THE ANATOMY OF INTERNATIONAL ARBITRATION

Edited by
Anna Petrig and Yarik Kryvoi

ROUTLEDGE

‘Anna Petrig and Yarik Kryvoi’s *The Anatomy of International Arbitration* is an invaluable contribution to the literature and deserves a place on the desk of all those involved in any form of international arbitration.’

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The Anatomy of International Arbitration

This book offers a clear and intellectually rigorous gateway into international arbitration. The book's original 'anatomical' approach dissects arbitration into its core components to show how this dispute resolution system operates in practice.

The book begins with cross-cutting issues such as sources of law and soft law, institutional and ad hoc arbitration, diversity, digitalisation, review mechanisms, and the enforcement of awards. It then examines eleven arbitration mechanisms, illustrating the diversity of arbitral frameworks—from inter-State, investor-State, and commercial arbitration to specialised areas including maritime, commodities, intellectual property, sports, and business and human rights arbitration. Each arbitration mechanisms chapter covers jurisdiction, procedure, adjudicators, applicable law, review, and the relationship with domestic and international courts.

Written by leading practitioners, academics, and arbitral institutions figures, the volume serves as both an accessible entry point and a comparative resource for scholars, practitioners, and policy-makers.

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Bernd Ehle

1. Introduction

The enforcement of arbitral awards is a cornerstone of the arbitration process. It ensures that the binding decisions made by arbitrators are not merely symbolic, but have practical, enforceable consequences. The prevailing party in an arbitration seeks not only a favourable decision, but also wants to ensure that the award can be recognized and effectively enforced across different jurisdictions if the losing party does not voluntarily comply with it. Without robust enforcement mechanisms, the credibility and utility of arbitration as a reliable and effective method of resolving disputes would be significantly undermined, thereby discouraging parties from choosing this form of dispute resolution.

This chapter provides an overview of the enforcement of arbitral awards, starting with an understanding of their nature, characteristics, and the legal frameworks governing enforcement under national laws. It further explores the various types of arbitral awards, mainly stemming from commercial and investor-state arbitration,[1] including monetary, non-monetary, and interim awards. The chapter then delves into mechanisms for enforcement, detailing domestic enforcement procedures, court proceedings, and international enforcement through instruments like the New York Convention[2] and various regional conventions. The chapter highlights differences in enforcement procedures along with challenges in cross-border enforcement and examines the enforcement of awards against sovereign States, focusing on State immunity and specific provisions under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).[3] It further discusses practical considerations for enforcement,

1 It should be noted that enforcement of awards in inter-State proceedings and law of the sea arbitrations operates differently due to the involvement of two sovereign States and the unique nature of these awards, which are often non-monetary. For an in-depth analysis of enforcement mechanisms specific to these types of awards, refer to Doe, 'Inter-State Arbitration', this volume, and Petrig, 'Law of the Sea Arbitration', this volume.

2 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

3 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159 (ICSID Convention).

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including drafting arbitration clauses, selecting the arbitration seat, asset tracing, and ensuring compliance with formal requirements for an enforceable award. The chapter concludes by looking at future trends and developments concerning the enforcement of international arbitral awards.[4]

2. Understanding Arbitral Awards

2.1. Nature and Characteristics

Arbitral awards mark the conclusion of the arbitration process, embodying the final and binding decisions issued by an arbitral tribunal following a thorough evaluation of the evidence and arguments presented by the parties. Far from being mere recommendations, these awards carry the same legal force as court judgments and are enforceable accordingly. As such, the parties are legally obliged to comply with the terms of the award. Non-compliance may trigger enforcement proceedings, thereby ensuring that the dispute resolution achieved through arbitration is upheld and implemented.[5]

2.2. Legal Framework

The enforceability of arbitral awards relies heavily on the legal frameworks that govern arbitration both nationally and internationally. These frameworks establish the rules and standards by which arbitral awards are recognized and enforced, ensuring consistency and reliability in their application.

National laws play an essential role in the enforcement of arbitral awards, with each country establishing its own regulations that determine how both domestic and international awards are treated within its jurisdiction. For instance, Switzerland applies Chapter 12 Swiss Private International Law Act (PILA)[6] to international arbitration and Part 3 Swiss Civil Procedure Code[7] to domestic arbitration. Many national laws are modelled on the UNCITRAL Model Law on International Commercial Arbitration,[8] which serves as a framework for countries to adopt or adapt when crafting their arbitration legislation. These national laws aim to grant arbitral awards the same level of authority and enforceability as court judgments,

4 Challenges to arbitral awards and grounds for challenge such as lack of due process or violation of public policy are outside the scope of this chapter on the enforcement of arbitral awards. They are covered in Kryvoi, 'Investor-State Arbitration', this volume; and in Reinisch, 'Review Mechanisms in International Arbitration', this volume.

5 Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) para 22.01 [A].

