Arbitration International

The Journal of the London Court of International Arbitration

Austrian Arbitration and Mediation —Number of Arbitrators and Decisions of Arbitral Tribunals

Alan Uzelac

Volume 23 Number 4 2007

ISSN 0957 0411

MISSION STATEMENT
A forum for the rigorous examination of the international arbitral process, whether public or private; to publish not information or news, but contributions to a deeper understanding of the subject.

Kluwer Law International
250 Waterloo Road
London SE1 8RD
United Kingdom
www.kluwerlaw.com

LCIA
70 Fleet Street
London EC4Y 1EU
telephone: +44 (0207) 936 7007
fax: +44 (0207) 936 7008
e-mail: lcia@lcia.org
www.lcia.org

Please address all editorial correspondence (including submission of articles) to:
Kathryn Arnot Drummond
The Assistant to the Editorial Board
Arbitration International
e-mail: submissions@arbitrationinternational.info

Where e-mail cannot be used, please address any correspondence to:
The Assistant to the Editorial Board
Arbitration International
c/o K. Arnot Drummond
LCIA
70 Fleet Street
London EC4Y 1EU

Number of Arbitrators and Decisions of Arbitral Tribunals

by ALAN UZELAC*

I. INTRODUCTORY REMARKS

THIS ARTICLE deals with the current status and the prospects for change in relation to two 'classical rules' of the UNCITRAL Arbitration Rules, with special reference to the new Austrian arbitral legislation.[1]

Under article 5 of the UNCITRAL Arbitration Rules (UAR) the parties can agree on one or three arbitrators. Their agreement can be made either in the contract, in the arbitration agreement, or within 15 days after the respondent receives the notice of arbitration. If there is no agreement when the 15-day period expires, the number of arbitrators is three.

Under article 31 UAR, in principle the panel of arbitrators decides by a majority of all appointed arbitrators.

These rules can already be considered as classics in the arbitration universe. Similar rules can now be found in a number of arbitration rules as well as in the laws on arbitration of several countries. Once they were established in the UAR, they were used as the model for a number of subsequent acts. *Inter alia*, a decade later they influenced Articles 10 and 29 of the 1985 UNCITRAL Model Law on International Commercial Arbitration (ML). At that time, it was stated that the rule on the number of arbitrators, 'once it reached its current form early in the drafting ... occasioned virtually no controversy ... even though it would work a significant change in the laws of some countries'.[2] The same (or almost the same)

---

* Alan Uzelac is Professor of Law at the University of Zagreb (Croatia) where he teaches Civil Procedure, Arbitration and Alternative Dispute Resolution. He is former Secretary General of the Permanent Arbitration Court at the Croatian Chamber of Commerce and the national representative in the UNCITRAL Working Group on Arbitration and Conciliation. The views expressed in this article are personal, and should not be taken as an accurate expression of the position of any organisation.

1 This article is based on the report prepared for the Joint UNCITRAL/VIAC Conference '30 Years of UNCITRAL Arbitration Rules' held in Vienna, 6 and 7 April 2006.

2 H.M. Holtzman and J.E. Neuhaus, *A Guide to the UNCITRAL Model Law on International Commercial Arbitration*, (The Hague, 1988), p. 348 (hereinafter: Holtzman and Neuhaus).

ARBITRATION INTERNATIONAL, Vol. 23, No. 4

could be stated for article 31 UAR (at least until the occurrence of the well-publicised, yet maybe still over-emphasised, problem of the 'truncated tribunals').

In this article, we will first analyse several elements in article 5 UAR under the following three topics:

(1) Number of arbitrators and party autonomy

- What number of arbitrators may the parties select?
- Can the parties, and to what extent, depart from article 5?

(2) Methods of making an agreement on the number of arbitrators and its timing

- Should the number of arbitrators be a part of the arbitration clause/submission to arbitration?
- Until which point in time can the parties exercise their autonomy?

(3) Default number of arbitrators in the absence of parties' agreement

- What number will be selected if the parties do not reach an agreement?

Secondly, we will analyse the elements related to article 31, and address the following issues:

(1) Reaching decisions in multi-member tribunals

- What decisions are covered by article 31?
- What are the standards for awards/procedural decisions?

(2) Decision-making in respect of awards (decisions on substance)

- How long may the tribunal deliberate?
- How can a majority be reached?
- How may dissent be expressed?
- Is a decision made by a 'truncated tribunal' valid?

While presenting the individual issues related to the number of arbitrators and decision-making, we will present the trends in current arbitration rules and legislation, with special emphasis on the latest enacted legislation, in great part inspired by the UNCITRAL Model Law, *i.e.* the new Austrian arbitration law.[3]

In analysing the current rules, the findings and proposals from the Paulsson and Petrochilos Report on the revision of the UNCITRAL Arbitration Rules will

---

[3] *See* new ss. 577–618 of the Austrian ZPO (Code of Civil Procedure), introduced by the 2006 amendments (SchiedsRÄG 2006).

be briefly commented upon.[4] As this report advocates many changes, among which the arguments for changes in articles 5 and 31 hold a prominent place, we attempt a critical assessment and evaluation of the proposed 'new' UNCITRAL Rules. The conclusions of this article are somewhat sceptical and critical towards the 'normative optimism' of the Paulsson and Petrochilos' submissions.

II. NUMBER OF ARBITRATORS (ARTICLE 5 UAR)

(a) Relation Between the Possible and Practicable: Number of Arbitrators and Party Autonomy

Article 5 UAR is of a dispositive nature. As with most other rules in the UAR, this rule is applicable if the parties have not agreed otherwise. Under article 1(1) of the UAR, the parties may agree on modifications of the rules. This includes the rule on the number of arbitrators. Thus, the parties may agree on virtually any number of arbitrators, as far as this is practicable and possible. Thus, for example, although the UAR provides only for situations where one or three arbitrators are appointed, it would be possible for the parties, while arbitrating under the UAR, to agree on a panel of five or more arbitrators.[5]

That said, one may note that cases in which parties have made use of the possibility to appoint more than three arbitrators are extremely rare. The overwhelming majority of all reported arbitration cases are adjudicated by a sole arbitrator, or by a panel that consists of three arbitrators. In that respect, the UAR still corresponds to the current state of affairs in international arbitration practice.

Apart from the question whether other options are practicable and useful, the parties' agreement on a different number of arbitrators may encounter further legal difficulties. The rules agreed between the parties should not be in conflict with provisions of the law applicable to the arbitration from which the parties cannot derogate, and even if a single provision of the UAR conflicts with such mandatory provisions, they will prevail over party autonomy (article 1(2) UAR).

