

**INTERNATIONAL ARBITRATION AS A METHOD FOR
DISPUTE RESOLUTION IN INTERNATIONAL OUTSOURCING AGREEMENTS**

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Although the quality and effectiveness of commercial dispute resolution mechanisms are an important part of international outsourcing arrangements, such mechanisms are often overlooked by parties when they are drafting their outsourcing agreements. Incredibly, some parties purposely avoid choosing a method of dispute resolution altogether, believing that any serious issues can be resolved through negotiation and calm, reasoned communication. With few exceptions, this strategy is usually doomed from its inception.

At the commencement of the outsourcing relationship, parties are on good terms with each other, and generally exhibit varying degrees of flexibility and restraint in order to close the contemplated deal. Issues such as performance metrics and service level warranties are dealt with in a cordial fashion until, of course, things start to go awry. As problems occur and the relationship begins to steer off course (as it will from time-to-time), flexible attitudes and cordiality suffocate underneath alternating waves of heated threats, attorneys' letters and, occasionally, panic attacks.

In the outsourcing arena, disputes are augmented and made more virulent by the distance between the parties, privacy concerns, language and cultural barriers, and knowledge transfer issues. Most often, parties simply will not want to communicate in a fair, rational manner with their overseas contractors when their expectations are disappointed. Instead, for better or worse, they will shout out the "relevant" laws or cite to the written agreement to support their positions. Unfortunately, neither option may bring the relief sought.

The irony of failing to address the issue of dispute resolution in an outsourcing agreement is that the parties usually end up litigating or arbitrating disputes anyway, but without any parameters describing the rules, venue or finality of the dispute resolution process.

What follows is a brief discussion of certain issues related to arbitration in the context of international outsourcing deals. Please note, this paper is intended only to highlight certain issues related to arbitration, and it is not exhaustive checklist of "dos and don'ts" in the area of dispute resolution.

ARBITRATION

Arbitration is emerging as the resolution method of choice in many outsourcing relationships. The bene-

fits of using arbitration include:

(a) Privacy. Arbitration proceedings, and the awards resulting from those proceedings, can be kept private by the parties. Where sensitive information and/or relationships are involved, the element of privacy can be very inviting.

(b) Issue Selection. Arbitration is a creature of contract, therefore, the process can address the same issues that can be addressed through litigation--assuming the parties drafted their arbitration provisions correctly. Of course, this is somewhat of a double-edged sword: if the arbitration clauses are not drafted correctly, certain issues (such as finality of awards) may be vulnerable to subsequent judicial review or extinguishment.

(c) Rule Selection. The parties can use institutional arbitration forums, or can proceed with ad hoc rules. Flexibility to choose the rules is often appealing to parties in the international arena.

(d) Arbitrator Selection. The parties can pick the qualifications of the arbitrators in advance or, in some cases, the parties choose specific individual arbitrators in advance.

(e) Speed and Cost: A lot has been written about whether arbitration actually moves faster, and at a lower cost, than other methods of dispute resolution. Costs and the speed of the process are both highly dependent on a number of factors, such as the rules of arbitration that the parties selected in their outsourcing agreement, the forum in which the arbitration takes place, the scope of the dispute, and the desire of the parties to move toward an equitable resolution. It is fair to say that a goal of the arbitration process is lower cost, as well as faster resolution; however, that goal is not always realized.

(f) Enforcement. Arbitration awards are enforceable in any country that is part of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. [\[FN1\]](#)

There are certain inherent limitations to arbitration, which need to be carefully considered before agreeing to arbitration as a dispute resolution alternative. Limitations include:

(a) Injunctive Relief. Injunctive relief is not available in arbitration. [\[FN2\]](#) To the extent that injunctive relief may be required, the parties will need to carve out an exception for judicial intervention.

(b) Joinder. Unless they are part of the outsourcing agreement, third parties cannot be forced to participate in an arbitration proceeding. This is in contrast to litigation, in which a third party can be required to appear in the action to account for part or all of the liability being addressed.

(c) Speed / Cost. Although also listed as a benefit of arbitration (above), factors of speed and cost are moving targets. Sometimes, but not as a general rule, it is unclear whether the arbitration process would be faster or cheaper than litigation. Since counsel is usually involved in the arbitration process,

and discovery proceedings often take place, the cost differential between arbitration and litigation can be slim.

A. Institutional vs. Ad Hoc Arbitration

Arbitration can be performed through an institutional arbitration setting, or it may be conducted on an ad hoc basis.

