



# Key Concepts of International Arbitration

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# Agenda

1. Evolution of international arbitration
2. Geography of international arbitration
3. Jurisdiction of arbitral tribunals
4. Consent and arbitration agreement
5. Key procedural elements: seat, interim measures, expedited proceedings
6. Arbitrators
7. Applicable law
8. Awards and review mechanisms
9. Enforcement
10. Relationship between arbitration tribunals and courts

# Evolution of International Arbitration



## Medieval & Renaissance periods

- Traders used local trade associations
- The Hanseatic League arbitration system to resolve disputes among its members



## State-State arbitration

- Jay Treaty between the United States and Great Britain (1794)
- Creation of the Permanent Court of Arbitration (PCA) in 1899

# Evolution of Applicable Law



## Lex Mercatoria

- Merchants accept judgements of fellow merchants; the role of reputation
- No supervision or intervention of domestic courts



## Domestic law

- States became bigger and 'nationalised' dispute settlement procedures
- National law and courts play a key role

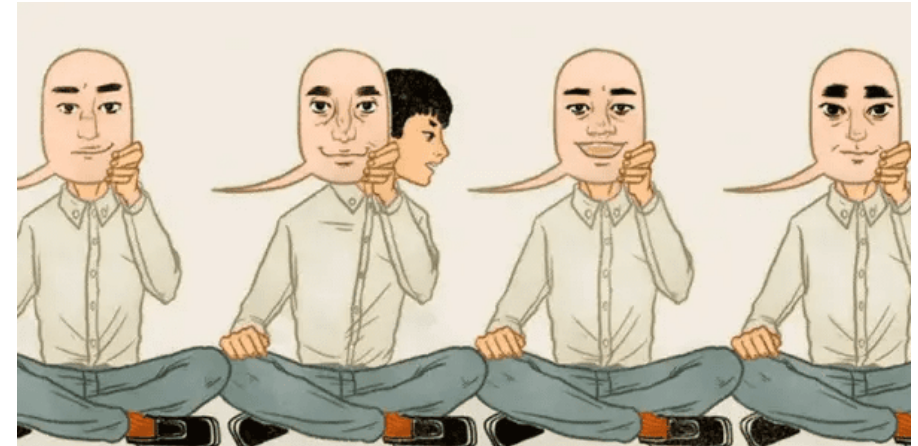
# Post–Cold War Revival of International Arbitration

- Expansion of cross-border commerce after the Cold War
- Increased reluctance to litigate in foreign domestic courts
- Fragmentation of national legal systems as a risk factor
- Arbitration as a neutral, depoliticised dispute resolution forum



# Cultural and Sociological Rationale for ADR

- Preference for face-saving dispute resolution in many legal cultures
- Emphasis on compromise rather than binary “win/lose” outcomes
- Preservation of long-term commercial relationships
- Arbitration as a culturally adaptable adjudicative mechanism



# Why States Prefer Arbitration in International Disputes

- Avoidance of litigation in national courts of the counterparty
- Perceived equality between state and private parties
- Neutral forum enhances legitimacy of outcomes
- Reduced perception of sovereign advantage



# Alternative Dispute Resolution (ADR)

Non-binding ADR Processes without Third-party Intervention	Non-Binding ADR Processes with Third-party Intervention	Binding ADR Processes
<ul style="list-style-type: none"><li>• Negotiation (including diplomatic)</li><li>• Cooling off periods</li></ul>	<ul style="list-style-type: none"><li>• Mediation</li><li>• Mini-trial</li><li>• Conciliation</li><li>• Stakeholder dialogue</li><li>• Early neutral evaluation</li><li>• Judicial settlement conference</li></ul>	<ul style="list-style-type: none"><li>• Expert determination</li><li>• Arbitration</li><li>• Med-arb (hybrid process)</li></ul>



# Why ADR is Widely Used?



Can be quick and inexpensive



Can be less confrontational: instead of arbitration in some cultures people prefer face-saving, mutually agreeable compromises to awards proclaiming one party's rights



But can be difficult if the parties and the mediator/conciliator do not share a similar cultural background



If other ADR procedures fail, parties may have to refer to arbitration (*ad hoc* or institutional)

# Mediation and Conciliation

## Mediation

persuade the parties to focus on their real interests, mediator does not assume sole responsibility for generating solutions but facilitates the parties' own discussion and representation of their own interests

- Singapore Mediation Convention
- WIPO Mediation Rules
- UNCITRAL Model Law on International Commercial Mediation

## Conciliation

the main role is to make a proposal for settlement, the conciliator plays a relatively direct role in the actual resolution of a dispute and even advises the parties on certain solutions by making proposals for settlement

