

REFUSAL OF RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARD UNDER THE NEW YORK CONVENTION WITH SPECIAL REFERENCE TO PUBLIC POLICY

Mohammed Zaheeruddin¹

¹Associate Professor, College of Law, United Arab Emirates University (UAEU), Al Ain, United Arab Emirates, P.O. Box No. 15551.
Email: Z_Mohammed@uaeu.ac.ae

Abstract: Article V(2)(b) of New York Convention permits refusal to enforce foreign arbitral awards, if recognition or enforcement is contrary to the public policy. New York Convention does not define the term 'public policy'; therefore, the courts exercised their discretion to interpret the term by following different standards in different jurisdictions. The similar arbitral award was refused to be recognized and enforced in one country, but validly is enforced in some other country. However, the courts have narrowly interpreted the term 'public policy' in the vast majority of jurisdictions to advance international arbitration and achieve the objective of New York Convention.

Keywords: Arbitral Award, New York Convention, Recognition and Enforcement, Public Policy.

1. INTRODUCTION

Arbitration offers fair and neutral proceedings, as well as awards characterized by finality and capability of enforcement in summary proceedings worldwide.¹ Once an international arbitral award is rendered, it is performed voluntarily in a majority of cases. However, where the award is not performed voluntarily, the parties generally continue litigating before national courts. The losing party might seek to set aside the award, while the winning party might seek to enforce it in one or more places.² The issuance of a "final" award may only mark the midway point in an international commercial dispute.³ Judicial recognition and enforcement of an arbitral award is necessary when one of the parties to arbitration

fails to comply voluntarily with the requirements of an award.⁴

In 1958, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") was introduced by twenty-four signatories, superseding previous international instruments and ushering in a new era of transnational commercial arbitration.⁵ The New York Convention shall apply to the enforcement of arbitral awards, made in the territory of a State other than the State, where the recognition and enforcement of such awards are sought.⁶

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is a pro-arbitration international treaty designed to promote worldwide recognition and enforcement of arbitral

1 Frederick A. Acomb and Nicholas J. Jones, *the Insider Adversary in International Arbitration*, 27 Am. Rev. Int'l Arb. 63 (2016).

2 Maxi Scherer, *Effects of International Judgments Relating to Awards*, 43 Pepp. L. Rev. 637 (2016).

3 Tom Childs, *Enforcement of International Commercial Arbitral Awards: Should a party be allowed Multiple Bites at the Apple?* 26 Am. Rev. Int'l Arb. 269 (2015).

4 Christopher S. Gibson, 113 Penn. St. L. Rev. 1227 (Spring, 2009).

5 Dr. Chrispas Nyombi and Dr. Konstantinos Siliadis, *Rationalizing the Defences to Enforcement under the New York Convention 1958*, 17 Asper Rev. Int'l Bus. & Trade L. 111, (2017).

6 The New York Convention, Article 1.

awards.⁷ There are 157 parties to this convention.⁸ The New York Arbitration Convention covers awards characterized as either “foreign” or “non-domestic.”⁹ The New York Convention has a “pro-enforcement bias,”¹⁰ therefore, recognition and enforcement of an arbitration agreement or award may only be refused upon limited grounds.¹¹

2. REFUSAL OF RECOGNITION AND ENFORCEMENT OF THE AWARD ON THE GROUNDS OF PUBLIC POLICY

Article V of the Convention prescribes the grounds for denial of recognition and enforcement of foreign arbitral awards.¹² New York Convention provides procedural defences in Article V (1) and substantive defences in Article V (2), on which a court may refuse to recognize and enforce the arbitration award. According to Article V (2)(b) of New York Convention, recognition and enforcement of an arbitral award *may* be refused, if the competent authority in the country *where recognition and enforcement is sought* finds that the recognition or enforcement of the award would be contrary to the public policy of *that country*.

Article V of the New York Convention aims at protecting the local interests of the recognition or enforcement forum.¹³ A similar provision can be found

in the UNCITRAL Model Law, that states that an arbitral award may be set aside by the court only if the court finds that the award is in conflict with the public policy of this State.¹⁴ A public policy exception is set forth in Article V (2)(b) of New York Convention, which provides that the recognition and enforcement of an arbitral award “*may*” be refused if it would “*be contrary to the public policy of that country*” –i.e., the country “*where recognition and enforcement of the [of the award]*” is sought.¹⁵ The Convention does not provide the meaning of “public policy”. There is no uniformity among the nations in the interpretation of the term “public policy”. The study surveys decisions from the courts in different jurisdictions of the world in the interpretation of word ‘public policy’ under the New York Convention. The study has identified that the courts have interpreted the word public policy narrowly; however, there is a need to observe uniformity to refuse recognition and enforcement of international arbitral awards on the ground of public policy.

2.1. Public Policy Exception under the New York Convention

One of the most frequently invoked basis for refusing to recognize an international arbitral award is the “public policy” (or *ordre public*) exception.¹⁶ The Article V(2)(b) exception permits jurisdictions to refuse recognition to international arbitral awards that are contrary to the public policy of the jurisdiction where enforcement is sought.¹⁷ New York Convention does not define the term “public policy.” Due to this lack of clarity, the public policy exception in Article V(2)(b) represents “*a catch-all defence for all the other substantive and procedural shortcomings of an international arbitral award or proceeding.*”¹⁸

⁷ Jeffrey H. Dasteel, *Is it Time to Awaken the New York Convention’s Dormant General Reciprocity Clause?* 26 Am. Rev. Int’l Arb. 539 (2015).

⁸ http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html

⁹ William W. Park, *The Internationalization of Law and legal Practice: National Law and Commercial Justice: Safeguarding Procedural integrity in International Arbitration*, 63 Tul. L. Rev. 647 (February 1989).

¹⁰ Robert D. Argen, *Ending Blind Spot Justice: Broadening the Transparency Trend in International Arbitration*, 40 Brooklyn J. Int’l L. 207 (2014).

¹¹ William Wang, *International Arbitration: The Need for Uniform Interim Measures of Relief*, 28 Brooklyn J. Int’l L. 1059 (2003).

¹² 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 (2002).

¹³ See Maxi Scherer, *supra* note 2.

¹⁴ The UNCITRAL Model Law, Article 34 (2)(b)(ii).

¹⁵ Gary B. Born, *International Arbitration Cases and Materials*, 2nd edition, 2015, Kluwer Law International BV, The Netherlands, page 1250.

¹⁶ Gary B. Born, *International Commercial Arbitration*, Kluwer Law International, Volume II, 2009, The Netherlands, page 2827.

¹⁷ Claudia T. Salomon and J.P. Duffy, *Enforcement Begins when the Arbitration Clause is Drafted*, 22 Am. Rev. Int’l Arb. 271 (2011).

¹⁸ James D. Fry, *Désordre Public International under the New York Convention: Wüther Truly International Public Policy*, 8 CHIN. J. INT’L. 81, 92 (2009), available at <http://chinesejil.oxfordjournals.org/content/8/1/81.full.pdf>.

