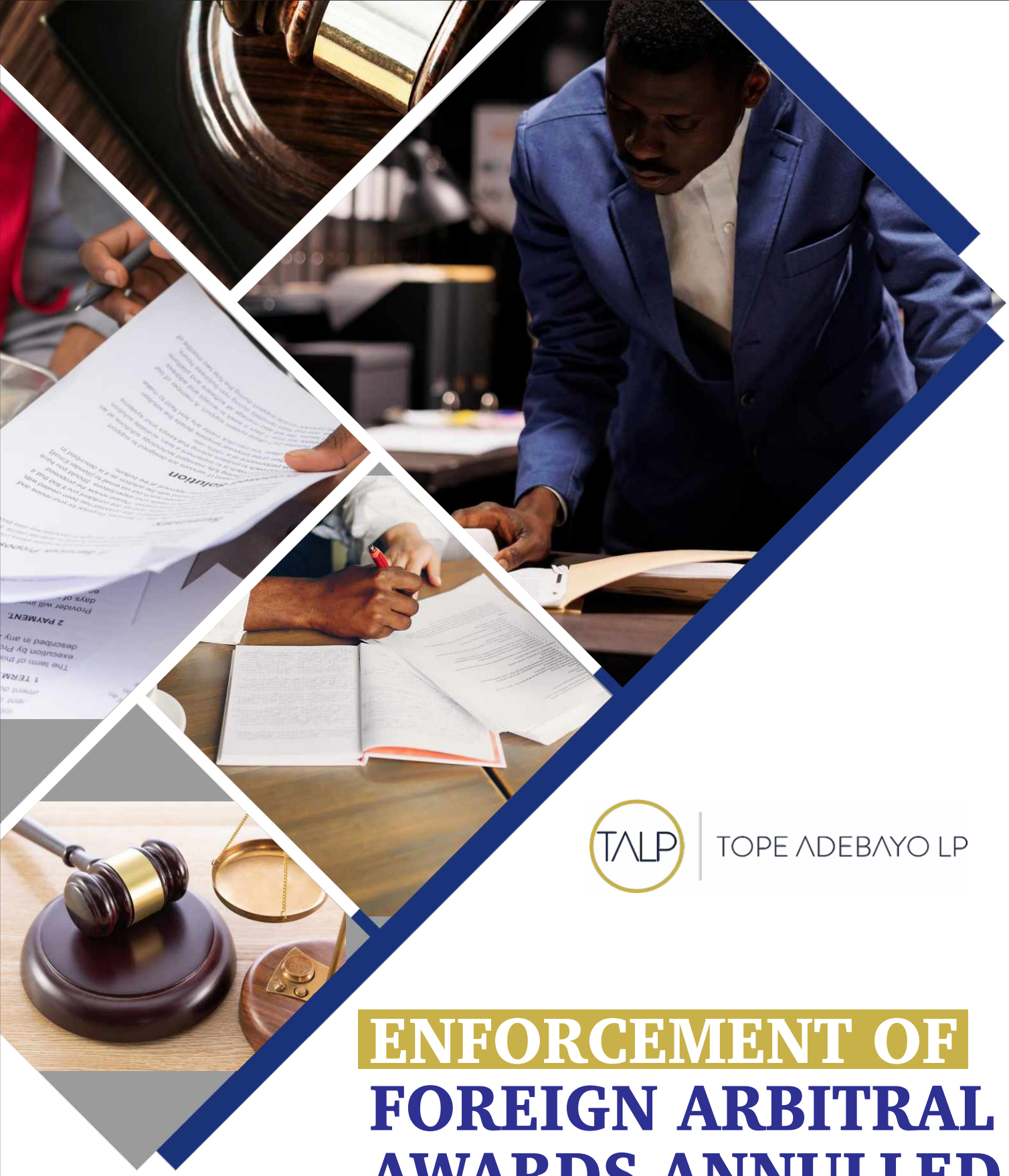


TALP | TOPE ADEBAYO LP

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS ANNULLED AT THE SEAT

INTRODUCTION

Enforcement of arbitral awards against a losing party who refuses to comply voluntarily with the award is consistent with the mutual intention of the parties to resolve their differences through arbitration and be bound by the resulting award. In this respect, judicial assistance ensures the effectiveness of arbitration as a private arrangement supported by national and international legal order.[1] Thus, the ability to enforce arbitral awards obtained in one country within the jurisdiction of another country is a significant catalyst for the success of international trade and commerce. The New York Convention[2] which facilitates this objective, nonetheless, contains normative grounds upon which enforcement courts may exercise discretion to refuse enforcement.

