1996

Foreign Arbitral Awards: Enforcing the Award against the Recalcitrant Loser

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FOREIGN ARBITRAL AWARDS:
ENFORCING THE AWARD
AGAINST THE RECALCITRANT LOSER

Jane L. Volz & Roger S. Haydock

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The globalization of the world markets makes business dealings with foreign companies numerous and commonplace. As business grows between domestic and foreign companies, disputes are inevitable. Differences in custom, language, and culture can fuel disputes when a conflict arises. Accordingly, when dealing with a foreign business, it is important to plan for a fair and successful method of resolution.

The most favored method to settle disputes among private parties in international business transactions is arbitration.
Scores of countries have recently added or revised their international arbitration laws or ratified arbitration treaties to attract foreign business and compete in the world markets. Sophisticated arbitral institutions that deal with private disputes between foreign parties can be found in all corners of the world.3

Arbitration provides a neutral, private, predictable, and cost-effective mechanism to settle private international business disputes. In arbitration, parties are generally free to negotiate the applicable law, select the arbitration forum, and have a say in the choice of arbitrators. Additionally, the selected arbitrators can be experts in the particular area of business under dispute.4 International arbitration circumvents the traditional judicial systems, eliminating the fundamental bias that may occur either in favor or against a domestic or foreign party. More importantly, many foreign countries will recognize and enforce foreign arbitral awards but not foreign judgments rendered by a domestic court of a foreign jurisdiction.5 This anomaly results because many countries are parties to treaties that allow for the recognition and enforcement of foreign arbitral awards, but not foreign judgments.6

3. For an overview of the major international arbitral institutions, see Robert D. Fischer & Roger S. Haydock, International Commercial Disputes: Drafting an Enforceable Arbitration Agreement, 21 WM. MITCHELL L. REV. 941 app. at 975 (1995). Unfortunately, as international arbitration becomes more popular, arbitration rules and procedures of some arbitral organizations have tended to progress into a highly sophisticated form of dispute resolution. One commentator suggests that arbitration has become "an engine of adjudication indistinguishable from its judicial counterpart." Thomas E. Carbonneau, National Law and the Judicialization of Arbitration: Manifest Destiny, Manifest Disregard, or Manifest Error, in INTERNATIONAL ARBITRATION IN THE 21ST CENTURY: TOWARDS "JUDICIALIZATION" AND UNIFORMITY? 115, 130 (Richard B. Lillich & Charles N. Brower eds., 1994). In any event, arbitration, rather than litigation, still remains the preferred method of settling international disputes because of its speed, flexibility, neutrality, and ease in enforcing awards.

4. In a jury trial in the United States, potential jurors with expertise in the area of business under which the dispute arises often are disqualified.


6. For example, the United States has failed to become a party to any treaty governing the enforcement of United States judgments in any European country. Behr, supra note 1, at 213. Thus, to enforce a judicial award in Europe, one must look to the domestic law of the country where enforcement is sought. Id. at 214. However, the United States and most European countries have ratified international treaties allowing for the recognition and enforcement of foreign arbitral awards. See generally
Litigation is usually much more expensive, time consuming, psychologically taxing, and adversarial than arbitration. Attorneys' fees can be enormous. Years can go by before a final judicial decision is made. Also, litigation is generally a public affair, open to the press, which may be eager to hang out the dirty linen of any business caught up in a court fight. Further, in highly complex commercial disputes, litigation subjects businesses to the limited expertise typical of many juries and judges. Most importantly, litigation is subject exclusively to the domestic laws of the country where the lawsuit is brought. If you are a foreigner, bias, whether real or imagined, looms over the process.

Arbitration provides a valuable alternative to the battle-like atmosphere inherent in litigation. As Judge Learned Hand once remarked, "[A]s a litigant, I should dread a lawsuit beyond almost anything else short of sickness and death." Although there are other alternatives to litigation, such as negotiation and mediation, arbitration is the only alternative that can be binding on the parties. Therefore, it can achieve the same result as litigation—a binding award. Moreover, the arbitration can be performed in a neutral location, exempt from potential territorial prejudice.

The key to a successful arbitration is the enforceability of the award. The majority of arbitral awards are honored, without resistance, by the losing party. The vast number of arbitrations, and the lack of data exhibiting enforcement difficulties, illustrate the positive results of international arbitrations. While the process is private, the results in the form of a written award can be made public. The lack of adverse data is a reasonable confirmation of its phenomenal success.

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9. REDFERN & HUNTER, supra note 6, at 416.
Of course, as in all disputes, some losing parties will refuse to cooperate. They may balk at an arbitrator's decision and default, possibly severing the relationship between the parties while initiating a more litigious atmosphere. In instances of binding arbitration, the arbitrator, or arbitration institution performing the arbitration, typically lacks the power to enforce the award against a recalcitrant loser. Once the decision is rendered, the arbitrator's job is done.

A few countries do favor arbitral awards and allow enforcement without the official blessing of a court. This, however, is the exception rather than the rule. In most countries, enforcement can only take place after a local court has given permission to execute the award by public force. Judicial intervention is required by virtue of the fact that arbitral awards are not decided by local judges designated by the country but generally by private individuals selected by the parties. The procedures and the extent of control exercised by the domestic courts over awards in enforcement proceedings differ from one country to the next.

This article discusses the enforcement of international arbitral awards between private United States and foreign businesses after a valid, binding arbitral award has been rendered. This article provides an overview of the procedures required to enforce a foreign award from the perspective of a United States party, decided either by a permanent arbitral institution or in an ad hoc arbitration setting. While not an exhaustive treatment of all of the procedural particularities involved in the enforcement of an arbitration award against a noncomplying party, this article surveys the basics required to compel a foreign party to comply with the binding arbitral decision.


12. For example, in England, a foreign arbitral award can be directly enforced. REDFERN & HUNTER, supra note 6, at 418 n.6.

13. Davis, supra note 11, at 79. Generally, however, most courts will enforce arbitral awards without significant scrutiny into the merits of a dispute. Id.

14. This article does not discuss arbitration between a private party and a foreign country but rather concentrates on the enforcement of awards between private foreign parties.

15. See infra note 19.
Part II of this article discusses the important transnational treaties governing commercial arbitration, most importantly, the New York Convention. Part III examines the “Model Law” on commercial international arbitration, prepared by the United Nations Commission on International Trade Law (“UNCITRAL”), and its impact on international arbitration. Part IV, the focus of this article, explores the individual procedures required to enforce arbitral awards around the world.

This article concludes with practical tips to help ensure a successful arbitration. In addition, three appendixes are provided: (1) the text of the New York Convention; (2) the text of UNCITRAL’s Model Law on commercial international arbitration; and (3) a detailed table of nearly all of the recognized countries of the world, illustrating each country’s recognition of the important international arbitration treaties, including reservations available under the New York Convention.

It is not the intent of the authors to provide an all-inclusive picture regarding the enforcement of foreign arbitral awards in each country. To achieve such a task would require years of research and perhaps volumes of work because “[t]he field of international arbitration proliferates apace.” Furthermore, with the world constantly changing, as evidenced by governments coming in and out of existence and new laws continually being promulgated, practitioners must update themselves accordingly.

II. Transnational Treaties: Sources of International Law

International, multilateral, and bilateral treaties comprise the most vital sources of international law. The United States is a party to hundreds of transnational treaties. In addition to transnational treaties, international commercial arbitration is governed by several sources of law, including: (1) the national

16. Taiwan (Republic of China), although not officially recognized by the international community, is included because of its importance in international trade.


law governing the parties' capacity to enter into the arbitration agreement; (2) the law governing the arbitration agreement itself; (3) the law controlling the arbitral proceedings, such as the rules of a permanent arbitral institution like the International Arbitration Forum or an ad hoc arbitral body\textsuperscript{19} established by the parties; and (4) the law governing the substantive issues in the dispute.\textsuperscript{20}

The contracting parties can refer to the code of procedure of the arbitral organization, or they can set forth most of the applicable law in the arbitration clause contained in their contract, thereby ensuring predictability.\textsuperscript{21} Regardless of what laws govern, the critical issue in an international arbitration is whether the award can be easily enforced. Without the guarantee of enforceability, the arbitration becomes meaningless, a mere prelude to frustrating litigation.

Historically, many international organizations have attempted to ensure the enforceability of arbitral awards through multilateral treaties, beginning with the Geneva Protocol of 1923\textsuperscript{22} and followed by the Geneva Convention of 1927,\textsuperscript{23} both treaties collectively known as the Geneva Treaties. While the Geneva Treaties are essentially historical remnants today,\textsuperscript{24} they remain the building blocks of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention).\textsuperscript{25} The New York Convention is

\begin{flushleft}
\textsuperscript{19} In an ad hoc arbitration, the parties set out their own arbitration rules and procedures.


\textsuperscript{21} See generally Fischer & Haydock, \textit{supra} note 3 (discussing how to draft valid and enforceable arbitration clauses in international contracts between private foreign parties).


\textsuperscript{25} See \textit{infra} part II.B. for a discussion of the New York Convention.
\end{flushleft}
by far the most important international arbitration treaty today.\textsuperscript{26} Thus, it is helpful to take a brief look at the Geneva Treaties, which created the fundamental underpinnings of the New York Convention.