Thus, what violates public policy and permits refusal of a foreign arbitral award in one jurisdiction might not violate another jurisdiction's definition of public policy.¹⁹ For instance, an arbitral award rendered in France may violate a fundamental public policy standard in Brazil and be held unenforceable by Brazil's national courts. Yet, the same award may not offend the public policy of any other country.²⁰

In *Richardson v. Mellish*,²¹ Burrough, J said that “*public policy – it is an unruly horse and when once you get astride it, you never know where it will carry you. It may lead you from the sound law. It is never argued at all but when other points fail*”. In order to advance the pro-recognition aspirations of the New York Convention, some jurisdictions have attempted to limit the application of the public policy exception only to those cases in which the award violates a body of universally recognized principles referred to as “international public policy.”²² The public policy standard for non-recognition of a foreign judgment constitutes a high bar.²³

Public policy plays a major role in international arbitration in several respects: (1) the arbitration agreement may violate public policy; (2) the conduct of the arbitration may violate public policy; (3) the law that the arbitrators apply may violate public policy; and (4) enforcement of the award may violate public policy. In all four situations, the question arises, as to what the substantive content of the term is.²⁴ The enforcing court considers three types of public policies: domestic, international, and transnational.²⁵ In the context of recognition and enforcement of foreign arbitral awards, many countries draw a distinction between domestic

public policy and international (or even transnational) public policy.²⁶

2.2. International Public Policy

International “public policy” refers to the laws and standards by which states govern arbitration of international character.²⁷ According to International Law Association, the international public policy of any State includes: (i) fundamental principles, pertaining to justice or morality, that the State wishes to protect even when it is not directly concerned; (ii) rules designed to serve the essential political, social or economic interests of the State, these being known as ‘*lois de police*’ or ‘public policy rules’; and (iii) the duty of the State to respect its obligations towards other States or international organizations.²⁸ The International Law Association interprets the notion of public policy as an international public policy of a particular State. Therefore, the award is subject to the public policy of the seat of arbitration.²⁹

2.3. Transnational Public Policy

Transnational public policy refers to the principles of universal justice, *jus cogens* in public international law, and the general principles of morality accepted by civilized nations.³⁰ However, transnational public policy does not often arise. It may be largely due to the overlap of international public policy and transnational public policy.³¹

2.4. Procedural Defence under Article V

In applying article V (2)(b) of New York Convention, courts review not only the substantive outcome of the

¹⁹ See Frederick A. Acomb and Nicholas J. Jones, *supra* note 1.

²⁰ Jay R. Sever, *The Relaxation of Inarbitrability and Public Policy checks on U.S. and Foreign Arbitration: Arbitration out of control?* 65 *Tul. L. Rev.* 1661 (1991).

²¹ (1824) 2 *Bing* 229, 252; 130 *E.R.* 294.

²² Pierre Mayer & Audley Sheppard, *Final Report on Public Policy as a Bar to Enforcement of International Arbitral Awards*, 19 *Arb. Int'l.* 249, 250 (2003).

²³ See Tom Childs, *supra* note 3.

²⁴ Hans Smit, *Comments on Public Policy in International Arbitration*, 13 *Am. Rev. Int'l Arb.* 65 (2002).

²⁵ Mark A. Buchanan, *Public Policy and International Commercial Arbitration*, 26 *AM. BUS. L.J.* 511, 513 (1988).

²⁶ Report on the Public Policy Exception in the New York Convention, October 2015, available at International Bar Association at http://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Default.aspx.

²⁷ See Jay R. Sever, *supra* note 20.

²⁸ ILA Final Report on Public Policy (2002).

²⁹ Yaraslau Kryvoi and Dmitry Davydenko, *Consent Awards in International Arbitration: From Settlement to Enforcement*, 40 *Brooklyn J. Int'l L.* 827 (2015).

³⁰ ILA Final Report on Public Policy (2002).

³¹ See Jay R. Sever, *supra* note 20.

award, but also the procedure leading to the award.³² Where the procedure followed in the arbitration suffered from serious irregularities, recognition and enforcement may be refused under article V (2)(b). It is thus common for courts to review awards that are brought before them for recognizing and enforcing fraud, bribery or some other significant because of process irregularity.³³ While recognizing the possibility of denying recognition of arbitral awards based on procedural public policy, most national courts have not readily found violations of procedural public policy.³⁴

2.5. Substantive Defences under Article V

Although some of Article V's exceptions are substantive, for example, a court may decline to enforce an award that is "contrary to the public policy" of the forum state; domestic courts have construed these exceptions narrowly.³⁵ There are a limited number of decisions from developed jurisdictions, where local statutory protections and substantive public policies have been relied upon to deny recognition to foreign arbitral awards.³⁶ The major implications of the dichotomy of procedural and substantive defences are mainly concerned with their scope of operation and overlapping application. This dichotomy also refers to the establishment of two facets of public policy, namely; procedural and substantive public policy.³⁷ When national courts have invoked public policy, it has sometimes been on grounds of procedural irregularities (which could readily have been considered under Article V (1)(b) or (d)).³⁸

Unless the public policy defence is interpreted in a restrictive manner, the scope of article V (2)(b) of the New York Convention is wide enough to cover both procedural

and substantive grounds provided under Article V of the New York Convention. As with substantive public policy, applications to refuse recognition and enforcement on the basis of procedural public policy have rarely been successful.³⁹

3. JUDICIAL DECISIONS ON 'PUBLIC POLICY' UNDER ARTICLE V (2)(b)

In the vast majority of jurisdictions, courts narrowly interpret or apply these rules and values by requiring a certain level of intensity for a given circumstance to be held contrary to public policy.⁴⁰ Unfortunately, some foreign courts have not shown a similar respect for international standards. Instead, they have resorted to local public policy arguments in order to annul or to avoid having to enforce an arbitral award against a local loser.⁴¹ The following paragraphs deal with decisions of the courts from different jurisdictions, in respect of interpretation of the term 'public policy' under Article V (2)(b) of the New York Convention.

Decisions in English Law

The English courts refused to enforce the award "only the most serious universally condemned activities such as terrorism, drug trafficking, prostitution and pedophilia and in any event nothing less than outright corruption and fraud would offend against English public policy."⁴² In the 21st century, the courts in England and Wales are more reluctant to refuse the enforcement of the foreign arbitral awards on the grounds of public policy.⁴³

³² UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) 2016 Edition, available at http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/2016_Guide_on_the_Convention.pdf.

³³ See UNCITRAL Secretariat Guide, supra note 32 at 252.

³⁴ See Gary B. Born, supra note 16, at 2852.

³⁵ Mark L. Movsesian, *International Commercial Arbitration and International Courts*, 18 Duke J. Com. & Int'l L. 423 (2008).

³⁶ See Gary B. Born, supra note 16, at 2855.

³⁷ FifiJunita, *Public Policy Exception in International Commercial Arbitration-Promoting Uniform Model Norms*, available at <https://poseidon01.ssrn.com/delivery.php?>, at 47.

³⁸ See Gary B. Born, supra note 16, at 2851.

³⁹ See UNCITRAL Secretariat Guide, supra note 32, at 248.

⁴⁰ IBA Subcommittee on Recognition and Enforcement of Arbitral Awards, Report on the Public Policy Exception in the New York Convention, October 2015, available at file:///C:/Users/CBE/Downloads/Report%20on%20the%20Public%20Policy%20Exception%20in%20the%20New%20York%20Convention%20-%202015.pdf.

⁴¹ See Hans Smit, supra note 24.

