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# COLORADO'S SECOND RENAISSANCE: ADOPTING THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

## INTRODUCTION

On October 7, 2015, Governor John Hickenlooper led a delegation of fifty-two Colorado leaders in business and academia on a trade mission to Japan, Turkey, China, and Israel.<sup>1</sup> The mission lasted until October 22, on which Governor Hickenlooper managed to cut some deals on behalf of many Colorado organizations, including a research and development agreement between Cathay Industrial Biotech of China and Colorado State University.<sup>2</sup> Those that have lived in Colorado all of their lives likely could have never conceived of Colorado having any sort of international character; after all as a landlocked state Colorado seems greatly disadvantaged geographically. However, with growth in Colorado at an all-time high, along with its denizens' propensity to experiment on many fronts, Colorado has become an up-and-coming state in the global market. Foreign direct investment in Colorado has helped bring jobs, promoted further growth, and encouraged domestic industries to export to the rest of the world from Denver. In the wake of the signing of the Trans-Pacific Partnership, this could not be timelier.<sup>3</sup>

However, despite all of this, there are several barriers preventing Colorado from taking that next step into becoming a more active member of the global economy. While some are more complex than others to solve, perhaps the easiest to repair is Colorado's international commercial arbitration law. All the state legislature would need to do is adopt the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration, or the "Model Law."<sup>4</sup> By making this change, Colorado would establish itself as a leader in international dispute resolution in the Rocky Mountain Region, if not the American heartland, and bring an argosy of business to Colorado.

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1. *Gov. Hickenlooper to Lead Global Trade & Investment Mission for Colorado*, COLO. OFF. OF THE GOVERNOR (Oct. 2, 2015), <https://www.colorado.gov/pacific/governor/news/gov-hickenlooper-lead-global-trade-investment-mission-colorado>.

2. Ed Sealover, *Hickenlooper Reports on International Trade Mission*, BIZJOURNAL (Oct. 24, 2015), [http://www.bizjournals.com/denver/blog/capitol\\_business/2015/10/hickenlooper-inks-pacts-lobbies-for-noble-energy.html](http://www.bizjournals.com/denver/blog/capitol_business/2015/10/hickenlooper-inks-pacts-lobbies-for-noble-energy.html).

3. Aldo Svaldi, *Trans-Pacific Partnership Exposes Fault Lines in Colorado*, THE DENVER POST (Oct. 5, 2015), [http://www.denverpost.com/business/ci\\_28925686/trans-pacific-partnership-exposes-fault-lines-colorado](http://www.denverpost.com/business/ci_28925686/trans-pacific-partnership-exposes-fault-lines-colorado).

4. *See generally* UNCITRAL Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006, [http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf).

To that end, in this paper I will analyze Colorado to exhibit its readiness in becoming an international player. I will discuss Colorado's potent industries, state of the art trade infrastructure, and its reputation for being the gateway to the Rocky Mountains to make my case. In turn, I will argue that Colorado should receive epochal benefits from becoming more trade friendly by adopting the Model Law because of the compatible foundations it already has in place. As a result of that investigation, I will review the state of the international commercial arbitration laws in Colorado presently, and explain why Colorado should emulate states like Washington and Georgia that have adopted the Model Law in recent years by examining their respective experiences adopting it. This will demonstrate that Colorado has the potential to become a novel, booming trade state in the international economy and will be able to realize at least some of that potential by updating its otherwise archaic, out-of-date, and dysfunctional international dispute resolution policy and implementing the Model Law in its stead.

*The Connection Between International Trade & International Commercial Arbitration*

When it comes to the American powerhouses of the United States, Colorado seldom comes to mind. However, Colorado's rapid growth in the past five years demonstrates a resilient market that is not showing many signs of slowing down, even in light of a possible national slowdown on the way.<sup>5</sup> In order to better understand why Colorado needs to alter its international commercial arbitration law to make it more trade friendly, one needs to understand why Colorado's economy can benefit from such a move and then sustain those positive effects.

First and foremost, it is no secret that international trade and investment is beneficial to any economy. Economists have universally accepted international trade as beneficial.<sup>6</sup> As an article in the Economist correctly points out, "if there is one proposition with which virtually all economists agree, it is that free trade is almost always better than protection."<sup>7</sup> A state will always be better off the more it engages in international trade in the aggregate.<sup>8</sup> There are many reasons for that, but by far the most compelling and prevailing theory in modern economics is about efficiency, which states accomplish by acquiring a comparative ad-

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5. Tom DiChristopher, *Better Than 50% Chance Recession is Coming: Analyst*, CNBC (Sep. 15, 2015), <http://www.cnbc.com/2015/09/15/better-than-50-chance-recession-is-coming-analyst.html>; See also Ylan Q. Mui, *Economists are Starting to Warn About the Risk of a New U.S. Recession*, WASHINGTON POST (Oct. 23, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/10/23/economists-are-starting-to-sound-alarm-about-the-risk-of-a-new-u-s-recession/>.

6. See generally GUZMAN PAUWELYN, INTERNATIONAL TRADE LAW 1-30 (Vicki Been et al. eds., 2nd ed. 2012); See also *Why Trade is Good for You*, *infra* note 7.

7. *Why Trade is Good for You*, THE ECONOMIST (Oct. 1, 1998), <http://www.economist.com/node/605144>.

8. *Id.*

vantage.<sup>9</sup> The rationale is that a comparative advantage, defined as the ability to produce a good at a lower cost than anyone else, reduces the waste of limited resources in the economy.<sup>10</sup> By reducing the amount of wasted resources, it frees up more resources for further production, effectively allowing further consumption of goods. More production means that a state's gross domestic product, or GDP, will increase, meaning the economy overall will benefit.<sup>11</sup> Because of the nature of a comparative advantage, every state should be able to have a comparative advantage in some kind of production or service.<sup>12</sup> Put plainly, no two states can have a comparative advantage in the same good.

In practice, the theory has been the biggest draw to negotiating free trade agreements.<sup>13</sup> Each state will primarily trade in what they are most efficient in producing or providing if tariffs and other less ostensible barriers of trade are removed.,<sup>14</sup> To that end, Colorado needs to focus on the industries that they are more efficient at producing than any other state, because all other things equal, Colorado will draw in investors from those industries.

Perhaps one of the least efficient fields investors can think of would be public sector dispute resolution procedures.<sup>15</sup> A lack of efficiency in dispute resolution is a huge barrier to foreign direct investment because a company cannot be certain where, how, or when a dispute might occur with a producer or consumer in a given state.<sup>16</sup> It is estimated that about ninety percent of all international contracts contain some kind of arbitration clause. Considering arbitration can often times alleviate most of the jurisdictional uncertainty that arises in international trading, this should come as no surprise.<sup>17</sup> By limiting the risk that a breach of a contract could lead to a court proceeding in any relevant country to the contract, businesses can better calculate the risk they take on in the event of a breach.<sup>18</sup> These calculations are imperative for businesses because it helps them assess and improve efficiency of production. The fact is, "uncertainty is the biggest enemy of efficiency."<sup>19</sup>

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9. *Id.*

10. *Id.*

11. PAUWELYN, *supra* note 6, at 4.

12. *Id.* at 12–14.

13. *The Case for Open Trade*, WORLD TRADE ORGANIZATION, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact3\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm) (last visited Dec. 15, 2015).

