16 Lawyers may require that a deposit is made to cover their expenses, but the deposit should be in accordance with the estimated amount of their charges and the probable expenses and labour required.

17 Lawyers shall never forget that they should put first not their right to compensation for their services, but the interests of their clients and the exigencies of the administration of justice. The Lawyer's right to ask for a deposit or to demand payment of out of-pocket expenses and commitments, failing payment of which they may withdraw from the case or refuse to handle it, should never be exercised at a moment at which the client may be unable to find other assistance in time to prevent irreparable damage being done.
Lawyers' fees should, in the absence or non-applicability of official scales, be fixed on a consideration of the amount involved in the controversy and the interest of it to the client, the time and labour involved and all other personal and factual circumstances of the case.

18 A contract for a contingent fee, where sanctioned by the law or by professional rules and practice, should be reasonable under all circumstances of the case, including the risk and uncertainty or the compensation and subject to supervision of a court as to its reasonableness.

19 Lawyers who engage a foreign colleague to advise on a case or to cooperate in handling it, are responsible for the payment of the latter's charges except where there has been express agreement to the contrary. When lawyers direct a client to a foreign colleague they are not responsible for the payment of the latter's charges, but neither are they entitled to a share of the fee of this foreign colleague.

20 Lawyers should not permit their professional services or their names to be used in any way which would make it possible for persons to practise law who are not legally authorised to do so.
Lawyers shall not delegate to a legally unqualified person not in their employ and control any functions which are by the law or custom of the country in which they practise only to be performed by a qualified lawyer.

21 It is not unethical for lawyers to limit or exclude professional liability subject to the rules of their local Bar Association and to there being no statutory or constitutional prohibitions.

International Bar Association International Code of Ethics

The International Bar Association is a federation of national Bar Associations and Law Societies and individual members. Most of the organisational members have established Codes of Legal Ethics as models for or governing the practice of law by their members.

In some jurisdictions these Codes are imposed on all practitioners by their respective Bar Associations or Law Societies or by the courts or administrative agencies having jurisdiction over the admission of individuals to the practice of law.

Except where the context otherwise requires, this Code applies to any lawyer of one jurisdiction in relation to his contacts with a lawyer of another jurisdiction or to his activities in another jurisdiction.

Nothing in this Code absolves a lawyer from the obligation to comply with such requirements of the law or of rules of professional conduct as may apply to him in any relevant jurisdiction. It is a restatement of much that is in these requirements and a guide as to what the International Bar Association considers to be a desirable course of conduct by all lawyers engaged in the international practice of law.

The International Bar Association may bring incidents of alleged violations to the attention of relevant organisations.

About the International Bar Association

The International Bar Association (IBA) is the world's foremost international association of lawyers. With a membership of some 18,000 individual lawyers in 183 countries, as well as 174 Bar Associations and Law Societies, it is able to place worldwide experience and a network of personal contacts at the disposal of its members.

The principal aims and objectives of the IBA are to encourage the discussion of problems relating to professional organisation and status; to promote an exchange of information between legal associations worldwide; to support the independence of the judiciary and the right of lawyers to practise their profession without interference; to keep abreast of developments in the law, and to help in improving the law and making new laws.

Above all it seeks to provide a forum in which individual lawyers can contact, and exchange ideas with, other lawyers.

The IBA fulfils these objectives through its public interest activities and through the activities of its three specialised Sections: the Section on Business Law (SBL), Section on Legal Practice (SLP) and the Section on Energy & Natural Resources Law (SERL).

The IBA and its Sections publish journals, books and the proceedings of their meetings. An annual Directory of Members gives full details of each member, providing a reference for those seeking contacts with colleagues in other countries.

The IBA's conferences and seminars fulfil one of the Association's most important objectives: the promotion of useful contacts and interchange between lawyers throughout the world.

Every two years a major conference is held, in which all three Sections of the IBA participate. The individual Sections hold their own conferences in the intervening years. A programme of specialised seminars is held throughout the year.

Membership of the IBA is open to all lawyers in industry, private practice, academia and members of the judiciary. For further details please write to the International Bar Association at the address below.

International Bar Association

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Rules of Ethics for International Arbitrators

Introductory Note

International arbitrators should be impartial, independent, competent, diligent and discreet. These rules seek to establish the manner in which these abstract qualities may be assessed in practice. Rather than rigid rules, they reflect internationally acceptable guidelines developed by practising lawyers from all continents. They will attain their objectives only if they are applied in good faith.

The rules cannot be directly binding either on arbitrators, or on the parties themselves, unless they are adopted by agreement. Whilst the International Bar Association hopes that they will be taken into account in the context of challenges to arbitrators, it is emphasised that these guidelines are not intended to create grounds for the setting aside of awards by national courts.

If parties wish to adopt the rules they may add the following to their arbitration clause or arbitration agreement:

> 'The parties agree that the Rules of Ethics for International Arbitrators established by the International Bar Association, in force at the date of the commencement of any arbitration under this clause, shall be applicable to the arbitrators appointed in respect of such arbitration.'

The International Bar Association takes the position that (whatever may be the case in domestic arbitration) international arbitrators should in principle be granted immunity from suit under national laws, except in extreme cases of wilful or reckless disregard of their legal obligations. Accordingly, the International Bar Association wishes to make it clear that it is not the intention of these rules to create opportunities for aggrieved parties to sue international arbitrators in national courts. The normal sanction for breach of an ethical duty is removal from office, with consequent loss of entitlement to remuneration. The International Bar Association also emphasises that these rules do not affect, and are intended to be consistent with, the International Code of Ethics for lawyers, adopted at Oslo on 25 July 1956, and amended by the General Meeting of the International Bar Association at Mexico City on 24 July 1964.

1 Fundamental Rule

Arbitrators shall proceed diligently and efficiently to provide the parties with a just and effective resolution of their disputes, and shall be and shall remain free from bias.

2 Acceptance of Appointment

2.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias.
2.2 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is competent to determine the issues in dispute, and has an adequate knowledge of the language of the arbitration.
2.3 A prospective arbitrator should accept an appointment only if he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.
2.4 It is inappropriate to contact parties in order to solicit appointment as arbitrator.

3 Elements of Bias

3.1 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties, or where he is prejudiced in relation to the subject-matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.
3.2 Facts which might lead a reasonable person, not knowing the arbitrator's true state of mind, to consider that he is dependent on a party create an appearance of bias. The same is true if an arbitrator has a material interest in the outcome of the dispute, or if he has already taken a position in relation to it. The appearance of bias is best overcome by full disclosure as described in Article 4 below.
3.3 Any current direct or indirect business relationship between an arbitrator and a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed. Examples of indirect relationships are where a member of the prospective arbitrator's family, his firm, or any business partner has a business relationship with one of the parties.
3.4 Past business relationships will not operate as an absolute bar to acceptance of appointment, unless they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment.
3.5 Continuous and substantial social or professional relationships between a prospective arbitrator and a party, or with a person who is known to be a potentially important witness in the arbitration, will normally give rise to justifiable doubts as to the impartiality or independence of a prospective arbitrator.

4 Duty of Disclosure

4.1 A prospective arbitrator should disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence. Failure to make such disclosure creates an appearance of bias, and may of itself be a ground for disqualification even though he non-disclosed facts or circumstances would not of themselves justify disqualification.
4.2 A prospective arbitrator should disclose:

(a) any past or present business relationship, whether direct or indirect as illustrated in Article 3.3, including prior appointment as arbitrator, with

any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration. With regard to present relationships, the duty of disclosure applies irrespective of their magnitude, but with regard to past relationships only if they were of more than a trivial nature in relation to the arbitrator's professional or business affairs. Non-disclosure of an indirect relationship unknown to a prospective arbitrator will not be a ground for disqualification unless it could have been ascertained by making reasonable enquiries;

(b) the nature and duration of any substantial social relationships with any party or any person known to be likely to be an important witness in the arbitration;

(c) the nature of any previous relationship with any fellow arbitrator (including prior joint service as an arbitrator);

(d) the extent of any prior knowledge he may have of the dispute;

(e) the extent of any commitments which may affect his availability to perform his duties as arbitrator as may be reasonably anticipated.

4.3 The duty of disclosure continues throughout the arbitral proceedings as regards new facts or circumstances.

4.4 Disclosure should be made in writing and communicated to all parties and arbitrators. When an arbitrator has been appointed, any previous disclosure made to the parties should be communicated to the other arbitrators.

5 Communications with Parties

5.1 When approached with a view to appointment, a prospective arbitrator should make sufficient enquiries in order to inform himself whether there may be any justifiable doubts regarding his impartiality or independence; whether he is competent to determine the issues in dispute; and whether he is able to give the arbitration the time and attention required. He may also respond to enquiries from those approaching him, provided that such enquiries are designed to determine his suitability and availability for the appointment and provided that the merits of the case are not discussed. In the event that a prospective sole arbitrator or presiding arbitrator is approached by one party alone, or by one arbitrator chosen unilaterally by a party (a 'party-nominated' arbitrator), he should ascertain that the other party or parties, or the other arbitrator, has consented to the manner in which he has been approached. In such circumstances he should, in writing or orally, inform the other party or parties, or the other arbitrator, of the substance of the initial conversation.

5.2 If a party-nominated arbitrator is required to participate in the selection of a third or presiding arbitrator, it is acceptable for him (although he is not so required) to obtain the views of the party who nominated him as to the acceptability of candidates being considered.

5.3 Throughout the arbitral proceedings, an arbitrator should avoid any unilateral communications regarding the case with any party, or its representatives. If such communication should occur, the arbitrator should inform the other party or parties and arbitrators of its substance.

5.4 If an arbitrator becomes aware that a fellow arbitrator has been in improper communication with a party, he may inform the remaining arbitrators and they should together determine what action should be taken. Normally, the appropriate initial course of action is for

the offending arbitrator to be requested to refrain from making any further improper communciations with the party. Where the offending arbitrator fails or refuses to refrain from improper communications, the remaining arbitrators may inform the innocent party in order that he may consider what action he should take. An arbitrator may act unilaterally to inform a party of the conduct of another arbitrator in order to allow the said party to consider a challenge of the offending arbitrator only in extreme circumstances, and after communicating his intention to his fellow arbitrators in writing.

5.5 No arbitrator should accept any gift or substantial hospitality, directly or indirectly, from any party to the arbitration. Sole arbitrators and presiding arbitrators should be particularly meticulous in avoiding significant social or professional contacts with any party to the arbitration other than in the presence of the other parties.

6 Fees

Unless the parties agree otherwise or a party defaults, an arbitrator shall make no unilateral arrangements for fees or expenses.

7 Duty of Diligence

All arbitrators should devote such time and attention as the parties may reasonably require having regard to all the circumstances of the case, and shall do their best to conduct the arbitration in such a manner that costs do not rise to an unreasonable proportion of the interests at stake.

8 Involvement in Settlement Proposals

Where the parties have so requested, or consented to a suggestion to this effect by the arbitral tribunal, the tribunal as a whole (or the presiding arbitrator where appropriate), may make proposals for settlement to both parties simultaneously, and preferably in the presence of each other. Although any procedure is possible with the agreement of the parties, the arbitral tribunal should point out to the parties that it is undesirable that any arbitrator should discuss settlement terms with a party in the absence of the other parties since this will normally have the result that any arbitrator involved in such discussions will become disqualified from any future participation in the arbitration.

9 Confidentiality of the Deliberations

The deliberations of the arbitral tribunal, and the contents of the award itself, remain confidential in perpetuity unless the parties release the arbitrators from this obligation. An arbitrator should not participate in, or give any information for the purpose of assistance in, any proceedings to consider the award unless, exceptionally, he considers it his duty to disclose any material misconduct or fraud on the part of his fellow arbitrators.

IBA MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE

(Adopted 1982)

A JUDGES AND THE EXECUTIVE

1 a) Individual judges should enjoy personal independence and substantive independence.

b) Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.

c) Substantive independence means that in the discharge of his/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience.

2 The Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive

3 a) Participation in judicial appointments and promotions by the executive or legislature is not inconsistent with judicial independence provided that appointments and promotions of judges are vested in a judicial body in which members of judiciary and the legal profession form a majority.

b) Appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries where, by long historic and democratic tradition, judicial appointments and promotion operate satisfactorily.

4 a) The Executive may participate in the discipline of judges only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution, which is independent of the Executive.

b) The power of removal of a judge should preferably be vested in a judicial tribunal.

c) The Legislature may be vested with the powers of removal of judges, preferably upon a recommendation of a judicial commission.

5 The Executive shall not have control over judicial functions.

6 Rules of procedure and practice shall be made by legislation or by the Judiciary in co-operation with the legal profession subject to parliamentary approval.

7 The State shall have a duty to provide for the executive of judgements of the Court. The Judiciary shall exercise supervision over the execution process.

8 Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.

9 The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.

10 It is the duty of the State to provide adequate financial resources to allow for the due administration of justice.

11
a) Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.
b) In countries where the power of division of judicial work is vested in the Chief Justice, it is not considered inconsistent with judicial independence to accord to the Chief Justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.
c) Subject to (a), the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

12 The power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.

13 Court services should be adequately financed by the relevant government.

14 Judicial salaries and pensions shall be adequate and should be regularly adjusted to account for price increases independent of executive control.

15
a) The position of the judges, their independence, their security, and their adequate remuneration shall be secured by law.
b) Judicial salaries cannot be decreased during the judges' services except as a coherent part of an overall public economic measure.

16 The ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversely affect the independence of individual judges or of the Judiciary as a whole.

17 The power of pardon shall be exercised cautiously so as to avoid its use as interference

18 a) The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute or frustrates the proper execution of a court judgement.

b) The Executive shall not have the power to close down or suspend the operation of the court system at any level.

B JUDGES AND THE LEGISLATURE

19 The Legislature shall not pass legislation which retroactively reverses specific court decisions.

20 a) Legislation introducing changes in the terms and conditions of judicial services shall not be applied to judges holding office at the time of passing the legislation unless the changes improve the terms of service.

b) In case of legislation reorganising courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.

