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REGIONAL INTERNATIONAL ARBITRATION CONFERENCE

DAWN OF INTERNATIONAL ARBITRATION IN THE SOUTH PACIFIC

12 & 13 February 2018

Westin Denarau Island, Nadi, Fiji

Keynote Address
by Gary Born

Government, Private Sector,
Lawyers and Judges

Disputes in the
South Pacific

Bula Vinaka

Mock
Arbitration

Promotion of FDI
through International
Arbitration Reform

New York Convention
and the South Pacific

INTRODUCTION TO INTERNATIONAL ARBITRATION

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**Daniel Meltz, Barrister 12 Wentworth
Selborne Chambers and ADB
Arbitration Consultant** 12 February 2018



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Introduction



What is International Commercial Arbitration?

Private, final and binding dispute resolution of commercial disputes between parties from different countries supported by an international legal framework

- Private in that disputes are not resolved within the court system but privately
- Final and binding in that with limited exceptions there is no appeal from an arbitral award and no appeal at all as to merits or law
- Usually commercial disputes as certain types of disputes are not capable of submission to arbitration
- International legal framework: New York Convention and UNCITRAL Model Law



Where does Arbitration fit in the disputes hierarchy?



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- Start with negotiations
- Perhaps escalate to mediation
- Choice of Expert determination;
- Arbitration; or
- Litigation
- But NEVER arbitration AND litigation



Reasons to Choose Arbitration



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Why Arbitrate?

"Arbitration is now the principal method of resolving international disputes involving states, individuals, and corporations" (Redfern & Hunter)

- Neutrality of venue - called the 'seat' of the arbitration – but seat and venue can be different
- Choice of Arbitrator(s) – Sole Arbitrator or 3 person panel – expertise?
- Confidentiality of proceedings
- Speed – generally faster than courts, even commercial courts, less hearing days
- New Emergency Arbitrator Procedures



Enforcement



....but the real reason parties arbitrate

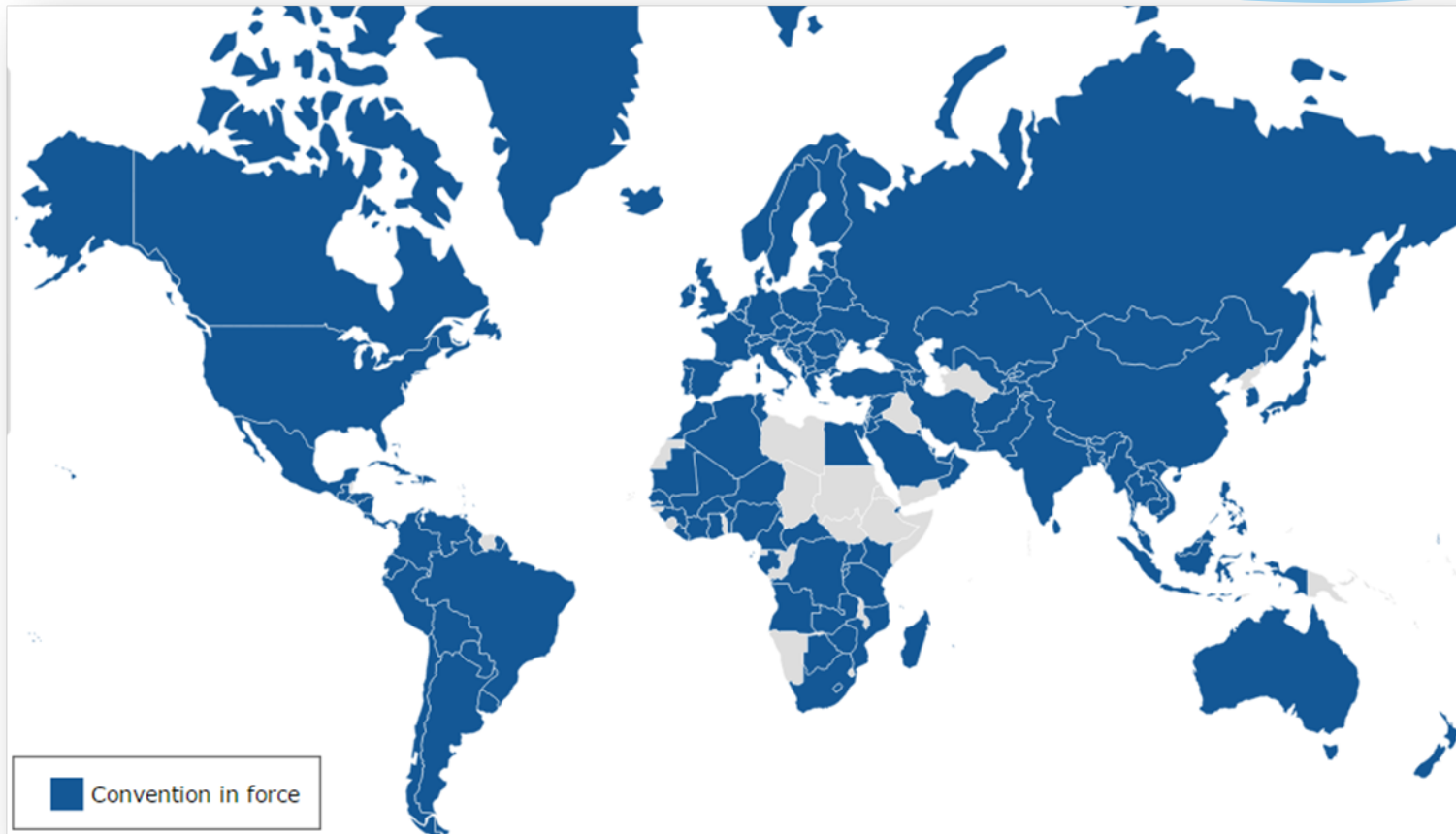
Enforceability of an award in 157 countries thanks to the New York Convention

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New York Convention



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Awards v Judgments



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Enforcement of an Award vs Judgment

For example in Australia - Foreign Judgments Regulation 1992 (Cth)

Only 28 scheduled countries with reciprocity: outside of Commonwealth - Israel, Italy, Germany, Japan, Korea, Poland and Switzerland **but not Australia's largest trading partners China and USA.**

However: unlike an arbitral award limited to money sum judgments only



Bespoke Process



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Arbitration is About Party Autonomy

Parties can choose and tailor the way the dispute resolution process works

Parties might dispense altogether with disclosure/discovery

Parties might choose to 'fast track' their case

Parties might choose to dispense with witness evidence

However what looks simple on the outside is supported by national and international laws and treaties.



Key elements



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Key Treaty and Model Law

- **Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York) known as the New York Convention**
- Just 16 Articles
- No cost, no reporting obligations
- **United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Arbitration 1985; amended in 2006 (Model Law)**
- 78 States - 109 jurisdictions



Flexibility of Hearings – Seat and Venue



- * **Seat and Venue**
- * Parties can agree to a 'seat' – usually in a neutral country.
- * However parties can have hearings wherever they agree so as to minimise costs.



Questions

