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Lex Loci Arbitri and Annulment of Foreign Arbitral Awards in U.S. Courts

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RECENT DEVELOPMENT: *LEX LOCI ARBITRI* AND ANNULMENT OF FOREIGN ARBITRAL AWARDS IN U.S. COURTS

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INTRODUCTION

In a recent decision out of the Fifth Circuit, the court ruled that under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”),¹ only courts in countries with primary jurisdiction may effectively vacate an arbitral award.² Primary jurisdiction is limited to the country that serves as the situs of the arbitration and possibly the home of the applicable procedural law, if different than the situs of the arbitration.³ Further, the Fifth Circuit held that courts with secondary jurisdiction may only decide whether arbitral awards

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1. See Convention on the Recognition and Enforcement of Foreign Arbitral Awards [hereinafter New York Convention], June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 (mandating reciprocal enforcement for all signatory countries).

2. See *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 287 (5th Cir. 2004).

3. See discussion *infra* Part III (addressing the New York Convention’s provisions regarding annulments and construction of such provisions).

will be enforced within that country.⁴ Secondary jurisdictions are countries subject to the New York Convention outside of those with primary jurisdiction.⁵ Parties obtaining annulments in secondary jurisdictions may not attempt to use such annulments as a defense to enforcement in other jurisdictions pursuant to the New York Convention.⁶ Thus, annulment decisions by courts in countries with secondary jurisdiction should not prevent enforcement elsewhere.⁷

I. BACKGROUND TO THE *KARAH BODAS* DECISION

Several years before the Fifth Circuit holding, the U.S. Supreme Court had already decided *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, in which the Court held that the venue provisions of the Federal Arbitration Act⁸ (“FAA”) are permissive.⁹ In *Cortez Byrd*, the Court held that the FAA allowed venues outside of the place of the award to effectively vacate arbitral awards as long as the jurisdiction was appropriate under the general venue statute.¹⁰ Accordingly, a Mississippi court was permitted to vacate an Alabama arbitral award.¹¹

4. *Karaha Bodas Co.*, 364 F.3d at 287.

5. See discussion *infra* Part III (describing the differences between primary and secondary jurisdictions).

6. *Karaha Bodas Co.*, 364 F.3d at 287.

7. *Id.*

8. 9 U.S.C. § 201-208 (2000) (implementing the New York Convention as the Federal Arbitration Act).

9. *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193 (2000) (resolving the split between the U.S. Courts of Appeals as to whether the FAA’s venue provision are permissive or mandatory).

10. *Id.* at 204.

11. See *id.* (overturning the Eleventh Circuit, which had held that venue was limited to the Northern District of Alabama). The arbitration arose pursuant to a contract dispute between *Cortez Byrd Chips, Inc.* and *Bill Harbert Construction Company* regarding Harbert’s construction of a wood chip mill for *Cortez Byrd* in Mississippi. *Id.* at 195. After the arbitration panel issued an award in favor of Harbert, *Cortez Byrd* filed a motion to vacate or modify the award in the United States District Court for the Southern District of Mississippi. *Id.* at 196. In response, Harbert filed a motion to confirm the award in the Northern District of Alabama. *Id.* *Cortez Byrd* then sought to dismiss, transfer, or stay the Alabama action. *Id.* The Alabama court denied the motion and held that Alabama was the

Despite the potential benefits of allowing permissive construction of venue provisions for vacatur in the domestic context,¹² the *Cortez Byrd* Court also inferred that similar reasoning should apply when considering foreign arbitral awards.¹³ Such reasoning should be analyzed and compared with the recent finding by the Fifth Circuit in *Karaha Bodas* and with traditional notions of *lex loci arbitri*.

