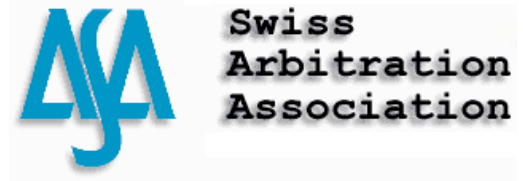




ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE



**Swiss
Arbitration
Association**

Glossary

of Arbitration and ADR

Terms and Abbreviations

Словарь

терминов и сокращений

в области арбитража и альтернативных

способов разрешения споров

E: English **F:** French **D:** German **Esp.:** Spanish **I:** Italian **L:** Latin **NL:** Dutch **R:** Russian

- = equivalent, also called ... (то же, что и...)
- : means... (означает)
- term for which there is an entry in this Glossary. see... (см. термин в Словаре)
- (1), (2) various meanings (sometimes one more specific included in the other) in the same entry. For an *example* →ADR. (разные значения одного и того же термина)
- ☺ term to be preferred because it is best understood internationally (предпочтительный термин)
- ☹ term to be avoided because it is incorrect, misleading, rare or too local, means different things to different people, or may appear offensive (термин, использование которого не рекомендуется).

A

AAA = American Arbitration Association = Американская арбитражная ассоциация, AAA (R), the leading arbitration institution in the United States of America. Issued (a) International Arbitration Rules, (b) other rules, (c) with →ABA, Code of Ethics for Arbitrators in Commercial Disputes, 1977, amended, 2005. www.adr.org. →ICDR.

ABA = American Bar Association = Американская ассоциация адвокатов (R). www.abanet.org

abuse of right = злоупотребление правом (R) = abus de droit (F) = Rechtsmissbrauch (D) = abuso de derechos (Esp.): a →civil law(2) concept similar to →estoppel, venire contra factum proprium (L), or →fraus legis (L).

accept jurisdiction = признать наличие юрисдикции (R) = find that own jurisdiction exists. →Kompetenz-Kompetenz(2). *Contrast* →decline jurisdiction.

ACI Arb = член Королевского Института арбитров (R) = Associate of the →Chartered Institute of Arbitrators.

acte de mission (F) = acta de misión (Esp.) = →terms of reference(1).

action to set aside = ходатайство об отмене (R) = plea in nullity: judicial remedy to have an arbitral award annulled on limited grounds such as →public policy(3). →vacatur (L).

ad hoc arbitration = арбитраж "ад хок": arbitration in which no arbitral institution plays a role beyond possibly that of an →appointing authority. The parties may agree to refer to →arbitration rules designed for ad hoc arbitration such as →Uncitral(c) or →CPR. Avoid →copy-cat arbitration. *Contrast* →institutional arbitration, →administered arbitration.

ad hoc panels of CAS = ад хок трибуналы Спортивного арбитражного суда (R): at games such as the Olympics, special →panels appointed by →CAS to deal with urgent matters. *Note*: This is →institutional, not →ad hoc, arbitration.

ad valorem (L) = в соответствии со стоимостью (R): depending on the →amount in dispute. →assessment of costs.

additional award = дополнительное арбитражное решение: an →award that lets a previous award stand, clarifying or supplementing it.

Additional Facility for the administration of conciliation, and →investment arbitration: ICSID arbitration outside the scope of the →ICSID Convention, using special →arbitration rules.

adjudication = разрешение споров (R): (1) dispute resolution by →litigation or →arbitration. (2) Specifically, in England, →preliminary, interim, often →summary, dispute resolution that is executory, but still subject to subsequent →litigation or →arbitration.

administering proof☺ = marshalling proof☺ = →taking of evidence☺.

administered arbitration = арбитраж под администрацией арбитражного института: a type of →institutional arbitration, where the administration determines seat of arbitration, number of arbitrators, appoints arbitrators, deals with the financial aspects of the arbitration, supervises and polices arbitrators, and exercises limited quality control over the →award. *Example* →ICC arbitration.

administrative conference = телеконференция по административным вопросам в арбитраже AAA: in →AAA arbitration, informal initial telephone conference between →case officer and parties.

ADR = Alternative Dispute Resolution = альтернативное разрешение споров: (1) in Europe, non-binding "amicable" →dispute resolution involving a third party. Does not include →arbitration. (2) in the United States, any →dispute resolution involving a third party, other than litigation, thus including →arbitration.

advance☺ on costs = deposit☺ = аванс на покрытие арбитражных расходов (R): a payment into account by a party to secure →arbitration costs or costs and fees of a →tribunal-appointed expert.

adversarial system = состязательная система (R): (1) system by which the facts of the case are presented to the arbitral tribunal by the parties. *Contrast* →inquisitorial system. (2) Sometimes, system following the principle(1) of →contradictoire (F).

adverse inference = вывод в пользу противной стороны (R): if a party failed to present certain evidence or prevented its →taking, conclusion drawn that the evidence would have been contrary to its interests. see Art. 9 →IBA Rules of Evidence.

advocate= адвокат (R): lawyer or →barrister who appears and speaks for a party at a hearing.

affidavit (L) =аффидавит (R): sworn statement. In arbitration, replaced by unsworn →witness statement.

agreement = соглашение (R): understanding (often text) by parties to create a →contractual(1) relationship.

agreement to arbitrate = арбитражное соглашение (R): →arbitration clause or →arbitration agreement.

agreed bundle = материалы, подлинность которых сторонами не оспаривается (R): in English practice, file, often of several binders, prepared jointly by the parties, containing the main documents of undisputed authenticity.

agreed terms: →consent award.

allegation = утверждение (R): presentation by party of facts that it expects to prove.

allocation of →costs = распределение расходов между сторонами (R): who bears which costs.

alternative☺ position, argument, prayer for relief: subsidiary☺ = альтернативные☺ = дополнительные☺ (требования, аргументы...) (R)...

alternative dispute resolution →ADR.

amendment to an award = изменение арбитражного решения (R): (1) usually, a change to an award already rendered. (2) →additional award, leaving the first unchanged.

amiable compositeur (F) = дружеский посредник (R): arbitrator engaged in →amiable composition (F).

amiable composition (F) = дружеское посредничество (R): (1) procedure leading directly to a decision →ex aequo et bono (L). (2) more specifically (in France), procedure leading first to a decision applying the applicable law, which is then corrected to take into account considerations →ex aequo et bono (L).

amicable settlement →settlement(1).

amicus brief (L): письменное заявление в суд стороны, не участвующей в споре (**amicus curiae**) (R) = a written submission by a non-party, called **amicus curiae** (L), to a →forum (L).

amount in dispute = цена спора (R) = sum in dispute: the amount of money, principal(1) only, by which, on the basis of their →prayers for relief, the parties are apart. Claims for →declaratory relief or →orders(2) should be valued in money for this purpose.

a-national arbitration = →delocalized arbitration.

an debeat (L) = установление ответственности (R): the question of →principle(2) whether money, often damages, is due at all. *Contrast* →quantum debeat (L) (определение размера ответственности (R)).

Anglo-American☺ = Anglo-Saxon☺ (E, mostly F). →common law(2).

annulment = отмена (R) = setting aside = vacatur (L). →action to set aside.

answer = отзыв (R) = counter-memorial = réponse (F) = response = Klageantwort (D) = Klageerwiderung (D) = contestación (Esp.): first →brief by →respondent.

anti-arbitration injunction, anti-suit injunction = судебный запрет возбуждать арбитражное разбирательство, арбитражный запрет возбуждать судебное разбирательство (R): →preliminary measure of a →forum directing a party not to file suit before another forum (→arbitral tribunal or →state court, as the case may be).

appeal = апелляция (R) = appel (F) = appello (I) = Berufung (D): a →judicial remedy with full review of the merits. Rare in arbitration. When →waiver agreement excludes "all appeals☺", this means all →remedies.

applicable law = governing law = proper law = применимое право (R) = loi applicable (F) = normas jurídicas aplicables (Esp.): **(1)** the law or →rules of law applicable to (*distinguish*) arbitration agreement, arbitration as such (including proper constitution of arbitral tribunal, jurisdiction, and arbitrability), procedure before the arbitral tribunal, →extra-contractual liability, or other substantive questions such as capacity to make a contract, contractual claims. **(2)** only to contractual claims. →Private international law, →conflict of laws.

appointing authority = назначающий орган (R): the authority designated to make missing appointments. (a) in →ad hoc arbitration, the →lex arbitri (L) provides for a →state court to act in the capacity of an appointing authority if none was appointed by the parties. (b) in →Uncitral arbitration, Art. 6 →Uncitral Arbitration Rules provides for a mechanism where no such appointing authority was specifically agreed.

appointment of an arbitrator = назначение арбитра (R): the act of vesting an individual with arbitral powers. In →ad hoc arbitration, the parties →appoint the arbitrators. In →institutional arbitration, sometimes (→ICC) the parties →nominate, and the institution appoints or "confirms".

arbitrable, arbitrability = арбитрабельный, арбитрабельность (R) = arbitrabilité (F) = Schiedsfähigkeit (D) = arbitrabilidad (Esp.): **(1)** In the technical sense, used for disputes that may be submitted to arbitration. The →lex arbitri determines (objective) arbitrability, either directly (Switzerland and Germany, where any dispute of economic interest is arbitrable) or by reference to a particular law. **(2)** Subjective arbitrability☺ = →capacity to be a party to arbitration. **(3)** Sometimes☺ (United States), matter within the scope of the →arbitration agreement.

arbitraggio (I): in Italy, type of arbitration whereby the arbitral tribunal determines a proper price.

arbitral award = →award.

arbitral institution = арбитражный институт, третейский суд (R) = institution arbitrale (F) = Schiedsinstitution (D) = institución arbitral (Esp.): In →institutional arbitration, institution that sets in motion the arbitral process and appoints arbitrators. In →administered arbitration, the institution exercises further functions. Every arbitral institution has its own →arbitration rules. →référé(2).

arbitral tribunal = состав арбитража, арбитражный трибунал (R) = tribunal arbitral (F) = Schiedsgericht (D) = tribunal arbitral (Esp.) = collegio arbitrale (I). Usually consists of →presiding arbitrator and two →co-arbitrators. *Contrast* →sole arbitrator.

arbitrariness = arbitraire (F) = Willkür (D) = arbitrariedad (Esp.): a (relatively wide) standard of review of arbitral awards. *Distinguish* this from (a) full, unfettered review, →appeal, and from (b) review limited to violations of →due process and →public policy(2).

arbitration = арбитраж, третейское разбирательство (R) = arbitrage (F) = Schiedsgerichtsbarkeit (D) = arbitraje (Esp.): Voluntary structured binding dispute resolution by a neutral third person or body. *Contrast* (a) →negotiation (unstructured), (b) in Europe, →ADR(1) (non-binding), (c) →litigation (involuntary). →ad hoc; →administered; →baseball; →commercial; →commodity; →court-annexed; →delocalized; →diagonal; →domain name; →domestic; →dormant; →fast-track; →horizontal; →international; →investment; →maritime; →mock; →multi-party; →public international law; →trade.

