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LEGAL CONSEQUENCES OF ENFORCING A FOREIGN ARBITRAL AWARD ANNULED IN THE COURT OF ORIGIN: ANALYSING COMMISA V. PEMEX CASE AND CHROMALLOY AEROSERVICES V. ARAB REPUBLIC OF EGYPT

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Abstract. *This article looks into the problems that come with enforcing foreign arbitral awards that have been set aside, especially in U.S. courts, and looks at how this affects the international dispute resolution system. The article focuses on how U.S. courts have dealt with cases such as PEMEX, a state-owned oil company, and COMMISA, a subsidiary of KBR, Inc., a U.S. construction company, and Chromalloy Aeroservices v. Arab Republic of Egypt. Enforcing awards that have been set aside is still a big topic of debate, and it gets criticized by both legal experts and professionals. Some courts respect the decisions made at the place where the arbitration happened and choose not to enforce annulled awards, showing respect for international cooperation. Others use the rules from the New York Convention to check the validity of the awards on their own and might still enforce them even if they were set aside. The study looks at how different places handle this issue, especially recent U.S. court rulings. It ends by saying these differences might hurt the main ideas of international arbitration, like fairness and efficiency.*

Keywords: *international arbitration, foreign arbitral awards, annulment, enforcemen, New York Convention, COMMISA a subsidiary of KBR, Inc., a U.S. construction company v. state-owned oil company PEMEX, Chromalloy Aeroservices v. Arab Republic of Egypt*

Introduction

International commercial arbitration is now widely used to settle business disagreements (Carter & Fellas, 2010, p. 25). Unlike court cases, arbitration is neutral, private, and involves experts (Makhmudov, 2022, p. 68). Another reason people choose arbitration over court is that the result, an award, is final and can be recognized in other countries (Born, 2021). Thus, the success of arbitration depends on the ability of national courts to recognize and follow the awards.

The purpose of this article is to analyze recent *COMMISA v. PEMEX and Chromalloy v. Egypt cases* in order to identify different approaches used by U.S courts and the challenges that may arise because of enforcement of annulled foreign arbitral awards. The relevance of *COMMISA v. PEMEX and Chromalloy v. Egypt cases* is due to the fact that US. Courts implemented new approach while dealing with enforcement of annulled foreign arbitral awards. Further, the main research question is to identify whether this novelty similar to French court's approach is legal and does it comply with Article (1)(V) New York Convention and basic principles of international law such as comity and legality.

The proper working of arbitration is supported by coordinated rules. There are several systems that set up the international rules for recognizing and following foreign arbitration decisions. First, the New York Convention (1958) provides international ways to recognize and follow foreign awards. Second, the Geneva Convention (1961) on International Commercial Arbitration deals with several issues in cross-border disputes. Third, the UNCITRAL Arbitration Rules (1976) are a model for procedures used in many arbitration centers worldwide.

Even though these agreements make it easier to recognize and follow awards, they also address certain exceptions. For example, Article V(1) of the New York Convention allows courts to refuse recognition under certain conditions: (a) the parties to the agreement were not capable under the law, or the agreement is not valid under the law; (b) the party against whom the award is made was not properly notified of the arbitrator or the arbitration process; (c) the award is about a disagreement not covered by the arbitration agreement or makes decisions on issues outside the agreement, unless those can be separated; (d) the composition of the arbitration panel or the process did not follow the agreement or the law of the country where the arbitration took place.

Article V (1) (e) of the New York Convention is one of the grounds on which recognition and enforcement "may be refused" at the request of the party against whom it is invoked. The language of the New York Convention states 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" (Rowley, 2021, p. 13). Similar language is provided in Panama Convention: "The decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made" (Inter-American Convention on International Commercial Arbitration, 1975). As underscored by permissive language, the Conventions themselves seem to leave a country free to enforce an award set aside in the country where the award was rendered (Silberman & Yaffe, 2017).

