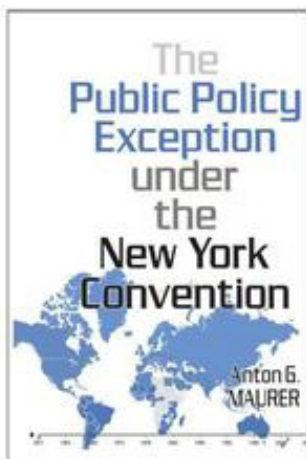


BOOK REVIEW: The Public Policy Exception Under the New York Convention

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This book is a comprehensive treatment of article V(2) (b) of the New York Convention. The public policy exception to recognition and enforcement of an arbitral award is viewed by many as the most controversial aspect of that instrument. Described variously as an “unruly horse,” an “untrustworthy guide” and “an uncertain one,” the public policy exception has led to unpredictability and inconsistency in the application of the convention, a result at odds with the convention’s intended purpose of providing ease, expedition and uniformity in support of arbitration as the mechanism for resolution of cross-border disputes. The public policy exception is accordingly a subject on which a work of this broad scope is welcome.

Maurer draws on an extensive background in international arbitration over several decades and professional involvement in disputes in over 80 jurisdictions to present a comprehensive global perspective on this critical exception to the convention.

The book is structured in five main chapters taking the reader from a background on the New York Convention to specific applications in different countries.

Following chapter one’s introduction, chapter two provides an overview of how conventions and treaties are to be interpreted under international law. The chapter reviews the relevant provisions of the Vienna Convention starting with the principle of *pacta sunt servanda* (agreements are to be kept) and discusses the accepted use of the *travaux préparatoires* (working papers) to aid in the interpretation of the text.

In chapter three, the author provides a detailed review of the negotiation of the convention and its public policy exception and discusses the various proposals made, accepted and rejected. Those who have never studied the *travaux* will be interested to read about the history of the introduction of the word “only” in article V to limit the scope of court review; the decision to use the word “may” rather than “shall” to describe the authority given to the courts in exercising their right of review to afford courts discretion to enforce an award even if one of the provisions of article V is met; and the rejection of the proposal that enforcement could be denied if the award involved a violation of any law of the state where enforcement is sought, thus limiting the scope of permissible review.

Chapter four’s analysis focuses on the import of the phrases used in the convention. Drawing upon the *travaux*, it dissects the meaning of each phrase to support the conclusion that the drafters intended that the public policy exception be narrowly construed. A discussion of the relationship between article V(1) and V(2)(b) and the circumstances in which each may be applicable follows.

In a tour de force, chapter five provides a comparative law analysis of the application of the convention in 20 jurisdictions. For each country, the discussion starts with the date of its accession to the convention and the local implementation mechanism, whether self-executing or by law. The author goes on to review local court decisions that discuss the public policy exception or refuse enforcement because of a violation of public policy.

The chapter then explores whether the country applies its views of international public policy or its own domestic public policy in applying the exception. Exhaustive footnotes to scholarly writings on the approaches of the various jurisdictions are supplied. It also provides quotations from various courts that have tried to articulate the narrow construction to be given to the public policy exception.

Importantly, the book devotes a significant portion of the text to the BRIC countries – Brazil, Russia, India and China. Chapter six explores each of these countries in depth. As global commerce continues to increase in these important growth markets, attention must be devoted to whether there are effective and reliable dispute resolution mechanisms. The author concludes, based on his analysis and review of the case law and the scholarly writings, that only Brazil construes the public policy exception as narrowly as most other member states. But the author suggests that there is hope that as the law on arbitration in these countries develops, their approach will more consistently be in line with that of other nations.

In the final chapter, the author concludes that the New York Convention has accomplished one of its key objectives: an analysis of 850 arbitration enforcement decisions under the convention shows that enforcement was refused in only 70 cases. However, the author also notes that the public policy exception has been the most misused ground for non-enforcement.

The work ends with the author's assessment of whether a state breaches public international law if its courts refuse recognition and enforcement of an award in violation of the New York Convention and the potential for use of bilateral investment treaties, where the investment requirement can be satisfied, to obtain redress.

The book's thorough review of the development of the public policy exception and its interpretation and application by courts in multiple jurisdictions is a significant contribution to the international arbitration community. Those seeking quick access to insights on a jurisdiction of interest will find this book an invaluable resource. Those interested in a comprehensive study of the public policy exception will find this book a treasure trove.