Arbitration Act 1996: Statute on arbitration in England and Wales.

arbitration agreement = арбитражное соглашение (R): (1) = compromis arbitral (F) = Schiedsvereinbarung (D) = acuerdo de arbitraje (Esp.): a separate agreement that has as its main purpose to provide for →arbitration. Sometimes entered into →in limine litis (L). (2) = convention d'arbitrage (F) = Schiedsvertrag (D): contractual relationship resulting from such an arbitration agreement or an →arbitration clause. →separability.

arbitration clause = арбитражная оговорка (R) = clause compromissoire (F) = Schiedsklausel (D) = cláusula arbitral (Esp.): In an →agreement, clause providing for →arbitration. Usually also covers other matters.

arbitration costs = арбитражные расходы (R) = frais d'arbitrage (F) = Schiedskosten (D). Usually includes →arbitral institution's administrative →fee and administrative expenses, →arbitration →fees. →arbitrators' →expenses, →VAT, experts', interpreters', court reporters' →fees and expenses, meeting room expenses. *Contrast* →party representation costs.

arbitration law = →lex arbitri (L).

arbitration rules = арбитражный регламент (R) = règlement d'arbitrage (F) = Schieds(gerichts)ordnung (D) = reglamento arbitral (Esp.): standard provisions on arbitration to which the parties agree to refer. →institutional arbitration; →Uncitral(c).

arbitrato irrituale, libero (I): in Italy, arbitration set up privately, under law of contracts.

arbitrato rituale (I): in Italy, arbitration set up following provisions of civil procedure, leading to an →award.

arbitrator = арбитр (R) = arbitre (F) = Schiedsrichter (D) = arbitro (Esp., I) = (in Scotland) arbiter (L). *Distinguish* →presiding arbitrator, →co-arbitrator, and →sole arbitrator. →status.

arbitrazh court = государственный арбитражный (или хозяйственный) суд (R) : in Russia, Kazakhstan, and other countries, state(1) commercial court. Has nothing to do with primary →arbitration. In Russia, however, →forum for →action to set aside.

ASA = Швейцарская арбитражная ассоциация (R), Association Suisse de l'Arbitrage (F), the Swiss Arbitration Association. www.arbitration-ch.org

assessment of costs = установление суммы арбитражных расходов (R): setting or fixing amount of →arbitration costs. →ad valorem or by hourly rates.

assessment of the evidence = оценка доказательств (R) : the process by which →forum reaches findings of →fact on the basis of the →evidence. see Art. 9 →IBA Rules of Evidence.

astreinte (F, Esp.) = астрент, возрастающая пеня (R) = Zwangsgeld (D) = dwangsom (NL): sometimes →per diem(2) →penalty imposed on a party for non-compliance with an →order(2).

attachment = арест имущества (R) = saisie-arrêt (F) = Arrest (D) = beslag (NL) = embargo (retentivo) (Esp.) = secuestro de bienes (Esp.): a measure similar to a freezing order = (formerly) Mareva injunction. *Quaere* whether an arbitral tribunal can order an attachment.

award = арбитражное решение (R) = sentence (F) = Schiedsspruch (D) = laudo (Esp.) = lodo (I) = vonnis (NL): →decision of an →arbitral tribunal on the →merits of one or more of the →prayers for relief. In the →ICC system, all awards are subject to →scrutiny. *Contrast* →order, not on the →merits. *Distinguish* (a) final award: decision of an arbitral tribunal equivalent to a court decision by which one or more of the prayers for relief of the parties is disposed of in a final manner, either without entering upon the merits or on the merits. *Contrast* →preliminary award. (b) Last award : the last award made by an arbitral tribunal before it is →functus officio (L). *Contrast* →interim award = interlocutory award. (c) Full award: deals with all prayers for relief. *Contrast* →partial award. →additional award; →consent a.; →form of a.; →interpretation of a.; →reasoned a.; →correction of a.; →declaratory a.; →default a.; →floating a.; →money a.

B

BAE = British Academy of Experts. Issued Rules for experts. www.academy-experts.org

barrister (in England) = advocate = барристер, судебный адвокат (R). →Q.C.

baseball arbitration☺ = →best offer arbitration☺ = final offer arbitration = pendulum arbitration = flip flop arbitration: United States type of arbitration used mostly in transfer disputes about baseball players. The parties give sealed best offers. The one closer to the figure determined independently by the arbitral tribunal is selected.

BATNA = Best alternative to a negotiated agreement: the best outcome that a party can achieve if the matter is not settled by →negotiation or →ADR.

best offer arbitration☺ = →baseball arbitration.

Beweiswürdigung (D) = →assessment of the evidence.

bias = предвзятость, заинтересованность (R) : lack of →impartiality.

blocking statute: a (usually criminal) statute by which a state seeks to prevent evidence from being obtained for use in proceedings abroad.

bifurcation of proceedings (United States) = параллельное или поэтапное проведение части арбитражных заседаний (R): conducting part of proceedings in parallel or at various times, e.g., on jurisdiction and (if necessary) on the merits; on liability and (if necessary) on quantum.

bilateral investment treaty, BIT = двустороннее соглашение о защите инвестиций (R): a treaty between sovereign countries that protects investment in the →host country made by a private party in the other country. Usually provides for arbitration between the private investor and the host country. →ICSID Convention.

bindend advies (NL): similar to →Schiedsgutachten (D).

Binnenbeziehung (D): narrow connection with a legal system, particularly →lex fori, justifying its application. Similar to minimum contacts for jurisdiction purposes.

BIT = →bilateral investment treaty.

boilerplate: accepted term for clauses in standardized form inserted into many →agreements.

brief (United States) = →written submission.

Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968: provided for recognition and enforcement of →state court(1) judgments in the European Union. Replaced by directive. →Lugano Convention.

bundle (in England) = binder: a volume of the →file. →agreed bundle.

burden of proof = бремя доказывания (R) = Beweislast (D) = carga de la prueba (Esp.): determines the party that bears the risk that the evidence might remain in →equipoise.

C

Cairo Regional Centre for Commercial Arbitration. www.crcica.org.eg

Calderbank offer⊕ = in England, →sealed offer.

Calvo doctrine: principle that in international investment disputes jurisdiction lies with the courts of the host country. Now abandoned.

CANACO: Centro de Mediación y Arbitraje Comercial de la Cámara Nacional de Comercio de la Ciudad de México. www.arbitrajecanaco.com.mx

capacity to be a party to arbitration = subjective arbitrability⊕. May well be governed by a different law than other questions, primarily by the →lex arbitri (L). *Contrast* →standing.

capitalization of interest = капитализация процентов (R) = anatocism = →compound interest: periodically adding interest to the principal(2), which results in interest on interest.

caption (United States) = →rubrum (L): heading of a →brief, →award, etc., identifying parties.

CAS (E) = TAS (F): Court of Arbitration for Sport, in Lausanne. www.tas-cas.org

case law = прецедентное право (R) = jurisprudence (F) = Judikatur (D), both with →false friends.

case officer: In →institutional arbitration, the person assigned to follow the case. In →ICC arbitration, called →counsellor = conseil (F). In →AAA domestic arbitration, called case administrator, case manager.

caucus: (1) In (→shuttle-diplomacy) →mediation, meeting between mediator and *one* party. (2) In industrial relations conciliation, a private meeting with negotiators from *both* sides. **caucus-ing**: procedure using caucuses.

CCI (F) = Chambre de commerce internationale = Международная торговая палата, (МТП) (R) = Cámara de Comercio Internacional = →ICC (E).

CCIG = Chambre du Commerce et de l'industrie de Genève = Торгово-промышленная палата Женевы (R). Runs together with other Swiss Chambers an →institutional arbitration system. www.cci.ch/geneve

CEPANI (F) = **CEPINA** (NL), Belgium's leading arbitration institution. www.cepani.be

certificate of enforceability: obtained at the →seat of arbitration.

certified = заверенный (R): stated to be correct or conforming, often by a state official.

chair = chairman⊕ = chairperson = →presiding arbitrator.

challenge (1) of arbitrator = отвод арбитра (R): procedure to have arbitrator →removed. **(2)** of award = →action to set aside.

Chartered Arbitrator: дипломированный арбитр (R), title granted by →Chartered Institute of Arbitrators.

Chartered Institute of Arbitrators = Королевский Институт Арбитров (R): Learned society based in London. Various chapters worldwide. Many of its over 10,000 members are →ACI Arb, some are MCI Arb or →FCI Arb or →Chartered Arbitrators. www.arbitrators.org

chess clock system = принцип шахматных часов при допросе свидетелей (R) = Böckstiegel method: system by which each party at a hearing has a preset, normally equal, time, to question witnesses on basis of their →witness statements, and to hear their answers.

CHF = Swiss Franc(s).

choice of law (1) = определение применимого права (R) →private international law. **(2)** = указание применимого права в договоре (R) = determination of the applicable substantive law by the parties in a choice-of-law-clause.

CIETAC = China International Economic and Trade Arbitration Commission = Китайская международная торгово-экономическая арбитражная комиссия (R). Runs →institutional arbitration system for all kinds of arbitrations. www.cietac-sz.org.cn

CI Arb: →Chartered Institute of Arbitrators.

CISG = (Vienna) Convention on the International Sale of Goods, 1980 = (Венская) Конвенция о договорах международной купли-продажи товаров 1980 г. (R) www.cisg.law.pace.edu

civil law: (1) = частное право (R) = private law. *Contrast* →public law. **(2)** = континентальное право (R) = legal tradition based on Roman law using codified statutory law as the main source of (private) law. *Contrast* →Anglo-American law, →common law(2).

claimant☺ = истец (R) = demanderesse (F) = Klägerin (D) = demandante (Esp.): plaintiff☺ in international arbitration.

class arbitration: often →court-ordered arbitration that emulates class action proceedings before state courts in the United States. No →privity or →confidentiality in such an arbitration. see www.adr.org

clause compromissoire (F) = →arbitration clause.

cláusula arbitral (Esp.): →arbitration clause.

clausula rebus sic stantibus (L): in →civil law(2) systems, implied term similar to →hardship clause.

closing →**order** = решение о прекращении дела (R) = ordonnance de clôture (F) = Abschreibungsbeschluss (D): form used by an arbitral tribunal to set an end to the arbitration without deciding on the merits.

closing statement: (1) →summation = заключительное слово (R). **(2)** (mostly in real estate transactions) final statement of costs = окончательная смета (R).

closure of proceedings = завершение разбирательства по делу (R) = clôture des débats (F) = cierre de la instrucción, cierre de las audiencias (Esp.): cut-off for new allegations and offers of proof. When arbitral tribunal declares closure of proceedings it takes the case under advisement. see Art. 22 →ICC Rules.

co-arbitrator: (1) usually, in three-person arbitral tribunal, arbitrator who is not →presiding arbitrator. **(2)** = fellow arbitrator.

colegio arbitral☺ (Esp.), tribunal arbitral (Esp.)= collegio arbitrale (I) = →arbitral tribunal.

collateral estoppel: binding effect of an earlier →decision(1) of a →preliminary issue between related parties on the decision by the same or another →forum.

comité restreint (F) = Committee of the Court (E): in →ICC arbitration, a (changing) three-person division of the ICC Court of International Arbitration which meets weekly to deal with current and urgent business.

commercial arbitration: between businesses, including states acting →iure gestionis.

commodity arbitration: arbitration usually dealing with fungible goods. Some commodity arbitration is →quality arbitration. →GAFTA.

common law: (1) = прецедентное право (R) = the part of the Anglo-American legal systems based on →case law of courts of law. →stare decisis (L). *Contrast* →equity(1); →statutory law. (2) = общее право (R) = generally, the Anglo-American☺ legal tradition based on English law. *Contrast* →civil law(2).

common law systems = система общего права (R): generally, the Anglo-American☺ legal systems.

company: usually used as generic term encompassing share corporations, limited liability corporations and other types of legal entities. *Contrast* partnership.

complaint = statement of claim. Usual term for first →brief by →claimant.

compound interest = сложный процент (R) results from →capitalization of interest = anatocism.

compromis arbitral (F) = →arbitration agreement.

conciliation = примирение (R): (1) = →mediation. (2) Frequently, more structured than →mediation, without →caucuses. Sometimes →rights-based rather than →interests-based. (3) Sometimes, any third-party facilitation. Do not confuse with reconciliation.

