

Table of Contents

Foreword.....xi
Prefacexiii
About the Authorxvi
Introduction.....1

Part I: Sources of Malfunctioning

CHAPTER I THE INTERNATIONAL FRAMEWORK OF
CONTROL OF THE VALIDITY OF AWARDS 11

Section I Jurisdiction Over Annulment of the Award 12

§1 The Exclusive Jurisdiction of Courts
at the Place of Arbitration 12

A. *The Adoption of the Principle by the
UNCITRAL Model Law and in
Comparative Law* 12

B. *The Advantages of the Principle*..... 15

§2 The Extra-Territorial Jurisdictional Rule..... 17

A. *The Multiple Alternative Criteria*..... 18

B. *The Arbitration Law Criterion* 20

C. *The Uncertain Criteria* 21

§3 The Exclusion of Annulment Actions..... 23

A. *The Optional Exclusion* 23

B. *The Mandatory Exclusion*..... 25

Section II Annulment Proceedings: The Extent of Control 29

§1 The UNCITRAL Model Law 30

A. *The Exclusive Nature of the Annulment
Proceedings*..... 30

B. *The Exhaustive Nature of the Annulment
Grounds* 31

C. *Contribution of the Model Law to the
International Harmonization of Means
of Challenge Against and the Extent of
Control of Awards*..... 32

§2 Modalities of Control Stricter Than Those
of the Model Law 33

A. *The Deviation from the Exclusivity of
Annulment Procedure*..... 33

	<i>B. The Adoption of Annulment Grounds More Rigorous than those of the Model Law</i>	<i>36</i>
§3	Modalities of Control Less Strict Than Those of the Model Law	40
	<i>A. The Adoption of Annulment Grounds less Rigorous Than Those of the Model Law</i>	<i>41</i>
	<i>B. The Discretionary Power of the Court Over Annulment</i>	<i>42</i>
CHAPTER II	ARTICULATION OF ANNULMENT AND ENFORCEMENT ACTIONS	45
Section I	The Birth of the New York Convention	45
§1	The Legal Regime Preceding the New York Convention	45
	<i>A. The 1923 Geneva Protocol</i>	<i>45</i>
	<i>B. The 1927 Geneva Convention</i>	<i>46</i>
§2	The Origins of the New York Convention	49
	<i>A. The ICC Draft Convention</i>	<i>49</i>
	<i>B. The ECOSOC Draft Convention</i>	<i>50</i>
§3	Legislative History	52
	<i>A. Environment and Objectives</i>	<i>52</i>
	<i>B. The Conflicting Tendencies</i>	<i>52</i>
Section II	The New York Convention: Achievements and Imperfections	55
§1	The Achievements	55
	<i>A. Elimination of the ‘Double Exequatur’</i>	<i>55</i>
	<i>B. The Possibility of Adjournment</i>	<i>57</i>
§2	The Imperfections of the New York Convention	59
	<i>A. Use of Enigmatic Terms</i>	<i>59</i>
	1. The ‘Binding’ Character of an Award	59
	2. Suspension of the Award	64
	<i>B. Annulment Proceedings: Jurisdiction and Extent of Control</i>	<i>65</i>
	1. The Invitation of the Secretary General of the United Nations	65
	2. Jurisdiction over the Annulment of the Award	67
	3. The Extent of Control over Arbitral Awards During Annulment Proceedings	69
§3	Recognition of the Annulment Decisions of the Courts in Which or Under the Law of Which the Award Was Made	70
	<i>A. Origins and Objectives</i>	<i>70</i>
	<i>B. Ambiguity of the Formula</i>	<i>71</i>

Part II: Manifestations of Malfunctioning

CHAPTER I	THE FOUNDATIONS OF THE PRACTICE OF ANNULLED AWARDS	77
Section I	Legal Foundations	77
§1	French Case Law	77
A.	<i>Establishment of the Case Law</i>	77
1.	<i>The Norsolor Case</i>	78
2.	<i>The Polish Ocean Line Case</i>	78
3.	<i>The Hilmarton Case</i>	78
4.	<i>The Chromalloy Case</i>	78
B.	<i>The Legitimacy of the Case Law</i>	81
C.	<i>The Scope of Application of the Case Law</i>	84
1.	Awards Falling Within the Scope of the Case Law	85
2.	The Impossibility of Adjournment	86
3.	Disregard of the Annulment Grounds	86
§2	Belgium	87
§3	Austria	89
§4	The United States	92
A.	<i>Chromalloy</i>	92
B.	<i>A Critical View of the Chromalloy decision</i>	96
Section II	Practical Foundations	107
§1	The Legitimacy of the Seat of Arbitration	107
A.	<i>The Origins of Delocalization</i>	108
B.	<i>Modern Delocalization</i>	109
§2	Neutrality of the Arbitral Process	113
A.	<i>Annulment of the Award at the Seat of Arbitration</i>	113
B.	<i>Annulment of the Award in the Country Under the Law of Which the Award was Made</i>	113
§3	The Archaism of Local Arbitration Law	115
A.	<i>Neutralizing the International Impact of Archaic Laws</i>	115
B.	<i>Encouragement of Harmonization</i>	116
CHAPTER II	THE NEGATIVE CONSEQUENCES	119
Section I	A Blow to International Coordination and Harmonization	119
§1	The <i>Hilmarton</i> Scenario	119
§2	The Scope of the Decision	122
§3	Other Forms of Disorder	125
A.	<i>Disorder Possibilities of Article V(1)(e) of the New York Convention</i>	125

	<i>B. Disorder Possibilities of Article IX(1) of the 1961 European Convention</i>	127
Section II	Possible Emergence of Biased Enforcement Decisions.....	128
Section III	Violation of the Will of the Parties.....	129
	§1 The Will of the Parties and the Annulment Control	129
	§2 Freedom to Organize the Extent of Control	131
Section IV	Distrust Towards Arbitration	132
	§1 The Distrust of International Business Operators Towards Arbitration	132
	§2 The Distrust of States Towards Arbitration	134

Part III: Solutions to the Malfunctioning

CHAPTER I	PROPOSED SOLUTIONS	141
Section I	Solutions of Continuity	141
	§1 Harmonization Through the UNCITRAL Model Law	142
	§2 Local Standard Annulments	147
	§3 Exclusion of Annulment Proceedings	151
Section II	Solutions of Rupture	157
	§1 Elaboration of a New Multilateral Convention	157
	§2 Establishment of a Supra-National Court of Control ..	162
CHAPTER II	THE APPROPRIATE SOLUTION	166
Section I	Regime and Evolution of International Commercial Arbitration	166
	§1 The Autonomy of Arbitration	166
	§2 An Autonomy under Guardianship	168
Section II	Unification: The Path of the Ideal Regime	170
	§1 Unification: Justifications	170
	§2 The Opportunity for a Unification	173
	<i>A. A Favorable Environment</i>	173
	<i>B. Precedents</i>	174
	1. ICSID	175
	2. The Centre for the Settlement of Investment Disputes Between Host States of Arab Investments and Nationals of Other Arab States	182
	3. The Arab Center for Commercial Arbitration ..	184
	4. Joint Court of Justice and Arbitration	185
	§3 The Foundations of the Ideal Structure	187
	Conclusion	192
	Index	195