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Effects of International Judgments Relating to Awards

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I. INTRODUCTION

Once an international arbitral award is rendered, in a great majority of cases, it is performed voluntarily.[1] Therefore, most of the time, the parties' dispute ends here.[2] However, for the remaining cases, where the award is not voluntarily performed, the parties generally continue litigating before national courts; the losing party might seek to set aside the award, while the winning party might seek to enforce it in one or more places.[3] Therefore, it is not rare that courts in different jurisdictions render judgments relating to one and the same award.[4]

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1. *See* QUEEN MARY UNIV. OF LONDON & PRICEWATERHOUSE COOPERS, INTERNATIONAL ARBITRATION: CORPORATE ATTITUDES AND PRACTICES 8 (2008), http://www.pwc.co.uk/assets/pdf/pwc-international-arbitration-2008.pdf (reporting that "more than 90% of the awards were honoured by the non-prevailing party").

2. *See id*. at 10 ("In only 11% of cases did participants need to proceed to enforce an award.").

3. *See id.* at 6 (indicating that 6% of arbitral awards were followed by litigation).

4. *See infra* Part III.

This Article looks at those judgments relating to international arbitral awards (award judgments) and, more precisely, at their extraterritorial effects.[5] It analyzes whether an award judgment rendered in one jurisdiction has effects in other jurisdictions. For instance, if the award has been set aside[6] in country *A*, does the set-aside judgment have effects on enforcement proceedings in country *B*? Similarly, if country *C* refuses to enforce an award on the basis that the tribunal has no jurisdiction, does this have a preclusive effect on enforcement proceedings pending in country *D*?

These questions have been addressed in a number of recent decisions around the world, including the English case of *Malicorp Ltd. v. Government of the Arab Republic of Egypt*[7] and the Hong Kong decision in *Astro Nusantara International BV v. PT Ayunda Prima Mitra*.[8] This Article will look at those decisions and place them in a broader context, discussing whether and to what extent award judgments should have extraterritorial effects.[9] Part II of this Article looks at the extraterritorial effects of award judgments rendered at the seat, whereas Part III analyzes those effects on judgments rendered elsewhere.

II. EXTRATERRITORIAL EFFECTS OF JUDGMENTS RENDERED AT THE SEAT OF ARBITRATION

The effect of a judgment rendered at the seat of arbitration is discussed most often in the context of set-asides: If a court at the seat has set aside the award, does this preclude enforcement proceedings pending elsewhere?[10] The question of the effects of the set-aside has spurred a hot debate in

5. *See infra* Parts II–III.

6. As a terminological remark, when referring to the proceedings nullifying an award before the national courts of the seat of the arbitration, this Article uses the phrase "set aside," which is the phrase found in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V(1)(e), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 [hereinafter New York Convention]. *But see* 9 U.S.C. § 10 (2012) (noting that the corresponding terminology is to "vacate" an award).

7. [2015] EWHC (Comm) 361 (Eng.).

8. [2015] H.K.E.C. 330 (C.F.I.) (H.K.).

9. *See generally* Maxi Scherer, *Effects of Foreign Judgments Relating to International Arbitral Awards: Is the 'Judgment Route' the Wrong Road?*, 4 J. INT'L DISP. SETTLEMENT 587, 591–94 (2013) (discussing a general trend in some jurisdictions of granting effect to foreign judgments relating to international arbitral awards).

10. A related question, and one that has received little attention, is whether a judgment at the seat of the arbitration refusing to set aside the award has preclusive effects on enforcement proceedings elsewhere. *See id.* at 599–628.

scholarly writing[11] and has led to contradictory decisions from national courts around the world.[12]

