Why Finland Should Adopt the UNCITRAL Model Law on International Commercial Arbitration

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This article describes why a small country like Finland, which has excellent natural attributes as a place for arbitration (political neutrality and stability, respect for the rule of law, freedom from corruption and a central location between East and West), but which is little resorted to for this purpose, being overshadowed by its neighbour, Sweden, should adopt the United Nations Commission on International Trade Law ('UNCITRAL') Model Law on International Commercial Arbitration (the 'Model Law'). The indispensable condition for any country to develop as a place for arbitration is for it to have a modern and internationally acceptable arbitration law. However, Finland's arbitration law is relatively old (dating from 1992) and based on an antiquated Swedish model. What is more serious is that Finland's legal infrastructure for arbitration, that is, its arbitration law and court system, is not perceived by international arbitration users and arbitral institutions as being internationally acceptable. By contrast, the Model Law is recognized today as the 'baseline for any state wishing to modernize its law of arbitration' Accordingly, if Finland wants to become an attractive place for international arbitration, as it should do, the obvious solution is for it to adopt the Model Law. This will make Finland instantly recognizable around the world as having a modern and internationally acceptable arbitration law.

1 INTRODUCTION

Finland has excellent attributes to serve as a place for an international arbitration, being widely recognized for its political neutrality and stability, respect for the rule of law and freedom from corruption. Few other countries can compare to Finland in these respects. It is a modern, socially advanced and highly democratic country with first class hotels and excellent transportation and telecommunication facilities. It has an outstanding and well established (founded in 1911) arbitral institution in the Arbitration Institute of the Finland Chamber of Commerce ('FAI').[1] Finland is also, like Sweden, exceptionally well located to attract disputes between parties

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[1] Andrea Carlevaris, *Secretary General of the International Chamber of Commerce ('ICC') International Court of Arbitration*, Paris, Speech (Helsinki International Arbitration Day 26 May 2016).

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from Eastern Europe, Russia, China and Asia generally, on the one hand, and parties from Western Europe and the Americas, on the other.

Yet, Finland has failed to attract users of international arbitration and has, instead, lost to other countries, notably Sweden, the economic and reputational benefits that hosting those disputes generate. A major reason for this failure is, undoubtedly, a lack of confidence or trust by foreigners and international arbitral institutions (whether justified or not) in Finland's legal infrastructure for arbitration, that is, Finland's arbitration law and court system and their ability and willingness to support arbitration and recognize and enforce arbitral awards. This article will focus on the first of these points, namely, the need for Finland to modernize its arbitration law and to make it attractive to foreign users of international arbitration.

Specifically, this article will explain why Finland should adopt, without significant change, the UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006 (the 'UNCITRAL Model Law' or 'Model Law'), by addressing the following six questions:

(1) Why is the seat of an international arbitration important and why should Finland want to be a popular seat?
(2) What is wrong with Finland's current arbitration law?
(3) How can a country become attractive as a place for international arbitration?
(4) How can Finland become a more attractive place for international arbitration?
(5) What are the benefits for Finland of adopting the UNCITRAL Model Law?
(6) Why should Finland adopt the UNCITRAL Model Law without significant change?

While this article does not focus on the Finnish court system and the need for it to support arbitration and to recognize and enforce arbitral awards, help by the Finnish judiciary in these respects is essential and should go hand-in-hand with legislative change. Accordingly, the Finnish judiciary should be actively involved in any reform of Finnish arbitration law and should – hopefully – be strongly persuaded to support such change.[2]

[2] One of the reasons for the success of the major reform of France's arbitration law in 1980 and 1981 (which was one of the inspirations for the UNCITRAL Model Law issued in 1985) was the close involvement of the French judiciary with it. As a result, the French judiciary is widely acknowledged today to support arbitration and to recognize and enforce arbitral awards which undoubtedly helps make France a popular place for international arbitration. The same is true of Switzerland where the Swiss judiciary enjoys a similar reputation of support for arbitration and for enforcement of arbitral awards. Thus, in Switzerland, only around 7% of court challenges to arbitral awards are reported to be

2 WHY IS THE SEAT OF AN INTERNATIONAL ARBITRATION IMPORTANT AND WHY SHOULD FINLAND WANT TO BE A POPULAR SEAT?

The selection of the arbitral seat has rightly been described as 'a decision with very significant legal and other consequences'[3] as the seat of an arbitration will, among other things, determine or at least influence the following:

(1) the law which governs the arbitration, including the validity of the arbitration agreement and the arbitrability of any dispute;
(2) the courts that can exercise supervisory and supportive powers in relation to the arbitration[4]; and
(3) the law that applies to any action to set aside or annul an arbitral award.[5]

Further, the seat of arbitration often determines, or at least influences, the nationalities or background of the arbitrators, the location of hearings and meetings, and the arbitral procedure, such as where there are imperative local legal norms to be respected.

