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International Dispute Resolution

Overview

A. Arbitration

International arbitration is the process of resolving disputes between or among transnational parties through the use of one or more arbitrators rather than through the courts. It requires the agreement of the parties, which is usually given via an arbitration clause that is inserted into the contract or business agreement. The decision is usually binding.

Arbitration is today most commonly used for the resolution of commercial disputes, particularly in the context of international commercial transactions (International Commercial Arbitration). It is also used in some countries to resolve other types of disputes, such as labour disputes, consumer disputes, and for the resolution of certain disputes between states and between investors and states.

As the number of international disputes mushrooms, so too does the use of arbitration to resolve them. There are essentially two kinds of arbitration, *ad hoc* and *institutional*. An institutional arbitration is one that is entrusted to one of the major *arbitration institutions* to handle, while an *ad hoc* one is conducted independently without such an organization and according to the rules specified by the parties and their attorneys.

Ad hoc, or unadministered, arbitration is flexible, relatively cheap and fast way of dispute settlement – if the parties co-operate. When parties are not able to co-operate, the assistance of an institution to move the arbitration forward is necessary.

One reason for the growth of arbitration is that there are now many arbitral bodies, and parties can select one that is best suited to their needs. Some organizations welcome any type of dispute. In contrast, there are organizations that specialize in particular types of disputes, such as those involving investments (e.g. ICSID) or that focus on a particular topic, such as intellectual property disputes (e.g. WIPO Arbitration and Mediation Center), sports-related disputes (e.g. Court of Arbitration for Sport). Some arbitral bodies also specialize in disputes in particular industries (e.g. Society of Maritime Arbitrators).

Another factor in selecting an institution is the nature of the party: One institution may be open only to states or member governments (e.g. WTO Dispute Settlement System), while another may be available to states or private parties (e.g. Permanent Court of Arbitration).

B. Mediation

Once a dispute has been submitted to arbitration, arbitration can be combined with mediation, a non-binding procedure in which a neutral intermediary assist the parties in reaching a negotiated settlement of the dispute. In a growing number of cases parties agree to first try to settle their dispute through mediation, and to resort to arbitration only if the dispute has not been settled with a certain period of time.

While both arbitration and mediation are usually private dispute resolution procedures based on a party agreement they differ in a number of important aspects. Arbitration is an adjudicative procedure and in this respect resembles court litigation. Once the parties have submitted a dispute to arbitration, neither party can opt out unilaterally, and any decision rendered by the arbitral tribunal will be binding on both parties.

Mediation in contrast, is a voluntary process which depends on the continuing cooperation of both parties since either party can withdraw at any time.

The following chapter will present the basis information of arbitration and mediation procedures used by the following seven major international arbitral institutions.

I. Permanent Court of Arbitration (PCA)
II. International Commercial Arbitration (ICA)
III. International Centre of Settlement of Investment Disputes (ICSID)
IV. WIPO Arbitration and Mediation Center
V. WTO Dispute Settlement System
VI. Court of Arbitration for Sport (CAC)
VII. Society of Maritime Arbitrators (SMA)

I. Permanent Court of Arbitration (PCA)

A. Overview	The *Permanent Court of Arbitration* (PCA), also known as the *Hague Tribunal* is an international organization based in The Hague, The Netherlands. It was established in 1899 as one of the acts of the first Hague Peace Conference, which makes it the *oldest institution* for international dispute resolution. The 1899 Convention was revised at the Second Hague Peace Conference in 1907, by the adoption of a second "Convention for the Pacific Settlement of International Disputes." Although the majority of States are parties to the 1907 Convention, both Conventions remain in force. As of 2006, *106 countries* were party to the treaty. The Court deals with cases submitted to it by *consent of the parties* involved and handles cases between countries and between countries and private parties. Unlike the International Court of Justice, the PCA is not an inter-state court. Parties may apply here for arbitration, mediation or examination of the facts. Unlike the ICJ, the Court is not just open to states but also to other parties. Organisations, private enterprises and even private individuals may apply here to resolve a dispute with a state.
B. Organizational Aspects	The Permanent Court of Arbitration (PCA) has its *headquarters* in The Hague. However, Dispute resolution proceedings conducted under its auspices may take place at any other location agreed upon by the parties to a case and/or the adjudicators.
I. International Bureau	The International Bureau, which is a *permanent secretariat*, serves as the operative secretariat of the PCA. It maintains the permanent roster of potential arbitrators, receives communications directed to the PCA (including requests for arbitration), and provides ongoing administrative services to the arbitral tribunals, including provision of the facilities of the PCA building.
II. Administrative Council	Supervisory control of the PCA is vested in its *Administrative Council*, which is comprised of the diplomatic representatives accredited to the Netherlands of the parties to the 1899 and 1907 Conventions. The Council provides general guidance to the work of the PCA, and supervises its *administration, budget* and *expenditure*.
III. Members of the Court	The drafters of the 1899 and 1907 Conventions contemplated the use of a "closed" panel from which parties would select their arbitrators. The Conventions therefore provide that each Contracting State to the Conventions may designate up to four "*Members of the Court*": persons of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator. Although the Conventions require that arbitrators be chosen from this list of Members, there is consent that parties preferred to have the autonomy to appoint arbitrators from outside that list.
IV. The Tribunal	Despite its definitive name, the „Permanent" Court has *no tribunal per se*. A tribunal or other dispute resolution body is established for each dispute submitted, and its method of constitution will depend on the applicable rules.
V. Resolution Services Offered	

	In terms of the resolution of disputes likely to endanger the maintenance of international peace and security, the PCA makes available four of the dispute settlement methods expressly listed in the UN Charter: *enquiry*, *mediation*, *conciliation* and *arbitration*. In the fields of international trade, investment and intellectual property, all of the PCA's modern procedural rules are capable of being used in resolving disputes, depending on the identity of the parties involved. An important aspect of the PCA's flexibility is that cases involving multiple parties, including perhaps States, IGOs and *private parties*, can also be submitted to PCA arbitration. Even purely private disputes can be submitted to PCA-administered arbitration, by using the UNCITRAL Arbitration Rules and designating the PCA as the administering authority.
C. Jurisdiction	
I. Jurisdiction on the Institution	As pointed out above, although the PCA was originally established for inter-State arbitration, the Hague Conventions allow considerable flexibility in the constitution of a "special Board of Arbitration." Pursuant to the various Optional Rules, the *following parties* may, in principle, agree to bring a case before the PCA: 1. Any two or more *States*; 2. A State and an *international organization* (i.e. an intergovernmental organization); 3. Two or more *international organizations*; 4. A *State* and a *private party*; and 5. An *international organization* and a *private party*. The PCA Rules of Procedure for Arbitrating Disputes Relating to Natural Resources and/or the Environment and the Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment contain no requirement that one of the parties be a *State* or organization of States. *Private parties* may agree to use the administrative and other facilities of the PCA in arbitrations conducted under the UNCITRAL Rules, and the PCA is contemplating adopting its own institutional version of the UNCITRAL Rules for this purpose.
II. Jurisdiction of the Arbitral Tribunal	The cornerstone of all types of arbitral jurisdiction is *agreement of the parties*. This agreement can be made by way of a *separate* agreement covering an existing dispute (often referred to as a "submission agreement") or through a *clause in a treaty*, contract, or other legal instrument, which is usually more general, covering any future disputes "arising under" or "in connection with" the instrument concerned.
III. Subject Matter	The potential *subject-matter* jurisdiction of PCA arbitral tribunals is *unlimited*. In each case however, the scope of jurisdiction is governed by the wording of the applicable arbitration agreement.
D. Applicable Law	
I. Procedural Rules	The law applicable to the proceedings is that *chosen by the parties*, in the first instance by agreeing to the application of a particular set of procedural rules. Modern procedural rules, such as the various PCA Rules, leave a great deal of *procedural flexibility* in the hands of the parties and the arbitral tribunal. All of the PCA Rules contain the general provision that the arbitral tribunal may conduct the arbitration in such manner as it

