

# Overview of International Arbitration

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## I. Concepts and Characteristics

International arbitration is a dispute resolution mechanism between parties of different nationalities, typically states or commercial entities. Arbitration is a process where parties agree to submit their dispute to one or more arbitrators, who will render a final binding decision. Within this framework, an arbitral tribunal is established solely to resolve the specific dispute. Instead of resorting to national courts, which are judicial proceedings, parties may choose arbitration as a method of conflict resolution, constituting a private dispute settlement<sup>1</sup>. Arbitration plays a significant role in dispute resolution as it provides an effective alternative to national courts.

International arbitration is commonly utilized in cross-border commercial disputes, as well as in investment disputes or other areas of international law<sup>2</sup>.

International arbitration is known to offer several advantages, such as<sup>3</sup>:

- Confidentiality : Arbitration proceedings are often more confidential as they are generally conducted privately.
- Choice of arbitrators : Parties can select one or more arbitrators, allowing them to choose experts in the field of the dispute to make informed and fair decisions.
- Speed and efficiency : Arbitration is often faster and more efficient due to less formal and more flexible procedures.
- Choice of applicable law

<sup>1</sup> OMPI, Qu'est-ce que l'arbitrage ? n.d., available on : <https://www.wipo.int/amc/fr/arbitration/what-is-arb.html>; R. RANJAN, Important principles of Arbitration Law, 25 february 2021, available on : <https://blog.ipleaders.in/important-principles-arbitration-law/>; K. SHONK, International Arbitration : What it is and How it Works, Harvard Law School, Daily Blog, 22 january 2024, available on : <https://www.pon.harvard.edu/daily/international-negotiation-daily/international-arbitration-what-it-is-and-how-it-works/>; Peace palace library, International Arbitration, n.d., available on: <https://peacepalacelibrary.nl/research-guide/international-arbitration>.

<sup>2</sup> HHR, International Commercial Arbitration vs. U.S. Commercial Litigation – Key Differences, n.d., available on : <https://www.hugheshubbard.com/news/international-commercial-arbitration-vs-u-s-commercial-litigation-key-differences>; K. SHONK, op.cit.

<sup>3</sup> Pepperdine Law Blog, What is International Commercial Arbitration ? 09 May 2023, available on :

<https://law.pepperdine.edu/blog/posts/what-is-international-commercial-arbitration.htm>; C. MALLEVILLE, Confidentiality versus Transparency in International Arbitration: Where to Draw the Line? French Law Perspective, 25 May 2023, Clyde&Co, available on : [https://www.clydeco.com/en/insights/2023/05/confidentiality-versus-transparency-in-international#:~:text=Confidentiality%20is%20the%20duty%20not,members%20of%20the%20arbitral%20institution](https://www.clydeco.com/en/insights/2023/05/confidentiality-versus-transparency-in-international#:~:text=Confidentiality%20is%20the%20duty%20not,members%20of%20the%20arbitral%20institution;); R.W. WATCHTER, G. YOON, M. YOO, Confidentiality in International IP Arbitration, 21 December 2022, GAR, available on : <https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/confidentiality-in-international-ip-arbitration>; C. T. SALOMON, Selecting An International Arbitrator: Five Factors To Consider, Mealey's International Arbitration Report, volume 17, October 2002, available on : <https://www.international-arbitration-attorney.com/wp-content/uploads/arbitrationlaw0405202743129.pdf>; Aceris Law, Expedited Arbitration, 01 october 2023, available on : <https://www.acerislaw.com/expedited-arbitration/>; Swiss Arbitration, Swiss Rules 2021, 2021, available on : <https://www.swissarbitration.org/centre/arbitration/arbitration-rules/>.

- Cross-border enforcement : Arbitral awards are easier to enforce across borders thanks to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Regarding its sources, international arbitration often relies on international conventions, bilateral treaties, or contractual clauses that provide for this method of dispute resolution. We will address this point in detail below<sup>4</sup>.

Moreover, arbitration can be ad hoc (parties appoint arbitrators themselves) or institutional (parties entrust the appointment of arbitrators to a specific arbitration institution)<sup>5</sup>.

In an international context, where parties likely originate from different jurisdictions, arbitration helps avoid difficulties associated with the diversity of national legal systems, as well as challenges in determining the competent court in the absence of a choice of forum.

International arbitration is thus an essential tool, especially for international trade, as it enables parties to resolve their disputes neutrally, efficiently, and impartially. This can promote legal certainty and confidence in international transactions.

It is important to note that arbitration is just one of several dispute resolution methods. Others include<sup>6</sup>:

- Negotiation, allowing parties to reach an agreement directly.
- Mediation, involving a neutral third party to assist parties in reaching an amicable settlement.
- International judicial proceedings, enabling parties to bring the dispute before international courts such as the ICJ or the ECHR.

These are the main existing methods of resolving international disputes. These various methods offer parties a range of options to effectively resolve their international disputes, tailored to their specific needs. Choosing the right resolution method often depends on the nature of the dispute, as well as the parties' preferences and practical considerations such as confidentiality and costs<sup>7</sup>.

