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# Review of the UNCITRAL Arbitration Rules and the Supplementary Provisions on the Conduct of Proceedings to Resolve International Investment Disputes

**Note by the Secretariat**

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# I. Introduction

1. At its fifty-ninth session in 2026, the Commission adopted the Supplementary Provisions on the Conduct of Proceedings to Resolve International Investment Disputes (SPs), which was prepared by Working Group III (A/81/17, Annex II).

2. For background, at its fiftieth session in 2017, the Commission had entrusted Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement (ISDS). During the first phase of its work, the Working Group identified concerns relating broadly to: (i) the lack of consistency, coherence, predictability and correctness of arbitral decisions in ISDS proceedings; (ii) arbitrators and decision makers; and (iii) the cost and duration of ISDS proceedings (A/CN.9/970 and A/CN.9/964). In the course of its deliberations, the Working Group generally considered that improvements to the procedural framework would be desirable to address those concerns (A/CN.9/1246, para. 2). The SPs were subsequently developed as part of that work, with a view to addressing certain of those concerns through targeted procedural provisions applicable to the conduct of ISDS proceedings.

3. Upon adopting the SPs at its fifty-ninth session, the Commission mandated Working Group II to review (a) the relationship between the UNCITRAL Arbitration Rules (UARs) and the SPs, (b) the advantages and disadvantages of different means to incorporate the SPs into the UARs, including any impact on the operation of the UARs, and (c) the feasibility and desirability of incorporating the SPs into the body of the UARs. The Commission noted that such work should not result in reopening the SPs or the issues that have been resolved therein and that the work should be reported back to the Commission (A/81/17, paras. 19(c) and 178–181). Accordingly, the present note was prepared in furtherance of that mandate and to facilitate deliberations by the Working Group.

# II. The relationship between the UNCITRAL Arbitration Rules and the Supplementary Provisions

4. The SPs have been prepared to apply to different types of ISDS proceedings and are intended to interact with different types of applicable rules. Their terminology has accordingly been adapted to the ISDS context, including by using “Tribunal” and “disputing parties” instead of “arbitral tribunal” and “parties”, respectively (A/CN.9/1246, para. 7; A/CN.9/1195, para. 22).

5. Regarding application of the SPs, the Commission noted that the SPs could apply to arbitration under different types of procedural rules, if so agreed by the parties, and that references to specific procedural rules should therefore generally be avoided. Where the UARs apply, the phrase “applicable rules” in the SPs means the UARs. The Commission also noted that the SPs, particularly those outlining the Tribunal’s discretionary powers, should not imply that the Tribunal did not possess such powers under the applicable procedural rules (A/81/17, paras. 66–67; see also decision by the Commission adopting the SPs, A/81/17, para. 122).

6. The following table[1] indicates how the SPs would supplement or displace specific articles of the UARs.

[1] This table was initially prepared by the secretariat for the Commission to illustrate the interaction between the SPs and the UARs (see A/CN.9/1246, para. 47) and has been updated to reflect the Commission’s discussions.

| *Supplementary Provisions* | *Interaction with UARs* |
|---|---|
| I – Consultation with the disputing parties | No general rule but consultation required in specific instances (see para. 22 below) |
| II – Evidence | Replaces articles 27 and 30(3) UARs and includes new features |
| III – Bifurcation | New – clarifies discretionary power under articles 17 and 23 UARs |
| IV – Interim measures | Replaces article 26 UARs |
| V – Manifest lack of legal merit | New – clarifies discretionary power under article 17 UARs |
| VI – Security for costs | New – clarifies discretionary power under articles 17, 26 and 42 UARs |
| VII – Suspension of the proceeding | New |
| VIII – Termination of the proceeding | Based on 30(1) and 36(1)–(2) UARs but includes new feature |
| IX – Period of time for making the award | New |
| X – Allocation of costs | Replaces article 42 UARs |
| XI – Consolidation and coordination of arbitrations | New |
| XII – Third-party funding | New |

7. The UARs are generic in nature and designed around broad tribunal discretion (article 17) and a high degree of party autonomy (article 1(1)). Many procedural matters are thus not expressly regulated. As indicated in the table above, several SPs operate as clarifications of the discretionary powers of Tribunals, in the ISDS context. Other SPs introduce targeted procedural tools in which the UARs are silent. Yet other SPs are intended to replace existing articles of the UARs. To the extent possible, these SPs were prepared in line with the UARs, only departing from the text of the UARs in a few instances to address concerns identified by Working Group III and to adapt to the ISDS context.

# III. Different means to incorporate the Supplementary Provisions into the UNCITRAL Arbitration Rules

8. The SPs were adopted as a standalone set of provisions for use by disputing parties as well as treaty Parties and were deliberately drafted in terms that would permit their application in arbitrations that are not governed by the UARs (A/81/17, paras. 66–67). If incorporated by reference, the SPs could apply to international investment dispute proceedings conducted under the UARs. If, however, the SPs were incorporated directly into the text of the UARs, their application could extend more broadly to disputes governed by the UARs outside the ISDS context (see Chapter IV). The following sets out possible approaches that have been presented to Working Group III and to the Commission (see A/CN.9/1246, paras. 37–49).

*The Transparency Rules approach*

9. One possibility is to follow the approach taken with regard to the Transparency Rules in article 1(4) UARs. Under that provision, the application of the Transparency Rules is automatic, provided that the conditions therein are met. They apply to

investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors. Their application is further subject to article 1 Transparency Rules, which addresses the scope of application of those Rules. There is no need for a separate or express agreement of the disputing parties to apply the Transparency Rules, unless they have agreed to apply the 1976 or 2010 versions of the UARs. The Transparency Rules are also available for use in investor-State arbitrations initiated under rules other than the UARs (article 1(9) of the Transparency Rules).

