

Session of The Hague - 1875

Draft Regulations for International Arbitral Procedure

The Institute,

desiring that recourse to arbitration for the settlement of international disputes be resorted to more and more by civilized peoples, hopes to be of service toward the realization of such progress by proposing for arbitral tribunals the following eventual regulations. It recommends them for adoption in whole or in part to States that may conclude compromis.

Article 1.

The compromis is concluded by means of a valid international treaty.

It may be:

- (a) In advance, either for all differences or for differences of a certain kind to be determined, that may arise between the contracting States.
- (b) For one difference or several differences already arisen between the contracting States.

Article 2.

The compromis gives to each contracting party the right of appealing to the arbitral tribunal that it designates for the decision of the dispute. In the absence of a designation of the number and the names of the arbitrators in the compromis, the arbitral tribunal shall settle upon this according to the provisions laid down by the compromis or by another convention.

In the absence of any provision, each of the contracting parties chooses on its own part an arbitrator, and the two arbitrators thus named choose a third arbitrator or designate a third person who shall select him.

If the two arbitrators named by the parties cannot agree upon the choice of a third arbitrator, or if one of the parties refuses the cooperation that it owes under the compromis for the formation of the arbitral tribunal, or if the person designated refuses to make a choice, the compromis becomes of no effect.

Article 3.

If at the outset, or because they have been unable to come to an agreement upon the choice of arbitrators, the contracting parties have agreed that the arbitral tribunal should be formed by a third person designated by them, and if the designated person takes upon himself the formation of the arbitral tribunal, the steps to be followed to this end shall in the first instance be in accordance with the provisions of the compromis. In the absence of provisions, the designated third person may either himself name the arbitrators or propose a certain number of persons among whom each of the parties shall choose.

Article 4.

Sovereigns and heads of Governments without any restriction shall be eligible to be named international arbitrators, and also all persons who have the capacity to exercise the functions of arbitrator under the common law of their country.

Article 5.

If the parties have legally agreed on arbitrators individually determined, the incapacity of or a valid exception to even a single one of these arbitrators voids the entire compromis, unless the parties can come to an accord upon another competent arbitrator.

If the compromis does not carry an individual determination of the arbitrator in question, it is necessary, in case of incapacity or valid exception, to follow the course prescribed for the original choice (Articles 2, 8) .

Article 6.

The declaration of acceptance of the office of arbitrator is made in writing.

Article 7

If an arbitrator refuses the arbitral office, or if he withdraws after having accepted it, or if he dies, or if he becomes insane, or if he is legally challenged by reason of incapacity under the terms of Article 4, application of the provisions of Article 5 shall be made.

Article 8.

If the seat of the arbitral tribunal is not mentioned in the compromis or in a subsequent convention between the parties, its determination is made by the arbitrator or a majority of the arbitrators.

The arbitral tribunal is authorized to change its seat only in case the accomplishment of its functions at the place agreed upon is impossible or clearly dangerous.

Article 9.

The arbitral tribunal, if composed of several members, appoints one of them as president, taken from its number, and selects one or more secretaries.

The arbitral tribunal decides in what language or languages its deliberations and the arguments of the parties shall take place, and the documents and other instruments of proof shall be presented. It keeps a record of its deliberations.

Article 10.

All members shall be present at the deliberations of the arbitral tribunal. The tribunal may nevertheless delegate to one or several members or even commit to third persons certain investigations.

If the arbitrator is a State or its head, a municipal or other corporation, an authority, a faculty of law, a learned society, or the actual president of the municipal or other corporation or authority, faculty or company, all the arguments may take place with the consent of the parties before the commissioner named ad hoc by the arbitrator. A protocol thereof shall be drawn up.

Article 11.

No arbitrator is authorized without the consent of the parties to name a substitute.

Article 12.

If the compromis or a subsequent convention between the parties prescribes for the arbitral tribunal the procedure to be followed, or the observance of a determined and positive law of procedure, the arbitral tribunal must conform to that provision. In the absence of such a provision, the procedure to be followed shall be freely chosen by the arbitral tribunal, which is only bound to conform to the principles that it has declared to the parties that it desires to follow.

The direction of the arguments belongs to the president of the arbitral tribunal.

Article 13.

Each of the parties may appoint one or more representatives before the arbitral tribunal.

Article 14.

Exceptions based on incapacity of arbitrators should be advanced before any other. If the parties are silent, any subsequent objection is inadmissible, except in cases of incapacity originating subsequently.

The arbitrators are to decide on the exceptions based on the incompetence of the arbitral tribunal, except in the recourse referred to in Article 24, paragraph 2, and in conformity with the provisions of the compromis.

