

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

By Albert Jan van den Berg

Hanotiau & van den Berg, Brussels, Belgium

President, Netherlands Arbitration Institute

Professor at law, Erasmus University, Rotterdam

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (the New York Convention), is described as the most successful treaty in private international law. It is adhered to by more than 140 nations. The more than 1,400 court decisions reported in the *Yearbook: Commercial Arbitration* show that enforcement of an arbitral award is granted in almost 90 per cent of the cases.

The Convention was established as a result of dissatisfaction with the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927. The initiative to replace the Geneva treaties came from the International Chamber of Commerce (ICC), which issued a preliminary draft convention in 1953. The ICC's initiative was taken over by the United Nations Economic and Social Council, which produced an amended draft convention in 1955. That draft was discussed during a conference at the United Nations Headquarters in May-June 1958, which led to the establishment of the New York Convention.

The following briefly describes the two basic actions contemplated by the New York Convention.

The first action is the recognition and enforcement of foreign arbitral awards, i.e., arbitral awards made in the territory of another State. This field of application is defined in article I. The general obligation for the Contracting States to recognize such awards as binding and to enforce them in accordance with their rules of procedure is laid down in article III. A party seeking enforcement of a foreign award needs to supply to the court: (a) the arbitral award; and (b) the arbitration agreement (article IV). The party against whom enforcement is sought can object to the enforcement by submitting proof of one of the grounds for refusal of enforcement which are limitatively listed in article V, paragraph 1. The court may on its own motion refuse enforcement for reasons of public policy as provided in article V, paragraph 2. If the award is subject to an action for setting aside in the country in which, or under the law of which, it is made ("the country of origin"), the foreign court before which enforcement of the award is sought may adjourn its decision on enforcement (article VI). Finally, if a party seeking enforcement prefers to base its request for enforcement on the court's domestic law on enforcement of foreign awards or bilateral or other multilateral treaties in force in the country where it seeks enforcement, it is allowed to do so by virtue of the so-called more-favourable-right-provision of article VII, paragraph 1.

The second action contemplated by the New York Convention is the referral by a court to arbitration. Article II, paragraph 3, provides that a court of a Contracting State, when seized of a matter in respect of which the parties have made an arbitration agreement, must, at the request of one of the parties, refer them to arbitration.

In both actions, the arbitration agreement must satisfy the requirements of article II, paragraphs 1 and 2, which include, in particular, that the agreement be in writing.

The influence of the New York Convention on the development of international commercial arbitration has been phenomenal. The New York Convention solidified two essential pillars of the legal framework by providing for the obligatory referral by a national court to arbitration in the event of a valid arbitration agreement and for the enforcement of the arbitral award. The Convention provided impetus to the hugely successful UNCITRAL Arbitration Rules of 1976 and the UNCITRAL Model Law on International Commercial Arbitration of 1985 (as amended in 2006). The New York Convention is probably the main reason why arbitration is the preferred method for the resolution of international business disputes.

Related Materials

Protocol on Arbitration Clauses, Geneva, 24 September 1923, League of Nations, *Treaty Series*, vol. 27, p. 157.

Convention on the Execution of Foreign Arbitral Awards, Geneva, 26 September 1927, League of Nations, *Treaty Series*, vol. 92, p. 301.

United Nations Commission on International Trade Law: UNCITRAL Arbitration Rules of 1976, General Assembly resolution 31/98 of 15 December 1976.

United Nations Commission on International Trade Law: UNCITRAL Model Law on International Commercial Arbitration of 1985 (as amended in 2006), General Assembly resolution 61/33 of 4 December 2006.