

**D. Working Papers submitted to the Working Group on International Contract Practices at its fifth session
(New York, 22 February-4 March 1983).**

**1. NOTE BY THE SECRETARIAT: MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION:
REVISED DRAFT ARTICLES I TO XXVI (A/CN.9/WG.II/WP.40)^a**

Introductory note

1. This working paper contains revised draft articles I-XXVI of a model law on international commercial arbitration, prepared by the secretariat in accordance with the conclusions of the Working Group on International Contract Practices at its fourth session (Vienna, 4-15 October 1982).¹ A comparative table at

the end of this note shows the numbers of the revised draft articles and of the corresponding previous draft articles² on which the revised draft articles are based.

2. In addition to the redrafting of the text of the articles, the revision includes a rearrangement of the order of the articles and a modification of the headings. While the original classification scheme is no longer used, the new headings and the order of articles are still

^a14 December 1982. Referred to in Report, para. 87 (part one, A).

¹See Report of the Working Group on International Contract Practices on the work of its fourth session (A/CN.9/232) (reproduced in this volume, part two, III, A).

²The previous draft articles prepared by the secretariat are contained in documents A/CN.9/WG.II/WP.37 and 38, and are also reproduced in A/CN.9/232.

to be regarded as tentative pending future decisions as to which of the revised draft articles will ultimately be retained and which of the additional draft provisions will be adopted.³

3. It may be noted that this revised draft does not contain a provision listing all the "mandatory" provisions of the model law. It merely reflects in individual provisions any decision taken by the Working Group in this respect, for example by including the words "unless otherwise agreed by the parties".

4. Finally, the revised draft has been prepared with the following two assumptions in mind which might later be expressly stated in the model law, possibly together with other rules of interpretation: (a) freedom of parties to determine a certain point includes freedom to authorize a third person or institution to make that determination; (b) agreement by parties includes reference to arbitration rules.

Comparative table of numbers of draft articles

<i>Revised draft article (in WP. 40)</i>	<i>Previous draft article (WP. 37, 38)</i>	<i>Revised draft article (in WP. 40)</i>	<i>Previous draft article (WP. 37, 38)</i>
I	1	XIII (1)	29 (1), 4
II (1)	2	(2)	28 (1), (2)
(2)	3	(3)	29 (2), 30
III	—	XIV	23
IV (1)	5	XV	19
(2), (3)	—	XVI (1)	18 (1), (2)
(4)	6	(2)	21
V (1), (2)	17 (1), (2)	XVII (1)	20 (1), 22 (2) d
VI	13	(2)	21 (last sent.)
VII	14	(3)	20 (2)
VIII (1)	15 (1)	(4)	22 (1)
(2)	16 (1)	(5)	22 (2) b
(3)	15 (2), 16 (2)	XVIII	24 (A) (1)-(4)
(4)	17 (3)	XIX (1)-(3)	31 (1)-(3)
IX (1)	7	(4)	32
(2)	8	XX	26
X (1)	9 (1)	XXI	33
Alt. A: (2)	9 (2) a, b	XXII (1)-(3)	27
(3)	9 (2)c, 10	(4)	35 (1)
Alt. B: (2)	9 (2)c, 10	XXIII	25
XI (1)	11	XXIV	34
(2)	—	XXV	36
XII	12	XXVI	36

Revised draft articles of a model law on international commercial arbitration

A. SCOPE OF APPLICATION

Article I

(1) This Law applies to international commercial arbitration as specified in paragraphs (2), (3) and (4) of this article.

³The additional draft provisions will be dealt with in A/CN.9/WG.II/WP.41 and 42 (reproduced in this volume, part two, III, D, 2 and 3, respectively).

(2) "Arbitration" includes [all matters of arbitration, in particular]

(a) Arbitration agreements [as defined in article II, paragraph (1)];⁴

(b) The preparation and conduct of arbitration proceedings based on such agreements whether or not administered by a permanent arbitral institution; and

(c) The arbitral awards resulting therefrom.

(3) "Commercial" refers to any [defined legal] relationship of a commercial [or economic] nature [including, for example, any trade transaction for the supply or exchange of goods, factoring, leasing, construction of works, consulting, engineering, commercial representation, investment, joint venture and other forms of industrial or business co-operation, financing, or providing of services].⁵

(4) "International" are those cases where the arbitration agreement is concluded by parties whose places of business are in different States. If a party has more than one place of business, the relevant place of business is [that which has the closest relationship to the arbitration agreement] [the seat of the head office].^{6,7}

B. ARBITRATION AGREEMENT

Article II

(1) ["Arbitration agreement" is an agreement by parties to] [In an "arbitration agreement" parties may] submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

⁴The reference to only paragraph (1) of article II would, apart from its general value, help to clarify that the requirement of written form as laid down in article II, paragraph (2), is not a question of scope of application. Thus, a non-written agreement would be covered by this Law but would not be valid because of article II, paragraph (2).