A. The Geneva Treaties

Both the 1923 Geneva Protocol on Arbitration Clauses (Geneva Protocol)\textsuperscript{27} and the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards (Geneva Convention)\textsuperscript{28} marked the beginnings of an attempt to unify and liberalize international commercial arbitration.\textsuperscript{29} Prompted by the International Chamber of Commerce in France, the Geneva Treaties were the first truly international arbitration treaties.\textsuperscript{30}

1. Geneva Protocol of 1923

In 1923, the League of Nations, predecessor to the United Nations, established the Geneva Protocol\textsuperscript{31} in an effort to make arbitration agreements and clauses enforceable on an international level.\textsuperscript{32} Specifically, its purpose was to guarantee the enforcement of arbitration awards in the nations in which the

\begin{itemize}
  \item \textsuperscript{26} Anthony T. Polvina, \textit{Arbitration as a Preventative Medicine for Olympic Ailments: The International Olympic Committee’s Court of Arbitration for Sport and the Future for the Settlement of International Sporting Disputes}, 8 EMORY INT’L L. REV. 347, 371 (1994). “[The New York] Convention has been the most successful international instrument in the field of arbitration, and perhaps could lay claim to be the most effective instance of international legislation in the entire history of commercial law.” Michael J. Mustill, \textit{Arbitration: History and Background}, J. INT’L ARB. June 1989, at 43, 49.
  \item \textsuperscript{27} Geneva Protocol, \textit{supra} note 22. Article I of the Geneva Protocol specifies that it applies to arbitration agreements made “between parties subject respectively to the jurisdiction of different Contracting States.” \textit{Id.} art. I, at 158.
  \item \textsuperscript{28} Geneva Convention, \textit{supra} note 23.
  \item \textsuperscript{29} Significant trading nations, including Brazil, Czechoslovakia, Denmark, Finland, France, Germany, Greece, India, Ireland, Japan, New Zealand, Norway, Poland, Portugal, Spain, Thailand, and the United Kingdom, became signatories to the Geneva Protocol. \textit{REDFERN & HUNTER}, \textit{supra} note 6, at 455 n.44. The United States, however, failed to adopt either the Geneva Protocol or the Geneva Convention. John R. Allison, \textit{Arbitration of Private Antitrust Claims in International Trade: A Study in the Subordination of National Interests to the Demands of a World Market}, 18 N.Y.U. J. INT’L L. & POL. 361, 381 (1986).
  \item \textsuperscript{30} \textit{REDFERN & HUNTER}, \textit{supra} note 6, at 61.
  \item \textsuperscript{31} Geneva Protocol, \textit{supra} note 22.
  \item \textsuperscript{32} \textit{REDFERN & HUNTER}, \textit{supra} note 6, at 455. See \textit{supra} note 29 for a listing of signatory nations.
\end{itemize}
ENFORCING ARBITRATION AWARDS

awards were rendered. Article I required ratifying nations to recognize
the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Despite a desire to internationalize commercial arbitration, the Geneva Protocol left much to be desired. In addition to clauses that permitted individual national policies to govern the arbitration process, drafting defects hindered the enforcement process. For example, nations could have varying interpretations on what was a “commercial matter.” Nations also could vary their interpretation of “existing and future differences.” Further, nations could disagree on which disputes were capable of settlement by arbitration.

Also, the Geneva Protocol only applied to arbitrations made between parties who were both subject to jurisdictions that had ratified the treaty. Courts had difficulty in determining what constituted jurisdiction. In complying with the jurisdiction component, some courts held it to be a nationality requirement, while others held it to be “a requirement of residence, domicile or usual place of business.”

Most significantly, the Geneva Protocol did little to impose guarantees of enforcement once an award was decided.

33. REDFERN & HUNTER, supra note 6, at 455.
36. Id.
37. Id.
38. Id.
40. REDFERN & HUNTER, supra note 6, at 455 n.43.
41. Id.
Ratifying nations needed only to enforce awards rendered in their own jurisdiction. Consequently, even if both disputing parties were determined to be in a jurisdiction that adhered to the Geneva Protocol, if the nation in which the award was made was not the nation in which the award was to be enforced, the successful party lacked power to enforce the award. This limitation defeated the fundamental purpose of the international nature of the Geneva Protocol: to enforce arbitration awards across international borders.

2. Geneva Convention of 1927

The Geneva Convention of 1927 expanded the force of the Geneva Protocol by providing for enforcement of arbitration awards outside of the nation in which the award was made, providing the nation in which the enforcement was sought was a party to the Convention. The Geneva Convention attempted to ameliorate the deficiencies of the Geneva Protocol while promoting international commercial arbitration. However, without substantive enforcement provisions, this treaty also lacked the actual power needed to allow for the recognition and enforcement of both arbitration clauses and awards.

Under the Geneva Convention, to enforce an award in a contracting nation when the award was rendered in a different contracting nation, Article I(d) required that “the award... become final in the country in which it has been made.” What “final” meant was left to the discretion of the nation in which the arbitration took place. Some nations required

43. REDFERN & HUNTER, supra note 6, at 61-62.
44. Id.
45. Id.
46. Geneva Convention, supra note 23.
47. REDFERN & HUNTER, supra note 6, at 62. The same parties that became signatories to the Geneva Protocol ratified the Geneva Convention with the exception of Brazil, Norway, and Poland. Id. at 62 n.26. See supra note 29 for a listing of signatories to the Geneva Protocol.
48. Panjabi, supra note 20, at 175.
49. REDFERN & HUNTER, supra note 6, at 456-57.
50. Geneva Convention, supra note 23, at 305.
51. Ramona Martinez, Recognition and Enforcement of International Arbitral Awards Under the United Nations Convention of 1958: The "Refusal Provisions," 24 INT'L LAW. 487, 504 (1990). “Finality” was required because of concerns that “the award should not be given binding effect in one country when it is not binding under the law where it was made.” Id.
court approval from the rendering nation for an award to be considered final.\textsuperscript{52} As a result, a party attempting to enforce an award would have to compel the local courts to grant leave to enforce the award, then go to the country in which the award was to be executed and seek court approval there.\textsuperscript{53} While the Geneva Convention was an improvement over the Geneva Protocol, its limitations proved daunting when attempting to enforce a foreign award.\textsuperscript{54}

B. The New York Convention of 1958

To rectify the deficiencies in the Geneva Treaties, the United Nations Economic and Social Council in 1956 drafted a multilateral convention to provide for a more “pro-enforcement” arbitral process that would further protect the integrity of international arbitration awards.\textsuperscript{55} A conference at the United Nations headquarters in 1958 ultimately produced the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,\textsuperscript{56} popularly known as the New York Convention.

The New York Convention has been hailed as the “cornerstone of current international commercial arbitration.”\textsuperscript{57} Described as “the single most important pillar on which the edifice of international arbitration rests,”\textsuperscript{58} it has gained phenomenal acceptance by the international community.\textsuperscript{59} Currently, over ninety countries have ratified the treaty and over

\begin{itemize}
\item \textsuperscript{52}  Id. at 504-05.
\item \textsuperscript{53}  REDFERN & HUNTER, supra note 6, at 456-57.
\item \textsuperscript{54}  The Geneva Convention, Article I(e), required that the “enforcement of the award [not be] contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.” Geneva Convention, supra note 23, art. I(e), at 305. This amorphous clause left awards open to attack. See REDFERN & HUNTER, supra note 6, at 456-57.
\item \textsuperscript{55}  Elise P. Wheeless, Article V(1)(b) of the New York Convention, 7 EMORY INT’L L. REV. 805, 806 (1993).
\item \textsuperscript{56}  New York Convention, supra note 24. For the full text of the New York Convention, see infra Appendix 1.
\item \textsuperscript{57}  ALBERT J. VAN DEN BERG, THE NEW YORK ARBITRATION CONVENTION OF 1958 1 (1981).
\item \textsuperscript{58}  J. Gillis Wetter, The Present Status of the International Court of Arbitration of the ICC: An Appraisal, 1 AMER. REV. OF INT’L ARB. 91 (1990)).
\end{itemize}
one hundred are signatories to the Convention. Moreover, additional countries are being added to the growing list of New York Convention parties every year, demonstrating an extraordinary satisfaction with the benefits under the Convention.

The fundamental purpose of the New York Convention is to eradicate the limitations under the Geneva Treaties and promote liberalized procedures for enforcing foreign arbitral awards. For example, the Geneva Treaties apply only to commercial claims, but the New York Convention can apply to both commercial and noncommercial matters. Also, unlike the Geneva Treaties, the New York Convention allows for the enforcement of an award in a noncontracting country. As a result, the New York Convention "confers legitimacy upon awards granted in any state, whether or not a contracting state, and whether or not the parties are subject to the jurisdiction of different contracting states."

1. Limitations of the New York Convention

The New York Convention permits contracting states to eliminate some advantages over the Geneva Treaties by allowing two reservations: the reciprocity reservation and the commercial reservation. Article I(3) of the New York Convention provides:

[Reciprocity Reservation]
When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Conven-
tion to the recognition and enforcement of awards made only in the territory of another Contracting State.67

[Commercial Reservation]
It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.68

The reciprocity reservation allows contracting states to permit enforcement only in the territory of other contracting states.69 Under the commercial reservation, a contracting state can choose to apply the Convention only to disputes arising out of legal relationships that are considered "commercial" under its laws.70 Thus, a state may reserve the right to apply the Convention exclusively to commercial disputes, as interpreted under its domestic laws.71 This reservation defeats one of the purposes of the New York Convention—to eradicate the deficiencies under the Geneva Protocol of 1923.

