INTERNATIONAL COMMERCIAL ARBITRATION: DRAFTING THE ARBITRATION CLAUSE AND SELECTING THE ARBITRATION RULES TO GOVERN THE ARBITRATION

ROBERT H. SMIT
SIMPSON THACHER & BARTLETT LLP

APRIL 1, 2003

Arbitration has become the preeminent means of dispute resolution in international commerce, yet is still often referred to as an "alternative" form of dispute resolution. In practice, international commercial arbitration is more appropriately considered not merely as an alternative to national court litigation, but rather as one of the primary means, along with national court litigation, for resolving disputes arising out of international commercial contracts. As counsel, our objective in advising clients as to their dispute resolution options is to identify for each client and each contract the most appropriate and potentially advantageous means of resolving their international commercial disputes.

This paper summarizes the primary issues to be considered by parties contemplating arbitration of their international commercial disputes. The first section sets forth guidelines for drafting an arbitration clause in an international commercial contract and, in particular, for selecting arbitration rules to govern the arbitration. The second section identifies some of the more serious mistakes commonly made in drafting arbitration clauses and in representing parties in international arbitrations.

I. GUIDELINES FOR DRAFTING AN ARBITRATION CLAUSE IN AN INTERNATIONAL COMMERCIAL CONTRACT

Parties to an international contract must determine first, whether arbitration is the most appropriate means of resolving disputes arising out of their contract; second, whether the arbitration should be administered by an arbitral institution or conducted in an *ad hoc* manner; third, which procedural rules should govern the arbitration; and finally, whether any specific procedural provisions should be incorporated in the arbitration clause. An informed decision as to each of these issues is indispensable, as those decisions will shape the style, length, complexity, fairness and cost of the dispute resolution proceedings, and may determine whether the proceedings ultimately produce a final, enforceable resolution.

A. RELATIVE ADVANTAGES AND DISADVANTAGES OF INTERNATIONAL COMMERCIAL ARBITRATION

The first issue—whether to litigate before national courts or to arbitrate disputes arising out of an international contract—is easily decided when, as often is the case, neither party is willing to submit potential disputes to a foreign court. Indeed, it is common practice to include

arbitration clauses in international contracts. The decision in each particular instance, however, should be based on an assessment of the benefits and drawbacks of international arbitration relative to national court litigation, bearing in mind that a benefit to one party may be a drawback to another.

- *Neutrality*. In national court litigation, a foreign party often is unfamiliar with the local procedures and language, must retain local counsel, translate documents and evidence, and fears a bias in favor of the local party (especially if one of the parties is a state or state entity). In international arbitration, the parties may designate a neutral decision-maker, site and language. On the other hand, a party in a position to insist on a clause requiring resort to its "home" courts may prefer national litigation precisely for these reasons.

- *Certainty/Finality*. A national court may decline to hear a case if it finds, among other things, that it lacks subject matter or personal jurisdiction, that it is not a convenient forum or that hearing the case would contravene doctrines of sovereign immunity or act of state. Even if the court does hear and decide the case, its judgment may not be readily enforceable abroad in the absence of an applicable treaty providing for such enforcement. In arbitration, by contrast, fewer jurisdictional defenses are available, and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") generally ensures that arbitration agreements and awards will be enforced practically worldwide.

- *Splitting-the-Baby*. There is a perception among many that arbitration results in compromise decisions without due attention to the merits of the dispute. While certain characteristics of arbitration (such as the need under most arbitration rules for a majority decision among a three-person tribunal) do lend themselves to compromise, others do not. Arbitrators in *international* arbitrations generally must apply the applicable law, and render a reasoned decision for their awards. Some arbitration rules allow the chairman of the tribunal to render an award if there is no majority among the tribunal, further reducing the impetus to compromise.

- *Confidentiality*. In arbitration, unlike litigation, both the proceedings and the award generally remain confidential, which may protect sensitive or proprietary information from disclosure and facilitate settlement. Parties to an arbitration agreement, however, should not assume that their arbitration automatically will remain confidential. Not all arbitration rules expressly provide for confidentiality and some arbitration rules limit confidential treatment to the deliberations of the tribunal and/or to the arbitral award. Such omissions or limitations may require contracting parties to consider adopting supplemental rules providing for complete confidentiality with respect to the arbitration.