	considers appropriate, provided that the parties are treated with equality and that, at any stage of the proceedings, each party is given a full opportunity of presenting its case. In purely *private commercial cases*, and conceivably in certain other cases as well, the arbitral tribunal might be likely to apply, or in any event, have reference to, the arbitration law of the place of arbitration (*lex loci arbitrii*) to fill gaps in the applicable rules. In *inter-State arbitration*, the arbitration agreement or ad hoc rules drawn up by the parties generally give the arbitral tribunal the express power to fill such gaps without reference to municipal law.
II. Substantive Law	Here again, arbitration gives the parties the flexibility to stipulate the *law applicable to the substance* of their dispute. The various PCA rules provide that the arbitral tribunal shall apply the law *chosen by the parties*; in the absence of an agreement, the tribunal will apply either the applicable rules of general international law or another body of law prescribed by choice of law rules. In cases involving *international organizations*, the tribunal is directed to take due account of the rules of the organization concerned and to the law of international organizations; and in cases involving *private parties*, the tribunal is directed to pay attention to the terms of the contracts or agreements in question and take into account the relevant trade usage. Finally, only with the agreement of the parties may the tribunal decide the dispute *ex aequo et bono*.
E. Procedural Aspects	
I. Institution of Proceedings	Under the various PCA Rules, the party initiating arbitration (the "claimant") initiates arbitration by serving the other party (the "respondent") with a *notice of arbitration*, which must contain the following information: 1. A demand that the dispute be *referred to arbitration*; 2. Names and addresses of the *parties*; 3. Reference to an *arbitration clause* or *arbitration agreement*; 4. Reference to the treaty, agreement, contract or other legal instrument (e.g., constituent instrument or decision of an international organization) out of which, or in relation to which the *dispute arose*; 5. General nature of the case and indication of the *amount* involved; 6. Relief or *remedy* sought; and 7. Proposal as to the *number of arbitrators*.
II. Constitution of the Tribunal	The parties may, by agreement, stipulate the *method of constituting* the arbitral tribunal. The basic method of constituting a tribunal, reflected in Conventions and the various sets of PCA Rules, involves an *appointment by each party*, with the party-appointed arbitrators then selecting a presiding arbitrator. The parties may agree on the number of arbitrators (*sole arbitrator*, *three arbitrators*, or – usually only in inter-State cases – *five arbitrators*); if they fail to do so, the tribunal will be composed of three arbitrators. In the absence of agreement on the third arbitrator, or upon failure on the part of one of the parties to appoint an arbitrator, the appointment will be made by the appointing authority agreed upon by the parties or, as in

	the UNCITRAL Rules, designated by the *Secretary-General* of the PCA. If the parties agree to arbitrate their dispute before a sole arbitrator, they may select that arbitrator by mutual agreement, or delegate this to the appointing authority, either expressly or as a consequence of their failure to agree. The parties may, however, provide for a *different method* of selecting arbitrators, including direct appointment by an appointing authority of their choice.
III. Provisional Measures	Under the various PCA Rules, the tribunal may, at the request of a party, order *interim measures of protection* that it deems necessary to preserve the respective rights of the parties or the subject matter of the dispute, and may do so in the form of an interim award.
IV. Place of Arbitration	It is customary to provide for an official place of arbitration, sometimes referred to as the "*seat*." According to the various PCA Rules, unless the parties have agreed otherwise, the place where the arbitration is to be held shall be *The Hague, The Netherlands*. There remains, however, great flexibility for both the parties and the arbitral tribunal in determining the exact venue for hearings, meetings and deliberations, both within and outside of the place of arbitration.
V. Written Submissions	The various sets of PCA Rules contemplate the *filing of a statement of claim* by the claimant, followed by a statement of defence by the respondent. The statement of claim must include the following information: 1. Names and addresses of the parties; 2. statement of facts supporting the claim; 3. The points at issue; and 4. Relief or remedy sought. In reply, the *statement of defence* must address particulars 2., 3. and 4. of the statement of claim, be accompanied by *supporting documents*, and make reference to additional documents or *evidence* the respondent intends to submit. It may also include a counter-claim arising out of the same treaty, agreement, contract or other legal instrument, or a claim for set-off, both of which must satisfy the procedural requirements applicable to an ordinary statement of claim.
VI. Hearings	The tribunal is authorized to decide whether *additional written submissions* are to be required, although, given the complexity of most PCA proceedings, there is usually a second round of written pleadings. Although the PCA Rules provide the basic time frame for the submission of written pleadings, this is usually decided by the tribunal in consultation with the parties, often at an organizational meeting which, although not provided for in the Rules, usually takes place in practice. The various PCA Rules entitle the parties to request a *hearing*, in the absence of which the tribunal will decide whether to hold hearings or to conduct the proceedings solely on the basis of written submissions, documents and other material. It is, however, extremely rare in PCA proceedings that either the parties or the tribunal elect to forgo a hearing. The Rules also provide for the presentation of evidence by *witnesses and experts*. If witnesses are to be heard, the party presenting them must communicate to the

VII. Representation	tribunal and the other party at least 30 days in advance their names and addresses, as well as the subject upon, and the languages in which, they will testify. The parties may be assisted by *persons of their choice*, the names and addresses of whom must be communicated in writing to the other party, to the International Bureau, and to the arbitral tribunal. In inter-State arbitration, each party is required to designate an agent.
F. Decision	
I. Award	The final decision of the tribunal is in the form of a *written award* decided by the *majority* of arbitrators. The award must include the *reasons* for the decision, unless the parties have agreed that no reasons are to be provided. The award is *final and binding* upon the parties and is to be executed without delay. If the parties reach a *settlement before* the end of the proceedings, they may request the tribunal to *record their agreement* in the form of an award on agreed terms.
II. Interpretation and Revision	After the award has been rendered, either party may request from the tribunal an *interpretation* of the award, *correction of errors* in computation, clerical or typographical errors, or an additional award on claims presented during the proceedings but omitted from the award.
III. Appeal	Awards are final and binding, and there is *no right of appeal*.
G. Enforcement	In agreeing to arbitration under the PCA Rules, the parties undertake to carry out the award without delay. Awards in cases involving private parties are generally enforceable in the same manner as any international commercial arbitration award, pursuant to the New York Convention. To the extent that the arbitration law of the place of arbitration requires that the award be filed or registered, the pertinent rules prescribe that the tribunal shall do this.

II. International Commercial Arbitration

A. Overview	*International commercial arbitration* is the most prominent of the procedures for resolving commercial disputes in international commerce. It is the process of resolving business disputes between or among transnational parties through the use of one or more arbitrators rather than through the courts. It requires the agreement of the parties, which is usually given via an arbitration clause in a contract or business agreement. In most cases the parties agree on the procedure to be followed in the arbitration by choosing one of the numerous arbitration institutions, like the *International Chamber of Commerce (ICC)*, the *International Court of Arbitration (ICA)*, the *Permanent Court of Arbitration (PCA)*, the *London Court of International Arbitration (LCIA)* or the *American Arbitration Association (AAA)*, in which the arbitration will take place. Any arbitration that takes place in the context of an institution will be conducted in accordance with the rules of that organization. Although it is a voluntary procedure that depends on the agreement of the parties, once such agreement has been reached neither party can withdraw from the agreement unilaterally. Arbitration performs much the same function as does litigation in the State courts, which means that it leads to a final and binding decision in the form of an award. An arbitral award can in general be more easily enforced in a foreign country than can the decision of a State court. The 135 States that have become party to the *New York Convention* have committed themselves to enforcing foreign arbitral awards. There is no similar world-wide convention by which States have promised to enforce the judgments of foreign State courts. Many of these arbitrations are carried out under the special arbitration regime in ICSID as provided by the Washington Convention. However, many of them are carried out using the institutions of ordinary international commercial arbitration.
B. Arbitration Agreement/Clause	By including an *arbitration clause* in a contract, the parties choose to settle their disputes – in the event any arise – out of court. Those disputes will then be submitted to arbitrators.
I. Concept of Arbitration Agreement	The *arbitration agreement* provides the basis for arbitration. It is defined as an agreement to submit present or future disputes to arbitration. It exists as (1) a clause in a contract, by which the parties to a contract undertake to submit to arbitration the *disputes that may arise* in relation to that contract (arbitration clause) or (2) an agreement by which the parties to a *dispute that has already arisen* submit the dispute to arbitration (submission agreement).
II. Requirements for the Arbitration Agreement	In order to be valid and enforceable, an arbitration agreement must: (1) *Be the result of a meeting of mind;* (2) C*learly state submission to arbitration;* (3) *Be made between parties having legal capacity to submit to arbitration*; (4) *Be made by a representative with authority to bind the principal to;* (5) *Be in writing;* (6) *Refer to a defined legal relationship and* (7) *be on arbitrable subject matters.*

