

ENFORCEMENT OF ANNULLED AWARDS: TOWARDS A BETTER ANALYTICAL APPROACH

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Summary: this essay comments the cases where enforcement of annulled awards has either occurred or been discussed. It summarizes and compares the existing analytical approaches, indicating advantages and disadvantages of each, concluding with a proposal in favor of adopting the French view upon considering it the approach that, albeit displaying certain loose ends, is the preferable among those extant.

Key words: arbitration, awards, setting aside, enforcement of annulled awards.

A robust corpus of analysis exists involving the possibility of enforcing arbitral awards annulled at the seat. I do not wish to repeat it. In this essay I wish to address exclusively a single issue hailing from the stated possibility: the analysis a national court should follow in assessing the request to enforce. To do so, I shall summarize and comment the cases that have thus far analyzed the issue (§I), and comment on the analysis performed (§II).

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I wish to thank the insightful comments I received from Professor William Park. However, only I am responsible for the content of this piece.

I. ENFORCING ANNULLED AWARDS

To my knowledge, ten cases exist that have analyzed the possibility of enforcing an annulled award, out of which eight were successful.¹ These cases are:

1. **Norsolor:** *Société Pablak Ticaret Limited Sirketi v. Norsolor S.A.*, French *Cour de Cassation*, 9 November 1984 (Arrêt n° 730) (“Norsolor”).
2. **Hilmarton:** *Société Hilmarton Ltd. v. Société Omnium de Traitement et de Valorisation (OTV)*, French *Cour de Cassation*, 23 March 1994 (Arrêt n° 484 P) (“Hilmarton”).
3. **Chromalloy:** *Chromalloy Aeroservices, a Division of Chromalloy Gas Turbine Corporation v. Arab Republic of Egypt*, District Court, District of Columbia, 31 July 1996 (939 F. Supp. 907) (“Chromalloy”).
4. **Baker Marine:** *Baker Marine (NIG.) LTD. v. Chevron (NIG.) LTD and Chevron Corp., Inc. v. Danos and Curole Marine Contractors, Inc.*, Second Circuit Court of Appeals, United States of America, 12 August 1999 (191 F. 3d 194) (“Baker Marine”).
5. **Karaba Bodas:** *Karaba Bodas Co., L.L.C Plaintiff v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, Fifth Circuit Court of Appeals, United States of America, 23 March 2004 (364 F. 3d 274) (“Karaba Bodas”).
6. **Termorio:** *Termorio S.A. E.S.P. and LeaseCo Group, LLC v. Electranta S.P., et al.*, Court of Appeals of the United States, District of Columbia, 25 May 2007 (487 F.3d 928, 376 U.S.App.D.C. 242) (“Termorio”).

¹ Except for *Baker Marine* and *Termorio*, all the cited cases decided to enforce the annulled award. One of them (*Commisa*) is not final. Appeal is pending.

7. **Putrabali:** *Société PT Putrabali Adyamulia v. Société Rena Holding et Société Moguntia Est Epices*, French *Cour de Cassation*, 29 June 2007 (Arrêt n° 1021 FP-P+B+I) (“*Putrabali*”).
8. **Yukos:** *Yukos Capital S.A.R.L., v. Oao Rosneft*, Third Court of Appeals, civil section, Amsterdam, 28 April 2009 (200.005.269/01) (“*Yukos*”).
9. **Castillo Bozò:** *Juan Jose Castillo Bozò, v. Leopoldo Castillo Bozò and Gabriel Castillo Bozò*, District Court of the United States, South Florida’s District, 23 May 2013 (1:12-cv-24174-KMW) (“*Castillo Bozò*”).
10. **Commisa:** *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploración y Producción*, District Court of the United States, South New York’s District, 27 August 2013 (1:10-cv-00206-AKH) (“*Commisa*”).

