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The Juridical Seat of Arbitration: A Comparative Study

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I. Abstract

This paper undertakes a doctrinal and comparative analysis of the juridical seat of arbitration as the organizing axis of international commercial arbitration. Despite the seeming clarity of the UNCITRAL Model Law, the persistence of confusion between the "seat" and "venue" has led to confusion on the issue of supervisory jurisdiction, curial law, and control of annulment. This research will interrogate the conclusive role of the seat in court supervision and whether there is a real convergence on the UNCITRAL model.

The article starts with the conceptual and historical background of the seat, comparing the territorial, delocalisation, and hybrid models, and their effects on lex arbitri and court intervention. The article then proceeds to analyze the territorial model in the Model Law, specifically Articles 20 and 34, and its interaction with party autonomy. It is against this background that the book critically reviews the post-BALCO territorial model in India, the classical seat model in England, the delocalisation model in France, and the Model Law-based pro-enforcement model in Singapore.

A more complex level of analysis is the relationship between judicial review on the seat and the enforcement of awards under the New York Convention, with a focus on annulled awards and conflicts between the seat and enforcement courts. The comparative analysis reveals that there is a structural convergence in territorial anchoring, but a persistent doctrinal divergence in the determination and construction of the seat, the standards of review, and the treatment of implied seats. The article concludes that, although the seat is the basis of arbitral structure, the Model Law has reached only structural, but not interpretative, uniformity and that a new approach to the seat in transnational arbitration is needed.

Key words: Seat of Arbitration**,** UNCITRAL Model Law**,** Lex Arbitri**,** Judicial Review of Arbitral Awards and New York Convention Enforcement

INTRODUCTION

The juridical seat of arbitration is no longer a mere geographical point; it is the legal pivot of international commercial arbitration. The modern practice of arbitration is based on a complex of international rules, national arbitration laws, and judicial mentality, in which the choice of the seat is the silent but decisive element that determines the whole process. The "seat theory" connects a delocalized and party-controlled process with a legal system, which determines the lex arbitri, court control, and remedies against the award.[1] However, despite the best efforts of harmonization under the New York Convention and the UNCITRAL Model Law in the past decades, a certain doctrinal uncertainty persists with regard to the exact role and effects of the seat.[2]

This ambivalence is most evident in the ever-blurring lines between seat and venue. While the seat is the juridical home of arbitration, the venue is a factual location for hearings, which has become increasingly fluid in the age of virtual hearings.[3] Courts and practitioners have nonetheless struggled with ambiguous or "pathological" clauses that fail clearly to designate a seat, requiring judges to infer it from competing indicia such as institutional rules, governing law clauses, or procedural preferences.[4] The effect is a patchwork of interpretative approaches and assumptions, with important implications for jurisdiction, judicial intervention, and the stability of awards.

The territorial principle enshrined in the UNCITRAL Model Law holds that the law of the seat prevails over the arbitral process and that the courts of the seat have primary supervisory and annulment jurisdiction.[5] However, experience shows a more complex scenario. Some countries adopt a seat-centric approach with a strong territoriality bias, which legitimates exclusive curial

[1] Sarker, M. (2022). Seat Theory in International Commercial Arbitration: Evolution from Lex Loci Arbitri to Lex Arbitri. Dhaka University Law Journal. (last visited on 1st February 2026) available at: https://doi.org/10.3329/dulj.v33i1.61512

[2] Kravtsov, S. (2023). Seat of arbitration: problematic issues of theory and practice. Analytical and Comparative Jurisprudence. (last visited on 1st February 2026) available at: https://doi.org/10.24144/2788-6018.2023.01.25 [3] Kumari, P. (2021). MATTERS CONCERNING SEAT AND VENUE OF ARBITRATION: CRITICAL AND COMPARATIVE ANALYSIS. THE JOURNAL OF UNIQUE LAWS AND STUDENTS. (last visited on 1st February 2026) available at: https://doi.org/10.59126/v1i3a11

[4] Hill, J. (2014). DETERMINING THE SEAT OF AN INTERNATIONAL ARBITRATION: PARTY AUTONOMY AND THE
INTERPRETATION OF ARBITRATION AGREEMENTS. International and Comparative Law Quarterly, 63, 517 - 534. (last visited on 1st February 2026) available at: https://doi.org/10.1017/s0020589314000293

[5] Bantekas, I., Ortolani, P., Ali, S., Gómez, M., & Polkinghorne, M. (2020). UNCITRAL Model Law on International Commercial Arbitration. Forming Transnational Dispute Settlement Norms. (last visited on 1st February 2026) available at: https://doi.org/10.1017/9781108633376

jurisdiction and limited intervention. Others, under the influence of delocalization theories, tend to underestimate the seat's centrality and consider the award as a transnational decision whose validity and enforceability rely as much on enforcement fora as on the seat courts.[6] This conflict is exacerbated by Article V(1)(e) of the New York Convention, which provides for the courts of the seat and the courts "under the law of which" the award was made, thus encouraging conflicting centres of authority on the fate of the award.[7]

In this context, the experience of the main arbitral jurisdictions in the comparative arbitral tradition of the last decades shows both convergence and divergence. England is the paradigm of the territorial tradition, where the seat fixes the curial law and the supervisory jurisdiction of the courts, with a structured but limited basis for setting aside awards.[8] India, after the turbulent period prior to BALCO, has been attempting to re-center its regime on territoriality, re-affirming the pre-eminence of the seat while grappling with seat-venue confusion and the treatment of foreign-seated arbitrations.[9] In contrast, the French tradition has been representative of delocalisation, with a conception of international arbitration as only loosely connected to the arbitration seat and with an appreciation of the autonomy of the arbitration procedure and of enforcement courts. Singapore falls between these two extremes: it is formally a Model Law jurisdiction and seat-centric, but also party autonomy and transnational arbitral expectation-sensitive.[10]

This doctrinal research is based on the assumption that, despite a certain structural uniformity that has been created through the UNCITRAL Model Law, the interpretative divergence in relation to the seat remains profound. By means of a comparative examination of the position in India, England, France, and Singapore, set against the wider background of the New York

