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“An Assessment of The Recognition and Enforcement of Arbitral Awards in International Commercial Arbitration and The Role of International Conventions”

Research dissertation presented in partial fulfilment of the requirements for the degree

of LLM in International Commercial / Human Rights Law (QQI) Law School, Griffith College Dublin

Andrea Cahill Ruá

2024

Candidate Declaration

Candidate Name (please print): ANDREA CAHILL RUÁ

I certify that the dissertation entitled: "An Assessment of The Recognition and Enforcement of Arbitral Awards In International Commercial Arbitration and The Role of International Conventions"

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is the result of my own work and that where reference is made to the work of others, due acknowledgment is given.

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Date: 08/09/2024

Supervisor Name (please print): Mr. Cormac Hickey

Supervisor signature: Cormac Hickey, August 8th, 2024.

Date: August 8th, 2024

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Abstract

This study shows how international commercial arbitration is a great, but not perfect. From researching this area it is evident that there are legal uncertainties in the recognition and enforcement of international commercial arbitral awards. International commercial arbitration comes from ADR (Alternative Dispute Resolution), which has become increasingly popular. For those who go through arbitration are seeking to keep their disputes out of the court's. Those may think that after going through international commercial arbitration that the process is finished with an award, this is not the case for some. The purpose of this research is to show that the system for the recognition and enforcement of international commercial arbitral awards needs to be changed. To explore the underlining factors that cause the confusion within the recognition and enforcement of awards, by examining the language used in the laws of awards and recognition and enforcement of awards. Through this issues found in the context of the laws proved it is difficult to recognise and enforce awards not because of the facts of the cases but because of the unpredictability of the laws. Also to assess the effects of the international conventions on the recognition and enforcement of international awards. This was achieved by explaining the conventions and why they were set up to further the courts compliance. It was discovered that while the development of the conventions was beneficial they did not provide clarity within their laws. This study also proposes reform to fill in any discrepancies or uncertainties in these laws to better the international commercial arbitration system. This is by selecting laws that are not appropriately worded and proving how these are issues. This study uses various legal methodology including the doctrinal, comparative, historical and sociological approach to help better the research of this paper and to draw appropriate conclusions.

List of Abbreviations

UNCITRAL	United Nations Commission on International Trade Law
ADR	Alternative Dispute Resolution
The Convention	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
The Model Law	UNCITRAL Model Law on International Commercial Arbitration
LCTA	London Corn Trade Association
ICC	International Chamber of Commerce
FAA	The Federal Arbitration Act (US)
LCIA	The London Court of International Arbitration
EFTA	European Free Trade Association
EU	European Union
EEA	European Economic Area
CPC	Civil Procedure Code
PILA	Private International Law Act
ICSID	International Centre for Settlement of Investment Disputes
DRDE	Dispute Resolution in the Digital Economy

Table of Contents

CANDIDATE DECLARATION II
ACKNOWLEDGEMENTS III
DEDICATIONS III
ABSTRACT IV
LIST OF ABBREVIATIONS V
INTRODUCTION 1
1. INTERNATIONAL COMMERCIAL ARBITRATION AND THE HISTORY 4
INTERNATIONAL COMMERCIAL ARBITRATION 4
THE HISTORY 6
ARBITRATION WITHIN LOCAL TRADE ASSOCIATIONS 6
ARBITRATION BETWEEN STATES 8
A. RESOLUTION OF DISPUTES BY ONE OR MORE ARBITRATORS 10
B. INTERNATIONAL ARBITRATION PATTERN 10
C. AWARDS GIVEN ON THE BASIS OF LAW 11
D. ARBITRAL AWARENESS 11
2. ARBITRAL AWARDS 13
DEFINITION OF INTERNATIONAL ARBITRAL AWARD: 13
RESULT OF THE ARBITRATION AGREEMENT 14
AWARD MADE BY AN ARBITRAL TRIBUNAL 14
FORMAL STANDARDS FOR INTERNATIONAL ARBITRAL AWARDS 14
WRITING, PLACE, DATE AND SIGNATURE REQUIREMENTS 15
FOUNDATIONS BEHIND THE AWARD 15
FORMS REQUIRED TO COMPLY WITH INSTITUTIONAL ARBITRATION RULES 16
LANGUAGE OF THE AWARD 16
TYPES OF AWARDS 16
A. FINAL AWARDS 17
B. PARTIAL AWARDS 17
C. INTERIM AWARDS 17
D. CONSENT AWARDS 17
E. DEFAULT AWARDS 18
F. ADDITIONAL AWARDS 18
CORRECTION AND INTERPRETATION OF AWARDS 18
TERMINATION OF ARBITRAL PROCEEDINGS WITHOUT AN AWARD 19
RELIEF GRANTED IN ARBITRAL AWARDS 19
A. ARBITRATORS' REMEDIAL AUTHORITY 19
B. MONETARY AWARDS 20
C. OTHER RELIEF 20
D. INTEREST 21
COSTS 21
A. AWARDS OF COSTS OF ARBITRATION UNDER NATIONAL ARBITRATION LEGISLATION 21
B. AWARDS OF COSTS OF ARBITRATION UNDER INSTITUTIONAL ARBITRATION RULES 21
FUNCTUS OFFICIO DOCTRINE: 22
3. RECOGNITION AND ENFORCEMENT OF AWARDS 24
RECOGNITION AND ENFORCEMENT OF AWARDS 24

THE NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS 1958 25
A. THE SCOPE OF THE CONVENTION (ARTICLE I) 26
B. THE ARBITRATION AGREEMENT'S VALIDITY AND FORMALITY AS A PREREQUISITE TO RECOGNITION AND ENFORCEMENT OF THE ARBITRAL AWARD (ARTICLE II) 27
C. THE APPLICABLE RULES OF PROCEDURE ON RECOGNITION AND ENFORCEMENT (ARTICLE III) 29
D. REFUSAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRAL AWARD (ARTICLE V) 29
DEFENCES TO BE RAISED UPON A DECISION OF THE COMPETENT AUTHORITY IN THE ENFORCING COUNTRY 33
IN-ARBITRABILITY OF THE SUBJECT MATTER OF THE DISPUTE 33
RECOGNITION AND ENFORCEMENT CONTRARY TO PUBLIC POLICY 34
APPROACH IN SWITZERLAND 34
THE REVISED CH.12 PILA 35
CHALLENGE OF THE AWARD BEFORE THE FEDERAL SUPREME COURT 36
APPROACH IN AUSTRALIA 36
4. NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS 1958 AND THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 40
CONTEMPORARY INTERNATIONAL ARBITRATION CONVENTIONS 41
NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS 1958 41
UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 45
5. REFORM AND RECOMMENDATIONS 49
AMENDING THE NEW YORK CONVENTION 49
ACCEPTANCE OF A NEW TREATY OR A PROTOCOL TO THE CONVENTION 50
PROMOTION OF THE UNCITRAL MODEL LAW 50
ADOPTION OF NON-BINDING INSTRUMENTS 51
THE NEW YORK CONVENTION'S FAULTS 52
6. FINAL THOUGHTS 59
CONCLUSION 62
BIBLIOGRAPHY 65

Introduction

One alternative to going to court is using international commercial arbitration to settle conflicts. It was developed as a less acrimonious alternative to going to court. International commercial arbitration can be recorded as far back as 1888 in Hamburg. As the commercial sector grows, it has shown to be a very effective tool for settling conflicts. International agreements like The UNCITRAL Model Law on International Commercial Arbitration of 1985 (The Model Law) and The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (The Convention)were created as a result.

This study will be focused on the recognition and enforcement of international commercial arbitral awards. Which includes the study of international conventions primary those in Europe. Including some discussion on international decisions and legislation of countries outside of Europe but is not comprehensively examined as the main issues derive from The UNCITRAL Model Law on International Commercial Arbitration of 1985 and The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and the jurisdictions that follow them. Aspects that attribute to the understanding of the recognition and enforcement of international commercial arbitral awards are discussed but not the entire framework of international arbitration.

Although international conventions have been put into place to make arbitration a more unified and regulated tool, it is proven that they have not. The laws that are used have shown that they are difficult to follow. As a result the arbitral awards are not being recognised and enforced. Arbitration is supposed to be appealing, it is a way to keep disputes out of the courts. Therefore it should be a better system than litigation. Yet, after the whole process of arbitration you may have to seek to get award recognised and enforced. Yet it is not as simple as it may seem, for example, with the wording of The New York Convention being vague it is more difficult. It is advantageous to have an international convention, specifically on the recognition and enforcement of awards, but it isn't if it has to be interpreted. The more that is left open to

interpret the more unreliable it gets. With laws that are so important to provide a final outcome, to give ease to parties, there should be no legal uncertainties.

Which is why this study has focused on the ways to better the recognition and enforcement of international commercial arbitral awards. To recognise that there is an area that must be addressed. In doing so, the recommendations that follow to help arbitration be more predictable than uncertain. The questions that stemmed from this research is, what can be done or proposed to fill in the gaps on the recognition and enforcement of international commercial arbitral awards? The issue is that the wording in the laws are too vague, what are the steps that can be done to change it so that there not need be an interpretation. It is worth noting if there have been made recommendations, have they been overlooked or taken on board.

There are not many reported cases where the arbitral award have not been recognised and enforced. Nevertheless, they are still very much important as they are a result from ambiguous wording in the governing law. Through researching the topic a number of reoccurring gaps in the law had been identified. By determining the law, how it was previously filled in gaps and how it should fill in the gaps to fix this occurring issue. This is achieved by explaining what international commercial law is and the importance of it. It is a worldwide dispute resolution; it has grown massively with the expansion of economic growth. The history is an example of how international commercial law has been around for many years and shows how it was developed into the laws of today. With the recognition and enforcement of international commercial arbitration comes the awards. Awards are the source; they show the different types of awards and relief granted with them. Each award is different yet very important as it is the final decision that the parties need in order to move forward. The framework for the recognition and enforcement of international commercial awards is the fundamental element of proceedings. The international conventions governing this promote the laws to provide that awards are recognised an enforced. Although, this is not the case in certain circumstances. With that, the Conventions are examined on how and why they were formed. This can clearly outline if they have followed through on their initiatives that they were established for. With this subsequently comes reforms and recommendations. This addresses the issues that arise with recognising and enforcing awards. Lastly, gathering the reform and recommendations to conclude on the transparency of whether the conventions will ever change. Doctrinal research is one of the technique approaches employed in this study; the primary focus of the doctrinal

method will be case law and other traditional legal sources. Additionally, comparative law as it is not a distinct body of law in and of itself, it compares the laws of other legal systems in order to identify and measure the similarities and differences. Furthermore, the historical approach assists in understanding legal matters from the past. Finally, sociological analysis examines how laws work, attempting to identify any patterns that may be discovered via the collection and organization of data based on observation.

1. International Commercial Arbitration and The History

International Commercial Arbitration

The creation of international arbitration would be required if it did not already exist. Agreements that transcend national boundaries are an essential component of business and commercial life as investment, trade, and commerce continue to grow on an international scale. Whether they include nations, organizations, or people, some of these international transactions and investments will inevitably result in litigation. The parties involved should attempt to resolve their disputes through ADR as the quickest course of action.[1] If it can be avoided, no prudent businessperson, company, or state wants to invest time and resources in legal processes. However, in the event that the disagreement cannot be resolved, it is crucial that there be a just, trustworthy, and peaceful process for doing so in order to uphold the outcome and adhere to the terms of the parties' agreement as well as the relevant legal framework. Parties that are based in the same nation typically have options when a disagreement occurs between them. They might go to their own national law courts with their issue. Alternatively, they might decide to settle the disagreement in private by including an arbitration clause in their contract. This kind of arbitration would be considered national or "domestic", regulated by the parties' agreed-upon norms as well as any necessary local legal requirements.[2]

When a disagreement results from a cross-border (or transnational) commercial partnership, the circumstances are drastically different. The harmed party will have to take their issue to court unless there is an agreement to arbitrate. In that scenario, determining which court has jurisdiction over the possible defendant will be important. This generally refers to the national court where the defendant maintains its place of business or domicile, which is the defendant's home court. This instantly calls into question the notion of fairness for the foreign claimant.[3] The claimant may also discover that the defendant's court uses a language different from the terms of the contract, that its well-established domestic processes are inappropriate for addressing issues involving other countries, and that the judges themselves have little to no

[1] Alan Redfern And Martin Hunter, *Redfern & Hunter: Law And Practice Of International Commercial Arbitration* (7th Edn, Oxford University Press 2022).
[2] Ibid.
[3] Ibid.

expertise resolving such conflicts. By stipulating that any disputes resulting from or related to such an international contract be brought to international arbitration, it makes sense to eliminate such risks. In fact, international arbitration has been called "the only game in town" for ensuring an effective and enforceable dispute resolution procedure in the transnational context.[4]

In the first instance, a conflict resolution mechanism's real nature cannot be determined only by the name that the parties choose for it.[5] Although a venue selection provision or an expert decision mechanism may be referred to as an "agreement to arbitrate" by the parties, this (mis)label does not change the mechanism's actual character.[6] To ascertain, objectively, whether a dispute resolution clause amounts to an agreement to arbitrate under the relevant legislation, one must nevertheless look at the content of the clause. However, in practice, this will probably be regarded as an arbitration agreement if the parties' agreement calls for anything called "arbitration." The meaning of the term "arbitration" is widely accepted.[7] With a few exceptions, almost all authorities recognize that arbitration is – and only is – a process wherein parties voluntarily submit a disagreement to a non-governmental arbiter chosen by or on behalf of the parties, who then issues a legally binding ruling ultimately settling the disagreement in line with impartial, adjudicative procedures that give the parties a chance to be heard. The majority of authorities have used comparable definitions:

> "Agreement between two or more specific or determinable parties agreeing in a binding manner to submit one or more current or future disputes to an arbitral tribunal, to the exclusion of the original competence of state courts and subject to a (directly or indirectly) determinable legal system," is a definition of an arbitration clause that adheres to the traditional idea of private arbitration.[8]

As it is shown here, arbitration is a large system by which parties who want to keep their dispute out of the court can do so. This was designed for nations, organizations and people to seek for disputes relating to international agreements. If the parties have stipulated an arbitration agreement in their contract, it gives the parties an opportunity to customise the way they handle any future disputes. Arbitration was adopted to cater to the parties disputes, which is not the case in litigation. Although, it would be worth pointing out that although arbitration is a preferred way to go, it does carry its own issues in its system. It was adopted many years ago,

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[4] Ibid.
[5] *Benson Pump Co v South Cent Pool Supply Inc*, 325 FSupp2d 1152 (D Nev 2004).
[6] *Dynasty Stainless Steel & Metal Indus, Inc v Hill Int'l, Inc*, 2018 WL 4259776, (EDNY).