The seat will normally be chosen by the parties in their arbitration clause or agreement but, failing this, may be selected by an arbitral institution[6] or the arbitral tribunal.[7]

If Finland were to be regarded as an attractive place or seat for the conduct of an international arbitration, this would have multiple benefits for the country.

First, to the outside world, it would further promote the image of Finland as a modern country which respects the rule of law and as a suitable place for the conduct of international business and, where necessary, legal proceedings. As a consequence, it would strengthen Finnish companies' position to propose Helsinki as a place of arbitration for any future disputes, when they negotiate contracts with foreign parties. In the same vein, it would encourage international arbitral institutions, such as that of the International Chamber of Commerce ('ICC'), and foreign parties to select Helsinki as a neutral place of arbitration, where Finnish parties are not involved in the dispute.

Second, the increased selection of Helsinki as a place of arbitration would benefit the Finnish economy. It would promote more travel to, and business in, Finland, generating revenue for Finnish airlines and hospitality services, such as

successful. Felix Dasser & Piotr Wójtowicz, *Challenges of Swiss Arbitral Awards – Updated and Extended Statistical Data as of 2015*, 34(2) ASA Bull. 280–300 (2016).

[3] Gary B. Born, *International Commercial Arbitration* vol. 2, 2055 (2d ed., Wolters Kluwer 2014).

[4] Julian D.M. Lew, Loukas A. Mistelis & Stefan Michael Kröll, *Comparative International Arbitration Law* 172 (Kluwer Law International 2003).

[5] Born, *supra* n. 3, at 2055–2063.

[6] *Ibid.*, at 2067.

[7] Lew, Mistelis & Kröll, *supra* n. 4, at 172.

hotels, restaurants and conference facilities. As more arbitral and related court proceedings would be taking place in Finland and be subject to Finnish law, they would benefit the Finnish legal profession and associated personnel, such as foreign language interpreters and providers of transcription services.

3 WHAT IS WRONG WITH FINLAND'S CURRENT ARBITRATION LAW?

The Finnish Arbitration Act is relatively old compared to the arbitration law in other countries as it dates from 1992. For example, all the other Nordic countries have modernized their arbitration laws since then.[8] As the Finnish Act is old, it fails to address issues that are now commonplace in modern arbitration laws, such as the principle of *compétence-compétence*, the autonomy of the arbitration clause, and the power of an arbitral tribunal to issue interim measures of protection. Apart from these matters, the Finnish Act stands in marked contrast to the best international standards, as reflected in the UNCITRAL Model Law, e.g., by imposing a rather strict and anachronistic writing requirement for arbitration agreements, containing various references to the Finnish Code of Judicial Procedure applicable to proceedings before the Finnish state courts (with respect to the challenge of arbitrators and the determination of the costs of arbitration), and allowing an arbitral award to be declared 'null and void' on certain policy grounds regardless of any time limit (instead of allowing an award to be set aside only in a setting aside action brought within a specified time limit).[9]

The Finnish Arbitration Act provides in Articles 53 and 55 more grounds for denying recognition and enforcement of foreign arbitral awards than the UNCITRAL Model Law (Article 36) which reflects Article V of the New York Convention. Thus, although Finland ratified the New York

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8 The arbitration laws of Denmark and Norway date from 2004 and 2005, respectively. Sweden adopted its Arbitration Act in 1999 and a revised Swedish Act is expected to enter into force soon. According to the terms of reference of the committee tasked with reviewing the Swedish Arbitration Act 'the primary motivation behind the review is to make arbitration in Sweden *even more attractive for both Swedish and international actors*', Anja Havedal Ipp, Kluwer Arbitration Blog, *Time to Upgrade: Review of the Swedish Arbitration Act*, http://kluwerarbitrationblog.com/2015/10/17/time-to-upgrade-review-of-the-swedish-arbitration-act/ (accessed 17 Oct. 2015) (emphasis added). In this regard, Sweden proposes to go even beyond the Model Law to make itself attractive and provide that 'for setting aside awards,' Swedish Court proceedings 'should be conducted in English if a party so requests'. According to this proposal, written submissions, written evidence and written examinations may be presented and conducted in English. The court's decisions, however, would still be rendered in Swedish – with a simultaneous English translation if requested'. (Translations of most arbitration-related court decisions are already available at the Swedish Arbitration Portal, www.arbitration.sccinstitute.com/swedish-arbitration-portal.) (accessed 13 June 2017), Ipp, *Ibid*.