II. KARAHA BODAS V. PERTAMINA

In 1994, Karaha Bodas Co. (“KBC”) entered into two contracts with Indonesia’s national gas and oil company, Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (“Pertamina”), to build and operate a geothermal electricity development facility in Indonesia.¹⁴ A contract dispute led to arbitration in Switzerland pursuant to the United Nations Commission on International Trade Law Arbitration Rules.¹⁵ The contract stipulated Indonesian law as the applicable substantive law.¹⁶ The arbitral tribunal held Pertamina liable and awarded KBC damages for expenses and lost profits.¹⁷

only proper venue for motions to confirm, vacate, or modify the award. *Id.* The Alabama court thereafter entered judgment in favor of Harbert. *Id.*

12. See Karyn A. Doi, Recent Development, *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 16 OHIO ST. J. ON DISP. RESOL. 409, 418 (2001) (discussing the positive arbitration policies reinforced by *Cortez Byrd*).

13. See *infra* notes 32-38 and accompanying text (describing the *Cortez Byrd* decision and its discussion of international arbitration and concerns regarding actions to vacate or modify awards rendered in non-signatory states).

14. See *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 282 (5th Cir. 2004) (discussing the relevant contracts at issue, which gave KBC the right to develop energy sources in Indonesia with Pertamina’s management and to sell electrical energy to an electric utility owned by the Indonesian government).

15. See *id.* at 282-83 (explaining the Indonesian government’s suspension of the energy project due to the country’s financial problems, which in turn led to the contract dispute between KBC and Pertamina).

16. See *id.* at 290-91 (referring to the relevant provisions in the contracts between KBC and Pertamina, which explicitly state that they are governed by the substantive laws of Indonesia).

17. See *id.* at 284-85 (awarding \$261.1 million in damages to KBC).

After receiving the favorable award, KBC filed suit in federal district court in Texas to enforce the arbitral award.¹⁸ As the enforcement action in the U.S. court was pending, Pertamina sought and was denied annulment of the award in Swiss courts.¹⁹ The Texas district court enforced the arbitral award²⁰ and Pertamina thereafter sought annulment in Indonesia.²¹ In 2002, Indonesian courts vacated the arbitral award and attempted to prevent its enforcement elsewhere.²² In 2004, the Fifth Circuit rejected the argument that the Indonesian annulment provided a defense to enforcement under the New York Convention and held that the Indonesian annulment did not prevent U.S. courts from enforcing the arbitral award.²³

Noah Rubins has pointed out the failures of the Indonesian judiciary in denying enforcement of foreign arbitral awards and failing to promote the values of the New York Convention, most recently highlighted by its attempted annulment in *Karaha Bodas*.²⁴ Despite the internal failings within Indonesia represented by the annulment in *Karaha Bodas*,²⁵ the question raised by the case and its

18. *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Bumi Negara*, 190 F. Supp. 2d 936 (S.D. Tex. 2001), *aff'd*, 364 F.3d 274 (5th Cir. 2004).

19. *See Karaha Bodas Co.*, 364 F.3d at 285 (describing how the Texas district court slowed the proceedings to await the Swiss court's decision).

20. *Karaha Bodas Co.*, 190 F. Supp. 2d at 957.

21. *Perusahaan Pertambangan Minyak Dan Bumi Negara v. Karaha Bodas Co.*, Case No. 86/PDT.G/2002/PN.JKT.PST, Preliminary Award (Central Jakarta State Court 2002) (unofficial translation), *available at* <http://www.lfip.org/lawe506/documents/session14/e506kbjakartadctprelim.doc> (last visited July 12, 2005).

22. *Id.*

23. *See Karaha Bodas Co.*, 364 F.3d at 310 ("Under the New York Convention, the parties' arbitration agreement, and this record, Switzerland had primary jurisdiction over the Award.") The court held that Indonesia did not have primary jurisdiction and the court therefore affirmed the district court's decision that the Indonesian annulment could not be used as a proper defense to enforcement in the United States under the New York Convention. *Id.*

24. *See* Noah Rubins, *The Enforcement and Annulment of International Arbitration Awards in Indonesia*, 20 AM. U. INT'L L. REV. 359 (2005) (describing the Indonesian court's decision to annul the arbitration award). Mr. Rubins argues that the Indonesian annulment was based on "unpredictable and unprincipled grounds," contrary to the spirit and standards of the New York Convention. *Id.* at 363.

