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Lean Arbitration: Cost Control and Efficiency Through Progressive Identification of Issues and Separate Pricing of Arbitration Services

by MICHAEL E. SCHNEIDER

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THE COSTLINESS of international commercial arbitration is a frequent subject of complaint. In many cases, the costs of the proceedings are high, compared both with the amount in dispute and with the costs of similar proceedings before the courts.1

When a party brings a case to arbitration and chooses an arbitration centre, an arbitrator and counsel, it wants to win the case, to gain advantages in the procedure and, in defence against advantages sought by the opponent party, to assure fairness and justice to the process and its outcome. Cost considerations probably are of secondary importance in these decisions, at least in the more important cases.2

Nevertheless, the cost of proceedings is receiving increasing attention from arbitration specialists3 and in the debate between the users of arbitration services and those who provide them. The issue of costs is also being used in the competition between different suppliers of such services

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1 Redfern and Hunter write that 'the cost of bringing or defending a claim before an international arbitral tribunal is likely to be considerably higher than that of bringing or defending the same claim before a court', in Law and Practice of International Commercial Arbitration, (London, 2nd ed., 1991) at p. 248. Not in all cases and countries are the differences in cost so great and so obvious. The 'hidden savings' through arbitration also must be considered, as for instance Pierre Karrer has pointed out in 'Arbitration Saves Costs: Poker and Hide-and-Seek' 3 Journal of International Arbitration (1986) at pp. 35–46. The costliness of international arbitration, nevertheless, is preoccupying.

2 The situation is different with respect to small claims where the costs of arbitration may be prohibitive. The proposals made in this article are not suitable in all respects to small claims procedures; but it is submitted that they can be adapted to provide a cost effective procedure for such claims.

(primarily between arbitration centres), and in the competition between suppliers of arbitration, and the suppliers of those services which have come to be described as Alternative Dispute Resolution (ADR). Where different methods of dispute resolution are seen by their users as satisfying equally a party’s principal objectives just described, the secondary objective of costs may indeed become a major consideration.

This article examines the factors which determine the costs of international commercial arbitration and seeks to identify the scope for cost-control and possible cost reductions. It will demonstrate that, in view of the particularities of the disputes considered, cost-control must be directed primarily to a more efficient management of the arbitration proceedings. This requires not only a limitation of the ‘time-consuming formalities of proceedings before a court’, but also above all, a high degree of interactivity between the parties and the arbitrators in a process which is focused on the essence of the dispute, eliminating peripheral issues whenever possible.

Proceedings conducted with the aim of reduction to the essence of the dispute, in terms of modern production management, may be described as ‘lean arbitration’. It is proposed that such ‘lean arbitration’ can best be achieved if the essential issues are clearly identified and their resolution, to the best possible extent, is priced separately for each issue, perhaps with an incentive scheme for cost-efficient management of the procedure.

I. THE COST ITEMS IN INTERNATIONAL COMMERCIAL ARBITRATION AND THE SCOPE FOR REDUCTIONS

The principal cost items of the arbitration procedure are (a) the fees of the arbitrators, (b) the expenses of the arbitrators in conducting the procedure and, in the case of institutional arbitration, (c) the costs and fees of the arbitration institution.

In addition to the procedural costs, there are the parties’ costs, both those arising within their own organisations and those for their counsel. These costs are often substantial and frequently exceed those of the procedure. While the parties’ own costs are normally affected by the conduct of the procedure, their amount depends on a number of other factors. Therefore, these costs are not considered here; but the recommendations made can be of significant effect also on the parties’ own costs.

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4 See e.g. Schwartz op. cit., at p. 10, note 11 on the controversy whether ICC or LCIA arbitrations are more costly.

5 In most cases, the assumption does not apply; ADR methods normally proposed are no true alternative to arbitration, since they do not lead to binding decisions by a third party. This consideration, of course, does not mean that, in the appropriate circumstances, ADR may not provide useful and efficient methods for settling a dispute.

6 According to Schwartz: op. cit., at p. 9, generally these costs exceed (sometimes by much) the costs and fees of the arbitrators and of the arbitration institution; see also Karrer, op. cit., at p. 37.

7 For instance, when pricing the arbitrator’s services for each identified issue, one may also fix the costs which the parties may spend on counsel for arguing the issue and exclude the winning party’s claim for reimbursement of the exceeding amount, as suggested by Arthur L. Marriott: ‘Changes in Arbitration Law and practice’, 59 Arbitration (1993), at pp. 41 and 50.
In the present practice of international commercial arbitration, the arbitrator’s fees may be determined by a time-based rate, such as a daily or hourly fee; by a percentage of the amount in dispute; or by a combination of various criteria of which the most important ones, once again, are the time spent on the case and the value in dispute. Sometimes, established fee rates for the professionals engaged as arbitrators may be applied. Normally, it is only at the end of the arbitration that the parties know the amount due on this account, but they will have paid, at an early stage of the proceedings, substantial sums as advances to cover the expected costs and fees.

There have been attempts to save costs by reducing the fees of the arbitrators. But there are limits to the effectiveness of such attempts. The fees at which a qualified arbitrator is prepared to supply his or her services, in general, are likely to be a function of the work required for the case; if the fees offered in a case are out of proportion with alternative sources of remuneration for an arbitrator, the chances are low that he will accept the assignment.

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8 According to Peter Schlosser, outside Germany the fees are fixed predominantly on the basis of hourly rates (Das Recht der internationalen privaten Schiedsgerichtsbarkeit, Tübingen (2nd ed., 1989) note 494 at p. 381); for Redfern and Hunter, the modern tendency is to regard the time spent on a case as the dominant factor. For 1990, they quote daily fees in the range of US$1,500 to US$3,000, stating that, in major international arbitrations daily fees up to US$4,000 were not unknown. The 1992 fee scale of the London Court of International Arbitration (LCIA) provides for an hourly rate between £150 and £375, and for the hearings a daily rate between £500 and £2000. Indeed, the LCIA considers the time-based fees as ‘one of the most popular features of LCIA arbitration’ (‘Introductory Note to the Revised Rules’, item 12; ILM (1985), 1137 at 1144). Time-based rates are also applied by the Geneva and the Stockholm Chamber of Commerce and the American Arbitration Association (AAA).

