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The Prague Rules: Fresh Prospects for Designing a Bespoke Process

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The challenges and opportunities of procedural diversity

As arbitration grows around the world, so too does the variety of the legal traditions of the parties and participants. This diversity brings with it the challenge of ensuring that the procedures adopted in the arbitration accord with the parties' expectations and their basic standards of fairness. It also brings with it the opportunity to adopt procedures, possibly new to some participants, to improve the efficiency and effectiveness of the process for all.

In 1999, the International Bar Association (IBA) developed the Rules for the Taking of Evidence (the IBA Rules) as a way of bridging the divide between civil law and common law, and in 2020, the IBA revised the Rules to take into account recent developments.[2] They have become one of the most widely adopted soft law instruments in arbitration. Despite this, the IBA Rules have not standardised the arbitral process. A margin of appreciation continues to exist in the approaches taken by counsel and arbitrators in different legal systems.[3] For example, there are still variations in the interpretation of what constitutes a 'narrow and specific' category of documents in a request for disclosure[4] and in the permissible extent to which counsel and potential witnesses may 'discuss their prospective testimony'.[5]

Still greater diversity has emerged from the growth of international arbitration and the increased desire for variety in the basic framework of rules that are available. For example, it has been observed that arbitrations between parties from different legal systems might not include any participants from a common law country, making it unnecessary to accommodate the expectations of participants from a common law background.[6] Whether the perceived inclination towards party prosecution in the IBA Rules is designed to cater to common lawyers is unclear. It may merely reflect a common preference of parties that have planned proactively for dispute resolution by including arbitration agreements in their commercial contracts. However, as arbitration expands to serve smaller matters, efficiency and cost containment become all the more important, regardless of the legal tradition of the parties and counsel, and this can militate in favour of greater leadership on the part of the tribunal. Finally, in arbitrations of all sizes, parties are coming to expect more proactive engagement of the tribunal in the process.

In response to these considerations, the Rules on the Efficient Conduct of Proceedings in International Arbitration (the Prague Rules or the Rules)[7] were developed in 2018 as an alternative to the IBA Rules. They are based on procedures that are drawn from the civil law tradition. In the months following their release, there were many lively debates about whether the two sets of rules were rivals or whether they would serve to complement one another.[8] This chapter seeks to identify the main procedural innovations found in the Prague Rules and to assess critically their value in promoting efficiency and effectiveness in the arbitral process.

Beginning with the cornerstone – proactive case management – the chapter considers the principles of supervised disclosure, witness summaries, joint commissions of experts, amicable settlement, the hearing, and tribunal discussions and decision-making. It compares the proposed techniques with those found in common law, civil law and the IBA Rules. The chapter concludes with the view that the Prague Rules make an important contribution to the toolkit of procedures available to parties and tribunals in maximising the efficiency of the process.

Proactive case management

The cornerstone of the Prague Rules is the principle of proactive case management. This begins with the first case management conference (CMC). In a provision described as the 'proactive role of the tribunal', the Rules recommend that this CMC should occur 'without any unjustified delay after receiving the case file'.[9] However, as discussed below, the tribunal might need a better appreciation of the nature of the dispute than tribunals often have at the first CMC to pursue the agenda contemplated in the Rules. For this reason, the Rules acknowledge that some of the more substantive aspects of the CMC may need to be deferred to a later stage of the arbitration, leaving the first CMC to focus on settling basic

housekeeping matters and establishing a procedural timetable.[10]

In the first substantive CMC, then, the tribunal is directed to take a proactive role by seeking to clarify: the relief sought by the parties; which facts are undisputed and which are disputed; and the legal grounds of each side's case.[11] The tribunal is further encouraged to indicate to the parties the facts that it regards as in dispute, the types of evidence needed to resolve the factual disputes, the apparent legal grounds for each side's case, and the options for ascertaining the factual and legal bases of the claim and the defence.[12]

Discussions such as this stand in stark contrast to the traditional common law approach in which judges and arbitrators are expected to remain largely passive while the parties prepare and present the evidence. In the common law, the tribunal is encouraged to defer to the parties' judgement on how they will make their respective cases and to refrain from any involvement that might hint at an emerging view of the case.[13] Clearly, then, for the tribunal to engage with the parties in the way envisaged by the Prague Rules, it is necessary for the parties to be persuaded that any questions asked by the tribunal members, or provisional views expressed by them, do not represent conclusions reached. The parties must be confident that everything that is said by the tribunal is subject to contrary indications arising from the evidence subsequently adduced and the submissions that the parties might subsequently make in the arbitration.

