HIGH COURT OF AUSTRALIA

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Details of Filing

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BETWEEN

CCDM Holdings, LLC
First Appellant

Devas Employees Fund US, LLC
Second Appellant

Telcom Devas, LLC
Third Appellant

and

The Republic of India
Respondent

AMENDED RESPONDENT'S SUBMISSIONS[1]

PART I: CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

PART II: STATEMENT OF ISSUES

2. Whether, for the purposes of s 10 of the *Foreign States Immunities Act 1985* (Cth) (**FSIA**), the 1960 conduct of the Respondent (**India**) in ratifying, subject to reservations, the *1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (**NY Convention**)[2] constitutes a submission to the jurisdiction of an Australian court in relation to a proceeding to recognise and enforce an arbitral award against India.

PART III: SECTION 78B OF THE *JUDICIARY ACT 1903* (CTH)

3. No s 78B notice is required.

PART IV: FACTS

4. The Appellants' submissions of 31 July 2025 (**AS**) omit certain critical matters of fact.

5. **India's ratification of the NY Convention.** By instrument of ratification deposited 13 July 1960, with effect on 11 October 1960, India ratified the NY Convention with the

[1] The Respondent appears conditionally. These submissions are only for the purpose described in s 10(7)(b) FSIA.

[2] 330 UNTS 3 (opened for signature 10 June 1958; entered into force 7 June 1959).

following declaration containing two reservations permitted by art I(3) (FC [24], emphasis added):[3]

> In accordance with Article 1 of the Convention, the Government of India declare that they will apply the Convention to the recognition and enforcement of awards made only in the territory of a State party to this Convention. They further *declare that they will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the Law of India.*

6. The underlined text uses the terms of art 1(3), first sentence (**reciprocity reservation**). The italicised text uses the terms of art I(3), second sentence (**commercial reservation**).

7. **The Bilateral Investment Treaty (BIT) and the arbitration.** The arbitration was conducted on the basis that a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence (PJ[8]). "India challenged the jurisdiction of the tribunal, including whether the underlying dispute engaged the promises contained in the BIT": PJ[12], FC[11]. The award the AS refers to as a "Merits Award" at [9] was an Award on Jurisdiction and Merits (PJ[13]).

8. The Merits Award (AFBM 391-591) and Quantum Award (ABFM 594-819) were admitted into evidence below subject to agreed limitations: PJ[118].

9. **Characterisation of the Awards and the conduct the subject of them.** AS [7] refers to a contract (**Antrix Agreement**) which does not control the characterisation of the claims the subject of the arbitration. India was not a party to it (PJ[33]). The arbitration was against India, not Antrix (PJ[11]-[12]), and involved allegations of breach of international law (i.e. the BIT, a treaty between States: see PJ[9]), not domestic contract law. The Appellants "expressly disavow[ed]" below "any contention that the BIT or the Devas/Antrix Agreement [fell] within the definition of 'commercial transaction' in s 11(3) [FSIA]" in respect of India, with "the former not being commercial in nature, and the latter not being a transaction which India itself had entered into": PJ[33].

10. The arbitration focused on whether the alleged conduct of India's Prime Minister, India's federal Cabinet, and the Cabinet Committee on Security (**CCS**) caused the annulment of the Antrix Agreement, in effect by directing the termination of a lease of spectrum on a State-owned satellite in order to preserve its use for national security and other public

[3] See 368 UNTS 371, Annex A (Ratification by India); FFC[24] (emphasis added). Australia acceded to the NY Convention on 26 March 1975 with effect on 24 June 1975, see 962 UNTS 364, Annex A (Accession by Australia).

purposes (the **Annulment**) (PJ [9], [11], [117]-[118]). The alleged conduct did not give the awards a character concerning a "commercial, trading, business, professional or industrial or like transaction": PJ[33], [114], [120]. Based on unchallenged expert evidence of India, "Cabinet decision-making is classically the highest form of executive policy-making, and is an act of State with no comparison with the activities of commercial parties or the entry into, or performance of, commercial transactions… [A] decision of the CCS is a decision of India exercising its highest governmental functions": PJ[117]. Those findings were not challenged in the Full Court of the Federal Court of Australia.

11. The Full Court held that the Appellants' "acceptance that the BIT and the Annulment are not commercial transactions" within s 11(3) of the FSIA, and their "abandonment of the contention that they are 'like transactions'", "carrie[d] with it the acceptance that the dispute that is the subject of the award is not readily characterised as arising from a commercial relationship": FC[79]. The Appellants do not challenge that reasoning.

12. The findings in the Merits Award did not support the Appellants' contention that the award concerned "like activities" by India to commercial transactions. The annulment conduct by the State's highest emanations was done partly to protect India's "essential security interests" and otherwise for "other public interest purposes", namely "railways and other public utility services", "societal needs, and having regard to the needs of the country's strategic requirements": PJ[118]. The arbitration concerned acts of a State *qua* State referable to core government functions. This was not appealed in the Full Court.

PART V: ARGUMENT

13. **Introduction:** This Court made plain in *Kingdom of **Spain** v Infrastructure Services Luxembourg S.á.r.l* (2023) 275 CLR 292 that waiver of sovereign immunity is "rarely accomplished by implication", and that a conclusion that the terms of a treaty evince, by implication, an agreement to submit to the jurisdiction of the courts of another state is "so unusual" and the "consequence is so significant" that such a conclusion cannot be reached without satisfaction of a "high level of clarity and necessity" (at [28]-[29]). Words "said to evidence waiver by implication must be construed narrowly"; even then, to be found, waiver must be clear and "unmistakable" (at [29]).

14. Unlike the 1965 *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (**ICSID Convention**)[4] considered in *Spain*, the earlier 1958 NY Convention nowhere mentions the word "immunity" or its cognates. The ICSID Convention exclusively concerns arbitral awards that inevitably involve at least one State party; state immunity was thus a topic that the ICSID project had to confront. By contrast, the earlier NY Convention sought to problem solve for garden variety arbitration agreements and awards between non-State actors for which state immunity is irrelevant. Even if (see below) some arbitral agreements or awards to which a State is a party could fall within the NY Convention, they would form a very small subset of its scope.

15. It is a large supposition that the NY Convention, pre-dating the ICSID project and dealing generally with the object of arbitration agreements and recognition and enforcement of foreign arbitral awards, was intended to diminish, by implication and without explicit debate,[5] states' long-established rights of immunity in international law. Yet that supposition, which underlies each ground in the Notice of Appeal (**NOA**) and has been challenged by the Notice of Contention (**NOC**), is assumed without analysis in the AS.

16. It is the Appellants, as the parties alleging waiver, who bear the onus on all questions. Applying this Court's methodology in *Spain,* the Full Court was correct to conclude that the Appellants have not established s 10 FSIA submission by India. The Full Court's orders may be sustained for the reasons it gave, as well as those advanced by way of NOC [2] and [3]. It is unnecessary to press NOC [1] and [4].

17. **Topics and structure.** The various issues raised in the NOA and NOC can conveniently be summarised and organised as follows.

18. *First topic: common issues.* Relevant to most grounds of the NOA and NOC are issues pertaining to methodology and the NY Convention's background, object and purpose.

19. *Second topic: Art I(1),* which identifies the category of awards to which the promises in the Convention "shall apply". India contends that the reference to "awards", "differences" and "persons" in Art I(1) refer to awards and differences of a commercial or private law nature, and do not include acts of State *jure imperii* or in its governmental capacity. On the unchallenged findings below, the Quantum Award concerns the conduct of India

[4] 575 UNTS 159 (opened for signature 18 March 1965; entered into force 14 October 1966). India is not a party.

[5] The Appellants' chronology filed in this Court records none of the relevant drafting history. India has remedied this with its own Chronology filed with these submissions. See further [31] below.

acting *jure imperii* or in its governmental capacity, not acts of the State in the nature of a commercial or private law transaction: above at [9]-[12]. Accordingly, NOC [2] contends the Quantum Award is not within the scope of the Convention; any promises made by India by ratification do not apply to that award.

20. *Third topic: Art I(3),* which contemplates that a Contracting State may further contract the scope of awards to which the promises contained in the Convention apply. Art I(3) permits a State, when ratifying the treaty, to 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" its national law. The Full Court held that "[b]y its reservation, India made it plain that it did not and would not treat differences arising from legal relationships that are not commercial (i.e. non-commercial disputes) as being subject to the Convention", and further, that the reservation had the consequence that "other Contracting States have no obligation to India in respect of such disputes": FC[72]. It also held that "India's ratification of the Convention subject to the commercial reservation is (at least) a sufficiently equivocal expression of India's intention not to waive foreign state immunity in proceedings enforcing the Convention in respect of non-commercial disputes to defeat any argument that it clearly and in a recognisable manner waiver immunity in such proceedings": FC[72]. These are the findings challenged by the NOA. India defends each finding.

21. *Fourth topic: Art III.* The primary judge treated art III as an unqualified promise by each Contracting State (PJ[43]) save in respect of any reservation made by it alone; he construed it as a promise that Australia will recognise and enforce any award within the scope of art I(1) irrespective of any claim to immunity that a state party debtor to the award may otherwise have. NOC [3] contends that art III, when it imposes an obligation that "[e]ach Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon…" does not, either by reference to "the rules of procedure of the territory where the award is relied upon" or upon its construction more generally, contain a promise of that unqualified width, nor conversely evince a clear and unmistakeable waiver, by each Contracting State, of its immunity in respect of any proceeding in the court of another Contracting State for the recognition and enforcement of an award to which the NY Convention otherwise applies.

