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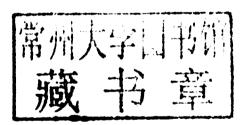
DOCUMENTARY SUPPLEMENT

Gary Born



INTERNATIONAL ARBITRATION DOCUMENTARY SUPPLEMENT 2011-2012

Gary B. Born





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Document 1

UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS ("NEW YORK CONVENTION")

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 application, supply:
 - (a) The duly authenticated original award or a duly certified copy thereof:
 - (b) The original agreement referred to in article II or a duly certified copy thereof.
- (2) If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

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

- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- (2) Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
 - (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

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

Article VII

- (1) The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting 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

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 Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

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

Article XIV

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

Article XV

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

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

Article XVI

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

Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") List of Contracting States (September 2010)

State	Signature	Ratification, Accession (a) or Succession (s)	Entry Into Force
Afghanistan a, b		30 Nov 2004 (a)	28 Feb 2005
Albania		27 Jun 2001 (a)	25 Sep 2001
Algeria a, b		7 Feb 1989 (a)	8 May 1989
Antigua and Barbuda <i>a, b</i>		2 Feb 1989 (a)	3 May 1989
Argentina a, b	26 Aug 1958	14 Mar 1989	12 Jun 1989
Armenia a, b		29 Dec 1997 (a)	29 Mar 1998
Australia		26 Mar 1975 (a)	24 Jun 1975
Austria		2 May 1961 (a)	31 Jul 1961
Azerbaijan		29 Feb 2000 (a)	29 May 2000
Bahamas		20 Dec 2006 (a)	20 Mar 2007
Bahrain a, b		6 Apr 1988 (a)	5 Jul 1988
Bangladesh		6 May 1992 (a)	4 Aug 1992
Barbados a, b		16 Mar 1993 (a)	14 Jun 1993
Belarus e	29 Dec 1958	15 Nov 1960	13 Feb 1961
Belgium a	10 Jun 1958	18 Aug 1975	16 Nov 1975
Benin		16 May 1974 (a)	14 Aug 1974
Bolivia		28 Apr 1995 (a)	27 Jul 1995
Bosnia and Herzegovina <i>a, b, f</i>		1 Sep 1993 (a)	6 Mar 1992
Botswana a, b		20 Dec 1971 (a)	19 Mar 1972
Brazil		7 Jun 2002 (a)	5 Sep 2002
Brunei Darussalam <i>a</i>		25 Jul 1996 (a)	23 Oct 1996

New York Convention

State	Signature	Ratification, Accession (a) or Succession (s)	Entry Into Force
Bulgaria a, e	17 Dec 1958	10 Oct 1061	8 Jan 1962
Burkina Faso		23 Mar 1987 (a)	21 Jun 1987
Cambodia		5 Jan 1960 (a)	4 Apr 1960
Cameroon		19 Feb 1988 (a)	19 May 1988
Canada h		12 May 1986 (a)	10 Aug 1986
Central African Republic <i>a, b</i>		15 Oct 1962 (a)	13 Jan 1963
Chile		4 Sep 1975 (a)	3 Dec 1975
China a, b		22 Jan 1987 (a)	22 Apr 1987
Colombia		25 Sep 1979 (a)	24 Dec 1979
Cook Islands		12 Jan 2009 (a)	12 Apr 2009
Costa Rica	10 Jun 1958	26 Oct 1987	24 Jan 1988
Côte d'Ivoire		1 Feb 1991 (a)	2 May 1991
Croatia a, b, f		26 Jul 1993 (a)	8 Oct 1991
Cuba a, b, e		30 Dec 1974 (a)	30 Mar 1975
Cyprus a, b		29 Dec 1980 (a)	29 Mar 1981
Czech Republic		30 Sep 1993 (a)	1 Jan 1993
Denmark a, b, c		22 Dec 1972 (a)	22 Mar 1973
Djibouti		14 Jun 1983 (a)	27 Jun 1977
Dominica		28 Oct 1988 (a)	26 Jan 1989
Dominican Republic		11 Apr 2002 (a)	10 Jul 2002
Ecuador a, b	17 Dec 1958	3 Jan 1962	3 Apr 1962
Egypt		9 Mar 1959 (a)	7 Jun 1959
El Salvador	10 Jun 1958	26 Feb 1998	27 May 1998
Estonia		30 Aug 1993 (a)	28 Nov 1993