[7] Alan Redfern And Martin Hunter, *Redfern & Hunter: Law And Practice Of International Commercial Arbitration* (7th Edn, Oxford University Press 2022).
[8] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

and some actions and cases were prevalent in creating the laws that are still used today. To which, it is also important to look at how this system was formed when considering some of the flaws in arbitration.

The History

The contemporary history of international commercial arbitration may be written in a variety of ways using a "radical pluralism" of historical techniques and perspectives.[9] Theoretically, one may concentrate on the histories of concepts, events, or specific individuals (there are, in fact, a great deal of well-known, as well as lesser-known, but equally intriguing,[10] personalities in the contemporary annals of international arbitration).[11] In this chapter, the question of whether and how much contemporary international arbitration practice differs from pre-20th-century conflict resolution techniques is posed. The argument posits that international arbitration may be examined within two distinct contexts: (1) the exclusive realm of domestic trade organizations, where arbitrations are conducted in secret; and (2) the more expansive arena of international adjudication, which has undergone significant changes over the years. It demonstrates how some of these features evolved and came to define contemporary international arbitration practice, even though it does not assert that these forms of arbitration, which were significant mechanisms in the late eighteenth and early nineteenth centuries, are the only "ancestors" of the current system.[12] In light of this, this chapter delves into the intricate history (or histories) of international arbitration by examining two significant currents that emerged at a period when the term "arbitration" had several meanings and the field was less codified than it is now.[13]

Arbitration within Local Trade Associations

Throughout the nineteenth century and beyond, European local trade associations adopted a considerable practice of commercial arbitration. Hamburg saw the establishment of the first

[9] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021) 33.
[10] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).
[11] Ibid.
[12] Ibid.
[13] Ibid.

permanent arbitration body, and then the commerce in metals, alcohol, and potato derivatives.[14] For example, an arbitration court was established in 1888 under the Commerce Chamber, having jurisdiction over all areas of commerce. Also the cotton trading committee was established in 1872, and it subsequently evolved into the Bremen Cotton Exchange.[15]

England's pivotal role among industrialized nations at the time contributed significantly to the practice's ongoing success in the nation.[16] London emerged as the global financial centre during the Industrial Revolution, and Great Britain emerged as the leading economic force in the globe.[17] Markets were made more accessible to outside competition by changes in policy, such as the abolition of the Corn Laws and the signing of the Navigation Acts. Technological developments further increased the integration of financial markets, making Great Britain the hub for buyers and sellers in the 19th-century grain market. Examples of these developments include the construction of an underwater telegraph cable beneath the English Channel in 1851 and the Atlantic Ocean in 1866.[18]

It is appropriate to see the growth of arbitration in England and other nations as a component of the "globalization boom" that occurred in the century before 1914.[19] Conflicts between buyers and sellers rose along with the growth of commerce. The cotton market in Liverpool held particular significance as it was the pioneer commodities market in Europe to introduce futures trading, much ahead of the London markets that continue to do so to this day.[20]The development and prosperity of commercial arbitration in the British commodities markets was greatly aided by the London Corn Trade Association (LCTA). The LCTA was established in 1878 with the goal of facilitating the grain trade by standardizing shipping documentation,

[14] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021) 45.
[15] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).
[16] Ibid.
[17] Ibid.
[18] Morton Rothstein, 'Centralizing Firms and Spreading Markets: The World of International Grain Traders, 1846-1914' (1988) 17(2)Business and Economic History 103-113.
[19] Charles Knick Harley, 'A Review of O'Rourke and Williamson's 'Globalization and History: The Evolution of a Nineteenth Century Atlantic Economy' [2000] 38(4) Journal of Economic Literature 926-935.
[20] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021) 46.

defining arbitration processes, and establishing quality standards.[21] The broad usage of standard contracts with arbitration clauses, which were constantly updated and becoming more exact over time, was credited with the development and success of commercial arbitration in the British commodities markets. Due to this, parties involved in international commerce were forced to use the arbitration procedures provided by the LCTA and other trade groups in order to resolve their disagreements, therefore solidifying Great Britain's position as a leading supplier of legal services.[22]The fact that England consistently improved the legal framework under which they were conducted was another factor contributing to the development and prosperity of commercial arbitration in the British commodities markets. The outcome was a convoluted arbitration system consisting of a "disparate patchwork of statute and common law."[23]

Arbitration between States

International arbitration began to take centre stage in the development of international law in the late 18th and early 19th century.[24] Throughout the nineteenth century, mixed commissions, which were established by treaty between two or more topics of international law, were often employed.[25]As they occasionally resulted in final and binding conclusions rendered by adjudicators chosen by the parties themselves, these mixed commissions might be seen of as the forerunners of contemporary arbitral tribunals. The mixed commissions established by the United States and Great Britain under the terms of the Jay Treaty of 1794 were the most significant.[26]The Jay Treaty changed the course of international arbitration history and was a huge success. It stipulated that some unsolved matters from the War of Independence would be arbitrated, while also partially resolving some of the unsettled concerns. Under the terms of

[21] Jérôme Sgard and Grégoire Mallard, A Tale of Three Cities: The Construction of International Commercial Arbitration in Jérôme Sgard and Grégoire Mallard (eds), Contractual Knowledge: One Hundred Years of Legal Experimentation in Global Markets (Cambridge University Press 2016) 1-58.

[22] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).

[23] Ibid.

[24] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021) 50.

[25] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).

[26] Treaty of Amity Commerce and Navigation, between His Britannic Majesty and The United States of America, by Their President, with the advice and consent of Their Senate ("Jay Treaty"), November 19, 1794.

the treaty, three mixed commissions were established, and 536 awards were made in all between 1794 and 1804.[27]

Arbitration by sovereign (*arbitrage par souverain*) was another type of arbitration practiced in the nineteenth century.[28] This was believed to have many key benefits, including a straightforward process based solely on documentation proof, the arbitrator's perceived objectivity as a neutral third-country figure, and the power bestowed upon the arbitrator's person by virtue of their role as monarch or emperor. Throughout the nineteenth century, this paradigm was applied frequently with positive results.[29]An important turning point in the nineteenth-century development of international arbitration was the Alabama Arbitration of 1872. The nineteenth-century "revival" of international arbitration has been attributed to it, as it has been called the "high-water mark" and an unparalleled international tribunal in history.[30] The arbitration pertained to a diplomatic disagreement that resulted from the American Civil War between the United States and Great Britain.[31] On the grounds that the British government had broken its legal obligation to uphold neutrality, the United States filed a claim for both direct and collateral damages against Great Britain. The Treaty of Washington, which established a five-member tribunal consisting of Brazilian, Swiss, and Italian arbitrators chosen by the Emperor of Brazil, the President of the Swiss Federation, and the King of Italy, was the result of several years of fruitless diplomatic attempts.[32] Within a year, the tribunal mandated that Great Britain make restitution to the United States.[33]

Developing Key Features of Modern International Arbitration Practice

Though they developed in quite different circumstances, the two strands discussed earlier in the Age of Aspirations contributed to the development or reinforcement of fundamental concepts and ideas that were crucial for the establishment of the contemporary international arbitration framework. There was a strong sense of renewal in arbitration, both inside trade

[27] Cesare Romano and others, *The Oxford Handbook of International Adjudication* (1st edn, Oxford University Press 2013) 44.
[28] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021) 52.
[29] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).
[30] Ibid.
[31] Ibid.
[32] Treaty between the United States and Great Britain (“Treaty of Washington”), May 8, 1871, Article I.
[33] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).

organizations and between nations, and innovations and improvements led to elements that are still relevant in contemporary international arbitration practice.[34] Furthermore, during this time, a unique kind of arbitral consciousness emerged, with arbitration being viewed as a successful means of resolving conflicts and maintaining stability between parties.[35]

A. Resolution of Disputes by One or More Arbitrators

Adjudication practices in British trade associations throughout the 18th and 19th centuries highlighted the potential for assigning conflict settlement to an "arbitral tribunal."[36] Contracts pertaining to the corn trade before the establishment of the LCTA stated that disagreements would be resolved by arbitrators, with their rulings being definitive. Twenty members of the London Corn Trade made up the committee of arbitrators that was founded in 1870.[37] Arbitrators would frequently examine and analyse samples in order to reach their conclusions about the subject matter. Parties appointed as co-arbitrators are a key component of international commercial arbitration, which has been impacted by this practice.[38] Two significant powers entrusted the dispute settlement process to an arbitral panel, which rendered a legally enforceable verdict, leading to the Alabama Arbitration. The arbitral tribunal was able to issue a binding ruling in spite of its hybrid nature, suggesting that using an arbitration tribunal for conflict settlement might be beneficial.[39]

B. International Arbitration Pattern

With the London Corn Trade Association and other British trade organizations serving as notable examples, the adjudicative processes in place prior to the twentieth century served as a strong foundation for international arbitration.[40] Debatable as a paradigm for contemporary international arbitration procedure is the Alabama Arbitration, a state-to-state conflict. Some claim it was an amazing diplomatic achievement, while others claim it serves as a model for

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[34] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021) 57.
[35] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Ibid.

using the law to settle international and economic issues.[41] The Alabama Arbitration successfully issued a binding award with parties that complied and gave reasons for its decision, despite the fact that it was not impartial by today's standards. The Institute of International Law's 1875 arbitration code of procedure codified this practice.[42] The Alabama Arbitration gave international arbitration new vigour even for claims relating to matters of national honour, even if it is not the model for modern international arbitration. It was an example of an adjudicative procedure that produced a reasoned and binding ruling.[43]

C. Awards Given on the Basis of Law

As public international law arbitrations move from the diplomatic to the legal sphere, arbitrators are depending more and more on legal reasons for their rulings.[44] The twentieth century saw this change, with the jurists and members of arbitral organizations becoming exclusively involved in international arbitration. The first notable example of arbitration by a collegial tribunal making reasoned verdicts based on law, was the Jay Treaty's mixed commissions.[45] A number of foundations of international law, like the right to determine jurisdiction and the ban against a state defending its domestic laws or executive power, are still based on the Alabama Arbitration, which brought up legal issues.[46]

D. Arbitral Awareness

The discussion of international arbitration was frequently seen as a vehicle for advancement on promoting world peace and stability.[47] When several arbitral institutions were established in the early decades of the twentieth century with the declared intention of preserving harmonious relationships between parties, it was clear that this consciousness pervaded the arbitration community.[48] The arts and literature have had a big contribution to the generalization of arbitral consciousness. A 1915 short novella by Strindberg emphasizes the

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[41] Ulf Franke and others, *Arbitrating for Peace: How Arbitration Made a Difference* (Kluwer Law International 2016).
[42] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).
[43] Rudiger Wolfrum, *The Max Planck Encyclopaedia of Public International Law* (2nd edn, Oxford University Press 2013).
[44] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.

need of arbitration in bringing about peace, averting a great world catastrophe, and preserving peace for coming generations.[49]

The Alabama Arbitration's utopian language had a significant influence on international arbitration, leading Swiss lawyer Gustave Moynier to suggest the establishment of an ongoing international criminal court for transgressions of humanitarian law.[50] The Hague Conferences of 1899 and 1907 were a result, aiming to increase the efficacy of international arbitration. The American Arbitration Association became increasingly common in private law, and the Jerusalem Arbitration Centre handled business conflicts, demonstrating the arbitral consciousness that persisted long into the twentieth century.[51]

The history of international commercial arbitration is significant to note. It is here where it can be seen how far back arbitration has been used, even in cases where the adoption of certain laws had not been in place. It is evident that historical events have influenced the laws in place that we use, although some may be amended. In saying this, it shows how if there is a gap in the law, it can be fixed. As mentioned previously, arbitration isn’t a perfect system, which will become more evident in the following chapters, but the law was changed, and the law has been changed since. This proves that it is possible to fill in the grey areas to help improve the system of arbitration. Some of which issues can be found in the recognition and enforcement of arbitral awards. Yet it is significant to start with the arbitral awards, as this builds upon the understanding of the whole issue.

[49] David D Caron, ‘War and International Adjudication: Reflections on the 1899 Peace Conference’ (2000) 94(1) American Journal of International Law 9.
[50] Mikaël Schinazi, *The Three Ages Of International Commercial Arbitration* (Cambridge University Press 2021).
[51] Ibid.

2. Arbitral Awards

Definition of International Arbitral Award:

Arbitral awards are vital to explain as they are the source of the recognition and enforcement of international commercial arbitral awards. Under both the New York Convention and national arbitration laws, classifying a judgment as an arbitral "award" as opposed to something else, is crucial. Exclusively "awards" are covered under the Convention; Article I(1) states that it covers "the recognition and enforcement of arbitral awards," and Article III exclusively addresses "arbitral awards." Therefore, only arbitral awards are covered by the "pro-enforcement" provisions of the Convention; other types of decisions (such expert findings, national court judgments, or conciliation recommendations) are not covered by this clause.[52] In a similar vein, most nations' arbitration laws often only apply to awards (and not other instruments). According to various arbitration laws as well as the UNCITRAL Model Law, including Articles 31–36, this is accurate.[53] Consequently, awards are subject to the form, rectification, annulment, recognition, and preclusive consequences of arbitral judgments as stipulated by national arbitration legislation, while other instruments are not. Three fundamental requirements are imposed by the Convention and national arbitration laws in connection with the idea of an arbitral "award": Three requirements must be met for the award: (a) it must be the outcome of an agreement to "arbitrate"; (b) it must contain certain minimum qualities that are fundamental to the idea of a "award"; and (c) it must address a substantive problem rather than a procedural one. An instrument will not be considered an award and will

[52] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021) 238.
[53] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

not be governed by the Convention or national arbitration laws unless these requirements are met.[54]

Result of the Arbitration Agreement

An agreement to "arbitrate," as opposed to an agreement to perform another function (like mediating), must be put into practice for an award to be made. In the absence of such a circumstance, neither the Convention nor any national arbitration laws apply, and there is no "arbitral" award at issue. An expert opinion, a national court ruling, or a conciliator's advice are not products of "arbitration," and as such, they are not "arbitral awards."[55]

Award made by an Arbitral Tribunal

In arbitration, an award is a formal document that expresses the tribunal's ultimate ruling on certain allegations or disagreements. It is the arbitral tribunal's final statement of its ruling regarding the parties' claims rather than a consequence of any acts or correspondence from the panel. The secretary of the tribunal, the appointing authority, or the arbitral institution do not make the award. The initial ruling under arbitral systems with internal institutional review is not always an award. [56]

Formal Standards for International Arbitral Awards

Arbitral awards are governed by formal rules that, if broken, may result in annulment or non-recognition. Both the Model Law and the New York Convention have formal requirements for awards. The Model Law stipulates that an award must be in writing, signed by the recipient, specify the date and location of the arbitration, and include the rationale for the judgment.[57] While the Convention does not impose any formal obligations, the Model Law serves as a representation of national legislation. The English Arbitration Act, which permits parties to agree on the form of the award, is one example of how certain jurisdictions acknowledge the autonomy of the parties to agree on form requirements.[58] That being said, there are form requirements for awards in both the Model Law and The Convention.

