Challenges in the Application and Enforcement of the New York Convention on International Arbitration Awards

Omoleke Muslim Olujide*

Abstract

Since the introduction of the New York Convention in 1958, the question of effectiveness and the accurate interpretation of its provisions have always been a subject of dispute across different jurisdictions of international law. This issue is mostly with respect to the internationally applicable principles on arbitration award. The consideration of the challenges and prospects of the New York Convention is important in the sense that it enhances the identification of the problems mitigating the effective enforcement of the convention and proffers ways by which international arbitration award can be more instrumental in the settlement of disputes, especially the ones commercial and international in nature. The study uses the doctrinal approach by evaluating relevant statutory instruments, including the New York Convention of 1958, as well as relevant academic works on the subject matter, in order to reach recommendations and measures of more effective practices. The article aims to explore the evolution of the Convention since its inception and how it has affected international arbitration awards. It also aims to address the limitations in enforcement mechanisms among the 159 contracting states. The overall findings of the work are to investigate how to ensure that countries engage in a more interactive trade setting with a decreased level of trade disputes.

KEYWORDS: Arbitration, New York Convention, Enforcement, Arbitral Awards, International Commercial Disputes.

* Omoleke Muslim Olujide, Bsc MBA, Mphil, LLB, BL, LL.M PhD, Department of Public and International Law, Faculty of Law, Federal University Oye-Ekiti, Oye-Ekiti, Ekiti State, Nigeria, Email: omolekeolujide@yahoo.com, Contact: 08036679440

1. Introduction

The enforcement of arbitral awards is important to the international arbitration system in order to ensure that the decision reached or judgement awarded is rooted with a force of global recognition. Hence, each of the parties to the dispute will be bound by such decisions and they will be jointly affected by the nature of such decisions subject to the circumstances of the case. It is true that without such enforcement, the award given by the arbitrator might be overlooked and appear to be a "toothless dog". This is because there is no force of implementation backing such award. The continued advocacy for a more enforceable approach of arbitral awards is important, mostly in respect to the fact that it increases the level of reliability as the decision becomes binding.

It also reduces the economic stress of engaging litigation in the settlement of trade dispute. Consequently, the absence of effective enforcement and interpretation will lead non-credibility of arbitration as an alternative mechanism in resolving disputes. Based on this perspective, the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is also known as the New York Convention, has been an international statutory instrument, providing a comprehensive legal framework for the administration of international dispute resolution among the over 160 contracting states in the world. Since its inception, the legal provision has been used in more than 2,000 court's decisions as at 2024.[1]

However, the implementation of the Convention has been both a mixture of issues and considerable achievements. Some of the issues encountered since over six decades of its institution include the struggle of conformity with the laws applicable in different jurisdictions of contracting states. What this means is that some of the states under the application of the Convention have issues with balancing the content of the Convention and their domestic laws, given some regulatory gaps. Arbitration awards require careful interpretation to ensure they are applied in accordance with the parties' intentions; hence, the need for accurate and consistent interpretation is not only a legal necessity but also a matter of fairness and justice.

[1] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) 330 UNTS 3s8 (the 'New York Convention').

Therefore, this study is premised on evaluating the New York Convention of 1958, by critically analyzing its effectiveness as well as its credible enforcement. The purpose of this is to highlight possible challenges which have offered major setbacks in regard to the overall implementation across the member state. It also provides possible prospects for future consideration. By addressing these questions, the study is necessary to contribute to the ongoing research on proffering measures to be adopted for ensuring fairness of the international arbitration system. Ensuring the Convention's consistent and effective application is vital for reinforcing arbitration's role as the bedrock of international dispute resolution.

2. Conceptual and Theoretical Framework

2.1 Conceptual Framework

2.1.1 What is Arbitration?

Arbitration is a private method of resolving dispute. It is a process by which parties agree to submit their conflicts to tribunal, rather than a national court. The Tribunal is usually non-bias and impartial in awarding its judgement. Another important characteristic of arbitration is that it is an alternative mechanism of resolving dispute between two parties. The agreement to apply the mechanism of arbitration is usually between both parties. The implication of this is that arbitration only arises when the parties themselves choose to include an arbitration clause in their contract or later agree to arbitrate a dispute. Furthermore, arbitration is flexible. This is evident in the fact that the governing law, the seat of arbitration, the arbitrators, and the applicable rules of procedure are not imposed on the parties, rather, the parties are allowed to decide. As a result of the above listed positive features, arbitration has been termed as the most effective process for resolving dispute involving states of different jurisdiction, most especially with respect to disputes that are commercial in nature.[2]

2.1.2 What is International Arbitration?

[2] University of Colorado Law School, 'New York Convention Banner' <https://guides-lawlibrary.colorado.edu/c.php?g=135718&p=10022333> accessed 1 June 2025.

