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# Seeking Its Place In The Sun: Florida's Emerging Role In International Commercial Arbitration

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## COMMENTS

### SEEKING ITS PLACE IN THE SUN: FLORIDA'S EMERGING ROLE IN INTERNATIONAL COMMERCIAL ARBITRATION

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#### I. INTRODUCTION

In the past two years, Florida has taken a giant leap towards becoming a major site for international commercial arbitration.

This important step forward has taken several different forms, including the enactment of a highly progressive statute entitled the Florida International Arbitration Act ("FIAA"),<sup>1</sup> the formation of a regional arbitration center known as the International Commercial Dispute Resolution Center ("ICDRC"),<sup>2</sup> and the establishment of a specialized maritime arbitration body called the Maritime Arbitration Board ("MAB").<sup>3</sup> At the same time, the American Arbitration Association ("AAA"), the nation's largest domestic arbitration organization, has reaffirmed its commitment to international commercial arbitration in Florida.<sup>4</sup> Finally, the United States is on the verge of joining the Inter-American Convention on International Commercial Arbitration ("the Panama Convention").<sup>5</sup>

There is much to be commended in this flurry of activity. First, it comes at a time when arbitration never has been more popular as a means of resolving transnational commercial disputes.<sup>6</sup> Second, it addresses the serious and longstanding deficien-

1. See *infra* text following note 48.

2. See *infra* text following note 200.

3. See *infra* text following note 235.

4. See *infra* text following note 294.

5. *Opened for signature* Jan. 30, 1975, OAS/Ser.A/20 (SEPF), reprinted in 14 INT'L LEGAL MATERIALS 336 (1975). See *infra* notes 156-59 and accompanying text. The Panama Convention is discussed in Byzaguirre, *Arbitration in Latin America: The Experience of the Inter-American Commercial Arbitration Commission*, 4 INT'L TAX & BUS. LAW. 288 (1986); Norberg, *Inter-American Commercial Arbitration: Unicorn or Beast of Burden?*, 5 PACE L. REV. 607 (1985); and Note, *Domestic Recognition and Enforcement of the Inter-American Convention on International Commercial Arbitration (IACAC)*, 10 SYRACUSE J. INT'L L. & COM. 169 (1983).

6. International arbitration has become a growth industry. To take just one example, consider the increased caseload of the Paris-based International Chamber of Commerce ("ICC"). In 1956, the ICC handled 32 international arbitrations. In 1976, it handled 210 international arbitrations. See Stevenson, *Preface to Symposium: ICC Arbitration*, 14 J. INT'L L. & ECON. 379, 379-80 (1980). By 1985 the number had increased by more than 50%, to 339. See Gaudet, *The International Chamber of Commerce Court of Arbitration*, 4 INT'L TAX & BUS. LAW. 213, 213 (1986). The expanding use of international commercial arbitration has been noted in a plethora of writings. See, e.g., Aksen, *The Need to Utilize International Arbitration*, 17 VAND. J. TRANSNAT'L L. 11 (1984); Aksen, *International Arbitration - Its Time Has Arrived!*, 14 CASE W. RES. J. INT'L L. 247 (1982); de Vries, *International Commercial Arbitration: A Transnational View*, 1 J. INT'L ARB. 21 (Jan. 1984); Devitt, *Multiparty Controversies in International Construction Arbitrations*, 17 INT'L LAW. 669 (1983); Ehrenhaft, *Effective International Commercial Arbitration*, 9 LAW & POL'Y INT'L BUS. 1191 (1977); Hoellering, *International Commercial Arbitration: A Peaceful Method of Dispute Settlement*, 40 ARB. J. 19 (Dec. 1985); Kerr, *International Arbitration v. Litigation*, J. BUS. L. 164 (1980); McClelland, *International Arbitration: A Practical Guide to the System for the Litigation of Transnational Commercial Disputes*, 17 VA. J. INT'L L. 729 (1977); O'Neill, *Recent Developments in International Commercial Arbitration*, 4 J. INT'L ARB. 7 (Mar. 1987); Perlman & Nelson, *New Approaches to the Resolution of International Commercial Disputes*, 17 INT'L LAW. 215 (1983); Rhodes & Sloan, *The Pitfalls of International Commer-*

cies which previously had existed in Florida as a result of both an inadequate state arbitration code<sup>7</sup> and an inhospitable judicial climate.<sup>8</sup> Third, it recognizes the benefits a community can enjoy by being a major international arbitration site<sup>9</sup> and the potential Florida has to become such a site.<sup>10</sup>

In the move to make Florida a modern international arbitration forum, however, the forces behind the changes often have tripped over one another. In doing so, they have diluted their resources, overlapped their functions, and duplicated their efforts. Moreover, unlike such cities as New York<sup>11</sup> and Stockholm,<sup>12</sup> the leaders of the Florida international arbitration movement have

*cial Arbitration*, 17 VAND. J. TRANSNAT'L L. 19 (1984); and Ruiz del Rio, *Arbitration Clauses in International Loans*, 4 J. INT'L ARB. 45 (Sept. 1987). See also *infra* note 58.

7. See *infra* notes 35-40 and 48-50 and accompanying text.

8. See *infra* notes 41-47 and accompanying text.

9. Being recognized as an international arbitration forum bestows a number of important benefits on a city, from increased prestige to increased employment for arbitrators, attorneys, court reporters, hoteliers, and restaurateurs. One commentator has stated that:

Along with increasing recognition of the legal importance of the place of arbitration, has come recognition of its commercial importance, in the sense of the business which it can bring to a city or country. The result has been increasing competition amongst the major cities of the world for recognition as a suitable place of arbitration.

Address by Alan Redfern, Esq., *Arbitration of International Commercial Transactions - Drafting the Arbitration Clause/Forum Selection* 10, delivered at the Miami ABA National Institute on Resolution of International Commercial Disputes (Nov. 6, 1987) (available in the offices of the University of Miami Inter-American Law Review).

10. See *infra* notes 226-33 and accompanying text.

11. No city has been more successful at marketing itself as an international arbitration forum than New York. The centerpiece of its efforts is the World Arbitration Institute ("WAI"), which was established in 1983 to foster the use of international commercial arbitration and to promote New York City as an attractive and advantageous arbitration site. See Werner, *World Arbitration Institute*, 1 J. INT'L ARB. 172 (June 1984). The WAI is discussed *infra* notes 329-38 and accompanying text.

12. Like New York, Stockholm has promoted itself actively as a site for the holding of international arbitrations. See generally Paulsson, *The Role of Swedish Courts in Transnational Commercial Arbitration*, 21 VA. J. INT'L L. 211 (1981), and Ulf, *International Arbitration in Sweden*, 1984 AM. SOC. INT'L L. 172 (1984). Stockholm rose to prominence in international arbitration circles in 1977, when it was selected as the forum for American-Soviet commercial arbitrations. In that same year, the Arbitration Institute of the Stockholm Chamber of Commerce ("AISCC") published a handbook on Swedish arbitration to facilitate international arbitrations. In 1984, a revised edition of the handbook was released. See STOCKHOLM CHAMBER OF COMMERCE, *ARBITRATION IN SWEDEN* (2d ed. 1984), reviewed by Jarvis, *Book Review*, 20 SUFFOLK U.L. REV. 1263 (1986). In December 1987, the AISCC revised its rules in a further attempt to make itself attractive to foreigners. The new rules, which went into effect on January 1, 1988, make a number of important changes. Chief among these is the deletion of old Rule 5, which incorporated the Swedish Law of Arbitration. Many foreigners had considered old Rule 5 to be a major drawback of arbitration at the AISCC. See *Stockholm Institute Adopts New Rules*, 2 INT'L ARB. REP. 839 (Dec. 1987).

failed to publicize their work adequately.<sup>13</sup> Thus, many parties do not know about Florida's arbitration opportunities. Even where parties are aware of Florida's recent efforts, they are likely to be confused by the seemingly redundant scopes of the FIAA, the Panama Convention, the United States Arbitration Act ("USAA"),<sup>14</sup> and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention").<sup>15</sup> As a result, Florida continues to be in the background of international commercial arbitration.

In order to fill the present void of information, this Note will examine the changes which have taken place in Florida in the last few years. To do so, it will begin by reviewing briefly the history of arbitration in Florida.<sup>16</sup> It then will examine the FIAA and assess its impact on the existing statutory framework, including the New York and Panama Conventions.<sup>17</sup> Next, the Note will describe the workings of the ICDRC,<sup>18</sup> MAB,<sup>19</sup> and AAA.<sup>20</sup> Finally, the Note will speculate on the future prospects of Florida's attempt to become a truly international arbitration forum.<sup>21</sup> The Note will conclude that although Florida has almost limitless potential, it will not begin to take significant strides until the following goals are met: 1) increased cooperation among the ICDRC, the MAB, and the AAA; 2) increased promotion of Florida as an international arbitration site, particularly in foreign business and legal communities; and, 3) increased funding and support, particularly from the state bar. To achieve these goals, the Note will call for the creation of a new state agency to coordinate all phases of Florida's development into a major international commercial arbitration capital.<sup>22</sup>

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13. There are a number of reasons that explain the lack of publicity, many of which can be traced to a lack of financial support. See *infra* text following note 339.

14. See *infra* notes 30-33 and accompanying text.

15. See 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38. For an extended discussion of the Convention, see A. VAN DEN BERG, *THE NEW YORK ARBITRATION CONVENTION OF 1958 - TOWARD A UNIFORM JUDICIAL INTERPRETATION* (1981). See also Trooboff & Goldstein, *Foreign Arbitral Awards and the 1958 New York Convention: Experience to Date in the U.S. Courts*, 17 VA. J. INT'L L. 469 (1977). See also *infra* notes 52 and 154 and accompanying text.

16. See *infra* notes 23-48 and accompanying text.

17. See *infra* notes 49-200 and accompanying text.

18. See *infra* notes 201-35 and accompanying text.

19. See *infra* notes 236-99 and accompanying text.

20. See *infra* notes 300-45 and accompanying text.

21. See *infra* notes 346-49 and accompanying text.

22. See *infra* notes 350-51 and accompanying text.

## II. A BRIEF HISTORY OF COMMERCIAL ARBITRATION IN FLORIDA

Florida enacted its first comprehensive arbitration law in 1828.<sup>23</sup> Similar in most respects to England's arbitration law of 1697,<sup>24</sup> it provided that parties could file an agreement to arbitrate with the court that would have jurisdiction over the controversy. If the parties subsequently followed the statutory procedures and filed the arbitrator's award with the court, the decision became binding. But like most state laws on arbitration during this period, the Florida law was largely ineffective because agreements to arbitrate future controversies were not enforceable.<sup>25</sup> This weakness, combined with the reticence of lawyers to venture into unfamiliar territory, made arbitration a little used procedure in Florida.<sup>26</sup>

The modern era of arbitration began in 1920, when the New York State legislature amended the state's Civil Practice Act. Under the new law, agreements to arbitrate future disputes were made enforceable for the first time.<sup>27</sup> This caused a burst of inter-

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23. Florida's first arbitration law was enacted on November 17, 1828 by the unicameral Legislative Council during a session in which much of the Territory's civil and criminal code was established. See J. McCLELLAN, *A DIGEST OF THE LAWS OF THE STATE OF FLORIDA FROM THE YEAR 1822 TO THE 11TH DAY OF MARCH, 1881, INCLUSIVE*, at 105-07 (1881).

24. 9 & 10 Will. III, c. 15 (repealed by 52 & 53 Vict., c. 49, § 26 (1889)). See *O'Bryan v. Reed*, 2 Fla. 448, 452 (1849).

25. See Yonge, *Arbitration of an Ordinary Civil Claim in Florida*, 6 U. FLA. L. REV. 157, 163 (1953). In *Duval County v. Charleston Eng'g & Contracting Co.*, 101 Fla. 341, 134 So. 509 (1931), the court wrote that an agreement to arbitrate future disputes was unenforceable because it was an executory contract which could be voided by either party. More often, however, courts simply refused to enforce arbitration agreements for future disputes on the grounds that such agreements violated public policy because they ousted the jurisdiction of the courts. This view had its roots in English common law, see *Vynior's Case*, 77 Eng. Rep. 595 (K.B. 1609), and had been adopted at an early date by American courts. Justice Story, for example, justified his refusal to recognize an arbitration agreement by writing that, "It is certainly the policy of the common law, not to compel men to submit their rights and interests to arbitration, or to enforce agreements for such a purpose." *Tobey v. County of Bristol*, 23 F. Cas. 1313, 1321 (C.C.D. Mass. 1845) (No. 14,065). See generally Wolaver, *The Historical Background of Commercial Arbitration*, 83 U. PA. L. REV. 132 (1934).

26. Farmer, *Introduction to Arbitration*, in *THE FLORIDA BAR, ARBITRATION IN FLORIDA* § 1.9, at 9 (1979). A survey conducted in 1954 found that few Florida lawyers had extensive experience with arbitration and, except in the labor field, many Florida lawyers preferred litigation over arbitration. See Albritton, *An Analysis of Florida Arbitration Law*, 31 FLA. B.J. 121, 125 (1957).

27. 1920 N.Y. Laws, ch. 275, now codified at N.Y. CIV. PRAC. L. & R. §§ 7501-7514 (McKinney 1980). The statute's constitutionality was upheld one year later in *Berkovitz v. Arbib & Houlberg, Inc.*, 230 N.Y. 261, 130 N.E. 288 (1921). It is interesting to note that the *Berkovitz* decision was authored by Judge Cardozo. Just seven years earlier, he had written that:

If jurisdiction is to be ousted by contract, we must submit to the failure of jus-

est in the subject of arbitration and led the Conference of Commissioners on Uniform State Laws to release a draft Uniform Arbitration Statute ("UAS") in 1924.<sup>28</sup> Although the UAS ultimately failed to win widespread support,<sup>29</sup> it presaged the passage of the USAA in 1925.<sup>30</sup> The USAA was modelled after the New York law, and similarly made agreements to arbitrate future disputes enforceable.<sup>31</sup> Although limited in scope to maritime transactions and interstate and foreign commerce,<sup>32</sup> the national character of the USAA, coupled with the Supreme Court's pronouncement that the USAA was constitutional,<sup>33</sup> provided increased support for the enactment of modern state arbitration laws.

The Great Depression and World War II halted further legislative action on arbitration.<sup>34</sup> But shortly after the war ended, Professor David S. Stern of the University of Miami School of Law took up the task of drafting a modern commercial arbitration statute for Florida.<sup>35</sup> After overcoming intense opposition from the labor bar,<sup>36</sup> Professor Stern's efforts became law in 1957.<sup>37</sup>

tice that may result from these and like causes. It is true that some judges have expressed the belief that parties ought to be free to contract about such matters as they please. In this state the law has long been settled to the contrary. The jurisdiction of our courts is established by law, and it is not to be diminished, any more than it is to be increased, by the convention of the parties.

*Meacham v. Jamestown, Franklin & Charleston R.R. Co.*, 211 N.Y. 346, 354, 105 N.E. 653, 656 (1914) (Cardozo, J., concurring) (citations omitted). For an historical discussion of arbitration in New York, see Jones, *Three Centuries of Commercial Arbitration in New York: A Brief Survey*, 1956 WASH. U.L.Q. 193 (1956).

28. See DOMKE ON COMMERCIAL ARBITRATION § 4:02, at 29-30 (G. Wilner ed. 1984).

29. The UAS was adopted by only four states: Nevada (1925), Utah (1927), Wyoming (1927), and North Carolina (1927). *Id.* at 30.

30. Feb. 12, 1925, c. 213, 43 Stat. 883, now codified at 9 U.S.C. §§ 1-14 (1982). For a general discussion of the Act, see Giovanni, *Some Comments on Commercial Arbitration and the Federal Arbitration Act*, 74 COM. L.J. 198 (1969), and Healy, *An Introduction to the Federal Arbitration Act*, 13 J. MAR. L. & COM. 223 (1982). See also *Kulukundis Shipping Co. v. Amtorg Trading Corp.*, 126 F.2d 978 (2d Cir. 1942).

31. See 9 U.S.C. § 2 (1982).

32. *Id.* at § 1.

33. See *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263 (1932).

34. One significant development, however, did occur during this period. In 1935, Congress passed the National Labor Relations (Wagner) Act. This Act recognized the right of workers to organize and resulted in increased unionization and collective bargaining. By 1941, most collective bargaining agreements contained arbitration provisions. Farmer, *Principles of Labor Arbitration*, in *ARBITRATION IN FLORIDA*, *supra* note 26 at § 6.2, at 105.

