EARLY DISMISSAL IN INTERNATIONAL ARBITRATION: EFFICIENCY TOOL OR THREAT TO DUE PROCESS?

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ABSTRACT

The early dismissal has become an issue that is hotly debated in the modern international arbitration. Though initially viewed with a grain of salt, this has been part of most institutional rules, including those of the ICCIC and SIAC. It is adopted by tribunals and parties to deal with increasing complexity, delays and costs of cross-border disputes. The concept is modest: an instrument that is able to dispose of unmeritorious claims or defenses in a speedy manner that will save time and money. This simplicity however does not agree with the fundamental principles of arbitration, which is fairness, equality of arms and the right by each party to bring out his entire case. This clash of speed and due process makes early dismissal the centre of both the doctrinal and practical and judicial debate. This paper explores that tension by putting early dismissal within the broad history of arbitration procedure and by considering how tribunals actually apply it. It makes use of the frameworks such as rule 41(5) of ICISD Arbitration Rule and SIAC Rule 29 among other rule provisions of other big institutions. This discussion reveals the ways in which the tribunals decide what will be considered as a lack of legal merit in a manifest sense, how they strike a balance between a fast disposal and the obligation to grant a party a meaningful opportunity to be heard and how they make a trade-off between procedural economy and the danger of closing the door to the evidentiary stage too soon. It is particularly attentive to instances of tribunal restraint, alerting that excessive or abusive use will distort arbitral judgment or destroy legitimacy. The paper also examines the national courts and their treatment of the decisions regarding early-dismissal cases at the enforcement or set-aside hearings. A tentative but nascent trend is being observed by UK, Singapore, US, and Indian courts: they tend to defer to the discretion of the tribunal, but they are looking at cases where the expedited procedure could border on unfairness. Combined with a set of friendly judicial attitudes, these contribute to the development of the new standards of review and the location of the balance between the autonomy of arbitral review and the protection of the interests of the population. The paper will conclude with a list of reforms that will enhance predictability and fairness. It suggests more distinct cutoffs, institutionalized protections, and drafting by partisanship. These are done to enable early

dismissal to be used as an efficient tool in the process of ensuring that the procedural integrity that maintains the arbitral justice is maintained.

Introduction

International arbitration is based on the promissory idea that it provides parties with a dispute-resolution mechanism which is faster, more adaptable, and less burdensome than the national courts. Nevertheless, with the increase of the complexity of commercial disputes and the increase in maximum evidentiary requirements, arbitration is often unable to meet these standards.[1] There is growing noise of parties complaining about lengthy schedules, the size of documents being generated, and the cost hikes, features that diminish the benefits that first made them look to arbitration.[2] In reaction, arbitral entities and tribunals have embraced procedural innovations that will help in improving efficiency. Some of these innovations include the early dismissal mechanism that allows the arbitrators to dismiss the claims or the defenses that are plainly baseless and thereby, avoid complete hearing.[3]

Early dismissal adoption is a significant change in the practice of arbitration. Traditionally, the aspect of arbitration has taken the cut-off measures that might deprive a party of presenting evidence with caution due to the priority of consent and procedural fairness.[4] This has the effect of authorizing a tribunal to summarily dismiss a claim giving rise to both practical and theoretical interrogatives: How should tribunals decide that a claim lacks merit manifestly?[5] How much of the efficiency can be brought to bear so as to constrain presentation of evidence? And does premature termination put the equality of treatment in danger or make the awards vulnerable to attack under the New York Convention?[6]

These questions are the hallmark of a broader conflict of modern arbitration. Although early dismissal is an acceptable solution to procedural inefficiency and the fact that arbitration is being abused by the parties bringing frivolous or strategically unsound claims, it also brings due-process concerns, especially on the right to a hearing, which is a critical element of the

