



## **AI COMMENTARY: NEW YORK CONVENTION 1958**

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

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## About Galadari

Galadari is a full-service Emirati law firm dedicated to providing legal solutions at every stage of the business cycle.

Since 1983, we have supported the development of the United Arab Emirates (UAE) legal framework, while contributing to the industry and driving great commercial impact across the Emirates and supporting our clients to navigate through their challenges.

For four decades, our goal has been to deliver the highest-quality product to solve complication issues. Our team take pride in our uncompromising approach to quality and recognise everything we do, or produce is a measurement of our commitment to quality. We give 100% the first time and every time.

Our legal team consists of over 60 locally qualified Emirati and international lawyers across 3 offices in the UAE who are fluent in 18 different languages. Our Emirati advocates have full rights of audience across all UAE Courts. Our team aims to provide the highest standard of legal service and maintain the same level of quality at every point of contact.

Aligned with our core values, Galadari is committed to being a responsible business. We are actively progressing towards a diverse and inclusive workforce, using our legal capabilities to do good in the community through pro bono work, supporting communities and charities across the UAE, and reducing our environmental impact.

## Galadari's International Arbitration Practice

Galadari "are a local law firm with international standards and lawyers, familiar with local UAE laws, DIFC laws, and international laws" (*The Legal 500 EMEA – UAE 2023*).

With over four decades of experience in the UAE, our team possesses extensive expertise gained from their involvement in high-profile, intricate disputes worth millions of dollars across the region. Clients rely on our broad-ranging knowledge to guide them on the most suitable strategy for their business when faced with a dispute, whether as the claimant or respondent.

We represent clients in proceedings governed by a variety of international arbitration bodies, including ICC, LCIA, SCC, SCIA, DIAC, and GCC CAC. Additionally, we also provide representation in ad-hoc arbitration cases, and arbitration-related proceedings before the courts of Dubai, the DIFC, Abu Dhabi, and the ADGM.

With one of the largest teams of Emirati advocates in the country, we offer a one-stop shop from the initiation to the conclusion of any arbitration, eliminating the need for external counsel.

Clients and legal directories continuously praise our forward-thinking approach. The team was shortlisted for Arbitration Law Firm of the Year by Thomson Reuters Asian Legal Business Middle East Law Awards 2023, and Arbitration Team of the Year in Law.com International's Middle East Legal Awards 2023.

## Galadari's International Arbitration Team



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## Editors' Preface

Galadari's Artificial Intelligence (AI) Commentary on arbitration rules, laws, and treaties, was composed by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov.

The term 'artificial intelligence' (AI) was first suggested by John McCarthy in 1955, defining it as a challenge "*of making a machine behave in ways that would be called intelligent if a human were so behaving*".

Almost seventy years later, further to multiple waves advancing AI technologies and notwithstanding several so-called 'AI winters' (prolonged periods of time when interest and investment in AI was significantly decreasing), AI has finally arrived as an essential technology for our future development and is here to stay. Today, leading AI platforms are able to maintain logical conversations their users, thus, satisfying Mr McCarthy's problem by making a machine behave intelligently.

The benefits of AI for both individuals and businesses have transitioned from being purely theoretical to practicable and, to a great extent, quantifiable. For legal practitioners, presently, such quantifiable benefits would likely be based on the billable time saved, for example, on document review and textual analysis or production of documents based on standard templates. Further, there is a huge potential to use AI to write simple code automating mundane tasks, such as generation of exhibit lists, (re)numbering of exhibits, bulk-conversion of documents from one file format into another, updating cross-references or footnotes in a document — one can think of plenty of use cases and what is needed is a bit of knowledge on how to make basic changes to that code and run it. However, as of the date of this publication, it seems that the general consensus among legal practitioners is that AI systems cannot be reliably used for legal research and all of the results of such research would still have to be reviewed with great care by human lawyers.

Galadari's AI Commentary on arbitration rules, laws, and treaties, is an experiment focussed on using AI to ascertain the current quality of AI analysis, and to determine whether AI is able to digest large quantities of complex information and produce an accurate and logical analysis of the relevant text in respect of various arbitration rules.

In the development of this AI Commentary, we used ChatGPT (GPT-3.5), an AI-powered language model developed by OpenAI. This AI model is capable of generating human-like text based on context and past conversations. The method used, for consistency, and not due to lack of imagination, implemented the use of the following prompt template to generate commentary on each provision of the relevant text: 'analyse article/section X of arbitration law/rules/treaty'.

Overall, the general outcome of our experiment indicates that, in the majority of situations, ChatGPT was able to successfully dissect provisions, spot important nuances, and generate meaningful commentary on the relevant provisions. Specifically, once ChatGPT was presented with a provision for analysis, it would typically attempt to break down the text into separate aspects into a list or bullet point format, tackling each and summarising the provision at the end of its analysis. This approach is consistently observed by ChatGPT across all the AI Commentary publications. We found this method to be suitable and informative, allowing readers to process the analysis in a systematic manner and benefit from ChatGPT's separation of the provision into smaller bits that the reader may be specifically interested in. It was noted that ChatGPT does not overlook or miss certain aspects of a provision, which is a potential human risk factor. ChatGPT addressed every aspect of provisions without fail, for example:

**Article 21.3 of the UAE Federal Law No. 6 of 2018 on Arbitration (“UAE Arbitration Law”):** “The Arbitral Tribunal may, at the request of any party or on its own motion, amend, suspend, or cancel an interim measure it has ordered, in exceptional circumstances, by prior notice to be given to the Parties.”

**ChatGPT:** “Article 21.3 of the UAE Arbitration Law grants the Arbitral Tribunal the authority to modify, suspend, or revoke interim measures it has previously ordered during the arbitration process. These changes can be made under specific conditions referred to as “exceptional circumstances”. Let us analyse this article:

1. **Modification:** The Tribunal can amend or alter the scope or conditions of an interim measure based on the evolving circumstances of the case.
2. **Suspension:** The Tribunal can suspend the enforcement of an interim measure temporarily if the circumstances warrant it.
3. **Cancellation:** The Tribunal can completely cancel or revoke an interim measure previously ordered if it deems it no longer necessary or appropriate.
4. **Exceptional Circumstances:** The Tribunal’s power to amend, suspend, or cancel interim measures is limited to exceptional circumstances, implying that such measures are not subject to routine or arbitrary alterations.
5. **Prior Notice:** The article requires the Tribunal to provide advance notice to the parties before making any changes to the interim measures. This ensures transparency and allows parties to present their positions on the proposed amendments.”

The commentary produced using ChatGPT did display some shortcomings. For example, there were instances when ChatGPT would ‘hallucinate’, making something up, which is a well-known limitation not only for OpenAI and ChatGPT users but also for other AI systems, for example:

**Extract from ChatGPT’s commentary on Article 2.4 of DIAC Arbitration Rules 2022 containing a reference to Article 32:** “This exception indicates that certain specific provisions, such as Article 32, may have limited application to agreements to arbitrate made before the effective date of the Rules. It provides flexibility for parties to agree on different rules or procedures ~~regarding the settlement or termination of proceedings~~, even if the general principle of the Rules taking precedence over the parties’ agreement still applies.”

**Human lawyer:** Article 32 of DIAC Arbitration Rules 2022 does not concern ‘settlement or termination of proceedings’ but sets out provisions pertaining to expedited proceedings.

Occasionally, ChatGPT would not appreciate the important distinction between ‘may’ or ‘should’ and the commanding ‘shall’, which can be crucial, for example:

**Article 4.1(c) of DIAC Arbitration Rules 2022:** “Any party wishing to commence an arbitration under the Rules shall submit to the Centre a Request which shall include: [...] (c) a copy of any relevant agreement between the parties, which contains the agreement to arbitrate, in respect of which the claim arises; [...]”

**ChatGPT:** “Article 4.1 of the DIAC Arbitration Rules outlines the requirements for submitting a Request to commence an arbitration under the Rules. Let us analyse each component of this article: [...] Copy of relevant agreement: The Request ~~should~~ include a copy of any relevant

*agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.”*

Parenthetically, ChatGPT sometimes would simply paraphrase a provision several times within a single answer or alter the format of the responses with a series of prompts within the same commentary. To be fair, most of these provisions were quite nominal and did not contain much substance for analysis, for example:

**Definition of ‘Parties’ Article 1.1 of UAE Arbitration Law:** *“Parties: The Claimant and the Respondent, whatever their number.”*

**ChatGPT:** *“Parties: Refers to the Claimant and the Respondent involved in the arbitration. The parties could be individuals, companies, or any legal entities engaged in a dispute.”*

It was expected that there would be such limitations, but it was pleasantly surprising that their frequency was much lower than anticipated.

Being cognisant of all the existing issues and scepticism within the legal community, we consider that this experimental AI Commentary could be of assistance to practitioners in at least two ways. First, it allows the reader an opportunity to perform a sense check on their understanding of a provision or its aspect against ChatGPT’s analysis. Second, the time required to produce 24 publications comprising the AI Commentary was significantly less than the typical duration needed to produce a single comprehensive commentary text on any of the relevant arbitration laws, rules, or treaties. Thus, should it become necessary, a similar AI commentary could be produced on any arbitration law/rules/treaty at a fraction of time and cost typically associated with such a task.

The purpose of publishing the AI Commentary is to provide arbitration practitioners and academics with a general sense of what is presently possible to achieve in the field of arbitration with the assistance of generative AI software, and encourage the arbitration community to push the boundaries of arbitration as a flexible, efficient, and effective dispute resolution method.

Notably, all commentary was generated with ChatGPT and was supported by a selective review by the Editors. Accordingly, the commentary may contain inaccurate and/or incomplete information. Readers are strongly advised to exercise caution reading the commentary with some scepticism and to keep a pencil in hand to note any inaccuracies. Needless to say, nothing in this text should be considered and/or relied upon as legal advice. For detailed information, please refer to OpenAI’s Terms & Policies.

This project would not be complete without front page illustrations, which were also generated by AI. DALL E, another OpenAI system capable of creating images based on prompts, was used for this purpose. The chosen concept is based on a watercolour painting style, primarily portraying athletic rivalries in locations that correspond to the relevant arbitration law, rules, or treaty. The hope is that the readers will find the illustrations aesthetically appealing.

Should you have any questions, comments, or observations, including any noticed errors, please do not hesitate to contact us directly via email at [s.dilevka@galadarilaw.com](mailto:s.dilevka@galadarilaw.com).

