

Luther.

Arbitration in 15 minutes: what, how and why?

SIAC / OAV Webinar „Managing Cross-Border Disputes:
The Advantages of SIAC Arbitration“

Dr Richard Happ
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What is arbitration?

Arbitration is:

- A **private dispute resolution** (\neq state courts)
- through **private judges/arbitrators** (\neq state judges), appointed by the parties,
- which come to a **final and binding decision** between the parties (\neq mediation).

Consequences of the private nature:

- **Arbitration agreement necessary (= contract)**
- Flexible proceedings
- Effect of the arbitral proceedings is limited to the parties → Basically no effects on third parties

Cross-border litigation vs. arbitration

Court proceedings

- Often unclear jurisdiction
- Judges: you don't know what you get
- Public proceedings
- Several instances
- Service of documents difficult and lengthy
- Cross-border taking of evidence difficult
- Worldwide enforcement difficult

Arbitration

- Jurisdiction agreed (mostly)
- Select your own arbitrator
- Confidential and non-public
- One instance
- Service of documents via courier and e-mail
- Simple and efficient taking of evidence
- Worldwide enforcement simple (in 146 States)

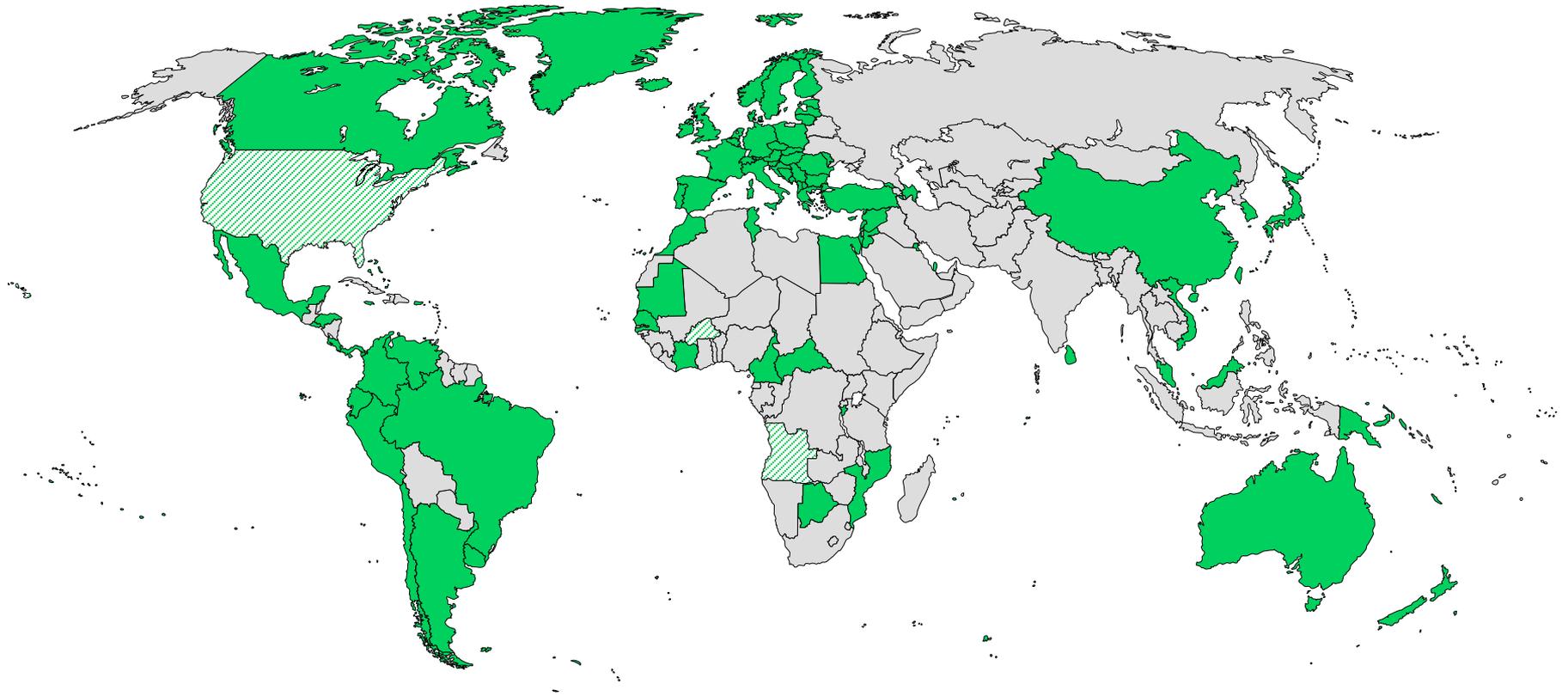
How does it work?