11. On the one hand, some scholars are of the opinion that recognition or enforcement of a set-aside award should *always* be refused. This opinion is based on the argument that an award that has been set aside ceases to exist and that therefore nothing is left to recognize or enforce (*Ex nihilo nihil fit*). *See, e.g.*, HAMID GHARAVI, THE INTERNATIONAL EFFECTIVENESS OF THE ANNULMENT OF AN ARBITRAL AWARD 114 (2002); GEORGIOS PETROCHILOS, PROCEDURAL LAW IN INTERNATIONAL ARBITRATION 336 (2004); Richard Hulbert, *Further Observations on Chromalloy: A Contract Misconstrued, a Law Misapplied, and an Opportunity Foregone*, 13 ICSID REV. FOREIGN INV. L.J. 124, 144 (1998); Albert Jan van den Berg, *New York Convention of 1958: Refusals of Enforcement*, 18-2 ICC INT'L CT. ARB. BULL. 1, 15–17 (2007); Albert Jan van den Berg, *The 1958 New York Arbitration Convention Revisited*, *in* 15 ARBITRAL TRIBUNALS OR STATE COURTS: WHO MUST DEFER TO WHOM? 125 (Pierre A. Karrer ed., 2001); Albert Jan van den Berg, *When Is an Arbitral Award Non-Domestic Under the New York Convention of 1958?*, 6 PACE L. REV. 25, 41–42 (1985). On the other hand, it has also been argued that the fact that an award has been set aside should *never* suffice to prevent its recognition or enforcement. This opinion is based on the view that international arbitration is not linked to any national legal order, including the one of the seat, but forms part of a specific national or transnational legal order. *See, e.g.*, EMMANUEL GAILLARD, LEGAL THEORY OF INTERNATIONAL ARBITRATION 35 (2010); Philippe Fouchard, *La portée internationale de l'annulation de la sentence arbitrale dans son pays d'origine*, 3 REV. ARB. 329 (1997); Emmanuel Gaillard, *Enforcement of Awards Set-Aside in the Country of Origin: The French Experience*, *in* IMPROVING THE EFFICIENCY OF ARBITRATION AGREEMENTS AND AWARDS: 40 YEARS OF APPLICATION OF THE NEW YORK CONVENTION 505 (Albert Jan van den Berg ed., 1999); Jan Paulsson, *Arbitration Unbound: Award Detached from the Law of Its Country of Origin*, 30 INT'L & COMP. L.Q. 358, 358–59 (1981); Jan Paulsson, *Delocalization of International Commercial Arbitration: When and Why It Matters*, 32 INT'L & COMP. L.Q. 53 (1983). Finally, a number of intermediate positions have been suggested. *See, e.g.*, Gary B. Born, *Recognition and Enforcement of International Arbitral Awards*, *in* 3 INTERNATIONAL COMMERCIAL ARBITRATION 3394, 3638 (2d ed. 2014) (concerning the recognition of set-aside awards under the New York Convention, suggesting that one should adopt an approach similar to the one found in the European Convention); Pierre Mayer, *Revisiting* Hilmarton *and* Chromalloy, *in* INTERNATIONAL ARBITRATION AND NATIONAL COURTS: THE NEVER ENDING STORY 165, 173–76 (Albert Jan van den Berg ed., 2001); Jan Paulsson, *Enforcing Arbitral Awards Notwithstanding a Local Standard Annulment*, 6 ASIA PAC. L. REV. 14 (1988); Jan Paulsson, *The Case for Disregarding LSAs (Local Standard Annulments) Under the New York Convention*, 7 AM. REV. INT'L ARB. 99 (1996) (suggesting that one should distinguish according to the grounds of the setting aside: set-asides based on local—as opposed to international—standards should not lead to refusing recognition and enforcement elsewhere).

12. *See, e.g.*, TermoRio S.A. v. Electranta S.P., 487 F.3d 928 (D.C. Cir. 2007); Baker Marine Ltd. v. Chevron Ltd., 191 F.3d 194, 197 n.3 (2d Cir. 1999); Spier v. Calzaturificio Tecnica S.p.A., 71 F. Supp. 2d 279 (S.D.N.Y. 1999); Chromalloy Aeroservices v. Arab Republic of Egypt, 939 F. Supp. 907 (D.D.C. 1996); PT Putrabali Adyamulia v. Rena Holding et Société Mnogutia Est Epices, Judgment (June 29, 2007), 32 Y.B. Comm. Arb. 299 (Cass. 2007) (France); Buyer v. Seller, Judgment (Jan. 24, 2003), 30 Y.B. Comm. Arb. 509 (OLG 2005) (Germany); Omnium de Traitement et de Valorisation v. Hilmarton, Judgment (June 10, 1997), 22 Y.B. Comm. Arb. 696 (Cass. 1997) (France); The Arab Republic of Egypt v. Chromalloy Aeroservices Inc., Judgment (Jan. 14, 1997), 22 Y.B. Comm. Arb. 691 (CA 1997) (France); Société Hilmarton v. Société OTV, Judgment (Mar. 23, 1994), 1994 Rev. Arb. 327 (Cass. 1994) (France); Ministry of Public Works v. Société Bec Frères, Judgment (Feb. 24, 1994), 22 Y.B. Comm. Arb. 682 (CA 1997) (France); DO Zdravilisce Radenska v. Kajo-Erzeugnisse Essenzen GmbH, Judgment (Oct. 20, 1993), 26 Y.B. Comm. Arb.