⁵Inclusion of such or a similar illustrative list could help to underline the desirable wide interpretation of the term "commercial" and, at least, make clear that the transactions listed are covered by the model law. If the Working Group decides not to retain such a list, some clarification might be achieved in a commentary, if one were to be published, in that case examples should also be given of transactions not covered by the model law, e.g. consumer sales.

⁶The first alternative reflects the formula used in article 10 (a) of the 1980 Vienna Sales Convention (Yearbook ... 1980, part three, I, B) but adjusted to arbitration. The second alternative is submitted for consideration in view of its potential advantages: it provides a clearer criterion and enhances the applicability of the model law. Adoption of the second alternative would lessen the need for the provision dealt with in the following footnote.

⁷In this context, the Working Group may wish to consider the suggestion (set forth in A/CN.9/232, para. 167) to include an "opting in"-provision according to which parties may stipulate the application of the model law (in lieu of the law on domestic arbitration) by regarding their case as an international one. Since a State is unlikely to grant such freedom of choice in strictly domestic cases, it is submitted that some international element should be established. While it will prove very difficult to define this element, one possible way might be to require that not all of the following places are situated in the same State: (a) place of offer of contract containing arbitration clause or of separate arbitration agreement; (b) place of corresponding acceptance; (c) place of performance of contract or of location of subject matter; (d) place of registration or incorporation (or nationality) of each party; (e) place of arbitration.

(2) The arbitration agreement, whether an arbitration clause in a contract or a separate agreement, shall be in writing [i.e.] [An agreement is in writing if it is] contained in a document signed by the parties or in an exchange of letters, telegrammes or other communications [in sufficiently permanent form] [of equal evidential value]. The reference in a contract to general conditions, or similar legal texts, containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause a part of the contract.

C. ARBITRATION AND THE COURTS

[Article III]

In matters governed by this Law, no court shall intervene except where so provided in this Law.⁸

Article IV

(1) A court, before which an action is brought in a matter which is the subject of an arbitration agreement, shall at the request of a party, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) A plea that the court [referred to in paragraph (1)] has no jurisdiction because of the existence of a valid arbitration agreement may be raised by a party not later than in his statement on the substance of the dispute.

(3) Where arbitration proceedings have commenced and such a plea is raised before the court or a party requests from [a court] [the Court specified in article V] a ruling that the arbitral tribunal has no jurisdiction the arbitral tribunal may either continue or suspend the arbitration proceedings until its jurisdiction is decided on by that court.

(4) Any party may address to a court a request for interim measures of protection, whether before or during arbitration proceedings. This shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

Article V

(1) The special Court entrusted by this Law with functions of arbitration assistance and control [under articles VIII (2), (3), X (2)/(3), XI (2), XIII (3), XIV, XXV, XXVI ...] shall be the ... (blanks to be filled by each State when enacting the model law).⁹

⁸This novel draft provision is intended to express a principle underlying the discussions in the Working Group. While its acceptability may be assessed only after the contents of (i.e. "the matters governed by") the model law are clear, it would compel the drafters to express in the Law any instance of possible court control.

⁹It is suggested that the question of the international jurisdiction or competence of this Court be discussed at a later stage (probably in connection with issues of conflict of laws) when the exact and complete tasks of that Court are clear

(2) Unless otherwise provided in this Law,

(a) This Court shall act upon request by any party or the arbitral tribunal;¹⁰ and

(b) The decisions of this Court shall be final.¹¹

D. COMPOSITION OF ARBITRAL TRIBUNAL

Article VI

(1) No person shall be by reason of his nationality precluded from acting as arbitrator, unless otherwise agreed by the parties.

(2) An arbitration agreement is invalid [if] [to the extent that] it accords one of the parties a [predominant position] [manifestly unfair advantage] with regard to the appointment of arbitrators.

Article VII

The parties are free to determine the number of arbitrators. Failing such determination, [three arbitrators] [a sole arbitrator] shall be appointed.

Article VIII

(1) Subject to the provisions of article VI (2), the parties are free to agree on a procedure of appointing the arbitrator or arbitrators.

(2) Failing such agreement,

(a) If, in an arbitration with a sole arbitrator, the parties are unable to agree on the arbitrator, he shall be appointed by the Court specified in article V;

(b) In an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator.

