Report to the
Washington Foreign Law Society
on
The UNCITRAL Model Law
on International Commercial Arbitration*

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I. INTRODUCTION

In September 1986, the Washington Foreign Law Society established a Committee to Study the UNCITRAL Model Law on International Commercial Arbitration,¹ (the "Model Law"), for the purpose of considering (a) whether the Model Law should be adopted by Congress or any of the states or (b) whether certain provisions of the Model Law might be appropriate for incorporation into the law of the United States by amending state laws and/or the Federal Arbitration Act² (the "FAA").

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This Report was prepared by the Washington Foreign Law Society's Committee on the UNCITRAL Model Law on International Commercial Arbitration. Charles A. Hunnicutt, Chairman; Stephen M. Boyd, Chairman, Federal Issues Subcommittee; Russell B. Stevenson, Jr., Chairman, State Issues Subcommittee; Kenneth I. Juster, Federalism Issues; Loren W. Hershey, Rapporteur.—Ed.

The Committee organized itself into subcommittees on Federal Issues and State Issues.

The Federal Issues Subcommittee compared the Model Law to the FAA, the New York Convention, and federal case law for the purpose of identifying Model Law provisions which are inconsistent with, or which deal with substantive points not covered by federal arbitration law. The State Issues Subcommittee performed a similar analysis, comparing the Model Law to the Uniform Arbitration Act (the "UAA"). Most of the states and the District of Columbia have patterned their arbitration statutes after the UAA.

Parts II and III of this Report describe the background and content of the Model Law, and discuss U.S. arbitration law and policy at federal and state levels. Part IV contains the Committee's recommendation for amending the FAA by incorporating certain provisions of the Model Law rather than adopting the Model Law in its entirety, and explains why several other possible amendments are not recommended. Part V explores complex issues of the relationship between state and federal law governing international arbitration, and Part VI recommends adoption of the Model Law by the states and the District of Columbia.

II. THE MODEL LAW

A. Origin and Impact of the Model Law

The United Nations Commission on International Trade Law ("UNCITRAL") was established in 1966 by the U.N. General Assembly to promote the unification of international trade law on a global basis. UNCITRAL has produced substantial results in several areas of international trade law, including international commercial arbitration and conciliation. In 1976, it produced the UNCITRAL Arbitration Rules, which are comprehensive, up-to-date, and widely accepted. These rules are being used, with some modifications, by the Iran-U.S. Claims Tribunal in The Hague. In 1980, UNCITRAL developed a companion set of Conciliation Rules.

3. The United States is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), 21 UST 2517, TIAS 6997, 330 UNTS 3, 9 U.S.C.A. § 201. Note: Chapter 2 of the FAA was enacted to implement the New York Convention in the United States. See Appendix C for text of the New York Convention.
5. The members of the Committee which prepared this report do not necessarily subscribe to each of its points. Although there was general agreement on the essential elements, there were minority positions which are not reported.
In 1982, the UNCITRAL Working Group on International Contract Practices began work on a Model Law on International Commercial Arbitration, which was intended to serve as a model for national laws in countries without arbitration law or where existing law needed modernization. The Model Law was unanimously approved by UNCITRAL on June 21, 1985, and on December 11, 1985, the U.N. General Assembly urged states to give serious thought to adopting the Model Law. The new Model Law establishes a unified practice and procedure for arbitration of international commercial disputes and strives to meet the essential requirements of party autonomy and basic fairness.

The U.S. government strongly supported UNCITRAL's work on the Model Law and was ably represented in the drafting group by two recognized arbitration experts, Michael Hoellering and Howard Holtzman, and by a representative of the State Department's Legal Adviser's Office. Although some compromises inevitably had to be made in the drafting process, the United States was generally satisfied with the final results.

In 1986, Canada became the first country to enact the Model Law at the national level. In Australia, a special working group established by the Federal Attorney General recently recommended that it be adopted at the national level in that country. The Model Law is also being studied in Egypt, England, Scotland, and presumably a number of other jurisdictions.

At the subnational level, the Model Law has already been enacted in most Canadian provinces and territories, including British Columbia, Ontario, and Quebec. It was also used as a source of ideas for the Florida International Arbitration Act, enacted in 1986, and for a bill pending in the Georgia legislature. In addition, a bill introduced in the California legislature in April 1987 is substantially based on the first six chapters of the Model Law, with a new seventh chapter on Conciliation. The California Bill was approved by the California Assembly in September 1987 and is expected to be approved by the State Senate and enacted into law in 1988.

9. Other jurisdictions, including the Netherlands and Switzerland, have recently adopted comprehensive laws on international commercial arbitration that are not based on the Model Law.
11. 1988 Cal. Adv. Legis. Serv. 23 (Deering). Chapters 7 and 8 of the Model Law on recognition and enforcement of foreign arbitral awards were not included in the California bill because they substantially duplicate Article V of the New York Convention, which is already in force.
12. The California bill passed in early 1988, was signed by the Governor on March 7, 1988, and became effective immediately.
B. Summary of the Model Law

The Model Law applies in international commercial arbitration, "international" being defined in the Model Act (Art. 1(3)). "Commercial" is not defined in the text, although a footnote to Article 1(1) states that a broad interpretation is intended and provides a nonexclusive list of commercial relationships.

Under the Model Law, courts are permitted to intervene only where explicitly provided in the Model Law. Each state enacting the law specifies the courts or other authorities that will perform the stated functions.

If an action is brought in a matter which is the subject of an arbitration agreement, the court shall, upon the request of a party, refer the matter to arbitration unless the court finds the agreement to be null and void, inoperative, or incapable of being performed. (Art. 8). The court may also provide interim measures of protection before or during arbitral proceedings. (Art. 9).

The court appoints arbitrators upon request of a party if: (1) a party fails to appoint an arbitrator within thirty days of receipt of a request from the other party; or (2) the two appointed arbitrators fail to agree on a third within thirty days of their appointment; or (3) in the case of a sole arbitrator, the parties are unable to agree. (Art. 11(3)). In addition, the court intervenes at the appointment stage if the parties or the arbitrators fail to perform actions required by the agreed appointment procedure. (Art. 11(5)).

Under the Model Law, parties may challenge an arbitrator. If the arbitral tribunal rejects the challenge, the challenging party has thirty days to request the court to decide on the challenge. The court's decision is not subject to appeal. (Art. 14(3)).

A party may request the court to decide on the termination of an arbitrator's mandate if the arbitrator becomes unable to perform the specified functions or fails to act without undue delay. A court decision would be needed only if the arbitrator does not voluntarily withdraw from office or if the parties do not agree on the termination. This decision is also not subject to appeal. (Art. 14(1)).

The Model Law provides specific requirements for the setting aside of an award by the court. The party making the application must prove that: (1) a party to the arbitration agreement was under some incapacity; or (2) the arbitration agreement is not valid under the law chosen by the parties; or (3) the party making the application was not given proper notice at a critical stage in the proceedings and was therefore unable to present its case; or (4) the award deals with a dispute beyond the scope of the arbitration agreement; or (5) the arbitral procedure or composition of the arbitral tribunal was not in accordance with the agreement. The court may also set aside an award if it finds that: (1)
the subject matter of the dispute is not capable of settlement by arbitration under the laws of the state; or (2) the award is in conflict with the state's public policy. (Art. 34(2)). In addition, the court may be asked to recognize or enforce an arbitral award and may refuse to do so only if the same proof is provided as outlined above for setting aside an award.

The Model Law also provides procedural protections for international commercial arbitration and the opportunity for parties to agree on expanded protections. For example, the parties are to be treated equally and each given a full opportunity to present their cases. (Art. 18). The parties may submit any relevant documents with their statements and may amend or supplement their statements during the course of the proceedings. (Art. 23). The Model Law requires that the parties be given sufficient advance notice of any hearing or other meeting of the arbitral tribunal for inspection of evidence. (Art. 24(2)). All information supplied to the arbitral tribunal by one party must be communicated to the other party, along with any expert report or other evidentiary document on which the arbitral tribunal may rely. (Art. 24(3)). Upon request, the parties may question experts appointed by the arbitral tribunal and may present expert witnesses to testify on the points at issue. (Art. 26(2)).