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November 2023

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**UNITED NATIONS CONVENTION  
ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS 1958<sup>1</sup>**

**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.**

Article I.1 of the New York Convention pertains to the scope and application of the convention in relation to the recognition and enforcement of arbitral awards. The New York Convention, formally known as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, is an international treaty aimed at facilitating the recognition and enforcement of foreign arbitral awards by national courts. Here is an analysis of Article I.1:

1. **Territorial Scope and Parties Involved:** The article starts by establishing the geographical scope of the convention. It applies when an arbitral award has been made in the territory of a state (referred to as the “State of origin”) that is different from the state in which recognition and enforcement of that award is being sought (referred to as the “Requested State”). This means that the convention comes into play when an arbitral award rendered in one country is sought to be recognised and enforced in another country.
2. **Subject Matter of the Award:** The provision indicates that the arbitral awards covered by the convention arise out of “differences between persons, whether physical or legal”. This encompasses disputes involving individuals, companies, organisations, or any other legal entities. The term “physical or legal” signifies that the convention is broad enough to include disputes between natural persons as well as those involving legal entities.
3. **Non-Domestic Awards:** The article extends the application of the convention to “arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought”. This clause ensures that the convention covers awards that are classified as international or foreign awards in the requested state. In other words, even if an arbitral award is not treated as a domestic award within the requested state’s legal system, it can still be subject to the provisions of the New York Convention.

In essence, Article I.1 sets out the basic parameters under which the New York Convention applies. It ensures that the convention is applicable to foreign arbitral awards made in one state and sought to be recognised and enforced in another state, regardless of the nature of the parties involved or the classification of the award within the requested state’s legal framework. This is intended to promote consistency and predictability in the enforcement of international arbitration awards across different jurisdictions, fostering international trade and investment by providing a mechanism for the efficient enforcement of arbitration outcomes.

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<sup>1</sup> Source:

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf>.



- 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.**

Article I.2 of the New York Convention elaborates on certain aspects related to the definition of “arbitral awards” and provides for the possibility of reciprocity-based declarations by states when signing, ratifying, acceding to the convention, or notifying extensions under Article X. Let us break down the analysis of Article I.2:

1. **Scope of “Arbitral Awards”:** This paragraph clarifies that the term “arbitral awards” encompasses not only awards rendered by arbitrators appointed for specific cases but also awards issued by permanent arbitral bodies to which the parties have submitted their disputes. This recognition is important as it acknowledges that arbitral awards can arise from both ad hoc arbitrations (where arbitrators are appointed for a particular dispute) and institutional arbitrations (where disputes are resolved by permanent arbitral institutions). This inclusion ensures that the convention applies to a wide range of arbitral proceedings.
2. **Reciprocity-Based Declarations:** This section allows states, when they sign, ratify, accede to the convention, or notify extensions under Article X, to make specific declarations regarding the application of the convention. These declarations are based on the principle of reciprocity, where a state agrees to treat other contracting states in the same manner as those states treat it.
  - a. **Territorial Limitation Declaration:** States can declare that they will apply the convention only to the recognition and enforcement of awards made in the territory of another contracting state. In other words, they limit the scope of the convention to foreign awards rendered in territories of other contracting states. This declaration ensures that a state is obligated to enforce foreign awards but not necessarily its domestic awards.
  - b. **Commercial Relationship Declaration:** States can also declare that they will apply the convention only to disputes arising out of legal relationships, whether contractual or not, that are considered as commercial under their own national law. This declaration allows states to determine the applicability of the convention based on whether the nature of the dispute aligns with their own domestic definition of commercial relationships. This might exclude certain types of disputes that are not deemed commercial under their national law.

In summary, Article I.2 serves to clarify the scope of “arbitral awards” covered by the convention and introduces the concept of reciprocity-based declarations. These declarations enable states to tailor the application of the convention to their preferences by limiting the territorial scope of enforcement and specifying the types of disputes that will fall under the convention’s purview. This flexibility aims to accommodate the legal and commercial considerations of different states while still promoting the recognition and enforcement of foreign arbitral awards.

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 I.3 of the New York Convention expands on the concept of reciprocity-based declarations, building upon the provisions outlined in Article I.2. This article focuses on the options available to states when they sign, ratify, accede to the convention, or notify extensions under Article X. Here is an analysis of Article I.3:

1. **Reciprocity-Based Declarations:** Similar to Article I.2, Article I.3 allows states to make declarations on the basis of reciprocity. These declarations provide a level of flexibility for states to determine the scope of application of the convention within their jurisdiction.
2. **Territorial Limitation Declaration:** States have the option to declare that they will apply the convention only to the recognition and enforcement of awards made within the territory of another Contracting State. This declaration allows a state to decide that it will enforce foreign awards rendered in territories of other contracting states, while potentially excluding the enforcement of foreign awards from non-contracting states.
3. **Commercial Relationship Declaration:** States can also declare that they will apply the convention only to differences arising out of legal relationships, whether contractual or not, that are considered as commercial under their own national law. This declaration provides the state with the ability to determine whether a particular legal relationship falls within the scope of the convention's application based on its own domestic criteria for defining commercial relationships.

The purpose of Article I.3 is to accommodate the diverse legal and commercial considerations of different states while promoting the recognition and enforcement of foreign arbitral awards. By allowing states to make these declarations, the New York Convention acknowledges that there might be variations in the criteria for enforcing awards and the types of disputes covered across different jurisdictions. This flexibility encourages states to participate in the convention and facilitates the development of a more harmonious framework for the enforcement of arbitral awards on an international level.

In summary, Article I.3 continues the theme of reciprocity-based declarations introduced in Article I.2. It highlights the options available to states when they are joining the convention or notifying extensions under Article X, giving them the ability to tailor the convention's application to their own legal and commercial preferences within certain limits.

## Article II

1. **Each Contracting State shall recognise 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.**

Article II.1 of the New York Convention focuses on the recognition of arbitration agreements by contracting states. This article emphasises the obligation of each contracting state to acknowledge and uphold agreements in writing that stipulate the parties' commitment to arbitrate disputes related to a specific legal relationship. Here is an analysis of Article II.1:

1. **Agreement in Writing:** The article begins by emphasising that the arbitration agreement must be in writing. This requirement underscores the importance of formalising the parties' intent to resolve their disputes through arbitration. While the convention does not specify a particular form for the writing, most jurisdictions have adopted a broad interpretation that includes various forms of written agreements, such as contracts, letters, exchange of emails, and more.
2. **Submission to Arbitration:** The provision states that the agreement must entail the parties' commitment to submit "all or any differences" that have arisen or may arise between them to arbitration. This language underscores the parties' choice to resolve their disputes through arbitration, indicating their intent to avoid court litigation. This language also implies that the arbitration agreement can cover both existing disputes and potential disputes that may arise in the future.
3. **Defined Legal Relationship:** The arbitration agreement should pertain to a "defined legal relationship". This refers to a clear identification of the legal context in which the disputes arise. The legal relationship can be contractual or non-contractual in nature, emphasising the convention's intent to promote the use of arbitration for a wide range of disputes, including those that do not necessarily arise from contractual relationships.
4. **Subject Matter Capable of Settlement by Arbitration:** The arbitration agreement must concern a "subject matter capable of settlement by arbitration". This means that the disputes covered by the agreement must be ones that can be effectively resolved through the arbitration process. Arbitration is generally suitable for matters that are of a private nature and can be addressed by a neutral third party. Certain disputes, such as criminal matters or those involving public policy issues, might not be considered suitable for arbitration.

Article II.1 serves to establish the fundamental principle that contracting states should uphold and recognise written agreements between parties to arbitrate their disputes. By doing so, the article promotes party autonomy and supports the use of arbitration as an alternative method of dispute resolution. This principle also lays the groundwork for the enforcement of arbitral awards under the convention, as arbitral awards are often based on the underlying arbitration agreement.

In summary, Article II.1 ensures that arbitration agreements that meet the specified criteria are given legal weight and must be upheld by contracting states. This provision encourages the use of arbitration to resolve a wide range of disputes arising from various legal relationships.

**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.**

Article II.2 of the New York Convention provides a comprehensive definition of what constitutes an “agreement in writing” for the purpose of recognising arbitration agreements. This article clarifies that the concept of an “agreement in writing” encompasses various forms of documentation that indicate the parties’ intent to arbitrate disputes. Here is an analysis of Article II.2:

1. **Agreement in Writing:** The article begins by establishing that the term “agreement in writing” is a central concept in the context of arbitration agreements. This underscores the convention’s emphasis on the importance of formalising the parties’ decision to resolve their disputes through arbitration.
2. **Arbitral Clause or Arbitration Agreement:** The provision states that the term “agreement in writing” includes both an “arbitral clause in a contract” and a standalone “arbitration agreement”. An arbitral clause is a provision within a contract that outlines the parties’ agreement to resolve disputes through arbitration rather than litigation. A standalone arbitration agreement is a separate document explicitly indicating the parties’ intent to arbitrate, which might not necessarily be part of a larger contract.
3. **Forms of Documentation:** The article specifies various forms in which an arbitration agreement can be documented:
  - a. **Signed by the Parties:** An arbitration agreement can be included within a document that is signed by the parties. This includes traditional signatures, electronic signatures, or other forms of agreement confirmation.
  - b. **Exchange of Letters or Telegrams:** An arbitration agreement can also be evidenced by an exchange of letters or telegrams between the parties. This recognises the historical practice of using written correspondence to confirm agreements and extend it to modern communication methods like emails.

Article II.2 is aimed at ensuring that the concept of an “agreement in writing” is sufficiently flexible to accommodate various forms of documentation that indicate the parties’ consent to arbitration. This flexibility is important given the diverse ways in which agreements can be formalised in different jurisdictions and across different time periods.

In summary, Article II.2 clarifies the definition of an “agreement in writing” for arbitration purposes. It highlights that this term includes both arbitral clauses within contracts and standalone arbitration agreements. Additionally, the article acknowledges the diverse ways in which parties can indicate their agreement to arbitrate, such as through signatures, exchange of letters, or telegrams. This flexibility facilitates the recognition and enforcement of arbitration agreements across different legal systems and communication methods.

