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## Dirty Secret: The Laundering of Foreign Arbitral Awards

Charles H. Brower II

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## *Articles*

# Dirty Secret: The Laundering of Foreign Arbitral Awards

CHARLES H. BROWER II<sup>†</sup>

*This Article addresses an undertheorized but important topic: the laundering of foreign arbitral awards. Prevailing parties in foreign arbitrations often obtain judgments confirming their awards at the place of arbitration. Fifty years ago, the Second Circuit established the so-called “parallel entitlements” doctrine, pursuant to which prevailing parties can seek enforcement of the foreign award under federal law, or enforcement of the foreign confirmation judgment under state law, or both.*

*If an award faces obstacles to enforcement under the New York Convention or the Federal Arbitration Act, the prevailing party can still obtain enforcement of the confirmation judgment under the legal standards that apply to the enforcement of foreign judgments under state law. Although a modest but persuasive body of commentary has criticized this laundering of foreign arbitral awards, observers have treated it as a logical consequence of the parallel entitlements doctrine that will continue until legislatures or courts change the direction of the law.*

*However, when recently serving as an expert witness in a high-end dispute, the author discovered a line of cases in which U.S. courts have effectively limited the scope of the parallel entitlements doctrine. Specifically, those cases have construed state law as sufficiently broad to permit consideration of certain fundamental lapses in the underlying arbitration when deciding whether to enforce foreign confirmation judgments. Such lapses include arguments that (1) the parties never had a valid arbitration agreement; (2) the arbitrators exceeded the scope of the submission to arbitration; (3) the respondent did not receive adequate notice of the arbitration proceedings; and (4) the tribunal lacked independence or impartiality. This line of cases provides new and meaningful limits on the laundering of foreign arbitral awards.*

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## INTRODUCTION

Arbitration mostly deserves its reputation as being the “gold standard” for resolving international commercial disputes.<sup>1</sup> In general, arbitrators chosen by the parties conduct the proceedings fairly and render sensible awards.<sup>2</sup> Parties voluntarily comply with awards over 90 percent of the time.<sup>3</sup> When necessary, prevailing parties can seek enforcement in summary proceedings under the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards.<sup>4</sup> Efforts to resist enforcement seldom have merit and rarely succeed.<sup>5</sup>

But truly exceptional cases exist. Arbitral tribunals sometimes exercise jurisdiction over respondents who never consented to arbitration.<sup>6</sup> Occasionally, they initiate or conduct proceedings without proper notice.<sup>7</sup> At times, they

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1. Frederick A. Acomb & Nicholas J. Jones, *The Insider Adversary in International Arbitration*, 27 AM. REV. INT'L ARB. 63, 64 (2016); see also NIGEL BLACKABY, CONSTANTINE PARTASIDES, ALAN REDFERN & MARTIN HUNTER, REDFERN & HUNTER ON INTERNATIONAL ARBITRATION § 1.01, at 1 (5th ed. 2009) [hereinafter REDFERN & HUNTER] (“International arbitration has become the principal method for resolving disputes between States, individuals, and corporations in almost every aspect of international trade, commerce, and investment.”); GARY B. BORN, INTERNATIONAL ARBITRATION: LAW AND PRACTICE § 1.02, at 8 (3d ed. 2021) (“Arbitration is widely regarded as the preferred means of resolving international commercial disputes.”).

2. See BORN, *supra* note 1, § 1.02[B]–[F], at 10–14 (describing several advantages of international arbitration including even-handedness, commercial competence and expertise of decision-makers, and party autonomy).

3. *Id.* at 327; Thomas E. Carbonneau, *The Assault on Judicial Deference*, 23 AM. REV. INT'L ARB. 417, 419 n.12 (2012); José Edgardo Muñoz López, *Alternative Dispute Resolution for E-Commerce*, 10 VINDOBONA J. INT'L COM. L. & ARB. 53, 62 n.36 (2006); Peter B. Rutledge, *Introduction: The Constitutional Law of International Commercial Arbitration*, 38 GA. J. INT'L & COMP. L. 1, 3 (2009); S.I. Strong, *Truth in a Post-Truth Society: How Sticky Defaults, Status Quo Bias, and the Sovereign Prerogative Influence the Perceived Legitimacy of International Arbitration*, 2018 U. ILL. L. REV. 533, 543–44 (2018); GERRY LAGERBERG & LOUKAS MISTELIS, INTERNATIONAL ARBITRATION: CORPORATE ATTITUDES AND PRACTICES, QUEEN MARY UNIV. OF LONDON 2, 8, 13 (2008), [https://arbitration.qmul.ac.uk/media/arbitration/docs/IAstudy\\_2008.pdf](https://arbitration.qmul.ac.uk/media/arbitration/docs/IAstudy_2008.pdf).

4. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 [hereinafter New York Convention]; see also BORN, *supra* note 1, § 1.02[D], at 13 (explaining that the New York Convention establishes “a ‘pro-enforcement’ regime, with expedited recognition procedures and only limited grounds for denying recognition to an arbitral award”).

5. According to a number of experienced practitioners and influential arbitration scholars, national courts have refused enforcement of awards only in about five percent of cases. Sir Michael Kerr, *Concord and Conflict in International Arbitration*, 13 ARB. INT'L 121, 129 n.24 (1997); see also BORN, *supra* note 1, at 327 n.1 (citing Albert Jan van den Berg, *The New York Convention: Its Intended Effects, Its Interpretation, Salient Problem Areas*, in THE NEW YORK CONVENTION OF 1958, at 25 (M. Blessing ed., 1996)).

6. See, e.g., *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 941 (1995); *Singh v. Interactive Brokers LLC*, 219 F. Supp. 3d 549, 557 (E.D. Va. 2016).

7. For cases involving refusal to enforce based on lack of proper notice regarding the commencement of arbitral proceedings, see CEEG (Shanghai) Solar Sci. & Tech. Co. v. Lumos LLC, No. 14–cv–03118–WYD–MEH, 2015 WL 3457853, at \*4–5 (D. Colo. May 29, 2015), *aff'd*, 829 F.3d 1201, 1207 (10th Cir. 2016); Qingdao Free Trade Zone Genius Int'l Trading Co. v. P & S Int'l, Inc., No. 08–1292–HU, 2009 WL 2997184, at \*4–5 (D. Or. Sept. 16, 2009) (involving the failure to give proper notice regarding the commencement of arbitral proceedings in China). For cases involving refusal to enforce based on lack of proper notice regarding steps the tribunal intended to take during the proceedings, see *Iran Aircraft Indus. v. Avco Corp.*, 980 F.2d 141, 145–46 (2d Cir. 1992) (involving the failure to provide proper notice regarding the type of proof the tribunal would accept); REDFERN & HUNTER, *supra* note 1, § 11.73, at 644 (discussing a German case in which the arbitrators failed to provide notice of their intent to rely on arguments not raised by the parties or the tribunal during the arbitral proceedings).

exceed the scope of submission to arbitration.<sup>8</sup> Rarely, they render awards that conflict with fundamental notions of public policy.<sup>9</sup> In such cases, losing parties should not voluntarily comply. On the contrary, they should resist enforcement under the New York Convention and should have realistic chances for success when attacking the integrity of the award head-on.

In certain cases where the facts posed serious impediments to the enforcement of foreign arbitral awards, award creditors have effectively laundered those awards by: (1) securing judgments confirming the awards at the place of arbitration (“award judgments” or “confirmation judgments”); and (2) then seeking recognition and enforcement of the resulting judgments in the United States under the so-called “parallel entitlements” doctrine.<sup>10</sup> In the process, award creditors eliminated application of the grounds for refusing to enforce awards under the New York Convention and Chapter 2 of the Federal Arbitration Act (“FAA”).<sup>11</sup> They achieved this by focusing attention instead on the grounds for refusing to recognize or enforce foreign *judgments* under state law and on the conduct of the foreign *judicial* proceedings.<sup>12</sup> Most cases have generally involved legal impediments arising under the FAA,<sup>13</sup> or provisions of the New York Convention not specifically directed at the refusal to enforce foreign arbitral awards.<sup>14</sup> But observers have warned, and a U.S. court has suggested, that parties could use the parallel entitlements doctrine to avoid application of the Convention’s refusal grounds.<sup>15</sup> When serving as expert witness in a high-end case recently, this Author saw an attempt to do just that.

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8. See *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 676–77 (2010); *United Mexican States v. Metalclad Corp.*, [2001] B.C.S.C. 664, at ¶¶ 67–72 (Can.); see also Shu Zhang & Peng Guo, *The (Ab)Use of the Public Policy Ground in the New York Convention in the Judicial Review of Foreign Arbitral Awards: Recent Developments in China*, 43 HOUS. J. INT’L L. 553, 564 (2021) (discussing a Chinese case in which the court held that a tribunal-rendered award constituted by the International Chamber of Commerce exceeded the scope of the submission to arbitration); Richard Menard, *Enforcement of Arbitral Awards in Korea: Recent Developments*, 19 INT’L BAR ASS’N ARB. NEWS 33, 34–35 (Feb. 2014) (discussing a South Korean case in which the court held that the award of a high-profile tribunal constituted by the International Chamber of Commerce exceed the scope of submission to arbitration).

9. See *Soleimany v. Soleimany*, [1999] Q.B. 785, at 800 (Eng.) (refusing to enforce an award that gave effect to a contract relating to the smuggling of carpets out of Iran).

10. See *infra* text accompanying notes 169–175.

11. See *infra* text accompanying notes 169–175.

12. See *infra* text accompanying note 170.

13. See *infra* text accompanying note 171.

14. See *infra* text accompanying notes 172–175.

15. See *Ocean Warehousing B.V. v. Baron Metals & Alloys*, 157 F. Supp. 2d 245, 249–50 (S.D.N.Y. 2001); RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB. § 4.8 cmt. c(ii) & reporters’ note c(ii) (AM. L. INST., Proposed Final Draft 2019); Tyler B. Robinson, *The Recognition and Enforcement of Foreign Arbitral Awards as Foreign Judgments in the United States*, 24 AM. REV. INT’L ARB. 63, 64–70 (2013); 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, 612–15 (2013); Comment, *Foreign Judgments Based on Foreign Arbitral Awards: The Applicability of Res Judicata*, 124 U. PA. L. REV. 223, 241–42 (1975) [hereinafter Comment]; Martin L. Roth, Note, *Recognition by Circumvention: Enforcing Foreign Arbitral Awards as Judgments Under the Parallel Entitlements Approach*, 92 CORNELL L. REV. 573, 587–89 (2007).

Although the topic remains undertheorized,<sup>16</sup> some observers have explicitly criticized the use of foreign award judgments to “circumvent” review of arbitral awards under the New York Convention.<sup>17</sup> While some have proposed abolition of the parallel entitlements doctrine,<sup>18</sup> the doctrine has become deeply engrained in U.S. jurisprudence.<sup>19</sup> A rare effort by a federal district court to challenge the doctrine head-on failed.<sup>20</sup> However, when serving as an expert witness, this Author discovered a line of cases that construed state law as being wide enough to permit consideration of certain fundamental lapses in the underlying arbitrations when reviewing foreign confirmation judgments.<sup>21</sup> Those cases provide a fresh perspective on how to limit the use of foreign confirmation judgments to launder defective awards.

Elaborating on the themes set forth above, Part II of this Article discusses the distinct legal frameworks for enforcing foreign arbitral awards and foreign judgments in the United States. Part III describes the origin and subsequent evolution of the parallel entitlements doctrine in the United States. Part IV identifies the ways in which the parallel entitlements doctrine opens the door to the laundering of foreign arbitral awards and other abusive practices. Part V breaks new ground by introducing a line of cases that have interpreted state law to permit consideration of certain fundamental lapses in the underlying arbitrations when conducting proceedings to enforce foreign confirmation judgments. Part VI concludes that the emerging line of cases offers a promising solution to the problem of laundering awards.