Over half of the contracting parties to the New York Convention, including the United States, have opted for the reciprocity clause reservation.72 Roughly one-third of the contracting parties have included the commercial reservation.73 Yet, despite the significant number of contracting states opting for the reservations, most countries construe them narrowly. Thus, "[n]either reservation is extremely important."74

2. Defenses to Enforcement Under the New York Convention

Article V of the New York Convention distinguishes five grounds on which an award can be refused. Grounds for refusal include: (1) incapacity of the parties;75 (2) improper notice of

68. Id.
69. Id.
70. Id.; see also REDFERN & HUNTER, supra note 6, at 459.
71. See Silverstein, supra note 65, at 454 n.79.
72. For a listing of countries that apply the reciprocity reservation, see Signatories to the 1958 New York Convention, 12 J. INT'L ARB. 113 (1995).
73. For a listing of countries that apply the commercial reservation, see id.
74. Allison, supra note 29, at 388.
the appointment of the arbitrator or of the arbitration itself; 76
(3) lack of jurisdiction, i.e., "[t]he award deals with a difference . . . not falling within the terms of the submission to arbitration"; 77 (4) procedural irregularities; 78 and (5) an invalid award based on the ground that the award was not "binding on the parties, or has been set aside or suspended by a competent authority of the country in which . . . that award was made." 79

In addition to the five grounds for refusal, an award can be denied by showing that "[t]he subject matter of the difference is not capable of settlement by arbitration under the law of that country." 80 Finally, an award can always be rejected if the jurisdiction in which the award is sought to be enforced finds the "award . . . contrary to the public policy of that country." 81

Though public policy grounds to deny enforcement remain the most amorphous, most countries, including the United States, have interpreted this narrowly. 82

The United States consistently upholds the enforcement of foreign awards under the New York Convention, demonstrating a "pro-enforcement bias" 83 by taking an "increasingly internationalist approach." 84 Correspondingly, most countries take the parallel approach of pro-enforcement with minimal judicial intervention. Nonetheless, many countries continue to struggle with the globalization of the markets and have difficulty with not having complete control of the execution of judgments where they did not participate in the decisions. This is especially true in the Latin and Central American countries, and in some

77. Id. art. V(1)(c), 21 U.S.T. at 2520, 330 U.N.T.S. at 42.
82. See, e.g., Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RATKA), 508 F.2d 969, 974 (2d Cir. 1974). In response to an attempt to declare an award invalid based on public policy arguments, the court held that awards should "be denied on this basis only where enforcement would violate the forum state's most basic notions of morality and justice." Id.
developing countries that remain suspicious of the western world.\textsuperscript{85}

\textbf{C. European Convention on International Commercial Arbitration}

The European Convention on International Commercial Arbitration,\textsuperscript{86} commonly referred to as the 1961 Geneva Convention, is more restrictive than the New York Convention because it applies exclusively to countries in eastern and western Europe.\textsuperscript{87} Eighteen European nations have become signatories, including France, The Federal Republic of Germany, Italy, and others.\textsuperscript{88}

The 1961 Geneva Convention was drafted specifically to address problems encountered between eastern and western European countries.\textsuperscript{89} While most of the ratifying nations to this Convention are also signatories to the New York Convention, the 1961 Geneva Convention was adapted for difficulties that may occur between communist-controlled countries of the Eastern bloc and non-communist European countries.\textsuperscript{90} Parties to the 1961 Geneva Convention are subject to specific procedural rules that remove the “role of national law in determining the grounds for setting aside an award.”\textsuperscript{91}

The 1961 Geneva Convention does not directly affect U.S. businesses because the United States is not a party. However, the Convention remains important to any private party engaging in business in Europe because it sets forth the procedural framework for the commonplace business interactions between European countries and thus can tangentially affect U.S. businesses. Accordingly, before entering into business transactions in Europe that utilize arbitration clauses, it is advisable to become familiar with the 1961 Geneva Convention.

\textsuperscript{85} See infra text accompanying notes 93-103.
\textsuperscript{87} Id., art. X(1), at 376.
\textsuperscript{89} Allison, supra note 29, at 382.
\textsuperscript{90} Id.
\textsuperscript{91} Id.
D. The Panama Convention of 1975

In 1975, the First Specialized Conference on Private International Law in Panama completed the Inter-American Convention on International Commercial Arbitration, commonly known as the Panama Convention. In the past, Latin American countries were particularly unwilling to utilize arbitration as a means of settling private disputes. This reluctance was due in large part to the influence of the Calvo Doctrine.

The Calvo Doctrine primarily resulted from "exploitation by large foreign-owned corporations of natural resources in the underdeveloped world during the late nineteenth and the early twentieth centuries." As increasing numbers of foreign investors began to saturate the developing countries in Latin America, the foreigners encountered numerous problems with local governments. Subsequently, the foreign investors began to demand protection from the local authorities. In turn, the Latin American governments granted diplomatic protection by allowing foreigners to "appeal to their home state for protection of their personal and property rights." This ultimately led to flagrant abuses, which, in response, resulted in the establishment of the Calvo Doctrine. This doctrine eluded any diplomatic protections under any circumstances and provides:


93. Justine Daly, Has Mexico Crossed the Border on State Responsibility for Economic Injury to Aliens? Foreign Investment and the Calvo Clause in Mexico After the NAFTA, 25 ST. MARY'S L.J. 1147, 1162 (1994).

94. Id.

95. Id.

96. Id.


98. Daly, supra note 93, at 1163 n.79.

99. Id. at 1163.

100. Id. at 1164.
First, that sovereign States, being free and independent, enjoy the right, on the basis of equality, to freedom from “interference of any sort” . . . by other states, whether it be by force or diplomacy, and second, that aliens are not entitled to rights and privileges not accorded nationals, and that therefore they may seek redress for grievances only before the local authorities.¹⁰¹

It is vital to understand the history behind the adoption of the Calvo Doctrine in order to fully grasp Latin America’s perceptions of international arbitration. “The United States and Europe regard the use of the Calvo Clause as an attempt at ‘non-responsibility,’ by which the host governments seek to immunize themselves from any international claims.”¹⁰² The Panama Convention demonstrates an affirmative stride toward breaking away from the Calvo Doctrine’s protectionistic mentality. Nonetheless, it is still common for Latin American countries, including Mexico, to adhere to the Doctrine. In fact, Mexico still retains a Calvo Clause in its constitution.¹⁰³

Argentina, Chile, Columbia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay, Venezuela, and the United States have signed and ratified the Panama Convention.¹⁰⁴ Bolivia, Brazil, the Dominican Republic, and Nicaragua have signed but not ratified the treaty.¹⁰⁵

The Convention provides for the reciprocal enforcement of commercial arbitration awards in contracting states:

An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.¹⁰⁶

¹⁰². Daly, supra note 93, at 1164.
¹⁰³. Id. at 1177-78. However, “Mexico, formerly the premier supporter of the Calvo Doctrine, has set aside that conviction to gain economically . . . even though the Mexican Constitution still contains a Calvo Clause.” Id.
¹⁰⁵. Brunel, supra note 104, at 53 n.78; see infra Appendix 3.
¹⁰⁶. Panama Convention, supra note 92, art. 4, at 337.
The Panama Convention mirrors the New York Convention in many respects. The only significant difference is that “[i]n the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission.”

Nevertheless, enforcing an award in a Latin American country adhering to the Panama Convention can still result in procedural dilemmas. “Despite legal provisions providing for the ... recognition of foreign awards, the procedural laws of many Latin-American countries frustrate the aim of international commercial arbitration . . . .” In some countries, it is not even worth applying to the courts for the enforcement of a judgment because one can become sunk in a quagmire of domestic laws which invariably leads to litigation in the domestic court system. In any event, the Panama Convention demonstrates a positive step in commercial arbitration in Latin American countries, a well-needed shift away from the debilitating effects of the Calvo Doctrine.

E. The Rome Convention of 1980

The European Economic Community (EEC) established the Convention on the Law Applicable to Contractual Obligations, commonly referred to as the Rome Convention, which allows signatories to choose what law shall govern contracts or specific portions of a contract. While not an arbitration treaty, the Rome Convention is essential to understanding the framework of trade in western Europe. Under the Rome Convention, parties have the freedom to choose any law regardless of whether it has some relationship to the transac-

107. Id. art. III, at 337.
108. See Redfern & Hunter, supra note 6, at 469 (quoting Alejandro M. Garro, Enforcement of Arbitration Agreements and Jurisdiction of Arbitral Tribunals in Latin America, 1 J. Int'l Arb. 293, 298 (1984)).
Consequently, when parties enter into an arbitration agreement, they can independently choose what law governs, ensuring certainty. The parties can also choose a different law for different portions of the contract.

Twelve nations, including Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, and the United Kingdom of Great Britain are parties to the Rome Convention.

F. The Impact of Bilateral and Multilateral Trade Treaties

There are hundreds of bilateral and multilateral trade treaties. Because these treaties generally deal with governmental entities, they will not be covered in depth here. However, it is worth noting a few in which the United States is a party and their impact on arbitration disputes between foreign private parties.

1. NAFTA

The North American Free Trade Agreement (NAFTA) expressly encourages the use of alternative dispute resolution techniques to settle disputes between private commercial parties. Under NAFTA, Canada, Mexico, and the United States must have legal mechanisms in place to enforce arbitration awards. In addition, a special trilateral committee under NAFTA will review and report on private dispute settlement issues.

112. Id. Conversely, under the Uniform Commercial Code in the United States, when choosing the governing law for a contract, parties must choose a law that has some relationship to the transaction. LOWRY, supra note 92, at 181.

113. Horlacher, supra note 111, at 178. In the United States, the Uniform Commercial Code does not allow such “unfettered choice of the applicable law.” LOWRY, supra note 92, at 181.


2. GATT

The General Agreement on Tariffs and Trade (GATT) provides a “legal framework for the conduct of trade relations between its member countries, a forum for trade negotiations and for the adaptation of its legal framework, and an organ for conciliation and settlement of disputes.” GATT expressly provides for the facilitation for the settlement of disputes. However, because it almost exclusively applies to member nations and not private businesses, it poses minor value to private parties in international business disputes.