Absent agreement by the parties, however, the arbitral tribunal has broad authority to determine procedural matters, including the place for arbitration, for consultation, for hearing witnesses, experts, or the parties, or for inspection of evidence. (Art. 20(2)). Since the arbitral tribunal may conduct the proceedings in any manner it considers appropriate, the arbitral tribunal also decides whether to hold oral hearings or whether to conduct the proceedings on the basis of documentary evidence alone. (Art. 24(1)). Finally, the parties may agree on the law to be applied to the substance of the dispute. However, absent this determination, the arbitral tribunal applies conflict of laws rules which it determines to be applicable. (Art. 28(1), (2)).

In international arbitration it is important for the parties to be free to agree on arbitral procedures because of their different nationalities and legal systems. However, the differences between the parties may be so great as to preclude agreement, and important due process and procedural decisions may be left to the arbitral tribunal. Some aspects of arbitration are not covered in the Model Law, including: (1) arbitrability; (2) the capacity of parties to conclude an arbitration agreement; (3) sovereign immunity; (4) consolidation of arbitration proceedings; and (5) enforcement of interim measures of protection.
A. Sources of Federal Law

The principal sources of federal arbitration law are the FAA, the New York Convention and its implementing legislation, and the decisions of federal courts. The FAA was enacted in 1925 to provide pro-arbitration, procedural guidelines for the federal courts in disputes arising under arbitration clauses in maritime transactions and contracts involving commerce.13 Previously, many courts had declined to enforce agreements to arbitrate future disputes, viewing such agreements as attempts to oust courts of their jurisdiction.14 Court decisions applying FAA provisions have turned judicial attitudes of hostility towards arbitration to the current strong support.

The FAA applies to all written arbitration agreements involving disputes whether they arise prior or subsequent to the date of the agreement. The policies which the FAA seeks to implement include enforcement of arbitration agreements, effective functioning of the arbitration process, provision for necessary safeguards, and the establishment of an efficient procedure for judicial involvement in arbitral proceedings and enforcement of arbitral awards. Many of the FAA’s provisions are designed to deal with procedural matters which parties do not anticipate when executing their contracts.

For example, the FAA permits arbitrators to correct minor errors and clarify awards, and it also specifies grounds for confirming, vacating, or modifying awards.15 However, the FAA contains no provision dealing with appeals of interlocutory awards to courts. Until recently, confusion and inconsistency had developed in federal court decisions dealing with interlocutory appeals in arbitration cases.16 Efforts have been underway for several years to amend the FAA by adding a new section 15 to make clear when an appeal may be taken from lower court orders affecting arbitration.

In 1958, the New York Convention was drafted at an intergovernmental conference at U.N. Headquarters in New York City.17 In 1970,
the United States ratified the New York Convention and enacted Chapter 2 of the FAA,\textsuperscript{18} to implement United States obligations under the Convention.

B. Recent Supreme Court Cases

In recent years, the U.S. Supreme Court has repeatedly strengthened arbitration law in the United States by reversing lower court decisions which had created exceptions to the general presumption in favor of arbitration. For example, in \textit{Scherk v. Alberto Culver},\textsuperscript{19} the Court enforced an agreement to arbitrate disputes in an international transaction involving the purchase of corporate securities even though under federal securities law at that time a purchaser in a purely domestic transaction would have had an absolute right to a judicial determination of its claims, \textit{i.e.}, a right that could not be waived or foreclosed by contract.

In \textit{Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.},\textsuperscript{20} the Court upheld the arbitrability of claims under U.S. antitrust laws which arise under international commercial agreements. Lower courts had consistently followed the \textit{American Safety Doctrine} which stated that antitrust issues were not arbitrable because of the public interest in vigorous, public enforcement of the antitrust laws which are of critical importance to a free enterprise system.\textsuperscript{21} The Supreme Court's decision in favor of arbitrability further expands the scope of arbitration in the United States and precludes respondents from avoiding an arbitration agreement by asserting a defense or counterclaim based on U.S. antitrust law.

Most recently, in \textit{Shearson/American Express, Inc. v. McMahon},\textsuperscript{22} the Supreme Court extended its approval of predispute arbitration agreements to two more categories of "public law" claims. In that case, the Court determined that domestic claims brought under section 10(b) of the Securities Exchange Act of 1934 and under section 1964(c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO") are arbitrable.\textsuperscript{23}

\begin{footnotes}
\item[18.] 9 U.S.C. §§ 201-08 (1982).
\item[19.] 417 U.S. 506 (1975).
\item[20.] 473 U.S. 614 (1985).
\item[21.] American Safety Equipment Corp. v. J.P. Maguire Co., 391 F.2d 821 (2d Cir. 1968). See Applied Digital Tech., Inc. v. Contential Casualty Co., 576 F.2d 116, 117 (7th Cir. 1978); Cobb v. Lewis, 488 F.2d 41, 47 (5th Cir. 1974); Helfenbein v. International Indus., Inc., 438 F.2d 1068, 1070 (8th Cir. 1971); Power Replacements v. Air Preheater Co., 426 F.2d 980, 983-84 (9th Cir. 1970).
\item[22.] 107 S. Ct. 2332 (1987).
\end{footnotes}
C. State Arbitration Laws—The Uniform Arbitration Act

State legislation authorizing enforcement of arbitration agreements is nearly universal. The arbitration legislation in more than half of the states is based on the UAA. The UAA authorizes specific enforcement of arbitration agreements with respect to both existing and future disputes, allows judicial review of arbitration awards for errors affecting the arbitration process but not for errors of law, and provides for a 90-day period of limitations for petitions to vacate or modify an award. Accordingly, in states that have adopted the UAA without substantive change, the FAA and the state statute tend to complement one another.

Some states, however, have diverged markedly from the UAA and the FAA. For example, several state statutes authorize specific enforcement of arbitration agreements only with respect to existing controversies and expressly exclude agreements to arbitrate future disputes. Some statutes, moreover, exclude tort claims from the operation of general commercial arbitration law. Other categorical exceptions are common. A few states have not accorded future controversies the same finality

27. Id. at §§ 12(a), 13(a), 7 U.L.A. at 140, 201-02.
28. UAA §§ 12(b), 13(a), 7 U.L.A. at 140, 201.

Furthermore, Iowa, Kansas, and Montana treat arbitration agreements as to future controversies differently from existing controversies. See Iowa Code Ann. § 679A.1(2) (West Supp. 1986) (agreements for future controversies cannot apply to contracts of adhesion, employment contracts, or tort claims); Kan. Stat. Ann. § 5-401 (1982) (agreements for future controversies cannot apply to insurance contracts, employment contracts,
given under the FAA. In addition, time limitations for seeking judicial review of arbitration awards vary under state law from a limitation of ten days to a period of one year. Finally, judicial interpretations of state statutes that facially parallel the FAA produce divergent results. For example, as a matter of judicial construction, some state courts have carved out exceptions to the state arbitration statute that would not constitute exceptions under the FAA.

IV. RECOMMENDATIONS CONCERNING FEDERAL LAW

Based on a comparison of the UNCITRAL Model Law to federal arbitration law in the United States, the Committee makes the following recommendations for amendment of United States federal law.

A. There Is No Need to Adopt the Entire Model Law

The Committee does not recommend that Congress adopt the UNCITRAL Model Law in its entirety, at least at this time. Existing federal arbitration law is strongly supportive in its enforcement of international arbitration agreements and recognition and enforcement of foreign arbitral awards. Furthermore, the provisions of the FAA and federal case law are adequate to support arbitration in general and international commercial arbitration law in particular. Thus, there is no perceived need for adoption of the entire Model Law at the federal level, and without a clearly perceived need, it would be politically unrealistic to expect that Congress could be persuaded to enact the Model Law. There are individual articles of the Model Law, which, if enacted, would usefully close gaps in the FAA or clarify policy.

or tort claims); MONT. CODE ANN. § 27-5-114 (1985) (agreements for future controversies cannot apply to personal injury claims, insurance contracts, contracts for less than $35,000, or workers’ compensation claims).


34. See ALA. CODE § 6-6-15 (1975).


B. Proposals To Amend the Federal Arbitration Act

1. Interim Measures of Protection Ordered by a Court. Article 9 of the Model Law provides:

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.\(^\text{37}\)

No such general provision is contained in the FAA,\(^\text{38}\) and U.S. courts are divided on whether pre-award attachment is permissible as an interim measure in support of international arbitration.\(^\text{39}\) Prior to U.S. ratification of the New York Convention, pre-award attachment was permitted under the FAA. Courts held that the FAA requirement that court proceedings be stayed pending arbitration did not preclude pre-award attachment for the purpose of obtaining jurisdiction and/or guaranteeing enforcement of the award.\(^\text{40}\) However, a contrary result was reached by the first court to consider this issue following U.S. ratification of the New York Convention. In \textit{McCreary Tire \& Rubber Co. v. CEAT S.p.A.},\(^\text{41}\) the court held the Convention's requirement that courts "shall ... refer the parties to arbitration" meant that the entire controversy must be transferred to the designated arbitral body and that pre-award attachment would be inconsistent with this provision.

