ELGAR COMMENTARIES

# THE ICSID CONVENTION, REGULATIONS AND RULES

## A Practical Commentary

Edited by
Julien Fouret
Rémy Gerbay
Gloria M. Alvarez
With Denis Parchajev



© The Editors and Contributors Severally 2019

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical or photocopying, recording, or otherwise without the prior permission of the publisher.

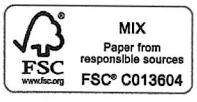
Published by
Edward Elgar Publishing Limited
The Lypiatts
15 Lansdown Road
Cheltenham
Glos GL50 2JA
UK

Edward Elgar Publishing, Inc.
William Pratt House
9 Dewey Court
Northampton
Massachusetts 01060
USA

A catalogue record for this book
is available from the British Library

Library of Congress Control Number: 2019951425

This book is available electronically in the **Elgar**online
Law subject collection
DOI 10.4337/9781786435248




ISBN 978 1 78643 523 1 (cased)
ISBN 978 1 78643 524 8 (eBook)

Typeset by Sparks – www.sparkspublishing.com
Printed and bound by CPI Group (UK) Ltd, Croydon CR0 4YY

# CONTENTS


*Extended contents* vii
*List of contributors* xiii
*Foreword* liv
*Table of cases* lvi
*Table of legislation and international instruments* xcviii

**PART I COMMENTARY ON THE CONVENTION 1**

The Preamble of the ICSID Convention 2

1 International Centre for Settlement of Investment Disputes 24

2 Jurisdiction of the Centre 102

3 Conciliation 256

4 Arbitration 271

5 Replacement and Disqualification of Conciliators and Arbitrators 751

6 Cost of Proceedings 777

7 Place of Proceedings 831

8 Disputes Between Contracting States 848

9 Amendment 858

10 Final Provisions 868

**PART II COMMENTARY ON ADMINISTRATIVE AND FINANCIAL REGULATIONS 911**

11 ICSID Administrative and Financial Regulations 912

12 Procedures of the Administrative Council 915

13 The Secretariat 925

14 Financial Provisions 930

15 General Functions of the Secretariat 941

16 Functions with Respect to Individual Proceedings 947

17 Special Provisions Relating to Proceedings 955

18 Immunities and Privileges 959

19 Miscellaneous 962

**PART III COMMENTARY ON RULES OF PROCEDURE FOR THE INSTITUTION OF CONCILIATION AND ARBITRATION PROCEEDINGS (INSTITUTION RULES) 964**

20 Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules) 965

**PART IV RULES OF PROCEDURE FOR ARBITRATION PROCEEDINGS (ARBITRATION RULES) 977**

21 Establishment of the Tribunal 978

22 Working of the Tribunal 1029

23 General Procedural Provisions 1058

24 Written and Oral Procedures 1085

25 Particular Procedures 1139

26 The Award 1225

27 Interpretation, Revision and Annulment of the Award 1270

*Select bibliography* 1305

*Index* 1311

Respondent) had submitted jurisdictional objections to the claim brought by Vacuum Salt Limited.

As a result of the jurisdictional objections and the request for provisional measures, the President of the Arbitral Tribunal was unable to participate and attend the first session.[30] It was therefore Judge Brower who accepted to serve as President of the Tribunal pursuant to Arbitration Rule 17. Judge Brower had indeed sent the acceptance of his appointment as arbitrator to the Secretary-General before Dr Hossain. **22.66**

Rule 17 continues to be rarely applied, although a very important instrument filling the gap to avoid proceedings being slowed down or deadlocked in the event of incapacity of the President of the Arbitral Tribunal. **22.67**

## RULE 18 – REPRESENTATION OF THE PARTIES

Mélanie Riofrio Piché and Krystle Baptista Serna

**(1) Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretary-General, who shall promptly inform the Tribunal and the other party.**

**(2) For the purposes of these Rules, the expression 'party' includes, where the context so admits, an agent, counsel or advocate authorized to represent that party.**

Rule 18 deals with the right of a party to organize its representation (1), but raises two additional issues that arise in the context of such rule: the authority to represent a party (2) and the tribunal's power to control the parties' representation (3). The authors have drawn three conclusions from their analysis of the current case law (4). **22.68**

[30] Indeed, this meant that the first session would encompass a short oral hearing rather than a simple initial brief. As a result, the President was unable to attend.

