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CORRECTION AND CLARIFICATION OF ARBITRAL AWARDS

SUMMARY

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CORRECTION AND CLARIFICATION OF ARBITRAL AWARDS

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INTRODUCTION

In theory, the role of the arbitrator over the dispute terminates in the moment when the arbitral award is issued. However, this general principle must be taken with a grain of salt. This is because one could imagine situations in which the arbitral award contains omissions, mistakes or obscurities. That is why arbitration rules[3] and legislations[4] of most jurisdictions allow the parties to ask the arbitral tribunal the removal of gaps, the correction of any material or clerical errors and the clarification of ambiguities in the award.

The arbitral tribunal's power to interpret its own awards is recognized by many civil-law jurisdictions[5] and some common-law States.[6] Requests for interpretation of arbitral awards have become popular among common-law States due to the increasing acceptance of UNCITRAL[7] Model Law and Rules.[8] R. D. A. KNUTSON reminds us that "*the tribunal can go back and reconsider its award, but the exact scope of this power is unclear and rests uneasily with concepts common to most jurisdictions, civil or common-law, such as* res judicata *and* functus officio*.*"[9] How the arbitral tribunal shall face this situation, independently of civil or common-law provisions, and how it can

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[2] The author expresses his gratitude to Júlia Vita de Almeida, who helped him do the research for this paper. However, any mistakes or omissions are the author's own responsibility.

[3] UNCITRAL Rules (Arts. 35-37), ICC Rules (Art. 29), SCC Rules (Arts. 41 and 42), LCIA Rules (Art. 27), ICSID Convention and Arbitration Rules (Arts./Rules 50 and 51) and Rules of the Mediation and Arbitration Chamber of São Paulo (Arts. 13.9 and 13.10), for instance.

[4] UNCITRAL Model Law (Art. 33), the 1996 English Arbitration Act (Sec. 57), the 1996 Brazilian Arbitration Act (Art. 30), the 1986 Netherlands Arbitration Act (Arts. 1060 and 1061 of the Code of Civil Procedure), the 1997 German Arbitration Statute (Art. 1058 of the ZPO), the 1998 Belgian Arbitration Statute (new Art. 1702 bis of the Judicial Code) and the 1999 Swedish Arbitration Act (Sec. 32), for instance. As FOUCHARD, GAILLARD and GOLDMAN point out, "*other legal systems, including French international arbitration law, are silent, leaving these questions to the parties who are free to select an appropriate procedural law or arbitration rules*". - E. GAILLARD and J. SAVAGE (Eds.), *Fouchard Gaillard Goldman on International Commercial Arbitration*, Kluwer Law International, 1999, p. 775.

[5] Brazil, The Netherlands, Germany, Belgium, Sweden, Mexico, Japan and Spain, for example.

[6] England (Sec. 57 of English Arbitration Act), Canada (Commercial Arbitration Act Article 33), Scotland (The Scotland Arbitration Code Article 23) and Malaysia (Article 35 of Arbitration Act 2005), for example.

[7] United Nations Commission on International Trade Law.

[8] Since Articles 35 to 37 of the 1976 UNCITRAL Arbitration Rules provide for the interpretation, correction and the making-process of an additional award.

[9] R. D. A KNUTSON, *The Interpretation of Arbitral Awards - When is a Final Award not Final?,* in *Journal of International Arbitration*, Vol. 11 No. 2 (1994), p. 99.

prevent abuses from the parties, are issues to be further discussed in the present analysis.

A set of post-award motions is usually available to the parties in international commercial arbitration.[10] Among them, requests for *correction* and *clarification* of arbitral awards will be focused in this review. *Correction* is employed here as meaning the rectification of omissions and of material or clerical errors. The word *clarification*, in its turn, is employed as a synonym of interpretation, seen as the pursuit of the real intent of the arbitral tribunal either in the motivation of the award, either in the condemnation itself.

Therefore, it is convenient to examine, as regards the requests for *correction* (A), firstly, the definition of gaps and how they can be filled and, secondly, the description of material and clerical errors and their correction. Finally, with respect to requests for *clarification* (B), we will proceed to analyze obscurities and what is to be deemed an obscurity.

A. REQUESTS FOR *CORRECTION*

One of most common errors in arbitral awards is the omission of any claim that should have been decided – or in the very least addressed -, as well as the absence of any word in the text (i); also, the existence of material and clerical mistakes is quite usual (ii). These errors are subject to a request for *correction* and not *clarification* of the award, since the objective here is not to pursuit the arbitrators' real intent, but to identify defects in the text, resulted from a lapse of attention.

