

CONTRIBUTION OF BENJAMIN DAVIS TO EXPEDITED ARBITRATION¹

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A. Fast-Track Arbitration at the ICC

The contributions of Benjamin Davis to expedited arbitration cannot be underestimated.

His experience with expedited arbitration goes back to Winter 1991/92, when he was working as counsel at the Secretariat of the ICC International Court of Arbitration and had to deal administratively with two, multimillion-dollar ICC arbitration cases where the parties had agreed on very short time limits for the rendering of the arbitral award. In two complex ICC cases on the price redetermination of a commodity product, the awards had to be rendered within approximately two months of the introduction of the Requests of Arbitration.² With these time limits the parties had reduced considerably the time frame foreseen under the then applicable ICC arbitration rules, which normally provided two months for the establishment of the Terms of Reference from the transmission of the file to the arbitral tribunal³ and six months for the rendering of the arbitral award,⁴ with a possibility of having these time limits extended by the ICC Court under the rules.⁵

It took an extraordinary effort of Benjamin Davis to deal with this unprecedented situation, and to arrange that, the arbitral tribunal was constituted much faster than would usually be the case in an ICC arbitration. The challenge of an arbitrator was handled much more rapidly than would normally be the case. Furthermore, the Terms of Reference were established and submitted to the ICC Court within just a few days, and thereupon the arbitral tribunal could examine the claims and submit an award within about a week and have the award scrutinized by the ICC Court and notified to the parties within the time limit set by the parties for the complete arbitration. The rapidity with which this ICC arbitration had been

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2. Benjamin G. Davis, *Fast-Track Arbitration: Different Perspectives – The case viewed by a counsel at the ICC Court’s Secretariat*, 3 ICC INT’L CT. ARB. BULL. 4, 4-8 (1992); Benjamin G. Davis, *Fast-Track Arbitration and Fast-Tracking Your Arbitration*, 9 J. INT’L ARB. 43, 43-50 (1992).

3. ICC RULES OF ARBITRATION art. 1 § 2 (INT’L CHAMBER OF COMMERCE 1988).

4. ICC RULES OF ARBITRATION art. 18 § 1 (INT’L CHAMBER OF COMMERCE 1988).

5. ICC RULES OF ARBITRATION art. 18 § 2 (INT’L CHAMBER OF COMMERCE 1988).

completed was unprecedented, but it raised enthusiasm with the parties involved⁶ and the arbitral tribunal having rendered the award.⁷ The arbitral tribunal recommended that special fast-track rules would be issued to render fast-track treatment possible when the arbitral tribunal has to deal with less co-operative litigants or is a less harmonious body.⁸ Benjamin Davis stimulated research on the topic and published with some colleagues a study on the legal environment for international fast track commercial arbitration on the five continents to examine its prospects.⁹

B. *Development of Rules for Expedited Arbitration*

Following the experience with these fast-track arbitrations of 1991/92, the ICC included in its 1998 Rules a provision expressly allowing for time limits to be shortened. At the same time, however, limits were set upon party autonomy with the fixing of time limits, as it was expressly stated in the 1998 ICC Rules that the ICC Court may extend time limits that have been shortened by the parties.¹⁰ With the reform of the ICC Rules of Arbitration in 2012, the ICC introduced a mechanism called the ‘emergency arbitrator’ whereby a party is given the right, prior to the constitution of the arbitral tribunal, to make an application for interim or conservatory measures that cannot await the constitution of the arbitral tribunal.¹¹ Finally, with the reform of the ICC Rules of Arbitration in 2017, the ICC introduced the mechanism of ‘expedited arbitration’ with the objective of having final awards rendered by sole arbitrators within six months after the case management conference.¹²

Other arbitration institutions have followed this trend towards expedited arbitration proceedings and introduced similar provisions in their rules, such as the American Arbitration Association,¹³ the Swiss Chambers’ Arbitration Institution,¹⁴

6. Peter J. Nickles, Moses Silverman & David K. Watkiss, *Fast-Track Arbitration: Different Perspectives – Three Perspectives from the Parties’ Counsels*, 3 ICC INT’L CT. ARB. BULL. 9, 9-14 (1992).

