ENFORCEMENT OF ANNULLED AWARDS?

By Albert Jan van den Berg*

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The Editor of the Bulletin asked me what I thought of Mr Jan Paulsson's theory on enforcing arbitral awards notwithstanding annulment in the country of origin.[1] My answer was that I found the theory intellectually courageous but difficult to apply from a legal and practical point of view. Having given that answer, I had no choice but to accept the Editor's invitation to write this contribution.

I - ANNULLED AWARDS: GENERAL RULE

Let me first explain what I believe to be the generally accepted rule with respect to annulled awards. The rule is that if an award has been annulled (also called "set aside" or "vacated") in the country of origin (usually the place of arbitration), it cannot be enforced in other countries. This rule exists because of the ground for refusal of enforcement set forth in Article V(1)(e) of the New York Convention: a court may refuse enforcement of an arbitral award if the respondent asserts and proves that the award has been set aside in the country in which, or under the law of which, it was made.

The underlying rationale of the rule is a concentration of judicial control over the arbitral process at the place of arbitration. However "international" a case may be, the arbitration and award are in a vast majority of cases the product of the legal regime governing arbitration at the place of arbitration. That legal regime comprises not only the arbitration law but also the courts. Thus, who would be better suited to decide over the regularity of an arbitration than the courts at the place of arbitration?

The advantage of the rule is that if the award has been set aside in the country of origin, the game is clearly over. A party will refrain from attempting to seek enforcement of the award abroad since it knows that enforcement will be refused under Article V(1)(e) of the New York Convention. Thus, in the case of a questionable award, a party cannot shop around the world in order to find a flexible court somewhere which is willing to enforce such an award.

Enforcement of a foreign award need not take place on the basis of the New York Convention. Article VII(1) of the Convention contains the so-called "more-favourable-right provision" according to which a party can seek enforcement on the basis of domestic law relating to enforcement of foreign arbitral awards. A number of countries do have such an alternative basis, and these are generally more favourable than the New York Convention. An example is Article 1076 of the Netherlands Code of Civil Procedure. Here again, the rule is confirmed in that one of the grounds for refusal of enforcement under Dutch law is the setting aside of the award in the country of origin (see Article 1076(1)(A)(e) of the Netherlands CCP).

This hard and fast rule with respect to annulled awards is seemingly simple. Yet, as happens often with this type of rule, not all cases lead to a satisfactory result. An award may be annulled in the country of origin on some outlandish ground. One may view this side effect of the rule as the price to be paid for its simplicity and predictability,

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[1] See *The ICC International Court of Arbitration Bulletin*, Vol. 9/No 1, pp. 14-31.

provided that exceptional cases do not occur too often. And, indeed, the cases in which awards are annulled in international arbitration on some exotic ground are reportedly rare.

II - "LSAs" AND "ISAs"

That is not the approach taken by Mr Paulsson. He distinguishes between awards that have been annulled on the basis of what he calls a "Local Standard Annulment (LSA)" as opposed to an "International Standard Annulment (ISA)". Whilst acknowledging that cases of LSA are exceptional, he argues that enforcement should be granted if the annulment has occurred on the basis of an LSA. I sympathize with Mr Paulsson's concerns, but I do not think that the solution proposed by him is workable nor that there is a real problem in practice.

A court before which enforcement of an award annulled in its country of origin is sought has first to consider whether it can overcome the ground for refusal of enforcement contained in Article V(1)(e) of the Convention. The only possibility is the use of a residual discretionary power to grant enforcement notwithstanding the presence of a ground for refusal. Such a discretionary power is nowadays recognized by a number of courts with respect to certain grounds for refusal, notably the due process ground of Article V(1)(b).[2] The question is whether residual discretionary power can also be applied to an annulled award as referred to in Article V(1)(e). Mr Paulsson assumes that to be the case without much discussion. The problem, however, is that after annulment, an arbitral award no longer exists under the applicable arbitration law (which is mostly the arbitration law of the place of arbitration). How can a court before which such an "award" is presented declare it enforceable? *Ex nihilo nil fit.* This legal impossibility appears to exist in any case under the New York Convention, since it explicitly refers in Article V(1)(e) to the applicable arbitration law.

If the court comes to the conclusion that it cannot grant enforcement of the annulled award under the New York Convention, it may look to an alternative basis for enforcement of foreign awards in its domestic law. If such a basis exists, it is very likely that the court will discover that that law also mandates refusal of enforcement of an annulled award.