One of the most complex challenges of enforcement of awards arises when an award is annulled or set aside at the seat of arbitration. While some jurisdictions uphold such annulments, others may still recognize and enforce the award, leading to legal uncertainties and jurisdictional conflicts. This article explores the challenges surrounding the enforcement of foreign arbitral awards, particularly in cases where the award has been annulled at the seat, and examines the divergent approaches taken by courts worldwide.

ENFORCEABILITY OF FOREIGN ARBITRAL AWARDS

The purpose of arbitration, which reflects the intrinsic element of the parties' agreement, is to arrive at a binding decision on the dispute.[3] This element is set out in most leading international rules of arbitration such as the UNCITRAL Rules,[4] the ICC Rules,[5] and LCIA Rules.[6] Implicit in the consent to arbitrate is that the resulting award will be binding and the parties will comply without the necessity of resorting to national courts for enforcement.[7] While voluntary performance of the award is expected, which is relatively a common practice, there are instances where the losing party may feel dissatisfied with the arbitral award and refuse to comply thereto. In this case, the winning party will need to take steps to give effect to the award. The relief against a losing party's refusal to perform the award is for the winning party to seek enforcement proceedings in a national court, a possibility contemplated by the parties from the outset of the arbitration. In this regard, an arbitral award is compared to a binding decision of a national court, but unlike the national court, an arbitral tribunal cannot enforce its decision.

[1] E. Onyema, 'IPCO v NNPC Saga and Liability of Nigerian Legal System', The Guardian (Nigeria, 22 December 2015) https://guardian.ng/features/law/ipco-v-nnpc-saga-and-liability-of-nigerian-legal-system/, accessed 9th September 2024.
[2] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958, United Nations Treaty Series, vol. 330, No. 4739 [hereinafter: the New York Convention or the Convention].
[3] Nigel Blackaby Et al (7th Edition) 2023, Kluwer Law International; Oxford University Press, P. 11.1
[4] UNCITRAL Rules, Art. 34.2
[5] ICC Rules, Art. 35.6
[6] LCIA Rules, Art. 26.8.
[7] See Queen Mary University of London, School of International Arbitration, and White & Case LLP, 2018 International Arbitration Survey: The Evolution of International Arbitration, available online at http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-InternationalArbitration-Survey-repor..., p. 7, which found that 64 per cent of arbitration users consider that 'enforceability of awards' is the most valuable characteristic of arbitration.

Generally, recognition and enforcement relate to giving effect to the award, either in the State where the award was made (primary jurisdiction) or in some other States (secondary jurisdiction). Enforcement of award in the State of origin or 'seat' of the arbitration is relatively easy and subject to the regime applicable to domestic arbitration. However, when enforcement is sought outside the territory of the State where the award was made, the award assumes the character of 'foreign' or 'international award, and presents a more complex situation. The enforcement of foreign awards is guided by private international law principles of party autonomy and respect for parties' contracts which has become the forte of the New York Convention.[8]

ENFORCEABILITY OF FOREIGN ARBITRAL AWARDS UNDER THE NEW YORK CONVENTION

The New York Convention 1958 ("Convention") is intended to facilitate the recognition and enforcement of international arbitration agreements and awards, by adopting "uniform international standards mandating the presumptive validity of such awards and limiting the circumstances for denying their recognition."[9] The policy objective of the Convention is to promote cross-border arbitrations by providing an international minimum standard of rules to encourage international trade and commerce.[10] The Convention generally applies to "the recognition and enforcement of arbitral awards made in the

State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal."[11] To this end therefore, **Article III of the Convention mandates Contracting States to "recognize arbitral awards as <u>binding and enforce</u> them in accordance with the rules of procedure of the territory where the award is relied upon"** and also charges them not to impose **"substantially more onerous conditions ... on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards."**