Most often, arbitration is conducted within an institutional setting. Some of the most well-known institutional settings are the International Court of Arbitration of the International Chamber of Commerce ("ICC"), the London Court of International Arbitration ("LCIA"), the American Arbitration Association ("AAA"), and the World Intellectual Property Organization ("WIPO"). [\[FN3\]](#)

The advantages of using an institutional setting are:

(a) **Branding.** Parties are often more comfortable using an institution that is well-known and well-established. Institutions such as the ICC (established in 1919), the LCIA (established in 1892), the AAA (established in 1926) and the WIPO (established as part of the United Nations in 1974) have been in existence for decades, and are generally known throughout the world for their arbitration services.

(b) **Experience.** With age comes experience, and arbitration institutions are no exception. The well-known institutions, in particular, have handled myriad cases ranging from simple commercial matters to complex international disputes. Accordingly, these institutions are well-equipped to handle international outsourcing issues.

(c) **Defined Rules.** Institutions use defined rules, in contrast to ad hoc arbitration settings in which the parties make their own rules. Having defined rules can be helpful, especially in cases where the parties cannot agree on ad hoc procedural or substantive rules.

(d) **Pre-determined Costs.** Institutions generally operate under established fee schedules, so the parties can gauge the costs of the process before they begin.

The Ad Hoc method of arbitration may be useful to parties that want to establish certain ground rules for dispute resolution, but do not want to be bound by the formalities of an institutional setting. Parties that want to utilize an Ad Hoc arbitration process may use the model rules created by the United Nations Commission on International Trade Law (UNCITRAL). [\[FN4\]](#)

The parties can also, by contract, determine their own rules and procedures for arbitration. This is rarely done however, and for good reason. In order for the parties to draft their own rules for arbitration, they need to take careful stock of the numerous variables and contingencies that can arise during an international dispute. This is a very time consuming and expensive process that usually requires knowledge and draftsmanship abilities far beyond those possessed by the contracting parties. If material issues are over-

looked by the parties, the dispute may end up being litigated in court, thereby eliminating any potential cost or time savings.

B. Choosing the Governing Law.

Parties often mistakenly believe that the physical location of the arbitration will also determine the governing law. This is a wrong assumption, probably based on the fact that in litigation, the location of the case generally determines the law to be applied. The concept of locale determining the governing law is foreign to international arbitration, and should not be assumed.

Instead, the parties should choose the law that they want to govern their disputes. Their choice will be upheld in virtually all institutional settings. Take, for example, the LCIA Rules of Arbitration, Article 22.3:

By agreeing to arbitration under these Rules, the parties shall be treated as having agreed not to apply to any state court or other judicial authority for any order available from the Arbitral Tribunal under Article 22.1, **except with the agreement in writing of all parties.** (emphasis added).

Similarly, the ICC Rules of Arbitration (Article 17) will uphold the parties' desire to select the law that governs the dispute:

The parties shall be free to agree upon the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute.

UNCITRAL (Article 33.1), used in Ad Hoc settings, also provides a mechanism by which the parties can choose the governing law:

The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute.

But what happens if the parties fail to choose the law that will govern the dispute? This issue is addressed in most institutional settings, as well as in UNCITRAL's rules. In sum, most institutional models permit the arbitrators to pick the law that they determine to be most appropriate. [\[FN5\]](#)

In the absence of any such agreement, the Arbitral Tribunal shall apply the rules of law which it determines to be appropriate. (ICC, Article 17).

Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable. (UNCITRAL, Art. 33).

One strategy used frequently in outsourcing agreements is the concept of "freezing the law." This strategy is used effectively in situations where parties are hesitant to select a state as their governing law, for fear that the laws of the chosen state might change in a way that would harm the parties or defeat their intentions. Freezing the law is also effective in situations where one of the outsourcing parties is a state entity, and the non-state entity fears that the state might change its laws to favor the state's position under the outsourcing contract. Freezing the law can be accomplished through the addition of a simple provision, such as:

The parties acknowledge and agree that [the governing state's] laws which shall be applied to any and all issues arising from, or related to, this Agreement, shall be read and interpreted solely and exclusively as those laws exist on [date]. Any and all changes to [the governing state's] laws subsequent to [date] shall not be considered in the interpretation of the terms of this Agreement or in the evaluation of either party's performance hereunder.

Notably, many institutional rules and UNCITRAL rules provide that an arbitrator can consider the relevant trade usages of the parties in conjunction with the governing law selected by the parties. Such usages, however, need to be demonstrated using extrinsic evidence. Consider, for example, these examples:

In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction. (UNCITRAL, Art. 33).

