NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

INTERNATIONAL LAW PROGRAM

THE ASSESSMENT OF ANNULMENT OF COMMERCIAL ARBITRATION AWARDS

CHIMENIM UGO

MASTER'S THESIS

NICOSIA

2019

THE ASSESSMENT OF ANNULMEN OF COMMERCIAL ARBITRATION AWARDS

CHIMENIM UGO

NEAR EAST UNIVERSITYGRADUATE SCHOOL OF SOCIAL SCIENCESINTERNATIONAL LAW PROGRAM

MASTER’S THESIS

ASST.PROF.DR. NAZIM ZIYADOV

NICOSIA
2019

ACCEPTANCE/APPROVAL

We as the jury members certify the '...' prepared by the .... defended on ...../..../.... has been found satisfactory for the award of degree of Master

JURY MEMBERS

...

Assist Prof Dr Nazim Ziyadov (Supervisor)

Near East University

Name of Faculty and Department

...

Assoc Prof Dr Volkan Gunel (Head of Jury)

Near East University

Name of Faculty and Department

...

Assist Prof Dr Tutku Tugyen Name Surname

Near East University

Name of Faculty and Department

DECLARATION

I CHIMENIM UGO, hereby declare that this thesis entitled ‘THE ASSESSMENT OF ANNULMENT OF COMMERCIAL ARBITRATION AWARDS”, has been prepared by myself under the guidance and supervision of ASST. PROF. DR NAZIM ZIYADOV in partial fulfillment of the Near East University Graduate School of Social Sciences regulations and does not to the best of my knowledge, breach any law of Copyrights and has been tested for plagarism and a copy of the result can be found in the thesis.

- The full extent of my thesis can be accessible from anywhere
- My thesis can only be accessible from Near East University
- My thesis cannot be accessible for two years, if I do not apply for extention at the end of this period.

Date:

Signature:

Name: Chimenim, Surname: Ugo

ACKNOWLEDGEMENT

The course of my masters has taken me through so many challanges, some of which i have overcome and the others have shapen me. Igive thanks to the almighty God who has given me the grace and opportunity, as well as the means to complete this journey in perseverance. Without His will and generosity, none of this or any other accomplishment would have been possible. I would like to express my sincere gratitude to my supervisor, Dr. Nazim Ziyadov for his guidance, encouragement, advice and invaluable assistance, the kind gestures i recieved from him during my research process, and his willingness to make himself available whenever I needed assistance, gave me the courage to complete this research. I am greatly indebted to my father HRH King BENNETH UGO, and my mother HRH Queen UGOwho have been my sponsors, as they have showntrue patience and support during my study.

I would also like to appreciate other members of my family for their love,support, as well as their encouragement from the start to the end,am greatful. Lastly my special thanks goes to every one who provided me with any kind of assistance necessary to help me to go through this work,thank you all.

ABSTRACT

THE ASSESSMENT OF ANNULMENT OF COMMERCIAL ARBITRATION AWARDS

Different translations of Article V(1)(e) of the New York Convention have resulted in inconsistencies in the way judges handle requests for the implementation of annulled international arbitral awards. Court cases from distinct Contracting States show that the judiciary have taken distinct solutions to this issue. The problem has become progressively crucial with the increasing amount of award difficulties.

By selecting the arbitral forum, contracting parties agree that their conflicts should be settled by an autonomous third party rather than national judiciary. National judiciary, however, still play an important position in contemporary international commercial arbitration by maintaining the smooth method and complementing the failure of the parties to agree on different disciplinary points.Onearea that stays extremely controversial is the annulment of awards in the arbitration seat of the court's decision to invalidate the arbitral award and the impact of that judgment on other court's implementation of the same award. Despite the increasing popularity of arbitration, unforeseen problems have emerged and the implementation of annulled awards has awakened ancient discussions about the very essence of arbitration and the interplay with national courts.

We would examine different case law to analyse/assess the issue of annulment of arbitration awards and the enforcement of arbitration awards in international commercial law, the functions and purpose of the New York convention and the UNCITRAL Model law.

Key words: Arbitration Awards, Enforcement and Recognition of arbitral awards, Annulment of arbitration awards, New York Convention, UNCITRAL Model Law Convention

ÖZ

THE ASSESSMENT OF ANNULMENT OF COMMERCIAL ARBITRATION AWARDS

New York Sözleşmesinin V (1) (e) maddesinin farklı tercümeleri hakimlerin iptal edilmiş uluslararası hakem kararlarının uygulanması için talepleri işleme biçimindeki tutarsızlıklar ile sonuçlanmıştır. Farklı Akit Devletlerden açılan davalar, yargının bu konuya farklı çözümler getirdiğini göstermektedir. Sorun artan ödül güçlüğü miktarıyla giderek önem kazanmıştır.

Hakem forumu seçerek, taraflar çatışmalarının ulusal yargı yerine özerk bir üçüncü tarafça çözülmesi gerektiği konusunda hemfikirdirler. Bununla birlikte, ulusal yargı, çağdaş uluslararası ticari tahkimde, yumuşak yöntemi koruyarak ve partilerin farklı disiplin noktalarında hemfikir olmadıklarını tamamlayarak hala önemli bir rol oynamaktadır. mahkemenin hakem kararını geçersiz kılma kararı ve bu kararın diğer mahkemenin aynı hükmün uygulanması üzerindeki etkisi. Tahkimin artan popülaritesine rağmen, öngörülemeyen sorunlar ortaya çıkmış ve iptal edilen ödüllerin uygulanması tahkimin özü ve ulusal mahkemelerle etkileşim hakkında eski tartışmaları uyandırmıştır.

Tahkim kararlarının iptali ve tahkim kararlarının uluslararası ticaret hukukunda uygulanması, New York sözleşmesinin işlevleri ve amacı ve UNCITRAL Model yasasının analiz edilmesi / değerlendirilmesi için farklı içtihat hukukunu inceleyeceğiz.

Anahtar kelimeler: TahkimÖdülleri, Hakem kararlarının uygulanması ve tanınması, Tahkim kararlarının iptali, New York Sözleşmesi, UNCITRAL Model Hukuk Sözleşmesi.

TABLE OF CONTENT

DECLARATION

ACKNOWLEDGEMENT iii

ABSTRACT iv

CONTENT v

ABBREVIATIONS vii

INTRODUCTION 1

Aim of the Study 4

Research Questions 4

Research Methodology 5

Formation of Thesis 5

CHAPTER 1 6

THE NEW YORK CONVENTION AND THE UNCITRAL MODEL LAW 6

1.1. Purpose of the New York Convention 6

1.1.1. Article V of the New York Convention in General 9

1.1.2. Article V(1)(e) of the NYC 11

1.1.3. What May or Must Means in the New York Convention 11

1.1.4. The Continuation of the Awards ' Legal Existence 13

1.1.5. Capable Authority To Annul Foreign Arbitration Awards Pursuant To New York Convention Article 5(1)(E) 14

1.2. UNCITRAL Model Law on International Commercial Arbitration 15

CHAPTER 2 16

ANNULMENT OF ARBITRATION AWARDS 16

2.1. Origin of Annulment in International Commercial 16

2.2. The Awards and Its Nationality 16

2.3. Grounds for Annulment 18

2.3.1. Grounds for Annulment by the Model Law 18

2.3.1.1. The Legitimacy of the Arbitral Agreement 19

2.3.1.2. Due Process 20

2.3.1.3. Exceeding Jurisdiction 21

2.3.1.4. Irregular Structure and Tribunal Appointment 21

2.3.1.5. Public Policy and Arbitrability 22

2.3.2. Other Grounds 24

2.4. Practical Structures for Annulment 25

2.4.1. Time Limits 25

2.4.2. Capability of the Court 26

2.5. Factors of the Annulment Proceedings 26

2.5.1. The Providence of the Annulled Award 27

2.5.2. New Proceedings 28

CHAPTER 3 37

ASSESSMENT OF ANNULLED FOREIGN ARBITRATION AWARDS 37

3.1. Assessment of Annulled and Enforced Foreign Arbitration Awards in compliance with Article 9 of the Geneva Convention on International Commercial Arbitration 37

3.1.1.Connection between the Geneva Convention and the New York Convention for the Annulment and Enforcement of Foreign Arbitration Awards

3.2. Ciments Francais v. Sibirskiy Cement Overlapping Analysis of New York and Geneva Conventions and Purpose of Annulled Arbitration Award in the Russian Federation 38

3.2.1. Facts of the Case 38

3.2.2. Annulment of arbitral award by Turkish Court 39

3.2.3. Enforcement of the ICC award by the Kemerovo Region Commercial Court 39

3.3. Assessment of Annulled Foreign Arbitral Awards in the United States 40

3.3.1. Article 5.1(e) of Inter-American Convention on International Commercial Arbitration 41

3.3.2. Development of U.S Decisional Law on the International Efficiency of Annulled Arbitral Awards 42

3.4. Chromalloy Aero services v. Government of Egypt 42

3.4.1. Facts of the Case 42

3.4.2. Cognitive of District Court 43

3.4.3. Critique of Chromalloy 44

3.5. Baker Marine v. Chevron 44

3.5.1. Facts of the Case 45

3.5.2. Chromalloy Renowned 46

3.6. Spier v. Calzaturificio Tecnica 47

3.6.1. Facts of the Case 48

3.6.2. Assessment of Chromalloy and Baker Marine by Spier Court 48

CONCLUSION 50

REFERENCES 54

PLAGERISIM REPORT 59

ETHICS COMMITEE APPROVAL 60

LIST OF ABBREVIATIONS

APK RF:	Arbitration Procedure Code of the Russian Federation
CPC:	Civil Procedure Code
FAA:	Federal Arbitration Act
ICC:	International Chamber of Commerce
ISA:	International Standard Annulment
LSA:	Local Standard Annulment
N.D.N.Y:	Northern District Court of New York
NYC:	New York Convention
S.D.N.Y:	Southern District Court of New York
SPA:	Share Purchase Agreement
UNCITRAL:	United Nations Commission on International Trade Law

INTRODUCTION

In an international arbitration, a victorious party fairly expects the award to be carried out without delay. If the receiving party chooses to pay, the receiving party shall have the right to take measures to enforce the award's efficiency.[1]Effectively, two measures can be made, one of which involves invoking the state's authority through its domestic judiciary to acquire a grip on the property of the winning party or in some other manner to compel the award's achievement. This method of convincing the award's achievement through national judiciary is called enforcement.

Arbitration has its recognized and unfamiliar side, like other events. The renowned party is in the regulations-legislation, arbitration rules sets and international conventions. Therefore, it is understood that arbitration procedures are confidential, shut to the public, so that arbitration parties may engage in conflict but at the same moment keep the reality that there is a controversy between them far from the public's curious eyes. For this purpose, understanding the truth of arbitration procedures and the manner the normative and doctrinal constructs come to life is a unique achievement of a few.

An arbitral award is international if it is issued in the land of a State other than the State in which such awards are attempted for recognition and enforcement and arise from distinctions between individuals, whether physical or legal. It also relates to arbitral awards in the State where recognition and enforcement are requested are not deemed national awards.[2]

The parties may have a completely different position on it as soon as a judge or arbitrator decides in a dispute. If there was an obvious winner in the proceedings, the will also be a possibility that the productivity of the general process will be rewarded instead of having decisions that are lined with imperfections. However, the pinching order of alternative decisions is created, a discreet legislator tries to find a right equity between the purpose andthevalue of the decision - making process. This

[1]Redfern A and Hunter M,*International Arbitration*, (5th edition, New York: Oxford University Press Inc,2009),p621.
[2]United nation, UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (New York, 1958) p309

generallymeans that the court of first instance is responsible for determining the facts and applying the law when it comes to judgment. One or two upper cases can be appealed to re-inspect the application of the law. During this inspection, the actual verdict may be accepted, nullified or cancelled and mentioned for a further round of first-category disputes. The award becomes final and binding once all these sprints are clear. Although it is ultimate and mandatory, members of parliament regularly spare a restricted amount of solutions. This extraordinary alternative is supposed to eradicate somehow snapped decisions, even if their very grounds are extremely inadequate. Arbitration was initially referred to as the response to many cases of legal actions.[3]Elasticity, privacy, appropriateness for global trade, these features cannot be considered. The ability to select those who decide will sound even better. The two leadingfacts of sale were, however, the noble projections of trans-boundaryimplementation and the promptness at which the reward is awarded. Asarbitration is not subject to plea in principle, the ultimateaward, which is equivalent to the verdict of the court, is not outside the range of the result. A particular period of consideration means that there are no appeal costs. As a result, arbitration may prove cheap in the long run, regardless of initial substantial costs.