Regarding the various existing categories in the field of arbitration, there are several depending on the specific area. Here are the main ones<sup>8</sup>:

<sup>4</sup> Louis L. Biro Law Library, International Legal Research : International Arbitration, 2024, available on : <https://libraryguides.law.uic.edu/c.php?g=261791&p=1750896>.

<sup>5</sup> DR. CLEIS MARIA NICOLE, D. KABIR A.N, Ad hoc Arbitration, 18 March 2024, available on : <https://jsumundi.com/en/document/publication/en-ad-hoc-arbitration#:~:text=L->

.Definition,oversight%20of%20an%20arbitral%20institution.&text=Institutions%20may%2C%20however%2C%20provide%20administrati ve,services%20to%20ad%20hoc%20tribunals.

<sup>6</sup> R. RANJAN, Important principles of Arbitration Law, 25 February 2021, available on : <https://blog.iplayers.in/important-principles-arbitration-law/>; A. HAFEEZ, Modes of Dispute Resolution under International Law, 4 August 2021, available on : <https://deliverypdf.ssrn.com/delivery.php?ID=238095091112122119078104069095116098030039095010089032081007093111029077125074024004017022101106058025050113028071076080120084118072059069019097082081015029080069091010062013123112094126098086103068096086113001007068003111079110067002103029104123121000&EXT=pdf&INDEX=TRUE>.

<sup>7</sup> R. RANJAN, *op. cit.*

<sup>8</sup> S. FRANCK, The Fundamentals of Arbitration, Economics and finance, 19 November 2020, available on : <https://oxfordre.com/economics/display/10.1093/acrefore/9780190625979.001.0001/acrefore-9780190625979-e-369>.

## III INTERNATIONAL LAW INSIGHTS

- Commercial arbitration : Involving disputes arising from commercial transactions between national or international businesses<sup>9</sup>.
- Investment arbitration : Involving disputes between investors and states, often arising from bilateral investment treaties (BITs).
- Public international arbitration : Involving disputes between states.
- Labor arbitration : Involving disputes between employers and employees.
- Sports arbitration : Involving disputes in the field of sports.

It is important to note that each category of arbitration has its own rules and procedures tailored to the particular characteristics and stakes of the disputes involved. These rules and procedures may also vary depending on the arbitration institutions involved.

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<sup>9</sup> Pepperdine Law Blog, What is International Commercial Arbitration ? 09 May 2023, available on : <https://law.pepperdine.edu/blog/posts/what-is-international-commercial-arbitration.htm>.



For example, the principle of confidentiality is embodied in Article 7 of the UNCITRAL Rules, which states: "*1. Confidential or protected information as defined in paragraph 2 and identified in accordance with the procedures set forth in paragraphs 3 and 4 shall not be made available to the public pursuant to Articles 2 through 6,*" thereby protecting the confidentiality of certain information disclosed during arbitration<sup>16</sup>.

- Principle of Flexibility

This principle refers to the ability of the arbitral process to adapt to the specific needs of each dispute and each party involved.

The principle of flexibility is notably embodied in Article 19 of the UNCITRAL Rules, which allows parties to agree on the language of arbitration, as well as specific procedural rules, thereby promoting flexibility<sup>17</sup>.

- Principle of Efficiency

The principle of efficiency is exemplified by the administration of the UNCITRAL Secretariat, resulting in the efficient conduct of arbitration. This principle is also embodied by strict deadlines set for each stage of the procedure, ensuring a certain expeditiousness<sup>18</sup>.

- Adversarial Process and Equality of Parties

Parties must have the full opportunity to present their arguments and evidence. The principles of an adversarial process and equality of parties ensure that each party has a fair opportunity to participate in the process<sup>19</sup>.

The principle of equality is notably embodied in Article 17 of the UNCITRAL Rules: "*Subject to the provisions of these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate provided that the parties are treated with equality and that at an appropriate stage of the proceeding each party is given a full opportunity of presenting his case*"<sup>20</sup>.

- Enforcement of Arbitral Awards

Decisions rendered by an arbitral tribunal are final and binding on the parties. They are generally enforceable in signatory countries of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards:

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20obligation%20may%20vary%20in,and%20nature%20of%20the%20obligation; C. MALLEVILLE, Confidentiality versus Transparency in International Arbitration: Where to Draw the Line? French Law Perspective, 25 May 2023, Clyde&Co, available on :

<sup>16</sup> CNUDCI, Règlement d'arbitrage de la CNUDCI sur la transparence dans l'arbitrage entre investisseurs et États fondé sur des traités, *op.cit.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Aceris Law LLC, Equal Treatment of the Parties in International Arbitration, 12 March 2020, available on :

<https://www.acerislaw.com/equal-treatment-of-the-parties-in-international-arbitration/>.