9 The author is grateful to Mrs Heidi Merikalla-Teir, Secretary General, FAI, and Mr Mika Savola, a Partner at Hannes Snellman Attorneys Ltd., Helsinki, for the comments on the Finnish Arbitration Act in this paragraph.

Convention in 1962, its domestic arbitration legislation is not, in fact, in compliance with it.

Furthermore, as relatively few international arbitrations take place in Finland, few international arbitration cases have been heard in the Finnish courts and, as Finnish courts have limited experience in dealing with international arbitration cases, there is naturally corresponding uncertainty about how international arbitration issues will be resolved by the Finnish court system.

Thus, if Finland wishes to develop its reputation as an acceptable seat of arbitration, it must engage in a wholesale reform of its international arbitration law.

The proponents of the Finnish Arbitration Act claim that the Act is 'to a large extent compatible with' the Model Law[10] and see no need for a total reform of Finnish arbitration law.[11] But, with all due respect, Finland is not recognized by UNCITRAL as having adopted the UNCITRAL Model Law,[12] although 75 states (106 jurisdictions) have been so recognized according to UNCITRAL.[13] In Scandinavia, these countries include both Denmark and Norway, the Arbitration Acts of which are based on the Model Law and apply to both international and domestic arbitrations.

What those distinguished scholars opposed to a wholesale reform of Finnish arbitration law[14] fail to recognize or give weight to, is that it is not just the content of Finnish law which must be modernized – *it is the perception of Finnish arbitration law by international arbitral institutions and foreign users of arbitration that must be fundamentally changed. Without this, Finland cannot hope to succeed in attracting a significant number of international arbitrations to its shores* (see discussion under questions 4 and 5 *infra*).

The reality today is that international arbitral institutions such as the ICC, perhaps the world's most important international arbitral institution, is unlikely to select Finland as a place of arbitration.[15] In fact, it has not done so even once over the years 2005–2015 (see Table 1). At the same time, over the same period, the ICC has selected Sweden as a place of arbitration twelve times and Denmark as a place of arbitration ten times (see Table 1).

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[10] Gustaf Möller, *National Report for Finland*, in *ICCA International Handbook on Commercial Arbitration* 1 (Jan Paulsson & Lise Bosman eds, Kluwer Law 2014).

[11] Gustaf Möller, *Behovet av en översyn av Finlands lag om skiljeförfarande* [The Need to Review Finland's Arbitration Act], JFT 5–6/2015.

[12] UNCITRAL, *Status UNCITRAL Model Law on International Commercial Arbitration (1985),* with amendments as adopted in 2006, www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html (accessed 9 May 2017).

[13] *Ibid.*

[14] Möller, *supra* n. 11.

[15] This has been confirmed in a telephone conversation with the ICC.

Table 1 Arbitral Seats Selected by the ICC Court

Year	*Denmark*	*Finland*	*Norway*	*Sweden*
2005	0	0	0	1
2006	0	0	0	1
2007	0	0	0	4
2008	1	0	0	0
2009	0	0	0	0
2010	3	0	0	1
2011	3	0	0	3
2012	1	0	1	1
2013	0	0	0	0
2014	1	0	0	0
2015	1	0	0	1
Total	10	0	1	12

The parties select the place of arbitration more often than institutions do[16] and they can be expected to have shown no greater inclination to select Finland as a place of arbitration than institutions. However, because of their generally greater current knowledge of arbitration laws and practices in different countries, arbitration institutions are normally more sophisticated in selecting places of arbitration than parties.

While Finland is not being chosen as a place of arbitration (at least by the ICC), Finnish parties are increasingly involved in ICC arbitrations and doubtless in other forms of international arbitration as well. Table 2 shows 114 Finnish parties to have been involved in ICC arbitrations over the period 2005 to 2015.