[8] The New York Convention also applies to arbitral awards that are 'not considered as domestic awards in the State where their recognition and enforcement is sought' (Art. 1(1)).
[9] Gary B. Born, International Commercial Arbitration, (3rd Ed., 2021), Kluwer, §26.03; Mobil Cerro Negro Ltd v. Venezuela, 87 F.Supp.3d 573, 594 (S.D.N.Y. 2015) ("The New York Convention was negotiated in 1958
and entered into force in 1959. It was adopted to facilitate international enforcement of arbitral awards"); Four Seasons Hotels & Resorts BV v. Consorcio Barr, SA, 613 F.Supp.2d 1362, 1367 (S.D. Fla. 2009) ("'there is a general pro-enforcement bias' manifested in the Convention")
[10] Albert Jan van den Berg, Enforcement of Arbitral Awards Annulled in Russia: Case Comment on Court of Appeal of Amsterdam, 27(2) J. INT'L ARB. 181 (2010); E. Gaillard, Legal Theory of International Arbitration (Martinus Nijhoff, 2010), 136
[11] Article 1(1) of the New York Convention

The advent of the Convention is also aimed at addressing the inadequacies of the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 (which existed prior to the Convention). One of such inadequacies is the requirement that an award must be final in the forum State. Specifically, it provides that to obtain recognition or enforcement, it is necessary to prove that the "award has become final in the country in which it was made, in the sense that it will not be considered as such if it is open to opposition, appeal …"[12] This was interpreted to mean that the award has to be declared as 'final' by the court of the seat of arbitration (the first "exequatur") as a condition for its recognition and enforcement in a foreign jurisdiction (the second exequatur). Where either court denies exequatur, the award will not ultimately be recognized and enforced. This greatly undermined the efficacy of the 1927 Geneva Convention, by making the processes cumbersome, slow, and uncertain, notwithstanding that the parties' dispute has, supposedly, been finally resolved by arbitration.[13] In addressing these inadequacies, the Convention deliberately uses the text 'binding' to avoid the problematic double exequatur. This reflects global best practices of encouraging the finality of arbitral awards, regardless of where they were issued.[14] It does not, however, mean that national courts do not possess residual powers upon application, to determine within the narrow compass allowed by the applicable law and other rules of procedure, whether the award is binding on the parties.[15] This discretion implies that even where there exists a ground for refusal to enforce such as annulment of award at the seat, a foreign court may still enforce it.[16]

IMPACT OF THE SEAT OF ARBITRATION ON THE ARBITRAL AWARD

The seat of arbitration plays a crucial role in arbitration as it directly influences several key aspects of the arbitration process such as arbitrability, determination of the governing law (both substantive and procedural), annulment, recognition, and enforcement of the arbitral award amongst others.[17] The "Seat" of arbitration refers to the jurisdiction or location in which the arbitration is officially regarded as taking place for the purpose of determining the law (lex arbitri or lex loci arbitri) that will govern the arbitration proceeding. Put differently, it is the legal address of arbitration, establishing its connection to a particular legal system.[18] It is important to state that the seat of arbitration need not necessarily be

[12] Article 1(d) of the Convention on the Execution of Foreign Arbitral Awards Signed at Gevena on the 26th day of September 1927; See also Article 4 (2) of the Geneva Convention.
[13] Born, Gary B., supra note 14.
[14] Lew J.M.D, Mistelis L.A & Kroll S.M., (2003) Comparative International Commercial Arbitration, Kluwer, p.20.
[15] See Articles 34 and 36, UNCITRAL Model Law; Article V, New York Convention.
[16] Article V (1)(e) of the Convention.
[17] Alexander J. Belohlavek, "Seat of Arbitration and Supporting and Supervising Function of Courts" https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2593428 accessed on 5th November 2024.
[18] Loukas Mistelis. (2016). Seat of Arbitration and Indian Arbitration Law Indian Journal of Arbitration Law, No. 4.

where individual procedural activities are conducted, especially where hearings are held. Thus, a case can be entirely resolved without the arbitrators and/or parties having to visit the designated seat of arbitration. However, while the seat may differ from the place (physical location) where proceedings occur, both are typically aligned in guiding the arbitration process. This is more so as most arbitration laws usually specify that the place or venue should help determine the relevant court's jurisdiction when the parties have not expressly designated a seat of arbitration. As such, the seat and venue of arbitration are inextricably linked.[19]