State	Signature	Ratification, Accession (a) or Succession (s)	Entry Into Force
Finland	29 Dec 1958	19 Jan 1962	19 Apr 1962
France a	15 Nov 1958	26 Jun 1959	24 Sep 1959
Gabon		15 Dec 2006 (a)	15 Mar 2007
Georgia		2 Jun 1994 (a)	31 Aug 1994
Germany a, b	10 Jun 1958	30 Jun 1961 (a)	28 Sep 1961
Ghana		9 Apr 1968 (a)	8 Jul 1968
Greece a, b		16 Jul 1962 (a)	14 Oct 1962
Guatemala a, b		21 Mar 1984 (a)	19 Jun 1984
Guinea		23 Jan 1991 (a)	23 Apr 1991
Haiti		5 Dec 1983 (a)	4 Mar 1984
Holy See a, b		14 May 1975 (a)	12 Aug 1975
Honduras		3 Oct 2000 (a)	1 Jan 2001
Hungary a, b		5 Mar 1962 (a)	3 Jun 1962
Iceland		24 Jan 2002 (a)	24 Apr 2002
India a, b	10 Jun 1958	13 Jul 1960	11 Oct 1960
Indonesia a, b		7 Oct 1981 (a)	5 Jan 1982
Iran, (Islamic Republic of) <i>a</i> , <i>b</i>		15 Oct 2001 (a)	13 Jan 2002
Ireland a		12 May 1981 (a)	10 Aug 1981
Israel	10 Jun 1958	5 Jan 1959	7 Jun 1959
Italy		31 Jan 1969 (a)	1 May 1969
Jamaica a, b		10 Jul 2002 (a)	8 Oct 2002
Japan <i>a</i>		20 Jun 1961 (a)	18 Sep 1961
Jordan	10 Jun 1958	15 Nov 1979	13 Feb 1980
Kazakhstan		20 Nov 1995 (a)	18 Feb 1996
Kenya a		10 Feb 1989 (a)	11 May 1989

New York Convention

State	Signature	Ratification, Accession (a) or Succession (s)	Entry Into Force
Kuwait a		28 Apr 1978 (a)	27 Jul 1978
Kyrgyzstan		18 Dec 1966 (a)	18 Mar 1997
Lao People's Democratic Republic		17 Jun 1998 (a)	15 Sep 1998
Latvia		14 Apr 1992 (a)	13 Jul 1992
Lebanon a		11 Aug 1998 (a)	9 Nov 1998
Lesotho		13 Jun 1989 (a)	11 Sep 1989
Liberia		16 Sep 2005 (a)	15 Dec 2005
Lithuania a		14 Mar 1995 (a)	12 Jun 1995
Luxembourg a	11 Nov 1958	9 Sep 1983	8 Dec 1983
Madagascar a, b		16 Jul 1962 (a)	14 Oct 1962
Malaysia a, b		5 Nov 1985 (a)	3 Feb 1986
Mali		8 Sep 1994 (a)	7 Dec 1994
Malta a, f		22 Jun 2000 (a)	20 Sep 2000
Marshall Islands		21 Dec 2006	21 Mar 2007
Mauritania		30 Jan 1997 (a)	30 Apr 1997
Mauritius a		19 Jun 1996 (a)	17 Sep 1996
Mexico		14 Apr 1971 (a)	13 Jul 1971
Moldova a, f		18 Sep 1998 (a)	17 Dec 1998
Monaco a, b		2 Jun 1982	31 Aug 1982
Mongolia a, b		24 Oct 1994 (a)	22 Jan 1995
Montenegro a, b, f		23 Oct 2006 (s)	3 Jun 2006
Morocco a	31 Dec 1958	12 Feb 1959 (a)	7 Jun 1959
Mozambique a		11 Jun 1998 (a)	9 Sep 1998
Nepal a, b		4 Mar 1998 (a)	2 Jun 1998
Netherlands a, d	10 Jun 1958	24 Apr 1964	23 Jul 1964
New Zealand a		6 Jan 1983 (a)	6 Apr 1983