Table 2 Number of Finnish Parties in ICC Arbitrations

Year	*Claimants*	*Respondents*	*Total*
2005	8	2	10
2006	3	8	11
2007	3	3	6

16 According to the ICC, in 88% of ICC cases in 2015 the place of arbitration was chosen by the parties and in 12% by the ICC Court. *ICC Dispute Resolution Bull.* 19 (June 2016).

Year	*Claimants*	*Respondents*	*Total*
2008	6	6	12
2009	8	3	11
2010	10	7	17
2011	10	2	12
2012	4	4	8
2013	8	7	15
2014	1	5	6
2015	1	5	6

As (1) Finnish parties are increasingly involved in international arbitrations, (2) Finland is not generally accepted by foreign users as a satisfactory place for an international arbitration, and (3) there are perceived to be satisfactory places nearby, Finnish parties are obliged to agree increasingly to arbitration abroad.

Thus, international cases that might otherwise be seated in Finland (because they involve a Finnish party or arbitrator or because Finland would be perceived as a neutral place of arbitration) take place elsewhere and, in particular, in its neighbour, Sweden. This is a loss for Finland's image and its economy, for Finnish companies doing business abroad and for the Finnish legal profession.

4 HOW CAN A COUNTRY BECOME ATTRACTIVE AS A PLACE FOR INTERNATIONAL ARBITRATION?

From a legal stand-point, the conditions for becoming attractive as a place for arbitration (assuming the country has already ratified the New York Convention, as almost all major trading nations, including Finland, have done) include:

(1) a modern, liberal, and well-recognized or accepted arbitration law;
(2) a corruption-free judiciary which is supportive of arbitration and willing to recognize and enforce arbitration awards, as demonstrated by a substantial body of case law; and
(3) a geographically convenient location with good facilities for hearings, technical support (transcription services and interpreters), accommodation, transportation and telecommunications.

The above elements are recognized as the desired infrastructure for an international arbitration. They enable parties to have the confidence and trust necessary to accept to conduct an arbitration at a given place.

As one arbitration authority has stated:

> *The most important factor is the formal legal infrastructure at the seat (62%), including both the national arbitration law* but also the track record in enforcing agreements to arbitrate and arbitral awards in that jurisdiction and its neutrality and impartiality.[17] (Emphasis added)

Similarly, as another arbitration authority has stated:

> *Often most important, the arbitral seat must have both national arbitration legislation and courts that are supportive of international arbitration*. As discussed above, both the arbitration legislation and the so-called procedural law of the arbitration (also sometimes referred to as the *lex arbitri* or curial law) are almost always that of the arbitral seat [18] … Selecting an arbitral seat where arbitration legislation supports and facilitates the arbitral process, rather than obstructs or invalidates it, is essential.[19] (Emphasis added)

While having a favourable infrastructure is essential to attract arbitrations, the Finnish arbitration community will need also to persuade international users of the advantages and desirability of conducting international arbitrations in Finland – a process that the FAI is already engaged in.

As the current Secretary General of the ICC's International Court of Arbitration has recently stated:

> Entering the number of the most popular destinations for international arbitration is often the result of *coordinated measures, such as appropriate legislative and judicial reforms and the creation of dynamic and reliable arbitral institutions*.
> The abovementioned analysis and observations show that *it is possible to 'brand' a jurisdiction and to enhance its reputation as an arbitration centre*, but also that there are clear limits to the results such an effort can achieve. These limits seem to rest *on the perceived neutrality and impartiality of the legal system of the seat and on the active support of the local arbitration community*.[20] (Emphasis added)

5 HOW CAN FINLAND BECOME A MORE ATTRACTIVE PLACE FOR INTERNATIONAL ARBITRATION?

To become a popular seat, Finland must make itself attractive to international arbitral institutions and foreign legal practitioners and their clients who make use of international arbitration.[21] As stated in answer to question 3, *it is the*

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[17] Loukas A. Mistelis, *Part I: International Commercial Arbitration, Chapter 19: Arbitral Seats – Choices and Competition*, in *International Arbitration and International Commercial Law: Synergy, Convergence and Evolution* 367 (Stefan Michael Kröll, Loukas A. Mistelis, et al. eds, Kluwer Law International 2011).

[18] Born, *supra* n. 3, at 2056.

[19] *Ibid.*, at 2056–2057.

[20] Andrea Carlevaris, Speech, *The Geography of International Arbitration – Places of Arbitration: The Old Ones and the New Ones* (School of International Arbitration, University of London 21 Apr. 2015).

