



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

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">• Negotiation (including diplomatic)• Cooling off periods	<ul style="list-style-type: none">• Mediation• Mini-trial• Conciliation• Stakeholder dialogue• Early neutral evaluation• Judicial settlement conference	<ul style="list-style-type: none">• Expert determination• Arbitration• Med-arb (hybrid process)



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.



Characteristics of Arbitration

No official
definition

Dispute
settlement

Binding nature

Consensual
nature
(jurisdiction,
withdrawal)


















Out of domestic
courts

International Arbitration Seats



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

Top-10 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
	Total	35,607	49,210	53,837



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



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

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 []."

Types of Jurisdiction

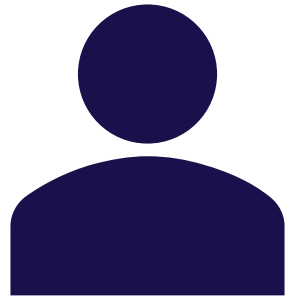
Jurisdiction: the authority to hear and decide



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



Two Types of Arbitration



Ad hoc



Institutional

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

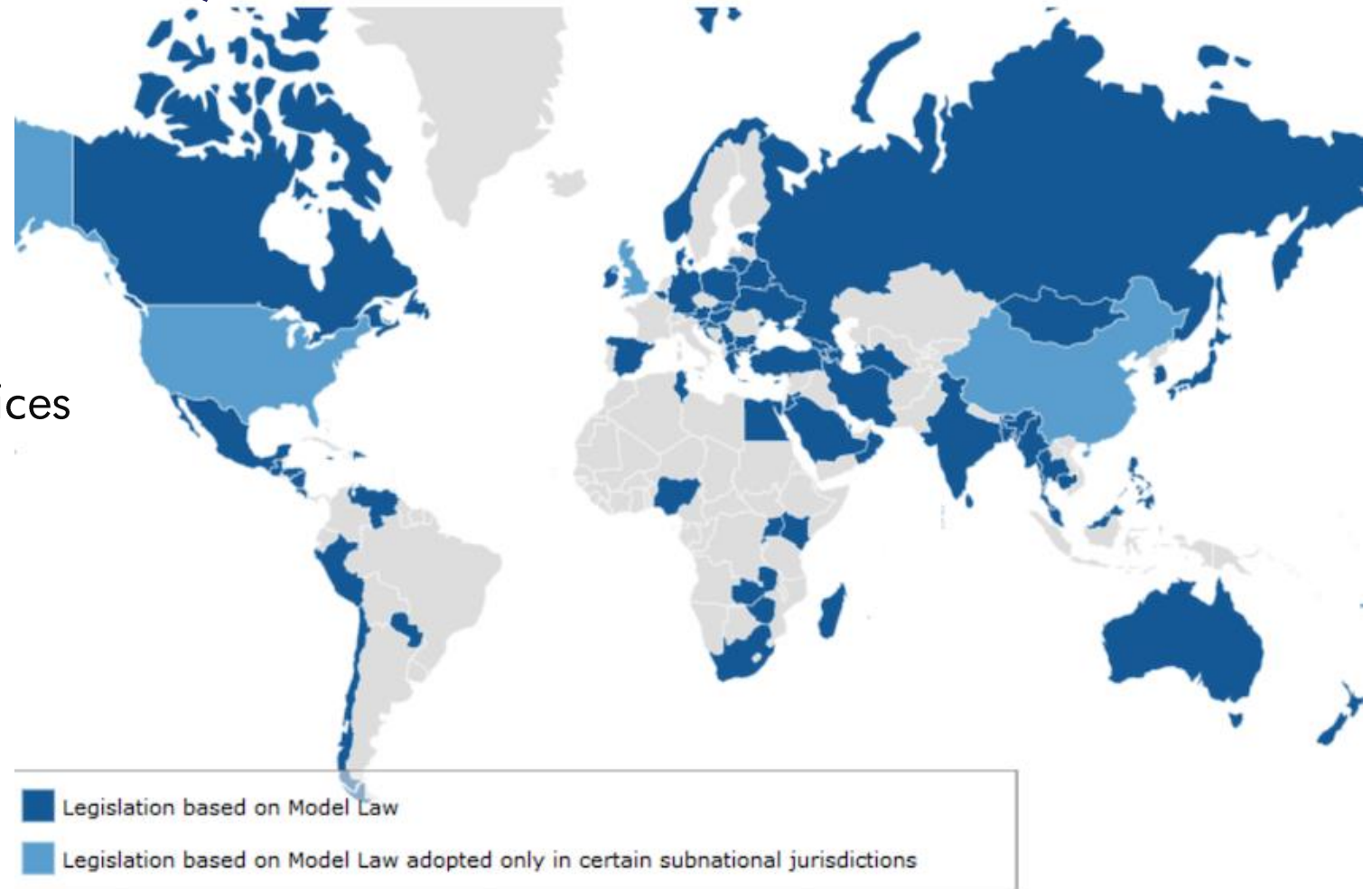
The role of domestic law

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

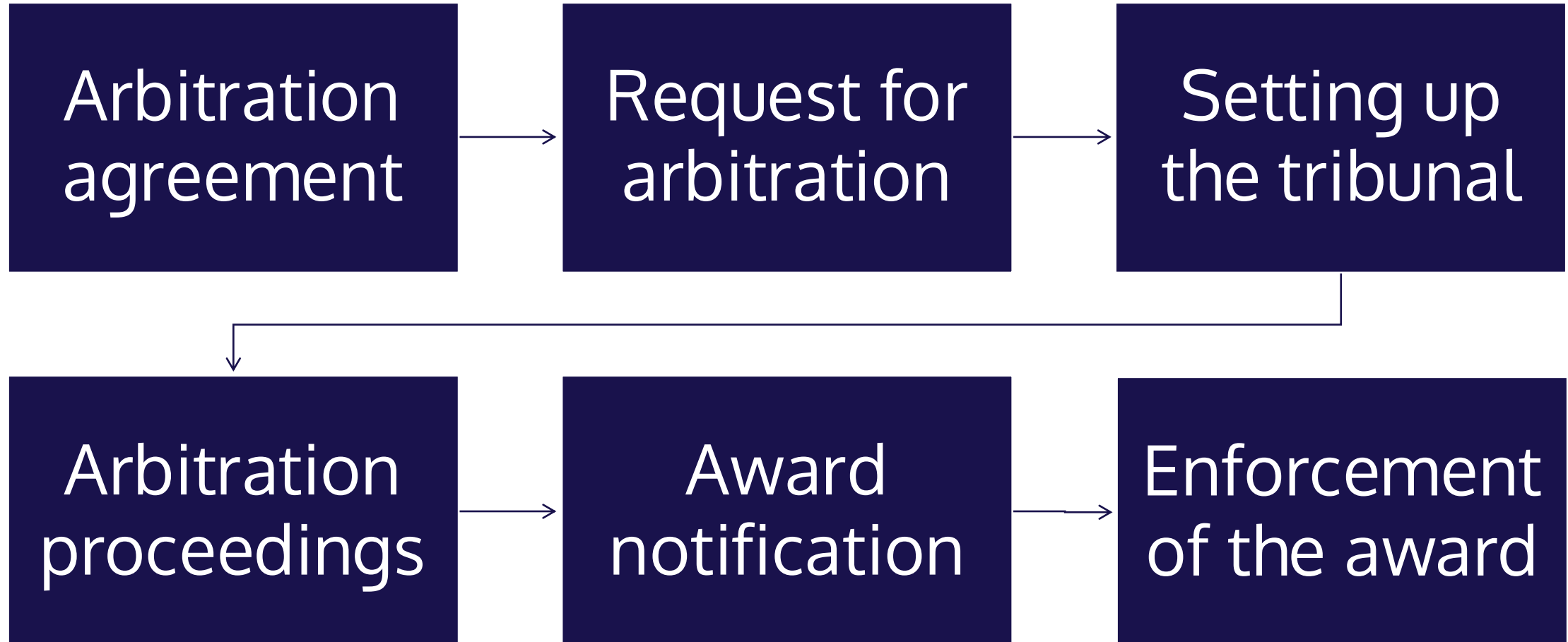


Model Law on International Commercial Arbitration (1985)

