Proceedings of the 4th International Conference on Global Politics and Socio-Humanities
DOI: 10.54254/2753-7048/2026.33251

International Commercial Disputes and Restrictions on Public Policy Exceptions: A Comparative Study on the Recognition and Enforcement of Foreign Arbitral Awards

Jingyi Su

University of Chinese Academy of Social Sciences, Beijing, China
20221051120@ucass.edu.cn

Abstract. This article examines the limitations of the public policy exceptions stipulated in the New York Convention in the recognition and enforcement of foreign arbitral awards, with a comparative focus on France and China. It holds that exceptions occupy a delicate position in international commercial arbitration: it is necessary to protect the fundamental values of the domestic legal order, but over-reliance on them may undermine the finality and cross-border enforceability of the arbitration award. This article first clarifies the concept and theoretical basis of public policy and distinguishes it from mandatory rules. Then, the operation of procedural and substantive public policies in law enforcement practice was analyzed, including due process, arbitrator independence, corruption and serious illegal acts. Comparative analysis shows that although there are differences between France and China in legal terms and institutional designs, both countries have adopted general restrictive practices, reserving exceptions for acts that obviously and seriously violate basic legal principles. On this basis, this article proposes a relatively balanced standard for the application of public policy exceptions in international commercial arbitration.

Keywords: policy exception, arbitral awards, international commercial arbitration

1. Introduction

In modern international business activities, arbitration has become one of the most important methods for the resolution of cross-border complication. However, the effectiveness of the arbitration mechanism depends not only on the arbitration process itself, but also on the smooth distribution and enforcement of arbitral awards between different jurisdictions. In this regard, the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) provided a legal framework widely accepted by most countries for the recognition and enforcement of foreign arbitral awards, thereby enhancing legal certainty among countries and promoting the development of international trade. But in practice, these two considerations must be reconciled. On one hand, in order to maintain the predictability of cross-border commercial transactions, arbitration awards should be circulated in a relatively convenient manner internationally. On the other hand, in order to protect the fundamental values of the internal legal systems of various countries and maintain social stability, courts of all countries need to retain the

© 2026 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2753-7048/2026.33251

necessary powers to refuse to approve or enforce foreign judgments that do not conform to the national legal order.

This is the background of the central issue of this article. Exceptions to public policies are necessary, but their scope of application must be cautious and limited. If the interpretation is too broad, it may break the framework of the New York Convention regarding the enforcement of foreign rulings. However, if the interpretation is too narrow, it may not function as a system that adheres to fundamental legal principles. Therefore, how to properly balance these conflicting and competing interests has become an important and increasingly urgent issue in the field of international commercial arbitration.

This article holds significant theoretical and practical significance. At the theoretical level, this article attempts to clarify the status of public policy exceptions within the framework of international arbitration and determine their scope of application. Although this concept is widely accepted in international arbitration, its exact meaning requires further in-depth exploration, and it is meaning often depends on the judicial interpretations adopted by different jurisdictions. This article aims to study how the Chinese and French legal systems apply this exception and clarify the limitations of public policy as a reason for rejection and implementation.

This article examines the concept and theoretical basis of public order exceptions from a structural perspective, as well as the differences between public policies and mandatory rules, in order to clarify the institutional functions of the public order exception system. Then compare how different jurisdictions handle procedural and substantive public policies when approving and enforcing foreign arbitration awards, with particular emphasis on their respective review methods and standards.

Finally, based on this comparative analysis, this paper determines the common trends and main differences in the application of public policy exceptions, and attempts to propose a more balanced standard for the use of exceptions.

