Arbitration

A Possible Commonwealth Arbitration Service

A Discussion Paper prepared for the Commonwealth Secretariat by Mr Sharad Rao

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Introduction

1. At the 1990 Commonwealth Law Ministers Meeting held in Christchurch, New Zealand, Prince Bola Ajibola SAN, Attorney General of the Federation and Minister of Justice of Nigeria posed the question "whether the time has not come for careful examination of the possibility of setting up an international arbitration centre for the Commonwealth that could be an assignment that could be given to the Commonwealth Secretary General to consider and come back to us and give us some working papers on...."

2. The purpose of this paper is briefly to explore this possibility and to make suggestions as to how the matter might proceed. As little use has been made of intra-Commonwealth state arbitration, this paper offers brief observations only in regard to inter state arbitration and somewhat fuller observations in regard to international commercial arbitration. These may be expanded as necessary.

The Prospects for a Commonwealth International Arbitration Centre

A. *Inter State Disputes*

3. The concept of arbitration as a form of dispute settlement as distinct from adjudication by a court has existed in all countries and cultures. However, its evolution in modern international law was confined to a group of states from Europe and America with similar inter related cultures and similar legal traditions. Exercising as they did considerable power and influence internationally they were the principal creators of modern international law. In their hands arbitration evolved as an essentially judicial process with emphasis on the application of substantive and procedural rules, and the process which had hitherto certain "flexibility" became more rigid in its rules and procedures adopting the more formal process of judicial settlement.

4. Countries which played little,if any, part in this evolutionary process have a different perception of the arbitral process. To them arbitration although conducted "on the basis of respect for law" should take into account a wide variety of considerations including, where possible, the context in which the dispute occurred and a process under which neither party emerged as a winner or loser. In other words the award should have a "somewhat mediatory quality".

5. Difficulties arising out of these differing perceptions and differences as to the implications of a State's consent to submit to arbitration has among a variety of other reasons resulted in a reluctance on the part of States to engage in inter-state arbitration.

6. As against 66 inter-state arbitrations recorded in the period 1901 to 1910, 37 in the period 1911 to 1920, and 66 in the period 1921 to 1930, the popularity of inter-state arbitrations declined with only 16 recorded in the period 1931 to 1940, 6 between 1941 to 1950, 12 between 1951 to 1960, 9 between 1961 to 1970, 4 between 1971 to 1980 and only 3 between 1981 to 1990. (The three latest arbitrations being the agreement between US/Iran dated 19 January 1981, the Guinea/ Guinea - Bissau (Maritime boundary) agreement dated 18 February 1983, and the Egypt/ Israel (Taba) agreement dated 11 September 1986).

7. The Hague Convention for the Pacific Settlement of Disputes of 1899 brought into being the Permanent Court of Arbitration. In a classic definition of the arbitral process the Convention declared that "international arbitration has for its object the settlement of differences between states by judges of their own choice, and on the basis of respect for law".

8. Today the Court of Arbitration exists side by side with the International Court of Justice, for the purpose, it seems, of serving either as an alternative mechanism for resolving legal disputes or as a means of settling other types of disputes or both. While the function of the International Court of Justice is to "decide disputes in accordance with the law", in arbitrations under the auspices of the Permanent Court of Arbitration differences are to be settled "on the basis of respect for law".

9. The Permanent Court of Arbitration is, of course, in no sense a court. It is in reality a panel of international lawyers nominated by states parties to the Hague Convention. Members of the panel are available to states wishing to select arbitrators from amongst them. The Court has a Bureau comprising a Secretary General, an Assistant Secretary General and a Secretary for day to day Secretarial work. Its Administrative Council comprises the Foreign Minister of the Netherlands as President and heads of the diplomatic missions at the Hague of States parties to the Convention.

10. Arbitrators selected from the Court heard thirteen

cases before the outbreak of the First World War, but after the creation of the International Court of Justice calls on the Court of Arbitration dwindled and it has in recent years played little or no role in the international arbitral process.

11. Two regional dispute settlement mechanisms were established subsequently, namely, in 1948 and 1957 by the Atlantic States of Europe and America and are worthy of note:

(i) The American Treaty on Pacific Settlement (Pact of Bogota) of 1948, under which the parties agreed to settle their differences by regional pacific procedures before referring them to the United Nations Security Council. It provides a range of settlement mechanisms which include binding arbitration for "differences of any kind".

