

# NEGOTIATING AND DRAFTING THE INTERNATIONAL SALES CONTRACT AND RELATED AGREEMENTS

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One of the biggest problems in international transactions, and particularly in international contracts, is making sure that all parties mean the same thing when they use the same words. Keeping that communication problem in mind, I would like to make a number of short points concerning international contracts. I will cover the international letter of credit, documents of title, definition of trade terms, inspection of goods and warranties, industrial property rights, and arbitration.

I note first that many business people and lawyers treat a letter of credit as if it were the sales contract.<sup>1</sup> A letter of credit is not a substitute for a contract; it is only a payment mechanism. The letter of credit will generally not even be consulted to fill in the missing terms of the contract. Treating a letter of credit as a sales contract substitute is a common and sometimes costly mistake.

Second, I find that many of these same people believe an exchange of telexes is necessarily a contract. A telex, however, may not be a sufficient writing *signed by the party to be charged* to satisfy the Statute of Frauds. I would not want to walk into court with nothing but a telex in my hand.

Third, I would caution that the choice of United States law to govern the terms of a contract can have some unintended results. For example, many business people use a sales or purchase order form that has general conditions and terms of sale. Thus begins the "battle of the forms."<sup>2</sup> As you know, in a "battle of the forms,"

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<sup>1</sup> A "letter of credit" is defined by U.C.C. § 5-103(1)(a):

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this Article (Section 5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

<sup>2</sup> U.C.C. § 2-207(1) provides that:

the buyer sends his form and the seller ignores it and sends back his form so that the parties are left, under United States law, with the contract the Uniform Commercial Code (U.C.C.) makes for them. You know that the U.C.C. favors purchasers of goods, so the result is that if you have a contract that says United States law applies, and you have a battle of the forms, you have just favored the purchaser in the contract.

The following diagram depicts the typical letter of credit cycle, beginning with the purchaser and his application to the issuing bank. If the application is accepted, the issuing bank issues the letter of credit, and the advising or confirming bank<sup>3</sup> either advises or confirms the letter of credit to the sellers. Next begins the passage of documents from the seller to the advising or confirming bank, then to the issuing bank, and next to the purchaser. The final steps in the cycle are the passage of money or financing from the purchaser to the issuing bank, then to the advising or confirming bank, and, finally, to the seller.