9 The ICC International Court of Arbitration and a number of other institutions such as the Zurich and Geneva Chamber of Commerce provide for fee scales setting a range of minimum and maximum amounts based on the amount in dispute or fix a maximum fee by reference to this amount. The statutory fee rates for lawyers in Germany (Bundesschutzanwaltsgebietsordnung – BRAGO), frequently applied by analogy to fix arbitrators’ fees, also are based on the value in dispute.

10 In ICC Arbitration, the Court fixes the rate within the value-based range by reference to the following criteria: ‘the time spent, the rapidity of the proceedings and the complexity of the dispute’ (Internal Rules of the Court, Rule 18). Such criteria also are applied by institutions which use similar value-based fee scales. Time-based fee rates may take account of the value in dispute (see Redfern and Hunter, op. cit., at p 250). For the criteria applied in Switzerland see in particular Baumgartner: op. cit. at pp. 252–282 and Jean-François Poudret ‘Jurisprudence du Tribunal Cantonal Vaudois en matière d’arbitrage interne et international’ 136, Journal des Tribunaux (1988) III, at pp. 62–64, who also compares the results of applying different scales.

11 For the application of professional fee rates of lawyers see e.g. Schlosser: op. cit. note 494, at p. 381, Baumgartner: op. cit. at p. 254 and Thomas Riede and Reiner Hadendfeldt, Schweizerisches Schiedsgerichtsrecht, Zurich (2nd ed., 1993) at p. 163.

12 However, where the fees are fixed by reference to the amount in dispute, the parties can know the fees or at least the range within which they will be fixed. This may provide much comfort to the parties (see e.g. Robine, op. cit. at p. 43). Furthermore, the advance requested by the arbitral tribunal or the institution at an early stage of the proceedings usually gives a good indication of the costs that must be expected (in this sense, Karrer, op. cit. at p. 40).

13 Exceptions may occur in cases where the function of arbitrator is conceived as increasing status and reputation of the person concerned or where he is prepared to accept, necessarily in a limited number of cases, to arbitrate as a service to his community.
It is true that the fee levels required by competent arbitrators differ to some extent from one country to another, from one profession to another and according to the employment situation of the person – a judge, a retired civil servant or a professor receiving the arbitration fees in addition to their basic salary or pension, is in a position to accept lower fees than a practising lawyer or engineer whose remuneration must also cover the overheads of his firm.\textsuperscript{14} However, it would appear that attempts to reduce costs of the arbitration by cutting the fee level of the arbitrator, in the end, risk to restrict the choice of persons available as arbitrators and thus cause a threat to the quality of the arbitration.\textsuperscript{15}

Reductions in the fees of the arbitrators, therefore, are best achieved not through the fee level but through a reduction in the volume of the work required in the assignment.

The arbitrators expenses consist primarily of costs for travel and accommodation in cases where the arbitrators do not live at the place of the proceedings, in costs for conducting the hearing (e.g. room rental, recording and transcripts), expenses for telephone conversations, fax, photocopy, etc. In addition, there may be costs for experts appointed by the arbitral tribunal or for a secretary/registrar. In some cases, these expenses may be substantial.\textsuperscript{16}

The standards of reimbursement and the accounting for these expenses by the arbitral tribunal are not always satisfactory and, occasionally, some savings may be achieved by a more careful management. The guidelines provided in arbitrations under the ICC Rules are a useful tool in this respect and can serve in other arbitrations, too.\textsuperscript{17} The system applied by the International Center for the Settlement of Investment Disputes (ICSID) in some respects, is more refined especially by distinguishing the \textit{per diem} rates according to the level of costs prevailing in the city concerned.\textsuperscript{18}

Among the areas which might benefit from some increased attention one may mention, in particular, the costs engaged by arbitrators for outside

\textsuperscript{14} In its decision of 18 February 1975 (\textit{BGE} 101 II 109, 113), the Swiss Supreme Court emphasized that the fees of a practising lawyer must include his office costs, reserves for sickness, vacation, continued education, military service, pension, defaulting clients, \textit{pro bono} and other unprofitable work. Since such costs do not apply to a professor paid by his university, the court held the fee rate of the Zurich bar inapplicable to a legal opinion given by a professor. Some Swiss writers extend the rationale to the discussion of arbitrators' fees, recognizing, however, the conflict with the principle of equal remuneration for equal work; in particular Baumgartner, \textit{op. cit.} at p. 268.

\textsuperscript{15} An ICC Working Group on the remuneration of arbitrators concluded that ‘for top arbitrators, application of the ‘average’ scale amount as the norm is about to become dissuasive’ (Schwartz, \textit{op. cit.} at p. 11).

\textsuperscript{16} Schwartz observes that, in their choice of arbitrators and their procedural decisions, the parties often do not seem to be aware of the consequences on the expenses of the arbitration (\textit{op. cit. at p. 15}). But some of these costs may be unavoidable (Karrer, \textit{op. cit.} at p. 44).


\textsuperscript{18} Comments in Redfern and Hunter \textit{op. cit.} at pp. 253-254.
services, for instance those relating to the conduct of the hearing and those for technical experts.\textsuperscript{19}

While there may be some room for improvements concerning transparency, accounting and management of these expenses, it appears that the scope for savings is small. Here, too, noteworthy reductions in costs can be expected primarily from a simplification of the procedure.

Often, but perhaps less frequently than it sometimes seems to be believed, the parties refer the dispute to an arbitration institution. In such cases the fees and expenses of the arbitration institution may be calculated on the basis of the costs for the services supplied in a particular case, on a lump sum or by reference to the value in dispute. The value which the institution has for the parties is not limited to the services provided, once a particular dispute is submitted to its arbitration; it also includes its very existence and the assurance which the parties may obtain from its availability in case a dispute should arise.\textsuperscript{20}

The payments which the parties must make to an arbitration institution once they refer their dispute to it, are perhaps the cost item which is most frequently considered as a promising source for savings.\textsuperscript{21} This is the case, in particular, where these costs are calculated by reference to the amount in dispute and are not in an easily perceived relationship with the services rendered by the institution in the case at hand.

Where the institution also administers the financial aspects of the arbitration, it can come under criticism for the amounts of the arbitrators' fees fixed by it; according to the interest of the critic, the fees may be said to be too high or too low.\textsuperscript{22} It may also be required that the institution accounts for the use of the funds which it holds on deposit from the parties and for the revenue drawn from such funds.\textsuperscript{23}

Despite these possible areas of criticism, it should not be overlooked that the availability of a competent institution may be a valuable support for an arbitration, especially in those cases where the parties do not feel sufficiently confident in the courts at the place of arbitration to provide the


\textsuperscript{20} In an unpublished paper quoted by Schwartz (op. cit. at p. 8, note 4), Stephen Bond compared the charges of the arbitration institution to insurance premiums. For further explanations on the charges of the ICC Court, see Schwartz, op. cit. at pp. 8–9 and pp. 15–17.