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16. Robinson, *supra* note 15, at 65; Scherer, *supra* note 15, at 588–89; Burton S. DeWitt, Note, *A Judgment Without Merits: The Recognition and Enforcement of Foreign Judgments Confirming, Recognizing, or Enforcing Arbitral Awards*, 50 TEX. J. INT’L L. 495, 496 (2015); Roth, *supra* note 15, at 577; *see also* RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB. § 4.8 reporters’ note c(ii) (stating that “there has not been extensive analysis” of the possibility for treating foreign award judgments as an “alternative vehicle” for enforcement purposes).

17. Robinson, *supra* note 15, at 65; Roth, *supra* note 15, at 588–90.

18. Roth, *supra* note 15, at 596–97; *see also* Robinson, *supra* note 15, at 84 (suggesting two possible avenues for the elimination or curtailment of the parallel entitlements doctrine, including the revisiting of preemption doctrine under the Supremacy Clause and application of the Convention’s refusal grounds in connection with state law).

19. Robinson, *supra* note 15, at 71–82; Scherer, *supra* note 15, at 600; DeWitt, *supra* note 16, at 496; *see also* RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB. § 4.8 reporters’ note c(ii) (recognizing that U.S. courts have generally followed the parallel entitlements doctrine); Yasmine Lahlou, *How Courts Treat Foreign Award Judgments: The Unsettled State of US Law and an English Perspective*, 12 DISP. RESOL. INT’L 195, 200 (2018) (observing that “federal courts in New York have routinely enforced award validating judgments from the seat, instead of the award”); Roth, *supra* note 15, at 577 (noting that “the few American courts and scholars that have tried to resolve the relationship between foreign awards and confirmation judgments have argued for treating the award and the judgment as distinct entitlements, either of which the holder may execute”).

20. *Comm’ns Imp. Exp. S.A. v. Rep. of the Congo*, 916 F. Supp. 2d 48 (D.D.C. 2013), *rev’d*, 757 F.3d 321, 333 (D.C. Cir. 2014); *see also infra* note 152 and accompanying text.

21. *See infra* Part V.

## I. THE DISTINCT FRAMEWORKS FOR RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS AND FOREIGN JUDGMENTS UNDER U.S. LAW

As explained below, federal law governs the recognition and enforcement of foreign arbitral awards in the United States. By contrast, state law governs the recognition and enforcement of foreign judgments. Designed to test and implement the outcomes of distinct forms of adjudication, the different frameworks require courts to perform somewhat different inquiries. In terms of efficacy, the common wisdom is that the framework for the recognition and enforcement of foreign arbitral awards is more favorable than the framework for the recognition and enforcement of foreign judgments.

In the United States, the New York Convention (the “Convention”) and Chapter 2 of the FAA constitute the principal sources of law regulating the enforcement of arbitral awards rendered in another state party to the Convention.<sup>22</sup> The Convention’s purpose was to liberalize and to unify the standards for judicial enforcement of arbitral awards.<sup>23</sup> The Convention achieves this by imposing minimal requirements on the party seeking enforcement.<sup>24</sup> In essence, the party seeking enforcement must supply the court with the original arbitration agreement, the original authenticated award, and translations of those documents if necessary.<sup>25</sup> Assuming that the party seeking enforcement has supplied the documents required by the Convention, courts may refuse enforcement only if the resisting party proves one of seven enumerated grounds listed in articles V(1)–(2):

1. Recognition and enforcement of the *award* may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the *award* was made; or

(b) The party against whom the *award* is invoked was not given proper notice of the appointment of the *arbitrator or of the arbitration proceedings* or was otherwise unable to present his case; or

(c) The *award* deals with a difference not contemplated by or not falling within the terms of the submission to *arbitration*, or it contains decisions

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22. 9 U.S.C. §§ 201–208; New York Convention, *supra* note 4, arts. III–V; Robinson, *supra* note 15, at 63; Comment, *supra* note 15, at 224–25; *see also* DeWitt, *supra* note 16, at 497.

23. Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n.15 (1974); *Comm’ns Imp. Exp. S.A.*, 757 F.3d at 326–27; *see also* BORN, *supra* note 1, § 15.01, at 331.

24. REDFERN & HUNTER, *supra* note 1, § 11.54, at 638.

25. New York Convention, *supra* note 4, art. IV; BORN, *supra* note 1, § 17.02[A], at 450–52; MARGARET L. MOSES, THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 231 (3d ed. 2017); REDFERN & HUNTER, *supra* note 1, § 11.54, at 638.

on matters beyond the scope of the submission to *arbitration*, provided that, if the decisions on matters submitted to *arbitration* can be separated from those not so submitted, that part of the *award* which contains decisions on matters submitted to *arbitration* may be recognized and enforced; or

(d) The composition of the *arbitral authority* or the *arbitral procedure* was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the *arbitration* took place; or

(e) The *award* has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that *award* was made.

2. Recognition and enforcement of an arbitral *award* may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by *arbitration* under the law of that country; or

(b) The recognition or enforcement of the *award* would be contrary to the public policy of that country.<sup>26</sup>

It should be evident that the grounds for refusing enforcement of awards focus on objections relating to awards or to some aspect of the arbitral proceedings leading up to the awards. In essence, they aim to ensure that the parties received a consensual and fair process, and that the award does not violate fundamental policies of the enforcement forum.<sup>27</sup>

Moving from the text of the Convention to its implementing legislation, the FAA simplifies the process for award creditors by allowing them to seek enforcement on motion as opposed to through the initiation of a lawsuit.<sup>28</sup> Case law further enhances the prospects for enforcement by recognizing a strong pro-enforcement bias,<sup>29</sup> a strong presumption that arbitrators have acted within the

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26. New York Convention, *supra* note 4, art. V (emphasis added); BORN, *supra* note 1, § 17.05[A]–[I], at 460–86; MOSES, *supra* note 25, at 232–44; REDFERN & HUNTER, *supra* note 1, § 11.63–.121, at 641–62.

27. New York Convention, *supra* note 4, art. V; Scherer, *supra* note 15, at 613.

28. 9 U.S.C. §§ 6, 208; TermoRio S.A. E.S.P. v. Electranta S.P., 487 F.3d 928, 940 (D.C. Cir. 2007); DeWitt, *supra* note 16, at 498.

29. Esso Expl. & Prod. Nigeria Ltd. v. Nigerian Nat'l Petroleum Corp., 40 F.4th 56, 62 (2d Cir. 2022) (quoting Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploración y Producción, 832 F.3d 92, 105–06 (2d Cir. 2016)); Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 364 F.3d 274, 296 (5th Cir. 2004); Calbex Min. Ltd. v. ACC Res. Co., 90 F. Supp. 3d 442, 462 (W.D. Pa. 2015).



scope of their jurisdiction,<sup>30</sup> and a requirement that courts narrowly construe the grounds to refuse enforcement.<sup>31</sup>

By contrast, there is no treaty or federal statute regulating the enforcement of foreign judgments in the United States.<sup>32</sup> As a result, state law governs the enforcement of foreign judgments.<sup>33</sup> Historically, U.S. courts enforced foreign judgments based on judicially developed principles of comity.<sup>34</sup> With respect to foreign money judgments, that is no longer the prevailing approach.<sup>35</sup> Starting in 1962, the Uniform Law Commission promulgated the Uniform Foreign Money Judgments Recognition Act (“UFMJRA”),<sup>36</sup> which codified prevailing common law standards,<sup>37</sup> and was ultimately adopted in thirty-one states, as well as the District of Columbia and the U.S. Virgin Islands.<sup>38</sup>

In 2005, the Uniform Law Commission adopted a renamed and slightly revised version of the model law, which is now known as the Uniform Foreign-

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30. *Parsons & Whittemore Overseas Co. v. Societe Generale de L’Industrie du Papier (RAKTA)*, 508 F.2d 969, 976 (2d Cir. 1974); *Calbex Min.*, 90 F. Supp. 3d at 461; *Chevron Corp. v. Rep. of Ecuador*, 949 F. Supp. 2d 57, 67 (D.D.C. 2013).

31. *CEEG (Shanghai) Solar Sci. & Tech. Co. v. LUMOS LLC*, 829 F.3d 1201, 1206 (10th Cir. 2016) (quoting *ARW Expl. Corp. v. Aguirre*, 45 F.3d 1455, 1462 (10th Cir. 1995)); *Parsons & Whittemore*, 508 F.2d at 976; *Calbex Min.*, 90 F. Supp. 3d at 461.

32. *In re Berting Fisheries, Inc.*, 300 B.R. 489, 502 n.13 (B.A.P. 9th Cir. 2003); *Nicor Int’l Corp. v. El Paso Corp.*, 318 F. Supp. 2d 1160, 1173 (S.D. Fla. 2004); *Pony Express Recs., Inc. v. Springsteen*, 163 F. Supp. 2d 465, 472 (D.N.J. 2001); *Van Den Biggelaar v. Wagner*, 978 F. Supp. 848, 857 n.9 (N.D. Ind. 1997); GARY B. BORN & PETER B. RUTLEDGE, *INTERNATIONAL CIVIL LITIGATION IN U.S. COURTS* 1079–80 (5th ed. 2011).

33. *DeJoria v. Maghreb Petroleum Expl., S.A.*, 935 F.3d 381, 385 (5th Cir. 2019); *Phillips USA, Inc. v. Allflex USA, Inc.*, 77 F.3d 354, 359 (10th Cir. 1996); *Turner Ent. Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1520 n.12 (11th Cir. 1994); *Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572, 582 (2d Cir. 1993); *RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB.* § 4.8 reporters’ note c (Am. L. Inst., Proposed Final Draft 2019).

34. *DeJoria*, 935 F.3d at 385; *Guinness PLC v. Ward*, 955 F.2d 875, 883 (4th Cir. 1992); *Osoorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1322 (S.D. Fla. 2009); BORN & RUTLEDGE, *supra* note 32, at 1081–82.

35. *See* BORN & RUTLEDGE, *supra* note 32, at 1081–83 (indicating that roughly 18 states continue to enforce foreign judgments based on the application of common law principles of comity, whereas just over 30 states have adopted either the 1962 Uniform Foreign Money Judgments Recognition Act or the 2005 Uniform Foreign Country Money Judgments Recognition Act).

36. UNIF. FOREIGN MONEY JUDGMENTS RECOGNITION ACT Prefatory Note (UNIF. L. COMM’N 1962) [hereinafter UFMJRA 1962].

37. *Clientron Corp. v. Devon IT, Inc.*, 35 F. Supp. 3d 665, 678 (E.D. Pa. 2014) (quoting *Soc’y of Lloyd’s v. Mullin*, 255 F. Supp. 2d 468, 475 (E.D. Pa. 2003)); *Transportes Aereos Pegaso, S.A. de C.V. v. Bell Helicopter Textron, Inc.*, 623 F. Supp. 2d 518, 535 (D. Del. 2009); *Manco Contracting Co. (W.L.L.) v. Bezdikian*, 195 P.3d 604, 608 (Cal. 2008); BORN & RUTLEDGE, *supra* note 32, at 1083.

38. Gary Born, *The Hague Convention on Choice of Court Agreements: A Critical Assessment*, 23 U. PA. J. CONST. L. 2010, 2050 n.208 (2021); Tarik R. Hansen & Christopher A. Whytock, *The Judgment Enforceability Factor in Forum Non Conveniens Analysis*, 101 IOWA L. REV. 923, 943 n.86 (2016); Alexander R. Moss, Note, *Bridging the Gap: Addressing the Doctrinal Disparity Between Forum Non Conveniens and Judgment Recognition and Enforcement in Transnational Litigation*, 106 GEO. L.J. 209, 223 (2017). At the time of writing, the UFMJRA remains in force in Alaska, Connecticut, Florida, Maryland, Massachusetts, Missouri, New Jersey, Ohio, Pennsylvania, and the U.S. Virgin Islands. *Foreign-Country Money Judgments Recognition Act, Enactment History*, UNIF. L. COMM’N (Nov. 14, 2023), <https://www.uniformlaws.org/committees/community-home?CommunityKey=ae280c30-094a-4d8f-b722-8dcd614a8f3e> [hereinafter UFCMJRA Enactment History].