[1]Pinsolle, Philippe, *Annulment of Arbitral Awards by State Court: Review of National Case Law with Respect to the Conduct of the Arbitral Process* (IBA Arbitration Committee Report, Oct. 2018).
[2]Davidson, Steven K & Genest, Alexandre, *Due Process and Procedural Irregularities*, in The Guide to Challenging and Enforcing Arbitration Awards — Fourth Edition (16 June 2025).
[3]Kenneth S. Carlston, *Procedural Problems in International Arbitration*, 39 AM. J. INT'l L. 426 (July 1945).
[4]Sergey Petrachkov, *International Arbitration*, 56 ABA/SIL YIR (n.s.) 171 .
[5]Richard M. Mosk & Tom Ginsburg, *Evidentiary Privileges in International Arbitration*, 50 INT'l & COMP. L.Q. 345 (April 2001).
[6] Nicholas S. Shantar, *Forum Selection Clauses: Damages in Lieu of Dismissal*, 82 B.U. L. REV. 1063 (October 2002).

legitimacy of arbitration.[7] The issue of whether early dismissal is understood as a well intentioned tool of efficiency or a threat to procedural fairness will depend upon how these two conflicting values are balanced in practice.[8]

Conceptual Framework of Early Dismissal

Response mechanisms Early dismissal In response to the critique that protracted proceedings and frivolous claims were undermining the efficiency and integrity of arbitral practice, mechanisms of early dismissal were developed which appeal to common-law traditions of summary judgment, without prejudice to due process.[9] The idea was first developed in investor-state arbitration when Rule 41(5) of the IC SID Arbitration Rules was introduced in the year 2006, permitting tribunals to strike out claims that are manifestly without legal merit at a preliminary stage.[10] This has been later extended to commercial arbitration laws: SIAC Rule 29 (2016) (under pretext of claims and defences) expanded the scope to encompass claims and defences manifestly without merit or otherwise inadmissible and requires that the meritless claims be determined within sixty days; HKIAC Rule 43 (2018) followed a similar model; and the ICC although not having an independent rule provides by tribunal direction that meritless claims may be determined.[11] The major aims of early dismissal are to save resources, time, and abuse, through which the tribunals can sieve out the cases that are simply untenable at the outset of the full evidentiary proceedings and maintain the autonomy and fairness of parties. Early dismissal is also quite different as compared to bifurcation and summary judgment.[12] Bifurcation parts ways proceedings - commonly the determination of jurisdiction and the primary merits - and usually concerns the admissibility of evidence, at the same time early dismissal summarily abolishes apparent non-starters without analysis of merits. Summary judgment, particularly in the form used by SIAC, presupposes factual assumptions that are enough to support a trial on issues that can be triable, but nonetheless a higher viability test

[7] Ilias Bantekas, *Equal Treatment of Parties in International Commercial Arbitration*, 69 INT'l & COMP. L.Q. 991 (October 2020).
[8] Paul (I) Lewis, *Ten Years of Unfair Dismissal Legislation in Great Britain*, 121 INT'l LAB. REV. 713 (November-December 1982).
[9] *Dismissal Procedures*, 80 INT'l LAB. REV. 347 (October 1959).
[10] William W. Thayer, *International Arbitration of Justiciable Disputes*, 26 HARV. L. REV. 416 (1912-1913).
[11] Ilias Bantekas, Procedural Estoppel in International Commercial Arbitration Proceedings, 1 *Chinese J. Transnat'l L.* 35(2023), https://doi.org/10.1177/2753412X231167677.
[12]William W. Park, The *Lex Loci Arbitri* and International Commercial Arbitration, 32 *Int'l & Compar. L.Q.* 21 (1983), http://www.jstor.org/stable/759466.

than the patent flaw test used in early dismissal.[13] These tools, in combination, balance each other in that efficiency is tackled in unique situations; bifurcation on the complexity of procedures, summary judgment on weak cases, early dismissal on outright baseless cases, and in this way early dismissal becomes a focused means of improving procedural efficiency to balance due process pressures.[14]

Economical Reasons of Early Dismissal.