(b) National Legislation on Number of Arbitrators

To the best of our knowledge, there are no national laws that would treat one or three member panels as contrary to the mandatory law of the country. However, some other options may run the risk that departing from the UAR rule on one or three arbitrators would be in violation of the law. So, for instance, the arbitration law in the former Yugoslavia[6] and its successor countries provided for an express

---

[4] This Report, commissioned by the UNCITRAL Secretariat, was first publicly presented at the Vienna VIAC-UNCITRAL Conference in April 2006. We are herein referring to the draft version of the Report distributed by e-mail (dated 31 March 2006). In the section of this article devoted to the Paulsson and Petrochilos Report, we respond to the invitation of the authors, who welcomed 'that [their] conclusions and suggestions be subjected to scrutiny, debate, and criticism from the widest possible audiences' (para. 10).

[5] *E.g.* the full panel of the Iran-United States Claims Tribunal consists of nine arbitrators.

[6] *See* art. 472/2 of the Code of Civil Procedure of former Yugoslavia (CCP-SFRY): 'The number of arbitrators must be odd'. Commentators considered this provision to be mandatory (*see* Janković *et al.*, *Commentary CCP* (Belgrade, 1990), p. 491).

and mandatory rule that the number of arbitrators should be odd, *i.e.* that no agreement can be made for an even number of arbitrators. In some of the successor states or territories of former Yugoslavia this rule was subsequently abandoned,[7] but in some others it still persists.[8] The rule requiring an uneven number of arbitrators also exists in some other national laws and international conventions, *e.g.* in the Netherlands, Egypt, Italy and in the Washington Convention.[9] The reason for such a rule was usually seen as the necessity to prevent deadlocks and ensure the formation of a majority in decision-making. If different opinions of arbitrators would lead to the impossibility of reaching a final decision, this could, under certain circumstances, be a reason for termination of the arbitration proceedings. This would in any event mean that in the case of selection of an even number of arbitrators, although it is permissible under the UAR, the mandatory law would prevail over party autonomy, leading to one of two possible outcomes: either to a change in the number initially selected, or to the invalidation of the whole agreement.

(c) New Austrian Arbitration Law's Rule on Number of Arbitrators: Back to the Future?

A softer version of the mandatory rule on an uneven number of arbitrators may be found in the new Austrian arbitration law which, while departing from the UNCITRAL Model Law and reaching even further in the past, draws on article 5(1) and (2) of the Strasbourg Uniform Law.[10] Under s. 586(1) of the Austrian Code of Civil Procedure (CCP) (2006), if the parties have agreed on an even number of arbitrators, than the selected arbitrators must appoint another arbitrator as a chairman.[11] The advantage of this provision, as compared to the stricter versions of, *e.g.* Egyptian or former Yugoslav law, is in the fact that the agreement on an even number would not make the arbitration agreement null and void. As opposed to the solution in, *e.g.* Italy, no external intervention by judicial authorities is needed.[12]

However, even this latest piece of legislation implies that party autonomy is restricted by the legislator's wish to ensure efficiency of the proceedings. In our opinion, this is not necessarily a better approach than the 'liberal' rule of the

---

[7] *E.g.* in Croatia by Law on Arbitration of 2001, art. 9, or in Montenegro by new CCP 2004, art. 475/1.

[8] *E.g.* in Slovenia (*see* CCP 1999, art. 458) or in Serbia (old CCP-SFRY, art. 472/2). The new Law on Arbitration adopted in Serbia in May 2006 (Off. Gaz. 46/06) has maintained the same rule in art. 16/3.

[9] CCP (Netherlands), art. 1026(2); Egyptian Law No. 27 (1994), art. 15(2); Italian CCP (as amended in 1994), art. 809; Washington Convention, Art. 37(2)(a). *See, inter alia,* J.D. Lew, L.A. Mistelis and S.M. Kröll, *Comparative International Commercial Arbitration* (The Hague, 2003), p. 225 (hereinafter: Lew, Mistelis and Kröll).

[10] European Convention providing a Uniform Law on Arbitration of 1966 ('1. the arbitral tribunal shall be composed of an uneven number of arbitrators ... ; 2. if the arbitration agreement provides for an even number of arbitrators, an additional arbitrator shall be appointed').

[11] *See* ZPO, s. 586(1) (in the authentic German text: 'Die Parteien können die Anzahl der Schiedsrichter frei vereinbaren. Haben die Parteien jedoch eine gerade Zahl von Schiedsrichtern vereinbart, so haben diese eine weitere Person als Vorsitzenden zu bestellen').

[12] Under CCP, art. 809 (Italy) in its version after 1994, if an even number of arbitratrors was provided, a third arbitrator would be appointed by the president of the competent state court. *See also* Bernardini's report for 'Italy' in *ICCA Handbook* (Suppl. 31, September 2000), p. 8.

UAR and the ML: if parties willingly prefer to have an even number of arbitrators because they wish the arbitrators to strive for consensual solutions, even at the expense of speed and efficiency, that choice should be recognised and observed. If, in a panel of two arbitrators, a consensus cannot be reached, the parties may use other procedural arrangements to escape a deadlock, such as the eventual appointment of an 'umpire'.[13] The difference in opinions and impossibility to find a consensually acceptable solution that would lead to a deadlock should, however, not be presumed at the very beginning of the proceedings, and could be reserved only if a real need for it should arise. Finally, if it happens that the will of the parties, however unlikely it may be, is to have either a unanimous decision or no decision at all, this should be respected – after all, the whole range of ADR methods never lead to a final and binding decision, and yet they are considered to be useful.

(d) Other Examples: the Multi-Arbitrator Rule of the Iran-United States Arbitral Tribunal

Departure from the provisions of article 5 can also amount to agreeing on provisions that would further limit the selection of the number of arbitrators. One example is the rules of the Iran-United States Arbitral Tribunal, based on the UAR, which were amended by a provision that did not allow the option of a sole arbitrator, thereby (in spite of the still recognised principle of party autonomy) in effect suggesting only panels of three arbitrators.[14] The time that parties have at their disposal to determine the number of arbitrators after initiation of arbitration (*i.e.* after arbitral *lis pendet*, after notification of the respondent) can also be modified.[15] It is not unimaginable that selected arbitration rules could even exclude any choice of parties in respect to the selection of the number of arbitrators (as, *e.g.* under some domain-name dispute resolution mechanisms, a sole arbitrator is provided for).

