

The New York Convention Guide

Professor Emmanuel Gaillard

Ljubljana | 20 March 2018

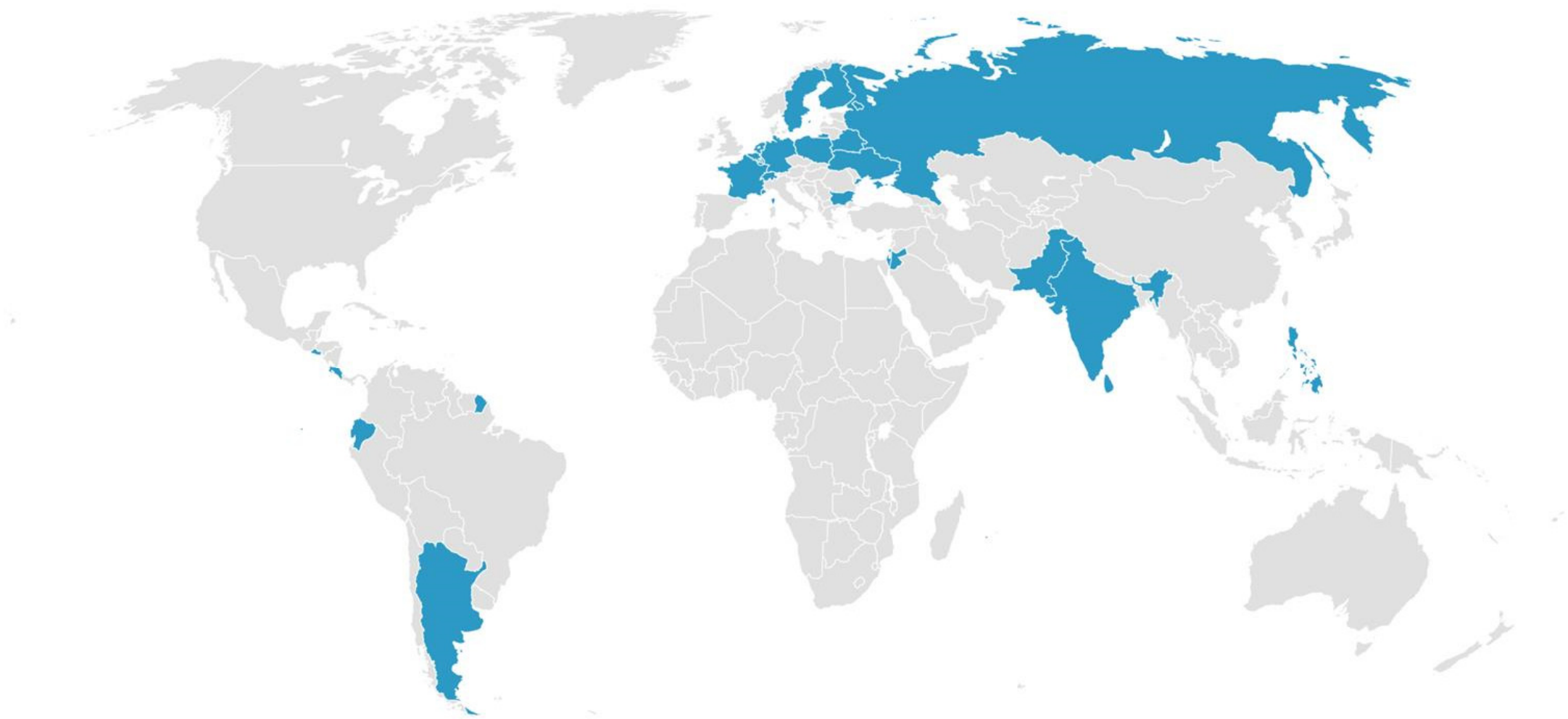


**LJUBLJANA
ARBITRATION CENTRE**
AT THE CHAMBER OF COMMERCE
AND INDUSTRY OF SLOVENIA

