A CLOSER LOOK AT THE PROPOSED "NEW NEW YORK CONVENTION"

Birthday's can be fraught occasions. The New York Convention's 50th birthday event took a twist – when the foremost authority on the convention, Albert Jan van den Berg, suggested the star of the show was showing its age. It should be replaced he said.

He even had an example of a replacement ready – a "new" New York Convention.

Amending the New York Convention would be no small feat. Few at this point feel van den Berg's sense of conviction that cracks are showing. What's more, the amendment process could backfire. What if it led to a less arbitration-friendly tool?

It's also possible that no convention would ever be perfect. One of the responses to van den Berg's proposal was that the difficuly isn't the text – it's the judges.

But Albert Jan van den Berg remains certain.

The difference between his view and others' may come down to thinking time. He's given the subject a lot of thought, everybody else is just starting. And few of us walk around with the professor's encyclopaedic knowledge of the issues that have developed around the current convention. What might help are tools that set his proposal in context, showing the scope of the changes and how they fit with other arbitration texts, such as the Model Law.

The pages that follow are offered in the spirit of providing that context. They present, in parallel:

- the current New York Convention text;
- the "hypothetical" convention; and
- select comments from van den Berg's own explanatory note on his project.

After all, until you've absorbed the details, how do you know if the risks outweigh the rewards?

Explanatory note on the hypothetical convention

By Albert van den Berg

For the full text of his explanatory note, and more original material, see his section under "members" at the ICCA website (www.arbitration-icca.org).

After 50 years of its existence, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958 (the New York Convention) is in need of modernisation:

- A number of provisions need to be added (for example, a definition of the scope of application with respect to agreements that fall under the referral provisions of article II(3); a waiver of a party to rely on a ground for refusal of enforcement; a reference to the arbitration agreement in the more-favourable-right provision of article VII(1)).
- A number of provisions need to be revised (for example, the written form as required by article II(2) for the arbitration agreement is stricter than almost any national law; the refusal of enforcement on the ground of a setting aside on any ground in the country of origin may import parochial annulment).
- A number of provisions are unclear (for example, the notion of an award "not considered as domestic" in article I(1); the expression "duly authenticated original award" in article IV(1)(a); the word "may" in the English text of article V(1); the words "terms of submission" and "scope of submission" to arbitration in article V(1)(c); the notion of a "suspended" award in article V(1)(e); the reference to "any interested party" in article VII(1)).
- A number of provisions are outdated (for example, the reference to "permanent arbitral bodies" in article I(2); the reference to the law under which the award was made in article V(1)(e)); and
- A number of provisions need to be aligned with prevailing judicial interpretation (for example, the public policy referred to in article V(2) means international public policy).

The Preliminary Draft Convention on International Enforcement of Arbitration Agreements and Awards (the Draft Convention) is intended to achieve the above modernisation. The Draft Convention is also intended to be readily understandable by practitioners and judges in many countries. To achieve that goal, the text is kept to a bare minimum and the solutions offered are clear and simple, and are based on what is current practice.

The above shortcomings in the New York Convention cannot be remedied by the UNCITRAL Model Law on International Commercial Arbitration of 1985 (the UNCITRAL Model Law), as revised in 2006. The reason is that the provisions relating to enforcement of an arbitral award as set forth in the UNCITRAL Model Law are almost the same as those contained in articles III to VI of the New York Convention (article 35), because of the policy decision taken in 1985 to follow as closely as possible the New York Convention.

Nor can the New York Convention's shortcomings be remedied adequately and comprehensively by a "recommendation regarding the interpretation" issued by international bodies such as UNCITRAL in 2006 regarding articles II(2) and VII(1). The mechanism of guidance notes in interpreting an international convention is useful for texts that can be subject to various interpretations, but its value is limited if a text is lacking or if the guidance contradicts an existing text.

It is expected that the time required for adherence by states to the Draft Convention is less than for the New York Convention, since the Draft Convention builds on the structure and concepts of the New York Convention. Thus, articles 1 to 7 deal with matters that are similar to those contained in article I to VII of the New York Convention. Furthermore, the New York Convention having matured after 50 years in existence, it will be readily understood that the Draft Convention constitutes a necessary update of the New York Convention.

The object and purpose of the Draft Convention are the same as for the New York Convention: to facilitate the enforcement of the arbitration agreement and arbitral award as much as possible. However, the Draft Convention is clearer in that the object and purpose aim specifically at international arbitration.