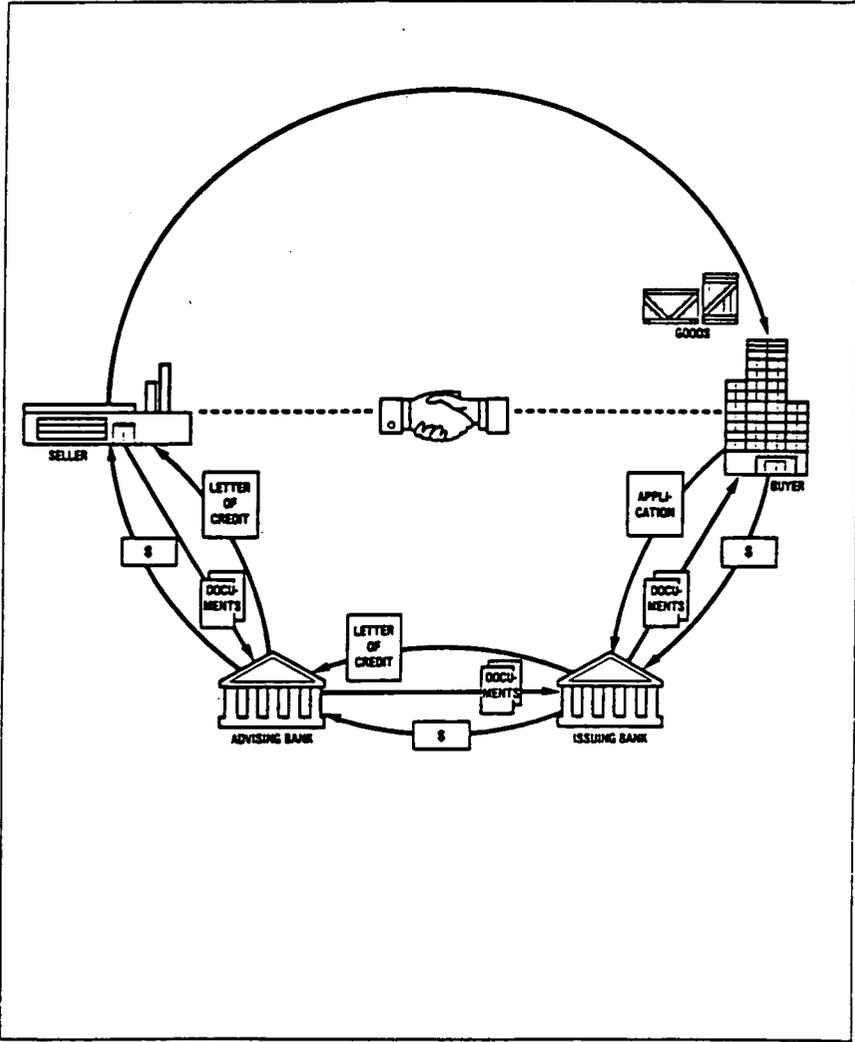
The most important thing I have learned about letters of credit is that when two multinationals do their first transaction together, they will generally do it on a letter of credit basis. That should tell you something if you are representing a business of lesser size. If you run into a first-time foreign purchaser who says it is really demeaning that you are asking for a letter of credit, I think your response should be a polite but firm "baloney." If for an initial transaction the other party will not use a letter of credit, your client is perhaps doing business with the wrong people. Generally the payment for a first non-government transaction will be effected by a letter of credit. World class companies ask for and routinely receive a letter of credit from world class companies the first time they transact business, and they think nothing of it. I do not see why my client and I should be any less aggressive than multinationals of equal bargaining position.

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A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

<sup>3</sup> "An 'advising bank' is a bank which gives notification of the issuance of a credit by another bank." U.C.C. § 5-103(e). "A 'confirming bank' is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank." U.C.C. § 5-103(f).

Export Letter of Credit Cycle



If your client is to receive payment by means of a letter of credit, it is important to spell out the terms of the letter of credit in the sales contract. For most contracts I literally draft the letter of credit and attach it to the contract or lay out the terms of the letter of credit in the contract. This attachment helps prevent ambiguities or unwanted language in the letter of credit as issued.

Many sales contracts say things like "Company X is obligated to deliver 100 tons of wheat," but such precision can be very helpful to an unscrupulous purchaser. What Company X really meant to say was that it would deliver at least 100 tons of wheat or some amount between 99 and 101 tons of wheat. If X is obligated to deliver precisely 100 tons of wheat, there may be a problem if X delivers 100.1 tons of wheat, because X may not get paid for the extra .1 ton of wheat.<sup>4</sup> If X delivers only 99.9 tons on the other hand, he has not fulfilled his contract. The U.C.C., if it is embodied in the applicable law, gives some relief to the seller in these cases.

I also find letters of credit with this same potential problem.<sup>5</sup> Dealing in discrete packages, like ten electric fans, is one thing; but dealing with commodities requires that the letter of credit permit some variance as to the amount which must be stated in the bill of lading. Such drafting oversights lead to problems when the seller does not quite comply with the contract, even when the parties understood that 99.9 tons of wheat would be acceptable per-

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<sup>4</sup> See *id.* at § 2-601(a), which provides that "if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may (a) reject the whole." (emphasis added).

<sup>5</sup> Though the Uniform Commercial Code requires only that an issuing bank employ "good faith and observance of any general banking usage" in determining whether to accept the proffer of documents, U.C.C. § 5-109(1), the courts have generally held that the issuer must assure that the documents proffered, which reflect the character of the goods as actually delivered, exactly match the documents required by the terms of the letter of credit. Since the bank is interested only in the documents to be presented, the essential requirements of a letter of credit must be strictly complied with by the party entitled to draw against the letter of credit, which means that the papers, documents, and shipping descriptions must be as stated in the letter. *Venizelos, S.A. v. Chase Manhattan Bank*, 425 F.2d 461 (2d Cir. 1970). *Accord Insurance Co. of North America v. Heritage Bank*, 595 F.2d 171, 174-76 (3d Cir. 1979); *Courtaulds North America, Inc. v. North Carolina Nat'l. Bank*, 528 F.2d 802, 805-06 (4th Cir. 1975).

