

The Role of the 1958 New York Convention in the Development of the Institution of International Commercial Arbitration

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Abstract: The research presented in this scientific article presents an analysis of the impact of the New York Convention of 1958 on the evolution and development of the institution of international commercial arbitration in the global context. The Convention, adopted with the aim of unifying and streamlining arbitration procedures in international commercial disputes, has become a cornerstone in ensuring legal stability and predictability in the field of international trade law.

Through the prism of the New York Convention and its principles, the author analyzes changes in the international commercial environment, emphasizing the importance of standardizing arbitration procedures, recognition and acceptance of arbitral awards, as well as the possibility of effective dispute resolution, which contributes to strengthening trust in international business relations.

Keywords: New York Convention, principles, commercial arbitration, unification, dispute resolution, arbitral awards, international trade law, institution of international commercial arbitration.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in 1958, is one of the most important international documents that has had a significant impact on the formation and development of the modern institution of international commercial arbitration. The Convention created

uniform legal mechanisms that contributed to the strengthening of arbitration as a preferred method of resolving cross-border disputes.

The historical context of the adoption of the New York Convention, the basic principles and rules enshrined in this document, as well as its impact on international commercial law and arbitration practice are of wide interest to researchers and legal practitioners. In this context, it is important to consider how the Convention contributed to the simplification of arbitration procedures, ensuring the recognition and enforcement of arbitral awards, and creating conditions for effective dispute resolution in the context of global trade.

The development of modern international arbitration began in Anglo-American relations, namely with the "Jay Treaty". "Jay's Treaty" is the name given to the Treaty of Amity, Commerce, and Navigation between Great Britain and the United States of America, signed on November 19, 1794.¹

Anglo-American arbitrations and the efforts of legal scholars paved the way for the Hague Peace Conferences of 1899 and 1907 and the establishment of the Permanent Court of Arbitration at The Hague. The Hague Peace Conferences codified existing rules of international arbitration and attempted to develop them further. The 26 states that participated in the First Peace Conference and the 44 states that participated in the Second Peace Conference adopted the Conventions for the Pacific Settlement of International Disputes of 1899 and 1907, which are essentially identical to each other. The Conventions recognized "in legal questions and especially in questions of the interpretation or application of international treaties, arbitration as the most effective and, at the same time, the fairest means of resolving disputes not settled by diplomatic means" (Article 41 of the 1907 Convention). The Conventions provided for the creation of the Permanent Court of Arbitration (PCA), which was created "to facilitate the possibility for Contracting Powers to resort without delay to

¹Newcomb J. T. New light on Jay's Treaty // American Journal of International Law. Vol. 28. 1934. P. 685-692; ¹ Hudson M. International courts in the past and future. Moscow, 1947. P. 30-33.

arbitration in the case of international disputes which cannot be settled by diplomatic means" (Article 41 of the 1907 Convention).²

In 1912, at a meeting of the Congress of Chambers of Commerce in Boston, a resolution was adopted recognizing the need to develop international rules for the arbitration of disputes arising in the sphere of international trade. In 1919, at the international trade conference in Atlantic City, a resolution was adopted on the establishment of the International Chamber of Commerce. In 1923, at the Second Congress of the ICC, the Chamber established a permanent International Court of Arbitration (ICA) to resolve international commercial disputes, which operates as a separate organization.³

Before the adoption of the New York Convention, arbitration awards made in one country were often not recognized and enforced in other jurisdictions. This fact significantly limited arbitration as an effective mechanism for resolving international disputes.⁴ The New York Convention changed this situation by establishing uniform rules for the recognition and enforcement of arbitration awards at the international level.

Thus, the Convention obliges member countries to recognize and enforce arbitration awards made in the territory of other states, with the exception of certain cases (for example, if the award is contrary to public policy of the country).⁵ It significantly simplified the process of recognition and enforcement of arbitration awards by establishing minimum requirements for the documents that the parties must provide to enforce the award in another country. Before the Convention, national courts could intervene in arbitration proceedings and refuse to recognise awards on various grounds. The New York Convention limited the intervention of

² Belarusian Journal of International Law and International Relations 1998 — No. 4. The concept of international arbitration and its historical development. Andrey Popkov.

³ History of international commercial arbitration / Chapter from the textbook "International Commercial Arbitration" edited by O. Yu. St. Petersburg - Moscow - 2018.

