



# General Assembly

Distr.: General  
3 October 2019

Original: English

---

**United Nations Commission on  
International Trade Law**  
Fifty-third session  
New York, 6–24 July 2020

**Report of Working Group II (Dispute Settlement)  
on the work of its seventieth session  
(Vienna, 23–27 September 2019)**

## Contents

	<i>Page</i>
I. Introduction . . . . .	2
II. Organization of the session . . . . .	2
III. Deliberations and decisions . . . . .	3
IV. Issues relating to expedited arbitration . . . . .	4
A. General consideration . . . . .	4
B. Draft provisions on expedited arbitration . . . . .	5



## 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.<sup>1</sup>

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.<sup>2</sup> After discussion, the Commission agreed that Working Group II should be mandated to take up issues relating to expedited arbitration.<sup>3</sup>

3. Accordingly, at its sixty-ninth session (New York, 4–8 February 2019), the Working Group commenced its consideration of issues relating to expedited arbitration with preliminary discussion on the scope of its work, characteristics of expedited arbitration, and possible form of the work. At that session, the Secretariat was requested to prepare draft texts on expedited arbitration and to provide relevant information based on the deliberations and decisions of the Working Group.

4. At its fifty-second session, the Commission considered the report of the Working Group on the work of its sixty-ninth session (A/CN.9/969) and expressed its satisfaction with the progress made by the Working Group and the support provided by the Secretariat.<sup>4</sup>

## II. Organization of the session

5. The Working Group, which was composed of all States members of the Commission, held its seventieth session in Vienna, from 23 to 27 September 2019. The session was attended by the following States members of the Working Group: Algeria, Argentina, Austria, Belarus, Belgium, Brazil, Burundi, Canada, Chile, China, Côte d'Ivoire, Croatia, Czechia, Dominican Republic, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Libya, Malaysia, Mexico, Nigeria, Pakistan, Peru, Philippines, Republic of Korea, Romania, Russian Federation, Singapore, Spain, Switzerland, Thailand, Ukraine, United States of America, Venezuela (Bolivarian Republic of) and Viet Nam.

6. The session was attended by observers from the following States: Bahrain, Bolivia (Plurinational State of), Burkina Faso, Cuba, Cyprus, Democratic Republic of the Congo, El Salvador, Malta, Mauritania, Netherlands, Norway, Saudi Arabia, Slovakia, Uruguay, Yemen and Zambia.

7. The session was also attended by an observer from the State of Palestine.

---

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

<sup>2</sup> *Ibid.*, para. 245.

<sup>3</sup> *Ibid.*, para. 252.

<sup>4</sup> *Ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, paras. 156–158.

8. The session was also attended by observers from the following international organizations:

(a) *Intergovernmental organization*: Gulf Cooperation Council (GCC), International Cotton Advisory Committee (ICAC) and Permanent Court of Arbitration (PCA);

(b) *Invited non-governmental organizations*: American Arbitration Association/International Centre for Dispute Resolution (AAA/ICDR), American Society of International Law (ASIL), Asian International Arbitration Centre (AIAC), Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC), Belgian Centre for Arbitration and Mediation (CEPANI), Cairo Regional Centre for International Commercial Arbitration (CRCICA), Center for International Investment and Commercial Arbitration (CIICA), Chartered Institute of Arbitrators (CIARB), China International Economic and Trade Arbitration Commission (CIETAC), Construction Industry Arbitration Council (CIAC), Energy Community Secretariat, Forum for International Conciliation and Arbitration (FICA), G.C.C. Commercial Arbitration Centre (GCCAC), Georgian International Arbitration Centre (GIAC), Hong Kong International Arbitration Centre (HKIAC), Hong Kong Mediation Centre (HKMC), ICC International Court of Arbitration (ICCWBO), Inter-American Arbitration Commission (IACAC-CIAC), Inter-American Bar Association (IABA), International Academy of Mediators (IAM), International Council for Commercial Arbitration (ICCA), International Insolvency Institute (III), Korean Commercial Arbitration Board (KCAB), Madrid Court of Arbitration, Miami International Arbitration Society (MIAS), Russian Arbitration Association (RAA), Russian Arbitration Center at the Russian Institute of Modern Arbitration (RAC at RIMA), Swedish Arbitration Association (SAA), Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), Law Association for Asia and the Pacific (LAWASIA) and Vienna International Arbitration Centre (VIAC).

9. The Working Group elected the following officers:

*Chairperson*: Mr. Andrés Jana (Chile)

*Rapporteur*: Mr. Takashi Takashima (Japan)

10. The Working Group had before it the following documents: (a) provisional agenda (A/CN.9/WG.II/WP.208); (b) a note by the Secretariat on draft provisions on expedited arbitration (A/CN.9/WG.II/WP.209); and (c) a submission by PCA (A/CN.9/WG.II/WP.210). For reference, the Working Group also had before it responses to a questionnaire circulated by the Secretariat on expedited arbitration and an overview of selected expedited arbitration provisions prepared by ICCA, both available on the UNCITRAL website. The Working Group expressed its appreciation to the arbitral institutions that responded to the questionnaire as well as to PCA and ICCA for the information they provided.

11. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of issues relating to expedited arbitration.
5. Adoption of the report.

### III. Deliberations and decisions

12. The Working Group considered agenda item 4 on the basis of the note by the Secretariat (A/CN.9/WG.II/WP.209). The deliberations and decisions of the Working Group with respect to item 4 are reflected in chapter IV. At the end of the session, the Secretariat was requested to prepare draft provisions on expedited arbitration,

illustrating how they could appear as an appendix to the UNCITRAL Arbitration Rules. In addition, the Secretariat was requested to also illustrate how those provisions could be presented in a stand-alone set of rules on expedited arbitration.

## **IV. Issues relating to expedited arbitration**

13. The Working Group commenced its consideration of issues relating to expedited arbitration with the understanding that its deliberations should aim at providing general guidance on the possible form and content of its work on expedited arbitration.