But the reality that an arbitral grant is equivalent to a court's ultimate judgement is a grant that had to come with a cost which is the control of the award by the judiciary. The agreement is reasonable, despite the fact that settlement is anagreement construction and the ensuingaward is declared as "private justice," "it can only be raised to the status of a court ruling by the state. Without this element, all the other benefits of arbitration over legal actions would be valueless. As the state permits its arbitration delegated powers to be reduced, it is only normal that it secures the right to adjudication.[4]

Arbitration provisions have become a prominent characteristic in global trade.[5] Between contracting parties they instil trust in the trading parties and also promote investors knowing that there will be a solution with some type of compensation in the case of any mistake. When awards are produced for a party they participate the state

---

[3]Caron D,Caplan L,*the UNCITRAL arbitration rules: A commentary*,(2nd edition,2013)
[4]Park W, *Arbitration of International Business Disputes* (2006).p147
[5]Lynch K*, The Forces of Economic Globalization: Challenges to the Regime of International Commercial Arbitration* (Kluwer Law International 2003)

equipment through the judiciary to recognize and enforce such awards. The judiciary are enforcing or denying such awards at their discretion.[6]

The winning party might make an effort to implement the award in another jurisdiction (the subordinate jurisdiction) when an international arbitration award is annulled or nullified in the country where the competition was conducted (the main jurisdiction). This creates distinctive difficulties to the subordinate jurisdiction whose judiciary must balance the parties' rights under the award with regard to the court's verdict nullifying the award. The "universally accepted rule," as said by Albert Jan van den Berg, is that if an award has been nullified in the state of origin (mainly the place of adjudication), it cannot be implemented in other countries." This ruleprovides the court's decision where the award is given significant deference.[7]

How international commercial arbitration can be so popular and successful during the past century may be a wonder to many. When alterations rises, conflicting parties will firstly recall national court and alternate to, which is the traditional active body for resolving disputes.[8]Also, mediation or conciliation, settlement are other alternative dispute resolutions. Nevertheless,since series of international conventions on arbitration agreement and execution of arbitral awards have been publicised, arbitration system is most regularly chosen for resolving commercial disputes.[9] the United National Convention on the Recognition and Enforcement of foreign arbitral awards which was more intimately called the New York Convention was the most successful and influential convention for promoting arbitration in the past century. International commercial arbitration has got great progress and received growing importance then and even till now, under the supports of the New York Convention.[10]

International decision makers and National legislatures have seen the need to limit the conclusiveness of arbitration awards under assured conditions. Usually, a partythat is

---

[6]Ibid
[7]Berg A*, New Horizons in International Commercial Arbitration and Beyond* (Kluwer Law International 2005)p346
[8]"International Law & World Order: Westons & Carlsons Basic Documents I.H.7 Permanent Court of Arbitration 1962 Rules of Arbitration and Conciliation for Settlement of International Disputes Between Two Parties of Which Only One Is a State" International Law & World Order: Westons & Carlsons Basic Documents
[9]"Alternative Dispute Resolution.pdf" (Scribd) <https://www.scribd.com/document/312013627/Alternative-Dispute-Resolution-pdf> accessed March 27, 2019
[10]Solomon D, "*Reinmar Wolff (Ed.), New York Convention. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958: A Commentary*(European Yearbook of International Economic Law 2014) 445

defeated in an arbitral award may try diverse means in order to destroy the efficiency of the award.[11]

Aim of the Study

International commercial arbitration is a significant component of the process of ensuring international trade works effectively, and has been for a lengthy moment. Each important agreement, particularly those relating to international affairs, should include a dispute resolution clause which chooses what will happen if a conflict occurs out of or in association with the agreement. If the parties decide to resolve their conflict by arbitration, a mechanism to manage all elements of this phase is crucial. The implementation of the arbitral award is one of the most significant elements of this scheme.

The purpose of this research is to examine how the New York Convention's drafting background and intent has influenced its implementation in multiple contracting states in distinct respects. By evaluating how instances concerning the annulment and implementation of arbitration awards have been handled by courts in different nations, the writer seeks to trace the methods that have emerged on this issue. In addition, the research aims to examine how other courts could and should manage a request for an award that has been set aside or annulled in the court table.

Research Questions

This thesis tries to answer some questions that raises issues in the annulment and enforcement of arbitration awards in international commercial law.

Question one: what would be the fate of an award after it has been annulled outside of its jurisdiction

Question two: should annulment of an arbitral award be banned

Question three: what should happen to an annulled award?

Question four: does the arbitrators have a second chance in resolving the dispute?

[11]Andrews N,Arbitration Awards: Issues of Finality and Res Judicata" Andrews on Civil Processes,p319

Research Methodology

The researcher intends to carry out the research using a qualitative method of analysis, by critically analysing case studies and trying to use them to provide a solution to the problem questions in this research.

The researcher also intends to get information from previous studies as well as research papers, Electronic sources, books and journals. This thesis studies the assessment of the annulment of arbitration awards in international commercial law.

Formation of Thesis

The thesis consist of a five chapter sections including conclusion, the starting point of the first chapter onebegins with the structural composition of the intended research topic its significant, and the relevance of the research question, following up immediately is chapter 2 Chapter two, which focuses on the purpose and importance of the New York convention, discussing the articles under the New York Convention relating to the thesis topic. Chapter three focuses on the setting aside of arbitration awards the reasons for annulment of arbitration awardsand also answered some of the research questions. Chapter four focuses on the arbitration awards that have been nullified in the state of its origin assessed by different countries using case studies. Lastly chapter five which is the conclusion answered some of the research question and also talked about the researchers final thoughts on the paper.

CHAPTER 1

THE NEW YORK CONVENTION AND THE UNCITRAL MODEL LAW

1.1. Purpose of the New York Convention

The New York Convention can be internationally viewed as one of the law treaties that has generated huge success ever in history, [12]this is so because about 159 States are full signatories and parties to the proceeds of the Convention and the number of interested signatories keeps increasing daily.[13] The major target of theNew York Convention was to first propose then establish a common legislative standards which will be useful for arbitration agreements. It also aimed at recognizing and enforcing foreign arbitration awards by courts specifically for the facilitation of a swift enforcement of arbitration awards.[14] This preposition of the New York Convention can be viewed in Article III, which states that every involving state shall identify arbitrationawards as mandatoryagreement, and also enforce them swiftly in agreement with the procedural rules of the territory where the award has been issued, this is also as long as the conditions are as registered in the following articles. It is also important that the arbitral awards do not include conditions that are imposed, high fees or charges of recognition or enforcement to the application of this Convention as against those of domestic arbitral awards[15].

The Article III also makes provision of a clear obligatory recognition and enforcementof awardsthat meet and satisfy the requirements of Article IV. Further interpretation of Article III states that the bases for the refusal of enforcement by courts should be on the grounds that are specifically stated in Article V.[16] These articles, and the statutory

---

[12]Cremades B, '*The Brave New World of Global Arbitration*',(The Journal of World Investment & Trade Volume 3 Issue 2, 2002)
[13]"II. Status of the New York Convention (Contracting States, Dates, Reservations and Declarations)" [2013] New York Convention 621, accessed March 28, 2019
[14]Fraser, "June 19, 1915, Vol. 100, No. 2608" (FRASER) <https://fraser.stlouisfed.org/title/1339/item/497320> accessed March 28, 2019
[15]Convention on the Recognition and Enforcement of Foreign arbitral awards'(New York Convention guide 1958)
[16]Ibid

aims that are stated in the proceeds of the New York Convention, correlates into the embodiment of the Convention's general enforcement regime.As it must also be noted that the convention is a primarily product of the drive to create an environment where foreign arbitral awards is easily enforced, thereby creating a standardized and effective international arbitration process. As described by Paulsson, Courts are not allowed to breach the Convention through the enforcement of awards except by failing to do so.[17]

In the Article V of the New York Convention the reasons on which enforcement and recognition of arbitral awards may be declined is listed. We can understand that the grounds as listed are very exhausting and vaguely ambiguous.[18]One of the reasons why a United States court once stated strongly. With respect to the convention, that courts are prohibited from having reconsiderations on the resultsof the arbitrationpanels.

The phases of recognition and enforcement is typically different from the procedures that are to be followed during arbitration award. This facts lays strong backings towards the decision that Article V of theNew York Convention does not depicts laws that are applicable to annulment proceeding, instead. Article V(1)(e) approves of the fact that there can be the existence of vacation procedures. This therefore recognizes it as one of the grounds for which recognition and enforcement of arbitration grants can be refused, set aside or suspended by capable authorities[19] of the country where the award was made.

Apparently some writershave askedthe possibility of the New York Convention to allow its signatories create additional reasons for the annulmentof an arbitral award, underthecountries legislation even though it is outside the grounds that are permitted under Article V.[20] In this case it is supposed that, national courts are basically prevented from reviewing important errors made in the awards. Most of these authors have based their questions on the fact that there is a desired unification of international arbitration proceedings that will be uniform across jurisdictions.[21]

---

[17]Paulsson M,'the 1958 New York Convention in action',(kluwer law international 2016)
[18]Moses M, *The Principles and Practice of International Commercial Arbitration*(2008)p241
[19]Marianne R, *14 UNCITRAL Model Law on International Commercial Arbitration*(Practitioners Handbook on International Commercial Arbitration,2nd edition,2009)
[20]Bantekas I, *Arbitral Awards and Challenges against Awards;An Introduction to International Arbitration*(2015)p185
[21]Bermann G,*Recognition and Enforcement of Foreign Arbitral Awards;The Interpretation and Application of the New York Convention by National Courts*(2017)p183

To allow the recognition and enforcement under the New York Convention, the applying parties would have to meet some basic requirements that are stated in Article IV.[22]Some of these requirements include the fact that the applicant must be willing to provide a competent authority with:

(a) An authentic document showing that it is the actualaward or a qualified copy of same.

(b) Theauthentic contracts mentioned to in Article II or a certified copy of same.

These conditions are minimum and formal and they are necessitated to allow for a request process that is as simple as possible for the arbitral award enforcement of foreign. Again it is important to note that Article IV prevails over any national legislation relating to the formal requirements of foreign awards.[23]

Another intention of the New York Convention is the "double exequatur". The double exequatur requirement as stated in the 1927Geneva Conventiongave some effects which would mean that an award had to first be proclaimed as Final in the country where it was rendered so as to allow easy and smooth enforcement abroad. The result of this requirement suggests that the award should first be confirmed in the arbitral seat so that it can be enforceable. Only after confirmation of the award in the country of origin could a party seek to enforce the award abroad in the arbitration. This clearly caused a slow, difficult and uncertain enforcement process. So, how was this requirement eliminated by the New York Convention? The drafters simply chose the term "binding" in Article III rather than "final" and thus made it clear that it was no longer required to confirm the award in the arbitral seat.[24] This was a major achievement in international arbitration, and the elimination of the double exequatur was even claimed to be the New York Convention's single most important effect. Although it must be regarded internationally accepted that while the term "binding" has this effect, it has created some controversy and discussion about the true meaning of the term, and the question of at what point an award becomes binding.[25]

---

[22]KarabelnikovB,*Recognition and Enforcement of Foreign Arbitral Awards: A Theoretical and Practical Commentary to the 1958 New York Convention*(volume 19,issue 3,2003)p409

[23]Carter J and Fellas J,*International Commercial Arbitration in New York*(2nd Edition,2016)

[24]Paulsson J, *The Legal Foundations of Arbitration; The Idea of Arbitration*(2013)p29

[25]Berg D and Bernard H,(2011),NEW YORK CONVENTION OF 1958’<http://www.hvdb.com/wp-content/uploads/2011-AJvdB-Commentaries-on-Court-Decisions-on-the-NYC-in-Yearbook-XXXVI.pdf> accessed April 12, 2019

Understanding the importance of the elimination of the double exequatur in international commercial arbitration is not so difficult. Apparently when arbitration is used to settle large commercial disputes, the party on the winning side must be certain for sure that weather or not the losing party act in accordance with the verdicts of the grant, the award can still enforced without a long and arduous process. In the world today, it is no longer uncommon to have assets in more than one country this is because of the globalization of business activities. But however, as long as the independence of the party is one of the major principles of arbitration, the proceedings could possibly take place anywhere in the world. The cost of having disputes can be high and the parties on the losing end of the arbitration may not have many assets. Therefore, before consideration international arbitration and trade, it is important to study the possibility of effectively enforcing arbitral awards away from the country where it was made.

Nothing in the New York Convention, nor in the essential structure and motivation behind the New York Convention, forces anobligation not to perceive an honour. To put it plainly, the New York Convention sets down least formal prerequisites for upholding awards and greatest guidelines on which enforcementmight be refused. Special cases to the general commitment to uphold arbitral awards set out in the New York Convention Article III is controlled only in Article V. It is essential to hold up under as a main priority, as talked about beneath, that the special cases in Article V are restricted and comprehensive.[26]

1.1.1. Article V of the New York Convention in General

The main rule is that Contracting States have a general obligation under the New York Convention to enforce external arbitration awards. However, there are exceptions to each rule. This is the case with the New York Convention's Article III. The exceptions are laid down in New York Convention Article V.