In all cases the Arbitral Tribunal shall take account of the provisions of the contract and the relevant trade usages. (ICC, Art. 17.3)

In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. (WIPO, Art. 59).

C. Choosing the Locale.

A number of factors should be considered when choosing the locale for the arbitration. For example, countries that have legal systems that give courts wide discretion to interfere with arbitration awards should be avoided. In addition, the parties should determine whether the locale permits arbitration

awards to be appealed to local courts. If appeal is permitted, the next relevant question to ask is whether the locale permits the parties to contractually waive their rights to appeal the arbitration award.

When choosing the locale, parties should also bear in mind that the locale must be convenient not only to the parties, but to any witnesses that might be needed as well. Therefore, parties should carefully consider an area's hotels, restaurants, transportation systems, and weather before making a final determination on the locale.

Perhaps the most important issue relating to the determination of locale is the issue of enforcement of the arbitration award. Most of the 134 states that have ratified or acceded to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards have agreed to the reciprocity provision of that Convention. The reciprocity provision provides that the state will enforce an arbitration award under the Convention, but only if the award was issued in a state that has also accepted the Convention. Put another way, if an award is issued in a non-Convention state (or in a state that has rejected the Convention's reciprocity provision, such as Switzerland), that award might not be enforced in states that have agreed to the Convention.

D. Choosing the Arbitrator(s).

If the parties do not choose the number of arbitrators, then most institutional rules (as well as UNCITRAL's rules) will make that decision for them. Consider the following excerpts from various rules:

If the parties have not previously agreed on the number of arbitrators (ie. one or three), and if within fifteen days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed. (UNCITRAL, Art. 5).

The LCIA Court alone is empowered to appoint arbitrators. The LCIA Court will appoint arbitrators with due regard for any particular method or criteria of selection agreed in writing by the parties. (LCIA, Art. 5).

If the parties have agreed on a procedure for the appointment of the arbitrator or arbitrators other than as envisaged in Articles 16 to 20, that procedure shall be followed... If the Tribunal has not been established pursuant to such procedure within the period of time agreed upon by the parties . . . the Tribunal shall be established or completed, as the case may be, in accordance with [WIPO's default procedures]. (WIPO, Art. 14).

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed [pursuant to AAA's appointment procedures]. (AAA, R-11).

E. Drafting Arbitration Provisions.

We begin with the premise that institutional arbitration is superior to Ad Hoc arbitration. This is so because, in the author's opinion, institutional arbitration provides more formal requirements and guidance to the parties to an outsourcing agreement than does an Ad Hoc model of arbitration. Not surprisingly, it is much easier to get an opposing party in an international outsourcing arrangement to agree to an institutional setting, as compared to an Ad Hoc setting.

Many institutional arbitration institutions provide model clauses which can be implemented easily into a party's outsourcing contract. The AAA, for example, provides checklists and model clauses for free through its website, www.adr.org. Other institutions do the same:

WIPO: <http://arbiter.wipo.int/arbitration/contract-clauses/clauses.html>

ICC: http://www.iccwbo.org/court/english/model_clause/model_clause.asp

LCIA: <http://www.lcia-arbitration.com/arb/uk.htm>

JAMS/ ENDISPUTE: <http://www.jamsadr.com/arbitration/forms.asp>

Appendix 1

Enforcement of Foreign Arbitral Awards (New York, 1958)

State	Ratification, Accession ^(a) , Succession ^(d)	Entry into force
Albania	27 June 2001 a	25 September 2001
Algeria ^{(1) (2)}	7 February 1989 a	8 May 1989
Antigua and Barbuda ^{(1) (2)}	2 February 1989 a	3 May 1989
Argentina ^{(1) (2) (7)}	14 March 1989	12 June 1989
Armenia ^{(1) (2)}	29 December 1997 a	29 March 1998
Australia	26 March 1975 a	24 June 1975
Austria	2 May 1961 a	31 July 1961
Azerbaijan	29 February 2000 a	29 May 2000
Bahrain ^{(1) (2)}	6 April 1988 a	5 July 1988
Bangladesh	6 May 1992 a	4 August 1992
Barbados ^{(1) (2)}	16 March 1993 a	14 June 1993
Belarus ⁽³⁾	15 November 1960	13 February 1961