21 A citizen shall have the right to be tried by the ordinary courts of law, and shall not be tried before *ad hoc* tribunals.

C TERMS AND NATURE OF JUDICIAL APPOINTMENTS

22 Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment.

23 a) Judges should not be appointed for probationary periods except for legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of the appointment.

b) The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.

24 The number of the members of the highest court should be rigid and should not be subject to change except by legislation.

25 Part-time judges should be appointed only with proper safeguards.

26 Selection of judges shall be based on merit.

27 The proceedings for discipline and removal of judges should ensure fairness to the judge and adequate opportunity for hearing.

28 The procedure for discipline should be held *in camera*. The judge may however request that the hearing be held in public, subject to final and reasoned disposition of this request by the disciplinary tribunal. Judgements in disciplinary proceedings, whether held *in camera* or in public, may be published.

29 a) The grounds for removal of judges shall be fixed by law and shall be clearly defined.
b) All disciplinary actions shall be based upon standards of judicial conduct promulgated by law or in established rules of court.

30 A judge shall not be subject to removal unless by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity he/she has shown himself/herself manifestly unfit to hold the position of judge.

31 In systems where the power to discipline and remove judges is vested in an institution other than the Legislature the tribunal for discipline and removal of judges shall be permanent and be composed predominantly of members of the Judiciary.

32 The head of the court may legitimately have supervisory powers to control judges on administrative matters.

E THE PRESS, THE JUDICIARY AND THE COURTS

33 It should be recognised that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.

34 The press should show restraint in publications on pending cases where such publication may influence the outcome of the case.

F STANDARDS OF CONDUCT

35 Judges may not, during their term of office, serve in executive functions, such as ministers of the government, nor may they serve as members of the Legislature or of municipal councils, unless by long historical traditions these functions are combined.

36 Judges may serve as chairmen of committees of inquiry in cases where the process requires skill of fact-finding and evidence-taking.

37 Judges shall not hold positions in political parties.

38 A judge, other than a temporary judge, may not practice law during his term of office.

39 A judge should refrain from business activities, except his personal investments, or ownership of property.

40 A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary.

41 Judges may be organised in associations designed for judges, for furthering their rights and interests as judges.

42 Judges may take collective action to protect their judicial independence and to uphold their position.

G SECURING IMPARTIALITY AND INDEPENDENCE

43 A judge shall enjoy immunity from legal actions and the obligation to testify concerning matters arising in the exercise of his official functions.

44 A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.

45 A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

H THE INTERNAL INDEPENDENCE OF THE JUDICIARY

46 In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and supporters.

The above standards are subject to periodic review by the appropriate committee or committees of the International Bar Association and amendment from time to time by the International Bar Association in plenary sessions as circumstances may warrant or require.

The Law Society of Upper Canada | Barreau du Haut-Canada

ADJUDICATOR CODE OF CONDUCT

Law Society of Upper Canada
Adjudicator Code of Conduct

Introduction

I. Purpose

1. The Law Society of Upper Canada Adjudicator Code of Conduct ("Code") is a guide to the conduct and the professional and ethical responsibilities of the Law Society's adjudicators. It is not intended as a legislative directive. Although there is some mandatory language in it, this is reflective of Convocation policies. The balance of the provisions is expressed in permissive language, but the purpose of the guide is to reflect accepted principles of behaviour. Law Society adjudicators should familiarize themselves with the content of this document in addition to the legislation, rules and procedures established to ensure that the Law Society's tribunal processes are consistent, transparent and fair.

II. Definitions

2. In the Code,

Appeal Panel means the Law Society Appeal Panel established under Part II of the *Law Society Act*;

Chair of the Appeal Panel means the member of the Appeal Panel appointed by Convocation as Chair of the Appeal Panel pursuant to the *Law Society Act*;

Chair of the Hearing Panel means the member of the Hearing Panel appointed by Convocation as Chair of the Hearing Panel pursuant to the *Law Society Act*;

Chair of the Panel means the individual member of a panel designated to ensure that a proceeding is conducted in an orderly fashion;

Final disposition of a matter occurs when the panel assigned to hear and decide a matter on the merits renders a final decision, order and, where reasons are required or given, reasons;

Hearing Panel means the Law Society Hearing Panel established under Part II of the *Law Society Act*;

Investigation means an investigation required by the Treasurer or a prescribed staff member pursuant to the *Law Society Act*;

Panel means a member or group of members of the Hearing Panel or Appeal Panel assigned to hear and determine a matter pursuant to Part II of the *Law Society Act*;

Proceeding means a proceeding under the *Law Society Act* that commences with the service of an originating process;

Tribunal means the Law Society of Upper Canada Hearing Panel and/or Appeal Panel, established pursuant to the *Law Society Act*, to hear and determine matters in whole or in part.

III. Application

3. The Code applies to the following areas of adjudicator responsibility: the conduct of pre-hearing conferences, hearings management (HM) and appeals management (AM) functions, hearings and appeals, and decision-making, as well as the institutional responsibilities of adjudicators to colleagues, the chairs of the Hearing Panel and Appeal Panel, and to the tribunal itself.

4. Adjudicators are responsible for conducting themselves in a professional and ethical manner. The Code is a guide. It cannot anticipate all possible fact situations in which adjudicators may be called upon to exercise judgment about appropriate conduct.

5. The Code applies to all Law Society adjudicators who are members of, or appointed to, the Hearing Panel or Appeal Panel. The Code also applies, with necessary modifications, to temporary panelists appointed to the Hearing Panel or Appeal Panel pursuant to the *Law Society Act*.

6. The Code governs the conduct of adjudicators from the beginning of the term of membership in, or appointment to, the Hearing Panel or Appeal Panel and includes continuing responsibilities after completion of the term of membership. The Code also governs temporary panelists appointed to the Hearing Panel or Appeal Panel pursuant to the *Law Society Act* from the time of the panelist's appointment and includes continuing responsibilities after the final disposition of the matter.

Conflict of Interest and Reasonable Apprehension of Bias

IV. Definitions

7. A **conflict of interest** is any interest, relationship, association or activity that is incompatible with an adjudicator's obligations to the tribunal. Conflicts may be actual or perceived. In this Code, 'conflict of interest' includes both pecuniary and non-pecuniary conflicts.

8. A **pecuniary conflict of interest** will arise where an adjudicator has a financial interest that may be affected by the resolution or treatment of a matter before the tribunal. The financial interest may be that of the adjudicator, or of a relative or other person with whom the adjudicator has a relationship.

9. A **non-pecuniary conflict of interest** will arise where an adjudicator has a non-financial interest, relationship, or association, or is involved in an activity, that is incompatible with an adjudicator's responsibilities as an impartial decision-maker. The interests, relationships, or activities of a relative or associate may raise a potential conflict for adjudicators if they will be affected by the determinations of the tribunal.

10. **Bias** exists where considerations extraneous to the evidence, law, or submissions applicable to the matter before the tribunal influence an adjudicator's ability to make a neutral and impartial decision. A reasonable apprehension of bias arising from an adjudicator's conduct or conflict of interest may be as detrimental to the public interest as actual bias.

11. Conflicts of interest and bias, actual or perceived, are incompatible with neutral

adjudication. Where the circumstances surrounding a proceeding raise an allegation of conflict of interest or bias on the part of an adjudicator, the test for whether or not the adjudicator should be disqualified from adjudicating the matter is whether or not the facts or procedure could give rise to a reasonable apprehension of conflict of interest or bias in the mind of a reasonable and informed person.

12. A **significant professional relationship** may include, for example, employee/employer, solicitor/client, partnership/association, or employee, associate or partner/law firm. Significant professional relationships may also arise outside the workplace as a result of, for example, the volunteer or charitable activities of an adjudicator.

13. A **personal relationship** may include, for example, a friendship or a spousal relationship.

V. Appropriate Conduct

14. Any conflict of interest, actual or perceived, arising from an adjudicator's professional or personal interests and the adjudicator's responsibilities as an adjudicator should be resolved in favour of the public interest.

15. Law Society adjudicators are prohibited from representing a licensee or licensee applicant who is the subject of a complaint and/or an investigation by the Law Society, appearing as counsel before the tribunal and from being retained as professional or legal consultants in the preparation of a matter before the tribunal or in any matter relating to the work of the tribunal. Adjudicators are prohibited from engaging in these activities for 24 months following the end of their term as a bencher or their appointment to, the Hearing Panel or Appeal Panel, or after the release of any outstanding decisions, orders or reasons, whichever is later. This does not preclude adjudicators from providing informational advice, without a fee, to licensees or licensee applicants who may be the subject of a complaint and/or an investigation or subject to disciplinary proceedings.

16. Adjudicators should not adjudicate in any proceeding, or participate in tribunal discussions of any matter, in which they, or a business associate, have a financial interest that is neither remote nor trivial and may be affected by the resolution or treatment of a matter before the tribunal.

17. Adjudicators should not adjudicate in any proceeding, or participate in tribunal discussions with respect to any matter in which a party or the party's representative appearing before the tribunal or providing evidence (other than a written testimonial) is from their current law firm. A similar prohibition applies where a party or a party's representative practises in association with the Law Society adjudicator.

18. Adjudicators will not normally be eligible to conduct a proceeding involving a party or the party's representative with whom they were formerly in a significant professional relationship until at least 24 months have elapsed from the termination of the relationship. In some circumstances it may never be appropriate for the adjudicator to conduct a proceeding involving that individual. When evaluating whether the adjudicator's participation in the proceeding would give rise to a reasonable apprehension of bias, the position of all parties, although not determinative, and the circumstances of the

relationship should be carefully considered.

19. Adjudicators will not normally be eligible to conduct a proceeding involving a party or a party's representative with whom they have a personal relationship. When evaluating whether the adjudicator's participation in the proceeding would give rise to a reasonable apprehension of bias, the position of all parties, although not determinative, and the circumstances of the relationship should be carefully considered.

20. Adjudicators should not generally adjudicate in any proceeding in which they, a relative or a business associate, have had any prior involvement in the proceeding.

21. Adjudicators should not adjudicate in any proceeding in which the outcome may have an impact on any other legal proceeding in which they have a significant personal interest.

22. Adjudicators should not take improper advantage of information obtained through official tribunal duties.

VI. Procedural Protocol

A. Overview

23. It is the responsibility of each adjudicator to consider any circumstance that might suggest a possible conflict of interest or bias in respect of any of the adjudicator's responsibilities. It may be that only the adjudicator is in a position to recognize a possible conflict or issue of bias.

24. As soon as grounds for a potential conflict of interest or allegation of bias are identified, an adjudicator should take appropriate steps as outlined in this Code. The particular procedure to follow will depend on whether the potential conflict of interest or bias is identified after accepting an appointment to a panel, but prior to hearing the matter, or is identified during a proceeding.

25. Where an investigation into a complaint against an adjudicator has been instructed pursuant to the *Law Society Act*, or the adjudicator is the subject of a Law Society proceeding, the adjudicator should follow the procedure articulated in the Code under the heading "Bencher under an investigation instructed pursuant to the *Law Society Act*."

26. An adjudicator who is uncertain about the appropriate action to take should consult with the Chair of the Hearing Panel or the Chair of the Appeal Panel.

27. Where a party has made submissions challenging the neutrality of an adjudicator, the panel should provide reasons, in most cases in writing, for its decision on the issue.

B. After Accepting an Appointment to a Panel but Prior to Hearing the Matter

28. Where an adjudicator becomes aware of circumstances that suggest a possible conflict of interest or bias on the part of the adjudicator after being assigned to hear a matter, but prior to the commencement of the hearing, the adjudicator should inform the Tribunals Office immediately. The adjudicator should indicate to the Tribunals Office that,
    a. the adjudicator wishes to withdraw from the panel; or

b. the adjudicator is aware of circumstances that suggest a possible conflict of interest or bias on the part of the adjudicator but the adjudicator, having given the circumstances careful consideration, has determined that the adjudicator is able to proceed with hearing the matter objectively, and will advise the parties on the record at the hearing.

C. Arising During a Proceeding

29. During a proceeding, the panel shall determine issues of conflict of interest or bias.

30. Where, during a proceeding, an adjudicator becomes aware of circumstances that suggest a possible conflict of interest or bias and the related circumstances may be unknown to the parties, the adjudicator should request the panel to recess the proceedings. The panel should then consider the seriousness of the possible conflict of interest or bias and determine whether,
    a. the adjudicator should withdraw from the panel; or
    b. the parties should be informed of the circumstances, submissions heard and a determination on the issue made.

31. Where a panel hears submissions from the parties on the issue of conflict of interest or bias, the panel should make a determination of the issue before continuing with the proceeding.

32. Where an allegation of conflict of interest or bias is raised about an adjudicator by a party,
    a. the adjudicator may immediately withdraw from the panel if appropriate, given the nature and the circumstances of the alleged conflict of interest or bias; or
    b. the panel may hear submissions from the parties with respect to the alleged conflict of interest or bias and make a determination on the issue.

D. Bencher Under an Investigation Instructed Pursuant to the *Law Society Act*

33. In this section,
    a. reference to investigations instructed by the Treasurer pursuant to the *Law Society Act* includes investigations instructed by prescribed staff members if authorized by the *Law Society Act*; and
    b. reference to benchers includes all Law Society adjudicators where the *Law Society Act* permits individuals other than benchers to act as Law Society adjudicators.

34. To preserve the integrity of the Law Society tribunal a bencher should not sit as a Law Society adjudicator while under an investigation instructed by the Treasurer pursuant to the *Law Society Act* ("under investigation") or while the subject of a Law Society proceeding subsequent to an investigation instructed by the Treasurer pursuant to the *Law Society Act* ("the subject of a Law Society proceeding"), unless otherwise approved by the Treasurer.