In addition, the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, which governs by stipulation of the parties most letter of credit agreements, provides: Article 7 - Banks must examine all documents, "with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit." UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS, art. 7 (I.C.C. Pub. No. 400)(rev. 1984).

formance. Unfortunately, the documents, the contract, and the letter of credit, do not say that discrepancy is permissible. Your client, for example, may walk into the bank with the ship captain's bill of lading for 99.9 tons, and the bank will refuse to pay since the letter of credit called for a bill of lading for 100 tons. Your client in this case has a big problem.<sup>6</sup>

Another common problem with letters of credit is the underestimation of the expiration date. Sellers are notoriously overly optimistic about when they can ship, so they often agree to unrealistic expiration dates in letters of credit. Your client, for example, may believe its goods will be ready for shipment in April and that the ship is going to sail in early May. On that basis, it might accept a letter of credit expiring at the end of May. Then, suppose a strike breaks out at the port, and the letter of credit expires. Your client may have timely moved its goods to the port, but since there was a strike at the port there was no one to put them on the ship. Since the goods were not on the ship, your client cannot obtain a timely dated bill of lading, without which your client cannot draw on the letter of credit. Since the letter will shortly expire, there is a mad flurry of telexes going back and forth in which your client begs the purchaser to extend the expiration date of the letter of credit. Do not allow your client to box itself in this way with an unrealistic expiration date in the letter of credit. Purchasers, of course, want an early expiration date to pressure the seller to get the goods out of the port and to the purchaser. The final date is certainly something that is subject to negotiation; however, I do not know how many times I have been called by a client who had an unrealistic expectation of when he could get the goods to the port because his letter of credit was expiring. If the letter of credit does expire, the client has lost his assured method of payment.<sup>7</sup>

A set of rules for the international use of the letter of credit has been developed by the International Chamber of Commerce. The rules are called the "Uniform Customs and Practices for Documen-

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<sup>6</sup> For some of the commentary on the problems associated with this rule of perfect tender, see *The Law of Letters of Credit and Standbys in the 1980's*, 24 ARIZ. L. REV. 235 (1982); Note, *Letters of Credit: A Solution to the Problem of Documentary Compliance*, 50 FORDHAM L. REV. 848 (1982).

<sup>7</sup> One who continues to do business by making "amendments" to a letter of credit which has expired should exercise caution. Any attempt at amendment will likely be construed as simply a new offer of credit. Such a new offer may include new terms, unrelated to the original letter of credit, which will be binding on the parties. *Banco Nacional de Desarrollo v. Mellon Bank*, 726 F.2d 87 (3d Cir. 1984).

tary Credits," and they were set out in International Chamber of Commerce (ICC) Publication 290.<sup>8</sup> Publication 400, a revision of the Uniform Customs and Practices for Documentary Credits (UCP) was effective October 1, 1984.<sup>9</sup> This is an example of a private "law." When the ICC speaks almost all banks and attorneys immediately refer to the new publication in their letters of credit.

The legal ramifications of a letter of credit are also worthy of note. If my client is the beneficiary of a confirmed irrevocable letter of credit from a United States bank in Atlanta, that means the bank just up the street is obligated to pay my client when he hands the Atlanta bank a bill of lading and an invoice for the goods. This arrangement has a number of advantages for the client. First, if the bank does not pay, the site of the lawsuit will be Atlanta, Georgia.<sup>10</sup> Second, my client is dealing with people whom he knows, so perhaps he will not have to bring a lawsuit to get paid; the client may have some leverage over the bank in a commercial sense. Third, my client will know the bank does not want to fail to pay on a letter of credit because news of this failure will quickly reach its correspondent banks.