First topic: issues common to multiple grounds (methodology; object and purpose)

22. **Methodology:** The Full Court, quoting the reasoning in *Spain*, correctly identified the test for establishing s 10(2) FSIA submission by implication from a treaty and referred to India's declarations as "(at least) a sufficiently equivocal expression of India's intention" to defeat any argument of unmistakable waiver: FC[71]-[72].

23. AS [59] appears subtly to raise the possibility that there is a disconnect between, on the one hand, the s 10 FSIA test articulated in *Spain* that waiver be "unmistakable", and, on the other hand, the interpretative principles stated in Art 31 and 32 of the *1969 Vienna Convention on the Law of Treaties* (**VCLT**)[6] which do not use language such as "clear", "necessary" and "unmistakable". There is in fact no disconnect.

24. Art 31(3), which itself reflects customary international law, requires that:

> 3. There shall be taken into account, together with the context:
>
> … (c) any relevant rules of international law applicable in the relations between the parties.

Two "relevant rule[s]" are (i) the rule of state immunity; and (ii) the further principle of international law that states are not to be understood as having waived or renounced rights (whether as to immunity or otherwise) unless such can be "unequivocally implied from the conduct of the State alleged to have waived or renounced its right".[7] The International Court of Justice, in ***Jurisdictional Immunities of the State***, was explicit as to the importance of state immunity as part of the international legal order, describing it as "a general rule of customary international law solidly rooted in the current practice of States", which "occupies an important place in international law and international relations", and which derives from the principle of sovereign equality of States, itself one of the "fundamental principles of the international legal order".[8] When rules (i) and (ii) are brought to bear in the VCLT Art 31 and 32 treaty interpretation exercise, it is difficult to conceive of any scenario where, as a matter of international law, a treaty could be interpreted to involve, by implication, a waiver of a State's right to immunity absent such being clear, necessary and unmistakable.

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[6] 1155 UNTS 331 (opened for signature 23 May 1969; entered into force on 27 January 1980). India is not a party.

[7] *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 168,266 [293], quoted in *Spain* at [19].

[8] *Jurisdictional Immunities of the State (Germany v Italy; Greece Intervening)* [2012] ICJ Rep 99, 123 [56]-[57].

25. That result, and the principle in Art 31(3)(c) itself, reflects the broader complementarity of treaty and customary law in the international legal system. In the recent advisory opinion of the ICJ on the *Obligations of States in respect of Climate Change*,[9] Judges Charlesworth, Brant, Cleveland and Aurescu filed a joint declaration explaining this relationship and endorsing (at [9]) the following passage of the late Professor Dinstein, a giant of international law (emphasis added):[10]

> In most disputes between States, the law applicable is a skein comprising strands of both treaties and custom: several rules (some engendered by treaty and others derived from custom) are complementing and interlacing with each other. There are reasons galore for this phenomenon. First and foremost, a treaty — notably when formulated in order to regulate a wide sector of international law (and irrespective of whether the drafters' aim is the codification of custom or the progressive development of international law) — hardly ever addresses every single issue coming within range. When a particular topic is not covered by the treaty, customary international law continues to govern the materia among Contracting and non-Contracting Parties alike.

26. There is a parallel here to domestic law's regard for coherence as between different bodies of rules forming part of a single system of law.[11] In ***Firebird*** *Global Master Fund II Ltd v Republic of Nauru,* French CJ and Kiefel J (Gageler J agreeing on this point at [131]) noted that the overlap between the FSIA and the *Foreign Judgments Act 1991* (Cth) is "only slight", and observed that it is "not to be supposed that a later general statue dealing with the subject of the enforcement of foreign judgments was intended to derogate from the Immunities Act provisions".[12] Likewise, in international law, an alteration by treaty to states' rights under pre-existing rules dedicated to the topic of state immunity is not to be supposed absent clear, unmistakable conduct.

27. **Background, object and purpose:** Despite acknowledging that the terms of a treaty must be interpreted in their context and in light of the treaty's object and purpose (AS [19]), the AS nowhere provides a statement of the treaty's object and purpose.

28. The primary judge's analysis of the treaty's object and purpose (PJ[51] and PJ[61]) misfired. As explained at [24] above, immunity is fundamental to state relations and a

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[9] International Court of Justice, General List No 187, 23 July 2025.

[10] Yoram Dinstein, 'The Interaction Between Customary International Law and Treaties' (2006) 322 *Collected Courses of the Hague Academy of International Law* 383 [229].

[11] See *Equuscorp Pty Ltd v Haxton* (2012) 246 CLR 498, 514 [25], 518 [34], 520 [38]; *Miller v Miller* (2011) 242 CLR 446 at 454 [15]; *Sullivan v Moody* (2001) 207 CLR 562 at 576 [42], 580-581 [53]-[55]; *Agricultural and Rural Finance Pty Ltd v Gardiner* (2008) 238 CLR 570 at 602 [100]; *CAL No 14 Pty Ltd v Motor Accidents Insurance Board* (2009) 239 CLR 390 at 406-410 [39]-[42].

[12] (2015) 258 CLR 31, [85]-[86], referring to *Maybury v Plowman* (1913) 16 CLR 468, 473-474.

weighty consideration in treaty interpretation pursuant to the interpretative principle in art 31(3)(c) VCLT. The point of considering object and purpose as per art 31 VCLT is not to determine whether a conclusion of waiver by treaty might somehow "fulfil" – in the sense of complement – the generalised goals of a treaty (the approach of the primary judge at PJ[51] and [61]), but rather, to consider whether, having regard to the particular aims of the treaty, it can be concluded that it set out to formulate new arrangements in respect of a large and altogether different topic as fundamental as state immunity.

29. The NY Convention arose out of the experience of businesspeople with the two treaties referred to in Art VII(2): the 1923 Geneva Protocol on Arbitration Clauses[13] and the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards[14] (**Geneva Treaties**). Neither was directed to arbitral awards to which a State is a party.[15]

30. The NY Convention seeks to: (a) improve upon the Geneva Treaties in facilitating the efficient and effective resolution of commercial or private law disputes arising between businesspeople across national borders, and in promoting international trade; (b) respond to particular problems that had arisen out of those earlier agreements, such as discriminatory treatment of international awards or inconsistency in the grounds for contesting award validity; and (c) preserve the sovereign rights of States.

31. These objects and purposes are evident in the *travaux* for the NY Convention, the relevant content of which is itemised in a Respondent's Chronology (**RC**) filed with these submissions. Chronologically, the core sequence was as follows.[16] In 1953, a committee of the non-governmental International Chamber of Commerce (**ICC**) provided to the United Nations Economic and Social Council (**ECOSOC**) a report and preliminary draft convention criticising the Geneva Treaties and seeking better to facilitate the enforcement of awards relating to international commercial disputes (RC, items 4 and 5). None of the

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[13] 27 LNTS 157 (opened for signature 24 September 1923 ; entered into force on 28 July 1924) (**1923 Protocol**).

[14] 92 LNTS 301 (opened for signature 26 September 1927; entered into force on 25 July 1929) (**1927 Convention)**.

[15] The 1923 Protocol applied only where, inter alia, there were "parties to a contract" who were "subject respectively to the jurisdiction of different Contracting States": Art 1. The 1927 Convention applied where an award was made "in pursuance of an agreement" covered by the 1923 Protocol, and "between persons who are subject to the jurisdiction of one of the High Contracting Parties": Art 1.

[16] This history is usefully summarised in an article by the Secretary and Senior legal officer for the Ad Hoc Committee, Paolo **Contini**, 'International Commercial Arbitration – The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (1959) 8(3) *American Journal of Comparative Law* 283, 287-294. As to Contini's role for the Ad Hoc Committee, see the Committee's Report at [5] (RC, item 17.1).

problems identified as arising out of the earlier Geneva Treaty regimes concerned awards involving disputes about the governmental conduct of States.[17] In response to the ICC's materials, in 1954 the ECOSOC adopted Resolution 520 (VII) which established an **Ad Hoc Committee** to study the matter raised by the ICC and to be comprised of representatives of only eight states with "special qualifications in that field" (RC, item 6). The small Ad Hoc Committee provided a Report in 1955 and a draft convention, which was transmitted to all members of the United Nations (RC, items 17 and 18). That the ambition did not stretch to formulating new arrangements for state immunity is clear from the Ad Hoc Committee's recommendation (emphasis added): "it would be desirable to establish a new convention which while going further than the Geneva Convention in facilitating the enforcement of foreign arbitral awards, would at the same time maintain generally recognised principles of justice and respect the sovereign rights of States".[18]

32. In May 1956, following a favourable reception from States to the Ad Hoc Committee's work, the ECOSOC made Resolution 604 (XXI). This convened "a Conference of Plenipotentiaries" for the purpose of "conclud[ing] a convention on the recognition and enforcement of foreign arbitral awards" and to "consider…other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes" (RC, item 22). The reference to plenipotentiaries is important, as also is the explicit demarcation of the purpose of the Conference to private law disputes. That was the context in which 45 States participated in the Conference held in New York from 20 May to 10 June, 1958 (RC, items 24 to 40) and which prepared and opened for signature the NY Convention (item 41). Consistent with the terms of Resolution 604 (XXI) which established it, the Conference identified in its Final Act (to which the NY Convention was annexed) that, "in addition to the convention…just concluded, which would contribute to increasing the effectiveness of arbitration in the settlement of private law disputes, additional measures should be taken in this field" (RC, item 41.1).