[26]“No. 4739. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Done at New York, on 10 June 1958”

The justification for declining to perceive or uphold foreign arbitration awards in the New York Convention are given as follows: Article V(1)(a), absence of a legitimate arbitration understanding or no limit ; Article V(1)(b), the gathering denied the chance to display his case Article V(1)(c), the award manages matters outside the extent of arbitration ; Article V(1)(d), the synthesis of the arbitration procedures was not in amicability with the gatherings' understanding; Article V(1)(e), the award isn't official or has been put aside at the arbitration site ; Article V(2)(a), the debate or the cases are non-arbitrableand lastly Article V(2)(b), the award is in breach of public policy.

The majority of these can be referred to in New York Convention Article V and it shall be interpreted narrowly and exclusive as exceptions which can be applicable only in rigorous cases.[27]In a case where an applicant has provided the necessary documents defined in Article IV to the competent authority, recognition and enforcement shall be granted to the foreign award as provided for in Article III. The major grounds wherewith awards recognition can be refused will be peculiar only to those set in Article V. Furthermore, where a party objects to the recognition and enforcement of the award, enforcement shall be provided for in Article V. This can be understood, since the entire purpose of the New York Convention has been designed to make the procedure simple.[28] In a case where the enforcement authority is to conduct a full review of the case, the operation could be long and complicated.

The initial five grounds, V(1)(a-e), are the main grounds on which the opponent may depend, and it is dependent upon that party to legitimize the presence of a few or these grounds. Be that as it may, the court may consider the grounds set out in V(2)(a-b) ex officio: that is, all alone movement. Situating the burden of proof on the party counteracting recognition and enforcement is a monstrous change.[29]Putting the burden of proof to the party that is resisting, this is yet another example of the inclinationthat can be seen in the New York Convention efforts to promote a swift and effective enforcement of external arbitrationawards. Despite the celebrations of the New York Convention as a great success, practically some of the grounds in Article V caused enforcement authorities problems. This can be seen as a result of the

[27]*Supra* note 18,p279
[28]*Supra* note 17,p541
[29]*Supra* note 1

inconsistent interpretation of the New York Convention by the various promising States.

1.1.2. Article V(1)(e) of the NYC

"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:

(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”. Specifically the New York Convention article has caused the most discourse and discussion on the grounds of rejecting acknowledgment and requirement in Article V. It is a consistently examined point among lawful specialists and has offered ascend to an assortment of potential inquiries regarding the reason and aim of the New York Convention.

In fact, Article V(1)(e) has set out three separate grounds for refusing recognition and enforcement by the competent authority, namely: 1. the award is not binding yet; 2. the award was revoked; 3. The award was suspended. This study is focused on the second ground where the recognition and enforcement of the award could be suspended or possibly denied if it has prior to the moment been set aside in the country of origin by a competent authority. This begs the question of what effect the setting aside of the award in the country of origin has on other jurisdictions, as the question has been dealt with by the courts in some of the member states.[30]

1.1.3. What May or Must Means in the New York Convention

If there is one or moreof the grounds in Article V(1), are upholding courts mandatory to deny requirement of the arbitral award? To address this inquiry, a more critical look must be given to the language of the New York Convention arrangements. The test in finding out the right evaluation of the New York Convention emerges from the way that it is drafted in five distinct languages which are similarly bona fide as per Article XVI. Chinese, English, French, Russian and Spanish are the five languagesin this way, all

[30]Kim J*, International Arbitration in Korea;Arbitration procedure*(2017)

these are conceivably right. Of the five, however, four demonstrate that acknowledgment and implementation "may" be denied. The special case is the French content that some legal writershave recommended building up a commitment to deny recognition and enforcementif an award can be categorized as one of the grounds set out in Article V.

The notable writers, Gary Born and Jan Paulsson, both help the view that authorization courts have alternatives in asserting that the language of Article V is plainly liberal, not necessary, by prudence of the word. They contend that authorization courts have watchfulness in choosing whether remote arbitration awardsought to be perceived and upheld, in spite of the fact that the award can be categorized as one of the reason for denial under Article V(1). This view was additionally affirmed in various contracting states by national courts, especially in cases regarding Article V(1)(e).

The view that Article V is liberal bodes well, without affirming to be an English-language master, there appears, apparently, to be a difference between the fundamental words "will" and the tolerant word "may." "Will" happens in various places in the New York Convention when an unmistakable duty is made. For instance, Article II of the New York Convention sets out a promise to see a record of an arbitration understanding. This is additionally steady with the end objectives of the New York Convention, for example encouraging the quick and feasible authorization of foreign arbitral awards. Permitting implementation courts to practice circumspection is increasingly predictable with this reason just as with the New York Convention's previously mentioned expert requirement predisposition. In addition, when it comes to interpreting international treaties, the Vienna Convention on the Law of Treaties of 1969 (gives direction on the most proficient method to do this).The writers trust that treating the grounds alluded to in Article V(1) as liberal fills the need and reason for the New York Convention all the more successfully. The end to be drawn from the above discourse is that the New York Convention's language and reason suggests that the justification for refusal to perceive and implement outside arbitral awards set out in Article V(1) are liberal and tolerant. Be that as it may, where Article V(1)(e) of the New York Convention is disturbed, no direction is offered with respect to when an implementation court may give

authorization of an award, despite the fact that a court in the nation where it was made has dissolved it. There is obviously the privilege to reject requirement of such an award, in spite of the fact that the utilization of the expression "may" opens the way to authorizing dropped outside arbitral awards.[31]

1.1.4. TheContinuation ofthe Awards ' Legal Existence

Most countries,have national arbitration legislation which allows domestic courts to annulawards within their own authority.

The UNCITRAL Model Law has made provision for courts to annulawards in their authority. Although with exceptions to Article V(1)(e) of the New York Convention, Article 34 sets outthe grounds for the annulmentof awards and areparallel to the grounds for refusal of recognition andenforcement. Although there are possibilities but it is quite rare international arbitral awards to be annulled, and when it eventually happens, there is a much debatedissue that arises and these issues are related to the continuation of the legal existence of the award.[32]

It is also quiet important to acknowledge that the jurisdiction to exclusively set aside an award lies on the coffers of the national courts in the country in which the award was made. This is sometimes referred to as the primary jurisdiction court in the country. In other Contracting States, secondary jurisdiction lies in the competent authorities thereby giving them the power to make verdicts on the enforcement or the refusal of the grant within their own jurisdiction.[33] This leads to the question: what is the actual result of an arbitral award being annulled by a primary court of jurisdiction? Does the award cease to exist entirely in any secondary jurisdiction or can it still be enforced abroad?

Many years after theNew York Convention has been enforced, the wide spread view was that it ceased to exist when an award was cancelled. Consequently, in no other auxiliary purviews might it be able to be implemented. This was a legitimate arrangement dependent on the thought that nothing can emerge out of nothing. As one

---

[31]Mayer UC,the enforcement of annulled arbitral awards;towards a uniform judicial interpretation of the 1958 new york convention (1998)

[32]Bermann G,*Recognıtıon And Enforcement Of Foreıgn Arbıtral Awards: The Applıcatıon Of The New York Conventıon By Natıonal Courts*(2014)p458

[33]Thomas D, *Yearbook Commercial Arbitration, Volume X - 1985, ICCA, General Editor: Pieter Sanders, and International Handbook on Commercial Arbitration, ICCA, General Editior: Pieter Sanders* (1986)p173

of the main figures in the work on drafting the New York Convention clarified, Professor Pieter Sanders: if an award is dropped, "there is never again an arbitrationaward, and the implementation of a non-existent award would be impossible or even conflict with the enforcement country'spublic policy. Starting here of view, nothing, not in any case the New York Convention, can inhale new life into an annulled award, since the New York Convention concerns just existing and legitimate arbitration awards.

In any case, following the improvement of case law identifying with Article V(1)(e) of the New York Convention, the issue of enforceability of cancelled arbitration awards has started discourse among lawful researchers. The discourse stems basically from the different elucidations of the expression "may" utilized in Article V(1) and the arrangement of "progressively ideal" in Article VII of the New York Convention. Various views have been put forward as to whether the use of the word "may" means that enforcement courts have discretion in deciding whether to refuse enforcement of foreign arbitral awards.[34]

1.1.5. Capable Authority To Annul Foreign Arbitration Awards Pursuant To New York Convention Article 5(1)(E)

Under Article 5(1)(e) of the New York Convention, the annulment of the arbitral award may constitute grounds for rejection of recognition and enforcement i.e. if it has been awarded by the competent authority, this has to be under the law of award. Article 5(1)(e) basically creates two possible jurisdictions saddled with the responsibility of annullingarbitration award. The jurisdiction of the arbitration seat and the authority of the law valid to the award, but it isperceived that the majority of the decisions on annulment originate from the country of settlement.

The Article does not specifically regulate if the dispute is subject to functional or practical law granting the authority to annul the award. The ambiguity of the New York Convention's language has given rise to court decisions worldwide that only technical law leadinglegal actions can activate such a body.[35]

[34]Scherer M, *Article III [Recognition and Enforcement of Arbitral Awards; General Rule, New York Convention*(2013)p258

[35]"U.S. Supreme Court Says Arbitration Agreements Exclude Class Arbitration Absent Consent" (JD Supra) <https://www.jdsupra.com/legalnews/u-s-supreme-court-says-arbitration-85123/> accessed April 12, 2019

1.2. UNCITRAL Model Law on International Commercial Arbitration

A comparable section of Article V(1)(e) of the New York Convention is contained in Article 36(1)(a)(v) of the UNCITRAL Model Law on International Commercial Arbitration. It may be concluded that model law rules such as the New York Convention comply with local arbitration award legislation. Unlike the New York Convention and the Inter-American Convention, the Model Law includes a clause for the annulment of arbitration awards. The grounds set out there in correlate to those set out in Article v of the New York Convention.[36] Most importantly, these grounds include a public policy exemption, contrary to the Washington and European conventions, which offers the States that have implemented Model Law legislation. In addition, the Model Law does not bindingly affect the embracing countries however goes about as a rule for transforming and modernizing the arbitration procedure under nearby legislation. States are in this manner allowed to go amiss from the necessities of the Model Law to implement increasingly stringent or looser Standards for the annulment of awards for arbitration. Despite the fact that the Model Law does not propose a survey of authentic oversights, it doesn't expressly prohibit such assessment.[37]

[36]Kim S, *A Study on Recent Canada Court's Decision Regarding the New York Convention and UNCITRAL Model Commercial Arbitration Law"* (null Kyungpook National University Law Journal,2014)p307
[37]Herrmann G, *The Uncitral Arbitration Law: a Good Model of a Model Law"* (1998)p483

CHAPTER 2

ANNULMENT OF ARBITRATION AWARDS

2.1. Origin of Annulment in International Commercial

The award has been put through some form of review by a court for as long as arbitration has lived as another way to legal action in court. This was the case under Roman law, under Napoleonic codes and in the middle Ages. The judicial review mostly took place in enforcement proceedings. It was the end of the story if the court found that enforcement should be refused. There were two developments that introduced the setting aside also called the annulment of the award as a separate action.[38]

First, a dissatisfied party did not want to wait until the winning party sought enforcement of the award.[39] It went on the offensive by seeking a declaration that the award was null or ought to be annulled. In that sense, the action to set aside reflects the action to enforce the award. Secondly, in the 19th century, with the advent of international arbitration, enforcement was no longer confined to the country where the award was made. Which was in danger of differentiating the decision on enforcing the same award in different countries. Consequently, the losing party had an interest in obtaining a declaration that the award was null and void in the country in which it was made. This could be done by requesting that the awards be set aside in that country.[40]

2.2. The Awards and Its Nationality

In general, an unsatisfied party can attempt to cancel the award in its country of origin. The losing party can only try to withstand recognition and enforcement in all other jurisdictions. Therefore, it is important to find out the award's "nationality" to set up the annulment mechanism Motion. There were generally two criteria for the origin of the arbitral award. It was determinedunder the procedural standard, thenationality of the

[38]Joongi K, "10 Setting Aside an Arbitral Award" [2017] International Arbitration in Korea
[39]Berg D,*Should the Setting Aside of the Arbitral Award Be Abolished*(2014)
[40]Mistelis L, *Setting Aside of Arbitral Awards and Forum Shopping in International Arbitration: Delocalization, Party Autonomy and National Courts in Post-Award Review*(Academia,2000)

award was determined in the manner in which it was awarded. Normally, procedural problems were also regulated by the lex loci arbitri, but this has not always been the situation. The second geographic standard triumphed, emphasizing where the grant was created, i.e. where the court has its legitimate seat. The New York Convention does not favour either of the requirements, but the template legislation is placed on the concept of the territories. The spread of design legislation has therefore assisted marginalize the application criteria.