35. Telephone interview with Dr. David S. Stern, Professor Emeritus, Northern Illinois University College of Law (Jan. 12, 1988). Professor Stern was supported in this effort by Dean Wesley A. Sturges of the University of Miami School of Law.

36. *Id.* In order to win support for his proposal, Professor Stern undertook a two-year promotional effort among members of the Florida bar. See Stern & Troetschel, *The Role of*

Generally referred to as the Florida Arbitration Code ("FAC"),<sup>38</sup> it makes arbitration agreements valid, irrevocable, and enforceable<sup>39</sup> unless the parties have stipulated specifically that the FAC will not apply to their agreement.<sup>40</sup> Although courts in Florida have recognized that the purpose of the FAC is to avoid protracted litigation and its financial costs,<sup>41</sup> they have done so only reluctantly.<sup>42</sup> Thus, arbitration agreements are construed strictly under the FAC,<sup>43</sup> and only matters expressly covered by the arbitration agreement may be arbitrated.<sup>44</sup> Moreover, Florida courts will not enforce arbitration agreements unless they are in writing<sup>45</sup> and set forth the procedures to be followed.<sup>46</sup> In addition,

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*Modern Arbitration in the Progressive Development of Florida Law*, 7 U. MIAMI L.Q. 205 (1952-53).

37. 1957 Fla. Laws, ch. 57-402, §§ 1-22, codified at FLA. STAT. §§ 57.10-31 (1957). Much of the success for getting the bill passed is credited to the Florida Bar Committee on Continuing Law Reform, which actually proposed the statute. See Albritton, *supra* note 26, at 126. As part of its efforts, the Committee engaged in an intensive information campaign. See, e.g., Arbuse, *The General Case for Arbitration*, 31 FLA. B.J. 129 (1957). In enacting the new statute, the legislature did not repeal the existing legislation, which was numbered §§ 57.01-09. After concerns were raised about the potential for a clash between the old law and the new law, see Sturges & Reckson, *Common-Law and Statutory Arbitration: Problems Arising From Their Coexistence*, 46 MINN. L. REV. 819, 823 n.11 (1962), the Florida legislature returned to the arbitration statute and repealed the earlier law. See 1965 Fla. Laws, ch. 65-127, § 1. Two years later, the legislature transferred the statute to a different chapter and renumbered the entire law. See 1967 Fla. Laws, ch. 67-254, § 12.

In many respects, the Florida Arbitration Code ("FAC") is similar to the Uniform Arbitration Act ("UAA"). The UAA was drafted by the Uniform Commissioners in 1955 as a successor to the failed UAS. See *supra* notes 28-29 and accompanying text. Endorsed by the American Bar Association in 1956 after various modifications had been made, the UAA quickly found favor with more than two dozen state legislatures. See DOMKE, *supra* note 28, at 30.

38. In addition to the FAC, Florida law also provides for arbitration in public employee problems, public utility disputes, uninsured motorists claims, salvage suits, and cases involving trust assets and road contractors. See Farmer, *supra* note 26.

39. FLA. STAT. § 682.02 (1987).

40. See, e.g., *Wickes Corp. v. Industrial Fin. Corp.*, 493 F.2d 1173 (5th Cir. 1974) (where the parties have made it clear that they do not wish to have the FAC apply, their rights and duties will be decided according to common law principles).

41. See, e.g., *Merkle v. Rice Constr. Co.*, 271 So. 2d 220 (Fla. Dist. Ct. App.), *cert. denied*, 274 So. 2d 234 (1973).

42. For a general discussion of the judiciary's hostility to arbitration and the FAC, see Note, *Enforceability of Commercial Agreements to Arbitrate Future Disputes: Judicial Alteration of the Florida Arbitration Code*, 30 U. FLA. L. REV. 615 (1978).

43. See, e.g., *Frank J. Rooney, Inc. v. Charles W. Ackerman of Florida, Inc.*, 219 So. 2d 110 (Fla. Dist. Ct. App.), *cert. dismissed*, 230 So. 2d 13 (Fla. 1969).

44. See, e.g., *G & N Constr. Co. v. Kirpatovsky*, 181 So. 2d 664 (Fla. Dist. Ct. App. 1966).

45. See, e.g., *Wiggs & Maale Constr. Co. v. Stone Flex*, 263 So. 2d 607 (Fla. Dist. Ct. App. 1972).

46. See, e.g., *Wood-Hopkins Contracting Co. v. C. H. Barco Contracting Co.*, 301 So. 2d



numerous subjects have been found to be non-arbitrable.<sup>47</sup>

The general hostility of the Florida courts, combined with the limitations of the FAC, retarded the growth of arbitration in Florida. Thus, twenty years after the FAC had been passed, it was possible for one commentator to write that "it is clear that in Florida arbitration of disputes, other than these [sic] in the labor area, are fairly rare."<sup>48</sup>

### III. FLORIDA'S RECENT EFFORTS TO FOSTER INTERNATIONAL COMMERCIAL ARBITRATION

#### A. *The Florida International Arbitration Act*

In drafting the FAC, Professor Stern recognized that Florida had the potential to become a major international arbitration forum.<sup>49</sup> Professor Stern decided, however, that any attempt to internationalize the FAC might jeopardize its passage. Thus, he chose to omit any references to international arbitration. As a result, Florida courts: 1) could not enforce an agreement to arbitrate in a foreign country; 2) could not enforce an agreement to arbitrate in Florida under the law of a foreign jurisdiction; 3) could not enforce arbitral awards rendered in a foreign jurisdiction; and, 4) could not enforce arbitral awards rendered in Florida pursuant to

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479 (Fla. Dist. Ct. App. 1974).

47. See, e.g., *Klosters Rederi A/S v. Arison Shipping Co.*, 280 So. 2d 678 (Fla. 1973), cert. denied, 414 U.S. 1131 (1974).

48. Farmer, *supra* note 26. Farmer went on to suggest, however, that arbitration would become more important in Florida in the future. *Id.*

49. At one point during his effort to have the FAC adopted, Professor Stern wrote that: The forthcoming establishment of an Inter-American trade center at Miami has pointed up the need of a modern act for Florida. International traders use future disputes clauses constantly; yet the present Florida statute does not provide for them. International traders might find the advantages of a Florida trade center not too inviting if forced to use the legal machinery of other jurisdictions to dispose of or settle disputes arising out of their contracts.

Stern & Troetschel, *supra* note 36, at 206.

Professor Stern was not alone in recognizing the potential importance of international commercial arbitration to Florida. Another commentator, writing just prior to the passage of the FAC, noted that:

Florida is becoming a center of Central and South American business. Time is of the essence of [sic] all contracts, and Florida cannot afford to have disputes with her South American neighbors that cannot be quickly resolved. A business man wants action, not justice a year from now from some court.

Arbuse, *supra* note 37, at 132. For another early view, see Goldman, *Arbitration in Inter-American Trade Relations: Regional Market Aspects*, 7 INTER-AM. L. REV. 67 (1965).

foreign law.<sup>50</sup>

To a degree, the omissions of the FAC were mitigated by the USAA<sup>51</sup> and, after 1970, by the New York Convention.<sup>52</sup> Yet a significant number of cases fell outside the purview of both the USAA and the New York Convention.<sup>53</sup> Thus, in January 1982, a task force on international arbitration, comprised of practicing attorneys and academicians, was formed by the Florida Bar to review the FAC.<sup>54</sup>

At the time the task force was convened, a broad consensus already had been reached on two points. First, the FAC needed to be modified to strengthen the power of the Florida courts to enforce international arbitration agreements and international arbitral awards. Second, the gaps in the USAA and the New York Convention needed to be filled. With its mandate set, the task force began its deliberations.

Early in its tenure the task force made two important decisions. First, it rejected the idea of amending the FAC. Instead, it set about to craft an entirely new piece of legislation which would deal only with the subject of international arbitration.<sup>55</sup> Second, it

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50. For a comprehensive discussion of these matters, see Swan, *Compelling Arbitration and the Judicial Review of Arbitral Awards*, 11 LAW. AM. 475 (1979).

51. *Id.* at 482, 484-85.

52. *Id.* at 486-87.

53. *Id.* at 479-81.

54. The members of the steering committee were Professor Alan C. Swan of the University of Miami School of Law; Carlos E. Loumiet, Esq., a member of the Miami law firm of Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen & Quentel; and Juan T. O'Naghten, Esq., then an attorney with the Miami law firm of Steel Hector & Davis. Professor Swan and Messrs. Loumiet and O'Naghten were assisted by Professor Keith Rosenn of the University of Miami School of Law; Agustin de Goytisolo, Esq., of the law firm of Trenam, Simmons, Kemker, Scharf, Barkin, Frye & O'Neill; Atilio Costabel, Esq., of the law firm of Costabel, Cavgnaro & Ashing; and Robert L. Weintraub, Esq., the Corporate Counsel for Williams Island.

55. The decision to draft an entirely new statute, rather than amending the FAC, was recounted recently as follows:

[I]n the case of the Florida International Arbitration Act, one distinguished legal scholar very active in this field, when requested to comment on the proposed law suggested a simple amendment to the existing Florida Arbitration Act. This method would correct shortcomings in regard to enforcement by the Florida courts. He also recommended a delay in taking action until the UNCITRAL Model Arbitration law then under consideration had been adopted.

These comments were given careful consideration — doubly so because of the stature of the writer. However the Florida Bar committee . . . felt that a more effective statute, particularly one to facilitate international arbitration in the state of Florida was of greater importance than maintaining uniformity at a perhaps less sophisticated level.

decided that the new law should promote, rather than merely facilitate, the use of international arbitration. Thus, the final product would need to be highly flexible, establish an environment conducive to international arbitration, provide maximum autonomy to the disputants, limit the amount of judicial intervention which could occur, and be attractive to foreign parties wary of arbitration.

For the next three years, guided by these goals, the task force worked and then re-worked its ideas. Finally, on January 14, 1985, the task force released its proposal and subsequently published it.<sup>56</sup> In the process of putting together its suggestions, the task force had undertaken an exhaustive review of other arbitration systems. It had studied numerous treatises, articles and court decisions on international arbitrations, examined the arbitration rules of the AAA, the International Chamber of Commerce in Paris, and the United Nations Commission on International Trade Law ("UNCITRAL"), considered the arbitration laws of New York, California, France, the United Kingdom, Hong Kong, and the Netherlands, and investigated a variety of international arbitration conventions.<sup>57</sup>

In introducing its proposal, the task force painted an attractive picture of international arbitration,<sup>58</sup> and argued that Florida had an opportunity to participate in the expanding mecca if it rid itself of the backwards FAC.<sup>59</sup> In a pitchman's message that mixed a touch of civic pride with a dash of economic opportunism, the task force stressed the benefits to be realized by Florida becoming

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Address by Dr. Carl E. B. McKenry, Secretary-General of the ICDRC, *Regional Arbitration Centers* 11-12, delivered at the Miami ABA National Institute on Resolution of International Commercial Disputes (Nov. 6, 1987) (available in the offices of the University of Miami Inter-American Law Review).

56. See Loumiet, O'Naghten & Swan, *Proposed Florida International Arbitration Act*, 16 U. MIAMI INTER-AM. L. REV. 591 (1985).

57. *Id.* at 594 n.2.

58. The task force wrote that, "Since World War II, arbitration has become a favored method of dispute resolution in international commerce." *Id.* at 594. The task force gave five reasons for this growth: the unwillingness of international firms to submit to foreign courts; the congestion and delay in the courts of many jurisdictions; the rising cost of litigation; the lack of confidentiality in court proceedings; and the desire for a dispute resolution mechanism which could be tailored to the particular dispute. *Id.*

59. The task force explained that:

Florida must have a modern statute which facilitates, rather than hinders, international arbitration, and generally reflects a legal climate hospitably disposed toward arbitration. This, broadly speaking, is the purpose of the proposed Act. *Id.* at 595.

a major international arbitration forum.<sup>60</sup>

With their proposal now before the public, the task force's next objective was to get the proposal before the state legislature. Thus, throughout the spring of 1985 the members of the task force began making regular trips to Tallahassee in an attempt to convince legislators to support the law. But as the legislative session wore on, the task force was faced with a simple truth: in a legislature dominated by concerns over a bloated budget, deteriorating education, a crushing need for new highways, a medical malpractice crisis, the unavailability of insurance for large segments of the population, the demands of vocal elderly voters, and the impact of Cuban refugees, no one cared very much about international arbitration. The fact that the law would cost nothing, had no opposition, and held out the promise of increased prestige and added revenue made no difference. As a result, the task force found itself unable to do more than have its proposal introduced and referred to a committee, where it languished.<sup>61</sup>

Almost as soon as the 1985 legislative session came to an end, the task force began devising a new strategy for the 1986 term. Enlisting the support of two South Florida legislators, both of whom were lawyers,<sup>62</sup> the task force decided that an intensive lob-

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60. The task force argued that:

[The] growth in the use of arbitration presents Florida with a genuine opportunity. Given its geographic location, infrastructure, transportation and communication facilities, population with varied linguistic skills, service industries, academic facilities, business and banking communities and well-developed legal system, Florida could emerge over a period of time as a significant center for international arbitration, particularly for disputes involving Latin America or the Caribbean. Such a development would naturally complement the emergence of Florida over the past fifteen years as a regional center for international banking and commerce.

*Id.*

61. House Bill 987 was introduced on April 5, 1985, and was referred to the Committees on Judiciary and Appropriations. On April 25th, it was subreferred to the Subcommittee on Consumer, Probate and Family Law and was placed on the Judiciary Subcommittee's agenda for April 29th. The Subcommittee's recommendation, pending ratification by the full committee, was favorable. However, on May 31, 1985, the Bill died in the Committee on the Judiciary.

The companion Senate Bill met a similar fate. After being introduced on April 16, 1985, Senate Bill 731 was referred to Committees on Commerce, Judiciary-Civil, and Appropriations. Subsequently, on May 31, 1985, the Bill died in the Committee on Commerce. JOINT LEGISLATIVE MANAGEMENT COMMITTEE, HISTORY OF LEGISLATION, 1985 REGULAR SESSION 96-97, 136 (1985).

62. The legislators were Miami State Representative Ronald A. Silver, a Democrat from the 100th District, and Miami State Senator Roberta Fox, a Democrat from the 40th District.

bying effort would be needed in order to get the bill passed. Thus, when the 1986 legislature convened, the task force was ready. Throughout the session its members and other supporters knocked on doors, buttonholed legislative assistants, made telephone calls, and continually pushed the committees to move the bill along and place it before the entire body.<sup>63</sup> As a result of this carefully orchestrated effort, the task force's proposal passed into law without a single change on July 9, 1986,<sup>64</sup> and became effective on October 1, 1986.<sup>65</sup> In doing so, it became the first state arbitration law to deal specifically with international arbitration.<sup>66</sup>

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63. When the House of Representatives convened on April 8, 1986, Representative Silver, joined by Hallendale State Representative Irma S. Rochlin, a Democrat from the 98th District, were ready to introduce House Bill 562; the bill was referred to the Committees on the Judiciary and on Appropriations. *Journal of the Florida House of Representatives*, 88th Regular Session, April 8, 1986, at 59 (1986) ("Journal of the House"). Nine days later, Senator Fox introduced the companion bill, Senate Bill 820, which was referred to the Senate Committees on Commerce, Judiciary-Civil, and Appropriations. *Journal of the Senate of the State of Florida*, 88th Regular Session, April 17, 1986, at 111 (1986) ("Journal of the Senate"). On May 7th, the House Committee on the Judiciary recommended the bill and referred it to the Committee on Appropriations. *Journal of the House*, May 7, 1986, at 136. In the Senate, S.B. 820 was recommended by the Committee on Commerce, *Journal of the Senate*, May 13, 1986, at 242, and by the Committee on the Judiciary-Civil. *Journal of the Senate*, May 28, 1986, at 400. The bills were sent to their respective Committees on Appropriations, from which they were withdrawn because of a lack of impact on appropriations. *Journal of the House*, May 27, 1986, at 552, and *Journal of the Senate*, June 2, 1986, at 534.

64. House Bill 562 passed the House on June 4, 1986, by a vote of 107 to 5, and was subsequently certified to the Senate. *Journal of the House*, June 4, 1986, at 103. Two days later, the Senate substituted the House Bill for S.B. 820, and passed it without opposition. *Journal of the Senate*, June 6, 1986, at 825. The bill was approved by the Governor and filed in the Office of the Secretary of State on July 9, 1986. Ch. 86-266, 1986 Fla. Laws 1981, 1997. See also JOINT LEGISLATIVE MANAGEMENT COMMITTEE, SUMMARY OF GENERAL LEGISLATION 1986, 151-53 (1986).