Based on their analysis, the cases can be (generally) classified in three baskets: (a) those enforcing in accordance with domestic law, (b) those ignoring the annulment decision, and (c) those which assess the annulment decision in order to determine if it deserves deference. I shall summarize each.

A. ENFORCEMENT IN ACCORDANCE WITH DOMESTIC LAW

1. The cases

According to the French view, arbitral awards are “decisions hailing from international justice” and hence may be enforced in France in accordance with French domestic law, as allowed by Article VII of the New York Convention.² This view has been repeatedly sustained by the *Cour de Cassation* in three cases: *Norsolor*, *Hilmarton* and *Putrabali*. I shall address them in chronological order.

² Convention on the Recognition and Enforcement of Foreign Arbitral Awards, dated 10 June 1958 (“New York Convention” or “Convention”).

Norsolor is the first case tackling the issue. The French high Court faced an enforcement request of an award annulled by the Vienna Court of Appeals on the ground that the reasoning of the award was premised on *lex mercatoria* which, in the Vienna Court of Appeals' view, provoked lack of certainty. In quashing the decision of the Paris Court of Appeals denying enforcement, the *Cour de Cassation* held that upholding it would be contrary to claimant's right to enforce an arbitral award based on French law (the country where enforcement was requested), in accordance with Article VII of the Convention.

Hilmarton follows the same *ratio*. Confronted with an arbitral award and a Swiss decision annulling it, the *Cour de Cassation* held that enforcement in France was feasible since (i) the arbitral award was not a decision 'integrated in Switzerland's legal order'; (ii) Article VII of New York Convention allows it to ignore ("écartée") the annulment decision (pursuant to Article V(1)(e) of the Convention) when the law of the country where the enforcement is sought allows enforcement; and (iii) France's public policy was unaffected. In its words:³

... the Swiss award is an international decision that is not incorporated in the legal order of said State. Its existence continues regardless of its annulment given that its enforcement in France is not contrary to international public policy;

... it follows from article 7 of the New York Convention ... that the judge may not deny enforcement of a foreign award when its national law so authorizes; that article 5-1, e, of the Convention, which establishes that the refusal of enforcement of an award annulled in its country of origin may be excluded when the law of the country where enforcement is sought allows for enforcement; that in this case the annulment of an award issued in Geneva does not constitute a displacement of the French international arbitration rule permitting enforcement of the award in France; that the

³ *Hilmarton*, p. 3. My translation of: "la sentence Suisse était une sentence internationale qui n'était pas intégrée dans l'ordre juridique de cet Etat, de sorte que son existence demeurait établie malgré son annulation et que sa reconnaissance en France n'était pas contraire à l'ordre public international; ...il résulte de l'article 7 de la Convention de NEW-YORK ... que le juge ne peut refuser l'exequatur d'une sentence étrangère lorsque son droit national l'autorise; que des lors, les dispositions de l'article 5-1, e, de la Convention, qui prévoient le refus d'exequatur d'une sentence annulée dans son pays d'origine, doivent être écartées lorsque le droit du pays ou l'exécution de la sentence est requise permet cette exécution; qu'en l'espèce, l'annulation de la sentence rendue à GENEVE ne constitue pas, aux termes de l'article 1502 du Nouveau Code de procédure civile, un cas de refus des règles françaises de l'arbitrage International pour demander l'exequatur en France de la sentence; d'une sentence rendue en matière d'arbitrage International, annulée à l'étranger par application de la loi locale, n'est pas contraire à l'ordre public international" (*Hilmarton*, p. 3).

enforcement of an award annulled abroad further to domestic law is not contrary to international public policy...