Concordat: Swiss intercantonal treaty on arbitration, applicable in →domestic arbitration in Switzerland. To be replaced by Federal Code of Civil Procedure.

confidentiality of arbitration: принцип конфиденциальности арбитража (R) = the principle(1) that neither existence nor details of an arbitration may be disclosed or used by arbitrators or parties, except where justified by law.

conflict of interest: = конфликт интересов (R) = a ground for inability of a person to be an →arbitrator. A form of lack of →independence →IBA(c).

conflict of laws = коллизионное право (R) →private international law.

consensual processes = →non-binding dispute resolution: →negotiation or →ADR(1) in European sense. *Distinguish* binding dispute resolution: →litigation or →arbitration.

consent →award = решение на основе мирного соглашения (R) = sentence d'accord parties (F): award on agreed terms, after a →settlement has been reached. see Art. 26 →ICC Rules.

consolidation = объединение (дел): combining two arbitrations into one. Usually requires the consent of all concerned. →joinder.

constitution of arbitral tribunal = формирование состава арбитража (R): the way the arbitral tribunal was constituted. The first question that any arbitral tribunal must necessarily decide (even before its →jurisdiction) is whether it is properly constituted.

constitution →order: учредительное постановление (R): in →ad hoc and other arbitration, the initial order, usually prepared in consultation with the parties, by which an arbitral tribunal

states in which way it was →constituted, takes up the case, and issues certain procedural →directions. In England, also called terms of appointment☺.

construction☺ of an agreement or a clause (mostly United States): their interpretation☺.

construction arbitration: arbitration in construction matters (which has its characteristics).

contemporary documents: documents prepared at the time when the events that led to the present dispute occurred. *Contrast* documents prepared for purposes of the arbitration.

contestación (Esp.): = →answer.

contract = договор (R): legal relationship created by mutual consent of the parties. *Contrast* →agreement.

contractual: (1) with reference to a contract. (2) more technically: conforming to the (main) contract.

contradictoire (F): the fundamental procedural →due process →principle(1) that the other side must be heard = audiatur et altera pars (L) = "пусть будет выслушана и другая сторона!" (R) = right to be heard. →equal treatment.

copy-cat arbitration: →ad hoc arbitration in which the Parties take →institutional arbitration rules and put them to a use for which they were not designed, bypassing the →arbitral institution. Not recommended.

correction of an award by the same tribunal that issued the award = исправление арбитражного решения (R). *Distinguish* (a) correction of typing errors and the like, (b) corrections on the merits. →decision; →additional award; →amendment.

costs: (a) →arbitration costs = арбитражные расходы (R) and (b) →party representation costs = издержки на юридическую защиту (R). →assessment. →allocation.

costs thrown away☺: in English arbitration, costs that are set as a lump sum and are due in any event.

cotes de plaidoiries: in France, an outline of oral argument, organized according to issues, often with citations to the file, normally with copies attached in folders, handed over on the occasion of final oral argument. Similar to →notes de plaidoiries.

counsel: (1) lawyer = юрист (R). →in-house counsel, →outside counsel. (2) →barrister. →Q.C.

counsellor = Conseiller (F): title of →ICC →case officer.

counterclaim = встречный иск (R) = demande reconventionnelle (F) = Widerklage (D) = demanda reconventional (Esp.): a claim by →respondent which is reflected in a →prayer for relief to be granted beyond rejecting the main claim.

counter-memorial = первый отзыв ответчика (R) = Answer = Réponse (F) = Klageantwort (D) = Klageerwiderung (D) = contestación (a la demanda) (Esp.): the first →brief by →respondent. May assert a →counterclaim.

court-annexed (or court-ordered) arbitration: arbitration by a court-approved →neutral(2) whose finding becomes binding if neither party seeks a rehearing by the court. Costs may be imposed on an applicant whose position then does not substantially improve.

court-annexed (or court-ordered) mediation: →mediation ordered by or arranged through a state court, and undertaken by a judicial officer or a court welfare officer, or by a court-approved mediator.

CPR = Center for Public Resources, the leading conciliation and mediation institution in the United States. Issued arbitration rules for →ad hoc arbitration.

critical path analysis: study of the effect of a →delay(1) in one activity on the timing of other activities and of the whole project.

cross-examination = cross-questioning☺ = перекрестный допрос (R) = Kreuzverhör (D) = contrainterrogatorio (Esp.): questioning by the party that did not present the witness. In cross-questioning, →leading questions may be asked. →chess clock system.

culpa in contrahendo (L) = доктрина о возникновении преддоговорной ответственности в случае недобросовестности стороны (R) : a doctrine in some →civil law(2) systems under which the mere initiation of negotiation creates a pre-contractual relationship as a matter of law which, inter alia, imposes on the negotiating parties a reciprocal obligation of good faith. This is seen in some systems as a contractual obligation, in others as an extra-contractual obligation.

curial law☺: expression used in England. What is meant is sometimes →lex fori (L) (but in which sense?), sometimes →lex arbitri, sometimes the law applicable to the procedure before the arbitral tribunal.

D

damage: the loss = убытки (R) = →damnum emergens (L), and possibly →lost profits = lucrum cessans (L).

damages = compensatory damages: = возмещение в размере понесенных убытков (R) = the money to compensate for the →damage. *Contrast* exemplary, punitive, or treble damages. *Quaere* whether an arbitral tribunal may award those.

damnum emergens (L): the loss suffered = понесенный ущерб (R). *Distinguish* lucrum cessans (L) = lost profits.

deadline = предельный срок совершения действия (R) = délai (F) = plazo (Esp.): date by which (Frist (D): time limit within which) a certain action must be taken.

decision (also F) = решение (R): (1) Any order or award by →arbitral tribunal or →state court. (2) Specifically, in the →ICC system, decision of arbitral tribunal not to interpret or amend an award.

declaration (also F) = Feststellung (D) = declaración (Esp.). →declaratory award.

declaration of will = выражение воли стороны (R) = declaration de volonté (F) = Willenserklärung (D) = declaración de voluntad (Esp.): in civil law(2) theory, generic term encompassing most types of statements, including statements resulting from the circumstances, called implied declarations of will, which express the will of a party. *Distinguish* from other declarations of a party.

declaratory award = деклараторное решение (R): →declaration issued in form of an →award. Cannot be →enforced, but may be →recognized.

decline jurisdiction = признать отсутствие юрисдикции (R): find that own jurisdiction is lacking. →Kompetenz-Kompetenz(2). *Contrast:* →accept jurisdiction.

default = неявка стороны на заседание или неподача отзыва в установленный срок (R): failure of a party to appear or file a →brief within the →deadline. May ultimately result in a default →award.

defense: (1) = ☺ →answer. (2) objection to a claim☺.

defendant☺: in arbitration, usually called respondent☺.

delay: (1) = просрочка, задержка (R) = time by which an action is late. (2) Sometimes (improperly) used as →"false friend" of délai (F). →deadline.

deliberation = совещание арбитров (R) =: the process by which an arbitral tribunal decides on →procedural orders and on →awards. →issue by issue voting.

delict☺ = правонарушение (R): in civil law(2), used for →tort.

delocalized arbitration = arbitrage flottant (F): an arbitration that has no →seat of arbitration and no →lex arbitri (L). It results in a floating →award. *Quaere* whether such an award can be enforced under the →New York Convention.

demande (F) = demanda (Esp.) = →complaint.

dépeçage (F): system whereby a →contract is "cut up" and its various aspects subjected to different →applicable laws.

deposit☺ = авансовый взнос (R) = →advance☺ on costs.

deposit of an award: filing the award with a registration authority, normally a court.

deposition: (1) a witness's answer to →pretrial interrogatories. (2) in international arbitration, sometimes used (incorrectly) for →testimony of witnesses.

diagonal arbitration: in →investment arbitration, arbitration between foreign investor and →host country.

dictum (L) = →obiter dictum (L). *Not* →operative part.

direct examination, direct questioning☺ = прямой допрос (R) = (in England) →examination-in-chief: initial phase of oral testimony where witness begins by answering questions put by the party that presented the witness. Often replaced by confirmation of a →witness statement. see Art. 4 →IBA Rules of Evidence. →chess clock system.

direct testimony = (in England) evidence in chief = показания, полученные при прямом допросе (R). Results from →direct questioning.

directions: mostly →procedural and organizational guidelines issued by →arbitral tribunal in →terms of reference, →constitution order or →order for directions.

director☺ = member of the board of directors☺ = член совета директоров (R). *Not* a directeur (F) = Direktor (D) = a manager, executive = руководитель (R).

DIS = Deutsche Institution für Schiedsgerichtsbarkeit, German Institution of Arbitration. Various activities. Runs an →institutional arbitration system.
www.dis-arb.de

discovery☺: (= disclosure) = раскрытие доказательств (R) = production☺ of documents and answers to written interrogatories (seldom used in arbitration). see Art. 3 →IBA Rules of Evidence.

dispositif (F) = Dispositiv, Tenor (D) = →operative part of the award.

dispute = спор, разногласие (R): a disagreement about (→arbitrable) issues.

dispute resolution = разрешение споров (R): determination of a →dispute by →negotiation and →settlement, →litigation and →judgment, or →arbitration and →award.

dispute review board = dispute resolution committee: particularly in the construction industry, a →panel meeting periodically to deal with disputes as soon as they arise by →conciliation or interim →adjudication(2).

dissenting opinion = особое мнение (R) = dissenting award[⊗]: usually considered possible in international arbitration. *Contrast* →majority opinion. →separate opinion. Instead of a separate dissenting opinion an indication of dissent in the →reasons is often preferable.

documents: in arbitration these are submitted well in advance of the →evidentiary hearing and do not require introduction or confirmation by a live witness.

documents only arbitration = разбирательство на основе документов, без устного слушания (R): arbitration without hearings with the parties. Must be agreed.

domain name arbitration: specialized administrative dispute resolution system for cyber-squatting matters set up by →WIPO.

domestic arbitration = внутреннее третейское разбирательство (R) = arbitrage national (F) = Binnenschiedsgerichtsbarkeit (D): arbitration considered domestic at the →seat of the arbitration, (1) on account of the countries of registration of the parties, or (2) of the nature of the →dispute, or (3) both. *Contrast*→international arbitration.

domestic public policy = государственный публичный порядок (R): →public policy of a state, usually for domestic law purposes. *Contrast* international or →transnational public policy.

dormant arbitration: an arbitration in which nothing is happening.

DRB: = →dispute review board.

due process (United States) = надлежащая правовая процедура (R) = a short-hand expression for fundamental procedural fairness. →contradictoire (F); →equal treatment; →natural justice; →right to be heard.

duplique (F) = Duplik (D) = réplica, contraréplica (Esp.) = rejoinder = дополнительный отзыв ответчика после ответа истца (R): second →brief (if any) by →respondent, after →claimant's →reply.

E

e.g. = exempli gratia (L) = for example.

effect: usually, force of law = законная сила (R).

Eingriffsnorm (D) = interventionist norm: →provision(1) that because of its policy claims imperatively to be applied mandatorily regardless of →applicable law. →positive public policy.

enforcement of →awards = принудительное исполнение арбитражных решений (R) = exequatur (L, F) = Vollstreckung (D) = ejecución del laudo = esecuzione (I) = tenuitvoerlegging (NL).

equal treatment of the parties = процессуальное равноправие сторон (R) = égalité de traitement des parties (F) = prozessuale Gleichbehandlung der Parteien (D) = igualdad de tratamiento entre los partes (Esp.): a fundamental procedural principle(1).

equipoise of the evidence: state of suspense. →burden of proof.

