



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 19 Nov 2025 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S90/2025
File Title: CCDM Holdings, LLC & Ors v. The Republic of India
Registry: Sydney
Document filed: Further Submissions of the Attorney-General of the Commonwealth
Filing party: Intervener
Date filed: 19 Nov 2025

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

BETWEEN:

CCDM HOLDINGS, LLC
First Appellant

DEVAS EMPLOYEES FUND US, LLC
Second Appellant

TELCOM DEVAS, LLC
Third Appellant

AND:

THE REPUBLIC OF INDIA
Respondent

ATTORNEY-GENERAL OF THE COMMONWEALTH
Intervener

**FURTHER SUBMISSIONS OF THE ATTORNEY-GENERAL OF THE
COMMONWEALTH**

PART I: FORM OF SUBMISSIONS

1. These submissions are in a form suitable for publication on the internet. They adopt abbreviations used in the Attorney-General's submissions of 11 September 2025 (CS). They are made in accordance with the directions given by the Court on 5 November 2025.

PART II: ARGUMENT

A. The effect of India's commercial reservation on India's Art III obligation

2. The commercial reservation provided for in Art I(3) of the NY Convention permits a Contracting State to narrow the scope of its obligations under that Convention to differences arising out of legal relationships that are considered "commercial" under its own domestic law (the "commercial reservation"). For brevity, these submissions refer to awards that decide such differences as "commercial awards".
3. Absent a reservation, a Contracting State's Art III obligation is to recognise and enforce all arbitral awards to which the NY Convention applies, under the conditions laid down in the articles that follow Art III. By making a reservation, the reserving State modifies the provisions of the Convention to the extent of that reservation in its relations with each other Contracting State. That effect is provided for in Art 21(1)(a) of the VCLT, which reflects custom.¹
4. Applying Art 21(1)(a) to India's Art III obligation in circumstances where India has made the commercial reservation, Art III binds India in its relations with every other Contracting State in the following modified form:

[India] shall recognize arbitral awards that decide differences arising out of legal relationships considered as commercial under the national law of India as binding and enforce them in accordance with the rules of procedure where the award is relied upon, under the conditions laid down in the following articles. ...
5. In short, the effect of India's commercial reservation is that India's Art III obligation to every other Contracting State is to recognise and enforce commercial awards (only). The necessary corollary of India's modified obligation is that every other Contracting State's Art III right against India is to have it recognise and enforce commercial awards (only). That means that Australia has no right to have India recognise a non-commercial award

¹ Article 21(1)(a) provides that a reservation "modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation". The VCLT does not apply to the issues in this case (CS [10]). However, no party or intervener disputes that Art 21 reflects the customary international law rules relating to reservations.

in its favour. In that way, Art 21(1)(a) modifies both India's obligation and the rights of other Contracting States.² Those are direct (as opposed to reciprocal) effects of India having made the commercial reservation.

B. The reciprocal effect of India's commercial reservation

6. Two rules of international law providing for the reciprocal effect of treaty reservations are relevant to this appeal: Art 21 of the VCLT, and Art XIV of the NY Convention. Those rules have the same content and effect. We address them in turn.

Reciprocal effect as between another Contracting State and India (Art 21(1)(b) of the VCLT)

- 10 7. Following the description in Art 21(1)(a) of the effect of a State's reservation for the reserving State in its relations with the other treaty parties, Art 21(1)(b) describes the reciprocal effect of the reservation for those other parties in their treaty relationship with the reserving State. The reservation "modifies those provisions to the same extent for that other party in its relations with the reserving State".³ That means that "the State ... with regard to which the reservation is established is released from compliance with the obligation which is the subject of the reservation with respect to the reserving State".⁴ In other words, Art 21(1)(b) does not simply modify the rights that correlate to the obligation that was modified under Art 21(1)(a),⁵ that work having already been done by Art 21(1)(a).
- 20 8. Applying Art 21(1)(b) to India's commercial reservation, Art 21(1)(b) modifies Art III for every other Contracting State in its relations with India to the same extent as Art 21(1)(a) modified Art III for India. The effect is that Australia (and every other Contracting State) has the following modified Art III obligation to India:

[Australia] shall recognize arbitral awards that decide differences arising out of legal relationships considered as commercial under the national law of India as binding and enforce them in accordance with the rules of procedure where the award is relied upon, under the conditions laid down in the following articles. ...