- *Specialized Competence*. A national judge may lack expertise in the particular subject-matter of the dispute or in international commerce generally. In arbitration, the parties may choose arbitrators with expertise in particular subject areas or international matters, thereby saving time and maximizing the prospect of a sensible

decision. Indeed, the quality of the arbitration will usually mirror that of the chosen arbitrators.

- *Procedural Flexibility*. National court procedures are fixed by local rules, and may include time-consuming procedures—most notably, pre-trial discovery—which may be unnecessary or inappropriate for the resolution of particular disputes. The procedure in arbitration, including the amount of discovery, organization of hearings and submission of evidence and arguments, is left largely to the agreement of the parties and discretion of the arbitrators, provided that a relatively relaxed standard of due process is met. The absence of a detailed procedural code in arbitration, however, may give rise to a greater range of procedural disputes and may increase the risk that parties and/or party-appointed arbitrators will engage in dilatory tactics or other misconduct.

- *Limited Powers of Arbitrators*. Unlike national courts, arbitrators generally lack the coercive powers to consolidate proceedings, to subpoena non-party witnesses or documents or to attach bank accounts or sequester assets. Those coercive measures, however, may nevertheless be available to parties in arbitration by means of limited recourse to the courts. Arbitrators may also be able to fashion remedies which are enforceable by the courts but which the courts themselves would not be authorized to grant.

- *Rapidity and Cost*. Once lauded as a rapid and inexpensive means of dispute resolution, arbitration is no longer necessarily quicker or cheaper than litigation, especially in large complex disputes. With respect to rapidity, the "average" duration of a complex commercial arbitration can be between two and three years, excluding any time it may take after an award is issued to enforce it against the losing party in national courts. With respect to cost, the parties must pay the fees and expenses of the arbitrators (and of the administering arbitral institution) as well as hire rooms for meetings and hearings, all of which may be substantial. Both the duration and expense of an international arbitration may be controlled, however, by resort to "fast-track arbitration" rules—in which particular types of disputes are identified by the parties for resolution by the arbitrator within a stipulated short time frame.[1]

B. INSTITUTIONAL VERSUS AD HOC ARBITRATION

International arbitration can be either "institutional" or "*ad hoc*". Institutional arbitration is arbitration conducted under the auspices and in accordance with the procedural rules of a particular arbitral institution, the most well-known of which are the International Chamber of

---

[1] *See* Robert H. Smit, *International Fast-Track Commercial Arbitration in the United States and Canada,* Comparative Law Yearbook for International Business/Special Issue on Dispute Resolution Methods (1995).

Commerce ("ICC"), the American Arbitration Association ("AAA"), the London Court of International Arbitration ("LCIA"), the Stockholm Chambers of Commerce, ("SCC"), and the International Centre for Settlement of Investment Disputes ("ICSID"). Typically, these institutions assist the parties in the constitution of the arbitral tribunal, supervise (to varying extents) the application of the institution's arbitration procedures, determine the arbitrators' fees and charge administrative fees for their services. The institutions themselves do not adjudicate the merits of the parties' dispute, leaving that task to the arbitrators appointed in each case.

Ad hoc arbitration is not conducted under the auspices of an arbitral institution. Instead, parties simply select arbitrators to resolve their disputes without institutional intervention. The parties may either draft their own rules of procedure, select a pre-existing set of arbitration rules the most promi`nent of which are those promulgated by the United Nations Commission on International Trade Law (the "UNCITRAL rules"), or allow the arbitrators independently to formulate procedural rules.

The primary factors to be considered when deciding between institutional and *ad hoc* arbitration include:

- *Predictability versus Flexibility*. Both institutional rules and the UNCITRAL Rules are time- and practice-tested rules which provide for many of the procedural issues likely to arise during arbitration. Drafting special *ad hoc* rules, by contrast, is an expensive and time-consuming process which can lead to unpredictable results. On the other hand, special *ad hoc* rules may be appropriate to meet the particular wishes of the parties and circumstances of the case.

- *Procedural Matters*. In institutional arbitration, the institution is available to provide assistance in resolving procedural difficulties—especially with respect to the constitution of the tribunal—that may arise during the course of the proceedings. In *ad hoc* arbitration, by contrast, the parties' only recourse other than to the arbitral tribunal (*if* it has been constituted and *if* it is willing to resolve the difficulty) is to the national courts at the place of arbitration, in which event certain of the benefits of arbitration (such as confidentiality) may be lost. Moreover, national courts in even the most frequently used arbitration venues may be relatively unsophisticated with respect to certain procedural matters such as the appointment and disqualification of international arbitrators.