With this background, there is an ongoing debate in international arbitration about whether awards that have been set aside can still be enforced in other countries. In this regard, it is important to note opinion of a well-known expert in the field of international commercial and international investment arbitration, Emmanuel Gaillard who supports French approach, admits that enforcement of annulled foreign arbitral awards is a positive trend, and does not breach the legitimacy principle. According to him, although this approach recognizes the binding nature of arbitral award, it rejects the idea of attachment of final award to the seat of arbitration (Gaillard, n.d., p. 1). Similar opinion has Professor R. Seyyadi, an Assistant in Commercial Law, University of Bahrain (Kingdom of Bahrain) (Seyyadi, 2018, pp. 128–141). The issue is not settled and is about how international agreements should be interpreted, especially regarding uniformity in following awards and protecting the rights of the parties involved. It also brings up bigger questions about how independent arbitration is from national courts, possible differences in decisions across places, and how strong and far-reaching arbitral awards really are. In addition, some authors hold opposing views regarding the consideration of annulled arbitral awards. The reason behind that is the use of French approach by other states can lead to violation of the principle of good faith (Polkinghorne, n.d.).

Generally, courts dealing with awards set aside in the country where the arbitration happened can take one of three approaches: (1) they might treat the award as invalid, meaning there's nothing to enforce; (2) they might ignore the cancellation, believing that courts in each country can look at the validity of the award using their own laws; or (3) they might show some respect for the cancellation decision, but still keep the choice to enforce the award if the circumstances justify it (Polkinghorne, n.d., p. 800).

When a country ignores an award simply because it finds no reasons to recognize or follow it, it acts as though arbitration is just an extension of its own legal system. So, it makes sense that the courts where the arbitration took place should have full control over the award. Since the parties chose that place on purpose, they probably expected that the courts there might cancel the award.

Many countries, including Russia, Chile, Germany, and others with civil law systems, have adopted this approach (Paulsson, 2016, p. 21). However, a few countries, such as France take a different stance. In France, both historically and currently, the law explicitly excludes the ground in Article V (1) (e) of the New York Convention as a reason for refusing to recognize an arbitration award. The French view is that international arbitration operates within a transnational legal system and is not tied to any single national legal system. As a result, an arbitration award that has been set aside at the seat of arbitration can still be enforced in France, unless there is another reason under the Convention that prevents enforcement based on French domestic law (Silberman & Yaffe, 2017). French approach can lead to inconsistency, as different tribunals may issue conflicting awards (Matveeva, 2016).

In the United States, courts have taken a middle ground. Some courts give some freedom to the place where the arbitration happened and follow the way Germany, Russia and Chile do, by not enforcing an annulled award because there is nothing to enforce. Other courts follow the approach of the French courts and enforce the award even if it was set aside at the arbitration seat. For example, in *Baker Marine v. Chevron*, the Second Circuit Court of Appeals said it would only enforce an annulled award if there were strong reasons to ignore the decision of the Nigerian court that annulled it. They found that there were no such reasons in that case (Baker Marine Nigeria Ltd. v. Chevron Nigeria Ltd., 1999).

Methods

This study is aimed at a comparative analysis of U.S. court's decisions on enforcement of annulment of foreign arbitral awards. During the preparation of this article, modern methods of studying legal phenomena and processes were employed, including both general scientific methods (systemic analysis, dialectical method, comparison, and classification) and specialized legal methods (comparative legal analysis, formal-legal method, historical method, system-structural analysis, statistical method, and descriptive-analytical method).

This study is conducted based on a comparative-legal research design. This approach made it possible to examine the enforcement of annulled foreign arbitral awards practice in the United States of America with comparison to the decisions made by such famous tribunals as Netherlands. Also, the study involves the consideration of case law of France, Germany, Mexico, Russia and other countries. The following table contains literature review. All materials have been sources from reliable research database. These articles have been sourced by using the following key words: "annulled arbitral awards," "New York Convention," "international comity," "international commercial arbitration." Language of the following articles is English. Included articles are from 1998-2025 years of publication.