<sup>20</sup> CNUDCI, Règlement d'arbitrage de la CNUDCI sur la transparence dans l'arbitrage entre investisseurs et États fondé sur des traités, 2013, available on : <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/fr/uncitral-arbitration-rules-2013-f.pdf>.

*"Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles"<sup>21</sup>.*

- Binding Nature of Decisions

Decisions rendered by the arbitral tribunal are binding on the parties, and challenges to the decision may be subject to specific conditions.

The principle of binding nature is embodied in Article 34 of the UNCITRAL Rules, which states that *"all awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out the award without delay"*<sup>22</sup>.

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<sup>21</sup> Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères, 1958, available on : <https://www.newyorkconvention.org/french>, art. 3.

<sup>22</sup> CNUDCI, *op.cit.*

### III. Arbitral Institutions

There are several arbitral institutions. These are international organizations that offer services for international arbitration. They are frequently chosen to resolve international disputes submitted to arbitration. Additionally, arbitration institutions provide internationally recognized arbitration rules and procedures. They also offer the advantage of providing a diverse choice of experienced arbitrators. The main existing arbitral institutions include:

- International Chamber of Commerce International Court of Arbitration (ICC) : This is one of the most recognized and utilized arbitral institutions. It offers arbitration services as well as mediation and technical expertise services for the resolution of international commercial disputes<sup>23</sup>.
- International Centre for Settlement of Investment Disputes (ICSID) : ICSID offers specific arbitration mechanisms in international investment law (disputes between states and foreign investors)<sup>24</sup>.
- Permanent Court of Arbitration (PCA) : PCA offers arbitration and mediation services for international disputes involving states, international organizations, and private companies<sup>25</sup>.
- London Court of International Arbitration (LCIA) : LCIA is one of the most renowned arbitration institutions in the UK. It offers arbitration services for international commercial disputes<sup>26</sup>.
- Netherlands Arbitration Institute (NAI) : NAI offers arbitration services for international commercial disputes<sup>27</sup>.
- Singapore International Arbitration Centre (SIAC) : SIAC offers arbitration services for international commercial disputes<sup>28</sup>.

These institutions have functions that play an essential role in promoting and facilitating international arbitration, such as<sup>29</sup> :

- **Development of Rules and Procedures**

These institutions develop and implement clear rules and procedures for the conduct of international arbitrations. These rules provide a coherent and predictable legal framework

<sup>23</sup> International Chamber of Commerce, Arbitration, n.d., available on : <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/> ; ICC Switzerland, ICC International Court of Arbitration, n.d., available on : <https://www.icc-switzerland.ch/dispute-resolution-services/icc-international-court-of-arbitration>.

<sup>24</sup> CIRDI, A propos, n.d., available on : <https://icsid.worldbank.org/fr/a-propos>.

<sup>25</sup> Permanent Court of Arbitration, Introduction à la CPA, n.d., available on : <https://pca-cpa.org/fr/about/>.

<sup>26</sup> LCIA Website, available on : <https://www.lcia.org>; LCIA, What is the London Court of International Arbitration (LCIA)?, n.d., available on : <https://www.curtis.com/glossary/commercial-arbitration/london-court-of-international-arbitration-lcia>.

<sup>27</sup> Netherlands Arbitration Institute Website, available on : <https://nai.nl>.

<sup>28</sup> Singapore International Arbitration Centre Website, available on : <https://siac.org.sg>.

<sup>29</sup> Mololamken LLP, What are arbitral institutions, and why do they matter?, n.d., available on: <https://www.mololamken.com/knowledge-what-are-arbitral-institutions-and-why-do>; E. R. GADELISHINA, What plays the key role in the success of an arbitration institution?, February 2013, available on: <https://www.financierworldwide.com/what-plays-the-key-role-in-the-success-of-an-arbitration-institution>; Bodenheimer, Arbitration: Arbitral institutions, n.d., available on : <https://www.changing-perspectives.legal/arbitration/arbitral-institutions/>; Cooley, The Main Institutions of International Arbitration, 31 July 2023, available on : <https://www.cooley.com/news/insight/2023/2023-07-31-the-main-institutions-of-international-arbitration>.

for parties involved in arbitration. This promotes predictability and legal certainty of arbitral decisions. We will delve into this further in Section V<sup>30</sup>.

○ **Administration of Arbitrations**

These institutions administer arbitration procedures by providing services. The services offered include case management services such as arbitrator appointments, coordination of hearings, management of deadlines, or general oversight of the arbitration process. This ensures the smooth progress of the procedure<sup>31</sup>.

○ **Provision of Infrastructure**

Arbitration institutions provide parties with the necessary infrastructure for conducting arbitrations, such as translation and interpretation services, equipped hearing rooms, and administrative services. This enables the conduct of arbitration proceedings efficiently and facilitated for the parties.

We see this notably in Article 6 paragraph 1 letter d of the ICSID Rules: the administrative council "*approves all arrangements with the Bank for the use of its premises and administrative services*"<sup>32</sup>.