Country Money Judgments Recognition Act (“UFCMJRA”).<sup>39</sup> Currently adopted in twenty-nine states and the District of Columbia,<sup>40</sup> the UFCMJRA largely reproduces the substance of the 1962 version of the Act.<sup>41</sup> But it also clarifies that the Act only applies to judgments rendered by courts in foreign countries, explicitly allocates the burden of proof between the enforcing and resisting parties, adds two new grounds for refusing to enforce foreign judgments, and introduces a fifteen-year statute of limitations for the enforcement of foreign judgments.<sup>42</sup>

In its current iteration, the UFCMJRA provides three mandatory and eight discretionary grounds to refuse enforcement of foreign country money judgments, which appear in section 4(b)–(c):

(b) A court of this state may not recognize a foreign-country *judgment* if:

- (1) the *judgment* was rendered under a *judicial system* that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) the *foreign court* did not have personal jurisdiction over the defendant; or
- (3) the *foreign court* did not have jurisdiction over the subject matter.

(c) A court of this state need not recognize a foreign-country *judgment* if:

- (1) the defendant in the *proceeding in the foreign court* did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
- (2) the *judgment* was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
- (3) the *judgment* or the [cause of action] on which the *judgment* is based is repugnant to the public policy of this state or of the United States;
- (4) the *judgment* conflicts with another final and conclusive judgment;
- (5) the *proceeding in the foreign court* was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
- (6) in the case of jurisdiction based only on personal service, the *foreign court* was a seriously inconvenient forum for the trial of the action;
- (7) the *judgment* was rendered in circumstances that raise substantial doubt about the integrity of the rendering *court* with respect to the judgment; or

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39. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT Prefatory Note (UNIF. L. COMM’N 2005) [hereinafter UFCMJRA 2005]; UFCMJRA 1962, *supra* note 36.

40. UFCMJRA Enactment History, *supra* note 38.

41. UFCMJRA 2005, *supra* note 39, prefatory note.

42. *Id.*; see also *The Uniform Foreign-Country Money Judgments Recognition Act: A Summary*, UNIF. L. COMM’N (2019), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8313e855-dee3-6d72-7e2c-44b682553285>.

(8) the specific proceeding in the *foreign court* leading to the *judgment* was not compatible with the requirements of due process of law.<sup>43</sup>

Evidently, the grounds for refusing enforcement of foreign judgments focus on objections that relate to judgments or to some aspect of the foreign judicial proceedings leading up to the judgments. In addition, the grounds for refusal under the UFCMJRA somewhat differ from the refusal grounds under article V of the New York Convention.<sup>44</sup> The reason should be obvious. Because arbitration is a consensual process,<sup>45</sup> the refusal grounds under the New York Convention aim to ensure that the parties received a consensual process, that the parties received a fair process, and that the award does not violate fundamental policies of the enforcement forum.<sup>46</sup> By contrast, litigation is not necessarily a consensual process.<sup>47</sup> On the contrary, it involves the potentially coercive exercise of jurisdiction over respondents. As a result, the refusal grounds for enforcement of judgments under the UFCMJRA do not focus on ensuring that the parties received a consensual process. Instead, they focus on ensuring that the foreign court acted within the scope of its jurisdiction, that the parties received a fair judicial process, and the foreign judgment is not repugnant to the public policy of the enforcement forum.<sup>48</sup>

Notwithstanding the differences just mentioned, federal law on the enforcement of foreign arbitral awards coincides with state law on the enforcement of foreign judgments in at least some important respects. For example, they both emphasize compliance with basic standards of fairness and public policy. With respect to basic standards of fairness, the New York Convention contemplates refusal to enforce foreign awards if the resisting party did not receive “proper” notice of the appointment of the tribunal or of the proceedings, or was “otherwise unable to present his case.”<sup>49</sup> Likewise, the UFCMJRA contemplates refusal to enforce foreign judgments if the resisting party “did not receive notice of the proceeding in sufficient time to enable the defendant to defend.”<sup>50</sup> In both situations, U.S. courts have interpreted the notice requirement to incorporate constitutional standards requiring that the defendant

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43. UFCMJRA 2005, *supra* note 39, § 4(b)–(c).

44. *Cf.* Born, *supra* note 38, at 2043 (“Levelling the playing field does not mean treating [arbitration and litigation], or their results, the same; it should instead mean treating them differently.”).

45. BORN, *supra* note 1, § 1.01[A], at 3; MOSES, *supra* note 25, at 2; REDFERN & HUNTER, *supra* note 1, § 2.01, at 85–86.

46. *See supra* note 27 and accompanying text.

47. *See* Born, *supra* note 38, at 2043 (“International arbitration is a consensual process . . . [while] national court litigation is predominantly a non-consensual process . . . .”); D. Alan Redfern, *Arbitration and the Courts: Interim Measures of Protection—Is the Tide About to Turn?*, 30 TEX. INT’L L.J. 71, 72 n.3 (1995) (“One of the basic differences between arbitration and litigation is that arbitration is essentially a consensual process—that is to say, the parties have expressly agreed to settle their differences by arbitration—whereas litigation will usually take place without the agreement of the defendant, provided that the court has jurisdiction.”).

48. Robinson, *supra* note 15, at 68; Scherer, *supra* note 15, at 613.

49. New York Convention, *supra* note 4, art. V(1)(b).

50. UFCMJRA 2005, *supra* note 39, § 4(c)(1).

receive notice “reasonably calculated” to provide actual notice in sufficient time.<sup>51</sup>

With respect to public policy, the New York Convention contemplates refusal to enforce awards if they or the proceedings leading up to the awards violate the public policy of the United States.<sup>52</sup> Courts have interpreted this to mean our “most basic notions of morality and justice.”<sup>53</sup> Likewise, the UFCMJRA contemplates the refusal to enforce foreign judgments if they or the causes of action on which they are based violate the public policy of the relevant state or of the United States.<sup>54</sup> According to the drafters of this provision, public policy is violated if recognition or enforcement “would tend clearly to injure the public health, public morals, or the public confidence in the administration of justice, or would undermine ‘that sense of security for individual rights . . . which any citizen ought to feel.’”<sup>55</sup> Courts applying the UFCMJRA often state that a foreign judgment violates public policy only if repugnant to “fundamental notions of what is decent and just in the State where enforcement is sought.”<sup>56</sup> While the overlap between the public policy grounds under the New York Convention and the UFCMJRA may not be complete, the correlation

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51. For cases invoking constitutional standards of notice when applying article V(1)(b) of the New York Convention, see CEEG (Shanghai) Solar Sci. & Tech. Co. v. LUMOS LLC, 829 F.3d 1201, 1206 (10th Cir. 2016) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)); *Emps. Ins. v. Banco De Seguros Del Estado*, 199 F.3d 937, 942 (7th Cir. 1999) (quoting *Mullane*, 339 U.S. at 314). For cases invoking constitutional standards of notice when applying § 4(c)(1) of the UFCMJRA, see *De Fontbrune v. Wofsy*, 39 F.4th 1214, 1230 (9th Cir. 2022) (quoting *Mullane*, 339 U.S. at 314); *Cassouto-Noff & Co. v. Diamond*, 170 N.E.3d 319, 322 (Mass. 2021) (quoting *Mullane*, 339 U.S. at 314).

52. New York Convention, *supra* note 4, art. V(2)(b). Although the New York Convention only refers to situations where enforcement of the award would violate public policy, national courts have recognized procedural arguments as valid bases for applying the public policy defense to enforcement of foreign arbitral awards under the New York Convention. Menalco J. Solis, *Removing Awards to the Autonomous Arbitral System by Waiving the Annulment Recourse*, 29 AM. REV. INT’L ARB. 121, 131 n.51 (2018) (citing *Rechtbank [District Court] Rotterdam* 28 February 2011, KG 2011, L/JN BP6101 (Catz Int’l B.V./Gilan Trading Kft.) (Neth.) for the proposition that ruling that recognition of a New York Convention award may be refused on Dutch public policy grounds when there is an obvious violation of fundamental procedural law); Inae Yang, *Procedural Public Policy Cases in International Commercial Arbitration*, 69 DISP. RESOL. J. 59, 60 (2014). Therefore, observers have taken the position that procedural public policy overlaps to some extent with the due process defense under article V(1)(b) of the New York Convention. S.I. Strong, *Enforcing Class Arbitration in the International Sphere: Due Process and Public Policy Concerns*, 30 U. PA. J. INT’L L. 1, 67 (2008); Yang, *supra*, at 60.

53. *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 305–06 (5th Cir. 2004); *Parsons & Whittemore Overseas Co. v. Societe Generale de L’Industrie du Papier*, 508 F.2d 969, 974 (2d Cir. 1974).

54. UFCMJRA 2005, *supra* note 39, § 4(c)(3).

55. *Id.* § 4 cmt. 8 (quoting *Hunt v. BP Expl. Co. (Libya) Ltd.*, 492 F. Supp. 885, 901 (N.D. Tex. 1980)).

56. See, e.g., *Corporación Mexicana de Mantenimiento Integral, S. De R.L. De C.V. v. Pemex-Exploración Y Producción*, 832 F.3d 92, 106 (2d Cir. 2016); *Telnikoff v. Matusevitch*, 702 A.2d 230, 255–56 (Md. 1997); *Milhoux v. Linder*, 902 P.2d 856, 861 (Colo. App. 1995). As with the public policy ground for refusing to enforce awards under the New York Convention, the UFCMJRA’s public policy grounds also extend to violations of constitutional due process and, so, overlap with the statute’s provisions on refusal to enforce foreign judgments due to a lack of adequate notice. See *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1346–47 (S.D. Fla. 2009) (applying Florida’s version of the UFCMJRA and concluding that constitutional due process violations also amounted to violations of public policy).

is powerful and striking. That overlap likely includes a shared commitment to preventing the enforcement of foreign awards and judgments resulting from proceedings that were conducted in a manner incompatible with fundamental constitutional standards of due process.<sup>57</sup>

Despite significant areas of overlap, the legal frameworks for the enforcement of foreign arbitral awards and foreign judgments are not equivalents under U.S. law. In general, most observers would opine that the framework established by the New York Convention and the FAA is more favorable to enforcement than the UFCMJRA.<sup>58</sup> The New York Convention only establishes seven enumerated grounds for refusing to enforce foreign arbitral awards,<sup>59</sup> none of which are mandatory.<sup>60</sup> By contrast, the UFCMJRA includes eleven enumerated grounds for refusing to enforce foreign judgments,<sup>61</sup> three of which are mandatory.<sup>62</sup> The New York Convention clearly places the burden of proof on the party resisting enforcement of awards,<sup>63</sup> whereas the 1962 UFMJRA did not expressly allocate the burden of proof.<sup>64</sup> The FAA creates federal subject matter jurisdiction and permits enforcement of awards by federal courts on motion.<sup>65</sup> By contrast, the UFCMJRA creates no basis for federal subject matter jurisdiction,<sup>66</sup> and contemplates the initiation of enforcement proceedings by complaint and without automatic recourse to summary proceedings.<sup>67</sup> In most cases, these considerations support arbitration's reputation as the preferred means for international dispute settlement because the enforcement of foreign awards usually faces fewer impediments than the enforcement of foreign judgments in the United States.

## II. FOREIGN AWARDS, FOREIGN JUDGMENTS, AND THE DEVELOPMENT OF THE PARALLEL ENTITLEMENTS DOCTRINE IN THE UNITED STATES.

Before 1958, the Geneva Convention on the Execution of Foreign Arbitral Awards supplied the prevailing legal regime for the enforcement of foreign

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57. See *Karaha*, 364 F.3d at 298; *Parsons & Whittemore*, 508 F.2d at 976.

