2. Key Concepts of International Arbitration

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Abstract
This chapter introduces and defines key concepts of arbitration such as consent, arbitration agreement, jurisdiction, *ad hoc* and institutional arbitration, seat of arbitration, expedited arbitration, interim measures, arbitrators, applicable law, arbitral awards, enforcement and other related topics. Arbitration is a private dispute resolution method where parties submit disagreements to a tribunal rather than courts for a binding decision. Modern arbitration encompasses diverse sectors like investor-state, sports, maritime, and business and human rights disputes. Special conventions related to the enforcement of arbitration awards make arbitration particularly suitable for international disputes as the prospects of enforcing arbitration awards are often better than those of domestic court judgements. The chapter concludes by addressing some emerging trends in international arbitration emphasizing diversity, digitization, environmental considerations, and third-party funding. Future reforms focus on enhancing efficiency, inclusion, and legitimacy to adapt to evolving global needs and challenges.

Keywords
arbitral tribunals, applicable law, arbitral awards, arbitration procedure, jurisdiction, alternative dispute resolution (ADR)

1. Background and History

Arbitration is a dispute resolution process in which parties agree to submit a disagreement to a non-governmental decision-maker (typically called arbitration tribunal), rather than a domestic or international court, to render a binding decision. International arbitration has evolved over centuries into a widely used mechanism for resolving conflicts. It has become a crucial tool in addressing disputes not only between private parties but also among sovereign States and state-created entities such as international organisations. The 20th century has witnessed the emergence of specialized arbitration mechanisms for many types of disputes, for example, investor-state, sports, maritime, commodities and business and human rights disputes. Despite shared features, these arbitration mechanisms differ. Key concepts of international arbitration,[2] which are introduced in this chapter, pave the way for more in-depth discussions in following chapters.

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[2] According to the comparative grid presented in Chapter 1 of this book, these are arbitration agreement and consent, jurisdiction, key procedural elements, adjudicators, applicable law, awards and enforcement and relationship between arbitration tribunals and domestic/international courts.

Arbitration has a long history.[3] When in the Medieval and Renaissance periods, traders engaged in cross-border transactions facing unfamiliar legal systems abroad, they turned to local trade associations for informal dispute resolution, bypassing state courts.[4] For example, between the 13th and 17th centuries, the Hanseatic League, a confederation of merchant guilds in Northern Europe, played a key role in trade facilitation. The league established an arbitration system to resolve disputes among its members.[5]

Subsequently, bilateral and multilateral treaties began to include arbitration clauses. Notable examples include the Jay Treaty between the United States and Great Britain in 1794, which established a commission for resolving claims.[6] States used mixed claims commissions, particularly in the early to mid-20th century, to arbitrate disputes arising after armed conflicts. These commissions allowed private individuals to directly pursue claims against states, expanding the scope of arbitration beyond interstate disputes.[7]

The first significant institutionalization of international arbitration occurred with the creation of the Permanent Court of Arbitration (PCA) in 1899 in the Hague, Netherlands.[8] Subsequently, the PCA has developed into a modern arbitral institution resolving disputes not only between states but also with involvement of private parties.[9]

The use of arbitration as a dispute resolution in the field of international commercial transactions has grown significantly following the adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)[10] in 1958, now ratified by over 170 States. This treaty facilitates the enforcement of arbitral awards in different countries, contributing to the widespread acceptance of arbitration as a preferred method of dispute resolution.

[3] See Fullelove and Borshevskaya, this volume; and Doe, this volume.
[4] Martin Hunter, 'Arbitration Procedure in England: Past, Present and Future' (1985) 1(1) Arbitration International 82, 84.
[5] Margrit Schulte Beerbühl, 'Networks of the Hanseatic League' (*European History Online*, 13 January 2012) <www.ieg-ego.eu/en/threads/european-networks/economic-networks/margrit-schulte-beerbuehl-networks-of-the-hanseatic-league> accessed 22 January 2025.
[6] Treaty of Amity, Commerce and Navigation (United Kingdom – United States of America) (adopted 19 November 1794, entered into force 29 February 1796) 52 CTS 243 (Jay Treaty).
[7] Rudolf Dolzer, 'Mixed Claims Commissions' in Anne Peters and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of International Public Law*, online edition (last updated May 2011) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e64> accessed 22 January 2025, para. 7. Also, Yarik Kryvoi, 'The Path of Investor-State Disputes: From Compensation Commissions to Arbitral Institutions' (2018) 33(3) ICSID Review – Foreign Investment Law Journal 743.
[8] See website of the Permanent Court of Arbitration <https://pca-cpa.org/en/about/introduction/history> accessed 22 January 2025.
[9] See Doe, this volume.
[10] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

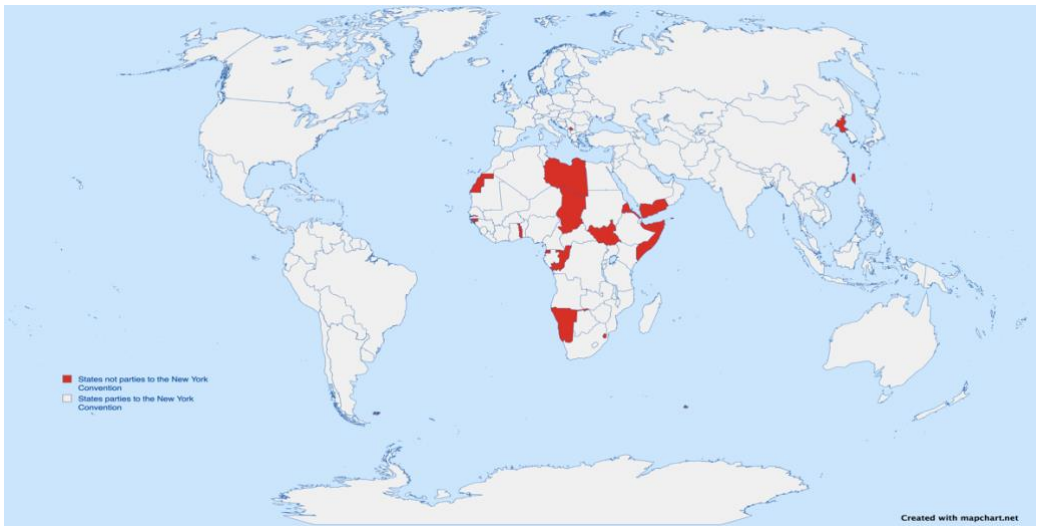

Figure 1. Map of States, which have ratified the 1958 New York Convention (States in red are not parties to the convention)

The United Nations Commission on International Trade Law developed the Model Law on International Commercial Arbitration in 1985 (UNCITRAL Model Law),[11] which provides a framework for domestic legislation on arbitration, which over 123 jurisdictions and 90 states have adopted.[12]

The establishment of specialised arbitral institutions including the International Centre for Settlement of Investment Disputes (ICSID)[13] in 1966, and the Court of Arbitration for Sport (CAS)[14] in 1984 offered new possibilities for resolving international disputes through arbitration. The users of arbitration include not only businesses but also states, individuals, international organisations and other organisations.

Various treaties incorporate arbitration provisions as mechanisms for dispute resolution, affording parties a flexible and unbiased avenue for resolving conflicts outside judicial fora. Illustrative instances encompass the United Nations Convention on the Law of the Sea (UNCLOS),[15] the Regional Comprehensive Economic Partnership Agreement uniting 15 Asia-

[11] United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006 <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf> accessed 31 January 2025 (UNCITRAL Model Law).
[12] Website of UNCITRAL <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status> accessed 6 January 2024.
[13] The ICSID, established in 1966 and headquartered in Washington, D.C., is the world's leading institution devoted to investor-state dispute settlement. See website of ICSID <https://icsid.worldbank.org/about> accessed 10 January 2024.
[14] The CAS, founded in 1984 and based in Lausanne, Switzerland, is an international quasi-judicial body that resolves disputes related to sports through arbitration. See website of CAS <www.tas-cas.org/en/index.html> accessed 14 January 2024. See also Boog and Vedovatti, this volume.
[15] United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS); see Petrig, this volume.

Pacific nations,[16] or bilateral investment treaties (BITs).[17] Furthermore, hundreds of instruments referring to the PCA have been concluded between states, international organizations, and private parties.[18] They cover diverse subject matters including international development cooperation, environmental protection, investment protection, and functioning of international organizations. In the context of investor-state arbitration, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) focuses on resolving investor-state disputes.[19] An impressive array of 158 Contracting States have ratified it.

Businesses around the world use private arbitral institutions in various countries such as the International Arbitration Court of the International Chamber of Commerce (ICC),[20] the London Court of International Arbitration (LCIA),[21] and the Singapore International Arbitration Centre (SIAC).[22] As the number of disputes resolved by arbitration grows, so does the number and geography of international arbitral institutions.

2. Vital Statistics and Caseload Trends

Every year, arbitration helps to resolve tens of thousands of disputes.[23] While the number of inter-state cases is low compared to commercial arbitration,[24] inter-state often relate to disputes carrying considerable diplomatic and political weight. For example, the *South China Sea Arbitration* involved the Philippines and China, addressing issues like historic rights, maritime entitlement origins, and the status of specific maritime features.[25] This dispute holds substantial geopolitical significance due to the region's strategic importance.

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[16] Regional Comprehensive Economic Partnership (adopted 15 November 2020, entered into force 1 January 2022) <https://asean.org/wp-content/uploads/2024/10/Regional-Comprehensive-Economic-Partnership-RCEP-Agreement-Full-Text.pdf> accessed 13 January 2025.

[17] E.g. Agreement on Promotion and Protection of Investments (Netherlands – Bahrain) (adopted 5 February 2007, entered into force 1 December 2009) 2649 UNTS 13 art 9; Agreement for the Reciprocal Promotion and Protection of Investments (China – Nigeria) (adopted 27 August 2001, entered into force 18 February 2010) <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/949/china---nigeria-bit-2001-> accessed 31 January 2025 art 9.

[18] See website of the Permanent Court of Arbitration <https://pca-cpa.org/en/resources/instruments-referring-to-the-pca/> accessed 20 April 2024.

[19] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159 (ICSID Convention).

[20] The International Arbitration Court of the ICC, founded in 1919 and based in Paris, is a leading institution in the field of international commercial arbitration. See website of ICC Court of Arbitration <https://iccwbo.org/about-icc-2/our-mission-history-and-values/> accessed 27 January 2025.