It is reasonable to wonder if the arbitral session should be given such significance to the courts. After all, the place may have been chosen with an urge, negligence, inaction or chosen by the arbitral authority or arbitrators replace the absence of selection of parties.[41]There are many possible responses to these challenges, but rephrasing Churchill one can reduce a lengthy tale: while there may be circumstances where the seat would be an inadequate place for command, the least poor alternative is to vest seat judiciary with supervisory expertise for the annulment procedure. All other point of relationship such as the citizenship of the adjudicators, selected rules of the court, selected substantive law, or place of the arbitration authority might possibly generate a structure far more disconnected from the reality of international commercial arbitration. The arbitration world has seen more drastic measures to reduce the seat's function. The people who support' delocalization' claimed that in order to be genuinely global, adjudication must be released from the strict limitations of local courtsandthat the corresponding grand must not be monitored at its origin but only ultimately in the process of recognition and enforcement.[42]

The territorial principle's frequency makes it relatively simple to determine if the award is internally for nullity reasons. But it's more difficult to ascertain precisely what the award is, i.e. what might it be? Beyond any annulment.The court may award many awards and mark them separately during the process of the proceedings, such marks can also differ from court to court to legal society. While the final award is certainly the theme of the conflict, there is less clarity about the condition with other choices. Since the subject matter is partly dealt with, inability to permit such a task would bypass the control system as a partial award should also be annulled. However, choices on

[41]Christine C, Part II International Judicial and Arbitral Procedure and Third Parties,Third Parties before International Arbitral Tribunals(1993)
[42]Rodriguos E,*Actions for Annulment of International Arbitral Awards: Recent Trends in the French Courts*

jurisdictional problems are labelled as awards is not the annulment method, but rather a unique appeal to the judiciary regulated by distinct examination norms. Other decision can be contested only with the final award.[43]

2.3. Grounds for Annulment

The amount of jurisdiction has risen, as already noted. The Model Law as the grounds for regulating arbitration. This carries with it about worldwide integration in many ways, one of which is an almost standardized list of factors for the arbitral award challenge.[44] Although, here it is mostly reasonable to emphasize that the model law served just as a guide for domestic law and following authorities sometimes such advice adds their national flavour to the model law ' guidelines. Some of the most significant arbitration authorities however, remain independent the model law mechanism.

2.3.1. Grounds for Annulment by the Model Law

Drafters of model law remained mainly strong to establish a list of grounds for challenges that would imitate the list of possible reasons Under the New York Convention of recognition and enforcement of the award, can be resisted. Hence, model law contains a comprehensive ' four plus two 'List: four grounds are surveyed only by the courtif invoked Complainant (disability of the arbitral agreement, irregular structure of the arbitration agreement to the arbitration court, infringement of due process and decision outside the choice of tribunal suggestion) and two additional reasons that are observed (Arbitrability and public policy) ex officio. The fifth ground under consideration Invoked under the New York Convention by a resisting party, thisaward was annulled in an original country, was of course not involved in the Model law. [45]

The ' four plus two' list is a kind of international agreement about what appears to be the ' perfect principal ' of allowed possibility of the award controlled.

[43]Should Arbitrator as a General Rule Be Required to Be Impartial and or Independent of the Parties?-Illustrate and Explain.” (The Lawyers & Jurists)
[44]Doak B and M, *Part II Grounds for Annulment, 9 Failure to State Reasons on Which the Award Is Based Annulment Under the ICSID Convention*(2012)
[45]“Enforcement of International Arbitration Awards,<http://www.austlii.edu.au/au/journals/IntTBLawRw/2004/2.html> accessed April 23, 2019

Itsfundamentalstandard is that no substantial revision of the award.[46]Thoughthere are minor exceptions even under the Model Law and New York Convention, and to anextent in some important non-Model Law authorities'limited review of the award is these days the norm.

2.3.1.1. The Legitimacy of the Arbitral Agreement

The model law stipulates that, if the grant is nullified, thearbitration agreement was not legitimateor a party to the arbitral agreement had some inability. The legitimacy of the agreement shall be assessed in unity with the law that the parties have submitted it or in accordance with lexarbitri (lexfori) legislation if they have not exercised this choice. This ground for cancelation is only one of several that may be used to correct inadequate jurisdiction.[47] The only jurisdiction that deals with this aspect is the deficiency of the arbitral agreement, because of the parties' lack of magnitude or other purpose. Another challenge to the jurisdiction can still be presented, but for other relevant reasons because of model law. Although this territory's range is restricted, its prospective effect is crucial as the challenge is clearly aimed against the whole jurisdiction nothing could emerge from it if there was no legitimate contract. The external boundaries of this test are not evident that the' invalidity' also includes the non-existence' and the scenario where an individual assigned to the arbitration party is not bound by the contract.[48]

This basis of examination offers a balance between the competences of the arbitrationcourt. Still the most extensive variety of Competence-Competence (negative Competence-Competence) offers only that the tribunal will have the right to be the first place to examine authority (including the legitimacy of the arbitration agreement).Tribunals, however, will not necessarily have the last word, normally it will belong to the judiciary. With respect to court choices, this is absolutely evident where they discover that they are indeed skilled and the contract is applicable. There are different jurisdictions to follow up in instances where the tribunalcan be the first to examine the legitimacy of the arbitration contract and find it void. It is a matter of

[46]Guest, "No Title - PDF Free Download" (epdf.tips) <https://epdf.tips/no-title39db810a25c1b3da4cd228d40226e68281539.html> accessed April 23, 2019

[47]Bermann G,*Chapter II. Arbitral Jurisdiction and the Arbitration Agreement" Collected Courses of the Hague Academy of International Law*

[48]Park W, *Arbitration of International Business Disputes; International Commercial Arbitration*(2nd edition,2012)

principle in some model countries that are faithful to the original blueprint that the rejectedarbitration verdict is incapable of beingreversed and agreementcannot be imposed on arbitrators.[49]

2.3.1.2. Due Process

Fairness is a pillar of any selection. Although the concepts of the proper method enshrined in a number of the most significant felony tools do not follow arbitration, arbitrations should however examine certain minimum practicalprinciples.[50] It is no longer shocking, that the model law offers that anaward can be annulled if a party cannot give its case. One possible reason for this incapacity was identified: the absence of appropriateobservation of the selection of the adjudicators or the court cases. [51]This is rarely the best motive and honestly a very significant one. The adequacy of knowledge is examined contrary to the regulations agreed upon by the events, which are generally the policies of a specific arbitration organization or some version guidelines. In the absence of such a choice, notice must comply with the lexarbitri guidelines. The reality that the notice was inadequate in itself is not always an aim for setting aside. Instead, errors isexamined contrary to the results it has created and is best if it prevents a celebration from providing the case. If follow up treatments first observe a faulty conveying, a party may not invoke this ground.

Although it is very important to violate due process it won't succeed every time for challenge. For example, an award can be cancelled if the court intentionally disguises documents the party has obtained ordoes not reveal proof to either party or both. A party must be provided an inexpensive moment to respond to the application of the alternative celebration in order to give its case. However, the application of a party to reinvestigatefavourable evidence can be denied without providing justification, and that rejection does not form a breach of right. Furthermore, no breach of due process may occur if a main witness does not appear to be offering evidence despite the fact that he was charged twice. Ultimately, if a person chooses to engage in court proceedings the intentional revocation of the right to be heard is taken into account.

---

[49]A BG, “6 Jurisdiction: Courts vs. Arbitrators” International Commercial Arbitration in New York(13th edition, 2016)
[50]Guest, “*International Commercial and Marine Arbitration* (Routledge Research in International Commercial Law) <https://epdf.tips/international-commercial-and-marine-arbitration-routledge-research-in-internatio.html> accessed April 23, 2019
[51]Martin C and Green J, *International Arbitration and Litigation, Jenner & Block Practice Series* (2014)

2.3.1.3. Exceeding Jurisdiction

The Model Law is disturbed by the condition in which the court go beyond its power, but the term submission used is accessible to analysis, there is no doubt that working beyond the submission to arbitration would address a situation in which the reward extends beyond the real demands for assistance or awards something else. It is also evident that if the award fell within the range of aid applications, there would be an excess, but such applications include issues not covered by the arbitration agreement. No reason for setting aside in the Model Law scheme is provided by an award that does not cover all parties ' requests[52].

It is not clear if this can be the suitableargument to appeal to wherea party claims that it never became a party to the contractat all. If one can acknowledge that the first jurisdictional ground covers only the illegitimacy of the arbitral agreement and not its scope then a non-signatory should be allowed to question the award on the ground that it has never submitted to the arbitration in first place.[53]

If the part of the award where the court surpassed its authority can be separated from the part of the awards that remains within the limits of submission, then the excess should be set aside. This is the only section of the Model Law relating to incomplete setting aside, it could be argued that incomplete setting aside should also be authorized for other reasons.[54]

2.3.1.4. Irregular StructureandTribunal Appointment

The parties' agreement is the cornerstone of arbitration. It is particularly important to adhere to this agreement when it comes to how arbitrators are selected and how the proceedings are conducted. Consequently, it is appropriate for the Model Law to regard deviations from such a decision as adequate grounds for the cancellation of the award. The strict implementation of this concept, however, is limited.[55]

---

[52]*Arbitration and Award. Award. Court Vacates Assessment of Punitive Damages in Contract Arbitration Because It Would Not Grant Such Damages in a Suit*" (66 Harvard Law Review,1953)p525

[53]Ibid,p510

[54]Collier J, "Foreign Arbitration Award—Enforcement Under Arbitration Act 1950, Art. 26—Award Not within Part II of the Act" (1975) 34 The Cambridge Law Journal 44

[55]"Arbitration. Unanimous Award of Three Arbitrators Invalidated by Disqualification of One" (1940) 26 Virginia Law Review 949

First, there may be instances where the party's agreement was frivolous or not frivolous, but their failure to comply did not affect the case and the concluding result. It would be unwise to treat such offenses as adequate grounds for annulment of the entire reports and clear out the hard work of the tribunals to obtain a final award. Consequently, the invoked irregularity must have influenced the final judgment. Secondly, arbitration does not occur in a legal void and it is exactly because a legal system allowed it that the parties appreciate their liberty. Their liberty is monitored by the binding regulations of relevant law, i.e. arbitral seat. If party terms conflict with these laws, arbitrators can securely disregard them and enforce lexarbitri regulations instead.

When parties have been deprived of the chance to decide in more detail thesystem under which the arbitration will follow, the methodagreed upon will be checked under the arbitral seat. Unrestricted rules of the lexarbitri will occasionally play a significant role, as the partieseither choosesdetailed rules of arbitral bodies, or ad hoc settings shaped by the 1976 UNCITRAL Rules.[56]

With regard to the structure of the court, this grounds tries to guarantee that the court is organized in a way (and order) given by the approval of the parties. It is questionable if this reasons can be used to cancel a judgment depending on the supposed prejudice of the adjudicators.[57]

2.3.1.5. Public Policy andArbitrability

When it comes to the structure of the arbitral board, public policy and arbitrabilities to make sure that the board is composed in a way provided by the agreement of the parties

The scope of the arbitrability check is a limited phenomenon specifically under the Model Law to objective arbitrability, and this is so to create a room where the point of the dispute settled through arbitration. Also we can say that this phenomenon is not concerned with that of ratione personae arbitrability i.e. subjective arbitrability, which usually is peculiar with states and public entities.[58]Basically a court judgement has ensured that all caseswhere the parties have the liberty to freely dispose ofall

---

[56]GaillardE& Savage J*, Fouchard Gaillard Goldman on International Commercial Arbitration* (1999)p313

[57]International Commercial Arbitration<https://internationalarbitrationlawyers.wordpress.com/page/32/> accessed April 25, 2019

[58]*Supra* note, 9

pecuniary matters has been cancelled, as such ownership claims or a mixture thereof usually mean that arbitrability is not influenced by the exclusive jurisdiction of the court. In essence, the range of arbitrable issues is constantly growing, it now involves not only conflicts usually within the range of global business arbitration, also conflicts involving issues of antitrust, intellectual property rights, and securities rights.[59] Arbitration, however, is still only permitted to enter mainly civil conflict aspects where statutes of public significance are applicable. Arbitration does not remove the right of the state to control or punish those who, for example, infringe antitrust or security laws. [60]

An issue that touches on public policy is the scope of arbitrable problems. Public policy, however, also has other elements and is therefore a unique and different test on the assurance of the award. Its incorporation is a blended advantage on one side, it gives reassurance to the legislator that in the national legal system awards that are contrary to the fundamental principles of society would not exist. The public policy, on the other hand, presents the option of a substantial backdoor evaluation of the award and runs an ever-present danger of an idea being confused by a judge's parliamentary lenses.[61] Public policy is often advised to be closely interpreted and implemented carefully, as it can be overwhelming. Although a supporter of academic studies is the notion of public policy and the practical effect it has on annulment may not be very important. In a new analytical research of Swiss nullity trials, there have been series of public policy difficulties even up to a hundred, and none of them have been successful. Statistics have also shown clearly thatpublic policy is hardly appealed on its own and is used as an alternative to reinforce other reasons for seeking nullity. Interestingly, the figures shows that the achievement level of disputes reduces with the amount of reasons being appealed at the same time, this means that although public policy may be seen as a severe scrutiny on grants, it is usually a result of despair.[62]

In spite of the comparatively small applied effect, it was acknowledged that the balance of cross-border decision-making could be disturbed by competing concepts of public

