Should an international arbitrator apply the New York Arbitration Convention of 1958?

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1. INTRODUCTION

Pieter Sanders can be considered as one of the Founding Fathers of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958. The history of the Convention goes back to the initiative launched by the International Chamber of Commerce in 1953. The ICC produced a Draft Convention aimed at international arbitral awards. This Draft was followed by a more conservative Draft Convention of the United Nations Economic and Social Council in 1955, which aimed at foreign arbitral awards governed by a national arbitration law. The first week of the subsequent International Arbitration Conference in New York in June 1958, was a Babel of discussion. That weekend, on a Sunday afternoon, Pieter Sanders sat with a typewriter on his knees in the backyard of his father-in-law's house just outside New York. In that one afternoon he managed to draft a new text, the major part of which was adopted in the second week of the Conference and thus became the New York Convention.

Needless to say the New York Convention is now the most important international instrument in the field of international commercial arbitration. At present, almost 60 States are Party to it. Its application has been reported in at least 160 cases in 21 countries.

Pieter Sanders has remained particularly attached to the New York Convention. When he was appointed by the International Council for Commercial Arbitration (ICCA) as General Editor of the *Yearbook Commercial Arbitration*, he decided from the outset in 1976 to devote a separate Part to the court decisions in which the Convention is interpreted and applied. He made the extracts of the court decisions more accessible by writing Commentaries in which the decisions were analyzed and compared, with the purpose of contributing to the international harmonization of judicial interpretations.

It was at this stage in 1976, that I had the honour of becoming Pieter Sanders' assistant and I have never regretted a moment of the five years that I spent as his

* The views expressed in this contribution are the sole responsibility of the author.

assistant. After I had assisted for a while in the editing of the extracts of the court decisions on the New York Convention, Pieter Sanders inspired me to write a thesis on the subject.[1]

One of the questions which I have touched upon in this thesis is whether an international arbitrator should apply the New York Convention.[2] This question has received little attention so far and it was no wonder that Pieter Sanders, always exploring new things, inquired about it at the public defence of the thesis in Rotterdam on September 18, 1981. Not being bound here by the time-constraints of a public defence of a thesis, I thought this contribution would be the appropriate occasion to elaborate my answer. The more so, since the question is, in fact, focused on the intersection of Pieter Sanders' career as a Founding Father of the Convention and a reputed international arbitrator.

2. THE INTERNATIONAL ARBITRATOR AND THE NEW YORK CONVENTION'S PROVISIONS RELATING TO THE ARBITRATION AGREEMENT

2.1 Preliminary

One may wonder what an arbitrator has to do with the New York Convention: the Convention is written for the courts as it is concerned with the recognition and enforcement of arbitration agreements and awards on an international level. Yet, the Convention may be incidentally relevant to the competence of an international arbitrator since the Convention contains provisions relating to the arbitration agreement.

It is this aspect with which I would like to deal in this part of my contribution. In Part 3 I will go into the question whether an international arbitrator should also observe those provisions of the Convention which do not relate to the arbitration agreement.

2.2 The Convention's provisions relating to the arbitration agreement

At the outset, a brief review may be made of the Convention's provisions concerning the arbitration agreement. These provisions are mainly contained in Article II of the Convention.

The first paragraph of Article II provides:

'Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.'

1. Albert Jan van den Berg, *The New York Arbitration Convention of 1958* (Deventer, 1981).
2. *Ibid* pp. 185-190.

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The definition of an arbitration agreement in writing can be found in the following paragraph 2, reading:

'The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.'

Pieter Sanders has, in my opinion rightly, stated that this provision constitutes a uniform rule which supersedes national law in respect of the form of the arbitration agreement for those cases in which the agreement falls under the New York Convention.[3]

We come then to the third paragraph of Article II which provides for recognition and enforcement of the arbitration agreement. It states:

'The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.'

This provision requires that a court must refer the parties to arbitration if an action is commenced before it in respect of a subject matter which is the same as that on which the parties have made an arbitration agreement, and one of the parties so requests. It subjects the referral to two conditions. First, the arbitration agreement must be an agreement within the meaning of 'this article', which incorporates the requirements of paragraphs 1 en 2 quoted above. Second, the agreement should not be 'null and void, inoperative or incapable of being performed'.