[54] Ibid.
[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] Ibid.

Writing, Place, Date and Signature Requirements

Laws pertaining to arbitration require that awards be documented so that the tribunal may review and understand them. The award must normally be signed by all arbitrators, however national laws permit the signature of the majority or presiding arbitrator in certain situations.[59] The venue for an annulment case may be determined by the award's location, among other important implications. The majority of arbitration laws mandate that arbitrators attest to the arbitral location by making it clear in the ruling.[60] The time frame for attempting to have the award annulled or corrected in accordance with relevant national legislation may be affected by the date the award is made.[61]

Foundations behind the Award

Unless the parties agree differently, arbitrators must provide an explanation for each award rendered within national territory under the Model Law, a legal framework that has developed over time. Unless the parties have agreed differently, the award shall specify the grounds for its determination, as per Article 31(2) of the Model Law.[62] Until the parties expressly agree otherwise, this condition will apply as the default. An award might be revoked or not recognized if the justification requirements are not met. The 1960 decision of the US Supreme Court, which said that arbitrators are not required to provide the court with their reasoning for a judgment, is typical.[63] If the parties' agreement does not call for a reasoned award, US courts often conclude that unreasonably awarded amounts are enforceable. In regions where local law allows for the recognition and execution of unreasonably awarded international judgments, there are noteworthy concerns regarding the former.[64]

Implications of Failure to Comply with Statutory Form Requirements

Statutory form requirements for rewards are frequently obligatory, as previously mentioned. Certain countries lack provisions for annulment of an arbitral ruling due to formal errors in technical aspects.[65] In certain states, the award may be declared void in annulment proceedings if a formal condition is not met, such as failing to sign or date the award or specify the arbitral location.[66] If applicable arbitration laws or institutional guidelines allow, such mistakes can

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[59] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[60] UNCITRAL Model Law, Art 31.
[61] English Arbitration Act 1996, s 70.
[62] UNCITRAL Model Law, Art 31(2).
[63] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[64] Ibid.
[65] UNCITRAL Model Law, Art 34(2).
[66] English Arbitration Act 1996, s 68.

easily corrected, and this is unquestionably a better option than nullifying an otherwise legitimate ruling.

Forms Required to Comply with Institutional Arbitration Rules

Any form criteria specified in the arbitration agreement must also be followed by awards. In general, form requirements are seldom imposed by arbitration agreements themselves. Conversely, form requirements are rarely imposed by arbitration provisions in institutional regulations. On the other hand, form criteria for rewards are usually prescribed by institutional norms. In doing so, the UNCITRAL Rules impose obligations that closely align with the Model Law;[67] identical to most other institutional regulations.[68] On the other hand, several regulations set more specific form requirements, which are usually easy to comply with but need the tribunal's attention.[69]If these conditions are not met, the award may be annulled or not recognized on the grounds that the parties' agreed-upon arbitral procedures were not followed.[70]

Language of the Award

Parties will usually define the terms of the arbitration (in the arbitration agreement), which will presumably include the award. The tribunal will choose the arbitration's language if the parties haven't, once more broadly interpreting this to include the language of the award. In both cases, failing to make the award in the required wording might very easily be considered a formal error and a reason for the award's annulment (or, less obviously, non-recognition).[71]

Types Of Awards

A wide range of "awards" are taken into consideration by the majority of national laws and institutional norms, including consent awards, default awards, interim awards, final awards, and partial awards. The discussion of each of these award categories follows.

[67] UNCITRAL Arbitration Rules 2013, Art 34.

[68] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

[69] Ibid.

[70] Ibid.

[71] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

A. Final Awards

According to Article 32(1) of the Model Law, the "final award" is the judgment rendered at the end of an arbitration.[72] The tribunal's mandate is terminated by this award, which also resolves any outstanding claims. Only "final" verdicts are recognized by certain arbitration agreements and national legislation; however, jurisdictional and partial awards may also be regarded as "final" if they reach finality in the arbitral seat.

B. Partial Awards

Partial awards are arbitral rulings that address just a portion of the parties' claims in an arbitration; the other claims are left for further review and determination. Even in the absence of a conflicting agreement, national statutes such as the UNCITRAL Rules and the Swiss Law on Private International Law specifically permit tribunals to grant partial awards.[73] The UNCITRAL Rules' Article 34(1) permits arbitrators to render distinct rulings on various matters at various points in time.[74] Generally, certain claims are determined separately using partial awards, while other claims are held for additional procedures. The arbitrators' responsibility to settle conflicts quickly gives them this authority.[75]

C. Interim Awards

Interim rewards are provided by institutional regulations and national legislation; these terms are sometimes used synonymously with partial awards.[76] Before all disputes are settled, these awards settle certain claims for remedy. Additionally, preliminary matters such as choice of law or interpretation of contractual obligations that are pertinent to the resolution of claims are resolved by interim awards. In contrast to partial awards, which offer a definitive settlement of a portion of the issue, they are also used to grant interim relief since they are susceptible to modification by the tribunal.

D. Consent Awards

Arbitration settlement agreements are frequently reached by the parties, and in the event of a negotiated settlement, they may choose to have the arbitration dismissed or get a consent judgment. Tribunals may grant consent awards upon request from parties under arbitration legislation and institutional regulations. Nevertheless, consent awards are exempt from the

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[72] UNICITRAL Model Law, Art 32(1.)

[73] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

[74] UNCITRAL Arbitration Rules 2013, Art 34(1).

[75] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

[76] Ibid.

common requirement that awards be "reasoned".[77] Although arbitrators often have the option to provide permission, in reality, tribunals seldom ever refuse to do so.

E. Default Awards

As was previously said, occasionally one side will not show up to the arbitration to make its case.[78] The tribunal may nonetheless consider and settle the parties' dispute in spite of a default by one of the parties. Conversely, the majority of arbitration laws stipulate that tribunals have the authority to issue default judgments and that these decisions are susceptible to confirmation (as well as annulment), just like challenged awards.[79] Most arbitration laws stipulate that tribunals may make default decisions and that these awards are liable to confirmation (and annulment), just like challenged awards, in the event that a party declines to participate.[80] It has also been often found that a party's refusal to take part in arbitral proceedings and the default award made against it do not amount to a violation of procedural rights under national arbitration legislation or Article V(1)(b) of the New York Convention.[81]

F. Additional Awards

Numerous arbitration legislation and institutional rules allow for the formation of "additional" or "supplemental" awards after what was meant to be the final judgment is rendered. When a tribunal's final decision inadvertently leaves open a claim that was raised during the arbitration, the parties usually request these further awards. An extra award is handled in the same manner as regular "awards"[82] and is governed by laws that apply universally with regards to revocation, acceptance, and implementation.[83]

Correction and Interpretation of Awards

Numerous arbitration legislation and institutional regulations provide for the arbitral tribunal to interpret or rectify verdicts. Since these interpretations and corrections have the same legal standing as awards, they can be recognized, annulled, and enforced similarly to awards.[84]

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[77] UNICITRAL Model Law, Art 31(2).
[78] Gary B. Born, *International Arbitration; Law And Practice* (3rd edn, Kluwer Law 2021).
[79] Ibid.
[80] Ibid.
[81] Ibid.
[82] UNICITRAL Model Law, Art 33(5).
[83] Gary B. Born, *International Arbitration; Law And Practice* (3rd edn, Kluwer Law 2021).
[84] UNICITRAL Model Law, Art 33(5).

Termination of Arbitral Proceedings Without An Award

Arbitrations may terminate without a verdict in some cases because of settlement agreements or claimant desertion. The Model Law permits tribunals to end arbitration procedures without issuing an award in some situations, such as when parties agree to end the processes, withdraw their claims, or determine that further proceedings are no longer required or feasible.[85] The majority of institutional rules, including those from the ICC and UNCITRAL, specifically permit tribunals to end arbitrations without issuing a decision. Even in the absence of express permission, the tribunal's procedural jurisdiction usually includes the ability to end proceedings without making an award. Termination without an award is likewise covered under the ICC and UNCITRAL Rules.[86]

Relief Granted In Arbitral Awards

Practically speaking, the alleviation that an award provides is its most important feature. For the most part, this is a simple issue with little complications. There usually won't be much room for dispute over the type of relief, the tribunal's authority to provide it, or how best to phrase it if one party is requesting money owed for products or the settlement of a debt. Disputes over the tribunal's authority to provide particular types of monetary remedy (such as punitive or multiple damages) or petitions for injunctive or declaratory orders may surface in instances involving these demands.

A. Arbitrators' Remedial Authority

The arbitration agreement establishes the remedial powers of an international arbitral tribunal, enabling parties to give arbitrators considerable latitude in awarding civil remedies to settle their conflicts.[87] These authorities are a reflection of the first-instance courts' discretion in remedial cases as well as the judiciary's respect for the business knowledge of the arbitrators. However, because of the arbitrator's extensive authority, relief granted by the tribunal may be contested in annulment or recognition procedures.[88]

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[85] UNICITRAL Model Law, Art 32(2).
[86] 2021 Arbitration Rules ICC, Art 33.
[87] Gary B Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[88] Ibid.

B. Monetary Awards

The majority of awards entail decisions that one party must pay another a certain amount of money. There is no doubt that arbitrators have the authority to award monetary damages, unless otherwise specified. Tribunals are empowered by the majority of national laws to render an award in any currency stipulated by the governing legislation or by the parties' contract. This is specifically stated in Section 48 of the English Arbitration Act, which states that the arbitrators may "order the payment of a sum of money in any currency."[89] Similar strategies are typically used by other legal systems, either in court decisions or legislative legislation.[90]

C. Other Relief

Conventions and laws pertaining to international arbitration typically remain quiet on the tribunal's power to grant injunctive or declaratory relief. Nevertheless, whether the parties' agreement or the institutional principles it contains offer such jurisdiction, national courts have frequently upheld verdicts that grant injunctive or declaratory relief. Courts have often maintained injunctive remedies, including orders of particular performance, even in the absence of an express agreement providing such powers. Both common law courts (where specific performance is an exception) and civil law courts have reached this decision.[91]

The ability of arbitrators to grant statutory damages as well as punitive (or exemplary) damages has been discussed. Even in the United States, where punitive penalties are widely recognized, New York courts have long maintained that public policy prevented arbitrators from granting punitive damages, which were thought to be the sole domain of state courts.[92] The case of *Mastrobuono v Shearson Lehman Hutton Inc*[93] has resulted in a decision by the US Supreme Court supporting the arbitrability of claims for punitive damages, clearing up any lingering questions concerning arbitrators' authority to grant punitive penalties. Both common law and national courts have supported this ruling. Tribunals may not lawfully award punitive damages in certain civil law jurisdictions, such as Switzerland, when they are seen to be against public policy. A more accurate perspective is that the public policies of the arbitral seat should not restrict the remedial authority of an arbitral tribunal. Rather, the public policies of the

[89] Ibid.
[90] Ibid.
[91] Ibid.
[92] Garrity v Lyle Stuart, Inc, 40 NY2d 354 (1976) (US AC).
[93] Mastrobuono v Shearson Lehman Hutton, Inc, 514 US 52 (1995)(SC).

jurisdiction most directly related to the parties' dispute and relief request should be applied through a conflict of laws examination.[94]

D. Interest

There are no provisions addressing interest awards made by international arbitration courts under the Model Law, Swiss Law, or French Code of Civil Procedure.[95] Nonetheless, a few governments have changed the Model Law to allow arbitrators to grant interest without establishing guidelines. While tribunals may use statutes governing interest judgments in domestic litigation or treat interest as a component of contractual damages, they are not often relevant in international arbitrations.[96]

Costs

A. Awards of Costs of Arbitration Under National Arbitration Legislation

The Model Law, which is a national arbitration legislation model, does not specifically address the allocation of legal expenses paid in cross-border arbitration. Nonetheless, a few nations have included clauses allowing arbitral tribunals to award arbitration expenses.[97] This illustrates the idea that, absent a contrary agreement, international arbitrators are considered to have the power to settle disputes. Regarding the arbitration fees and the parties' legal counsel, the FAA says nothing. Tribunals may award expenses for legal counsel under most institutional standards, and arbitration agreements may address this matter expressly.[98] In international arbitration, the use of party autonomy usually does not give rise to issues of enforcement.[99]

B. Awards of Costs of Arbitration Under Institutional Arbitration Rules

Legal cost awards are covered under the LCIA Rules, ICC Rules, and UNCITRAL Rules, among other institutions. Starting from the premise that the winning party will be entitled to its expenses, the UNCITRAL Rules provide arbitrators wide latitude in allocating legal costs.[100]

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[94] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[95] Ibid.
[96] Ibid.
[97] Ibid.
[98] Ibid.
[99] English Arbitration Act 1996, s 60.
[100] UNCITRAL Arbitration Rules 2013, Art 40.

Unless it appears to the tribunal that the application of such a general principle would be inappropriate under the Arbitration Agreement or otherwise, the LCIA Rules provide an overall standard that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues.[101]

The ICC Rules offer relatively few guidelines for determining legal expenses; instead, the tribunal and any applicable national (or other) law regulations have the majority of the say in this matter. According to the ICC Rules, the arbitrator determines how much to charge each party and how much to charge the arbitrators. The ICC Court sets these amounts.[102] Practically speaking, arbitrators in international matters frequently determine the cost of legal counsel without delving into complex substantive analysis or problems of relevant law. Most awards just provide a "reasonable" or "appropriate" sum, or they rely on discretion granted by applicable institutional norms.[103] According to a study of ICC awards made between 1989 and 1991 (under the 1988 ICC Rules), in cases where claimants were mostly successful, they were given a sizable share of the arbitration costs in 39 out of 48 cases, and in about half of the cases (24 out of 48 cases), a sizable portion of their legal costs.[104] Tribunals typically left arbitration and legal costs with the party that incurred them or ordered the unsuccessful claimant to pay some or all of the respondents' costs in ICC cases where claimants obtained significantly less than half of the amounts claimed (or where the respondent recovered larger amounts).[105]

Functus Officio Doctrine:

An arbitral tribunal loses the ability to act after making its final award, including the ability to review, amend, or augment it. This is known as the *functus officio* doctrine.[106] This theory is frequently covered by arbitration laws, which usually state that arbitrators forfeit their right to continue the arbitration after completing their mandate and rendering a definitive decision. The final judgment or an order of the arbitral tribunal terminates the arbitral procedures, according to the UNCITRAL Model Law, which lays forth a well-organized set of norms regulating the arbitrators' mandate.[107] Nevertheless, neither the *functus officio* theory nor the expiration of the arbitrators' mandate are expressly covered by the Model Law. The *functus officio* concept has

[101] LCIA Arbitration Rules 2020, Art. 28(3).
[102] 2021 Arbitration Rules ICC, Art 38(4).
[103] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] UNCITRAL Model Law, Arts 33 and 34.

been upheld by US courts, who have stated that it is based on the unwillingness of an arbitrator to reconsider the merits of an award once it has been given and is connected to the ideas of *res judicata.*[108]

The award is the final step in arbitration and there are the many types of awards. It is worth looking at how awards are dealt with and the many ways in which they can be annulled during the process of the award. It is manly on the parties to make sure that their agreement is sufficient so that this is not the case. It shows how important awards are, for example interim awards. Also the relief that can be sought by an award, such as costs, costs are a huge factor when the arbitration process has come to an end. As this is the last step it would give the impression that the process is over, it is not. In some cases having to get recognition or having to get the award enforced is. It is evident how important these awards are and how for example, if you are seeking a monetary award and now it is not recognised, how this will add frustration of further seeking recognition. The manner in which the award is to be recognised and enforced will be discussed further down below.

