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Remedies Against Incomplete, Erroneous and Unclear International Arbitral Awards

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Ikram Ullah^{††}

Abstract

There is a clear body of transnational law emerging from Article 33 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law. Parties to an arbitral dispute may seek correction and interpretation of an award, within the time limits (usually 30 days) set by statute and the object of the request must be targeted against a slip (computational, typographical or similar mistake) or an oversight in the award. Anything beyond a slip or an oversight that effectively targets the thought process of the arbitrators cannot be amenable to the process of correction under Article 33. Hence, a conscious “mistake” by the tribunal does not constitute an error under Article 33 but an appeal against the arbitrators’ personal judgment or knowledge, which is unacceptable. In equal measure, such a mistake would not usually give rise to a ground for setting the award aside. A much more contentious issue is whether the courts and the tribunal itself possess authority to extend the time lines for making an application for correction or interpretation. There seems to be emerging consensus that if there is agreement between the parties, such consent serves as an exception to the *functus officio* nature of the tribunal. The same considerations apply *mutatis mutandis* in respect of requests for an additional award, the aim of which is to address claims that the tribunal omitted to address in its original award.

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I. Introduction

It is not uncommon for awards to suffer from lack of clarity or be riddled with mistakes¹ that render them problematic in terms of enforcement. Arbitrators often draft large awards consisting of many complex claims and can be overwhelmed and ultimately commit several errors such as forgetting to address all claims, mistaking the names of the winning parties, or making wrong calculations.² Such awards may still be enforced, but will prejudice

¹ See Cecilia M. Di Cio, *Dealing with Mistakes Contained in Arbitral Awards*, 12 AM. REV. INT'L ARB. 121, 121 (2001). Awards may suffer from mistakes in several ways, including also translation failures. See generally *id.* at 121 (stating that there are “errors that are ‘ministerial’—for example, typographical or clerical mistakes”).

² Mistakes are also common in investor-state arbitral awards, as well as inter-state disputes handled by judicial entities such as the International Court of Justice (“ICJ”) and

the rights of the parties. It is therefore crucial that when an award is rendered, the parties scrutinize the award in as much detail as possible because there are strict time limits for requesting its correction and adding new content, particularly in respect to claims not contemplated by the tribunal in the original award.³ The process of correcting arbitral awards is not straightforward, although its rationale is undisputed.⁴ This is due to the fine line between revision, interpretation, correction, and remedies against awards, which are treated akin to annulments or appeals on points of law and facts.⁵ Indeed, the first type of remedy, the subject matter of this article, is not meant to serve as a disguised appeal against mistakes of law or fact in the body of the award.⁶ Mistakes of law and fact which are predicated on the arbitrators' personal judgment are not susceptible to an appeal or similar remedy unless they constitute grounds for annulment under the law of the seat.⁷ Hence, tribunals and courts faced with requests for revision, interpretation, and correction of an international arbitral award must ensure the sought remedy is directed against a true oversight in the award.⁸ No

the Permanent Court of Arbitration ("PCA"). *See e.g.*, Archer Daniels Midland Co. et. al. v. Mexico, ICSID Case No. ARB/(AF)/04/05, Decision on the Requests for Correction, Supplementary Decision and Interpretation (Jul. 10 2008); *see* Kaiyan Homi Kaikobad, Interpretation and Revision of International Boundary Decisions, part III, sec. 5 (Cambridge Univ, Press 2007).

³ *See* UNCITRAL Model Law on International Commercial Arbitration, art. 33(1),(3), UNCITRAL, U.N. Doc A/40/17 (Jun. 21 1985) [hereinafter UNCITRAL Model Code].

⁴ *See generally* Stephen J. Ware, *Vacating Legally-Erroneous Arbitration Awards*, 6 Y.B. ARB. & MEDIATION 56, 106 (2014) (stating that there is a "longstanding rule that courts should confirm awards without determining whether they are legally-correct").

⁵ *See generally id.* at 106 (stating that "the law on vacating legally-erroneous arbitration awards [is] . . . sorely deficient"). Of course, awards may be annulled for a variety of other procedural reasons, such as improper notice. *See* Ilias Bantekas, *Receipt of Written Communications in International Commercial Arbitration*, 31 AM. REV. INT'L. ARB. 85, 96 (2021).

⁶ *See* Jason Fry et al., *THE SECRETARIAT'S GUIDE TO ICC ARBITRATION* (Int'l Chamber of Com. 2012) 349. "Article 35(2) does not provide a means of appeal. It does not permit the arbitral tribunal to review the substance of its reasoning or deal with additional claims or arguments. It is limited to situations involving clear errors or vague language." *Id.*

⁷ *See generally id.* at 351 ("Many applications for interpretation amount to attempted appeals aimed at . . . attempting to have the arbitral tribunal reconsider its decision or the evidence. Article 35(2) does not empower an arbitral tribunal to revise the outcome or reasoning of its award.").

⁸ *See id.* at 351. "Most arbitral tribunals find that to be admissible a request for interpretation must seek to clarify the meaning of an operative part of the arbitral tribunal's

doubt, there will be times when such a distinction is far from clear.

The current practice is predicated on the elaboration of this limited remedy in Article 33 of the UNCITRAL Model Law on International Commercial Arbitration. Article 33 allows any of the parties, but usually the party with an interest in correcting the award, to request the tribunal to correct it or to offer an interpretation that leads to greater clarity and precision.⁹ Given that tribunals become *functus officio* once their mandate expires, or when the time limits for set aside proceedings come to an end, it is crucial that the parties observe the pertinent limits for making requests for correction and/or interpretation.¹⁰ If they fail to do so, then they are unable to turn to the tribunal that issued the award, but exceptionally they may be allowed to approach the courts of the seat at a later date.¹¹ In equal manner, the parties may be allowed under certain institutional rules to approach the Court of their chosen institution or the courts of the seat at a later date with a view to offering the same service, even if the tribunal is *functus officio*.¹² This practice is, however, exceptional because of the expectation of parties to arbitration having access to experienced counsel who can read the award immediately after it is issued and can hence advise their clients if something is unclear or incorrect.¹³ Article 33 of the Model Law has not only acted as a catalyst for a uniform approach to the correction, interpretation, and revision of arbitral awards, but it has also provided an impetus for consistent judgments in both Model

decision.” *Id.* Therefore, requests for interpretation should generally target the dispositive section of the award or other parts that directly affect the dispositive section or the parties’ rights and obligations.” *Id.*

⁹ See UNCITRAL Model Law, *supra* note 3, at art. 33(a-b).

¹⁰ See *id.* at art. 32 (explaining the “Termination of proceedings” and “Correction and interpretation of award”). Exceptionally, however, the parties may, through mutual consent, extend the period of an arbitrator’s authority to issue correctional, interpretational or additional award. *Pirtek (U.K.) Ltd. v. Deanswood Ltd.* [2005] EWHC 2301, ¶ 20 (appeal taken from U.K. Com. Court). *Pirtek (U.K.) Ltd.* found any additional award for interest had to be made within 56 days of the date of the original award, unless the parties agreed a longer period. *Id.* at ¶ 37. In *Pirtek (UK) Ltd.*, an additional award on interest was requested seventeen months after the original award was set aside because, inter alia, that the request had not been lodged by mutual consent. *Id.* at ¶ 33, 42.

¹¹ Article 33 does not allow for returning to the arbitration tribunal after the time limit expires. See UNCITRAL Model Code, *supra* note 3, at art. 32-34.

¹² This is explained further below. *But see* Thomas H. Webster, *Functus Officio and Remand in International Arbitration*, 27 ASA BULL. 441, 441 (2009).

¹³ See sections 8.1 and 8.2 of this paper below for an analysis of this issue.

Law jurisdictions, non-Model Law states, as well as institutional laws.¹⁴ It is this article's belief that the vast majority of judgments in this field have been influenced or predicated on the dictates of Article 33. As a result, our analysis will focus on Article 33 and pertinent developments around the world that are the direct or indirect result of its impact and influence. It is therefore important to provide the text of Article 33 at this juncture:

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a 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;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.¹⁵

¹⁴ See G.A. Res. 65/22, at art. 38 (2010) [hereinafter UNCITRAL Arbitration Rules]; see ICC, *ICC Arbitration Rules 2017 & 2021 – Compared Version*, art. 36 (Jan. 2021); see LCIA, *LCIA Arbitration Rules*, art. 27 (2014). This clearly corresponds with the intended public interest of what is otherwise a private means of dispute settlement. See Ilias Bantekas, *The Public Interest Perspective of International Courts and Tribunals*, 38 ARIZ. J. INT'L & COMPAR. L. 61, 63 (2021).

¹⁵ UNCITRAL Model Code, *supra* note 3, at art. 33.

The Article is organized under the following sections; Section 2 will explore the *travaux* (preparatory works) of the Model Law, particularly its 1985 version, where Article 33 was first adopted. This will be followed by Section 3, the legal nature of the relevant claims, as well as the precise meaning of requests to correct and interpret awards in Sections 4 and 5 respectively, and the tribunals' *proprio motu* (at the tribunal's own initiative) powers in this respect in Section 6. Section 7 will deal with requests for additional awards in respect of claims not contemplated or omitted from the final award. Although additional awards are not always included in discussions on correction and interpretation, this paper takes a different view, chiefly because claims for an additional award are effectively claims for correction of an incomplete award.¹⁶ Section 8 examines the delicate issue of available timelines for challenging technically faulty awards and whether the tribunal or the courts are best suited for this purpose.

II. Travaux Préparatoires

Article 33 sets out the conditions warranting a correction, interpretation, and the making of an additional award.¹⁷ During the initial drafting process, there was uncertainty regarding the need for the Model Law to deal with various types of awards.¹⁸ However, later the negotiators were convinced the Model Law should deal with this issue and the Preparatory Commission (working on the Model Law) affirmed this position by ordering that in "preparing the model law due account be taken of the 1958 New York Convention and of the UNCITRAL Arbitration Rules."¹⁹ As to the particular point concerning the various types of awards, it was desired that if various types of awards were to be encompassed under the Model Law, the arbitrator should be entitled to make those awards only on the request of the parties.²⁰ A fixed standard time period, as followed in national laws, was considered good practice,

¹⁶ See *infra* Section 6.

¹⁷ See UNCITRAL Model Code, *supra* note 3, at art. 33.

¹⁸ See Rep. of the U.N. Comm'n on Int'l Trade L. on the Work of its Fourteenth Session, U.N. Doc. A/36/17, ¶¶ 40-42 (Jun. 26, 1981).

¹⁹ *Id.* at ¶ 65.