(3) Where [the composition of an arbitral tribunal becomes unduly delayed because] the parties, or two arbitrators, are unable to reach agreement or where one of the parties, or any designated appointing authority, fails to act as required under an agreed appointment procedure or under this Law, the Court specified in article V may be requested [by any party or arbitrator] to take the necessary measure instead.

(4) The Court, in appointing an arbitrator, shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or a third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

¹⁰Provisions which "provide otherwise" may either restrict the rule under (a), e.g. article X (3) which entitles only a party to resort to this Court, or widen the rule by entitling others, such as individual arbitrators, e.g. article VIII (3) or XI (2).

¹¹Provisions which "provide otherwise", i.e. allow an appeal, might, for example, be envisaged in respect of decisions on setting aside, or on recognition and enforcement, of arbitral awards (to be dealt with in A/CN.9/WG.II/WP.42).

Article IX

(1) A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator [, from the time of his appointment,] shall disclose any such circumstances to the parties unless they have already been informed by him of these circumstances.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.

Article X

(1) The parties are free to agree on the procedure for challenging an arbitrator subject to the provisions of paragraph (3) of this article.¹²

Alternative A:

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after knowing about the appointment or the circumstances referred to in article IX (2), send a written statement of the reasons for the challenge to the other party and to all arbitrators. The mandate of the arbitrator terminates when the other party agrees to the challenge or the arbitrator withdraws from his office; in neither case does this imply acceptance of the validity of the grounds for the challenge.

(3) If a challenge

(a) under paragraph (2) of this article is not successful within 30 days after the receipt of the written statement by the other party and by the challenged arbitrator,¹³ or

(b) under any challenge procedure agreed upon by the parties, is neither accepted by the other party or the challenged arbitrator nor sustained by any person or body entrusted with the decision on the challenge,

the challenging party may [request the Court specified in article V to decide on the challenge] [pursue his objections before a court only in an action for setting aside the arbitral award].

Alternative B:

(2) Where an arbitrator is challenged without success, whether or not under a procedure agreed upon by the parties, the challenging party may [request the Court specified in article V to decide on the challenge] [pursue his objections before a court only in an action for setting aside the arbitral award].

¹²The reference to paragraph (3) relates to alternative A, if alternative B were to be adopted, the reference should be to paragraph (2).

¹³No time-period seems necessary if resort to the court may only be had in an action for setting aside. If a time-period were to be adopted, consideration might be given to selecting as the starting point of time the date of mailing the statement (to further the interest of the challenging party).

Article XI

(1) The mandate of an arbitrator terminates in the event of the *de jure* or *de facto* impossibility of his performing his functions or, unless otherwise agreed by the parties, in the event that he fails to act [in accordance with his mandate under the arbitration agreement].

(2) If a dispute arises concerning any of the cases envisaged in paragraph (1), any party or arbitrator may request the Court specified in article V to decide on the termination of the mandate.

Article XII

In the event of the death or resignation of an arbitrator or the termination of his mandate under article X or XI, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced, unless the parties agree otherwise. [However, if the arbitrator to be replaced was named in the arbitration agreement, that agreement shall lapse *ipso jure*].¹⁴

E. COMPETENCE OF ARBITRAL TRIBUNAL

Article XIII

(1) The arbitral tribunal has the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the [statement of defence or, with respect to a counter-claim, in the reply to the counter-claim] [reply to the claim or the counter-claim]. A party is not precluded from raising such plea by the fact that he has appointed, or participated in the appointment, of an arbitrator. A plea that the arbitral tribunal has exceeded its terms of reference shall be raised promptly after the matter, allegedly outside the mandate, is taken up. The arbitral tribunal may admit a later plea if it deems the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) either as a preliminary question or in the final award. In either case, a ruling by the arbitral tribunal that it has jurisdiction may be contested by any party only in an action for setting aside the arbitral award. [A ruling by the arbitral tribunal that it has no jurisdiction may be contested by any party within 30 days before the Court specified in article V].

¹⁴It is submitted that this last sentence does not seem necessary or advisable. Its practical value seems limited since naming of an arbitrator in the original agreement is not very common. More importantly, a less automatic and more flexible approach is desirable and possible in view of the proviso in the first sentence "unless the parties agree otherwise".

Article XIV

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order interim measures for conserving, or maintaining the value of, the goods forming the subject-matter in dispute, such as their deposit with a third person or the sale of perishable merchandise. The arbitral tribunal may require [of a party or the parties] security for the costs of such measures. If enforcement of any such interim measure becomes necessary, the arbitral tribunal may request [a competent court] [the Court specified in article V] to render executory assistance.