### **A. General consideration**

#### **1. Focus of the work**

14. As to the scope of its work, the Working Group confirmed its decisions made at its sixty-ninth session (see [A/CN.9/969](#), para. 34) that it would focus preliminarily on international commercial arbitration and assess at a later stage the relevance of its work to investment and other types of arbitration.

15. In that respect, it was pointed out that if the work would eventually result in revisions of the UNCITRAL Arbitration Rules (the “Rules”), caution should be taken as the Rules were generic in nature, with wide application, including in investment and State-to-State arbitration. It was reiterated that the Working Group should not seek to address the specific aspects of expedited proceedings in the context of investment arbitration, as Working Group III (Investor-State Dispute Settlement Reform) was currently tasked with considering the reform of investor-State dispute settlement. It was clarified that the Working Group could seek guidance from the Commission when addressing issues, which might overlap with the work of Working Group III.

16. The Working Group further reaffirmed its decision at its sixty-ninth session (see [A/CN.9/969](#), paras. 33 and 115) that, once it completed the work on expedited arbitration, it would consider other procedures, such as emergency arbitrator and adjudication, based on additional information about those procedures, particularly regarding their use in the international context.

#### **2. Form of the work**

17. The Working Group took note of the various possible forms its work on expedited arbitration could take, which included a set of rules, model clauses and guidance texts.

18. It was generally felt that the work should begin on the preparation of a set of rules on expedited arbitration (hereinafter referred to as the “expedited arbitration rules”), which should have some linkage to the UNCITRAL Arbitration Rules. As to their presentation, it was suggested that the expedited arbitration rules could be presented either as part of the Rules (as a new section or an appendix) or as a stand-alone text (self-contained or with cross references to the Rules). While diverging views were expressed on the advantages and disadvantages of each approach, the need to ensure user-friendliness was highlighted.

19. After discussion, the Working Group agreed to base its deliberations on the draft provisions provided for in document [A/CN.9/WG.II/WP.209](#) and to further consider their presentation after deliberations on their content. It was agreed that other forms of work, such as model clauses and guidelines, could also be considered as the Working Group made progress.

## **B. Draft provisions on expedited arbitration**

### **1. Scope of application**

#### *Parties' agreement to expedited arbitration*

20. The Working Group confirmed its previous understanding that the parties' agreement to expedited arbitration should be the determining factor for its application and that express consent of the parties would be necessary for the expedited arbitration rules to apply. It was highlighted that if the parties had agreed in advance to resolve their dispute by referring to the expedited arbitration rules, that agreement would trigger expedited arbitration. It would be the same if the parties had agreed to use the expedited arbitration rules after a dispute had arisen.

21. A number of suggestions were made with regard to the possible application of the expedited arbitration rules. While a suggestion was made that the expedited arbitration rules could provide for an opt-out mechanism (where parties would be free to exclude their application), it was generally felt that the explicit consent of the parties should be required for the expedited arbitration rules to apply.

22. It was stated that requiring the agreement of parties to expedited arbitration would be in line with the expectation of the parties and due process requirements. It was also said that while requiring the explicit agreement of the parties may limit instances where the expedited arbitration rules would become applicable, parties' consent to the rules would justify the inclusion of more expeditious features.

23. It was generally felt that the expedited arbitration rules should only apply prospectively (in other words, once the rules have entered into force and the parties have agreed to the rules) and that caution should be taken for any retroactive application of the rules to disputes where the parties had not expressed their consent.

24. In light of the fact that the work could result in the revision of the UNCITRAL Arbitration Rules, attention of the Working Group was drawn to the presumption in article 1(2) of the Rules regarding the application of the version of the Rules in effect on the date of the commencement of the arbitration. As that presumption might result in the parties being bound by the expedited arbitration rules, it was suggested that the presumption in article 1(2) should not apply to those rules. It was also suggested that another way of addressing the concerns relating to the presumption in article 1(2) would be delinking the expedited arbitration rules from the Rules, possibly by presenting them as a stand-alone text.

25. After discussion, it was agreed that explicit agreement of the parties should be required for the application of the expedited arbitration rules and that there should be no presumption that the expedited arbitration rules could become applicable, where the parties had not expressly consented to their application.

#### *Determination by a third party on the application of expedited arbitration*

26. The Working Group then considered whether the expedited arbitration rules should include a mechanism whereby expedited arbitration could apply without the consent of all the parties or through the involvement of a third party.

27. It was reiterated that the consent of the parties to the expedited arbitration rules should be the factor determining their application and, accordingly, determination by a third party without consent of all the parties would raise due process concerns, possibly impacting the enforceability of the award. It was stated that if the parties' consent were to be the sole criterion to determine the application of the expedited arbitration rules, the involvement of a third party would not be necessary. In addition, it was generally felt that even if a third party were to be involved in the determination, it would be the parties that should have the final word on the application of the expedited arbitration rules and that rules should not be imposed on the parties.

28. During the deliberation, it was pointed out that a third party should nevertheless be able to suggest the application of the expedited arbitration rules to the parties. It

was said that if the parties had agreed to such a mechanism in their arbitration agreement, a third party could make a determination on the application of the expedited arbitration rules either upon the request of one of the parties or upon its own initiative in exceptional circumstances. It was also mentioned that there could be merit in allowing a third party to make the determination even when one of the parties had not agreed to their application. It was said that in so doing, the third party should consult with the parties and take into account the overall circumstances of the dispute.

29. It was mentioned that the involvement of a third party in determining the application of the expedited arbitration rules should generally be based on objective criteria either agreed by the parties or set forth in the rules themselves. It was further mentioned that the involvement of a third party could only be envisaged when there were some set criteria which would automatically trigger the application of the expedited arbitration rules. References were made to financial thresholds and other criteria introduced by arbitral institutions administering expedited arbitration. In that context, some doubts were expressed about establishing such criteria in relation to the UNCITRAL Arbitration Rules. It was further said that if objective criteria were difficult to establish, it would also be difficult to envisage the involvement of a third party.