- *Administrative Matters*. In institutional arbitration, the institution will determine certain administrative matters (such as the fees and expenses of arbitrators, enforcement of time-limits, etc.), some of which might otherwise be quite awkward for the parties to resolve with the arbitrators. In *ad hoc* arbitration, those matters will have to be handled by the arbitrators and the parties.

- *Institutional Stature*. In institutional arbitration, the institution lends its standing to the arbitrator's procedural rulings (including the decision to proceed notwithstanding default by a party) and award, enhancing the likelihood of

voluntary compliance with or judicial enforcement of both. *Ad hoc* arbitration, by contrast, depends largely for its effectiveness on cooperation between the parties, backed up by an adequate legal system in the place of arbitration.

- *Cost*. Institutional arbitration is often believed to be more expensive than *ad hoc* arbitration, especially where the amounts at issue are large and the arbitrators' fees and institution's administrative expenses are calculated as a percentage of the amounts in dispute. The calculation of arbitrators' fees and administrative expenses on such an *ad valorem* basis, however, frequently results in lower arbitrators' fees than those calculated on the basis of time spent and tends to discourage parties from asserting inflated claims for damages.

- *Delay*. Delay inevitably results from the need to process certain steps in the arbitral proceedings through the bureaucratic machinery of the arbitral institution. In *ad hoc* arbitration, on the other hand, delay may result from the absence of an institutional mechanism to resolve procedural difficulties, especially those which arise before the constitution of the arbitral tribunal.

Many experienced international practitioners find that the balance of factors favors institutional over *ad hoc* arbitration, primarily because institutional arbitration provides added predictability and security and reduces the prospects for resort to national courts as to procedural matters. *Ad hoc* arbitration pursuant to the UNCITRAL Rules in particular, however, may be attractive where the amounts at stake are high and the parties and their counsel are sufficiently experienced in international arbitration to forego the services and added security provided by arbitral institutions.

If *ad hoc* arbitration is preferred, adoption of existing *ad hoc* arbitration rules such as the UNCITRAL Rules is strongly recommended. It is also particularly important for parties to an *ad hoc* arbitration agreement to designate in their agreement both an appointing authority to assist in the constitution of the arbitral tribunal and the place of arbitration whose arbitration law and courts may become instrumental in resolving unforeseen procedural difficulties. It is also worth noting that *ad hoc* arbitration is occasionally perceived as accommodating a recalcitrant respondent's efforts to delay or frustrate the proceedings.

C. ARBITRATION RULES CONTRASTED

After choosing between institutional and *ad hoc* arbitration, parties must further determine which particular set of institutional or *ad hoc* arbitration rules to adopt.[2] Among the most important factors to be considered in choosing a set of arbitration rules to govern the arbitration are:

---

[2] For a comparison of the specific provisions of the leading sets of international arbitration rules, *see* Simpson Thacher & Bartlett's COMPARISON OF INTERNATIONAL ARBITRATION RULES (Juris Publishing 2002).

- *Site, Stature and Experience of the Institution*. The location, international experience and stature of the arbitral institution (or, in *ad hoc* arbitration, of the chosen set of arbitration rules and of the designated appointing authority) may affect how and how well that institution performs its functions under the applicable arbitration rules. The location of the institution, together with the place of arbitration, also often will be determinative of the nationality of the chairman of the tribunal. The stature of the institution may enhance voluntary compliance with or judicial enforcement of the arbitrators' or institution's procedural decisions and the final award.

- *Constitution of the Arbitral Tribunal*. The arbitration rules should provide reasonable and clear standards and procedures for constituting the arbitral tribunal and deciding challenges to arbitrators.[3] In international arbitration, all arbitrators, including party-appointed arbitrators, are generally required to be independent and impartial and *ex parte* communications on matters of substance between the tribunal and the parties after the tribunal has been formed are prohibited.

- *Availability of Ancillary Relief*. The availability of provisional and conservatory measures to preserve the *status quo* pending the issuance of an award is often critically important. The arbitration rules should (and must do) authorize the arbitral tribunal to grant such interim measures where appropriate and authorize the parties to apply to competent national courts for interim measures where prompt or effective interim relief is not available from the tribunal. In addition, in some cases parties should consider specifying the national courts from which such interim measures may be sought.