III – THE FRENCH THEORY

The only known exception in the area of domestic laws is France, where, indeed, awards annulled in the country of origin have been enforced. The French courts have developed a generous but somewhat curious theory. In their opinion, awards made abroad have no homeland. When an award from abroad arrives in France, it is granted asylum by "being integrated into the French legal order." In that process, the French courts ignore an annulment of the award by a court at the place of arbitration.

To give an example: when the Swiss Federal Supreme Court (hardly a court prone to flights of legal fancy) set aside an award made in Geneva in the matter of *Hilmarton*, the French courts ruled that the annulment had no effect in France and declared the annulled award enforceable in France.[3] One can imagine the surprise of the Swiss judges (and many other judges and practitioners outside France[4]). It may be emphasized that all this takes place outside the New York Convention on the basis of French domestic law concerning the enforcement of foreign arbitral awards.

[2] See my article "Residual Discretion and Validity of the Arbitration Agreement in the Enforcement of Arbitral Awards under the New York Convention of 1958," in *Current Legal Issues in International Commercial Litigation* (Faculty of Law, University of Singapore, 1997), pp. 327-344.

[3] The *Hilmarton* saga is the subject of a series of court decisions in France and Switzerland. The most recent one is Cour de Cassation, 27 June 1997, reported in *Yearbook Comm. Arb.* XXII(1997) pp. 696-698 (France No 27), which excerpt contains an overview of these decisions with references.

[4] Also within France, certain commentators are perplexed: see, e.g., B. Leurent, "Reflections on the International Effectiveness of Arbitration Awards," 12 *Arbitration International* (1996), pp. 269-285, who observes at p. 270: "As for the arbitrator whose award has been annulled, he may find some comfort in knowing that the cadaver of his award might be resurrected locally were it to drift toward certain shores, at least the French coastline. The only viewpoint that really counts, however, is that of the arbitration users, but it seems... that the French system is ill-suited to meeting their expectations."

The French theory is based on the view that the place of arbitration is legally irrelevant for international arbitration. With a fair measure of inconsistency, the French theory only applies to awards rendered outside France. For an award rendered inside France in an international arbitration, the place of arbitration is legally relevant. Such an award is subject to the provisions contained in Articles 1492–1507 of the French Code of Civil Procedure. Article 1504 provides: "The action for setting aside is available against awards *rendered in France* in international arbitration, on the grounds of Article 1502" (emphasis added). If it is believed that the place of arbitration is legally irrelevant, and if no effect is given to the annulment of an award made outside France in an international arbitration, it is illogical to provide for the possibility of setting aside an award rendered in France in an international arbitration. The refusal of enforcement in France (Article 1502) would have sufficed. What is sauce for the goose is also sauce for the gander. Considering this situation, a foreign court will be confused: what should it do with an award rendered in France in an international arbitration that has been set aside under Article 1504?

It is also said that the Belgian courts have embraced the French theory. There is only one decision by a court of first instance, and it is not entirely clear. The Court of First Instance in Brussels apparently made a distinction between an appeal on the merits and an action for setting aside.[5] With respect to an arbitral award rendered in Algiers, which an Algerian court had declared to lack force and effect (*infirmer*), it held that the New York Convention did not apply for lack of retroactive effect but granted enforcement on the basis of Belgian domestic law, as it considered that the decision by the Algerian court was not a decision relating to the setting aside of the award. The Court found that the parties had renounced means of recourse on the basis of, *inter alia*, article 24 of the ICC Arbitration Rules of 1988.

Mr Paulsson believes that his view is "vindicated" by these cases.[6] He then states that "[t]he recent *Chromalloy* case provides a further useful illustration" (p. 15). I respectfully disagree. To explain my position, I need to review this decision in some detail. *Chromalloy* is frequently invoked for the proposition that courts in the United States have followed the French theory. As often happens with propositions that are frequently repeated, they acquire a life of their own. If one reads the US District Court decision itself, however, one will discover that it is not French at all.