[21] The perception of Finnish users is not that important as they can be presumed to prefer Finland as it will be most convenient for them.

perception of international arbitral institutions and foreign users of Finland's laws, judiciary and general infrastructure for arbitration that is critical if they are to be persuaded to agree to site arbitrations in Finland. At the same time, they must be convinced of this without (much) study – ideally, by only a glance – as it is a notorious fact that business people (and their lawyers) typically give minimal attention to an arbitration clause in a business contract. In fact, it is almost the last thing they think about, with the result that such a clause is commonly referred to as the 'midnight clause'.

As a leading German authority, Professor Dr Klaus Peter Berger, has described the situation:

> Arbitration laws are geared not so much to the domestic lawyer who is familiar with his or her legal system *but to the foreign party that expects an easy-to-read and easy-to-work-with arbitration law for its arbitration in a third, 'neutral' country*. It is for this reason that in the contemporary legal climate of international arbitration, *'consumer satisfaction has assumed far greater importance than theoretical or structural purity'*.
>
> Thus … *the law has to be familiar to the foreign practitioner. He has to recognize the law as a well-known set of rules and provisions, thus mitigating the fear of any local particularities hidden in the statute or in the commentaries.*[22] (Emphasis added)

How does one convince a foreign party? As the legal environment is the most important consideration in selecting a place of arbitration,[23] the most obvious way to begin is by adopting an arbitration law that is universally recognized as representing the best practice in the field and familiar to everyone – the UNCITRAL Model Law.

As a leading authority on international arbitration has stated, the Model Law is 'the baseline for any state wishing to modernise its law of arbitration'.[24] Another authority further supports this point:

> Aware of the importance of the legal environment to the parties' choice of the place of arbitration, numerous countries have in the last years enacted or revised their arbitration laws in order to keep abreast of modern arbitration standards and to attract more international arbitration proceedings. The UNCITRAL Model Law has played a decisive role in this process. In fact, this legal instrument was purposely conceived to assist states in reforming and modernizing their laws on arbitral procedure so as to take into consideration the specific features and needs of international commercial arbitration.[25]

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22 K. Berger, *Das neue Recht der Schiedsgerichtsbarkeit / The New German Arbitration Law* 44 (Cologne, RWS Verlag 1998).

23 N. Blackaby, C. Partasides, A. Redfern & M. Hunter, *Redfern and Hunter on International Arbitration* 271 (6th ed., 2014).

24 *Ibid.*, at 168.

25 Fernando Dias Simões, *Commercial Arbitration Between China and the Portuguese-Speaking World* Ch. 2, 67(Kluwer Law International 2014).

UNCITRAL's Explanatory Note to the Model Law describes its contents as follows:

> [The Model Law] covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different legal or economic systems of the world. Since its adoption by UNCITRAL, the Model Law has come to represent the accepted international legislative standard for a modern arbitration law and a significant number of jurisdictions have enacted arbitration legislation based on the Model Law.[26]

The opponents to the adoption of the UNCITRAL Model Law in Finland seem to rely on the Swedish example, as Sweden attracts a significant number of international arbitration proceedings yet it is not a Model Law country. But this is not a justified comparison. Adoption of the Model Law has not been an imperative for Sweden, just as it has not been an imperative for England, France or Switzerland, as each has been a well-established place for arbitration for decades, having laws and a judicial system that are known to, and have long been accepted by, users of international arbitration. Furthermore, there exists in each of these countries a substantial body of case law providing foreign users with reassurance as to how local courts will deal with international arbitration issues.

Moreover, the current Swedish Arbitration Act has its own deficiencies. At least a dozen of these are identified in an English language summary of a report of a Swedish parliamentary committee appointed in 2014 to review the country's arbitration law.[27] They include: that Swedish courts have concurrent jurisdiction with an arbitral tribunal to determine the arbitral tribunal's jurisdiction[28]; the lack of provisions dealing with multi-party proceedings; and the failure to designate a single court with exclusive jurisdiction to consider applications for setting aside arbitral awards (as envisaged by the UNCITRAL Model Law).[29]

For these reasons, Sweden is not a good model for Finland to follow on this subject. Conversely, a more suitable exemplar, Norway, has recognized the

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26 Howard M. Holtzmann, Joseph E. Neuhaus, Edda Kristjánsdóttir & Thomas M. Walsh, *A Guide to the 2006 Amendments to the UNCITRAL Model Law on International Commercial Arbitration* 793 (Wolters Kluwer, 2015).