[6] Pulido, I. (2025). The Delocalization of International Commercial Arbitration. Principles and Practices in the Application of Provisional Measures. Vniversitas. (last visited on 1st February 2026) available

at: https://doi.org/10.11144/javeriana.vj74.dica

7 Cheng, T. (2012). Features of Arbitral Practice that Contribute to System-Building. Proceedings of the ASIL Annual Meeting, 106, 292 - 294. (last visited on 1st February 2026) available at: https://doi.org/10.5305/procannmeetasil.106.0292

8 Hill, J. (2014). DETERMINING THE SEAT OF AN INTERNATIONAL ARBITRATION: PARTY AUTONOMY AND THE INTERPRETATION OF ARBITRATION AGREEMENTS. International and Comparative Law Quarterly, 63, 517 - 534. (last visited on 1st February 2026) available at: https://doi.org/10.1017/s0020589314000293

9 Joshi, S. (2016). Does Being Uniform with the World Mean Murdering Your Own Uniqueness? Shining the Light of Unicitral Model Law Over Arbitration Act: Critical Analysis of the Approach. **. (last visited on 1st February 2026)

10 Garimella, S. (2014). Territoriality Principle in International Commercial Arbitration – The Emerging Asian Practice. **(last visited on 1st February 2026) available at: https://doi.org/10.2139/ssrn.2584332

Convention and Model Law, the research investigates whether the seat has a conclusive role in supervisory jurisdiction, to what extent national courts are moving towards a common understanding of "seat" and "place of arbitration," and whether delocalized and hybrid solutions are challenging or transforming the classic supervisory model. The ultimate goal is thus both descriptive and prescriptive: to understand the doctrinal architecture of the seat and to determine whether more harmonization or a principled pluralism is in the best interest of the legitimacy and efficacy of transnational arbitration.

CONCEPTUAL FOUNDATIONS: SEAT VERSUS VENUE AND THE JURIDICAL THEORY

The classical theory of arbitration arose with strong roots in territoriality, considering international arbitration as an institution that is part of a specific national legal system. The "seat theory" evolved as the tool for linking this apparently autonomous institution to a specific State, making the lex loci arbitri of the seat the lex arbitri of the arbitration and thus bringing it within the mandatory rules and jurisdiction of the State.[11] In this system, the courts of the country of the seat have primary supervisory and annulment jurisdiction, while the foreign courts are mainly operating at the enforcement stage.[12]

The dissatisfaction with the limitations imposed by territoriality gave rise to delocalisation, which aims to weaken or break the connection between arbitration and any national system. Delocalised approaches to arbitration conceptualise international arbitration as a transnational process whose validity is based on party autonomy, arbitration rules, and international conventions rather than the law of the seat, which sees the role of national courts confined to recognition and enforcement through instruments such as the New York Convention.[13] However, modern practice does not reveal either pure territoriality or complete delocalization

11 Sarker, M. (2022). Seat Theory in International Commercial Arbitration: Evolution from Lex Loci Arbitri to Lex Arbitri. Dhaka University Law Journal. (last visited on 2nd February 2026) available at: https://doi.org/10.3329/dulj.v33i1.61512

12 Barry, M. (2015). The Role of the Seat in International Arbitration: Theory, Practice, and Implications for Australian Courts. Journal of International Arbitration. (last visited on 2nd February 2026) available at: https://doi.org/10.54648/joia2015012

13 Siddique, F. (2018). Re-Emergence of Delocalization in the Aspect of International Commercial Arbitration. Consumer Law eJournal. (last visited on 2nd February 2026)

but rather a range of approaches in which national law and courts strike a balance between autonomy and control.[14]

One of the most important conceptual distinctions is between the seat of arbitration and the place of hearings. The seat represents the juridical home of the arbitration, as it determines the legal system applicable to the arbitral procedure, the nationality of the award, and the supervisory power over specific courts. Conversely, the venue is the geographical location where the hearings or meetings take place, and this is determined by convenience and not necessarily by the legal framework that governs the process.[15]

However, modern practice increasingly recognizes that no significant geographical connection is required for the appointment of a seat, as it serves as a "legal domicile of the proceedings", a legal fiction sufficient to connect the arbitration with a national law even if no hearing is ever held there, as in online and sports arbitration.[16] Courts and jurists therefore hold that the change of venue does not affect the agreed seat, and that the seat is the preeminent determinant of curial law and jurisdiction, despite the mobility of hearings.

The choice or determination of the seat has three main legal effects. First, it determines the lex arbitri, which is the procedural law that governs the conduct of the arbitration, including the powers of the arbitration tribunal, challenges to arbitrators, and the validity of the award. Although the parties can agree to follow institutional rules or a different substantive law for the contract, the mandatory rules of the lex arbitri are binding.

Secondly, the location of the arbitration seat governs the allocation of supervisory jurisdiction. The courts of the seat have primary jurisdiction over the arbitration process with respect to provisional measures, assistance in the production of evidence, and challenges to due process, to the extent that the interventionist power is conferred by the national law.[17] Thirdly, the seat

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14 Domente, M., & Rosca, I. (2025). Theoretical and practical perspective of the delocalization of international commercial arbitration in the legislation of some states. Development Through Research and Innovation IDSC- 2025. https://doi.org/10.53486/dri2025.75

15 Rana, S., & Kaur, I. (2024). SEAT AND VENUE AN ENDLESS CONTROVERSY. ShodhKosh: Journal of Visual and Performing Arts. https://doi.org/10.29121/shodhkosh.v5.i1.2024.2596

16 Sarker, M. (2022). Seat Theory in International Commercial Arbitration: Evolution from Lex Loci Arbitri to Lex Arbitri. Dhaka University Law Journal. https://doi.org/10.3329/dulj.v33i1.61512

17 Bělohlávek, A. (2015). Seat of Arbitration and Supporting and Supervising Function of Courts. **.

has implications for annulment jurisdiction and the "nationality" of the award. Proceedings for setting aside the award are normally brought before the courts of the seat, and the outcome of annulment or confirmation of the award affects enforcement under the New York Convention, specifically Article V(1)(e). The seat of arbitration has a direct bearing on the remedies available and the robustness of the award in cross-border enforcement.