C. Arbitral Tribunal	One of the most important aspects of international commercial arbitration is that the parties are *free to choose the arbitrators* or to provide the means by which the arbitrators will be chosen.
I. Appointment of the Arbitrators	In the vast majority of cases the parties choose either a *sole arbitrator* or *three arbitrators*. In cases where a significant sum is at stake or, the parties come from States with different legal and commercial traditions, a panel of three arbitrators would be the normal pattern. The AAA Rules and LCIA Rules provide that there will be one arbitrator unless the parties have agreed otherwise or the institution believes that there should be three. The ICC Rules also gives certain priority to the appointment of a single arbitrator. The UNCITRAL Rules provides otherwise: If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed. The principle of equality of the parties leads to the rule that both parties must *agree on the manner* in which the tribunal is constituted. Any method of selection will be accepted. The parties may name a particular person or persons by name or they may indicate the office in which the individual serves. In case the parties are unlikely to reach an agreement on the sole arbitrator or on the arbitrators once a dispute has arisen, they may also *designate an arbitral institution* to administer the arbitration, in which case the procedure for appointment of the members of the arbitral tribunal will be set out in the rules of that institution.
II. Qualifications of the Arbitrators	In principle *any natural person* may be appointed as an arbitrator. However, the *nationality* of the arbitrators is a significant criterion listed in most arbitration rules as an indication of the *impartiality*, *independence* or *neutrality* of the arbitrator. Thus, both the ICC Rules and the LCIA Rules include a clear rule stating that the sole arbitrator or third arbitrator in a collegial tribunal, shall be chosen from a country other than those of which the parties are nationals, unless the parties agree otherwise. *Experience* and expertise with the arbitral process are probably the most important qualifications to be expected from an arbitrator. Yet, legal expertise is certainly not the only one to consider. It is usual and convenient to appoint a *lawyer* as a sole arbitrator, due to the problems of jurisdiction and procedure, conflict of laws and applicable substantive law that are likely to arise even in the simplest of arbitrations. In the case of a three-member arbitral tribunal, the optimum qualification necessary for the understanding and adequate resolution of the dispute may call for a different kind of expertise.
D. Arbitral Proceedings II. Ad hoc and Institutional Arbitrations	Due to the Party autonomy, which is the fundamental principle in determining the procedure to be followed in an international commercial arbitration, the parties are generally *free to select the procedure* they desire by which their disputes may be resolved. Thus, they may select an "*ad hoc*" or an "*institutional*" arbitration. "Ad hoc" arbitrations are those arbitrations that are *conducted by the parties alone* without the assistance of an arbitral institution. In such arbitrations the parties must agree on the procedures necessary for the commencement and general conduct of the arbitration.

	An "institutional" arbitration is one that is *administered by a specialist arbitral institution* under rules of arbitration published by that institution. Examples of such institutions are the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the American Arbitration Association (AAA), the International Centre for the Settlement of Investment Disputes (ICSID) and the World Intellectual Property Organization (WIPO).
II. Commencing the arbitration	Depending on the specific requirements of the arbitration agreement and the applicable laws, the arbitral proceedings may be *commenced by*: (1) issuing a notice to the opposing party to appoint or concur in the appointment of an arbitrator; or (2) issuing a notice to the appointing party to submit the dispute to the arbitral tribunal, if one is designated in the arbitration agreement; or (3) commencing the procedure for appointment of the arbitral tribunal as provided in the arbitration agreement by, for example, writing to the appointing authority to make the appointment of the arbitral tribunal; or (4) lodging the claim with the arbitral tribunal if it is designated in the arbitration agreement.
IV. Preliminary Meeting	It is always useful in an international commercial arbitration to convene a *preliminary meeting* once the arbitral tribunal has been constituted, in which a *framework for the proceedings* should be established. None of the major institutional arbitration rules impose an obligation to hold a preliminary meeting nor do they prohibit the holding of one. In practice, it is always useful for the tribunal to hold a preliminary meeting.
V. Written Submissions	Usually the first step that would be taken once the arbitral tribunal has been appointed and the procedure established would be an exchange between the parties of some form of *written submissions*. The UNCITRAL Model Law on International Commercial Arbitration provides that each party shall state the facts supporting his claim or defence, as the case may be, and may submit documents or references to the evidence that will be relied upon. The primary purpose of these documents is to *identify the scope* of the arbitral tribunal's mandate as to the issues it will have to decide and to identify the *facts and arguments* in support of the parties' positions and to effectively restrict them to those positions, so that there will be no unfair surprises later. Written submissions are normally *exchanged sequentially*, so that the claimant sets out its position first and the respondent then answers. At the time the written submissions are served by a party on the other, a copy is usually served on the arbitral the tribunal at the same time. The next stage is for the arbitral tribunal to draw up its "*Terms of Reference*" for signature by the arbitrators and the parties.
VI. The Hearing	Hearings may be conducted on the basis of "documents only" or more commonly, an *oral hearing* will be held at which the representatives of the parties have an opportunity to make oral submissions to the arbitral tribunal, and the arbitral tribunal will ask for clarification of matters contained in the written submissions and hear the evidence of witnesses. The general practice is to permit each party to present a brief opening statement. The major institutional rules provide for a hearing or

	hearings to take place at the *request of either party*, or on the motion of the arbitral tribunal itself. An arbitral tribunal may also proceed to make its award *without a hearing* if the parties have expressly so agreed. If the written stages have been very comprehensive, the hearing may be brief and purely formal. On the other hand, if the written pleadings have been simple, and no documentary or witness evidence has been submitted in writing, the arbitral tribunal may probably consider it necessary to hear oral evidence before being satisfied that the party concerned has discharged the burden of proof in relation to the relevant issues. If one of the parties refuses or *fails to appear* despite proper notice of the hearing being given to him, the arbitral tribunal should proceed with the hearing and issue its award.
E. Applicable Law	Though the arbitrators are bound to apply to the merits of the dispute the *rules of law chosen by the parties*, as a general rule of international arbitration law, they must always look carefully at clauses that provide for amiable composition. If such a power has been conferred on them, it does not exclude the application of legal rules. It merely requires the verification of their compatibility with the requirements of equity. Arbitrators are not required to apply the conflicts of law rules of the country of the seat of arbitration. The lex arbitri provides them with principles to help them decide the law applicable to the merits of the dispute. These rules, generally supplementary, allow arbitrators in institutional arbitration proceedings to apply the rules contained in the institutional rules. Wherever the parties have *not chosen the law* applicable to the merits of the dispute, the arbitrators may have recourse to the conflict rules of one or more States, or to general principles of private international law. They can also resort to the direct method, which en-ables them to avoid using a conflicts approach and to select the appropriate rules for the purpose of resolving the dispute. Appropriate rules can come from the law of a State or an international convention.
F. Making the Award	Many arbitration rules, but few arbitration laws, specify the *time* within which the tribunal must issue its award. The period of time may be measured from the time the arbitral tribunal was formed, the Terms of Reference were adopted, the case was submitted to the arbitral tribunal or the closure of the proceedings. Most arbitration rules provide that, where the tribunal is composed of more than one arbitrator, the decision must be taken by a *majority* of them. Some rules specify that where there is no majority, the chairman's vote decides the award. The award must be *notified* to the parties. Arbitration laws or rules for ad hoc arbitration usually place the obligation on the tribunal. Institutional arbitration rules usually will provide that the institution will communicate the award. The UNCITRAL Model Law and many modern laws that follow its pattern have only a short list of *requirements* in regard to the form and content of the award. The award must *be in writing* and *signed*, state its *date* and the *place* of arbitration and contain reasons for the award. Some other arbitration laws have considerably more

	extensive requirements that include identification of the arbitrators, of the parties and of their representatives and a full description of the various procedural steps. Finally, the award will normally include the *amount of the costs* and an allocation of those costs between the parties.
G. Recognition and Enforcement	The *recognition and enforcement proceedings* of foreign arbitral awards under the New York Convention of 1958 (hereinafter: NYC) constitute the final stage of any arbitration whenever the arbitral award is not executed voluntarily, whereas leading arbitration institutions observe that most foreign arbitral awards are voluntarily executed by the parties. With 132 countries presently party to the NYC, it has become one of the most successful multilateral conventions in the field of international commercial law and, of commercial dispute resolution in particular. Nevertheless, still depending on national rules, the enforcement procedure of foreign arbitral awards may be considered the weakest link in the chain of international dispute resolution
I. Valid Arbitration Agreement	The existence of a *valid arbitration agreement* is a prerequisite for any arbitration. The NYC applies to the recognition and enforcement of *foreign* arbitral awards; in the sense of Article I, an award is foreign that has been made in the territory of another State or, though made in the State where recognition or enforcement is sought, is not considered domestic by the law of that State. The "*in writing*" requirement under the NYC means that the contract must either be signed by the parties to a dispute or contained in an exchange of letters or telegrams.
II. Enforcement Procedure	The NYC sets out the general obligation of each Contracting State to *recognize and enforce* an arbitral award as *binding* and enforce them in accordance with the rules of procedure of the territory where the award is relied upon. In this connection national rules may relate, for example, to discovery of evidence, estoppel or waiver, set-off or counterclaim against the award, the entry of judgment clause, the period of limitation for the enforcement of an award under the Convention and interest incurred on the award. To request recognition or enforcement of a foreign arbitral award, the party must fulfill *two formal requirements*: he must supply the "duly authenticated original" or a "duly certified copy" of the arbitral award, and the original arbitration agreement or a "duly certified copy" thereof. The party requesting recognition and enforcement may *base its request* on national law or an international treaty other than the NYC. The NYC provides that, in the relationship between the NYC and national law, the rules more favourable to enforcement have priority.
H. Court Measures	Due to the fact that it takes time from the time a request for arbitration is filed until a final award can be enforced, it may be necessary in the meantime to take *measures of protection* to secure that the final award will be enforceable. Such interim measures of protection can be directly sought from courts. Courts will grant those measures according to their *domestic law*. In some jurisdictions the application for such a measure may be deemed an implied waiver of the agreement to arbitrate,

	but modern international commercial arbitration law tends to go in the opposite direction. When an interim measure issued by an arbitral tribunal requires enforcement, it will be necessary to apply for it to a court. *Enforcement of a measure* in the form of an arbitral award may be available under NYC. Otherwise, enforcement has to be sought according to the law of the enforcing forum.