(i) The removal of gaps

A gap is present whenever a claim or issue that should have been addressed in the proceedings, or simply a word or information, is omitted in the award.[11] The *correction* can be presented as an additional award in the first situation, or an *addendum*, in the second one. Circumstances such as the composition of the arbitral tribunal, the rules applicable to the *correction*, the procedural uses and customs and the extension and nature of the *lacuna* are taken into consideration by the arbitrators when making the choice between the additional award and the *addendum* remedies. What really matters is, actually, the substance.

Whenever a word or information is omitted in the award's text, the usual solution is to make an *addendum*. This amendment follows the same procedure as the

[10] See A. N. VOLLMER and A. J. BEDFORD, *Post-Award Arbitral Proceedings*, in *Journal of International Arbitration*, Vol. 15, No. 1 (1998), p. 37.

[11] See A. REDFERN, M. HUNTER, N. BLACKABY and C. PARTASIDES *Law and Practice of International Commercial Arbitration*, 4th ed., Sweet and Maxwell, 2004, pp. 1 - 36

one provided for the correction of material and clerical errors. For this reason, it will be examined in the next topic ("The correction of material and clerical errors").

As regards the omission of a claim in the decision, the appropriate solution is the request for an additional award, as it usually is for this specific sort of flaws. The main purpose of the remedy "*is to prevent a national court from setting aside an award for incompleteness or failure to dispose of a claim at issue*".[12]

The peculiarity of such motion resides on the fact that a *correction* of omissions might avoid the need for further *clarification* of the arbitral award. Since the purpose of an additional award is to rectify an omission, once the gap is filled, the decision of the arbitrators will be better understood.

The motion for an additional award has a similar procedure in most arbitration rules and legislations. An important consideration to bear in mind is that it is usually not carried out on the initiative of the arbitral tribunal.[13]

After receipt of the arbitral award the parties usually have thirty days to request an additional award, on notice to the other party. However, terms are not timed so universally: pursuant to Article 37.2 of the UNCITRAL Arbitration Rules ("UNCITRAL Rules") of 1976, "*if the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request*." The London Court of International Arbitration Rules ("LCIA Rules") of 1998 also accords sixty days as the time limit for rendering an additional award. Under the American Arbitration Association Rules ("AAA Rules") the delay is substantially shorter - the additional award must be issued within thirty days after the request.

The Brazilian Arbitration Act admits motions for an additional award in its Article 32, II. The procedure is very similar to the one provided by the institutional rules described above, but the difference resides, once again, on the delays. The parties have only five days to fill the request, while the arbitral tribunal shall respect the time limit of ten days to issue the additional award. The English Arbitration Act of 1996 ("English Arbitration Act") has similar provisions,[14] but the parties are bound to a 28-day time limit, while the arbitral tribunal, to a 56-day time limit.

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[12] A. N. VOLLMER and A. J. BEDFORD, *Post-Award Arbitral Proceedings*, in *Journal of International Arbitration*, Vol. 15, No. 1 (1998), p. 44.

[13] An exception is, for instance, The English Arbitration Act Article 57.3 (B): "*57. Correction of award or additional award: (…) (3)* ***The tribunal may on its own initiative*** *or on the application of a party (…)(b)* ***make an additional award*** *in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award. These powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.*" (Emphasis added)

[14] See Article 57.3 (B).

The table below[15] illustrates the comparative analysis of requests for additional awards in a few institutional and national rules of arbitration:

ADDITIONAL AWARDS								
	INSTITUTIONAL RULES				LEGISLATIONS			
	UNCITRAL	**ICC**	**SCC**	**LCIA**	**UNCITRAL Model Law**	**Brazil**	**England**	**USA**
Contemplate Additional Awards?	Yes	No	Yes	Yes	Yes	Yes	Yes	No
On the initiative of the arbitral tribunal?	No	___	No	No	No	No	Yes, within 28 d.	___
Time limit granted to the parties for submission of request	30 d.	___	30 d.	30 d.	30 d.	5 d.	28 d.	___
Time limit granted to the arbitral tribunal for deciding	60 d.	___	60 d.	60 d.	60 d.	10 d.	56 d.*	___

*In this case, the arbitral tribunal is granted 56 days of the date of the original award.