In the territorial theory, arbitration is based on the law of the seat, which regulates procedure and ascribes exclusive or primary jurisdiction to the courts of that State. Denationalisation is considered a "myth", and the seat is the decisive element in arbitrability, court control, and annulment. The delocalisation theory: This theory challenges the orthodoxy and asserts that international arbitration should operate with less reliance on the legal system of the seat of arbitration. Instead, it relies on party autonomy, arbitration rules, and international law.

In its stronger form, delocalisation makes possible the enforceability of awards despite annulment in the seat, revealing an internationalist approach to arbitral power. Between these two extremes, a hybrid or Model Law approach appears, as in the case of states that adopt the UNCITRAL Model Law. This framework maintains territorial anchorage through the concept of "place of arbitration", but attempts to resist judicial intervention and party autonomy, resulting in a tempered form of territoriality rather than delocalization.[18] The architecture that emerges emphasizes that the seat is still the juridical center of gravity, even as transnational norms of enforcement are increasingly shaping the operation of international commercial arbitration.

THE SEAT AND SUPERVISORY JURISDICTION UNDER THE UNCITRAL MODEL LAW

The UNCITRAL Model Law on International Commercial Arbitration has established a seat- centric system of supervision, in which the juridical seat of arbitration is the only gateway to curial control and annulment. This regime is expressed most fully in Article 20 (place of arbitration), Article 34 (setting aside), and the territorial principle expressed in Article 1(2), and

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18 Ortolani, P. (2020). Place of Arbitration. UNCITRAL Model Law on International Commercial Arbitration. (last visited on 2nd February 2026) available at: https://doi.org/10.1017/9781108633376.032

is informed by the underlying policy of party autonomy and narrowly circumscribed court intervention.[19]

The parties' primary law-making power regarding the place of arbitration is granted through Article 20(1), which enables them to select the juridical seat of arbitration, thus the lex arbitri and supervising courts to be applied. Absent such agreement, the tribunal may decide the place "having regard to the circumstances of the case", but this decision is still juridical, not geographical in the strict physical sense. The Model Law carves out the juridical seat from other venues by allowing hearings and deliberations to take place in any place "without affecting the place of arbitration" (Article 20(2)). This reinforces the fact that the selected venue is a legal construct that grounds the proceedings in a specific legal system, as opposed to a description of the location of procedural acts.[20]

Article 34 sets out the application for setting aside as the sole recourse against an award issued in a Model Law State, evidencing a pro-arbitration policy of limited and exhaustive grounds, based on Article V of the New York Convention. Crucially, only the courts of the seat, as determined by Article 1(2) and Article 20, have jurisdiction over such applications, while foreign courts are limited to control over recognition and enforcement. The time limit in Article 34(3) reflects the same policy of finality and harmonization. Nonetheless, experience in certain Model Law jurisdictions indicates efforts by courts to extend this period under national procedural rules, reflecting tensions between the restrictive approach of the Model Law and national procedural traditions.[21]

Article 1(2) codifies a territorial rule, stating that the Law shall apply only if the arbitration seat is located in the enacting State. This rule makes the seat a centralised hub for the determination of the arbitral law and the court with supervisory and annulment power. The [19] Marianne, R. (2019). Part IV International Treaties, 20 UNCITRAL Model Law on International Commercial Arbitration. Practitioner's Handbook on International Commercial Arbitration. (last visited on 2nd February 2026) available at: https://doi.org/10.1093/law/9780198784807.003.0020

20 Garimella, S. (2014). Territoriality Principle in International Commercial Arbitration – The Emerging Asian Practice. **.(last visited on 2nd February 2026) available at: https://doi.org/10.2139/ssrn.2584332

21 Gadkari, A. (2022). Harmonizing International Commercial Arbitration: A Special Focus on Time Limit to Setting Aside an Award. Indonesian Journal of Law and Society(last visited on 2nd February 2026) available at: . https://doi.org/10.19184/ijls.v3i1.28258

Model Law thus provides little scope for effective delocalisation in the post-award phase: challenge of awards is thus nationalised in the courts of the seat.

The Model Law aims at harmonization rather than full uniformity. On the central questions of grounds for setting aside, exclusivity of recourse, and the territorial allocation of supervisory authority, it achieves a high level of substantive harmonization. Nevertheless, it maintains broad procedural flexibility through the use of party agreement and institutional rules, as well as a degree of national deviation in implementation and interpretation. Comparative analysis reveals that, despite the common text, there are differences among jurisdictions with regard to the stringency of time limits on setting aside, the ambit of "public policy", and the intensity of review, and that the Model Law is a harmonizing template rather than a code of uniformity.[22]

Party autonomy is a core tenet of the Model Law, but it is exercised through the seat. The parties can select the place of arbitration, the rules of procedure, and the substantive law of the contract; however, these selections are made through the mandatory regime of the lex arbitri of the seat.[23] The Model Law therefore promotes a model of limited party autonomy, in that parties cannot, as a matter of design of the Model Law, opt out of the supervisory jurisdiction of the courts of the seat or opt for a different State's courts to annul an award made in the enacting State.[24] On the other hand, its openness to party made procedural regimes and non-national substantive rules demonstrate a conscious balance between the sovereignty of the state and territorial control on the one hand, and the autonomy and international operation of international commercial arbitration on the other.

THE INDIAN POSITION: TERRITORIALITY AFTER BALCO

The BALCO decision in Bharat Aluminium Co. v Kaiser Aluminium [25] signifies the definitive turnabout of Indian arbitration law on a strictly territorial seat-based regime. However, the post-

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22 Hyari, O., & Ani, A. (2021). Post award arbitral tribunal's mandate under the UNCITRAL Model Law and national laws based thereon. Heliyon, 7. (last visited on 2nd February 2026) available at: https://doi.org/10.1016/j.heliyon.2021.e07556

23 Nahnybida, V. (2020). Implementation of the Principle of Party Autonomy in Determining the Law Applicable to the Substance of Dispute in International Commercial Arbitration. University Scientific Notes. (last visited on 3rd February 2026) available at: https://doi.org/10.37491/unz.77.1

24 Ortolani, P. (2020). Application for Setting Aside as Exclusive Recourse against Arbitral Award. **, 858-898. (last visited on 3rd February 2026) available at: https://doi.org/10.1017/9781108633376.046

25 Bharat Aluminium Co vs Kaiser Aluminium Technical Service Inc. (last visited on 3rd February 2026) available at: https://indiankanoon.org/doc/173015163/.

