
**60 YEARS OF THE
NEW YORK CONVENTION:
LESSONS LEARNT**

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Qatar

New York Convention

- New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards - signed 10 June 1958, effective 7 June 1959
- 24 signatories. Currently 157 Contracting States (ratified/acceded/succeeded) as per NYC website (12/3/18). Notable omissions:
 - Sudan/South Sudan
 - Iraq
 - Yemen
 - Libya
 - North Korea
- More than 1750 court decisions from more than 65 countries available on NYC website on how the courts have interpreted and applied the New York Convention's provisions

New York Convention

- 16 Articles, including:
 - Scope (Article I);
 - Recognition of arbitration agreement (Article II);
 - Recognition and enforcement of arbitration awards (Article III);
 - Grounds for refusal of recognition and enforcement of arbitration awards (Article V)

Key areas of difficulty

- Arbitrator selection/bias
- Illegality/public policy developments
- Judicial awareness of arbitration - training

Institutional Rules: Arbitrators

- ICC
 - Article 11: “impartial and independent”, duty of disclosure
 - Article 14: process for challenges
- LCIA
 - Article 5: “impartial and independent”, duty of disclosure
 - Article 10: process for challenges
 - 2015 Guidance: Notes For Arbitrators, addresses (amongst other things) independence, impartiality, availability and confidentiality

Institutional Rules: Arbitrators

- ICSID Convention and Arbitration Rules
 - ICSID Convention Article 14: “relied upon to exercise independent judgment” (Spanish translation states “impartiality”)
 - ICSID Convention Article 57: Challenges to arbitrators
 - ICSID Arbitration Rules, Rule 9: process for challenges
- UNCITRAL
 - Article 11: impartiality and independence, duty of disclosure
 - Article 12: challenges to be made “if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence”

Institutional Rules: Arbitrators

- IBA Rules of Ethics for International Arbitrators (1987)
- Guidelines on Conflicts of Interest in International Arbitration (2014)
- Bar Council Information Note Regarding Barristers in International Arbitration (2015)

Recent cases

- English Courts:
 - *Cofely v Bingham and Knowles* [2016] EWHC 240
 - *W Ltd v M Sdn Bhd* [2016] EWHC 422
 - *H v L* [2017] EWHC 137 (Comm)
- ICSID:
 - *Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/12/21)

Areas of difficulty: Public Policy

- Decline to enforce based on public policy?
- International v domestic public policy
- Examples:
 - Default of a party;
 - Lack of impartiality of arbitrator;
 - Lack of reasons in award;
 - Irregularities in the arbitral procedure.
- 2002: International Law Association - “*Final Report on Public Policy as a Bar to Enforcement of International Arbitral Awards*” – recommendations in relation to public policy as a ground for refusal to enforce

ILA Report on Public Policy

- Key recommendations:
 - The finality of awards rendered in the context of international commercial arbitration should be respected save in exceptional circumstances.
 - Such exceptional circumstances may in particular be found to exist if recognition or enforcement of the international arbitral award would be against international public policy.
 - The expression "international public policy" is used to designate the body of principles and rules recognised by a State, which, by their nature, may bar the recognition or enforcement of an arbitral award rendered in the context of international commercial arbitration when recognition or enforcement of said award would entail their violation on account either of the procedure pursuant to which it was rendered (procedural international public policy) or of its contents (substantive international public policy).

ILA Report on Public Policy

- 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 organisations.
- An example of a substantive fundamental principle is prohibition of abuse of rights. An example of a procedural fundamental principle is the requirement that tribunals be impartial. An example of a public policy rule is anti-trust law. An example of an international obligation is a United Nations resolution imposing sanctions. Some rules, such as those prohibiting corruption, fall into more than one category.
- Whether the seat of the arbitration was located within the territory of the forum or abroad is not a consideration which should be taken into account by a court when assessing an award's conformity with international public policy.

Areas of difficulty: Public Policy

- 2014/2015 – IBA Subcommittee on Recognition and Enforcement of Arbitral Awards conducted a comparative study on 'public policy' as a defence to the recognition and enforcement of arbitral awards under the NYC by soliciting and receiving reports from Arbitration Committee members reporting jurisdiction by jurisdiction on the treatment of public policy by the domestic courts in the context of enforcement of foreign arbitral awards
- October 2015 – 19-page general report published (country-specific reports also made available), and covered:
 - Definition of “public policy”; and
 - Concrete manifestations of “public policy”.

Areas of difficulty:

Judicial awareness of arbitration/training

- The most successful arbitration centres are based upon the following fundamental principles:
 - Legal framework;
 - Legal community;
 - Logistics.
- In addition, a reputation for judicial integrity and expertise focused upon court support and not interference with arbitration has meant London, Paris, Geneva, Singapore and Hong Kong have occupied preeminent positions for international arbitration.
- Qatar has every potential to become a regional hub as an international dispute resolution centre with reference to these principles.