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Settlement of commercial disputes

Issues relating to expedited arbitration

Note by the Secretariat

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I. Introduction

1. At its fifty-first session, the Commission took note of the suggestions for possible future work in the field of dispute resolution expressed by the Working Group at its sixty-eighth session (A/CN.9/934, paras. 149–164), as well as of proposals for work, in particular on expedited arbitration (A/CN.9/959) and on the conduct of arbitrators, with a focus on questions of impartiality and independence (A/CN.9/961). It was pointed out that the aim of the proposals was to improve the efficiency and quality of arbitral proceedings.¹

2. Regarding expedited arbitration, it was suggested that the work could consist of providing information on how the UNCITRAL Arbitration Rules could be modified (including by parties) or incorporated into contracts via arbitration clauses that provided for expedited procedures or in guidance to arbitral institutions adopting such procedures, in order to ensure the right balance between fast resolution of the dispute and respect for due process. Reference was also made to the possibility of considering jointly the topics of expedited arbitration and adjudication, as expedited arbitration would provide generally applicable tools for reducing cost and time of arbitration, while adjudication would constitute a specific method that had demonstrated its utility in efficiently resolving disputes in a specific sector.²

3. After discussion, the Commission agreed that Working Group II should be mandated to take up issues relating to expedited arbitration.³

4. In order to assist the Working Group in its consideration of the topic, the present note provides background information regarding expedited arbitration, highlighting issues relating to the matter, and further suggesting possible forms of work.

II. Issues relating to expedited arbitration

A. Expedited arbitration

1. Definition and forms

5. Expedited arbitration is a form of arbitration that is carried out in a shortened time frame and at reduced cost by accelerating and simplifying key aspects of the proceedings so as to reach a final decision on the merits in a cost and time effective manner (see A/CN.9/959, para. 28). Fast arbitration services are offered by many arbitral institutions and can also be found in certain areas tailored for specific needs, such as sport arbitration,⁴ commodity arbitration, domain name disputes⁵ or construction cases.⁶ Furthermore, expedited arbitration is typically used where a simplified procedure, with a limited scope, suffices. Institutional solutions are generally structured around two criteria: one is complexity; the other is the value of claims. The two are not necessarily the same.

6. Most expedited arbitration procedures entail similar approaches aimed at streamlining the process in order to reduce time and cost. Expedited arbitration is characterized by various elements including (i) provision of strict time limits for both parties when appointing the arbitral tribunal or making submissions and for the

¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 244.

² *Ibid.*, para. 245.

³ *Ibid.*, para. 252.

⁴ See Court of Arbitration for Sport (CAS) with information on the procedures available at <http://www.tas-cas.org/en/icas/code-statutes-of-icas-and-cas.html>.

⁵ See the World Intellectual Property Organization (WIPO) Arbitration and Mediation Centre, with information on the procedures available at <http://www.wipo.int/amc/en/domains/>.

⁶ See UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000), Chapter VI, “Settlement of disputes”, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/pfip-e.pdf>.

arbitral tribunal when issuing the arbitral award; and (ii) limitation of procedural steps, such as limited number of submissions and restrictions on hearings (see below, paras. 9–21).

7. The Working Group may wish to note that organizations active in the field of international arbitration, including arbitral institutions, have long been exploring ways to tailor the procedure to the profile of the case and to reduce time and costs associated with arbitration. Such efforts have been ongoing in the field of commercial as well as investment arbitration.⁷ The results have been manifold, including:

- Strict application of the institutional arbitration rules with a focus on efficiency and possible adaptation of the procedure itself;⁸
- Incorporation of an expedited procedure into institutional arbitration rules,⁹ presented either as:
 - o Provisions on expedited or fast-track procedures within the rules;¹⁰ or
 - o An annex to the rules that provides for expedited or fast-track arbitration;¹¹
- A separate set of rules on expedited arbitration.¹²

⁷ See the ICC Guidelines for Arbitrating Small Claims (2003), available at: http://library.iccwbo.org/content/dr/COMMISSION_REPORTS/CR_0021.htm?11=Commission+Reports; and the ICC Commission Report on Techniques for Controlling Time and Costs in International Arbitration (second edition, 2018) available at <https://iccwbo.org/publication/icc-arbitration-commission-report-on-techniques-for-controlling-time-and-costs-in-arbitration/>; in the field of investment arbitration, see the “Proposals for Amendment of the ICSID Rules” prepared by the ICSID Secretariat, dated 2 August 2018, including a new chapter for optional expedited arbitration (III. ICSID Convention Arbitration Rules, chapter XII, Rules 69–79 and Additional Facility Rules, VII. Annex B. Chapter XII, Rules 73–81) available at https://icsid.worldbank.org/en/Documents/Amendments_Vol_Two.pdf; for a Synopsis see: https://icsid.worldbank.org/en/Documents/Synopsis_English.pdf.

⁸ Almost all arbitration rules of institutions as well as the UNCITRAL Arbitration Rules focus on efficiency and permit tailoring of the procedure by the parties in light of the characteristics of the case. See, for instance, the London Court of International Arbitration (LCIA) studies aimed at monitoring time and costs, available at: <http://www.lcia.org/LCIA/reports.aspx>. The report, “Facts and Figures — Costs and Duration: 2013–2016,” shows that the average duration of cases up to the award is 16 months, for cases up to USD 1 million, it is 9 months and the average time from last submission to award is 3 months. It may be noted that the LCIA Rules do not provide for expedited arbitration (except for article 9A and 9C on the constitution of the arbitral tribunal).