○ **Selection of Qualified Arbitrators**

These institutions offer lists of qualified and experienced arbitrators. Parties can then choose competent and impartial arbitrators for the resolution of their dispute. The selection of qualified arbitrators contributes to ensuring the integrity and fairness of the arbitral process.

We see this notably in Article 3 of the ICSID Arbitration Rules:

*"(1) If the Tribunal is to be constituted pursuant to Article 37(2)(b) of the Convention:*

*(a) either party shall, in a communication to the other party:*

*(i) appoint two persons, specifying that one, who shall not be of the same nationality as either party or be otherwise a national of either party, shall be the arbitrator appointed by it, and the other, the arbitrator proposed as President of the Tribunal; and*

*(ii) invite the other party to accept the appointment of the arbitrator proposed as President of the Tribunal and to appoint another arbitrator;*

*(b) upon receipt of such communication, the other party shall, in its response:*

*(i) appoint the arbitrator appointed by it, who shall not be of the same nationality as either party or otherwise a national of either party; and*

*(ii) accept the appointment of the arbitrator proposed as President of the Tribunal or appoint another person to serve as such;*

<sup>30</sup> Aceris Law LLC, What is International Arbitration ? International Arbitration Information by Aceris Law LLC, available on : <https://www.international-arbitration-attorney.com/what-is-international-arbitration/>.

<sup>31</sup> Swiss Arbitration Centre, Swiss Rules of International Arbitration (Swiss Rules), 2021, available on : <https://www.swissarbitration.org/wp-content/uploads/2023/08/Swiss-Rules-2021-EN.pdf>

<sup>32</sup> CIRDI ; Convention pour le règlement des différends relatifs aux investissements entre États et ressortissants d'autres États, 2006, available on : <https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20French.pdf>, art.6.



*(c) upon receipt of the response, the party initiating shall notify the other party whether it accepts the appointment of the arbitrator proposed by the other party as President of the Tribunal*<sup>33</sup>.

○ **Supervision**

Arbitration institutions ensure the supervision of arbitrations<sup>34</sup>. They ensure compliance with established rules and procedures. This supervision may include verifying the validity of rendered arbitral awards, as well as resolving any disputes that may arise during the arbitration process.

Thanks to the various functions offered by arbitration institutions, they play an important role in promoting international arbitration. This contributes to the efficient and equitable resolution of international disputes and undoubtedly represents advantages for the parties.

Furthermore, preferring arbitration institutions offers several practical and strategic advantages as their framework and rules ensure a fair and orderly process. Additionally, their administrative services can simplify dispute management, and their expertise can often expedite conflict resolution<sup>35</sup>.

It is important to note that the choice of institution by the parties should be made thoughtfully. Indeed, parties must consider factors such as the institution's domain of competence, its pre-requisite rules and conditions, its specific arbitration procedures and rules, as well as costs and/or duration, which may differ between institutions. Additionally, each institution has its own set of rules. The conditions and rules may therefore differ among them, which should also be considered when choosing the institution.

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<sup>33</sup> CIRDI, Règlement de procédure relatif aux instances d'arbitrage, 2006, available on : <https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20French.pdf>, art.3.

<sup>34</sup> ICC Switzerland, *op.cit.* ; J. FERNANDEZ-ARMESTO, The governance of arbitral institutions: how to improve standards through accreditation, n.d., available on : <https://jfarmesto.com/wp-content/uploads/2023/05/How-to-improve-standards-through-accreditation.pdf>.

<sup>35</sup> Arbitrage international, Arbitration institutionnel ou ad hoc ? Aceris Law, 02 January 2019, available on : <https://www.international-arbitration-attorney.com/fr/arbitragem-institucional-ou-ad-hoc/>.

## IV. International Legal Framework

The international legal framework for arbitration comprises a set of instruments, such as international conventions, treaties, national laws, institutional arbitration rules, and customary practices. These various instruments aim to govern the procedures and standards applicable to international arbitrations.

### ○ International Conventions

#### ○ The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)

This convention, adopted in 1958, is the most important convention in international arbitration. It establishes an international framework for the recognition and enforcement of foreign arbitral awards in signatory states. Moreover, it facilitates the recognition of international arbitral awards and their application in different countries.

The role of the New York Convention, gathering 172 state parties, is outlined in its Article 1 paragraph 1: "*This Convention applies to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought*"<sup>36</sup>.

The Convention provides for the recognition and enforcement of arbitral awards in signatory countries under its Article 3<sup>37</sup>.

#### ○ The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)

This convention, established by ICSID, provides rules for the arbitration of investment disputes between investors and states<sup>38</sup>.

International conventions form the basis of the international legal framework for arbitration. Many other international conventions exist, particularly depending on the relevant field<sup>39</sup>.

### ○ Institutional Arbitration Rules

Many international arbitration institutions develop their own rules and procedures for conducting international arbitrations. These rules provide a standardized framework for dispute management and are widely used in the practice of international arbitration<sup>40</sup>. Let's take a few examples:

<sup>36</sup> Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères, *op.cit.*, article 1.

<sup>37</sup> *Ibid*, art. 3.

