

# Kluwer Arbitration Blog

## The Contents of the Yearbook Commercial Arbitration, Volume XLVIII (2023), Uploads 3 and 4

Stephan Schill (General Editor, ICCA Publications; Amsterdam Center for International Law, University of Amsterdam) · Thursday, December 14th, 2023

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Recently, the third and fourth upload of court decisions from the 2023 Yearbook went online on KluwerArbitration. The third upload contains 17 decisions from 13 countries, all applying the New York Convention. The following is a selection of the upload's highlights.

In *Compañía de Inversiones Mercantiles*, the district court had refused to vacate its earlier confirmation of a Bolivian award, on the ground that the award had since been set aside in Bolivia. The [United States Court of Appeals for the Tenth Circuit](#) agreed with the district court that the power of the court to deny enforcement of an award on public policy grounds under the New York Convention also allows the court to refuse to accept the *annulment* of an arbitral award on those grounds. In the present case, denying *vacatur* of the confirmation judgment was supported by considerations concerning the interest in the finality of judgments and in respecting the contractual expectations of the parties, and the U.S. policy favoring arbitral dispute resolution as a signatory to the New York Convention.

The [Arbitrazh \(Commercial\) Court for the Moscow Circuit](#) denied the enforcement of an English award because of a violation of the public policy of the Russian Federation. In the underlying case, the claimant had successfully obtained an award against the respondent as guarantor for a loan that the claimant had extended to a third party. When a moratorium on the collection of debts from the third party was ordered as part of insolvency proceedings of the third party, the Court found that enforcement of the award ordering the respondent to repay violates the fundamental principle of the equal treatment of insolvency creditors.

Finally, in an enforcement case, the [Turkish Court of Cassation](#) reversed the lower court's decision and held that a partial award on jurisdiction could be granted recognition. The Court stressed what was relevant for purposes of recognition of an award under the 1958 New York Convention was not the form in which an award is rendered, as a partial vs. a final award, but whether the decision in question was meant to be binding in substance.

The fourth upload of materials contains 26 decisions, including two decisions rendered in respect of the interim and the final *ad hoc* awards in the *Sulu* case, a dispute between the heirs of the

Sultan of Sulu and Malaysia, to which the rights under an 1878 agreement for the exploitation of natural resources in North Borneo had eventually passed. On 6 June 2023, the [Paris Court of Appeal](#) found that the interim award rendered by the sole arbitrator in Madrid could not be enforced in France, because the Spanish court that had initially appointed the arbitrator had subsequently annulled his appointment. On 27 June 2023, the [Court of Appeal in The Hague](#) denied leave to enforce the final award in this case, rendered by the same sole arbitrator in Paris, again on the ground that he had lacked jurisdiction because his appointment had been annulled in Spain.


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