Finally, as far as the arbitration agreement is concerned, Article V, para. 1 under *a* should be mentioned. That provision states that enforcement of the arbitral award may be refused if the party against whom enforcement is sought proves that:

'the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made'.

This provision deals, in the first place, with the capacity of the parties to an arbitration agreement. How the law applicable to a party is to be determined is not mentioned by ground *a*, so that it must be deemed to be left to the conflict of laws rules of the forum.

In the second place, ground *a* contains conflict rules for determining the validity of the arbitration agreement. The law applicable to the arbitration agreement is relevant for those aspects for which the New York Convention does not provide uniform rules. I will not discuss the conflict rules of Article V, para. 1 under *a*, which are in turn also uniform rules, that is to say, they supersede the conflict rules of the forum. It may suffice to say that, although the text of the Convention

3. 'Commentary', in *Yearbook Commercial Arbitration* Vol. VI (1981) p. 202 at p. 206.

mentions the conflict rules in the context of the enforcement of the arbitral *award* only, it can be argued that they apply at the stage of the recognition and enforcement of the arbitration agreement pursuant to Article II, para. 3, as well.[4]

2.3 The Convention, the courts and the international arbitrator

It is a general legal principle, also in international commercial affairs, that the competence of the courts is the rule, and the competence of the arbitrators the exception for solving disputes. Of course, empirically, on the international commercial level the order is reversed, but this phenomenon has not (yet?) been transposed into the national legal systems.

The above principle has two aspects. First, the exception is permitted only on the basis of a valid arbitration agreement by the parties. Second, the courts have generally retained the last word about the exclusion of their competence, and hence about the validity of the arbitration agreement.

However, the arbitrator may express an opinion on the validity of the arbitration agreement. In fact, it is his first task to examine his competence and to this effect to examine the validity of the arbitration agreement. If he finds that the agreement is valid, he may proceed with the arbitration, subject to a subsequent control by the courts which is usually exercized in an action for setting aside the award in the country where the award is made (the country of origin) or in an enforcement procedure in another Contracting State under the New York Convention (Art. V, para. 1, ground *a*, quoted above).

The crucial question in this connection is *how* an international arbitrator examines the validity of the arbitration agreement. It is usually assumed that he should make this examination on the basis of the law which he determines to be applicable to the arbitration agreement. This would ordinarily not include the New York Convention's provisions concerning the arbitration agreement.

It is submitted that this type of examination does not take full account of the very reason of the examination. The reason of the examination is whether he is regularly vested with competence vis-à-vis the courts, his competence being the exception and that of the courts the rule. *He should therefore rather examine whether a court would refer the parties to arbitration if it were seized of the dispute.* The court's examination cannot be limited to the applicable law: if the agreement falls under the New York Convention, the court must take into account the Convention's provisions concerning the arbitration agreement. Whereas a court must do so, an international arbitration should, in my opinion, do the same.

It may be argued, that as a matter of practice, such examination by an arbitrator is too far-reaching as he should not be forced to sit in the chair of a judge. Moreover, he should not be burdened with the difficult task of finding out which court would have been competent.

As regards the first objection, it may be pointed out that if an international

4. *Ibid*, at p. 211.

arbitrator is of the opinion that he is not bound to apply the Convention's provisions relating to the arbitration agreement, a party can still approach the court with the question of the validity of the arbitration agreement under the Convention. That party may approach the court by means of initiating an action on the merits in which case the other party will probably invoke Article II, para. 3, of the Convention. In my opinion, a party may also use a simpler procedure by asking the court for a declaratory judgment about the validity of the arbitration agreement under the Convention. Article II, para. 3, can be deemed to apply by analogy to this type of action as well.

As regards the second objection, it is submitted that an international arbitrator can dispense with this inquiry – which, indeed, is sometimes difficult – because the New York Convention has been adhered to by almost 60 States. The international arbitrator may therefore safely assume that the 'otherwise competent court' is located in a country which is Party to the Convention and in which the courts have to apply the Convention, in those cases in which the arbitration agreement comes within its purview.