⁴² *Westacre Invs. Inc. v. Jugoinport-SPDR Holding Co. Ltd.*, [1999] Q.B. 740, 757 (Comm. Ct.) (Eng.).

⁴³ Bartłomiej Orawiec, *the public policy exception under the New York Convention on the Recognition and Enforcement of Foreign arbitral Awards (the UK perspective)*, Comparative Law Review, 21, 2016, Nicolaus Copernicus University available at <http://dx.doi.org/10.12775/CLR.2016.003>.

In *Yukos Capital Sarl v. OJSC Rosneft Oil Company* (No 2),⁴⁴ it was held that under English law, the public policy standard requires “coherent evidence” that the courts of the country that issued the judgment are “partial and dependent.” In *Westacre Investment, Inc. v. Jugoinport-SPDR Holdings Company Ltd.*,⁴⁵ the English court enforced an agreement that was contrary to the public policy of the place of performance as long as enforcing the agreement was not contrary to the public policy of the governing law of England. The court enforced the award even though it violates the public policy in Kuwait but did not violate the Swiss Public Policy, where the arbitration was conducted. The court concluded that the policy of giving effect to arbitral awards outweighed the policies against such contract.

In *Omnium de Traitement et. de Valorisation (OTV) S.A. v. Hilmarton*,⁴⁶ the OTV argued that the agreement to pay commissions was unlawful in its place of performance, therefore the award should not be enforced. The place of performance is Algeria and Swiss law is the law chosen by the parties. The court held that the agreement was not unlawful from the point of view of Swiss law. The English court recognized the award made in Switzerland and reasoned that it was not adjudicating the contract but only considering the issue of enforcement of award. In *Deutsche Schachtbau-und Tiefbohrergesellschaft M.B.H (D.S.T.) v. Ras al., Khaimah National Oil Co (Rakoil)*,⁴⁷ the English court of Appeal held that that public policy is not a vehicle for the court’s subjective views and must only be applied on the basis of articulated, fundamental policies.

In *Soleimany v. Soleimany*,⁴⁸ the Court of Appeal of England and Wales refused to enforce the arbitral award on the ground that it violates public policy of a foreign country. In this case, export of the carpets from Iran violated Iranian revenue and export controls. The court rejected the enforcement of the award as it was based on a contract to commit acts of smuggling in Iran and hence enforcement of the award was refused as it found to be contrary to English public policy.

⁴⁴ [2012] EWCA Civ 855, at P 151.

⁴⁵ (2000) Q.B. 288.

⁴⁶ (1999) 2 Lloyd’s Rep. 222 (Q.B).

⁴⁷ (1987) 2Lloyd’ Rep. 246.

⁴⁸ [1999] Q.B. 785.

US Courts

The public policy defence, under Article V(2) of the Convention, has been narrowly construed by American courts and has not met with much success.⁴⁹ In the United States, courts find that “enforcement of foreign arbitral awards may be denied [under Article V (2)(b)] only where enforcement would violate the forum state’s most basic notions of morality and justice.”⁵⁰ However, some jurisdictions have interpreted the exception broadly to deny enforcement to otherwise valid awards.⁵¹

In *Parsons & Whittenmore Overseas Co. v. Societe Generale de l’ Industrie du Papier (RATKA)*,⁵² Parsons argued that enforcing the award would violate the public policy of the United States. The court held that enforcement of foreign arbitral awards may be denied on the basis only where enforcement would violate the forum state’s most basic notions of morality and justice. The public policy exception is unavailable in situations where the award’s recognition and enforcement are merely contrary to the forum state’s “national political interests.”

In *Steel Corp. of the Philippines v. Int’l Steel Servs.*,⁵³ it was held that the enforcement of foreign arbitral awards may be denied only where enforcement would violate the forum state’s most basic notions of morality and justice. In *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*,⁵⁴ the court held that “arbitral awards are unenforceable on grounds that they are violative of public policy only when the award violates some ‘explicit public policy’ that is ‘well-defined and dominant, [and is] ascertained by reference to the laws and legal precedents and not from general consideration of supposed public interests.”

In *Europcar Italia S.p.A. v. Maiellano Tours, Inc.*,⁵⁵ it was held that article V(2)(b) must be “construed very narrowly” to encompass only those circumstances “where enforcement would violate our most basic notions

⁴⁹ See Jay R. Sever, supra note 20.

⁵⁰ The American Review of International Arbitration, Center for International Commercial and Investment Arbitration, Columbia Law School, 2016/Vol. 27, No. 1, at 68.

⁵¹ See Claudia T. Salomon and J.P. Duffy, supra note 18.

⁵² 508 F.2d 969 (2d Cir. 1974).

⁵³ 354 F. App’x 689, 694 (3d Cir. 2009).

⁵⁴ 141 F.3d 1434, 1445 (11th Cir.1998).

⁵⁵ 156 F.3d 310, 315 (2d Cir.1998).

of morality and justice. “In *Sung Hwan Co. v. Rite Aid Corporation*,⁵⁶ the New York Court of Appeals held that a foreign judgment does not run afoul of New York public policy unless it is “inherently vicious, wicked or immoral, and shocking to the prevailing moral sense.

In *W.R. Grace & Co. v. Local Union*,⁵⁷ held that a public policy cannot be derived from “general considerations of supposed public interest,” but must be based upon explicit and clearly-defined “laws and legal precedents. “In *Chevron Corp. v. Republic of Ecuador*,⁵⁸ the U.S. court held that “only where enforcement would violate the forum state’s most basic notions of morality and justice,” the court enforced the award, finding that the threshold for refusing the enforcement of arbitral awards on public policy grounds was “extraordinarily high” and “extremely narrow.”

In *Termorio S.a.E.s.P. and Leaseco Group, LLC., Appellants v. Electranta S.p., et. al.*,⁵⁹ the court also held that a U.S. court may enforce an otherwise annulled arbitral award if there was evidence that the nullification proceedings or judgment are “repugnant to fundamental notions of what is decent and just in the United States”.⁶⁰ In *American Construction Machinery & Equipment Corporation Ltd. v. Mechanised Construction of Pakistan Ltd.*,⁶¹ the United States District Court, S.D. New York enforced the award in spite of the fact that the Pakistani Court declared both the arbitration clause and the ICC arbitral award invalid. The court held that in fact, public policy would be violated if the Court declined to confirm the award. Similarly, in *re Arbitration between Chromalloy Aeroservices v. Arab Republic of Egypt*,⁶² the U.S. Court enforced the award annulled by the Cairo Court of Appeals. The US District Court found that the arbitral award was proper as a matter of U.S. law, recognizing that the decision of the Egyptian court would

violate United States public policy in favor of final and binding arbitration of commercial disputes.

The US Court in *Sonatrach (Algeria) v Distrigas (United States District Council)*,⁶³ suggested that public policy defences should be construed narrowly, because in an increasingly interconnected world, parties should be able to freely negotiate internationally recognized and binding agreements.⁶⁴ In *Mitsubishi Motor Corporation v. Soler Chrysler-Plymouth Inc.*,⁶⁵ the United States Supreme court ordered arbitration in this case. Mitsubishi concerned the arbitrability of federal antitrust claims. Although American courts traditionally had refused to allow the arbitration of such claims, the Mitsubishi court believed it was “necessary for national courts to subordinate domestic notions of arbitrability to the international policy favouring commercial arbitration.”⁶⁶

In *Northrop Corporation. v. Triad International Marketing S. A.*,⁶⁷ the Ninth Circuit Court held that refusal to enforce an award of commissions relating to arms shipments to Saudi Arabia, which violated both Californian and U.S. public policy. The court chose to enforce the award in spite of the argument that the contract to pay commissions was illegal in the place of performance. The court narrowly construed the public policy defence and enforced the arbitral award.