In a subsequent case, \textit{Carolina Power \& Light Co. v. Uranex},\(^\text{42}\) the District Court declined to follow the \textit{McCreary} holding and instead found that pre-award attachment is not inconsistent with the New York Convention. In the absence of authoritative guidance in the text of the Convention or in its legislative history, the court relied on the pre-Convention judicial precedents under the FAA which permitted pre-award attachment pending arbitration of the merits of a dispute.\(^\text{43}\) Furthermore, U.S. courts have uniformly permitted pre-award attach-

\[^{37}\text{24 I.L.M. 1302, art. 9 (1985).}\]
\[^{38}\text{9 U.S.C. § 8 (1982), which is limited to admiralty cases, permits initiation of a proceeding, "by libel and seizure of the vessel or other property of the other party ... and the court then shall have jurisdiction to direct the parties to proceed with arbitration and shall retain jurisdiction to enter its decree upon the award." Id.}\]
\[^{40}\text{See Brower \& Tupman, \textit{Court-ordered Provisional Measures under the New York Convention}, 80 AM. J. INT'L L. 24 (1986); Note, \textit{An Argument for Pre-Award Attachment in International Arbitration Under the New York Convention}, 18 CORNELL INT'L L.J. 99 (1985).}\]
\[^{41}\text{501 F.2d 1032 (3d Cir. 1974).}\]
\[^{42}\text{451 F. Supp. 1044 (N.D. Cal. 1977).}\]
\[^{43}\text{Id. at 1050-51.}\]
ment in admiralty cases both before and after U.S. ratification of the New York Convention.\textsuperscript{44}

\textit{Cooper v. Ateliers de la Motobecane, S.A.}\textsuperscript{45} followed \textit{McCreary} in holding that pre-award attachment is not permitted under the New York Convention or the New York Arbitration Act. The \textit{Cooper} court reasoned that attachment is a device through which to secure payment of a money judgment. It is arguable that attachment is not necessary in arbitration for two reasons. First, voluntary compliance with arbitral awards may be as high as 85\%. Second, parties can draft security clauses (\textit{e.g.}, which provide for performance bonds) into the arbitration agreements. The court also states that the value of arbitration lies partly in the neutrality which it affords. To allow pre-award attachment would subject a party to a foreign country's judicial rules and practices with respect to attachment.\textsuperscript{46}

The \textit{Uranex} court identified only one policy concern to justify its conclusion that pre-award attachment is permissible, namely, that "the Supreme Court has concluded [in \textit{Boys Markets, Inc. v. Retail Clerks Union}\textsuperscript{47}] that the availability of provisional remedies encourages rather than obstructs the use of agreements to arbitrate."\textsuperscript{48}

In \textit{Boys Markets},\textsuperscript{49} the Supreme Court ruled that if employers could not obtain an injunction to enforce a no-strike agreement in an arbitration clause, employers would have a disincentive to enter such agreements. The Court also asserted that if an employer could not obtain an injunction, the basic purpose of arbitration, "expeditious settlement of industrial disputes," would be undermined.\textsuperscript{50} While the Supreme Court's reasoning in \textit{Boys Markets} is persuasive, it is not clear that its reasoning can properly be extended to the context of pre-award attachment. It is arguable that the absence of a pre-award attachment remedy will deter parties from entering arbitration agreements.

United States courts are likely to remain divided on the availability of pre-award attachment until the issue is finally resolved by the U.S.

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47. 398 U.S. 235 (1970). The Court's holding was based largely on the fact that the FAA does not expressly forbid pre-award attachment.
50. \textit{Id.} at 249.
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Supreme Court or by Congress. In light of the general view that the Model Law is in harmony with the New York Convention, the fact that Article 9 of the Model Law now expressly permits resort to courts for interim measures of protection may well persuade the Supreme Court to allow pre-award attachment in aid of international commercial arbitration. Until this issue is resolved by the Supreme Court, the Committee has concluded that it would be appropriate and desirable for Congress to amend the FAA by adopting the substance of Article 9 of the Model Law.

An argument made against such an amendment is the risk that it may cause non-U.S. parties to view the United States as a less attractive forum for international arbitration. This risk is not substantial, however, because a number of prominent centers for international commercial arbitration are already located in countries which permit pre-award attachment and other interim measures.

2. Challenge of Arbitrators. Article 12 of the Model Law requires prospective arbitrators to disclose circumstances likely to cause justifiable doubts as to their impartiality or independence, and specifies the grounds for challenging an arbitrator. Article 13 deals with challenge procedures, including the right to take any adverse tribunal ruling to a court within 30 days, but providing for no appeal from the court’s decision (although the issue could be raised again in proceedings to enforce or to set aside an award). The FAA contains no comparable provisions. Although courts have inherent power to remove arbitrators before or during arbitral proceedings, they have generally been reluctant to exercise this power.

Thus, allegations of partiality or of other grounds for disqualification are usually considered only in proceedings to set aside an award.

Section 19 of the American Arbitration Association’s (AAA) Commercial Arbitration Rules does provide for challenge and disqualification procedures which may be implemented during an arbitral proceeding. If the AAA were to reject a challenge, the question would be subject to judicial review in connection with a proceeding to enforce or set aside an award.

The Committee believes the substance of Articles 12 and 14 of the

51. See, e.g., Sofia Shipping v. Amoco Transp. Co.: Courts are reluctant to set aside an award based on a claim of evident partiality, and will do so only if the bias of the arbitrator is direct and definite; mere speculation is not enough. [Citing Merits v. Leatherby among others.] The instant matter is governed by International Produce Inc. v. A/S Rosshavet, 638 F.2d 548 (2d Cir.), cert. denied, 451 U.S. 1017 (1981). In that case the Second Circuit held that the mere “appearance of bias” is not sufficient to justify vacating an arbitration award under Section 10.

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Model Law should be added in amendment to the FAA. This would allow for a challenge to arbitrators to be submitted to a court at the beginning of an arbitral proceeding unless the parties had selected the rules of the AAA or some other arbitration proceeding that included procedures for challenging arbitrators. The principal argument against adding these provisions to federal law is the concern that they may be abused by parties seeking to delay or disrupt the arbitral proceedings. No such delay need occur, however, because the final clause of Article 13(3) of the Model Law authorizes the arbitral tribunal, including the challenged arbitrator, to continue the arbitral proceedings pending a court decision on the challenge. Furthermore, any party asserting a frivolous challenge, especially if taken to court, would incur the serious risk of losing the tribunal's respect as to credibility and seriousness of purpose.

3. Tribunal Authority to Name the Place of Arbitration if Parties Have Not Done So. Article 20 of the Model Law provides that if the parties have not agreed on the place of arbitration, the venue shall be determined by the arbitral tribunal. The tribunal shall consider the circumstances of the case, including the convenience of the parties. The FAA provides in section 206 that a court

may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. 52

No federal statute authorizes a court or an arbitral tribunal to designate the place of arbitration if the parties have failed to do so. 53 Thus, even though the parties have entered into a written agreement to arbitrate future disputes, if they fail to specify the place of arbitration, either party can prevent arbitration by refusing to agree on the place of arbitration.

Consequently, it would be consistent with the strong United States policy favoring enforcement of written arbitration agreements to amend the FAA by adopting the substance of Article 20(1), thus filling the gap in existing law which allows parties to avoid arbitration by refusing to agree on the place of arbitration.

4. Rules Applicable to Substance of the Dispute. Article 28 of the Model Law provides guidelines for the arbitral tribunal to use in deciding what rules of law to apply to the substance of a dispute. These provisions

53. But see Bauhinia Corp. v. China Nat'l Mach. & Equip. Import & Export Corp., 819 F.2d 247 (9th Cir. 1987) in which the Ninth Circuit held that when the arbitration agreement was ambiguous as to the situs of arbitration and the parties could not agree on a locale, the district court was required under 9 U.S.C. § 4 to order arbitration, even in an international case, within the district in which the petition for the order directing arbitration was filed.
are consistent with Article 33 of the UNCITRAL Arbitration Rules.