58. See *MOSES*, *supra* note 25, at 3 (opining that the New York Convention generally makes foreign arbitral awards "easier to enforce internationally than a national court judgment"); *REDFERN & HUNTER*, *supra* note 1, § 1.93, at 33 (indicating that the enforceability of foreign awards differs significantly than the enforceability of foreign judgments because widely accepted treaties govern the former, but not the latter).

59. See *supra* note 26 and accompanying text.

60. *BORN*, *supra* note 1, § 17.04[D], at 458; *REDFERN & HUNTER*, *supra* note 1, § 11.59, at 639.

61. See *supra* note 43 and accompanying text.

62. UFCMJRA 2005, *supra* note 39, § 4(b).

63. *Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1263 (11th Cir. 2011); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 288 (5th Cir. 2004); *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier*, 508 F.2d 969, 973 (2d Cir. 1974).

64. UFCMJRA 2005, *supra* note 39, § 4 cmt. 13.

65. 9 U.S.C. §§ 6, 203, 208; see also *supra* note 28 and accompanying text.

66. See *supra* note 33 and accompanying text (indicating that state law regulates the enforcement of foreign judgments).

67. UFCMJRA 2005, *supra* note 39, § 6(a) cmts. 1–2.

arbitral awards.<sup>68</sup> That convention, however, was not widely adopted outside Europe.<sup>69</sup> Furthermore, it required award creditors to seek confirmation of awards by courts at the seat of arbitration as a condition to enforcement of awards in third states.<sup>70</sup> Known as the “double exequatur” requirement, the resulting duplication of judicial proceedings was seen as needless and cumbersome.<sup>71</sup>

Observers have described the elimination of double exequatur as a primary goal and achievement of the New York Convention.<sup>72</sup> However, many foreign awards enter the United States supported by a foreign judgment granting confirmation at the place of arbitration or enforcement in third states.<sup>73</sup> This has required U.S. courts to consider the relationship between foreign awards and the judgments confirming or enforcing them. Unlike their counterparts in England and Germany,<sup>74</sup> U.S. courts have developed a doctrine of parallel entitlements, pursuant to which the prevailing party may seek enforcement of the foreign award, or the foreign judgment, or both.<sup>75</sup>

As just mentioned, foreign arbitral awards often enter the United States accompanied by a foreign judgment declaring the validity of the award.<sup>76</sup> This phenomenon can occur for at least three reasons. First, and perhaps most importantly, the New York Convention contemplates that the losing party will have the opportunity to request set-aside of an award by the courts at the place of arbitration in accordance with the standards provided by that forum’s domestic law.<sup>77</sup> The New York Convention does not directly regulate set-aside

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68. Convention on the Execution of Foreign Arbitral Awards, Sept. 26, 1927, 92 L.N.T.S. 301; W. Laurence Craig, *Some Trends and Developments in the Laws and Practice of International Commercial Arbitration*, 30 TEX. INT’L L.J. 1, 9 (1995).

69. Craig, *supra* note 68, at 9.

70. *Id.*; Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys “R” Us, Inc., 126 F.3d 15, 22 (2d Cir. 1997); Kenneth R. Davis, *Unconventional Wisdom: A New Look at Articles V and VII of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 37 TEX. INT’L L.J. 43, 45 (2002).

71. Toys “R” Us, 126 F.3d at 22; Davis, *supra* note 70, at 45.

72. Emmanuel Gaillard, *The Emerging System of International Arbitration: Defining “System”*, 106 AM. SOC’Y INT’L L. PROC. 287, 292 (2012); Stefan Kröll, *The Non-Enforceability of Decisions Rendered in Summary Arbitral Proceedings Pursuant to the NAI Rules Under the New York Convention*, 23 AM. REV. INT’L ARB. 75, 104 (2012); Stephen T. Ostrowski & Yuval Shany, Note, *Chromalloy: United States Law and International Arbitration at the Crossroads*, 73 N.Y.U. L. REV. 1650, 1656 (1998); Scherer, *supra* note 15, at 624; S.I. Strong, *Border Skirmishes: The Intersection Between Litigation and International Commercial Arbitration*, 2012 J. DISP. RESOL. 1, 15 (2012); Comment, *supra* note 15, at 226 n.16.

73. See Comment, *supra* note 15, at 224; see also Scherer, *supra* note 15, at 588 (“It is . . . not uncommon to have judgments from differing jurisdictions relating to the same award.”).

74. See, e.g., Lahlou, *supra* note 19, at 201 (England); Robinson, *supra* note 15, at 65 n.10 (Germany).

75. Scherer, *supra* note 15, at 600; see also RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB. § 4.8 cmt. c(ii) (Am. L. Inst., Proposed Final Draft 2019); DeWitt, *supra* note 16, at 506; Robinson, *supra* note 15, at 64–65; Roth, *supra* note 15, at 577, 583.

76. See Comment, *supra* note 15, at 224; see also Scherer, *supra* note 15, at 588 (“It is . . . not uncommon to have judgments from differing jurisdictions relating to the same award.”).

77. New York Convention, *supra* note 4, art. V(1)(e); MOSES, *supra* note 25, at 216, 218, 237.

proceedings,<sup>78</sup> but it provides that success in a set-aside action becomes a ground for refusing to enforce the award in every other state party.<sup>79</sup> The prospect of worldwide refusal creates powerful incentives for losing parties to pursue set-aside proceedings as a matter of course. Yet, most of these actions fail.<sup>80</sup> When that happens, an order denying set-aside is treated like an order confirming the award.<sup>81</sup> This may be the primary reason that foreign awards enter the United States supported by foreign confirmation judgments.

Even if the losing party has not commenced set-aside proceedings and even if the New York Convention does not require confirmation as a condition to enforcement in third states, the prevailing party may still have reasons to seek confirmation of the award by courts at the place of arbitration. Historically, it was thought that successful confirmation proceedings could preclude subsequent set-aside actions.<sup>82</sup> At the very least, initiation of confirmation proceedings could start the clock on the time limit for bringing set-aside actions.<sup>83</sup> Also, even if not strictly necessary, successful confirmation actions at the place of arbitration create a neater package for enforcement in third states, can reduce procedural delay during enforcement in third states, and can secure more reliable decisions on any question regarding the procedural laws governing the arbitration.<sup>84</sup>

As explained below, adoption of the parallel entitlements doctrine by U.S. courts increases the incentives for prevailing parties to seek confirmation of awards at the place of arbitration. This occurs because the foreign confirmation judgments also become legally enforceable in the United States,<sup>85</sup> sometimes under standards more favorable than enforcement of foreign arbitral awards.<sup>86</sup> As a result, confirmation actions can increase and enhance the options for enforcement proceedings in the United States.<sup>87</sup> Thus, to the extent that enforcement proceedings in the United States constitute a possibility, the prevailing party has incentives to seek confirmation by courts at the place of arbitration.

Even if the parties have not commenced set-aside or confirmation proceedings at the place of arbitration, foreign awards can still enter the United

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78. BORN, *supra* note 1, §§ 16.03, 16.03[A], at 373–74; REDFERN & HUNTER, *supra* note 1, § 11.88, at 650.

79. New York Convention, *supra* note 4, art. V(1)(e); MOSES, *supra* note 25, at 237; REDFERN & HUNTER, *supra* note 1, § 10.03, at 586.

80. BORN, *supra* note 1, § 16.01, at 364; MOSES, *supra* note 25, at 216.

81. *Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 29 F.3d 79, 81–82 (2d Cir. 1994); *see also* RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INV.-STATE ARB. § 4.8 cmt. c(ii) (Am. L. Inst., Proposed Final Draft 2019) (indicating that the denial of set aside is treated as a judgment confirming the award).

82. Comment, *supra* note 15, at 226.

83. *Id.* at 226–27.

84. *Id.* at 227–28.

85. *See infra* notes 114–152 and accompanying text.

86. *See infra* notes 166–175 and accompanying text.

87. *See infra* note 156 and accompanying text.

States supported by a foreign judgment. This can happen because the New York Convention contemplates multijurisdictional enforcement proceedings, in which the award creditor commences parallel enforcement proceedings in several jurisdictions where the award debtor has assets.<sup>88</sup> For example, the award creditor in a Swiss arbitration might seek enforcement of the award in Canada, Singapore, Hong Kong, and the United States.<sup>89</sup> Assuming that the courts in Hong Kong have already granted enforcement under the New York Convention, the award would enter the United States supported by the enforcement judgment of that jurisdiction.<sup>90</sup>

In short, there will be many cases in which prevailing parties possess both a foreign arbitral award and a judicial decision confirming or enforcing the award. Although the New York Convention prescribes at least some of the legal consequences of a *successful* set-aside action,<sup>91</sup> it does not address the legal effect of judicial decisions confirming or enforcing foreign arbitral awards.<sup>92</sup> Observers consistently describe the body of scholarship on the topic as surprisingly underdeveloped,<sup>93</sup> and jurisprudence differs significantly among national jurisdictions.<sup>94</sup>

In considering the possible relationships between foreign arbitral awards and foreign confirmation or enforcement judgments, the literature identifies three possibilities. First, the doctrine of complete merger might apply.<sup>95</sup> Under that view, the award merges into the foreign judgment (just as any cause of action merges into a judgment), with the result being that the award ceases to exist and the only remaining possibility becomes enforcement of the foreign judgment itself.<sup>96</sup> Although complete merger has a certain abstract plausibility, any historical or practical basis seems lacking. Before the adoption of the New York Convention, no one thought that confirmation of awards by courts at the seat of arbitration caused the disappearance of awards. On the contrary, confirmation at the seat of arbitration was a condition to enforcement of awards

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88. *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 367–68 (5th Cir. 2003); RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB. § 4.8 cmt. c(iii) (Am. L. Inst., Proposed Final Draft 2019); Lahlou, *supra* note 19, at 195–96, 206.

89. *Karaha*, 335 F.3d at 367–68.

90. See RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB. § 4.8 cmt. c(iii) (“By the time recognition or enforcement is sought in a U.S. court, it may already have been the subject of a request for recognition or enforcement in another secondary jurisdiction and a decision on that request may have been rendered.”).

91. New York Convention, *supra* note 4, art. V(1)(e); see also RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INV.-STATE ARB. § 4.8 reporters’ note c(ii); Roth, *supra* note 15, at 576; Scherer, *supra* note 15, at 595.

92. RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INVESTOR-STATE ARB. § 4.8 reporters’ note c(ii); Roth, *supra* note 15, at 577.

93. See *supra* note 16 and accompanying text.

94. See *supra* notes 74–75 and accompanying text.

95. RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INVESTOR-STATE ARB. § 4.8 reporters’ note c(ii); Comment, *supra* note 15, at 234–35; DeWitt, *supra* note 16, at 505; Roth, *supra* note 15, at 580–82.

96. RESTATEMENT (THIRD) OF THE U.S. L. OF INT’L COM. & INVESTOR-STATE ARB. § 4.8 reporters’ note c(ii); Comment, *supra* note 15, at 234–35; DeWitt, *supra* note 16, at 505; Roth, *supra* note 15, at 580–82.



in third states.<sup>97</sup> There is no reason to think that merger has become any more tenable since adoption of the New York Convention. On the contrary, the prevalence of foreign award judgments means that complete merger would result in the disappearance of significant numbers of awards and, with it, the elimination of any recourse to the New York Convention for cross-border enforcement of awards.<sup>98</sup> Since that would frustrate the purpose of the world's most successful private international law treaty,<sup>99</sup> one can hardly take the possibility of complete merger seriously.<sup>100</sup>

As an alternative to complete merger, one might see foreign confirmation and enforcement judgments as only having territorial effects.<sup>101</sup> For example, if an award is rendered in France, a judgment confirming the award would only mean that the award is valid and enforceable in France.<sup>102</sup> The award would merge into the confirmation judgment only for purposes of the French judicial system.<sup>103</sup> Likewise, a judgment enforcing the same award in England would only mean that the award is enforceable in England.<sup>104</sup> The award would merge into the enforcement judgment only for purposes of the English judicial system.<sup>105</sup> Only the award would be enforceable in third states.<sup>106</sup> Given their territorial limitations, the French confirmation and English enforcement judgments would not be enforceable in third states.<sup>107</sup>

To be sure, the factual and legal determinations made in the French and English judgments *might* support claims of issue preclusion in third states.<sup>108</sup> However, one must approach that assertion with caution, inasmuch as confirmation proceedings are conducted under the domestic law of the arbitral forum,<sup>109</sup> and the New York Convention calls on each court to apply its own national standards for enforcement in third states when it comes to questions of

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97. See *supra* note 71 and accompanying text.