For some counsel and parties, the concern about the possibility of prejudgement reflected in this degree of proactivity may cause unease. However, others will have more confidence that the tribunal members are willing and able subsequently to be persuaded to the contrary. For them, an open discussion of the state of the issues and the evidence can be a useful exercise in streamlining the matters in dispute and focusing the parties' attention on the real challenges that they must meet in making out their claims and defences.

A willingness to suspend judgement on whether the tribunal has formed firm views of the case is critical for the third recommendation that the Prague Rules make for this CMC. This is a recommendation that the tribunal share its preliminary views on questions concerning: who bears the burden of proof; the nature of the relief sought; the disputed issues; and the weight and relevance of the evidence submitted by the parties at that stage.[14] Again, for some, this level of engagement with the emerging issues of the case, and this candour from the tribunal about its current impressions of the evidence, will cross the line. Aware of the risk that this poses for provoking challenges to the tribunal's impartiality, the Prague Rules provide explicitly that '[e]xpressing such preliminary views shall not by itself be considered as evidence of the arbitral tribunal's lack of independence or impartiality, and cannot constitute grounds for disqualification'.[15]

Returning to the question of the placement of this CMC in the arbitral process, it is clear that a tribunal must have a fairly detailed grasp of the case to engage in this kind of proactive case management. Whether it does may depend on the style of the parties' first substantive written submissions. This kind of engagement may be possible where, for example, a matter is commenced with a detailed memorial-style pleading that attaches the relevant documentary evidence on which the claimant relies, and which is responded to with a similarly detailed pleading by the respondent, with documents attached. However, it is unlikely to be possible if the arbitration has been commenced with a notice of arbitration and answer containing only a few paragraphs of the substance of the dispute – or when the tribunal has received only traditional common law pleadings containing broad allegations relating to the events giving rise to the claim and no documents or witness statements to support them. In these situations, the tribunal may wish to devote the first CMC to administrative matters and schedule a second CMC of a more substantive nature to follow a more detailed exchange of written pleadings.

Finally, the Prague Rules encourage the parties and the tribunal during this CMC to identify any preliminary matters of fact or law that might usefully be decided at an early stage in the proceedings to streamline the process.[16] The process of determining preliminary issues here is different from the process of bifurcation. The determination of preliminary issues generally occurs within the context of an overall timetable, leading to a main evidentiary hearing and the completion of a final award. The scheduling of preliminary issues may require the creation of two streams of case preparation operating in tandem and allowing the subsequent steps in the arbitration to be adjusted in accordance with the outcome of the preliminary issues determination. However, the scheduling of preliminary issues will not generally include two sequentially created timetables, the first ending with the determination of the preliminary issue, and the second beginning afresh to deal with the remaining issues, should the matter continue.

Supervised disclosure

Most readers will be familiar with the civil law–common law compromise on the disclosure of documents that is proposed in the IBA Rules: each party discloses the documents on which it intends to rely and then each is entitled to request a 'narrow and specific' category of documents from the other side. Then a table, known as a Redfern schedule, is developed to log summaries of the requests, objections, responses and rejoinders.[17]

Following this, the tribunal tries to decide whether or not the documents should be disclosed. This can be difficult if the tribunal has insufficient knowledge of the case at that stage to make confident determinations of the relevance and probative value of the evidence sought or of the merits of the objections. It is an approach that has provoked countless debates about what constitutes a 'narrow and specific' category and, more generally, about whether the time and cost of the disclosure process is warranted – quite apart from the time and cost that may be involved in the disputes that can arise in

the disclosure process.

The Prague Rules begin from the standpoint that the value of disclosure is not to be presumed and that the parties should be required to persuade the tribunal that it is needed in the instant case.[18] Further – and these are perhaps the most striking features of document production under the Prague Rules – the party seeking production must ask the tribunal to request the document and the request must be for one or more specific documents, rather than for a category of documents.[19]

Of course, in weighing the benefits of such a restrained approach to the exchange of documents, much will turn on whether the issues of fact will be decided on a balance of probabilities or on a clearly allocated burden of proof. The common law 'balance of probabilities' method of determining the facts may require the parties to seek more documentary evidence than the civil law 'burden of proof' method. The nature and size of the case will also be relevant: a claim for non-payment in a sale of goods transaction will require fewer documents than a complex infrastructure dispute.