## 1. THE RIGHT OF A PARTY TO ORGANIZE ITS REPRESENTATION

**22.69** Rule 18 acknowledges an undisputed right granted to parties in international legal proceedings: the right to be represented by agents and/or counsel of their own choosing. This right is also recognized as a basic right to a fair trial in Article 42 of the Statute of the International Court of Justice[31] and in Article 6(3)(c) of the European Convention on Human Rights.[32]

**22.70** The Rule allows any party to be either represented or assisted by 'agents', 'counsel' or 'advocates', but it does not require such representation or assistance. This means that parties may represent themselves before ICSID tribunals or may authorize someone to represent them.

### A. Representation v. assistance of the parties

**22.71** Rules of Procedure for Arbitration Proceedings (the 'ICSID Rules') do not provide further details as to the meaning of the terms 'representation' or 'assistance'. The common meaning of the words suggests that the difference between the two concepts lies on the powers granted to the person that represents or assists. A representative has the power to speak for and engage the designating party whereas, an assistant to the party will aid in its defence before the arbitral tribunal. In any case, the scope of authority will have to be determined by the designating party.

**22.72** In disputes between States, these are frequently *represented* before the arbitral tribunal by *agents*,[33] who are *assisted* by *counsel*.[34] The agents are the full and official representatives of the party, who manage and control the case, and instruct counsel.

**22.73** In practice, ICSID cases are disputes between investor claimants (private companies or individuals) against respondent States. In such cases, according to the ICSID Rules, the investor claimant must designate precisely each party to the dispute and provide the address of each in its request for arbitration.[35] Thus, the claimant ought to provide

31 Statute of the International Court of Justice, Article 42: '1. The parties shall be represented by agents. 2. They may have the assistance of counsel or advocates before the Court. 3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.'

32 European Convention on Human Rights, Article 6(3)(c): 'Everyone charged with a criminal offence has the following minimum rights: c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.'

33 Statute of the International Court of Justice, Article 42(1): 'The parties shall be represented by agents.'

34 Statute of the International Court of Justice, Article 42(2): '[The parties] may have the assistance of counsel or advocates before the Court.'

35 ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings, Rule 2(1)(a): 'The request shall: (a) designate precisely each party to the dispute and state the address of each.'

the address of at least one representative of the respondent State. Unlike other juridical persons, States do not have a registered address. The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the 'ICSID Convention' or 'Convention') and the ICSID Rules do not address this issue, which may cause some difficulties for the claimant.

**22.74** In designating a representative of the respondent State, investors may turn to the international definition of representative of a State provided in Article 7 of the Vienna Convention on the Law of Treaties, 1969:

> 1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:
>    (a) he produces appropriate full powers; or
>    (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.
> 2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
>    (a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
>    (b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
>    (c) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

**22.75** Thus, the investor may consider a person to be the representative of the respondent State, under international law, if he either:

- produces the appropriate full powers;
- appears to be a representative based on prior practice; or
- by virtue of the functions he carries out within the respondent State.

**22.76** The investor may also want to verify the municipal law of the respondent State for any provisions regarding the authority of certain government officials and agencies to represent the State.[36]

---

36 Illustrative case on which Sébastien Manciaux bases his article, 'The Representation of States before ICSID Tribunals' (2011) 2(1) Journal of International Dispute Settlement 89–90. *Cf. Carnegie Minerals (Gambia) Limited v. Republic of Gambia*, in which the annulment committee addressed the issue of whether the domestic law of the respondent State may govern the question of representation of claimant in the annulment proceedings. The committee conceded that the case was 'unique' and found that the domestic law of the respondent State should not determine who is able to represent a claimant in cases where the claimant is deemed to be a national of a foreign State under Article 25(2)(b)

### B. Who may act as representative or assistant to the parties?

**22.77** Nowadays, parties are almost always represented by lawyers specialized in investment arbitration. Investors are usually represented by lawyers in private practice and sometimes also by in-house counsel. States are usually represented by government lawyers, lawyers in private practice or both.

