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The Boundaries of the Public Policy Exception: The Abuse of Article V(2)(b) of the New York Convention and Its Regulation

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Abstract. The public policy exception under Article V(2)(b) of the New York Convention was meant to be the "last safeguard" in the international commercial arbitration system for protecting the fundamental legal principles and moral baseline of the place of enforcement, yet in practice it has gradually been alienated into a tool frequently invoked by courts of various countries to evade international arbitration obligations and block the enforcement of foreign awards. The abuse of the public policy exception manifests in two typical forms: substantive expansion and procedural abuse, with its root causes lying in the ambiguity of the concept itself and the external intervention of sovereign will. In response, regulation should proceed from two aspects: formulating interpretation guidelines for public policy and establishing a three-tier filtering mechanism, so as to seek a dynamic balance between maintaining the finality of arbitration and respecting sovereign will.

Keywords: New York Convention, international commercial arbitration, public policy exception

1. Introduction

International commercial arbitration is known for its "finality of a single award" and high flexibility. Since the conclusion of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the New York Convention), it has become the preferred mechanism for global commercial actors to resolve cross-border disputes. The public policy exception stipulated in Article V(2)(b) of the Convention (hereinafter the "exception clause") aims to safeguard the fundamental legal principles and moral baseline of the place of enforcement, blocking awards that clearly violate the basic consensus of the international community only in very rare circumstances. However, in recent years the original purpose of the public policy exception has been continuously alienated: courts of various countries, through expansive interpretation of public policy, repackage procedural defect defenses that originally belonged to the parties as public policy matters invoked by the court, thereby evading the mandatory obligation to enforce foreign awards.

The case of Z v Y heard by the Court of First Instance of the High Court of Hong Kong in 2018 is a typical example: in that case, a mainland arbitral tribunal rendered an award on a guarantee contract involving a "back-to-back" sale arrangement, upholding the claim of the applicant Z

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company; yet when the respondent Y applied to the Hong Kong court for refusal of enforcement, it argued that the underlying transaction was in substance an illegal lending arrangement disguised as a raw material sale, in violation of mainland Chinese law. Although the arbitral tribunal had rejected Y's illegality defense, the Hong Kong Court of First Instance unusually refused enforcement on public policy grounds, on the reasoning that the tribunal "failed to provide proper analysis and reasoning on the issue of contract illegality" [1]. Similarly, in Russia, since the 2014 Crimea incident and the subsequent imposition of Western sanctions, Russian courts' interpretation of public policy has become increasingly broad—the Supreme Court of Russia once ruled that the enforcement of a foreign arbitral award that would cause the bankruptcy of a Russian company violates Russian public policy; in 2018 it further held that the enforcement against the property of a Russian state-owned enterprise might harm the Russian Federation and likewise constituted a public policy violation [2]. The above jointly points to a core question: how and why is the public policy exception clause abused? What kind of impact does such abuse have on the international arbitration system?

For this reason, this study aims to clarify theoretically the function and boundaries of the public policy clause of the New York Convention, examine the typical manifestations of the abuse of the public policy exception and comparative-law models, analyze its deep-seated causes at the jurisprudential, institutional, and political-social levels, and propose a regulatory framework, so as to provide arbitral tribunals and courts of various countries with an operable analytical tool for identifying abusive conduct.

2. Concrete manifestations of the alienation of the public policy exception

The public policy exception refers to the legal exception under which a court, when recognizing or enforcing a foreign or foreign-related arbitral award, may refuse recognition or enforcement if the award violates the fundamental legal principles, social public interest, or good morals of its own country. Yet in recent years, when applying it, courts of various countries have gradually departed from the functional positioning of this exception as a "last safeguard," repackaging domestic-law-level policy preferences, procedural defects, and even diplomatic positions as fundamental public policy violations, concretely manifesting in two typical forms: substantive expansion and procedural abuse.

2.1. Substantive expansion

The typical feature of substantive expansion lies in that the enforcing court elevates mandatory norms that should belong to the domestic-law level, such as foreign exchange control and bankruptcy protection, indiscriminately to the level of "international public policy," and refuses enforcement on the ground that the award violates the specific economic or administrative policies of its own country, thereby alienating the public policy exception into a "protectionist valve" for its own economic interests.