\textsuperscript{21} Pierre Lalive, 'Avantages et inconvenients de l'arbitrage ad hoc', in Études offertes à Pierre Bellet (Paris 1981) at pp. 301 and pp. 315–316, quotes a number of authors having made this proposition. He insists, however, on stating that the decisive factor is not the actual amount paid to the institution but the 'price-quality relationship'. W. Laurence Craig, William W. Park and Jan Paulsson, International Chamber of Commerce Arbitration Paris 2nd ed 1990) are also sceptical about the possible savings in this respect; see Schwartz: op. cit. at p. 10.

\textsuperscript{22} For examples of such criticism, see Schwartz, op. cit. at p. 11.

\textsuperscript{23} See Karrer, op. cit. at p. 41; in ad hoc arbitration, this requirement applies to the arbitrators; see in this respect, Redfern and Hunter, op. cit. at p. 254.
services of the institution such as appointment of arbitrators, decisions on their challenge and other assistance in the procedure.²⁴ Sometimes both the parties and the arbitrators see an advantage in having the arbitrators' fees determined not by the arbitrators themselves but by the institution. Finally, the amounts payable to the institution normally are such that their reduction or omission affect only moderately the total costs of an arbitration.

These considerations suggest that the arbitrators' fees, as the principal cost item, and to some extent also the other cost items, depend largely on the volume of work which the conduct of the procedure and the decision of the disputed issues require. It follows that efforts for cost-reduction must aim at simplifying the procedure and at limiting the scope of the dispute. In order to do so effectively, the causes must be understood which lead in many international arbitrations to the complexity of the dispute and the procedure and thus are among its principal cost factors.

II. COMPLEXITY AS THE PRINCIPAL COST FACTOR

The causes of complexity in many international commercial arbitration cases can perhaps best be shown by a comparison with other forms of international arbitration which have the reputation of being simple, short and cost effective. A good example for such other forms are the proceedings at some of the commodity exchanges.

Arbitrations at such commodity exchanges as GAFTA or FOSEA²⁵ are international, both in terms of the parties to the dispute and the flow of goods; they may involve substantial amounts. Contrary to many other international arbitrations, they are completed rapidly, at low costs and, presumably, at a high rate of satisfaction with the process by those concerned with it.

How do they differ from those other arbitrations which cause so much complaint about the time and money they consume? The principal differences relate (a) to the nature of the dispute and (b) to the context in which it is resolved.

Concerning their nature, the disputes in commodity arbitrations relate in most cases to a number of standard situations which arise out of a specific type of transaction, concluded normally by reference to the same legal system and on the basis of forms of contract which can be described as 'collective' contract forms or conditions since they are prepared not by

²⁴ Where such confidence exists, the comparative advantages of institutional arbitration, indeed, are much reduced. At any rate, even in institutional arbitration, the parties and the arbitrators make major contributions in this respect as shown by Lalive, op. cit. at pp. 305-312.

²⁵ Grain and Feed Trade Association (GAFTA) and Federation of Oils Seeds and Fats Associations Ltd (FOSEA).
individual traders, but by the community of traders which support the commodity exchange.

The resolution of these disputes takes place among the group of traders at the commodity exchange who have been and expect to remain in continued business relations. Thus, while the parties to the dispute may come from countries with very different legal and political systems, their representatives form part of a community. The arbitrators are members of this community and enjoy the respect of their peers. They deal with the dispute on the basis of procedural rules which are known to and accepted by all participants in the proceedings. Normally, they reside and meet in the city where the commodity exchange is located and where the parties have residents competent to deal with the case.

In many other international arbitrations these elements are absent; there, the disputes relate to often complex factual and legal situations which differ largely from one case to another. Standard forms of contract, where they are used, are often those prepared by one of the parties only; collective standard conditions which exist in some industries are often employed in versions modified by a particular user or adapted to a particular case. The law applicable to the dispute differs from case to case and frequently the choice of law forms one of the issues to be decided.

The context in which these other disputes are resolved also differs notably from that of the described commodity arbitrations. The parties, their representatives and counsel not only come from different countries but, in many cases, differ greatly in their approaches and procedures for dispute resolution.

It is not infrequent that one or several of the participants in an international arbitration are unfamiliar with the rules and practices applicable to the proceedings. An important task of the arbitrators in such proceedings is to establish the basis of and the rules for communication among the participants and to create with the parties a minimum amount of confidence. In addition, the participants generally come from places far apart and have busy schedules; their meetings are difficult to organize and are often costly.

Many international arbitrations, thus, raise a host of issues which require investigations in many different areas of law, procedure, commerce and science. Much care must be taken to ensure that the procedure takes

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26 The best known of such internationally used collective conditions of contract are probably those prepared under the auspices of the International Federation of Consulting Engineers (generally referred by its French acronym FIDIC) for Civil Engineering Construction (Red Book) and, to a lesser extent, those for Electrical and Mechanical Works (Yellow Book).

27 In proceedings before foreign courts the resulting communication difficulties occur in the relations between a party's ordinary counsel (in-house or at its place of business) and the lawyer admitted before the foreign court. In arbitration, the party's ordinary counsel may plead the case with resulting reductions in cost (see Karrer, op. cit. at p. 37). But the communication problems then arise before the arbitral tribunal.
account of this complexity and to assure the parties of its fairness and of the justice of its outcome.

These circumstances determine the directions and the limits of efforts which can be made in order to reduce the costs of such arbitrations. The efforts should be directed primarily at focusing the procedure to the specific requirements of the disputes considered and then at limiting the issues which have to be decided in these procedures.

Before discussing this aspect of procedure, another point should be briefly addressed which is considered occasionally as a potential source for saving costs.

III. REDUCING COSTS BY PROCEEDING BEFORE A SOLE ARBITRATOR

Since the arbitrators’ fees and expenses are a major cost item and since a plurality of arbitrators often creates difficulties and delays in the scheduling of meetings and in the deliberations, savings and simplifications in the procedure can be obtained by reducing the number of arbitrators and having the dispute decided by a sole arbitrator. Where the amount in dispute is low, this approach is indeed often chosen, especially in institutional arbitration.