[21] The LCIA, established in 1892 and headquartered in London, is a leading international institution for commercial dispute resolution. See website of LCIA <www.lcia.org/LCIA/history.aspx> accessed 11 January 2024.

[22] The SIAC, founded in 1991 and based in Singapore, is a prominent arbitration institution for commercial dispute resolution in Asia. See website of SIAC <https://siac.org.sg/about-us> accessed 12 January 2024.

[23] For example, in 2023, over 58'000 disputes were administered under some of the most-known arbitration rules. Yarik Kryvoi and Anna Petrig, 'World Arbitration Caseload 2024 – Mapping the Terrain' (*Arbitration Lab Blog*, 5 November 2024) <https://arbitrationlab.com/world-arbitration-caseload-2024-mapping-the-terrain/> accessed 27 January 2025.

[24] For example, in 2022, the PCA facilitated registry services in 204 cases, out of which four were inter-State arbitrations. See, Permanent Court of Arbitration, 'Annual Report 2023' (2023) <https://docs.pca-cpa.org/2024/06/0bd839f2-pca-annual-report-2023.pdf> accessed 11 February 2025.

[25] The South China Sea Arbitration (The Republic of Philippines v The People's Republic of China) Case no 2013-19 (PCA).

Statistical insights from leading arbitral institutions shed light on the number of disputes in various economic sectors. We can categorize the predominant caseload into the following key sectors.

Commodities: Commodity disputes encompass conflicts arising from international commodity transactions, such as grain, oil, sugar or metals. These conflicts involve a broad spectrum of issues, including breach of contract, non-performance, non-payment, and other legal matters that may emerge throughout a commodity transaction. Many commodity-related disputes are resolved by specialised arbitral institutions such as the Grain and Feed Trade Association (GAFTA) and the Federation of Oils, Seeds and Fats Associations (FOSFA). Various of these institutions offer specialized commodities arbitration rules to efficiently address the unique challenges and intricacies of such disputes.[26]

Maritime and shipping: Arbitral rules, such as SIAC[27] and London Maritime Arbitrators Association (LMAA),[28] are applied to handle a notable proportion of maritime disputes, underscoring the significance of the shipping sector in international arbitration. Examples of disputes in this sector involve collisions or damage to vessels, disputes arising from charter parties or bills of lading, and conflicts over maritime insurance coverage.[29]
Construction: The construction sector features prominently across various arbitral institutions, including ICSID,[30] CIETAC (China International Economic and Trade Arbitration Commission), [31] and SIAC.[32] Disputes in this sector include claims for delays or disruptions to construction schedules, disputes over payment terms or contract specifications, defects in workmanship or materials.[33]

Transport: The transport sector has increasingly become a focal point in international arbitration, particularly in the context of disputes related to trade in commodities and agricultural products.[34] Disputes often concerned the quality or quantity of delivered goods or delays or damages during commodity transportation.

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[26] See Litina, this volume.
[27] Maritime disputes constituted 13% of cases at SIAC in 2022, highlighting the presence of shipping-related matters in arbitration proceedings. SIAC, 'Annual Report 2022' (*SIAC*, 2023) <https://siac.org.sg/wp-content/uploads/2023/04/SIAC_AR2022_Final-For-Upload.pdf> accessed 12 January 2024.
[28] Disputes administered by the LMAA further highlighting the breadth of industries addressed through arbitration mechanisms. See, James Clanchy, 'Arbitration statistics 2022: ad hoc strengthens as institutions recede' (*Lexis Nexus*, 1 November 2023) <www.lexisnexis.co.uk/blog/research-legal-analysis/arbitration-statistics-2022-ad-hoc-strengthens-as-institutions-recede> accessed 13 January 2024.
[29] See Clanchy, this volume.
[30] At ICSID 12% of cases in 2022 related to construction, International Centre for Settlement of Investment Disputes, 'Annual Report 2024' (2024), <https://icsid.worldbank.org/sites/default/files/publications/ICSID-AR2024-WEB.pdf> accessed 27 January 2025.
[31] CIETAC manages disputes in construction projects, suggesting a considerable presence of construction-related arbitration cases. See CIETAC, 'CIETAC 2022 Work Report and 2023 Work Plan' (*CIETAC*, 2023) <http://www.cietac.org/index.php?m=Article&a=show&id=18848&l=en> accessed 11 January 2024.
[32] SIAC observed that disputes related to construction contributing to 11% of cases in 2022, indicating the significance of this sector in arbitration proceedings. SIAC (n. 27).
[33] See Nazzini, this volume.
[34] For instance, the LCIA reported a notable increase in transport and commodities cases, constituting 37% of the caseload in 2022 compared to 14% in 2021, indicating a growing trend in arbitration related to transportation. See LCIA, 'Annual Casework Report 2022' (LCIA, 2023) <www.lcia.org/lcia/reports.aspx> accessed 12 January 2024.

Energy and resources: Institutions like the LCIA[35] and ICSID[36] resolve a significant number of disputes relating to this economic sector. Disputes often deal with disagreements over the interpretation of production sharing agreements, resource allocation, and conflicts stemming from environmental regulations affecting energy projects.

Banking and finance: Institutions such as the LCIA[37] and CIETAC[38] observe a significant portion of their caseload originating from disputes in the banking and finance sector. This includes conflicts arising from loan agreements, interbank disagreements, and derivatives.[39] Besides these sectors, international arbitration has seen disputes emerge across a spectrum of other industries (e.g., digital business, healthcare and pharmaceuticals, and professional services) in recent decades confirming the demand for arbitration as an effective dispute resolution mechanism.

3. Arbitration Agreement and Consent

Consent serves as the basis of any arbitration, reflecting the autonomy of arbitration users. An arbitral tribunal may only settle issues that the parties have agreed to resolve through arbitration.[40] This arbitration agreement can take various forms, including arbitration clauses in a contract,[41] compromise (a separate agreement),[42] or expression of consent in domestic laws and treaties,[43] which is subsequently accepted by the other party which has a right to rely on the treaty (e.g., the investor). Regardless of how its form or whether reached before or after a disagreement emerges, parties need to express consent and form a binding agreement to

[35] The LCIA observed a decrease in the proportion of energy and resources cases from 25% in 2021 to 11% in 2022, indicating a potential shift in the arbitration landscape within this sector. Ibid.
[36] ICSID proceedings in fiscal year 2022 continued to be dominated by extractives and energy sectors, comprising a significant portion of new cases. ICSID, 'Annual Report 2022' (*ICSID*, 2023) <http://icsid.worldbank.org/sites/default/files/publications/ICSID_AR.EN.pdf> accessed 12 January 2024.
[37] The LCIA reported a notable shift in its caseload, with banking and finance cases decreasing from 26% in 2021 to 15% in 2022, reflecting fluctuations in this sector's arbitration activity: LCIA (n. 35).
[38] CIETAC effectively manages disputes in equity investment and financial securities, indicating a notable presence of financial matters in arbitration. CIETAC (n. 31).
[39] There is also a specialised P.R.I.M.E. Finance arbitration institution and rules established to resolve financial disputes. See website of P.R.I.M.E. Finance <https://primefinancedisputes.org/> accessed 31 January 2025.
[40] See, e.g., UNCITRAL Model Law art 16; London Court of International Arbitration, Arbitration Rules (2020) <www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx> accessed 31 January 2025 (LCIA Arbitration Rules) art 23(1); United Nations Commission on International Trade Law, Arbitration Rules (2021) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf> accessed 31 January 2025 (UNCITRAL Arbitration Rules) art 23.
[41] An arbitration clause is a provision in a contract that stipulates that parties will resolve any dispute arising from the contract through arbitration rather than through litigation in court. Standard contract clauses are pre-written terms and conditions that parties include in a contract.
[42] A compromise (or *compromis*) in the context of arbitration refers to a binding agreement of the parties, which is formalized in writing. A typical example of where the parties may agree on a *compromis* is when a dispute has already arisen between the parties, but they do not wish to go to a domestic court.
[43] In arbitration, an expression of consent signifies that the parties agree to submit their disputes to arbitration rather than litigating in court. This consent can take various forms, such as a separate written arbitration agreement or clause within a contract, a documented record of mutual consent, or an agreement to arbitrate after a dispute arises. In the context of investor-state arbitration, consent can also be expressed in domestic law. See, e.g., Albanian Law on Foreign Investments of 2 November 1993 (Albanian Law on Foreign Investments) art 8(2); Greater Colombo Economic Commission Law of 31 January 1978 (Greater Colombo Economic Commission Law) sec 26(1).

arbitrate their dispute. The validity of these different types of agreements to arbitrate depends on meeting both formal requirements, as dictated by applicable laws or agreed standards.

It must be noted that an arbitration clause within a contract is considered a separate agreement, independent of the other contractual terms. If the arbitral tribunal determines that the contract is null and void, it does not automatically render the arbitration clause invalid.[44] In some jurisdictions, it is known as the doctrine of separability.[45]

Previously, international conventions such as the 1958 New York Convention and the UNCITRAL Model Law mandated that arbitration agreements were only 'in writing'.[46] A significant transformation in communication has occurred in recent years. Telegrams, once commonplace, are now considered outdated artifacts, replaced by diverse forms of written electronic communication. In light of this, one of the options for States to include in their domestic laws provided in the UNCITRAL Model Law's in 2006 explicitly broadened the definition of 'writing' to encompass various forms, including electronic communication.[47] Despite the relaxation of formality, a minimum requirement for a permanent record remains. The majority of jurisdictions mandate written agreements. For instance, the Netherlands Arbitration Act 1986 mandates proof of the arbitration agreement through a written instrument expressly or impliedly accepted by the parties.[48] Similarly, the Swiss Federal Act on Private International Law 1987 stipulates that the arbitration agreement must be in writing or through a communicative means allowing textual evidence.[49]

4. Jurisdiction

An arbitral tribunal may only settle issues that the parties have agreed to resolve through arbitration. The parties give a tribunal the authority to resolve disputes between them, and the arbitral tribunal must take care to abide within the boundaries of that authority, also known as jurisdiction.