[108] La Vale Plaza, Inc v RS Noonan, Inc, 378 F2d 569 (US)(AC)(1969).

3. Recognition and Enforcement of Awards

Recognition and Enforcement of Awards

Now the recognition and enforcement of awards must be assessed in detail to discover the ambiguities associated with it. The past ten years have seen a rise in the use of arbitration as a result of global business expansion and the creation of strong new arbitration legislation by various nations looking to support arbitration.[109] Since the arbitration procedure is governed and customized by the parties' agreement, it gives parties a means to resolve their disagreement in a way that best suits them. Thus, a crucial component of arbitration is the acceptance and execution of foreign arbitral rulings. In order to resolve business conflicts and uphold international arbitral rulings, the majority of nations have created national arbitration legislation. Enforcement of arbitral awards commonly happens when the parties agree to the award, at which point it is peacefully enforced. Nonetheless, if one of the parties refuses to voluntarily abide by the decision, the other party may attempt to have the award recognized and enforced in a nation where the other party owns assets. Furthermore, the arbitral award

[109] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.

may be set aside by the losing party. While recognition and enforcement of an award seek to make it effective, challenges to an award seek to alter or overturn it.[110] Therefore, an international mechanism is required to coordinate and standardize the recognition and execution of foreign arbitral awards. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was subsequently developed as a result of this.

The New York Convention On The Recognition And Enforcement Of Foreign Arbitral Awards 1958

The first post-World War I document to demonstrate the desire of the international community to work together through harmonized commercial law was the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. On June 10, 1958, the Convention was adopted in New York, and on June 7, 1959, it came into effect. Memberships have increased gradually since it was adopted, reaching 156 nations in 2015.[111] It has been hailed as a Convention that may be the most successful example of international law in the annals of business law.[112] Two fundamental obligations of signatory states to the New York Convention are to uphold arbitration agreements and to acknowledge and uphold international arbitral rulings. A foreign arbitral ruling may only be refused recognition or enforcement under the specific circumstances outlined in the Convention.[113] As a result, once enacted, it takes precedence over any national laws that conflict with its goals. Arbitration is often a more effective means of resolving cross-border conflicts than litigation because it is an impartial process overseen by impartial judges (arbitrators) and has the benefit of being globally recognized and enforceable. However, there isn't a single global document that governs the acceptance and implementation of court rulings.[114] Nevertheless, the Convention's intent has occasionally been marred by the way it has been interpreted and applied in different Contracting States. National courts of Contracting States advanced significantly over time in handling the interpretation and enforcement of foreign awards.[115] This came about as a result of the United Nations Commission on International Trade Law's (UNCITRAL) formulation

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[110] Ibid.
[111] Ibid.
[112] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 1-18.
[113] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[114] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 1-18.
[115] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.

and adoption on June 21, 1985 of the UNCITRAL Model Law on International Commercial Arbitration.

The purpose of the Model Law is to help governments update and modify existing laws pertaining to arbitral process to better accommodate the unique characteristics and needs of international commercial arbitration. It covers every step of the arbitration procedure, including the arbitration agreement, the make-up and authority of the arbitral tribunal, the scope of the court's involvement, and the acceptance and execution of the arbitral decision. It represents the global agreement that important facets of the practice of international arbitration are recognized by governments across all areas and by the various legal or economic systems across the globe."[116]

A. The Scope of the Convention (Article I)

The conditions under which arbitral awards are subject to the Convention's provisions are outlined in Article I.[117] These are awards that are made outside of the state where enforcement or recognition is desired, as well as awards that are not seen as domestic in the state where such actions are pursued.[118] Accordingly, under the Convention, an award that satisfies both requirements is regarded as "foreign".[119]Furthermore, in order to restrict the Convention's scope, Contracting States may adopt one or both of the two reservations included in paragraph 3 of Article I when they sign, ratify, and accede to the Convention.[120] First, only Contracting governments (that is, those governments that have signed this Convention) are permitted to recognize and enforce international awards issued in other Contracting States under the reciprocity reservation. Second, in compliance with national law, Contracting States may restrict the recognition and enforcement of foreign awards to those disputes arising from business relationships, as long as they adhere to the commercial restriction. States may select to use one or both of the reserves.[121]

[116] Ibid.
[117] New York Convention, Art I.
[118] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[119] New York Convention, Art I.
[120] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[121] New York Convention, Art I.

Furthermore, there is no guidance on how a national court would ascertain the location of an award.[122] Due to the fact that national courts in each state interpret this clause differently, it is a complicated matter that has a substantial impact on the acceptance of foreign awards in Contracting States. Furthermore, the complex issue of where the award is thought to have been made has arisen as a result of form shopping.[123] For instance, the parties could decide that the arbitration will happen in Geneva, but the hearing will be in London, and the arbitrator would write the decision from his Stockholm office. This results in national courts having to analyse and interpret the location of the award in light of both its own national laws and other relevant laws, which frequently leads to ambiguity or incorrect application of the law.

B. The Arbitration Agreement's Validity and Formality As A Prerequisite To Recognition and Enforcement of The Arbitral Award (Article II)

Since arbitration is predicated on the parties' agreement, the Convention begins with a consistent clause to guarantee that the arbitration agreement is clearly understood in each of the Contracting States. Article II lays forth the fundamental terms of the arbitration agreement and requires Contracting States, especially their legislatures and courts, to acknowledge it.[124] It also aims to standardize and clarify the most crucial prerequisite for an arbitration agreement, which is that it must be in writing. Therefore, if a valid arbitration agreement is present, it requires courts in Contracting States to refer to arbitration disputes that are presented before them. The national courts of the Contracting States, not the arbitral tribunal, are covered by Article I.[125] To guarantee the delivery of an enforceable award, the arbitral tribunal will consider the standards outlined in Article II.[126] Additionally, the arbitration agreement is governed by a number of variables under Article II.[127] An arbitration agreement must meet certain standards in order to be enforceable, including being in writing.[128] Not only is the written requirement required for an arbitration agreement to be recognized and enforced, but it also applies to an arbitral ruling. An arbitration clause in a contract, an arbitration agreement signed by the parties, or something included in a correspondence or telegraph is included in the

[122] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[123] Ibid.
[124] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010).
[125] New York Convention, Art I.
[126] New York Convention, Art II.
[127] Ibid.
[128] Ibid.

definition of agreement in writing.[129] In both common law and civil law nations, the necessity in writing has actually led to a great deal of issues in a lot of situations. primarily because this condition has not been generously interpreted by courts in those nations.[130]

Furthermore, the Contracting State court should, upon request from one of the parties, postpone court proceedings and send the parties to arbitration where the parties have agreed to arbitrate their dispute.[131] If there is a valid arbitration agreement, Article II mandates a mandatory referral to arbitration, which will put the matter on hold until the tribunal makes an award. This doesn't apply if the agreement is void, non-operational, or unable to be carried out.[132] The legislation must make sure that a party cannot avoid arbitration by filing its claim in a court of law in order for arbitration to be successful. If the parties have consented to arbitration, Article II (3) compels the courts of Contracting States to send the matter to arbitration.[133] This clause regulates a particular facet of the well-recognized "Competence-Competence" concept that varies from nation to nation.[134] According to the theory, the arbitral tribunal effectively has first jurisdiction over matters pertaining to its own jurisdiction. As a result, this theory restricts the ability of a party to contest the existence or legality of the arbitration agreement in order to postpone or even prevent arbitration proceedings.[135]

Therefore, when a claim regarding the legality of the arbitration agreement is made, Article II (3) requires the courts of Contracting States to send the subject to arbitration and let the tribunal make a decision. Furthermore, if a court in a Contracting State determines that an arbitration agreement is "null and void," it shall not force arbitration. The term "null and void" refers to an illegitimate arbitration agreement that might be used as justification for rejecting recognition and enforcement on the grounds that it violates state public policy of the state in question.[136] An arbitration agreement's inability to be carried out or its inoperativeness provide another defence against its legitimacy. The term "inoperative" describes situations in which the

[129] Ibid.
[130] Ihab Amro, *Recognition and Enforcement of Foreign Arbitral Awards in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries* (Cambridge Scholars Publishing 2013).
[131] New York Convention, Art II.
[132] Ibid.
[133] New York Convention, Art II(3).
[134] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010).
[135] Ihab Amro, *Recognition and Enforcement of Foreign Arbitral Awards in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries* (Cambridge Scholars Publishing 2013).
[136] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.

arbitration agreement is no longer in force, such as when the parties have revoked it. The courts of the Contracting States have the authority to determine whether an agreement is ineffective. Additionally, when the court submits an issue to the arbitral tribunal, the tribunal has the discretion to determine whether an arbitration agreement is null and void.[137]

C. The Applicable Rules of Procedure on Recognition and Enforcement (Article III)

The right to recognize and enforce an arbitral decision as binding and to have it carried out in accordance with that state's procedural laws is granted by Article III of the Convention to the Contracting State.[138] Nonetheless, the Convention forbids Contracting States from placing greater restrictions, fees, or charges on the enforcement or recognition of arbitral decisions covered by the Convention than they do on the enforcement or recognition of domestic arbitral awards. In reality, Contracting States do not all follow the same set of regulations or procedures when it comes to enforcing arbitral awards.[139] For instance, in common law nations, an arbitral award cannot be executed until a judgment is issued upon it; in such cases, the judgment will be enforced instead of the award. In contrast, a competent court must declare an arbitral award to be enforceable in civil law nations in order for it to be implemented.

D. Refusal of Recognition and Enforcement of a Foreign Arbitral Award (Article V)

A court may withhold recognition and enforcement if the party objecting to recognition is able to establish one of the reasons listed in Article V.[140] Article V stipulates that the party defending against enforcement may raise one defence, and the enforcing court may consider an *ex officio* defence.[141] Since the grounds listed in Article V are all-inclusive, national legislation is unable to provide any further defences. Furthermore, a Contracting State court cannot assess the merits of the decision and is only permitted to review the award in order to determine if the reasons under Article V are met.

1. Defences to be brought up at the other party's request

[137] Ibid.
[138] Ibid.
[139] Ibid.
[140] New York Convention, Art V.
[141] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 205-230.

If the party bringing the award establishes one of the grounds specified in Article V (1) of the New York Convention, a court in a Contracting State may decline to accept and enforce the arbitral award.[142]

2. Incapacity of the parties or invalidity of an arbitration agreement

Article V (1) (a) cites incapacity of the parties to the agreement referred to in Article Il or invalidity of the agreement under the law to which the parties have submitted or under the law of the nation where the award was made as the grounds for invalidity.[143]Firstly, incapacity describes a party's ability to enter into a contract or their ability to bring a dispute to arbitration. A party's capacity is established at the moment the arbitration agreement is signed. However, the Convention does not control the matter of incapacity; rather, the national courts have the authority to settle the matter by applying their own conflict rules.[144] The arbitration agreement's legitimacy is the second reason under Article V (1)(a).[145] Article V (1)(a) requires that the arbitration agreement's legality be evaluated independently of the primary contract's validity. The term "doctrine of Separability" refers to this, which is applicable under the New York Convention and is present in the national legislation of the majority of Contracting States.[146]This concept treats the arbitration agreement as an independent contract from the primary container agreement.[147] Therefore, the arbitration clause in that agreement continues if the main agreement is declared void.

3. Violation of due process

In practical terms, this justification is known as the "due process exception". The term "due process" relates to the basic right to a trial by jury, which is regarded as procedural public policy by most national courts.[148] Consequently, the public policy exemption of Article V

[142] Ihab Amro, *Recognition and Enforcement of Foreign Arbitral Awards in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries* (Cambridge Scholars Publishing 2013).
[143] New York Convention, Art V 1(a).
[144] Ihab Amro, *Recognition and Enforcement of Foreign Arbitral Awards in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries* (Cambridge Scholars Publishing 2013).
[145] New York Convention, Art V(1)(a).
[146] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[147] Tibor Varady and others, *International Commercial Arbitration: A Transnational Perspective* (5th edn, Thompson West 2012).
[148] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 231-256.

(2)(b) and the due process exception of Article V (1)(b) overlap.[149] In an attempt to improve their prospects of overturning the decision, parties typically decide to file a claim of procedural due process under both allegations.[150] The two exceptions, though, operate in distinct ways. The party challenging the award must bring up the Article V (1)(b) due process exemption.

As a result, the courts can only consider the claim in light of the information that party has supplied. On the other hand, the court that is urged to recognize or enforce the award may, under Article V (2)(b), evaluate a claim of public policy breaches *ex officio*. Since the party opposing enforcement uses the public policy exception as a broad escape clause, in reality, courts typically take into account both exclusions simultaneously.[151] However, if the defendant has been given the chance to take part in the arbitration, courts often dismiss accusations of breaches of due process. Thus, in order to refute an allegation of default, a party must demonstrate that his failure to engage in the proceedings was not the cause of the default. Instances of this include when the party's witness is not allowed to be heard by the tribunal. However, if the failure resulted from the actions of the party, such as persistently delaying the hearing or the witness's inability to adhere to the tribunal's time restriction, then this is not seen as a violation of due process.[152]

4. Exceeding the scope of submission to arbitration

In the event that the arbitrators went beyond the authority specified in the parties' agreement, the court of a Contracting State may decline to enforce the verdict. This is because arbitration is by its very nature a party-driven procedure, meaning that the parties' permission is the source of the arbitrators' authority. Nonetheless, the issue of whether an arbitrator overreached themself shouldn't cause the award's merits to be re-examined.[153] Consequently, national courts interpret this issue carefully when determining whether or not the tribunal overreached its jurisdiction. Therefore, while addressing such a claim, a court ought to take into account construing the arbitration agreement's terms rather than the quality of the verdict.

