



## Chapter 2 Regulatory Framework for Arbitration

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**2-1** For arbitration to exist and succeed there must be a regulatory framework which controls the legal status and effectiveness of arbitration in a national and international legal environment. This regulatory framework must give effect to the agreement to arbitrate, the organisation of the arbitration process and the finality and enforceability of the arbitration award.

**2-2** Arbitration is the alternative jurisdiction to national courts which are specifically established by the state to apply and uphold the law and determine all forms of dispute. Arbitration is also the jurisdiction selected by the parties in preference to national courts. Parties may have many reasons for this selection. However, the extent to which parties can refer their disputes to arbitration is inevitably a matter to be regulated by the law. In recent years this has been through both national and international law.<sup>(1)</sup>

*page "17"*

**2-3** This chapter reviews (1) the historical development of international arbitration, (2) the adoption of the New York Convention, (3) the influence of international arbitration rules and practice, (4) the UNCITRAL Model Law and the adoption of new arbitration laws in many jurisdictions, and (5) the effect of this regulatory web on international commercial arbitration.

### **1. Historical Development of International Arbitration**

**2-4** For centuries arbitration has been accepted by the commercial world as a preferred or at least an appropriate system for dispute resolution of international trade disputes. The law has lagged behind in recognising and giving effect to the decisions of arbitrators. Most arbitrations were held on an *ad hoc* basis and despite rather than with support of the law. Even in England, for long a centre for international commercial arbitration due to its pivotal position as the centre for shipping, insurance, commodity and financing businesses, arbitration was closely controlled by the English courts.

**2-5** During this period there was significant national court intervention in the arbitration process, including reviewing the substantive decisions of the arbitrators. By corollary, there was no international regulation of arbitration. This invariably meant that the enforcement of awards was dealt with differently in every country which took account of not only its own national law on the recognition of foreign awards but also other political factors which might have been relevant.

**2-6** In the late 19th century and at the beginning of the 20th century, the development of modern international arbitration practice began. However it was based on national laws. The approach of these national laws was directly reflective of the attitude of most national courts. The law and the courts were reluctant to recognise that the commercial world was agreeing to arbitration as part of their business decisions.

**2-7** However arbitration was considered an exception to and an erosion of national courts' jurisdiction. The courts saw arbitration as a rival. Most importantly, although states agreed to recognise and enforce the arbitration agreements and awards, they wanted to closely supervise the arbitration process. This meant that arbitration, from its commencement, throughout the procedure and including recognition of the award, was strictly regulated in national laws. Although not all aspects of arbitration laws were considered mandatory, there was only little room for party autonomy.

*page "18"*

**2-8** The development of national arbitration laws to the current regulation of international commercial arbitration has been evidenced

in many legal systems.<sup>(2)</sup> The earliest law dedicated to arbitration in England was in 1698. In France, the subject of arbitration was first included in the Code of Civil Procedure 1806. In the United States the first federal arbitration legislation was the Federal Arbitration Act 1925.

## **2. International Regulation of Arbitration**

### **2.1. Early Efforts to Support International Arbitration**

**2-9** As world trade expanded, the need to create a mechanism for international recognition and enforcement of both arbitration agreements and awards in relation to international commercial agreements was of paramount importance. To facilitate arbitration, two Hague Conventions were concluded in 1899 and in 1907<sup>(3)</sup>, both entitled The Hague Convention for the Pacific Settlement of International Disputes. These Conventions created the Permanent Court of Arbitration which still exists and functions today.

**2-10** The world's business community established the International Chamber of Commerce (ICC) in 1919. This institution has been and remains the voice of the international business community. In 1923 the ICC created its Court of International Arbitration to provide the framework for an independent and neutral arbitration system for the determination of commercial disputes between parties from different countries. Since the early 1920s the ICC has been a major driving force in the promotion of both arbitration as a mechanism for the resolution of [page "19"](#) international commercial disputes and the need for international regulations to uphold and support the arbitration process.