BALCO experience paints a complex picture of both significant doctrinal development and the emergence of interpretive rigidity. Prior to BALCO, the Supreme Court in Bhatia International had held that Part I of the 1996 Act was applicable to foreign-seated arbitrations unless specifically or impliedly excluded, which allowed Indian courts to provide interim relief and even entertain setting aside challenges to foreign awards. Venture Global furthered this irregularity by permitting Section 34 challenges to foreign awards, obfuscating the line between seat, enforcement forum, and supervisory court.[26]
The literature widely described this as an irregular, extra-territorial departure from the territorial principle of the UNCITRAL Model Law. BALCO overruled Bhatia and Venture, holding that Part I applies only to arbitrations within India, and that Indian courts do not have jurisdiction to set aside or interfere with foreign-seated arbitrations.[27] The Court clearly brought the Act into line with the territorial approach of the Model Law, considering the seat as the "centre of gravity" of the arbitration process.

Later commentary considers the BALCO case as a "final affirmation" of the territorial approach in international commercial arbitration with Indian parties, where the arbitration is seated outside India, bringing India back into the mainstream of seat-centric practice. Subsequent decisions and legislative updates (notably the 2015 amendments on interim measures and enforcement) largely maintain this BALCO structure and selectively re-introduce a degree of assistance for foreign-seated arbitrations through specified statutory channels.[28]

The post-BALCO case law has evolved a robust exclusive jurisdiction rule: "Where the seat is established (by express or implicit intention), the courts of that seat possess the exclusive primary jurisdiction over appointment, provisional measures in certain cases, and setting aside, while the other courts, including Indian courts, are limited to enforcement roles".[29]

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26 Garimella, S. (2014). Territoriality Principle in International Commercial Arbitration – The Emerging Asian Practice. **. (last visited on 3rd February 2026) available at: https://doi.org/10.2139/ssrn.2584332

27 Palande, D., & Ingle, S. (2025). Maritime Claims and Arbitration in India: A Critical Study of Legislative and Judicial Developments. International Journal For Multidisciplinary Research. (last visited on 3rd February 2026) available at: https://doi.org/10.36948/ijfmr.2025.v07i04.53443

28 Mukherjee, S., Adhikari, M., & , N. (2025). Examining the Role of Indian Courts in Assisting Arbitral Tribunals: A Comprehensive Legal Analysis. International Journal of All Research Education & Scientific Methods. (last visited on 3rd February 2026) available at: https://doi.org/10.56025/ijaresm.2025.1305253971

29 Garimella, S. (2014). Territoriality Principle in International Commercial Arbitration – The Emerging Asian Practice. **.(last visited on 3rd February 2026) available at: https://doi.org/10.2139/ssrn.2584332

This is described by commentators as "seat centric arbitration," where the selection of a foreign seat is considered a choice to opt out of Indian curial law and Indian supervisory courts, except as provided for in the New York Convention for enforcement. This has had the effect of reassuring foreign parties that foreign-seated awards will be shielded from broad Indian review.[30]

The difference between "seat" and "venue" has been a cause of constant litigation. BALCO and subsequent cases refer to international jurisprudence to distinguish between:

- Seat: the juridical home of arbitration, and the law of the supervisory jurisdiction;
- Venue: a simple geographical spot for holding hearings, which does not, per se, affect the seat.

The importance of drafting with clarity and avoiding ambiguous "place/venue" clauses has been highlighted by Indian scholarship and jurisprudence, which point out that courts have been forced to imply a seat in certain cases from institutional rules, choice of law rules, or juridical links.[31]

Trends emerging post BALCO indicate a pro-arbitration, enforcement-minded policy, especially in maritime and commercial cases, and a readiness to conform to international norms. Foreign arbitration seats are being recognized and recognized, anti-arbitration injunctions restricted, and party choice of a foreign arbitration seat recognized as a valid means of "contracting out" of Indian curial law.

However, several tensions still exist:

- Clauses with no seat or poorly drafted clauses: Indian courts are still struggling to establish a juridical seat in cases where the seat is not clearly established, indicating "crude approaches" and inconsistencies.[32]

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30 Bishnoi, S. (2024). Role Of Indian Courts In Facilitating International Commercial Arbitration: A Critical Evaluation. Educational Administration: Theory and Practice. (last visited on 3rd February 2026) available at: https://doi.org/10.53555/kuey.v30i1.8586

[31] Kumari, P. (2021). MATTERS CONCERNING SEAT AND VENUE OF ARBITRATION: CRITICAL AND COMPARATIVE
ANALYSIS. THE JOURNAL OF UNIQUE LAWS AND STUDENTS. (last visited on 3rd February 2026) available at: https://doi.org/10.59126/v1i3a11

[32] Yadav, A. (2020). Seat, Venue, Place of Arbitration: The Never Ending Debate in Indian Arbitration Regime. SSRN Electronic Journal. (last visited on 3rd February 2026) available at: https://doi.org/10.2139/ssrn.3635166

- Indian parties opting for foreign seats: There is still debate on the limits of policy and the consequences of Indian parties being subject to the entire foreign supervisory regime.[33]
- Party autonomy and its interaction: It has been suggested that Indian law is "procedural law centric rather than seat centric" in the context of party autonomy in foreign procedural law, which is not easily reconciled with the strict territorial principle.[34]

BALCO has undoubtedly clarified the doctrine on the key issue of territoriality: Part I is seat bound, and the supervisory court follows the seat. However, the robust and at times uncompromising approach to the seat theory, together with inconsistent treatment of seat/Venue conflicts and foreign seats, has also created pockets of rigidity in interpretation and new litigation on construction and limits. India has thus moved from a state of chaotic overlap to a clearly articulated but at times rigid territorial orthodoxy—articulating the principle while still working through its edges.