An example may clarify the consequences of the international arbitrator's duty to apply the Convention's provisions relating to the arbitration agreement.

According to Articles 1341 and 1342 of the Italian Civil Code an arbitral clause or standard conditions must be specifically approved in writing, that is to say, a specific signature of the parties for the arbitral clause in addition to the contract in general. Such a requirement is not imposed by Article II, para. 2, of the Convention. If the arbitration agreement were governed by Italian law and the Convention were not be applied, the agreement would be invalid, and, hence, the arbitrator incompetent. If the Convention were applied to the same agreement, the uniform rule character of Article II, para. 2, would preclude the application of Articles 1341 and 1342 of the Italian Civil Code and the validity of the arbitration agreement would be upheld, and, hence, the competence of the arbitrator.

The reverse may of course also occur. The form of the agreement may be valid under the applicable law, but not under Article II, para. 2, of the Convention. The international arbitrator would then be incompetent. But here, as I shall discuss in the following section, Article VII, para. 2, may come to rescue.

2.4 The more-favourable-right-provision of Article VII, para. 1

The principle being that an international arbitrator is obliged to apply the New York Convention, the application may also lead to non-application in appropriate cases. Article VII, para. 1, contains a so-called more-favourable-right (mfr) provision:

> 'The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.'

The New York Convention is not known for its simplicity: reading Article VII, para. 1, one would think that the other more favourable treaty or domestic law may be relied upon only in the case where the enforcement of the *award* is sought. But that may be deemed not to be the case. On the basis of a systematic and textual interpretation, the mfr-provision of Article VII, para. 1, of the Convention may be regarded to apply to the enforcement of the arbitration agreement pursuant to Article II, para. 3, as well. In order not to complicate the subject of this contribution, I will not repeat this interpretation here.[5]

Since a court may apply the mfr-provision in an action for the enforcement of the arbitration agreement, an international arbitrator may do the same. As a consequence, if an arbitrator finds that an arbitration agreement does not meet the requirements of Article II, para. 2, of the Convention regarding the written form of the arbitration agreement, he may, in virtue of Article VII, para. 1, rely on another treaty or, what will be more likely, on domestic law.

At this point it may be asked why an international arbitrator should apply the New York Convention if the Convention permits him to fall back on domestic law. Although this appears to be fodder for theoretical legal acrobats, it may preclude the application of laws which are more demanding regarding the form of the arbitration agreement than Article II, para. 2, of the Convention. Articles 1341 and 1342 of the Italian Civil Code, mentioned in the end of the preceeding section, are an example of this.

2.5 Which international arbitrator has to apply the Convention's provisions relating to the arbitration agreement?

Until now I have referred to the obligation of an *international* arbitrator to apply the Convention's provisions relating to the arbitration agreement, without defining when an arbitrator can be considered international. The question as to when an arbitration can be considered international is still subject to a discussion which would transcend the limits of this contribution.

For the purposes of the present contribution it may suffice to observe that an arbitrator could by analogy adopt the test which may be used by the courts for determining whether an arbitration agreement falls under the Convention in order to qualify for recognition and enforcement in virtue of Article II, para. 3. Unlike the Convention's field application for the enforcement of the arbitral award – i.e., an arbitral award made in the territory of another (Contracting) State (Art. I) – the Convention does not provide a definition in respect of the recognition and enforcement of the arbitration agreement. In the absence of such definition, the following interpretation in this respect may be adopted.[6]

5. *Supra* n. 1, pp. 86-88.
6. See Pieter Sanders' 'Commentary', in *Yearbook Commercial Arbitration* Vol. IV (1979) p. 231 at pp. 237-238. See also my "Commentary" in *Yearbook Commercial Arbitration* Vol. VII (1982), p. 290 at pp. 297-299.

A. If the arbitration is to take place in another (Contracting) State than that in which the agreement is invoked, the Convention applies in all cases.

B. If the agreement is invoked in the State in which the arbitration is to take, or is taking place, the Convention applies (a) if at least one of the parties is a foreign national and/or (b) if the underlying transaction involves a subject matter which has contacts with one or more foreign States.