- UNCITRAL Conciliation Rules
- ICSID Conciliation Rules
- United Nations Model Rules for the Conciliation of Disputes between States



# Expert Determination & Dispute Review Boards

## Expert Determination

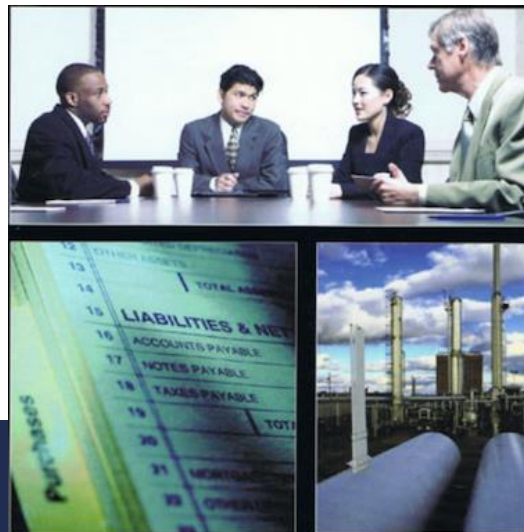
an independent third party who is an expert in the subject to be considered appointed to decide the dispute. The expert's decision is binding on the parties, unless agreed otherwise at the outset

Particularly suited to valuation disputes and technical issues rather than detailed legal issues

## Dispute Review Boards

an independent panel of impartial professionals providing guidance to resolve project issues and mitigate their impact

For example, the Channel Tunnel Project any dispute had first to be referred to the Panel of experts and then to ICC arbitration. Similar to expert determination.



# Non-Binding ADR as a Gateway to Arbitration

- Mediation and conciliation often used as first steps
- Lack of binding outcomes limits their dispute-ending effect
- Failed ADR frequently escalates into arbitration or litigation
- Practical need to understand arbitration even when ADR is preferred

# Characteristics of Arbitration

No official  
definition

Dispute  
settlement

Binding nature

Consensual  
nature  
(jurisdiction,  
withdrawal)

Out of domestic  
courts

# Pros and Cons of Arbitration

## Pros

- Allows expert analysis of complex issues
- Less formal and tailored proceedings
- Sometimes faster (particularly with expedited procedure)
- Almost always in a "neutral" country
- Confidential
- Greater finality

## Cons

- Very limited judicial review (no "appeal")
- Harder to delay results
- Uncertain rules and procedures
- Limited checks on arbitrator's powers
- Experience of arbitrators often differs widely



# Consent and the Irrevocability of Arbitral Jurisdiction

- Arbitration founded on party consent
- Consent crystallises jurisdiction once an agreement exists
- No unilateral withdrawal from arbitral jurisdiction
- Courts generally enforce arbitration agreements strictly



# The Agreement to Arbitrate

- Arbitration clause ("model clauses")
- Submission agreement (agreement after a dispute has actually arisen)
- Should be "in writing" under the New York Convention
- Once agreed - the parties may not unilaterally withdraw
- Enforcement of arbitration agreement



# Arbitrability

## Arbitrability

- The need to have a genuine dispute
- A real disagreement rather than a fake dispute



## Examples of non-arbitrable disputes:

- Competition (antitrust) law
- Securities law
- Criminal law
- The rationale: to benefit not only the parties but society at large