Taking a 2019 judgment of the Supreme Court of Lithuania as an example, the court refused to recognize and enforce a Serbian arbitral award on the ground that the punitive damages for the high liquidated damages in the award "violated the Lithuanian Constitution" and were "unfair" to the sanctioned party [3]. This case shows an extreme interpretation of public policy, reflecting that the court's reasoning in substance elevated its own country's substantive requirement of "reasonableness" to the height of international public policy. This approach stands in sharp contrast with the original intent of the drafters of the New York Convention: the public policy exception

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contemplated by the Convention should focus on "fundamental moral and justice principles," rather than the general legal differences among countries at the level of commercial regulation.

The Caribbean Court of Justice also made a similar expansion in BCB Holdings v. Government of Belize, holding that a settlement agreement violated Belize's constitutional principle of "separation of powers and parliamentary sovereignty" on the ground that it involved a tax preferential arrangement not approved by the legislature, and refused enforcement accordingly. The court later candidly admitted that what it reviewed was precisely Belize's own constitutional order rather than some "international public policy." [4] Taking a domestic constitutional arrangement directly as the reason for refusing recognition and enforcement of a foreign arbitral award clearly exceeds the proper boundary of the public policy exception contemplated by the New York Convention.

The above expansions severely erode the finality of arbitral awards and the predictability of cross-border enforcement; the inconsistent adjudication standards among countries also aggravate the fragmentation of rules, making it impossible for commercial actors to reasonably assess the enforcement risk of an award in a specific jurisdiction at the time of contracting, and the efficiency advantage of international arbitration is thereby greatly diminished.

2.2. Procedural abuse

The core feature of procedural public policy abuse lies in that the court elevates an attributable procedural defect that should have been handled under Article V(1)(b) or (d) of the New York Convention to a "fundamental violation of procedural justice" sufficient to trigger the "exception clause." In this way, the applicant can obtain a lower threshold of proof and a broader margin of discretion, thereby evading the stricter evidentiary requirements set by Article V(1) of the Convention for procedural defect defenses.

The Metropolitan Court of Appeal of Hungary, in judgment ÍH2019.94, clarified the boundary of the application of procedural public policy. In that case, the losing party argued that enforcement violated the due process principle enshrined in the Hungarian Constitution on the ground of "not having received notice of the arbitral proceedings," and requested the court to refuse enforcement under the public policy exception. The court of first instance found that the relevant documents had been effectively served on the losing party's representative at the reception desk of a restaurant. The court of appeal upheld enforcement accordingly, and pointed out that the public policy exception is established only when "the fundamental rules constituting the basis of the social and economic order" are violated, that ordinary procedural defects do not reach this threshold, and that service issues should be confined to review within the framework of Article V(1)(b) of the New York Convention [5]. The exemplary significance of this judgment lies in that it clearly established the "principle of residuality" for the application of procedural public policy, namely that the public policy exception may be resorted to only when the procedural defect cannot be covered by Article V(1) of the Convention, or when the severity of the defect reaches an "irremediable fundamental flaw.

In contrast, there is a tendency in certain jurisdictions to expansively apply procedural public policy. If a court finds a violation of "natural justice" merely because of a minor defect in the translation of served documents, or slight misconduct by the arbitral tribunal in procedure management, it is in substance hollowing out the finality of the arbitral award under the name of procedural public policy, which constitutes procedural abuse.

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3. Current review models of the public policy exception

In response to the above abusive phenomena, courts of various countries have developed different review models, all committed to addressing the risk of abuse within a narrow-interpretation framework, which can be roughly summarized into the following four types.

The first is Switzerland: a lenient review model oriented toward the proportionality principle. As a typical representative of arbitration-friendly jurisdictions, Switzerland is known for its highly self-restrained review of public policy. According to Article 194 of the Swiss Private International Law Act, a foreign arbitral award may be refused only when its recognition or enforcement result is "manifestly incompatible" with the core values of the Swiss legal system. The Swiss Federal Supreme Court further clarified in its case law that a public policy violation must reach the degree of "serious and manifest," and a mere deviation from or inconsistency with Swiss legal rules is insufficient to trigger the exception clause [6]. The core of this review model lies in the application of the proportionality principle: the court does not inquire whether the arbitral tribunal's interpretation of substantive law is correct, nor does it review whether the award's reasoning is sufficient; rather, it proceeds solely from the conclusion of the award to judge whether it touches the non-negotiable fundamental principles of the Swiss legal order. It is worth noting that the Swiss court sets the threshold for finding a public policy violation at "serious and manifest," which in substance excludes the vast majority of challenges to awards from public policy review, thereby maximizing the protection of the finality of arbitral awards. This type may be briefly summarized as a lenient review centered on the proportionality principle.