### **2.2. The Geneva Conventions 1923 and 1927**

**2-11** The ICC was directly involved in the promotion and adoption of the 1923 Geneva Protocol on Arbitration Clauses<sup>(4)</sup> and the 1927 Geneva Convention on the Execution of Foreign Awards.<sup>(5)</sup> These instruments were collectively aimed at international recognition of arbitration agreements and awards. In those days, the mechanisms brought by those instruments were considered successful, but their operation was not problem-free.<sup>(6)</sup>

**2-12** The main problem was the recognition of awards and is known as the problem of double *exequatur*. For a foreign award to be enforced in the national jurisdiction, it was generally necessary to demonstrate that the award had become final in the country where it was rendered. This often required some form of confirmatory order or permission from the court in the country where the award was rendered. Often such court would review the award and a losing party would use the opportunity to challenge the arbitration tribunal's findings or conclusions in the award, and the procedure according to which the arbitration was conducted. Furthermore, the successful party had the burden of proof in the country where it was seeking enforcement, that the conditions for enforcement set out in the 1927 Convention were satisfied. In addition, the enforcing party had to show that the constitution of a tribunal and the arbitration process had conformed with the law of the place of arbitration.

**2-13** The Geneva Protocol and the Geneva Convention have been almost entirely superseded by the New York Convention.

### **2.3. The New York Convention**

**2-14** The major catalyst for the development of an international arbitration regime was the adoption of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. As will be seen throughout this [page "20"](#) book the New York Convention continues to set the standard requirements for a successful international arbitration process.

**2-15** With the expansion of international trade after World War II the ICC took the initiative to develop a new convention that would obviate the problems and could replace the Geneva Conventions.

**2-16** In 1953, the ICC prepared a draft convention entitled Enforcement of International Arbitral Awards - Report and Preliminary Draft Convention.<sup>(7)</sup> The aim was to "greatly increase the efficiency of international commercial arbitration, by ensuring a rapid enforcement of arbitration awards rendered in accordance with the will of the parties."<sup>(8)</sup> In the eyes of the promoters of the Preliminary Draft, international enforcement of arbitration awards could only be

attained "by giving full value to the autonomy of the [parties] will...." This effectively proposed arbitration not governed by a national law. The idea, however, did not attract enough international support.

**2-17** The United Nations, through its Economic and Social Council (ECOSOC), took the lead in the review of the ICC draft convention. It then prepared its own draft convention in terms closer to the Geneva Convention than the ICC draft. The ECOSOC draft together with the ICC draft were considered at a conference in New York in 1958. A compromise text was adopted as the New York Convention. The Convention provides for international recognition of arbitration agreements and awards by national courts.

**2-18** The New York Convention replaced the two Geneva Conventions although there remain countries party to those Conventions. More significantly, today and for the past 30 years, the New York Convention is the cornerstone of international commercial arbitration. The Convention established an international regime to be adopted in national laws which facilitates the recognition and enforcement of both arbitration agreements and awards.

**2-19** The success of the Convention is well illustrated by three factors. First, over 130 countries are party to the Convention. There are few private law conventions that have achieved such a wide international acceptance.<sup>(9)</sup>

*page "21"*

**2-20** Secondly, for the purpose of interpreting and applying the New York Convention, it is now common for the courts of one country to look to the decisions of other foreign national courts to see how specific provisions have been interpreted and applied. Whilst these national court decisions are not automatically binding, such applications of the common rules of the New York Convention have had a direct influence on the development of international arbitration practice and law, which is increasingly of significant influence on parties, arbitrators, and national courts, regardless of nationality.