33. Having overlooked these critical aspects and qualifications on the treaty's background, object and purpose, the Appellants present, as an essential ingredient to the NY Convention's object and purpose, the existence of an unqualified ability (indeed, they call it an unqualified "sovereign right") of each State party, within its territory, to recognise

[17] For an overview of the problems which were of concern, see: Pierre Tercier, 'The 1927 Geneva Convention and the ICC Reform Proposals' (2008) 2(1) *Dispute Resolution International* 19.

[18] RC, item 17.1 at 5 [14] (**Ad Hoc Committee Report**).

and enforce arbitral awards against other states subject only to the conditions in art V: see AS [16], [17], [20], [52], [53]. That radically overstates the ambition.

34. *First,* because sovereign territorial rights are *not* unqualified. As the ICJ has explained, the rule of state immunity and the principle of sovereign equality from which it derives have implications for rights associated with territorial sovereignty (emphasis added):[19]

> This principle [sovereign equality] has to be viewed together with the principle that each State possesses sovereignty over its own territory and that there flows from that sovereignty the jurisdiction of the State over events and persons within that territory. Exceptions to the immunity of the State represent a departure from the principle of sovereign equality. Immunity may represent a departure from the principle of territorial sovereignty and the jurisdiction which flows from it.

Nothing in the *travaux* suggests that the drafters sought to rework these rules.

35. *Second,* the NY Convention was drafted between 1954-1958, at a time when the era of Bilateral Investment Treaties (BITs) and investor-State arbitrations had not yet arrived. BITs were a reaction to post-war developments culminating in developing and socialist countries using a numerical majority in the United Nations General Assembly to "establish recognition of their right to expropriate foreign investment without payment of fair market value for the expropriated assets".[20] The first BIT was concluded *after* the NY Convention.[21] The dispute mechanism in the BITs which followed were different from the mechanisms adopted historically in Friendship Commerce and Navigation (**FCN**) Treaties, the post-war variant of which provided for submission of disputes to the International Court of Justice.[22] Hence the very specific development of the 1965 ICSID Convention directly and exclusively concerned with investor/State arbitrations. ICSID needed to confront, as the NY Convention had not, the intersection of global efforts to encourage foreign direct investment on the one hand, and State immunity on the other.

36. As this Court explained in *Spain* (at [52]-[58]), the debate on that topic was explicit and intense. That also confirms the novelty of the proposed waiver that the ICSID draft put

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[19] *Jurisdictional Immunities of the State*, [57].

[20] Kenneth **Vandevelde**, 'A brief history of International Investment Agreements' (2005) 12(1) *UC Davis Journal of International Law and Policy* 157, 167. See generally, 166-173.

[21] *Treaty for the Promotion and Protection of Investments*, Pakistan-Federal Republic of Germany, opened for signature 25 November 1959, 457 UNTS 24 (entered into force 28 April 1962): see Vandevelde (n 2~~0~~1), 169. The first investor-State dispute based on BITs dated from 1987: United Nations, 'Investor-State Disputes Arising from Investment Treaties: A Review UNCTAD/ITE/IIT/2005/4' (2005), 4.

[22] Vandevelde, (n 2~~0~~1), 165, 173. *Cf* the FCN bilateral treaties of the "Colonial Era" (prior to WWII) which afforded even weaker protection: see Vandevelde (n 2~~0~~1) 158-161.

on the table in respect of investor/State arbitrations to incentivise foreign direct investment. Despite widespread awareness of the NY Convention and discussion of it for other purposes during the ICSID drafting process,[23] no-one suggested during those drafting debates that the horse had already bolted for those States which had agreed to the NY Convention. Nor does the *travaux* for the NY Convention have any equivalent discussion on immunity as recorded for ICSID.

Second Topic: Art I(1) and NOC [2]

37. **Summary.** Art I(1) specifies the types of arbitral awards to which the Convention shall "apply". NOC [2] contends that insofar as art I(1) refers to any award to which a State may be a party, the terms do not include awards concerning the conduct of a State *jure imperii* or in its governmental capacity, as opposed to acts of a State which are *jure gestionis* (that is, acts are in the nature of ordinary commercial activities or private law). Art I(1) is not engaged by awards concerning the conduct of a State *qua* State, as is India's conduct here: see [9]-[12] above.

38. While the primary judge rejected India's construction of Art I(1) (PJ [32(b)], [58]-[62], [86], [87]-[92]; see FC [53], [81]-[82]), it was subsequently endorsed in a powerful dissenting opinion of Judge Katsas of the United States Court of Appeals for the District of Columbia, in a case involving the Federal Republic of Nigeria.[24]

39. **Argument.** Art I(1) is the focal point for NOC [2]. It provides:

> This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

40. In this Court, the Appellants contend that the Convention applies to "all 'awards either' made outside the territory of the enforcing State or considered not to be domestic in that State" (AS [17], emphasis added). That interpretation of art I would have the Convention apply to any and all awards to which a State is a party so long as made outside Australia or not considered to be domestic in Australia. That interpretative claim involves quite a

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[23] See, e.g., ICSID, *History of the ICSID Convention: Documents Concerning the Origin and Formulation of the Convention*, vol II-1,521 (Fourth Session, 30 April 1964).

[24] *Zhongshan Fucheng Industrial Investment Co Ltd v Federal Republic of Nigeria* 112 F.4th 1054 (2024) at 1075, 1078-1084 (D.C. Cir. 2024) (***Zhongshan v Nigeria***). An application for certiorari was dismissed by consent.

change of position for the Appellants. They conceded at first instance and on appeal to the Full Court[25] that art 1(1) does not extend the NY Convention to all non-domestic arbitral awards to which a State may be a party. That concession was necessary because the *travaux* records that in 1955 the Ad Hoc Committee changed the name of the draft convention to refer to "*Foreign*" awards, instead of "*International*" awards, to avoid any suggestion that inter-state arbitral awards were within scope (RC, item 17.1). At the later Conference of Plenipotentiaries in 1958, an Italian delegate asked whether the broad terms of art I might capture inter-State disputes submitted to the PCA (RC, item 38.5). The meeting president responded that the drafting committee "had no such intention" (RC, item 38.6). Having regard to these portions of the *travaux*, and the NY Convention's object and purpose as set out in [29]-[36] above, art I(1) cannot be interpreted to include (as the appellants now contend) all awards to which a State is a party either made outside the territory of the State in which recognition and enforcement is sought or considered not to be domestic in that State.

41. NOC [2] provides a principled basis for interpreting the concept of an "award", "differences" and "persons" by reference to the Convention's concern with private law transactions, and the complementary distinction recognised in international law that, at least in those states subscribing to a restrictive theory of immunity, a state may not be immune for acts *jure gestionis* but it is immune for acts *jure imperii.*[26]

42. To submissions on sovereign equality and immunity (see [24], [34]), and the object and purpose of the Convention (see [27]-[36]), we add the following. *First,* in the 1950s, most states continued to adopt an absolute theory of immunity where a foreign state was impleaded, and even in those few states exploring restrictive immunity, the change made no difference in respect of another State's conduct in its governmental capacity.[27] As

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[25] At first instance: Applicants' Submissions in Reply dated 2 December 2022 at [57] (**RBFM** 44-50 (Tab 4)); in the Full Court: Respondents' Outline of Submissions dated 28 March 2024 at [37]-[42] and [49] (**ABFM** 934-954 (Tab 16)).

[26] *Jurisdictional Immunities of the State* at [59] and [61]. The ICJ has described the classification as distinguishing between whether "the acts in question fall to be assessed by reference to the law governing the exercise of sovereign power (*jus imperii*) or the law concerning non-sovereign activities of a State, especially private and commercial activities (*jus gestionis*)": *Jurisdictional Immunities of the State* at [60].

[27] *Zhongshan v Nigeria* at 1080-1081; Australian Law Reform Commission, *Foreign State Immunity* (Report No 24, 30 June 1984), 9-10 [11]-[12]; Hazel Fox and Philippa Webb, *The Law of State Immunity* (Oxford University Press, 3rd ed, 2013), 137-142; *Benkharbouche v Embassy of the Republic of Sudan* [2019] AC 777 [37], [52]-[53]; *Kazemi Estate v Islamic Republic of Iran* [2014] 3 SCR 176 at [39]-[45]; Rosalyn Higgins DBE QC, 'Recent Developments in the Law of Sovereign Immunity in the United Kingdom', Themes and Theories: Selected Speeches, and Writings in International Law (OUP, 2009) pp 330-344. See also: Jack B.

Judge Katsas observed in *Nigeria,* all states at the time "still granted immunity for governmental acts – those only a sovereign may undertake"[28] and no state was suggesting that should change. (Whilst Australia's (later) immunity legislation came to be formulated on the basis that the distinction between *acta jure imperii* / *acta jure gestionis* can be difficult to apply in practice, and the primary judge expressed the same view (PJ[88]), the principle of treaty interpretation embodied in art 31(3)(c) VCLT requires the NY Convention to be interpreted not by reference to domestic law preferences and perspectives, but having regard to the private law focus of Resolution 604 and the Conference, and the content of international law applicable to relations between States.)