30. It was suggested that certain criteria could be developed by the Working Group providing guidance on when expedited arbitration rules would apply, which would be based on, for instance, the nature of the dispute, the urgency of its settlement and the proportion between the value of the dispute and the expected costs of arbitration (see paras. 35–41 below).

31. After discussion, it was widely felt that a third party should not be in a position to determine and impose on the parties the application of the expedited arbitration rules and that the expedited arbitration rules should apply only when there was explicit consent by the parties to the rules. It was also generally felt that a third party (for example, the administering institution, the arbitral tribunal or the appointing authority) would, in any case, be free to suggest to the parties the application of expedited arbitration rules. Lastly, it was widely felt that the parties would be free to agree on the application of the expedited arbitration rules at any time including after the dispute arose.

32. However, it was pointed out that even when the parties had consented to the application of the expedited arbitration rules, there could be instances where a third party could be involved in determining their application.

33. One example would be where the parties, in their arbitration agreement, had included a set of criteria that would trigger the application of the expedited arbitration rules. In that case, the involvement of a third party might be necessary to determine whether the criteria were met. However, it was questioned whether that matter was an issue of applicability to be resolved before the constitution of the arbitral tribunal or an issue of jurisdiction for which the arbitral tribunal would be making a determination.

34. Another example related to how parties might have formulated their consent to the expedited arbitration rules. For example, if the parties had agreed to arbitration under the UNCITRAL Arbitration Rules including the expedited arbitration rules, a third party might need to intervene to determine whether the expedited provisions would apply to the dispute at hand.

#### *Establishing criteria for determining the application of expedited arbitration*

35. With regard to the criteria for determining the application of expedited arbitration, a wide range of approaches taken by arbitral institutions were shared. Some institutions relied solely on the parties' consent and did not include any other criteria. Other institutions had included financial thresholds or other criteria, which could trigger expedited arbitration. It was mentioned that those institutions further provided mechanisms where the parties could opt-in to expedited arbitration even if

the criteria were not met and where parties could opt-out even if the criteria were met. It was noted that arbitral institutions had a certain role to play in determining whether the criteria were met and whether the dispute was suitable for expedited arbitration.

36. In that context, the possible role of the arbitral tribunal in determining whether the criteria were met was mentioned, as it would be best informed about the overall circumstances of the case and could make an informed decision on whether expedited arbitration was suitable for the dispute. In response to the question whether the arbitral tribunal could be in a position to determine the application of the expedited arbitration rules, it was suggested that the appointing authority could have a role in determining the application of the expedited arbitration rules.

37. Doubts were expressed about whether the expedited arbitration rules to be prepared by the Working Group should or could include a financial threshold or other criteria that would trigger their application. In that regard, it was suggested that rather than including such criteria in the expedited arbitration rules, model clauses could be developed including a number of criteria which the parties would be free to choose from. It was also suggested that the criteria to be developed by the Working Group could be mentioned in a guidance text.

38. On the other hand, the advantages of introducing a financial threshold was also stressed mainly as providing a clear and objective standard. It was stated that establishing a financial threshold would ensure predictability and certainty to the parties on whether expedited arbitration would apply, and preference was expressed for such a monetary threshold over other qualitative criteria, which might pose uncertainties in practice. It was also mentioned that if the parties were free to opt-in or opt-out from expedited arbitration regardless of whether the financial threshold was met, that threshold would simply provide a starting point for the parties to discuss and agree on whether expedited arbitration would apply.

39. In response, it was mentioned that establishing a monetary threshold would raise the question of the currency in which the amount would be expressed. It was further mentioned that, setting a fixed amount might be difficult as well as arbitrary and that the set amount might not necessarily reflect whether the dispute was suitable for expedited arbitration. It was said that even a dispute of a high amount could be simple to resolve and parties with a dispute of a lower amount might wish to proceed to non-expedited arbitration. It was also mentioned that it would be difficult to ascertain the amount of the claim at the earlier stages of arbitration. It was reiterated that considering the different levels of economic development, setting a monetary threshold that could be applicable in all jurisdictions might also be a challenging task. It was further mentioned that the rules to be prepared by the Working Group should endure time, particularly as unlike arbitral institutions, it would be difficult for UNCITRAL to update or revise the financial threshold when needed.

40. With regard to other criteria to be considered in determining the application of expedited arbitration, the following were mentioned: (i) the nature and level of complexity of the case; (ii) time sensitiveness of the dispute; (iii) urgent needs of the parties; (iv) suitability of the dispute for expedited arbitration; (v) document-only proceedings; (vi) the need for and the number of witnesses; (vii) possible joinder and consolidation; and (viii) the likeliness of the dispute being resolved in the time frame provided for in the expedited arbitration rules.

41. After discussion, the Working Group agreed that a possible set of criteria for determining the application of expedited arbitration should be developed, while reflecting the wide range of views expressed during its deliberations. It was generally felt that those criteria could include both quantitative and qualitative factors, while efforts should be made to ensure that they would remain objective. In addition to a monetary threshold, the following were mentioned as possible criteria to be developed: (i) nature of the dispute; (ii) urgency of the resolution of the dispute; (iii) complexity or simplicity of the dispute; (iv) proportionality of the amount of claim to the cost of arbitration; and (v) overall circumstances of the case. The Secretariat was requested to provide different options for further consideration by the

Working Group, including on the various possible presentations, for example, in the expedited arbitration rules, model clauses or a guidance text.

*Parties' agreement to resort to non-expedited arbitration*

42. The Working Group then turned its attention to situations where expedited arbitration would not apply even though the parties had initially agreed to expedited arbitration, for instance, where the complexity of the case or the introduction of additional claims and counterclaims would make non-expedited arbitration more appropriate.