# Two Types of Arbitration

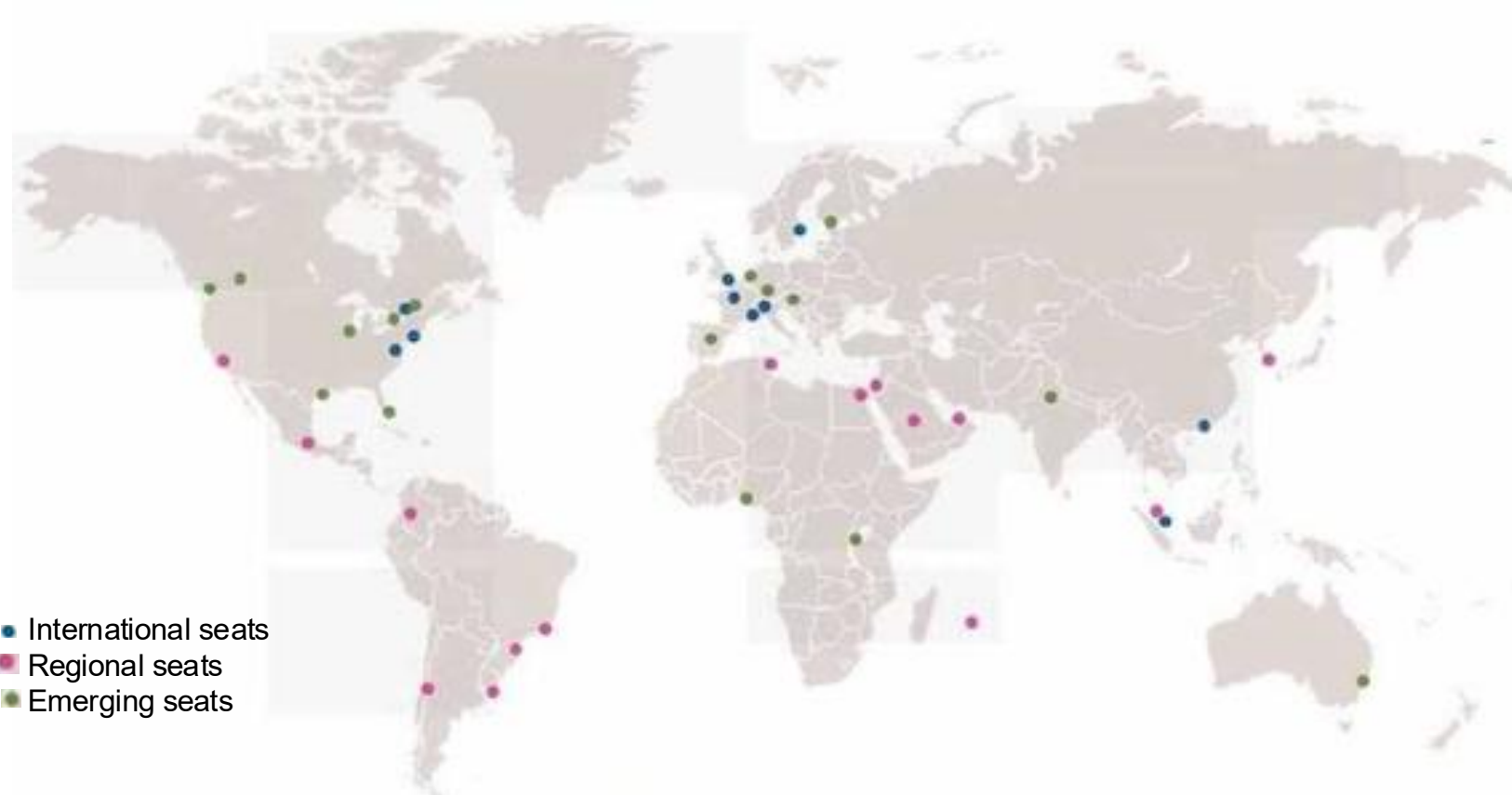


Ad hoc


















Institutional

# International Arbitration Seats



Source: International Bar Association, The Current State and Future of International Arbitration: Regional Perspectives IBA Arb 40 Subcommittee (2015)

# Top-20 Arbitration Rules

Rank in 2025		Rules	2022	2023	2024
1		Shenzhen Court of International Arbitration (headquarters) (SCIA)	8,280	12,004	14,518
2		Beijing Arbitration Commission (BAC)	8,421	12,222	14,060
3		Shanghai Arbitration Commission (SHAC)	5,671	7,348	8,047
4		China International Economic and Trade Arbitration Commission (CIETAC)	4,086	5,237	6,013
5		Shanghai International Economic and Trade Arbitration Commission (SHIAC)	2,576	4,879	4,028
6		London Maritime Arbitrators Association (LMAA)	1,807	1,845	1,733
7		International Chamber of Commerce (ICC)	695	870	831
8		American Arbitration Association (AAA-ICDR)	755	848	811
9		Singapore International Arbitration Centre (SIAC)	336	640	585
10		International Commercial Arbitration Court (ICAC Moscow)	652	521	550
11		Vietnam International Arbitration Center (VIAC)	292	424	475
12		International Commercial Arbitration Court (ICAC Kyiv)	373	584	453
13		Hong Kong International Arbitration Centre (HKIAC)	344	281	352
14		Korean Commercial Arbitration Board (KCAB)	342	368	349
15		London Court of International Arbitration (LCIA)	296	334	320
16		Dubai International Arbitration Centre (DIAC)	292	323	262
17		Stockholm Chamber of Commerce (SCC)	141	175	199
18		German Arbitration Institute (DIS)	148	180	142
19		International Centre for Settlement of Investment Disputes (ICSID)	50	45	58
20		Permanent Court of Arbitration (PCA)	50	82	51
		<b>Total</b>	<b>35,607</b>	<b>49,210</b>	<b>53,837</b>



# Arbitration Clause Elements

- Choice of procedural rules
- Governing law
- The seat of arbitration
- Language
- Arbitral tribunal formation and composition
- Confidentiality

## Recommended Clauses

### Future disputes

For contracting parties who wish to have future disputes referred to arbitration under the LCIA Rules, the following clause is recommended. Words/spaces in square brackets should be deleted/completed as appropriate.