⁴ Alan Redfern and others, Law and Practice of International Commercial Arbitration (4th edn, Sweet & Maxwell, London 2004) para 1.47.

⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. Article 5.

national courts in arbitration proceedings, which contributed to increased confidence in arbitration on the part of international business.

The Convention established an exhaustive list of grounds on which national courts could refuse to recognise or enforce an arbitration award. These grounds included, for example, a violation of the parties' rights to a fair hearing or non-compliance with public policy, and it also emphasized the principle of minimal intervention by national courts in arbitration proceedings, which reinforced the importance of the autonomy of arbitration as an independent means of dispute resolution.

The New York Convention contributed to the unification of standards applicable to arbitration proceedings and arbitration awards across countries. This became especially important in the context of globalization, when international transactions became more common and business participants more diverse.

- **Recognition of Arbitration Agreements:** The Convention recognized the binding nature of arbitration agreements concluded between the parties, thereby avoiding duplication of proceedings in national courts.
- **Transparent and Predictable Rules:** The Convention provided parties to arbitration with more predictable and transparent rules for the recognition and enforcement of arbitral awards, thereby increasing confidence in arbitration as a universal dispute resolution mechanism.

The adoption of the New York Convention became an important stimulus for the creation and development of arbitration institutions around the world. As a result, many countries began to actively support the development of arbitration at the national level, as well as creating specialized arbitration centers. After the adoption of the Convention, institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and others received additional impetus for development due to the more guaranteed recognition of their decisions abroad. Following the emergence of international arbitration institutions, regional arbitration centres such as the Singapore International Arbitration Centre (SIAC) and the Hong

Kong International Arbitration Centre (HKIAC) began to emerge in different parts of the world and became important players in international arbitration.

The New York Convention played a major role in increasing the confidence of international businesses in arbitration. The recognition and enforcement of arbitral awards in most countries around the world made arbitration the preferred method of resolving commercial disputes. With the adoption of the Convention, the number of arbitration cases increased significantly as parties to international contracts increasingly chose arbitration as a method of resolving disputes.

One of the most famous and early cases of application of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is the case of *Parsons & Whittemore v. Société Générale de l'Industrie du Papier* (1974).⁶ In this case, the American company Parsons & Whittemore entered into a contract with the French company Société Générale de l'Industrie du Papier to build a plant in Chile. A dispute arose that was referred to arbitration in Paris. The arbitration award was in favor of the French company. After Parsons & Whittemore failed to comply with the arbitration award, Société Générale de l'Industrie du Papier applied to a US court for recognition and enforcement of the arbitration award under the 1958 New York Convention. The US court upheld the Paris arbitration award and declared it enforceable in the United States. This precedent-setting case demonstrated the effectiveness and efficiency of the New York Convention in the field of international commercial arbitration and confirmed its importance in ensuring the recognition and enforcement of arbitral awards outside the country where the award was made.⁷

International companies have come to view arbitration as an effective risk management tool because arbitral awards can be recognized and enforced in more jurisdictions than court decisions. When concluding international contracts, the unification of arbitration helps to avoid complex legal issues related to the choice of

⁶ United States / 23 December 1974 / U.S. Court of Appeals, Second Circuit / *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA)* / 74-1642, 74-1676

⁷ https://en.wikipedia.org/wiki/Parsons_%26_Whittemore_Overseas_Co._v._Societe_Generale_de_L%27Industrie_du_Papier

law. The use of uniform arbitration standards allows parties to be less dependent on local laws.

The New York Convention has become a catalyst for change in national legal systems. Many countries have begun to reform their arbitration laws to bring them into line with the Convention and create a more favorable environment for arbitration.

In 1985, the UNCITRAL Model Law on International Commercial Arbitration was adopted, which has become a model for national arbitration laws, such as the national legislation on domestic arbitration in Uzbekistan.⁸ The Model Law was drafted taking into account the provisions of the New York Convention and contributed to the harmonization of arbitration laws.⁹

It is possible that this law is the main instrument for the unification of laws, since it served as the basis for the development of laws at the national level regulating arbitration proceedings¹⁰, but a more accurate opinion is that it was the Convention that laid the foundation for the reform of the national laws of the participating states. Many countries that adopted the New York Convention revised their legislation to facilitate the recognition and enforcement of arbitration awards and support the development of arbitration as an effective dispute resolution mechanism. Today, the New York Convention is one of the most successful international treaties in the field of private law.