**2-21** Thirdly, and this follows from the above two points, it is now generally accepted that agreements to arbitrate and arbitration awards will be enforced by the courts of most countries which are party to the New York Convention. Upholding arbitration agreements and awards is an absolute prerequisite if international arbitration is to succeed and the New York Convention has provided the framework for this success.<sup>(10)</sup>

#### **2.4. Other Arbitration Conventions**

**2-22** The New York Convention was followed by a series of bilateral and multilateral Conventions.<sup>(11)</sup> They had varied purposes and were directed generally to different areas of international business. None of these conventions, with the exception of the ICSID Convention, have achieved anything like the level of success of the New York Convention.

**2-23** *The European Convention on International Commercial Arbitration 1961* <sup>(12)</sup>: This Convention, concluded during the cold war period, was aimed at promoting east-west trade. It was developed by the United Nations Economic Commission for Europe. It covers general issues of parties' rights to submit to arbitration, who can be an arbitrator, how arbitration proceedings should be *page "22"* organised, how to determine the applicable law, and the setting aside and challenge of awards. Although it is still in operation it never really achieved real international recognition. In fact, the number of countries which have acceded to the Convention has recently been increased.<sup>(13)</sup>

**2-24** *The Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States* was promoted by the World Bank 1965: In the late 1950s and 1960s many of the former colonial countries achieved their independence and were looking to take over ownership and control of major concessions owned by foreign companies. This Convention created the International Centre for the Settlement of Investment Disputes (ICSID) which has jurisdiction over legal disputes arising from investments between a contracting state and a national of another contracting state. It was hoped that by the developing countries accepting ICSID jurisdiction this would give investors confidence to continue with and make further investments in such countries. The Washington Convention has been ratified by over 130 countries.<sup>(14)</sup>

**2-25** *The European Convention Providing a Uniform Law on Arbitration 1966*: This Convention was developed through the Council

*Arbitration 1966*: This Convention was developed through the Council of Europe and was aimed at providing a uniform national and international arbitration law. It was signed by Austria and Belgium and ratified only by the latter. It has never come into force.

**2-26** *The Convention on the Settlement by Arbitration of Civil Law Disputes Resulting From Economic Scientific and Technical Co-operation of 1972*: This Convention had real influence and effect during the existence of the Soviet dominated trading block in eastern and central Europe. It came into force under the auspices of the Council for Mutual Economic Assistance (Comecon) and provided for arbitration to resolve disputes between trading entities from the countries members of Comecon. Following the demise of the Soviet Union and the disintegration of Comecon this Convention no longer has any real purpose or reason to exist.<sup>(15)</sup>

page "23"

**2-27** *The Inter-American Convention on International Commercial Arbitration of 1975*: It is based on the New York Convention and is primarily concerned with the recognition and enforcement of arbitration agreements and awards but it is territorially restricted to the area of America.<sup>(16)</sup>

**2-28** *The MERCOSUR Agreement on International Commercial Arbitration of 1998*: Mercosur was created by the Treaty of Asuncion in March 1991.<sup>(17)</sup> The Mercosur Agreement on International Commercial Arbitration was signed on 23 July 1998 but only Argentina has ratified it to date.<sup>(18)</sup> The Agreement is a complete code of arbitration the object of which is "the regulation of arbitration as an alternative private means for the solution of disputes arising from international commercial contracts between natural or legal persons of private law." It covers situations where there is an arbitration agreement made by entities located or domiciled in more than one member state or if there is a contract with an objective connection, whether legal or economic, with a Mercosur state.

**2-29** *The Amman Arab Convention on Commercial Arbitration* was concluded in 1987. Its purpose was to establish "unified Arab Rules on commercial arbitrations." It established the Arab Centre for Commercial Arbitration as a permanent organization which provides an arbitration service in accordance with the rules in the Convention.<sup>(19)</sup>

