



Convention on
Biological Diversity

INTERNATIONAL LITIGATION COSTS: COMPARATIVE STUDY

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Presentation of a comparative study of the real and transactional costs involved in the process of access to justice across jurisdictions commissioned by the Executive Secretariat in accordance with decision IX/12 paragraph 13 (d) of the Conference of the Parties.

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<https://www.cbd.int/doc/meetings/abs/abswg-07/information/abswg-07-inf-04-en.doc>

Presentation

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- Grounds for Litigation
- Types of Litigation
- Litigation Costs
 - Arbitration
 - Execution of Arbitral Awards
 - Domestic Courts
 - Execution of Foreign Judgments
- Conclusion

Grounds for Litigation

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Plaintiff from a source country

vs.

User from a foreign country

- Breach of Contract

- ▣ Financial provisions (e.g. non-payment of royalties)

- ▣ Non-Financial provisions (e.g. non-construction of a hospital)

- Breach of Source Country Tort Law

- ▣ Liability to reparation for illicit use of genetic resources

Types of Litigation

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□ Arbitration

■ Institutional (e.g. ICC International Court of Arbitration)

“All disputes arising out of or in connection with the present agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”

■ Ad Hoc (e.g. UNCITRAL Arbitration Rules)

□ Domestic Courts

■ e.g. Jurisdiction agreement, domicile of defendant

Arbitration Costs

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- Attorney fees
 - Hourly rate plus expenses (and success fee)
- Arbitrator fees (one to three arbitrators)
- Arbitral institution administrative expenses
- Other costs
 - Experts, witnesses
 - Documentation, translation, hearing recording, transcription
 - Conference rooms, travel expenses
- Allocation of costs by arbitrator (to prevailing party)
- Court of the seat of arbitration re: supervision

Execution of Arbitral Awards

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- Recognition and execution of an arbitral decision (e.g. by a court where defendant has assets)
 - Attorney Fees
 - New York Convention Parties required to recognize foreign arbitral awards, subject to limited exceptions
 - No review on the merit of the case
 - Court costs
 - Other costs and expenses (e.g. official translation)
 - Allocation of costs

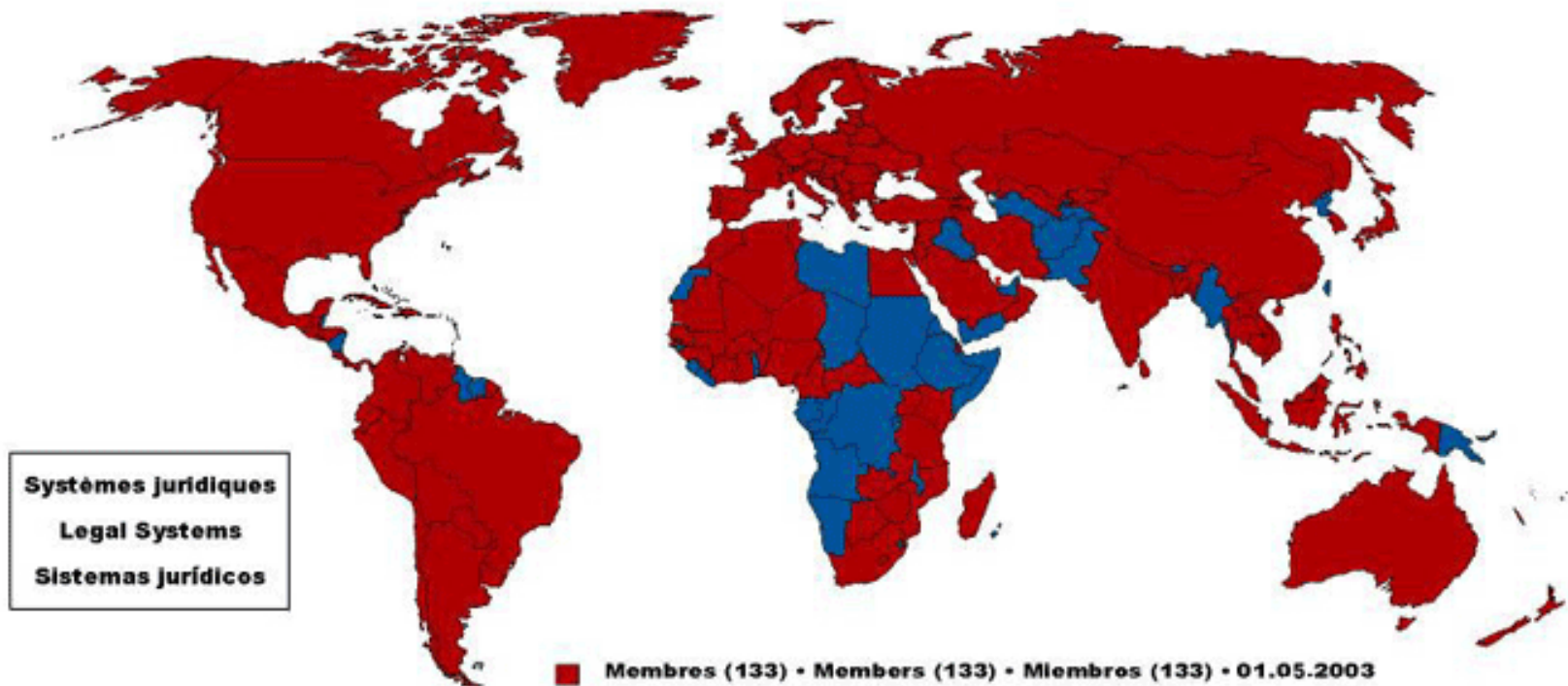
New York Convention (144 States)

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Convention des Nations Unies pour la reconnaissance et l'exécution des sentences arbitrales étrangères (New York, 1958)

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

Convención de la Naciones Unidas sobre el Reconocimiento y la Ejecución de las Sentencias Arbitrales Extranjeras (New York, 1958)



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Domestic Courts

	France (Trib. de commerce)	Brazil (State Justice)	Japan (District court)	California (District Court)
Attorney Fees	Hourly fee plus expenses (success fee)	Hourly fee (evaluation and success fees)	Up-front and success fee (hourly fee)	Hourly fee plus expenses (success fee)
• Pleadings and motions	Written submissions	Written submissions	Written sub., court follow-up	Written sub., court hearings
• Disclosure of evidence	Documentary evidence, court expert	Documentary evidence, experts	Documentary evidence, experts	Disclosure, discovery, depositions
• Trial	Closing arguments	Deposition of parties, experts	Deposition of witnesses	Jury, deposition of witnesses
Costs	\$	\$	\$	\$\$
Allocation of costs	Court and court expert costs	Court costs	Court costs	Court and other costs (attorney)
Time	1 to 2 years	1 to 2 years *	1 to 2 years	1 to 2 years

Execution of Foreign Judgments

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- Recognition and execution of a foreign judgment (e.g. by a court where defendant has assets)
 - Attorney Fees
 - Simplified procedure: No review on the merit of the case
 - Court costs
 - Other costs and expenses
 - Allocation of costs

Conclusion: To minimize costs

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- Agree on effective dispute resolution provisions
 - Arbitration
 - Number of arbitrators, seat and language of arbitration...
 - Court (e.g. Jurisdiction of source or user country court)
- Explore other means to limit or resolve disputes
 - Maintaining contact through cooperation committee
 - Resolving technical matters with independent expert
 - Negotiating with mediator and conciliator
- Maintain good working relationships
- If no contract: rely on source or user country law

Thank you

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