

Note on Article 30Para 3

(bracketed)

1. This new paragraph is an innovation. To my astonishment no comments were made as to this idea at New Delhi. Nevertheless I think this para 3 and the commentary on this para 3 needs further consideration.

When finally accepted it should find its place in a separate article. Contrary to the correction of the award (heading of Article 30) we deal here with quite another subject: an additional award.

There are no precedents to which we can refer like we could do concerning "correction". We are really introducing here something quite new. There are obvious practical reasons for doing so.

2. The dangers we should avoid are that our innovation in the Rules might be regarded as contrary to national arbitration laws. I refer to those national arbitration laws that give a right to set the award aside when not all points at issue are dealt with by the arbitrators. It is also agreed that parties cannot limit the grounds for setting aside in their arbitration agreement; this would be against public order.

When ^{et} we do in Article 30, para 3, is no such limitation. On the contrary we extend the authority of the arbitrators in order to complete their award, when their attention has been drawn to an omission they have made. This should be done within a short period (~~over~~ 15 days), with copy of the request to the other party.

The new possibility should be limited to those omissions that can ^{be} repaired without further hearing. All the elements to render an additional award should be available. We only aim at a repair of a clearcut omission that can, without further evidence, easily be repaired within a short period, at the utmost within 60 days.

3. It may be considered whether this conception has been clearly enough expressed in the text of para 3. This now states only:

If the arbitrators consider the request justified, they shall complete their award within 60 days of receipt of the request.

Should this not be developed a little further f.i. as follows:

If the arbitrators consider the request justified and they feel able to repair the omission without any further evidence, they shall complete their award within 60 days of receipt of ~~the~~ request.

4. For the same reason (clarification and in order to make our introduction of the new idea less vulnerable to attack) I propose to alter the commentary on para 3 as follows:

Commentary

2. Para 3 is designed

(this first paragraph can remain unchanged)

By submitting their arbitration to the Uncitral Arbitration Rules the parties have agreed to enlarge the power of the arbitrators and have entitled them not only to correct clerical errors but also to complete their award in case of an omission.

Contrary to the correction of a clerical error which can be done by a letter signed by the arbitrators, the repair of an omission in their award requires an additional award that, like the main award, has to comply with the provisions of Article 26. For the rendering of this award only a short time limit has been provided: at the utmost 60 days. This time period is justified as no exchange of written pleadings and no further hearings will be held. The repair of the omission may only take place when the point at issue has been raised in the arbitral proceedings and can be decided upon without further evidence.

This f.i. is the case when interests have been claimed but arbitrators have omitted to give their decision on this point or, other example, when arbitrators omitted to decide on specific arbitration-costs although they were claimed in the arbitral proceedings.

Para 3 only aims at giving an opportunity for repair of those omissions that can easily be repaired. In the absence of a provision like para 3, a lengthy and ^{costly} ~~costly~~ arbitration might be totally invalidated. Permitting completion of the award on points at issue that have been presented in the arbitral proceedings would be in the interest of an efficient and effective disposition of the dispute between the parties.