65. See Castillo & Goldfarb, *Effective October 1, 1986: New Law Makes Florida Forum for Resolution of International Disputes*, *Miami Rev.*, Oct. 9, 1986, at 1, col. 1.

66. On March 4, 1988, however, California Governor George Deukmejian approved Assembly Bill No. 2667. The bill subsequently was filed with Secretary of State March Fong Eu on March 7, 1988, and became effective immediately. See 1988 Cal. Stat. ch. 23; 1988 Cal. Adv. Legis. Serv. 23 (Deering). Introduced by Assemblyman Kille, the bill is entitled, "Arbitration and Conciliation of International Commercial Disputes," and governs the arbitration and conciliation of 18 specified types of international commercial disputes. The law adds a new title (Title 9.3) to Part 3 of the California Code of Civil Procedure and will be codified as §§ 1297.11 through 1297.432 of the Civil Procedure Code. Among the matters covered by the new law are the form of the arbitration agreement (§§ 1297.71 and 1297.72); the use of judicial measures in aid of arbitration (§§ 1297.91 through 1297.95); the composition and jurisdiction of the arbitral tribunal (§§ 1297.101 through 1297.154); the manner and conduct of the arbitration (§§ 1297.181 through 1297.262); the making of the arbitral award (§§ 1297.281 through 1297.318); the termination of arbitration proceedings (§§ 1297.321 through 1297.337); and the conduct and effect of conciliation proceedings (§§ 1297.341 through 1297.432). The law also provides for and imposes a state-mandated local program for superior courts.

As previously discussed, the FIAA is intended to remedy the

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One month after California passed its law, Georgia followed suit by amending Chapter 9 of Title 9 of the Georgia Code. The amendment, which worked a number of changes in Georgia domestic arbitration law, added a new Part 2 to Article 1 of Chapter 9. Part 2 states that it is designed to "encourage the use of arbitration in the resolution of conflicts arising out of international transactions" so as to "provide a conducive environment for international business and trade." Part 2 provides that it only applies to arbitrations involving at least one person domiciled outside the United States or a dispute which bears some relation to property, performance, investment, or other activity outside the United States (§ 9-9-31). Part 2 goes on to provide that the agreement to arbitrate can be contained in any written document, including letters, telexes, and telegrams (§ 9-9-32), that any person can serve as an arbitrator regardless of his or her nationality (§ 9-9-33), that the arbitral tribunal may rule on its own jurisdiction (§ 9-9-34), that the arbitrators may grant such interim relief as they deem fit (§ 9-9-35), that the parties are free to select their own procedural rules (§ 9-9-36), that the parties may choose to conduct the arbitration in any language (§ 9-9-37), that the arbitrators may appoint such experts as they require (§ 9-9-38), that the arbitrators may issue reasoned awards under certain circumstances and may award attorneys' fees as they see fit (§ 9-9-39), and that the courts shall give great deference to such arbitration awards (§ 9-9-40 through § 9-9-42). Part 2 also changes the time periods applicable to international arbitration proceedings (§ 9-9-43). After passing both houses of the Georgia legislature, the bill was signed into law on April 5, 1988 by Governor Joe Frank Harris (available in the offices of the University of Miami Inter-American Law Review).

In addition to California and Georgia, Hawaii is about to enact an international commercial arbitration law. The Hawaii House of Representatives currently has before it House Bill No. 2003, which was introduced into the Fourteenth Legislature with 35 co-sponsors. Entitled, "Hawaii International Arbitration, Mediation, and Conciliation Act," the bill is very short compared with the Florida, California, and Georgia laws. Rather than providing detailed rules for holding international arbitrations, the bill simply recognizes the rapid expansion of international business among Pacific region nations and the need for an international dispute resolution system. It then refers all further matters to the Hawaii Center for International Commercial Dispute Resolution ("CICDR"). The CICDR is a project of the Hawaii State Bar Association, the University of Hawaii Program on Conflict Resolution, the University of Hawaii William S. Richardson School of Law, the Honolulu office of the American Arbitration Association, and the Hawaii state judiciary. It first was proposed in 1986 by Hawaii Chief Justice Herman Lum as part of the Hawaii Judiciary's Program on Alternative Dispute Resolution, and was established formally on November 24, 1987. The CICDR is headed by former Hawaii Governor George Ariyoshi and has a twenty-member Board of Governors. The Board's members consist of seven practicing lawyers, three professors, and the presidents of three banks, three investment companies, a hotel chain, a trade association, the Hawaii Visitors Bureau, and the Hawaiian Telephone Company. See further Kua, *Hawaii Center to Offer Arena to Settle Disputes Among Firms in Pacific Basin*, Honolulu Star-Bulletin, Dec. 9, 1987; Smyser, *Hawaii Moves Toward Greater Pacific Role*, Honolulu Star-Bulletin, Dec. 1, 1987; Forest, *'Dispute Resolution Center' Established*, Pac. Bus. News, Nov. 30, 1987; Ariyoshi *Elected Center Leader*, Honolulu Advertiser, Nov. 28, 1987; and Burris, *Dispute-Resolution Center Starting*, Honolulu Advertiser, Nov. 24, 1987 (available, together with H.B. 2003 and the CICDR's by-laws, list of Board of Governors, and Background Information paper, in the offices of University of Miami Inter-American Law Review).

In addition to the recent statutory efforts aimed specifically at international commercial dispute resolution, some states in the past have enacted legislation more broadly designed to encourage the use of their forums for the resolution of transnational disputes. In 1984, for example, the New York State legislature enacted a statute expressly recognizing New York choice-of-law and choice-of-forum clauses in contracts in excess of \$250,000 in which neither

deficiencies of the FAC, fill the gaps caused by the USAA and the New York Conventions, and provide incentives to foreign parties. Structurally, the Act is divided into three separate segments. Part I consists of four sections which deal with the Act's title,<sup>67</sup> policy,<sup>68</sup> scope,<sup>69</sup> and definitions.<sup>70</sup> Part II is entitled, "Conduct of Arbitrations." Its sixteen sections can be categorized into four broad areas: the steps to be followed when initiating arbitration;<sup>71</sup> the appointment of arbitrators;<sup>72</sup> the holding of hearings;<sup>73</sup> and the issuing of awards.<sup>74</sup> Finally, Part III is entitled, "Court Proceedings in Connection with Arbitration." It consists of fifteen sections. These sections mainly deal with the role of the courts in arbitrations subject to the FIAA before,<sup>75</sup> during,<sup>76</sup> and after the arbitration.<sup>77</sup> In addition, Part III also contains a transition rule,<sup>78</sup> and a

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the parties nor the transaction have any connection to New York. Under the statute, New York courts must recognize such clauses and may not decline jurisdiction. *See* N.Y. GEN. OBLIG. LAW §§ 5-1401 and 1402 (McKinney Supp. 1988). *See further* Credit Francais International, S.A. v. Sociedad Financiera de Comercio, C.A., 128 Misc. 2d 564, 490 N.Y.S.2d 670 (N.Y. Sup. Ct. 1985); and Herzog, *Conflict of Laws*, 36 SYRACUSE L. REV. 119, 131-33, 154 (1985).

67. FLA. STAT. § 684.01 (1987).

68. FLA. STAT. § 684.02 (1987).

69. FLA. STAT. § 684.03 (1987). According to one member of the task force, the purpose of this section is to make it clear that the FIAA will apply only to international arbitrations, and that the FAC will continue to apply to domestic arbitrations:

The existing Florida Arbitration Code, Chapter 682 of the Florida Statutes, is left intact for domestic (i.e., United States) arbitrations, on the theory that certain sectors of the business community of Florida (notably the real estate and the insurance industries) may have become accustomed over the years to conducting arbitrations of that type under the Florida Arbitration Code. To resolve any potential conflicts between the Act and the Florida Arbitration Code, Section 684.03(3) makes it clear that, to the extent Florida law becomes involved in an arbitration within the scope of the Act, it is to the Act, and not to the Florida Arbitration Code, that one must look.

Loumiet, *Introductory Note: Florida International Arbitration Act*, 26 INT'L LEGAL MATERIALS 949, 950-51 (1987). This piece, authored by one of the original task force members following passage of the FIAA, provides a useful review of the provisions of the FIAA and offers certain insights into the task force's thinking. Additionally, the task force's report contains an extended commentary on the Act as proposed in 1985. *See* Loumiet, O'Naghten & Swan, *supra* note 56, at 618-57.

70. FLA. STAT. § 684.04 (1987).

71. FLA. STAT. §§ 684.05-08 (1987).

72. FLA. STAT. §§ 684.09-12 (1987).

73. FLA. STAT. §§ 684.13-16 (1987).

74. FLA. STAT. §§ 684.17-20 (1987).

75. FLA. STAT. § 684.22 (1987).

76. FLA. STAT. § 684.23 (1987).

77. FLA. STAT. §§ 684.24-32 (1987).

78. FLA. STAT. § 684.33 (1987).

severability rule.<sup>79</sup> The final section of Part III (and, as a result, the final section of the Act itself) makes arbitrators immune from suits for acts performed in connection with their arbitral duties.<sup>80</sup>

Most of Part I is devoted to clarifying the relationship between the FAC and the FIAA. The key to the FIAA is the use of the term "resident of the United States," which is defined in section 684.04(2) as a natural person who maintains his sole residence within the United States or its territories,<sup>81</sup> and a corporate person which is organized or incorporated under the laws of the United States or its territories.<sup>82</sup> The importance of this term is revealed in section 684.03(1). That section provides that the FIAA will apply if at least one of the disputants is a nonresident of the United States,<sup>83</sup> or where all of the disputants are residents of the United States and the dispute involves property outside the United States,<sup>84</sup> relates to a contract or other agreement to be performed, in whole or in part, outside the United States,<sup>85</sup> involves an investment outside the United States,<sup>86</sup> or, in a particularly interesting piece of drafting, bears "some other relation" to one or more foreign countries.<sup>87</sup> Section 684.03(2) specifies the two instances in which the FIAA will not apply and the one instance in which the FIAA is presumed not to apply. Accepting the established view that matters involving domestic relations are inappropriate subjects for arbitration,<sup>88</sup> the FIAA states that it shall not apply to

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79. FLA. STAT. § 684.34 (1987).

80. FLA. STAT. § 684.35 (1987).

81. FLA. STAT. § 684.04(2)(a) (1987).

82. FLA. STAT. § 684.04(2)(b) (1987).

83. FLA. STAT. § 684.03(1)(a) (1987).

84. FLA. STAT. § 684.03(1)(b)(1) (1987).

85. FLA. STAT. § 684.03(1)(b)(2) (1987).

86. FLA. STAT. § 684.03(1)(b)(3) (1987).

87. FLA. STAT. § 684.03(1)(b)(4) (1987).

88. See generally DOMKE, *supra* note 28, § 13:09, at 196-200. In the 1980's, however, the use of alternative dispute resolution techniques to decide domestic matters has started to gain popularity in the United States. See, e.g., Bethel & Singer, *Mediation: A New Remedy for Cases of Domestic Violence*, 7 VT. L. REV. 15 (1982); Silberman, *Professional Responsibility Problems of Divorce Mediation*, 16 FAM. L.Q. 107 (1982); and Zumeta, *Mediation as an Alternative to Litigation in Divorce*, 62 MICH. B.J. 434 (1983). Despite this trend, the task force decided to exclude such disputes because:

[m]ost legal systems around the world would look askance at the use of arbitration to settle disputes arising out of domestic relations, such as inheritance, divorce, property settlements, child custody, etc. Indeed, an attempt to arbitrate such matters would be viewed in many countries as contrary to public policy.

Loumiet, O'Naghten & Swan, *supra* note 56, at 625.



such disputes.<sup>89</sup> Similarly, the FIAA states that it does not cover political disputes between two or more governments,<sup>90</sup> although the Act could have provided otherwise given the extensive existing practice of inter-government arbitration.<sup>91</sup> In addition, section 684.03(2) provides that the FIAA will not apply in disputes concerning real property located in Florida unless the parties have indicated expressly in writing that the FIAA is to govern.<sup>92</sup> Thus, except in the limited circumstances where section 684.03(2) is applicable, it appears that the only arbitrations that are not subject to the FIAA are those involving only American parties where there is no connection to any country other than the United States.<sup>93</sup>

Part II of the Act amounts to a set of rules which can govern the arbitration, but which are not mandatory. As explained by the Act's drafters, these rules primarily are intended as guidelines for parties to follow in designing their own procedures, should they so desire, and to provide a backup when the party-created rules fail to address an issue that arises in the course of the arbitration.<sup>94</sup> The mission of Part II can best be understood by keeping in mind the third goal of the task force: to provide incentives to foreign disputants by maximizing party autonomy.

Part II is largely a recapitulation of the arbitration rules developed by UNCITRAL in 1976,<sup>95</sup> although with some deviations.

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89. FLA. STAT. § 684.03(2)(b) (1987).

90. *Id.*

91. For a discussion of the expanding use of arbitration by national governments, see Sohn, *The Role of Arbitration in Recent International Multilateral Treaties*, 23 VA. J. INT'L L. 171 (1983). The task force's decision to reject such arbitrations was recounted in the following manner:

[T]he arbitration of political disputes between governments, while widely approved, is generally considered by the international community to be a process requiring special rules differing from those normally employed in arbitrating disputes between private parties, or between a private party and a government acting in a proprietary or commercial capacity. Therefore, it is not considered appropriate for arbitration of such disputes to fall under a general arbitration statute such as the Act.

Loumiet, O'Naghten & Swan, *supra* note 56, at 625.

92. FLA. STAT. § 684.03(2)(a) (1987).

93. According to the task force, the Act will apply to arbitrations involving a person who maintains two residences, one in the United States and one abroad. See Loumiet, O'Naghten & Swan, *supra* note 56, at 626. The Act does not apply to any conciliation or mediation dispute except those which the parties have agreed to undertake prior to the holding of an arbitration governed by the Act. FLA. STAT. § 684.03(3) (1987).

94. See Loumiet, *supra* note 69, at 951, and Loumiet, O'Naghten & Swan, *supra* note 56, at 626.

95. G.A. Res. 31/98, 31 U.N. GAOR Supp. (No. 39) at U.N. Doc. A/31/39 (1976). The UNCITRAL Rules were published in 1976, see U.N. Doc. A/31/17 (1976), and are repro-

Overall, any deviations from the UNCITRAL Model Rules appear to result from the heavy emphasis of the Act on party autonomy and non-intervention by the courts.

The first four sections of Part II deal with the initiation of arbitration proceedings. Taken together, these sections attempt to make clear that the parties are to have broad powers in choosing how and when to arbitrate their dispute. The centerpiece is section 684.07, which states that the parties are free to fix the rules of the arbitration, and may exclude any part or parts of the FIAA as they see fit.<sup>96</sup> Pursuant to section 684.05, they may agree to be bound by the FIAA even if the arbitration is to be held outside Florida.<sup>97</sup> Under section 684.06, the arbitrators shall conduct the arbitration as they see fit, subject to any rules agreed to by the parties.<sup>98</sup> Section 684.08 rounds out these provisions by providing procedures for commencing arbitration. The procedures are very flexible. A notice requesting arbitration need only state, in a general way, the nature of the dispute, the names and addresses of the parties, a reference to the written undertaking to arbitrate, a demand for arbitration, and the relief requested.<sup>99</sup> Notice is to be given in any manner calculated to give actual notice, unless the parties previ-

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duced at 4 INT'L TAX & BUS. LAW. 348 (1986). For a discussion of the UNCITRAL Rules, see Sanders, *Commentary on UNCITRAL Arbitration Rules*, 2 Y.B. COM. ARB. 172 (1977).

96. FLA. STAT. § 684.07(1) (1987). According to the task force, "this section confers upon the parties the right to deviate in any way they choose from the rules set out in Part II of the Act." Loumiet, O'Naghten & Swan, *supra* note 56, at 628. This provision is in line with the practice of other international arbitration systems. As will be recalled, *see supra* note 12, the Arbitration Institute of the Stockholm Chamber of Commerce recently changed its rules to permit parties to opt out of Swedish law.