The starting point of any analysis in this context must be Article V(1)(e) of the New York Convention, which provides, in relevant part, that recognition and enforcement of an award "may be refused . . . if . . . [t]he award . . . has been set aside . . . by a competent authority of the country in which, or under the law of which, that award was made."[13]

The problem with Article V(1)(e) is that it provides that a set-aside *may* be refused recognition and enforcement elsewhere, but does not contain any guidance on how this should be interpreted.[14] This has led to the confusing situation of inconsistent and conflicting decisions around the world, as mentioned above.[15]

In this context it has been suggested that necessary guidance could be found by looking at the principles of private international law.[16] The question of whether and how to grant effect to a foreign judgment is a common issue in private international law.[17] Applying those principles to foreign set-aside judgments should provide the courts with the required guidance as to when they should refuse to recognize or enforce awards that have been set aside.[18]

In practice, if the foreign set-aside judgment complies with the forum's principles of private international law (for example, it has been rendered by a competent court, in fair proceedings, and does not violate the forum's public policy), the foreign set-aside judgment should be given effect and the award refused recognition and enforcement under Article V(1)(e).[19] Conversely, if the foreign set-aside judgment does not comply with the forum's principles of private international law (for example, it has been

919 (OGH 1999) (Austria); Société Nationale pour la Recherche, le Transport et la Commercialisation des Hydrocarbures (SONATRACH) v. Ford, Bacon & Davis Inc., Judgment (Dec. 6, 1988), 15 Y.B. Comm. Arb. 370 (Comm. 1990) (Belgium).

13. *See* New York Convention, *supra* note 6, at art. V(1)(e).

14. *See id.*

15. *See supra* note 12 and accompanying text.

16. *See* Linda Silberman & Maxi Scherer, *Forum Shopping and Post-Award Judgments*, *in* FORUM SHOPPING IN THE INTERNATIONAL COMMERCIAL ARBITRATION CONTEXT 313, 329 (Franco Ferrari ed., 2013).

17. *See id.* at 313.

18. *See* Linda Silberman, *The New York Convention After Fifty Years: Some Reflections on the Role of National Law*, 28 GA. J. INT'L & COMP. L. 25, 32 (2009); *see also* William Park, *Duty and Discretion in International Arbitration*, 93 AM. J. INT'L L. 805, 813 (1999) ("The soundest policy regarding annulment [judgments] is to treat them like other foreign money judgments, according them deference unless procedurally unfair or contrary to fundamental notions of justice.").

19. *See* Silberman & Scherer, *supra* note 16, at 323.

rendered by a non-competent court, in unfair proceedings, or violates the forum's public policy standards), the award may be recognized and enforced despite the set-aside judgment and Article V(1)(e).[20]

This idea has gained significant momentum. It was followed by the Amsterdam Court of Appeal in the 2009 decision *Yukos Capital S.a.r.l. v. OAO Rosneft*,[21] where the court heard an enforcement action concerning four awards that had been set aside in Russia, the seat of the arbitration.[22] It stated that "a Dutch court is not compelled to deny leave for recognition of an annulled arbitral award if the foreign decision annulling the arbitral award cannot be recognized in the Netherlands."[23] The court found that it was "likely that the Russian civil court decisions annulling the arbitral awards [were] the outcome of a judicial process that must be deemed partial and dependent."[24]

The current draft of the U.S. Restatement on International Commercial Arbitration also points in the same direction.[25] According to the draft Restatement, a U.S. court should look at its foreign judgment principles in order to decide whether an award set aside by a competent foreign court may still be recognized or enforced in the United States according to Article V(1)(e) of the New York Convention.[26]

Most recently, the English High Court addressed this issue in *Malicorp Ltd. v. Government of the Arab Republic of Egypt*.[27] Malicorp sought enforcement of an award against Egypt before the English courts, although the award had been set aside in Egypt, the seat of the arbitration.[28]

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20. *See id.*

21. Judgment (Apr. 28, 2009), 34 Y.B. Comm. Arb. 703 (Hof 2009) (Neth.); *see also* Maximov v. OJSC Novolipetsky Metallurgichesky Kombinat, Judgment (Nov. 17, 2011), 37 Y.B. Comm. Arb. 274, 276 (Rb. 2012) (Neth.).

