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A Deep Dive into International Commercial Arbitration, The Key Concepts, Major Arbitral Institutions, Potential Benefits and Drawbacks

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Abstract
International Commercial Arbitration is like having all the doors under one roof when it comes to cross-border commercial disputes. This article examines how International Commercial Arbitration works, the benefits and potential drawbacks of international commercial arbitration, being one of the most popular ADR processes for resolving international business controversies. Along this line, it looks at the development history and legal context of arbitration, emphasizing the New York Convention and UNCITRAL, as well as the present-day debates. The study also takes cognizance of the benefits of arbitration as a method of dispute resolution in international business, such as speed, neutrality, confidentiality and cost-effectiveness. However, it also has shortcomings, including the absence of appeal mechanisms, being expensive and biased, and problems concerning the execution of awards. Other proposed measures include newer developments like digital arbitration and new jurisdictional additions, also mentioned as potential reforms to some of these challenges. Based on the synthesis of the literature, the article shares some practical considerations of arbitration for business and law practitioners. Lastly, suggestions are made on overcoming the cons and enhancing the efficiency of arbitration in the cross-border business disputes.

Keywords
Arbitration International, Dispute Resolution, Mechanism, Neutrality, Confidentiality, Benefits, Drawbacks, Impartial Arbitrators

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1. Introduction

International commercial arbitration is an important means of settling disputes in the international business environment and provides companies with a suitable form of dispute resolution different from litigation. In the past, especially in the ancient Greeks and Romans, arbitration in commercial matters existed, although the twentieth and nineteenth centuries proved more systematic.[1] As international business increased, the demand for international commercial arbitration came into force. The nineteenth century was marked by the formation of more important conventions and frameworks of the international, where the noteworthy New York Convention of 1958 and the principle of the recognition and enforcement of the foreign arbitral awards became the strong base of the modern system of the international commercial arbitration.[2] The UNCITRAL Model Law (1985) also paved the way for standardizing arbitration laws and Coming up with ways to

[1] Meskic, Z., & Gagula, A. (2024). Why the Applicable Law in International Commercial Arbitration Does Not Matter and Why It Should. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, *16*(1), 04523036.

[2] Tahir, M. I. (2023). Arbitration System in Commercial Disputes in Pakistan and Enforcement of Foreign Awards. *Al-NASR*, 73-92.

encourage arbitration worldwide.[3]With the expansion of the global economy, and international business transactions getting more complex, there is a need for an effective, reliable and flexible mechanism of dispute resolution.[4] Arbitration enables organizations to sort out their problems in arbitration rather than national courts since arbitration is more neutral than national courts. In arbitration, flexibility, speed, confidentiality and enforceability of awards have enhanced the practice over the years.[5] As technology advances on the current world business platform, international commercial arbitration has progressed equally, making new dispute resolution methods available more quickly. New York Convention 1948 on the recognition and enforcement of foreign arbitral awards is an important part of international arbitration as more than 160 countries are parties to this Convention, due to which involved parties of the international contract can have specific security as their arbitration award can be easily enforced internationally.[6] The UNCITRAL Model Law acts as a guideline to many nations, affecting their domestic laws and the general processes involved in constituting the transnational legal system of commercial arbitration.[7] Together with other regional conventions and bilateral treaties, these legal tools have made International Arbitration a standard form of dispute-solving in international commercial law, putting dispute resolution on strong legal bases and in a predictable way worldwide.

This article aims to understand the process and benefits and drawbacks of International Commercial Arbitration by examining how it responds to the opportunities and challenges it offers to business entities, law practitioners and policymakers. Arbitration is recognized as one of the fundamental elements of international business contracts because, through this mechanism, the parties can solve their problems promptly without undue interference by local political and legal systems.[8] However, some drawbacks of international commercial arbitration became apparent while studying its specifics, such as high legal fees, absence of the right of appeal, and occasional accusations of being exclusive and unequal for participants.[9]

The coverage of this article goes beyond an evaluation of the concept of international commercial arbitration and embraces a discussion of its importance in modern commercial contexts. For this purpose, it will contemplate the processes by which arbitration works, how they are evolving, and the new forms of arbitration based on new technologies, such as digital systems and Artificial Intelligence, that are becoming

[3] Herrmann, G. (1985). The UNCITRAL Model Law–its background, salient features and purposes. *Arbitration international*, *1*(1), 6-39.

[4] Wang, J. (2024). Joinder mechanism in international commercial arbitration: a trend in the digital age?. *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique*, *37*(3), 923-942.

[5] Pauwelyn, J. (2020). Export restrictions in times of pandemic: Options and limits under international trade agreements. *Journal of world trade*, *54*(5).

[6] Cole, R. A. (1985). The public policy exception to the New York convention on the recognition and enforcement of arbitral awards. *Ohio St. J. on Disp. Resol.*, *1*, 365.

[7] Hoellering, M. F. (1986). The uncitral model law on international commercial arbitration. *The International Lawyer*, 327-339.

[8] Martinez-Fraga, P. J. (2020). The Absolute Immunity of the Arbitrator: A Mistake with Historical Origins. *Cuadernos Derecho Transnacional*, *12*, 546.