III. TIMING AND METHODS OF MAKING AN AGREEMENT ON THE NUMBER OF ARBITRATORS

(a) Essential Features of the Agreement on the Number of Arbitrators

As is the case for some other important elements of the arbitration agreement, the number of arbitrators is often already selected in the arbitration agreement or in the submission to arbitration. Model arbitration clauses (including the model arbitration clause annexed to article 1(1) UAR) usually contain an optional supplementalal provision on the number of arbitrators.[16] If the parties did not opt

---

[13] Holtzmann and Neuhaus, pp. 349–350 (A/CN.9/207, para. 67).

[14] *See* J.J. van Hof, *Commentary on the UNCITRAL Arbitration Rules: the Application by the Iran-U.S. Claims Tribunal* (The Hague, 1991), pp. 37–39.

[15] In the drafting of the Iran-United States Tribunal rules, it was tentatively proposed that the period of 15 days be replaced by eight days. The proposal was, however, rejected: *see* van Hof, *supra* n. 14.

[16] So in the note to the UAR model arbitration clause (art. 1(1), ad b.) ('number of arbitrators shall be ... one or three)'.

for such an amendment, the UAR determines the default option of three arbitrators. Therefore, agreements which do not provide for the number of arbitrators are fully valid and do not depend on the default rules of the applicable national procedural law.

Yet, in compliance with the prevailing role of party autonomy, the parties may select the number of arbitrators later, in an annex to the arbitration agreement or the submission to arbitrate. In line with the rules on the form and substance of the arbitration agreement (*e.g.* Article 6 ML), the selection of the number of arbitrators may even happen in the exchange of the statements of claim and defence.

It is at least debatable whether the formal requirements of the applicable law with respect to arbitration agreements would also apply to the parties' selection of the number of arbitrators. The current trend of softening (or even abandoning) formal requirements and of limiting them to a matter of evidence leads to an ever-diminishing importance of this question. In our opinion, as the selection of the number of arbitrators is not a substantial requirement for the validity of the arbitration agreement, such selection may happen by any means, even orally.

Still, the parties cannot wait indefinitely to select the number of arbitrators. The latest point at which the parties can make such selection is, under article 5 UAR, 'within fifteen days after the receipt by the respondent of the notice of arbitration'. The text of article 5 UAR suggests that, after this time, the parties are precluded from selecting the number of arbitrators – instead, the default rule is triggered. However, it may be arguable whether the parties still have a residual right to change the default rule by their consensus. So, for example, it may be argued that the parties' agreement made after expiry of this time limit would still be valid and binding, if this agreement was made prior to the appointment of the (sole) arbitrator and initiation of the proceedings, or even if it was made later, but prior to the making of the award. In any case, if parties only later reach an agreement that a different number of arbitrators should be appointed (*e.g.* five instead of three) and such a panel makes an award, it is not likely that this award could successfully be challenged for that reason in setting aside proceedings.

(b) Default Number of Arbitrators if Parties Cannot Reach Agreement

If parties have validly agreed on arbitration, but cannot ultimately reach agreement on the number of arbitrators, the default rule of article 5 UAR is that a panel of three arbitrators will be appointed. The default rule, as any non-mandatory rule, could of course be different. Although some arbitration institutions do follow the same rule (*e.g.* CIETAC or DIS), in some other sets of institutional arbitration rules, different answers to parties' default are given. For example, under article 8(1) of the ICC Rules, if the parties have not agreed upon the number of arbitrators the court will appoint a sole arbitrator, except 'where it appears to the court that the dispute is such as to warrant the appointment of three arbitrators'. Similarly, article 5.4 of the LCIA Rules provides that 'a sole arbitrator shall be appointed unless the parties have agreed in writing otherwise,

or unless the LCIA Court determines that in view of all the circumstances of the case a three-member tribunal is appropriate'.

Some other institutions have provided a value threshold that would, in the absence of the parties' agreement, determine whether a sole arbitrator or a panel of arbitrators has to be selected. Thus, *e.g.* under article 6 of the Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Commerce ('Zagreb Rules') of 2002, the sole arbitrator will be appointed if the amount in dispute does not exceed 50,000 euros, whereas for higher values the arbitration will be conducted by a panel of three arbitrators.

The considerations that have inspired the choice of default rules were reported in several sources. So, according to Dore, during the drafting of the UAR there were suggestions to accept the default rule on sole arbitrators in order to 'save expense'. As to the three arbitrators, it was argued that such is the common practice in international commercial arbitration, where each party typically appoints an arbitrator of its own nationality, while the presiding arbitrator is selected by the first two arbitrators or by the appointing authority.[17]

When Article 10 ML was drafted, there was again a debate on the best default number, and three options were proposed in addition to the default rule providing for three arbitrators: appointment of a number of arbitrators equal to the number of parties, but increased by one if the number of parties is even; appointment of a sole arbitrator; and appointment of a sole arbitrator unless a party requests and the appointing authority decides that, given the circumstances of the case, there should be three arbitrators.[18] Finally, despite those who favoured the sole arbitrator rule as a rule that 'would cost less in time and money', the three-person default rule was accepted, influenced mainly by three main arguments: (i) such a panel would be more likely to guarantee equal understanding of the positions of the parties; (ii) three-person tribunals are the most common configuration in international commercial arbitration; and (iii) article 5 of the UAR provides for such a solution.[19]

Preference for sole arbitrators as opposed to favouring three-person panels may also depend on the family of legal systems. So, *e.g.* it was noted that 'as a rule of thumb, it can be said that in common law countries there exists a certain preference for a sole arbitrator while in civil law countries a three member tribunal is the preferred method'.[20] Thus, the law in England[21] provides for a sole arbitrator, while the law in Austria,[22] Germany[23] or Croatia[24] favours three-person

---

17 I. Dore, *The UNCITRAL Framework for Arbitration in Contemporary Perspective*, (London, 1993), p. 6.
18 Holtzmann and Neuhaus, pp. 348–349.
19 A/CN.9/232, para. 80.
20 R. Bernstein, J. Tackaberry, A.L. Marriott and D. Wood (eds.) *Handbook of Arbitration Practice*, (London, 1998), p. 47 para. 2-143 (hereinafter: *Bernstein's Handbook*); Lew, Mistelis and Kröll, *supra* n. 9 at pp. 225–226 (para. 10-10).
21 Arbitration Act, s. 15(3).
22 ZPO, s. 586(2).
23 *Ibid.* 1034(1).
24 Law on Arbitration, art. 9.

panels. However, intermediate solutions, such as appointment of the number of arbitrators according to the discretion of an appointing authority, are also to be found in national legislation, *e.g.* in the Netherlands, where in the absence of the parties' agreement the number of arbitrators will be determined by the President of the District Court according to the circumstances of the case.