In *KarahaBodas Co.,(KBC) L.L.C., v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (“Pertamina”)*,⁶⁸ the award was annulled by Indonesian court, however, the U.S. Court of Appeals for the Fifth Circuit affirmed the Texas district court’s summary judgment decision enforcing the award and relied on the law of *situs*, which in KBC’s case was Switzerland. In Hong Kong, Singapore, Canada, Texas, and New York, enforcing courts allowed KBC’s execution on Pertamina’s assets to proceed.⁶⁹

⁵⁶ 817 N.Y.S. 2d 600, 603 (2006).

⁵⁷ 749, 461 U.S. 757 (U.S. S.Ct. 1983).

⁵⁸ 949 F. Supp. 3d 57, 61 (D.D.C 2013).

⁵⁹ 487 F.3d 928 (D.C. Cir. 2007).

⁶⁰ <http://arbitrationblog.kluwerarbitration.com/author/john-m-barkett/>.

⁶¹ 659 F. Supp 426 (SDNY, 1987).

⁶² Case no. 94-2339, United States, U.S. District Court, District of Columbia, 31 July 1996, available at http://newyorkconvention1958.org/index.php?lvl=notice_display&id=1139.

⁶³ 80 BR 606 (Massachusetts 1987).

⁶⁴ See Dr. ChrispasNyombi and Dr. KonstantinosSiliafis, supra note 5.

⁶⁵ 473 US 614 (1985).

⁶⁶ See Mark L. Movsesian, supra note 35.

⁶⁷ 811 F.2d 1265 (9th Cir. 1987).

⁶⁸ U.S. Court of Appeals, Fifth Circuit, decided on March 23, 2004.

⁶⁹ Noah Rubins, *the Enforcement and Annulment of International Arbitration Awards in Indonesia*, 20 Am. U. Int’l L. Rev. 359 (2005).

In the following cases, the US Courts refused to enforce the awards. Furthermore, in some cases, courts accepted public policy defence with some limitations:⁷⁰ In *Matusевич v. Telnikoff*,⁷¹ the court refused to enforce a British libel judgment on the grounds that, to do so would be in violation of public policy.⁷² In *Victrix S.S. Company, S.A. v. Salen Dry Cargo A.B.*,⁷³ the federal court of appeals refused to enforce London arbitration award on the ground that it would conflict with the public policy of the United States.

In *Laminions-Trefilerias-Cablerias de Lens, S.A. v. Southwire Company*,⁷⁴ the court ruled that imposition of excess interest rates, even though in accordance with French Foreign law, violated applicable United States public policy against the imposition of penal interest rates. The court enforced the award so far as the application of the French interest rate, it refused to enforce the additional 5% interest. In *Thomas v. Carnival Corporation*,⁷⁵ the court partially invalidated the arbitration clause under Article V(2)(b) of the New York Convention for violating American “public policy”. The Eleventh Circuit held that an arbitration clause “null and void” which provided for disputes to be resolved under Panamanian law because enforcement of the clause would cause the plaintiff, a seaman, to forfeit his right to seek a remedy under the Seaman’s Wage Act.

Case Law from other Countries on Interpretation on Term ‘Public Policy’

The decisions from different jurisdictions show that the courts have restricted the scope of public policy exception set forth in Article V (2) (b) of the New York Convention by considering the validity of award according to the public policy of place of enforcement and not of any other place. In large extent, the courts interpreted the

⁷⁰ *Laminions-Trefilerias-Cablerias de Lens, S.A. v. Southwire Company* [484 F. Supp. 1063 (N.D. Ga. 1980).

⁷¹ 877 F. Supp. 1 (D.D.C. 1995).

⁷² J. Noelle Hicks, Andrew P. Vance Memorial Writing Competition Winner Facilitating International Trade: *The U.S. Needs Federal Legislation Governing the Enforcement of Foreign Judgments*, 28 Brooklyn J. Int’l L. 155 (2002).

⁷³ 825 F.2d 709 (2d Cir. 1987).

⁷⁴ 484 F. Supp. 1063 (N.D. Ga. 1980).

⁷⁵ 573 F.3d 1113 (11th Cir 2009).

term ‘public policy’ narrowly and enforced the foreign arbitral awards.

Argentina

The Argentinian Federal Supreme Court in *Jose Cartellone Construcciones Civiles SA v. Hidroelectrica Norpatagonica SA o Hidronor SA* (“*Cartellone*”),⁷⁶ held that granting compound interest, the arbitral tribunal imposed an excessive burden on the award-debtor incompatible with Argentinian public policy, therefore, annulled the award.

Australia

The Federal Court of Australia in *Traxys Europe S.A. v. Balaji Coke Industry Pvt Ltd.*,⁷⁷ held that “it is only those aspects of public policy that go to the fundamental, core questions of morality and justice in [the] jurisdiction [where enforcement is sought] which enliven this particular statutory exception to enforcement.”⁷⁸

Austria

The Supreme Court of Austria in *Case 3Ob221/04b, 26*,⁷⁹ held that it is for the Austrian courts to decide “whether the arbitral award is irreconcilable with the fundamental principles of the Austrian legal system because it is based on a foreign legal principle which is totally irreconcilable with the domestic legal system.”⁸⁰

Brazil

In *Keytrade AG v. Fertilizantes Industria e Comercio de Fertilizantes* (“*Keytrade*”),⁸¹ the award debtor opposed the recognition of the award on the ground that the granting compound

⁷⁶ Corte Suprema de Justicia de la Nacion [CSJN] [National Supreme Court of Justice], 8/8/2007.

⁷⁷ 23 March 2012, [2012] FCA 276.

⁷⁸ See UNCITRAL Secretariat Guide, supra note 32, at 241.

⁷⁹ January 2005, XXX Y.B. COM. ARB. 421(2005), at 427, para. 15.

⁸⁰ Settlement of commercial disputes, UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

⁸¹ Superior Tribunal de Justiça, Sentença Estrangeira Contestada No 4024/EX (2010/0073632-7), Rel. Min. Nancy Andrighi.

interest violates the Brazilian law which forbids usury. The Brazilian court rejected the argument and held that contradiction with Brazilian substantive law is not enough to trigger the public policy exception, therefore, the award does not violate the fundamental values of the Brazilian legal system.

Canada

The Canadian court in *Canada v. S.D. Myers Inc.*,⁸² observed that 'Public policy' does not refer to the political position or an international position of Canada but refers to 'fundamental notions and principles of justice.'⁸³

Chile

The Chilean court in *PublicisGroupe Holdings B.V. c. Arbitro Manuel Jose Vial*,⁸⁴ held that the public policy should be interpreted restrictively and limited only to the fundamental rules of the State. In *Vergara Varas v. Costa Ramirez* ("Vergara Varas"), [Corte de Apelaciones [C. Apel.] (court of appeals),⁸⁵ the Chilean court held that omission of Chilean rules of Civil Procedure was not a violation of Chilean public policy. The public policy defence should be granted only when the most fundamental legal principles of Chilean law are infringed, as when the arbitrator violates procedural equality between the parties, due process or is involved in fraud or another form of corruption.

