

МИНИСТЕРСТВО НАУКИ И ВЫСШЕГО ОБРАЗОВАНИЯ РФ  
МИНИСТЕРСТВО ОБРАЗОВАНИЯ, НАУКИ, КУЛЬТУРЫ И СПОРТА РА  
ГОУ ВПО РОССИЙСКО-АРМЯНСКИЙ УНИВЕРСИТЕТ

Составлена в соответствии с федеральными

**УТВЕРЖДАЮ:**

Государственными требованиями к структуре  
основной профессиональной образовательной  
программы послевузовского профессионального  
образования (аспирантура)

Проректор по науке  
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Институт: Права и Политики

Кафедра: Международного и европейского права

**Учебная программа подготовки аспиранта и соискателя**  
**ДИСЦИПЛИНА: 2.1.7**

**Актуальные вопросы международного коммерческого арбитража**

наименование дисциплины (модуля) по учебному плану подготовки аспиранта

5.1.5

-Шифр

Международно-правовые науки

наименование научной специальности

Программа одобрена на заседании  
кафедры  
2023 г.

протокол № 7 (23) от 04 июля

Утверждена Ученым Советом ИПП  
2023 г.

протокол № 8 (46) от 06 июля

И.о.зав. кафедрой

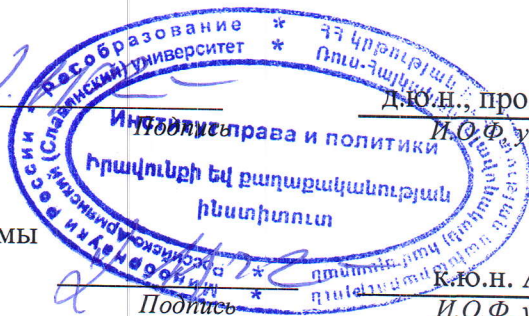
Д.Ю.Н., профессор Оганесян В.А.

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Ереван 2023

Ереван 2023

## Общие положения

Настоящая рабочая программа<sup>1</sup> обязательной дисциплины «**Актуальные вопросы международного коммерческого арбитража**» образовательной программы послевузовского профессионального образования (ООП ППО) ориентирована на аспирантов и соискателей университета, уже прослушавших общие и специальные курсы по международному публичному праву.

### 1. Цели изучения дисциплины

Курс охватывает современные проблемы коммерческого арбитража. В нем рассматривается полный цикл арбитражного процесса, а также практические и теоретические проблемы.

### 2. Компетенции обучающегося, формируемые в результате освоения дисциплины (модуля)

Аспирант или соискатель должен

#### знать:

- международные конвенции в области международного коммерческого арбитража
- правовое регулирование разрешения международных коммерческих споров
- наиболее актуальные практические проблемы в сфере регулирования международного коммерческого арбитража

#### уметь:

- выделять из общей информации проблемные ситуации путем сопоставления имеющегося материала и аналитического мышления сформировать собственный подход к актуальным проблемам;
- сформировать свою приверженность к тому или иному подходу.

#### владеть:

- практическими навыками составления документов и участия в рамках международного коммерческого арбитражного разбирательства

### 3. Объем дисциплины (модуля) и количество учебных часов

Вид учебной работы	Кол-во зачетных единиц*/уч. часов
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<sup>1</sup> Учитывая, что данная дисциплина будет преподаваться в 2019-2020 учебном году, учебная программа будет изменена в соответствии с предложениями будущего преподавателя

Аудиторные занятия	
Лекции (минимальный объем теоретических знаний)	8
Семинар	18
Практические занятия	
Другие виды учебной работы (авторский курс, учитывающий результаты исследований научных школ Университета, в т.ч. региональных)	
Формы текущего контроля успеваемости аспирантов	
Внеаудиторные занятия:	
Самостоятельная работа аспиранта	10
<b>ИТОГО</b>	<b>36</b>
Вид итогового контроля	Составляющая экзамена кандидатского минимума <b>зачет</b>

#### 4. Содержание дисциплины (модуля)

##### 4.1 Содержание лекционных занятий

№ п/п	Содержание	Кол-во уч. часов
1	<ul style="list-style-type: none"> <li>• ARBITRATION AS AN ADR METHOD, PROS AND CONS OTHER ISSUES</li> <li>• THE ARBITRATION AGREEMENT</li> <li>• THE ARBITRAL TRIBUNAL: COMPOSITION, APPOINTMENT, INDEPENDENCE, CHALLENGES AND STATUS</li> <li>• POWERS AND JURISDICTION OF THE ARBITRAL TRIBUNAL AND KOMPETENZ KOMPETENZ</li> </ul>	4
2	<ul style="list-style-type: none"> <li>• APPLICABLE LAWS</li> <li>• INTERIM MEASURES</li> <li>• AWARDS &amp; CHALLENGES AT THE SEAT OF ARBITRATION</li> </ul>	2
3	<ul style="list-style-type: none"> <li>• ENFORCING ARBITRATION AWARDS</li> <li>• ARBITRATION RULES (INSTITUTIONS AND AD HOC)</li> <li>• THEORETICAL FOUNDATIONS OF INTERNATIONAL COMMERCIAL ARBITRATION AND PRACTICAL CONSEQUENCES</li> </ul>	2
<b>Всего:</b>		<b>8</b>

#### 5. Образовательные технологии

В процессе обучения применяются следующие образовательные технологии:

1. Сопровождение лекций показом визуального материала.
2. Проведение лекций с использованием интерактивных методов обучения.

## 6. Учебно-методическое и информационное обеспечение дисциплины (модуля)

Учебно-методические и библиотечно-информационные ресурсы обеспечивают учебный процесс и гарантируют качественное освоение аспирантом образовательной программы. ВУЗ и кафедра располагают библиотекой, включающей научную и учебную литературу по основным проблемам международного права.