---

[59]“International Arbitration Third Edition. Contributing Editor: Joe Tirado” (PDF) <https://docplayer.net/60802231-International-arbitration-third-edition-contributing-editor-joe-tirado.html> accessed April 25, 2019

[60]Strebel and D. F, (1997)“The Enforcement of Foreign Judgments and Foreign Public Law”<https://open.library.ubc.ca/cIRcle/collections/ubctheses/831/items/1.0077551> accessed April 25, 2019

[61]Park W, “*Arbitration of International Business Disputes;International Commercial Arbitration*,(2012)

[62]Doak B and M MS, “Part II Grounds for Annulment, 6 Manifest Excess of Powers” [2012] Annulment Under the ICSID Convention

policy as some countries would annul or hesitate to acknowledge awards that would be applicable in other countries. The EuropeanConvention on International Commercial Arbitrationof 1961 launched a more practical one. According to its Article IX, Member States ' judiciary shall ignore an award annulled in a different constituent if it has been set aside for violation of government law. At the same moment, annulment equivalent to other basis specified in the Model Law should not be disregarded.[63]

2.3.2. Other Grounds

The model regulation is usually not larger than a model as such states can use or withdraw their legislative alternatives.This can be seen as a' deviation' or adding a ' local flavour'. The significance of amendments like these may vary, some of them are truly important, allowing you to impose rules in a country - wide felony environment: legislative reform would not paint until it was well ' linked' to different parts of the rules. However, it can be said that having additional grounds for the sake of an annulment, can be seen as an important intervention and one of the kind processes has been taken by the legislators. Because there is no possibility of listing them all, it is important to mention a few strategies in the adoption of the Model Law. One instance is the arbitration law of the Philippines, the rule represents a radical revision of model law grounds in such a way that it is surprising to have been included in the listing of version regulation jurisdictions.Basically, none of the grounds given in the Model law are present in the Philippines Act. as an alternative, itintroduces an opportunity of change as well as possible correction in an award, wherein a some of the bases of making the intervention would have resemble the model law grounds for annulment. However, some nations made a decision to keep the bases that have been given for the model regulation and upload extra factors they taken into consideration essential. For instance, in Austria it is explicitly maintained that the award can be set apart if the stated grounds calls for revision of a courtroom judgment, most importantly when there have been some influence in the award these influence could be the criminal acts of parties or the arbitrators.[64]Comparable objectives were given in Serbia by the legislation but it was decided that it should not be introduced on a grounds of reference

---

[63]Buchanan M, "*Public Policy And International Commercial Arbitration*" (26 American Business Law Journal 1988)p511

[64]Gabrielle K and Antonio R, The Annulment and Enforcement of the Award", International Arbitration: Law and Practice in Switzerland,(2015)p7

for revision,rather it should be addresseddirectly. It is possible to vacate a grant if it has been based on a false witness statement or forged documentation, again this may also happen if the award has been given in relations to an unlawfulactionof ajudgeor a party, these reasons have to be provenin a concludingverdict.

The United States Supreme Court added a visibleneglect of law in wilco v. swan statement. This cancelation floor is not a constitutional floor and is open for reconsideration in each individual case. The outcome was no longer pleasing to everyone at all: even if the courts are limited from time to time and limit' show up brush aside ' to situations in which grants infringeimportant government law or the simple language of the agreement, others increase the possibility of the assessment to errors of law.The most important errors are people who have successfullyaltered the result of the argument and pissed off the anticipations of the events. The Supreme Court's current decision in Hall Street v. Mattel tossed lower courts into even greater mayhem whereas a few have stated that the intentions is that appear disregard' doesn't give a reasonable ground for an annulment butothers observed that it is a concrete reason in which an award can be confronted.[65]

2.4. Practical Structures for Annulment

2.4.1. Time Limits

In the framework of internationalcommercial arbitration, speed and finality are essential. Subsequently, it is almost always time-barred to take an action for annulment. If the time limit expires, a party shall be excluded from the challenge of the grant. The organisation of the interval is generally caused by a certain neutral time, such as when the award was given to the party or when the award was placed. The duration of the era differs from 28 days in the UK to 6 months period in China. It can also be said that the Model Law as well as a host of others, most national rules are in between around a three-month duration beginning to run on the day the award was reported to the party it appears that the time constraint is preclusive.[66] However, there are opinions that the phrase may not be produced after that indicates a measure of the court's discretion. This does not seem convincing in the context of the Model Law's

---

[65] *Guide to National Rules of Procedure for Recognition and Enforcement of New York Convention Awards*(ICC digital liberary)

[66] Gabrielle K and Antonio R,*The Annulment and Enforcement of the Award", International Arbitration: Law and Practice in Switzerland*,(2015)p8

simple reading. Such understanding, however, could demonstrate helpful if the award was awarded byillegal operations and this is disclosed only after the due date has expired. Some members of the parliament noticed this option and set unique time boundaries for positive annulment reasons. Others tried to fix the issue by enabling modification as a unique remedy against the award.[67]

2.4.2. Capability of the Court

Ability for vacating awards within the national courts may be centralized or distributed there are some very excellent factors to choose jurisdiction concentration: it enables the expertise of judges and the simple determination of the skilled tribunal. If the party is willing to define the skilled tribunal readily and there is an experienced judge who has skills in dealing with arbitration, the method for setting aside is expected to be performed efficiently and without delay. This option was adopted in Switzerlandwhere, all the cases for vacating global arbitration is focused before the National Court.[68]Generally, its judgment is not appealed.

Other systems are not so clearly defined. First, two measures can be allowed instead of one. Setting aside is addressed in the first instance by an advanced tribunal of the seat and subsequently before the main tribunal. A variant is wherever the original power of the first instance is divided between commercial judiciary and courts of public authority and the requests are handled by two distinct courts. Finally, decentralization can be argued for by giving jurisdiction initially to a lower judiciary,[69]having further appeals presented to a higher courts.

2.5. Factors of the Annulment Proceedings

A qualified tribunal entrusted with the request to annul an award may take distinct choices: dismiss the request and maintain the award, cancel the award in whole or in portion or in some circumstances to stop the trials and enable judges to reconsidercertain problems and take action that would remove the basis for annulment.

[67]Mistelis L, "Setting Aside of Arbitral Awards and Forum Shopping in International Arbitration: Delocalization, Party Autonomy and National Courts in Post-Award Review" Forum Shopping in the International Commercial Arbitration Context

[68]Guest, "International Commercial Arbitration" (mafiadoc.com) <https://mafiadoc.com/international-commercial-arbitration_5a2fa49d1723dd8a5ec8ffb9.html> accessed May 9, 2019

[69]A BG, "6 Jurisdiction: Courts vs. Arbitrators" [2016] International Commercial Arbitration in New York

As long as the challenge is dismissed, this implies that at the implementation point in the country where the challenge was tried, the award will have no issues. It also has promising opportunities for implementation in other countries, particularly when the award faced a challenge that arose in model law jurisdiction. As reasons why the Model Law should not be accepted and why New York Convention should not be accepted, an award that removed the first barrier is clearly intended to clear an identical one outside the country. However, even if the reasons for the Model Law and that of the New York Convention seem the same, They may not usually be evaluated under the same legislation: for example, the setting aside tribunal will scrutinize the award in accordance with its notions of arbitration and that of public policy, whereas the recognition tribunal may use distinct norms.[70] Even with regard to the basis to be examined under the same legislation (e.g. evaluating the contract's legitimacy or the participants ' ability), there is a danger that the judiciary will implement the same legislation differently. In other words, the reality that the award was not annulled in itself does not ensure its implementation overseas. If the award is effectively nullified, two problems rises instantly; one, the significance of such annulment away from another jurisdiction. Two, does the annulment returns the authority of the courts or does the adjudication takes another chance to resolve the conflict?[71]

2.5.1. The Providence of the Annulled Award

Apparently the benefactor of an arbitration award can consequently get a challenge in the country of origin and if the award is in turnannulled, it is not only effected in the country of its annulment but in other jurisdiction. This is recommended by the New York Convention and Article V(1)(e) make provisions for the refusal of the award haven been annulled or put off by an jurisdiction of competence in the country where the award was made.[72]

It is a common possibility to expect deference for the Court of Recognition and cancelation always seems to be a very potent way of preventing enforcement in other places. However, as stated by the New York Convention ('may refuse' and not 'must refuse') and itspro-enforcement attitude suggests that for its enforcement and

---

[70]Doak B and MarchiliS*, Annulment Under the ICSID Convention*(2012)

[71]Park w, "*Part II Legal Framework: Courts, Statutes and Treaties, C The Effect of Annulment, 1 What Is to Be Done with Annulled Awards*(Arbitration of International Business Disputes,2012)

[72]Sardu A, "*The Fate of the Award Annulled in the Country of the Seat*" (2016, 17 Global Jurist)

recognition there can be a measure of discretion. But on the brighter side it is not always automatic for annulment not to be enforced by other jurisdictions, otherwise, the argument would be that goes, local annulment standards becomes very important. Despite the acceptance of such interpretation it can be seen clearly in practice that the chances of enforcement of cancelled awards are usually very slim. Apart from relying on Article V(1)(e)description, a decision of annulment could also be supported by the New Article VII of the new York Convention which agrees for the request of Local legislation and international treaties. But again if such local laws do not support foreign nullity as a concrete purpose to refuse recognition and Enforcement, then foreign annulmentwill also not apply.Although, recognition and enforcement may still be refused on some other ground.[73]In addition,anunsuccessful attempts in the cancelation of awards could become important elements of the overall prevention strategy somewhere else. In other words, while the reset procedure is pending anywhere else award country recognition and enforcement may be suspended.

2.5.2. New Proceedings

The conduct of the arbitrator's mission ends when they sign the awards causes some practical problems. In other words, under the laws of many arbitrators, certain errors in the award may be corrected or some of its aspects reconsidered ex officio or in accordance with the court order. The majoraim for this involvement is to avoid annulment and blowing process efficiency. If they were officially functional after the award had been granted, these corrections and improvements would not be possible. It is therefore probably better to suspend your term of office while the challenge (or deadline) is pending. Some member state laws states that arbitration can have a sound award bases, if thejurisdiction is succeeded by challenge, as such the courts are strategically assumed upon the dispute. In a number of jurisdictions, however, this has no effect, rather the case is given to arbitration except the award is set aside on the grounds that the arbitraltreaty is illegal. This is expressly provided for in the laws of Serbia and Croatia, with exceptions to the situation in which the names of the arbitrators were also listed in arbitration agreement, in which case nullity constantly

[73]Moses M, *Attempts to Set Aside an Award, The Principles and Practice of International Commercial Arbitration*p193

returns the case back to the judiciary. [74] However, in a case of a consequent setting aside of award maybe at the third time, on similar subject matter, the court can therefore declare an invalid agreement if the parties request.

[74]Loksa O,*Setting Aside Arbitral Awards That Lack Reasoning*(2016)

CHAPTER 3

ASSESSMENT OF ANNULLED FOREIGN ARBITRATION AWARDS

3.1. Assessment of Annulled and Enforced Foreign Arbitration Awards in compliance with Article 9 of the Geneva Convention on International Commercial Arbitration

The drafting of the Geneva Convention was with an awareness that there are some feasible problems that could arise in the future by the optional nature of Article 5(1) of the New York Convention mentioned earlier. Compared to the New York Convention, it is smaller in scope with limited application to the parties residing in contracting states. [75]

3.1.1. Connection between the Geneva Convention and the New York Convention for the Annulment and Enforcement of Foreign Arbitration Awards

Having established a clear direction for implementing courts on how to manage annulled arbitration awards, the Planners further created regulations for the relationship between Article 5(1)(e) and the Geneva Convention in Article 9(2). It is a general notation that the Geneva Convention represents international treaties that are specifically binding on a very few number of constituents as compared with the New York Convention. This means that Article 9(2) creates a logic that poses a limitation in the use of 5(1) (e) mostly to cases of nullity that are covered in the descriptions of the same article. But to further clarify the conflicts between New York and Geneva Conventions, Austria's Supreme Court in 1993 gave an award against the Slovenian company at the Yugoslav Chamber of Economy but in order to enforce the award that has been set aside by the Slovenian court, the Austrian Supreme Court spelled out the irrelevance of having broader grounds as a reason to refuse enforcement under the New York Convention in relations to the awards ruled by the Geneva Convention.

