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# Recent Developments in Inter-American Commercial Arbitration

by Charles Robert Norberg\*

ON JUNE 9, 1978, the Government of the United States signed the Inter-American Convention on International Commercial Arbitration.<sup>1</sup> The Inter-American Commission on Commercial Arbitration moved its office into a Washington, D. C. building of the Organization of American States (OAS) on December 1, 1980. And early in the administration of President Ronald Reagan, the Department of State sent the President the Inter-American Convention on International Commercial Arbitration with a recommendation that he forward it to the Senate for its advice and consent toward ratification.<sup>2</sup> The Department of State also has proposed implementing legislation to amend Title IX (Arbitration) of the U. S. Code in order to implement the provisions of the Convention within the United States.

U.S. parties are increasingly submitting commercial disputes which originate within the Western Hemisphere to international arbitration. This article focuses on the historical development of this evolutionary process and movement which can be expected in the near future.<sup>3</sup>

## I. HISTORY OF THE ARBITRAL PROCESS IN THE WESTERN HEMISPHERE

Arbitration as a method of resolving disputes dates from the Roman Empire and came to the Western Hemisphere through the Spanish conquerors.<sup>4</sup> The procedural and commercial codes which they enacted in

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<sup>1</sup> OAS/SER. A./20 (SEPF), reprinted in 14 INT'L LEGAL MATERIALS 336 (1975) [hereinafter cited as ICICA]. The text is attached as an appendix to this article.

<sup>2</sup> Undated draft letter and appendices from Alexander Haig to Ronald Reagan hereinafter cited as Letter from Haig. The President forwarded the Convention to the Senate. 127 CONG. REC. S6208 (daily ed. June 15, 1981) (remarks of Sen. Stevens).

<sup>3</sup> For earlier articles, see generally C. Norberg, *Inter-American Commercial Arbitration*, 1 LAW AM. 25 (1969); and C. Norberg, *Inter-American Commercial Arbitration Revisited*, 7 LAW AM. 275 (1975).

<sup>4</sup> For a good short history, see generally M. DOMKE, *LAW AND PRACTICE OF COMMERCIAL ARBITRATION* (1968).

Latin America contained provisions for arbitration, but, subsequently, the arbitral process was little used domestically or internationally.<sup>5</sup>

Contractual clauses providing for arbitration were generally regarded as valid but were not enforced unless the parties agreed to set forth the dispute in the form of a *compromiso*. Generally, the *compromiso* is an *escritura pública* (public document subscribed before a notary public) which provides in specific terms: the names of the parties, the names of the arbitrators, the subject matter which is submitted to arbitration, the term within which the arbitrators must grant the award, a fine which will be paid by the party not accepting the award to the party who accepts it, the manner in which the arbitrators have to proceed, the place in which the arbitrators must carry on hearings and make the award, a declaration of the renunciation of the privilege of appeal, and the appointment of the umpire in case of disagreement of arbitrators or the designation of a person to whom authority has been given to appoint him and the mutual promise to abide by the arbitrators' award.<sup>6</sup>

In contemplating the arbitral process, the parties were free to choose the procedures for the arbitration as long as they were not contrary to the specific requirements of the codes in force at the place of arbitration.<sup>7</sup> Judicial assistance from courts has been available in approximately 50 percent of the Latin American countries employing arbitration. The courts may appoint an arbitrator where one party fails to fulfill his obligation and provide court assistance in completing the *compromiso*.<sup>8</sup> Until enactment of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)<sup>9</sup> by the United Nations, enforcement of foreign arbitral awards depended on the Treaties of Montevideo of 1889<sup>10</sup> and 1940,<sup>11</sup> on the Bustamante Code of Private International Law (1928)<sup>12</sup> and on comity.

