Nos. 23-1201, 24-17

IN THE

Supreme Court of the United States

CC/DEVAS (MAURITIUS) LIMITED, ET AL.,

Petitioners,

v.

ANTRIX CORP. LTD., ET AL.,

Respondents.

(Additional Caption on the Reverse)

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* PROFESSOR GEORGE A BERMANN IN SUPPORT OF PETITIONERS

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December 11, 2024

DEVAS MULTIMEDIA PRIVATE LIMITED,

Petitioner,

v.

ANTRIX CORP. LTD., ET AL.,

Respondents.

QUESTION PRESENTED

Whether the exercise of personal jurisdiction over foreign States sued under the Foreign Sovereign Immunities Act requires satisfaction of the minimum contacts test.

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BRIEF AMICUS CURIAE OF PROFESSOR GEORGE A. BERMANN IN SUPPORT OF PETITIONERS

IDENTITY AND INTEREST OF *AMICUS CURIAE* [1]

Pursuant to Supreme Court Rule 37, Professor George A. Bermann respectfully submits this brief *amicus curiae* in support of Petitioners CC/Devas

[1] Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae or his counsel made a monetary contribution to its preparation or submission.

(Mauritius) Limited; Devas Multimedia America, Inc.; Devas Employees Mauritius Private Limited; and Telcom Devas Mauritius Limited.

Professor Bermann is a member of the faculty of law at Columbia Law School. He is also chief reporter for the American Law Institute's ("ALI") Restatement of the U.S. Law of International Commercial and Investor-State Arbitration, which takes the position, based on existing case law, that "[t]he adequacy of jurisdiction over the defendant in a post-award action is determined by the generally applicable statutory and constitutional standards governing the exercise of such jurisdiction." Restatement § 4-25(a). The Restatement further states that a United States court may exercise quasi-in-rem jurisdiction in a post-award action where the award debtor's property is within the court's jurisdiction, even where the property is unrelated to the underlying dispute. *Id.* § 4-25(b) & Reporter's Note (a)(iii).

The ALI is the leading independent organization in the United States producing scholarly work to clarify the law and render it more coherent. The Restatement of the U.S. Law of International Commercial and Investor-State Arbitration provides a comprehensive review of the role of the courts over the life cycle of an arbitral proceeding, including post-award relief and the confirmation and enforcement of awards falling under international treaties, such as the New York Convention.

Professor Bermann, as a scholar and practitioner, has a vested interest in ensuring that the New York Convention is properly understood. More specifically, he seeks to ensure that the United States complies with obligations set out in the New York Convention and does not impose additional, burdensome requirements for the confirmation and enforcement of foreign awards that are inconsistent with the Convention. By imposing such requirements, United States courts would frustrate the treaty's purpose of ensuring that final and binding awards are duly recognized and enforced by all Contracting States, thereby ensuring their international mobility.

SUMMARY OF THE ARGUMENT

The Ninth Circuit concluded that a minimum contacts analysis is necessary in order for a United States court to exercise personal jurisdiction over a foreign State in an action seeking recognition of an award subject to the New York Convention. *Devas Multimedia Private Ltd. v. Antrix Corp.*, 2023 U.S. App. LEXIS 19755, *3-4 (9th Cir., Aug. 1, 2023). There are no fewer than five reasons why this holding is incorrect.

First, the requirement of minimum contacts is based upon due process considerations, but it is well-settled that a foreign State is not a "person" within the meaning of the Due Process Clause and therefore cannot avail itself of due process protections.

Second, Congress, in the Foreign Sovereign Immunities Act (FSIA) expressly provided that, unless one or more of the exceptions to immunity under FSIA is present, United States courts have both subject matter and personal jurisdiction over the

defendant sovereign, irrespective of whether that sovereign has minimum contacts with the relevant jurisdiction.

Third, the New York Convention does not itself require minimum contacts for recognizing or enforcing[2] foreign arbitral awards. Lack of personal jurisdiction is not among the Convention's seven exhaustive exceptions to a Contracting State's duty to recognize and enforce foreign awards. Nor can imposing a requirement of minimum contacts be justified under Article III of the Convention, which authorizes courts to recognize and enforce Convention awards in accordance with local procedures. As the *travaux préparatoires* relating to the New York Convention make clear, the local procedures referenced in Article III are purely procedural in nature.

Fourth, in accordance with the principles laid out by this Court in *Shaffer v. Heitner*, 433 U.S. 186 (1977), the usual requirement of minimum contacts is not in any event applicable to an action that merely gives effect to a foreign judgment or award rather than itself imposes liability. The Court can ensure uniformity among lower courts' approaches by clarifying that courts may exercise personal jurisdiction in compliance with due process

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[2] As a general matter, and as discussed in more detail below (Section IV, *infra*), the term "recognition and enforcement" of an arbitral award (also referred to as "confirmation") refers to the process by which a court determines that the award is final and binding and grants the award the force of a national court judgment. Importantly, in this context, "enforcement" does *not* mean the award creditor's collection on the award or execution against assets of the award debtor to satisfy the award.

protections without requiring a showing of minimum contacts and that the mere presence of property in the jurisdiction suffices.

