

## CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

### Article 35. *Recognition and enforcement*

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.\*

(3) Filing, registration or deposit of an award with a court of the country where the award was made is not a pre-condition for its recognition or enforcement in this State.

### Article 36. *Grounds for refusing recognition or enforcement*

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

- (i) the parties to the arbitration agreement referred to in article 7 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

\*The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

- (ii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator(s) or of the arbitral proceedings or was otherwise unable to present his case; or
  - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
  - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the court finds that:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
  - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

### 3. Working papers submitted to the Working Group at its seventh session

- (a) *Composite draft text of a model law on international commercial arbitration: note by the secretariat (A/CN.9/WG.II/WP.48)*

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## INTRODUCTORY NOTE

1. This working paper contains the composite draft text of a model law on international commercial arbitration, prepared by the secretariat in accordance with the conclusions of the Working Group on International Contract Practices at its sixth session (Vienna, 29 August - 9 September 1983).<sup>1</sup> The draft text is preceded by a comparative table of numbers of draft articles showing on which previous draft articles the revised articles of the composite text are based.

Comparative table of numbers of draft articles

Article in composite draft (WP.48)	Previous draft article (A/CN.9/245; reproduced in this Yearbook, part two, II, A, 1)	Article in composite draft (WP.48)	Previous draft article (A/CN.9/245; reproduced in this Yearbook, part two, II, A, 1)
1	I, I bis (e)	18	XIV
2 (a)-(d)	I bis (a)-(d)	19	XV
2 (e)	—	20	XVI
3	I ter	21	B
4	I quater	22	D
5	III	23	C
6	V	24	XVII (1) (a), (2), (3)
7	II	25	XVIII
8 (1)	IV (1)	26	XVII (4), (5), (1) (b)
8 (2)	XIII (4)	27	E
9	IV (1)	28	XIX (1), (2), (4)
10	XIII (4)	29	XX
11 (1)	IV (2)	30	XXI
11 (2)-(5)	VIII	31	XXII
12 (1), (2)	IX	32	F
12 (3)	—	33	XXIV
13	X	34 (1)	XXIX
14	XI	34 (2)-(4)	XXX
15	XII	35	XXV, XXVI
16	XIII	36	XXVII, XXVIII
17	—		

2. It may be noted that the secretariat did not prepare any explanatory footnotes to the composite draft text, which represents a direct implementation of the Working Group's decisions on the individual previous draft articles. However, the secretariat will submit to the Working Group two further notes. One, to be published as document A/CN.9/WG.II/WP.49 (reproduced in this *Yearbook*, part two, II, B, 3, b), will deal with the territorial scope of application and related issues, including questions of conflict of laws. The other note, to be published as document A/CN.9/WG.II/WP.50 (reproduced in this *Yearbook*, part two, II, B, 3, c), will contain some annotations on articles of the composite draft and deal with a variety of issues which the Working Group may wish to consider, or reconsider, in its overall review of the draft model law.

3. Finally, it may be noted that the headings of chapters and of articles are presented by the secretariat in an attempt to facilitate reference. The Working Group may wish to consider which headings should be retained in the final draft.

<sup>1</sup>"Report of the Working Group on International Contract Practices on the work of its sixth session" (A/CN.9/245) paras. 12-220; reproduced in this *Yearbook*, part two, II, A, 1.

## Composite draft text of a model law on international commercial arbitration

## CHAPTER I. GENERAL PROVISIONS

Article 1. *Scope of application*

(1) This Law applies to international commercial\* arbitration. Its provisions are subject to any multi-lateral or bilateral agreement entered into by this State.

(2) [An] arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the [territory of the] State in which the parties have their places of business:

(i) the place of arbitration if determined in the arbitration agreement;

(ii) any place where [a substantial] [the preponderant] part of the [characteristic] obligations of the [commercial relationship] [transaction] are to be performed or where its centre of activity or its subject-matter is located.

(3) For the purposes of paragraph (2), if a party has more than one place of business, the relevant place of business is that which has the closest relationship to the arbitration agreement. If a party does not have a place of business, reference is to be made to his habitual residence.