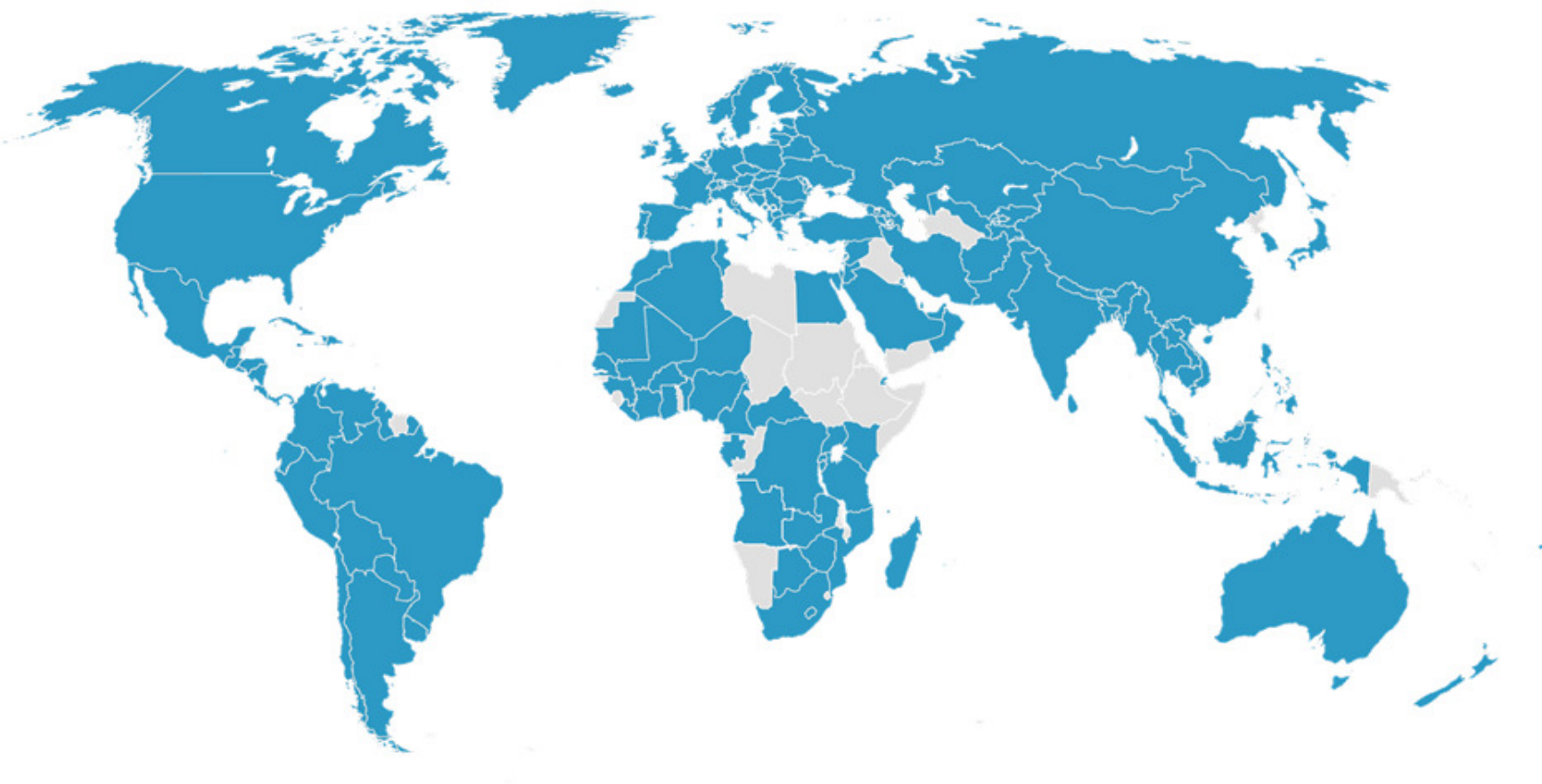
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1958 | 24 Signatory States



2018 | Convention in force in 157 States



Angola: 157th (2017)

Andorra: 156th (2015)

Comoros: 155th (2015)