The second is the United States: a dual review model that bifurcates procedure and substance. U.S. courts are relatively strict in their procedural review; if a party was not given a reasonable opportunity to be heard, or the composition of the arbitral tribunal was manifestly biased, the court may find that the award violates the most basic conceptions of justice of the United States and refuse enforcement. But at the substantive level, U.S. courts' attitude is extremely restrained. Since the 1974 case Parsons & Whittemore, U.S. courts have clearly confined the public policy exception to the realm of the "most basic moral and justice conceptions" of the United States, and repeatedly emphasized that violation of domestic mandatory statutes or administrative regulations does not automatically constitute a public policy violation [7]. U.S. courts' position in sanction-related cases is particularly typical: even when the enforcement of an award has a superficial conflict with U.S. unilateral sanctions policies against Iran, Russia, and other countries, the courts still tend to prioritize the predictability of the enforcement of international arbitral awards, treating support for arbitration itself as a "supranational" public policy [8]. This decoupling of sanctions policy from public policy stands in sharp contrast with the United States' identity as a major initiator of sanctions, and also highlights the special balance struck by U.S. courts between arbitration-friendliness and traditional sovereign interests. The core of this standard lies in the differentiated treatment of procedural public policy and substantive public policy.

The third is France: a model of EU-law priority and narrowing of substantive exceptions. The Court of Cassation of France has made clear in its case law that the rules constituting the core part of EU public policy within the EU legal system, especially the basic principles of free competition and free movement established by the EU founding treaties, have direct effect in France's international public policy review. This means that if the result of recognition or enforcement of an arbitral award conflicts with mandatory EU rules, French courts may refuse enforcement on that basis. In addition, French courts have strictly delimited the scope of application of substantive public policy. The Paris Court of Appeal established the violation standard of "manifest, effective, and concrete" in a series

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of judgments, and emphasized that the public policy exception should not be used as a substitute tool for reviewing the arbitral tribunal's fact-finding or application of law. In recent years, French courts have even further raised the requirement of "manifestness": refusal of enforcement is permitted only when the conclusion of the award itself blatantly violates French international public policy [9]. This standard shows two distinct features in public policy review: first, priority deference to EU law; second, an extremely narrowed interpretation of substantive public policy.

The fourth is Singapore: a model that puts equal weight on legislative clarity and judicial restraint. Section 31 of Singapore's International Arbitration Act domesticates the New York Convention while clearly stipulating that the public policy exception applies only to situations of "violation of the fundamental moral and justice principles of Singapore." [10] This legislative definition provides clear guidance to the courts and rules out the possibility of refusing enforcement on the ground of domestic mandatory norms or administrative regulations. In practice, the Singapore High Court further clarified in CZ v. CX that violation of Singapore law—even mandatory law—does not automatically equate to a violation of public policy; the precondition for refusing enforcement is that the result of recognizing or enforcing the award would "strike at the core foundation of the Singapore legal order." [11] This public policy review model is known for its equal emphasis on legislative clarity and judicial restraint.

Although the above four models differ in their review standards, they share a basic consensus: the public policy exception should be narrowly interpreted, and its erosion of the finality of arbitral awards must be strictly constrained.

4. Causes of the abuse of public policy

4.1. Internal cause: the conceptual ambiguity of the public policy exception itself

The primary reason why the public policy exception is easily abused lies in the lack of an exclusive definitional standard for the concept itself. The "exception clause" merely sums it up in the phrase "contrary to the public policy of that country," without providing explanation or definition. Although this legislative openness was necessary for the wide acceptance of the Convention, it also leads to the fragmentation and unpredictability of the rules.

A fundamental conceptual confusion lies in the conflation of "domestic public policy" and "international public policy." The former protects the fundamental principles in the legal order of a specific country and has a broad scope; the latter covers only the core values commonly recognized by the international community and of transnational universality, and has a narrow scope. Yet some countries have not effectively distinguished the two, improperly transplanting the lenient standard that should apply only to domestic cases into the review of international arbitral awards. When a court refuses enforcement of a foreign award on the ground of protecting a domestic mandatory norm, such as an industrial policy, what it actually applies is domestic public policy rather than the international public policy referred to by the Convention.