If my client chooses an alternative contract route so that the United States bank only advises the letter of credit, he is relying upon the creditworthiness of the foreign bank which issued the letter of credit. The foreign bank issued the letter of credit in favor of my client upon the request of its customer, my client's purchaser. With a letter of credit that is only advised by a United States bank, my client is relying on the credit of a foreign bank about which he may know nothing. If the foreign bank does not pay, the United States advising bank has no obligation to pay.<sup>11</sup> It has only advised my client that the foreign bank has established the letter of credit, and it has taken no obligation except to act as an intermediary.<sup>12</sup>

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<sup>8</sup> UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (I.C.C. Pub. No. 222 1962).

<sup>9</sup> UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (I.C.C. Pub. No. 400 1984). For a review of the 1984 changes, see Kozolchyk, *The 1983 UCP Revision, Trade Practices and Court Decisions: A Plea for a Closer Relationship*, 9 CANADIAN BUS. L.J. 214 (1984).

<sup>10</sup> The applicable law would also be Georgia law. U.C.C. § 1-105(1).

<sup>11</sup> *Id.* § 5-107(1), which provides that: "(1) unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit. . . ."

<sup>12</sup> This problem became especially acute for United States corporations after the Iranian Revolution. For discussion of the letter of credit problems which arose from this situation,

If I ask the domestic advising bank to confirm the letter of credit issued by a foreign bank, and it refuses to do so, that refusal tells me something about the credit worthiness of the foreign bank. In most instances, if I cannot get a large regional bank based in Atlanta or a money center bank with offices in Atlanta to confirm the letter of credit established by the foreign purchaser, that tells me that the foreign bank may not be creditworthy. On the other hand, this refusal may only mean that the United States bank does not have a correspondent relationship with the foreign bank. Unwillingness of local banks to confirm does not damn a foreign bank; however, if a client really needs to be sure he is going to be paid, then he cannot afford to rely on advised letters of credit issued by foreign banks. Also, remember that a small company does not have the resources to bring a lawsuit in a foreign jurisdiction against a foreign issuing bank which fails to pay on the letter of credit. When I consider advice versus confirmation, I weigh the element of the situs of a potential lawsuit and its likely effect on settlement.

I draft a number of contracts which are used as negotiation tools. I usually draft and attach to the contract, as separate parts, clauses which provide descending levels of assurance of payment to my seller client. I start with an irrevocable letter of credit confirmed by my client's bank. Then I fall back to a letter of credit issued by a foreign bank, hopefully a world class creditworthy bank, located in a country with a well-developed judicial system. Next, I fall back to any letter of credit I can get, just as long as it is irrevocable. If a letter of credit does not say it is irrevocable, the purchaser can walk into the issuing bank at any time and cancel the letter of credit.<sup>13</sup> If your client's letter of credit does not say it is irrevocable, your client could be in a world of trouble.

The next position for my clients in the contracts I draw up is that my customer will ship the goods and send the documents of title to a bank in the purchaser's country. This foreign bank will be instructed to collect payment from the purchaser in return for delivering the documents of title to the purchaser. The customer will have to pay the foreign bank in order to get the documents necessary to finally obtain the goods. This is called a documentary col-

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see Getz, *Enjoining the Standby Letter of Credit: The Iranian Letter of Credit Cases*, 21 HARV. INT'L L.J. 189 (1980). See also *Annual Survey of Developments in International Trade Law*, 14 GA. J. INT'L & COMP. L. 65, 106-07, nn.255-61 (1984).

<sup>13</sup> See U.C.C. § 5-106(3) (this revocation may take place without notice to or consent from either the customer or the beneficiary of the letter of credit).

lection.<sup>14</sup> A danger in this process is that, unfortunately, foreign banks have been known to deliver the documents without first obtaining payment.

The next position in the contract is to require the customer to accept a time draft drawn on him in exchange for the documents. This agreement yields a much cleaner lawsuit if I must later sue for the price of the goods, because I need not sue on only a contract. The contract in effect has been replaced by this obligation, the draft that the purchaser has signed in order to get the goods.