²⁰ See U.N. Secretary-General, *Possible Features of a Model Law on International Commercial Arbitration*, U.N. Doc. A/CN.9/207, ¶ 82 (May 14 1981).

despite the difficulty of regulating such time limits uniformly.²¹ However, it was stipulated that if the standard time is laid down, it should be coupled with “an elaborate mechanism for extensions.”²² It was stressed that it was necessary to give parties a right to seek correction of errors in awards, or a right to seek interpretation or the issuance of additional awards, in line with the UNCITRAL Arbitration Rules’ provision on that subject.²³ At this point in time, although such provision was considered of limited significance, its inclusion was favored with an aim to “overcome any problems arising from the fact that the mandate of the arbitral tribunal is terminated by making the award.”²⁴

At first, the Working Group kept its deliberations within the confines of “final, interim, interlocutory, and partial” awards and its list of questions did not include the issue of additional awards.²⁵ In fact, there were divergent views on inclusion within the Model Law.²⁶ While its inclusion was opposed by one view, the opposing view considered the mere enumeration of types of arbitral awards as insufficient and instead, “legal qualifications and consequences of different types, including possible means of recourse and enforceability” should have been specified.²⁷ Generally, the participants agreed the parties were at liberty to prescribe time limits for the arbitrator for purposes of making an arbitral awards, and the Model Law should refrain from setting such time limits and dealing ramifications for the expiry thereof, owing to obvious considerable variations of circumstances in international arbitration.²⁸

Later general consensus also developed on the inclusion of “provisions concerning the correction and interpretation of award.”²⁹ Such provision was thought to be “modelled on articles

²¹ *See id.* at ¶ 84.

²² *Id.*

²³ *See id.* at ¶ 93.

²⁴ *Id.* at ¶ 93.

²⁵ Comm’n. on Int’l Trade Law, Rep. of the Working Grp. on Int’l Cont. Prac. on the Work of its Fourth Session, U.N. Doc. A/CN.9/232, ¶ 135 (Nov. 10, 1982) [hereinafter Report for the Working Fourth Session].

²⁶ *See id.*

²⁷ *Id.*

²⁸ *See id.* at ¶ 74.

²⁹ *Id.* at ¶ 98.

35 and 36 of UNCITRAL Arbitration Rules.”³⁰ Focusing on the avoidance of possible abuses and delay, confinement of requests for interpretation to specific points was considered very necessary.³¹ At the same time, provisions dealing with the correction and interpretation of the award (Article 34) were striving to keep the arbitrator’s mandate intact “in cases of awards which do not settle the dispute in full.”³²

Czechoslovakia proposed that the interpretation under Article 33 should be confined to the “interpretation of the reasons upon which the award is based.”³³ However, the German Democratic Republic’s proposal was that the Model Law should not deal with the possibility of interpretation of award.³⁴ But a general consensus developed in favor of affording the arbitral tribunal the right to “correct any errors in computation, any clerical or typographical errors, or any errors of similar nature as provided in paragraph (1)(a), and that the parties should not be able to stipulate to the contrary” by keeping a 30-day time period with non-mandatory character.³⁵

Although the party’s right to request interpretation of the award was not made subject to the parties’ agreement to the contrary, there was no agreement as to whether the arbitrator’s interpretation in response to the party’s request should become part of the award.³⁶ On the face of different types of awards, it was noted that limitation periods for “attacking” an arbitral award in court should be harmonized.³⁷

The divergent view prevailed on the question of whether certain timelines should be prescribed to mandate the arbitrator to dispose of the requests for interpretation and correction of awards.³⁸ The

³⁰ *Id.*

³¹ *See id.*

³² Comm’n. on Int’l Trade Law, Rep. of the Working Grp. on Int’l Cont. Prac. on the Work of its Third Session, U.N. Doc. A/CN.9/216, ¶ 73 (Mar. 23, 1982).

³³ U.N. Secretary-General, Analytical compilation of comments by Gov’ts and int’l orgs. on the draft text of a model l. on int’l com. arb., U.N. Doc. A/CN.9/263, art. 33 ¶ 1 (Mar. 19 1985) [hereinafter U.N. Secretary General Report].

³⁴ *See id.* at art. 33 ¶ 2.

³⁵ Report of the Working Fourth Session, *supra* note 25 at ¶ 178.

³⁶ *See id.* at ¶ 179.

³⁷ *See id.* at ¶ 182.

³⁸ *See* Comm’n. on Int’l Trade Law, Rep. of the Working Grp. on Int’l Cont Prac. on the Work of its Seventh Session, U.N. Doc. A/CN.9/246, ¶ 122 (Mar. 6 1984).

view opposing such timelines was supported with arguments “that there may be circumstances in which the arbitral tribunal would be unable, for good reasons, to comply with a fixed time-limit.”³⁹ This would potentially “create uncertainty as to the validity of actions taken after their expiration and would raise questions as to the sanction for non-compliance.”⁴⁰

Although the other view did not favor strict timelines, it supported the prescription of a general formula under which the arbitrator would be required to act “promptly” and “without delay.”⁴¹ However, the Working Group went for compromise by furnishing fixed timelines.⁴² To that end, the arbitrator was to render correction and interpretation within 30 days of receipt of request and an additional award within sixty days of the request.⁴³ Section 33 also conferred power on the arbitrator “to extend the thirty- and sixty-day period, if necessary . . .”⁴⁴ This time period was to commence after the receipt of the request and was suggested that, after the respective time periods, the words “of receipt of the request” be added in the text of the provision, but this suggestion did not receive sufficient acceptance.⁴⁵

It was also noted that notice of request for correction, interpretation, or additional award, should also come from the requesting party to the other party to afford him or her an opportunity to express their views thereon.⁴⁶ “It was suggested that a reasonable period of time during which that party could reply should be taken into account for the calculation of the period of time which the arbitral tribunal should dispose of the request.”⁴⁷ Sweden and the United States proposed mandating the arbitrator who, upon receipt of a request from a party, should afford the other party an opportunity to be heard.⁴⁸ Although the Swedish proposal did not expressly refer to additional awards, the United States’ proposal was

³⁹ *Id.* at 119.

⁴⁰ *Id.*

⁴¹ *Id.* at ¶ 121.

⁴² *Id.* at ¶ 122.

⁴³ *See id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at ¶ 123.

⁴⁶ *See id.* at ¶ 124.

⁴⁷ *Id.*

⁴⁸ *See* U.N. Secretary General Report, *supra* note 33, at art. 33(3).

with regard “to all three cases of action . . . (i.e. correction, interpretation of the award and additional award).”⁴⁹ However, Sweden considered a 30-day period too short for both “a response to a request under . . . Article [33] and for the ensuing action by the arbitral tribunal.”⁵⁰ The United States proposed the 30-day time period should commence after the submission of reply from the other party on request for correction, interpretation of the award, or additional award.⁵¹ For this purpose, the Working Group relied on the wisdom of the arbitrator to give reasonable time to the other party, and for that reason did not prescribe any timeline for the other party’s reply.⁵²

On the point of an additional award, the Working Group first thought to include in the provision that the arbitral tribunal could be empowered to render an additional award only where to render such award there would be no need for evidence and a hearing.⁵³ But that idea was abandoned because “it was unduly restrictive in that it excluded a considerable number of cases where at least a hearing, if not further evidence, was necessary before making the additional award.”⁵⁴

III. The Legal Nature of Claims

Once the award is made, it becomes final and binding and cannot become the subject of a request for correction, interpretation, or addition under Article 33 of the Model Law.⁵⁵ This is because the mandate of the tribunal is considered to have ended after the pronouncement of an award and the completion of arbitration proceedings.⁵⁶ When the arbitrator becomes *functus officio* (expiration of mandate) he or she cannot reopen the disputed claims,

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *See id.*

⁵² UN Doc. A/CN.9/246, *supra* note 38 at ¶ 122.

⁵³ *See id.*, at ¶ 125.

⁵⁴ *Id.*

⁵⁵ *See* Tay Eng Chuan v. United Overseas Ins. Ltd., [2009] SGHC 193 (Sing. High Ct.); Trade & Transp., Inc. v. Nat. Petroleum Charterers Inc., 931 F.2d 191, 193-94 (2d Cir. 1991); Loc. P-9, United Food & Com. Workers Int’l Union v. George A. Hormel & Co., 776 F.2d 1393, 1395 (8th Cir. 1985); Todd Petroleum Mining Co. Ltd. v. Shell (Petroleum Mining) Co. Ltd., [2014] NZCA 507 at [¶ 34] (N.Z.); Torch Offshore LLC v. Cable Shipping Inc., [2004] EWHC 787 [28] (Appeal taken from U.K. Com).

⁵⁶ *See* UNCITRAL Model Code, *supra* note 3, at art. 32(1).

or revisit the issues in the award that have already been decided.⁵⁷ However, this presumption is subject to exceptions for the purposes of correction, interpretation of the award, and the making of an additional award.⁵⁸ Many senior courts correctly claim that requests for correction, clarification, and interpretation (of ambiguous awards) constitute an exception to the regular *functus officio* of tribunals, but they have not clarified whether the serious grounds for such exception equally justify an extension of the statutory time limits.⁵⁹

Therefore, requests for correction, interpretation, and additional awards can only be satisfied before the award is clad with finality. The New Zealand Court of Appeal in *Todd Petroleum Mining*⁶⁰ emphasized that normally the termination of arbitration proceedings brings the mandate of arbitrators to an end, this being the point at which the award becomes final.⁶¹ However, Article 33 of the Model Law functions to extend this mandate in three ways: first, to correct outstanding errors; second, to interpret some aspect of the award; and third, to produce an additional award.⁶² In *Popack v. Lipszyc*,⁶³ the Ontario Court of Appeal considered when an award becomes binding for the purposes of enforcement. In August of 2013, the arbitrator in the case made an award in favor of the appellants at a significantly lower amount than what was sought by the appellants, who proceeded to set aside the award on the basis that the arbitrator had followed an improper procedure.⁶⁴ Upon dismissal, the

⁵⁷ See *Teamsters Local 312 v. Matlack, Inc.*, 118 F.3d 985, 991 (3rd Cir. 1997).

⁵⁸ See *Colonial Penn Ins. Co. v. Omaha Indem. Co.* 943 F.2d 327, 334 (3rd Cir. 1991); *La Vale Plaza Inc. v. R.S. Noonan*, 378 F.2d 569, 573 (3d Cir. 1967); UNCITRAL Model Code, *supra* note 3, at art. 33(3).

⁵⁹ Several United States Circuit courts are unanimous in recognizing such an exception where an arbitral award “fails to address a contingency that later arises or when the award is susceptible to more than one interpretation.” See *Sterling China Co. v. Glass, Molders, Pottery, Plastics & Allied Workers Loc. No. 24*, 357 F.3d 546, 554 (6th Cir. 2004); see also *Brown v. Witco Corp.*, 340 F.3d 209, 219 (5th Cir. 2003); *Gen. Re Life Ins. Co. v. Lincoln Nat’l Life Ins. Co.*, 273 F.Supp.3d 307, 315 (2nd Cir. 2018).