Fifth, and more generally, imposing a minimum contacts requirement in actions to recognize and enforce Convention awards would prevent United States courts from enforcing a large number of foreign awards in keeping with their international obligations. This would be contrary to the fundamental purpose of the Convention. Subject to its seven defenses to recognition and enforcement, the Convention requires United States courts to recognize and enforce *all* foreign awards, irrespective of where the award debtor is located, whether physically or juridically.

ARGUMENT

I. FOREIGN STATES ARE NOT PERSONS WITHIN THE MEANING OF THE CONSTITUTION'S DUE PROCESS CLAUSE

The requirement of minimum contacts for a court's exercise of personal jurisdiction over the defendant is rooted in Constitutional considerations of due process. See *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (noting the role of minimum contacts analysis in a state's exercise of jurisdiction consistent with due process). Foreign States, however, do not enjoy due process protections because they are not "persons." See U.S. Const. Amdt. 5 ("[N]or shall any *person* . . . be deprived of life, liberty, or property, without due process of law. . . ." (emphasis added)). United States courts have consistently so held. See *Frontera Resources Azerbaijan Corp. v. State Oil Co. of the*

Azerbaijan Republic, 582 F.3d 393, 398-400 (2d Cir. 2009); *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 96-99 (D.C. Cir. 2002); *TMR Energy Ltd. v. State Prop. Fund of Ukraine*, 411 F.3d 296, 300 (D.C. Cir. 2005); *Gater Assets Ltd. v. Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021); *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012).

This Court has held that "[t]he word 'person' in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union." *South Carolina v. Katzenbach*, 383 U.S. 301, 323 (1966). Consistent with this Court's reasoning, courts have considered that it would "be highly incongruous to afford greater Fifth Amendment rights to foreign nations, who are entirely alien to our constitutional system, than are afforded to the states, who help make up the very fabric of that system." *Price v. Socialist People's Libyan Arab Jamahiriya*, *supra*, at 96; see also *Frontera Resources Azerbaijan Corp.*, *supra*, at 399.

Consequently, a foreign State cannot defeat an otherwise justifiable exercise of jurisdiction over it by a United States court on the ground that the State lacks minimum contacts with the United States forum state.

II. THE FOREIGN SOVEREIGN IMMUNITIES ACT CONFERS ON UNITED STATES COURTS JURISDICTION OVER FOREIGN STATES IN ACTIONS TO RECOGNIZE AND ENFORCE FOREIGN ARBITRAL AWARDS

The amenability of foreign States to the jurisdiction of United States courts is governed by the Foreign Sovereign Immunities Act ("FSIA"). The FSIA recognizes the immunity of foreign States to the jurisdiction of courts in the United States unless one of certain exceptions apply. Relevant here is the "arbitration exception." 28 U.S.C. § 1605(a)(6). Under that exception, a foreign State is not immune to suit in United States courts in actions "to confirm an award made pursuant to such an agreement to arbitrate" if the "award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards." *Ibid.* The arbitration exception is plainly applicable to the appeal at hand, which is precisely a suit to recognize and enforce an arbitral award under the New York Convention. See Section III, *infra*.

An especially noteworthy feature of the FSIA is that it not only sets out the rules governing sovereign immunity, but it also specifically provides that if, due to a FSIA exception, a foreign State is not entitled to immunity to suit (and service of process is proper under 28 U.S.C. § 1608), then the United States court where the action is brought automatically has both subject matter jurisdiction and personal jurisdiction over the defendant State. See 28 U.S.C. § 1330(a)

(providing subject matter jurisdiction over "a foreign state . . . with respect to which the foreign state is not entitled to immunity" under 28 U.S.C. §§ 1605-1607); *id.* § 1330(b) ("Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title."). In other words, through the arbitration exception, the FSIA itself establishes jurisdiction over foreign States in actions to recognize and enforce arbitral awards. The FSIA requires nothing more. If no venue is proper for the proceeding, the FSIA expressly provides that the District of Columbia serve as the venue for such action. 28 U.S.C. § 1391(f)(4); see also *Mobil Cerro Negro, Ltd. v. Bolivarian Rep. of Venez.*, 863 F.3d 96, 116 (2d Cir. 2017).

III. THE NEW YORK CONVENTION DOES NOT REQUIRE MINIMUM CONTACTS IN ACTIONS FOR RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRAL AWARD

The United States is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[3] commonly referred to as the New York Convention. The

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[3] June 10, 1958, 21 U. S. T. 2517, T. I. A. S No. 6997. The United States acceded to the New York Convention in 1970 and Congress codified obligations of the Convention by adding Chapter 2 to the Federal Arbitration Act, which grants federal courts subject matter jurisdiction over actions to confirm arbitration awards under the Convention. See 9 U.S.C. §§ 201-208; *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 439 (2020).

Convention's mandate is simple:

> 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.

New York Convention, Art. III (emphasis added). Thus, the Convention expressly requires Contracting States to recognize and enforce foreign arbitral awards. While the Convention does not itself require that the rendering state itself be a party to the Convention, it allowed Contracting States to adopt a reciprocity requirement, and the United States has done so. See New York Convention, Art. I(3); *Zhongshan Fucheng Indus. Inv. Co. v. Fed. Republic of Nigeria*, 112 F.4th 1054, 1059 (D.C. Cir. 2024) (noting the United States adopted the reciprocity reservation under Article I(3)).