- *Conduct of the Arbitral Proceedings*. The arbitration rules should balance the parties' interests in predictability and flexibility in the conduct of the arbitral proceedings. More specifically, the arbitration rules should provide for access to information and documents (which is *not* to say discovery of the type permitted in many common law jurisdictions) under the supervision of the tribunal to the degree necessary to develop evidence sufficient to render a just award. Particular attention should also be paid to the desirability of any special procedures—such as the "Terms-of-Reference" procedure under the ICC Rules — provided for under the arbitration rules.

- *Issuance of the Award*. The provisions in the arbitration rules governing whether a majority of the tribunal must concur in the award, whether the award must be reasoned, and whether the award will be subject to scrutiny by the arbitral institution are particularly important in evaluating different sets of arbitration rules.

---

[3] For a roster of international arbitrators, *see* Smit's Guide to International Arbitration, *The Roster of International Arbitrators* (Juris Publishing 2001).

- *Administrative Costs*. Many practitioners perceive administrative costs to be a significant factor in choosing among arbitration rules. Although the ICC Rules are widely believed to entail the highest administrative costs, arbitrators in ICC arbitration often receive relatively low fees, balancing out the total costs of the arbitration to the parties.

The most well-known sets of arbitration rules—the ICC, LCIA, SCC, AAA, ICSID and UNCITRAL Rules—all contain provisions governing the various aspects of the arbitral procedure, and allow the parties (to varying degrees) to modify those provisions to suit their particular wishes or needs.

1. The ICC Rules: "Supervised" Arbitration

The ICC Rules were promulgated by the International Chamber of Commerce — a Paris-headquartered association of thousands of business enterprises located in more than 130 countries, and their "National Committees" established in approximately 60 different countries—in furtherance of its purpose to promote international commerce worldwide. Under the ICC Rules, the ICC's International Court of Arbitration (the "ICC Court", an assembly of over 50 prominent figures in international arbitration), and its Secretariat, supervises the administration and conduct of the arbitral proceedings.

Three features in particular distinguish ICC arbitration from other forms of institutional arbitration. First, the ICC Court does not directly appoint the chairman or sole arbitrator of the tribunal, but instead requests the appropriate National Committee (determined in light of the place arbitration, the governing law and other factors) to propose an arbitrator for the ICC Court's confirmation, thereby tapping into a large international pool of experienced arbitrators. Second, the arbitral tribunal's first duty under the ICC Rules is to compose a document defining its terms of reference, including the relief sought and issues to be determined in the arbitration. Finally, an ICC tribunal must submit its award in draft form to the ICC Court which may require the tribunal to make changes in the form of the award designed to enhance its enforceability and/or make suggestions to the tribunal as to the substance of the award.

ICC arbitration remains both the most widely-used and most criticized form of international arbitration. Indeed, its salient features are subject to constant debate as to their relative benefits and drawbacks. It is fair to say, however, that the international stature of the ICC coupled with the degree of supervision exercised by the ICC Court accord special credibility, and hence enhanced enforceability, to awards rendered under the ICC Rules. In cases involving a state or state enterprise, which comprise a significant portion of the ICC Court's caseload, that stature and supervision may be particularly important to the enforceability of the awards rendered.[4]

---

[4] On ICC arbitration, *see* Robert H. Smit, *An Inside View of the ICC Court*, Arbitration International 53 (No. 1, 1994)

2. The LCIA and AAA Rules: "Administered" Arbitration

The LCIA Rules and the AAA's International Arbitration Rules both are excellent sets of institutional arbitration rules.[5] Under those sets of rules, the institutions' primary role is in the constitution of the tribunal (and determination of challenges to arbitrators), after which the arbitral proceedings are treated in greater detail than in the ICC Rules but with significantly less intervention by the institutions. Despite the quality of their Rules, the LCIA's and AAA's international arbitration caseloads represent but a small fraction of that of the ICC, largely because they are perceived as national, rather than truly international, institutions.

3. The ICSID Rules: State Investment Dispute Arbitration

The ICSID Rules were promulgated by the International Centre for the Settlement of Investment Disputes, which was created under the auspices of the World Bank pursuant to the 1965 Washington Convention on the Settlement of Investment Disputes. ICSID's jurisdiction, and therefore ICSID arbitration, is limited to investment disputes between a signatory state and a national of another signatory state.