International arbitration refers specifically to arbitration where the parties, the subject matter, or the transaction has a cross-border element. This means that the nature of trade agreement and subsequent dispute extended to two countries of different jurisdiction. The concept has grown significantly with the expansion of global trade and investment. Many Countries constantly maintain bilateral and unilateral relationship to generally develop and improve the economic and trade agreement between or among member states. Therefore, the parties and all procedures are allowed to be neutral in the application of arbitration. For instance, parties are provided with a neutral forum that avoids the risks of home-court advantage in domestic courts. In the same way, international arbitration also ensures that the arbitral process is not bound by one national legal system. The continued advancement for international arbitration is also premised on the relative ease with which awards can be enforced in foreign states under international treaties.[3]

2.1.3 What is an Arbitral Award?

An arbitral award can be referred to as the final decision rendered by an arbitral tribunal resolving the issues submitted by the parties. The award is usually binding and enforceable. What this means is that, the parties involved are under the obligation to carry out the decision and the judgement awarded. In a way, the decision of a court of arbitration maintains the same role as a judgment of a national court. Unlike interim or procedural orders, an award disposes of substantive claims or issues and represents the conclusive resolution of the dispute. Arbitral awards can take different forms which include;

a. final awards, which conclude all issues.

b. partial awards, which determine some issues while others remain pending.

c. interim awards, which address preliminary matters, and

[3] K Shonk, 'International Arbitration: What It Is and How It Works' (Program on Negotiation, Harvard Law School, 24 July 2025) <https://www.pon.harvard.edu/daily/international-negotiation-daily/international-arbitration-what-it-is-and-how-it-works/> accessed 1 June 2025.

d. consent awards, where the tribunal records a settlement agreed by the parties.[4]

One of the defining characteristics of an arbitral award is its finality. Hence, once delivered, it cannot normally be resolved again by the same tribunal, except for limited corrections or clarifications where applicable. It should be noted that only arbitral awards are eligible for recognition and enforcement under international treaties such as the New York Convention. In essence, arbitration and arbitral awards offer an internationally trusted alternative to court litigation. Parties agree to place their dispute in the hands of a neutral tribunal, and the resulting award is recognized as final and enforceable across all contracting jurisdiction.

The recognition and enforcement of foreign arbitral awards is governed primarily by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention stipulate the obligation for contracting states to recognize arbitral awards made in another state as binding and to enforce them under the same conditions as domestic awards. In other words, for an award to be recognized and enforced, the party applying must meet certain documentary requirements, as provided for. Some of the requirement include presenting the duly authenticated original award or a certified copy, and the original arbitration agreement or a certified copy. Where these documents are not in an official language of the state where enforcement is sought, a certified translation must also be provided.[5] As a matter of fact, the Convention does not create an imposition on the conformity of the statutory provisions. Consequently, the Convention also included certain exception allowing the refusal of the Convention's provision on certain grounds which are included under Article V.[6]

2.2 Theoretical Foundations of International Arbitration

2.2.1 Party autonomy

[4] F Baetens, 'Arbitral Award' in Max Planck Encyclopedias of International Law (April 2023) <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e1238.013.1238/law-mpeipro-e1238> accessed 1 June 2025.

[5] *New York Convention, art IV.*

[6] New York Convention, art V.

This is one of the most important principles in international arbitration. It allows parties to freely determine the framework within which their disputes will be resolved without any external interference. This freedom covers the choice of substantive law applicable to the contract, the procedural rules governing the arbitration, the seat of arbitration, the number and qualifications of arbitrators, the language of the proceedings, and even the arbitral institution that will administer the case. Arbitration is therefore different from litigation in the sense that the theory of party autonomy grants each party to have a say in the arbitration procedure. Hence, a single decision of one party without the consent or approval of the other will nullify the arbitral awards that may be consequently reached. The New York Convention strongly reflects party autonomy. For instance, Article II requires courts to recognize and enforce arbitration agreements chosen by the parties. This prevents one party from avoiding arbitration by resorting to litigation. Article V also protects party autonomy by allowing enforcement of awards to be refused if the arbitration agreement was invalid under the law chosen by the parties, or if the arbitral procedure was not in line with their agreement.[7]

2.2.2 *Pacta Sunt Servanda*

The principle of pacta sunt servanda means "agreements must be kept." This principle is a cornerstone of both contract law and international arbitration. It simply states that a party is not allowed to dishonor the terms of the agreement entered into. Consequently, all parties to a contractual agreement are expected not to deny the existence of their duties and obligations to the contract, as it is a binding agreement. In other words, they are obligated to honor its terms. In the context of arbitration, this theory reinforces the binding force of arbitration agreements and arbitral awards. Parties cannot escape their commitments by later denying the validity of the agreement or refusing to comply with an award. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) incorporate the principle of pacta sunt servanda. Again, Article II requires courts of contracting states to recognize arbitration agreements and refer disputes to arbitration unless the agreement is invalid, inoperative, or incapable of being performed. In the same way,

[7] D Papayannis, 'Independence, Impartiality and Neutrality in Legal Adjudication' (2016) 28 Revus 33, 35.

