

University of Miami

School of Law

LAW 770 A

The Practice of the New York Convention

Marike Paulsson

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The New York Convention (“NYC”) is the single most important international instrument in the field of international commercial arbitration.

Prof. Marike Paulsson has extensive experience dealing with the issues under the NYC. She is recognized as one of the world’s leading expert on this treaty. She is former counsel at Hanotiau & van den Berg (Brussels, Belgium) where she worked with Albert Jan van den Berg on expert opinions and other counsel work regarding the enforcement of awards. She gives expert testimony on issues of jurisdiction and the NYC. She worked previously with Allen & Overy and Freshfields Bruckhaus (Amsterdam, The Netherlands) and she is now a Senior Consultant with Albright StoneBridge Group, a commercial diplomacy firm led by Secretary Madeleine Albright. She is the co-founder of ICCA’s NYC Roadshow; a series of workshops for judges from different countries on the NYC. She is also founder of Judicial Forum for the NYC and a member of ICCA’s Judiciary Committee and oversees the Roadshows in Latin America, North America and India. Professor Marike Paulsson has taught at Miami Law since 2009 and is the director of UM’s International Arbitration Institute. She also teaches in Latin America, Washington, France, The Netherlands, India and the Kingdom of Bahrain. She is interviewed regularly on recent cases under the NYC by Law360 and the Global Arbitration review and is a contributor to Kluwer Arbitration for the NYC.

Prof. Marike Paulsson co-authored ICCA's Guide to the Interpretation of the 1958 New York Convention, the India Resolutions on the Proper Application of the NYC, and is completing her PhD on the enforcement of annulled awards with Leiden University. In her treatise, The 1958 New York Arbitration Convention in Action, Prof. Paulsson outlines the key issues relating to NYC’s interpretation and application by the courts in more than 157 Contracting States. With Professor Hunter, she is the editor of the upcoming Handbook on Arbitration in India. She has taught, lectured and written extensively on the topic of the NYC for the past fifteen years.

The New York Convention is generally considered to be the most important legal cornerstone for international commercial arbitration. It is also acclaimed to be the most successful international convention in international private law. This course will address the basis elements and core provisions of the New York Convention. It serves as a first portal to understanding the drafting of enforcement requests and the rebuttal of such requests under the New York Convention. Students will have access to a database containing well over 2100 cases as reported in the Yearbook for Commercial Arbitration and the NYC website created

by Professors Marike Paulsson and Albert Jan van den Berg. When studying the Convention from its drafting history through its current application in the courts of Contracting States, students will become familiar with the legal and practical intricacies of international commercial arbitration.

The course will give the students a unique opportunity:

- to learn how to present a request for enforcement of an arbitral award or defend against a request for enforcement under the New York Convention;
- to learn how to stop court proceedings on the merits and have the case referred to arbitration by a court under the New York Convention;
- to acquire skills of analyzing and comparing court decisions in various jurisdictions in international matters.

The majority of the court decisions are published in the *Yearbook: Commercial Arbitration* (where each court decision has been assigned a unique number per country) and online on www.kluwerarbitration.com. Court decisions can be located via the indexes on www.newyorkconvention.org (go to “Court Decisions” and then choose either between “2. Topic List of Court Decisions on the New York Convention Cases” or “3. Country List of Court Decisions on the New York Convention”).

Other materials are also published on www.newyorkconvention.org. You are invited to browse through the website.

Session 1

Monday, February 18, 2019, 12:30 – 1:50PM

Room A110

Subjects:

Introduction to the New York Convention

Article I – Field of Application: Arbitral Award

Reading:

- The text of the New York Convention in English at <http://www.newyorkconvention.org/texts>. Those who comprehend any of the other official languages of the Convention may study those other texts for purposes of comparison.