98. DeWitt, *supra* note 16, at 505–06; Roth, *supra* note 15, at 581; see also RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 reporters' note c(ii).

99. DeWitt, *supra* note 16, at 505–06; Roth, *supra* note 15, at 581.

100. See RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 reporters' note c(ii) (noting that the doctrine of merger "has been criticized by scholars," that "no U.S. court has adopted it," and that "it is rejected by the Restatement").

101. DeWitt, *supra* note 16, at 508; Roth, *supra* note 15, at 583–84; Scherer, *supra* note 15, at 608; see also RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 cmt. c(iii) (applying this principle to foreign enforcement judgments).

102. DeWitt, *supra* note 16, at 515; Roth, *supra* note 15, at 583.

103. Roth, *supra* note 15, at 583.

104. *Id.*; DeWitt, *supra* note 16, at 515.

105. Roth, *supra* note 15, at 583.

106. *Id.*; DeWitt, *supra* note 16, at 508.

107. Roth, *supra* note 15, at 583.

108. *Id.*; DeWitt, *supra* note 16, at 508.

109. DeWitt, *supra* note 16, at 512; Robinson, *supra* note 15, at 66–67; Scherer, *supra* note 15, at 606; see also *Ocean Warehousing B.V. v. Baron Metals & Alloys, Inc.*, 157 F. Supp. 2d 245, 248–50 (S.D.N.Y. 2001) (describing a situation in which a Dutch court applied Dutch arbitration law in proceedings to confirm an award rendered on Dutch territory and concluding that the New York Convention would not have applied to proceedings to confirm a domestic arbitral award).

due process,<sup>110</sup> public policy,<sup>111</sup> and arbitrability.<sup>112</sup> In other words, the precise legal issues decided by the first court are often not identical to the legal issues to be decided by the second court, with the result that the conditions required for issue estoppel often do not apply.<sup>113</sup> In any case, the territorial approach appears to be consistent with the views of German and English courts.<sup>114</sup> It also enjoys wide support among the observers who have addressed the relationship between foreign awards and foreign award judgments.<sup>115</sup>

A third possibility is that foreign confirmation and enforcement judgments do not result in merger and have effects that are not limited to the territory of the rendering state. Instead, foreign confirmation and enforcement judgments establish new, distinct, independent, and parallel causes of action.<sup>116</sup> As a result, the prevailing party can choose to enforce the foreign award, the foreign award judgment, or both.<sup>117</sup> Although less popular among observers who have addressed the issue,<sup>118</sup> this approach was embraced by the U.S. Court of Appeals for the Second Circuit fifty years ago.<sup>119</sup> Ever since, it has enjoyed consistent application by courts in the Second Circuit and the Southern District of New York,<sup>120</sup> which are the U.S. locations most likely to see actions to enforce foreign arbitral awards and foreign money judgments.<sup>121</sup>

In recent years, other influential U.S. jurisdictions have endorsed the parallel entitlements doctrine. These include the U.S. Court of Appeals for the D.C. Circuit,<sup>122</sup> the U.S. District Court for the Northern District of Illinois,<sup>123</sup> and the U.S. District Court for the Eastern District of Pennsylvania.<sup>124</sup> No U.S.

110. *Emps. Ins. v. Banco De Seguros Del Estado*, 199 F.3d 937, 942 (7th Cir. 1999); *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier*, 508 F.2d 969, 975 (2d Cir. 1974).

111. New York Convention, *supra* note 4, art. V(2)(b); RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 cmt. d & reporters' note d (Am. L. Inst., Proposed Final Draft 2019); Scherer, *supra* note 15, at 621.

112. New York Convention, *supra* note 4, V(2)(a); RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 cmt. d & reporters' note d; *see also* DeWitt, *supra* note 16, at 513 ("Many grounds for non-recognition are to be determined by local law of the secondary jurisdiction . . .").

113. RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 cmt. d & reporters' note d; Lahlou, *supra* note 19, at 207; Scherer, *supra* note 15, at 620–21.

114. Scherer, *supra* note 15, at 603–04 (Germany); *see also* Lahlou, *supra* note 19, at 201–02 (England).

115. RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 cmt. c(ii) & reporters' note c(ii); DeWitt, *supra* note 16, at 508; Roth, *supra* note 15, at 583, 594–95; Scherer, *supra* note 15, at 605, 608–09, 617–18.

116. *See supra* note 76 and accompanying text.

117. *See supra* note 76 and accompanying text.

118. *See infra* notes 159–170 and accompanying text.

119. *Island Territory of Curacao v. Solitron Devices, Inc.*, 356 F. Supp. 1, 14 (S.D.N.Y. 1973), *aff'd*, 489 F.2d 1313 (2d Cir. 1973).

120. *See, e.g.,* *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 712–13 & n.2 (2d Cir. 1987); *Fotochrome, Inc. v. Copal Co.*, 517 F.2d 512, 518 (2d Cir. 1975); *Ocean Warehousing B.V. v. Baron Metals & Alloys, Inc.*, 157 F. Supp. 2d 245, 249 (S.D.N.Y. 2001); *Oriental Com. & Shipping Co., (U.K.) v. Rosseel, N.V.*, 769 F. Supp. 514, 516 (S.D.N.Y. 1991).

121. *Robinson*, *supra* note 15, at 64 & n.6; Roth, *supra* note 15, at 584.

122. *Comm'ns Imp. Exp. S.A. v. Rep. of Congo*, 757 F.3d 321, 332–33 (D.C. Cir. 2014).

123. *Nat'l Aluminum Co. v. Peak Chem. Corp.*, 132 F. Supp. 3d 990, 994 (N.D. Ill. 2015).

124. *Clientron Corp. v. Devon IT, Inc.*, 35 F. Supp. 3d 665, 677, 680–81 & n.8 (E.D. Pa. 2014).

jurisdiction has effectively rejected the parallel entitlements doctrine.<sup>125</sup> Under these circumstances, one would have to describe it as reflecting U.S. law on the relationship between foreign arbitral awards and award judgments.<sup>126</sup> A brief history of U.S. jurisprudence on the topic follows.

Observers trace the development of the parallel entitlement doctrine to *Island Territory of Curacao v. Solitron Devices, Inc.*<sup>127</sup> Decided just three years after the United States' accession to the New York Convention in 1970,<sup>128</sup> *Solitron* involved a U.S. company that agreed to establish a production facility for semiconductors, to enter into a long-term lease of property specially constructed for the project, and to create significant new employment opportunities in Curacao.<sup>129</sup> In the event of disputes, the agreement provided for arbitration in Curacao.<sup>130</sup> Following disturbances and a sharp increase in minimum wages, the U.S. company refused to take possession of the premises.<sup>131</sup> The government of Curacao initiated arbitration proceedings, which the U.S. company boycotted on the grounds that the adoption of legislation increasing minimum wages made performance of the agreement and its arbitration clause impossible.<sup>132</sup> Despite the respondent's absence from the proceedings, the tribunal rendered an award sustaining some of the government's claims for damages, but rejecting others.<sup>133</sup> Among other things, the tribunal awarded damages based on the level of unemployment benefits for one hundred workers that the U.S. company had undertaken to employ.<sup>134</sup>

After receiving the award, the government of Curacao obtained a writ of execution from a local court.<sup>135</sup> Subsequently, it sought enforcement of the award under the New York Convention and enforcement of the writ of execution under New York's version of the UFMJRA in the Southern District of New York.<sup>136</sup> During the enforcement proceedings, the respondent argued that the tribunal lacked jurisdiction due to termination of the underlying agreement, one of the arbitrators lacked impartiality, and the legal relationship between the

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125. The U.S. District Court for the District of Columbia attempted to reject the parallel entitlements doctrine but was reversed. *Comm'n's Imp. Exp. S.A. v. Rep. of Congo*, 916 F. Supp. 2d 48, 56–58 (D.D.C. 2013), *rev'd*, 757 F.3d 321 (D.C. Cir. 2014).

126. RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 reporters' note c(ii) (Am. L. Inst., Proposed Final Draft 2019); Roth, *supra* note 15, at 584–86; Scherer, *supra* note 15, at 600.

127. *Island Territory of Curacao v. Solitron Devices, Inc.*, 356 F. Supp. 1 (S.D.N.Y. 1973), *aff'd*, 489 F.2d 1313 (2d Cir. 1973); Robinson, *supra* note 15, at 71–74.

128. *Solitron*, 489 F.2d at 1318; Comment, *supra* note 15, at 223; DeWitt, *supra* note 16, at 497; Roth, *supra* note 15, at 575.

129. *Solitron*, 489 F.2d at 1315.

130. *Id.* at 1315–16.

131. *Id.*

132. *Id.* at 1316–17, 1319–20.

133. *Id.* at 1316.

134. *Id.*

135. *Id.* at 1317.

136. *Island Territory of Curacao v. Solitron Devices, Inc.*, 356 F. Supp. 1, 3 (S.D.N.Y. 1973), *aff'd*, 489 F.2d 1313 (2d Cir. 1973).

parties was not commercial and, therefore, fell outside the scope of the New York Convention.<sup>137</sup> When responding to the last argument, the district court observed that even if the underlying relationship was not commercial and the award did not fall within the scope of the New York Convention, the foreign award judgment would still be enforceable under New York law, which was not limited to commercial relationships.<sup>138</sup> In addition, the court held that the relationship between the company and Curacao was in fact commercial.<sup>139</sup> As a result, it enforced both the foreign award and the foreign award judgment.<sup>140</sup>

On appeal, the Second Circuit only addressed the enforcement of the foreign award judgment.<sup>141</sup> According to the court, this approach would allow it to decide the case without reaching the question of whether the award violated U.S. public policy by awarding damages based on welfare payments to unemployed workers.<sup>142</sup> In this context, the U.S. company argued that Curacaoan courts lacked jurisdiction because performance of the agreement and its dispute resolution clauses calling for arbitration in Curacao had been rendered impossible due to minimum wage increases in that jurisdiction.<sup>143</sup> The U.S. company also contended that the foreign award judgment was unenforceable, inasmuch as it was based on an award that violated U.S. public policy by calculating damages based on welfare payments paid to unemployed workers.<sup>144</sup> In a footnote, the court replied that enforcement of foreign award and the foreign award judgment were “entirely separate and distinct questions.”<sup>145</sup>

In the body of the text, however, the court addressed the merits of the public policy argument.<sup>146</sup> In the end, the court held that the tribunal’s decision involved a cautious, fair, and proper effort to quantify damages even if U.S. courts would have chosen a different yardstick.<sup>147</sup> Thus, in enforcing the foreign award judgment under state law, the court considered public policy objections to the award even as it abstained from applying the New York Convention and its refusal grounds to determine the enforceability of the award. This last move may constitute an important nuance in subsequent discussion regarding the legal relevance of fundamental lapses in the underlying arbitration when applying state law on the enforcement of foreign award judgments.<sup>148</sup>

In the ensuing decades, panels of the Second Circuit and judges of the Southern District of New York consistently reaffirmed the principle that the

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137. *Solitron*, 489 F.2d at 1317.