43. *Second,* in rejecting this interpretation, the primary judge was much influenced by a textual point that the text does not include any limitation on *when* a state is a "legal person" for the purposes of art I: PJ[58]-[59], [86]. That textual point becomes moot once it is appreciated – in the light of [40] above – that, read in light of the objects and purpose of the Convention which positively excluded at least some kinds of non-domestic arbitral awards involving states from the scope of the Convention's ambitions, the reference to "awards", "differences" and "persons" in art I(1) cannot be read as literally and expansively as the primary judge's reasons contemplate.

44. *Third,* once resort is had to the *travaux*, the settlement of private law disputes was not only a "primary focus" of the Convention (PJ[85]), it was the explicit territory for the Conference of Plenipotentiaries which led to its conclusion: [32] above. To the extent regard is had to debates and other institutional documents, nowhere is there any explicit consideration of the possible application of the Convention to arbitral awards concerning the governmental acts of State. All that was mentioned was the possibility that the convention would apply to "public enterprises and public utilities… if their activities were governed by private law" and it was superfluous to make that explicit: RC, item 17.1; see also PJ[69]. The primary judge reasoned this part of the *travaux* supported an expansive interpretation of the Convention, not limited to scenarios where the acts of the State in issue were of a commercial or private law nature: PJ[70]. However, as Judge Katsas colourfully said in dissent in *Nigeria* at [1080-1081]:

Tate, Changed Policy Concerning the Granting of Sovereign Immunity to Foreign Governments, 26 *Dep't State Bull.* 984 (1952); John Niehuss, 'International Law - Sovereign Immunity: The First Decade of the Tate Letter Policy', *Michigan Law Review* (1962); *Trendtex Trading Corporation Ltd v Central Bank of Nigeria* [1977] QB 529.

[28] *Zhongshan v Nigeria* at 1080.

> In this legal and historical context, with no clear text or contemporaneous mention of fundamentally altering the scope of foreign sovereign immunity, mere use of the word "persons" cannot be deemed to reach the governmental acts of foreign sovereigns. Just as Congress does not hide elephants in mouseholes, ... neither do treaty negotiators. And if the Convention did have the revolutionary effect that Zhongshan claims, then surely someone, from among the many nations and individuals negotiating the treaty, would have at least mentioned it.
>
> …By the time of the New York Convention in 1958, there was already support for domestic courts to resolve disputes between private parties and foreign sovereigns under private law. But for disputes between private parties and foreign sovereigns under public law, applying the Convention would have not only eliminated bedrock immunity protections but also undercut espousal requirements, in broad fields where both would otherwise be required. Again, it is highly unlikely that treaty drafters would have effected such sweeping changes through an unadorned reference to "persons", in a Convention focused mainly on private commercial trade. And it is highly unlikely, if such sweeping changes were under consideration, that none of the negotiating countries, interested parties, or commenters would have even noted the issue.

45. *Fourth,* the argument advanced by NOC [2] is also supported by a large number of commentators, many of whom are referred to at PJ[88]-[90]. The primary judge rejected a number of these as unpersuasive on the basis that distinctions between private/commercial acts and non-private/non-commercial acts were not explained, nor "how such distinctions might apply to disputes arising from bilateral investment treaties" (PJ [88]). Those criticisms are met by [24]-[25], [28]-[36~~35~~] and [42]-[44] above. *Contra* PJ[92], Professor Albert van den Berg's footnotes indicate he too endorsed the relevance of such distinctions. For his statement that the NY Convention can apply to an award to which a State is a party "if it relates to a transaction concerning commercial activities in their widest sense" he cited Paolo Contini, L. Cappelli-Perciballi, Pieter Sanders, and GW Haight (see notes 131-134 on p. 279). Each of them[29] excludes from the Convention's scope arbitral awards not dealing with private law or commercial disputes, and variously carve out "political" matters or questions of public international law. Further, van den Berg's work embraces the distinction between a State's acts *jure imperii* and *jure*

[29] Contini, above n. 16 at 294 (cited at J[89], [92]); Lionello **Cappelli-Perciballi**, 'The Application of the New York Convention to Disputes Between States and Between State Entities and Private Individuals: The Problem of Sovereign Immunity" (1978) 12(1) *The International Lawyer* 197, 198-199; Pieter Sanders, 'The New York Convention', in International Commercial Arbitration (The Hague 1960) 293, 299; see also: Pieter Sanders, 'New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (1959) 25(3) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 100,103 (cited at J[88]). As to Haight: see G.W Haight, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Summary Analysis of Record of United Nations Conference, May-June 1958* (1 October 1958), 4, stating (p. 7) that "legal persons" should be given its "ordinary meaning", but "[t]he only necessary qualification … would appear to be the exclusion of political matters".

gestionis as relevant to whether it will be entitled to immunity (see at p. 280), and doubted that the Convention applies to awards between states (at p. 282).[30]

46. Finally, PJ[91] takes certain statements made by Professor Crawford out of context. In the very same paragraph as that quoted at PJ[91], Crawford offers a reason to doubt the construction of art I(1) as picking up arbitral awards between States or to which a State is a party because "[i]t would be surprising if an uncontemplated inference from Article 1 of the Convention were to have such marked effects in the area of sovereign immunity". On the next page (p.102) he concludes that the Convention "cannot be interpreted as waiving sovereign immunity with respect to enforcement" having regard to the *pacta tertii* rule. At fn 42 he reduces the interpretative choice to two options: "Either the Convention is to be interpreted as not applying to arbitral awards to which a state is a party, or sovereign immunity is one of the 'rules of procedure' under art 3, conditioning local enforcement". The argument advanced by NOC [2] is a variation on the first option, and fully consistent with Crawford's ultimate proposition that the Convention does not include a waiver of immunity, having regard to the importance of state immunity, the *travaux's* ambiguities and considerations of *pacta tertii*.[31]

47. Conclusion on NOC [2]: The outcome below should be sustained on the basis of NOC [2], together with the unchallenged findings at PJ [111]-[112] and [117]-[121]: see [9]-[12] above. The Quantum Award is not within the scope of art I(1).

Third Topic: Art I(3) and the NOA

48. Art I(1) specifies the general class of awards to which the NY Convention "shall apply". Art I(3), with its reservation mechanism, then performs a narrowing function. It identifies in advance particular species of awards that a Contracting State may choose to excise from the art I(1) genus – the result being that the NY Convention, as that Contracting State has chosen to sign up to it, "appl[ies] to" "arbitral awards" as defined in art I(I) *minus the species of awards it has excised by its reservation(s)*.

49. India ratified the NY Convention subject to, relevantly, the commercial reservation in art I(3). The Appellants do not contend that this reservation failed to comply with art I(3) or was otherwise invalid (see AS[2]). The effect of a reservation is to *derogate from* the

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[30] Albert Jan **van den Berg**, *The New York Arbitration Convention of 1958* (Kluwer Law International, 1981), 282 citing Cappelli-Perciballi at 199.

[31] James **Crawford**, "A Foreign State Immunities Act for Australia?" (1978-1980) *8 Australian Year Book of International Law* 71 at 101 and 102, note 42.

substantive provisions of a treaty.[32] "The author of a reservation which is permissible and which has been formulated in accordance with the required form and procedures cannot be compelled to comply with the provisions of the treaty without the benefit of its reservation".[33] And, where a State has relieved itself of obligations to other Contracting States via its reservation, "it may ordinarily be assumed that those other parties consent to its doing so with the implied understanding that they shall likewise be relieved of those same obligations vis-à-vis the [reserving State]".[34]

50. By making the commercial reservation, India contracted the scope of the awards within art I(1) to which it will "apply" the NY Convention. It limited its promise to "apply" the NY Convention to art I(1) awards *only* where they arise "out of legal relationships … which are considered as commercial under the national law of [India]".

51. As the Full Court found at FC[66]-[68], the contraction of India's obligations worked by its commercial reservation has three related effects. First, India is subject to none of the NY Convention's *obligations* (including but not limited to the art III obligation to recognise and enforce awards), and enjoys none of its *rights*, insofar as the excluded species of awards is concerned. Put another way, India's commercial reservation was a statement of the disputes that India would "treat … as being subject to the Convention" (FC[72]), *in any context*, including where another State was seeking to apply the NY Convention to India. Second, by application of the reciprocity principle embodied in art 21 VCLT, India's reservation affected the legal relations between it and every other Contracting State by modifying the treaty "to the extent of the reservation for each party reciprocally" (FC[67]). As between India and every other Contracting State, no provision of the NY Convention had any application to awards arising out of legal relationships

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[32] **Corten and Klein**, *The Vienna Convention on the Law of Treaties: A Commentary* (2011), 539, quoting from the report issued by the third Special Rapporteur on the law of treaties (*Report on the Law of Treaties,* A/CN.4/101, *Yearbook of the International Law Commission (1956)*, vol II, 115.

[33] Draft guideline 4.3.7, United Nations, *Report of the International Law Commission,*(2010) UN Doc A/65/10, 169, quoted in Corten and Klein, 555; see also the final guideline: ILC Guide to Practice on Reservations to Treaties 2011, *Yearbook of the International Law Commission, 2011*, vol II, Part Two, Guideline 4.3.8.

