

**Europa-Institut of Saarland University (ed.)  
Marc Bungenberg | Stefan Weber**

**International Dispute Resolution  
Selected Documents**

Third revised and extended edition

Europa-Institut of Saarland University  
Selected legal documents  
Edited by  
Europa-Institut of Saarland University  
Law Department  
Volume I

**INTERNATIONAL DISPUTE RESOLUTION  
SELECTED DOCUMENTS**

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## Preface

The Europa-Institut, as the editor of this edition, is the second oldest institution of its kind in Europe. More than 5.000 students from all over the world have been educated in the fields of European and International Law at the Europa-Institut since its foundation in 1951. Each year students from over 30 countries enroll in the one-year postgraduate master program “European and International Law” to study the legal, political, economic and cultural foundations of the European Union as well as various areas of public international law. The program is characterized by six modules which provide students with greater freedom of choice with regard to the courses they wish to attend and which also allow for a high degree of specialization. The six modules are European Integration, European Economic Law, Foreign Trade and Investment, International Dispute Resolution and European, International Protection of Human Rights and IT Law. The program can be completed entirely in English, entirely in German or through a combination of the two languages and results in the attainment of the title “Master of Laws (LL.M.)”.

This is the third edition of “International Dispute Resolution – Selected Documents”, which builds upon, revises and extends the already comprehensive collection of documents (treaties, model laws, national laws, arbitration rules etc.) contained in the previous issues. Its aim is to take stock of the developments in the area of International Dispute Resolution, be it amendments to existing documents or entry into force of new ones, as well as to broaden the existing selection. One thing remains however unchanged – this edition too addresses not only the students of our LL.M. program, but also universities in general, practitioners, policy-makers and international lawyers.

This third edition (1) provides technical corrections, updates, and clarifications, and (2) adds the IBA Report on the Public Policy Exception in the New York Convention, the ICSID Institution Rules, Conciliation Rules and Additional Facility Rules, the Mauritius Convention on Transparency, the Investment Chapter of the Comprehensive Economic and Trade Agreement, the Energy Charter Treaty, the EU-Singapore Investment Protection Agreement, the French Arbitration Law, the PCA and SCC Rules of Arbitration, the ICJ, ITLOS and CAS Rules, and EU Regulations related to Investor-State Dispute Settlement to the reader. In all, this new edition aims to include documents which reflect the latest developments in international commercial and investment arbitration.

International dispute resolution is a truly international area of law. Domestic perceptions are often challenged. In addition to traditional positive law, soft (transnational) rules of law have been firmly established as applicable norms for arbitral decision-making. Sources of substantive law have a different dynamic than in domestic litigation and domestic arbitration. International arbitration lawyers, and students, find themselves working in many different jurisdictions and with different laws. Students with a good grounding in their domestic legal system are educated to be capable and even enthusiastic about working in different legal systems. As a result, they become cosmopolitan and internationalist in outlook and disposition.

Rules on international dispute resolution, in particular on international commercial arbitration, are an anthology of international treaty rules, arbitration rules (soft law), and domestic rules which are mainly enabling default rules of the organization and conduct of arbitral proceedings. During the last thirty years, the international dispute resolution laws and rules were shaped in manifold ways: traditional positive domestic law was harmonized through the implementation of model laws, soft (transnational) rules of law, mostly developed by arbitration practitioners, have firmly established themselves as applicable norms for arbitral decision-making, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) has been shaped by interpretation and application of state courts and become the anchor of international arbitration.

Although information on international dispute resolution laws and rules is readily available on the internet, and the proliferation of academic and legal writing is rather unparalleled both in terms of quantity and quality, there has been a lack of a compilation of manageable size that focuses on the primary sources of international dispute resolution laws and rules, including investment arbitration. We selected those international treaties, model laws, national laws, arbitration rules and other documents which are of particular importance in our academic context. The book, therefore, places a special emphasis on international arbitral proceedings under the ICC Rules, the DIS Rules, the Vienna Rules, the Swiss Rules, the UNCITRAL Rules, and the ICSID Rules.

This book is not only a valuable tool for students in our postgraduate master's program at the Europa-Institut of Saarland University, but also to the academic community in general, as well as to arbitration lawyers and arbitrators, in particular, when practicing in Europe.

Students are invited to use the original texts in this book to draw out the themes and principles on which international dispute resolution is based. In this way, students are

encouraged to develop an intellectually and analytically appropriate approach which will permit them to tackle issues relating to international dispute resolution.

We take this opportunity to thank everyone who over the past six years have provided us with suggestions and corrections for improving this book. We are grateful to Prof. Dr. Thomas Giegerich, LL.M. (Director of the Europa-Institut) and Akad. Dir. Julia Legleitner, LL.M. (program director of the Europa-Institut) for supporting this project which otherwise would have been impracticable. This book could not have been achieved without the contribution of Ass. iur. Christina Backes (managing editor), Angshuman Hazarika, LL.M., Stefan Unterleithner, and Corina Vodă, LL.M. (text editors), and Uwe Loebens (art editor).