There is no dispute that the New York Convention governs recognition and enforcement of the award underlying the present appeal. See 9 U.S.C. §§ 203, 207 (defining proper courts and statute of limitations for New York Convention proceedings). In ratifying the Convention, the United States limited its recognition and enforcement obligation to commercial cases and to awards rendered in jurisdictions that are themselves parties to the Convention. This satisfies the reciprocity requirement. See *New York Convention: Contracting States*, https://www.newyorkconvention.org/contracting-states/contracting-states (as visited Dec. 11, 2024).

The dispute in the present case is unquestionably commercial in character. See Pet. Devas Multimedia Private Limited Br. 10. Moreover, the award was rendered in India, which is a party to the Convention. See *ibid.*

The purpose of the New York Convention is simple. As this Court has recognized, the Convention seeks to "unify the standards by which . . . awards are enforced in the signatory countries." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974). More specifically, the Convention aims to reduce to a bare minimum the barriers faced by an award creditor in seeking to recognize and enforce an award against the award debtor. In effect, it imposes an obligation analogous to the "full faith and credit" clause upon each signatory State to recognize and enforce foreign arbitral awards.

Importantly, the New York Convention's recognition and enforcement obligation is subject, limitatively, to seven defenses. Under the first five defenses, the courts of a Contracting State "may" refuse the recognition or enforcement of an award "*only* if that party furnishes to the competent authority where the recognition and enforcement is sought, proof" of: (1) the incapacity of a party or the invalidity of the agreement to arbitrate; (2) improper notice of the appointment of the arbitrator or of the arbitration itself or inability of the award debtor to present its case; (3) application of the arbitration agreement to a dispute beyond the scope of that agreement; (4) failure to abide by the parties' agreement on constitution of the tribunal and matters of procedure; or (5) the non-binding nature of the award or its annulment or suspension by a competent

court at the arbitral seat. New York Convention, Art. V(1)(a)-(e) (emphasis added). Each of these defenses is designed to ensure that the arbitration agreement and the arbitral proceeding are regular and legitimate. Under the remaining two defenses, the courts of a Contracting State "may" refuse recognition and enforcement to protect the Contracting State's own vital interests, notably where "[t]he subject matter of the difference is not capable of settlement by arbitration under the law of that country," or "[t]he recognition and enforcement of the award would be contrary to the public policy of that country." *Id.*, Art. V(2)(a)-(b).

The exhaustive and limited nature of the New York Convention's defenses to recognition and enforcement of an award was purposeful. From the start, the drafters thought it essential to strictly cabin the defenses available to award debtors to defeat recognition and enforcement of awards. A report by the Committee on the Enforcement of International Arbitral Awards, which accompanied a preliminary draft of the Convention, emphasized that the word "only," as used in now Article V, "makes it clear that . . . no other grounds except those included in [now Article V] may be invoked as a defence." U.N. Econ. & Soc. Council, Report of the Committee on the Enforcement of International Arbitral Awards, 9 U.N. Doc. E/2704, at pp. 9, 19-20 (Mar. 28, 1955), online at https://digitallibrary.un.org/record/750274?ln=en&v=pdf. This met the explicit needs of the international community. In considering the Convention, the United Nations Economic and Social Counsel held a debate in which the International Chamber of Commerce urged, "[o]n behalf of the international business community," the adoption of "a simple and

flexible system for the enforcement of arbitral awards which would . . . limit the grounds on which the enforcement of such an award could be refused to serious procedural irregularities, incompatibility with the public policy of the country of enforcement, or proof that the award had been annulled." *Certain Underwriters at Lloyd's London v. Argonaut Ins. Co.*, 500 F.3d 571, 576 n.5 (7th Cir. 2007) (quoting).

In accordance with the Convention's purpose and plain text, Congress adopted these limited defenses when implementing the New York Convention by adding Chapter 2 to the Federal Arbitration Act (FAA). Section 207 of the FAA states: "The court *shall* confirm the award *unless* it finds one of the grounds for refusal or deferral of recognition and enforcement of the award specified in the said Convention." 9 U.S.C. § 207 (emphasis added). United States courts rightly respect the exhaustive and narrow nature of defenses to recognition and enforcement under the Convention. See *Commodities & Minerals Enterprise v. CVG Ferrominera Orinoco, C.A.*, 49 F.4th 802, 809 (2d Cir. 2022) (holding Article V "contains an exhaustive list of seven defenses to confirmation"); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 287 (5th Cir. 2004) ("[C]ourts in countries of secondary jurisdiction may refuse enforcement only on the grounds specified in Article V."); *China Minmetals Materials Import & Export Co. v. Chi Mei Corp.*, 334 F.3d 274, 283 (3d Cir. 2003) ("Consistently with the policy favoring enforcement of foreign arbitration awards, courts strictly have limited defenses to enforcement to the defenses set forth in Article V of the Convention . . . .").