THE ENGLISH TERRITORIAL MODEL

The English arbitration law is a classical example of the territorial model, wherein the juridical seat is the main connecting factor for curial law, judicial supervision, and award control. The Arbitration Act 1996 and the proposed reforms have strengthened seat centrism as a deliberate policy decision to ensure London's preeminence as an international arbitration center.[35]

Where the seat of arbitration is England, Part I of the Arbitration Act 1996 regulates the arbitration procedure and confers "supervisory jurisdiction" on the courts of England. Sections 67-69, which provide for jurisdictional objections, serious irregularity, and limited appeals on points of law, apply only to awards made in arbitrations with their seat in England and Wales,

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[33] Jain, I. (2016). The legal implications of Indian parties resorting to foreign arbitration: decoding the decision in Addhar. Arbitration International, 32, 681-685. (last visited on 3rd February 2026) available at: https://doi.org/10.1093/arbint/aiw029

[34] Joshi, S. (2016). Does Being Uniform with the World Mean Murdering Your Own Uniqueness? Shining the Light of Unicitral Model Law Over Arbitration Act: Critical Analysis of the Approach. **. (last visited on 4th February 2026)

[35] Gicquello, M. (2023). Reviewing the Arbitration Act 1996. Amicus Curiae. (last visited on 4th February 2026) available at:https://doi.org/10.14296/ac.v4i2.5588

thus affirming that the lex arbitri rule is the law of the seat. This is in response to delocalisation theories that aim to remove arbitration from national legal systems.[36]

English courts give paramount importance to the nominated seat. In the case of Enka v Chubb, the Court of Appeal has expressed the "strong presumption" that, in the absence of an express choice, the law of the seat is the proper law of the arbitration agreement, underlining the non- derogable status of the supervisory role of the court of the seat. The

arbitration-friendly approach diverges from the general conflict of laws approach in giving precedence to the integrity of seat jurisdiction over the general choice of law rules.[37] The review by the Law Commission and the proposed reforms demonstrate support for a default rule that harmonizes the law of the arbitration agreement with the law of the seat, exactly for the purpose of strengthening legal certainty and maintaining the pre-eminent position of London as a seat.

Where clauses are ambiguous or "seatless", English courts require that one juridical seat must be ascertained in order to establish jurisdiction and curial law. In fairly simple uni-directional clauses, they have formulated rules of interpretation to enable the seat to be determined by reference to London, institutional rules, or procedural terminology.[38] However, in pluri- directional clauses referring to more than one location, the case law is less consistent, with scholars criticizing the inconsistent reasoning and at times evident "forum preference" in favor of London. Notwithstanding these flaws, the analytical premise remains territorial, with the necessary seat of some state to be determined in order to provide the governing lex arbitri and supervising court.

The courts of the English seat alone have primary control over the validity of English seated awards. Challenges under sections 67-69 are firmly seated and foreign courts are expected, as a matter of comity and New York Convention practice, to look to the decisions of the courts of

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36 Yalabık, F. (2021). The Impact of the Seat of Arbitration on Judicial-Interference: Do Sections 67, 68 and 69 of the English Arbitration Act 1996 regarding Challenges of Awards Make London An Attractive Hub?. Annales de la Faculté de Droit d'Istanbul. (last visited on 4th February 2026) available at: https://doi.org/10.26650/annales.2021.70.3220

37 Phua, M., & Chan, M. (2020). The distinctive status of international arbitration agreements in English private international law?. Arbitration International, 36, 419-427. (last visited on 4th February 2026) available at: https://doi.org/10.1093/arbint/aiaa026

38 Hill, J. (2014). DETERMINING THE SEAT OF AN INTERNATIONAL ARBITRATION: PARTY AUTONOMY AND THE
INTERPRETATION OF ARBITRATION AGREEMENTS. International and Comparative Law Quarterly, 63, 517 - 534. (last visited on 4th February 2026) available at: https://doi.org/10.1017/s0020589314000293

the seat as the central reference point for award validity. English judges and scholars repudiate delocalized models of awards as floating loose from seat control, emphasizing that legal effect is ultimately derived from their connection to a national system, and foremost, that of the seat.[39]

- The English model is said to be "classical" because it:
- Is concerned with the seat as the juridical home of the arbitration, and with lex arbitri, supervisory jurisdiction, and challenges.
- Assumes that the law of the seat regulates the arbitration agreement, emphasizing the inseparability of supervisory power from the territory chosen.
- Remits the setting aside of powers to the court of the seat, in accordance with the conventional interpretation of the New York Convention and Model Law.
- Resists delocalisation, maintaining that the binding force of arbitral awards is generated through their integration into the legal order of the seat.

English law thus embodies a paradigmatic example of the territorial seat theory, in which the national law and courts constitute the essential basis of the arbitration process.

THE FRENCH DELOCALISATION THEORY

The French delocalisation theory reinterprets international arbitration as a form of international justice that is only remotely linked to any national legal system, and in particular to the legal system of the seat. This approach is a normative provocation against the traditional territoriality principle, which considers the lex loci arbitri as the main source of validity, control, and extinction of the award.

The French doctrine and courts consider the international award as not "attached to any state legal order", but rather as the decision of an autonomous arbitral legal order, downgrading the seat to a point of contact rather than a constitutive source of authority.[40] This philosophical approach is a reaction to the Westphalian distribution of adjudicative power and reflects wider trends of globalisation and the deconstruction of state-centric models.