⁶⁰ *Todd Petroleum Mining Co.*, [2014] NZCA 507 [17 Oct. 2014].

⁶¹ It is contested whether the time limits for an award to become final begin at the moment all arbitrators sign it, or whether the majority signs it. See Ilias Bantekas, *The Requirement of Signed and Dated Awards: Are Arbitrators Ever Entitled not to Sign?*, 39(3) ASA BULL. 642 (2021).

⁶² See UNCITRAL Model Code, *supra* note 3, at art. 33.

⁶³ See *Popack v. Lipszyc*, 2018 ONCA 635.

⁶⁴ *Id.* at [4].

appellants asked the respondents to pay the costs as awarded by the arbitrator.⁶⁵ However, the respondent filed an application to the arbitrator to lower the costs of the award, as a matter of the additional costs incurred by the appellants' annulment proceedings.⁶⁶ Subsequently, the appellants filed to enforce the award under Articles 35 and 36 of the Model Law.⁶⁷ At the same time, the respondent applied for stay of enforcement, asserting that because the award was not yet binding, the arbitrator had no authority to decide costs.⁶⁸ The court stated that the respondent's claim did not concern an error falling within the purview of Article 33 and that the intention of the respondent was based on an event that occurred after the award was made; thus, it raised a new issue for the tribunal.⁶⁹ The court referred to Article 32(1) of the Model Law, which states that "arbitral proceedings are terminated by the final award,"⁷⁰ as well as Article 33(3), which provides that the "mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4)";⁷¹ that is, "subject to a request for a correction or interpretation of an award, an additional award, or a suspension of setting aside proceedings by a court."⁷² The court then held that the award was final, demanded the parties release each other from other obligations, and did not indicate any other issues needing further consideration.⁷³ The court also highlighted that neither party had asked the arbitrator to include the litigation costs in the award.⁷⁴ Even if they had made such an application, they did not follow the requisite timelines given in Article 33(1) and 33(3).⁷⁵ The court held that the request to consider the inclusion of costs "does not

⁶⁵ See *id.* ¶¶ 4–5.

⁶⁶ See *id.*

⁶⁷ See *id.* ¶ 5.

⁶⁸ *Id.* ¶¶ 6–23.

⁶⁹ See *id.* ¶¶ 67–69.

⁷⁰ *Article 32 – Termination of Proceedings (1985)*, UNCITRAL MODEL LAW ON INT'L COM. ARB., [<https://perma.cc/H96S-RJD2>] (last visited Oct. 16, 2021).

⁷¹ *Commercial Arbitration and Other Alternative Dispute Resolution Methods – (UNCITRAL) Model Law on International Commercial Arbitration*, SICE, [<https://perma.cc/JU8D-B4L7>] (last visited Oct 16, 2021).

⁷² See *Popack*, 2018 ONCA 635 [75].

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

involve a matter of correction or an additional award ‘as to claims presented in the arbitral proceedings but omitted from the award’ within the meaning of Art. 33 of the Model Law. It is a request to adjudicate a new issue.”⁷⁶ The court also held that, with respect to recognizing an arbitral award, the jurisdiction lies with the court and not with the arbitrator to decide if the award is binding.⁷⁷

IV. Errors Amenable to Corrections

Any of the parties may request the arbitrators to correct typographical or calculation errors in awards, often referred to as “slips,” as well as any injustice caused by an oversight, such as an unconscious omission.⁷⁸ Some jurisdictions, particularly provinces within federal states, limit the ambit of permitted corrections to slips, thus excluding oversights.⁷⁹ Article 33 of the Model Law cannot be used to correct mistakes in the arbitrator’s reasoning;⁸⁰ a request for correction is not a substitute for setting an award aside.⁸¹ The slip must “be an error affecting the expression of the arbitrator’s thought.”⁸² Where the award mistook the plaintiff as the defendant in at least two places, this was viewed as a clerical slip.⁸³ Slips may relate to an arithmetic error, such as the calculation of interest due,⁸⁴ or a failure to account for a deposit that had been made by one of

⁷⁶ *Id.* ¶ 81.

⁷⁷ *Id.* ¶ 84 (citing *Dalimpex Ltd. v. Janicki*, 2003 CanLII 34234, para. 47 (ON CA)).

⁷⁸ Art. 43(1) Alberta Arbitration Act; *see also* *Dawson v. Dawson*, 2016 ABQB 167 [46] (CanLII).

⁷⁹ The British Columbia Arbitration Act is a prime example of such a jurisdiction.

⁸⁰ Hence, where the tribunal issued an addendum to an award because it had failed to consider the relief claimed, this was held to fall outside the limited scope of Art. 33(1)(a) of the Model Law. Such relief could be only become available through an application for an additional award under Art. 33(3) of the Model Law. *See* *SC v. OE1* [2020] HKCFI 2065 ¶ 27–32. *See also* *CNH Glob. NV v. PGN Logistics Ltd.* [2009] 1 CLC 807.

⁸¹ *See* *McLean Homes S. E. Ltd. v. Blackdale Ltd.*, [2001] ArbLR 38; *Ircon Int’l Ltd. v. Budhiraja Mining & Constr. Ltd.*, 2007(4) ARBLR 159 (Delhi High Court) (2007) (India).

⁸² *See* *Sutherland & Co. v. Hannevig Bros Ltd.*, [1921] 1 KB 336, at 341.

⁸³ *See* *Tay Eng Chuan v. United Overseas Ins. Ltd.*, [2009] SGHC 193. The Singapore High Court was asked to correct four other “slips.” It found these to pertain to substantive findings of the tribunal, thereby holding they were only amenable to an appeal process, as only technical or non-substantive errors are amenable to correction.

⁸⁴ *See* *Fat Cat Farms Ltd. v. Wolfe*, 2017 MBQB 76 [57] (affirmed in 2017 MBCA 124).

the parties.⁸⁵ For instance, in an award relying on the existence of 20,266 tons of soybeans, instead of 120,266 tons, the discrepancy was held to amount to a clerical mistake.⁸⁶ In another case, the key issue was the fuel consumption of a vessel.⁸⁷ The owner and charterer submitted evidence showing 7 and 4.5 tons of fuel consumption, respectively.⁸⁸ The award relied on the charterer's evidence, but mistakenly used the owner's figures, and as a result ordered the charterer to pay much more than expected. The court remitted the award to the arbitrator,⁸⁹ emphasizing that if the request for correction relates to "an error in the thought process itself," it cannot be corrected.⁹⁰ The English Court of Appeal drew a distinction between having "second thoughts or intentions and correcting an award or judgment to give true effect to first thoughts or intentions": it is thus impossible to correct a wrong assessment of evidence or misconstruction and mis-appreciation of law.⁹¹ The court noted that the arbitrator correctly recorded expert evidence from both sides but accidentally and erroneously attributed the views of one party's expert to that of another's and vice versa, and "as an exercise in judgment, he accepted the evidence of the charterers' expert and he does not have any second thoughts about having done so."⁹² Having accepted that evidence, he sought to give effect to his acceptance in the award.⁹³ That he did not succeed was due solely to the accidental attribution of the evidence to the wrong parties in his reasons, which he used as a tool in constructing the

⁸⁵ See *Pross Renovations Ltd. v. Lemay*, 2010 BCSC 80, at paras 28–29, 39.

⁸⁶ See *Fuga AG v. Bunge AG*, [1975] 2 Lloyd's Rep 192; *Todd Petroleum Mining Co. Ltd. v. Shell (Petroleum Mining) Co. Ltd.*, [2014] NZCA 507; *Torch Offshore LLC v. Cable Shipping Inc.* [2004] 2 All ER 365 (QB), 28; *Casata Ltd. v. Gen. Distrib.'s Ltd.* [2006] 2 NZLR 721 [112–117].

⁸⁷ See *Mut. Shipping Corp. v. Bayshore Shipping Co. of Monrovia Ltd.*, [1985] 1 WLR 625 (holding that a distinction should be made between an arbitrator having second thoughts, which is not permissible, and the correction of an award to give effect to first thoughts or intentions, which is permissible under the slip rule).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See *Sutherland & Co.*, [1921] 1 KB 336, at 341; *Food Corp. of India v. Marastro Compania Naviera S.A. of Pan.*, [1987] 1 WLR 134.

⁹¹ See *Mut. Shipping Corp.*, 1 WLR 625 n.43; *Gannet Shipping Ltd. v. Eastrade Commodities Inc.* [2002] CLC 365; CLOUT Case 207, Sing. Int'l Arbit. Ctr., 6 Feb. 1998; SIAC Arb. No. 6 of 1996.

⁹² *Id.*

⁹³ *Id.*

award.⁹⁴ This seems to me to be a classic case of “error [in an award] arising from any accidental slip [in the recording of material contained in the reasons].”⁹⁵ The court then allowed the arbitrator to correct the award.⁹⁶

In another case, the arbitrator initially calculated damages at the date of termination of the agreement in question, but later discounted them due to early payment.⁹⁷ However, by the time the award was issued, the agreement period of three years had expired and the arbitrator decided to award damages without any discount and with interest commencing from the date of the award’s issuance.⁹⁸ When the defendant requested a correction limiting interest to post-award actions only, the arbitrator made it clear that he had not intended to deprive the defendant of profits on claims prior to the award.⁹⁹ He thus proceeded to correct the award, granting interest from the date when payment was due, instead of on the basis of when the award was issued.¹⁰⁰ The other party disputed the propriety of the tribunal’s corrective action.¹⁰¹ The court duly agreed, holding that the contested slip must “be an error affecting the expression of the arbitrator’s thought, not an error in the thought process itself”; therefore, the tribunal’s correction of the date on which interest was due was neither a clerical, computational, or typographical error.¹⁰² The arbitrator simply wanted to correct his mistake, but he did not have the power or authority.¹⁰³

Where available, the power of arbitrators to correct also extends to the ancillary relief granted in the award. In *Gannet*, the parties agreed to demurrage at a value of 860 USD, but the arbitrator included 21,858 USD of demurrage because of his misreading of “some manuscript amendments made in the laytime calculations submitted by the charterer.”¹⁰⁴ The arbitrator amended the award

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *See* CNH Glob. NV, 1 CLC 807, at P4.

⁹⁸ *See id.* at PP5-8.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See id.* at 810ff.