III. International Centre for Settlement of Investment Disputes (ICSID)	
A. Overview	The *International Centre for Settlement of Investment Disputes* (ICSID or the Centre) is established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the *Convention*). The Convention was formulated by the Executive Directors of the International Bank for Reconstruction and Development (the *World Bank*). ICSID Convention is specialized in the settlement of *investment disputes*. In accordance with the provisions of the Convention, ICSID provides facilities for *conciliation* and *arbitration*. The ICSID Convention offers considerable advantages: it offers a system for dispute settlement that contains not only standard clauses and rules of procedure but also *institutional support* for the conduct of proceedings.
B. Selecting the Appropriate Forum	The ICSID Convention provides for two methods of dispute settlement, conciliation and arbitration:
I. Conciliation	Conciliation is a more flexible and informal method that is designed to assist the parties in reaching an agreed settlement. Conciliation ends in a report that suggests a solution but is *not binding* on the parties. Therefore, this method ultimately depends on the continuing willingness of both parties to cooperate.
II. Arbitration	Arbitration is a more formal and adversarial process. Nevertheless, a considerable number of arbitration cases end in an agreed settlement. If no agreed settlement is reached, the outcome is an *award that is binding* on both parties and may be enforced.
C. Consent to Jurisdiction	
I. Requirement of consent	Participation in the ICSID Convention does not, by itself, constitute a submission to the Centre's jurisdiction. For jurisdiction to exist, the Convention requires separate consent in writing *by both parties*.
II. Forms of consent	Consent to the Centre's jurisdiction may be given in one of several ways. Consent may be contained in a *direct agreement between the investor and the host State* such as a concession contract. Alternatively, the basis for consent can be a standing offer by the host State which may be accepted by the investor in appropriate form. Such a standing offer may be contained in the host State's legislation. A standing offer may also be contained in a treaty to which the host State and the investor's State of nationality are parties. Most Bilateral Investment Treaties (BITs) dealing with investments contain such offers. The more recent cases that have come before ICSID show a trend from consent through *direct agreement between the parties* to consent through a general offer by the host State which is later accepted by the investor often simply through instituting proceedings.

III. Binding nature of consent	Consent by the parties to arbitration under the Convention is *binding*. Once given by both parties, it may not be withdrawn unilaterally. A party may not determine unilaterally whether it has given its consent to ICSID's jurisdiction: the decision on whether jurisdiction exists is with the tribunal.
D. The Parties to Proceedings	
III. Mixed proceedings	Proceedings under the Convention are always *mixed*. One party (the host State) must be a Contracting State to the Convention. The other party (the investor) must be a national of another Contracting State. Either party may initiate the proceedings.
IV. Constituent subdivisions and agencies	States may also authorize constituent subdivisions or agencies to become parties in ICSID proceedings on their behalf.
V. Natural or legal persons	The investor can be an individual (*natural person*) or a company or similar entity (*juridical person*). Both types of persons must meet the nationality requirements under the Convention.
VI. Participation in Convention	Both the host State and the investor's State of nationality must be Contracting Parties, that is, they must have ratified the ICSID Convention. The decisive date for participation in the Convention is the time of the institution of proceedings. If either State is not a party to the Convention, ICSID is not available but it may be possible to proceed under the Additional Facility.
E. Subject-matter Jurisdiction	Subject-matter jurisdiction under the ICSID Convention is defined in terms of a legal dispute arising directly out of an investment.
VIII. Legal dispute	There must be a concrete dispute between the parties on a point of law or fact. A *claim* must be formulated in terms of a legal right or obligation. A claim presented in terms of a commercial or political dispute is not admissible.
IX. Arising directly	The legal dispute must be reasonably closely connected to the underlying *investment transaction*. Issues arising from generally applicable rules of the host State's law may not meet this requirement. The investment need not be a foreign direct investment.
X. Investment	The ICSID Convention does *not contain a definition* of the term "investment". The absence of a definition gives the parties a certain discretion to characterize their transaction as an investment. Nevertheless, the requirement that there is an investment is an objective one and the parties are not free to bring just any dispute to ICSID.
F. Applicable Law	The substantive rules of law for solving a dispute are not provided by the ICSID Convention. The Convention grants autonomy to the *parties in choosing the law* that ought to be applied to solve their dispute. In other words, it directs tribunals how to find the rules to be applied to particular disputes. Tribunals are to follow any agreed choice of law by the parties. The parties can also allow the tribunal to decide *ex aequo et bono*. In the absence of an agreement, the ICSID Convention designates the host State's law in conjunction with international law as the applicable law. The tribunal may

	not return a finding of *non liquet* if it is unable to discover appropriate rules of law.
G. Procedural Issues	Although arbitration is a consensual process, whereby the parties retain extensive freedom or autonomy to determine the rules of procedure that should govern the arbitration, this autonomy is limited, by the *mandatory provisions of the Convention* which provide a framework that governs the arbitral procedure. In addition, the ICSID has adopted Administrative and Financial Regulations and Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules) which contain further mandatory provisions that limit the autonomy of the parties.
III. Initiation of Arbitration Proceedings	ICSID arbitrations are commenced by means of a *request for arbitration* sent to the Secretary-General. The request shall contain information concerning the *issues in dispute*, the *identity* of the parties and their *consent* to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings. A claimant must observe the procedural requirements contained in the parties' arbitration agreement or document containing consent.
IV. Arbitral Tribunal	Parties are *free to designate* the arbitrators of their choice when constituting the arbitral tribunal. When a tribunal is to be composed of *three members*, as is most commonly the case, *each party* is entitled to appoint *an arbitrator*. In a tribunal composed of three arbitrators, the parties may *not appoint their nationals* or co-nationals as arbitrators, unless each arbitrator has been chosen by agreement. Arbitrators must have a *high moral character*, recognised competence in the field of law, commerce, industry and finance and be able to exercise independent judgment.
V. Conducting the Arbitration	Within *60 days* of its constitution (unless otherwise agreed by the parties), the tribunal shall conduct its *first session*, whereas the parties may choose the place of proceedings. They include a *written* and an *oral phase*, unless the parties agree otherwise. In the written phase, the parties present their case in *memorials* containing statements of fact and law, accompanied by supporting documentation. During an oral hearing before the tribunal, the tribunal may *pose questions* to the parties, as well as their witnesses and experts, who may also be examined and cross-examined by the parties.
VI. Provisional Measures	Subject to the parties' agreement, the tribunal may recommend provisional measures for the *preservation* of the rights of either party. Tribunals may *only recommend* measures and cannot issue binding orders. A request by a party must be of an urgent nature that cannot await the final award. The parties cannot seek conservatory orders from national courts, unless they have expressly reserved this right in their agreement recording consent to ICSID arbitration.
VII. Award	Tribunals must decide questions by *majority*. An award must deal with *all questions* submitted by the parties that are decisive to the tribunal's reasoning. Failure to do so may lead to annulment of the award. An award must contain *sufficient reasoning* to explain how the tribunal reached its conclusion. Failure to provide such reasoning may lead to annulment of the award. Unless the parties agree otherwise, the tribunal has

VIII.Costs of the Arbitration	broad discretion to apportion the costs of the arbitration. The costs of the arbitration include three distinct elements: (i) the *charges* and expenses incurred by ICSID; (ii) the *fees* and expenses of the tribunal; and (iii) the *parties' legal costs*. The first two categories are financed by means of *advance payments* made by the parties.
H. Binding Force and Post-Award Remedies	An ICSID-award is *final and binding* and not subject to any remedy except those provided for in the Convention. In particular, an award is not subject to any review by domestic courts. However, the Convention itself provides *four types of remedies* after an award has been rendered: 1. supplementation and rectification, 2. interpretation, 3. revision and 4. annulment. These remedies are available only upon the request of one or both parties and, with the exception of interpretation, subject to *time limits*.
I. Entforcement	Due to the fact that the award is binding on the parties to the proceedings, the winning party has a *legal right to demand compliance*. Non-compliance by a party with an award would be a breach of a legal obligation. All States parties to the Convention are under an *obligation to recognize and enforce ICSID awards*. The procedure for enforcement is governed by the laws of the country where enforcement is sought. The award must be treated for purposes of enforcement like a final decision of a local court. If a State party to ICSID proceedings fails to comply with the resulting award, the State of the investor's nationality may exercise *diplomatic protection*.