⁹ Examples of arbitral institutions that have adopted expedited procedures include the following: the ICC International Court of Arbitration; the Arbitration Institute of the Stockholm Chamber of Commerce (SCC); the Swiss Chambers’ Arbitration Institution (SCAI); the China International Economic and Trade Arbitration Commission (CIETAC) — Arbitration Institute of the China Chamber of International Commerce; the Singapore International Arbitration Centre (SIAC); the Hong Kong International Arbitration Centre (HKIAC); the Georgian International Arbitration Centre (GIAC); the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association (AAA); the Australian Centre for International Commercial Arbitration (ACICA); the German Arbitration Institute/Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS); the Vienna International Arbitration Centre (VIAC); the Japan Commercial Arbitration Association (JCAA); the Russian Arbitration Centre at the Russian Institute of Modern Arbitration; the Asian International Arbitration Centre (AIAC); and the Lagos Chamber of Commerce International Arbitration Centre (LACIAC).

¹⁰ See, for instance, Chapter VI of the JCAA Commercial Arbitration Rules (2014); Chapter VII of the Arbitration Rules of the Russian Arbitration Centre (2017); Article 42 of the Swiss Rules of International Arbitration (2012); Chapter IV of the CIETAC Arbitration Rules (2015); Article 5 of the SIAC Rules (2016); Article 42 of the HKIAC Administered Arbitration Rules (2018); and Article 45 of the VIAC Rules (2018) (referred to as the “Vienna Rules”).

¹¹ See, for instance, Article 30 in conjunction with Annex VI of the ICC Rules of Arbitration (2017); Annex III of the 2016 LACIAC Arbitration Rules; and Annex IV the DIS Arbitration Rules (2018).

¹² See, for instance, the SCC Rules for Expedited Arbitrations (2017); the AIAC Fast Track Arbitration Rules (2018); the ACICA Expedited Arbitration Rules (2016); and the ICDR International Expedited Procedures (2014).

8. It may also be noted that statistics, where available, show a growing interest from users of international arbitration for expedited procedures.¹³

2. Characteristics and questions for consideration

(a) How to foster efficiency, while preserving quality, due process and fairness

9. The section below presents procedures and mechanisms that characterize expedited arbitration, highlighting some questions for consideration.

Sole arbitrator

10. Expedited arbitration procedures usually provide for the appointment of a sole arbitrator. In the interest of speed, the appointment mechanism itself often foresees the intervention of the arbitral institution.

11. Arbitral institutions have adopted different approaches where the arbitration agreement concluded by the parties contains provisions that may be contrary to the procedures on appointment of a sole arbitrator. Certain institutions consider expedited procedures inappropriate if an arbitration agreement foresees a tribunal consisting of more than one member,¹⁴ while others either (i) have no mandatory norms and rely on the parties' ability to agree on a sole arbitrator,¹⁵ or (ii) prescribe that a sole arbitrator may be imposed on the parties.¹⁶ The latter approach has given rise to case law with divergent outcomes where expedited arbitration has been applied retroactively to cases where consent would not have necessarily covered the agreement to arbitrate under an expedited setting.¹⁷

12. Expedited procedures also include the requirement that arbitrators formally confirm their availability to ensure the expeditious conduct of the arbitration, and that, in so doing, they give due regard to the expedited nature of these proceedings. In order to allow for an efficient application of the timelines provided for in expedited arbitration, a question for consideration is the appropriateness of specific measures in case of non-compliance with such timelines.¹⁸

¹³ By way of illustration, 28 per cent of the caseload of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) in 2016 was administered under the SCC Rules for Expedited Arbitration. Similarly, the statistics published by the Swiss Chambers' Arbitration Institution (SCAI) show that, by the end of 2015, 29 out of 136 arbitration cases (namely, 21 per cent of SCAI's total caseload) were governed by the expedited procedure provisions. The statistics of the Singapore International Arbitration Centre (SIAC) show that from 1 July 2010 to 31 March 2017, there were 341 applications for expedited procedure, out of which a total of 186, namely more than half, were accepted.

¹⁴ See, for instance, Rule 75.2(2) in Chapter VI of the JCAA Commercial Arbitration Rules (2015).

¹⁵ See, for instance, HKIAC Administered Arbitration Rules (2018) and the Vienna Rules (2018).

¹⁶ See, for instance, the ICC Arbitration Rules (2017), Appendix VI, Article 2(1) and the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration § 82–84 (October 2017); the expedited procedure of the SIAC Rules, Rule 5.2(b), which gives the President of SIAC discretion to allow a larger tribunal to hear the case.

¹⁷ The relevant provision on expedited procedure of the SIAC Rules was scrutinized by the Singapore High Court in the *AQZ v. ARA* case where a party was seeking to set aside the award rendered by a sole arbitrator. The Court ruled that the award did not violate the agreement of the parties: incorporating SIAC Rules in the agreement was equated to agreeing that these Rules should take precedence where expressly so prescribed. Case available at: <http://www.singaporelaw.sg/sglaw/laws-ofsingapore/case-law/free-law/high-court-judgments/15914-aqz-v-ara-2015-sghc-49>. It should be noted that a Chinese court reached an opposite conclusion in a similar case: see *Liu J., Tang M. and Zhu Y.*, "Chinese Court Refused Recognition and Enforcement of a SIAC Award", 25 August 2017, available at: <https://www.lexology.com/library/detail.aspx?g=412f18a5-f910-4fbc-8055-eb421d1de522>.