Therefore from a practical point of view, it must be noted that as long as Geneva Convention does not provide regime of enforcement for foreign awards, parties that seek recognition of their awards must subject themselves to the rules of both

[75] Marriott A, *International Chamber of Commerce Arbitration (Second Edition) by Laurence Craig, William Park, and Jan Paulsson,* (1991)p 77

conventions and they may have to depend on the instruments application of inter-complementary enforcement. In which case the seeking party should make sure that the subject and conditions of both conventions satisfied.[76]

3.2. CimentsFrancais v. Sibirskiy Cement Overlapping Analysis of New York and Geneva Conventions and Purpose of Annulled Arbitration Award in the Russian Federation

In countries where both instruments are applicable, understanding the conflict between Geneva and NY Conventions with respect to the assessment of an arbitral award that has been annulled is very important. Firstly we could take into consideration the annulled arbitration award of the Russian Federation between CimentsFrancais v. Sibirskiy Cement, this is a very formidable example where issues are highlighted in relations to the matter. [77]

3.2.1. Facts of the Case

In this case, the French company known as CimentsFrancais, was up against Open Joint Stock Company, Sibirskiy Cement Holding Company, Russian Federation, and Istanbul Cimento, Turkey. Dispute between the parties related to agreement of share Purchase executed on 26 March 2008. On the basis of Share Purchase Agreement, on 31 March 2008, Sibirskiy Cement paid CimentFrancais € 50,000,000 as an initial payment. However, on 21 October 2008, CimentFrancais notified Sibirskiy Cement that it considered SPA to be legally terminated and planned to retain the initial payment as a result of the inability of the latter to make transfers of shares as agreed under the Purchase agreement. The disagreement occurring between the parties in regards to the termination of SPA resulted in arbitration of ICC in Istanbul, Turkey. The court made a ruling on CimentFrancais ' claim to approve the validity of the removal of SPA as well as its entitlement to Sibirskiy Cement's initial payment and counter-claim on CimentFrancais ' statement of breach of SPA and its obligation to repay the initial

---

[76]*Supra* note 2,p359

[77]Practical Law UK Signon, (2011) <http://arbitration.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application/msword&blob key =id&blobtable=MungoBlobs&blobwhere=1247309505764&ssbinary=true accessed April 28, 2019

payment. In an award of the arbitral tribunal's given in 7 December 2010 a decision stating that SPA had validly concluded and further made terminations by CimentFrancais having the right to retain Sibirskiy Cement's initial payment. [78]

3.2.2. Annulment of arbitral award by Turkish Court

In Turkish court, Sibirskiy Cement made a successful challenge on the Partial Award. On 31 May 2011, the Kadikoy District made annulment to the Partial Award on the basis of the following grounds:

1. Arbitration award has been made outside the recognized term involved in an arbitral proceedings Article 15(1)(c) of Turkey's Law No. 4686.

2. Secondly the arbitral tribunal has not made considerations on an argument that concerns the termination of the SPA vis-à-vis the adaptation as such exceeded its authority Article 15(1)(e) of Law No. 4686;

3. The requirements for the enforcement of the Partial Award as well as the parties waiver towards seeking the annulment, was conflicting to Turkey's public policy Article 15(2)(b) of Law No. 4686.[79]

3.2.3. Enforcement of the ICC award by the Kemerovo Region Commercial Court

On the basis of the Geneva and New York Conventions, Cement Francais went further to seek enforcement of the Award in Russia following the annulment proceedings in Turkey. On July 20, 2011, the Partial Award was granted by Kemerovo Court. This was the first case of an award recognized by Russian courts set aside in the country of origin. CimentFrancais submitted an application for recognition and enforcement of the award in accordance with Sect. 5 of the Russian Federation Code of Arbitration Procedure. Sibirskiy Cement, among other reasons, challenged the procedures for the enforcement of the Award because of the annulment by Turkish court, the ground

[78]Alfons C, *Recognition and Enforcement of Annulled Foreign Arbitral Awards*
[79]McClure M, Alford R and Fonseca S,(2011) “AN UNLİKELY MİX, THE RUSSİAN COURTS, A FRENCH CEMENT COMPANY, AND THE 1961 EUROPEAN CONVENTİON ON INTERNATİONAL COMMERCİAL ARBİTRATİON”<http://arbitrationblog.kluwerarbitration.com/2011/09/28/genevaconventio/> accessed April 28, 2019

for refusing enforcement in accordance with Article 5.1(e) of the New York Convention valid to the restricted award. Kemerovo Court initially established a legal framework that is applicable in assessing the legal force of the annulment decision, recognizing the superiority of the New York as well as the Geneva Conventions over APK RF (Arbitration Procedure Code of the Russian Federation) as set out in Article 13.4 of APK RF(Arbitration Procedure Code of the Russian Federation) .[80] At the beginning of the discussion court stressed the Turkish court decision's lack of finality due to CimentFrancais ' timely appeal. The judge then reiterated the applicability of the Geneva Convention toward the case of enforcement because of the fact that the list for setting aside in the convention is exasperating. Subsequently the Kemerovo Court have made a test for the grounds that sets aside Article 9(1) of the Geneva Convention in Turkey and it was concluded that none of the aforementioned grounds implied a refusal to recognize an award in Russia. As a result, the court granted CimentFrancais's request for enforcement of the Partial Award.

3.3. Assessment of Annulled Foreign Arbitral Awards inthe United States

From the contracting states to the New York Convention, the United States represent one of the jurisdictions where the choice of recognizing foreign annulled arbitral awards is left to the courts without any explicit administrative direction from the household.

Starting with universal legitimate instruments on recognition of foreign annulled arbitral awards, has to break down transactions that exist between Inter-American and New YorkConventions in power in the US. Furthermore, between connection among FAA and New York Convention, thirdly, improvement of US decisional treatment for vacated remote arbitral awards and in conclusion,[81] survey criteria fitting for US courts managing the abrogated arbitral awards brought for acknowledgment.

---

[80]Kim J, *International Arbitration in Korea;Arbitration procedure*(2017)
[81]Alfons C, *Recognition and Enforcement of Annulled Foreign Arbitral Awards*

3.3.1. Article 5.1(e) of Inter-American Convention on International Commercial Arbitration

To enable the establishment of a completely legal basis of understanding the assessment of similar awards in the United States, which is the main focus of this study, as well as a dedication of this part to conventions that are American related and represents a multilateral agreement towards enforcing foreign arbitration awards in force in 19 Latin American counts, which includes United States, Argentina, Brazil and Venezuela.

First of all, it is important to state that the convention held at Panama has been drafted in such a way that it has full compatibility with the convention held in New York thereby causing an overlap in covering both instruments, especially since the grounds for refusal of enforcement are nearly identical. Before considering the specific solutions used by major contracting states, it should be noted that Article 7 of the New York Convention gives a clear standing of the legal force of existing conventions, this therefore states that ‘the validity of a bilateral or multilateral agreement shall not be affected by anything in this present Convention. The United States decides the struggle between the two Conventions by Section 305 of the Federal Arbitration Act. The provision specifically states that if the majority of the parties to the arbitration agreement were citizens of the Panama Convention's contracting states, the latter would take precedence over the New York Convention, while the New York Convention would apply in all other cases.[82]

As a preliminary point, we should also stress that there is no more favourable provision of national law in the Panama Convention comparable to Article 7(1) of the New York Convention. Consequently, where the Convention applies to the enforcement of annulled arbitral awards instead of the New York Convention,There would never be a question of applying domestic Federal Arbitration Act rules.[83]According to Bowman, omitting the possibility of applying domestic law to international arbitration awards by national courts, ‘The Panama Convention provides less support than the New York conventıon to the advocates of de-localized arbitration and a-national awards.

[82]Carbonneau T,*A Proposed Reformulation of the United States Arbitration Act (FAA);Toward a New Federal Law on Arbitration*(2014)
[83]Mayer UC, *The Enforcement of Annulled Arbitral Awards: Towards a Uniform Judicial Interpretation of the 1958 New York Convention* (1998)p 583

A major clarification was made on the relationship between Panama and New York and this was done by the U.S. District Court in a case of TermoRio v. Electranta. In this case the judgemade a decision on which convention was applicable to the annulled award, even though the home countries of both parties, were memberstates to the Panama Convention, therefore the latter became an applicable pursuant to Section 305(1), reason being that the relevant provisions of the Panama Convention and the New York Convention were identical, the court declared that it was inappropriate to discuss the former.

3.3.2. Development of U.S Decisional Law on the International Efficiency of Annulled Arbitral Awards

Since an existing international and domestic framework has been established for the treatment of foreign awards that has been vacated in the United States, it is therefore important to make analysis on the development of U.S. case law with special emphasis on four cases in this section.[84]

3.4. Chromalloy Aeroservices v. Government of Egypt

Application of Article 7 of NY Convention in Chromalloy Aeroservices v. the Arab Republic of Egypt to ensure the enforcement of a foreign award annulled in its origin country was introduced by the District Court of Columbia.

3.4.1. Factsofthe Case

The dispute arose between Delaware Corporation Chromalloy Aeroservices (CAS) and Egypt based on the June 16, 1988 contract of helicopter servicing. This dispute between both parties resulted in an arbitration under Egyptian law this was also according to the UNCITRAL Rules of Arbitration. On 24 August 1994, in breach of the terms agreed, Egypt was held liable by the arbitration tribunal for the termination of contract.[85]

[84]Jan K, “Recognition and Enforcement of Foreign Arbitral Awards; Max Planck Encyclopedia of Public International Law(2008)
[85]“International Arbitration and Enforcement in U.S. Federal Courts.” (The Free Library) <https://www.thefreelibrary.com/International arbitration and enforcement in U.S. federal courts.-a061402723> accessed April 28, 2019

CAS went further to move for an enforcement of the award in the United States by filing an application for the District of Columbia at the U.S. District Court on 28 October 1994. Egypt referred Cairo Court of Appeals to set aside the Cairo Arbitral Award in about two weeks after initiating the enforcement proceedings. Even though there was an unsuccessful attempt to stall proceedings in the District Court, on 5 December 1995, the Cairo Court overturned the award on the grounds that the tribunal had allegedly failed to apply Egyptian administrative law, resulting in a violation of the law of choice of parties.[86]Deviation from the agreement of the parties was ground for the annulment of the arbitral award pursuant to Article 53.1(d) of the Egyptian Arbitration Law.

3.4.2. Cognitive of District Court

Chromalloy Judge provided implementation mainly on the basis of Article 7 of the New York Convention. For the first time in the history of the U.S,case-law court used Article 7 as an instrument that allowed the parties requesting implementation to depend on Chapter 1 of the Federal Arbitration Actinstead of Article 5 of the New York Convention, since the former offered more favourable treatment for the particular award of the parties concerned.[87]

Following the argument that has been arrayed, the court took it upon itselftotest the award with the with the recognition refusal ground that has been prescribed by Chapter 1 of the Federal Arbitration Actwith limitations to corruption,prejudice,fraud, misconduct in procedure, which exceeds the powers of the arbitrators or shows a disregard of law. As per the region court, the deformity of the arbitral awardinvoked by the Egyptian court could have been portrayed as an error. Thusly, since the grounds set out in Chapter 1 of the Federal Arbitration Act did not mention to the situs courtannulment by any means, the court found that the solicitation for affirmation was all around established. Locale court went on and tested the estimation of the U.S. Egyptian court's judgment as a result of Egyptian enemy of arbitration arrangement. Court found that Egyptian court administering encroached both a major U.S. open approach (against detailed substantive legal survey of awards) and the arbitration understanding of the gatherings (who had deferred such review). All the more explicitly, the court found that

[86]Minister of Defense v. Chromalloy Aeroservices, Cairo Court of Appeals, Dec. 5, 1995 in 24 Y.B. COMM. ARB. 265 (1999)

[87]Marianne R, “14 UNCITRAL Model Law on International Commercial Arbitration” [2009] Practitioners Handbook on International Commercial Arbitration

the annulment of the arbitral honour in rupture of no plan of action proviso incorporated into the arbitration understanding damaged US open approach in implementing such provisos, letting the annulment choices well enough alone for the regard that outside decisions merit.[88]

3.4.3. Critique of Chromalloy

By applying Article 7 of the New York Convention, Chromalloy's judgement is being criticized basically because it brought domestic standards into the international legal framework. This resulted in the blaming of Chromalloy court by the commentators because it had encouraged inconsistent application of the provisions made available in the New York Convention with its reliance on domestic law, havenadmitted that the drafters had a mind-set of sacrificing uniformity in the enforcement by inserting Article 7(1) into the text. Courts reasoning is criticized by Gharavi for failing to understand the language of Article 9 of the Federal Arbitration Act referring to awards in the U.S. District Court jurisdiction. Commentators stress the difference between Articles 1502 of the French Civil Procedure Code (C.P.C.), specifically targeted at international arbitration awards whıle numbering more favourable grounds for refusing recognition than the New York Convention. Despite the clarity of Civil Procedure Code expressly referring to ınternational arbitration awards, section 208 of the Federal Arbitration Act made Chapter 1, including section 9, applicable to the enforcement of New York Convention awards leaving no reason to exclude the provision obtained from the Chromalloy case that its sole base on its wording.[89]

3.5. Baker Marine v. Chevron

Three years later, following Chromalloy 2nd Circuit in Baker Marine v. Chevron, in an issue that relates to the application of domestic Federal Arbitration Act rules to the New York Convention Article 7 was brought withdrawn from the shelf. The court in this case was asked to make an enforcement of the award as it has been issued by the

[88]"International Arbitration and Enforcement in U.S. Federal Courts." (The Free Library) <https://www.thefreelibrary.com/International arbitration and enforcement in U.S. federal courts.-a061402723> accessed April 28, 2019

[89]"Recognition and Enforcement of New York Convention Awards" The Arbitration Act 1996 422

arbitration tribunal that satin Lagos, Nigeria which was also dismissed by the Nigerian court on the grounds that it had lost party's application.[90]

3.5.1. Factsofthe Case

Baker Marine, Danos and Chevron are companies that participate in the oil industry in Nigeria. Baker Marine and Danos entered into a contract to offer barge services to Chevron in September 1992. Baker Marine agreed that local support would be provided, while Danos agreed that management and technical equipment would be provided. Baker Marine and Danos ' bid was successful, and the two companies entered into a joint contract with Chevron to provide barge services in October 1992.