China

The Supreme Court of China in *Hemofarm DD, MAG International Trading Company v. Jinan Yongning Pharmaceutical Co., Ltd.*,⁸⁶ held that according to Articles V(1)(c) and Article V(2)(b) of the New York Convention, recognition and enforcement of the ICC International Court of Arbitration Award 13464/MS/JB/JEM should be refused

because the ICC Award is in violation of China's judicial sovereignty and the jurisdiction of its judiciary.

Colombia

The Colombian Supreme Court in *Petrotesting Colombia S.A.Y Southeast Investment Corporation v. Ross Energy S.A.* ("Petrotesting"),⁸⁷ held that public policy exception should cover only violations to international public policy, a concept different from the imperative norms of domestic law.

France

France has a highly developed and comprehensive arbitration statute that addresses domestic and international arbitration separately. In general, France has an articulated public policy and arbitrability law which restricts enforcement and arbitration, if violations are proven.⁸⁸ In *Société Thales Air Defense v. GIE Euromissiles et al.*,⁸⁹ the French Court of Appeals held that the violation of the public policy should be justifiable if it is obvious "flagrant, effective and real". In *SocieteHilmarton v. OTV (a French Company)*,⁹⁰ the French Supreme Court enforced the ICC award even though this award had been vacated by the Swiss Supreme Court. This award was set aside by the Swiss Supreme Court based on arbitrability due to its contravention of the Algerian Anti-Corruption Law.⁹¹

Germany

According to the German Court decisions, the recognition of a foreign arbitral award can only be denied if the arbitral procedure suffers from a grave defect that touches the foundation of the State and economic functions.⁹² A mere violation of the substantive or procedural law applied by the arbitral tribunal is not sufficient to constitute

⁸² 2004 3 F.C. 368.

⁸³ Professor Frederic Bachand, *Recent Developments on Grounds for Annulment and non-enforcement of international arbitral awards in Canada: Report to the NAFTA 2022 Committee*, 13 Sw. J.L. & Trade Am. 107 (2006).

⁸⁴ At 395[Corte de Apelaciones [C. Apel.] (court of appeals), 4 abril2009][Rol No. 9134-2007, 4 August 2009.

⁸⁵ 9 September 2013.

⁸⁶ 2008 MIN SI TA ZI NO. 11.

⁸⁷ Corte Suprema de Justicia [C.S.J.] (Supreme Court), 27 julio 2011] available at http://newyorkconvention1958.org/index.php?lvl=notice_display&id=504.

⁸⁸ See Jay R. Sever, supra note 20.

⁸⁹ Feb. 5. 2003 (2004) Review of Arbitration No 1, 94.

⁹⁰ Year Book Commercial Arbitration 1995 – Volume XX 663-65.

⁹¹ See Fifi Junita, supra note 37, at 65.

⁹² Judgment of 15 May 1986, XXII Y.B. Commercial Arbitration, 489, 490 (*German Bundesgerichtshof*).

such violation.⁹³ In *case no. 4 Z Sch 17/03*⁹⁴ the Bavarian Highest Regional Court (Bavarian Supreme Court) denied enforcement pursuant to Article V (2) (b) of the New York Convention and held that even under the less stringent requirements of international public policy, the concealment of a settlement agreement constitutes a gross violation of the basic principles of German law.

India

According to the Indian Arbitration Act, 1996 the enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes proof to the court that the enforcement of the award would be contrary to the public policy of India.⁹⁵ In *Tamil Nadu Electricity Board v. ST-CMS Electric Co. Private Ltd.*,⁹⁶ the court held that for the contract to be contrary to public policy it must be unlawful in the country where it has to be performed according to its express or implied terms. In *Renusager Power Co. Ltd. VeneralElectric Co.*,⁹⁷ the Supreme Court of India held that merely a violation of Indian laws would not suffice to attract the bar of public policy in the International arbitration context. The illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that the award is against the public policy. Award could also be set aside on the grounds of public policy, if it is so unfair and unreasonable that it shocks the conscience of the court.

In *Oil & Natural Gas Corp. (ONGC) v. Saw Pipes Ltd.*,⁹⁸ the Supreme Court of India, held that public policy of India has been defined to include- (a) the fundamental policy of India; or (b) the interests of India; or (c) justice or morality; or (d) in addition, if it is patently illegal. In *Venture Global Engineering v Satyam Computer Services*,⁹⁹ the

⁹³ Judgment of 12 July 1990, 1990 NJW 3210, 3211 (*German Bundesgerichtshof*).

⁹⁴ Germany Bayerisches Osberstes Landesgericht (Bavarian Highest Regional Court) Germany, 20 November 2003, available at http://newyorkconvention1958.org/index.php?lvl=notice_display&d=271.

⁹⁵ Article 48 (2)(b).

⁹⁶ [2007] EWHC 1713 (Comm.).

⁹⁷ AIR 1994 SC 860.

⁹⁸ 2003 (5) SCC 705.

⁹⁹ (2008) S.C.A.L.E. 214.

Supreme Court of India held that the losing party could bring an independent action in India to set aside a foreign arbitral award on the expanded grounds of public policy as set out in the case of *Saw Pipes*.¹⁰⁰ In *Penn Racquet Sports v. Mayor International Ltd.*¹⁰¹ the Delhi High Court refused to apply *Satyam case*¹⁰² and held that the award was not contrary to the public policy of India. In reaching its decision, the Indian court held that the ground of public policy for the purposes of enforcement of foreign awards should be interpreted narrowly.¹⁰³

In *ONGC Ltd. v. Western Geco International (GECO) Ltd.*,¹⁰⁴,¹⁰⁵ the Supreme Court of India considered the ambit of “public policy” under Section 34 of the Arbitration and Conciliation Act, 1996. The Court held that if the arbitrators failed to make an inference which should have been made, or have made a *prima facie* wrong inference, then the court may interfere with such an award and make modifications.¹⁰⁶

Indonesia

The Indonesian court in *Sikinos Maritime Ltd. v. PD Perdata Lot*,¹⁰⁷ refused to enforce the award because the arbitration agreement violates the Indonesian public policy.

Italy

The Court of Appeal of Milan (Italy) in *Allsop Automatic Inc. v. Tecnoskisc*,¹⁰⁸ stated that public policy refers to

¹⁰⁰ Sameer Sattar, *Enforcement of Arbitral Awards and Public Policy: Same Concept, different Approach?* page 11, available at <https://www.employmentlawalliance.com/Templates/media/files/Misc%20Documents/Enforcement-of-Arbitral-Awards-Public-Policy.pdf>.

¹⁰¹ 2011 (122) DRJ 117.

¹⁰² *Venture Global Engineering v Satyam Computer Services* (2008) S.C.A.L.E. 214.

¹⁰³ See Sameer Sattar, *supra* note 100, at 11.

¹⁰⁴ (2014) 9 SCC 263.

¹⁰⁵ (2014) 9 SCC 263.