(ii) The European Convention on the Settlement of Disputes of 1957 under which the parties are required to "submit to arbitration all disputes which may arise between them other than those mentioned in Article 1 and which have not been settled by conciliation, either because the parties have agreed not to have prior recourse to it or because conciliation has failed." (Article 1 refers to "International legal disputes", a term further elaborated by examples along the lines of Article 38 of the Statute of the International Court of Justice). It has thus indicated arbitration as the appropriate mode for resolving non legal disputes.

12. The International Law Commission's Model Rules on Arbitral Procedure completed in 1958, contemplated their general applicability by all States. These Rules specify the law to be applied along the lines of Article 38 of the Statute of the International Court of Justice referred to above, and restricted the power to decide "ex aequo et bono" only if agreement between the parties so provide. The Rules failed to find support of the developing countries and of Eastern Europe who opposed it on the ground that they violated what in their opinion was a basic principle of arbitration - the autonomy of the will of the parties.

13. Recognition of the problems associated with the use of arbitration to resolve inter-state disputes in its essentially judicial mode has given rise to several proposals as to how the arbitral process could be developed and applied. In "The Function of International Arbitration Today " in Recueil des Cours 1963, Professor Louis Sohn reviews several of these proposals for settlement of non legal disputes between states expressing his own preference for referring "non legal disputes to an international arbitral tribunal empowered to decide ex aequo et bono either in all cases or, at least, in so far as there is no rule of international law applicable to the particular dispute".

14. Perhaps the shared concepts and common expectations of the Commonwealth could benefit from an approach similar to the European Convention on the Settlement of Disputes of 1957. The topic needs detailed consideration with specialist advice to determine whether an understanding can be arrived at which could find general acceptance within the Commonwealth.

B. *International Contract Disputes*

15. International arbitration has established itself as the most widely adopted method for settling international contract disputes. Arbitration offers significant advantages in on-going commercial relationships in which the parties hope to be able to resolve any dispute which may arise without serious disruption of the relationship. It assures a measure of certainty : an assured channel of dispute resolution agreed in advance, which avoids the risk that any party may be faced with a choice of law or forum which it regards as either potentially biased or simply unfamiliar. It is flexible, expeditious and generally regarded as cost effective.

16. Efforts have been made from time to time to develop a uniform law for arbitration and uniform rules of procedure for application in international arbitration. Both ad hoc and institutional rules have been drawn to suit various disciplines and approaches to the conduct of dispute resolving process for example the 1975 Rules of the International Chamber of Commerce Court of Arbitration, Rules of the International Centre for the Settlement of Investment Disputes, the 1985 Rules of the London Court of International Arbitration, and Rules on Commercial Arbitration formulated by the International Law Association in 1950. A Uniform Law on Arbitration in Respect of Relations of Private Law was developed by UNIDROIT in 1935, revised in 1954, and amended by the Legal Committee of the Consultative Assembly of the Council of Europe in 1957. In 1966 the European Convention on International Commercial Arbitration of 1961 held under the auspices of the United Nations Economic Commission for Europe promulgated its ECE Rules for International Commercial Arbitration. In 1976 UNCITRAL adopted the UNCITRAL rules for ad hoc arbitration and suitable for adoption by arbitral institutions generally.

17. The UNCITRAL Arbitration Rules, which are gaining in popularity, were designed primarily to provide an international set of rules for commercial arbitration that would be acceptable in countries with different legal and economic systems. They were intended to serve a dual purpose, first, as rules of procedure of direct application, available to parties entering into an arbitration agreement, and, second, as a model set of arbitration rules to be incorporated into the rules of national and international arbitration centres. With

the expansion of international arbitration beyond traditional areas, the applicability of the UNCITRAL rules has extended to such fields as investment, joint ventures, transfer of technology, and other forms of industrial, technical and economic cooperation and include controversies and claims regarding the breach, termination, or invalidity of a contract.