State of Palestine: 154th (2015)

Congo: 153rd (2015)

Guyana: 152nd (2014)

Bhutan: 151st (2014)

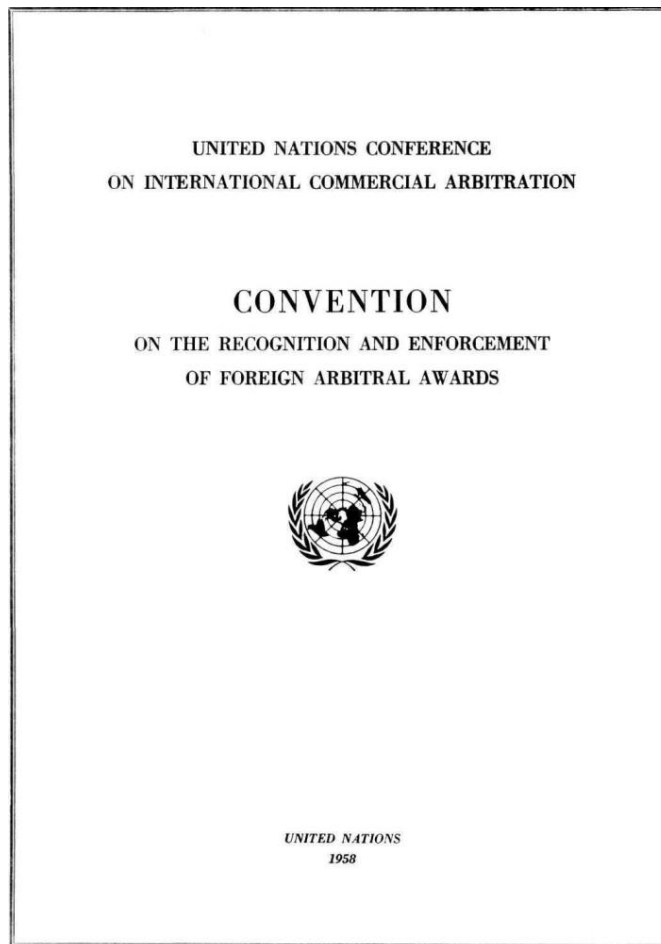
Burundi: 150th (2014)

Myanmar: 149th (2013)

São Tomé: 148th (2013)

The pro-enforcement policy of the Convention

Replacement of the 1923 Geneva Protocol and the 1927 Geneva Convention



■ Broadening the scope

- “Article I gives the New York Convention a broader scope than the 1927 Geneva Convention. Pursuant to article I(1), the New York Convention applies to awards made in any foreign State, irrespective of whether that State is a Contracting State”. **(Guide, Chapter I, para. 3)**
- “The Geneva Convention applied only to arbitral awards that were rendered in proceedings ‘between persons who are subject to the jurisdiction of one of the High Contracting Parties’”. **(Guide, Chapter I, para. 4)**

■ Removing barriers

- “The New York Convention eliminated the requirement that the applicant provide proof of finality of the award”. **(Guide, Chapter IV, para. 4)**
- The Convention “allows national courts to adjourn their decision on enforcement should they ‘consider it proper’” **(Guide, Chapter VI, para. 5)**, as opposed to an automatic stay under the Geneva Convention.

■ Introducing a more favorable right provision

- “Contracting States will not be in breach of the Convention by enforcing arbitral awards pursuant to provisions of domestic laws or treaties that are more favorable to enforcement”. **(Guide, Chapter VII, para. 2)**

History | Decision of the UNCITRAL Commission

1969-1970

Discussion of a convergence towards a uniform interpretation of existing conventions

1998

Discussion on the interpretation of the New York Convention

2008

Report based on replies sent by 108 Party States to the Convention regarding its implementation, interpretation, application, requirements and procedure

2010

“[...] the project should consist in the development of a guide on the New York Convention, with a view to **promoting a uniform interpretation and application of the Convention**. It was considered that such a guide could assist with problems of legal uncertainty resulting from its imperfect or partial implementation and could limit the risk that practices of States diverged from the **spirit of the Convention**”