However, in principle, greater restraint in disclosure is likely to be welcome to all, as may be the encouragement of the tribunal to become more involved in this part of the process. Many have experienced the benefits of tribunal engagement in the resolution of contentious disputes about the production of documents under the IBA Rules. When convening a CMC serves to get to the bottom of the issues and to find a way forward, one wonders how much more time and money would have been expended without the tribunal's involvement. One also wonders, as the tribunal becomes involved, and the advocacy becomes less strident and the parties become more conciliatory, whether tribunal involvement has increased the parties' confidence that their requests will be considered thoughtfully.

Whether those with a common law background are likely to embrace the restrictive approach to disclosure proposed in the Prague Rules is less certain. Even if they do not, it may be helpful for them to appreciate the context in which it is intended to operate. This becomes clear when the Rules are read as a whole. Elsewhere in the Rules, the tribunal is encouraged to take a more proactive role in fact finding in various ways, including, of its own initiative, requesting documentary evidence and the attendance of fact witnesses.[20] Accordingly, even for those who struggle with the presumption against disclosure, the approach in the Prague Rules should be understood in the context of a process for developing the evidentiary record that has a more prominent role for the tribunal in identifying and obtaining the relevant evidence.

Witness summaries

One way of streamlining the preparation and presentation of fact evidence is to allocate the primary responsibility for identifying and obtaining relevant evidence to the tribunal. However, there are ways in which the Prague Rules can improve efficiency in cases that proceed through party prosecution. In some common law systems, evidence of fact is initially taken in depositions. While this practice is largely unknown outside litigation in North America, there are echoes of it in the practice of preparing witness statements, which is typically done in international arbitrations.

The practice of submitting witness statements obviates the need for the direct examination of witnesses, but the cost of saving time at the hearing is the need for counsel to expend time in crafting witness statements that are concise and on point and in the language and style of the witnesses who will swear them.

This is an expensive front-loaded element of the process. When the fact witness statements are appended to a memorial-style pleading that includes the relevant documents on which the party will rely, they ensure that the facts pleaded will be more precise and accurate. However, if they are expected to provide a foundation for a complex factual record, the length and number of statements to be prepared can make the early phases of the arbitration very costly. Furthermore, there is an unhelpful tendency for witness statements prepared by counsel to merge with the submissions, making it difficult for the tribunal to discern where the witnesses' evidence leaves off and the pleadings begin.

As an alternative to witness statements, the Prague Rules propose that the parties identify in their initial pleadings the fact witnesses on whom they intend to rely, the factual circumstances of their testimony, and the relevance and materiality of the testimony.[21]

Having considered these summaries of the proposed witnesses' evidence, the tribunal then decides, in consultation with the parties, which of the witnesses' evidence requires the more extensive treatment involved in preparing a witness statement and, possibly, cross-examining the witness at the hearing. The Rules then provide in some detail for the rights of (1) parties to submit witness statements that have not been sought, but which they regard relevant, (2) the tribunal to request a witness statement, but then not require the witness to appear for cross-examination, (3) parties to insist on calling witnesses for examination in any event, and (4) the tribunal to accord the weight it sees fit to the evidence in a witness statement in the absence of live testimony from the witness.[22]

As a natural extension of the early assessment of the tribunal of what is and is not genuinely in dispute, there could be value in this practice of submitting summaries of proposed witnesses' evidence to be expanded into full witness statements only as needed for a limited number of key witnesses. The practice might add an interim step between the typical two rounds of pleadings, but it could reduce the number of complete witness statements required. It could also provide an

opportunity for the tribunal to encourage counsel to limit the statement to the witnesses' evidence and refrain from shaping it into submissions. Furthermore, the subsequent possibility that the tribunal could direct the preparation of one or more additional witness statements during the second round of pleadings as necessary may reassure the parties that the evidence needed to decide the case will be before the tribunal by the time of the hearing.

Finally, in regard to witness evidence at the hearing, the Prague Rules make it clear that the tribunal is to direct and control the examination of witnesses. Specifically, the tribunal may reject unnecessary questions and establish time limits, set the sequence of witnesses and types of questions to be asked, and hold witness conferences.[23] Even though all these steps are currently used to improve time management during the hearing, the extent to which the tribunal takes control of fact witness examination will, no doubt, vary considerably from tribunal to tribunal and from case to case.[24]

Joint commissions of experts

The preparation and presentation of expert evidence has proved to be a major challenge for the common law and civil law alike. In a party-led process, the need for experts to assist a tribunal in understanding the issues in a case, and the facts that are likely to be needed to be determined, weighs in favour of allowing the parties to appoint and instruct them, and to take the lead in questioning them at the hearing, particularly if the parties know more about the case in the early stages of the arbitration than the tribunal. Moreover, authorising the parties to select and manage the experts increases the parties' confidence in the arbitral process. However, this level of party involvement in preparing the expert evidence can undermine the experts' independence, potentially making their evidence less useful to the tribunal.