Table 1

Author	Research Title	Jurisdiction/ Countries studied	Research Focus	Key Findings
(Emmanuel Gaillard., 1998)	Enforcement of Awards Set Aside in the Country of Origin: The French Experience	France, United States of America	Comparative enforcement mechanisms	An arbitral award does not derive its validity exclusively from the law of the seat of arbitration. The enforcing state may independently determine whether the award should be recognized and enforced.
(Silberman, L.,&Yaffe.,N. 2017)	The US Approach to Recognition and Enforcement of Awards after Set-Asides: The Impact of the Pemex Decision	Unites States, France, Netherland, Mexico	Comparative enforcement of arbitral awards annulled at the seat; interpretation of Article V(1)(e) of the New York Convention; impact of the Pemex decision on U.S. doctrine	U.S Courts applied French approach by enforcing annulled foreign arbitral award. International case law has been considered.
(D.V. Krasikov., 2019)	Recognition and Enforcement of Arbitral Awards Set Aside Abroad: Problems of Consistency of the International Regime	France, United States, Netherlands	Enforcement of foreign arbitral awards annulled at the seat; coherence of the international enforcement regime under the 1958 New York Convention	The study revealed comparative analysis of case law and precedents in terms of enforcement of annulled arbitral awards.
(Seyadi, R., 2018)	Enforcement of Arbitral Awards Annulled by the Court of the Seat	International	Enforcement of annulled arbitral awards at the seat	The author supported the opinion in favor of French approach
(Nam. P.H., 2025)	Public Policy and the Refusal to Enforce Foreign Arbitral Awards: A Comparative Analysis of France, Singapore, and Vietnam	France, Singapor, Vietnam	Public policy exception	Public policy applied differently across jurisdictions

Results

The findings of this study demonstrate that the enforcement of annulled foreign arbitral awards varies significantly depending on the legal approach adopted. The case law analyzed in the research shows that the French approach is relatively strict, whereas U.S. practice follows a more moderate, middle-ground position. At the same time, a growing tendency toward the French approach can be observed in U.S. judicial decisions.

With regard to implications for Uzbekistan, although the field of international commercial arbitration has developed only recently, a detailed analysis indicates that judges at times face difficulties in applying the New York Convention. In some instances, courts appear to adopt a selective or inconsistent approach when deciding on the enforcement of foreign arbitral awards. For example, scholar Sharipov (2019) highlights this issue in a recent article, describing enforcement practice in Uzbekistan as "unpredictable."

Despite Uzbekistan's efforts to position itself as an arbitration-friendly jurisdiction, recent case law suggests a contrasting trend. Therefore, it is essential to closely examine these challenges and address existing shortcomings in order to avoid repeating the mistakes observed in other jurisdictions.

The following table explains the results and tendency of case law concerning enforcement of annulled foreign arbitral awards by jurisdictions.

Table 2

Case	Situation	Setting aside at the seat	Enforcement despite annulment?	Reasoning
COMMISA vs. PEMEX	The dispute arose between Mexican state-owned oil company and U.S. company concerning construction of oil platforms	Yes	Yes	U.S courts enforced arbitral award despite being annulled at the seat due to the misapplication of reciprocity and basic principles of justice.
Chromalloy vs. Egypt	The dispute is similar to Pemex and concerned the issue of enforcement of annulled foreign arbitral awards	Yes	Yes	US court enforced annulled award, holding that the parties' arbitration agreement and New York Convention allowed enforcement despite annulment; pro-arbitration/public policy approach.
Yukos Capital vs. Rosneft	The dispute was considered by the Tribunal in Netherlands and has a long history including bankruptcy, criminal issues. Dutch court enforced annulled decision by Russian courts.	Yes	Yes	The court reasoned rejection of Russian court's decision due to political reasons, expropriation, and fabricated documents.
TermoRio vs. Electranta	The dispute arose between Colombian party and Colombian state-owned utility. It concerned the breach of power purchase agreement.	Yes	No	U.S courts here rejected the enforcement of annulled foreign arbitral award.