IV. WIPO Arbitration and Mediation Center	
A. Overview	The *World Intellectual Property Organization* (WIPO) provides dispute resolution services through its Arbitration and Mediation Center (the Center), which is an administrative unit of WIPO'S International Bureau. The Center administers *alternatives to court litigation* for the resolution of commercial disputes between private parties with a focus on *intellectual property*. The dispute resolution procedures offered by the Center are mediation, arbitration, expedited arbitration, mediation followed by arbitration and variations on these procedures. While the WIPO procedures focus on intellectual property disputes, nothing prevents the parties to a dispute from using them in other types of commercial disputes.
B. The Organisation	WIPO is an independent, intergovernmental organization established by a Convention signed in Stockholm in 1967 that entered into force in 1970. Administratively, it forms part of the United Nations system of organizations and has its headquarters in Geneva, Switzerland. WIPO comprises 179 Member States. WIPO's principal objective is to promote the *protection of intellectual property* throughout the world through cooperation among States, and, where appropriate, in collaboration with other international organizations. WIPO provides its services to its Member States and to individuals and enterprises who are constituents of those States. Its operations are largely self-financed by means of the fees it charges for services it renders to the private sector, the remainder being funded by contributions from Member States. WIPO provides *dispute resolution services* through its Arbitration and Mediation Center,. The Center has promulgated WIPO Mediation Rules, WIPO Arbitration Rules and WIPO Expedited Arbitration Rules (together the "Rules") for use in various dispute resolution procedures. The Rules have been designed for use in any legal system, and in procedures anywhere in the world, so that any person or entity may refer a dispute for resolution under any of the procedures administered by the Center. The dispute resolution procedures offered by WIPO are nominally categorized as: (a) *mediation*; (b) *arbitration*; (c) *expedited arbitration*; and (d) *mediation followed by arbitration*. Unlike court litigation, each of these procedures must be agreed to by the parties to the dispute. The *subject matter* of the arbitration and mediation proceedings administered by the Center in the past has included both *contractual disputes* (e.g. patent licensing agreements, trademark co-existence agreements, software licences, distribution agreements for pharmaceutical products and research and development agreements) and *non-contractual disputes* (e.g. patent infringement).

	The dispute resolution procedures and resources of the Center are open to *all persons* and entities regardless of national affiliation. A submitting party (or parties) need not be connected in any way with a Member State or a State that is a party to any treaty or convention administered by WIPO. *Individuals*, *enterprises*, and other entities having a recognized legal personality may submit disputes to the procedures administered by the Center. When a *State* enters into a contract, it may be a party to a dispute subject to a procedure administered by the Center if the State has validly expressed its consent in writing to refer any dispute arising from that contract to the procedure.
C. Mediation	Mediation is a *consensual and non-binding* process in which a neutral person facilitates discussion and negotiation between the parties so that the parties themselves can solve their problem by *finding a mutually beneficial solution*. The parties design both the process and the terms and conditions of their solution to their problem. In contrast to adversarial procedures, such as litigation or arbitration, a mediator cannot impose a settlement on the parties. Also, any party can abandon the mediation at virtually any time before signing a settlement agreement.
I. Mediation Procedure	Conceptually, the Mediation includes the following steps: 1. Commencing the mediation; 3. Appointing the mediator; 4. Initial conference with the mediator and party representatives; 5. Mediation sessions in which ground rules are reviewed, information is gathered, issues are identified, interests and needs of the parties are identified and explored, options are listed, options are evaluated, impasses are dealt with, and an agreement to resolve some or all of the issues or to continue to disagree is entered into; and 6. Subsequent communications between the mediator and one or more parties.
1. Initial Conference	After the mediation has commenced and the mediator has been engaged, the first event is likely to be a *conference* among the mediator and party representatives, usually counsel. This is an organizational conference, which is often conducted by telephone. Substantive issues to be mediated are outlined, schedules are set, participants are agreed upon, submissions to be made to the mediator are agreed upon, confidentiality is discussed, the need to understand and explore real interests and needs is discussed, and other information the parties ought to consider and the mediator ought to know is discussed. At the conclusion of this conference, the mediator will typically send to the parties a letter summarizing their discussion and their agreements.
2. Mediation Session	At the first mediation session, the mediator typically introduces all attendees and reviews the ground *rules*. The mediator allows everyone an opportunity to comment, to assure that all participants have bought into the process. The ground rules will be those discussed previously with counsel and outlined in the mediator's letter. Whatever the outcome of the mediation, the parties

	should *not leave* the mediation *without some writing*, endorsed by the parties, summarizing the situation. If the parties have settled their differences, at minimum a memorandum of understanding should be prepared and executed by all parties before they depart. Often, it is left to the lawyers to prepare later a more complete agreement. However, the memorandum of understanding should expressly state it is binding on all the parties. Also, often as the lawyers prepare more complete documentation, new issues arise. The mediation is not over until all issues are resolved.
II. Confidentiality	The entire mediation process is *confidential*. Thus meetings between the mediator and the parties should not be recorded and all documents should be returned or destroyed after the mediation procedure. Furthermore all statements made during a mediation enjoy settlement privileged status.
III. Termination of the Mediation	The WIPO Mediation Rules set out three circumstances under which a mediation pursuant to those rules may be terminated: 1. The signing of a settlement agreement by the parties "*covering any or all of the issues in dispute.*" 2. The "*decision of the mediator if, in the mediator's judgment, further efforts at mediation are not likely to lead to a resolution of the dispute.*" 3. The "*written declaration of a party, at any time after attending the first meeting of the parties with the mediator and before the signing of any settlement agreement.*"
IV. Mediation Fees and Costs	The parties pay to the Center a *non-refundable registration fee* in the amount of 0.10 per cent of the „value of the mediation", which is determined by the total value of the amounts claimed, up to a maximum fee of US$ 10,000. The *fees of the mediator* are fixed by the Center, after consultation with the mediator and the parties. The Schedule of Fees and Costs provides that a mediator's hourly rate may range from US$ 300 to US$ 600, and the per diem rate may range from US$ 1,500 to US$ 3,500. In the course of negotiating the mediator's rate, the WIPO Rules provide that the amount in dispute, the complexity of the subject-matter of the dispute, and any other relevant circumstances should be taken into account. To cover the costs of the mediation, the parties must deposit moneys with the Center.
V. Liability	Except in respect of deliberate wrongdoing, neither the mediator, WIPO nor the Center are *liable* in connection with a mediation conducted under the WIPO Rules. This kind of waiver on the part of the parties is commonplace in the rules of most dispute resolution providers. Neither mediators nor dispute resolution institutions are likely to agree to provide services if parties are permitted to seek relief from the mediator or the institution when parties perceive a mediation, or a settlement agreement, has gone sour due to a mistake by the mediator or the institution.
D. Arbitration	Arbitration is a consensual procedure in which a neutral person or persons impose a *binding decision* on the parties. Whereas the parties may design the procedure, the arbitrator designs the terms and conditions of the decision. Also, after a party has agreed to arbitrate, the party *cannot unilaterally withdraw* from the arbitration

	process without risking an adverse decision on substantive issues.
I. Place of Arbitration	WIPO Arbitration Rules provide that, the parties themselves *should agree on the place* of arbitration. Otherwise, the Center shall select the place of the arbitration, taking into account observations of the parties and "the circumstances of the arbitration". In intellectual property arbitrations, it is important that the law and public policy of the jurisdiction where the arbitration occurs permit arbitration of the intellectual property issues in dispute.
II. Arbitral Law	Under WIPO Arbitration Rules the law applicable to the arbitration, i.e. the *arbitral law*, is usually the *law of the place of arbitration*. The arbitral law is taken into consideration to determine issues such as whether a dispute is arbitrable, interim measures of protection, the conduct of the arbitration (to the extent not provided by the WIPO Arbitration Rules), the form and validity of the arbitral award and any challenges as to its validity brought before the courts of the place of the arbitration. The law chosen by the parties to govern the substance of the dispute will normally also cover the validity of the underlying commercial contract and, as part of that contract, the arbitration agreement. The WIPO Rules further provide that the tribunal shall decide the substance of the dispute in accordance with the law or rules of *law chosen by the parties*. This law need not be the same as the arbitral law. In the absence of clear party agreement, the law that governs the substance of the dispute will depend on the nature of the dispute. If *intellectual property rights* granted or registered in different jurisdictions are the subject of the arbitration, if the parties have not agreed otherwise, the law of the granting or registering jurisdiction will control the *construction and enforcement* of each right.
III. Composition and Establishment of the Tribunal	The *arbitral tribunal* shall consist of the number of arbitrators *agreed by the parties*. In the absence of agreement by the parties, the Center shall appoint a sole arbitrator, except where the Center in its discretion determines that three arbitrators are appropriate. If the parties have agreed upon an appointment procedure, that procedure shall be followed, otherwise, a list procedure will be followed. Each arbitrator shall be impartial and independent and where the parties have not agreed on the nationality of a sole or presiding arbitrator, such arbitrator shall be a national of a country other than the countries of the parties.
IV. Conducting the Arbitration	The tribunal may *conduct the arbitration* in such manner as it considers appropriate. But the tribunal shall ensure that the parties are treated with *equality* and given a fair opportunity to present their case and that the procedure takes place with due expedition. Unless the parties agree otherwise, the *language* of the arbitration proceedings shall be the language of the arbitration agreement.