Article 2. *Definitions and rules of interpretation*

For the purposes of this Law:

(a) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(b) "court" means a body or organ of the judicial system of a country;

(c) where a provision of this Law grants the parties freedom to determine a certain issue, such freedom includes the right of the parties to authorize a third person or institution to make that determination;

(d) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(e) any written communication is deemed to have been received if it is physically delivered to the

\*The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, irrespective of whether the parties are "commercial persons" (merchants) under any given national law. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.

addressee or if it is delivered at his place of business, habitual residence or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known place of business or residence. The communication shall be deemed to have been received on the day it is so delivered.

#### Article 3. *Manadatory provisions*

The parties may not derogate from the following provisions of this Law: articles . . .

#### Article 4. *Waiver of right to object*

A party who knows [or ought to have known] that any provision of this Law [from which the parties may derogate] [or any requirement under the arbitration agreement] has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without delay [or, if a time-limit is provided therefor, within such period of time] shall be deemed to have waived his right to object.

#### [Article 5. *Scope of court intervention*

In matters governed by this Law [concerning the arbitral proceedings or the composition of the arbitral tribunal, courts may exercise supervisory or assisting functions only if] [, no court shall intervene except where] so provided in this Law.]

#### Article 6. *Special court for certain functions of arbitration assistance and supervision*

The Court with jurisdiction to perform the functions referred to in articles 11 (3), (4), 13 (3), 14, 17 (1), [32 (2) Variant A] and 34 (3) shall be the . . . (blanks to be filled by each State when enacting the model law).

## CHAPTER II. ARBITRATION AGREEMENT

#### Article 7. *Definition and form of arbitration agreement*

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration, whether or not administered by a permanent arbitral institution, all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document assigned by the parties or in an exchange of letters, telex, telegrammes or other means of tele-communication which provide a record of the agreement. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause a term of the contract.

#### Article 8. *Arbitration agreement and substantive claim before court*

(1) A court, before which an action is brought in a matter which is the subject of an arbitration agreement, shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where, in such case, arbitral proceedings had already commenced, the arbitral tribunal may continue the proceedings while the issue [of its jurisdiction] is pending with the court [unless the court orders a stay or suspension of the arbitral proceedings].

#### Article 9. *Arbitration agreement and interim measures by court*

It is not incompatible with the arbitration agreement for a party to request, before or during arbitral proceedings, from a court an [interim measure of protection] [interim measure or a measure of conservation] and for a court to grant such measure.

## CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

#### Article 10. *Number of arbitrators*

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

#### Article 11. *Appointment of arbitrators*

(1) No person shall be by reason of his nationality or citizenship precluded from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days after having been requested to do so by the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days from their appointment, the appointment shall be made, upon request of a party, by the Court specified in article 6;

(b) if, in an arbitration with a sole arbitrator, the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the Court specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure; or

(b) the parties, or two arbitrators, are unable to reach an agreement expected from them under such procedure; or

(c) an appointing authority fails to perform any function entrusted to it under such procedure,

any party may request the Court specified in article 6 to take the necessary measure instead, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) to the Court specified in article 6 shall be final. The Court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality or citizenship other than those of the parties.

#### Article 12. *Grounds for challenge*

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall [without delay] disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and thereafter, shall without delay disclose any such circumstances to the parties unless they have already been informed by him of these circumstances.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

(3) The fact that, in cases under article 13 (2) or 14, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator does not imply acceptance of the validity of any ground referred to in [that provision] [paragraph (2) of this article or in article 14].

#### Article 13. *Challenge procedure*

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after knowing any circumstance referred to in article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged

arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) is not successful, the challenging party may request, within fifteen days [after having received the decision rejecting the challenge], from the Court specified in article 6 a decision on the challenge which shall be final; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings.

#### Article 14. *Failure or impossibility to act*

If an arbitrator [fails to act or becomes *de jure* or *de facto* unable to perform his functions] [becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act], his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request from the Court specified in article 6 a decision on the termination of the mandate which shall be final.

#### Article 15. *Appointment of substitute arbitrator*

[Where the mandate of an arbitrator terminates under article 13 or 14 or because of his resigning for any other reason,] a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced, unless the parties agree otherwise.

### CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

#### Article 16. *Competence to rule on own jurisdiction*

(1) The arbitral tribunal has the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract 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.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim. A party is not precluded from raising such plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal has exceeded its terms of reference shall be raised promptly after the arbitral tribunal has indicated its intention to [deal with] [decide on] the matter alleged to be outside the terms of reference. The arbitral tribunal may admit a later plea if it deems the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) either as a preliminary question or in an award on the merits. [In either case, a ruling by the arbitral tribunal that it has jurisdiction may be contested by any party only in an action for setting aside the arbitral award.]

#### Article 17. *Concurrent court control*

(1) [Notwithstanding the provisions of article 16,] a party may [at any time] request the Court specified in article 6 to decide whether or not there exists a valid arbitration agreement and [, if arbitral proceedings have commenced,] whether or not the arbitral tribunal has jurisdiction [with regard to the dispute referred to it].

(2) While such issue is pending with the Court, the arbitral tribunal may continue the proceedings [unless the Court orders a stay or suspension of these proceedings].

#### Article 18. *Power of arbitral tribunal to order interim measures*

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any interim measure [of protection it deems necessary in respect of the subject-matter of the dispute]. The arbitral tribunal may require of a party or the parties security for the costs of such measure.

### CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

#### Article 19. *Determination of rules of procedure*

(1) Subject to the [mandatory] provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that each party is given a full opportunity of presenting his case. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

#### Article 20. *Place of arbitration*

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal.

(2) Notwithstanding the provisions of the preceding paragraph, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property, or documents.

#### Article 21. *Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, the arbitral proceedings [shall be deemed to] commence on the date at which a request that a [particular] [specified] dispute be referred to arbitration is received by the respondent [provided that such a request identifies the claim].

#### Article 22. *Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing [of witnesses, experts or the parties], and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or [one of the] languages agreed upon by the parties or determined by the arbitral tribunal.

#### Article 23. *Statements of claim and defence*

(1) Within the period of time stipulated by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars. The parties may annex to their statements all documents they deem relevant or may add a reference to the documents or other evidence they will submit.

(2) [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.

#### Article 24. *Hearings and written proceedings*

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold hearings or whether the proceedings shall be conducted on the basis of documents and other materials. However, if a party so requests, the arbitral tribunal shall, at the appropriate stage of the proceedings, hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.

(2) In order to enable the parties to be present at any hearing and at any meeting of the arbitral tribunal for inspection purposes, they shall be given sufficient notice in advance.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or other document, on which the arbitral tribunal may rely in making its decision, shall be communicated to the parties.

### Article 25. *Default of a party*

Unless otherwise agreed by the parties, if, without showing sufficient cause for the failure,

(a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral proceedings shall be terminated;

(b) the respondent fails to communicate his statement of defence in accordance with article 23 (1),

*Variant A:* the arbitral proceedings shall continue;

*Variant B:* the arbitral tribunal shall continue the proceedings without treating such failure as an admission of the claimant's allegations;

*Variant C:* the arbitral tribunal shall treat this as a denial of the claim and continue the proceedings;

(c) any party fails [to comply with a request by the arbitral tribunal] to appear at a hearing, or to produce documentary evidence, the arbitral tribunal [may] [shall] continue the proceedings [and may make the award on the evidence before it].

### Article 26. *Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties before the appointment of the first arbitrator, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the tribunal.

(2) The [expert may, within his terms of reference, require a party to give him] [arbitral tribunal may require a party to give the expert] any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(3) The expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to interrogate him and to present expert witnesses in order to testify on the points at issue.

### Article 27. *Court assistance in taking evidence*

(1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The request shall [be in the language of the court, include a certified copy of the arbitration agreement and] specify:

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the [necessary information on the] evidence to be obtained, in particular

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document or other property to be inspected.

(2) The court may, within its competence and according to its rules on taking evidence [, including provisions on admissibility and on enforcement procedures], execute the request either by taking the evidence itself or by ordering that the evidence be provided directly to the arbitral tribunal. If so [suggested] [demanded] in the request, the court may transmit the request to a competent court of a foreign State [where assistance in obtaining evidence is required].

[(3) Where a foreign court transmits to a competent court of this State a request for assistance in taking evidence relating to arbitral proceedings in that foreign State, the court of this State shall treat such request as having been made by that foreign court itself].

## CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

### Article 28. *Rules applicable to substance of dispute*

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as [are chosen] [may be agreed] by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

### Article 29. *Decision-making by panel of arbitrators*

In arbitral proceedings with more than one arbitrator, any award including interim [, interlocutory] and partial award, and any other decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, the parties or the arbitral tribunal may authorize a presiding arbitrator to decide questions of procedure [on his own].

### Article 30. *Settlement*

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and executory force as any other award on the merits of the case.

### Article 31. *Form and contents of award*

(1) An award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any missing signature is stated.

(2) 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 or the award is an award on agreed terms under article 30.

(3) An award shall state its date and the place of arbitration as determined in accordance with article 20 (1). The award shall be deemed to have been made at that place.

(4) After an award is made, a copy thereof signed by the arbitrators in accordance with paragraph (1) of this article shall be communicated to each party.

### Article 32. *Termination of proceedings*

#### *Variant A:*

(1) The arbitral proceedings are terminated:

(a) by the making of the final award which constitutes or completes the disposition of all claims submitted to arbitration; or

(b) by an agreement of the parties that the arbitral proceedings are to be terminated at a specified date [or after expiry of a specified period of time]; or

(c) by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) After having given suitable notice to the parties, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings

(a) when the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; or

(b) if for any other reason the continuation of the proceedings becomes unnecessary or inappropriate.

[Where the arbitral tribunal fails to issue an order of termination, any party may request from the Court specified in article 6 a ruling on the termination of the proceedings.]

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4).

#### *Variant B:*

(1) The arbitral proceedings are terminated either with the final award or by agreement of the parties or by an order of termination [by the arbitral tribunal] [which the arbitral tribunal may issue when the continuation of the proceedings appears unnecessary or inappropriate].

(2) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4).

### Article 33. *Correction, interpretation and completion of award*

(1) Within thirty days after the receipt of the award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may request the arbitral tribunal:

(a) 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; and

(b) to give [, within thirty days,] an interpretation of a specific point or part of the award; such interpretation shall form part of the award.

(2) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days after the receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award; if the arbitral tribunal considers such request to be justified and that the omission can be rectified without any further hearings or evidence, it shall make that additional award [within sixty days after the receipt of the request].

(3) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

## CHAPTER VII. RECOURSE AGAINST AWARD

### Article 34. *Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award made [in the territory of this State] [under this Law] may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the Court specified in article 6 only if

(a) the party making the application furnishes proof that:

(i) the parties to the arbitration agreement referred to in article 7 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of the arbitrator(s) or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains



decisions on matters not submitted to arbitration may be set aside; or

- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the [mandatory provisions of this Law and the] agreement of the parties or, failing such agreement, was not in accordance with this Law; or

(b) the Court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the award or any decision contained therein is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award in accordance with article 31 (4) [or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal].

(4) The Court, instead of setting aside the award, [may order, where appropriate, that the arbitral proceedings be continued] [may authorize the continuation of arbitral proceedings where this would permit an omission or other procedural defect to be cured without having to set aside the award].

## CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

### Article 35. *Procedural conditions of recognition and enforcement*

(1) An arbitral award [within the scope of article 1 (1)] [made within or outside the territory of this State] shall be recognized as binding, subject to the provisions of article 36.

(2) To obtain enforcement, an application shall be made in writing to the competent court, accompanied by the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the said award or agreement is not made in an official language of this State, the party applying for enforcement of the award shall supply a duly certified translation of these documents into such language.\*

### Article 36. *Grounds for refusing recognition or enforcement*

(1) Recognition or enforcement of an arbitral award [made within or outside the territory of this State] may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) the parties to the arbitration agreement referred to in article 7 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator(s) or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) A party, against whom recognition or enforcement of an award made [in the territory of this State] [under this Law] is sought during the period of time referred to in article 34 (3), may raise any objection in accordance with paragraph (1) of this article only by an application for setting aside to the Court specified in article 6.

[(3) Where a party seeks recognition, but not enforcement, of an award before an authority other than a court, the other party may request the Court specified in article 6 to order refusal of recognition in accordance with paragraph (1) of this article.]

(4) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) or (2) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to give suitable security.

\*The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions [for enforcement of awards made in that State or under the law of that State].