Discussion

The Pemex dispute was between Commisa, a Mexican branch of the U.S. company KBR Inc., and Pemex, the state-owned oil company. The disagreement involved two contracts for constructing offshore oil platforms in the Gulf of Mexico. The contracts required any disputes to be settled through arbitration in Mexico (Corporación Mexicana de Mantenimiento Integral v. Pemex, 2016). In 2009, an arbitral tribunal ruled in favor of Commisa, awarding over $350 million due to a breach of contract. However, in 2011, a Mexican court overturned the decision, stating that Mexican administrative law did not allow arbitration for disputes involving a state-owned entity.

Commisa then tried to get the award enforced in U.S. courts. In 2013, a federal court in New York ruled in Commisa's favor, concluding that the Mexican court's annulment violated fundamental principles of justice because it retroactively applied administrative law to render the dispute non-arbitrable. In August 2013, Judge Hellerstein from the US District Court for the Southern District of New York approved the award, which was about $300 million, even though it had been set aside in Mexico. This decision was upheld in 2016 by the Second Circuit, which affirmed that U.S courts have broad discretion to enforce annulled arbitral awards, when the foreign annulment conflicts with U.S public policy and undermines basic notions of justice and morality (Paulsson, 2016a).

This position showed a big change from earlier decisions, like *TermoRio S.A. E.S.P. v. Electranta S.P.*, where the D.C. Circuit said that arbitral awards overturned at the place where the arbitration happened usually should not be enforced in the United States, unless there were special reasons. That case dealt with a decision by a Colombian court to cancel an award in Colombia. The next case also supported the importance of public policy principles (Paulsson, 2016b, p. 21).

Public policy involves fundamental principles that possess an imperative nature and have social and public significance. Each state has its own public policy principles that can truly vary depending the legal system, sovereignty, rights and obligations, culture and in some jurisdictions religion. This principle is important to explore due to its evolving nature and broad interpretation.

By contrast, in the *COMMISA v. PEMEX case*, U.S. courts moved away from strict deference to the seat of arbitration. Both the Southern District of New York and the Second Circuit concluded that enforcement could still be granted despite the annulment. They reasoned that the Mexican court's ruling conflicted with fundamental principles of justice because it retroactively applied rules of non-arbitrability, thereby leaving Commisa without any effective forum to pursue its claims.

This divergence can be understood through several interconnected legal principles. One of the key concepts is international comity, which generally calls for courts to respect foreign courts (Paulsson, 2017). Although comity is discretionary doctrine rather than mandatory, the original framework of the relevant conventions envisioned a cooperative relationship between courts at the seat of arbitration and courts of enforcement – one grounded in mutual respect rather than hierarchy (Paulsson, 2016, p. 21).

In *Pemex case*, however, U.S. courts limited the application of comity, finding that the Mexican judgment was fundamentally inconsistent with standards of due process and fairness. This reflects a shift away from automatic deference toward a more qualified approach, under which enforcement may be denied if the foreign annulment is deemed "incompatible" with basic principles of justice.

In the *Yukos Universal Limited (Isle of Man) v. The Russian Federation case,* a similar argument was made. The Amsterdam Court of Appeal enforced through with an arbitral award that had been rejected by Russian courts. They argued that the Russian cancellation should not be recognized because it was considered a foreign court decision from a system that was not fair or impartial, so did not qualify for recognition (Yukos Universal Ltd. v. The Russian Federation, 2005). The Dutch court treated the Russian annulment as a foreign judgment issued by a tribunal lacking independence and impartiality, and therefore undeserving of recognition. This case is often viewed as a clear example of the "judgments approach," since deficiencies such as lack of judicial independence and procedural fairness are widely accepted grounds for refusing recognition.