Article III obliges contracting states to recognize and enforce arbitral awards, ensuring that parties comply with the outcome of the process they consented to in advance.[8]

2.2.3 The Territorial Theory

The territorial theory in international arbitration is based on the idea that arbitration is closely tied to the legal system of the seat of arbitration. According to this approach, the arbitration is conducted under the authority of the law of the state where it takes place, and the courts of that state have supervisory powers over the arbitral process. This means that issues such as the appointment of arbitrators, the validity of the arbitration agreement, and the procedure followed are all determined by the law of the seat. The New York Convention reflects this approach in provisions such as Article V(1)(d) and Article V(1)(e),[9] which allow enforcement of awards to be refused if the arbitral procedure did not comply with the law of the country where the arbitration took place or if the award has been set aside by a competent authority in that country. The territorial theory therefore anchors the legitimacy of arbitral awards to the state where they were rendered. In contrast, the delocalization theory argues that international arbitration should not be tightly bound to the law of the seat. Proponents of this theory view arbitration as a process based primarily on the will of the parties and international norms, with minimal interference from national courts.

2.3 The Development of the New York Convention 1958

2.3.1 Early Development

The New York Convention of 1958 was not the first international instrument on the recognition and enforcement of arbitral agreements and awards. It was preceded by the 1923 Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards, both of which were adopted under the auspices of the League of Nations. These earlier instruments laid the foundation for international cooperation in arbitration but were

[8] R Hyland, '*Pacta Sunt Servanda*: A Meditation' (Trans-Lex.org) <https://www.trans-lex.org/124500> accessed 1 June 2025.

[9] *New York Convention, arts V(1)(d) and V(1)(e).*

eventually regarded as inadequate in meeting the needs of a rapidly expanding system of international commerce. The New York Convention was therefore introduced to replace and improve upon them, creating a more effective and uniform enforcement framework.[10] The 1923 Geneva Protocol on Arbitration Clauses and the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards represented the first coordinated international efforts to create a legal framework for the recognition and enforcement of arbitral agreements and awards across national borders.

The 1923 Protocol primarily addressed the validity and enforceability of arbitration agreements. It also provided that contracting states must recognize and give effect to arbitration clauses in commercial contracts involving parties from different jurisdictions. It further highlighted the autonomy of parties to choose arbitration as a dispute resolution method and obligated national courts to refer disputes to arbitration when a valid arbitration clause existed. However, the Protocol focused mainly on the agreement to arbitrate and did not provide comprehensive provisions for the enforcement of arbitral awards themselves. Its implementation was limited by states' ability to make reservations, such as restricting its application to commercial contracts, and by procedural diversity across jurisdictions.[11]

On the other hand, the 1927 Geneva Convention expanded on the 1923 Protocol by addressing the recognition and enforcement of foreign arbitral awards. It established the procedural requirements and substantive conditions under which an award made in one contracting state could be recognized and enforced in another. However, its framework was criticized for being overly complex and restrictive. For instance, it required proof that the award was final in the country of origin, meaning it could not be appealed, and also allowed national courts to review the merits indirectly under broad grounds such as public policy. Additionally, enforcement was limited to awards made pursuant to the 1923 Protocol. This has continued to exclude awards

[10] UNCITRAL, 'History 1923–1958: The New York Convention' <https://www.newyorkconvention.org/texte/travaux-preparatoires/history-1923-1958> accessed 1 June 2025.

[11] Indian Institute of Arbitration and Mediation, 'Geneva Protocol 1923' <https://www.arbitrationindia.com/geneva_protocol_1923.html> accessed 1 June 2025.

from noncontracting states. These limitations often frustrate parties seeking proper enforcement, because domestic courts retain significant discretion to deny recognition. The difficulties experienced under these two Geneva instruments exposed the need for a more streamlined, universal, and less restrictive regulation. This culminates in the development of the 1958 New York Convention.[12]

Article VII (2) of the New York Convention explicitly recognizes this historical continuity by stating that the Geneva Protocol of 1923 and the Geneva Convention of 1927 would cease to have effect between contracting states once they became bound by the New York Convention.[13] This ensured a smooth transition from the earlier framework to the more efficient and globally recognized system under the 1958 Convention. Today, the New York Convention has become the cornerstone of international arbitration, while the Geneva Conventions are of largely historical significance, for its contribution in paving the way toward international recognition of arbitration agreements and awards.

3. Effectiveness and Interpretation of the New York Convention

3.1 Effectiveness of the 1958 Convention

Since its adoption in 1958, the Convention has been ratified by more than 170 countries, making it one of the most successful multilateral treaties in existence. This widespread acceptance means that parties to international contracts can rely on a uniform framework for the recognition and enforcement of arbitral awards almost anywhere in the world. The Convention has therefore created a global legal infrastructure that supports international trade and investment by ensuring that arbitration agreements and awards are respected across diverse jurisdictions. There are three outstanding features which distinguished the applicability of the convention, and they include;

i. Pro-enforcement bias
ii. Narrow interpretation of the grounds for refusal
iii. Exclusive grounds for refusal.

