

Following the Jay Treaty, states resorted to international arbitration with increasing frequency. During the nineteenth century, more than 220 arbitrations involving some 70 different states took place. These arbitrations frequently – although not always – involved formal rules governing procedure, including the submission and evaluation of evidence. Often, the tribunal was expressly directed by treaty or *compromis* to decide the dispute in accordance with applicable principles and rules of law.<sup>(6)</sup> Over a period of time, there evolved from these arbitrations certain procedural rules and practices which were subsequently codified and augmented in such instruments as the draft arbitral code adopted by the Institut de Droit International in 1875, the Hague Conventions of 1899 and 1907, the Rules of the Permanent Court of International Justice and the International Court of Justice, and the Model Rules on Arbitral Procedure adopted by the International Law Commission in 1958. These instruments were negotiated and drafted by diplomats and lawyers from diverse legal backgrounds who realised that, to be acceptable in cases where the jurisdiction of the tribunal is inherently consensual, the rules of procedure involved could not be those of any single legal system. Consequently, the rules of procedure that were developed by [page "376"](#) the Hague Peace Conferences and such bodies as the Institut de Droit International and the International Law Commission were a synthesis of rules drawn from the civil law and the common law.

Commercial arbitration between private parties also flourished during the nineteenth century, but the process was much less formal and legalistic than that involved in arbitrations between states. The arbitrators in commercial arbitrations were usually merchants or traders rather than lawyers, and their decisions were generally based on trade practices and notions of fairness rather than the rule of law. Such arbitrations were conducted without formal rules of procedure and evidence. Even with the advent of commercial arbitral institutions in the late nineteenth and early twentieth centuries,<sup>(7)</sup> commercial arbitration remained an informal and largely non-legalistic affair. The early arbitration rules of all of the major commercial arbitral institutions were largely silent as to procedure except with respect to the institution of arbitral proceedings and the constitution of the tribunal.<sup>(8)</sup>

It was not until the latter part of the twentieth century that commercial arbitration became the formal, legal process that we know today. This evolution was a natural and inevitable consequence of the fact that arbitration has become the principal means of resolving major international commercial disputes. Such disputes typically involve complex factual and legal issues which could not be effectively resolved without established principles and rules of procedure.

As the need for such principles and rules evolved, it was natural for the parties and tribunals involved in commercial arbitrations to look to the various existing codifications of arbitral procedure that had been formulated in the context of arbitrations between states – procedures which reflected a compromise between the civil law and the common law.

The evolution of formal procedure in commercial arbitration was not simply a matter of adopting procedures used in arbitrations between states, however. There was a more pragmatic aspect of this evolution: international commercial arbitration, like arbitration between states, typically involves parties, counsel and arbitrators from different legal systems. If the process of commercial arbitration is to work efficiently and effectively, it must accommodate this legal diversity.

Even today, the rules of commercial arbitral institutions such as the ICC and the LCIA contain very little in terms of the procedure that is to govern the conduct of the arbitration. In general, these rules permit the parties to agree on the procedure to be followed by the tribunal in conducting the arbitral proceedings. In practice, however, most of the procedures and rules concerning evidence in major commercial arbitrations are the same as those found in arbitrations between states and arbitrations between states and private parties. [page "377"](#) Thus, many of the provisions in the UNCITRAL Arbitration Rules and the IBA Rules of Evidence have counterparts in the rules of the Permanent Court of Arbitration (including those in the Hague Conventions) and in the ICSID Arbitration Rules.


Turning now to the particular principles and rules of evidence that are common to most international arbitrations.

#### **a. Admissibility of Evidence**

Because of the use of juries in the common law system, common law procedure is characterised by technical, restrictive rules of evidence which may preclude the admission of documentary or testimonial evidence for lack of sufficient relevance, materiality or credibility. In common law jurisdictions, considerable time and effort are often spent in procedural wrangling concerning the admissibility of particular evidence. Historically, international tribunals have had little patience with such practice and have taken the view that they should hear and consider everything that each party has to say concerning the dispute. The tribunal itself determines the relevance, materiality and probative value of all evidence submitted by the parties, and does not need to hear argument from the parties concerning these matters. It is for the parties to submit the evidence and for the tribunal to evaluate it. Thus, in the *South-West Africa* cases, in responding to objections by the applicant's agent concerning testimony of the respondent's witness, the President of the International Court of Justice<sup>(9)</sup> stated:

The evidence will remain on the record; the Court is quite able to evaluate evidence, and if there is no value in the evidence, then there will be no value given to this part of the evidence ... This Court is not bound by the strict rules of evidence applicable in municipal courts and if the evidence established by the witness does not sufficiently convey that the evidence is reliable in point of fact, then the Court, of course, deals with it accordingly when it comes to its deliberation.<sup>(10)</sup>

Although international tribunals will generally admit any evidence that a party deems necessary to establish its case, a tribunal always has authority to determine that evidence is inadmissible in appropriate circumstances. Evidence may be excluded if it is unduly burdensome, duplicative, defamatory or obviously irrelevant.

The authority of an international arbitral tribunal to determine the admissibility and the probative value of any evidence submitted to it has been codified by the International Law Commission in its Model Draft on Arbitral Procedure,<sup>(11)</sup> by the United Nations Commission on International Trade Law (UNCITRAL) in its Model Law on International Commercial Arbitration,<sup>(12)</sup> by  page "378" the International Bar Association in its Rules of Evidence,<sup>(13)</sup> and in the rules of various arbitral institutions such as the International Centre for Settlement of Investment Disputes,<sup>(14)</sup> the International Chamber of Commerce<sup>(15)</sup> and the London Court of International Arbitration.<sup>(16)</sup>

### **b. Burden of Proof and Standard of Proof**

As a general rule, a party to an international arbitration has the burden of proving the facts necessary to establish its claim or defence. The standard of proof – *i.e.*, the quantum or degree of proof used to determine whether this burden has been discharged – has not evolved into a general rule, however. As Judge Buergerthal has observed:


What standard of proof to apply in a given case is yet another question that is of importance to international judicial fact-finding. There is nevertheless very little international precedent on the subject.<sup>(17)</sup>

International arbitration conventions, national arbitration laws, *compromis*, arbitration rules and even the decisions of arbitral tribunals are almost uniformly silent on the subject of the standard of proof. This fact is in part a reflection of the general rule that an international tribunal has discretion to determine the probative value of all evidence submitted by the parties. Such discretion is inherently subjective; the tribunal must decide for itself whether, based on the evidence submitted by the parties, the truth of a particular claim or defence has been established. This discretionary authority by its nature invites an entirely personal assessment of evidence by the tribunal.

In assessing the evidence, arbitrators will generally apply standards with which they are familiar as a result of their own particular legal background. Generally speaking, in common law systems courts apply the 'preponderance of the evidence' or 'balance of probability' standard in non-criminal cases, whereas in civil law systems the standard of proof is one of '*l'intime conviction du juge*'. As applied in international arbitration, there appears to be little practical difference between these standards, as shown by the frequency with which arbitrators from different legal systems concur in the fact-finding process.

A higher standard of proof may be applied in cases involving



particularly sensitive allegations of wrongdoing such as conduct *contra bonos mores*. For example, the European Court of Human Rights has held that allegations that a state has engaged in practices involving torture or other inhumane treatment of prisoners must be proved 'beyond a reasonable doubt'.<sup>(18)</sup> And the Inter-American Court of  page "379" Human Rights has held that allegations that a state has carried out or tolerated a practice of disappearances in its territory must be proved 'in a convincing manner'.<sup>(19)</sup> A higher standard of proof may also be applicable in cases involving allegations of bribery, fraud, corruption or extortion. For instance, the Iran-United States Claims Tribunal has held with respect to allegations of bribery that, 'If reasonable doubts remain, such an allegation cannot be deemed to be established'.<sup>(20)</sup>

It could be argued that more frequent articulation of the standard of proof by international tribunals would enhance the appearance of fairness in international arbitration. As Lord Hewart observed, 'it ... is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done'.<sup>(21)</sup>

On the other hand, the increasing use of international arbitration, coupled with the relative infrequency of challenges of arbitral awards,<sup>(22)</sup> suggests that in fact international arbitration is widely perceived as an inherently fair process, notwithstanding the general practice of international tribunals to refrain from articulating the standard of proof used to decide cases.

### **c. Direct and Indirect Evidence**

With respect to both documentary evidence and testimonial evidence, international tribunals distinguish between 'direct' or 'primary' evidence and 'indirect', 'secondary' or 'circumstantial' evidence. The direct evidence of a document is the document itself.<sup>(23)</sup> A copy of the document or testimony as to the content of the document by a person who has read it is indirect evidence. Direct testimonial evidence is the testimony of a witness who has personally observed a fact or event. The affidavit of such a witness, as well as testimony of a witness whose knowledge is derived from a third person rather than personal observation (*i.e.*, 'hearsay' testimony), are indirect evidence.

In international arbitration, the distinction between direct or primary evidence and indirect or secondary evidence involves the weight of the evidence, not its admissibility. Direct evidence is preferred and will generally be given more weight than indirect evidence. Nevertheless, indirect evidence is generally accepted by international tribunals, and if direct evidence is not available, indirect evidence is the only method of proof. Similarly, if direct evidence is impeached, indirect evidence may be decisive.

 page "380"

In determining the weight to be given indirect evidence, a tribunal will consider whether there is an acceptable reason for the non-production of direct evidence. In cases of nationalisation or civil unrest, for example, documents constituting direct evidence are often lost or destroyed. A party who submits indirect evidence without offering convincing proof that direct evidence is not available risks an adverse award.<sup>(24)</sup> In evaluating indirect evidence, a tribunal will also consider whether corroborating evidence is available.

### **d. Presumptions and Inferences**

In the absence of direct evidence, international tribunals often presume or infer facts on the basis of other proven or accepted facts (such proven or accepted facts constitute indirect evidence). A presumption or inference in favour of one party in effect puts the burden of proof on the other party. As Bin Cheng observed in his classic work on the general principles of law applied by international tribunals, 'it is legitimate for a tribunal to presume the truth of certain facts or of a certain state of affairs, leaving it to the party alleging the contrary to establish its contention'.<sup>(25)</sup>

The use of inferences by international tribunals is illustrated by the decision of the International Court of Justice in the *Corfu Channel* case. There, the United Kingdom alleged that Albania was responsible under international law for damage and loss of life caused by the explosion of mines in Albanian territorial waters. Albania denied any complicity in or knowledge of the laying of the mines, but admitted that such knowledge, if it existed, would involve Albania's responsibility. The United Kingdom could not produce direct evidence of such knowledge, and the Court refused to presume such knowledge merely on the basis of the fact that the mines were located in Albania's territorial waters. The Court

recognised, however, that the fact that the injury complained of occurred in waters subject to the exclusive territorial control of Albania limited the methods of proof available to the United Kingdom. In this connection, the Court said:

the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. *This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions.* It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.


The Court must examine therefore whether it has been established by means of indirect evidence that Albania has knowledge of mine-laying in her territorial waters.<sup>(26)</sup> (Emphasis added).

 page "381"

On the basis of such indirect evidence, the Court imputed knowledge of the mines to Albania.<sup>(27)</sup>

Tribunals often draw inferences from a party's conduct. For example, a party's failure to object may give rise to an inference that the party agrees to or accepts the matter in issue if the circumstances are such as to call for a positive reaction if an objection exists. Thus, in the *Temple of Preah Vihear* case, the International Court of Justice inferred Siam's acceptance in 1908–1909 of a map prepared by French authorities in connection with the delimitation of the boundary between Siam, as Thailand was then known, and Cambodia, which at the time was part of French Indo-China. The map was prepared pursuant to a treaty entered into by France and Siam in 1904. The treaty provided that the boundary between Cambodia and Siam in the vicinity of Preah Vihear was the watershed line. It also provided that a mixed Franco-Siamese boundary commission would be established to determine the exact course of the boundary. The mixed commission was established in due course. It surveyed the frontier and fixed the boundary. The final stage in the delimitation process was the preparation and publication of maps. Because the Government of Siam lacked the technical resources to prepare the maps, it requested the French Government to do so. The French authorities proceeded to prepare a series of 11 maps, including the so-called 'Annex I map' that delimited the boundary in the vicinity of Preah Vihear, which was subsequently disputed by Cambodia and Thailand. The Annex I map showed Preah Vihear as being situated in the territory of Cambodia. The map was not signed by the mixed commission and was not formally incorporated in the boundary treaty. In proceedings before the International Court of Justice, Thailand argued that the Annex I map was in error and at variance with the treaty because the boundary delimited on the Annex I map was not the watershed line. According to Thailand, the true watershed line placed Preah Vihear in Thai territory.

The Court, however, never reached the question of whether the Annex I map was in error. It found that the manner in which the map was communicated to the Siamese Government and publicised elsewhere called for a positive reaction from Siam if it did not accept the map as representing the parties' agreement as to the boundary. The particular circumstances which the Court found called for a positive reaction if Siam did not accept the map were the following:

It is clear from the record that the publication and communication of the eleven maps ... including the Annex I map, was something of an occasion. This was no mere interchange between the French and Siamese Governments, though, even if it had been, it could have sufficed in law. On the contrary, the maps were given wide publicity in all technically interested quarters by being also communicated to the leading geographical societies in important countries, and to other circles regionally interested; to the Siamese legations accredited to the British, German, Russian and United States Governments; and to all the members of the Mixed Commission, French and Siamese. The full original distribution consisted of about one hundred  page "382" and sixty sets of eleven maps each. Fifty sets of this distribution were



allocated to the Siamese Government.<sup>(28)</sup>

In light of these circumstances, the Court concluded:


it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. *Qui tacet consentire videtur si liquid debuisset ac potuisset.*<sup>(29)</sup>

On the basis of Siam's acquiescence, the Court inferred Siam's acceptance of the Annex I map and held that Cambodia had sovereignty over the disputed area. The Court explained its reasoning as follows:

The Court however considers that Thailand in 1908–1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on the map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory ...

The Court considers that the acceptance of the Annex I map by the Parties caused the map to enter the treaty settlement and to become an integral part of it ... The Parties at that time [1908] adopted an interpretation of the treaty settlement which caused the map line, in so far as it may have departed from the line of the watershed, to prevail over the relevant clause of the treaty.<sup>(30)</sup>

Inferences from a party's failure to object often arise in a commercial context. Thus, the Iran-United States Claims Tribunal has repeatedly held that a party's failure to object to invoices in a timely manner gives rise to a presumption that the invoices are correct,<sup>(31)</sup> and that a party's failure to object in a timely manner to alleged defects in a contractor's work raises serious doubts as to the existence of such defects.<sup>(32)</sup>

A tribunal may also draw an adverse or negative inference from a party's failure to produce evidence known or presumed to be in its possession. International tribunals generally have authority to order the production of evidence, and a party which has been ordered to produce evidence in its possession is under an obligation to do so. The failure of a party to produce evidence in its possession may give rise to an inference that the evidence is adverse to the interests of that party. The nature of the inference will depend on the particular circumstances involved. In the */NA* case, for example, Iran failed to  [page "383"](#) produce documents supporting and explaining its valuation of certain expropriated property. The Iran-United States Claims Tribunal inferred from this failure to produce evidence that Iran's valuation did not reflect the value of the property in question. The Tribunal said:

The report's numerous references to special rules and directives of CII also make it impossible for the Tribunal to judge the validity of the valuation techniques used. The Respondent has furnished neither the texts of such rules and directives nor the underlying documents, although it was ordered to do so. The Respondent's attempt to excuse its non-compliance with the Tribunal's order by merely stating that the documents were 'voluminous' is not convincing ... In assessing the evidentiary weight of the Amin report, the Tribunal must draw negative inferences from the Respondent's failure to submit the documents which it was ordered to produce. In sum, the Amin report is so qualified and limited, and so influenced by unexplained, specially adopted (and not generally accepted) accounting techniques, that it cannot be considered to reflect the value of Shargh at the time of nationalization.<sup>(33)</sup>

The Tribunal's statement that it found Iran's excuse for failing to produce the documents 'not convincing' is important. To draw an inference against a party for failure to produce evidence not reasonably believed to be in the party's possession would expose the award to nullification on such grounds as denial of justice and contravention of the principle of equality of the parties. For this reason, a tribunal will be reluctant to draw a negative inference unless it is convinced that the party which has failed to produce the evidence in question is in fact able to produce the evidence.

Inferences and presumptions generally are not conclusive and may be rebutted by relevant evidence. As Sandifer observed, 'Any party relying upon ... a presumption in place of assuming a primary burden to establish by competent evidence allegations on which he relies does so at his own risk'.<sup>(34)</sup>

There may be an issue, however, as to whether the available evidence is sufficient to overcome a presumption. Thus, in the *Temple of Preah Vihear* case, Judge Spender, disagreeing with the majority, considered the evidence sufficient to overcome any inference or presumption that Thailand had accepted the Annex I map. In his dissenting opinion he said:

In the face of the facts stated – all of which are established beyond controversy – it is an unproductive exercise to have recourse to presumptions or inferences ... No presumptions can be made and no inference can be drawn which are inconsistent with facts incontrovertibly established by the evidence. These facts admit of only one conclusion, namely: that the frontier line on Annex I was not a line agreed upon by the Mixed Commission as a delimitation of the frontier of the Dangrek.<sup>(35)</sup>

 page "384"

#### **e. Judicial Notice**

An arbitral tribunal is not required to base its decision solely on the evidence produced by the parties. It may take judicial notice of facts that are so well known or so easily verified that any kind of formal proof would obviously be superfluous. Different tribunals have taken notice of such facts as historical events,<sup>(36)</sup> treaties,<sup>(37)</sup> legislative enactments<sup>(38)</sup> and documents in the public domain.<sup>(39)</sup>

Also, although international tribunals will generally hear evidence of the applicable law if offered by the parties, they frequently apply the principle of *jura novit curia*, which amounts to judicial notice of the applicable law. Thus, the International Court of Justice has said, 'as an international judicial organ, [the Court] is deemed to take judicial notice of international law'.<sup>(40)</sup> Similarly, tribunals in commercial arbitrations are deemed to know the applicable municipal law or to be able to ascertain it without evidence submitted by the parties.<sup>(41)</sup>


There is no definitive list of the matters of which judicial notice may be taken by international tribunals. In each case, it is for the particular tribunal to decide in light of the relevant circumstances. As Judge Huber said in the *Island of Palmas* case, 'It is for the Arbitrator to decide both whether allegations do or – as being within the knowledge of the tribunal – do not need evidence in support and whether the evidence produced is sufficient or not'.<sup>(42)</sup>

### **II. The Procedural Law Applicable to Evidence**

#### **a. Arbitrations between Private Parties**

Inherent in the principle of territorial sovereignty is the right of every state to regulate conduct within its own territory. As Brierly put it:

At the basis of international law lies the notion that a state occupies a definite part of the surface of the earth, within which it normally exercises, subject to the limitations imposed by international law, jurisdiction over persons and things to the exclusion of the jurisdiction of other states. When a state exercises an authority of this kind over a certain territory it is popularly said to have 'sovereignty' over the territory.<sup>(43)</sup>

Thus, the conduct of arbitrations between private parties, which comprise most international commercial arbitrations, is in principle always subject to the  page "385" jurisdiction of the state where the arbitration takes place. If, for example, two private parties agree to arbitrate a commercial dispute in France, the conduct of the arbitration will be subject to any mandatory rules of French law regardless of the law that governs the substantive issues in the case.


Occasionally in arbitrations between private parties, the parties agree that the conduct of the arbitration will be governed by some law other than the municipal law of the state in which the arbitration takes place. For example, they may agree that the arbitration will be governed by 'transnational law', 'international law' or 'general



principles of law'. Such efforts to remove the arbitration from the reach of the municipal law of the seat of the arbitration are commonly referred to as 'delocalisation' of the arbitration. The extent to which the parties themselves can delocalise the arbitration will depend on the particular municipal law involved. The municipal laws of France and Switzerland, for example, contain few mandatory procedural rules applicable to international arbitration, leaving it to the parties and the tribunal to determine such rules. The laws of Italy and the United Kingdom, on the other hand, contain more in the way of mandatory rules and are generally more intrusive in the arbitral process. The subject of delocalization has attracted a good deal of scholarly debate, particularly with respect to its implications for the enforcement of awards.<sup>(44)</sup> Redfern and Hunter have explained the rationale for the notion of delocalization as follows:

The intention underlying the delocalisation theory is a sensible one. It is to grant freedom to international commercial arbitration from the constraints of different national legal systems, and so make the place of arbitration a matter of no legal significance. An arbitral tribunal would not need to be concerned with the law of the place in which the arbitration was being held; all that it would need to do would be to comply with the requirements of international public order (including, in particular, the requirement of a fair hearing) so as to ensure the international acceptability of its award.<sup>(45)</sup>

Whatever may be the merits of delocalization from the standpoint of judicial philosophy, however, private parties to an international arbitration may expose the award to challenge in the courts at the seat of the arbitration if they disregard mandatory rules of municipal law.<sup>(46)</sup>

Municipal law typically contains provisions concerning such procedural matters as the appointment of arbitrators, the challenge of arbitrators, interim measures of protection, the form and validity of the arbitral award, and the grounds and procedures for recourse against an award. Municipal law generally contains few mandatory rules concerning evidence in international arbitrations, however. While some variations occur in municipal law with respect to such  page "386" matters as the use of oaths and the preparation of witnesses, most municipal legal systems leave evidentiary matters in international arbitrations largely to the discretion of the tribunal and the agreement of the parties.


