

Recognition and Enforcement of Arbitral Awards Under the International Law Framework: From the Perspective of Judicial Review Boundaries in the Implementation of the New York Convention

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Abstract

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the “New York Convention”) has established a global legal framework centered on the principle of “pro-enforcement”. Over nearly seven decades, one might expect this path to have widened with time. Yet Article V of the Convention, which enumerates the grounds for refusal, has been interpreted in widely divergent ways by judges across different jurisdictions. The truly vexing question is this: Where exactly should the line be drawn between respecting the finality of arbitral awards and safeguarding national judicial sovereignty? The Convention text offers no explicit answer, but in practice, the question is inescapable. This article proceeds along the central thread of Article V, examining the issue through four lenses: the public policy exception, the fate of annulled awards, the boundary review of arbitrability, and the new variables introduced by emerging technologies. Turning to China’s approach, this article ultimately advances three propositions - on the review boundary, replace domestic standards with “international public policy”. On annulled awards, substitute the territorial approach with an “international annulment standard”. On interpretive direction, narrow rather than expand the scope wherever possible. At bottom, the aim is to identify a workable coordination mechanism between Convention obligations and domestic judicial sovereignty.

Keywords

New York Convention, Recognition and enforcement, Judicial review, Public policy

Introduction

The 1958 New York Convention, with 172 contracting states to date, may fairly be described as the “constitution” of the international commercial arbitration community. Article III of the Convention is explicit - each Contracting State “shall recognize arbitral awards as binding and enforce them” in accordance with the principle of non-discrimination. Yet, interestingly, Article V simultaneously lays down seven exhaustive grounds for refusal. Through this simultaneous opening and narrowing, the “pro-enforcement” foundation is preserved while the instrument of “judicial supervision” is retained. The two forces thus coexist in delicate tension [1].

That said, this equilibrium is hardly stable. Article V uses the phrase “may be refused” - a single word, “may”, that opens the door to discretionary room. It is precisely this

discretionary space that has given rise to a chain of fundamental questions: How deeply may a court review a foreign award? Is the review confined to procedural matters, or can it penetrate into substantive issues? Should domestic public policy or international standards govern? These questions have clung to the convention from the very first day of its implementation, and after more than half a century, the debates continue unabated. This article takes the normative structure of Article V as its entry point. It seeks to unpack the logic of demarcating judicial review boundaries along four lines: the public policy exception, enforcement of annulled awards, arbitrability, and the impact of new technologies. Along the way, it incorporates China’s recent practice, ultimately addressing the question of how Convention obligations and national sovereignty may be coordinated.

If it can offer any insight toward improving China's review regime for foreign-related arbitration, this effort will not have been in vain.

Article V of the New York Convention: The normative framework for judicial review

The normative structure and dual review mechanism of article V

Article V first divides the grounds for refusal into two categories. Paragraph 1 enumerates five grounds for refusing enforcement of arbitral awards. They cover invalid arbitration agreements, procedural irregularities, excess jurisdiction by the tribunal, non-compliant tribunal composition or procedures, and awards lacking binding force or already being set aside. All these points must be pleaded and proved by the respondent, and the court cannot conduct ex officio review. Conversely, the two grounds under paragraph 2 - the subject matter not being capable of settlement by arbitration and enforcement being contrary to public policy - may be examined by the court sua sponte [2]. This is a rather elegant design: Procedural defects involving private interests are left for the parties to assess, while matters touching upon the fundamental legal order of a state are reserved for judicial scrutiny. Yet herein also lies the difficulty - the term "public policy" is too amorphous, inherently incapable of precise definition, and in practice serves all too readily as a wedge to pry open the review threshold. At root, why has the boundary proven so persistently elusive? This single provision may well be the fundamental cause.

The boundary between formal and substantive review

One point on which the Convention is unyielding: The enforcement court is prohibited from conducting a substantive re-examination (*révision au fond*) of a foreign award. Since Article V is exhaustive, a court may not invoke grounds beyond that list to refuse enforcement. Yet the problem does not thereby become simpler - if a court denies enforcement under the banner of "violation of public policy" has this step already crossed into the substantive domain? To be honest, there is no clean answer [3].

Sarkar and SR have raised a further layer: The very type of award also unsettles this boundary [4]. For instance, does an interim measure ordered by an emergency arbitrator qualify as an "arbitral award" within the

meaning of the Convention? By what standard should it be enforced? To date, no meaningful consensus has emerged across national practices. The result is yet another layer of ambiguity superimposed upon the boundary.

The public policy exception: Key contested issues in the judicial review boundary

The dual dimension of public policy

The public policy exception - Article V (2) (b) - is probably the most frequently invoked and most hotly contested ground in courts around the world. The Convention, for its part, offers no definition of "public policy". Charitably viewed, this silence respects the legal sovereignty of each state; less generously, it has sown the seeds for the persistent blurring of the boundary. In practice, two tiers of public policy can be differentiated. The first is domestic public policy. It covers mandatory provisions and politico-economic interests under a single state's domestic legal system. The second is international public policy. It denotes fundamental legal principles and moral benchmarks widely acknowledged worldwide. The difficulty is this: in a concrete case, which level should apply? Different countries may arrive at entirely different answers.