[9] Chaturvedi, N. (2021). Alternate Dispute Resolution (ADR): Benefits & Disbenefits. *Jus Corpus LJ*, *2*, 766.

increasingly relevant. At the same time, for business people and legal practitioners, it is essential to grasp arbitration's potential benefits and drawbacks when choosing the preferable type of dispute resolution in international contract agreements.[10] Similarly, policymakers are required to determine whether arbitration systems are operating fairly in the new environments characterized by the emergence of new issues like digitization and geostrategic realignments.[11] This article aims to discuss the key benefits and shortcomings of international commercial arbitration concerning the contemporary literature and case findings. Therefore, the article aims to emphasize the role of arbitration in international trade while responding to the most common arguments about this method, including its availability, effectiveness, and technological advancement. This way, the article will give the reader a general picture of present-day international commercial arbitration, its success, and what it needs to be when effectively resolving controversies. The thesis statement that informs this article is that as much as international commercial arbitration has several benefits, such as efficiency, neutrality and enforceability of awards, it also poses several difficulties based on cost, accessibility, and fairness. Therefore, developing new arbitration practices suitable for a digital world economy necessitates reforming and further developing the arbitration system.[12]

2. Historical Evolution of Arbitration Practices

Arbitration has its origins in ancient times, when it was used as an effective means of settling conflicts between merchants and among communities. In ancient Greece, respected members of the community commonly utilized arbitration in both private and public disagreements as mediators.[13] Similar to this, arbitration was a common procedure in ancient Rome, especially when it came to trade and business disputes. Roman law accepted arbitration as a valid dispute resolution procedure, and contracts to arbitrate were legally binding. In order to avoid the formalities and the delays of court processes, arbitration was used at this time to resolve disputes quickly and amicably.[14] Merchant guilds commonly used arbitration to resolve commercial disputes in medieval Europe. A system that could swiftly and efficiently settle disputes without interfering with business was required due to the expansion of trade throughout Europe.[15] The members of the guilds adhered as well as upheld the norms and processes that the guilds established for arbitration. Early arbitration organizations also emerged at this time, laying the foundation for contemporary arbitration organization.[16]

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[10] Eidenmuller, H., & Varesis, F. (2020). What Is an Arbitration? Artificial Intelligence and the Vanishing Human Arbitrator. *NYUJl & bus.*, *17*, 49.

[11] Guill, T. U. (1996). Framework for Understanding and Using ADR. *Tul. L. Rev.*, *71*, 1313.

[12] Butt, J. (2024). Economics, Arbitration and Technology: Digitalization Trends in Nordic Dispute Resolution. *Minhaj International Journal of Economics and Organization Sciences*, *4*(1), 69-85.

[13] Narain, S. UNDERSTANDING THE LEGAL FRAMEWORK GOVERNING COMMERCIAL ARBITRATION. *ARBITRATION BUSINESS AND COMMERCIAL LAWS*, 9.

[14] Ibid

[15] Smith, L. B. (1991). Disputes and settlements in medieval Wales: the role of arbitration. *The English Historical Review*, *106*(421), 835-860.

[16] M. Feria-Tinta, "Arbitration and the European convention on human rights," in International Arbitration and EU Law, 2021. doi: 10.4337/9781788974004.00015.

With the growth of global trade and the demand for a uniform process for settling cross-border conflicts, the modern age of arbitration started to take shape in the late 19th and early 20th centuries.[17] Important turning points in the international acceptance of arbitration were the ratification of the Geneva Protocol on Arbitration Clauses in 1923[18] and the Geneva Convention on the Execution of Foreign Arbitral Awards in 1927.[19] The globalization of arbitration was made possible by these accords, which established the idea that arbitration agreements and verdicts were to be accepted and upheld internationally. Another milestone in the institutionalization of arbitration were the founding of the International Chamber of Commerce (ICC) in 1919 and its International Court of Arbitration in 1923. By providing guidelines, protocols, and a list of arbitrators to help parties settle disagreements, the ICC offered a structure for managing arbitration matters.[20] The London Court of International Arbitration (LCIA) and the American Arbitration Association (AAA) are two examples of similar organizations that have developed internationally as a result of the International Commercial Council's successful arbitration services.[21] Despite having centuries-old roots, international commercial arbitration did not receive its first formal introduction until the 20th century, when UNCITRAL, which was founded in 1966,[22] introduced the model law on international commercial arbitration in 1985 and amended it in 2006[23].In order to promote the model law as a substitute for litigation in international commercial conflicts, the UN General Assembly adopted it in 1985.[24] The 1980s witnessed the introduction of arbitration laws into the legal systems of numerous developed nations, including the UK, Spain, France, Italy, Portugal, and the Netherlands.[25]

3. Importance of the New York Convention, 1958

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, is the most important piece of legislation relating to international commercial arbitration. It provides a global constitutional charter for the international arbitral process and currently has 160 Contracting States, including the US. The Convention has led to the remarkable growth and success of international arbitration in recent years by enabling national courts and arbitral tribunals to establish effective,

[17] D. T. Ba Duong, "The evolution of summary procedure in investment arbitration: Past, present and future," Arbitr. Int., 2021, doi: 10.1093/arbint/aiaa047.

[18] Garner, J. W. (1925). The Geneva Protocol for the pacific settlement of international disputes. *American Journal of International Law*, *19*(1), 123-132.

[19] Contini, P. (1959). International Commercial Arbitration: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. *Am. J. Comp. L.*, *8*, 283.

[20] Kelly, D. (2005). The international chamber of commerce. *New Political Economy*, *10*(2), 259-271.

[21] Dr. Dharmpal Singh, Dr. Zuleika Homavazir, "Arbitration and Business Commerial Law" Year of Publication 2023 (Revised).

[22] Vijay K. Bhatia and others, 'Contested Identities in International Arbitration Practice', Discourse and Practice in International Commercial Arbitration: Issues, Challenges and Prospects (Taylor & Francis Group 2013)

[23] Ibid 22

[24] Ibid 22

[25] Casella (n 5) 159

long-lasting procedures for upholding international arbitration agreements and rulings..[26] The Convention additionally operates as the basis for the majority of national laws that regulate the international arbitral process, which in turn implement and expand upon the key concepts of the Convention.[27] The ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1958 represented a watershed moment in the history of arbitration. With more than 160 countries having accepted the agreement, signatory governments are required to accept and uphold arbitral verdicts rendered in other signatory states. since of this international framework, arbitration is now the predominant dispute resolution process in international trade since it gives parties the guarantee that their rulings will be upheld internationally.[28] On June 10, 1958, the participants of the New York Conference unanimously endorsed and made the Convention's draft available for signature (only the United States and three other states abstained).The Convention's final draft was published in Chinese, Russian, Spanish, French, and English.[29] Arbitration has developed further in recent decades, according to the evolving needs of the corporate sector. In order to meet the demands of a globalized economy, arbitration practices have changed. Examples include the emergence of international investment arbitration, the creation of specialized arbitration rules for industries like energy and construction, and the growing use of technology in arbitration proceedings.[30] In addition to being a means of settling business disputes, arbitration is now an essential part of international law, which helps to make cross-border transactions more stable and predictable.