In contrast, in a tribunal-led process, a tribunal-appointed expert will be much more likely to be independent, but the expert's grasp of the issues and the factual foundation needed for them to provide their evidence will be no better than that of the tribunal. This creates a risk that the expert's evidence will be less relevant and probative, prompting each of the parties to challenge it and to seek to retain its own expert to supplement the evidence of the tribunal-appointed expert.

Various solutions to this conundrum have been proposed. For example, the concept of a 'single joint expert' entails the parties agreeing on an expert that they brief and subsequently examine jointly. This approach does not appear to have gained much currency. In another example, the examination of experts of like discipline together at the hearing, sometimes described as 'hot-tubbing', has been adopted more widely, with various approaches taken to the manner of questioning.[25] Other combinations of the respective roles of the tribunal and the parties in the process have been developed, with varying degrees of success.

The provisions of the Prague Rules describe in some detail the roles of the tribunal and the parties in the appointment of experts, the establishment of their mandates, the supply of the necessary information and documents, and the conduct of the examinations at the hearing. The Rules grant the tribunal primary responsibility for the process, as is the case generally in civil law, but considerable care is taken to allow for the involvement of the parties throughout, and for the parties and the tribunal to agree on the details of the process.[26]

One such variation is worth highlighting. It is described as a 'joint expert commission'.[27] The parties each select an expert on an area in which there is an agreed need. Following the appointment of the experts, the tribunal instructs the experts to establish a joint list of questions and to prepare a joint report, including a list of issues on which they agree, a list of issues on which they disagree, and the reasons why they disagree.[28]

How does this work in practice? One approach can involve the parties indicating in their first round of pleadings the areas in which they anticipate the need for expert evidence and identifying the experts that they propose to appoint. Subject to the need to refine the areas for expert evidence, or to address objections to the choice of experts, the tribunal then meets with the experts and counsel to explain the process and to instruct the experts to prepare a joint list of questions. This list of questions needs to be sufficiently detailed and precise to ensure that the issues in dispute are joined for the purpose of the joint report. This may require exchanges between the experts and the tribunal, or even a further meeting to improve the list of questions. However, once settled, the experts can get down to work on the joint report, which might also need to be refined with tribunal management and support.

Following this, the experts are instructed to provide their individual reports on issues on which their opinions differ and to highlight any differences in factual, methodological or legal premises on which these differences are based. Finally, the experts may be instructed to provide their opinions on the outcomes, were the tribunal to accept the factual, methodological or legal premises relied on by the expert retained by the other party.[29]

This multi-stage process must be run in tandem with the development of other aspects of the case. A first meeting with the experts might occur soon after the first round of pleadings and in one of the early substantive CMCs, as appropriate, once the main fact witnesses have been identified and their witness statements have been submitted. Then, the experts' agreed list of questions may be helpful in clarifying the nature and extent of disclosure needed from each side.[30] The experts may then be engaged to assist in resolving disputes about disclosure requests where the requests relate to the evidence that the experts will develop.

Following the disclosure process, the experts can prepare their joint report followed by individual reports. Ideally, the experts will also provide opinions based on the other experts' factual, methodological or legal premises thereafter, possibly in conjunction with the second round of pleadings.

An iterative process such as this, involving the tribunal throughout, requires counsel to be confident that relinquishing the tight control they might otherwise have on their experts will not result in expert testimony that will undermine their case. Further, from the standpoint of the tribunal, it involves more effort in the early stages of the arbitration. However, this process provides considerable assurance that: the technical issues in the case will be joined; the tribunal will understand the expert evidence at the hearing and how it relates to the facts to be determined; and the tribunal will know what decisions it needs to make both on the fact evidence and the expert evidence to reach its conclusions in the case.