III. UNCITRAL: A Unified Approach


119. LONG, supra note 118, at 5.
120. LOWRY, supra note 92, at 345. UNCITRAL was established in 1966 in an effort to promote unification of international Trade Law on a global basis.” Pierson, supra note 88, at 41. “The basic mandate of UNCITRAL is 'to further the progressive harmonization and unification of the law of international trade.'” Pierson, supra note 88, at 41. “The basic mandate of UNCITRAL is 'to further the progressive harmonization and unification of the law of international trade.'”
122. See infra Appendix 3.
UNCITRAL completed the final draft of the Model Law in 1985. The goal of UNCITRAL was to provide for the uniform enforcement of arbitral awards. While the New York Convention provides for a satisfactory means of enforcing foreign arbitral awards, over half of the United Nations members have failed to adopt it. UNCITRAL wanted to provide an alternative to the generally politically motivated unwillingness to jump on the bandwagon of the New York Convention. Because the nations adopting the Model Law have reproduced it without substantial modifications, it has proven its success.

IV. Enforcement of the Award

Most parties to binding arbitrations voluntarily comply with the arbitrators decision with little hesitation. When a losing party fails to abide by the arbitrator's decision, three strategies may be implemented to force the losing party to comply. First, the successful party can unilaterally attempt to force the losing party to follow the arbitrator's demand. The winning party can put pressure on the recalcitrant party by stating that it is in the party's best interest to perform the award or risk losing future business with the winning party. At this point, however, the opposing party likely has already contemplated the effects of its business relationship with the winning party and would have complied if it had mattered.

Second, adverse publicity may compel the losing party to pay up. If the business is a thriving one, it may want to avoid the


124. The Model Law was intended to provide the "uniform treatment of all awards, irrespective of their country of origin." Id.; see also Gerold Herrmann, The Contribution of UNCITRAL to the Development of International Trade Law, in 2 THE TRANSNATIONAL LAW OF INTERNATIONAL COMMERCIAL TRANSACTIONS, 35-36 (Norbert Horn & Clive M. Schmitthoff eds., 2d ed. 1982).

125. See supra note 60.

126. Ungar, supra note 123, at 720. UNCITRAL provides a "back door" means of acceding to the New York Convention." Id. at 721.


press. A final option is to force the losing party to perform the award by seeking court intervention through the country's judicial system. Instituting court proceedings is the last resort.

Two general methods are utilized in the enforcement of international arbitration awards: (1) summary enforcement under the laws of the particular country, and (2) suing on the award. The range of procedures vary from easily enforcing the award with little or no judicial intervention or review to full-blown judicial proceedings, potentially requiring the parties to reargue the entire claim in a competent court. Each country may differ in what is required to execute a judgment. The discussion below provides a description, region by region, of how binding arbitral awards are enforced.

A. United States

While the United States prides itself on being at the forefront of alternative dispute resolution, it lags behind western Europe and many Asian countries in promoting and adopting alternative forms of resolving disputes. For example, the United States never became a party to the Geneva Treaties, and it did not ratify the New York Convention until 1970. Most East Asian cultures have preferred friendly dispute resolution over adversarial litigation for thousands of years.

Jurisdiction of any claim under the Convention is vested with the federal district courts. The United States has opted for the commercial reservation: "An arbitration agreement . . . whether contractual or not, which is considered as commercial . . . falls under the Convention."

129. Because the focus is on enforcement of arbitral awards in foreign jurisdictions, this article does not discuss enforcement of foreign arbitral awards in the United States. For an in-depth examination of this topic, see generally Joseph T. McLaughlin, Enforcement of Arbitral Awards Under the New York Convention: Practice in U.S. Courts, in INTERNATIONAL COMMERCIAL ARBITRATION: RECENT DEVELOPMENTS, at 275 (PLI Com. Law & Practice Course Handbook Series No. 477, 1988).


131. See infra text accompanying notes 224-26.


133. Id. § 202. See supra text accompanying notes 67-71 for an explanation of commercial reservation.
B. Canada

Prior to acceding to the New York Convention in 1986, Canada participated in international commercial arbitration primarily on an ad hoc basis, adhering to common law rules. To avoid being left behind in the race for a piece of the world's market, Canada increasingly attempted to come up to speed with respect to international trade agreements. Nonetheless, reluctance by Canada's federal government to implement legislation without the prior approval of the provinces stifled this process.

Finally, after thirty years of debate, the provinces agreed to ratify the New York Convention, and the federal government acceded to the Convention. Problems remained, however. For example, each province adopted slightly different legislation. The most notable difference occurs in the commercial reservation. While each province has opted for the commercial reservation, allowing application of the Convention only in matters of a commercial nature, the definition of “com


135. Davidson, supra note 120, at 677, 682, 696. According to Davidson, "International trade is the life-blood of the Canadian economy." Id. at 677. Further, exports make up the "largest single source of jobs in Canada." Id.


137. Id. at 1436-37; see also Davidson, supra note 120, at 681 (discussing the negative ramifications of Canada's delayed accession to the New York Convention).

138. Davidson, supra note 120, at 682. For the appropriate legislation adopted by province, see Parker School of Foreign and Comparative Law, International Commercial Arbitration and the Courts 7 (1990).

139. Davidson, supra note 120, at 682.

140. United Nations Foreign Arbitral Awards Convention Act, ch. 21, art. 1(3), 1986 S.C. 813 (Can.). “[Any State] may also declare that it will apply the Convention only to differences arising out of legal relationships . . . which are considered as commercial under the national law of the State making such declaration.” Id. In addition, while most of the provinces allow for enforcement from noncontracting states (reciprocity clause), Saskatchewan, Friesen, supra note 136, at 1437 n.102, and Alberta do not, International Commercial Arbitration and the Courts, supra note 138, at 451-52.
commercial legal relationship” differs from one province to the next.  

On the other hand, Canada was the first country to adopt the UNCITRAL Model Law. Its applicability, however, is limited to “matters where at least one of the parties to the arbitration is a department or a Crown corporation or in relation to maritime or admiralty matters.” Under the UNCITRAL legislation, the Canadian courts refuse to hear challenges to arbitration awards absent “fraud, bias, or excess of jurisdiction.”

When dealing with a Canadian business, it is important to look at the legislation of the particular province in which an award may be enforced. That will be the law that governs enforcement. Most awards in Canada are complied with voluntarily. When a refusal occurs, the party seeking enforcement must go with an affidavit and a certified copy of the award to the court of the particular province in which enforcement is sought and seek an ex parte application.

Challenges to enforcement include (1) the incapacity of a party, (2) a lack of notice, (3) an award not within the terms of the arbitration agreement, (4) a tribunal not properly constituted, or (5) an award contrary to public policy.

The largest institutional arbitration center in Canada is the British Columbia International Commercial Arbitration Centre (BCICAC). The BCICAC was founded in 1986 when the Model Law was adopted.

141. Friesen, supra note 136, at 1437 n.102.
143. Id. § 5(2).
144. Harvey, supra note 134, at 273.
145. Id. at 279.
146. Id. This is the typical procedure outlined in the New York Convention. See New York Convention, supra note 24, art. IV.
148. Harvey, supra note 134, at 273. The BCICAC is located at Room 205, 355 Burrard Street, Vancouver, B.C. V6C 2G8; the telephone number is (604) 681-23351. Id. at 277.
C. Mexico

Because of Mexico's close proximity to the United States, it remains of critical importance when it comes to trade and private business ventures. In the past, arbitration of private disputes in Mexico was disfavored because of the lack of trust, as demonstrated by the Calvo Doctrine. Nevertheless, Mexico became a party to the New York Convention in 1971 and to the Panama Convention in 1978.

In 1977, the Mexican courts began to relax the strict procedural formalities required to enforce arbitral awards under Mexican law. Two prominent cases decided by Mexican courts, Malden Mills, Inc. v. Hilaturas Lourdes S.A. and Presse Office S.A. v. Centro Editorial Hoy S.A., demonstrated a willingness to recognize and enforce arbitral awards. Prior to these cases, Mexican courts repeatedly failed to honor arbitration awards. Thus, these decisions clearly mark a new trend in Mexico toward the enforcement of arbitral awards.

In addition, Mexico has amended its commercial laws to reflect the New York and Panama Conventions and to incorporate "principles embodied in UNCITRAL's Model Law." However, the new laws still retain procedural challenges. Enforcement of an award is governed by Mexico's Commercial Code, which is filled with numerous restrictions and formalities. All in all, the Mexican courts continue to maintain a stronghold over arbitral awards.

149. See supra text accompanying notes 95-103.
151. Id. at 927.
153. Id. at 301.
154. See generally Mayer, supra note 150 (discussing Mexico's prior unwillingness to enforce and honor awards).
155. Id. at 931 n.79.
156. See generally Mayer, supra note 150 (detailing the procedures to enforce a foreign arbitral award under Mexico's Commercial Code).
157. Because Mexico does not have a treaty allowing the enforcement of foreign judgments (except with Spain), arbitration is clearly the optimal choice regardless of the difficulties in the local courts. See Michael W. Gordon, Moderator, Arbitration of Commercial Disputes in Mexico and the United States: A Panel Discussion, 2 U.S.-MEX. L.J. 111, 123 (1994). In answer to a question asking whether enforcement of an arbitration award is more easily accomplished in Mexico than enforcement of a judicial judgment, Mexican attorney Jose Luis Siqueiros stated:
D. Central America

Central America, like Mexico, has just begun to accept arbitral awards in an attempt to attract foreign business. One significant factor has been the increase of democracy in these countries that has spurred a "wide variety of trade and investment initiatives." Additionally, most of the economically significant Central American countries have ratified some version of the New York Convention. Similarly, many of the countries also have ratified the Panama Convention.