The following is a summary of the Convention's enhancements provided by the New York Conference President:

"It was immediately clear that the Convention was an advancement above the 1927, Geneva Convention. It provided a more comprehensive definition of the rewards covered by the Convention; It gave the authority before which the award was sought to be relied upon the power to order the party opposing the enforcement to provide appropriate security; it lowered and simplified the requirements that the party seeking recognition or enforcement of an award would have to comply with; it shifted the burden of proof to the party against whom recognition or enforcement was invoked; and it gave the parties more freedom in selecting the arbitral authority and the arbitration procedure."[31]

4. Key Concepts in Arbitration

Understanding arbitration terminologies and principles is crucial for all participants, including parties, lawyers, and arbitrators. The practice of arbitration is based on these concepts, which are essential for understanding the complicated nature of arbitration procedures.

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[26] Born, G. B. (2018). The New York Convention: A Self-Executing Treaty. *Mich. J. int'l l., 40,* 115.

[27] Ibib

[28] S. Ali, "Transnational commercial law-developments and controversies," in The Oxford Handbook of Transnational Law, 2021. doi: 10.1093/oxfordhb/9780197547410.013.20.

[29] U.N. Conference on International Commercial Arbitration, Summary Record of the Twenty-Fourth Meeting, at 10, U.N. Doc. E/CONF.26/SR.24

[30] D. S. R. Ms. Charu Shahi, "The Concept Of Institutional Arbitration – Need For The Hour," Psychol. Educ. J., 2021, doi: 10.17762/pae.v58i2.3194.

[31] U.N. Conference on International Commercial Arbitration, Summary Record of the Twenty-Fifth Meeting, at 2, U.N. Doc. E/CONF.26/SR.25 (Sept. 12, 1958).

An Arbitration Agreement: A contract that binds the parties to deciding their disputes instead of going to court is known as an arbitration agreement. This agreement can be formed after a dispute has already emerged or before it does, usually as a provision in a business contract. Because it specifies the parameters of the arbitration, the rules that will govern it, and the number and selection of arbitrators, the arbitration agreement is an essential document.[32] It creates the foundation for starting the arbitration procedure and grants the arbitrators their authority and the power.[33]

Selection of Arbitrators: To settle a dispute, arbitrators are impartial third persons chosen by the parties involved or appointed by an arbitration organization. The selection of arbitrators is based on their qualifications, expertise, neutrality, and experience.[34] They have the power to lead the arbitration process, evaluate the available data, and issue an arbitral award—a final, legally enforceable ruling. Since the caliber and honesty of the arbitrators can have a big impact on the case's outcome, choosing them is an essential part of arbitration.[35]

An Arbitral Award: The ultimate ruling made by the arbitrator or arbitrators at the end of the arbitration process is known as an arbitral award. The parties are bound by the award, which settles their disagreement.[36] Depending on the nature of the dispute, it may be in the form of a statement of rights, a specific performance order, or a monetary award.[37] The New York Convention generally makes arbitral awards enforceable, which means that most nations' courts can accept and uphold them.[38]

An Arbitration Clause: A clause in a contract that mandates that any disagreements between the parties be settled through arbitration is known as an arbitration clause. This section usually outlines the arbitration's rules, the number of arbitrators, the language used during the proceedings, and the arbitration's seat, or the legal jurisdiction in which it is held.[39] A vital aspect in corporate contracts is an arbitration clause, which establishes the dispute resolution process and guarantees that the parties are dedicated to adopting arbitration as their preferred conflict settlement mechanism.[40]

Arbitration Rules: The procedural rules governing the arbitration procedure are known as arbitration rules. The parties themselves can draft these guidelines, or they may be taken from an arbitration organization like the ICC, LCIA, or AAA.[41] The appointment of arbitrators, document exchange, hearing procedures, and

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[32] Dr. Dharmpal Singh, Dr. Zuleika Homavazir, "Arbitration and Business Commerial Law" Year of Publication 2023 (Revised).

[33] Ibid

[34] Jain, K. OVERVIEW OF TYPES OF ARBITRATION: CHOOSING THE RIGHT METHOD. *ARBITRATION BUSINESS AND COMMERCIAL LAWS*, 15.

[35] Ibid 34

[36] Gaillard, E. (Ed.). (2010). *The review of international arbitral awards* (No. 6). Juris Publishing, Inc.

[37] Ibid

[38] Sanders, P. (1979). A Twenty Years' Review of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In *Int'l L.* (Vol. 13)

[39] Wiegand, S. A. (1994). Arbitration Clauses: The Good, The Bad, The Ugly. *Okla. L. Rev.*, *47*, 619.

[40] Ibid

[41] D. S. R. Ms. Charu Shahi, "The Concept Of Institutional Arbitration – Need For The Hour," Psychol. Educ. J., 2021, doi: 10.17762/pae.v58i2.3194.

award giving are only a few of the many topics addressed by arbitration rules.[42] They guarantee the fair and effective administration of the arbitration procedure and offer a framework for it.[43]

The seat of Arbitration: The jurisdiction where the arbitration is legally based is referred to as the seat of arbitration or the legal location of arbitration. The procedural law that regulates the arbitration, the role of the courts in assisting or overseeing the arbitration, and the enforceability of the arbitral award are all influenced by the arbitration's seat.[44] Because it might affect how the arbitration is conducted and the possibility of challenges to the award, the parties' choice of seat is a strategic one.[45] In institutional arbitration, the arbitration procedure is run by a regulatory body that provides a set of regulations, selects arbitrators as needed, and provides support for administrative tasks. [46]

In contrast, ad hoc arbitration is carried out without the assistance of a body, and the parties individually decide on the rules and processes. However, arbitration may be carried out independently of any institution (ad hoc arbitration) or under the authority of an arbitration institution (institutional arbitration), both approaches have their benefits and drawbacks, and the selection between institutional and ad hoc arbitration depends on the specific needs, requirements and preferences of the parties.[47]

Recognitions and Enforcements: The process by which an arbitral award is accepted as legally binding and enforceable in a country other than the arbitration's seat is referred to as recognition and enforcement.[48] The New York Convention 1958 mandates that signatory governments uphold awards rendered in other signatory states and offers a framework for the acceptance and enforcement of foreign arbitral rulings.[49] Enforcement, however, may be contested on certain grounds, such as if the verdict violates public policy, was obtained through fraud, or the arbitrators overreached their powers.