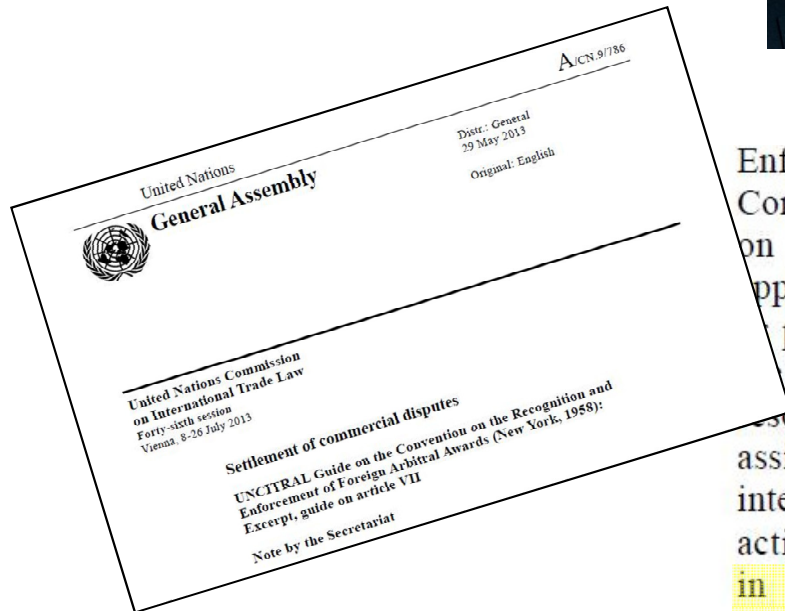
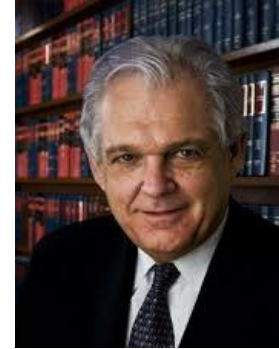
United Nations Commission on International Trade Law, *UNCITRAL Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958): Note by the Secretariat*, 25 March 2014 (Forty-seventh session, Vienna, 7-25 July 2014)