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[39] Sarker, M. (2022). Seat Theory in International Commercial Arbitration: Evolution from Lex Loci Arbitri to Lex Arbitri. Dhaka University Law Journal. (last visited on 5th February 2026) available at: https://doi.org/10.3329/dulj.v33i1.61512

[40] Astakhova, D. (2021). THE ROLE OF THE DELOCALISATION THEORY IN THE DEVELOPMENT OF THE FRENCH
LEGISLATION ON INTERNATIONAL COMMERCIAL ARBITRATION. Vestnik Tomskogo gosudarstvennogo universiteta. Pravo. (last visited on 5th February 2026) available at: https://doi.org/10.17223/22253513/40/11

Delocalisation is implemented by a strong concept of party and arbitral autonomy. Under Article 1511 of the French Code of Civil Procedure, the voie directe is provided, which enables arbitrators to determine the applicable law directly, without resort to conflict of laws rules of the seat, thus reducing reliance on any national system. French case law also articulates a transnational validity test for arbitration agreements, based on common intention, good faith, and effet utile rather than lex contractus or lex loci arbitri.[41]

However, in the case of France, which has a dualistic regime (domestic vs. international arbitration), the seat's constitutive role is consistently diminished in case law. The competence of the juge d'appui may be invoked even in the absence of an objective link between the dispute and France, which again emphasizes the non-territorial approach to international arbitration and the willingness of French courts to facilitate "floating" arbitrations. The seat continues to be a procedural reference point, but not an exclusive jurisdictional hub.[42]

The most extreme form of delocalisation is the readiness to enforce annulled awards at the seat. The French law does not list foreign annulment as a ground to refuse exequatur, which allows the recognition of set aside awards, such as in Putrabali and, ex ante, in Yukos. In this internationalist approach, the enforcement court exercises its own, limited review (public policy and due process), independently of the award's fate in the primary jurisdiction.[43]

Delocalisation certainly undermines the traditional model of supervision, whereby the courts of the seat have primary and almost universal jurisdiction over the award, and subsequent courts defer to the decision of the seat courts under Article V(1)(e) of the New York Convention. The French approach shatters this vertical structure by regarding annulment in the seat as no more than one national outlook in a pluralistic enforcement environment.

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[41] Wagner, K. (2025). French Courts and Arbitration Validity: Simplicity or Legal Uncertainty?. Journal of International Arbitration. (last visited on 5th February 2026) available at: https://doi.org/10.54648/joia2025037

[42] Pulido, I. (2025). The Delocalization of International Commercial Arbitration. Principles and Practices in the Application of Provisional Measures. Vniversitas. (last visited on 5th February 2026) available at: https://doi.org/10.11144/javeriana.vj74.dica

[43] Ay, Y. (2021). Recognition and Enforcement of Annulled Foreign Arbitral Awards in the Country of Origin under the 1958 New York Convention: the US and French Approaches. Teisė. (last visited on 5th February 2026) available at: https://doi.org/10.15388/teise.2021.120.11

However, the French model does not cancel supervision but redistributes it. Supervision is reallocated from a monopolistic supervisory court to multiple enforcement bodies that apply the same standards of minimal procedural justice and international public policy. Instead of a law-free arbitral order, delocalisation introduces a multilateral supervision system that is diffuse and territorial, yet maintains legality and increases resistance to arbitrary annulments and local courts.

SINGAPORE'S MODEL LAW-ORIENTED FRAMEWORK

The arbitration regime in Singapore is constructed in a Model Law-compliant but locally differentiated manner that aims to reconcile international harmonization with the common-law approach. The international arbitration in Singapore is governed by the International Arbitration Act (IAA), which has adopted the UNCITRAL Model Law as its procedural framework, in addition to its own Arbitration Act for domestic arbitrations. This dual track system allows Singapore to bring international cases in line with international standards (limited grounds for annulment, tribunal competence, finality of awards) while maintaining specific rules for domestic disputes.[44]
The courts in Singapore have always adopted a pro-arbitration and minimal intervention approach. They have restricted review on very narrow Model Law/IAA grounds and refused to revisit errors of fact or law. The case law illustrates an "active but deferential" role, which encompasses a readiness to remit cases to the tribunal rather than set aside awards, and a general presumption in favour of upholding awards even when public policy and natural justice are relied upon.[45]

The IAA and case law closely associate curial powers with the juridical seat. The highest court in Singapore has, however, restricted court ordered interim relief to arbitrations seated in Singapore under section 12(7) IAA, in contrast to a broader Model Law interpretation that

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[44] Pillay, M. (2004). The Singapore Arbitration Regime and the UNCITRAL Model Law. **. last visited on 5th February 2026) available at: https://doi.org/10.1093/arbitration/20.4.355

[45] Kapustina, N. (2024). Correlation between the Arbitrators' Discretion and the Natural Justice in Arbitration Proceedings. Moscow Journal of International Law. last visited on 5th February 2026) available at: https://doi.org/10.24833/0869-0049-2024-1-80-89

would permit support for foreign-seated arbitrations.[46] On the other hand, the courts are also diligent in scrutinizing applications to set aside, using reasonableness and fairness tests in alleged breaches of due process and requiring only serious violations of natural justice under section 24(b) of the IAA to warrant judicial intervention.

Doctrinally, Singapore is a middle-of-the-road jurisdiction. It retains England's strong seat supervisory approach and adheres to the paramountcy of the lex loci arbitri on matters such as arbitrability and the law governing the arbitration agreement, but adopts structured conflicts methodologies based on current comparative common law thinking on the matter. At the same time, it embodies the internationalist approach of the Model Law, namely uniformity, good faith, and judicial restraint, but with strategic deviations when local policy or institutional preference (as in section 12(7) IAA) is deemed of paramount importance.
Singapore is a harmonising jurisdiction in two ways. First, it localises Model Law rules within a common law system,

illustrating how a jurisdiction can be both strongly territorial and globally convergent.[47] Secondly, by virtue of its consistent pro-enforcement judicial approach, graduated standards of review, and ancillary institutions such as the Singapore International Commercial Court, it provides a middle ground between English-style territorial control and Model Law pragmatism, and instead serves to consolidate rather than fracture the developing transnational consensus on the juridical seat.[48]

JUDICIAL REVIEW AT THE SEAT VS ENFORCEMENT UNDER THE NEW YORK CONVENTION

The judicial review at the seat corresponds to the traditional notion of supervisory jurisdiction, whereby courts exercise control over awards by means of narrowly circumscribed grounds of annulment, which are sometimes identified with Article 34 of the UNCITRAL Model Law, concentrating on serious procedural irregularities, ultra vires, incapacity, or violation of public

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46 Ho, J. (2008). Decoding Singapore's International Arbitration Act, Section 12(7). Arbitration International, 24, 609-614. last visited on 5th February 2026) available at: https://doi.org/10.1093/arbitration/24.4.609