## 7. Источники

### ТЕМА 1-3

-- Redfern & Hunter on International Arbitration: Chapter 2 (\*)

#### (A) GENERAL

- Significance of Arbitration Agreements: positive and negative effects
- Fouchard, Gaillard & Goldman, *International Commercial Arbitration* (1999) at pp 381-410 (\*)

#### (B) INTERNATIONAL REGULATION

- Geneva Convention: Art I(a)
- New York Convention: Arts II & V

#### (C) NATIONAL REGULATION

- UNCITRAL Model Law (1985) as revised (2006) (Art 7) (\*)
- Non-UNCITRAL Models (e.g. English Arbitration Act, 1996, ss. 5,6,7, 9)

#### (D) KEY CHARACTERISTICS

- (1) Existing v Future Disputes
- (2) The Doctrine of Separability / Autonomy
  - UNCITRAL Model Law (Art 16)
  - UNCITRAL Arbitration Rules (Art 22)
  - ICC Rules / LCIA Rules
  - Section 7 of the English Arbitration Act 1996

Mayer, *The limits of Severability of Arbitration Agreement*, ICCA Congress Series, 1999 pp. 261-267 (\*)

**Premium Nafta Products Ltd v Fili Shipping Company Ltd (“Fiona Trust”)** [2007] UKHL 40 (\*)

**Harbour Insurance v Kansa** 3 All ER 397, YCA 1995 p. 771  
UK 39

**Prima Paint Corp. v. Flood and Conklin** US 395 (1967) (\*)

compare “*Kompetenz Kompetenz*”:

- UNCITRAL Model Law (Art 16)
- Section 30 of the English Arbitration Act 1996

Dimolista, *Separability and Kompetenz-Kompetenz*, ICCA Congress Series, 1999 pp. 217-256

(3) Parties v Non-Parties

- Extension of the arbitration agreement to non-signatories
  - Transfer of the arbitration agreement
  
  - Poudret & Besson, *Comparative law of International Arbitration* (2007) at pp 210-254
  
  - Fouchard, Gaillard & Goldman, *International Commercial Arbitration* (1999) at pp 280-296
- [note to students: choose either of these texts]**

(E) **FORMAL VALIDITY**

- The debate on “writing”
  - Article 7 of the Model Law (as amended in 2006)
  
  - *Article II and the Requirement of Form, Landau QC and Moollan in Enforcement of Arbitration Agreements and International Arbitral Awards* (Edited by Gaillard and Di Pietro, 2008)
  
  - Explanatory Notes to the UNCITRAL Model Law at pp 27-28 (\*)

(F) **ISSUES OF SUBSTANCE**

- The concept of “Arbitrability”

Poudret & Besson, *Comparative law of International Arbitration* (2007) at pp 281-314 (\*)

Hanotiau, *The law applicable to arbitrability*, ICCA Congress Series n 9, pp. 146-167, 1998

Fortier, *Arbitrability of Disputes*, Libre Amicorum Robert Brinner, pp. 269-284, 2005

**Mitsubishi Motors Corp. V. Soler Chrysler-Plymouth** 473 U.S. 614 (1985) (\*)
  
- Scope and Anatomy: One-Stop Adjudication?

**Premium Nafta Products Ltd v Fili Shipping Company Ltd (“Fiona Trust”)** [2007] UKHL 40 (\*)

Poudret & Besson, *Comparative law of International Arbitration* (2007) at pp 264 – 280 (\*)

(G) **IMPLIED TERMS?**

- **Confidentiality:**

- **Esso Petroleum v Plowman** [1995] 11 *Arb Int* 234 (H.C. of Australia) (\*)
- **Ali Shipping v Shipyard Trojar** [1999] 1 WLR 314 (CA)
- **Bulgarian Foreign Trade Bank Ltd v A.I. Trade Finance Inc.** Case T-1881-99 (Swedish Supreme Court, 27 October 2000) – Arbitration rules of UN Economic Commission for Europe - Art confidentiality) (\*) 29:
- **Television New Zealand Ltd v Langley Productions Ltd** [2000] 2 NZLR 250
- **Associated Electric & Gas Ins Services Ltd v European Reinsurance Company of Zurich** Privy Council [2003] 1 WLR 1041 (\*)
- Fortier, *The Occasionally Unwarranted Assumption of Confidentiality* *Arbitration International*, Vol. 15, No.2 (1999) at pp 131-140
- **Implied Powers:**
  - No Implied Powers:
    - **In re Unione Stearinerie Lanza & Wiener** [1917] 1 KB 558
    - **The Kostas Melas** [1981] 1 Lloyd’s Rep 18, 26 (\*)
    - s.39 of the English Arbitration Act, 1996
    - Stalev A, *Interim Measures of Protection in the Context of Arbitration*, ICCA Congress Bahrain 1993, 103-113.
  - Implied Powers:
    - Sanders *International Encyclopedia of Comparative Law* Vol XVI, Chapter 12 (Arbitration) - 1996, at '172
    - UNCITRAL Model Law art. 17
    - Iran-US Claims Tribunal: **E-Systems, Inc v Iran** Award No. ITM 13-388-FT, 2 Iran-US C.T.R. at 51-57 (\*)
    - Gaillard, *Anti-suit injunctions issued by Arbitrators*, ICCA Congress Series no. 13 (2006) at pp 235-266
- (H) **“PATHOLOGICAL CLAUSES”**
  - **Insigma Technology v Alstom Technology** [2008] SGHC 134 (Article in *Arbitration International*, 2009 Vol. 25 at pp 319-328)
  - **Lucky-Goldstar International (HK) Ltd v Ng Moo Kee Engineering Ltd** [1994] ADRLJ 49 (HK)

- **Balli Trading v China Agribusiness** [1998] 2 Lloyds Rep 76 (Eng Comm Ct) (\*)
- The German Coffee Association, Final Award 28 September 1992 Yearbook Commercial Arbitration, A.J. van den Berg (ed.), Vol. XIX (1994), pp. 48 – 50
- Fouchard, Gaillard & Goldman, *International Commercial Arbitration* (1999) at pp 262 – 268 (\*)

## TEMA 4

-- Redfern & Hunter: Chapter 4 (\*)

### (A) APPOINTMENT OF ARBITRATORS

#### 1. Initial Considerations

- a. **Applicable Contract Terms**
- b. **Applicable Law**
- c. **Time-Limits / Speed**

- Redfern & Hunter: Paras 4.01 to 4.13 (\*)

#### 2. Different Types of Tribunals

##### a. The Number of Arbitrators

- UNCITRAL Model Law, Art 10 (\*)
- English Arbitration Act 1996, s.15 (\*)
- ICC Art 8 (\*)
- LCIA Art 5.4 (\*)
- Draft Revision to the UNCITRAL Arbitration Rules, Art 7 (WP 154, 8 Dec 2008) (\*)
- Kirby, “With Arbitrators, Less Can be More: Why the Conventional Wisdom on the Benefits of having Three Arbitrators may be Overrated” (2009) J Int’l Arb, Vol. 26 No. 3 (2009), pp. 337 – 355

*The Problem of Multiple Parties:*

- **Siemens AG and BKMI Industrienlagen GmbH v. Dutco Construction Co.** (7 January 1992) Yearbook Commercial Arbitration, Vol. XVIII (1993), pp. 140 – 142 (\*)
- ICC Art 10 (\*)
- LCIA Art 8 (\*)
- Draft Revision to the UNCITRAL Arbitration Rules, Art 10 (WP 154, 8 Dec 2008) (\*)
- English Arbitration Act 1996, s.18 (\*)
- Schwartz, “In the Wake of Dutco” (1993) J of Int’l Arb, Vol. 10 No. 3, pp. 5 - 20