"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

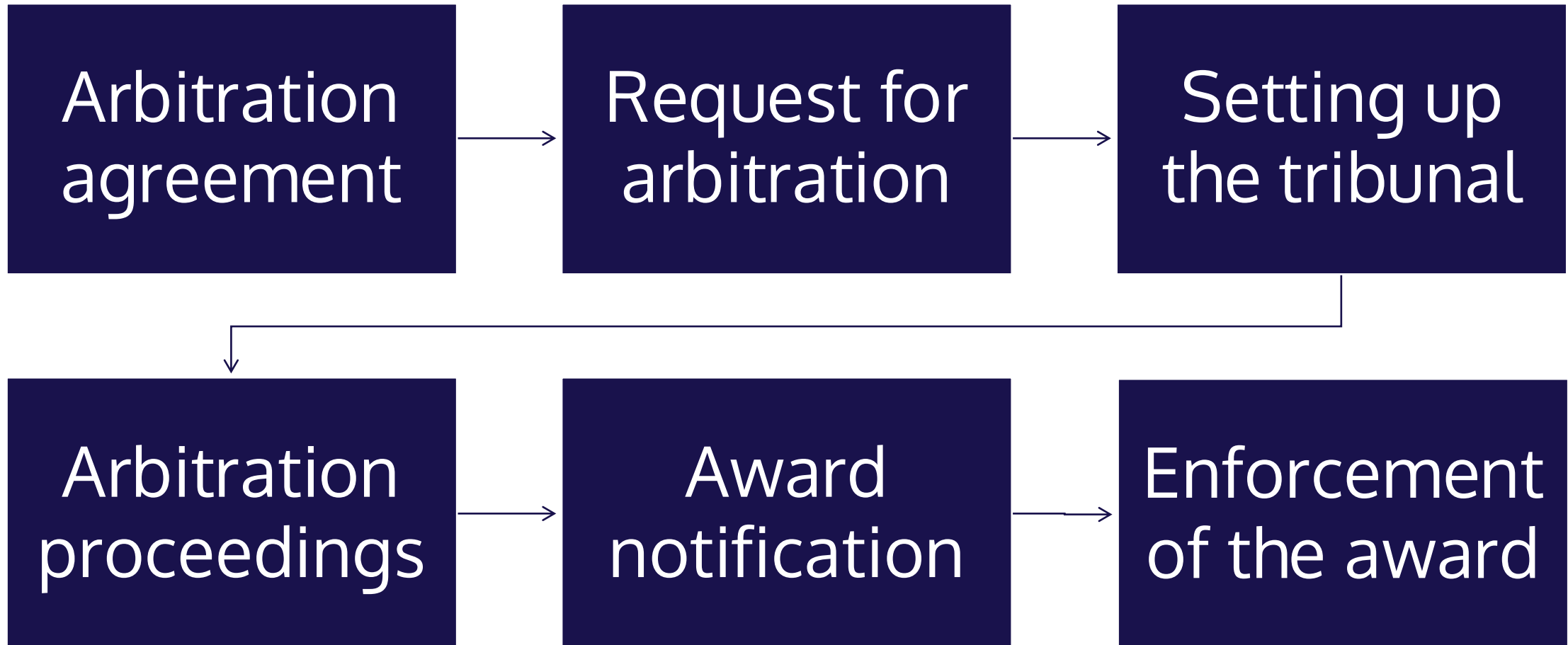
The number of arbitrators shall be [one/three].

The seat, or legal place, of arbitration shall be [City and/or Country].

The language to be used in the arbitral proceedings shall be [ ].

The governing law of the contract shall be the substantive law of [ ]."

# The Arbitration Process



# Types of Jurisdiction

Jurisdiction: the authority to hear and decide

type of jurisdiction	definition	examples
Subject matter jurisdiction	disputes based on the specific issues or topics outlined in the arbitration agreement	disputes arising out of a contract, disputes arising out of an investment
Personal jurisdiction	parties bound by the arbitration agreement (typically those named in the agreement)	specific states, investors, individuals
Temporal jurisdiction	the arbitration agreement must have been valid and in effect at the time the dispute arose	Specific limits in the arbitration clause, limitation periods, post-termination



# Applicable Law in Arbitration

## Law which governs

- The agreement to arbitrate
- Provisional measures
- The actual arbitration proceedings
- Law applicable to substance of the dispute
- Law applicable to international recognition and enforcement of awards