**2-30** *The 1993 Treaty establishing OHADA*, the Organization for the harmonization of business law in Africa, effected co-operation also in the area of arbitration. Following this mandate on 11 March 1999 the OHADA Council of Ministers adopted a uniform law on arbitration, repealing all contrary provisions in national legislation of its member states. The Treaty (which entered into effect in 1995) also established a "Joint court of Justice and Arbitration" which plays the dual role of an arbitration institution and a court empowered to review awards. The new regime applies to both domestic and international arbitration.<sup>(20)</sup>

page "24"

### **3. Influence of International Arbitration Instruments and Practice**

**2-31** With the many different legal procedures and systems which existed, international arbitrators and the lawyers representing parties had to show flexibility in determining the procedures to follow. The arrangements for appointment, challenge and removal of arbitrators, the procedure for the conduct of the arbitration, and the form and content of awards, varied between legal systems. As arbitration became more popular common standard practices developed. Arbitrators were prepared to look away from national law to international practice and to the development of procedures on a specific basis for each case.

**2-32** As international arbitration increased and the influence and benefits of the New York Convention became apparent new arbitration institutions began to emerge, each with its own arbitration rules and procedures. Each offered arbitration services influenced by its own national environment. The established arbitration institutions like the ICC, and the London Maritime Arbitration Association (LMAA) and the commodity institutions in England, whilst fixed with their rules, were aware of the need to develop new and more flexible procedures.

#### **3.1. The UNECE and UNECAFÉ Arbitration Rules**

**2-33** A major influence in the 1960s, following its success with the New York Convention, was the United Nations. Through its

new York Convention, was the United Nations. Through its Economic Commissions for Europe and for Asia and the Far East it developed special arbitration rules and procedures for arbitrations involving parties from and taking place in eastern and western Europe (UNECE) and in the large and emerging economies of Asia and the Far East (ECAFE). These Rules were almost identical in content which was due in large part to the common attitudes of specialists of the day as to how international arbitration practice should be conducted. These Rules were used in many cases but never achieved international recognition in circumstances where institutional arbitration was inappropriate.<sup>(21)</sup> They have been superseded by the UNCITRAL Arbitration Rules.

page "25"

### 3.2. The UNCITRAL Arbitration Rules

**2-34** In the early 1970s there was an increasing need for a neutral set of arbitration rules suitable for use in *ad hoc* arbitrations. Once again it was under the auspices of the United Nations that special arbitration rules were prepared, this time by the Commission on International Trade Law ("UNCITRAL"). The UNCITRAL Rules for *ad hoc* arbitration were "intended to be acceptable in both capitalist and socialist, in developed and developing countries and in common law as well as civil law jurisdictions."<sup>(22)</sup> This is because the Rules have a "truly universal origin, in particular their parallel creation in six languages (Arabic, Chinese, English, French, Russian and Spanish) by experts representing all regions of the world as well as the various legal and economic systems."<sup>(23)</sup>

**2-35** The UNCITRAL Rules have achieved international recognition and are widely used. They are autonomous and suitable for use in almost every kind of arbitration and in every part of the world. Although originally developed for *ad hoc* arbitration they have now been adopted by many arbitration institutions<sup>(24)</sup> either for their

general rules or for optional use.<sup>(25)</sup>

**2-36** The UNCITRAL Rules deal with every aspect of arbitration from the formation of the tribunal to rendering an award. They were intended to provide the guidelines and flexibility for the smooth operation of arbitration proceedings. When approved, these Rules reflected what the drafters believed were the accepted and desired independent standards for use in international arbitration. Today these Rules are in fact reflective of what actually transpires in international arbitration practice and provide a milestone for review in many arbitrations under other systems.

**2-37** Apart from the very wide acceptance and use of the UNCITRAL Rules generally, perhaps the most significant use has been their adoption, in slightly modified form, by the Iran-US Claims Tribunal. The publication of over 800 [page "26"](#) awards and decisions of the Iran-US Claims Tribunal has provided a jurisprudence on which parties in international arbitrations, either under the UNCITRAL Rules or in international arbitrations generally, can rely. This has contributed to the development of a common standard for the conduct and procedure of international commercial arbitrations.