The Montevideo Treaty of 1889 relating to procedural law provided in Title III, Articles 5-7, that foreign arbitral awards in civil and commercial matters would be enforced in a signatory state if the award had been

<sup>5</sup> *Id.*

<sup>6</sup> Norberg, *General Introduction to Inter-American Commercial*, 3 Y.B. COM. ARB. 1 (1978).

<sup>7</sup> J. Lliteras, *Exparte International Commercial Arbitration* 4 (1975) (paper submitted to the XIX Conf. Inter-Am. B. Ass'n, Cartagena, Colom. [copy on file at *Case Western Reserve Journal of International Law*]).

<sup>8</sup> *Id.* at appendix.

<sup>9</sup> 21 U.S.T. 2517; T.I.A.S. No. 6997.

<sup>10</sup> Treaty concerning the Union of South American States in respect of procedural law, signed at Montevideo, Jan. 11, 1889, O.A.S.T.S. No. 9 [hereinafter cited as 1889 Treaty].

<sup>11</sup> Treaty on International Procedure Law, signed at Montevideo, Mar. 19, 1940, O.A.S.T.S. No. 9 [hereinafter cited as 1940 Treaty].

<sup>12</sup> Bustamante Code (Convention on Private International Law), signed at Havana, Feb. 20, 1928, 86 L.N.T.S. 246 No. 1950 (1929).

given by a competent tribunal in the international field. The conditions for enforcement included: the award must have the nature of a final judgment in the state where it had been rendered; the defendant must have been legally served and represented or declared legally not present in accordance with the laws of the country of the arbitration; and the award must not be against public policy in the country where it is to be enforced. The Treaty of Montevideo of 1889 was ratified by Argentina, Bolivia, Paraguay, Peru, Uruguay, acceded to by Colombia and signed by Brazil and Chile, both of whom did not ratify.<sup>13</sup>

The Latin American countries met in Montevideo again in 1940 and an ensuing treaty on international procedural law set forth legal requirements for the execution of foreign arbitral awards essentially the same as the Montevideo Treaty of 1889. The 1940 Treaty was signed by Argentina, Bolivia, Brazil, Colombia, Paraguay, Peru and Uruguay and ratified by Argentina, Paraguay and Uruguay.<sup>14</sup>

The countries of Latin America, together with the United States, met in Havana in 1928 and promulgated a major revision of treaties of private international law in a Code of Private International Law, known as the Bustamante Code.<sup>15</sup> Articles 423-433 dealt with commercial arbitration and the enforcement of foreign arbitral awards, providing for their reciprocal enforcement among the signatory countries. The Code was ratified by Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, El Salvador, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama and Peru. Venezuela also approved the Code, but specifically excepted the enforcement of foreign arbitral awards. Thus, a system and pattern of international treaty law existed among the Latin American countries recognizing the validity of an arbitration clause and providing for the enforcement of a foreign arbitral award. The Government of the United States, however, was not a party to any of these treaties.

Commercial relations between parties in the United States and those in Latin America began to move toward the creation of a hemispheric system of arbitration and dispute settlement. When the first Pan American Financial Conference met in 1915 the principle of commercial arbitration for dispute settlement was endorsed.<sup>16</sup> Pursuant to that conference, the U.S. Chamber of Commerce and the Chamber of Commerce of Argentina entered into a bilateral agreement relating to the settlement of international commercial disputes by arbitration. By 1922, the U.S. Chamber

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<sup>13</sup> See 1889 Treaty, *supra* note 10.

<sup>14</sup> See 1940 Treaty, *supra* note 11.

<sup>15</sup> See Bustamante Code, *supra* note 12.

<sup>16</sup> Actas del Primer Congreso Financiero Panamericano 325-26 (Washington, D.C., May 24-29, 1915, Library of the O.A.S.).

of Commerce had signed eight such bilateral agreements.<sup>17</sup> By 1931, the IVth Pan American Commercial Arbitration Conference had resolved to inquire into the commercial interest of the countries supporting an active system of arbitration for the settlement of trade disputes.