[34] 'Codification of International Law, Part III – Law of Treaties' (1935) 29(4) *Supplement to the American Journal of International Law* 635, 867 **(Harvard Commentaries)** (addressing art 13 of the Draft Convention, to practically the same effect as the definition of "reservation" in art 2(1)(d) of the ensuing VCLT). The Harvard Commentaries were the principal source of the *travaux* for the VCLT, and the reciprocity principle underpinning art 21(1)-(2) VCLT is also reflected in the commentary to art 13 of the Draft Convention, albeit in the form of a general principle as opposed to a rule: Ference Majoros, 'Le régime de réciprocité de la Convention de Vienne et les réserves dans les Conventions de La Haye' (1974) *Journal du droit international*, No. 1 80,82-83, 89.

considered as commercial under Indian law. Third, India therefore has no right to require Australia to perform any obligation under the NY Convention, and Australia correspondingly has no obligation to India to perform such obligations, with respect to "commercial" awards – including the obligation to recognise and enforce under art III.

52. **NOA [1]: reciprocal operation of reservation per VCLT art 21.** The starting point of the Full Court's reasoning concerning the commercial reservation was the principle in VCLT art 21(1)-(2): that a reserving State's reservation to a treaty operates reciprocally on the rights and obligations of other Contracting States under the treaty vis-à-vis the reserving State (FC[26]-[27], [65]-[68]).

53. The premise underpinning the Full Court's analysis of art 21 was that this reciprocity principle reflected customary international law, and as such could influence the interpretation of the NY Convention (which entered into force before the VCLT was made or entered into force). The appellants do not directly challenge the Full Court's premise (see AS[33], [48], [49]). That is wise, because art 21 was the correct starting point: there is strong support in cases and commentary for the proposition that art 21 VCLT restates customary law rules in existence at around the time that the NY Convention was finalised.[35] This makes sense because reciprocity under a treaty – the idea that, if one State limits or excludes its obligations to other States, the other States' obligation to the reserving State are limited or excluded to the same extent – is a particular manifestation of two foundational principles underpinning the conduct of treaty relations. The first is the *equality of States*:[36] there should be balance in the benefits and burdens that States

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[35] See Corten and Klein, 542, 566; *Report of the International Law Commission on the work of the second part of the seventeenth session,* Yearbook of the ILC 1966, UN Doc A/6309/Rev 1 (3-28 January 1966), 209 (commentary on then draft art 19(1) (**ILC Yearbook 1966**); *Analytical Compilation of Comments and Observations Made in 1966 and 1967 with respect to the Final Draft Article on the Law of Treaties*, UN Doc A/CONF.39/5 (Vol. I) (10 February 1968), 165 [5.2], both cited in DW Bowett, 'Reservations to Non-Restricted Multilateral Treaties' 41(1) (1968) British Yearbook of International Law 67, 85; 2011 ILC Guide, 429(5), 430-431(13); *Certain Norwegian Loans* (*France v Norway*) *(Judgment)* [1957] ICJ Rep 9, 23-24; *Interhandel (Switzerland v United States) (Judgment)* [1959] ICJ Rep 6, 23 (whilst noting the language of art 36(2) of the ICJ Statute); Harvard Commentaries, 867 (Article 13), 868 citing e.g. *The Marie Glaeser* [1914] P 218 (see 220-221). Quincy Wright, 'The Permanent Court of International Justice: International Conciliation' (1927) 232 *International Conciliation* 329, 341; In the *travaux* to the VCLT, see e.g. J. L Brierly, *Report on Reservations to Multilateral Conventions by Mr. J. L Brierly, Special,* UN Doc A/CN.4/41 (6 April 1951) annex B, quoting Charles Rousseau, *Principes généraux du droit international public* (Editions A. Pedone, 1944), tome I ("A reservation is always subject to reciprocity, i.e. it can be invoked against the State making it by all other parties to the treaty").

[36] Pierre-Henri **Imbert**, *Les réserves aux traités multilatéraux* (Editions A. Pedone,1979), 250 ("L'inégalité entre les Etats ne peut être présumée"); *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Azerbaijan v Armenia) (Judgment)* [2024] No 180, at [50]-[51] ; Tobias **Thienel**, 'Reciprocity in the Law of Treaties' in M. Kaldunski (ed.) *Reciprocity in International Law,*

Parties bear as against each other. The *second* is the *primacy of consent*:[37] States' treaty obligations must be voluntarily assumed; if the treaty allows it, a State may limit its obligations by way of a reservation, and another State may accept or reject that limitation as between the two; and this regime ultimately "increase[s] the opportunities for States to participate in" treaties[38]. The rules codified in art 21 VCLT govern the NY Convention subject to any contrary indication.[39]

54. The Appellants' contention that art I(3) of the NY Convention, on its proper construction, excludes or modifies the reciprocity principle should be rejected.

55. *First*, art I(3)'s phrase "will apply the Convention only to …" does not assist the appellants (cf AS[35]). In contradistinction with the reciprocity reservation, the commercial reservation is not framed to address only a Contracting State's recognition and enforcement of awards under the NY Convention. It deals with a broader topic: the scope of disputes to which a Contracting State "will apply the Convention". "Apply" in this context is a term of broad import. On a plain reading, a Contracting State may "apply" the NY Convention in a range of ways that do not involve recognition or enforcement of an award *per se* – for example, by referring or refusing to refer parties to arbitration (art II(3));[40] imposing conditions or fees on the recognition and enforcement of arbitral awards (art III); applying for recognition and enforcement of an arbitral award that the State obtains against one of its commercial contractors (art V); or taking steps to extend the NY Convention's application to other territories (art X(3)). So to could a State "apply" the NY Convention by "accept[ing] enforcement" of an arbitral award against it,[41] or by requiring another Contracting State to take action under the Convention.[42] The latter steps need have no connection with the reserving State's territory (cf AS[35]). Against this

(Palgrave Macmillan, 2024), 85, 98 (the purpose and effect of splitting up a multilateral treaty into a series of bilateral relationships is "to restore the balance of treaty obligations in force between the reserving and the reacting States"); Arianna **Whelan**, *Reciprocity in Public International Law* (Cambridge University Press, 2023), 83.

[37] ILC Yearbook 1966, 209, commentary to what was then draft art 19, para (1); Thienel, 97; Whelan, 83; Corten and Klein, 545, 549.

[38] Bowett, 76 fn 2.

[39] Art 31(3)(c) VCLT, which unquestionably represents customary international law: *Spain* at [38].

[40] See van den Berg, above n 30 at I-1.8, p52, referring to a US District Court case.

[41] See Transcript of Proceedings before Jackman J (28 September 2023), P221.19-21 (Walker SC) (**ABFM** [854]).

[42] See e.g. Cappelli-Perciballi, above n 29 at 203-204.

backdrop, the Full Court's construction of India's commercial reservation aligns with the natural meaning of art I(3)'s text.

56. *Second*, as to AS[36], while it is correct that arts I and III are agnostic about the "nationality" of the parties to any award presumptively covered by the NY Convention, that assists India rather than the Appellants, because it confirms that the organising principle for art I(3)'s operation is the *subject matter of the dispute* (differences arising out of legal relationships considered commercial under the reserving State's law). On the Full Court's interpretation of art I(3), a State's reservation thereunder operates consistently across all matters "commercial" under its law, regardless of the territory in which the matters were arbitrated or the identity of the litigants.

57. *Third*, as to AS [37], the absence of the words "on the basis of reciprocity" from this reservation does not advance things. That language, as used in the reciprocity reservation, has a particular meaning: that the reserving State will apply the NY Convention to the recognition and enforcement of an award only if the award was made in the territory of another State that is also party to the NY Convention. Without that reservation, Contracting States must recognise and enforce "arbitral awards rendered in any other country".[43] The commercial reservation is not directed towards that kind of reciprocity; as just explained, it concerns the subject matter of the dispute underlying the award.

58. *Fourth*, as to AS [38] and [42], the fact that the reservation hinges upon application of domestic law concepts is nothing new for an international treaty[44] – or, indeed, for the NY Convention itself: see art I(1)(whereby an enforcing State may need to recognise something that counts as an "arbitral award" under the law of another State, and not under its own); arts V(1)(a) and (d) (whereby an enforcing State may need to determine whether the parties were "under some incapacity", or whether the arbitral agreement, composition of the arbitral authority or the arbitral procedure was valid, according to foreign law); and art XI (whereby an enforcing State may need to determine, in assessing whether another Contracting State has relevant obligations, whether the NY Convention's articles come within the legislative jurisdiction of that other State's federal authority).

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[43] Ad Hoc Committee Report at [22] (RC, item 17).

[44] See, e.g., the reservation by the US to the ICCPR, discussed in D.W. ~~Grieg~~ Greig, 'Reservations: Equity as a Balancing Factor?' (1995) 16 *Australian Yearbook of International Law* 22, 77 fn 211 (art 20 does not require action by the US "that would restrict the right of free speech and association protected by the Constitution and laws of the United States").

59. *Fifth,* as to AS [38] and [51], the Appellants' argument proceeds on the incorrect assumption that art I(3) is a "territorially limited reservation". Neither court below adopted this proposition[45]; nor do the Appellants cite any supporting commentary. Indeed, the language of the commercial reservation stands in sharp contrast with the reciprocity reservation contained in the very same provision of the NY Convention (art 1(3)), in that it does not refer to "territory" at all.

