One of the grounds for remitting or setting aside an Award for serous irregularity is "the award or the way in which it was procured being contrary to public policy". Article V(2)(b) of the New York Convention 1958 provides that one of the grounds on which a court can refuse to recognise or enforce an arbitral award is that "recognition or enforcement would be contrary to the public policy of that country".

Introduction

The matters considered by courts in deciding challenges to awards under the Arbitration Act will be discussed initially by briefly examining Section 68 as a whole prior to investigation of the public policy[1] ground. The report written by the Draft Advisory Committee[2] is examined in order to establish parliament's intention when including this exception. Finally key cases will be considered where challenges have been made on this ground.

A similar approach will be applied when the New York Convention public policy exemption is discussed. The drafting committee's report together with key cases and respected opinion will enable the matters that courts consider under this Article, to be established. Additionally the attempt by the International Law Association to establish accepted recommendations will be acknowledged as they have had significant support, although to date have not achieved universal consensus.

To conclude, a comparison of the different approaches will be made and justification sought regarding the variances found.

Arbitration Act 1996

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[1] Egerton -v- Brownlow (1853) 4 HLC 1: "…that principle of law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against public good". Cheshire and North, Private International Law (13th edn., Butterworths, 1999), p. 123: "…some moral, social or economic principle so sacrosanct ... as to require its maintenance at all costs and without exception". El-Ahdab, ""General Introduction on Arbitration in Arab Countries"", International Handbook on Commercial Arbitration (hereinafter ""Handbook"") (Kluwer), Suppl. 27, Dec. 1998, Annex 1, p.12.: "…the concept of public policy is based on the respect of the general spirit of the *Sharia* and its sources (the *Koran* and the *Sunna*, etc.) and on the principle that "individuals must respect their clauses, unless they forbid what is authorized and authorize what is forbidden". Justice Burrogh in Richardson v. Mellish [1824] 2 Bing. 228; [1823–1834] All ER Rep. 258: "Public policy is 'a very unruly horse, and when once you get astride it you never know where it will carry you". Lord Denning in Enderby Town Football Club Ltd v. The Football Association Ltd [1971] Ch. 591 at 606: "With a good man in the saddle, the unruly horse can be kept in control."

[2] On Arbitration Law: Report on The Arbitration Bill 1996

Section 68 of the Arbitration Act 1996[3]

This section[4] of the Act provides for an application to court to challenge an award on the grounds of serious procedural irregularity affecting the tribunal, the proceedings or the award where the seat of the arbitration is in England and Wales or Northern Ireland[5]. The Act states nine kinds of irregularity, which the court considers has caused or will cause the appellant substantial injustice. A challenge based on serious irregularity with the additional requirement for substantial injustice will only succeed where the arbitral procedure has erred substantially from what would reasonably have been expected.

The Departmental Advisory Committee[6] set out various considerations that courts should apply to applications under this section. These were summarised by Mr Justice Cresswell in *Petroships Pte Ltd v Petec Trading and Investment Corporation and Ors*[7]:

i. Closed list of irregularities[8]
ii. Courts should be able to correct serious failure to comply with the due process of arbitral proceedings
iii. A serious irregularity has to pass the test of causing substantial injustice before a court can act
iv. The test of substantial injustice should be applied so as to support the arbitral process and not interfere with it. Only where the circumstances are so far removed from what should have happened would the court act
v. As the parties have agreed to arbitrate, the test is not what would have happened if the dispute had been litigated
vi. Substantial injustice can only be argued if what has happened is indefensible in regard to choosing to arbitrate

[3] S.68 is derived from the Arbitration Act 1950, ss.22(1) and 23(2); and the Model Law, Art.34

[4] The parties may not exclude an application under this section by agreement

[5] Arbitration Act Section 2(1). Section 2(4) also permits challenges where (a) no seat of the arbitration has been designated or determined, and (b) by reason of a connection with England and Wales or Northern Ireland the court is satisfied that it is appropriate to do so

[6] On Arbitration Law: Report on The Arbitration Bill 1996 paras 278-283, Chairman The Rt Hon Lord Justice Saville

[7] 2001, 2 Lloyd's Rep. 348

[8] The closed list of irregularities replaces the concept of 'misconduct', which was undefined under the Section 23 1950 Act and Section 5 of the 1975 Act that referred specifically to public policy.

vii. S.68 is designed as a longstop, only available in extreme cases, where the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected

viii. S.68 must not be used to circumvent the restrictions upon the court's power to intervene in arbitral proceedings

The courts are not quick to interfere under this sub-section. Of those cases that have considered it, judgments have emphasised that it is only intended for use in extreme cases[9].