Amicable settlement

The Prague Rules clarify that, subject to a party's objections, the tribunal may assist in amicable settlement at any stage; with written consent, a tribunal member may mediate; and if unsuccessful, the tribunal member will continue the arbitration with the parties' consent or be replaced.[31] Although this process is not new and must always be approached with care so as not to result in a failed mediation and possibly the need to replace an arbitrator, it is a procedural feature worth endorsing through inclusion in the Rules.[32] As with a number of the other features available to be adopted in appropriate cases, the inclusion of amicable settlement as an option during the process in a set of rules such as these can serve to alert the parties to a practice that enjoys broad acceptance even if they have not yet experienced it.[33]

Hearing, tribunal discussions and decision-making

In relation to the hearing, the Prague Rules encourage a number of cost-saving devices, such as documents-only hearings, hearings of limited duration and remote hearings.[34]

Further guidance on the relationship between the evidence and the decision-making is given in various provisions. Despite the proactive role of the tribunal, the parties are not relieved of their obligations regarding their burden of proof.[35] If a party does not comply with the tribunal's orders or instructions, the tribunal may draw adverse inferences.[36] Parties bear the burden of proof on the legal positions on which they rely, but the tribunal is authorised to apply legal provisions and to consider authorities not submitted by the parties, provided the parties are given an opportunity to express their views.[37]

In allocating costs, the tribunal is directed to take into account the parties' conduct during the arbitration, including their cooperation and assistance in conducting the proceedings in a cost-efficient and expeditious manner.[38]

On the question of tribunal discussions and deliberations, the Prague Rules make it clear that the tribunal is not to wait until the hearing is over, but to conduct internal discussions before the hearing and to hold deliberations as soon as possible thereafter with a view to rendering an award as soon as possible.[39]

Fresh prospects for designing a bespoke process

In the continuing drive to increase the efficiency of international arbitration, the Prague Rules make a welcome contribution to the techniques available to counsel and arbitrators for effective management of their arbitration. As arbitration practitioners become increasingly sophisticated in meeting the diverse expectations of parties and the needs of particular cases, these Rules will assist in looking beyond the existing common principles and standardised procedures to fashion a bespoke process from a broader range of options.

Although some of the Prague Rules' tribunal-led procedures may be more attractive than others to counsel and arbitrators, there are bound to be found among them techniques that will improve the cost-effectiveness of the arbitration. Perhaps most importantly, practitioners who are wary of accepting alternatives to familiar procedures will be encouraged to consider a broader range of possibilities by finding some of these options in a well-crafted set of standard rules produced collaboratively and endorsed by a group of leading arbitrating practitioners.

Notes

[1] Janet Walker is a chartered arbitrator. The author wishes to thank Brendan Ofner and Peter Taurian of Sydney Arbitration Chambers for their support in preparing this chapter.

[2] International Bar Association [IBA], IBA Rules on the Taking of Evidence in International Commercial Arbitration (adopted by a resolution of the IBA Council, 17 December 2020) [IBA Rules], available at **www.ibanet.org/resources** (to select preferred language for download). The Rules had previously been revised in 2010, available at the same web address.

[3] Janet Walker, Jorge Rojas and Paula Costa e Silva, 'Interpreting the IBA Rules on the Taking of Evidence', Joint IIDP-IAPL Conference on Evidence and Procedure (October 2018, Salamanca).

[4] IBA Rules, Article 3(3)(a)(ii).

[5] id., Article 4(3).

[6] Gonzalo Stampa, 'The Prague Rules', *Arbitration International* (June 2019), Vol. 35, Issue 2, pp. 221–44 (noting that the genesis of the Rules was in a panel discussion entitled 'Creeping Americanization of International Arbitration: Is It the Right Time to Develop Inquisitorial Rules of Evidence?' at IV Annual Conference of the Russian Arbitration Association, 20 April 2017 in Moscow, and documenting the development of thought that led from the initially confrontational approach to one that sought to provide a meaningful alternative).

[7] Rules on the Efficient Conduct of Proceedings in International Arbitration [Prague Rules], available at **https://praguerules.com/prague_rules/**.

[8] Annett Rombach and Hanna Shalbanava, 'The Prague Rules: A New Era of Procedure in Arbitration or Much Ado about Nothing?', *SchiedsVZ* (2019), Vol. 17, Issue 2, pp. 53–60; Klaus Peter Berger, 'Common Law vs. Civil Law in International Arbitration: The Beginning or the End?', *Journal of International Arbitration* (2019), Vol. 36, Issue 3, pp. 295–314; Peter J Pettibone, 'The Prague Rules on the Efficient Conduct of Proceedings in International Arbitration: Are They an Alternative to the IBA Rules on the Taking of Evidence in International Arbitration?', *Asian Dispute Review* (2019), Vol. 21, Issue 1, pp. 13–17; Lukas Hoder, 'The Arbitrator and the Arbitration Procedure, Prague Rules vs. IBA Rules: Taking Evidence in International Arbitration', in Christian Klausegger, Peter Klein, et al. (eds), *Austrian Yearbook on International Arbitration 2019* (Manz'sche Verlags- und Universitätsbuchhandlung, 2019), pp. 157–77; Duarte G Henriques, 'The Prague Rules: Competitor, Alternative or Addition to the IBA Rules on the Taking of Evidence in International Arbitration?', *ASA Bulletin* (2018), Vol. 36, Issue 2, pp. 351–63.