**b. The Profile / Qualities of Arbitrators**

*The Pros & Cons, and Role, of Party Nominees*

- Smith, “Impartiality of the Party-Appointed Arbitrator” (1990) *Arb Int’l*, Vol. 6 No. 4, pp. 320 - 342

*Lawyers / Experts / “Commercial Men”?*

*Nationality?*

- LCIA Art 6 (\*)

*The International Arbitral “Mafia”?*

- Paulsson, “Ethics, Elitism, Eligibility” *J Int’l Arb* (1997) Vol. 14, No. 4, pp. 13 - 22
- Slaou, “The Rising Issue of ‘Repeat Arbitrators’: A Call for Clarification” (2009) *Arb Int’l*, Vol. 25 No. 1, pp. 103 - 119

**3. Mechanisms for Nominating and Appointing**

- Redfern & Hunter (5<sup>th</sup> Ed): Paras 4.29 to 4.47 (\*)
- Poudret & Besson, *Comparative Law of Int’l Arbitration* (2007) at paras 391-412 (\*)

*Interviewing Candidates for Appointment*

- Chartered Institute of Arbitrators, Practice Guideline 16: The Interviewing of Prospective Arbitrators

**(B) CHALLENGE AND REPLACEMENT OF ARBITRATORS**

**1. Concepts and Grounds**

**a. “Independence” v “Impartiality” v “Neutrality”**

*Connections with the parties*

*Connections with the subject matter / “Issue” conflicts*

- Poudret & Besson, *Comparative Law of Int’l Arbitration* (2007) at paras 413-423 (\*)
- Fouchard, Gaillard & Goldman, *International Commercial Arbitration* (1999), at paras 1021-1047 (\*)
- ICC Art 7(1) (\*)
- LCIA Art 5.2 (\*)
- English Arbitration Act 1996, s.24 (\*)
- DAC Report on the English Act, Feb 1996, paras 100-110

**b. “Actual” v “Apparent” Bias**



*The nature of the Connection*

- ***AT&T Corporation v Saudi Cable***  
[2000] 1 Lloyd's Rep 22  
[2000] 2 Lloyd's Rep 127 (CA)

**c. Duties of Disclosure**

- IBA Guidelines on Conflicts of Interest in International Arbitration (May 2004) (\*)
- Draft Revision to the UNCITRAL Arbitration Rules, Arts 11-12 (WP 154, 8 Dec 2008)

**2. Procedure**

- Redfern & Hunter (5<sup>th</sup> Ed): Paras 4.107 to 4.118 (\*)
- Poudret & Besson, *Comparative Law of Int'l Arbitration* (2007) at paras 424-428
- Draft Revision to the UNCITRAL Arbitration Rules, Arts 13-14 (WP 154, 8 Dec 2008)

**3. Role of Institutions v. Role of National Courts**

- ***AT&T Corporation v Saudi Cable***  
[2000] 1 Lloyd's Rep 22 / [2000] 2 Lloyd's Rep 127

**(C) LOSS OF RIGHT TO APPOINT / TRUNCATED TRIBUNALS**

- LCIA Rules, Art 12 (\*)
- ICC Rules, Art 12 (\*)
- Draft Revision to the UNCITRAL Arbitration Rules, Art 15 (WP 154, 8 Dec 2008) (\*)
- Schwebel, "The Authority of a Truncated Tribunal", ICCA Congress series no. 9 (1999), pp. 314 - 318
- Seifi, "The Legality of Truncated Arbitral Tribunals (Public and Private): An Overview in the Wake of the 1998 ICC Rules of Arbitration" (2000) J.Int'l Arb, Vol. 17 No. 6, pp. 3 - 046
- ***Himpurna v Indonesia*** (2000) XXV *Yearbook Comm Arb* 186
- "They Said I was Going to be Kidnapped" by H. Priyatna Abdurrasyid *Mealey's International Arbitration Report*, 2003, Vol 18, #6

**(D) STATUS OF ARBITRAL TRIBUNALS**

*"Judges", or Creatures of Contract?*

- Poudret & Besson, *Comparative Law of Int'l Arbitration* (2007) at paras 437-455 (\*)
- Fouchard, Gaillard & Goldman, *International Commercial Arbitration* (1999), at paras 1009- 1027, & 1101-1168
- *Jivraj v Haswani* [2010] EWCA Civ 712 (\*)

## TEMA 5

- Redfern & Hunter: Chapter 5 (\*)

### SUPPLEMENTAL READING:

- Poudret & Besson, *Comparative law of International Arbitration* (2007) at pp 457-488
- Fouchard, Gaillard & Goldman, *International Commercial Arbitration* (1999) at pp 381-416

[Choose one or other]

### Jurisdiction: what falls within the scope of jurisdictional challenge?

- Lesotho Highlands Development Authority v Impregilo SPA [2005] UKHL 43 (\*)
- LG Caltex Gas Co Ltd (2001) BLR 235 (Aikens J) (\*)

### Who decides the issue of jurisdiction: Court or Arbitral Tribunal?

#### What does Kompetenz-Kompetenz really mean?

- Article II.3 of the New York Convention (\*)
- UNCITRAL Model Law (as amended in 2006), Article 16 (\*)
- Separability and Kompetenz-Kompetenz, Dimolitsa, ICCA Congress (1999) pp 217-256
- (English) Arbitration Act 1996 (\*)
  - Section 9, especially 9(4).
  - Section 30
  - Section 32
  - Section 67
  - Section 72
- *Azov Shipping Co v Baltic Shipping Co* [1999] 1 Lloyd's Rep 68 at page 69 (\*)

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“Where a challenge to an arbitrator’s substantive jurisdiction is made, the party that challenges the jurisdiction has a number of options under the Act. It may agree to participate in the argument before the arbitrator of the question of his competence and jurisdiction: see section 30 of the Act. It may do so while reserving its right to challenge the arbitrator’s award as to his own competence (see section 67) . . .

Alternatively, it may seek, without arguing the matter before the arbitrator, to promote the determination of the preliminary point of jurisdiction by the court under section 32. . . .  
 The third option of someone disputing an arbitrator's jurisdiction is to stand aloof and question the status of the arbitration by proceedings in court for a declaration, injunction or other appropriate relief under section 72 of the Act. In such a case he is in the same position as a party to arbitral proceedings who challenges an award under section 67 on the ground that there was no substantive jurisdiction."

