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International arbitration evokes impressions of exotic hearing rooms in old luxury hotels on the shores of a Swiss lake surrounded by snowy mountains. The reality can be quite different. This area of law is the subject of industrial textbook writing authored by experts. This article does no more than set out a very brief view of some considerations which may apply in international arbitration and is written for interest.

International arbitration is a private and confidential dispute resolution mechanism for parties involved in international transactions where neither party has any desire to resolve their disputes in public, or in the state courts of the other. It is a creature of contract comprised in a matrix of private and public international law, comparative law and the local law in the place of arbitration together with the governing law of the contract. One of the practical requirements of a compliant arbitration clause is to state the language in which an arbitration is to be conducted. Irrespective of the governing law of the underlying contract, English counsel are frequently engaged to appear as an advocate for clients where the language of the contract and related correspondence is in English. Where a foreign law governs the contract, counsel are guided by relevant local legal expertise.

Modern arbitration is the successful progeny of the United Nations and its International Trade Law Commission (UNCITRAL). Post-World War II rationale suggests that a measure of bilateral trade interdependence has a positive impact on reducing military conflict. The UNCITRAL Model Law on International Commercial Arbitration was adopted by the United Nations on 21 June 1985[i]. In 2006, it was amended and now includes more detailed provisions on interim measures. This model law is intended to influence individual legislatures when enacting their own arbitration laws.

Legislation based on the Model Law has been adopted in 85 States in a total of 118 jurisdictions[ii]. There are exceptions such as France which relies on its Civil Code origins[iii]. The English Arbitration Act 1996[iv] (AA96) is said to be inspired by, but not a copy of, the Model Law which runs to 36 Sections over 21 pages. By contrast, the AA96 runs to 110 sections over 55 pages and is referred to as Model Law "plus". Other countries such as Thailand omit certain features of the Model Law and are said to be model law "minus". Scotland's arbitration law relies on the Model Law[v].

The Model Law is accompanied by a set of model procedural rules for the organisation and conduct of Arbitration known as UNCITRAL Rules. These rules detail how the arbitral proceedings should be conducted and what powers are exercisable by the arbitral tribunal and parties. The rules deal with the way in which the arbitration is conducted, rather than with the determination of the substantive rights and obligations in the dispute between the parties. In addition, the place or seat of arbitration must be stated because the procedural laws of the seat will additionally govern the procedure of the arbitration and identify the curial court which can give assistance with, for example, subpoenas to witnesses and appeals.

An attractive feature of arbitration is that, unlike state court decisions, arbitration awards are recognised and enforced in 170 countries worldwide[vi] under an international treaty known as the New York Convention[vii]. An award given in Birmingham can be enforced through the courts of Brussels, Bangkok, Bombay or Brisbane to mention but a few. It allows a successful party to chase assets wherever they are to be found in a convention country.

An important aspect is the ability of the parties to arbitration to appoint their own judge. This may be an Engineer Architect or Quantity Surveyor in construction disputes or a retired Loss Adjuster or Master Mariner in maritime or insurance disputes. Generally, each party nominates their independent neutral and the two so chosen appoints the third or tribunal chair. There is no requirement to appoint a lawyer although lawyers are frequently chosen. There are also provisions for a sole arbitrator to be appointed so reducing costs. There must always be an odd number of arbitrators for obvious reasons and in default of appointment, an arbitral institution can become the nominating authority.

Whilst there is a DIY form of arbitration known as *ad hoc* arbitration, these are difficult to organise and manage, particularly where one party is recalcitrant and are not therefore to be recommended. Most arbitrations are managed in an orderly fashion by arbitral institutions that charge a fee to supervise and administer the

proceedings. Amongst many other jurisdictions, London has the LCIA[viii], Paris has ICC[ix], Dubai has DIAC[x], and Singapore has SIAC[xi]. Each institution produces its own arbitration rules for the most part based on the UNCITRAL Rules as well as their own model arbitration clauses.

Obtaining expert advice is to be recommended in drafting or interpreting arbitration clauses. The Clause must at a minimum state that disputes are to be referred to arbitration, set out the number of arbitrators agreed, the place or seat of arbitration, the institutional rules to be used, and the language of arbitration stated. Soft law can also be incorporated.[xii] Where there is an arbitration clause most state courts will decline jurisdiction. Arbitration clauses are also autonomous, that is, severable and independent even where the underlying contract may be defective or void. Arbitrators also have the power to determine their own jurisdiction under a German Law jurisprudential doctrine known as Kompetenz-Kompetenz which has been accepted internationally.

The presentation of claim and defence/counterclaim and the production of evidence including witness and opinion evidence is governed by the chosen arbitration rules and the law at the seat of arbitration. A clause expressing 'arbitration in London' will invoke the AA96 and a common law type procedure. 'Arbitration in Paris' will summon the French Civil Procedure Code[xiii] and consequently, a Civil Law oriented process. The choice, background and nationality of arbitrators can to an extent influence the procedure. Where three retired Indian superior court judges are appointed the case may have the feel of the Indian High Court. Where three engineers are appointed then proceedings may reflect a construction site office meeting with added formality. If a tribunal of English barristers or KCs are appointed then despite the imposing views of the lake and mountains from the hearing room, the ambience may well feel very much like the RCJ on the Strand.

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[i] UN Resolution 40/72 1985

[ii] https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

[iii] See xiii infra

[iv] https://www.legislation.gov.uk/ukpga/1996/23/data.pdf

[v] C/f Arbitration (Scotland) Act 2010 which more closely aligns with the Model Law at 37 Sections.

[vi] For a full list of contracting states see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-1&chapter=22&clang=_en

[vii] Convention on the Recognition and Enforcement of Foreign Arbitral Awards New York, 10 June 1958

[viii] London Court of International Arbitration

[ix] International Chamber of Commerce

[x] Dubai International Arbitration Centre

[xi] Singapore International Arbitration Centre

[xii] The International Bar Association Rules on taking of Evidence in International Arbitration is an example of soft law as are the various protocols recommended by the Chartered Institute of Arbitrators such as Guidelines on Security for Costs or use of Technology amongst others. See https://www.ciarb.org/resources/guidelines-ethics/international-arbitration/

[xiii] French arbitration law is set out in the French Code of Civil Procedure (FCCP), as interpreted by French case law. Articles 1442 to 1503 of the FCCP apply to domestic arbitration (together with articles 2059 to 2061 of the French Civil Code (FCC)), while articles 1504 to 1527 of the FCCP apply to international arbitration. An arbitration is considered international where it "involves the interests of international commerce" (FCCP, article 1504). These laws are not based on and to some extent predate the Model Law.

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