138. *Island Territory of Curacao*, 356 F. Supp. at 13.

139. *Id.*

140. *Id.* at 14.

141. *Solitron*, 489 F.2d at 1318, 1323.

142. *Id.* at 1318 n.4.

143. *Id.* at 1319–20.

144. *Id.* at 1320–21.

145. *Id.* at 1321 n.8.

146. *Id.* at 1321.

147. *Id.*

148. See *infra* notes 180–189 and accompanying text.

prevailing party in a foreign arbitration can enforce the award under federal law or related award judgments under state law in the United States.<sup>149</sup> Emphasizing the supposedly parallel nature of the remedies, two decisions went so far as to indicate that legal impediments to the enforcement of awards under federal law would not prevent enforcement of foreign award judgments under state law.<sup>150</sup>

For over forty years, the Second Circuit and the Southern District of New York were the only jurisdictions rendering decisions on the parallel entitlements doctrine.<sup>151</sup> In the 2010s, however, courts in other important jurisdictions began to apply the parallel entitlements doctrine. These included the U.S. District Courts for the Districts of Eastern Pennsylvania and the Northern District of Illinois.<sup>152</sup> The U.S. District Court for the District of Columbia rejected the parallel entitlements doctrine, but the D.C. Circuit reversed on appeal.<sup>153</sup> Thus, as of this writing, the parallel entitlements doctrine has been endorsed by federal courts in at least four jurisdictions, including two of the country's most influential intermediate appellate courts. No U.S. jurisdiction has successfully charted a different course.

Under these circumstances, the parallel entitlements doctrine seems firmly entrenched in U.S. jurisprudence.<sup>154</sup> However, as explained below, a modest but persuasive body of commentary has criticized several aspects of the parallel entitlements doctrine.<sup>155</sup> In addition, this Article breaks new ground by revealing a line of cases that questions the scope of the parallel entitlements doctrine.<sup>156</sup>

### III. USE AND ABUSE OF THE PARALLEL ENTITLEMENTS DOCTRINE

The point of the parallel entitlements doctrine is to increase the prevailing party's options to enforce the results of foreign arbitrations.<sup>157</sup> In one sense, this

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149. See *supra* text accompanying note 121; Robinson, *supra* note 15, at 74; Roth, *supra* note 15, at 586.

150. Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala, 29 F.3d 79, 80–82 (2d Cir. 1994) (enforcing a foreign confirmation judgment under state law even though the statute of limitations for the underlying award had already run under federal law); Ocean Warehousing B.V. v. Baron Metals & Alloys, 157 F. Supp. 2d 245, 249 (S.D.N.Y. 2001) (indicating that a foreign confirmation judgment would be enforceable under state law even though the underlying award was not supported by an “agreement in writing” as required by the New York Convention).

151. See *Comm'ns Imp. Exp. S.A. v. Rep. of Congo*, 757 F.3d 321, 332 (D.C. Cir. 2014) (observing that the Second Circuit was the only other federal appeals court to have addressed the relationship between foreign confirmation judgments and the underlying awards); Roth, *supra* note 15, at 584 (writing in 2017, opining that the relationship between foreign awards and foreign confirmation judgments had “rarely been addressed outside the Second Circuit,” and emphasizing “New York’s unusually developed precedent” on the topic).

152. *Nat'l Aluminum Co. v. Peak Chem. Corp.*, 132 F. Supp. 3d 990, 994 (N.D. Ill. 2015); *Clientron Corp. v. Devon IT, Inc.*, 35 F. Supp. 3d 665, 677, 680–81 & n.8 (E.D. Pa. 2014).

153. *Comm'ns Imp. Exp. S.A. v. Rep. of Congo*, 916 F. Supp. 2d 48, 56–58 (D.D.C. 2013), *rev'd*, 757 F.3d 321 (D.C. Cir. 2014).

154. Scherer, *supra* note 15, at 600.

155. See *infra* notes 159–170 and accompanying text.

156. See *infra* Part IV.

157. See *Oriental Com. & Shipping Co., (U.K.) v. Rosseel, N.V.*, 769 F. Supp. 514, 517 (S.D.N.Y. 1991) (describing a foreign confirmation judgment as merely increasing the enforcement “options” for the prevailing

seems consistent with strong federal policies favoring arbitration and the enforcement of foreign awards.<sup>158</sup> But as explained below, many observers criticize the parallel entitlements doctrine as logically unsound, prone to encourage gamesmanship, and capable of circumventing other federal policies intended to prevent the enforcement of certain awards.

Although the relationship between foreign arbitral awards and foreign award judgments remains an undertheorized topic in the United States,<sup>159</sup> a modest but persuasive body of commentary levels several criticisms at the parallel entitlements doctrine.<sup>160</sup> According to several commentators, the parallel entitlements doctrine is logically unsound in the sense that foreign awards and foreign award judgments do not involve parallel and independent legal rights. To the contrary, award judgments are ancillary to, and completely dependent on, the underlying awards.<sup>161</sup> In the absence of the underlying awards, foreign award judgments could not exist and would serve no purpose.<sup>162</sup> Under these circumstances, the creation of parallel tracks ignores the actual relationship between the two sets of decisions.

In addition to being logically unsound, the parallel entitlements doctrine tends to promote gamesmanship. Examples include the encouragement of duplicative litigation, including perpetuation of the double *exequatur* that the New York Convention was specifically designed to avoid.<sup>163</sup> Examples also include the creation of incentives for forum-shopping,<sup>164</sup> with the prevailing party seeking an award judgment in the most permissive jurisdiction before seeking enforcement of the award and foreign award judgment in the United States.<sup>165</sup> Finally, examples include using award judgments to leverage worldwide discovery of assets from defendants not subject to any form of personal jurisdiction in the United States.<sup>166</sup> This possibility exists because courts in New York have held that they must have personal jurisdiction to enforce foreign arbitral awards against defendants or their property.<sup>167</sup> However,

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party); RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 reporters' note c(ii) (Am. L. Inst., Proposed Final Draft 2019) (indicating that the parallel entitlements approach affords the prevailing party "two parallel strategies for recognition and enforcement").

158. *See* *Consortio Rive, S.A. De C.V. v. Briggs of Cancun, Inc.*, 82 Fed. App'x. 359, 364 (5th Cir. 2003); *Rsch. & Dev. Ctr. "Teploenergetika," LLC v. EP Int'l, LLC*, 182 F. Supp. 3d 556, 565 (E.D. Va. 2016) (quoting *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier*, 508 F.2d 969, 975 (2d Cir. 1974)); *Kaliroy Produce Co., Inc. v. Pac. Tomato Growers, Inc.*, 730 F. Supp. 2d 1036, 1054 (D. Ariz. 2010).

159. *See supra* note 16 and accompanying text.

160. RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 cmt. c(ii) & reporters' note c(ii).

161. DeWitt, *supra* note 16, at 507–08; Scherer, *supra* note 15, at 605–11.

162. Scherer, *supra* note 15, at 606.

163. *Id.* at 612, 624.

164. RESTATEMENT (THIRD) OF THE U.S. L. OF INT'L COM. & INVESTOR-STATE ARB. § 4.8 cmt. c(ii) & reporters' note c(ii); Scherer, *supra* note 15, at 622–23.

165. Scherer, *supra* note 15, at 623.

166. Lahlou, *supra* note 19, at 200.

167. *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 226 (2d Cir. 2014).

courts in New York have also held that they can conduct proceedings to recognize and enforce foreign judgments without *in personam* jurisdiction over defendants or even *in rem* jurisdiction over their assets.<sup>168</sup> As a result, the prevailing party can use enforcement of foreign award judgments in New York as the predicate for discovery of the defendant's assets worldwide,<sup>169</sup> an option that is ingenious and may be startling even to veterans in the field.

Most importantly, the parallel entitlements doctrine can encourage "enforcement by circumvention" of the grounds to refuse enforcement of foreign awards under the New York Convention and the FAA.<sup>170</sup> In other words, the prevailing parties can launder defective awards by securing foreign award judgments. The parallel entitlements doctrine, in turn, allows them to shift the substance and focus of the control mechanism away from the arbitration itself and from federal law on the enforcement of foreign awards to the foreign judicial proceedings and state law on the enforcement of foreign judgments.<sup>171</sup> The effects of this shift can be dramatic. For instance, in a number of cases, courts have enforced foreign confirmation judgments long after the three-year statute of limitations had run on enforcement of the underlying awards.<sup>172</sup>

Although the circumvention of short statutes of limitations on otherwise impeccable awards might seem like a reasonable move, U.S. courts have also signaled a willingness to use the parallel entitlements doctrine to permit the laundering of awards that were never enforceable under the New York Convention in the first place. For example, one U.S. federal court ruled that an award rendered in Taiwan was not enforceable under the New York Convention because Taiwan is not a party to the New York Convention.<sup>173</sup> However, the same court recognized that the prevailing party could seek enforcement of the Taiwanese judgment confirming the award.<sup>174</sup> Likewise, one party argued that a Dutch judgment was not enforceable under the New York Convention because the parties did not have the agreement in writing required by article II of the Convention.<sup>175</sup> However, at a preliminary stage in the litigation, the court indicated that the argument would not prevent enforcement of the Dutch

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168. *Abu Dhabi Com. Bank PJSC v. Saad Trading, Contracting & Fin. Servs. Co.*, 986 N.Y.S.2d 454, 457–58 (App. Div. 2014); *Lenchyshyn v. Pelko Elec.*, 723 N.Y.S.2d 285, 289–92 (App. Div. 2001); Ronald A. Brand, *The Continuing Evolution of U.S. Judgment Recognition Law*, 55 COLUM. J. TRANSNAT'L L. 277, 311–13 (2017).

169. Lahlou, *supra* note 19, at 200.

170. *See supra* note 17 and accompanying text.

171. *See Robinson, supra* note 15, at 68–70; Scherer, *supra* note 15, at 612–15.

172. *Comm'ns Imp. Exp. S.A. v. Rep. of Congo*, 757 F.3d 321, 323, 332–33 (D.C. Cir. 2014); *Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 29 F.3d 79, 80–82 (2d Cir. 1994); *Nat'l Aluminum Co. v. Peak Chem. Corp.*, 132 F. Supp. 3d 990, 992, 994–95 (N.D. Ill. 2015).

173. *Clientron Corp. v. Devon IT, Inc.*, 35 F. Supp. 3d 665, 676–77 (E.D. Pa. 2014).

174. *Id.* at 677, 680.

175. *Ocean Warehousing B.V. v. Baron Metals & Alloys, Inc.*, 157 F. Supp. 2d 245, 249 (S.D.N.Y. 2001).

judgment confirming the award because New York state law on the enforcement of foreign judgments contained no similar requirement.<sup>176</sup>

As of this writing, the author is not aware of any case in which U.S. courts have used the parallel entitlements doctrine to secure enforcement of foreign award judgments where the underlying awards would have been refused enforcement under the grounds set forth in article V of the New York Convention.<sup>177</sup> To be sure, observers have warned that this represents the logical consequence of a strong parallel entitlements doctrine in which awards and award judgments travel along independent tracks that never intersect.<sup>178</sup> However, the precise scope of the parallel entitlements doctrine remains undefined.<sup>179</sup> And, as explained below, the author has discovered a line of cases in which courts have allowed the tracks to intersect. Courts permitted that intersection by considering objections to certain fundamental lapses in the underlying arbitration when applying state law on the recognition and enforcement of foreign award judgments.

#### IV. THE INTERSECTION OF PARALLEL LINES

When serving as an expert witness in a case involving a Chinese arbitral award, a Chinese award judgment, and parallel enforcement proceedings in the United States and Canada, this author discovered a line of cases in which U.S. courts have considered and decided objections to fundamental lapses in the underlying arbitration when applying state law on the recognition and enforcement of foreign award judgments. In essence, this means that lines of analysis can intersect somewhat even under the so-called parallel entitlements doctrine. Thus, even though the New York Convention's refusal grounds have no direct application or relevance to the enforcement of foreign award judgments,<sup>180</sup> courts have interpreted state law as being sufficiently broad to permit consideration of fundamental lapses in the underlying arbitration when conducting proceedings to enforce foreign award judgments.