- Peterson Farms v C&M Farming [2004] 1 Lloyd's Rep 603 (\*)
- Law Debenture Trust v. Elektrim [2005] 2 Lloyd's Rep 755 (\*)
- Al Naimi v Islamic Press Agency [2000] 1 Lloyd's Rep 522
- Albon v. Naza Motor Trading [2007] 2 Lloyd's Rep 1
- Bilta v Nazir [2010] 2 Lloyd's Rep 29 (\*)
- Dallah Estate & Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan [2009] EWCA Civ 755 (\*): on scope of New York Convention review of jurisdictional questions – identical to s.67 test.
- Indian Arbitration and Conciliation Act 1996, ss.16, 45 (\*)
  - Shin-Etsu Chemical Co, Indian Supreme Court, 12 August 2005 (\*)
- French Code of Civil Procedure, Article 1458
  - See Fouchard, Gaillard & Goldman, *International Commercial Arbitration* (1999) at pp 407-408 (para 672) (\*)
- US
  - First Options v Kaplan, Supreme Court (22 May 1995) (\*)
  - Park, Arbitrability Dicta in First Options v Kaplan, *Arbitration International*, Vol. 12, No. 2 (1996) pp 137-160
  - Reisberg: Rules governing who decides jurisdictional issues (*American Review of International Arbitration*, Vol. 20 (No.2))
- Mauritian International Arbitration Act 2008, ss 5, 20 (\*)
  - Travaux Préparatoires, See para. 39-43 (Section 5) and 74-76 (Section 20) (\*)
- Developing Countries
  - Non recognition of Kompetenz Kompetenz in Developing Countries, the Venezuelan Example, Diaz Candia, *Journal of International Arbitration*, Vol. 24 No. 1 (2007) pp 25-35
- Arbitration Rules

- LCIA, Article 23 (\*)
- UNCITRAL Rules, Article 21 (\*)
- ICC Rules, Article 6 (\*)

### **Waiver of Jurisdictional Objection**

- See above e.g. Model Law, Article 16(2); UNCITRAL Rules, Article 21(2)

### **TEMA 6**

- **Redfern & Hunter:** Chapter 2 (\*)

### **FURTHER READING:**

- **Fouchard, Gaillard & Goldman** on International Commercial Arbitration (Kluwer, 1999), Ed. By Gaillard and Savage:
  - Pages 212-240 (law governing the arbitration agreement)
  - Pages 315-318 (law applicable to arbitrability)
  - Pages 633-654 (law governing procedure)
  - Pages 787-887 (law applicable to the merits)
- **Lew, Mistelis, Kröll** *Comparative International Commercial Arbitration* (Kluwer, 2003)
  - Chapter 6, 17-18
- Van den Berg, ed.** *Improving the Efficiency of Arbitration and Awards* ICCA Congress series no. 9 (Paris/1999)
  - Contributions by Lew, Hanotiau and Blessing.
- Lew, Applicable Law in International Commercial Arbitration,** Oceana Publications 1978.

### **General Reference:**

- **Dicey & Morris** *The Conflict of Laws* (Sweet & Maxwell 14<sup>th</sup> Ed – 2006 Chapter 16)

## **(A) THE POTENTIAL FOR MULTIPLE GOVERNING LAWS**

- (1) Capacity

### **Article V(1)(a) New York Convention**

**Ministry of Defence (Country X) v Contractor (US)**, Interim award in case no. 7263 of 1994, XXII Yearbook Commercial Arbitration 92 (1997).

**Buques Centroamericanos, S.A. v. Refinadora Costarricense De Petroleos, S.A.**, US SDNY, Decision of 17 May 1989, 1989 U.S. Dist. LEXIS 5429.

(2) Arbitration Agreement

**Japan Educational Corporation v Kenneth J. Feld**, High Court, Tokyo 30 May 1994, XX Yearbook Commercial Arbitration 745 (1995) (\*)

Decision of German Federal Supreme Court, 21 September 2005, III ZB 18/05, XXXI Yearbook Commercial Arbitration 679 (2006).

**C v D** [2007] EWHC 1541 (English Commercial Court) (\*)

**Halpern v Halpern and Vaisfiche**, Queen's Bench Division decision of 24 March 2006, [2006] EWHC 603.

(3) Substance / merits (see your volume of KCL Materials)

English Arbitration Act 1996, s.46  
UNCITRAL Model Law, Article 28  
UNCITRAL Rules, Article 33  
ICC Rules, Article 17  
LCIA Rules, Articles 22.3 & 22.4  
French New Code of Civil Procedure, Article 1458  
Swiss PILA, Article 187

(4) Procedure (*lex arbitri*)

**Petrochilos**, '*Procedural Law in International Arbitration*', Oxford University Press, 2004. ISBN 0 19 924948 2.

**Park**, '*The Lex Loci Arbitri and International Commercial Arbitration*', in 32 *International and Comparative Law Quarterly* (1983) p. 21.

**Goode**, '*The Role of the Lex Loci Arbitri in International Commercial Arbitration*', in 17 *Arbitration International* 19 (2001).

**Mann**: '*Lex Facit Arbitrum*', *International Arbitration: Liber Amicorum for Martin Domke* (ed. Pieter Sanders), The Hague Martinus Nijhoff 1967, p. 158; reprinted in (1986) *Arbitration International*.

**Union of India v McDonnell Douglas** [1993] 2 Lloyd's Rep 48.

**Naviera Amazonica Peruana v Compania Internacional de Seguros del Peru**, United Kingdom Court of Appeal, decision of 10 November 1987, [1988] 1 Lloyd's Rep 116.

-- interplay with procedural rules

Compare Article V(1)(d) New York Convention and Article 34(2)(iv) UNCITRAL Model Law.

(5) Recognition & Enforcement

(6) Arbitrability?

*The Hub Power Company Ltd v (1) WAPDA & (2) The Federation of Pakistan*  
Judgment of the Supreme Court of Pakistan, 14 June 2000 (Civil Appeal No 1398  
and 1399 of 1999) [2000] 16 *Arbitration International* 431; *Mealey's International  
Arbitration Report*, 2000 Vol 15, #7 at 'A.1 (\*)

Fouchard Gaillard Goldman, pages 315-318.

**(B) “CONFLICT OF LAWS” RULES -**

**How to identify the law governing (1)-(6) above?**

Exception to Rome Convention 1980

**(C) THE CONCEPT AND RELEVANCE OF “SEAT”**

**Article V(1)(e) New York Convention.**

**Article 31(3) UNCITRAL Model Law.**

*Outhwaite v Hiscox*, House of Lords, decision of 24 July 1991, [1991] 3 All ER  
641.