**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 II.3 of the New York Convention outlines the obligations of the court of a contracting state when faced with a legal action that pertains to a matter covered by an arbitration agreement. This article establishes the principle that courts should respect and enforce arbitration agreements, referring the parties to arbitration unless certain specified conditions are met. Here is an analysis of Article II.3:

1. **Mandatory Referral to Arbitration:** The article stipulates that when a court of a contracting state is presented with a case that falls within the scope of an arbitration agreement as defined in Article II.2, the court is obligated to refer the parties to arbitration. This means that if the parties have agreed to resolve their dispute through arbitration, the court should respect that agreement and guide the parties towards arbitration.
2. **Exceptions to Referral:** The court's duty to refer the parties to arbitration is not absolute. There are three specific scenarios in which the court might choose not to make the referral:
  - a. **Null and Void Agreement:** If the court determines that the arbitration agreement is null and void, it will not enforce the agreement and will proceed with the legal action. Null and void could be due to issues like lack of capacity to contract, fraud, duress, or other factors rendering the agreement legally invalid.
  - b. **Inoperative Agreement:** If the court finds that the arbitration agreement has become inoperative due to the parties' inability to proceed with arbitration (e.g., due to changes in circumstances, impracticability, etc.), it may proceed with the legal action.
  - c. **Incapable of Being Performed Agreement:** If the court determines that the arbitration agreement is incapable of being performed, possibly due to impracticality, impossibility, or other factors, it might decline to enforce the agreement and proceed with the legal action.
3. **Promotion of Party Autonomy:** Article II.3 reflects the convention's overarching principle of party autonomy in arbitration. It upholds the parties' right to choose arbitration as a method of resolving their disputes, and it requires courts to respect that choice unless the agreement is genuinely problematic or unenforceable.
4. **The main intent of Article II.3 is to discourage parties from trying to bypass or ignore their arbitration agreements by taking their disputes to court. It ensures that, in most cases, once parties have agreed to arbitrate, courts will support that decision and encourage the parties to follow through with their chosen method of dispute resolution. This approach promotes international arbitration as a preferred means of resolving disputes and contributes to consistency in enforcing arbitration agreements globally.**

In summary, Article II.3 mandates courts in contracting states to refer parties to arbitration when a dispute falls under an arbitration agreement. This principle is subject to exceptions when the agreement is null and void, inoperative, or incapable of being performed. This provision supports party autonomy and reinforces the recognition and enforcement of arbitration agreements as stipulated by the New York Convention.

### 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 III of the New York Convention establishes the obligations of contracting states with regard to the recognition and enforcement of arbitral awards. This article emphasises the principle of treating foreign arbitral awards with the same level of recognition and enforcement as domestic awards, promoting fairness and consistency in international arbitration. Here is an analysis of Article III:

1. **Recognition and Enforcement of Arbitral Awards:** The article begins by stating that each contracting state shall recognise arbitral awards as binding and enforce them. This signifies the commitment of contracting states to uphold the legitimacy of arbitral awards and treat them as legally binding decisions.
2. **Enforcement in Accordance with Local Rules of Procedure:** The provision specifies that enforcement of arbitral awards should be carried out in accordance with the rules of procedure of the territory where the award is being relied upon. This acknowledges that enforcement procedures can vary from jurisdiction to jurisdiction and underscores the importance of adhering to the local legal framework when seeking enforcement.
3. **No Substantially More Onerous Conditions or Fees:** One of the significant principles emphasised in this article is that no contracting state should impose conditions, fees, or charges for the recognition and enforcement of foreign arbitral awards that are substantially more burdensome than those imposed on the recognition and enforcement of domestic arbitral awards. This principle prevents discrimination against foreign arbitral awards and ensures that the process of enforcing foreign awards is not unduly hindered by unreasonable requirements or excessive fees.

Article III is designed to ensure that the recognition and enforcement of foreign arbitral awards are fair and consistent across jurisdictions. By requiring states to treat foreign arbitral awards on par with domestic awards and prohibiting the imposition of discriminatory conditions or fees, the article contributes to the establishment of a level playing field for international arbitration. This approach is instrumental in fostering confidence in the arbitral process and facilitating the enforcement of awards across borders.

In summary, Article III of the New York Convention underscores the commitment of contracting states to recognise and enforce arbitral awards, treats foreign awards in line with domestic awards, and prevents the imposition of excessively burdensome conditions or fees for enforcing foreign awards. This provision plays a vital role in promoting the effectiveness and integrity of international arbitration and encouraging cross-border enforcement of arbitral decisions.

#### 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.**

Article IV.1 of the New York Convention outlines the procedural requirements that a party seeking the recognition and enforcement of an arbitral award must fulfil. This article sets forth the necessary documents that the applying party must provide to the court in the requested state. Here is an analysis of Article IV.1:

1. **Procedural Prerequisites for Recognition and Enforcement:** The article establishes a specific procedure that the party seeking recognition and enforcement of an arbitral award must follow. It mandates that the applying party must fulfil certain documentary requirements at the time of making the application to the competent court.
2. **Documentary Evidence to Be Supplied:** Article IV.1 stipulates that the party applying for recognition and enforcement must supply two key documents:
  - a. **Duly Authenticated Original Award or Certified Copy:** The applying party must provide the court with either the original arbitral award that has been duly authenticated or a certified copy of the award. This ensures that the court has access to the official arbitration award document, which serves as the basis for the enforcement process.
  - b. **Original Agreement or Certified Copy:** Additionally, the party must submit the original arbitration agreement referred to in Article II (the agreement to arbitrate) or a certified copy of this agreement. This requirement ensures that the court has the means to verify the existence of a valid arbitration agreement between the parties.
3. **Purpose of the Requirements:** The requirements outlined in Article IV.1 serve several important purposes:
  - a. **Authentication and Verification:** The requirement for a duly authenticated original award or certified copy ensures the authenticity and accuracy of the award being presented for enforcement. This minimises the risk of presenting fraudulent or inaccurate documents.
  - b. **Access to Arbitration Agreement:** The provision related to the arbitration agreement ensures that the court can verify the existence of a valid arbitration agreement between the parties. This prevents parties from attempting to enforce awards that are not supported by a valid agreement to arbitrate.
  - c. **Efficiency and Transparency:** By specifying the necessary documents in advance, the article promotes efficiency in the enforcement process and provides a clear framework for parties and courts to follow.

4. Article IV.1 plays a crucial role in ensuring the integrity and efficiency of the enforcement process under the New York Convention. By requiring the submission of the original award or certified copy and the arbitration agreement, the article helps prevent abuse of the enforcement process and establishes a consistent standard for recognising and enforcing arbitral awards across contracting states.

In summary, Article IV.1 of the New York Convention sets out the procedural requirements for parties seeking the recognition and enforcement of an arbitral award. It specifies that the applying party must provide a duly authenticated original award or certified copy, as well as the original arbitration agreement or a certified copy. These requirements contribute to the transparency, authenticity, and efficiency of the enforcement process.

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 IV.2 of the New York Convention addresses the situation where the arbitral award or the arbitration agreement is not in an official language of the country where enforcement is sought. This article outlines the requirement for translation and the procedures for certifying the accuracy of the translation. Here is an analysis of Article IV.2:

1. **Translation Requirement:** The article states that if the arbitral award or the arbitration agreement is not originally made in an official language of the country where enforcement is being sought, the party applying for recognition and enforcement must provide a translation of these documents into the official language of that country. This requirement is in place to ensure that the court and other relevant parties can understand the content of the award and the agreement.
2. **Certification of Translation:** The translation of the documents must be certified to ensure its accuracy. Article IV.2 outlines two possible ways to certify the translation:
  - a. **Official or Sworn Translator:** The translation can be certified by an official or sworn translator. These are individuals who have the legal authority to translate documents and certify their accuracy. This approach ensures that the translation is prepared by a professional with recognised competence in translation.
  - b. **Diplomatic or Consular Agent:** Alternatively, the translation can be certified by a diplomatic or consular agent of the country where the award is being enforced. This recognises the authority of diplomatic and consular officials to authenticate documents, including translations.
3. **Purpose of Translation and Certification:** The translation requirement and certification serve several important purposes:
  - a. **Access to the Content:** When parties and courts are dealing with documents in languages that they may not understand, translations ensure that the content of the award and the agreement is accessible and comprehensible.



- b. **Verification of Accuracy:** The certification process guarantees the accuracy of the translation, preventing mistranslations that could impact the meaning and validity of the documents.
  - c. **Uniform Standard:** The requirement for certified translations maintains a consistent and reliable standard for dealing with foreign-language documents in the enforcement process across different jurisdictions.
4. Article IV.2 contributes to the transparency and fairness of the enforcement process by ensuring that parties and courts can accurately understand the content of the arbitral award and the arbitration agreement, even if they are not in an official language of the country where enforcement is sought. This provision helps prevent misunderstandings and inconsistencies that could arise from language barriers.

In summary, Article IV.2 of the New York Convention establishes the requirement for translations of arbitral awards and arbitration agreements not in an official language of the enforcement country. The translation must be certified by an official or sworn translator, or by a diplomatic or consular agent. This provision ensures accessibility and accuracy in the enforcement process across language differences.

#### 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**

Article V.1(a) of the New York Convention lays out one of the specific grounds on which recognition and enforcement of an arbitral award can be refused. This provision focuses on situations where the arbitration agreement between the parties is deemed invalid or unenforceable. Here is an analysis of Article V.1(a):

- 1. **Invalidity or Inapplicability of the Arbitration Agreement:** Article V.1(a) establishes that a party against whom enforcement of an arbitral award is sought can request the refusal of recognition and enforcement if that party can provide proof to the competent authority that the arbitration agreement itself is invalid or inapplicable.
- 2. **Grounds for Refusal:** This subsection presents three distinct scenarios where the arbitration agreement may be considered invalid or inapplicable:
  - a. **Incapacity Under Applicable Law:** If the parties to the arbitration agreement were, under the law that applies to them, under some form of incapacity at the time the agreement was made, it might render the agreement unenforceable. Examples of incapacity include situations where one of the parties lacked legal capacity to enter into a contract or an arbitration agreement.

- b. Invalid Under the Parties' Subjected Law: If the parties have specified a particular law to govern the arbitration agreement, and under that chosen law, the agreement is not valid, it can be grounds for refusal.
  - c. Invalid Under the Law of the Seat of Arbitration: If there is no indication regarding the law governing the arbitration agreement, the agreement may be deemed invalid under the law of the country where the arbitration award was made (referred to as the "seat" of the arbitration).
3. Importance of Legal Validity of the Agreement: This provision recognises that for arbitration proceedings and awards to be valid and enforceable, the underlying arbitration agreement itself must be legally valid. If the agreement is not valid for any of the reasons mentioned above, the subsequent award based on that agreement could also be questioned.
  4. Burden of Proof: The requesting party (the party against whom the award is invoked) has the burden of furnishing proof of the invalidity or inapplicability of the arbitration agreement. This requirement ensures that parties cannot easily invoke this ground for refusal without substantiating their claim.
  5. Article V.1(a) reflects the importance of a valid and enforceable arbitration agreement as the foundation of the arbitration process. It underscores the principle that parties must be able to freely and knowingly enter into arbitration agreements for the process to be legitimate. This provision also ensures that enforcement of arbitral awards is balanced by the necessity of valid and binding agreements to arbitrate.

In summary, Article V.1(a) of the New York Convention establishes the grounds for refusal of recognition and enforcement when the arbitration agreement itself is proven to be invalid or inapplicable under the parties' chosen law, the law applicable to them, or the law of the seat of arbitration. This provision upholds the significance of a legally valid arbitration agreement as the basis for the arbitration process and subsequent awards.