New York Convention 1958	Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards
Article I	Article 1 – Field of Application
[No comparable provision]	1. This Convention applies to the enforcement of an arbitration agreement if: (a) the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their place of business or residence in different states; or (b) the subject matter of the arbitration agreement relates to more than one state.
1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.	2. This Convention applies also to the enforcement of an arbitral award based on an arbitration agreement referred to in paragraph 1.
[Passim]	3. Where this Convention refers to the enforcement of an arbitral award, it comprises the recognition of an arbitral award.
2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.	[Deleted]
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.	[See article 8 – General Clauses below]

- "The title of the Draft Convention reflects that it also covers the enforcement of the arbitration agreement."
- "It also makes clear that the Draft Convention is intended to serve "international" arbitration, rather than "foreign" arbitration."
- "The structure is similar between the texts: articles 1 to 7 of the Draft Convention deal with matters that are analogous to those contained in Arts. I to VII of the New York Convention. But the amended provisions modernise the [text] and remove redundancies, obstacles and uncertainties".

- Fills a lacuna of the New York Convention – namely, no definition of agreements that qualify for referral to arbitration.
- "The definition requires that the agreement concerns international arbitration. The definition is a condensed version of the UNCITRAL Model Law's broad scope."

- Clarifies the uncertainties of the New York Convention's scope "in particular the nebulous phrase "not considered as domestic awards"".
- Remedies another shortcoming: "Under the New York Convention it can happen that - with respect to the same arbitration - the arbitration agreement is deemed to fall under the referral provisions of Art. II(3), whilst the arbitral award does not come within the Convention's definition of its field of application as a "foreign" award."

A separate provision on "recognition" means that the Convention "is not unduly burdened by recurring references to recognition".

Thanks to Albert Jan van den Berg for his time reviewing the 'key feature' notes above. He is the speaker in all quoted sections.

New York Convention 1958	Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards
Article II	Article 2 – Enforcement of Arbitration Agreement
1. 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.	[Deleted in part; see paragraph 2(c)]
2. 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	[Deleted]
3. 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	1. If a dispute is brought before a court of a Contracting State which the parties have agreed to submit to arbitration, the court shall, at the request of a party, refer the dispute to arbitration, subject to the conditions set forth in this article.
[See in part paragraph 3 above]	2. The court shall not refer the dispute to arbitration if the party against whom the arbitration agreement is invoked asserts and proves that:
[No comparable provision]	(a) the other party has requested the referral subsequent to the submission of its first statement on the substance of the dispute in the court proceedings; or
[See paragraph 3]	(b) there is prima facie no valid arbitration agreement under the law of the country where the award will be made; or
[See paragraph 1 in fine]	(c) arbitration of the dispute would violate international public policy as prevailing in the country where the agreement is invoked.
[No comparable provision]	3. The court may on its own motion refuse to refer the dispute to arbitration on ground (c) mentioned in paragraph 2.

Abolishes requirement for a written form of arbitration agreement. "That requirement of the New York Convention poses one of the major problems in practice as it is more stringent than is imposed by virtually all modern arbitration laws." "The Draft Convention follows the trend as evidenced by the amendments to the UNCITRAL Model Law of 2006 by offering the option of no longer imposing an internationally required written form for the arbitration agreement."

Introduces parallelism with enforcement of arbitral award: now, the resisting party has to assert and prove grounds for *not* referring the dispute to arbitration.

Adds a provision absent in the New York Convention but found in a number of arbitration laws (eg, Art. 8(1) of the UNCITRAL Model Law).

- Requires a court to examine the validity of the arbitration agreement on *prima facie* grounds only "because the referral should be decided expeditiously by the court and the arbitral tribunal is the first instance to conduct a full review of an objection to the validity of the arbitration agreement."
- Adds a conflict of laws rule for determining the *prima facie* validity of the arbitration agreement.

Introduces parallelism with enforcement of arbitral award: under the New York Convention, a court may on its own motion refuse enforcement if the award violates public policy (Art. V(2)).

- Adds reference to public policy (absent from Art II of the New York Convention).
- Narrows public policy to international public policy.
- Treats arbitrability as part of (international) public policy.