F. PLACE AND CONDUCT OF ARBITRATION PROCEEDINGS

Article XV

(1) Subject to the provisions of article XVII (1) [(a), (b), (2), (3), [(5),] the parties are free to [agree on] [determine, either directly or by reference to arbitration rules,]¹⁵ the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement [on the respective point at issue], the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that each party is given a full opportunity of presenting his case. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article XVI

(1) The parties are free to agree on the place where the arbitration is to be held. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal [, having regard to the circumstances of the arbitration].

(2) Notwithstanding the provisions of the preceding paragraph, the arbitral tribunal may [, unless otherwise agreed by the parties,]¹⁶ meet at any place it deems appropriate for

- (a) Hearing witnesses;
- (b) Consultations among its members;
- (c) The inspection of goods, other property or documents.

Article XVII

(1) [Failing agreement by the parties,]¹⁶ the arbitral tribunal shall decide whether to hold hearings or whether the proceedings shall be conducted on the basis of documents and other materials. However, if a party so requests,

(a) The arbitral tribunal shall, at the appropriate stage of the proceedings, hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument [on the substance of the dispute];

(b) Any expert, appointed by the arbitral tribunal, after delivery of his written or oral report, shall be heard at a hearing where the parties have the opportunity [to be present,] to interrogate the expert and to present expert witnesses in order to testify on the points at issue.

(2) In order to enable the parties to be present at any hearing and any meeting of the arbitral tribunal for inspection purposes, they shall be given [sufficient] notice [thereof at least 40 days in advance].¹⁷

(3) All documents or information supplied to the arbitral tribunal by one party shall be [communicated] [made available] to the other party. Also any expert report or other document, on which the arbitral tribunal may rely on in making its decision, shall be made available to the parties.

(4) [Unless otherwise agreed by the parties,]¹⁶ the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the tribunal.

(5) The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. [Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.]

Article XVIII

Alternative A:

[Unless otherwise agreed by the parties,]¹⁶ if, without showing sufficient cause for the failure,

(a) The claimant fails to communicate his statement of claim within the period of time stipulated by the parties or fixed by the arbitral tribunal, the arbitration proceedings shall be terminated [and the costs of the arbitration be borne by the claimant];

(b) The respondent fails to communicate his statement of defence within the period of time [of not less than 40 days as] stipulated by the parties or fixed by the arbitral tribunal, [this [may] [shall] be treated as a denial of the claim and]¹⁸ the arbitration proceedings shall continue;

(c) A party, duly notified in accordance with article XVII (2),¹⁹ fails to appear at a hearing, the arbitral tribunal may proceed with the arbitration;

¹⁷The second alternative would be useful also in the context of the default provision of article XVII (c).

¹⁸If the idea in square brackets were to be accepted, the Working Group may wish to define what exactly is meant by "denial of claim".

¹⁹A (minimum) period of time would have to be included here, if in article XVII (2) the first alternative (i.e. "sufficient notice") were adopted.

¹⁵The second alternative may be regarded as superfluous, if the suggestion set forth in the introduction (above, para.4) were accepted.

¹⁶Mention of this proviso may be deemed unnecessary in view of the fact that this article is not included in the reference to mandatory provisions listed in article XV (1).

(d) A party fails to produce documentary evidence, after having been invited to do so within a specified period of time of not less than 40 days, the arbitral tribunal may make the award on the evidence before it.^{19a}

Alternative B:

Even if, without showing sufficient cause for the failure, the respondent fails to communicate his statement of defence, or a party fails to appear at a hearing or to produce documentary evidence, although an invitation to do so had been sent at least 40 days in advance, the arbitral tribunal may continue the proceedings and make the award, unless default proceedings are excluded by agreement of the parties.

G. RULES APPLICABLE TO SUBSTANCE OF DISPUTE

Article XIX

(1) The arbitral tribunal shall [decide the dispute in accordance with such rules of law as may be agreed by the parties] [apply the law designated by the parties as applicable to the substance of the dispute]. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the [pertinent] substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of trade applicable to the transaction.

(4) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

H. MAKING OF AWARD AND OTHER DECISIONS

Article XX

(1) When there are three [or another uneven number of]²⁰ arbitrators, any award or other decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by [a majority of the arbitrators, i.e.]

^{19a}If the minimum period of time (40 days) set forth in this paragraph and in paragraph (b) were to be adopted, it should probably be regarded as "mandatory", unlike the rest of this article.

