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Contents

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Introduction

This compilation of abstracts forms part of the system for collecting and disseminating information on Court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.1). CLOUT documents are available on the UNCITRAL website: (www.uncitral.org/clout/showSearchDocument.do).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted or referred to by the Court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available, in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references. The abstracts are searchable on the database available through the UNCITRAL website by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these.

The abstracts are prepared by National Correspondents designated by their Governments, or by individual contributors; exceptionally they might be prepared by the UNCITRAL Secretariat itself. It should be noted that neither the National Correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

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Cases Relating to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards — The "New York" Convention (NYC)

Case 1356: NYC V; V(1)(b)
Benin: Tribunal de Première Instance de Cotonou
Ordonnance n°19/94
M. Adeossi v. Sonapra
25 January 1994
Original in French
Published in: Revue Camerounaise de l'Arbitrage n°2 (1998), p. 15

Abstract published on www.newyorkconvention1958.org[1]

An arbitral award was rendered in the Havre (France) on 20 December 1993. Mr. Adeossi requested the recognition and enforcement of the arbitral award in Benin.

The Tribunal de Première Instance de Cotonou (Cotonou First Instance Tribunal) refused to enforce the arbitral award. It reasoned that the recognition and enforcement of foreign arbitral awards were governed by the NYC (ratified by Benin in 1974) and the Code of Civil Procedure, and verified whether the conditions provided in Article V NYC and Article 1030 of the Code of Civil Procedure were fulfilled, inter alia (i) the regularity of the foreign decision (formal requirement), (ii) whether the respondents were able to participate in the proceeding, (iii) whether the delays had been complied with, (iv) whether due process had been violated, (v) whether the arbitral tribunal had jurisdiction to hear the dispute, and (vi) whether the award was contrary to domestic public policy.

In the case at hand, the Tribunal de Première Instance de Cotonou held that due process had been violated. In this respect, it noted that after the date of closing of the proceeding, both parties had filed supplemental briefs and that, although the brief submitted by SONAPRA had been declared inadmissible, the arbitral tribunal had relied on various arguments raised by Mr. Adeossi in his final brief submitted after SONAPRA's submission which had been refused.

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[1] The website www.newyorkconvention1958.org is a project supported by UNCITRAL with a view to providing information on the application of the New York Convention (1958). It supplements the cases collected in the CLOUT system. The abstracts are reproduced as part of the CLOUT documentation so they can be officially translated into the six languages of the United Nations. In order to ensure consistency with the website www.newyorkconvention1958.org, the editorial rules of that website have been maintained even when they differ from CLOUT editorial rules.

Case 1357: NYC III; V; V(2); VI; VII
Burkina Faso: Tribunal de Grande Instance de Ouagadougou
Société des Ciments d'Abidjan (SCA) v. Société Burkinabè des Ciments et Matériaux (CIMAT)
13 June 2001
Original in French
Published in: Revue Burkinabé de droit, n°41, Note Pierre Meyer

Abstract published on www.newyorkconvention1958.org[2]

An ICC award was rendered in Paris on 17 August 1998 in favour of Société des Ciments d'Abidjan (SCA). The award was subsequently declared enforceable in France. SCA then requested the enforcement of the arbitral award in Burkina Faso. The losing party (CIMAT) opposed enforcement on various grounds, inter alia, (i) that the Tribunal de Grande Instance de Ouagadougou (First Instance Court of Ouagadougou) lacked jurisdiction to rule on the matter in accordance with the France-Burkina Faso Convention on Judicial Cooperation whose provisions prevail over the NYC pursuant to Article VII NYC, (ii) that there was a situation of lis pendens since it initiated proceeding before the Tribunal de Grande Instance de Ouagadougou which was still pending before the Cour d'appel d'Abidjan (Abidjan Court of Appeal), and (iii) that the arbitral award violated Burkina public policy given that the Claimant had not complied with the Burkina procedural rules in breach of Article III NYC. It also requested an adjournment of the decision on the enforcement of the award in accordance with Article VI NYC until the French Cour de cassation (Supreme Court) rendered its decision on the setting aside of the award.