## The role of domestic law

- Enforce an agreement to arbitrate
- Provisional measures
- Challenging awards
- Recognition and enforcement of awards



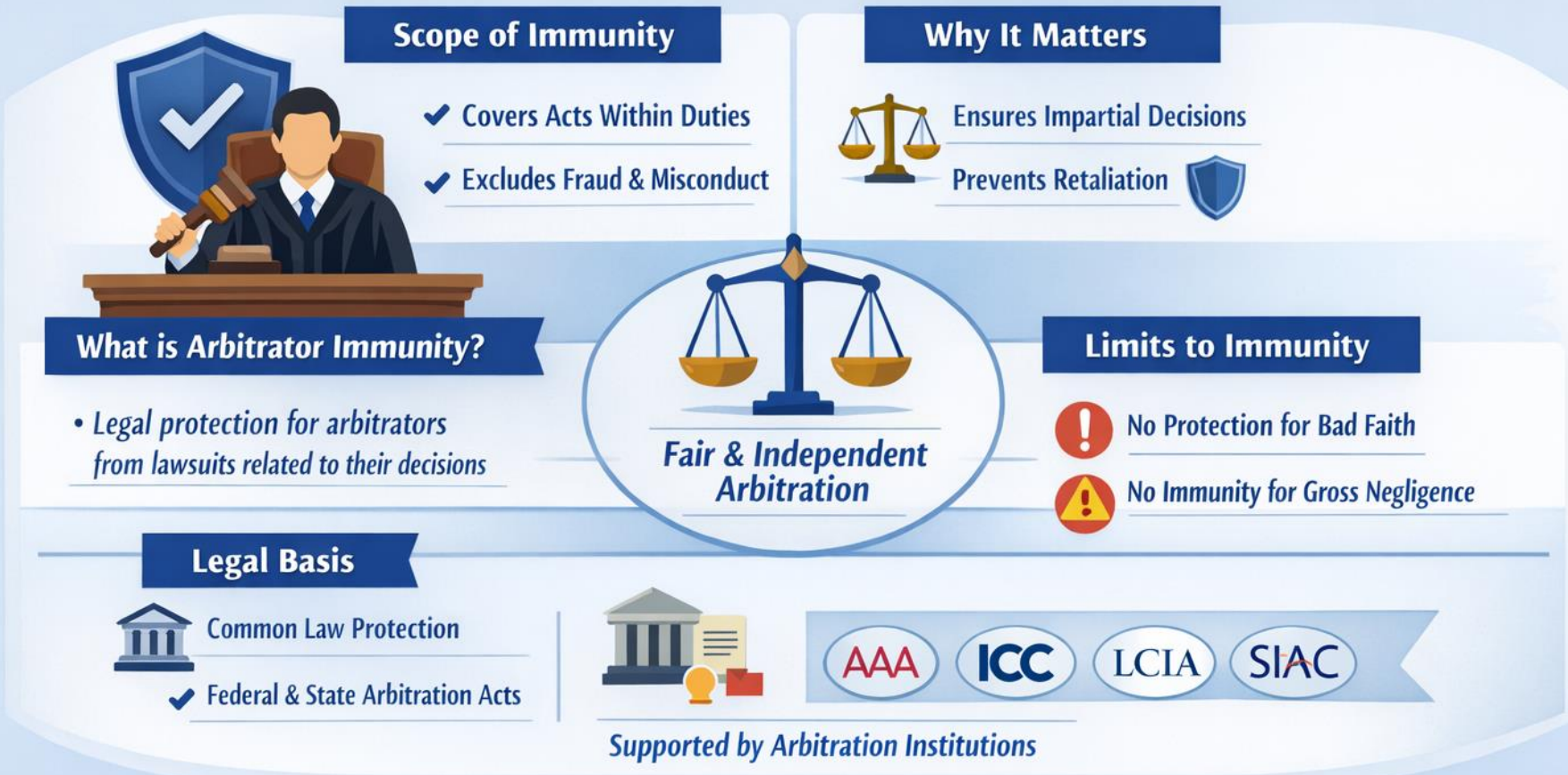
# Limits of Tribunal Powers and Adverse Inferences

- Arbitral tribunals lack coercive powers of national courts
- Dependence on party cooperation
- Ability to draw adverse inferences for non-compliance
- Reliance on domestic courts for compulsory measures