In *Putrabali* the reasoning further to which an award annulled abroad was enforced was premised on the international character of the award, characterizing it as a “decision of international justice” (“*décision de justice internationale*”). And in accordance with French law, the annulment decision issued by another country is not a sufficient reason to deny the enforcement of an award. In the words of the *Cour de Cassation*:⁴

Given that the international award, which is not linked to the legal order of a state, is a decision of international justice, which regularity is examined with regard to the rules applicable in the country where its recognition and enforcement are sought; that further to Article VII of the New York Convention of 10 January 1958 *Rena Holding* had the right to submit in France the award issued in London on 10 April 2001, in accordance with the arbitration convention, and with the rules of IGPA, it is possible to avail itself of the provisions of French international arbitration law, which do not provide for the annulment of the award in its place of origin as a ground to refuse recognition and enforcement of the award issued abroad.

2. Comment

The gist of the reasoning of the three summarized is as follows:

- (a) The characterization of awards as hailing from international justice;
- (b) The characterization of annulment decisions as judgments which validity is confined to domestic systems;
- (c) The premise that, albeit awards annulled abroad *may* be refused under Article V(1)(e) of the New York Convention, such outcome is not *mandated*. Moreover, enforcing is not against international public policy; and

⁴ My translation of “Mais attendu que la sentence internationale, qui n'est rattachée à aucun ordre juridique étatique, est une décision de justice internationale dont la régularité est examinée au regard des règles applicables dans le pays où sa reconnaissance et son exécution sont demandées ; qu'en application de l'article VII de la Convention de New-York du 10 janvier 1958, la société *Rena Holding* était recevable à présenter en France la sentence rendue à Londres le 10 avril 2001 conformément à la convention d'arbitrage et au règlement de l'IGPA, et fondée à se prévaloir des dispositions du droit français de l'arbitrage international, qui ne prévoit pas l'annulation de la sentence dans son pays d'origine comme cause de refus de reconnaissance et d'exécution de la sentence rendue à l'étranger”.

- (d) Article VII of the New York Convention provides for the possibility of enforcing when there is a most favorable law—domestic or otherwise.

French courts look to *their* domestic law so as to assess if, according to it, an annulled award may be enforced. If no reason is found *not* to enforce, they enforce it. And in doing so, they emphasize that the foreign annulment decision has force within a foreign legal system, not the French legal system. Therefore, when faced with two competing decisions—an award and a decision annulling it—they choose to enforce the award, absent a countervailing reason hailing from domestic law.

This vision not only has technical merit, but fosters a praiseworthy result.

The *merit* consists in the skill with which the New York Convention is conceived and handled: it is conceived as an “open” instrument that acts as a *de minimis* statute, a ‘floor’ so to speak, further to which awards may be enforced. But should another more favorable law apply, it shall be further to the latter that the award will be enforced.

The plausible *result* has to do with the fact that a creditor further to an arbitral award is construed to have such right as a result of an internationally accepted dispute resolution mechanism, which may be given effects by virtue of both the *international* and *domestic* legal systems. Viewed thus, the plurality of systems are mutually-reinforcing methods of ensuring that rights flowing from arbitral awards will be made effective.

B. IGNORING THE ANNULMENT DECISION

Cases exist where the analysis followed is twofold: (i) the annulment decision is ignored; and (ii) the focus is the content of the award.

1. The cases

In *Karaha Bodas*, an award annulled in Jakarta, Indonesia, was enforced in Texas given that the annulment decision did not come from the seat or “*primary jurisdiction*” (a term coined by said court of appeals).⁵ Switzerland was the seat of the award. Arguing that the award was done ‘in accordance’ with Indonesian law, Pertamina advanced that two seats existed: Switzerland and Jakarta. Therefore, the annulment decision had to be respected: it flowed from *a*—if not *the*—seat. The Texas court of appeals decided that the *real* seat was Switzerland.⁶ Since the annulment did not hail from Switzerland, the ground contained in Article V(1)(e) of the New York Convention was not satisfied, and therefore enforced the award.