More than being a matter of taste and tradition, the number of arbitrators still seems to be an issue of appropriateness. Some of the main advantages of international arbitration, *e.g.* the possibility to bring into arbitration a balanced account of different national legal traditions and experiences, are undoubtedly best realised in multi-person panels. 'More eyes see more': thus, a multi-person panel can profit greatly from individual experiences, individual viewpoints and the individual expertise of the arbitrators. The desire to overcome distrust and ensure fairness of the proceedings is, in the minds of the parties, better catered for if they have the possibility to appoint someone who they can fully trust and who will represent, if not their interests, than at least their national traditions and legal notions. Such an arbitrator can be a guarantee for the parties that their specific arguments will be considered and, if need be, 'translated' to the rest of the tribunal. To a certain extent, a multi-person panel brings about a certain level of control and limits possible arbitrariness of the decision that can have grave consequences, due to the limited scope for a possible challenge of the award.[25]

Of course, all these arguments are applicable only to the typical case in international commercial arbitration (at least to the textbook example of such arbitration), characterised by the difference in legal backgrounds of the parties and their representatives, the transnational nature of the transaction, complexity and a high amount in dispute. Today, when the same rules are often applicable to international and domestic cases, and when a number of new institutions have been established dealing not only with 'mega-cases' but also with fairly small and simple cases, the three-member tribunal can amount to 'overkill', bringing unnecessary costs and delays. The right to appoint arbitrators can also be misused, and thus the multi-member panels may produce the problem of 'truncated' tribunals.[26]

However, all of that may mean an invitation for national legislators and drafters of arbitration rules to reconsider their own rules, based on the concrete analysis of their cases and previous experiences. It is also a warning that the default three-person rule from the UAR and ML should not be taken for granted and non-critically accepted for every purpose. As to the UAR themselves, they were from the very beginning adjusted to the typical case in international commercial arbitration, which is quite understandable taking into account the profile of the institution that produced them. As such, they were well received and confirmed in practice.

---

[25] As stated in Lew, Mistelis and Kröll, p. 228, three-member tribunals 'reduce the risk of an arbitrator completely misunderstanding the case'.

[26] *See Ivan Milutinovic PIM* v. *Deutsche Babcock AG* (ICC Case no. 5017). *See infra.*

(c) Recent Trends with respect to the Future of Article 5 UAR: the Paulsson and Petrochilos Report

In opposition to statements on the uncontroversial nature of article 5 UAR and its wide acceptance by legislators and institutions quoted at the beginning of this article, there are some of the opinion that article 5, along with many other rules of the UAR, should be urgently revised. As such opinions are represented by an author of as high a reputation as Jan Paulsson, in a document commissioned by the UNCITRAL itself, they should be taken seriously.

The criticisms expressed by Paulsson and Petrochilos relate both to general rules, *i.e.* the default number of arbitrators, as well as to the technical details, *i.e.* the 15-day period within which the parties may agree on a single- or three-member tribunal. The report criticises the rigidity of the three-member default rule, and states that 'claims involving relatively small sums have on occasion been heard by three-member tribunals simply because the respondent defaulted in the constitution of the tribunal'.[27]

Proposed changes of article 5 involve the distinction of two situations in cases in which parties have not previously agreed on the number of arbitrators. In the first situation, within the period after the receipt of the notice of arbitration (*i.e.*, under this proposal, prolonged from 15 to 30 days) a party may express a preference for three arbitrators. In such a case, the default number of arbitrators (or, better, unilaterally designated number of arbitrators) will be three. In the second situation, if there were no express preferences for three arbitrators within the 30-day period, authority to designate the number would be transferred to the appointing authority, which would 'have the power to appoint a sole arbitrator where the nature or magnitude of the dispute so warrants and a party so requests in writing'.[28]

The underlying premise of the Paulsson and Petrochilos' submissions is that such rules would better cater for the interests of claimants, especially in the situation where the respondent acts passively. This is clearly visible from the other proposal, *i.e.* that the appointing authority would, when appointing a sole arbitrator, 'have the power to appoint as sole arbitrator the person proposed by the claimant ... unless the respondent has objected to that person'[29] (although, in the preceding sentence, a request for the appointment of a sole arbitrator could have been made by any party).

The original, but rather complex and cumbersome, new provisions for article 5 proposed by Paulsson and Petrochilos as the 'better' UAR rules, suffer from the same deficiencies as a number of their other proposals. For a slight improvement in an unspecified (yet perhaps not very great) number of situations, the beauty of clear and simple principles is sacrificed and traded for a complex and hardly readable text. The proclaimed effect (suppressing the unco-operative behaviour of

---

[27] Paulsson and Petrochilos, *supra* n. 4 p. 56.
[28] *Ibid.* p. 59.
[29] *Ibid.* (draft paragraph 3, *in fine*).

the respondent) is hardly achieved, as the respondent has the possibility to opt expressly for three arbitrators, and thereby achieve their appointment irrespective of the practicability and the need for such a multi-arbitrator tribunal. As the appointment of a sole arbitrator implies a procedure before an appointing authority, based on the fulfilment of a set of requirements, such a method of proceeding would potentially prolong the process and incur new costs for the parties. In some settings, this might also open a debate on the 'nature' and 'magnitude' of the dispute, causing further delays and expenses.

The main problem of such an approach, as with a number of other proposed changes, may be found in the uncertainty of their addressees. If the UAR are used for 'proper' international disputes (with appropriate volume and significance), the problem would hardly occur. If they are used as rules in another setting, the parties could have foreseen the problem and departed from the default rule. If they are used as a model for other dispute resolution rules (be it institutional or ad hoc), the drafters always have the opportunity to consider the nature of future disputes and chose between the simple UAR rule and other alternatives expressed in the rules of arbitration organisations or in the national legislation.

Finally, it is hard to imagine that the mandate of the UNCITRAL – contributing to the harmonisation of international trade law – would be achieved by the introduction of novel solutions that are hardly universally accepted (and are even hardly universally acceptable). The introduction of dual regimes ('old' and 'new' UAR) and their departure from the UNCITRAL Model Law cannot be justified, in particular if the problem that is addressed by the new rules is not of the utmost practical importance.

The same conclusion could be derived from the analysis of the current national legislation. One recent example is Austria. With the new arbitration legislation in 2006, it joined a number of countries that have adopted the imperfect, but still simple and acceptable three-member default rule.[30] Therefore, we have considerable reservations both as to the need for the default rule in the UAR to be changed, and with respect to the probability that it could usefully be changed in the future.