14. *Id.*

15. Kimberley Worley, *Why Arbitrate?*, HOLDEN LAW GROUP (Sep. 10, 2013), <http://www.holdenlawgroup.com/blog/why-arbitrate>.

16. See generally David McLean, *Toward a New International Dispute Resolution Paradigm: Assessing the Congruent Evolution of Globalization and International Arbitration*, 30 U. PA. J. INT'L L. 1087 (2009).

17. Maurice Kenton & Peter Hirst, *Advantages of International Commercial Arbitration*, 12 INT'L COMP. GUIDE TO: INT'L ARB. 20, 20 (2015).

18. *Id.*

19. *Uncertainty the Enemy of Efficiency*, ANGLICARE AUSTRALIA, (Mar 19, 2014), [http://www.anglicare.asn.au/site/uncertainty\\_the\\_enemy\\_of\\_efficiency.php](http://www.anglicare.asn.au/site/uncertainty_the_enemy_of_efficiency.php).

Conversely, when a country or state adopts laws that encourage efficiency in dispute resolution such as arbitration law, then that country or state is going to draw companies to it. The best part is, because of the nature of international commercial arbitration, the business does not necessarily have to be making an investment in Colorado per se. Instead, they could be agreeing to do business with a company in Wyoming, but agree to handle any disputes in arbitration located in Denver. When used appropriately, international commercial arbitration law can create an entire industry around it.<sup>20</sup> While the agreement may call upon the law of an entirely different state, the local state laws will be vital to determining elements of the proceedings, such as what evidence law to draw from or whether to get an interim measure to help compel arbitration.<sup>21</sup> The fact is international commercial arbitration can bring considerable investment to Colorado. Not only will it attract foreign direct investment in many of Colorado's growing and lucrative markets, but also it will create a brand new industry that will draw upon the state's transportation, lodging, dining, and legal services.

In 2012, a survey commissioned by Arbitration Place in Toronto, Canada identified several economic areas in which international arbitration would have potential benefit. These include: increased spending on facilities, including hotels, restaurants, shops and supportive service providers; foreign counsel and arbitrators spending money on local accommodation, transportation, food and beverages, and other visitor expenditures; and indirect benefits associated with improving the profile and reputation of the state.<sup>22</sup> These are just some of the areas that can see positive and immediate impacts after the adoption of the Model Law. Part of the reason for this is the adoption of the Model Law operates as a pellucid signal to the rest of the world that the state economy is ready to join the international trade arena.<sup>23</sup> Steven McCarthy, the Chairman and CEO of Além International Management supported that notion, when he mentioned the value of adopting the Model Law in persuading international sporting organizations to bring international sporting events to Colorado.<sup>24</sup> While the adoption of the Model Law usually also leads to the creation of specialized arbitration centers with facilities and ameni-

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20. Todd Wells, Report to the Colorado Bar Association on the UNCITRAL Model Law on International Commercial Arbitration 6–7 (Jan. 2014) (unpublished manuscript) (on file with author).

21. MARGARET L. MOSES, *THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* 47–48 (2nd ed. 2012).

22. CHARLES RIVER ASSOCIATES, *ARBITRATION IN TORONTO: AN ECONOMIC STUDY* 3 (Sep. 2012), [http://www.globalarbitrationreview.com/cdn/files/gar/articles/CRA\\_report.pdf](http://www.globalarbitrationreview.com/cdn/files/gar/articles/CRA_report.pdf).

23. Wells, *supra* note 20, at 17.

24. *Id.* Além International is a Colorado-based international sporting event marketing company that works around the world at the highest levels of international sports, including collaboration efforts with the 2014 Sochi Olympics Torch Relay. See Além International, <http://www.aleminternational.com>.

ties catered to arbitrations,<sup>25</sup> there is evidence to suggest that attorneys and their clients prefer utilizing a city's deluxe hotel facilities instead if available.<sup>26</sup> Still, it is estimated that the creation of a regional arbitration facility for the Rocky Mountain region could bring roughly 1.55 million dollars in revenue to the city of Denver for every international matter tried at the center.<sup>27</sup> Ultimately, these are just some of the multitude of benefits the Model Law can bring to Colorado if it is adopted. The imagination is truly the limit on this matter.

### *The Current Colorado Trade Economy*

Colorado is ready to take the next step toward becoming a noteworthy member of the international trade economy. Denver, Colorado already has a sophisticated hub for which all international trade to the Rocky Mountain region can pass through. With the state's diverse economic industries, robust and ever-expanding transportation network, and reputation for being the gateway to the Rocky Mountain region, Colorado is ripe to adopt the Model Law to attract more foreign business to the state and beyond.

### Colorado's Diverse Economy

In order for a state to compete internationally, it needs to have a diverse economy in place to offer many products and services to the world. While theoretically this practice goes against the spirit of developing a comparative advantage, practically it demonstrates a state's ability to form a comparative advantage in any one industry at any time.<sup>28</sup> It also shows international investors that an economy can be resilient to the fluctuations of the global economy,<sup>29</sup> and what better evidence to that than Colorado's impressive survival record of the 2008 global recession.<sup>30</sup>

As it stands now, Colorado's top five exports are rather diverse. They are, in order of the value of the amount exported between 2011 and 2014: fresh or chilled meat of bovine animals without bones, instruments and appliances for medical use, electronic integrated circuits, frozen

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25. See generally ATLANTA INTERNATIONAL ARBITRATION SOCIETY, <http://arbitrateatlanta.org/> (last visited Dec. 14, 2015); HONG KONG INTERNATIONAL ARBITRATION CENTRE, <http://www.hkiac.org/> (last visited Dec. 9, 2015); TORONTO ARBITRATION PLACE, <http://www.arbitrationplace.com/toronto/> (last visited Dec. 9, 2015).

26. David Samuels, *Hearing Centers Survey*, GLOBAL ARBITRATION REVIEW (Feb. 4, 2014), <http://globalarbitrationreview.com/regional-arbitration/directory/4/article/32364/hearing-centres-survey/>.

27. Wells, *supra* note 20, at 8; CHARLES RIVER ASSOCIATES, *supra* note 22, at 4.

28. See generally Gene Grossman & Giovanni Maggi, *Diversity and Trade*, 90 AM. ECON. REV. 1255 (2000).

29. Richard Florida, *How Diversity Leads to Economic Growth*, CITYLAB (Dec. 12, 2011).

30. Howard Pankratz, *Report: Colorado Cities Quick to Climb Out of Recession*, *Denver No. 4*, DENV. POST (Jul. 28, 2014), [http://www.denverpost.com/business/ci\\_26230557/report-denver-had-fourth-best-post-recession-recovery](http://www.denverpost.com/business/ci_26230557/report-denver-had-fourth-best-post-recession-recovery).

meat of bovine animals without their bones, and civilian aircraft and parts.<sup>31</sup> Collectively, these five industries only make up about seventeen percent of all Colorado exports between 2011 and 2014.<sup>32</sup> This demonstrates that Colorado's industries are very diverse, and no industries significantly outweigh any others. Overall, the entirety of Colorado exports only makes up roughly half a percent of all American exports in recent years.<sup>33</sup>

However these are just the industries Colorado exports from. Domestically, the Colorado economy looks a little different. The Colorado Office of Economic Development and International Trade, or "COEDIT," recognizes 14 key industries to the state's economy, including advanced manufacturing, bioscience, energy, and healthcare.<sup>34</sup> These industries do not necessarily reflect the top exports of the state, and that could have a lot to do with not having ideal international arbitration laws in place. These are all internationally untapped industries that have experienced significant growth in recent years. The primary drivers of the Colorado economy are agriculture, manufacturing, mining, and tourism.<sup>35</sup> Collectively, these industries have become huge boons for foreign investors. In fact, between 2009 and 2013, Colorado has experienced a forty-five percent increase in its export values across all industries.<sup>36</sup> It is clear foreign investors have taken notice of the Centennial State, and they just need another reason to make their presence in Colorado imperative. What better way to accomplish that than by adopting the Model Law?