ICSID arbitration is unique in the extent to which resort to national courts is limited. Court-ordered ancillary relief, for instance, is generally not available in ICSID arbitration. In addition, ICSID awards are subject only to an internal annulment procedure after which they are enforceable in signatory states as would be final judgments of the courts of those states. In the past, the enhanced enforceability of ICSID awards has been largely illusory, however, because of the potential for delay under the ICSID Rules, due in significant part to the ICSID annulment procedure. Indeed, a significant number of the awards rendered have been subject to annulment proceedings, and several of those awards have been annulled requiring the entire proceedings to begin anew. For these reasons and others, actual resort to ICSID arbitration had been relatively rare historically, although ICSID's case load has increased significantly in the past few years.

4. The UNCITRAL and CPR Rules: Ad Hoc Arbitration

The UNCITRAL Rules were developed in 1976 by the United Nations Commission for International Trade Law, and have become increasingly popular due largely to their good track record as the basis for the rules used by the Iran-United States Claims Tribunal. In substance, the UNCITRAL Rules are quite similar to the LCIA and AAA Rules (both of which were patterned to some extent on the UNCITRAL Rules), although parties to an UNCITRAL arbitration agreement should choose an appointing authority to perform the principal functions otherwise performed by the administering institution. Several arbitral institutions, including the

---

[5] On LCIA arbitration, *see* Martin H. Hunter and Jan Paulsson, *A Commentary on the 1985 Rules of the London Court of International Arbitration*, 10 Y.B. COM. ARB. 167 (1985). On AAA international arbitration, *see* Hans Smit, *The New International Rules of the A.A.A.*, 2 AM. REV. INT'L ARB. 1 (No. 1, 1991).

ICC and the Hong Kong International Arbitration Centre, are available to serve as appointing authority under the UNCITRAL Rules.

The New York-based Center for Public Resources has also promulgated an excellent new set of *ad hoc* international arbitration rules (the "CPR Rules") as an alternative—indeed, the only alternative currently available—to the UNCITRAL Rules. The CPR Rules deserve to be considered seriously by parties wishing to provide for *ad hoc* arbitration of their international disputes.[6]

D. SPECIFIC PROVISIONS

Finally, parties should consider incorporating certain additional provisions governing specific aspects of the arbitration in their arbitration agreements. Particularly important are provisions governing the following:

- *Place of Arbitration*. While the institution or arbitrators will choose a place of arbitration if the parties fail to designate one themselves, that decision is simply too important for the parties to leave to others. The law of the place of arbitration may determine (and therefore should be examined with respect to), among other things: (i) the validity and interpretation of the arbitration agreement, (ii) the arbitrability of the dispute, (iii) mandatory procedural rules for the conduct of the arbitral proceedings, (iv) the availability of ancillary assistance from the local courts, (v) the procedural recourse against the award and (vi) the enforceability of the award in other countries. Many countries have adopted special laws, such as the UNCITRAL Model Law (usually in a modified form), to minimize the extent to which national courts can intervene in arbitral proceedings and to help ensure the enforceability of awards. However, national laws differ widely in this regard, and it is very important, therefore, to consider the law of the place of arbitration in negotiating an arbitration clause. It is also important to consider the most likely countries in which any arbitral award would be enforced and the applicable laws of those countries.[7]

- *Language of the Proceedings*. The arbitration clause should specify the language of the arbitration, if only to ensure that one language rather than two are used and that the parties' counsel of choice will be able to represent them during the proceedings.

---

6 On the CPR Rules, *see* Robert H. Smit, *The Newly Revised CPR Rules for Non-Administered Arbitration of International Disputes,* 18(1) Journal of International Arbitration 5 (2001).

7 Although in practice the place of arbitration is often determined in light of considerations of neutrality and convenience to the parties and witnesses, it bears noting that the tribunal remains free to hold hearings in sites other than the place of arbitration so long as its award is signed (or, at least, deemed to have been "made") at the place of arbitration.

- *Applicable Law*. Absent stipulation of the law governing the contract, the arbitrators will determine the applicable law. It is strongly recommended that the parties designate the governing law in their contract.