10. To take this approach, the Working Group may wish to consider the conditions under which the SPs would apply, including whether their application should be limited to investor-State arbitration arising under "a treaty providing for the protection of investments or investors" or whether it should extend more broadly, for example, to disputes under investment contracts and domestic legislation. A provision similar to article 1 Transparency Rules detailing the scope of application of the SPs (including the temporal scope, possible opt-out and conflicts) may need to be developed. For example, where the relevant treaty was concluded on or after 1 April 2014, the Transparency Rules apply by default to investor-State arbitration initiated under the UARs, unless the treaty parties opt out. In the case of the SPs, they could apply, for example, to investor-State arbitration arising under a treaty providing for the protection of investments or investors concluded on or after a specific future date, if the scope is limited to such treaties.

11. This could be done by adding a new paragraph in article 1 UARs to read: "6. […], these Rules include the UNCITRAL Supplementary Provisions on the Conduct of Proceedings to Resolve International Investment Disputes [subject to…][where…]."

12. The UARs with the new paragraph would come into effect on a specific future date to be determined. In accordance with article 1(2) UARs, parties to arbitration agreements concluded after 15 August 2010 would be presumed to have referred to the [2027] version, unless they opted to apply a particular version of the UARs.[2] Parties wishing to apply the UARs and the SPs could expressly agree to the [2027] version of the UARs. The Working Group may wish to consider whether it should be possible for the parties to choose to apply the SPs without the Transparency Rules and vice versa.

*The Expedited Arbitration Rules approach (Appendix to the UARs)*

13. Another possibility is to incorporate the SPs into the UARs following the approach taken with the Expedited Arbitration Rules (EARs) in article 1(5) UARs. The EARs form an appendix to the UARs and only apply where the parties so agree. This approach would avoid the automatic application of the SPs under certain conditions and leave their application entirely to the consent of the disputing parties. This approach was taken in the EARs as the consent of the parties was considered crucial in applying the streamlined and simplified procedure with shorter time frames. The agreement of the parties to apply the EARs is considered a modification to the UARs under article 1(1) UARs.

14. This approach avoids the need to elaborate the conditions in which the SPs would apply and leaves such determination entirely to the disputing parties. The disputing parties would need to agree to the UARs and also to the SPs for the latter to apply.

15. This approach could be adopted by adding a new paragraph in article 1 UARs to read: "6. The UNCITRAL Supplementary Provisions on the Conduct of Proceedings to Resolve International Investment Disputes in [the appendix] shall apply to arbitration where the parties so agree."

[2] The presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.

*Revision of the UARs to incorporate the Supplementary Provisions*

16. Another approach would be to consider whether the SPs should be incorporated into the UARs either by revising the relevant articles and/or adding new articles. This might result in a broader revision of the UARs. And if the SPs were incorporated directly into the text of the UARs, their application could extend more broadly to disputes governed by the UARs beyond the ISDS context. The following chapter considers the feasibility and desirability of this approach, in order to seek the input of the Working Group in that regard.

# IV. Feasibility and desirability of incorporating the Supplementary Provisions into the body of the UNCITRAL Arbitration Rules

17. This chapter examines each SP in turn, identifying its purpose and the concerns it was designed to address in the ISDS context. It then considers whether, and to what extent, those concerns arise under the UARs, taking into account their broader scope of application. In doing so, the chapter analyses the relationship between the SPs and the UARs, including the extent to which the functions served by the SPs are already reflected in the UARs, whether any particularities remain, and whether and how such particularities could appropriately be accommodated within the UARs framework. The SPs are examined individually rather than collectively in order to enable a provision-specific assessment of their objectives, their interaction with the UARs, and the feasibility and desirability of their incorporation.

18. The Working Group may wish to discuss whether, and if so which, considerations should serve as guiding parameters for its assessment of the possible incorporation of the SPs into the UARs. Such parameters could include, among others, the value of providing a common procedural baseline while preserving sufficient flexibility to accommodate different legal traditions, arbitral practices and the circumstances of individual cases; the desirability of promoting procedural clarity and predictability; the need to preserve tribunal discretion and flexibility in the conduct of proceedings; the promotion of proportionality, procedural economy and effective case management; the avoidance of unnecessary duplication or overlap with existing provisions of the UARs; and the need to avoid overly prescriptive or expansive regulation that could increase the cost and duration of proceedings. The Working Group may wish to consider whether these or other considerations should inform the assessment of each SP, and whether different weight should be given to them depending on the particular provision under consideration.

19. Where incorporation of a particular SP is considered appropriate, consequential amendments to existing provisions of the UARs may be necessary to avoid overlap, duplication, gaps or inconsistent formulations.

## A. Provision I: Consultation with the disputing parties

20. SPI requires the Tribunal to consult the disputing parties before making an order or decision that it is authorized by the SPs to make on its own initiative (A/CN.9/1195, para. 55; A/81/17, para. 70). It establishes a general consultation requirement in those circumstances, rather than repeating the requirement in each relevant SP (A/CN.9/1195, para. 55; A/81/17, para. 70).

21. The 1976 UARs gave the tribunal broad discretion to conduct the proceedings, provided that parties are being treated with equality and each party's full opportunity to present its case, while preserving party autonomy where agreed (article 15(1)).[3]

[3] The UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 and 2026 (MAL), by contrast, has evolved more incrementally and does not follow the same trajectory towards general consultation. Its amendments have instead been

The latter is also reflected, for example, in articles 16 (Place of arbitration) and 17 (Language).

22. The 2010 UARs introduced more explicit requirements for party involvement in certain procedural decisions. During the revision, the Working Group did not consider a general consultation requirement necessary (A/CN.9/614, paras. 78 and 91; see also A/CN.9/619, para. 114). Nevertheless, consultation was expressly included for appointment of experts (article 29(1)), while article 17(2) requires the tribunal to invite the parties to express their views before taking certain procedural steps, including establishing the provisional timetable and changing periods of time (A/CN.9/665, paras. 122–123; A/CN.9/703, para. 25; A/65/17, paras. 70, 132, 83).