Public Policy: If an arbitral verdict is thought to go against the fundamental doctrines or principles of the jurisdiction where enforcement is sought, courts may refuse to enforce it under the legal doctrine known as public policy.[50] Courts interpret the public policy exception narrowly because it is meant to stop awards that would be detrimental to the public interest from being enforced. [51]

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[42] A. Ijaodola, "The Concept of Forced Arbitration: An Arbitration with Wrong Footing," SSRN Electron. J., 2021, doi: 10.2139/ssrn.3739277.

[43] Ibid

[44] F. A. Grey, "Arbitration as an Alternative Dispute Settlement Mechanism at the WTO," J. Int. Disput. Settl., 2021, doi: 10.1093/jnlids/idab009.

[45] Ibid

[46] Ibid

[47] Dr. Dharmpal Singh, Dr. Zuleika Homavazir, "Arbitration and Business Commerial Law" Year of Publication 2023 (Revised).

[48] Collier, J. G., & Lowe, V. (2000). *The settlement of disputes in international law: institutions and procedures*. OUP Oxford.

[49] Ibid

[50] Noone, M. A. (2011). ADR, public interest law and access to justice: the need for vigilance. *Monash UL Rev., 37*, 57.

[51] Ibid

However, the definition of public policy can differ greatly throughout countries, which makes it a challenging and occasionally divisive topic in arbitration.

Interim Awards: Temporary orders issued by the arbitrator or arbitrators to maintain the status quo, safeguard evidence, or shield one of the parties from damage prior to the final award are known as interim measures, provisional measures, or conservatory measures. Orders that freeze assets, secure evidence, or forbid specific behaviors are a few examples of interim measures.[52] A key tool in arbitration is the power to give interim remedies, which enables the arbitrator or arbitrators to resolve pressing concerns that arise.[53]

Determination of Jurisdiction: The parties' arbitration agreement may specify how the arbitrator is to be appointed. The arbitrator must be convinced that the parties' agreement was legitimate and that the conflict was precisely about the parameters when he is chosen. [54]

The arbitral tribunal will not continue if it determines that the arbitration agreement is not subject to arbitration, the position may be more dubious in this case.[55] However, the arbitral tribunal must first decide whether it has jurisdiction over the matter before beginning its process. A relationship between the arbitral tribunal and the parties is necessary to resolve any dispute, and this relationship can be found in the parties' contract, which genuinely aids the tribunal in establishing its jurisdiction. "As stated in ***Ashville Investments V Elmer*** **Contractors":**[56] A non-statutory arbitrator's jurisdiction is derived from the consent of the parties who appoint him. He has the jurisdiction that they agree to grant him and none that they refuse.[57]

5. Major Arbitral Institutions

Arbitral institutions have developed and evolved in accordance with the expansion of international commercial arbitration and the growth of global business. For instance, the International Centre for Dispute Resolution (ICDR), a part of the American Arbitration Association, was established specifically to handle international conflicts.[58] In order to provide a framework that is conducive to international arbitration and to enhance their capacity to handle specific challenges, arbitral institutions are always updating their regulations.[59] The brief introduction of major International Commercial Arbitration Institutions is as follows.

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[52] Dr. Dharmpal Singh, Dr. Zuleika Homavazir, "Arbitration and Business Commerial Law" Year of Publication 2023 (Revised).

[53] Ibid

[54] Mahdi, M. A. (2012). The effectiveness of international commercial arbitration system and a critical analysis?.

[55] Ibid at page 13, para 5

[56] (1998) 37 BLR 55, 78 per Bingham LJ

[57] Andrew Tweeddale and Keren Tweeddale, Arbitration of Commercial Disputes (Oxford University Press), p 3 to 4

[58] Moses, M. L. (2017). *The principles and practice of international commercial arbitration*. Cambridge University Press.

[59] Thomas Dietz, Does International Commercial Arbitration Provide Efficient Contract Enforcement Institutions for International Trade?, in International Arbitration & Global Governance: Contending Theories & Evidence 168, 171

5.1 The International Chamber of Commerce (ICC) International Court of Arbitration

One of the most prominent and well-known arbitral tribunals is the ICC International Court of Arbitration. The International Court of Arbitration does not belong to any judicial system and is not a court in the traditional meaning of the word. Instead, the administrative body in charge of managing the arbitration procedure is the Court of Arbitration. Legal experts from around the globe make up its membership. A permanent, qualified administrative personnel is also part of the ICC's Secretariat. On January 1, 2012, the latest Arbitration Rules of the ICC went into force. The ICC stands out as an arbitral body due to a few characteristics. Initially, the Court of Arbitration examines each ICC arbitral award; hence, the parties do not receive the award until the Court has examined it.[60] If the Court discovers any irregularities, it returns the verdict to the arbitrators together with its remarks, even though it lacks the authority to make fundamental changes to the award. Second, the ICC also requires that the parties fill out and sign a document known as the "Terms of Reference" at the beginning of the arbitration.[61] This document includes a summary of the claims and relief sought, the parties, the arbitration location, the rules, and occasionally additional information about scheduling or discovery.[62] This guarantees that everyone is aware of the arbitration's terms at the outset of the procedure. Furthermore, practitioners prior to the ICC appreciate the fact that the Secretariat staff members who handle cases are actually attorneys.[63] The ICC International Court of Arbitration conducts arbitrations worldwide, while having its headquarters in Paris but ICC International Court of Arbitration conducts arbitrations worldwide.[64]