However, the three-member tribunal has distinct advantages in dealing with the complex situation which arbitrators must face in many international disputes. First of all, having a person of its choice sitting on the tribunal is a source of some comfort for a party. In the present environment of very limited judicial control over arbitrators and their decisions, there are, indeed, few assurances for fairness and justice other than the qualification of the arbitrators and the understanding that the arbitrator appointed by a party, while he should be impartial and not an advocate of the party, should see to it that its position is properly considered.28

Secondly, the resolution of complex disputes, as they are submitted to international arbitration, often requires a great variety of qualifications which rarely can be found in one person alone. A mix of qualifications among the members of the tribunal, thus, can be helpful for a competent resolution of the dispute.

Thirdly, and perhaps most importantly, a panel of three qualified arbitrators, as a result of its internal consultations and the confrontation of views, is likely to reach a more balanced decision and to take better account

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28 It is this assurance of the proper consideration of its position which a party should expect of the arbitrator appointed by it, not its unconditional support; in this sense see, in particular, Eugen Bucher: 'Zur Unabhängigkeit des parteibenannten Schiedsrichters' in Postskript Kummer (Bern 1980) at p. 599.
of the dispute in its complexity than even a very highly-qualified sole arbitrator can do.

If all three arbitrators approach their mandate with competence and impartiality, a tribunal of three members appears to be the better solution for complex disputes. Cutting the number of arbitrators to one, therefore, does not appear as a very advisable method of cost-control.

IV. FOCUSING THE PROCEDURE: THE CASE FOR INTERACTIVITY

Much more room for cost-saving seems to exist in the manner in which the proceedings are conducted. This conduct depends not only on the arbitrators but also to a large and often predominant extent on the parties and their counsel. Much of the delay and high costs about which parties to international arbitration proceedings complain are in fact due to actions of their own counsel, both in the manner in which they frame the case and in their procedural moves.

Some of the time and costs absorbed by such action of counsel may be genuinely necessary for the proper defence of the case; in some cases, much of the time and costs are due to incompetence of counsel or to dilatory tactics. In between these two extreme situations, there is a wide range of action which could be simplified and, in many cases, avoided by a better communication between arbitrators and counsel. It is this range to which particular attention should be paid and where improvements are likely to be most effective.

In many cases, the conduct of international arbitration cases is largely determined by rules and practices developed in domestic court proceedings. While some of these mechanisms may be a useful source of inspiration for conducting an international arbitration, it should not be overlooked that they were developed in a domestic context and for the purpose of a different kind of proceedings. Therefore, care should be taken to avoid importing into international arbitration unnecessary encumbrance through reference to rules of domestic court proceedings and the habits and practices developed there.

When deciding the manner in which the procedure should be conducted, the question should not be whether preference is to be given to a

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29 The subject received particular attention at the 1990 ICCA Congress on Effective Proceedings in Construction Cases, published in ICCA Congress Series No. 5. Among the many useful papers presented on this subject, the following are particularly relevant (Humphrey Lloyd, Robert Briner, Jan Paulsson, Piero G. Parodi); see also Schwartz: op. cit. at p. 15.

30 Redfern and Hunter, for instance, stress that arbitrations 'should not be conducted with all the time-consuming formalities of proceedings before a court' (op. cit. at p. 248). See also the criticism cited by Uff (op. cit. at p. 31) describing arbitration as now practiced in English construction disputes as 'a pale imitation of High Court procedure'.

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civil law or a common law approach. Rather one should ask how to assure most effectively and at the lowest costs that the arbitrator correctly understands the parties' case and the evidence they offer in support of it. This objective should guide both the choice of the procedural means at the disposal of the parties and the limits imposed on their use.

If one views international arbitration cases, one can find many instances where the proceedings contain measures which appear unnecessary or unproductive for this objective; on other occasions the proceedings fall short of meeting it adequately. There is indeed much room for reform directed at improving the arbitrator’s understanding of the case and the evidence and at avoiding measures and the resulting costs which do not serve this objective.

There is, of course, a variety of ways for achieving this objective and arbitrators differ in their preferred approach. The particularity of each case and the conveniences of the participants, primarily the arbitrators and the parties’ counsel, should also be considered. In all cases, however, it is suggested that a high degree of interactivity is an essential factor in the efficient conduct of an arbitration: while it is for each party to formulate its case, arbitrators should not limit themselves to observing its presentation.

Once the case has been formulated, they should take an active role in the procedure, assure themselves that their understanding of the parties’ positions is correct and that the procedure, especially with respect to the marshalling of evidence, corresponds to the requirements of these positions. It is submitted that, through such interactivity, the parties’ rights to a fair hearing of their case is particularly well protected.

As an example of such an interactive conduct of the procedure one may take the following sequence:

- The parties are first given an opportunity to fully expose their case in a written exchange of pleadings. The presentation should be as complete as possible. To the extent feasible, written evidence on which a party relies in support of its allegations should be produced with these pleadings. Other evidence (such as witnesses, experts, site inspection) should be specified at the same occasion, for instance by identification of the person, his status

\[34\] In matters of civil procedure, there are important differences between systems normally included within one or the other category; for instance between the procedure before English and American courts and between those before French and German courts. Contrasting civil law and common law procedure, thus, does not appear as very helpful. Moreover, as shown for instance by Claude Reymond, the differentiation between systems of civil procedure is far more complex than can be expressed by such stereotype characterizations as inquisitorial and adversarial (‘Civil Law and Common Law Procedures: Which is More Inquisitorial? A Civil Lawyer’s Response’ 1989 5 Arbitration International at pp. 357-368).

\[35\] As expressed by Uff, the arbitrator has a "positive duty to direct the arbitration in the right course, without the comfort of being able simply to leave the parties to get on with the case." (op. cit. at p. 34).

\[36\] Where a large volume of written evidence is expected, it is advisable that a system for presenting and referencing the documents be agreed in advance.
and function and the facts on which he could testify. After the exchange of pleadings, the arbitrator should take an active role: he should examine the parties’ respective cases and test his understanding of them; where necessary, he should seek clarification.

— Once the positions are clarified, the arbitrator should define at least provisionally the issues which, in his understanding of the case, require decisions; he should give the parties an opportunity to comment and, where necessary, to correct this understanding.

— He should then identify the facts which require to be established and decide which of the evidence offered appears capable of providing support for the relevant and contested allegations. This evidence and no other should then be marshalled.