In accordance with that resolution, the Conference sponsored a comprehensive survey of the arbitration laws and practices in the hemisphere. The VIIth International Conference of American States meeting in Montevideo, Uruguay (December 1933) was informed of the results.<sup>18</sup>

The report recommended that trade and commercial organizations of the different republics, not their governments, should develop an inter-American system of arbitration. Further, it suggested that standards should be adopted for amending existing arbitration laws to make legal procedures more uniform and better adapted to trade conditions and for making rules of procedure more effective.

The Conference accepted the recommendations and adopted Resolution XLI which, in paragraph 3, provided as follows:

That with a view to establishing even closer relations among the commercial associations of Americas entirely independent of official control, an inter-American commercial agency be appointed in order to represent the commercial interests of all Republics, and to assume, as one of its most important functions, the responsibility of establishing an inter-American system of arbitration (approved December 23, 1933).

The Pan American Union requested the American Arbitration Association and the Commission on Commerce of the Inter-American Council for Inter-American Relations to establish such a hemispheric arbitration system. The Inter-American Commercial Arbitration Commission came into being in 1934.<sup>19</sup>

By 1951, the question of the substantive arbitral law in each one of the countries had appeared on the agenda of the Inter-American Council of Jurists. At their meeting in Mexico City in 1956, the Council adopted and recommended such a model law for action.<sup>20</sup> Regrettably, no Latin American country adopted the law. Believing that uniformity of law and procedure relating to international commercial arbitration was desirable for the Western Hemisphere, the Inter-American Juridical Committee proposed a draft convention on international commercial arbitration at

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<sup>17</sup> SPECIAL HANDBOOK FOR THE USE OF THE DELEGATES TO THE FIFTH INTERNATIONAL CONFERENCE OF THE AMERICAN STATES 134-136 (Washington, D.C., Dec. 1922, Library of the O.A.S.).

<sup>18</sup> Commercial Arbitration in the American Republics, report to the Seventh International Conference of American States (Montevideo, Dec. 3, 1933, Library of the O.A.S.).

<sup>19</sup> See note 2, *supra* at 5.

<sup>20</sup> Third meeting of the Inter-American Council of Jurists, Res. VIII, Draft Uniform Law on Inter-American Commercial Arbitration, Mexico City, Jan. 17 - Feb. 4, 1956.

its 1967 meeting in Rio de Janeiro.<sup>21</sup> The Convention, in revised form, was adopted at the First Specialized Inter-American Conference on Private International Law held in Panama in January 1975.<sup>22</sup>

## II. THE INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

As members of the Organization of American States, 20 countries of the Western Hemisphere attended the Panama Conference in January 1975, and discussed six proposed international treaties, including the Treaty on International Commercial Arbitration. The entire Conference proceedings are reported in the Spanish language in Vol. I and II, *Actas y Documentos de la Conferencias Especializada Interamericana Sobre Derecho Internacional Privado*.<sup>23</sup> The conference divided into two working groups. These groups discussed in detail each of the articles of the Draft Convention.

Article 1 has two notable features. It provides for the validity of an agreement to arbitrate either a present or a future dispute. Thus, an agreement can provide for the arbitration of "any differences that may arise or have arisen" between the parties. This clarifies the use of a "submission" prepared in furtherance of a clause to arbitrate and drafted after a controversy had in fact arisen. Also under the Convention, an agreement to arbitrate can be evidenced by an "instrument, signed by the parties, or in the form of an exchange of letters, telegrams or telex communications." This obviates the difficulties imposed by a requirement that an agreement to arbitrate and a submission should be in the form of a public document sworn to before a notary public. This language of the Panama Convention tracks Article II of the UN Convention and recognizes contemporary practices of the international business community.