**(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**

Article V.1(b) of the New York Convention outlines another ground on which the recognition and enforcement of an arbitral award can be refused. This provision addresses situations where the party against whom enforcement is sought argues that they did not receive proper notice of the arbitration proceedings or were unable to present their case. Here is an analysis of Article V.1(b):

1. Lack of Proper Notice or Inability to Present Case: Article V.1(b) allows the party against whom the award is invoked to request the refusal of recognition and enforcement if they can provide proof to the competent authority that they were not given proper notice of the appointment of the arbitrator or the arbitration proceedings. Additionally, this provision covers situations where the party was otherwise unable to present their case effectively during the arbitration process.

2. Importance of Notice and Opportunity to Present Case: Proper notice and the opportunity to present one's case are fundamental principles of due process and fairness in any legal proceedings, including arbitration. This provision underscores the significance of these principles in maintaining the integrity of the arbitration process.
3. Burden of Proof: The party requesting refusal (the party against whom enforcement is sought) has the burden of furnishing proof that they did not receive proper notice or were unable to present their case effectively during the arbitration proceedings. This requirement ensures that parties cannot easily invoke this ground for refusal without substantiating their claim.
4. Preservation of Fairness: Article V.1(b) reflects the New York Convention's commitment to maintaining fairness and due process in the arbitration process. It ensures that parties are not deprived of the opportunity to participate fully in the arbitration and that any award rendered is based on a fair and complete consideration of the arguments and evidence presented.
5. Balancing Interests: While the provision protects the party's right to proper notice and the ability to present their case, it is important to note that it also aims to strike a balance. It does not grant an automatic right to refuse enforcement for minor or technical issues with notice or presentation of the case; rather, it addresses situations where there has been a significant and prejudicial violation of due process.

In summary, Article V.1(b) of the New York Convention provides a ground for refusing recognition and enforcement when the party against whom the award is invoked can prove that they were not given proper notice of the appointment of the arbitrator, the arbitration proceedings, or were otherwise unable to present their case effectively. This provision ensures the fairness and integrity of the arbitration process by safeguarding the parties' right to notice and the opportunity to present their arguments and evidence.

- (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**

Article V.1(c) of the New York Convention introduces another ground for the refusal of recognition and enforcement of arbitral awards. This provision addresses situations where the arbitral award deals with matters that were not within the scope of the arbitration agreement or submission to arbitration. Here is an analysis of Article V.1(c):

1. Award Beyond the Submission or Scope: Article V.1(c) allows the party against whom the award is invoked to request the refusal of recognition and enforcement if they can prove to the competent authority that the award deals with a difference that was not contemplated by or not falling within the terms of the arbitration agreement or submission to arbitration. This also applies if the award contains decisions on matters beyond the scope of the agreed-upon submission.

2. **Separation of Decisions:** This provision introduces flexibility by stating that if the award contains decisions on matters that were submitted to arbitration and those that were not, the part of the award that relates to matters submitted to arbitration can still be recognised and enforced. This separation of decisions is designed to prevent the entire award from being invalidated if only a portion of it is beyond the scope of the submission.
3. **Preservation of the Parties' Intent:** Article V.1(c) reflects the principle that arbitration is a consensual process, and parties should be bound by the scope of their agreement to arbitrate. The provision safeguards against awards that venture into issues that were not intended to be resolved through arbitration.
4. **Balancing the Effectiveness of Awards:** While this provision aims to ensure that awards remain within the boundaries set by the parties' agreement, it also acknowledges that not all aspects of a dispute may fall squarely within the terms of the arbitration agreement. By allowing the separation of decisions, the provision aims to balance the need for enforcing parts of an award that fall within the scope while excluding those that go beyond.
5. **Burden of Proof:** As with other grounds for refusal, the party requesting the refusal (the party against whom enforcement is sought) bears the burden of furnishing proof that the award's subject matter goes beyond the scope of the submission to arbitration.

In summary, Article V.1(c) of the New York Convention provides a ground for refusing recognition and enforcement when the party against whom the award is invoked can demonstrate that the award deals with matters that were not contemplated by or within the scope of the arbitration agreement or submission to arbitration. This provision maintains the integrity of the arbitration process by ensuring that awards respect the boundaries set by the parties' agreement while allowing for the enforcement of separable decisions that fall within the scope of the submission.

**(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**

Article V.1(d) of the New York Convention introduces another ground for the refusal of recognition and enforcement of arbitral awards. This provision addresses situations where the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or with the law of the country where the arbitration took place. Here is an analysis of Article V.1(d):

1. **Composition of Arbitral Authority and Procedure:** Article V.1(d) allows the party against whom the award is invoked to request the refusal of recognition and enforcement if they can prove to the competent authority that the composition of the arbitral authority (the arbitrators) or the procedure followed in the arbitration was not in accordance with either the parties' agreement or the law of the country where the arbitration took place.
2. **Upholding Party Autonomy and Due Process:** This provision underscores the importance of party autonomy in determining the composition of the arbitral authority and the procedure to be followed in the arbitration. It also emphasises the need for procedural regularity and adherence to due process principles.



3. **Agreement vs. Local Law:** The article recognises two possible bases for assessing the validity of the composition of the arbitral authority and the procedure. The first is the agreement of the parties. If the parties had agreed on a particular composition or procedure, the arbitration must adhere to that agreement. The second is the law of the country where the arbitration took place. If there is no explicit agreement, the procedure should follow the local law of that country.
4. **Avoiding Procedural Irregularities:** Article V.1(d) aims to prevent parties from seeking recognition and enforcement of awards when there have been significant departures from the agreed-upon procedure or the relevant local law. This provision safeguards against procedural irregularities that could impact the fairness and validity of the arbitration process.
5. **Burden of Proof:** As with other grounds for refusal, the party requesting the refusal (the party against whom enforcement is sought) has the burden of proving that the composition of the arbitral authority or the arbitral procedure was not in accordance with the parties' agreement or the relevant local law.

In summary, Article V.1(d) of the New York Convention provides a ground for refusing recognition and enforcement when the party against whom the award is invoked can demonstrate that the composition of the arbitral authority or the arbitral procedure was not in accordance with the parties' agreement or the law of the country where the arbitration took place. This provision ensures that parties' autonomy in arbitration and procedural regularity are upheld, contributing to the integrity and legitimacy of arbitral awards.

- (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.**

Article V.1(e) of the New York Convention introduces yet another ground for the refusal of recognition and enforcement of arbitral awards. This provision addresses situations where the award has not yet become binding on the parties or where the award has been set aside or suspended by a competent authority of the country in which the award was made or under the law of that country. Here is an analysis of Article V.1(e):

1. **Award Not Yet Binding, Set Aside, or Suspended:** Article V.1(e) allows the party against whom the award is invoked to request the refusal of recognition and enforcement if they can prove to the competent authority that the award falls into one of the following three categories:
  - a. The award has not yet become binding on the parties.
  - b. The award has been set aside by a competent authority in the country where the award was made.
  - c. The award has been suspended by a competent authority in the country where the award was made.

2. **Binding Nature of Arbitral Awards:** This provision acknowledges that an arbitral award should be binding on the parties once rendered. If the award has not yet achieved the status of binding due to certain factors, it might not be suitable for recognition and enforcement.
3. **Set Aside and Suspended Awards:** The provision also takes into account instances where the validity of an award has been questioned through legal proceedings in the country where the arbitration took place. If a competent authority has set aside the award due to serious irregularities, or if the award has been suspended temporarily during such proceedings, recognition and enforcement may be refused.
4. **Balancing Fairness and Enforcement:** Article V.1(e) recognises the balance between the interest in enforcing valid arbitral awards and the need to ensure that awards are not enforced when they are subject to ongoing legal challenges or have been invalidated through proper legal procedures.
5. **Burden of Proof:** As with other grounds for refusal, the party requesting the refusal (the party against whom enforcement is sought) has the burden of proving that the award has not yet become binding, has been set aside, or has been suspended by a competent authority.

In summary, Article V.1(e) of the New York Convention provides a ground for refusing recognition and enforcement when the party against whom the award is invoked can demonstrate that the award has not yet become binding on the parties, has been set aside by a competent authority, or has been suspended due to ongoing legal challenges in the country where the award was made. This provision respects the finality and enforceability of valid arbitral awards while allowing for proper review and legal remedies when the validity of an award is in question.

**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**

Article V.2(a) of the New York Convention introduces another ground for the refusal of recognition and enforcement of arbitral awards. This provision addresses situations where the competent authority in the country where recognition and enforcement is sought finds that the subject matter of the dispute is not capable of settlement by arbitration under the law of that country. Here is an analysis of Article V.2(a):

1. **Subject Matter Not Capable of Arbitration:** Article V.2(a) allows the competent authority in the country where recognition and enforcement is sought to refuse the recognition and enforcement of an arbitral award if it determines that the subject matter of the dispute is not capable of being settled through arbitration under the law of that country.
2. **Legal Limitations on Arbitration:** This provision reflects the idea that certain types of disputes may be excluded from arbitration based on public policy or legal considerations in the country where enforcement is sought. It acknowledges that not all disputes may be appropriate for resolution through the arbitration process.

3. **Balancing of Legal Systems:** Article V.2(a) emphasises the importance of respecting the legal norms and public policy of the enforcement country. It recognises that the legal framework of the country where enforcement is sought may have specific limitations on the types of disputes that can be arbitrated.
4. **Potential for Discrepancy:** While the New York Convention generally promotes the enforcement of arbitral awards, this provision recognises that there might be situations where the subject matter of the dispute conflicts with the legal principles or policy of the country where enforcement is sought.
5. **Competent Authority Determination:** The determination of whether the subject matter is not capable of settlement by arbitration under the law of the enforcement country is made by the competent authority of that country. This authority may consider local laws, regulations, and legal interpretations.
6. **Limitations on Public Policy Grounds:** It is important to note that the “not capable of settlement by arbitration” ground is closely linked to public policy considerations in the enforcement country. However, this ground is not meant to be a broad avenue for avoiding enforcement based on public policy concerns; rather, it is tied to specific limitations on arbitrability under the local law.

In summary, Article V.2(a) of the New York Convention provides a ground for refusing recognition and enforcement when the competent authority in the enforcement country determines that the subject matter of the dispute is not capable of settlement by arbitration under the law of that country. This provision respects the sovereignty of the enforcement country’s legal system and acknowledges that certain disputes may not be suitable for resolution through arbitration based on local legal considerations.

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

Article V.2(b) of the New York Convention introduces another ground for the refusal of recognition and enforcement of arbitral awards. This provision addresses situations where the competent authority in the country where recognition and enforcement is sought determines that the recognition or enforcement of the award would be contrary to the public policy of that country. Here is an analysis of Article V.2(b):

1. **Contrary to Public Policy:** Article V.2(b) allows the competent authority in the country where recognition and enforcement is sought to refuse the recognition and enforcement of an arbitral award if it concludes that doing so would be contrary to the public policy of that country.
2. **Protection of Essential Values:** This provision recognises that while the New York Convention promotes the enforcement of arbitral awards, there are situations where the public policy of the enforcement country might be compromised by enforcing a particular award. Public policy generally refers to the fundamental and essential principles and values that a country seeks to protect through its legal system.