---

[12] Geneva Convention 1927 – Convention on the Execution of Foreign Arbitral Awards (Trans-Lex.org) <https://www.trans-lex.org/511400> accessed 1 June 2025.

[13] *New York Convention, art VII(2).*

These characteristics have been widely accepted across different jurisdictions, and they form the foundation of the preparatory work of the 1958 Convention and many other UNCITRAL works. Some national courts have, however, failed to give effect to the principle. This is because one of the key features in interpreting any international convention is that it should be interpreted in light of its object and purpose. The purpose of the New York Convention is to facilitate harmony. It also aims to "unify the standards by which arbitral awards are enforced in the signatory countries."[14]

Prior to the coming of the New York Convention, earlier regulations for the administration of arbitration, such as the Geneva Convention, entail diverse ambiguous requirements, which make it impossible to grasp the interpretation of the law effectively. On the other hand, New York changed the perspective by setting out clear rules under Articles III, IV, and V of the Convention. These provisions established uniform conditions for recognition and enforcement. It further limits the grounds on which enforcement may be refused.[15] The New York Convention abolished double exequatur, the requirement that an arbitral award be approved by both the country issuing the award and the country seeking enforcement. This is considered an obsolete practice under the Geneva Convention; hence, the replacement.

Another key measure of effectiveness is the Convention's success in reducing judicial hostility to foreign awards. In the past, many national courts were reluctant to enforce arbitral awards made abroad, often invoking public policy or procedural grounds to resist enforcement. The New York Convention reversed this trend by creating a pro-enforcement system. The enforcement of Foreign Arbitral Awards has gained more flexibility and acceptance among UN member states. In accordance with Article 1, this Convention is applicable in a State

[14] HSF Kamer, '60 Years of the New York Convention: A Triumph of Trans-national Legal Co-operation, or a Product of its Time and in Need of Revision?' (27 July 2018) <https://www.hsfkamer.com/insights/2018-07/60-years-of-the-new-york-convention> accessed 1 June 2025.

[15] TA Olowu, 'Enforcement of Arbitral Awards under the New York Convention' (RH Manda & Associates, 2 June 2025) <https://www.rhmandasosociates.com/enforcement-of-arbitral-awards-under-the-new-york-convention> accessed 5 June 2025.

other than the State where the recognition and enforcement of such awards are sought, or to arbitral awards not considered to be domestic awards. Therefore, the scope of the application of this Convention depends on what the notions of "arbitrator's award" and "foreign arbitration award" are, because these two notions can determine which awards should be executed under the rules of the Convention and gain its benefits. It gave an obligation to contracting states to recognize awards as binding and enforce them with only narrow exceptions. Judicial practice in many jurisdictions now reflects this shift, as courts interpret the Convention in favor of enforcement and apply the refusal grounds restrictively.[16]

3.2 Interpretation of Core Provisions

3.2.1 Article I

Article I clarifies that the Convention applies to the recognition and enforcement of arbitral awards made in a State other than the one where enforcement is sought. It also covers awards that are not considered domestic in the enforcing State. This means the Convention governs "foreign" awards, whether made by ad hoc tribunals or permanent arbitral institutions. States may, upon signing or ratifying, make two reservations, which include;

i. the reciprocity reservation (limiting enforcement to awards from other Contracting States) and
ii. the commercial reservation (limiting enforcement to commercial disputes). For instance, the United States adopted both reservations, restricting application to commercial disputes arising from other Contracting States. The provision ensures clarity on the reach of the Convention while preserving State discretion.[17]

3.2.2 Article II

[16] GA Bermann, 'Recognition and Enforcement of Foreign Arbitral Awards: The Interpretation and Application of the New York Convention by National Courts' in GA Bermann (ed), Recognition and Enforcement of Foreign Arbitral Awards (Ius Comparatum, vol 23, Springer 2017).

[17] UNCITRAL, New York Convention Guide: Article I <https://www.newyorkconvention1958.org/index.php?lvl=cmspage&menu=691&opac_view=-1> accessed 1 June 2025.

Article II requires Contracting States to recognize written agreements by which parties commit to submit disputes to arbitration. Such agreements can be arbitration clauses within contracts or separate arbitration agreements, and can even be established through written correspondence such as letters or telegrams. Importantly, if a court is seized of a dispute covered by such an agreement, it must refer the parties to arbitration unless the agreement is invalid, inoperative, or incapable of being performed.[18] This enshrines the principle of party autonomy by compelling courts to respect arbitration agreements.