Among other strong points presented in favor of early dismissal is the fact that it can significantly minimize the cost and time involved in the arbitration process.[15] With the rising resemblance of arbitral proceedings to the full-scale litigation, the parties add gradually rising costs of large-scale incurrence of documents, expert testimony, and procedural cycles. Premature termination provides a solution to ending the proceedings at the very beginning in case a claim or defence is clearly untenable to save the parties the waste of money and inefficient hearings.[16] Furthermore, it is decisively important in preventing frivolous, speculative or bad-faith claims which can be strategically pursued to postpone proceedings or intimidate settlements. By allowing tribunals to address these claims expeditiously early dismissal serves as a disciplining mechanism to procedural economy in that the tribunal can concentrate resources in case management on the focal issues as opposed to getting sucked into the vortex of fruitless, pointless oppositions.[17] The practice of other institutions like IC SID and SIAC depicts the practical advantages of early-dismissal. Rule 41 of the ICSID and Rule 29 of SIAC have been applied to cases where legal foundation of claims is evidently unsound, or the jurisdictional basis is unsound meaning that the tribunal can end the proceedings prematurely to avoid the needless costs increase.[18] These instances prove that it is possible to use early dismissal as a method to improve overall efficiency and predictability of the arbitral process in case of judicious use. The mechanism also has a more global effect on case-

[13] Cavinder Bull, An Effective Platform for International Arbitration: Raising the Standards in Speed, Costs and Enforceability, in *Int'l Orgs. & the Promotion of Effective Disp. Resol.: AIIB Yearbook of Int'l L. 2019* 7, 7–27 (Peter Quayle & Xuan Gao eds., vol. 2, Brill 2019), http://www.jstor.org/stable/10.1163/j.ctvrxk3sj.4.
[14] Steven J. Stein & Daniel R. Wotman, International Commercial Arbitration in the 1980s: A Comparison of the Major Arbitral Systems and Rules, 38 *Bus. Law.* 1685 (1983), http://www.jstor.org/stable/40686527.
[15] Mark Friedman et al., International Arbitration, 41 *Int'l Law.* 251 (2007), http://www.jstor.org/stable/40708160.
[16] Kenneth S. Carlston, Procedural Problems in International Arbitration, 39 *Am. J. Int'l L.* 426 (1945), https://doi.org/10.2307/2193523.
[17] William W. Thayer, International Arbitration of Justiciable Disputes, 26 *Harv. L. Rev.* 416 (1913), https://doi.org/10.2307/1326088.
[18] Louk Faesen et al., Case Studies of Norm Development in Hybrid Conflict, in *From Blurred Lines to Red Lines: How Countermeasures and Norms Shape Hybrid Conflict* (Hague Ctr. for Strategic Studies 2020), http://www.jstor.org/stable/resrep26678.6.

management strategy: the very presence of early-dismissal will lead parties to make their pleadings more polished, and will increase the incentives toward procedural honesty, as well as provide tribunals with a proactive means of ensuring that proceedings are kept on course and on a sensible scale.[19]Therefore, early dismissal is becoming more and more viewed not just as a cost-cutting tool but as part and parcel of today arbitral case-management, to reestablish the quickness and efficiency with which arbitration was originally differentiated to litigation.[20]

Due Process Concerns and Criticisms

One of the common criticisms of the early dismissal in arbitration is that it could limit the fundamental right to an arbiter hearing (audi alteram partem). Summary disposal processes normally rule on cases at a stage after the parties have had an insignificant chance to present evidence or to interrogate opposing courtroom arguments;[21] Therefore, an unsuccessful party might be left with a valid complaint that it was not provided with a complete hearing. The associated risk, which is related to the right to be heard, is the fact that premature dismissal may lead to an inadequate review of evidence.[22] The default nature of the early dismissal is such that tribunals are obliged to determine that a claim is manifestly devoid of merit or falls beyond the jurisdiction of the tribunal on the basis of minimal factual evidence. This is because critics warn that what seems to be evident on pleadings might be altered when documents or expert testimony are reviewed; any hasty decision may lead to the factual question or any simplification of the law.[23] In fact, cases where tribunals have resisted summary procedures have been pointed out by empirical commentators and practitioners because they feared that the summary procedure would be making decisions involving complex facts based on an inadequate record. Arbitral overreach and the rejection in premature fashion is also an issue of concern as a symptom of judicialisation in arbitration. The broad discretion of tribunals to dismiss claims prematurely is associated with a risk of taking the scalpel and axe out of the