35. While under investigation or the subject of a Law Society proceeding, a bencher, subject to the discretion of the Treasurer, should decline to be scheduled to adjudicate when the Tribunals Office canvasses the adjudicator's availability. It is left to the discretion of each

bencher to determine whether or not to disclose the reason for declining to be scheduled to adjudicate.

36. Where a bencher is assigned to a panel that is not seized of a matter, and the bencher is informed that the Treasurer has instructed an investigation into a complaint about that bencher or that the bencher is the subject of a Law Society proceeding, the bencher should withdraw from the panel if the investigation or proceeding will not be completed by the date on which the bencher is scheduled to adjudicate. It is left to the discretion of each bencher to determine whether or not to disclose the reason for withdrawing from the panel.

37. A bencher who is a member of a panel that is seized of a matter should immediately inform the Chair of the Hearing Panel or the Chair of the Appeal Panel of an investigation instructed by the Treasurer, or that the bencher is the subject of a Law Society proceeding, where the investigation or proceeding will not be completed by the next date on which the bencher is scheduled to adjudicate.

Adjudicator Responsibilities

VII. Conduct During the Proceeding

38. Adjudicators are expected to conduct both themselves and the proceedings in a judicial manner. To this end, adjudicators should,
    a. approach every proceeding with an open mind with respect to every issue and avoid comments or conduct that could cause any person to think otherwise;
    b. listen carefully and respectfully to the views and submissions of the parties and their representatives; and
    c. show respect for the parties, their representatives, witnesses, their panel colleagues, and for the proceeding process itself, through their demeanour, timeliness, dress and conduct throughout the proceeding.

39. Other than for scheduling a further hearing of the matter before the panel, adjudicators should refrain from using personal communication devices during a proceeding.

40. Adjudicators should familiarize themselves with constitutional requirements and legislation, such as the Canadian Charter of Rights and Freedom and the Ontario Human Rights Code, to ensure that they conform to relevant requirements. In addition, they should also be sensitive to issues of gender, ability, race, language, culture and religion. They should, for example recognize that these factors might influence how their demeanour and that of the parties, their representatives and witnesses is perceived.

16. Adjudicators should avoid undue interruption and interference in the examination and cross-examination of witnesses. To this end, adjudicators should be and appear to be objective and should avoid the appearance of advocating on behalf of a party to the proceeding.

17. The Law Society does not provide counsel to its tribunals. Accordingly, adjudicators should request submissions on questions of procedure or law from all parties or their representatives. Where all parties or their representatives are not in attendance before the tribunal, the request should be made of all parties through the Tribunals Office.

18. When attempting to ensure that unrepresented parties are not procedurally disadvantaged at a proceeding, adjudicators should do so in a manner that is not inconsistent with their role as impartial arbiters.

19. Communicating off the record with parties, their representatives or witnesses in respect of proceedings may give rise to an apprehension of bias. As a result, adjudicators should not, in respect of proceedings and before a decision is released,
    a. communicate with those persons, except in the presence of all parties and their representatives or with the consent of the parties;
    b. correspond with parties, or their representatives, by any means (email, facsimile, text message, etc.), except through the Tribunals Office. It is the responsibility of the Tribunals Office to forward the adjudicators' communications to all parties and their representatives; and
    c. when attending social occasions, discuss any matter in respect of the proceedings.

20. Hearing rooms and areas in which adjudicators convene may be accessible to others. It is essential that adjudicators not leave confidential materials, including their own notes taken during the proceeding, in plain view where others may have access to them.

VIII. Decision-Making Responsibilities

21. Adjudicators should make decisions on the merits and justice of the matter, based on the law and the evidence.

22. Adjudicators should apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval from any person, institution, or community must not deter adjudicators from making the decision that they believe is correct based on the law and the evidence.

23. Adjudicators should endeavour to ensure that decisions are rendered in a timely manner. Where written reasons are to be given, adjudicators should strive to ensure that they are prepared with reasonable promptness.

IX. Responsibilities To Other Panelists

24. Adjudicators should, through their conduct, promote civility among Law Society adjudicators and in the hearing process and be respectful of the views and opinions of colleagues.

X. Responsibilities When Sitting as a Panel

25. Adjudicators should make themselves available on a timely basis for discussions with their panel colleagues on the conduct of the proceeding and on the substance of the determinations to be made. When a draft decision is provided for comments, adjudicators should respond at the earliest opportunity. Adjudicators should follow the procedure for written reasons as determined by the Tribunals Office in consultation with the Chairs of the Hearing and Appeal Panels.

26. Adjudicators should consider carefully panel colleagues' reasons where there is a difference in their proposed determinations on an interim or final decision. However,

adjudicators should not abandon strongly held views on an issue of substance, either for the sake of panel unanimity or in exchange for agreement on any other point.

27. In circumstances where adjudicators are unable to agree with the proposed decision of a majority of the panel after discussion and careful consideration, they should endeavour to ensure that a reasoned dissent is rendered with reasonable promptness.

XI. Responsibilities To the Chairs of the Hearing and Appeal Panels

28. When adjudicators become aware of colleagues' conduct that may threaten the integrity of the tribunal or its processes, they have a duty to advise the Chair of the Hearing Panel or the Chair of the Appeal Panel of the circumstances as soon as reasonably practicable.

XII. Responsibilities To the Tribunal

29. Adjudicators should comply with the policies and procedures established for the tribunal.

30. Where adjudicators have questions about the appropriateness of any hearing or appeal policy or procedure, they may consult with the Chair of the Hearing Panel or the Chair of the Appeal Panel.

31. Adjudicators should refrain from publicly taking a partisan position in respect of individual matters under consideration in a proceeding before the tribunal.

32. Adjudicators should not make public comment, orally or in writing, on any aspect of a matter before them. Adjudicators should exercise caution before publicly commenting on the decisions, procedures or structures of the tribunal, a decision of colleagues, or on the manner in which other colleagues have conducted themselves during a proceeding.

33. It is generally inappropriate for adjudicators to communicate with the media regarding a decision of the tribunal or the tribunal's conduct of a proceeding. All inquiries from the media should be referred to the Law Society's Communications Department.

34. Adjudicators shall attend adjudicator education programs in accordance with policies adopted by Convocation.

35. Adjudicators should not divulge confidential information unless legally required to do so, or appropriately authorized to release the information.

36. Adjudicators should not engage in conduct that exploits their position of authority.

XIII. Temporary Panelists Appointed Pursuant to the *Law Society Act*

37. Temporary panelists appointed pursuant to the *Law Society Act* should not allow their personal or professional activities to undermine the discharge of their responsibilities as Law Society adjudicators.

38. Temporary panelists appointed pursuant to the *Law Society Act* should minimize the likelihood of conflicts arising that may affect their neutrality or give rise to an allegation of bias.

64. Temporary panelists appointed pursuant to the *Law Society Act* are prohibited from representing a licensee or licensee applicant who is the subject of a complaint and/or an investigation by the Law Society, appearing as counsel before the tribunal and from being retained as professional or legal consultants in the preparation of a matter before the tribunal or in any matter relating to the work of the tribunal. Temporary panelists are prohibited from engaging in these activities for 24 months following the end of their appointment to, the Hearing Panel or Appeal Panel, or after the release of any outstanding decisions, orders or reasons, whichever is later. This does not preclude temporary panelists from providing informational advice, without a fee, to licensees or licensee applicants who may be the subject of a complaint and/or an investigation or subject to disciplinary proceedings.

XIV. Post-Term Responsibilities

65. Adjudicators are prohibited from representing a licensee or licensee applicant who is the subject of a complaint and/or an investigation by the Law Society, appearing as counsel before the tribunal and from being retained as professional or legal consultants in the preparation of a matter before the tribunal or in any matter relating to the work of the tribunal. Adjudicators are prohibited from engaging in these activities for 24 months following the end of their term as a bencher or their appointment to, the Hearing Panel or Appeal Panel, or after the release of any outstanding decisions, orders or reasons, whichever is later. This does not preclude adjudicators from providing informational advice, without a fee, to licensees or licensee applicants who may be the subject of a complaint and/or an investigation or subject to disciplinary proceedings.

66. Adjudicators have an on-going duty of confidentiality after the expiry of their membership in, or appointment to, the Hearing Panel or Appeal Panel.

67. Adjudicators whose term of appointment has expired, but who have continuing responsibilities by virtue of on-going proceedings in which they participated as adjudicators continue to be guided by this Code.

Chartered Institute of Arbitrators

CIArb

The Chartered Institute of Arbitrators Code of Professional and Ethical Conduct for Members (October 2009)

Introduction

This Code of Professional and Ethical Conduct is published pursuant to the Bye-Laws of the Institute so that members may be reminded of the professional and moral principles which should at all times govern their conduct.

The Oxford English Dictionary defines 'ethics' as moral principles or rules of conduct. A Code of Ethics provides a set of moral principles according to which one should conduct one's affairs. The Code sets out, in a number of Rules, the minimum standards of conduct that members should observe. A significant breach of the Code amounts to professional misconduct by virtue of Bye-Law 15.2.

The Code is in two parts but members should be cognisant of the entire code and should apply the principles herein, in whole or in part, as applicable to their dispute resolution practice.

Part 1 relates to the conduct of members, including honorary officers, in the carrying out of the functions, duties and responsibilities of the Institute. It governs the conduct of members when acting as members of the Board of Trustees, the Board of Management, or any committee of the Institute and applies also to the conduct of honorary officers of the Institute when appointing arbitrators, mediators and others to act as neutrals in alternative dispute resolution processes.

Part 2 relates to the conduct of members when acting or seeking to act as neutrals in alternative dispute resolution processes, wherever conducted, whether or not they have been appointed so to act by the Institute or any officer of the Institute and whether or not the process is conducted under the auspices of the Institute.

The purpose of adopting a Code of Ethics for neutrals involved in alternative dispute resolution is to serve not only as a guide but as a point of reference for users of the process and to promote public confidence in dispute resolution techniques. The Code itself is a reflection of internationally acceptable guidelines.

In some instances the ethics set down herein may be repeated in legislation governing the process, case law or rules which parties adopt. In many instances members will also be bound by other codes of practice or conduct imposed upon them by virtue of membership of primary professional organisations.

PART 1

Code Relating to the Conduct of Members When Serving on Committees of the Institute, Acting for the Institute or Making Appointments as Honorary Officers of the Institute

Rule 1 Members of the Institute (including its honorary officers) when conducting the business and affairs of the Institute and when serving on the Board of Trustees and on any board or committee established by the Institute have an overriding obligation to act at all times in a disinterested manner and to be faithful to the relationship of trust which exists between members and the Institute.

Rule 2 Members shall disclose any interest or relationship which is likely to affect, or may reasonably be thought likely to affect, their conduct. Members shall not without prior disclosure act, speak or vote in connection with a matter in which they have an interest or in which any person or body with which they are connected has an interest. Members shall not permit outside pressure, fear of criticism or any form of self-interest to affect their conduct.

Rule 3 Members shall not knowingly gain or seek to gain any undisclosed personal advantage or profit from serving on the Board of Trustees or on any board or committee established by the Institute or from acting in any way on behalf of the Institute.

Rule 4 Where the appointment of a third-party neutral falls to be made by the President or other honorary officer of the Institute ("the appointer"), then

(1) the overriding principle is that all appointments shall be made with a view to selecting, on objective criteria, a suitable person to fulfil the particular role in question and that the appointment shall not be affected by personal factors; and

(2) the appointer should always take such steps as may be reasonable and practicable to satisfy himself or herself that persons suggested by the executive staff of the Institute as being suitable for appointment are in fact suitable persons to be appointed.

PART 2

Code Relating to the Conduct of Members when Acting or seeking to Act as Neutrals

Introduction

This Code is subject to the overriding requirements that it shall not:

(i) require a member to act in a way that is unethical or unlawful under any other Code or law applicable to the member;

(ii) form part of the rules of any dispute resolution process;

(iii) override or replace the rules or applicable laws of any dispute resolution process; nor

(iv) provide grounds for judicial review or other legal action.

Rule 1 ***Behaviour***

A member shall not behave in a manner which might reasonably be perceived as conduct unbecoming a member of the Institute.

Rule 2 ***Integrity and Fairness***

A member shall maintain the integrity and fairness of the dispute resolution process and shall withdraw if this is no longer possible.

Rule 3 ***Conflicts of Interest***

Both before and throughout the dispute resolution process, a member shall disclose all interests, relationships and matters likely to affect the member's independence or impartiality or which might reasonably be perceived as likely to do so.

Where a member is or becomes aware that he or she is incapable of maintaining the required degree of independence or impartiality, the member shall promptly take such steps as may be required in the circumstances, which may include resignation or withdrawal from the process.

Rule 4 ***Competence***

A member shall accept an appointment or act only if appropriately qualified or experienced.

A member shall not make or allow to be made on the member's behalf any representation about the member's experience or expertise which is misleading or deceptive or likely to mislead or deceive.

Rule 5 ***Information***

Where appropriate and having regard to whether the parties are represented by professionals familiar with the dispute resolution process, the member shall ensure that the parties are informed of the procedural aspects of the process.

Rule 6 ***Communication***

A member shall communicate with those involved in the dispute resolution process only in the manner appropriate to the process.

Rule 7 ***Conduct of the Process***

7.1 A member shall prepare appropriately for the dispute resolution process concerned.

A member shall not be influenced by outside pressure or self interest.

A member shall not delegate any duty to decide to any other person unless permitted to do so by the parties or applicable law.

A member shall not unduly delay the completion of the dispute resolution process.

Rule 8 ***Trust and Confidence***

A member shall abide by the relationship of trust which exists between those involved in the dispute and (unless otherwise agreed by all the parties, or permitted or required by applicable law), both during and after completion of the dispute resolution process, shall not disclose or use any confidential information acquired in the course of or for the purposes of the process.

Rule 9 ***Fees***

A member shall charge only reasonable fees and expenses having regard to all the circumstances and shall disclose beforehand and explain to the parties to the dispute resolution process the basis upon which the fees and expenses shall be calculated and charged.