Therefore, the choice of the seat of arbitration is crucial, as it defines the applicable arbitration law and establishes the court with supervisory jurisdiction over the arbitration process. This choice affects both the recognition of arbitration agreements and the enforcement of arbitral awards. In the context of an arbitration agreement, the arbitration law of the jurisdiction that issued a decision on the validity and scope of the agreement governs the arbitral procedure and establishes the grounds on which the court of the seat of arbitration may annul the agreement and or the award. This implies that if an aggrieved party seeks to challenge the award in a court other than the court of the seat, the doctrine of res judicata may apply, as only the court of the seat has the authority to annul (set aside or vacatur) the award made by the arbitral tribunal.[20] Put differently, it is only the courts of the seat of arbitration that have the exclusive competence to annul or set aside arbitral award,[21] and to that extent, it is only decisions of the courts of the seat that have legal relevance,[22] regarding the annulment of arbitral awards. This has been confirmed by numerous court decisions[23] and the New York Convention has restricted the courts where the annulment of an international arbitral award can be pursued, specifically to the courts of the seat.[24]

[19] Gonzalo Vial, "Influence of the Arbitral Seat in the Outcome of an International Commercial Arbitration" (2017) (50) 2 International Lawyer 332.
[20] Nnaemeka Nweze & Festus Okechukwu Ukwueze 'The Effect of Arbitral Jurisdictional Decision on National Courts' [2023] (16) (2) Contemporary Asia Arbitration Journal 207.
[21] Albert Jan van den Berg, Should the Setting Aside of the Arbitral Award be Abolished?, 29 ICSID Review
266 (2014)
[22] Tibor Varady et al., International commercial arbitration: A transnational perspective 1135 (6 ed. 2016).
[23] In International Standard Electric Corp. v. Bridas Sociedad Anonima Petrolera, 745 F. Supp. 172 (S.D.N.Y. 1990), ISEC filed a petition in the United States district court to vacate the award. This was dismissed as the court held that it lacked subject matter jurisdiction to vacate a foreign arbitral award. This is because the parties had elected to apply the procedural law of Mexico, and as the governing procedural law was that of Mexico, only Mexican courts had jurisdiction to vacate the award.
[24] Articles V (1)(e) & V of the Convention; Also see Articles 6 and 34 of the UNCITRAL Model Law.

Further to the above, international arbitration is typically subject to a two-tier system of judicial oversight, namely, the court of the arbitral seat (primary jurisdiction) and courts of other states where recognition and enforcement of awards are sought (secondary jurisdiction). The courts of secondary jurisdiction can only recognize and enforce foreign awards, after due consideration of the grounds for refusing foreign arbitral awards. However, it does not have the vires to set aside or annul an award issued by a primary jurisdiction tribunal.

It follows that enforcement courts lack jurisdiction to set aside foreign-seated arbitral awards, as such awards are governed by the provisions of international instruments such as the New York Convention and the UNCITRAL Model Law. However, in some cases, some enforcement courts have misconstrued an application to resist enforcement of a foreign award as an attempt to set aside the award. One of such instances was captured in the case of **Limak Yatirim, Enerji Uretim Isletme Hizmetleri Ve Insaat A.S. & Ors V. Sahelian Energy and Integrated Services Limited,**[25] where the Court of Appeal of Nigeria held that:

> "**Municipal Courts have jurisdiction though limited, to set aside an arbitration award where it is afflicted by unconscionable acts and where recognition and enforcement of the arbitral award will amount to violation of public policy as enumerated in Sections 48 and 52 of the Arbitration and Conciliation Act Cap A18 LFN 2004. The law of the seat of arbitration outside the shores of Nigeria is not applicable when it comes to enforcement of an arbitral award(s). The applicable law is that of the place of enforcement and where an award debtor resists the recognition and enforcement of the award at the place of enforcement as in this case, the Nigeria law is applicable and not the law of Switzerland or Turkey as submitted by the Appellants. The submission of the Appellants in the first sentence of paragraph 2.26 of Appellants' Reply Brief to the effect that Section 48 of the Arbitration and Conciliation Act 'and indeed other section(s) of the ACA does not apply to and/or empower a Nigerian Court to set aside an international award arising from arbitration not conducted in Nigeria and/or under Nigerian law" are grossly unfounded and have no support in arbitration law .**"

[25] (2021) LPELR-56408(CA)

In this regard, it is submitted that the attitude of the Nigeria court and or any other enforcement court in misconstruing an application to resist enforcement of a foreign award to mean an application to set aside foreign awards, risk contravening established principles of international arbitration. Such actions could undermine the reputation of such secondary jurisdiction as an arbitration-friendly jurisdiction. Consequently, such provisions of the secondary jurisdiction's municipal laws on setting aside arbitral awards must be read to mean setting aside arbitral awards[26] obtained in that jurisdiction and not foreign arbitral awards.