18. Although originally intended as rules for ad hoc proceedings, the UNCITRAL arbitration rules are increasingly being used in institutional settings. A number of arbitral institutions which have their own established arbitration rules have accepted, in a variety of ways, the use of the UNCITRAL rules if parties so wished. Some institutions have adopted the rules with or without modifications as their own rules of procedure for international arbitration. These include the Regional Centre for Arbitration Kuala Lumpur, the Australian Centre for International Arbitration, and the British Columbia International Commercial Arbitration Centre. Others such as the London Court of International Arbitration embodied that option into their established institutional rules; yet others, such as the Euro Arab Chambers of Commerce, use the UNCITRAL rules as an alternative to their own rules, if the parties so desire.

19. Increasingly the question when to arbitrate is taking on a new meaning. It is becoming associated with the choice of whether to engage in a conciliation proceeding before considering the need for arbitration. Conciliation, too, is receiving growing attention as an alternative method for resolving international trade disputes.

20. Conciliation is a non binding process which involves the use of third persons to assist the parties to reach a settlement. Agreement to conciliate does not exclude the possibility of arbitration if the conciliation is not successful. The ICC has had conciliation rules for many years.

21. The United Nations Commission on International Trade Law adopted the UNCITRAL Conciliation Rules in 1980. These are regarded as the most complete and comprehensive conciliation rules available. The rules are flexible, yet are more specific than most other rules in provisions designed to safeguard the rights of the parties. They were developed by representatives of all geographic regions including capitalist and socialist states as well as developed and developing economies and are likely, therefore, to receive broad and world wide acceptance.

22. The parties and the arbitrators in these various established systems come from both civil law and common law jurisdictions and have a different approach towards the conduct of the process particularly as regards reception of evidence, both oral and written. The common law lawyers are accustomed to the adversarial approach and the laying out of a case for judicial consideration and those with civil law background preferring an inquisitorial approach.

23. The process of international commercial arbitration, originating as it did, in Europe, has been largely influenced by the civil law system of continental Europe with its greater emphasis on the exchange of written pleadings as compared to the common law focus on oral hearings. Witnesses, if any, are heard only after a series of exchange of briefs and documents by both parties. Witnesses are called by the court rather than the parties and are examined by the Court itself. Counsel may put questions to adduce complementary testimony but their role is secondary. Common law proceedings place emphasis on hearings, oral testimony and the examination of witnesses. Documentary evidence play a secondary role.

24. The arbitrators tend to apply procedures which they are familiar with and apply principles of the legal system which they know best. But arbitrators may choose to apply procedures which are common to both systems or adopt certain features of each system, provided the essential elements of a fair procedure are respected and applied so that the award is enforceable. These elements comprise what is termed 'arbitral due process' which includes the right to be heard, the right to be informed of proofs and arguments, and the right to obtain an award based on the arbitrator's own opinion and judgment and not that of others. These generally recognised principles are common to both systems.

25. The Rt Hon Sir Michael Kerr, President of the London Court of International Arbitration said at a conference in Hong Kong (in 1980) that he favoured the use of the inquisitorial approach in arbitrations. He said that "in long and complex cases the Continental inquisitorial procedure is often more effective than our adversary system. It is better for the tribunal to limit discovery in the first instance, to appoint its own experts, and then to exercise control over the volume of discovery and the witnesses whom it wants to hear..."

26. The greater emphasis on written pleadings would reduce the amount of time the parties and the arbitrators must physically be together, thus reducing costs. The conduct of proceedings too is thought to be more flexible, enabling the arbitrators to study the contentions of the parties at their convenience, to confer without the need to travel except for the hearing proper, which would take less time as many of the matters will have been dealt with in the written pleadings.

27. Considered in the light of such conflicting principles and attitudes the establishment of an arbitral system for the Commonwealth which shares a common law heritage and concepts deserves consideration.

28. There has been in recent years an emergence of a considerable number of arbitral institutions offering

their services to settle international commercial disputes. The most important and widely used institution is undoubtedly the International Chamber of Commerce. Parties who arbitrate under the ICC rules are offered a full range of secretariat services by the Court of Arbitration of the International Chamber of Commerce. Similarly the London Court of International Arbitration offers comparable services to parties who wish to arbitrate under the LCIA rules. The UNCITRAL rules do not lay down secretariat services. However the rules contemplate that the arbitrators may arrange with an institution to provide such assistance.

