The Editors of this special issue of FORUM have invited me to comment on what the last 100 years “have brought in terms of drastic changes, continuity, evolution etc.” in the field of international arbitration. A convenient way to approach those questions is to look at what changes have occurred – or not occurred – in the slightly more than a century since the Convention for the Pacific Settlement of International Disputes was concluded at The Hague in 1899, establishing a permanent arbitration institution and promulgating a set of Rules for international arbitral proceedings (1899 Convention). A comparison of the arbitration provisions of that Convention with modern rules and laws reveals no drastic changes in fundamental concepts, but, rather, continuity of basic goals and evolution of procedures.

The continuity in the field of international arbitration during the last 100 years is particularly striking when we compare it with the vast changes in the political landscape during the same period. To appreciate the magnitude of those political upheavals, we need only read, and read between the lines of, the first paragraph of the 1899 Convention that lists the following heads of State as signatories:

“His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc. and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain and in His Name her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of all the Russians; His Majesty the King of Serbia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss Federal Council; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria.”

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Basic Concepts and Objectives of International Arbitration

The signatories of the 1899 Convention declared in the Preamble their resolve “to promote by their best efforts the friendly settlement of disputes,” as well as their desire for “extending the empire of law and of strengthening the appreciation of international justice” and their recognition of “the advantages attending the general and regular organization of the procedure of arbitration.” These same goals have continued to motivate the international community years later. Thus, for example, the General Assembly of the United Nations in 1976 when adopting a resolution recommending use of the then new Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL Arbitration Rules) stated that it did so “recognizing the value of arbitration as a method of settling disputes … and being convinced that the establishment of rules for ad hoc arbitration that are acceptable in countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations.” It can readily be seen that this echoes the basic beliefs that motivated the 1899 Convention. One change, however, is that the parties to the 1899 Convention proceeded on the basis that there was one “society of civilized nations” (Preamble), but the U.N. General Assembly in 1976 understood that in the modern world a text creating a system of international justice must not only express the values of one society but must show that it recognizes the need to accommodate “different legal, social and economic systems.”

Unchanged over the years is the basic definition of the objective of international arbitration. Modern arbitration rules, laws and court decisions could hardly state that objective more clearly than the succinct provision in the 1899 Convention that “International arbitration has for its object the settlement of differences between [parties] by judges of their own choice on the basis of respect for law” (Art. 15).

Enforcement of Arbitration Agreements and Awards

The objective of resolving disputes by arbitration cannot be achieved unless parties abide by their agreements to arbitrate and honor the awards that result. The 1899 Convention dealt with this in one brief, comprehensive and quite eloquent statement declaring that an agreement to arbitrate “implies the engagement to submit loyally to the award” (Art. 18). A century later, arbitration rules typically express that more directly and prosaically, saying that “awards shall be final and binding on the parties” (e.g., UNCITRAL Arbitration Rules, Art. 32, para. 2). To effectuate that, an elaborate system of conventions, national laws and court decisions has evolved to prevent parties who have agreed to arbitrate from submitting their disputes to national courts and to require that they comply with arbitral awards. In this regard, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) has been widely adhered to throughout the world and is