9. That is, Australia's Art III obligation under the NY Convention is narrowed, with respect

² International Law Commission, *Guide to Practice on Reservations to Treaties with commentaries*, UN Doc A/66/10/Add.1 (26 April – 3 June and 4 July – 12 August) (**ILC Guide to Practice with commentaries**) at Guideline 4.2.4 [26] (at page 461).

³ VCLT, Article 21(1)(b).

⁴ ILC Guide to Practice *with commentaries* (n 2) at [26] (at page 461).

⁵ T:169\7526-7527.

to India, such that Art III requires Australia to recognise and enforce only awards that are commercial under the law of India.

10. The consequence of that reciprocal contraction in Australia's obligation is that India (as a State) has no correlative right to have Australia recognise and enforce awards that are not commercial under the law of India. The above modification of Art III is "to the same extent" in Australia's treaty relationship with India as the modification of Art III that was generated by Art 21(1)(a) for India. That is so notwithstanding that the domestic effect of the reservation for India's obligation to recognise and enforce awards within India appears greater than its effect within Australia (that apparent difference arising because the effect within India results from the combined operation of the reservation on India's relations with each of the other 171 Contracting States to the Convention).

Lack of any reciprocal effect as between other Contracting States (Art 21(2) of the VCLT)

11. Article 21(2) provides that "the reservation does not modify the provisions of the treaty for the other parties to the treaty inter se". That makes clear that a reservation has neither direct nor reciprocal effect on rights and obligations as between two or more non-reserving parties to a treaty. Accordingly, India's commercial reservation does not modify the rights and obligations arising from Art III as they exist between Australia and the Netherlands, or between any other pair of Contracting States. To Contracting States that have not themselves made a commercial reservation, Australia's Art III obligation is as follows:

[Australia] shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure where the award is relied upon, under the conditions laid down in the following articles. ...

12. In its terms, that might suggest that Australia would be under an obligation to other Contracting States to recognise and enforce awards against the State of India, whether or not India has waived State immunity. But that is not so. To illustrate why, it is useful to consider a different version of the thought experiment the Court was invited to consider during the oral hearing.⁶
13. Consider a scenario in which only Australia and the Netherlands are parties to the NY Convention. Assume neither has made a commercial reservation, such that the full extent of rights and obligations under Art III exist between them. As such, Art III would require

⁶ T:163-164/7244-7267.

those States to recognise and enforce all arbitral awards that fall within Art I (the breadth of which is such that it would include awards made in favour of India and other non-parties, whether or not they were commercial). But Art III clearly would not require either State to recognise and enforce awards against States that are not parties to the Convention and that have not otherwise waived State immunity.⁷ The fact that Australia and the Netherlands had agreed to recognise and enforce certain arbitral awards would not be interpreted as requiring them to recognise and enforce awards against the State of India (or any other non-party State), because India has a right under customary international law to State immunity, and both Australia and the Netherlands have a correlative customary international law obligation to respect that immunity.⁸ A treaty between Australia and the Netherlands cannot remove or override the rights of a non-party State, and would not be interpreted as purporting to do so. Nor can it provide any possible basis to conclude that the non-party State has waived its right to State immunity.

14. How would the situation change if India then ratified the NY Convention, and did so subject to the commercial reservation? With respect to every other Contracting State, India would thereby assume a limited version of the ordinary obligations that arise under Art III, and other States would acquire similarly limited correlative rights to have awards recognised and enforced in India (ie they would obtain the right only to have India recognise and enforce awards if they are commercial under the law of India) (per Article 21(1)(a)). By reason of the reciprocal effect of India's reservation, the Art III obligations of every other Contracting State to India would be similarly limited, such that (for example) Australia's obligation to India under Art III would be limited to recognising and enforcing awards that are commercial under the law of India (per Article 21(1)(b)).
15. But what of the pre-existing rights and obligations under Art III between Australia and the Netherlands? India would now be a party to the NY Convention, such that the *pacta tertiis* rule would no longer relevantly bear on the interpretation of Art III. However, by reason of India's ratification subject to the commercial reservation, India would have no obligation under Art III to any of the other 171 Contracting States to recognise or enforce any award that is not commercial under the law of India, irrespective of where in the world that award was made, and irrespective of who the parties to that award may be (per