In *Castillo Bozgo*, the District Court performed a three-step analysis. First, it decided to ignore the annulment decision due to the fact that it did not come from the seat,⁷ reasoning that:

The Court finds that the Venezuelan annulment order at issue in this case does not qualify as a judgment of a "competent court," and thus should not be afforded comity

It then analyzed the reasons for annulment and concluded that no such reasons were extant. Finally, she analyzed if the enforcement would breach *her* public policy—and concluded that:

the Court finds that recognition of the arbitral decision will not violate the public policy of the United States, and thus the Court does not have grounds to refuse to recognize the arbitration award under Art. 5(2)(b) of the Convention.

In *Yukos* the Amsterdam’s Court of Appeals decided to enforce the award annulled in Moscow considering that:⁸

⁵ A digression is apposite. Referring to the seat as the “primary jurisdiction” invites confusion. Although in a manner it facilitates explanation, it invites a subconscious assumption that may cause analytical mischief: that one jurisdiction has supremacy over another. There is no such supremacy in the regime of the New York Convention. The “secondary jurisdiction” is not ‘secondary’ in importance. It is a jurisdiction just like any other, including the law of the seat.

⁶ Not only because the reference to the applicable law did not entail the domestic arbitration law, but also because Pertamina requested (without success) the annulment in Switzerland.

⁷ Being that the seat was Miami and the annulment decision from Caracas.

... the New York Convention 1958 otherwise leaves scope for granting leave to enforce an arbitral award that has been set aside by a competent authority of the country where the award was granted, the Dutch court is in any rate not compelled to refuse the leave to enforce a set aside arbitral award if the foreign judgment under which the arbitral award was set aside, cannot be recognized in the Netherlands. This particularly applies if the manner in which said judgment was brought about does not satisfy the principles of due process and for that reason recognition of the judgment would lead to a conflict with Dutch public order.

It framed the issue thus:⁹

Whether the decision of the Russian Civil Court to set aside the arbitral award can be recognized in the Netherlands, more in particular whether said judgments were rendered by a judicial instance that is impartial and independent.

Considering (a) the (*sic*) “close interwovenness” of Rosneft and the State of Russia; (b) the several international indicators which referred to (i) the lack of independence of the Russian judiciary, (ii) the fact that the judiciary receives instructions from the executive,¹⁰ (iii) that the judiciary is used by the executive as a political instrument; and (c) that partiality and dependency by their nature occur ‘behind the scenes’; the Amsterdam Court of Appeals concluded that it is plausible that the award-annulment decision of the Russian Civil Court came from a partial process which lacked independence. Therefore, it did not deserve to be recognized in the Netherlands.¹¹ Hence, when assessing Yukos Capital’s request to enforce the arbitral award, the annulment decisions were ignored.

2. Comment

Although in the same basket, I must avow that the cases are analytically distinguishable. Whilst *Karaba Bodas* and *Castillo Bozgo* ignored the annulment decision given that they did not hail from the seat, *Yukos* ignored it because it questioned the

⁸ Paragraph 3.5 of the available English version. (A better translation was unavailable.)

⁹ Id., ¶3.9.

¹⁰ A phenomenon known as “supine pozvonochnost”: judicial decisions are said to follow telephone instructions from the executive (“zvonok”).

¹¹ Id., ¶3.9.4.

judiciary that issued it.¹² Whilst the former acted in accordance with the New York Convention, the latter avoided the question. Nonetheless, what all three have in common is that *they chose not to refuse enforcement of the award when faced with an annulment decision by ignoring the annulment decision* — albeit for different reasons. The fact that international case law displays said analytical option as a solution to the dilemma addressed in this essay is sufficient to have them considered to accomplish our purpose.

C. DEFERENCE ANALYSIS

1. The cases

Cases exist where the exercise followed involved assessing the quality of the annulment decision in order to decide whether it deserves ‘deference’. If the answer is positive, enforcement is denied. If it does not, enforcement is ordered.