25. *Id.*

intersection with U.S. Supreme Court dicta in *Cortez Byrd* reaches to a much larger issue: what are the effects of annulments of foreign arbitral awards outside of the place of arbitration and outside of the country whose procedural law applied to the arbitration? When and how must other states recognize annulments rendered in a party's home country?

III. *KARAH BODAS*, *CORTEZ BYRD*, AND TRADITIONAL NOTIONS OF *LEX LOCI ARBITRI*

Effective annulments in international arbitration cause awards to lose the protection of the comprehensive enforcement regime of the New York Convention.²⁶ Relevant portions of the Convention allow annulment by a "competent authority of the country in which, or the country under the law of which, the award was made."²⁷ Scholars

26. Article V(1) of the New York Convention provides:

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 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.

New York Convention, *supra* note 1, 21 U.S.T. at 2520, 330 U.N.T.S. at 40, 42.

27. *Id.* at 2520, 330 U.N.T.S. at 42 (setting forth this provision under Article V(1)(e)).

have described the textual references to annulments of arbitral awards in the Convention as somewhat ambiguous,²⁸ but numerous courts and scholars have interpreted the phrase “the country under the law of which” to be referring solely to the parties choice of procedural law.²⁹

Although under the New York Convention it is possible that there would be two countries with primary jurisdiction, several commentators maintain that there should be only one country with primary jurisdiction.³⁰ Despite these analyses, the situs of the arbitral award and the country whose procedural law is used could potentially, although unlikely for practical purposes, both have primary jurisdiction.³¹ Thus, the situs of the award or the country whose procedural law is used would be the only proper forums for vacatur that could have extraterritorial effects on other signatories of the New York Convention.³² Under the Convention, signatory

28. See Rubins, *supra* note 24, at 388 (explaining that although the text of Article V(1)(e) of the New York Convention is ambiguous, case law clearly establishes that it refers to the situs of the arbitration and to the country whose procedural law applied to the arbitration). See generally William W. Park, *Duty and Discretion in International Arbitration*, 93 AM. J. INT'L L. 805 (1999) (discussing the confusion regarding effects of annulments of international arbitration awards under the New York Convention). Further, the New York Convention does not set forth any standards for annulment decisions. See New York Convention, *supra* note 1. Signatories are free to develop their own grounds for annulment. See *id.*

29. See *Int'l Standard Elec. Corp. v. Bridas Sociedad Anonima Petrolera, Industrial Y Comercial*, 745 F. Supp. 172, 177 (S.D.N.Y. 1990) (“[W]e conclude that the phrase in the Convention ‘[the country] under the laws of which that award was made’ undoubtedly referenced the complex thicket of the procedural law of arbitration . . .”). See generally Rubins, *supra* note 24, at 387-91 (discussing U.S. and foreign court interpretation of Article V(1)(e) of the New York Convention).

30. See *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 308-09 (5th Cir. 2004) (stating that although the New York Convention suggests the possibility of more than one country having primary jurisdiction, the predominant view is that only one country has such jurisdiction in a particular case). Allowing only one country to exercise primary jurisdiction is consistent with the purposes of the New York Convention to provide predictability and neutrality in international business. *Id.* at 309.

31. See *id.* at 291 (noting that selection of a procedural law outside of the place of the arbitration would be “complex, inconvenient, and inconsistent with the selection of a neutral forum as the arbitral forum”).