Article 2 authorizes the parties to delegate to a third party, whether a natural or juridical person, the appointment of arbitrators. This would allow the Inter-American Commercial Arbitration Commission to perform that function. Article 2 further provides that arbitrators may be foreigners. This is a basic change of the law for some countries, such as Colombia, where aliens or non-residents may not be arbitrators.<sup>24</sup>

According to Article 3, the parties may agree on any rules for governing the procedure of their arbitration. In the absence of an expressed agreement between the parties, "the arbitration shall be conducted in ac-

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<sup>21</sup> OEA/Ser I/VI.1, 32, Mar. 1968 (Engl.) at 46.

<sup>22</sup> Inter-American Convention on International Commercial Arbitration, signed in Panama at the Inter-American Specialized Conference on Private International Law, Jan. 30, 1975, O.A.S.T.S. No. 9, 92.

<sup>23</sup> OEA/Ser. K/XXI. 1, CIDIP/64, Vols. 1 and 2, May 1975.

<sup>24</sup> COLUMBIAN CODE OF COMMERCE, Tit. 3, art. 2012, (1971).

cordance with the Rules of Procedure of the Inter-American Commercial Arbitration Commission [IACAC]." The language of the Convention permitting the parties to agree on their own procedural rules is reflective of the general practice throughout Latin America in arbitrations involving *amiables componedores* (*amiable compositeurs*). In the absence of such agreement, it would be presumed that the rules of the forum would apply under normal Latin American practices. The Convention changes this basic concept, however, providing that the Rules of the IACAC will govern. Therefore, if a Latin American country ratifies the Inter-American Convention, then the Rules of the IACAC would presumably supersede the local procedural rules relating to commercial arbitration. As yet, this conflict has not been resolved.

Regarding enforcement of an arbitral award, Article 4 of the Convention states that it shall have the force of a final judicial judgment. The recognition and execution of an award may be ordered in the same manner as that of judgments handed down by ordinary national or foreign courts. This must be done in accordance with the procedural laws of execution, as well as the provisions of their national treaties. Here again, the Convention is reflective of the language of the UN Convention.

The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) was copied almost verbatim in Article 5. This provides for remedies that may be taken against an arbitral award.

Article 6 was also taken verbatim from the UN Convention. It provides for the postponement of a decision on the execution of an arbitral award and the obligation of an objecting party to provide appropriate guarantees.

Signature and ratification requirements are covered in Article 7 which provides for signature by the member states of the OAS. Article 9, however, states that "[t]his Convention shall remain open for accession by any other State." Thus, framers of the Convention looked toward the utilization of the IACAC and its Rules by non-Western Hemisphere countries who trade with Latin America. For example, the Western European countries (particularly Spain), as well as Japan, the People's Republic of China, and Soviet bloc countries, might find that ratification of the Inter-American Convention would be advantageous to their commercial trade with Latin America.

The problem of nations operating under the federal system of government was recognized in Article 11. Any state having two or more territorial units in which different systems of law apply in relation to arbitration may, at the time of acceding to the Convention, declare that it shall extend to all its territorial units or only to one or more of them. During the Panama Conference, discussions of this Article were of great interest to the Canadian observer.

The Inter-American Convention on International Commercial Arbi-

tration was signed in Panama on January 30, 1975 by the Governments of Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Uruguay and Venezuela. Currently, the Convention has been ratified by the following governments: Mexico, El Salvador, Honduras, Costa Rica, Panama, Chile, Paraguay and Uruguay. In Argentina, the present Minister of Economy, Dr. José Alfredo Martínez de Hoz, favors the ratification of both the UN Convention of 1958, and the OAS Convention of 1975. The Foreign Ministry of the Government of Brazil has reportedly taken the position that the Government of Brazil should also ratify both Conventions. On June 9, 1978, the United States signed the OAS Convention. Its position on ratification will be set forth in some detail later in this article.