équité (F): (1) = по справедливости (R)= general considerations of fairness within the law. (2) en équité (F) = →ex aequo et bono (L).

equity: (1) the part of Anglo-American law based historically on decisions by special authorities in equity, e.g. in the areas of company law, family law, trusts. (2) general considerations of fairness within the law. (3)[⊗] = considerations →ex aequo et bono (L). →équité (F).

escalating dispute settlement: method, sometimes contractually(1) prescribed (which is not recommended), by which the parties seek to resolve their dispute first by →negotiation, then, if unsuccessful, by →ADR(1), and finally by →arbitration.

estoppel = утрата права делать возражения или определенные заявления (R): a common law concept similar to →abuse of right, venire contra factum proprium (L), →fraus legis (L).

ethics for arbitrators: stated in →IBA Ethics for Arbitrators, →AAA/ABA Code of Ethics, and other documents.

EUR = Euro(s). **EURIBOR** = interbank ordinary rate on →EUR = ставка предложения кредитов в евро на межбанковском рынке (R).

event☺: outcome, as in “Costs follow the event”.

evaluation: a non-binding assessment of the merits of a position in a dispute or the viability of proposed settlement terms.

evidence = (1) proof = доказательства (R). (2) in England, →testimony = свидетельские показания (R).

evidence-in-chief (in England) = →testimony given in →direct questioning.

evidentiary hearing☺ = main hearing = основное слушание (R) = audience principale (F) = Hauptverhandlung (D) = audiencia de fondo (Esp.): a →hearing, often lasting several days, to hear the testimony of witnesses and →take other evidence(1). see Art. 8 →IBA Rules of Evidence.

ex aequo et bono (L) = по добру и справедливости (R): considerations of fairness and justice on which an arbitral tribunal (if so empowered) is expected to reach its decision on a case by case basis without recourse to →rules of law. →amiable composition.

examination-in-chief (in England) = →direct questioning.

exclusion agreement: In England, in an arbitration where English law applies to the merits, exclusion of an →appeal on a point of English law. *Contrast* →waiver agreement.

exclusionary rule: forbids using as evidence information illegally obtained.

exceptio fori (alieni) (L): the →defense(2) that another →forum (L) has jurisdiction over the →dispute.

executive: a top officer of a company = руководящий работник (R).

exhibit = приложение (R): a document formally put by one party into the record.

ex officio (L) = в силу занимаемой должности (R): (1) By force of one’s office. (2) ☺ →inquisitorial system.

ex parte (L) **proceedings** = слушание в отсутствие одной из сторон (R): proceedings without the other party having an opportunity to be heard. Rare in arbitration.

expert (also F) = эксперт (R) = Sachverständiger (D) = perito (I, Exp.) = experto (Esp.): a person who because of special training or experience (=→expertise(1)) can say what normally happens in matters exceeding common knowledge. May be (a) →tribunal-appointed or (b) →party-appointed.

expert determination = expert appraisal: a procedure whereby a dispute, often of a factual or technical nature, is resolved without following rules of arbitration or litigation by an →expert, nominated or identifiable, whose decision is final and binding on the parties. →Schiedsgutachten (D).

expertise (E): (1) what makes an →expert an expert = профессиональная компетенция (R) (2) (F): →expert's report.

expert's report = отчет эксперта (R) = expertise (F) = Sachverständigengutachten (D) = perizia (I) = dictamen, informe (Esp.): a report by →expert stating in writing the expert's qualifications, task, assumptions, method, and findings. Often with executive summary.

expert witness☺ = свидетель –эксперт (R): usually = party-appointed expert☺.

extra petita (L) = →ultra petita (L).

extra-contractual liability: →torts.

extract from the Register of Commerce = выписка из торгового регистра (R) = extrait du registre du commerce (F) = Kbis in France = Handelsregisterauszug (D) = extracto de acta (Esp.): a certified document reproducing much of the information on file with the Register of Commerce.

F

facilitation: assistance provided to the parties to a dispute by a third party, usually neutral, to help them to deal constructively with the issues between them.

fact v. law = вопросы факта и вопросы права (R): a fundamental characterization question in →procedural law and other areas of the law. →iura novit curia (L). Findings of fact may be reviewable to a more limited standard than holdings of law.

factual matrix☺ = the facts.

false friends: colloquial expression for words that share the same origin but mean different things in different languages. *Examples* →delay, →director.

fast track arbitration = ускоренная арбитражная процедура (R): sped-up arbitration.

favor arbitri (L): the policy in favor of arbitration.

favor validitatis (L): the policy in favor of validity (of intended transaction).

FCIArb: Fellow of the →Chartered Institute of Arbitrators.

fee = вознаграждение (R): remuneration for professional service (a) on hourly basis (b) →ad valorem or (c) a fixed or flat fee.

FIDIC: Fédération internationale des Ingénieurs Conseils, Lausanne. Issued widely used standard forms of contract known as red, yellow, silver, books. www.fidic.org

file = материалы дела (R) = dossier (F) = Akten (D) = Akt (Austrian) = expediente (Esp.) = atti (I): the entire written record of an arbitration, i.e. the correspondence, the →written submissions, the →exhibits, the →witness statements and →experts' reports, the →transcript, the →orders and →awards. May include tangible things "filed" as exhibits.

final award = окончательное арбитражное решение (R): *Contrast* preliminary award. →award.

final offer arbitration = →best offer arbitration.

fishing expedition: accepted term for overbroad request for production of →evidence.

flip flop arbitration: = →best offer arbitration.

floating arbitration, award →delocalized arbitration.

fork-in-the-road: →provision requiring →claimant to choose between →investment arbitration and →commercial arbitration.

form of award: form that an award should take; in particular, whether it should be called an →award, and whether it should be a reasoned award.

forum (L): (1) →state court or →arbitral tribunal = арбитраж или государственный суд (R). (2) →seat = место проведения арбитражного разбирательства.

forum non conveniens / forum inconueniens (L): doctrine that an inappropriate, though competent court may waive its jurisdiction to another forum for the benefit of the parties and the witnesses.

frais (F) = →costs.

fraus legis (L) = согласно букве, но не духу закона (R) fraude à la loi (F) = Gesetzesumgehung (D): complying with the wording, but not the spirit of the law.

functus officio (L): no longer in office.

further and better particulars: (mostly English) sometimes requested by one party from the other party so it may answer the other party's case more fully.

G

GAFTA: The Grain and Feed Trade Association in London. The foremost →commodity arbitration institution in the world.

gap-filling law = диспозитивные нормы права (R) = nachgiebiges Recht (D) = →ius dispositivum (L) = droit dispositif (F): in →civil law(2), law, normally statutory, that applies to a point not expressly covered in an →agreement. *Contrast:* →mandatory law.

GBP = British Pounds (Sterling).

general principles of law = общие принципы права (R): widely accepted →principles(1) found on the basis of comparative law.

give →evidence(2): In England, →testify.

Goldman formula: general statement about →issues for arbitration to avoid listing them.

green list in →IBA Guidelines, lists cases where no disclosure is required because disqualification is unconceivable.

group of companies: companies ultimately belonging to the same person(s).

group of companies theory: theory according to which, under certain circumstances, where an arbitration agreement exists for a contract between one party in a →group of companies and a third party, the third party may invoke the arbitration agreement in its relationship with *all* companies in the group.

group of contracts theory: theory according to which, under certain circumstances, where some of the contracts between the parties contain an arbitration clause, but some do not, the arbitration clause has effect for *all* contracts between the parties.

H

hardship clause = договоренность изменить условия контракта, если нарушится экономический баланс (R): clause that provides for adaptation or modification of the parties' contractual obligations to restore economic balance.

hearing file: a file constituted for or collected in the course of a →hearing (day) containing the documents referred to in the course of the hearing.

hearing, hearings = conference = слушание (R): usually conducted with parties. *Contrast* →meeting.

hearsay = показания с чужих слов (R): testimony not based on personal knowledge but on what witness heard others say.

high-low contract: in the USA, a procedure in which parties agree to →adjudication(1), but limit the parameters. They then can hedge against an adverse award.

horizontal arbitration: in →investment arbitration, arbitration between investor state and host state. Contract →diagonal arbitration.

host country = страна-получатель инвестиций (R): in →investment arbitration, the country into which an investment was made.

hybrid process: a dispute resolution process combining →primary processes. *Examples:* →mini-trial, →med-arb, →moderated settlement conference. *Contrast* →primary process.

I

IBA = International Bar Association = Международная ассоциация юристов, МАЮ (R). Its Committee on Arbitration and ADR issued (a) IBA Rules of Evidence, 1999, (b) IBA Ethics for International Arbitrators, 1986, (c) Guidelines on Conflicts of interest, 2004. www.ibanet.org

ICC = International Chamber of Commerce = Международная Торговая Палата, МТП (R). Inter alia, runs the foremost →international →commercial arbitration system. →ICC Court of International Arbitration, →ICC Rules. www.iccwbo.org

ICC Rules = Арбитражный Регламент МТП (R): Arbitration Rules of the International Chamber of Commerce, 1998.

ICC Court of International Arbitration = Международный арбитражный суд МТП (R): the administrative body within the →ICC that administers ICC arbitration. The ICC Court has some 125 members, a President and other officers, and a Secretariat. Sits (monthly) in plenary session and (weekly) in →Comité restreint.

ICCA = International Council for Commercial Arbitration = Международный Совет по коммерческому арбитражу (R), gathers by cooptation the foremost leaders in the field. Inter alia, publishes ICCA Yearbook and holds conventions and conferences every two years.

ICDR: international division of →AAA, in New York, Dublin, Singapore, and Mexico City.

IDRC = International Dispute Resolution Centre at 70 Fleet Street, London = Международный центр разрешения споров, Лондон (R),. www.idrc.co.uk

ICSID Convention: the (Washington) Convention on the settlement of investment disputes between States and nationals of other States, 1965, that set up the International Center for the Settlement

of Investment Disputes = Конвенция 1965 г. об урегулировании инвестиционных споров между государствами и физическими или юридическими лицами других государств (R) .
www.worldbank.org/icsid.org

i.e. = id est (L) = that is.

IHK (D): (1) Internationale Handelskammer = →ICC. (2) Industrie- und Handelskammer (in various German cities).

immunity of arbitrators = иммунитет арбитров (R): from criminal prosecution or from civil suits.

impartiality of arbitrators = беспристрастность арбитров (R) = impartialité (F) = Unparteilichkeit (D) = imparcialidad (Esp.): lack of bias in the psychological (subjective) sense. Partiality may lead to →challenge(1). *Contrast* (objective) →independence.

implied terms: in →common law systems, terms read into a contract by operation of law. →gap-filling law.

in camera (L): the public being excluded.

in-house counsel = штатный юрист (R): lawyer employed by a company. *Contrast*→outside counsel.

in limine litis (L): at the threshold of the proceedings.

independence = независимость (R) = independence (F) = Unabhängigkeit (D) = independencia (Esp.) = indipendenza (I): objective lack of dependence, usually financial or political or both, of an →arbitrator from one of the parties, usually the party that nominated him or her. Lack of independence may lead to →bias (=lack of →impartiality) and →challenge(1).

infra petita (L): a decision infra petita does not cover all →prayers for relief.

inquisitorial system = следственная система (R): procedural system by which the arbitral tribunal establishes (a) the facts, (b) the law of the case on its own = motu proprio (L) = sua sponte (L) = ☹ →ex officio (L). *Distinguish* →adversarial system(1).

inspection = on site inspection = local inspection = Augenschein (D) = inspección (Esp.) = ispezione (I): means of establishing facts by which the arbitral tribunal inspects premises, usually in the presence of the parties. see Art. 7 →IBA Rules of Evidence.

institutional arbitration = институциональный арбитраж (R): arbitration where an →arbitral institution is involved at least to set up the arbitral tribunal. *Contrast* →ad hoc arbitration.

instructing solicitors: in England, the solicitors who have appointed a barrister to appear as →advocate or →counsel(2) for their clients.

inter partes(L): between the parties.

interest: *Distinguish* (a) simple = простые проценты (R) from (b) →compound interest = сложные проценты (R); (c) →contractual(1) = проценты по договору (R) from (d) →statutory interest = проценты, установленные законом (R).

interests-based: characterizes mediation where parties are helped to explore and enhance their mutual interests to find a →win-win solution. *Contrast* →rights-based.

interim adjudication: →adjudication(2).

interim award, interlocutory award = промежуточное арбитражное решение (R) = sentence interimaire (F) = Zwischenschieds-spruch (D) = laudo provisional (Esp.): any →award rendered before the end of the arbitration. *Contrast* last award or closing order.

interim measures of protection = →provisional and conservatory measures.

interlocutory = временный, неокончательный (R): temporary, not final.

intermediate dispute resolution: a procedure, especially in the construction industry, by which a neutral third party or board deals with or advises, through mediation or informal →adjudication(2) on the resolution of disputes as they arise. →Dispute Review Board.

international arbitration = международный арбитраж (R): depending on the definition, (1) an arbitration between parties from different countries or (2) an arbitration involving the interests of international business. *Contrast* →domestic arbitration, →transnational.