97. FLA. STAT. § 684.05(1) (1987).

98. FLA. STAT. § 684.06(1) (1987). The task force noted that this section "is based upon another fundamental principle of international arbitration - namely, that the arbitral tribunal should be given wide discretion to conduct the arbitration as it deems best, constrained only by any rules which the parties adopt either expressly or by implication." Loumiet, O'Naghten & Swan, *supra* note 56, at 628.

99. FLA. STAT. § 684.08 (1987). In order to facilitate further service of process, the legislature also amended the state's service rules:

At the same time that the Act was enacted, the Florida Legislature added to the Florida Statutes a new Section 48.196 setting forth rules for service of process in the context of Florida court proceedings arising under the Act. [B]y virtue of the enactment of that statutory section there is now greater flexibility in serving process in connection with such a proceeding than is available under Florida law for any other type of court proceeding.

Loumiet, *supra* note 69, at 969 n.11. For a further discussion of § 48.196, the enactment of which had been urged by the task force, see Loumiet, O'Naghten & Swan, *supra* note 56, at 657-59.

ously have agreed upon a particular manner.<sup>100</sup> In order to avoid time-consuming and costly litigation prior to the holding of the arbitration, section 684.06(2) provides that the arbitrators are to determine all challenges to their jurisdiction, including charges that the undertaking to arbitrate either does not exist or is not valid.<sup>101</sup>

The next four sections of Part II deal with the appointment of the arbitrators and the establishment of the arbitral tribunal. Section 684.09 deals with the actual appointment of arbitrators, and states that in all cases where the parties have agreed upon a selection method, or actually have named arbitrators, their choice is not to be disturbed.<sup>102</sup> Where the parties have not agreed on a selection method and cannot agree to specific arbitrators, either party may go to court and request that an arbitrator be named.<sup>103</sup> Despite the widespread use of tripartite panels in international commercial arbitration,<sup>104</sup> section 684.09 expresses a distinct preference for arbitration before a sole arbitrator.<sup>105</sup> Nevertheless, section 684.11 directs that where there is more than one arbitrator, the panel is to act by majority vote.<sup>106</sup> An exception is made for procedural issues, which the chairman is permitted to decide if authorized by his or her fellow arbitrators.<sup>107</sup> All such decisions are

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100. FLA. STAT. § 684.08(2) (1987).

101. FLA. STAT. § 684.06(2) (1987). It has been written that, "This broad power conferred upon the tribunal goes hand in hand with the extremely limited circumstances under which a Florida court may intervene prior to or during the conduct of an arbitration [governed by the FIAA]." Loumiet, *supra* note 69, at 952. See also Loumiet, O'Naghten & Swan, *supra* note 56, at 628 ("Subsection (2) simply confirms the traditional power of arbitrators to be the judge of their own jurisdiction.").

102. FLA. STAT. § 684.09 (1987).

103. FLA. STAT. § 684.23(1) (1987).

104. See de Vries, *International Commercial Arbitration: A Contractual Substitute for National Courts*, 57 TUL. L. REV. 42, 69 (1982).

105. The task force favored the use of sole arbitrators for three reasons:

First, because it felt that the two additional arbitrators normally imply more cost, delay and complication in the arbitral process. . . . Second, because, in the task force's experience, when three arbitrators are used, the two appointed by the parties tend to act as advocates for the party that appointed them, at least as concerns the more fundamental issues in dispute. Hence, even in this situation truly controversial issues tend to be decided by a single arbitrator - the neutral one. Third, because it was not clear to the task force how the three-arbitrator rule would work in arbitrations involving more than two parties.

Loumiet, *supra* note 69, at 962 n.18. As noted by the task force, see Loumiet, O'Naghten & Swan, *supra* note 56, at 680, the USAA contains a similar bias in favor of single arbitrators. See 9 U.S.C. § 5 (1982).

106. FLA. STAT. § 684.11 (1987).

107. *Id.*

subject to review by the full tribunal.<sup>108</sup>

Section 684.10(1), in a bow to the changing nature of alternate dispute resolution, provides that the arbitrators are to hold their proceedings in abeyance whenever it appears that one party has failed to obey a written agreement to have the dispute submitted to mediation or conciliation.<sup>109</sup> Section 684.10(2) permits the arbitrators to record any agreed settlement between the parties in the form of a final award,<sup>110</sup> in a practice similar to that of the Iran-United States Claims Tribunal at The Hague.<sup>111</sup>

Finally, section 684.12 deals with the difficult and complex question of consolidated arbitrations. Recognizing the deep split among American courts on this question,<sup>112</sup> the task force wisely decided to side step the issue by not deciding it. Thus, section 684.12 states that two or more arbitrations can be consolidated

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108. *Id.*

109. FLA. STAT. § 684.10(1) (1987).

110. FLA. STAT. § 684.10(2) (1987).

111. See Böckstiegel, *Applying the UNCITRAL Rules: The Experience of the Iran-United States Claims Tribunal*, 4 INT'L TAX & BUS. LAW. 266, 268-69 (1986) (noting that over half the awards issued by the Tribunal have been on agreed terms). The Iran-United States Claims Tribunal was formed pursuant to the Algiers Accords, under which the United States and Iran resolved numerous disputes arising from the seizure of the American Embassy in Tehran on November 4, 1979. See Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Jan. 19, 1981, United States-Iran, 81 Dep't St. Bull. 1, 4 (Feb. 1981), reprinted in 20 INT'L LEGAL MATERIALS 230, 232 (1981). The work of the Tribunal is discussed in Belland, *Iran-US Claims Tribunal: Some Reflections on Trying a Claim*, 1 J. INT'L ARB. 238 (June 1984); Brower, *Current Developments in the Law of Expropriation and Compensation: A Preliminary Survey of Awards of the Iran-United States Claims Tribunal*, 21 INT'L LAW. 639 (1987); Lowenfeld, *The Iran-U.S. Claims Tribunal: An Interim Appraisal*, 38 ARB. J. 14 (Dec. 1983); and Robinson, *Recent Developments at the Iran-United States Claims Tribunal*, 17 INT'L LAW. 661 (1983).

112. In *Compania Espanola de Petroleos S.A. v. Nereus Shipping S.A.*, 527 F.2d 966 (2d Cir. 1976), cert. denied, 426 U.S. 936 (1976), the Second Circuit held that arbitrations could be consolidated judicially pursuant to the USAA. In *Weyerhaeuser Co. v. Western Seas Shipping Co.*, 743 F.2d 635 (9th Cir.), cert. denied, 469 U.S. 1061 (1984), however, the Ninth Circuit disagreed with the Second Circuit and rejected the reasoning contained in *Nereus*. Since then, trial courts in the Second Circuit have split over whether *Nereus* is still good law. Compare, e.g., *Ore & Chem. Corp. v. Stinnes Interoil*, 606 F. Supp. 1510 (S.D.N.Y. 1985) (*Nereus* is no longer good law) with *Sociedad Anonima de Navegacion Petrolera v. Cia. de Petroleos de Chile S.A.*, 634 F. Supp. 805 (S.D.N.Y. 1986) (*Nereus* is still good law). The subject is discussed further in Barron, *Court-ordered Consolidation of Arbitration Proceedings in the United States*, 4 J. INT'L ARB. 81 (Mar. 1987), and in Hascher, *Consolidation of Arbitration by American Courts: Fostering or Hampering International Commercial Arbitration?*, 1 J. INT'L ARB. 127 (Mar. 1984). See also *Vigo S.S. Corp. v. Marship Corp. of Monrovia*, 26 N.Y.2d 157, 257 N.E.2d 624, 309 N.Y.S.2d 165, cert. denied sub nom. *Frederick Snare Corp. v. Vigo S.S. Corp.*, 400 U.S. 819 (1970).

where: 1) the governing law of the disputes does not otherwise prohibit consolidation; and, 2) all of the parties agree to the consolidation or all of the disputes are to be submitted to the same tribunal and the tribunal finds that the interests of justice require consolidation.<sup>113</sup>

The next four sections of Part II concern questions relating to the arbitration hearings. Section 684.13 sets forth the general rules to be observed in the course of the hearing, although section 684.13(1) permits the panel to proceed on the basis of written submissions if the parties do not request a hearing.<sup>114</sup> Otherwise, the arbitrators are expected to hold hearings for the purpose of examining witnesses, inspecting documents and other evidence, and entertaining oral argument.<sup>115</sup> Although the place of the arbitration is to be determined by the parties, and may be either in or outside of Florida,<sup>116</sup> hearings may be held wherever the panel deems appropriate,<sup>117</sup> and notice must be given to each party.<sup>118</sup> For the most part, the panel may conduct its internal affairs as it sees fit.<sup>119</sup> It may set a date beyond which parties may not amend their claims, answers, counter-claims, or cross-claims without the permission of the panel,<sup>120</sup> and it may also decline to hold additional hearings after the initial hearing.<sup>121</sup> Only two limitations are imposed on the arbitrators' power to conduct the hearings. First, the panel may not adjourn the proceedings past the date the parties had fixed for the issuance of an award, unless the parties agree to extend the date.<sup>122</sup> Second, the panel may not issue an award against a party solely on the ground that the party failed to appear, proceed, or defend itself.<sup>123</sup>

Section 684.14 contains the now-standard direction that every party to an arbitration conducted pursuant to the FIAA has the right to be represented by an attorney.<sup>124</sup> Section 684.14 is unique

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113. FLA. STAT. § 684.12(1) (1987).

114. FLA. STAT. § 684.13(1) (1987).

115. *Id.*

116. FLA. STAT. § 684.13(3) (1987).

117. FLA. STAT. § 684.13(1) (1987).

118. *Id.*

119. FLA. STAT. § 684.13(4) (1987).

120. FLA. STAT. § 684.13(2) (1987).

121. FLA. STAT. § 684.13(1) (1987).

122. FLA. STAT. § 684.13(5) (1987).

123. FLA. STAT. § 684.13(6) (1987).

124. FLA. STAT. § 684.14 (1987). As noted by the task force, this section is modelled after § 682.07 of the FAC. See Loumiet, O'Naghten & Swan, *supra* note 56, at 632.

among international arbitration systems, however, because it states that any pre-dispute waiver of this right is ineffective.<sup>125</sup> Section 684.15(1) covers additional familiar ground by stating that the arbitrators need not follow "formal rules of evidence."<sup>126</sup> Instead, the tribunal is to determine the relevance and materiality of all evidence which is proffered,<sup>127</sup> and may draw upon its own knowledge as it deems appropriate.<sup>128</sup> Section 684.15(2) vests the arbitrators with the power to issue subpoenas, administer oaths, order the taking of depositions, and appoint experts.<sup>129</sup> Section 684.15(3) permits the arbitrators to fix witness fees,<sup>130</sup> while section 684.15(4), in an important departure from typical state arbitration laws, allows the arbitrators to apply for assistance from any court, tribunal or governmental authority in any jurisdiction.<sup>131</sup>

Like section 684.12, which deals with the complex issue of consolidation, section 684.16 deals with the equally nettlesome issue of interim relief.<sup>132</sup> Although the FIAA does not define the term "interim relief,"<sup>133</sup> it presumably includes the full panoply of interim

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125. FLA. STAT. § 684.14 (1987). A similar provision is found in § 682.07 of the FAC. See FLA. STAT. § 682.07 (1987).

126. FLA. STAT. § 684.15(1) (1987).

127. *Id.*

128. *Id.* It has been explained that this provision was included to "mak[e] it clear that the tribunal need not play a passive role and simply rely on the facts and evidence voluntarily brought forth by the parties." Loumiet, *supra* note 69, at 953. See also Loumiet, O'Naghten & Swan, *supra* note 56, at 632-33. This provision is in accord with the practice of the world's major arbitration systems. See Poznanski, *The Nature and Extent of an Arbitrator's Powers in International Commercial Arbitration*, 4 J. INT'L ARB. 71, 83 (Sept. 1987).

129. FLA. STAT. § 684.15(2) (1987).

130. FLA. STAT. § 684.15(3) (1987).

131. FLA. STAT. § 684.15(4) (1987).

132. FLA. STAT. § 684.16(1) (1987).

133. The term also is not defined in either the task force report, *supra* note 56, or the recent legislative commentary by Loumiet, *supra* note 69. Section 684.16(1) does state, however, that the tribunal is empowered to "grant such interim relief as it considers appropriate." For a further discussion of the granting of provisional relief in international arbitrations, see McDonell, *The Availability of Provisional Relief in International Commercial Arbitration*, 22 COLUM. J. TRANSNAT'L L. 273 (1984); Reichert, *Provisional Remedies in the Context of International Commercial Arbitration*, 3 INT'L TAX & BUS. LAW. 368 (1986); and Note, *An Argument for Pre-Award Attachment in International Arbitration Under the New York Convention*, 18 CORNELL INT'L L.J. 99 (1985). For an interesting case discussion, see *Cooper v. Ateliers de la Motobecane, S.A.*, 57 N.Y.2d 408, 442 N.E.2d 1239, 456 N.Y.S.2d 728 (1982). For a review of the *Cooper* case, see Newman & Burrows, *Attachment in Aid of Arbitration*, N.Y.L.J., Dec. 30, 1982, at 1, col. 1. In *Cooper*, the New York Court of Appeals held that the New York Convention prohibits courts from issuing provisional orders of attachment in aid of non-maritime arbitrations. To counteract this decision, the New York State legislature amended the New York arbitration law expressly to permit the New

relief devices, such as injunctions, attachments, civil arrests, garnishments, writs of replevin, restraining orders, and protective orders. The relief may be granted *ex parte* where necessary,<sup>134</sup> and the tribunal is empowered to go to any court as a party in its own right to seek judicial assistance in achieving the objectives of the interim relief.<sup>135</sup>

The final four sections of Part II deal with the tribunal's final award. Section 684.17 states that the tribunal is to apply whatever substantive law is called for by the parties.<sup>136</sup> If the parties have so agreed, the arbitrators may act *ex aequo et bono* or as *amiables compositeurs*.<sup>137</sup> Where the parties have not specified which law is to govern, the arbitrators are free to select whichever law they deem most appropriate, including in their choice conflict of law principles.<sup>138</sup> Section 684.18 permits the arbitrators to include interest in their award, either as agreed by the parties or as the arbitrators find appropriate.<sup>139</sup> No limit is set on the rate of interest, although it may be presumed that a usurious rate would be struck down by a court.<sup>140</sup>

Section 684.19 deals with a host of issues. Section 684.19(1) directs the arbitrators to render their award in the time agreed to by the parties; where no time is fixed, the arbitrators are to render their decision within such time as they deem appropriate.<sup>141</sup> Section 684.19(1) also authorizes the arbitrators to issue partial final awards, despite the conflicting positions taken by the courts.<sup>142</sup>

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York courts to grant provisional relief. This new law went into effect on January 1, 1986. See 1985 N.Y. Laws Ch. 253, § 1, amending N.Y. CIV. PRAC. L. & R. § 7502 (McKinney 1980). This law is discussed at length in Newman & Burrows, *Int'l Arbitration Provisional Remedies*, N.Y.L.J., Feb. 24, 1986, at 1, col. 1.

134. FLA. STAT. § 684.16(1) (1987).

135. FLA. STAT. § 684.16(2) (1987).

136. FLA. STAT. § 684.17 (1987).

137. *Id.* This provision is discussed in Loumiet, *supra* note 69, at 953, and in Loumiet, O'Naghten & Swan, *supra* note 56, at 634-35. For a general discussion of the power of arbitrators to act *ex aequo et bono* and as *amiables compositeurs*, see de Vries, *supra* note 104, at 72-74.

138. FLA. STAT. § 684.17 (1987). An extended discussion of this section appears in Loumiet, *supra* note 69, at 953, 963 n.20.

139. FLA. STAT. § 648.18 (1987).

140. According to the task force, this section was left vague because "numerous factors (including the currency of the award and market interest rates for that currency) will come into play" when granting interest. Loumiet, O'Naghten & Swan, *supra* note 56, at 635.