29. The International Chamber of Commerce is located in Paris and is represented by national committees in over 50 countries. The Court of Arbitration of the International Chamber of Commerce is the international arbitral body of the ICC and its members are nominated by the different national committees. The ICC Court of Arbitration does not itself engage in arbitration. It supervises and assists in international arbitration proceedings conducted by arbitral tribunals established on a case by case basis according to the ICC rules. The conduct of the proceedings and the award rendering process fall within the domain of the particular arbitral tribunal. The Court of Arbitration meets three times a month, once in plenary session and twice in a committee of the court to decide on issues such as confirmation of or challenges to the appointment of arbitrators, approval of draft awards, fixing of fees and costs of arbitration.

30. There has been a steady increase in the submission of disputes to ICC arbitration. In 1977 the Secretariat of the ICC Court of Arbitration registered 205 arbitration cases; by 1987 that number had increased to 339 and by 1987 to approximately 700. By comparison the other known arbitral institution the International Centre for Settlement of International Disputes had between 1971 when the first request was filed before the ICSID and 1987, 23 additional requests lodged before it. The LCIA which had at the end of 1987, 21 pending arbitrations currently has around 60 pending cases and new references are filed at the rate of around 35 to 40 a year. Almost all cases have at least one non UK party and in over 80% of the cases the parties are non UK parties.

31. Over the last three years parties to disputes under the LCIA Rules included parties from 8 Commonwealth countries, namely Australia, Belize, Bermuda, Brunei, The Channel Islands, Hong Kong, Malaysia, and the United Kingdom.

32. Despite its international name and reputation the ICC is primarily a Western European institution. During the 9 years period between 1979 and 1988 over half of 5676 parties (54.5%) to ICC arbitrations came from Western Europe, 13.5% from Asia and the Far East, 6.2% from North Africa, 4.4% from the Middle East, 4% from sub-Saharan Africa, and 3.8% from Latin America and the Carbine. Of these the Commonwealth content was as follows:

Western Europe:	UK 275, Channel Islands 8, Cyprus 8, Malta 3
Far East:	India 49, Australia 35, Pakistan 21, Singapore 20, Sri Lanka 17, Hong Kong 16, Malaysia 12, Bangladesh 9, New Zealand 5, and Brunei 2.
Africa:	Nigeria 28, Kenya 7, Zambia 5, Seychelles 5, Ghana 4, Botswana 3, Namibia 3, Mauritius 2, Tanzania 2
America and the Caribbean:	Canada 60, Bermuda 29, Bahamas 22, Cayman Islands 14, West Indies 10
Total 674,	Percentage of Total 11.87%

33. The ICC receives approximately 300 requests annually. Of these in one out of three cases proceedings take place in Paris. The jurisdiction of the ICC Court of Arbitration is limited to "business disputes of an international character". This term is not defined and the Court tends to interpret it broadly. The rules respect party autonomy including determination of the place of arbitration, selection of arbitrators, and stipulation of applicable law.

34. The International Centre for Settlement of Industrial Disputes (ICSID) was created by a treaty that obliges the signatory states to recognise an ICSID award as though it were a judgment of their own national court. It is located in Washington and is affiliated with the World Bank. However, the ICSID arbitration is available only if one party is a state or state agency. Like the ICC the ICSID does not itself engage in arbitration but provides simply the facilities. In contrast to the ICC (and UNCITRAL rules) the ICSID fixes the fees for the arbitrators. The current fee is 600 special drawing rights per day for meetings and hearings, or for any 8 hours work day. In addition the arbitrators are paid a per diem allowance of $145.

35. The American Arbitration Association is an independent, non governmental, nonprofit organisation. The Association is governed by a Board of Directors and has a staff of over 400. It administers over 45,000 arbitrations annually. Just over 150 of these are international, and have involved on an average parties from thirty-five different countries. The AAA has developed supplementary procedures for International Commercial Arbitration. The AAA has adopted a specific set of administrative procedures for cases under the UNCITRAL Arbitration Rules setting forth in detail how the AAA would perform the functions of an appointing authority and provide administrative services in conformity with the UNCITRAL rules.

36. The London Court of International Arbitration is perhaps the oldest and best known facility offered within the Commonwealth. It was inaugurated in 1892 as the London Chamber of Arbitration on the initiative of the Corporation of London. It operates under the general direction of a Joint Committee of Management composed of representatives of the Chartered Institute of Arbitrators, the Corporation of the City of London and the London Chamber of Commerce. It consists of twenty six members who are leading practitioners in the field of international commercial arbitration.