60. *Sixth*, as to AS [40], the contention that Mauritius and the Netherlands could sue Australia "to *enforce* Australia's Art III obligation" misunderstands the reciprocal effect of the reservation. Since the Appellants must rely upon *India's* rights and duties under art III as the source of the alleged waiver, it is the relations between *Australia and India* as affected by the reservation that matters. Even if Mauritius or the Netherlands were to call upon Australia to enforce the award, Australia could properly answer that its obligation to enforce under art III is qualified by India's ability to assert sovereign immunity which is a product of India's reservation. In addition, art V(2)(b) would permit an Australian court to refuse recognition or enforcement of an award where that step "would be contrary to the public policy of" Australia, which it would be were the court to allow India to be impleaded in circumstances where India asserts immunity. In any event, each of Australia, Mauritius and the Netherlands became party to the NY Convention years after India's ratification of that treaty,[46] and did so in full knowledge that India had made the commercial reservation; and none of those States purported to challenge the nature or scope of India's reservation as being contrary to the Convention.[47]

61. *Seventh*, as to AS [41], the Full Court at [69] was right to conclude that its analysis was not undermined by art XIV. That article is primarily directed towards circumstances in which Contracting State A tries to 'have its cake and eat it too' by, e.g., seeking enforcement of an award in Contracting State B's courts even though State A is not bound to apply the NY Convention to awards of that kind. Ultimately, though, art XIV supports India's analysis, as express confirmation of what would otherwise flow from the customary law principle reflected in VCLT art 21(1)(b) (see FC[66]). In affirming the

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[45] PJ[43] contains no such finding. PJ[58] makes the different point that Australia's reservations could be the only relevant reservations (as it was the State where recognition and enforcement was sought), which reasoning does not survive the Full Court's judgment.

[46] After India's ratification on 13 July 1960: the Netherlands ratified the Convention on 24 April 1964; Australia acceded to the Convention on 26 March 1975; and Mauritius acceded to the Convention on 19 June 1996.

[47] See Greig~~Grieg~~, above n ~~44~~ at 52, 86-87, citing VCLT art 20(4).

principle of reciprocity,[48] and in doing so across *all* obligations under the NY Convention, art XIV demonstrates that the NY Convention embodies mutual rights and obligations that readily accommodate the notion that one State's invocation of limits on its duties is reflected back at it in corresponding limits on other States' duties.[49]

62. *Eighth,* as to AS [42], the purpose of the reservation mechanism in art I(3) is not to further the broad treaty objective of facilitating enforcement of foreign awards. Rather the provision exemplifies a competing rationale which the Appellants overlook: that allowing Contracting States to qualify the scope of their obligations in certain agreed circumstances may have been the price of securing widespread ratification of the treaty.

63. *Ninth*, as to AS [43] and the *travaux*, in ECOSOC's short discussion of the "reciprocity" language at its 23rd meeting (p11), when Messrs Ramos (Argentina) and Herment (Belgium) identified that the "concept of reciprocity" contemplated by the reciprocity clause "could not apply to the commercial clause", they evidently meant that a Contracting State that "did not distinguish between commercial and other obligations" could not feasibly make the reservation and then invoke it as against other Contracting States, because that would require it to "introduce that distinction into their domestic law". A State that applies another State's commercial reservation does not change its own domestic law at all. Further, the terms on which the general reciprocity clause (now art XIV) was successfully proposed by Norway at the 24th meeting indicate that the drafters sought to ensure that art I(3) operated reciprocally.[50]

64. *Tenth*, the references to individual sections of eight contracting States' statutes at AS[45], proffered in isolation, do not "establish[] the agreement of the parties regarding [the Convention's] interpretation". To take one example, s 8(3) of the *International Arbitration Act 1974* (Cth), which facilitates Federal Court enforcement of a foreign award "[s]ubject to this Part", contains a note stating: "For the enforcement of a foreign award against a foreign State … see the [FSIA]". So, far from providing "only" for the application of reservations made by Australia, s 8 expressly envisages that foreign state

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[48] Imbert (n 36) at p251.

[49] See D.W. Greig, 'Reciprocity, Proportionality and the Law of Treaties' (1994) 34(2) *Virginia Journal of International Law* 295, 302, quoting from *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion)* [1951] ICJ Rep 15, 23; 332.

[50] RC, item ~~41~~40.1 at 6 (Mr Rogblien (Norway), noting that, whilst "some provision" had been made for reciprocity in select provisions, "no corresponding words had been inserted into", relevantly, the second sentence of art 1(3), and that a "general clause … would remedy all those defects").

immunity may qualify the general principle, and thus leads back to the very issue in this case. The most that can be said is that relevant State practice points in different directions.[51]

65. *Eleventh*, the 1981 decision of a trial court in Ohio[52] is a slender reed on which to hang the contention that the commercial reservation does not "operate reciprocally" (cf AS[46]). As to the decisions cited at AS fn 24, neither involved a claim to sovereign immunity on the basis that the State's ratification of the treaty was subject to the commercial reservation.

66. *Finally*, the discussion at AS[47] reveals only that there is no clear and consistent position stated by international publicists on this issue.[53] "That creates a high bar for establishing that the Full Court "failed to consider and properly apply" their work (AS[47]).

67. In summary, none of the matters relied upon by the Appellants provides a sound basis for concluding that art I(3) of the NY Convention excludes the principles of reciprocal operation of treaty reservations as embodied in art 21 VCLT.

68. **NOA [2]: misconceived objection to reciprocity invoking Guideline 4.2.5.** By this ground, the Appellants contend that the commercial reservation is not capable of operating reciprocally even if the customary international law rule reflected in art 21 VCLT and Guideline 4.2.4 prima facie governs the NY Convention, because the exception in Guideline 4.2.5 displaces that position (AS[49]) because: (i) obligations under art III are "at most *mutual*, but not *reciprocal*" (AS[50]); and (ii) the commercial reservation is territorially limited. Regarding (i), the appellants do not attempt to justify this position, and it flies in the face of the reciprocity reservation – a clear statement within the NY Convention that reciprocal application of the NY Convention's obligations would

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[51] See Young-Joon Mok, 'The Principle of Reciprocity in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958' (1989) 21(2) *Case Western Reserve Journal of International Law* 123, 144 (discussing art 953 of the Spanish Code of Civil Procedure), and *Arbitration (Foreign Agreements and Awards) Act 1982* (NZ) s 13.

[52] *Fertilizer Corp. of India v. IDI Mgmt., Inc.*, 517 F. Supp. 948, 952-53 (S.D. Ohio 1981).

[53] For the contrary proposition to that relied upon by the appellants, see, e.g., Mirabito, "The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards: The First Four Years", 5 GA. J. Int'l & Comp. L. 471 at pp492, 499 (1975); Cohn, Reports of Committees, 25 Mod. L. Rv. 449, 452 (1962); Weigand and Baumann (eds), *Practitioner's Handbook on International Commercial Arbitration* (2019) at [21.76]; Rubinstein and Fabian, 'The Territorial Scope of the New York Convention and its Implementation in Common and Civil Law Countries' in Gaillard and Di Pietro (eds), *New York Convention in Practice* (2008) 91, 98.

not compromise its object and purpose[54] – and art XIV (see [~~61~~61] above). Contrary to AS[50], Guideline 4.2.5 must be applied to the NY Convention's provisions as a whole, and not to the NY Convention viewed only as a bargain between India and Australia. Further, to identify "rights" that Australia has lost by reason of India's reservation (AS[50]) reveals a misunderstanding of both the reservation's effect and the issues raised by s 10(2) of the FSIA (see [60] above). The Appellants must necessarily accept that art III operates subject to the general international law rule that a State may claim immunity (otherwise there would be no reason to consider whether India's conduct *restricts* the immunity to which it would otherwise be entitled). All India's reservation does for immunity purposes is preclude any conclusion that India has required Australia to recognise and enforce awards against it (cf PJ[43]). Rather than taking away any "right" from Australia, it simply neutralises conduct that might in a different setting be interpreted as forfeiting India's right to immunity. As to (ii), see [~~59~~59] above.

69. **NOA [3]: effect of commercial reservation on India's purported submission through art III.** The Appellants' focus on Australia's "right" to enforce the Award (AS[52]) suffers from the difficulties mentioned at [51] and [60] above; see also [33]-[36]. When the question is whether India has unmistakably submitted to the Court's jurisdiction by ratifying the NY Convention, it is India's expression of India's obligations and correlative rights that must be determinative. The issues joined between the parties here and below demonstrate that whether the NY Convention governs an award in a dispute involving a State acting *qua* State, and whether the commercial reservation has only a territorial operation is contestable. This denies the proposition that India unequivocally waived its immunity upon joining the NY Convention in 1960. The methodological issue raised at AS[59] is answered in [22]-[26] above.

70. **NOA [4]: correct application of s 10 FSIA in this case.** The legal consequences described above at [48~~48~~]-[69~~69~~] cannot be squared with the primary judge's path of reasoning set out in PJ[43] and endorsed at AS[24]. Applying the terms of PJ[43], the result is this (see [49]-[51] above). India does not require, and cannot be compelled to require, Australia to recognise and enforce an arbitral award that, under Indian law, does not arise out of "commercial" legal relationships (see [51]). Australia is relieved of the obligation to recognise and enforce an award of that kind vis-à-vis India. Equally,

[54] See Oliver Dörr and Kirsten Schmalenbach, 'Article 21' in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties,* (Springer, 2nd ed, 2018) 346 [22]-[23].

Australia does not require, and cannot be compelled to require, India to recognise and enforce such awards within India's jurisdiction.