5.2 The London Court of International Arbitration (LCIA)

The LCIA is the arbitration institution's responsible supervising body instead of a "court" in the legal sense. The final arbiter for the correct application of the LCIA Rules is the 46-member LCIA Arbitration Court.[65] Additionally, it is in charge of designating tribunals, deciding arbitrators' challenges, and managing expenses. The LCIA is the oldest organization still in existence for international arbitration, having been established in the late nineteenth century.[66] Disputes referred to the LCIA are administered by its Secretariat, which is led by a Registrar.[67] The parties may designate any site for the LCIA to administer cases and enforce its regulations. Together with the London-based organization, the LCIA also set up LCIA India, a separate arbitral body with its own rules centered in New Delhi.[68] Additionally, it established the DIFC-LCIA

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[60] ICC Rules, art. 33.

[61] Ibid

[62] ICC Rules, art. 23.

[63] Ibid 59

[64] The ICC administered arbitrations, www.iccwbo.org/ Products-and-Services/Arbitration-and-ADR/Arbitration/Introduction-to-ICCArbitration/Statistics.

[65] Gerbay, R. (2012). The London Court of International Arbitration (LCIA). *The World Arbitration Reporter, 2nd Edition, JurisNet*.

[66] Moses, M. L. (2017). *The principles and practice of international commercial arbitration*. Cambridge University Press.

[67] Registrar's Report, 2015, available at the LCIA www.lcia.org/LCIA/reports.aspx.

[68]Ibid

Arbitration Center in Dubai and the LCIA-MIAC Arbitration Center, a brand-new arbitration facility in Mauritius.[69]

5.3 Hong Kong International Arbitration Centre:

There is no denying the increasing prominence of a number of arbitral institutions situated in Asia. HKIAC, which was established in 1985, is currently the most well-known arbitral tribunal outside of Europe.[70] As part of its continuous legal reform, Hong Kong passed a new Arbitration Ordinance in 1982.[71] To increase Hong Kong's reputation as an arbitration forum for international arbitrations, the numerous characteristics that various legal and economic sectors had requested were included by the Arbitration Ordinance.[72] The 1982 Arbitration Ordinance eliminated the exceptional case procedure, among other modifications[73]. In 1990, Hong Kong adopted the Arbitration Ordinance, which marked a significant shift from English arbitration practices.[74] HKIAC has been actively involved in advancing and putting into practice best practices for settling international business and investment disputes for the past 34 years. HKIAC has achieved significant strides in that regard by establishing regulations, taking part in legislative reforms, and collaborating with different stakeholders and business entities[75]. A rising number of government agencies and foreign organizations are choosing the Center as the location for conflict resolution, according to recent statistics and initiatives, demonstrating that HKIAC has also implemented international best practices in cases filed to it.[76] HKIAC is expected to contribute more to international dispute settlement given its continuous efforts and track record, especially in relation to the Belt and Road Initiative.[77]

5.4 China International Economic and Trade Arbitration Commission (CIETAC)

CIETAC has developed its own arbitration procedure guidelines. With the creation of the Arbitration Commission, the Provisional Rules of Arbitration Procedure were developed.[78] The Arbitration Commission

[69] LCIA website at www.lcia.org/LCIA/international.aspx.

[70] www.hkiac.org;

[71] Arbitration Ordinance, 1982, ch. 341 (H.K.) [hereinafter 1982 Hong Kong Arbitration Ordinance], reprinted in [Commercial Arbitration Law in Asia and the Pacific] Int'l Com. Arb. (Oceana Publications) No. 4, H.K.1 (Sept. 1987); CRAIG ET AL., Hong Kong Law

[72] CRAIG ET AL., Hong Kong Law, supra note 6, S 34.01, at 595; SIMMONDS & HILL., supra note 4, at 1.

[73] Gearing, M., & Liu, J. (2019). The Contributions of the Hong Kong International Arbitration Centre to Effective International Dispute Resolution. In *International Organizations and the Promotion of Effective Dispute Resolution* (pp. 40-55). Brill Nijhoff.

[74] Zinger, S. G. (1997). Arbitration at the crossroads in Hong Kong. *Int'l Fin. L. Rev.*, *16*, 25.

[75] Global Arbitration Review, Guide to Regional Arbitration 2018.

[76] Yang, P. (2006). A Brief History of Hong Kong International Arbitration Centre. *Asian Disp. Rev.*, *8*, 47.

[77] The Belt & Road Initiative (bri) is an extensive outbound investment initiative launched by the Chinese government in 2013 as an official policy to stimulate economic development along an overland 'Silk Road Economic Belt' and a maritime '21st Century Maritime Silk Road'.

[78] Liu, G., & Lourie, A. (1994). International commercial arbitration in China: history, new developments, and current practice.

modified its arbitration rules to satisfy the requirements of its evolution[79]. On October 1, 2000, the current Arbitration Rules were approved, these Arbitration Rules provide that CIETAC can considers matters involving domestic and international conflicts, whether they are contractual or non-contractual, provided that the parties have agreed to arbitrate their disagreement with CIETAC. An expert team of arbitrators and secretaries with professional expertise and ethics make up CIETAC.[80] There are expert and experienced arbitrators on the current Panel of Arbitrators, with 174 of them hailing from Hong Kong, Macao, Taiwan, and other nations.[81] The Arbitration Act of 1994 mandates that arbitrators issue rulings in line with the law. According to Chinese arbitration procedure, arbitrators must fairly and reasonably render the award while taking into account the parties' contractual agreement and international experience, provided that the ruling complies with the law.[82] In China, ex equae et bono arbitration is prohibited.[83] The arbitral proceedings may be held anywhere (including abroad) in accordance with the CIETAC Arbitration Rules 2000, except for Beijing, Shenzhen, and Shanghai, which are the locations of CIETAC and its Sub-Commissions.[84] It is pertinent to mention here that In China, ad hoc arbitration has never taken place. Ad hoc arbitration and the legality of an ad hoc arbitration agreement were not covered by Chinese law prior to the CAA 1995.[85] Unless the parties come to a supplemental agreement to that effect, no designated arbitration commission in the arbitration agreement is sufficient to render the agreement void, as per Articles 16 and 18 of the CAA 1995.[86] Ad hoc arbitration agreements are therefore null and void. Ad hoc arbitration is actually not allowed in China. In order for the parties to receive the best support possible from the arbitral institutions, China supports institutional arbitration.[87]