The binary division of procedural public policy and substantive public policy helps clarify discussion in theory, yet is easily confused in practice. The former concerns basic procedural guarantees such as due process and fair hearing, while the latter touches whether the substantive result violates fundamental moral or legal principles. The tricky part is that there is overlap between procedural public policy and the procedural defect defenses enumerated in Article V(1) of the New York Convention, such as not having been properly notified or having been unable to present one's case. When a procedural defect falls within both clauses, the court faces a dilemma: should it be confined to the framework where the party bears the burden of proof, or be elevated to a public

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policy matter that the court may invoke on its own motion? Different jurisdictions take different positions on this, and this uncertainty itself provides room for abuse.

The theoretical traditions of various jurisdictions further amplify the divergence of concepts. Civil-law countries tend to understand public policy starting from holistic concepts such as "good morals" or "the fundamental basis of the legal order," emphasizing its objective aspect as the foundation of social survival. Common-law countries, by contrast, approach it more from case-specific justice and moral intuition, with a more subjective coloring. When there is no higher-level unified interpretive framework, these two traditional theories inevitably lead to inconsistent standards in the judicial practice of various countries.

4.2. External cause: the intervention of sovereign will in the enforcement of arbitral awards

The structural defects of the concept provide the normative possibility for the abuse of public policy, while it is the sovereign state's continuous intervention in arbitral awards through state will that is the key to pushing abuse from an occasional phenomenon into a general trend. The intervention factors mainly consist of the following two levels.

The authorizing defects of the Convention and domestic law provide an institutional entry point. The legislative structure of Article V of the Convention itself contains a fundamental contradiction: on the one hand, with the purpose of "recognition and enforcement of foreign arbitral awards," it establishes an institutional bias in favor of enforcement; on the other hand, paragraph 2 of Article V reserves a broad margin of discretion for various countries, neither setting a hierarchical review standard nor providing any reference for "what degree of violation is sufficient to trigger the public policy exception." This legislative gap means that any substantive delimitation of the boundaries of public policy can only rely on the self-restraint of the courts of various countries. Looking at the legislation of various countries, the differences are even more pronounced: France, Switzerland, and other countries clearly distinguish domestic and international public policy in legislation or judicial practice, strictly limiting the latter to internationally recognized fundamental principles; while other countries make no distinction, and even directly adopt elastic concepts such as "national interest" and "economic security." When the legislation itself adopts a lenient standard, the court's expansive interpretation gains a legitimate channel. The institutional gap in the review procedure is equally not to be ignored: in many jurisdictions, the determination of public policy lacks effective hierarchical constraints or appellate review, making the public policy exception more easily a hidden channel for local protectionism.

Second, geopolitical competition and the resurgence of nativism inject real-world momentum. Observed from a political-science perspective, against the current background of the resurgence of state sovereignty and the intensification of great-power competition, courts of various countries have begun to use the public policy exception as a tool to express political positions, assert sovereign will, and even carry out retaliation. When a court refuses recognition and enforcement on the ground that enforcement "would harm national interests" or "violate foreign policy," what it actually exercises is no longer judicial review power but a political judgment cloaked in legal form; viewed from a sociological perspective, while the globalization process creates wealth, it also produces a marked division between winners and losers within various countries. The discontent and nationalist demands of those social groups whose interests are harmed by industrial outflow and intensified external competition need an institutional outlet for release. As the guardian of mainstream social values, courts in this social atmosphere are more inclined to repackage their country's economic, social, and even cultural preferences as "public policy," so as to confront the liberal trade order represented by international arbitration.

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5. Theoretical controversies over the abuse of public policy

5.1. Strict-limitation theory

The strict-limitation theory holds that the public policy exception should be confined to the most extreme and rare circumstances, and may be invoked to refuse enforcement only when the enforcement of the award would offend "the most fundamental moral and justice principles," such as corruption, terrorism, and genocide—conduct universally condemned by the international community. Any expansive application is a departure from the fundamental spirit of the New York Convention.