37. The London Arbitration Centre consists of a complex of court rooms, retiring rooms and library, telex, fax and other communicating facilities, research and information services and staff support services. The functions of the LCIA court include:

ensuring the application of the rules; proper selection and appointment of arbitrators; dealing with challenges to arbitrators; ruling on disputes which may arise in the course of the proceedings; ensure the smooth functioning of the arbitration proceedings; and keeping the Rules under review.

38. In 1987 the LCIA introduced the concept of "users" councils, each with its own secretariat, covering the major trading areas of the world. "Users" are defined as corporate lawyers and others from international and multi national industrial, commercial and trading organisations; international lawyers and firms of lawyers; and practising arbitrators and number approximately 450 in just over 40 countries. The councils are designed to provide a more formal and structured relationship between the LCIA and the users. There are four councils at the present time, namely -

(i) LCIA European Council covering all European and adjacent countries including Eastern Europe and the Middle East.

(ii) LCIA North American Council covering North America and the adjacent countries;

(iii) LCIA Asia Pacific Council covering South East Asia and the Pacific rim;

(iv) LCIA Pan African Council covering sub Saharan Africa.

39. A Regional Centre for Arbitration was established in Kuala Lumpur in 1979 under the auspices of the Asian African Legal Consultative Committee in cooperation with and with the assistance of the Government of Malaysia. The centre is a non-profit making institute and has been established with a view to provide a system for settlement of disputes for the benefit of parties engaged in trade with and within that region.

40. The Vancouver Centre for Commercial Disputes was established in 1986 with funding from the provincial government and additional federal funding. The centre functions under the ICA Foundation of British Columbia with trustees representing the provincial government, The University of British Columbia Law School, The Vancouver Board of Trade and the commercial, legal and arbitration communities. The centre is housed in Canada Place at Vancouver Harbour and provides facilities which include conference rooms, counsel rooms, witness retiring rooms, a library and communicating facilities. The centre also provides interpreters, and translators.

41. A number of other Commonwealth countries also offer secretariat services. These include Nigeria, India, Malta, Hong Kong, Singapore, and Australia.

42. Staffing - ICC and LCIA

(a) The ICC Secretariat is headed by a Secretary General who is assisted by a General Counsel. Immediate responsibility for the progress of each case file falls on the Counsel. There are 5 of them - generally young lawyers. They are identified to litigants as the persons responsible for the file. Each counsel (with the help of an assistant and a Secretary) takes responsibility for all aspects of the case.

(b) The LCIA has a Registrar, a Deputy Registrar (who is a qualified Solicitor) and secretarial and clerical staff.

Administrative Fees and Costs

43. Each request for arbitration under the ICC rules must be accompanied by an advance of $2,000 in respect of administrative costs. The administrative costs charged are subject to a maximum. Fees are assessed by the Court at time of final award based on the degree of complexity, duration and any other particular circumstance. Costs are estimated at commencement, and each party is required to pay 25% of it at the outset, and the remaining 50% prior to the entering into effect of terms of reference. Interest from the advance is not credited to the parties and has become an important source of revenue for the ICC. ICC fees can be inequitable. If a claim is for a large amount, but is not complex and requires only one or two hearings the arbitrators fees are out of proportion to the work involved. Similarly administration fees are not directly proportional to the extent of the facilities used.

44. For large cases, ICSID arbitration is less expensive than ICC arbitration. This is so because the parties benefit from the World Bank's infrastructure and the arbitrators' fees are fixed on a per day rate.

45. The LCIA has chosen to fix the arbitrators fees on the basis of the time spent on the case rather than the amount. By way of guidance these are in the following range :

- £600-1,500 per day for meetings and hearings.
- £100-300 per hour for other time spent.

There is a provision which enables the court to disregard the schedule in order to avoid unjustifiably high

arbitrators fees when a case is settled early or resolved more easily than anticipated. A registration fee of £500 is payable in advance, and the time spent by the Secretariat is charged at the rate of £100 per hour.

46. The UNCITRAL rules do not prescribe administrative and arbitrators fees. The tribunal may request each party to make an equal deposit in advance to cover the cost of the arbitration, and later request supplementary deposits. UNCITRAL costs are defined to include fees of the arbitrators, their travel and other expenses, costs of experts appointed by the Tribunal, costs of witnesses, attorneys' costs, fees and expenses of the appointing authority. They prescribe that the fees of the arbitrators must be "reasonable in amount" taking into account the amount of time spent, the amount of the claim and the complexity of the case.