The International Law Association's 2002 Report took a clear stance - domestic courts should use "international public policy" as the benchmark for review rather than relying on domestic standards. The research of El Maknoui adds a further dimension: Viewed within Islamic jurisdictions, the tension between the Convention's public policy exception and Sharia compliance requirements is striking [5]. The same award may meet two entirely different fates in two different legal systems.

Public policy review in Chinese practice

Looking across national practices, the public policy exception has generally followed a path of narrow construction. Zhang and Guo provide the statistics: Between 2012 and 2022, of 203 concluded foreign award cases, only one was denied enforcement on public policy grounds. Yet in recent years, certain cases have surfaced - where the award collided with a final judgment of a Chinese court - that give a sense that the calibration between the standard of review and the Convention's pro-enforcement spirit has not yet been fully tightened.

One distinctive feature of China's approach warrants mention: The internal reporting mechanism. If an intermediate court intends to refuse enforcement of a foreign award, it must report the matter upward level by level to the Supreme People's Court and await a response before rendering its decision. This mechanism, launched in 1995, has proven broadly effective - it has significantly unified the review standard nationwide and curbed the impulse of lower courts to casually invoke public policy. The only persistent grumble concerns the non-public, non-proceduralized nature of the process. Whether transparency is sufficient remains a matter of ongoing debate.

Recognition and enforcement of annulled awards: The territorial effect debate

"May" or "shall": A grammatical quandary that spawned profound divergence

Article V (1) (e) provides that where the award has been annulled or suspended by a competent authority of the country in which, or under the law of which, it was made, the enforcement court "may refuse" recognition and enforcement. Yet when the English and French texts are placed side by side, a problem emerges - the English version says "may be refused", while the French text reads "seront refusés" (shall be refused). A one-word difference has directly spawned a prolonged tug-of-war over whether the enforcement court possesses any discretion at all.

Reasoning from the treaty system itself, Article VII (1), the "more favorable right" provision, clearly preserves a path for the enforcement court - it may apply more lenient domestic law or treaty provisions. If Article V were characterized as mandatory, Article VII would be rendered largely superfluous. This reasoning is quite robust at the level of systemic interpretation. Accordingly, the mainstream view treats Article V as a permissive provision, meaning that an enforcement court, when faced with an annulled award, does retain a measure of discretion.

The "international annulment standard" as a theoretical framework

Once discretion is acknowledged, the academic community has advanced the notion of an "international annulment standard". The idea is this: an enforcement court should not automatically accept the annulment

judgment of the seat at face value but should conduct its own assessment - whether the annulment satisfies the internationally recognized baseline of due process. If the annulment by the seat court was manifestly deformed. For example, using *ex post facto* legislation to retroactively invalidate the arbitration agreement, or elevating domestic mandatory rules into an absolute ground for annulment - then the enforcement court is entirely within its discretion to proceed with recognition of the award [6].

In analyzing Ethiopia's post-ratification enforcement regime, made a powerful observation: Under a multi-track enforcement framework, an award creditor may rely on Article VII of the Convention to select the most favorable domestic law or treaty to proceed. This design is itself an expression of the Convention's pro-enforcement spirit, and it incidentally leaves a door open for the enforcement of annulled awards. From this, one can also appreciate why the Convention has retained such vitality for nearly seven decades - openness and inclusiveness are perhaps its deepest roots.

New challenges to judicial review boundaries in the context of new technologies

Łągiewska has turned her attention to the technological frontier [7]. Blockchain, artificial intelligence, and online dispute resolution platforms are reshaping the landscape of international arbitration, and in doing so are creating new complications for the review mechanism under the New York Convention. The pressure comes from roughly three directions. First, does an arbitration clause embedded in a smart contract on the blockchain even qualify as an "agreement in writing" under Article II of the Convention? Second, do the arbitration procedures within a metaverse or a decentralized autonomous organization meet the due process benchmarks of "proper notice" and "opportunity to present one's case" required under Article V (1) (b)? Third, it is most intriguingly, does an AI-assisted or even AI-authored award qualify as an "arbitral award" within the definition of Article I of the Convention?

Sotoudeh has dug deeper into the specific issue of AI arbitrators [8]. When reading the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration alongside the New York Convention, a challenge arises

in the following scenario: a party invokes Article V to resist enforcement on the ground that “the composition of the arbitral authority was not in accordance” or that “due process was violated”. On what basis would the enforcement court conduct its review? The existing judicial review framework presupposes that the arbitrator is a human being - only human decisions lend themselves to review for reasonableness. But once the arbitrator is replaced by an algorithm, the entire established review benchmark must be rebuilt from scratch. This is not merely a tool change; it is a transformation of the entire set of rules.