The defenses to recognition and enforcement under the Convention are not only limitative, but also narrowly circumscribed. The Convention decidedly disallows courts from refusing to recognize or enforce an award by questioning the award's merits or revisiting the tribunal's reasoning. See *Estate of Zhengguang v. Yu Naifen Stephany*, 105 F.4th 648, 656 (4th Cir. 2024) ("In confirmation proceedings under the New York Convention, there is no case to try, only a binding award to recognize and enforce."); *China Nat. Metal Prods. Import/Export Co. v. Apex Digit., Inc.*, 379 F.3d 796, 799 (9th Cir. 2004) ("Our review of a foreign arbitration award is quite circumscribed. Rather than review the merits of the underlying arbitration, we review de novo only whether the party established a defense under the Convention." (citation and internal quotation marks omitted)); *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier*, 508 F.2d 969, 977 (2d Cir. 1974) (noting the New York Convention "does not sanction second-guessing the arbitrator's construction of the parties' agreement"); *Commodities & Minerals Enterprise v. CVG Ferrominera Orinoco, C.A.*, *supra*, at 818 (rejecting an award debtor's challenge to the determination of damages as a challenge "outside of any defense listed in Article V").

Absent from the Convention's limited defenses is any requirement that the enforcing court have personal jurisdiction over the defendant. See New York Convention, Art. V. This omission is not surprising. The Convention seeks to maximize the recognizability and enforceability of foreign awards, and allowing States to interpose personal jurisdiction requirements of their own devise under domestic law

would drastically reduce the sought-after international mobility of awards. The Convention thus does not allow imposition of any such requirements; nor did the United States, in negotiating and signing the Convention, demand that absence of personal jurisdiction be included among the enumerated defenses. Nor could the United States unilaterally have done so, even if it wanted to, by including such a defense in the implementing legislation of Chapter 2 of the FAA. Erecting such barriers to recognition and enforcement would directly contradict Article V of the Convention. See New York Convention, Art. 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 . . . proof" of the enumerated defenses (emphasis added)). It also bears noting that Congress deliberately made the recognition and enforcement process a summary one. See *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007) ("Confirmation under the Convention is a summary proceeding in nature . . . .").

IV. THE MINIMUM CONTACTS REQUIREMENT IS IN ANY EVENT INAPPLICABLE TO A PROCEEDING BROUGHT MERELY TO RECOGNIZE AND ENFORCE A FOREIGN ARBITRAL AWARD

As explained above, due process protections are not available to foreign States. See *supra* Section I. But, even if foreign States were afforded due process in a United States lawsuit, and even if the New York Convention contained an exception to courts' duty to recognize foreign arbitral awards on the basis of a lack

of personal jurisdiction, a "minimum contacts" analysis still would not apply. This is due to the well-established distinction between proceedings to confirm or recognize a foreign judgment or award, on the one hand, and proceedings seeking to impose liability on a defendant in the first instance, on the other. In the former circumstance, a foreign court or arbitral tribunal can be assumed to have had jurisdiction over the defendant and to have determined the merits of the dispute before it. The subsequent role of a court in recognizing or enforcing a judgment or award is largely ministerial. Upon satisfying itself of the regularity of the foreign proceedings, the court simply converts that foreign judgment or award into a domestic judgment pursuant to a motion by the judgment or award creditor. See 9 U.S.C. §§ 6, 207, 208.

The question of due process and the exercise of personal jurisdiction centers on whether a defendant has fair warning of its subjection to jurisdiction in this country. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) ("By requiring that individuals have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign, the Due Process Clause gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.") (citation and quotation marks omitted). With liability established in an arbitral award, a defendant must reasonably expect subsequent proceedings to collect on that debt in jurisdictions where its assets lie. Whether or not they are specifically aware of the New York Convention, parties that enter into international

arbitration agreements and participate in international arbitral proceedings have reason to expect that the resulting awards may be recognized and enforced in places where their assets may be found. In sum, a defendant's due process rights are not meaningfully at stake in the recognition and enforcement of foreign judgments and awards. Nor does the United States have any particular interest in limiting recognition and enforcement to cases in which the judgment or award debtor has minimum contacts with the United States.[4] Courts need not, therefore, require a full minimum contacts analysis to exercise personal jurisdiction in such proceedings.

The position advanced here was squarely established in this Court's decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977). There, the Court held that the minimum contacts analysis of *International Shoe* applies to cases establishing *in rem* personal jurisdiction. But, in doing so, the Court drew precisely the distinction set out above between actions on the merits in the first instance and post-judgment execution proceedings:

> Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in

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[4] Not to be forgotten is the fact that recognition and enforcement of a foreign award, though procedurally simple, is not automatic. Every state in the United States places serious limitations on the recognizability and enforceability of foreign judgments, and the New York Convention—through its defenses—imposes similar limitations on the recognizability and enforceability of foreign awards.

> allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.

Id. at 210 n.36. The Court in *Shaffer* essentially recognized that the exercise of *quasi-in-rem* jurisdiction over the defendant debtor in a post-judgment enforcement proceeding is constitutionally permissible provided it has assets within the jurisdiction. Those assets need bear no relationship to the underlying action. *Ibid.*[5] Minimum contacts with the forum state on the part of the judgment debtor are not required.