IV - THE CHROMALLOY DECISION

The case involved a 1988 contract between Chromalloy Aeroservices, Inc. ("Chromalloy" or "CAS") and the Air Force of the Arab Republic of Egypt ("Egypt" or "ARE") for the supply of spare parts, maintenance and repair of helicopters belonging to the Egyptian Air Force. The contract contained the following clause: "It is... understood that both parties have irrevocably agreed to apply Egypt Laws and to choose Cairo as seat of the court of arbitration... The decision of the said court shall be final and binding and cannot be made subject to any appeal or other recourse." Following a dispute between the parties, arbitration took place in Cairo and, on 24 August 1994, an award was made against Egypt for an amount of some US $ 16 million, plus interest and costs.[7] In the award, the majority of the arbitral tribunal concluded with respect to the applicable law: "The Arbitral Tribunal considers that it does not need to decide the legal nature of the contract. It appears that the Parties rely principally for their claims and defences, on the interpretation of the contract itself and on the facts presented. Furthermore, the Arbitral Tribunal holds that the legal issues in dispute are not affected by the characterisation of the contract."

[5] Tribunal de Première Instance, Brussels, 6 December 1988, *Société Nationale pour la Recherche, le Transport et la Commercialisation des Hydrocarbures (Sonatrach)* v. *Ford, Bacon and Davis Incorporated*, reported in *Yearbook Comm. Arb.* XV (1990), pp. 370-377 (Belgium No 7).

[6] That appears to be his belief at p. 15. However, some 15 pages later, we find the statement: "The French solution may go too far, inasmuch as no foreign annulment is given effect." (p. 30).

[7] The award is published in *Mealey's International Arbitration Report*, August 1996. For a background account of what happened in the arbitration, see G.H. Sampliner, "Enforcement of Foreign Arbitral Awards After Annulment in their Country of Origin," *Mealey's International Arbitration Report* (1996), pp. 145-151 at pp. 147-149.

On 28 October 1994, Chromalloy sought enforcement of the award before the US District Court for the District of Columbia. Egypt, in turn, sought the nullification of the award before the Court of Appeal in Cairo. By a decision of 5 December 1995, the Court of Appeal in Cairo nullified the award. The Egyptian Court relied on Article 53(1)(d) of Egypt's Law on Arbitration of 1994, which provides that an award may be annulled "if the arbitral award fails to apply the law agreed by the parties to the subject matter of the dispute."[8] The Court reasoned that the majority of the arbitral tribunal had incorrectly applied Egyptian civil law whilst, according the Court, the phrase "Egypt Laws" should be understood as an exclusive acceptance of Egyptian administrative law.

It is submitted that this decision of the Egyptian Court of Appeal is – to say the least – surprising. One will even be more surprised when one learns that Egypt's expert witness had testified in the arbitration that the arbitral tribunal could apply the Egyptian Civil Code, rather than administrative law, and obtain the same results;[9] and that Egypt's counsel in the arbitration had stated in the Rejoinder Memorial: "for the examination of the following legal questions, I have come to the conclusion that as far as administrative and civil law are concerned, the legal solution is identical..."[10]

Faced with the Egyptian court decision annulling the award, what could the US District Court (sole Judge June L. Green) do in terms of enforcement in the United States? The award was annulled (set aside) in the country of origin, and this would lead to a refusal of enforcement under Article V(1)(e) of the Convention. Moreover, Egypt had argued before the Judge that any judicial finding regarding the *bona fides* of Egypt's judicial system would be construed by an important military ally as a hostile act of foreign policy.[11]

The judge granted enforcement.[12] Although the result will satisfy the feeling for justice of many, the reasoning is legally not convincing. The judge started by noting that under Article V a court "*may*, at its discretion, decline enforcement of the award" (emphasis added by the Judge). As a general proposition, this appears to be correct. However, as mentioned above, it is questionable whether such a residual discretion also extends to awards that have been set aside in the country of origin.

Leaving that aspect aside, the judge continued by observing that pursuant to Article VII(1), the Convention does not deprive a party of any right it may have to avail itself of an award in the manner and to the extent allowed by the law of the country where enforcement is sought (i.e., the more-favourable-right provision). This would point to US law concerning the enforcement of foreign arbitral awards outside the Convention. It is here where the reasoning became confusing: "Accordingly, the Court finds that, if the Convention did not exist, the Federal Arbitration Act (FAA) would provide Chromalloy with a legitimate claim to enforcement of this arbitral award. See 9 U.S.C. ss. 1-14." That is a very generous interpretation of Chapter 1 of the Federal Arbitration Act (i.e., 9 U.S.C. ss. 1-14) which applies to arbitration inside the United States on the federal level. Being on that track, the judge examined Chapter 1 of the Federal Arbitration Act and found – not surprisingly – that the award was proper as a matter of US law.