2. Concept and theoretical positioning

2.1. Public policy exception

In the system of private international law, public policy exceptions are an important institutional guarantee for each country to protect the core values of its own law. If the application of foreign laws or the recognition and enforcement of foreign arbitral awards seriously violate the basic legal principles of the court state, domestic courts may refuse to grant their legal effect or refuse to enforce them. In international commercial arbitration, the most important legal basis for this mechanism is Article V (2) (b) of the 1958 New York Convention, which stipulates that if recognition and enforcement violate the public policy of the state to which it is required to be enforced, recognition and enforcement may be refused [1]. The existence of this exception reflects the balance between two competing values. On the one hand, courts in all countries should allow arbitration awards to circulate as freely as possible among various jurisdictions. On the other hand, courts still need to uphold the core values of their domestic legal system and ensure that these values are not fundamentally challenged by foreign rulings.

Scholars generally regard public policy as a safety valve in the international arbitration system. Gary Born believes that public policy defense provides courts with a limited intervention mechanism when the enforcement of rulings would offend the most fundamental concepts of justice and morality of the court state [2]. Similarly, Albert Jan van den Berg believes that the drafters of the New York Convention deliberately framed the public policy provisions as a narrow exception in

DOI: 10.54254/2753-7048/2026.33251

order to maintain the overall tendency of the Convention to be conducive to enforcement [3]. These studies show that public policy exceptions have never been used as a tool for extensive judicial review.

The theoretical basis of public policy exceptions lies in maintaining the integrity and stability of the domestic legal order while respecting the autonomy of international arbitration. Therefore, in order to respect the autonomy of international awards, when applying this exception, the court should not re-examine the legal facts on which the award is based, nor should it attempt to correct general legal errors committed by the arbitral tribunal. Only in extremely exceptional circumstances, that is, if the enforcement of the ruling clearly violates the country's most fundamental principles of justice or constitutional values, should the court invoke this principle [4].

2.2. Difference from compulsory rules

Public policies and mandatory rules are often discussed simultaneously due to their certain similarities, but they play different roles in the legal system. Public policy mainly serves as a passive control mechanism to deny the influence of the results produced by foreign laws, while mandatory rules are a regulatory mechanism actively applied by courts. As Zhirsov pointed out, mandatory rules and public policies in international commercial arbitration are independent legal means for states to safeguard their fundamental interests [5]. Mandatory rules usually come into play at the stage of determining applicable laws, where they function as directly applicable norms and may replace or overturn laws otherwise chosen by the parties or designated by conflict of law's provisions. But public policy usually emerges in the later stages of recognition and enforcement, serving as a corrective mechanism that allows courts to reject the legal effect of foreign legal outcomes or arbitration awards that are incompatible with their most fundamental values.

Maintaining this distinction is of great significance for ensuring the enforcement of foreign rulings. If courts regard all violations of domestic mandatory rules as violations of public policy, the scope of public policy exceptions will be expanded without any bottom line, thereby undermining the stability of the system for recognizing and enforcing international arbitration awards. Only by confining public policies to a narrow scope can it be possible to ensure that only disputes truly involving a country's fundamental values will trigger the application of exceptions. Therefore, public policy should be understood as a limited corrective mechanism rather than a means of extensive judicial supervision over arbitration awards.

2.3. Why should public policy exceptions be applied

From an institutional perspective, international commercial arbitration relies on the certainty of national laws and the terms and conventions signed among countries, that is, mutual trust among countries. Therefore, the invocation of public policy exceptions must be quite restrained. The New York Convention is widely regarded as one of the most successful international instruments in this field, and its main role lies in promoting mutual recognition and enforcement of arbitration awards among contracting states [6]. In addition, researchers have repeatedly pointed out that excessive use of public policy defense will greatly shake this framework and increase uncertainty in international transactions [7].