The FAA does not provide guidelines for selecting the rules to be applied to the substance of disputes in arbitration. Nor is there any such provision in the AAA's Commercial Arbitration Rules. If the parties have not agreed, there is often the presumption that the choice of situs will indicate the choice of substantive law.\textsuperscript{54} Thus, the Committee recommends amending the FAA by adopting the substance of Article 28 of the Model Law in order to fill another gap in U.S. law by adding this widely-accepted provision on the rules applicable to the substance of a dispute.

C. Possible Amendments Not Recommended

There are a number of other Model Law provisions which have no counterpart in current federal law. Some of these provisions are discussed in this section with an explanation as to why these provisions are not being recommended as amendments to the FAA at this time.

1. \textit{Appeal to Court of Tribunal's Finding of Jurisdiction}. Article 16(3) of the Model Law provides \textit{inter alia} that if the arbitral tribunal rules as a preliminary question that it has jurisdiction, a party may appeal the ruling within 30 days to a designated court, and the decision will not be subject to further appeal. There is no comparable provision in the FAA or federal case law. At present, an arbitral tribunal's determination that it has jurisdiction is reviewable in a judicial proceeding to enforce or vacate the tribunal's award.

Theoretically, an immediate appeal would avoid the time and expense of conducting an arbitral proceeding in cases where the tribunal erroneously decides that it has jurisdiction. However, the arguments against such a provision are convincing. First, it may encourage frivolous appeals which would burden the arbitral process in terms of effort and expense even though the arbitral tribunal would continue pending the court's decision. Second, it is unnecessary since a party that seriously believes an arbitral tribunal is without jurisdiction may submit the issue to a court by suing to enjoin the arbitral proceedings. Therefore, the Committee does not believe that Article 16(3) of the Model Law is a necessary provision and do not recommend it as an amendment to the FAA.

2. \textit{Power of Tribunal to Order Interim Measures}. Article 17 of the Model Law authorizes the arbitral tribunal, unless otherwise agreed by

\textsuperscript{54} \textit{See} \textsuperscript{ Restatement (Second) of Conflicts of Laws} § 218, comment 6, which notes that the choice of a place for arbitration is "persuasive evidence" of an intent that local law govern. \textit{See also} International Refugee Org. v. Republic S.S. Corp., 189 F.2d 838 (4th Cir. 1951), where the interpretation of a contract was governed by English law because the contract provided for arbitration in London.
the parties, to order interim measures of protection and to require any party to provide appropriate security in connection with such measures. Although the FAA contains no similar provision, at least one U.S. district court has recognized that arbitrators have an implied or inherent power to order interim measures to safeguard property that is the subject of an arbitration proceeding. Also, section 34 of the AAA's Commercial Arbitration Rules contains an express, though limited, provision on this subject. Thus, although the Model Law's provisions on interim measures are broader than existing U.S. rules, present law and practice is adequate in this area, and the need for the broader Model Law provisions is minimal.

3. Independent Experts Appointed by Tribunal. Article 26(1) of the Model Law authorizes the arbitral tribunal to appoint one or more experts to report on specific issues and requires parties to give the experts all relevant information, documents, or property for inspection. Under Article 26(2) of the Model Law, parties have the right to request a hearing at which they may put questions to the expert appointed by the tribunal and to present their own expert testimony on the points at issue. The FAA has no comparable provisions.

Article 26 of the Model Law has a certain appeal. In principle, it would allow an arbitral tribunal to obtain expert testimony and opinions from independent experts that were not selected and paid by one of the parties. This would enable the tribunal to escape from the "battle of experts."

Despite its initial appeal, it raises a number of problems including: Would the arbitral tribunal be able and willing to select truly qualified, independent experts? Would some tribunals be tempted to abuse this privilege by appointing experts even when they are not truly needed? Would the use of such experts unnecessarily prolong the hearing and increase costs by the increase in expert's fees and the extra hearing days?

Additionally, such a provision would be unlikely to win the support of the legal profession. United States trial lawyers are accustomed to selecting and working with their own experts. They would be wary of a tribunal's active participation in this process. Such a practice, in the U.S. context, might merely escalate the battle of experts into a longer, more expensive battle. For these reasons, the FAA should not be amended along the lines of Article 26 of the Model Law.

V. PROBLEMS OF FEDERALISM

A. Constitutional Basis of the Federal Arbitration Act

As noted above, the FAA provides for the enforceability of arbitration agreements and arbitral awards relating to maritime transactions or contracts involving interstate or foreign commerce. Moreover, the FAA provides procedures for the resolution in federal courts of disputes involving the enforceability of arbitration agreements and arbitral awards. However, the question arises as to what effect the FAA has on such a dispute in state court or in federal court solely on the basis of diversity jurisdiction. In other words, does the FAA establish a specific federal substantive interest that must be applied regardless of the forum where the issue is adjudicated? Finally, to what degree does that federal interest preempt state laws?

Resolution of these questions relates back to the enactment of the FAA and to the Supreme Court's decision in *Erie Railroad Co. v. Tompkins*. When Congress enacted the FAA in 1925, the constitutional basis for the statute was not at issue. At that time, the longstanding doctrine formulated in *Swift v. Tyson* authorized federal courts exercising diversity jurisdiction to develop principles of general federal common law pursuant to authority implied in article III of the Constitution. When the Supreme Court decided *Erie* in 1938, it altered deep-rooted judicial notions of federalism by restricting the authority of the federal judiciary, and by implication the Congress, to formulate principles of federal common law. *Erie*, in effect, forced the Supreme Court to reconstruct the constitutional basis for the FAA in order to prevent serious erosion of its scope. There have, in fact, been several key Supreme Court decisions addressing the application of *Erie* to the FAA, and thus the respective roles of federal and state law for arbitration disputes.

1. Bernhardt v. Polygraphic Co. of America. The Supreme Court first considered application of *Erie* to the FAA in *Bernhardt v. Polygraphic Co. of America*. *Bernhardt* involved an employment contract which contained a provision stating that in case of any dispute the parties would submit the matter to arbitration under New York law. The petitioner brought a diversity action in federal court for breach of contract. Respondent moved for a stay of the proceedings under section 3 of the FAA, so that the controversy could go to arbitration in New York. The Court construed section 3 of the FAA to require a stay of

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56. 304 U.S. 64 (1938).
57. 41 U.S. (16 Pet.) 1 (1842).
litigation pending arbitration only if the subject matter of the contract fell within the scope of sections 1 and 2, which it did not in this case. The Court also addressed the *Erie* question of whether section 3 of the FAA required enforcement, in a diversity case, of a provision of a contract providing for arbitration. The Second Circuit's opinion had characterized the provisions of section 3 of the FAA as merely procedural. The Court disagreed, finding that the application of section 3 in a diversity action would be "outcome determinative." Under *Guaranty Trust Co. v. York*, therefore, the federal court would be obligated to apply state law. Consequently, since *Bernhardt*, a right to arbitrate has been characterized as "substantive" in nature. *Bernhardt* therefore gave rise to concern that the FAA could constitutionally be applied only in federal court cases arising under federal law, not in diversity cases. Moreover, because *Bernhardt* was a federal diversity case involving an *intrastate* contract, it left open several other questions. For example, would state law apply (i) in a federal diversity case involving a contract related to a maritime or interstate transaction; (ii) in a state case involving a contract related to a maritime or interstate transaction; and (iii) in a case which is in federal court on a jurisdictional basis other than diversity of citizenship? The Supreme Court addressed the first of these questions in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*

2. *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.* The issue presented in *Prima Paint* was whether the federal court or an arbitrator is to resolve a claim of fraud in the inducement of a contract containing a broad arbitration clause. The contract in question evidenced a transaction involving interstate commerce. Prima Paint had filed a diversity action in U.S. district court seeking rescission of the contract on the basis of fraudulent inducement and sought an order enjoining Flood & Conklin from proceeding with arbitration. Flood & Conklin cross-moved to stay the court action pending arbitration.