22. *Yukos Cap.*, 34 Y.B. Comm. Arb. at 703.

23. *Id.* at 705.

24. *Id*. at 712.

25. *See* RESTATEMENT (THIRD) OF THE U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 4-16(b) (AM. LAW INST., Tentative Draft No. 2, 2012) ("Even if [the] award has been set aside by a competent authority, a court of the United States may confirm, recognize, or enforce the award if the judgment setting it aside is not entitled to recognition under the principles governing the recognition of judgments . . . .").

26. *Id*. § 4-16 reporters' note d ("[T]he Restatement takes as its point of departure the law of judgments of the court where recognition or enforcement [of the award] is sought, inasmuch as a judgment of set-aside is, after all, a judgment.").

27. [2015] EWHC (Comm) 361 (Eng.).

28. *Id*. at [6].

Malicorp argued that the English court should ignore the Egyptian set-aside judgment because the Egyptian courts were biased in setting aside the award condemning Egypt.[29] It was, however, unable to convince the judge who found that there was no "positive and cogent evidence [of pro-government bias]."[30] Justice Walker applied what he described as "the preferred approach" of the English courts—namely, giving effect to the foreign set-aside—unless "applying general principles of English private international law, the set aside decision was one which this court would give effect to."[31] Malicorp had further argued that the Egyptian set-aside judgment had misapplied relevant Egyptian law, but this was equally unsuccessful.[32] Justice Walker observed that "an assertion that a foreign judgment is 'wrong' is not a sufficient basis to refuse to recognise it."[33] As a result, the set-aside award could not be enforced in England.[34]

What is one to think of this general approach of applying principles of private international law in order to assess the effects of a foreign set-aside under Article V(1)(e) of the New York Convention? On the one hand, this solution has the advantage of providing guidance that Article V(1)(e) is missing. Using the pre-established framework of existing principles of private international law fills this gap.[35] On the other hand, this approach leads to some difficulties as highlighted by the recent case law mentioned above.

First, the approach leads to the often difficult and delicate question about whether the foreign set-aside judgment was rendered by an independent and impartial judge, such as in the above-described *Yukos* and *Malicorp* matters.[36] In particular, when a state or state-owned entity is involved and the seat of the arbitration is in that state, there will always be the lingering question whether the local courts acted bias-free when setting aside the award.[37] However, for the award-creditor to actually prove any bias of the local court is difficult, if not impossible.[38] Regardless, any

29. *Id*. at [24].
30. *Id*. at [26].
31. *Id*. at [21]–[22].
32. *Id*. at [24].
33. *Id*. at [25].
34. *Id*. at [28].
35. *See* Silberman & Scherer, *supra* note 16, at 329.
36. *See supra* notes 21–34 and accompanying text.
37. *See Malicorp*, [2015] EWHC (Comm) 361 at [24]–[27].
38. As discussed above, the Amsterdam Court of Appeal has applied a very low standard,

discussion about the alleged bias of the foreign state's court will inevitably lead to uncomfortable situations and likely have a negative impact on international relations with that state.

Second, this approach, which consists of applying private international law principles to the foreign set-aside judgment, may lead to unsatisfactory results in some instances.[39] Let us assume, for instance, that the foreign courts, in setting aside the award, obviously misapplied the foreign law (for example, inventing a condition that the award must be signed in red ink). The review of the merits of a foreign court's decision is generally not permitted under private international law principles.[40] As clearly stated by Justice Walker in *Malicorp*, "an assertion that a foreign judgment is 'wrong' is not a sufficient basis to refuse to recognise it."[41] The prohibition of the review of the merits thus leads to situations where one might have to accept a set-aside at the seat, even though it is based on an obviously wrong decision.[42]

III. EXTRATERRITORIAL EFFECTS OF JUDGMENTS RENDERED OUTSIDE THE SEAT OF ARBITRATION

Turning now to the effects of judgments rendered elsewhere than at the seat, the typical question is as follows: Where an award has been enforced or enforcement has been refused in one country, and enforcement proceedings are also pending elsewhere, does the first judgment have a preclusive effect in the other enforcement proceedings?