If the court's interpretation of public policy is too broad, the losers will take advantage of it to delay the implementation, and the implementation process will be transformed into a disguised appeal. This not only weakens the finality of arbitral awards but also increases the time and cost of resolving cross-border commercial disputes. Institutionally speaking, this will undermine the appeal

DOI: 10.54254/2753-7048/2026.33251

of international arbitration as an effective dispute settlement mechanism. So, both arbitration practice and academic reviews generally hold that public policy exceptions should be limited to extreme circumstances. It is precisely on this theoretical basis that the following text compares how different jurisdictions construct the legal basis and applicable framework of public policy defenses in the recognition and enforcement of foreign arbitration awards

3. Types of public policy in the recognition of foreign arbitral awards

3.1. Procedural public policy: minimum guarantees of due process

3.1.1. Due process and the right to be heard

In the process of recognizing and enforcing foreign arbitration awards, due process is usually regarded as one of the core elements of procedural public policy. The ability of international arbitration to function across jurisdictions ultimately depends on a minimum shared understanding of procedural justice, that each party must have a fair opportunity to present its case and to participate in the arbitral process on equal terms [8].

At the institutional level, the New York Convention does not expressly use the term due process, but the grounds for refusal set out in Article V, such as lack of proper notice or inability to present one's case—effectively establish the basic framework of procedural fairness [9]. In the enforcement phase, courts usually do not review the arbitration procedure comprehensively but only focus on whether these minimal guarantees are in serious violation.

From a comparative point of view, different jurisdictions have followed different paths but generally show similar trends in terms of constraints. In France, the concept of international public order strictly limits procedural review to situations that violate the fundamental requirements of procedural justice. French courts focus on emphasizing that their task is not to reevaluate the specific details of the arbitration process, but to intervene in the judicial process only when procedural flaws obviously undermine the legality of the award. Chinese law USES the word social public welfare, which means that it should not conflict with China's social order or public interests. In practice, however, procedural fairness is also an important issue. For example, if a party has not been properly notified or is unable to participate in the proceedings, this may constitute a basis for refusing enforcement [10]. Even so, Chinese courts are usually very cautious when applying this standard to avoid undue interference in the enforcement of arbitral awards.

In France and China, legal procedures and the protection of voices are typical examples of public policy exceptions. However, it has been pointed out that general procedural flaws do not constitute a violation of public policy. Exceptions only make sense when defects seriously affect the parties' right to participate or undermine the legitimacy of the award itself.

3.1.2. The independence and impartiality of arbitrators

Arbitrators their independence and impartiality are another core component for ensuring the justice of an award procedure and also an important aspect of public policy review. In international arbitration, arbitrators not only need to remain impartial when making awards but also have the obligation to disclose any potential conflicts of interest. These requirements are widely regarded as the basic procedural standards of international arbitration.

During the enforcement stage, there were serious structural flaws in the arbitration tribunal. For instance, if significant relationships or conflicts of interest are not disclosed in a timely manner, this

DOI: 10.54254/2753-7048/2026.33251

may lead the court in the place of enforcement to determine that the ruling violates basic procedures. French courts usually handle this issue with caution and only invoke public policy exceptions when concerns about the independence of arbitrators are serious enough to raise necessary doubts about the fairness of the award [9]. Chinese courts have strengthened supervision over this issue through the review system guarantee. In cases where the court may consider refusing to execute, it usually adopts an internal review procedure to ensure the consistency and prudence of judicial decisions as much as possible. Only when doubts about the independence of arbitration are serious enough to undermine the procedural basis of the award will this issue rise to the level of public policy. This strict threshold reflects the fundamental principle that domestic judicial intervention in international arbitration should be kept to a minimum.

From the perspective of the structure of arbitration award enforcement, public policy review usually occurs in the final stage of the enforcement process. The court will first consider matters such as whether the arbitration agreement is valid and whether the arbitration procedure is conducted legally. Only when these basic elements are met, it turns into the defense of public policy.

Within this framework, significant procedural irregularities are an important basis for invoking exceptions. The award can be challenged if the arbitration process is substantially departure from the procedure agreed by the parties, or if one party is exposed to serious procedural inequalities during the proceedings. In the practice of international arbitration, however, the distinction is generally drawn between normal procedural defects and serious procedural illegality. Generally speaking, there is only reason to refuse enforcement when the defect has a significant impact on the outcome of the ruling.

Therefore, public policy functions as final security in the implementation process. Its use is not only narrow and limited but also exposed to a high threshold of seriousness. This institutional design seeks to maintain the impartiality of the basic procedure while protecting the finality and cross-border enforceability of arbitral awards.