In addition, parties to an *ad hoc* arbitration agreement should also designate an appointing authority to resolve disputes as to the constitution of the tribunal and a procedural law (if other than that of the place of arbitration) to govern unforeseen procedural difficulties that may arise during the course of the proceedings. Each of the above provisions, in turn, may bear on the identities and nationalities of the arbitrators selected.

Other provisions parties may consider incorporating in their arbitration agreement include provisions relating to pre-arbitration negotiation, conciliation or mediation procedures, possible "fast-track" procedures to expedite the arbitral process; the capacity and authority of the parties to agree to arbitration; waiver of sovereign immunity and act-of-state defenses; the scope of the disputes to be arbitrated; the number, nationality and qualifications of the arbitrators; specific procedures desired by the parties such as discovery or referral of issues to experts; accommodations for multi-party disputes (*i.e.*, consolidation of separate but related arbitrations and arbitrations involving more than two parties); the apportionment of costs including attorneys' fees; the currency of the award; and entry-of-judgment on the award and waiver of appeals.

II. COMMON PITFALLS IN DRAFTING INTERNATIONAL ARBITRATION CLAUSES

While it is impossible to provide an exhaustive inventory of the pitfalls in international arbitration, it is possible and useful to identify some of the serious mistakes commonly made by parties and their counsel in negotiating and drafting arbitration agreements in international contracts.

The most common and most serious mistake made by parties and their counsel in negotiating and drafting arbitration clauses is to pay insufficient attention to the dispute resolution provisions of their international contracts. As a result, the legal effect of even the most sophisticated and complex of international contracts may remain uncertain or ultimately be determined in an inappropriate or unexpected forum. More specifically, the certainty sought in otherwise well-drafted international contracts all-too-often falls prey to the following recurring pitfalls in the arbitration clauses of those contracts:

- *Incapacity of Parties*. Any assumptions made by a party as to the capacity of its counterparty, or as to the authority of his counterparty's representatives, to bind itself to arbitration are ill-advised. The capacity and authority of state parties in particular should be clearly determined prior to the execution of the arbitration agreement.

- *Conflicting Dispute Resolution Provisions*. Parties frequently insert conflicting or inconsistent dispute resolution provisions in their contract or contracts, with the result that recourse to the courts may become necessary to determine the controlling

dispute resolution mechanism. Often, parties agree to refer certain disputes arising out of their contract to an expert and other disputes arising out of the same contract to an arbitrator without clearly defining the scope of the disputes to be resolved by each and the relationship of the disputes to each other. In transactions involving multiple parties and contracts (such as construction ventures), related contracts may inadvertently provide for different dispute resolution procedures, raising the risk of duplicative adjudication with inconsistent results. Finally, parties occasionally make resort to arbitration non-exclusive, further muddying the dispute resolution waters.

- *Inappropriate Choices of Appointing Authority and Place of Arbitration*. Parties frequently make poor choices as to the arbitral institution or appointing authority to assist in the constitution of the tribunal as well as of the place of arbitration. A poor choice of appointing authority may result in the constitution of an inferior (or less well disposed) tribunal or a deadlock in the proceedings if the designated authority is simply unwilling to perform the services requested of it. A poor choice of place of arbitration may have serious consequences on the enforceability of the arbitration agreement and award as well as on the conduct of the arbitral proceedings.

- *Omitted Provisions as to Ancillary Relief*. Even parties who focus sufficiently on the enforceability of their arbitration agreement and award often neglect to consider the potential need for provisional or conservatory relief pending the award. Contractual consents to judicial jurisdiction and waivers of sovereign immunity, for instance, frequently fail to include applications for interim relief within their purview. Under U.S. law, a foreign sovereign must explicitly waive sovereign immunity from pre-judgment attachment.

- *Excessive Specificity*. Parties sometimes include detailed provisions regarding the qualifications of the arbitrators or conduct of the proceedings in their arbitration agreements which may unduly limit the pool of suitable arbitrator candidates, unnecessarily straightjacket the arbitral proceedings, or conflict with specific provisions of the applicable institutional or *ad hoc* rules. Generally speaking, it is advisable to refrain from imposing numerous restrictions on the qualifications of arbitrators, to leave to the tribunal considerable latitude to tailor the arbitral proceedings to the needs of the particular disputes that arise, and to avoid treating in detail aspects of the arbitral process already subject to institutional or *ad hoc* rules.