#### Colorado's Sophisticated Infrastructure

By 2016, Denver, and Colorado by extension, will have all the pieces in place for a stable infrastructure that will support an international trade-conducive economy. Between its many administrative organizations, transportation networks, and lodging facilities, Denver is becoming a major hub for business both domestically and internationally. An effort to adopt the Model Law will only bolster that expectation.

Colorado already has several administrations in place to assist foreign businesses in connecting with local businesses. Perhaps the most notable of these is the Colorado Office for Economic Development and

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31. *State Exports from Colorado*, U.S. CENSUS BUREAU, <http://www.census.gov/foreign-trade/statistics/state/data/co.html> (last visited Dec. 15, 2015).

32. *Id.*

33. *Id.*

34. *See Key Industries*, CO. OFF. OF ECON. DEV. & INT'L TRADE <http://www.advancecolorado.com/key-industries> (last visited Dec. 15, 2015).

35. Tucker Hart Adams, *The Economist: What's the Most Important Industry in Colorado?*, *COLO. BIZ MAG.* (Aug. 1, 2009), <http://www.cobizmag.com/Articles/The-economist-Whats-the-most-important-industry-in-Colorado/>.

36. *International Rankings and Statistics*, CO. OFF. OF ECON. DEV. & INT'L TRADE <http://www.advancecolorado.com/international-business/international-rankings-and-statistics>

International Trade, or “COEDIT.”<sup>37</sup> COEDIT consolidates both domestic business networks with international business networks in order to encourage business-to-business solutions.<sup>38</sup> The organization’s website also provides visitors with resources to get a better understanding of the Colorado economy and learn about various events across the state.<sup>39</sup> However while COEDIT’s website and office might be the most well-known administrative asset in Colorado for international trade, it is not the only one. There is also World Trade Center Denver, the Federation of International Trade Associations, and the International Chamber of Commerce, along with many others.<sup>40</sup> Like COEDIT, these various organizations provide a myriad of resources for businesses from all over the world to connect with those of Colorado, along with other government agencies and non-profits.<sup>41</sup>

However, without being able to get people to travel across Colorado and stay comfortable, all these administrative resources would be for naught. Fortunately, the Denver metro area is soon to complete an ambitious public transportation overhaul that would help connect more of the Denver metro area to downtown and the airport.<sup>42</sup> These collective city lines, combined with abundant lodging facilities, will allow Denver area visitors to travel almost anywhere in the city without the need of a car. These convenient projects were done for the express purpose of attracting new guests to Denver, whether it be for tourism or business opportunities.<sup>43</sup> The result of this project has helped spread business districts across the metro area, allowing for several business centers, rather than concentrate all business downtown.<sup>44</sup> This structure has correlated with an unprecedented boom in business start-ups across the city, making the Denver area one of the best communities for start-ups.<sup>45</sup>

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37. *OEDIT*, CO. OFF. OF ECON. DEV. & INT’L TRADE, (last visited Dec. 15, 2015).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Organizations*, WORLD TRADE CENTR DENV., <http://www.wtcdenver.org/trade-resources/organizations> (last visited Dec. 13, 2015).

42. *See FasTracks is Creating Connections*, RTD, <http://www.rtd-denver.com/Fastracks.shtml> (last visited Nov. 24, 2015). The city is expecting to connect the downtown area to the airport, and to connect the larger portions of the metro area to both lines.

43. Monte Whaley, *Denver is Being Transformed by FasTracks, 10 Years After Key Vote*, DENV. POST (Jan. 31, 2015), [http://www.denverpost.com/news/ci\\_27429751/denver-is-being-transformed-by-fastracks-10-years](http://www.denverpost.com/news/ci_27429751/denver-is-being-transformed-by-fastracks-10-years).

44. *Id.*

45. *See Young High-Tech Firms Outpace Private Sector Job Creation*, KAUFFMAN FOUNDATION (Aug. 14, 2013), <http://www.kauffman.org/newsroom/2013/08/young-hightech-firms-outpace-private-sector-job-creation>; *See also* Allison Griswold, *More Young Adults in Cities Are Giving Up on Driving to Work*, SLATE MAG.(Aug. 14, 2015), [http://www.slate.com/blogs/moneybox/2015/08/14/census\\_commuting\\_report\\_young\\_people\\_in\\_cities\\_are\\_driving\\_less\\_and\\_biking.html](http://www.slate.com/blogs/moneybox/2015/08/14/census_commuting_report_young_people_in_cities_are_driving_less_and_biking.html). With young people leading the charge for startups, and young people preferring public transportation to driving in cities, logic would argue that young people choose to move to cities that are conducive to both cultures.

That is to say nothing of the improving ability to get across the state. With lavish ski towns just an hour or two away, businessmen could easily fly into Denver and access any one of these towns for a business conference paired with majestic sights and exhilarating activities. While transportation between these points is not as developed as the Denver area, many of them sport their own regional transportation networks.<sup>46</sup> Furthermore, for those willing to pay for the hefty expense, there are numerous smaller airports across the state allowing for more pinpoint access into Colorado's various regions.<sup>47</sup> There are also two railroad lines that allow access to various destinations on the Interstate 70 corridor, such as Winter Park and Glenwood Springs.<sup>48</sup> Finally, for those who do not mind renting a car, the majority of Colorado is accessible by road. This is especially worth considering with ongoing plans by the state to expand and resurface various roads across the state.<sup>49</sup>

All of this connects to the international community through Denver International Airport, or "DIA." DIA has quickly become one of the most successful and busiest airports in the world, and for good reason.<sup>50</sup> With its central location in the United States, it allows easy access across all of North America, making it an attractive hub for many airlines. Furthermore, its felicitous design has made it so inclement weather seldom obscures air traffic, giving it a stark advantage over rival airports in the region.<sup>51</sup> Finally, DIA has slowly but surely expanded its international travel options, including the recent additions of Tokyo and Panama City. With future intent to connect Asia, Europe, and Latin America to Denver, DIA is swiftly becoming an attractive hub city for many companies worldwide.<sup>52</sup>

Essentially, the infrastructure is in place and has vastly improved Colorado's potential as an international trade destination. A thriving in-

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46. See generally *Official Website of Eagle County, Colorado*, EAGLECOUNTY.US, <http://www.eaglecounty.us/transit/schedules/> (last visited Dec. 12, 2015); <http://www.ridetransport.com/flex> (last visited Dec. 12, 2015); *City of Aspen Routes*, RFTA.COM, <http://www.rfta.com/routes/city-of-aspen/> (last visited Dec. 12, 2015).