71. **NOA [5]: procedural fairness.** The Appellants overstate their case on NOA [5]. A centrepiece of India's appeal to the Full Court was PJ[43] and [58], wherein the primary judge found that India's agreement to art III of the NY Convention included an agreement and requirement by India that Australia recognise and enforce an award even if India is a party, and that India's reservations were not relevant to the present proceeding: see the notice of appeal to the Full Court, ground 1(b)(ii) (CAB 98). India directly advanced the point that the treaty architecture's provision for the making of reservations in the terms of art I(3), and the fact of India having made a declaration containing the commercial reservation, imperilled the primary judge's analysis at PJ[43] read with PJ[58] and supplied "additional reasons to conclude that his Honour (at J[43]) overread the scope and content of signatory states' agreement in construing" art III: see written submissions in chief at [42]-[43] (ABFM 926-927).[55] That is the context for: **FC [59]** (identifying the central issue as the correctness of PJ[43] and PJ[58]) and **FC [60]** (noting that "[o]ne of the errors that India contends the primary judge made focusses on the fact that India ratified the New York Convention subject to the [commercial] reservation" and that India contends there was an overreading of its obligations having regard to the terms of art III and the fact its agreement was subject to reservations). The Full Court also correctly identified in the very next paragraph **FC[61]** that the respondents' answer to India's submission was to contend that the reservation only operated "unilaterally."[56]

72. The Appellants had the opportunity to put, in support of their own contention that the reservation had only "unilateral" effect, any legal materials they wished to put (and in any event, they have now advanced all such material on this appeal such that there is no prejudice). They chose not to put any alternative case that if – as India contended – India's reservations had interpretative consequences for the scope of both Australia and India's art III promises, then the Quantum Award was nonetheless "commercial" under Indian law. Nor did they advance any Indian authority to support such a contention. Indian authority would have spoken to the contrary, as the Delhi High Court has held that a

[55] The reservations were also the subject of oral address in respect of art 1(1) and art III: Transcript of Proceedings, The Republic of India v CCDM Holdings, LLC and Others (Full Federal Court of Australia, NSD 1306/2021, Derrington, Stewart, Feutrill JJ, 23 May 2024) P21-22, 27-28, 58. T21-22, 27-28, T58- 59.

[56] See Appellants' submissions to the FC filed 28 March 2024 at [29].

dispute grounded in rights under a BIT is not a "commercial" dispute for the purposes of s 44 of the *Arbitration and Conciliation Act 1996*[57] (which codifies India's commercial reservation in domestic law: see AS fn 20). Nor was the law in Australia of any use to the Appellants via the evidentiary presumption adverted to at FC [77], given the Appellants' concession that the BIT was not commercial in nature, and given the findings unchallenged in the Full Court that the Quantum Awards do not concern commercial or like transactions for the purposes of Australian law: see [9]-[12] above.

73. That is the context for FC [76]-[82]. Either there has been no procedural unfairness, or any unfairness has not been causative of prejudice. The outcome would inevitably have been the same.[58]

Fourth topic: Art III and NOC [3]

74. If NOC [3] is reached, this Court is required to decide whether Art III includes an unqualified promise by Australia to India (and vice versa) that awards which otherwise are within the scope of the NY Convention will be recognised and enforced by each irrespective of any claim to immunity that the other may have under international law.

75. Art III provides (emphasis added):

> Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

76. The primary judge concluded art III contains an unqualified promise by each Contracting State (PJ[43]) save in respect of any reservation made by the State in which the application for recognition and enforcement is made. NOC [3] contests that conclusion, on two bases which are independent but reinforce each other.

77. *The first basis:* the phrase "in accordance with the rules of procedure in the territory where the award is relied upon" introduces a *qualification on the promise* of the forum State to recognise and enforce, necessarily *qualifying any consent* by any other Contracting State to the jurisdiction of the forum court. Under international law it is well-established that

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[57] *Union of India v. Khaitan Holdings (Mauritius) Ltd., 2019 SCC OnLine Del 6755* at §1, §29, §35-§36; *Union of India v. Vodafone Group PLC United Kingdom, 2018 SCC OnLine Del 8842* at §89-§91.

[58] *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 418 ALR 152, [16].

the rules of state immunity are regarded as "procedural".[59] Consequently, art III does not supply consent to jurisdiction; there needs to be something additional to mere agreement by a State to art III to trigger waiver of immunity by that Court under the rules of procedure of the forum state.

78. *The second (and broader) basis*: art III would not in any event be construed as containing any agreement to surrender a Contracting States' immunity status should it become a debtor to an award to which the NY Convention otherwise applies. This conclusion is to be reached per art 31 and 32 VCLT having regard to text, context and purpose and relevant rules of international law, and the *travaux*.

79. As to text: there is a no textual reference to immunity in this treaty. On the other hand, there is explicit qualification to the art III promise by reference to "rules of procedure". That term, in international law, includes rules of immunity. It operates likewise within art III. The "rules of procedure" are not limited to, for example, the rules of service, limitation periods, or evidentiary requirements).[60] "Contracting States are free to determine the content of the rules of procedure".[61] Such latitude makes sense given art III's concern is with precluding non-discrimination between domestic and foreign awards, and the diversity of procedural rules (including on immunity) between States.

80. The context, object and purpose of the NY Convention, and the preparatory work, confirms that the NY Convention operates in parallel with but does not cut across State parties' rights and obligations with respect to immunity arising under international law and other domestic systems (as to which, see [1413]-[1515], [2424]-[3626], and [4241]-[4442] above). Those considerations are only strengthened when it is appreciated that the "relevant rules" of international law applicable to Contracting States are derived from a principle as fundamental as sovereign equality, and themselves constitute an "important" rule closely supervised by States. The AS (and the primary judge at PJ[43] and [51])

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[59] *Jurisdictional Immunities of the State* at [93] ("The rules of State immunity are procedural in character and are confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State. They do not bear upon the question whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful"). Accordingly, the ICJ held that there is no conflict between the rules on State immunity (i.e., procedural rules) and international law rules of *jus cogens* (i.e., substantive rules): at [92]-[94]. See also *Arrest Warrant of 1 April 2000 (Democratic Republic of the Congo v Belgium)* [2002] I.C.J. Rep 3, [60] ("While jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law").

[60] See E Gaillard and G Bermann (eds.), *UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (2016), 88-89 [29]-[32] (**UNCITRAL Guide**).

[61] UNCITRAL Guide, 85-86 [24].

assume that contracting parties must have intended to give the treaty maximum efficacy and that this would be undermined by any plea of immunity, an assumption that posits an expansionist agenda to the detriment of States' longstanding sovereign immunities, without any textual indication that the treaty had that agenda, or any basis in the terms or *travaux* positively supporting such a dramatic reworking of a topic as important to States as their sovereign immunities. From a null result the appellants and primary judge impermissibly, and apparently by "necessity", infer a positive.

81. Thus the premise of PJ [43] that art III contains a promise by Australia to recognise and enforce all awards within the scope of art I(1), without qualification, should be rejected. Rather, the promise is to recognise and enforce those awards, while at the same time respecting the rights which other States have to immunity. But even if the premise were sound, the conclusion in PJ [43] would not follow. When the express promise in art III is framed in terms solely of what a State will do within its own territory, there is no clear and unmistakeable indication that each Contracting State is waiving its rights of immunity as they may exist in varying forms across each of the other Contracting States. Test the matter where, as in the present case, the state is impleaded before the courts of another contracting state in respect to conduct which it has done *qua* sovereign and for which it is sued under an international law obligation arising from a BIT. The defences to enforcement under art V are not apt to protect a State in such case. There is an available implication, sufficient to defeat waiver, that each Contracting State is not giving up in advance the rights it has to be respected as an equal sovereign of the State called upon to enforce; some more explicit act is required to constitute waiver than the terms of art III. And if, contrary to the Full Court, art I(3) is construed as wholly limited to what a state will do *in its territory*, then it becomes even more unlikely that art III has the extraordinary consequences of waiver in advance for all times, purposes and awards.

82. The two interpretations of art III advanced by NOC [3] answer the concern of the primary judge that if the treaty is *not* interpreted implicitly to waive states' immunity, Australia "would be unable" to comply with its art III obligations: see PJ[43], [51] and [96]. They supply a complete answer because Australia owes no such unqualified obligations. The primary judge's finding that the argument advanced by NOC [3] involved "a completely arid point of taxonomy" (PJ[96]) erred because it wrongly assumes the correctness of the earlier conclusion at PJ[43] that Australia's art III promise is unqualified.

83. **Relevant decisions in other jurisdictions.** The argument advanced by NOC [3] has recently been considered in other jurisdictions. The Court of Appeal of England and Wales (Phillips LJ, Newey LJ and Sir Julian Flaux C agreeing) suggested the argument as a reason for why it was "by no means clear" that an interpretation of art 54 of the ICSID Convention as containing a submission to jurisdiction by Spain would "necessarily result in article III [of the NY Convention] being so interpreted":[62]

> The two provisions [art 54 ICSID and art III NY Convention] are not worded identically, article III referring to the award being enforced "in accordance with the rules of procedure of the territory where the award is relied upon". As state immunity is regarded as a procedural bar as a matter of international law, it may be that article III preserves state immunity on its own terms. Further, whereas the [ICSID] Convention is necessarily dealing with awards to which a contracting state is party, that is far from the case in relation to the [NY] Convention. The conclusion that article 54 contains an "unmistakeable" agreement by states that awards against them would be enforced may not be so obvious in respect of article III…

84. Most recently, in a case being prosecuted by the present appellants in England, Sir William Blair (sitting as a Judge of the High Court of Justice), adopted the argument advanced by NOC [3] to find that India had not waived immunity simply by ratifying the NY Convention (emphasis added):[63]

> Section 2(2) of the UK's State Immunity Act 1978 (**SIA**) provides that a state may submit to the jurisdiction of the UK courts by a prior written agreement. I consider that by reason only of its ratification of the New York Convention 1958 (NYC), the Republic of India has not submitted to the jurisdiction, or to put it another way, ratification of the NYC by India does not in and of itself amount to consent by way of a "prior written agreement" by the state waiving its immunity. <u>This is because (1) there is no indication that it was the intention of the drafters of the NYC to preclude immunity-based arguments in enforcement actions against states, and overall the commentary is to the effect that immunity-based arguments are not precluded, (2) applying the established classification of state immunity in English and international law, the reference to "rules of procedure" in Article III NYC preserves state immunity in its own terms, and (3) applying the test for waiver in English law, the ratification of Art III of the NYC is not, on its own, a waiver of state immunity by India.</u>

Sir William Blair granted the Appellants permission to appeal on the basis the issue has implications for state immunity.[64] The appeal is pending (CA-2025-001365).