²⁰The words "or another uneven number of" are placed between square brackets in order to invite discussion by the Working Group on whether it might not be sufficient to deal, in the model law, only with the case of three (and not more) arbitrators and, then either to include a "*mutatis mutandis*"-provision for cases with more than three arbitrators or to leave it to the States adopting the model law whether or not to deal with questions of such big panels.

more than half of all appointed arbitrators [, provided that all arbitrators had the opportunity to take part in the deliberations leading to the award or decision].

(2) However, in the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, a presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

Article XXI

(1) If, during the arbitration proceedings, the parties agree on a settlement of the dispute, the arbitral tribunal shall either terminate the arbitration proceedings or, if requested by the parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article XXII and shall state that it is an award. Such an award has the same status and executory force as any other award on the merits of the case.²¹

Article XXII

(1) An award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitration proceedings with more than one arbitrator [, if the signature of one or more arbitrators cannot be obtained,] the signatures of more than half of all appointed arbitrators shall suffice, provided that the fact and the reason for the missing signature or signatures are stated.²²

(2) The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article XXI.

(3) An award shall state the place of arbitration [as referred to in article XVI]. The award shall be deemed [irrebuttably] to have been made at that place and on [the] [any] date indicated therein.

(4) After an award is made, a copy thereof signed by the arbitrators in accordance with paragraph (1) of this article shall be communicated to each party.

I. DURATION OF MANDATE OF ARBITRAL TRIBUNAL²³

Article XXIII

Alternative A:

The [making] [delivery] of the final award, which constitutes or completes the disposition of all claims

²¹The last sentence might later have to be modified in order to qualify this statement as regards reasons for recourse against such award or its enforcement (a subject-matter to be dealt with in WP.42).

²²The idea mentioned in footnote 20 might be considered here, too.

²³The draft articles included here might later be combined (and harmonized) with any draft provisions on termination of arbitration proceedings (to be dealt with in WP.41).

submitted to arbitration, terminates the mandate of the arbitral tribunal, subject to the provisions of article XXIV.²⁴

Alternative B:

Where the arbitral tribunal makes an award which [is not intended to] [does not] constitute a final disposition of the substance of the dispute, the making of such an award (for example, an interim, interlocutory, or partial award) does not terminate the mandate of the arbitral tribunal.

Article XXIV

(1) Within thirty days after the receipt of the award, [unless another period of time has been agreed upon by the parties,] a party, with notice to the other party, may request the arbitral tribunal

(a) To correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature; the arbitral tribunal may, within thirty days after the communication of the award, make such corrections on its own initiative; and

(b) To give, within forty-five days, an interpretation of a specific point or part of the award [; such interpretation shall form part of the award].

(2) Unless otherwise agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal, within thirty days after the receipt of the award, to make an additional award as to claims presented in the arbitration proceedings but omitted from the award; if the arbitral tribunal considers such request to be justified and that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.

(3) The provisions of article XXII shall apply to a correction or interpretation of the award or to an additional award.

²⁴In addition to the extension of the mandate under article XXIV, another case of "extension" which might be regulated in the model law is where the final award is later set aside.

J. RECOGNITION AND ENFORCEMENT OF AWARD²⁵

Article XXV

An arbitral award made in the territory of this State shall be recognized as binding and enforced in accordance with the following procedure [unless recognition and enforcement of such awards are granted under less onerous conditions]:

An application shall be made in writing to the [competent court] [Court specified in article V], accompanied by the duly authenticated original award, or a duly certified copy thereof, and the original arbitration agreement referred to in article II, or a duly certified copy thereof.

Article XXVI²⁶

An arbitral award made outside the territory of this State shall be recognized as binding and enforced in accordance with the following procedure, subject to any multilateral or bilateral agreement entered into by this State:

An application shall be made in writing to the [competent court] [Court specified in article V], accompanied by the duly authenticated original award, or a duly certified copy thereof, and the original arbitration agreement referred to in article II, or a duly certified copy thereof. If the said award or agreement is not made in an official language of this State, the party applying for recognition and enforcement of the award shall supply a translation of these documents into such language, certified by an official or sworn translator or by a diplomatic or consular agent.

²⁵Under this heading, further provisions, still to be drafted, may be included such as provisions on objections against recognition and enforcement (to be dealt with in WP.42). A final chapter ("K. Recourse against arbitral award") would then cover the provisions on setting aside of awards (also to be dealt with in WP.42).

²⁶It should be noted that this article on foreign awards, like article XXV on domestic awards, deals merely with some procedural aspects of recognition and enforcement. Important qualifications and restrictions will be contained in future draft provisions, in particular those on objections against leave for enforcement (to be dealt with in WP.42).