Another important distinction must be borne in mind when applying the principles articulated in *Shaffer* to this appeal. A judgment *recognizing and enforcing* a foreign judgment or award does not itself entail *execution* upon the defendant's assets. That judgment merely converts or domesticates a final foreign judgment or award into a local judgment that enjoys the same status as any other local judgment. See 9 U.S.C. § 13 (stating a judgment recognizing an arbitral award "may be enforced as if it had been rendered in an action in the court in which it is entered"); 9 U.S.C. § 208 (incorporating 9 U.S.C. §§ 1, *et seq.* to actions to recognize or confirm foreign arbitral awards under the New York Convention);

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[5] On the other hand, recovery in a quasi-in-rem action is limited to the value of the assets within the jurisdiction. *Id.* at 199 (noting that the "effect of a judgment in [an *in rem* or *quasi in rem* action] is limited to the property that supports jurisdiction").

CBF Industria de Gusa v. AMCI Holdings, Inc., 80 F.3d 58, 72 (2d Cir. 2017) ("Under the New York Convention, [this] process of reducing a foreign arbitral award to a judgment is referred to as 'recognition and enforcement.' 'Recognition' is the determination that an arbitral award is entitled to preclusive effect; 'Enforcement' is the reduction to a judgment of a foreign arbitral award . . . Recognition and enforcement occur together, as one process, under the New York Convention.") (internal citations omitted); *Zeiler*, 500 F.3d at 169 ("A district court confirming an arbitration award does little more than give the award the force of a court order."); *Dynaresource de Mex. S.A. de C.V. v. Goldgroup Resources, Inc.*, 667 S.W.3d 918, 926 (Tex. App. 2023) ("The purpose of recognition is two-fold—to domesticate a judgment for purposes of enforcement and attain preclusive effect of that judgment."); Restatement (Second) Conflict of Laws, Chapter 5, Topic 2, Introductory Note ("Recognition of a judgment is a condition precedent to its enforcement."). Execution is a separate and subsequent step to recognition and enforcement that results in the levying of assets of the award debtor to satisfy the award. See *Mobil Cerro Negro*, 863 F.3d, at 118 (noting the terms recognition and enforcement "appear to have taken on the basic meaning (in the foreign arbitral context) of converting the judgment of another jurisdiction into a federal judgment on which execution . . . *may* occur" (emphasis added)); *Schlumberger Tech. Corp. v. United States*, 195 F.3d 216, 220 (5th Cir. 1999) ("[B]efore an order of execution could issue which would allow the award to be enforced, the award first had to be converted by confirmation into a judicial judgment.").

Courts have routinely applied this Court's reasoning in *Shaffer* to exercise *in rem* jurisdiction in proceedings to recognize and enforce foreign judgments. See, *e.g.*, *Thomas & Agnes Carvel Found. v. Carvel*, 736 F. Supp. 2d 730, 755 (S.D.N.Y. 2010) (concluding, in a suit to recognize United Kingdom money judgments, "to the extent that Ms. Carvel may have property here, the Supreme Court's recognition of quasi in rem jurisdiction as consistent with due-process requirements in a debt-collection case . . . would likely enable a court in this state to assert jurisdiction over the parties for present purposes" (citations omitted)), adopted, 2010 U.S. Dist. LEXIS 85978 (S.D.N.Y., Aug. 20, 2010); *Society of Llyod's v. Byrens*, 2003 U.S. Dist. LEXIS 26719, *13 (S.D. Cal., May 29, 2003) (stating, in an action to enforce an English judgment, "[t]he Supreme Court and the Ninth Circuit recognize that a judgment may be enforced in a forum where the defendant owns property even if that property is not the subject of the underlying controversy"); cf. Restatement (Third) Foreign Relations Law of the U.S. § 481 Comment h. ("The rationale behind wider jurisdiction in enforcement of judgments is that once a judgment has been rendered in a forum having jurisdiction, the prevailing party is entitled to have it satisfied out of the judgment debtor's assets wherever they may be located.").

Particularly explicit is *Lenchyshyn v. Pelko Electric, Inc.*, 281 A.D.2d 42, 723 N.Y.S.2d 285, 289-291 (2001). There, the court reasoned that "[c]onsiderations of logic, fairness, and practicality dictate that a judgment creditor be permitted to obtain recognition and enforcement of a foreign country money judgment without any showing that

the judgment debtor is subject to personal jurisdiction in New York." *Id.* at 291. The court highlighted that, in a proceeding to enforce a foreign judgment under New York law, "the judgment creditor does not seek any new relief against the judgment debtor, but merely asks the court to perform its ministerial function of recognizing the foreign country money judgment and converting it into a New York judgment." *Ibid.* Other courts have echoed this commonsense conclusion. See, *e.g.*, *Pure Fishing v. Silver Star Co.*, 202 F. Supp. 2d 905, 909-910 (N.D. Iowa 2002) (concluding personal jurisdiction over a foreign country judgment debtor was not needed to recognize that judgment); *Intrigue Shipping, Inc. v. Shipping Assocs.*, 2013 Conn. Super. LEXIS 2875, *11 (Dec. 13, 2013) (holding Connecticut's Uniform Foreign Money Judgment Recognition Act did not require a court to find personal jurisdiction over a judgment debtor to recognize a foreign country money judgment); *Milan Indus. Ltd. v. Wilson Worldwide Propriety Ltd.*, 2011 N.Y. Misc. LEXIS 6842, *3-9, 2011 Slip Op 33770(U) (May 25, 2011) (finding personal jurisdiction over the defendant and "*in rem* jurisdiction over some property of the defendant [were] not necessary to enforce" a foreign judgment); *Abu Dhabi Commercial Bank PJSC v. Saad Trading*, 117 A.D.3d 609, 986 N.Y.S.2d 454, 458-459 (2014) (holding a defendant judgment debtor need not have minimum contacts or property in New York for New York courts to recognize a foreign money judgment).