**Articles 53 and 101(2)(b) English Arbitration Act.**

*International Standard Electric Corp. v Bidas Sociedad Anonima Petrolera* US  
SDNY 1990, 745 F. Supp. 172. (\*)

*National Thermal Power v Singer* (1992) Indian Sup Ct (\*)

*Rupali v Bunni* (Con LYB 1995) Pakistan Sup Ct (\*)

**ICC Arbitration No 10623 / AER / ACS** Award of 7 December 2001 (Gaillard;  
Bernadini; Bunni) ASA Bulletin, N0 1 of 2003, at p.59.

*Naviera Amazonica v Comp Int Seguros* [1988] 1 Lloyd's Rep 116

*Bank Mellat v Hellsinki Techniki SA* [1984] QB 291, at 301 (\*)

*Black-Clawson International Ltd v Papierwerke* [1981] 2 Lloyd's Rep 446

*Channel Tunnel v Balfour Beatty* [1993] A.C. 334

*ABB Lummus Global Ltd v Keppel* [1999] 2 Lloyd's Rep 24

*Dubai Islamic Bank v Paymentech* [2001] 1 Lloyd's Rep 65 (QBD)

UNCITRAL Notes on Organizing Arbitral Proceedings (Para 22):

“Various factual and legal factors influence the choice of the place of  
arbitration, and their relative importance varies from case to case. Among the  
more prominent factors are: (a) suitability of the law on arbitral procedure of

the place of arbitration; (b) whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the State where the arbitration takes place and the State or States where the award may have to be enforced; (c) convenience of the parties and the arbitrators, including the travel distances; (d) availability and cost of support services needed; and (e) location of the subject-matter in dispute and proximity of evidence.”

Examples of Decisions on Seat:

*UPS v Canada*, Decision on the Place of Arbitration, Oct. 17, 2001, available at [http://www.international.gc.ca/tna-nac/documents/PA\\_oct.pdf](http://www.international.gc.ca/tna-nac/documents/PA_oct.pdf);

*ADF Group Inc. v. United States of America*, Procedural Order No. 2 Concerning the Place of Arbitration, July 11, 2001, available at <http://www.state.gov/documents/organization/5965.pdf>;

*Methanex Corp. v. United States of America*, Written Reasons for the Tribunal’s Decision of 7<sup>th</sup> September 2000 on the Place of Arbitration, available at <http://www.state.gov/documents/organization/6038.pdf> ;

*Ethyl Corp. v. Canada*, Decision Regarding the Place of Arbitration, Nov. 28, 1997, 38 I.L.M. 702, <http://www.international.gc.ca/tna-nac/documents/EthylPlaceofArbitration.pdf>.

## (D) “DELOCALISED” ARBITRATION

### i. Origins of the theory: arbitration governed by international law

*Arabian American Oil Company (Aramco) v The Kingdom of Saudi Arabia* 27 International Law Reports 117

*Texaco Overseas Petroleum Company and California Asiatic Oil Company v Government of the Libyan Arab Republic* (17 International Legal Materials 3 (1979) (\*)

### ii International treaties

**Articles 53 and 54 of the Washington Convention**

*Mark Dallah v Bank Mellat*, UK High Court of Justice decision of 26 July 1985, [1986] Q.B. 441 .

*Gould Inc., Gould Marketing, Inc., Hoffmant Export Corporation, Gould International Inc. v Ministry of Defense of the Islamic Republic of Iran*, US Court of Appeals for the 2 Circuit, Decision of 23 October 1989

### iii National laws

**Malaysian Arbitration Act 1952 Section 34 as Amended in 1980**

34. Act not to apply to certain arbitrations.

(1) Notwithstanding anything to the contrary in this Act or in any other written law but subject to subsection (2) in so far as it relates to the enforcement of an award, the provisions of this Act or other written law shall not apply to any arbitration held under

the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965 or under the United Nations Commission on International Trade Law Arbitration Rules 1976 and the Rules of the Regional Centre for Arbitration at Kuala Lumpur.

(2) Where an award made in an arbitration held in conformity with the Convention or the Rules specified in subsection (1) is sought to be enforced in Malaysia, the enforcement proceedings in respect thereof shall be taken in accordance with the provisions of the Convention specified in subsection (1) or the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, as may be appropriate.

(3) The competent court for the purpose of such enforcement shall be the High Court.

**Note:** The new Malaysia Arbitration Act 2005 received Royal Assent on 31 December 2005 replacing the Malaysia Arbitration Act, 1952.

**Belgian Judicial Code 1985** (Provision amended in 1998)

**Article 1717(4)**

4. The Belgian Court can take cognizance of an application to set aside only if at least one of the parties to the dispute decided in the arbitral award is either a physical person having Belgian nationality or residing in Belgium, or a legal person formed in Belgium or having a branch (*une succursale*) or some seat of operation (*un siège quelconque d'opération*) there.

*See also Article 190(2) Swiss Public International Law Act, Article 78(6) Tunisian Arbitration Code, Article 51(1) Swedish Arbitration Act.*

Note the difference between old Belgian 1985 approach and other provisions.

**iv Cases on delocalisation**

*Delaume: SEEE v. Yugoslavia: Epitaph or Interlude?* 4(3) *Journal of International Arbitration* 25 (1987).

*SEEE v Yugoslavia*, Dutch Supreme Court, decision of 26 October 1975, 14 *International Legal Materials* (1975) p. 71.

*Libyan General National Maritime Transport Company (GMTC) v AB Götaverken*, Court of Appeal of Paris, decision of 21 February 1980, 20 *International Legal Materials* (1981) p. 884.

**Paulsson**, 'Arbitration Unbound: Award Detached from the Law of Its Country of Origin', in 30 *International and Comparative Law Quarterly* (1981) p. 358.

**v Annulled Awards**

*Kajo Erzeugnisse Essenzen GmbH v DO Zdravilisce Radenska*, Austrian Supreme Court, decision of 20 October 1993, XXIV *Yearbook Commercial Arbitration* (1999) p. 919 (in connection with article IX of the European Convention)



*Hilmarton v Omnium de Traitement et de Valorisation (OTV)*, Court of Appeal Paris, decision of 19 December 1991 XIX *Yearbook Commercial Arbitration* (1994) p.655 and French Supreme Court, decision of 23 March 1994, XX *Yearbook Commercial Arbitration* (1995) p.663 (\*)

*Chromalloy Aeroservices, Inc v The Arab Republic of Egypt*, US District Court for the District of Columbia, decision of 31 July 1996, XXII *Yearbook Commercial Arbitration* (1997), p. 1001.