Belgium ⁽¹⁾	18 August 1975	16 November 1975

Benin	16 May 1974 a	14 August 1974

Bolivia	28 April 1995 a	27 July 1995

Bosnia and Herzegovina ⁽¹⁾	1 September 1993 d	6 March 1992
(2) (6) (e)		

Botswana ^{(1) (2)}	20 December 1971 a	19 March 1972

Brazil	7 June 2002 a	5 September 2002

Brunei Darussalam ⁽¹⁾	25 July 1996 a	23 October 1996

Bulgaria ^{(1) (3)}	10 October 1961	8 January 1962

Burkina Faso	23 March 1987 a	21 June 1987

Cambodia	5 January 1960 a	4 April 1960

Cameroon	19 February 1988 a	19 May 1988

Canada ⁽⁴⁾	12 May 1986 a	10 August 1986

Central African Republic ⁽¹⁾	15 October 1962 a	13 January 1963
(2)		

Chile	4 September 1975 a	3 December 1975

China ^{(1) (2)}	22 January 1987 a	22 April 1987
Colombia	25 September 1979 a	24 December 1979
Costa Rica	26 October 1987	24 January 1988
Côte d' Ivoire	1 February 1991 a	2 May 1991
Croatia ^{(1) (2) (6) (e)}	26 July 1993 d	8 October 1991
Cuba ^{(1) (2) (3)}	30 December 1974 a	30 March 1975
Cyprus ^{(1) (2)}	29 December 1980 a	29 March 1981
Czech Republic ^{(a) (e)}	30 September 1993 d	1 January 1993
Denmark ^{(1) (2)}	22 December 1972 a	22 March 1973
Djibouti ^(e)	14 June 1983 d	27 June 1977
Dominica	28 October 1988 a	26 January 1989
Dominican Republic	11 April 2002 a	10 July 2002
Ecuador ^{(1) (2)}	3 January 1962	3 April 1962
Egypt	9 March 1959 a	7 June 1959
El Salvador	26 February 1998	27 May 1998
Estonia	30 August 1993 a	28 November 1993

Finland	19 January 1962	19 April 1962
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France ⁽¹⁾	26 June 1959	24 September 1959
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Georgia	2 June 1994 a	31 August 1994
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Germany ^{(1) (10) (b)}	30 June 1961	28 September 1961
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Ghana	9 April 1968 a	8 July 1968
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Greece ^{(1) (2)}	16 July 1962 a	14 October 1962
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Guatemala ^{(1) (2)}	21 March 1984 a	19 June 1984
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Guinea	23 January 1991 a	23 April 1991
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Haiti	5 December 1983 a	4 March 1984
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Holy See ^{(1) (2)}	14 May 1975 a	12 August 1975
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Honduras	3 October 2000 a	1 January 2001
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Hungary ^{(1) (2)}	5 March 1962 a	3 June 1962
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Iceland	24 January 2002 a	24 April 2002
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India ^{(1) (2)}	13 July 1960	11 October 1960
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Indonesia ^{(1) (2)}	7 October 1981 a	5 January 1982
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Iran (Islamic Rep. of) ⁽¹⁾	15 October 2001 a	13 January 2002
(2)		

Ireland ⁽¹⁾	12 May 1981 a	10 August 1981

Israel	5 January 1959	7 June 1959

Italy	31 January 1969 a	1 May 1969

Jamaica ^{(1) (2)}	10 July 2002 a	8 October 2002

Japan ⁽¹⁾	20 June 1961 a	18 September 1961

Jordan	15 November 1979	13 February 1980

Kazakhstan	20 November 1995 a	18 February 1996

Kenya ⁽¹⁾	10 February 1989 a	11 May 1989

Kuwait ⁽¹⁾	28 April 1978 a	27 July 1978

Kyrgyzstan	18 December 1996 a	18 March 1997

Lao People's Democratic Republic	17 June 1998 a	15 September 1998

Latvia	14 April 1992 a	13 July 1992

Lebanon ⁽¹⁾	11 August 1998 a	9 November 1998

Lesotho	13 June 1989 a	11 September 1989
Lithuania ⁽³⁾	14 March 1995 a	12 June 1995
Luxembourg ⁽¹⁾	9 September 1983	8 December 1983
Madagascar ^{(1) (2)}	16 July 1962 a	14 October 1962
Malaysia ^{(1) (2)}	5 November 1985 a	3 February 1986
Mali	8 September 1994 a	7 December 1994
Malta ^{(1) (11)}	22 June 2000 a	20 September 2000
Mauritania	30 January 1997 a	30 April 1997
Mauritius ⁽¹⁾	19 June 1996 a	17 September 1996
Mexico	14 April 1971 a	13 July 1971
Monaco ^{(1) (2)}	2 June 1982	31 August 1982
Mongolia ^{(1) (2)}	24 October 1994 a	22 January 1995
Morocco ⁽¹⁾	12 February 1959 a	7 June 1959
Mozambique ⁽¹⁾	11 June 1998 a	9 September 1998
Nepal ^{(1) (2)}	4 March 1998 a	2 June 1998
Netherlands ⁽¹⁾	24 April 1964	23 July 1964