43. The Working Group agreed that parties should be entitled to revert or resort to non-expedited arbitration based on the agreement of all parties and expressed that the formulation provided for in paragraph 27 of document [A/CN.9/WG.II/WP.209](#) provided a good starting point.

44. It was however pointed out that reverting or resorting to non-expedited arbitration after the proceedings had begun might pose practical challenges, in particular with regard to the constitution of the arbitral tribunal, and the availability of arbitrators for a longer period. It was questioned whether the matter should be addressed under the applicable law, or by the parties and the arbitral tribunal through consultation. Preference was expressed for not addressing the matter or delving into too much detail, and for providing flexibility to the parties and the arbitral tribunal to address relevant issues. Divergent views were expressed on whether that matter should be addressed in the rules or in a guidance text.

*A party's withdrawal from expedited arbitration*

45. The Working Group then considered whether a party that had agreed to expedited arbitration before the dispute would be free to withdraw after the dispute had arisen (in other words, to refer the dispute to non-expedited arbitration) and whether such possibility should be provided for in the expedited arbitration rules.

46. One view was that a party should not be able to withdraw unilaterally as that party had already agreed to expedited arbitration and it would also be contrary to the expectation of the other party wishing to resolve the dispute in an expeditious manner. It was further said that allowing for such withdrawal would defeat the purpose of the arbitration agreement and might harm the predictability of the overall process. It was also mentioned that if the parties had agreed on expedited arbitration and the arbitral tribunal or the appointing authority, upon the request of a party, decided to resort to non-expedited arbitration without the consent of the other party, issues might arise with regard to the enforcement of the award based on article V(1)(d) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

47. However, another view was that a party should be able to withdraw from expedited arbitration after seeking the consent of the other party. In addition, while a party should not have a unilateral right to withdraw from expedited arbitration, the expedited arbitration rules should cater for exceptional circumstances where it would be justifiable to resort to non-expedited arbitration. It was suggested that the party making such a request should be required to provide persuasive grounds for the need to resort to non-expedited arbitration. It was suggested that providing that mechanism would comfort the parties (including States) entering into an agreement on expedited arbitration, as they would still have the opportunity to resort to non-expedited arbitration after the dispute arose.

48. General preference was expressed that where a request was made by one of the parties to withdraw from expedited arbitration, the arbitral tribunal should determine whether to resort to non-expedited arbitration. If the tribunal had not yet been constituted, it was suggested that the appointing authority or an administering institution could be tasked with the determination, while doubts were expressed about

their involvement and preference was expressed for the tribunal, once constituted, to make the determination.

49. It was generally felt that a third party, in allowing a party to withdraw from expedited arbitration, would need to consult with other parties and take into account the overall circumstances of the case. It was stated that a mere change of circumstances would not justify a party's request for withdrawal and that only an "exceptional circumstance" would justify such a request. It was suggested that the expedited arbitration rules should set forth such exceptional circumstances in an objective manner, particularly to avoid any abuse by the parties. It was mentioned that change of facts which could not have been foreseen when the parties agreed to expedited arbitration, the dispute not being suitable for expedited arbitration, and at which stage of the proceeding the request was made, were some of the factors that the third party could take into account in granting the request to resort to non-expedited arbitration. It was suggested that the third party should be required to render a reasoned decision when doing so.

50. In regard to whether there should be a limited time frame during which a party could make the request to withdraw from expedited arbitration, it was generally felt that there should not be such limitation and that a party should be able to make the request at any time. However, it was mentioned that the third party determining whether to allow withdrawal would likely consider the stage at which the request was made.

51. During the deliberations, questions were asked with regard to the flexibility to be provided in the expedited arbitration rules which might make it unnecessary for parties to withdraw from expedited arbitration. Questions were also raised about the practicalities in resorting to non-expedited arbitration, for example, about the composition of the tribunal and the relationship with the tribunal already constituted as well as at which stage the non-expedited arbitration would commence.

*Determination by a third party on the non-application of expedited arbitration despite the parties' willingness to proceed with expedited arbitration*

52. It was agreed that the expedited arbitration rules should not include the possibility of a third party determining to proceed with non-expedited arbitration on its own initiative, despite the will of the parties to proceed with expedited arbitration, as this would be contrary to party autonomy.

## **2. Number of arbitrators**

53. The Working Group agreed that the expedited arbitration rules should provide that the arbitral tribunal should be composed of a sole arbitrator. Divergent views were expressed on whether that rule should be mandatory or set forth as default explicitly allowing the parties to agree otherwise. In support of a mandatory rule, it was said that one arbitrator would permit a more rapid, efficient and less costly procedure. That feature was described as a key characteristic of expedited arbitration, and one that would clearly differentiate expedited from non-expedited arbitration. On the other hand, those in support of allowing parties to agree on more than one arbitrator stated that party autonomy should prevail. In addition, it was said that a number of arbitral institutions permitted expedited arbitration with more than one arbitrator, which did not create difficulties in conducting expedited arbitration.

54. On whether an appointing authority should be entitled to determine the number of arbitrators upon the request of a party and in light of the circumstances of the case, it was mentioned that such an option should not be retained in the expedited arbitration rules as it might open the door to dilatory tactics by the parties and could impose unexpected costs in relation to the involvement of additional arbitrators. Wide support was expressed to keep the expedited arbitration rules simple, with only few exceptions. It was suggested that if such a rule were to be included, the agreement of the parties should nevertheless prevail.

55. After discussion, the Working Group agreed that the expedited arbitration rules should provide for a sole arbitrator, while the parties could agree to more than one arbitrator. It was further agreed that the appointing authority should not have any role in determining the number of arbitrators in the expedited arbitration rules.