For a discussion of further suggestions by Paulsson and Petrochilos that address the decision-making rules, see below.

IV. DECISION-MAKING BY THE ARBITRAL TRIBUNAL (ARTICLE 31 UAR)

(a) Pros and Cons of Collective Decision-making

The use of multi-member tribunals naturally makes decision-making an issue. The advantage of multi-member tribunals – the possibility of bringing different perspectives – is at the same time its possible disadvantage, as the tribunal should,

---

[30] *See* Austrian ZPO (2006), s. 586(2).

ultimately, harmonise the differences in views at least to the extent that a decision is possible. It is not realistic to expect that in many arbitrations (if in any) the three arbitrators will have a completely identical understanding of the case.

Article 31 UAR has accepted the most simple and obvious rule on decision-making – the majority rule well known to all democracies. However, this is not the only possible option, and (like every other majority rule) this rule is not a perfect rule. As the arbitral tribunal has to render a number of decisions and adjudicate a number of issues, there is a likelihood that, if a particular issue is not a simple yes-or-no issue, the majority would not be reached. How to proceed in such situations and what are the alternatives?

(b) Decision-making in Multi-member Tribunals

In an ideal world, all arbitral tribunals would decide by a consensus. However, as desirable as it may be, it is not always possible to reach a consensus, and even if it were to be possible, it would demand a considerable amount of time. Therefore, for the sake of efficiency of the arbitral proceedings, the ideal of unanimity has to be somewhat watered down, although it should never be fully abandoned.

On the opposite side, a quite different alternative approach would entail a solution according to which, where a decision cannot be made unanimously, only one arbitrator (the presiding arbitrator or an umpire) would be authorised to decide instead. If the first option, insisting on unanimous decisions, may jeopardise the effectiveness of the arbitral process, than this second option may in fact seriously undermine the benefits of multi-member tribunals.

Yet, both options may be considered by the parties, as they may, under article 1(1) UAR, choose any method of decision-making. Obviously, this choice would be limited by mandatory fairness standards of the applicable arbitration law. It should not be fully excluded that the values of consensus, fairness and equality would be so important for the parties that they would be ready to risk an eventual inability to reach a decision, or the delays that are involved in such a process. At least those familiar with dispute-resolution mechanisms in public law, where there is a very strong preference to resolve international disputes by consensus, would confirm that such an option is not fully unreasonable. Also, if the values of speed and efficiency have precedence over an agreed solution, the parties may opt for rather autocratic methods of decision-making.

(c) Standards for Decisions of Substantive and Procedural Nature

The default rule in article 31(1) UAR goes half-way between these two options. In principle it provides for majority decisions for all types of decisions made by the arbitrators. However, article 31(2) contains a separate, less strict rule 'in the case of questions of procedure'. For such decisions, the presiding arbitrator may decide on his own in two situations:

(a) when the arbitral tribunal so authorises; and
(b) when there is no majority.

The possibility that the arbitrators authorise their chairman to rule on questions of procedure may also be interpreted so that, *a contrario*, for questions that are not of procedural nature, the arbitrators do not have the authority to transfer substantive decision-making to the presiding arbitrator. The arbitrators are, and remain, responsible for the making of substantive decisions, and they would violate their duty if they transferred their powers to someone else,[31] even if that was their chairman. As procedural issues generally do not have an imminent effect on the outcome of the case, the transfer of powers to the presiding arbitrator seems quite natural (corresponding to the similar practice in national courts where the presiding judge often directs the conduct of the proceedings of the multi-member tribunals).

The second case in which the presiding arbitrator may rule alone is where no majority can be formed on a specific issue of procedure. His authority to rule on his own only arises when neither of the other two arbitrators can agree with him on a specific issue. Then, and only then, may the presiding arbitrator rule alone. The fact that this is not a direct authority of the chairman is underlined by the statement that his decision in any case is subject to revision by the arbitral tribunal. In other words, if a majority can be formed – even against the presiding arbitrator's ruling, and after its making – such majority would be decisive.

(d) Making of Decisions as to the Substance (=Awards?)

Article 31 does not make any express difference between awards and procedural orders. Instead, the difference is made between decisions on the questions of procedure, and, *a contrario*, decisions of a substantive nature. The UAR does not define the notion of an 'award', and therefore the different decision-making rules cannot be simply attributed to awards and other decisions. However, as most of the awards deal with the substantive issues rather than with 'questions of procedure', they would generally have to be made only by a majority of the arbitrators.

The process of reaching a majority can be lengthy. In any case, the arbitral panel should devote appropriate time to deliberations, both prior and after the closure of the hearing. The UAR, just as most other arbitration rules, do not specifically provide any rules for deliberations of the tribunal. The length of deliberations is generally connected to the issue of time limits for the making of the award. Under the UAR, such a time limit is not expressly provided, although it is generally expected that the awards are made promptly. Some other rules supplement this approach of the UAR by fixing concrete time limits (*e.g.* ICSID rule 46 of 60 days after the closure of the proceedings). In the UAR, the time needed for reaching the decision and the drafting of the award is left to the discretion of the arbitrators.[32] From the perspective of majority requirement, sometimes it will not only be desirable, but also necessary to reserve enough time for a thorough deliberation about all aspects of the case.

---

[31] *See* on this issue *Sacheri* v. *Robotto*, Corte di cassazione, 7 June 1989, where the Italian court did set aside an award because it was drafted by an expert to whom the arbitrators (who were not lawyers) gave such assignment ((1991) XVI *YBCA* 156).

[32] Lew, Mistelis and Kröll, *supra* n. 9 at pp. 24–36.

If, even after such thorough deliberations, no majority can be reached, there is no shortcut to a decision as in the case of procedural decisions when the presiding arbitrator can make decisions alone. One of the possible options to overcome the lack of majority, as demonstrated by the practice of the Iran-United States Arbitral Tribunal, is in the separation of issues. When the case is divided into a number of issues, the formation of a majority is more likely, though such majorities can be different. The segmentation of the procedure could ultimately lead to a series of partial decisions, which may be a solution that is not always elegant, but can bring the process further and avoid deadlocks.[33]

The majority rule for substantive decisions was criticised for several reasons: apart from possible higher costs and delays, it was argued that such a model of decision-making is more likely to produce extreme results, as the presiding chairman may be tempted to accept the 'lesser evil' and side with one of the opposing 'extremist' opinions of the party-appointed arbitrators in order to avoid deadlocks.[34] This reasoning, although it does have some merit, is not absolutely flawless. First, skilful arbitrators may be able to find an appropriate balance between the extreme positions of their fellow co-arbitrators. Secondly, the authority of the presiding arbitrator to make decisions on his own is not an absolute protection against extreme positions – sometimes such an 'extremist' position may be taken by the presiding arbitrator.