[19] Richard Painter et al., Unfair Dismissal, in *Employment Rights* 275, 275–320 (3d ed., Pluto Press 2004), https://doi.org/10.2307/j.ctt18fs38k.23.
[20] Marc J. Goldstein & Andrea K. Bjorklund, International Commercial Dispute Resolution, 36 *Int'l Law.* 401 (2002), http://www.jstor.org/stable/40707666.
[21] R. Floyd Clarke, A Permanent Tribunal of International Arbitration: Its Necessity and Value, 1 *Am. J. Int'l L.* 342 (1907), https://doi.org/10.2307/2186168.
[22] David L. Noll, Regulating Arbitration, 105 *Calif. L. Rev.* 985 (2017), http://www.jstor.org/stable/44630778.
[23] Giuditta Cordero-Moss, *UNCITRAL Working Group II: Early Dismissal and Preliminary Determination in Expedited Arbitration?*, Kluwer Arbitration Blog (Sept. 19, 2020), https://legalblogs.wolterskluwer.com/arbitration-blog/uncitral-working-group-ii-early-dismissal-and-preliminary-determination-in-expedited-arbitration/.

party/parties and placing them in the hands of the arbitrators, especially where institutional rules use open-ended language (e.g. the term manifestly without legal merit).[24] Certain critics refer to a kind of due process paranoia where tribunals are anxious over the prospect of being annulled or reviewed over their enforcement, and as such tend to either give excessive process leniency to parties or, ironically, to have dismissal powers too easily, which have become open to attack. This tension has not been just on paper; courts at the seat (and other enforcement courts) have on a few occasions carefully examined whether an early dismissal application was compatible with fundamental fairness and procedural protection.[25] Under the remedies approach, premature dismissal will provide certain bases of annulment or denial of enforcement. The national courts and the arbitral institutions review the decision that the tribunal provided the parties with a reasonable opportunity to state their case; in the case when the court identifies that decision of the tribunal on the material issues was taken without a proper procedure, the award may be set aside, or it may not be recognized by the due-process-related provisions of the Model Law and the New York Convention.[26] This exposure to law encourages the cautious practice of tribunal as well as prudent behaviour by the parties (either to seek early dismissal or to contest aggressively) and makes the management of the cases harder in some cases instead of easier. Lastly, prominent arbitral practitioners and scholars have called upon application of a dialed-back protection; as opposed to a wholesale ban on early dismissal.[27] These may include setting high standards of dismissal (highly visible and obvious lack of merit), setting of temporal restrictions on submitting applications, allowing a narrow scope of specific evidence where need be, and providing clear guidelines of the institutions to encourage predictability.[28]

Judicial Treatment of Early-Dismissal Decisions

The decision regarding early-dismissal is treated by courts and enforcement bodies in two

[24] Webber Wentzel, *The Early Bird Catches the Worm* (date unknown), https://www.webberwentzel.com/News/Pages/the-early-bird-catches-the-worm.aspx.
[25] Aditya Vikram Jalan & Shreya Choudhary, *Early Dismissal – A Fast and Furious Road to Justice?*, AZB & Partners (Aug. 19, 2024), https://www.azbpartners.com/bank/h1-early-dismissal-a-fast-and-furious-road-to-justice/.
[26] Early dismissal, summary dismissal and strike out in arbitration proceedings, LexisNexis (n.d.), https://www.lexisnexis.co.uk/legal/guidance/early-dismissal-summary-dismissal-strike-out-in-arbitration-proceedings.
[27] Iain Sharp, *From East to West: Combatting Due Process Paranoia and the Evolution of Early Dismissal Procedures in International Arbitration* (Sept. 26, 2025), https://ciarb.net.au/resource/combatting-due-process-paranoia-and-the-evolution-of-early-dismissal-procedures-in-international-arbitration/.
[28] Yarik Kryvoi, *Key Concepts of International Arbitration*, in *The Anatomy of International Arbitration* (Anna Petrig & Yarik Kryvoi eds., Routledge, draft chapter, forthcoming 2025) (draft 2024), available at SSRN, https://ssrn.com/abstract=4834154.