23. The EARs also require consultation (e.g. article 9), which is distinct from inviting parties to express their views (e.g. article 2(2), 3(3), 10, 11, 14 and 16). Unlike the latter, which entails providing an opportunity for parties to comment before a decision is made, consultation requires active engagement by the tribunal with the parties regarding the organization and management of the proceedings (see Explanatory Note to the EARs, paras. 60–61). The similar approach of constructive engagement is required in the context of the Model Clauses on Specialised Express Dispute Resolution (see in particular the Model Clause on Adjudication, Option II, para. 2(d)).

24. A similar evolution is reflected in the UNCITRAL Notes on Organizing Arbitral Proceedings (the Notes). The 1996 Notes treat consultation as discretionary, mainly to enhance predictability and improve the procedural atmosphere (1996 Notes, paras. 4–8). The 2016 Notes[4] similarly described tribunal discretion but place greater emphasis on party participation and autonomy, recognizing that parties may agree on and tailor the procedure to their needs and that discretion and flexibility are useful as they enable the tribunal to make decisions on the organization of arbitral proceedings that take into account the circumstances of the case and the expectations of the parties, while complying with due process requirements (2016 Notes, paras. 6, 8).

25. In considering whether SPI should be incorporated into the UARs, the Working Group may wish to consider the added value of such a general requirement. In doing so, the Working Group may also wish to consider whether the general consultation requirement should be distinct from inviting the parties to express their views. A general consultation requirement would ensure that the parties are consulted before the tribunal exercises a power on its own initiative as authorized by the UARs. At the same time, the UARs already contain established safeguards and targeted requirements to seek the views of the parties, which have been in place since 2010 and are familiar to users. The Working Group may therefore wish to balance the potential benefits of a general consultation requirement against whether the existing provisions already provide sufficient safeguards for parties to express their views. Relevant considerations could include whether:

(a) Consultation requirements enhance procedural fairness by allowing parties to be heard before procedural decisions are taken;

(b) An exchange of positions can ultimately reduce delay, facilitate settlement and prevent subsequent procedural disputes;

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targeted: the 2006 amendments expanded the possible forms of arbitration agreements and added provisions on interim measures and preliminary orders, while the 2026 amendments further adapted the framework to technological developments, including arbitral awards and notices in electronic form.

[4] As the 2023 Notes differ from the 2016 Notes only by the addition of a Note on early dismissal and preliminary determination, references are made in the first instance to the relevant Note in the 2016 Notes, where it first appeared. The corresponding Notes were retained in the 2023 and 2026 Notes, the latter adding a further Note on the form of awards. Differences in paragraph references between the versions result solely from the renumbering occasioned by these additions and not from substantive changes to the text.

(c) An increase in instances of required consultations might, on the other hand, lengthen or delay the proceedings; and

(d) In the absence of institutional supervision or other administration in UNCITRAL arbitrations, the UARs should provide structured opportunities for consultation by the arbitral tribunal and expression of views to guide tribunals and parties.

## B. Provision II: Evidence

26. SPII provides a detailed framework for the taking, production, assessment and exclusion of evidence in ISDS proceedings. It largely builds on the evidentiary regime contained in article 27 UARs, with paragraphs 1 (burden of proof), 2 (tribunal-ordered production of evidence) and 7 (assessment of evidence) corresponding respectively to article 27(1), article 27(3) and article 27(4) UARs. While these provisions remain unchanged, SPII would supplement or change the UARs by addressing the consequences of a party's failure to comply with an order to produce evidence (paragraph 3), document production procedures (paragraphs 4–5), the form of witness and expert statements (paragraph 6), the exclusion of evidence (paragraph 8), and tribunal-ordered visits and inquiries (paragraph 9).

*Paragraph 3: consequences of non-production*

27. SPII, paragraph 3, builds on article 30(3) UARs by expanding the possible consequences for a party's failure to comply with a tribunal production order. While article 30(3) UARs allows the tribunal to make the award on the evidence before it, paragraph 3 additionally allows the Tribunal to "order such relief as it considers appropriate", expressly including, by way of example, the possibility of making the award on the evidence before it. This gives the Tribunal broader remedial discretion than article 30(3) UARs, allowing it to tailor the consequence of non-production to the circumstances of the case,[5] such as by drawing adverse inferences or ordering costs, rather than being limited to deciding the case on the evidence before it (see A/81/17, para. 75).

*Paragraphs 4 and 5: document production*

28. Paragraphs 4 and 5 provide a structured regime for party-to-party document production and objections to production requests. Paragraph 4 allows the Tribunal, at a party's request, to establish a procedure for one party to request documents from another, taking into account the benefits and burdens of production. Paragraph 5 sets out the circumstances that the Tribunal shall consider in resolving objections to document production requests. The paragraph is intended to provide the Tribunal with tools to structure document production and avoid unnecessarily burdensome production phases (A/CN.9/1195, para. 25).

29. The UARs do not expressly provide for a comparable document production procedure.[6] Document production issues were also discussed in the context of the preparation of the EARs, resulting in article 15(1) EARs. That provision addresses both the tribunal's authority to determine which documents and other evidence the parties should produce and its power to limit or refuse requests for document production. These powers were included to streamline proceedings and promote efficiency by avoiding burdensome evidentiary processes (see, for example,

[5] Comparable approaches can be found in other arbitral rules, for example, rule 24.6 Chartered Institute of Arbitrators All-Ireland Arbitration Rules 2020 (CIArb All-Ireland Rules).

[6] See also 2016 Notes, Note 13, paras. 76–78. Article 3 International Bar Association Rules on the Taking of Evidence in International Arbitration (IBA Rules) 2020, for instance, sets out procedures for requests for and objections to document production. The IBA Rules are referenced in other arbitration rules. See, for example, article 35(2) Australian Centre for International Commercial Arbitration Rules 2021 (ACICA Rules), which expressly permits the arbitral tribunal to have regard to the IBA Rules when determining procedural matters relating to evidence.

A/CN.9/1003, para. 80). This suggests that document production reflects a broader procedural concern in international arbitration, and that tribunals could benefit from procedural guidance in the rules for a potentially burdensome and contentious aspect of arbitral proceedings. At the same time, paragraph 82 of the Explanatory Note to the EARs clarifies that article 15(1) should not be interpreted as meaning that tribunals do not have such discretion under article 27(3) UARs.