First, the Supreme Court held that, under *Bernhardt*, the stay provisions of section 3 of the FAA applied to the dispute since the contract

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61. Id. at 203.
64. Justice Frankfurter made precisely this suggestion in his concurring opinion in Bernhardt v. Polygraphic Co. of Am., 350 U.S. 198, 208 (1956).
evidenced a transaction in admiralty or in interstate commerce. The Court then read the statutory language of the FAA to require the district court to determine the issue of fraudulent inducement of the arbitration clause. However, all other issues relating to the contract, including the validity of the contract itself would be decided in arbitration. Because the state in which the district court sat would not have followed this rule of separability, the Court had to address the constitutionality of its decision under the principles of *Erie*. The majority concluded that "it is clear beyond dispute that the federal arbitration statute is based upon and confined to the incontestable federal foundations of ‘control over interstate commerce and over admiralty.’" Accordingly, the Court avoided the implications of *Erie* by concluding that "[f]ederal courts are bound to apply rules enacted by Congress with respect to matters — here, a contract involving commerce — over which it has legislative power." Thus, *Prima Paint* clearly established a policy of enforcing the provisions of the FAA in all suits in federal court concerning arbitration agreements or arbitral awards involving a maritime transaction or a contract in interstate or foreign commerce. The Court left open, however, the issue of whether state courts reviewing arbitration agreements in contracts involving maritime or interstate transactions were required to follow the FAA (i.e., the degree to which the FAA preempts state law).

B. Federal Preemption: Substantive Law


The Supreme Court dealt tangentially with the preemption issue in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.* This case arose out of a diversity action in federal district court seeking an order to compel arbitration under section 4 of the FAA. The district court stayed the action pending resolution of a concurrent state court suit. The Court of Appeals reversed the district court's stay and remanded the case with instructions to enter an order to arbitrate. The Supreme Court affirmed, holding that the district court had abused its discretion. The Court found no showing of exceptional

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68. *Id.* at 401.
69. *Id.* at 404.
70. *Id.* at 405. The Court added that if Congress had relied on its Article III powers to create general federal common law in diversity cases, "it was only supplementary to the admiralty and commerce powers, which formed the principal basis of the legislation." *Id.* at 405 n.13.
71. *Id.* at 406 (emphasis added).
circumstances justifying the stay and recognized "the presence of federal-law issues" under the FAA as "a major consideration weighing against surrender [of federal jurisdiction]." The Court thus read the underlying issue of arbitrability to be a question of substantive federal law: "Federal law in the terms of the Arbitration Act governs that issue in either state or federal court." The Court went on to rule that section 2 of the FAA is "a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. The effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act."

The Court also noted in a footnote what it termed as the "anomalous" nature of the FAA in the field of federal court jurisdiction. According to the Court, although the FAA creates a body of federal substantive law, it does not create any independent federal-question jurisdiction under 28 U.S.C. 1331 or otherwise. Therefore, there must be diversity of citizenship or another independent basis for federal jurisdiction before an order under section 4 compelling arbitration can issue.

While these brief statements in Moses H. Cone seemed to resolve issues surrounding the application of the FAA in state courts, the statements were only dicta since Moses H. Cone involved federal court litigation. The Supreme Court got its first chance properly to consider the applicability of the FAA to state court proceedings in Southland Corp. v. Keating.

2. Southland Corp. v. Keating. The dispute in Southland involved a series of franchise agreements that each contained an arbitration clause. Several franchisees alleged that Southland had violated the disclosure requirements of the California Franchise Investment Law, and that this law guaranteed them a judicial forum for the resolution of their statutory claims. The plaintiffs filed a class action in state court, and Southland moved to compel arbitration of the claims pursuant to the contracts.

When the case eventually reached the California Supreme Court, the Franchise Investment Law was interpreted to require judicial resolution of all claims brought under that statute. The California Supreme Court

75. Id. at 26.
76. Id. at 24.
77. Id.
78. Id. at 25 n.32.
held that Congress did not intend to preempt the states from enacting legislation which prohibited arbitration in areas which touched on matters of overriding state concern. It therefore concluded that the Franchise Investment Law did not contravene the FAA.\textsuperscript{82}

The United States Supreme Court reversed, stating, "in enacting § 2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."\textsuperscript{83} The Court reasoned that if Congress, in enacting the FAA, had intended to create a procedural rule applicable only in federal courts it would not have limited the Act to contracts "involving commerce":

We therefore view the "involving commerce" requirement in § 2, not as an inexplicable limitation on the power of the federal courts, but as necessary qualification on a statute intended to apply in state and federal courts.\textsuperscript{84}

Although noting that there were ambiguities in the legislative history of the FAA, the Court reiterated its ruling in \textit{Prima Paint}—that the FAA rests on the authority of Congress to enact substantive rules under the Commerce Clause—and its statement in \textit{Moses H. Cone} that the FAA creates a body of substantive law applicable in state and federal courts.\textsuperscript{85} The Court concluded that Congress had created a substantive rule applicable in state as well as federal courts because it sought to foreclose state legislative attempts to undercut the enforceability of arbitration agreements.\textsuperscript{86}

Yet, the Court also made it clear it was not holding that sections 3 and 4 of the FAA apply to proceedings in state court.\textsuperscript{87} It appears, therefore, that although states are not free to refuse to enforce arbitration agreements involving interstate commerce, they may determine what procedures they will follow in supervising arbitration so long as the federal rights created by section 2 of the FAA remain protected. The precise scope of the states' freedom to define the procedures incident to arbitration remains unclear.\textsuperscript{88}

\begin{itemize}
\item \textsuperscript{82} Id. at 602-04, 645 P.2d at 1202-04, 103 Cal. Rptr. at 370-72.
\item \textsuperscript{83} Southland Corp. v. Keating, 465 U.S. 1, 10 (1984).
\item \textsuperscript{84} Id. at 14-15.
\item \textsuperscript{85} Id. at 12-13.
\item \textsuperscript{86} Id. at 16. The Court also found it necessary to apply the substantive rules under the FAA to the states to counteract the possibility of forum shopping that would result if each state were permitted to create exceptions to the general enforceability of arbitration agreements based on that state's local policy concerns. Id. at 15.
\item \textsuperscript{87} Id. at 16 n.10.
\item \textsuperscript{88} Id. at 24, 29-33. See, e.g., the dicta in \textit{Moses H. Cone}:
Although § 3 [of the FAA] refers ambiguously to a suit 'in any of the courts
It should also be noted that *Southland* did not directly address the relationship between the FAA and state arbitration statutes. *Southland* stands only for the proposition that state-created exceptions to the enforceability of arbitration agreements are not permitted under federal law.9 Again, the extent to which the FAA preempts state arbitration procedures has still not been formally resolved.

3. Summary. In summary, the Moses H. Cone and Southland cases establish the following principles: The federal substantive policy requiring that arbitration agreements and arbitral awards be enforced, enunciated in section 2 of the FAA, governs any contract involving a maritime, interstate or foreign commerce transaction. This federal substantive requirement applies in both federal and state courts, so long as the contract in question falls under section 2 of the FAA. A corollary is that federal common law developed under the FAA is binding on state courts only to the extent such common law derives from the general command of section 2.

Despite the federal substantive policy favoring arbitration, the general provisions of the FAA do not create any independent basis for federal-question jurisdiction. The federal courts have original jurisdiction only over those arbitration agreements which fall within the scope of the New York Convention as implemented by Chapter 2 of the FAA — i.e., arbitration agreements in commercial contracts that have some reasonable relation with one or more foreign states.90

Finally, the federal substantive policy favoring arbitration does not apply in either federal or state court if the contract falls outside the scope of section 2 of the FAA (e.g., contracts that are oral or purely intrastate in character).

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of the United States, the state courts have almost unanimously recognized that the stay provision of § 3 applies to suits in state as well as federal courts, requiring them to issue the same speedy relief when a dispute is referable to arbitration. . . . This is necessary to carry out Congress' intent to mandate enforcement of all covered arbitration agreements; Congress can hardly have meant that an agreement to arbitrate can be enforced against a party who attempts to litigate an arbitrable dispute in federal court, but not against one who sues on the same dispute in state court.


The Court in Moses H. Cone did add, however, that it is less clear whether the same is true of an order to compel arbitration under § 4 of the FAA because that section, unlike § 3, speaks only of a petition to "any United States district court." Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 26, n.35 (1984) (emphasis added).

C. Federal Preemption: Procedural Law

As already noted, the cases described above allow for application of state arbitration law relating to "procedural" matters. It is clear that the procedures under the FAA apply in any contracts case in federal court involving a maritime or interstate transaction (i.e., within the scope of section 2 of the FAA). On the other hand, state procedures apply (as do state substantive rules) when the arbitration agreement involves purely intrastate commerce. If such a case were brought in state court, the state arbitration statute would apply in its entirety.