Just over half of the ratifying Central American countries have opted for the reciprocity clause under the New York Convention, making recognition and enforcement available only to countries that have ratified the New York Convention. This poses no difficulty to U.S. businesses because of the recognition of such awards in the United States.

Essentially, if one is doing business in a Central American country, it is best to seek out the specific law of that country with regard to its recognition of arbitration awards. As discussed supra, most Central and Latin American countries still adhere to the "Calvo Doctrine" mentality and remain wary at times of U.S. businesses.

Enforcement of an arbitral award is ten times faster and cheaper [than a judicial judgment]. . . . If you would like me to enforce an arbitral award in Mexico, I would be happy to do it in less than three months. Give me a money judgment rendered by a United States court and I may not be able to enforce that judgment in ten years:

Id. at 124 (addressing commercial arbitration between U.S. and Mexican companies).


159. See Horacio A. Grigera-Naon, Latin America: Overcoming Traditional Hostility Towards Arbitration, in INTERNATIONAL COMMERCIAL ARBITRATION: RECENT DEVELOPMENTS, at 375, 377 (PLI Com. Law & Practice Course Handbook Series No. 477, 1988); see also infra Appendix 3 for a listing of Central American countries that have ratified the New York Convention.

160. See Grigera-Naon, supra note 159, at 377; see also infra Appendix 3 for a listing of Central American countries that have ratified the Panama Convention.

161. Barbados, Belize, Cuba, and Guatemala apply the reciprocity reservation. Signatories to the 1958 New York Convention, supra note 72, at 113.

162. See supra text accompanying notes 67, 69.

163. See supra note 72 and accompanying text.

164. See Grigera-Naon, supra note 159, at 394; see also text accompanying notes 93-103.
E. South America

South America is one of the few areas of the world that has frowned upon the use of private arbitration as a means of resolving business disputes between private foreign parties. Consequently, most countries in South America have not become signatories, nor ratified the New York Convention. In an attempt to join in the world economy, however, there is a trend toward accession to the New York Convention. Before entering into business transactions with a South American country where an arbitration clause is used, it is crucial to examine the current law with regard to arbitration in that country. Argentina and Brazil, important economic nations, are highlighted below.

1. Argentina

Argentina is a highly literate nation, yet it remains a third-world country. It is currently on the verge of a revolution to “transform the state-driven economy into a market-driven economy through mass privatization and deregulation.” Argentine President Carlos Menem stated that “Argentina is ready to triumph . . . and leave this true hell called the Third World.” To facilitate this transformation, Argentina has ratified the New York Convention and recently entered into the United States-Argentina Bilateral Investment Treaty. This treaty closely resembles NAFTA.

It remains to be seen how the effects of the New York Convention will aid in the enforcement of arbitral awards. Currently, to enforce a foreign arbitral award, the winning party must submit to judicial proceedings to obtain “exequatur.”

166. Id. at 103.
167. Id. at 96.
168. Id. at 114.
170. Snyder, supra note 165, at 114.
171. Sergio A. Leiseca & Thomas W. Studwell, Latin American Accounts Receivable: To Sue for Collection or to Refinance, 39 Bus. Law. 495, 496 (1984). Exequatur is defined as “leave to enforce the award.” Marcel Storme & Bernadette Demeulenaere,
Once exequatur, or the "final judgment," is granted, the successful party can follow through with the judgment as if it were a domestic judgment. Still, however, the normal judicial enforcement proceedings to attach assets or provide some alternative relief must be dealt with. This can be procedurally complicated.

2. Brazil

Brazil is not amenable to the enforcement of international arbitral awards. While Brazil is a member of the United Nations, it has refused to recognize the New York Convention. To enforce a foreign arbitral award in Brazil, the foreign party must get the award ratified by the local courts under their domestic laws.

F. Northern and Western Europe

The European Union (EU), formerly the European Economic Community (EEC), comprises most of the economically significant European nations. Generally, European countries are a step ahead of the rest of the world when it comes to commercial arbitration. As a result, most EU countries easily recognize and enforce foreign judgments with little judicial interaction. Because each country tends to differ in minor ways, it is best to seek out the particular laws of the country where enforcement is sought. Several representative countries are discussed below.

1. Belgium

Belgium has ratified both the New York Convention and the 1961 Geneva Convention. A party seeking enforcement of an award in Belgium must apply to the Belgium courts, specifically, the President of the Court of First Instance, for exequatur.\textsuperscript{176}

\textsuperscript{172} See Grigera-Naon, supra note 159, at 414.
\textsuperscript{174} Id.
\textsuperscript{175} STORME & DEMEULENAERE, supra note 171, at 3.
\textsuperscript{176} Id. at 107. The enforcement of domestic awards is set forth in the Gerechtelijk Wetboek: Code Judiciaire, Article 1710(1), which provides in its English translation:
Belgium treats awards rendered in a foreign jurisdiction differently from awards rendered in Belgium, regardless of the nationality of the parties to the arbitration. Foreign awards sought for enforcement in Belgium are typically governed by an international treaty like the New York Convention or the 1961 Geneva Convention.

The courts in Belgium will grant leave for enforcement of a foreign award by ex parte application. The court will refuse to grant leave for enforcement:

1. if the arbitral award is still open to appeal before the arbitrators and if the arbitrators have not ordered provisional enforcement notwithstanding appeal;
2. if the award or its enforcement is contrary to [Belgium’s public policy] or if the dispute is not capable of settlement by arbitration;

The arbitral award may be enforced only after the enforcement formula has been apposed by the President of the Court of First Instance, on the application of the interested party. The party against whom enforcement is sought, cannot present his views at this stage of the procedure.

*Id.* at 129-30.
177. *Id.* at 107.
178. *Id.* at 110-11, 113.
179. *Id.* at 112 (citing Article 1719(1), Gerechtelijk Wetboek/Code Judiciaire).
3. if there exists a ground for setting aside [an award] as provided in Article 1704 of the Gerechtelijk Wetboek/Code Judiciaire.\(^{180}\)

Belgium continues to be one of the foremost countries in enforcing foreign arbitral awards. Summary judicial proceedings are available, minimizing the extent of judicial control over the enforcement of an award.\(^{182}\)

2. **Sweden**

Sweden is a party to the Geneva Protocol of 1923, the Geneva Convention of 1927, and the New York Convention of 1958.\(^{183}\) Sweden has not chosen the reciprocity or commercial reservations under the New York Convention.\(^{184}\) In addition,

\(^{180}\) Article 1704 of the Gerechtelijk Wetboek/Code Judiciaire states in part:

2. An arbitral award may be set aside:
   (a) if it is contrary to [public policy];
   (b) if the dispute was not capable of settlement by arbitration;
   (c) if there is no valid arbitration agreement;
   (d) if the arbitral tribunal has exceeded its jurisdiction or its powers;
   (e) if the arbitral tribunal has omitted to make an award in respect of one or more points of the dispute and if the points omitted cannot be separated from the points in respect of which an award has been made;
   (f) if the award was made by an arbitral tribunal irregularly constituted;
   (g) if the parties have not been given an opportunity of substantiating their claims and presenting their case, or if there has been disregard of any other obligatory rule of the arbitral procedure, insofar as such disregard has had an influence on the arbitral award;
   (h) if the formalities prescribed in paragraph 4 of Article 1701 have not been fulfilled;
   (i) if the reasons for the award have not been stated;
   (j) if the award contains conflicting provisions;

3. An award may also be set aside:
   (a) if it was obtained by fraud;
   (b) if it is based on evidence that has been declared false by judicial decision having the force of *res judicata* or on evidence recognised as false;
   (c) if, after it was made, there has been discovered a document or other piece of evidence which would have had a decisive influence on the award and which was withheld through the act of the other party.

STORME & DEMEULENAERE, *supra* note 171, at 128.

181. *Id.* at 132 (citing Article 1723(1)-(3), Gerechtelijk Wetboek/Code Judiciaire).


184. *Id.*
Sweden has a Foreign Arbitrations Act, which details the rules required to enforce foreign arbitral awards.

To enforce a foreign award in Sweden, the winning party must submit to the Svea Court of Appeal, which has exclusive jurisdiction over such appeals, and get the award declared enforceable. The party must translate the award into Swedish to obtain exequatur. The award can then be enforced in the same manner as a court judgment.

Of course, challenges are available to attack the award. An award can be challenged on grounds that (1) the arbitrators exceeded their authority; (2) the arbitration should not have been conducted in Sweden; (3) the arbitrator was improperly appointed or disqualified; (4) through no fault of the complaining party, there was a procedural error that influenced the outcome. Also, the party challenging the award must do so within sixty days from being notified of the award or be otherwise barred from attacking the award. Though awards are often challenged, the challenges have met with little success. Finally, an award can be refused if it contravenes Swedish public policy. Sweden, like Belgium, allows summary judicial proceedings in enforcing a foreign arbitral award and clearly remains on the forefront of commercial arbitration.