Another important issue in the case was the use of Mexican administrative rules after the fact. U.S. courts viewed this as undermining legal certainty and legitimate expectations, particularly in commercial arbitration, where parties rely on the stability of dispute resolution clauses. Retroactive invalidation of arbitration undermines the principle of *pacta sunt servanda* (agreements must be kept) (Born, 2021). Retroactive application of arbitration was one of the reasons and ground for U.S. court to enforce set aside foreign arbitral award. Concerning the principle of *pacta sunt servanta,* the U.S. court reffered in order to explain the binding nature of agreements and illegality to use optionally retroactive invalidation.

Although not presented as a traditional expropriation dispute, the U.S court's reasoning effectively treated the Mexican annulment as having an expropriatory impact. By setting aside the award and foreclosing any alternative forum, the state effectively stripped Commisa of its established monetary claim. The court viewed this as leaving the claimant without a remedy, which resembled uncompensated state interference with vested rights.

The decision also used public policy except in Article V of the New York Convention. Even though this exception is usually applied very carefully, the court used it to say they would not recognize the Mexican court's decision to cancel the arbitration, not the arbitration award itself. This reflects a broader reading of public policy, one that places greater emphasis on procedural fairness and due process that on strict deference to the seat of arbitration.

This approach is quite different from cases like *TermoRio S.A. E.S.P. v. Electranta S.P.*, where the D.C. Circuit said that awards made at the seat of arbitration should usually not be enforced unless there are very special reasons (TermoRio S.A. E.S.P. v. Electranta S.P., 2007). *The Pemex case* shows a more active approach in enforcing awards, letting U.S. courts look into whether the foreign decision to cancel an award was valid.

The Analysis of Chromalloy decision

In the Chromalloy case, the U.S. District Court for the District of Columbia applied U.S. federal rules on domestic arbitration to enforce an award that had been set aside by an Egyptian court. The court used Article VII of the New York Convention along with U.S. arbitration laws and decided that it was okay to enforce the award because refusing to do so would go against the strong public policy that supports recognizing arbitral awards.

According to the Art VII of the New York Convention "shall not deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or treaties of the country where such award is sought to be relied upon." The New York Convention uses wording that sets a basic standard for recognizing and enforcing foreign arbitration decisions. This means that while the Convention lists some reasons why enforcement might be refused, it does not stop countries from using their own laws that are more helpful for enforcement. So, if a country's laws allow for easier or more flexible recognition than the Convention requires, parties can use those laws. This "minimum protection" idea makes the Convention act as a starting point, not a strict rule, allowing each country to have its own rules that are supportive of arbitration. Because of this, the US court did not accept the Egyptian decision. The dispute itself arose from a contract between Chromalloy Aeroservices, a U.S. company, and the Arab Republic of Egypt concerning the maintenance and repair of military helicopters, which ultimately led to arbitration and subsequent enforcement proceedings in the United States (Ramaswamy, 2002).

The contract had a clause that required disputes to be settled through arbitration following the rules of the Cairo Regional Centre for International Commercial Arbitration. The group of people chosen to resolve the dispute, called the arbitral tribunal, decided that Egypt should pay money because they broke the contract. Later, the Egyptian courts where the arbitral tribunal rejected the decision, saying the tribunal had gone beyond its authority under Egyptian law. Chromalloy then asked a U.S. court in Washington, D.C. to make the decision valid under the New York Convention. The main question the U.S. court had was whether a decision that was set aside in the country where the arbitration took place could still be made valid in the U.S. The court decided that the decision could still be enforced. They explained that the New York Convention allows for some reasons to refuse enforcement, and the Egyptian cancellation did not stop the U.S. court from making the decision valid. The court also said that the U.S. strongly supports arbitration and that the parties wanted a final and binding decision through this process.