¹⁸ See ICC Arbitration Rules (2017), Article 2.2, Appendix III: the timely submission of an arbitral award is a factor considered by the ICC Court in fixing the arbitrators' fees; this may lead either to (i) the fixing of fees below what would have otherwise been expected in case of delay attributable to the arbitrators; or (ii) an uplift to such fees.

Shorter timelines, including for the establishment of the timetable for the conduct of the arbitration

13. Stricter timelines and determined overall duration for the proceedings are usual characteristics of expedited procedures.

14. Some rules introduce deadlines for key procedural steps, giving discretion to the arbitral institution to shorten them. Others provide for an overall duration, instead of determining deadlines for each procedural stage, thereby leaving scope for flexibility. Furthermore, expedited arbitration procedures usually contain a deadline for the issuance of the arbitral award. Depending on the institutions, the deadline, which can be extended in case of exceptional circumstances, generally ranges from thirty days to nine months, with a commencement date being either the date of constitution of the arbitral tribunal, of transmission of the case to the arbitral tribunal, of the case management conference, of filing of the last written submission or of the last hearing.¹⁹

Discretion of the arbitral tribunal to adopt procedural measures it considers appropriate

15. Procedural measures that contribute to expedited arbitration include limiting the number, length and scope of written submissions and written evidence, or not allowing document production.²⁰ Arbitral tribunals are usually encouraged to organize a case management meeting at an early stage of the proceedings in order to adopt a strict procedural timetable and identify issues.²¹

16. An issue that might also be considered regarding expedited procedure is the impact of additional claims or counterclaims during the procedure.²² New claims might need to be made, for example when a party discovers new facts after the submission of its request for arbitration or response. However, such claims have an impact on the duration of the proceedings. Arbitral tribunals might need guidance on how to assess their impact in expedited arbitration, in light of the requirements of due process and fairness.

Taking of evidence in international arbitration

17. Expedited arbitration has also an impact on the fact-finding process and on the admissibility of evidence.

¹⁹ ICC Arbitration Rules (2017), Appendix VI, Article 4.1 (six months from the case management conference, unless the deadline is extended by the Court, which occurs in very exceptional circumstances only); SCC Rules for Expedited Arbitration (2017), Article 43 (three months from the referral of the case); SIAC Arbitration Rules (2016), Rule 5.2 (d) (six months from the date when the tribunal is constituted); ACICA Expedited Arbitration Rules (2016), Article 4.1 (four months from the appointment of the arbitrator if there is no counterclaim or set-off); CIETAC Arbitration Rules (2015), Article 62 (three months from the date when the tribunal is formed); ICDR International Expedited Procedures (2014), Article E-10 (thirty calendar days from the final hearing or receipt of the final written submissions, unless the parties agree otherwise); WIPO Expedited Arbitration Rules (2014), Article 58 (one month from the date on which the proceedings are declared closed, which is not more than three months after either the delivery of the statement of defence or the establishment of the tribunal, whichever event occurs later); HKIAC Administered Arbitration Rules (2018), Article 42.2(f) (six months from the date on which the file was transmitted to the arbitral tribunal); Swiss Rules of International Arbitration (2012), Article 42(d) (six months from the date on which the file was transmitted to the tribunal); DIS Arbitration Rules (2018), Annex 4, Article 1 (six months after the conclusion of the case management conference pursuant to Article 27.2); and Vienna Rules (2018), Article 45.8 (within six months of transmission of the file, unless the deadline is extended by the Secretary General).

²⁰ See, for instance, the ICC Arbitration Rules (2017), Appendix VI, Article 3.4; ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration, para. 88; and DIS Arbitration Rules (2018), Annex IV, Article 3.

²¹ UNCITRAL Notes on Organizing Arbitral Proceedings (2016), Note 1.

²² See for instance article 45.4 of the Vienna Rules (2018) which provides that counterclaims or set-off claims are admissible only until the expiry of the time limit for submission of the answer to the statement of claim.

18. The Working Group may wish to note that approaches of arbitration laws and practices vary on the taking of evidence.²³

19. The Working Group may wish to consider whether arbitration more generally would benefit from stricter and harmonized rules, to the extent feasible, on the taking of evidence. In particular, the Working Group may wish to consider the means of avoiding extensive production of documents and multiple cross-examinations of fact and expert witnesses, taking into account the differences between the legal traditions of the parties involved in international arbitration.

Hearing

20. A common method by which institutional rules expedite proceedings is through limitations on hearings, and suggesting that the case should be decided on the basis of documents only. Such procedural measures include, for instance, having a brief hearing²⁴ or no hearing; or hearings only when requested by a party and agreed to by the arbitral tribunal. Certain arbitral institutions impose a pecuniary threshold for a hearing to occur, while others work on the assumption that a hearing will occur, subject to the arbitral tribunal finding that it is not needed in the circumstances of the case,²⁵ or the agreement of all parties that a hearing is not necessary.²⁶

Arbitral award

21. Some arbitral institutions have attempted to expedite proceedings by simplifying the process of making arbitral awards. This has been achieved by a variety of means, such as (i) allowing the arbitral tribunal to either give reasons in the award in summary form or give no reasons, unless a party requests a reasoned award before the end of the closing statement; and (ii) providing the arbitral tribunal with a discretion to give summary form reasons where the parties have not agreed that no reasons should be given.

Preserving the quality, due process and fairness

22. The Working Group may wish to consider the various mechanisms to preserve the quality, due process and fairness in light of the expedited characteristics of the procedure. Given challenges of awards at the enforcement stage on the ground of violation of due process, guidance may be useful on how to conduct expedited arbitration while preserving the right of parties to present their case (see below, paras. 28–31).