Domestic legislation and international treaties highlight the importance of an arbitral tribunal not exceeding its jurisdiction. For example, the UNCITRAL Model Law provides that an arbitral award can be set aside in domestic courts if it deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement.[50] Domestic laws of most jurisdictions follow this approach.[51] The New York Convention provides that recognition and enforcement of an award may be refused by domestic courts if the award addresses issues outside the scope of the arbitration agreement.[52]

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[44] See, e.g., Albanian Law on Foreign Investments art 8(2); Greater Colombo Economic Commission Law sec 26(1).
[45] See, e.g., Fiona Trust & Holding Corporation and 20 Others v Privalov and 17 Others [2007] UKHL 40, [2007] 4 All ER 951.
[46] New York Convention art II(2).
[47] UNCITRAL Model Law art 7(2).
[48] Netherlands Arbitration Act of 1 December 1986 sec 1021.
[49] Swiss Federal Act on Private International Law of 18 December 1987 (Swiss PILA) art 178(1).
[50] UNCITRAL Model Law art 34(2).
[51] In France, for example, an award may be contested if the arbitral tribunal either erroneously affirmed or rejected jurisdiction: French Code of Civil Procedure of 5 December 1975 (French CPP) art 1520.1.

The notion of arbitrability established the limits of jurisdiction of arbitral tribunals. It concerns whether a dispute can be resolved through arbitration. The New York Convention and the Model Law apply to disputes 'capable of settlement by arbitration'.[53] States can limit the types of disputes suitable for arbitration reflecting their policy preferences.[54] Certain matters reserved for domestic courts are outside the scope of arbitration due to their public nature. In other words, domestic courts should adjudicate such disputes.

Despite the growing trend towards permitting arbitration of traditionally non-arbitrable matters, the specific categories of disputes eligible for arbitration vary significantly across jurisdictions. For instance, disputes related to specific subjects like family law, criminal matters, consumer law, patents, competition law, and insolvency are generally not considered arbitrable.[55]

The question of arbitrability can arise during arbitration proceedings or after the tribunal renders an award. Arbitral tribunals have authority to decide on arbitrability based on the law governing the arbitration agreement[56] or the laws of the seat of arbitration (*lex arbitri*).[57] According to the New York Convention, the law of the country where recognition or enforcement is sought determines arbitrability.[58]

4.1. Types of Jurisdiction

The jurisdiction of arbitral tribunals typically covers the following aspects: subject matter jurisdiction, personal jurisdiction and temporal jurisdiction.

Subject matter jurisdiction refers to the authority of the arbitral tribunal to hear and decide a particular type of dispute determined by the arbitration agreement between the parties (e.g., 'all disputes arising' out of a particular contract or a treaty). For example, Arbitral Tribunals constituted under Annex VII of UNCLOS have only jurisdiction over disputes concerning the interpretation or application of the UNCLOS, rather than any law of the sea-related or even public international law dispute.

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[53] UNCITRAL Model Law arts 34(2)(b)(i) and 36(1)(b)(i); New York Convention arts II(1) and V(2)(a).

[54] *Egerton v Earl Brownlow* [1853] 4 HLC 1 (the Supreme Court of England and Wales once characterized public policy as the legal principle stating that no individual can lawfully engage in actions that may be harmful to the public or contrary to the common good); *Parsons & Whittemore Overseas Co v Société Générale de L'Industrie Du Papier (RAKTA)*, 508 F.2d 969 (2d Cir 1974) (US courts have defined public policy as encompassing the fundamental concepts of morality and justice within the jurisdiction where the legal proceedings are held).

[55] E.g., French law delineates certain topics that are not open to arbitration within the jurisdiction of France, such as disputes concerning personal status (capacity, marriage, and divorce) or involving public entities or administrations (with limited exceptions for commercial activities authorized by decree): French CCP art 2060. Indian courts have identified non-arbitrable disputes, including criminal offenses, matrimonial, guardianship, insolvency, testamentary, intellectual property, and tenancy matters: Indian Arbitration and Conciliation Act of 16 August 1996 (Indian AA) sec 2(2).

[56] ICC Case no 6719 in Jean-Jacques Arnaldez, Yves Derains and Dominique Hascher, *Collection of ICC Arbitral Awards 1991–1995* (Kluwer Law International 1997) 567–577; ICC Case no 6149 in Jean-Jacques Arnaldez, Yves Derains and Dominique Hascher, *Collection of ICC Arbitral Awards 1991–1995* (Kluwer Law International 1997) 315–331.

[57] *Consultant v Egyptian Local Authority* ICC Case no 6162, (1992) XVII Yearbook Commercial Arbitration 153; ICC Case no 4604, (1985) X Yearbook Commercial Arbitration 973; French original in Sigvard Jarvin and Yves Derains, *Collection of ICC Arbitral Awards 1974-1985* (Kluwer Law International 1990) 546–554.

[58] New York Convention art V(2)(a).

The tribunal's *personal jurisdiction* defines whom jurisdiction extends to, typically these are parties named in the arbitration agreement. In some cases, parties must meet particular characteristics. For example, in investor-state arbitration the personal jurisdiction extends to any investment-related dispute between a state party that has agreed to submit investment disputes to arbitration under the terms of the treaty and a national of another State party to that treaty.[59] Generally, the tribunal has authority to render binding awards only in relation to those who have agreed to arbitrate.

Temporal jurisdiction concerns the relevant time frame in relation to which the arbitral tribunal has authority to adjudicate a dispute. The agreement between the parties may specify the relevant time periods or events. For example, in commercial arbitration arbitral tribunals typically have jurisdiction over disputes that arise during the contractual relationship or within a specified period after the termination of the contract. Tribunals might hesitate to address disputes arising before or after the contractual relationship unless expressly outlined in the treaty.[60]

4.2. Challenges to Jurisdiction

Challenges to jurisdiction can arise when one party contests the authority of the arbitral tribunal to hear a particular dispute. Challenges to jurisdiction may be partial or total. A partial challenge typically arises from the interpretation of arbitration agreements and may hinge on whether the matter referred to arbitration aligns with the scope of the arbitration agreement. Conversely, a total challenge to jurisdiction poses a more fundamental inquiry into the existence of a valid arbitration agreement. Grounds for a total challenge often involve core elements of arbitration clauses, such as disputes regarding consent, the form of the arbitration agreement, arbitrability under the applicable law, time-barred claims, or unmet preconditions to arbitration.[61]

For example, a construction contract might stipulate that any disputes regarding extra work must first be reviewed and determined by an engineer before proceeding to arbitration. If a party brings claims without seeking the engineer's decision, the opposing party may contend that this failure results in arbitration claims are inadmissible or outside of the jurisdiction of the arbitral tribunal.[62] While admissibility deals with the suitability of a claim for arbitration at a specific time, such as being time-barred or requiring certain preconditions to be fulfilled,

[59] ICSID Convention art 25.
[60] See, e.g., Jan de Nul NV and Dredging International NV v Arab Republic of Egypt Case no ARB/04/13 (ICSID, Award, 6 November 2008) paras 125 and 129; Ping An Life Insurance Company of China Ltd and Ping An Insurance (Group) Company of China Ltd v Kingdom of Belgium Case no ARB/12/29 (ICSID, Award, 30 April 2015) paras 193 and 200.
[61] These statutes highlight grounds for total challenge such as invalidity due to incapacity or lack of consent, lack of jurisdiction by the tribunal over the dispute or parties, procedural errors like improper notice, and substantive grounds i.e., UNCITRAL Model Law art 34(2)(a); Swedish Arbitration Act of 1 March 2019 sec 34 (Swedish AA); English Arbitration Act of 17 June 1996 (English AA) sec 30(1); Indian AA sec 34(2).
[62] Similarly, a challenge can also be based on admissibility e.g., *Burlington Resources Inc v Republic of Ecuador* Case no ARB/08/5 (ICSID, Decision on Jurisdiction, 2 June 2010).

jurisdiction focuses on the tribunal's authority to make decisions on matters within the agreed scope of the arbitration clause.[63]

Arbitral rules and domestic arbitration laws often provide procedures for resolving challenges to jurisdiction. Except in inter-state arbitration, domestic courts play an important role in settling jurisdictional matters, typically allowing intervention only after the arbitral tribunal has made its jurisdictional decision.[64] This highlights the importance of domestic laws applicable at the seat of arbitration when drafting arbitration agreements.[65] For example, in jurisdictions like England, domestic courts also have the power to address questions to determine the substantive jurisdiction of the tribunal at the preliminary stage.[66] Apart from challenging the arbitral award directly in the jurisdiction where the arbitration took place, a party retains the option to subsequently contest the award during the enforcement phase.

5. Key Procedural Elements

5.1. *Ad hoc* and Institutional Arbitration

Arbitration, as a dispute resolution mechanism, provides parties with the autonomy and flexibility to tailor the proceedings to their needs. The choice between *ad hoc* or institutional arbitration significantly shapes the procedural elements of arbitration.[67] In *ad hoc* arbitration, parties directly manage the arbitration process without (or limited) involvement of an administering institution. They may draft their own rules and procedures or choose to follow established rules such as the UNCITRAL Arbitration Rules 2021.[68] As discussed in more detail elsewhere in this book in its 'purest' form, an *ad hoc* arbitration would entail a tribunal and the parties agreeing procedural rules for all aspects of the arbitration not provided for by the

[63] See, generally, Jan Paulsson, 'Jurisdiction and Admissibility' in Gerald Aksen, Karl-Heinz Böckstiegel, Michael Mustill, Paolo Patocchi and Anne Whitesell (eds), *Global Reflections on International Law, Commerce and Dispute Resolution: Liber Amicorum in Honour of Robert Briner* (International Chamber of Commerce 2005) 601–618.

[64] Examples of provisions on intervention by national courts include Swedish AA sec 2(2); French CCP art 1448.1; Singaporean Arbitration Act of 17 October 2001(Singaporean AA) sec 10(3).

[65] It must be noted, in inter-state arbitration domestic courts usually do not have any involvement in jurisdictional challenges and tribunals have a final say on jurisdictional issues. See, e.g., Permanent Court of Arbitration, Optional Rules for Arbitrating Disputes between Two States (1992) <https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitrating-Disputes-between-Two-States_1992.pdf> accessed 31 January 2025 (PCA Optional Rules for Arbitrating Disputes) art 21.

[66] English AA sec 32(1).

[67] See Fullelove and Borshevskaya, this volume.