— Having heard the parties’ conclusions on this evidence and any clarifications sought by him, the arbitrator can decide the case.

This is, of course, only a general outline for a potential interactive sequence. In practice, each case requires adaptations, and variations are possible. But in all cases, it should be discussed between the parties and the arbitrators at a very early stage of the proceedings, probably best before the first exchange of pleadings (perhaps preceded by a short written outline of each party’s case).

If handled properly, this approach concentrates the procedure on the issues central to the dispute and assists the parties in addressing them effectively. It provides a ‘full and rigorous investigation’ of the parties’ respective cases, but guides this investigation to those aspects which are decisive for the outcome of the dispute.\textsuperscript{34} In other words, it provides both efficiency and a fair hearing.

The example also shows that, despite possible improvements in the conduct of the procedure and the resulting savings in time and cost, the process remains time-consuming and costly. It is submitted that further reductions in the costs of the procedure, through simplification of its successive steps, create serious risks of reducing fairness in the process.

Since a further reduction in the costs of the process, thus, can be had only at a price which, at least for an important dispute would appear excessive, one should look for additional means of cost-control in a different direction: efforts can be made to limit the scope and the number of disputed issues to which, in a particular case, this costly procedure is applied.

\textsuperscript{34} There are, of course, differences in the views on what constitutes a ‘full and rigorous investigation’. When Uff recommends that an arbitrator follow a procedure which may fall short of such investigation (\textit{op. cit.} at p. 34) some of the restrictive measures suggested, indeed, lead to focus the proceedings without affecting the arbitrator’s understanding of the case.
V. IDENTIFYING THE ISSUES TO BE DECIDED

The term 'issue' is used frequently in discussion about arbitration procedure. However, its meaning is not clearly defined and may differ for instance from one arbitrator to another. These differences are particularly apparent if one compares Terms of References prepared by different arbitrators and the substance matters which are defined under the heading of 'issues to be decided'.

In this article, the term 'issue' is understood in a wide sense: it refers to all matters, whether of fact or law, related to a particular dispute on which the parties disagree.

Since the matters of substance on which the parties may disagree in an arbitration may be of very different kinds, and since such differences in kind may require differences in the manner in which an issue is treated, some distinctions must be made. The following three categories are suggested.

(i) *principal issues or claims*: when bringing an action or when making a counterclaim, a party seeks a certain result which the other party denies. This desired result is the object of the arbitration procedure and should be expressed in the prayer for relief or the claims in a procedural sense. The concept of such prayer for relief seems to be more developed in the French and German systems of procedure where it is described as 'conclusions' or 'Antrag'. However, in its basic form, it is an essential element of any arbitration which defines the task of the arbitrator by reference to the *petita* of the parties. These claims are dealt with in the award which may neither be *ultra* nor *infra petita*.

(ii) *procedural issues*: such issues do not concern the substance matter of the dispute, but the manner by which it is resolved. The category includes questions of jurisdiction, challenges of the arbitrator, disputes over evidence, organisational matters etc. If such issues are raised by a party and no understanding can be reached on them, the arbitrator must decide them expressly or implicitly by disregarding them. Since decisions on such issues do not concern the substance of the dispute, they are not properly described as awards.

(iii) *preliminary legal or technical issues*: These issues form part of the substance of the dispute and must be resolved before the claims can be decided or as part of this decision. As examples, one may mention questions concerning the definition of the contractual obligations, conformity of

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36 Article 13 of the ICC Arbitration Rules requires that the Terms of Reference contain, inter alia, the 'definition of the issues to be determined'.

37 The requirement for an arbitrator to stay within the limits of the claims made by the parties is confirmed by the 1958 New York Convention which, in its Article V.1(c), lists as one of the admitted grounds for refusal of enforcing an award that it 'contains decisions beyond the scope of the submissions to arbitration'.

supplies to the specifications, timeliness of performance, applicability and
definition of rates or causal link between an event creating liability and the
damage for which reparation is sought. The preliminary issues which arise
in the context of a particular claim depend on the argument in support of
the claim and on the defence. But not all preliminary issues need be
decided: the arbitrator may find that a dispute over the definition of the
contractual specifications is not decisive because the goods actually deliver-
ed did not comply with either of the disputed definitions; he may find that
the dispute over conformity of supplies need not be resolved because, even
if the supplies did not conform, the recipient did not give timely notice of
the alleged non-conformity.

Who identifies the issues which must be decided? The answer differs
according to the category to which the issue belongs:

(i) The principal issues or claims must be identified by the claiming
party, the claimant or, in the case of a counterclaim, the defendant. While
the arbitrator may and, if necessary, should advise and assist the parties in
the clear description of their claims, it is up to each to determine which
claims it wishes to submit to arbitration. To the extent that they are
contested, such claims must be decided by the arbitrator in his award.

(ii) Procedural issues are identified by the party which raises them. Here
again, the arbitrator may and, where necessary should, advise in the suitable
formulation of the procedural motion; but the identification of the issue
depends on the party making it.

(iii) Preliminary issues are a function of the claim and the manner in
which the parties argue in support of or against the claim; insofar as it is the
parties who determine the identification of these issues. In the end,
however, it is for the arbitrator to determine how the principal issue is to be
resolved. Therefore, the final identification of preliminary issues is a task of
the arbitrator. The procedural difficulty arises from the inter-relationship
between on the one hand, the parties’ argument and evidence and on the
other, the arbitrator’s identification of decisive preliminary issues.

The identification of these issues has considerable impact on the costs of
the procedure and, therefore, deserves some further discussion. Decisive
preliminary issues must be identified, at the latest, when the award is
drafted. Some arbitrators delay this identification until that time. This is a
prudent approach which is not without merit: at the end of the proceedings
when they are writing the award, the arbitrators are best in a position to
determine which preliminary issues are decisive and which are not; indeed,
frequently in the course of deliberating the decision and of drafting the
award, arbitrators reconsider their views on the relevance and decisiveness
of preliminary issues.