¹⁰⁴ *See Gannet Shipping Ltd. v. Eastrade Commodities Inc.*, n.45.

on the application of the charterer, and the correction was accepted by the owner.¹⁰⁵ He also amended the original costs, which reduced the amount to be paid by the charterer by half, despite the fact that there was no computational error in the costs.¹⁰⁶ The court held that the error in the amount of demurrage in the award was an accidental slip because the arbitrator had not intended to use those figures.¹⁰⁷ It relied on Section 57(3)(a) of the English Arbitration Act, which empowers arbitrators to correct the amount of an award as well as any consequential corrections of costs because cost errors were the result of “accidental slips” of award amounts.¹⁰⁸ The court reasoned that if the arbitrator were not empowered to correct the costs, then if after correction the award amount were reduced under slip rule from £1m to £1, then the only way for the correction of costs would be Section 68 of the Arbitration Act 1996, which would be unfortunate because this route is expensive and engulfed in time limits.¹⁰⁹

The calculation of costs and whether their assessment is erroneous is a persistent field that attracts requests for correction. The claimant contended that the words appearing in Rule 28.1 of the Singapore International Arbitration Centre (SIAC) Rules by which the parties may request the tribunal “to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature” are similar to Article 33(1) of the Model Law, yet narrower than “accidental slip or omission,” which appears in chapter 10 of the Singapore Arbitration Act, and which in turn were interpreted by English courts to include “even errors in a bill of costs due to mistake by solicitors representing a party.”¹¹⁰ The presiding arbitrator did not accept that “an error in computation would include miscalculations, use of wrong data in calculations, omissions of data in calculations and a clerical or typographical error would include mistakes made in the course of typing or drafting the award.”¹¹¹ He further stated “the term ‘errors of a

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *See id.*

¹¹⁰ *See id.* at 644, 650ff.

¹¹¹ UNCINTRAL, Case Law on UNCINTRAL Texts, 2, U.N. Doc. A/CN.9/SER.C/ABSTRACTS/16 (Mar. 19, 1998) [hereinafter UNCINTRAL Abstracts]

similar nature[.]’ if read as meaning errors of the ‘same kind[.]’ would also include errors or mistakes of commission, as well of omission which had been inadvertently made or had never been intended by the tribunal.”¹¹² “Accordingly, the presiding arbitrator considering that article 33 of the Model Law was best understood as used in contradistinctions to errors of judgement, whether of law or of fact, for which a tribunal is not empowered to correct,” ultimately held that it possessed authority to correct the certificate of costs.¹¹³

V. Interpretation of the Award

At the request of the parties or on its own initiative, the tribunal interprets some points in its award.¹¹⁴ The consent of both parties is mandatory for an effective request for interpretation.¹¹⁵ There may well be situations where certain words or terms require the tribunal’s particular interpretation or understanding; equally, it may not be clear from the reasons listed by the tribunal whether a particular claim has been dealt with in the award or alternatively reserved for future determination.¹¹⁶ Similarly, the need for clarification arises where the award’s reasoning is ambiguous as to how a particular issue or claim was dealt with.¹¹⁷ In one case, for instance, the arbitrator calculated the valuation of construction work by adapting the approaches forwarded to it by the parties and included therein numerous elements not put forth by the parties.¹¹⁸

16].

¹¹² *Id.*; see also *Arnason v. Arnason*, [2011] ABQB 393, ¶ 66 (Can. Alta. Q.B) (holding “[m]athematical errors, or clear misunderstandings such as money that was credited but proven not to have been paid” are matters susceptible to the correction procedure).

¹¹³ UNCINTRAL Abstracts 16, *supra* note 111, at 2.

¹¹⁴ See UNCINTRAL Model Law, *supra* note 3, at art. 33(1)(b).

¹¹⁵ See *Tay Eng Chuan v. United Overseas Ins. Ltd.*, *supra* note 55.

¹¹⁶ There have been many cases that reached these conclusions.

¹¹⁷ See generally *Buyuk Camlica Shipping Trading & Industr. Co. v. Progress Bulk Carriers Ltd.*, [2010] EWHC 442, ¶ 23 (UK Com.) (“[I]n relation to Reasons, Mr. Jones says that it is that they are ambiguous or could be clearer”); see also *an der Giessen-de-Noord Shipbuilding Div. B.V. v. Imtech Marine & Offshore B.V.*, [2008] EWHC 2904, ¶ 5 (UK Com.) (“GN contends that such shortness was not in this case a virtue because it resulted in the Tribunal failing to address critical issues and defences and that that omission has caused substantial injustice to it.”).

¹¹⁸ See *Groundshire v. V.H.E. Const.*, [2001] EWHC 8, ¶ 77 (UK Com.).

This included an 18 percent reduction in standing time cost¹¹⁹ and resulted in the award's arguments and rationale being unclear.¹²⁰ Similarly, *Bulk Ship Union* involved a monetary claim and interest at a rate of 13.5 percent, in accordance with the English Late Payment of Commercial Debts (Interest) Act 1998 ("1998 Act").¹²¹ The tribunal awarded interest on that amount at a rate of five percent, not under the 1998 Act but under section 49(3)(a) of the Arbitration Act 1996.¹²² The High Court held that the claimants were entitled to seek clarification regarding the applicability of the 1998 Act, because Section 57(3) of the English Arbitration Act entitles them to do so in the event of ambiguity or absence of reasons in the award.¹²³ Unfortunately, the claimants failed to seek such clarification from the tribunal and hence could not avail themselves of Section 69 of the Arbitration Act.¹²⁴

A. Notice requirements

Article 33 of the Model Law requires that, when a party applies for a correction, interpretation, or for an additional award, it must give the other party notice, so as to afford an opportunity to contradict the assertions made in the application.¹²⁵ The Singapore Court of Appeal emphasized that the notice requirement included in section 43(4) of the Singapore Arbitration Act and Article 33 of the Model Law is "not simply an extension of the general rule" whereby a party to arbitration needs to inform the other party when it communicates with the arbitrator.¹²⁶ This requirement, which resulted from the standard of fairness, as enshrined in Article 18 of the Model Law, implies that the other party should be given equal opportunity to present its case on the claim presented for an additional award.¹²⁷

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See *Bulk Ship Union v. Clipper Bulk Shipping Ltd.*, [2012] EWHC 2595 (UK Com.).

¹²² *Id.* ¶ 3.

¹²³ *Id.* ¶ 31.

¹²⁴ *Id.* ¶ 32.

¹²⁵ See UNCINTRAL Model Law, *supra* note 3, at art. 33(1)(b).

¹²⁶ UNCINTRAL, Case Law on UNCINTRAL Texts, 6, U.N. Doc. A/CN.9/SER.C/ABSTRACTS/157 (Jul. 9, 2015) [hereinafter UNCINTRAL Abstracts 157].

¹²⁷ See *id.*; see also A. Samuel, *Arbitration, Alternative Dispute Resolution Generally*

The notice requirement was emphasized in *Anita Mantri*, in which the Delhi High Court held that arbitrators are bound to conduct proceedings in accordance with the principles of natural justice.¹²⁸ It further stipulated that before rendering the additional award, the tribunal was bound to provide notice and a right of hearing to the appellant on the claim of the respondent.¹²⁹ The Court thus differentiated between subsections 1 and 4 of Section 33 of the Indian Arbitration and Conciliation Act.¹³⁰ It stated that Section 33(1) of the Act was akin to Section 152 of the country's Civil Procedure Code; both provisions deal with corrections of typographical or clerical errors, or any other error of a similar nature in respect to awards and judgments.¹³¹ "Section 33(4) [of the Act] is similar to section 114 and Order 47 [of the] Civil Procedure Code," which provide authority for claims or relief in respect to matters wrongly omitted by the tribunal.¹³² The High Court was at pains to illustrate that, because the award was named "additional" and additional relief was ultimately granted, such relief fell in the purview of Section 33(4) of the Act.¹³³ The Court further stated that "the peculiar facts of a case where the clerical or typographical error or some other error is of such a nature that actually no notice was required, may be in the facts of that case it can be said that a correction can be made under Section 33(1) without notice.¹³⁴ However, the same cannot be said of an application which is really an application under Section 33(4) for the granting of additional relief."¹³⁵

In the *PetroChina* case, the China International Economic and Trade Arbitration Commission ("CIETAC") rendered an award ordering Shandong to return sulfur to PetroChina¹³⁶ and PetroChina

and the European Convention on Human Rights, 21 J. OF INT'L ARB. 413 (2004); M.A. Kurkela & S. Turunen, *Due Process in International Commercial Arbitration*, (Oxford University Press, 2d ed. 2010).

¹²⁸ See *Anita Mantri v. Karvy Stock Broking Ltd. & Anr. S.*, (2011) FAO No. 198/2007 (High Court of Dehli).

¹²⁹ See *id.* ¶ 6.

¹³⁰ See *id.*

¹³¹ See *id.*

¹³² *Id.*

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ *Id.*

¹³⁶ See *id.* ¶ 3.1.

to reimburse the payment within 30 days of the date of award.¹³⁷ PetroChina approached CIETAC with an application for a supplemental award, requesting clarification on the order of performance under the arbitral award.¹³⁸ Meanwhile, Shandong obtained an *ex parte* order from the court for the enforcement of paragraph 1, without reference to the performance stipulated in paragraph 2.¹³⁹ In response, CIETAC imparted three letters.¹⁴⁰ The first two letters stated that PetroChina would reimburse Shandong only after it returned the sulfur to PetroChina, thus confirming the interpretation envisaged by PetroChina.¹⁴¹ In the third letter, CIETAC stated that the first two letters constituted the supplementary award.¹⁴² However, it is worth noting that both PetroChina's application and CIETAC's response failed to notify Shandong.¹⁴³ PetroChina applied for the enforcement of this award.¹⁴⁴ The Court held that the letters breached the rules of natural justice because they were issued without affording Shandong an opportunity to be heard.¹⁴⁵

VI. Correction of Awards through Tribunals' *Proprio Motu* Powers

Paragraph 2 of Article 33 of the Model Law empowers the tribunal to correct the award on its own initiative (*motu proprio*) within 30 days of the date of the award.¹⁴⁶ This power is consistent with the tribunal's obligation to issue an award that is enforceable and without faults that may lead to it being set aside.¹⁴⁷ Furthermore, inasmuch as arbitrators may be held liable against the

¹³⁷ See *id.* ¶ 3.

¹³⁸ See *id.* ¶ 5.

¹³⁹ See *id.* ¶ 4.

¹⁴⁰ See *id.* ¶ 10.2.

¹⁴¹ See *id.* ¶ 5.

¹⁴² See *id.* ¶ 10.2.

¹⁴³ See generally *id.* ¶ 10.3 ("On the issue of whether the *Ex Parte* order should be set aside for material nondisclosure by Hongri, the Judge was satisfied there was no material nondisclosure.").

¹⁴⁴ See *id.* ¶ 5.

¹⁴⁵ *Id.* ¶ 46.

