

# RES JUDICATA IN ARBITRATION<sup>1</sup>

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## I. Introduction: *Res Judicata* and situations where it might arise in arbitration

As mentioned in the ILA Interim Report on “*Res Judicata* and Arbitration”<sup>2</sup>, the term *Res Judicata* refers to the general doctrine according to which an earlier and final adjudication by a court or arbitral tribunal is conclusive in subsequent proceedings involving the same subject matter or relief, the same legal grounds and the same parties (the so-called ‘triple-identity test’).

This doctrine exists in different legal cultures, it is a principle of international law and even a general principle of law, with the meaning of Article 38(1)(paragraph c) of the Statute of the International Court of Justice, which has been recognized by the International Court of Justice, by the European Court of Justice and also by arbitral tribunals applying international law.

As judgments, arbitral awards are generally accepted as having *res judicata* effect to a greater or lesser extent<sup>3</sup>, as is mentioned below.

However, there are **relevant particularities or specific questions** in the application of *res judicata* to arbitration and mainly to international arbitration. On the one hand, the application of *res judicata* in Common Law countries and in Civil Law countries varies considerably, and it varies even within the Common Law family and within the Civil Law family.

<sup>1</sup> \* The present text corresponds, with few changes, to the presentation made in the VII Congress of the Arbitration Center of the Lisbon Chamber of Commerce on 28 June 2013.

<sup>2</sup> Committee’s Interim Report on ‘*Res Judicata* and Arbitration’, Report of the Seventy-First ILA Conference, Berlin, 2004, available from the International Law Association and in pdf format at [www.ila-hq.org](http://www.ila-hq.org).

<sup>3</sup> Cfr. Interim and Final Reports.