*Award of 7 December 2001*, 21 ASA Bulletin 59 (2003) summary by A. Crivellaro. *International Bechtel Co., LLP (The “DAC Dubai v. Bechtel” case)* Paris Court of Appeal, 2004/07635, 29 September 2005), *Stockholm International Arbitration Review*, 2005:3, Observations by Philippe Pinsolle and Observations by Alexis Mourre.

*Termo Rio* U.S. Court of Appeal District Court of Columbia. *TermoRio c. Electrificadora Dela Atlantico*, 26 May 2007

*Putrabali* French Cour de Cassation, 29 June 2007 (\*)

## TEMA 7

Interim Measures:

- Redfern & Hunter: Chapter 7
- Fouchard, Gaillard & Goldman on International Commercial Arbitration (Kluwer, 1999), Ed. by Gaillard and Savage, pp 710-732
- Comparative Law of International Arbitration, Poudret & Besson at pp 518 to pp 549

[Choose one of Redfern & Hunter, Fouchard, Gaillard & Goldman or Poudret & Besson (\*)]

- The Protection of Jurisdiction by Arbitrators (Notes on Emmanuel Gaillard’s Report), ICCA Congress Series, Montreal 2006, Toby Landau QC (\*)
- Anti-Suit Injunctions in International Arbitration, IAI Series (2005)
  - By the Courts: 5-41 (Schwebel, Baum, Lew)
  - By the Arbitrators: 113-145 (Levy, Kerameus)

### THE PROBLEM OF INTERIM MEASURES OF PROTECTION

#### (A) Arbitrator’s Powers to Grant Interim Relief:

**Nature of Powers, Source of Powers and Limitations of Powers:**

- **problem of ex parte measures**

- Amended Article 17 of the UNCITRAL Model Law and Explanatory Notes at p31 (\*)
- Report on the Working Group of UNCITRAL, 13-17 September 2004 at Paras 16-17 and 10-14 January 2005 at Para 13 (\*)

- Iran-US Claims Tribunal: *E-Systems, Inc v Iran* Award No. ITM 13-388-FT, 2 Iran-US C.T.R. at 51-57

(Art 26 of UNCITRAL Arbitration Rules)

International Arbitral Rules

- Article 25.1(c) of the LCIA Rules
- Article 26(1) of the UNCITRAL Rules
- Article 23 of the ICC Rules

National Arbitral Laws:

- Sections 38, 41 and 42 of the (English) Arbitration Act 1996
- Switzerland: Private International Law Act 1987, art. 183

**(B) Courts' Powers to Grant Interim Relief:**

-- **Constructive Support:**

- Protocol on Arbitration Clauses, Sept 24 1923 (Geneva Protocol)
- Geneva Convention (European Convention) 1961, art.VI par.4
- Council of Europe Uniform Law of 1966, art.4 par 2 (adopted by Belgium: JudC art. 1679 par 2)
- UNCITRAL Model Law art. 9 (\*)
- s.44 of the (English) Arbitration Act 1996 (\*)

*Cetelem SA v Roust Holdings Ltd* [2005] 2 Lloyd's Rep 494

*Weissfisch v Julius* [2006] 1 Lloyd's Rep 716

*A v B* [2007] 1 Lloyd's Rep 237 at p.256

*Pacific Maritime (Asia) Ltd v Holystone Overseas Ltd*

[2008] 1 Lloyd's Rep 371

*Starlight Shipping Co and another v Tai Ping Insurance Co*

*Ltd Hubei Branch and another* [2008] 1 Lloyd's Rep. 230 (\*)

*TNEB v ST-CMS* [2008] 1 Lloyd's Rep 93 (\*) and see also *TNEB v ST-CMS* – application before the High Court of Madras to restrain Claimant from pursuing anti suit injunctive relief before English Courts in support of arbitral proceedings (the Madras application is on the website)

- EC Regulation 44/2001

*West Tankers Inc v RAS Ruunioe Adriatica di Sicurta Spa*

[2007] UKHL 4 and ECJ (10 February 2009) (\*)

-- **Anti-Arbitration Injunctions**

*Elektrim v Vivendi* [2007] 2 Lloyd's Rep 8 (\*)

*Salini v Ethiopia* ICC Arbitration No. 10623/AER/ACS

(Award 7 December 2001) (\*)

*Air (PTY) Ltd v International Air Transport Association*, decision of the Geneva Court of 2 May 2005 (\*)

*Venture Global v Satyam* (Supreme Court 2008) (\*) (anti-award injunction)

-- **Fanaticism? US Approach**

- *McCreary Tire & Rubber Co v Ceat S.p.A.* 501 F.2d 1032 (3d Cir. 1974)
- *Cooper v Ateliers de la Motobécane S.A.* 57 NY 2d 408 (1982)
- New York Convention art. II par 3
- *Carolina Power & Light Co v Uranex* 451 F. Supp. 1044, 1050-2 (1977)
- *Borden Inc v Meiji Milk Products Co* 919 F 2d 822, 826 (1990)
- *Becker Attachments in Aid of International Arbitration - The American Position* 1 Arb Int=1 40 (1985)
- USC 1782 (see the journal article on USC 1782, which is posted on the website)

(C) **The Problem of Enforcement**

- Voluntary compliance
- “Recommendations” v “Orders” v “Interim Awards” v “Awards”
  - *Charles M Willie & Co v Ocean Laser (The ASmaro@)* [1999] 1 Lloyd’s Rep 225 (Rix J) - 29 October 1998 (\*)
  - *Starlight Shipping Co v Tai Ping Insurance Co. Ltd* [2008] 1 Lloyd’s Rep 230 at Para 26 (\*)
  - Article 17H of the UNCITRAL Model Law (as revised in 2006) (\*)
  - *Schwartz Conservatory and Provisional Measures in ICC Arbitration: International Chamber of Commerce, Ninth Joint Colloquium.* (English) Arbitration Act 1996: s.42 / s.66
  - FAA s.10 (US): *Sperry International Trade v Government of Israel* 689 F 2d 301 (2d Cir 1982) - an order barring Israel from calling on a stand-by letter of credit in connection with a contractual dispute - enforced by a district court. - Expansive view of FINAL
- Application of the New York Convention
  - *Resort Condominiums International, Inc. (USA) v Ray Bolwell a.o. (Australia)* Queensland S.Ct. 29 Oct 1993 - excerpts in ICCA Yearbook 1995, 630.
  - *Publicis Communication v True North Communications Inc* 203 F.3d 725 (7<sup>th</sup> Cir. 2000).