6 Federal Act on Private International Law of 18 December 1987 (PILA).

7 Swiss Civil Procedure Code of 19 December 2008.

8 United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006 <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf> accessed 29 July 2025 (UNCITRAL Model Law).

provided the awards meet certain criteria, such as adherence to due process and non-violation of public policy requirements.[9]

The international enforceability of arbitral awards is primarily governed by international conventions, the most significant of which is the New York Convention. This Convention, to which over 170 States are parties,[10] creates a uniform legal framework for the recognition and enforcement of arbitral awards across borders.

Under the New York Convention, Contracting States are required to give effect to an agreement to arbitrate when seized of a claim in a matter covered by an arbitration agreement and to recognize and enforce arbitral awards made in other Contracting States, subject to limited exceptions such as the award being contrary to public policy or the arbitration agreement being invalid. The New York Convention has been instrumental in promoting international arbitration by providing a reliable mechanism for cross-border enforcement of arbitral awards, thereby enhancing their credibility and attractiveness for transnational business.[11]

2.3. Types of Arbitral Awards

Arbitral awards can be classified into various types, depending on the nature of the relief granted. Understanding these types is essential for appreciating the scope of available enforcement measures.

Monetary awards are the most common type of arbitral awards and involve the payment of a specific sum of money from one party to another. These awards typically arise in disputes where financial compensation is sought for breaches of contract, damages, or other financial claims. The enforceability of monetary awards is critical as it directly impacts the financial interests of the parties involved. Courts in States that have joined the New York Convention are generally obliged to recognize and enforce these awards, provided they comply with the Convention's requirements.

Non-monetary awards encompass orders for specific performance, injunctions, or declaratory relief, requiring a party to perform certain actions or refrain from specific activities rather than paying a sum of money. For example, an arbitral tribunal might direct a party to deliver goods, transfer property, or cease infringing on intellectual property (IP) rights. In inter-State arbitration, non-monetary awards can order the delimitation of disputed boundaries or declare that a State has materially breached its obligations. Enforcing non-monetary awards is often more

9 For a more detailed analysis of enforcement regimes under national laws, Julian Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 687–732.

10 A current list of the Contracting States can be found on the website of the New York Convention <www.newyorkconvention.org/contracting-states/contracting-states> accessed 29 July 2025.

11 Christoph Liebscher, 'Preliminary Remarks' in Reinmar Wolff (ed), *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Article-by-Article Commentary* (2nd edn, Beck, Hart and Nomos 2019) 1–24 paras 18–20a.

complex than enforcing monetary awards as it may require ongoing supervision or involve actions that are difficult to quantify and enforce across jurisdictions.[12]

2.4. Interim Awards

Interim awards, also known as provisional or interlocutory awards, are temporary measures issued by arbitral tribunals during the arbitration process to preserve the *status quo*, prevent harm, or ensure that the eventual award can be enforced effectively.[13] These may include orders for interim relief such as freezing assets, preserving evidence, granting temporary injunctions, or requiring the release of a vessel (e.g., in the context of the law of the sea arbitration).[14] The enforceability of interim awards varies by jurisdiction, with some national laws and courts being more receptive to enforcing such measures than others.[15]

3. Mechanisms for Enforcement

This section explores the mechanisms for enforcing arbitral awards, both domestically and internationally. Understanding these mechanisms, including the grounds for refusal and the procedural nuances, is crucial for effectively navigating the enforcement landscape and upholding the integrity of the arbitration process.

3.1. Domestic Enforcement Procedures

Domestic enforcement procedures are relevant for the implementation of arbitral awards within a country's borders. These procedures are generally governed by national laws that establish the framework for recognizing and enforcing such awards.[16]

In most jurisdictions, the enforcement of arbitral awards involves court proceedings. The party seeking enforcement must apply to a court with appropriate jurisdiction, presenting the arbitral award and any necessary documentation, such as the arbitration agreement. The court then examines whether the award meets the

12 For a more detailed analysis of non-monetary awards, see Michael Schneider, 'Non-Monetary Relief in International Arbitration: Principles and Arbitration Practice' in Michael Schneider and Joachim Knoll (eds), *Performance as a Remedy: Non-Monetary Relief in International Arbitration* (Juris 2011) 3–48.

13 For a more detailed analysis of provisional measures, including in the inter-State context, see Cameron Miles, *Provisional Measures Before International Courts and Tribunals* (Cambridge University Press 2017).

14 For more information on provisional measures in the law of the sea context, see Petrig, 'Law of the Sea Arbitration', this volume.

15 For a more detailed analysis of different types of arbitral awards, see Nigel Blackaby, Constantine Partasides and Alan Redfern, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2022) paras 9.19–9.101.

16 See, eg, Switzerland: Private International Law Act Chapter 12; United Kingdom: Arbitration Act of 17 June 1996 Part III.

requirements set out in the national arbitration law, such as compliance with due process and non-violation of public policy.[17]

Courts generally take a supportive approach to arbitration, upholding the finality and binding nature of arbitral awards. However, they retain the authority to refuse enforcement if certain fundamental conditions are not met, ensuring the arbitration process aligns with core legal principles. For instance, enforcement may be denied if the arbitral tribunal's impartiality and independence are compromised or if one party has exerted undue influence over the tribunal's composition.[18]

Recognition and enforcement are distinct yet interconnected processes. Recognition involves the formal acceptance of an arbitral award as binding and legally valid within a jurisdiction. Once an award is recognized, it can then be enforced, allowing the court to take necessary measures to ensure compliance. These measures may include issuing orders for payment or specific performance, such as directives to transfer goods, refrain from using certain IP rights, or assign those rights to the opposing party.[19]

The process for recognition and enforcement typically involves submitting the arbitral award and the arbitration agreement to the court, along with a certified translation, if necessary. The court reviews the documents to ensure that the award complies with domestic legal standards and, if satisfied, issues an order for enforcement, a so-called *exequatur* order.