We wish to thank the institutions that have given us permission to publish their conventions, translations of law, rules and guidelines.

Prof. Dr. Marc Bungenberg, LL.M. (Lausanne)  
Director, Europa-Institut, Saarbrücken, August 2019

Prof. Dr. Stefan Weber, LL.M. (Harvard)  
Vienna-Saarbrücken, August 2019



# Contents

<b>I</b>	<b>International Treaties and Model BITs</b>	
I-1	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958)	15
I-2	European Convention on International Commercial Arbitration	21
I-3	Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)	31
I-4	EU-Singapore Investment Protection Agreement	51
I-5	United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention on Transparency)	117
I-6	Treaty between the Federal Republic of Germany and the Sultanate of Oman concerning the Encouragement and Reciprocal Protection of Investments	123
I-7	2012 U.S. Model Bilateral Investment Treaty	131
I-8	Agreement between the People's Republic of China and the United Republic of Tanzania concerning the Promotion and Reciprocal Protection of Investments	165
I-9	Comprehensive Economic and Trade Agreement Chapter Eight - Investment	177
I-10	Energy Charter Treaty [Parts I, III, V, VII, VIII]	211

<b>II</b>	<b>Model Law &amp; National Laws on Commercial Arbitration</b>	
II-1	UNCITRAL Model Law on International Commercial Arbitration	235
II-2	German Code of Civil Procedure Book 10 – Arbitration Proceedings	253
II-3	Swiss Federal Act on Private International Law Chapter 12 – International Arbitration	271
II-4	Austrian Code of Civil Procedure Part Six, Fourth Chapter – Arbitration Procedure	277
II-5	French Code of Civil Procedure Book IV, Title II - International Arbitration	295
<b>III</b>	<b>Arbitration Rules and Rules of International Dispute Settlement Organizations</b>	
III-1	UNCITRAL Arbitration Rules	309
III-2	ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules)	331
III-3	ICSID Rules of Procedure for Conciliation Proceedings (Conciliation Rules)	335
III-4	ICSID Rules of Procedure for Arbitration Proceedings (Arbitration Rules)	347
III-5	ICSID Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (Additional Facility Rules)	367
III-6	ICC Rules of Arbitration (as amended in 2017)	405
III-7	DIS Arbitration Rules 2018	445
III-8	Swiss Rules of International Arbitration	481
III-9	Vienna Rules of Arbitration 2018	511
III-10	Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce	541
III-11	Permanent Court of Arbitration Rules 2012	565
III-12	International Court of Justice Rules	585
III-13	International Tribunal for the Law of the Sea Rules	619
III-14	Code of Sports-related Arbitration	663
<b>IV</b>	<b>Model Arbitration Clauses</b>	
IV-1	ICC Arbitration Clauses	691
IV-2	DIS Model Arbitration Clauses	693
IV-3	Swiss Model Arbitration Clause	695
IV-4	Vienna Model Clause	697
IV-5	PCA Model Clause	699
<b>V</b>	<b>Alternative Dispute Resolution</b>	
V-1	ICC Mediation Rules	703
V-2	Singapore Convention on Mediation	711

## **VI Supplementary Materials**

VI-1	UNCITRAL Recommendation regarding the Interpretation of Article II, Paragraph 2, and Article VII, Paragraph 1 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards	721
VI-2	UNCITRAL Notes on Organizing Arbitral Proceedings	723
VI-3	UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration	747
VI-4	IBA Rules on the Taking of Evidence in International Commercial Arbitration	753
VI-5	IBA Guidelines on Conflicts of Interest in International Arbitration	765
VI-6	IBA Guidelines on Party Representation in International Arbitration	781
VI-7	IBA Report on the Public Policy Exception in the New York Convention	793
VI-8	IBA Rules on Ethics	811
VI-9	Vienna Convention on the Law of Treaties (Articles 31-33)	817
VI-10	ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts	821
VI-11	Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules)	833
VI-12	EU Regulation 1219 (2012) on transitional arrangements for bilateral investment treaties	841
VI-13	EU Regulation 912 (2014) on a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals	851
	List of documents in other books	866



## **I. International Treaties and Model BITs**



# **Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958)**

Date 10 June 1958

In force 7 June 1959

Source United Nations, Treaty Series, vol. 330, p. 3

Link [www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII\\_1\\_e.pdf](http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf)

## **Article I**

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

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## **Article II**

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

## **Article III**

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

## **Article IV**

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

## **Article V**

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

- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
  - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
- (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
  - (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

#### **Article VI**

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

#### **Article VII**

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

#### **Article VIII**

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter

becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

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

#### **Article IX**

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article X**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

#### **Article XI**

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

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

### **Article XII**

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

### **Article XIII**

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

### **Article XIV**

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

### **Article XV**

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

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

### **Article XVI**

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