**TEMA 8**

**Redfern & Hunter:**

**Chapter 9, pp.513-583 (\*)**

**Chapter 10, pp.585-619(\*)**

**OPTIONAL FURTHER READING**

**Poudret, Besson; Comparative Law of International Arbitration (Sweet & Maxwell, 2007):**

**Chapter 8, pp. 631-698**

**Chapter 9, pp. 699-791**

**Lew, Mistelis, Kroll; International and Comparative Commercial Arbitration (Kluwer 2004):**

**Chapter 24, pp. 627-662**

**Chapter 25, pp 693-686**

**L. TYPES OF DECISIONS**

(a) "Directions"

(b) "Orders"

(c) "Awards"

**"Interim Awards"**

**"Partial Awards"**

**"Provisional Awards"**

**"Final Awards"**

**"Consent Awards"/ "Agreed**

**Awards" "Default Awards"**

*Examples of Statutory Provisions:*

**English Arbitration Act 1996: s.39&s.47 (\*)**

**Netherlands Arbitration Act 1986: Art 1049**

**(\*)**

**Swiss Private International Law Act 1987: Arts 186(2)&188**

**(\*)**

*Examples of Arbitration Rules:*

**UNCITRAL Arbitration Rules (1976), Art 32**

**(\*)**

**Current Revision of the UNCITRAL Arbitration Rules:**

**UNCITRAL WP 151.Add I (Aug 2008), at pages 12-14 (\*)**

**Draft Report on 51<sup>st</sup> UNCITRAL Working Group Session (Nov 2009), at pages 14-21 (\*)**

*Select Cases:*

***Charles M Willie & Co v Ocean Laser (The "Smaro")* [1999] 1 Lloyd's Rep 225 (Rix J) (\*)**

***Brasoil (Brapetro Oil Services Company v The Management and Implementation Authority of the Great Man-Made River Project)* Paris Cour**

d'Appel, I July 1999, *Mealey's International Arbitration Report* (1999) Vol 14, No.8, pp G-1 to G-7.

*Sperry International Trade v Government of Israel* 689 F 2d 301 (2d Cir1982)

*Publicis Communications and Publicis SA v True North Communications Inc* (2000) XXV Yearbook Commercial Arbitration 1152; 203 F.3d 725 (7th Cir.2000).

*Resort Condominiums International, Inc. (USA) v Ray Bo/well a.o. (Australia)* Queensland S.Ct. 29 Oct 1993 - excerpts in ICCA Yearbook 1995, at630.

## **II. CHARACTERISTICS OF AWARDS**

### **(a) Res Judicata & Issue Estoppel**

ILA recommendation on *res judicata* and *arbitration*, 2006. (\*)

#### **ILA Conference Report (2006), at pages 27-38 (\*)**

Sheppard, A., *Res judicata and Issue Estoppel* in *Parallel State and Arbitral Procedures in International Arbitration*, Dossiers, ICC Institute of World Business Law, Cremades, B. and Lew, J. (ed.), Paris, ICC Publishing, ICC Publication No. 692, 2005, pages 219-242

*AEGIS v European Re* [2003] 1 WLR 1041

*Fidelitas Shipping Co Ltd v V/O Exportchleb* [1966] 1 QB 630

### **(b) Collateral Estoppel**

#### **Restatement (Second) of Judgments §88**

### **(c) "Abuse of Process"?**

*Henderson v Henderson* (1843) 3 Hare 100

*Johnson v Gore Wood* [2002] 2 AC 1(HL), at pages 22-32.

## **III. THE PROCESS OF DECISION-MAKING**

### **(a) Deliberations**

*Czech Republic v CME Czech Republic BV* Svea Court of Appeal, Case No. T 8735-01 (2003), at pages 13-23 ; 47-54; 85-90.

### **(b) Majority Voting**

**ICC Arbitration Rules: Art 25(1) (\*)**

**English Arbitration Act 1996, s.20(3)&(4) (\*)**

**UNCITRAL Arbitration Rules (1976): Art.31 (\*)**

## Current Revision of the UNCITRAL Arbitration Rules:

es:

UNCITRAL WP 151.Add 1 (Aug 2008), at page 12 (\*)

Draft Report on 51<sup>st</sup> UNCITRAL Working Group Session (Nov 2009), at pages 14-16 (\*)

### (c) Dissenting Opinions

A. Redfern, *The 2003 Freshfields' Lecture: Dissenting Opinions in International Commercial Arbitration: The Good, the Bad and the Ugly*, *Arbitration International*, Vol. 20 No. 3 (2004), pp. 223 -242.

### (d) The Duty to Provide Reasons

ICC Arbitration Rules: Art 25(2) (\*)  
LCIA Rules, Art 26(1) (\*) UNCITRAL  
Model Law, Art 31 (\*) English  
Arbitration Act, s. 52(4) (\*)  
*The Easyrider* [2004] 2 Lloyd's Rep. 626 (QB)

## IV. TYPES OF REMEDIES

### (a) Range of Possible Remedies

Declaratory relief  
Directing payment of money  
Injunctive relief  
Specific performance  
Rectification Indemnity  
Interest

### (b) Remedies "implied" from the Substantive Law

*Chandris v Isbrandtsen-Moller* (1950) 84 Lloyd's Rep 347;  
[1951] 1 K.B. 240, at pages 256-263.

### (c) Additional/ Different Remedies

English Arbitration Act 1996, s. 48 / 49.

### (d) The Loss of Substantive Remedies, by a choice of Procedure?

*Wealands v CLC Contractors* [1999] 2 Lloyd's Rep 739

But contrast:

*Mitsubishi v Soler-Chrysler* (1985 - US Sup Ct)

*Accentuate Ltd v. Asigra Inc*, (30 October 2009 - English High Court)

*Thomas v Carnival* (1 July 2009 - US CA 11<sup>th</sup> Cir)

## **(e) The Problem of Punitive Damages**

*British Airways v Laker* [1985] A.C. 58 (HL)

P. Lalive *Transnational (or Truly International) Public Policy and International Arbitration*, 3 ICCA Congress Series 257 (1988).

E.A. Farnsworth *Punitive Damages in Arbitration*, *Arbitration International*, Vol 7 No 1 (1991), p.3.