New York Convention 1958	Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards
Article III	Article 3 – Enforcement of Award – General
Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.	1. An arbitral award shall be enforced exclusively on the basis of the conditions set forth in this Convention. 2. The law of the country where enforcement is sought shall govern the procedure for enforcement of the award. 3. There shall not be imposed onerous requirements on the procedure for enforcement nor substantial fees or charges.
[No comparable provision]	4. Courts shall act expeditiously on a request for enforcement of an arbitral award.
Article IV	Article 4 – Request for Enforcement
[No comparable provision]	1. Fulfillment of the conditions set forth in this article entitles the party seeking enforcement to be granted enforcement of the arbitral award, unless the court finds that a ground for refusal is present under the conditions set forth in articles 5 and 6.
1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply: (a) The duly authenticated original award or a duly certified copy thereof;	2. The party seeking enforcement shall supply to the court the original of the arbitral award.
[See paragraph 1(a)]	3. Instead of an original of the arbitral award, the party seeking enforcement may submit a copy certified as conforming to the original. The certification shall be in such form as directed by the court.
(b) The original agreement referred to in article II or a duly certified copy thereof.	[Deleted]
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.	4. If the arbitral award is not in an official language of the court before which enforcement is sought, the party seeking enforcement shall, at the request of the other party or the court, submit a translation. The translation shall be in such form as directed by the court.

- Note change, in paragraph 2, from "conditions" (used in Art. III of the New York Convention) to "requirements on the procedure". "This is in order to make clear the difference between paragraph 1 (conditions for enforcement are exclusively governed by the Convention) and paragraph 2 (procedure for enforcement is governed by the law of the country where enforcement is sought)."
- Abandons comparison with the enforcement procedure of domestic awards "so that an harmonized "light" international standard for the enforcement procedure can be achieved".

"This addresses a serious problem under the New York Convention: in a number of Contracting States, the procedure for enforcement of Convention awards is unacceptably slow."

- Makes clear that the conditions set forth in Art. 4 are the only conditions that need to be met by the party seeking enforcement.
- Removes the unduly burdensome requirement of "authenticated original award".
- Provides more flexibility in certification of copy of award.
- Makes the translation requirement less formal.
- Ends need to submit a copy of the arbitration agreement (see at Art. II(1)-(2) above). A similar amendment was made in 2006 to the UNCITRAL Model Law.

New York Convention 1958	Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards
Article V	Article 5 – Grounds for Refusal of Enforcement
[No comparable provision]	1. Enforcement of an arbitral award shall not be refused on any ground other than the grounds expressly set forth in this article.
[No comparable provision]	2. Enforcement shall be refused on the grounds set forth in this article in manifest cases only.
1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:	3. Enforcement of an arbitral award shall be refused if, at the request of the party against whom the award is invoked, that party asserts and proves that:
(a) 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; or	(a) there is no valid arbitration agreement under the law of the country where the award was made; or
(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or	(b) the party against whom the award is invoked was not treated with equality or was not given a reasonable opportunity of presenting its case; or
(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or	(c) the relief granted in the award is more than, or different from, the relief sought in the arbitration and such relief cannot be severed from the relief sought and granted; or
(d) 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; or	(d) the composition of the arbitral tribunal was not in accordance with the agreement of the parties, or in the absence of such an agreement, not in accordance with the law of the country where the award was made; or
[See paragraph 1(d)]	(e) the arbitral procedure was not in accordance with the agreement of the parties, or in the absence of such an agreement, not in accordance with the law of the country where the award was made; or

Provides that the grounds for refusal of enforcement are "limitative". It excludes in particular a review by a court of the merits of an arbitral award.

- Introductory language is mandatory ("enforcement shall be refused" in paragraph 3).
- Establishes the concept of refusal in "manifest cases only" (paragraph 2).
- "Acting together, paragraphs 2 and 5 of Article 5 alleviate the need to deal with a question about Art. V(1) of the New York Convention - namely whether the introductory language of the grounds for refusal of enforcement should be permissive or mandatory, as in "enforcement may be refused" or "enforcement shall be refused. Having both provisions in the Draft Convention, the introductory language of paragraph 3 can be unambiguous by being mandatory."
- "The concept of "manifest cases only" also resolves the question under the New York Convention whether there is a residual power to enforce notwithstanding the existence of a ground for refusal of enforcement. Having that concept there is no need to have such power."