GROUNDS FOR REFUSING ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Notwithstanding the general presumptive enforceability of awards under the Convention, a Contracting State may refuse to enforce foreign awards where the losing party establishes any of the recognized grounds.[27] The grounds represent an internationally accepted standard, not only because of the wide acceptability of the Convention but also because the UNCITRAL Model Law adopts similar grounds for refusing the recognition and enforcement of awards by courts of secondary jurisdiction.[28] While these grounds may be relied upon by a court where enforcement is sought, these grounds do not permit any review on the merits of the award to which the Convention applies.[29]

Article V(1)(a-e) of the Convention, sets out five different grounds upon which recognition and enforcement of an arbitral award "may" be refused at the instance of the losing party against whom the award is sought to be enforced. One such ground which is the focus of this article is the provision of Article V(1)(e) which provides that "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." Contextually, a major consideration for a losing party to file an application before a competent authority in the seat of arbitration for annulment or set aside of the award is a presumption that if the award is set aside or annulled, there is a high probability that its enforcement "will be refused in any other jurisdiction where it is sought."[30] Ideally, the decision of the court of the seat should presumably be determinative of the continued validity of the award, for purposes of enforcement.[31]

[26] Section 55 of the Arbitration and Mediation Act 2023.
[27] Article V.
[28] Articles 34 and 36.
[29] The Supreme Court of India in Renusagar Power Co. Ltd v General Electric Co. (1995) XX YBCA 681 at 691, held that 'the scope of enquiry before the court in which the award is sought to be enforced is limited
[to the grounds mentioned in the Act] and does not enable a party to the said proceedings to impeach the Award on merits'. See also Nigel Blackaby, supra note 16, at P. 11.55
[30] Tripkovic, Jelena (2018) Enforcement of Arbitral Awards set aside in the country of origin, Central European University, p. 1.
[31] Karaha Bodas Co. LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 364 F.3d 274 (5th Cir. 2004

Expectedly, Article V (1)(e) ground has generated a lot of controversy and legal debate, firstly, because of the assumption that if an award has been set aside in the country of its origin, it is unenforceable in that country by the doctrine of res judicata, and that it is only a matter of international comity or indeed the principle of reciprocity that "courts of other States would also regard the award as unenforceable,"[32] and secondly, because there is a discretion on the enforcement court to determine how to deal with such awards. As would be seen subsequently, courts of some jurisdictions recognize and enforce awards annulled or set aside at the seat.

ENFORCEMENT OF ANNULLED AWARD UNDER THE NEW YORK CONVENTION

As earlier observed, the Convention mandates general recognition and enforcement of arbitral awards. However, it also provides exhaustive grounds for refusal of recognition and enforcement, which includes annulled or set aside awards. Both Article 34 of the UNCITRAL Model Law and Article V (1)(e) of the Convention empower a competent authority in the seat of arbitration to annul or set aside an award. This residual power of a competent authority (oftentimes a court designated for supervisory jurisdiction over arbitration) in the country of origin of an award to annul or set aside an award permits a check on the arbitral process, which is why arbitrators are encouraged to render an enforceable award.

Presumptively, the fact of an award having been set aside or annulled in the seat of arbitration which makes it unenforceable therein should necessarily commend a refusal of enforcement where it is sought. This suggests that annulment is notionally intended to have an extra-territorial effect, as annulled awards may be refused enforcement.[33] In any event, Article VI of the Convention permits a national court before which an application for recognition and enforcement is made, to adjourn the application where there is a pending set-aside proceeding at the seat of the arbitration. Given that the language of Article V(1)(e) is rendered in a permissive character in the same manner as Article 36(1) of the Model Law, entitling a court where enforcement is sought to a discretion whether to enforce the award despite its set aside, one would expect that the provisions would be interpreted in the same way by national courts across various jurisdictions. As a multilateral treaty on private international law, it is to be expected that consistent with Vienna Convention on the Law of Treaties, the provisions of Article V of the New York Convention will be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[34]