State law would also apply exclusively to those few international arbitrations taking place in the United States to which the FAA does not apply. This would include, for example, a dispute between two foreign parties not involving interstate commerce. The federal courts would generally lack jurisdiction over controversies relating to the administration of such a case. Moreover, state courts would not be required by Southland to apply any part of the FAA. Such cases are probably fairly rare in the United States today, yet there is no requirement that this be so. Such cases are relatively common in Europe, where arbitrations under the sponsorship of the International Chamber of Commerce, the Stockholm Chamber of Commerce, and similar organizations often take place in a situs having no connection with the parties or the transaction.

There is also room for the application of state law in a case involving the foreign commerce of the United States if a dispute relating to the conduct of the arbitration was brought in state court. In this instance, the federal substantive policy favoring arbitration, as expressed in section 2 of the FAA, would apply. However, theoretically the remainder of the FAA only governs procedures in federal courts. This leaves states free to devise their own procedures and remedies with regard to arbitration, so long as those procedures are consistent with the substantive command of the FAA. Indeed, the fact that Congress granted the federal courts original rather than exclusive jurisdiction under Chapter 2 of the FAA suggests that Congress contemplated state court involvement in recognizing and enforcing international arbitration agreements and awards.

To the extent a state statute is consistent with the "procedural"

91. They would subsequently have jurisdiction over an action involving recognition or enforcement of an award if the New York Convention were applicable. See 9 U.S.C. § 203 (1982).

92. This is necessarily the case if neither party is a citizen and there is not basis for federal question jurisdiction. In addition, the parties may agree to the application of state law. In such cases, state law governing procedure would apply as long as any dispute involving the arbitration were brought in state court. It is unclear whether a federal court would apply state law governing arbitral procedure if the case were removed. We believe, however, that the federal court should honor the parties' choice of law, at least insofar as it does not conflict with substantive federal law.
provisions of the FAA, it would presumably not be preempted. If, however, the state-enacted statute varies substantially from the FAA, the court would have to determine whether the state procedures infringe on the substantive command of section 2 of the FAA. If they do, a federal court may find such procedures to be preempted by the federal statute.93

The set of “procedures” subject to special treatment are those embodied in sections 3 and 4 of the FAA, and in their respective state counterparts. As noted above, these provisions relate to oversight and intervention by the courts: section 3 of the FAA provides that a “United States court” shall stay proceedings pending arbitration when a suit involves an issue referable to arbitration; section 4 provides that a “United States district court” shall issue an order compelling arbitration of a controversy within the court’s jurisdiction when petitioned by a party “aggrieved by the alleged failure, neglect, or refusal to arbitrate under a written agreement for arbitration.” These two provisions, while characterized as procedural, appear to be integral to the federal substantive policy favoring arbitration. For that reason, a state court entertaining an arbitration dispute within the scope of section 2 of the FAA would probably have to provide state procedures for court intervention similar to sections 3 and 4. Otherwise its procedures would be preempted by these federal provisions.94

D. Recognition and Enforcement of Foreign Awards

As already noted, Chapter 2 of the FAA implements the New York Convention, and deals primarily with recognition and enforcement of arbitration agreements and awards falling under the Convention. While the Convention and its enabling legislation do not expressly preempt state law in the area of international commercial arbitration,95 it is likely

93. It is interesting to speculate on whether the federal courts could acquire jurisdiction to address this issue if there is no independent basis of federal jurisdiction.
94. See Moses H. Cone Memorial Hosp. v. Constr. Corp., 460 U.S. 1, 26 nn.34, 35. In other procedural areas, however, regarding matters such as the appointment of arbitrators, witnesses, fees, and compelling attendance, it is easy to imagine how state law could vary from federal law. Moreover, in other areas of potential court oversight and intervention, such as prejudgment attachment and interim relief, states should be permitted to enforce such provisions so long as they promote arbitration, which would normally be the case. If, however, any such provision undermines the ability of a party to seek arbitration in a contract involving a maritime transaction or a transaction in interstate commerce, that provision would be preempted by federal law.
that state law may not interfere with the substantive policy of Chapter 2.

Again, however, there appears to be at least some role for state law in this area. First, to the extent state law provides adequately for recognition and enforcement, a state court probably may apply it. In any event, state arbitration law would apply in state court to the enforcement of a foreign arbitral award rendered in a nation that is not a signatory to the New York Convention. An award rendered in such a nation would not be enforceable under Chapter 2 of the FAA. If there was no basis for federal jurisdiction, a party seeking enforcement of such an award in the United States would have to go to state court and proceed under state law. If there was a basis for federal jurisdiction, but the case did not involve the "foreign commerce" of the United States, a federal court would presumably apply state law. Thus, not only does federal law not completely preempt state law governing recognition and enforcement of awards, there may be some situations in which state law is the only law that would be available to a party seeking enforcement of an award in the United States.

VI. ADOPTION OF THE MODEL LAW AT THE STATE LEVEL

Even though state law plays a relatively limited role in international commercial arbitrations, the Committee believes that there are sound reasons for the adoption of the Model Law by at least some states. It should be emphasized that the Committee is not recommending that a state adopt the Model Law in lieu of an existing arbitration statute, but as a supplement to it. Although the Model Law may be adapted to serve as an all-purpose arbitration statute, most states need not replace, for domestic cases, a statutory regime that is generally well understood and functions well in practice. Moreover, an attempt to do so would be more likely to generate opposition than the adoption of a statute confined to international disputes.

There are two sets of considerations that favor the adoption of the Model Law at the state level. The first relates to the improvements in state law that now governs international commercial arbitration. The second refers to the Model Law’s potential effect on the general climate for arbitration.

A. Difference Between the Model Law and the UAA

Obviously, the most important consideration bearing on the desirability of the adoption of the Model Law is the change it would make in the current legal regime. There are, in fact, few substantive differences between the Model Law and the UAA. Yet, the two statutes differ markedly in structure and content. First, the UAA is clearly the product of a common law approach to statutory drafting. However, the authors of the Model Law worked to develop a "code," in the civil law tradition. Consequently, the Model Law is more comprehensive and fully elaborated than the UAA. Second, unlike the UAA, which was drafted primarily to govern domestic arbitrations between parties in the same state, the Model Law addresses many of the special problems that arise only in international arbitrations. In addition to these two general differences, there are a few more or less substantive differences between the two statutes.

In erecting a legal structure within which to carry on international arbitrations, there are considerable advantages to the more fully elaborated approach of the Model Law. Both the FAA and the UAA are drafted against the background of a body of law and procedure that enables U.S. lawyers to fill in most gaps without much difficulty. In the international context, however, at least some of the parties and counsel will certainly be unfamiliar with U.S. law and practice. International parties may have difficulties in using the FAA or the UAA to answer questions beginning with the decision whether to arbitrate in the United States. In many cases, the more fully-articulated Model Law would provide a ready answer. Furthermore, once an arbitration begins, the Model Law would provide greater guidance to the parties and the tribunal with less time spent educating persons who are unfamiliar with U.S. practice regarding proper interpretation of the statutes that would otherwise apply.  

The Model Law also provides helpful rules for dealing with special problems arising from international arbitration. It deals, for example, with choice of language (Article 22), choice of law (Article 28), nationality of the arbitrators (Article 11), and the foreign law issues implicit in recognition and enforcement of foreign arbitral awards (Articles 35 and 36). Although few of these issues will likely be resolved differently under U.S. law, neither the FAA nor the UAA has provisions that deal expressly and unambiguously with them.

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97. There are numerous places in which the Model Law's greater detail may be helpful. For example, Article 7 defines the term "arbitration agreement" and provides an elaborate description of what constitutes an "agreement in writing." There is no counterpart in the UAA. The Model Law is also more specific with respect to the impartiality of arbitrators (Articles 12 and 13), procedural details and time requirements (Articles 19-24), and party default (Article 25).
The Model Law also expressly provides for party autonomy with respect to a wide range of procedural questions, questions as to which the UAA does not clearly allow the parties equivalent latitude. For example, the Model Law allows the parties to stipulate that the subject matter in dispute is international (Article 1), what constitutes a "receipt of written communication" (Article 3), the number of arbitrators (Article 10), procedures for appointment (Article 11) and grounds for challenge (Article 13), the scope of tribunal interim measures (Article 17), general procedures (Article 19), place of arbitration (Article 20), date of commencement of the proceedings (Article 21), the language (Article 22), the content and timing of pleadings (Article 23), hearings (Article 24), party default (Article 25), the role of the tribunal-appointed expert (Article 26), choice of law (Article 27), and the time-period of a motion for clarification or interpretation of an award (Article 33).