If post-judgment proceedings for the enforcement of foreign judgments do not require a showing of minimum contacts, as established by this Court's ruling in *Shaffer*, then post-award proceedings for the enforcement of foreign arbitral

awards also should not require a showing of minimum contacts. No deprivation of life, liberty, or property occurs as a result of recognizing or enforcing an otherwise enforceable award and converting it into a local judgment. After all, such proceedings simply formalize a preexisting liability and domesticate it into a local judgment. See *Commodities & Minerals Enterprise*, 49 F.4th, at 814 ("[C]onfirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." (citation and quotation marks omitted)). Not at stake in such proceedings is the imposition of liability in the first instance or the execution of any judgment against assets of a judgment debtor—actions that justifiably trigger due process rights of the defendant to various degrees. Cf. *Fidelity Nat. Fin. v. Friedman*, 935 F.3d 696, 702 (9th Cir. 2019) (holding, in the context of registering a federal judgment from one federal court in another district under 28 U.S.C. § 1963, "[w]e see no reason why—based on case law, policy, or otherwise—[] the simple act of subsequently registering a judgment alters a debtor's substantive rights such that a due process right is triggered. To the contrary, registration itself does not change the amount of money or property owed; it only facilitates collection of a pre-existing judgment").

Circuit courts have adopted inconsistent positions on the need for minimum contacts in actions to enforce awards against foreign award debtors under the New York Convention. See *Frontera Resources Azerbaijan Corp.*, 582 F.3d, at 397-98; *Telcordia Tech, Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 178-79 (3d Cir. 2006); *Base Metal Trading, Ltd. v. OJSC Novokuznetsky Aluminum Factory*, 283 F.3d

208, 212 (4th Cir. 2002); *First Inv. Corp. v. Fujian Mawei Shipbuilding Ltd.*, 703 F.3d 742, 749-50 (5th Cir. 2012); *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1121 (9th Cir. 2002); *S & Davis Int'l, Inc. v. Republic of Yemen*, 218 F.3d 1292, 1303-05 (11th Cir. 2000). The Second and Ninth Circuits have adopted the principles in *Shaffer* and held that the mere presence of property satisfies requirements of personal jurisdiction and Constitutional due process. *Frontera Resources Azerbaijan Corp.*, 582 F.3d, at 397-98; *Glencore Grain Rotterdam B.V.*, 284 F.3d, at 1127-28; *Cerner Middle E., Ltd. v. iCapital, LLC*, 939 F.3d 1016, 1019-20, 1024 (9th Cir. 2019) (reversing the dismissal of an action to enforce a foreign arbitral award under the New York Convention, holding the district court had quasi in rem jurisdiction over the award debtor). Several lower courts have also held, in persuasively reasoned decisions based upon *Shaffer*, that the recognition of foreign awards does *not* require establishing minimum contacts over the defendant debtor within the United States. Instead, the mere presence of property suffices. See, *e.g.*, *Bunge S.A. v. Pac. Gulf Shipping (Singapore) Pte Ltd.*, 2020 U.S. Dist. LEXIS 56169, *4-8 (D. Or., Mar. 31, 2020) (enforcing a foreign arbitral award under the New York Convention based on quasi in rem jurisdiction over the award debtor); *CME Media Enters. B.V. v. Zelezny*, 2001 U.S. Dist. LEXIS 13888, *8-10, 16 (S.D.N.Y., Sept. 10, 2001) (confirming a foreign arbitral award under the New York Convention based on quasi in rem jurisdiction without requiring minimum contacts between the debtor and the forum); *Equipav S.A. Pavimentacao, Engenharia e Comercio Ltda. v. Bertin*, 2024 U.S. Dist. LEXIS 9222, *2-3, 18-

19, 33 (S.D.N.Y., Jan. 18, 2024) (same); *Crescendo Mar. Co. v. Bank of Communs. Co.*, 2016 U.S. Dist. LEXIS 21824, *13-15, 29 (S.D.N.Y., Feb. 22, 2016) (same); *Vantage Mezzanine Fund II P'Ship Acting Through Vantage Mezzanine Fund II Pty Ltd. v. Taylor*, 2024 U.S. Dist. LEXIS 175937, *8-11 (S.D.N.Y., Sept. 27, 2024) (same).

By contrast, the Fourth Circuit continues to demand minimum contacts in such actions. In *Base Metal Trading v. Ojsc Novokuznetsky Aluminum Factory*, it held that the minimum contacts personal jurisdiction "analysis is not altered when the defendant's property is found in the forum state," on the basis that *Shaffer* "eliminated all doubt that the minimum contacts standard in *International Shoe* governs *in rem* and *quasi in rem* actions as well as *in personam* actions." *Supra*, at 213. However, the Fourth Circuit's reasoning ignores *Shaffer*'s important distinction between actions to impose liability and actions to enforce foreign judgments.