47. See *Colorado Airports Map*, COLO. DEPT. OF TRANSP., <https://www.codot.gov/programs/aeronautics/colorado-airport-system/ColoradoAirportMap> (last visited Dec. 16, 2015).

48. See generally *California Zephyr*, AMTRAK, <http://www.amtrak.com/california-zephyr-train> (last visited Dec. 16, 2015).

49. See generally *Projects*, COLO. DEPT. OF TRANSP., <https://www.codot.gov/projects> (last visited Dec. 16, 2015).

50. See Press Release, *Denver International Airport Sets All-Time Record for Passenger Traffic in 2014*, DENV. INT'L AIRPORT, (Feb. 4, 2015), <http://www.flydenver.com/sites/default/files/downloads/15-007%20December%20Traffic.pdf>; See generally *Denver the Mile High City*, DENVER.ORG, <http://www.denver.org/about-denver/transportation/airport-info/> (last visited Dec. 16, 2015).

51. Denver International Airport, *DIA is Expert at Aviation in the Snow!*, IFLYDIA.COM, <http://www.iflydia.com/automatedlanding.php> (last visited Dec. 11, 2015).

52. Laura Kenney, *DIA Pursues International Flights at Routes Conference*, DENV. POST (Feb. 2, 2015), [http://www.denverpost.com/news/ci\\_27439600/dia-pursues-international-flights-at-routes-conference](http://www.denverpost.com/news/ci_27439600/dia-pursues-international-flights-at-routes-conference).

frastructure, coupled with the various administrative agencies and organizations, work together to connect Coloradans to the international community like never before. All that is missing is auspicious international commercial arbitration law that would serve as a sure-fire signal to the rest of the world that Colorado is ready and willing to do business with them.

#### Denver: Gateway to the Rocky Mountains

Denver is widely recognized as a gateway to the Rocky Mountains.<sup>53</sup> That is not really contested to those in the United States. However those outside the United States know the Rocky Mountains for little more than beautiful scenery and good skiing. According to the United States Census Bureau, the Rocky Mountain region typically consists of the intermountain western states that encompass the Rocky Mountains.<sup>54</sup> Those states include Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.<sup>55</sup> The Denver area is the second largest metro area in the Rocky Mountain region as recognized by the census bureau, only behind Phoenix.<sup>56</sup> However, unlike Phoenix, Denver is better situated to serve the entire Rocky Mountain region. With its central location in the delineated region, business through Denver could serve twenty-two million people. For example, there is extensive mining in the Rocky Mountain region for minerals that tech companies covet, including molybdenum, copper, tungsten, and zinc.<sup>57</sup> Denver's I-70 and I-25 highways allow direct access to four of the seven other mountain states and secondary access to highways that do have direct access to all of the other mountain states. Transit through Denver to access the Rocky Mountains is just easy. Through Denver, a business strategy to reach all of those twenty-two million consumers is feasible.

#### *The Failure of the Colorado International Commercial Arbitration Act*

Colorado's current international arbitration law is shockingly sparse, adding fuel to a fire that is archaic, out-of-date, and dysfunctional. The Colorado International Dispute Resolution Act implemented it in

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53. IIP Digital, *Denver, Colorado: Gateway to the Colorado Rocky Mountains*, USEMBASSY.GOV, <http://iipdigital.usembassy.gov/st/english/pamphlet/2012/09/20120921136402.html#axzz3uVZi5MnX> (last visited Dec. 12, 2015).

54. *Census Regions and Divisions of the United States*, CENSUS.GOV, [http://www2.census.gov/geo/pdfs/maps-data/maps/reference/us\\_regdiv.pdf](http://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf) (last visited Dec. 10, 2015).

55. *Id.*

56. United States Census Bureau, *American FactFinder*, CENSUS.GOV, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Dec. 14, 2015).

57. Wayback Machine, *Rocky Mountains*, ARCHIVE.ORG, <https://web.archive.org/web/20060927145110/http://biology.usgs.gov/s+t/SNT/noframe/wm146.htm> (last visited Dec. 9, 2015).

1993.<sup>58</sup> Since then, the act has yet to be updated.<sup>59</sup> The act comprised of seven total articles, which is considerably less than other states that have opted to incorporate similar laws. Collectively, the articles only accomplish the following: a legislative declaration of intent,<sup>60</sup> applicability of the law,<sup>61</sup> freedom to choose the language of the arbitral proceeding,<sup>62</sup> and immunity for the arbitrators.<sup>63</sup> This is simply not enough to address the many complications and nuances that could arise in an international commercial arbitration. For one, because the law clearly distinguishes international commercial arbitration from domestic commercial arbitration, it could imply that the domestic arbitration laws such as the Dispute Resolution Act<sup>64</sup> do not apply if one of the parties to the contract is a foreigner. This can present a significant problem because it does not necessarily allow for interim relief. In the world of international commercial arbitration, the ability to use interim relief from a state's courts is ideal.<sup>65</sup> Some might argue that it was left out because federal law or treaty law pre-empted the issue, but the problem is both sources of law happen to also be silent on the matter.<sup>66</sup> In fact, the United States Supreme Court has consistently stated that the Federal Arbitration Act, or "FAA", does not pre-empt state arbitration laws.<sup>67</sup> Only section two of the FAA, which mandates that arbitration agreements be considered, "valid, irrevocable, and enforceable," has been explicitly regarded to pre-empt state law.<sup>68</sup> The United States Supreme Court has held that other articles of the FAA might not even apply in state courts.<sup>69</sup> All this uncertainty is just demonstrative of the kind of headache many international lawyers would prefer to avoid in many states, like Colorado.

As for treaty law, the only treaty that would apply in these cases is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the New York Convention.<sup>70</sup> It is unclear whether the New York Convention even applies in state courts.<sup>71</sup> Part of

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58. COLO. REV. STAT. ANN. §§ 13-22-501–507 (West 2015).

59. *Id.*

60. *Compare Id.*, with GA. CODE ANN. §§ 9-9-30–43 (West 2010).

61. C.R.S.A. § 13-22-504 (West 2015); C.R.S.A. § 13-22-505 (West 2015).

62. *Id.* § 13-22-506.

63. *Id.* § 13-22-507.

64. *See generally* C.R.S.A. §§ 13-22-301–313 (West 2015).

65. William P. Mills, *State International Arbitration Statutes and the U.S. Arbitration Act: Unifying the Availability of Interim Relief*, 13 FORDHAM INT'L L. J. 603, 605 (1989).

66. *Id.*

67. *Volt Info. Scis. v. Bd. Of Trs.*, 489 U.S. 468, 477 (1989).

68. *See Southland Corp. v. Keating*, 465 U.S. 1 (1985); *See also* Christopher R. Drahozal, *Federal Arbitration Act Preemption*, 79 INDIANA L. J. 393 (2004); *See generally* Jill I. Gross, *Over-Preemption of State Vacatur Law: State Courts and the FAA*, 3 J. AM. ARB. 2 (2004).

69. *Fonden v. U.S. Home Corp.*, 85 P.3d 600, 602 (Colo. App. 2003). (Although the FAA preempts inconsistent state law, its preemptive effect is restricted to the question of arbitrability and whether the agreement to arbitrate is valid).

70. *See generally* The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Jun. 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3.