3. Switzerland

Switzerland is also on the cutting edge of commercial arbitration. While arbitration has become "increasingly slower and expensive, and awards more difficult to enforce," Switzerland maintains simplified arbitration procedures, thus adhering to the underlying philosophy of arbitration. The Swiss

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187. Id.
188. Id. This requirement is not strictly upheld. Id.
189. Id.
190. Id.
191. Id.
192. Id. At least one Swedish commentator, however, has never heard of an award being refused under public policy grounds. Id.
Federal Act on Private International Law, \textsuperscript{194} enacted in 1989, grants arbitrators more power while reducing the domestic court’s authority. \textsuperscript{195}

The rules embodied in the Swiss Federal Act have been “specifically tailored to the needs of contemporary international arbitrations.” \textsuperscript{196} However, the Act applies only to arbitrations performed in Switzerland between a domestic and foreign party. \textsuperscript{197} Thus, if one is doing business with a Swiss party, it may be advantageous to have the arbitration performed in Switzerland.

Under the Act, the arbitral tribunal can seek assistance from the local courts to enforce the arbitrator’s award, assuming the relevant assets are located in Switzerland. \textsuperscript{198} Moreover, because Switzerland is a party to the New York Convention, foreign awards will be recognized in its domain, regardless of whether the award was made in a country that has ratified the New York Convention. \textsuperscript{199} Switzerland has not opted for the reciprocity reservation and thus respects judgments made by noncontracting states. \textsuperscript{200}

\textbf{G. Eastern Europe (Including Former Soviet Bloc Countries)}

“Everything is in a state of flux in the Eastern European countries.” \textsuperscript{201} The recent fall of communism in Eastern Europe brought a surge of optimism and enthusiasm for a bright and promising future. \textsuperscript{202} Unfortunately, bitter rivalries, destruction, death, and utter chaos have become the recent fallout in certain areas. \textsuperscript{203} With that, the judicial systems have been unable to handle the enormous caseload resulting from the communist past. \textsuperscript{204} In addition, the local courts lack

\textsuperscript{195} Kaufmann, \textit{supra} note 193.
\textsuperscript{196} \textit{Id.}
\textsuperscript{197} \textit{Id.}
\textsuperscript{198} \textit{Id.}
\textsuperscript{199} \textit{Id.}
\textsuperscript{200} \textit{Id.}
\textsuperscript{202} \textit{Id.} at 519.
\textsuperscript{203} \textit{Id.} at 520.
\textsuperscript{204} \textit{Id.} at 527.
experience and expertise in handling international commercial disputes. Consequently, arbitration is the only rational choice available to international parties in conflict.

In fact, foreign arbitral awards are given more recognition than foreign judgments. The same issues that create difficulties in the judicial systems, however, cause obstacles to enforcing foreign arbitral awards. Eastern European countries have been amenable to foreign arbitral awards but reluctant to accept awards from the International Chamber of Commerce in Paris. Once again, because these countries are in a state of flux, it is best to consult the current law of the particular jurisdiction in which an award may need to be enforced.

H. CIS States

The Commonwealth of Independent States (CIS) includes Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russia, Turkmenistan, Ukraine, Uzbekistan, Armenia, Moldova, Tajikistan, and Georgia. The CIS was formed after the Union of Soviet Socialist Republics (USSR) was disbanded, and its governmental organization is new and unpredictable. Consequently, while most of the member states are eager to engage in western economics and businesses, risks are great. Opportunity for U.S. business, on the other hand, may outweigh the risks. The CIS states are rapidly acceding to the New York Convention, and only time will tell as to how these nations will deal with enforcement of foreign awards.

I. Middle East

"Interest in arbitration in all fields has been steadily increasing in the Middle East with several countries in the

205. Id.
206. Id. at 527-28.
207. Id. at 528.
208. Id. at 529.
209. See Commonwealth of Independent States (CIS), available in MICROSOFT (R) ENCARTA (Funk & Wagnalls Corp. 1994). CIS was founded in 1991 and was modeled after the European Union (formerly the EEC). Id.
210. See id.
211. See infra Appendix 3 (indicating which CIS states adhere to the New York Convention).
region setting up arbitration centers." 212 Many Middle Eastern countries have recently ratified the New York Convention. 213 On the other hand, some of the smaller Middle Eastern countries, including Yemen, Oman, and Qatar, have not. 214

Saudi Arabia, one of the most important Middle Eastern countries, 215 has the largest gross domestic product among the Middle Eastern countries. 216 To increase international trade, in 1994, Saudi Arabia ratified the New York Convention. 217 Saudi Arabia’s recent accession to the New York Convention has been described as a “curative remedy for a problem affecting Saudi foreign trade relations.” 218

Prior to its accession to the Convention, it was risky for foreign corporations to do business in Saudi Arabia. An official from the Commerce Department stated that “Saudi Arabia is the only Middle East nation where U.S. firms can’t seem to resolve contract disputes.” 219 In 1992, approximately 500 million dollars worth of claims from U.S. businesses remained unsettled. 220

On the other hand, foreign arbitral awards allegedly “have the same status as a judgment issued by a relevant judicial body and are just as enforceable as the judgment issued by courts resulting from litigation.” 221 It is too early to tell how the

212. Soman Baby, Joint Efforts to Promote Arbitration are Sought in Bahrain, EGYPTIAN GAZETTE, Dec. 2, 1993 (quoting the president of the Bahrain Society of Engineers, Emad Almoayed).
213. See infra Appendix 3 for the Middle Eastern States that have ratified the New York Convention.
217. Id.
218. Id.
220. Id.
Saudi courts will interpret the enforcement procedures under the New York Convention.

U.S. businesses are becoming increasingly interested in investing in Saudi Arabia because of the highly skilled and educated labor pool, which is inexpensive compared to other countries. As foreign business increases in Saudi Arabia, the country will continue to face cultural struggles, which may result in the lack of positive enforcement proceedings. The accession to the New York Convention is perhaps one small step toward the continuing acceptance of foreign arbitral awards.

J. China

Both mainland China and Taiwan affirmatively support international commercial arbitration and the recognition and enforcement of foreign awards in their territories. However, significant cultural differences between China and the western world continue to cause friction between Chinese and U.S. businesses.

1. The People’s Republic of China (Mainland China)

Businesses in the People’s Republic of China (China) favor resolving disputes through mediation or conciliation, the rationale being, “you suffer a little loss, and I suffer a little as well, and we are good friends.” Unlike the adversarial nature inherent in dispute resolution in the United States, the Chinese prefer “friendly consultation,” and litigation is only executed as a last resort. If friendly conciliation or media-

222. Roy, supra note 59, at 921.

223. Id. According to Roy, because Saudi Arabia has traditionally been unfriendly to the enforcement of foreign arbitral awards, the Saudi government may likely rely on the public policy exception available under the New York Convention to deny the enforcement of foreign arbitral awards. Id. at 923. Roy’s article provides an excellent background to Middle Eastern countries like Saudi Arabia and the recent accessions to the New York Convention.


tion fails, foreign parties doing business in China typically turn to binding arbitration, not court intervention.\textsuperscript{226}

China joined the New York Convention in 1958 and ratified the Convention in 1987, thus recognizing foreign arbitral awards.\textsuperscript{227} Nearly all commercial arbitrations in China are conducted in Beijing at the China International Economic and Trade Arbitration Commission (CIETAC)\textsuperscript{228} or in Shenzhen or Shanghai where CIETAC operates sub-commissions.\textsuperscript{229} Maritime disputes are handled by the China Maritime Arbitration Commission (CMAC), the only other international arbitral institution in China.\textsuperscript{230} Ad hoc arbitration is not permitted inside China, although a foreign ad hoc arbitral award can be enforced in China by virtue of the New York Convention.\textsuperscript{231} Because Chinese companies abhor the thought of arbitrating in another country, they customarily insist that the arbitration take place in China.\textsuperscript{232}

\begin{itemize}
\item \textsuperscript{226} See Hua Chen, \textit{China and its Arbitration System in Foreign Trade}, 68 U. DET. L. REV. 457, 458-60 (1991). Most often, when a dispute arises between a Chinese and foreign business, the parties will first undertake friendly consultation. If that fails, they will attempt mediation. Arbitration is instituted only as a default resolution technique. \textit{Id.} Under Chinese law, international commercial contracts must contain a provision for arbitration. If a Chinese company defaults from a binding arbitration award, the victor's final remedy lies in the Chinese courts. Schulberg, \textit{supra} note 225, at 140.
\item \textsuperscript{227} Chen, \textit{supra} note 226, at 469.
\item \textsuperscript{228} \textit{China's Arbitration System: Mutual Dissatisfaction}, BUSINESS CHINA, Aug. 23, 1993. CIETAC, called the Foreign Trade Arbitration Commission (FTAC) at the time of its inception in 1956, was founded by the China Council for the Promotion of International Trade “to settle disputes arising from contracts and transactions in foreign trade, particularly those disputes between foreign firms, companies, or other economic organizations.” Chen, \textit{supra} note 226, at 457. In 1980, FTAC became the Foreign Economic and Trade Arbitration Commission (FETAC). \textit{Id.} at 458. FETAC was renamed the China International Economic and Trade Arbitration Commission (CIETAC) in 1988. \textit{Id.} at 459.
\item \textsuperscript{229} See Wong, \textit{supra} note 224; \textit{China's Arbitration System: Mutual Dissatisfaction}, \textit{supra} note 228.
\item \textsuperscript{230} Song Dihuang. \textit{People's Congress Finally Regulates China 's Domestic and International Arbitration,} LLOYDS LIST, Nov. 18, 1994, available in DIALOG, Lloyds List Database, 1994 WL 8816683. CMAC, formerly the Marine Arbitration Council, was established in 1959 by the China Council for the Promotion of International Trade (CCPIT). See Chen, \textit{supra} note 226, at 457. This article does not discuss arbitration under CMAC.
\item \textsuperscript{231} Dihuang, \textit{supra} note 230.
\item \textsuperscript{232} Wong, \textit{supra} note 224. “Foreigners doing business in China have tremendous pressure to agree to arbitrating in China . . . . It is a little unfair. CIETAC is a Chinese national institution, so it's difficult to get a neutral tribunal and obtain a neutral arbitration.” \textit{Arbitration Disputes Triple in Three Years,} SOUTH CHINA MORNING POST, Dec. 1, 1994, available in DIALOG, South China Morning Post Database, 1994 WL 9326992 (quoting Alastair Crawford, an attorney practicing international arbitration in Asia).
\end{itemize}
"Beijing has become one of the busiest international commercial arbitration centres in the world."233 In fact, in 1994, CIETAC handled more arbitrations than any other organization in the world.234 Under CIETAC, foreigners and Chinese are considered "equal before the law."235 Statistics show that decisions under CIETAC are rendered about the same amount for foreigners as for the Chinese.236