3.2. Substantive public policy: the exclusion of corruption and illegality

3.2.1. Arbitral awards involving corruption

During the enforcement stage of foreign arbitration awards, corruption is generally regarded by various national jurisdictions as one of the core situations that can cause public policy exceptions. However, there are significant differences between the various legal systems in how to recognize and apply this basic principle.

According to French law, corruption is at the heart of the international public order. Although articles 1520 and 1525 of the French code of civil procedure provide the legal basis for refusal and enforcement, French courts adhere to strict restrictions. More specifically, the court does not conduct a full fact-finding of the case. Instead, demand that the corrupt conduct be clear and direct enough and have had a material impact on the award [9]. This standard reflects France's consistent arbitration-friendly approach: public policy exceptions apply only to limited exceptional circumstances, even when illegal activities are involved.

Chinese law addresses the same issue through the concept of social public interest. Article 282 of the Civil Procedure Law stipulates the legal basis for refusing to execute. However, unlike France, China has introduced a hierarchical reporting and approval mechanism at the institutional level [10]. Where a people's court refuses to execute on the ground that it violates public interests, it must report to a higher people's court for review, and sometimes even to the Supreme People's Court for review. This mechanism to a large extent restricts the discretionary power of lower courts, making

DOI: 10.54254/2753-7048/2026.33251

the determination of corruption not only a substantive judgment issue but also a procedural control issue. So, France and China have reached the same conclusion that corruption is a typical basis that can trigger exceptions to public policies, but they have reached this conclusion through different channels. France relies on high threshold standards set by the judiciary, while China ensures constraints through institutional review mechanisms.

3.2.2. Protection of the international economic order and serious illegality

Apart from corruption, serious forms of illegal activities such as fraud and money laundering may also fall within the substantive scope of public policy. In this regard, the differences between France and China are more prominently reflected in the variations in conceptual structure and regulatory orientation.

According to French law, such behavior is still evaluated within the framework of the international public order. Although this concept is very abstract, judicial practice has confined it to behaviors that fundamentally threaten the international business order. Not all illegal acts are grounds for refusal to execute; Public policy exceptions only apply when the illegality reaches a level that affects the core values of a country's legal system [11]. The concept of social and public interests in China has a more distinct policy orientation and regulatory dimension. When it comes to serious illegality, courts should not only consider the legality of the ruling itself, but also its potential impact on market order, financial regulation or social stability. However, it is worth noting that this seemingly broader concept is restricted in practice by the reporting mechanism, which makes the threshold for its application relatively high.

To sum up, the main difference between the two jurisdictions lies in that France emphasizes the conflicts in the value structure within the legal system, while China takes into account both legal principles and regulatory order simultaneously. However, in terms of the outcome, both jurisdictions have avoided expanding public policy to a general tool for reviewing illegal acts, thereby maintaining the stability of the arbitration award enforcement system.

4. Comparative conclusions: defining the limits of the public policy exception

4.1. Converging trends: a high threshold for public policy intervention

From a comparative perspective, although there are differences among jurisdictions in terms of legal terminology, institutional design and judicial practice, there is a clear trend of convergence in the application of public policy exceptions to the recognition and enforcement of foreign arbitration awards. The most notable common feature is that courts usually interpret public policy defense in a very narrow way and regard it as a tool of a special nature [12].

Such a move largely reflects the direction of enforcement protection embodied in the New York convention. As the leading multilateral instrument in international arbitration, treaties are basically designed to facilitate the recognition and enforcement of arbitral awards between jurisdictions. Therefore, article 5 provides for limited reasons for rejection and reserves public policy as a limited defense against exceptional cases. Under this background, the courts of most jurisdictions generally adopt a cautious approach to the interpretation of public policy, to avoid the enforcement of arbitral awards and excessive interference.