71. Christopher R. Drahozal, *New York Convention and the American Federal System*, THE SYMPOSIUM, 2012 J. DISP. RESOL. 1, 101, 109 (2012).

this confusion stems from the fact that the United States Supreme Court has called the New York Convention “non-executing”, meaning that without proper legislation to implement it across the country, the treaty is not necessarily binding on state courts.<sup>72</sup> Furthermore, the New York Convention is not perfect, and many attorneys have been uncomfortable with its “public policy exception” to enforcing foreign arbitral awards.<sup>73</sup> Attorneys criticize the exception for being too easy to abuse by other states in refusing to enforce foreign awards.<sup>74</sup> The fact is attorneys are not receptive to the idea of opening up their clients to this kind of liability even though the United States has adopted the New York Convention.<sup>75</sup> The states must meet them halfway to get closer to receiving the optimal benefits of international trade, and The Model Law accomplishes this.

Furthermore, Colorado’s case law on the matter is not particularly helpful either. As it stands now, there are absolutely no published Colorado cases that touch on the International Dispute Resolution Act.<sup>76</sup> Clearly, without any cases to help interpret the law, one cannot expect international businesses to take on that level of uncertainty and risk. Perhaps the best critique of states who implement their own regimes instead of the Model Law is from a Pennsylvania State Law Review article in which the authors declare:

The legal regime governing international arbitration in the United States is complex and difficult for newcomers to navigate . . . foreign lawyers and foreign parties, as well as many U.S. judges and lawyers, understandably find it challenging to assess the sometimes intricate relationships between international and domestic arbitration; therefore, the choice among potentially applicable laws and precedents is not always clear.<sup>77</sup>

A report written to the Washington State Foreign Law Society established that while it may not be prudent for the United States government to adopt the Model Law because it would be too general in scope, it would be best for each state do so on an individual basis to cater it to their individual policy concerns and experiences.<sup>78</sup> The same report dis-

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72. See *Medellin v. Texas*, 552 U.S. 491, 521–22 (2008).

73. Joel R. Junker, *The Public Policy Defense to Recognition and Enforcement of Foreign Arbitral Awards*, 7 CAL. W. INT’L. L. J. 228 (1977). (“The public policy defense to enforcement of foreign arbitral awards has been considered the greatest single threat to the use of arbitration in international commercial disputes.”).

74. *Id.*; Moses, *supra* note 21, at 228–29.

75. Wells, *supra* note 20, at 21.

76. I was unable to locate any case law that drew from the International Dispute Resolution Act.

77. George A. Bermann et al., *Restating the U.S. Law of International Commercial Arbitration*, 113 PENN. ST. L. REV. 1333, 1334 (2009).

78. Charles A. Hunnicutt et al., *Report to the Washington Foreign Law Society on the UNCITRAL Model Law on International Commercial Arbitration*, 3 OHIO ST. J. DISP. RESOL. 303, 326, 330 (1987).

cussed how the Model Law “provides helpful rules for dealing with special problems arising from international arbitration,” that the FAA and New York Convention simply do not outline for foreign attorneys and their clients.<sup>79</sup> The point is, the Model Law would placate many of the concerns foreign attorneys have because they already know how the Model Law interacts with the New York Convention, and they would be more inclined to advise a client to do business in a state that has incorporated it. The case studies on Washington and Georgia below reinforce that claim.

### *Case Studies*

In 1985, United Nations Commission on International Trade Law, or UNCITRAL, adopted the Model Law on International Commercial Arbitration.<sup>80</sup> In 2006, UNCITRAL amended the law to include more provisions on interim measures.<sup>81</sup> As of today, at least 100 jurisdictions and 70 recognized countries have adopted the Model Law.<sup>82</sup> In the United States, only nine states have adopted the Model Law.<sup>83</sup> Unsurprisingly, these nine states are all coastal states. Therefore, from the onset there is a considerable factor to take into account when comparing these states to Colorado, which is a double landlocked state. Therefore, in order to do the analysis justice, I chose one state whose largest, most economically proficient city was not its port city. Texas, California, and Florida are too large both in terms of population and in terms of economy to truly compare to Colorado.<sup>84</sup> Connecticut, Illinois, and Louisiana’s largest cities also happen to be port cities, and so that comparison would be flawed.<sup>85</sup> That would just leave Georgia, Washington, and Oregon. Considering these factors, Georgia is perhaps the best state to compare to Colorado because its largest city, Atlanta, is landlocked much like Denver. While Georgia includes a port at Savannah, the city is not in any way the state’s main economic driver.<sup>86</sup> Furthermore, Georgia is a recent adopter of the Model Law, making it the best indicator for the effects on a modern

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79. *Id.* at 327.

80. UNCITRAL, *supra* note 4.

81. *Id.*

82. *Status UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006*, UNCITRAL, [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/1985Model\\_arbitration\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html) (last visited Dec. 15, 2015).

83. *Id.* (in order of their adoption: California, Connecticut, Texas, Oregon, Illinois, Louisiana, Florida, and Georgia. Washington has also adopted the model law, but the UNCITRAL website has yet to include them officially).

84. *See generally* Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2013 more information 2013 *Population Estimates*, AM. FACT FINDER, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visit Dec. 5, 2015).

85. *Consider* Bridgeport, Chicago, and New Orleans, respectively.

86. *Compare* SAVANNAH AREA CHAMBER OF COM., SAVANNAH 2014 ECONOMIC TRENDS, (Jan. 2014), [http://www.savannahchamber.com/images/userfiles/2014\\_economic\\_trends.pdf](http://www.savannahchamber.com/images/userfiles/2014_economic_trends.pdf), *with Metro Atlanta Unites to Boost Exports*, 20 METRO ATLANTA ECON. BRIEFING 8 (Feb. 2015).

economy. Georgia adopted the Model Law in 2012, allowing enough time for data before and after the adoption to accumulate for study.<sup>87</sup>

With all of that said, Atlanta is gargantuan, representing the ninth largest metro area in the United States.<sup>88</sup> Furthermore, regionally Georgia is drastically different from Colorado, with a completely different demographic makeup.<sup>89</sup> Therefore, it would be ideal to also examine either Washington or Oregon. Both states are comparable to Colorado in terms of demographic makeup, relative size physically and economically, and in their respective cultures.<sup>90</sup> However, when it comes down to choosing between them, Washington is a better comparison. Washington just adopted the Model Law in July 2015.<sup>91</sup> The addition is so recent that the UNCITRAL website has yet to add Washington to its list of United States that have adopted it.<sup>92</sup> In addition, Seattle is very comparable to Denver. Both feature heavy tech industries, young cultures, and similar demographic makeups. Washington is a relatively mountainous state with some mining<sup>93</sup> and agricultural<sup>94</sup> industries much like Colorado. Oregon shares this feature with both states as well,<sup>95</sup> but its economy and the relative size of Portland make it a weaker comparison than Washington.<sup>96</sup>

Considering all of these factors, two case studies into Washington and Georgia's adoptions of the Model Law will be the best states to help prove Colorado's case for adopting the Model Law. Both states share elements with Colorado the other does not, allowing for a complete analysis. In the cases of Washington and Georgia, both states have adopted the Model Law with near unanimous consensus in their state legislatures

87. *Status, supra* note 82.

88. *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014 - United States -- Metropolitan and Micropolitan Statistical Area Estimates*, U.S. CENSUS BUREAU, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Dec. 14, 2015).