(e) Dissenting Opinions and Truncated Tribunals

As much as majority decision-making means that, in a three-member tribunal, one arbitrator may be outvoted by the remaining two, it still generally implies the participation of all three arbitrators in decision-making. The award made still remains the award of the whole arbitral tribunal, and therefore it should be considered as a collective product, even if it was not unanimous. The UAR, as most arbitration laws and other rules (including the ML) do not contain any rules regarding the way in which the arbitrator(s) who remained in the minority may express their dissent.[35] Thus, positions on dissenting opinions made under the UAR vary, from their acceptance to full rejection. The reasons for the exclusion of a dissenting opinion as stated in some jurisdictions (mainly in civil law countries) include alleged breach of the secrecy of the deliberations of the tribunal, weakening the authority of the award and encouraging and facilitating

---

[33] The practice of dividing the issues was also criticised by some arbitrators of the Iran-United States Tribunal for possible circumvention of the majority rule: it 'conflicts with the spirit, if not the letter, of the rule requiring an award to be made by a majority' (Mosk in *Ultrasystems* v. *Iran*, Award No. 89-84-3, 4 Iran-U.S. C.T.R. at 82). *See further* van Hof, *supra* n. 14 at pp. 212–214 (para. 4.1.4). Yet, the approach of some national procedural laws is basically the same, *e.g.* the Croatian Code of Civil Procedure provides that, in case of a deadlock, the issues should be separated and the vote should be repeated until a majority decision is reached. *See* CCP, art. 131(4).

[34] Thus, Holtzmann in *Economy Forms Corp.* v. *Iran*, (Award No. 55-165-1, 3 Iran-U.S. C.T.R. at 55) arguing that 'something is better than nothing'. *See* van Hof, *supra* n. 14 at p. 212.

[35] Exceptions may be found in the laws of Brazil and China, as well as in the Washington Convention. *See* Lew, Mistelis and Kröll, *supra* n. 9 at pp. 24–47.

challenge of awards. Dissenting opinions also offer an easy way out for party-appointed arbitrators who could, by expressing their dissenting opinions, demonstrate to the party that appointed them that they 'defended its interest'.[36] The proponents of the dissenting opinions (mainly in common law countries) argue that open expression of differing views tend to strengthen the legitimacy of the arbitral proceedings and may lead to more thorough deliberations.

According to some commentators, dissenting opinions, even where permitted, are not frequent in international commercial arbitration.[37] However, if the practice of the ICC can be an indicator of the trend, it seems that dissenting opinions are tending to become a more regular feature,[38] and the number of submitted dissenting opinions show that they are not entirely insignificant (they occur in relation to about 5 to 10 per cent of all awards).[39]

Generally, an undesirable yet still often used method of expressing dissent consists in a refusal to sign an award. An award that is not signed by one of the arbitrators in a three-member tribunal would still be valid under article 32(4) UAR, provided that the reason for the absence of signature (*i.e.* arbitrator's dissent) is stated in the award.

An arbitrator who participated in deliberations of the tribunal, who was outvoted and who subsequently refused to sign an award should still be considered as a part of the tribunal that made the decision. This is arguably not the case if one of the arbitrators were to leave the deliberations and resign before the making of the award (or even prior to that). In such a case, the remaining arbitrators may be faced with the option either to trigger the process of appointment of a substitute arbitrator, if they can, or to continue deliberating as a 'truncated tribunal'. If, in such a situation, a decision were to be made, it could be considered as a unanimous decision made by an incomplete tribunal.

Whether decisions of such truncated tribunals are valid or not, is a matter of controversy. Arbitral practitioners tend to support the validity of a truncated tribunal's decisions, arguing that such a position would prevent the undermining of the proceedings by a partisan arbitrator, and that it would save time and costs of the parties. On the other hand, the arguments against the validity of such decisions are also grave: they include violation of party autonomy (of the agreement that the case be resolved by a specific number of arbitrators); due process of law (requiring that all members of the tribunal take part in the making of the award); equal treatment of parties (which it is argued relates not only to the participation of parties, but also to party-appointed arbitrators) and eventual prohibition of even-numbered tribunals.[40] These arguments led courts to

---

[36] E. Gaillard and J. Savage (eds), *Fouchard, Gaillard and Goldman On International Commercial Arbitration* (The Hague, 1999), pp. 1399–1400.

[37] A. Redfern and M. Hunter, *Law and Practice of International Commercial Arbitration* (London, 2004), at pp. 8–70.

[38] An example is the change in the Internal Rules of the ICC Court in 1998. *See further* Fouchard, Gaillard and Goldman, *supra* n. 36 at p. 1402.

[39] *Ibid.* The data cited in the source relate to the 1995–2000 period.

[40] Lew, Mistelis and Kröll, *supra* n. 9 at pp. 13–68.

annulment of awards in several highly cited cases, including *ATC-CFCO*[41] and the *Ivan Milutinovic* case[42] (decisions by the French Cour d'appel de Paris and by the Swiss Federal Tribunal). Although these decisions were criticised by commentators,[43] the issue is still unsettled.[44] Several newer rules contain express provisions on the issue of truncated tribunals (LCIA, ICC) with differing solutions.

(f) Examples of Recent Legislation: Decision-making under the New Austrian ZPO (2006)

The new Austrian law generally follows the rules of the ML on decision-making (in new ZPO, s. 604(1)), but adding to them a second, new rule that separately addresses the issue of 'truncated tribunals'. So, after reproducing literally the text of Article 29 ML (based more or less on article 31 UAR), the Austrian legislator added the new ZPO, s. 604(2), devoted to the situations in which 'one or more arbitrators did not participate in decision-making without a justified cause'.[45] In these situations, the Austrian law empowers 'the other arbitrators' to make a decision as a truncated tribunal, if two conditions are fulfilled.

First, the decision can be validly made only if it is made by the majority of all arbitrators (including those who abstained from voting). Secondly, the notification obligation should be fulfilled. In the case of awards (*Schiedssprüche*), the parties should be notified about the intention to proceed in such a manner before the decision is made. For 'other decisions' (*i.e.* non-awards), the parties should also be notified, but that may take place later, after the decision has already been made.