Chevron's contract included provisions for the arbitration of disputes incorporated by reference by the contract between Baker Marine and Danos. These provisions stated that "any dispute, controversy or claim arising out of this Agreement, or infringement thereof, termination or validity thereof, shall be finally and conclusively settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)."[91] Two different clauses further specified that the arbitration "procedure" shall be governed by the substantive laws of the Federal Republic of Nigeria “Chevron’s contract included provisions for the arbitration of disputes incorporated by reference by the contract between Baker Marine and Danos. And the Contracts "shall be interpreted in accordance with the laws of the Federal Republic of Nigeria." Contracts also provided that "the award of arbitrators may be made to any court with jurisdiction thereof" and that the contract and awards under it "shall be governed by the 1958 Convention of the United Nations on the Recognition and Enforcement of Foreign Arbitration." Baker Marine charged the contract violations against Chevron and Danos. The parties submitted arbitration before arbitrator panels in Lagos, Nigeria, pursuant to those contracts.

One dispute panels awarded Baker Marine in damages againstDanos $2.23 million and the second panel awarded Baker Marine $750,000 in damages against Chevron. The court annulled the two arbitral awards pending proceedings of enforcement that

[90]Macmahon B, “Interpretation of the Award of the Arbitral Tribunal” [2007] Permanent Court of Arbitration Award Series The Iron Rhine (IJZEREN RIJN) Arbitration (Belgium—Netherlands) Award of 2005 145
[91]“FindLaw's United States Second Circuit Case and Opinions.” (Findlaw) <https://caselaw.findlaw.com/us-2nd-circuit/1011705.html> accessed May 5, 2019

was initiated by Baker Marine in the Federal High Court of Nigeria, with the decisions[92] of 1996 and 1997. The award's annulment decision against Chevron was coined out of improper punitive damages impositions, this laid claims that the arbitrators acted beyond the scope of the party's submissions stating also that the parole of evidence was also wrongly admitted. On the other hand, due to the lack of supporting evidence, the award against Danos was set aside.

Baker Marine requested the Northern District Court of New York (N.D.N.Y.) to enforce the two Nigerian awards under the New York Convention in August 1997. In the pre-2nd Circuit decision, the District Court dismissed a petition referring to the New York Convention and international committee requirements.[93]

3.5.2. Chromalloy Renowned

On the basis of Baker Marine's appeal, 2nd Circuit needed to choose whether Article 7 of the New York Convention enabled the applicant to depend on the local Federal Arbitration Act and solicitation authorization of awards paying little mind to the Nigerian court's annulment choices. In response to the negative request, the court ruled against the applicability of Article 7 because there was no link between the dispute and the law of the United States. More specifically, under Article 7(1) of the New York Convention, the court identified the following circumstances as discouraging the application of domestic law: 1. Contracted parties in Nigeria; 2. Nigerian and 3 arbitration laws. No reference was made to US law in the dispute governing agreements. Furthermore, the court noted that the mechanical use of local arbitral law to outside awards under the Convention would truly undermine the reason and produce clashing decisions all the time.[94]

Having rejected Baker Marines argument in regards to the availability of Federal Arbitration Act Domestic Avenue on the recognition arbitral awardsof foreign nature, court moved to consider whether district court would duly exercise its discretion under New York Convention 5(1)(e) while rejecting enforcement on the grounds of annulment. In this regard, the court stressed that there was no reason to ignore the

[92]Mayer UC, "The Enforcement of Annulled Arbitral Awards: Towards a Uniform Judicial Interpretation of the 1958 New York Convention" (1998) 3 Uniform Law Review 583
[93]Tan D, *EnforcingNational Court Judgments as Arbitration Awards under the New York Convention* (2018)p415
[94]Ibid

decisions under Article 5(1)(e) due to the failure of the appellant to provide adequate reasons for denying that the Nigerian annulment judgmentsis international effective.

Supporting the aforementioned position as to the discretionary nature of Article 5(1)(e), 2nd Circuit exonerated Chromalloy's ruling on several facts from the present case. First, the court emphasized American company's involvement in Chromalloy, while the awards in question had no involvement with a U.S. company.[95] Second, compared to Chromalloy, who a primary enforcement in the U.S., Baker Marine first attempted to have an enforcement in Nigeria but after failure in the origincountry requested recognition in U.S. courts. Finally, in the case of Chromalloy, court punished on contract explicitly precluding any intrigue or other cure from the arbitral honour. The unequivocal legally binding term brought about the Chromalloy court's view that the annulment of Egypt was a repudiation of "their solemn promise to abide by the arbitration result." The court pointed out on the differences stating that the recognition judgments in Nigeria has no conflict with US public policy, meanwhile having a diverse view to the Egyptian annulment decisions was made in Chromalloy.[96]

Distinguishing between the nationalities of the gatherings and indicating the American organization in Chromalloy might be utilized as the connection necessary to trigger Article 7, the lack of which is emphasized in the relevant part of the decision.

Although 2nd Circuit mentioned the district court's reliance on comity argument, there was never a comment on the matter. Letting out the principle of comity may have been understood as a 2nd Circuit hesitation to admit that U.S. courts should grant Nigerian courts comity.

3.6. Spier v. Calzaturificio Tecnica

Just two months since the decision of Baker Marine, S.D.N.Y. ruled in Spier v. CalzaturificioTecnica against the enforceability of foreign arbitral awards annulment in Italy.

[95] *Supra* note 2
[96] Ibid

3.6.1. Facts ofthe Case

The brought for requirement in region court came about because of a question emerging from the 1969 aptitude contract between Martin Spier, an American architect, and CalzaturificioTecnica S.P. A. an Italian company. FollowingTecnica's dispute over the performance of the contract, the arbitral tribunal held unanimously in favour of Spier on 15 October 1985, awarding $672,043 plus interest at a rate of 15% as of 1 January 1985.The award was tried in 1985-1999 before all courts in Italy, finally nullifying the award on the bases that the arbitrators had exceeded their powers in the award of the compensation to Spier.[97]

3.6.2. Assessment of Chromalloy and Baker Marine by Spier Court

In Spier's renewed proceedings in the district court, resulted in the judge making a decision on the deference as prescribed by the Italian court's final judgment thereby setting aside the arbitral award to be enforced. In the case of Chromalloy and Baker Marine, there arose a question of the reliability of FAA as a favorable regime for the enforcement of the annulled arbitral award. This analysis of the interplay between Chromalloy and Baker Marine, made the judge to admitt the similarity between Chromalloy and the present case specifically from the fact that it was U.S. citizens who requested foreign arbitral award enforcement. Court then analyzed the Baker Marine decision which exounorated Chromalloy and Baker Marine and clearly showed the infringement of no recourse clause in the Chromalloy contract as the decisive factor in violation of the FAA's US public policy.[98]

The Court went on and linked Egypt's breach of the no-recourse clause to the Chromalloy court's justification for using the domestic enforcement avenue, expressing that the Chromalloy locale court's dependence on the FAA to neglect the Egyptian court's choice invalidating the Egyptian honor was provoked by a specific situation not present for the situation at bar: Egypt's glaring negligence for its decision to nullify the Egyptian award.

The word play of Spier court pursued Baker Marine in an agreement that there is no reference to US law by gatherings contracting in Italy blocked utilization of local FAA

[97]"Spier v. Calzaturificio Tecnica, SpA, 71 F. Supp. 2d 279 (S.D.N.Y. 1999)" (Justia Law) <https://law.justia.com/cases/federal/district-courts/FSupp2/71/279/2515457/> accessed May 5, 2019

[98]Slater M, *On Annulled Arbitral Awards and the Death of Chromalloy* (2009)p 271

guidelines to enforcement of honor. The court additionally emphasized the edge required by second circuit for the gatherings mentioning enforcement of annulled awards to show “adequate reason” why it had disregarded decisionof annulment. [99]

Interestingly, regardless of Baker Marine and Spier courts trusted that the reason activating utilization of residential FAA principles to Egyptian canceled grant was the rupture of no plan of action proviso by Egypt, Chromalloy choice does not appear to depend on that ground while legitimizing use of Article 7.

Both, Spier and Baker Marine courts in actuality legitimized dependence on local law while authorizing remote honor in the event of break of no plan of action provision by the losing party. Putting such a great amount of accentuation on the specific reality of the case is contended to be a frail recognizing strategy utilized by the courts, since no response provisions never block application for putting aside or opposing enforcement.[100]

---

[99]Westons and Carlsons,*Conventıon On The Recognıtıon And Enforcement Of Foreıgn Arbıtral Awards*(international law and world order)
[100]Ibid

CONCLUSION

The choice of a court to annul (or not annul) may not be the conclusion of the fight for legitimate grant. There will be at least one further round of appeals if the legislator chooses to obtain jurisdiction in the lower court. This,of course, is the decision not against the award but against the lower court judgement. Nevertheless, an extra challenge advantage would be faced by the party that tries to reject an award. It's inconvenient.Usually, annulment can only be presented within a certain period of time, brief and caused by an objective display such as an award notification, rather than a subjective consciousness. This development is not suitable for issues of assessment that are not noticeable as long as the application date expires. It may eventually turn out, for instance, dishonesty on the part of the adjudicator or the court chose on the grounds of fake evidence(documents etc).The model law and its majoritydo not address this issue in an effort to help enhance the purposeof effectiveness and regulation.This ' revision ' against the award is possible in some jurisdictions that have not chosen the model law. For example, Belgium allows an exceptional separate application to be submitted within five years, but not later than three months from the applicant's time. Revision will be successful if the grant is established on wrong proof obtained by deception or provided by the other party in the absence of significant evidence.There is no specific legal requirement in Switzerland to submit an evaluation, but the right to do so has been given that the target duration is higher for example in Belgium (10 years),However, the reasons for the deadline are comparable. The annulment method do not own an international agreement, comparable to the New York Convention, which ' ranks the floor. 'instead, the UNCITRAL Model provides national legislators with nothing but a useful guide.As a result, how the nulity process is conceived between countries is still an imortant contrast.Basically not a part of the problem spoken about in annulment arose as an international agreement, "someone somewhere" always had a distinct understanding of how to handle a specific problem.However,the lowest common denominator of all those is possible Systems: nullification action remains the only arbitral recourse award; an award may be

challenged in the country where it was awarded; is not a substantive review of the award in principle, but rather a scrutiny of its procedural and some issues related to the arbitration agreement; Finally, the annulment grounds catalog is compulsory, it is particularly compulsory Difficult to extend it further for the parties. Despite the still varying views Effectiveness of the New York Convention annulled award, establishing Apart from this, the cost - effective strategy to resist enforcement remains Award arbitral.

The New York Convention, having been adopted permissively, leaves national courts with the power to implement annulled awards Since this area of legislation is not settled, different jurisdictions have embraced different norms in the conditions in which the implementation of annulled awards may be allowed. The main point, however, is that just because an award appears dead and buried that does not always means the end of the case. Where the grant has been cancelled, it is crucial that sides seek guidance from arbitration lawyers with expertise in regulatory law to determine if regeneration is still feasible.

In the case of Baker Marine, the writers defined the judgment as ' a standard use of Article V(1)(e) and the principle of ex nihilo nil fit: if the award was revoked by the judicial authority in the nation in which it was awarded,the award no longer exist. the reasoning behind these descriptive instances is that enforcement courts should postpone choices to annul the award of the capable court in the country of origin. If judges in secondary jurisdictions did not recognize the annulment-decision of an award, but instead were usually second-guessed, this could give the parties to the arbitration significant confusion. The winning party would not be allowed to proceed their company with the assurance that the court's judgment would stand in a stage of annulling an award.