#### ***b. Arbitrations between States***

The situation with respect to the applicable procedural law in arbitrations between sovereign states is quite different. The reason, again, is grounded in the notion of sovereignty. As Brownlie has stated, 'The sovereignty and equality of states represent the basic constitutional doctrine of the law of nations, which governs a community consisting primarily of states having a uniform legal personality'.<sup>(47)</sup>

A state may agree to limitations of its sovereignty in favour of another state,<sup>(48)</sup> but such limitations will not be presumed.<sup>(49)</sup> If two states agree to arbitrate in the territory of a third state, they do not thereby subject the conduct of the arbitration to the municipal law of the third state; the arbitration will be governed by public international law. In most cases, the parties to the arbitration will agree with the state in whose territory the arbitration takes place to confer immunity upon the arbitral proceedings and the participant.<sup>(50)</sup> Similarly, institutions such as the Permanent Court of Arbitration which conduct arbitrations between sovereign states usually have immunity agreements with the states in which they are located.<sup>(51)</sup> Even without such an agreement, however, the principles of sovereignty and the equality of states would preclude the application of municipal law to the arbitration.

Of course, the states that are parties to the arbitration could, as an attribute of their sovereignty, agree to submit the conduct of the arbitration to municipal law, but to do so would be extraordinary. Mann summed up the practice of states with respect to the procedural law in arbitrations between states as follows:

Though there is no compelling reason of principle or logic why in a given case States should not decide upon arbitration under the law of a particular State, it has so far been the uniform practice to divorce arbitration between States entirely from any system of municipal law, and to submit it to public international law. This seems to be generally accepted or assumed, but is hardly ever stated in express terms.

The tribunal cannot help of course, having its seat and its hearings in national territory, and this probably presupposes the consent of such territory's sovereign. But his law does not reach the arbitration between States. Thus the arbitration will follow its own procedural rules, whether they are laid down in the *compromis* or derived from a multilateral Convention such as the Hague Convention of 1907 or from general international  page "387" law. It follows that the arbitrators may be at liberty to hear witnesses on oath even where the *lex loci* precludes arbitrators from administering oaths. Or, to take another example, the award is not subject to the requirement, known to many systems of municipal law, according to which it must be deposited with the local court.<sup>(52)</sup>

The specific procedural rules applicable to arbitrations between states, including rules concerning evidence, will be those set forth in the *compromis*, in any applicable arbitration treaty or, if the case is before an international institution such as the Permanent Court of Arbitration or a claims commission, in the institution's rules. The Hague Conventions of 1899 and 1907 also contain rules of procedure which apply to arbitrations between parties to the Conventions in the absence of other procedural rules. In addition, as discussed *infra*, there has evolved from the practice of states before international tribunals a number of procedural rules and practices which are generally applicable to arbitrations between states because of their widespread acceptance and application.

### c. Arbitrations between States and Private Parties

The procedural law applicable to arbitrations between states and private parties is more problematic. Although such arbitrations have occurred since the mid-nineteenth century,<sup>(53)</sup> the question of the applicable procedural law was not addressed in any meaningful way by a tribunal until the *Aramco* case<sup>(54)</sup> in 1958. That case involved a dispute under a concession agreement between Saudi Arabia and the Arabian American Oil Company. With respect to the law applicable to the merits of the case, the *compromis* provided that the dispute would be resolved in accordance with the law of Saudi Arabia in so far as it involved matters within the jurisdiction of Saudi Arabia, and in accordance with the law deemed applicable by the arbitration tribunal in so far as matters beyond the jurisdiction of Saudi Arabia were concerned. The *compromis* was silent with respect to the procedural law applicable to the arbitration. Although the seat of the arbitration was Geneva, the tribunal concluded that considerations of sovereign immunity precluded Swiss law from governing the conduct of the arbitration:

Considering the jurisdictional immunity of foreign States, recognized by international law in a spirit of respect for the essential dignity of sovereign power, the Tribunal is unable to hold that arbitral proceedings to which a sovereign State is a Party could be subject to the law of another State. Any interference by the latter State would constitute an infringement of the prerogatives of the State which is a Party to the arbitration. This would render illusory the award given in such circumstances. For these reasons, the Tribunal finds that the Law of Geneva cannot be applied to the present arbitration.<sup>(55)</sup>

 page "388"

The tribunal held that the conduct of the arbitration was to be governed by international law and particularly the rules set forth in the International Law Commission's Draft Convention on Arbitral Procedure:


It follows that the arbitration, as such, can only be governed by international law, since the Parties have clearly expressed their common intention that it should not be governed by the law of Saudi Arabia, and since there is no ground for the application of the American law of the other Party. This is not only because the seat of the Tribunal is not in the United States, but also because of the principle of complete equality of the Parties in the proceedings before the arbitrators. It is true that the practice of the Swiss Courts has limited the jurisdictional immunity of States and does not protect that immunity, in disputes of a private nature, when the legal relations between the Parties have been created, or when their obligations have to be performed, in Switzerland. The



Arbitration Tribunal must, however, take that immunity into account when determining the law to be applied to an arbitration which will lead to a purely declaratory award. By agreeing to fix the seat of the Tribunal in Switzerland, the foreign State which is a Party to the arbitration is not presumed to have surrendered its jurisdictional immunity in case of disputes relating to the implementation of the 'compromis' itself. In such a case, the rules set forth in the Draft Convention on Arbitral Procedure, adopted by the International Law Commission of the United Nations at its fifth session (New York 1955), should be applied by analogy.<sup>(56)</sup>

A different result was reached in the *BP* case,<sup>(57)</sup> which involved the expropriation of a petroleum concession in Libya. There, the arbitrator held that the procedural law of the arbitration was Danish law because the seat of the arbitration was Copenhagen. The arbitrator acknowledged that the application of municipal law to the arbitration imposed a limitation on Libya's sovereign immunity, but found such limitation to be 'within the limits of international law':

The Tribunal cannot share the view that the application of municipal procedural law to an international arbitration like the present one would infringe upon such prerogatives as a State party to the proceedings may have by virtue of its sovereign status. Within the limits of international law, the judicial or executive authorities in each jurisdiction do, as a matter both of fact and of law, impose limitations on the sovereign immunity of other States within such jurisdictions.<sup>(58)</sup>

The *Topco/Calasiatic*<sup>(59)</sup> case and the *Liamco*<sup>(60)</sup> case also involved expropriations of petroleum concessions in Libya. In both cases, the arbitrators held that the municipal law of the seat of the arbitration was not applicable to the arbitration. In the *Topco/Calasiatic* case, the arbitrator adhered to the reasoning of the tribunal in the *Aramco* case, holding that, for reasons of sovereign immunity, the arbitration was governed by international law.<sup>(61)</sup> In the *Liamco* case, the arbitrator found that it was an accepted principle of international law that the rules of procedure which  page "389" govern an arbitration between a state and a private party are determined by agreement of the parties or, failing such agreement, 'by decision of the Arbitral Tribunal, independently of the local law of the seat of arbitration'.<sup>(62)</sup> Because *Liamco* and Libya had not agreed on the procedural law to be applied, the arbitrator – like the tribunal in the *Aramco* case – decided that the rules set forth in the International Law Commission's Draft Convention on Arbitral Procedure should govern the conduct of the arbitration.<sup>(63)</sup>


In the *Aminoil* case,<sup>(64)</sup> which involved the nationalisation of an oil concession in Kuwait, the American Independent Oil Company and the State of Kuwait agreed that the arbitration would be subject to 'any mandatory provisions of the place where the arbitration is held', which was Paris. The tribunal found, however, that the parties had not submitted the conduct of the arbitration to the municipal law of France. With respect to the parties' agreement that the arbitration would be subject to any mandatory provisions of the law at the seat of the arbitration, the tribunal said:

this does not in the least entail of itself a general submission to the law of the tribunal's seat which was designated as Paris. In actual fact the Parties themselves, in the Arbitration Agreement, provided the means of settling the essential procedural rules, when they conferred on the Tribunal the power to 'prescribe the procedure applicable to the arbitration on the basis of natural justice and of such principles of transnational arbitration procedure as it may find applicable' (Article IV, 1), which was done by the Rules adopted on 16 July 1980.

Having regard to the way in which the Tribunal has been constituted, its international or rather, transnational character is apparent. It must also be stressed that French law has always been very liberal concerning the procedural law of arbitral tribunals, and has left this to the free choice of the Parties who, often, have not had recourse to any one given national system. French law has thus befriended arbitrations the transnational character of which has been well in evidence.<sup>(65)</sup>

Thus, the tribunal in the *Aminoil* case concluded that, pursuant to the *compromis* and consistent with the law of the seat of the arbitration, it had the power to prescribe procedural rules 'on the

basis of natural justice and of such principles of transactional arbitration procedure as it may find applicable'.

In recent years, many arbitrations between sovereign states and private parties have been put beyond the reach of municipal law by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ('Washington Convention').<sup>(66)</sup> The Washington Convention established the International Centre for Settlement of Investment Disputes (ICSID) to provide facilities for conciliation and arbitration of investment disputes between states and nationals of other states. The Washington Convention exempts such arbitrations from municipal law for procedural purposes. Under the terms of the Convention, state parties agree (i) that the procedures applicable to ICSID arbitrations shall be  [page "390"](#) governed by the Washington Convention (which, itself, constitutes international law) and the rules promulgated thereunder; (ii) that awards rendered by ICSID tribunals shall not be subject to any appeal in municipal courts or to any other remedy except those provided for in the Convention;<sup>(67)</sup> and (iii) to enforce the pecuniary obligations imposed by an ICSID award as if it were a final judgment of a court of that state.<sup>(68)</sup>

### III. Documentary Evidence

#### a. The Predilection for Documentary Evidence

Historically, international arbitral tribunals have given greater weight to documentary evidence than to testimonial evidence. According to Sandifer:

Probably the most outstanding characteristic of international judicial procedure is the extent to which reliance is placed in it upon the written word, both in the matter of pleadings and of evidence, but especially the latter. It may be said that evidence in written form is the rule and direct oral evidence the exception.<sup>(69)</sup>

Although oral evidence is now common in international procedure, tribunals will generally treat documents which came into existence when the events giving rise to the dispute occurred as having more probative value than testimonial evidence. Witnesses are sometimes deliberately untruthful, truthful witnesses are sometimes mistaken in their recollection of facts, and even truthful witnesses who accurately recall the facts are sometimes discredited by adroit cross-examination so as to obscure the truth. On the other hand, contemporaneous documents that were generated without a view to improving either party's position in the dispute and which record or otherwise tend to prove the facts in issue are generally considered to be credible evidence, subject to any issues there may be as to the authenticity of the document.

The reasons for the priority given to documentary evidence in international procedure were summarised by Bin Cheng as follows:

'Testimonial evidence', it has been said, 'due to the frailty of human contingencies is most liable to arouse distrust'. On the other hand, documentary evidence stating, recording, or sometimes even incorporating the facts at issue, written or executed either contemporaneously or shortly after the events in question by persons having direct knowledge thereof, and for purposes other than the presentation of a claim or the support of a contention in a suit, is ordinarily free from this distrust and considered of higher probative value.<sup>(70)</sup>

 [page "391"](#)

#### b. Production of Documents

As a general rule, the parties to an international arbitration are required to produce those documents upon which they rely to prove their case.<sup>(71)</sup> The rules of most international tribunals are designed to prevent a party from being unfairly disadvantaged by the unexpected production of evidence by the other party. Thus, when a claimant files its memorial, it is expected to file at the same time all documents in its possession necessary to prove any factual issues raised in the memorial. Similarly, when the respondent files its counter-memorial, it must submit all documentary evidence upon which it relies for its defence and any counterclaim. The same rule applies to replies, rejoinders and other written pleadings. International tribunals are generally flexible in the application of this rule, however. As Judge Huber noted in the *Island of Palmas* case:




However desirable it may be that evidence should be produced as complete and at as early a stage as possible, it would seem to be contrary to the broad principles applied in international arbitrations to exclude *a limine*, except under the explicit terms of a conventional rule, every allegation made by a Party as irrelevant, if it is not supported by evidence, and to exclude evidence relating to such allegations from being produced at a later stage of the procedure.<sup>(72)</sup>

The parties must also have the opportunity to submit to the tribunal their observations on the evidence submitted by the other party. As Judge Bustamante put it:

The fair administration of justice requires that every document presented by one of the parties be known by the other or others in opportune time for discussing it and submitting to the tribunal the observations that it deems necessary.<sup>(73)</sup>

### c. Discovery

The right of discovery in international arbitration is generally limited to documents which are relied upon in the pleadings of the other party. This right is a corollary of the rule that parties to an international arbitration are supposed to produce those documents upon which they rely to prove their case. American-type discovery – under which the parties are required to disclose *all* relevant documents – is rarely used in international arbitration. As a general rule, a party to an international arbitration is under no obligation to produce documents adverse to its interests unless ordered to do so by the tribunal.

On the other hand, a party to an international arbitration may request documents from the other party, provided that such documents are identified with reasonable specificity. If the requested documents are not produced by the other  [page "392"](#) party, the party requesting the documents may ask the tribunal for an order directing production of the documents. The decision to make such an order is entirely within the discretion of the tribunal unless the parties have agreed otherwise. Although a tribunal may order the production of documents, it does not have the power to compel production. If the tribunal orders the production of documents and the party against whom the order is made does not produce the documents without a satisfactory explanation, the tribunal may infer that the documents in question are adverse to the interests of the party that has failed to produce them. Also, the tribunal, or the requesting party with the consent of the tribunal, may be able to enlist the powers of the local municipal courts to compel the production of the documents. The availability of such judicial assistance is generally determined by the municipal law at the seat of the arbitration. Thus, Article 27 of the UNCITRAL Model Law provides:

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

### d. Authentication of Documents

Because of the importance attached to documentary evidence by international arbitral tribunals, the authenticity of documents sometimes becomes an issue in international proceedings. Generally speaking, the rules concerning the production of original documents in international proceedings are less strict than in municipal law. It has long been established that the 'best evidence rule' which requires that the terms of a document be proven by production of the document itself is not applicable in proceedings before international tribunals.<sup>(74)</sup> Moreover, the quality of photographic reproduction today is of such a high standard that it serves little purpose to require an original document unless authenticity is an issue. Consequently, international tribunals seldom require the submission of original documents. Indeed, in many cases – particularly international commercial arbitrations – in the interest of expediency and by tacit agreement of the parties, uncertified copies of original documents are routinely accepted without question by the tribunal.

However, the use of fraudulent documents in cases before international tribunals – even cases involving sovereign states – while uncommon is not unknown.<sup>(75)</sup> If the authenticity of a document is challenged, the party submitting the document must

prove its authenticity by whatever evidence is appropriate in the circumstances of the case. International tribunals are generally flexible and pragmatic in their approach to the authentication of documents. The method of authentication will depend on the particular document involved and the [page "393"](#) circumstances surrounding it. A duly certified copy of the original document is usually deemed sufficient to prove the contents of the original. In some cases, however, production of the original document may be required, particularly if the authentication itself is in issue.

#### **IV. Testimonial Evidence**

##### **a. General Principles**

Testimonial evidence, despite its acknowledged shortcomings, is an important means of fact-finding in the international judicial process. While documentary evidence is in principle preferable, it sometimes happens that the available documents are not sufficient in and of themselves to determine the facts in issue. In such case, the tribunal must rely in whole or in part upon testimonial evidence to reach a decision.

Historically, witnesses seldom appeared before international tribunals. During its entire history, the Permanent Court of International Justice heard oral testimony in only one case.<sup>(76)</sup> Today, however, oral testimony is common in international proceedings and the rules governing the admission and evaluation of testimonial evidence are essentially the same as those applicable to documentary evidence. Commenting on the oral phase of the *Corfu Channel* case (the first contentious case decided by the International Court of Justice), Rosenne observed:

The procedure for the examination of witnesses was characterized by its liberality, lack of rigidity, and lack of strict adherence to municipal practice ... From the point of view of the Court, the object was that as much light as possible should be cast upon the matters to be discussed and the Parties should be given every opportunity to defend their point of view.<sup>(77)</sup>

Rosenne's comment is an apt description of the approach taken today by most international tribunals with respect to testimonial evidence. A party will generally be allowed to submit any testimonial evidence it deems necessary to establish its case, subject to the tribunal's power to control examination of the witness and evaluate his evidence.<sup>(78)</sup>

The general practice of international tribunals with respect to oral testimony is to allow counsel to examine witnesses subject to the control of the tribunal. Cross-examination by opposing counsel is invariably permitted, and the tribunal itself [page "394"](#) may put questions to the witness. Ordinarily, the claimant's witnesses present testimony first, followed by the respondent's witnesses.<sup>(79)</sup> Usually, the claimant and the respondent may also produce rebuttal testimony. In addition, the tribunal itself may call witnesses. However, the tribunal does not have the power to compel witnesses to attend the hearing or to testify. If a witness refuses to appear, the tribunal or a party with the consent of the tribunal may be able to apply to a local court for an order that the witness attend the hearing and give testimony. As with the production of documents, the availability of such judicial assistance in connection with witnesses depends on the municipal law in force at the seat of the arbitration.<sup>(80)</sup>

##### **b. 'Hearsay' Evidence**

International procedure does not preclude the admission of 'hearsay' evidence, *i.e.*, evidence not based on the personal observation of the witness. As with other kinds of evidence, the issue is usually one of evaluation rather than admissibility. International tribunals will generally admit hearsay evidence, but the weight given such evidence will depend upon the circumstances of the case, including other evidence which either confirms or refutes the hearsay evidence.

##### **c. Affidavits and Witness Statements**

It is common practice for parties in international arbitrations to submit testimonial evidence in the form of written witness statements – sometimes referred to as 'affidavits' or 'depositions' – prepared *ex parte*, *i.e.*, without the participation of the opposing party or the tribunal.<sup>(81)</sup> Such statements are generally submitted on



the understanding that the witness making the statement will be available during the oral phase of the proceedings for cross-examination or questions by the tribunal. Failure of the witness to appear for cross-examination, if requested to do so by the other party, will affect the weight given his written testimony by the tribunal and may result in that testimony being deemed inadmissible.

#### **d. Evaluation of Testimonial Evidence**

In international procedure, the tribunal has discretion to assess the weight of any evidence submitted to it. Testimonial evidence intrinsically involves problems of evaluation different than those that arise in connection with documentary evidence. Difficulties in the evaluation of documentary evidence usually concern [page "395"](#) interpretation of ambiguous documents and occasionally involve the authenticity of documents. The situation with testimonial evidence is different. Ambiguities in testimonial evidence, are, generally speaking, easily resolved by direct examination, cross-examination or questions from the tribunal. What is not easily resolved is the credibility of the witness. Evaluation of witness testimony often involves an assessment of the witness's truthfulness and objectivity. Such assessment will necessarily involve an element of subjectivity, particularly when the witness's testimony is neither corroborated nor impeached by other evidence. In such cases, the tribunal must assess the truthfulness of the witness on the basis of his demeanour and the intrinsic merit of his testimony. A witness's objectivity is often inferred from his relationship to the party on whose behalf he is testifying.