⁷ This is for the reasons developed by the Solicitor-General at the oral hearing: namely, the *pacta tertiis* rule, which is made relevant to the interpretation of Art III of the NY Convention by Art 31(3)(c) of the VCLT: T:146-148/6434-6539.

⁸ T:146/6450-6452; *Jurisdictional Immunities of the State (Germany v Italy; Greece Intervening)* [2012] ICJ Rep 99 at [56].

Article 21(1)(a)). And, by reason of the reciprocal effect of the reservation, no other Contracting Party would have any obligation to India with respect to such awards (per Article 21(1)(b)).

16. For that reason, India's ratification of the NY Convention would say nothing about the rights and obligations of every other Contracting State in respect of non-commercial awards (CS [16]-[30], [38]-[42]). The rights and obligations of pre-existing Contracting States (eg, in the thought experiment above, Australia and The Netherlands) with respect to non-commercial awards would remain exactly as they were prior to India's ratification. Those States would continue to be obliged to each other to recognise and enforce those awards (even if they were in favour of India). But nothing about India's acceptance of rights and obligations under Art III with respect to commercial awards would clearly or unmistakably waive State immunity in respect of non-commercial awards. As India would have said nothing at all with respect to such awards, it would have done nothing that could constitute such a waiver. Ratification of the NY Convention could not itself have resulted in waiver with respect to non-commercial awards (as it would have done if India had ratified the Convention without making the commercial reservation), because "in relations between the reserving State and the others, it is as if the provisions which are the subject of the reservation are not part of the treaty".⁹

17. For the above reasons, the appellants are incorrect when they submit that the above result defies Art 21(2) by allowing India's commercial reservation to affect the content of the rights and obligations between Australia and the Netherlands.¹⁰ That submission involves two critical errors.

(a) **First**, the appellants elide the consequence of India's commercial reservation for the extent of its waiver of State immunity with the legal effect of that reservation. It is true that India's commercial reservation does not modify the legal effect of the Art III rights and obligations as between Australia and the Netherlands. But that does not prevent a reservation from being relevant to the identification of the awards that India has agreed other Contracting States would have rights and obligations to recognise and enforce against India itself, that being the issue that is critical to waiver. To put the point simply, if it is a State's acceptance of rights and obligations under Art III that is the reason why ratification of the NY Convention involves

⁹ ILC Guide to Practice *with commentaries* (n 2) at Guideline 4.2.4 [27] fn 2132 (at page 461).

¹⁰ T:170/7550-7558.

waiver of State immunity, it logically follows that a reservation that confines the scope of Art III with respect to that State must correspondingly confine any waiver of immunity.¹¹

- (b) ***Second***, once it is understood that Australia and the Netherlands could not – by agreement between themselves – create an obligation to enforce awards against India, it becomes clear that the appellants invoke Art 21(2) of the VCLT based on a false comparison. The appellants claim that the commercial reservation has “modified” the relationship between Australia and the Netherlands. But that relationship has only been “modified” compared to what that relationship would have been had India ratified the NY Convention without making the reservation. That state of affairs has never existed, such that nothing has been modified.

18. Applying the above principles, for the most part India’s commercial reservation will not have any effect on whether Australia is required to recognise and enforce awards in Australia (including non-commercial awards). Australia not having made the commercial reservation itself, it has an obligation to other Contracting States to recognise and enforce all awards that fall within the NY Convention except to the extent that this obligation is limited by the *pacta tertiis* rule (with respect to awards against non-party States) or is reduced by reservations made by other Contracting States (which may either have confined the scope of any waiver of immunity by those States and/or confined Australia’s obligations to those States by reason of their reciprocal effect). With the one exception noted immediately below, Australia would, for example, have an obligation to other Contracting States to recognise and enforce both commercial and non-commercial awards involving Indian nationals or Indian companies, and an obligation to recognise and enforce awards that were made by tribunals seated in India.