The Court's guidance is necessary to promote uniformity in lower courts' approach to recognizing or confirming awards under the New York Convention. In doing so, the Court should apply the same principle underlying its reasoning in *Shaffer* and require only the presence of property—whether or not that property relates to the underlying controversy—to satisfy due process for courts to exercise personal jurisdiction in actions to confirm a foreign award.

Applying the principles for enforcement of foreign judgments that this Court articulated in *Shaffer* to enforcement of foreign arbitral awards serves another vital purpose further developed in the section that follows: it promotes the United States's

compliance with its obligations under the New York Convention. While enforcement of foreign judgments is essentially a matter of state law, recognition and enforcement of arbitral awards under the Convention directly implicates the United States's treaty obligations. Moreover, this Court has repeatedly voiced a pro-enforcement federal policy, that liberal application of the New York Convention and Chapter 2 of the Federal Arbitration Act clearly promotes.

V. APPLYING A MINIMUM CONTACTS ANALYSIS TO RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS WOULD FRUSTRATE THE PURPOSES OF THE NEW YORK CONVENTION

Conditioning the recognition and enforcement of foreign arbitral awards upon the presence of minimum contacts of an award debtor with the jurisdiction where recognition is sought would fundamentally undermine and frustrate the purpose of the New York Convention, which is to ensure the international mobility of awards.

We know that the New York Convention's central aim is to ensure the recognition and enforcement of arbitral awards in jurisdictions other than the one in which those awards are rendered. Indeed, one of the advantages of arbitration over litigation of international disputes, and one of the reasons parties prefer arbitration over litigation, is the Convention's guarantee of recognition and enforcement in all other jurisdictions that are party to the Convention. The Convention, with over 170 state parties, is among the most widely ratified treaties world-wide, as result of which the number of Convention awards is extraordinarily high. See New

York Convention: Contracting States, https://www.newyorkconvention.org/contracting-states/contracting-states (as visited Dec. 11, 2024).

As previously noted, the Convention imposes an affirmative obligation on the United States and all other Contracting States to recognize and enforce foreign arbitral awards, subject only to the limited exceptions set forth in Article V. In particular, Article III of the Convention provides that:

> 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.

New York Convention, Art. III (emphasis added). It is crucial to the efficacy of the Convention that Contracting States not erect barriers to the recognition and enforcement of awards other than those provided for by the Convention's seven enumerated defenses. See *Scherk,* 417 U.S. at 520 n.15 ("The goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to . . . unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory

countries.").

Requiring proof of minimum contacts in order for a court to entertain a recognition and enforcement action under the Convention amounts to precisely such a prohibited barrier. Due to the fact that Convention awards are rendered in virtually every country on the globe, and that the vast majority of award debtors world-wide have no contacts with the United States—much less minimum contacts needed to satisfy due process—only a tiny fraction of Convention awards could be recognized and enforced in the United States. As a result, the United States cannot, if it requires minimum contacts for jurisdiction in recognition and enforcement actions under the Convention, come close to respecting its recognition and enforcement obligations under the Convention.

Further, recalcitrant award debtors could escape enforcement of awards by simply avoiding minimum contacts with the United States for three years, after which the limitations period for a recognition and enforcement action would lapse. That would insulate those award debtors from any risk that an award rendered against them could be domesticated into a United States judgment. See 9 U.S.C. § 207 (requiring an action to confirm a New York Convention award to be brought within three years after the award is rendered).

Thus, for all practical purposes, refusal to recognize and enforce foreign arbitral awards that are otherwise entitled to recognition and enforcement under the Convention on the basis of the award debtor's lack of minimum contacts would place the United States in violation of its international treaty

obligations. The United States cannot in good conscience subscribe to a treaty mandating the recognition and enforcement of *all* foreign awards that are not subject to a Convention defense, while at the same time imposing a hurdle that systematically bars recognition and enforcement of all but a tiny fraction of foreign awards.

Article III of the New York Convention provides that States shall conduct recognition and enforcement proceedings "in accordance with the rules of procedure of the territory where the award is relied upon." However, Article III's reference to "the rules of procedure" of the enforcing state provides no basis for imposing a minimum contacts requirement to recognition and enforcement actions under the Convention. The "rules of procedure" referenced in Article III refer to the means and mechanisms by and through which awards are recognized and enforced locally. G. B. Born, International Commercial Arbitration, § 26.02 (Kluwer Law International, 3rd ed. 2024) ("Article III is concerned only with purely procedural aspects of the recognition proceedings themselves (*e.g.*, filing fees, time periods, legal representation and judicial venue)."). The term "rules of procedure" cannot plausibly be regarded as including the rules governing a court's judicial jurisdiction. See *Figueiredo Ferraz e Engenharia de Projeto Ltda v. Repuplic of Peru*, 665 F.3d 384, 399 (2d Cir. 2011) (Lynch, J., dissenting) ("[T]he 'procedure' provisions of the treaties permit variation with regard to the manner in which signatory states enforce international arbitration awards; they do not provide a means by which a state may decline to enforce such awards at all."); Restatement of the U.S. Law of International Commercial and Investor-State

Arbitration § 4.27, Reporter's Note (b)(ii) (Am. L. Int. 2023) (emphasizing that "Article III makes application of national procedural law subject to 'the conditions laid down in the . . . articles [following Article III],'" including the exclusive grounds for nonrecognition and nonenforcement found under Article V); A. Jan van den Berg, The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation 239 (1981) (stating Article III is "not concerned with the *conditions* for enforcement," which are set in Articles IV-VI, but with "the form of the request and the competent authority").