[68] United Nations Commission on International Trade Law, Arbitration Rules (2021) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf> accessed 31 January 2025 (UNCITRAL Arbitration Rules). UNCITRAL Arbitration Rules should be distinguished from the UNCITRAL Model Law on Arbitration, discussed earlier. The Model Law is not a binding document, but a set of norms, which states may implement and modify, if needed, in their domestic law. On the other hand, parties can decide to directly apply UNCITRAL Arbitration Rules to resolve their dispute through arbitration.

applicable law of the seat.[69] Some institutions additionally provide model rules that parties can use for *ad hoc* arbitration not linked to any particular arbitral institution.[70]

In institutional arbitration, a recognized institution (e.g., ICC, SIAC or PCA) administers the procedure. It provides administrative support, rules, or appoints arbitrators. This can add a level of structure and efficiency to the institutional arbitration process. It must be noted, however, that many arbitration mechanisms are not purely *ad hoc* or institutional but rather sit somewhere on the spectrum between these two poles.[71]

The decision of choosing between institutional and *ad hoc* arbitration depends on factors such as the nature of the dispute and preferences of the parties. Institutional arbitration provides several benefits such as detailed arbitration rules, administrative support from a secretariat, or assistance in selecting qualified arbitrators. However, institutional arbitration entails potential drawbacks such as high administrative costs and short timelines.

Ad hoc arbitration often proves more cost-effective since it does not require paying fees to arbitration institutions. It suits various claim sizes and offers flexibility in choosing procedural rules tailored to parties' needs. However, *ad hoc* arbitration may also bring certain disadvantages, including potential disagreements on procedures, arbitrator selection, or arbitrator fees, and greater responsibilities for organizing the arbitration.[72] Moreover, *ad hoc* awards may be difficult to enforce in some jurisdictions.[73]

5.2. Initiation and Conduct of Proceedings

The arbitration process typically begins with the initiation of proceedings. Typically, one party sends a notice of arbitration to the other or to the institution.[74] This document typically outlines the claims, identifies the arbitrators or the method for their appointment, and sets the stage for the arbitration.

Additionally, parties in international arbitration may agree (whether through the adoption of particular rules or otherwise) to sign terms of reference which represent a contractual instrument endorsed by both parties and arbitrators. The purpose is to establish precise

[69] See Fullelove and Borshevskaya, this volume.
[70] UNCITRAL Arbitration Rules; International Institute for Conflict Prevention and Resolution, Rules for Non-Administered Arbitration of International Disputes (2018) <https://static.cpradr.org/docs/2017InternationalNon-AdminArbRules%20(web%20version)_.pdf> accessed 31 January 2025; London Maritime Arbitrators Association, LMAA Terms and Procedures (2021) <https://lmaa.london/wp-content/uploads/2021/04/LMAA-Terms-Procedures-2021-FINAL.pdf> accessed 31 January 2025 (LMAA Rules).
[71] See Fullelove and Borshevskaya, this volume.
[72] See, e.g., Yarik Kryvoi, 'UK and International Experience in the Admission, Regulation and Operation of Arbitral Institutions: Report prepared for the Great Britain-China Centre for the China Prosperity Fund UK-China Business Environment Programme' (2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3827454> accessed 31 January 2025.
[73] ibid.
[74] See, e.g., Singapore International Arbitration Centre, Arbitration Rules (2016) <https://siac.org.sg/wp-content/uploads/2022/06/SIAC-Rules-2016-English_28-Feb-2017.pdf> accessed 31 January 2025 (SIAC Arbitration Rules) art 3(1); UNCLOS Annex VII art 1.

parameters of the dispute (in particular the issues in dispute, identifying claims and counterclaims) and its procedural elements (such as governing law, language, timeline).[75]

The proceedings typically involve various stages, including the exchange of statement of claim and defence,[76] the presentation of evidence,[77] witness examinations,[78] and legal arguments.[79] The tribunal manages the process, ensuring fairness and efficiency.

5.3. Seat of Arbitration and Place of Proceedings

Parties often agree on the seat of the arbitration, which determines the legal framework for the arbitration, including the applicable procedural law (*lex arbitri*)[80] and the authority of local courts to intervene and support arbitration.[81] The physical place of arbitration, i.e., the actual location where arbitration hearings and proceedings occur does not always coincide with the seat of arbitration. After the Covid-19 pandemic many arbitration proceedings increasingly take place fully or partially in a remote (online) format,[82] which should have no impact on the seat of arbitration. It is the latter, which determines the applicable procedural framework (*lex arbitri*) and the courts with supervisory jurisdiction.[83]

The *lex arbitri* also determines the legal requirements for setting aside (also known as 'annulling' or 'vacating') an award and enforcement in that particular jurisdiction.[84] Therefore, it is crucial to carefully consider various factors when selecting the seat. One survey of practitioners suggests that the five most preferred seats for arbitration of international disputes are London, Singapore, Hong Kong, Paris and Geneva.[85]

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[75] International Chamber of Commerce, Arbitration Rules (2021) <https://iccwbo.org/wp-content/uploads/sites/3/2020/12/icc-2021-arbitration-rules-2014-mediation-rules-english-version.pdf> accessed 31 January 2025 (ICC Arbitration Rules) art 23.
[76] See, e.g., UNCITRAL Arbitration Rules arts 20 and 21; LCIA Arbitration Rules art 15.
[77] See, e.g., UNCITRAL Arbitration Rules art 27; ICC Arbitration Rules art 25; LCIA Arbitration Rules art 15.
[78] See, e.g., UNCITRAL Arbitration Rules arts 27 and 28; ICC Arbitration Rules art 25; LCIA Arbitration Rules art 20.
[79] See, e.g., UNCITRAL Arbitration Rules art 28; ICC Arbitration Rules art 26; LCIA Arbitration Rules art 19.
[80] Domestic legislations clarifying the link between the seat of arbitration and *lex arbitri* see, e.g., Swiss PILA art 176(1); Indian AA sec 2(2); Malaysian Arbitration Act of 31 December 2005 sec 3(3); German Code of Civil Procedure of 5 December 2005 (German CCP) sec 1 § 1025(1).
[81] See, e.g., International Standard Electric Corporation (US) v Bridas Sociedad Anonima Petrolera (Argentina), 745 F Supp 172 (SDNY 1990); Bharat Aluminium Company v Kaiser Aluminum Technical Services Inc Civil Appeal no 7019 (Chhattisgarh High Court, 10 August 2005) (courts in various countries have consistently ruled that the authority to oversee arbitration proceedings is exclusively vested in the jurisdiction where the arbitration is seated).
[82] For instance, in 2023 Sixty-six percent of all hearings and sessions combined remote and in- person features. International Centre for Settlement of Investment Disputes, 'Annual Report 2023' (2023) <https://icsid.worldbank.org/sites/default/files/publications/ICSID_AR2023_ENGLISH_web_spread.pdf> accessed 13 January 2024.
[83] Union of India v McDonnell Douglas Corporation [1993] 2 Lloyd's Rep 48.
[84] International Standard Electric Corporation v Bridas Sociedad Anonima Petrolera (n 81); Bharat Aluminium Company v Kaiser Aluminum Technical Services (n 81) (courts in various countries have consistently ruled that the authority to oversee arbitration proceedings is exclusively vested in the jurisdiction where the arbitration is seated).
[85] Queen Mary and White & Case, '2021 International Arbitration Survey: Adapting Arbitration to a Changing World' <www.whitecase.com/publications/insight/2021-international-arbitration-survey> accessed 20 April 2024.

Parties often choose these cities as arbitration seats because of arbitration-friendly laws and practices and the presence of leading arbitral institutions. For instance, LCIA is headquartered in London, making it a popular choice for arbitration proceedings administered under these rules. Similarly, Singapore hosts SIAC, while Hong Kong is home to HKIAC (Hong Kong International Arbitration Centre), contributing to prominence of these cities as arbitration seats. Miami has recently emerged as a seat of arbitration, particularly for Latin American disputes.

However, the city of the headquarters does not always define the seat of arbitration. For example, in one year, according to LCIA statistics, beyond London, twelve other cities were selected as seats of LCIA arbitrations.[86]

In inter-state arbitrations, the geography of disputes is different. For example, the PCA is based in the Hague, which attracts many disputes to this city.[87] However, the parties can decide to have a seat of their arbitration in other cities. PCA has offices in Buenos Aires, Ha Noi, Mauritius and Singapore.[88]

5.4. Language of Arbitration

Parties can also choose the language of arbitration. English remains the dominant language of international business. For example, for ICC arbitrations around 80% of proceedings and awards are in English, the same is true for many other institutions around the world.[89] In some areas, however, other languages also play a prominent role. For example, in ICSID proceedings sixty four percent of the cases were conducted in English and seven percent of all cases were conducted either only in Spanish or in Spanish and English simultaneously.[90]
Other languages often used in international arbitration include French (in Europe and Francophone Africa), Portuguese (in Europe and Brazil) and Russian (in some former Soviet Union states).[91] The world's business arbitral institutions are based in China and Chinese language plays an important role there because most disputes administered by such institutions are of domestic nature, without an international element.[92]

5.5. Procedural Powers of Tribunal

The powers of arbitral tribunals are linked to the so-called *Kompetenz-Kompetenz* principle. According to this principle, the tribunal has authority to rule on its own jurisdiction, including

[86] LCIA (n. 34).
[87] In 2023, approximately one third of disputes take place in the Hague, the rest take place in other countries. See, PCA (n. 24), 28.
[88] ibid.
[89] ICC, 'ICC Dispute Resolution 2020 Statistics' (*ICC*, 2021) <https://nyiac.org/wp-content/uploads/2021/09/ICC-Dispute-Resolution-2020-Statistics.pdf> accessed 12 January 2024. Also see, ICSID (n. 36) nearly 64 percent cases were conducted in English in ICSID Arbitrations and SCC nearly 50 percent of the cases were conducted in English for SCC Arbitrations. SCC, 'SCC Statistics' (SCC, 2023) <https://sccarbitrationinstitute.se/en/about-scc/scc-statistics#:~:text=The%20SCC%20appointed%2050%20arbitrators,and%20the%20already%20appointed%20arbitrators> accessed 12 January 2024.
[90] ICSID (n. 36)
[91] ICSID (n. 36)
[92] Kryvoi and Petrig (n 23).

any challenges to jurisdiction.[93] Most institutional arbitration rules, contemporary arbitration statutes, and the principal international arbitration treaties recognise this principle.[94] The UNCITRAL Model Law provides that the arbitral tribunal has the authority to decide on its own jurisdiction, addressing objections related to the existence or validity of the arbitration agreement.[95]