The new Austrian provisions on truncated tribunals are a welcome addition, in particular because they form a legislative basis for valid decision-making by 'truncated tribunals' that would otherwise be at the least questionable (see above). Some safeguards against too hasty decisions by incomplete tribunals seem also to be in place, both in respect to the 'overall majority' principle, and in respect to the obligation of prior disclosure. On the other hand, the new Austrian 'pro-truncation rule' is also not without every ambiguity, which might be resolved by future jurisprudence.[46]

---

[41] *ATC-CFCO* v. *Comilog*, Cour d'appel Paris, 1 July 1997, XXIVa (1999) *YBCA* 181.

[42] *Ivan Milutinovic PIM* v. *Deutsche Babcock AG* (ICC Case no. 5017), Tribunal Federal. *See* Schwebel, 'The Validity of an Arbitral Award Rendered by a Truncated Tribunal' in (1995) 6(2) *ICC Bulletin* 19 at p. 22 *et seq.*

[43] *See e.g.* Fouchard, Gaillard and Goldman, *supra* n. 36 at p. 1373; Lew, Mistelis and Kröll, *supra* n. 9 at pp. 31–74.

[44] *See also Hilmapurna California Energy Ltd* v. *Republic of Indonesia*, ad hoc award of 16 October 1999, (2000) XXV *YBCA* 186 at p. 194.

[45] Original German text of s. 604(2): 'Nehmen ein oder mehrere Schiedsrichter an einer Abstimmung ohne rechtfertigenden Grund nicht teil, so können die anderen Schiedsrichter ohne sie entscheiden. Auch in diesem Fall ist die erforderliche Stimmenmehrheit von der Gesamtzahl aller teilnehmenden und nicht teilnehmenden Schiedsrichter zu berechnen. Bei einer Abstimmung über einen Schiedsspruch ist die Absicht, so vorzugehen, den Parteien vorher mitzuteilen. Bei anderen Entscheidungen sind die Parteien von der Nichtteilnahme an der Abstimmung nachträglich in Kenntnis zu setzen.'

[46] *E.g.*, it is not clear why the standards in s. 604(1) and (2) are different: the need for prior disclosure relates to 'awards', and not to decisions of a substantive nature, while the text of s. 604(1) speaks of 'procedural issues' (*Verfahrensfragen*) and not about 'decisions other than awards'. It is also not clearly defined what would be the consequences if the tribunal did not fulfil its disclosure obligation. One may assume that the lack of prior disclosure in the case of awards would lead to nullity, but it is less clear what would be the consequence of the lack of subsequent notification in the case of other decisions (*e.g.* procedural orders).

(g) Paulsson and Petrochilos' Proposals on Truncated Tribunals and Decision-making by the Tribunal

In their Report, Paulsson and Petrochilos state that 'clear rules are required to deal with two situations': first, 'when the tribunal decides to "proceed with the arbitration" notwithstanding the absence of one of its members', and, secondly, 'when the tribunal perceives that one of its members is obstructing the progress of the case, including the tribunal's deliberations'.[47]

As to the solution to the question of 'truncated tribunals', the Report proposes a rather different approach compared to the one of the Austrian legislator. The resolution of the problem, under their analysis, is not to be found in article 31, but rather in article 13 UAR. Their proposal is to change the rule on resignation to the effect that resigning arbitrators would need the approval of the majority of the other arbitrators. Otherwise, the resigning arbitrators would be replaced 'by a direct selection by the appointing authority'.[48] In such a case, effectively no 'truncated tribunals' would be authorised to make awards, but rather full tribunals that are supplemented by newly appointed substitutes.

Although the truncated tribunals were addressed under a different heading, the Paulsson and Petrochilos Report does not refrain from proposing changes to article 31 UAR. This time, the focus is on the classical decision-making rule, and the target is the majority principle. Citing the *RAKTA* arbitration,[49] the report argues that there are cases where 'a deadlock may arise in such a way that the presiding arbitrator would have to sacrifice principle in order to render an award under the UNCITRAL Rules'.[50] The example given was negative, as in the *RAKTA* case the presiding arbitrator was authorised to issue his ruling as an award by the chairman alone, while this would not be possible under the UAR. Concluding from that, the submission of the Paulsson and Petrochilos Report is that the same ICC rule has to be adopted as the future rule of the revised UAR, by adding to article 31 the clause that 'if no majority is formed, any award or other decision shall be made by the presiding arbitrator alone'.

Some issues related to majority decision-making have already been discussed in this article.[51] Here, it remains to be said that a departure from the majority principle, although it might contribute to the efficiency of the arbitral process, does not necessarily resolve the whole problem. In an arbitration, it is not impossible that the party-appointed arbitrators' position, and not the chairman's, would be the 'least unreasonable'. Such monocratic decision-making by a single member of a three-member tribunal might contradict our usual perception of democratic decision-making. While this might be in accordance with the attitude in some legal environments (above all in countries with a common law tradition),

---

47 Paulsson and Petrochilos, *supra* n. 27 at p. 12.e.

48 *Ibid.* p. 103 (draft art. 13(2)).

49 *RAKTA* (ICC Case no. 1703/1971), summarised in W.L. Craig, W.W. Park and J. Paulsson, *International Chamber of Commerce Arbitration* (3rd edn, 2000), p. 370.

50 Paulsson and Petrochilos, *supra* n. 27 at p. 219.

51 *See supra.*

this is not the case in all legal traditions. Majority decision-making may be slower, less effective and more demanding for the chairpersons of arbitral tribunals, but it fosters debate, exchange of arguments and a joint responsibility of all arbitrators for the outcome of the arbitral process. It also prevents hasty decisions, be they by the chairmen or not. All in all, if the proposed rule has some advantages, they may be offset by the disadvantages, and therefore it is not easy at all to make a clear-cut case in favour of such a change in the UAR and for the adoption of the completely different, non-majoritarian rule. The sheer fact, admitted by the report itself, that the cases of awards made by the chairman alone are very rare, may speak in favour of a cautious and reserved approach.

V. CONCLUSION

The UAR provisions on the number of arbitrators and their decision-making are still today a solid basis that belongs to the anthology of modern arbitration practice. They remain useful as they are, and therefore we see no urgent need to change articles 5 or 31. Alternative models do exist, *e.g.* with respect to resolving problems with even-numbered arbitral tribunals; default rules on the number of arbitrators that would be appointed if parties cannot agree; or methods of making decisions when no majority can be formed. But these models also have their disadvantages and no one can seriously argue that they are manifestly and undoubtedly superior to the UAR provisions. If parties consider them better, they may either opt for the alternative rules, or, using their party autonomy granted under article 1(1) UAR, make specific arrangements, departing from the text of the UAR.