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[62] *Infrastructure Services Luxembourg S.a.r.l v The Kingdom of Spain* [2024] EWCA Civ 1257; [2025] 2 WLR 621 at [102(i)].

[63] *CC/Devas (Mauritius) Ltd v Republic of India* [2025] EWHC 964 (Comm); [2025] 1 Lloyd's Rep 499, [1], [87].

[64] *CC/Devas (Mauritius) Ltd v Republic of India* [2025] EWHC 1189 (Comm) at [6].

85. Sir William Blair's careful reasoning also includes a useful summary addressing the prior decisions of other national courts: at [54]-[62]. The Brief of the US Government referred to at [56] of those reasons was in evidence and referred to in submissions below, as was an earlier brief of the US Government (**RBFM 6 to 33 (Tab 1)**). The US position is that a State does *not* waive immunity merely by becoming a party to the NY Convention; that a (separate) agreement to arbitrate the disputes would be a necessary condition to find an implicit waiver in an NY Convention enforcement action; and that in such actions the US courts should rely on the FSIA arbitration exception, not the waiver exception.

86. **Commentary supports NOC [3].** As the primary judge noted, there is substantial commentary to the effect that the reference to "rules of procedure" in Art III includes the forum State's law of foreign State immunity: PJ[94]. This includes the opinions of Professors Crawford and Bjorklund: PJ[94]. Professor Crawford identified the argument now advanced by NOC [3] as the preferable route to the conclusion (which he considered undoubtedly correct) that the NY Convention cannot be interpreted as waiving sovereign immunity with respect to enforcement and that, having regard to the "rather haphazard way" in which the intersection of the NY Convention with awards to which States were a party was considered at all, "[i]t would be surprising" if the NY Convention "were to have such marked effects in the area of sovereign immunity".[65] Professor Bjorklund, has stated that "[i]*t* is clear […] based on the negotiating history of the Convention, that the delegates did not intend to preclude an immunity-based argument in enforcement actions against states" and that "municipal immunity laws have been treated as preliminary matters of procedure which claimants seeking to execute awards must overcome."[66] Hazel Fox also makes the point that state immunity is a "*procedural plea*".[67]

87. **Contrast with ICSID**. For the reasons stated in NOC [3], India's conduct in ratifying the NY Convention, subject to its declaration, is insufficient to satisfy the s 10(2) FSIA test for submission to jurisdiction by implication from a treaty's terms. That result may be contrasted with the ICSID Convention, which *explicitly* refers to immunity, does *not* contain an equivalent to the words "in accordance with the rules of procedure", and

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[65] Crawford (n 31), 101-2, note 42.

[66] Andrea Bjorklund, "Sovereign Immunity as a Barrier to the Enforcement of Investor-State Arbitral Awards: The Re- Politicisation of International Investment Disputes" (2010) 21 *American Review of International Arbitration* 211 at 218-219.

[67] Hazel Fox, *State Immunity and the New York Convention*, in Emmanuel Gaillard and Domenico Di Pietro (eds) Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice, (Cameron May 2008) 829, 836-837.

additionally contains *other textual differences* about how the convention applies where recognition and enforcement is sought outside the territory of a Contracting State. As explained in [1414]-[1515] and [3535]-[3636] above, ICSID was a later treaty that exclusively concerned awards to which a State would be a necessary party, and further, explicitly sought as part of its object and purpose to incentivise foreign direct investment in developing states. Unsurprisingly, questions of immunity were confronted and decided upon as part of the drafting of that convention: see *Spain* at [51]-[58]. Additionally, essential to the conclusion in *Spain* as to the meaning of art 54 of the ICSID Convention was its surrounding provisions, including, significantly Art 53: *Spain* [69]. Art 53 provides that an award "shall be binding on the parties" and that "each party shall abide by and comply with the terms of the award" (emphasis added). That is a promise by each Contracting State as to how it will apply the convention irrespective of whether its institutions are called upon for recognition and enforcement. The NY Convention has no equivalent to Art 53.

PART VII: ESTIMATED TIME FOR ORAL ARGUMENT

88. The Republic of India (India) estimates that it will require 1 day to present its oral argument. Part of that time may be allocated to a rejoinder if, as has been the approach taken in writing, the Appellants do not advance orally in chief their case on the NOC.

Dated 2829 August 2025

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ANNEXURE TO RESPONDENT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
Australian legislation and statutory instruments					
1	*Foreign State Immunities Act 1985* (Cth) (FSIA)	Compilation No 4 (21 October 2016 to 17 February 2022)	ss 9, 10 , 11	Act in force on the date that the application for recognition and enforcement was made.	21 April 2021
2	*International Arbitration Act* 1974 (Cth) (**IAA**)	Compilation No 13 (26 October 2018 to 17 February 2022)	s 8(3), Schedule 1	Act in force on the date that the application for recognition and enforcement was made.	21 April 2021
Foreign Legislation					
3	*State Immunity Act 1978* (UK) (**SIA**)	As amended on 23 February 2023	s2(2)	Act as currently in force	23 February 2023.
Treaties					
4	*Protocol on Arbitration Clauses*, opened for signature 24 September	As entered into force	Art 1	Protocol as in force[68]	Entered into force 28 July 1924 **India**[69] • Ratification: 23 October 1937

[68] Per Article VII(2) of the New York Convention, "*The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention*."

[69] 27 UNTS 157 (India).

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
	1923, 27 LNTS 157				**Australia** (not a party) **Mauritius**[70] • Ratification (by the British Empire): 22 June 1925 • Succession: 18 July 1969 **USA** (not a party)
5	*Convention on the Execution of Foreign Arbitral Awards,* opened for signature 26 September 1927, 92 LNTS 301	As entered into force	Art 1	Convention as in force[71]	Entered into force on 25 July 1929. **India**[72] • Ratification: 23 October 1937 **Australia** (not a party) **Mauritius**[73] • Ratification (by the UK prior to Independence): 13 July 1931 • Succession: 18 July 1969 **USA** (not a party)

[70] 683 UNTS 334, Annex C (Mauritius).

[71] Per Article VII(2) of the New York Convention, "*The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention*."

[72] 92 UNTS 301 (India).

[73] 683 UNTS 334, Annex C (Mauritius).

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
6	*United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards,* opened for signature 10 June 1958, 330 UNTS 3	As entered into force	Arts I(1), I(3), III, IV, V, VII, X, XI, XIV	Convention as currently in force	Entered into force on 7 June 1959. **India**[74] • Ratification: 13 July 1960 • Date of effect: 11 October 1960 **Australia**[75] • Accession: 26 March 1975 • Date of effect: 24 June 1975 **Mauritius**[76] • Accession: 19 June 1996 • Date of effect: 17 September 1996 • Partial withdrawal of declaration: 24 May 2013 **USA**[77] • Accession: 30 September 1970 • Date of effect: 29 December 1970

[74] 368 UNTS 371~~368~~, Annex A (India).

[75] 962 UNTS 364, Annex A (Australia).

[76] 1927 UNTS 494, Annex A (Mauritius); 2921 UNTS 261, Annex A (Mauritius (partial withdrawal of declaration)).

[77] 751 UNTS 398, Annex A (United States).

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
7	*Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, opened for signature 18 March 1965, 575 UNTS 159	As entered into force	Arts 53, 54, 55	Convention as currently in force	Entered into force on 14 October 1966. **India** (not a party) **Australia**[78] • Ratification: 2 May 1991 • Date of effect: 1 June 1991 **Mauritius**[79] • Signature: 2 June 1969 • Ratification: 2 June 1969 • Date of effect: 2 July 1969 **USA**[80] • Ratification: 10 June 1966 • Date of Effect: 14 October 1966
8	*Vienna Convention on the Law of Treaties,* opened for signature 23 May 1969, 1155 UNTS 331	As entered into force	Arts 21, 31-32	Convention as currently in force	Entered into force on 27 January 1980. **India** (not a party) **Australia**[81] • Accession: 13 June 1974

[78] 1639 UNTS 409, Annex A (Australia).

[79] 684 UNTS 420, Annex A (Mauritius).

[80] 575 UNTS 160 (United States).

[81] 1155 UNTS 331 (Australia, Mauritius, United States).

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
					• Date of effect: 27 January 1980 **Mauritius** • Accession: 18 January 1973 • Date of effect: 27 January 1980 **USA** (not a party) • Signature: 24 April 1970