### **3. Appointment of the arbitral tribunal**

#### *Appointment mechanism under the expedited arbitration rules*

56. The Working Group then discussed the appointment mechanism under the expedited arbitration rules.

57. It was generally felt that, when a sole arbitrator was to be appointed, the rule should be that the parties should jointly agree on the sole arbitrator. It was mentioned that while it might be difficult for the parties to agree on the sole arbitrator, they should still be encouraged to do so, which would be in line with their expectation to be involved in the appointment process. Another view, based on the fact that it could be difficult for the parties to agree on the sole arbitrator, was that the expedited arbitration rules should provide that the appointing authority would appoint the arbitrator, unless the parties had agreed on the arbitrator. It was stated that such an approach could prevent undue delays in the appointment process.

58. However, doubts were expressed on the automatic involvement of an appointing authority, based on the fact that the parties should retain the right to appoint the sole arbitrator. It was suggested that shortening the time frame during which the parties could agree on the sole arbitrator and envisaging the involvement of an appointing authority thereafter could sufficiently expedite the process.

59. With regard to the suggestion that the claimant should be required to include a proposal of the arbitrator in the notice of arbitration, it was generally felt that while the claimant might wish to suggest name(s) of the arbitrator in its notice of arbitration, it should not be a requirement under the expedited arbitration rules.

60. As to how the appointing authority would become involved in the appointment process, different views were expressed. One was that it should only be upon the request of one of the parties, as the appointing authority would likely not have any knowledge about the case (unless it was the administering institution). Another view was that the appointing authority should be automatically involved after lapse of a certain time period (see, for example, para. 43 of document [A/CN.9/WG.II/WP.209](#)).

61. It was suggested that a short time period should be provided in the expedited arbitration rules during which the parties could agree on the sole arbitrator, for example, 15 to 30 days. After that time period, a party could make a request to the appointing authority or the appointing authority could proceed to make a direct appointment. However, it was also noted that a reduced time frame should be considered carefully, as all parties should be given sufficient time to engage in the process (see also below, para. 64).

62. On when that time frame should commence, views were expressed that it should commence upon the receipt by the respondent of the notice of arbitration or upon the receipt by parties of the proposal for the sole arbitrator. It was also mentioned that parties should be free to request the intervention of the appointing authority even before the lapse of the time period, if they were confident that no agreement would be reached. It was further mentioned that if the parties were given a set time frame to reach an agreement on the sole arbitrator and that time frame had lapsed, it should still be left to any party to request the intervention of an appointing authority since the parties might be negotiating an agreement.

63. As to the appointment process to be undertaken by the appointing authority, it was mentioned that the list procedure provided for in article 8(2) of the UNCITRAL Arbitration Rules could also apply to expedited arbitration. It was mentioned that the appointing authority, when making the appointment, should consult with the parties.

64. Considering that the Working Group had agreed that the appointment of more than one arbitrator would be possible under the expedited arbitration rules, it was generally felt that the appointment mechanism provided for in articles 9 and 10 of the UNCITRAL Arbitration Rules would also be applicable to expedited arbitration, possibly with a shorter time frame. However, as noted above (see para. 61 above), some doubts were expressed about reducing the time frame in those articles.

65. As to the challenges of arbitrators, it was agreed that the expedited arbitration rules should include a mechanism adapting articles 12 and 13 of the UNCITRAL Arbitration Rules to take into account the expeditious nature of the proceedings.

#### *Designating and appointing authority mechanism*

66. The Working Group heard a presentation by PCA on its role as designating and appointing authority under article 6 of the UNCITRAL Arbitration Rules (see document [A/CN.9/WG.II/WP.210](#)). It was stated that the mechanism under article 6 could be conducted in a time- and cost-efficient manner, as evidenced by the PCA's experience in designating an appointing authority in an average of two weeks with minimal fixed fees. The Working Group also heard presentations by other arbitral institutions that had administered arbitration, or acted as appointing authority, under the UNCITRAL Arbitration Rules.

67. A proposal was made for the mechanism under article 6 to be modified, possibly providing for PCA to act as a default appointing authority under the expedited arbitration rules, if the parties had not or were not able to agree on an appointing authority. In response, it was observed that when revising the UNCITRAL Arbitration Rules in 2010, the Working Group and the Commission considered at length the mechanism in article 6 of the Rules and confirmed the principle expressed therein. It was noted that it would not be advisable to revisit the conclusion then reached.

68. In that regard, it was also noted that in the case of arbitration without administrative support, the appointment of the arbitrator could be equally carried out by a judge of a domestic court in some States. Furthermore, the need to highlight that the parties in expedited arbitration ought to designate an appointing authority was emphasized and it was suggested that that could be done in a model clause.

69. After discussion, the Working Group requested the Secretariat to prepare options with regard to designating and appointing authorities in expedited arbitration, including what was currently provided for in article 6 of the UNCITRAL Arbitration Rules and possible adaptations thereto.

#### **4. Case management conference and procedural timetable**

70. On whether the expedited arbitration rules should require the holding of a case management conference, diverging views were expressed. One view was that as a case management conference would contribute to streamlining the overall procedure, it should be an essential element of expedited arbitration. Another view was that flexibility should be left to the tribunal whether to hold a case management conference, as that would largely depend on the circumstances of the case. It was mentioned that requiring a case management conference might burden the tribunal and allow parties to raise due process issues, if not held.

71. On when a case management conference should be held (regardless of whether it was required or not in the expedited arbitration rules), it was generally felt that there should not be a strict time frame and flexibility should be left to the tribunal. In that context, preference was expressed for the phrase "as soon as practicable" in draft provision 3(1).

72. On whether the arbitral tribunal should be required to establish a provisional procedural timetable, different views were expressed. Recalling the Working Group's discussion when it revised the UNCITRAL Arbitration Rules in 2010, it was suggested that the arbitral tribunal should be required to establish a timetable after consultation with the parties (see article 17(2) of the Rules). It was further suggested

that a time frame should be set during which the arbitral tribunal would be required to establish the timetable (for example, a number of days or immediately after the case management conference). In response, it was stated that discretion should be left to the arbitral tribunal on whether and when to establish a timetable.

