LCIA Perspectives
Celebrating the New York Convention’s 60th anniversary

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded on 10 June 1958 - the New York Convention - celebrates its 60th anniversary in all parts of the world throughout 2018. The Convention is indeed almost a universal instrument, spanning all regions, legal regimes and levels of development. To date, 159 countries have adhered to it with several more in the pipeline. It is also one of the most successful instruments of the United Nations system in the economic field.

To borrow a few sentences from UNCITRAL’s New York Convention Guide: “Almost 60 years after its creation, the New York Convention continues to fulfil its objective of facilitating the recognition and enforcement of foreign arbitral awards, and in the years to come, will guarantee the continued growth of international arbitration and create conditions in which cross-border economic exchanges can flourish.” In short, at 60, the New York Convention is as fresh and sharp as when it was adopted.

The sources of such a success are manifold. The objective of the Convention was to build an effective legislative framework, which would facilitate recognition and enforcement of arbitral awards and arbitration agreements. To reach that objective, the drafters of the Convention endeavoured to strike the right balance in designing a mechanism “which, while going further than the Geneva Convention in facilitating the enforcement of foreign arbitral awards, would at the same time maintain generally recognized principles of justice and respect the sovereign rights of States”. The Convention further strikes a right balance between the application of domestic law for matters that do not need harmonization, and international substantive law. Furthermore, the Convention has a built-in mechanism to allow for advancement of the legislative framework on recognition and enforcement of foreign arbitral awards through its article VII, which leaves the door open to the application of more favourable laws, thereby paving the way for innovative and liberal standards.

In this way, the Convention has been the cornerstone of international arbitration as the primary method for solving disputes in international trade, and the commonly used dispute settlement method for countless disputes. The New York Convention is often referred to as one of the pillars of an international system of arbitral justice.

Less known is the fact that it is also the cornerstone of UNCITRAL’s origin and mandate. Indeed, in conjunction with the consideration of the question of recognition and enforcement of foreign arbitral awards, the United Nations Conference on International Commercial Arbitration, which worked on the preparation and adoption of the New York Convention from 20 May to 10 June 1958, underlined in its final Act the relevance of measures for increasing the effectiveness of arbitration. The topics mentioned included collection and publication of information on existing arbitration law and facilities, technical assistance in the development of arbitral legislation and institutions, and the preparation of a model law on arbitration.  

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These topics found their way into the programme of work of UNCITRAL and its roadmap for developing the field of international arbitration. On that basis, UNCITRAL developed Arbitration Rules (1976, revised in 2010), the Model Law on International Commercial Arbitration (1985, amended in 2006), and undertook a survey on the legislative implementation of the Convention (1995-2007).

Notable is the support provided by various areas of arbitral practice to the New York Convention over time, that have widely contributed to strengthening the international framework for recognition and enforcement of arbitral awards. In this respect, I would like to refer to the Rules of the London Court of International Arbitration (LCIA Rules) which, under their section on General Rules, provide that “(...) the LCIA Court, the LCIA, the Registrar, the Arbitral Tribunal and each of the parties shall act at all times in good faith, (...) and shall make every reasonable effort to ensure that any award is legally recognised and enforceable at the arbitral seat” (article 32.2). Clearly, such a provision serves as an important reminder for all those involved in arbitration of the need to abide by the due process and enforcement framework prescribed by the Convention and reflected in many national laws both in respect of enforcement of awards at the seat and from abroad.

In preparation for the 50th anniversary of the Convention, the UN General Assembly adopted resolution 62/65 in which it recognized the value of arbitration as a method of settling disputes in international commercial relations in a manner that contributed to harmonious commercial relations, stimulated international trade and development and promoted the rule of law at the international and national levels. The Assembly expressed its conviction that the Convention strengthened respect for binding commitments, inspired confidence in the rule of law and ensured fair treatment in the resolution of disputes arising over contractual rights and obligations. On the basis of the General Assembly request to increase efforts to promote wider adherence to the Convention and its uniform interpretation and effective implementation, UNCITRAL entrusted its Secretariat with the preparation of a Guide on the New York Convention (2011-2017). It further developed with experts involved in the preparation of the Guide a web platform that provides freely available resources on the Convention, and constitutes nowadays the most comprehensive online resource on the Convention.

Preparing and updating the Guide has been an opportunity to consider the interpretation and application of the Convention by State courts in numerous jurisdictions. As indicated in the Guide, “Article VII (1), which will grow in importance with the continued modernization of national arbitration laws, ensures that the Convention cannot freeze the development of international arbitration. It is this provision which has allowed courts in the Contracting States to advance many of the most important innovations underpinning the modern system of international arbitration.”

Areas of divergence, for instance on court referral to arbitration when parties have validly concluded an arbitration agreement, are expressions of the different legal orders, that do not require harmonization. Overall, as indicated in the Guide, despite the diversity of the Contracting States’ legal systems, the interpretation and application of the Convention has been rather consistent and in conformity with the Convention’s policy of favouring recognition and enforcement. With major jurisdictions such as China or India opening up to international arbitration, this consistent interpretation may be put to a test. The flexibility and respect for sovereignty that constitute the ingredients of the Convention’s longevity will no doubt allow it to accommodate increased recourse to it. It will also contribute to the reform called for by States in investment arbitration where the current process in UNCITRAL is also looking towards multilateral discussions and universal outcomes.

With this same objective of longevity and success, UNCITRAL is preparing the adoption of a UN Convention on International Settlement Agreements resulting from Mediation, which has the ambition to be as successful as the New York Convention to allow the development of mediation as a preferred system for resolving disputes.

For the time being, to the New York Convention, happy 60th anniversary and many happy returns.