32. *Id.* at 287.

countries may still choose to enforce a properly vacated award because the provisions of Article V(1)(e) are not mandatory,³³ but courts will most often defer to those with primary jurisdiction.³⁴ Typically, the situs of the arbitration's procedural law is used, but parties can stipulate otherwise if they do so explicitly.³⁵

Other than the two potential countries with primary jurisdiction to vacate an arbitral award, “[c]ourts in other countries have secondary jurisdiction; a court in a country with secondary jurisdiction is limited to deciding whether the award may be enforced in that country.”³⁶ While primary jurisdictions may use their own domestic law to determine whether to vacate or set aside an arbitral award, secondary jurisdictions determining whether to refuse enforcement of an award are limited to the grounds set forth in the New York Convention.³⁷ Using this logic, because Swiss law was determined to

33. See New York Convention, *supra* note 1, 21 U.S.T. at 2520, 330 U.N.T.S. at 42 (stating under Article V(1)(e) that enforcement of arbitral awards “may be refused” if vacated in a country with primary jurisdiction). The Convention’s use of “may” highlights the discretionary basis for courts to refuse to enforce vacated awards. *Id.*; see also *Chromalloy Aeroservices v. Arab Republic of Egypt*, 939 F. Supp. 907, 909 (D.D.C. 1996) (discussing the non-mandatory provisions of Article V of the New York Convention and enforcing an arbitration award vacated at the place of arbitration). The court held that Article VII of the New York Convention allows courts to recognize a vacated award if such award was set aside for reasons not recognized in the enforcing country. *Id.*

34. See Pippa Read, *Delocalization of International Commercial Arbitration: Its Relevance in the New Millennium*, 10 AM. REV. INT’L ARB. 177, 190 (1999) (describing the usual practice of courts to recognize annulments and to set aside arbitral awards vacated in courts with primary jurisdiction).

35. See New York Convention, *supra* note 1, 21 U.S.T. at 2520, 330 U.N.T.S. at 42 (providing under Article V(1)(d) that enforcement of an award may be refused where 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”); see also *Karaha Bodas Co.*, 364 F.3d at 292 (discussing the need for an “express designation” to rebut the strong presumption that the place of the arbitration also provides the applicable procedural law). “Under the New York Convention, an agreement specifying the place of the arbitration creates a presumption that the procedural law of that place applies to the arbitration.” *Id.* at 291.

36. *Karaha Bodas Co.*, 364 F.3d at 287.

37. See *id.* at 288 (noting the “much broader discretion to set aside an award” in primary jurisdictions).

be the procedural law used in *Karaha Bodas*³⁸ and because Switzerland was the situs of the award,³⁹ Switzerland was therefore the only country with primary jurisdiction to annul the arbitral award.⁴⁰

The result in *Karaha Bodas* would have been the same whether the court interpreted the New York Convention to allow two primary jurisdictions or one because Switzerland was both the situs of the arbitration and the home of the applicable procedural law.⁴¹ Because Switzerland was the only country with primary jurisdiction, the Fifth Circuit reasoned that Indonesia's annulment was improper and therefore, should have no effects outside of Indonesia.⁴² Yet, it is unclear whether the U.S. Supreme Court would agree with this line of reasoning.

In *Cortez Byrd*, the U.S. Supreme Court held that despite the willingness of parties to pick an inconvenient forum as the place of the arbitration, they "might well be less willing to pick such a location if any future court proceedings had to be held there."⁴³ The Court explained that if the venue provisions of the FAA were held to be mandatory, forums outside of the district of the arbitration would still be able to consider a motion to confirm an award, but could not also hear a motion to vacate or modify the same award.⁴⁴ The Court rejected such an outcome and stated "Congress simply cannot be tagged with such a taste for the bizarre."⁴⁵ The Court went on to

38. *Id.* at 291-92.

39. *Id.* at 282-83.

40. *Id.* at 309-10.

41. *See id.* at 309 ("In this case, both of the New York Convention criteria for the country with primary jurisdiction point to Switzerland—and only to Switzerland.")

42. *Id.* at 310.

43. *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 201 (2000).