INTERNATIONAL ARBITRATION PRACTICE GUIDELINE

Interviews for Prospective Arbitrators

Chartered Institute of Arbitrators

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The Chartered Institute of Arbitrators is a learned society that works in the public interest to promote and facilitate the use of Alternative Dispute Resolution (ADR) mechanisms. Founded in 1915 and with a Royal Charter granted in 1979, it is a UK-based membership charity that has gained international presence in more than 100 countries and has more than 14,000 professionally qualified members around the world. While the Chartered Institute of Arbitrators has used its best efforts in preparing this publication, it makes no representations or warranties with respect to the accuracy or completeness of its content and specifically disclaims any implied warranties of merchantability or fitness for a particular purpose.

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Interviews for Prospective Arbitrators

Interviews for Prospective Arbitrators

Introduction

1. This Guideline sets out the current best practice in international commercial arbitration in relation to interviews for prospective arbitrators. It provides guidance on:
   i. how to respond to a request for an interview by a party prior to an appointment (Article 1);
   ii. matters that can be discussed at an interview prior to an appointment (Article 2);
   iii. matters that are not appropriate for discussion at an interview prior to an appointment (Article 3); and
   iv. specific arrangements for interviews for prospective sole or presiding arbitrators (Article 4).
2. In this Guideline, references to '*ex parte* communications' should be understood to encompass oral or written communications, for the purposes of an interview (1) prior to an appointment, between any party and a prospective arbitrator without the presence of the opposing party, and (2) after an appointment, for the purposes of discussions between an appointing party and its appointee in relation to the selection of a presiding arbitrator to the extent that the agreed or applicable procedure provides for the selection of a presiding arbitrator by the co-arbitrators.

Preamble

1. Two fundamental principles of arbitration are that (1) parties are free to select arbitrators of their own choosing to decide their dispute and (2) the arbitrators are independent and impartial. Most national laws and arbitration rules have specific provisions requiring arbitrators to declare their independence and impartiality at the time of their appointment and to disclose any change to that status if it should occur at any time during the arbitration. Additionally, to avoid creating an appearance of bias or lack of independence during the course of the arbitration, some national

laws and arbitration rules require that arbitrators should not have any unilateral communications, including conversations, with either of the parties.

2. The issue of bias, either actual or apparent, or lack of independence, is to be determined objectively, from the point of view of a reasonable third person who, with knowledge of the circumstances of the case, would conclude that there is a likelihood that the arbitrator, when making a decision, would be influenced by factors other than the merits of the case.
3. In international arbitration it is common practice to have three arbitrators. Each party appoints one arbitrator and then the agreed procedure, rules and/or law(s) usually provide for the party-appointed arbitrators to select, or to participate in the selection of, a presiding arbitrator. As the selection of arbitrators is one of the most important strategic decisions in arbitration, the parties may want to interview a prospective arbitrator before making an appointment instead of relying solely on publicly available information and personal recommendations.
4. Even though such an interview would take place before any appointment was made, purely because it involves only one of the parties and the prospective arbitrator present, it carries with it a risk that the absent party may later use the fact of the interview to challenge the arbitrator's impartiality and independence, assuming they are appointed. Accordingly, prospective arbitrators should take great care when participating in such an interview to ensure that it does not compromise the integrity of the arbitral process or their impartiality and independence.
5. National laws and arbitration rules rarely address the issue of interviews for prospective arbitrators. A few laws and rules do specify that *ex parte* communications between a prospective arbitrator and an appointing party are permissible for the purposes of discussing the candidate's

availability, past experience and the general nature of the dispute but give no guidance as to how an interview should be conducted.[1]

6. The discrete considerations raised by the practice of participating in interviews prior to an appointment are dealt with in this Guideline with a view to minimising the risks of challenges to arbitrators and/or their awards arising from such interviews. The previous edition of this Guideline provided that arbitrators should tape record the interview and disclose the tape to the other party and to the appointing body, if any, at the earliest opportunity available. As this is no longer the practice in most jurisdictions, the Guideline has been re-drafted to reflect current best practice which is described in detail below.

Article 1 — General principles

1. **Subject to the caveats detailed in this Guideline, arbitrators may agree to be interviewed by a party prior to an appointment as part of the selection process. The mere fact that a prospective arbitrator had been interviewed by one of the parties only, prior to an appointment, should not, of itself, be a ground for challenge.**
2. **When considering a request for an interview, prospective arbitrators should enquire whether the arbitration agreement, including any arbitration rules and/or the law of the place of arbitration (*lex arbitri*) contain provisions prohibiting *ex parte* communications prior to appointment.**
3. **If minded to proceed with the interview, prospective arbitrators should request a copy of the arbitration agreement so that they are informed of the names of the parties and the general nature of the prospective appointment in order to check whether they have any conflict, any experience and qualifications required and any knowledge of the language in which the arbitration will be conducted.**

4. **After having cleared an initial conflicts check, prospective arbitrators should agree with the interviewing party, and confirm in writing, the basis upon which the interview is to be conducted.**
5. **Prospective arbitrators should not receive any remuneration or hospitality for agreeing to participate in an interview.**
6. **Prospective arbitrators should make contemporaneous notes of the matters discussed in the interview.**

Commentary on Article 1

Paragraph 1

Participating in an interview is not a sufficient ground for challenge

The fact that an arbitrator had been interviewed by a party should not of itself provide grounds for challenging an appointee's impartiality and independence. However, since a conversation exceeding the appropriate scope could be a ground for challenge, prospective arbitrators should take great care to avoid any aspect of the interview providing grounds for challenge.

Paragraph 2

Discretion to accept an interview

When approached with a request for an interview, prospective arbitrators should determine whether it is appropriate, in light of the applicable rules or law(s) and any known requirements, such as, for example, technical expertise, language skills and availability, to accept the request. For these purposes, they should ask the interviewing party to provide in advance a copy of the arbitration agreement, including information about the governing law, arbitration rules or constitutional terms applicable to the proceedings and the place of arbitration, if agreed, and any deadlines for making the final award. Prospective arbitrators should not express any opinion as to the operation,

effectiveness and/or interpretation of the arbitration agreement.

Paragraph 3

Subject matter experience and

knowledge of the language of the arbitration

To determine whether they have the requisite competence and qualifications prospective arbitrators should seek a brief description of the general nature of the dispute. Depending on the nature of the dispute, the type of arbitration and the arbitration agreement, prospective arbitrators may be required to have specific legal and/or technical knowledge, experience and/or qualifications. Knowledge of the language(s) in which the arbitration will be conducted is very important and arbitrators should only accept appointments if they are sufficiently proficient in the language of the arbitration, so that they can understand the dispute and follow what is happening during the proceedings.

Paragraph 4

Conflict checks

a) When considering whether to accept an appointment, it is important to identify as early as possible any matters that may cause the prospective arbitrator concern as to their impartiality or independence. Prospective arbitrators should disclose to the parties, any circumstances they are aware of that may give rise to justifiable concerns as to their impartiality or independence. For these purposes, prospective arbitrators should consider any past or existing relationship with any of the parties, including affiliates of that party, their representatives and/or the law firm of those representatives. They should also consider any financial or personal interest in the outcome of the case, for example, through some shareholding or office held with a third party who has an interest in the outcome of the case.[2]

b) Depending on the particular circumstances of the case, prospective arbitrators may request additional information regarding the identity of executors, shareholders, investors or third party funders with any interest in the outcome of the case. This may include information as to a party's corporate structure, including a list of the parties' parents, affiliates and subsidiaries. Prospective arbitrators may also consider it necessary to seek identification of any persons who the interviewing party anticipates may be called as witnesses and/or experts. Prospective arbitrators may also ask if any other arbitrator has already been appointed and, if so, who they are.

Third-party funding and conflicts of interest

c) Third-party funding in international arbitration is a relatively recent phenomenon. If an arbitrator has a relationship with a funder which could create a conflict and interviewing parties may not be aware of that relationship, it would be prudent, prior to the interview, to draw the party's attention to the fact that a relationship of this kind could be grounds for challenge, so that the party can consider whether it is appropriate to make any particular disclosure. This will enable a funded party to raise the issue with the funder and avoid a conflict emerging later in the proceedings.

Paragraph 4

Ground rules

a) Before accepting a request for an interview, prospective arbitrators should agree in advance the limits of the interview with the interviewing party. The place, the timing, the names and roles of the participants and the scope of matters to be discussed should be set out in an agenda exchanged before the interview takes place. Prospective arbitrators should also ask the interviewing party to agree that any information

provided as to the nature of the case should be stated in a general manner, avoiding advocacy or misrepresentation of the other party's position.[3]

b) This Guideline may, by agreement, serve as the basis upon which the interview is to be conducted, with such additional restraints and safeguards as agreed in advance and as may be appropriate in the specific circumstances of the case.

Nature and place of the interview

c) The interview may be conducted in person, by telephone or videoconference. The interview should be conducted in a professional manner and, if in person, in the prospective arbitrator's office or other neutral business location rather than the offices of the interviewing party. The interview should not take place in a restaurant, lounge, café, bar, or any similar place, and should not include a meal, drinks or any element which might be considered as hospitality.[4]

The interviewing team

d) It is good practice to agree in advance the constitution of the interviewing team, including who will lead the interview and how it will be conducted. The interview should normally be led by a senior representative of the interviewing party's legal team.

Duration of the interview

e) The length of the interview should be determined and agreed in advance. The longer an interview lasts, the greater the risk that it will stray into matters which should be avoided (see Article 3 below). Appropriate time will depend on the particular circumstances of the case, but 30 minutes should be sufficient for most interviews.

Paragraph 5

Reimbursement for participating in an interview

Prospective arbitrators should not charge or accept any remuneration or gift for their participation in an interview. If the interview takes place in a business location other than the prospective arbitrator's office and they have to travel to the meeting, they may be reimbursed for their reasonable travel expenses or, if it takes place by telephone and/or videoconference, they may be reimbursed for any reasonable communication expenses. Any such reimbursement should be agreed in advance and in writing.

Paragraph 6

Disclosure of the fact of the interview

a) There is no general duty to disclose the fact that an interview has taken place. Interviews are routine in some jurisdictions and less common in others.[5] As a result, parties may have different attitudes to the acceptability of interviews with prospective arbitrators and different expectations as to the need to disclose or be informed that an interview has taken place. Prospective arbitrators, prior to agreeing to be interviewed, should consider whether it would be appropriate to disclose the fact that an interview took place, if appointed. If they decide in favour of disclosure, the prospective arbitrators should inform the interviewing party what they will disclose, if appointed.

Taking notes or recording interviews

b) There is no general duty to keep a record of the content of an interview, however, it is good practice for prospective arbitrators to make a contemporaneous note of the matters discussed in an interview in order to address any later suggestions that inappropriate matters were discussed. A prospective arbitrator who considers it would be

appropriate to make a recording of an interview should first obtain the agreement of the interviewing party before doing so. Alternatively, a prospective arbitrator may consider it appropriate to bring a secretary or other assistant to take notes in the interview, in which case they should first obtain agreement of the interviewing party.

Disclosure of the content of the interview

c) There is no general duty to disclose the content of an interview. Any note or recording of the interview taken by the candidate is primarily for their own recollection. An arbitrator who considers it is appropriate to disclose the note or the recording of the interview should do so promptly after their appointment and to all parties, any co-arbitrators and any arbitral institution in order to show the integrity with which the interview was conducted and thereby reduce the risk of challenges.

Article 2 — Matters to discuss at an interview prior to an appointment

Matters to be discussed at an interview should be clearly defined and agreed with an agenda exchanged in advance. In any event, the content of an interview should be limited to the following:

i. past experience in international arbitration and attitudes to the general conduct of arbitral proceedings;

ii. expertise in the subject matter of the dispute;

iii. availability, including the expected timetable of the proceedings and estimated timings and length of a hearing; and/or

iv. in *ad hoc* arbitrations, the prospective arbitrator's reasonable fees and other terms of appointment, to the extent permissible under the applicable rules and/or law(s).

Commentary on Article 2

a) Prospective arbitrators should explain to a party requesting an interview that, if appointed, the fact or content of an interview may give rise to challenges to the arbitrator or any award. For these reasons, it is good practice to establish an agreed procedure and an agenda in the event that an interview is to take place. The purpose of an interview should be to enable a prospective arbitrator and a party to discuss the candidate's suitability and availability for the appointment. Therefore, it should be limited to these specific matters in order to reduce the risk of a challenge to the candidate, if appointed, and/or to any award.

b) The topics to be discussed should be agreed in writing in advance. This allows the prospective arbitrator and the interviewing party to prepare for the interview. It should also enable any concerns to be raised in advance and thereby reduce the risk of straying into areas that should not be discussed such as the candidates' views on issues likely to arise in the course of the arbitration. Also, when discussing the agreed topics the prospective arbitrator should not give any advice and the interviewing party should not ask the candidate to give advice. Any questions asked at the interview should be neutral and general in nature.

Past experience as an arbitrator

c) Prospective arbitrators may discuss with the interviewing party their knowledge and understanding of arbitration law, practice and procedure. For these purposes, prospective arbitrators may provide details of their past experience to demonstrate that they possess the necessary knowledge and understanding, subject always to the duty of confidentiality owed to the parties involved in any previous arbitrations.

General conduct of arbitral proceedings

d) Prospective arbitrators may discuss their approach to procedural issues but they should not discuss specific questions as to the procedural aspects likely to arise in the arbitration they are being interviewed for. It is permissible to discuss questions phrased in general terms relating to the candidate's ability to manage and progress arbitral proceedings, including questions seeking the arbitrator's view on generic procedural issues.

Availability

e) Before deciding to accept any appointment, prospective arbitrators should determine whether they can devote the necessary time and attention to remain available throughout the proceedings and ensure expeditious and efficient conduct of the arbitration. Prospective arbitrators may ask and respond to questions relating to any estimated schedule of the arbitral proceedings in order to ensure that they are available and have sufficient time to devote to the case.