No agreement: simplifies the current provisions in the New York Convention, in particular the conflict rules.
No due process: modernises the current New York Convention provision, using language similar to, eg, the UNCITRAL Model Law.

Excess of authority : removes unclear language from the current New York Convention provision (which refers, eg, to "terms of the submission" and "scope of submission").

Solves a problem that has developed with the current Art. V(1)(d), which "has given rise to a question whether an agreement of the parties on [eg, composition of the tribunal or the procedure] can deviate from the mandatory rules of the arbitration law of the place of arbitration".

The Draft Convention would require enforcement in the event of such a deviation. "In that case, an aggrieved party should seek the setting aside of the award in that country of origin" says van den Berg – followed by seeking refusal of enforcement on grounds of set aside.

This solution comports with a similar approach adopted in the UNCITRAL Model Law.

Separates irregular composition of tribunal from irregular procedure "for reasons of clarity" van den Berg writes.

New York Convention 1958	Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards
(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made	(f) the award is subject to appeal on the merits before an arbitral appeal tribunal or a court in the country where the award was made; or
[See paragraph 1(e)]	(g) the award has been set aside by the court in the country where the award was made on grounds equivalent to grounds (a) to (e) of this paragraph; or
2. 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:	[See paragraph 4 below]
(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or	[Subsumed in ground (h) below]
(b) The recognition or enforcement of the award would be contrary to the public policy of that country.	(h) enforcement of the award would violate international public policy as prevailing in the country where enforcement is sought.
	4. The court may on its own motion refuse enforcement of an arbitral award on ground (h) of paragraph 3.
[No comparable provision]	5. The party against whom the award is invoked cannot rely on grounds (a) to (e) of paragraph 3 if that party has not raised them in the arbitration without undue delay after the moment when the existence of the ground became known to that party.
Article VI	Article 6 – Action for Setting Aside Pending in Country of Origin
If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.	1. If the application for setting aside the award referred to in article 5(3)(g) is pending in the country where the award was made, the court before which the enforcement of the award is sought under this Convention has the discretion to adjourn the decision on the enforcement.
	2. When deciding on the adjournment, the court may, at the request of a party, require suitable security from the party seeking enforcement or the party against whom the award is invoked.

Replaces "binding" with a description. "The word 'binding' … has given rise to differing interpretations" says van den Berg. The paragraph's effect is confined to appeals on the merits to a second arbitral tribunal or very rare a court: therefore, most awards will become enforceable as soon as rendered.

Drops the current Convention's reference to "suspended" awards in its Art. V(1)(e) because its meaning is unclear.

Addresses the issues raised by the French *Hilmarton* and American *Chromalloy* and *TermoRio* cases.

Establishes a concept of internationally recognised set aside standards.

"[It] means that setting aside on (domestic) public policy or parochial grounds in the country of origin is not a ground for refusal" writes van den Berg.

The same solution was adopted in Art. IX of the European Convention on International Arbitration of 1961.

- Narrows public policy to international public policy.
- Arbitrability is treated a part of (international) public policy.

Explicitly introduces a waiver rule that is lacking in the New York Convention.

Under the draft text, a party that fails to timely raise a ground for refusal argument during the arbitration waives the right to use it during enforcement proceedings.

Some courts have interpreted the New York Convention as including such a waiver. That interpretation, however, depends on the word "may" in the English authentic text of the introduction to this article (and that word is substituted for "shall" in the Draft Convention).