¹⁰⁶ Arthad Kurlekar, Kluwer Arbitration Blog, January 7, 2015, available at <http://arbitrationblog.kluwerarbitration.com/2015/01/07/ongc-v-western-geco-a-new-impediment-in-indian-arbitration/>.

¹⁰⁷ Application for exequatur of international arbitration No. 3 Pen.Ex'r/Art.Int/Pdt/1992, Apr. 6, 1994.

¹⁰⁸ 4 December 1992, XXII Y.B. Com. Arb. 725.

“a body of universal principles shared by nations of the same civilization, aiming at the protection of fundamental human rights, often embodied in international declarations or conventions.”¹⁰⁹

Korea

According to a decision from Korean court, the basic tenet of Article V (2)(b) is to protect the fundamental moral beliefs and social order of the country where recognition and enforcement of the award is sought from being harmed by such recognition and enforcement.¹¹⁰

Singapore

The Singapore courts narrowly interpreted the word public policy. The Singapore High Court in *AJU v AJT*,¹¹¹ set aside the award on the basis that it was contrary to public policy of Singapore because it enforced an agreement that was illegal and unenforceable in Thailand. The Singapore Court of Appeal overturned the High Court’s decision and held that even if an arbitral tribunal’s findings of law or fact are wrong, such errors would not *per se* engage the public policy of Singapore.

In *PT AsuransiJasa Indonesia (Persero) v Dexia Bank SA*,¹¹² the Court of Appeal held that although the concept of public policy of the State is not defined in the Act or the Model Law, the general consensus of judicial and expert opinion is that public policy under the Act encompasses a narrow scope. In our view, it should only operate in instances where the upholding of an arbitral award would “shock the conscience”. In *re arbitration between Hainan Machinery Import and Export Corp and Donald & McArthur Pte Ltd*,¹¹³ the court held that the principle of comity of nations required that the awards of foreign arbitration tribunals be given due deference and be enforced unless exceptional circumstances existed. As a nation that aspired to be an international arbitration centre, Singapore must

¹⁰⁹ See UNCITRAL Secretariat Guide, supra note 32, at 244.

¹¹⁰ Judgment of 14 February 1995, *Adviso NV v. Korea Overseas Construction Corporation*, XXI Y.B. Commercial Arbitration 612, 615 (Korean S. Ct.) (1996).

¹¹¹ [2011] SGCA 41.

¹¹² [2007] 1 SLR 597; [2006] SGCA 41.

¹¹³ [1995] SGHC 232.

recognize foreign awards if it expected its own awards to be recognized abroad.

Switzerland

The Swiss court in *K.S. AG v C.C. SA*,¹¹⁴ held that the Swiss public policy defence has a more limited scope in the context of proceedings for the recognition and enforcement of foreign arbitral awards than in proceedings before a Swiss court deciding on the merits. The Swiss Federal Tribunal in *Inter Maritime Management SA v. Russin & Vecchi*,¹¹⁵ held that the merits of the award cannot be reviewed under the cover of public policy. In *X S.p.A. v. Y S.r.l.*,¹¹⁶ the Swiss Federal Tribunal held that an award contravenes public policy “if it disregards essential and widely recognized values which, according to the conceptions prevailing in Switzerland, should form the basis of any legal order.”¹¹⁷

Zimbabwe

The Harare High Court in *Zimbabwe Electricity Supply Commission v. Genius Joel Maposa*,¹¹⁸ stated that infringement of public policy can constitute corruption, fraud, bribery and serious procedural irregularities.

European Court of Justice

Since 1997 the ECJ and national courts of EU Member States have gradually built a body of case law that undermines the certainty, finality, and portability of international commercial arbitration agreements through increasingly broad reliance on the public policy exception of the New York Convention.¹¹⁹

¹¹⁴ (1995) XX Year Book commercial Arbitration 762.

¹¹⁵ XXII Year Book Commercial Arbitration, 789, 796 (1995).

¹¹⁶ Federal Tribunal, Switzerland, 8 March 2006, *Arrets du Tribunal Federal* (2006) 132 III 389.

¹¹⁷ See UNCITRAL Secretariat Guide, supra note 32, at 244.

¹¹⁸ Zimbabwe: Harare High Court (Judge Devittie); Judgment No. HH-231-98 29 March and 9 December 1998, for details see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V99/892/77/PDF/V9989277.pdf?OpenElement>.

¹¹⁹ Allen B. Green and Josh Weiss, *Public Policy and International Arbitration in the European Union*, 22 *Am. Rev. Int’l Arb.* 661 (2011).

Analysis of Judicial Decisions from Different Jurisdictions

Although different jurisdictions define public policy differently, case law tends to refer to a public policy basis for refusing recognition and enforcement of an award under article V (2)(b) of the New York Convention when the core values of a legal system have been deviated from.¹²⁰ The public policy defence in enforcement proceedings emphasizes the public interest and not just the interests of the disputing parties.¹²¹

Despite the potential expansive and unruly character of “public policy”, courts in most developed jurisdictions have been very reluctant to invoke the exception to deny recognition to international arbitral awards.¹²² Contracting States should be permitted to invoke Article V (2)(b) s public policy defence only exceptionally, in order to safeguard fundamental, mandatory policies, articulated in legislative or judicial instruments, which are not contrary to the Convention’s basic purposes or to developing state practice under the Convention.¹²³ The New York Convention should remove control over awards from the country of origin. To allay the concerns of those wary of arbitration, the New York Convention should vest sole annulment power in the country whose law the parties chose to govern the dispute.¹²⁴ The seat of arbitration would be in a neutral state.¹²⁵

In this context, one must also realize that Article V (2) of the Convention reduces the application of the public policy limitation in two ways: First, its introductory sentence, by the word “may”, permits, but does not mandate refusal and thus gives the court, discretion in this regard. And secondly, its paragraph (b) requires that not only the award as such, but its recognition and enforcement would be contrary to public policy.¹²⁶

The study of judicial decisions from different jurisdictions suggest that the non-recognition of foreign arbitral awards under Article V (2)(b) of the New York Convention must be based on international public policy rather than on local public policy. The courts refused to enforce the awards only on certain well founded grounds, such as terrorism, drug trafficking, corruption, fraud;¹²⁷ violates fundamental policies of the state;¹²⁸ violates public policy of a foreign state;¹²⁹ violates the forum state’s most basic notions of morality and justice;¹³⁰ decision is irreconcilable with the domestic legal system;¹³¹ violates the fundamental values of domestic legal system;¹³² the award is so unfair and unreasonable that it shocks the conscience of the court;¹³³ violates fundamental values of the domestic legal system;¹³⁴ or if it disregards essential and widely recognized values.¹³⁵

4. CONCLUSION

The New York Convention provides effective method of recognition and enforcement of foreign arbitral awards. The New York Convention allows a court to refuse enforcement of an award on its own motion, if the enforcement of the award would be contrary to the public policy of the country where the enforcement is sought. This provision permits a contracting State to

¹²⁷ *Westacre Investment Inc. v. Jugoimport-SPDR Holding Co. Ltd.*, [1999] Q.B. 740, 757 (Comm. Ct.) (Eng.).

¹²⁸ *Deutsche Schachtbau-und Tiefbohrgesellschaft M.B.H (D.S.T.) v. Ras al., Khaimab National Oil Co (Rakoil)*, (1987) 2Lloyd’ Rep. 246.