In many domestic legal systems, arbitral tribunals have the power to rule on their own jurisdiction before the domestic courts intervene. This principle underscores the arbitrators' ability to determine the extent of the authority of the tribunal. Domestic courts have to refrain from hearing arguments against the tribunals' jurisdiction until the tribunal itself had had a chance to do so.[96] However, while arbitral tribunals autonomously decide on their own competence, domestic law usually imposes certain limitations.[97] Arbitral tribunals have the authority to hear evidence, to decide on various procedural matters, and render final awards.[98]

5.6. Cost of proceedings

The costs of arbitration include arbitrator fees, administrative fees (for institutional arbitrations), legal fees (e.g., counsel fees), and other expenses (e.g., relating to the hearing venue, translators, transcription services and electronic 'hearing platform' costs).[99] Arbitrators often address the allocation of costs in the final award, although separate costs awards are also common. When it comes to arbitrators' remuneration the parties may agree on a fee structure or refer to institutional rules that provide guidance on arbitrators' compensation.[100]

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[93] Examples of provisions on the principle of *Kompetenz-Kompetenz* include UNCITRAL Model Law art 16; Swiss PILA art 186(1); Swiss Arbitration Centre, Swiss Rules of International Arbitration (2021) <www.swissarbitration.org/wp-content/uploads/2023/08/Swiss-Rules-2021-EN.pdf> accessed 11 February 2025 (Swiss Rules) art 23(1); ICC Arbitration Rules art 6(3); LCIA Arbitration Rules art 23(1); International Centre for Dispute Resolution, International Dispute Resolution Procedures (Including Mediation and Arbitration Rules) (2021) <www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar> accessed 11 February 2025 (ICDR Rules) art 19(1); UNCLOS Annex VII art 9; PCA Optional Rules for Arbitrating Disputes art 21.

[94] See, e.g., UNCITRAL Model Law art 16; Swiss PILA art 186(1); Swiss Rules art 23(1); ICC Arbitration Rules art 6(3); LCIA Arbitration Rules art 23(1); ICDR Rules art 19(1); UNCLOS Annex VII art 9; PCA Optional Rules for Arbitrating Disputes art 21.

[95] UNCITRAL Model Law art 16(1).

[96] For example, French law grants arbitral tribunals priority to decide on its jurisdiction: French CPP art 1466; similar approach in English AA sec 30(1); Swedish AA sec 2.

[97] See, e.g., *Odontologia Noroeste Ltda v GOU – Grupo Odontologico Unificado Franchising Ltda* Case no 1.602.076 – SP (2016/0134010-1) (Supreme Federal Court of Brazil, 15 September 2016) (Brazil's highest court ruled that a domestic court has the authority to declare the nullity of an arbitration agreement if it is clearly and manifestly illegal, even before the conclusion of the arbitration proceedings.) Also, a Swiss court before which an action is brought shall decline jurisdiction unless it finds that the arbitration agreement is invalid, inoperable, or incapable of being performed.

[98] Examples of provisions on the authority to decide procedural matters, hear evidence, and render final awards include UNCITRAL Model Law art 16; Swiss PILA art 186(1); Swiss Rules art 23(1); ICC Arbitration Rules art 6(3); LCIA Arbitration Rules art 23(1); ICDR Rules art 19(1).

[99] For example, in investor-state arbitration, legal costs may reach millions of US dollars; see Matthew Hodgson, Yarik Kryvoi and Daniel Hrcka, '2021 Empirical Study: Costs, Damages and Duration in Investor-State Arbitration' (*British Institute of International and Comparative Law and Allen & Overy*, 2021) <www.biicl.org/documents/136_isds-costs-damages-duration.pdf> accessed 11 February 2025.

[100] ICC Arbitration Rules Appendix III arts 3 and 2(2); see website of LCIA <www.lcia.org/Dispute_Resolution_Services/schedule-of-costs-lcia-arbitration-2020.aspx> accessed

5.7. Emergency Arbitrators

Arbitration rules often provide for the appointment of emergency arbitrators to grant interim relief before the constitution of the full tribunal.[101] These procedures offer parties a mechanism to secure interim relief through a promptly appointed emergency arbitrator (typically within one or two business days) before the formal establishment of the arbitral tribunal.[102] Emergency arbitrators may allow parties to obtain interim measures without relief from domestic courts – for instance, to seek urgent remedies to preserve the *status quo*, prevent the other party from hiding assets or on other issues. Unlike a court, however, the emergency arbitrator has no power to issue an order that binds a third party to the arbitration, should such relief be sought.

5.8. Expedited Proceedings

Certain arbitration rules also provide for expedited mechanisms, whether for the whole or part of the arbitral process.[103] A leading example of 'full' expedited arbitration procedures are the Expedited Arbitration Rules of the ICC.[104]

The swift formation of an arbitral tribunal involves a simplified process to speed up arbitration proceedings. Within this framework, submitting a written application to the institution, with copies provided to all parties involved in the arbitration, is a pivotal initial step in commencing the accelerated arbitration procedure. In some cases, the arbitral institution has the authority to reduce the prescribed time frames for the tribunal's establishment at its discretion.[105]

5.9. Transparency and Confidentiality

The level of transparency and confidentiality of arbitral proceedings and related documents determines the extent to which non-parties can access information about proceedings. In practice, the parties can usually tailor the extent of transparency suitable for their case. Balancing transparency and confidentiality allows parties to safeguard their interests in arbitral proceedings and may also have a significant impact on the legitimacy of arbitration. In context commercial arbitration, the private nature of the process allows to keep disputes confidential,

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11 February 2025; see website of ICSID <https://icsid.worldbank.org/services/cost-of-proceedings/schedule-fees/2023> accessed 11 February 2025.

[101] See, e.g., ICC Arbitration Rules art 29 and Appendix V; ICDR Rules art 6; Stockholm Chamber of Commerce, Arbitration Rules (2023) <https://sccarbitrationinstitute.se/wp-content/uploads/2024/12/SCC_Arbitration_Rules_2023_English.pdf> accessed 11 February 2025 (SCC Arbitration Rules) Appendix II; Hong Kong International Arbitration Centre, Administered Arbitration Rules (2024) <https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2024> accessed 11 February 2025 (HKIAC Arbitration Rules) sch 4; SIAC Arbitration Rules sch 1; LCIA Arbitration Rules art 9B.

[102] See, e.g., ICC Arbitration Rules art 29 and Appendix V; ICDR Rules art 6; SCC Arbitration Rules Appendix II; HKIAC Arbitration Rules sch 4; SIAC Arbitration Rules sch 1; LCIA Arbitration Rules art 9B.

[103] See, e.g., LCIA Arbitration Rules art 22(5); SIAC Arbitration Rules rule 5; HKIAC Arbitration Rules art 41; Swiss Rules art 37.

[104] ICC Arbitration Rules Appendix VI.

[105] ICC Arbitration Rules Appendix VI.

but this can vary depending on the governing law and the parties' agreement.[106] In arbitrations involving States (e.g., State-State or investor-State arbitration), the awards and proceedings are typically public, although it may also be possible to change it.[107]

Although confidentiality remains a common feature of commercial arbitration, increasingly, there is a trend toward greater transparency in international arbitration.[108] Some institutional rules require the publication of redacted awards.[109] The calls for more transparency in commercial arbitration arise from the arguments that despite being private disputes, the implications of commercial arbitration affect the non-disputing as well.[110] The 2014 Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration,[111] serves as a notable illustration of efforts aimed at facilitating the implementation of UNCITRAL Rules on Transparency[112] in investor-state arbitration. However, only nine States have ratified this convention at the time of writing,[113] which suggests that states are not that eager to make their investor-State arbitrations more transparent in accordance with this convention. Notably, in domains such as business and human rights disputes, where public interest strongly advocates for transparency, comprehensive transparency provisions are delineated, as evidenced by the far-reaching transparency rules articulated in the Hague Rules on Business and Human Rights.[114]

6. Arbitrators

Arbitrators are independent individuals appointed to settle a dispute in accordance with an arbitral procedure. They play the central role in arbitral proceedings by deciding procedural questions and resolving the dispute on the merits. Arbitrators are typically appointed based on

[106] ICSID Arbitration Rules rule 61(1)(3); Court of Arbitration for Sport, Code of Sports-Related Arbitration (2023) <www.tas-cas.org/fileadmin/user_upload/CAS_Code_2023__EN_.pdf> accessed 11 February 2025 (CAS Rules) rule 59; LMAA Rules art 29.

[107] For a comparative overview of various approaches to transparency see Yarik Kryvoi, 'Private or Public Adjudication? Procedure, Substance and Legitimacy' (2021) 34(3) Leiden Journal of International Law 681, 691-693.

[108] Stefan Pislevik, 'Precedent and Development of Law: Is It Time for Greater Transparency in International Commercial Arbitration?' (2018) 34(2) Arbitration International 241; Philip Wimalasena, 'The Publication of Arbitral Awards as a Contribution to Legal Development – A Plea for More Transparency in International Commercial Arbitration (A Summary of the Doctoral Thesis "Die Veröffentlichung von Schiedssprüchen als Beitrag zur Normbildung", Mohr Siebeck, 2016)' (2019) 37(2) ASA Bulletin 279, 281.

[109] See, e.g., SIAC Arbitration Rules art 32(12); LCIA Arbitration Rules art 30(3); ICDR Rules art 40(4); Vienna International Arbitral Centre, Rules of Arbitration (2021) <www.viac.eu/images/documents/vienna_rules/VIAC_schieds_mediationsordnung_2021_e_v4_1812s.pdf> accessed 12 February 2025 art 41.

[110] Wimalasena (n 108).

[111] United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration (adopted 10 December 2014, entered into force 18 October 2017) 3208 UNTS 1.

[112] United Nations Commission on International Trade Law, Rules on Transparency in Treaty-Based Investor-State Arbitration (2014) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rules-on-transparency-e.pdf> accessed 12 February 2025.

[113] See website of UNCITRAL <https://uncitral.un.org/en/texts/arbitration/conventions/transparency/status> accessed 13 January 2024.