<sup>38</sup> CIRDI, Convention pour le Règlement des différends relatifs aux investissements entre États et ressortissants d'autres États, *op.cit.*

<sup>39</sup> Arthur W. DIAMOND Law Library, International Commercial Arbitration: Treaties and International Agreements, Columbia Law School, n.d., available on : <https://guides.law.columbia.edu/c.php?g=1143492&p=8594689>.

<sup>40</sup> International Arbitration, What is International Arbitration ?, n.d., available on : <https://www.international-arbitration-attorney.com/what-is-international-arbitration/>.

- ICSID "*proposes specialized procedural regulations for arbitration, conciliation, fact-finding, and mediation*"<sup>41</sup> in investment matters, such as the ICSID Convention, which is an international treaty governing arbitration. It has been ratified by 158 contracting states<sup>42</sup>.
- ICC has its own arbitration rules. According to the ICC: "*each of these Rules defines a structured institutional framework aimed at ensuring transparency, efficiency, and fairness in the dispute resolution process while allowing the parties to exercise their choice on many aspects of the procedure*"<sup>43</sup>.
- LCIA has several rules governing each element related to arbitration. These rules are available on the LCIA's official website<sup>44</sup>.

These are just a few examples of institutional arbitration rules. However, there are many other arbitration institutions offering their own arbitration rules, each with different characteristics.

It is logical to consider these differences when choosing arbitration rules by the parties. It is necessary to consider the function of the institution in question, as well as other criteria such as the nature of the dispute, the place of arbitration, the preferences of the parties, etc.

It is also important to note that institutional arbitration rules are not binding. Parties to an international arbitration are not obliged to comply with the rules of a particular arbitration institution. They have several options such as following all or part of a set of rules of a particular arbitral institution, or even agreeing to a different arbitration procedure in their arbitration clause. This reaffirms the principle of party autonomy and the principle of flexibility of arbitration. The assertion that institutional arbitration rules are not binding is enshrined in several sources of international arbitration law. For example, this principle is stated in several arbitration rules of institutions.

This is notably the case with the ICC Arbitration Rules which state that: "*Parties wishing to resort to the procedure provided for in the ICC Mediation Rules should consider choosing one of the clauses below, which meet different needs and situations. Parties are free to adapt the clause of their choice according to the circumstances. They may for example wish to provide for recourse to a dispute resolution formula other than mediation. They may also wish to specify the language and place of the mediation and/or arbitration procedure. The notes accompanying each clause are intended to assist parties in choosing the one that best meets their particular needs*"<sup>45</sup>. Additionally, Article 39 states that: "*Parties may agree to shorten the various time limits provided for in the Rules. Such an agreement entered into after the constitution of the arbitral tribunal shall only take effect with its approval*"<sup>46</sup>. Other provisions of this type exist and illustrate that party autonomy prevails regarding their choice of procedure and other elements concerning arbitration.

<sup>41</sup> CIRDI, Règlements du CIRDI, n.d., available on : <https://icsid.worldbank.org/fr/reglement#:~:text=Le%20CIRDI%20propose%20des%20règlements,entre%20investisseurs%20et%20États%20membres.>

<sup>42</sup> CIRDI, Convention pour le règlement des différends relatifs aux investissements entre États et ressortissants d'autres États, *op. cit.* ; CIRDI, CIRDI Convention et Règlements, n.d., available on : <https://icsid.worldbank.org/fr/reglement/convention.>

<sup>43</sup> ICC, Règlement d'arbitrage, Règlement de médiation, *op. cit.*

<sup>44</sup> LCIA, LCIA Arbitration Rules, 2020, available on : [https://www.lcia.org/Dispute\\_Resolution\\_Services/lcia-arbitration-rules-2020.aspx.](https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx.)

<sup>45</sup> ICC France, Règlement d'arbitrage, Règlement de médiation, *op. cit.*

<sup>46</sup> *Ibid*, article 39.

○ **National Laws on Arbitration**

Each country has its own laws on international arbitration. These laws define a legal framework for the conduct of international arbitrations within the territory of the respective state. Although these national laws on international arbitration vary from one country to another, they mostly address issues such as the jurisdiction of arbitral tribunals, the formation of the arbitral tribunal, the arbitral procedure, the law applicable to the dispute, the recognition and enforcement of arbitral awards, and the conditions for recourse against rendered arbitral awards. The arbitration laws of several states are available at: <https://www.international-arbitration-attorney.com/fr/arbitration-law-of-world/>.

We also note that many states have based their laws on international arbitration on UNCITRAL models<sup>47</sup> or other international sources<sup>48</sup>.

This is notably the case with the Swiss International Arbitration Law, which states in its introduction: "*The Swiss Rules of International Arbitration (...) based on the UNCITRAL Arbitration Rules*"<sup>49</sup>.

It is also the case with Spanish law, which states in its preamble: "*The current Law 60/2003, of December 23, on Arbitration, has represented a qualitative advance in the regulation of this institution, establishing a new framework for domestic and international arbitration that takes as a reference the UNCITRAL Model Law, on commercial arbitration, adopted on June 21, 1985*"<sup>50</sup>.