The Tribunal de Grande Instance de Ouagadougou granted enforcement of the arbitral award in Burkina Faso. It first dismissed CIMAT's objection on jurisdiction which was raised at a later stage of the proceeding. It then reasoned that since Burkina Faso ratified the NYC on 23 March 1987, the NYC is applicable to the case at hand. It recalled the grounds for refusing enforcement of an arbitral award listed under Article V NYC and held that a situation of lis pendens does not constitute a ground for refusing enforcement. As to CIMAT's argument that the arbitral award violates Burkina public policy, it stated that a violation of public policy requires the breach of a general principle of law considered fundamental by the State. In the present case, the Tribunal de Grande Instance de Ouagadougou concluded that the arbitral award was not contrary to a fundamental principle of law.

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Case 1358: NYC I; III; IV; IV(1)
Cameroon: High Court of Fako Division
Suit No. HCF/91/M/2001-2002
African Petroleum Consultants (APC) v. Société Nationale de Raffinage
15 May 2002
Original in French
Published in: Revue Camerounaise de l'Arbitrage n°18, p. 15

Abstract published on www.newyorkconvention1958.org[3]

An award was rendered on 17 April 2002 in London in favour of African Petroleum Consultants (APC). APC petitioned the High Court of Fako Division to enforce the arbitral award in Cameroon pursuant to the NYC, the Charter of Investment in Cameroon and the OHADA Uniform Act on Arbitration. The losing party (Société Nationale de Raffinage) opposed this request by claiming that the High Court of Fako Division lacked jurisdiction.

The High Court of Fako Division granted enforcement of the award in Cameroon. It first assessed whether it had jurisdiction to grant the enforcement of the arbitral award. Pursuant to Articles I and III NYC, it reasoned that given the fact that Cameroon had ratified the NYC, it was bound to recognize and enforce arbitral awards made in another Contracting State (which was the case here since the award was rendered in London, the United Kingdom being a party to the NYC) and to consider them binding and enforce them in accordance with the rules of procedure of Cameroon. It thus held that it had jurisdiction to entertain the request. It then ruled that there was no reason to refuse the recognition and enforcement of the award given that (i) there was no lack of capacity on the part of the parties, (ii) the arbitration agreement was valid, (iii) proper notice was given to the party against whom the award was made, (iv) the award fell within the terms of the submission to arbitration, and (v) the award did not contain decisions on matters beyond the scope of the submission to arbitration. Lastly, it held that APC's application satisfied the conditions set forth in Article IV NYC since the documents provided therein had been produced.

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Case 1359: NYC
Côte d'Ivoire: Cour d'appel d'Abidjan
Arrêt n° 486
Société PRODEXCI v. Société RAIMUND COMMODITIES INC.
20 April 2004
Original in French
Published in: Actualités Juridiques n° 48/2005, p. 126. Observations KOMOIN François

Abstract published on www.newyorkconvention1958.org[4]

An agreement was entered into between a United States company (RAIMUND COMMODITIES INC.) and a company registered in Côte d'Ivoire (PRODEX-CI). A dispute arose and an arbitral award was rendered by the Arbitral Chamber of the Cocoa Merchants' Association of America in favour of RAIMUND. In an order issued on 22 December 2003, the President of the Tribunal de Première Instance de Yopougon (First Instance Court of Yopougon), acting as summary judge, allowed the enforcement of the arbitral award in Côte d'Ivoire. Appealing this decision, PRODEX-CI argued that the summary judge lacked jurisdiction to grant the enforcement of the arbitral award pursuant to the provisions of the Code of Civil and Commercial Procedure and that the enforcement should have been refused given that due process had been violated. In response, RAIMUND contended that the Tribunal de Première Instance de Yopougon had jurisdiction and that the applicable texts were the Uniform Act on Arbitration and the NYC, whereas the provisions of the Code of Civil Procedure did not apply to the case at hand.

The Cour d'appel d'Abidjan (Abidjan Court of Appeal) overturned the enforcement order and held that the Tribunal de Première Instance lacked jurisdiction. It reasoned that even though the NYC is applicable to the enforcement of foreign arbitral awards, RAIMUND had failed to establish that the Convention allowed summary judges to grant enforcement of foreign arbitral awards in Côte d'Ivoire. It thus ruled that the enforcement of a foreign arbitral award should, in the absence of specific international treaties addressing the issue, be granted by the courts of the place where the Defendant has a domicile or residence in Côte d'Ivoire pursuant to the provisions of the Code of Civil Procedure.