At the end of her opinion, the judge confused the matter further: "Article VII of the Convention does not eliminate all consideration of Article V; it merely requires that this Court protect any rights that Chromalloy has under the domestic laws of the United States." However, if a party seeking enforcement chooses to rely on the domestic law concerning enforcement of foreign awards or on some other treaty by virtue of the more-favourable-right provision of Article VII(1) of the New York Convention, it can rely on that other basis *in toto* only, to the exclusion of the New York Convention. Cherry-picking is not allowed. One may not, for instance, rely on domestic law for the formal validity of the arbitration agreement, thereby

[8] Egypt's Law on Arbitration of 1994 is based on the UNCITRAL Model Law on International Commercial Arbitration of 1985. However, ground *d)* of Art. 53(1) is a ground which the Egyptian legislature has added to the grounds for setting aside listed in Art. 34(2) of the UNCITRAL Model Law. Another addition in the Egyptian Law – not relied upon by the Court of Appeal of Cairo – is ground *g)* which provides: "if nullity occurs in the arbitral award, or if the arbitral proceedings are tainted by nullity affecting the award."

[9] Sampliner, *supra.*, at p. 150.

[10] Quoted in Court of Appeal of Paris, 14 January 1997, *Yearbook Comm. Arb.* XXII (1997) pp. 691-695 at p. 694 (France No 26).

[11] Sampliner, *supra*, at p. 150.

[12] US District Court, District of Columbia, 31 July 1996 (*Chromalloy Aeroservices* v. *The Arab Republic of Egypt*) *Yearbook* XXII (1997), pp. 1001-1012 (US No 230).

excluding Article II(2) of the Convention, but for the other aspects of enforcement still rely on the remaining provisions of the Convention.

The judge then proceeded to find that the clause in the contract in question – "[t]he decision of the said court shall be final and binding and cannot be made subject to any appeal or other recourse" – meant that "the arbitration agreement between Egypt and Chromalloy precluded an appeal in Egyptian courts." That is true insofar as an exclusion by agreement of a setting aside action is permitted by the arbitration law of the country of origin. There are very few countries where such an exclusion agreement is permitted (notably, Sweden and Switzerland). It appears that such an exclusion agreement is not permitted by Egyptian arbitration law.

Egypt had also asked the District Court to grant *res judicata* effect to the decision of the Court of Appeal in Cairo in terms of enforcement of a foreign judgement. The judge refused on grounds of US public policy, reasoning that the public policy in question was "[t]he US public policy in favor of final and binding arbitration of commercial disputes." One may wonder whether that public policy is tantamount to a public policy of refusing enforcement of foreign judgements. If US public policy could be used in that sense, the setting aside of any arbitral award in the country of origin as a ground for refusal of enforcement under Article V(1)(e) of the Convention would become a dead letter in the United States.

Egypt had further argued that by choosing Egyptian law, and by choosing Cairo as the site of the arbitration, Chromalloy had "for all times signed away its rights under the Convention and US law." The judge found this argument "specious." According to her, "It is untenable to argue that by choosing arbitration under the Convention, Chromalloy has waived its rights specifically guaranteed by that same Convention." The fact of the matter, however, is that by agreeing to arbitration in Cairo, Chromalloy had accepted the applicability of Egyptian arbitration law, including the possibility of annulment of the award in that country. The Convention creates not only rights but also obligations, for both Chromalloy and Egypt. One of them is that if the award has been set aside in the country of origin, its enforcement may be refused under the Convention in other countries.

The *Chromalloy* decision has received wide attention in arbitration literature, both approving and disapproving.[13] The decision should, however, be seen for what it is. It is a decision rendered in rather peculiar circumstances and the reasons in support of it (however much one can sympathize with them) are not free from criticism. Fortunately for the parties, but unfortunately for those interested in the questions under consideration, the parties settled their case. What remains is an unconvincing precedent until another US court has the opportunity to address these questions.