In *Baker Marine* the enforcement of an arbitral award annulled at the seat (Nigeria) was denied reasoning that, if the award was made *in Nigeria*, in accordance with *Nigerian law*, including arbitration law, the fact that a *Nigerian court* annulled it is sufficient to refuse enforcement in the United States. When arriving at said conclusion, it made two observations that display a deference analysis:¹³

... Baker Marine has made no contention that the Nigerian courts acted contrary to Nigerian law. It is sufficient answer that Baker Marine has shown no adequate reasons for refusing to recognize the judgments of the Nigerian Court...

Ad contrario —one surmises— had there been statements or evidence that the Nigerian courts acted in a manner contrary to their law, or ‘sufficient reasons’ to deny recognition of the annulment decisions, the New York court would have enforced.

In *Chromalloy* an award annulled in Cairo was enforced in the United States. When deciding on the subject, the District Court performed a two-step analysis. First,

¹² This strand of reasoning could warrant considering the decision in the third basket (See §C, *infra*).

¹³ *Id.*, p. 197.

it determined if, for purposes of United States law, the award should not be enforced. Second, it assessed whether it should be enforced given the existence of an annulment decision. With regards to the first step, the District Court reasoned that:¹⁴

While Article V provides a discretionary standard, Article VII of the Convention requires that, “The provisions of the present 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 ... of the count[r]y where such award is sought to be relied upon.” ... In other words, under the Convention, CAS maintains all rights to the enforcement of this Arbitral Award that it would have in the absence of the Convention. Accordingly, the Court finds that, if the Convention did not exist, the Federal Arbitration Act (“FAA”) would provide CAS with a legitimate claim to enforcement of this arbitral award. ...

After analyzing whether, further to the *Federal Arbitration Act*, a ground to refuse enforcement existed, the District Court concluded that, “as a matter of U.S. law, the award is proper”. With regard to the second analytical step, it reasoned¹⁵ that failing to enforcing the award would:

...repudiate its solemn promise to abide by the results of the arbitration

It framed the issue as follows: should the annulment decision of the Egyptian Court of Appeals be granted *res judicata* effect? Rejecting the approach that enquired into whether the Court of Appeals correctly decided the issue under Egyptian Law, it concluded that:

the award ... is valid as a matter of U.S. law. The Court further concludes that it need not grant *res judicata* effect to the decision of the Egyptian Court of Appeal of Cairo. ...

As a result, it recognized the arbitral award notwithstanding its annulment.

Termorio follows a similar path. From the outset one finds in the Syllabus the following explanation:

¹⁴ Id., p. 909. Notes omitted.

¹⁵ Echoing *Scherk* where, in the context of the arbitration *agreement*, it voiced the concern of the New York Convention drafting delegates that domestic courts should not allow the breach of the promise to arbitrate. (*Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519, 94 S.Ct. 2449, 2457).

Because there is nothing in the record here indicating that the proceedings before the Consejo de Estado were *tainted* or that the judgment of that court is other than authentic, the District Court was, as it held, obligated to respect it. ... Accordingly, we hold that, because the arbitration award was lawfully nullified by the country in which the award was made, appellants have no cause of action in the United States to seek enforcement of the award under the FAA or the New York Convention.

(emphasis added)

In this case enforcement was opposed given the existence of an annulment decision from Colombia's *Consejo de Estado*. The annulment was premised on the claim that the arbitration had to follow Colombian law, and Colombian law did not expressly provide for the use by public entities of the ICC Arbitration Rules. Interestingly, under the title "Validity of Foreign Judgment Vacating an Arbitration Award" it stated:¹⁶

...a secondary Contracting State normally may not enforce an arbitration award that has been lawfully set aside by a "competent authority" in the primary Contracting State. Because the Consejo de Estado is undisputedly a "competent authority" in Colombia (the primary State), and because **there is nothing in the record here indicating that the proceedings before the Consejo de Estado were tainted** or that the judgment of that court is other than authentic, appellees contend that appellants have no cause of action under the FAA or the New York Convention to enforce the award in a Contracting State outside of Colombia. On the record at hand, we agree.