3. **Balancing Legal Norms:** Article V.2(b) reflects the balance between respecting international arbitration and the legal principles and values of individual countries. It allows countries to maintain control over the enforcement of foreign awards when they believe that doing so would violate their most fundamental legal principles.
4. **High Standard for Invoking Public Policy:** The “contrary to public policy” ground is considered a narrow and exceptional basis for refusing enforcement. It is not meant to be a general escape route from enforcing awards with which a party disagrees; rather, it is intended to address extreme cases where enforcement would severely undermine the host country’s most essential legal norms.
5. **Scope of Review:** The determination of whether the award’s recognition or enforcement would be contrary to public policy is made by the competent authority of the enforcement country. This authority would consider the specific facts of the case and the potential impact of enforcing the award on the country’s legal order and values.
6. **International Consensus on Public Policy:** While the notion of public policy can vary from country to country, the New York Convention anticipates a certain degree of international consensus on what constitutes fundamental legal values. This provision respects the diversity of legal systems while also aiming to maintain a level of consistency in the enforcement process.

In summary, Article V.2(b) of the New York Convention provides a ground for refusing recognition and enforcement when the competent authority in the enforcement country determines that enforcing the award would be contrary to the public policy of that country. This provision respects the sovereign authority of countries to protect their essential legal values while maintaining a high threshold for invoking public policy as a basis for refusing enforcement.

## 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 VI of the New York Convention addresses the scenario where an application for setting aside or suspension of an arbitral award has been made to a competent authority in the country where enforcement is sought. This article allows for the competent authority considering the enforcement of the award to adjourn its decision and potentially order the party seeking enforcement to provide suitable security. Here is an analysis of Article VI:

1. **Adjournment of Enforcement Decision:** Article VI empowers the competent authority in the country where enforcement is sought to adjourn its decision on whether to enforce the arbitral award if an application for setting aside or suspension of the award has been made to a competent authority in accordance with Article V(1)(e) of the Convention. This allows the enforcement authority to await the outcome of the local proceedings challenging the award’s validity before making a decision on enforcement.

2. **Preserving Integrity of Arbitration Proceedings:** This provision reflects the New York Convention’s commitment to ensuring the fairness and validity of arbitration proceedings. By allowing for adjournment, the Convention recognises the importance of addressing challenges to the award’s validity in the appropriate legal forum before enforcing it.
3. **Proper Consideration of Enforcement:** The adjournment gives the competent authority time to evaluate the outcome of the local proceedings and make an informed decision on enforcement based on the resolution of any challenges to the award.
4. **Security Requirement:** Article VI also enables the competent authority to order the party seeking enforcement of the award to provide suitable security if it deems it necessary. This is aimed at ensuring that if the award is ultimately set aside or suspended, the party challenging the enforcement is not left without recourse to recover any damages that might arise from enforcement activities.
5. **Balancing Interests:** Article VI strikes a balance between the interests of enforcing valid arbitral awards and allowing parties the opportunity to challenge awards they believe are invalid. The provision ensures that parties are not disadvantaged due to the enforcement of an award that might be subsequently invalidated.
6. **Application of Article V(1)(e):** The reference to Article V(1)(e) in Article VI clarifies that the adjournment and security measures apply specifically in cases where the award’s validity is being challenged based on the grounds described in Article V(1)(e) of the Convention.

In summary, Article VI of the New York Convention provides a mechanism for handling situations where an application for setting aside or suspension of an award has been made in the enforcement country. The competent authority considering enforcement can adjourn its decision, allowing for the resolution of local challenges to the award’s validity. Additionally, the authority may require the party seeking enforcement to provide suitable security to ensure that potential losses from enforcement can be compensated if the award is ultimately invalidated. This provision ensures a balanced approach to enforcing arbitral awards while respecting the parties’ rights to challenge their validity.

## 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.**

Article VII.1 of the New York Convention addresses the relationship between the Convention and existing agreements or laws regarding the recognition and enforcement of arbitral awards. This article ensures that the Convention does not override existing multilateral or bilateral agreements between Contracting States, and it preserves the rights of parties to avail themselves of arbitral awards in accordance with the applicable laws and treaties of the country where enforcement is sought. Here is an analysis of Article VII.1:

1. **Preservation of Existing Agreements:** Article VII.1 emphasises that the provisions of the New York Convention do not affect the validity of any multilateral or bilateral agreements



that Contracting States have entered into regarding the recognition and enforcement of arbitral awards. This means that countries that have already established specific agreements related to this matter are not obligated to abandon those agreements in favour of the Convention.

2. **Respect for Sovereign Agreements:** This provision reflects the principle of respect for sovereign agreements between countries. It acknowledges that countries may have negotiated specific terms related to recognition and enforcement that go beyond the general framework provided by the Convention.
3. **Protection of Rights Under Local Laws and Treaties:** Article VII.1 also ensures that parties seeking enforcement of arbitral awards are not deprived of any rights they may have under the laws or treaties of the country where enforcement is sought. In other words, parties can still invoke any existing rights they have under domestic laws or bilateral treaties to enforce arbitral awards.
4. **Complementary Nature:** This provision recognises that the New York Convention serves as a complement to, rather than a replacement for, existing agreements and national laws. It allows Contracting States to maintain their preferred recognition and enforcement mechanisms while also benefiting from the framework provided by the Convention for awards falling outside those agreements.
5. **Flexibility in Enforcement:** Article VII.1's emphasis on allowing parties to avail themselves of arbitral awards in the manner and to the extent allowed by local laws and treaties ensures that parties have flexibility in seeking enforcement based on the specific provisions of the country where enforcement is sought.
6. **Application to International Awards:** The article underscores that parties can use the Convention to enforce arbitral awards in situations where no specific multilateral or bilateral agreement applies or when their rights under existing agreements or laws do not fully address their needs.

In summary, Article VII.1 of the New York Convention clarifies that the Convention does not affect the validity of existing multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards between Contracting States. Furthermore, it ensures that parties retain the ability to utilise arbitral awards according to their rights under domestic laws or treaties, thereby maintaining the flexibility to choose between existing mechanisms and the provisions of the Convention for enforcement purposes.

**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 VII.2 of the New York Convention addresses the relationship between the Convention and two earlier international agreements related to arbitration: the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927. This article specifies that these earlier agreements will cease to have effect between Contracting States upon their becoming bound by the New York Convention. Here is an analysis of Article VII.2:

1. **Termination of Earlier Agreements:** Article VII.2 clarifies that the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 will lose their effect between Contracting States as they become bound by the New York Convention. In other words, the provisions of these earlier agreements will no longer apply to the extent that they conflict with or are covered by the provisions of the New York Convention.
2. **Transition to New Framework:** The New York Convention represents a modernised and more comprehensive framework for the recognition and enforcement of arbitral awards. Article VII.2 ensures a smooth transition from the earlier agreements to the more contemporary standards provided by the Convention.
3. **Unity of International Arbitration Law:** The purpose of this provision is to promote a unified approach to the recognition and enforcement of foreign arbitral awards among Contracting States. By rendering the previous agreements ineffective between Contracting States, the New York Convention aims to establish a consistent and widely accepted legal framework for the enforcement of arbitral awards.
4. **Embracing Enhanced Principles:** The New York Convention provides enhanced principles and rules for the recognition and enforcement of arbitral awards compared to the earlier agreements. It encompasses a broader scope and addresses many issues that had not been adequately covered in the older agreements.
5. **Facilitating Global Enforcement:** By phasing out the previous agreements and encouraging the adoption of the New York Convention, international trade and investment benefit from more consistent and efficient mechanisms for enforcing arbitral awards across countries.
6. **Respect for Existing Commitments:** It is important to note that Article VII.2 does not revoke the earlier agreements retroactively. It only ceases their effect between Contracting States once those States become bound by the New York Convention.

In summary, Article VII.2 of the New York Convention establishes that the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 will no longer be effective between Contracting States as they become bound by the New York Convention. This transition supports a more unified and comprehensive approach to the recognition and enforcement of foreign arbitral awards globally.

## 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.**

Article VIII.1 of the New York Convention outlines the period during which the Convention is open for signature by eligible states. It specifies the categories of states that are eligible to sign the Convention during this period. Here is an analysis of Article VIII.1:

1. **Open for Signature:** Article VIII.1 states that the New York Convention is open for signature until December 31, 1958. During this period, eligible states are invited to sign the Convention.
2. **Eligible States:** The article specifies the categories of states that are eligible to sign the Convention during the indicated period:
  - a. Any Member of the United Nations.
  - b. Any other State that is or becomes a member of any specialised agency of the United Nations.
  - c. Any State that is or becomes a party to the Statute of the International Court of Justice.
  - d. Any State to which an invitation has been addressed by the General Assembly of the United Nations.
3. **Inclusion of Specialised Agencies and International Court of Justice:** The Convention recognises the importance of states associated with international organisations and institutions such as specialised agencies of the United Nations and the International Court of Justice. These entities are integral to the development and administration of international law.
4. **Invitation by the General Assembly:** The General Assembly of the United Nations has the authority to extend invitations to certain states that may not fall under the categories mentioned above. This demonstrates the inclusive nature of the Convention and its aim to encourage widespread adoption.
5. **Broad Outreach:** By extending the invitation to a variety of categories of states, Article VIII.1 aims to ensure broad participation in the Convention, fostering a globally accepted framework for the recognition and enforcement of arbitral awards.
6. **Promotion of International Trade:** The Convention's widespread adoption and recognition were designed to enhance the efficiency and predictability of cross-border commercial disputes by facilitating the enforcement of arbitral awards.

In summary, Article VIII.1 of the New York Convention establishes a timeline during which eligible states can sign the Convention. It includes Member States of the United Nations, states affiliated with specialised agencies or the International Court of Justice, and states invited by the General Assembly. This provision encourages a diverse range of states to join the Convention, contributing to the establishment of a widely accepted framework for the enforcement of arbitral awards.