- Arbitration is created by agreement and therefore private dispute resolution
- Thus
 - No court building
 - No hearing facilities
 - No court clerks (“Geschäftsstelle”)
- Parties must agree on procedure, must select arbitrators
- Arbitrators/parties must handle all aspects of the proceedings, book rooms, ask for costs, serve writs etc.
- Possible, but complicated and time intensive

Why are arbitral institutions like SIAC useful?

- Arbitral institutions, inter alia
- Have up-to-date arbitration rules covering likely and unlikely problems
- Have model arbitration clauses for contracts
- Assist the parties and the proceedings where necessary, e. g.
 - When the other party fails to nominate an arbitrator
 - Decides about challenges
 - Collects and distributes money to arbitrators
 - Ensures quality of awards

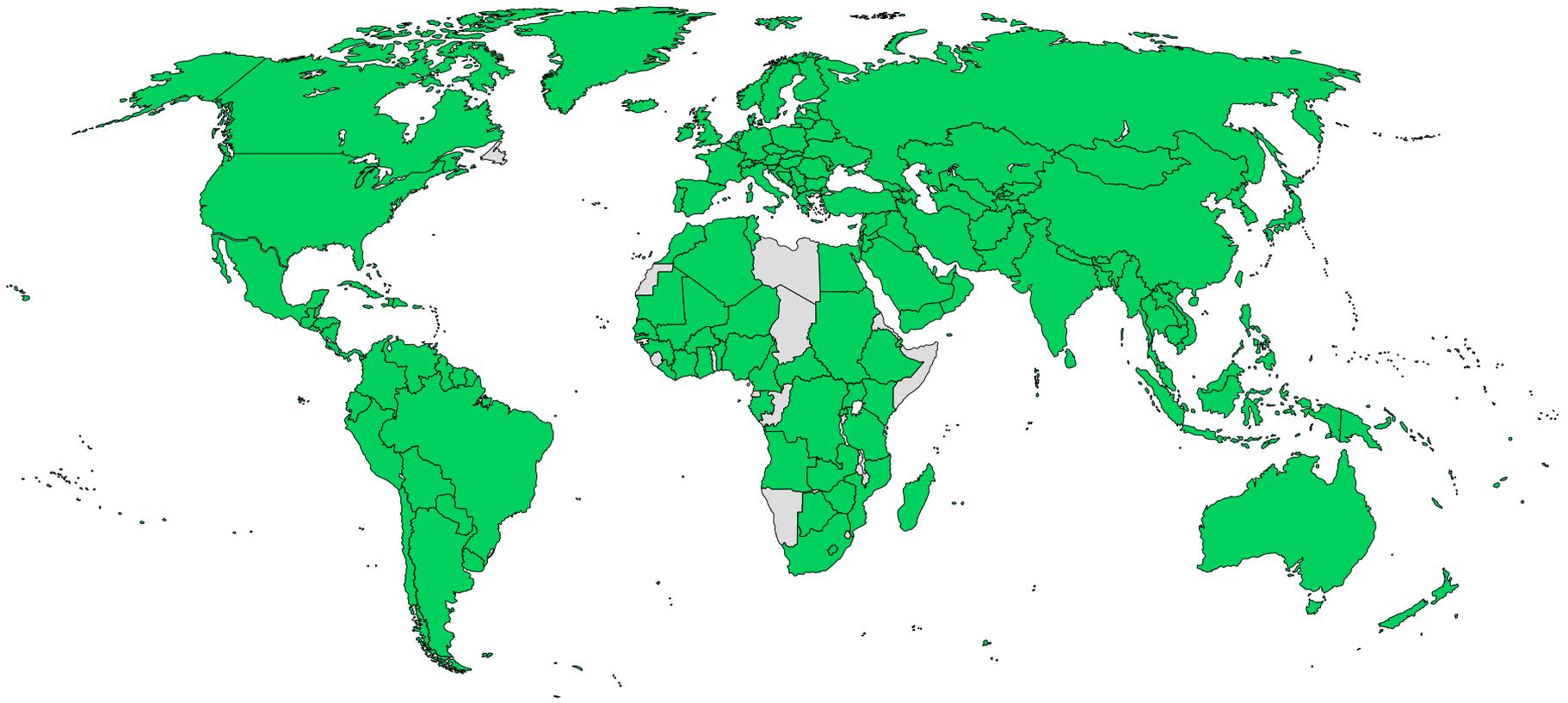
Why is enforcement of awards easier (1/2)?



 mutual recognition and enforcement of court decisions

 mutual recognition and enforcement of court decisions controversial/restricted

Why is enforcement of awards easier (2/2)?



 Contracting States of the New York Convention

Thank you!



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“Richard Happ is ‘a top name in public international law’ and ‘a leading investment arbitration expert’, according to impressed peers”

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