In cooperation with

Professor Emmanuel Gaillard

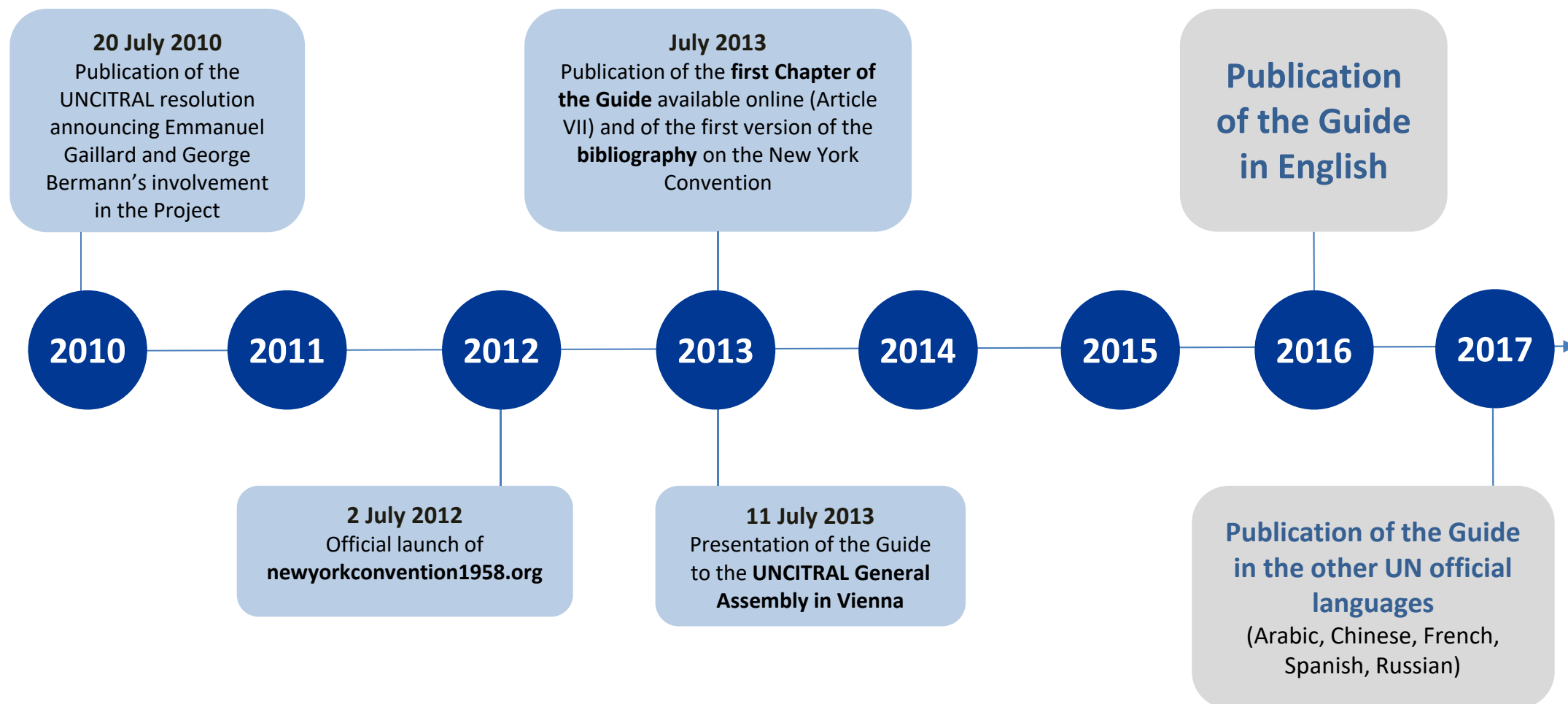


Professor George A. Bermann



Enforcement of Foreign Arbitral Awards (New York, 1958) (“the Convention”). The Commission requested the Secretariat to study the feasibility of preparing a guide on the Convention, with a view to promoting a uniform interpretation and application of the Convention, thus avoiding uncertainty resulting from its imperfect partial implementation and limiting the risk that practices of States diverge from the spirit of the Convention. Also, at that session, the Commission agreed that, resources permitting, the activities of the Secretariat in the context of its technical assistance programme could include dissemination of information on the judicial interpretation of the New York Convention, which would usefully complement other activities in support of the Convention.¹ At its forty-fourth and forty-fifth sessions, in 2011 and 2012, the Commission had been informed that the Secretariat was carrying out the project related to the preparation of a guide on the Convention, in close cooperation with G. Bermann (Columbia University School of Law) and E. Gaillard (Sciences Po School of Law), who had established research teams to work on the project. The Commission was informed that a website (www.newyorkconvention1958.org) had been established in order to make the information gathered in preparation of the guide on the New York Convention publicly available.²

Key dates



The Guide in its different languages



Promoting a uniform interpretation

“The purpose of the Guide is to assist in the dissemination of information on the New York Convention and further promote its adoption as well as its uniform interpretation and effective implementation. In addition, the Guide is meant to help judges, arbitrators, practitioners, academics and Government officials use more efficiently the case law relating to the Convention.”

United Nations Commission on International Trade Law, *UNCITRAL Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958): Note by the Secretariat*, 25 March 2014 (Forty-seventh session, Vienna, 7-25 July 2014)

The Guide | Methodology

- Research teams **initially analyzed case law from 15 common law and civil law jurisdictions:**
 - Australia, Canada, India, Hong Kong, the United Kingdom of Great Britain and Northern Ireland, the United States of America
 - Brazil, China, Colombia, Egypt, France, Germany, Russian Federation, Switzerland, OHADA
- Contributors to the Project gathered further **case law from 45 countries**
- Extensive case law analysis uncovered the key trends in how the Convention is applied in practice: **a bottom-up approach**
- The Guide includes a **Chapter for each article of the Convention**
- Each Chapter includes the list of the **Preparatory Works** in introduction and provides for an analysis of the **text of the Convention** in the light of **case law** from a multiplicity of jurisdictions
- This process **led to the creation** of the newyorkconvention1958.org website