3.2. International Enforcement

International enforcement mechanisms are crucial for the effectiveness of arbitration in cross-border disputes. These mechanisms are primarily governed by international conventions and regional agreements that facilitate the recognition and enforcement of arbitral awards across different jurisdictions.

The New York Convention has significantly contributed to the success of international arbitration as a dispute resolution mechanism by providing a uniform and reliable framework for the recognition and enforcement of arbitral awards around the world. In particular, it has played a pivotal role in promoting international arbitration by ensuring that arbitral awards made in one Contracting State can be recognized and enforceable in other Contracting States. This global enforceability has increased confidence in arbitration as a reliable means of resolving international disputes, encouraging businesses to choose arbitration over litigation, which can be more complex and less predictable across different legal systems.[20]

17 For a more detailed analysis of different types of national enforcement laws, see Born (n 5) para 26.05 [B].

18 Daniel Girsberger and Nathalie Voser, *International Arbitration: Comparative and Swiss Perspectives* (4th edn, Nomos and Schulthess 2021) para 1730.

19 For a more detailed analysis of the difference between recognition and enforcement mechanisms, see Blackaby, Partasides and Redfern (n 15) paras 11.18–11.22.

20 The official website of the New York Convention, <www.newyorkconvention.org/> accessed 29 July 2025, provides comprehensive resources, including the text of the Convention, a database of

The New York Convention applies to arbitral awards made in the territory of a State other than the State where recognition and enforcement are sought, as well as to awards not considered domestic awards in the State where enforcement is sought. To enforce an award under the New York Convention, aparty must provide the domestic court with the original award, the arbitration agreement, and, if necessary, certified translations of these documents. The Convention's scope and straightforward formal requirements have streamlined the enforcement process, making it more accessible and efficient.[21]

At the same time, Article I(3) entitles each Contracting State to limit the scope of application of the Convention by making respective reservations, namely, the 'reciprocity' reservation. This reservation restricts the application of the Convention only to awards made in the territory of another Contracting State.[22] The Contracting States can also make the 'commercial' reservation, which narrows down the Convention's application to the matters that are commercial in nature (e.g., the United States used both the reciprocity and commercial reservations, adopting a wide interpretation of the term 'commercial' that excludes 'matrimonial and other domestic relation awards, political awards and the like'). The enforcement courts of each Contracting State decide for themselves whether the matter at stake is commercial in nature for the purposes of Article I(3).[23]

Article V New York Convention provides specific grounds under which a national court may refuse to recognize and enforce a foreign arbitral award. These

Contracting States, and a collection of relevant case law. It aims to support the uniform interpretation and application of the Convention globally. In addition, the platform of the New York Convention, <https://newyorkconvention1958.org> accessed 29 July 2025, created with the support of UNCITRAL, offers an online version of the Guide on the New York Convention. This resource includes detailed commentary, judicial decisions, and preparatory documents (*travaux préparatoires*) to promote consistent understanding and application of the Convention across jurisdictions. Furthermore, the International Council for Commercial Arbitration (ICCA), 'ICA's Guide to the Interpretation of the 1958 New York Convention: Second Edition' (2024) <https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Judges%20Guide_English_Second%20edition_24%20Feb%202025.pdf> accessed 19 August 2025, serves as an essential manual for practitioners, providing detailed analysis and insights into the Convention's provisions. It is designed to facilitate the uniform application of the Convention by courts and arbitral tribunals. The ICCA Yearbook is a valuable resource that compiles annual developments in arbitration law, including case law and commentary related to the New York Convention, offering a global perspective on its implementation and interpretation. There are further commentaries, such as the one edited by Reinmar Wolff, which provides an authoritative analysis of the New York Convention, delving into the legal principles and case law that shape its application.

21 For a more detailed analysis of scope of application of the New York Convention, see Bernd Ehle, 'Article I [Scope of Application]' in Reinmar Wolff (ed), *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Article-by-Article Commentary* (2nd edn, Beck, Hart and Nomos 2019) 25–82.

22 It should be noted that the reciprocity reservation does not have significant practical importance due to the growing number of Contracting States to the New York Convention.