89. *Colorado v. Georgia*, INDEX MUNDI, <http://www.indexmundi.com/facts/united-states/quick-facts/compare/colorado.georgia> (last visited Dec. 14, 2015).

90. *Compare Colorado v. Oregon*, INDEX MUNDI, <http://www.indexmundi.com/facts/united-states/quick-facts/compare/colorado.oregon> (last visited Dec. 14, 2015), with *Colorado v. Washington*, INDEX MUNDI, <http://www.indexmundi.com/facts/united-states/quick-facts/compare/colorado.washington> (last visited Dec. 14, 2015).

91. See Wash. St. Legislature, *History of Bill: SB 5227*, WA.GOV, <http://app.leg.wa.gov/dlr/bills/summary/default.aspx?year=2015&bill=5227> (last visited Dec. 10, 2015).

92. *Status, supra* note 82.

93. *The Mining Industry in Washington, 2012*, THE NATIONAL MINING ASSOCIATION, <http://www.nma.org/pdf/states/econ/wa.pdf> (last visit Apr. 15, 2016).

94. *Agriculture: A Cornerstone of Washington's Economy*, WASHINGTON STATE DEPARTMENT OF AGRICULTURE, <http://agr.wa.gov/aginwa/> (last visit Apr. 15, 2016).

95. *Did You Know? OREGON FARM BUREAU*, <http://oregonfb.org/about/oregon-agriculture/> (last visit Apr. 15, 2016); *The Mining Industry in Oregon, 2012*, THE NATIONAL MINING ASSOCIATION, <http://www.nma.org/pdf/states/econ/or.pdf> (last visit Apr. 15, 2016).

96. See *generally* Colorado vs. Oregon, INDEXMUNDI, <http://www.indexmundi.com/facts/united-states/quick-facts/compare/colorado.oregon> (last visit Apr. 15, 2016).

and little opposition through the legislative process. Both states have seemingly benefitted from the passage of the laws, and provide good experiences and rationales for Colorado's lawmakers to heed.

#### Case Study – Washington State

Washington adopted the Model Law on May 18, 2015, but it only became effective on July 24, 2015.<sup>97</sup> Because the adoption was so recent, there would be no point in analyzing the current economic effects of the law's passage. Still, the rationale for the legislature's adoption is worth analyzing, and provides a compelling argument for why Colorado should do the same sooner rather than later.

The bill was presented on January 15<sup>th</sup>, 2015.<sup>98</sup> Four state senate Republicans sponsored the bill.<sup>99</sup> After it was originally read, SB 5227 was immediately referred to the Senate's Law & Justice Committee.<sup>100</sup> The Committee first reviewed the bill during a public hearing on January 29, 2015.<sup>101</sup> To accompany the hearing, the committee prepared a report.<sup>102</sup> That report noted that SB 5227 emulated the UNCITRAL Model Law and summarized the bill's purpose and effects.<sup>103</sup> Furthermore, it clearly noted that implementing the new law would not require fiscal review, nor appropriation, nor need a task force to review or implement the law.<sup>104</sup> During the hearing, testimony was given by various proponents, summarized by the committee as the following:

This bill will be good for business. Adopting it will allow Washington to be a forum for international commercial arbitrations. The businesses do not have to be Washington companies to come to Washington and hold their arbitration. Washington is a convenient site location. This bill is also good from a legal perspective. The bill provides a legal basis for hosting international arbitration without undue burden on Washington's courts. It gives flexibility to hold an international arbitration in any Washington county; it has reasonable controls, sets reasonable boundaries. For example, a dispute between an Asian manufacturer and a European distributor could be resolved in Seattle. Other international venues are marketing their locations as a host, why not us?<sup>105</sup>

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97. *History of Bill: SB 5227*, *supra* note 91.

98. *Id.*

99. *Id.*; *See also* Wash. State. Legislature, *Senators*, WA.GOV, <http://leg.wa.gov/Senate/Senators/Pages/default.aspx> (last visited Dec. 4, 2015).

100. *History of Bill: SB 5227*, *supra* note 91.

101. *Id.*

102. MELISSA BURKE-CAIN, SENATE BILL REPORT SB 5227: AN ACT RELATING TO INTERNATIONAL COMMERCIAL ARBITRATION (WASH. JAN. 28, 2015). <https://app.leg.wa.gov/CMD/Handler.ashx?MethodName=getdocumentcontent&documentId=C31BGiJwHvs&att=false>.

103. *Id.*

104. *Id.*

105. MELISSA BURKE-CAIN, SENATE BILL REPORT SB 5227: AN ACT RELATING TO INTERNATIONAL COMMERCIAL ARBITRATION (Wash. Feb. 2, 2015),

There was no testimony offered against the bill.<sup>106</sup> On February 11, the committee unanimously advised that the law pass the Senate.<sup>107</sup> On March 4, SB 5227 passed the final reading with a clear majority, and the committee submitted the bill to the state House for further review.<sup>108</sup>

On March 6, the bill arrived in the House and was immediately submitted to the House Judiciary Committee.<sup>109</sup> Interestingly enough, the report submitted to the House Judiciary Committee made no mention of the UNCITRAL Model Law, although the text of SB 5227 still clearly followed that of the Model Law.<sup>110</sup> Nevertheless, the House Judiciary Committee also unanimously advised that the bill pass the House on March 26, 2015.<sup>111</sup> Finally, on April 15, SB 5227 was put up for a third reading and final vote, where every one of the House's 98 members voted for the bill.<sup>112</sup> During that entire process, no representative edited the bill at any point, and the representatives found little to no opposition throughout the process.<sup>113</sup> In fact, the bill was so popular that both the House and Senate suspended the rules to expedite it to its final vote in each chamber.<sup>114</sup> Thus far, there has been no commentary, positive or negative, regarding the law since its passage.

While the UNCITRAL website has yet to include Washington as an adopter of the Model Law, the law clearly follows the format and structure of the Model Law. Furthermore, the first report regarding the bill made a clear mention of its influence by the Model Law.<sup>115</sup> Strangely enough, after it passed the Senate and House, the final bill's report referred to the Model Law merely as "the law."<sup>116</sup> It could be that there were some in the state legislature who were averse to adopting anything that came from the United Nations, but that is merely conjecture at this point. While it is inexplicable why that specific nuance was removed from subsequent reports to the legislature's chambers and committees, the end result is still the same—a bill that drew considerably from the Model Law flew through the Washington legislature in a span of sixty-two work days with little to no opposition or debate.<sup>117</sup> This was during a

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<http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/5227%20SBA%20LAW%2015.pdf>.

106. *Id.*

107. *History of Bill: SB 5227, supra* note 91.

108. *Id.*

109. *Id.*

110. *See Id.; See also Burke-Cain, supra* note 102.

111. *History of Bill: SB 5227, supra* note 91.

112. *Id.*

113. *Id.*

114. *Id.*

115. *See Burke-Cain, supra* note 105.

116. FINAL BILL REPORT: S.B. 5227-C 276 L 15 (Wash. 2015), <http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/5227%20SBR%20FBR%2015.pdf>.

117. *History of Bill: SB 5227, supra* note 91.