Section 68(2)(g)[10] in Respect of Public Policy

To comply with the requirements of this consideration, the matters being challenged would have to be shown to have caused injustice, be unconscionable or reprehensible and not just inadvertent[11].

It is apparent that, for example, the withholding of documents is not sufficient alone to satisfy this irregularity. Additionally it is a requirement to show that the non-disclosure was deliberate and substantial injustice had been caused as a result. In *Profilati*[12], the Hon. Mr. Justice Moore-Bick stated that it was not sufficient to establish that an account statement relating to aluminium futures trading which had been withheld due to negligence or an error of judgement, may have influenced the award. Inadvertence was also cited by the Hon. Mr. Justice Moore-Bick in *Cuflet Chartering v Carousel Shipping Co Ltd*[13] as being a bar to a successful challenge under sub-section (2)(g):

> "… where, as in the present case, one party to arbitral proceedings bases his complaint on the manner in which the other conducted himself in relation to the proceedings, I doubt whether anything short of unconscionable conduct would justify the court in setting aside the award. … it would not be enough to show that the owners had inadvertently misled Cuflet, however carelessly they might have

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[9] Profilati Italia S.R.L. v. Painewebber International Futures Ltd. [2001] 1 ArbLR 51, [2001] All ER (Comm) 1065

[10] Arbitration Act 1996, The award being obtained by fraud or the award or the way in which it was procured being contrary to public policy

[11] Protech Projects Construction (PTY) Limited v Mohammed Abudulmohsin Al-Kharafi & Sons for General Trading, General Contracting and Industrial Structures WLL:Mohammed Abdulmohsin Al-Kharafi & Sons for General Trading, General Contracting and Industiral Structures WLL v Big Dig Construction (Proprietary) Ltd (In Liquidation) [2005] EWHC 2165 (Comm) HC; Langley J "…must at least involve more than inadvertence and must, save perhaps very exceptionally, involve something which can readily be described as unconscionable or reprehensible"

[12] FN 9

[13] [2001] 1 Lloyd's Rep 707

expressed themselves."

Akenhead J considered the question of inadvertence in the more recent case of *L Brown & Sons Ltd v Crosby Homes (North West) Ltd*[14] when it was held that the withholding or non-disclosure of documents, which have not been ordered to be disclosed or agreed to be disclosed, cannot be described as reprehensible.

In order to achieve a successful challenge under Section 68(2)(g) by establishing that a witness had lied, it must be demonstrated that the award was gained as a result of the lying or deception and also that substantial injustice would be caused to the applicant as a result. In *Brown*[15], Akenhead J held that whether or not a witness was lying was a matter that the parties would have left to the arbitrator. Save in exceptional circumstances, the parties' autonomy dictated that the arbitrator's decision on whether or not a witness was lying must be upheld.

The wording of the subsection, 'the way it was procured being contrary to public policy'[16] within the context of serious procedural irregularity, is obviously significant. Challenges will not succeed where matters of public policy are raised which were not raised during the arbitration. D. Mackie QC highlighted this in *Sanghi Polyesters Ltd (India) v The International Investor KCFC (Kuwait)*[17] where he stated that the Arbitrator couldn't be criticised for failing to deal with a matter not raised at the arbitration.

It has been established[18] that Section 68 cannot be used to circumvent the restrictions on the court's power of intervention. In *R v V*[19] part of the claimant's case was that the award was contrary to public policy. The award however expressly finds that the Agreement and its performance was not illegal in the place of performance (Libya), was not contrary to English public policy and no complaint was made regarding the arbitral process. Equally V is not accused of any reprehensible or unconscionable behaviour during the arbitral process.