[32] Nigel Blackaby, supra note 9, at P. 11.91.
[33] Van den Berg, supra note 53, at 4
[34] Article 31(1) of the Vienna Convention on the Law of Treaty of 23rd May, 1969

JURISDICTIONAL APPROACHES TOWARD THE ENFORCEMENT OF ANNULLED AWARDS

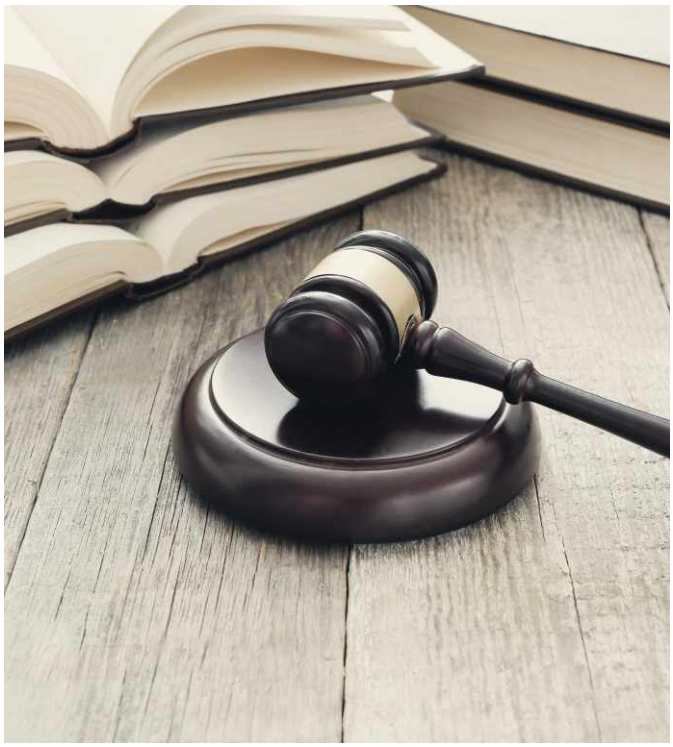
Notably, countries such as France, Belgium, Austria, the United Kingdom, and until recently, the United States of America, have shown their disposition to recognize and enforce arbitral awards set aside by courts of the seat ("the delocalized approach"). This approach argues that international arbitration is part of a transnational legal order unattached to the national regime at the seat. Courts of countries that share this orientation maintain a strong pro-arbitration bias against set-aside orders.[35] They have justified their international approach on the permissive, as against the mandatory text of Article V of the Convention, relying on the literal interpretation of the operative phrase "may refuse" as opposed to the used formulation of "shall refuse" as is found in some other parts of the Convention's articles.[36] Additional support for the optional refusal to enforce is found in historical interpretation and comparison between Article V(1)(e) of the Convention and the mandatory text of the 1927 Geneva Convention which provided emphatically that an "award shall be refused."[37] Given that the rationale for introducing the Convention is to cure the defects of its predecessor, it can be deduced that the drafters intentionally decided to donate discretionary powers to enforcement judges.[38] Moreover, the Convention recognizes the possibility of national bias in the form of more favourable provisions in domestic legislation permitting enforcement of annulled awards.[39] The delocalized approach has received judicial blessings in several cases.[40]

Opposed to the preceding, is the classical/territorial approach which recognizes that a set-aside order under Article V(1)(e) of the Convention establishes a bar (res judicata) against recognition and enforcement of the award elsewhere. This pivots on the ex nihilo nihil fit (out of nothing, nothing is produced) effect of an annulment such that the annulled award loses validity and is incapable of being enforced both at the seat and subsequently wherever its enforcement is sought.[41]