If the purpose of the additional award is to deal with claims that were omitted in the award decision, there are two conditions for its application. First, the request shall challenge an award that addresses *claims* and, second, the request shall not be used as an artifice to raise *new* claims.

The first condition means that an award dealing only with procedural issues, not touching the merits of the dispute, is not subject to a request for an additional award. It seems irrelevant whether the award is final or partial,[16] since what really matters is the omission of any claim that supposedly had to be dealt with in the decision award.[17]

[15] Other relevant institutional rules and legislations are not part of the present and next tables because they were not analyzed in this paper.

[16] We agree with R. D. A KNUTSON when he contends that "*interim awards are final as to the matters they decide*" - *The Interpretation of Arbitral Awards - When is a Final Award not Final?,* in *Journal of International Arbitration*, Vol. 11 No. 2 (1994), p. 99.

[17] In their mention of UNCITRAL Rules Article 37, AAA Rules Article 30 and IAC Rules Article 37, N. VOLLMER and A. J. BEDFORD affirm that "*the use of the term 'claims' (rather than 'claim') and the reference to 'the award' could imply that the award referred to in these provisions is the final award. In other words, the term 'claims' could mean the totality of the claims (which only the final award will deal with) and the use of the term 'the award' could mean the final award (only one final award exists, but more than one interim or partial award may exist). This issue apparently has not been raised in practice. To the contrary, in one or perhaps two cases, tribunals have considered requests for additional awards when only a partial award had been issued*." (e.g. *Harris Int'l Telecomms. Inc. v. Iran*, 18 Iran–U.S. Cl.

The second condition is related to the specific scope of the additional award: to decide a claim that was omitted in the award decision or, in other words, to remove a gap. The terms of reference shall be taken as parameters to determine whether the gap alleged by the parties concerns a claim previously defined or simply and erroneously an issue out of the scope of the arbitration. We agree with R. TRITTMANN and C. DUVE in their statement that "*in making use of its discretionary power, the arbitral tribunal has to examine whether the affected claim has actually been presented in the proceedings or whether the request affects a new claim.*"[18]

The request for an additional award being an unusual remedy and not foreseen by all institutional rules, such as the International Chamber of Commerce Rules ("ICC Rules") of 1998, there are not many examples[19] of it in case-law. But one of them is particularly worth a closer exam, one that is largely discussed by authorities: *Lockheed Corp. v. Iran.*[20]

The dispute arose when the North-American *Lockheed Corp.* claimed to recover losses that resulted from its business activities with Iran and the Iranian Air Force.[21] The Iran – United States Claims Tribunal ("Iran-US Claims Tribunal"),[22] governed by the arbitration rules of UNCITRAL, found against Iran's counterclaim. Arguing that *Lockheed* should be ordered to return certain parts to Iran and asking for clarification as regards the status of certain other parts in *Lockheed*'s possession, Iran filed a post-award motion, but did not specify whether it was a request for *correction* or *clarification* of the arbitral award. The Tribunal first noted that a request for

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Trib. Rep. 76-77 (1988) - *Post-Award Arbitral Proceedings*, in *Journal of International Arbitration*, Vol. 15, No. 1 (1998), p. 46.

[18] In F. B. WEIGAND (Ed.), *Practitioner's handbook on international arbitration*, Copenhagen, Verlag C. H. Beck München, 2002, p. 366.

[19] D. D. CARON and L. F. REED mention the following cases of the Iran-US Claims Tribunal as examples of requests for additional awards: *Hood Corp.* v. *Islamic Republic of Iran*; *Flexi-Van Leasing, Inc.* v. *Islamic Republic of Iran*; *International Schools Services, Inc.* v. *Islamic Republic of Iran*; *Exxon Research and Engineering Co.* v. *Islamic Republic of Iran*; *Sedco, Inc.* v. *NIOC*; *Harris International Telecommunications, Inc.* v. *Islamic Republic of Iran*; *Mohajer-Shojaee* v. *Islamic Republic of Iran*; *Saboonchian* v. *Islamic Republic of Iran*; *Collins Systems International, Inc.* v. *Navy of the Islamic Republic of Iran*; *Harold Birnbaum* v. *Islamic Republic of Iran*; *Unidyne Corporation* v. *Islamic Republic of Iran*. - *Post Award Proceedings under the UNCITRAL Arbitration Rules*, in *Arbitration International*, Vol. 11 No. 4 (1995), pp. 442-443.