Many other states have relied on UNCITRAL models. UNCITRAL model laws, such as the Model Law on International Commercial Arbitration, provide a comprehensive legislative framework for international arbitration, which is compatible with various principles of international arbitration<sup>51</sup>.

It is important to bear in mind that general principles of law, such as the principle of fairness and good faith, may also be applied by arbitrators, and arbitral jurisprudence is also a source of international arbitration<sup>52</sup>.

If arbitration takes place in a state that does not have its own national law on international arbitration, the rules applicable to arbitration may notably be those provided by an institution chosen by the states or even those provided in the arbitration clause agreed by the parties.

National laws on international arbitration are therefore important as they define the legal framework for international arbitrations taking place within their territory and aim to ensure the smooth conduct of arbitrations and respect for the rights of the parties. However, they are not mandatory, as parties have, under the principle of autonomy, the freedom to choose the

<sup>47</sup> CNUDCI, Règlement d'arbitrage de la CNUDCI sur la transparence dans l'arbitrage entre investisseurs et États fondé sur des traités, *op.cit.*

<sup>48</sup> Arbitrage international, Lois d'arbitrage du monde, Informations sur l'arbitrage international par Aceris Law LCC, n.d., available on : <https://www.international-arbitration-attorney.com/fr/arbitration-law-of-world/#:~:text=Les%20lois%20nationales%20sur%20l,anti%2Dsuit%2C%20la%20disponibilit%20de.>

<sup>49</sup> Swiss Arbitration Centre, Swiss Rules of International Arbitration (Swiss Rules), *op. cit.*

<sup>50</sup> Boletín oficial del estado, n° 121, Section 1, page. 50797-50804, 21 May 2011, available on : <https://www.international-arbitration-attorney.com/wp-content/uploads/2013/07/Spain-Arbitration-Law.pdf>.

<sup>51</sup> Commission des Nations Unies pour le droit commercial international, Loi type de la CNUDCI sur l'arbitrage commercial international (1985) avec les amendements adoptés en 2006, available on : [https://uncitral.un.org/fr/texts/arbitration/modellaw/commercial\\_arbitration#:~:text=adoptés%20en%202006-.Loi%20type%20de%20la%20CNUDCI%20sur%20l'arbitrage%20commercial%20international,de%20l'arbitrage%20commercial%20intern ational.](https://uncitral.un.org/fr/texts/arbitration/modellaw/commercial_arbitration#:~:text=adoptés%20en%202006-.Loi%20type%20de%20la%20CNUDCI%20sur%20l'arbitrage%20commercial%20international,de%20l'arbitrage%20commercial%20intern ational.)

<sup>52</sup> P. KAHN, Les principes généraux du droit devant les arbitres du commerce international, n.d., available on : <https://www.sfdi.org/wp-content/uploads/2021/06/Kahn-Les-principes-generaux-du-droit-devant-les-arbitres-du-commerce-international.pdf>, p.305-327.

procedure that will apply to their dispute, including both procedural rules and the applicable law. Parties may therefore choose not to apply national arbitration rules and, for example, to agree on an ad hoc procedure instead<sup>53</sup>.

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<sup>53</sup> W. MYFANWY, DR. WILLCOCKS ANDREW, Arbitration Clause, Jus Mundi, 29 April 2024, available on : <https://jusmundi.com/en/document/publication/en-arbitration-clause>, n°4.

## V. Arbitration Procedure

Several sets of rules govern the arbitration process. The arbitration procedure is guided by multiple sources that collectively establish a comprehensive framework for conducting arbitration. These sources can be categorized into three main groups.

### 5.1. 1958 UN Model

One significant set of rules governing arbitration procedure is the model developed by the UN in 1958<sup>54</sup>. This model outlines the sequence of steps to be followed in international arbitration disputes. It provides a standardized framework for conducting international arbitration procedures and covers aspects such as dispute recognition. According to this model, the arbitration procedure unfolds as follows<sup>55</sup> :

#### **1. Recognition of a dispute.**

#### **2. Establishment of a written compromise between the parties expressing their willingness to submit the dispute to arbitration.**

As previously discussed, for parties to access arbitration, they must explicitly accept this method of dispute resolution.

This stems from the principle of party autonomy, which emphasizes the parties' autonomy in arbitration matters.

Acceptance of this method of dispute resolution can occur either through the inclusion of an arbitration clause in a contract before the dispute arises or through an agreement made after the dispute arises.

The preamble of the ICSID Convention clearly articulates the need for parties' acceptance: "*Recognizing that the mutual consent of the parties to submit these disputes to conciliation or arbitration, using these mechanisms, constitutes a binding agreement that requires, in particular, that any recommendations of the conciliators be duly taken into account and that any arbitral award be enforced*"<sup>56</sup>.

Article 2 of the New York Convention also refers to this: "*Each contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject capable of settlement by arbitration*"<sup>57</sup>.