interrelated perspectives: (a) the public-law gate keeping role by means of such instruments as the New York Convention (recognition and enforcement), and (b) the domestic reasons of setting aside or vacating such awards at the seat of arbitration.[29] By a violation of due process, a common ground of refusal of recognition is found under the New York Convention (Article V(1)(b)) this means that when a tribunal dismissed a claim at an early stage, it will be subject to review to the extent that it can be shown that a party has been denied a reasonable opportunity of presenting its case.[30] Meanwhile, most national regimes (and federal laws, including the United States Federal Arbitration Act) assume a high standard in overturning an arbitral result; courts are usually unwilling to review tribunals on the question of evidence and fact absent a clear violation of the basic standard of procedural fairness. Due to these two forces, tribunals and courts have converged towards the idea that the standard of a legal early dismissal should be raised.[31] Both institutional formulations and the practice notes reiterate that dismissal must be limited to those claims that are plainly lacking legal ground or are simply out of jurisdiction; a test that demands an objection must be plainly visible on the face of the record available and not one that requires a denial of fact.[32] The practice of the International Centre of Settlement of Investment Disputes (ICSID) is an example of how Rule 41(5) applications are seldom successful: the tribunal should show that the objection can be disposed of without any difficulty in a clear and obvious fashion with relative ease and dispatch, and statistics show very few successful applications on summary dismissal. The case law affirms that the courts will affirm the decision of early-dismissal based on the situation when the tribunal has fulfilled the minimum requirements of procedural fairness. Singapore gives a recent and dramatic example: on a high profile appeal, the Singapore courts affirmed a successful early dismissal by SIAC rules whilst emphasizing that the finding by the tribunal that a claim was manifestly unsustainable is to be based on an objective and persuasive evaluation of the pleadings and other limited materials before it.[33] It is noteworthy that the approach of the Singapore Court of

[29] The Case for Summary Proceedings in Indian Arbitration: Learning from ICSID, SIAC and Global Practice,"SCC Times (Sept. 8, 2025), https://www.scconline.com/blog/post/2025/09/08/the-case-for-summary-proceedings-in-indian-arbitration-learning-from-icsid-siac-and-global-practice/.

[30]Summary Procedures in International Arbitration," Aceris Law (n.d.), https://www.acerislaw.com/summary-procedures-in-international-arbitration/.

[31] Eric De Brabandere, *The ICSID Rule on Early Dismissal of Unmeritorious Investment Treaty Claims: Preserving the Integrity of ICSID Arbitration*, Manchester Journal of International Economic Law, Vol. 9, No. 1 (2012), 23–44, available at SSRN, https://ssrn.com/abstract=2078363.

[32] SIAC Rule 29 on Early Dismissal — How Early Is Early?", Kluwer Arbitration Blog (May 9, 2023), https://legalblogs.wolterskluwer.com/arbitration-blog/siac-rule-29-on-early-dismissal-how-early-is-early/.

[33] Evgeniya Rubinina, *The LCIA Publishes its 2020 Rules: A Light-Touch Update to Meet Modern Needs*, Kluwer Arbitration Blog (Aug. 13, 2020), https://legalblogs.wolterskluwer.com/arbitration-blog/the-lcia-publishes-its-2020-rules-a-light-touch-update-to-meet-modern-needs/.