The Inter-American Commercial Arbitration Commission, first chartered in 1934, has become the chosen instrument for the settlement of international commercial disputes in the Western Hemisphere by the provisions of Article 3 of the Convention. While the Commission is a non-government body, it nevertheless was authorized by a resolution of the Conference of American States, and has received financial subvention from the OAS as well as the Inter-American Development Bank. Furthermore, the OAS has regularly been providing for arbitration of future disputes in accordance with rules of the IACAC. As of January 1, 1978, the Commission formally changed its Rules and adopted the ad hoc arbitration rules recommended by the UN Commission on International Trade Law (UNCITRAL).<sup>25</sup> The UNCITRAL Rules, of course, had to be amended somewhat to reflect the exigencies of relationships in the Western Hemisphere. As a consequence, new IACAC Rules will make arbitration compatible with other countries which have adopted the UNCITRAL Rules. Since its move to the OAS building, the Commission has continuing access to the Western Hemisphere communication system of the OAS, including its telex and telephone links.

International commercial arbitration has been a slow-growing plant but the blossoms were seemingly inevitable. The Convention is the culmination of a process which began in 1915 and gradually accumulated momentum in the 1930s, resulting in a 1967 Draft Convention which was finally approved in 1975. Viewing the Convention as a whole, it provides a framework for unifying procedural and substantive international commercial arbitration law in the Western Hemisphere.

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<sup>25</sup> Text of the UNCITRAL Arbitration Rules is included in Report of UNCITRAL on the Work of its Ninth Session, UN Doc. A/31/17, par. 57. The General Assembly recommended the use of these Rules on December 15, 1976. On May 6, 1977, the Executive Committee of the Inter-American Commercial Arbitration Commission adopted the UNCITRAL Rules with changes appropriate for their use in the Western Hemisphere, to be effective January 1, 1978.

### III. THE UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (1958)

Ratified by Mexico, Ecuador, Chile, Cuba, Trinidad, Tobago, Colombia, and the United States, the UN Convention of 1958<sup>26</sup> served as a strong base from which much of the OAS Convention was derived. Although the terms of the UN Convention have often been commented upon,<sup>27</sup> a brief listing and comment should be made about those terms most relevant to the OAS document.

Article I,3 provides that, when ratifying the Convention, any state may declare, on the basis of reciprocity, that it will apply the Convention terms of recognition and enforcement only to awards made in the territory of another contracting state. It may also declare that it will apply the Convention only to differences arising out of legal relationships (whether contractual or not) which are considered as commercial under the national law of the state making such declaration.

Article II provides for the recognition of an agreement in writing under which the parties undertake to submit to arbitration certain present and future disputes arising from a defined legal relationship. The term "agreement in writing" would include an arbitral clause in a contract, arbitration agreement (signed by the parties), or an exchange of letters or telegrams. Article II also provides for the enforcement of the arbitral clause by permitting a party to the agreement to request an appropriate court to stay a pending legal action and refer the parties to arbitration.

Article III recognizes arbitral awards as binding and enforceable in accordance with the Rules of Procedure of the territory upon which the award relied. To obtain recognition and enforcement of the award, Article IV provides for a procedure requiring the party seeking enforcement simply to supply a duly authenticated original award (or a duly certified copy thereof), together with the original agreement referred to in Article II (or a duly certified copy thereof). In the alternative, Article V sets forth the grounds for refusing to recognize and enforce an award. Those grounds similarly appear in Article 5 of the OAS Convention.

Finally, Article VII provides that the UN Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the contracting states. Within the meaning of Article VII, the OAS Convention can be properly regarded as a multilateral agreement.

From the above listing, it can be seen that there are numerous simi-

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<sup>26</sup> U.N. Doc. A/CN.9/68 (1979).

<sup>27</sup> Asken, *The Application of the New York Convention by the United States Courts*, 4 Y.B. COMB. ARB. 341 (1979).

larities, and just a few modest differences, between the UN and OAS Conventions. In addition, the ratification of both conventions by a single country does not produce an inconsistency of policy (as is witnessed by the willingness of the U.S. Government, as a ratifier of the UN Convention, to accede to the OAS Convention).