23 The 'commercial' reservation was not adopted by many States and, thus, does not hinder wide application of the Convention. For a more detailed analysis of the reciprocity and commercial reservations, see Ehle (n 21) paras 170–187.

grounds are designed to ensure that recognition and enforcement are denied only in exceptional circumstances. The key grounds for refusal include procedural defects such as invalid arbitration agreements, lack of proper notice, inability to present a case, or the award dealing with matters beyond the scope of the arbitration agreement, and substantive issues where the award conflicts with the public policy of the enforcing State or if the subject matter of the dispute is not arbitrable under the law of that State. Article V thus affirms that while arbitral awards are generally enforceable, they must nonetheless comply with the fundamental legal principles and public policy of the jurisdiction in which enforcement is sought.[24]

Apart from the New York Convention, regional conventions also facilitate the enforcement of arbitral awards. Examples include the Panama Convention[25] and the European Convention on International Commercial Arbitration.[26] These conventions operate similarly to the New York Convention but are tailored to the legal environments of specific regions, providing additional frameworks for the recognition and enforcement of arbitral awards within those areas.[27]

3.3. Differences in Enforcement Procedures

While the New York Convention provides a broadly uniform framework for the recognition and enforcement of arbitral awards, differences in enforcement procedures can still arise due to variations in national laws and judicial interpretations. Some jurisdictions might demand more extensive documentation or adhere to specific procedural formalities that are not universally applied. For example, the necessity for notarization or legalization of documents can differ, impacting the ease and speed with which an award can be enforced. Such differences underscore the importance of understanding the specific legal context of each jurisdiction when seeking to enforce an arbitral award internationally. This is why it is usually advisable to work with local lawyers who have experience with enforcement proceedings in the jurisdiction in question.[28]

24 For a more detailed analysis of grounds under which a national court may refuse to recognize and enforce a foreign arbitral award, see, generally, Christian Borris, Rudolf Hennecke, Stephan Wilske, Todd Fox, Maxi Scherer, Christoph Liebscher, David Quinke and Reinmar Wolff, 'Article V [Grounds for Refusal of Recognition and Enforcement of Arbitral Awards]' in Reinmar Wolff (ed), *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Article-by-Article Commentary* (2nd edn, Beck, Hart and Nomos 2019) 231–461.

25 Inter-American Convention on International Commercial Arbitration (adopted 30 January 1975, entered into force 16 June 1976) 1438 UNTS 245.

26 European Convention on International Commercial Arbitration (adopted 21 April 1961, entered into force 7 January 1964) 484 UNTS 349.

27 For a more detailed analysis of regional conventions, see Blackaby, Partasides and Redfern (n 15) paras 11.139–11.151.

28 For a more detailed analysis of deviating national provisions, see Maxi Scherer, 'Article III [Recognition and Enforcement of Arbitral Awards; General Rule]' in Reinmar Wolff (ed), *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Article-by-Article Commentary* (2nd edn, Beck, Hart and Nomos 2019) 199–212 paras 36–37.

4. Challenges in Cross-Border Enforcement

Enforcing arbitral awards across different jurisdictions is a complex and multifaceted process that presents several challenges due to variations in legal systems, issues related to recognition and enforcement, and the need for effective coordination between jurisdictions. Understanding these challenges is essential for navigating the international arbitration landscape and ensuring that arbitral awards are effectively and consistently enforced worldwide.

4.1. Divergent Legal Systems

One of the primary challenges in cross-border enforcement of arbitral awards is the divergence in legal systems across different countries. Each jurisdiction has its own set of laws, procedures, and legal principles that can impact the recognition and enforcement of arbitral awards.

Different countries have varying standards for what constitutes a valid and enforceable arbitral award. For instance, the criteria for due process, public policy, and the arbitrability of certain disputes can differ significantly. What is considered a minor procedural irregularity in one jurisdiction might be deemed a serious violation in another, leading to the refusal of enforcement.[29]

The attitude of national courts towards arbitration can also vary. Some jurisdictions are more arbitration-friendly, adopting a pro-enforcement stance that supports the international arbitration framework, thereby respecting the finality of the arbitral tribunal's decision. Others may be more interventionist, scrutinizing arbitral awards more rigorously and applying stricter standards, which can hinder the enforcement process. The national courts have also developed diverging approaches towards the enforcement of awards that have been annulled at the place of arbitration: While generally courts refuse enforcement of an award annulled in the country in which it was made in respect of a foreign decision, some jurisdictions can still authorize such enforcement. These differing attitudes can create unpredictability in the enforcement of arbitral awards across borders.

4.2. Recognition and Enforcement Issues

Recognizing and enforcing an arbitral award in a foreign jurisdiction involves several complex issues that can pose significant challenges.