**22.78** Rule 18 does not allow a party to object to the lack of professional qualifications of the counterparty's representative. The term 'agent' does not imply a specific legal or other qualification. Thus, any person duly authorized and designated by the party may act as its agent before the arbitral tribunal. The terms 'counsel' or 'advocates' do not imply a specific legal qualification.[37] Hence, any person with appropriate legal training – jurists, attorneys, barristers, solicitors, *avocats*, professors of law – may act as counsel or advocate.

### C. Immunity

**22.79** Article 22 of the ICSID Convention states that parties' representatives appearing in ICSID proceedings enjoy the same immunity from legal process as ICSID arbitrators or members of the ICSID Secretariat.[38]

## 2. THE AUTHORITY TO REPRESENT A PARTY

**22.80** The names and authority of agents, counsel or advocates must be notified to the Secretary-General, who will then inform the tribunal and the other party. Rule 18 does not differentiate between the authority of an agent and that of counsel or advocate.[39] Therefore, the designating party must specify in its designation, the scope of authority of the people designated as agents, counsel or advocates.

**22.81** Rule 18 does not establish a general requirement for an agent or counsel representing a party to provide a power of attorney or any other proof of authority. However, the

---

of the ICISID Convention. *Carnegie Minerals (Gambia) Limited v. Republic of Gambia*, Decision on Representation (7 October 2016), paras 38–46.

37 *Abaclat v. Argentina*, Decision on Jurisdiction and Admissibility, dated 4 August 2011, para. 448; ICSID Reports (n 24) Rule 18, note B, 83.

38 ICSID Convention, Article 22: 'The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.'

39 ICSID Reports (n 24) Rule 18, note C, 83.

ICSID Secretariat, and certainly the arbitral tribunal, have an implied power to request such proof of authority when appropriate.[40]

In practice, the party itself or its counsel informs the ICSID Secretariat of its legal representation and attaches a power of attorney. If no power of attorney is provided the ICSID Secretariat requests that an authorization be provided, which may take the form of a simple letter. Representation is not often contested in ICSID arbitration, but when it is, the matter is usually addressed by the arbitral tribunal. **22.82**

The proper representation of the parties – and especially of States – is crucial, because Article 52(1)(a) of the ICSID Convention states that one party may request the annulment of an award on the ground that the tribunal was not properly constituted. And an ICSID tribunal would surely be held not 'properly constituted' if the person that purported to appoint one of its members had no power to do so. **22.83**

Problems concerning the representation of a State can be addressed in at least four ways:[41] **22.84**

- by curing the lack of authority of the person representing the State;
- by ratification of the acts in question;
- by relying on the principles of good faith and estoppel; and
- by invoking the responsibility of the respondent State.

The following cases provide some examples: **22.85**

In *Generation Ukraine v. Ukraine*, the respondent raised a jurisdictional objection at the final hearing based on an alleged deficiency in the formal appointment of the claimant's counsel by the Board of Directors of Generation Ukraine. The tribunal dismissed the objection as belated, but clarified that even if this had not been so, the tribunal would dismiss it as 'hypertechnical and unmeritorious' because the continuous presence of the sole shareholder of Generation Ukraine at the hearings left no doubt that the corporation chose to be represented by the counsel who appeared on its behalf.[42] **22.86**

In *Scimitar v. Bangladesh*, the tribunal dismissed the case for lack of jurisdiction under Article 41(5) of the ICSID Rules. The tribunal accepted the respondent's challenge to **22.87**

40 *Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria*, Procedural Order No 5 (14 October 2016), paras 55, 65, 95, 96(a).

41 Sébastien Manciaux, 'The Representation of States before ICSID Tribunals' (2011) 2(1) Journal of International Dispute Settlement 87, 93.