One quite significant difference should be mentioned, however, concerning the role of the Inter-American Commercial Arbitration Commission and the applicable rules to be used to govern arbitration. The UN Convention says nothing concerning rules to be followed in any arbitration within the purview of the Convention, neither does it contemplate specific institutional arrangements for facilitating an arbitration. On the other hand, Article 3 of the OAS Convention specifically particularizes the role of the IACAC as an institutional arrangement. It also provides that the Rules of the IACAC are to be used in the absence of an agreement between the parties to do otherwise. Thus, while the countries of the world have provided through the UN Convention for the recognition and enforcement of foreign arbitral awards, the countries of the Western Hemisphere, acting through the OAS, have quite specifically recognized the usefulness and desirability of channeling their international commercial arbitration activity through the specific and unique institutional arrangement of the Inter-American Commercial Arbitration Commission.

#### IV. POSITION OF THE GOVERNMENT OF THE UNITED STATES

The Government of the United States ratified, with reservations, the UN Convention on September 30, 1970.<sup>28</sup> The reservations relate to reciprocity with foreign governments that have similarly ratified the Convention, and limitation of the substance of foreign arbitral awards to commercial activities.<sup>29</sup> With regard to the question of whether to ratify the OAS Convention, a consultative committee was formed under the auspices of the American Arbitration Association. The committee convened several meetings to consider the problems of ratification. They also considered the language to be recommended for use in the legislation of implementation (required to bring the Convention into force in the United States), should the committee recommend Senate ratification.

The results of the committee deliberations were conveyed to the Department of State. The Department subsequently prepared a draft of a letter to President Reagan recommending that the Government of the United States ratify the Convention with certain specific reservations.<sup>30</sup>

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<sup>28</sup> See ICICA, *supra* note 1.

<sup>29</sup> These two reservations to Article I(3) were made by the Government of the United States when it ratified the Convention.

<sup>30</sup> Letter from Haig, *supra* note 2.

The text of the letter of transmittal to the President notes that while the United States is a party to the UN Convention, only five of the OAS member states have adhered to that Convention. But it also notes that ratification of the OAS Convention will begin to reverse this potentially weak situation.

The ratification of the Inter-American Convention will make possible the greater recognition and enforcement of arbitral agreements and arbitral awards among the countries of the Western Hemisphere, thus filling an important void which presently exists in international legal arrangements. New legislation will be required as part of Title IX (Arbitration) of the United States Code in order to implement the provisions of the Convention within the United States.<sup>51</sup>

The Department of State, in discussing the legislation of implementation, proposed reservations. First, if the Rules of Procedure of the IA-CAC in effect on January 1, 1980, are subsequently changed or amended, then the Government of the United States reserves the right to accept or reject the amendment pursuant to a rulemaking authority to this effect to be given to the Secretary of State. Second, since Article 4 of the OAS Convention does not explicitly limit enforcement to awards made in the territory of another contracting state, it is anticipated that there will be a request for a reservation to the effect that the United States will apply Article 4 only to awards made in the territory of a contracting state.

The third reservation relates to the possibility of a conflict between the Inter-American and New York Conventions. Since the New York Convention is better established in law and in practice than the Inter-American Convention, a reservation will be requested in the following language:

Where both this Convention and the New York Convention on Recognition and Enforcement of Arbitral Agreements are applicable to a particular case, the United States will be bound by and apply the provision of this Convention (the Inter-American Convention) if a majority of the parties to the arbitration agreement are citizens of a state or states that have ratified or acceded to this Convention and are member states of the Organization of American States. In other cases, the United States will be bound by and apply the provisions of the New York Convention.