6. Potential Benefits of International Commercial Arbitration

International commercial arbitration is well known for its speedy nature compared to court litigation. Arbitration proceedings are sometimes more efficient, provided and agreed to by the parties, and timetables and procedures are far more flexible.[88] Administrative justice also makes arbitration flexible since people cannot be locked out for days and sometimes months, as in courts. For instance, regarding ad hoc arbitration,

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[79] Hu, L. (2003). An Introduction to Commercial Arbitration in China. *Dispute Resolution Journal*, *58*(2), 78-85.

[80] Hong, D. U., & Lee, J. Y. (2018). Why Are There So Few Investor-State Arbitrations in China? A Comparison with Other East Asian Economies. *World*, *7*, 76-349.

[81] Ibid

[82] Hu, L. (2003). An Introduction to Commercial Arbitration in China. *Dispute Resolution Journal*, *58*(2).

[83] Ibid

[84] Im, C. (2017). Comparative Analysis on Alternative Dispute Resolution in Cambodia and China, in Particular, Arbitration. *Particular, Arbitration (December 1, 2017)*.

[85] Zhang, T. (2013). Enforceability of ad hoc arbitration agreements in China: China's incomplete ad hoc arbitration system. *Cornell Int'l LJ*, *46*, 361.

[86] Ibid

[87] Lu, L. I. U., & Qi, Q. (2019). Determining the validity of ad hoc arbitration agreements in China: Past, present, and future. *Frontiers of Law in China*, *14*(1), 115-140.

[88] Nahnybida, V., Bilousov, Y., Bliakharskyi, Y., Boiarskyi, I., & Ishchuk, A. (2022). Trade agreements, digital development and international commercial arbitration. Cuestiones Políticas, 40(74).

UNCITRAL Arbitration Rules and ICC Rules contain the provision for speedy proceedings by which the parties control the speed of dispute resolution.[89] The Arbitration Tribunal's benefits have expanded the number of parties involved in this process and the number of international organizations that oversee and conduct arbitration hearings, both of which have undoubtedly impacted the unification of the International Arbitration Regulations.[90] On the other hand, this trend has encouraged nations to review their arbitration laws in order to adjust to the factual situations brought about by global trends and make the entire procedure as attractive as possible. This will additionally assist the countries attract in foreign investors.[91]

International Commercial Arbitration is preferred over judicial processes due to following potential benefits.

Arbitration awards are widely recognized and executed globally

Arbitration rulings are recognized and implemented globally due to the New York Convention, which provides a structure for executing such awards.[92] The most significant enforcement instrument is the New York Convention, which allows the parties to take their disagreement to an arbitral tribunal and to readily request that the award be recognized and enforced by the local authorities as a court judgment.[93] As of right now, 165 states have ratified the 1958 convention.[94] One of the main benefits of international commercial arbitration is thought to be the New York Convention. In general, recognizing and putting into practice a transoceanic arbitration decision is simpler and easier than understanding and putting into execution a foreign court decision. The parties' decision to seek arbitration does not guarantee a problem-free resolution. Arbitration is not widely used due to challenges in recognizing and implementing its findings.[95]

Party Autonomy

The concept of party autonomy originated in the 19th century. Since the parties are free to choose the applicable law for each stage of the arbitration process, it is commonly understood that party autonomy is one of the best aspects of international arbitration. The applicable laws for the merits of the dispute, the arbitration agreement (or clause), the arbitral processes (lex arbitri), and the conflict of law provisions that apply to all layers are among the layers of pertinent legislation.[96] If the parties fail to agree on a governing law for each layer, the courts will step in and determine the ruling. It may take many weeks for the courts to

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[89] Liukkunen, U. (2020). Chinese context and complexities–comparative law and private international law facing new normativities in international commercial arbitration. Ius comparatum, 1(1), 254-287.

[90] Lecaj, M., & Curri, G. (2021). Benefits of International Commercial Arbitration in Resolving the Commercial Contests. *Perspectives of Law and Public Administration*, *10*(2), 96-101.

[91] Ibid

[92] Martinez Ramona, Recognition and Enforcement of International Arbitral Awards Under the United Nations Convention of 1958:

[93] Orbay-Graves, A. (2023). *Use of international commercial arbitration for project finance disputes: A new approach for drafting the arbitration clause* (Doctoral dissertation, Brunel University London).

[94] Ibid

[95] Fox, W., & Dautaj, Y. (2023). *International Commercial Agreements*. Kluwer Law International BV.

[96] Matteo Zambelli, 'LIDW 2019: The Rise of Arbitration in Financial Services Disputes' [2019] <http://arbitrationblog.kluwerarbitration.com/2019/05/08/lidw-2019-the-rise-of-arbitration-in-financial-services-disputes-7-may-2019/> accessed 13 January 2022.