### 3.3. The UNCITRAL Model Law and the Development of Modern Arbitration Laws in many Jurisdictions

**2-38** As a result of the successful operation of the New York Convention and the development of established arbitration practice, the differences between national arbitration laws became only too apparent. There were essentially three different situations.

**2-39** In some countries the courts still sought to control and supervise arbitrations taking place in their jurisdictions. Other countries sought rather to provide support for the arbitration process whilst refusing to intervene or interfere in the process itself, as opposed to strict supervision of the arbitration process.<sup>(26)</sup> This can be called a minimalist approach to international commercial arbitration. This last development recognised the fundamental influence of party autonomy in international arbitration, which effectively required very limited interference with a party's will. The third group of countries had either old and out of date arbitration laws or no arbitration laws at all.

**2-40** It became increasingly clear that some uniformity was needed to reflect the commonly accepted standards for international arbitration. The benchmark event in this respect was the introduction of the UNCITRAL Model Law of 1985. The concepts of party

of the UNCITRAL Model Law of 1985. The concepts of party autonomy and the supportive role of courts to the arbitration process are the basis of the Model Law. The Model Law harmonised and modernised<sup>(27)</sup> the issues it touches upon and represents a step forward along with the New York Convention and the UNCITRAL Rules.<sup>(28)</sup> What is equally [page "27"](#) important is the jurisdictions where new legislation has been influenced by the Model Law.<sup>(29)</sup>

**2-41** The minimalist approach and the primacy of the principle of party autonomy, as embodied in the Model Law, have now been recognised in all modern arbitration laws. They reshape the scope of courts' powers in respect of assistance and supervision. The scope of court assistance is generally confined to the appointment and

removal of arbitrators, the grant of provisional relief and the collection of evidence. The supervisory powers of a court are limited generally to the challenge to jurisdiction, removal of arbitrators, and appeal from, setting aside and enforcement of arbitration awards. In addition, no derogation is allowed from the due process requirements and there is a limit in each jurisdiction to matters which are arbitrable.

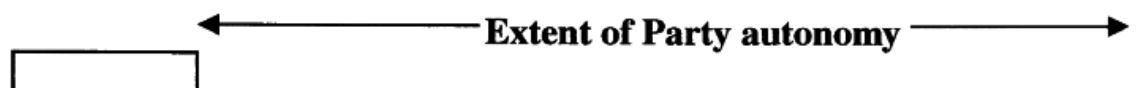
#### **4. Effect of the Regulatory Web**