Cases:

- US 54 (Second Circuit, 17 June 1983 (*Bergesen*));
- US 261 (Second Circuit, 10 September 1997 (*Yusuf*));
- US 533 (sub 3-6 and 7-20) (Sixth Circuit, 18 March 2005 (*Jacada*))

Literature:

Marika Paulsson, The 1958 New York Convention in Action (MP-NYC I) pp. 97-124

Session 2

Tuesday, February 19, 2019, 12:30 -1:50PM

Room A110

Subjects:

Article I – Field of Application: Arbitral Award (cont'd)

Article II(1)-(2) – Arbitration Agreement (including writing requirement)

Reading:

Cases:

- US 100 (sub 14-19) (Ninth Circuit, 23 October 1989 (*Gould*));
- US 338 (sub 3-14) (Seventh Circuit, 14 March 2000 (*Publicis*))
- US 457 (sub 22-26) (Third Circuit, 20 June 2003 (*Standard Bent Glass*))

Literature:

UNCITRAL Survey 2008 paras. 8-25 [¶ 113]- UNCITRAL Survey 2008 Add. 1 para. 35 [¶ 113]

UNCITRAL Model Law (as amended in 2006), Art. 7 - UNCITRAL Recommendation 2006

MP-NYC I: pp. 61-95.

Session 3

Wednesday, February 20, 2019, 12:30 – 1:50PM

Room A110

Subjects:

Article II(3) – Referral by Court to Arbitration

Article III - Procedure for Enforcement

Reading:

Cases:

- US 50 (sub 3) (First Circuit, 30 August 1982 (*Ledee*));
- Netherlands 34 (Hoge Raad, 25 June 2010 (*Yukos*)); ;
- US 749 (Second Circuit, 14 December 2011 (*Figueiredo Ferraz Consultoria*))

Literature

- UNCITRAL Survey 2008 paras. 41-44 [¶¶ 214-216]
- MP-NYC I: pp. 124-135.

Session 4

Thursday, February 21, 2019, 12:30PM – 1:50PM Room A110

Subjects:

Article IV - Conditions to be Fulfilled by the Petitioner

Article V - Grounds for Refusal of Enforcement in General

Reading:

Cases:

- US 750 (sub 13-19, 24-36) (Ninth Circuit, 15 December 2011(*Cubic*));
- UK 60 (sub 7-10) (Court of Appeal, 18 April 2002 (*Yukos*)); -
- Switzerland 42 (sub 3-7) (Bundesgerichtshof, 4 October 2010 (*X AG*)); -
- Netherlands 10 (sub 1) (President, Rechtbank, Amsterdam, 12 July 1984 (*SPP*));
- US 7 (Second Circuit, 23 December 1974 (*Parsons*));
- US 520 (sub 3) (Second Circuit, 31 March 2005 (*Encyclopaedia Universalis*));
- US 472 (sub 9-11) (Fifth Circuit, 26 November 2003 (*Consortio Rive*)).

Literature:

MP-NYC I: pp. 137-175

Session 5

Friday, February 22, 2019, 2:00PM-5:00PM

Room A110

Subjects:

Article V(1) – Grounds for Refusal of Enforcement to be Proven by the Respondent

Article V(2) – Public Policy as Ground for Refusal of Enforcement

Readings:

Cases:

- France 42 (Cour de Cassation, 29 June 2007 (*Putrabali*));
- Netherlands 31 (Gerechtshof Amsterdam, 28 April 2009 (*Yukos*))
- Netherlands 39 (sub 4.8-4.11) (Rechtbank, Amsterdam, 17 November 2011 (*Maximov*));
- Netherlands 40 (Rechtbank, Amsterdam 10 May 2013 (*Kompas*));
- UK 95 (Court of Appeal (Civil Division), 27 June 2013 (*Yukos/Rosneft*));
- US 621 (sub 1-20) (District of Columbia Circuit, 25 May 2007 (*TermoRio*))
- US 7 (Second Circuit, 23 December 1974 (*Parsons*));
- US 59 (sub 8-11, 18-19 and 21-22) (Supreme Court, 2 July 1985 (*Mitsubishi*))

Literature:

MP-NYC I: pp.175-231.

Spring 2019

Session 6

Saturday, February 23, 2019, 10:00AM-1:00PM

Room A110

Review session

Method of Evaluation

Students will be evaluated by means of a final exam, which will be scheduled with the Registrar's Office. Please contact faculty assistant, Elina Escarda, at exe234@law.miami.edu for additional information.

Attendance Policy

Due to the small number of meetings, attendance to all meetings/classes for short courses is mandatory. Students who miss more than one class session (80 minute) of a 1-credit short course are subject to administrative withdrawal and will have a W for the course on their transcripts.

Disabilities

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact The Office of Disability Services for information about available opportunities, resources, and services. You may also visit the Office of Disability Services website at www.law.miami.edu/disability-services.