141. FLA. STAT. § 684.19(1) (1987).

142. The subject of interim awards has proven to be a divisive one in the United States, and is reviewed in detail in *Metallgesellschaft A.G. v. M/V Capitan Constante*, 790 F.2d 280 (2d Cir. 1986), and in *Liberian Vertex Transports v. Associated Bulk Carriers*, 738

The award must be in writing and must be signed by the arbitrators,<sup>143</sup> and generally is not to contain reasons.<sup>144</sup> Reasons may be provided if the parties so request or if the tribunal believes that recognition of the award is likely to be prejudiced if reasons are not provided.<sup>145</sup> As in so many other international arbitration systems, the decisions of the panel are to be kept confidential unless all of the parties consent to publication, disclosure is required by law, or disclosure is necessary in connection with any judicial or other official proceeding.<sup>146</sup>

Under section 684.19(4), the arbitrators are authorized to award, without limitation, attorneys' fees to the winning side.<sup>147</sup> This is a radical departure from American law.<sup>148</sup> Finally, in a rejection of the traditional rule of *functus officio*,<sup>149</sup> section 684.20 permits any party to the arbitration to file a request with the panel to vacate, clarify, correct, or amend the award.<sup>150</sup> The request must be filed within 30 days of the issuance of the award.<sup>151</sup> Thereafter, all parties are to receive an adequate opportunity to respond in writing to the request.<sup>152</sup> Although the FIAA is silent as to how long the panel may consider the request, the Act does state that the tribunal may hold further hearings, take additional evidence, and accept written submissions from the parties.<sup>153</sup>

Unlike Part II, which is optional, section 684.21 makes it clear that Part III applies to any arbitration otherwise within the scope of the FIAA. With the exception of a few miscellaneous sections at the end of Part III, this segment of the Act is designed to deal with

F.2d 85 (2d Cir. 1984). See also *Michaels v. Mariforum Shipping, S.A.*, 624 F.2d 411 (2d Cir. 1980).

143. FLA. STAT. § 684.19(1) (1987).

144. *Id.* Some commentators, however, have argued that as a general matter, international arbitration awards should provide reasons for the decisions. See, e.g., Carbonneau, *Rendering Arbitral Awards with Reasons: The Elaboration of a Common Law of International Transactions*, 23 COLUM. J. TRANSNAT'L L. 579 (1985).

145. FLA. STAT. § 684.19(3) (1987).

146. FLA. STAT. § 684.19(3)(a), (b), and (c) (1987).

147. FLA. STAT. § 684.19(4) (1987).

148. See *Sammi Line Co. v. Altamar Navegacion S.A.*, 605 F. Supp. 72 (S.D.N.Y. 1985) (in maritime arbitration, arbitrators have no power to award attorneys' fees when charterparty is silent on the subject); *Transvenezuelan Shipping Co. S.A. v. Czarnikow-Rionda, Inc.*, 1982 Am. Mar. Cas. 1458 (S.D.N.Y. 1981) (same).

149. For a discussion of *functus officio*, see DOMKE, *supra* note 28, § 22:01, at 337-40.

150. FLA. STAT. § 684.20 (1987). This provision is patterned after the FAC. See FLA. STAT. § 682.10 (1987).

151. FLA. STAT. § 684.20 (1987).

152. *Id.*

153. *Id.*



the respective roles of the court and the arbitration panel.

In large measure, Part III is designed to achieve the task force's second goal: filling the gaps left by the USAA and the New York Convention. Under prior law, Florida courts were powerless to act with respect to any international arbitration which did not arise out of a transaction involving a maritime interest, or interstate or foreign commerce, or which involved a transaction that arose in a country not a party to the New York Convention. Although the same could be said for most, if not all, state courts, this matter was of particular concern to the drafters of the FIAA because most Latin American and Caribbean countries were not signatories to the New York Convention.<sup>154</sup> Naturally, it was expected that many of the international disputes that would be arbitrated in Florida would have a Latin American nexus.<sup>155</sup>

Some of this concern, it was acknowledged, would be relieved upon the United States' ratification of the Panama Convention,<sup>156</sup> since several of the countries which had not ratified the New York Convention already had ratified the Panama Convention.<sup>157</sup> Ironically, just one week after the FIAA went into effect, the United States Senate gave its advice and consent to the Panama Convention.<sup>158</sup> As anticipated by the task force, however, ratification by

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154. See Loumiet, O'Naghten & Swan, *supra* note 56, at 595 ("The New York Convention applies only to awards . . . [that] emanate from countries that have ratified the Convention. The vast majority of the countries in Latin America and the Caribbean have not signed the Convention."). At the time the FIAA was before the legislature, the following Latin American and Caribbean states had ratified the New York Convention: Chile; Colombia; Cuba; Ecuador; Guatemala; Haiti; Mexico; Panama; Trinidad and Tobago; and Uruguay. See 2 J. INT'L ARE. 120 (Dec. 1985). Notably absent from this list are Argentina, Bolivia, Brazil, Costa Rica, Jamaica, Peru, and Venezuela.

155. See *supra* note 60.

156. The task force wrote that, "Although this situation will be ameliorated somewhat upon eventual ratification by the United States . . . , it is uncertain when ratification by the United States or other major Latin American countries will occur." Loumiet, O'Naghten & Swan, *supra* note 56, at 595 n.3.

157. When the FIAA was introduced into the Florida House of Representatives on April 8, 1986, Chile, Costa Rica, El Salvador, Honduras, Mexico, Panama, Paraguay, and Uruguay had ratified the Panama Convention. See Norberg, *supra* note 5, at 629. By the time the new law was approved by the Governor on July 9, 1986, Venezuela also had become a party; Guatemala ratified the Convention shortly before the FIAA went into effect. Of these countries, only Chile, Mexico, Panama, and Uruguay also have ratified the New York Convention. See Address by Charles R. Norberg, Director General of the Inter-American Commercial Arbitration Commission, *The Panama Convention, The Commission and U.S. Policy* 3, delivered at the Miami ABA National Institute on Resolution of International Commercial Disputes (Nov. 6, 1987) (available in the offices of the University of Miami Inter-American Law Review).

158. See Kearney, *Developments in Private International Law*, 81 AM. J. INT'L L. 724

additional Latin American and Caribbean countries has been slow.<sup>159</sup> Still, one may wonder if there is any dispute left which is not covered by the USAA, the New York Convention, or the Panama Convention.

The answer clearly is yes. First, several major countries have not ratified either the New York Convention or the Panama Convention, although some may do so in the near future. Among the countries which are not signatories are Argentina, Brazil, the Dominican Republic, and Peru. Second, because the FIAA is free from traditional notions of territoriality, it can apply to disputes outside the United States which otherwise are not covered. Thus, for example, a dispute between a Brazilian and an Argentine arising from a contract to ship goods from Peru to England would be arbitrable under the Florida Act, and any award arising therefrom would be enforceable in Florida.<sup>160</sup>

In order to fill the gaps left by the USAA and the various conventions, section 684.22 takes up the subject of court proceedings to compel arbitration and to stay court proceedings in lieu thereof, and sets the tone for the remaining sections. Under section 684.22(1), a court must order the parties to arbitration, regardless of where the arbitration is to take place, except in three specific instances: 1) if there was fraud in the inducement of the written undertaking to arbitrate; 2) if the submission of the dispute to arbitration would be contrary to the public policy of either Florida or the United States; or, 3) if the arbitrators already have determined that the dispute is not arbitrable.<sup>161</sup> In a further boost to the use of arbitration, section 684.22(1) provides the court with the power to sever the non-arbitrable aspects of the claim and order the remaining portions to arbitration. It should be noted, however, that this power rests in the sound discretion of the court.

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(1987). When the Panama Convention enters into force for the United States, it will be codified as Chapter III of the United States Arbitration Act. See Norberg, *supra* note 5, at 618.

159. Since the FIAA became effective, Colombia is the only new country to ratify the Panama Convention. Colombia also is a party to the New York Convention. See Address by Charles R. Norberg, Director General of the Inter-American Commercial Arbitration Commission, *The Panama Convention, The Commission and U.S. Policy* 3, delivered at the Miami ABA National Institute on Resolution of International Commercial Disputes (Nov. 6, 1987) (available in the offices of the University of Miami Inter-American Law Review).

160. This example is based on the discussion in Loumiet, O'Naghten & Swan, *supra* note 56, at 619-20.

161. FLA. STAT. § 684.22(1)(a), (b), and (c) (1987).

During the course of the arbitration, the court is expected to play a small role. Thus, section 684.23 limits court intervention to four distinct matters: 1) selection of an arbitrator where the parties cannot or will not agree upon an arbitrator;<sup>162</sup> 2) enforcement of any discovery order made by the tribunal;<sup>163</sup> 3) enforcement of any request or order issued by the panel for interim relief;<sup>164</sup> and 4) upon application by any party that the arbitrators have delayed unduly the issuance of their final award, designation of a date certain by which the award must be issued.<sup>165</sup> Although the court is free to act with respect to the first three matters, it may act in respect to the fourth matter only when the arbitration is taking place in Florida or the parties have agreed to be bound by Part II of the FIAA.<sup>166</sup>

Judicial intervention following the release of a final award is the focus of sections 684.24 and 684.25. Section 684.24 directs that, subject to section 684.25, an award rendered pursuant to the FIAA is to be confirmed.<sup>167</sup> As such, the FIAA provides arbitral awards with the same presumption of propriety as that found in the USAA.<sup>168</sup> Section 684.25(1) provides seven grounds on which to vacate an arbitration award. For the most part, these grounds are similar to those found in the New York Convention.<sup>169</sup> The first ground is a restatement of section 684.22, and provides that the award shall be vacated where there was no written undertaking to arbitrate, or there was fraud in the inducement of the undertaking, or the panel previously had found the issue to be non-arbitrable.<sup>170</sup> Section 684.25(1)(b) makes the award subject to vacation if the challenging party was not given notice of the arbitration.<sup>171</sup> Section 684.25(1)(c) states that an award shall be vacated if the proceed-

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162. FLA. STAT. § 684.23(1) (1987).

163. FLA. STAT. § 684.23(2) (1987).

164. FLA. STAT. §§ 684.23(3), (4) (1987).

165. FLA. STAT. § 684.23(5) (1987).

166. FLA. STAT. §§ 684.23(5), (6) (1987).

167. FLA. STAT. § 684.24(1)(a) (1987).

168. See 9 U.S.C. § 9 (1982). Unlike the USAA, however, the FIAA does not require that the parties have agreed in advance that a judgment could be entered on the tribunal's award. See Loumiet, O'Naghten & Swan, *supra* note 56, at 643.

169. See Loumiet, *supra* note 69, at 965 n.25. For a discussion of the defenses available under the New York Convention, see McLaughlin & Genevro, *Enforcement of Arbitral Awards Under the New York Convention - Practice in U.S. Courts*, 3 INT'L TAX & BUS. LAW. 249 (1986), and Note, *The Express Defenses of the N.Y. Convention on Foreign Arbitral Awards*, 5 N.Y.L. Sch. J. INT'L & COMP. L. 103 (1983).

170. FLA. STAT. § 684.25(1)(a) (1987).

171. FLA. STAT. § 684.25(1)(b) (1987).

ings leading up to the award were unfair.<sup>172</sup> What constitutes unfairness is difficult to say since the FIAA does not elaborate on the meaning of the word "unfair," except to qualify it by saying that the unfairness must have "substantially prejudice[d] the rights of the party challenging the award."

Section 684.25(1)(d) permits an award to be vacated on the grounds that it was obtained by corruption, fraud or undue influence.<sup>173</sup> In a strange bit of drafting, this ground also states the award can be vacated if it is contrary to the public policy of the United States or Florida.<sup>174</sup> Clearly, the better drafting practice would have been to make the public policy ground a separate ground, and it is to be hoped that courts called upon to enforce the FIAA will take careful note of the use of the word "or" which separates the two clauses.<sup>175</sup> Section 684.25(1)(e) states that an award is to be vacated if a neutral arbitrator had a material conflict of interest with the challenging party, unless the party learned of the conflict in a timely fashion and decided to proceed with the arbitration.<sup>176</sup>

This section is particularly problematic for two reasons. First, it is unclear what is meant by the term "neutral arbitrator." Since, in the typical commercial arbitration, there are two party-appointed arbitrators and only one truly neutral arbitrator, namely, the chairman or umpire, the use of the word neutral could be read as referring only to the chairman or umpire. On the other hand, it can be argued that the view of party-appointed arbitrators as mere advocates for the side which appointed them is a uniquely American phenomenon.<sup>177</sup> The reality, however, is that the use of the word "neutral" is both unnecessary and confusing, and is an outgrowth of the preference shown in section 684.09 for sole arbitrators.<sup>178</sup>

A second problem with this section is the likelihood that many parties will learn of a conflict in a timely fashion but will be reluctant to challenge the arbitrator. If they guess incorrectly about the materiality of the conflict, or are unable to convince the court of

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172. FLA. STAT. § 684.25(1)(c) (1987).

173. FLA. STAT. § 684.25(1)(d) (1987).

174. *Id.*

175. This is a matter of some concern, given the history of Florida courts in interpreting the FAC. See Note, *supra* note 42, at 639.

176. FLA. STAT. § 684.25(1)(e) (1987).

177. See further de Vries, *supra* note 104, at 69-70.

178. See *supra* notes 104-05 and accompanying text.

the materiality, or are unable to prove the conflict, they then have no choice but to return to the arbitration with the challenged arbitrator continuing to preside. With the arbitrator's integrity having been called into question, the chances are good that he will be more hostile to the party that challenged him. Although this is a substantial problem in the tripartite panel setting, it is an unbearable problem in the sole arbitrator setting envisioned by section 684.09, and may lead the challenging party to conclude that it must settle the matter on whatever terms the other side is willing to offer. Clearly, the timely notice/lack of objection standard contained in the FIAA needs to be amended.

Section 684.21(1)(f) permits the award to be vacated where the award resolves an issue which the parties did not agree to submit to arbitration.<sup>179</sup> Finally, section 684.25(1)(g) states that an arbitration award may be vacated where the composition of the arbitral tribunal was not in accordance with the agreement of the parties, unless the challenging party waived its rights or participated in the proceedings without first objecting.<sup>180</sup> Once again, the problem of the hostile arbitrator is raised but not resolved by this section. In addition, although the language is ambiguous on this point, it is presumed that where there was no agreement as to how the arbitration panel was to be formed and one of the parties asked the court to appoint an arbitrator pursuant to section 684.23(1), no argument can be raised later under section 684.25(1)(g).

Section 684.25(1) is supplemented to a degree by section 684.25(2), which states that the court is to forego an independent factual investigation of claims made under sections 684(1)(c), (f) and (g) where such claims were raised and decided by the arbitral authority under whose direction the arbitration was conducted. Since no limitation appears, again it is presumed that any arbitral body, whether domestic or foreign, qualifies under section 684.25(2).

Section 684.25(2) creates the problem that if a party complains to the administering body about any of the topics covered by sections 684.25(1)(c), (f) or (g) (unfairness, subject matter, or composition), and the administering body concludes that there was no basis for a complaint, the party is, for all practical purposes,

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179. FLA. STAT. § 684.25(1)(f) (1987).

180. FLA. STAT. § 684.25(1)(g) (1987).

estopped from raising this challenge in court. While there is case law to support such a system,<sup>181</sup> it is submitted that such case law is poorly reasoned and tends to undermine, rather than promote, confidence in the arbitral process. Not only does it require parties to have faith in both the arbitration panel and the administering organization, even though only the arbitrators are accountable to the parties, but it places a party engaged in an ad hoc arbitration in a better position than a party engaged in an administered arbitration merely because there is no administering body with which to lodge a complaint.

A third difficult issue, in addition to consolidation and interim relief, which the drafters of the FIAA took up was the problem of awards issued in a foreign currency. Ever since Justice Holmes' decisions in this highly complicated area,<sup>182</sup> courts and commentators have found themselves bedeviled by the subject of foreign currency judgments.<sup>183</sup> In a confusingly worded clause, section 684.26 states that the courts shall confirm awards issued pursuant to the FIAA regardless of the fact that the award is denominated in a foreign currency.<sup>184</sup> The section then provides that any party may request the court to convert the award into United States dollars using the market rate of exchange in effect on the day the award was issued. It is unclear just what the day of issuance is, and resorting back to section 684.19, which deals with the subject of awards, is of no help. The day of issuance might mean any of the following: 1) the day a majority of the arbitrators agreed on the decision, since all subsequent steps were merely *pro forma*; 2) the day the award was drafted; 3) the day the award was signed by the last arbitrator; 4) the day the award was mailed to the parties; 5) the day the award was received by the last party; 6) the day the award should have

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181. See, e.g., *Koch Oil, S.A. v. Transocean Gulf Oil Co.*, 751 F.2d 551 (2d Cir. 1986) (issue of whether an award had been rendered in a timely fashion in an AAA arbitration was to be decided solely by the AAA).