47 John, C. (2018). 2 Legal Framework for Arbitration in Singapore. **. last visited on 5th February 2026) available at: https://doi.org/10.1093/law/9780198810650.003.0002

48 Hwang, M. (2015). Commercial courts and international arbitration—competitors or partners?. Arbitration International, 31, 193-212. last visited on 5th February 2026) available at: https://doi.org/10.1093/arbint/aiv038

policy. After being annulled, the award ceases to have any legal effect in the jurisdiction of the seat, and national law usually declares it null and void in the internal system. Modern jurisprudence stresses that judicial review should remain exceptional; courts are encouraged not to retry the merits but to limit their intervention to the grounds "set forth in law".[49]

Article V(1)(e) provides, but does not require, the enforcement court with discretion to refuse recognition on the grounds that the award has been "set aside or suspended" by a competent authority at the seat. The discretionary "may" has provided a great deal of flexibility for the contracting states, and there have been divergent views on the issue, ranging from the classical (territorial) view that treats foreign annulment as a near-automatic bar to enforcement, to the internationalist view that treats it as one aspect of a broader enforcement inquiry.[50]

Empirical and doctrinal research reveals that courts in various countries have upheld awards in the face of annulment where proceedings to set aside were considered one-sided, on the basis of local public policy, or in violation of the principles of justice.[51] The New York Convention does not preclude such enforcement, as Article V(1) is discretionary, and Article VII permits reliance on more pro-enforcement domestic law. On the other hand, other regimes hold that enforcement of annulled awards is contrary to the Convention's structure, the tenets of legal certainty, lis pendens, and res judicata, and propose a reform to make an refusal obligatory in such instances.

In the case where the annulled award is enforced in a foreign country, the court of enforcement implicitly refuses to recognize the judgment of annulment, leading to horizontal conflict between judicial authorities and issues of fragmented res judicata and abuse of process.[52] Some authors argue that decisions on annulment may be considered foreign judgments and thus fall

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49 Zaheeruddin, M. (2023). Recognition and Enforcement of Annulled Arbitral Awards Under the New York Convention

1958. International Journal of Professional Business Review. (last visited on 6th February 2026) available at: https://doi.org/10.26668/businessreview/2023.v8i7.2637

50 Baltag, C. (2022). Article V(1)(e) of the New York Convention: To Enforce orNot to Enforce Set Aside Arbitral Awards?. Journal of International Arbitration. (last visited on 6th February 2026) available at: https://doi.org/10.54648/joia2022018

51 Psárska, L. (2022). Current Challenges of Enforcing Annulled Arbitral Awards. COFOLA International 2022. Current Challenges of Resolution of International (Cross-Border) Disputes. (last visited on 6th February 2026) available at: https://doi.org/10.5817/cz.muni.p280-0231-2022-11

52 Mayer, U. (1998). The Enforcement of Annulled Arbitral Awards: Towards a Uniform Judicial Interpretation of the 1958 New York Convention. Uniform Law Review, 3, 583-599. (last visited on 6th February 2026) available at https://doi.org/10.1093/ulr/3.2-3.583

within the general standards of recognition, thus mediating conflicts through private international law methods rather than purely arbitral methods.[53]

The cases are plotted on a spectrum ranging from strong deference to the seat (classic approach), through balanced or "foreign judgment" approaches, to strong internationalism in jurisdictions willing to uphold set aside awards where the annulment is held to be abusive or idiosyncratic. Comparative studies of German, French, US, and other practices have confirmed that the place of enforcement is of prime importance, since the methodological approach of the courts has a decisive influence on the outcome.

The contemporary doctrine and practice abandon the absolute dominance of the seat. Annulment is a key issue in the status of recognition of the award within the state and a strong, but not decisive, ground for refusal within the foreign state.[54] The discretionary framework of the New York Convention, together with delocalization and balanced approaches, transforms the seat from a monopolistic sovereign to a dominant but contestable point in a pluralistic enforcement network, where validity will ultimately be assessed by the interaction of multiple courts rather than a controlling jurisdiction.

CONVERGENCE OR FRAGMENTATION?

A COMPARATIVE DOCTRINAL ASSESSMENT

In the majority of the preeminent arbitral locations, the territorial principle continues to constitute the essential framework of the system. The UNCITRAL Model Law has specifically linked the application of its provisions to arbitrations with their seat within the territory of the state adopting the Model Law, thus confirming a seat-centric approach to the lex arbitri and curial supervision.[55] The Model Law approach in Asia and Europe follows this territorial anchoring, and the seat is used to determine the competent courts, the grounds for setting aside,

53 Brinkman, D. (2023). Recognition and Enforcement of Annulment Judgments under the New York Convention. Journal of International Arbitration. (last visited on 7th February 2026) available at https://doi.org/10.54648/joia2023029

54 Al-Malahmeh, F. (2007). The deficiencies of the New York Convention of 1958 relating to the enforcement refusal ground V (1) (e) and their effects on the enforcement of annulled foreign arbitral awards. **. last visited on 7th February 2026)55 Ortolani, P. (2020). Place of Arbitration. UNCITRAL Model Law on International Commercial Arbitration. (last visited on 7th February 2026) available at: https://doi.org/10.1017/9781108633376.032

and the characterization of awards as domestic or foreign. Even the critical literature on the "seat theory" does not regard the juridical link with a national system as avoidable.

The most obvious delocalised counter-example comes from France. Theoretically based on pluralist and transnational approaches, the French law considers international awards as not bound by the law of the seat, but as subject to an autonomous French concept of "international arbitration order" for recognition and annulment purposes.[56] The seat court's decisions may be disregarded by French courts if they find enforcement to be consistent with the minimal standards of international public policy under French law, reflecting a pluralist approach whereby validity is ascribed by the community of recognizing states rather than the seat court.[57]

Even in seat-centric systems, the strength of review varies. While some Model Law countries limit access to the narrow grounds of Article 34, stressing deference and finality, others, such as England, retain limited review for error of law in appropriate circumstances, while courts in Australia, Hong Kong, and Singapore have adopted strong deference in procedural matters, intervening only where there is a breach of fundamental due process principles.[58]

Divergence is most apparent in implied seat jurisprudence. English courts have evolved complex rules of interpretation to imply a seat from "uni directional" or "pluri directional" clauses, which sometimes show a preference for the forum and an arbitration-centric approach that departs from general conflict rules in contract law.[59] Other countries are less systematised, with doubts as to whether institutional rules, language of the venue, or governing law clauses are sufficient to establish a seat, creating "procedural traps" at the jurisdiction and enforcement stage.