27 Official Government Report '*Översyn av lagen om skiljeförfarande. Betänkande av Skiljeförfarandeutredningen*' ['Review of the Arbitration Procedure. Report of the Arbitration Investigation'] (SOU 2015:37) 25–38.

28 *See* for this provision, the author's *Comment on Section 2 of the Swedish Arbitration Act of 1999 Dealing with the Right Arbitrators to Rule on Their Own Jurisdiction*, in *The Swedish Arbitration Act of 1999, Five Years On: A Critical Review of Strengths and Weaknesses* Ch. 2 (Lars Heuman & Sigvard Jarvin eds, Juris Net, LLC, New York 2006).

29 Model Law, Art. 6 and UNCITRAL, Report of the Secretary-General: *Analytical Commentary on Draft Text of a Model Law on International Arbitration*, A/CN.9/264 (25 Mar. 1985, Vienna – 20, para. 2).

importance of being acknowledged as having adopted the UNCITRAL Model Law:

> the [Norwegian] Arbitration Act implements the UNCITRAL Model Law … indeed, obtaining such status was an important consideration for the legislature.[30]

6 WHAT ARE THE BENEFITS FOR FINLAND OF ADOPTING THE UNCITRAL MODEL LAW?

As the UNCITRAL Model Law is the dominant model law dealing with international commercial arbitration,[31] the main advantage of adopting it is that it will make Finland instantly recognizable around the world as having a modern and internationally acceptable law of arbitration and thus attractive to international arbitral institutions and foreign users of international arbitration. Another benefit is that it will relieve Finland from having to draft its own new arbitration law. All that would be required is translation of the Model Law into Finnish and Swedish, Finland's official languages. Further, as the Model Law has been applied and interpreted for decades by courts in Model Law countries, Finnish courts will benefit immediately from the existing body of case law which has interpreted the Model Law. This case law should be particularly helpful given the very limited experience of Finnish courts in dealing with international arbitration cases until now.

One of the main reasons countries have adopted the Model Law has been precisely to attract international arbitrations, as can be seen from reports from the following countries active in international trade and investment which have done so: Germany, Singapore, Hong Kong and Australia.

6.1 Germany

The German Ministry of Justice explained some of the reasons for adopting the UNCITRAL Model Law, as follows:

> If we want to reach the goal that Germany will be selected more frequently as the seat of international arbitrations in the future, *we have to provide foreign parties with a law that, by its outer appearance and by its contents, is in line with the framework of the Model Law that is so familiar all over the world*. This is necessary, in particular, in view of the fact that *in negotiating international contracts, usually not much time is spent on the drafting of the arbitration agreement. The purpose of the Model Law, to make a significant contribution to the unification of the law of international arbitration, can only be met if one is willing to prefer the goal of unification instead of a*

[30] K. Mrybakk & A. Ryssdal, National Report for Norway (2009) in *ICCA International Handbook on Commercial Arbitration* (Jan Paulsson & Lise Bosman eds, Kluwer Law International 1984 & Supp. 54, Mar. 2009).

[31] Born, *supra* n. 3, at 139.

> *purely domestic approach* when it comes to the question of the necessity and the scope as well as to the determination of the contents of individual rules.[32] (Emphasis added)

When the Commission formed by the German Federal Ministry of Justice started its work on a new arbitration law, two major decisions were agreed early on:

> 1. *Germany would accept the UNCITRAL Model Law literally and with as few modifications as possible in order to assure transparency for the non-German users of the law to whom the UNCITRAL Model was well known throughout the world.*
> 2. The law would be applicable both to domestic and to international arbitration in Germany to avoid the well-known difficulties arising from the distinction between these two.[33] (Emphasis added)

As a result, today Germany has not only one of the most advanced arbitration laws but one which is also readily understandable and usable by foreign legal practitioners and their clients.

6.2 Singapore

In recent years, the Singaporean government has been particularly responsive to legal developments in the field of international arbitration, emphatically promoting Singapore as an international arbitration centre by showing a disposition to amend its laws whenever necessary.[34] The city-state has built a privileged reputation throughout the arbitration community for its capacity to update and improve arbitration legislation, when needed, within a matter of months.[35] Accordingly, in Singapore, the

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[32] *See ibid.*, at 138–139 referring to Bundestags-Drucksache No. 13/5274, 12 July 1996, reprinted in K.-P. Berger, *The New German Arbitration Law* 140 (1998), quoted in K.-P. Berger, *The New German Arbitration Law in International Perspective*, 26 Forum Int'l 4 (2000). *See also* M. Krimpenfort, *Vorläufige und sichernde Maßnahmen in schiedsrichterlichen Verfahren* 4–5 (2001).