44. *See id.* at 200-01 (describing that if the venue provisions were mandatory, in a situation where a proceeding to confirm an award was taking place outside of the district of the arbitration and the responding party objected to the confirmation, the responding party must therefore go back to the district of the arbitration to initiate a separate proceeding). The parties would then have to be involved in proceedings in multiple forums regarding the same award. *Id.*

45. *Id.* at 201.

describe how the flexibility provided to parties by allowing them to freely negotiate where an arbitration will take place “could well be inhibited by a venue rule mandating the same inconvenient venue if someone later sought to vacate or modify the award.”⁴⁶

In part, the Court rested its decision on the effects of venue restrictions on motions to confirm, modify, and vacate awards in the international context.⁴⁷ The Court, referring to the New York Convention and to the Inter-American Convention on International Commercial Arbitration,⁴⁸ described how restricting “venue to the site of the arbitration would preclude any action under the FAA in courts of the United States to confirm, modify, or vacate awards rendered in foreign arbitrations not covered by either convention.”⁴⁹ The Court was concerned that actions to enforce foreign arbitral awards rendered in non-signatory states would be defeated in the United States due to venue restrictions.⁵⁰

The Court in *Cortez Byrd* made no distinction in its discussion of international arbitration as to whether broader recognition of annulments should be allowed for foreign arbitral awards only from non-signatory states or from all foreign seats of arbitration.⁵¹ Specifically in the domestic context, *Cortez Byrd* discussed the rationale behind allowing parties to seek annulment in their home jurisdiction.⁵² While the Court’s discussion revolved primarily around the domestic system, the discussion shows that its reasoning was significantly shaped by effects on the international regime.⁵³

46. *Id.*

47. *See supra* notes 43-47 and accompanying text (discussing the U.S. Supreme Court dicta in *Cortez Byrd* regarding venue restrictions applicable to the confirmation, modification, or vacatur of foreign arbitral awards).

48. Jan. 30, 1975, 104 Stat. 449, 1438 U.N.T.S. 249.

49. *Cortez Byrd*, 529 U.S. at 202-03.

50. *See id.* at 203 (“Although such actions would not necessarily be barred for lack of jurisdiction, they would be defeated by restrictions on venue, and anomalies like that are to be avoided when they can be.”)

51. *Id.* at 202-03.

52. *Id.* at 200 (“The most convenient forum for a defendant is normally the forum of residence, and it would take a very powerful reason ever to suggest that Congress would have meant to eliminate that venue for postarbitration disputes.”)

53. *Id.* at 202-03.

Although the U.S. Supreme Court seemed to believe that its construction of the FAA would provide the most favorable outcome for arbitration,⁵⁴ using the logic of *Cortez Byrd* in an international context would allow vacatur in home countries of parties seeking annulment of arbitral awards in contravention of traditional interpretations of the New York Convention.⁵⁵ Professor William Park has noted that this result could have drastic consequences on the international arbitration regime.⁵⁶ In *Karaha Bodas*, this would allow Pertamina's successful annulment action at home in Indonesia to effectively vacate the arbitration award and potentially prevent enforcement elsewhere. Additionally, the New York Convention refers to no such application.⁵⁷ As discussed earlier, under the Convention only the situs of the place of the award and potentially the law under which the award was made may appropriately vacate the award and thereafter provide other countries with an additional ground to deny enforcement.⁵⁸ Other countries merely have the authority to refuse to enforce awards that have not been vacated in the primary jurisdiction.⁵⁹

Allowing parties seeking annulment to successfully reach such a result at home negates the neutrality of international arbitration.⁶⁰

54. See Doi, *supra* note 12, at 418 (describing the U.S. Supreme Court's liberal construction of the FAA in *Cortez Byrd* as most favorable to arbitration).

55. See William W. Park, *Amending the Federal Arbitration Act*, 13 AM. REV. INT'L ARB. 75, 125 (2002) (suggesting that application of the reasoning of *Cortez Byrd* to an international context would allow parties to seek annulments at home).