¹⁴⁶ See UNCINTRAL Model Law, *supra* note 3, at art. 33(2).

¹⁴⁷ In creating the UNCINTRAL Model Code, the General Assembly adopted the recommendation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958. G.A.Res. 61/33 at 2 (Dec. 4 2006).

parties, it is in their interest to correct the award on their own motion, even if the parties do not detect the mistake.¹⁴⁸ Not only do the arbitrators owe a duty to issue an enforceable award that is not amenable to being set aside, the arbitrators are also obligated to ensure neither party is disadvantaged, even when the performance of an obligation stipulated in the award is found to have been subject to wrong calculations.¹⁴⁹

A theoretical problem that may arise is whether the discretion of the tribunal to correct its award may conflict with a right of the parties not to have the award corrected. In practice, however, a tribunal realizing the existence of a mistake will confer with the parties and give them notice that it intends to correct the award.¹⁵⁰ Usually, the correction of the award will be in the interest of the prevailing party, in order to avoid a setting aside or a denial or recognition and enforcement.¹⁵¹ Hence, the event of a tribunal wishing to correct the award against the will of all parties involved is relatively unlikely. If party autonomy was paramount and the tribunal could not reach the winning party, the tribunal would have to seek the consent of the losing party,¹⁵² who are not likely to be forthcoming. Such an outcome would conflict with the pursuit of commercial justice; in the event of a conflict between the duty of the tribunal to offer an enforceable award, and the desire of the winning party not to correct an erred award, the former should necessarily prevail. Party autonomy does not dictate the content or reasoning of the award on the part of the tribunal.¹⁵³ These befall the range of inherent powers of arbitrators, which serve the type of commercial justice that the law expects from arbitral tribunals.¹⁵⁴ In this sense, arbitration should be no different than the courts.

¹⁴⁸ Failure to act is grounds for terminating an arbitrators mandate. UNCINTRAL Model law, *supra* note 3, at art. 14.

¹⁴⁹ *See id.* at art. 18.

¹⁵⁰ *See id.* at art. 33.

¹⁵¹ *See generally* Michael Ostrove et. all., *Awards: Challenges*, Global Arbitration Review (Jan. 2, 2019), <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/1st-edition/article/awards-challenges> (“Courts . . . reflect[] a broad consensus as to the merits of arbitral awards being final.”) [<https://perma.cc/35H7-RHNA>].

¹⁵² *See* UNCINTRAL Model Law, *supra* note 3, at art. 33(1).

¹⁵³ *See id.* at art. 28.

¹⁵⁴ *See* Ilias Bantekas, *Introduction to International Arbitration*, 107-09 (Cambridge Univ. Press 2015).

VII. The Request for an Additional Award

As already mentioned, the issuance of the final award is traditionally deemed to render the tribunal *functus officio*.¹⁵⁵ This general rule, however, has been progressively mitigated in many legal systems, which allows the tribunal (within certain limits) to make an additional award.¹⁵⁶ In New Zealand, an award could only be reconsidered for matters omitted by the tribunal through an order of the same court, assuming the court “considers the request to be justified”¹⁵⁷ To remove a deficiency, the tribunal was first empowered to rectify any slips and errors, upon which the parties were permitted under Section 14(2) of the Arbitration Amendment Act 1938 to make an application to the tribunal within 14 days of the award, so long as the award did not deal with costs.¹⁵⁸ Although the New Zealand Arbitration Act 1996 did not repeal this provision, more general powers were conferred on arbitrators through Section 33 of the First Schedule of the Arbitration Act 1996, which itself is based on Article 33 of the Model Law.¹⁵⁹ As has already been mentioned, an additional award is possible (if a party makes a request within 30 days of the original award) in respect of “claims presented in the arbitral proceedings but omitted from the award.”¹⁶⁰ It is therefore first of all necessary to determine the meaning of a “claim” under Article 33 of the Model law.

A. No formal requirement to present “claim” for original

¹⁵⁵ See generally *Fidelitas Shipping Co. v. V/O Exportchelb*, [1966] Q.B. 630, 644 (U.K. Com) (“An arbitrator’s authority is limited by stating a consultative case. Once he has stated a case, he is a *functus officio* as regards the issues covered by the case.”).

¹⁵⁶ See e.g., Arbitration Act 1890, s 9(b) (N.Z.) (granting powers to arbitrator including “[t]o state an award as to the whole or part thereof in the form of a special case for the opinion of the Court.”).

¹⁵⁷ Arbitration Act 1996, s 33(3) (N.Z.)

¹⁵⁸ See Arbitration Amendment 1938, s 14(2) (N.Z.). New Zealand’s Arbitration Amendment Act of 1938 was inspired from the English Arbitration Act of 1889 and the Arbitration Act of 1934. See Robert Burnard, *The New Zealand Law Commission’s Report on the UNCITRAL Model Law*, 8 ARB. INT’L 3, 281 (Sep. 1 1992).

¹⁵⁹ See Arbitration Act 1996 *supra* note 157 at art. 33; see also UNCITRAL Model Law, *supra* note 3, at art. 33.

¹⁶⁰ Arbitration Act 1996, *supra* note 157, at art. 33(3).

and additional awards

Article 33(3) of the Model Law states that on the request of party submitted within 30 days of the original award, the arbitrator can make an additional award in respect of claims “presented in the arbitral proceedings but omitted from the award.”¹⁶¹ Whether the Tribunal has “dealt with” a claim in the award must be read in its context.¹⁶² The judgment in *Union Marine* contains a useful summary and references to cases decided on “claims” presented to the tribunal, and whether such claims have been “dealt with.”¹⁶³ In *Torch Offshore v. Cable Shipping*,¹⁶⁴ Judge Cooke explained Section 57(3)(b) of the English Arbitration Act, “which uses the word ‘claim’, [sic] only applies to a claim which has been presented to a Tribunal but has not been dealt with, as opposed to an issue which remains undetermined as part of a claim.”¹⁶⁵ “‘Claim’ can refer to a head of claim for damages or some other remedy, but not to an issue which is part of the process by which a decision is arrived at on one of these claims.”¹⁶⁶ In equal measure, Colman J in *World Trade Corporation v. Czarnikow*,¹⁶⁷ emphasized that “‘claim’” does not mean a submission in support of a relevant question of fact. It means a claim for relief by way of damages, declaration or otherwise, such as would have to be pleaded.”¹⁶⁸

In *Cadogan*, it was held that no formality to present the claim before the arbitrator in original proceedings is required.¹⁶⁹ The

¹⁶¹ UNCINTRAL Model Law, *supra* note 3, at art. 33(3).

¹⁶² See *Union Marine Classifications Serv. LLC v. Comoros*, [2017] EWHC 2364, Issue 3 (Comm). For example, if a tribunal has not addressed the issue of jurisdiction but has nonetheless definitively decided all the substantive claims of the parties, it is deemed to have dealt with the interlocutory jurisdictional claim. See *Ilias Bantekas, The Proper Law of the Arbitration Clause: A Challenge to the Prevailing Orthodoxy*, 27 J. of Int’l Arb. 1, # (2010) (“If a dispute incorporating these elements were eventually to proceed to arbitration (and assuming the parties did not engage any local courts), the arbitrator would only be asked to decide upon substantive legal issues and not procedural ones.”).

¹⁶³ *Union Marine Classifications Service LLC v. Comoros*, *supra* note 162.

¹⁶⁴ *Torch Offshore LLC v. Cable Shipping Inc.*, [2004] EWHC 787 (Comm).

¹⁶⁵ *Id.* at ¶ 27.

¹⁶⁶ *SC v. OEL*, *supra* note 80, at ¶ 39.

¹⁶⁷ *World Trade Corp. v C Czarnikow Sugar Ltd.*, [2004] EWHC 2332 (Comm).

¹⁶⁸ *Id.* at ¶ 14.

¹⁶⁹ *Cadogan Mar. Inc. v. Turner Shipping Inc.*, [2013] EWHC 138 (Comm) at ¶ 43 (“A claim is ‘dealt with’ in an award if it has been finally determined by it. Although the dispositive part of the award is likely to be the most important part of the award for the purposes of considering that issue, where, as is almost invariably the case, the written

notion should therefore be construed in a broad and non-technical fashion, also in light of the arbitration's tendency to be less formally constrained than court litigation.¹⁷⁰ The important thing is that the claim is before the arbitrator and this is considered as having been achieved even if the claim is not presented in written pleadings or submissions.¹⁷¹ In *Cadogan*, the High Court desired to give a non-technical and broad construction to the term "claim" because arbitration, as compared to litigation, is a less formal mechanism of dispute resolution, whose focus is on substance rather than form.¹⁷² It stated further that:

A claim is "dealt with" in an award if it has been finally determined by it. Although the dispositive part of the award is likely to be the most important part of the award for the purpose of considering that issue, where, as is almost invariably the case, the written reasons form part of the award, the whole of the award needs to be considered, and the dispositive part of the award considered in the context of the written reasons.¹⁷³

Additional awards enable parties to resolve disputes with the tribunal arbitrator with completeness and without resorting to courts.¹⁷⁴ English courts have emphasized that it is desirable to receive the cure arising from defects in awards from the arbitrators themselves, rather than the courts.¹⁷⁵ In *Todd Petroleum*, the New Zealand Court of Appeal stipulated that "there is no support in the statutory languages of either arts 33(3) or 34(3) [of the Model Law] for a qualitative gloss on the nature of the request for an additional award . . . [A]dding a qualitative requirement that a request under art 33(3) be a 'proper' request would mean that a party would not know whether it has made a request in terms of that article until the arbitral tribunal either grants or rejects its application."¹⁷⁶ Moreover,

reasons form part of the award, the whole of the award needs to be considered, and the dispositive part of the award considered in the context of the written reasons.").

¹⁷⁰ *See id.* at ¶ 32 ("In my judgment this is an unduly narrow and technical construction of the claims being made.").

¹⁷¹ *Id.* at ¶ 22.

¹⁷² *See id.* at ¶ 32 ("This was an arbitration rather than court proceedings. Arbitration is rightly a less formal process and concentrates on substance rather than form.").

¹⁷³ *Id.* at ¶ 43.

¹⁷⁴ *Torch Offshore LLC v. Cable Shipping Inc.*, [2004] EWHC 787 (Comm), at ¶ 24.

¹⁷⁵ *Id.* at ¶ 28.