The theoretical foundation of this position can be traced back to the drafting history of the New York Convention. The drafters deliberately confined the scope of the public policy exception to an extremely narrow one, so as to reverse the difficulty of enforcing foreign arbitral awards under the 1927 Geneva Convention. As Maurer argues in his monograph, the exception clause adopts the wording "may also be refused," which grants the court discretionary power but also implies that refusal of enforcement should be the exception rather than the rule [12]. The multiple revisions of the public policy clause during the drafting of the Convention all evolved in the direction of further restricting its scope of application. At the normative level, strict-limitation theorists emphasize that mandatory norms in domestic law cannot be automatically equated with public policy in the sense of the Convention. The mere fact of violating domestic law is insufficient to constitute a proper ground for refusing enforcement of a foreign arbitral award.

The greatest contribution of the strict-limitation theory lies in its clear recognition of the structural damage that the abuse of the public policy exception may cause to the New York Convention system, and its attempt to defend the finality of arbitral awards by setting an extremely high threshold for application. Yet the defects of the strict-limitation theory are equally obvious. This position implies a theoretical presupposition that the content of public policy is determinate, exhaustible, and that there is a general consensus in the international community thereon. This assumption may have had a certain degree of plausibility in the second half of the twentieth century, but against the background of the increasingly pluralistic contemporary international legal order, its explanatory power has significantly declined. When different jurisdictions have divergent criteria for identifying "corruption," and the definition of "terrorism" is fraught with political disagreement, the abstract formula of "the most fundamental moral and justice principles" cannot provide operable guidance for specific cases.

5.2. Context-dependence theory

Unlike the absolutist position of the strict-limitation theory, the context-dependence theory recognizes the fluidity and evolution of the content of public policy, and holds that public policy is not fixed but constantly adjusts with the evolution of the consensus of the international community. Issues such as anti-corruption, human rights protection, and environmental protection gradually gained general acceptance in the international community in the second half of the twentieth century; whether and to what extent these emerging norms constitute part of international public policy should be judged according to the specific context.

The core concern of the context-dependence theory lies in the dynamic balance between maintaining the finality of arbitral awards and responding to the basic value claims of the international community. This position holds that a completely rigid definition of public policy cannot adapt to the changes of the international community, and a moderate flexibility is inevitable

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and necessary. The key is that when invoking the public policy exception, courts should maintain the transparency and prudence of their reasoning, and avoid replacing concrete legal reasoning with vague moral pronouncements. Kleinheisterkamp offers a systematic critique of the concept of "transnational public policy," pointing out that the so-called "transnational public policy" often implies the hegemonic claims of a specific legal tradition rather than truly neutral universal values [13]. This critical perspective suggests that the context-dependence theory, if improperly operated, may degenerate into a tool for the export of major-power legal culture. Therefore, context-dependence theorists emphasize that the evolution of public policy must be based on genuine international consensus rather than the one-sided claims of a certain jurisdiction.

The advantage of the context-dependence theory precisely lies in supplying what the strict-limitation theory lacks in terms of dynamism. This position keenly observes that the international legal order is not static, and that public policy, as a "general clause," has a function that inherently includes adaptive responses to social change. This position also emphasizes transparent reasoning and prudent weighing, avoiding the mechanical application into which the strict-limitation theory may fall, and setting procedural constraints on the court's discretion. But the context-dependence theory's reliance on the court's discretion exposes it to doubts about insufficient predictability. In the absence of a unified mechanism for forming transnational consensus, courts of different jurisdictions may make diametrically opposite public policy judgments on the same issue, thereby aggravating rather than mitigating the uncertainty in the enforcement of international arbitral awards.

5.3. Political realism

The fundamental divergence of the political-realist position from the previous two theories lies in this: both the strict-limitation theory and the context-dependence theory presuppose that the public policy exception is a "legal issue" that can be objectively defined and normatively applied, whereas political realism holds that this presupposition itself is misleading. The public policy exception is in essence the ultimate expression of the will of the sovereign state, and political factors cannot be completely removed.

Ghodoosi systematically deconstructs public policy theory from the perspective of economics and power analysis, distinguishing the "transnationalist approach" and the "statist approach" in international arbitration theory; the former emphasizes the normative ideal of arbitration as an autonomous legal order, while the latter recognizes the fundamental constraining effect of state power on arbitration. Political realism evidently belongs to the latter. The essential function of the public policy exception is to provide the court with an "exit mechanism" to deal with the potentially irreconcilable conflict between the arbitral award and the fundamental interests of the state [14]. Starting from this position, political realists argue that rather than vainly pursuing a substantive unified interpretation of public policy among countries, it is better to turn to the pursuit of procedural predictability. The emphasis is on ensuring that the review procedures of various jurisdictions are transparent, consistent, and foreseeable, so that commercial actors can reasonably assess the enforcement risks of different jurisdictions before a dispute arises.