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[149] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[150] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 231-256.
[151] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[152] Ibid.
[153] Ibid.

5. Improper composition of the arbitral tribunal or improper arbitral procedure

The arbitral tribunal may be constituted by the parties in any way they see proper, and they may also decide which rules will apply to the proceedings. A court may decline to accept and uphold an award if the arbitral tribunal's makeup or the arbitration process deviates from the parties' agreement or the laws of the nation where the arbitration is being held.[154]

6. Setting aside or suspension of an arbitral award

Article V (1)(e) provides a final basis for refusing to recognize and enforce an award.[155] This ground relates to non-binding awards, as well as nullified or suspended awards inside the nation of origin. The definition of non-binding is not provided in the first section, which addresses non-binding awards. Due to this uncertainty, it is now unclear if the Convention should define "binding" in a way that is distinct from other conventions or if an award may only be deemed "binding" if it complies with the laws of its country of origin.[156]

Generally speaking, the autonomous interpretation maintains that an award can be considered "binding" for the purposes of Article V (1)(e) as soon as, in those circumstances where such methods of recourse are available, it becomes impossible to file a legitimate appeal on the merits with a second arbitral instance or court.[157] A different viewpoint from an independent understanding of "binding" holds that an award should only be regarded as binding if it complies with the legal requirements of its place of origin.[158] This has caused issues since, for example, the definition of the word ‘binding’ varies among nations. In certain nations, the rendering of an award confers binding status. In other nations, nevertheless, the matter is contingent upon whether a party retains the right to appeal against the verdict. Furthermore, since arbitration centres have grown, many of them now have regulations stating that, once the tribunal renders a judgment, it is legally binding.

In the second section, non-binding awards are discussed. Essentially, this implies that if an award was set aside in the nation where it was made, that set aside might be used as a defence

[154] Ibid.
[155] New York Convention, Article V (1)(e).
[156] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 301-344.
[157] New York Convention, Article V (1)(e).
[158] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 301-344.

against enforcement in a different nation. Consequently, the likelihood that the award would be recognized and enforced in a different Contracting State is diminished by a successful set aside in the nation of origin.[159]Generally speaking, the court of the nation where the arbitration took place, that is, the seat of the award, is the appropriate entity with the ability to set it aside. In addition, the Convention stipulates that an award may be annulled or suspended in the nation where it was granted in accordance with the applicable legislation. Three such laws might be considered "under which the award was made": (a) the arbitration law, which governs the arbitration processes; (b) the law controlling the arbitration agreement between the parties; and (c) the substantive law governing the parties' underlying dispute.[160] This is due to the potential for the parties to agree that a different arbitration law than the one from the nation where the decision was rendered would govern the award.

Defences to be raised upon a decision of the competent authority in the enforcing country

Two reasons stated in Article V (2) of the Convention may be used by a court in the nation enforcing the agreement as justifications for refusing to accept and enforce an arbitral decision.[161]

In-arbitrability of the subject matter of the dispute

If the subject matter of the dispute cannot be resolved by arbitration under the laws of the enforcing nation, this reason enables the competent court in that country to refuse to accept and enforce an arbitral judgment on its own initiative. Non-arbitrable situations typically represent a special interest of the enforcing nation, which is to have domestic courts determine these kinds of disputes exclusively.[162] Criminal law, labour law, anti-competition legislation, and domestic relations are examples of non-arbitrable subject topics.[163] In addition, a lot of nations with civil laws, like Qatar, view a dispute as arbitrable if the parties are able to resolve their differences or come to an agreement.[164]

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[159] Ihab Amro, *Recognition and Enforcement of Foreign Arbitral Awards in Theory and in Practice: A Comparative Study in Common Law and Civil Law Countries* (Cambridge Scholars Publishing 2013).
[160] Herbert Kronke and others, *Recognition and enforcement of foreign arbitral awards : a global commentary on the New York Convention* (Kluwer Law International 2010) 301-344.
[161] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[162] Ibid.
[163] Ibid.
[164] Ibid.

It is evident from Article V(2) that the nation in which enforcement is sought is involved in the non-arbitrability question. Therefore, the arbitration's venue's laws are irrelevant. This is due to the fact that the arbitrability debate revolves on the state's unique national interest in permitting the arbitrability of particular disputes. Thus, under Article II (3) of the Convention, the court may either set aside the award or refuse to accept an arbitration agreement if the laws of the location of arbitration deem a dispute to be non-arbitrable.[165] As previously mentioned, Article II permits a court in any Contracting State where legal proceedings are initiated to carry on with the litigation if it determines that the arbitration agreement cannot be carried out, including when it comes to the arbitrability of the dispute.[166] Consequently, the question of arbitrability may fall under one of three legal regimes: (a) the law of the arbitration venue in the event that a party wishes to set aside an award; (b) the local law of the location where a party files a lawsuit despite the existence of an arbitration agreement; or (c) the law of the nation that is enforcing the arbitration agreement.[167]

Recognition and enforcement contrary to public policy

The New York Convention's overall pro-enforcement stance suggests interpreting the public policy defence narrowly in order to eliminate unnecessary barriers to the execution of arbitral verdicts. Therefore, the public policy defence should only be admissible in cases when the enforcing state's most basic moral and just principles would be violated by the implementation of an award. Public policy infractions can take many different forms, such as the arbitrator's objectivity, claims of bribery or illegality, fraud, an award made without justification, time constraints, a lack of due process, etc.[168] Furthermore, many have viewed Article V(2)(b) as a safe harbour for Contracting States to reject recognition of foreign prizes in the event that they can demonstrate that the award contravenes their national policy.[169] Because different nations have different ideas on what constitutes public policy, this might lead to ambiguity in the practice of international arbitration.

Approach in Switzerland

[165] New York Convention, Article II (3)
[166] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' (2015) 70(3) Dispute Resolution Journal 61-84.
[167] Ibid.
[168] Ibid.
[169] New York Convention, Article V(2)(b).

Since Swiss law contains provisions for both domestic and international arbitration in two different statutes, the country regulates arbitration using a dual concept.[170] It comes important to note that Switzerland is a member of the EFTA but not of the EU or EEA. The UNCITRAL Model Law on International Commercial Arbitration was considered by Switzerland.[171] While Pt 3 of the CPC contains the legislative requirements governing domestic arbitration, Ch. 12 of the PILA contains the regulations governing international arbitration procedures with a Swiss seat.[172] Nevertheless, Ch. 12 PILA and Pt 3 CPC are intended as separate sets of regulations, and the general requirements of the PILA and CPC, respectively, do not apply to arbitration, despite the fact that they are included into legislation governing other procedural concerns.[173] Arbitrations may be deemed international under Switzerland's arbitration legislation, which is based on the Swiss Arbitration legislation (Ch. 12 PILA), provided that at least one of the parties does not have its domicile, habitual abode, or seat in Switzerland. It makes no difference what country the parties are from. By accepting Pt 3 CPC, the parties may choose not to have the foreign arbitration clauses applied to them. Because Swiss arbitration legislation is brief, parties are afforded freedom and liberty.[174] Additionally, the law contains provisions, which may be wide or narrow, on arbitrability. International treaties like the ICSID Convention and the New York Convention are among those to which Switzerland is a party.

The revised Ch.12 PILA

The PILA was amended in order to: (i) increase the autonomy and flexibility of the parties; (ii) enhance legal certainty and clarity by, among other things, codifying specific rulings from the Swiss Federal Supreme Court into the law and elucidating some unclear language; and (iii) make it easier for foreign parties to access Swiss arbitration law.[175] The revision's impact on the Federal Supreme Court Act's (FSCA) regulations for arbitral award challenges before the Swiss Federal Supreme Court extended to those rules as well.

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[170] Chloé Terrapon and Louis Christe, 'Recent developments in Swiss arbitration: a modern framework to a classical picture' [2024] 27(1)International Arbitration Law Review 1-24.
[171] Ibid.
[172] Ibid.
[173] Bernhard Berger and Franz Kellerhals , *International and Domestic Arbitration in Switzerland* (4th edn, Beck Hart Nomos 2021) 84.
[174] Chloé Terrapon and Louis Christe, 'Recent developments in Swiss arbitration: a modern framework to a classical picture' [2024] 27(1)International Arbitration Law Review 1-24.
[175] Ibid.

The new regulations, which took effect on January 1, 2021, regulate the legal implications of all arbitration agreements, even those that were reached before to that date. This implies that, among other things, arbitration agreements found in unilateral legislative actions and agreements between parties to relinquish their right to pursue legal remedies that meet the new formal standards are now regarded as legitimate, even if they were signed before January 1, 2021.[176] It is now possible for parties involved in international arbitration processes and arbitral tribunals with foreign seats to directly request assistance from Swiss courts, even if such actions were ongoing before to January 1, 2021, and, more significantly, even if prior requests for similar assistance have been denied.[177] Lastly, even in cases where the contested award was made before to the PILA and FSCA's enactment, requests for revision are nevertheless subject to their altered versions.[178]

Challenge of the award before the Federal Supreme Court

The idea that awards of international arbitral tribunals located in Switzerland may only be contested before the Swiss Federal Supreme Court remains unaltered by the PILA modification.[179] Under the previous regulations of the PILA and the FSCA, the challenge process for arbitral awards made in Switzerland was already regarded as being very effective because the award is deemed final upon notification to the parties and can only be contested on extremely narrow grounds and within a condensed 30-day period. As a result, the Swiss legislature swiftly amended the current legislation to further enhance the effectiveness of the procedures and provide clarification on a few points raised by the Federal Supreme Court's case law.[180]

Approach in Australia

The Australian government has acknowledged the value of bringing international arbitration to Australia.[181] In an effort to draw arbitration to Australia by adopting a legal framework

[176] Ibid.
[177] Ibid.
[178] Ibid.
[179] Ibid.
[180] Ibid.
[181] Therese Wilson, 'Australian courts taking arbitration seriously: recognising the limitations on the review of arbitral awards' (2014) 80(4) Chartered Institute of Arbitrators 353-361.

consistent with international practice, the UNCITRAL Model Law on International Commercial Arbitration was incorporated into Australia's International Arbitration Act 1974 through amendments made in 2010.[182] Additionally, new Uniform State Acts regarding domestic arbitration were enacted between 2010 and 2013, also incorporating the Model Law with some modifications. Recent rulings indicate that the Australian courts have "come to the party" and are taking a pro-arbitration position.[183]

Article 5 of the UNCITRAL Model Law on International Commercial Arbitration states that "No court shall intervene in matters governed by this Law except where so provided in this Law."[184] The Uniform Acts governing domestic arbitrations in Australia, such as the Queensland Commercial Arbitration Act 2013 and the New South Wales Commercial Arbitration Act 2010, and the Australian International Arbitration Act 1974 (as revised in 2010) also reflect this.[185] The Model Law lays forth extremely narrow criteria for a court to evaluate an award and decide whether to set it aside or refuse to recognize and enforce it. The Model Law's articles 34, 35, and 36, which address reversing awards or refusing to recognize and enforce them, contain these grounds, the Australian International Arbitration Act and state-based Uniform Acts also reflect these grounds.[186] In line with this, Gary Born has said that "courts will not review the substance of arbitrators' decisions—it is an almost sacrosanct principle of international arbitration."[187] This acknowledges that one of the main reasons parties select arbitration over other forms of dispute resolution is to have the disagreement settled once and for all. As a result, it is improper to have judicial review of awards in situations where such review would essentially represent an appeal. As a result, courts across several countries have affirmed that the Model Law forbids a review of an arbitral award's merits.[188] Insofar as award reviews are allowed, it is thought that some judicial oversight is required to maintain the integrity of the arbitral process while still allowing parties to have some

[182] Ibid.
[183] Ibid.
[184] UNCITRAL Model Law, Art 5.
[185] Therese Wilson, 'Australian courts taking arbitration seriously: recognising the limitations on the review of arbitral awards' (2014) 80(4) Chartered Institute of Arbitrators 353-361.
[186] Ibid.
[187] Ibid.
[188] Ibid.

autonomy.[189] The most disputed element of arbitration has been identified as the proper extent of judicial review of arbitral rulings.[190]

A court's authority to set aside an award for procedural or public policy reasons (which does not include merit review) is limited by the Australian Model Law.[191] State-based Uniform Acts, such as s.34A of the Queensland Commercial Arbitration Act 2013, provide review of awards, albeit, provided that the parties consent to an appeal if given permission.[192] Although it is not included in the Model Law, arbitration agreements need this clause.[193]

A right of appeal for domestic arbitral awards is provided under the Australian Model Law, a feature absent from many other countries. Nonetheless, the Model Law has been incorporated into legislation in several instances, such as the Australian International Arbitration Act 1974, without this further power of appeal.[194] Some contend that the Model Law still leaves open the possibility of a merit review, citing applications based on public policy or arbitral tribunal wrongdoing as examples.[195] To support the claim that these grounds extend to permit such a review, however, a broad interpretation of these grounds is necessary. A failure to provide justification is now included in the scope of review, but this is contingent on the parties' consent. In the recent case of *TCL Air Conditioner (Zhongshan) Co Ltd v. The Judges of the Federal Court of Australia*,[196] the Australian courts adopted a position on the review or rejection of arbitral verdicts. In the case of *TCL Air Conditioner (Zhongshan) Co Ltd v. The Judges of the Federal Court of Australia* ,[197] TCL and Castel, a Chinese business, were at odds. Castel attempted to enforce the arbitration's rulings after the matter was submitted to it. TCL contended that the absence of a domestic arbitration similar to s.34A of the Uniform Acts compromised the institutional integrity of the Federal Court. Additionally, they contended that

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[189] Peter Binder, *International Commercial Arbitration and Mediation in UNCITRAL Model Law Jurisdictions* (3rd edn, London: Sweet & Maxwell 2010) 377.
[190] Therese Wilson, 'Australian courts taking arbitration seriously: recognising the limitations on the review of arbitral awards' (2014) 80(4) Chartered Institute of Arbitrators 353-361.
[191] Ibid.
[192] Therese Wilson, 'Australian courts taking arbitration seriously: recognising the limitations on the review of arbitral awards' (2014) 80(4) Chartered Institute of Arbitrators 353-361.
[193] Ibid.
[194] Ibid.
[195] Ibid.
[196] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of* Australia [2013] HCA 5.
[197] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of* Australia [2013] HCA 5.

the Model Law limited the scope of the public policy ground for review and required that the award be accurate in law.[198]

The Model Law (TCL) and its interpretation of Model Law Art 35 were dismissed by the High Court. The court stressed that the parties' agreement, which gives formation to the legal right to enforcement, is the basis for the arbitral tribunal's competence to render a final and enforceable arbitral decision.[199] The UNCITRAL working group's working papers do not imply that the requirement for an arbitral tribunal to decide "in accordance with" the substantive provisions of law selected by the parties was intended to include a requirement that the arbitral tribunal apply those laws in a way that a competent court would determine to be correct. Accordingly, the court rejected TCL's interpretation of Model Law art. 28. The court further reaffirmed that the International Arbitration Act's s.19 limits the public policy basis for refusing to enforce an arbitral ruling and that legal mistake is not a valid defence.[200]

The recognition and enforcement of arbitral awards is not straight forward. If one of the parties refuses to voluntarily abide by the decision, the other party may attempt to have the award recognized and enforced in a nation where the other party owns assets. Nevertheless, the Convention's intent has occasionally been marred by the way it has been interpreted and applied in different Contracting States. National courts of Contracting States advanced significantly over time in handling the interpretation and enforcement of foreign awards.[201] Although, this should not be the case, the reason for an interpretation is due to its ambiguity. As mentioned previously, courts having to analyse and interpret the location of the award in light of both its own national laws and other relevant laws, which frequently leads to ambiguity or incorrect application of the law. When looking at Switzerland, the PILA and the FSCA is regarded as being very effective because the award is deemed final upon notification to the parties and can only be contested on extremely narrow grounds and within a condensed 30-day period. As a result, the Swiss legislature swiftly amended the current legislation to further enhance the effectiveness of the procedures and provide clarification on a few points raised by the Federal

[198] Therese Wilson, 'Australian courts taking arbitration seriously: recognising the limitations on the review of arbitral awards' (2014) 80(4) Chartered Institute of Arbitrators 353-361.
[199] Ibid.
[200] Ibid.
[201] Khadeja Al-zarraa, 'Recognition and Enforcement of Foreign Arbitral Awards' [2015] 70(3) Dispute Resolution Journal 61-84.)