There are several issues which the Model Law would alter under the rules prevailing under the UAA. It would at least provide clearer guidance where the UAA is silent and the cases are in conflict. In most, if not all of these instances, the change would facilitate international arbitration and would not radically depart from contemporary U.S. practices in a manner provoking serious objection. For example, Article 9, which authorizes courts to grant interim relief in cases that are under arbitration, was discussed above as it relates to the FAA. Like the FAA, the UAA is silent on the question. Adoption of the Model Law would provide useful clarification for international cases.

Another particularly significant issue in arbitration law is whether an arbitral tribunal can rule on its own jurisdiction. Article 16 of the Model Law provides a direct affirmative answer to that question. The UAA is unclear on the issue. State courts have, however, generally construed the UAA's language to require that competence of the arbitral tribunal be resolved by a court. Thus, adoption of the Model Law would reverse the rule prevailing under the UAA in a way thought by most observers to foster arbitration.

The UAA is also silent as to whether an arbitral tribunal is authorized to order a party to take interim measures of protection. There are a few cases that suggest that a tribunal does have such power even absent express statutory authorization. Nevertheless, the issue remains in considerable doubt. Article 17 of the Model Law clearly authorizes the tribunal to take interim measures of protection and to order the giving of security for such measures.

98. See, e.g., Thayer v. American Fin. Serv., Inc., 322 N.W.2d 599 (Minn. 1982).
Like the FAA, the UAA contains no means of challenging the composition of an arbitral tribunal other than to attack the final award. Inefficiencies of this procedure are discussed above. The adoption of the Model Law at the state level would, through the mechanism of Article 14, reflect an improvement over the UAA.

In addition, under Article 31 of the Model Law, the tribunal is required to state the reasons upon which an award is based. Although nothing in the UAA prohibits the tribunal from giving a statement of reasons, this departs from standard practice in domestic arbitrations.

Finally, a tribunal, in accordance with Article 33, may make a correction, interpretation, or an additional award, upon motion of a party, within 30 days after entry of the final order. Needless review by a court could be avoided by giving the tribunal this augmented authority. The legal regime of the UAA does not incorporate such an efficient mechanism.

B. Practical Reasons For Adoption of the Model Law

An important factor in selecting a site of arbitration in an international matter is the parties’ perception of the character of the legal regime in which the arbitration will take place. The parties are highly likely to be concerned about the certainty of that legal regime. As the foregoing discussion demonstrates, a foreign party considering arbitrating a dispute in the United States is likely to find it difficult to understand the rules that would apply.

The principal objective of the Model Law is to establish a clear, well-articulated set of rules conducive to international commercial arbitration. On the whole, the effort appears to have been successful. The Committee’s work suggests that there are few important substantive conflicts between the Model Law and the UAA. However, the Model Law is more fully developed and has the advantage of having been designed to deal with special problems of international arbitration. Although adoption of the Model Law at the state level would not eliminate the complexity inherent in our federal system, it would, however, provide a clear and comprehensive system of procedural rules for an arbitration under state law. The system would, of course, be subject to preemption by state law procedures to the extent that they interfere substantially with the federal policy in favor of arbitration.

The adoption of the Model Law would, moreover, send a clear message that the jurisdiction in question is hospitable to international arbitration. Indeed, in the final analysis, this may be the most important effect of a state’s adoption of the Model Law. At least a few jurisdictions, hoping to increase the number of international arbitrations that take place within their borders, have adopted or are considering adopting the Model
One of the clearest reasons for doing so is to be able to say to parties considering arbitration in the jurisdiction, "We have adopted a comprehensive statutory scheme favoring international commercial arbitration worked out by a group of distinguished practitioners and academics under the auspices of an affiliate of the United Nations. You may already be familiar with the statute, which is expressly intended to foster and facilitate international commercial arbitration, as it is being adopted by an increasing number of nations around the world."

If a significant number of states adopt international commercial arbitration laws which do not follow the Model Law with reasonable uniformity, the resulting complexity and confusion might cause foreign parties to regard the United States as an undesirable venue. Should such a result occur, the international arbitration community in the United States might decide to recommend that Congress adopt the Model Law, or some modification thereof, in order to preempt the field and create national uniformity in the law of international commercial arbitration.

There is obviously considerably more to the creation of a successful international arbitral center than the adoption of a statute. Nevertheless, adoption by the District of Columbia, and any other state-level jurisdiction with ambitions to attract international arbitrations, could be a very useful step in achieving those ambitions.

VII. CONCLUSION

In summary, the Committee recommendations are as follows:
A. There is no need at present to adopt the entire Model Law at the federal level.
B. The FAA would be improved by amendments adding the substance of Articles 9, 12, 13, 20, and 28 of the Model Law.
C. Those jurisdictions of the United States, including the District of Columbia, that are interested in making themselves attractive venues for international commercial arbitration can further their objective by adopting the Model Law.

Proposals for amending the FAA or adoption of the Model Law at the district or state level will succeed only with a widespread consensus that its adoption of the Model Code is substantively desirable, technically sound, and politically realistic. Achieving such a consensus would be facilitated by members of the international arbitration community critically reviewing and commenting on these proposals. Consequently, the Washington Foreign Law Society welcomes such input in order to determine the extent to which the views and recommendations expressed in this Report are shared.

100. See supra notes 10-11.
APPENDIX A

UNCITRAL MODEL LAW
ON
INTERNATIONAL COMMERCIAL ARBITRATION

The UNCITRAL Model Law on International Commercial Arbitration (as adopted by the United Nations Commission on International Trade Law on June 21, 1985) is intended to serve as a model of domestic arbitration legislation, harmonizing and making more uniform the practice and procedure of international commercial arbitration while freeing international arbitration from the parochial law of any given adopting state. To a large extent, the model law parallels existing United States law. It provides for broad party autonomy in fashioning the arbitration process, reflects principles of fairness and equality of treatment of the parties, includes basic provisions for the functioning of arbitral proceedings where the parties have not made necessary provisions, and strikes a supportive relationship between arbitration and the courts.

The full text of the model law follows.

UNCITRAL Model Law on International Commercial Arbitration

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of Application*

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

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

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

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

(3) An arbitration is international if:
   (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
   (b) one of the following places is situated outside the State in which the parties have their places of business:
      (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
      (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
   (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

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

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

Article 2. Definitions and Rules of Interpretation

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

Article 3. Receipt of Written Communications

(1) Unless otherwise agreed by the parties:
   (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
   (b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of Right to Object

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

Article 5. Extent of Court Intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or Other Authority for Certain Functions of Arbitration Assistance and Supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by...[Each State enacting this model law specifies the court, courts, or, where referred to therein, other authority competent to perform these functions.]
Article 7. Definition and Form of Arbitration Agreement

(1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration Agreement and Substantive Claim Before Court

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

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

Article 9. Arbitration Agreement and Interim Measures by Court

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of Arbitrators

(1) The parties are free to determine the number of arbitrators.
(2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of Arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,
   (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator: if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
   (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,
   (a) a party fails to act as required under such procedure, or
   (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or
   (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority, specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.
Article 12. Grounds for Challenge

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

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

Article 13. Challenge Procedure

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

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

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

Article 14. Failure or Impossibility to Act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.
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(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of Substitute Arbitrator

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of Arbitral Tribunal to Rule on Its Jurisdiction

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

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

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.
Article 17. Power of Arbitral Tribunal to Order Interim Measures

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

Chapter V. Conduct of Arbitral Proceedings

Article 18. Equal Treatment of Parties

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

Article 19. Determination of Rules of Procedure

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

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

Article 20. Place of Arbitration

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

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of Arbitral Proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request
for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determination by the arbitral tribunal.