1. Written Submissions	The Claimant shall file a Request for Arbitration followed by a *Statement of Claim* within 30 days after notice of the constitution of the tribunal. This document shall include a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought, accompanied by supporting documentary evidence. Within 30 days after receipt of the Statement of Claim, or within 30 days after receipt of notification from the Center of the establishment of the Tribunal, whichever occurs later, the Respondent shall communicate its *Statement of Defense* to the Claimant and to the Tribunal, which mirrors the Statement of Claim in format and content. Further written statements might follow.
2. Preparatory Conference	Following the submission of the Statement of Defense, it is customary in internatinal arbitration for the tribunal to convene a *preparatory conference* in order to effect proper management of the arbitration.
3. Hearings	WIPO Arbitration Rules provide for a *hearing* for the presentation of evidence by fact witnesses and experts and for oral argument, if either side so requests or if the tribunal determines the need to hold a hearing. If no hearing is held, the proceedings are conducted on the basis of documents and other materials. The tribunal shall declare the *proceedings closed* "when it is satisfied that the parties have had adequate opportunity to present submissions and evidence." The tribunal is not likely to declare the proceedings closed until the tribunal has received the last posthearing submission from the parties, including supplemental submissions.
4. The Award	The tribunal shall *decide* the substance of the dispute in accordance with the law or rules chosen by the parties. If the parties fail to designate that law, the tribunal shall apply the law or rules that the tribunal considers appropriate. The tribunal is to have due regard for the terms of any relevant contract and "applicable trade usages". The tribunal may decide as *amiable compositeur* or *ex aequo et bono* (that is, according to principles of equity and the tribunal's own conscience) only if the parties have expressly authorized it to do so. Furthermore the law applicable to the arbitration shall be the arbitration law of the place of the arbitration, unless the parties have expressly agreed on another arbitral law. Unless the parties have agreed otherwise, where there is more than one arbitrator, any award, order or other decision of the tribunal shall be by a majority. In the absence of a majority, the presiding arbitrator shall make the award, order or other decision. Finaly the WIPO Rules provide that an award shall state reasons on which it is based, unless the parties have agreed otherwise and the applicable arbitral law does not require a statement of reasons. Most arbitral awards are implemented voluntarily. Article 64 of the WIPO Arbitration Rules states that "by agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay". Where enforcement proves necessary, parties need to have recourse to national courts in those countries where they wish the award to be enforced. If a national court recognizes the award, it will grant a title (*exequatur*)

5. Enforcement	which is enforceable like a final judgment rendered by such court. Recognition and enforcement of domestic awards, i.e. awards rendered under the arbitral law of the country in which enforcement is sought, is subject to the national law of the country concerned. For foreign arbitral awards, i.e. awards sought to be enforced in a state other than the state of the place of arbitration, parties can rely on the uniform international legal framework established by the New York Convention, which has been ratified by more than 130 states worldwide.
E. Expedited Arbitration	As noted, WIPO provides for expediting the arbitration process by way of modifications to the WIPO Arbitration Rules. *Expedited arbitration* is a consensual procedure in which the rendering of a decision by the arbitrator is accelerated. The WIPO expedited arbitration model comprises, inter alia, the following modifications: 1. The Statement of Claim must accompany the Request for Arbitration; 2. The Statement of Defense must accompany the Answer to the Request; 3. There is only one arbitrator; 4. Except in exceptional circumstances, hearings may not exceed three days; 5. Other time periods are shortened; 6. Lower registration and administration fees apply; and 7. Fixed fees for the sole arbitrator apply to disputes where the value in dispute is up to US$ 10 million.
F. Mediation followed by arbitration	In *mediation followed by arbitration* (sometimes known as “med-arb”), mediation is undertaken first. If the dispute is not entirely settled by way of mediation, arbitration ensues to resolve remaining issues.

V. The WTO Dispute Settlement System

A. Overview	The Members of the World Trade Organization (WTO) agreed in 1994 on the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) annexed to the WTO Agreement. Herein the WTO members agreed that, if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. That means abiding by the agreed procedures, and respecting judgements. Pursuant to the rules detailed in the DSU, member states can engage in consultations to resolve trade disputes pertaining to a "covered agreement" or, if unsuccessful, have a WTO panel hear the case. The priority, however, is to settle disputes, through consultations if possible. Dispute settlement is regarded by the WTO as the central pillar of the multilateral trading system, and as a "unique contribution to the stability of the global economy". By July 2005, only about 130 of the nearly 332 cases had reached the full panel process.
B. Object and Purpose of the WTO Dispute Settlement System	The declared object and purpose of the WTO dispute settlement system is to achieve “a satisfactory settlement” of disputes in accordance with the rights and obligations established by the covered agreements. Accordingly, the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. Furthermore, the object and purpose of the dispute settlement system is for Members to seek redress for a violation of obligations or other nullification or impairment of benefits through the *multilateral* procedures of the DSU, rather than through *unilateral* action. The DSU expresses a clear preference for solutions mutually acceptable to the parties reached through negotiations, rather than solutions resulting from adjudication. Thus each dispute settlement proceeding must start with consultations between the parties to the dispute with a view to reaching a mutually agreed solution.
C. Jurisdiction I. Scope of Jurisdiction	Due to the fact that the DSU establishes “an integrated dispute settlement system” which applies to all of the covered agreements, the WTO dispute settlement system has *jurisdiction over any dispute* between WTO Members arising under what are called the covered agreements. The covered agreements are the WTO agreements listed in Appendix 1 to the DSU, including the *WTO Agreement*, the GATT 1994 and all other Multilateral Agreements on Trade in Goods, the GATS, the *TRIPS Agreement* and the DSU. Some of the covered agreements provide for a few *special and additional rules* and procedures “designed

	to deal with the particularities of dispute settlement relating to obligations arising under a specific covered agreement". These special or additional rules and procedures prevail over the DSU rules and procedures to the extent that there is a "difference", i.e., a conflict, between the DSU rules and procedures and the special and additional rules and procedures.
II. Compulsory Jurisdiction	The jurisdiction of the WTO dispute settlement system is *compulsory in nature*. From there a complaining Member is obliged to bring any dispute arising under the covered agreements to the WTO dispute settlement system. As a matter of law a responding Member, on the other hand, has no choice but to accept the jurisdiction of the WTO dispute settlement system.
III. Consent to Jurisdiction	Unlike in other international dispute settlement systems, there is *no need* for the parties to a dispute arising under the covered agreements *to accept in a separate declaration* or separate agreement the jurisdiction of the WTO dispute settlement system to adjudicate that dispute. *Accession to the WTO constitutes consent* to and acceptance of the compulsory jurisdiction of the WTO dispute settlement system.
D. Access to WTO Dispute Settlement System	Access to the WTO dispute settlement system is limited to Members of the WTO. The WTO dispute settlement system is a *government-to-government* dispute settlement system for disputes concerning rights and obligations of WTO Members.
I. Causes of Action	Each covered agreement contains one or more consultation and *dispute settlement provisions*. These provisions set out when a Member can have recourse to the WTO dispute settlement system. Hereafter any Member may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other Member or Members which it considers to be concerned, if it should consider that any benefit accruing to it directly or indirectly under this Agreement is being *nullified or impaired* or that the attainment of any objective of the Agreement is being *impeded* as the result of (a) the failure of another Member to carry out its obligations under this Agreement, or (b) the application by another Member of any measure, whether or not it conflicts with the provisions of this Agreement, or (c) the existence of any other situation.
II. Types of Complaints	Unlike other international dispute settlement systems, the WTO system thus provides for three types of complaints: *"violation" complaints*, *"non-violation" complaints* and *"situation" complaints*, whereas violation complaints are by far the most common type of complaints. In the case of a "non-violation" complaint or a "situation" complaint, the complainant must demonstrate that there is nullification or impairment of a benefit or the achievement of an objective is impeded.
E. Dispute Settlement Methods	The WTO dispute settlement system provides for more than one dispute settlement method. The DSU allows for the settlement of disputes through *consultations*; through good offices, *conciliation* and *mediation*; through adjudication by *ad hoc panels* and the *Appellate Body* or through *arbitration*.
I. Consultations	The DSU expresses a clear *preference* for solutions mutually acceptable to the parties to the dispute, rather