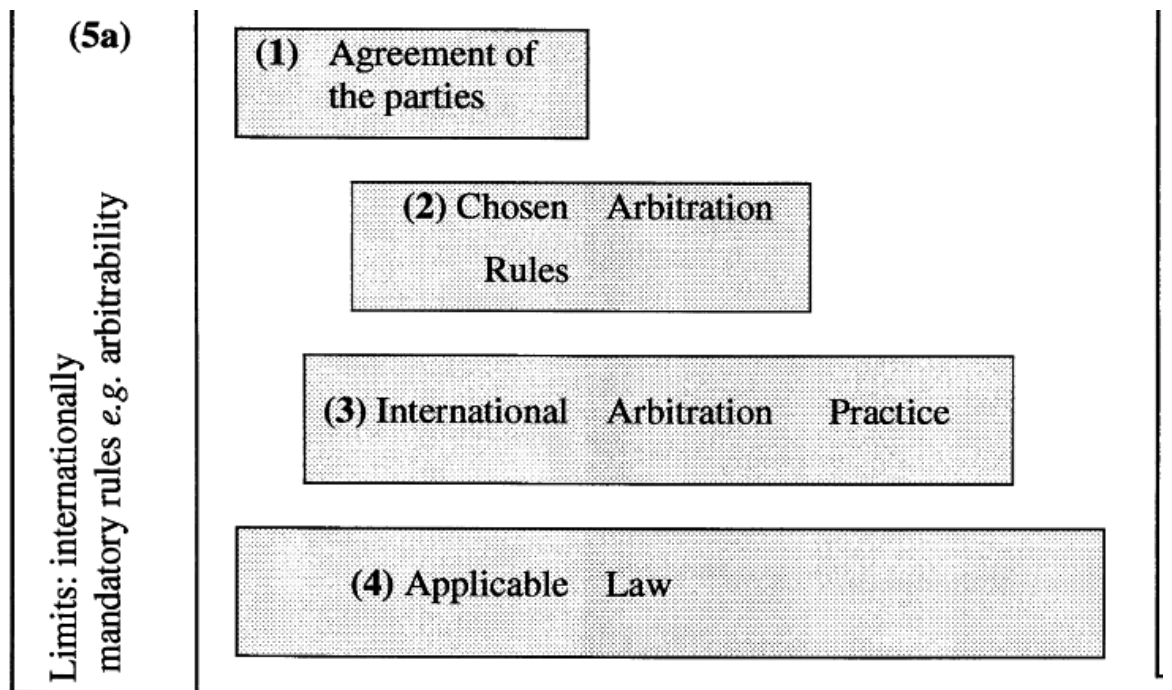
**2-42** Wherever the parties are from and whatever form and place of arbitration is selected, every arbitration will be situated within and subject to some legal and regulatory systems. In most international arbitrations, there will be an overlap between two or more of these systems, e.g. the law of the place of arbitration and the arbitration rules. The effectiveness of the arbitration and the enforceability of the arbitration award will depend on the relevant law and rules being respected.

**2-43** As will be seen throughout this study, in every arbitration there is an underlying national law, normally that of the place of arbitration, which regulate and controls the arbitration. It will be tempered by international arbitration practice and the rules of arbitration, institutional or *ad hoc*, which the parties may have selected to govern their arbitration. An inevitable question is which shall prevail where the two are in conflict.

**2-44** As illustrated by the table below, the regulatory web for international arbitration is hierarchical involving elements of party autonomy, the chosen arbitration rules, international arbitration practice, the applicable arbitration laws as well as the relevant international arbitration conventions. Party autonomy is the primary source of the arbitration and the procedure. The arbitration will be governed by what the parties have agreed in the arbitration agreement (1), subject to the limits provided by mandatory rules (5). The agreement may either directly specify the rules and procedures to follow (1) or do so indirectly by selecting the [page "28"](#) applicable arbitration rules (2). For example, the parties can either directly fix the number of arbitrators, or do so indirectly by choosing rules which specify the number of arbitrators, e.g. the UNCITRAL Rules.

## **The Regulatory Web**





← **(6) International conventions guarantee recognition of party autonomy: agreements to arbitrate and awards have to be enforced**

#### The Regulatory Web

**2-45** The agreement of the parties (1) will prevail over the provisions in the chosen arbitration rules (2) which in turn prevail over international arbitration practice (3) and the applicable law (4). In this hierarchy the norms of a lower stage are superseded by those of a higher stage and are only applicable where there is no regulation in any of the preceding stages. By corollary, in the absence of agreement as to specific rules or arbitration rules it is the applicable law (4) that will govern the arbitration.

**2-46** International arbitration practice (3) comes into play at all stages, not only as a separate source but also to interpret the arbitration agreement, the [page "29"](#) chosen arbitration and the applicable national law. The international conventions (6) form part of the applicable law and aim to ensure that arbitration agreements and awards are enforced. In so doing, they uphold party autonomy as the backbone of the regulatory web. The shape of the web changes over time with the international arbitration practice influencing the contents of the applicable arbitration rules and the law.

**2-47** The regulatory web is constrained at both sides by relevant mandatory rules. These impact, at the outset, on the types of issues that can be submitted to arbitration (5a) and ultimately the effectiveness and enforceability of the arbitration award (5b).