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

Article VIII.2 of the New York Convention outlines the process of ratification and the required step of depositing the instrument of ratification with the Secretary-General of the United Nations. Here is an analysis of Article VIII.2:

1. **Ratification Process:** Article VIII.2 stipulates that after a state has signed the New York Convention, it must proceed with the ratification process. Ratification is the formal approval of the Convention's terms and obligations by the state's competent authorities, typically its legislative body or head of state.
2. **Deposit with the Secretary-General:** Upon completing the ratification process, the state is required to deposit the instrument of ratification with the Secretary-General of the United Nations. The "instrument of ratification" refers to the official document that signifies a state's consent to be bound by the Convention's provisions.
3. **Centralised Repository:** Depositing the instrument of ratification with the Secretary-General serves as a centralised repository for the Convention's documentation. This allows the United Nations to maintain an official record of which states have ratified and acceded to the Convention.
4. **Ensuring Transparency:** The deposit of the instrument of ratification with an international organisation like the United Nations enhances transparency and provides an accessible record of each state's commitment to the Convention.
5. **Confirmation of Intent:** By depositing the instrument of ratification, the state confirms its intention to be legally bound by the terms of the Convention. This formalises the state's participation and ensures that it will fulfil its obligations under the Convention.
6. **International Recognition:** The deposit process solidifies a state's status as a party to the New York Convention within the international legal community. Other states, as well as individuals and businesses engaged in international trade, can rely on the Convention's provisions knowing that the ratifying state is bound by them.

In summary, Article VIII.2 of the New York Convention outlines the process of ratification and the requirement for states to deposit the instrument of ratification with the Secretary-General of the United Nations. This formal step confirms a state's commitment to the Convention's provisions and contributes to the transparency, accessibility, and international recognition of each state's participation.

## Article IX

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

Article IX.1 of the New York Convention states that the Convention is open for accession by all the states referred to in Article VIII. In essence, it allows states that meet the criteria specified in Article VIII to join the Convention through the process of accession. Here is an analysis of Article IX.1:

1. **Accession Process:** Article IX.1 provides for a mechanism through which states that were not among the original signatories of the Convention can still become parties to it. Accession is the act by which a state that was not involved in the negotiation and signing of a treaty expresses its consent to be bound by the treaty's terms.

2. **Relevance of Article VIII:** Article VIII outlines the eligibility criteria for states to sign the Convention. Therefore, Article IX.1 ensures that the states that are eligible to sign according to Article VIII are also eligible to accede to the Convention.
3. **Inclusivity and Global Participation:** The provision aligns with the Convention's goal of encouraging widespread adoption and participation. By allowing states to accede, the Convention aims to create a globally accepted framework for the enforcement of arbitral awards.
4. **Flexibility for Later Joining:** The New York Convention recognises that states may choose to join the Convention at a later time due to various reasons such as changes in legal frameworks or policy considerations. Article IX.1 ensures that these states have the opportunity to accede and benefit from the Convention's provisions.
5. **Consistency in Legal Standards:** Allowing states to accede to the Convention maintains consistency in the interpretation and application of rules regarding the recognition and enforcement of arbitral awards across various jurisdictions.
6. **Procedure for Accession:** States wishing to accede to the Convention typically communicate their intent to the depositary (usually the Secretary-General of the United Nations) and follow the necessary domestic procedures for accession. This process involves the formal acceptance of the Convention's terms and obligations.

In summary, Article IX.1 of the New York Convention specifies that the Convention is open for accession by states that meet the eligibility criteria outlined in Article VIII. This provision facilitates the expansion of the Convention's reach by allowing states to join at a later stage and contributes to the broader goal of establishing a widely accepted framework for the enforcement of arbitral awards worldwide.

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

Article IX.2 of the New York Convention outlines the process by which states can accede to the Convention. It specifies that the act of accession is completed through the deposit of an instrument of accession with the Secretary-General of the United Nations. Here is an analysis of Article IX.2:

1. **Accession Process Clarified:** Article IX.2 clarifies the steps that states need to take in order to accede to the Convention. It establishes the requirement for states to deposit an official instrument of accession with the designated depositary, which in this case is the Secretary-General of the United Nations.
2. **Formal Expression of Consent:** The "instrument of accession" is a formal document that signifies a state's consent to become a party to the Convention. By depositing this instrument with the Secretary-General, a state effectively expresses its intention to be legally bound by the Convention's provisions.
3. **Centralised Record Keeping:** Depositing the instrument of accession with the Secretary-General serves as a centralised repository for the Convention's documentation. It allows the United Nations to maintain an official record of which states have acceded to the Convention.



4. **Uniform Process:** The requirement for all acceding states to deposit their instruments of accession with the same depositary ensures a uniform and consistent process for all parties interested in becoming parties to the Convention.
5. **Contribution to Transparency:** The deposited instruments of accession create a transparent and accessible record of each state's commitment to the Convention. This information is important for ensuring compliance, facilitating communication between states, and maintaining the Convention's integrity.
6. **Recognition of New Parties:** Once a state's instrument of accession has been deposited, the state is officially recognised as a party to the Convention, and it becomes entitled to the rights and responsibilities outlined in the Convention.

In summary, Article IX.2 of the New York Convention specifies that the process of accession is completed by depositing an instrument of accession with the Secretary-General of the United Nations. This provision outlines a formal and standardised procedure for states wishing to become parties to the Convention, ensuring transparency, consistency, and recognition of new parties.

## 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.**

Article X.1 of the New York Convention addresses the concept of territorial extension of the Convention's application. It allows states, at the time of signing, ratifying, or acceding to the Convention, to declare that the Convention's provisions will apply to one or more of the territories for which the state has international responsibility. Here is an analysis of Article X.1:

1. **Territorial Extension Option:** Article X.1 provides a mechanism for states to decide whether the Convention's provisions should apply to their various territories with distinct international relationships. This option acknowledges that states may have territories with unique legal status and international relations.
2. **At the Time of Signature, Ratification, or Accession:** The provision specifies that the declaration regarding the extension of the Convention's application must be made at the time when the state is signing, ratifying, or acceding to the Convention. This ensures that the intention to extend the Convention's reach is communicated clearly during the process of becoming a party to the Convention.
3. **Scope of Application:** States can choose to extend the Convention's application to all or specific territories for which they have international responsibility. The decision is entirely at the discretion of the state and depends on its assessment of how the Convention's provisions would best fit the legal and practical circumstances of its territories.
4. **Effective Timing:** The declaration regarding territorial extension becomes effective when the Convention enters into force for the state concerned. This ensures that the extension is aligned with the state's formal participation in the Convention.

5. Flexibility and Local Adaptation: Article X.1 recognises the importance of flexibility in applying the Convention’s principles to territories that might have distinct legal systems, cultures, or relationships with other countries. States can make an informed decision about the applicability of the Convention based on the specific circumstances of their territories.
6. Coordination with International Relations: This provision enables states to harmonise the application of the Convention with their international relationships and commitments related to their territories. It reflects the recognition that some territories might have specialised agreements or considerations that warrant distinct treatment.

In summary, Article X.1 of the New York Convention allows states to declare that the Convention’s provisions will extend to all or specific territories for which they have international responsibility. This provision underscores the Convention’s flexibility and adaptability to accommodate the diverse legal and international relations contexts of different territories within a state’s jurisdiction.

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.**

Article X.2 of the New York Convention outlines the process by which a state can extend the Convention’s application to additional territories for which it has international responsibility after initially becoming a party to the Convention. This extension is done through a notification to the Secretary-General of the United Nations. Here is an analysis of Article X.2:

1. Extension Process: Article X.2 sets out the procedure for a state to extend the application of the Convention to additional territories for which it is responsible. This extension can take place after the state has initially become a party to the Convention.
2. Notification to the Secretary-General: To extend the Convention’s application to additional territories, the state must provide a notification to the Secretary-General of the United Nations. This notification serves as a formal communication of the state’s intention to broaden the scope of the Convention’s application.
3. Effective Date of Extension: The extension takes effect either on the ninetieth day after the Secretary-General receives the notification or on the date of entry into force of the Convention for the state concerned, whichever is later. This ensures that the extension aligns with the state’s existing obligations under the Convention and the time required for proper communication and implementation.
4. Balancing Timeliness and Implementation: The provision strikes a balance between allowing timely implementation of the extension and accounting for practical considerations. The ninetieth-day waiting period provides sufficient time for the notification to be processed and communicated to relevant parties.
5. Coordination with Convention Entry into Force: If the Convention has not yet entered into force for the state, the extension takes effect once the Convention becomes effective for

that state. This coordination ensures that the extension of the Convention’s application is aligned with the state’s formal participation in the Convention.

6. Flexibility for Change in Circumstances: Article X.2 recognises that states might experience changes in circumstances or international relationships that prompt them to extend the Convention’s application to additional territories at a later stage. The process outlined here allows for such flexibility.

In summary, Article X.2 of the New York Convention outlines the process for states to extend the Convention’s application to additional territories for which they have international responsibility. The extension is accomplished through a formal notification to the Secretary-General of the United Nations and takes effect after a specified waiting period or upon the entry into force of the Convention for the state concerned, whichever is later. This provision reflects the Convention’s adaptability to changing circumstances and the importance of coordination with existing legal frameworks.

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 X.3 of the New York Convention addresses the situation where a state does not extend the Convention’s application to certain territories at the time of signature, ratification, or accession. It outlines the state’s obligation to consider the possibility of later extending the Convention to those territories, with certain considerations related to constitutional requirements and the consent of the governments of the territories. Here is an analysis of Article X.3:

1. Extension to Non-Initially Covered Territories: Article X.3 acknowledges that a state might choose not to extend the Convention’s application to certain territories at the time of becoming a party to the Convention. This could be due to various reasons, including constitutional considerations, legal complexity, or international relationships.
2. Obligation to Consider Extension: The provision obligates the state to revisit the question of extending the Convention’s application to those territories at a later time. This demonstrates the Convention’s intent to encourage as broad a scope of application as possible.
3. Necessary Steps for Extension: If a state decides to extend the Convention to territories initially not covered, it is expected to take the necessary procedural and legal steps to effectuate the extension. This might involve enacting domestic legislation or other measures.
4. Subject to Constitutional Reasons: The extension process should take into account any constitutional constraints that might exist within the state. The state is expected to comply with its own constitutional procedures and requirements in extending the Convention to additional territories.
5. Consent of Territory Governments: The provision recognises that, in some cases, the extension of the Convention might require the consent of the governments of the

territories concerned. This respects the autonomous governance of these territories and acknowledges their role in determining their international legal obligations.

6. **Balance Between Sovereignty and International Law:** Article X.3 reflects a balance between a state's sovereignty and its obligations under international law. While the Convention encourages extension to as many territories as possible, it also respects the constitutional and governance arrangements within each state.
7. **Encouragement of Consistency:** The provision suggests that states should strive for consistency in applying the Convention to all their territories, in order to maintain a uniform approach to the enforcement of arbitral awards.

In summary, Article X.3 of the New York Convention highlights the expectation that states will consider extending the Convention's application to territories not initially covered. It acknowledges constitutional considerations and the importance of obtaining the consent of territory governments if necessary. This provision emphasises the Convention's flexibility while respecting the legal and political diversity of states and their 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 XI of the New York Convention addresses the application of the Convention's provisions in the context of federal or non-unitary states. It outlines the responsibilities and procedures that should be followed by such states to ensure the effective implementation of the Convention's obligations within their constitutional systems. Here is an analysis of Article XI:

1. **Applicability to Federal or Non-Unitary States:** Article XI recognises that federal or non-unitary states have complex constitutional structures where legislative authority is distributed between a central (federal) government and constituent units (states or provinces). This article provides guidelines for the application of the Convention's provisions in such states.