Supreme Court's case law.[202] In Australia they are also trying to close a narrow gap and make it easier to enforce and recognise arbitral awards. These jurisdictions should be noticed, it is clear that they have spotted the ambiguities and are closing the gaps in their jurisdictions. It is also worth looking at the international conventions that regulate international commercial arbitration, and how they contribute.

4. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the UNCITRAL Model Law on International Commercial Arbitration

[202] Chloé Terrapon and Louis Christe, 'Recent developments in Swiss arbitration: a modern framework to a classical picture' [2024] 27(1)International Arbitration Law Review 1-24.

Contemporary International Arbitration Conventions

With the problems associated with the recognition and enforcement of international commercial arbitral awards, the Conventions must be looked at to recognise why they were set up and their goals for enforcing these laws. There are several tiers of the legal system that oversee international commercial arbitration. Under this regime, arbitration agreements are given effect by international arbitration conventions and national arbitration legislation.[203] International arbitration conventions, such as the New York Convention, are one type of international arbitration convention. National arbitration legislation, such as local enactments of the UNCITRAL Model Law, are another type of arbitration legislation. Institutional arbitration rules are included in the arbitration agreements of the parties.

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

The 1923 Geneva Protocol on Arbitration Clauses in Commercial Matters[204] and the 1927 Geneva Convention for the Execution of Foreign Arbitral Awards were the first contemporary international commercial arbitration accords.[205] The Protocol required Contracting States to submit parties to such agreements to arbitration in order to recognize international commercial arbitration agreements. Conversely, the Convention stipulated that arbitral decisions rendered in other Contracting States would be recognized (with a few exceptions). Due in part to the start of World War II, the Protocol and Convention had little real-world use. The 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards replaced the Geneva Protocol and Convention.[206] The Convention, which is commonly known as the "New York Convention," is the most important piece of modern legislation pertaining to international commercial arbitration. With its broad provisions enabling both national courts

[203] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[204] Geneva Protocol on Arbitration Clauses in Commercial Matters (“Geneva Protocol”), 27 L.N.T.S. 158 (1924).
[205] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[206] Ibid.

and arbitral tribunals to create long-lasting, efficient mechanisms for upholding international arbitration agreements and verdicts, it offers a universal constitutional charter for the international arbitral process.

Like many national arbitration legislation, the Convention was enacted to meet the demands of the global business sector, specifically to enhance the legal framework that the Geneva Protocol and Geneva Convention had established for international arbitration. The United Nations Conference on Commercial Arbitration, a three-week conference that included 45 governments in the spring of 1958, served as the main forum for the negotiation of the Convention.[207]The outcome of the conference was the New York Convention, a fundamentally novel piece of legislation that established a thorough legal framework for international arbitration for the first time.

The Convention is written in texts that are equally authentic in English, French, Spanish, Russian, and Chinese. The main body of the Convention is condensed into five brief provisions, which make up its scant few pages (Articles I through V). The Convention is commonly recognized as "the cornerstone of current international commercial arbitration," despite its briefness.[208] "It works," as the late Stephen Schwebel, President of the International Court of Justice, so eloquently put it.[209]A common criticism of the Convention is that it did not establish a comprehensive legislative framework covering every facet of international arbitration, unlike the 1985 UNCITRAL Model Law, for instance.[210] Instead of particularly governing the conduct of the arbitral proceedings or other parts of the arbitral process, the Convention's provisions concentrated on the acceptance and enforcement of arbitration agreements and arbitral decisions.

Uniformity was a primary goal of the Convention's drafters, who aimed to create a unified set of global legal norms for the implementation of arbitration verdicts and agreements.[211] The provisions of the Convention, in particular, set uniform international standards for: (a) national courts must recognize and enforce foreign arbitral awards (Articles III and IV), subject to a limited number of specified exceptions (Article V); (b) national courts must recognize the

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[207] Ibid.

[208] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021) 98-99.

[209] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

[210] Ibid.

[211] Ibid.

validity of arbitration agreements, subject to specified exceptions (Article II); and (c) national courts must refer parties to arbitration when they have entered into a valid agreement to arbitrate that is subject to the Convention (Article II(3)).[212] Review by a recognition court of the merits of the arbitrators' substantive decision is not one of the permissible exceptions to the requirement to recognize foreign awards. Rather, the exceptions are restricted to matters of jurisdiction, procedural regularity and fairness, compliance with the parties' arbitration agreement, and public policy.

The Geneva Protocol and Geneva Convention for international arbitration were significantly improved by the New York Convention in a number of ways. The Convention was notable for several reasons, including the fact that it shifted the burden of proof from the party seeking enforcement of arbitral awards to the party opposing their enforcement,[213] recognized substantial party autonomy in selecting the arbitral procedures and applicable laws, and eliminated the previous "double exequatur" requirement (which mandated that awards be confirmed in the arbitral seat before being recognized abroad).[214]

Despite the Convention's brevity and focus on arbitration agreements and awards, the significance of its terms can scarcely be exaggerated. The Convention's provisions effected a fundamental restructuring of the legal regime for international commercial arbitration, combining the separate subject matters of the Geneva Protocol and Geneva Convention into a single instrument which provided a legal framework that covered international arbitrations from their inception (the arbitration agreement)[215] until their conclusion (the award). In so doing, the Convention established for the first time a comprehensive international legal framework for international arbitration agreements, arbitral proceedings and arbitral awards.[216]

The New York Convention initially drew few ratifications, despite its current significance. States from all across the world, however, changed their minds over time, and as of March 2021, 168 countries have ratified the Convention.[217] Nearly all of the main trade nations as well as several countries from Latin America, Africa, Asia, the Middle East, and the former Soviet

[212] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[213] New York Convention, Arts III-V.
[214] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[215] New York Convention, Arts V(1)(a)-1(d)
[216] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[217] Ibid.

Union are party to the Convention. Many governments have joined the Convention during the past 20 years, overcoming long-standing traditions of mistrusting international arbitration, notably several in the Middle East and Latin America.[218] As a result, the Convention has fulfilled the goals of its drafters and is now used as a worldwide charter or constitution for international arbitration.

Except for the Geneva Protocol and Geneva Convention, which are terminated as between Contracting States, Article VII of the New York Convention states that the Convention has no bearing on the legality of any bilateral or other multilateral agreements pertaining to the recognition and enforcement of foreign arbitral awards.[219] Article VII(1) further stipulates:

> "[The Convention] shall not … 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 treaties of the country where such award is sought to be relied upon."[220]

According to a "pro-enforcement" interpretation of Article VII, agreements and awards may be enforced under the Convention, another treaty, or national law if it is more advantageous than the Convention.[221] The Convention has been enacted into national law in almost all Contracting States. Therefore, the content of such national legislation as well as the interpretations of the Convention and national implementing laws by national courts frequently determine the actual effect of the Convention.[222] Without the requirement for implementing legislation, the Convention may also have direct (or self-executing) implications in national courts in some states.[223]

As was already said, consistency was a major goal for the Convention's drafters. It is imperative that national legislatures and courts in various Contracting States adopt consistent interpretations of the Convention in order to achieve that goal. National courts have generally accepted this challenge. Due to the increased availability of national court rulings in other

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[218] Ibid.
[219] New York Convention, Arts VII(1)-(2).
[220] New York Convention, Arts VII(1)-(2).
[221] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[222] Ibid.
[223] Gary B born, 'The New York Convention: A Self-Executing Treaty' [2018] 40(1) Michigan Journal of International Law.

countries and the growing citation of foreign and international authorities by national courts in their interpretation of the Convention, this process has intensified in recent decades.[224]

UNCITRAL Model Law on International Commercial Arbitration

National courts must uphold the arbitral process and give effect to arbitration agreements and verdicts in order for the arbitral process to operate effectively and for the parties' goals to be realized in their agreement to arbitrate. One of the main goals and accomplishments of developed trading states and other jurisdictions throughout the past 50 years has been the implementation of legislation attaining these purposes.[225] The New York Convention and other international arbitration conventions are essentially implemented by these national arbitration statutes, which also serve as the foundation for national court rulings pertaining to international arbitration agreements and judgments.

Arbitration laws, especially in civil law countries (including Germany, France, Italy, the Netherlands, and Austria), sometimes took the form of a chapter in the national Code of Civil Procedure. It has been usual for common law nations (such as the US, UK, Singapore, and Australia) to pass separate laws that address arbitration alone. The latter strategy, in which stand-alone arbitration laws are more prevalent, is being driven by the UNCITRAL Model Law's rising popularity. As will be covered in more detail below, national arbitration statutes sometimes have different provisions for domestic and international arbitration or are exclusively relevant to international arbitrations. This strategy has been used to allow "pro-arbitration" norms in international settings that might not be suitable for domestic disputes due to historical or other factors.[226] However, other nations (such as England, Germany, and Spain) have enacted identical laws for both domestic and international arbitrations (although with some special provisions that handle the two domains differently with respect to certain topics). In general, statutes supporting arbitration fall into two categories: those that are not supportive of the arbitral process and those that are, usually but not always, based on the UNCITRAL Model Law.

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[224] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[225] Ibid.
[226] Ibid.

The most significant piece of legislation pertaining to international commercial arbitration is the 1985 UNCITRAL Model Law.[227] It is a model for legislation in many countries and has been implemented in a significant (and increasing) number of jurisdictions. In 2006, the Model Law underwent revisions aimed at enhancing its legislative foundation. States, the business industry, the international arbitration community, and regional organizations (such as the Asian-African Legal Consultative Committee) engaged in extensive consultations prior to the Model Law's adoption. Following these talks, the Model Law's present final text was accepted by UNCITRAL in a resolution in 1985. Later that year, the Model Law was also endorsed by a resolution passed by the U.N. General Assembly.[228] The Model Law was created with the intention of standardizing how international commercial arbitration is handled across nations, and it is intended for national legislatures to enact. The 36 articles that make up the Law address every aspect of the international arbitral procedure in detail. Articles 7-9 of the law address enforcement of arbitration agreements; Articles 10–15 address the appointment and challenges of arbitrators; Article 16 addresses the jurisdiction of arbitrators; Article 17 deals with provisional measures; Articles 18–26 addresses the seat of arbitration and procedures; Article 27 deals with evidence gathering; Article 28 addresses applicable substantive law; Article 34 sets aside awards; and Articles 35–36 recognize and enforce foreign awards, including grounds for non-recognition.[229]

Written international arbitration agreements are presumed to be legitimate and enforceable under the Model Law, with a few specific exceptions.[230] By means of a dismissal or stay of national court proceedings, Article 8 of the Model Law allows for the implementation of legitimate arbitration agreements, irrespective of the arbitral seat. In addition, the law recognizes the presumption of separability (Article 16) and gives arbitrators the power (competence-competence) to take into account their own jurisdiction.[231]

The Model Law's Article 5 establishes the rule that judges should not become involved in arbitral procedures.[232] Additionally, the law upholds the parties' autonomy (within the bounds of due process) with respect to the arbitral proceedings (Article 19(1)); in the event that the

[227] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[228] Ibid.
[229] Ibid.
[230] UNCITRAL Model Law, Arts 7–8.
[231] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[232] UNCITRAL Model Law, Art 5.

parties cannot agree, the tribunal may dictate such procedures (Article 19(2)).[233] The Model Law approaches arbitral procedures by defining a minimal set of procedural norms that the parties may freely amend by agreement, subject to a very restricted set of required principles of fairness, due process, and equality of treatment.[234] In some specified areas, such as the creation of a tribunal, the taking of evidence, and interim measures, the law also offers judicial support to the arbitral procedure (Articles 9, 11–13 and 27).[235]

The Model Law's Article 34 stipulates that international arbitral awards have the presumptive validity, subject to a narrow and exclusive list of grounds for annulment in the arbitral seat.[236] These grounds are similar to those that the New York Convention allows for the non-recognition of an award, and include public policy, lack or excess of jurisdiction, non-compliance with the arbitration agreement, violations of due process, and non-arbitrability. Articles 35 and 36 of the Model Law mandate, in a parallel provision, the recognition and enforcement of foreign awards (issued in arbitral seats outside the state of recognition), again on the same terms as specified in the Convention.[237]

The 1985 Model Law saw a few changes accepted by UNCITRAL in 2006.[238] The addition of general interpretative principles to Article 2, the written form of arbitration agreements to Article 7, the standards for provisional measures from national courts and arbitral tribunals to Article 17, and the procedures for award recognition to Article 35 were the main areas of revision.[239] The Model Law must be ratified by each national legislature; it has no legal force of its own. More than 110 jurisdictions have adopted legislation based on the Model Law, including the Russian Federation, Australia, Bahrain, Bermuda, British Virgin Islands, Brunei, Bulgaria, Canada, Costa Rica, Cyprus, Denmark, Dominican Republic, Fiji, Germany, Georgia, Hong Kong, India, Ireland, Japan, Malaysia, Mauritius, Mexico, Montenegro, New Zealand, Nigeria, Norway, Peru, and several states and provinces in the United States, Canada,