[35] See C. Koch, 'The Enforcement of Awards Annulled in their Place of Origin: The French and US Experience', Journal of International Arbitration, 26 (2009), 267
[36] Such as Articles II, III, VII of New York Convention, where "shall" is used.
[37] Convention on the Recognition and Enforcement of Foreign Awards, Travaux Preparatoires - Final Act and Convention on the Recognition and Enforcement of Foreign Arbitral Awards, at 32, U.N. DOC E/Conf.26/8/Rev.1 (1958), art. 2(c)
[38] Jared Hanson, Setting Aside Public Policy: The Pemex Decision And The Case For Enforcing International
[39] Arbitral Awards Set Aside As Contrary To Public Police, 45 Georgetown Journal of International Law 826, 833 Article VII(1) of the New York Convention
[40] Pabalk Ticaret Ltd Sirketi v. Norsolor SA, French Cour de Cassation civ. Le, Judgment of 9 October 1984, Yearbook Commercial Arbitration, vol. XI (1986), 484; Hilmarton Ltd. v. Omnium de Traitement et de Valorisation, Cour de Cassation [Cass. 1e civ.], 23 March 1994, Revue de l'arbitrage, (1994), 327, 663 ; PT Putrabali Adyamulia v. Rena Holding, Ltd., Cour de Cassation [Cass. 1e civ.], 29 June 2007, Revue de l'arbitrage, (2007), 507.
[41] See Van den Berg, Albert Jan, supra at note 45; A. J. van den Berg, (2003) Consolidated Commentary on the Court Decisions Concerning the New York Convention, Yearbook Commercial Arbitration, vol. XXVIII, Kluwer, 562; Getma International v. Republic of Guinea, 862 F.3d 45 (D.C. Cir. 2017).

Finally, there is also the **hybrid or middle path approach,** which partly adopts not only the delocalized approach but also ascribes a margin of deference to the seat's set-aside decision. Thus, courts of a country with this approach believe that an award is not tied to the legal regime of the seat but at the same time recognizes set aside order and exercises discretion to review the grounds under which the award has been set aside to determine if the award can still be enforced, regardless. Where the set aside is based on the Convention grounds as against some parochial local considerations, the set-aside decision would be respected by the state where enforcement is sought.[42] However, where the set-aside decision is based on local considerations other than the Convention grounds, such will be disregarded, and the arbitral award enforced.[43]

In sum, it is the inherent discretion in Article V and, sometimes, more favourable clause in the local legislation that encourages enforcing courts to enforce foreign arbitral awards set aside at the seat. Whereas discretion applies to the Convention grounds for refusing recognition, it is difficult to extend the exercise of such discretion where the set-aside order is based on local standards. Where this occurs, an enforcement court may esteem lightly the set aside order and proceed to recognise and enforce the award. In all cases, it is advisable for the enforcement court to review the grounds for the set aside orders to decipher how to exercise its discretionary powers or what course of action to take.



CONCLUSION

The enforcement of foreign arbitral awards that have been annulled at the seat remains a contentious and evolving issue in international arbitration. While some jurisdictions defer to the decision of the seat, others prioritize the principles of finality and party autonomy, allowing enforcement despite annulment. This divergence underscores the need for careful drafting of arbitration agreements and strategic consideration of the seat of arbitration. As international arbitration continues to develop, greater harmonization of enforcement standards may be necessary to ensure predictability and fairness in cross-border dispute resolution.

[42] In Canada, the courts have indicated a willingness to recognize award unless one of the grounds of refusal in Article 36 of the UNCITRAL Model Law is present, and even within those parameters they have discretion to enforce the award. Europcar Italia S.p.A. v. Alba Tours Int'l Inc., 23 O.T.C. 376, [1997] O.J. No. 133, para. 22; Powerex Corp. v. Alcan Inc., 2004 B.C.S.C. 876, B.C.J., [2004] No. 1349.

[43] Yukos Capital S.A.R.L. v. OAO Rosneft, No. 200.005.269/01, Amsterdam Court of Appeals, 28 April 2009; Nikolay Viktorovich Maximov v Open Joint Stock Company 'Novolipetsky Metallurgichesky Kombinat [2017] EWHC 1911 (Comm).

PLEASE NOTE THAT THIS ARTICLE IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE

AUTHORS

HARRISON OGALAGU
PARTNER
h.ogalagu@topeadebayolp.com

NNAMDI EZEKWEM
ASSOCIATE

Brought to you by TALP's Dispute Resolution Department

For further enquiries, log onto www.topeadebayolp.com

Do you need to get in touch with us, to know more on how we can help you and your business? Kindly contact us by using any of the details provided below:

TOPEADEBAYO LP

The Phoenix, 3rd Floor, 31 Mobolaji Bank Anthony Way, Ikeja Lagos, Nigeria.
p: +234 813 366 7374, +234 708 869 9174
e: info@topeadebayolp.com
w: www.topeadebayolp.com