2. **Differentiated Obligations of Federal Government:** Subsection (a) addresses the legislative jurisdiction of the federal authority. It states that for Convention articles falling under federal legislative jurisdiction, the obligations of the federal government are the same as those of non-federal Contracting States. This ensures uniformity in the implementation of the Convention's obligations at the federal level.
3. **Recommendation to Constituent States:** Subsection (b) focuses on articles of the Convention that come under the legislative jurisdiction of constituent states or provinces. It mandates the federal government to promptly bring these articles to the attention of the appropriate authorities of the constituent units with a favourable recommendation. This encourages coordinated implementation within the federal system.
4. **Transparency and Exchange of Information:** Subsection (c) highlights the importance of transparency and mutual assistance among federal states. It allows any Contracting State to request information on the federal and constituent units' laws and practices concerning specific Convention provisions. This exchange of information contributes to the effective functioning of the Convention within the federal system.
5. **Promotion of Coordination:** Article XI reflects the recognition that in federal systems, coordination among various levels of government is crucial to ensure consistent implementation of international obligations. The article promotes intergovernmental communication to harmonise the application of the Convention.
6. **Balancing Autonomy and International Commitments:** Article XI recognises that constituent units in federal systems might have varying degrees of legislative autonomy. It balances the need to respect this autonomy while ensuring that international commitments, such as the obligations under the Convention, are effectively fulfilled.
7. **Practical Implications:** This article assists federal states in navigating the challenges of implementing an international treaty within their complex constitutional structures. It encourages cooperation and consistency among different levels of government.

In summary, Article XI of the New York Convention provides guidelines for the application of the Convention's provisions within federal or non-unitary states. It outlines the responsibilities of the federal government in ensuring uniformity, recommends favourable action to constituent states, and promotes the exchange of information to facilitate effective implementation of the Convention's obligations within the federal system.

## Article XII

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

Article XII.1 of the New York Convention specifies the conditions for the Convention's entry into force. It outlines the requirement for a minimum number of ratifications or accessions before the Convention becomes effective. Here is an analysis of Article XII.1:

1. **Threshold for Entry into Force:** Article XII.1 establishes a specific condition that must be met for the Convention to come into force. This condition involves the deposit of a



minimum of three instruments of either ratification or accession by states wishing to be bound by the Convention.

2. Numerical Requirement: The requirement of three instruments of ratification or accession serves as a numerical threshold that signifies a collective commitment among states to make the Convention effective.
3. Promotion of Widespread Adoption: By setting a relatively low threshold of three ratifications or accessions, Article XII.1 aims to facilitate the entry into force of the Convention. This encourages states to ratify or accede to the Convention, contributing to its broader acceptance and applicability.
4. Timely Implementation: The provision specifies that the Convention will come into force on the ninetieth day following the date on which the third instrument of ratification or accession is deposited. This ensures a prompt and foreseeable timeline for the Convention's entry into force.
5. Balance Between Participation and Effectiveness: Article XII.1 strikes a balance between encouraging participation by a sufficient number of states and ensuring that the Convention's entry into force is not overly delayed. This encourages early ratification or accession by states and fosters timely implementation of the Convention's principles.
6. Initial Steps Towards Global Application: The threshold requirement provides a starting point for the Convention's global application. It incentivises states to actively engage with the Convention and consider becoming parties to it.
7. Positive Implications for International Trade: The timely entry into force of the Convention benefits international trade and commerce by establishing a more predictable framework for the recognition and enforcement of arbitral awards across borders.

In summary, Article XII.1 of the New York Convention sets the conditions for the Convention's entry into force. It requires the deposit of a minimum of three instruments of ratification or accession. This provision promotes the widespread adoption of the Convention among states and facilitates its timely implementation, which ultimately contributes to a more efficient and reliable international arbitration system.

**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 XII.2 of the New York Convention establishes the entry into force of the Convention for states that ratify or accede to it after the initial threshold of three instruments of ratification or accession has been deposited. It outlines the timeline for these subsequent states to become bound by the Convention's provisions. Here is an analysis of Article XII.2:

1. Sequential Entry into Force: Article XII.2 deals with the entry into force of the Convention for states that ratify or accede to it after the initial three instruments have been deposited. It specifies that the Convention will enter into force for each of these

subsequent states on the ninetieth day following the deposit of their respective instruments of ratification or accession.

2. **Gradual Expansion of the Convention's Reach:** The provision acknowledges that the Convention may gain new parties over time. It facilitates the incremental expansion of the Convention's applicability beyond the initial group of ratifying or acceding states.
3. **Uniformity in Timelines:** By stipulating the same ninetieth-day timeline for subsequent states, Article XII.2 ensures consistency and predictability in the entry into force process. This is important for facilitating effective planning and coordination among states.
4. **Encouragement for Ratification or Accession:** The provision establishes a straightforward timeline for states considering ratification or accession to the Convention. Knowing that the Convention will come into force within a set period after their own deposit of instruments encourages states to join the Convention.
5. **Benefits for International Trade and Commerce:** As more states become parties to the Convention, international trade and commerce benefit from a broader framework for the recognition and enforcement of arbitral awards. The gradual expansion of the Convention's reach enhances its effectiveness.
6. **Balancing Timeliness and Flexibility:** Article XII.2 balances the desire for timely entry into force with the flexibility required for individual states' internal processes for ratification or accession.
7. **Global Application of the Convention:** As more states ratify or accede to the Convention, its international application grows stronger, reinforcing the Convention's status as a fundamental instrument in the field of international arbitration.

In summary, Article XII.2 of the New York Convention outlines the entry into force process for states that ratify or accede to the Convention after the initial threshold has been met. It establishes a standard timeline for these subsequent states to become bound by the Convention's provisions, facilitating gradual expansion and ensuring uniformity in the Convention's application.

### 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.**

Article XIII.1 of the New York Convention addresses the procedure for a Contracting State to denounce or withdraw from the Convention. It outlines the process and timeline for denunciation, emphasising the commitment of states to international agreements while providing an exit mechanism. Here is an analysis of Article XIII.1:

1. **Denunciation Mechanism:** Article XIII.1 establishes the process through which a Contracting State can denounce or withdraw from the Convention. Denunciation is a formal action that indicates a state's intent to cease being bound by the Convention's obligations.

2. **Written Notification to the Secretary-General:** To denounce the Convention, a Contracting State is required to submit a written notification to the Secretary-General of the United Nations. This ensures that the denunciation is properly documented and communicated to the relevant parties.
3. **One-Year Waiting Period:** The provision specifies that denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. This waiting period allows for a transitional phase during which the state's denunciation becomes effective, providing continuity and stability for ongoing arbitration proceedings and enforcement cases.
4. **Balancing Flexibility and Stability:** Article XIII.1 balances the principle of state sovereignty with the need to maintain stability in international arbitration processes. The one-year waiting period allows parties to adapt to the impending change while avoiding abrupt disruptions.
5. **Protection of Existing Rights:** The waiting period also ensures that existing arbitration proceedings and enforcement actions are not unduly affected by the denunciation. Parties involved in such processes have time to adjust to the change and make necessary arrangements.
6. **Reflecting Commitment to International Agreements:** The requirement of a formal written notification and the waiting period reflect the Contracting State's commitment to adhering to international agreements in a responsible and thoughtful manner, even when withdrawing from them.
7. **Transparency and Accountability:** By notifying the Secretary-General, the denouncing state communicates its decision transparently to the international community. This transparency is crucial for maintaining trust and accountability in international relations.
8. **Safeguarding International Arbitration:** The provision helps maintain the integrity of the international arbitration system. While denunciation is permitted, the waiting period helps ensure that the framework remains functional for ongoing cases and encourages orderly transitions.

In summary, Article XIII.1 of the New York Convention outlines the process for a Contracting State to denounce the Convention. It emphasises a structured and gradual approach to withdrawing from the Convention, safeguarding ongoing arbitration processes, and maintaining stability in the international arbitration framework.

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.**

Article XIII.2 of the New York Convention addresses the situation where a state that has extended the Convention's application to specific territories under Article X decides to cease that extension. It outlines the procedure and timeline for such a declaration, ensuring that changes to the territorial

scope of the Convention are communicated and implemented in a controlled manner. Here is an analysis of Article XIII.2:

1. **Territorial Extension Adjustment:** Article XIII.2 recognises that states may have previously extended the Convention’s application to specific territories under Article X. This provision allows states to adjust the territorial scope of the Convention by withdrawing the extension from those territories.
2. **Withdrawal Mechanism:** The provision outlines the procedure for withdrawal. A state that has extended the Convention’s application to specific territories can declare its intention to cease that extension. The declaration must be made through a notification to the Secretary-General of the United Nations.
3. **One-Year Waiting Period:** Similar to the denunciation process outlined in Article XIII.1, Article XIII.2 specifies a one-year waiting period. The Convention’s extension to the concerned territory will cease one year after the date of receipt of the notification by the Secretary-General.
4. **Structured Transition:** The waiting period ensures a gradual and structured transition regarding the territorial scope of the Convention. It allows for time to adapt to the change and make necessary adjustments in ongoing arbitration proceedings and enforcement cases.
5. **Consistency and Predictability:** The one-year waiting period provides a consistent and predictable timeframe for the change to take effect. This predictability is important for maintaining stability in international arbitration processes.
6. **Safeguarding Legal Security:** The provision safeguards legal security for ongoing cases and parties affected by the change in the territorial scope. Parties have time to prepare for the altered framework and to make necessary arrangements.
7. **Facilitating Changes in International Relations:** Article XIII.2 acknowledges that changes in international relationships or domestic policies might necessitate adjustments in the territorial application of the Convention. It provides a mechanism for states to adapt to evolving circumstances.
8. **Continued Sovereignty and Flexibility:** The provision respects the sovereignty of states by allowing them to adjust the territorial scope of the Convention in line with their evolving interests and policies.

In summary, Article XIII.2 of the New York Convention outlines the procedure for a state to withdraw the extension of the Convention’s application to territories previously covered under Article X. The provision includes a one-year waiting period, ensuring a gradual and controlled transition and maintaining stability in the international arbitration framework.