182. In *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517 (1926), Justice Holmes focused on the law governing the contract from which the financial obligation arose, holding that since the debt originally was incurred in marks, in Germany, under German law, it would be satisfied only by payment in marks "however much the mark might have fallen in value compared with other things." *Id.* at 519. Justice Holmes distinguished *Deutsche Bank* from his earlier decision in *Hicks v. Guinness*, 269 U.S. 71 (1925). In *Hicks*, a debt on account to an American creditor was held payable in U.S. dollars, although the German respondent argued that it should have been payable in marks.

183. An excellent summary of the state of this area of the law is contained in Brand, *Restructuring the U.S. Approach to Judgments on Foreign Currency Liabilities: Building on the English Experience*, 11 *YALE J. INT'L L.* 139 (1985).

184. *FLA. STAT.* § 684.26 (1987).

been received by the last party pursuant to normal mailing; 7) the day the time to appeal under section 684.20 expired; 8) the day the award was declared final following any appeal under section 684.20; 9) the day the award was issued pursuant to a court order obtained pursuant to section 684.23(5); or, 10) the day the award should have been issued if it had not become necessary to seek an order under section 684.23(5).<sup>185</sup>

A further problem with section 684.26 is that it states that where the award has been issued in a currency for which there is no market rate of exchange, the court shall fix a rate which it deems appropriate. This is highly prejudicial to the losing party, and not required by any notions of justice or fair play. In dealing with currencies that cannot be converted, one usually is dealing with a decision by the government issuing such currency that there be no free exchange of the currency.<sup>186</sup> Thus, to allow an American court to fix a rate not only is the height of judicial folly, but it tends to undermine a decision of a foreign government. While it may be argued whether this provision violates the Act of State doctrine,<sup>187</sup> it certainly makes little sense as a political matter, especially in light of the decision in section 684.03(2)(b) to have the FIAA not apply in cases involving two or more governments.<sup>188</sup> Moreover, it may prove to be a disincentive to foreign disputants.

Although little needs to be said about sections 684.27 through 684.32, which are largely self-explanatory and deal with such matters as final decrees, judgment roles, venue, and appeals, two matters should be noted in passing. First, a decision to conduct an

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185. The task force's report on this section does not address this issue. See Loumiet, O'Naghten & Swan, *supra* note 56, at 652-53. A similar silence is found in Loumiet, *supra* note 69, at 956.

186. This is particularly true of third world nations, which are very sensitive about the stability and value of their currency. As a result, currency matters are highly regulated in developing and underdeveloped countries. See further Zamora, *Recognition of Foreign Exchange Controls in International Creditors' Rights Cases: The State of the Art*, 21 INT'L LAW. 1055 (1987).

187. The Act of State doctrine has been developed in a series of cases decided by the United States Supreme Court. See *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682 (1976); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964); and *Underhill v. Hernandez*, 168 U.S. 250 (1897). Under the doctrine, American courts are precluded from inquiring into the validity of acts committed by a foreign sovereign within its own territory. The doctrine is discussed in C. EBENROTH, *BANKING ON THE ACT OF STATE* (1985); Bazzyler, *Abolishing the Act of State Doctrine*, 134 U. PA. L. REV. 325 (1986); and Comment, *Applying an Amorphous Doctrine Wisely: The Viability of the Act of State Doctrine After the Foreign Sovereign Immunities Act*, 18 TEX. INT'L L.J. 547 (1983).

188. See *supra* notes 90-91 and accompanying text.

FIAA arbitration pursuant to Part II of the Act confers personal jurisdiction over the parties for purposes of Part III, even where the arbitration has been held outside Florida and the FIAA is the only Florida connection.<sup>189</sup> Second, an immediate appeal will lie from any order granting or denying an application to compel or stay arbitration or to stay judicial proceedings made pursuant to section 684.22.<sup>190</sup> Of course, appeals also will lie from any order confirming or vacating an arbitration award.<sup>191</sup>

Section 684.33 is the so-called transitional rule. It states that the FIAA will apply to all written arbitration agreements whether entered into prior to or after the effective date of the Act.<sup>192</sup> It also states that Part II of the Act will not apply to arbitration proceedings begun prior to October 1, 1986, unless the parties so stipulate,<sup>193</sup> and makes judicial proceedings commenced prior to October 1, 1986 subject to the pre-FIAA law.<sup>194</sup> A severability provision, which appears in section 684.34, protects the FIAA if any portion of it is found unlawful,<sup>195</sup> although this is unlikely since Florida courts have never found any portion of the FAC to be unlawful.<sup>196</sup>

As noted earlier, the final section of Part III, and of the Act as a whole, is section 684.35, which immunizes arbitrators acting under the color of the FIAA from any suit for their arbitral actions.<sup>197</sup> In addition to the strange placement of the section (one would have expected it to be in Part II so that parties could opt out of such immunity), the section is troubling because it represents a reversal from modern notions about arbitrator immunity. As courts<sup>198</sup> and commentators<sup>199</sup> begin to suggest that arbitrators

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189. FLA. STAT. § 684.30 (1987).

190. FLA. STAT. § 684.32(1)(a) (1987).

191. FLA. STAT. § 684.32(1)(c) (1987).

192. FLA. STAT. § 684.33 (1987).

193. *Id.*

194. *Id.*

195. FLA. STAT. § 684.34 (1987).

196. *See Note, supra* note 42, at 621.

197. FLA. STAT. § 684.35 (1987).

198. *See, e.g.,* Baar v. Tigerman, 140 Cal. App. 3d 979, 189 Cal. Rptr. 834 (Ct. App. 1983) (AAA arbitrator can be held liable for civil damages for failure to render a timely award). The case is discussed in Note, *Arbitration — Arbitrator Potentially Liable for Failure to Render a Decision*, 67 MARQ. L. REV. 147 (1983).

199. *See* Jarvis, *The Problem of Post-Hearing Delay in Maritime Arbitrations: "When Did You Say We Would Receive the Arbitrators' Award?"* 9 MD. J. INT'L L. 19 (1985) [hereinafter *Post-Hearing Delay*], for the reasons why arbitrators should not have immunity. For the classic statement of why arbitrators should be immune from suit see Domke, *The Arbitrator's Immunity from Liability, A Comparative Survey*, 3 U. Tol. L. Rev. 99 (1971) [here-



should be held accountable for their acts, this section effectively closes the door on the possibility of such remedies. The section is particularly troubling not only because there is no counterpart in the FAC, thereby making FIAA arbitrators less responsible than FAC arbitrators, but also because as originally drafted the FIAA provided only qualified arbitral immunity.<sup>200</sup>

### *B. The International Commercial Dispute Resolution Center*

As arbitration has increased in world-wide popularity as a means of resolving international commercial disputes, recognition of the benefits to a community in hosting arbitrations also has increased,<sup>201</sup> as a result arbitral institutions have sprung up in cities around the world. At the same time, a number of regional arbitration centers also have been formed.<sup>202</sup> While the nature of the arbitration centers differs from site to site, most of the new arbitration centers provide one or more of the following services: facilities in which to conduct arbitrations; rosters of qualified persons who can be called on to serve as arbitrators; education programs to train arbitrators; public information campaigns to increase the community's knowledge and awareness of arbitration; and promulgation of rules of procedure which may be used by parties.

In the United States, arbitration centers recently have been formed in such diverse locales as Atlanta, Houston, Los Angeles, and San Francisco.<sup>203</sup> The establishment of these centers comes at a time when New York City is recognized as one of the three major arbitration sites in the world,<sup>204</sup> the others being Paris<sup>205</sup> and London.<sup>206</sup> Outside the United States, new arbitration centers have

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inafter *Immunity*).

200. See Loumiet, O'Naghten & Swan, *supra* note 56, at 615, 656-57, and compare with FLA. STAT. § 684.35 (1987), as discussed in Loumiet, *supra* note 69, at 954.

201. See *supra* note 9.

202. See Radfern, *supra* note 9, at 10-11, and McKenry, *supra* note 55, at 2-3.

203. *Id.* See also Buxbaum, *Introduction*, 4 INT'L TAX & BUS. LAW. 205, 205 (1986).

204. See *supra* note 11.

205. As the home of the International Chamber of Commerce, Paris long has played a leading role in international arbitration. The ICC, founded in 1919, is discussed in de Hancock, *The International Court of Arbitration: The Institution and its Procedures*, 1 J. INT'L ARB. 21 (Jan. 1984).

206. For a discussion of the international arbitration alternatives available in London, see Jarvin, *London as a Place for International Arbitration*, 1 J. INT'L ARB. 59 (Jan. 1984), and Shenton & Toland, *London as a Venue for International Arbitration: The Arbitration Act of 1979*, 12 LAW & POL'Y INT'L BUS. 643 (1980).

been opened in Canada (at Vancouver), Colombia (at Bogota), Egypt (at Cairo), and the Dominican Republic (at Santo Domingo).<sup>207</sup>

The idea for an international arbitration center in Miami first was proposed in 1981 by Milton N. Fisher, the former president of Panelfab International Corporation and at the time the president of the Coral Gables (Florida) Chamber of Commerce.<sup>208</sup> Following his suggestion, the academic, legal and business communities of South Florida were polled during 1982 for advice on the feasibility as well as the desirability of creating such a center.<sup>209</sup> A major step forward was taken in October 1983, when, at the annual planning meeting of the International Center of Florida ("ICF"),<sup>210</sup> it was agreed that a steering committee should be formed to study the matter.<sup>211</sup>

In February 1984, a press release announced that the ICF had decided to establish a new institute for the non-judicial resolution of international commercial disputes. The as-yet unnamed institute was to be established under the auspices of the ICF.<sup>212</sup> During the next month, the ICF moved forward with its idea, and in March 1984 incorporated the Institute for Settlement of International Commercial Disputes ("ISICD") as a non-profit corporation with its principal offices in Coral Gables.<sup>213</sup>

In May 1984, the ISICD's Board of Directors adopted rules for arbitration and conciliation.<sup>214</sup> These rules were based largely on the UNCITRAL Arbitration Rules of 1976 and the UNCITRAL Conciliation Rules of 1980.<sup>215</sup> A turning point for the ISICD came in October 1984. By now renamed the Institute for Resolution of International Commercial Disputes ("IRICD"),<sup>216</sup> and possessing a

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207. For an extensive list of arbitration sites, see L. KOS-RABCEWICZ-ZUBKOWSKI & P. DAVIDSON, *COMMERCIAL ARBITRATION INSTITUTIONS: AN INTERNATIONAL DIRECTORY AND GUIDE* (1986).

208. See A. Smith, *Market Research & Analysis and Marketing Plan for the International Commercial Dispute Resolution Center (ICDRC) iv* (May 28, 1986)(unpublished manuscript)(available in the offices of the University of Miami Inter-American Law Review).

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

detailed set of by-laws,<sup>217</sup> the Institute entered into a contract with the City of Miami for a development grant. Under the grant, the City of Miami provided the Institute with "\$50,000 to cover the cost of initial organization, preparation of an in-depth marketing study and support for the then proposed Florida International Commercial [sic] Arbitration Act."<sup>218</sup>

In June 1985, Dr. Carl E. B. McKenry, a professor at the University of Miami's Schools of Business and Law, was named the Secretary-General of the IRICD.<sup>219</sup> A short time later, the IRICD again changed its name. Now known as the International Commercial Dispute Resolution Center ("ICDRC"),<sup>220</sup> the Center was introduced for the first time to the international arbitration community at the October 1985 Inter-American Bar Association annual meeting in Acapulco, Mexico.<sup>221</sup>

A second turning point for the ICDRC came in March 1986, when the first arbitration to be held in its offices took place. The disputants were the Rohm Corporation and Didefon, S.A.C.I. Although the arbitration actually was conducted under the auspices of the ICC, the ICDRC provided important assistance to the ICC and in the process proved that it could provide important services to the international business community in an efficient manner.<sup>222</sup>

The final steps to full operation were taken in May 1986. First, the ICDRC co-sponsored the IXth Inter-American Conference on International Commercial Arbitration.<sup>223</sup> Second, members of the ICDRC attended the VIIIth International Arbitration Congress in New York City.<sup>224</sup> Finally, the marketing study funded by the City of Miami was completed and submitted to the ICDRC's Secretary-General.<sup>225</sup>

The ICDRC was established in the belief that, by taking advantage of Florida's geographical location as the major gateway to Latin America and the Caribbean, it might be able to "overcome an historical reluctance to use commercial arbitration in Latin

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217. *Id.*

218. See McKenry, *supra* note 55, at 7.

219. See Smith, *supra* note 208.

220. *Id.*

221. *Id.*

222. *Id.* See also McKenry, *supra* note 55, at 13.

223. See Smith, *supra* note 208.

224. *Id.* at vi.

225. See *supra* note 61.

America."<sup>226</sup> Although the marketing study found that Miami (and thus, indirectly, the ICDRC) possessed a total of seventeen characteristics<sup>227</sup> that would be attractive to businesses from many different geographical regions,<sup>228</sup> and urged the ICDRC to market itself in a wide number of countries,<sup>229</sup> it found that three attributes of Miami would make the ICDRC particularly attractive to Latin American businessmen: the geographical proximity of Miami to Latin America; the bilingual nature of the South Florida community; and the "simpatico" feelings between South Florida and Latin America.<sup>230</sup> At the same time, however, the marketing study stressed that the ICDRC would have to "continue to apprise itself of the traditional, although changing, reluctance of Latin Americans to resort to international arbitration, particularly beyond their national borders."<sup>231</sup> The marketing study also warned that:

The location of the ICDRC in the United States at once identifies the institute with U.S. or "foreign law" in the eyes of Latin Americans, causing fear of partiality as a result. These disincentives, however, should be mitigated by the UNCITRAL Rules as adopted by the ICDRC, which are transnational in character and designed to harmonize international commercial disputes between industrialized and developing nations.<sup>232</sup>

In concluding its assessment of the potential of the ICDRC, the marketing study stated in part that, "Miami possesses all of the requisite attributes and facilities to successfully promote the development of the ICDRC as an important new forum for international commercial arbitration in the Western Hemisphere."<sup>233</sup>

At the present time, the ICDRC, in the words of its Secretary-General, "has completed th[e initial] phase of its development and is now in the promotional phase which consists of information dis-

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226. See McKenry, *supra* note 55, at 6.

227. The factors identified by the marketing study as making Miami an attractive place for establishment of a new international arbitration center were its: 1) strategic geographic location; 2) cosmopolitan nature; 3) linguistic diversity; 4) large pool of workers possessing technical skills; 5) broad base of experts; 6) efficient communications system; 7) academic facilities; 8) libraries; 9) international business community; 10) positive business climate; 11) free trade zone; 12) political stability; 13) weather; 14) airports; 15) ports and harbors; 16) financial infrastructure; and 17) trade opportunities. See Smith, *supra* note 208, at 146-52.

228. *Id.* at 152.

229. *Id.* at 195.

230. *Id.* at 146, 148.

231. *Id.* at 153.

232. *Id.*

233. *Id.* at 154.

semination concerning the Center, encouraging its use by a designation clause in international commercial agreements, and the continuing development of a panel of distinguished arbitrators."<sup>234</sup> The ICDRC now is housed in the new World Trade Center in downtown Miami, where it shares space with the ICF.<sup>235</sup>

### C. *The Maritime Arbitration Board*

Traditionally, maritime arbitrations in the West have been held in either London<sup>236</sup> or New York.<sup>237</sup> Although a number of maritime arbitrations also are held each year in Paris,<sup>238</sup> Hamburg,<sup>239</sup> Tokyo,<sup>240</sup> Gdynia,<sup>241</sup> Moscow,<sup>242</sup> and Beijing,<sup>243</sup> London and New York have achieved widespread acceptance in the international maritime community through the passage of time, the use of standardized charterparty clauses, the creation of specialized maritime arbitration societies, the development of an hospitable judicial climate, the ready availability of highly-trained maritime counsel, and the availability of such important support services as expert witnesses, court reporters, meeting rooms, and transportation, lodging, and communication facilities.<sup>244</sup>

Recently, however, there has been growing dissatisfaction with both London and New York as maritime arbitration centers. Crit-

234. See McKenry, *supra* note 55, at 7.

235. *Id.* The ICDRC's mailing address is World Trade Center, 80 S.W. 8th Street, Miami, Florida 33130.

236. See McIntosh, *The Practice of Maritime Arbitrations in London: Recent Developments in the Law*, [1983] LLOYD'S MAR. & COM. L.Q. 235.

237. See Zubrod, *Maritime Arbitration in New York*, 39 ARB. J. 16 (Dec. 1984).

238. Maritime arbitrations in Paris take place before the Chambre Arbitrale Maritime de Paris. See 4 INT'L TAX & BUS. LAW. 343-44 (1986).