[33] Prof. Dr G. Hermann, *Foreword*, in *Arbitration in Germany, the Model Law in Practice* (Böckstiegel, Kroll & Nacimiento eds, Wolters Kluwer Law & Business 2007).

[34] Stephan Wilske, *The Global Competition for the 'Best' Place of Arbitration for International Arbitrations – A More or Less Biased Review of the Usual Suspects and Recent Newcomers*, 1 Contemp. Asia Arb. J. 50 (2008).

[35] Singapore's Minister for Law, K. Shanmugam, said in a public speech in June 2012: 'there is the *willpower of the government, the desire to make a change and create the right legislative framework*. So, we took the approach of consulting the industry, putting in whatever changes which were necessary, and in Singapore, *if we come across a problem, if the industry says this needs to be changed, we can change it legislatively within a matter of six to seven months, and we have done it several times. Our Courts are extremely supportive and are pro-arbitration*. But, as I shared this yesterday with a smaller group, *if we see a decision, and we have seen a couple that we feel that are not the most arbitration-friendly, not welcomed by the industry, we got on it and we legislatively changed it. And over a period of time, there is a framework, a system where both the Courts and the legislature work together*. We don't try to be thought leaders, because we don't believe that we are at that stage in the arbitration sector, but we take the best practices around the world and we say we will incorporate from here. *We consult very closely, regularly, with the industry both within Singapore and outside Singapore*'. K Shanmugam, Singapore Ministry of Law, Speech, *Opening Plenary of the 21st Congress of the International Council for Commercial Arbitration*, 11 June 2012 (emphasis added) (transcript available at www.mlaw.gov.sg/news/speeches/speech-by-minister-for-law-mr-k-shanmugam-at-the-opening-plenary-of-the-21st-congress-of-the.html) (accessed 23 June 2017).

Parliamentary Secretary, Ministry of Law, explained the rationale for the adoption of the Model Law in the International Arbitration Act 1994 as follows:

> Firstly, the Model Law *provides a sound and internationally accepted framework* for international commercial arbitrations. Secondly, *the general approach of the Model Law will appeal to international businessmen and lawyers*, especially those from Continental Europe, China, Indonesia, Japan and Vietnam who may be unfamiliar with English concepts of arbitration. This will work to Singapore's advantage as our businessmen expand overseas. Thirdly, it will *promote Singapore's role as a growing center for international legal services and international arbitrations*.[36] (Emphasis added)

As one commentator has said 'the overriding focus was to promote Singapore as an international arbitration centre, including amongst international businessmen and lawyers … unfamiliar with English concepts of arbitration'.[37]

6.3 Hong kong

Accessibility is another important reason why a country should adopt the Model Law. For example, the Hong Kong Law Reform Commission concluded that 'the Model Law … has the advantage of making [Hong Kong] law *internationally recognizable and accessible*' (emphasis added) and that:

> [the] primary reason for recommending the adoption of the Model Law … is *the need to make knowledge of our legal rules for international commercial arbitration more accessible to the international community* … We are convinced that it is much better [to avoid changes than] trying to improve what is already *the result of many years work by an international group of experts*.[38] (Emphasis added)

Since its adoption of the Model Law in 2010, Hong Kong has seen an increase in international arbitration proceedings seated in its territory, being listed for the first time in 2015 among the most favoured arbitration seats.[39]

6.4 Australia

John Hatzistergos, a prominent Australian politician and former solicitor, stated the reasons for Australia's adoption of the Model Law. He first recalled that 'the

[36] Singapore Parliamentary Reports, vol. 63, col. 627 on the sitting of 31 Oct. 1994.
[37] Mohan R. Pillay, *The Singapore Arbitration Regime and the UNCITRAL Model Law*, 20 (4) Arb. Int'l 355,360.
[38] Law Reform Commission of Hong Kong, *Report on the Adoption of the UNCITRAL Model Law of Arbitration* 6–11 (1987).
[39] Queen Mary University of London, *2015 International Arbitration Survey: Choices in International Arbitration* 12. In a similar survey conducted in 2010, Hong Kong did not appear on the list of preferred seats. Queen Mary University of London, *2010 International Arbitration Survey: Choices in International Arbitration* 17.