[20] See D. D. CARON and L. F. REED, *Post Award Proceedings under the UNCITRAL Arbitration Rules*, in *Arbitration International*, Vol. 11 No. 4 (1995), p. 443; N. VOLLMER and A. J. BEDFORD, *Post-Award Arbitral Proceedings*, in *Journal of International Arbitration*, Vol. 15, No. 1 (1998), p. 44; and R. D. A KNUTSON, *The Interpretation of Arbitral Awards - When is a Final Award not Final?,* in *Journal of International Arbitration*, Vol. 11 No. 2 (1994), p. 104.

[21] J. D. FRY, *Islamic Law and the Iran-United States Claims Tribunal: The Primacy of the International Law over Municipal Law*, in *Arbitration International*, Kluwer Law International, Vol. 18, Issue 1, 2002, p. 111.

[22] This tribunal came into existence to rule the delicate relations between the Islamic Republic of Iran and the United States of America arising out in November 1979. More information at http://www.iusct.org/background-english.html

correction[23] of errors was clearly not applicable to the case. Besides, a request for *clarification*[24] could not be examined either: as Iran had only claimed damages during the course of the proceedings, a claim for physical delivery of the parts could not be subject of the post-award requests. Finally, issuing an additional award[25] was also not appropriate, since Iran had not specified any claims from its original proceedings that the Tribunal's award might have failed to address.

From the brief analysis of the case at hand, it is possible to affirm that the request for an additional award has the limited scope of rectifying an omitted claim in the award decision. Any new issue raised by the parties in the post-award motion shall be considered an abuse and be rejected by the arbitral tribunal.

We proceed to examine the request for *correction* of material and clerical errors, the most usual among all post-award motions.

(ii) The correction of material and clerical errors

Material errors are computational, such as mistakes in the calculation of a certain amount. Clerical errors are purely typographical or of similar technical nature, such as erroneous dates, inverted numbers and displaced words. Both must be self-evident.

In any case, errors are what theory calls *noises in communication*, and although they do not affect the intention of the arbitrators, they might conduct to difficulties of comprehension to a less alert reader. For this reason, errors shall be corrected, "*but the correction would not mean that the tribunal had changed its decision. Rather, it would only mean that the tribunal had incorrectly expressed its decision in the first place*."[26]

Thus, it is clear that rectification of obvious mistakes is subject to a post-award motion for *correction*, and not *clarification*. Nothing will be interpreted again by the arbitral tribunal, which will only perform a technical formal review.

The motion for *correction* of any error in the award can arise on the initiative of the arbitral tribunal and also at the request of any of the parties.

When the arbitral tribunal itself detects an error in the award, it can make an amendment. The ICC Rules allow the arbitral tribunal thirty days to submit an *addendum* for approval to the Court.[27] The time limit granted to *"sponte propria*" corrections by the arbitral tribunal is the same under UNCITRAL,[28] SCC[29] and LCIA[30] Rules.

[23] UNCITRAL Rules Article 36.
[24] UNCITRAL Rules Article 35.
[25] UNCITRAL Rules Article 37.
[26] A. N. VOLLMER and A. J. BEDFORD, *Post-Award Arbitral Proceedings*, in *Journal of International Arbitration*, Vol. 15, No. 1 (1998), p. 39.
[27] ICC Rules Article 29.1.
[28] UNCITRAL Rules Article 36.

The UNCITRAL Model Law[31] provides for the *correction* of errors on the arbitral tribunal's own initiative. The English Arbitration Act in its Article 57.3 (A) also contemplates such possibility and there doesn't seem to be laws forbidding this practice in other countries.

The parties are also allowed to request the arbitral tribunal for *correction* of errors in the award. Under the ICC Rules,[32] the interested party shall make the application within thirty days of the receipt of the award. The arbitral tribunal will then grant the other party a short time limit, normally not exceeding thirty days, to submit any comments. Finally, the arbitral tribunal shall render its draft decision to ICC Court in thirty days. As regards the procedure of *correction* under ICC Rules, M. BÜHLER and S. JARVIN interestingly note that "*what is foreseen by the ICC Rules is exactly what does happen in practice: out of over 300 Awards approved each year by the Court, and despite ICC arbitrators using their best efforts in drafting Awards, only a handful pass such scrutiny without the Secretariat and/or the Court finding at least one typographical error. (…) However, as practice has shown, the system is not 100% 'safe' and, on past experience, the need to have corrections made to an award has arisen even after the approval of the Award by the Court and most often after its notification to the parties.*"[33]

Other institutional rules also provide for *correction* of the award on the initiative of any of the parties. The UNCITRAL Rules' Article 36.1, for instance, states that "*within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature.*" Under SCC[34] and LCIA[35] Rules, not only the parties, but also the arbitral tribunal is bound to a 30-day time limit to submit its decision thereon.