Establishment of an Institution for Arbitration

47. The minimum requirements of an institution of arbitration appear to be :

(i) To arrange and provide facilities for hearings

(ii) To arrange interpreters and transcripts

(iii) To act as a conduit for exchanges of papers among parties and arbitrators.

(iv) To arrange for deposits to cover the arbitrators' fees and other expenses.

(v) Establishing and reviewing the arbitrators' fees

(vi) Providing other secretariat assistance.

48. The centre would set the standard qualifications for arbitrators, establish and maintain a panel of arbitrators, set up and keep the rules of procedure up to date, set the administrative fees for services rendered to the parties and to receive and disburse all funds deposited by the parties in the course of their arbitration. The actual upkeep of a panel once it is established, is a continuing one if the parties are to be assured of available and competent arbitrators. The preparation of rules and clauses once established have also to be kept up to date. New conditions, current court decisions, or changes in laws require constant examination of these rules. There are at least a dozen standard clauses in current use. They are dictated by trade conditions, government regulations, or other factors that require special types of clauses. A constant analysis of these changes must be made.

49. It is pertinent here to examine the basic items of costs of establishing and maintaining such a system. In addition to staffing costs, and the cost of arranging the various matters referred to in Paragraphs [32 and 33] above, not in itself inconsiderable, there would be the initial outlay in providing equipment such as computers, type writers, copying machine, fax, stationery etc.

50. A system of arbitration cannot, therefore, be successfully established unless there is a sponsoring organisation that is willing and able to finance its establishment, maintenance and operation. In the event that it is felt that a Commonwealth international arbitration service be established this could be done under the patronage of the Commonwealth Secretariat, within or in association with its Legal Division.

51. International commercial arbitration is a service industry and is subject to the same standards and exigencies as those which generally govern the business community notably in terms of competence and cost effectiveness.

52. The functions performed by an administrative institution greatly facilitate the conduct of the practical details of the case. But bearing in mind that excellent facilities are already available in various parts of the Commonwealth (such as for instance the London Court of International Arbitration in London, the Regional Centre for Arbitration in Kuala Lumpur, the Vancouver Centre for Commercial Disputes in Vancouver, and similar facilities in Singapore, Hong Kong and Australia and indeed in Nigeria, as referred to above) bilateral arrangements should be possible with these various centres to provide venues and services in the various regions of the Commonwealth and yet centrally administered without having to incur the added expense of providing such further facilities.

53. The executive functions of the organisation would be performed by professionally qualified staff, the judicial functions by members of Panels under established Rules of Procedure. Staffing could be modest at least initially. An Executive Director or Registrar, assisted by a Senior Administrative assistant and one or possibly two Secretaries could with the support services of the Legal Division be able to establish and provide these services competently yet economically.

54. The income sources:

(i) Grants or contributions to be solicited from Governments and commercial bodies.

(ii) Membership: By way of guidance the LCIA membership and fees are as follows:

  (a) Large international and multi-national companies £500-650

  (b) Law firms .. £350 to 450

  (c) Small and medium sized companies, firms and associations .. £250 to 350

  (d) Individual members .. £85 to 125

[A rough count of LCIA membership indicates a total membership of just over 450, of which 225 are Law firms, 75 are companies, 150 are individuals. Income from membership is approximately £150,000. The Commonwealth content of membership is estimated to be of the order of 240, and income from Commonwealth membership approximately £70,000.]

(iii) Fees from parties for administrative costs.

55. It should be borne in mind that whereas a centre may be "open for business" as soon as its rules of procedure, administrative structure etc are established it will not be "in business", so to speak, until its services are requested, and for this to happen the parties would have first agreed to refer its dispute to it. The staffing may, therefore, be staggered over a period of time as the situation may demand.

56. A small working group could be appointed to recommend a suitable set up and draw up rules of procedure. UNCITRAL rules with suitable modifications, if necessary, could be a useful starting point.

57. The International Bar Association has after detailed consideration on the subject made by members of a variety of common law and civil law systems drawn up Supplementary Rules of Evidence in International Arbitration designed to define procedures acceptable to parties from diverse systems of law.