Remuneration and other terms of appointment

f) In institutional arbitrations the arbitrators' fees are usually set and supervised by the relevant institution, in which case there is no need to discuss remuneration at the interview. In *ad hoc* arbitrations, on the other hand, the candidates' reasonable fees and other terms of appointment may be discussed at the interview, provided that such a discussion is not prohibited or limited under any applicable law(s) and/or rules.[6]

Article 3 — Matters that should not be discussed

The following matters should not be discussed either directly or indirectly:

i. the specific facts or circumstances giving rise to the dispute;

ii. the positions or arguments of the parties;

iii. the merits of the case; and/or

iv. the prospective arbitrator's views on the merits, parties' arguments and/or claims.

Commentary on Article 3

Prospective arbitrators should explain to the interviewing party that an interview should not be used to explore their views with respect to issues which may form part of the case, to test the party's submissions of fact and/or law or to explore what they are likely to decide on the merits of any aspect of the case. Prospective arbitrators should therefore decline to answer any questions, including hypothetical ones, seeking to test their position on specific issues likely to arise in the arbitration they are being interviewed for. In the event that a prospective arbitrator comes to the conclusion that the interviewing party is seeking a partisan arbitrator or one who will not be impartial, they should consider, if necessary, terminating the interview and declining the appointment.

Article 4 — Interviews for prospective sole or presiding arbitrators

If a prospective sole or presiding arbitrator is invited to an interview by one party, they should only agree to be interviewed by all parties jointly. If, however, a candidate is satisfied that a party who chooses not to attend such an interview was invited to attend and given reasonable notice of the interview, and does not object to the interview and/or the agenda, the interview may proceed in the absence of that party. In these circumstances, the prospective

arbitrator should make a contemporaneous note of matters discussed in the interview and send it to all of the parties, any co-arbitrators and any institution, promptly after their appointment.

Commentary on Article 4

Interviewing prospective sole or presiding arbitrators

a) Generally, an interview with a prospective sole or presiding arbitrator, in cases of pure *ad hoc* arbitrations or where the arbitration agreement including any arbitration rules and/or the *lex arbitri* require parties to appoint a presiding arbitrator, should be conducted jointly by all parties and by reference to an agenda agreed in advance. If, however, a party chooses not to attend but does not object to the interview and/or the agenda, a candidate may be interviewed solely by the attending party or parties.[7]

Discussions with party-appointed arbitrators in relation to the selection of a presiding arbitrator

b) Where the presiding arbitrator is selected by the party-appointed arbitrators, a party-appointed arbitrator may discuss with the party that appointed them a list of criteria that a party-appointed arbitrator should look for in a presiding arbitrator suited for that role in that arbitration and/or a list of possible candidates that they consider have the requisite criteria. The party-appointed arbitrators should share any such lists with each other with a view to assisting them both in selecting a presiding arbitrator who has the requisite experience and qualifications that the parties want.[8]

c) Articles 1 to 3 of this Guideline equally apply to any interviews with prospective sole or presiding arbitrators.

Conclusion

The selection of arbitrators is one of the most important strategic steps in arbitration. Interviews with prospective arbitrators prior to appointments allow parties to obtain a more complete picture of candidates they are considering appointing. Such a practice undoubtedly carries risks that may be perceived as undermining the arbitrators' impartiality and independence. This Guideline seeks to highlight best practice so as inform prospective arbitrators how to prepare for and conduct interviews with a view to reducing the risk of a later challenge as a consequence of the interview.

NOTE

The Practice and Standards Committee (PSC) keeps these guidelines under constant review. Any comments and suggestions for updates and improvements can be sent by email to psc@ciarb.org

Last revised 30 August 2016

Endnotes

1. See e.g., Rule 13(6) SIAC Rules (2016), Article 13(5) LCIA Rules (2014) and Article 11(5) HKIAC Rules (2013).
2. When deciding what to disclose, arbitrators may consult the IBA Guidelines on Conflicts of Interest in International Arbitration (2014), available at <www.ibanet.org>.
3. Doak Bishop and Lucy Reed, 'Practical Guidelines for Interviewing, Selecting and Challenging Party-Appointed Arbitrators in International Commercial Arbitration' (1998) 14(4) Arbitration International, pp. 395 *et seq*.
4. Julian D. M. Lew and others, *Comparative International Commercial Arbitration* (Kluwer Law International 2003), para 10.36.
5. See QMUL and White & Case LLP, 2012 International Arbitration Survey 'Current and Preferred Practices in the Arbitral Process Survey Findings', p. 6 ("Those most experience with pre-appointment interviews are from North America, Latin America and Western Europe, while those least experienced with them are from Africa and the Middle East.") See also, Niklas Elofsson, '*Ex Parte* Interviews of Party-Appointed Arbitrator Candidates: A Study Based on the Views of Counsel and Arbitrators in Sweden and the United States' (2013) 30(4) Journal of International, pp. 381 *et seq*.
6. See generally, 2016 CIArb Guideline on Terms of Appointment including Remuneration.
7. Gabrielle Kaufmann-Kohler and Antonio Rigozzi, *International Arbitration: Law and Practice in Switzerland* (OUP 2015), p. 164.
8. Lew and others, n 4, para 10.37.

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CCBE

pour le droit & la justice

CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION AND CODE OF CONDUCT FOR EUROPEAN LAWYERS

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The Council of Bars and Law Societies of Europe (CCBE) has as its principal object to represent its member Bars and Law Societies, whether they are full members (i.e. those of the European Union, the European Economic Area and the Swiss Confederation), or associated or observer members, on all matters of mutual interest relating to the exercise of the profession of lawyer, the development of the law and practice pertaining to the rule of law and the administration of justice and substantive developments in the law itself, both at a European and international level (Article III 1.a. of the CCBE Statutes).

In this respect, it is the official representative of Bars and Law Societies which between them comprise more than 1 million European lawyers.

The CCBE has adopted two foundation texts, which are included in this brochure, that are both complementary and very different in nature.

The more recent one is the ***Charter of Core Principles of the European Legal Profession*** which was adopted at the plenary session in Brussels on 24 November 2006. The Charter is not conceived as a code of conduct. It is aimed at applying to all of Europe, reaching out beyond the member, associate and observer states of the CCBE. The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession.

The Charter aims, inter alia, to help bar associations that are struggling to establish their independence; and to increase understanding among lawyers of the importance of the lawyer's role in society; it is aimed both at lawyers themselves and at decision makers and the public in general.

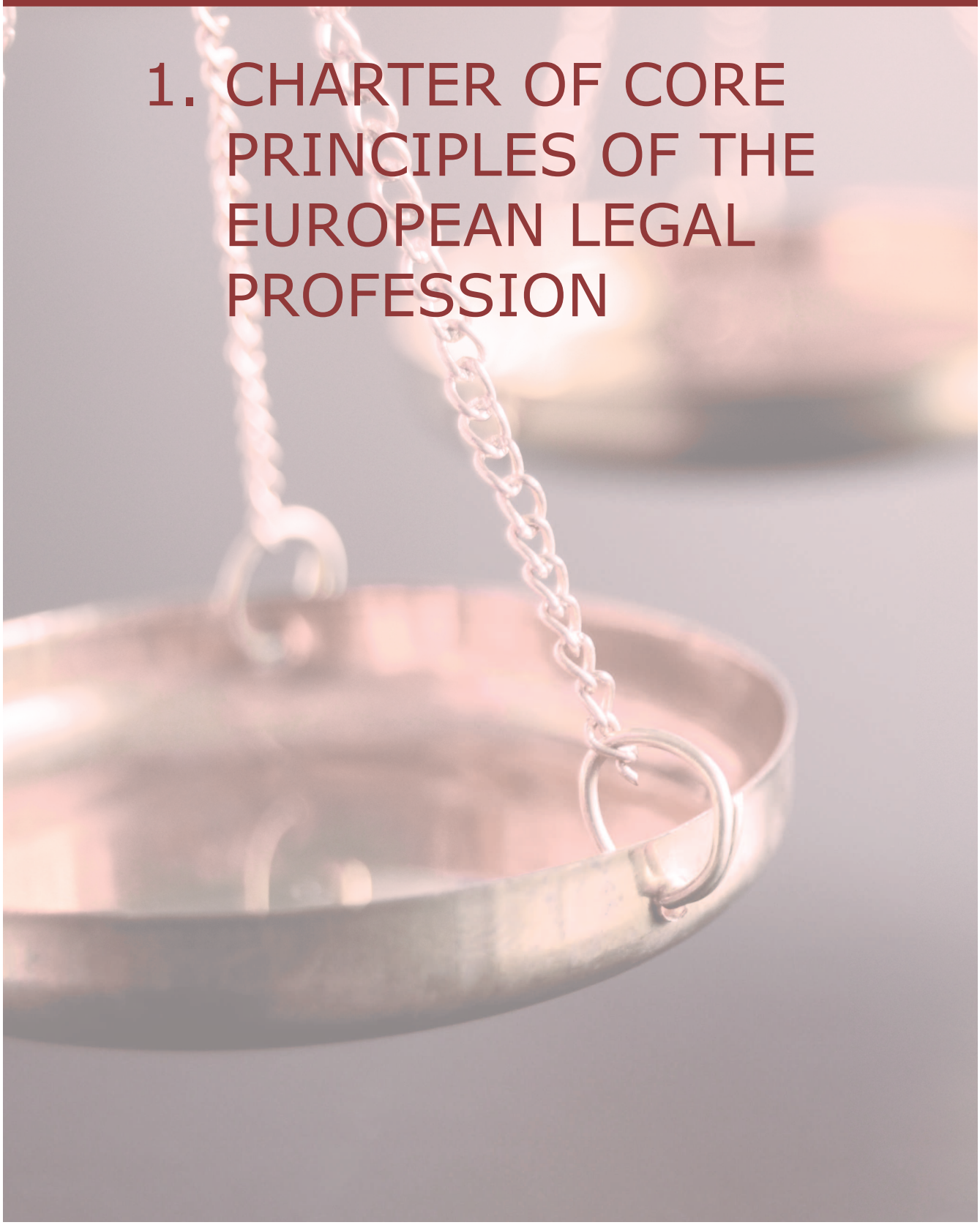
The ***Code of Conduct for European Lawyers*** dates back to 28 October 1988. It has been amended three times; the latest amendment took place at the plenary session in Oporto on 19 May 2006. It is a binding text on all Member States: all lawyers who are members of the bars of these countries (whether their bars are full, associate or observer members of the CCBE) have to comply with the Code in their cross-border activities within the European Union, the European Economic Area and the Swiss Confederation as well as within associate and observer countries.

These two texts include a commentary for the first one, and an explanatory memorandum for the second one.

It is unnecessary to emphasise the importance of the set of norms set out in these two documents, which are the basis of the deontology of the European legal profession, and which contribute to shaping the European lawyer and the European bar.

31 January 2008

CONTENT



1. CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION

"In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society."

– the CCBE's Code of Conduct for European Lawyers, article 1.1

There are core principles which are common to the whole European legal profession, even though these principles are expressed in slightly different ways in different jurisdictions. The core principles underlie the various national and international codes which govern the conduct of lawyers. European lawyers are committed to these principles, which are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention of Human Rights. Bars and Law Societies, courts, legislators, governments and international organisations should seek to uphold and protect the core principles in the public interest.

The core principles are, in particular:

(a) the independence of the lawyer, and the freedom of the lawyer to pursue the client's case;

(b) the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy;

(c) avoidance of conflicts of interest, whether between different clients or between the client and the lawyer;

(d) the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer;

(e) loyalty to the client;

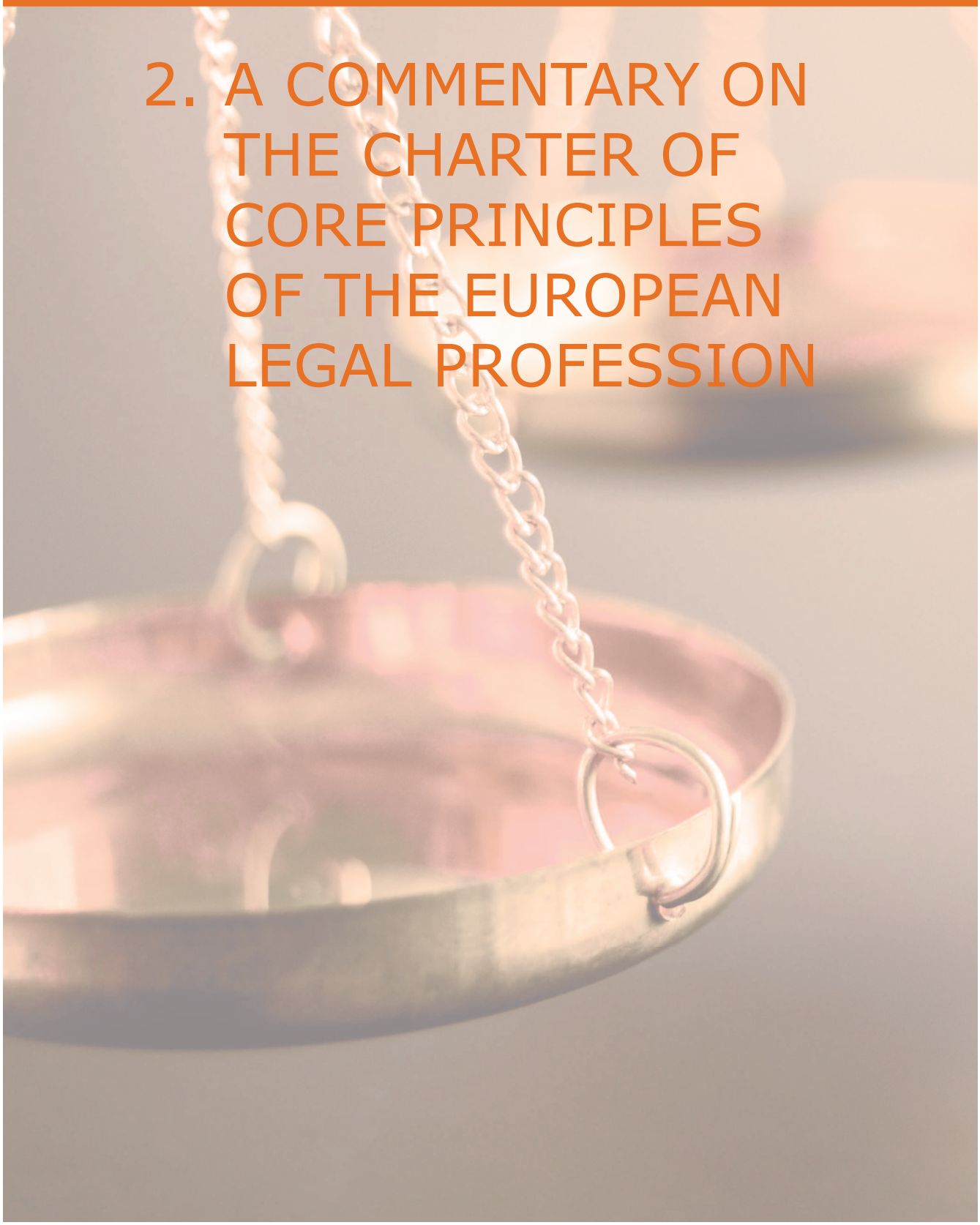
(f) fair treatment of clients in relation to fees;

(g) the lawyer's professional competence;

(h) respect towards professional colleagues;

(i) respect for the rule of law and the fair administration of justice; and

(j) the self-regulation of the legal profession.