Seventeen years after the *Chromalloy case*, a court in the *Pemex case* dealt with similar issues about enforcing an arbitral award that had been set aside. Although the court did not use the same Article VII analysis from *Chromalloy* — because this case was under the Panama Convention, which does not have a similar rule—it still considered *Chromalloy* to be important. The court mentioned past cases that said national courts should be careful when accepting foreign decisions to cancel awards that go against basic fairness. In the end, the court used this reasoning to decide that the Mexican court's cancellation of the award was so unfair that it should not be recognized, which meant the award could still be enforced in the United States (Brennan, n.d.).

The *Pemex* court did not follow exactly the same reasoning used in the Chromalloy *case*, but it agreed that the original case is still valid. It also said that the decision probably will not lead to many similar cases in the U.S, because the situation in that case was very special and different. Still, the court suggested that changing the outcome would have been hard to explain under the facts. In doing so, it brought back a decision that was once seen as unusual, showing that parties involved in arbitration are still bound by the courts where arbitration took place, even if the award is set aside everywhere. The court also pointed out that international agreements on arbitration offer ways to handle tricky situations like this. Importantly, in August 2014, the Mexican courts didn't succeed in canceling $500 million award. To reach this decision, the court looked at two important cases that show courts should be cautious about accepting annulment decisions that go against basic fairness. Using this reasoning, the Pemex court found that the Mexican court's decision to cancel the award was so unfair that it should not be accepted, making it possible to enforce the award in the U.S.

Conclusion

The Pemex and Chromalloy cases show a growing pattern in U.S. courts to uphold arbitral awards even when they have been set aside at the original arbitration location. This trend makes arbitration more effective, but it can also be viewed as reducing the respect given to foreign court decisions, which usually receive some level of consideration under principles of international comity and fairness. The prolonged litigation—spanning nearly two decades and involving multiple proceedings—demonstrates how uncertainty over the status of annulled awards can undermine the finality and speed that arbitration is intended to provide. The justification often advanced for this more interventionist approach is that foreign annulment decisions may be disregarded only where they appear “suspicious,” meaning procedurally questionable or inconsistent with fundamental fairness.

Another question here is whether international commercial arbitration is regarded as delocalized dispute resolution mechanism? What if it leads to efficiency-driven “competition” among legal systems? Can those transnational decisions truly be effective? As illustrated in the *Yukos case,* delocalized character of enforcement not always guarantee effectiveness, since Russia has still not paid the compensation. Similarly, *COMMISA v. PEMEX* enforcement of which lasted more than a decade highlights how successful awards may face prolonged enforcement.

However, this standard is highly subjective and risks inconsistent application if used too broadly. On the other hand, courts that adopt new approaches risk forgetting the main purpose of the New York Convention, which is the effective enforcement of foreign arbitral awards. Is it effective to bring these awards into consideration? For this reason, such an approach should only be used in truly exceptional situations where there are clear and serious problems with due process or fairness. Otherwise, international arbitration may lose predictability and neutrality, becoming more exposed to strategic litigation and state influence rather than functioning as a stable and depoliticized dispute resolution mechanism.

Finally, in relation to Uzbekistan the following amendments can be implemented into national legislation. It is necessary to adopt the Regulation “About erroneous practice of Uzbek courts in applying the Convention on the New York Convention 1958.” The Regulation should involve criteria for application of Article V (1) (e) of New York Convention based on current research and international practice. In addition, national courts should consider the binding nature of foreign arbitral award, but should acknowledge their degree of discretionary power. Although the national legislation provides that Court decisions of a foreign state or arbitral awards issued in disputes and other matters arising in the economic sphere may be recognized and enforced in the Republic of Uzbekistan if an international treaty and the legislative acts of the Republic of Uzbekistan provide for the recognition and enforcement of such decisions, it lacks detailed guidance. Last, the legislation should address in which circumstances the set aside foreign arbitral award can be enforced.

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