

15 Introduction

Parts II and III of the Manual dealt with supranational dispute resolution and supranational dispute resolution bodies. The types of disputes were those where one or more of the parties is likely to be a State. The dispute resolution bodies dealt exclusively either with disputes between States or with disputes where one or more of the parties is likely to be a State.

This part of the Manual will deal with international commercial disputes. It may be helpful to approach the topic by looking first at the kind of dispute resolution provisions that are likely to be found in a commercial contract. These are of vital importance, and contractual provision will normally be made at a minimum for the following:

- i) *Forum*: in what country should the dispute resolution process take place?
- ii) *Choice of law*: which country's law is to govern the contract? It is, of course, always open to the parties to provide for a choice of laws rather than a choice of law and to provide that disputes will be resolved by way of reference to general principles of international law or *lex mercatoria*.⁶³ However, the choice of a national law is likely to be the norm.
- iii) *Dispute resolution process*: broadly speaking, as discussed earlier, there are four dispute resolution processes in common use: litigation, arbitration, alternative dispute resolution (ADR) and expert determination. The questions that then arise are:
 - If litigation, which country's courts are to have jurisdiction?
 - If arbitration, is this to be institutional or ad hoc? If institutional, which institution? London Court of International Arbitration (LCIA), International Chamber of Commerce (ICC), American Arbitration Association (AAA), etc.?
 - If ADR, should some form of ADR filter mechanism be inserted into the contract, arbitration then only being triggered off in the event that the ADR process fails?
 - Or is expert determination the appropriate way to resolve disputes?

The following chapters look at those four dispute resolution processes, and at some of the institutions and other bodies providing facilities for the resolution of disputes in the pure commercial field.

63 Law merchant, originally a body of rules and principles relating to merchants and mercantile transactions.