To initiate proceedings under CIETAC, a plaintiff must submit an application for arbitration, similar to a complaint presented in litigation.237 Claims, facts, and evidence to support the plaintiff's claim, including the arbitration agreement on which the application is based, must be included.238 A nominal fee is paid, arbitrators are appointed (the plaintiff and defendant each select one and CIETAC selects the presiding arbitrator),239 and a hearing is conducted.240 Within thirty days of the hearing, a non-appealable majority decision is reached.241 Once CIETAC renders a decision, its job is done. CIETAC, like nearly all arbitral institutions, has no authority to enforce an award rendered against a party.242

The enforcement of arbitration awards is subject to the procedural rules found in the People's Republic of China Procedure Code, Article 195, which describes judicial enforcement of arbitration decisions.243 Article 195 provides:

When one party concerned fails to implement the ruling made by the PRC foreign affairs arbitration organ, the other party concerned may request that the ruling be carried out in accordance with this law by the intermediate people's
court of the place where the arbitration organ is located, or where the property is located. 244

Consequently, if the Chinese party loses and refuses to comply with the arbitrator’s award, the winning party must submit to the People’s Court to enforce the award. Court intervention remains the ultimate drawback of arbitrating in the People’s Republic.

Moreover, because of local protectionism in China, it may be difficult to enforce an award inside its border. 245 On the other hand, while CIETAC handled over 500 cases in 1993, 246 less than ten cases had documented enforcement problems. 247 To minimize enforcement dilemmas, the Supreme People’s Court in China has directed the local courts not to interfere with such awards, requiring that any review be done in Beijing. 248 Most importantly, however, China recently revamped its international arbitration laws making the laws more conducive to foreigners. 249

The Arbitration Act of The People’s Republic of China, adopted on August 31, 1994, by the Eighth National People’s Congress, came into force on September 1, 1995. 250 Under this state-of-the-art arbitration law, modeled after UNCITRAL, arbitration with Chinese businesses will presumably be more amenable to foreign corporations doing business in China. The Act, like UNCITRAL, has eight chapters. 251 As the former international arbitration laws of China required, enforcement of an award against an unwilling party requires application to the People’s Court. 252

Article 260 of the Act provides six conditions under which Chinese courts can refuse to enforce an award: (1) there is no arbitration agreement; (2) the arbitration is beyond the scope

244. Id.
245. Wong, supra note 224.
246. Arbitration Disputes Triple in Three Years, supra note 232.
247. Wong, supra note 224.
248. Id.
249. Dihuang, supra note 230.
251. Id. Chapter 5 of the Act provides for the rules to set aside awards. Id. Enforcement of awards is discussed in Chapter 6 of the Act. Id.
252. Id.
of the agreement or the arbitration institution has no jurisdiction; (3) the composition of the arbitral body or the arbitration procedures violate statutory procedure; (4) evidence is concealed resulting in an unfair hearing; (5) an arbitrator seeks or accepts a bribe, misbehaves, or bends the law; or (6) the award violates public policy. Moreover, if the award is set aside by the court, a new arbitration cannot begin unless both parties consent to another arbitration agreement.

Despite China’s commendable advances toward fair, efficient dispute resolution, China remains a communist country with the potential for severe political unrest. Repeated exploitation of the labor force demonstrated by child labor and sweat shops has created friction between the United States and China. Political unrest always presents risks when trying to enforce foreign awards because the courts will inevitably be a major player in the process when the losing party fails to cooperate. On the other hand, China’s road toward westernization is well under way, and China must support the recognition and enforcement of foreign awards if it wants to be a dominant actor in the global economy.

2. The Republic of China (Taiwan)

The Republic of China (ROC) effectively controls an area roughly one-sixth the area of Minnesota (approximately 14,000 square miles). Despite its diminutive size, in 1989 it ranked twelfth in the world as an exporting nation and was the fifth leading trading partner of the United States. The ROC, unlike the People’s Republic of China, has a “bustling Western-style market economy.” Notwithstanding its economy,

253. Id.
254. Id.
255. See Marcus W. Brauchli & Joseph Kahn, Labor’s Pains: China’s Workers Encounter Hardship on Capitalist Road, ASIAN WALL ST. J., May 20, 1994, available in WESTLAW, WSJ-Asia Database, 1994 WL 2008231. Repeated labor strikes, soaring inflation, and high unemployment have created a politically volatile situation making business risky for foreigners. Id.
256. Hungdah Chiu, The International Law of Recognition and the Status of the Republic of China, 3 J. CHINESE L. 193, 193 (1989). In 1989, the population of the ROC was approximately twenty million. Id.
257. Id.
258. Edward G. Durney, Copyright Law in China and Taiwan, in GLOBAL INTELECTUAL PROPERTY SERIES 1993: PROTECTING TRADEMARKS & COPYRIGHTS SUCCESSFUL STRATEGIES, at 311, 313 (PLI Patents, Copyrights, Trademarks, and Literary Property
Taiwan is not officially recognized internationally. Because it is not recognized, it cannot ratify the New York Convention.

K. Hong Kong

Hong Kong, currently under British jurisdiction, recognizes the importance and value of arbitration in resolving disputes. Since 1980, Hong Kong has attempted to establish itself as a major international arbitration center for the Pacific Rim region. While Hong Kong is not a formal signatory to the New York Convention, the Convention extends to Hong Kong through Britain. Currently, the New York Convention is an integral part of Hong Kong's arbitration statute.

In 1997, Hong Kong will revert to Chinese rule. This forthcoming change in sovereignty raises a myriad of uncertainties over the status of Hong Kong's arbitration system. In fact, statistics already demonstrate a decrease in willingness to arbitrate in Hong Kong. For example, the Hong Kong International Arbitration Centre decreased its case load from 185 cases in 1992 to 139 cases in 1993, a twenty-five percent reduction.

Fortunately, to "ease the concern among the territory's legal profession," China's recently promulgated arbitration law, taking effect September 1, 1995, is likely to restore Hong Kong's status as an international arbitration arena. The law minimizes court intervention, allows foreigners to act as arbitrators, and removes the possibility of disputes arising from differing
interpretations between Hong Kong and China. This new arbitration law will purportedly “bring it closer to western economies in settling disputes.” Nonetheless, arbitral awards between Hong Kong and China still must be enforced through the People’s Court.

L. Southeast Asia

1. Japan

Japanese and U.S. corporations are rapidly doing more and more business together. Accordingly, litigation is not an uncommon occurrence. “The most serious legal problem in U.S.-Japanese transnational litigation is the enforcement of a judgment against a Japanese defendant.” Hence, arbitration provides a worthy alternative because arbitration awards are significantly easier to enforce.

Japan has ratified the New York Convention. The Japanese Code of Civil Procedure, Article 800, provides that an arbitration award has the same effect as a judgment and is conclusive between the parties.

2. Indonesia

In 1981, Indonesia ratified the New York Convention. The implementory regulations necessary for the Indonesian courts to comply with the Convention were not issued, however, until 1990. A recent decision, overruling the chairman of the Indonesia Supreme Court’s order that foreign arbitral

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266. Chan, supra note 263.
267. Id. (quoting Terence Tung, a solicitor with the law firm of Johnson, Stokes and Master).
268. Dihuang, supra note 230.
269. Dr. Thomas S. Mackey, Litigation Involving Damages to U.S. Plaintiffs Caused by Private Corporate Japanese Defendants, 5 TRANSNAT’L LAW. 131, 172 (1992) (discussing the difficulty in enforcing judgments in Japan).
270. Id. at 182.
272. Id. art. 800., 2A WORLD ARBITRATION REPORTER, at 1937.
awards be enforced, demonstrates that foreign arbitral decisions may not be respected in the Indonesian courts, despite ratification of the New York Convention.275

Indonesia has opted for both the reciprocity and commercial reservation under the New York Convention.276 Thus, to enforce an award, the award must be rendered in a country that is a party to the Convention and the dispute must be commercial as interpreted by Indonesian law.277 A party seeking enforcement must obtain a writ of execution from the supreme court in Jakarta.278

An application can be made to the Clerk of the Central Jakarta District Court by submitting an original or an authenticated copy of the contract and the arbitral award.279 The contract and award must be translated into Bahasa Indonesia.280 In addition, the award must be accompanied by a statement from the Indonesian diplomatic representative in the country where the award was rendered, indicating its adherence to the New York Convention.281

The district court then submits the application to the supreme court within fourteen days.282 After the supreme court reviews the application, a writ is sent back to the district court for enforcement or, if necessary, transferred to another court having proper jurisdiction over the award.283

3. Singapore

The Republic of Singapore has a population under three million with an area of only 240 square miles.284 It consists of the central island of Singapore and fifty-four surrounding islets.285 In spite of its small size, Singapore ranks as the

275. Id.
276. Chyi, supra note 273.
277. Id.
278. Id.
279. Id.
280. Id.
281. Id.
282. Id.
283. Id.
285. Id.
world's second largest international port. While Singapore has a diverse population of Chinese, Malay, and Indians, its primary language is English.