42 *Generation Ukraine, Inc. v. Ukraine*, Award (16 September 2003), para. 16.1.

the tribunal's jurisdiction, based on the fact that the request for arbitration had been introduced by persons not properly authorized and that there was no subsequent authorization under the law of the British Virgin Islands.[43]

**22.88** More recently in *Interocean v. Nigeria*, the claimant requested that the tribunal direct the State to produce an instrument authorizing an English law firm – who had initially been engaged by the respondent 'to act as Co-counsel along with Counsel already on record'[44]– to act as counsel to the respondent. The tribunal found that there were inconsistencies and ambiguities and contradictions in the manner in which respondent had addressed the authority of its counsel, and ordered the respondent to submit a letter from the Attorney General confirming that the law firm was validly appearing on behalf of the respondent in the proceedings.[45]

### 3. THE TRIBUNAL'S POWER TO CONTROL A PARTY'S REPRESENTATION

**22.89** As mentioned previously, parties have the right to select representatives of their own choosing. But, is this an unrestricted right? Do ICSID tribunals have the power to exclude a counsel and, if so, in which circumstances should they do so?

**22.90** The ICSID Convention and Rules do not explicitly give the power to tribunals to exclude counsel. If tribunals assume an authority to which they are not clearly entitled, there is a risk that their award may be annulled on the ground that they have exceeded the scope of their power.[46] To what extent can a tribunal be deemed to have the power to exclude counsel where such express authority is not available?

**22.91** As confirmed by C. Schreuer, tribunals have an inherent power to take measures to preserve the integrity of its proceedings:[47]

> An ICSID tribunal's power to close gaps in the rules of procedure is declaratory of the inherent power of any tribunal to resolve procedural questions in the event of lacunae. In exercising this power, the tribunal may not go beyond the framework of the Convention, the Arbitration Rules and the parties' procedural agreements but must, first of all, attempt to close any apparent gaps through the established methods of interpretation for treaties and other legal documents. But the tribunal is free of the constraints of procedural law in any national legal system of law, including that of the tribunal's seat (see

43 *Scimitar v. Bangladesh*, Award (5 April 1994), paras 7–8, 21, 25, 29.

44 *Interocean Oil* (n 40) Procedural Order No. 5 (14 October 2016), paras 50(a), 52.

45 ibid. paras. 55, 65, 95, 96(a).

46 See ICSID Convention, Article 52(1)(b).

47 Christoph H. Schreuer, *The ICSID Convention: A Commentary* (CUP 2001), 683.

also paras. 3.20 supra). ICSID tribunals have exercised their procedural discretion by formulating general rules for the proceedings before them or by making specific decisions. They have done this earlier in the form of procedural orders or informally.

Such inherent power finds its legal basis in Article 44 of the Convention, which authorizes the Tribunal to decide 'any question of procedure' not expressly dealt with in the Convention, the ICSID Rules or 'any rule agreed by the parties'. Article 44 of the Convention states as follows: **22.92**

> Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

The issue is whether the inherent authority of an international tribunal to exercise such powers that are necessary to preserve the integrity of its proceedings extends to the exclusion of counsel. **22.93**

Two kinds of situations have arisen regarding the appointment of party representation within the ICSID system: the conflict of interest between counsel and arbitrator, and the one between counsel and party. **22.94**

## A. Conflict of interest counsel-arbitrator

The first situation occurs when changes in a party representation in the course of an arbitration may, because of conflicts of interest between a newly-appointed party representative and one or more of the arbitrators, threaten the integrity of the proceedings. **22.95**

In the cases of *Hrvatska Elektroprivreda d.d. v. Slovenia* ('*Hrvatska*')[48] and *Rompetrol Group N.V. v. Romania* ('*Rompetrol*')[49] the tribunals had to deal with the appointment of a party's representative because of an alleged conflict of interest with a member of the tribunal. **22.96**

[48] *Hrvatska Elektroprivreda d.d. v. Slovenia*, ICSID Case No. ARB/05/24, Tribunal's ruling regarding the participation of Mr. David Mildon QC in further stages of the proceedings (6 May 2008).

[49] *Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Decision on the participation of a counsel (14 January 2010).