#### **V. Expert Evidence**

It often happens that, to make necessary findings of fact, a tribunal will require expert evidence. Expert evidence has long been used in international arbitration.<sup>(82)</sup> Such evidence may take the form of testimony, reports or inquiries. It is most often used to assist the tribunal with such technical matters as the valuation of claims, the cause of structural or material failure, accepted practice within a given industry and the technical aspects of boundary delimitation and demarcation. Expert evidence has also been used to prove such matters as the content of municipal law,<sup>(83)</sup> the practice of states with respect to maritime claims and delimitation,<sup>(84)</sup> variations in the name of a geographic feature,<sup>(85)</sup> and the correct translation of foreign legislation.<sup>(86)</sup>

Whereas a witness testifies as to his knowledge of particular facts, an expert generally testifies as to his opinion or belief. This difference is illustrated in the formal declarations made by witnesses and experts appearing before the International Court of Justice. Every witness giving testimony before the Court makes the following declaration: 'I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth'.<sup>(87)</sup>

Every expert makes the same declaration with the addition of the following words: 'and that my statement will be in accordance with my sincere belief'.<sup>(88)</sup>

Occasionally, the same individual may appear as both a witness and an expert in international proceedings.<sup>(89)</sup> There is no general rule prohibiting such practice. [page "396"](#) Experts may be presented by the parties or appointed by the tribunal. In any event, experts are expected to be independent and objective.

The tribunal is not bound by the conclusions of the expert, nor is a tribunal under any obligation to appoint an expert or order an expert inquiry when requested to do so by a party. Generally, a tribunal will only appoint an expert when it deems such an appointment useful in ascertaining the truth as to disputed facts. On the other hand, if a party offers its own expert evidence, such evidence will generally be admitted by the tribunal.

#### **VI. Site Visits (Descente Sur Les Lieux)**

Occasionally it is useful for the tribunal or its experts to visit the place where the dispute arose, either to formally gather evidence or to acquaint the tribunal in a general way with the factual background of the case so as to enhance its appreciation of the factual arguments of the parties. In the *Corfu Channel* case, for example, the International Court of Justice on its own initiative dispatched a committee of experts to Albania and Yugoslavia to conduct certain investigations and experiments and report thereon. The evidence obtained by the experts figured prominently in the Court's

decision.<sup>(90)</sup> In the *Beagle Channel* case,<sup>(91)</sup> which involved a territorial dispute between Argentina and Chile, the tribunal itself at the request of the parties visited the disputed area but made no formal findings of fact based on its observations. Indeed, its visit to the disputed area is nowhere mentioned in the award except in the summary of the proceedings. Nevertheless, the tribunal's visit to the site certainly enhanced its understanding of the very complex geographical situation involved in the case.

Site visits are most often used in construction disputes, disputes involving the operation of industrial plants and in boundary and territorial disputes.

## VII. Maps as Evidence

Maps are frequently submitted as evidence in cases involving boundary and territorial disputes. Maps may be advanced in support of a claimed boundary, a claim of territorial sovereignty or sovereign rights, or as evidence of names or locations of disputed geographical features. Maps are generally admissible, but their evidentiary value will depend on the circumstances of the case.

Occasionally, maps form an integral part of a treaty such that they are direct or primary evidence and may be decisive. For example, in the *Sovereignty Over Certain Frontier Lands* case, the International Court of Justice decided the issue of territorial sovereignty on the basis of maps that were annexed to a treaty between Belgium and the Netherlands. The treaty had been drafted by a mixed boundary commission. The commission also prepared detailed survey maps and [page "397"](#) topographical maps which were signed by the commissioners and annexed to the treaty. The treaty itself provided in Article 3 that the maps had 'the same effect as though they were inserted in their entirety'. Thus, the maps were primary evidence of the boundary. As to their effect, the Court concluded:

These maps, in which the disputed plots are shown as belonging to Belgium were designed to become and did become part of the Convention and, in accordance with Article 3 thereof, had the same legal force as the Convention itself.<sup>(92)</sup>

In the *Temple of Preah Vihear* case, discussed *supra*, a map which was neither prepared nor signed by the mixed boundary commission and which was not expressly incorporated in the boundary treaty nevertheless became an 'integral part' of the treaty settlement as a result of the parties' acceptance of the map as representing their agreement with respect to the location of the boundary.

The importance of maps as evidence should not be overemphasised, however. In most cases, maps are only indirect or secondary evidence which may or may not confirm conclusions drawn from treaties, decisions or other documents. In such cases, the maps will be carefully scrutinised by the tribunal and evaluated on the basis of the source of the cartographer's information. As the International Court of Justice said in the case concerning the *Frontier Dispute between Burkina Faso and Mali*:

Whether in frontier delimitations or in international territorial conflicts, maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts.<sup>(93)</sup>

Parties frequently produce a multiplicity of maps purporting to prove their respective claims. If such maps originate from a variety of original sources and show unanimity over a long period of time with respect to a boundary or the name or location of a geographical feature, they may constitute important evidence. Often, however, the source of the cartographer's information is unknown. In such cases, the tribunal will be reluctant to attach much evidentiary value to the maps in question. It also frequently happens that maps – even



'official' maps prepared by governments – have merely been copied from previously existing maps and are not based on original sources of information. [page "398"](#) Such maps are hearsay evidence and entitled to little evidentiary value, no matter how numerous, unless corroborated by other evidence. As Judge Huber stated in the *Island of Palmas* case:

If the arbitrator is satisfied as to the existence of legally relevant facts which contradict the statements of cartographers whose sources of information are not known, he can attach no weight to the maps, however numerous and generally appreciated they may be.<sup>(94)</sup>

### VIII. Late Production of Evidence

In any arbitration, time limits are established for the production of evidence. These time limits may be prescribed by the *compromis*, the arbitration rules or, as is usually the case, by the tribunal. In any event, the tribunal usually has discretionary authority to extend such time limits.

As a general rule, documentary evidence is to be submitted with whatever pleading it relates to, and consequently all such evidence is to be produced prior to the close of the written proceedings, *i.e.*, before the oral proceedings commence. It often happens, however, that documentary evidence is submitted during the oral proceedings. In exceptional circumstances, it may even be submitted *after* the oral proceedings. If such evidence is submitted in response to a request by the tribunal, or if the other party consents to its submission, the evidence will invariably be admitted. Moreover, even when the other party objects to the late production of evidence, the evidence will usually be admitted subject to the right of the other party to comment on it and submit rebuttal evidence. The reason for this practice was explained by the Permanent Court of International Justice in the *Free Zones* case:

because the decision of an international dispute of the present order should not mainly depend on a point of procedure, the Court thinks it preferable not to entertain the plea of inadmissibility and to deal on their merits with such of the new French arguments as may fall within its jurisdiction.<sup>(95)</sup>

In the majority of cases in which late evidence has been accepted, there appears to have been no requirement that good cause be shown for late production. Rather, the tribunal's principal concern has been that it have all of the relevant evidence before it when deciding the case.

But just as the tribunal has discretion to admit evidence submitted out of time, it has discretion to exclude such evidence, and a party who produces evidence beyond the prescribed time limit runs the risk that the tribunal will refuse to accept the evidence unless good cause is shown for the late production.<sup>(96)</sup> In deciding whether to admit evidence that has been produced beyond the [page "399"](#) prescribed time limit, the tribunal may take into account such factors as whether the evidence was available to the party submitting it at the time when the evidence should have been produced;<sup>(97)</sup> if so, whether, as a result of developments in the course of the arbitral proceedings the evidence has assumed an importance not apparent earlier;<sup>(98)</sup> and whether admission of the evidence will unduly delay or disrupt the arbitral proceedings<sup>(99)</sup> or otherwise prejudice the interests of the other party.<sup>(100)</sup> Evidence withheld in bad faith as a tactical ploy to gain advantage in the proceedings will be excluded.<sup>(101)</sup> In any event, if evidence is admitted after the prescribed time limit has expired, the other party has the right to comment on such evidence and to submit further evidence in rebuttal thereof.<sup>(102)</sup>

### IX. The Critical Date

A different kind of time constraint which involves the relevance rather than the admissibility of evidence is the so-called 'critical date'. In all cases, there is a point in time in the factual chronology of the dispute beyond which the conduct of the parties and other events can no longer affect the decision of the case. This time is called 'the critical date'. The concept of the critical date was explained by Fitzmaurice in the United Kingdom's pleadings before the International Court of Justice in the *Minquiers and Ecrehos* case as follows:

the theory of the critical date involves ... that, whatever was the position at the date determined to be the

critical date, such is still the position now. Whatever were the rights of the Parties then, those are still the rights of the Parties now. If one of them then had sovereignty, it has it now, or is deemed to have it. If neither had it, then neither has it now ... The whole point, the whole *raison d'être*, of the critical date rule is, in effect, that time is deemed to stop at that date. Nothing that happens afterwards can operate to change the situation as it then existed. Whatever that situation was, it is deemed in law still to exist; and the rights of the parties are governed by it.<sup>(103)</sup>

This is not to say that evidence of events occurring after the critical date is always irrelevant. The tribunal may consider facts occurring after the critical date in order to evaluate facts occurring prior to that date. As Fitzmaurice explained it: [page "400"](#)

Just as the subsequent practice of parties to a treaty, in relation to it, cannot alter the meaning of the treaty, but may yet be evidence of what that meaning is, or what the parties had in mind in concluding it, so equally events occurring after the critical date in a dispute about territory cannot operate to alter the position as it stood at that date, but may nevertheless be evidence of, and throw light on, what the position was.<sup>(104)</sup>

The critical date is a matter of substance, not procedure, and it involves the relevance of the evidence, not its admissibility.<sup>(105)</sup>

Discussion of the critical date is frequently found in cases involving territorial disputes because such cases typically involve conduct over protracted periods of time, often decades or even centuries. As Fitzmaurice observed, however, 'Such a date must obviously exist in all litigated disputes, if only for the reason that it can never be later than the date on which legal proceedings are commenced'.<sup>(106)</sup>

The critical date forecloses the use of evidence of self-serving conduct intended by the party concerned to improve its position in the arbitration after the dispute has arisen.<sup>(107)</sup> It may also foreclose the use of evidence that is simply irrelevant because of the facts involved. In the *Island of Palmas* case,<sup>(108)</sup> for example, the United States and the Netherlands both claimed territorial sovereignty over a small, isolated island situated midway between the Philippines and the Netherlands East Indies. The United States based its claim on the 1898 Treaty of Paris, by which Spain purported to cede the island of Palmas to the United States. The Netherlands, on the other hand, based its claim on an alleged peaceful and continuous display of state authority over the island for many years up until and after the Treaty of Paris. After noting that Spain could not transfer to the United States more rights than she herself possessed, Judge Huber went on to say:

The essential point is therefore whether the Island of Palmas (or Miangos) at the moment of the conclusion and coming into force of the Treaty of Paris formed a part of the Spanish or Netherlands territory.<sup>(109)</sup>

Thus, the critical date was that on which the Treaty of Paris entered into force. After considering the evidence, Judge Huber held that, at the time of the treaty, the Netherlands – not Spain – had title to the island, such title having been acquired by the continuous and peaceful display of sovereignty over a long period of time up until the critical date.

In most cases, the critical date will be the date on which the dispute crystallised or the date when the legal proceedings commenced. The critical date is not always obvious, however, and may be a matter of contention between the parties, as explained by Jennings with reference to the *Minquiers and Ecrehos* case: [page "401"](#)

It will be remembered that the French, relying upon a Fisheries Agreement of 1839, tried to establish that it was only necessary for them to show a French title at that date in order to exclude the relevance of evidence of acts of sovereignty by either party subsequent to 1839. It would have been a great advantage to the French if this had been accepted by the Court as the critical date, because the bulk of acts of sovereignty since 1839 greatly favoured the British case. The British argument naturally favoured a more recent critical date.<sup>(110)</sup>

Although not generally referred to as such, the notion of a critical date figures in most expropriation cases in connection with the valuation of the expropriated property. In principle, a party whose



property has been expropriated is entitled to compensation for the value of the property at the time of the taking, and it is generally recognised that the valuation of expropriated property must disregard events that were not reasonably foreseeable at the time of the expropriation. Thus, in the *Lighthouses* case, the Permanent Court of Arbitration said:

the damage suffered by the firm can only be assessed by reference to data existing at the time when the concession was taken over. Subsequent events, which were unforeseen at that time both by the Greek Government which seized the concession and by the firm which was dispossessed of it, cannot be taken into consideration in a case of a grant of compensation which ought to have been not only determined but also put at the disposal of a concessionaire before the latter's removal.<sup>(111)</sup>

The critical date in most expropriation cases will be the date of the taking; evidence of events after that date will be irrelevant for purposes of valuation except to the extent that such events were foreseeable at the time of the taking. The subtlety involved in the notion of foreseeability is illustrated by the decision of the Iran-United States Claims Tribunal in the *Phillips* case, where the tribunal held that the expropriated joint services agreement should be valued on the basis of the oil prices foreseen at the time of expropriation, rather than the prices actually prevailing at that time or the prices that in fact were realised subsequent to the expropriation:

In order to estimate what revenue could have reasonably been expected in September 1979 to be received from the sales of the oil to be produced under the JSA, an assessment has to be made of what oil prices would have been foreseen in September 1979 to prevail on world markets during the remaining years of the JSA. While experience shows that forecasting future crude oil prices is difficult and open to a high risk of being proved wrong by the subsequent realities of the actual market, the Tribunal's objective here is to determine the range of expectations that seemed reasonable in September 1979, not the accuracy of those expectations in fact.<sup>(112)</sup>

 page "403"

## **X. Evidence of Interested Persons**


Although the municipal law of certain states prohibits parties from appearing as witnesses, there is no general rule in international arbitration that precludes the admission of evidence of interested persons. Such evidence has long been accepted by international tribunals.<sup>(113)</sup> As Commissioner Nielson explained in the *Dillon* case:

Unimpeached testimony of a person who may be the best informed person regarding transactions and occurrences under consideration cannot properly be disregarded because such a person is interested in a case. No principle of domestic or international law would sanction such an arbitrary disregard of evidence.<sup>(114)</sup>

Today, it is common for interested persons from both the public sector and the private sector to give evidence before international tribunals. Consular and diplomatic representatives and military officers have appeared as witnesses in numerous cases before the International Court of Justice, the Permanent Court of Arbitration and ad hoc tribunals; corporate officers and executives routinely give testimony in commercial arbitrations in which their employer is a party.

The weight given the evidence of interested persons will take into account such factors as whether the evidence is corroborated, whether other evidence could have been obtained with reasonable effort, whether the evidence is contradicted by other evidence, the inherent plausibility of the evidence, the credibility of the person submitting the evidence and the opportunity for cross-examination. As the American-Mexican Claims Commission put it, the evidence of interested persons:

must of course be considered in the light of tests applicable to witnesses generally, the tests as to a person's sources of information and his capacity to ascertain and his willingness to tell the truth.<sup>(115)</sup>

Because parties frequently compromise claims which they consider well-founded in order to reach a settlement, an international tribunal as a general rule will not consider evidence consisting of statements, admissions or proposals made in the course of settlement negotiations. Thus, the Permanent Court of International Justice said in the *Chorzow Factory* case:  [page "403"](#)

the Court cannot take into account declarations, admissions or proposals which the Parties may have made during direct negotiations between themselves, when such negotiations have not led to a complete agreement. <sup>(116)</sup>

In the case concerning the *Frontier Dispute between Burkina Faso and Mali*, a chamber of the International Court of Justice referred to the above-quoted statement of the Permanent Court of International Justice as a 'firmly established rule'.<sup>(117)</sup>

An issue may arise, however, as to whether particular evidence in fact was obtained through settlement negotiations. Thus, in the *Pepsico* case the Iran-United States Claims Tribunal deemed admissible a letter which the respondents argued had been written in connection with settlement discussions between the parties. The tribunal found that the letter was not an offer of settlement but rather a normal business communication acknowledging certain accounts receivable. <sup>(118)</sup>

## **XII. Privileged Evidence**

International tribunals, like municipal courts, recognise certain kinds of evidence as 'privileged' or exempt from production. A claim of privilege invariably raises the problem of reconciling the search for the truth as to disputed facts with the protection of interests that are considered fundamental to society, such as national security and the relationship between lawyers or physicians and their clients. If evidence is privileged, a party is under no obligation to produce it. The extent to which certain evidence is privileged will generally depend on the law applicable to the arbitration and the facts of the case.

In arbitrations governed by municipal law, the existence and scope of privilege will be determined by the law of the seat of the arbitration. The laws of most states protect military secrets and communications between a doctor or a lawyer and his client from disclosure in arbitral proceedings.

In commercial arbitrations, parties occasionally resist the production of evidence on the ground that it contains proprietary or confidential business information. If the parties have agreed to make the IBA Rules of Evidence applicable to the arbitration, a party seeking to protect the confidentiality of business secrets may be able to avail itself of article 9(2) of the Rules, which provides:

The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any document, statement, oral testimony or inspection for any of the following reasons ...

 [page "404"](#)

(e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

Absent agreement of the parties, however, business secrets are not as a general rule privileged under municipal law. A party who refuses to produce evidence on the ground that it would disclose proprietary or confidential business information risks an adverse inference. In proceedings before international tribunals, concerns about business secrets are usually dealt with by confidentiality agreements which are enforceable in municipal courts,<sup>(119)</sup> or by redaction of the documents of concern.

The notion of privilege has also arisen occasionally in proceedings governed by international law, but no general rules have evolved. For example, in the *Corfu Channel* case, the International Court of Justice requested the United Kingdom to produce certain naval orders that had been dispatched to the destroyer *Volage*, one of the British ships damaged by mines in the incident that gave rise to the case. The United Kingdom refused to produce the orders, pleading 'naval secrecy'. The Court declined to draw an adverse inference from the United Kingdom's failure to produce the orders. It dismissed the matter with the enigmatic comment that:



Those documents were not produced, the Agent pleading naval secrecy; and the United Kingdom witnesses declined to answer questions relating to them. It is not therefore possible to know the real content of these naval orders. The Court cannot, however, draw from this refusal to produce the orders any conclusions differing from those to which the actual events gave rise.<sup>(120)</sup>

In the *Tihomir Blaskic* case, on the other hand, the International Criminal Tribunal for the Former Yugoslavia ordered the production of certain documents, rejecting Croatia's claim of privilege on the basis of national security. The tribunal's decision in this regard turned on its interpretation of its organic act, the Statute of the International Tribunal adopted by the United Nations Security Council in 1993.<sup>(121)</sup> The tribunal said:

It would be contrary to the spirit and the language of the Statute and to the nature and purpose of the International Tribunal to permit a State to invoke, absolutely, a national security privilege. Further, such a position would jeopardize the International Tribunal's obligation to ensure a fair and expeditious trial and to afford the accused rights guaranteed by the Statute, for which access to evidence is a *sine qua non*.<sup>(122)</sup>

 page "405"

In other cases, states have agreed to produce evidence even though it allegedly involved national security. For example, in the *Godínez Cruz* case,<sup>(123)</sup> the Government of Honduras, at the request of the Inter-American Court of Human Rights, produced evidence concerning the organisation of its armed forces. Honduras was permitted to present the evidence in a closed session of the Court.


The reality of the situation, however, is that states will not reveal to international tribunals information that would compromise their national security. The dilemma this poses, not only for the fact-finding process but for the process of international arbitration in general, has been aptly summed up by Reisman as follows:

Undoubtedly, it is vital for a decision maker, whether national or international, to have all the data relevant to a particular matter before him in order to appreciate the problem and to be capable of rendering a decision consonant with the minimum and maximum goals of his public order ... On the other hand, a rule that would require a state to disclose all the documents in its possession bearing on an issue in litigation would force many states to refuse to adjudicate, lest they endanger themselves. Disclosure of many documents might reveal their source which could jeopardise individuals, weaken intelligence systems, and in severe cases occasion international incidents ... Concerns such as these must be accepted as valid exclusive interests, recognized by the public order of the most comprehensive international community. Resort to adjudication of disputes should not require renunciation of these interests. From a practical standpoint, it is clear that no state will renounce them, and the result will be either evasion of the rule, which would be most deleterious to perspectives of authority, or decreased resort to international adjudication.<sup>(124)</sup>

### **XIII. Fraudulent Evidence**

An award procured through fraudulent evidence is, in principle, a nullity. A mere allegation of fraud is not sufficient to render the award null, however; for this purpose, the fraudulent basis of the award must be established by a tribunal which is competent to decide the matter or by some other means.

If the fraud is discovered before the award is made, the tribunal will disregard the evidence and may draw such adverse inferences as the circumstances warrant. The gravest effect of the discovery of fraudulent evidence prior to the award may be its influence on the arbitrator's personal conviction as to the truthfulness and integrity of the party that has submitted the evidence. That conviction will ultimately be manifested in the arbitrator's findings of fact, which are generally beyond the reach of any appeal.