(b) Determination of application

23. Arbitral institutions have taken a variety of approaches in respect of determining cases that would qualify for expedited arbitration.

Application of financial threshold

24. Under a first approach, expedited procedures apply on an “opt-out” basis: for cases below a certain monetary value, the expedited procedure automatically applies unless the parties decide otherwise. In practice, most arbitral institutions foresee the application of a financial threshold, and consider the amount at stake in the dispute in order to determine whether to apply an expedited procedure. However, the amount is not uniform among arbitral institutions and there is no fixed understanding of what a

²³ UNCITRAL Notes on Organizing Arbitral Proceedings (2016), Note 13. See also the IBA Rules on the Taking of Evidence in International Arbitration which have sought over the years to bring a more harmonized approach among various legal traditions and the recent Rules on the Efficient Conduct of Proceedings in International Arbitration (“The Prague Rules”).

²⁴ See, for instance articles 17(3) and 28(1) of the UNCITRAL Arbitration Rules, which signals that oral hearings are not needed in all cases.

²⁵ See, for instance, JCAA Arbitration Rules (2015), Rule 80.

²⁶ See, for instance, DIS Arbitration Rules (2018), Annex 4, Article 4.

“small claim” is.²⁷ It may be noted that it has not been considered appropriate in the context of UNCITRAL instruments to define the notion of “small claims” by reference to financial criteria.²⁸

Other criteria

25. Certain arbitral institutions have included “opt-in” mechanisms as a financial threshold might not necessarily be a decisive element. Indeed, some claims may be high in value but so simple that it might be appropriate to solve them through an expedited procedure. In that light, certain arbitral institutions require cooperation between the parties or express agreement for the application of expedited procedures, irrespective of the value of the claim.²⁹ Expedited procedures would usually apply where the complexity and the nature of the dispute allow for it to be decided through limited written exchange and without extensive oral evidence.

26. Under another approach, a party can request application of the expedited procedure to the arbitral institution, which will then decide on the basis of the characteristics of the case or the circumstances.³⁰ The institution may, for instance, consider whether the dispute presents characteristics of simplicity and could be resolved within a very limited time frame or whether the case could be disposed of on a summary basis. Institutional rules do not generally provide much guidance on the matter. Some refer to situations where the procedure would be “inappropriate in the circumstances,”³¹ while others provide that the institution should take into account “all relevant circumstances”.³²

Flexibility to revert to a non-expedited procedure

27. In addition, some expedited arbitration rules give the arbitral institution or the arbitral tribunal the power to opt out of expedited procedures after application of the rules.³³ The flexibility of the procedure allows parties to revert to usual proceedings, should the expedited procedure not be adapted, for instance, because the dispute is more complex than originally anticipated, or a combination of criteria.

(c) Enforceability of decisions

Party autonomy

28. An important question is whether the expedited procedure will apply or not and how that decision conforms to, or contrasts with, the parties’ agreement. Expedited arbitration has an impact on a number of key procedural issues, such as on the number of arbitrators and the constitution of the arbitral tribunal, hearings and deliberations, and rendering of the final award. These questions are sensitive in light of article V(1)(d) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (“New York Convention”), which provides that a court may refuse to recognize and enforce an arbitral award if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement

²⁷ The appropriate monetary value threshold varies, for instance: the ICC Arbitration Rules (2017), Appendix VI: United States dollars 2 million (see also the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration, para. 67b) and paras. 70–77); ICDR International Expedited Procedures: United States dollars 250,000; SIAC Arbitration Rules (2016): Singapore dollars 6 million; HKIAC Administered Arbitration Rules (2018): Hong Kong dollars 25 million. See also Queen Mary University of London, *The 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration*, available at: <http://www.arbitration.qmul.ac.uk/research/2015/>.

²⁸ See UNCITRAL Technical Notes on Online Dispute Resolution, which refers in para. 22 to “disputes arising out of cross-border, low-value e-commerce transactions”, without defining the notion of “low value”.

²⁹ See, for instance, DIS Arbitration Rules (2018), Article 27.4 (ii); and the Vienna Rules, Article 45.1.

³⁰ See, for instance, HKIAC Administered Arbitration Rules (2018), Article 42; and SIAC Arbitration Rules (2016), Rule 5.1.

³¹ See, for instance, the ICC Arbitration Rules (2017), Article 30(3)(c).

³² See, for instance, the Swiss Rules (2012), article 42(2).

³³ See, for instance, the SIAC Rules (2016), Rule 5.4.

of the parties. The application of expedited arbitration procedures gives rise to a number of issues in certain situations where the parties did not opt for such procedure. Therefore, an important point for consideration would be how the agreement of the parties for expedited arbitration should be recorded, and whether parties should also agree on the modalities.³⁴

Parties' ability to present their case

29. In expedited arbitrations, arbitral tribunals might be tempted to refuse extensions of time for presenting written submissions or limit their length and number. This may give rise to issues at the enforcement stage, where parties could argue that they were not able to fully present their case, because of the accelerated nature of the proceedings or based on a violation of the parties' right to equal treatment.

30. The Working Group may wish to consider how to strike the right balance between the risk of due process and equal treatment challenges and the tools that arbitrators can use to expedite the procedure. The risk might become more acute where the accelerated procedure applies without the express agreement of the parties.