73. It was generally felt that the establishment of a timetable would not necessarily need to be linked with the time of the case management conference. It was also generally felt that the important aspect to be highlighted in the expedited arbitration rules was the need for the arbitral tribunal to consult with the parties in establishing a timetable. Another aspect that was mentioned was that the timetable to be established in expedited arbitration would need to take into account the overall time frame that would govern the issuance of the award and reference was made to draft provision 10.

74. On the conduct of a case management conference and consultation with the parties, it was generally felt that the expedited arbitration rules should point out that it need not be done in person and that the arbitral tribunal should be able to determine the appropriate means, including the most convenient means of communication. As such, it was suggested that draft provision 4(3) could be simplified significantly. It was further mentioned that if sufficient flexibility was provided to arbitral tribunals in holding a case management conference (for example, through written exchanges which need not be simultaneous for all the parties), it would make it possible to consider requiring in the expedited arbitration rules the holding of a case management conference.

75. After discussion, it was generally felt that the expedited arbitration rules should provide that the tribunal should consult with the parties on how to organize the proceedings, possibly through a case management conference and other means. In preparing the relevant rule, it was also generally felt that article 17 of the UNCITRAL Arbitration Rules should be taken into account, particularly paragraph 2 with regard to the establishment of a provisional timetable. It was agreed that the question of whether the expedited arbitration rules should require the arbitral tribunal to hold a case management conference would be considered at a later stage.

## **5. Time frames and related issues**

### *Time frames in the expedited arbitration rules and the discretion of the arbitral tribunal*

76. Taking note of the time frames provided in the UNCITRAL Arbitration Rules (for example, articles 4 and 25), the Working Group considered issues relating to time frames to be provided for in the expedited arbitration rules. The Working Group noted that article 17 of the UNCITRAL Arbitration Rules gave discretion to the arbitral tribunal to extend or shorten time frames, while bearing in mind the need to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

77. In that context, it was underlined that while shorter time frames constituted one of the key characteristics of expedited arbitration, consideration should also be given to preserving the flexible nature of the proceedings and complying with due process requirements. It was also underlined that specific time frames that would be applicable at the various stages of arbitration might be difficult to introduce in the expedited arbitration rules, as the time period would differ depending on the dispute. Therefore, it was suggested that time frames for different stages of the proceedings should be determined by the parties and the arbitral tribunal in light of the characteristics of the case. It was also suggested that time frames for the completion of the procedure and the rendering of the award could ensure an expedited conduct of the proceedings, while preserving the flexibilities in the timing of individual steps in the procedure.

78. Consequently, it was generally felt that the expedited arbitration rules should follow closely the approach of the UNCITRAL Arbitration Rules regarding main

procedural steps, while possibly providing for shorter time frames. Further, it was suggested that the discretion of the arbitral tribunal in the conduct of the arbitration under article 17 of the Rules should be preserved for the sake of flexibility. It was also suggested that the need for the arbitral tribunal to take into account the expeditious nature of the proceedings in exercising its discretion could be highlighted in the expedited arbitration rules.

79. The Working Group generally agreed that the arbitral tribunal should have the authority to modify time frames to be prescribed in the expedited arbitration rules but not the authority to alter time frames set by the parties in their agreements without consulting them in line with article 17(2) of the UNCITRAL Arbitration Rules.

80. Further, it was highlighted that the expedited arbitration rules should expressly provide that the arbitral tribunal could limit the number, length and scope of written submissions and written evidence, or not allow document production at all. That was considered as a means to shorten the procedure (see also para. 99 below). A view was expressed that the consequences for non-compliance by the parties with the time frame and other limitations could also be provided for in the expedited arbitration rules.

*Treatment of the notice of arbitration and response thereto as the statements of claim and of defence*

81. The Working Group considered whether the expedited arbitration rules should treat a notice of arbitration and response thereto as the statements of claim and of defence therefore eliminating the need for the parties to produce a statement of claim or of defence (see articles 20(1) and 21(1) of the UNCITRAL Arbitration Rules). It was stated that while a claimant would have ample time to produce a notice of arbitration complying with the requirements for a statement of claim, a respondent would not necessarily have time to produce a response to the notice, also complying with the requirements for a statement of defence. It was suggested that documents accompanying the statements of claim and of defence could be referenced by the parties in the statements and produced at a later stage. It was suggested that depending on the approach to be taken by the Working Group, the time frame for the respondent to communicate the response to the notice of arbitration might need to be adjusted (see article 4(1) of the Rules).

## **6. Early dismissal and preliminary determination**

82. The Working Group considered whether the expedited arbitration rules should include provisions on early dismissal (a tool for arbitral tribunals to dismiss claims and defences that lacked merit) and on preliminary determination (a procedure that would allow a party to request the arbitral tribunal to decide on one or more issues or points of law or fact without undergoing every procedural step) based on draft provisions 5 and 6.

83. It was said that such tools were not specific to expedited arbitration, and were used also in non-expedited arbitration, including in investment arbitration. It was further pointed out that early dismissal was a tool to dismiss a claim or defence at the early stages of the proceedings, rather than to accelerate the proceedings. Some concerns were raised that the use of such tools in expedited arbitration might result in delays, while it was also suggested that appropriate time frames within the rules could address such concerns. In addition, it was stated that while such tools might be common in certain jurisdictions, parties and arbitrators from other jurisdictions might not be so familiar with them.

84. Concerns were raised that work on those tools might not fall within the mandate of the Working Group, particularly as they could apply in the context of non-expedited arbitration. However, noting that those tools could improve the efficiency of the arbitral proceedings, support was expressed for the Working Group to further examine those tools as part of its work on expedited arbitration focusing on commercial arbitration.

85. As a general point, it was suggested that articles 17(1) and 34(1) of the UNCITRAL Arbitration Rules, respectively recognizing the broad discretion of the arbitral tribunal to conduct the proceedings and to make separate awards on different issues at different times, could sufficiently allow an arbitral tribunal to make an early dismissal or preliminary determination. In response, it was said that providing such tools explicitly in the expedited arbitration rules would make it easier for the parties as well as the tribunal to utilize them. In that context, a question was raised on how draft provisions 5 and 6 would operate in relation to article 23 of the Rules.