If the fraud is not discovered until after the award has been made, the award may be subject to revision or nullification. Various international treaties and  page "406" conventions,<sup>(125)</sup> municipal laws,<sup>(126)</sup> arbitration rules<sup>(127)</sup> and arbitration agreements<sup>(128)</sup> have

provided for revision or nullification of awards procured by fraud. For this purpose, fraud has sometimes been treated as a 'new fact'<sup>(129)</sup> or 'essential error'.<sup>(130)</sup> As Justice Roberts, the umpire in the *Sabotage* cases before the United States-Germany Mixed Claim Commission, stated:

Every tribunal has inherent power to reopen and to revise a decision induced by fraud. If it may correct its own errors and mistakes, *a fortiori* it may, while it still has jurisdiction of a cause, correct errors into which it has been led by fraud and collusion.<sup>(131)</sup>

Problems arise, however, when the fraud is discovered after the tribunal has become *functus officio*. If the arbitration is governed by municipal law, the party alleging fraud will usually have a remedy in the municipal courts of the seat of the arbitration<sup>(132)</sup> or the place of enforcement.<sup>(133)</sup> If the arbitration is governed by international law, however, the situation is more problematic: the party alleging fraud may have to rely on diplomatic channels, sometimes in combination with municipal courts and legislative bodies, to resolve the matter.<sup>(134)</sup>

 page "407"

The submission of false evidence to an international tribunal may not be intentional. In the *Behring Sea* case, the United States submitted as evidence translations of various documents from Russian archives which were intended to prove that, prior to Russia's cession of Alaska to the United States in 1867, Russia had exclusive jurisdiction and rights to fur seals in the Behring Sea. Upon learning that the translations were false and misleading, the agent of the United States notified the British agent of that fact and withdrew the translations from evidence. Although the United States was responsible for the submission of the fraudulent translations, the culpable party appears to have been the translator. According to Moore:

It appears that the original translator of the documents, a native Russian named Ivan Petroff, with a view to ingratiate himself with the Government of the United States and to impress upon it the importance of the Alaskan archives, in the hope that he might be employed to classify and translate them, made what Mr. Foster described as 'an astounding series of false translations'.<sup>(135)</sup>

#### XIV. Conclusions

International arbitrations vary considerably in terms of the nature of the parties, the subject matter of the dispute, the law governing the dispute and the law governing the arbitration itself. Nevertheless, various principles and rules of evidence have emerged from the process of international arbitration over the past two centuries which are generally applicable to all arbitrations unless the parties agree otherwise. These principles and rules represent a combination of civil law and common law concepts.

International arbitral procedure is characterised by the absence of restrictive rules governing the form, submission, admissibility and evaluation of evidence. The general approach of international tribunals is to keep open all avenues for the submission of evidence that will assist the tribunal in establishing the truth with respect to disputed facts. All evidence, documentary and testimonial, is generally admissible. The tribunal itself determines the relevance, materiality and probative value of the evidence.

Documentary evidence is generally given more weight than testimonial evidence. Contemporaneous documents generated without a view to improving either party's position in the dispute are considered to be more reliable evidence than the testimony of a witness who may be mistaken in his recollection of the facts or deliberately untruthful.

 page "408"

Each party has the burden of proof with respect to the facts necessary to establish its case and is required to produce those documents upon which it relies for that purpose. As a general rule, a party to an international arbitration is under no obligation to produce documents adverse to its interests unless ordered to do so by the tribunal. International tribunals generally have the power to require the production of documents, but do not have the power to compel such production. However, the failure of a party to produce evidence in its possession may give rise to an inference that the evidence is adverse to the interests of that party. Depending on the law



governing the arbitration, the tribunal may be able to enlist the powers of the municipal courts at the seat of the arbitration to compel production.

In international arbitration, the standard of proof used by the tribunal to determine whether a party has met its burden of proof with respect to a particular issue, although seldom articulated, is usually that of 'the preponderance of the evidence' or '*l'intime conviction de juge*'. In cases involving allegations of conduct *contra bonos mores*, a higher standard such as 'beyond a reasonable doubt' may be applied.

In principle, documentary evidence is to be submitted with whatever pleading it relates to. However, international tribunals generally have the power to permit the late production of documents and typically do so on the ground that the dispute should be decided on the basis of the facts and the law involved rather than a point of procedure. Late production may be denied, however, if it will unduly delay the arbitral proceedings or unfairly prejudice the interests of the other party. To avoid such prejudice, if late production is allowed, the other party must have the opportunity to comment on the evidence involved and submit rebuttal evidence.

Although documentary evidence is preferred, testimonial evidence is common in international arbitration and is often an important means of fact-finding, particularly when the documentary evidence is not sufficient to determine the facts in issue. Witnesses are examined and cross-examined by counsel under the direction of the tribunal. Testimonial evidence is often submitted in the form of written witness statements, but in such case the witness is expected to be available for cross-examination during the oral phase of the proceedings.


In international arbitration, as in municipal law, direct evidence is generally preferred over indirect evidence. However, international tribunals often make presumptions or draw inferences on the basis of indirect evidence when the direct evidence is not sufficient to decide the matter. International tribunals also take judicial notice of facts which are so well known or so easily verified as to make proof superfluous, as well as of the applicable law.

Expert evidence is commonly used in international arbitrations to assist the tribunal with such technical matters as the valuation of claims, the cause of structural or material failure, accepted practices within a given industry and other matters requiring specialised expertise. Such evidence may take the form of testimony, reports or inquiries. The expert may be appointed by the tribunal or by a party, but in any event the expert is expected to be independent and objective. The tribunal is not bound by the expert's opinion.

 [page "409"](#)

Another form of fact-finding used in international arbitration is the *descente sur les lieux* or site visit. In construction disputes, disputes involving the operation of industrial plants and in boundary and territorial disputes, it is often useful for the tribunal or experts appointed by the tribunal to visit the place where the dispute arose, either to formally gather evidence or to acquaint the tribunal in a general way with the factual background of the case.

As in most municipal legal systems, evidence obtained in settlement negotiations and evidence that is privileged for reasons of national security or a professional relationship is exempt from production in international arbitration.

Fraudulent evidence will be disregarded by the tribunal if the fraud is discovered before the award is made. If the fraud is not discovered until after the award is made, the award may be subject to revision or nullification.  [page "410"](#)

<sup>2</sup> Partner, Covington & Burling.

<sup>1</sup> PCJ, Series D, *Acts and Documents Concerning the Organization of the Court*, (1926), Addendum to No. 2, *Revision of the Rules of Court*, p. 250.

<sup>2</sup> The Permanent Court of International Justice was a product of the arbitral process. Its statute and rules, like those of its successor, the International Court of Justice, were based largely on the work of the Hague Peace Conferences of 1899 and 1907, which created the Permanent Court of Arbitration. As Reisman has observed, 'All contemporary international judicial institutions, whether named courts, tribunals, panels or commissions are arbitral, in that at least

the formal contingency for their authority in specific cases emanates from the joint will of the litigating parties'. W.M. Reisman, *Nullity and Revision* (1971), p. 66.

<sup>3</sup> Even in arbitrations between sovereign states, however, the tribunal generally has the power to order the production of evidence, See e.g., Article 69 of the Hague Convention of 1907, which provides 'The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.'

<sup>4</sup> P. Lalive, 'Enforcing Awards' in *International Chamber of Commerce, 60 Years of ICC Arbitration: A Look at the Future* (1984), p. 323.

<sup>5</sup> J. Ralston, *International Arbitration from Athens to Locarno* (1929), p. 191.

<sup>6</sup> See e.g., the *Alabama Claims* case, where Article VI of the Treaty of Washington provided, 'In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case': *British and Foreign State Papers*, vol. 61, p. 39.

<sup>7</sup> The London Court of International Arbitration was established as the London Chamber of Arbitration in 1891; the Arbitration Institute of the Stockholm Chamber of Commerce was established in 1917; the International Chamber of Commerce Court of Arbitration was established in 1923; and the American Arbitration Association was established in 1926.

<sup>8</sup> See e.g., the Rules of Procedure for Arbitration of the International Chamber of Commerce approved by the Council of the International Chamber of Commerce at its meeting on 10 July 1922.

<sup>9</sup> As to the relevance of the jurisprudence of the International Court of Justice and its predecessor, the Permanent Court of International Justice, to international arbitration, see *supra* n. 2.

<sup>10</sup> *South-West Africa* cases, (Second Phase), [1966] ICJ Rep., Pleadings, vol. 10, p. 122; vol. 11, p. 460.

<sup>11</sup> Article 21(1).

<sup>12</sup> Article 19.

<sup>13</sup> Article 9(1).

<sup>14</sup> Rule 34(1).

<sup>15</sup> Article 20(1).

<sup>16</sup> Article 14(3).

<sup>17</sup> R. Lillich (ed.), *Fact-Finding Before International Tribunals* (1992), p. 271.

<sup>18</sup> *Ireland v. United Kingdom* (1978) 25 Eur Ct HR (ser. A) 65.

<sup>19</sup> *Velasquez Rodríguez* case, Judgment (Merits), Inter-American Court of Human Rights, Series C: Decisions and Judgments, No. 4 (1988), para. 138.

<sup>20</sup> *Oil Field of Texas, Inc. v. Government of the Islamic Republic of Iran and others*, (1986), 12 Iran-US CTR 315.

<sup>21</sup> *R v. Sussex Justices, ex parte McCarthy* [1924] 1 KB 259.

<sup>22</sup> Most arbitral awards are voluntarily complied with. See A. van den Berg, 'Refusals of Enforcement under the New York Convention of 1958: the Unfortunate Few' in ICC International Court of Arbitration, *Arbitration in the Next Decade* (1998), p. 75; A. Redfern and M. Hunter, *Law and Practice of International Commercial Arbitration* (2nd edn, 1991), p. 416; P. Lalive, *supra* n. 7 at p. 323.

<sup>23</sup> In the common law system, the so-called 'best evidence' rule requires that the terms of a document be proved by the production of the document itself. A similar rule obtains in the civil law system.

<sup>24</sup> See e.g., *H.A. Spalding Inc. v. Ministry of Roads and Transport of the Islamic Republic of Iran*, (1986), 10 Iran-US CTR 31.

<sup>25</sup> B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953), p. 304.

<sup>26</sup> [1949] ICJ Rep. 18.

<sup>27</sup> *ibid.* p. 22.

<sup>28</sup> [1962] ICJ Rep. 22.

<sup>29</sup> *ibid.* p. 23.

<sup>30</sup> *ibid.* pp. 32, 33–34. The Court's decision that Preah Vihear was subject to the sovereignty of Cambodia was also based on the principle of estoppel. The Court said that even if Siam had not accepted the Annex I map in 1908, it would be precluded by its conduct subsequent to 1908 from asserting that it had not accepted the map and the boundary depicted thereon. *ibid.* p. 32.

<sup>31</sup> See e.g., *Rockwell International Systems, Inc. v. Government of the Islamic Republic of Iran*, (1989), 22 Iran-US CTR 183.

<sup>32</sup> See e.g., *DIC of Delaware, Inc. v. Tehran Redevelopment Corp. and others*, (1985), 8 Iran-US CTR 176.

<sup>33</sup> *INA Corp. v. Government of the Islamic Republic of Iran*, (1985), 8 Iran-US CTR 382. For other cases where the tribunal drew a negative inference from a party's failure to produce evidence, see



- Sedco, Inc. v. National Iranian Oil Co. and others*, (1987), 15 Iran-US CTR 55; *Foremost Tehran, Inc. and others v. Government of the Islamic Republic of Iran and others*, (1986) 10 Iran-US CTR 302; and *Parker v. Mexico*, United States and Mexico General Claims Commission, *Opinions of Commissioners* (1926), pp. 39–40.
- <sup>34</sup> D. Sandifer, *Evidence Before International Tribunals* (rev. edn, 1975), p. 146.
- <sup>35</sup> [1962] ICJ Rep. 109.
- <sup>36</sup> See e.g., *Fabiani case*, J.B. Moore, *International Arbitrations* (1898), vol. 5, p. 4905.
- <sup>37</sup> See e.g., *Island of Palmas case*, (1928), United Nations, *Reports of International Arbitral Awards*, vol. II, p. 842.
- <sup>38</sup> See e.g., *Starrett Housing Corp. and others v. Government of the Islamic Republic of Iran and others*, (1987), 16 Iran-US CTR 190.
- <sup>39</sup> See e.g., *Flexi-Van Leasing, Inc. v. Government of the Islamic Republic of Iran*, (1982), Order No. 36, 1 Iran-US CTR 455.
- <sup>40</sup> *Fisheries Jurisdiction* [1974] ICJ Rep. 9. But the Court treats municipal law as a fact which may require proof. *Case concerning Certain German Interests in Polish Upper Silesia*, PCIJ, Ser. A, No. 7, p. 19.
- <sup>41</sup> See e.g., ICC Case No. 5418, International Council for Commercial Arbitration, XII Yearbook 102 (1988).
- <sup>42</sup> United Nations, *Reports of International Arbitral Awards*, vol. II, p. 841.
- <sup>43</sup> J.L. Brierly, *The Law of Nations* (6th edn, 1963), p. 162.
- <sup>44</sup> See P. Mayer, 'The Trend Towards Delocalisation in the Last 100 Years' in *The Internationalisation of International Arbitration: The LCIA Centenary Conference* (1995), p. 37; P. Lalive, 'Les règles de conflit de lois appliquées au fond du litige par l'arbitre international siègent en Suisse' in *Revue de l'arbitrage* (1976), p. 155; P. Fouchard, *L'Arbitrage Commercial International* (1965), p. 22.
- <sup>45</sup> A. Redfern and M. Hunter, *Law and Practice of International Commercial Arbitration* (1991), p. 88.
- <sup>46</sup> See e.g., English Arbitration Act 1996, s. 68 which provides for the setting aside of awards if certain mandatory rules of English law are contravened.
- <sup>47</sup> I. Brownlie, *Principles of Public International Law* (4th edn, 1990), p. 287.
- <sup>48</sup> See e.g., *The S.S. Wimbledon*, PCIJ, Ser. A, No. 1, p. 25.
- <sup>49</sup> See e.g., *Case concerning the Swedish Motorship Kronprins Gustaf Adolf and Pacific* (1932) 26 AJIL 896 (1932).
- <sup>50</sup> See e.g., Exchange of Notes constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Swiss Confederation regarding the Status, Privileges and Immunities in Switzerland of the Court of Arbitration in the Beagle Channel Case and Persons Connected Therewith, 858 UNTS 41.
- <sup>51</sup> See e.g., Agreement concerning the Headquarters of the Permanent Court of Arbitration between the Permanent Court of Arbitration and The Kingdom of the Netherlands, The Hague, 30 March 1999.
- <sup>52</sup> F.A. Mann, *Studies in International Law* (1973), p. 257.
- <sup>53</sup> See e.g., *Egypt v. Suez Canal Co.*, Award of 6 July 1864, 55 British and Foreign State Papers 1004.
- <sup>54</sup> *Saudi Arabia v. Arabian American Oil Co.* (1958) 27 ILR 117.
- <sup>55</sup> *ibid.* pp. 155–156.
- <sup>56</sup> *ibid.* p. 156.
- <sup>57</sup> *BP Exploration Co. (Libya) v. Government of the Libyan Arab Republic* (1973) 53 ILR 297.
- <sup>58</sup> *ibid.* p. 147.
- <sup>59</sup> *Texaco Overseas Petroleum Co./California Asiatic Oil Co. v. Government of the Libyan Arab Republic* (1977) 53 ILR 389.
- <sup>60</sup> *Libyan American Oil Co. v. Government of the Libyan Arab Republic* (1977) 20 ILM 1.
- <sup>61</sup> (1977) 53 ILR 431.
- <sup>62</sup> (1981) 20 ILM 42.
- <sup>63</sup> *ibid.* p. 43.
- <sup>64</sup> *American Independent Oil Co., Inc. v. Government of the State of Kuwait* (1982) 66 ILR 518.
- <sup>65</sup> *ibid.* p. 560.
- <sup>66</sup> 575 UNTS 160.
- <sup>67</sup> *ibid.* Article 53.
- <sup>68</sup> *ibid.* Article 54.
- <sup>69</sup> D. Sandifer, *Evidence Before International Tribunals* (revised edn, 1975), p. 197.
- <sup>70</sup> B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953), pp. 318–319.
- <sup>71</sup> ICSID Rules of Procedure for Arbitration Proceedings, r. 24; LCIA

- Arbitration Rules, art. 6.6; UNCITRAL Arbitration Rules, art. 18(2).
- <sup>72</sup> United Nations, Reports of International Arbitral Awards, vol. II, p. 841.
- <sup>73</sup> A. Bustamante, *Derecho Internacional Publico* (1938), vol. 5, p. 428.
- <sup>74</sup> See e.g., *Barcelona Traction* (Second Phase) [1970] ICJ Rep. 98 (Sep. Op. Fitzmaurice).
- <sup>75</sup> See e.g., *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain* [2001] ICJ Rep. 46.
- <sup>76</sup> This was the *Case concerning Certain German Interests in Polish Upper Silesia*. See M. Hudson, *The Permanent Court of International Justice* (1934), p. 502.
- <sup>77</sup> S. Rosenne, *The Law and Practice of the International Court* (1965), p. 576.
- <sup>78</sup> But see ICC Case No. 1512 in which the arbitrator, in a decision upheld by the English courts, declined to hear testimonial evidence because 'the arbitrator is satisfied that all relevant facts have been fully established and that there is no need to obtain testimonies or hear witnesses, the less so as the facts are simple and to a large extent undisputed, and the litigation centres on the interpretation of contractual documents and legislative or regulatory provisions'. *Dalmia Dairy Industries Ltd v. National Bank of Pakistan* [1978] 2 Lloyd's Rep. 269.
- <sup>79</sup> Occasionally, parties to an international arbitration agree to a procedure known as 'witness conferencing', whereby all witnesses and experts are examined and cross-examined jointly in teams. For a discussion of this process, see W. Peter, 'Witness Conferencing' in (2002) 18 *Arb. Int'l* 47.
- <sup>80</sup> See e.g., UNCITRAL Model Law, Article 27.
- <sup>81</sup> Ex parte affidavits and witness statements are a feature of common law procedure. In civil law jurisdictions, testimony not taken before the court is usually taken by deposition before a judge or other competent authority in the presence of the opposing party.
- <sup>82</sup> See e.g., *Behning Sea Arbitration* and particularly Article IX of the Treaty of Arbitration between Great Britain and the United States signed 29 February 1892, discussed in Moore, *International Arbitrations* (1898), vol. 1, pp. 798–799, 802.
- <sup>83</sup> *Amco Asia Corp. and others v. Republic of Indonesia*, (1984), 1 ICSID Rep. 458.
- <sup>84</sup> *Guinea/Guinea Bissau Maritime Boundary Arbitration*, (1985), 77 ILR 647.
- <sup>85</sup> *Island of Palmas*, (1928), United Nations, Reports of International Arbitral Awards, vol. II, p. 860.
- <sup>86</sup> *Southern Pacific Properties (Middle East) Ltd v. Arab Republic of Egypt*, (1988), 106 ILR 546.
- <sup>87</sup> Rules of the Court, art. 64.
- <sup>88</sup> *ibid.*
- <sup>89</sup> See e.g., *South West Africa* [1966] ICJ Rep. 9.
- <sup>90</sup> [1949] ICJ Rep. 21.
- <sup>91</sup> 52 ILR 93.
- <sup>92</sup> [1959] ICJ Rep. 220.
- <sup>93</sup> [1986] ICJ Rep. 582.
- <sup>94</sup> United Nations, Reports of International Arbitral Awards, vol. II, p. 853.
- <sup>95</sup> *Free Zones of Upper Savoy and the District of Gex*, Series A/B, No. 46 (1932) 155–156.
- <sup>96</sup> See e.g., *Norton v. Mexico*, J.B. Moore, *International Arbitrations* (1898), vol. 2, p. 1355.
- <sup>97</sup> See e.g., Permanent Court of Arbitration, *Proceedings of the Tribunal of Arbitration Convened at The Hague under the Provisions of the Special Agreement between the United States of America and Norway concluded at Washington, June 30th, 1921, for the Submission to Arbitration of Certain Claims of Norwegian Subjects against the United States arising out of Certain Requisitions of the United States Shipping Board Emergency Fleet Corporation* (Van Langenhuisen Brothers, The Hague, 1922), pp. 16–32, 100.
- <sup>98</sup> *Hidetomo Shinto v. Government of the Islamic Republic of Iran*, (1988), 19 Iran-US CTR 328.
- <sup>99</sup> See e.g., *Middle East Management and Construction Corp. v. Government of the Islamic Republic of Iran*, (1985), 9 Iran-US CTR 343.
- <sup>100</sup> See e.g., *Harris International Telecommunications v. Government of the Islamic Republic of Iran*, (1987), 17 Iran-US CTR 45.
- <sup>101</sup> See e.g., PCIJ, Series D, *Acts and Documents Concerning the Organization of the Court*, (1936), Third Addendum to No. 2, *Elaboration of the Rules of Court of March 11, 1936*, p. 191.
- <sup>102</sup> See e.g., Rules of the International Court of Justice, art. 56.
- <sup>103</sup> *Minquiers and Ecrehos* case [1953] ICJ Rep., Pleadings, vol. 2, p. 64.
- <sup>104</sup> *ibid.* p. 92.