We find similar provisions, but with different time limits, in national legislations, such as the Brazilian Arbitration Act, Article 30 and the English Arbitration Act, Article 57.[36] In this sense, G. B. BORN properly recalls that "*even where legislative mechanisms do not exist, national courts have fashioned limited means of correcting*

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[29] Article 41.2 of 2010 Stockholm Chamber of Commerce Rules.
[30] LCIA Rules Article 27.2.
[31] Article 33.2 of 1985 UNCITRAL Model Law.
[32] ICC Rules Article 29.2.
[33] In F. B. WEIGAND (Ed.), *Practitioner's handbook on international arbitration*, Copenhagen, Verlag C. H. Beck München, 2002, p. 276 (footnotes omitted).
[34] SCC Rules Article 41.1.
[35] LCIA Rules Article 27.1.
[36] "*(…) the Swiss Law on Private International Law does not include a statutory provision on correction of awards. It is well-settled, however, that this does not prevent an arbitral tribunal in an international arbitration seated in Switzerland from correcting its award. In the absence of contrary agreement, some Swiss commentators suggest that a 30-day time limit is applicable to requests for corrections, although the better view adopts a more flexible analysis in the absence of legislative deadlines*." - G. B. BORN, *International Commercial Arbitration*, Kluwer Law International, 2009, pp. 2521-2536.

mistaken awards. These various legislative and judicial actions are necessary in order to avoid the unacceptable possibility that a party find itself bound by an award ordering relief that the arbitrators did not intend and do not want to grant."[37]

As the New York Convention does not expressly require neither forbid procedures for correction of arbitral awards, and considering that a mistaken award shall not be given effect, pursuant to basic conceptions of procedural fairness, it seems acceptable that, in the absence of applicable institutional rules or legislation, the parties be free to agree on a procedure for correction in the Terms of Reference of the dispute.[38] Likewise, in rare circumstances, national courts might be allowed to proceed to a formal review of the arbitral award, as provided by U.S. Federal Arbitration Act ("FAA"), Section 11.[39]

The table below summarizes the differences and similarities among institutional rules and legislations as regards the procedure for *correction* of arbitral awards.

CORRECTION OF THE AWARD								
	INSTITUTIONAL RULES				**LEGISLATIONS**			
	UNCITRAL	**ICC**	**SCC**	**LCIA**	**UNCITRAL Model Law**	**Brazil**	**England**	**USA**
Contemplate Correction of Awards?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes*
On the initiative of the arbitral tribunal?	Yes, within 30 d.	Yes, within 30 d.	Yes, within 30 d.	Yes, within 30 d.	Yes, within 30 d.	No	Yes, within 28 d.	___
Time limit granted to the parties for submission of request	30 d.	30 d.	30 d.	30 d.	30 d.	5 d.	28 d.	___
Time limit granted to the arbitral tribunal for deciding	___	30 d.	30 d.	30 d.	30 d.	10 d.	28 d.	___

*FAA provides for correction of arbitral awards carried out by the United States court in and for the district wherein the award was made.

[37] G. B. BORN, *International Commercial Arbitration*, Kluwer Law International, 2009, p. 2521. The author, however, does not mention which other countries have such rules.

[38] This possibility is also in accordance with the parties' autonomy principle.

[39] "*Section 11. Same; modification or correction; grounds; order. In either of the following cases* ***the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration*** *(a)* ***Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.*** *(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted. (c) Where the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.*" (Emphasis added)

Although it seems to be clear that an award can be subject to amendment only when there is an obvious mistake, parties still attempt to use the request for *correction* as an opportunity to challenge the substance of the award.

For this reason, arbitral tribunals have quite often re-defined the real purpose of an *addendum*, explaining to the parties that provisions for *correction* have a restricted meaning and should not be raised as an appeal of the arbitral award.