Of course, the practice of international arbitration (not only arbitration governed by the UAR) points to some uncertainties related to issues that are not expressly regulated by the UAR. Some of them are clearly too difficult to regulate in a general manner, *e.g.* the issue of time limits for decision-making. Again, this is an occasion where parties may legitimately use their autonomy in departing from the text of the UAR, if desired.

Some recent proposals for the revision of the UAR – in particular those voiced by the Paulsson and Petrochilos Report – contain useful arguments and inspiring insights. Yet, it is still doubtful whether they have made a fully convincing case regarding the submission that 'a revision of the Rules is overdue and indispensable',[52] and in particular whether their proposed changes would bring a decisive improvement to the UAR and their use in the practice of international commercial arbitration. The main issue here is related to the purpose of the changes: to whom are the changes addressed and for whom should the UAR revision take place? The UAR have achieved their global popularity more as a symbol of one, harmonised vision on global dispute resolution than as an everyday tool for settling commercial disputes. They were a model before the first

[52] Paulsson and Petrochilos, *supra* n. 27 at p. 4.

model laws of the UNCITRAL, and as such they were incorporated into a number of national laws and arbitration rules. Their impact was far greater exactly in this symbolic role, in comparison to their relatively limited use in the concrete practice of ad hoc arbitration cases governed by them.

Now, 30 years later, the choice that parties have on the menu of international arbitration rules is far greater, just as the practice of arbitration is far more developed. The 'big' arbitration providers have developed their own particular rules, sometimes far more detailed than the UAR. If we look at such rules from the legalistic point of view, they may seem more coherent and elaborate than the UAR – and it seems indeed that the self-understanding of many reputable arbitration institutions is that their rules are 'better' than the UAR. This is very visible in some places in the Paulsson and Petrochilos Report, which frequently cites the ICC and LCIA Rules, arguing that their solutions are 'sound and workable, and should be part of a revised text of the UAR'.[53] However, the 'big' arbitration organisations' rules had and have different functions and operate on a rather different level. As institutional rules, they rely on organisational structures and have a preference for efficiency in decision-making and institutional control – the same preferences that determine many of the proposals in the Paulsson and Petrochilos Report.[54] Should this be the future of the UAR? We think: not necessarily. The UAR should remain a flexible and informal tool for ad hoc arbitrations, a tool that can be used as a model for a number of other procedures, not only those in institutional arbitrations and not only in cases where the 'big players' play their game. The UAR should remain a lighthouse, and not only one among many confectionery products that need to improve their 'features' and 'specifications' every season.

Having said that, we do not deny the need to address the unresolved issues connected with the application of articles 5 and 31. The most complicated and far-reaching practical and doctrinal problems related to articles 5 and 31 are connected to the issue of truncated tribunals. Here, some additional provisions may, *prima facie*, be helpful. As the UNCITRAL has decided at its Thirty-ninth session in June 2006 to put the revision of the UNCITRAL Rules on its agenda for future work, this is also what will most likely happen. However, our opinion is that such additional provisions (*e.g.* those drafted along the lines of similar LCIA or ICC provisions) would resolve only one half of the problem.

In the rules, it would be possible to provide whether or not arbitrators are authorised to make decisions in truncated tribunals. If their right to make such decisions was affirmed, the time limit could be set after which eventual resignations of arbitrators would not affect the ability of a tribunal to make the award (*e.g.* after closure of oral hearings). A more ambitious reform could also

---

[53] *Ibid.* p. 76.

[54] As one could see from the proposals of Paulsson and Petrochilos, they prefer efficiency over procedural guarantees of fairness (departure from majority decision-making), they place more power in the hands of chairpersons (chairman-alone awards), and they require more control and intervention by the appointing authorities (determining the 'appropriate' number of arbitrators, direct appointment of a replacement arbitrator in case of resignation).

consider changes in the rules on resignation of arbitrators, providing, for example, that during the proceedings (or after a certain moment in the proceedings) the arbitrators would be authorised to resign only with the permission of the parties and/or other two arbitrators. In spite of other possible interpretations, it seems to us that the current text of the UAR assumes tacitly that an arbitrator has a unilateral right to resign. The duty to appoint a replacement arbitrator is at least impliedly present in the current text of article 13 ('in the event of ... resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator *shall be appointed*').[55] Therefore, it is likely that the rules on truncated tribunals would require some changes in at least article 13, and possibly also in article 32(4).

The effect of such possible changes would dispel eventual doubts whether a truncated tribunal was allowed to act under the parties' agreement, and therefore caters only to objections made on the basis of party autonomy arguments. The other half of the problem, though, is that some objections in current and past cases and in the doctrine were not derived from the party perspective, but from the due process of arbitration and party equality, *i.e.* from the rules and principles that parties cannot change by their agreement. Such arguments could not be handled in a satisfactory manner by a mere changes of arbitration rules, even if those rules have such a global reputation and weight as the UAR undoubtedly have. For an effective harmonisation of international arbitration practice in this, second respect, we consider that only a binding legislative instrument would be fully appropriate. To make provision for truncated tribunals in a comprehensive way within the framework of the UNCITRAL's activities, further amendments to the ML, or even a binding international instrument, would be desired. In our opinion, although this would be a rather demanding task, we think that such a task would bring more benefits than changes in the current UAR, that have served well for 30 years and which are fit to serve equally well – changed or unchanged – for at least the next 30 years.

The recent reform of the Austrian arbitration law demonstrates that the concepts embodied in the UAR (as well as its successors, such as the UNCITRAL Model Law) continues to contribute to the harmonisation of arbitration laws in the world. The roots of the Austrian rules on the number of arbitrators and decision-making in multi-member tribunals are indeed in articles 5 and 13 of the UAR. In section 586 one can hear an echo of article 5 UAR; in section 604, some of the text clearly relies on article 31 UAR. The sections of the two provisions that supplement or change the original UNCITRAL text are partly inspired by the past and tradition (*e.g.* the rule against an even number of arbitrators) and partly by the experiences gained that look towards the future (*e.g.* the solution of the issue of truncated tribunals). As such, the Austrian rules are a good example of modern arbitration legislation, a legislation that is harmonised with global standards, although not without some local flavour. As harmonisation of arbitral

[55] Same for failure to act in art. 13(2), which would cover the situation of tacit obstruction of one arbitrator.

practices and legislations is not a one-way street, after having UAR as a source of inspiration for the new Austrian law, in the future this law might be one of the inspirations for the revision of the UAR. It might also make us think about the extent of future changes to the UAR, as most of the UAR text is clearly still so acceptable that even countries with a developed arbitration culture, such as Austria, do not delete or add a great deal to its original wording. An old adage may be reconfirmed in respect of future changes to the UAR: sometimes, less is more.