The conditions and effects of preclusion principles vary significantly from jurisdiction to jurisdiction, and it would go beyond the scope of this Article to discuss them in detail.[43] However, one can say that irrespective of those differences, the main aims of preclusion principles are to (i) show

deeming it sufficient that it was "likely that the Russian civil court decisions annulling the arbitral awards [were] the outcome of a judicial process that must be deemed partial and dependent." Yukos Cap. S.a.r.l. v. OAO Rosneft, Judgment (Apr. 28, 2009), 34 Y.B. Comm. Arb. 703, 712 (Hof 2009) (Neth.).

39. *Malicorp*, [2015] EWHC (Comm) 361 at [21]–[22].

40. *Id*. at [25].

41. *Id*.

42. *Id.*

43. *See, e.g.*, ANDREW DICKINSON, BRITISH INST. OF INT'L AND COMP. LAW, COMPARATIVE REPORT ON THE EFFECT IN THE EUROPEAN COMMUNITY OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS: RECOGNITION, RES JUDICATA AND ABUSE OF PROCESS (2008); INT'L LAW ASS'N, INTERIM REPORT: "RES JUDICATA" AND ARBITRATION 22–27 (2004).

respect to the findings of the foreign court, (ii) ensure procedural efficiency in not re-deciding matters already heard, and (iii) promote "judicial peace" in preventing a dispute from going on forever.[44]

Based on these general goals, it is logical to apply preclusive principles also in the context of award judgments. Indeed, English courts have regularly granted preclusive effects to foreign enforcement judgments, such as in the 2011 English High Court decision *Chantiers de l'Atlantique SA v. Gaztransport & Technigaz SAS*[45] and the 2012 English Court of Appeal decision *Yukos Capital S.a.r.l. v. OJSC Rosneft Oil Co*.[46] Even the U.K. Supreme Court decision *Dallah Real Estate and Tourism Holding Co. v. Ministry of Religious Affairs* contains obiter statements to this effect.[47]

In the United States, the draft Restatement on International Commercial Arbitration adopts a similar approach.[48] According to the Restatement, a

44. Tiffany Miller, Vandenberg v. Superior Court, 15 OHIO ST. J. DISP. RESOL. 579, 586 n.64 (2000).

45. [2011] EWHC (Comm) 3383 [313]–[15] (Eng.). This case dealt with an award in which the arbitral tribunal seated in London had dismissed all claims. *Id.* at [3], [34]. The successful respondent in the arbitration sought recognition and enforcement of the award in France and the other party resisted, arguing that the award had been obtained by fraud. The French courts dismissed this latter argument and declared the award enforceable. *Id.* at [51]. The unsuccessful party in the arbitration also applied for the award to be set aside in the U.K. on the basis that it was obtained by fraud. *Id.* at [1]. Justice Flaux—after having found that the award had not been obtained by fraud—held in obiter that as the same party had already raised these matters in resisting recognition and enforcement before the French courts and lost, it was barred under the relevant English law principles of issue estoppel from raising those matters again before the English court. *Id*. at [313]–[18].

46. [2012] EWCA (Civ) 855 (Eng.); *see also* Yukos Cap. S.a.r.l. v. OJSC Rosneft Oil Co., [2011] EWHC (Comm) 1461 (Eng.). For the background of the dispute, see Jakob van de Velden, *The "Caution* Lex Fori*" Approach to Foreign Judgments and Preclusion*, 61 INT'L & COMP. L.Q. 519, 521 (2012).

47. [2010] UKSC 46 [98] (appeal taken from Eng.). In this case, recognition and enforcement proceedings were underway in the United Kingdom, while the French courts heard a set-aside action concerning the same award. *Id*. at [29]. Lord Mance noted that "an English judgment [in the recognition and enforcement proceedings] holding that the award is not valid could prove significant in relation to [the French] proceedings, if French courts recognise any principle similar to the English principle of issue estoppel." *Id*.; *see also* Good Challenger Navegante SA v. Metalexportimport SA [2003] EWCA (Civ) 1668 [80]–[90] (Eng.) (accepting, in principle and obiter, that a Romanian judgment recognizing and enforcing an award could produce issue estoppel in a subsequent recognition or enforcement action regarding the same award in the United Kingdom).