“short” legislative session for the Washington legislature.<sup>118</sup> To introduce and pass a bill that quickly without any significant obstacles beyond parliamentary procedure, which the legislature also suspended at times, is certainly a notable feat. Especially a bill that the minority party exclusively sponsored.<sup>119</sup>

There is a variety of reasons to explain why the bill was so successful. For one, the legislature introduced a similar bill during the previous session in 2014, where it did not make it to a hearing in the Senate.<sup>120</sup> As a result, when the Senate reintroduced the bill as SB 5227 at the debut of the 2015 session, there must have been a renewed sense of urgency for many of its proponents to get the bill through. Second, the Washington State Bar Association, or WSBA, wrote a compelling report arguing for the passage of the law.<sup>121</sup> The WSBA adamantly declared that Washington was hopelessly falling behind its neighbors without the Model Law.<sup>122</sup> It backed this up by explaining that, “international companies typically choose to arbitrate in a country or state that has adopted the model UNCITRAL Act because the model Act provides an attractive framework for arbitrating such disputes and its procedures are internationally understood and accepted.”<sup>123</sup> It also stipulated that the state’s domestic act was not suitable as a substitute for the Model Law, instead serving as a barrier to foreign direct investment.<sup>124</sup> Finally, the report noted that the law accumulated significant support from various institutions while lacking any known opposition.<sup>125</sup>

Ultimately, the implementation of the law had no real risk and carried a high opportunity cost for every day the legislature did not implement it. The House was cognizant of the substantial economic benefits the state could earn from implementing these laws with no risk.<sup>126</sup> It even establishes that every international commercial arbitration that did not

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118. See generally *Dates of 2015 State Legislative Sessions*, BALLOTPEDIA.ORG, [https://ballotpedia.org/Dates\\_of\\_2015\\_state\\_legislative\\_sessions](https://ballotpedia.org/Dates_of_2015_state_legislative_sessions).

119. See *Washington State Legislature: Partisan Composition*, BALLOTPEDIA.ORG, [https://ballotpedia.org/Washington\\_State\\_Legislature#Partisan\\_composition](https://ballotpedia.org/Washington_State_Legislature#Partisan_composition) (last visited Dec. 14, 2015).

120. See AN ACT RELATING TO INTERNATIONAL COMMERCIAL ARBITRATION, H.B. 2169 (Wash. 2014), <http://lawfilesexternal.leg.wa.gov/biennium/2013-14/Pdf/Bill%20Reports/House/2169%20HBR%20APH%2014.pdf> ashx (last visited Dec. 10, 2015) (The bill passed the House 95 to 2).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. AN ACT RELATING TO INTERNATIONAL COMMERCIAL ARBITRATION, H.B. REPORT 1070 (WASH. 2014), <http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/House/1070%20HBR%20JUDI%2015.pdf>.

occur in Washington cost the state about two million dollars in revenue.<sup>127</sup>

While there is no official reason SB 5227 rapidly and implacably became the Washington International Commercial Arbitration Act, there are many plausible reasons to support its passage and no real evidence of a good argument for not passing it. Considering the recentness of its passage, Colorado can stand to learn from Washington's treatment of the bill today. If anything, Colorado is better suited to adopt the law because at the moment, there is a lack of nearby competition for Colorado. None of the Rocky Mountain States have incorporated the Model Law. This is also the case for the nearby plains states. The only competition close enough to Colorado is Washington, Illinois, and Texas. Surely, by considering Washington's story, Colorado could stand to lead this part of the nation and reap considerable benefits for its constituents.

#### Case Study – Georgia

In 2010, Georgia found itself in a position that is very similar to Colorado's today. It too had some semblance of an international arbitration law that struggled to attract foreign investors. In fact, Georgia's old law accomplished more than Colorado's current law.<sup>128</sup> Meanwhile, its neighbor and rival, Florida, went ahead and adopted the Model Law.<sup>129</sup> It is no secret among international commercial arbitration attorneys that Miami is the second most arbitrated-in city behind New York City.<sup>130</sup> While there may have been some Georgians who were content with the old law, many felt Florida's dominance in the span of a year, and immediately recognized they must do something to keep Georgia relevant in the Southeast. The old law comprised of thirteen articles, only eleven of which were really operative, and worked in conjunction with the domestic arbitration law.<sup>131</sup> Much like Colorado, these laws did not resemble the Model Laws, and it was unclear how they interacted with federal and treaty law.

Enter February of 2012, when four Republicans and one Democrat presented a bill based on the Model Law to the Georgian Senate.<sup>132</sup> The bill more or less emulated the Model Law, while also repealing the then-existing international commercial arbitration law. On February 6, 2012, the legislature referred the bill, SB 383, to the Senate's Judiciary Committee.<sup>133</sup> The committee had made several favorable remarks regarding

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127. *Id.*

128. GA. CODE ANN. §§ 9-9-30–43 (West 2010).

129. *Status*, *supra* note 82.

130. Wells, *supra* note 20, at 6–7.

131. GA. CODE ANN. § 9-9-30 (West 2010).

132. Ga. Gen. Assembly, *2011-2012 Regular Session - SB 383*, GA.GOV, <http://www.legis.ga.gov/Legislation/en-US/display/20112012/SB/383> (last visited Dec. 12, 2015).

133. *Id.*; *See also Minutes of the Senate Judiciary Committee*, 2012 Session (Ga. Jan. 11, 2012), <http://www.senate.ga.gov/committees/Documents/2012Minutes80.pdf>.

the adoption of the Model Law. The committee believed that its adoption could make Georgia a center for international dispute resolution in the Southeast, encourage foreign companies to do business in Georgia, boost overall economic development and tourism in the state, and decrease the cost of doing business internationally for local businesses.<sup>134</sup> Several distinguished members of the Georgian community including representatives from the Georgian Bar, Georgia State University, various chambers of business, and JAS worldwide, gave testimony.<sup>135</sup> With no opposing testimony, the committee unanimously advised the Senate to pass SB 383.<sup>136</sup> By February 22, 2012, the Senate had passed the bill without a single nay vote and sent it to the House.

When it arrived, the bill was also submitted to the House's Judiciary Committee.<sup>137</sup> The Judiciary Committee also favorably advised passage of SB 383 in the House.<sup>138</sup> By March 26, 2012, the House had passed the bill without any edits with 159 votes for and three opposed.<sup>139</sup> The governor signed the bill on May 2, 2012, and it became effective on July 1, 2012.<sup>140</sup> Much like in the Washington case, the bill flew through the Georgian Legislature. In a span of thirty-five workdays, the bill had passed.<sup>141</sup> If that does not suggest any sense of urgency in overturning the previous law and implementing a better, more favorable law to international investors, it is difficult to imagine what does.

The summary of the law in the 2012 session laws further illustrates evidence of that sense of urgency. The session laws summarized that, "this bill updates and modernizes Georgia's International Commercial Arbitration Code by separating the international code from the domestic process. It provides for the procedural parameters to apply in international arbitration and for court intervention if necessary."<sup>142</sup> An implication of the diction used demonstrates that among those in the Georgian legislature, there was a sense that the previous law was archaic, out-of-date, and dysfunctional. Many other reasons for the desire to pass such legislation likely parallel to that discussed in the Washington case: no risk, high reward, as well as ample support domestically and internationally.<sup>143</sup>

Unlike the Washington case, however, Georgia has had a little under three years to observe the results of its new law. Since the adoption

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134. *Id.*

135. *Id.*

136. *Id.*

137. Ga. Gen. Assembly, *supra* note 132.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. Senate Research Office, 2012 SESSION OF THE GEORGIA GENERAL ASSEMBLY LEGISLATION PASSED, S.B. 383 at 35 (July 1, 2012), <http://www.senate.ga.gov/sro/Documents/Highlights/2012Highlights.pdf>.