The final position I take for my clients is to require sale on open account. Of course, a sale on open account means there is no letter of credit or documentary collection and no acceptance of a time draft; the purchaser is simply obligated to pay the price under the sales contract at the further time specified in that contract.

I open draft contracts with these succeeding levels of assurance of payment for the seller. When the client enters into negotiations, he can decide where he wants to stop. I think you should provide your client with these alternatives for negotiation, because in competitive markets, particularly after a few successful transactions, purchasers are going to resist giving an irrevocable letter of credit because of the expense involved in establishing the letter of credit. For that reason I think it is a good idea to have all the successive fallback positions in your client's hands for negotiations.

Earlier I mentioned shipping terms. The legal significance of shipping and delivery terms is often generally misunderstood. I am amazed at the people who use the terms FOB,<sup>15</sup> FAS,<sup>16</sup> C&F,<sup>17</sup> and CIF<sup>18</sup> and have no idea of the legal consequences of the terms. These terms have great legal significance, but one of the problems with them is determining by whose definitions you are playing. In the United States, we often rely on the American Foreign Trade Definitions of 1941<sup>19</sup> or on the U.C.C.<sup>20</sup> If you rely on those defini-

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<sup>14</sup> For a review of the documentary or stand-by letter of credit process, see Wheble, *Problem Children - Stand-by Letters of Credit and Simple First Demand Guarantees*, 24 ARIZ. L. REV. 301 (1982); Verkuil, *Bank Solvency and Guaranty Letters of Credit*, 25 STAN. L. REV. 716 (1973).

<sup>15</sup> The various nuances of the use of the term "free on board" and their legal significance are outlined in U.C.C. § 2-319(1)(a)-(c).

<sup>16</sup> For an explanation of the legal significance of "free alongside," see *id.* § 2-319(2)(a)-(b).

<sup>17</sup> See *id.* § 2-320(3). The term C & F means "that the price so includes cost and freight." *Id.* § 2-320(1).

<sup>18</sup> *Id.* § 2-320(3). The term CIF means "that the price includes in a lump sum the cost of goods and insurance and freight to the named destination." *Id.* 2-320(1).

<sup>19</sup> AMERICAN FOREIGN TRADE DEFINITIONS (1941).

tions you must refer to those definitions. Foreign purchasers will often refer to INCO terms,<sup>21</sup> which are published by the International Chamber of Commerce. You must go through the U.C.C., the American Foreign Trade Definitions, and the INCO terms to learn the differences. They are different, and you must refer to some set of definitions, for terms like "CIF" mean different things in different countries.

I also would argue that *force majeure* clauses should not be considered boiler plate.<sup>22</sup> A United States seller often tries to add a *force majeure* clause to excuse the timeliness of his performance if things go wrong over which he has no control such as strikes, work stoppages, war, or severe shortages of raw materials.<sup>23</sup> The seller will often reason in such a case that surely the purchaser can pay him if the purchaser has received the goods; therefore, he will prefer that *force majeure* not apply to the payment of money, and the clause should reflect this desire.

When describing quality in a sales contract, I try to give the seller a window. It is amazing how many contracts require a specific quality, no better and no worse. Suppose the contract says something has to be 95% pure. In such a case, 95.1% should be satisfactory. The contract should say instead "at least" 95% pure. You would be surprised how many very large contracts fail to take into account a possible slight discrepancy in quality.

It is important to also remember that inspection of goods can be arranged at any point in a transaction. Purchasers, particularly those who have opened letters of credit, want some assurance that they will receive the contracted for goods. This position is valid, since often the seller will receive payment well before the goods reach the purchaser. Professional surveyors inspect goods, and a number of international surveyors have offices in many countries. These inspectors provide a great deal of protection without prohibitive costs, particularly if they are engaged to sample goods rather

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<sup>20</sup> See *supra* notes 12-15.

<sup>21</sup> See REFERENCE WORKS: FOREIGN COMMERCE HANDBOOK 128-29 (17th ed. 1981).