(emphasis added)

It adhered to *Baker Marine's* reasoning where, once an annulment ground was found to be present, enforcement was denied for *comity*. It explained:¹⁷

... For us to endorse what appellants seek would seriously undermine a principal precept of the New York Convention: an arbitration award does not exist to be enforced in other Contracting States if it has been lawfully "set aside" by a competent authority in the State in which the award was made. This principle controls the disposition of this case.

And as to the question whether the decision of the *Consejo de Estado* deserved deference, it concluded that:¹⁸

¹⁶ Id., p. 935.

¹⁷ Id., p. 936.

¹⁸ Id., p. 939.

The Consejo de Estado, Colombia's highest administrative court, is the final expositor of Colombian law, and we are in no position to pronounce the decision of that court wrong.

As a result, the enforcement of the arbitral award was denied, for it had been annulled at the seat.

Recently, in *Commisa*,¹⁹ the District Court commenced by posing the question as follows: when confronted with an award and a decision annulling it, which one should prevail?²⁰ It concluded that,²¹ given the circumstances, the decision did not deserve deference:²²

I hold ... that the Eleventh Collegiate Court decision violated basic notions of justice in that it applied a law that was not in existence at the time the parties' contract was formed and left COMMISA without an apparent ability to litigate its claims. I therefore decline to defer to the Eleventh Collegiate Court's ruling, and I again confirm the Award and grant judgment thereon.

The premise behind the conclusion was retroactivity. An (alleged) *ex post facto* application of a statute. As a consequence, it declined to defer to said decision for, in its opinion:²³

The decision ... violated basic notions of justice, ... I hold that the Award in favor of COMMISA should be confirmed.

To reach said conclusion it analyzed the content of the annulment decision.²⁴ Doing so involved determinations on Mexican law, particularly whether an *ex post facto* application of a subsequent law occurred. It concluded:²⁵

¹⁹ I acted as expert witness before the New York court of first instance in this case. I do not wish to take any position on the substantive merits of the case. That is for the New York Courts to decide. Here, I am only concerned with the (academic) question of the type of analysis performed.

²⁰ *Commisa*, p. 1, first paragraph.

²¹ The analysis followed raises the question whether the decision was an expression of principle or a solution based on the particular circumstances of the case.

²² *Commisa*, p. 2.

²³ *Id.*, p. 31.

²⁴ Pp. 24 - 31.

²⁵ P. 25. The conclusion is restated on page 31.

I find that ... the decision vacating the Award violated “basic notions of justice”, and that deference is therefore not required.

As a result, the request to “confirm the award” was granted. Appeal is pending as of the date of this essay.

2. Comment

The United States’ solution to the problem of the possibility to enforce annulled awards involves analyzing the annulment decision in order to determine if it deserves “deference”. Albeit the standard has varied,²⁶ and therefore *forum shopping* is available, it appears that if something seems to be ‘wrong’ with the decision of annulment, deference would be unavailable. Whilst *Baker Marine* takes an intermediate standard — that the decision is not tainted— *Termorio* employs a higher one: that basic notions of justice are breached. And *Commisa* echoed the latter, adopting the standard of another circuit.²⁷

II. IS THERE A BETTER APPROACH?

The three views canvassed above not only involve different ways to solve a dilemma which has, for some time now, occupied the minds of salient experts, but also reflect solutions displaying different analytical rigor, causing different consequences, both positive and negative.

Whilst the impact of the *deference analysis* is that one judiciary passes judgment over another, *disregarding* the annulment decision it the equivalent of closing ones eyes before reality. Even worse, ignoring the express text of the New York Convention: an award may be refused enforcement when annulled.²⁸ On the other hand, the

²⁶ And some jurisdictions are in the process of crafting their standard.

²⁷ Given that, at the time of writing, the case was under appeal, the impact of the decision in the (currently fluid) standard of the Second Circuit is to be seen. As is known, it is not the courts of first instance which create precedents, but the higher courts when they accept, rejecting or qualify the reasoning of lower courts.