238 Alamdari (n 26) 60.

decide on what the appropriate governing law is. The legislation chosen to govern the merits of the dispute might be challenging when mandatory clauses within the applicable law conflict with and limit the parties' authority. In other words, it's crucial to assess if a party's autonomy about applicable law is limited by their country's private international laws, resulting in the need for multiple legislations and courts.[97] Most international arbitration laws, rules, and treaties support the principle of party autonomy.[98] The notion highlights the provisions of the Nigeria Arbitration and Conciliation Act (2004)[99], the New York Convention,[100] and UNCITRAL.[101] Some examples are Model Law, the English Arbitration Act of 1996, the Indian Arbitration and Conciliation Act of 1996, the Ghana Arbitration and Conciliation Act of 2010, and the International Chamber of Commerce (ICC) Arbitration Rules of 2012.[102] The laws and rules mentioned above oblige parties to observe their choice of procedural requirements, to varied degrees. The New York Convention states that if parties do not follow the required laws, an arbitral decision may not be recognized or enforced by courts.[103]

Neutrality

Neutrality in international arbitration has two dimensions.[104] Arbitration is preferred by parties due of its neutrality and lack of bias towards domestic courts.[105] The second is about the nationality of the arbiter. It is advised that the nationality of the person nominated be distinct from that of the nominating parties when parties choose a single arbitrator.[106] This procedure should be used when party-appointed arbitrators choose a presiding arbitrator. Some argue that party-appointed arbitrators may be affected by the appointing party's intended conclusion, raising concerns about their impartiality.[107] There have been suggestions that the

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[97] Ibid

[98] Emmanuel Gaillard, "The Role of the Arbitrator in Determining the Applicable Law" in Lawrence W. Newman & Richard D. Hill (eds), The Leading Arbitrators (Guide to International Arbitration, 2004) 1; Julian D. M. Lew and other, Comparative International Commercial Arbitration (Kluver Law International, 2003) 413.

[99] ACA 2004, ss 1 and 2.

[100] The New York Convention 1958, art V (1) (d).

[101] The UNCITRAL Model Law 1985, art 19 (1), which provides inter alia that:the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

[102] Fagbemi, S. A. (2015). The doctrine of party autonomy in international commercial arbitration: myth or reality?. *Journal of Sustainable Development Law and Policy (The)*, *6*(1), 202-246.

[103] The New York Convention 1958, art V.

[104] Susan D. Franck, The Role of International Arbitrators, 12 ILSA J. INT'L & COMP. L. 499, 501 (2006).

[105] MOSES, supra note 6, at 1.

[106] Feebily, R. (2019). Neutrality, Independence and impartiality in international commercial arbitration, a fine balance in the quest for arbitral justice. *Penn St. JL & Int'l Aff.*, *7*, 88.

[107] 5 See David J. McLean & Sean-Patrick Wilson, Is Three a Crowd? Neutrality, Partiality and Partisanship in the Context of Tripartite Arbitrations, 9 PEPP. DISP. RESOL. L.J. 167, 168–69 (2008). See also Laurens J.E. Timmer, The Quality, Independence and Impartiality of the Arbitrator in International Commercial Arbitration, 78 ARB. 348, 350–51 (2012).

specific appointing party's desired outcome may have an impact on the arbitrator chosen by that party.[108] The English Court of Appeal's decision in ***Locabail (UK) Ltd v. Bayfield Properties Ltd***[109] clarified when an arbitrator's lack of independence towards one party is not acceptable. The arbitrator's previous political, social, sporting, or charitable affiliations, masonic affiliations, or previous instructions to act for or against any party, solicitor, or advocate involved in an arbitration, as well as membership in the same Inn[s of Court], circuit, or local Law Society chambers, must be considered.[110] English courts emphasize that most arbitrators have extensive expertise and knowledge. Given the restricted pool of arbitrators, it's probable that they've dealt with parties before. If parties have complete knowledge, they can agree that party-appointed arbitrators may favor the appointing party and this situation is unlikely to undermine the process's integrity, as all parties will have access to arbitrators with similar qualifications.[111] The neutral arbitrator ensures the balance and impartiality of the arbitral panel.[112]

Confidentiality:

Confidentiality of an arbitral procedure has benefits and downsides, much like the majority of other features of international commercial arbitration. The primary benefit of the proceedings or awards not being made public is that the parties can rest easy knowing that any information provided during the proceedings, including sensitive information or company financials, will be handled and discussed behind closed doors.[113] In contrast to litigation, the parties determine the scope of secrecy in an international arbitration procedure based on their arbitration agreement or provision. However, in practice, this flexibility granted to parties might not be effective in some situations, such as when the secrecy clause's scope is unclear or there is no authority or mechanism in place to enforce it.[114] Two key factors influence how the confidentiality principle for international commercial arbitration (ICA) proceedings is applied in practice: first, how various international arbitration organizations handle the matter, and second, how different nations' laws handle the idea of confidentiality.[115] Confidentiality is not a given under the ICC's 2021 Arbitration Rules. At the request of one of the parties, the arbitral tribunal may choose to keep the proceedings private or take the appropriate steps to safeguard trade secrets and private data. It is important to keep in mind that although an arbitration hearing is private, it is not usually secret, unless the parties expressly state differently in their

[108] Hans Smit, Quo Vadis Arbitration? Sixty Years of Arbitration Practice, by Pieter Sanders, 11 AM. REV. INT'L ARB. 429, 429 (2000).

[109] Locabail (UK) Ltd. v. Bayfield Properties Ltd. [2000] QB 451 at [480] para. 25 (Eng.).

[110] Feebily, R. (2019). Neutrality, Independence and impartiality in international commercial arbitration, a fine balance in the quest for arbitral justice. Penn St. JL & Int'l Aff., 7, 88.

[111] Couri, A. C. P. (2004). *Standards of impartiality, independence and neutrality for arbitrators in international commercial arbitration*.

[112] Ibid

[113] Orbay-Graves, A. (2023). *Use of international commercial arbitration for project finance disputes: A new approach for drafting the arbitration clause* (Doctoral dissertation, Brunel University London).