Case law

31. The Working Group may wish to consider that case law on the enforcement of arbitral awards resulting from expedited arbitration is scarce, indicating that parties are either satisfied with such proceedings or that, given the amounts at stake in the dispute, they are reluctant to challenge awards rendered in expedited proceedings. Available case law shows that, in their scrutiny of awards, enforcement courts have sought to strike a balance between, on the one hand, the arbitrators' powers and discretion in implementing expedited procedure rules and giving effect to the policy of time and cost efficiency underlying such rules and, on the other hand, the requirements of due process and fairness.³⁵

(d) Other questions

32. The Working Group may wish to consider any other issues that would require consideration.

B. Other related procedures

1. Emergency arbitrator

33. A relatively recent trend in international arbitration is the appointment of emergency arbitrators. In cases of urgency, that cannot await the constitution of the arbitral tribunal, a party may need to seek interim or conservatory measures before the arbitral tribunal has been constituted (for instance, measures to maintain the status quo, to protect assets or evidence, and anti-suit injunctions).

34. In order to meet the need for urgency, many arbitral institutions offer the services of an emergency arbitrator, who renders an interim order before the

³⁴ As an illustration of how the due process concern is addressed, it may be noted that the ICC made its mandatory expedited provision applicable only prospectively so that it could be said that it did indeed reflect "the agreement of the parties" — i.e., only arbitration agreements entered into after the effective date of the ICC Arbitration Rules (2017) would have this expedited procedure applied to them.

³⁵ See Svea Court of Appeal, Case No. T6238-10, 24 February 2012; English High Court, *Travis Coal Restructured Holding v. Essar Global Fund* (2014) EWHC 2510 (Comm), 24 July 2014; Shanghai No. 1 Intermediate People's Court, *Noble Resources International Pte. Ltd. v. Shanghai Xintai International Trade Co. Ltd.* (2016), 11 August 2017.

appointment of the arbitral tribunal.³⁶ Statistics show that emergency arbitration is used by parties.³⁷

35. The distinctive characteristics of emergency arbitration are as follows:

- The arbitral institution usually conducts a preliminary screening to consider whether there is an agreement to arbitrate and whether the rules on emergency arbitration apply, which includes, for instance, checking that the chosen rules refer to the emergency arbitration procedure, and that the parties did not opt out of the procedure and did not agree on a different pre-arbitral procedure for obtaining interim measures;
- A sole emergency arbitrator, when available, is appointed within a very short time period (one to three days, or “as soon as possible”) by the arbitral institution, and is subject to standards of impartiality and independence, an expedited challenge procedure, if needed, with the challenge being decided by the institution; on a practical note, this usually implies for institutions to have a roster of potentially available arbitrators in order to be able to appoint an arbitrator in such a very short time period;
- Depending on the applicable rules, the time limit for rendering a decision or an award ranges from 5 to 15 days, or it is required that decisions are made “as expeditiously as possible”;
- Emergency arbitrators have the same powers and limitations as arbitral tribunals with respect to awarding interim measures and they remain bound by any applicable mandatory law governing the ability of an arbitral tribunal to grant interim measures;
- Once the arbitral tribunal is constituted, it is not bound by the decisions of the emergency arbitrator.

36. The use of emergency arbitrators may give rise to a series of issues, including:

- Notification of the emergency procedure, and timelines for the respondent to get organized;
- Lack of guidance on when it would be appropriate for interim orders to be granted;
- Enforceability of the measures ordered by the emergency arbitrator;
- Use of emergency arbitrators in the context of investor-State dispute settlement (ISDS): under the ICSID Rules, it is possible to request expedited relief, but there is no provision regarding emergency arbitrators; similarly, certain arbitral institutions exclude ISDS cases from the scope of application of the emergency arbitrator provisions;³⁸ there is, however, no such exclusion in a number of other

³⁶ See, for instance, the SCC Arbitration Rules (2017), Appendix II; the SIAC Rules (2016), Rule 30.2 and Schedule 1; ICC Arbitration Rules (2017), Article 29, Appendix V; ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration § 35–48; the Swiss Rules (2012), Article 43; the HKIAC Administered Arbitration Rules (2018), Article 23.1 and Schedule 4; the LCIA Arbitration Rules (2014), Article 9B; the International Institute for Conflict Prevention and Resolution (CPR), Rules for Administered Arbitration of International Disputes (2014), Rule 14; CIETAC Arbitration Rules (2015), Article 23 and Appendix III; the Kigali International Arbitration Centre, KICAC Arbitration Rules (2012), Article 34 and Annex 2; and the AIAC Arbitration Rules (2018), Schedule III. Institutional arbitration rules as well as the UNCITRAL Arbitration Rules also allow parties to seek interim measures from a national court prior to the commencement of the arbitration as emergency arbitration may not be sufficient or appropriate in all circumstances. It may be noted that the UNCITRAL Arbitration Rules, often applicable in ad hoc international arbitration cases, do not provide for the appointment of an emergency arbitrator.

³⁷ See *Ten years of emergency arbitration*, by Grant Hanessian and Alexandra Dosman, *The American Review of International Arbitration*, 2016, vol. 27, at Section III, available on the Internet at: https://arbitrationlaw.com/sites/default/files/free_pdfs/aria_-_songs_of_access.pdf; ICC Commission Report on Emergency Arbitrator Proceedings (under preparation).

³⁸ See, for instance, the ICC Arbitration Rules (2017), Article 29(5).

rules that do not make the distinction between the type of cases for which emergency arbitration is institutionally proposed.