One of the most common grounds for refusing the enforcement of an arbitral award is the public policy exception. Under the New York Convention and many

29 For instance, national courts adopt differing approaches to the enforcement of an award that has been set aside in its country of origin. The predominant approach, known as the territorial approach, generally refuses enforcement of such awards (eg, the Netherlands). In contrast, the delocalized approach does not view the annulment of an award in its country of origin as grounds for denying enforcement (eg, France). For a more comprehensive analysis of these divergent enforcement standards, see Borris, Hennecke, Wilske, Fox, Scherer, Liebscher, Quinke and Wolff (n 24).

national laws, an award can be denied enforcement if it is found to be contrary to the public policy of the country where enforcement is sought. The interpretation of public policy can vary widely between jurisdictions, leading to inconsistencies in the outcomes of enforcement proceedings. Some countries adopt a narrow interpretation, refusing enforcement only for violations of fundamental principles, such as awards tainted by procedural fraud (e.g., awards based on forged documents, bribed arbitrators, or perjured testimony are typically viewed as violating public policy). Other jurisdictions apply a broader interpretation, extending the public policy exception to include a wider array of legal and moral standards; for instance, in certain jurisdictions, an award may be deemed contrary to public policy if its enforcement is perceived as harmful to national interests.[30]

Another challenge is procedural irregularities in the arbitration process. Courts in the enforcing jurisdiction may scrutinize the arbitral process to ensure that it complies with due process and fair trial standards. Any perceived lack of impartiality, failure to provide adequate notice, or denial of the opportunity to present a case can lead to the refusal of enforcement. These procedural checks, while necessary to uphold justice, can also create hurdles for the smooth enforcement of awards.[31]

4.3. Coordination Between Jurisdictions

Finally, effective coordination between jurisdictions is essential for the seamless enforcement of arbitral awards, yet it is often fraught with challenges.

In cases where the winning party seeks enforcement in multiple jurisdictions simultaneously—for example, where the assets of the losing party are located in several countries—concurrent proceedings can complicate the process. Different courts may reach different conclusions regarding the enforceability of the same award, leading to conflicting decisions. This lack of coordination can also result in delays, increased costs, and legal uncertainty for the parties involved.

Coordination is further complicated by legal and cultural differences between jurisdictions. Legal traditions, procedural rules, and judicial practices (including the speed at which proceedings progress) can differ significantly and affect how courts interpret and apply the rules governing arbitration and the enforcement of arbitral awards. Cultural attitudes towards arbitration and foreign awards (e.g., different styles of advocacy, evidence gathering, treatment of witnesses, discovery,

30 See Reinmar Wolff, 'Article V(2)(b) [Grounds for Refusal of Recognition and Enforcement of Arbitral Awards]' in Reinmar Wolff (ed), *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Article-by-Article Commentary* (2nd edn, Beck, Hart and Nomos 2019) 416–461 paras 521–586; Blackaby, Partasides and Redfern (n 15) paras 11.110–11.129.

31 For a more detailed analysis of procedural irregularities that can result in the refusal of enforcement, see Borris, Hennecke, Wilske, Fox, Scherer, Liebscher, Quinke and Wolff (n 24).

etc.) can also influence judicial decisions, adding another layer of complexity to cross-border enforcement efforts.[32]

To address these challenges, mechanisms for judicial cooperation and communication are crucial. Multilateral treaties, bilateral agreements, and frameworks for judicial assistance can facilitate better coordination. The New York Convention itself serves as a foundational tool for promoting consistency in enforcement worldwide, but additional efforts at the regional and bilateral levels can further improve coordination. Initiatives such as the training of judges, dialogue between courts, and the development of best practices can help close the gaps between different legal systems and improve the overall efficiency of cross-border enforcement.[33]

5. Enforcement of Awards Against Sovereign States

Enforcing arbitral awards against sovereign States presents unique challenges due to the principles of State immunity and specific frameworks like the ICSID Convention. This section explores these challenges and the mechanisms available to address them.[34]

5.1. State Immunity from Jurisdiction and from Enforcement

Sovereign immunity is a fundamental principle of international law, granting States immunity from the jurisdiction of foreign courts and from enforcement measures. This principle poses significant hurdles for the enforcement of arbitral awards against States.

Jurisdictional immunity is a legal principle that prevents a State from being sued in the courts of another State without its consent. This doctrine is rooted in the concept of sovereign equality, meaning that no State has the authority to judge another. Jurisdictional immunity typically extends to State-owned entities (SOEs) and instrumentalities, which means that companies or organizations owned by the State also benefit from this protection.[35]

However, many legal systems have moved towards a 'restrictive' approach to State immunity. This approach differentiates between two types of acts conducted by the State: sovereign acts (*jure imperii*) and commercial acts (*jure gestionis*). Sovereign acts are those carried out by the State in its governmental capacity, such

32 For a more comprehensive discussion of cultural differences in arbitration, see Patrick Taylor, Shreya Aren and Alma Mozetic, 'Harmonising Cultural Differences in International Arbitration: The Role of Parties' Reasonable Expectations and Counsel's Ethical Rules' (2020) 2 Stockholm Arbitration Yearbook 43.

33 August Reinisch, 'The New York Convention as an Instrument of International Law' in Franco Ferrari and Friedrich Rosenfeld (eds), *Autonomous Versus Domestic Concepts under the New York Convention* (Kluwer Law International 2021) 1–12, 4–5.

34 For a more comprehensive discussion of investor-state arbitration, see Kryvoi, 'Investor-State Arbitration', this volume.