# ARBITRATOR IMMUNITY

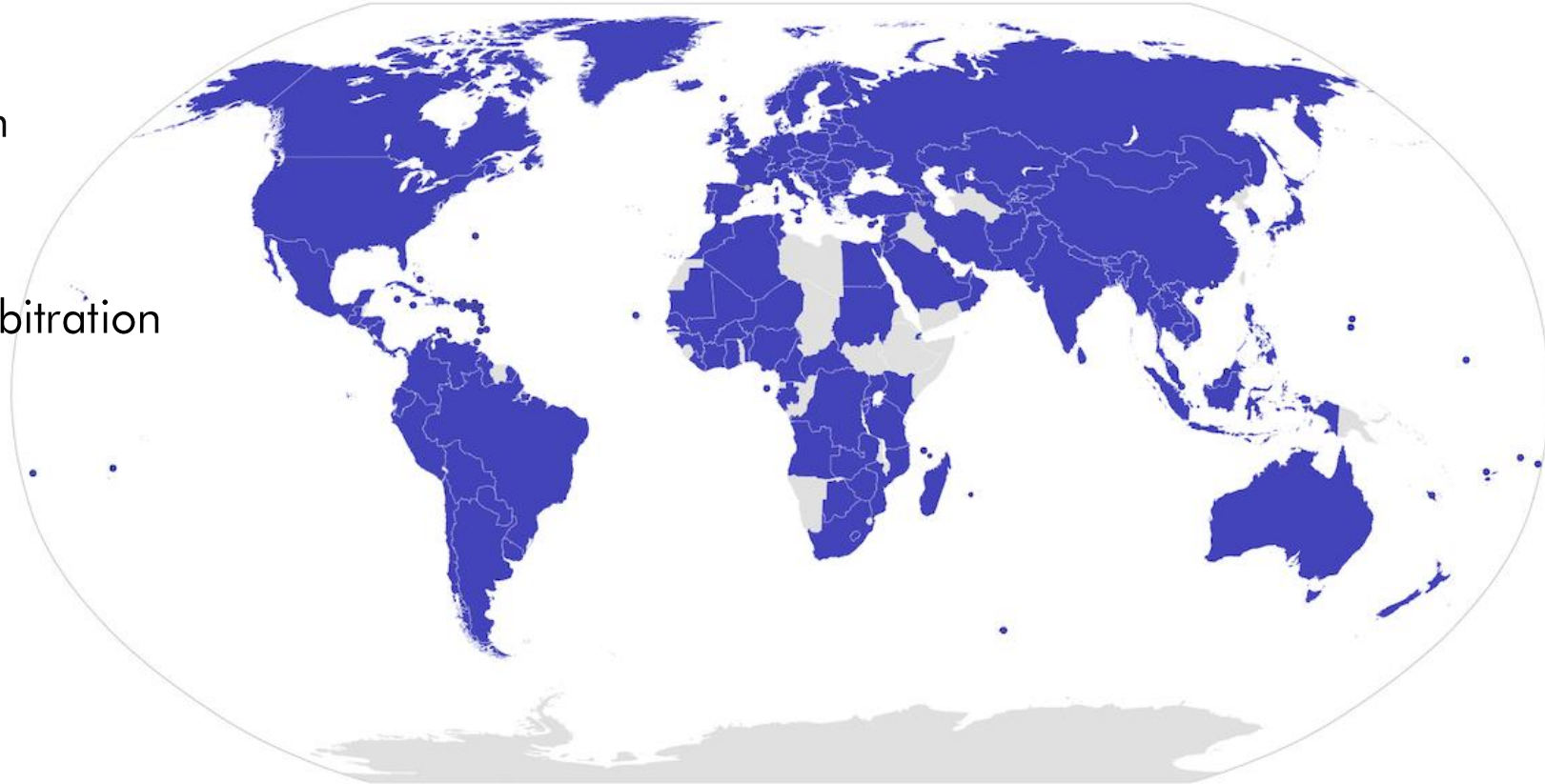
Protection for Neutral Decision-Makers





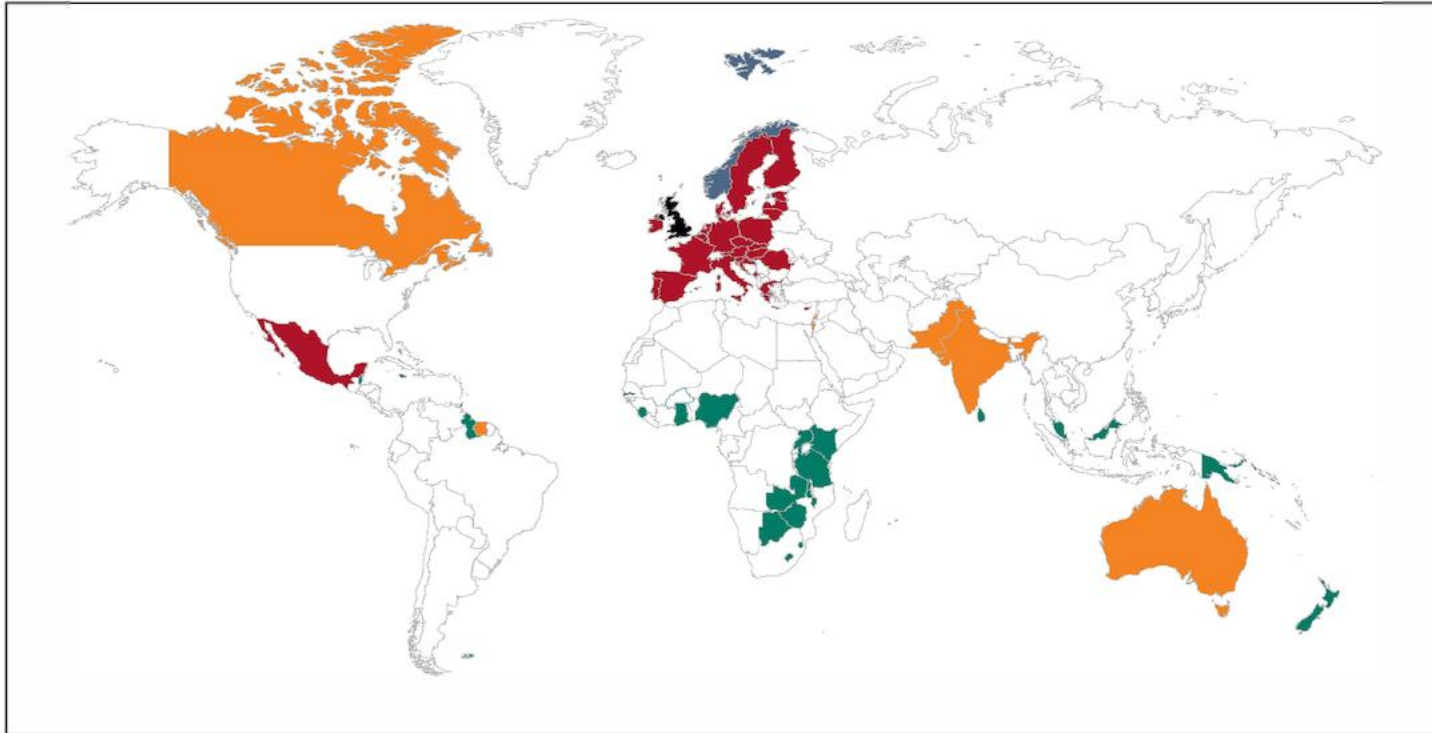
# New York Convention (1958)

- Enforcement of arbitral awards in different countries
- Ratified by over 170 states
- The backbone of international arbitration
- Limited grounds for refusal of enforcement
- Minimization of local bias