¹⁷⁶ *Todd Petroleum Mining Co Ltd. v. Shell (Petroleum Mining) Co Ltd.*, [2014] NZCA at ¶ 37 per Stevens J (N.Z.).

the notion of requirement for a proper request is inconsistent with the language of art 34(4) which speaks only of a request being ‘disposed of’.¹⁷⁷

B. “Claim” presented, but omitted

As already mentioned, in order for the tribunal to make an additional award, there must be a claim that was “presented,” but “omitted,” from the original award.¹⁷⁸ Conversely, a claim that was not presented during the arbitration could not be adjudicated in an additional award. Courts have held that, in case of disagreement between the parties, it is up to the requesting party to prove that the claim had indeed been presented.¹⁷⁹ In *Pirtek*, for instance, a request for an additional award concerning interest on the original award was submitted to the arbitrator 17 months after the issuance of the award, with the request being accepted.¹⁸⁰ The subsequent award was set aside because it violated the statutory limitation period and also because the claim of interest was not raised before the arbitrator in the original proceedings; clearly, a fresh claim cannot be raised in request for an additional award.¹⁸¹ The High Court was adamant that if there is a dispute as to whether a particular claim was submitted for arbitral determination and which the arbitrator did not address in the award, then the burden of proof is on the asserting party to prove that such a claim was in fact presented in its statement of claim or defence.¹⁸²

An interesting question concerns whether arbitral costs can be awarded in an additional award. The Supreme Court of New Zealand stated that a tribunal is always expected to rule on the costs of the procedure, unless the parties agree otherwise.¹⁸³ Therefore, if the original award does not deal with costs, the issue should be considered as “omitted” and can be dealt with in an additional award.¹⁸⁴ Arbitral tribunals can make an additional award on an

¹⁷⁷ *Id.* at ¶ 37.

¹⁷⁸ *See* *Sinclair v. Woods of Winchester Ltd. and Another* [2005] EWHC 1631 (QB).

¹⁷⁹ *Pirtek (UK) Ltd. v. Deanswood Ltd.*, [2005] EWHC 2301 (Comm) at ¶ 36.

¹⁸⁰ *But see id.* at ¶¶ 33, 49.

¹⁸¹ *See id.* at ¶¶ 39-42.

¹⁸² *See id.* at ¶ 46.

¹⁸³ *Casata Ltd. v. Gen. Distrib. Ltd.*, [2006] 2 NZLR 721, [2006] NZSC 8 at ¶¶ 128-129.

¹⁸⁴ *Id.* at ¶ 4.

issue presented before them but not dealt by them.¹⁸⁵ In *Pirtek*, a party's request for an additional award in respect of a claim not presented in its statement of claim was not accepted by the tribunal.¹⁸⁶ This is certainly good law and consistent with common sense.

While considering the question whether the tribunal can award costs in its additional award, none of which were claimed before the final award was issued, the Supreme Court of New Zealand, in *General Distributors*, stated that costs are always an issue that the tribunal is bound to deal with, unless the parties agree otherwise. In other words, the tribunal does not have the option as to whether it should deal with the issue of costs because it has discretion on the amount of costs to be awarded.¹⁸⁷ If the issue of cost was raised before the tribunal but the award is silent on this, this would be an omission entitling the claimant to correction and an additional award.

C. Arbitrator's conscious "omission" of a claim

In some cases, a tribunal will omit a claim not because of a mistake, but because of a conscious choice not to deal with claims that fall outside of the jurisdiction of the tribunal, or which have been rendered irrelevant by a decision on other claims. In these cases, an additional award is generally not possible.¹⁸⁸ In a case involving an insurance claim, the tribunal first issued an interim award on July 1, 2005 asserting its jurisdiction and ruling on several other preliminary issues.¹⁸⁹ In its award, the tribunal stated, "we reserve our decision as to costs, how they shall be borne and who shall assess them (except for the costs of the tribunal) until some future occasion" and issued a decision on the costs of arbitration.¹⁹⁰ The award further stated, "[it] is final as to what it decides. Any remaining issues which we have to decide shall be determined on a

¹⁸⁵ See Arbitration Act 1996, (1996), CURRENT LAW ch 2§ 57(3)(b) (stating that a tribunal may "make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but not dealt with in the award").

¹⁸⁶ See *Pirtek (UK) Ltd. v. Deanswood Ltd.*, [2005] EWHC 2301 (Comm) at ¶ 49.

¹⁸⁷ *Casata Ltd. v. Gen. Distrib. Ltd.*, [2006] 2 NZLR 721, [2006] NZSC 8 at ¶ 3.

¹⁸⁸ See *VALE Australia Pty Ltd. v. Steel Authority of India Ltd.*, Case 414/2011 at ¶¶ 81, 83(b) (March 30, 2012) (High Court of Delhi).

¹⁸⁹ *Sea Trade Maritime Corp v. Hellenic Mutual War Risks Association (Bermuda) Ltd. (The Athena)*, [2006] EWHC 578 (Comm) at ¶ 4.

¹⁹⁰ *Id.* at ¶ 7(99).

further occasion if required.”¹⁹¹ In December 2005 (i.e. beyond the statutory 56-day period) the tribunal made another award against the defendant, Sea Trade, which then challenged the award on the ground of expiry of the limitation period, further alleging that the tribunal was *functus officio* after the July 2005 award.¹⁹² The award was declared valid by the court, holding that Section 47 of the English Arbitration Act 1996 confers general powers upon arbitrators to deal with claims in parts and in different award.¹⁹³

In a German case, the tribunal declined jurisdiction over the controversy.¹⁹⁴ The claimant challenged the award before the German courts and, while the case was pending before the Supreme Court, the tribunal rendered an additional award, awarding the respondents the costs of the arbitration.¹⁹⁵ The respondent applied for enforcement, and the claimant resisted on the grounds that, inter alia, the arbitrator did not have jurisdiction to issue an additional award because the setting-aside procedure concerning the final award was still pending.¹⁹⁶ The Supreme Court held that the tribunal was not only competent, but was also required to rule on costs, and “[a] declaration of enforceability of the first award was not required for the issuance of the decision on costs.”¹⁹⁷

VIII. Timelines for Requests to Correct, Interpret, or Produce Additional Award

While applying for correction or interpretation of awards, both the parties and the tribunal must strictly adhere to the timelines laid down in Article 33 of the Model Law and implementing statutes of the *lex arbitri*.¹⁹⁸ Paragraph 1 of Article 33 stipulates requests for correction and interpretation of awards, as well as requests for additional awards, should be made within 30 days of the delivery of

¹⁹¹ *Id.* at ¶ 7(101).

¹⁹² *See id.* at ¶ 20.

¹⁹³ *Id.* at ¶ 17.

¹⁹⁴ United Nations Comm’n on Int’l Trade L., Case L. on UNCITRAL Texts (CLOUT): Case 663: MAL 16 (1); 33 (3); 34 (3), at page 4, U.N. Doc. A/CN.9/SER.C/ABSTRACTS/61 (Feb. 5, 2007).

¹⁹⁵ *See id.*

¹⁹⁶ *See id.*

¹⁹⁷ *Id.*

¹⁹⁸ *See* UNCITRAL, *supra* note 3, at art. 33.

the award, and in 60 days for additional awards.¹⁹⁹

The question as to when the communication of a request for correction or interpretation becomes effective has raised some discussion. In *Budhiraja*, the petitioner requested the tribunal within the statutory period of 30 days, but the request was not received in the office of the arbitrator.²⁰⁰ When the petitioner came to know that his application had not been received, he sent another for the correction of the award, which was sent and thus received beyond the 30-day limit.²⁰¹ He naturally challenged the expiration of the time limits in force.²⁰² The Delhi High Court made the point that the usual means of communication enjoy a presumption of delivery under section 114(f) of the Indian Evidence Act.²⁰³ This presumption is rebuttable because the surrounding facts may create suspicion about the true receipt of the communication.²⁰⁴ The Court relied on *Harihar Banerji*, in which the Indian Supreme Court held that if a letter is properly posted, then it will be presumed to have reached its addressee in proper time, in due course of postal business, and been received by its intended addressee.²⁰⁵ It held that the presumption is stronger if the sender has taken extra caution by posting it through registered post and received either by the direct addressee or someone acting on his behalf.²⁰⁶ The Delhi High Court held that the petitioner sent the request through UPC (a private courier service), thus presuming that such request reached the arbitrator in proper time and in an appropriate manner; the circumstances of the dispatch thus created a presumption of delivery.²⁰⁷ Where a deadline for making a pertinent request has

¹⁹⁹ *Id.* at art. 33(1).

²⁰⁰ *Budhiraja Mining & Constructions Ltd. v. Ircon International Ltd. & Anr.*, (2012) ILR 4 Delhi 273 at ¶ 2 (High Court of Delhi) (May 3, 2012).

²⁰¹ *See id.*

²⁰² *See id.* at ¶ 5.

²⁰³ *See id.* at ¶ 16.

²⁰⁴ *See id.*

²⁰⁵ *See id.*; *see also* *Harihar Banerji v. Ramshashi Roy*, AIR 1918 at ¶ 18.

²⁰⁶ *See* *Budhiraja Mining & Constructions Ltd. v. Ircon International Ltd. & Anr.*, (2012) ILR 4 Delhi 273 at ¶ 16 (High Court of Delhi) (May 3, 2012).

²⁰⁷ *See id.* at ¶ 17. This principle was also applied in *Samriti Devi & Anr v. Sampurna Singh & Anr.*, AIR 2011 SC 773 at ¶ 22 (stating that “the presumption would apply with greater force to letters which are sent by registered post, yet, when facts so justify, such a presumption is expected to be drawn even in the case of a letter sent under postal certificate”). Therefore, in the absence of any proof to the contrary, the letter would be

expired the courts have, in exceptional circumstances, proved willing to grant an extension.²⁰⁸ The possibility for an extension, however, largely depends on the circumstances of the case and the desirability of a clarification.²⁰⁹

A. Judicial attitudes over extension of timelines

In the event of expiry of the time limits for filing a request for correction or interpretation, some courts, as noted in brief at the end of the last section, have been inclined to extend the limitation period. In *Xstrata*, which concerned a dispute submitted to the LCIA, the tribunal issued an award ordering the buyer to pay the claimant, but this was met by a refusal.²¹⁰ The claimant applied for the recognition and enforcement of the award in China because the defendant was incorporated in China.²¹¹ The claimant's application was refused on the ground that ICRA, the fourth claimant, was not a party to the main contract and the arbitration agreement.²¹² The claimant applied to the LCIA for an additional award, or a correction of the award in respect of ICRA, but the LCIA replied that such a request was beyond the 30-day time limit set under its rules and could only oblige if ordered by the courts of the seat.²¹³ The claimant asked the Commercial Court of London to extend the time limit using its powers under Section 79 of the English Arbitration Act 1996.²¹⁴ The Court observed that in the instant case, the parties did not "otherwise agree" on a non-extension and

deemed to have reached it addressee (*see Ram Murti v. Bhola Nath & Anr*, 22 (1982) DLT 426 at ¶ 7; *see also Madan Lal Seth v. Amar Singh Bhalla*, 18 (1980) DLT 427 at ¶ 7; *see also Om Prakash Bahal v. A.K. Shroff*, AIR 1973 Del. 39 at ¶ 4).