**22.97** In both cases the tribunal recognized the fundamental principle that parties are free to organize their representation,[50] and acknowledged that ICSID tribunals have no explicit power to exclude counsel.[51]

**22.98** In *Hrvatska* the claimant challenged a counsel appointed by the respondent on the ground that he was a barrister at the same chambers as the president of the tribunal.[52] The claimant was notified of the participation of the barrister only shortly before the hearing.

**22.99** The tribunal found that, although the respondent was free to select its legal team as it saw fit prior to the constitution of the tribunal, it was not entitled to subsequently amend the composition of its legal team in such a fashion as to imperil the tribunal's status or legitimacy.[53] The tribunal concluded that a fundamental principle (such as that of a party's right to choose its representative) must give way to overriding exceptions. In that case, such overriding exception was that of the immutability of properly constituted tribunals enshrined in Article 56(1) of the Convention.[54]

**22.100** In light of the fundamental rule determined in Article 56(1) of the Convention and given its inherent procedural powers confirmed by Article 44 of the Convention, the tribunal concluded that it had the power to exclude counsel and that the circumstances of the case required so.[55]

**22.101** In *Rompetrol* the respondent sought to challenge claimant's counsel on the grounds that he was once employed by the same law firm as the president of the tribunal.

**22.102** The tribunal explicitly refrained from adopting the *Hrvatska* approach. The tribunal was not convinced that there was any tension between the two basic principles: the party's right to be represented by persons of its own choice v. the independence and impartiality of the tribunal (coupled with the associated principle of the immutability of a tribunal duly constituted).[56] The tribunal found that where two basic principles did come into collision with one another, it would be its duty to find a way of bringing the two principles into balance, not to assign priority to one over the other.[57] Although

50 *Hrvatska* (n 48) para. 24; *Rompetrol* (n 49) para. 20.

51 ibid.

52 Claimant invited the tribunal to 'recommend to the Respondent that it refrain from using the services' of respondent's counsel. *Hrvatska* (n 48) para. 10.

53 ibid. para. 26.

54 ibid. para. 25.

55 ibid. para. 34.

56 *Rompetrol* (n 49) para. 21.

57 ibid.

the tribunal remained silent on whether it had or had not power to exclude counsel, it did hold that if such power existed, it would be one 'to be exercised only rarely and in compelling circumstances'.[58]

In this case, the tribunal did not find any basis to interfere in the choice by claimant of its counsel for these proceedings, and rejected the respondent's application to exclude claimant's counsel. **22.103**

ICSID jurisprudence is not consistent on the extent to which a tribunal may exclude a counsel whenever there might be a conflict of interest between a party's representatives and one or more arbitrators.[59] **22.104**

### B. Conflict of interest counsel-party

A second situation that has arisen is that of a counsel that has previously represented the counterparty in a related proceeding. In this case the conflict of interest is caused by the counsel chosen by the party. **22.105**

In *Fraport v. Philippines*,[60] the respondent applied to the annulment committee for an order disqualifying claimant's counsel from acting in the arbitration on the ground that he had a conflict of interest stemming from his prior representation of the respondent in a related and – at that time – still pending ICC arbitration.[61] **22.106**

The committee decided the matter in accordance with the power given to it under Article 44 of the Convention, in order to protect the integrity of the proceedings.[62] It held that such power and duty includes the power and obligation to make sure that generally recognized principles relating to conflict of interest and the protection of the confidentiality of information imparted by clients to their lawyers are complied with.[63] **22.107**

---

58 Ibid. para. 18.

59 The use of inherent power to disqualify counsel in this kind of situation has become a non-issue in commercial arbitrations under the 2014 London Court of International Arbitration Rules (see Article 18 of the LCIA Rules and the General Guidelines for the Parties' Legal Representatives). Like the LCIA Rules, the IBA Guideline on Party Representation in International Arbitration, adopted by a resolution of the IBA Council on 25 May 2013, also allows the tribunal to exclude a party representative appointed after the constitution of the tribunal from participating in the arbitral proceedings, if such appointment creates a conflict (see Guidelines 4 to 6 on Party Representation).