2. A COMMENTARY ON THE CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION

1. On 25 November 2006 the CCBE unanimously adopted a "Charter of Core Principles of the European Legal Profession". The Charter contains a list of ten principles common to the whole European legal profession. Respect for these principles is the basis of the right to a legal defence, which is the cornerstone of all other fundamental rights in a democracy.

2. The core principles express the common ground which underlies all the national and international rules which govern the conduct of European lawyers.

3. The Charter takes into account:

   - national professional rules from states throughout Europe, including rules from non-CCBE states, which also share these common principles of European legal practice[1],
   - the CCBE's Code of Conduct for European Lawyers,
   - the Principles of General Application in the International Bar Association's International Code of Ethics[2],
   - recommendation Rec (2000) 21 of 25 October 2000 of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyer[3],
   - the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990[4],
   - the jurisprudence of the European Court of Human Rights and the European Court of Justice, and in particular the judgment of 19 February 2002 of the European Court of Justice in Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten (C-309/99)[5],
   - the Universal Declaration of Human Rights[6], the European Convention on Human Rights[7], and the European Union Charter of Fundamental Rights[8],
   - the European Parliament resolution on the legal professions and the general interest in the functioning of legal systems, 23 March 2006[9].

4. The Charter is designed to serve as a pan-European document, reaching out beyond the member, associate and observer states of the CCBE. It is hoped that the Charter will be of help, for instance, to bar associations that are struggling to establish their independence in Europe's emerging democracies.

5. It is hoped that the Charter will increase understanding among lawyers, decision makers and the public of the importance of the lawyer's role in society, and of the way in which the principles by which the legal profession is regulated support that role.

6. The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice. By

1 The national codes of conduct can be found on CCBE web site.
2 General Principles of the Legal Profession, adopted by the International Bar Association on 20 September 2006.
3 Recommendation No. R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at 727th meeting of the Ministers' Deputies).
4 Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
5 Case C-309/99 *J.C.J Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Avocaten,* [2002] ECR I-1577.
6 The Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948.
7 Convention for the Protection of Human Rights and Fundamental Freedoms, signed by the members of the Council of Europe on 4 November 1950 in Rome.
8 Charter of Fundamental Rights of the European Union, signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.
9 European Parliament resolution on the legal professions and the general interest in the functioning of the legal systems, adopted on 23 March 2006.

embodying all these elements, the lawyer, who faithfully serves his or her own client's interests and protects the client's rights, also fulfils the functions of the lawyer in society - which are to forestall and prevent conflicts, to ensure that conflicts are resolved in accordance with recognised principles of civil, public or criminal law and with due account of rights and interests, to further the development of the law, and to defend liberty, justice and the rule of law.

7. The CCBE trusts that judges, legislators, governments and international organisations will strive, along with bar associations, to uphold the principles set out in the Charter.

8. The Charter is prefaced by an extract from the preamble to the Code of Conduct for European lawyers, including the assertion that: "Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society." The rule of law is closely associated with democracy as currently understood in Europe.

9. The Charter's introductory paragraph claims that the principles in the Charter are essential for the fair administration of justice, access to justice and the right to a fair trial, as required by the European Convention on Human Rights. Lawyers and their bar associations will continue to be in the forefront in campaigning for these rights, whether in Europe's new emerging democracies, or in the more established democracies where such rights may be threatened.

Principle (a) – the independence of the lawyer, and the freedom of the lawyer to pursue the client's case:

A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts. Indeed without this independence from the client there can be no guarantee of the quality of the lawyer's work. The lawyer's membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers' independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients' cases, and may suffer imprisonment or death for attempting to do so.

Principle (b) – the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy:

It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others - the most intimate personal details or the most valuable commercial secrets - and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there can be no trust. The Charter stresses the dual nature of this principle - observing confidentiality is not only the lawyer's duty - it is a fundamental human right of the client. The rules of "legal professional privilege" prohibit communications between lawyer and client from being used against the client. In some jurisdictions the right to confidentiality is seen as belonging to the client alone, whereas in other jurisdictions "professional secrecy" may also require that the lawyer keeps secret from his or her own client communications from the other party's lawyer imparted on the basis of confidence. Principle (b) encompasses all these related concepts - legal professional privilege, confidentiality and professional secrecy. The lawyer's duty to the client remains even after the lawyer has ceased to act.

Principle (c) – avoidance of conflicts of interest, whether between different clients or between the client and the lawyer:

For the proper exercise of his or her profession, the lawyer must avoid conflicts of interest. So a lawyer may not act for two clients in the same matter if there is a conflict, or a risk of conflict, between the interests of those clients. Equally a lawyer must refrain from acting for a new client if the lawyer is in possession of confidential information obtained from another current or former client. Nor must a lawyer take on a client if there is a conflict of interest between the client and the lawyer. If a conflict of interest arises in the course of acting for a client, the lawyer must cease to act. It can be seen that this principle is closely linked to principles (b) (confidentiality), (a) (independence) and (e) (loyalty).

Principle (d) – the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer:

To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.

Principle (e) – loyalty to the client:

Loyalty to the client is of the essence of the lawyer's role. The client must be able to trust the lawyer as adviser and as representative. To be loyal to the client, the lawyer must be independent (see principle (a)), must avoid conflicts of interest (see principle (c)), and must keep the client's confidences (see principle (b)). Some of the most delicate problems of professional conduct arise from the interaction between the principle of loyalty to the client and principles which set out the lawyer's wider duties – principle (d) (dignity and honour), principle (h) (respect towards professional colleagues) and in particular principle (i) (respect for the rule of law and the fair administration of justice). In dealing with such issues the lawyer must make it clear to the client that the lawyer cannot compromise his or her duties to the court and to the administration of justice in order to put forward a dishonest case on behalf of the client.

Principle (f) – fair treatment of clients in relation to fees:

A fee charged by a lawyer must be fully disclosed to the client, must be fair and reasonable, and must comply with the law and professional rules to which the lawyer is subject. Although professional codes (and principle (c) in this Charter) stress the importance of avoiding conflicts of interest between lawyer and client, the matter of the lawyer's fees seems to present an inherent danger of such a conflict. Accordingly, the principle dictates the necessity of professional regulation to see that the client is not overcharged.

Principle (g) – the lawyer's professional competence:

It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Recently, post-qualification training (continuing professional development) has gained increasing emphasis as a response to rapid rates of change in law and practice and in the technological and economic environment. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.

Principle (h) – respect towards professional colleagues:

This principle represents more than an assertion of the need for courtesy – although even that is important in the highly sensitive and highly contentious matters in which lawyers are frequently involved on behalf of their respective clients. The principle relates to the role of the lawyer as intermediary, who can be trusted to speak the truth, to comply with professional rules and to keep his or her promises. The proper administration of justice requires lawyers to behave with respect to each other so that contentious matters can be resolved in a civilised way. Similarly it must be in the public interest for lawyers to deal in good faith with each other and not to deceive. Mutual respect between professional colleagues facilitates the proper administration of justice, assists in the resolution of conflicts by agreement, and is in the client's interest.

Principle (i) – respect for the rule of law and the fair administration of justice:

We have characterised part of the role of the lawyer as acting as a participant in the fair administration of justice. The same idea is sometimes expressed by describing the lawyer as an "officer of the court" or as a "minister of justice". A lawyer must never knowingly give false or misleading information to the court, nor should a lawyer ever lie to third parties in the course of his or her professional activities. These prohibitions frequently run counter to the immediate interests of the lawyer's client, and the handling of this apparent conflict between the interests of the client and the interests of justice presents delicate problems that the lawyer is professionally trained to solve. The lawyer is entitled to look to his or her bar association for assistance with such problems. But in the last analysis the lawyer can only successfully represent his or her client if the lawyer can be relied on by the courts and by third parties as a trusted intermediary and as a participant in the fair administration of justice.

Principle (j) – the self-regulation of the legal profession:

It is one of the hallmarks of unfree societies that the state, either overtly or covertly, controls the legal profession and the activities of lawyers. Most European legal professions display a combination of state regulation and self-regulation. In many cases the state, recognising the importance of the core principles, uses legislation to buttress them – for instance by giving statutory support to confidentiality, or by giving bar associations statutory power to make professional rules. The CCBE is convinced that only a strong element of self-regulation can guarantee lawyers' professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role.

3. CODE OF CONDUCT FOR EUROPEAN LAWYERS

This Code of Conduct for European Lawyers was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006. The Code also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007.

1. PREAMBLE

1.1. The Function of the Lawyer in society

In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society.

A lawyer's function therefore lays on him or her a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the courts and other authorities before whom the lawyer pleads the client's cause or acts on the client's behalf;
- the legal profession in general and each fellow member of it in particular;
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2. The Nature of Rules of Professional Conduct

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

1.3. The Purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of "double deontology", notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.

1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to a lawyer's cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code.

1.4. Field of Application *Ratione Personae*

This Code shall apply to lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Associate and Observer Members of the CCBE.

1.5. Field of Application *Ratione Materiae*

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

(a) all professional contacts with lawyers of Member States other than the lawyer's own;

(b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State.

1.6. Definitions

In this Code:

"Member State" means a member state of the European Union or any other state whose legal profession is included in Article 1.4.

"Home Member State" means the Member State where the lawyer acquired the right to bear his or her professional title.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent Authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

"Directive 77/249/EEC" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

2. GENERAL PRINCIPLES

2.1. Independence

2.1.1. The many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties.

2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests or in response to outside pressure.

2.2. Trust and Personal Integrity

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3. Confidentiality

2.3.1. It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2. A lawyer shall respect the confidentiality of all information that becomes known

to the lawyer in the course of his or her professional activity.

2.3.3. The obligation of confidentiality is not limited in time.

2.3.4. A lawyer shall require his or her associates and staff and anyone engaged by him or her in the course of providing professional services to observe the same obligation of confidentiality.

2.4. Respect for the Rules of Other Bars and Law Societies

When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organisations of the CCBE are obliged to deposit their codes of conduct at the Secretariat of the CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

2.5. Incompatible Occupations

2.5.1. In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.

2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he or she wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6. Personal Publicity

2.6.1. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

2.7. The Client's Interest

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession.

2.8. Limitation of Lawyer's Liability towards the Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his or her liabilities towards the client in accordance with the professional rules to which the lawyer is subject.

3. RELATIONS WITH CLIENTS

3.1. Acceptance and Termination of Instructions

3.1.1. A lawyer shall not handle a case for a party except on that party's instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him or her when the specific circumstances show that the identity, competence and authority are uncertain.

3.1.2. A lawyer shall advise and represent the client promptly, conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.

A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.

3.1.3. A lawyer shall not accept instructions unless he or she can discharge those instructions promptly having regard to the pressure of other work.

3.1.4. A lawyer shall not be entitled to exercise his or her right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2. Conflict of Interest

3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

3.2.2. A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.

3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3. Pactum de Quota Litis

3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.

3.3.2. By "pactum de quota litis" is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

3.3.3. "Pactum de quota litis" does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the Competent Authority having jurisdiction over the lawyer.

3.4. Regulation of Fees

A fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable, and shall comply with the law and professional rules to which the lawyer is subject.

3.5. Payment on Account

If a lawyer requires a payment on account of his or her fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6. Fee Sharing with Non-Lawyers

3.6.1. A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the professional rules to which the lawyer is subject.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

3.7. Cost of Litigation and Availability of Legal Aid

3.7.1. The lawyer should at all times strive to achieve the most cost-effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2. A lawyer shall inform the client of the availability of legal aid where applicable.

3.8. Client Funds

3.8.1. Lawyers who come into possession of funds on behalf of their clients or third parties (hereinafter called "client funds") have to deposit such money into an account of a bank or similar institution subject to supervision by a public authority (hereinafter called a "client account"). A client account shall be separate from any other account of the lawyer. All client funds received by a lawyer should be deposited into such an account unless the owner of such funds agrees that the funds should be dealt with otherwise.

3.8.2. The lawyer shall maintain full and accurate records showing all the lawyer's dealings with client funds and distinguishing client funds from other funds held by the lawyer. Records may have to be kept for a certain period of time according to national rules.