37. The Working Group may wish to note that there is no uniform approach regarding enforcement, in particular as decisions by emergency arbitrators can be modified or terminated by the arbitral tribunal once constituted. If the relief ordered by an emergency arbitrator is not enforceable, there is the risk that the party seeking relief has to apply to an ordinary court for the same relief (A/CN.9/959, para. 39). In that light, some States have adopted legislation for the purpose of enforcing emergency arbitration decisions.³⁹

2. Adjudication

38. Adjudication is a mechanism whereby parties can refer a dispute to an independent party who is then required to make a decision in a limited time frame. It therefore provides for a quick process to resolve contractual disputes. Decisions of adjudicators remain binding until any further consideration of the matter in dispute in subsequent arbitration or litigation.

39. At its sixty-eighth session, the Working Group heard a proposal to examine the issue of expedited dispute resolution and to develop a set of tools, including adjudication, to address different aspects. It was highlighted that the two components would fit well together, as one would provide generally applicable tools for reducing the cost and time of arbitration, while the other would facilitate use of a particular tool that has demonstrated its utility in efficiently resolving disputes in the field of construction (A/CN.9/934, para. 155). It was suggested that model legislative provisions and contractual clauses could be developed to facilitate the broader use of adjudication (A/CN.9/934, para. 154).

40. Certain States have developed legislation on adjudication, in order to establish a right to adjudicate.⁴⁰ Certain arbitral institutions are also proposing adjudication rules.⁴¹ Where adjudication is provided for by legislation, the contractual arrangements play a central role. Often, the content of the contract is described in the law.⁴² In jurisdictions without statutory adjudication, adjudication remains available on a contractual basis. In these jurisdictions, the main issue is the lack of a framework regarding the enforceability of decisions by adjudicators.

41. The Working Group may wish to note that adjudication is referred to in the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000), Chapter VI, currently under revision.⁴³

³⁹ See, for instance the Singapore International Arbitration (Amendment), 2012 Act, Section 2(1); and the Hong Kong Arbitration Act (amended on 19 July 2013), Section 22B.

⁴⁰ The right to adjudication is provided for in legislation in the United Kingdom, in section 108 of the Housing Grants, Construction and Regeneration Act, 1996.

⁴¹ See, for instance, the ICC Dispute Board Rules (2015), available at <https://iccwbo.org/publication/2015-dispute-board-rules-2018-appendices-english-version/> and procedures proposed by the Hong Kong International Arbitration Centre (HKIAC), available at http://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/Adjudication/HKIAC_Adjudication_Rules_2009.pdf; the DIS Rules on Adjudication, available at <http://www.disarb.org/en/16/rules/dis-rules-on-adjudication-id30>.

⁴² Section 108 of the Housing Grants, Construction and Regeneration Act, 1996, United Kingdom, provides that “(2) The contract shall — (a) enable a party to give notice at any time of his intention to refer a dispute to adjudication; (b) provide a timetable with the object of securing the appointment of the adjudicator and referral of the dispute to him within 7 days of such notice; (c) require the adjudicator to reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred; (d) allow the adjudicator to extend the period of 28 days by up to 14 days, with the consent of the party by whom the dispute was referred; (e) impose a duty on the adjudicator to act impartially; and (f) enable the adjudicator to take the initiative in ascertaining the facts and the law. (...)”.

⁴³ UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000), Chapter VI, “Settlement of disputes”, United Nations publication, Sales No. E.01.V.4., General Assembly Resolution A/RES/56/79, 25 January 2002. For the revisions, see A/CN.9/982/Add.6, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/acn9.982.add6_.pdf.

3. Others

42. The Working Group may wish to consider whether the question of early dismissal of claims through summary proceedings should be part of its work. Applied to international arbitration, summary proceedings are adapted to situations where one or more issues in a dispute that do not raise complex issues of fact or law can be settled, partially or fully, on a summary basis.⁴⁴

43. Where institutions do not expressly allow arbitrators to adjudicate the matters before them through summary proceedings, it remains debated whether such procedures fall within the tribunal's broad case management powers (including its authority to ensure efficiency and cost reduction).

III. Consideration of possible work

A. General remarks and scope of work

1. General remarks

44. The Working Group may wish to recall the suggestion that work should:

- Be based on the needs of the users, particularly those of the business community;
- Focus on promoting arbitration as an efficient method and avoid possible overregulation; and
- Respond to the needs of developing States that were in their initial stages of implementing a legislative framework for dispute resolution (A/CN.9/934, para. 157).

45. At the sixty-eighth session of the Working Group, it was explained that expedited arbitration procedures had been a focus of many arbitral institutions in recent years, in part as a response to concerns among users about rising costs, undue formality and lengthier timelines making arbitration more burdensome and similar to litigation. The usefulness of having a common international expedited procedure framework was highlighted, in light of the increasing demand to resolve simple cases by arbitration and of a lack of international mechanisms to cope with such disputes (A/CN.9/934, para. 153). As indicated in document A/CN.9/959, arbitration is increasingly under pressure, and therefore the right balance needs to be found between efficiency and the compliance with due process (A/CN.9/959, paras. 5–7).

2. Questions for consideration

46. Questions for consideration regarding the scope of work include the following:

- Whether the focus of the work should be on establishing an international framework on expedited arbitration and, if so, how such work will articulate with the work done by UNCITRAL in relation to other instruments, such as the UNCITRAL Arbitration Rules,⁴⁵ the Notes on Organizing Arbitral Proceedings (2016),⁴⁶ the Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules⁴⁷ and the Technical Notes on Online Dispute Resolution (2016);⁴⁸

⁴⁴ SCC Rules for Expedited Arbitration (2017), Article 40; SIAC Arbitration Rules (2016), Article 29; Rule 41(5) of the ICSID Arbitration Rules.

⁴⁵ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, annex I, available at <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>.

⁴⁶ *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 158, available at https://uncitral.un.org/en/texts/arbitration/explanatorytexts/organizing_arbitral_proceedings.