**2-48** There are few mandatory requirements in national arbitration laws. <sup>(30)</sup> Most arbitration laws are permissive allowing the parties a wide degree of discretion in deciding how their arbitration should be organised and conducted. The selection, intentional or inadvertent, of a particular arbitration system will demonstrate the parties' intention and will generally be respected. Ultimately, just as the decision to submit disputes to arbitration is based on the parties' choice, so too the applicable rules will be determined according to the wishes of the parties.

**2-49** Where there are complications and uncertainties, these should be resolved by national courts and arbitrators in accordance with international arbitration practice, as illustrated and recorded in the international arbitration instruments, including the New York Convention, the UNCITRAL Rules and the Model Law. The overriding factors must be the importance of the will of the parties and the absolute essential to achieve an effective and enforceable arbitration award. Hence the importance of the criteria set out as fundamental to the validity of an award in Article V of the New York Convention.

[page "30"](#)

- <sup>1</sup> This issue gave rise to the extensive debate about the legal nature of arbitration, *i.e.* contractual, jurisdictional, hybrid or *sui iuris*.
- <sup>2</sup> See generally Roebuck, "A short history of arbitration", in Kaplan, *Hong Kong and China Arbitration*, xxxiii-lxv, "The myth of judicial jealousy", 10 *Arb Int* 395 (1994); Roebuck, "Sources for the history of arbitration", 14 *Arb Int* 237 (1998); Robert, *L'Arbitrage*, 4-6, Fouchard Gaillard Goldman *on International Commercial Arbitration*, paras 131-135; Monnier, "Le role de la Suisse dans l'histoire de l'arbitrage de droit international public", *Recueil de Travaux Suisses*, 3-14; Bucher, *Arbitrage International en Suisse*, 18-21; Bucher and Tschanz, *International Arbitration in Switzerland*, 20-25.
- <sup>3</sup> The Convention for the Pacific Settlement of Disputes, adopted 29 July 1899, was one of the most important results of the First International Peace Conference held in The Hague in 1899. This resolved "to promote by their best efforts friendly settlement of international disputes" and therefore sought to establish a "permanent institution of a tribunal of arbitration, accessible to all." These aims were furthered by the (second) Convention for the Pacific Settlement of Disputes, adopted at the Second International Peace Conference on 18 October 1907.
- <sup>4</sup> As of December 2002, 39 states had ratified this Convention.
- <sup>5</sup> As of December 2002, 33 states had ratified this Convention.
- <sup>6</sup> See generally Lorenzen, "Commercial Arbitration – International and Interstate Aspects", 43 *Yale LJ* 716 (1934).
- <sup>7</sup> Reprinted in 9(1) *ICC Bulletin* 32 (1998) 35-36.
- <sup>8</sup> *Ibid*, 32.
- <sup>9</sup> See, *e.g.*, the United Nations Convention on Contracts for the International Sale of Goods 1980 ratified by more than 60 countries and the work of the Hague Conference on Private International Law. UNCITRAL currently has a membership of 60 states as of 21 January 2003.
- <sup>10</sup> A review of the New York Convention is being undertaken at the United Nations following the conference in 1998 to celebrate the 40th anniversary of the Convention. One of the topics being considered is how the orders or directions of arbitrators, especially concerning interim measures of protection or relief, could be made enforceable through national courts in countries other than the place of arbitration.
- <sup>11</sup> See, *e.g.*, Treaty for Conciliation, Judicial Settlement and Arbitration between United Kingdom and Northern Ireland and Switzerland 1965; and The Convention between France and Spain 1969 on the Recognition and Enforcement of Judicial and Arbitral Decisions and Authentic Acts. Many of these treaties deal with trade, investments and judicial assistance.
- <sup>12</sup> See, *e.g.*, Benjamin, "The European Convention on International Commercial Arbitration", *BYBIL* 478 (1961), and Hascher, "European YBCA 1006 (1995)."
- <sup>13</sup> As of December 2002, the Convention had been signed and ratified by 29 states.
- <sup>14</sup> <[www.worldbank.org/ICSID](http://www.worldbank.org/ICSID)>.
- <sup>15</sup> The Secretariat of the COMECON in Moscow officially ceased to function on 1 January 1991. In the light of this fact the only way to denounce the Convention is bilaterally. Poland and Hungary terminated their participation in the agreement in 1994 and the Czech Republic gave a notice of termination in 1995. Only the Russian Federation is still a member of the Convention. See further Keglevic, "Arbitration in Central Europe", 9 *Croat Arbit Yearb* 79 (2002), 81-3.
- <sup>16</sup> This Convention has been ratified by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay and Venezuela.
- <sup>17</sup> Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay have signed the Treaty.
- <sup>18</sup> As of December 2002.
- <sup>19</sup> This Convention has been ratified by 14 Arab countries including Algeria, Iraq, Jordan, Lebanon, Libya, Morocco, Sudan, Syria and Tunisia.
- <sup>20</sup> See <<http://www.ohada.com/textes.php?categorie=658>> See also Meyer, *OHADA – Droit de arbitrage* (Bruylant 2002); Fouchard, *L'OHADA et les perspectives de l'arbitrage en Afrique* (Bruylant 2002); Feneon, "The OHADA Treaty. Paving the Way Towards a New Legal System in French Speaking Africa?", 3(3) *Int ALR* N43 (2000); Leboulanger, "L'arbitrage et l'harmonisation du droit des affaires en Afrique", *Rev Arb* 541 (1999).
- <sup>21</sup> On these rules see, respectively, Benjamin, "New Arbitration Rules for Use in International Trade" in Sanders (ed), *International*