[114] Ibid

[115] Born, G. (2021). *International Commercial Arbitration: Commentary and Materials*. BRILL.

arbitration agreement.[116] The arbitration agreement must therefore contain a provision ensuring the confidentiality and privacy of the proceedings. The LCIA 2020 Arbitration Rules, on the other hand, take a strong stand on confidentiality and mandate that the parties keep all awards, materials, and documents prepared for the arbitration—including those created by third parties—confidential unless disclosure is mandated by law, a right, or to enforce the award in court.[117] According to the UNCITRAL Guidelines for Organising Arbitral Proceedings, the UNCITRAL Model Law does not contain any provisions for parties that choose to prioritize confidentiality, and national laws do not provide a consistent approach to the demand of confidentiality.[118]

7. Drawbacks of International Commercial Arbitration

As much as international commercial arbitration has many benefits, it has also been criticized. This section seeks to look at the criticisms. As mentioned above, one of the significant drawbacks is that there are no appealing instances. Arbitration has the disadvantage that where a case reaches an award, such an award may not be appealed since arbitration awards are usually final and binding. This can be Harmful to the extent that parties of the proceeding feel that an error was committed or that the tribunal's decision is unfair.[119] However, although some national laws permit such a limited appeal where, for instance, fraud has occurred or where there has been a procedural technicality, the lack of a full appeal opportunity operating as an appellate tribunal may seriously erode the equity of the arbitral system.[120] The other concern is that arbitration has some bias. However, the selection of arbitrators brings back some controversy since arbitration, in principle, is meant to be impartial. Another weakness is that, in some cases, the arbitrators may be biased by their experience, affiliation, or any other tendency that may influence their decision-making process.[121] However, the cost of arbitration remains high, especially in complex cases, and expensive. Although arbitration is comparatively cheaper than litigation, the cost of arbitrators, attorneys, and miscellaneous charges is higher in significant, complex cases, making it expensive for most firms.[122] Even if the arbitrator commits a factual or legal error,

[116] Walter H. Boone and Mandie B. Robinson, 'Whole Lotta Shakin' Going on: Recent Studies Link Fracking and Earthquakes' [2015] 82 Def Counsel J 68

[117] LCIA 2020 Arbitration Rules Article 30.1

[118] 295 'UNCITRAL Notes on Organizing Arbitral Proceedings 2016' <https://uncitral.un.org/en/texts/arbitration/explanatorytexts/organizing_arbitral_proceedings> accessed 4 February 2024.

[119] Gu, W. (2024). China's Modernization of International Commercial Arbitration and Transnational Legal Order. UC Irvine Journal of International, Transnational, and Comparative Law, 9(1).

[120] Orbay-Graves, A. (2023). *Use of international commercial arbitration for project finance disputes: A new approach for drafting the arbitration clause* (Doctoral dissertation, Brunel University London).

[121] Liukkunen, U. (2020). Chinese context and complexities–comparative law and private international law facing new normativities in international commercial arbitration. *Ius comparatum*, *1*(1), 254-287.

[122] Mboya, R. A. (2023). Critical Review of the Adoption of the Uncitral Model Law on International Commercial Arbitration in Africa (Doctoral dissertation, University of Nairobi).

there is no right of appeal. That rule does, however, have certain restrictions; these are fact-driven and impossible to describe precisely, aside from in broad strokes.[123]

Another is the question of the enforcement of the arbitral awards. While the New York Convention helps enforce awards across signatory states, enforcement can become complex in some jurisdictions, more so in countries characterized by the weak rule of law or those court systems that are reluctant to recognize foreign arbitral awards.[124] This means that the enforcement of decisions becomes widely dissimilar, weakening the broad principle of international commercial arbitration and discouraging companies from implementing the method. Additionally, non-signatories to the arbitration agreement cannot be forced to arbitrate, with a few exceptions. (A lease's arbitration clause prohibits an assignee or sublessee from being held accountable in possession and be enforced by those individuals as well. Like in the case of **Melchor Investment Co. v. Rolm Systems**[125] and **Kelly v. Tri Cities Broadcasting**.[126]

8. Conclusion & Implications

This paper reveals the efficiency of international commercial arbitration and sheds light on the shortcomings encountered in practice. The benefits of arbitration are it is flexible and neutral, operates under conditions of confidentiality, and the awards it gives can be enforced, making arbitration preferred in international business. However, there are still considerable areas for improvement, such as expensive costs, time consumption, and lack of appealing opportunities. Based on the research, the following recommendations can be made to enhance the process of international commercial arbitration despite its shortcomings. Firstly, cost-cutting measures should be encouraged to make arbitration affordable for companies big and small. This could include pervasively integrated procedures, like express arbitration since it reduces the time and money required to resolve disputes. Furthermore, through digital arbitration platforms, contention costs could be reduced through social hearings and alternatives to travel and meetings. Secondly, delays in arbitration proceedings must be addressed significantly. The present study opines that arbitration institutions should set tighter timeframes for the conduct and conclusion of proceedings and set steps to ensure that cases progress without delay. Technology could play a role in increasing efficiency by fast-forwarding communication as well as paperwork. Thirdly, the proposal to start the practice of allowing the appeal in strictly defined situations would give parties a chance to reopen the arbitral awards where specific errors or injustices have occurred. Although this would partially erode the conclusiveness of the arbitration process, it could improve its impartiality and give more assurance to the parties to the arbitration. Lastly, there is a need to enhance the transparency of who makes and who takes arbitration decisions to dispel any perceived bias and keep arbitration accurate and relevant as a key form of commercial dispute settlement. More disclosure can go a long way toward enhancing the reliability of arbitration to get over cross-border disputes and facilitating more companies to adopt it. Future studies could be directed to investigate the new forms of arbitration,

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[123] Orbay-Graves, A. (2023). *Use of international commercial arbitration for project finance disputes: A new approach for drafting the arbitration clause* (Doctoral dissertation, Brunel University London).

[124] Wang, J. (2024). Joinder mechanism in international commercial arbitration: a trend in the digital age? International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique, 37(3), 923-942.

[125] (1992) 3 CA 4th 587

[126] (1983) 147 CA 3d 666.)

including digital arbitration and investigate the viability of enforcing the arbitral awards in the country's jurisdictions with a non-conducive legal environment.

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