²⁸ Article V(1)(e) of the New York Convention.

French view is intellectually stimulating for it does not cause frictions with other jurisdictions, and sends a salutary message.

The *deference analysis* fosters frictions that may not only be serious, but that are also unfortunate as they could have been avoided. To illustrate, consider turning around the facts of the last commented case (*Commisa*). What would happen if a Mexican court first instance passed judgment on an annulment decision hailing from the Court of Appeals for the Second Circuit of the United States which, after applying a binding US-Supreme Court decision, was told by the Mexican court of first instance that it misapplied *its* own law, and therefore—in the opinion of the Mexican court—does not deserve “deference”?²⁹

Without doubt, less than desirable consequences would ensue.³⁰ (And these consequences should not be ignored: for the system to function, judiciary goodwill need exist.) I ask the reader: is it healthy to follow a method that causes said type of results?

We need to accept it: the deference analysis is suboptimal.

On the other hand, the cases ignoring the annulment decision are questionable in that they fail to comply with the New York Convention. I would not be surprised if some alleged that they have *violated* the New York Convention. In my opinion, the conclusion is not forced: the *chapeau* of Article V contains a verb providing for discretion (“may”).³¹ But the solution which simply ignores the annulment decision—which satisfies the hypothesis contained in article V(1)(e) of the New York Convention—is the equivalent to trying to cover the sun with one finger. What is

²⁹ Recall that the New York court of first instance characterized the decision of the Mexican court of appeals (the Eleventh Collegiate Circuit Court) as “in breach of the most basic notions of justice”. (pp. 2 y 31).

³⁰ This explains why some Mexican judges are irritated after becoming privy to the New York *Commisa* decision—especially given the content of pages 24 to 31.

³¹ Particularly because the discretion to not enforce (New York Convention Article V) is coupled by a positive duty to enforce (New York Convention Article III) and the possibility to do so even in more liberal cases than those contained in the New York Convention (Article VII).

more, it does not really give a solution to our dilemma; it circumvents it. And without a principled reason. (And what is more, if one follows what occurred in *Yukos*, the result could well be worse: it is ignored after passing judgment on the annulment decision.³² It was *ignored* after being *reviled*.)

Because of the above I propose that the most sophisticated and plausible view is the French solution.³³ Further to the same, the French system is understood to be porous. It is open to receive, absorb and enforce awards which are understood to be the product of ‘international justice’. It will deny enforcement only when a reason to refuse exists *under French domestic law* — not because another court said so. This is what makes it more interesting, sophisticated and plausible. It acknowledges the international arbitral system — ‘arbitral legal order’³⁴— and embraces it. In accordance with this view, domestic law is conceived as one piece —one more gear— of the (complex) international system which effect is to facilitate the resolution of international disputes. Understood thus, the effect will be that a creditor under an arbitral award may trust the international system as a whole to have its rights respected. If a piece becomes clogged or stuck, others will assist. The international engine will not become wrecked should one of the pistons be inadequately oiled. And given that nobody passes judgment on anybody, no offended parties (judiciaries) will exist.³⁵

³² I would not be surprised if, instead of *judged*, some feel the judiciary was *insulted*.

³³ I am open to views as to the merits of the French view in itself, a matter I would be delighted to hear from expert colleagues. My point in this paper is not that the view is in and of itself perfect, but that it is the better from those extant.

³⁴ To echo the term coined by Emmanuel Gaillard in ASPECTS PHILOSOPHIQUES DU DROIT DE L'ARBITRAGE INTERNATIONAL, Academie de droit internationald de la Haye, Martinus Nijhoff Publishers, Leiden, 2008.

³⁵ My concern regarding this regard is not due to thin skin. It stems from understanding that nothing is gained by insulting a neighbor, particularly a commercial partner. And on the other hand the good will and disposition to cooperate may be lessened. And if a legal text allows for both interpretations, why not favor choosing the analytical solution avoiding problems, rather than that inflaming them?