However, there are considerable disadvantages in waiting with the identi-
fication of decisive preliminary issues until the end of the proceedings. Not
knowing which of the possibly relevant issues will be found decisive, the
parties must argue and produce their evidence for all of them. In some cases, this can lead to massive waste of time and efforts. It is submitted that a major, if not the principal, source of wastage and dissatisfaction with many international commercial arbitrations lies in an inadequate focusing on the issues which finally are found to be decisive. It is in this area that probably the largest potential for improving cost control and efficiency can be found.37

While an early identification of decisive preliminary issues, in principle, has its obvious advantages, its practical application gives rise to difficulties and is not without risks. The principal source of difficulties has been mentioned already: the assessment of the case by the arbitrators, and therefore their view on which issues are decisive may vary during the course of the proceedings. As the case proceeds, as witnesses and experts are heard, new arguments are discovered and developed by the parties and the deliberations among the arbitrators progress, issues may lose their importance and others, which previously were considered marginal, may become controlling.

It follows that, normally, the decisive preliminary issues cannot be defined by the arbitral tribunal once and for all at the beginning of the proceedings. This identification, in most cases, will have to take place progressively, in the form of a process between the arbitrators and the parties: interactivity, here too, is an essential ingredient.

In the sequence of proceedings described above, a first identification of issues in general terms might be attempted at the preliminary meeting. After the first exchange of pleadings, the arbitral tribunal should be able to identify the issues much more precisely; the parties should be heard on this identification. The issues thus identified, then, should guide the choice of subjects for the hearing which thus could be properly focused.

It cannot be excluded that, during or even after the hearing, an issue not previously identified becomes decisive. The necessary adjustments may cause delay and additional costs. However, if the process has been properly managed, it can be expected that such additional costs are far below those which have been saved by focusing the proceedings on the issues identified by the arbitral tribunal in consultation with the parties.

VI. PRICING THE ARBITRATOR’S SERVICES

The arbitrator is engaged to resolve a dispute. The price which the parties pay for this service consists of the cost of the procedure and the arbitrator’s fees. As previously explained, the costs normally are reimbursed as they

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37 A good example of how efficiency can be gained by focusing the proceedings on critical issues is given by Ulf, op. cit. at p. 36.
arise and the fees are fixed by reference to a variety of methods and criteria. Most systems for fixing the fees provide little, if any, incentive for cost-efficient conduct of the procedure.\textsuperscript{38}

There can be little doubt that the most effective means to ensure cost-effectiveness in the production of goods or the provisions of a service is a fixed price agreed in advance, generally in the form of a lump-sum. The person providing the goods or service is best placed to evaluate the resources required and to manage them in the most efficient manner. However, a lump-sum price, as any other fixed price agreed in advance, requires a precise specification of the goods or service to be provided.

It is the nature of things that, in a dispute of the complexity described above, the scope of work of the arbitrator cannot be adequately specified in advance. It depends on a great variety of factors which are unknown or insufficiently known to the arbitrator at the beginning of the procedure and over which he has only partial control during the proceedings. For the settlement of a dispute of the type discussed here, a lump-sum price or even a lump-sum fee would normally not be appropriate.\textsuperscript{39}

The situation is somewhat different if one sets out to price the resolution of individual issues. In this respect, the scope of work may be more easily foreseeable and the difficulties for the arbitrator in controlling the evolution of costs may be smaller. Of course, one cannot generalize: some issues may be as complex and unforeseeable in their scope of work as an entire dispute, others may be sufficiently defined to allow a reasonably certain assessment of the work required and the commitment of the arbitrator to perform it at a lump-sum.

It is perhaps easier for an arbitrator, especially if he is qualified as a lawyer, to assess in advance the work required for an issue concerning jurisdiction or other procedural matters than those involved in deciding a claim. The assessment of the scope of work for a claim probably can be made much better at a later stage in the proceedings, once the preliminary issues have been identified with some certainty.

\textsuperscript{38} Schwartz argues that the ICC system of setting a range within which the fees are fixed provides an incentive to the arbitrators for an efficient conduct of the case (op. cit. at p. 10 et seq.). This incentive effect, if it occurs at all, is likely to be rather limited: first of all, the range itself depends neither on the volume of work required nor on the efficiency of the arbitrator. Secondly, the causes for cost-increases in an arbitration are numerous and the arbitrator has only limited control over them. Thirdly, the Court and its Secretariat can determine only with difficulty, if at all, whether the large volume of effort and expense required in a particular case was caused by the complexity of the case or the conduct of the parties (and therefore should entitle the arbitrator to fees in the upper part of the fee range) or whether it was caused primarily by the inefficiency of the arbitrator (and, thus, should entitle him only to fees in the lower part of the range). Nevertheless, it must be admitted that the mere existence of an upper limit to the fees may have a disciplining effect on an arbitrator.

\textsuperscript{39} In this sense Baumgartner, op. cit. at p. 249; Rüede and Hadenfeldt see lump-sum fees as possible arrangements (op. cit. at p. 163). According to Redfern and Hunter, however, fixed fee arrangements, covering all the work done by the arbitrators, including time spent at the hearing 'however long it may last', are made in 'cases of major importance, involving arbitrators of high international standing' (op. cit. at p. 251).
It follows that, if one wishes to introduce some cost-control through the pricing of the arbitrator's services, one would normally have to proceed in stages. In the following example, the stages are linked to the sequence described above: in a first stage, at the very beginning of the proceedings, the arbitrator may fix the costs and fee required for the preparation and the conduct of the preliminary meeting at which the procedure is organized. At this preliminary meeting, the fee for the next stage can be agreed, covering the procedure until after the exchange of pleadings and the organizational meeting following this exchange. On the same occasion, it might be possible to fix a lump-sum for the fee and, perhaps also, for the costs concerning possible proceedings on jurisdiction or on other procedural issues identified in this early stage already. After the exchange of pleadings, the arbitrator will have a better understanding of the scope of work required for deciding the claims. For some claims he may find it possible to fix a lump-sum fee. For others, he may prefer to proceed first on a preliminary issue and commit himself only with respect to the fee for deciding this issue. In the case of some other claims, no commitment on a lump-sum may be possible at that stage or at all.

In all cases where the arbitrator makes a commitment on a lump-sum basis, unforeseen events, including new incidents of substance or procedure raised by the parties and their lawyers, should be reserved. In order to do so, the assumptions should be specified which the arbitrator made when setting the lump-sum. Such assumptions include for instance the principal preliminary issues, the approximate duration of the hearing or the number of witnesses. If there are major changes in these assumptions, the lump-sum will have to be reconsidered. Difficulties might arise in this context when the additional scope of work or costs are caused not by the parties but by the arbitrator, either because of inefficient management of the proceedings or because he requires additional evidence or argument.