[9] Prague Rules, Article 2.1; Gonzalo Stampa, 'The Prague Rules', op. cit., pp. 228–29.

[10] Prague Rules, Article 2.3.

[11] id., Article 2.2.

[12] id., Article 2.4, paragraphs (a) to (d); Duarte G Henriques, op. cit., p. 354.

[13] Rolf Trittmann and Boris Kasolowsky, 'Taking Evidence in Arbitration Proceedings between Common Law and Civil Law Traditions: The Development of a European Hybrid Standard for Arbitration Proceedings', *UNSW Law Journal* (2008), Vol. 31, Issue 1, pp. 330–40, at 332; Klaus Peter Berger, op. cit., pp. 295–314.

[14] Prague Rules, Article 2.4(e).

[15] id., Article 2.4; Peter J Pettibone, op. cit., p. 15.

[16] Prague Rules, Article 2.5.

[17] For a recent discussion of the civil law–common law compromise that focuses on the Redfern schedule, see Gonzalo Stampa, 'Refreshing Redfern: The Document Production Schedule', in Bernardo M Cremades and Patricia Peterson (eds), *Rethinking the Paradigms of International Arbitration* (ICC Institute of World Business Law, Dossier XX, 2023), pp. 57–86.

[18] Prague Rules, Article 4.2; Annett Rombach and Hanna Shalbanava, op. cit., p. 56.

[19] Prague Rules, Article 4.3; Peter J Pettibone, op. cit., p. 15.

[20] Prague Rules, Article 3.

[21] id., Article 5.1.

[22] id., Articles 5.2 to 5.8; see also Peter J Pettibone, op. cit., p. 16.

[23] Prague Rules, Article 5.9.

[24] Xavier Favre-Bulle and Christopher Newmark, 'The Use and Abuse of Factual Witnesses', in Bernardo M Cremades and

Patricia Peterson (eds), *Rethinking the Paradigms of International Arbitration* (ICC Institute of World Business Law, Dossier XX, 2023), pp. 100–32, at 105–06.

[25] Justice Stephen Rares, 'Using the "Hot Tub" – How Concurrent Expert Evidence Aids Understanding Issues' (Speech, IPSANZ Seminar, 12 October 2013).

[26] Prague Rules, Article 6; Gonzalo Stampa, 'The Prague Rules', op. cit., pp. 228–29.

[27] Prague Rules, Article 6.2.a.ii.

[28] See also Professor Doug Jones AO, 'Ineffective Use of Expert Evidence in Construction Arbitration' (Speech, GAR Dubai Arbitration Week 2020, 16 November 2020).

[29] For a discussion of a similar procedural timeline, see Doug Jones, 'Redefining the Role and Value of Expert Evidence', in Bernardo M Cremades and Patricia Peterson (eds), *Rethinking the Paradigms of International Arbitration* (ICC Institute of World Business Law, Dossier XX, 2023), pp. 142–75, at 162–65.

[30] id., pp. 166–67.

[31] Prague Rules, Article 9; Gonzalo Stampa, 'The Prague Rules', op. cit., pp. 230–31.

[32] Bernd Ehle, 'The Arbitrator as a Settlement Facilitator', in *Walking a Thin Line. What an Arbitrator Can Do, Must Do or Must Not Do* (Bruylant, 2010), pp. 79–95, at 80.

[33] See further Catherine Kessedjian, 'Inherent and Discretionary Powers of Arbitrators', in Bernardo M Cremades and Patricia Peterson (eds), *Rethinking the Paradigms of International Arbitration* (ICC Institute of World Business Law, Dossier XX, 2023), pp. 17–35, at 29–30.

[34] Prague Rules, Article 8; Gonzalo Stampa, 'The Prague Rules', op. cit., p. 230.

[35] Prague Rules, Article 3.1; Gonzalo Stampa, 'The Prague Rules', op. cit., p. 235.

[36] Prague Rules, Article 10.

[37] id., Article 7.

[38] id., Article 11.

[39] id., Article 12.

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