⁴⁷ *Ibid.*, *Sixty-seventh Session, Supplement No. 17 (A/67/17)*, para. 64, available at https://uncitral.un.org/en/texts/arbitration/explanatorytexts/organizing_arbitral_proceedings.

⁴⁸ *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 217 and Annex I, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf.

- How to delineate the issues to be covered, and whether they should be limited to expedited arbitration or also include consideration of the questions referred to above in paragraphs 33 to 43; if so, how work on these issues could be integrated with work on expedited arbitration;
- Whether the work should also address the question of enforcement of decisions resulting from such procedures;
- As the UNCITRAL Arbitration Rules are of a generic nature and are applicable to both commercial and investment arbitration, whether any work that would cover the UNCITRAL Arbitration Rules would address both types of arbitration;
- Whether work on expedited arbitration should provide for incentives for more efficient handling of arbitration process, or sanctions in case of non-compliance with deadlines.

B. Preliminary consideration of possible work

47. The Working Group may wish to consider how to best create a framework facilitating the use of expedited arbitration procedures. Various options are identified below on a preliminary basis.

1. UNCITRAL Arbitration Rules

48. The Working Group may wish to note that expedited arbitration is not a distinct system of arbitration. The UNCITRAL Arbitration Rules were originally intended to be used in a broad range of circumstances and therefore a generic approach was taken in drafting the Rules.⁴⁹ When the Working Group revised the Rules in 2010, it took note that the Rules had been easily adapted to be used in a wide variety of circumstances covering a broad range of disputes and that this quality should be retained (see [A/CN.9/614](#), para. 17).

(a) The UNCITRAL Arbitration Rules in light of the characteristics of expedited procedures

49. The Working Group may wish to note the following points by way of comparison of the UNCITRAL Arbitration Rules with the characteristics of expedited arbitration procedures.

Number of arbitrators

50. Regarding the number of arbitrators, it may be noted that the default rule under the UNCITRAL Arbitration Rules is three arbitrators. When the Working Group revised the UNCITRAL Arbitration Rules in 2010, the question of the default number of arbitrators was considered.⁵⁰ A proposal was made that a way to address the

⁴⁹ In practice, there are at least four types of arbitration where the UNCITRAL Arbitration Rules are used, namely, disputes between private commercial parties where no arbitral institution is involved (a type sometimes referred to as “ad hoc” arbitration), investor-State disputes, State-to-State disputes and commercial disputes administered by arbitral institutions.

⁵⁰ According to the *travaux préparatoires* of the revision of the UNCITRAL Arbitration Rules (see [A/CN.9/614](#), paras. 59–61): in support of retaining the default composition for arbitral tribunal of three members, it was said that the default rule of three arbitrators was a well-established feature of the UNCITRAL Arbitration Rules, reproduced in the Model Law, and ensured a certain level of security by not relying on a single arbitrator. In favour of inclusion of a default rule of a sole arbitrator, it was said that such a rule would render arbitration less costly and thus make it more accessible, particularly to poorer parties and in less complex cases. The Working Group observed that it was normal practice to have one arbitrator as the default rule in arbitrations administered by some institutions with a discretion to appoint three arbitrators, subject to contrary agreement by the parties. It was suggested that discretion to intervene could be granted to the appointing authority in non-institutional arbitrations to appoint three arbitrators in more complex arbitrations. However, that solution was not retained for the reasons that such discretion fell outside the traditional role for appointing authorities; it could introduce a further level of

question of accessibility of arbitration and reduction of cost would be to issue guiding recommendations on how to use the UNCITRAL Arbitration Rules in situations involving small claims, including the recommendation that the parties agree on the appointment of a sole arbitrator (A/CN.9/614, paras. 59–61).

Appointment mechanism

51. Regarding the appointment mechanisms under the UNCITRAL Arbitration Rules, it may be noted that the parties are responsible for appointing arbitrators, with the assistance of the appointing authorities where the appointment is problematic. The power of the appointing authority to constitute the arbitral tribunal under article 10 of the UNCITRAL Arbitration Rules has been broadly formulated to cover all possible failures to constitute the arbitral tribunal (see A/CN.9/619, para. 88). The Working Group may wish to consider how these procedures would apply in situations of expedited arbitration.

Availability

52. Along the same lines as required under expedited arbitration procedures, the UNCITRAL Arbitration Rules provide that arbitrators should formally confirm that they are able to devote sufficient time to ensure the expeditious conduct of the arbitration (see above, para. 12).⁵¹

Time limits and discretion of the arbitral tribunal to adopt such procedural measures as it considers appropriate

53. The UNCITRAL Arbitration Rules contain streamlined time limits, with a wide discretion left to the arbitral tribunal under article 17 to determine deadlines in light of the characteristics of the case. When revising the Rules in 2010, the Working Group agreed that the arbitral tribunal should have the authority to modify the periods of time prescribed in the Rules but not to alter the general time frames that might be set by the parties in their agreements without prior consultation with the parties (A/CN.9/619, para. 136).

54. The Working Group agreed that it would not be feasible to set a maximum duration for the proceedings when it revised the UNCITRAL Arbitration Rules, given the generic nature of the Rules and that there would be no institution to deal with possible extensions of the time limit. Rather than imposing an arbitrary time period, flexibility has been retained by inclusion of a general principle that there should not be undue delay in rendering an award (A/CN.9/614, paras. 47, 118 and 119).