There shall be no appeal from preliminary judgments on competence, unless coupled with an appeal from the final arbitral decision.

In case doubt as to competence depends on the interpretation of a clause of the compromis, the parties are deemed to have given to the arbitrators the power to decide the question, in the absence of a stipulation to the contrary.

Article 15.

In the absence of provisions in the compromis to the contrary, the arbitral tribunal has the power :

1. To determine the forms and periods in which each party must, through its duly authorized representatives, present its conclusions, establish them in fact and in law, submit its instruments of proof to the tribunal, communicate them to the adverse party, produce the documents whose production the adverse party requires ;
2. To hold as admitted the contentions of each party which are not clearly disputed by the adverse party, as well as the alleged contents of documents which the adverse party fails to produce without sufficient reasons;
3. To order new hearings, to require from each party explanation of doubtful points;
4. To issue orders of procedure (on the conduct of the case), to cause proofs to be furnished, and, if necessary, to call upon the competent tribunal for judicial acts for which the arbitral tribunal is not qualified, particularly sworn testimony of experts and witnesses ;
5. To decide, in its free discretion, upon the interpretation of the documents produced and generally upon the worth of the instruments of proof presented by the parties.

The forms and periods mentioned under Nos. 1 and 2 of the present article shall be determined by the arbitrators in a preliminary order.

Article 16.

Neither the parties nor the arbitrators can of their own accord involve any other States or third persons whatever in the case without special authorization expressed in the compromis and the previous consent of the third party.

The voluntary intervention of a third party is admissible only with the consent of the parties that have concluded the compromis.

Article 17.

Counter-claims cannot be brought before the arbitral tribunal except so far as permitted by the compromis, or except when the two parties and the tribunal are in accord in admitting them.

Article 18.

The arbitral tribunal gives judgment according to the principles of international law, unless the compromis imposes upon it different rules or leaves the decision to the free discretion of the arbitrators.

Article 19.

The arbitral tribunal cannot refuse to give judgment under the pretext that it is not sufficiently informed either on the facts or on the legal principles that should be applied.

It must decide definitively each of the points in controversy. Nevertheless, if the compromis does not provide for a simultaneous definitive decision of all the points, the tribunal may, while deciding definitively certain points, reserve the others for a later proceeding.

The arbitral tribunal may render interlocutory or preliminary decrees.

Article 20.

The delivery of the final decision must take place within the time fixed by the compromis or by a subsequent convention. In the absence of other determination, the period of two years is considered as agreed upon, beginning from the day of the conclusion of the compromis. The day of conclusion is not included therein; nor is the time within which one or more arbitrators may have been prevented, by force majeure, from discharging their duties.

In case the arbitrators, by interlocutory decrees, order investigations, the time is increased by one year.

Article 21.

Every final or provisional decision shall be made by a majority of all the arbitrators named, even when one or more of the arbitrators refuse to take part therein.

Article 22.

If the arbitral tribunal finds that the contentions of none of the parties are established, it must declare this, and, if it is not limited in this respect by the compromis, it must lay down the real state of the law with respect to the parties in dispute.

Article 23.

The arbitral award must be reduced to writing, and contain a statement of reasons, unless that is dispensed with under the stipulations of the compromis. It should be signed by each of the members of the arbitral tribunal. If the minority refuses to sign, the signature of the majority is sufficient, with the written declaration that the minority has refused to sign.

Article 24.

The award, with the reasons, if stated, is notified to each party. The notification is effected by communication of a copy to the representative of each party, or to an empowered agent of each party appointed ad hoc.

Even if it has been communicated only to the representative or to the empowered agent of one party, the award can no longer be changed by the arbitral tribunal.

The tribunal, however, has the right, so long as the time mentioned in the compromis has not expired, to correct mere errors in writing or reckoning, even when neither of the parties makes a motion to that effect, and to complete the award on undecided disputed points on the motion of one party and after a hearing of the adverse party. An interpretation of the award as notified is not admissible unless both parties request it.

Article 25.

The award when duly pronounced decides, within the limits of its scope, the dispute between the parties.

Article 26.

Each party shall bear its own expenses and a half of the expenses of the arbitral tribunal, without regard to the decision of the arbitral tribunal on the indemnity which one or the other of the parties may be adjudged to pay.

Article 27.

The arbitral award is null in case of an invalid compromis, or in case of excess of authority, or of proved corruption of one of the arbitrators, or of essential error.

(28 August 1875)

Translation by JB Scott (ed) *Resolutions of the Institute of International Law Dealing with the Law of Nations with an Historical Introduction and Explanatory Notes* (OUP New York 1916). pp. 1-6.