[114] Hague Rules on Business and Human Rights Arbitration (2019) <https://docs.pca-cpa.org/2019/12/The-Hague-Rules-on-Business-and-Human-Rights-Arbitration.pdf> accessed 12 February 2025 (Hague Rules); see Kriebaum, this volume.

the agreement of the parties, which specifies the number of arbitrators (a sole arbitrator, a panel of three or more arbitrators) and the method of their appointment.

can be appointed in various ways, most commonly by parties (each party appoints its arbitrator, and the appointed arbitrators select a neutral presiding arbitrator) or institutions (institutional rules foresee mechanisms for the appointment of arbitrators, either by the institution itself or by a designated appointing authority).[115]

The qualifications and background of arbitrators can vary, and parties may agree on specific qualifications of arbitrators in their arbitration agreement.[116] Many arbitrators have legal expertise, industry knowledge, or experience relevant to the dispute. Increasingly, arbitral institutions and policymakers promote diversity in arbitral tribunals. This includes gender diversity, geographical diversity, and diversity in professional backgrounds. Some institutional rules encourage parties to consider diversity when appointing arbitrators.[117]
Arbitrators must be impartial and independent. They must disclose any potential conflicts of interest and comply with ethical guidelines set forth in institutional rules or applicable laws.[118] Failure to comply with ethical and legal obligations may result in challenges to arbitrators[119] or to the arbitral award itself.[120]

Grounds for disqualification may include bias, lack of impartiality, or failure to disclose relevant information.[121] At the same time, arbitrators generally enjoy immunity from legal action for acts performed in the course of their duties as arbitrators. This immunity is essential to ensure arbitrators can make decisions without fear of personal liability.[122]

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[115] See, e.g., ICC Arbitration Rules art 13; LCIA Arbitration Rules art 5; UNCITRAL Arbitration Rules arts 8, 9 and 10.

[116] Examples of provisions on qualifications and background of arbitrators include Swedish AA sec 7; Singaporean AA sec 11; Indian AA sec 11; English AA sec 24(1); PCA Optional Rules for Arbitrating Disputes art 8.

[117] Examples of provisions on diversity of arbitrators include Belgian Centre for Arbitration and Mediation, Arbitration Rules (2023) <https://cepani.be/files/publications_documents/documents/rules/en/arbitration/cepani_arbitrage_en---annexes---code-hd.pdf> accessed 12 February 2025 art 15; Scottish Arbitration Centre Rules (2023) <https://scottisharbitrationcentre.org/wp-content/uploads/2024/01/SAC-Rules-2023-1.pdf> accessed 12 February 2025 art 8(1); International Chamber of Commerce, 'Note to National Committees and Groups on the Proposal of Arbitrators' (24 November 2016) <https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/note-national-committees-groups-icc-proposal-arbitrators/> accessed 12 February 2025, para 40. On diversity, see Lijnzaad, this volume.

[118] Examples of provisions on conflict of interest include UNCITRAL Model Law art 12(1); United Nations Commission on International Trade Law, Code of Conduct for Arbitrators in International Investment Dispute Resolution (2023) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2318824e-coc_arbitrators_ebook_11june.pdf> accessed 12 February 2025 art 11; LCIA Arbitration Rules art 5(4); PCA Optional Rules for Arbitrating Disputes art 9.

[119] Examples of provisions on ethical and legal obligations that may result in challenges include UNCITRAL Model Law art 34(2)(a)(iv); New York Convention art V(1)(d).

[120] PCA Optional Rules for Arbitrating Disputes art 10. In cases where there is evidence of corruption by an ICSID arbitrator, the arbitral award may potentially be annulled under Article 52(1)(b) of the ICSID Convention, which allows challenges based on corruption on the part of one of the members of the Tribunal.

[121] Ibid.

[122] Examples of provisions on immunity of arbitrators include ICC Arbitration Rules art 41; LCIA Arbitration Rules art 31(1), ICDR Rules art 38; HKIAC Arbitration Rules art 46. Also see, English AA sec 29; Kenyan Arbitration Act of 10 August 1995 sec 16B.

Parties typically define the term of service for arbitrators in the arbitration agreement or rely on default procedures in institutional rules. According to the principle '*functus* officio' (a Latin term that means 'having performed his or her office') once an arbitrator or arbitral tribunal has rendered a final award, their mandate and authority over the subject matter of the dispute comes to an end.[123] Challenges aim at the replacement or disqualification of arbitrators, as provided in relevant institutional rules or arbitration laws.[124]

7. Applicable law

The term applicable law refers to norms relevant to various aspects of arbitration. In contrast to domestic arbitration, international arbitration typically encompasses multiple legal systems or sets of legal principles. The identification of the applicable law stands as a crucial element within the arbitration proceedings.

The parties to an arbitration agreement often have the freedom to choose the applicable law governing the substance of their dispute.[125] This choice is typically expressed in the arbitration agreement or through subsequent agreement during the arbitration process. If the parties do not specify the applicable law, or if there is ambiguity in the choice of law, the arbitral tribunal may determine the applicable law.[126] Tribunals often consider the substantive law chosen by the parties, the law of the contract, and other relevant legal principles.[127]

According to LCIA statistics, during one year domestic laws of nineteen jurisdictions served as substantive governing law in LCIA arbitrations.[128] It is notable that English law continues to be the prevailing selection not only for LCIA arbitration,[129] but across all ICC cases.[130]
SCC (Stockholm Chamber of Commerce) saw a prevalence of decisions rendered in Swedish, English, and Russian languages, with Swedish law emerging as the most commonly applied governing law.[131] SIAC's caseload reflects disputes governed by the laws of a significant

[123] See more about his principle: Greg Fullelove, 'Functus Officio?' in Julio Betancourt (ed), Defining Issues in International Arbitration: Celebrating 100 Years of the Chartered Institute of Arbitrators (Oxford University Press 2016) 257–268.
[124] Examples of provisions on challenges include UNCITRAL Arbitration Rules art 12; LCIA Arbitration Rules art 10; ICSID Convention art 57; ICC Arbitration Rules art 14; ICDR Rules art 14(1); Arbitration Rules art 19; HKIAC Arbitration Rules art 11(6). Also see, Swedish AA sec 8; French CPP art 1463; Singaporean AA sec 12; Indian AA sec 12.
[125] Brazilian Arbitration Act of 23 September 1996 sec 2; English AA sec 46(1); French CPP art 1511; German CCP art 1051(10); Russian Federation Law on International Commercial Arbitration of 7 July 1993 sec 28; Swiss PILA art 187(1).
[126] See, e.g., *The Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait)* [2021] UKSC 48 (the arbitration tribunal determined that French law, being the governing law of the seat, was applicable to the arbitration agreement.).
[127] Nigel Blackaby, Constantine Partasides and Alan Redfern, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2022) ch 3.
[128] LCIA (n. 34).
[129] Ibid.
[130] Choice-of-law clauses were included in substantive contractual provisions in 95% of all cases registered in 2020. These covered the laws of 127 different nations, states, provinces and territories – the highest number to date. In 2020, the most frequently selected governing law for contracts was English law with 122 cases (13% of all cases registered), the laws of a US state (104 cases),17 followed by Swiss law (66 cases), French law (56 cases), and the laws of Brazil (42 cases). See website of the ICC <https://nyiac.org/wp-content/uploads/2021/09/ICC-Dispute-Resolution-2020-Statistics.pdf> accessed 12 January 2024.
[131] SCC (n. 89).

number of jurisdictions, with Singaporean law taking the lead at over half of cases. English Law and Indian Law feature prominently in governing law preferences in SIAC cases.[132]
The applicable law in international arbitration can include domestic and international law. In some cases, especially in international commercial arbitration, the tribunal may apply *lex mercatoria* (autonomous customary rules and procedures developed within business communities).[133] In other cases, the parties may agree to resolve their dispute based on the principles of fairness (*amiable compositeur* or *ex aequo et bono*).[134]

A separate set of laws can apply to the arbitration agreement itself, either because the parties choose to do so or as a result of application of conflict of law rules.[135]

The law of the seat of arbitration (*lex arbitri*) determines procedural matters, such as arbitrability, the enforceability of the arbitration agreement, the conduct of proceedings, and the grounds for challenging or setting aside awards.[136]

Because enforcement of arbitral awards often involves jurisdictions outside of the seat of arbitration, a separate law governs the enforcement of the arbitral award. In inter-state arbitration, the significance of the seat may vary compared to other arbitration mechanisms because domestic courts usually have no authority to annul or set aside awards. It is usually possible to agree on holding hearings at a location separate from the arbitration's seat, without changing the seat or the place from which the award is issued.

While precedent usually does not bind arbitral tribunals in the same way as courts, previous arbitral tribunals' decisions, especially those addressing similar legal issues, may influence and be considered by arbitral tribunals.[137] This is particularly true in areas with a wealth of public awards, such as investor-state arbitration or inter-state arbitration and less so in areas where confidentiality prevails (e.g., international commercial arbitration). In other words, tribunals tend to take into account earlier cases and be consistent on various issues pertaining to

[132] SIAC (n. 27)
[133] Pierre Mayer, 'The Role of the UNIDROIT Principles in ICC Arbitration Practice' [2022] ICC International Court of Arbitration Bulletin Special Supplement 105, 111.
[134] See, e.g., UNCITRAL Arbitration Rules art 33(2).
[135] Julian Lew, 'Relevance of Conflict of Law Rules in the Practice of Arbitration' (12th International Council for Commercial Arbitration Congress, Vienna, 3–6 November 1994) in Albert van den Berg (ed), *Planning Efficient Arbitration Proceedings: The Law Applicable in International Arbitration* (Kluwer Law International 1996) 447–458.
[136] See, e.g., International Standard Electric Corporation v Bridas Sociedad Anonima Petrolera (n 81); Bharat Aluminium Company v Kaiser Aluminum Technical Services (n 81) (Courts in various countries have consistently ruled that the authority to oversee arbitration proceedings is exclusively vested in the jurisdiction where the arbitration is seated).
[137] See, e.g., *Saipem SpA v The People's Republic of Bangladesh* Case no ARB/05/07 (ICSID, Decision on Jurisdiction and Recommendation on Provisional Measures, 21 March 2007) (the tribunal asserted that previous decisions did not bind it but must pay due consideration to earlier decisions of international tribunals, unless it has 'compelling contrary grounds' not to do so); *Caratube International Oil Company LLP v The Republic of Kazakhstan* Case no ARB/08/12 (ICSID, Decision on Provisional Measures, 31 July 2009) (the arbitral tribunal relied on legal rules to confer legal effects on previous decisions, considering them as supplementary means of interpretation, although stating that previous decisions do not bind arbitrators).

jurisdiction and procedure, such as the timeliness of raising objections to jurisdiction and the authority of the tribunal to prescribe interim measures.[138]

Even when the parties have chosen a specific law to govern their contract, tribunals may refuse to apply provisions that violate public policy or mandatory rules of the enforcement jurisdiction.[139]

The law governing the arbitration agreement, the choice of law by the parties, the law of the seat, the law applicable to the arbitration agreement and the law of the enforcement jurisdiction collectively shape the legal framework within which the arbitral tribunal operates. Tribunals aim to strike a balance between respecting party autonomy and applying principles that ensure a fair and just resolution of the dispute.