*Paragraph 6: Witnesses and expert witnesses*

30. Paragraph 6 generally follows article 27(2) UARs, except that it replaces the permissive wording ("may be presented in writing") with mandatory wording ("shall be presented in writing"). This aligns the text with article 15(2) EARs, which also uses the mandatory wording. Use of the mandatory wording in this regard could promote efficiency and predictability and assist in the streamlined management of proceedings.

*Paragraph 8: exclusion of evidence*

31. Paragraph 8 introduces a framework on exclusion of evidence and specific grounds for such exclusion, including (i) evidence obtained unlawfully, (ii) falsified or fraudulent evidence, and (iii) evidence the use of which is prohibited under applicable law, rules or privileges.[7] Article 27(4) UARs only gives the Tribunal general authority over the admissibility and weight of evidence, whereas paragraph 8 was influenced by article 9 of the IBA Rules (A/CN.9/1195, paras. 38–39).

*Paragraph 9: visits and inquiries*

32. Paragraph 9 expressly empowers the Tribunal to order a visit to a place connected with the dispute and to conduct inquiries there, while requiring the order to define the scope, subject matter, procedure and time limits and to preserve the parties' right to participate. Paragraph 9 further clarifies that the Tribunal could act either at a disputing party's request or on its own initiative.

33. The UARs do not contain a comparable provision and paragraph 9 is intended to clarify the Tribunal's discretionary powers under the UARs in this regard (A/CN.9/1195, paras. 24–43; A/81/17, para. 76).

34. The 2016 Notes similarly address inspections in Note 16, stating that tribunals may consider whether a physical or virtual inspection is useful or necessary, taking into account efficiency, costs, the parties' participation, and the scope and arrangements for the inspection. Various institutional arbitral rules address inspections as well.[8] In this context, article 7 of the IBA Rules provides that the tribunal may, at the request of a party or on its own motion, conduct or require an inspection of a relevant site, property, machinery or other goods, systems, processes or documents. This suggests that visits and inspections are a broader issue in international arbitration and not specific to ISDS.

*Summary*

35. The foregoing raises the broader question whether the evidentiary provisions of the UARs should be reviewed in light of SPII. In particular, the Working Group may wish to consider whether the rationales underlying the more detailed ISDS-specific provisions translate to the context of general commercial arbitration and, if so, whether corresponding provisions should or could be incorporated into the UARs. This could include consideration of whether tribunals should be able to impose a broader range of possible consequences for non-production of documents or other

[7] For other grounds for exclusion of evidence, see, for example, R-35(b) American Arbitration Association Commercial Arbitration Rules 2022 (AAA Rules).

[8] Site visits are provided for in a few rules, including rule 21.3 CIArb All-Ireland Rules; article 12(4)(c) Delos Dispute Resolution Arbitration Rules 2021; article 52 World Intellectual Property Organization Arbitration Rules 2021 (WIPO Rules).

evidence by a party; whether the UARs themselves or guidance material should establish a procedural framework for party-to-party document production; whether mandatory language should be used in connection with the in writing requirement for witness statements; whether express grounds for the exclusion of evidence should be included; and whether the Tribunal's power to conduct visits, inspections and inquiries should be expressly addressed.

## C. Provision III: Bifurcation

36. SPIII provides rules for bifurcation, allowing a party to request, and the Tribunal to order on its own initiative, that an issue be addressed separately (paragraphs 1, 6 and 7). It addresses the timing of requests for bifurcation and factors relevant to the decision, including efficiency, potential disposition of all or part of the claim, and whether the issues are too intertwined for separate determination (paragraphs 2 to 4). The Tribunal is to decide the request within 30 days and give reasons (paragraph 5). The provision draws on ICSID rule 42 and complements article 23 UARs on pleas as to the jurisdiction of the tribunal.

37. However, bifurcation is not unique to ISDS. The 2016 Notes expressly addresses the determination of the sequence in which issues are decided and possible bifurcation of the proceedings, recognizing bifurcation as one of the procedural tools available to tribunals in organizing proceedings (Note 11(b)). Likewise, the IBA Rules foresee in article 2(3)(b), that some issues might be preliminarily determined.[9]

38. The Working Group may wish to consider whether the clarification and procedural framework developed in SPIII would also be useful in the context of arbitration under the UARs generally. An express provision could provide a common baseline concerning when and how a bifurcation request should be made, the factors the tribunal should consider, and the consequences of ordering bifurcation. At the same time, there may be a stronger case in arbitration under the UARs for retaining the more flexible approach reflected in article 17 UARs and the 2016 Notes, given the diversity of commercial disputes and the different procedural environments in which the UARs operate.

39. If the Working Group considers that an express provision would be desirable in the UARs, it may also wish to consider whether it should be formulated as a stand-alone article, rather than being tied to article 23 on pleas as to the jurisdiction of the tribunal, given that bifurcation may concern a much wider range of issues than jurisdiction.

## D. Provision IV: Interim Measures

40. SPIV provides a detailed regime for interim measures, largely based on article 26 UARs and ICSID rule 47. It permits the Tribunal, at the request of a disputing party, to order interim measures (paragraph 1) to maintain or restore the status quo, prevent current or imminent harm or prejudice to the arbitral process, or preserve evidence (paragraph 2), subject to specified limitations (paragraph 3) and requirements (paragraphs 4–6). It further addresses their modification or termination (paragraph 7), security (paragraph 8), disclosure of changed circumstances (paragraph 9), costs and damages arising from improperly granted measures (paragraph 10), and recourse to judicial authorities (paragraph 11).