With these specific reservations, ratification by the United States of the Inter-American Convention has been recommended by the Secretary of State's Advisory Committee on Private International Law and its study group of experts on arbitration (including representatives from the American Bar Association, the American Society of International Law, the National Conference of Commissioners on Uniform State Laws, the

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<sup>51</sup> *Id.*

American Law Institute, and the American Association for the Comparative Study of Law). In addition, the American Bar Association, the American Arbitration Association, the U.S. Chamber of Commerce, the Association of American Chambers of Commerce in Latin America, the Bar Association of the City of New York and other state bar associations have officially endorsed ratification of the Inter-American Convention by the United States.

## V. CONCLUSION

It is anticipated that the Senate will give its advice and consent to ratification of the Inter-American Convention on International Commercial Arbitration. By doing so, the framework within the Western Hemisphere for the uniformity of law and practice in the field of international commercial arbitration will be greatly strengthened. Since the United States has ratified the UN Convention of 1958, arbitration clauses and ensuing arbitral awards are already recognized as being valid and enforceable in Mexico, Ecuador, Chile, Cuba, Colombia, Trinidad and Tobago. Upon ratification of the Inter-American Convention by the United States, the countries of Honduras, Costa Rica, El Salvador, Panama, Paraguay and Uruguay will be added to the list. It also is anticipated that other Latin American countries will ratify the UN or OAS Conventions in the near future.

Commercial interests in the United States and in the Latin American countries, including quasi-government corporations in the United States and throughout Latin America, will soon have a system within the Western Hemisphere for rapid, effective and inexpensive settlement of international commercial disputes. It will therefore obviate the need of pursuing remedies in the court system of another country. In addition, the system has been structured to be compatible with comparable arbitration systems throughout the world. But most importantly, it will provide for the uniform and rapid enforceability of foreign arbitral awards in the debtor's country. The international commercial arbitral process is finally coming of age in the Western Hemisphere.

## APPENDIX

INTER-AMERICAN CONVENTION  
ON INTERNATIONAL COMMERCIAL ARBITRATION

The Governments of the Member States of the Organization of American States, desirous of concluding a convention on international commercial arbitration, have agreed as follows:

## Article 1

An agreement in which the parties undertake to submit to arbitral decision any differences that may arise or have arisen between them with respect to a commercial transaction is valid. The agreement shall be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications.

## Article 2

Arbitrators shall be appointed in the manner agreed upon by the parties. Their appointment may be delegated to a third party, whether a natural or juridical person.

Arbitrators may be nationals or foreigners.

## Article 3

In the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission.

## Article 4

An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.

## Article 5

1. The recognition and execution of the decision may be refused, at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested:

- a. That the parties to the agreement were subject to some incapacity

under the applicable law or that the agreement is not valid under the law to which the parties have submitted it, or, if such law is not specified under the law of the State in which the decision was made; or

- b. That the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or
- c. That the decision concerns a dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated from those not submitted to arbitration, the former may be recognized and executed; or
- d. That the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement, that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or
- e. That the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made.

2. The recognition and execution of an arbitral decision may also be refused if the competent authority of the State in which the recognition and execution is requested finds:

- a. That the subject of the dispute cannot be settled by arbitration under the law of that State; or
- b. That the recognition or execution of the decision would be contrary to the public policy ("ordre public") of that State.

#### Article 6

If the competent authority mentioned in Article 5.1.e has been requested to annul or suspend the arbitral decision, the authority before which such decision is invoked may, if it deems it appropriate, postpone a decision on the execution of the arbitral decision and, at the request of the party requesting execution, may also instruct the other party to provide appropriate guaranties.

#### Article 7

This Convention shall be open for signature by the Member States of the Organization of American States.

#### Article 8

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

#### Article 9

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

#### Article 10

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### Article 11

If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

#### Article 12

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing

State, but shall remain in effect for the other States Parties.

### Article 13

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States. The Secretariat shall notify the Member States of the Organization of American States and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation as well as of reservations, if any. It shall also transmit the declarations referred to in Article 11 of this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT PANAMA CITY, Republic of Panama, this thirtieth day of January one thousand nine hundred and seventy-five.