It should be understood that the sequential pricing of arbitration services on a lump-sum basis, as proposed here, seems to be a new approach for which there is only little experience. In its application, various adaptations may be required. In particular, some claims may not be capable of, or suitable for, separate pricing, but require to be considered collectively in the course of the same phase of procedure and at the same hearing without much room for distinction with respect to scope of work and costs. In such cases, it may be preferable to price several issues jointly or price one or several preliminary issues distinctly from the price of the claims to which they relate. In the application of the system, the specific situation of each case, of course, must be taken into account.

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40 It would be prudent for him to require an advance twice the amount required to be paid in equal share by the parties. If only one of the parties pays its share, the case may proceed to the preliminary hearing. If both parties pay, the excess can be credited for the remainder of the proceedings.

41 There is some experience, in separate pricing of the initial stage and of such issues at jurisdiction. The present author is not aware of cases where separate pricing for the entire dispute, as suggested in the text, has been attempted.
VII. THE PRICING OF ISSUES AS A MEANS FOR FOCUSING THE PROCEEDINGS

In the present practice of international arbitration, the manner in which the arbitrator's fees are fixed allows little, if any, differentiation with respect to the relevance or usefulness of the various elements of the procedure for the settlement of the dispute, nor with respect to the responsibility for costs caused by each of these elements.

Separate pricing allows such differentiation and, thereby promotes cost-effective procedural decisions. These effects occur in two areas: (i) separate pricing facilitates allocation of cost responsibility to the party which has caused the costs; (ii) it enables a cost–benefit analysis and thereby promotes procedural decisions by which the parties concentrate the proceedings on the issues which are most important for them. In addition, separate pricing (iii) may facilitate fee negotiations with the arbitrators.

(i) The cost responsibility question is set in the following context: each principal issue and each procedural issue is introduced to the procedure because one of the parties wants to achieve a certain result. The need for a decision by the arbitrator arises only insofar as the other party objects. The principal issues or claims, by definition, are introduced by the claimant – or the counterclaimant – procedural issues may be introduced by one or the other party.

Now, if each issue is priced separately, the costs can be awarded separately, too. Each party can thus evaluate the risk of being intransigent on an issue by forcing a decision of the arbitrator. As a first effect of pricing issues separately, one can thus expect a reduction in frivolous or exorbitant claims and in dilatory motions or defences. The effect is likely to be particularly noteworthy if each party is required to advance the costs for deciding the claims and procedural motions which it submits to the arbitrator. Separate pricing of issues holds each party responsible for the procedural costs caused by its unreasonable positions. In this manner, responsibility for costs can be allocated much more accurately and, if submitted, more cost effectively, than this can be done in the present system where 'costs follow the event'.

(ii) The proposed system has additional potential in promoting a cost–benefit analysis with respect to each of the issues submitted to arbitration. Apart from considering which party in the end will bear the costs of deciding a certain issue, the parties can examine whether the benefit of having a certain issue decided in the arbitration is worth the costs of

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43 Karret has described the salutary effect which the request for an advance on costs can have on frivolous or exorbitant counterclaims (op. cit. at p. 42).

44 For a discussion of present practice with respect to decisions on costs, see Nurick, op. cit. (with reference to ICSID, ICC, ad hoc proceedings and the Iran–US Claims Tribunal) and Schwartz, op. cit. (with respect to ICC proceedings).
reaching this decision. Some examples may illustrate the considerations which are likely to be made in such situations:

(a) Issues of jurisdiction may be dispositive of the case; if the party raising such a defence prevails with it, the case is dismissed. It does not seem very likely that, by separate pricing, a party raising such an issue will be persuaded not to pursue it. However, there are issues of jurisdiction which, even if they are decided in favour of the party raising them, do not dispose of the case; for instance, the parties may be in dispute about the question of which company of a group is the right defendant; or the claimant may wish to bring the arbitration not only against the subsidiary which actually signed the contract containing the arbitration clause, but also against the mother company with which the contract was negotiated. In both cases, the arbitration will proceed against one of the companies named as defendants and the issue merely concerns the question of whether the claimant, if it prevails, has one or several debtors against whom the award can be enforced. If the costs of deciding such issues of jurisdiction are identified separately, the parties may have a strong incentive to examine whether the issue really needs to be decided in costly arbitration proceedings or whether a different solution can be found.

(b) When a party submits a long list of claims to arbitration, some of the smaller ones may cause procedural costs out of proportion to the parties’ interest in a decision by the arbitrator. A separate identification of the costs highlights this situation and may incite the parties to find a more cost efficient solution – for instance by agreeing that they be awarded in the same proportion as that between claim and award for some other claims, identified as ‘key’ or ‘reference claims’ which will be decided by the arbitrator.

(c) Some preliminary issues may be central to the parties’ disagreement. To the extent to which the issue is indeed controlling for the decision on the claims concerned, it is unlikely that the parties could be convinced to settle the issue, even if relatively high costs are required for its decision. However, there may be other preliminary issues which, while being of secondary importance, are costly to resolve. When the costs of proceeding on such issues are identified to them, the parties might be prompted to reach agreement on them or simplify their resolution, e.g. by agreeing on some aspects such as rates for quantification of damages.

(d) Pricing the resolution of issues in arbitration might also increase the willingness of the parties to refer some of them, in particular certain

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4 Robine has stressed the importance which an assessment of the costs of the procedure has for the party’s determination on an amicable settlement of the dispute (op. cit. at p. 43).

4 In the present author’s experience, such situations are frequent and absorb considerable amounts of time and resources.
preliminary issues such as quantification, to alternative methods of resolution such as an attempt at joint determination by the parties' experts.46

(iii) Finally, concerning fee negotiations, it should be pointed out that separate pricing of issues provides a basis for more rational negotiations between the parties and the arbitrator about his fees. In arbitrations where the fees are not fixed by an institution, questions relating to the fees are particularly delicate. Some arbitrators do not wish to have any discussion about the matter and fix them unilaterally. Others state to the parties the principles on which they will make their decision or even discuss the amount with them; some even seek agreement on the fees. In all cases, the parties are in a difficult situation because, with respect to the fees, the arbitrators decide in their own case and the parties fear that, in questioning the fee decisions or proposals by the arbitrator, they risk to antagonize him.47

When the pricing discussion takes place by reference to individual issues by an approach as that described here, the parties have somewhat more room for negotiation. Once the arbitrator has identified the issues and specified the assumptions made for defining his scope of work, the parties, rather than having to say bluntly that the fees are too high, can propose modifications in the scope of work, for instance by suggesting that certain preliminary issues be agreed or left for separate determination or by proposing simplifications in the procedure. On the basis of such adjustments in the scope of work reductions of the arbitrator's fee proposal can be considered without the parties having to fear offending the arbitrator and without the arbitrator having to fear loss of face.