35 For a more detailed analysis of jurisdictional immunity, see Blackaby, Partasides and Redfern (n 15) paras 11.152–11.167.

as military operations or diplomatic activities. In contrast, commercial acts are those that a private individual or corporation could also perform, such as entering into a commercial contract or engaging in trade. Under the restrictive approach, States can claim immunity from lawsuits in foreign courts for their sovereign acts but not for their commercial activities. This distinction is crucial because it ensures that States cannot use their sovereign status to avoid liability in commercial transactions, promoting fairness in international trade and commerce.[36]

Arbitration agreements are a key element in this context. When a State enters into an arbitration agreement, it is often interpreted as a waiver of jurisdictional immunity for the matters covered by the agreement. This means that the State agrees to resolve disputes through arbitration rather than relying on its immunity to avoid legal proceedings. However, proving that a State has waived its jurisdictional immunity can be challenging. It requires clear evidence that the State intended to waive its immunity and consent to arbitration. Legal complexities arise from varying interpretations of arbitration agreements and the specific wording used, as well as differences in national laws regarding State immunity. Courts may require a high standard of proof to establish that a waiver has occurred, making it a complex legal hurdle for private parties seeking to arbitrate disputes with States.[37]

Even when jurisdictional immunity is waived, States often retain immunity from enforcement actions against their assets, such as diplomatic properties and military assets. Enforcement immunity means that a successful claimant in arbitration may face significant difficulties in seizing State assets to satisfy an arbitral award. Some exceptions exist, such as waivers of immunity specifically for enforcement purposes or targeting non-immune commercial assets used for non-sovereign activities. However, identifying and accessing these assets can be legally and practically challenging due to the complex nature of State asset holdings, especially when States take measures to shield their assets from enforcement.[38]

The so-called alter ego issue arises when creditors seek to enforce an award not only against the State but also against SOEs or subsidiaries. This requires demonstrating that the SOE or subsidiary operates as an alter ego of the State, meaning there is no meaningful separation between the entity and the State itself. Courts

36 For a more detailed analysis of the restrictive approach to State immunity, see Ehle (n 21) paras 140–150; Doak Bishop, James Crawford and Michael Reisman (eds), *Foreign Investment Disputes: Cases, Materials and Commentary* (2nd edn, Kluwer Law International 2014) 45.

37 For a more detailed analysis of waiver of jurisdictional immunity, see Félix Montero and Paloma Castro, 'Waivers of Sovereign Immunities in Enforcement Proceedings and the 1958 NY Convention' in Katia Fach Gomez and Ana López Rodríguez (eds), *60 Years of the New York Convention: Key Issues and Future Challenges* (Kluwer Law International 2019) 369–388; Teresa Cheng, 'State Immunity, Public Policy and International Commercial Arbitration' (20th International Council for Commercial Arbitration Congress, Rio de Janeiro, 23–26 May 2010) in Albert van den Berg (ed), *Arbitration Advocacy in Changing Times* (Kluwer Law International 2011) 362–380.

38 For a more detailed analysis of enforcement of awards against States, see Matthew Saunders and Claudia Salomon, 'Enforcement of Arbitral Awards Against States and State Entities' (2007) 23(3) Arbitration International 467.

typically require proof of extensive control by the State over the entity's operations and finances.[39]

Moreover, enforcing an arbitral award against a State can involve political and diplomatic considerations. States may exert political pressure or engage in diplomatic negotiations to resist enforcement. The creditor may need to navigate these political dynamics, which can influence the outcome of enforcement efforts. In addition, the national courts can be reluctant to enforce awards against States due to concerns about international relations and respect for State sovereignty. Even in jurisdictions where sovereign immunity is limited, courts may exercise caution in order to avoid diplomatic fallout. Given these complexities and challenges, creditors sometimes opt to negotiate settlements with States rather than pursue prolonged enforcement battles. Indeed, some States are willing to settle to avoid reputational damage and potential disruption of international relations.[40]

5.2. Enforcement under the ICSID Convention

The International Centre for Settlement of Investment Disputes (ICSID)[41] provides a specialized framework for resolving disputes between States and foreign investors, offering mechanisms for the enforcement of awards against sovereign States.[42]

The ICSID Convention, which has been ratified by over 150 States, establishes a self-contained legal regime for the recognition and enforcement of arbitral awards. Under Article 54 ICSID Convention, member states are required to recognize an ICSID award as binding and enforce the monetary obligations as if it were a final judgment of a national court. This provision eliminates the need for separate recognition proceedings before domestic courts, thereby significantly simplifying the enforcement procedure.[43]

While the ICSID Convention facilitates enforcement, it does not entirely remove the obstacles posed by State immunity. Article 55 ICSID Convention explicitly preserves the immunity of State assets from execution, meaning that enforcement actions still need to navigate the complexities of State immunity. However, the Convention provides a strong legal basis for enforcement, and the commitment of member states to uphold their treaty obligations can provide additional leverage for investors seeking compliance with awards.

39 For a more detailed analysis of enforcement against SOEs, see Lew, Mistelis and Kröll (n 9) 733–759.

40 For more examples of how political and diplomatic pressure can affect the negotiated settlement with a State, see Emmanuel Gaillard and Ilija Mitrev Penushliski, 'State Compliance with Investment Awards' (2020) 35(3) ICSID Review – Foreign Investment Law Journal 540.