# Enforcement of English Judgments

States and territories with which England and Wales have reciprocal enforcement arrangements for court judgments



Hague Convention on  
Choice of Court  
Agreements

Norway-UK Bilateral  
Treaty\*

Administration of  
Justice Act 1920

Foreign Judgments  
(Reciprocal  
Enforcement) Act 1933

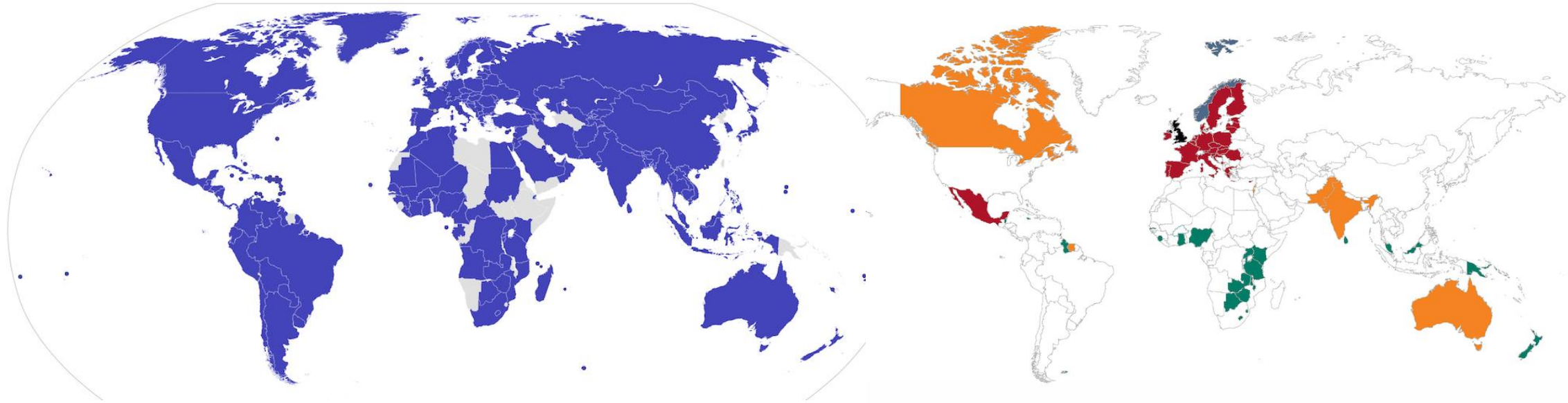
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# Voluntary Compliance and the Credibility of Arbitration