Category A can obviously not apply to an arbitrator. On the other hand, category B may be adopted by an arbitrator. Thus, if an arbitrator is faced with an arbitration involving at least one party which has a nationality (in its broadest sense) other than the State in which the arbitration is being held, he has to apply the Convention's provisions relating to the arbitration agreement. The same applies for the case where the underlying transaction involves foreign commerce, even if the parties have a nationality which is the same as that of the place of arbitration.

The foregoing is based on the presumption that the arbitration takes place in a country which has adhered to the New York Convention, which is so in the majority of international cases nowadays, the Convention being adhered to by almost 60 States. But what if the exeptional case occurs that an arbitration takes place in a country which has not become a Party to the Convention? Should an international arbitrator in such arbitration apply the Convention? In my opinion, an international arbitrator is *not* bound to apply the Convention in this case.

It may well be that the arbitration excludes the competence of a court located in another country which is a Convention country. Following the theory developed above, he should then be obliged to apply the Convention. However, an international arbitrator has also to take into account the courts of the country in which the arbitration is taking place. These courts may not be the 'otherwise competent' courts in the sense that they would have been competent to deal with the merits of the dispute in the absence of an arbitration agreement. But on the level of the arbitration itself, they have competence to assist the arbitration, e.g., the appointment of the arbitrators, the summoning of an unwilling witness etc. They have also competence about the question whether the arbitration can take place at all within their jurisdiction. To this effect they have to examine the validity of the arbitration agreement. They will examine this question on the basis of the applicable law, without the New York Convention. The international arbitrator then should not be brought into an awkward position whereby in applying the New York Convention, he comes to results which would be different from the courts of the place of arbitration.

2.6 Decided awards

There are not many awards reported in which international arbitrators have considered the New York Convention. As far as it could be researched, they are limited to awards rendered in Bulgaria, FR Germany, and the Netherlands. All these cases involved Article II, para. 2, of the New York Convention concerning

the formal validity of the arbitration agreement. For example, Bulgarian arbitrators held that Article II, para. 2, supersedes the more demanding Articles 1341 and 1342 of the Italian Civil Code.[7]

Only one award could be found in which the arbitrators were of the opinion that they were not bound to apply the Convention. They reasoned that the Convention is only concerned with the enforcement of arbitral awards rendered in another country.[8] 'For convenience sake' the arbitrators omitted to mention that the Convention applies also to the recognition and enforcement of an arbitration agreement pursuant to Article II, para. 3, of the Convention.

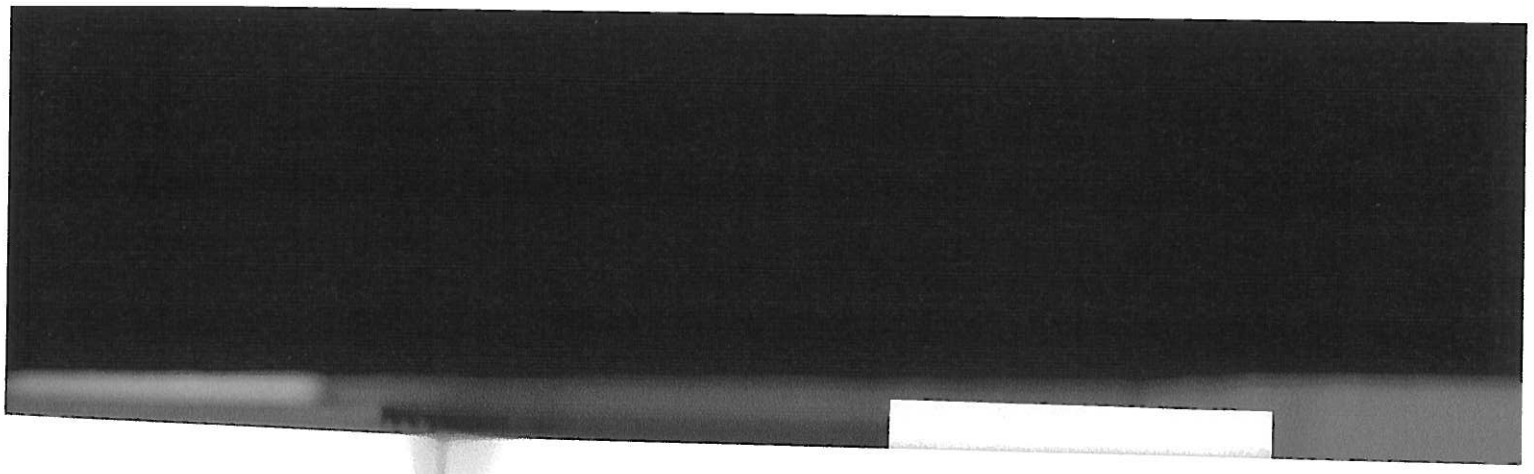
Several of the considerations made in the foregoing sections are illustrated in an award of an arbitral tribunal constituted under the Rules of Arbitration for Overseas Hides and/or Skins of the Netherlands Hide and Leather Exchanges Association in Rotterdam.[9] Before the arbitrators, the Italian party had objected to the competence of the arbitrators, arguing that the arbitral clause in the contract did not have the written form as required by Italian law. The arbitrators rejected this allegation as follows:

> 'However, the formal validity of an arbitral clause in the case as the one at hand involving an Italian and Dutch party, is exclusively governed by Article II, paragraphs 1 and 2, of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, which Convention was acceded to by Italy on January 31, 1969, and was ratified by the Netherlands on April 24, 1964. Article II, paragraph 1, of this Convention requires that the arbitration agreement be in writing. Article II, paragraph 2, provides that 'the term "agreement in writing", shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.' According to the prevailing interpretation by the courts in the various Contracting States, Article II, paragraphs 1 and 2, constitutes an internationally uniform rule for the formal validity of an arbitration agreement, which rule does not leave any room for the applicability of domestic law. Consequently, Articles 806-808 of the Italian Code of Civil Procedure are inapplicable in the present case.
>
> The arbitral clause in question complies with Article II, paragraph 2, of the Convention: Contract no. 546-V is signed by the claimants and is expressly referred to by the defendants by number 546-V in the aforementioned cable of June 5, 1980. This constitutes an exchange in writing within the meaning of Article II, paragraph 2, of the Convention.
>
> It may be added that if the Convention were not to be applied in virtue of its Article VII, paragraph 1, the formal validity of the arbitral clause is still to be upheld. Clause 24.1 of the International Hide & Skin Contract No. 1 provides that 'for the purpose of arbitration, appeal and any other legal proceedings and for the purpose of establishing *formal* and essential validity, this contract *shall be deemed to have been made in the country of the place of arbitration* and to be performed there so that the law of such country shall be the proper law of the contract, any correspondence or reference to the offer, the acceptance, the place of payment, the place of appeal or otherwise notwithstanding.' [emphasis added by the arbitrators]. This clause would lead to the applicability of Dutch law to the contract, including the arbitral clause in question, under which law the arbitral clause is valid beyond any doubt.'

7. Arbitration Court of the Bulgarian Chamber of Commerce and Industry, award of May 12, 1971, published in *Yearbook Commercial Arbitration* Vol. IV (1979) p. 191. See for other awards, *supra* n. 1 at pp. 186-188.

8. Arbitral Tribunal of the Netherlands Oils, Fats and Oilseeds Trade Association (NOFOTA), award of March 20, 1977, published in *Yearbook Commercial Arbitration* Vol. III (1978) p. 225.

9. Award of October 30, 1980, published in *Tijdschrift voor Arbitrage* (Neth.) (1980 no. 6) p. 169 award no. 40.



3. THE INTERNATIONAL ARBITRATOR AND THE OTHER PROVISIONS OF THE CONVENTION

The preceding part was concerned with the question whether an international arbitrator is obliged to apply the Convention's provisions concerning the arbitration agreement. It may now be investigated whether an arbitrator should apply also the other provisions of the Convention, *viz.* the provisions concerning the enforcement of the arbitral award.

These provisions may be dealt with as it can be argued that an international arbitrator is under a duty to render an arbitral award which is capable of enforcement under the New York Convention.[10] This may be regarded as an implied term in the contract which the arbitrator concludes with the parties when he accepts the appointment.