Appeal is characterised by the acknowledgement of the institutional ability to exercise rules about early-dismissal with a tactful approach and at the same time indicates that there will be subsequent checks of the appellate or supervisory overseeing that the right to be heard was not too restricted.Similarly, critics observe that SIAC Rule 29 (and similar rules in other Asian hubs) is construed very carefully and courts will consider whether the tribunal provided ample time to parties to make specific submissions prior to dismissal.[34] Conversely, jurisdictions that have a narrow vacatur or review regime (especially in the United States federal courts) are more likely to simply afford a broad discretion to tribunals on procedural matters, only intervening to a small set of statutory or constitutional bases of vacatur. It means that early-dismissal awards cannot be easily reversed in the United States provided that the process of the tribunal shows a minimum of fairness and the award does not rely on the open signs of prejudice or the blatant neglect of the law.[35] However, the procedural posture is significant: where an early adjournment results in an award that clearly establishes disputed facts without providing any viable possibility of evidence adduction, jurisdictional courts in different jurisdictions have been open to the possibility of refusing to enforce or confirm such an award. The practical implication is that the attack on set -aside and enforcement is based not on general doctrine but on the facts and procedures. Successful challenges usually claim that the tribunal (i) used an inappropriately low standard of defects manifested, (ii) resolved significant factual issues based on pleadings only, or (iii) deprived a party of any material opportunity to address a dispositive claim. In the presence of these elements, it has been held by the courts that the minimum fair-hearing standard under the Model Law or the New York Convention has failed and awards have either been set aside or non-recognized.[36] On the other hand, in those cases where tribunals record a thoughtful, narrowed-down process of reasoning - giving parties notice, permitting them to make targeted submissions, and not entailing the determination of disputed facts - courts have been prepared to endorse early dismissal as a legitimate case-management device. The comparison of the United Kingdom, Singapore, United States, and

[34] Ping Zhao, Stella Lu & Ice Zhang, Domestic Application of Early Dismissal Procedures in International Arbitration: Highlights from Recent Amendments to the Shanghai Arbitration Commission Arbitration Rules, JT&N (Aug. 22, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=00000000000000009155 (on file with JT&N).

[35] O. Thomas Johnson & Elizabeth Sheargold, Early Dismissal of Claims as a Tool to Enhance the Efficiency and Legitimacy of ISDS, in *By Peaceful Means: International Adjudication and Arbitration – Essays in Honour of David D. Caron* (Charles N. Brower & others eds., Oxford 2024; online ed., Oxford Academic, Feb. 22, 2024), https://doi.org/10.1093/oso/9780192848086.003.0016.

[36] Charlie Caher & Jonathan Lim, Summary Disposition Procedures in International Arbitration, in *The International Comparative Legal Guide to: International Arbitration 2018* 1–11 (Global Legal Group ed., 15th ed. 2018).

India indicates differences in focus and not in theory. English judges, whilst protective of arbitration and usually pro-enforcement, examine the question of whether the procedural rights of parties were observed (and more generally, the arbitration jurisprudence of the Supreme Court emphasizes the importance of scrutinising the process and issues of governing law). Singapore has of late shown a guarded readiness to justify considered early dismissals as it indicates the boundaries to which it may go.[37] The FAA generally establishes a deferential regime of confirmation used in the United States courts and is biased towards finality of awards. In other ways India is more interventionist: arbitration autonomy is under growingly respected by Indian courts; domestic public-policy and procedural fairness goals can result in restless review since; and advice on early-dismissal cases is in its infancy.In all of these systems, the common denominator is the same: early dismissals can only be legally condoned when tribunals meet a strict test in adhering to procedural fairness and narrowly restricting summary dismissal to indeed exceptional cases.[38] Stated succinctly, the way early-dismissal decisions are treated by the courts reconciles two institutional objectives of safeguarding the basic hearing rights of parties and the efficiency and finality of arbitration. It all turns out how well that record by the tribunal shows that the dismissal was restricted to claims that were proved unsustainable on the papers, and that parties received a fair, proportionate hearing. With tribunals recording such an equilibrium, courts and enforcers have normally been ready to support early dismissal; with tribunals failing to record it, awards can face set-aside or non-recognition.

Recommendations for Reform

A consistent reform agenda of early dismissal should be grounded in enhancing clarity, consistency, and procedural fairness and efficiency of arbitration should remain the same. To start with, arbitral bodies need to use more concise and consistent guidelines on when it is proper to dismiss an employee early. The existing rules manifestly without legal merit or there is no credible legal basis are still subject to interpretation and they promote a vastly varying tribunal practice. A refined standard ought to draw the line between (i) the jurisdictional deficiencies noted on the face of the record, (ii) the challenged claims, which are legally

[37] Due Process and Procedural Irregularities, in *The Guide to Challenging and Enforcing Arbitration Awards – 4th ed.*(Global Arbitration Review 2025), https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/due-process-and-procedural-irregularities.