86. A few arbitral institutions that had introduced similar provisions in their institutional rules shared their experience, confirming that those provisions were used in practice. In that regard, it was suggested that information on the use of similar tools by domestic courts, particularly with regard to their handling of frivolous claims, could be useful.

87. After discussion, it was generally felt that issues relating to early dismissal and preliminary determination and relevant provisions should be examined by the Working Group as providing tools to improve the overall efficiency of arbitral proceedings at a later stage of its discussion on expedited arbitration without precluding the possibility that such mechanism could be included within the expedited arbitration rules. It was agreed that whether the relevant provisions could be placed in the expedited arbitration rules should be considered at a later stage and that the Working Group would benefit from additional information on the use of such tools in international arbitration practice as well as in domestic courts.

## **7. Counterclaims and additional claims**

88. The Working Group then considered issues relating to counterclaims and additional claims in expedited arbitration and the extent to which they should be allowed in light of its accelerated nature and due process requirements. It was generally felt that the right of the parties to make counterclaims and additional claims should be preserved, and that the discussion should therefore focus on the possible limitations as well as on the discretion of the arbitral tribunal to lift any limitation. General support was expressed for draft provisions 7 and 8 as providing a good basis for the discussion.

89. On whether the respondent should be limited to raise counterclaims in its response to the notice of arbitration, a suggestion was made that a more flexible approach might be appropriate, also taking into account whether the response to the notice of arbitration would be treated as a statement of defence in expedited arbitration (see para. 81 above). It was further suggested that the arbitral tribunal should be given the discretion to decide, during its consultation with the parties, whether counterclaims would be accepted at a later stage of the proceedings. Another suggestion was that draft provision 7 could be drafted to alert parties that they might be restricted in their submission of counterclaims.

90. Regarding the ability to present additional claims, it was generally felt that draft provision 8, in its current form, could be too restrictive, and that the parties should be provided a short time frame during which they could amend or supplement their claims (for example, a short period of time after the receipt of the response to the notice of arbitration or within a period of time determined by the arbitral tribunal). It was said that such an alternative would better account for the evolving nature of the case.

91. Regarding cost allocation, it was suggested to expressly provide in the expedited arbitration rules that the arbitral tribunal should apportion the cost related to the counterclaims or additional claims to the party requesting it, if the claims were found to be frivolous.

92. It was mentioned that issues relating to counterclaims and additional claims should be further reviewed based on a set of criteria to be established by the Working

Group for determining the application of expedited arbitration (see paras. 35–41 above).

## **8. Hearings**

93. The Working Group then considered whether the expedited arbitration rules should include a rule limiting the holding of hearings.

94. One view was that limitations on hearings were a key characteristic of expedited arbitration and should be reflected in the expedited arbitration rules. In that line, some support was expressed for option A in draft provision 9. It was stated that taking such an approach would distinguish expedited arbitration from non-expedited arbitration, while at the same time, parties would retain the right to request the arbitral tribunal to hold a hearing. It was noted that arbitral tribunals should endeavour not to hold hearings in expedited arbitration to the extent possible so as to reduce time and cost.

95. Another view was that a hearing does not necessarily prolong the proceedings and might even facilitate a quicker conclusion. Noting that the arbitral tribunal would be best-positioned to decide on whether to hold a hearing, it was suggested that the arbitral tribunal should have the discretion based on the circumstances of the case and taking into account the views of the parties. It was also suggested the arbitral tribunal should determine whether and for what purpose to hold a hearing based on the documents and other material submitted by the parties. Accordingly, support was expressed for option B in draft provision 9, particularly as it did not contain a presumption that a hearing would not be held in expedited arbitration.

96. It was generally felt that the parties should have a right to object to the decision by the arbitral tribunal to not hold a hearing. On how the arbitral tribunal should treat such an objection, differing views were expressed. One view was that the arbitral tribunal should be bound and thus would need to hold a hearing, while another view was that the arbitral tribunal would still have the discretion to not hold a hearing. In that context, a view was expressed that the tribunal should have the discretion to hold a hearing, even when the parties had agreed not to have one.

97. As to the conduct of hearings, it was noted that article 28 of the UNCITRAL Arbitration Rules would generally be applicable in expedited arbitration. It was observed that the arbitral tribunal could harness various means of communication to hold hearings, which would meet the expectation that expedited arbitration would be less costly. It was further noted that the duration of the hearings should be shorter and that they could also be conducted remotely, as had been suggested with regard to case management conferences (see para. 74 above).

98. After discussion, the Working Group decided that alternative rules on hearings should be prepared. The general rule could be that: (i) there would be no hearing in expedited arbitration, unless otherwise agreed by the parties or upon the request of one of the parties; or (ii) the arbitral tribunal had the discretion to decide whether to hold a hearing based on the circumstances of the case and taking into account the expeditious nature of the proceedings. Where the arbitral tribunal would decide not to hold a hearing, any of the parties may object to that decision upon which the arbitral tribunal would: (i) be obliged to hold a hearing in line with article 17(3) of the UNCITRAL Arbitration Rules; or (ii) retain the discretion to hold a hearing. It was also agreed to highlight efforts to be made by the arbitral tribunal that the conduct of the hearing was tailored to expedited arbitration.

## **9. Taking of evidence**

99. The Working Group considered whether the expedited arbitration rules should include provisions on the taking of evidence. It was generally felt that flexibility should be left to the arbitral tribunal on the taking of evidence, which would also provide parties sufficient time to present witness statements and expert opinions. There was also general support for clarifying that the arbitral tribunal should have the discretion to limit the production of documents and cross-examination of fact and

expert witnesses (see para. 80 above). It was also said that the parties should be alerted to the fact that extensive production of evidence would not be possible in expedited arbitration.