Case law referenced in the Guide



Over 50 contributors

Dsp Publishing

Supreme Court Of Tasmania



Tribunal De Justiça Do Estado De São Paulo

Foreign Trade School Of Law

Republica E Cantone Ticino



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香港國際仲裁中心
Hong Kong International
Arbitration Centre

High Court Of Australia

NYIAC | New York
International Arbitration Center

Supreme People's Court Of The People's Republic Of China

DIS

Deutsche Institution für
Schiedsgerichtsbarkeit e.V.
German Institution of Arbitration



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Conclusion

1

Courts apply the provisions of the Convention in a **consistent manner** and promote the Convention's objective **to facilitate** the recognition and enforcement of arbitral awards

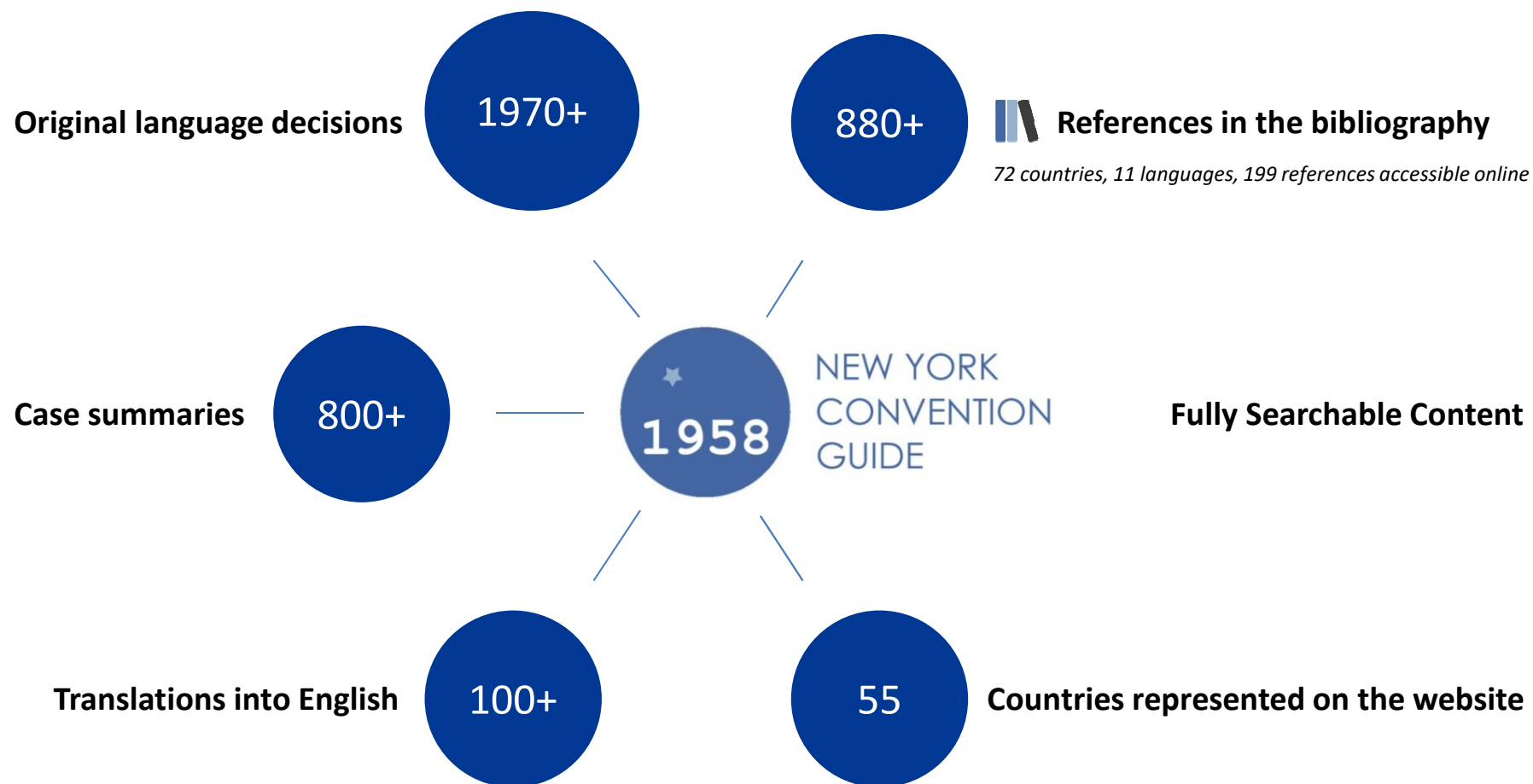
2


Parties resisting enforcement have been largely **unsuccessful** at proving grounds for refusal under Article V

3


The Convention sets a **minimum standard** and national laws may always be more **pro-enforcement**

Article VII(1) reflects that the Convention provides for a **“ceiling”**, or maximum level of control, over recognition and enforcement









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EVENTS

20 March 2018 | Joint
UNCITRAL-LAC Conference on
Dispute Settlement, Ljubljana,
Slovenia

The conference is organized jointly by
UNCITRAL and the Ljubljana Arbitration
Centre (LAC) and will take place at the ...

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Slovenia

Reservations

Slovenia made a reservation with regards to the retroactive application of the Convention.

Instrument of accession

Act of Ratification (Official Gazette of the Socialist Federal Republic of Yugoslavia, International Treaties, No. 11/8 of 9 October 1981).