rules for use in international trade, in Sanders (ed), *International Commercial Arbitration*, vol III, 361; and Sanders, "ECAFE Rules for International Commercial Arbitration", in Sanders (ed), *Liber Amicorum Martin Domke*, 252.

<sup>22</sup> Sanders, "Commentary on UNCITRAL Arbitration Rules", II YBCA 172 (1977) 173.

<sup>23</sup> Herrmann, "UNCITRAL's Basic Contribution to the International Arbitration Culture in International Dispute Resolution: Towards an International Arbitration Culture", in van den Berg (ed), *ICCA's Congress Series no 8* (1996), 49, 50.

<sup>24</sup> See, e.g., Kuala Lumpur Regional Centre for Arbitration, the Cairo Regional Centre for International Commercial Arbitration, the Hong Kong International Arbitration Centre, and the Spanish Court of Arbitration.

<sup>25</sup> See, e.g., the American Arbitration Association, the London Court of International Arbitration and the Inter-American Commercial Arbitration Commission.

<sup>26</sup> Goldman, "The Complementary Roles of Judges and Arbitrators in Ensuring that International Commercial Arbitration is Effective", in *60 Years of ICC Arbitration*, 257.

<sup>27</sup> Blessing, *Introduction to Arbitration*, para 277.

<sup>28</sup> This is particularly so in England where the Arbitration Act 1996 expressly did not follow the UNCITRAL Model Law but was directly influenced in many ways by it. Although the 1989 Report of the Departmental Advisory Committee on Arbitration Law recommended against the adoption of the UNCITRAL Model Law, when preparing the Arbitration Act 1996 the DAC paid "at every stage ... very close regard" to the Model Law and the content and structure of the Act owe a great deal to the Model Law.

<sup>29</sup> For a current list of countries which have adopted the Model Law see <[www.uncitral.org](http://www.uncitral.org)>.

<sup>30</sup> E.g., Schedule 1 England, Arbitration Act provides that 25 of the 110 provisions in the Act are mandatory and cannot be excluded or avoided by the parties in arbitrations which have their seat in England.

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