International Arbitration Court of the Austrian Federal Economic Chamber: the leading arbitration institution in Austria. www.wk.or.at

international award⊕: (1) = решение международного коммерческого арбитража (R) = rendered in →international arbitration (but in which sense?) or (2) = иностранное арбитражное решение (R)= foreign award under the →New York Convention.

international public policy = международный публичный порядок (R) = ordre public international (F): →public policy in international cases. →transnational public policy. *Contrast* →domestic public policy.

interpretation: (1) толкование (R) = understanding or →construction of a text, contractual or statutory. (2) устный перевод (R) = oral translation of oral statement into another language by simultaneous (sometimes whispering) or consecutive interpretation. *Contrast* →translation of a written text.

interpretation of award: an explanation of the award's meaning without amending its text.

interrogatory: (1) questionnaire to be answered in pre-trial procedure by a witness. Rarely used in international arbitration. Sometimes witnesses are questioned in writing, interrogatory-style. (2) ⊕ = →testimony of witness.

interventionist norm = →Eingriffsnorm (D).

investment arbitration = инвестиционный арбитраж (R): →diagonal arbitration between a foreign investor and the →host country, or →horizontal arbitration between states. →bilateral investment treaty; →ICSID Convention.

investor's country: In →investment arbitration, the investor's (home) country.

ipso facto (L): in and by itself = в силу самого факта (R).

ipso iure (L): by operation of law = в силу закона (R).

issue by issue voting: a way by which an arbitral tribunal decides on questions issue by issue. *Note*: depending on how the questions are asked, different decisions may be reached, so the definition of issues may be an issue by itself.

issues for arbitration = вопросы, подлежащие разрешению арбитражем (R): as a rule, to be listed in the →terms of reference, art 18→ICC Rules. These are questions of law and of fact which are not identical with the prayers for relief. They are normally →preliminary issues that may be resolved by a →preliminary award. May be replaced by →Goldman formula.

iura novit curia (L) = “суд знает закон” (R): →principle(1) that arbitral tribunal must apply the law →sua sponte (L).

iure gestionis (L) = действия государства как частного хозяйствующего субъекта (R): (action by a state) in a business mode. *Contrast* →iure imperii (L).

iure imperii (L) = суверенная деятельность государства (R): (action by a state) on the basis of the state's supremacy. *Contrast* →iure gestionis (L).

ius commune (L): general (Roman) law.

ius dispositivum (L) →gap-filling law. *Contrast* →mandatory law.

J

joinder = объединение (вопросов, сторон) (R): combining two or more (1) issues or (2) parties into one arbitration. →consolidation.

judicial assistance = судебная помощь (R): the action of the →juge d'appui (F) and other state courts acting on →letters rogatory.

judicial settlement conference: in the United States state and federal courts, meeting convened by a judge in his or her chambers to explore settlement possibilities. →Referentenaudienz (D).

juge d'appui (F): the →state court at the →seat of an arbitration that lends support to arbitral proceedings, usually by issuing →preliminary or conservatory measures, by assisting in →taking evidence, and by issuing →letters rogatory. see, e.g. Art. 183 to 185 Swiss →PIL Statute.

judgment = судебное решение (R): →decision on the merits by →state court. *Contrast* →award.

jurisdiction of arbitral tribunal = компетенция состава арбитража (R) = competence (F) = Zuständigkeit (D) = competencia (Esp.): capacity to enter into the →merits. →separability; →Kompetenz-Kompetenz(2).

K

Kbis: in France, = →Extract from the Register of Commerce.

Klage (D) = →complaint.

Klageantwort (D) = Klageerwiderung (D) = →answer.

Kompetenz-Kompetenz (D) = принцип компетенции компетенции (R): (1) In older German doctrine[⊗], jurisdiction to finally decide on jurisdiction. (2) Outside Germany, used in a looser sense: jurisdiction of arbitral tribunal to decide on its jurisdiction, subject to remedy to →state court on the jurisdiction point.

Kostenvorschuss (D) = →deposit.

Kuala Lumpur Regional Centre for Arbitration, see www.klrca.org

L

lack of independence: →partiality.

language of arbitration = язык арбитража (R): usually the sole language in which an arbitration is conducted and into which all evidence is translated or interpreted. Sometimes one uses different languages for written submissions, oral testimony, and oral argument, and allows legal materials or documentary evidence to be submitted in further languages without translation.

laudo (Esp.) = →award.

law v. fact →fact v. law.

LCIA = London Court of International Arbitration, the leading arbitration institution in England.
www.lcia-arbitration.com

lead evidence⊗(E): present →evidence(1)

leading question = наводящий вопрос (R): question that suggests the expected answer. →cross-questioning.

letter of intent = протокол о намерениях (R): letter or other written document in which parties state their intent to enter into an agreement and outline its content. →memorandum of understanding.

letters of request = **letters rogatory** = судебное поручение (R): a request by which one →state court asks a state court in another jurisdiction to perform certain tasks and report to the requesting court. →juge d'appui (F).

lex anterior (L): the earlier law. *Contrast* →lex posterior (L).

lex arbitri (L) = право места проведения арбитража (R) : applicable arbitration law, determined by the →seat of arbitration. Deals mostly with (a) manner of setting up arbitral tribunal, (b) policing arbitrators, (c) function of →juge d'appui (F), (d) →remedies against awards.

lex contractus (L) = право, применимое к контракту (R): the law applicable to the contract.

lex fori (L) = закон места арбитража (R): the law (in which sense?) at the →seat of arbitration.
Sometimes: the substantive law at the →seat of arbitration.

lex loci actus (L) = закон места совершения действия (R): the law at the place of an action.

lex mercatoria (L): substantive rules of non-state law, developed in arbitral →case law.

lex posterior (L): the later law. *Contrast* →lex anterior (L).

lex specialis (L): a (more) specific source of law. *Contrast* lex generalis (L).

LIBOR = London interbank ordinary rate. →EURIBOR.

lieu de l'arbitrage (F) = lugar del arbitraje (Esp.) = →place of arbitration. →seat.

liquidated damages = заранее оцененные убытки (R): a sum contractually agreed in advance to anticipate actual damage. *Contrast* →penalty, in terrorem (L).

lis pendens (L) = дело находится в рассмотрении (R): **(1)** →dispute before a →forum(1). **(2)** = lis alibi pendens (L). May have effect that the same dispute may not be submitted to another forum.

list system: procedure by which an arbitrator is selected from a list, preexisting or specially established.

litigation = судебное разрешение споров (R): compulsory binding dispute resolution by a →state court or other state-appointed official. *Contrast* →arbitration; →ADR.

LME = London Metal Exchange.

lodo (I) = →award.

LOI: letter of intent.

losing party (so spelled): the party that loses.

lost profits = упущенная выгода (R) = →lucrum cessans (L), and sometimes compensation for this.

lucrum cessans (L): lost profits, and sometimes compensation for this. *Contrast* →damnum emergens (L).

Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1988: parallels the →(now replaced) Brussels Convention.

M

main hearing: usually = →evidentiary hearing.

managing director: a →director who is also the top manager of the company.

mandatory law = императивные нормы права (R) = droit impératif (F) = zwingendes Recht (D) = ley mandatoria (Esp.) = ius cogens (L): within →applicable law, statutory or case law that applies in any event, even if the parties agree otherwise. *Contrast* →public policy.

maritime arbitration = морской арбитраж (R): arbitration of maritime disputes.

mass claims process: Often on special international law basis, special administrative process to determine thousands of claims in "rough justice" and distribute often limited funds to victims of large-scale injustice (or their legal successors). *Examples:* www.crt-II.org, www.iom.com, www.uncc.org.

med-arb = посредничество - арбитраж (R): a combination of →mediation and →arbitration. →neutral first mediates, and, if this fails, sometimes at the option of the parties, then arbitrates.

mediation = посредничество (R): →facilitated dispute resolution by negotiated settlement without →adjudication. Normally →interest-based, but may be →rights-based. **(1)** Usually conducted in shuttle diplomacy or →caucuses. **(2)** Sometimes = →conciliation.

meeting = совещание состава арбитража (R): usually conducted only within the arbitral tribunal. *Contrast* →hearing, conference, with the parties.

memorandum of understanding = меморандум о взаимопонимании (R): a (preliminary) written agreement on a number of points. Similar to a →letter of intent.

memorial☺: →written submission☺, brief, →"false friend" of mémoire (F).

merits = существо спора (R) = substance of the →dispute.

mini-trial: a form of →conciliation with formalized limited presentations before senior managers of both participants and a neutral →umpire(2). Tends to be →rights-based.

mock arbitration = учебное или пробное арбитражное разбирательство (R): **(1)** privately organized educational role-playing, using a hypothetical case. **(2)** In a very large arbitration, a party may organize an internal mock arbitration to assess the effect of past and possible future submissions on a mock →panel patterned after the arbitral tribunal.

model clause = типовая оговорка (R): an →arbitration clause recommended to lead to the application of particular →arbitration rules.

model law = типовой закон (R): **(1)** on international arbitration. Adopted with minor modifications, in many jurisdictions of the world. **(2)** on electronic commerce. *Both* developed by →Uncitral.

money award☺ = monetary award☺: →award requiring a party to pay money to the other. *Contrast* inter alia, declaratory award or →order(2).

moot: **(1)** no longer at issue. **(2)** arbitration moot: student competition in →mock arbitration(1). *Examples:* www.cisg.law.pace.edu/vis.html (Vienna) www.cisgmoot.org (Hong Kong)

motion = ходатайство стороны (R): request by a party that the arbitral tribunal do something. Motions are often →procedural. *Contrast* →prayer for relief.

motu proprio (L) →inquisitorial system.

MOU = →Memorandum of Understanding.

multi-door courthouse: the concept of a court official making a preliminary case analysis and then referring disputants to a wide range of dispute resolution facilities and processes, not merely litigation. Singapore and a number of United States cities and counties offer multi-door programs.

multi-party arbitration = многосторонний арбитраж (R): arbitration with more than two parties. May lead to problems of →party autonomy(2), →equal treatment, and →procedure.

N

NAFTA = North American Free Trade Agreement. Establishes free trade zone and provides for →investment protection or →trade arbitration.

national: *contrast* →international; →transnational.

National Committee: in the →ICC system, these bodies →nominate arbitrators and perform other services.

nationality☺: normally = citizenship☺ = гражданство (R).

natural justice☺: in England, equivalent of →due process.

negative →public policy: considerations used to set aside the application of the substantive law normally resulting from the application of →private international law rules. *Contrast* →positive public policy.

negotiation = переговоры (R): voluntary process by which parties seek to resolve a →dispute without the intervention of a third →neutral(2). *Contrast* →ADR, →arbitration, →litigation.