UNCITRAL Model Law reflects the *accepted world standard* for arbitrating commercial disputes' (emphasis added) before explaining:

> There are a number of good reasons for adopting the UNCITRAL Model Law as the basis for the domestic law. First, the UNCITRAL Model Law *has legitimacy and familiarity worldwide*. It has provided an *effective framework* for the conduct of international arbitrations in many jurisdictions, including Australia, for *over 24 years*. It provides a *well-understood procedural framework* to deal with issues such as the appointment of arbitrators, jurisdiction of arbitrators, conduct of arbitral proceedings and the makings of awards, and therefore is *easily adapted to the conduct of domestic arbitrations*. Indeed, jurisdictions such as New Zealand and Singapore have based their domestic arbitration legislation on the UNCITRAL Model Law, and it has proven appropriate.
>
> Second, basing domestic commercial arbitration legislation on the UNCITRAL Model Law creates *national consistency in the regulation and conduct of international and domestic commercial arbitration*. The Commonwealth International Arbitration Act 1974 gives effect to the Model Law in relation to international arbitrations. Many businesses, including legal ones, operate domestically and internationally, and one set of procedures for managing commercial disputes makes sense. Thirdly, *practitioners and courts will be able to draw on case law and practice in the Commonwealth and overseas to inform the interpretation and application of its provisions*.[40] (Emphasis added)

7 WHY SHOULD FINLAND ADOPT THE UNCITRAL MODEL LAW WITHOUT SIGNIFICANT CHANGE?

While a number of factors are important in making a country attractive as a seat for international arbitration, the first one that should be taken into account is whether the country has a modern and liberal arbitration law, as explained *supra*. Thus, the easiest and most efficient way for Finland to enhance its acceptability as a place for international arbitrations is to adopt – and, most importantly, to be recognized by UNCITRAL as having adopted – the Model Law. Enacting the Model Law would make Finnish arbitration law as acceptable and welcoming to international arbitration as the laws of the most modern and popular centres of international commercial arbitration.

To optimize the positive perception that adoption of the Model Law would have in the international community, Finland should do so without significant change. Any departures from the Model Law are likely to be viewed with suspicion by the international community, the sole audience which matters in so far as attracting international arbitrations is concerned, and risk undermining the positive impression that adoption of the Model Law would make.[41] The reports of

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[40] Information available at https://www.parliament.nsw.gov.au/bills/DBAssets/bills/SecondReadspeechLC/976/LC%206110.pdf.

[41] Carlevaris, *supra* n. 1.

Germany, Singapore and Hong Kong (in answer to question 6 *supra*), all stress the importance of adopting the UNCITRAL Model Law with little or no change.[42]

Adopting the Model Law with little or no change is especially important for a country like Finland which is not a major business centre and which is little known in the field of international arbitration. Given the existence of well-established centres for international arbitration nearby (e.g., Stockholm) and the intense competition among countries to attract international arbitrations (not least by Sweden), reform of Finland's arbitration law will be completely unnoteworthy unless Finland adopts the Model Law without significant change. Finland should adopt the latest and best international practice (i.e. the Model Law) and, like Singapore, acknowledge with commendable humility that '[w]e don't try to be thought leaders, because we don't believe that we are at that stage in the arbitration sector, but take the best practices around the world'[43], and incorporate the Model Law into Finnish law.

Indeed, if Finland is serious about wishing to attract international arbitrations (as is hoped), Finland should not just adopt the Model Law, as some seventy-five states are reported already to have done, but consider what additional measures it might take to make Finland even more attractive for international arbitrations. For example, as mentioned above, Sweden is not just updating its arbitration law but is envisaging that Swedish court proceedings to set aside arbitral awards should be conducted in English if a party so requests. In the interests of Finland's image abroad and its economy, Finland should be thinking of similar or other initiatives to make it attractive for international arbitrations and not limit its reform to adoption of the Model Law.

[42] Indeed, if Finland should depart significantly from the Model Law, it would repeat the mistake it made in 1992 when UNCITRAL refused to recognize Finland as a Model Law country. Since then, as we have seen, international arbitral institutions and international legal practitioners and their clients have generally shunned Finland as a place for an international arbitration. As Finland had (unlike e.g. Norway, *see* answer to question 5 above) neglected to attach importance to foreign or international perceptions of its law on arbitration, taking instead an inward-looking approach, it has lost to Sweden and other established arbitration centres cases that could otherwise have come to Finland.

[43] *Supra* n. 35.