239. Maritime arbitrations in Hamburg take place at the German Maritime Arbitration Association. See VEREINIGUNG FÜR DEUTSCHE SEESCHIEDSGERICHTSBEARKEIT (n.d.) (informational brochure available in the offices of the University of Miami Inter-American Law Review).

240. Maritime arbitrations in Tokyo take place before the Japan Shipping Exchange, Inc. See 4 INT'L TAX & BUS. LAW. 344 (1986).

241. Maritime arbitrations in Gdynia take place before the International Court of Arbitration for Marine and Inland Navigation. See 4 INT'L TAX & BUS. LAW. 345 (1986).

242. Maritime arbitrations in Moscow take place before the Maritime Arbitration Commission. The practices and procedures of the Commission are discussed in Jarvis, *The Soviet Maritime Arbitration Commission: A Practitioner's Perspective*, 21 TEX. INT'L L.J. 341 (1986).

243. Maritime arbitrations in Beijing take place before the Maritime Arbitration Commission. See Pew, Jarvis & Sidel, *The Maritime Arbitration Commission of the People's Republic of China: Options and Strategies*, 18 J. MAR. L. & COM. 351 (1987).

244. *Id.*

ics today frequently complain of high cost<sup>245</sup> and long delays.<sup>246</sup> As a result, a number of alternative maritime arbitration centers have begun to emerge, including centers in such important port cities as Vancouver,<sup>247</sup> San Francisco,<sup>248</sup> and Houston.<sup>249</sup> Taking account of these developments, the Admiralty Law, Insurance and Surveyors Division of The Marine Council of Miami<sup>250</sup> proposed in 1986 the establishment of a Maritime Arbitration Board ("MAB").<sup>251</sup>

MAB arbitrations are conducted pursuant to a set of rules which largely duplicates the Rules for Arbitration Procedures of the Society of Maritime Arbitrators, Inc. ("SMA") of New York.<sup>252</sup> Just as the SMA's rules consist of thirty-eight numbered sections divided into nine groups, so do the MAB's rules consist of thirty-eight numbered sections divided into nine groups. There are, however, some significant differences.

In section 1 of its rules, the MAB retained all of the SMA's language but added a new paragraph which states that "[c]laims or disputes concerning all matters covered by the United States Arbitration Act, or the Florida International Arbitration Act, or relating to admiralty and maritime jurisdiction including recreational boating, or aviation, air space or outer space, may be submitted under these Rules." The purpose of this new paragraph is two-fold. First, by referring to the FIAA, the Rules hope to convince foreign

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245. See, e.g., Jarvis, *Problems with and Solutions for New York Maritime Arbitration*, [1986] LLOYD'S MAR. & COM. L.Q. 532, 536.

246. *Id.* at 537-38.

247. In December 1986, the Vancouver Maritime Arbitrators Association was launched to attract significant maritime arbitration hearings to Vancouver. See *Maritime Arbitrators Group Launched*, ARB. CANADA 3 (Oct. 1987).

248. In order to promote the holding of maritime arbitrations in San Francisco, an organization known as the Society of Maritime Arbitrators of San Francisco, Inc. has been formed. See further *Post-Hearing Delay*, *supra* note 199, at 44.

249. *Id.*

250. The Marine Council was formed approximately thirty years ago as a non-profit organization to provide the Miami community with "a forum regarding waterfront issues and serv[e] as a watchdog on behalf of marine interests." Maritime Arbitration Board, Inc., *Schedule of Fees 2* (n.d.) [hereinafter *Schedule*]. The Marine Council is divided into ten divisions. Telephone interview with Richard E. Briggs, Executive Director, The Marine Council (Jan. 12, 1988).

251. Telephone interview with Richard E. Briggs, Executive Director, The Marine Council (Jan. 12, 1988).

252. The Society of Maritime Arbitrators, Inc. was founded in 1963 to provide arbitration services to the maritime community. Currently, the SMA has 120 members. For a further discussion of the SMA and its rules, see Zubrod, *supra* note 237. See also Zubrod, *Delay in Maritime Arbitrations - Post-Hearing and Otherwise: An Arbitrator's View*, 10 MD. J. INT'L L. & TRADE 178 (1986).

parties, particularly those from Latin America, to choose Miami over both New York and London, and to assure such parties that all of the benefits of the FIAA will be available when arbitrating before the MAB.

The second goal of the new language is to remove any doubt as to the subject matter which the MAB can hear. As is well known, American court decisions have been divided on the precise parameters of admiralty jurisdiction. While recreational boating is now considered to be part of admiralty, this was not always the case.<sup>253</sup> By the same token, aviation accidents occurring on water generally are held to be outside the purview of admiralty law.<sup>254</sup> Finally, while many commentators have likened outer space law to admiralty law,<sup>255</sup> no admiralty court yet has made this leap. By adding this paragraph, the MAB, while holding itself out as a viable alternative for resolving traditional maritime disputes, also has ensured that it will be able to respond to emerging legal fields and issues, as well as those special needs of the South Florida maritime community.

Section 3 of the MAB's rules states that the MAB will establish and maintain a roster of persons qualified to serve as "Maritime Arbitrators."<sup>256</sup> Like the SMA and London Maritime Arbitrators Association ("LMAA"), the MAB does not state what qualifications will be required,<sup>257</sup> and to date the MAB has not

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253. At one time, pleasure boating matters were considered to be outside the purview of the admiralty jurisdiction of the federal courts. In 1982, however, the United States Supreme Court held that such matters were within admiralty jurisdiction. See *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982). In his dissent, Justice Powell noted that there were 14.3 million pleasure boats in the United States in 1980. *Id.* at 677. Since many of these vessels are based in South Florida, the MAB expects that much of its caseload will involve pleasure boat owners, users, repair facilities, and marinas. In addition, the MAB expects to receive significant work from small commercial ships. For these disputants, the MAB should offer a viable alternative to the high cost and long delays of South Florida's overworked federal courts, and from the inexperience with admiralty matters of the area's state courts. Telephone interview with Richard E. Briggs, Executive Director, The Marine Council (Jan. 12, 1988).

254. See *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249 (1972).

255. See, e.g., Jarvis, *The Space Shuttle Challenger and the Future Law of Outer Space Rescues*, 20 *INT'L LAW* 591 (1986), and Note, *Space Salvage: A Proposed Treaty Amendment to the Agreement on Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched Into Space*, 26 *VA. J. INT'L L.* 965 (1986).

256. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 3 (1986).

257. The LMAA was founded in the early 1960's to provide maritime arbitration services in London. The history of the LMAA is recounted in *Post-Hearing Delay*, *supra* note 199, at 32-33.

closed its roster to practicing attorneys,<sup>258</sup> in sharp contrast to the practice of the SMA.<sup>259</sup> Also like the SMA and LMAA, the MAB has not placed a limit on the size of its roster,<sup>260</sup> in contrast to the practice of the Soviet Maritime Arbitration Commission ("SMAC") and Chinese Maritime Arbitration Commission ("CMAC").<sup>261</sup>

Section 4 of the MAB rules changes the office of the arbitration tribunal from the home or business address of the sole arbitrator or panel chairman to the office of the Secretary of the MAB.<sup>262</sup> This is an important change from the SMA rules,<sup>263</sup> and it is the first indication that, unlike the SMA and LMAA, the MAB is an administered arbitration system. In this respect, the MAB resembles the SMAC<sup>264</sup> and the CMAC.<sup>265</sup>

Section 5, which deals with the initiation of arbitration, permits a party to initiate arbitration either by filing a demand directly on the other side, or by filing the demand with the Secretary of the MAB.<sup>266</sup> This option is a departure from the SMA, the LMAA, the SMAC, and the CMAC. While the SMA<sup>267</sup> and LMAA<sup>268</sup> require the demand be served on the other side, the SMAC<sup>269</sup> and CMAC<sup>270</sup> both require the demand be served on the president (or, in the case of the CMAC, the chairman) of the commission.

Since the MAB is expected to administer the arbitration, an interesting question arises as to how the MAB is to learn of the arbitration if the claimant chooses to serve its demand directly on the respondent and does not file a copy of the demand with the

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258. See *infra* note 289.

259. See Zubrod, *supra* note 237.

260. The MAB's current roster lists nineteen arbitrators. See *infra* note 294. In contrast, the SMA has approximately 120 members and the LMAA has approximately 55 members. See *Post-Hearing Delay*, *supra* note 199, at 33, 35.

261. The Maritime Arbitration Commission in Moscow is limited by statute to twenty-five members. See Jarvis, *supra* note 242, at 348. The Maritime Arbitration Commission in Beijing likewise is limited to 31 members. See Pew, Jarvis & Sidel, *supra* note 243, at 356.

262. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 4 (1986).

263. Society of Maritime Arbitrators, Inc., *Rules for Arbitration Procedures* § 4 (1983).

264. See Jarvis, *supra* note 242, at 348-52.

265. See Pew, Jarvis & Sidel, *supra* note 243, at 356-63.

266. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 5 (1986).

267. Society of Maritime Arbitrators, Inc., *Rules for Arbitration Procedures* § 5 (1983).

268. London Maritime Arbitrators Association, *The L.M.A.A. Terms (1987)* § 3(b) (1986).

269. See Jarvis, *supra* note 242, at 350.

270. See Pew, Jarvis & Sidel, *supra* note 243, at 361.



Secretary of the MAB. Since section 5 states that the respondent may file its response directly with the claimant, and since the parties are free to select any MAB arbitrator without the need to consult the Secretary,<sup>271</sup> this lapse in drafting might be disturbing. In practice, however, this will not be a problem, since section 5 also states that no hearings will be held until the administrative fees have been paid.<sup>272</sup> The Administrative Fee Schedule appears in Appendix B to the Rules. The fees range from \$200 to over \$1,800, depending on the size of the claim.<sup>273</sup> Once again, this practice is similar to that of the SMAC<sup>274</sup> and CMAC.<sup>275</sup> It should be pointed out that the administrative fee is for the benefit of the MAB, and does not compensate the arbitrators, who are expected to set their own fees.<sup>276</sup>

One other deviation from the SMA rules is contained in section 5. Under the MAB rules, "[a]ll initial notices and filings may be made . . . by telex or electronic mail."<sup>277</sup> While the use of telex to give notice has become standard procedure among maritime practitioners, the inclusion of this statement removes whatever doubt there had been as to the propriety of this practice.<sup>278</sup>

Section 7, which deals with disqualifications of arbitrators, adds that "[n]o person shall be disqualified as an Arbitrator on grounds of race, creed, sex or nationality."<sup>279</sup> There is no non-discrimination clause in the SMA's rules.

An interesting change in section 8 states that challenges to any arbitrator may be heard by the appropriate federal district court "or by a state of Florida court, if applicable." This language, of course, tracks the FIAA, and makes it clear that the MAB intends

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271. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 5 (1986).

272. *Id.*

273. See *Schedule*, *supra* note 250.

274. See *Jarvis*, *supra* note 242, at 359 n.96.

275. See *Pew, Jarvis & Sidel*, *supra* note 243, at 363.

276. Under § 37 of the MAB's rules, the arbitrators are expected to "determine the amount of his/their compensation, taking into account the complexity and urgency of the subject matter and the time spent." Maritime Arbitration Board, Inc., *Rules for Arbitration* § 37 (1986).

277. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 5 (1986).

278. For a non-maritime case in which the court permitted service by telex, see *New England Merchants Nat'l Bank v. Iran Power Generation and Transmission Co.*, 508 F. Supp. 49, 52 (S.D.N.Y. 1980).

279. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 7 (1986). For a discussion of sexual discrimination in the maritime community, see *Jarvis, Sexual Equality Before the Silver Oar: Lifting the Fog on Women, Ships, and the Law of Admiralty*, 7 CARDOZO L. REV. 93 (1986).

for the FIAA to apply in all circumstances in which it is effective.

Section 13 of the MAB rules follows the language of section 13 of the SMA rules. The section deals with representation by counsel, a subject also covered in section 684.14 of the FIAA.<sup>280</sup> Unlike either the SMA rules or the FIAA, however, the MAB rules, while assuring parties of the right to have counsel, goes on to say, "Proceedings shall be conducted with minimum formality, and a party should not be prejudiced when appearing without counsel."<sup>281</sup>

Section 21 of the SMA rules discusses arbitration in the absence of a party. While it does not say so, the practice of SMA arbitrators is to refuse to issue an award solely on the basis that one party has failed to appear or proceed.<sup>282</sup> The MAB codified this practice by expanding section 21 to read "no award of a Panel under these Rules shall be based solely upon default; the moving party has the burden to produce evidence to prove his claims."<sup>283</sup> This provision is even more generous than section 684.13(6) of the FIAA, which states that the failure to appear or proceed shall not be treated as an admission.<sup>284</sup>

There are two additional differences between the SMA and MAB rules. After intense pressure from the legal community,<sup>285</sup> the SMA amended section 27 of its rules to recommend, although not require, the panel to issue its award within 120 days of the closing of evidence.<sup>286</sup> This rule change has not caught up yet with the MAB, which continues to have old section 27. Under this provision, the panel simply is expected to issue its award in a timely fashion.

Finally, as with section 684.35 of the FIAA,<sup>287</sup> section 37 of the MAB rules immunizes arbitrators from suits arising out of the per-

280. See *supra* notes 124-25 and accompanying text.

281. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 13 (1986).

282. See, e.g., *A/S Odd v. Contank Petroleum and Gas Co., S.A., Soc'y Mar Arb. Award No. 2018* (Sept. 5, 1984). In this charter hire dispute between a shipowner and charterer, the owner was required to produce the full evidence of its claim, in spite of the charterer's failure to participate in the arbitration. In rendering its award, the panel stated that, ". . . the record is clear, and the panel is satisfied that [the c]harterer has been afforded ample opportunity to respond and defend against [the o]wner's claim, but apparently, for reasons unknown to us, have [sic] chosen not to." *Id.* at 4.

283. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 21 (1986).

284. See *supra* note 123 and accompanying text.

285. See Jarvis, *Delay in Maritime Arbitrations: A Rejoinder to Mr. Zubrod*, 10 *Md. J. INT'L L. & TRADE* 199, 200 (1986).

286. *Id.*

287. See *supra* notes 197-200 and accompanying text.

formance of their duties. Interestingly, while the FIAA simply refers to suits, the MAB specifically refers to civil suits.<sup>288</sup>

In addition to promulgating a set of rules, the MAB also has established a roster of maritime arbitrators, which so far has been filled by a mix of maritime attorneys, shipping industry executives, and academicians.<sup>289</sup> The MAB also has formed a Board of Directors,<sup>290</sup> selected a Secretary,<sup>291</sup> and established an office within the headquarters of The Marine Council.<sup>292</sup> It has not yet conducted any arbitrations,<sup>293</sup> however, and only recently has begun to publicize its existence.<sup>294</sup>

#### D. *The American Arbitration Association*

The American Arbitration Association is the oldest and most prestigious arbitration organization in the United States.<sup>295</sup> Founded in New York City in 1922 as the Arbitration Society of America, it was reestablished as a not-for-profit corporation in

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288. Maritime Arbitration Board, Inc., *Rules for Arbitration* § 37 (1986). This difference is one of nomenclature only, since parties cannot by agreement immunize arbitrators from criminal liability. See further *Immunity*, *supra* note 199.

289. The current roster includes eight members engaged in the shipping industry, including manufacturing, design, and repair; two ship brokers; two surveyors; two marine insurance agents; two admiralty attorneys; a retired officer of the United States Coast Guard; and one marina operator. In addition, the roster also includes Professor Dennis M. O'Connor of the University of Miami School of Law, who was instrumental in the development of the MAB Rules. Maritime Arbitration Board, Inc., *Roster of Arbitrators* (May 4, 1987) (unpublished list available in the offices of the University of Miami Inter-American Law Review).

290. The Board of Directors has seven members, and currently consists of the President and the Executive Director of The Marine Council; four admiralty attorneys; and one shipping industry executive. Maritime Arbitration Board, Inc., *Board of Directors* (Aug. 25, 1986) (unpublished list available in the offices of the University of Miami Inter-American Law Review).

291. The current Secretary of the Board is Richard E. Briggs, the Executive Director of The Marine Council. The President of the MAB is John H. Thomas, Esq., of the Coral Gables law firm of Thomas & Raab. Telephone interview with Richard E. Briggs, Executive Director, The Marine Council (Jan. 12, 1988).