8. Awards and enforcement

8.1. Types of Awards

An award in the context of arbitration refers to the final binding decision issued by an arbitral tribunal. An award can cover various issues,[140] including jurisdiction, merits, and quantum (determining the amount of compensation). These may further be classified as provisional, interim or final. Additionally, awards may involve either monetary compensation or non-monetary redress (e.g. returning goods in kind). If the parties manage to resolve their dispute amicably and reach a settlement, they may opt to formalize the terms of their agreement in a consent award for enforcement benefits.[141]

While all awards in arbitration are generally considered binding and 'final,' i.e. resolving the specific issues in dispute, parties typically reserve the term 'final award' for decisions that conclude the tribunal's mission.[142] Upon the delivery of a final award, the tribunal loses jurisdiction over the dispute, terminating its special relationship with the parties. However, even after it has issued its final award, the tribunal still has some 'residual' jurisdiction (e.g., to correct an award). Tribunals may issue a separate award explicitly labelled as a partial award. The power to issue partial awards may lead to potential time and cost savings for all parties involved. Issuing a partial award may make a particular sense where it is possible to separate issues, for example, those related to jurisdiction, merits and quantum.[143]

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[138] Gabrielle Kaufmann-Kohler, 'Arbitral Precedent: Dream, Necessity or Excuse?: The 2006 Freshfields Lecture' (2007) 23(3) Arbitration International 357, 361; Mayer (n. 133) suggests that, in commercial arbitrations, tribunals are less inclined to attribute precedential importance to other awards, whereas sport arbitrations exhibit a significant dependence on precedents; investment arbitration involves the gradual establishment of rules by examining past cases.

[139] See Jan Kleinheisterkamp, 'Overriding Mandatory Laws in International Arbitration' (2018) 67(4) International and Comparative Law Quarterly 903.

[140] Examples of provisions on types of awards include ICC Arbitration Rules art 2v; UNCITRAL Arbitration Rules art 34(1); SIAC Arbitration Rules art 32(5).

[141] UNCITRAL Model Law art 30; ICC Arbitration Rules art 33; see also Yaraslau Kryvoi and Dmitry Davydenko, 'Consent Awards in International Arbitration: From Settlement to Enforcement' (2015) 40(3) Brooklyn Journal of International Law 827.

[142] UNCITRAL Arbitration Rules art 34(2); PCA Optional Rules for Arbitrating Disputes art 32.

[143] ICC Arbitration Rules art 2v; UNCITRAL Arbitration Rules art 26; SIAC Arbitration Rules art 32(5); PCA Optional Rules for Arbitrating Disputes art 32.

Parties can request additional awards to address unresolved issues by the initial tribunal decision. Many arbitration rules allow for such requests, and even without explicit provisions for obtaining additional awards.[144] It is also possible to see interpretation of particular issues or specific issues from the tribunal.[145]

Both the arbitral tribunal and domestic courts may issue interim measures (also known as provisional measures) to protect the parties' rights by preventing actions that may lead to immediate or impending harm or undermine the integrity of arbitral proceedings. Tribunals adopt such measures before the final award. Some examples of interim measures include appointment of an emergency arbitrator, stay of parallel proceedings, security of costs, and immediate protection of rights.[146]

Interim measures are granted according to criteria outlined in the relevant applicable rules. One study concluded that in investor-state arbitration the criteria of urgency, necessity to avoid risk of harm or prejudice, existence of the right, proportionality, *prima facie* jurisdiction and a *prima facie* case on merits are the most widely used.[147]

Most arbitration rules explicitly confer authority upon the tribunal to order binding interim measures upon a party's request.[148] The ICSID Arbitration Rules differ in this respect by characterizing the tribunal's power as 'recommending' provisional measures.[149] In practice, however, such orders are usually seen as binding.[150]

8.2. Requirements as to the Form of Award

Parties primarily determine the form of the award through the arbitration agreement and the applicable law. The arbitration agreement, including chosen institutional rules, may specify formalities. For instance, the UNCITRAL Rules and PCA Optional Rules for inter-state arbitration mandate a written award with stated reasons, signed by the arbitrators, and including relevant details.[151] The ICSID Arbitration Rules provide a comprehensive set of requirements for writing an award, encompassing party designations, procedural details, factual summaries,

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[144] See, e.g., English AA sec 57(3)(b); LCIA Arbitration Rules art 27; UNCITRAL Arbitration Rules art 39.
[145] See, e.g., UNCITRAL Model Law, PCA Optional Rules for Arbitrating Disputes art 37.
[146] Examples of provisions on interim measures include UNCITRAL Arbitration Rules art 26(2); International Centre for Settlement of Investment Disputes, Arbitration Rules (2022) <https://icsid.worldbank.org/sites/default/files/Arbitration_Rules.pdf> accessed 11 February 2025 (ICSID Arbitration Rules) rule 47(1); LCIA Arbitration Rules art 25(1); also see Swedish AA sec 25; Singaporean AA sec 11; Indian AA secs 9 and 17; PCA Optional Rules for Arbitrating Disputes art 26; UNCLOS art 290(5).
[147] See, e.g., David Goldberg, Yarik Kryvoi and Ivan Philippov, 'Empirical Study: Provisional Measures in Investor-State Arbitration' (*British Institute of International and Comparative Law and White & Case*, 2023) <www.biicl.org/documents/157_provisional-measures-in-investorstate-arbitration-2023.pdf> accessed 2 December 2024.
[148] Examples of provisions on interim measures upon party's request include ICC Arbitration Rules art 28(1); UNCITRAL Arbitration Rules art 26(2), LCIA Arbitration Rules art 25(1); PCA Optional Rules for Arbitrating Disputes art 26.
[149] ICSID Arbitration Rules rule 47(1).
[150] Goldberg, Kryvoi and Philippov (n 147); for a rule on the bindingness of provisional measures, see UNCLOS art 290(6).
[151] UNCITRAL Arbitration Rules art 34(3); PCA Optional Rules for Arbitrating Disputes art 32.

and cost considerations, which emphasizes the significance of adhering to institutional rules.[152] As discussed in more detail below, some institutional rules, most famously perhaps the ICC, provide for scrutiny by the institution itself to ensure the award meets certain formal requirements.[153]

Domestic law may also impose specific form requirements, often centred on the award being in writing, reasoned, dated, and signed.[154] Complying with these requirements is crucial for arbitral tribunals to ensure the validity and enforceability of their awards.

8.3. Internal Review Mechanisms in Arbitration

Internal review mechanisms in arbitration refer to procedures that allow parties to challenge arbitral awards within the framework of the arbitral process.[155] Arbitral tribunals design these mechanisms to address specific issues that may arise during or after the arbitration, providing a form of internal check on the fairness and validity of the arbitral proceedings.

In institutional arbitration, the arbitral rules may provide for internal review mechanisms.[156] For example, the ICC Rules provide for an internal review of all draft awards by the ICC's International Court of Arbitration (the 'scrutiny' process referred to above), which may 'lay down modifications as to the form of the award' and draw a tribunal's 'attention to points of substance'.[157] Every ICC award must be approved by the ICC Court before it can be officially rendered. The SIAC rules provide for a similar internal review process.[158]

The ICSID Convention provides for a mechanism for annulment of awards. Parties can request annulment on specific grounds, such as a serious departure from a fundamental rule of procedure or a manifest excess of powers.[159] Similarly, certain institutional rules allow for appeals on points of law.[160] However, such mechanisms are relatively rare in international commercial arbitration, where the finality of awards is generally praised.

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[152] ICSID Arbitration Rules rule 59.
[153] LCIA Arbitration Rules art 26; ICC Arbitration Rules art 34; CAS Rules rule 47.
[154] See, e.g., Swiss Civil Procedure Code of 19 December 2008 art 384; English AA sec 52.
[155] See Reinisch, this volume.
[156] Examples of provisions on internal review mechanisms include Paris Maritime Arbitration Chambre, Arbitration Rules (2022) <www.arbitrage-maritime.org/CAMP-V3/arbitration-rules/> accessed 12 February 2025 art XVII; Grain and Feed Trade Association, Arbitration Rules No 125 (2024) <www.gafta.com/write/MediaUploads/Contracts/2024/July2024/125_JULY_2024.pdf> accessed 12 February 2025 arts 10,11 and 12; Federation of Oils, Seeds and Fats Associations, Rules of Arbitration and Appeal (2024) <www.fosfa.org/wp-content/uploads/2024/04/The-Rules-of-Arbitration-and-Appeal-1-April-2024.pdf> accessed 12 February 2025 rules 7, 8 and 9.
[157] ICC Arbitration Rules art 33.
[158] SIAC Arbitration Rules art 33.
[159] ICSID Convention art 52. For an empirical study of annulment under the ICSID Convention see Johannes Koepp, Yarik Kryvoi and Jack Biggs, 'Empirical Study: Annulment in ICSID Arbitration' (*British Institute of International and Comparative Law and Baker Botts*, 2021) <www.biicl.org/documents/10899_annulment-in-icsid-arbitration190821.pdf> accessed 2 December 2024.
[160] See, e.g., CAS Rules rule 47.

Lastly, arbitration rules may provide procedures for correcting clerical or typographical errors in the award or seeking an interpretation of specific points in the award. These procedures do not aim to challenge the substance of the award but to address minor issues.[161]

8.4. External Review Mechanisms in Arbitration

If a party, due to genuine concerns or strategic considerations, concludes that an issue affecting the award cannot be rectified by the arbitral tribunal and if there is no provision for internal review under the applicable rules, it may turn to domestic courts to set aside the award, either in its entirety or in part. Arbitral awards may be subject to setting aside proceedings before the seat's domestic courts.[162] Setting aside proceedings typically involve grounds such as procedural irregularities, lack of jurisdiction, or public policy violations.[163] In addition, it is possible to resist enforcement of arbitral awards, where courts in the enforcement jurisdiction may decline to recognise and enforce a foreign arbitral award.