Netherlands Arbitration Institute = Арбитражный институт Нидерландов (R), see www.asser.nl/ica/nai-rules.htm

neutral (mostly United States): (1) not party-appointed arbitrator. (2) not party-appointed conciliator or other ADR practitioner.

neutral fact-finding expert: a neutral →expert appointed by parties to investigate facts and to form a legal or technical view, often about specified issues, and to make a non-binding →expert's report to the parties.

new law merchant = →lex mercatoria (L).

New York Convention = Нью-Йоркская конвенция о признании и исполнении иностранных арбитражных решений 1958 г. (R): the United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. In Germany, often called UN-Übereinkunft (D)☺ = New Yorker Konvention☺.

www.uncitral.org/english/texts/arbitration/NY-conv.htm

nomination of an arbitrator = назначение арбитра (R): a nomination is subject to confirmation by an →arbitral institution. →appointment of arbitrators.

non-signatory = не являющийся стороной (R): (1) who has not signed the →arbitration agreement. (2) By extension (since signature may not be required), who, on its face, is not a party to it.

notes de plaidoiries (F): written presentation, with full references, handed over at the occasion of oral →summation. Similar to →pleading notes, →cotes de plaidoiries (F).

O

Obfrau, Obmann (D) = →presiding arbitrator.

obiter dictum (L): statement in →reasons for a →decision that “in passing” goes beyond the essential reasoning for its →operative part. *Contrast* subsidiary reasoning. *Contrast* holding. →stare decisis.

ombudsman (originally Swedish) = омбудсмен (R): an independent person who deals with complaints by the public against administrative and organizational injustice and maladministration. Has the power to investigate, recommend, criticize, make issues public.

opening statement = вступительное слово (R): at the →evidentiary hearing, initial speech by a party representative setting out the salient points of the party's case. Sometimes replaced by →skeleton argument, or omitted.

operative part of an award or procedural →order(1) = резолютивная часть решения (R) = dispositif (F) = Tenor (D): part that contains the actual decision. →Prayers for relief are directed towards the operative part. *Contrast* →reasons.

opinion = мотивировочная часть решения (R): the arbitral tribunal's reasons for the operative part of its award.

oral argument = устные прения (R): oral presentation, sometimes of facts, often on assessment of evidence, and points of law.

oral hearing⊕ = →hearing⊕, often →evidentiary hearing.

orange list in →IBA Guidelines, lists cases where disclosure is required because, if a party objects, disqualification is conceivable.

order: (1) = процедурное решение арбитров (R): procedural decision rendered by →arbitral tribunal →pendente lite (L). *Examples*: →constitution order; →closing order; →order for directions. (2) процедурный приказ (R) →preliminary measure directing a party to do or not do certain things. *Contrast* →money (or monetary) relief or award; →declaratory award.

order for →directions (mostly English): an →order whereby an arbitral tribunal organizes the arbitral procedure.

ordinary court⊕ = государственный суд (R)→state court⊕= tribunal étatique (F) = staatliches Gericht (D) = tribunal judicial, tribunal estatal (Esp.).

ordre public (F): →public policy.

outside counsel = внештатный юрист (R): lawyer in private practice. *Contrast* →in-house counsel.

P

pacta sunt servanda (L) = договоры должны соблюдаться (R): principle(2) that contracts must be kept.

Panama Convention: Inter-American Convention on International Commercial Arbitration, dated January 30, 1975.

panel: group of people expected to act as a whole. Sometimes →arbitral tribunal.

parallel proceedings: proceedings between the same or (partly) related parties before other →fora (L).

pari passu (L) = at the same pace, in step with...

partial award = арбитражное решение по части спорных вопросов (R): →award that deals with some, but not all →prayers for relief.

partiality: subjective leaning or bias of an arbitrator towards one party, usually the party that nominated him or her. *Contrast* (objective) lack of →independence.

partisan: said of a person, sometimes an arbitrator, who supports one of the parties to a dispute, and who does not have or profess neutrality.

party autonomy = автономия сторон (R): **(1)** the right of the parties to choose the applicable law. **(2)** principle(1) that arbitration depends on the will of the parties.

party representation costs = издержки стороны на юридическую защиту (R) = frais de representation (F) = Parteivertretungskosten (D) = costes de representación legal de la parte (Esp): party representatives' (= attorney's) →fees and expenses, party-appointed expert's fees and expenses, witnesses' fees and expenses, in-house personnel costs and expenses (*quaere*), party-appointed interpreters' and translators' fees and expenses.

party-appointed expert☺ = →expert witness.

party representative: **(1)** = →counsel(1): person appearing on behalf of a party, usually a lawyer. **(2)** person acting for a corporate party, usually one of its officers.

pathological arbitration clause: a defective (but normally valid) contract clause which requires →interpretation(1) or further agreement to determine (a) whether it provides for →arbitration, not something else, (b) if so, the →seat of arbitration, and (c) whether it provides for →ad hoc arbitration (with an →appointing authority?) or for →institutional arbitration, and if so, (d) for which (existing) →institution.

PDG = Président Directeur Général (F) = Председатель Правления и Генеральный директор (R) = Chairman of the Board and CEO.

penalty =, неустойка (R) = **(1)** = peine contractuelle (F) = Vertragsstrafe (D): in civil law(2), a sum agreed to be due by the breaching party to the aggrieved party in terrorem (L), sometimes →per diem (L). **(2)** = →astreinte (F).

pendente lite (L): while the arbitration is pending.

per diem (L) = for each day: **(1)** = суточные (R) = flat amount of money received by an arbitrator to cover expenses of a day. **(2)** per diem fine: →penalty incurred each day a party fails to comply with an →order(2). →astreinte.

Permanent Court of Arbitration = Постоянный арбитражный суд в Гааге (R): agency of the United Nations at The Hague. An arbitral institution which (a) institutes →public international arbitrations between sovereign countries, (b) determines appointing authority where none was chosen by the parties in Uncitral arbitration. →Uncitral(c). www.pca-cpa.org

petita (L): = →prayers for relief.

PIL Statute: Закон о международном частном праве Швейцарии (R) = Swiss Federal Statute on →Private International law, including chapter on →international arbitration.

place of arbitration☺: usually the →seat☺ of the arbitration (a city). *Distinguish* from the place where the arbitral tribunal will meet, sometimes called →venue.

plaintiff☺: usually called claimant☺ in arbitration.

plea in nullity = →action to set aside.

plea of lack of jurisdiction = возражение об отсутствии компетенции (R): →defense(2), normally to be raised before, or at the latest, at the time of entering upon the merits, that the arbitral tribunal lacks jurisdiction because the arbitration agreement is invalid, does not bind a particular party, does not cover the dispute, or establishes conditions that are not (yet) met. A similar plea may be raised that the arbitral tribunal is not properly constituted or that the dispute is not →arbitrable.

pleadings☺ = письменные /устные заявления сторон (R): written memorials, submissions or briefs, sometimes oral pleadings.

pleading notes: in England, a written presentation including full citation to legal materials, usually to accompany an oral presentation emphasizing the main points.

plural claimants, respondents: several claimants or respondents in a →multi-party arbitration.

positive →public policy: invoked to apply in a particular case →interventionist norms (not necessarily part of the →applicable law).

post-hearing brief = письменное заключительное слово (R) = closing written submission = closing memorial = brief presented after a hearing, normally the →evidentiary hearing. Often stands in lieu of oral →summation.

power of attorney = procuration (F) = Vollmacht (D): a principal's(2) (normally written) statement to third parties that actions by the agent will bind the principal(2).

prayers for relief = требования (R) = relief requested = conclusions (F) = Klagebegehren (D) = Rechtsbegehren (D) = pretenciones (Esp.): statement by a party on the content of the requested →operative part of the award in the best of cases. = petita (L) for the purposes of →ultra petita (L) and →infra petita (L). →alternative prayer for relief.

precedent = прецедент (R): in case law developments, an earlier (leading) decision which determines a later decision under the →principle(1) of →stare decisis (L).

pre-hearing conference: a (preliminary) hearing or telephone conference at which numerous questions of a technical and →procedural nature are discussed to prepare an →evidentiary hearing. →Uncitral(d), →IBA Rules of Evidence.

preliminary award = предварительное арбитражное решение (R) = sentence préliminaire (F) = Vor(ab)schiedsspruch (D) = laudo preliminarío (Esp.): decision with a binding effect on the arbitral tribunal itself on a →preliminary →award.

preliminary hearing: →pre-hearing conference in the form of a →hearing.

preliminary issue: issue that must be resolved before issue in the →prayers for relief may be addressed, e.g. whether issue jurisdiction exists or a particular law applies.

preliminary or conservatory measure = обеспечительная мера (R): usually in form of an →order(2), relief directing a party to do or not to do certain things.

preparation of a witness: work done by a →party representative to ready a witness for oral →testimony. Permitted and required in international arbitration. Obviously, a witness should not be induced to lie. →witness statement.

prescription (E, F) = исковая давность (R) = Verjährung (D) = prescripción (Esp.): →time-bar, usually of a claim or action. →statute of limitations.

president: (1) senior officer in a company; a top executive. (2) = **presiding arbitrator** = председатель состава арбитража (R) = chairperson = chairman[⊗] = chair = président (F) = Präsident (D): arbitrator who chairs and manages the arbitration and often exercises limited procedural powers.

prima facie (L): at first glance.

primary process: primary procedure used for dispute resolution, namely →negotiation, →conciliation, →arbitration, and →litigation. *Contrast* →hybrid process.

principal: (1) = сумма основного требования или присужденная сумма (помимо процентов) (R) = main sum claimed or awarded. *Contrast* →interest. (2) = принципал (R) = person for whom agent acts.

principle: (1) basic proposition of law. (2) the question whether money is due = →an *debeatur* (L). *Contrast* →quantum.

private international law, PIL = международное частное право, МЧП (R) = conflict of laws = droit international privé (F), DIP = Internationales Privatrecht (D), IPR: mainly determines, in an international setting, which →substantive law applies.

privilege = право на неразглашение информации (R): in the law of evidence, the right of a person to withhold certain information. *Example:* client-attorney privilege. *Quaere* which law applies. see Art. 9 →IBA Rules of Evidence.

privity of contract: principle that a contract has effects only →inter partes. **privity of arbitration:** principle(1) that arbitration hearings are private.

procedural: pertaining to procedure. see sect. 34 →Arbitration Act 1996. **procedural order:** an arbitral tribunal's →order(1) on a procedural point.

procedure (also F) = правила процедуры (R): the procedural *rules* followed by an →arbitral tribunal. *Contrast* →proceedings.

proceedings = procédure (F only) = процесс (R): the *actual* way an arbitral tribunal proceeds or proceeded. *Contrast* →procedure (E).

production of documents[⊗]: предоставление документов (R) = preferred term for →discovery[⊗]. see Art. 3 →IBA Rules of Evidence. →Redfern schedule.

Prokurist (D): in German and other laws, a mid-level representative of a company with defined powers.

proof procedure = procédure de preuve (F) = Beweisverfahren (D) = desahogo de pruebas, procedimiento de pruebas (Esp.): the →procedure of →administering proof or evidence. Usually →documents are produced together with the →briefs. →Witnesses are heard at a →hearing. →Party-appointed experts may prepare an →expert's report and also be heard. An →expert's report by a →tribunal-appointed expert may be prepared. The arbitral tribunal may proceed with an →inspection. At the close of a proof procedure the Parties usually comment on the evidence, by →oral summation or →post-hearing briefs. see Art. 3 to 8 →IBA Rules of Evidence.

provision: (1) a short part of a legal enactment or agreement. (2) In accounting, a sum set aside to cover a particular risk.

provisional and conservatory measures = временные обеспечительные меры (R) = medidas provisionales de protección (Esp.): various measures granted usually at an early stage of an arbitration for a number of purposes, particularly to ensure a fair and equal procedure before the →arbitral tribunal.

public international law arbitration: arbitration of matters of public international law, sometimes before the →Permanent Arbitration Court at the Hague.

public law = публичное право (R) = droit public (F) = öffentliches Recht (D) = derecho público (Esp.): the part of the law in civil law(2) systems dealing with (a) the state and (b) its →iure imperii relations with private parties.

public policy = публичный порядок (R) = ordre public (F): **(1)** for arbitral tribunal, considerations or →principles(1) of law so fundamental that otherwise applicable law becomes inapplicable (→negative public policy) or **(2)** that override otherwise applicable law (→positive public policy). **(3)** a ground to →set aside an →award. **(4)** a ground to refuse →recognition and enforcement. →second look doctrine. see Art. V →New York Convention. *Distinguish* (a) →domestic from (b) international or →transnational, and (c) arbitral decision from (d) judicial →remedy and (e) →recognition and enforcement public policy.