The radical aspect of political realism lies in its exposure of the normative illusion shared by the previous two positions—that public policy can be reduced to a set of objective, neutral, and universally applicable legal rules. The invocation of the public policy exception is always embedded in a specific sovereign-state context, and the court's judgment cannot be completely free from considerations of national interest, diplomatic stance, and ideology. Especially in the enforcement of awards involving unilateral economic sanctions, the same award faces radically different public policy judgments in the courts of the sanction-initiating state, the sanctioned state, and third

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countries; this fact itself already falsifies the possibility of "pure legal interpretation." But this critical edge also traps it in a theoretical dilemma. If sovereign will is recognized as the ultimate determining factor of public policy, the core object of normative discussion loses its basis for existence, because all legal argumentation can ultimately be reduced to the operation of power politics. Political realism has strong explanatory power at the descriptive level, but provides no constructive institutional solution at the normative level.

Against the background of intensifying geopolitical conflicts and the return of great-power competition to the international legal stage, the context-dependence theory has greater theoretical vitality and practical applicability than the strict-limitation theory and political realism.

6. Regulatory paths for the abuse of public policy

6.1. Establishing conceptual consensus: formulating interpretation guidelines for the application of international public policy

At the international level, promoting authoritative institutions such as the International Bar Association and the United Nations Commission on International Trade Law to formulate "Interpretation Guidelines on the Application of the Public Policy Exception" is the most feasible coordination path at present. The advantage of this path lies in building consensus in the form of soft law, which both avoids the lengthy cycle of hard-treaty negotiation and preserves the necessary margin of discretion for the courts of various countries.

First, the interpretation guidelines should clearly distinguish "international public policy" from "domestic public policy." This distinction has been adopted by the vast majority of arbitration-friendly jurisdictions, yet divergences remain in theoretical connotation and practical operation. Germany's practice provides a useful reference: the Federal Court of Justice of Germany clearly distinguishes the "internal public order" applicable to domestic awards from the "international public order" applicable to foreign awards, and the review standard of the former is stricter than that of the latter, while the latter is understood in practice as a "somewhat lower threshold" standard, which reflects respect for the particularity of international arbitral awards [15]. On the basis of summing up the experience of various countries, the interpretation guidelines should extract the identification criteria for international public policy, emphasize that its content should be limited to the fundamental principles commonly recognized by all civilized nations, and exclude purely domestic mandatory norms of a single country.

Second, the interpretation guidelines should establish the proportionality principle, setting the threshold for refusal of recognition and enforcement at a "serious and manifest" violation of international public policy. Surveys in the International Bar Association report show that in more than forty responding jurisdictions, courts generally require that the act violating public policy reach a certain degree of seriousness before refusal of enforcement, and although the expressions used by various countries differ—such as "manifest violation," "flagrant violation," and "serious conflict"—they all serve the same function, namely limiting the court's margin of discretion. The function of the proportionality principle lies precisely in guiding the court to make such hierarchical judgments, avoiding the elevation of all legal errors to public policy violations.

Finally, the application of procedural public policy should be confined to situations of "irremediable fundamental defects." The core function of procedural public policy lies in safeguarding the parties' basic procedural rights, rather than providing the losing party with a second opportunity to argue. In many jurisdictions, successful cases of violating procedural public policy mostly involve fundamental procedural defects, such as a party being given no opportunity to

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present its case at all, manifest bias in the composition of the arbitral tribunal, or an award obtained through fraud or bribery. By contrast, minor procedural defects such as small translation problems in served documents or slight impropriety in procedural time limits should not be brought within the ambit of public policy. The interpretation guidelines should clarify the boundaries of the application of procedural public policy, functionally distinguish it from the specific procedural defense grounds listed in Article V(1) of the New York Convention, and prevent parties from evading the stricter threshold of proof under the name of public policy.