41 ICSID is the world's leading institution dealing with investor-state dispute settlement, see website of ICSID <https://icsid.worldbank.org/about> accessed 29 July 2025.

42 For a more detailed analysis of enforcement under the ICSID Convention, see August Reinisch, 'Enforcement of Investment Treaty Awards' in Katia Yannaca-Small (ed), *Arbitration Under International Investment Agreements: A Guide to the Key Issues* (2nd edn, Oxford University Press 2018) 797–822.

43 ibid paras 29.66–29.70.

6. Practical Considerations for Enforcement

Effective enforcement of arbitral awards requires strategic planning and proactive measures throughout the arbitration process. This section provides practical tips on drafting arbitration clauses, taking measures during arbitration, and collecting evidence for enforcement.

6.1. Drafting Arbitration Clauses and Selecting the Arbitration Seat

The foundation for successful enforcement is laid at the outset of any contractual relationship through carefully drafted arbitration clauses and the strategic choice of the seat of arbitration. A well-drafted arbitration clause should be clear and comprehensive to avoid ambiguity at the enforcement stage. Furthermore, the choice of the arbitration seat is particularly critical as the arbitration law of the seat, the so-called *lex arbitri*, defines the legal framework for the procedural aspects of the arbitration and can influence prospects of enforcement. Ideally, the seat should be a city located within a State party to the New York Convention, where the local courts are recognized for being arbitration-friendly, supportive (as opposed to interventionist), and have a proven track record of enforcing arbitral awards.[44]

6.2. Measures Taken During the Arbitration

During the arbitration process, several proactive measures can be taken to enhance the likelihood of successful enforcement of the award for the winning party.

It is worth considering initiating an arbitration claim against parties that have the financial ability to satisfy the award. If necessary, an attempt can also be made to involve third parties who are involved in the dispute and whose assets may be targeted for enforcement by means of third-party notice[45] or joinder.[46] Ensuring that the respondent has sufficient assets is crucial for effective enforcement.

It can be important to inform the arbitral tribunal of the formal requirements for enforcement in the jurisdictions where enforcement may be sought. This

44 Born (n 5) para 14.02.

45 A third-party notice contractually binds a third party to an arbitral award without rendering it a formal party. The majority of arbitration laws do not authorize third-party notices unless the third party is covered by the arbitration agreement. For example, the German Arbitration Institute has a special set of rules regulating this instrument: German Arbitration Institute, Supplementary Rules for Third-Party Notices (2024) <www.disarb.org/en/tools-for-dis-proceedings/dis-rules#c5712> accessed 29 July 2025. See also Maximilian Pika, *Third-Party Effects of Arbitral Awards: Res Judicata against Privies, Non-Mutual Preclusion and Factual Effects* (Kluwer Law International 2019) 15–48.

46 A joinder represents a procedural mechanism of adding a third party to an already initiated arbitration which can be performed through a request of a party to a pending arbitration or a third party willing to be joined. Generally, joinder raises issues of the parties' consent to such intervention and the equality of the rights to participate in the appointment process, given that a third party is usually joined when the tribunal has been already constituted. See, eg, Bernard Hanotiau*, Complex Arbitrations: Multi-Party, Multi-Contract and Multi-Issue. A Comparative Study* (2nd edn, Kluwer Law International 2020) 311–360.

includes ensuring that the form and content of the award comply with the requirements of these jurisdictions, such as providing detailed reasoning and clear orders. Additionally, a party seeking to ensure the enforceability of a favourable award should make sure to adhere to procedural rules to avoid grounds for refusal of enforcement, ensure that proper notice is always given and that all parties have the opportunity to present their case. Finally, it is advisable to prepare certified copies and translations of key documents as required by the enforcement jurisdictions.[47]

Proactively tracing and identifying the opposing party's assets during the arbitration process is also important. Asset tracing involves investigating the location, ownership, and value of assets. Once these assets are identified, ideally in a State party to the New York Convention, seeking interim measures such as asset freezing orders can prevent the dissipation of assets before the award is rendered. These measures can significantly enhance the prospects of successful enforcement.[48]

6.3. Collecting Evidence for Enforcement

Gathering and preserving evidence is essential for enforcing arbitral awards. This evidence supports the recognition and enforcement process in court.

Maintaining comprehensive documentation throughout the arbitration is essential. This includes ensuring that all contracts and arbitration agreements are properly executed and accessible. It also involves preserving all communications related to the arbitration, such as notices of arbitration and procedural orders. Additionally, keeping detailed records of hearings, witness statements, expert reports, and submissions is crucial for a well-documented arbitration process. Sometimes, the arbitration itself can be used to collect information or records that demonstrate the respondent's obligations and asset holdings, such as financial statements, bank records, or property deeds. These records will be crucial in tracing assets and overcoming enforcement challenges.[49]

7. Future Trends and Developments in the Enforcement of Arbitral Awards

The enforcement of arbitral awards is continually evolving, influenced by changes in the legal landscape, advancements in technology, and ongoing discussions about

47 Jeffrey Waincymer, *Procedure and Evidence in International Arbitration* (Kluwer Law International 2012), para 2.7.14.4.