- <sup>105</sup> Oppenheim's *International Law* (9th edn, 1996), vol. I, pp. 711–712.
- <sup>106</sup> G. Fitzmaurice, 'The Law and Procedure of the International Court of Justice, 1951–4: Points of Substantive Law, Part II' in (1956–57) 32 BYIL 20.
- <sup>107</sup> *Minquiers and Ecrehos* case [1953] ICJ Rep. 59.
- <sup>108</sup> United Nations, Reports of International Arbitral Awards, vol. II, p. 829.
- <sup>109</sup> *ibid.* p. 843.
- <sup>110</sup> R.Y. Jennings, *The Acquisition of Territory in International Law* (1963), p. 33.
- <sup>111</sup> *Lighthouses Arbitration*, (1956), 23 ILR 301.
- <sup>112</sup> 21 Iran-US CTR 128.
- <sup>113</sup> See e.g., *Montijo v. Guatemala*, J.B. Moore, *International Arbitrations* (1898), vol. 2, pp. 1434–1435.
- <sup>114</sup> *Dillon v. Mexico*, United States and Mexico General Claims Commission, *Opinions of Commissioners* (1929), p. 65.
- <sup>115</sup> *Kling v. Mexico*, United States and Mexico General Claims Commission, *Opinions of Commissioner* (1931), p. 47.
- <sup>116</sup> PCIJ, Series A, No. 17, p. 51.
- <sup>117</sup> [1986] ICJ Rep. 632.
- <sup>118</sup> *Pepsico, Inc. v. Government of the Islamic Republic of Iran and Zamzam Bottling Companies*, (1986), 13 Iran-US CTR 28.
- <sup>119</sup> See e.g., IBA Rules of Evidence, art. 9(3), which provides, 'The Arbitral Tribunal may, where appropriate, make necessary arrangements to permit evidence to be considered subject to suitable confidentiality protection'.
- <sup>120</sup> [1949] ICJ Rep. 32.
- <sup>121</sup> S/RES/827 (1993).
- <sup>122</sup> *Tihomir Blaskic*, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, Decision on the Objection of the Republic of Croatia to the Issuance of Subpoenae Duces Tecum, (1997), p. 62.
- <sup>123</sup> Inter-American Court of Human Rights, Judgment 20 January 1989, Ser. C, No. 5 (1989).
- <sup>124</sup> W.M. Reisman, *Nullity and Revision* (1971), pp. 601–602.
- <sup>125</sup> The first bilateral treaty to provide for revision appears to be the treaty of 23 July 1898 between Italy and Argentina, which provided for revision of the award in the event that 'the judgment has been based upon a false or erroneous document'. The first multilateral treaty to deal with revision was the Hague Convention of 1899, which provided that the parties to an arbitration could reserve in the *compromis* the right to demand revision of the award on the ground of the discovery of 'some new fact calculated to exercise a decisive influence upon the award'. The *travaux préparatoires* of the Convention make clear that, for purposes of revision, fraud constitutes a 'new fact'.
- <sup>126</sup> See e.g., Belgium's Judicial Code, Sixth Part; Arbitration, which provides in art. 1704(3) that an award may be set aside 'if it was obtained by fraud'.
- <sup>127</sup> See e.g., ICSID's Rules of Procedure for Arbitration Proceedings, r. 50.
- <sup>128</sup> See e.g., art. 11 of the *compromis* signed by Guinea and Guinea-Bissau on 17 February 1983, 77 ILR 644.
- <sup>129</sup> The Hague Conventions of 1899 and 1907 provide for revision of arbitral awards on the ground of the discovery of a decisive 'new fact'. The *travaux préparatoires* make clear that for purposes of revision and nullification, fraud constitutes a 'new fact'. *The Proceedings of the Hague Peace Conference, The Conference of 1899* (1920), p. 753.
- <sup>130</sup> *Annuaire de l'Institut de Droit International* (1877), p. 87.
- <sup>131</sup> Mixed Claims Commission, United States and Germany, *Administrative Decisions and Opinions of a General Nature* (1933–1939), p. 1118.
- <sup>132</sup> Provision in municipal law for the setting aside of an award procured by fraud may be express, as in England where Arbitration Act 1996, s. 68(2)(g) provides that an award may be challenged on the ground that it was 'obtained by fraud'; or it may be implied, as in France where the provisions of the New Code of Civil Procedure (NCP) concerning the nullification of international awards make no express reference to fraud, but the courts have held that an international award procured by fraudulent means violates public policy and may be set aside on that ground under art. 1502 of the NCP. *European Gas Turbines v. Westman International*, Cour d'appel de Paris, 30 November 1993, Rev. Arb. 194, 359.
- <sup>133</sup> Article V(2)(b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides: 'Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that ... [t]he recognition or enforcement

of the award would be contrary to the public policy of that country'.

<sup>134</sup> For example, in the *Weil* and *Al Abra* cases decided by the United States-Mexican Claims Commission, Mexico made payments under the awards to the USA, but protested through diplomatic channels that the awards had been procured through fraud and perjury by the American claimants. The United States Congress enacted legislation authorising the President of the United States to investigate the allegations of fraud and, if such allegations were found to be true, to withhold further payments under the awards until the cases were retried. This legislation was subsequently amended to authorise the Attorney General to bring suit in the United States Court of Claims to determine whether the awards were obtained by fraud and, if so, providing for the return of the remaining funds to Mexico. The Court of Claims then found that the awards in both the *Weil* case and the *Al Abra* case were procured by fraud. The USA subsequently returned to Mexico all amounts awarded in the two cases. This required the enactment of further legislation to appropriate the necessary funds, because certain amounts had already been distributed to the claimants by the US Government. See Moore, *International Arbitrations* (1898), vol. 2, pp. 1324–1348.

<sup>135</sup> J.B. Moore, *International Arbitrations* (1898), vol. 1, p. 815.

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## **ANNEX 17**



**Government  
Printing Bureau**

Imprensa Oficial

**中文  
Versão Portuguesa**

**Macao Special  
Administrative Region**



[\[ Chinese Version \]](#) [\[ Portuguese Version \]](#)

## **Joint Declaration - Annex I -Annex II**

### **Joint declaration of the Government of the People's Republic of China and The Government of the Republic of Portugal on the question of Macao**

The Government of the People's Republic of China and the Government of the Republic of Portugal have reviewed with satisfaction the development of the friendly relations between the two Governments and peoples since the establishment of diplomatic relations between the two countries and agreed that a proper negotiated settlement by the two Governments of the question of Macao, which is left over from the past, is conducive to the economic growth and social stability of Macao and to the further strengthening - of the friendly relations and cooperation between the two countries. To this end, they have, after talks between the delegations of the Governments, agreed to declare as follows:

1. The Government of the People's Republic of China and the Government of the Republic of Portugal declare that the Macao area (including the Macao Peninsula, Taipa Island and Coloane Island, hereinafter referred to as Macao) is Chinese territory, and that the Government of the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999.

2. The Government of the People's Republic of China declares that in line with the principle of one country, two systems, the People's Republic of China will pursue the following basic policies regarding Macao :

1. In accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, the People's Republic of China will establish a Macao Special Administrative Region of the People's Republic of China upon resuming the exercise of sovereignty over Macao.

2. The Macao Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China, and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government. The Macao Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication.

3. Both the Government and the legislature of the Macao Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held in Macao. Officials holding principal posts will be nominated by the chief executive of the Macao Special Administrative Region for appointment by the Central People's Government. Public servants (including police) of Chinese nationality and Portuguese and other foreign nationalities employment. Portuguese and other foreign nationals may be appointed or employed to hold certain public posts in the Macao Special Administrative Region.

4. The current social and economic systems in Macao will remain unchanged, and so will the life - style. The laws currently in force in Macao will remain basically unchanged. All rights and freedoms of the inhabitants and other persons in Macao, including those of the person, of speech, of the press, of assembly, of association, of travel and movement, of strike., of choice of occupation, of academic research, of religion and belief, of communication and the ownership of property will be ensured by law in the Macao Special Administrative Region.

5. The Macao Special Administrative Region will on it's own decide policies in the fields of culture, education, science and technology and protect cultural relics in Macao according to law. In addition to Chinese, Portuguese may also be used in organs of government and in the legislature and the courts in the Macao Special Administrative Region.



6. The Macao Special Administrative Region may establish mutually beneficial economic relations with Portugal and other countries. Due regard will be given to the economic interests of Portugal and other countries in Macao. The interests of the inhabitants of Portuguese descent in Macao will be protected by law.

7. Using the name "Macao, China", the Macao Special Administrative Region may on its own maintain and develop economic and cultural relations and in this context conclude agreements with states, regions and relevant international organizations.

The Macao Special Administrative Region Government may on its own issue travel documents. Government may on its own issue travel documents for entry into and exit from Macao.

8. The Macao Special Administrative Region will remain a free port and a separate customs territory in order to develop its economic activities. There will be free flow of capital. The Macao Pataca, as the legal tender of the Macao Special Administrative Region, will continue to circulate and remain freely convertible.

9. The Macao Special Administrative Region will continue to have independent finances. The Central People's Government will not levy taxes on the Macao Special Administrative Region.

10. The maintenance of public order in the Macao Special Administrative Region will be the responsibility of the Macao Special Administrative Region Government.

11. Apart from displaying the national flag and national emblem of the People's Republic of China, the Macao Special Administrative Region may use a regional flag and emblem of its own.

12. The above-stated basic policies and the elaboration of them in Annex I to this Joint Declaration will be stipulated in a Basic Law of the Macao Special Administrative Region of the People's Republic of China by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

3. The Government of the People's Republic of China and the Government of the Republic of Portugal declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 19 December 1999, the Government of the Republic of Portugal will be responsible for the administration of Macao. The Government of the Republic of Portugal will continue to promote the economic growth of Macao and maintain its social stability, and the Government of the People's Republic of China will give its cooperation in this connection.

4. The Government of the People's Republic of China and the Government of the Republic of Portugal declare that in order to ensure the effective implementation of this Joint Declaration and create appropriate conditions for the transfer of government in 1999, a Sino-Portuguese Joint Liaison Group will be set up when this Joint Declaration enters into force, and that it will be established and will function in accordance with the relevant provisions of Annex II to this Joint Declaration.

5. The Government of the People's Republic of China and the Government of the Republic of Portugal declare that land leases in Macao and other related matters will be dealt with in accordance with the relevant provisions of the Annexes to this Joint Declaration.

6. The Government of the People's Republic of China and the Government of the Republic of Portugal agree to implement all the preceding declarations and the Annexes which are a component part of the Joint Declaration.

7. This Joint Declaration and its Annexes shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 1987 in the Chinese and Portuguese languages, both texts being equally authentic.

For the Government of the People's Republic of China.

For the Government of the Republic of Portugal.

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#### ANNEX I

**ELABORATION BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA OF ITS BASIC POLICIES  
REGARDING MACAO**

**I - II - III - IV - V - VI - VII - VIII - IX - X - XI - XII - XIII - XIV**

The Government of the People's Republic of China elaborates the basic policies of the People's Republic of China regarding Macao as set out in paragraph 2 of the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao as follows :

**I**

The Constitution of the People's Republic of China stipulates in Article 31 that the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions. In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Macao on 20 December 1999, establish the Macao Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Macao Special Administrative Region of the People's Republic of China, stipulating that after the establishment of the Macao Special Administrative Region the socialist system and socialist policies shall not be practised in the Macao Special Administrative Region and that the current social and economic systems and life-style in Macao shall remain unchanged for 50 years.

The Macao Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China, and shall enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government. The Macao Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Macao Special Administrative Region to conduct on its own those external affairs specified in Section VIII of this Annex.

**II**

The executive power of the Macao Special Administrative Region shall be vested in the Government of the Macao Special Administrative Region. The Government of the Macao Special Administrative Region shall be composed of local inhabitants. The chief executive of the Macao Special Administrative Region shall be appointed by the Central People's Government on the basis of the results of elections or consultations to be held in Macao. Officials holding principal posts ( equivalent to Assistant-Secretaries, procurator-general and principal officer of the police service ) shall be nominated by the chief executive of the Macao Special Administrative Region for appointment by the Central People's Government.

The executive authorities shall abide by the law and shall be accountable to the legislature.

**III**

The legislative power of the Macao Special Administrative Region shall be vested in the legislature of the Macao Special Administrative Region. The legislature shall be composed of local inhabitants, and the majority of its members shall be elected.

After the establishment of the Macao Special Administrative Region, - the laws, decrees, administrative regulations and other normative acts previously in force in Macao shall be maintained, save for whatever therein may contravene the Basic Law or subject to any amendment by the Macao Special Administrative Region legislature.

The legislature of the Macao Special Administrative Region may enact laws in accordance with the provisions of the Basic Law and legal procedures, and such laws shall be reported to the Standing Committee of the National People's Congress of the People's Republic of China for the record. Laws enacted by the legislature of the Macao Special Administrative Region which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The legal system of the Macao Special Administrative Region shall consist of the Basic Law, the laws previously in force in Macao and the laws enacted by the Macao Special Administrative Region as above.

**IV**

Judicial power in the Macao Special Administrative Region shall be vested in the courts of the Macao Special Administrative Region. The power of final adjudication shall be exercised by the court of final



appeal in the Macao Special Administrative Region. The courts shall exercise judicial power independently and free from any interference, and shall be subordinated only to the law. The judges shall enjoy the immunities appropriate to the performance of their functions.

Judges of the Macao Special Administrative Region courts shall be appointed by the chief executive of the Macao Special Administrative Region acting in accordance with the recommendation of the independent commission composed of local judges, lawyers and noted public figures. Judges shall be chosen by reference to their professional qualifications. Qualified judges of foreign nationalities may also be invited to serve as judges in the Macao Special Administrative Region. A judge may only be removed for inability to discharge the functions of his office, or for behaviour incompatible with the post he holds, by the chief executive acting in accordance with the recommendation of a tribunal appointed by the president of the court of final appeal, consisting of not fewer than three local judges. The removal of judges of the court of final appeal shall be decided upon by the chief executive in accordance with the recommendation of a review committee consisting of members of the Macao Special Administrative Region legislature. The appointment and removal of judges of the court of final appeal shall be reported to the Standing Committee of the National People's Congress for the record.

The prosecuting authority of the Macao Special Administrative Region shall exercise procuratorial functions as vested by law, independently and free from any interference.

The system previously in force in Macao for appointment and removal of supporting members of the judiciary shall be maintained.

On the basis of the system previously operating in Macao, the Macao Special Administrative Region Government shall make provisions for local lawyers and lawyers from outside Macao to practise in the Macao Special Administrative Region.

The Central People's Government shall assist or authorise the Macao Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

#### V

The Macao Special Administrative Region shall, according to law, ensure the rights and freedoms of the inhabitants and other persons in Macao as provided for by the laws previously in force in Macao, including freedom of the person, of speech, of the press, of assembly, of demonstration, of association (e.g. to form and join non-official associations), to form and join trade unions, of travel and movement, of choice of occupation and work, of strike, of religion and belief, of education and academic research ; inviolability of the home and of communication, and the right to have access to law and court ; rights concerning the ownership of private property and of enterprises and their transfer and inheritance, and to obtain appropriate compensation for lawful deprivation paid without undue delay : freedom to marry and the right to form and raise a family freely.

The inhabitants and other persons in the Macao Special Administrative Region shall all be equal before the law, and shall be free from discrimination, irrespective of nationality, descent, sex, race, language, religion, political or ideological belief, educational level, economic status or social conditions.

The Macao Special Administrative Region shall protect, according to law, the interests of residents of Portuguese descent in Macao and shall respect their customs and cultural traditions.

Religious organizations and believers in the Macao Special Administrative Region may carry out activities as before for religious purposes and within the limits as prescribed by law, and may maintain relations with religious organizations and believers outside Macao. Schools, hospitals and charitable institutions attached to religious organizations may continue to operate as before. The relationship between religious organizations in the Macao Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

#### VI

After the establishment of the Macao Special Administrative Region, public servants ( including police ) of Chinese nationality and Portuguese and other foreign nationalities previously serving in Macao may all remain in employment and continue their service with pay, allowances and benefits no less favourable than before. Those of the above-mentioned public servants who have retired after the establishment of the Macao Special Administrative Region shall, in accordance with regulations currently in force, be entitled to pensions and allowances on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Macao Special Administrative Region may appoint Portuguese and other foreign national previously serving in the public service in Macao or currently holding Permanent Identity Cards of the Macao Special Administrative Region may also invite Portuguese and other foreign nationals holding public posts in the Macao Special Administrative Region shall be employed only in their individual capacities and shall be responsible exclusively to the Macao Special Administrative Region.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Macao's previous system of employment, discipline, promotion and normal rise in rank for the public service shall remain basically unchanged.

## VII

The Macao Special Administrative Region shall on its own decide policies in the fields of culture, education, science and technology, such as policies regarding the languages of instruction ( including Portuguese ) and the system of academic qualifications and the recognition of academic degrees.

All educational institutions may remain in operation and retain their autonomy. They may continue to recruit teaching and administrative staff and use teaching materials from outside Macao. Students shall enjoy freedom to pursue their education outside the Macao to pursue their education outside the Macao Special Administrative Region shall protect cultural relics in Macao according to law.

## VIII

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, the Macao Special Administrative Region may on its own, using the name " Macao, China ", maintain and develop relations and conclude and implement agreements with states, regions and relevant international or regional organizations in the appropriate fields, such as the economy, trade, finance, shipping, communications, tourism, culture, science and technology and sports. Representatives of the Macao Special Administrative Region Government may participate, as members of the delegations of the Government of the People's Republic of China, in international organizations or conferences in appropriate fields limited to states and affecting the Macao Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organization or conference concerned, and may express their views in the name of " Macao, China ". The Macao Special Administrative Region may, using the name " Macao, China ", participate in international organizations and conferences not limited to states.

Representatives of the Macao Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in negotiations conducted by the Central People's Government at the diplomatic level directly affecting the Macao Special Administrative Region.

The application to the Macao Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances of each case and the needs of the Macao Special Administrative Region and after seeking the views the People's Republic of China is not a party but which are implemented in Macao is not a party but which are implemented in Macao may remain implemented in the Macao Special Administrative Region. The Central People's Government shall, according to the circumstances and the needs, authorise or assist the Macao Special Administrative Region of other relevant international agreements.