6.2. Strengthening procedural constraints: establishing a three-tier filtering mechanism for domestic review

Establish an identification filter. Its core task is to discern the true attributes of the public policy norm invoked. The court should first distinguish whether the policy belongs to a country's domestic public policy or to international public policy of transnational universality. The normative significance of this distinction lies in excluding matters that are purely domestic policy considerations from being directly elevated to the object of international public policy review, thereby filtering out at the source the most common type of abusive situation in practice. For a norm preliminarily identified as international public policy, the court should further determine the tier it occupies. The premise of tiered processing is the recognition that international public policy is not a homogeneous whole; different norms differ significantly in the breadth and depth of acceptance by the international community and in the certainty of their content. Norms at the highest tier, such as the prohibition of genocide, the prohibition of torture, and the fight against transnational corruption, are core norms universally accepted by the international community with highly determinate content; violation of such norms should be subject to the strictest review standard. Norms at the middle tier—regional consensus norms or specific-domain consensus norms, such as the core rules of EU competition law or the basic principles in anti-sanction blocking statutes—have a relatively limited scope of application, and their review requires weighing, in the specific context, the relative weight of that norm against the value of arbitral finality. Norms at the peripheral tier essentially still belong to the category of domestic public policy and should not be brought into the object of the first-tier identification review.

Establish a review filter. Its core function is to apply the proportionality principle to assess the seriousness of the violation. After the court confirms that the invoked norm falls within the ambit of international public policy, it needs to further determine whether the award's violation of that norm reaches the substantive threshold sufficient to trigger refusal of enforcement. The proportionality principle plays a core function at this stage; its internal logic is that refusal of enforcement is a major intervention in the finality of the arbitral award and may be adopted as an extreme measure only when the violation has sufficient seriousness. The adjudication of seriousness should be considered comprehensively from multiple aspects, such as the degree of damage the violation causes to fundamental interests and whether the violation is of transnational universality. In addition, the proportionality principle enables the court to distinguish the nature of the violation: substantive divergences arising from differences in legal interpretation or factual findings should in principle not be recognized as serious violations sufficient to trigger the public policy exception; refusal of enforcement is justified only when there is an irreconcilable fundamental conflict between the conclusion of the award and the core norms of the international public policy of the forum.

Establish a remedy filter. Its core function is to explore alternative remedial schemes other than refusal of enforcement. Even if the award does indeed constitute a violation of international public policy, refusal of enforcement is not the only or optimal response. The core logic of the remedy filter

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is to require the court to give priority to whether the negative effects of the public policy violation can be eliminated by other means, and to make the decision to refuse enforcement only when no feasible alternative exists. The remedy is divided into the following parts: first, when the violation mainly stems from a procedural defect that can be repaired through a supplementary procedure, the court should give priority to staying the enforcement proceedings and remitting the case to the arbitral tribunal, allowing the parties to remedy the procedural defect at the arbitral stage; second, when the violation concerns only part of the award's contents and that part can be separated from the whole award, the court should consider enforcing the part that does not violate public policy and refusing only the violating part; third, in certain special circumstances, such as conflicts involving sovereign interests or major foreign policy, the court may, while refusing enforcement, clearly state the reasons and conditions for refusal, providing the parties with a possible path for re-applying for enforcement in the future. This remedial approach helps bring the court's discretion within procedural constraints and avoids the unnecessary institutional loss caused by all-or-nothing adjudication.

The institutional rationality of the three-tier filtering mechanism lies in transforming public policy review from a one-time final judgment into a phased, multi-factor comprehensive assessment. The identification filter resolves the question of "whether review is permissible," the review filter responds to the question of "the degree of review," and the remedy filter provides the way out "after review." The three tiers are not in a simple linear progression but an organic whole that cooperates and supports one another.

7. Conclusion

The public policy exception under Article V(2)(b) of the New York Convention, due to factors such as conceptual ambiguity, institutional gaps, and the resurgence of geopolitics, harbors the risk of alienation from a safety valve into an avoidance tool. The essence of the abuse lies in the ambiguity within the concept and the external intervention of sovereign state will; therefore, the abusive conduct should also be regulated from two major aspects: internally formulating interpretation guidelines, and externally establishing a tiered procedure. In the final analysis, how to draw a normative boundary in the application of the public policy exception that both prevents abuse and preserves necessary flexibility will be a fundamental proposition that the international arbitration system must continuously face.

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