¹²⁹ *Soleimany v. Soleimany*, [1999] Q.B. 785.

¹³⁰ *Parsons & Whittenmore Overseas Co. v. Societe Generale de l’Industrie du Papier (RATKA)*, 508 F.2d 969 (2d Cir. 1974).

¹³¹ *Case 30b221/04b, 26*, Settlement of commercial disputes, UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

¹³² *Keytrade AG v. Fertilizantes Industria e Comercio de Fertilizantes (“Keytrade”)*, Superior Tribunal de Justiça, Sentença Estrangeira Contestada No 4024/EX (2010/0073632-7), Rel. Min. Nancy Andrighi.

¹³³ *Renusager Power Co. Ltd. Veneral Electric Co*, AIR 1994 SC 860.

¹³⁴ Judgment of the OGH of 24 August 2011, 3 Ob 65/11x.

¹³⁵ *X S.p.A. v. Y S.r.l.* Federal Tribunal, Switzerland, 8 March 2006, Arrêts du Tribunal Federal (2006) 132 III 389.

¹²⁰ See UNCITRAL Secretariat Guide, supra note 32, at 240.

¹²¹ See Frederick A. Acomb and Nicholas J. Jones, supra note 1.

¹²² See Gary B. Born, supra note 16, at 2838.

¹²³ See Gary B. Born, supra note 16, at 2839.

¹²⁴ See Kenneth R. Davis, supra note 124.

¹²⁵ See Hans Smit, supra note 24.

¹²⁶ Karl-Heinz Böckstiegel, *Public Policy as a Limit to Arbitration and its Enforcement*, *IBA Journal of Dispute resolution*, Special Issue 2008, The New York.

rely on its own national public policy for recognition and enforcement of foreign arbitral awards. The New York Convention gives the discretionary power to the competent authority to refuse the recognition and enforcement. The discretionary nature in article V of the Convention suggests that it must be used for the enforcement bias provided in article III of the New York Convention. The better option for the national courts, in order to advance the international arbitration, is to implement the pro arbitration mandate of the New York Convention, not to expand the scope of Article V(2)(b) and limit it to international public policy.

Acknowledgement

The author is very thankful to all the associated personnel in any reference that contributed in/for the purpose of this research.

Conflict of Interest

The research has no conflict of interest and is not funded through any source.

REFERENCES

Books

- Gary B. Born, *International Arbitration Cases and Materials*, 2nd edition, 2015, Kluwer Law International BV, The Netherlands, page 1250.
- Gary B. Born, *International Commercial Arbitration*, Kluwer Law International, Volume II, 2009, The Netherlands, page 2827.

Journals

- Claudia T. Salomon and J.P. Duffy, *Enforcement Begins when the Arbitration Clause is Drafted*, 22 Am. Rev. Int'l Arb. 271 (2011).
- Christopher S. Gibson, 113 *Penn St. L. Rev.* 1227 (Spring, 2009).
- Dr. Chrispas Nyombi and Dr. Konstantinos Siliadis, *Rationalizing the Defences to Enforcement under the New York Convention 1958*, 17 *Asper Rev. Int'l Bus. & Trade L.* 111, (2017).
- Fifi Junita, *Public Policy Exception in International Commercial Arbitration-Promoting Uniform Model Norms*, available at <https://poseidon01.ssrn.com/delivery.php?>, at 47.

- Frederick A. Acomb and Nicholas J. Jones, *the Insider Adversary in International Arbitration*, 27 Am. Rev. Int'l Arb. 63 (2016).
- Hans Smit, *Comments on Public Policy in International Arbitration*, 13 Am. Rev. Int'l Arb. 65 (2002).
- J. Noelle Hicks, Andrew P. Vance Memorial Writing Competition Winner Facilitating International Trade: *The U.S. Needs Federal Legislation Governing the Enforcement of Foreign Judgments*, 28 Brooklyn J. Int'l L. 155 (2002).
- James D. Fry, *Désordre Public International under the New York Convention: Wither Truly International Public Policy*, 8 CHIN. J. INT'L. 81, 92 (2009), available at <http://chinesejil.oxfordjournals.org/content/8/1/81.full.pdf>.
- Jay R. Sever, *The Relaxation of Inarbitrability and Public Policy checks on U.S. and Foreign Arbitration: Arbitration out of control?* 65 Tul. L. Rev. 1661 (1991).
- Jeffrey H. Dasteel, *Is it Time to Awaken the New York Convention's Dormant General Reciprocity Clause?* 26 Am. Rev. Int'l Arb. 539 (2015).
- 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 (2002).
- Mark A. Buchanan, *Public Policy and International Commercial Arbitration*, 26 AM. BUS. L.J. 511, 513 (1988).
- Mark L. Movsesian, *International Commercial Arbitration and International Courts*, 18 Duke J. Com. & Int'l L. 423 (2008).
- Maxi Scherer, *Effects of International Judgments Relating to Awards*, 43 Pepp. L. Rev. 637 (2016).
- Noah Rubins, *the Enforcement and Annulment of International Arbitration Awards in Indonesia*, 20 Am. U. Int'l L. Rev. 359 (2005).
- Pierre Mayer & Audley Sheppard, *Final Report on Public Policy as a Bar to Enforcement of International Arbitral Awards*, 19 Arb. Int'l. 249, 250 (2003).
- Professor Frederic Bachand, *Recent Developments on Grounds for Annulment and non-enforcement of international arbitral awards in Canada: Report to the NAFTA 2022 Committee*, 13 Sw. J.L. & Trade Am. 107 (2006).
- Robert D. Argen, *Ending Blind Spot Justice: Broadening the Transparency Trend in International Arbitration*, 40 Brooklyn J. Int'l L. 207 (2014).
- Tom Childs, *Enforcement of International Commercial Arbitral Awards: Should a party be allowed Multiple Bites at the Apple?* 26 Am. Rev. Int'l Arb. 269 (2015).

- William Wang, *International Arbitration: The Need for Uniform Interim Measures of Relief*, 28 Brooklyn J. Int'l L. 1059 (2003).
- William W. Park, *The Internationalization of Law and legal Practice: National Law and Commercial Justice: Safeguarding Procedural integrity in International Arbitration*, 63 Tul. L. Rev. 647 (February 1989).
- Yaraslau Kryvoi and Dmitry Davydenko, *Consent Awards in International Arbitration: From Settlement to Enforcement*, 40 Brooklyn J. Int'l L. 827 (2015).
- Deutsche Schachtbau-und Tiefbohrgesellschaft M.B.H (D.S.T.) v. Ras al, Khaimah National Oil Co (Rakoil), (1987) 2Lloyd' Rep. 246.
- Europcar Italia S.p.A. v. Maiellano Tours, Inc., 156 F.3d 310, 315 (2d Cir.1998).
- Hemofarm DD, MAG International Trading Company v. Jinan Yongning Pharmaceutical Co., Ltd., 2008 MIN SI TA ZI NO. 11.
- In re Arbitration between Chromalloy Aeroservices v. Arab Republic of Egypt, Case no. 94-2339, United States, U.S. District Court, District of Columbia, 31 July 1996, available at http://newyorkconvention1958.org/index.php?lvl=notice_display&id=1139.