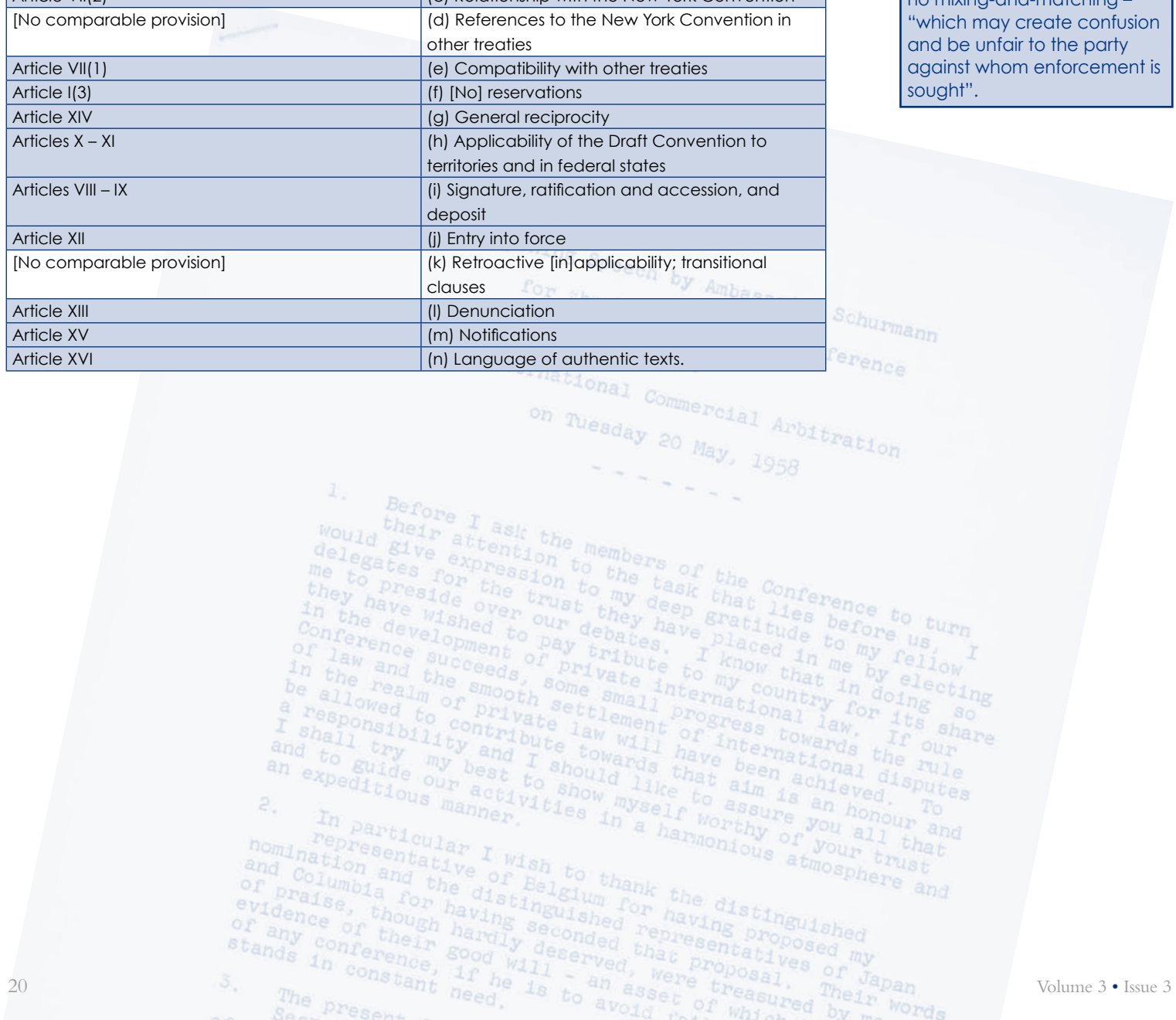
"For those reasons the Draft Convention contains express provisions on waiver" writes van den Berg.

New York Convention 1958	Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards
Article VII(1)	Article 7 – More-Favourable-Right
1. 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.	If an arbitration agreement or arbitral award can be enforced on a legal basis other than this Convention in the country where the agreement or award is invoked, a party seeking enforcement is allowed to rely on such basis.
Articles VII(2) – XVI	Article 8 – General Clauses
	The General Clauses to be considered and possibly included in the Draft Convention include amongst others:
[No comparable provision]	(a) Designation of Competent Enforcement Court
[No comparable provision]	(b) Interpretation
Article VII(2)	(c) Relationship with the New York Convention
[No comparable provision]	(d) References to the New York Convention in other treaties
Article VII(1)	(e) Compatibility with other treaties
Article I(3)	(f) [No] reservations
Article XIV	(g) General reciprocity
Articles X – XI	(h) Applicability of the Draft Convention to territories and in federal states
Articles VIII – IX	(i) Signature, ratification and accession, and deposit
Article XII	(j) Entry into force
[No comparable provision]	(k) Retroactive [in]applicability; transitional clauses
Article XIII	(l) Denunciation
Article XV	(m) Notifications
Article XVI	(n) Language of authentic texts.

Continues the principle that the Convention sets a minimum standard and Contracting States are free to adopt more liberal legal regimes for enforcement.