7. Hans Smit, *Fast-Track Arbitration: Different Perspectives – A Chairman’s Perspective*, 3 ICC INT’L CT. ARB. BULL. 15, 15-17 (1992).

8. *Id.* at 17.

9. Roland Amoussou-Guenou, Bachir G. Affaki, Ram T. Madaan, Maasaki Sawano, Fernando M. Serrano, Odette L. Glain, David Brown, Robert H. Smith & Benjamin G. Davis., *International Fast-Track Commercial Arbitration*, 23 COMPAR. L. Y.B. INT’L BUS. 357 (1995).

10. ICC RULES OF ARBITRATION art. 32 (INT’L CHAMBER OF COMMERCE 1998). *See also* ERIK SCHÄFER, HERMAN VERBIST & CHRISTOPHE IMHOOS, ICC ARBITRATION IN PRACTICE 158-59 (2005).

11. ICC RULES OF ARBITRATION art. 29 (INT’L CHAMBER OF COMMERCE 2012). *See also* ERIK SCHÄFER, HERMAN VERBIST & CHRISTOPHE IMHOOS, ICC ARBITRATION IN PRACTICE 162-63 (2d ed. 2015).

12. ICC RULES OF ARBITRATION art. 30 (INT’L CHAMBER OF COMMERCE 2017). *See also* THOMAS H. WEBSTER & MICHAEL BÜHLER, HANDBOOK OF ICC ARBITRATION 502-03 (4th ed. 2018).

13. COMMERCIAL ARBITRATION RULES § E (AMERICAN ARBITRATION ASSOCIATION).

14. SWISS RULES OF INTERNATIONAL ARBITRATION art. 42 (SWISS CHAMBERS’ ARBITRATION INSTITUTION 2012).

the Stockholm Chamber of Commerce,¹⁵ the Singapore International Arbitration Centre,¹⁶ and the Belgian Centre for Arbitration and Mediation.¹⁷ UNCITRAL (United Nations Commission on International Trade Law) recently also took the initiative to prepare a set of rules on expedited arbitration,¹⁸ as expedited arbitration is described as a streamlined and simplified procedure with a shortened time frame, which made it possible to reach a final resolution of the dispute in a cost- and time-effective manner.¹⁹ The work of UNCITRAL Working Group II on expedited arbitration is ongoing and focuses on how expedited arbitration can be used in “ad hoc” arbitration proceedings.

C. Conclusion

The experience which Benjamin Davis had with the first ICC fast-track arbitrations in 1991/92 and the enthusiasm with which the parties and the arbitral tribunal welcomed this rapid way of deciding disputes were a source of inspiration for the ICC to develop new rules enabling the parties to conduct arbitration proceedings rapidly. Expedited proceedings are now available under the rules of different arbitration institutions and are used frequently,²⁰ although these rules are generally available only for cases below a certain amount in dispute. With the current development by UNCITRAL of expedited arbitration rules for “ad hoc” arbitration proceedings, it is expected that parties in “ad hoc” arbitrations will soon also have the possibility to conduct arbitrations in a much faster way.

15. RULES FOR EXPEDITED ARBITRATION (ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE 2017).

16. RULES OF ARBITRATION art. 6 (SINGAPORE INTERNATIONAL ARBITRATION CENTRE 2016).

17. CEPANI ARBITRATION RULES art. 29 (BELGIAN CENTRE FOR ARBITRATION AND MEDIATION 2020).

18. UNCITRAL Secretariat Note A/CN.9/WG.II/WP.214, Draft provisions on expedited arbitration, 23 July 2020; UNCITRAL Secretariat Note A/CN.9/WG.II/WP.214/Add.1, Draft provisions on expedited arbitration, 24 July 2020.

19. See UNCITRAL Secretariat Note A/CN.9/WG.III/WP.214, *supra* n. 18, para. 3.

20. The ICC 2019 Dispute Resolution Statistics indicate that in 2019 the Expedited Arbitration Provisions were applicable in 65 cases. See *ICC Dispute Resolution 2019 Statistics*, 2020, 16.