*Mastrobuono v Shearson Lehman Hutton, Inc.* 514 U.S. 52 (US Sup Ct

1995)

## **v. POST-AWARD PROCEEDINGS**

**Corrections  
Interpretations  
Additional Awards**

**UNCITRAL Model Law, Art 33 (\*)  
English Arbitration Act 1996, s.57,70(2) (\*)**

**UNCITRAL Arbitration Rules (1976), Arts 35, 36, 37  
(\*) ICC Arbitration Rules, Art 29(\*)**

**Internal Arbitral Reviews / Appeals**

**ICSID Arbitration Rules (*ad hoc* Annulment  
Committee) GAFTA Arbitration Rules (Appeal Board)**

## **VI. CHALLENGES TO AWARDS AT THE SEAT**

**(A) Jurisdictional Challenges:**

**Types of Objection  
Procedural Choices in Addressing Objections**

**UNCITRAL Model Law Art 34 (\*)**



**English Arbitration Act 1996,  
ss.7, 30, 31, 32,67,72 (\*)**

**(B) Due Process Challenges:**

**Types of Objection  
Mechanics**

**UNCITRAL Model Law, Art 34 (\*)  
English Arbitration Act 1996, s.68  
(\*)**

**(C) Appeals on Merits:**

**Pros & Cons  
Mechanics**

**English Arbitration Act 1996, ss.69, 70 (\*)**

**(D) Problematic Cases:**

*Hitachi Ltd, et al v Rupali Polyester et al*, Supreme Court of Pakistan,  
10<sup>th</sup> June 1998, ICCA Yearbook Volume XXV (2000) at pp 443-534.  
(Pakistan 1937 / 1940 Act)

*Saw Pipes v ONGC* Sup Ct of India, 17 April 2003  
- see commentary by Darwazeh & Heinemann (July 2006)

*Venture Global Engineering v Satyam Computer Services* (! 0 Jan  
2008) Sup Ct of India, Civil Appeal No 309 of 2008, in Yearbook  
Commercial Arbitration Volume XXXIII - 2008, Volume XXXIII  
(Kluwer Law International 2008) pp. 239 - 257

**VII. WAIVER/EXCLUSION OF CHALLENGES TO AWARDS AT  
THE SEAT**

**ICC Arbitration Rules, Art 28(6)  
(\*) LCIA**

**Arbitration Rules, Art 26.9 (\*)**

**Current Revision of the UNCITRAL Arbitration Rules:**

**UNCITRAL WP 151.Add 1 (Aug 2008), at pages 12-13 (\*)**

**Draft Report on 51<sup>st</sup> UNCITRAL Working Group  
Session (Nov 2009), at pages 18-21 (\*)**

**TEMA 9**

## Covered Jurisdictions

- UK
- FRANCE
- USA
- CHINA
- UAE
- SWITZERLAND

## TEMA 10

### RELEVANT INSTITUTION RULES

- LCIA
- ICC
- SCC
- UNCITRAL RULES

## TEMA 11

Reading marked with (\*) is essential reading

### (A) Theoretical Foundations of International Commercial Arbitration:

#### -- Two theoretical models:

Is international commercial arbitration entirely separate from the national legal order: a denationalised creature of contract?

Is international commercial arbitration part of the national sovereign legal order?

*An independent and autonomous form of private justice based on the parties' consent, or an exceptional derogation from the jurisdiction of national courts.*

-- Redfern & Hunter, Law and Practice of International Commercial Arbitration (2009): Chapter 1 at 1.206 to 1.224 (pp 68-73) (\*)

-- Fouchard, Gaillard & Goldman on International Commercial Arbitration (Kluwer, 1999), Ed. By Gaillard and Savage: Chapter I (pp 9-59) especially Section I and Section III

-- Poudret & Besson, Comparative Law of International Arbitration (2<sup>nd</sup> Ed 2007), Chapter 1, pp 1-37 (\*)

-- Lex Facit Arbitrum (FA Mann 1967) re-printed in Arbitration International, Vol. 2 No. 3 (1986) pp 241-260 (\*): -

*“If, as is almost generally admitted, the arbitrator is bound to observe the ordre public of the lex arbitri, it would be both illogical and unrealistic to suggest that he is entitled to disregard other rules of that legal system's private international law.”*

-- Gaillard, The Representations of International Arbitration (Journal of International Dispute Settlement, 2010) (\*)

-- **The Status of Vacated Awards in France: the Cour de Cassation Decision in Putrabali:** Arbitration International, Vol. 24 No. 2 (2008) pp 277-

295

(\*):

*“An international arbitral award – which is not anchored in any national legal order – is an international judicial decision whose validity must be ascertained with regard to the rules applicable in the country where recognition and enforcement is sought”*

**(B) The denationalised autonomous approach**

-- The cornerstone of modern international commercial arbitration: **New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)** (“the New York Convention”) (\*)

*Is the award an autonomous instrument disconnected from the legal order of the seat of the arbitration and regulated only at the place(s) of enforcement under the New York Convention?*

-- **Dallah Estate & Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan** [2009] EWCA Civ 755 (\*)

*Interpreting the limits of the New York Convention and the interplay between the seat of the arbitration and the place of enforcement of the arbitral award*

-- **Lesotho Highlands Development Authority v Impregilo SPA** [2005] UKHL 43

**(C) National order approaches**

-- The Model proposed by the UN to each Member State

The UNCITRAL Model Law on International Commercial Arbitration (1985) (as amended in 2006) (“the Model Law”)

Specific concepts under the Model Law:

- Separability
- Kompetenz-Kompetenz
- Applicable laws
- The legal seat of the arbitration
- The role of the national courts at the seat of the arbitration
- The role of the national courts at the place of enforcement of the arbitral award

-- The choices made by given States:

- **England: English Arbitration Act 1996**

**Premium Nafta Products Ltd v Fili Shipping Company Ltd (“Fiona Trust”)** [2007] UKHL 40 (\*)

**Mustill, The new English law on arbitration in 1996: philosophy, inspiration and aspiration, Revue de l’arbitrage, 1997 No.1, pp 29-44**

and

*“Il semble que les relations existant entre l'arbitre et les parties aient cessé d'être de nature contractuelle pour devenir, sous certains aspects au moins, une question de statut légal » (“It would appear that the relationship between the arbitrator and the parties has ceased to be of a contractual nature, and has become, at least for certain aspects, an issue of legal status”)*

- **France:**

**NIOC v State of Israel** (Mealey's International Arbitration Report Vol.17, June 2002) (\*)

- **India: Indian Arbitration and Reconciliation Act 1996**

**Arbitration in India: An Unenjoyable Litigating Jamboree:** Asian International Arbitration Journal, Vol. 3 No. 1 (2007) pp 99-123

**Venture Global Engineering v Satyam Computer Services Ltd**, 10 January 2008, Supreme Court of India (\*)

**ONGC v Saw Pipes** A.I.R. 2003 S.C. 2629

- **Mauritius: The Mauritian International Arbitration Act 2008**, Act No. 37 Of 2008 (“the IAA”) (\*)

**(D) Truly transnational arbitration?**

-- Sports Arbitration

**8. Материально-техническое обеспечение**

Кафедра/научное подразделение располагает материально-технической базой, соответствующей действующим санитарно-техническим нормам и обеспечивающей проведение всех видов теоретической и практической подготовки, предусмотренных учебным планом аспиранта, а также эффективное выполнение диссертационной работы.