To date, the New York Convention is one of the most successful international treaties in the field of private law. To date, 172 countries have signed and ratified the Convention, making it a universal instrument for the recognition and enforcement of arbitration awards.¹¹ The Convention covers most countries in the world, making arbitration awards easily enforceable on a global scale, and the accession of countries

⁸ Uzbekistan Adopts Law on International Commercial Arbitration Thomas R. Snider (Al Tamimi & Company), Sherzodbek Masadikov (SHERLAW), and Sergejs Dilevka (Galadari Advocates & Legal Consultants)/March 24, 2021 / Kluwer arbitration blog

⁹ Sanders, P., The making of the Convention. Enforcing Arbitration Awards under the New York Convention. Experience and Prospects. United Nations, N.Y. 1999, p.3.

¹⁰ Erpyleva N.Yu. International Commercial Arbitration: Legal Foundations of Functioning // International Law. 2013. No. 1. P. 1-74. DOI: 10.7256/2306-9899.2013.1.545

¹¹ https://uncitral.un.org/ru/texts/arbitration/conventions/foreign_arbitral_awards/status2

with different legal systems (both common and civil law) to the Convention has made it a truly universal instrument for supporting international arbitration. This influence is not limited by time, which was also reflected in the adoption of the new Economic Procedural Code of the Republic of Uzbekistan on 01.04.2018. Along with other innovations in the wording of the code, it is worth noting Chapter 33 "Proceedings for the Recognition and Enforcement of Foreign Court and Arbitration Awards", developed on the basis of the New York Convention of 1958. This chapter regulates the procedure for proceedings, in particular the form and content of applications, packages of required documents, the procedure for their consideration or return, as well as grounds for refusal. The execution of a foreign court or arbitration award is carried out on the basis of a writ of execution issued by the court that issued a ruling on the recognition and enforcement of a foreign court or arbitration award, in the manner prescribed by the legislation of the Republic of Uzbekistan.¹² These rules are the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards into national legislation, which the Republic of Uzbekistan acceded to in 1996.¹³

However, despite the achievements, there is a need for further improvements:

The global economy and technology continue to evolve, and arbitration procedures must adapt to new challenges, such as electronic evidence and online arbitration. The development of new rules and recommendations can help ensure that the convention remains relevant.

Differences in the interpretation and application of the convention in different countries can create uncertainty. Efforts are needed to unify approaches to the application of the convention, which may include additional guidance or clarifications from international organizations. Some countries may remain inaccessible to arbitration due to bureaucratic barriers or lack of legal infrastructure.

¹² Article 258 of Chapter 33 of the Economic Procedural Code of the Republic of Uzbekistan dated 24.01.2018

¹³ <https://lex.uz/docs/2009040>

Removing these barriers, including improving legal regulation, is necessary for the wider adoption of arbitration in the global economy.

Conclusion

The 1958 New York Convention is an important legal instrument that has had a significant impact on the development of international commercial arbitration. The Convention has contributed to the unification of rules regarding the recognition and enforcement of arbitral awards, allowing parties to rely on the predictability and stability of the arbitration process at the international level. This, in turn, creates conditions for the increased use of arbitration as a method of resolving disputes in international trade. Thanks to the Convention, participants in international trade have gained confidence that arbitral awards will be recognized and enforced in most countries that have signed the Convention. This helps to increase confidence in arbitration as an effective way to resolve commercial disputes and encourages the choice of arbitration over litigation. The Convention provides protection for the rights of the parties in arbitration proceedings, including guarantees regarding a fair hearing and compliance with the terms agreed upon by the parties. This becomes especially important in cross-border disputes where jurisdictional and applicable law complexities may arise. The influence of the New York Convention has led to the growth of arbitration institutions and venues around the world. This has increased the choice of parties and access to more diverse and specialized arbitrators. The Convention has been an important element in the development of international arbitration law, providing a legal basis for resolving disputes between individuals and states. It has contributed to the formation of a more comprehensive and multi-layered approach to international legal relations. Overall, the New York Convention of 1958 is the cornerstone of international commercial arbitration, ensuring its effectiveness and universality. It continues to play a key role in providing legal certainty and protecting the interests of the parties, making arbitration an accessible and reliable tool for resolving international disputes.

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