A notable example is the U.S. Supreme Court decision in *Mitsubishi Motors Corp. v Soler Chrysler-Plymouth, Inc. (1985),*[19] where the Court held that the antitrust claims raised by Soler Chrysler-Plymouth, Inc. were subject to arbitration under the Federal Arbitration Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Court emphasized that there is no presumption against the arbitration of statutory claims, including those under the Sherman Act. It reasoned that principles of international comity and the need for predictability in international commerce favor enforcing arbitration clauses in transnational agreements. The Court rejected arguments that antitrust issues are too complex for arbitration or that arbitration would undermine public policy. Accordingly, it ruled that the arbitration clause must be enforced. The decision affirmed in part, reversed in part, and remanded the case for further proceedings.

3.2.3 Articles III and IV

Article III obliges States to recognize arbitral awards as binding and enforce them in accordance with local procedural rules, while prohibiting discrimination against foreign awards by imposing more onerous conditions than those applicable to domestic awards. Article IV prescribes that the enforcing party must provide the duly authenticated award and the arbitration agreement, or certified copies, along with translations if required. Courts typically enforce these requirements in a pragmatic way to avoid unnecessary barriers.[20] For

[18] *UNCITRAL, New York Convention Guide: Article II <https://www.newyork convention1958.org> accessed 1 June 2025.*

[19] *Mitsubishi Motors Corp v Soler Chrysler-Plymouth Inc 473 US 614 (1985).*

[20] WIPO, 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards'<https://www.wipo.int/amc/en/arbitration/ny-convention/text.html> accessed 1 June 2025.

instance, the enforcement of arbitral awards under Article IV of the New York Convention, as incorporated in sections 100–103 of the Arbitration Act 1996 in England, requires the production of duly authenticated originals or certified copies of both the award and the arbitration agreement. The English Court of Appeal in *Lombard-Knight v Rainstorm Pictures Inc*[21] clarified that certification should be interpreted pragmatically to facilitate enforcement rather than hinder it. This reflects the Convention's pro-enforcement bias, ensuring that procedural formalities do not obstruct justice. English courts, therefore, adopt a flexible approach, accepting reasonable evidence of authenticity. This interpretation aligns with Article IV's intent to simplify rather than complicate recognition of arbitral awards.[22]

3.2.4 Article V

Article V provides the limited grounds upon which recognition or enforcement may be refused. Under Article V (1), the resisting party must prove specific defects such as invalidity of the arbitration agreement, lack of proper notice, inability to present its case, the tribunal exceeding its mandate, improper procedure, or that the award has not become binding or has been annulled at the seat of arbitration. Under Article V (2), refusal may also be based on non-arbitrability of the subject matter or if enforcement would violate the public policy of the enforcing State. Courts interpret these grounds narrowly.[23] For example, in *Parsons & Whittemore Overseas Co. v Societe Generale,*[24] The U.S. Court of Appeals for the Second Circuit affirmed the enforcement of a foreign arbitral award, holding that none of the defenses under Article V of the New York Convention were applicable. The court emphasized that the public policy exception in Article V (2) (b) must be construed narrowly and cannot be used merely because enforcement would offend domestic interests. It found that the arbitral process met procedural fairness and due notice

[21] *Lombard-Knight v Rainstorm Pictures Inc [2014] EWCA Civ 356.*

[22] N Querée, 'A Certifiable Point? Enforcement of Arbitral Awards under Article IV of the New York Convention and Section 102 of the Arbitration Act 1996' (Kluwer Arbitration Blog, 8 July 2014) <https://www.legalblogs.wolterskluwer.com/arbitration-blog/a-certifiable-point> accessed 1 June 2025.

[23] S Fries and others, 'Grounds to Refuse Enforcement' in Global Arbitration Review (4th edn, Kellerhals Carrard 2025).

[24] *Parsons and Whittemore Overseas Co Inc v Societe Generale de L'Industrie du Papier* (RAKTA) 508 F 2d 969 (2nd Cir 1974).

requirements. Thus, the decision reinforced the Convention's pro-enforcement bias by strictly limiting the grounds for refusal under Article V.

3.2.5 Article VI

Article VI allows courts to adjourn enforcement proceedings if an award is being challenged in the country of origin. The enforcing court may also order security from the party resisting enforcement. This provision balances deference to the courts at the seat of arbitration with the need to avoid indefinite delays. For instance, courts in Switzerland have occasionally adjourned proceedings pending annulment applications abroad but typically impose strict conditions, such as requiring security, to prevent abuse.