The strict scope of UNCITRAL Rules' Article 36, for instance, was re-affirmed in several decisions of the Iran-US Claims Tribunal:[40] *Harris Int'l Telecomms., Inc. v. Iran*;[41] *American Bell Int'l, Inc. v. Iran*;[42] *Unidyne Corp. v. Iran*;[43] *Petrolane, Inc. v. Iran*;[44] *Picker International Corp. v. Iran*;[45] *Paul Donin de Rosiere* v. *Iran*;[46] *Sedco, Inc*. v. *NIOC*;[47] *Endo Laboratories, Inc.* v. *Iran*;[48] *Uiterwyk Corp* v. *Iran*[49] and *Avco Corp.* v. *Iran.*[50]

Besides, the unusual provision of the FAA (which, as explained above, allows judicial courts to make the correction of arbitral awards), was also subject to interpretation on a case-law basis. On August 29, 2003, the Ninth Circuit Court of Appeals found that Sections 10 and 11 of the FAA allow a federal court to correct a technical error, to strike all or a portion of an award and to vacate an award only when it is completely irrational or exhibits manifest disregard for the law. In addition, the Court held that "*private parties have no authority to dictate the manner in which the federal courts conduct judicial proceedings. That power is reserved to Congress — and when Congress is silent on the issue, the courts govern themselves. Here,* ***because Congress has determined that federal courts are to review arbitration awards only for certain errors, the parties are powerless to select a different standard of review***

[40] See more detailed commentaries at A. N. VOLLMER and A. J. BEDFORD, *Post-Award Arbitral Proceedings*, in *Journal of International Arbitration*, Vol. 15, No. 1 (1998), pp. 38-40; and D. D. CARON and L. F. REED, *Post Award Proceedings under the UNCITRAL Arbitration Rules*, in *Arbitration International*, Vol. 11 No. 4 (1995), pp. 437-439.

[41] *Harris Int'l Telecomms., Inc. v. Iran*, 18 Iran–U.S. Cl. Trib. Rep. 76-77 (1988).

[42] *American Bell Int'l, Inc. v. Iran*, 14 Iran–U.S. Cl. Trib. Rep. 173, 174 (1987).

[43] Dec. No. DEC 122-368-3 (Iran–U.S. Cl. Trib. 1994) (Westlaw, Int–Iran database).

[44] 27 Iran–U.S. Cl. Trib. Rep. 264 (1991).

[45] *Picker International Corp.* v. *Islamic Republic of Iran*, Dec. No. DEC 48-10173-3 (7 October 1986) reprinted in 12 Iran-US CTR 306, 307 (1986-II).

[46] *Paul Donin de Rosiere* v. *Islamic Republic of Iran*., Dec. No. DEC 57-498-1 (10 February 1987) reprinted in 14 Iran-US CTR 100, 101 (1987-I).

[47] *Sedco, Inc*. v. *NIOC*, Dec. No. DEC 64-129-3 (18 September 1987) reprinted in 16 Iran-US CTR 282, 284 (1987-III).

[48] *Endo Laboratories, Inc.* v. *Islamic Republic of Iran*, Dec. No. DEC 74-366-3 (25 February 1988) reprinted in 18 Iran-US CTR 113, 114 (1988-I).

[49] *Uiterwyk Corp* v. *Islamic Republic of Iran*, Dec. No. DEC 96-381-1 (22 November 1988) reprinted in 19 Iran-US CTR 171, 174-75 (1988-II).

[50] *Avco Corp.* v. *Islamic Republic of Iran*, Decision and Correction to Partial Award, Award No. 377-261-3 (15 January 1989) reprinted in 19 Iran-US CTR 253, 255 (1988-II).

— whether that standard entails review by seeking facts unsupported by substantial evidence and errors of law"(emphasis added).[51]

In conclusion, the narrow scope of requests for *correction* of omissions, material or clerical errors means that the arbitral tribunal shall not be invited to review the reasoning of its decision award. Requests for *clarification*, which will be discussed below, have a similar purpose.

B. REQUESTS FOR *CLARIFICATION*

The arbitral award's text often contains ambiguities, allowing more than one interpretation for a single statement. It can also be obscure, that is, unclear and difficult to understand. These flaws may be subject to a procedure of *clarification*, whereby the arbitral tribunal is invited to clarify or reveal the real meaning of what was written.