The Central People's Government shall, in accordance with the circumstances of each case and the needs of the Macao Special Administrative Region, take steps to ensure that the Macao Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organizations in which Macao is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Macao Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Macao by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions in Macao of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

## IX



**The following categories of persons shall have the right of abode in the Macao Special Administrative Region and be qualified to obtain Permanent Identity Cards of the Macao Special Administrative Region :**

- ☐ **The Chinese nationals who were born or who have ordinarily resided in Macao before or after the establishment of the Macao Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Macao of such Chinese nationals :**
- ☐ **The Portuguese who were born in Macao or who have ordinarily resided in Macao before or after the establishment of the Macao Special Administrative Region for a continuous period of 7 years or more and who, in either case, have taken Macao as their place of permanent residence ; and**
- ☐ **The other persons who have ordinarily resided in Macao for a continuous period of 7 years or more and have taken Macao as their place of permanent residence before or after the establishment of the Macao Special Administrative Region, and persons under 18 years of age who were born of such persons in Macao before or after the establishment of the Macao Special Administrative Region.**

**The Central People's Government, shall authorise the Macao Special Administrative Region Government to issue, in accordance with the law, passports of the Macao Special Administrative Region of the People's Republic of China to all Chinese nationals who hold Permanent Identity Cards of the Macao Special Administrative Region, and other documents of the Macao Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Macao Special Administrative Region.**

**The above passports and travel documents of the Macao Special Administrative Region shall be valid for all states and regions and shall record the holder's right to return to the Macao Special Administrative Region.**

**For the purpose of travelling to and from the Macao Special Administrative Region, inhabitants of the Macao Special Administrative Region may use travel documents issued by the Macao Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of this fact stated in their travel documents as evidence that the holders have the right of abode in the Macao Special Administrative Region.**

**Entry into the Macao Special Administrative Region by inhabitants of other parts of China shall be regulated in an appropriate way.**

**The Macao Special Administrative Region may apply immigrations controls on entry into, stay in and departure from the Macao Special Administrative Region by persons from foreign states and regions.**

**Unless restrained by law, holders of valid travel documents shall be free to leave the Macao Special Administrative Region without special authorization.**

**The Central People's Government shall assist or authorise the Macao Special Administrative Region Government to negotiate and conclude visa abolition agreements with the states and regions concerned.**

#### **X**

**The Macao Special Administrative Region shall decide it's economic and trade policies on it's own. As a free port and a separate customs territory, it shall maintain and develop economic and trade relations with all states and regions and continue to participate in relevant international organizations and international trade agreements, such as the General Agreement on Tariffs and Trade and agreements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Macao Administrative Region shall be enjoyed exclusively by the Macao Special Administrative Region shall have the authority to issue it's own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.**

**The Macao Special Administrative Region shall protect foreign investments in accordance with the law.**

**The Macao Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.**

#### **XI**

**After the establishment of the Macao Special Administrative Region, the monetary and financial systems previously practised in Macao shall remain basically unchanged. The Macao Special Administrative Region shall decide it's monetary and financial policies on it's own. It shall safeguard the free operation**

of the financial institutions and the free flow of capital within, into and out of the Macao Special Administrative Region. No exchange control policy shall be applied in the Macao Special Administrative Region.

The Macao Pataca, as the legal tender of the Macao Special Administrative Region, shall continue to circulate and remain freely convertible. The authority to issue Macao currency shall be vested in the Macao Special Administrative Region Government. The Macao Special Administrative Region Government may authorise designated banks to perform or continue to perform the functions of its agents in the issuance of Macao currency. Macao currency bearing references inappropriate to the status of Macao as a special administrative region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.

## XII

The Macao Special Administrative Region shall draw up on its own its budget and taxation policy. The Macao Special Administrative Region shall report its budget and final accounts to the Central People's Government for the record. The Macao Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The Macao Special Administrative Region shall not levy taxes on the Macao Special Administrative Region.

## XIII

The Central People's Government shall be responsible for the defense of the Macao Special Administrative Region.

The maintenance of public order in the Macao Special Administrative Region shall be the responsibility of the Macao Special Administrative Region Government.

## XIV

Legal leases of land granted or decided upon before the establishment of the Macao Special Administrative Region and extending beyond 19 December 1999, and all rights in relation to such leases shall be recognised and protected according to law by the Macao Administrative Region. Land leases approved or renewed after the establishment of the Macao Special Administrative Region shall be dealt with in accordance with the relevant land laws and policies of the Macao Special Administrative Region.

## ANNEX II

### ARRANGEMENTS FOR THE TRANSITIONAL PERIOD

#### I. SINO-PORTUGUESE JOINT GROUP

#### II. SINO-PORTUGUESE LAND GROUP

#### MEMORANDUM

#### MEMORANDUM

In order to ensure the effective implementation of the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao and create appropriate conditions for the transfer of government of Macao, the Government of the People's Republic of China and the Government of the Republic of Portugal have agreed to continue their friendly cooperation during the transitional period between the date of the entry into force of the Joint Declaration and 19 December 1999.

For this purpose, the Government of the People's Republic of China and the Government of the Republic of Portugal have agreed to set up a Sino-Portuguese Joint Liaison Group and a Sino-Portuguese Land Group in accordance with the provisions of paragraphs 3, 4 and 5 of the Joint Declaration.

#### I. SINO-PORTUGUESE JOINT GROUP

1. The Joint Group shall be an organ for liaison, consultation and exchange of information between the two Governments. It shall not interfere in the administration of Macao, nor shall it have any supervisory role over that administration.

2. The functions of the Joint Liaison Group shall be :

a) To conduct consultations on the implementation of the Joint Declaration and its Annexes;

- b) To exchange information and conduct consultations on matters relating to the transfer of government of Macao in 1999;**
- c) To conduct consultations on actions to be taken by the two Governments to enable the Macao Special Administrative Region to maintain and develop external economic, cultural and other relations;**
- d) To exchange information and conduct consultations on other subjects as may be agreed by the two sides.**

**Matters on which there is disagreement in the Joint Liaison Group shall be referred to the Governments for solution through consultations.**

- 1. Each side shall designate a leader of ambassadorial rank and four other members of the group. Each side may also designate experts and supporting staff as required, whose number shall be determined through consultations.**
- 2. The Joint Liaison Group shall be established on the entry into force of the Joint Declaration and shall work within three months after it's establishment. It shall meet in Beijing, Lisbon and Macao alternately in the first year of work. Thereafter, it shall have it's principal base in Macao. The Joint Liaison Group shall continue it's work until 1 January 2000.**
- 3. Members, experts and supporting staff of the Joint Liaison Group shall enjoy diplomatic privileges and immunities of such privileges and immunities as are compatible with their status.**
- 4. The working and organizational procedures of the Joint Liaison Group shall be agreed between the two sides through consultations within the guidelines laid down in this Annex. The work of the Joint Liaison Group shall remain confidential unless otherwise agreed.**

## ***II. SINO-PORTUGUESE LAND GROUP***

- 1. The two Governments have agreed that, with effect from the entry into force of the Joint Declaration, land leases in Macao and related matters shall be dealt with the following provisions :**
  - a) Leases of land granted previously by the Portuguese Macao Government that expire before 19 December 1999, except temporary leases and leases for special purposes, may, in accordance with the relevant laws and regulations currently in force, be extended for a period expiring not later than 19 December 2049, with a premium be collected.**
  - b) From the entry into force of the Joint Declaration until 19 December 1999 and in accordance with the relevant laws of land may be granted by the Portuguese Macao Government for terms expiring not later than 19 December 2049, with a premium to be collected.**
  - c) The total amount of new land, including fields reclaimed from the sea and undeveloped land, to be granted under Section II, paragraph 1 ( b ) of this Annex shall be limited to 20 hectares a year. The Land Group may, on the basis of the proposals of the Portuguese Macao Government, examine any change in the above-mentioned quota and make decisions accordingly.**
  - d) From the entry into force of the Joint Declaration until 19 December 1999, all incomes obtained by the Portuguese Macao Government from granting new leases and renewing leases shall, after deduction of the average cost of land production, be shared equally between the Portuguese Macao Government and the future Government of the Macao Special Administrative Region. All the income so obtained from land by the Portuguese Macao Government, including the amount of the above-mentioned deduction, shall be used for financing land development and public works in Macao. The Macao Special Administrative Region Government's share of land income shall serve as a reserve fund of the Government of the Macao Special Administrative Region and shall be deposited in banks incorporated in Macao and, if necessary, may be used by the Portuguese Macao Government for land development and public works in Macao during the transitional period with the endorsement of the Chinese side.**
- 2. The Sino-Portuguese Land Group shall be an organ for handling land leases in Macao and related matters on behalf of the two Government.**
- 3. The functions of the Land Group shall be :**



- a) To conduct consultations on the implementation of Section II of this Annex ;
  - b) To monitor the amount and terms of land granted, divisions and use of income from land granted in accordance with the provisions of Section II, paragraph I of this Annex.
  - c) To examine proposals of the Portuguese Macao Government for drawing on the Macao Special Administration Region Government's share of income from land and to make recommendations to the Chinese side for decision.
  - d) Matters on which there is disagreement in the Land Group shall be referred to the two Governments for solution through consultations.
4. Each side shall designate three members of the Land Group. Each side may also designate experts and supporting staff as required, whose number shall be determined through consultations.
5. Upon the entry into force of the Joint Declaration, the Land Group shall be established and shall have its principal base in Macao. The Land Group shall continue its work until 19 December 1999.
6. Members, experts and supporting staff of the Land Group shall enjoy diplomatic privileges and immunities or other privileges and immunities or other privileges and immunities as are compatible with their status.
7. The working and organizational procedures of the Land Group shall be agreed between the two sides through consultations within the guideline laid down in this Annex.

(To be exchanged between the two sides)

#### MEMORANDUM

In connection with the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao signed this days, the Government of the People's Republic of China declares :

The inhabitants in Macao who come under the provisions of the Nationality Law of the People's Republic of China, whether they are holders of the Portuguese travel or identity documents or not, have Chinese citizenship. Taking account of the historical background of Macao and its realities, the competent authorities of the Government of the People's Republic of China will permit Chinese nationals in Macao previously holding Portuguese travel documents to continue to use these documents for traveling to other states and regions after the establishment of the Macao Special Administrative Region. The above-mentioned Chinese nationals will not be entitled to Portuguese consular protection in the Macao Special Administrative Region and other parts of the People's Republic of China.

#### MEMORANDUM

In connection with the Joint Declaration of the Government of the Republic of Portugal and the Government of the People's Republic of China on the Question of Macao signed this day, the Government of the Republic of Portugal declares:

In conformity with the Portuguese legislation, the inhabitants in Macao who, having Portuguese citizenship, are holders of a Portuguese passport on 19 December 1999 may continue to use it after this date. No person may acquire Portuguese citizenship as from 20 December 1999 by virtue of his or her connection with Macao.

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### Joint Declaration - Annex I -Annex II

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[\[ Home \]](#) [\[ Chinese Version \]](#) [\[ Portuguese Version \]](#)

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## **ANNEX 18**



# **MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL**

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**Status as at 1 April 2009**

**Volume I  
Part I, Chapters I to VII**



**UNITED NATIONS**

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# **MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL**

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## INTRODUCTION

1. This publication, the twenty-sixth of the series *Multilateral Treaties Deposited with the Secretary-General* (ST/LEG/SER/E/ - a supplement to the second volume was issued to cover actions from 1 January to 31 December 1983 under reference ST/LEG/SER.E/22/add.1), consolidates all information on treaty actions (i.e., signatures, ratifications, accessions, denunciations, miscellaneous notifications, reservations, declarations and objections) undertaken relating to the multilateral treaties deposited with the Secretary-General covered up to 1 April 2009

### A. TREATIES COVERED BY THIS PUBLICATION

2. This publication contains:

- All multilateral treaties deposited with the Secretary-General;
- The Charter of the United Nations, in respect of which certain depositary functions have been conferred upon the Secretary-General (although the Charter itself is deposited with the Government of the United States of America);
- Multilateral treaties formerly deposited with the Secretary-General of the League of Nations, to the extent that formalities or decisions affecting them have been taken within the framework of the United Nations;<sup>1</sup>
- Certain pre-United Nations treaties, other than those formerly deposited with the Secretary-General of the League of Nations, which were amended by protocols adopted by the General Assembly of the United Nations.

### B. DIVISION INTO PARTS AND CHAPTERS

3. The publication is comprised of two volumes, and is divided into two parts. Volume I includes Part I, Chapters I to XI. Volume II includes Part I, Chapters XII to XXIX, and Part II. Part I contains information relating to United Nations treaties,<sup>2</sup> and Part II contains information relating to League of Nations treaties. Part I, in turn, is divided into chapters and each chapter relates to a given theme. The treaties within each chapter are listed in the chronological order of their conclusion. Part II lists the first 26 treaties in the order in which they appear in the last League of Nations publication of signatures, ratifications and accessions.<sup>3</sup> Thereafter, the treaties are listed in the order in which they first gave rise to formalities or decisions within the framework of the United Nations.

### C. INFORMATION PROVIDED IN RESPECT OF EACH TREATY

(a) *United Nations treaties*

4. Chapter headers

The following information is typically provided for each treaty in the header of each chapter:

- The full title, place and date of adoption or conclusion;
- Entry into force;
- Registration date and number, pursuant to Article 102 of the Charter (where appropriate);
- The number of signatories and parties;
- References to the text of the treaty as published in the United Nations Treaty Series (UNTS) or, if it has not yet been published in the Treaty Series, the reference to the United Nations documentation where its text may be found; and
- A brief note on the adoption of the treaty.

#### 5. Status tables

Participants are listed in the status tables in alphabetical order. Against each participant's name, the relevant treaty action is entered, i.e., the date of signature, the date of deposit of the instrument of ratification, acceptance, approval, accession, or succession.<sup>4</sup> The names of participants that have denounced the treaty appear between brackets, and the date of deposit of the notification of denunciation is indicated in a footnote. Additional information on denunciation of treaties appears in footnotes.

Entries in status tables pertaining to formalities effected by a predecessor State in respect of treaties to which the successor States have notified their succession are replaced by the names of the relevant successor States with the corresponding date of deposit of the notification of succession. A footnote indicates the date and type of formality effected by the predecessor State, the corresponding indicator being inserted next to the successor States in the table as the case may be. As regards treaties in respect of which formalities were effected by a predecessor State and not listed in the notifications of succession of the successor States, a footnote indicating the date and type of formality effected by the predecessor State is included in the status of the treaties concerned, the corresponding footnote indicator appearing next to the heading "Participant".

Treaties which have been terminated are denoted by an asterisk. For those treaties, the participant tables have been removed.

#### 6. Declarations, reservations, objections

The texts of declarations and reservations generally appear in full immediately following the status tables. Objections, territorial applications and communications of a special nature, for example, declarations recognizing the competence of committees such as the Human Rights Committee, also appear in full. Related communications, for example, communications with regard to objections, and other information appear in footnotes.

*(b) League of Nations treaties*

7. The information provided is essentially based on the official records of the League of Nations. This accounts for the difference in format as compared with treaties deposited with the Secretary-General of the United Nations.

8. The list of signatures, ratifications, acceptances, approvals, accessions, and successions in respect of each of the League of Nations multilateral treaties covered by this publication is divided into two sections. The first section reflects the status as at the time of the transfer of those treaties to the custody of the United Nations, without implying a judgement by the Secretary-General of the United Nations on the current legal effect of those actions. The second section provides the status following the assumption of the depositary functions by the Secretary-General of the United Nations in relation to these treaties.

#### **D. INFORMATION OF A GENERAL NATURE**

9. On the occasion of undertaking treaty formalities, issues of a general character are sometimes raised (mostly with regard to representation, succession or territorial application). An effort has been made to group all explanatory notes relevant to such issues as they pertain to the States concerned in the "Historical Information" section in the front matter of this publication as well as in chapters I.1 and I.2. Similarly, Part I, Chapters I.1 and I.2 contain information transmitted by communications from Heads of States or Governments or Ministers for Foreign Affairs informing the Secretary-General of changes in the official denomination of States or territories. In the case of States that are not members of the United Nations or in the case of intergovernmental organizations, the information appears in notes corresponding to the formalities that gave rise to the

issue. Cross-references are provided as required. Progressively, all information of a historical and political nature will be moved to the "Historical Information" section in the front matter of the publication.

#### **Disclaimer:**

*The Treaty Section, Office of Legal Affairs, United Nations has made every reasonable attempt to ensure that material contained in this publication was correct at the time it was created and last modified. However, this information is provided for reference purposes only. For an official record of actions undertaken with respect to the multilateral treaties deposited with the Secretary-General, States parties are advised to consult the e-mail transmissions/hard copies of the relevant communications issued by the Treaty Section, Office of Legal Affairs, United Nations.*

#### **Suggestions for corrections or modifications should be communicated to:**

Office of Legal Affairs  
Treaty Section  
United Nations  
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#### **For the regularly updated electronic version of this publication, please visit the United Nations Treaty Collection on the Internet at:**

<http://treaties.un.org>

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#### **Notes:**

<sup>1</sup> Multilateral treaties formerly deposited with the Secretary-General of the League of Nations, by virtue of General Assembly resolution 24 (I) of 12 February 1946, and of a League of Nations Assembly resolution of 18 April 1946 (League of Nations, Official Journal, Special Supplement No. 194, p. 57) were transferred, upon dissolution of the League of Nations, to the custody of the United Nations.

<sup>2</sup> For ease of reference, those League of Nations treaties and other pre-United Nations treaties that were amended by protocols adopted by the General Assembly of the United Nations are included in Part I, so that the list of States which have become parties to the amending protocol and to the treaty, as amended,

are followed immediately by a list showing the status of the treaty at the time of its transfer to the custody of the United Nations.

<sup>3</sup> See League of Nations, Official Journal, Special Supplement No.195, Supplement to the Twenty-First List, Geneva, 1946.

<sup>4</sup> The following main symbols are used: a, accession; A, acceptance; AA, approval; c, formal confirmation; d, succession; P, participation; s, definitive signature; and n, notification (of provisional application, of special undertaking, etc.). Unless otherwise indicated the date of effect is determined by the relevant provisions of the treaty concerned.

## HISTORICAL INFORMATION

## ARUBA

*See note 1 under "Netherlands".*

## BELARUS

**Note 1.**

Formerly: "Byelorussian Soviet Socialist Republic" until 18 September 1991.

## BENIN

**Note 1.**

Formerly: "Dahomey" until 2 December 1975.

## BOSNIA AND HERZEGOVINA

**Note 1.**

The Government of Bosnia and Herzegovina deposited with the Secretary-General notifications of succession to the Socialist Federal Republic of Yugoslavia to various treaties with effect from 6 March 1992, the date on which Bosnia and Herzegovina assumed responsibility for its international relations.

*See also note 1 under "former Yugoslavia".*

*For information on the treatment of treaty actions by predecessor States and successor States in the status tables, see Part C, "Status tables" of the "Introduction" to this publication.*

## BURKINA FASO

**Note 1.**

Formerly: "Upper Volta" until 4 August 1984.

## BURMA

*See note 1 under "Myanmar".*

## CAMBODIA

**Note 1.**

As from 3 February 1990, "Cambodia". Formerly, as follows: as from 6 April 1976 to 3 February 1990 "Democratic Kampuchea"; as from 30 April 1975 to 6 April 1976 "Cambodia"; as from 28 December 1970 to 30 April 1975 "Khmer Republic".

## CAMEROON

**Note 1.**

As from 4 February 1984 Cameroon (from 10 March 1975 to 4 February 1984 known as "the United Republic of Cameroon" and prior to 10 March 1975 known as "Cameroon").

## CENTRAL AFRICAN REPUBLIC

**Note 1.**

In a communication dated 20 December 1976, the Permanent Mission of the Central African Empire to the United Nations informed the Secretary-General that, by a decision of the extraordinary Congress of the Movement for the Social Development of Black Africa (MESAN), held at Bangui from 10 November to 4 December 1976, the Central African Republic had been constituted into the Central African Empire.

In a communication dated 25 September 1979, the Permanent Representative of that country to the United Nations informed the Secretary-General that, following a change of regime which took place on 20 September 1979, the former institutions of the Empire had been dissolved and the Central African Republic had been proclaimed.

## CHINA

**Note 1.**

*Signatures, ratifications, accessions, etc., on behalf of China.*

China is an original Member of the United Nations, the Charter having been signed and ratified on its behalf, on 26 June and 28 September 1945, respectively, by the Government of the Republic of China, which continued to represent China in the United Nations until 25 October 1971.

On 25 October 1971, the General Assembly of the United Nations adopted its resolution 2758 (XXVI), reading as follows:

*"The General Assembly.*

*" Recalling the principles of the Charter of the United Nations,*

*" Considering that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that the United Nations must serve under the Charter,*

*" Recognizing that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,*

*" Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it."*



The United Nations had been notified on 18 November 1949 of the formation, on 1 October 1949, of the Central People's Government of the People's Republic of China. Proposals to effect a change in the representation of China in the United Nations subsequent to that time were not approved until the resolution quoted above was adopted.

On 29 September 1972, a communication was received by the Secretary-General from the Minister for Foreign Affairs of the People's Republic of China stating:

"1. With regard to the multilateral treaties signed, ratified or acceded to by the defunct Chinese government before the establishment of the Government of the People's Republic of China, my Government will examine their contents before making a decision in the light of the circumstances as to whether or not they should be recognized.

"2. As from October 1, 1949, the day of the founding of the People's Republic of China, the Chiang Kai-shek clique has no right at all to represent China. Its signature and ratification of, or accession to, any multilateral treaties by usurping the name of 'China' are all illegal and null and void. My Government will study these multilateral treaties before making a decision in the light of the circumstances as to whether or not they should be acceded to."