Another example is the Court of Arbitration for Sport, which offers standard declarations such as "*I, the undersigned, accept the statutes of... [name of the federation], in particular the provision establishing the exclusive jurisdiction of the Court of Arbitration for Sport*"<sup>58</sup>. This declaration signifies not only the parties' acceptance to submit the dispute to arbitration but also the election of a specific institution.

<sup>54</sup> United Nations, *Modèle de règles sur la procédure arbitrale*, 1958, available on : [https://legal.un.org/ilc/texts/instruments/french/draft\\_articles/10\\_1\\_1958.pdf](https://legal.un.org/ilc/texts/instruments/french/draft_articles/10_1_1958.pdf).

<sup>55</sup> *Ibid.*

<sup>56</sup> CIRDI, *Convention et règlements du CIRDI*, *op.cit.*, préambule, p.11.

<sup>57</sup> *Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères*, *op.cit.*

<sup>58</sup> Court of Arbitration for sport, *Modèles de clauses : Procédure d'arbitrage ordinaire*, n.d., available on : <https://www.tas-cas.org/fr/arbitrage/modeles-de-clauses.html>.

### **3. Constitution of the arbitral tribunal, including the appointment of arbitrators.**

The parties establish the arbitral tribunal through a signed compromise that settles the essential details of the arbitration.

Additionally, arbitrator appointment includes determining the number of arbitrators and their mode of selection.

### **4. In case of disagreement on the existence of the dispute or arbitrability, an initial procedure before the International Court of Justice must be undertaken.**

### **5. Signing of the compromise.**

The signing of the compromise settles details such as the tribunal's composition, the subject of the dispute, applicable legal rules, languages of debate, etc. According to this model, it is also necessary to include a confidentiality clause. This clause aims to protect the disclosure of information related to the dispute and proceedings to non-participating third parties.

### **6. Conducting the arbitration.**

This includes:

- Written pleadings (exchange of memoranda, rejoinders, and surrejoinders between the parties).
- Oral hearings.
- Questions posed by arbitrators to the parties and requests for clarifications.
- Closing of the hearing procedure directed by the President of the tribunal.

### **7. Evidence evaluation and decision-making.**

This includes:

- Admission of evidence by the tribunal.
- Examination and evaluation of evidence presented by the parties.
- After deliberation, the tribunal's decision based on the evidence and arguments presented.

### **8. Enforcement of the arbitral award.**

These steps define the standard process for conducting international arbitration according to the rules proposed in the 1958 model. The articles of this model provide a detailed and comprehensive framework regarding the conduct and procedure of international arbitration.

It is important to note that disputing states are free to follow or draw inspiration from the model's rules: "*The procedures offered to disputing States by this model are mandatory only when they have agreed to resort to them either in the compromise or in any other commitment*"<sup>59</sup>. Indeed, many aspects of these rules are recognized and used in the practice of international arbitration.

In parallel, there are several other sets of rules on arbitration procedure. The most common ones are those issued by arbitration institutions:

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<sup>59</sup> United Nations, *Modèle de règles sur la procédure arbitrale*, *op.cit.*, préambule.

## 5.2. Institutional Arbitration Rules

The procedure may also be provided by rules contained in arbitration institutions' regulations.

- **International Chamber of Commerce (ICC) Arbitration Rules**

The ICC administers arbitrations according to its own set of rules, the "*ICC Arbitration Rules*"<sup>60</sup>. These rules are regularly updated.

The ICC Rules provide that "*This brochure contains two distinct but complementary dispute resolution procedures offered by the International Chamber of Commerce (ICC). Arbitration under the ICC Arbitration Rules is a formal procedure leading to a binding decision by a neutral arbitral tribunal, enforceable under both national arbitration laws and international treaties such as the 1958 New York Convention*"<sup>61</sup>.

- **United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules**

UNCITRAL has developed its own rules for international arbitration, often used in international commercial disputes. These offer a comprehensive framework for arbitration procedures<sup>62</sup>.

- **Permanent Court of Arbitration (PCA) Arbitration Rules**

The PCA offers a set of arbitration rules that parties can use in international arbitration<sup>63</sup>. The PCA provides procedural rules in Section III of its arbitration rules<sup>64</sup>.

- **International Centre for Settlement of Investment Disputes (ICSID) Arbitration Rules**

ICSID's procedural rules for arbitration instances provide its own procedure<sup>65</sup>. Indeed, ICSID administers investment-related arbitrations according to its own rules<sup>66</sup>.

## 5.3. Ad Hoc Arbitration Rules

In addition to the aforementioned rules, parties may also choose to resort to ad hoc arbitration rules. Ad hoc rules are specific rules that parties themselves develop to govern the arbitration process. However, parties sometimes adhere to an existing set of rules to govern ad hoc arbitration, which is more convenient<sup>67</sup>.