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Case 1360: NYC
Côte d'Ivoire: Cour Suprême
Arrêt n° 501
Société SICAFA S.A. v. Société J. ARON and Company (U.K.)
13 June 2002
Original in French
Published in: Actualités Juridiques n° 50/2005, p. 285

Abstract published on www.newyorkconvention1958.org[5]

An arbitral award was rendered on 26 July 1996 under the aegis of the Chambre des Cafés et Poivres du Havre in favour of a United Kingdom company (J. ARON and Company). In an order issued on 7 February 1997, the Tribunal de Grande Instance du Havre (First Instance Court of Le Havre) allowed enforcement of the arbitral award in France. On 17 February 1998, the enforcement order was declared enforceable in Côte d'Ivoire by the President of the Tribunal de Première Instance d'Abidjan (First Instance Court of Abidjan). The losing party (Société Industrielle de Café et de Cacao) filed a petition before the Cour Suprême (Supreme Court) on the ground that this decision violated the France-Côte d'Ivoire Convention on judicial cooperation and the provisions of the NYC.

The Cour Suprême affirmed this decision and dismissed the action, without referring to the NYC. It reasoned that the France-Côte d'Ivoire Convention on judicial cooperation sets forth the conditions that must be satisfied for a decision rendered by French Courts to be declared enforceable in Côte d'Ivoire, inter alia, that (i) the decision was rendered by a court having jurisdiction, (ii) the decision is enforceable under French law, (iii) due process was not violated, and that (iv) the decision is not contrary to the public policy of the country in which it is relied upon. It then held that SICAFA had not established that these conditions were not fulfilled in the case at hand.

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Case 1361: NYC II(3)
Côte d'Ivoire: Cour Suprême
Arrêt n°317/97
Toyota Services Afrique (TSA) v. Société Promotion de Représentation Automobiles (PREMOTO)
4 December 1997
Original in French
Published in: Revue Camerounaise de l'Arbitrage, n° 5, avril-mai-juin 1999, p. 16

Abstract published on www.newyorkconvention1958.org[6]

On 29 August 1996, PREMOTO and TSA concluded a commercial concession agreement containing an arbitration agreement. A dispute arose and PREMOTO initiated summary proceedings before the juge des référés (summary judge), which issued an order on 2 June 1997, ordering TSA to deliver a certain amount of vehicles. The Cour d'appel d'Abidjan (Abidjan Court of Appeal) upheld the order on 1 July 1997. TSA filed a petition before the Cour Suprême (Supreme Court) on various grounds, inter alia, that the lower courts should have referred the parties to arbitration in accordance with Article II(3) NYC.

The Cour Suprême affirmed the decision of the Cour d'appel d'Abidjan. It reasoned that the juge des référés had jurisdiction to order provisional measures despite the existence of an arbitration agreement. The Cour Suprême then reviewed the decision rendered by the juge des référés and held that it had not ruled on the merits and therefore Article II(3) NYC had not been breached. It then rejected the other arguments raised by TSA and dismissed the action.

Case 1362: NYC
Egypt: Court of Cassation, case number 1042/73
Engineering Industries Company & Sobhi A. Farid Institute v. Roadstar Management & Roadstar International
28 March 2011
Original in Arabic

Abstract published on www.newyorkconvention1958.org[7]

The parties entered into a contract for the transfer of know-how, which provided for the settlement of disputes by arbitration in Lugano, Switzerland, in accordance with

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the Rules of the International Chamber of Commerce (the "ICC Rules"). On 4 February 2002, an arbitral award was rendered under Swiss law ordering Engineering Industries Company and Sobhi A. Farid Institute ("the Claimants") to pay damages to Roadstar Management and Roadstar International. The Claimants filed a lawsuit before the Cairo Court of Appeal, requesting a suspension of the enforcement of the award and its setting aside. On 29 September 2003, the Cairo Court of Appeal declined jurisdiction over the Claimants' request. On 23 November 2003, the Claimants challenged the judgment of the Cairo Court of Appeal before the Court of Cassation, alleging that the Cairo Court of Appeal had incorrectly applied the law by deciding that it lacked jurisdiction over the Claimant's lawsuit even though the contract for the transfer of know-how was governed by the New Commercial Code, which provides for the jurisdiction of Egyptian Courts over disputes arising from contracts for the transfer of technology.