On 25 June 1991, the Republic of Slovenia succeeded to the Socialist Federal Republic of Yugoslavia's rights and obligations under international treaties by the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 1/1991-I of 25 June 1991) and notified its succession by Act Notifying the Succession of the Conventions of the United Nations Organization and the Conventions Adopted by the International Atomic Energy Agency (Official Gazette of the Republic of Slovenia, No. 9/92 of 17 July 1992).

National Arbitration Act in force

Arbitration act (Official Gazette of the Republic of Slovenia, No. 45/2008 of 9 May 2008) [[Original in Slovenian](#)] ([Legal Information System \(PIS\)](#), [www.pisrs.si](#)) | [Translation in English](#)]

Domestic Court with jurisdiction over recognition and enforcement of foreign award

A foreign award may be recognized by the District Court of Ljubljana (Okrožno Sodišče v Ljubljani) and enforced by the competent District Court (Okrožna Sodišča) where the assets are located.

Author(s) and Contributor(s)

Dr. Ana Jereb (LL.M. (MIDS); the Supreme Court of the Republic of Slovenia)

Useful links

Slovene legislation database: [www.pisrs.si](#)

Slovene case-law database: [www.sodnapraksa.si](#) (Public information of Slovenia, the Supreme Court of the Republic of Slovenia)

Slovene Supreme Court: [www.sodisce.si](#)

Slovene Constitutional Court: [www.us-rs.si](#)

Date of succession

6 July 1992

Date of entry into force

25 June 1991

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sorted by (Date of decision descending)
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Share the result

Slovenia / 17 May 2017 / Slovenia, Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia) / VSRS Sklep Cpg 1/2017

Slovenia / 06 October 2016 / Slovenia, Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia) / VSRS Sklep II Ips 119/2015