3.8.3. A client account cannot be in debit except in exceptional circumstances as expressly permitted in national rules or due to bank charges, which cannot be influenced by the lawyer. Such an account cannot be given as a guarantee or be used as a security for any reason. There shall not be any set-off or merger between a client account and any other bank account, nor shall the client funds in a client account be available to defray money owed by the lawyer to the bank.

3.8.4. Client funds shall be transferred to the owners of such funds in the shortest period of time or under such conditions as are authorised by them.

3.8.5. The lawyer cannot transfer funds from a client account into the lawyer's own account for payment of fees without informing the client in writing.

3.8.6. The Competent Authorities in Member States shall have the power to verify and examine any document regarding client funds, whilst respecting the confidentiality or legal professional privilege to which it may be subject.

3.9. Professional Indemnity Insurance

3.9.1. Lawyers shall be insured against civil legal liability arising out of their legal practice to an extent which is reasonable having regard to the nature and extent of the risks incurred by their professional activities.

3.9.2. Should this prove impossible, the lawyer must inform the client of this situation and its consequences.

4. RELATIONS WITH THE COURTS

4.1. Rules of Conduct in Court

A lawyer who appears, or takes part in a case, before a court or tribunal must comply with the rules of conduct applied before that court or tribunal.

4.2. Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings.

4.3. Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him- or herself or to any other person.

4.4. False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5. Extension to Arbitrators etc.

The rules governing a lawyer's relations with the courts apply also to the lawyer's relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5. RELATIONS BETWEEN LAWYERS

5.1. Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2. Co-operation among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

5.3. Correspondence between Lawyers

5.3.1. If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the first of the documents.

5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform the sender accordingly without delay.

5.4. Referral Fees

5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to him- or herself.

5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he or she knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6. (Deleted by decision of the Plenary Session in Dublin on 6 December 2002)

5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine him- or herself to recommending another lawyer or introducing that other lawyer to the client but instead him- or herself entrusts a correspondent with a particular matter or seeks the correspondent's advice, the instructing lawyer is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his or her personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of the instructing lawyer's disclaimer of responsibility for the future.

5.8. Continuing Professional Development

Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession.

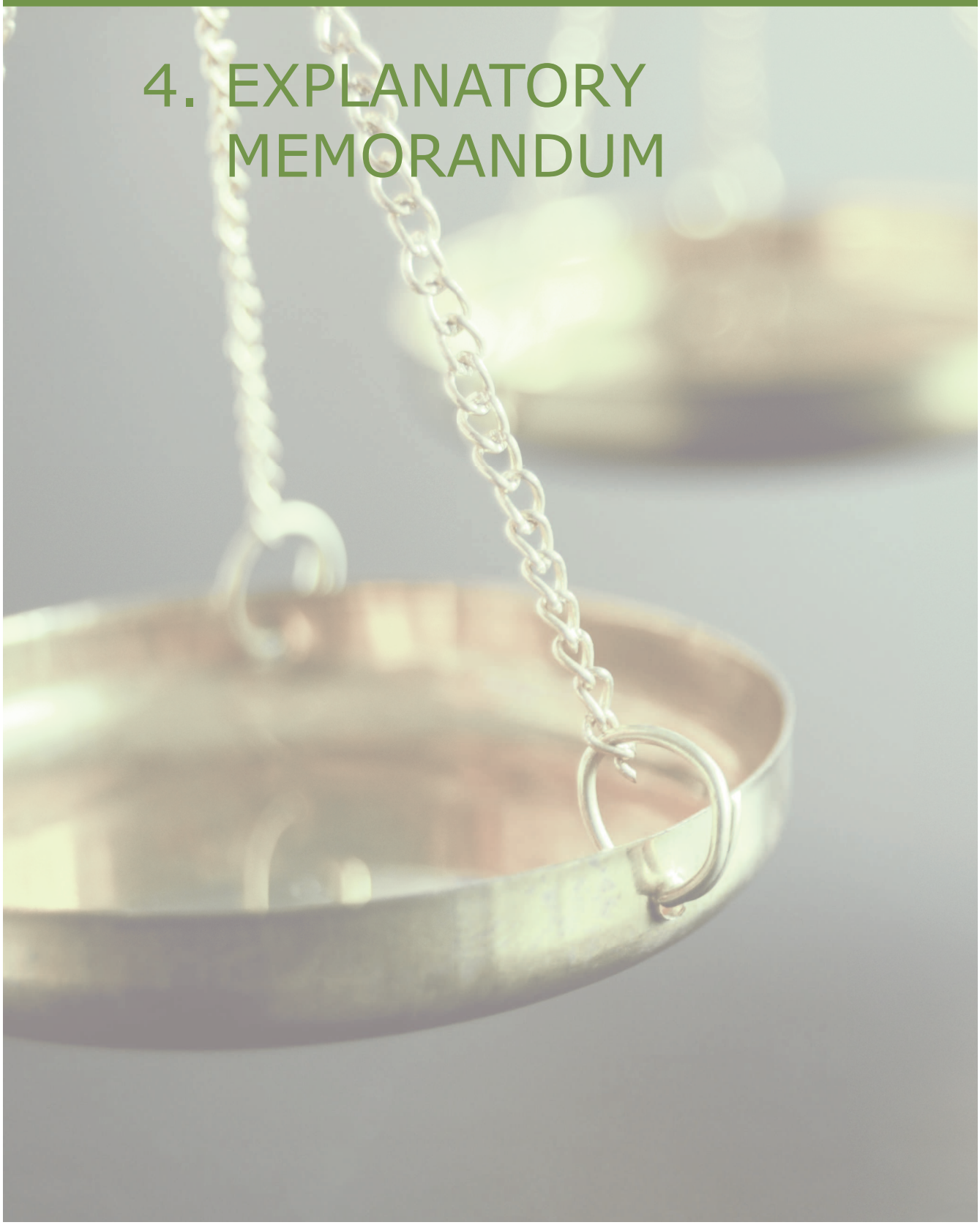
5.9. Disputes amongst Lawyers in Different Member States

5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct the lawyer shall draw the matter to the attention of that colleague.

5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.

5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

4. EXPLANATORY MEMORANDUM



This Explanatory Memorandum was prepared at the request of the CCBE Standing Committee by the CCBE's deontology working party, who were responsible for drafting the first version of the Code of Conduct itself. It seeks to explain the origin of the provisions of the Code, to illustrate the problems which they are designed to resolve, particularly in relation to cross-border activities, and to provide assistance to the Competent Authorities in the Member States in the application of the Code. It is not intended to have any binding force in the interpretation of the Code. The Explanatory Memorandum was adopted on 28 October 1988 and updated on the occasion of the CCBE Plenary Session on 19 May 2006. The Explanatory Memorandum also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007. The list of professions in the commentary on article 1.4 is subject to modification.

The original versions of the Code are in the French and English languages. Translations into other Community languages are prepared under the authority of the national delegations.

Commentary on Article 1.1 – The Function of the Lawyer in society

The Declaration of Perugia, adopted by the CCBE in 1977, laid down the fundamental principles of professional conduct applicable to lawyers throughout the EC. The provisions of Article 1.1 reaffirm the statement in the Declaration of Perugia of the function of the lawyer in society which forms the basis for the rules governing the performance of that function.

Commentary on Article 1.2 – The Nature of Rules of Professional Conduct

These provisions substantially restate the explanation in the Declaration of Perugia of the nature of rules of professional conduct and how particular rules depend on particular local circumstances but are nevertheless based on common values.

Commentary on Article 1.3 – The Purpose of the Code

These provisions introduce the development of the principles in the Declaration of Perugia into a specific Code of Conduct for lawyers throughout the EU, the EEA and Swiss Confederation, and lawyers of the Associate and Observer Members of the CCBE, with particular reference to their cross-border activities (defined in Article 1.5). The provisions of Article 1.3.2 lay down the specific intentions of the CCBE with regard to the substantive provisions in the Code.

Commentary on Article 1.4 – Field of Application Ratione Personae

The rules are stated to apply to all lawyers as defined in the Lawyers Services Directive of 1977 and the Lawyers Establishment Directive of 1998, and lawyers of the Associate and Observer Members of the CCBE. This includes lawyers of the states which subsequently acceded to the Directives, whose names have been added by amendment to the Directives. The Code accordingly applies to all the lawyers represented on the CCBE, whether as full Members, Associate Members or Observer Members, namely:

Albania	Avokat
Andorra	Advocat
Armenia	Pastaban
Austria	Rechtsanwalt
Belgium	Avocat / Advocaat / Rechtsanwalt
Bosnia and Herzegovina	Advokat / Odvjetnik
Bulgaria	Advokat
Croatia	Odvjetnik
Cyprus	Dikegóros
Czech Republic	Advokát
Denmark	Advokat
Estonia	Vandeadvokaat
Finland	Asianajaja / Advokat
FYROM	Advokat
France	Avocat
Georgia	Advokati / Advokatebi
Germany	Rechtsanwalt
Greece	Dikegóros
Hungary	Ügyvéd
Iceland	Lögmaður
Ireland	Barrister / Solicitor
Italy	Avvocato
Latvia	Zvērināts advokāts
Liechtenstein	Rechtsanwalt
Lithuania	Advokatas
Luxembourg	Avocat / Rechtsanwalt
Malta	Avukat / Prokuratur Legali
Montenegro	Advokat
Moldova	Avocat
Netherlands	Advocaat
Norway	Advokat
Poland	Adwokat / Radca prawny
Portugal	Advogado
Romania	Avocat
Serbia	Advokat
Slovak Republic	Advokát / Advokátka
Slovenia	Odvetnik / Odvetnica
Spain	Abogado / Advocat / Abokatu / Avogado
Sweden	Advokat
Switzerland	Rechtsanwalt / Anwalt / Fürsprech / Fürsprecher /Advokat/ avocat / avvocato / advocat
Turkey	Avukat
Ukraine	Advokat
United Kingdom	Advocate / Barrister / Solicitor

It is also hoped that the Code will be acceptable to the legal professions of other non-Member States in Europe and elsewhere so that it could also be applied by appropriate conventions between them and the Member States.

Commentary on Article 1.5 – Field of Application Ratione Materiae

The rules are here given direct application only to "cross-border activities", as defined, of lawyers within the EU, the EEA and Swiss Confederation and lawyers of the Associate and Observer Members of the CCBE - see above on Article 1.4, and the definition of "Member State" in Article 1.6. (See also above as to possible extensions in the future to lawyers of other states.) The definition of cross-border activities would, for example, include contacts in state A even on a matter of law internal to state A between a lawyer of state A and a lawyer of state B; it would exclude contacts between lawyers of state A in state A of a matter arising in state B, provided that none of their professional activities takes place in state B; it would include any activities of lawyers of state A in state B, even if only in the form of communications sent from state A to state B.

Commentary on Article 1.6 – Definitions

This provision defines a number of terms used in the Code, "Member State", "Home Member State", "Host Member State", "Competent Authority", "Directive 77/249/EEC" and "Directive 98/5/EC". The reference to "where the lawyer carries on cross-border activities" should be interpreted in light of the definition of "cross-border activities" in Article 1.5.

Commentary on Article 2.1 – Independence

This provision substantially reaffirms the general statement of principle in the Declaration of Perugia.

Commentary on Article 2.2 – Trust and Personal Integrity

This provision also restates a general principle contained in the Declaration of Perugia.

Commentary on Article 2.3 – Confidentiality

This provision first restates, in Article 2.3.1, general principles laid down in the Declaration of Perugia and recognised by the ECJ in the AM&S case (157/79). It then, in Articles 2.3.2 to 4, develops them into a specific rule relating to the protection of confidentiality. Article 2.3.2 contains the basic rule requiring respect for confidentiality. Article 2.3.3 confirms that the obligation remains binding on the lawyer even if he or she ceases to act for the client in question. Article 2.3.4 confirms that the lawyer must not only respect the obligation of confidentiality him- or herself but must require all members and employees of his or her firm to do likewise.

Commentary on Article 2.4 – Respect for the Rules of Other Bars and Law Societies

Article 4 of the Lawyers Services Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State providing services on an occasional or temporary basis in another Member State by virtue of Article 49 of the consolidated EC treaty, as follows:

(a) activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each Host Member State under the conditions laid down for lawyers established in that state, with the exception of any conditions requiring residence, or registration with a professional organisation, in that state;

(b) a lawyer pursuing these activities shall observe the rules of professional conduct of the Host Member State, without prejudice to the lawyer's obligations in the Member

State from which he or she comes;

(c) when these activities are pursued in the UK, "rules of professional conduct of the Host Member State" means the rules of professional conduct applicable to solicitors, where such activities are not reserved for barristers and advocates. Otherwise the rules of professional conduct applicable to the latter shall apply. However, barristers from Ireland shall always be subject to the rules of professional conduct applicable in the UK to barristers and advocates. When these activities are pursued in Ireland "rules of professional conduct of the Host Member State" means, in so far as they govern the oral presentation of a case in court, the rules of professional conduct applicable to barristers. In all other cases the rules of professional conduct applicable to solicitors shall apply. However, barristers and advocates from the UK shall always be subject to the rules of professional conduct applicable in Ireland to barristers; and

(d) a lawyer pursuing activities other than those referred to in (a) above shall remain subject to the conditions and rules of professional conduct of the Member State from which he or she comes without prejudice to respect for the rules, whatever their source, which govern the profession in the Host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that state, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the Host Member State and to the extent to which their observance is objectively justified to ensure, in that state, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

The Lawyers Establishment Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State practising on a permanent basis in another Member State by virtue of Article 43 of the consolidated EC treaty, as follows:

(a) irrespective of the rules of professional conduct to which he or she is subject in his or her Home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the Host Member State in respect of all the activities the lawyer pursues in its territory (Article 6.1);

(b) the Host Member State may require a lawyer practising under his or her home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that state lays down for professional activities pursued in its territory.