3.2.6 Article VII

Article VII ensures that the Convention does not override more favourable rules available under national law or other treaties. This means parties may rely on domestic laws that provide easier enforcement mechanisms. The French Code of Civil Procedure, particularly Articles 1480 to 1504, reflects the flexibility promoted under Article VII of the New York Convention, which allows reliance on more favourable domestic laws for enforcement. In France, courts often apply these national provisions to uphold the validity and enforceability of arbitral awards, even when strict international formalities are not met or when an award has been annulled at the seat of arbitration. The procedural rules requiring written form, reasons, and signatures ensure transparency but do not prevent enforcement where substantial compliance exists, particularly in international arbitration. This demonstrates France's pro-arbitration stance, aligning with Article VII by providing broader rights and enforcement pathways beyond the Convention's minimum standards.[25]

4. Challenges in the Application of the New York Convention

4.1 Varying Interpretations of "Public Policy"

The Convention allows courts to refuse recognition or enforcement of an arbitral award if doing so would be contrary to the public policy of the enforcing State. However, the term "public policy" is not defined

[25] C Seraglini and Q Herruel, 'Challenging and Enforcing Arbitration Awards: France' in Global Arbitration Review (Freshfields, May 2025).

in the Convention, leaving room for states to interpret it in ways that reflect their own legal traditions, moral values, and political considerations. This lack of uniformity has led to divergent judicial approaches, creating uncertainty for parties seeking enforcement across multiple jurisdictions.

In some jurisdictions, courts interpret public policy narrowly, applying it only to cases where enforcement would clearly violate the fundamental principles of justice and morality. The United States, for example, in *Parsons & Whittemore Overseas Co. v. Societe Generale* (1974),[26] emphasized that the public policy exception should be invoked only in cases where enforcement would be contrary to the nation's most basic notions of morality and justice. Also, in the case of *Resort Condominiums v Bolwell*,[27] the Queensland Supreme Court found that enforcement of an award would violate public policy for three distinct reasons:

(a) the orders issued by the arbitrators were too vague and far-reaching to permit enforcement,
(b) the orders were not of the sort that a court in that jurisdiction would make, and
(c) the orders were duplicative of those already issued by a U.S. court in respect of the same subject matter.

4.2 Reservations Limiting the Scope of Application

When ratifying the New York Convention, several states introduced reservations that narrow its application and challenge its goal of universal enforcement. The most significant of these is the reciprocity reservation under Article I (3), which limits enforcement to awards rendered in the territory of another contracting state. Although initially intended to protect national sovereignty, this reservation has restricted the Convention's global reach and introduced uncertainty, as some states apply it inconsistently or without formal declarations. Surveys by UNCITRAL have revealed confusion regarding its existence and effect, with courts in certain jurisdictions refusing enforcement based on perceived lack of reciprocity. While the commercial reservation has been less controversial, its varied interpretation across jurisdictions

[26] *Parsons and Whittemore Overseas Co Inc v Societe Generale* (n 24).
[27] *Resort Condominiums v Bolwell (1993) 118 ALR 655.*

continues to affect uniformity. Despite the gradual withdrawal of reciprocity reservations and the growing irrelevance of awards from non-contracting states, national courts remain divided in their approach. Consequently, these reservations, especially reciprocity, continue to pose practical and conceptual barriers to the Convention's objective of ensuring a consistent and predictable international regime for arbitral award enforcement.[28]

4.3 Restrictive Stance of the Enforcing Jurisdiction

The enforcement of cross-border arbitral awards under the New York Convention often depends on the attitude of the courts in the enforcing country. In several jurisdictions especially those with less developed legal systems or where national interests take precedence, courts display a cautious or conservative approach toward recognizing foreign arbitral awards. This conservatism may not be overt but is reflected in procedural requirements, such as demanding extensive translations of arbitral awards into the local language and insisting on notarized or sworn certifications. Though seemingly administrative, such measures frequently cause prolonged delays in enforcement. The effects are most severe for small and medium-sized enterprises, which often lack the resources and legal expertise to handle complex international enforcement processes. Misled by an overestimation of the Convention's straightforwardness, these entities encounter unforeseen procedural barriers, leading to additional costs, delays, and operational disruptions that diminish the practical effectiveness of the New York Convention.[29]

4.4 Divergent National Interests

One of the major challenges impeding the effective implementation of the 1958 New York Convention is the divergence of national interests among signatory states. Many countries, while formally acceding to the Convention, remain reluctant to fully align their domestic legal systems with its requirements, often prioritizing national sovereignty

[28] C Furner, 'Uncertainty Regarding the Existence and Future of the Reciprocity Reservation Under the New York Convention' Newsletter – TerraLex Connections (LALIVE, 2024) <https://www.lalive.law/wp-content/uploads/2024/05/Terralex_Connections.pdf> accessed 1 June 2025.