The reason why the Convention drafters left the means of recognition and enforcement to local law was their belief that trying to prescribe uniform recognition and enforcement procedures would be an exceptionally difficult, and ultimately unnecessary, undertaking. See U.N. Econ. & Soc. Council, *Comments on Draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, Doc. E/Conf.26/2, 4 (Mar. 6, 1958), available at https://documents.un.org/doc/undoc/gen/n58/048/68/pdf/n5804868.pdf (last visited Dec. 11, 2024) (Secretary General of the Economic and Social Council stating "it may not be considered practical to attempt spelling out the applicable enforcement procedures in all detail in the text of the Convention itself" and, instead, suggesting the text should provide that awards "be enforced in accordance with a simplified and expeditious procedure which, in any event, should not be more onerous than that applied to domestic arbitral awards"); A. Jan van den Berg, The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation 235 (1981) (noting proposals

on prescribing rules of procedure for award recognition and enforcement "led to a Babel-like confusion at the Conference, which consumed considerable time, and served to demonstrate that there is practically no branch of law which is so different in the various legal systems as the law of procedure, it being mainly a product of national history"). They thought it sufficient to require Contracting States to subject the recognition and enforcement of arbitral awards to no more stringent conditions than those applicable to the recognition and enforcement of local awards. See New York Convention, Art. III ("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.").

Thus, it is clear, not only from the terms of Article III ("rules of procedure") but also from its purpose, that the provision was concerned with the *how* of recognition and enforcement, not the *whether* of recognition and enforcement. The Convention itself determines *whether* an award creditor is entitled to recognition and enforcement of an award against an award debtor. All that the Convention left to the Contracting States through Article III was to determine *how* (*i.e.*, through what procedural means) that recognition and enforcement was to take place. See Park & Yanos, Treaty Obligations and National Law: Emerging Conflicts in International Arbitration, 58 Hastings L.J. 251, pp. 255-256 (2006) ("Contracting states certainly possess discretion with respect to minor ministerial matters, such as the amount of filing fees or rules about where enforcement motions

must be brought. However, no support exists for the proposition that the 'procedure where relied upon' language was intended to serve as a backdoor escape from recognition of legitimate foreign awards."); Int'l Commercial Disputes Comm., Assn. of the Bar of the City of N.Y., Lack of Jurisdiction and Forum *Non Conveniens* as Defenses to the Enforcement of Foreign Arbitral Awards, 15 Am. Rev. Int'l Arb. 407, p. 428 (2004) (noting the term "procedure" in Article III "contemplates application of national procedures only to 'recognize arbitral awards as binding and enforce them,' not to *deny* recognition and enforcement of arbitral awards").

In sum, the New York Convention would largely be deprived of its fundamental purpose if Contracting States were allowed to erect serious jurisdictional barriers to recognition and enforcement of foreign awards not contemplated by the Convention. Such would be the case if United States courts imposed on award creditors a requirement that award debtors be shown to have minimum contacts with the enforcement forum. That is a requirement that precious few award creditors can hope to satisfy.

CONCLUSION

For the foregoing reasons, the Court should reverse the court of appeal's decision and remand for further proceedings.

Respectfully submitted,

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APPENDIX

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APPENDIX A: FEDERAL ARBITATION ACT, CHAPTER 2

9 U.S.C. § 201 Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter [9 USCS §§ 201 et seq.].

9 U.S.C. § 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title [9 USCS § 2], falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

9 U.S.C. § 203. Jurisdiction; amount in controversy

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

regardless of the amount in controversy.

9 U.S.C. § 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title [9 USCS § 203] may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

9 U.S.C. § 205. Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title [9 USCS §§ 1 et seq.] any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

9 U.S.C. § 206. Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter [9

USCS §§ 201 et seq.] may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

9 U.S.C. § 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter [9 USCS §§ 201 et seq.] for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. § 208. Application

Chapter 1 [9 USCS §§ 1 et seq.] applies to actions and proceedings brought under this chapter [9 USCS §§ 201 et seq.] to the extent that chapter is not in conflict with this chapter [9 USCS §§ 201 et seq.] or the Convention as ratified by the United States. This chapter [9 USCS §§ 201 et seq.] applies to the extent that this chapter [9 USCS §§ 201 et seq.] is not in conflict with chapter 4 [9 USCS §§ 401 et seq.].

APPENDIX B: UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (NEW YORK, 10 JUNE 1958)

Article I

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

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

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

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any

differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

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

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

Article III

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

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly

certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

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

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

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

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those

not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

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

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

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

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

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

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (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 and 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.