143. *Id.*

of the law, Georgia has seen the creation of an international arbitration institution,<sup>144</sup> an international commercial arbitration program at Georgia State University,<sup>145</sup> and local law firms pushing for the application of the law through their clients.<sup>146</sup> However, there are some tangible economic indicators to examine as well. In 2010, Georgia only brought in 747 million dollars in foreign direct investment, down roughly thirty percent from the previous year.<sup>147</sup> Florida happened to enact its own international commercial arbitration laws in 2010 as well. Florida experienced a twenty-three percent increase in foreign direct investment from the previous year.<sup>148</sup> Similarly, in 2012 Georgia saw a shocking increase in foreign direct investment from the previous year. In 2012, Georgia brought in 2.82 billion dollars in foreign direct investment, a forty-two percent increase from the previous year.<sup>149</sup> While there are many factors that could have prompted the increases in Florida and Georgia, the adoption of friendly international commercial arbitration laws had to be one of them.

The continuous increase in the Georgian GDP, is another indicator of the law's success. At the close of 2012, Georgia's GDP increased by four percent from the previous year.<sup>150</sup> By the close of 2013, Georgia's GDP increased by 4.4% of 2012's total.<sup>151</sup> More precisely, there was a two percent increase in Georgia's GDP between June 2012 and January 2013, and a three percent increase between June 2012 and August 2013.<sup>152</sup>

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144. See generally Atlanta International Arbitration Society, *Setting Sail with International Arbitration*, Sept. 30, 2015, ARBITRATEATLANTA.ORG, <http://arbitrateatlanta.org/events/setting-sail-with-international-arbitration/> (last visited Dec. 11, 2015).

145. See generally Georgia State University College of Law, *Summer Academy in International Commercial Arbitration*, GSU.EDU, <http://law.gsu.edu/international-programs/saiica/> (last visited Dec. 10, 2015).

146. See generally Stites and Harrison PLLC, *International Arbitration in Atlanta*, STITES.COM, <http://www.stites.com/learning-center/legal-updates/international-arbitration-in-atlanta> (last visited Dec. 10, 2015); King & Spalding, *Enactment of the New Georgia International Commercial*

*Arbitration Code Solidifies Atlanta's Status as a Hub for International Arbitration*, KSLAW.COM (June 5, 2012), <http://www.kslaw.com/imageserver/KSPublic/library/publication/ca060512.pdf>; *Georgia Seeks to be Arbitration Center for International Business Disputes*, SAPORTAREPORT.COM (July 7, 2013), <http://saportareport.com/georgia-aiming-to-be-an-arbitration-center-for-international-business-disputes/>.

147. Georgia USA, *International Investment*, GEORGIA.ORG, <http://www.georgia.org/business-resources/international-investment/> (last visited Dec. 10, 2015).

148. *Top 5 Reasons to do Business in Florida*, FLORIDATREND.COM, <http://www.floridatrend.com/article/1248/2-global-hub> (last visited Dec. 10, 2015).

149. Georgia USA, *supra* note 147.

150. Federal Reserve Bank of St. Louis, *Total Gross Domestic Product for Georgia*, STLOUISFED.ORG, <https://research.stlouisfed.org/fred2/series/GANGSP> (last visited Dec. 10, 2015).

151. *Id.*

152. U.S. Dept. of Commerce, *Regional Data*, BEA.GOV, <http://www.bea.gov/iTable/iTableHtml.cfm?reqid=70&step=10&isuri=1&7003=200&7035=-1&7004=naics&7005=-1&7006=13000&7036=-1&7001=5200&7002=5&7090=70&7007=2015,2014,2013,2012,2011,2010,2009&7093=levels> (last visited Dec. 11, 2015).

While the sharp increases in foreign direct investment and GDP do not necessarily prove a causality between the law's passage and an increase in Georgia's economic output, it certainly demonstrates a correlation that validates the law as a conspicuous factor in that positive growth. However much like Washington, Georgia suffers from direct competition with its neighbors. Florida has been the more successful state in terms of growth and output, and has made it difficult for Georgia to reap the full benefits of its newly amended law due to the competition. Nevertheless, that still does not negate the level of success experienced by Georgia in recent years.

As explained in the Washington case study, Colorado does not have any competition for international dispute resolution in its immediate area. Being the first landlocked state to implement the Model Law would likely allow it to profit substantially more than its coastal counterparts. Furthermore, much like Georgia, Colorado currently sports international dispute resolution law that is archaic, out-of-date, and dysfunctional; and therefore, can stand to update and modernize them. Colorado is a young state that is not as established as other states in the international economy, and can appeal to investors who recognize the lack of significant international competition in Colorado relative to other Model Law states. Overall, Colorado should consider Georgia's treatment of the Model Law and adopt it as soon as possible to become a clear leader in the Rocky Mountain and Plains regions.

#### CONCLUSION

Overall, Colorado is well positioned to adopt the Model Laws. With its current international commercial arbitration regime serving as an obstacle to international businesses that want to come to Colorado, there is no benefit to maintaining laws that are archaic, out-of-date, and dysfunctional.

Adopting the Model Law can be the opportunity of the century for Colorado, and there is plenty of reason to believe the Model Law will attract more foreign direct investment than before. Colorado features phenomenal administrative resources to help network local businesses to international ones on a cyber and "telecommunicative" level. Then, those businesses can connect in person practically anywhere in the state whether it is by train, car, or plane. Those same forms of transportation will facilitate any future business relationship between those businesses, and they will be able to eventually grow and exploit the entire Rocky Mountain region's consumers.

This is the kind of reality Colorado is already finding itself in today, but the benefits could be felt sooner if the Model Law is adopted in Colorado. The obfuscated, dichotomous relationship between state and federal arbitration law is unappealing to many foreign attorneys and businesses, and the risks of taking those on for many international businesses is

simply too risky. Instead, the Model Law is something familiar to them, with so many countries having adopted it to date. Its relationship with the New York Convention is well understood, and there is no reason to believe that adopting it would deter any investors at least in the arbitration realm.

Colorado must learn from the experiences of Georgia and Washington, two states that have recently adopted the Model Law to varying success. In the case of Washington, Colorado can learn from the many positions taken up by the state legislatures various committees and members and recognize that this is the kind of bill that can garner overwhelming support and little opposition. One could say the same for Georgian experience, with the added benefit of observing their upward trajectory economically since the passage of the new law. Georgia's economy continues to improve every day and it is beginning to flex its international arbitration muscles in its competition with Florida. Unlike Washington or Florida, Colorado has no immediate competitors in the field today. Colorado could become a leader in bringing international commercial arbitration, if not international business, to the Rocky Mountain region.

Denver is a hotbed of growth lately, and with another recession believed to be on the way, what better way to lessen the blow than by opening up the state to more economic possibilities with the Model Law? Adopting the law is virtually free for the state, carries no real risk, and comes packaged with an improved economy. The fact of the matter is, the current laws do not work for Colorado, and the Model Law will.

*James Harmoush*