	than solutions resulting from adjudication. Therefore, resort to adjudication by a panel must be preceded by consultations between the complaining and responding parties to the dispute with a view to reaching a mutually agreed solution.
II. Adjudication	If consultations fail to resolve the dispute, the complaining party may resort to adjudication by a panel and, if either party to the dispute appeals the findings of the panel, the Appellate Body.
III. Arbitration	Aside from consultations and adjudication by panels and the Appellate Body, which are by far the most frequently used Dispute Settlement Methods, the WTO dispute settlement system also provides for expeditious *arbitration* as an alternative means of dispute settlement. The parties to a dispute arising under a covered agreement may decide to resort to arbitration. They must clearly define the issues referred to arbitration and agree on the particular procedure to be followed. The parties must also agree to abide by the arbitration award. Furthermore the arbitration award must be consistent with the covered agreements.
F. Institutions of WTO Dispute Settlement	Among the institutions involved in WTO dispute settlement, there is a distinction between the political institutions of the WTO and, in particular, the Dispute Settlement Body, and independent, judicial-type institutions such as *ad-hoc* dispute settlement panels and the standing Appellate Body. While the WTO has entrusted the adjudication of disputes to panels at the first instance level and the Appellate Body at the appellate level, the Dispute Settlement Body continues to play an active role in the WTO dispute settlement system.
I. Dispute Settlement Body (DSB)	The Dispute Settlement Body, or DSB, is an alter ego of the *General Council of the WTO*. The DSB has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements.
II. Panels	At the request of a complaining party, the DSB will establish a *panel* to hear and decide a dispute. As a rule, panels consist of *three persons*, who are not nationals of the Members involved in the dispute. These persons are often trade diplomats or government officials but also academics and practising lawyers regularly serve as panellists.
III. Appellate Body	The *Appellate Body* hears appeals from the reports of dispute settlement panels. Unlike panels, the Appellate Body is a *permanent*, standing international tribunal. It is composed of *seven persons*, referred to as Members of the Appellate Body. Members of the Appellate Body are appointed by the DSB for a term of *four years*, once renewable. Only the complaining or responding party can initiate appellate review proceedings. Appeals are limited to issues of law covered in the panel report or legal interpretations developed by the panel.
IV. Other Institutions	Apart from the DSB, panels and the Appellate Body, there are a number of other institutions and persons involved in the WTO's efforts to resolve disputes between its Members. These institutions and persons

	include *arbitrators*, the *Textile Monitoring Body*, the Permanent *Group of Experts*, Experts and *Expert Review Groups*, the *Chairman of the DSB* and the *Director-General* of the WTO.
G. WTO Dispute Settlement Proceedings	There are four stages in WTO dispute settlement proceedings: (1) consultations, (2) panel proceedings, (3) Appellate Body proceedings and (4) implementation of the recommendations and rulings.
I. Consultations	Any WTO Member may request consultations, which shall be notified to the Dispute Settlement Body (the "DSB") and the relevant Councils and Committees by the Member, which requests consultations. The request for consultations shall be submitted *in writing* and shall give the *reasons* for the request, including identification of the measures at issue and an indication of the legal basis for the complaint. The Member to which a request for consultation is made must *reply* to the request within 10 days after the date of its receipt and enter into consultations within a period of no more than 30 days after the date of receipt of the request. Otherwise the Member that requested the consultations may proceed directly to request the establishment of a panel. If consultations between the parties fail to settle the dispute by reaching a mutually agreed solution, the complaining party may request the DSB to establish a panel to adjudicate the dispute.
II. Panel Proceedings	
1. Panel Establishment	The DSB establishes the panel *at the latest* at the DSB meeting following the meeting at which the request for the establishment first appears as an item on the agenda. Within one week after the panel is composed, the panel will call a "organizational" meeting with the parties to consult with them on the timetable for the panel process and the working procedures.
2. Written Submissions and Panel Meetings	As a rule, the parties to the dispute make *two written submissions* to the panel and the panel *meets twice* with the parties on the substance of this dispute. Generally, parties will be required to file within five to nine weeks from the composition of the panel, their first written submissions. In their first written submissions, the parties present the *facts* of the case and their *arguments*. After the filing of these first submissions of the parties, the panel holds, generally within one to two weeks of the filing of the written submission of the respondent, a first "substantive" (as opposed to "organizational") meeting with the parties. At this meeting, the panel asks the complainant to present its case. At the same meeting, the respondent is asked to present its own point of view. Within two to three weeks later, the parties file simultaneously their *rebuttal submissions*, in which they reply to the arguments and evidence submitted by the other party. One to two weeks after the filing of the rebuttal submissions, the panel will have a second "substantive" meeting with the parties. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting or in writing.
3. Panel Report	Once the panel has completed a draft of the descriptive

III. Appellate Review	(i.e., the factual and arguments) sections of its *report*, the panel issues this draft to the parties for their comments within two weeks. Two to four weeks after the expiration of the time period for receipt of comments on the descriptive part, the panel subsequently issues to the parties an interim report, including both the descriptive sections and the panel's findings and conclusions. The *final panel report* then typically consists of an introductory section on the procedural aspects of the dispute, a section on factual aspects of the dispute (in which the measure at issue is discussed), a section setting out the claims of parties, sections summarizing the arguments of the parties and third parties, a section on the interim review, the section containing the panel's findings and, finally, the panel's conclusions. It is *first issued* to the parties to the dispute and some weeks later *circulated* to the DSB. Once circulated to WTO Members, the panel report is an unrestricted document available to the public. Where a panel concludes that a Member's measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring that measure into conformity with that agreement. The recommendations and rulings of the panel are not legally binding by themselves. They become legally binding only when they are adopted by the DSB and thus have become the recommendations and rulings of the DSB. The DSB adopts the panel report, and its recommendations and rulings, by reverse consensus, i.e., the DSB adopts the report unless it decides by consensus *not* to adopt the report. A panel report may be appealed at any time after it is circulated to the WTO Members, and before it is adopted by the DSB. The appellate process commences with the filing by an appellant of a *notice of appeal*. Then the Appellate Body reviews the challenged legal issues and may uphold, reverse or modify the panel's findings. The Appellate Body is thus the *second and final stage* in the adjudicatory part of the dispute settlement system.
H. Implementation and Enforcement **I. Implementation by the „losing" Member**	With the DSB's adoption of the panel (and Appellate Body) report, there is now a "recommendation and ruling" by the DSB addressed to the losing party to bring itself into compliance with (WTO) law. The DSU states that in the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures found inconsistent with WTO law and that prompt compliance with the recommendations or rulings of the DSB is essential in order to ensure the effective resolution of disputes. The DSB is responsible for supervising the implementation of panel and Appellate Body reports. The first duty of the "losing" Member is to inform the DSB, at a meeting within 30 days after the adoption of the report, of its intentions to implement the recommendations and rulings of the DSB. It is usually at that same meeting that the Member

II. Compensations and Suspension of Concessions	concerned states whether it is able to comply immediately with the recommendations and rulings. If immediate compliance is not possible, the implementing Member has a *reasonable period of time* for achieving that compliance. If the responding party does not bring its measures into conformity with a covered agreement within the reasonable period of time, the prevailing Member can either seek *compensation* or get authorization from the DSB to *suspend equivalent concessions* or other obligations to the responding Member. The DSU stresses that neither compensation nor suspension of concessions is to be preferred to the full implementation of the recommendations and rulings of the DSB. It accordingly provides that they are temporary measures to be resorted to in the event of the impossibility to implement the recommendations and rulings of the DSB within the reasonable period of time.

VI Court of Arbitration for Sport (CAS)

A. Overview	In order to settle sports-related disputes through arbitration and mediation, two bodies have been created : the *International Council of Arbitration for Sport* (ICAS) and the *Court of Arbitration for Sport* (CAS). The disputes to which a federation, association or other sports-related body is party are a matter for arbitration, only insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide. The seat of the ICAS and the CAS is established in *Lausanne*, Switzerland. The task of the ICAS is to facilitate the settlement of *sports-related disputes* through arbitration or meditation and to safeguard the independence of the CAS and the rights of the parties. The CAS, which has a list of arbitrators, procures the arbitral resolution of disputes arising within the field of sport through the intermediary of arbitration provided by Panels composed of one or three arbitrators. It comprises an Ordinary Arbitration Division and an Appeals Arbitration Division. The CAS has a list of mediators in order to procure the resolution of sports-related disputes through mediation. The mediation procedure is governed by separate rules.
B. The International Council of Arbitration for Sport I. Composition	The ICAS is composed of *twenty members*, namely high-level jurists appointed in the following manner : a. four members are appointed by the *International Sports Federations* (“IFs”), viz. three by the *Summer Olympic IFs* (ASOIF) and one by the *Winter Olympic IFs* (“AIWF”), chosen from within or from outside their membership; b. four members are appointed by the Association of the *National Olympic Committees* (“ANOC”), chosen from within or from outside its membership ; c. four members are appointed by the *International Olympic Committee* (“IOC”), chosen from within or from outside its membership ; d. four members are appointed by the twelve members of the ICAS listed above, after appropriate consultation with a view to safeguarding the interests of the *athletes* ; e. four members are appointed by the sixteen members of the ICAS listed above and chosen from among personalities independent of the bodies designating the other members of the ICAS. The members of the ICAS are appointed for a renewable period of *four years*.
II. Attributions	The ICAS exercises, *inter alia*, the following functions: 1. It *appoints the personalities* who are to constitute the list of arbitrators and the list of CAS mediators and can remove them from those lists; 2. It exercises those functions concerning the *challenge and removal of arbitrators*, and any other functions which the Procedural Rules confer upon it;