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

Article XIII.3 of the New York Convention addresses the continuity of the Convention’s applicability in relation to arbitral awards for which recognition and enforcement proceedings have already been initiated before a Contracting State’s denunciation of the Convention takes effect. Here is an analysis of Article XIII.3:

1. **Continuity of Applicability:** Article XIII.3 ensures that the Convention remains applicable to certain situations even after a Contracting State denounces the Convention. Specifically, the provision pertains to arbitral awards for which recognition and enforcement proceedings have been initiated prior to the denunciation taking effect.
2. **Preservation of Legal Rights:** The provision seeks to maintain the legal rights and expectations of parties involved in ongoing recognition and enforcement proceedings. Denunciation should not disrupt proceedings that are already underway.
3. **Mitigating Potential Injustice:** By allowing the Convention to continue applying to ongoing cases, Article XIII.3 mitigates the potential injustice that could arise if a denunciation were to suddenly affect proceedings that parties have initiated in good faith.
4. **Balancing Changes with Ongoing Cases:** The provision strikes a balance between a state’s decision to withdraw from the Convention and the need to provide a reasonable transition for cases that were already in progress at the time of denunciation.
5. **Ensuring Legal Certainty:** Article XIII.3 contributes to legal certainty by avoiding abrupt disruptions in the legal process. Parties can rely on the Convention’s framework until their cases are resolved, even if the state has decided to denounce the Convention.
6. **Incentive for Orderly Denunciation:** This provision encourages states to plan their denunciation in a way that respects ongoing legal proceedings and provides a reasonable transition period. States can align their denunciation with the conclusion of existing cases.
7. **Maintenance of International Commercial Relationships:** The provision maintains the stability of international commercial relationships and arbitration procedures. Parties can have confidence that recognition and enforcement processes will not be unduly affected by the state’s denunciation.
8. **Avoiding Retroactive Impact:** Article XIII.3 prevents the retroactive impact of a state’s denunciation on cases that were already initiated and under consideration. This ensures that the legal landscape remains consistent throughout the process.

In summary, Article XIII.3 of the New York Convention ensures the continued applicability of the Convention to ongoing recognition and enforcement proceedings even after a Contracting State’s denunciation takes effect. The provision prioritises legal continuity, protects ongoing cases, and maintains stability in international arbitration proceedings.



## 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 XIV of the New York Convention addresses the principle of reciprocity in the application of the Convention among Contracting States. It establishes that a Contracting State can only invoke the Convention against other Contracting States if it is also bound by the Convention's obligations. Here is an analysis of Article XIV:

1. **Principle of Reciprocity:** Article XIV embodies the principle of reciprocity, which is a fundamental concept in international law. It ensures that the benefits and obligations of the New York Convention are extended only to those states that have chosen to be bound by it.
2. **Limitation on Application:** The provision establishes a limitation on a Contracting State's ability to rely on the Convention's provisions against other Contracting States. In other words, a state cannot demand the benefits of the Convention from another state unless it has itself undertaken the same obligations.
3. **Mutual Consent and Obligations:** Article XIV underscores the idea that international agreements are built on mutual consent and shared obligations. It prevents states from cherry-picking only the advantageous aspects of the Convention while avoiding its responsibilities.
4. **Balancing Rights and Duties:** The provision ensures a balanced approach between the rights and duties of Contracting States. A state can access the benefits of the Convention's framework for recognition and enforcement only if it agrees to be subject to the same obligations when others seek enforcement in its jurisdiction.
5. **Encouraging Participation:** Article XIV encourages states to join the Convention and become parties to it. This is because the right to avail oneself of the Convention's provisions against other Contracting States is contingent upon assuming reciprocal obligations.
6. **Maintaining Equitable Treatment:** The provision maintains an equitable approach to international arbitration. It prevents states from creating imbalances by demanding enforcement of arbitral awards from other states while avoiding their own obligations to recognise and enforce such awards.
7. **Enhancing International Cooperation:** Article XIV promotes cooperation among Contracting States by ensuring that the Convention's framework operates within a framework of mutual obligations. States are more likely to honour and enforce arbitral awards from jurisdictions that similarly uphold their obligations.
8. **Preserving the Convention's Integrity:** Article XIV safeguards the integrity of the Convention's structure and principles. It ensures that only those states that commit to a reciprocal framework can enjoy the benefits and rights provided by the Convention.

In summary, Article XIV of the New York Convention emphasises the principle of reciprocity by stating that a Contracting State can only use the Convention's provisions against other Contracting States if it

is itself bound by the Convention's obligations. This provision maintains a balanced and equitable approach to international arbitration and reinforces the importance of mutual consent and shared responsibilities among states.

#### 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 XV of the New York Convention outlines the role of the Secretary-General of the United Nations in notifying and communicating various actions and events related to the Convention to the Contracting States. This article emphasises transparency, information-sharing, and the central role of the United Nations in facilitating communication among the Contracting States. Here is an analysis of Article XV:

1. **Notification Responsibilities:** Article XV designates the Secretary-General of the United Nations as the responsible entity for notifying the Contracting States about specific events and actions related to the Convention. These events include signatures, ratifications, accessions, declarations, denunciations, and other notifications stipulated in different articles of the Convention.
2. **Transparency and Communication:** The provision underscores the importance of transparency and communication among the Contracting States. It ensures that states are informed about developments related to the Convention, promoting openness and shared understanding.
3. **Promoting Compliance:** By notifying states about actions such as signatures, ratifications, and accessions, the provision encourages states to uphold their commitments under the Convention. It reinforces the notion that international agreements are public and subject to scrutiny.
4. **Centralised Role of the United Nations:** Article XV highlights the United Nations' role as a central hub for information dissemination among the Contracting States. This centralisation enhances efficiency and prevents confusion that could arise from direct state-to-state communication.
5. **Timely Communication:** The requirement for the Secretary-General to notify states promptly about relevant actions helps maintain an up-to-date record of the Convention's

status. This ensures that states have accurate and current information about the actions of other states.

6. **Maintaining Consistency:** By providing a standardised channel for communication, Article XV contributes to maintaining consistency in how information is shared among the Contracting States. This consistency promotes clarity and avoids misunderstandings.
7. **Facilitating Decision-Making:** The information provided through notifications allows states to make informed decisions about their own actions, such as potential ratifications, accessions, or denunciations. This facilitates strategic planning and alignment with the Convention's provisions.
8. **Supporting the Functioning of the Convention:** The provision plays a vital role in supporting the practical operation of the Convention by ensuring that states are aware of key developments and changes.

In summary, Article XV of the New York Convention designates the Secretary-General of the United Nations as responsible for notifying Contracting States about various actions and events related to the Convention. This article enhances transparency, promotes compliance, and facilitates effective communication among states, thereby contributing to the efficient operation of the Convention.

## 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.**

Article XVI.1 of the New York Convention addresses the authenticity and preservation of the Convention's texts in different languages. It emphasises the equal authenticity of the Convention's texts in multiple languages and the deposit of these texts in the archives of the United Nations. Here is an analysis of Article XVI.1:

1. **Multilingual Authenticity:** The provision highlights the multilingual nature of the New York Convention by stating that its Chinese, English, French, Russian, and Spanish texts are equally authentic. This underscores the commitment to ensuring that the content of the Convention is accurately reflected in multiple languages.
2. **Eliminating Language Bias:** By according equal authenticity to texts in various languages, Article XVI.1 eliminates any potential linguistic bias or preference. All Contracting States can rely on any of these texts with confidence, regardless of their preferred language.
3. **Ensuring Consistency:** The equal authenticity of multiple language versions is crucial for maintaining consistency in the interpretation and application of the Convention across different legal systems. This consistency reduces the risk of misinterpretation due to language variations.
4. **Avoiding Disputes:** Providing equal authenticity to multiple language versions helps prevent disputes arising from differences in interpretation that might occur if one language version were given precedence over others.

5. **Enhancing Accessibility:** The availability of the Convention’s texts in multiple languages facilitates access for a diverse range of legal professionals, scholars, and stakeholders worldwide. This accessibility promotes broader understanding and utilisation of the Convention’s provisions.
6. **Promoting Global Adoption:** Equal authenticity in various languages encourages broader international participation and ratification. States that use different official languages can be confident that the Convention’s provisions are accurately reflected in their respective languages.
7. **Archival Depository:** Article XVI.1 establishes the United Nations as the repository for the Convention’s texts. Depositing the texts in the archives of the United Nations ensures their secure storage and accessibility for future reference and verification.
8. **Reflecting International Cooperation:** The provision symbolises the international cooperation and shared commitment to harmonising arbitration practices across diverse legal traditions. It reinforces the collaborative nature of the Convention’s creation and application.

In summary, Article XVI.1 of the New York Convention emphasises the equal authenticity of the Convention’s texts in multiple languages and their deposit in the archives of the United Nations. This provision supports consistency, accessibility, and broader international adoption of the Convention’s principles, while affirming the commitment to linguistic diversity and international cooperation.

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

Article XVI.2 of the New York Convention outlines the responsibility of the Secretary-General of the United Nations to transmit a certified copy of the Convention to the States mentioned in Article VIII. This provision underscores the official and procedural aspects of disseminating the Convention to the relevant parties. Here is an analysis of Article XVI.2:

1. **Official Transmission:** Article XVI.2 specifies that the Secretary-General of the United Nations has the duty to transmit a certified copy of the Convention to the States contemplated in Article VIII. This official transmission ensures that the Convention is properly communicated to the states that are entitled to be notified about its existence and content.
2. **Procedural Formality:** The provision outlines a procedural formality, indicating that the Secretary-General’s transmission of a certified copy serves as a formal act in notifying the Contracting States. This notification reinforces the commitment of states to uphold the provisions of the Convention.
3. **Facilitating Implementation:** By transmitting a certified copy, the United Nations assists Contracting States in implementing the Convention effectively. States need accurate and reliable copies to reference when applying and enforcing the Convention’s provisions.

4. **Ensuring Consistency:** A certified copy from the United Nations ensures the accuracy and consistency of the Convention's text across all states. This reduces the likelihood of variations in interpretation due to differences in copies or translations.
5. **Supporting Legal Professionals:** The provision benefits legal practitioners, scholars, and other stakeholders by providing them with an official and reliable reference document. This supports the proper understanding and application of the Convention's provisions.
6. **Promoting Transparency:** Transmitting a certified copy reinforces transparency in international legal matters. It indicates that the United Nations is actively engaged in promoting adherence to and awareness of the Convention's principles.
7. **Symbolism of Authority:** The Secretary-General's transmission carries a symbolic weight of authority, signifying the endorsement of the Convention by a reputable international entity. This can influence states to take the Convention seriously and commit to its provisions.
8. **Global Adoption and Compliance:** By disseminating certified copies to the states contemplated in Article VIII, the provision encourages more states to become aware of and ratify the Convention. It also fosters a sense of accountability for adhering to its obligations.

In summary, Article XVI.2 of the New York Convention outlines the role of the Secretary-General of the United Nations in transmitting a certified copy of the Convention to the States contemplated in Article VIII. This provision ensures official communication, facilitates proper implementation, and supports consistent and accurate reference for Contracting States, thereby contributing to the effective functioning of the Convention.





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