In many jurisdictions, courts hold that the parties’ intentions, in concluding an agreement to arbitrate in an international commercial setting, are presumptively to resolve all disputes related to their business relationship in a single, centralized proceeding, rather than in separate and potentially inconsistent proceedings. In the words of one national court decision: “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.”

Equally, arbitral tribunals have been reluctant to apply other requirements for res judicata under some national laws in a restrictive or technical manner. In the words of one award:

“If it is true that the Owner was not a party to the referee procedure in the context of which the decision of the Court of Appeal was rendered, it is nonetheless the case that the object of the request now advanced before the arbitral tribunal is essentially identical to that judged in that procedure … [The party to both procedures is, therefore,] bound by the decision of the Court of Appeal …”

The tribunal also held that it would not apply strict rules of res judicata, but that:

“the rules of good procedural order in an important number of countries including those of the European Community do not prevent any less a party to an arbitration from availing itself, for a request that is essentially identical and again presented as a request for interim relief …, of the successive possibilities offered by state jurisdictions … without there being an objective change in circumstances.”

As discussed above, these approaches are consistent with a proper analysis of the doctrine of preclusion as applied to arbitral awards in national courts. That analysis focuses on the objectives and expectations of the parties’ arbitration agreement, and particularly their presumptive desire to resolve all of their disputes in a single, centralized proceeding; in turn, for reasons already addressed, this produces international rules of preclusion whose general terms are mandated by the New York Convention, aimed at securing the final, binding character of international arbitral awards.


242 See §§27.01[3]-[6].

243 See §27.01[3]. See also Delgado Case, in Spain-United States Claims Commission (27 May 1881), in J. Moore, International Arbitrations to Which the United States Has Been A Party 2196, 2199 (1898); Danford Knowlton & Co. Case, Award of 31 March 1881, in J. Moore, International Arbitrations to Which the United States Has Been A Party 2194 (1898); Machado Case, Award of 12 July 1880, in J. Moore, International Arbitrations to Which the United States Has Been A Party 2193, 2194 (1898) (“the test is whether both claims are founded on the same injury”).

Referring Principles:

- XIII.1.2 - Interpretation of arbitration agreements
- XIII.4.5 - Conclusive and preclusive effects of awards; res judicata