"I propose that the annulment of an award by the courts in the country where it was rendered should not be a bar to enforcement elsewhere unless the grounds for that annulment were those recognized internationally." [101]

More than twenty years ago Jan Paulsson made this proposal and other authors have supportted her over the years.Paulsson argues that local ordinary annulments ("LSAs")

[101]Paulsson J, "Enforcing Arbitral Awards Notwithstanding Local Standard Annulments" (1998) 6 Asia Pacific Law Review 1

should not be a bridge if an award is set aside on the basis of a worldwide inappropriate local law.Only international standard annulments decisions ("ISAs") should qualify for global acceptance, according to Paulsson, ISAs fall within the scope of Article V(1)(a-d). Everything else would be LSAs, like a law that needs all arbitrators to be masculine, etc., and would therefore not be allowed to influence globally. According to Paulsson, there is already a possibility of disregarding LSAs: Article V(1) is voluntary and therefore a decision to annul an award if it is based on an LSA could be overlooked by the court.[102]

As parties in any state are free to agree to arbitrate, because of that country's particular legal order, one can not rule out the likelihood that their selection of location will be affected or even specifically selected. Because of the regulations of that jurisdiction concerning the option of having an award annulled, the parties may choose the place. However, opponents of the geographic strategy have asserted that the choice to arbitrate in a particular country is taken many times merely because of convenience, without giving much thought to the government judiciary's possible effect on the seat.This argument isn't too persuasive. Even though all parties can not be anticipated to be well educated and create the decision of location after significant thought, the parties ' will may not be rejected so readily. Even though the selection of location of arbitration is produced solely for comfort, the nation where the arbitration takes place still has legislative power over the arbitration process.

The State also has the power to regulate the process by enabling competition to take place in its territory and to set aside the grant if it is found faulty by the judiciary of that country. Therefore, the parties may expect enforcement authorities in other states to respect their decision of location and offer deference to main court judgments.

No compulsory international standards explicitly permit or ban the assessment of arbitration awards for factual mistakes by domestic judiciary. Article V of the New York Convention does not limit the vacatur grounds accessible under the statutory law. Article 34 of the UNCITRAL Model Law offers advice but lacks binding impact in this effort. The United States is therefore free to set its own norms of vacuum without infringing international contracts.The New York Convention was a success and a key to enforcing international arbitral awards quickly and efficiently. Nothing is ideal,

---

[102] Ibıd

though. Since the New York Convention has been signed by159 States with distinct legal commands, culture and background, the understanding of it will inevitably vary.

This observation evaluates the magnitude to which the courts can cancel the arbitration award It created that, despite the opposing power of the U.S. judiciary, no international agreement either requires or prevents the judicial evaluation of an arbitration grant with regard to the fundamental facts. According to U.S. legislation, statutory assessment is allowed on an unconstitutional basis and in the framework of an annulment public policy basis. In addition, factual inspection may be permitted under wider government legislation as well as by contract with a party.

Double-control issues and prospective competing choices are troubling, but their effect is restricted to a few cases. The problem of communal annulment is not a reason, even if it is unsatisfactory to occasionally annul on such grounds. Exercise votes with its legs in order to maintain the chance that the tribunal of the nation of origin may exercise main authority over the grant of universally effective annulment trials. So the answer to the question should the annulment of arbitral awards be eliminated? is no, but I wouldn't be proposing to go back to complacency, I believe we can live in a stronger globe of arbitration. A lot of justification is needed for the present state of annulment in international arbitration. This is partly due to the restricted reach and obsolete provisions of the New York Convention and the incorporation into UNCITRAL Model Law of the New York Convention. I firmly think we can do better. I hope that the different options for feasible solutions can be further investigated.

What should be done with annulled awards is another question. The finest course of action could be to handle annulments as other international commercial judgments, giving them deference unless the order annulling the prize was infected with basic procedural impropriety. Such policy would suit the discretionary structure established by the New York Convention. For example, if a foreign judge refuses to refer a case to neutral arbitrators, a lack of integrity in the annulment proceedings could be found. In such circumstances, it may well be appropriate for an enforcement forum to recognize the annulled arbitral award rather than the vacating court judgment.

REFERENCES

BOOKS

Park W, *Arbitration of International Business Disputes* (2006).

Lynch K*, The Forces of Economic Globalization: Challenges to the Regime of International Commercial Arbitration* (Kluwer Law International 2003)

Berg A*, New Horizons in International Commercial Arbitration and Beyond* (Kluwer Law International 2005)

Paulsson M,'the 1958 New York Convention in action',(kluwer law international 2016)

Moses M, *The Principles and Practice of International Commercial Arbitration* (2008)

Bantekas I, *Arbitral Awards and Challenges against Awards;An Introduction to International Arbitration* (2015)

Bermann G, *Recognition and Enforcement of Foreign Arbitral Awards;The Interpretation and Application of the New York Convention by National Courts* (2017)

Karabelnikov B, *Recognition and Enforcement of Foreign Arbitral Awards: A Theoretical and Practical Commentary to the 1958 New York Convention*(volume 19,issue 3,2003)

Carter J and Fellas J*,International Commercial Arbitration in New York* (2nd Edition,2016)

Paulsson J, *The Legal Foundations of Arbitration; The Idea of Arbitration* (2013)

Kim J*, International Arbitration in Korea;Arbitration procedure*(2017)

Mayer U,*the enforcement of annulled arbitral awards;towards a uniform judicial interpretation of the 1958 new york convention* (1998)

Herrmann G, *The Uncitral Arbitration Law: a Good Model of a Model Law"* (1998)

Berg D,*Should the Setting Aside of the Arbitral Award Be Abolished*(2014)

Christine C, *Part II International Judicial and Arbitral Procedure and Third Parties,Third Parties before International Arbitral Tribunals* (1993)

Doak B and Marchili S, *Part II Grounds for Annulment, 9 Failure to State Reasons on Which the Award Is Based Annulment Under the ICSID Convention*(2012)

Park W, *Arbitration of International Business Disputes; International Commercial Arbitration*(2nd edition,2012)

Moses M, *Attempts to Set Aside an Award, the Principles and Practice of International Commercial Arbitration* (3rd Revised edition, 2018)

Loksa O, *Setting Aside Arbitral Awards That Lack Reasoning* (2016)

Carbonneau T, *A Proposed Reformulation of the United States Arbitration Act (FAA);Toward a New Federal Law on Arbitration* (2014)

Tan D, *Enforcing National Court Judgments as Arbitration Awards under the New York Convention* (2018)

ONLINE JOURNALS

Redfern A and Hunter M, *International Arbitration*, (5th edition, New York: Oxford University Press Inc,2009)

Solomon D, "*Reinmar Wolff (Ed.), New York Convention. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958: A Commentary* (European Yearbook of International Economic Law 2014)

Cremades B, '*The Brave New World of Global Arbitration*',(The Journal of World Investment & Trade Volume 3 Issue 2, 2002)

Marianne R, *14 UNCITRAL Model Law on International Commercial Arbitration* (Practitioners Handbook on International Commercial Arbitration,2nd edition,2009)

Thomas D, *Yearbook Commercial Arbitration, Volume X - 1985, ICCA, General Editor: Pieter Sanders, and International Handbook on Commercial Arbitration, ICCA, General Editior: Pieter Sanders* (1986)

Kim S, *A Study on Recent Canada Court's Decision Regarding the New York Convention and UNCITRAL Model Commercial Arbitration Law"* (null Kyungpook National University Law Journal,2014)

Mistelis L, *Setting Aside of Arbitral Awards and Forum Shopping in International Arbitration: Delocalization, Party Autonomy and National Courts in Post-Award Review*(Academia,2000)

Should Arbitrator as a General Rule Be Required to Be Impartial and or Independent of the Parties?-Illustrate and Explain." (The Lawyers & Jurists)

Martin C and Green J, *International Arbitration and Litigation, Jenner & Block Practice Series* (2014)

Arbitration and Award. Award. Court Vacates Assessment of Punitive Damages in Contract Arbitration Because It Would Not Grant Such Damages in a Suit" (66 Harvard Law Review,1953)

Collier J, "*Foreign Arbitration Award,Enforcement Under Arbitration Act 1950, Art. 26 Award Not within Part II of the Act"* (34 The Cambridge Law Journal 44,1975)

Arbitration. Unanimous Award of Three Arbitrators Invalidated by Disqualification of One" (26 Virginia Law Review 1940)

Gaillard E & Savage J, *Fouchard Gaillard Goldman on International Commercial Arbitration* (1999)

Buchanan M, "*Public Policy And International Commercial Arbitration*" (26 American Business Law Journal 1988)

Mistelis L, *"Setting Aside of Arbitral Awards and Forum Shopping in International Arbitration: Delocalization, Party Autonomy and National Courts in Post-Award Review" Forum Shopping in the International Commercial Arbitration Context.*

Sardu A, "*The Fate of the Award Annulled in the Country of the Seat*" (2016, 17 Global Jurist)

Marriott A, *International Chamber of Commerce Arbitration (Second Edition) by Laurence Craig, William Park, and Jan Paulsson,* (1991)

Jan K, "Recognition and Enforcement of Foreign Arbitral Awards; Max Planck Encyclopedia of Public International Law(2008)

Macmahon B, "Interpretation of the Award of the Arbitral Tribunal" [2007] Permanent Court of Arbitration Award Series The Iron Rhine Arbitration (Belgium—Netherlands Award of 2005)

Westons and Carlsons*,Conventıon On The Recognıtıon And Enforcement Of Foreıgn Arbıtral Awards*(international law and world order)

ACADEMIC ARTICLES

United nation, UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (New York, 1958)

Caron D,Caplan L,*the UNCITRAL arbitration rules: A commentary*,(2nd edition,2013)

Andrews N,*Arbitration Awards: Issues of Finality and Res Judicata" Andrews on Civil Processes*

Convention on the Recognition and Enforcement of Foreign arbitral awards'(New York Convention guide 1958)

Scherer M, *Article III [Recognition and Enforcement of Arbitral Awards; General Rule, New York Convention* (2013)

Rodriguos E, *Actions for Annulment of International Arbitral Awards: Recent Trends in the French Courts*(2018)

A BG, "6 Jurisdiction: Courts vs. Arbitrators" International Commercial Arbitration in New York(13th edition, 2016)

Guide to National Rules of Procedure for Recognition and Enforcement of New York Convention Awards(ICC digital liberary)

Marianne R, “14 UNCITRAL Model Law on International Commercial Arbitration” [2009] Practitioners Handbook on International Commercial Arbitration

“Recognition and Enforcement of New York Convention Awards” The Arbitration Act 1996

ONLINE RESOURCES

Berg D and Bernard H,(2011),NEW YORK CONVENTION OF 1958’ <http://www.hvdb.com/wp-content/uploads/2011-AJvdB-Commentaries-on-Court-Decisions-on-the-NYC-in-Yearbook-XXXVI.pdf> accessed April 12, 2019

“U.S. Supreme Court Says Arbitration Agreements Exclude Class Arbitration Absent Consent” (JD Supra) <https://www.jdsupra.com/legalnews/u-s-supreme-court-says-arbitration-85123/> accessed April 12, 2019

“Enforcement of Arbitration Awards

<http://www.austlii.edu.au/au/journals/IntTBLawRw/2004/2.html> accessed April 23, 2019

Guest, “*International Commercial and Marine Arbitration* (Routledge Research in International Commercial Law) <https://epdf.tips/international-commercial-and-marine-arbitration-routledge-research-in-internatio.html> accessed April 23, 2019

International Commercial Arbitration

<https://internationalarbitrationlawyers.wordpress.com/page/32/> accessed April 25, 2019

“International Arbitration Third Edition. Contributing Editor: Joe Tirado” (PDF) <https://docplayer.net/60802231-International-arbitration-third-edition-contributing-editor-joe-tirado.html> accessed April 25, 2019

Strebel and D. F, (1997)“The Enforcement of Foreign Judgments and Foreign Public Law” <https://open.library.ubc.ca/cIRcle/collections/ubctheses/831/items/1.0077551> accessed April 25, 2019

Guest, “*International Commercial Arbitration*” <https://mafiadoc.com/international-commercial-arbitration_5a2fa49d1723dd8a5ec8ffb9.html> accessed May 9, 2019

Practical Law UK Signon, (2011) <http://arbitration.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application/msword&blob k ey =id&blobtable=MungoBlobs&blobwhere=1247309505764&ssbinary=true accessed April 28, 2019

McClure M, Alford R and Fonseca S,(2011) “AN UNLİKELY MİX, THE RUSSİAN COURTS, A FRENCH CEMENT COMPANY, AND THE 1961 EUROPEAN CONVENTİON ON INTERNATİONAL COMMERCİAL ARBİTRATİON”<http://arbitrationblog.kluwerarbitration.com/2011/09/28/genevaconventio/> accessed April 28, 2019

“International Arbitration and Enforcement in U.S. Federal Courts.” (The Free Library) <https://www.thefreelibrary.com/International arbitration and enforcement in U.S. federal courts.-a061402723> accessed April 28, 2019

“International Arbitration and Enforcement in U.S. Federal Courts.” (The Free Library) <https://www.thefreelibrary.com/International arbitration and enforcement in U.S. federal courts.-a061402723> accessed April 28, 2019

“FindLaw's United States Second Circuit Case and Opinions.” (Findlaw) <https://caselaw.findlaw.com/us-2nd-circuit/1011705.html> accessed May 5, 2019

“Spier v. Calzaturificio Tecnica, SpA, 71 F. Supp. 2d 279 (S.D.N.Y. 1999)” (Justia Law) <https://law.justia.com/cases/federal/district-courts/FSupp2/71/279/2515457/> accessed May 5, 2019

PLAGERISIM REPORT

ETHICS COMMITEE APPROVAL