41. The distinctions between SPIV and article 26 UARs reflect considerations specific to ISDS. The prohibition in SPIV, paragraph 3, on enjoining the challenged measure responds to its potential character as an exercise of State regulatory authority, while consideration of harm to the public interest in paragraph 6 reflects effects

[9] See also article 22.4. International Centre for Dispute Resolution Rules 2021 (ICDR Rules); article 12(5) Rules of International Arbitration of the Israeli Institute of Commercial Arbitration (IICA Rules); rule 32.6 Singapore International Arbitration Centre Rules 2025 (SIAC Rules).

extending beyond the disputing parties (see A/CN.9/1195, para. 57; A/81/17, paras. 82–88). The omission of asset preservation from paragraph 2 (in comparison to article 26(2)(c) UARs, see A/CN.9/1195, para. 58; A/81/17, para. 81) is also relevant in the ISDS context, given potential concerns relating to State immunity, the distinction between sovereign and commercial assets, and interference with the State's use of public assets before liability is determined.

42. While many of the arbitration rules contain provisions on interim measures, they do not contain the ISDS-specific adaptations introduced in SPIV. The Working Group may therefore wish to consider whether there is a sufficient justification, to modify the UARs to incorporate these ISDS-specific adaptations, or whether it would be preferable to simply retain article 26 UARs.

## E. Provision V: Manifest lack of legal merit

43. SPV establishes a procedure allowing a disputing party to object that a claim is manifestly without legal merit, either with respect to the substance of the claim or the jurisdiction of the Tribunal. It sets time limits for raising and deciding the objection and provides for an award or decision by the Tribunal. Counterclaims and claims for set-off are expressly excluded. SPV was inspired by ICSID rule 41 (A/CN.9/1195, para. 63).

44. The inclusion of an express provision on early dismissal and preliminary determination in the UARs was considered by the Commission in 2022 when considering the EARs. The Commission noted that the topic was significant in international commercial arbitration. However, taking into account the parallel work of Working Group III and concerns about successive revisions of the UARs, it decided not to pursue an express provision at that stage (A/77/17, para. 228; A/CN.9/1085, para. 63). Instead, the issue was addressed through Note 21 on early dismissal and preliminary determination, included in the 2023 Notes.

45. The Working Group may therefore wish to consider whether the current revision provides an appropriate opportunity to introduce an express provision in the UARs, in light of this context and the use of comparable procedures in other arbitration rules.[10]

## F. Provision VI: Security for costs

46. SPVI allows the Tribunal, at the request of a disputing party, to order a party making a claim to provide security for costs. In the SPs, references to a "claim" are generally understood to include counterclaims and claims for set-off, (see A/81/17, para. 72) unless otherwise indicated (in SPV (1)).

47. The main rationale for security for costs in the SPs is to protect a successful respondent State (A/CN.9/1044, para. 70). SPVI sets out the procedure for requesting and deciding such an order and identifies relevant factors, including the party's ability and willingness to comply with an adverse decision on costs, the effect of security on its ability to pursue the claim, the parties' conduct and the existence of third-party funding in relation to those factors or any other circumstance that the Tribunal finds relevant.

48. The provision was developed based on ICSID rule 53 and reflects concerns about the recovery of costs awarded against a party that may be unable or unwilling to pay. It includes certain adaptations for ISDS, including in relation to States, third-

[10] Comparable mechanisms include summary determination under rule 9 Asian International Arbitration Centre Arbitration Rules 2026 (AIAC Rules) as well as summary procedure under article 18 Rules of Arbitration of the Bahrain Chamber for Dispute Resolution 2022 (BCDR Rules) and article 39 Arbitration Institute of the Stockholm Chamber of Commerce Arbitration Rules 2023 (SCC Rules). See also rule 19 Arbitration Rules of Asia Pacific Centre for Arbitration and Mediation (APCAM Rules); article 18 IICA Rules.

party funding and the consequences of non-compliance (A/CN.9/1238, paras. 20, 37 and 43).

49. Article 26(6) UARs provides that the tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure, but does not otherwise deal expressly with security.[11] The 2016 Notes address security for costs in Note 8, but also only in the context of interim measures. Other arbitration rules contain dedicated provisions on security for costs, while some address it as a form of interim or conservatory relief.[12]

50. The Working Group may therefore wish to consider whether the UARs would benefit from a provision on security for costs, or whether the existing framework under articles 17 and 26 sufficiently provides the necessary flexibility. If an express provision is considered appropriate, the Working Group may wish to consider whether it should establish a common baseline for when security for costs may be ordered and the factors to be taken into account, while preserving sufficient tribunal discretion. It may also wish to balance protection against unrecoverable costs with the risk that security requirements could restrict legitimate claims or increase the cost and duration of proceedings.

## G. Provision VII: Suspension of the proceeding

51. SPVII provides a framework for the suspension of ISDS proceedings. A joint request by the parties requires the Tribunal to suspend the proceeding (paragraph 1), while suspension following a unilateral request or on the Tribunal's own initiative remains discretionary unless provided otherwise in the applicable rules (paragraph 2). SPVII also addresses the duration and terms of the suspension, the effect of the suspension on procedural time limits and extension of the suspension period (paragraphs 3 and 4). The SP was modelled on ICSID rule 54 and was intended, inter alia, to facilitate procedural efficiency (A/CN.9/1238, para. 52).

52. While article 17(1) UARs grants the tribunal broad discretion in conducting the arbitration as it considers appropriate and article 43(4) UARs specifically addresses suspension in the event of non-payment of deposits, the UARs do not otherwise regulate the circumstances, duration or effects of a suspension. Although a power to suspend proceedings may be implicit in the tribunal's general procedural discretion under article 17(1) UARs, SPVII might provide greater certainty by clarifying the exercise of that power through a structured procedural framework governing the suspension of proceedings.

53. Various arbitration rules contain provisions on suspension, primarily in three respects: as a consequence of non-payment of arbitration costs,[13] for facilitating mediation efforts[14] and for case-management purposes.[15]

54. The Working Group may therefore wish to consider whether a provision on suspension would provide sufficient practical value to warrant inclusion in the UARs,

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[11] Article 43 UARs concerns deposits for the costs of the arbitration, rather than security for a potential future decision on costs in favour of one party, while article 42 UARs concerns the allocation of costs. See also article 26(3) Milan Chamber of Arbitration – Arbitration Rules 2023 (CAM Milan Rules); article 37(4) Arbitration Rules of the Qatar International Center for Conciliation and Arbitration (QICCA Rules).