19. The sole exception is non-commercial awards against India. Australia does not have an obligation to any Contracting State to recognise or enforce such awards (unless India has otherwise waived its immunity), because India’s ratification of the NY Convention subject to the commercial reservation does not clearly and unmistakably waive immunity with respect to such awards. While the reciprocal effect of the commercial reservation also means that India has no right to have any other Contracting State recognise and enforce non-commercial awards in its favour, Australia would remain

¹¹ The Attorney-General respectfully adopts Edelman J’s observation that it would be “odd [if the] waiver of state immunity extended to circumstances beyond those circumstances which are encompassed within the terms of the reservation”: T-56/2435-2438.

obliged to other Contracting States to recognise and enforce such awards. However, in a practical sense, it is highly unlikely that any other Contracting State would seek to require Australia to recognise or enforce a non-commercial award in India's favour (and the reciprocal effect of the commercial reservation means that India would have no right to complain if Australia failed to do so).¹²

Article XIV of the NY Convention

20. Article XIV of the NY Convention results in Art III having the same reciprocal effect as Art 21(1)(b) of the VCLT, despite them being cast in different terms (CS [36]). That is why commentators, including the ILC, describe Art XIV as referring to reciprocity in a “general” way:¹³ it merely indicates that usual principles of customary international law concerning the reciprocal effect of reservations apply to the NY Convention. For the same reason, those same commentators describe Art XIV as “superfluous”.¹⁴ As Müller, a leading commentator, has put it: “there is widespread support for the position that the reciprocal application of reservations is a general principle of law, and of automatic application requiring no specific provision”.¹⁵ The sole relevant additional effect of Art XIV is to make plain that there is nothing incongruous in the commercial reservation being recognised as having reciprocal operation. That follows because the text of the NY Convention simultaneously contemplates both that such a reservation may be made and, if made, that the resultant confinement of the reserving State's obligations under Art III will have reciprocal effect.

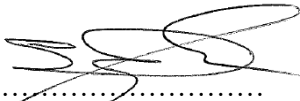
¹² T:166/7372-7390.

¹³ Daniel Müller, “1969 Vienna Convention: Article 21, Legal effects of reservations and of objections to reservations” in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary (Vol 1)* (Oxford University Press, 2011) (**Müller on Article 21 in Corten and Klein**) at [34]; ILC Guide to Practice *with commentaries* (n 2), Guideline 4.2.4 at [33] fn 2142 (page 463). Senior counsel for the respondent took the Court to Dr Müller's commentary at [36] (T:190/8447-8478) to explain the reciprocal operation of India's reservation, but Dr Müller specifically addressed Art XIV of the NY Convention only two paragraphs earlier in the same commentary (at [34] fn 75). The treatment at [34] makes clear that he was not talking about the NY Convention in his analysis at [36], which was addressed to “exceptional” situations where a reservation does not operate reciprocally to relieve a non-reserving party of its obligations to the reserving party – Dr Müller gives human rights treaties as an example (at [35]).

¹⁴ Müller on Article 21 in Corten and Klein (n 13), at [34]; ILC Guide to Practice *with commentaries* (n 2), Guideline 4.2.4 at [33] (page 463). At fn 2143, the ILC notes that one commentator even criticises the introduction of clauses “reiterating” the reciprocity principle “for reasons of clarity and legal stability”.

¹⁵ Müller on Article 21 in Corten and Klein (n 13), at [34].

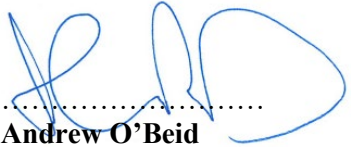
Dated: 19 November 2025



.....
Stephen Donaghue
*Solicitor-General of the
Commonwealth*



.....
Callista Harris
7 Wentworth Selborne
T: (02) 8224 3055
charris@7thfloor.com.au



.....
Andrew O'Beid
Solicitor-General's Chambers
T: (02) 6141 6059
andrew.o'beid@ag.gov.au