A close reading of the Second Circuit's first opinion on the topic reveals an uneven commitment to the distinction between proceedings to enforce foreign arbitral awards and award judgments. As mentioned above, the respondent in the *Solitron* case argued that the award was not enforceable under the New York Convention because the award of damages to cover welfare payments violated

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176. *Id.*

177. See Robinson, *supra* note 15, at 82 (opining that “no court to date, perhaps apart from the district court decision in *Ocean Warehousing*, has purported to enforce a foreign judgment based on a foreign arbitral award where the result would be to deny a defendant in U.S. court a meritorious New York Convention defense to the underlying award”).

178. See *supra* note 17 and accompanying text.

179. Scherer, *supra* note 15, at 601.

180. *Ocean Warehousing*, 157 F. Supp. 2d at 249.



U.S. public policy.<sup>181</sup> The respondent also argued that the court should not enforce a foreign award judgment that was based on an unenforceable award.<sup>182</sup> Although the first argument probably lacked merit,<sup>183</sup> the Second Circuit still chose to avoid it by focusing only on enforcement of the foreign award judgment under state law.<sup>184</sup>

Turning to the respondents' argument about not enforcing foreign judgments based on unenforceable awards, the Second Circuit observed in a footnote that enforcement awards and foreign award judgments were "entirely separate and distinct questions."<sup>185</sup> However, in the body of its decision, the Second Circuit addressed the merits of the respondent's contention about the award's violation of public policy. In so doing, the court held that the tribunal had performed a cautious, fair, and proper quantification of damages, even if the approach was unorthodox by local standards.<sup>186</sup> The Second Circuit concluded that the tribunal's "method of ascertaining damages" did not contravene any "New York statutory law."<sup>187</sup> Therefore, the Second Circuit concluded that the respondent's argument failed "under state law."<sup>188</sup>

Crystallizing the points just made, in *Solitron*, the Second Circuit veered between: (1) declaring enforcement of foreign awards and foreign award judgments to be distinct issues; and (2) actually considering objections about the underlying arbitration when applying state law on the enforcement of foreign judgments.<sup>189</sup> According to one experienced practitioner, the Second Circuit "did not actually abide by the distinction it drew between the enforceability of the foreign award and that of the foreign judgment."<sup>190</sup> The Author of the present Article would reach a slightly different conclusion. In this Author's view, the Second Circuit respected the distinction between enforcement of foreign arbitral awards and foreign award judgments as distinct processes subject to distinct legal frameworks. However, when applied to foreign award judgments, the Second Circuit construed state statutory provisions governing the refusal to enforce foreign judgments as being sufficiently broad to permit consideration of objections to certain fundamental lapses in the underlying arbitration. This view is not merely plausible. It is also consistent with subsequent decisions by a handful of federal and state courts.

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181. See *Island Territory of Curacao v. Solitron Devices, Inc.*, 489 F.2d 1313, 1320–21 & n.8 (2d Cir. 1973); *supra* note 145 and accompanying text.

182. *Solitron*, 489 F.2d at 1320–21.

183. Robinson, *supra* note 15, at 74.

184. *Solitron*, 489 F.2d at 1318 n.4, 1323.

185. *Id.* at 1321 n.8.

186. *Id.* at 1321.

187. *Id.*

188. *Id.*

189. Robinson, *supra* note 15, at 72–73.

190. *Id.* at 73.

In a more recent case, a Taiwanese company received an award in arbitration proceedings conducted in Taiwan.<sup>191</sup> It also received an order enforcing the award in Taiwan.<sup>192</sup> Subsequently, the prevailing party sought enforcement of the award and the corresponding judgment in the United States.<sup>193</sup> In those proceedings, the U.S. District Court for the Eastern District of Pennsylvania refused to enforce the award under the New York Convention, inasmuch as Taiwan is not a state party to the Convention and the U.S. submitted a declaration that it would only enforce awards rendered on the territory of another state party.<sup>194</sup> However, consistent with the parallel entitlements doctrine, the court also recognized that the Taiwanese party had an independent cause of action to enforce the foreign judgment, and that reciprocity concerns posed no obstacle to enforcement of that judgment under state law.<sup>195</sup>

On a motion for summary judgment, the respondent resisted enforcement of the Taiwanese judgment on two grounds. First, the parties did not have any valid arbitration agreement.<sup>196</sup> In the court's view, that objection amounted to an argument that Taiwanese courts lacked subject matter jurisdiction to confirm the resulting award.<sup>197</sup> As a result, the argument fell within the provision of Pennsylvania's version of the UFCMJRA that mandates the refusal to enforce foreign judgments if the foreign court lacked subject matter jurisdiction.<sup>198</sup> Although the district court ultimately rejected the contention that the parties never concluded any valid arbitration agreement,<sup>199</sup> the point is that it construed state law on the enforcement of foreign judgments as wide enough to justify consideration of arguments regarding a fundamental lapse in the underlying arbitration.

In a second argument, the respondent in *Clientron* argued that the tribunal exceeded the scope of the parties' submission to arbitration.<sup>200</sup> In the court's view, that objection amounted to an argument that the subsequent confirmation of the award was contrary to an agreement between the parties.<sup>201</sup> Therefore, the argument fell within the provision of Pennsylvania's version of the UFCMJRA that permits the refusal to enforce foreign judgments if rendered in violation of an agreement between the parties.<sup>202</sup> In this context, the court expressed the view that the respondent's argument had merit and that the court was inclined to

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191. *Clientron Corp. v. Devon IT, Inc.*, 35 F. Supp. 3d 665, 669 (E.D. Pa. 2014).

192. *Id.*

193. *Id.* at 669–70.

194. *Id.* at 674–77.

195. *Id.* at 677, 680.

196. *Id.* at 681–82.

197. *Id.* at 681; *see also* UFCMJRA 2005, *supra* note 39, § 4(b)(3).

198. *Clientron*, 35 F. Supp. 3d at 681, 691.

199. *Id.* at 690–91.

200. *Id.* at 681–82.

201. *Id.* at 681, 691–92; *see also* UFCMJRA 2005, *supra* note 39, § 4(c)(5).

202. *Clientron*, 35 F. Supp. 3d at 681, 691–92.

refuse recognition of the foreign award judgment.<sup>203</sup> But the court allowed the parties a further opportunity to conduct discovery and, therefore, reserved judgment.<sup>204</sup> Again, the point is that the court construed state law on the enforcement of foreign judgments as wide enough to justify consideration of arguments regarding a fundamental lapse in the underlying arbitration. It also seemed inclined to accept that the particular fundamental lapse justified the refusal to enforce the corresponding foreign award judgment. In this context, it seems relevant to mention that objections to fundamental lapses in the underlying arbitration were the *only* grounds considered by the court for refusing to enforce the Taiwanese award judgment under Pennsylvania's version of the UFMJRA.<sup>205</sup>

Lack of proper notice is another area in which courts have been willing to consider, and grant relief for, fundamental lapses in the arbitration when considering enforcement of foreign award judgments under state law. For example, in one case, a Salvadoran party obtained an award against a U.S. party in arbitration proceedings conducted in El Salvador.<sup>206</sup> Subsequently, the Salvadoran party obtained judgment confirming the award in El Salvador.<sup>207</sup> The Salvadoran party then sought enforcement of the foreign award judgment in the U.S. District Court for the Southern District of Florida,<sup>208</sup> which has become a major hub for arbitration and related litigation involving transactions with Latin America.<sup>209</sup> Applying state common law principles on the recognition and enforcement of foreign judgments, the court refused to enforce the foreign award judgment, in part because the respondent did not receive proper notice of the arbitration and in part because the respondent did not receive proper notice of the foreign judicial proceedings.<sup>210</sup>

The *Injection Footwear* case supports the proposition that U.S. courts have construed state law on the enforcement of foreign judgments as broad enough to permit consideration of arguments regarding lack of proper notice in the underlying arbitration when deciding whether to enforce foreign award judgments. However, when the Author recently served as an expert witness, the opposing party sought to minimize the significance of *Injection Footwear* on the grounds that: (1) it was only decided by a special master in the first instance; (2)

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203. *Id.* at 692, 697.

204. *Id.* at 697–98.

205. *Id.* at 681–97.

206. *Corporacion Salvadorena de Calzado, S.A. (Corsal, S.A.) v. Injection Footwear Corp.*, 533 F. Supp. 290, 292 (S.D. Fla. 1982).

207. *Id.* at 292.

208. *Id.*

209. See Adam Feit, *Tort Reform, One State at a Time: Recent Developments in Class Actions and Complex Litigation in New York, Illinois, Texas, and Florida*, 41 LOY. L.A. L. REV. 899, 955–56 (2008) (“According to some legal experts, Miami is now second to New York City as the most popular destination for international arbitration. For many years, Miami has increasingly become a preferred location for arbitration hearings, especially among corporations doing business in Central and South American countries.”).

210. *Injection Footwear*, 533 F. Supp. at 296–98.

consideration of notice in the underlying arbitration was dicta because the special master decided that the respondent did not receive proper notice in the judicial proceedings, and there was no reason to believe that lack of notice in the underlying arbitration by itself would have been sufficient to justify refusal to enforce the foreign award judgment; and (3) there was no reason to believe that the decision survived Florida's subsequent adoption of the UFMJRA in 1994.<sup>211</sup>

While one can make lawyerly attempts to minimize the importance of *Injection Footwear*, the arguments do not seem compelling. First, the district court appointed a law professor from the University of Miami as special master because the professor had fluency in Spanish and expertise in the complex subject matter that the court lacked.<sup>212</sup>

Second, the issue of notice in the underlying arbitration was not dicta. On the contrary, the issue appeared in two of the eight topics that the court expressly instructed the special master to address.<sup>213</sup> Specifically, the court instructed the special master to determine “[w]hether the El Salvador *judgment* . . . complies with the procedural requirements of El Salvador law, *both* in commencing the arbitration proceeding *and* in reducing the arbitration award to judgment.”<sup>214</sup> The court also instructed the special master to decide “[w]hether the . . . delivery of certain papers to the [d]efendant in the United States constituted sufficient service of process to support the commencement of arbitration proceedings under El Salvador law.”<sup>215</sup>

Third, after deciding that the respondent had not received proper notice of the underlying arbitration, the special master expressly held that the lack of proper notice relating to the arbitration proceedings deprived the relevant Salvadoran court of the personal and subject matter jurisdiction that it would have had if the claimant had followed the proper procedures under Salvadoran law.<sup>216</sup>

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211. *See* *Le Credit Lyonnais, S.A. v. Nadd*, 741 So. 2d 1165, 1166 (Fla. Dist. Ct. App. 1999) (noting that Florida adopted the UFMJRA in 1994).

212. *Injection Footwear*, 533 F. Supp. at 292–93.

213. *Id.* at 295.

214. *Id.* (emphasis added).