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56 Domente, M., & Rosca, I. (2025). Theoretical and practical perspective of the delocalization of international commercial arbitration in the legislation of some states. Development Through Research and Innovation IDSC- 2025. (last visited on 7th February 2026) available at: https://doi.org/10.53486/dri2025.75

57 Pulido, I. (2025). The Delocalization of International Commercial Arbitration. Principles and Practices in the Application of Provisional Measures. Vniversitas. (last visited on 7th February 2026) available at: https://doi.org/10.11144/javeriana.vj74.dica

58 Cheng, T. (2012). Features of Arbitral Practice that Contribute to System-Building. Proceedings of the ASIL Annual Meeting, 106, 292 - 294. (last visited on 7th February 2026) available at: https://doi.org/10.5305/procannmeetasil.106.0292

59 Scherer, M., & Jensen, J. (2021). Towards a Harmonized Theory of the Law Governing the Arbitration Agreement. SSRN Electronic Journal (last visited on 7th February 2026) available at:. https://doi.org/10.2139/ssrn.4015769

The territorial basis and Model Law core has certainly reduced transaction costs and increased predictability, in particular with regard to competence competence, limited grounds of annulment, and the role of courts at the seat. The Model Law was never intended to lead to similar regimes; sustainable diversity within broad common frameworks is both contemplated and to a certain extent inevitable.[60]

Doctrinal diversity has important laboratory roles. Delocalized models (France), hybrid territorial models (England, India), and highly deferential Model Law systems (Hong Kong, Singapore, Australia) explore different weights of autonomy and control, finality and correctness. Comparative analysis of delocalisation and the law applicable to the arbitration agreement reveals that multiple approaches trigger innovation and could perhaps better reflect party will, as long as they do not stray to such an extreme extent as to jeopardise the underlying expectations of the New York Convention and the Model Law.[61]

On a doctrinal analysis, the present scenario can be said to be that of convergent pluralism: a common territorial template with substantial, and normatively significant, areas of fragmentation in the standards of review, seat of infringement analysis methods, and delocalized enforcement philosophy.

SUGGESTIONS

The comparative study of the juridical seat reveals three groups of recommendations.

First, the issue of drafting clarity in arbitration clauses must be considered a non-derogable best practice. The parties must clearly identify the juridical seat, which must be distinguished from the venue of hearings, and the "curial law" and supervisory courts. The model clauses of the major arbitration institutions must be amended to avoid ambiguity regarding the seat, particularly when multi-tier dispute resolution, hybrid proceedings, and virtual hearings are

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[60] Рейес, А. (2022). Uniformity And Diversity In International Commercial Arbitration Law Of Uzbekistan. Перспективы развития международного коммерческого арбитража в Узбекистане. (last visited on 8th February 2026) available at https://doi.org/10.47689/978-9943-7818-6-3/iss1-pp10-12

[61] Cheng, T. (2012). Features of Arbitral Practice that Contribute to System-Building. Proceedings of the ASIL Annual Meeting, 106, 292 - 294. (last visited on 8th February 2026) available at : https://doi.org/10.5305/procannmeetasil.106.0292

contemplated. The legislative guides and bar standards must stress the consequences of not specifying the seat, such as the uncertainty of annulment and enforcement courts.

Second, there is an urgent need for jurisprudential consistency. The apex courts in Model Law and non-Model Law countries should develop reasoned frameworks on the following issues:
(i) implied seat, (ii) the ambit of supervisory jurisdiction, and (iii) standards of review for due process and public policy. Regular restatements by arbitral bodies and cross-citations of leading decisions (such as from England, France, Singapore, and India) can help develop a "common core" approach across national boundaries.

Third, with regard to the future of seat theory in transnational arbitration, a reform agenda ought to embrace a balanced, rather than absolutist, approach to territoriality. The seat must continue to be the central reference point for court intervention, but with increasing acknowledgment of: (i) limited enforcement of annulled awards on grounds of justice as required; and (ii) party autonomy in selecting procedural regimes, independent of territorial rigidities. Soft-law measures and a future overhaul of the New York Convention or ancillary arrangements may successively embed a more harmonized, but flexible, understanding of the juridical seat.

CONCLUSION

The analysis provided by this study corroborates the basic thesis that the juridical seat continues to be the focal point of international commercial arbitration, even as transnational practice increasingly transcends territoriality. In this way, by determining the lex arbitri, the allocation of supervisory and annulment jurisdiction, and the "nationality" of the award, the seat remains the legal domicile of the proceedings rather than a geographical designation.
The comparative analysis of India, England, France, and Singapore shows that this centrality of the seat is neither accidental nor outdated, but that the territorial, delocalized, and hybrid models all position themselves in relation to the seat, whether by institutionalizing, tempering, or deliberately decentring the seat's power.
On the other hand, the UNCITRAL Model Law has ensured structural consistency rather than interpretive uniformity. The territorial approach, the recourse mechanism, and the seat/venue

split have ensured a largely consistent framework, but the underlying structure is inhabited by national courts and legislatures with different approaches to the seat, public policy, time limits, and standards of review. This has ensured "convergent pluralism," where there is a common framework with the seat as its foundation, but there is disagreement on how that foundation is established and how far it limits the enforcement jurisdiction.

Normatively, the research implies that such a combination is not necessarily pathological per se. The structural consistency provided by the Model Law is the foundation for predictability, and interpretative diversity enables jurisdictions to test various trade-offs between autonomy and control, as well as territorial control and transnational enforcement. The challenge that lies ahead is not to walk away from the seat, but to improve it—through better drafting, sound jurisprudence, and measured receptiveness to delocalized forces—so that the juridical seat remains a firm but flexible foundation of the arbitral system.