[29] Z Yang, 'The Challenges of the New York Convention and Potential Solutions' (2024) 39 Journal of Education, Humanities and Social Sciences (EMSS) 34, 36.

and domestic policy considerations over international obligations. This tendency to safeguard national autonomy frequently leads to selective enforcement or restrictive interpretations of the Convention's provisions. The problem is compounded by variations in legal systems and judicial practices, which result in inconsistent recognition and enforcement of arbitral awards across jurisdictions. For instance, the Supreme Court of Indonesia in the case of *PT Nizwar v Navigation Maritime Bulgars Varna*[30] ruled that the courts could not apply the New York Convention to enforce a foreign arbitral award because Indonesia had never statutorily implemented the Convention. Subsequently, the Supreme Court issued Regulation 1 of 1990, requiring recognition and enforcement of foreign awards pursuant to bilateral or multilateral conventions. The legislature thereafter enacted Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Consequently, these intertwined factors rooted in divergent national interests continue to obstruct the Convention's goal of establishing a uniform and reliable global framework for the recognition and enforcement of foreign arbitral awards.[31]

4.5 Delays and Bureaucratic Barriers in Enforcement

Although the Convention was designed to streamline enforcement, practical barriers such as lengthy judicial proceedings, high filing fees, and bureaucratic requirements continue to frustrate parties. In certain jurisdictions, enforcement actions may take years, effectively undermining the efficiency advantage of arbitration. These delays not only erode confidence in the arbitral process but also impose high costs on parties, especially small and medium enterprises involved in cross-border trade. The bureaucracy surrounding enforcement undermines the spirit of the Convention, which envisaged a speedy and efficient recognition process.

4.6 Judicial Inefficiencies

The effectiveness of enforcing arbitral awards is significantly undermined by structural weaknesses in national judicial systems, including corruption, poor infrastructure, and procedural backlogs. For

[30] *PT Nizwar v Navigation Maritime Bulgars Varna, Case No 2944 K/Pdt/1983 (Supreme Court of Indonesia, 1984).*

[31] International Law Editorial, 'Understanding International Conventions: Framework and Impact' (World Jurisprudence, 4 April 2024) <https://world jurisprudence.com/international-conventions/> accessed 1 June 2025.

instance, according to the World Bank's 2020 Doing Business Report, it takes an average of 816 days, almost three years to enforce a contract in El Salvador, ranking the country 91st out of 190 economies.[32] Although this ranking may appear moderate and was even cited in the U.S. Department of State's 2021 Investment Climate Statements[33] as indicative of a fair business climate, the lengthy enforcement period poses serious challenges for investors who may experience financial strain and reduced liquidity while awaiting resolution. Vietnam presents a similar case. Despite being considered a major investment destination due to its economic growth and demographic potential, the Doing Business Report ranks Vietnam 70th globally, with an average contract enforcement period of about 400 days.[34] Although this is comparatively shorter, a delay of more than a year still hampers business efficiency and confidence. These situations highlight a broader pattern across many jurisdictions where judicial inefficiency and corruption diminish trust in the arbitration enforcement system established by the New York Convention. As a result, enforcement procedures become delayed, unpredictable, and occasionally biased, eroding investor confidence and weakening the overall integrity of the international arbitration framework.[35]

5. Prospects for Strengthening the New York Convention

5.1 Establishment of an International Bureau

One major prospect for the improvement of the New York Convention is the creation of a centralized international bureau for the submission and processing of arbitral award enforcement applications. Drawing inspiration from the Madrid System administered by the World Intellectual Property Organization (WIPO), such a bureau would serve as an intermediary between applicants and national enforcement authorities. Under the current system, enforcement of arbitral awards across jurisdictions often involves costly and time-consuming

[32] World Bank, Doing Business 2020: Comparing Business Regulation in 190 Economies (World Bank Group 2020) <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/688761571934946384> accessed 1 June 2025.

[33] US Department of State, 2021 Investment Climate Statements (US Department of State 2021) <https://www.state.gov/reports/2021-investment-climate-statements/> accessed 1 June 2025.

[34] World Bank (n 32).

[35] Z Yang (n 29) 38.

legalizations, such as notarization, apostille certifications, and consular verifications. A centralized bureau would streamline this process by allowing applications to be filed once through the applicant's national authority, which would then forward them to the international bureau. The bureau, in turn, would verify and coordinate with enforcement agencies in the target country. This reform would drastically reduce procedural duplication, delays, and financial burdens, thereby promoting a more uniform and efficient enforcement mechanism under the New York Convention.[36]

5.2 Adoption of a Unified Language System

Another proposed solution is the introduction of a single or limited number of official languages for filing enforcement applications. The Madrid System currently allows trademark applications to be submitted in one language usually English or French thereby reducing translation expenses and potential errors. Similarly, under the New York Convention, the enforcement of arbitral awards frequently requires the translation of voluminous documents into the local language of the enforcing state, significantly increasing costs and time. Adopting a unified language approach would simplify and standardize the process, minimize translation-related discrepancies, and enhance accessibility, especially for smaller businesses and individual claimants involved in international arbitration. It would also foster a more cohesive interpretation of arbitral awards across diverse legal systems.[37]

5.3 Development of an Online Legal Resource Repository

A third key prospect is the creation of a comprehensive online legal resource base dedicated to international arbitration enforcement. This would mirror the WIPO's global database for trademark laws and regulations under the Madrid System. Such a repository, possibly hosted under the United Nations Commission on International Trade Law (UNCITRAL) or another international body, would provide easy access to arbitration laws, enforcement procedures, judicial precedents, and related regulations in multiple languages. This transparency would be invaluable for legal practitioners, businesses, and enforcement officials. It would also close the knowledge gap that often hinders