[12] See, for example, article 26bis BCDR Rules; article 24 Administered Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC Rules) 2024; article 38 SCC Rules; rule 48 SIAC Rules.

[13] See, for example, R-59(e) AAA Rules; articles 35(3)–(4) Arbitration Rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada 2025 (CAM-CCBC Rules); article 38(7) Rules of Arbitration of the Arbitration Centre of Mexico 2009 (CAM Mexico Rules).

[14] See, for example, rule 49.2 AIAC Rules; article 38 (1) Arbitration and Mediation Center of Armenia Arbitration Rules 2023 (AMCA Rules); article 13.11 HKIAC Rules.

[15] See, for example, article 30.1 HKIAC Rules on concurrent proceedings.

beyond the existing mechanism under article 43(4). The Working Group may also wish to consider, for instance, whether such a provision could provide a useful procedural basis for suspension to facilitate mediation or other settlement efforts, or to assist in the effective and orderly management of proceedings.

## H. Provision VIII: Termination of the proceeding

55. SPVIII addresses several circumstances in which a proceeding may be terminated. It provides for mandatory termination when jointly requested by the disputing parties (paragraph 1), termination following a unilateral request by a disputing party where no other disputing party objects within the prescribed period (paragraph 2), and termination following prolonged inactivity by the parties (paragraph 3). It also addresses termination following settlement (paragraph 4) and where continuation of the proceeding has become unnecessary or impossible for any other reason (paragraph 5). The provision draws on articles 30(1) and 36 UARs and ICSID rules 55–57.

56. In particular, the inactivity mechanism[16] in SPVIII, paragraph 3, supplements article 30(1)(a) UARs. Paragraphs 4 and 5 correspond, in substance, to article 36(1) and (2) UARs. In addition, article 43(4) UARs provides that the tribunal may order the suspension or termination of the proceeding for a party's failure to make required deposits.

57. As SPVIII, paragraphs 4 and 5 already correspond to article 36(1) and (2) UARs, the Working Group may therefore wish to consider whether certain elements of SPVIII, paragraphs 1 to 3, should be incorporated into the UARs, such as (i) through a new article on termination or (ii) by integrating those elements into existing articles 30 and 36 UARs. In doing so, the Working Group may wish to consider the relationship between those provisions as well as article 43 UARs, including whether termination prior to the constitution of the tribunal should be addressed.

## I. Provision IX: Period of time for making the award

58. SPIX introduces fixed time periods for rendering awards with the aim of promoting procedural efficiency and reducing the duration and costs of proceedings (A/CN.9/1238, para. 70). It requires the Tribunal to make the award as soon as possible and, in any event and unless the disputing parties agree otherwise, within specified periods following the last submission, depending on the type of award (paragraph 1). It also permits an extension where special circumstances justify delay, subject to informing the parties and indicating the revised period (paragraph 3). SPIX is modelled on ICSID rule 58.

59. Fixed time limits are a common feature of expedited arbitration procedures, where shortened procedural periods are combined with streamlining measures aimed at enhancing procedural efficiency.[17] For example, the EARs contain a six-month

[16] See also, for example, article 34(b)(c) Georgian International Arbitration Centre Arbitration Rules 2024 (GIAC Rules); articles 42.2(iii); article 42.4 (iii) Arbitration Rules of the German Arbitration Institute 2018 (DIS Rules).

[17] See, for example, the expedited procedures under rule 7 AIAC (Fast Track Procedure); article 14 APCAM Rules; Chapter VII Beijing Arbitration Commission/Beijing International Arbitration Centre – Arbitration Rules (2022) (BAC/BIAC Rules); article 6 BCDR Rules; article 29 Arbitration Rules of the Belgian Centre for Arbitration and Mediation 2023 (CEPANI rules); article 32 Dubai International Arbitration Centre – Arbitration Rules 2022 (DAIC Rules); Annex 4 DIS Rules; article 36 GIAC Rules; see article 32 on expedited procedure in conjunction with Appendix V and article 33 on highly expedited procedure in conjunction with Appendix VI of the International Chamber of Commerce Arbitration Rules 2026 (ICC Rules); Appendix D – Expedited Arbitration Netherlands Arbitration Institution Arbitration Rules 2024; Permanent Court of Arbitration – Arbitration Rules 2012 (PCA Rules) with its Optional Protocol on Expedited Procedure adopted in 2024; Chapter IV QICCA Rules; Appendix II – Expedited Procedure Rules to the Saudi Center for Commercial Arbitration – Arbitration Rules 2023 (SCCA

period of time for making awards and the UNCITRAL Model Clause on Highly Expedited Arbitration contemplate a highly expedited procedure under which an award is to be rendered as quickly as 45 days.

60. In non-expedited arbitration, arbitral rules take different approaches to the timeframe for rendering a final award. While some rules impose a specified or default time limit,[18] others do not prescribe a single rigid deadline and instead allow the applicable period to be tailored to the circumstances of the case.[19] The UARs likewise do not prescribe a time limit. When the issue was considered in the context of preparing the 2010 revision of the UARs, the Working Group favoured retaining flexibility rather than imposing an arbitrary period, while emphasizing the need to avoid undue delay (A/CN.9/614, paras. 118–119). Recent developments also illustrate the practical difficulties of fixed deadlines: the 2026 ICC Rules have moved away from a single six-month default period for ordinary arbitrations (article 31(1) of the 2021 ICC Rules) towards a time limit fixed or extended by the President of the ICC Court having regard to the circumstances of the case (article 34 of the 2026 ICC Rules).

61. The Working Group may wish to consider whether fixed time periods for rendering awards are appropriate for inclusion in the UARs and, if so, what legal and procedural consequences could follow from non-compliance by the tribunal. In particular, it may wish to consider (i) whether such periods should operate as best-efforts obligations rather than strict conditions affecting the validity, recognition or enforcement of an award rendered after the period; (ii) whether and on what basis a tribunal should be permitted to extend them; and (iii) what safeguards, if any, would be appropriate to ensure that extensions do not undermine the procedural discipline and predictability that the time limits are intended to promote.