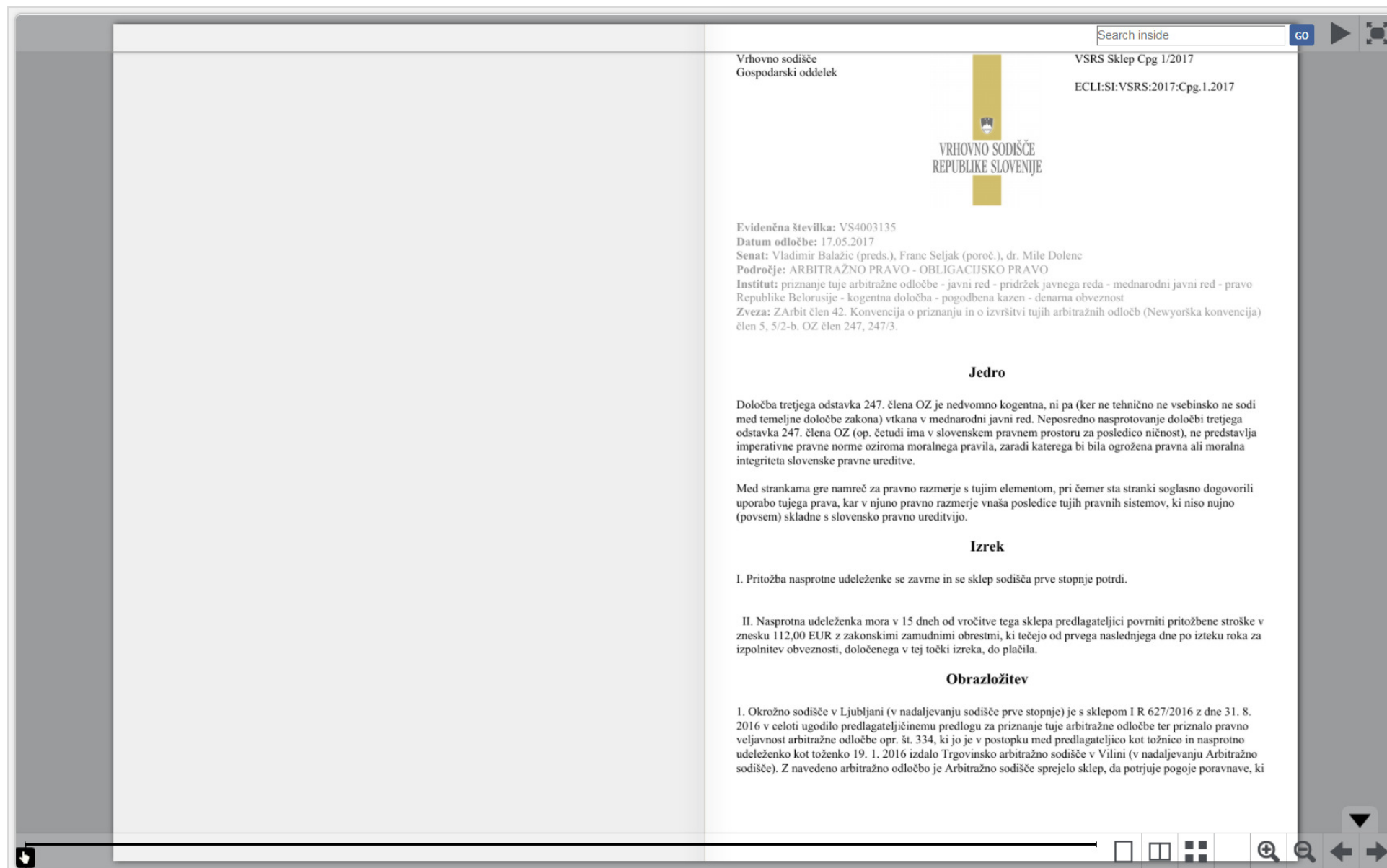
Slovenia / 15 July 2016 / Slovenia, Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia) / VSRS Sklep Cpg 8/2016

Slovenia / 07 April 2015 / Slovenia, Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia) / VSRS Sklep Cpg 7/2014

Slovenia / 10 November 2011 / Slovenia, Višje sodišče v Ljubljani (High Court of Ljubljana) / VSL sklep I Cpg 1082/2011

Slovenia / 16 December 2009 / Slovenia, Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia) / VSRS Sklep Cpg 2/2009

Refine
Court
Slovenia, Vrhovno sodišče Republike Slovenije (Supreme Court of the Republic of Slovenia) [5]
Slovenia, Višje sodišče v Ljubljani (High Court of Ljubljana) [1]
Applicable NYC Provisions
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V(1) [3]
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VII [2]



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