In concrete institutional practices, China and France adopt different legal forms, but both show similarly restrictive approaches. French law is based on the concept of international order and limits exceptions in cases where basic legal principles are violated. On the other hand, the Chinese law

DOI: 10.54254/2753-7048/2026.33251

adopts the word social welfare and strengthens its application through a hierarchical reporting mechanism. In practice, however, Chinese courts also use considerable binding force when requesting exceptions. These arrangements reflect an important institutional understanding that exceptions to public policy function only as a last resort. The court should consider relying on it only if the enforcement of an award would clearly prejudice the fundamental values of legal order or seriously prejudice the social and public interests. Applicable in this high threshold manner, public policy can protect the most fundamental elements of the legal system without compromising the final and international enforceability that arbitration is intended to ensure.

4.2. Diverging emphases among jurisdictions

Jurisdictions in different countries are increasingly inclined to make restrictive interpretations of public policy exceptions, but there are still significant differences in the way specific legal systems apply these exceptions in practice. These differences largely reflect the different practical paths taken by the legal systems of various countries in balancing transaction security and substantive justice in international arbitration.

In French law, courts usually place greater emphasis on maintaining the stability of international commercial relations and the expected interests of applicants. This institutional preference is closely related to the long-standing tendency of the French legal system to be friendly to arbitration and its reliance on foreign enterprises. Courts working within this framework tend to interpret public policy exceptions in a narrow sense and avoid improper judicial intervention during the enforcement stage. They usually only consider relying on exceptions when the arbitration award obviously violates the basic principles of the legal order. By strictly restricting judicial review, France's approach strives to maintain the efficiency, finality and reliability of arbitration as a means of resolving cross-border disputes.

In contrast, some jurisdictions may place greater emphasis on social governance and regulatory order factors when applying public policy exceptions. China provides a useful example. The concept of social public interest not only encompasses fundamental procedural principles but also, to a certain extent, reflects the state's concern for maintaining social order and stability and for macro-control of the economy. Although Chinese courts usually invoke this exception with caution in practice, the term itself indicates that during the enforcement stage, domestic abstract regulatory interests may also influence the interpretation of public policies.

The above-mentioned differences do not indicate that public policies in international arbitration lack a common structural basis. On the contrary, they all highlight the position of public policy exceptions at the intersection of international arbitration norms and the core values of internal laws in different countries. As Berman pointed out, public policy defense under the New York Convention is inevitably influenced by the diversity of legal systems in various countries, as each state has the right to independently determine the fundamental public policy principles recognized in its own legal order. Therefore, these differences observed in practice indicate that different national jurisdictions have made different institutional choices in balancing the protection of international commercial transactions with the maintenance of domestic legal order due to their distinct focuses.

4.3. Toward a balanced standard for applying the public policy exception

The above comparative analysis indicates that public policy exceptions should neither be too broad to threaten the arbitration system nor too narrow to lose their institutional functions. The real

DOI: 10.54254/2753-7048/2026.33251

difficulty lies in finding a reasonable balance between the efficiency of international arbitration enforcement and the fundamental values of the domestic legal system.

In actual judicial practice, the boundaries of public policy are rarely completely clear. The existence of a certain degree of inconsistency between an arbitration award and domestic law does not necessarily mean that enforcement should be refused. If courts regard ordinary legal differences as public policy issues, the enforcement framework established by the New York Convention will be difficult to maintain. The operation of international arbitration largely depends on a fundamental expectation that arbitration awards enjoy relatively stable enforceability in various jurisdictions. However, it is also unrealistic to assert that the court should enforce the arbitration award under any circumstances. In some extreme cases, the content of the ruling may seriously conflict with the fundamental principles of the legal system of the country where the court is located, to the extent that enforcement would undermine the legitimacy of the system itself. The existence of public policy exceptions is precisely to provide the necessary institutional safety valve in such exceptional circumstances.