[38] Andreina Escobar, Summary Dispositions: How Parties May Encourage Arbitrators to Adopt New Case Management Practices, 5 *ITA in Review* Issue 1 (2023).

impossible, yet the allegations of fact have been established, and (iii) the challenged claims, which can not be effectively proven without scrutiny of facts in some details, should not be rejected immediately. By positioning such differentiated thresholds, uncertainty will be minimized and tribunals will be guided into principled but cautious application of dismissal powers.

Second, the institutions need to think about the creation of a model rule on early dismissal harmonised with major arbitration frameworks. This rule must provide: (a) a clear high standard of dismissal; (b) a requirement on the party seeking it to state what was wrong with an exactness; (c) the assumption by the tribunal, that disputes of fact are often best resolved by early dismissal; and (d) a clear appreciation that early dismissal is not necessarily the right response to fact-intensive claims. An ideal rule would encourage alignment of SIAC, ICSID, ICC and UNCITRAL and other regimes and this would ensure that there is no forum-shopping and this would offer predictability to the parties involved.

Third, there should be strong procedural protection to defend due process. At least, tribunals ought to be asked to give notice of the possibility of early dismissal, request specific written submissions, and, where appropriate, to permit an expedited and narrow-focused hearing session with an aim to clarify the law. There should be a stringent time schedule (such as mandatory filing of dismissal applications within a limited time frame of the proceedings) because otherwise the option of encouraging early dismissal as a delay strategy in mid-proceeding can be used by the parties. Reasoned procedural orders should also be given by tribunals on why the threshold of early dismissal has or has not been reached; this transparency will minimize the chances of future set-aside proceedings and the process will be seen as legitimate.

Fourth, the criteria on which national courts that consider early dismissal awards ought to be drafted must become clearer. Courts ought to take a review that identifies between (i) the tribunal evaluation of the merits that deference is correct, and (ii) the procedural defence that strict scrutiny is warranted. The national courts must avoid determining that the tribunal was right in its ruling, but must determine whether the party was given a substantial opportunity to develop its case and whether the tribunal made use of the high standard that has been put to determine passing the dismissal. An enumerated standard would discourage mind-moving set-aside requests as well as provide that disgraceful due-process infractions are examination.

Lastly, contractual drafting would be important in strengthening party autonomy. Parties which get into the arbitration agreements must be advised to indicate whether they agree to such early dismissal, the applicable threshold, the procedure schedule and the nature of claims which are appropriate to be dismissed early. Parties can also choose to insist on a short oral hearing preceding dismissal, or restrict the tribunal in dismissing on purely legal grounds. Contractual clearness does not just minimize ambiguity, it also holds tribunals and courts accountable to the agreed procedural structure between the parties, making contracting more predictable and limited in terms of appeal.

Conclusion

This paper has shown that early dismissal is in an ambivalent stance in the sphere of international arbitration: it gives a substantive chance to eliminate delay, expenses, and abuse of process, but at the same time raises issues of equity and the right of one of the parties to be heard. The discussion largely supports the assumption that the idea of early dismissal is only beneficial when implemented in a carefully defined and strictly controlled context. When tribunals set a high evidential burden, offer targeted chances of parties to be heard and avoid an early conclusion of facts, early dismissal functions as a powerful tool of procedural efficiency. On the contrary, in cases where the mentioned safeguards are limited or selective, the mechanism is prone to set-aside challenges and it compromises the trust in the arbitral process.

In the present day, early dismissal is expected to become a more significant part of case management as the institutions will perfect their procedural regulations and will gradually allow it to be integrated in the arbitration agreements. The experience of judicial trends shows that it is cautiously accepted on the basis of close examination of procedural fairness in cross jurisdictions. At bottom, it is not inherent that early dismissal is in itself a threat or a panacea; it can only be legitimate when it is designed carefully and implemented with discipline. Further research is needed by focusing on empirical trends in its application, comparative national practice and the manner in which it is responding to by the national courts.