State	Signature	Ratification, Accession (a) or Succession (s)	Entry Into Force
Nicaragua		24 Sep 2003 (a)	23 Dec 2003
Niger		14 Oct 1964 (a)	12 Jan 1965
Nigeria a, b		17 Mar 1970 (a)	15 Jun 1970
Norway a, i		14 Mar 1961 (a)	12 Jun 1961
Oman		25 Feb 1999 (a)	26 May 1999
Pakistan a	30 Dec 1958	14 Jul 2005	12 Oct 2005
Panama		10 Oct 1984 (a)	8 Jan 1985
Paraguay		8 Oct 1997 (a)	6 Jan 1998
Peru		7 Jul 1988 (a)	5 Oct 1988
Philippines a, b	10 Jun 1958	6 Jul 1967	4 Oct 1967
Poland a, b	10 Jun 1958	3 Oct 1961	1 Jan 1962
Portugal a		18 Oct 1994 (a)	16 Jan 1995
Qatar		30 Dec 2002 (a)	3 Mar 2003
Republic of Korea <i>a</i> , <i>b</i>		8 Feb 1973 (a)	9 May 1973
Romania a, b, e		13 Sep 1961 (a)	12 Dec 1961
Russian Federation e	29 Dec 1958	24 Aug 1960	22 Nov 1960
Rwanda		31 Oct 2008	29 Jan 2009
Saint Vincent and the Grenadines <i>a</i> , <i>b</i>		12 Sep 2000 (a)	11 Dec 2000
San Marino		17 May 1979 (a)	15 Aug 1979
Saudi Arabia a		19 Apr 1994 (a)	18 Jul 1994
Senegal		17 Oct 1994 (a)	15 Jan 1995
Serbia and Montenegro <i>a</i> , <i>b</i> , <i>f</i>		12 Mar 2001 (s)	27 Apr 1992
Singapore a		21 Aug 1986 (a)	19 Nov 1986

New York Convention

State	Signature	Ratification, Accession (a) or Succession (s)	Entry Into Force
Slovakia i		28 May 1993 (s)	1 Jan 1993
Slovenia a, f, k		6 Jul 1992 (s)	25 Jun 1991
South Africa		3 May 1976 (a)	1 Aug 1976
Spain		12 May 1977 (a)	10 Aug 1977
Sri Lanka	30 Dec 1958	9 Apr 1962	8 Jul 1962
Sweden	23 Dec 1958	28 Jan 1972	27 Apr 1972
Switzerland	29 Dec 1958	1 Jun 1965	30 Aug 1965
Syrian Arab Republic		9 Mar 1959 (a)	7 Jun 1959
Thailand		21 Dec 1959 (a)	20 Mar 1960
The former Yugoslav Republic of Macedonia <i>a</i> , <i>b</i> , <i>f</i>		10 Mar 1994 (s)	17 Sep 1991
Trinidad and Tobago <i>a, b</i>		14 Feb 1966 (a)	15 May 1966
Tunisia a, b		17 Jul 1967 (a)	15 Oct 1967
Turkey a, b		2 Jul 1992 (a)	30 Sep 1992
Uganda a		12 Feb 1992 (a)	12 May 1992
Ukraine <i>e</i>	29 Dec 1958	10 Oct 1060 (a)	8 Jan 1961
United Arab Emirates		21 Aug 2006 (a)	19 Nov 2006
United Kingdom of Great Britain and Northern Ireland <i>a</i> , <i>g</i>		24 Sep 1975 (a)	23 Dec 1975
United Republic of Tanzania <i>a</i>		13 Oct 1964 (a)	12 Jan 1965
United States of America <i>a</i> , <i>b</i>		30 Sep 1970 (a)	29 Dec 1970