- Simplifies a long bit of text down to "legal basis".
- Fills a hole in the New York Convention by making it clear 'arbitration agreements' are also covered by Article 7.

Creates a fork-in-the-road: choose Convention-based enforcement, or enforcement on another legal basis, but no mixing-and-matching – "which may create confusion and be unfair to the party against whom enforcement is sought".



Q&A with **Albert Jan van den Berg**

Ten years ago, Albert Jan van den Berg told an ICCA congress celebrating 40 years of the New York Convention: "If it ain't broke, don't fix it."

In other words, any problems with the New York Convention could be solved through less drastic means than a new convention. Last month, he reversed his view.

He explained his change of mind to *Global Arbitration Review*.

GAR: At the 40th anniversary you were certain no change was necessary. What led you to shift your position?

There is not just one reason or one moment in time that led me to change my view. Instead, it was a slow progression.

Indeed, I wrote some 10 years ago that the Convention need not be amended. In a contribution that just came out, however, I concluded:

> *In previous contributions, I took the position that the text and structure of the Convention do not seem to be at stake. I am not so certain any more. It is not a question whether the 10 per cent refusals can be avoided. Rather, we should not be complacent with a text and structure that are 50 years old. The wear and tear affecting them may indeed justify the question whether we should not be aiming at a revamped or even entirely new Convention."*

That was published in the *ICC Bulletin* (Vol 18 No. 2, 2007, p15 at 49).

What troubled me in particular was the written form of the arbitration agreement as required by article II(2) of the New York Convention. That is stricter than almost any national law.

The "closet refusals" of referral to arbitration under article II(3) are not reviewed in my surveys (which concern arbitral awards only, that is to say some 50 per cent of the court decisions reported on the Convention in the Yearbook Commercial Arbitration).

When I saw UNCITRAL's recommendation of 2006 interpreting article II(2) of the Convention, I thought that it was too complicated for courts and, moreover, difficult to square with the text of article II(2). Then I saw the amendment of article 7 of UNCITRAL's Model Law, which offers as an option to do away with the written form requirement altogether.

Why would such a solution not be possible for the New York Convention?

Next, I had to prepare my keynote address for the ICCA Dublin Congress. Instead of having yet another analysis of the Convention and its case law, I thought it might be an interesting exercise to do "hypothetical drafting": how might the Convention have looked if we drafted it today. When preparing the draft and explanatory note, I started to realise that the New York Convention is really ageing and that sooner or later it needed to be modernised, also because courts have become more critical of arbitration.

GAR: Several commentators on your panel – Emmanuel Gaillard and Peter Turner, for example – made arguments resisting change. You didn't have very long to respond to them. But presumably, you had factored those arguments into your thinking?

I did anticipate the reactions. Most of them concern the process of amending the Convention. There is a fear of changing things. There is also a defeatist attitude of lack of hope. Others found it too much trouble. If those views had prevailed in the 1950s, we would not have had the New York Convention today! At the initiative of the ICC in 1953, the United Nations established the New York Convention as a replacement of the 1927 Geneva Convention. We should ask ourselves this question: would we have been better off with the 1927 Geneva Convention today? The answer obviously is no. Do we want to show our gratitude to the drafters of the 1958 Convention by being lazy rather than tired?

Again others believed that the judiciary needs to be "educated" rather than drafting a new New York Convention – if that is so, you're better educating them with a simple, user-friendly text than with a 50-year-old complex, and at times confusing, text. Dushyant Dave gave a good example of the Indian courts: they read the provisions of article V(1)(e) of the Convention ("the country in which, or under the law of which, that award was made") as [meaning] Indian arbitration law [is] applicable to arbitration in London.

I was not persuaded by the reactions against the Dublin Convention. There were no substantive arguments that could convince me to leave the Convention as it currently stands.

Few had been able to read the text of the hypothetical draft. I was happy to note that those who have done so appeared to see positive elements. The hypothetical draft is intended to function seamlessly with the UNCITRAL Model Law.

GAR: What might happen next?

There is no immediate urgency to amend. However, the "golden years" (1975 to 1995) of the New York Convention are over. The pendulum in favour of arbitration seems now to swing back. I believe that we should start thinking about a new treaty. What is dubbed as the "Dublin Convention" may be a first step in the process of awareness creation. In the meantime, I will of course continue to monitor the New York Convention. The second edition of my book on the Convention of 1981 may well appear prior to a new New York Convention.