Article 23. Statements of Claim and Defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and Written Proceedings

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

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

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

**Article 25. Default of a Party**

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

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

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

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

**Article 26. Expert Appointed by Arbitral Tribunal**

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

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

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

**Article 27. Court Assistance in Taking Evidence**

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.
Chapter VI. Making of Award and Termination of Proceedings

Article 28. Rules Applicable to Substance of Dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision-Making by Panel of Arbitrators

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

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and Contents of Award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral
tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of Proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

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

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

Article 33. Correction and Interpretation of Award; Additional Award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
   (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
   (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

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

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

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

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

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for Setting Aside as Exclusive Recourse Against Arbitral Award

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

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

(a) the party making the application furnishes proof that:

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

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision
of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law, or
(b) the court finds that:
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the Law of this State; or
(ii) the award is in conflict with the public policy of this State.
(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal’s opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and Enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.
(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.***

Article 36. Grounds for Refusing Recognition or Enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
(a) at the request of the party against whom it is invoked, if that

*** The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.
party furnishes to the competent court where recognition or enforcement is sought proof that:

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

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

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

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the laws of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the laws of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

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

THE UNITED STATES ARBITRATION ACT
(TITLE, 9 U.S. CODE)*

CHAPTER 1.—GENERAL PROVISIONS

§1. "Maritime Transactions," and "Commerce" Defined; Exceptions to Operation of Title

"Maritime transactions," as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs of vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce," as herein defined, means commerce among the several States or with foreign nations, or any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§2. Validity, Irrevocability, and Enforcement of Agreements to Arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§3. Stay of Proceedings Where Issue Therein Referable to Arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceedings referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration.

has been had in accordance with the terms of the agreement, providing
the applicant for the stay is not in default in proceeding with such
arbitration.

§4. Failure to Arbitrate Under Agreement; Petition to United States
Court Having Jurisdiction for Order to Compel Arbitration; Notice and
Service Thereof; Hearing and Determination

A party aggrieved by the alleged failure, neglect, or refusal of another
to arbitrate under a written agreement for arbitration may petition any
United States district court which, save for such agreement, would have
jurisdiction under Title 28, in a civil action or an admiralty of the
subject matter of a suit arising out of the controversy between the
parties, for an order directing that such arbitration proceed in the
manner provided for in such agreement. Five days' notice in writing of
such application shall be served upon the party in default. Service
thereof shall be made in the manner provided by the Federal Rules of
Civil Procedure. The court shall hear the parties, and upon being satisfied
that the making of the agreement for arbitration or the failure to comply
therewith is not in issue, the court shall make an order directing the
parties to proceed to arbitration in accordance with the terms of the
agreement. The hearing and proceedings, under such agreement, shall
be within the district in which the petition for an order directing such
arbitration is filed. If the making of the arbitration agreement or the
failure, neglect, or refusal to perform the same be in issue, the court
shall proceed summarily to the trial thereof. If no jury be demanded
by the party alleged to be in default, or if the matter in dispute is
within admiralty jurisdiction, the court shall hear and determine such
issue. Where such an issue is raised, the party alleged to be in default
may, except in cases of admiralty, on or before the return day of the
notice of application, demand a jury trial of such issue, and upon such
demand the court shall make an order referring the issue or issues to
a jury in the manner provided by the Federal Rules of Civil Procedure,
or may specially call a jury for that purpose. If the jury find that no
agreement in writing for arbitration was made or that there is no default
in proceeding thereunder, the proceeding shall be dismissed. If the jury
find that an agreement for arbitration was made in writing and that
there is a default in proceeding thereunder, the court shall make an
order summarily directing the parties to proceed with the arbitration
in accordance with the terms thereof.

§5. Appointment of Arbitrators or Umpire

If in the agreement provision be made for a method of naming or
appointing an arbitrator or arbitrators or an umpire, such method shall

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be followed; but if no method be provided therein, or if a method be
provided and any party thereto shall fail to avail himself to such method,
or if for any other reason there shall be a lapse in the naming of an
arbitrator or arbitrators or umpire, or in filling a vacancy, then upon
the application of either party to the controversy the court shall designate
and appoint an arbitrator or arbitrators or umpire, as the case may
require, who shall act under the said agreement with the same force
and effect as if he or they had been specifically named therein; and
unless otherwise provided in the agreement the arbitration shall be a
single arbitrator.

§6. Application Heard as Motion

Any application to the court hereunder shall be made and heard in
the manner provided by law for the making and hearing of motions,
except as otherwise herein expressly provided.

§7. Witnesses Before Arbitrators; Fees; Compelling Attendance

The arbitrators selected either as prescribed in this title or other-
wise, or a majority of them, may summon in writing any person to
attend before them or any of them as a witness and in a proper case
to bring with him or them any book, record, document, or paper which
may be deemed material as evidence in the case. The fees for such
attendance shall be the same as the fees of witnesses before masters
of the United States courts. Said summons shall issue in the name of
the arbitrator or arbitrators, or a majority of them, and shall be signed
by the arbitrators, or a majority of them, and shall be directed to the
said person and shall be served in the same manner as subpoenas to
appear and testify before the court; if any person or persons so summoned
to testify shall refuse or neglect to obey said summons, upon petition
to the United States court in and for the district in which such arbitrators,
or a majority of them, are sitting may compel the attendance of such
person or persons before said arbitrator or arbitrators, or punish said
person or persons for contempt in the same manner provided on February
12, 1925, for securing the attendance of witnesses or their punishment
for neglect or refusal to attend in the courts of the United States.

§8. Proceedings Begun by Libel in Admiralty and Seizure of Vessel or
Property

If the basis of jurisdiction be a cause of action otherwise justiciable
in admiralty, then, notwithstanding anything herein to the contrary the
party claiming to be aggrieved may begin his proceeding hereunder by
libel and seizure of the vessel or other property of the other party
according to the usual course of admiralty proceedings, and the court
shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

§9. Award of Arbitrators; Confirmation; Jurisdiction; Procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

§10. Same; Vacation; Grounds; Rehearing

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusal to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.
§11. Same; Modification or Correction; Grounds; Order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to affect the intent thereof and promote justice between the parties.

§12. Notice of Motions to Vacate or Modify; Service; Stay of Proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

§13. Papers Filed with Order on Motions; Judgment; Docketing; Force and Effect; Enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.
The judgment shall be docketed as if it was rendered in an action. The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§14. Contracts Not Affected

This title shall not apply to contracts made prior to January 1, 1926.

CHAPTER 2.—CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

§201. Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

§202. Agreement or Award Falling Under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

§203. Jurisdiction; Amount in Controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

§204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding
with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

§205. Removal of Cases from State Courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

§206. Order to Compel Arbitration; Appointment of Arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

§207. Award of Arbitrators; Confirmation; Jurisdiction; Proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

§208. Chapter 1; Residual Application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.
APPENDIX C

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION
CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS
June 10, 1958

Article I

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

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

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

Article II

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

2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

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

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

Article IV

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

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

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
   (a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
   (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
   (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted
to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

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

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

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

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

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

Article VI

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

Article VII

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

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

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

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

Article IX

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

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

Article X

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

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

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

Article XI

1. In the case of a federal or non-unitary State, the following provisions shall apply:
(a) With respect to those articles of this Convention that come within
the legislative jurisdiction of the federal authority, the obligations
of the federal Government shall to this extent be the same as
those of Contracting States which are not federal States;
(b) With respect to those articles of this Convention that come within
the legislative jurisdiction of constituent states or provinces which
are not, under the constitutional system of the federation, bound
to take legislative action, the federal Government shall bring
such articles with a favourable recommendation to the notice of
the appropriate authorities of constituent states or provinces at
the earliest possible moment;
(c) A federal State party to this Convention shall, at the request of
any other Contracting State transmitted through the Secretary-
General of the United Nations, supply a statement of the law
and practice of the federation and its constituent units in regard
to any particular provision of this Convention, showing the extent
to which effect has been given to that provision by legislative or
other action.

Article XII

1. This Convention shall come into force on the ninetieth day following
the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the
deposit of the third instrument of ratification or accession, this Con-
vention shall enter into force on the ninetieth day after deposit by such
State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written
notification to the Secretary-General of the United Nations. Denunciation
shall take effect one year after the date of receipt of the notification
by the Secretary-General.
2. Any State which has made a declaration or notification under
article X may, at any time thereafter, by notification to the Secretary-
General of the United Nations, declare that this Convention shall cease
to extend to the territory concerned one year after the date of the
receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards
in respect of which recognition or enforcement proceedings have been
instituted before the denunciation takes effect.
Article XIV

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

Article XV

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

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

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.