It may be added that counsel for Chromalloy did their homework in studying international arbitration literature and discovering that France is the place for *Les Misérables* of arbitral awards. And, indeed, they obtained a leave for enforcement on the award annulled in Egypt on the basis of the French theory reviewed above (applicable outside the Convention), that a setting aside in the country of origin is not a ground for refusal of enforcement of a foreign award.[14]

V – ORDERLY ADMINISTRATION AND INCONSISTENT RESULTS

Having reviewed what he believes to be "Instances of Disregard of LSAs," Mr Paulsson devotes the subsequent (large) part of his contribution to a refutation of the various arguments advanced against his theory. I have implicitly addressed most of these arguments above. Obviously, I cannot leave unanswered Mr Paulsson's assertion that my argument of an orderly international administration of justice is "specious" (p. 21).

Why specious? Mr Paulsson: "First, the fact that we can, and do, live with occasional situations of inconsistent results" (p. 21). I would agree, but why not avoid them if you can? Moreover, the same argument can be used in support of the existing, simple, hard and fast rule regarding annulled awards: the fact that we can, and do, live with

[13] See, amongst others, approving: Sampliner, *supra* (Mr. Sampliner candidly admits that he was Chromalloy's counsel). Disapproving: H.G. Gharavi, "Chromalloy: Another View," 12(1) *Mealey's International Arbitration Report* (January 1997), pp. 21-27; *id.*, "The Legal Inconsistencies of Chromalloy," 12(5) *Mealey's International Arbitration Report* (May 1997), pp. 21-24.

[14] Court of Appeal of Paris, 14 January 1997, *Yearbook Comm. Arb.* XXII (1997), pp. 691-695 (France No 26).

occasional situations of annulled awards. Mr Paulsson continues by describing *Hilmarton* as being "like a two-headed white rhinoceros which might give us a thrill in the cinema but does not really endanger our daily walk to work." If that is the case, why make a complicated attempt to rescue such awards?

Mr Paulsson's second counter-argument – which he believes to be "conclusive" – is that, to avoid inconsistent results, enforcement should never be granted until any possibility of challenge to the award in its country of origin has been disposed of. He believes that this would in effect take us back to the Geneva Convention of 1927. In addition, Mr Paulsson argues that to be faithful to the thought that inconsistent judgements should be avoided, I ought to insist that adjournment of enforcement under Article VI of the Convention should always be granted. I can reassure Mr Paulsson: there is no risk of being thrown back to the arbitration Stone Age, nor is there a necessity to grant adjournment requests in each and every case. The system of the New York Convention is built on the assumption of a valid award; the exception is an award that is set aside (the so-called "pro-enforcement bias"). Here again, the assumption is that actual setting aside occurs in a few cases only. These assumptions are borne out by reality. Only in a few cases, is an action for setting aside successful in the country of origin. In the very rare case that enforcement has not been adjourned and, subsequently, the award is set aside, the enforcement order can be revoked and monies paid can be restituted.[15]

When Mr Paulsson compares me with a dormant Homer (the Greek one, p. 23), I should be happy, considering that he accuses Professor Reisman of having "turned the real world upside down" (p. 27). And that despite the fact that Professor Reisman makes the respectable argument that to enforce annulled awards may violate an implicit allocation of national court authority under international law.[16] I suggest that the reader judge for himself or herself and I suspect that we will hear more from Professor Reisman on the subject in the near future.

[15] *Accord*, E. Schwartz, "A Commentary on Chromalloy: Hilmarton à l'américaine," *J. Int. Arb.*, June 1997, at 133 n. 31. Mr. Paulsson is pessimistic: "In an international context, however, the remedy of restitution is often illusory: what is paid is gone" (n. 29).

[16] W. M. Reisman, *Systems of Control in International Adjudication and Arbitration* (Duke University Press, 1992).

VI – RESUSCITATION AND OTHER PROPOSALS

Mr Paulsson's theory is what my compatriots, borrowing from the Bible, would call "old wine in new wineskins". What he actually proposes is an introduction of the system of the European Convention on International Commercial Arbitration of 1961 into the New York Convention. The European Convention is adhered to principally by countries in Europe (but not all of them; notably absent are the United Kingdom, Switzerland, Sweden and the Netherlands). It owes its genesis to the former East-West division. The European Convention complements the New York Convention in a number of respects. As regards the setting aside of an award in the country of origin, Article IX(1) provides: "The setting aside in a Contracting State of an arbitral award covered by this Convention, shall only constitute a ground for refusal of recognition or enforcement in another Contracting State if such setting aside took place in a State in which, or under the law of which, the award has been made and for one of the following reasons..." Article IX(1) then lists grounds for setting aside which are substantially similar to grounds (a) through (d) for refusal of enforcement under Article V(1) of the New York Convention. Article IX(2) further provides that in relations between Contracting States that are also Party to the New York Convention, enforcement may be refused in case the award has been set aside in the country where the award was made only if the award has been set aside on one of the grounds listed in Article IX(1) under (a) through (d).