We observe that each institution tends to establish its own procedural rules governing the conduct of arbitration. As we have seen previously, these rules often draw inspiration from key

<sup>60</sup> ICC France, Règlement d'arbitrage, Règlement de médiation, 2021, available on : <https://www.icc-france.fr/wp-content/uploads/2021/02/892-FRA-Reglement-darbitrage-2021-Reglement-de-mediation-2014.pdf>.

<sup>61</sup> *Ibid*, p.1.

<sup>62</sup> Commission des Nations Unies pour le droit commercial international, Règlement d'arbitrage de la CNUDCI, n.d., available on : [<sup>63</sup> CPA, Règlement d'arbitrage de la CPA, 2012, available on : <https://docs.pca-cpa.org/2015/11/R%C3%A9glement-darbitrage-de-la-CPA-2012.pdf>.](https://uncitral.un.org/fr/texts/arbitration/contractualtexts/arbitration#:~:text=Le%20R%C3%A9glement%20d%27arbitrage%20de%20la%20CNUDCI%20a%20%C3%A9t%C3%A9%20adopt%C3%A9,Etats%20et%20des%20litiges%20commerciaux ; CNUDCI, Règlement de la CNUDCI sur la transparence dans l'arbitrage dans l'arbitrage entre investisseurs et États fondé sur des traités, <i>op.cit</i>.</p>
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<sup>64</sup> *Ibid*, section III.

<sup>65</sup> CIRDI, Convention et règlements du CIRDI, 2006, available on :

<https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20French.pdf>, p.99ss.

<sup>66</sup> *Ibid*.

<sup>67</sup> Arbitrage international, Arbitration institutionnel ou ad hoc ? *op.cit*.



principles of international arbitration. However, they may differ depending on the institutions, allowing for consideration of the specificities of the institution in question, such as its preferred domain, as well as the parties' needs. Indeed, these different arbitration rules offer different approaches and procedures for resolving international disputes submitted to arbitration. Parties can choose those that best suit their specific needs, depending on the institution they address.

#### 5.4. National Laws

As we have already seen, each state has its own legislation on arbitration. These must comply with the key principles of international arbitration. National laws on international arbitration are important as they define the legal framework for international arbitrations taking place within their territory. Additionally, they aim to ensure the smooth conduct of arbitrations and respect for the parties' rights. These national laws provide for the procedure applicable to arbitrations taking place on their territories.

#### 5.5. Agreement of the Parties

Parties have the freedom to agree on the arbitration procedure applicable to their dispute under the principle of party autonomy. Indeed, they can provide for the arbitration procedure either in their arbitration clause in the contract binding them or in a separate arbitration agreement. Therefore, parties may deviate from the rules of arbitration institutions or national laws to agree on others that may be more suitable for their situation and needs. This also allows for the implementation of the principle of flexibility.

Indeed, an arbitration clause typically contains: "*An explicit referral of disputes to arbitration; The governing law of the arbitration agreement; The seat of arbitration; The rules governing the arbitration; The number of arbitrators and their method of selection (see Arbitrator appointment); and if applicable, the institution governing proceedings (see Institutional arbitration) or confirmation of Ad hoc arbitration*"<sup>68</sup>.

However, this choice logically should not violate the fundamental principles of international arbitration, such as the right to a fair procedure or the tribunal's impartiality.

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<sup>68</sup> W. MYFANWY, DR. WILLCOCKS ANDREW, *op.cit.*, n°4.

## VI. Conclusion

In this comprehensive overview of international arbitration, we have explored various elements such as its concepts, characteristics, fundamental principles, international legal framework, governing institutions, and its procedure. We have addressed the following points:

- International arbitration is an important mechanism for resolving disputes between parties of different nationalities. It offers an effective alternative to national courts.
- The sources of arbitration include international conventions, bilateral treaties, institutional regulations, or contractual clauses that provide for this mode of conflict resolution.
- Fundamental principles of arbitration, such as party autonomy, neutrality and impartiality, confidentiality, adversarial process and party equality, as well as the enforcement of arbitral awards, constitute essential pillars. These principles ensure the efficiency and integrity of the arbitration process.
- Arbitral institutions play a crucial role in promoting and facilitating international arbitration by providing rules, procedures, administrative services, lists of qualified arbitrators, and other functions.
- The international legal framework for arbitration includes a set of instruments: international conventions, institutional arbitration rules, national arbitration laws, as well as consideration of custom and jurisprudence.
- The arbitration procedure, regulated by various sets of rules, generally follows a standard process.

International arbitration is therefore an essential tool in our legal system. It offers an efficient, impartial, and neutral means to resolve international disputes. Its importance is undeniable in the international context, particularly concerning international trade and relations between states.

Moreover, the flexible nature of the legal framework for international arbitration allows parties to adapt it and choose the legal regime that best suits their needs. The system also places great emphasis on the fundamental principle of party autonomy, which is inevitably advantageous. In addition to its flexibility and promotion of party autonomy, international arbitration presents other undeniable advantages, as we have observed, such as the possibility for parties to choose arbitrators specialized in the relevant field, ensuring a fair and informed decision-making process.

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