Thus, many institutional rules and national legislations contemplate post-award motions for *clarification* of arbitral awards. Besides, the arbitrators' power to interpret their own decisions may also be founded on the parties' agreement, since one of the guiding principles of arbitration is the parties' right to create the rules thereof.[52]

The object of a motion for *clarification* may explain why it is raised on the initiative of the parties: those who have trouble understanding the decision will be the ones interested in having a clearer award.

As explained above, the arbitrators' answer to requests for *correction* of awards can be a simple decision, when they find it not appropriate to make an amendment, and an additional award or an *addendum*, when they agree that an amendment is necessary. In respect to the requests for *clarification,* the arbitral tribunal may also make a decision denying interpreting the award. However, when an interpretation is necessary, it usually takes the form of an *addendum* and constitutes part of the award.

Pursuant to UNCITRAL Rules[53] the parties are granted thirty days – counted from the receipt of the award - to request an interpretation. The arbitral tribunal must decide thereon in up to forty five days after the receipt of the request. The procedure of *clarification* under SCC and ICC Rules[54] follows the same deadlines provided for the above-described procedure of *correction*. It is interesting to note that the LCIA Rules are silent in respect to the clarification of awards, although they expressly provide for

[51] ALFORD, R. P., *29 August 2003 – Federal Court of Appeals for the Ninth Circuit*, Digest by ITA Board of Reporters.
[52] KNUTSON, *The Interpretation of Arbitral Awards - When is a Final Award not Final?,* in *Journal of International Arbitration*, Vol. 11 No. 2 (1994), p. 103.
[53] UNCITRAL Rules Article 35.
[54] ICC Rules Article 29.2.

correction of material or clerical errors, as well as for an additional award in case of omissions.[55]

The Brazilian Arbitration Act also contemplates the *interpretation of obscurities, doubts or contradictions* in the award. But the time limits here are considerably shorter: five days for the parties to request it and ten days for the arbitral tribunal to decide about it. On the other hand, the English Arbitration Act prefers to refer to the *clarification or removal of ambiguities* and grants a 28-day time limit to both the parties and the arbitral tribunal.

The following table illustrates the previous considerations about requests for *clarification* of arbitral awards in institutional rules and national legislations.

CLARIFICATION OF THE AWARD								
	INSTITUTIONAL RULES				**LEGISLATIONS**			
	UNCITRAL	**ICC**	**SCC**	**LCIA**	**UNCITRAL Model Law**	**Brazil**	**England**	**USA**
Contemplate Clarification of Awards?	Yes	Yes	Yes	No	Yes*	Yes	Yes	No
On the initiative of the arbitral tribunal?	No	No	No	___	No	No	Yes, within 28 d.	___
Time limit granted to the parties for submission of request	30 d.	30 d.	30 d.	___	30 d.	5 d.	28 d.	___
Time limit granted to the arbitral tribunal for deciding	45 d.	30 d.	30 d.	___	30 d.	10 d.	28 d.	___

*If so agreed by the parties.

Requests for *clarification*, as well as requests for *correction*, constitute an important instrument employed by the parties as an attempt to have the substance of the award reviewed. Again, although this practice is quite usual, it shall not be stimulated, since the interpretation has a very limited purpose, which was several times reinforced by case-law.

The scope of the power to interpret was settled under the general principles of International Law in two important cases: *U.K. - French Continental Shelf* and *Chorzow*

[55] "*It is interesting to speculate as to whether an ambiguity or lacuna in the award could be thought of as an accidental mistake or omission. It seems doubtful that requests for interpretation could be thought to be included in the arbitrator's jurisdiction by this clause*." - KNUTSON, *The Interpretation of Arbitral Awards - When is a Final Award not Final?,* in *Journal of International Arbitration*, Vol. 11 No. 2 (1994), p. 105.