To my knowledge, the complex Article IX of the European Convention has been applied only once in practice.[17] So, why resuscitate an idea that has barely come to life in the first place?

In any event, Article IX of the European Convention represents a specific and appropriate

[17] Oberster Gerichtshof [Supreme Court], 20 October 1993, *Radenska* v. *Kajo*, reported in French in *Revue de l'arbitrage* (1998 No 2) pp. 419-430 with note by P. Lastenhouse and P. Senkovic. The case concerned an arbitral award made in former Yugoslavia which had been set aside by the Superme Court of Slovenia for violation of public policy, the underlying contract being considered as creating a dominant position. The Austrian Supreme Court declared the award enforceable, holding that a violation of public policy is not a ground listed in Art. IX of the European Convention of 1961.

international legal basis for enforcement of annulled awards. I do not believe that a creative interpretation of the New York Convention can legally achieve such a far-reaching result.

Mr Paulsson also gives us guidance as to when to disregard LSAs (pp. 28-31). He starts with the following prayer: "A court which considers that its national arbitration law justifies the enforcement of an arbitration award must, by virtue of Article VII of the New York Convention, enforce the award without heed to its annulment elsewhere" (p. 28). This is chanting the French mantra, notwithstanding the subsequent justification: "This is a good thing." Besides other applicable bilateral or multilateral treaties, Article VII can be applied only if the country in question has domestic law on the enforcement of foreign arbitral awards either in the form of legislation or developed by case law. Not all countries have such a domestic law. Even fewer countries have such a law which is to the effect that the annulment of an award in its country of origin is to be disregarded. Actually, to my knowledge, this group consists solely of France.

The distinction between ISA and LSA is explained by Mr Paulsson as follows: "The rich experience of international trade law since 1958 has told us what an ISA is: a decision consistent with the substantive provisions of the first *four* paragraphs of Article V(1) of the New York Convention and Article 36(1)(a) of the UNCITRAL Model Law. Everything else would be an LSA, and entitled only to local effect" (emphasis as in original text, p. 29). Article V(1) of the Convention and Article 36(1)(a) of the Model Law set forth the grounds for refusal of enforcement to be asserted and proven by the party against which enforcement is sought. These four paragraphs concern:

(a) Invalidity of the arbitration agreement;

(b) Violation of due process;

(c) Award *extra petita*;

(d) Violation of the rules relating to the constitution of the arbitral tribunal or the arbitral procedure.

Yet, it is not enough for Mr Paulsson to bend the New York Convention by excluding ground (e) of Article V(1), which would also mean that a non-binding award can be enforced under the Convention. Mr Paulsson goes further: "To keep LSAs from returning through the back door, one must disregard the incidental *renvois* to the law of the venue in paragraphs (a) and (d)" (p. 29 n. 61). For Mr Paulsson, this is still not enough. He also proposes to do away with one of the main features of the Convention by suggesting "to grant [ISAs] a presumption of validity, thus reversing the general rule of the New York Convention and putting the resisting party to the burden of proving that the Arbitral Tribunal did *not* lack jurisdiction, was *not* wrongfully constituted, did not prevent a party from being heard, and so forth – i.e. that the foreign annulment was unjustified." (emphasis as in original text, p. 30) In the process of rewriting the New York Convention, Mr Paulsson does not omit to delete Article VI: "applications to adjourn enforcement actions should not be granted unless the enforcement court considers that an ISA is likely to materialize" (p. 31). If that is so, Article VI has become meaningless: a court may well refuse enforcement immediately since it has to apply the same standards under grounds (a) – (d) of Article V(1) of the Convention.

Reading the above proposals gives one the feeling sometimes experienced when reading a post-hearing submission of opposing counsel in an arbitration: you wonder which hearing he has attended – it was certainly not the one in which you participated. If Mr Paulsson's proposals were accepted, a court may wonder whether there is now a Paris Arbitration Convention for Distressed Awards. I do not think that this exceptional category of awards is worth the effort and confusion of such a Convention.