

# Contemporary Issues in International Dispute Resolution

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## Controlling Costs in International Arbitration

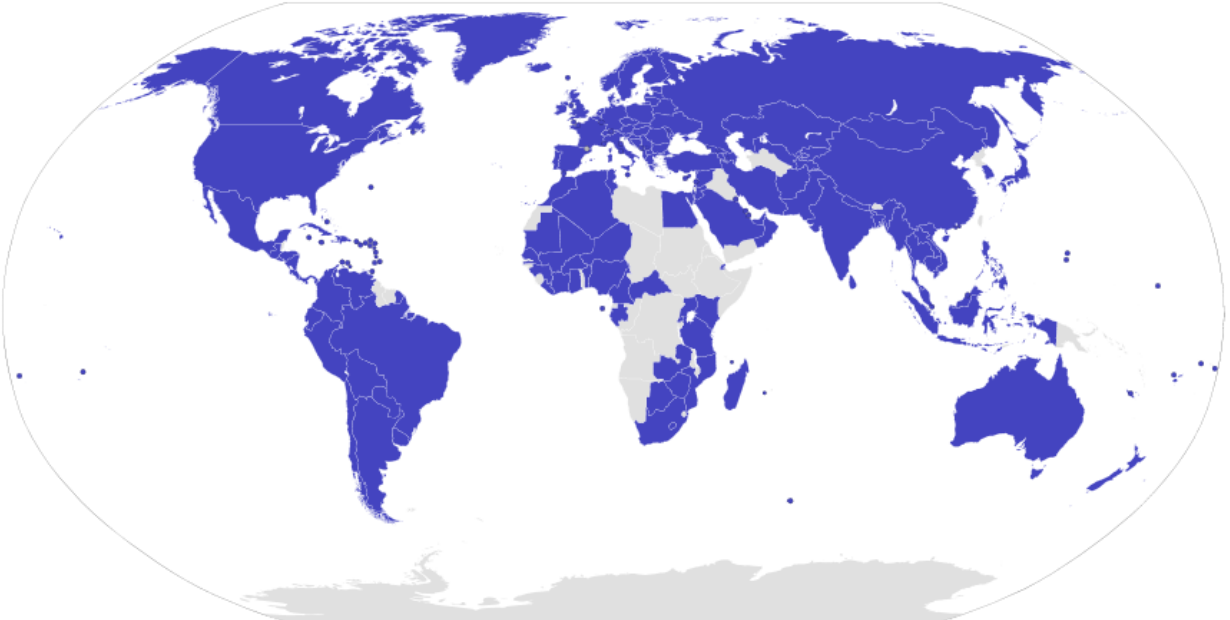
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# Ill-Considered Clauses Create Surprising Costs



- Clause does not fit deal
  - Consider contract \$
- Rules not accommodating
- Expensive seat
- Number of arbitrators
- Administered/Ad-Hoc
- Control the process
- Solution: Craft to limit expense
  - Limit written submissions
  - Limit witnesses & experts
  - Control tribunal's role
  - Full reasoned award
  - Consider potential counsel

# Seat Selection – NY Convention Signatory State Only



# Attach Award to Assets Anywhere (almost)



- Key – Courts in NY Convention signatory states confirm awards rendered in other signatory states.
- Party's biz seat does not matter – **Seat** of arbitration does
- Place arbitral seat in a New York Convention signatory state
- Award can be confirmed in state where losing party has assets

# Recent Example of Global Reach of NY Convention



# Choose Right Claim/Contract/Parties



- Avoid costly jurisdictional objections.
  - Costs and delay can be equal to actual merits dispute.
- Go with strongest claim
  - Add-ons = added costs
- Choose contract that best accomplishes your goals.
- Contracting parties is easiest.
- Institutional rules regarding joinder/consolidation
  - Consider contract \$
- Party that has assets.

# Arbitrator Selection - Consider the Bench





# Arbitrator Selection – The Bench

- Most frequently used arbitrators often most expensive
- Busy schedules delay your arbitration
- Conflicts cause delay
- More diversity amongst junior ranks
- Large pool of emerging arbitrators
- Resources for arbitrators
  - ICDR Energy Arbitrators List
  - Institutional arbitrators
  - Conduct due diligence

# Arbitrator Selection – Choose International Arbitrator



# Expedited Procedures



# Hearings – Shorter the Better



- Long hearings often ineffective and inefficient.
- Hearing preparation/participation costliest part of process
- 3-5 days if possible
- Merits & damages same time?
- Focus on most important issues
- Which witness/expert necessary?
- Educate/entertain
- No hearing for purely contract interpretation?

# Experienced International Arbitration Counsel



"I know nothing about the subject,  
but I'm happy to give you my expert opinion."

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