Reports

- Report on the Public Policy Exception in the New York Convention, October 2015, available at International Bar Association at http://www.ibanet.org/LPD/Dispute_Resolution_Section/Arbitration/Default.aspx.
- UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) 2016 Edition, available at http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/2016_Guide_on_the_Convention.pdf.
- IBA Subcommittee on Recognition and Enforcement of Arbitral Awards, Report on the Public Policy Exception in the New York Convention, October 2015, available at <file:///C:/Users/CBE/Downloads/Report%20on%20the%20Public%20Policy%20Exception%20in%20the%20New%20York%20Convention%20-%202015.pdf>.
- In re arbitration between Hainan Machinery Import and Export Corp and Donald &McArthyPte Ltd, [1995] SGHC 232.
- Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1445 (11th Cir.1998).
- Inter Maritime Management SA v. Russin&Vecchi, XXII Year Book Commercial Arbitration, 789, 796 (1995).
- Jose Cartellone Construcciones Civiles SA v. Hidroelectrica Norpatagonica SA o Hidronor SA ("Cartellone"), Corte Suprema de Justicia de la Nacion [CSJN] [National Supreme Court of Justice], 8/8/2007.
- KarahaBodas Co., (KBC) L.L.C., v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara ("Pertamina"), U.S. Court of Appeals, Fifth Circuit, decided on March 23, 2004.

Cases

- AJU v AJT, [2011] SGCA 41.
- Allsop Automatic Inc. v. Tecnoskisnc, 4 December 1992, XXII Y.B. Com. Arb. 725.
- American Construction Machinery & Equipment Corporation Ltd. v Mechanised Construction of Pakistan Ltd., 659 F. Supp 426 (SDNY, 1987).
- Case 3Ob221/04b, 26, January 2005, XXX Y.B. COM. ARB. 421(2005), at 427, para. 15.
- Case no. 4 Z Sch 17/03, Germany Bayerisches Osberstes Landesgericht (Bavarian Highest Regional Court) Germany, 20 November 2003, available at http://newyorkconvention1958.org/index.php?lvl=notice_display&d=271.
- Chevron Corp. v. Republic of Ecuador, 949 F. Supp. 3d 57, 61 (D.D.C 2013).
- Keytrade AG v. FerticitrusIndustria e Comercio de Fertilizantes ("Keytrade"), Superior Tribunal de Justiça, SentençaEstrangeiraContestada No 4024/EX (2010/0073632-7), Rel. Min. Nancy Andrighi.
- K.S. AG v C.C. SA, (1995) XX Year Book commercial Arbitration 762.
- Laminions-Trefileries-Cableries de Lens, S.A. v. Southwire Company, 484 F. Supp. 1063 (N.D. Ga. 1980).
- Mitsubishi Motor Corporation v. Soler Chrysler-Plymouth Inc, 473 US 614 (1985).
- Northrop Corporation. v. Triad International Marketing S. A, 811 F.2d 1265 (9th Cir. 1987).
- Oil & Natural Gas Corp. (ONGC) v. Saw Pipes Ltd., 2003 (5) SCC 705.
- Omnium de Traitement et. de Valorisation (OTV) S.A. v. Hilmarton, (1999) 2 Lloyd's Rep. 222 (Q.B).

- ONGC Ltd. v. Western Geco International (GECO) Ltd., (2014) 9 SCC 263.
- Parsons &Whittenmore Overseas Co. v. Societe Generale de P Industrie du Papier (RATKA), 508 F.2d 969 (2d Cir. 1974).
- Penn Racquet Sports v. Mayor International Ltd. 2011 (122) DRJ 117.
- Petrotesting Colombia S.A.Y Southeast Investment Corporation v. Ross Energy S.A. (“Petrotesting”), Corte Suprema de Justicia [C.S.J.] (Supreme Court), 27 julio 2011 available at http://newyorkconvention1958.org/index.php?lvl=notice_display&id=504.
- PT AsuransiJasa Indonesia (Persero) v Dexia Bank SA, [2007] 1 SLR 597; [2006] SGCA 41.
- PublicisGroupe Holdings B.V. c. Arbitro Manuel Jose Vial, at 395[Corte de Apelaciones [C. Apel.] (court of appeals), 4 abril2009][Rol No. 9134-2007, 4 August 2009.
- Renusager Power Co. Ltd..VeneralElecctric Co, AIR 1994 SC 860.
- Richardson v. Mellish, (1824) 2 Bing 229, 252
- Sikinos Maritime Ltd. v. PD Perdata Lot, Aplicacion for exequatur of international arbitration No. 3 Pen.Ex'r/ Art.Int/Pdt/1992, Apr. 6, 1994.
- Sung Hwan Co. v. Rite Aid Corporation, 817 N.Y.S. 2d 600, 603 (2006).
- Société Thales Air Defense v. GIE Euromissiles et. al., Feb. 5. 2003 (2004) Review of Arbitration No 1, 94.
- SocieteHilmarton v. OTV (a French Company), Year Book Commercial Arbitration 1995 – Volume XX 663-65.
- Soleimany v. Soleimany, [1999] Q.B. 785.
- Sonatrach (Algeria) v Distrigas (United States District Council), 80 BR 606 (Massachusetts 1987).
- Steel Corp. of the Philippines v. Int'l Steel Servs., 354 F. App'x 689, 694 (3d Cir. 2009).
- Superior Tribunal de Justiça, SentençaEstrangeiraContestada No 4024/EX (2010/0073632-7), Rel. Min. Nancy Andrighi.TermorioS.a.E.s.P. and Leaseco Group, LLC., Appellants v. ElectrantaS.p., et. at., 487 F.3d 928 (D.C. Cir. 2007).
- Tamil Nadu Electricity Board v. ST-CMS Electric Co. Private Ltd.,[2007] EWHC 1713 (Comm.).
- Thomas v. Carnival Corporation, 573 F.3d 1113 (11th Cir 2009).
- Traxys Europe S.A. v. Balaji Coke Industry Pvt Ltd., 23 March 2012, [2012] FCA 276.
- Venture Global Engineering v Satyam Computer Services, (2008) S.C.A.L.E. 214.
- Vergara Varas v. Costa Ramirez (“Vergara Varas”), [Corte de Apelaciones [C. Apel.] (court of appeals), 9 September 2013.
- Victrix S.S. Company, S.A. v. Salen Dry Cargo A.B., 825 F.2d 709 (2d Cir. 1987).
- W.R. Grace & Co. v. Local Union, 749, 461 U.S. 757 (U.S. S.Ct. 1983).
- Westacre Investment, Inc. v. Jugoiimport-SPDR Holdings Company Ltd., (2000) Q.B. 288.
- X S.p.A. v. Y S.r.l., Federal Tribunal, Switzerland, 8 March 2006, Arrêts du Tribunal Federal (2006) 132 III 389.
- Yukos Capital Sarl v. OJSC Rosneft Oil Company (No 2), [2012] EWCA Civ 855, at P 151.
- Zimbabwe Electricity Supply Commission v. Genius Joel Maposa, Zimbabwe: Harare High Court (Judge Devittie); Judgment No. HH-231-98 29 March and 9 December 1998, for details see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V99/892/77/PDF/V9989277.pdf?OpenElement>.