- Harmonization of arbitration laws
- Modernization of arbitration practices
- Flexibility and party autonomy
- Encouragement of arbitration-friendly legal environment
- Adaptability



The Arbitration Process



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

AWARD

Members of the Tribunal

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

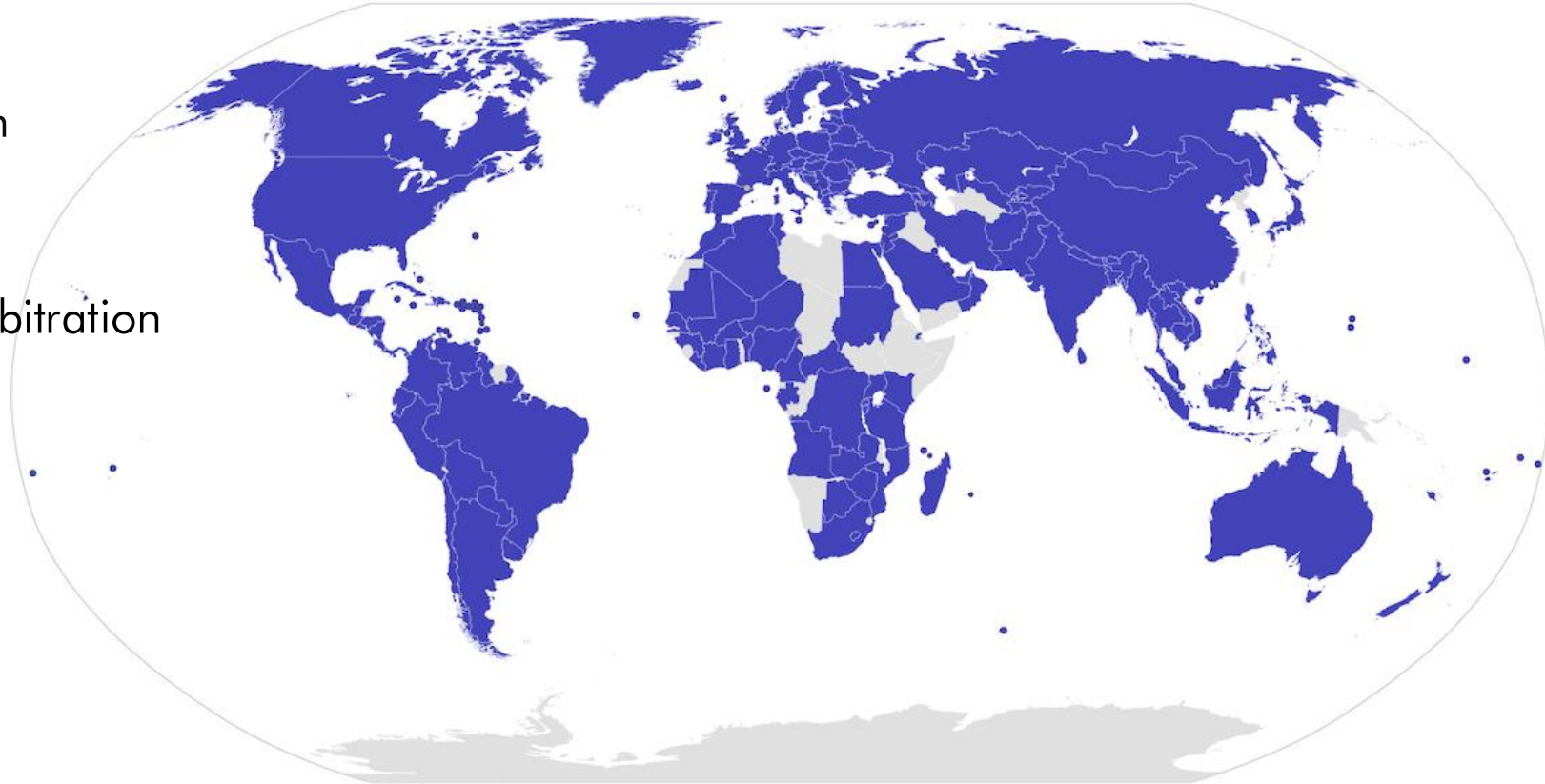
Secretary to the Tribunal

Anneliese Fleckenstein

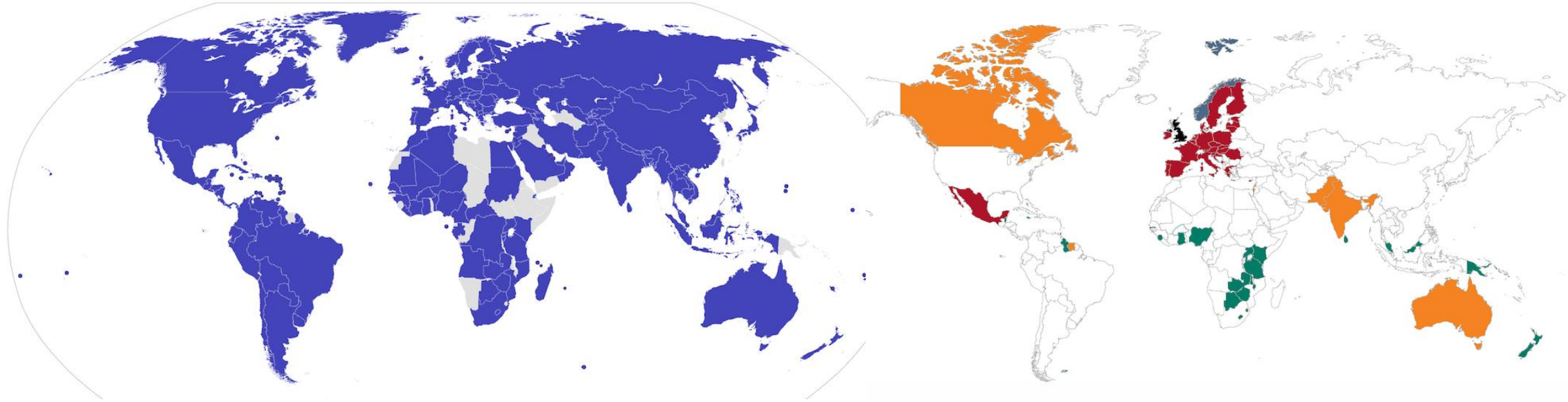
Date of dispatch to the Parties: 3 March 2023

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



Arbitration Awards v Court Judgements



Recognition and Enforcement of Arbitral Awards

- New York Convention's Role
- Other regimes
- National Implementation
- Challenges and Defenses

1
2 IN THE _____ COURT OF _____ COUNTY
3 STATE OF _____
4
5 _____)
6 PLAINTIFF)
7 VS.) Case No. _____
8)
9 _____)
10 DEFENDANTS)
11 COMPLAINT TO ENFORCE ARBITRATION AWARD
12 _____, Plaintiff, files this Complaint to enforce arbitration award
13 against Defendant, _____ and would state in support of this
14 complaint the following:
15
16 1. This Court has jurisdiction of this proceeding pursuant to the Statutes and Court
17 Rules of the State of _____.
18 2. Plaintiff is a resident of _____ County, _____ whose address is
19 _____, Defendant is a resident of _____ County,
20 _____ whose residence address is _____. Defendant may be
21 served with process pursuant to the applicable Court Rules at his residence address or business
22 address at _____.
23 3. On or about _____, Plaintiff and Defendant agreed to settle a
24 dispute between them by binding arbitration. The dispute was arbitrated by arbitrator, _____
25 in the City of _____, State of _____. All documents relevant to the
26 arbitration are attached hereto as follows:
27
28 (a) Arbitration Agreement, Exhibit "A."

Role of National Courts

- Jurisdictional Challenges
- Enforcement of Awards
- Setting Aside Awards





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