All entries recorded throughout this publication in respect of China refer to actions taken by the authorities representing China in the United Nations at the time of those actions.

#### **Note 2.**

By a notification on 20 June 1997, the Government of China informed the Secretary-General of the status of Hong Kong in relation to treaties deposited with the Secretary-General. The notification, in pertinent part, reads as follows:

"In accordance with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, signed on 19 December 1984 (hereinafter referred to as the Joint Declaration), the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, with effect from that date, become a Special Administrative Region of the People's Republic of China. [For the full text of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, 19 December 1984, see United Nations *Treaty Series* volume No.1399, p. 61, (registration number I-23391)].

It is provided in Section 1 of Annex I to the Joint Declaration, "Elaboration by the Government of the People's Republic of China of its Basic Policies Regarding Hong Kong" and in Articles 12, 13 and 14 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which was adopted on 4 April 1990 by the National People's Congress of the People's Republic of China (hereinafter referred to as the Basic Law), that the Hong Kong Special Administrative

Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibility of the Central People's Government of the People's Republic of China. Furthermore, it is provided both in Section XI of Annex I to the Joint Declaration and Article 153 of the Basic Law that international agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Administrative Region.

In this connection, on behalf of the Government of the People's Republic of China, I would like to inform Your Excellency as follows:

I. The treaties listed in Annex I to this Note [herein under], to which the People's Republic of China is a party, will be applied to the Hong Kong Special Administrative Region with effect from 1 July 1997 as they:

(i) are applied to Hong Kong before 1 July 1997; or (ii) fall within the category of foreign affairs or defence or, owing to their nature and provisions, must apply to the entire territory of a State; or

(iii) are not applied to Hong Kong before 1 July 1997 but with respect to which it has been decided to apply them to Hong Kong with effect from that date (denoted by an asterisk in Annex I). II. The treaties listed in Annex II to this Note [herein under], to which the People's Republic of China is not yet a party and which apply to Hong Kong before 1 July 1997, will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force beginning from 1 July 1997.

III. The Government of the People's Republic of China has already carried out separately the formalities required for the application of the treaties listed in the aforesaid Annexes, including all the related amendments, protocols, reservations and declarations, to the Hong Kong Special Administrative Region with effect from 1 July 1997.

IV. With respect to any other treaty not listed in the Annexes to this Note, to which the People's Republic of China is or will become a party, in the event that it is decided to apply such treaty to the Hong Kong Special Administrative Region, the Government of the People's Republic of China will carry out separately the formalities for such application. For the avoidance of doubt, no separate formalities will need to be carried out by the Government of the People's Republic of China with respect to treaties which fall within the category of foreign affairs or defence or which, owing to their nature and provisions, must apply to the entire territory of a State."

The treaties listed in Annexes I and II, referred to in the notification, are reproduced below.

Information regarding reservations and/or declarations made by China with respect to the application of treaties to

the Hong Kong Special Administrative Region can be found in the footnotes to the treaties concerned as published herein. Footnote indicators are placed against China's entry in the status list of those treaties.

Moreover, with regard to treaty actions undertaken by China after 1 July 1997, the Chinese Government confirmed that the territorial scope of each treaty action would be specified. As such, declarations concerning the territorial scope of the relevant treaties with regard to the Hong Kong Special Administrative Region can be found in the footnotes to the treaties concerned as published herein. Footnote indicators are placed against China's entry in the status list of those treaties.

#### *Annex I*

*(The treaties are listed in the order that they published in these volumes.)*

*Charter of the United Nations and Statute of the International Court of Justice :*

- Charter of the United Nations, 26 June 1945; - Statute of the International Court of Justice, 26 June 1945;
- Amendment to Article 61 of the Charter of the United Nations, adopted by the General Assembly of the United Nations in resolution 2847 (XXVI) of 20 December 1971.

*Privileges and Immunities, Diplomatic and Consular Relations :*

- Convention on the Privileges and Immunities of the United Nations, 13 February 1946;
- Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations, 21 November 1947; - Vienna Convention on Diplomatic Relations, 18 April 1961;
- Vienna Convention on Consular Relations, 24 April 1963.

#### *Human Rights:*

- Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948;
- International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966;
- Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984;
- Convention on the Rights of the Child, 20 November 1989.

#### *Narcotic Drugs and Psychotropic Substances :*

- Convention on psychotropic substances, 21 February 1971;
- Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961, 8 August 1975;
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988.

#### *Health :*

- Constitution of the World Health Organization, 22 July 1946.

#### *International Trade and Development :*

- Agreement establishing the Asian Development Bank, 4 December 1965;
- Charter of the Asian and Pacific Development Centre, 1 April 1982

#### *Transport and Communications - Customs matters:*

- Customs Convention on Containers, 2 December 1972\*.

#### *Navigation :*

- Convention on the International Maritime Organization, 6 March 1948;
- Convention on a Code of Conduct for Liner Conferences, 6 April 1974.

#### *Educational and Cultural Matters:*

- Convention for the Protection of Products of Phonograms Against Unauthorized Duplication of their Phonograms, 29 October 1971.

#### *Penal Matters :*

- International Convention against the taking of hostages, 17 December 1979;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973.

#### *Law of the Sea:*

- United Nations Convention on the Law of the Sea, 10 December 1982.

#### *Commercial Arbitration:*

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958.

#### *Outer Space:*

- Convention on the Registration of Objects Launched into Outer Space, 12 November 1974.

#### *Telecommunications :*

- Constitution of the Asia-Pacific Telecommunity, 27 March 1976.

#### *Disarmament :*

- Convention on Prohibitions or restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with protocols I, II and III), 10 October 1980;
- Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction, 3 September 1992.

#### *Environment :*

- Vienna Convention for the Protection of the Ozone Layer, 22 March 1985;
- Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987;
- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 29 June 1990;
- Basenvention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, 22 March 1989.

*Annex II (The treaties are listed in the order that they are published in these volumes.)*

*Refugees and Stateless Persons:*

- Convention relating to the Status of Stateless Persons, 28 September 1954.

*Traffic in Persons :*

- International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921;
- Protocol amending the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and the International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, 4 May 1949;
- International Agreement for the Suppression of the "White Slave Traffic", 18 May 1904;
- International Convention for the Suppression of the White Slave Traffic, 4 May 1910.

*Obscene Publications:*

- Protocol to amend the Convention for the suppression of the circulation of, and traffic in, obscene publications, concluded at Geneva on 12 September 1923, 12 November 1947;
- International Convention for the Suppression of the Circulation of, and Traffic in Obscene Publications, 12 September 1923;
- Protocol amending the Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910, 4 May 1949;
- Agreement for the Repression of Obscene Publications, 4 May 1910.

*Transport and Communications - Custom matters:*

- International Convention to Facilitate the Importation of Commercial Samples and Advertising Materials, 7 November 1952;
- Convention concerning Customs Facilities for Touring, 4 June 1954;
- Additional Protocol to the Convention concerning Customs Facilities for Touring, relating to the Importation of Tourist Publicity Documents and Material, 4 June 1954;
- Customs Convention on the Temporary Importation of Private Road Vehicles, 4 June 1954;
- Customs Convention on the Temporary Importation of Commercial Road Vehicles, 18 May 1956;
- Customs Convention on the Temporary Importation for Private Use of Aircraft and Pleasure Boats, 18 May 1956;
- European Convention on Customs Treatment of Pallets Used in International Transport, 9 December 1960.

*Transport and Communications - Road Traffic :*

- Convention on Road Traffic, 19 September 1949.

*Educational and Cultural Matters*

- Agreement of the Importation of Educational, Scientific and Cultural materials, 22 November 1950.

*Status of Women*

- Convention on the Political Rights of Women, 31 March 1953;

- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 10 December 1962.

*Penal Matters :*

- Protocol amending the Slavery Convention signed at Geneva 25 September 1926, 7 December 1953;
- Slavery Convention, 25 September 1926;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 7 September 1956.

*Environment :*

- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Copenhagen, 25 November 1992.

*League of Nations:*

- Convention and Statute on Freedom of Transit, 20 April 1921;
- Convention and Statute on the Regime of Navigable Waterways of International Concern, 20 April 1921;
- Declaration Recognizing the Right to a Flag of States Having no Sea-coast, 20 April 1921;
- Convention and Statute on the International Regime of Maritime Ports, 9 December 1923 ;
- International Convention relating to the Simplification of Customs Formalities, 3 November 1923.

*See also note 2 under "United Kingdom of Great Britain and Northern Ireland" .*

**Note 3.**

By a notification dated 13 December 1999, the Government of the People's Republic of China informed the Secretary-General of the status of Macao in relation to treaties deposited with the Secretary-General. The notification, in pertinent part, reads as follows:

"In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao signed on 13 April 1987 (hereinafter referred to as the Joint Declaration), the Government of the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999. Macao will from that date, become a Special Administrative Region of the People's Republic of China. [For the full text of the Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macao, 13 April 1987, see United Nations *Treaty Series* volume No. 1498, p. 229 (registration number I-25805)].

It is provided in Section 1 of Elaboration by the Government of the People's Republic of China of its Basic Policies Regarding Macao, which is Annex 1 to the Joint Declaration, and in Article 12, 13 and 14 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law), which was adopted by the National People's Congress of the People's Republic of China on 31 March 1993, that the Macao Special Administrative Region will

enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China. Furthermore, it is provided both in Section VIII of Annex I of the Joint Declaration and Article 138 of the Basic Law that international agreements to which the People's Republic of China is not yet a party but which are implemented in Macao may continue to be implemented in the Macao Special Administrative Region.

In this connection, on behalf of the Government of the People's Republic of China, I have the honour to inform your Excellency that:

I. The treaties listed in Annex I to this Note [herein below], to which the People's Republic of China is a Party, will be applied to the Macao Special Administrative Region with effect from 20 December 1999 so long as they are one of the following categories:

(i) Treaties that apply to Macao before 20 December 1999;

(ii) Treaties that must apply to the entire territory of a state as they concern foreign affairs or defence or their nature or provision so require.

II. The Treaties listed in Annex II to this Note, to which the People's Republic of China is not yet a Party and which apply to Macao before 20 December 1999, will continue to apply to the Macao Special Administrative Region with the effect from 20 December 1999.

III. The Government of the People's Republic of China has notified the treaty depositaries concerned of the application of the treaties including their amendments and protocols listed in the aforesaid Annexes as well as reservations and declarations made thereto by the Chinese Government to the Macao Special Administrative Region with effect from 20 December 1999.

IV. With respect to other treaties that are not listed in the Annexes to this Note, to which the People's Republic of China is or will become a Party, the Government of the People's Republic of China will go through separately the necessary formalities for their application to the Macao Special Administrative Region if it so decided."

The treaties listed in Annexes I and II, referred to in the notification, are reproduced below.

Information regarding reservations and/or declarations made by China with respect to the application of treaties to the Macao Special Administrative Region can be found in the footnotes to the treaties concerned as published herein. Footnote indicators are placed against China's entry in the status list of those treaties.

Moreover, with regard to treaty actions undertaken by China after 13 December 1999, the Chinese Government confirmed that the territorial scope of each treaty action would be specified. As such, declarations concerning the territorial scope of the relevant treaties with regard to the Macao Special Administrative Region can be found in the footnotes to the treaties concerned as published herein. Footnote indicators are placed against China's entry in the status list of those treaties.

#### *Annex I*

*(The treaties appear in the order as they are provided in these volumes.)*

*Charter of the United Nations and Statute of the International Court of Justice :*

- Charter of the United Nations, 26 June 1945;

- Statute of the International Court of Justice, 26 June 1945;

- Amendment to Article 61 of the Charter of the United Nations, adopted by the General Assembly of the United Nations in resolution 2847 (XXVI) of 20 December 1971.

*Privileges and Immunities, Diplomatic and Consular Relations:*

- Convention on the Privileges and Immunities of the United Nations, 13 February 1946;

- Convention on the Privileges and Immunities of the Specialised Agencies of the United Nations, 21 November 1947;

- Vienna Convention on Diplomatic Relations, 18 April 1961;

- Vienna Convention on Consular Relations, 24 April 1963.

*Human Rights :*

- International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966;

- Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979;

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984;

- Convention on the Rights of the Child, 20 November 1989.

*Refugees and Stateless Persons:*

- Convention relating to the Status of Refugees, 28 July 1951;

- Protocol relating to the Status of Refugees, 31 January 1967;

*Narcotic Drugs and Psychotropic Substances:*

- Convention on psychotropic substances, 21 February 1971;

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988.

*Health :*

- Constitution of the World Health Organization, 22 July 1946.

*International Trade and Development :*

- Charter of the Asian and Pacific Development Centre, 1 April 1982.

*Navigation:*

- Convention on the International Maritime Organization, 6 March 1948.

*Penal Matters:*

- International Convention against the taking of hostages, 17 December 1979; -



Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973.

*Law of the Sea:*

- United Nations Convention on the Law of the Sea, 10 December 1982.

*Law of Treaties:*

- Vienna Convention on the Law of Treaties, 23 May 1969.

*Telecommunications:*

- Constitution of the Asia-Pacific Telecommunity, 27 March 1976.

*Disarmament:*

- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III), 10 October 1980;

- Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol IV, entitled Protocol on Blinding Laser Weapons), 13 October 1995;

- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, 3 May 1996;

- Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction, 3 September 1992.

*Environment:*

- Vienna Convention for the Protection of the Ozone Layer, 22 March 1985;

- Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987;

- Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 29 June 1990;

- Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, 22 March 1989;

- United Nations Framework Convention on Climate Change, 9 May 1992;

- Convention on biological diversity, 5 June 1992.

*Annex II:*

(The treaties appear in the order as they are provided in these volumes.)

*Human Rights:*

- International Covenant on Economic, Social and Cultural Rights, 16 December 1966;

- International Covenant on Civil and Political Rights, 16 December 1966;

*Narcotic Drugs and Psychotropic Substances:*

- Single Convention on Narcotic Drugs, 30 March 1961

- Protocol amending the Single Convention on Narcotic Drugs and Narcotic Substances, 25 March 1972.

*Traffic in Persons:*

- International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921;

- International Convention for the Suppression of the Traffic in Women of Full Age, 11 October 1933;

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 21 March 1950;

*Transport and Communication - customs matters:*

- Convention concerning Customs Facilities for Touring, 4 June 1954;

- Additional Protocol to the Convention concerning Customs Facilities for Touring, relating to the Importation of Tourist Publicity Documents and Material, 4 June 1954;

*Transport and Communication - road traffic:*

- Convention on Road Traffic, 19 September 1949.

*Penal Matters:*

- Slavery Convention, 25 September 1926;

- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 7 September 1956;

*League of Nations:*

- Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes, 7 June 1930;

- Convention for the Settlement of Certain Conflicts of Laws in connection with Cheques, 19 March 1931;

- Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, 7 June 1930;

- Convention providing a Uniform Law for Cheques, 19 March 1931;

- Convention on the Stamp Laws in connection with Bills of Exchange and Promissory Notes, 7 June 1930;

- Convention on the Stamp Laws in connection with Cheques, 19 March 1931.

See also note 1 under "Macao" and note 1 under "Portugal".

## CONGO

### Note 1.


In a communication dated 15 November 1971, the Permanent Mission of the People's Republic of the Congo to the United Nations informed the Secretary-General that their country would henceforth be known as the "Congo".

**ANNEX 19**

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Last updated at 10:31 (UK time) 3 Nov 2009 

## Memorandum on Application

1. This Memorandum reviews the rules of international law in relation to the application of treaties to the overseas territories as well as the practice of United Kingdom Government Departments and international organisations in the matter.

### The relevant rules of international law

2. Under international law a treaty may apply to a State as an international person, or to the territory of the state, or to both. As regards the question of the extent of the territory of a state to which a treaty may apply, the basic rule is contained in Article 29 of the Vienna Convention on the Law of Treaties (1969), which reads as follows:

#### Territorial scope of treaties

*Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.*

The Vienna Convention is widely regarded as setting out rules of customary international law on this subject.

3. Although it is a short provision, some comment on its terms and scope may be helpful.

#### 'entire territory' –

4. In the case of a complex State such as the United Kingdom, territory means all the parcels of land (including any appurtenant territorial sea) over which the Crown enjoys sovereignty. A State's territory may be divided into at least two kinds: (1) metropolitan, and

(2) non-metropolitan or 'territories for the international relations of which a State is responsible'. The decision as to which territory is metropolitan and which is non-metropolitan is one for the authorities of the State concerned to make. Apart from a few exceptions which do not concern the United Kingdom, such decisions have not been challenged by other States.

#### 'unless a different intention appears from the treaty' –

5. Some treaties contain express provisions about particular territories or groups of territories. Where they exist, such provisions determine the scope of the territorial extent of the treaty. The matter is one of interpretation in each case.

6. A different intention may be manifested by a provision in the treaty according to which a State, which has territories for the international relations of which it is responsible may specify upon signature, ratification or accession the non-metropolitan territories to which that treaty is to extend. Such a provision is often called 'a territorial application clause'.

#### 'unless a different intention ... is otherwise established'

7. Even if a particular treaty does not contain a territorial application clause, it is still open to a State such as the United Kingdom to specify at the time of signature, ratification or accession the territorial extent of the application of that treaty and, subsequently, to increase that extent. This is by means of wording contained in the instrument of ratification or accession, or by means of a Note addressed to the Depositary. In 1967, the United Kingdom adopted the practice of making clear in the instruments of ratification and accession the territorial extent of the application of treaties. Since that time, the practice has been followed consistently and no challenge has been mounted in any case (whether by another State or by the United Nations or another international organisation). Instead, there has been acceptance over many years of the practice of specifying the territorial extent, thereby establishing in each case the 'different intention' from the basic proposition that a treaty is binding in respect of the entire territory under the sovereignty of the Crown. Other States such as The Netherlands and Denmark follow a similar practice.

### The practice of Whitehall departments

8. The Home Office and the FCO have standard operating procedures according to which the overseas territories are to be consulted about treaties which are under negotiation and which are to apply or are capable of being applied, in respect of the United Kingdom's non-metropolitan territories. The purpose of consultation is to ascertain whether there are particular considerations in respect of any overseas territory which need to be taken into account in the text of a treaty, as well as to ascertain whether or not each overseas territory wishes the treaty to apply to it. Those particular considerations may be reflected in reservations which are particular to the overseas territory if that is appropriate.

### The practice of international organisations

9. Before the mid-1960s, it was standard practice in the United Nations and other international organisations to include in treaties a 'territorial application clause'. However, with the increase in membership by States gaining independence in the early 1960s, opposition developed to the inclusion of such clauses. Following a Whitehall policy review, it was decided that the United Kingdom could no longer secure the inclusion of territorial application clauses in treaties negotiated within global bodies. Accordingly, treaties adopted under the auspices of such organisations were from 1967 dealt with by means of statements made in the United Kingdom's instruments of ratification or accession, or in Notes to the Depositary (as explained in paragraph above 7). In other organisations such as the Council of Europe, it remains the standard practice to include a territorial application clause.