<sup>22</sup> The validity of *force majeure* clauses has been upheld in several cases. See, e.g., *Interpetrol Bermuda Ltd. v. Kaiser Aluminum Int'l Corp.*, 719 F.2d 992, 37 U.C.C. Rep. 779, 783-89 (9th Cir. 1983); *Jon-T Chemicals, Inc. v. Freeport Chemical Co.*, 704 F.2d 1412 (5th Cir. 1978). See also U.C.C. § 2-615, comment 8. For a discussion of the use of letters of credit in Soviet international commercial transactions, see Armstrong, *Letters of Credit in East-West Trade: Soviet Reception of Capitalist Custom*, 17 VAND. J. TRANSNAT'L L. 329 (1984).

<sup>23</sup> For an example of a typical *force majeure* clause, see *Rockwell Int'l Systems, Inc. v. Citibank, N.A.*, 719 F.2d 583, 585 (2d Cir. 1983).

than to inspect every item.

Our job on behalf of United States exporters is generally to negate warranties. Typically a client will grant a limited warranty for repair or replacement within a certain time period, and the attorney will attempt to negate all other express and implied warranties. He should also negate consequential damages, especially for delayed delivery.

The attorney should be cautioned that there is an interesting interplay with choice of law and any such warranty negation clauses. I never cease to be amazed at people who put all sorts of warranty disclaimer language in a contract and then stipulate that Mississippi law applies, when in Mississippi a party may not negate the warranty of merchantability or the warranty of fitness for purpose.<sup>24</sup> So, if the attorney drafts a wonderful clause negating all warranties and says that the law of Mississippi will apply, he shoots himself in the foot. Watch out for the interplay of the choice of law provision and the substantive provisions, for the choice of law provision may in effect remake a contract.

Many export contracts omit any discussion of industrial property rights, such as patents, trademarks, and copyrights. The contract should, however, provide that such property is clearly the property of the seller or the manufacturer, that the use by a distributor or agent gives no rights to the distributor or agent, and that upon the termination of the relationship, the agent or distributor agrees that he has no rights in those trademarks, patents, or copyrights. One of our Italian multinational clients was told by its United States distributor that it could not register its trademarks in the United States. Trusting their distributor, the principals allowed him to register the marks. Two years later, when the distributorship relationship began to unravel, the Italian company had a difficult time getting its marks back.

The second point to remember about industrial property is that many countries have industrial property regimes which differ greatly from the United States regime. In Mexico, for example, a party is often obliged to use a co-equal Mexican trademark. Mexican law also requires the registration of any agreement including trademark licenses as an incident to a sales contract, for the transfer of foreign technology to Mexico.<sup>25</sup>

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<sup>24</sup> MISS. CODE ANN. § 11-7-18 (Harrison Supp. 1984).

<sup>25</sup> For commentary on and the English text of this Act, see Delgado, *Mexico: Commentary on the Amended Technology Law*, 80 PAT. & TRADEMARK REV. 295 (1982).

The typical response of an American attorney to choice of law and choice of forum questions is to provide for United States courts and application of United States law. This might seem unusual, for the United States has no treaties for the reciprocal enforcement of judgments. We negotiated with England for years, but no treaty resulted.<sup>26</sup> If a party obtains a judgment in the United States and the other party has no assets here, it is generally wasting a lot of time and effort, because in many countries the action will have to start *de novo*. Generally, however, I put clauses requiring United States adjudication in the contract with defensive motives. If my client is sued in Iran and the Iranian plaintiff brings his Iranian judgment to the United States, I will raise the contract's choice of law and choice of forum clauses as defenses and argue that the Georgia court should not recognize the Iranian judgment. The two clauses have rather limited objectives, but I guess they accomplish those objectives. I am not sure they accomplish much more unless the other party has assets in the United States, in which case the clauses accomplish a great deal. Once again, I think you need to decide what you would like to accomplish with these clauses rather than just adding them to the contract as boiler plate language. As a last comment on choice of forum clauses, you should not choose one forum and another law. If you want a mess, go to a French court and litigate under Georgia law.