²⁰⁸ *See*, for instance, with reference to the English Arbitration Act. *See Xstrata Coal Queensland Pty Ltd. and Others v. Benxi Iron & Steel (Group) International Economic & Trading Co.* [2016] EWHC 2022 (Comm) at ¶ 48; *see also Gold Coast Ltd. v. Naval Gijon SA* [2006] EWHC 1044 (Comm) at ¶ 44.

²⁰⁹ *See SA Builders Ltd. v. Municipal Corp. of Delhi*, EA No. 270/2002 in Ex. P. No. 99/1998 (High Court of Delhi) (19 February 2008) at ¶ 7.

²¹⁰ *Xstrata Cola Queensland Pty Ltd. v Benxi Iron & Steel (Group) international Economic & Trading Co Ltd.* [2016] EWHC 2022 (Comm)

²¹¹ *See id.* at ¶ 4.

²¹² *See id.* at ¶ 5.

²¹³ *See id.* ¶¶ 22, 27. The provision in question was Art 27.1 LCIA Rules.

²¹⁴ *See id.* ¶ 23. Section 79(1) stipulates that "[u]nless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceedings . . ." Arbitration Act 1996, c. 23, § 79(1) (Eng.).

proceeded to extend the time limit.²¹⁵

The extension of the applicable limitation period is not part of a generally accepted rule; it depends on the facts of each case and is subject to judicial discretion. In *S. A. Builder*, the arbitrator gave an award to the claimant on December 16, 1997, and held that the claimant suffered a loss toward its business because of its inability to use frozen assets.²¹⁶ The award directed the respondent to pay compensation and interest from April 1, 1990, to the date of payment.²¹⁷ The respondent challenged the award but failed.²¹⁸ When the execution of the award was filed in the court, there was a disagreement between the claimant and respondent on the amount payable under the award because the claimant was calculating the amount differently.²¹⁹ The claimant argued that there was no clarity as to whether the interest had been granted by the arbitrator under Section 31(7)(a) of the Indian Arbitration and Conciliation Act, and sought permission from the execution court to receive clarification from the arbitrators.²²⁰ The court granted permission with a note that this was in no way an authorization to re-examine the merits of the application.²²¹ The arbitrator issued an order of clarification modifying the award and held that, under Section 31(7) of the Arbitration and Conciliation Act, the tribunal can produce a “pre-reference period, [awaiting litigation] and post award.”²²² The Delhi High Court confirmed that even after the deadline has passed, the parties can agree to extend this time period.²²³

B. Extension of time limits by order of the tribunal

Although tribunals may possess inherent power to extend statutory deadlines on Article 33 applications filed directly to the tribunal, this does not explain why a tribunal that has long disbanded

²¹⁵ See *Xstrata Coal Queensland Pty. Ltd. V. Benxi Iron & Steel (Grp.) Int'l Econ. & Trading Co.* [2016] EWHC 2022 (Comm) (Eng.) at ¶ 23.

²¹⁶ See *S.A. Builders v. Municipal Corp. of Delhi*, ExpP-99/98 of 2008, decided on Feb. 19, ¶ 1 (Delhi High Court) (India) at ¶ 1.

²¹⁷ See *id.*

²¹⁸ See *id.* at ¶ 2.

²¹⁹ See *id.*

²²⁰ See *id.* at ¶ 4.

²²¹ See *id.* at ¶ 6.

²²² *Id.* at ¶ 2.

²²³ See *id.* ¶ 6.

and become *functus officio* should reassemble. Justice is as much for the party whose interests were harmed by a faulty award as for the other party who relied in good faith on that award and whose legitimate expectations are now under threat. These are just some of the considerations that guide or should guide tribunals in their discretion of time limits. Indian courts have held that tribunals cannot extend time limits on actions under Section 33(1), the equivalent of Article 33(1) of the UNCITRAL Model Law, but can extend time limits on actions under Section 33(6) of the Indian Arbitration and Conciliation Act.²²⁴ Arbitration proceedings are not terminated upon the lapse of time limits contemplated under Section 33(2) or (5) of the Act, as this is not required by Article 33(6) and 32 of the Indian Act.²²⁵ These principles emerged from one application under Section 33 to the tribunal, in which the petitioner objected to an extension of applicable time limits on the ground that the tribunal cannot endlessly entertain a dispute.²²⁶ The court rejected the plea and held that it cannot restrain arbitrators from considering the matter.²²⁷

This was elaborated further in *Ircon*.²²⁸ There, the arbitrator issued two awards on May 23, 2002, and the petitioner was directed to make payments within two months.²²⁹ The respondent filed an application for correction of computational and typographical errors on June 18, producing a certificate of dispatch with the same date.²³⁰ The respondent acknowledged receipt on July 23 that payments had been made to it.²³¹ However, on July 22 the respondent sent another letter to the arbitrator asking him to make a decision on his June 18 application.²³² The petitioner received notice on July 30 from the arbitrator concerning the respondent's application for correction, to

²²⁴ See *Nat'l Highways Auth. of India v. ITD Cementation India Ltd.*, OMP 455 of 2009, decided on Aug. 11, ¶ 10 (Delhi High Court) (India).

²²⁵ See *id.* ¶ 11.

²²⁶ See *id.* ¶ 12.

²²⁷ See *id.* ¶ 15.

²²⁸ See *Ircon Int'l Ltd. v. Budhraj Mining & Constrs. Ltd.*, OMP 431/2003 & 432/2003 of 2007, decided on Sept. 24 (Delhi High Court) (India).

²²⁹ See *id.* ¶¶ 1–2.

²³⁰ See *id.* ¶ 2.

²³¹ *Id.*

²³² *Id.*

which the petitioner replied on August 20.²³³ The respondent then filed an application under Section 5 of the Limitation Act for condonement of the delay in filing the application for correction.²³⁴ The arbitrator proceeded to issue an order on August 11, which stated that he was out of his Delhi office and had not received the June 18 application, having only received the application for correction sent as a reminder on July 22.²³⁵ The arbitrator went on to condone the delay in filing the application for correction by invoking Section 5 of the Limitation Act.²³⁶

On the basis of these facts, the court stated that Section 33 of the Arbitration and Conciliation Act makes clear that, unless agreed otherwise by the parties, the application for the correction award must reach the arbitrator within 30 days of delivery of the award and that it must be made with notice to the other party.²³⁷ An application to correct the award may be by any party, as well as by the tribunal on its own motion (*suo motu*) within 30 days of the issuance of the award.²³⁸ The Delhi High Court highlighted that there are three types of time limitations pertinent to correction applications: first, the applicant has to request for a correction within 30 days of the delivery of the award; second, the arbitrator has to make the correction within 30 days from the receipt of the request; and, third, the tribunal can make the correction on its own initiative with 30 days of the award.²³⁹ In the event of *suo motu* correction, the 30-day time period starts when the award is issued, not when it has been delivered.²⁴⁰

In *Ircon*, the application was made by the party.²⁴¹ The High Court emphasized that the timelines in Section 33 cannot be extended unless provided by the statute itself.²⁴² The extension is

²³³ *Id.*

²³⁴ *Ircon Int'l Ltd. v. Budhraj Mining & Constrs. Ltd.*, OMP 431/2003 & 432/2003 of 2007, decided on Sept. 24, ¶ 2 (Delhi High Court) (India).

²³⁵ *See id.*

²³⁶ *See id.*

²³⁷ *See id.* ¶ 5.

²³⁸ *See id.*

²³⁹ *See id.*

²⁴⁰ *See Ircon Int'l Ltd. v. Budhraj Mining & Constr. Ltd.*, OMP 431/2003 & 432/2003 of 2007, decided on Sept. 24, ¶ 5 (Delhi High Court) (India).

²⁴¹ *See id.* ¶ 2.

²⁴² *See id.* ¶ 5.

allowed only under subsection 6 of Section 33, which stipulates that the time limits pertinent to applications under subsections 2²⁴³ and 5²⁴⁴ of Section 33 can be extended.²⁴⁵ In other words, the extendible time is the one in which the tribunal must decide about the correction of the award.²⁴⁶ The timelines within which the parties must submit their application cannot be extended.²⁴⁷ Section 33 sufficiently reflects the legislature's intent to allow extensions for tribunals to decide on a correction, but not to allow extensions for the submission of an application for correction.²⁴⁸ The High Court further highlighted that there is no provision akin to Section 36(6)²⁴⁹ empowering the tribunal to correct the award beyond 30 days from the issuance of the award.²⁵⁰ The Court concluded that where the legislature intended the extension of time, it expressed its intention clearly and therefore there could be no condonement for any delays in the submission of an application for correction of an award by invoking Section 5 the Limitation Act.²⁵¹

C. Timelines for challenge and appeal after delivery of award

The timelines for challenging an award through an application for correction, interpretation, or an additional award, starts from the

²⁴³ Subsection 2 says: "If the arbitral tribunal considers the request made under subsection (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award." The Arbitration and Conciliation Act, 1996, §33(2) (India).

²⁴⁴ Subsection 5 says: "if the arbitral tribunal considers the request made under subsection (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request." *Id.* § 33(5).

²⁴⁵ See *Iron Int'l Ltd. v. Budhraj Mining & Constrs. Ltd.*, OMP 431/2003 & 432/2003 of 2007, decided on Sept. 24, ¶ 5 (Delhi High Court) (India).

²⁴⁶ See *id.*

²⁴⁷ See *id.*

²⁴⁸ See *id.*

²⁴⁹ Subsection 6 says: "The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5)." The Arbitration and Conciliation Act, 1996, §33(6) (India).

²⁵⁰ See *Iron Int'l Ltd. v. Budhraj Mining & Constrs. Ltd.*, OMP 431/2003 & 432/2003 of 2007, decided on Sept. 24, ¶ 5 (Delhi High Court) (India).