292. Telephone interview with Richard E. Briggs, Executive Director, The Marine Council (Jan. 12, 1988). The mailing address of the MAB is 615 S.W. 2nd Avenue, #208, Miami, Florida 33130.

293. Telephone interview with Richard E. Briggs, Executive Director, The Marine Council (Jan. 12, 1988).

294. To date, the MAB's publicity efforts have consisted of brief mentions in The Marine Council's newsletter and correspondence with members of the local maritime community. Telephone interview with Richard E. Briggs, Executive Director, The Marine Council (Jan. 12, 1988).

295. For a general discussion of the AAA, see DOMKE, *supra* note 28, § 2:02, at 15-20.

1926 as the AAA.<sup>296</sup> Today the AAA, which continues to be headquartered in New York City, has a network of thirty-one regional offices located throughout the United States.<sup>297</sup> Through these offices and its national panel of arbitrators,<sup>298</sup> the AAA handles a wide variety of accident, commercial, construction, franchise, grain, real estate and textile disputes.<sup>299</sup> In addition to providing arbitration services, the AAA also has been in the forefront of efforts to develop and promote the use of other alternative dispute resolution methods, such as conciliation and mediation.<sup>300</sup>

During the last two decades, the AAA has devoted an increasing amount of attention to international arbitration.<sup>301</sup> Chief among its activities have been the drafting of proposed legislation to implement the New York Convention<sup>302</sup> and the Panama Convention,<sup>303</sup> the participation as *amicus curiae* in a number of important international arbitration cases before the United States Supreme Court,<sup>304</sup> the publication of various works on international arbitration,<sup>305</sup> and service as the U.S. representative to the UNCITRAL Working Group which developed the UNCITRAL model law on arbitration.<sup>306</sup>

In order to encourage parties to use the AAA for their international arbitrations, the AAA has developed a set of Supplementary Procedures for International Commercial Arbitration.<sup>307</sup> Unlike the

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296. See Farmer, *supra* note 26, § 1.2, at 4.

297. AMERICAN ARBITRATION ASSOCIATION, *FACTS ABOUT THE AMERICAN ARBITRATION ASSOCIATION* 7 (Nov. 1986).

298. The national panel includes over 60,000 arbitrators. *Id.* at 4.

299. See DOMKE, *supra* note 28, § 2:02, at 16-18.

300. *Id.* at 17.

301. See generally Meade, *Arbitration Overview: The AAA's Role in Domestic and International Arbitration*, 1 J. INT'L ARB. 263 (Oct. 1984).

302. Address by Michael F. Hoellering, General Counsel of the American Arbitration Association, *The American Arbitration Association and its Involvement in International Commercial Arbitration* 4, delivered at the Miami ABA National Institute on Resolution of International Commercial Disputes (Nov. 6, 1987) (available in the offices of the University of Miami Inter-American Law Review).

303. *Id.*

304. *Id.* See, e.g., Hoellering, *Shearson/American Express v. McMahon: Broadened Domain of Arbitration in U.S.A.*, 4 J. INT'L ARB. 153, 155 (Sept. 1987) (discussing the AAA's *amicus* brief in *Shearson/American Express v. McMahon*, 107 S. Ct. 2332 (1987)).

305. Address by Michael F. Hoellering, General Counsel of the American Arbitration Association, *The American Association and its Involvement in International Commercial Arbitration* 4, delivered at the Miami ABA National Institute on Resolution of International Commercial Disputes (Nov. 6, 1987) (available in the offices of the University of Miami Inter-American Law Review).

306. *Id.*

307. *Id.* at 2.

independent rules developed by the AAA for other specialized fields,<sup>308</sup> the Supplementary Procedures are designed to be "used in conjunction with the existing AAA Rules, to provide the necessary modifications for effective international dispute resolution."<sup>309</sup> The Supplementary Procedures provide for non-national arbitrators; an exchange of information; the transmittal of materials in advance to the arbitrator; the holding of consecutive hearings; the selection of an appropriate language in which to conduct the arbitration proceedings; reasoned awards if the parties request them; and the use of compensated arbitrators.<sup>310</sup> In addition to the Supplementary Procedures, the AAA also has developed specialized procedures for cases to be tried according to the UNCITRAL arbitration rules.<sup>311</sup>

Currently, the AAA handles approximately 150 international arbitrations per year, with claims ranging from \$25,000 to \$800 million.<sup>312</sup> These arbitrations typically involve foreign joint ventures and licensing agreements, transnational maritime disputes, and international commercial and commodity transactions.<sup>313</sup> Parties to these arbitrations have included nationals of Canada, Korea, Peru, Saudi Arabia, and Sri Lanka.<sup>314</sup>

Entrenching itself deeper in the field of international commercial arbitration, the AAA has entered into 17 cooperative agreements with foreign arbitral institutions and government bodies.<sup>315</sup> Under these agreements, the AAA is exchanging information, providing administrative assistance, and generally facilitating the use of international arbitration and conciliation.<sup>316</sup> The AAA also serves as the national section to administer cases in the United States arising under the rules of the Inter-American Commercial Arbitration Commission.<sup>317</sup> Finally, the AAA acts as the appointing arbitration authority for commercial disputes arising between the

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308. *Id.* at 1.

309. See Hoellering, *Is a New Practice Emerging from the Experience of the American Arbitration Association?*, 4 INT'L TAX & BUS. LAW. 230, 233 (1986) [hereinafter *New Practice*].

310. *Id.*

311. See Hoellering, *supra* note 302, at 2.

312. *Id.* at 4.

313. *Id.*

314. *Id.*

315. *Id.* at 1.

316. *Id.*

317. *Id.*

United States and the Soviet Union, Hungary and Bulgaria.<sup>318</sup> The AAA also provides conciliation services pursuant to a joint conciliation agreement between the United States and the People's Republic of China,<sup>319</sup> and through agreements with chambers of commerce in Bulgaria, Hungary, Poland, and Romania.<sup>320</sup>

Having established itself as a major figure among international arbitration bodies, the AAA in recent times has devoted more and more of its resources to promoting the international capabilities of its individual offices. Much of this work has been overseen by the AAA's Board of Directors' Committee on International Commercial Arbitration.<sup>321</sup> To date, most of the attention has been focused on its office in New York, although efforts now also are underway in Atlanta and San Francisco.

In order to take advantage of its international arbitration capabilities in New York, the AAA established the World Arbitration Institute ("WAI") in 1984.<sup>322</sup> The WAI is designed to foster the use of international commercial arbitration and to promote New York City as an attractive and advantageous arbitration site.<sup>323</sup> Although the WAI is housed in the New York offices of the AAA and receives most of its financial support from the AAA,<sup>324</sup> it also receives financial assistance from such important international law firms in New York as Baker & McKenzie; Coudert Brothers; Cleary, Gottlieb, Steen & Hamilton; Kelley Drye & Warren; Sherman & Sterling; and White & Case.<sup>325</sup> To strengthen further the appeal of the WAI, the AAA has enlisted the Association of the Bar of the City of New York, the New York State Bar Association, Columbia University, and the Society of Maritime Arbitrators as co-sponsors of the WAI.<sup>326</sup>

The WAI's activities are overseen by a director and an International Advisory Committee composed of arbitration experts from France, Hungary, Italy, Japan, Mexico, the Netherlands, Nigeria,

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318. *Id.*

319. *Id.* at 2.

320. *Id.*

321. *Id.* at 1.

322. See *New Practice*, *supra* note 309, at 236.

323. See INTERNATIONAL COMMERCIAL ARBITRATION IN NEW YORK 290 (J. McClendon & R. Everard-Goodman eds. 1986).

324. *Id.*

325. *Id.* at 292.

326. *Id.* at 290-91.

the United States, and West Germany.<sup>327</sup> The most important activity undertaken by the WAI has been the preparation of a handbook on international commercial arbitration.<sup>328</sup> Released in connection with the May 1986 Congress of the International Council of Commercial Arbitration in New York, the book provides an extended discussion of the advantages to be obtained by holding international arbitrations in New York.<sup>329</sup> The WAI also publishes a quarterly newsletter on international arbitration known as *Forum New York*.<sup>330</sup> Finally, the director of the WAI has authored several articles touting both the WAI and New York.<sup>331</sup>

Similar efforts are underway in Atlanta and San Francisco. In Atlanta, the AAA has organized a Center for International Commercial Disputes,<sup>332</sup> while in San Francisco the AAA is lending its support to the recently formed Asia/Pacific Center for the Resolution of International Business Disputes.<sup>333</sup> Turning to Florida, the AAA's regional office in Miami has been studying the subject of international commercial arbitration for some time.<sup>334</sup> To date, informal discussions have taken place between the Miami AAA regional office and ICDRC,<sup>335</sup> and similar discussions are expected to take place in the future with the MAB.<sup>336</sup> Moreover, the relocation of the AAA Miami office to more spacious quarters at the beginning of 1988 will allow it to provide increased international arbitration services.<sup>337</sup> The critical role that can be played by the Miami AAA office is beyond doubt, and recently was pointed out by the Secretary-General of the ICDRC. Taking note of the explosive growth of international commercial dispute resolution centers in the United States, he urged such centers "to seek some working relationship or accomodation with the AAA, because of the AAA's

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327. *Id.* at 291.

328. *See supra* note 323.

329. *See* Everard-Goodman, *A Book and a Congress*, N.Y.L.J., July 17, 1986, at 1, col. 1.

330. *Id.* at 289.

331. *See, e.g.*, Everard-Goodman, *Choosing a Place for International Arbitration: The New York Option*, 2 J. INT'L ARB. 39 (June 1985), and Everard-Goodman, *The World Arbitration Institute*, N.Y.L.J., Nov. 14, 1985, at 1, col. 1.

332. *See* Hoellering, *supra* note 302, at 1.

333. *Id.*

334. Interview with René Grafals, Regional Vice-President, American Arbitration Association (Miami) (Nov. 5, 1987).

335. *Id.*

336. *Id.*

337. *Id.* The new mailing address of the AAA Regional Office is Rivergate West, 99 5th Street, Miami, Florida 33131.

reputation and valuable internal mechanisms of record keeping, house procedure and logistics."<sup>338</sup>

#### IV. FLORIDA'S FUTURE PROSPECTS FOR BECOMING A MAJOR SITE FOR INTERNATIONAL COMMERCIAL ARBITRATION

Florida today has reached the crossroads of becoming a major site for the holding of international commercial arbitrations. While it has come far in the last five years, and will advance further still once the Panama Convention enters into force in the United States,<sup>339</sup> Florida is not recognized by the international business and legal communities as a place to arbitrate. There are four reasons for this. First, there has been a lack of publicity about the recent activities which have taken place in Florida. The lack of publicity is the direct result of the second and third factors which have plagued Florida's efforts: apathy on the part of the Florida legal community and a shortage of adequate funding.

The apathy of the Florida legal community has been appalling, and perhaps was well typified by the lack of attendance at the recent National Institute on the Resolution of International Commercial Disputes.<sup>340</sup> Held on November 5-6, 1987, at the Intercontinental Hotel in downtown Miami, the Institute featured twenty distinguished experts, including practicing attorneys, academicians, and arbitration tribunal administrators, from Canada, England, France, Mexico, the United States and Venezuela. Despite the stature of the speakers, the Institute drew fewer than 40 attendees.

A shortage of money also has crippled Florida's efforts. With the exception of the \$50,000 development grant given to the ICDRC by the City of Miami in 1984,<sup>341</sup> there has been no funding

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338. See McKenry, *supra* note 55, at 12.

339. As Latin American acceptance of international commercial arbitration increases, acceptance of Florida as an attractive forum will grow. See *supra* note 230 and accompanying text.

340. The Institute was presented by the Section of International Law and Practice of the American Bar Association, the International Law Section of the Florida Bar, and the American Bar Association Division for Professional Education, in cooperation with the American Arbitration Association, the City of Miami, the Court of Arbitration of the International Chamber of Commerce, the Inter-American Commercial Arbitration Commission, the State of Florida Department of Commerce, and the World Trade Center of Miami. The Institute was chaired by Hugh J. Turner, Esq., of the Miami office of Kelley, Drye & Warren, and Joseph P. Griffin, Esq., of the Washington, D.C. office of Morgan, Lewis & Bockius.

341. See *supra* note 218.



for any international arbitration projects.

The final problem which has confronted Florida is a lack of coordination among the ICDRC, the MAB, and the AAA. In this respect, however, what is happening in Florida is not different from what is taking place around the world. The last few years have seen the establishment of so many new international dispute resolution centers that the ICDRC's Secretary-General has begun to speak of center overload, and has predicted that "many will fail over the first few years of existence, particularly those without ongoing governmental support."<sup>342</sup>

The Secretary-General's mention of government support is timely and apt. To date, the problems which have prevented Florida from becoming a major international commercial arbitration site have defied solution by the private sector, and there is no reason to believe that this soon will change. While there are any number of explanations for the private sector's failure to promote international arbitration, one point is clear. The government will have to become an active participant if Florida is to attract international arbitrations.

#### V. A PROPOSAL FOR IMPROVING FLORIDA'S FUTURE PROSPECTS

In order to solve the problems now facing Florida, it is suggested that a new alliance be formed among the Florida state government and the academic, business, and legal communities. Specifically, it is suggested that a new state office, to be called the Florida Agency for the Resolution of International Disputes ("FARID"), be formed within the state government to promote the holding of international commercial arbitrations and other dispute resolution proceedings within Florida.<sup>343</sup>

It is envisioned that FARID would be directed by a nine-member Board of Governors. The Board would consist of the following persons or their designees: the Florida Secretary of State; the Secretary of the Florida Department of Commerce; the President of the Florida Bar; the Secretary-General of the ICDRC; the Secretary of the MAB; the Miami Regional Vice-President of the AAA; a representative from the state chambers of commerce; and two

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342. See McKenry, *supra* note 55, at 12.

343. Undoubtedly, it will be more difficult to convince the state legislature to establish FARID than it was to convince them to pass the FIAA, because unlike the FIAA, FARID will require on-going funding.

members of the public chosen by the Governor, at least one of whom would be a full-time member of an educational institution located in Florida.<sup>344</sup>

The Board would be assisted by a staff which would receive funding to carry out the agency's objectives, as determined by the Board of Governors. Although these objectives would be subject to change over time, the initial objectives of FARID would be to promote Florida as a site for the holding of international arbitrations as well as conciliations and mediations. In particular, FARID would seek to:

1. Target specific markets in selected geographic areas and industries, concentrating on high market potential countries and key business sectors;
2. Develop an effective, ongoing promotional campaign for reaching target market segments;
3. Establish a broad, diversified client base in the United States and overseas;
4. Secure a leading competitive position for Florida;
5. Promote greater understanding and acceptance of non-judicial international dispute settlement methods through education of the international business community, and inform it of the advantages of resorting to alternative dispute resolution techniques in Florida;
6. Develop a prestigious image and reputation for Florida and its dispute resolution capacities; and
7. Conduct long-term strategic planning.

The creation of FARID would resolve Florida's current problems in three ways. First, it would institutionalize Florida's commitment to international dispute resolution, thereby making it clear that the state intends to become and remain a major force among international dispute resolution forums. Second, FARID would assure that sufficient funding was available on a long-term basis. Third, FARID would provide a central body which could un-

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344. Since some members of the Board will hold office for an extended period of time by virtue of their automatic appointment (such as the Secretary of the MAB, the Secretary-General of the ICDRC, and the Regional Vice President of the AAA), it is suggested that at least some members of the Board (such as those from the public sector) be appointed for limited, non-renewable terms, and that these terms be staggered. Following this procedure should ensure an appropriate balance of institutional continuity and new ideas.

dertake effective publicity, avoid institutional factionalism and wasteful duplication, and promote cooperation among the state's various arbitral entities.

## VI. CONCLUSION

In the marketing study undertaken for the ICDRC, Florida is described as having been touched by a "new internationalism."<sup>345</sup> As part of this new internationalism, Florida has begun to seek a place among such cities as New York, London, Paris and Stockholm as a provider of international dispute resolution services. Now that the process has begun, the time has come for a coordinated, meaningful approach under the direction of a new state agency. Anything less will cause Florida to remain a second-class player in the high-stakes world of international business disputes.

JUDITH A. MELLMAN\*

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345. See Smith, *supra* note 208, at 5. The term "new internationalism" was used earlier by George C.J. Moore, Esq., one of the members of the ICDRC. See Moore, *Florida's New Internationalism*, 56 FLA. B.J. 381 (1982).

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