My last topic is the value of arbitration. Many attorneys use arbitration clauses because of the United Nations Convention on the Recognition and Enforcement of Arbitral Awards.<sup>27</sup> Basically, that Treaty says that agreements to arbitrate are enforceable before the courts of all the signatories.<sup>28</sup> As you know, even in recent times, agreements to arbitrate were often found unenforceable under common law; in other words, pre-dispute agreements to arbitrate were not binding. The Treaty says that, notwithstanding contrary domestic law, such agreements are binding.<sup>29</sup> It also says that if

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<sup>26</sup> See Draft Convention Between the United Kingdom of Great Britain and Northern Ireland and the United States of America Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters, initialled Oct. 26, 1976, reprinted in G. De-laume, *TRANSNATIONAL CONTRACTS* Appendix One, Booklet C, at 379 (1984). The European Community nations have signed such a reciprocal agreement. See Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, reprinted in 2 *COMMON MKT. REP.* (CCH) ¶6001 (1978).

<sup>27</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

<sup>28</sup> *Id.* art. II, § 1.

<sup>29</sup> *Id.*

you obtain an arbitral award, it will be enforced by all the courts of the signatory countries.<sup>30</sup> That means you do not have to go back through the merits; you simply present your arbitral award for enforcement. Few grounds exist upon which the courts of a signatory country can refuse to enforce an award. If you obtain an arbitral award in the United States against a German corporation, for example, you simply take your arbitral award to Germany and hand it to the appropriate court official. That official is required to seize the German corporation's cars, trucks, or factories and sell them so that your arbitral award is satisfied.

Some folks tend to think that arbitration is a panacea, but it does have its drawbacks. Arbitration is often not swift. To avoid this problem, I typically provide in the contract and in the submission to arbitration that the arbitrators must give their award within a certain time period in order to be paid. That stipulation tends to help them move right along. Another problem with arbitration is that it sometimes is not less expensive than litigation. At least when a party wins an award, however, it has some reasonable assurance that it can enforce that award in the Convention signatory countries. One should also be wary of the tendency of some arbitrators to split the baby, that is, simply meet the contesting parties halfway.

Three problems arise in the arbitration context. First, the most commonly used rules, for example, the ICC Rules, do not provide for discovery. Under the ICC Rules, nobody is obligated to give the kind of documentary and deposition evidence to which United States lawyers are accustomed.<sup>31</sup> An attorney can find that to be a real problem, and he thus may be surprised or unable to make a full presentation to the arbitrators. Second, many clauses require an involved process to pick arbitrators. One of the favorite things I do with arbitration clauses is to try to get the parties to pick some persons to do the arbitration in order of priority so as to avoid a long process of picking arbitrators. I also like to use a single arbitrator rather than a panel of three or more. I find that with three arbitrators, one is usually the representative for one side, one is the representative for the other side, and one is in the middle. Why not just pick the one in the middle; it is a lot less expensive. I am sure some folks would disagree, but I have found this method to work well.

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<sup>30</sup> *Id.* art. II.

<sup>31</sup> The Uniform Rules themselves, of course, contain no rules for practice and procedure.

For the discussion of the final problem, let me come back again to the interplay of the contractual provisions. The following is a good example of not paying attention to what the left hand and the right hand are doing. A prestigious United States law firm once drafted, on behalf of a domestic client, a contract referring to Georgia law and containing a long, full-blown arbitration provision. I represented the foreign party to that transaction, a party which did not have any assets in the United States and did not want to arbitrate in the United States. When problems arose under the contract, the party in the United States and its lawyers came forward and attempted to enforce the agreement to arbitrate. Georgia law, however, says that a full-blown arbitration clause that says all disputes must be submitted to arbitration is unenforceable.<sup>32</sup> We settled on a very amicable and favorable basis to our client, because the domestic party's lawyers realized that at the time Georgia courts were not likely to enforce the clauses they had composed.

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<sup>32</sup> "[A] general agreement to arbitrate *all questions*. . . should be treated as against public policy and void." *State Highway Dept. v. MacDougald Construction Co.*, 189 Ga. 490, 504 (1939); *Wright v. Cecil A. Mason Construction Co.*, 115 Ga. App. 729, 730 (1967).