[36] Z Yang (n 29) 39.
[37] *ibid*.

effective enforcement, particularly for smaller firms unfamiliar with foreign legal systems. Consequently, it would promote consistency, fairness, and predictability in the application of the New York Convention worldwide.[38]

5.4 Integration of Mechanisms from the Brussels Regulations

The Brussels Regulations (EU Regulation No. 1215/2012) offer another significant measure for reform. These regulations allow for the direct enforcement of judgments between member states without requiring a declaration of enforceability. Applying a similar mechanism within the New York Convention could simplify and expedite the enforcement of arbitral awards among contracting states. This model emphasizes procedural efficiency by eliminating redundant court proceedings and facilitating automatic recognition of awards across borders. Additionally, the Brussels Regulations' provision for protective measures which allows states to enforce awards in line with their domestic legal frameworks can be adopted to maintain respect for national sovereignty. This balance between harmonization and flexibility could strengthen trust among member states while ensuring uniformity in enforcement outcomes.

5.5 Promotion of Flexible Implementation Mechanisms

A further critical solution involves enhancing mutual trust and cooperation among member states. The success of bilateral and multilateral treaties, such as those governing mutual legal assistance, depends on a shared sense of reliability and legal reciprocity. For the New York Convention to achieve similar efficiency, member states must commit to transparent, consistent, and predictable enforcement practices. To accomplish this, the Convention could include provisions for gradual implementation, allowing states to opt in or reserve participation in certain procedural reforms. A transition period could be established to enable domestic legal systems to align with new standards without undermining sovereignty. This measured and inclusive approach would encourage broader participation and foster confidence in the Convention's reform, ultimately improving cross-border cooperation and reducing resistance from jurisdictions with differing legal traditions.[39]

[38] *ibid*
[39] ibid

6. Conclusion

The New York Convention remains the foundation for ensuring that international law becomes more recognized and practicable in inter-country commercial and trade relationships. It should, however, be noted that the continued success of the Convention lies in a more effective interpretation and implementation of the Convention. The arbitral award and decision of the tribunal must maintain the force of law, such that any of the Parties will not be permitted to deny or elude the existence of their obligations. In the same way, the court should also recognize and apply such decisions. As stated in the article, the challenges to mitigating the success of enforcement should be critically resolved by the consideration of necessary recommendations as discussed. Overall, the recognition of the Convention as a relevant international instrument in the settlement of trade disputes will subsequently result in the accurate dispensation of Justice across jurisdictions.

It is recommended that Countries should not just sign and ratify the New York Convention. They must take cogent measures to ensure that the provisions of the Convention are fully implemented through the application of proper enforcement mechanisms where there is non-compliance. National or domestic laws should be amended or enacted in a way that will entrench the principles in the 1958 New York Convention. When the principles of the Convention are entrenched into the legal system, it becomes more possible to ensure the more effective synchronization of the Convention with domestic laws.

In order to ensure a proper administration of international arbitration, the government should ensure to facilitate an extensive capacity development for relevant stakeholders including the judges, lawyers, and court officials. The purpose of this initiative is to ensure that the judicial officers are more enlightened and grounded on how the Convention works and how it can be used more effectively. Similarly, there should be a public awareness on the relevance of arbitration as one of the effective mechanisms for the settlement of dispute. The awareness should clarify the doubts on arbitration and establish it advantages as an alternative to litigation.

The establishment of courts with specialization in the area of foreign arbitral awards can also go a long way in resolving the issues associated with the implementation of the Convention. Hence, these specialized courts will have the freedom and expertise necessary to preside and decide on arbitral cases. This will prevent the probability of bias and enable the consistency of applicable principles. Aside from entrenching the principles of the Convention into their national laws, Countries should also consider inculcating the practice of arbitration into their legal system. It is when arbitration has been recognized that the principle in the Convention can be applied. The end result of this is that there will be a faster and easier arbitration process.

Business people in the private sectors, investors, and legal practitioners should also be enlightened on the benefits of applying the procedures of enforcing arbitral awards under the 1958 New York Convention. In the same way, countries should ensure that they build good relationship and collaboration with international organizations such as UNCITRAL and the World Bank Group. This will endeavour the assistance of such organisations in providing the facilities or expertise needed. It can also assist developing countries to develop implementation plans and to further strengthen their judicial enforcement capacity.

States should ensure that judges interpret the Convention in good faith, through proper checks and balances and without protectionist bias. This will ensure that the judicial officials do not act in excess of their power, by favouring one party at the unjustifiable interest of the other party. Incorporating arbitration and the Convention's principles into university and judicial training curricula can foster long-term institutional understanding and sustainability. Governments could undertake periodic assessments to identify challenges in the enforcement of foreign arbitral awards and to evaluate judicial compliance with the Convention's obligations.