

ANNEX E**Arbitration and conciliation procedures****Part I: Arbitration procedure**

The arbitration procedure for purposes of paragraph 2 (a) of Article 25 of this Convention shall be as follows:

Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 25 of this Convention by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of claim, together with any supporting documents. Such notification shall state the subject matter of arbitration and include, in particular, the Articles of this Convention the interpretation or application of which are at issue.

2. The claimant party shall notify the Secretariat that it is referring a dispute to arbitration pursuant to Article 25 of this Convention. The notification shall be accompanied by the written notification of the claimant party, the statement of claim, and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

Article 2

1. If a dispute is referred to arbitration in accordance with Article 1 above, an arbitral tribunal shall be established. It shall consist of three members.

2. Each party to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by agreement the third arbitrator, who shall be the President of the tribunal. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement. The President of the tribunal shall not be a national of any of the parties to the dispute, nor have his or her usual place of residence in the territory of any of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the United Nations, who shall make the designation within a further two-month period.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection.

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, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information or documents that 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 its costs and shall furnish a final statement thereof to the parties.

Article 10

A Party that has an interest of a legal nature in the subject matter of the dispute that may be affected by the decision may intervene in the proceedings with the consent of the arbitral tribunal.

Article 11

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

Article 12

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

Article 13

1. 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

make its decision. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings.

2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The arbitral 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 that should not exceed five more 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 member 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. The interpretation of this Convention given by the final decision shall also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. The final decision shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any disagreement that may arise between those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that final decision, may be submitted by any of them for decision to the arbitral tribunal that rendered it.

Part II: Conciliation procedure

The conciliation procedure for purposes of paragraph 6 of Article 25 of this Convention shall be as follows:

Article 1

A request by a party to a dispute to establish a conciliation commission pursuant to paragraph 6 of Article 25 of this Convention shall be addressed in writing to the Secretariat, with a copy to the other party or parties to the dispute. The Secretariat shall forthwith inform all Parties accordingly.

Article 2

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, comprise three members, one appointed by each party concerned and a President chosen jointly by those members.

2. In disputes between more than two parties, parties in the same interest shall appoint their member of the commission jointly by agreement.

Article 3

If any appointment by the parties to the dispute is not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1 above, the Secretary-General of the United Nations shall, upon request by any party, make such appointment within a further two-month period.

Article 4

If the President of the conciliation commission has not been chosen within two months of the appointment of the second member of the commission, the Secretary-General of the United Nations shall, upon request by any party to the dispute, designate the President within a further two-month period.

Article 5

The conciliation commission shall assist the parties to the dispute in an independent and impartial manner in their attempt to reach an amicable resolution.

Article 6

1. The conciliation commission may conduct the conciliation proceedings in such a manner as it considers appropriate, taking fully into account the circumstances of the case and the views the parties to the dispute may express, including any request for a swift resolution. It may adopt its own rules of procedure as necessary, unless the parties otherwise agree.

2. The conciliation commission may, at any time during the proceedings, make proposals or recommendations for a resolution of the dispute.

Article 7

The parties to the dispute shall cooperate with the conciliation commission. In particular, they shall endeavour to comply with requests by the commission to submit written materials, provide evidence and attend meetings. The parties and the members of the conciliation commission are under an obligation to protect the confidentiality of any information or documents they receive in confidence during the proceedings of the commission.

Article 8

The conciliation commission shall take its decisions by a majority vote of its members.

Article 9

Unless the dispute has already been resolved, the conciliation commission shall render a report with recommendations for resolution of the dispute no later than twelve months of being fully constituted, which the parties to the dispute shall consider in good faith.

Article 10

Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

Article 11

The costs of the conciliation commission shall be borne by the parties to the dispute in equal shares, unless they agree otherwise. The commission shall keep a record of all its costs and shall furnish a final statement thereof to the parties.