	3. It looks after the *financing of the CAS*; 4. It supervises the activities of the CAS *Court Office*; 5. If it deems such action appropriate, it sets up regional or local, permanent or *ad hoc arbitration* structures; 6. If it deems such action appropriate, it creates a legal aid fund to *facilitate access to CAS* arbitration and determines the terms of implementation; 7. It may take any other action which it deems likely to *protect the rights of the parties* and, in particular, to best guarantee the total independence of the arbitrators and to promote the settlement of sport-related disputes through arbitration.
C. The Court of Arbitration for Sport	
I. Mission	The CAS sets in operation Panels which have the task of providing for the resolution by arbitration and/or mediation of disputes arising within the field of sport in conformity with the Procedural Rules.
II. Arbitrators	The personalities designated by the ICAS appear on the CAS list for a renewable period of four years. In establishing the list of CAS arbitrators, the ICAS shall call upon *personalities with full legal training*, recognized competence with regard to sports law and/or international arbitration, a *good knowledge of sport* in general and a good command of at least one CAS working language. In addition, the ICAS shall respect, in principle, the following distribution : 1. 1/5th of the arbitrators selected from among the persons proposed by the IOC, chosen from within its membership or from outside; 2. 1/5th of the arbitrators selected from among the persons proposed by the IFs, chosen from within their membership or outside; 3. 1/5th of the arbitrators selected from among the persons proposed by the NOCs, chosen from within their membership or outside; 4. 1/5th of the arbitrators chosen, after appropriate consultations, with a view to safeguarding the interests of the athletes; 5. 1/5th of the arbitrators chosen from among persons independent of the bodies responsible for proposing arbitrators in conformity with the present article. In appointing the personalities who appear on the list of arbitrators, the ICAS shall, wherever possible, ensure fair representation of the continents and of the *different juridical cultures*.
III. Organization of the CAS	The CAS is composed of *two divisions*, the Ordinary Arbitration Division and the Appeals Arbitration Division. 1. *The Ordinary Arbitration Division* constitutes Panels, whose task is to resolve disputes submitted to the ordinary procedure, and performs, through the intermediary of its President or his deputy, all other functions in relation to the smooth running of the proceedings conferred upon it by the Procedural Rules; 2. *The Appeals Arbitration Division* constitutes Panels, whose task is to resolve disputes concerning the decisions of federations, associations or other sportsrelated bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide. It performs, through the intermediary of its President or his deputy, all other functions in relation to the smooth running of the proceedings conferred upon it

	by the Procedural Rules
D. Procedural Rules	
I. General Provisions	The Procedural Rules of the CAS apply whenever the *parties have agreed* to refer a sports related dispute to the CAS. Such disputes may arise out of an *arbitration clause* inserted in a contract or regulations or of a later *arbitration agreement* (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings). Such disputes may involve *matters of principle relating to sport* or matters of pecuniary or other interests brought into play in the practice or the development of sport and, generally speaking, any activity related or connected to sport. During the Arbitration the parties may be *represented* or assisted by persons of their choice. All *notifications and communications* that the CAS or the Panel intend for the parties have to be made through the Court Office.
II. Formation of the Panel	The Panel is composed of *one or three arbitrators*. If the arbitration agreement does not specify the number of arbitrators, the President of the Division determines the number, taking into account the amount in dispute and the complexity of the dispute. In general, the parties may agr*ee on the method of appointment* of the arbitrators. In the absence of an agreement, the arbitrators will be selected by the parties by a mutual agreement. In the absence of such an agreement being reached, the President of the Division proceeds with the appointment. The Rules also provide the Opportunity for a *Multiparty Arbitration* Procedure.
III. Conciliation	The President of the Division, before the transfer of the file to the Panel, and thereafter the Panel may at any time seek to resolve the dispute by *conciliation*. Any settlement may be embodied in an arbitral award rendered by consent of the parties.
IV. Procedure before the Panel	The procedure before the Panel comprises *written submissions* and, if the Panel deems it appropriate, an oral *hearing*. d such person. The parties call to be heard by the Panel such witnesses and experts which they have specified in their written submissions. The parties are responsible for the availability and costs of the witnesses and experts called to be heard.
V. Law Applicable to the Merits	The Panel shall decide the dispute according to the rules of *law chosen by the parties* or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide *ex aequo et bono*.
VI. Award	The award shall be made by a *majority decision*, or, in the absence of a majority, by the President alone. The award shall be written, dated and signed. Unless the parties agree otherwise, it shall briefly state reasons.

	The award notified by the CAS Court Office is *final and binding* upon the parties.
E. Costs of the Arbitrations Proceedings	Upon filing of the request/statement of appeal, the Claimant has to pay a *minimum Court Office fee* of Swiss francs 500.—, without which the CAS shall not proceed, which the CAS keeps in any event. But the Panel takes it into account when assessing the final amount of the fees. Each party must *advance* the cost of its own witnesses, experts and interpreters.

VII. Society of Maritime Arbitrators	
A. Overview	The *Society of Maritime Arbitrators, Inc.* is a professional, nonprofit organisation whose mission is to „educate the general public and members of the *maritime industry* about procedures for alternate dispute resolution ("ADR") in the maritime industry, to educate the general public and members of the maritime industry about substantive maritime law, and to encourage the use of ADR for the resolution of commercial disputes arising in the maritime industry". All references to the "Act" are to the United States Arbitration Act and all references to "SMA" are to the Society of Maritime Arbitrators, Inc.
B. Consent to Maritime Arbitration Procedure	Wherever parties have *agreed to arbitration* under the Rules of the Society of Maritime Arbitrators, Inc., these Rules, including any amendment(s) in force on the date of the agreement to arbitrate are binding on the parties. Nevertheless, except for those Rules which empower the Arbitrators to administer the arbitration proceedings, the parties may mutually alter or modify these Rules.
C. Tribunals	The "*Panel*" is any Tribunal created under the parties' agreement, to resolve disputes by arbitration under the Maritime Arbitration Rules. The SMA shall establish and maintain a roster of persons with qualifications to act as Maritime Arbitrators from which Arbitrators may be chosen.
D. Initiation of the Arbitration	
I. Arbitration Agreement	Any party to an agreement for arbitration under SMA Rules may initiate an arbitration proceeding *by giving written notice* to the other party of its demand for arbitration and naming its chosen arbitrator. In its demand for arbitration, the party initiating the process has to set forth the *nature of the dispute*, the *amount of damages* involved, if any, and the *remedy* sought.
II. Place of Arbitration	Herewith the parties are free to amend or add to their claims until the proceedings are closed. The arbitration takes place in the City of *New York* at a location chosen by the Panel, unless otherwise agreed by the parties.
E. Appointment of Arbitrators	If the arbitration agreement specifies a method by which Arbitrators are to be appointed, that method will be followed and in the event of a conflict, its terms will prevail over this section of the Rules. When requested by a party, the SMA shall submit its then current roster of members from which arbitrators may be appointed. *Arbitrators can be appointed* by the parties or their counsel, orally or in writing.
F. Procedure for Oral Hearings	
I. Representation	Any party has the option to be represented in the arbitration proceedings by *counsel* or any other duly-appointed *representative*.
II. Majority Decision	Whenever the Panel consists of more than one

	Arbitrator, the decision and award of the Arbitrators shall be by *majority vote*, where appropriate, unless a unanimous decision is required by the arbitration agreement. In cases where the arbitration clause calls for two party-appointed Arbitrators and an Umpire, should the two be unable to agree, they shall appoint an Umpire who shall take into account the reasons for their disagreement and adjudicate the matters in controversy as if he/she were sole Arbitrator.
G. The Award	The Panel has the collective duty to issue awards not later than 120 days after the final evidence or brief has been received and the parties have been notified that the proceedings have been closed. Failure of the Panel to abide by this provision shall not be grounds for challenge of the Award.
H. Expenses and Fees	The *expenses of witnesses* have to be paid by the party producing or requiring the production of such witnesses subject to allocation by the Panel in its final Award. Subject to the final allocation in the Award, expenses incurred at the request of the Panel will initially be borne equally by the parties. The Panel may require an *advance deposit* for any sums it may reasonably have to expend. Each *Panel* member shall determine the amount of his/her *compensation*. When determining the fee, the Arbitrator(s) shall take into account the complexity, urgency and time spent on the matter. At any time prior to issuance of the Award, the Panel is able to require that the parties post security for its estimated fees and expenses.