56. See *id.* (describing how a more widespread ability to effectively vacate arbitral awards in the international context would have "dramatically disagreeable results"). Professor Park notes that the *Cortez Byrd* reasoning might not have great effects on the domestic regime, but suggests an international example where a Massachusetts seller and German buyer agree to arbitration in London not expecting that despite their attempts to seek a neutral forum, they might still be subject to the courts of Germany and the United States. *Id.*

57. See New York Convention, *supra* note 1.

58. See *id.*

59. See *supra* notes 31-35 and accompanying text (analyzing the ability of countries with secondary jurisdiction to refuse to enforce awards, but not to vacate under Article V(1)(e) of the New York Convention).

60. See Park, *supra* note 55, at 126 (recognizing stability as one of the great achievements of international arbitration and noting the potential danger of applying the *Cortez Byrd* reasoning in the international context).

This rationale applies particularly to a case like *Karaha Bodas*, where the party seeking annulment was an Indonesian state-owned entity.⁶¹ Neutrality is one of the primary aims and reasons for popularity of international arbitration.⁶² The U.S. Supreme Court's desire to allow home annulment of foreign awards not covered by international arbitration conventions seems a less critical goal than preservation of the larger neutral and predictable international arbitration regime.

Alternatively, the U.S. Supreme Court's decision in *Cortez Byrd* could be subject to a narrower interpretation. Because the Court was interpreting the venue provision under the FAA, the Court presumably could support a broader ability to effectively vacate foreign arbitral awards in certain international contexts, but analyze these cases under the provisions of the applicable international convention. In cases where there is no applicable convention, there would be no need to construe the ability to effectively vacate awards in a more limited manner than the Court's analysis in *Cortez Byrd*. For instance, by finding that the FAA allows permissive use of effective vacatur when not explicitly precluded by international convention, U.S. courts could hear motions to confirm, modify, or vacate foreign arbitral awards rendered in non-signatory countries.

This logic does not necessarily mean U.S. courts would have to recognize broader application of vacatur for foreign awards rendered in countries that are signatories of the New York Convention or the Inter-American Convention on International Commercial Arbitration. In those cases, courts could then look to the applicable convention provisions governing vacatur. This interpretation would be consistent with the U.S. Supreme Court's concern regarding venue restrictions on awards rendered in non-signatory states while preserving traditional notions of *lex loci arbitri* under the New York Convention.

61. See *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 281 (5th Cir. 2004) (describing how the Indonesian government owns Pertamina).

62. See *Park*, *supra* note 55, at 102 ("Often an arbitral situs is chosen only for geographical convenience or procedural neutrality, and the dispute involves neither property nor activity at the place of arbitration.")

CONCLUSION

In *Karaha Bodas*, the Fifth Circuit reinforced a predictable and efficient international arbitration regime by holding that courts in a secondary jurisdiction have the authority only to refuse enforcement of an award. The Fifth Circuit did not allow an Indonesian state-owned entity to effectively vacate an award in its home country when Indonesia neither served as the situs of the arbitration nor provided the applicable procedural law. The court's reasoning effectuates preservation of the negotiated terms of the contract at issue and the justified expectations of international business.

Although *Karaha Bodas* exemplified such laudable goals, it is questionable whether its reasoning is consistent with the dicta of the U.S. Supreme Court in *Cortez Byrd*, which seemingly approves the use of home jurisdictions to effectively vacate arbitral awards, even in the international context.⁶³ Despite this analysis, *Karaha Bodas* would be consistent with a narrow interpretation of *Cortez Byrd*, where U.S. courts recognize a broader ability to vacate foreign awards, but only when such award is not covered by an international convention that approaches vacatur in a more limited manner.⁶⁴

63. See discussion *supra* Part III (evaluating the U.S. Supreme Court's dicta in *Cortez Byrd* with the Fifth Circuit's reasoning in *Karaha Bodas*).

64. See discussion *supra* Part III (suggesting a narrow interpretation of *Cortez Byrd*, applicable to the confirmation, modification, and annulment of foreign awards rendered in non-signatory states).