

Influences of cultural systems in international arbitration: the barrier or the harmonization factor

UNCITRAL's Model Law summarizes international arbitration culture?

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- **Origins and purposes of the Model Law**
- **International practices embodied in the Model Law**
- **International practices not embodied in the Model Law**
- **Should these practices/principles be embodied in the Model Law?**

Origins and purposes in the preparation of UNCITRAL's Model Law

- In 1981, the U.N. Secretary-General presented a Report suggesting to commence working on a Model Law.
- The draft of the Model Law included a compilation of provisions of national laws with extensive consultations and debates involving states, business and regional organizations and the arbitration community.
- After three years of drafting, the General Assembly adopted UNCITRAL's Model Law through Resolution 40/72. In 2006 the Model Law was revised and amended.
- The Model Law was designed to be implemented by national legislatures.
- At present, the Model Law has been enacted in 80 States and a total of 111 jurisdictions.
- UNCITRAL's Model Law main goals are to achieve an increasing harmonization in the way international commercial arbitration is treated in different jurisdictions and to provide similar answers to the difficulties that it encounters.

UNCITRAL's Model Law main contents

- Enforcement of arbitration agreements (Articles 7-9)
- Appointment and removal of arbitrators (Articles 10-15)
- Provisional measures (Article 17)
- Conduct of the arbitral proceedings (Articles 18-26)
- Judicial assistance in evidence-taking (Article 27)
- Applicable substantive law (Article 28)
- Arbitral awards (Articles 29-33)
- Setting aside or vacating awards (Article 34)
- Recognition and enforcement of foreign awards, including bases for non-recognition (Articles 35-36)

International practices embodied in the Model Law

- ❖ Enforceability of Agreements and Awards (Article 35).
- ❖ Equality of Treatment during the Process (Article 18).
- ❖ Separability Presumption and arbitrators authority (competence-competence) to consider their own jurisdiction (Article 16).
- ❖ Principle of judicial nonintervention in the arbitral proceeding (Article 16)
- ❖ Parties' autonomy with regard to the arbitral proceedings (subject to specified due process limits) (Article 19).
- ❖ The choice of the applicable law (Article 28).
- ❖ Presumptive validity of arbitral awards, subject to a limited and exclusive list of grounds for annulment of awards (Article 34).

International practice not embodied in the Model Law

- Transparency/Confidentiality Rules
- Taking of evidence
- Conflicts of Interests
- Corruption
- Expedited and/or Emergency proceedings
- Ethics/Conduct standards applicable to parties and counsel
- Other matters: disclosure, means of communications, *amicus curiae*, third party funding, etc.

- Where are these matters regulated?
 - ✓ Conventions
 - ✓ National Legislation
 - ✓ Customary International Law
 - ✓ Soft Law (IBA rules or guidelines, ICCA, etc.)

Should these matters be governed by the Model Law?

Thank you

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