Q

quaere (L) = ask; usually: who should decide, under which law, for which purpose?

query☺ = question☺.

Q.C. = королевский адвокат в Англии (R): in England, one of Her Majesty's Counsel, a Queen's Counsel, normally a senior barrister who has "taken →silk". →S.C.

quadruplicate (F) = →surrebutter, by which the →respondent answers a →triplique (F).

quality arbitration, accepted term for →scratch-and-sniff arbitration: a type of commodity arbitration involving a quality dispute.

quantum debetur (L) = определение размера ответственности (R): the question, once it is found that money is due, how much money is due. *Contrast* an debeatur (L) = →principle(2).

R

reasoned award = арбитражное решение с мотивировочной частью (R): an award with →reasons given. Customary in →international arbitration.

reasons = мотивировочная часть решения (R): explanation by an arbitral tribunal why a particular award (or procedural order) is issued. *Contrast* →operative part of an award (or procedural order). →obiter dictum; →dissenting opinion.

rebutter = triplique (F) = contraréplica (Esp.): third →brief by →claimant.

Rechtsgespräch (D): discussion of legal questions between arbitral tribunal and party representatives. Usually informal.

Rechtsmissbrauch (D) = →abuse of right.

Rechtsstaat (D) = правовое государство (R) = état de droit (F) = estado de derecho (Esp.): state under the →rule of law.

receptum arbitri (L) = →Schiedsrichtervertrag (D).

recital: декларативная часть документа (R) = "whereas clause" at the outset of an →agreement.

recitals: преамбула (R) = preamble (E, D).

recognition and enforcement = признание и исполнение (R) (1) of foreign arbitral awards →New York Convention. (2) of other judicial or arbitral, domestic or foreign, decisions. *Quaere* which law applies.

record = →file.

re-cross examination, questioning☺: a second round of →cross-questioning.

red list: Non-waivable red list in →IBA Guidelines, lists cases where disqualification is unavoidable. Waivable red list lists cases where, if after full disclosure all parties expressly agree with full knowledge, disqualification is avoidable.

Redfern schedule = schedule of document production: a table listing requests for production of documents, reasons given, defenses, and decisions.

re-direct examination, questioning☺: a second round of →direct questioning.

référé (F): (1) in France, special procedure for preliminary and conservatory measures to be ordered by a state court in advance of litigation or arbitration. (2) *préarbitral*: same separate quasi-arbitral procedure ordered by →arbitral institution. www.iccwbo.org

reference☺: in England, old term meaning arbitral proceedings or arbitration☺.

Referentenaudienz (D)☺: in Zurich, preliminary and unprejudicial discussion of factual and legal issues sometimes conducted by arbitral tribunal to help parties find an amicable settlement. →Rechtsgespräch (D).

reframing: (1) In mediation, communication technique which changes the frame of reference against which an event is viewed, so it can be seen in a different light. (2) more loosely: redefining of issues or views in a more constructive way.

rejoinder = duplique (F) = Duplik (D) = *dúplica* (Esp.): second →brief (if any) by →respondent, after →claimant's →reply.

relief requested = →prayer for relief.

remedy= средство правовой защиты (R) = Rechtsmittel (D) = *recurso* (Esp.): includes →action to set aside and →appeal.

remission: after award has been →set aside, the matter is normally remitted or remanded to the same arbitral tribunal.

removal of an arbitrator = освобождение арбитра от полномочий (R): Upon →challenge of an arbitrator, the arbitrator may be removed by the appointing authority or by the state court supervising and policing arbitrators. →replacement of an arbitrator.

replacement of an arbitrator = замена арбитра (R): usually procedure follows the same rules as the original appointment. According to some arbitration rules, different rules apply in certain cases.

reply = *réplique* (F) = Replik (D) = *replica* (Esp): second →brief by →claimant.

request for arbitration = просьба об арбитраже (R) = *demanda de arbitraje* (Esp.): short written submission to the other party or an arbitral →institution, often →nominating or →appointing a party-appointed (→co-) arbitrator. The first action setting an arbitration in motion, often accompanied by a →statement of claim.

res judicata (L): binding effect of the resolution of a →dispute between the parties which must be →recognized when a further decision is made between the same parties, raising the same issue as →preliminary issue.

resolution of a dispute: →dispute resolution.

respondent☺ = ответчик (R) = défenderesse = Beklagte (D) = demandado (Esp): usually preferred term in international arbitration for defendant☺.

restraint of competition☺ = ограничение конкуренции (R): action contrary to anti-trust law☺ = competition law☺.

restraint of trade☺ = ограничение торговли (R): action contrary to anti-trust law.

right to be heard = droit d'être entendu (F) = rechtliches Gehör (D) = derecho a ser escuchado (Esp.): a fundamental ingredient of →due process.

rights-based: based on law, not →interests. In →conciliation, used to describe process in which conciliator tries to predict the outcome of a (possible) arbitration.

Rome Treaty: the treaty that established in 1957 what is now the European Union.

rubrum (L) = →caption page.

rule of law = верховенство закона, правовое государство (R): the principle(1) of government by law, not men = état de droit (F) = Rechtsstaat (D).

rules of law = règles de droit (F) = Rechtsregeln (D): to be distinguished from law. Include provisions that have a legal character but do not stem directly from sources of law of a state. *Examples*: international treaties; model laws; general conditions; contract forms; →general principles of law; →Unidroit Principles, →lex mercatoria (L), etc.

S

Sachverständiger (D) = →expert.

S.C. = Senior Counsel. In some →common law jurisdictions outside England, the equivalent of a →Q.C.

schedule☺: = график, таблица, перечень (R) **(1)** a statement, usually in table form, of the various claims and counterclaims, and →defenses to them =→Scott Schedule. →Redfern Schedule. **(2)** (United States) = →time-table. **(3)** schedule of →costs(1) attached to →arbitration rules. **(4)** any other attachment.

Schiedsauftrag (D) = →Terms of Reference.

Schiedsgutachten (D): →expert determination of factual issues by court-appointed expert.

Schiedsort (D)☺ = →place of arbitration →seat.

Schiedsrichter (D) = →arbitrator.

Schiedsrichtervertrag (D): mostly in German doctrine, the →contract between the parties, or the institution, or both, and an arbitrator or the arbitral tribunal.

Schiedssprache (D) = →language of arbitration.

Schiedsspruch (D) = →award.

Schiedsverfahrensrecht (D)☺: sometimes **(1)** the law applicable to →procedure before the arbitral tribunal. **(2)** = →lex arbitri.

Scott schedule (English): a table listing the various claims by one party and the positions taken on them by the other.

scratch-and-sniff, look/sniff arbitration: accepted terms for →quality arbitration.

scrutiny of the →award = проверка решения (R): function exercised by the International Court of Arbitration of the →ICC to review draft awards primarily for form before they are approved and issued. see Art. 27 →ICC Rules.

sealed offer: in England, offer for →settlement made under seal and handed over to arbitral tribunal. This may be taken into account when allocating costs. Sometimes accompanied by a payment "into court" to the arbitral tribunal.

seat of the arbitration☺ = место арбитража (R) = seat of the arbitral tribunal☺: the place which determines the →lex arbitri (L).

second look doctrine: based on a →dictum by United States Supreme Court in the Mitsubishi case, doctrine according to which a state court of the United States will not stay arbitration of an →arbitrable(1) matter but reserves the right to have a second look at the award when asked to →enforce it, particularly with regard to the application of →positive public policy, e.g. anti-trust law.

secret du délibéré (F): the principle(1) that what was said in a →deliberation is secret. →confidentiality of arbitration.

secretariat of an →arbitral institution = секретариат арбитражного института (R) →case officer and others.

secretary of an arbitral tribunal = секретарь состава арбитража (R): a person occasionally appointed to deal with various administrative matters.

security for →costs: обеспечение (R). *Distinguish*, (1) for →party representation costs of opposing party = Parteikostensicherheit (D) and, (2) for →arbitration costs = cautio iudicatum solvi (L) = Prozesskostensicherheit (D). A party may be required to provide security for some of these costs (by →advances or by posting a bank guarantee) in view of the possibility that it might be required to pay these costs.

sentence (F) = →award.

separability☺ = независимость арбитражной оговорки (R) = severability of the arbitration agreement: the principle(1) that the →arbitration agreement is distinct in law from the →contract to which it refers or the →agreement in which it appears.

separate opinion: (a) отдельное мнение (R) = a concurring opinion, concurring in the result, but giving other reasons for reaching it or (b) особое мнение (R), a →dissenting opinion, reaching a different result.

sequestration of a witness: principle(1) that a witness should not hear others testify before taking the stand.

setting aside = отмена (решения) (R): usual remedy against →awards →action to set aside.

setoff = зачет требований (R): effected by (a) a declaration or (b) ipso iure, as an effect of law(s) of →substance or procedure. Extinguishes simultaneously two claims. *Distinguish* →counterclaim. Frequently, a →respondent will, as a →defense(2), set off a claim of its own, and to the extent it is not extinguished by the setoff, bring a →counterclaim.

settlement: (1) = мировое соглашение (R) = "amicable" conclusion of a dispute by agreement, generally implying some compromise between the parties. (2)☺ разрешение спора (R) = sometimes☺ synonymous with *any* resolution of a dispute, as in →ICSID. (3) урегулирование долга (R) = payment of a debt.

severability☺ = →separability.

shuttle diplomacy: a term used where a mediator →caucuses (with) each party separately.

siège (F) = →seat. *Contrast* →venue.

Singapore Arbitration Centre = Арбитражный центр Сингапура (R) www.siac.org.sg

silk: accepted term for →Q.C.

situs (L): place. (a) Usually = building site. (b) Sometimes[⊗] (perhaps because the words sound similar), seat of arbitration.

skeleton argument: in England, an outline of the position taken by a party on facts and especially on law. Usually presented shortly before a hearing.

sole arbitrator = единоличный арбитр (R) = arbitre unique (F) = Einzelschiedsrichter (D): arbitrator sitting alone. In England and some →arbitration rules, the normal type of arbitral tribunal. *Contrast* three-person →arbitral tribunal.

sovereign immunity = суверенный иммунитет (R) = state immunity: immunity of sovereign country from prosecution (in arbitration) or enforcement. *Quaere* when and how this can be waived.

standing to sue or be sued = **locus standi** (L) = Aktivlegitimation, Passivlegitimation (D): capacity of a party to make or defend a particular claim in view of the merits. *Contrast* →capacity to be a party to arbitration = subjective arbitrability[⊗].

standstill agreement (United States) = (English) breather: an agreement by (prospective) litigants not to do anything during the standstill period.

stare decisis (L): in →case law developments, the (Anglo-American) principle(1) that a court must follow the holding of law of a decision of a court as high or higher.

state court: (1) государственный суд (R) = any court in the judicial system, also called ordinary[⊗] court. *Contrast* arbitral tribunal. (2) суд штата в США (R) = in USA: a court of a state. *Contrast* Federal Court.

statement of claim = written →complaint. *Similarly*: Statement of →defence, reply, etc. →answer; →reply, etc.

statement of costs: summary list of a party's party representation costs.

status (L) of arbitrator: entire legal position of an →arbitrator, including possible immunity. →Schiedsrichtervertrag (D).

statute of limitations = →prescription (also F) = time-bar = Verjährung (D): →rule of law by which a particular right to claim (though not the right itself) lapses after a certain time period (= limitation period).

statutory interest: = legal[⊗] interest = проценты, установленные законом (R). Set by →statutory law.

statutory law = статутное право (R): that part of the law that is found in statutes and other enactments. *Contrast* →common law(1), →equity(1).

stay of proceedings = приостановление производства по делу (R) = Sistierung (D): may be ordered by arbitral tribunal, and in certain jurisdictions, by →state court at the →seat of the arbitration.

stipulation: an agreement between the parties on facts or procedural matters.

sua sponte (L) = →inquisitorial system.