8.5. Enforcement

The enforcement of arbitral ensures that the binding decisions made by arbitrators are not merely symbolic but have practical consequences. In the context of commercial and investor-state arbitration the 1957 New York Convention (ratified by over 170 States) aims to ensure that the award can be recognised and effectively enforced across different jurisdictions if the losing party does not voluntarily comply with it.[164] The public policy exception is one of the most common grounds for refusing the enforcement of an arbitral award under the New York Convention and many national laws.[165] Public policy interpretations vary widely between jurisdictions, which may lead to inconsistencies in the outcomes of enforcement proceedings.[166]

The ICSID Convention requires its members States (ratified by nearly 160 States[167]) requires as though it were a final judgment of a court in that State.[168] Moreover, regional conventions establish a different enforcement regime. A leading example is the Inter-American Convention on International Commercial Arbitration, also referred to as Panama Convention, concluded in 1975 among the United States and most Latin American nations.[169]

9. Relationship between Arbitration Tribunals and Domestic/International Courts

[161] See, e.g., ICC Arbitration Rules art 36; LCIA Arbitration Rules art 27(2); ICDR Rules art 36(3); HKIAC Arbitration Rules art 38; Swiss Rules art 37; PCA Optional Rules for Arbitrating Disputes art 36(1).
[162] See, e.g., UNCITRAL Model Law art 34(2)(a)(i); Swedish AA sec 34; Indian AA sec 34.
[163] See, e.g., UNCITRAL Model Law art 34(2)(a)(i); Swedish AA sec 34; English AA sec 30(1); Indian AA sec 34.
[164] See Ehle, this volume.
[165] New York Convention art V.
[166] See Ehle, this volume.
[167] See website of ICSID <https://icsid.worldbank.org/about/member-states/database-of-member-states> accessed 17 February 2025.
[168] ICSID Convention art 54.
[169] Inter-American Convention on International Commercial Arbitration (adopted 30 January 1975, entered into force 16 June 1976) 1438 UNTS 245.

While parties often opt for arbitration to avoid court litigation, in some instances it is necessary to involve courts. These include determining jurisdiction, appointment and challenges of arbitrators, provisional measures, setting aside awards, appeals on points or law and recognition and enforcement of awards.

As discussed earlier, arbitral tribunals have the primary authority to rule on their own jurisdiction, by virtue of the *Kompetenz-Kompetenz* principle. However, parties may bring issues related to jurisdiction before domestic courts, particularly when a party challenges the tribunal's authority or when there are disputes over the existence or validity of the arbitration agreement.[170]

Parties usually determine the process of appointing and challenging arbitrators through the arbitration agreement, concluded within the framework of relevant institutional rules and the law of the seat. In some cases, if parties are unable to agree on the appointment of an arbitrator, domestic courts may have a role in appointing an arbitrator.[171] As discussed above, arbitral tribunals have the authority to grant interim relief with support of domestic courts, especially when urgency is a factor.[172] Courts can issue injunctions or other measures to preserve assets or maintain the status quo pending the arbitration.[173]

Lastly, as mentioned previously, domestic courts play a critical role in enforcing awards within their jurisdictions.

10. Future outlook

As the landscape of international arbitration evolves, practitioners, institutions, policymakers, and other stakeholders continue to explore how to enhance the efficiency and legitimacy of arbitration. Efficiency and legitimacy are critical to the success of international arbitration. Efforts to streamline procedures, enhance transparency, and ensure diversity among arbitrators contribute to the perceived efficiency and legitimacy of the process.[174] Striking the right balance between expeditious resolution and ensuring due process remains a challenge.
Arbitral tribunals are increasingly prioritizing diversity and inclusion.[175] Efforts to enhance gender and regional representation are gaining momentum, with institutions and practitioners

[170] Examples of provisions on challenges the tribunal's authority include French CCP art 1448.1; Singaporean AA sec 6.
[171] Examples of provisions on role of domestic courts in appointment of arbitrators include Swedish AA sec 10; Indian AA sec 11; English AA sec 24.
[172] UNCITRAL Arbitration Rules art 26(2); ICSID Arbitration Rules rule 47(1); LCIA Arbitration Rules art 25(1); HKIAC Arbitration Rules art 23; ICC Arbitration Rules art 28; PCA Optional Rules for Arbitrating Disputes art 26.
[173] Swiss PILA arts 183(1) and (2).
[174] Stephan Schill, 'Conceptions of Legitimacy of International Arbitration' in David Caron, Stephan Schill, Abby Cohen Smutny and Epaminontas Triantafilou (eds), *Practising Virtue: Inside International Arbitration* (Oxford University Press 2015) 106–124; Caroline Simson, 'The Link Between Transparency and Legitimacy in International Arbitration' (25th International Council for Commercial Arbitration Congress, Edinburgh, 18–21 September 2022) in Cavinder Bull, Loretta Malintoppi and Constantine Partasides (eds), *Arbitration's Age of Enlightenment?* (Kluwer Law International 2023) 267–278.
[175] See Lijnzaad, this volume.

acknowledging the value of diverse perspectives in decision-making.[176] This focus on diversity extends beyond gender and region, encompassing a broader range of backgrounds and expertise.

The adoption of digital tools and technology in arbitration is likely to further affect the development of arbitration.[177] Online case management, virtual hearings, and the use of artificial intelligence for document review are among the trends that could enhance efficiency and reduce costs. [178]

Furthermore, there is a growing emphasis on integrating environmental, social, and governance considerations into arbitration. Parties and arbitrators are increasingly mindful of the broader societal, environmental and governance impacts of disputes.[179] With the increasing focus on climate change and sustainability, the field of international arbitration may see a rise in disputes related to environmental issues and sustainable development. This trend emphasizes the need for arbitrators to possess expertise in diverse areas, including environmental law and sustainable business practices.[180]

The use of third-party funding[181] in arbitration is a topic of ongoing discussion. Regulatory developments and ethical considerations surrounding third-party funding may shape its future

[176] See, e.g., International Council for Commercial Arbitration with the assistance of the Permanent Court of Arbitration, 'Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings: 2022 Update' (2022) <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/ICCA-Report-8u2-electronic3.pdf> accessed 17 February 2025; Yves Fortier, 'Diversity in International Arbitration' (2023) 39(2) Arbitration International 226.

[177] See Bianchi, this volume.

[178] International Chamber of Commerce Commission on Arbitration and ADR, 'Leveraging Technology for Fair, Effective and Efficient International Arbitration Proceedings' (2022) <https://iccwbo.org/wp-content/uploads/sites/3/2022/02/icc-arbitration-and-adr-commission-report-on-leveraging-technology-for-fair-effective-and-efficient-international-arbitration-proceedings.pdf> accessed 17 February 2025; Queen Mary University of London School of International Arbitration and White & Case, '2018 International Arbitration Survey: The Evolution of International Arbitration' (2018) <www.qmul.ac.uk/arbitration/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF> accessed 17 February 2025; International Chamber of Commerce Commission on Arbitration and ADR, 'Information Technology in International Arbitration' (2017) <https://iccwbo.org/wp-content/uploads/sites/3/2017/03/icc-information-technology-in-international-arbitration-icc-arbitration-adr-commission.pdf> accessed 17 February 2025.

[179] International Bar Association Arbitration Committee ESG Subcommittee, 'Report on Use of ESG Contractual Obligations and Related Disputes' (2023) <www.ibanet.org/document?id=report-on-use-of-ESG-contractual-obligations> accessed 17 February 2025.

[180] The PCA offers specialized rules for arbitration and conciliation of environmental disputes: Permanent Court of Arbitration, Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment (2001) <https://docs.pca-cpa.org/2016/01/Optional-Rules-for-Arbitration-of-Disputes-Relating-to-the-Environment-and_or-Natural-Resources.pdf> accessed 17 February 2025.

[181] Third-party funding in arbitration involves a financial agreement where a third party, often a financial institution or individual, provides capital to support a party's participation in arbitration. The funding covers arbitration expenses like legal fees and expert charges. In return, the funder receives a share of the final arbitral award if the funded party prevails. This arrangement is typically non-recourse, relieving the funded party of repayment if the claim is unsuccessful.

role in international arbitration.[182] Striking a balance between promoting access to justice and addressing potential conflicts of interest remains a focal point of this discourse.

Recent global events, such as the COVID-19 pandemic, have highlighted the importance of flexibility and adaptability in dispute resolution mechanisms.[183] The ability of arbitration to respond to unforeseen challenges and crises will likely be a focus for future developments.
The international arbitration community continually explores ways to enhance the efficiency and fairness of the process. Proposals for reform include revising institutional rules, addressing issues related to costs and duration of proceedings, and adapting to evolving legal and business landscapes.[184] Collaborative efforts across jurisdictions and sectors, in some cases coordinated by international organisations such as UNCITRAL and ICSID, will be pivotal in ensuring that international arbitration remains a desirable and legitimate method of dispute resolution.

[182] International Council for Commercial Arbitration, 'Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration' (April 2018) <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Third-Party-Funding-Report%20.pdf> accessed 17 February 2025; Working Group III of the United Nations Commission on International Trade Law, 'Possible Reform of Investor-State Dispute Settlement (ISDS) – Draft Provisions on Procedural Reform' (11 July 2022) UN Doc A/CN.9/WG.III/WP.219.

[183] The ICC and other arbitration institutions have adopted electronic-only submissions, which have proven to be efficient and environmentally friendly: ICC Commission on Arbitration and ADR 2022 (n. 178).

[184] Various institutions have made it significantly easier to conduct multi-party arbitrations and have expanded the scope of expedited and reduced-cost arbitral proceedings, thereby addressing cost and time-saving measures i.e., the updated ICC Arbitration Rules of January 2021, have broadened the application of expedited arbitration by raising the threshold for opting out from 2 million to 3 million US dollars. Furthermore, the ICSID Arbitration Rules allow parties to voluntarily choose expedited arbitration, The LCIA Arbitration Rules of October 2020, explicitly acknowledge tribunals' power to promptly dismiss claims lacking merit, with the aim of shortening the time it takes for tribunals to deliver their awards by setting an eight-month deadline from the conclusion of arguments.