The limits of exceptions can be evaluated through three cumulative considerations. First of all, disputed conflicts must involve the fundamental principles of the legal system rather than ordinary domestic legal rules. Secondly, conflicts must be obvious and serious, rather than merely reasonable differences. Thirdly, courts must consider whether enforcement will affect the overall stability of the legal order or undermine the public's confidence in judicial justice. If exceptions are applied with caution in accordance with these principles, fundamental legal values can be maintained without undermining the stability of the international arbitration system. With the continuous development of international commercial arbitration, maintaining this balance will remain one of the core issues in the application of public policy exceptions.

5. Conclusion

Within the framework of the New York Convention, public policy exceptions occupy a considerable position of institutional tension: they are both indispensable and potentially destructive. On the one hand, as a safety valve, it enables courts to preserve the fundamental values of their legal systems by preventing the enforcement of awards that would impair legal legitimacy. On the other hand, if applied too broadly, it risks undermining the very foundations on which international arbitration depends—namely, finality, predictability, and cross-border enforceability.

The comparative analysis in this article shows that, despite differences in legal terminology and institutional design among France, and China, a clear trend of convergence has emerged in the application of the public policy exception: courts generally adhere to a high threshold and apply the exception with caution. Whether framed as order public international, public policy, or social and public interest, each formulation in practice tends to confine the exception to manifest and serious violations of fundamental legal principles. Meanwhile, significant differences still exist. France and the United States place greater emphasis on the certainty of transactions and the self-restraint of the judiciary, while in China, public policies are still more closely linked to the country's regulatory goals to a certain extent.

On this basis, the restrictions on public policy exceptions can be distilled into three evaluation elements. First of all, a disputed conflict must involve a fundamental principle of the legal system. Secondly, the violation must be clear and serious enough. Thirdly, law enforcement must have a substantive impact on the overall legitimacy of the legal order, rather than merely involving ordinary legal differences.

DOI: 10.54254/2753-7048/2026.33251

Ultimately, the significance of public policy exceptions does not lie in the frequency with which they are invoked, but in how cautiously and prudently they are applied. Its legitimacy precisely lies in its special nature. Only by maintaining this balance can international arbitration remain effective without deviating from the core values of the domestic legal order. Looking ahead, as cross-border commercial disputes become increasingly complex, how public policy exceptions can maintain a dynamic balance between the trend of global uniform enforcement and the diversity of legal values in various countries will continue to require further theoretical reflection and practical improvement.

References

[1] United Nations (1958) Convention on the Recognition and Enforcement of Foreign Arbitral Awards. United Nations, New York.
[2] Born, G.B. (2014) International Commercial Arbitration. 2nd Edition, Kluwer Law International, Alphen aan den Rijn.
[3] van den Berg, A.J. (1981) The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation. Kluwer Law and Taxation Publishers, Deventer.
[4] Gaillard, E. and Savage, J., Eds. (1999) Fouchard, Gaillard, Goldman on International Commercial Arbitration. Kluwer Law International, The Hague.
[5] Zhilsov, A.N. (1995) Mandatory and Public Policy Rules in International Commercial Arbitration. Netherlands International Law Review, 42, 81-119.
[6] UNCITRAL (2016) UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). United Nations Commission on International Trade Law, Vienna.
[7] Park, W.W. (2012) Arbitration of International Business Disputes: Studies in Law and Practice. 2nd Edition, Oxford University Press, Oxford.
[8] Gaillard, E. (2010) Legal Theory of International Arbitration. Martinus Nijhoff Publishers, Leiden.
[9] Lew, J.D.M., Mistelis, L.A. and Kröll, S.M. (2003) Comparative International Commercial Arbitration. Kluwer Law International, The Hague.
[10] Peerenboom, R. (2006) Judicial Independence and Judicial Accountability: An Empirical Study of Individual Case Supervision. The China Journal, 55, 67-93.
[11] Mayer, P. (1986) Mandatory Rules of Law in International Arbitration. Arbitration International, 2, 274-289.
[12] Drahozal, C.R. (2012) The New York Convention and the American Federal System. Journal of Dispute Resolution, 2012, 101-126.