- Majority of arbitral awards are complied with voluntarily
- Reputation and repeat-player considerations drive compliance
- Enforcement serves as a background guarantee, not the norm
- Arbitration's legitimacy depends on this expectation of compliance



# Arbitration Awards v Court Judgements



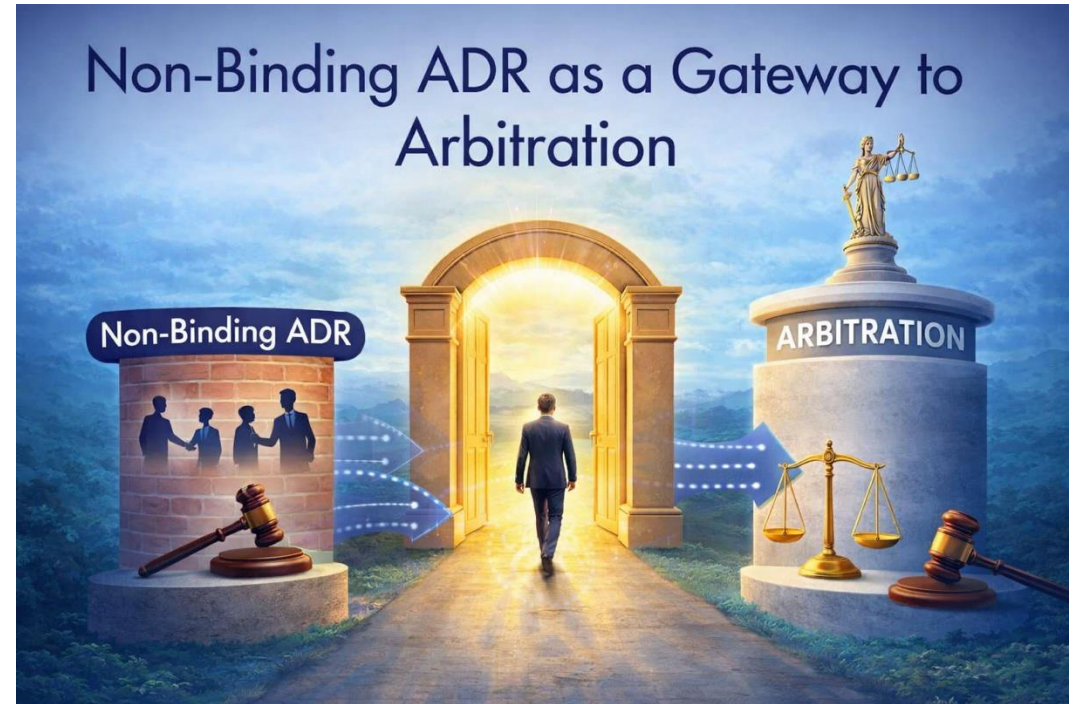
# Role of National Courts

- Jurisdictional Challenges
- Enforcement of Awards
- Setting Aside Awards



# Functus Officio and Finality of Arbitral Awards

- Tribunal's mandate ends with the final award
- No power to revisit merits after mandate is exhausted
- Ensures legal certainty and finality
- Limited post-award powers only where expressly allowed



# Arbitration Awards

- Binding decisions of tribunals
- Interim and final
- Jurisdiction and merits
- Awards on quantum, costs, other procedural aspects
- Final award contents: reasoning, decision, costs

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

WESTWATER RESOURCES, INC.

Claimant

v.

THE REPUBLIC OF TÜRKIYE

Respondent

ICSID Case No. ARB/18/46

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**AWARD**

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*Members of the Tribunal*

Honourable Ian Binnie, C.C., K.C.  
Professor Robert G. Volterra, Co-Arbitrator  
Professor Brigitte Stern, Co-Arbitrator

*Secretary to the Tribunal*

Anneliese Fleckenstein

*Date of dispatch to the Parties: 3 March 2023*



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