New Zealand ⁽¹⁾	6 January 1983 a	6 April 1983
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Nicaragua	24 September 2003 a	23 December 2003
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Niger	14 October 1964 a	12 January 1965
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Nigeria ^{(1) (2)}	17 March 1970 a	15 June 1970
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Norway ^{(1) (5)}	14 March 1961 a	12 June 1961
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Oman	25 February 1999 a	26 May 1999
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Pakistan	.	.
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Panama	10 October 1984 a	8 January 1985
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Paraguay	8 October 1997 a	6 January 1998
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Peru	7 July 1988 a	5 October 1988
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Philippines ^{(1) (2)}	6 July 1967	4 October 1967
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Poland ^{(1) (2)}	3 October 1961	1 January 1962
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Portugal ^{(1) (c)}	18 October 1994 a	16 January 1995
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Qatar	30 December 2002 a	30 March 2003
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Republic of Korea ^{(1) (2)}	8 February 1973 a	9 May 1973
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Republic of Moldova ^{(1) (6)}	18 September 1998 a	17 December 1998
Romania ^{(1) (2) (3)}	13 September 1961 a	12 December 1961
Russian Federation ^{(3) (d)}	24 August 1960	22 November 1960
Saint Vincent and the Grenadines ^{(1) (2)}	12 September 2000 a	11 December 2000
San Marino	17 May 1979 a	15 August 1979
Saudi Arabia ⁽¹⁾	19 April 1994 a	18 July 1994
Senegal	17 October 1994 a	15 January 1995
Serbia and Montenegro ⁽¹⁾	12 March 2001 d	27 April 1992
	(2) (6) (f)	
Singapore ⁽¹⁾	21 August 1986 a	19 November 1986
Slovakia ^{(a) (e)}	28 May 1993 d	1 January 1993
Slovenia ^{(1) (2) (6) (e)}	6 July 1992 d	25 June 1991
South Africa	3 May 1976 a	1 August 1976
Spain	12 May 1977 a	10 August 1977
Sri Lanka	9 April 1962	8 July 1962
Sweden	28 January 1972	27 April 1972

Switzerland ⁽⁸⁾	1 June 1965	30 August 1965
Syrian Arab Republic	9 March 1959 a	7 June 1959
Thailand	21 December 1959 a	20 March 1960
The former Yugoslav Republic of Macedonia ^{(1) (2) (6)} (e)	10 March 1994 d	17 September 1991
Trinidad and Tobago ^{(1) (2)}	14 February 1966 a	15 May 1966
Tunisia ^{(1) (2)}	17 July 1967 a	15 October 1967
Turkey ^{(1) (2)}	2 July 1992 a	30 September 1992
Uganda ⁽¹⁾	12 February 1992 a	12 May 1992
Ukraine ⁽³⁾	10 October 1960	8 January 1961
United Kingdom of Great Britain and Northern Ireland ⁽¹⁾	24 September 1975 a	23 December 1975
United Republic of Tanzania ⁽¹⁾	13 October 1964 a	12 January 1965
United States of America ⁽¹⁾	30 September 1970 a	29 December 1970

(2)

Uruguay	30 March 1983 a	28 June 1983
Uzbekistan	7 February 1996 a	7 May 1996
Venezuela ^{(1) (2)}	8 February 1995 a	9 May 1995
Vietnam ^{(1) (2) (3) (9)}	12 September 1995 a	11 December 1995
Zambia	14 March 2002 a	12 June 2002
Zimbabwe	29 September 1994 a	28 December 1994

Total Parties: 134 (as of April 2004)

Notes

(a) The Convention was signed by the former Czechoslovakia on 3 October 1958 and an instrument of ratification was deposited on 10 July 1959. On 28 May 1993, Slovakia and, on 30 September 1993, the Czech Republic deposited instruments of succession.

(b) The Convention was acceded to by the former German Democratic Republic on 20 February 1975 with reservations (1), (2) and (3).