48. However, there seems to be no established U.S. case law on this issue. *See, e.g.*, Belmont Partners v. Mina Mar Grp., Inc., 741 F. Supp. 2d 743 (W.D. Va. 2010). Before the U.S. District Court, one party sought confirmation of an award rendered in the United States, whereas the other party cross-motioned to vacate the award. *Id*. at 746. In parallel enforcement proceedings concerning the same award in Canada, the Superior Court of Justice in Ontario had recognized the

U.S. court should apply principles of claim and issue preclusion in post-award proceedings in order to determine whether it "may reexamine a matter decided at an earlier stage of the proceedings . . . by a foreign court."[49] Therefore, if the forum's relevant principles on claim or issue preclusion are met, a U.S. court should give preclusive effect to a foreign judgment that considered the same claim or issue in a previous recognition or enforcement action.[50]

In contrast, a recent Hong Kong case came to a different result. In *Astro Nusantara International v. PT Ayunda Prima Mitra*, the Hong Kong Court of First Instance dealt with an award for which enforcement was also sought in other jurisdictions, including England, Indonesia, Malaysia, and Singapore.[51] The courts in Singapore had refused enforcement on the basis that the arbitral tribunal lacked jurisdiction,[52] and one of the questions before the Hong Kong court was whether this finding had preclusive effect in Hong Kong.[53] It found that no such preclusive effect should be granted, stating that:

> The fact that an arbitral award has been refused enforcement by a court in another jurisdiction, even one whose law governs the arbitration agreement or the procedures of the arbitration . . . is not a ground for resisting enforcement of the arbitral award in Hong Kong under the New York Convention, because different jurisdictions have different rules, laws and regulations governing [the] enforcement of arbitral awards . . . .[54]

The Hong Kong decision raises valid questions about the approach

award and ordered its enforcement. *Id*. at 748. The U.S. court found that the Canadian judgment merited comity and its findings constituted res judicata for the U.S. court. *Id.* at 751.

49. RESTATEMENT (THIRD) OF THE U.S. LAW OF INT'L COMMERCIAL ARBITRATION, *supra* note 25, § 4-8; *see also id*. § 4-8 reporters' notes b(ii) ("The Restatement thus takes the position that these judgment recognition questions are no different in nature from those presented in other situations involving successive court rulings. Rather than propound wholly new rules for the arbitration context, the Restatement embraces the forum's existing rules on claim and issue preclusion, 'law of the case,' and recognition of foreign country judgments, as the case may be.").

50. *See also* George Bermann, *Domesticating the New York Convention: The Impact of the Federal Arbitration Act*, 2 J. INT'L DISP. SETTLEMENT 317, 324 (2011).

51. [2015] HCCT 45/2010 [28] (C.F.I.) (Legal Reference System) (H.K.).

52. [2013] SGCA 57 [230] (Sing. App. Ct.).

53. *Astro Nusantara*, [2015] HCCT 45/2010 at [28].

54. *Id.* at [73].

followed by the English courts and in the draft Restatement. First, one might query whether it is opportune to let the procedural timetable decide which enforcement forum renders its decision first and thus influences, via the preclusive effect of the first judgment, the enforcement of the award in other jurisdictions.[55] As mentioned above, enforcement was sought in multiple jurisdictions.[56] If the first judgment had preclusive effect on the outcome of the enforcement elsewhere, this would have put a lot of weight on the procedural timetable, and thus opened the door for unwanted strategic positioning or forum-shopping.[57]

Second, and maybe even more importantly, one might query whether it is right to let a foreign court decide whether an award should be enforced in the forum.[58] Rather, it seems that this decision should only be in the hands of the forum's courts.[59] As pointed out by the Hong Kong court, "[w]hether a ground has been made out for refusing to enforce a Convention award . . . is a matter governed by Hong Kong law and to be determined by the Hong Kong court[s]."[60]

IV. CONCLUSION

In sum, serious questions remain as to whether award judgments should follow the same route as other judgments and be granted preclusive effect. Importantly, award judgments seem to be different from "normal" judgments because they do not decide the merits of the dispute, but only relate to a prior adjudication of the award.[61] This "ancillary" nature of award judgments might well explain the differences in the treatment of award judgments, be it those rendered at the seat or elsewhere.[62]

55. *See* Maxi Scherer, *Effects of Foreign Judgments Relating to International Arbitral Awards: Is the 'Judgment Route' the Wrong Road?*, 4 J. INT'L DISP. SETTLEMENT 587, 622 (2013).

56. *Astro Nusantara*, [2015] HCCT 45/2010 at [28].

57. *See* Scherer, *supra* note 55, at 611.

58. *See Astro Nusantara*, [2015] HCCT 45/2010 at [73(5)].

59. *See id.*

60. *Id*.

61. *See* Scherer, *supra* note 55, at 606.

62. *See id.* at 605 (noting the ancillary nature of award judgments and the effects of their analytical framework).

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