55. It may also be noted that the UNCITRAL Notes on Organizing Arbitral Proceedings (2016) highlight the importance of holding case management meetings at which the parties and the arbitral tribunal can establish strict time limits for procedural steps and a cost-effective procedure for the arbitration.⁵² The Notes contain indications for the arbitral tribunals and the parties on how to adapt the procedure to the specificities of the case within the framework established by arbitration rules.⁵³

56. Other features of the UNCITRAL Arbitration Rules that would be useful to underline in the context of expedited procedures include the possibility for the notice of arbitration and the response thereto to be used as the statement of claim and of defence, respectively. Articles 20 and 21 of the UNCITRAL Arbitration Rules deal

delay in the arbitral proceedings; at the time of appointment of arbitrators, there might not be an appointing authority; leaving the question of the number of arbitrators to the appointing authority based on the subjective question of whether or not a case was complex would introduce a level of uncertainty.

⁵¹ See, for instance, Annex to the UNCITRAL Arbitration Rules.

⁵² See UNCITRAL Notes on Organizing Arbitral Proceedings, 2016, available at: <http://www.uncitral.org/pdf/english/texts/arbitration/arb-notes/arb-notes-2016-e.pdf>.

⁵³ See also document A/CN.9/893 regarding the project under preparation by the Swiss Arbitration Association, in cooperation with UNCITRAL, referred to as the “ASA Toolbox”.

with the situation where the claimant or respondent decide to treat the notice of arbitration or response thereto as a statement of claim or of defence. The provisions are useful in practice, as they clarify that a party does not need to produce a statement of claim or of defence if it considers that its notice of arbitration or response thereto already fulfils that purpose (see [A/CN.9/669](#), para. 19).

Hearings

57. The UNCITRAL Arbitration Rules foresee the possibility that no hearing would be needed for the case at hand (see arts. 17(3) and 28(1)).

Award

58. Article 34(3) of the UNCITRAL Arbitration Rules provides that the parties may agree that no reasons are to be given in the award by the arbitral tribunal (see above, para. 21).

(b) Guidelines or contractual clauses for the parties

59. The UNCITRAL Arbitration Rules have been used for low-value, simple cases, where parties adapted the Rules as expressly provided for in article 1, paragraph 1. The Working Group may wish to consider whether possible work may consist in providing guidance to parties, or model contractual clauses, on how to adapt the UNCITRAL Arbitration Rules to expedited arbitration, in application of article 1(1). In so doing, it may wish to note the questions raised above regarding the appropriate criteria for the application of expedited procedures in light of the fact that the UNCITRAL Arbitration Rules apply *ad hoc*. Application of a specific expedited procedure would then rely mainly on parties' agreement, unless a specific role would be given to appointing authorities in that respect.

(c) Guidelines for arbitral institutions rendering services or administering arbitration under the UNCITRAL Arbitration Rules

60. In addition, work may also consist in providing advice to arbitral institutions on how to adapt the UNCITRAL Arbitration Rules for expedited arbitration. This may be useful for the institutions which have adopted the UNCITRAL Arbitration Rules as their institutional rules, as well as for those which provide services under the UNCITRAL Arbitration Rules. These services include administering arbitrations under the UNCITRAL Arbitration Rules as well as acting as an appointing authority.

2. Guidance to arbitral institutions

61. The Working Group may wish to consider whether the work should consist in guidance to arbitral institutions on expedited procedures and on emergency arbitrators.⁵⁴ It may wish to note that, as mentioned above, with the development of international arbitration, many arbitral institutions in various parts of the world offer simplified procedures for expedited arbitration and for emergency arbitrators.

62. Regarding expedited procedures, advice could be given on the various approaches, and their differences. Work may also address the question of how to deal with divergence between mandatory elements of the expedited procedures and the agreement of the parties on various questions such as the number of arbitrators, in particular in light of article V(1)(d) of the New York Convention. Work could cover how to achieve the right balance between expedited procedures and due process, fairness of the proceedings, party autonomy, arbitrators' neutrality and enforceability of the award.

⁵⁴ See [A/CN.9/959](#), para. 28.

3. Guidance to users (arbitral tribunals and parties)

63. The use of expedited arbitration may require departing from standardized procedures. Guidelines for users would aim at assisting the arbitrators and the parties at finding innovative solutions within the limits of due process requirements, possibly including settlement facilitation and early neutral evaluation. The guidelines may constitute an addition to the Notes on Organizing Arbitral Proceedings (2016), focusing on expedited arbitration.

64. The Working Group may wish to consider the various elements that would make arbitration more efficient. A possible area for work could consist in providing guidance on how and when to apply an expedited procedure or revert back to a normal procedure and to provide more guidance on case management techniques. For instance, providing guidance on means to undertake early determination of issues at stake in a dispute, or on the types of proof admitted in expedited arbitration might lead to a more efficient resolution of the case. The Working Group may wish to consider whether work should address these practical matters.

65. As indicated above, a related development in arbitration procedure has been that of summary disposition. Due to the disputes and controversies surrounding it, summary disposition may be an area for the Working Group to consider addressing either through guidelines or otherwise. Arbitral tribunals may benefit from principles and guidelines on when summary disposition would be appropriate, and how such procedures should be conducted.

66. The Working Group may wish to consider whether users would benefit from guidance regarding the use of emergency arbitrators.

67. Further, the Working Group may wish to recall that the UNCITRAL Notes on Organizing Arbitral Proceedings (2016) provide that “in appropriate circumstances, the arbitral tribunal may raise the possibility of a settlement between the parties.” The Working Group may wish to consider whether guidance should be provided in circumstances where it would be appropriate for the arbitral tribunal to facilitate settlement of the dispute.