Stockholm Arbitration Institute of the Stockholm Chamber of Commerce = Арбитражный институт Торговой палаты Стокгольма, Институт ТПС (R), the leading arbitral institution in Sweden. www.chamber.se

substantive law = материальное право (R), droit applicable au fond (F) = Sachrecht (D): law applicable to the merits. *Contrast* →procedural law. →substance v. procedure; →private international law.

substance v. procedure вопросы материального и процессуального характера (R): a fundamental characterization question in →conflict of laws and other areas of the law. In litigation, →procedural questions may be governed by →(procedural) lex fori; in arbitration such questions are determined by the parties or the arbitral tribunal. see sec. 34 →English Arbitration Act 1996.

summation: comment on the entire evidence, often combined with legal argument. Normally oral. This may be replaced by →post-hearing briefs.

supersede (so spelled): replace.

surrebutter = quadruplique (F) = Quadruplik (D): →brief by →respondent answering →rebutter.

suspensive effect: granted by state court to take away otherwise existing →enforceability of an →award.

Swiss Chambers = Торговые палаты Швейцарии (R): Chambers of Commerce of Basel, Bern, Geneva, Lausanne, Lugano and Zurich which operate an →institutional arbitration system under →Swiss Rules.

Swiss Rules: Швейцарский регламент международного арбитража (R), Swiss Rules of International Arbitration. www.swissarbitration.ch

T

taking of evidence: сбор доказательств (R), all measures taken by an arbitral tribunal to establish the facts of the case.

TAS (F) = Tribunal Arbitral du Sport = →CAS. www.tas-cas.org

Tenor (D): →operative part of the award.

terms of appointment⊕: →Constitution Order.

terms of reference (1) = Акт о полномочиях арбитров (R) = acte de mission (F) = Schiedsauftrag (D) = acta de misión (Esp.) = atto di missione (I): Initial document issued by arbitral tribunal after consultation with parties. In →ICC arbitration, the initial document prepared by the arbitral tribunal and signed by them and the parties (see Art. 18 →ICC Rules). (2) sometimes⊕= Experteninstruktion (D): a description of the task given a →tribunal-appointed expert.

testimony = свидетельские показания (R) = témoignage (F) = Zeugenaussage (D) = testimonio (Esp.): in England and United States, evidence(2)⊕: oral answers by witnesses to questions. Testimony is expected to be honest, i.e. subjectively the truth, the whole truth and nothing but the truth.

three-person arbitral tribunal = Dreierschiedsgericht (D): in many systems, the normal type of arbitral tribunal. *Contrast* →sole arbitrator.

time limit = крайний срок (R) (1) →deadline. (2) to commence arbitration, render award. Not recommended.

time-bar = →prescription = →statute of limitations. *Quaere* what is barred, (a) the right, (b) the claim, (c) the remedy?

time-table = action sheet☺ =→calendar☺ = schedule☺; = summarizes in list or table form past and future actions in an arbitration. see Art. 18 →ICC Rules.

tolling agreement (United States): an agreement providing that for its duration, the statute of limitations will be tolled more slowly or be held up.

Tomlin order☺ (England): Order to stay proceedings pursuant to agreed terms.

tort = правонарушение (R) = delict, = extra-contractual liability, = unlawful act: act leading to private law liability not based on contract but by operation of (statutory) law, normally based on negligence.

trade arbitration = торговый арбитраж (R): dispute in which a party in international business complains of discrimination in a foreign country. →WTO; →NAFTA.

trade tribunal: arbitral tribunal set up to resolve →trade disputes.

trade usages = торговые обычаи (R): must usually be taken into account by arbitral tribunal, see Art. 17 ICC Rules. *Quaere* in which sense.

transcript = стенограмма (R): verbatim (L: word-for-word) transcript prepared by court reporters, (a) some time after a hearing, or (b) as an overnight transcript, or (c) as an immediate running transcript, perhaps allowing instant annotation.

translation = письменный перевод (R): usually limited to written text. *Contrast* interpretation of oral statement. In some countries, official or sworn translators are available who provide a →certified translation (which should not be presumed to be correct).

transnational = транснациональный (R): sometimes used instead of →international for greater contrast with →national or →domestic.

transnational public policy: →public policy of the most truly international nature.

tribunal-appointed →**expert**: used especially in →civil law(2)-style procedure.

triplique (F) = rebutter: the third →brief by →claimant.

TRO = Temporary restraining order: in the United States, a special preliminary injunction issued →ex parte by a →state court(1) prohibiting a certain action for a short period pending normal consideration of a motion for a preliminary injunction.

tronc commun (F): features that different laws share because they have common historical roots.

truncated arbitral tribunal = неполный состав арбитража (R) = tribunal arbitral tronqué (F) = Rumpfschiedsgericht (D): an arbitral tribunal which has no longer all its members and has not yet been reconstituted. *Quaere* whether in special circumstances, especially if one member abusively resigned, a truncated arbitral tribunal may take decisions.

U

ultra petita (L): a decision ultra petita goes beyond the →prayers for relief.

umpire: (1) in the Anglo-American tradition, especially in commodity and maritime arbitration, an arbitrator selected by two →co-arbitrators unable to reach agreement on an →award. *Distinguish* →presiding arbitrator. (2) →chair in →mini-trial.

UN Übereinkunft☺ (D) = New Yorker Konvention☺ (D) = →New York Convention.

unequivocal: standard of clarity often required for →choice-of-law-clauses, →exclusion agreements, →waiver agreements, and exercising other options provided by →lex arbitri (L).

Uncitral = ЮНСИТРАЛ, Комиссия Объединенных Наций по праву международной торговли (R) = United Nations Commission on International Trade Law. It drafted (a) →New York Convention, (b) →Model Law of International Arbitration, adopted, with minor modifications, in many jurisdictions of the world. (c) →Uncitral Arbitration Rules, a set of uniform arbitration rules in ad hoc arbitration, for world-wide use, or to be adapted for institutional arbitration. (d) Uncitral Notes on planning arbitral proceedings. (e) Model Law on Electronic Commerce. (f) Conciliation rules. (g) Model Law on Cross Border Insolvency Law, followed by Chapter 15 of the United States Bankruptcy Code. www.uncitral.org

unconditional appearance: appearance before an arbitral tribunal without contesting its proper →constitution or →jurisdiction by a certain time or stage of the proceedings. This confers jurisdiction upon the arbitral tribunal independently from the existence of a valid arbitration agreement.

Unerlaubte Handlung (D) = →tort.

Unidroit = Унидруа, Международный институт по унификации частного права (R) = International Institute for the Unification of Private Law, Rome. Issued Unidroit Principles of International Commercial Contracts, 1994, 2005. www.unidroit.org

United Nations Claims Commission: specialized administrative court in Geneva dealing with claims against Iraq connected with its invasion of Kuwait. www.unog.ch/uncc

unlawful act =→tort.

US-Iran Claims Tribunal: specialized international court at The Hague using modified →Uncitral Arbitration Rules.

USD = United States Dollar(s).

V

vacate = →set aside. **vacatur** (L): "(the award) is set aside", the outcome of a successful →action to set aside.

VAT = налог на добавленную стоимость, НДС (R) = Value added tax = impôt sur la valeur ajoutée (F) = Mehrwertsteuer (D) = impuesto sobre el valor añadido, impuesto al valor agregado (Esp.) = imposta sul valore aggiunto (I).

venire contra factum proprium (L): going against one's own action, inconsistent behavior against the principle(1) of good faith. →estoppel.

venting: allowing a party the opportunity to vent his or her anger or other emotions. Sometimes used at the outset of proceedings.

venue = место фактического проведения арбитражного слушания (R): the place where an arbitral tribunal meets, usually a precise address, e.g., a hotel. Has no legal significance. *Contrast* →seat of the arbitration.

verbatim (L) **transcript**: →transcript.

Verfahrensrecht (D)⊗: →Schiedsverfahrensrecht (D)⊗.

Verjährungsverzicht (D) = →tolling agreement.

Vertragsstrafe (D) = →penalty.

Verwaltungsrat (D): (1) board of directors. (2) a member of the board of directors, a →director.

Vienna Convention: the (Vienna) →Convention on the International Sale of Goods, 1980, →CISG.

Vienna Rules: the →arbitration rules of the →Austrian Economic Chamber (in Vienna).
www.wk.or.at

voie directe (F): in the absence of a →choice of law by the parties, system which determines the →objectively applicable substantive law directly without using a conflict-of laws rule. *Contrast* **voie indirecte** (F): two-step system which first determines the applicable →private international law, which then determines the →applicable substantive law.

W

waiver agreement: in Belgium, Sweden, and Switzerland, where all parties are foreign, an agreement by them to exclude all →remedies (→⊕appeals) against a future award in the country of the →seat of the arbitration.

Washington Convention = →ICSID Convention. www.icsid.org

whereas clause: accepted term for →recital.

wild cat arbitration = →copy-cat arbitration.

win-win: the concept that parties can arrive at →settlement(1) in which each gains some advantage, rather than an →adjudicated resolution in which generally one party will win and the other will lose. *Contrast* →zero-sum game.

WIPO = Всемирная организация интеллектуальной собственности, ВОИС (R) World Intellectual Property Organization, in Geneva, a specialized agency of the United Nations. Offers (a) an →institutional arbitration system, (b) →domain name arbitration. www.arbiter.wipo.int

witness conferencing = одновременное заслушивание нескольких свидетелей (R): hearing several witnesses simultaneously, so their answers may be confronted on the spot.

witness statement = устные свидетельские показания (R): written statement by a witness outlining its testimony. Often stands in lieu of →direct questioning or examination. Sometimes answers to questions, but normally a chronologically structured and numbered narration. see Art. 4 →IBA Rules of Evidence.

writ⊕: sometimes improperly used for →written submission.

written submission = письменное заявление стороны (R) = brief = written pleading = mémoire (F) = Rechtschrift (D) = schriftliche Eingabe, Schriftsatz (D): Usually contains factual and legal argument, and offers of proof, with →documents attached.

writing = требование письменной формы (R): form requirement, e.g. for a valid →arbitration agreement. *Quaere* what exactly must be written (text? signature? offer? acceptance?), and under which circumstances may requirement be fulfilled or replaced by an oral statement, conclusive action, or electronic means.

WTO = Всемирная торговая организация, ВТО (R) = World Trade Organization, in Geneva. Has its own dispute resolution system. www.wto.org.

Z

zero-sum game: a situation in which there is no room for a →win-win resolution, because every penny gained by one party is necessarily lost by the other.

zone of agreement: the range of possible terms of →settlement within which a particular →dispute may be resolved.

Zurich Chamber of Commerce = Торговая палата Цюриха (R): runs, together with other →Swiss Chambers, an →institutional arbitration system. www.zurichcci.ch