The Court of Cassation dismissed the Claimants' challenge. It concluded that the application of the Egyptian Arbitration Law is limited by Article 1 to arbitration proceedings held in Egypt and to international arbitration proceedings which the parties have agreed to submit to the Egyptian Arbitration Law. It added that this position complies with the NYC, to which Egypt had acceded by Presidential Decree No. 171/1959. The Court held that the dispute between the parties regarding the arbitration proceedings had to be submitted to the Swiss Courts and not to Egyptian Courts, given that the parties had agreed that their disputes were to be settled by arbitration in Lugano, and in the absence of any evidence establishing an agreement to apply the Egyptian Arbitration Law. The Court also noted that the New Commercial Code does not apply to the parties' contract because the contract was concluded after its entry into force.

Case 1363: NYC III
Egypt: Tanta Court of Appeal
42/42
Al Ahram Beverages Company v. Société Française d'Etudes et de Construction
17 November 2009
Original in Arabic

Abstract published on www.newyorkconvention1958.org[8]

On 25 September 1991, an arbitral tribunal seated in Geneva, Switzerland, issued an award in favour of Société Française d'Etudes et de Construction ("Société Française") against Al Ahram Beverages Company ("Al Ahram") in an arbitration under the Rules of the International Chamber of Commerce (the "ICC Rules"). On 14 April 2005, the Chairman of the Cairo Court of Appeal held that he lacked jurisdiction to rule on Société Française's request for the enforcement of the award, noting that the award was rendered abroad and was therefore governed by the NYC

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and its enforcement should be requested before the competent Court of First Instance pursuant to Article 297 of the Code of Civil and Commercial Procedure ("Code of Procedure"). Société Française applied for enforcement of the award before the Khanka Court of First Instance. By a judgment dated 24 September 2009, the Khanka Court of First Instance granted enforcement to the award and reduced the applicable interest rate to 7 per cent. Al Ahram appealed before the Tanta Court of Appeal, arguing that the award should not be enforced as it contravened public policy in Egypt.

The Tanta Court of Appeal decided that the Khanka Court of First Instance lacked jurisdiction over the request for enforcement of the award and overruled its judgment. The Court of Appeal noted that requests for enforcement of decisions issued abroad are made before the Courts of First Instance pursuant to Article 297 of the Code of Procedure, subject to the exception contained in Article 301 of the Code of Procedure that international conventions are applicable even when they are in contradiction with the provisions of the Code of Procedure. The Court recalled that Egypt acceded to the NYC by Presidential Decree No. 171/1959 and that the NYC is therefore applicable as is any other law of the Egyptian State. Referring to Article III NYC which provides that the contracting States shall enforce arbitral awards in accordance with their rules of procedure, the Court noted that the term "rules of procedure" in the NYC is not limited to the Code of Procedure but includes all laws organizing proceedings, such as the Egyptian Arbitration Law. It added that Article III NYC also provides that the contracting States shall not impose substantially more onerous conditions on the enforcement of foreign arbitral awards than those imposed on the enforcement of domestic arbitral awards. Comparing the provisions of the Code of Procedure applicable to enforcement of foreign decisions with Articles 55 to 58 of the Egyptian Arbitration Law, which apply to enforcement of arbitral awards issued in Egypt, the Court concluded that the provisions of the Code of Procedure set more onerous conditions than those of the Egyptian Arbitration Law. Accordingly, it decided that the enforcement of the award would be governed by the Egyptian Arbitration Law, which provides in its Articles 9 and 56 for the jurisdiction of the Chairman of the Cairo Court of Appeal over requests for enforcement of awards issued in international commercial arbitrations. The Court therefore referred the matter to the Chairman of the Cairo Court of Appeal.