In October 1994, Singapore passed the International Arbitration Act 1994 (IAA). The IAA is patterned after UNCITRAL's Model Law. Prior to the enactment of the IAA, Singapore's laws on arbitration were compiled in the Arbitration (Foreign Awards) Act, now repealed. In addition, Singapore has ratified the New York Convention and has established the Singapore International Arbitration Centre in an effort to encourage foreign business relations.

4. Thailand

Thailand is governed by a parliamentary system of democracy. Its law derives from a set of civil codes, and, unlike the common law system, the country's judicial decisions do not constitute binding precedent or law. Thailand's tremendous economic growth has lured foreign investors, including foreign manufacturers and suppliers.

Despite its burgeoning economy, Thailand, like a few southeast Asian countries, remains suspicious of international arbitration. However, to increase foreign investment, Thailand has opened an arbitration office in the Ministry of Justice. This institution "provides foreign businesses a means of resolving disputes outside the confines of the Thai legal

286. Id.
287. Id. at 1040-41.
290. Id.
291. Id.
293. Id. at 105-06.
294. Id. at 99-100.
295. Id. at 100.
296. Id.
In conjunction with opening the arbitration office, Thailand enacted the Arbitration Act 1987. Enforcing an arbitration award in Thailand is simple under the procedure provided in Section 23 of the Act. The party wishing to enforce the award in Thailand must request a court judgment within a year from the time the award was rendered. A court may deny enforcement of the award "[i]n case[s] where the court is of the opinion that an award is contrary to the law governing the dispute, is the result of any unjustified act or procedure or is outside the scope of the binding arbitration agreement or relief sought by the party."

While Thailand has not officially ratified the New York Convention, it became a signatory in 1959 and the courts generally abide by its terms. Thus, if the Thai party does not have assets in Thailand, the prevailing party can seek enforcement in another country providing that country has ratified the New York Convention.

Nonetheless, because of the broad array of defenses available to the losing party under Thailand's Arbitration Act, which facilitate a possible vacation of the award, arbitration lacks "appeal and utility." After arbitration, parties can end up litigating the whole matter in the Thai court system—a procedure that the parties wanted to avoid in the first place. On the other hand, arbitral awards in Thailand are more easily enforced under the New York Convention than awards rendered by national courts. Hence, arbitration still remains "an attractive alternative to submitting [a] dispute to the Thai courts."

297. *Id.*
300. *Id.* at 114.
301. *Id.* at 115 (quoting Section 24 of the Arbitration Act).
302. *Id.* at 116.
303. *Id.*
304. *Id.* at 115-16.
305. See *id.*
306. *Id.* at 119.
307. *Id.* at 121.


M. Africa

Acceptance of the New York Convention is limited in Africa. Nevertheless, African nations, unlike Latin and South American countries, generally accept arbitration as a dispute resolution technique. While nearly all African nations have arbitration statutes, many of these laws lack specific provisions for the enforcement of foreign arbitration awards, creating problems when a party refuses to comply. However, some African nations treat arbitral awards the same as judgments of foreign courts in reference to enforcement.

In Africa, antiquated arbitration laws established by colonial governments predominate, causing difficulty in dealing with the courts. Accordingly, before contracting with an African nation, it is necessary to become familiar with the applicable laws of the particular nation and to watch your step.

V. Conclusion

If valid arbitration clauses are carefully drafted, enforcement presents little difficulty because history demonstrates that parties will, in practice, voluntarily abide by arbitration awards. Only when rebellious losers refuse to honor the awards do complications arise. Undoubtedly, the most critical component in dealing with a foreign business is the law of the particular jurisdiction where an arbitration award needs to be enforced. Without the guarantees embodied in the New York Convention, UNCITRAL, or the Panama Convention, business becomes precarious when disputes arise that require arbitration. Consulting attorneys in the country where an award may need to be enforced is a prudent choice—before a dispute arises.

308. Only 14 African countries have ratified the Convention. Ratifying countries include Benin, Botswana, Burkina Faso, the Central African Republic, Djibouti, Egypt, Ghana, Madagascar, Morocco, Niger, Nigeria, South Africa, Tanzania, and Tunisia. Ungar, supra note 123, at 723 n.32.
309. See supra part IV.C-E.
310. Ungar, supra note 123, at 736.
312. Id. at 415.
313. Ungar, supra note 123, at 736.
314. Id. at 737.
Appendix 1

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS.†

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

† Done at New York on June 10, 1958.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
   (a) The duly authenticated original award or a duly certified copy thereof;
   (b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.
Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting State nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is
Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favorable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.
Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X, and XI;
(d) The date upon which this Convention enters into force in accordance with article XII;
(e) Denunciations and notifications in accordance with article XIII.

Article XVI
1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.
Appendix 2

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION†

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

(1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or


1. Article headings are for reference purposes only and are not to be used for purposes of interpretation.

2. The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.

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(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:
   (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
   (b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:
   (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
   (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
   (c) “court” means a body or organ of the judicial system of a State;
   (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
   (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
   (f) where a provision of this Law, other than in articles 25(2(a) and 32(2(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counterclaim.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:
   (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known
place of business, habitual residence or mailing address by
registered letter or any other means which provides a record
of the attempt to deliver it;
(b) the communication is deemed to have been received on
the day it is so delivered.
(2) The provisions of this article do not apply to communica-
tions in court proceedings.

Article 4. Waiver of right to object
A party who knows that any provision of this Law from which
the parties may derogate or any requirement under the
arbitration agreement has not been complied with and yet
proceeds with the arbitration without stating his objection to
such non-compliance without undue delay or, if a time-limit is
provided therefor, within such period of time, shall be deemed
to have waived his right to object.

Article 5. Extent of court intervention
In matters governed by this Law, no court shall intervene except
where so provided in this Law.

Article 6. Court or other authority for certain functions of
arbitration assistance and supervision
The functions referred to in articles 11(3), 11(4), 13(3), 14,
16(3) and 34(2) shall be performed by . . . [Each State enacting
this model law specifies the court, courts or, where referred to
therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Definition and form of arbitration agreement
(1) “Arbitration agreement” is an agreement by the parties to
submit to arbitration all or certain disputes which have arisen or
which may arise between them in respect of a defined legal
relationship, whether contractual or not. An arbitration
agreement may be in the form of an arbitration clause in a
contract or in the form of a separate agreement.
(2) The arbitration agreement shall be in writing. An agree-
ment is in writing if it is contained in a document signed by the
parties or in an exchange of letters, telex, telegrams or other
means of telecommunication which provide a record of the
agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article. Failing such agreement, (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6; (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6. Where, under an appointment procedure agreed upon by the parties, (a) a party fails to act as required under such procedure, or (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment. A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his
impartiality or independence. An arbitrator, from the time of
his appointment and throughout the arbitral proceedings, shall
without delay disclose any such circumstances to the parties
unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist
that give rise to justifiable doubts as to his impartiality or
independence, or if he does not possess qualifications agreed to
by the parties. A party may challenge an arbitrator appointed
by him, or in whose appointment he has participated, only for
reasons of which he becomes aware after the appointment has
been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging
an arbitrator, subject to the provisions of paragraph (3) of this
article.

(2) Failing such agreement, a party who intends to challenge an
arbitrator shall, within fifteen days after becoming aware of the
constitution of the arbitral tribunal or after becoming aware of
any circumstance referred to in article 12(2), send a written
statement of the reasons for the challenge to the arbitral
tribunal. Unless the challenged arbitrator withdraws from his
office or the other party agrees to the challenge, the arbitral
tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the
parties or under the procedure of paragraph (2) of this article
is not successful, the challenging party may request, within thirty
days after having received notice of the decision rejecting the
challenge, the court or other authority specified in article 6 to
decide on the challenge, which decision shall be subject to no
appeal; while such a request is pending, the arbitral tribunal,
including the challenged arbitrator, may continue the arbitral
proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform
his functions or for other reasons fails to act without undue
delay, his mandate terminates if he withdraws from his office of
if the parties agree on the termination. Otherwise, if a contro-
versy remains concerning any of these grounds, any party may
request the court or other authority specified in article 6 to
decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator
Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction
(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a
preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the
Article 21. Commencement of arbitral proceedings
Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language
(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence
(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.
Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence
The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION PROCEEDINGS

Article 28. Rules applicable to substance of dispute
(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
(3) The arbitral tribunal shall decide *ex aequo et bona* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction,

Article 29. Decision-making by panel of arbitrators
In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator,
if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement
(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award
(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.
(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.
(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings
(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
   (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
   (b) the parties agree on the termination of the proceedings;
(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.
CHAPTER VII. RECOUSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:
   (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
   (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
   (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
   (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:
   (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
   (ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had
been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal’s opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.
# Appendix 3

## PARTIES TO INTERNATIONAL ARBITRATION CONVENTIONS AND RESERVATIONS

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<td>1994</td>
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**UN** Member of the United Nations.

**EU** Member of the European Union.

**CIS** Member of the Commonwealth of Independent States.

* In 1989 Australia extended ratification to all external territories except Papua New Guinea.

** Denmark's ratification extends to Greenland and Faroe Islands.

**** Includes all Territories of French Republic.

***** Hong Kong's accession is through the United Kingdom.

****** Switzerland withdrew reservation in 1993.

† Adoption of the Model Law or other legislation based on Model Law.

†† Awaiting final approval.

††† Adopted on a state (subnational) level.