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CONSOLIDATED WORKING DOCUMENT*

Addendum

ANNEX

[IV.] ARBITRATION

* In order to facilitate processing, the consolidated working document is being reproduced as A/AC.237/Misc.17 and Add.1-9. The present addendum is thus an integral part of the whole document, an edited version of which will be published subsequently as an annex to the report of the Committee on the work of its fourth session.

A/AC.237/Misc.17/Add.8

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ANNEX IV**ARBITRATION****Article 1**

Unless the Parties to a dispute otherwise agree, the arbitration referred to in Article [VII. 2.] (Alternative B) (Settlement of Disputes) of the Convention shall be conducted in accordance with the procedure set out in articles 2 to 17 below.

Article 2

The claimant party shall notify the secretariat of the reference of a dispute to arbitration pursuant to Article [VII. 2.] (Alternative B) (Settlement of Disputes) of the Convention. The notification shall state the subject matter of the arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which is at issue. The secretariat shall forward the information thus received to all Parties to the Convention or to the protocol concerned.

Article 3

1. In disputes between two parties, the Arbitral Tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator within two months of the notification referred to in Article 2 of this Annex and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
2. In disputes between more than two parties, parties in the same interest shall appoint one member of the Tribunal jointly by agreement.
3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary General of the United Nations shall, at the request of either party, designate the chair within a further two months' period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the notification referred to in article 2 of this Annex the other party may inform the Secretary-General of the United Nations, who shall designate the other arbitrator within a further two months' period.

Article 5

The Arbitral Tribunal shall render its decision in accordance with international law, as well as the provisions of this Convention and any protocols concerned.

Article 6

Unless the parties to the dispute otherwise agree, the Arbitral tribunal shall determine its own procedure, ensuring that each Party has a full opportunity to be heard and to present its case.

Article 7

The parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, using all means at their disposal, shall:

- a) provide it with all relevant documents, facilities and information; and
- b) enable it when necessary to call witnesses or experts and receive their evidence.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the Arbitral Tribunal.

Article 9

Unless the Arbitral Tribunal determines otherwise because of the particular circumstances of the case, the costs of the Tribunal shall be borne by the parties to the dispute in equal shares. The Tribunal shall keep a record of all the costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party to the Convention or, as the case may be, to a protocol thereto, that has an interest of a legal nature in the subject matter of the dispute that may be affected by the decision in the case, may intervene in the proceedings with the consent of the Tribunal.

Article 11

The Tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions both on procedure and substance of the Arbitral Tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the Arbitral Tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The Tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which shall not exceed a further five months.

Article 15

The final decision of the Arbitral Tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any members of the Tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The final decision shall be binding on the parties to the dispute and without appeal unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute.

Article 17

Any controversy that may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the Arbitral Tribunal which rendered it.