Nevertheless, a lawyer practising under his or her home-country professional title shall be exempted from that requirement if the lawyer can prove that he or she is covered by insurance taken out or a guarantee provided in accordance with the rules of the Home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the Competent Authority in the Host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the Home Member State (Article 6.3); and

(c) a lawyer registered in a Host Member State under his or her home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the Host Member State so permits for lawyers registered under the professional title used in that state (Article 8).

In cases not covered by either of these Directives, or over and above the requirements of these Directives, the obligations of a lawyer under Community law to observe the rules of other Bars and Law Societies are a matter of interpretation of any relevant provision,

such as the Directive on Electronic Commerce (2000/31/EC). A major purpose of the Code is to minimise, and if possible eliminate altogether, the problems which may arise from "double deontology", that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1).

Commentary on Article 2.5 – Incompatible Occupations

There are differences both between and within Member States on the extent to which lawyers are permitted to engage in other occupations, for example in commercial activities. The general purpose of rules excluding a lawyer from other occupations is to protect the lawyer from influences which might impair the lawyer's independence or his or her role in the administration of justice. The variations in these rules reflect different local conditions, different perceptions of the proper function of lawyers and different techniques of rule-making. For instance in some cases there is a complete prohibition of engagement in certain named occupations, whereas in other cases engagement in other occupations is generally permitted, subject to observance of specific safeguards for the lawyer's independence.

Articles 2.5.2 and 3 make provision for different circumstances in which a lawyer of one Member State is engaging in cross-border activities (as defined in Article 1.5) in a Host Member State when he or she is not a member of the Host State legal profession.

Article 2.5.2 imposes full observation of Host State rules regarding incompatible occupations on the lawyer acting in national legal proceedings or before national public authorities in the Host State. This applies whether the lawyer is established in the Host State or not.

Article 2.5.3, on the other hand, imposes "respect" for the rules of the Host State regarding forbidden or incompatible occupations in other cases, but only where the lawyer who is established in the Host Member State wishes to participate directly in commercial or other activities not connected with the practice of the law.

Commentary on Article 2.6 – Personal Publicity

The term "personal publicity" covers publicity by firms of lawyers, as well as individual lawyers, as opposed to corporate publicity organised by Bars and Law Societies for their members as a whole. The rules governing personal publicity by lawyers vary considerably in the Member States. Article 2.6 makes it clear that there is no overriding objection to personal publicity in cross-border practice. However, lawyers are nevertheless subject to prohibitions or restrictions laid down by their home professional rules, and a lawyer will still be subject to prohibitions or restrictions laid down by Host State rules when these are binding on the lawyer by virtue of the Lawyers Services Directive or the Lawyers Establishment Directive.

Commentary on Article 2.7 – The Client's Interest

This provision emphasises the general principle that the lawyer must always place the client's interests before the lawyer's own interests or those of fellow members of the legal profession.

Commentary on Article 2.8 – Limitation of Lawyer's Liability towards the Client

This provision makes clear that there is no overriding objection to limiting a lawyer's liability towards his or her client in cross-border practice, whether by contract or by use of a limited company, limited partnership or limited liability partnership. However it points out that this can only be contemplated where the relevant law and the relevant rules of conduct permit - and in a number of jurisdictions the law or the professional rules prohibit or restrict such limitation of liability.

Commentary on Article 3.1 – Acceptance and Termination of Instructions

The provisions of Article 3.1.1 are designed to ensure that a relationship is maintained between lawyer and client and that the lawyer in fact receives instructions from the client, even though these may be transmitted through a duly authorised intermediary. It is the responsibility of the lawyer to satisfy him- or herself as to the authority of the intermediary and the wishes of the client.

Article 3.1.2 deals with the manner in which the lawyer should carry out his or her duties. The provision that the lawyer shall undertake personal responsibility for the discharge of the instructions given to him or her means that the lawyer cannot avoid responsibility by delegation to others. It does not prevent the lawyer from seeking to limit his or her legal liability to the extent that this is permitted by the relevant law or professional rules - see Article 2.8.

Article 3.1.3 states a principle which is of particular relevance in cross-border activities, for example when a lawyer is asked to handle a matter on behalf of a lawyer or client from another state who may be unfamiliar with the relevant law and practice, or when a lawyer is asked to handle a matter relating to the law of another state with which he or she is unfamiliar.

A lawyer generally has the right to refuse to accept instructions in the first place, but Article 3.1.4 states that, having once accepted them, the lawyer has an obligation not to withdraw without ensuring that the client's interests are safeguarded.

Commentary on Article 3.2 – Conflict of Interest

The provisions of Article 3.2.1 do not prevent a lawyer acting for two or more clients in the same matter provided that their interests are not in fact in conflict and that there is no significant risk of such a conflict arising. Where a lawyer is already acting for two or more clients in this way and subsequently there arises a conflict of interests between those clients or a risk of a breach of confidence or other circumstances where the lawyer's independence may be impaired, then the lawyer must cease to act for both or all of them.

There may, however, be circumstances in which differences arise between two or more clients for whom the same lawyer is acting where it may be appropriate for the lawyer to attempt to act as a mediator. It is for the lawyer in such cases to use his or her own judgement on whether or not there is such a conflict of interest between them as to require the lawyer to cease to act. If not, the lawyer may consider whether it would be appropriate to explain the position to the clients, obtain their agreement and attempt to act as mediator to resolve the difference between them, and only if this attempt to mediate should fail, to cease to act for them.

Article 3.2.4 applies the foregoing provisions of Article 3 to lawyers practising in association. For example a firm of lawyers should cease to act when there is a conflict of interest between two clients of the firm, even if different lawyers in the firm are acting for each client. On the other hand, exceptionally, in the "chambers" form of association used by English barristers, where each lawyer acts for clients individually, it is possible for different lawyers in the association to act for clients with opposing interests.

Commentary on Article 3.3 – Pactum de Quota Litis

These provisions reflect the common position in all Member States that an unregulated agreement for contingency fees (pactum de quota litis) is contrary to the proper administration of justice because it encourages speculative litigation and is liable to be abused. The provisions are not, however, intended to prevent the maintenance or introduction of arrangements under which lawyers are paid according to results or only if the action or matter is successful, provided that these arrangements are under sufficient regulation and control for the protection of the client and the proper administration of justice.

Commentary on Article 3.4 – Regulation of Fees

Article 3.4 lays down three requirements: a general standard of disclosure of a lawyer's fees to the client, a requirement that they should be fair and reasonable in amount, and a requirement to comply with the applicable law and professional rules.

In many Member States machinery exists for regulating lawyers' fees under national law or rules of conduct, whether by reference to a power of adjudication by the Bar authorities or otherwise. In situations governed by the Lawyers Establishment Directive, where the lawyer is subject to Host State rules as well as the rules of the Home State, the basis of charging may have to comply with both sets of rules.

Commentary on Article 3.5 – Payment on Account

Article 3.5 assumes that a lawyer may require a payment on account of the lawyer's fees and/or disbursements, but sets a limit by reference to a reasonable estimate of them. See also on Article 3.1.4 regarding the right to withdraw.

Commentary on Article 3.6 – Fee Sharing with Non-Lawyers

In some Member States lawyers are permitted to practise in association with members of certain other approved professions, whether legal professions or not. The provisions of Article 3.6.1 are not designed to prevent fee sharing within such an approved form of association. Nor are the provisions designed to prevent fee sharing by the lawyers to whom the Code applies (see on Article 1.4 above) with other "lawyers", for example lawyers from non-Member States or members of other legal professions in the Member States such as notaries.

Commentary on Article 3.7 – Cost of Litigation and Availability of Legal Aid

Article 3.7.1 stresses the importance of attempting to resolve disputes in a way which is cost-effective for the client, including advising on whether to attempt to negotiate a settlement, and whether to propose referring the dispute to some form of alternative dispute resolution.

Article 3.7.2 requires a lawyer to inform the client of the availability of legal aid where applicable. There are widely differing provisions in the Member States on the availability of legal aid. In cross-border activities a lawyer should have in mind the possibility that the legal aid provisions of a national law with which the lawyer is unfamiliar may be applicable.

Commentary on Article 3.8 – Client Funds

The provisions of Article 3.8 reflect the recommendation adopted by the CCBE in Brussels in November 1985 on the need for minimum regulations to be made and enforced governing the proper control and disposal of clients' funds held by lawyers within the Community. Article 3.8 lays down minimum standards to be observed, while not interfering with the details of national systems which provide fuller or more stringent protection for clients' funds.

The lawyer who holds clients' funds, even in the course of a cross-border activity, has to observe the rules of his or her home Bar. The lawyer needs to be aware of questions which arise where the rules of more than one Member State may be applicable, especially where the lawyer is established in a Host State under the Lawyers Establishment Directive.

Commentary on Article 3.9 – Professional Indemnity Insurance

Article 3.9.1 reflects a recommendation, also adopted by the CCBE in Brussels in November 1985, on the need for all lawyers in the Community to be insured against the risks arising from professional negligence claims against them. Article 3.9.2 deals with the situation where insurance cannot be obtained on the basis set out in Article 3.9.1.

Commentary on Article 4.1 – Rules of Conduct in Court

This provision applies the principle that a lawyer is bound to comply with the rules of the court or tribunal before which the lawyer practises or appears.

Commentary on Article 4.2 – Fair Conduct of Proceedings

This provision applies the general principle that in adversarial proceedings a lawyer must not attempt to take unfair advantage of his or her opponent. The lawyer must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent of the other party's lawyer. See also on Article 4.5 below.

Commentary on Article 4.3 – Demeanour in Court

This provision reflects the necessary balance between respect for the court and for the law on the one hand and the pursuit of the client's best interest on the other.

Commentary on Article 4.4 – False or Misleading Information

This provision applies the principle that the lawyer must never knowingly mislead the court. This is necessary if there is to be trust between the courts and the legal profession.

Commentary on Article 4.5 – Extension to Arbitrators etc.

This provision extends the preceding provisions relating to courts to other bodies exercising judicial or quasi-judicial functions.

Commentary on Article 5.1 – Corporate Spirit of the Profession

These provisions, which are based on statements in the Declaration of Perugia, emphasise that it is in the public interest for the legal profession to maintain a relationship of trust and cooperation between its members. However, this cannot be used to justify setting the interests of the profession against those of justice or of clients (see also on Article 2.7).

Commentary on Article 5.2 – Co-operation among Lawyers of Different Member States

This provision also develops a principle stated in the Declaration of Perugia with a view to avoiding misunderstandings in dealings between lawyers of different Member States.

Commentary on Article 5.3 – Correspondence between Lawyers

In certain Member States communications between lawyers (written or by word of mouth) are normally regarded as to be kept confidential as between the lawyers. This means that the content of these communications cannot be disclosed to others, cannot normally be passed to the lawyers' clients, and at any event cannot be produced in court. In other Member States, such consequences will not follow unless the correspondence is marked as "confidential".

In yet other Member States, the lawyer has to keep the client fully informed of all relevant communications from a professional colleague acting for another party, and marking a letter as "confidential" only means that it is a legal matter intended for the recipient lawyer and his or her client, and not to be misused by third parties.

In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in a court, the lawyer should mark the letter as "without prejudice".

These important national differences give rise to many misunderstandings.

That is why lawyers must be very careful in conducting cross-border correspondence.

Whenever a lawyer wants to send a letter to a professional colleague in another Member State on the basis that it is to be kept confidential as between the lawyers, or that it is "without prejudice", the lawyer should ask in advance whether the letter can be accepted on that basis. A lawyer wishing that a communication should be accepted on such a basis must express that clearly in the communication or in a covering letter.

A lawyer who is the intended recipient of such a communication, but who is not in a position to respect, or to ensure respect for, the basis on which it is to be sent, must inform the sender immediately so that the communication is not sent. If the communication has already been received, the recipient must return it to the sender without revealing its contents or referring to it in any way; if the recipient's national law or rules prevent the recipient from complying with this requirement, he or she must inform the sender immediately.

Commentary on Article 5.4 – Referral Fees

This provision reflects the principle that a lawyer should not pay or receive payment purely for the reference of a client, which would risk impairing the client's free choice of lawyer or the client's interest in being referred to the best available service. It does not prevent fee-sharing arrangements between lawyers on a proper basis (see also on Article 3.6 above).

In some Member States lawyers are permitted to accept and retain commissions in certain cases provided: a) the client's best interests are served, b) there is full disclosure to the client and c) the client has consented to the retention of the commission. In such cases the retention of the commission by the lawyer represents part of the lawyer's remuneration for the service provided to the client and is not within the scope of the prohibition on referral fees which is designed to prevent lawyers making a secret profit.

Commentary on Article 5.5 – Communication with Opposing Parties

This provision reflects a generally accepted principle, and is designed both to promote the smooth conduct of business between lawyers and to prevent any attempt to take advantage of the client of another lawyer.

Commentary on Article 5.6 – Change of Lawyer

Article 5.6 dealt with change of lawyer. It was deleted from the Code on 6 December 2002.

Commentary on Article 5.7 – Responsibility for Fees

These provisions substantially reaffirm provisions contained in the Declaration of Perugia. Since misunderstandings about responsibility for unpaid fees are a common cause of difference between lawyers of different Member States, it is important that a lawyer who wishes to exclude or limit his or her personal obligation to be responsible for the fees of a foreign colleague should reach a clear agreement on this at the outset of the transaction.

Commentary on Article 5.8 – Continuing Professional Development

Keeping abreast of developments in the law is a professional obligation. In particular it is essential that lawyers are aware of the growing impact of European law on their field of practice.

Commentary on Article 5.9 – Disputes amongst Lawyers in Different Member States

A lawyer has the right to pursue any legal or other remedy to which he or she is entitled against a colleague in another Member State. Nevertheless it is desirable that, where a breach of a rule of professional conduct or a dispute of a professional nature is involved, the possibilities of friendly settlement should be exhausted, if necessary with the assistance of the Bars or Law Societies concerned, before such remedies are exercised.