48 For a more detailed analysis of asset tracing and asset freezing in different jurisdictions, see Jacob Jørgensen (ed), *Finding, Freezing and Attaching Assets: A Multi-Jurisdictional Handbook* (Kluwer Law International 2016).

49 For a more detailed analysis of recognition of arbitration agreements for enforcement purposes, see Reinmar Wolff, Stephan Wilske and Todd Fox, 'Article II [Recognition of Arbitration Agreements]' in Reinmar Wolff (ed), *New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Article-by-Article Commentary* (2nd edn, Beck, Hart and Nomos 2019) 83–197.

potential reforms in international enforcement mechanisms. This section explores these future trends and developments.

7.1. Evolving Legal Landscape

The legal landscape for the enforcement of arbitral awards is expected to evolve in several significant ways, reflecting broader changes in international law and arbitration practices. For instance, efforts to harmonize arbitration laws globally are likely to continue, driven by the need for consistency and predictability in international arbitration. The UNCITRAL Model Law has already been widely adopted, and more jurisdictions are expected to align their domestic laws with this model. This harmonization will facilitate easier enforcement of arbitral awards across different jurisdictions, reducing legal uncertainties and barriers.

There is a growing trend towards increased transparency and accountability in arbitration proceedings. Initiatives such as the Mauritius Convention on Transparency[50] aim to enhance transparency in investor-state arbitration. As transparency becomes a more prominent feature, it may impact the enforcement process by ensuring that awards are seen as fair and legitimate, thereby reducing resistance to their enforcement.[51]

The scope of arbitrability is expanding, with more types of disputes being deemed suitable for arbitration. This includes complex financial instruments, IP rights, and even certain aspects of public law disputes. As the range of arbitrable issues grows, the mechanisms and principles for enforcing arbitral awards will need to adapt to these new contexts.

7.2. Technology in Enforcement of Arbitral Awards

Technological advancements are transforming various aspects of the arbitration process, including the enforcement of arbitral awards. The use of technology in enforcement proceedings can streamline processes, reduce costs, and increase efficiency.

Blockchain technology and smart contracts are emerging as tools that could revolutionize the enforcement of arbitral awards. Smart contracts can automatically execute and enforce certain terms of an arbitral award without the need for court intervention. Blockchain can provide a transparent and immutable record of the arbitration process, enhancing trust and reducing the risk of fraud.[52]

50 United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration (adopted 10 December 2014, entered into force 18 October 2017) 3208 UNTS 1.

51 For a more detailed analysis of transparency in investor-state arbitration, see Jansen Calamita and Ewa Zelazna, 'The Changing Landscape of Transparency in Investor-State Arbitration: The UNCITRAL Transparency Rules and Mauritius Convention' [2016] Austrian Yearbook on International Arbitration 271.

52 Peter Michaelson and Sandra Jeskie, 'Arbitrating Disputes Involving Blockchains, Smart Contracts, and Smart Legal Contracts' (2019) 74(4) Dispute Resolution Journal 89, 129–131.

Artificial intelligence and data analytics can assist in asset tracing and evaluating the enforceability of awards by analyzing vast amounts of data quickly and accurately. These technologies can identify patterns and provide insights that human analysts might miss, enhancing the overall effectiveness of enforcement strategies.[53]

7.3. Potential Reforms in International Enforcement Mechanisms

Reforming international enforcement mechanisms is an ongoing process that is aimed at addressing existing challenges and improving the efficacy of arbitral award enforcement.

While the New York Convention remains the cornerstone of international arbitration enforcement, there are discussions about updating or supplementing the Convention to address contemporary challenges. Potential reforms could include clarifying certain provisions, such as the public policy exception, and enhancing the mechanisms for cooperation between member states. However, the prevailing view is that the New York Convention functions effectively and does not require significant changes. Additionally, amending the Convention would be a lengthy and complex process, requiring approval from over 170 member states.

The establishment and strengthening of regional arbitration hubs can facilitate the enforcement of arbitral awards by providing localized support and expertise. Regions such as Asia, the Middle East, and Africa are developing their arbitration centres, which can offer more accessible and culturally attuned enforcement mechanisms.

Improving judicial cooperation and training is critical for the effective enforcement of arbitral awards. Initiatives to train judges and legal practitioners in international arbitration principles can lead to more consistent and supportive court decisions regarding enforcement. Enhanced cooperation between courts in different jurisdictions can also facilitate smoother cross-border enforcement processes.

8. Conclusion

The effective recognition and enforcement of arbitral awards remains a cornerstone of international arbitration, underpinning its reliability and effectiveness as a dispute resolution mechanism. A robust enforcement system is essential for maintaining the legitimacy and efficacy of arbitration, ensuring that arbitral awards are respected and implemented globally. From drafting effective arbitration clauses to navigating State immunity and embracing technological advancements, international arbitration practitioners should be well-versed in the multifaceted aspects of enforcement.

53 For a more comprehensive discussion of the use of digital technologies in international arbitration, see Bianchi, ‘Digitalization in International Arbitration’, this volume.