## J. Provision X: Allocation of costs

62. SPX provides a framework for the allocation of costs. It follows the rule under article 42 UARs that the unsuccessful disputing party bears the costs (paragraph 1), while allowing the Tribunal to depart from that rule where reasonable in light of all relevant circumstances (paragraph 2). The provision identifies factors relevant to the allocation of costs, including the outcome of the proceeding or any parts thereof, the parties' conduct and efficiency, the complexity of the issues, the reasonableness of the costs claimed, and the relationship between the amount of monetary damages claimed and the amount awarded (paragraph 2). It also regulates the exclusion of certain success-based fees and third-party funding costs (paragraph 5), permits decisions on costs to be made at any time (paragraph 6), and requires reasons for decisions on costs (paragraph 7). SPX is based on article 42 UARs, as well as ICSID rule 52.

63. The UARs already provide in article 42(1) for the unsuccessful-party-pays-principle that costs of the arbitration shall in principle be borne by the unsuccessful

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Rules); schedule 2 – streamlined procedures – and schedule 3 – expedited procedure SIAC Rules; article 42 on expedited procedure Swiss Rules of International Arbitration 2021.

[18] See, for example, article 18.1 ADR Chambers Arbitration Rules 2026 (ADR Rules); rule 20(1)–(2) APCAM Rules; article 48 BAC/BIAC Rules; article 29 CAM-CCBC Rules; article 31 CAM Mexico Rules; article 36 CAM Milan Rules; article 51.2 China International Economic and Trade Arbitration Commission Arbitration Rules 2024 (CIETAC Rules); article 37 DIS Rules; article 37 GIAC Rules; article 33(3) SCCA Rules; article 58 Shanghai International Arbitration Center – Arbitration Rules 2024 (SHIAC Rules); article 32(2) Vienna International Arbitration Centre – Arbitration Rules 2021 (VIAC Rules).

[19] See, for example, R-47 AAA Rules; article 35(1) BCDR Rules; article 31.2 HKIAC Rules; article 33(1) ICDR Rules; article 15.10 London Court of International Arbitration – Arbitration Rules 2020 (LCIA Rules) according to which the tribunal "shall seek to make its final award as soon as reasonably possible and shall endeavour to do so no later than three months following the last submission from the parties"; see also article 43 (1) Commercial Arbitration Rules 2021 Japan Commercial Arbitration Association (JCAA Rules); article 43 SCC Rules.

party, while allowing the tribunal to apportion costs differently where reasonable in the circumstances.[20] The Working Group may therefore wish to consider whether a more detailed costs-allocation framework would be beneficial. Factors such as the parties' conduct, the reasonableness and proportionality of costs, and the relationship between the amount claimed and awarded may also be relevant in non-ISDS disputes and could provide greater guidance and predictability, while preserving tribunal discretion. The Working Group may also wish to consider whether the UARs should address third-party funding in the context of allocation of costs (see also para. SPXII below).[21]

## K. Provision XI: Consolidation and coordination of arbitrations

64. SPXI establishes a consent-based mechanism for the consolidation or coordination of two or more pending arbitrations. Consolidation combines the arbitrations into a single proceeding and permits the Tribunal to render one or more awards, including partial awards, whereas coordination aligns specified procedural aspects while preserving separate proceedings and awards (paragraphs 2 and 3). The provision also establishes a mechanism for implementing the parties' agreed terms by requiring consultation with the constituted tribunals or relevant institutions (paragraphs 1 and 4).

65. SPXI was modelled on ICSID rule 46 and developed in response to concerns that parallel proceedings may duplicate procedural efforts, increase costs and give rise to inconsistent outcomes, as existing mechanisms for consolidation, joinder and coordination were of limited application, including where proceedings were conducted under different arbitration rules or at different institutions (A/CN.9/964, paras. 46, 49 and 53).

66. The UARs contain no mechanism for consolidation or coordination of arbitrations separately commenced under the UARs or under other arbitral rules. Article 17(5) permits joinder of a third person that is a party to the arbitration agreement, but does not address the consolidation of existing proceedings. The possibility of including a consolidation mechanism was considered during the 2010 revision of the UARs, but was not pursued, in part because of concerns regarding its operation in non-administered proceedings and across separate contracts or arbitration agreements (see A/CN.9/619, paras. 116 and 119–120).

67. Consolidation is also addressed in a number of other arbitration rules,[22] although approaches differ as to whether consolidation requires the consent of all parties or may be ordered by a tribunal or institution in specified circumstances. It should be noted that Working Group III is developing a similar provision to that effect (see A/CN.9/WG.III/WP.267, draft provision 11 bis). Express provisions on coordination are less common, although several sets of arbitration rules permit related arbitrations to be conducted concurrently or otherwise coordinated.[23] The 2016 Notes also

[20] Article 42(1) PCA Rules and article 40 Swiss Rules adopt a similar approach. See also article 42 Kigali International Arbitration Centre Arbitration Rules 2012 (KIAC Rules), according to which the tribunal may consider such circumstances as it considers relevant. See also article 21 ADR Rules; article 39(5) CEPANI Rules; article 41 (4) and (5) ICC Rules; article 80(2) JCAA; article 28.4 LCIA Rules expressly permit tribunals to take the parties' conduct into account when allocating costs.

[21] Some rules instead leave third-party funding arrangements as a factor for the tribunal to consider: see, for example, article 34.4 HKIAC Rules; rule 38(6) SIAC Rules.

[22] See, for example, article 16 ACICA Rules; article 15 APCAM Rules; article 30 BAC/BIAC Rules; article 29 BCDR Rules; article 12 CAM Milan Rules; article 50 Arbitration Rules Cairo Regional Centre for International Commercial Arbitration 2024 (CRCICA Rules); article 8 DIAC Rules; article 8 DIS Rules; article 11 GIAC Rules; article 28 HKIAC Rules; article 11 ICC Rules; article 9 ICDR Rules; article 57 JCAA Rules; article 11 KIAC Rules; article 22A (22.7) LCIA Rules; article 10 QICCA Rules; articles 11 and 15 SCC Rules; article 13 SCCA Rules; article 21 Arbitration Rules Scottish Arbitration Centre 2023; rule 16 SIAC Rules; article 40 SHIAC Rules.

