1. In the absence of the parties' agreement, arbitration rules provide that the place of arbitration shall be determined by the arbitral tribunal or the administering institution.

2. Under Article 62 of the ICSID Convention, arbitration proceedings shall be held at the seat of the Centre in Washington D.C., unless, the parties agree to have the proceedings held at the PCA or any other place approved by the tribunal after consultation with the Secretary-General (Article 63 of the Convention). Pursuant to Article 16 of the UNCITRAL Arbitration Rules, absent the parties' agreement, the tribunal shall determine the place of arbitration. Pursuant to Article 14 of the ICC Rules of Arbitration, absent the parties' agreement, the Court will determine the place of arbitration.

3. Generally, arbitration rules allow tribunals and parties to hold hearings and meetings at a place different from the legal place of arbitration. This flexibility in most arbitral rules is of great convenience in practice, as it lessens the effect of the choice of one seat over another.

4. In determining the place of arbitration, arbitral tribunals and arbitral institutions will take into consideration different factors. These factors include accessibility; logistical capabilities such as suitable infrastructure to hold hearings, etc. Some factors are of great legal significance. Indeed, the place of arbitration determines the procedural law applicable to the arbitration and the courts empowered to review the award. Equally important in this regard is to determine whether the state where the seat of the arbitration would be located is a party to international instruments providing for the recognition and enforcement of arbitral awards.\(^1\) The attitude of the local judiciary towards arbitration will also be considered.

5. The rule under the ICSID Convention is that absent the parties' agreement to the contrary, the place of arbitration will be the seat of the Centre in Washington D.C. The place of arbitration in an ICSID Convention proceeding does not have the same legal implications attached to a non-ICSID Convention proceeding.\(^2\) Indeed, ICSID proceedings "are entirely self-contained and insulated from the legislation of the place of proceedings."\(^3\) Recognition, enforcement and

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\(^2\) Christoph H. Schreurer et al., The ICSID Convention, A Commentary (Second Edition), p. 1244 "…the place of arbitration under the ICSID Convention has little legal relevance." (Schreurer)

\(^3\) Schreurer et al p. 1244.
post-award remedies are also governed by the Convention itself. However, it is advisable that proceedings be held in a State Party to the Convention.

6. If the parties opt for the UNCITRAL Arbitration Rules to govern the proceedings, it would then fall on the arbitral tribunal, after giving the parties an opportunity to be heard, to determine the place of arbitration. The tribunal will take into account the circumstances of the case. These circumstances will include factors such as the (a) suitability of the law of the place of arbitration; (b) whether there is a treaty on enforcement of arbitral awards; (c) convenience of the parties and the tribunal, e.g., travel and logistics; (d) location of the subject matter of the dispute and proximity of evidence. Tribunals will also weight considerations of (e) neutrality.

7. Factors (d) and (e), apparently mutually exclusive, have been decisive in certain cases. Indeed, in investor-State arbitration the subject matter of the dispute and the evidence will almost invariably be in the host state. It has been noted that practical considerations "would speak in favor of holding proceedings in the host state. Neutrality of the place of arbitration is, however, essential.

8. For example, the NAFTA tribunals in Ethyl and Methanex, conducting proceedings under the UNCITRAL Rules, determined the place of arbitration in the host state, primarily, but not exclusively, based on factor (d). It should be noted in this connection that NAFTA Article 1130 effectively limits NAFTA tribunals' decision on the place of arbitration to one of the NAFTA parties.

9. In the ADF v. United States arbitration conducted under the ICSID Additional Facility Rules, the U.S. relied on the Decisions by the tribunals in Ethyl and Methanex to argue, inter alia, in favor of having the place of arbitration in Washington D.C., as a result of its proximity with the subject matter of the dispute and the bulk of the evidence. The tribunal in ADF agreed with the Unites States and designated Washington D.C. as the place of arbitration.

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4 Articles 50-55 of the ICSID Convention.
5 Schreurer et al p. 1245.
6 These factors are set out in the UNCITRAL Notes on Organizing Arbitral Proceedings-21-23.
7 Schreurer p. 1256. The author also notes that "the location of proceedings in the territory of an interested party may affect the independence of the …tribunal…"
8 Ethyl Corporation v. Canada (NAFTA/UNCITRAL), Decision Regarding the Place of Arbitration of November 28, 1997. The tribunal determined Toronto, Canada as the place of arbitration. At p. 9 of its Decision, the tribunal commented on the issue of neutrality. Methanex Corporation v. United States of America (NAFTA/UNCITRAL), Written Reason for the Tribunal's Decision of 7th September 2000 on the Place of the Arbitration. The tribunal determined Washington D.C. as the place of arbitration.
9 NAFTA Article 1130: unless the parties otherwise agree, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention…"
10 ADF Group Inc. v. United States of America (ICSID Case. No. ARB(AF)/00/1), Submission on Place of Arbitration of Respondent United States of America; and U.S. Final Observations on Place of Arbitration of Respondent United States of America.
11 Id. Procedural Order No.2 Concerning the Place of Arbitration.
By contrast, the tribunal in *Vito Gallo v. Canada*, another NAFTA tribunal conducting proceedings under the UNCITRAL Rules, while conscious of its limitations under NAFTA Article 1130, noted the importance of neutrality. The tribunal noted that the "perfect place" is one which is neither that of the investor nor the host state. In the same vein the tribunal in *Mobil v. Canada*, a NAFTA tribunal conducting proceedings under the ICSID Additional Facility Rules, considered the importance of neutrality. Canada argued that the proximity of the evidence pointed out to St. Johns, Newfoundland and Labrador, where the subject matter of the dispute was located, or Ottawa, where the Federal Government is established, as the place of arbitration.

The Claimants, two U.S. companies argued for Washington D.C. as the place of arbitration. In the alternative, the Claimants argued that Toronto would be the place which would raise less concerns as to neutrality, if the place of arbitration was designated in Canada. Relying on *Vito G. Gallo* the tribunal designated Toronto, which it considered neutral, as the place of arbitration.

An investment tribunal conducting a proceeding under the UNCITRAL Rules will consider within the circumstances of the case, among other factors, the place where the subject matter of the dispute and the evidence are located. At the same time, the tribunal will also take into account considerations of neutrality, and in interpreting a treaty without the limitation of NAFTA Article 1130, will consider different options, subject to the parties' respective positions thereon.

If the parties opt for the ICC Arbitration Rules, pursuant to Article 14 of the Rules and absent the parties' agreement, the Court will determine the place of arbitration. Under Articles 4(3)(f) and 5(1)(e) of the Rules, the Claimant and the Respondent have to state their respective position as to the place of arbitration for the Court's determination, in the request for arbitration and the answer, respectively. The parties may also agree that the arbitral tribunal, instead of the Court, determines the place of arbitration.

In making its determination, the Court will take into account the arbitration law of the relevant jurisdiction and the likely interference of the local judiciary in the arbitration; whether or not the state in question is a party to a convention such as the New York Convention. With respect to neutrality, the Court would in general avoid selecting the place of arbitration the parties' country

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13 *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada* (ICSID Case No. ARB(AF)/07/4), Procedural Order No. 1 of October 7, 2009, at para. 29. (*Mobil*)
14 Request for Arbitration of Mobil Investments Canada Inc. and Murphy Oil Corporation at paras. 5 and 6.
15 *Mobil* at 7.
16 *Mobil* at paras. 33, 42 and 43.
17 Factors set out in the UNCITRAL Notes on Organizing Arbitral Proceedings 21-23.
of origin. The Court will also consider convenience: logistical considerations and costs.\footnote{Id. 213-215.}