In conclusion on this point, the effect of separate pricing on the conduct of the procedure will obviously depend on the particular circumstances of each case. There may be situations where, due to a profound antagonism or for other reasons, the parties, or one of them, will not show any inclination to consider a cost–benefit analysis in their procedural decisions. But there should be no doubt that, as a system, separate pricing of issues promotes cost consciousness both with the parties and with the arbitrator. It provides a strong incentive to focus the proceedings on those issues which are central to the parties' dispute and which are best resolved by a decision of the arbitrator in unavoidably costly proceedings.

46 This practice seems to have been developed in England (see D.M. Cato and Ian Menzies, *Arbitration Practice and Procedure – Interlocutory and Hearing Problems*, London 1992 at p. 251); occasionally, it can be found in international arbitration (see Schneider, *op. cit.* at p. 448).

47 Schwartz describes the 'uncomfortable position' in which the parties find themselves in such negotiations (*op. cit.* at p. 9, note 8). Redfern and Hunter refer to the reluctance of the parties to 'upset the arbitrator by appearing to criticise their fees' but state that such reluctance is not justified: 'Arbitrators of the right calibre should not take offence, if it is suggested to them, that they are proposing to charge rather more than the "going rate", so long as the suggestion is made with proper courtesy' (*op. cit.* at p. 252).
VIII. INCENTIVES FOR COST EFFICIENT MANAGEMENT OF THE PROCEDURE?

The effective application of the system described here depends to a large extent on the motivation of those responsible for the conduct of the procedure in each case. In order to strengthen this, one might consider providing incentives.

The system provides effective incentives for the parties, since they are the ones who bear the costs and hence have an interest in their reduction.

Additional incentives for the parties are provided by the decisions on cost and by the initial uncertainty about them. The decision by which the costs are awarded against the party losing on an issue, serves as incentive against a party pressing an issue on which it stands little chance to win. Since, at the time when the costs are engaged and, in particular, when the arbitrator’s scope of work and his fee are agreed, it is still uncertain which party will have to bear the costs, there is an incentive for both parties to limit the costs.

With respect to the arbitrator, incentives to reduce costs are less readily apparent. One might even say that cost-savings are against his immediate financial interests, since they are linked to a reduction in his scope of work and, hence his fee. This consideration might justify a bonus scheme by which the arbitrator participates in the savings of procedural costs which his efficient conduct of the proceedings produces.

Such an incentive scheme for the arbitrator could be based on a target cost and provide that a share of the difference between target and actual costs be paid to the arbitrator as a bonus.

The target would have to be agreed at an early stage of the proceedings. It should reflect the maximum cost which the parties reasonably may have to expect. Since, at the very beginning, the possible maximum scope of work can hardly be foreseen, it would appear more appropriate to fix the target by reference to the amount in dispute, expressed as a percentage of this amount. If during the course of the proceedings the amount of the claims is increased, the target should be adjusted accordingly.

At the same time, the parties and the arbitrator should also agree on the share of the savings which the arbitrator should receive. This share should be fixed at a percentage which is high enough to serve as an incentive to the arbitrator; but it should leave enough of the savings for the parties, so that they, too, maintain an interest in reducing the costs.

At the end of the proceedings, the actual costs would be compared to the target costs. The difference between the two constitutes the savings to which the percentage agreed as the arbitrator’s share is applied. The result is the arbitrator’s bonus. This bonus should be paid even if some or all claims have not been decided but settled amicably. From the point of view of the parties, such a settlement is the most satisfactory completion of an arbitration and, in many cases, the arbitrator, directly or indirectly, will have
contributed to it. It appears only just, and in the interest of a proper functioning of the incentive scheme, that he should benefit from the savings in procedural costs caused by such a settlement.

IX. CONCLUSIONS

The system of 'lean arbitration' proposed here essentially consists of:

- interactive conduct of the proceedings;
- progressive identification by the arbitrator, in consultation with the parties, of all issues to be decided;
- separate pricing for the resolution of each issue, preferably by lump-sums, agreed in advance;
- an incentive scheme through which the arbitrator participates in the savings caused by an efficient conduct of the proceedings.

Some elements of this system can be found in present international arbitration practice: a number of arbitrators, especially on the European continent, apply a high degree of interactivity in the conduct of the proceedings. The identification of issues is required for instance in the ICC Arbitration Rules as part of the Terms of Reference, although such identification does not necessarily occur in the manner recommended in the present article. Some arbitrators, especially those conducting the proceedings interactively, continue to refine the identification of issues as the proceedings progress. Separate pricing, however, seems to have been used only very occasionally and only for some isolated issues. Cases where incentive schemes have been applied in international arbitration are not known to the present author. At any rate, as a system, 'lean arbitration' as proposed here seems to be new.

As with any new system, the application of the proposal in arbitration practice will require changes in the attitudes of those involved in the proceedings. Some of its features may require adaptations of rules and practices. Separate pricing of the resolution of issues, while it would probably create no difficulties under most rules for ad hoc arbitration, may require adaptations in the rules or, at least, in the practices of those institutions which fix the fees of arbitrators. But it does not appear inconceivable that, for instance in ICC arbitration, after the advance has been fixed by the Court and paid by the parties, the arbitrator discusses with the parties the amounts for the resolution of specific issues, recommends them to the Court which then fixes the fees accordingly and pays them out of the advances received.

In any event, the initiatives for the changes will have to come primarily from arbitrators, possibly from the institutions and to some degree also from the parties and their counsel. Cost and pricing issues, which in many
arbitrations are still treated rather discreetly and even with hesitation, must be approached openly and with a view to efficiency. After all and despite its special features, international commercial arbitration is a business service like many others and, if conducted properly, should respond not only to criteria of fairness and justice but also to those of efficient management.

As a new system, 'lean arbitration', for its full development will require testing in practical application. Such application may show defects and may lead to adjustments. But the risk of shortcomings which may be revealed should not deter from attempting its implementation. It is submitted that the system is a suitable and perhaps the most promising means for reducing costs in international commercial arbitration without reducing fairness of the process and justice in the result.