Factory. In the first case, the Permanent Court of Arbitration held that interpretation is an auxiliary process that may not change what the Court has already settled with binding force. In the second case, the Permanent Court of International Justice laid down that the interpretation merely gives a precise definition of the meaning and scope of the decision, but does not add anything to it.[56]

Besides, UNCITRAL Rules' Article 35 was extensively discussed in the context of the Iran-US Claims Tribunal.[57] In *Pepsico, Inc. v. Iran*,[58] for instance, the tribunal affirmed that interpretation means clarification, and shall be employed when the language of the award is ambiguous. Other cases reinforced the idea that an interpretation is applicable to remove an ambiguity in the text: *Ford Aerospace & Communications Corporation* v. *Air Force of Iran*;[59] *Paul Donin de Rosiere* v. *Iran*;[60] *Sedco, Inc*. v. *NIOC*;[61] *Phibro Corporation* v. *Iran*;[62] *Gabay* v. *Iran*[63] and *Eastman Kodak Co*. v. *Iran*.[64]

D. CARON AND L. REED suggest an interesting practical test to identify when the request for *clarification*, as provided for in the UNCITRAL Rules' Article 35, is applicable: "*If specific language or punctuation in the award is unclear – meaning incomprehensible or susceptible to contradictory interpretations – ideally, to both client and attorney, then an Article 35 request for clarification is warranted. Under Article 35, counsel should be able in the written request to quote the ambiguous language in the award and define the ambiguity. True ambiguity is a high test, and one that definitely merits giving the panel a second chance to be understood. Particularly if the award is unclear as to the 'purport of the award and the resultant obligations and rights of the parties', clarification will increase the chances of voluntary compliance with the award. Ambiguity will not only stand in the way of satisfaction, but will also complicate any subsequent commercial relationship between the parties*."

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[56] See KNUTSON, *The Interpretation of Arbitral Awards - When is a Final Award not Final?,* in *Journal of International Arbitration*, Vol. 11 No. 2 (1994), p. 106.
[57] See D. D. CARON and L. F. REED, *Post Award Proceedings under the UNCITRAL Arbitration Rules*, in *Arbitration International*, Vol. 11 No. 4 (1995), pp. 433-434.
[58] *Pepsico, Inc. v. Iran*, 13 Iran–U.S. Cl. Trib. Rep. 328, 329 (1986).
[59] *Ford Aerospace & Communications Corporation* v. *Air Force of Iran*, Dec. No. DEC 47-159-3 (2 October 1986) reprinted in 12 Iran-US CTR 304, 305 (1986-III).
[60] *Paul Donin de Rosiere* v. *Islamic Republic of Iran*, Dec. No. DEC 57-498-1, (10 February 1987) reprinted in 14 Iran-US CTR 100, 101-2 (1987-I).
[61] *Sedco, Inc*. v. *NIOC*, Dec. No. DEC 64-129-3 (18 September 1987) reprinted in 16 Iran-US CTR 283, 284 (1987-III).
[62] *Phibro Corporation* v. *Islamic Republic of Iran*, Dec. No. DEC 97-474-3 (17 May 1991) reprinted in 26 Iran-US CTR 254-55 (1991-I).
[63] *Gabay* v. *Islamic Republic of Iran*, Dec. No. DEC 99-771-2 (24 September 1991) reprinted in 27 Iran-US CTR 194, 195 (1991-II).
[64] *Eastman Kodak Co*. v. *Islamic Republic of Iran*, Dec. No. DEC. 102-227-3 (30 December 1991) reprinted in 27 Iran-US CTR 269, 271 (1991-II).

CONCLUSION

The requests for *correction* and *clarification* of arbitral awards stem from a characteristic of the human gender itself - the impossibility to avoid mistakes. Due to this trait, even procedural orders may contain slips or obscurities. However, those are in a secondary position, since procedural issues are ancillary to the merits of the case. Thus, they were not an object of our comments in the present article.

One could imagine the arbitrators' power to correct or interpret the arbitral award without provocation of the parties. In theory, this power is comparable to any author's right to issue *errata* to correct errors his text may contain. Nevertheless, the silence of the parties renders the manifestation of the arbitrators unnecessary, and maybe this is why it is not usual that the referred practice be put into action.

Another issue linked to the *correction* and *clarification* of arbitral awards is the evaluation that must be carried out by lawyers before requesting it. If their request is granted, the rectification or interpretation - which implies costs - might lead to an eventual surprise. Besides, sometimes the inability of lawyers who impolitely or aggressively address the tribunal could bring on a human reaction from the arbitrators, whose patience has already been tested by such lawyers' previously using an inadequate language. As we know, rules of courtesy stand to human behavior as rules of hygiene stand to peoples' health.

In brief, the *correction* and *clarification* of arbitral awards is admissible only when it does not intend to modify the essence of the decision. Otherwise, it merely constitutes a manifestation of what was called "*jus sperniandi*"[65] in the past.

[65] *Jus sperniandi* means a right to complain.

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