60 *Fraport AF Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25, Decision on application for disqualification of counsel (18 September 2008).

61 Ibid. para. 17.

62 The committee applied Article 44 of the ICSID Convention *mutatis mutandis* to the procedure before the committee pursuant to Article 52(4) of the ICSID Convention. ibid. para. 36.

63 Ibid. para. 37.

**22.108** The committee, however, pointed out that it did not have ethical responsibilities or jurisdiction over the parties' legal representatives in their own capacities.[64] It specifically stated that, as an international tribunal, it had no power to rule on an allegation of misconduct and that it was not bound by any professional rules that may apply.[65]

**22.109** In reaching its conclusion, the committee analysed whether there was any real risk that the lawyer could have received confidential information which may be relevant to the annulment application and give an undue advantage to the claimant, prejudicing the fair disposition of the proceedings.[66] The committee dismissed the application.

**22.110** In the event of a breach of an applicable ethical standard, parties may issue a complaint to a lawyer's national regulator. However, it is rare to have national regulators sanctioning lawyers for ethical misbehaviours in foreign proceedings.[67] In practice, the burden of policing the conduct of counsel falls on the arbitral tribunal. However, tribunals have no jurisdiction over representatives, solely over the parties. Unlike a regulator, arbitral tribunals may have difficulties sanctioning representatives.[68]

## 4. CONCLUSION

**22.111** Three main ideas can be drawn from the analysis of Rule 18.

**22.112** First, there is a fundamental principle that parties are free to organize their representation as they see fit.

**22.113** Second, the ICSID Convention and the ICSID Rules contain no provisions as to the disqualification of counsel (in contrast to the specific rules as to the disqualification of arbitrators in Article 57 of the ICSID Convention).

**22.114** Third, tribunals have an inherent power to take measures to preserve the integrity of arbitral proceedings according to Article 44 of the ICSID Convention. Whether they possess an implied power to control a party's representation, stemming from this

64 ibid. para. 39.

65 ibid. paras. 39–41.

66 ibid. para. 42.

67 G. Born, *International Commercial Arbitration* (2nd edn, Wolters Kluwer 2014), 2888.

68 For more information on the current system for resolving ethical issues involving party representatives in ICSID arbitration see Catherine A. Rogers, 'Context and Institutional Structure in Attorney Regulation: Constructing a Law Enforcement Regime for International Arbitration' (2003) 39 Stanford Journal of International Law 1; Hans-Jürgen Hellwig, 'At the Intersection of Legal Ethics and Globalization: International Conflicts of Law in Lawyer Regulation' (2008) 27 Penn State International Law Review 395; Carolyn B. Lamm and others, 'Has the Time Come for an ICSID Code of Ethics for Counsel?' (2009–2010) Yearbook on International Investment Law & Policy.

provision, is still undefined. What is clear though is that, if such power exists, it would be one to be exercised in exceptional circumstances, and upon a case-by-case analysis.

**22.115** In any case, and although no precedent has been raised as to this matter so far, it would be much easier for an ICSID tribunal to exercise this control with respect to counsel than with regard to agents of a respondent State.

**22.116** Finally, the Proposal for Amendment of the ICSID Rule 18 includes minor language modifications.[69] The main difference is that the proposed rule specifies that the expression 'party' may include, where the context so admits, all parties acting as claimants or as respondents, and an authorized representative of the party.[70] This is so, in order simply to accommodate multiparty proceedings.

69 International Centre for Settlement of Investment Disputes, 'Proposals for Amendment of the ICSID Rules – Working Paper' (Volume 3), 2 August 2018, 88.

70 Proposed Arbitration Rule 2:

**Meaning of Party and Party Representation**

(1) For the purposes of these Rules, 'party' may include, where the context so admits:

(a) all parties acting as claimants or as respondents; and

(b) an authorized representative of a party.

(2) Each party may be represented or assisted by agents, counsel or advocates ('representative(s)'), whose names and proof of authority to act shall be notified by that party to the Secretariat.