(c) On 12 November 1999, Portugal presented a declaration of territorial application of the Convention in respect of Macau. The notification has taken effect for Macau on 10 February 2000.

(d) The Russian Federation continues, as from 24 December 1991, the membership of the former Union of Soviet Socialist Republics (USSR) in the United Nations and maintains, as from that date, full responsibility for all the rights and obligations of the USSR under the Charter of the United Nations and multilateral treaties deposited with the Secretary-General.

(e) The date of effect of the succession is as follows: for Bosnia and Herzegovina, 6 March 1992; for Croatia, 8 October 1991; for Czech Republic, 1 January 1993; for Djibouti, 27 June 1977; for Slovakia,

1 January 1993; for Slovenia, 25 June 1991; and for the former Yugoslav Republic of Macedonia, 17 September 1991.

(f) The former Yugoslavia had acceded to the Convention on 26 February 1982. On 12 March 2001, the Secretary-General received from the Government of Yugoslavia a notification of succession, confirming the declaration dated 28 June 1982 by the Socialist Federal Republic of Yugoslavia. (see notes (1), (2) and (6) below)

Declarations and reservations

(Excludes territorial declarations and certain other reservations and declarations of a political nature)

(1) State will apply the Convention only to recognition and enforcement of awards made in the territory of another Contracting State.

(2) State will apply the Convention only to differences arising out of legal relationships whether contractual or not which are considered as commercial under the national law.

(3) With regard to awards made in the territory of non-contracting States, State will apply the Convention only to the extent to which these States grant reciprocal treatment.

(4) Canada declared that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the laws of Canada, except in the case of the Province of Quebec where the law does not provide for such limitation.

(5) State will not apply the Convention to differences where the subject matter of the proceedings is immovable property situated in the State, or a right in or to such property.

(6) State will apply the Convention only to those arbitral awards which were adopted after the coming of the Convention into effect.

(7) Argentina declared that the present Convention should be construed in accordance with the principles and rules of the National Constitution in force or with those resulting from reforms mandated by the Constitution.

(8) On April 23, 1993, Switzerland notified the Secretary-General of its decision to withdraw the reciprocity declaration it had made upon ratification.

(9) Viet Nam declared that interpretation of the Convention before the Vietnamese Courts or competent authorities should be made in accordance with the Constitution and the law of Viet Nam.

(10) On 31 August 1998, Germany withdrew the reservation made upon ratification mentioned in note 1.

(11) The Convention only applies in regard to Malta with respect to arbitration agreements concluded after the date of Malta's accession to the Convention.

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[\[FN1\]](#). Appendix 1 sets forth the member countries, and the dates of their accessions, to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

[\[FN2\]](#). An exception to this exists in the American Arbitration Association's rules. This organization has implemented "Optional Rules for Emergency Measures of Protection," which can offer parties injunctive-type relief within a few days after a request for such relief is made. However, such emergency remedies are not available unless the parties agreed in advance that such remedies could be used.

[\[FN3\]](#). There are a multitude of additional institutional settings, both international and regional, such as the Arbitration Chamber of Paris ([http:// www.arbitrage.org/us/index_us.htm](http://www.arbitrage.org/us/index_us.htm)), the China International Economic and Trade Arbitration Commission (CIETAC) (<http://www.cietac-sz.org.cn/cietac/index-e.htm>), the Indian Council of Arbitration (ICA) (<http://www.ficci.com/icanet>), the Japan Commercial Arbitration Association (JCAA) (<http://www.jcaa.or.jp/e/>), and the Singapore International v Arbitration Centre (SIAC) ([http:// www.interarbitration.net/institutions/index.asp?id=siac](http://www.interarbitration.net/institutions/index.asp?id=siac)). For the purposes of this paper, however, we will focus primarily on

[\[FN4\]](#). "As the 'core legal body within the United Nations system in the field of international trade law', as stated in General Assembly resolution 37/106, UNCITRAL was given the mandate to further the progressive harmonization and unification of the law of international trade. The first specific task given to the Commission in pursuance of this mandate [was] to coordinate the work of organizations active in the field of international trade law and to encourage cooperation among them." Opening Speech at UNCITRAL's 33rd Session by Mr. Hans Corell, Under-Secretary-General for Legal Affairs (available at <http://www.un.org/law/counsel/uncitral.htm>).

[\[FN5\]](#). The parties may also look to the 1980 Rome Convention on the Law Applicable to Contractual Obligations for guidance in this area. That Convention provides that if no law is chosen, the contract should be governed by the law of the country with which the dispute is most connected.