[23] See, for example, article 29 BAC/BIAC Rules; article 22A (22.7(iii)) LCIA Rules; article 19 ACICA Rules; rule 17 SIAC Rules; article 30 HKIAC Rules; article 14 SCCA Rules.

recognize consolidation as an increasingly common feature of arbitration rules and provide guidance on its use (Note 19(b), paras. 142–143).

68. The Working Group may therefore wish to consider whether to introduce a consent-based consolidation mechanism like that in SPXI for ad hoc proceedings under the UARs, where no administering institution is available to facilitate consolidation or coordination and where related disputes may otherwise proceed separately before different tribunals. Such a mechanism could also respond to the broader concern of parallel proceedings, including issues of res judicata and lis pendens, in the context of commercial arbitration. Related concerns had previously been raised in the context of the UARs, although consideration of certain possible procedural responses, including early dismissal and early determination, was deferred while Working Group III considered how these and related concerns should be addressed in the context of ISDS reform (A/CN.9/1085, para. 66). Its consideration in the present context could therefore provide an opportunity to revisit the issue from the broader perspective of the UARs and to assess whether a consent-based mechanism could provide an appropriate procedural response.

## L. Provision XII: Third-party funding

69. SPXII establishes a framework for the disclosure of third-party funding in ISDS proceedings. It defines third-party funding broadly (paragraph 1), requires the disclosure of the identity of the third-party funder and other information (paragraph 2), and requires such information to be disclosed at the commencement of the proceeding or immediately after the funding arrangement is entered into, with a continuing obligation to disclose any new information or changes thereto (paragraphs 3 and 5). Provision XII further allows the Tribunal to request additional information where necessary (paragraph 4) and provides safeguards regarding the publication of disclosed information (paragraph 6). The provision also establishes an obligation on the Tribunal to take appropriate measures in the case of non-compliance, including ordering of security for costs, consideration of the failure when allocating costs or suspension and possible termination of the proceeding (paragraph 7). The overall purpose of SPXII is to enhance transparency, assist in identifying potential conflicts of interest and enable tribunals and parties to assess the implications of third-party funding for the conduct of the proceedings (A/CN.9/WG.III/WP.245, paras. 46–47, see also A/CN.9/970, paras. 18–19). These objectives also relate to broader UNCITRAL efforts to promote transparency and integrity in ISDS, including through the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution and work addressing the disclosure and transparency implications of third-party funding.

70. The UARs do not address third-party funding. Article 11 UARs imposes a continuing obligation on arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence, but does not require a funded party to identify its third-party funder. Articles 17(1) and 27(3) UARs give the tribunal general discretion respectively over the conduct of the proceedings and the production of documents or other evidence, which may support case-specific requests for information but do not establish an automatic and continuing disclosure obligation.

71. As third-party funding has become increasingly prevalent in international arbitration over recent decades, accompanied by growing attention to its implications for transparency, conflicts of interest, security for costs and procedural integrity, a number of sets of arbitration rules now expressly regulate third-party funding and require a funded party to disclose the existence of the funding arrangement and the identity of the funder at the commencement of the arbitration or promptly after the

arrangement is concluded.[24] Beyond that basic disclosure, their approaches differ as some rules address funding only through case management or disclosure ordered by the Tribunal, while others permit further inquiries concerning the funder's interest or liability for adverse costs and allow funding or non-compliance to be considered in procedural or costs decisions.[25]

72. The Working Group may therefore wish to consider whether to introduce a provision on third-party funding into the UARs, which would provide a clear procedural framework for addressing third-party funding in arbitral proceedings. In particular, it may wish to consider whether the detailed disclosure requirements in SPXII (including the list of information that must be disclosed) are appropriate for general application, or whether a limited disclosure obligation would sufficiently address concerns relating to transparency and conflicts of interest while avoiding unnecessary disclosure and disputes concerning relevance and confidentiality.

# V. Way forward

73. Following its deliberations, the Working Group may wish to recommend to the Commission the way forward on the above-mentioned issues. In doing so, the Working Group may wish to consider, inter alia, the following issues:

- Whether to suggest incorporation of the SPs by reference following either the Transparency Rules or EARs approaches (see paras. 9–12 and 13–15 above, respectively);
- If the SPs are not incorporated as such, whether to incorporate some of the SPs into the body of the UARs, including which provisions would require adaptation and how such adaptations would affect the scope and application of the SPs;
- How the SPs and the possibly updated UARs would interact where both apply to an ISDS proceeding, including whether and how the SPs would operate alongside the relevant provisions of the updated UARs;
- How subsequent updates to the SPs could affect the updated UARs (particularly those based on the SPs); and
- The operation of the UARs including the Transparency Rules and the EARs in conjunction with the SPs – for example, where the parties agree to apply the EARs and the SPs, how any potential conflicts or inconsistencies between the two sets of provisions should be addressed, including, for example, the time limits in article 16 EARs and SPIX, respectively.

[24] See, for example, rule 54.2 ACICA; article 25(1)–(3) AMCA Rules; rule 31.1–31.3 AIAC Rules; article 21bis BCDR Rules; article 43 CAM Milan Rules; article 48(1) CIETAC Rules; article 53 CRCICA Rules article 22.1–22.2 DIAC Rules; article 44 HKIAC Rules; Article 14(7) ICDR Rules; rule 38.1–38.2 SIAC Rules; articles 7.1.(h), 8.1(g) and 9.6 CAM-CCBC Rules; articles 9 (vii) and 11(b) WIPO Rules; article 10.5 Korean Commercial Arbitration Board International Arbitration rules; article 9 QICCA Rules; article 13a VIAC Rules.

[25] See, for example, rule 31.4 AIAC Rules; article 48 (2) CIETAC Rules; article 22.3 DIAC Rules; rule 38(6) and (7) SIAC Rules.