China’s practice and pathways for coordination with convention obligations

Since acceding to the Convention in 1987, China has progressively constructed a review system for the recognition and enforcement of foreign awards. In terms of overall direction, the courts have consistently played the “pro-arbitration” card - between 2012 and 2022, more than ninety percent of foreign awards received full recognition and enforcement [9]. At the operational level, the Supreme People’s Court has relied on case-by-case replies, judicial policy documents, and conference minutes to refine and unify the review standards [10].

To be candid, however, certain difficulties in review practice remain unresolved. By what criterion should the nationality of an arbitral award be determined? The “seat of the arbitral institution” test and the “place of arbitration” test have been in ongoing tension. Article 100 of the 2021 Symposium Minutes did clarify that “an award rendered with Mainland China as the place of arbitration shall be deemed a foreign-related arbitral award of Mainland China”.

Yet the nature of an award rendered by a foreign arbitral institution with Mainland China as the place of arbitration remains suspended in uncertainty. Similar issues arise on the public policy front - the courts have generally maintained a tight grip, but in isolated cases, the line between domestic mandatory rules and public policy has been somewhat blurred.

Moving forward, the optimization of review boundaries may need to pursue several paths. First, clearly establish the benchmark of “international public policy” and distinguish it from domestic mandatory norms, to prevent the public policy exception from expanding through use.

Second, adopt the “international annulment standard” approach, giving courts discretionary space to examine the legitimacy of annulment judgments [11]. Third, enhance the transparency of the internal reporting mechanism and reinforce procedural safeguards, ensuring that the system retains the credibility it deserves. Fourth, closely monitor the impact of new technologies on the arbitration enforcement regime and ensure that the institutional framework responds promptly as new forms of disputes emerge.

Conclusion

Looking back, the New York Convention, with its deceptively concise and open text, has sustained the global network of arbitral award enforcement for nearly seven decades. To have come this far is no small feat. The grounds for refusal under Article V, exhaustive as they are, serve as a bulwark for the finality of arbitration and as a necessary concession to the judicial sovereignty of each state. Yet the boundary of judicial review - never explicitly drawn in the Convention text, yet unavoidable in practice - ultimately depends on whether domestic courts can strike a genuinely workable balance between the Convention’s pro-enforcement ethos and the protection of their own public policy.

China, as a major contracting party to the Convention, has carried considerable weight in the interpretation and implementation of the Convention’s spirit through its judicial practice over the years. Looking ahead, as globalization and digitalization converge, the judicial review boundary will only be pulled in more directions. To meet this challenge, the commitment to narrow construction must not be abandoned, the benchmark of international public policy must not be allowed to drift, and the trajectory of new technologies must be closely tracked. Only then might it be possible, within the international legal framework of the Convention, to carve out space for both the free movement of awards and the preservation of domestic judicial sovereignty, achieving a dynamic equilibrium. To carry the New York Convention through another seven decades - that, perhaps, is what it deserves.

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References

- [1] Kola Tafaj, F., Çinari, S. (2023) Recognition and enforcement of foreign arbitral awards in Albania. *European Business Organization Law Review*, 24(2), 677-691.
- [2] Han, P. (2011) Challenging arbitral awards: a comparative study of Chinese law, British law and UNCITRAL Model Law. *Frontiers of Law in China*, 6(3), 418-446.
- [3] Zhang, S., Guo, P. (2022) 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. *Houston Journal of International Law*, 43(3), 553-594.
- [4] Sarkar, S., SR, S. (2024) Enforcing emergency arbitral awards: global and Indian perspectives. *Liverpool Law Review*, 45, 445-469.
- [5] El Maknoui, M. E., Jadalhaq, I. M., Alqodsi, E. M. (2023) Islamic commercial arbitration and private international law: mapping controversies and exploring pathways towards greater coordination. *Humanities and Social Sciences Communications*, 10, 523.
- [6] Bahta, T. H. (2021) The ratification of the New York Convention in Ethiopia: towards efficacy and avoidance of divergent paths. *Mizan Law Review*, 15(2), 493-522.
- [7] Łagiewska, M. (2024) New technologies in international arbitration: a game-changer in dispute resolution? *International Journal for the Semiotics of Law - Revue Internationale De Sémiotique Juridique*, 37, 851-864.
- [8] François, A., Low, S. A., Sypek, E. I., Christensen, A. J., Sotoudeh, C., Beier, K. T., Scherrer, G. (2017) A brainstem-spinal cord inhibitory circuit for mechanical pain modulation by GABA and enkephalins. *Neuron*, 93(4), 822-839.
- [9] Klementyev, A. P. (2026) International commercial arbitration and over-the-counter derivatives. *Kutafin Law Review*, 13(2), 391-425.
- [10] Marzi, G., Balzano, M., Caputo, A., Pellegrini, M. (2025) Guidelines for bibliometric-systematic literature reviews: 10 steps to combine analysis, synthesis and theory development. *International Journal of Management Reviews*, 27(1), 81-103.
- [11] Zaheeruddin, M. (2023) Recognition and enforcement of annulled arbitral awards under the New York Convention 1958. *International Journal of Professional Business Review: International Journal of Professional Business Review*, 8(7), 75.