²⁵¹ See *id.* On the inapplicability of the Limitation Act on this point, see *Yadav v. Mishra*, AIR 1974 SC 480 (India); *Union of India v. Popular Constr. Co.*, AIR 2001 SC 4010, (2001) (India).

date the tribunal has issued a new award or an order about the application.²⁵² Where “the grounds for challenge are known and are not dependent upon the outcome of the application for clarification then there is no good reason to postpone the running of the 28-day period until the date of the corrected award. To do so would unnecessarily delay the making of a challenge to an award. That would be contrary to the aim and object of the [English Arbitration] Act which is to promote the finality of arbitration awards.”²⁵³

Regarding one requirement in Section 70(2) of the English Arbitration Act, the Commercial Court of London stated that the ambiguous parts of the award should be severed from the unaffected parts and that such unaffected parts should be treated without any requirement of Section 70(2) mandating to have recourse under Section 57 before initiating an appeal or challenge.²⁵⁴ Dealing with the argument that the court must see the totality of arbitral decision before dealing an appeal, the court stated that “[i]t certainly must apply where the uncertainty or ambiguity has affected or may affect that part of the result which is in question (and also perhaps in some cases the reasoning leading to that result).”²⁵⁵

For the purpose of postponing the challenge timeline, the application made should come in the purview of Section 33. For instance, the court has held that the limitation period under Section 34 takes into account the time consumed by the arbitrator for any of these three applications (correction, interpretation, and an additional award).²⁵⁶ If the application is not among these, the limitation period started from the date of original award.²⁵⁷ The court has also held that, under Section 34(3), a party has to apply for the set aside of the award within three months of receiving the award, and that if application under Section 33 was made to the arbitrator, then a three-month period will run after he received the award wherein

²⁵² See, e.g., *McLean Homes S. E. Ltd. v. Blackdale Ltd.*, [2001] EWHC (TCC) 830 [19] (Eng.); *Aztec Constr. Ltd. v. Frocan Indus. Contractors Ltd.*, 1993 CanLII 7191 [10] (Can. ABQB); *Al Hadha Trading Co. v Tradigrain S.A. & Ors* [2002] ArbLR 2 [61] (Eng.).

²⁵³ *Daewoo Shipbuilding & Marine Eng'g Co. v. Songa Offshore Equinox Ltd.* [2018] EWHC (Comm) 538 [43] (Eng.).

²⁵⁴ See *id.* ¶ 28 (quoting *Gbangbola v. Smith & Sheriff Ltd.*, [1998] 3 All ER 730, 736–37).

²⁵⁵ *Id.* (quoting *Gbangbola*, [1998] 3 All ER at 736–37).

²⁵⁶ See *Sirkar v. Sirkar*, AP No. 76 of 2014, decided on Mar. 13 (Calcutta High Court) (India).

Section 33 application was disposed of by the arbitrator.²⁵⁸

In this regard, the time for the delivery of award is of great importance because this is the time when various timelines start, like Sections 33(1), 33(4) and 34(3). For the purpose of these timelines, when an award is considered to have been delivered was discussed in *State of Maharashtra*.²⁵⁹ In this case, the arbitrator issued an award in favor of the respondent and gave a copy of the award signed by him on March 20, 2003.²⁶⁰ On account of non-payment of costs by appellant, neither the original award nor its copy was provided by the arbitrator.²⁶¹ However, on March 29, the respondent sent a copy of the signed award to the appellant.²⁶² When the respondent continued to ask for the awarded money from the appellant, the appellant said they were going to challenge the award and requested the arbitrator give the signed copy of the award to it on January 28, 2004.²⁶³ At the Indian Supreme Court, the appellant contended that the challenge of an arbitral award was beyond the three-month period given in Section 34(3) because the award was provided to them by the arbitrator with too much of a delay, while the respondent contended that they had provided the appellant with the copy of signed award on March 29, which was within the Section 34(3) period.²⁶⁴

The Supreme Court referred to Section 31(5), which mandates the arbitrator to deliver the signed copy of award to each party.²⁶⁵ Thus, the court concluded that what was to be delivered to each party was the signed copy of award and not just any copy of the

²⁵⁸ See *Todd Petrol. Mining Co. v. Shell (Petrol. Mining) Co.* [2014] NZCA 507 at [36] (N.Z.).

²⁵⁹ See *State of Maharashtra v. ARK Builders Priv. Ltd.*, (2011) 4 SCC 616, ¶ 11 (India). The Supreme Court of India found support on this point in *Union of India v. Tecco Trichy Eng'rs & Contractors*. See *id.* ¶ 12. In *Union of India*, the Supreme Court held the delivery of award to be a matter of substance and not of mere formality because, under section 31, it is at this point that proceedings terminate. See *Union of India v. Tecco Trichy Eng'rs & Contractors*, (2005) 4 SCC 239. Delivery of award to the party and receipt of award by the party sets many limitation periods into motion like those given in sections 33(1), 3(4), and 34(4). See *id.*

²⁶⁰ *State of Maharashtra*, (2001) 4 SCC ¶ 3.

²⁶¹ See *id.*

²⁶² See *id.*

²⁶³ See *id.* ¶ 4.

²⁶⁴ See *id.* ¶¶ 7–8.

²⁶⁵ See *id.* ¶ 10.

arbitral award.²⁶⁶ The court then concluded that the expression, “party making that application had received the arbitral award,” cannot be read in isolation and it must be understood in light of what is said earlier in Section 31(5) that requires a signed copy of the award to be delivered to each party. Reading the two provisions together it is quite clear that the limitation prescribed under Section 34 (3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting it aside.²⁶⁷

The Supreme Court held that because the appellant was not in possession of copy of award, its application under Section 34 was restored.²⁶⁸ However, when the timelines for the purposes of Sections 33 or 34 have lapsed, Limitation Act 1963 cannot be invoked for condonation of delay.²⁶⁹

If the award was served on a public holiday, that day would be excluded from the limitation period of three months and 30 days.²⁷⁰ However, the limitation period would run from the day when the award is received by someone who has knowledge of the arbitration proceedings and understanding of the matter.²⁷¹ In this case, the award was received on Saturday and came to the table of the executive engineer on Monday, therefore Saturday and Sunday were not included in the reckoning of the limitation period due to holidays and also for the delivery of the award.²⁷²

IX. Form and Contents of Award

Finally, Article 33 of the Model Law contains a reference to Article 31,²⁷³ which in turn sets forth some minimum requirements of form and content for the arbitral award.²⁷⁴ Corrections and

²⁶⁶ See *State of Maharashtra v. ARK Builders Priv. Ltd.*, (2011) 4 SCC 616, ¶ 10 (India).

²⁶⁷ See *id.* ¶ 11.

²⁶⁸ See *id.* ¶¶ 17–18.

²⁶⁹ See *State of Himachal Pradesh v. Himachal Techno Eng'rs*, (2010) 12 SCC 210, ¶ 4 (India).

²⁷⁰ See *id.* ¶ 7.

²⁷¹ See *id.*

²⁷² See *id.* ¶ 2.

²⁷³ See U.N. Comm'n on Int'l Trade L., UNCITRAL MODEL L. ON INT'L COM. ARB. (1985): WITH AMENDMENTS AS ADOPTED IN 2006, art. 33(5), U.N. Sales No. E.08.V.4 (2008).

²⁷⁴ See *id.* art. 31.

interpretations of awards, as well as additional awards, should thus comply with the same requirements as the original award.²⁷⁵ This rule is in principle uncontroversial; however, a distinction must be drawn between those requirements of Article 33 that are always relevant in this context, and those that may be relevant depending on the type of additional ruling issued by the tribunal. More specifically, there is no doubt that corrections, interpretations, and additional awards should be made in writing and signed by (at least the majority of) the arbitrators.²⁷⁶ It is equally clear that the date and place of arbitration must be stated,²⁷⁷ and that a signed copy must be delivered to each party.²⁷⁸

As far as the reasons are concerned,²⁷⁹ conversely, the requirement changes depending on whether the tribunal issues an additional award, a correction, or an interpretation. In case of an additional award dealing with a portion of the merits that should have been adjudicated in the original award, the reasons on which the additional award is based should be spelled out with the same level of detail as the original award. An additional award is, after all, a decision on the substance of the dispute, and there is no reason why it should contain a less encompassing reasoning than the original award. In the case of a correction, the reasons may in some instances be intrinsically evident in the type of amendments made by the tribunal; the correction of a mere computational typographical error, for instance, would not require an extensive explanation. As for interpretations of the award, the purpose is to provide clarity as to what the effects the tribunal intended to attach to the original award; the requirement to give reasons, hence, is met inasmuch as the tribunal provides sufficient information as to the precise contours of the outcome of the dispute and, in particular, the way in which the award should be complied with.

X. Conclusion

There is nothing more frustrating at the end of a lengthy arbitral

²⁷⁵ See *id.* art. 33(5).

²⁷⁶ See *id.* art. 31(1).

²⁷⁷ See *id.* art. 31(3).

²⁷⁸ See *id.* art. 31(4).

²⁷⁹ See U.N. Comm'n on Int'l Trade L., UNCITRAL MODEL L. ON INT'L COM. ARB. (1985): WITH AMENDMENTS AS ADOPTED IN 2006, art. 31(2), U.N. Sales No. E.08.V.4 (2008).

process than for the winning party to realize that the tribunal miscalculated the amount of damages or interest due, or otherwise infused the award with significant errors. Even clerical errors, such as the name of the winning or losing party, will make it impossible to enforce the award at the seat or elsewhere, not to mention more substantive issues such as the parties' unequal treatment by the tribunal.²⁸⁰ In other cases, the tribunal may have forgotten to deal with one of the parties' claims, as was originally framed in their statement of claim or defense. While arbitral statutes, local arbitration laws, and international instruments, such as the UNCITRAL Model Law, provide for remedies against such defects in the body of the award, it is often disputed whether the error or omission is a disguised claim against a point of fact or law with which one of the parties fundamentally disagrees.²⁸¹ Tribunals will be reluctant to point out whether a particular request amounts to such a disguised claim, in which case the party in question may assess whether the error or omission falls within the grounds available under the law of the seat to annul an award.

In all other cases, the general principle, based on the consistent practice of states and national courts, seems to be that the *subjective* interpretation of facts and the relevant law by the tribunal does not amount to an error under the terms of Article 33 of the Model Law. Requests for rectification are only available in respect of errors and omissions that do not touch upon the subjective discourse of the tribunal. In such cases, the parties may request the tribunal or the courts of the seat to remedy the defects so that the award is rendered meaningful for the parties. For this reason, it is important that the parties adhere religiously to the time limits set out by their chosen rules or the *lex arbitri*. No doubt, despite such timelines, it would be detrimental to the rights of the winning party if a mistake is later discovered. Hence, the timelines are not meant to punish the parties for the lack of diligence, but to recognize that the tribunal becomes *functus officio* shortly after the award is rendered. This is why some arbitral institutions have made provisions for arbitrators to make themselves available even after the usual timelines have elapsed.

²⁸⁰ See generally Ilias Bantekas, *Equal Treatment of Parties in International Commercial Arbitration*, 69 INT'L & COMPAR. L.Q. 991 (2020) (showing general principles of equal treatment in international arbitral proceedings).

²⁸¹ See, e.g., Ilias Bantekas, *Party Autonomy and Default Rules Regarding the Choice of Number of Arbitrators*, 22 CARDOZO J. CONFLICT RESOL. 31, ## (2021).