100. In that context, various views were expressed on how best to reflect such general understanding. One view was to provide general guidance to the parties and the arbitral tribunal and not to include a specific provision in the expedited arbitration rules. Another view was that article 27 of the UNCITRAL Arbitration Rules might sufficiently address the matter. Yet another view was that article 27 could be adapted, for example, to state that unless otherwise directed by the arbitral tribunal, evidence, including witness statements, should be submitted in writing only and within a limited time frame.

101. Regarding the suggestion that all evidence should be submitted with the notice of arbitration, it was said that that could be burdensome and counterproductive, and that it would be preferable to determine when evidence should be submitted during the consultation between the arbitral tribunal and the parties.

## **10. Rendering of the award**

### *Time frame for the rendering of the award*

102. The Working Group considered whether the expedited arbitration rules should provide that the award should be rendered in a fixed time frame and, if so, what would be the appropriate period of time, when that period would commence, and the mechanism for extending the time period.

103. The Working Group heard presentations by arbitral institutions on their experience with implementing time frames regarding the duration of the proceedings. In that context, it was generally acknowledged that the rendering of the award was one of the time-consuming stages of arbitration and that reducing the time of that stage would shorten the overall duration. The Working Group therefore confirmed its understanding that the expedited arbitration rules should set a fixed time frame for the issuance of the award. However, it was stated that that time frame might not be necessary if that period was included in the overall time frame for completing the arbitration. While it might be premature to fix the time frame for rendering of the award, some support was expressed for including a six-month period in the expedited arbitration rules, which was common in institutional arbitration rules. It was also mentioned that the expedited arbitration rules should provide that the parties were able to agree on a time frame different from that in the rules.

104. It was suggested that the time frame could start to run from an early stage of the proceedings, such as the receipt of the notice of arbitration, the constitution of the arbitral tribunal or the holding of the case management conference. Some preference was expressed for the time of the constitution of the arbitral tribunal as it provided more certainty and as the arbitral tribunal would have control over the process from then on.

105. In that context, it was suggested that the expedited arbitration rules could also include a separate time frame, specific to the rendering of the award which could start to run from the date the arbitral tribunal declared the closure of the procedure. It was also said that the expedited arbitration rules should also cater for situations, for instance, the replacement of an arbitrator or where parties sought amicable resolution, which should halt the time period.

106. It was generally felt that the time frame for rendering the award could be extended under certain conditions. It was suggested that an extension should only be possible in exceptional circumstances and that the reasons for the extension should be provided. It was further suggested that the expedited arbitration rules could prescribe a short time period to be granted for any extension.

107. On who would extend the time frame, differing views were expressed. It was acknowledged that it might be difficult for the parties to agree to such an extension

at a late stage of the proceedings. One view was that an appointing authority could be tasked with that role, while some doubts were expressed, particularly considering the ad hoc nature of the rules. Another view was that the arbitral tribunal in consultation with the parties might be better placed with that role. However, it was further indicated that an arbitral tribunal might not be allowed to extend the time frame without the consent of the parties in certain jurisdictions.

108. It was suggested that the expedited arbitration rules should provide for the consequences of non-compliance by the arbitral tribunal with the set time frames for rendering awards, for instance, the replacement of the arbitrator. It was pointed out that the rules should be drafted in such a manner that non-compliance of the set time frames would not constitute a ground for annulment of the award.

#### *Reasoning in awards*

109. With regard to whether and the extent to which the expedited arbitration rules would require reasons to be given in an award, differing views were expressed. One view was that draft provision 10(2) reflected the understanding that unless otherwise agreed by the parties, an arbitral tribunal in expedited arbitration would not need to give any reason, or could give reasons in summary form, as both would likely accelerate the procedure. It was said that draft provision 10(2) would provide an arbitral tribunal with explicit discretion to render the award providing reasons in a succinct and concise manner, unless the parties had agreed that no reason need to be given.

110. However, concerns were expressed about that approach. It was stated that requiring the arbitral tribunal to provide a reasoned award could assist its decision-making and would comfort the parties as they would find that their arguments had been duly considered. It was also mentioned that the absence of reasoning in an award might impede its control mechanism, as the court or other competent authority would not be in a position to consider whether there were grounds for setting aside the award or refusing its recognition and enforcement. In that line, it was suggested that the approach taken in article 34(3) of the UNCITRAL Arbitration Rules could also apply in expedited arbitration. Noting that the expedited arbitration rules would be geared towards simpler cases, it was mentioned that during the consultation with the parties, an arbitral tribunal would be able to narrow down the core issues that would need to be addressed in its award with appropriate reasoning. It was further mentioned that article 34(3) would be more compatible with certain domestic legislations that required reasoned awards, without which the award might be null and void. It was further stated that in any case, the parties could always agree that no reasons need to be given or that the reasons could be given in summary form. Lastly, it was noted that few institutions had introduced provisions limiting the reasoning in the award, absent the agreement of the parties.

111. Additional concerns were expressed about the phrase “in summary form” in draft provision 10(2), as it was not objective and could be interpreted differently, creating uncertainty. Preference was expressed for avoiding the use of such a phrase and it was mentioned that a guidance text could clarify that an award should have reasons in a succinct manner but sufficient enough to explain the basis of the decisions therein.

112. After discussion, it was generally felt that the expedited arbitration rules should provide that the arbitral tribunal should state the reasons upon which the award was based, unless the parties have agreed that no reasons were to be given or that reasons were to be given in a summary form. It was suggested that a general rule on the discretion of the arbitral tribunal could point out that the tribunal should take into account the expeditious nature of the proceedings in rendering an award.

113. It was also widely felt that there would be no merit to include in the expedited arbitration rules the possibility of providing the reasons within a certain period of time after rendering of the award. It was further agreed that issues relating to the interpretation and correction of the awards as well as additional award would also need to be considered in the context of the expedited arbitration rules.