215. *Id.*

216. *Id.* at 296–98. There are at least three different ways in which a court applying the UFMJRA or the UFCMJRA could justify consideration of notice in the underlying arbitration when deciding whether to enforce a foreign confirmation award. As in *Injection Footwear*, the court might see the lack of adequate notice in the arbitration as impairing the personal or subject matter jurisdiction of the court in subsequent confirmation proceedings. *See id.*; UFCMJRA 2005, *supra* note 39, § 4(b)(2)–(3), and text accompanying *supra* note 43. Alternatively, as noted above, section 4(c)(1) of the UFCMJRA permits U.S. courts to refuse enforcement of foreign judgements if the “defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.” *See* UFCMJRA 2005, *supra* note 39, § 4(c)(1), and text accompanying *supra* note 43. The question is what constitutes “the proceeding in the foreign court” for purposes of enforcing foreign confirmation judgments. Plainly, the “proceeding in the foreign court” includes the judicial component of the proceeding. However, the focus of the judicial component in the confirmation proceedings is an inquiry into the integrity of the arbitral proceeding. In that sense, one might plausibly conclude that the arbitral proceeding is part of “the proceeding in the foreign court” for purposes of section 4(c)(1) of the

Fourth, there is no reason to assume that Florida's subsequent adoption of the UFMJRA would have abrogated the decision in *Injection Footwear*. As of this writing, a Westlaw search shows seventy-five citations to the case, but no negative history. Also, a Florida appellate court has cited commentary indicating that the UFMJRA was intended to codify, rather than to alter, prevailing common-law rules on the enforcement of foreign judgments.<sup>217</sup> Further, according to that court, the UFMJRA was not adopted to *ease* the enforcement of foreign money judgments in Florida,<sup>218</sup> meaning that it was not designed to remove existing impediments to enforcement of foreign money judgments.

Perhaps even more importantly, there is additional support for interpreting the UFMJRA as permitting consideration of notice in the underlying arbitration when conducting proceedings to enforce foreign award judgments. In *Fiske, Emery & Assocs. v. Ajello*, a Canadian law firm commenced a fee arbitration in Quebec Province against clients resident in Connecticut.<sup>219</sup> The arbitration panel required the respondents to post security in the amount of \$16,000 Canadian dollars as a condition for proceeding to a hearing.<sup>220</sup> The respondents declined to post security and, therefore, claimed that they did not expect the matter to proceed to a hearing.<sup>221</sup> However, after the law firm waived the condition relating to security, the tribunal proceeded to a hearing and issued an award in the amount of \$18,544 Canadian.<sup>222</sup> Subsequently, the law firm obtained an order from Quebec's Superior Court confirming the award.<sup>223</sup>

Later, the Canadian law firm sought enforcement of the Canadian judgment under Connecticut's version of the UFMJRA and enforcement of the award under the New York Convention in proceedings before the Superior Court of Connecticut.<sup>224</sup> In response to the action to enforce the Canadian judgment, the respondents argued that they did not receive proper notice of the arbitration hearing, that they were denied due process, and that the award was therefore

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UFMJRA. Finally, as noted above, section 4(c)(3) of the UFMJRA allows courts to refuse enforcement of foreign judgments if the "judgment or the *cause of action* . . . on which the judgment is based is repugnant to the public policy of this state or of the United States." See UFMJRA 2005, *supra* note 39, § 4(c)(3) (emphasis added) (brackets omitted), and text accompanying *supra* note 43. In a proceeding to enforce a foreign confirmation judgment, the cause of action on which the judgment is based is an action to enforce the underlying arbitration award. To the extent that the award was rendered in violation of constitutional standards regarding notice, the cause of action in the confirmation proceedings would be repugnant to U.S. public policy and a U.S. court should refuse to enforce the foreign confirmation judgment under section 4(c)(3) of the UFMJRA. See Robinson, *supra* note 15, at 89–90 (noting that a complete denial of due process in the underlying arbitration should justify a refusal to enforce a foreign confirmation judgment on public policy grounds under New York's version of the UFMJRA).

217. *Le Credit Lyonnais, S.A. v. Nadd*, 741 So. 2d 1165, 1167 (Fla. Dist. Ct. App. 1999).

218. *Id.*

219. *Fiske, Emery & Assocs. v. Ajello*, 577 A.2d 1139, 1140–41 (Conn. Super. Ct. 1989).

220. *Id.* at 1142.

221. *Id.*

222. *Id.* at 1141–43.

223. *Id.* at 1140.

224. *Id.* at 1140–41.

obtained through fraud.<sup>225</sup> The court considered and addressed each of these arguments on the merits, concluding that respondents knew about the Canadian arbitration proceedings, were represented by counsel in those proceedings, understood the nature of the proceedings, and were informed of the date of the hearing.<sup>226</sup> In addition, the security requirement was established for the law firm's benefit and the law firm was entitled to waive the posting of security as a condition for proceeding to a hearing.<sup>227</sup> Under these circumstances, the court held that the facts did not support any ground for refusal to enforce the Canadian judgment under the UFMJRA.<sup>228</sup>

In a subsequent passage, the court acknowledged that it had already discussed the facts relating to the lack of adequate notice in the underlying arbitration, but added that arguments relating to the lack of notice should have been raised in the underlying arbitration.<sup>229</sup> In this context, it seems relevant to note the general rule that the failure to raise objections during the arbitration proceedings results in waiver of those objections for subsequent enforcement proceedings.<sup>230</sup> However, assuming that a party preserved objections regarding the lack of proper notice or was unable to preserve them because the lack of proper notice left them unaware of the arbitration proceedings, principles of waiver would not apply. In any case, the point is that in *Fiske, Emery*, Connecticut's Superior Court considered and decided several objections about fundamental lapses in the underlying arbitration (including notice), when deciding whether to enforce a Canadian award judgment under the UFMJRA.<sup>231</sup>

In addition to the published opinions already discussed, there is an unpublished opinion from the U.S. District Court for the Southern District of New York that overlaps with and amplifies some of the points already made above. In *Attorney General of Barbados v. Fitzpatrick Constr. Ltd.*, the parties entered into an agreement for construction of a sewage plant, pumping station, and related facilities in Barbados.<sup>232</sup> After disputes arose, the government of Barbados commenced an arbitration in Barbados and received a significant award.<sup>233</sup> Subsequently, the Supreme Court of Barbados issued a judgment confirming the award, and the Attorney General of Barbados sought enforcement of that judgment in the Southern District of New York under New York's version of the UFMJRA.<sup>234</sup> In opposing the enforcement action, the

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225. *Id.* at 1142–43.

226. *Id.* at 1142.

227. *Id.* at 1142–43.

228. *Id.*

229. *Id.* at 1144.

230. BORN, *supra* note 1, § 17.05[C][4], at 470–71.

231. *Fiske, Emery & Assocs.*, 577 A.2d at 1142.

232. *Att'y Gen. of Barb. v. Fitzpatrick Constr. Ltd.*, No. 87 Civ. 4714 (JMW), 1988 WL 18871, at \*1 (S.D.N.Y. Feb. 22, 1988).

233. *Id.* at \*2.

234. *Id.*

respondent argued that “the arbitration clause did not bind it and . . . therefore, the arbitration was contrary to the agreement of the parties.”<sup>235</sup>

As in *Clientron*, the court reframed the contention as an argument that the Barbadian court lacked subject matter jurisdiction, which brought the topic within the UFMJRA.<sup>236</sup> Also as in *Clientron*, the district court extensively addressed and rejected the contention on the merits.<sup>237</sup> As in *Fiske, Emery*, the district court also observed that the respondent had notice of the arbitration and the confirmation proceedings but did not participate in either and, therefore, did not contest the existence of an arbitration agreement in either forum.<sup>238</sup> Under these circumstances, the argument would have come “too late in the day” even if it had merit.<sup>239</sup>

In addition, the respondent argued that enforcement of the foreign judgment was “repugnant to the public policy of this state” for purposes of New York’s version of the UFMJRA due to the partiality of the arbitrator in the underlying proceedings.<sup>240</sup> Again, the court considered and decided the issue on the merits, although it concluded that the respondent’s conclusory allegations came nowhere near establishing a ground to refuse enforcement of the judgment under New York state law.<sup>241</sup>

Although the respondent in the *Fitzpatrick* case did not succeed on any of its arguments for refusing to enforce the foreign confirmation judgment, the case stands for the proposition that courts have construed state enactments of the UFMJRA as broad enough to permit the consideration of objections to fundamental lapses in the underlying arbitration when conducting proceedings to enforce foreign award judgments. More importantly, this has happened in the jurisdiction most closely associated with the parallel entitlements doctrine.

#### CONCLUSION

The line of cases discussed in Part V does not undermine the *existence* of the parallel entitlements doctrine. On the contrary, the courts appeared to see enforcement of foreign arbitral awards and foreign judgments as distinct processes subject to distinct legal frameworks. Nor does the line of cases discussed in Part V prevent award creditors from using foreign award judgments to launder *certain* defective awards. It seems beyond question that award creditors can use such judgments to circumvent the short statute of limitations

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235. *Id.* at \*4.

236. *Id.*

237. *Id.* at \*4–\*6.

238. *Id.* at \*5.

239. *Id.*

240. *Id.* at \*7.

241. *Id.*

that applies to foreign arbitral awards under the New York Convention,<sup>242</sup> the exclusion of awards rendered in states not party to the New York Convention,<sup>243</sup> and the Convention's requirement for an agreement in writing.<sup>244</sup>

However, the line of cases discussed in Part V demonstrates a recognition of certain limits on the *scope* of the parallel entitlements doctrine. In proceedings to enforce foreign award judgments, respondents cannot directly invoke the grounds for refusing to enforce the underlying awards under the New York Convention.<sup>245</sup> However, in applying the UFCMJRA, the UFMJRA, and state common law to proceedings seeking enforcement of foreign award judgments, courts have construed the relevant state laws as sufficiently broad to permit consideration of certain objections to fundamental lapses in the underlying arbitrations. These include allegations regarding the absence of any valid arbitration agreement between the parties,<sup>246</sup> allegations that the arbitrators exceeded the scope of submission to arbitration,<sup>247</sup> allegations that the respondent did not receive proper notice of the arbitration proceedings,<sup>248</sup> and allegations that the tribunal lacked independence or impartiality.<sup>249</sup>

Furthermore, although the cases discussed in Part V are not many in number, there is no competing line of cases as of this writing. When the Author recently served as expert witness and relied on those cases, the other side could chip away at his testimony by attempting to distinguish or limit the cases discussed in Part V. They could not, however, find a single case or piece of scholarship stating that the cases discussed in Part V were wrongly decided. Under these circumstances, the Author submits that the cases discussed in Part V constitute the only U.S. law on an important but undertheorized point of law.

Looking to the future, it is not clear whether the cases discussed in Part V establish an exhaustive list of the arbitration-related objections that can be brought into play for purposes of resisting the enforcement of foreign award judgments under state law. It is possible that the list will continue to evolve through the thoughtful development of jurisprudence. However, even if subsequent cases do not move the needle any further, the ability to contest the existence of the arbitration agreement, to allege that the arbitrators exceeded the scope of submission to arbitration, to allege the lack of proper notice in the

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242. See *supra* note 172 and accompanying text (referring to a number of cases, in which courts have enforced foreign confirmation judgments long after the three-year statute of limitations had run on enforcement of the underlying awards).

243. See the cases cited *supra* notes 173–174 and accompanying text.

244. See *supra* notes 175–176 and accompanying text.

245. *Ocean Warehousing B.V. v. Baron Metals & Alloys, Inc.*, 157 F. Supp. 2d 245, 249 (S.D.N.Y. 2001).

246. *Clientron*, 35 F. Supp. 3d at 681–82, 690–91; *Att’y Gen. of Barb. v. Fitzpatrick Constr. Ltd.*, No. 87 Civ. 4714 (JMW), 1988 WL 18871, at \*4–6 (S.D.N.Y. Feb. 22, 1988).

247. *Clientron*, 35 F. Supp. 3d at 681–82, 691–92.

248. *Corporacion Salvadorena de Calzado, S.A. (Corsal, S.A.) v. Injection Footwear Corp.*, 533 F. Supp. 290, 296–98 (S.D. Fla. 1982); *Fiske, Emery & Assocs. v. Ajello*, 577 A.2d 1139, 1142 (Conn. Super. Ct. 1989).

249. *Fitzpatrick Constr. Ltd.*, 1988 WL 18871 at \*7.



underlying arbitration, and to allege the tribunal's lack of independence or impartiality place meaningful limits on the use of foreign award judgments to launder defective awards.

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