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[233] UNCITRAL Model Law, Art 19(1)-(2).
[234] UNCITRAL Model Law, Art 18.
[235] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[236] UNCITRAL Model Law, Art 34.
[237] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[238] UNCITRAL Model Law, 2006 Revisions; Bantekas & Ortolani, Definition and Form of Arbitration Agreement, in I. Bantekas et al. (eds.), UNCITRAL Model Law on International Commercial Arbitration: A Commentary 121 (2020); Menon & Chao, Reforming the Model Law Provisions on Interim Measures of Protection, 2 Asian Int'l Arb. J. 1 (2006).
[239] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).

and Australia.[240] Not less significant, even in nations like England, France, and Switzerland where it was not enacted, the Model Law has established the course for the revision of arbitration legislation. Moreover, a fairly consistent body of international precedent about the interpretation of the Model Law is starting to emerge from court rulings in nations that have ratified it.[241]

The Convention and the Model Law are the core of international commercial arbitration. Although there are ambiguities, both the Model Law and the Convention are very well written pieces. This is evident with how much they are used in arbitration. Yet, a common criticism of the Convention is that it did not establish a comprehensive legislative framework covering every facet of international arbitration, unlike the 1985 UNCITRAL Model Law, for instance.[242] Uniformity was a primary goal of the Convention's drafters, who aimed to create a unified set of global legal norms for the implementation of arbitration verdicts and agreements.[243] The provisions of the Convention, in particular, set uniform international standards for: (a) national courts must recognize and enforce foreign arbitral awards (Articles III and IV), subject to a limited number of specified exceptions (Article V).[244] The word "must" has been used although according to a "pro-enforcement" interpretation of Article VII, agreements and awards may be enforced under the Convention, another treaty, or national law if it is more advantageous than the Convention.[245] Therefore, it gives the impression that if another treaty or national law goes against the strictness of having to enforce or recognize an award it is free to use. The Model Law has a similar set of rules, as it allows for the non-recognition of an award, and include public policy, lack or excess of jurisdiction, non-compliance with the arbitration agreement, violations of due process, and non-arbitrability. Articles 35 and 36 of the Model Law mandate, in a parallel provision, the recognition and enforcement of foreign awards (issued in arbitral seats outside the state of recognition), again on the same terms as specified in the Convention.[246] Lastly, it is prevalent to look at the reform and recommendations that the Model Law and the Convention could use help to reflect on the changes that are being asked of them.

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[240] Ibid.
[241] Henri Alvarez and others, *Model Law Decisions: Cases Applying the UNCITRAL Model Law on International Commercial Arbitration* (Kluwer Law International 2003)
[242] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[243] Ibid.
[244] Ibid.
[245] Gary B. Born, *International Arbitration; Law And Practice* (3rdedn, Kluwer Law 2021).
[246] Ibid.

5. Reform And Recommendations

Amending the New York Convention

Due to the issues with the recognition and enforcement of international commercial arbitral awards, it is necessary to examine what possible reform the Conventions have shown. All of the world's major nations have ratified the New York Convention, a widely recognized international convention pertaining to private international law. The Convention, which has been ratified by 172 governments and all major powers, has been a tremendous achievement in recognizing and upholding judicial rulings.[247] Even in nations with a shortage of experts in international arbitration, the ease of use of the Convention enables a simple enforcement procedure for arbitration agreements and decisions.[248] The effectiveness of the Convention is especially remarkable in light of the international community's previous attempts to draft a worldwide multilateral instrument for the recognition and enforcement of court rulings.[249]

Since its 40th anniversary in 1998, the New York Convention, a worldwide arbitration convention, has been the subject of considerable controversy. Because of the Convention's widespread acceptance, current standing, continuing research, and judicial interpretation, the majority of authors think it shouldn't be changed.[250] The 134 member nations are unlikely to agree on an amendment, though, as it would be a drawn-out procedure that may jeopardize the Convention's current general acceptance and application. Moreover, it is doubtful that any revision will improve the Convention's approval because the act of amending it can make it less widely accepted.[251]Although, the Convention is widely accepted the concerns are still

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[247] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[248] Ibid.

[249] Ibid.
[250] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[251] Ibid.

there, a new protocol or amendment to the Convention given the ambiguity, may as a result sway those to approve a clearer law.

Acceptance of a New Treaty or a Protocol to the Convention

States have been debating the worldwide treaty known as the New York Convention since 1976. A protocol was suggested by the Asian African Legal Consultative Committee to enhance court enforcement and consistency. UNCITRAL, however, declined this idea in 1977, arguing that a Protocol would not be the best course of action.[252] The UN New York Convention Day brought this idea back to life in 1998 as a potential reform path. To make definitions more clear, the new treaty can use the UNCITRAL Model Law. The same issues that arise with changing the Convention would also arise with this strategy, including the difficulty in reaching a consensus and the possibility of creating a third and fourth tier of Convention membership. The multiple tier system would be tedious and confounding for global trade participants.[253] Yet, the fact that it has been brought up again to the Convention shows that there is interest for it to be changed.

Promotion of the UNCITRAL Model Law

The UNCITRAL Model Law has drawn criticism for its inconsistent award enforcement practices, despite its intended global harmonization of international commercial arbitration. In order to remedy this, it was proposed that the Model Law be updated or modified in order to provide guidelines for the enforcement of Convention awards as well as a model legislation outlining the requirements for award enforcement outside of the Convention.[254] States would be able to more easily take use of the most advantageous legal provision included in Article VII(1) of the Convention as a result.[255] The Model Law is the foundation for arbitration laws in nations like, Scotland in the United Kingdom and California, Connecticut, Oregon, and Texas in the United States. It has been extensively recognized or influenced by both civil and common law jurisdictions. However, the Model Law does not address a number of the Convention's inadequacies, including the definition of "arbitration award" and the ambiguity

[252] Ibid.
[253] Ibid.
[254] Pieter Sanders, *Quo Vadis Arbitration? Sixty Years of Arbitration Practice* (Kluwer Law International 1999) 81-82.
[255] The Convention, Article VII(1)

in the written form requirement.[256] Three benefits come from amending the Model Law again rather than creating a new convention or Protocol: it is simpler to create a model law on the enforcement of foreign arbitral awards outside of the Convention, States can more easily implement these new articles into their domestic laws, and parties have more latitude to depart from the prescribed text.[257] This idea would be the most sensible path to choose. Given that it is more difficult to amend the Convention or to create a new treaty.

Adoption of Non-Binding Instruments

In a proposal made in previous years to amend the Convention and achieve consistency was to issue non-binding instruments, including practice guidelines like the restatement for courts and advocates in the contracting states, which provide proposed consistent interpretations of the Convention's articles.[258] This strategy is predicated on the idea that appropriate judicial interpretation may overcome the shortcomings of the Convention.[259] Any method that could affect judicial interpretation is used to implement this kind of reform, including training programs for advocates and judges, handbooks or guidelines, and the release of court rulings that demonstrate how the Convention has been interpreted in contracting state courts.[260] These non-binding agreements might all help to harmonize how the Convention is used and interpreted. This then came to light in 2016, the UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) 2016 Edition was posted. In the preface under Section 7 it states;

> "The Guide on the New York Convention does not constitute an independent authority indicating the interpretation to be given to individual provisions but rather serves as a reference tool collating a wide range of decisions from a number of jurisdictions. The purpose of the Guide is to assist in the dissemination of information on the New York Convention and further promote its adoption as well as its uniform interpretation and effective implementation. In addition, the Guide is meant to help judges, arbitrators, practitioners, academics and Government officials use more efficiently the case law relating to the Convention."[261]

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[256] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[257] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[258] Ibid.
[259] Ibid.
[260] Ibid.
[261] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) 2016 Edition.

The guide contains the interpretations of many judgements from different jurisdictions. One may be under the impression that the guide would be constructed by those in the same manner as the Convention. Rather it has compiled a number of interpretations from cases that have all been decided on different ethics from different jurisdictions. This again, proves how many cases there have been where an interpretation of the Model Law has been made. While they have answered a proposal, they have also outlined a weakness. That is that they cannot put the Convention into plain wording.

The New York Convention's faults

The New York Convention has been successful, yet there are still a lot of issues with its implementation. The preceding section outlines the broad reform pathways.[262] This section outlines flaws in the Convention and offers solutions that can be implemented through the reform paths already mentioned. The UNCITRAL Secretariat released a list of 13 issues related to international arbitration in 1999. These issues stem from the Convention's textual ambiguity or from the Convention's complete lack of discussion of these issues.[263] The UNCITRAL Secretariat released a list of five issues related to international arbitration in 2022.

A. Developments in DRDE .
B. Online platforms for dispute resolution
C. Adjudication
D. Technology-related dispute resolution
E. Roundtable discussion on the way forward

In Section 79 of the RoundTable Discussion on The Way Forward it states:

> "It was also suggested that the work could involve the preparation of model clauses on the appointment and role of experts/neutrals, short time frames and confidentiality, which parties could use for disputes that require a swift resolution. Lastly, it was stressed that

[262] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[263] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.

such work should be based on existing UNCITRAL texts and address how their use could be amplified without the need to revise those texts."[264]

This shows how the law is not going to be changed. Instead, it will add more guidelines on how to interpret the law but not change it to make it easier, and then there would be no need for interpretation. In looking at further recommendation the Working Group posted its recommendations in February 2024. It was stated that following the submission of the drafting proposals, there was a general consensus that the Working Group ought to clarify the objectives of the model clause. It was said that the main goal of the model provision was to guarantee that arbitral proceedings would take place within a set, non-negotiable time period in order to facilitate the prompt settlement of disputes.[265]It was also suggested that the model language establishing a time limit would assist in avoiding needless delays, lower expenses, and provide parties predictability throughout the arbitration.[266] Although this recommendation was made for the model clause, it mentions predictability. Predictability is something that needs to be in all arbitrations, this means having predictable law. Not law that is vague and could disrupts the final outcome of an arbitration.

Arbitration rulings that have been revoked by a court in the nation where they were issued have also sparked debate about amending the Convention. An enforcement court cannot use the New York Convention's principles to apply to annulled awards.[267] A court may decline to enforce an award that has been set aside in the nation where it was made, according to Article V(1)(e).[268] The implementation of Article V(1)(e) has had erratic outcomes, as one might anticipate.[269] While the UNCITRAL Model Law does include a minimal criteria for annulling awards in Article 34,[270] which is comparable to Art V(1) of the Convention, it does not offer a

[264] Report of the Colloquium on Possible Future Work on Dispute Settlement held during the seventy-fifth session of Working Group II (New York, 28 March–1 April 2022) A/CN9/1091 Sec 79.
[265] Report of Working Group II (Dispute Settlement) on the work of its seventy-ninth session (New York, 12–16 February 2024) A/CN9/1166.
[266] Ibid.
[267] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[268] The Convention, Article V(1)(e).
[269] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[270] UNCITRAL Model Law, Art 34.

unified norm for handling annulled awards.[271]The absence of uniformity in the handling of revoked awards has occasionally led to peculiar enforcement actions.[272]

Two well-known examples where US and French courts enforced revoked awards are *Chromalloy and Hilmarton*[273]. The Arab Republic of Egypt held a contract with the US business Chromalloy Aeroservices, Inc. for the inspection and maintenance of Egyptian Air Force helicopters. The arbitral panel granted Chromalloy $16.2 million plus interest after finding that the contract had been cancelled illegally. At the same time that Egypt moved to the Court of Appeal of Cairo to have the verdict annulled, Chromalloy attempted to enforce this award in France and before the US District Court in Washington, DC. On May 4, 1995, the Tribunal de Grande Instance in Paris put the award into effect.[274] On December 5, 1995, the Egyptian Court of Appeal revoked the award. Nevertheless, the verdict was upheld by the US District Court on July 31, 1996.[275] Despite the fact that Art.V(1)(e) of the Convention does not oblige courts to refuse to enforce an annulment, this was the first instance of an annulment being enforced. This again shows the confusion in the gap of the Model Law. Also that in the guidelines set out by the General Secretary in 2016 how different courts can come to different conclusions and how it may not be appropriate to use many different cases to show how the Model Law is to be interpreted.

Hilmarton featured an ICC arbitration clause in a consulting agreement between Hilmarton (the consultant) and OTV.[276] Hilmarton's fee claim was denied by the Swiss ICC panel. OTV requested and was granted enforcement of the award at the Paris Court of First Instance. Both the Supreme Court and the Paris Court of Appeal upheld the trial court's ruling. Regardless of whether the Swiss verdict was revoked in Switzerland, the French Supreme Court ruled that it remained enforceable. Simultaneously, the Geneva Court of Appeal nullified the award on the basis of arbitrary decision-making, which is not included in the list of reasons specified in Article V of the Convention for preventing execution. The Swiss Supreme Court nevertheless

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[271] UNCITRAL Model Law, Art 34(2)
[272] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[273] *Chromalloy Aeroservices v Arab Republic of Egypt*, 939 F Supp 907 (District Court, Columbia 1996).
[274] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[275] *Chromalloy Aeroservices v Arab Republic of Egypt*, 939 F Supp 907 (District Court, Columbia 1996).
[276] *Hilmarton Ltd (UK) v Omnium de Traitement et de Valorisation-OTV (France)* [1994] 20 Y.B. Comm. Arb. 663 (1995) (France Court of Cassation)

upheld. Through his efforts, Hilmarton was able to get this annulment upheld by the French Court of First Instance in Nanterre. At this point, Hilmarton also managed to get the matter resubmitted to a different Swiss arbitrator, who rendered a decision in Hilmarton's favour and mandated that OTV pay a fee as stipulated in the contract. This second award was enforced by the Court of First Instance of Nanterre, France as well. If nothing else, these instances show us that an award need not be deemed null and void simply because one court has annulled it.[277] This shows yet another inconsistency in the Convention also and how this case will give further confusion and frustration upon both parties after been given different conclusions, and again how much the recognition and enforcement of awards is broadly interpreted.

Yet again the guide by the General Secretary made in 2016 are relevant to these recommendations. In Article 1 (1) the meaning of "recognition and enforcement" was discussed;

> "The New York Convention does not define the terms "recognition" and "enforcement" and case law interpreting these terms is scarce. Of the few reported cases, a Colombian court has held that, while "recognition" concerns recognizing the legal force and effect of an award, "enforcement" concerns the forced execution of an award previously recognized by the same State."[278]

While this interpretation is now helpful it is not defined in the Convention, those with issues interpreting may not know of this guide published. As it states there are few decisions where it has been defined. The question of whether a party must request recognition and enforcement of an award jointly or separately is directly tied to the meaning of the terms "recognition" and "enforcement." The German Supreme Court interpreted "recognition and enforcement" to indicate that the two measures were connected and could not be pursued independently in a 1981 ruling.[279] Not only was the definition of recognition and enforcement questioned but also the terminology, this clarifies that it is a whole entity and not to be interpreted as two separate issues.