## **ANNEX 20**



**ICSID/8****CONTRACTING STATES AND MEASURES TAKEN BY THEM  
FOR THE PURPOSE OF THE CONVENTION****(February 2014)**

Attached are listings, prepared by the Secretariat pursuant to Administrative and Financial Regulation 20, of:

Contracting States, including dates of entry into force for each of them of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Art. 68 of the Convention)	- ICSID/8-A
Exclusions of Territories by Contracting States (Art. 70 of the Convention)	- ICSID/8-B
Designations by Contracting States Regarding Constituent Subdivisions or Agencies (Art. 25(1) and (3) of the Convention)	- ICSID/8-C
Notifications Concerning Classes of Disputes Considered Suitable or Unsuitable for Submission to the Centre (Art. 25(4) of the Convention)	- ICSID/8-D
Designations of Courts or Other Authorities Competent for the Recognition and Enforcement of Awards Rendered Pursuant to the Convention (Art. 54(2) of the Convention)	- ICSID/8-E
Legislative or Other Measures Relating to the Convention (Art. 69 of the Convention)	- ICSID/8-F

## CONTRACTING STATES

Listed below are the 150 Contracting States, together with the dates on which the Convention entered into force for them:

<u>Contracting State</u>	<u>Entry into Force of Convention</u>
Afghanistan	July 25, 1968
Albania	November 14, 1991
Algeria	March 22, 1996
Argentina	November 18, 1994
Armenia	October 16, 1992
Australia	June 1, 1991
Austria	June 24, 1971
Azerbaijan	October 18, 1992
Bahamas	November 18, 1995
Bahrain	March 15, 1996
Bangladesh	April 26, 1980
Barbados	December 1, 1983
Belarus	August 9, 1992
Belgium	September 26, 1970
Benin	October 14, 1966
Bosnia and Herzegovina	June 13, 1997
Botswana	February 14, 1970
Brunei Darussalam	October 16, 2002
Bulgaria	May 13, 2001

Burkina Faso	October 14, 1966
Burundi	December 5, 1969
Cabo Verde	January 26, 2011
Cambodia	January 19, 2005
Cameroon	February 2, 1967
Canada	December 1, 2013
Central African Republic	October 14, 1966
Chad	October 14, 1966
Chile	October 24, 1991
China	February 6, 1993
Colombia	August 14, 1997
Comoros	December 7, 1978
Congo	October 14, 1966
Congo, Democratic Republic of	May 29, 1970
Costa Rica	May 27, 1993
Côte d'Ivoire	October 14, 1966
Croatia	October 22, 1998
Cyprus	December 25, 1966
Czech Republic	April 22, 1993
Denmark	May 24, 1968
Egypt, Arab Republic of	June 2, 1972
El Salvador	April 5, 1984
Estonia	Jul. 23, 1992
Fiji	September 10, 1977
Finland	February 8, 1969
France	September 20, 1967
Gabon	October 14, 1996

Gambia, The	January 26, 1975
Georgia	September 6, 1992
Germany	May 18, 1969
Ghana	October 14, 1966
Greece	May 21, 1969
Grenada	June 23, 1991
Guatemala	February 20, 2003
Guinea	December 4, 1968
Guyana	August 10, 1969
Haiti	November 26, 2009
Honduras	March 16, 1989
Hungary	March 6, 1987
Iceland	October 14, 1966
Indonesia	October 28, 1968
Ireland	May 7, 1981
Israel	July 22, 1983
Italy	April 28, 1971
Jamaica	October 14, 1966
Japan	September 16, 1967
Jordan	November 29, 1972
Kazakhstan	October 21, 2000
Kenya	February 2, 1967
Korea, Republic of	March 23, 1967
Kosovo, Republic of	July 29, 2009
Kuwait	March 4, 1979
Latvia	September 7, 1997
Lebanon	April 25, 2003



Lesotho	August 7, 1969
Liberia	July 16, 1970
Lithuania	August 5, 1992
Luxembourg	August 29, 1970
Macedonia, former Yugoslav Rep. of	November 26, 1998
Madagascar	October 14, 1966
Malawi	October 14, 1966
Malaysia	October 14, 1966
Mali	February 2, 1978
Malta	December 3, 2003
Mauritania	October 14, 1966
Mauritius	July 2, 1969
Micronesia	July 24, 1993
Moldova	June 4, 2011
Mongolia	July 14, 1991
Montenegro	May 10, 2013
Morocco	June 10, 1967
Mozambique	July 7, 1995
Nepal	February 6, 1969
Netherlands	October 14, 1966
New Zealand	May 2, 1980
Nicaragua	April 19, 1995
Niger	December 14, 1966
Nigeria	October 14, 1966
Norway	September 15, 1967
Oman	August 23, 1995
Pakistan	October 15, 1966

Panama	May 8, 1996
Papua New Guinea	November 19, 1978
Paraguay	February 6, 1983
Peru	September 8, 1993
Philippines	December 17, 1978
Portugal	August 1, 1984
Qatar	January 20, 2011
Romania	October 12, 1975
Rwanda	November 14, 1979
Samoa	May 25, 1978
Sao Tome and Principe	June 19, 2013
Saudi Arabia	June 7, 1980
Senegal	May 21, 1967
Serbia	June 8, 2007
Seychelles	April 19, 1978
Sierra Leone	October 14, 1966
Singapore	November 13, 1968
Slovak Republic	June 26, 1994
Slovenia	April 6, 1994
Solomon Islands	October 8, 1981
Somalia	March 30, 1968
South Sudan	May 18, 2012
Spain	September 17, 1994
Sri Lanka	November 11, 1967
St. Kitts & Nevis	September 3, 1995
St. Lucia	July 4, 1984
St. Vincent and the Grenadines	January 15, 2003

Sudan	May 9, 1973
Swaziland	July 14, 1971
Sweden	January 28, 1967
Switzerland	June 14, 1968
Syria	February 24, 2006
Tanzania	June 17, 1992
Timor-Leste	August 22, 2002
Togo	September 10, 1967
Tonga	April 20, 1990
Trinidad and Tobago	February 2, 1967
Tunisia	October 14, 1966
Turkey	April 2, 1989 <sup>1</sup>
Turkmenistan	October 26, 1992
Uganda	October 14, 1966
Ukraine	July 7, 2000
United Arab Emirates	January 22, 1982
United Kingdom	January 18, 1967
United States	October 14, 1966
Uruguay	September 8, 2000
Uzbekistan	August 25, 1995
Yemen, Republic of	November 20, 2004
Zambia	July 17, 1970
Zimbabwe	June 19, 1994

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<sup>1</sup> On ratifying the Convention, Turkey declared that: "With respect to Article 64 of the Convention, the Government of Turkey is of the opinion that the disputes which may arise from the interpretation and application of the Convention can be solved through meaningful negotiations between the parties to the dispute, without the need of having recourse to third party settlement."

Art. 70 of the  
Convention

## EXCLUSIONS OF TERRITORIES BY CONTRACTING STATES

Pursuant to Article 70 of the Convention, the following Contracting States have excluded from the application of the Convention the following territories for whose international relations they are responsible:

<u>Contracting State</u> <sup>2</sup>	<u>Date Notice of Exclusion was Received by Depositary</u> <sup>3</sup>	<u>Territories Excluded</u>
Moldova	May 5, 2011	<u>Text of Notice</u> : "... the provisions of the Convention shall be applied only on the territory effectively controlled by the authorities of the Republic of Moldova."
New Zealand	April 2, 1980	Cook Islands Niue Tokelau
United Kingdom	June 19, 1973	British Indian Ocean Territory Pitcairn Islands British Antarctic

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<sup>2</sup> Denmark excluded, by a notification received on May 15, 1968, the Faroe Islands; by notification received on October 30, 1968, Denmark extended the application of the Convention to the Faroe Islands as of January 1, 1969.

On depositing its instrument of ratification, the Netherlands restricted the application of the Convention to the Kingdom in Europe; by a notification received on May 22, 1970, the Netherlands withdrew that restriction and thus extended the application of the Convention to Suriname and the Netherlands Antilles; Suriname having attained independence on November 25, 1975, the Convention ceased to be applicable to Suriname as of that date.

On depositing its instrument of ratification, the United Kingdom excluded, inter alia, from its coverage Jersey and the Isle of Man. By notifications received on June 27, 1979, and November 17, 1983, respectively, the United Kingdom extended the application of the Convention to Jersey as of July 1, 1979, and to the Isle of Man as of November 1, 1983.

<sup>3</sup> The International Bank for Reconstruction and Development.

Art. 25(1) and (3) of  
the Convention

## DESIGNATIONS BY CONTRACTING STATES REGARDING CONSTITUENT SUBDIVISIONS OR AGENCIES

1. Article 25(1) of the Convention provides that the jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.

2. The following Contracting States have designated the subdivisions and agencies listed below as competent to become parties to disputes submitted to the Centre. In some cases, the States concerned have, pursuant to Article 25(3) of the Convention, also notified the Centre that no approval by the State is required for the designated subdivision or agency's consent to submit disputes to the Centre, and these are also indicated below:

<u>Contracting State</u> <sup>4</sup>	<u>Date of Designation</u>	<u>Name of Constituent Subdivision/Agency</u>
Australia	May 2, 1991*	The State of New South Wales The State of Victoria The State of Queensland The State of South Australia The State of Tasmania The Northern Territory The Australian Capital Territory

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Note: *ad hoc* designations and notifications made by Contracting States pursuant to Articles 25(1) and 25(3) are excluded from this listing.

\* This symbol signifies that on making the designation, the Contracting State also notified the Centre, pursuant to Article 25(3) of the Convention, that the State's approval would not be required for consents by the constituent subdivision/agency to submit disputes to the Centre.

<sup>4</sup> The Government of the Republic of Ecuador signed the ICSID Convention on January 15, 1986 and deposited its instrument of ratification on the same date. The Convention entered into force for Ecuador on February 14, 1986. On April 19, 1988, the Republic of Ecuador designated the Corporación Estatal Petrolera Ecuatoriana as a constituent subdivision or agency pursuant to Article 25(1) of the ICSID Convention. On August 21, 2002, the Republic of Ecuador designated the Consejo Nacional de Electricidad (CONELEC) as a constituent subdivision or agency pursuant to Article 25(1) of the ICSID Convention. On July 6, 2009, the depositary received a written notice of Ecuador's denunciation of the Convention. In accordance with Article 71 of the Convention, the denunciation took effect six months after the receipt of Ecuador's notice, i.e., on January 7, 2010.



<u>Contracting State</u>	<u>Date of Designation</u>	<u>Name of Constituent Subdivision/Agency</u>
Guinea	August 16, 1983	Société des Mines de Fer de Guinée pour l'Exploitation des Monts Nimba
	April 17, 1991	Société Nationale des Eaux de Guinée
Indonesia	September 27, 2012*	Government of the Regency of East Kutai
Kenya	June 20, 1988	Kenya Ports Authority
		Kenya National Shipping Line
Madagascar	October 8, 1981	Entreprise Nationale d'Hydrocarbure
Nigeria	May 11, 1978	Nigerian National Petroleum Corporation
Peru	October 11, 1996*	Perupetro S.A.
Portugal	July 24, 1996*	Investimentos, Comércio e Turismo de Portugal
Sudan	November 19, 1981	The General Petroleum Corporation
Turkey	October 8, 1998	Turkish Electricity Generation and Transmission Corporation (TEAŞ)
		Petroleum Pipeline Corporation (BOTAŞ)
United Kingdom	May 7, 1968	Bermuda
		British Virgin Islands
		Cayman Islands
		Falkland Islands (Malvinas)
		Falkland Islands (Malvinas) Dependencies
		Gibraltar
		Montserrat
		Anguilla
		St. Helena
		St. Helena Dependencies
		Turks & Caicos Islands
	June 11, 1973*	Guernsey (Bailiwick of)
	October 1, 1990*	Jersey (Bailiwick of)
		Isle of Man

Art. 25(4) of the  
Convention

**NOTIFICATIONS CONCERNING CLASSES OF DISPUTES  
CONSIDERED SUITABLE OR UNSUITABLE FOR SUBMISSION  
TO THE CENTRE**

The following Contracting States have notified the Centre, pursuant to Article 25(4) of the Convention, of the class or classes of disputes they would or would not consider submitting to the jurisdiction of the Centre:

<u>Contracting State</u> <sup>5</sup>	<u>Classes of Disputes</u>
China	<p><u>Text of Notification:</u></p> <p>“[P]ursuant to Article 25(4) of the Convention, the Chinese Government would only consider submitting to the jurisdiction of the International Centre for Settlement of Investment Disputes disputes over compensation resulting from expropriation and nationalization.”</p> <p><u>Date of Notification:</u></p> <p>January 7, 1993</p>

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<sup>5</sup> On July 8, 1974, Guyana notified the Centre “that Guyana would not consider submitting to the jurisdiction of the Centre legal disputes arising directly out of an investment relating to the mineral and other natural resources of Guyana.” That notification was withdrawn by Guyana by a communication dated September 29, 1987 stating, inter alia, that “[h]ereafter the Government of Guyana will, in accordance with Article 25 of the said Convention, refer to the Centre legal disputes to which that Article applies and which the parties to the dispute consent in writing to submit to the Centre.”

On June 22, 1983, Israel notified the Centre that “Israel shall consider submitting to the Centre only disputes related to an approved investment under one of the Israeli Laws for the Encouragement of Capital Investments” and, with reference to Article 26 of the Convention, that “Israel requires the exhaustion of local administrative or judicial remedies as a condition under this Convention.” Those notifications were withdrawn by Israel by a communication received by the Centre on March 21, 1991.

On April 27, 1993, Costa Rica notified the Centre that “[t]here may only be recourse to arbitration pursuant to [the Convention] where all existing administrative or judicial remedies have been exhausted.”

Guatemala<sup>6</sup>

Text of Notification:

“The Republic of Guatemala does not accept submitting to the Centre’s jurisdiction any dispute which arises from a compensation claim against the State for damages due to armed conflicts or civil disturbances.”

Date of Notification:

January 16, 2003

Indonesia

Text of Notification:

“[T]he Government of the Republic of Indonesia would not consider submitting to the jurisdiction of ICSID class of dispute arising from the administrative decision issued by the Regency Governments within the Republic of Indonesia.”

Date of Notification:

September 27, 2012

Jamaica

Text of Notification:

“In accordance with Article 25 of the Convention establishing the International Centre for the Settlement of Investment Disputes, the Government of Jamaica hereby notifies the Centre that the following class of dispute at any time arising shall not be subject to the jurisdiction of the Centre:

Class of Dispute:

Legal dispute arising directly out of an investment relating to minerals or other natural resources.”

Date of Notification:

May 8, 1974

Papua New Guinea

Text of Notification:

“WHEREAS under Article 25(4) of the Convention any Contracting State may, at the time of acceptance thereof, notify

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<sup>6</sup> On January 16, 2003, Guatemala notified the Centre that “the Republic of Guatemala will require the exhaustion of local administrative remedies as a condition of its consent to arbitration under the Convention.”

the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre;

NOW THEREFORE the Government of Papua New Guinea

HEREBY NOTIFIES the Centre that it will only consider submitting those disputes to the Centre which are fundamental to the investment itself.”

Date of Notification:

September 14, 1978

Saudi Arabia

Text of Notification:

“[T]he Kingdom reserves the right of not submitting all questions pertaining to oil and pertaining to acts of sovereignty to the International Centre for the Settlement of Investment Disputes whether by way of conciliation or arbitration.”

Date of Notification:

May 8, 1980

Turkey

Text of Notification:

“I also have the honour to hereby notify, pursuant to Article 25 (4) of the ‘Convention on the Settlement of Investment Disputes Between States and Nationals of Other States’ concerning classes of disputes considered suitable or unsuitable for submission to the jurisdiction of the Centre that only the disputes arising directly out of investment activities which have obtained necessary permission, in conformity with the relevant legislation of the Republic of Turkey on foreign capital, and that have effectively started shall be subject to the jurisdiction of the Center. However, the disputes, related to the property and real rights upon the real estates are totally under the jurisdiction of the Turkish courts and therefore shall not be submitted to jurisdiction of the Center.”

Date of Notification:

March 3, 1989

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Note: The Government of the Republic of Ecuador signed the ICSID Convention on January 15, 1986 and deposited its instrument of ratification on the same date. The Convention entered into force for Ecuador on February 14, 1986. On December 4, 2007, the Republic of Ecuador notified the Centre pursuant to Article 25(4) of the ICSID Convention that: “The Republic of Ecuador will not consent to submit to the jurisdiction of the International Centre for Settlement of Investment Disputes (ICSID) the disputes that arise in matters concerning the treatment of an investment in economic activities related to the exploitation of natural resources, such as oil, gas, minerals or others. Any instrument containing the Republic of Ecuador’s previously expressed will to submit that class of disputes to the jurisdiction of the Centre, which has not been perfected by the express and explicit consent of the other party given prior to the date of submission of the present notification, is hereby withdrawn by the Republic of Ecuador with immediate effect as of this date.” On July 6, 2009, the depositary received a written notice of Ecuador’s denunciation of the Convention. In accordance with Article 71 of the Convention, the denunciation took effect six months after the receipt of Ecuador’s notice, i.e., on January 7, 2010.



Art. 54(2) of the  
Convention

**DESIGNATIONS OF COURTS OR OTHER AUTHORITIES COMPETENT FOR  
THE RECOGNITION AND ENFORCEMENT OF AWARDS RENDERED  
PURSUANT TO THE CONVENTION**

The following courts and other authorities have, in accordance with Article 54(2) of the Convention, been designated by Contracting States as competent for the recognition and enforcement of arbitral awards rendered pursuant to the Convention:

<u>Contracting State</u>	<u>Court or Other Authority</u>
Argentina	Justicia Nacional en lo Contencioso Administrativo Federal (the proceeding to be initiated before the Cámara Nacional de Apelaciones en lo Contencioso Administrativo Federal)
Australia	The Supreme Court of New South Wales The Supreme Court of Victoria The Supreme Court of Queensland The Supreme Court of Western Australia The Supreme Court of South Australia The Supreme Court of Tasmania The Supreme Court of the Northern Territory The Supreme Court of the Australian Capital Territory
Austria	Landes- und Kreisgerichte
Barbados	Registrar of the Supreme Court
Belgium	Ministère des affaires étrangères
Benin	Cour Suprême
Botswana	Registrar of the High Court
Burkina Faso	Cour Suprême
Burundi	Tribunal de Première Instance de Bujumbura
Cameroon	Cour Suprême (Chambre Administrative)
Central African Republic	Le Tribunal de Grande Instance

Colombia	Sala Plena de la Sección Tercera de la Sala de lo Contencioso Administrativo del Consejo de Estado
Congo, Republic of	Tribunal de Grande Instance de Brazzaville
Côte d’Ivoire	Président du Tribunal de Première Instance d’Abidjan
Czech Republic	Ministry of Justice
Cyprus	District Court, Nicosia
Denmark	Bailiff (lower court) of district concerned
Egypt, Arab Republic of	Ministry of Justice
Fiji	Supreme Court
Finland	Executor-in-chief (ulosotonhaltija) with local jurisdiction
France	“Tribunal de Grande Instance” having jurisdiction where the enforcement is to take place
Germany	The “Landgericht” with local jurisdiction over the debtor, or, in its absence, the “Landgericht” of the district where the property of the debtor is located or where the enforcement is to take place
Ghana	High Court
Greece	Single Judge Court of First Instance for Athens
Guatemala	Organismo Judicial
Guinea	Procureur Général
Guyana	High Court
Hungary	Fővárosi Biróság, Budapest
Iceland	Bailiff (fogeti) of the District concerned
Indonesia	Supreme Court
Ireland	High Court

Israel	Appropriate District Court
Italy	Courts of Appeal having jurisdiction in the province where the enforcement is to take place
Jamaica	Supreme Court
Japan	The summary court or the district court which is designated in the arbitration agreement, and in the case of absence of such designation, the summary court or the district court having the jurisdiction over the place of the defendant's domicile or residence, or over the place where the subject matter of a claim or the security therefor or any attachable property of the defendant is located
Jordan	Court of First Instance
Kenya	High Court
Korea, Republic of	
Seoul	Seoul Civil District Court
Chunchon, Kangwondo	Chunchon District Court
Chongju, Chungchong Pukdo	Chongju District Court
Taejon, Chungchong Namdo	Taejon District Court
Taegu, Kyongsang Pukdo	Taegu District Court
Pusan, Kyongsang Namdo	Pusan District Court
Kwangju, Cholla Namdo	Kwangju District Court
Chonju, Cholla Pukdo	Chongju District Court
Cheju, Chejudo	Cheju District Court
Latvia	The Ministry of Justice
Lesotho	Permanent Secretary for Foreign Affairs
Liberia	Supreme Court
Luxembourg	Tribunal d'arrondissement
Madagascar	Chambre Administrative de la Cour Suprême
Malawi	High Court

Malaysia	High Court
Mauritania	Supreme Court of Mauritania (Nouakchott)
Mauritius	Supreme Court
Morocco	“Président du Tribunal Régional” of the district where the enforcement is to take place
Netherlands	President of the District Court in The Hague
New Zealand	High Court
Niger	Tribunal de Première Instance dans le ressort duquel la sentence arbitral doit être exécutée
Nigeria	Supreme Court
Norway	Namsmannen (Bailiff)
Papua New Guinea	National Court
Philippines	The Regional Trial Court of the city or province where the arbitration proceedings were held or where the losing party resides or does business
Portugal	Supremo Tribunal de Justiça
Romania	Bucharest Court and the District Courts by circumstance
Rwanda	Tribunal de Première Instance de Kigali
St. Lucia	Supreme Court of Saint Lucia
Saudi Arabia	Court of Grievances
Senegal	Cour d’Appel de Dakar
Sierra Leone	Cabinet (through the Ministry of Finance)
Singapore	High Court
Sri Lanka	District Court of Colombo