Article III (rules of procedure for enforcement of award) and Article IV (conditions to be fulfilled by party seeking enforcement) are obviously not incidental to an arbitrator or the enforceability of his award. The same can be deemed to apply to the second part of ground *e* of Article V, para. 1 and Article VI, which are concerned with the setting aside of the arbitral award.

On the other hand, an international arbitrator may take heed of ground *b* (due process), ground *c* (arbitrator's authority), and the first part of ground *e* (binding award). However, these provisions can be found in almost all arbitration laws, and, hence, these provisions need not be considered either as they are not specific for the Convention.

Two provisions relating to the enforcement of the award remain to be considered for the present question. The first is the famous ground *d* of Article V, para. 1, which states that enforcement of the arbitral award may be refused if the respondent can prove that:

> 'The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place.'

The opinion has been advanced that this provision would allow parties to 'de-nationalize' the arbitration, i.e., that the parties may agree that the arbitration is not governed by any arbitration law at all, but by their arbitration agreement alone. Leaving aside that 'de-nationalized' arbitration has an uncertain legal status and may not serve the parties' interest in an expeditious and definite adjudication of their dispute, I agree with Pieter Sanders' opinion that the New York Convention is only applicable to arbitral awards which are the result of an arbitration that is governed by a national arbitration law.[11] As far as the enforcement of the award is concerned, ground *d* means merely that the enforcement judge – thus the judge in a Contracting State other than the State in which the

10. See Julian Lew, *Applicable Law in International Commercial Arbitration* (Dobbs Ferry 1978) nos. 158, 271 and 450.
11. 'Commentary', *Yearbook Commercial Arbitration* Vol. VI (1981) p. 202 at ppl. 204-205.

award is made – may not verify the regularity of the composition of the arbitral tribunal and the arbitral procedure under the law of the country of arbitration if the parties have made an agreement on these matters. In the country of arbitration, ground *d* does not apply, simply because the New York Convention is not applicable in this country. The Convention applies only to the enforcement of a foreign award and enforcement of an international arbitration agreement, but not to the stage in between. Thus, in the country of arbitration, no support can be found in the Convention for 'de-nationalized' arbitration, even if the Convention were to provide for such arbitration. Consequently, an international arbitrator need not bother either with ground *d*, and has, in principle, to apply the arbitration law of the country of arbitration.[12]

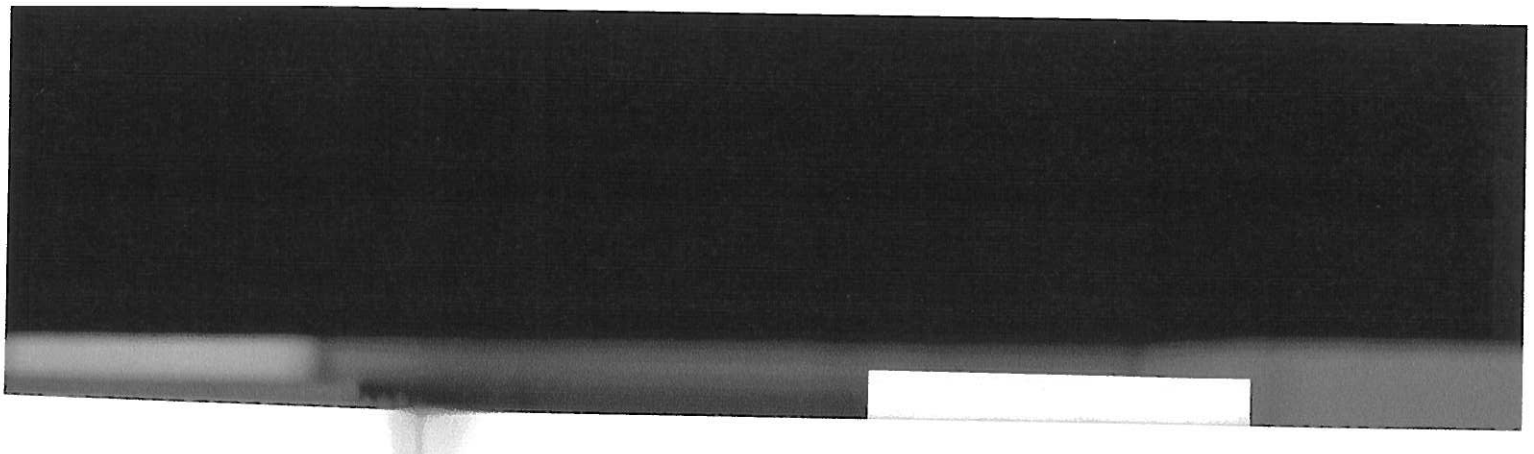
The other remaining provision pertaining to the enforcement is Article V, para. 2, which reads:

> 'Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
> (b) The recognition or enforcement of the award would be contrary to the public policy of that country.'

Article V, para. 2, raises the question whether an international arbitrator should take into account the rules of public policy (of which the arbitrability of ground *a* of Art. V, para. 1, forms part) under the law of the country in which enforcement of the award may be sought. To be clear, an international arbitrator is in principle bound to apply the rules of public policy of the law governing the arbitration (which is usually the law of the country of arbitration). This law may of course distinguish between domestic public policy and the narrower international public policy. The question is whether an international arbitrator must apply *in addition* rules of public policy of the country or countries in which enforcement of his award may be sought.

In my opinion, the duty of an international arbitrator to render an enforceable award does not – or rather cannot – include such obligation because it will be difficult to determine in which country an award may be enforced. It is by no means certain that this country will be the country of the losing party. That party may well have assets out of which the award can be satisfied in several other countries. Even if these countries could be identified to the arbitrator before the award is rendered, a cumulative application of the rules of public policy of several countries would be both impractical and improper. It would be impractical especially because rules of public policy, usually developed by case law with all

12. This applies, in my opinion, also the the exceptional case where the agreement of the parties on the composition of the arbitral tribunal or arbitral procedure deviates from the mandatory provisions of the arbitration law of the place of arbitration. In this case too, the arbitrator must follow the mandatory provisions of the arbitration law despite the fact that for this reason the award may be unenforceable under ground *d* in other Contracting States. For, if the arbitrator would not do so, the award can be set aside in the country of rendition, which in turn may entail the refusal of enforcement under the second part of ground *e* in other Contracting States.



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kinds of subtle distinctions, are difficult to determine. To charge the arbitrator (or the parties) with the burden finding out all the possibly relevant rules of public policy of other countries is bound to result in misapprehension and delays in the arbitration; the arbitrator has already work enough to determine the public policy of his forum. It would also be improper since the application of a rule of public policy of a State in which subsequently, for some reason no enforcement is sought, but which rule is not a rule of public policy of another State in which enforcement is sought, would unnecessarily constrain the arbitral decision.

In other words, an arbitrator is not an appropriate forum for dealing with the public policy of countries other than the country of arbitration. Public policy should, in my opinion, not have an extra-territorial effect.

I am therefore not in favour of certain recent developments according to which the public policy of foreign countries should be applied.[13]

4. CONCLUSION

It may be concluded that an international arbitrator is obliged to apply the Convention's provisions relating to the arbitration agreement. In practice the application will be mainly concerned with the written form of the arbitration agreement as required by Article II, para. 2. However, in virtue of the more-favourable-right provision of Article VII para. 1 of the Convention, an international arbitrator may rely on other treaties or domestic law if that basis is more favourable than the New York Convention. On the other hand, the Convention's provisions relating to the enforcement of the award need not be considered by an international arbitrator.

I am aware of the fact that up to now few international arbitrators have applied the Convention's provisions relating to the arbitration agreement. The view which I have attempted to develop in this contribution does not imply that those international arbitrators who do not apply the Convention's provisions render an award which would be invalid for this reason. It is merely an attempt to lay down what, in my opinion, would for the time being be more proper for an international arbitrator to do with respect to the Convention and may help him in certain cases. I wish to be the last who sounds the tocsin for the Convention which, also thanks to Pieter Sanders' efforts, functions satisfactorily in practice in a considerable number of cases.

13. See art. 7, para. 1 of the European Communities Convention on the Law Applicable to Contractual Obligations, done at Rome on June 10, 1980, Official Journal of the European Communities, No. L 266/1, of October 9, 1980.