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[277] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.

[278] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

[279] Ibid.

‘Arbitral awards’ are not defined in the Convention. "It will depend on the law of the State in which an award is to be enforced whether a particular decision is to be regarded as an arbitral award," the Austrian representative said during the article I negotiations.[280] This implies that the determination of when a decision qualifies as a "arbitral award" under the New York Convention rests with the courts of the Contracting States where recognition and enforcement are sought. Numerous courts have ruled that the intent and goals of the New York Convention must be taken into account when defining the phrase "arbitral award."[281] For instance, a Colombian court has ruled that the spirit of the New York Convention should be followed when interpreting the word "arbitral award."[282] It is commonly acknowledged by courts that an award is determined by its substance and essence, not by the designation the arbitrators gave it.[283] For instance, a United States court has ruled that an award is enforceable under the New York Convention even if it is not named "award."[284] Likewise, an arbitrator's designation of a judgment as an "award" would not be sufficient to qualify it as such under the New York Convention.[285] Courts have determined that, for the purposes of the New York Convention, "arbitral awards" can only refer to arbitrators' rulings that finally and bindingly resolve all or some parts of the dispute, including jurisdiction.[286] Consequently, courts have determined that a judgment must meet three requirements in order to qualify as a "arbitral award" under the New York Convention: it must (i) be rendered by arbitrators; (ii) settle a dispute or a portion of it in a final way; and (iii) be binding.[287]

Case law that has been recorded demonstrates that judgments that ultimately settle a disagreement, in whole or in part, are regarded as ‘awards’ within the terms of the Convention.[288] For instance, an Australian court ruled that a judgment must definitively resolve all or at least part of the issues brought before the arbitral tribunal in order for it to qualify as a

[280] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[281] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) Art I(1).
[282] Ibid.
[283] Ibid.
[284] Ibid.
[285] Ibid.
[286] Ibid.
[287] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) Art V (1)(e)
[288] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) Art I(1).

"arbitral award" under the terms of the New York Convention.[289] In a similar vein, a US court determined that in order for a ruling to be considered an "award," it must definitively resolve each distinct claim.[290] As per the Colombian court's interpretation of the "finality" criterion, the decisions are considered final not because they terminate the arbitration or the tribunal's operations, but rather because they definitively resolve certain problems that have been brought to arbitration.[291]

Here it is evident that the guide goes back on itself. It first discusses how even if an award is not called an award, it can still be enforceable, and how it is not an award even if an arbitrator deems it to be. Yet courts have determined a set of rules for an award to be named an award. It can prove to be efficient to have a set of rules that will govern when an award is deemed an award, but the other comments of awards are simply confusing to those trying to interpret the guide. Courts are attempting to "align their interpretations, thus establishing a truly uniform judicial interpretation of the Convention's provisions," despite the fact that different courts may have had differing opinions on particular sections of the Convention, according to surveys of judgments.[292]

The New York Convention's pro-enforcement stance is embodied in Article III, which states that "each Contracting State shall recognize arbitral awards as binding and enforce them."[293] Foreign arbitral awards have a *prima facie* claim to acceptance and enforcement in the Contracting States because of article III. "[e]ach Contracting State shall recognize arbitral awards as binding and enforce them," reads the opening clause of article III.[294] The term "must" in article III indicates that the duty is mandatory, as noted by the courts of the Contracting States on many occasions.[295] According to a Cameroonian court, for instance, "the meaning of article I and article III [...] is that Cameroon is bound to recognize and enforce arbitral awards

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[289] Ibid.
[290] Hall Steel Company v. Metalloyd Ltd., 492 F.Supp.2d 715 (District Court Eastern District of Michigan 2007).
[291] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
[292] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[293] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
[294] Ibid.
[295] Ibid.

made in another contracting State."[296] According to a Bulgarian court, "every signatory country [to the Convention] shall recognize the validity of the final arbitration award and shall allow its enforcement" as per Article III.[297] Courts in Germany and England have also acknowledged that article III is required.[298]

Although parties aiming to recognize and enforce foreign arbitral awards have frequently targeted the courts of Contracting States where the award-debtor possessed assets or where they felt there was a greater chance of collecting a monetary award,[299] neither article III nor any other clause of the Convention necessitates the existence of assets in the jurisdiction where recognition and enforcement is sought. The courts of the Contracting States have not linked recognition and enforcement under the Convention to the existence of assets, with the exception of a German ruling that denied execution of a foreign arbitral award in a situation when the award-debtor had no assets in Germany.[300] Prominent comments attest that the recognition and execution of an award under the Convention does not depend on the existence of assets in the jurisdiction in question.[301] This again was a decision where the court had the discretion to make this an exception.

According to Article III, foreign arbitral awards must be recognized and upheld "in accordance with the rules of procedure of the territory where the award is relied upon."[302] Courts have concluded that the rules of procedure that may be used in accordance with Article III should be construed narrowly and decided upon without reference to the classifications upheld by national legislation.[303] For example, the Italian Court of Cassation ruled that the interpretation of "rules of procedure" should be narrow and that the Italian Code of Civil process did not grant the court the authority to apply the concept of *lis pendens* because of article III.[304] It is possible

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296 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
297 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
298 Ibid.
299 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
300 Ibid.
301 Ibid.
302 The Convention, Article III.
303 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
304 Ibid.

for an award to be recognized and enforced in one Contracting State and denied recognition and enforcement in another due to a procedural rule that is applicable in the former but not the latter. This is because article III grants Contracting States the freedom to apply their national rules of procedure. However, there aren't many instances of these circumstances in published case law.[305] Yet this does appear in the case mentioned above in *Chromalloy and Hilmarton*[306]. Just because there are not many cases of this effect does not mean that there are none. This wording tends to indirectly interpret that the Convention does not want to recognise that there are cases where this issue has occurred. The guide should also not only address the Convention, but take accountability instead of saying that there are not many cases. This shows how they are aware, but do not want to admit that the vague wording of the law has caused much frustration to parties whom cases have been interpreted one way or another by court's in different jurisdictions.

6. Final Thoughts

The New York Convention, ratified by 172 major nations and all major powers, is a significant international agreement on private international law, recognizing and upholding judicial rulings.[307] Despite the Convention's widespread acceptance, there are still doubts. Given the uncertainty in the Convention, a new protocol or amendment may persuade some to support a more precise rules and regulations. The Asian African Legal Consultative Committee recommended a protocol to improve uniformity and enforcement of the law. But in 1977, UNCITRAL rejected this proposal, claiming that a Protocol would not be the wisest course of action. [308] In 1998, the UN New York Convention Day revived this concept as a possible reform avenue. This clearly shows that there is a need for reform as it has been brought to the attention of the Convention before. Instead the Convention has not recognised this and has pushed it

[305] Ibid.
[306] *Chromalloy Aeroservices v Arab Republic of Egypt*, 939 F Supp 907 (District Court, Columbia 1996).
[307] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[308] Ibid.

aside. Yet, the Convention being amended does prove more difficult than a new treaty. In saying this, the Convention is a result of the 1923 Geneva Protocol on Arbitration Clauses in Commercial Matters[309] and the 1927 Geneva Convention for the Execution of Foreign Arbitral Awards. Therefore, when looking at it from this context it can be seen that a better convention can be made as a result of an outdated one instead of amending it.

Another approach is to amend the Model Law. Revision of the Model Law has three advantages over drafting a new convention or Protocol: it is easier to draft a model law on the enforcement of foreign arbitral awards outside of the Convention; States can incorporate these new articles into their national legislation with greater ease; and parties have greater freedom to deviate from the model text. [310] This would be the most logical course of action. Considering that drafting a new treaty or changing the Convention is more challenging.

The issue of non-binding instruments, such as practice guidelines like the restatement for courts and advocates in the contracting states, which provide suggested consistent interpretations of the Convention's articles, was one of the proposals made in previous years to amend the Convention and achieve consistency. [311] As a result the UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) 2016 Edition was then published. This does show that the Convention do see the recommendations made to it, while this guide was a step in the right direction it did still show discrepancies. In Article 1 (1) the meaning of "recognition and enforcement" was discussed; "The New York Convention does not define the terms "recognition" and "enforcement" and case law interpreting these terms is scarce." [312] The fact that case law interpreting recognition and enforcement is very few shows that courts are reluctant to interpret this. Resulting in awards not being recognised and enforced.

The New York Convention does not define "arbitral awards," but courts have determined that they refer to rulings by arbitrators that resolve disputes, including jurisdiction, and must be

[309] Geneva Protocol on Arbitration Clauses in Commercial Matters ("Geneva Protocol"), 27 L.N.T.S. 158 (1924).
[310] James D fry, 'The Federal Arbitration Act, UNCITRAL Model Law and New York' (2005) 8(1) International Arbitration Law Review 1-13.
[311] Ibid.
[312] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

final, binding, and settle the dispute. [313] Yet when this was discussed earlier it showed how confusing the guide was with trying to state the right way to interpret when an award is an 'award'. The purpose of the guide is to try to clarify the interpretation of the Convention, instead it comes across as confusing to the reader. The New York Convention's pro-enforcement stance is embodied in Article III, which states that "each Contracting State shall recognize arbitral awards as binding and enforce them."[314] According to Article III, foreign arbitral awards must be recognized and upheld "in accordance with the rules of procedure of the territory where the award is relied upon."[315] While the wording suggest that award must be enforced, how were awards being enforced where in certain cases the term 'award' had to be interpreted.

The Convention allows Contracting States to apply their national rules of procedure, allowing for the recognition and enforcement of awards in one state but denied in another. Although there aren't many instances of this in published case law, it doesn't mean there are not.[316] The guide should address this issue and take accountability, acknowledging the vague wording of the law that has caused frustration for parties. The guide offers interpretations of several rulings from various courts. It's possible that they thought the guide would be created by those who created the Convention. Instead, it has gathered a variety of interpretations from cases judged under various ethical standards in various countries. This demonstrates once more the sheer number of instances in which the Model Law has been interpreted. They have addressed a suggestion and pointed out a flaw at the same time. That is, they are unable to reword the Convention in straightforward language. This guide should not be accepted as the Conventions way of showing reform as it has shown that it still carries ambiguity.

[313] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) Art V (1)(e)
[314] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).
[315] The Convention, Article III.
[316] *Chromalloy Aeroservices v Arab Republic of Egypt*, 939 F Supp 907 (District Court, Columbia 1996).

Conclusion

In the first chapter the history in particular was discussed. Contemporary practices in international law have evolved significantly over time, with the development of commercial arbitration being a significant aspect of the practice. The growth of arbitration in England and other nations during the "globalization boom" in the century before 1914 was driven by rising conflicts between buyers and sellers. The Jay Treaty of 1794 significantly changed the course of international arbitration history. This period saw a renewed sense of arbitration within trade organizations and between nations, with arbitration seen as a successful conflict resolution method. The Age of Aspirations and the Age of Innovation further developed fundamental concepts for modern international arbitration practice. This in particular was important for showing that certain events and cases have an impact on lawmaking. For the recognition and enforcement of international commercial arbitral awards and its issues could also like the cases involved will hopefully help the international conventions see that reform should be taken.

Arbitral awards are crucial for the recognition and enforcement of international commercial arbitral awards, as they are subject to the form, rectification, annulment, recognition, and preclusive consequences of arbitral judgments as stipulated by national arbitration legislation. The Model Law and the New York Convention have formal requirements for awards, such as

being in writing, signed by the recipient, specifying the date and location of the arbitration, and including the rationale for the judgment. The arbitration agreement establishes the remedial powers of an international arbitral tribunal, allowing parties to give arbitrators considerable latitude in awarding civil remedies to settle conflicts. Arbitration awards are a crucial aspect of international law and norms, encompassing consent awards, default awards, interim awards, final awards, and partial awards. In some cases having to get recognition or having to get the award enforced is. It is evident how important these awards are as they carry the importance of a resolution to the parties. All cases are important and should not have legal uncertainties yet still even the definition of 'awards' is not in the Convention. The issue of the recognition and enforcement of international commercial arbitral awards starts with the awards themselves.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is a crucial international mechanism for coordinating and standardizing the recognition and execution of arbitral awards. It aims to uphold arbitration agreements and acknowledge international arbitral rulings. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in 1958, helps governments update and modify existing laws to better accommodate the unique characteristics and needs of international commercial arbitration. The Convention outlines several grounds for refusing to recognize and enforce an arbitral award, such as incapacity of the parties, invalidity of an arbitration agreement, violation of due process, and setting aside or suspension of an award. In Switzerland and Australia have considered the UNCITRAL Model Law on International Commercial Arbitration to regulate arbitration. Switzerland's PILA allows parties to be considered international if one doesn't have a Swiss domicile or seat. Australia's Model Law forbids merit review, allowing parties autonomy and appeal rights for domestic awards. Yet, reviewing the Convention it has not acted in its full capacity to better arbitration. Although there were amendments made in 2006, it should also consider looking at other jurisdictions. This way it can deliberate on how other jurisdictions truly update and modify existing laws.

The New York Convention, a significant international agreement on private international law, recognizes and upholds judicial rulings. Despite its widespread acceptance, there are still doubts about its interpretation. A new protocol or amendment may be necessary to improve

uniformity and enforcement of the law. The Asian African Legal Consultative Committee recommended a protocol to improve uniformity and enforcement of the law, but UNCITRAL rejected this proposal in 1977. In 1998, the UN New York Convention Day revived the concept as a possible reform avenue. Another approach is to amend the Model Law, which has advantages over drafting a new convention or Protocol. This would allow states to incorporate new articles into their national legislation with greater ease and give parties greater freedom to deviate from the model text. The UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 2016 Edition was published, but it still shows discrepancies in its interpretation. The guide offers interpretations of several rulings from various courts, but it is unable to reword the Convention in straightforward language, demonstrating the sheer number of instances in which the Model Law has been interpreted.

This paper explored the underlining factors that cause the confusion within the recognition and enforcement of awards, by examining the language used in the laws of awards and recognition and enforcement of awards. Through this, issues found in the context of the laws proved it is difficult to recognise and enforce awards not because of the facts of the cases but because of the unpredictability of the laws. It also to assessed the effects of the international conventions on the recognition and enforcement of international awards. This was achieved by explaining the conventions and why they were set up to further the courts compliance. It was discovered that while the development of the conventions was beneficial they did not provide clarity within their laws. This study also proposes reform to fill in any discrepancies or uncertainties in these laws to better the international commercial arbitration system. This is by selecting laws that are not appropriately worded and proving how these are issues. This paper aimed at trying to show the reader that arbitration is a great system but with its in discrepancies proved otherwise. With appropriate reform, the recognition and enforcement of international commercial arbitral awards will build arbitration to be the great system it was intended to be.

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