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[14] [2008] EWHC 817 (TCC)

[15] FN 14

[16] Arbitration Act 1996 S.68(2)(g)

[17] [2000] 1 Lloyd's Rep. 480 Queens Bench Division

[18] Lesotho Highlands Development Authority v Impreglio SpA [2005] UK HL 43, Lord Steyn at para 29. "But nowhere in section 68 is there any hint that a failure by the tribunal to arrive at the "correct decision" could afford a ground for challenge under section 68"

[19] [2008] EWHC 1531 (Comm) Queens Bench Division

The 2009 case of *Double K. Oil Products 1996 Limited v Neste Oil OYJ*[20] provides a summary of how Section 68(2)(g) has been construed. In a case regarding the purchase of gas, the claimant sought the setting aside of an arbitral award on the ground of false evidence in procuring a favourable decision being contrary to public policy and submitted that this qualified under any or all three grounds in Section 68(2)(g)[21].

Hon Mr Justice Blair laid out the principles that were applicable:

i. Section 68[22] sets a high threshold[23]
ii. It is not enough to show that one party inadvertently misled the other, however carelessly[24]
iii. It will normally be necessary to satisfy the court that some form of reprehensible or unconscionable conduct has contributed in a substantial way to the obtaining of the award. A challenge to an award cannot, therefore, be made on the grounds of an innocent failure to give proper disclosure[25] or the innocent production of false evidence[26]
iv. Where the allegation is fraud in the production of evidence, the onus is on the applicant to make good the allegation by cogent evidence[27]
v. The applicant must show that the new evidence relied upon was not available at the time of the arbitration and would have had an important influence on the result[28] and has caused or will cause substantial injustice to the applicant.

New York Convention 1958, Article V(2)(b) [29]

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[20] [2009] EWHC 3380 (Comm) Queens Bench Division

[21] (i) The award being obtained by fraud, (ii) The award being contrary to public policy (iii) The way in which it was procured being contrary to public policy

[22] Arbitration Act 1996

[23] FN 18

[24] Cuflet Chartering v. Carousel Shipping Co Ltd [2001] 1 Lloyd's Rep 707 , Moore-Bick J, at [12]

[25] Profilati Italia SRL v. PaineWebber Inc [2001] 1 ArbLR 51, [2001] All ER (Comm) 1065 , Moore-Bick J at [17] and [22]

[26] Elektrim SA v. Vivendi Universal SA [2007] All ER (Comm) 365 , Aikens J at [80]-[81]

[27] Cuflet at [12] FN 24, Elektrim at [81] FN 26

[28] Westacre Investments Inc v Jugoimport-SDPR Holding Co Ltd [1999] 2 Lloyd's Rep 65 at 76-77, Waller LJ, applied by Cooke J in Thyssen Canada Ltd v Mariana Maritime SA [2005] ArbLR 62 at [60]-[66] and in DDT Trucks of North America Ltd v DDT Holdings Ltd [2007] 2 Lloyd's Rep 213 at [22]-[23]

[29] Recognition and enforcement of the award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: The recognition of the award would be contrary to the public policy of that country

The Drafting Committee of the New York Convention endorsed a narrow interpretation of Article V(2)(b) noting in its report that it intended to limit the application of the public policy provision to cases in which enforcement would be 'distinctly contrary to the basic principles of the legal system of the country where the award is invoked.'[30]

Although 'the characteristic of contemporaneous international arbitration law is its liberalism'[31], the limit to that liberalism is often public policy and the last instance for its application is at the point of enforcement. Under Article V(2)(b) the court[32] can refuse (although it only refuses rarely under this Article) enforcement if it would be contrary to the public policy of that country[33]. This wording suggests that the Article does not seek to harmonise public policy across all states (transnational public policy).[34]

> "…international public policy, according to a generally accepted doctrine is confined to violation of really fundamental conceptions of legal order in the country concerned."[35]

The Article uses the word 'may' rather than 'shall' indicating that it is not mandatory that courts deny enforcement when the ground is met.[36] The wording here confirms the convention's pro enforcement objectives whilst restricting discretion to enforcing awards that despite being contrary to domestic public policy are not contrary to international public policy.[37]

The matters considered by courts under this Article can generally be categorized as follows:

i. Due Process[38] - 'unfairness in the manner in which the arbitration was

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[30] Report of the Committee on the Enforcement of International Arbitral Awards, U.N. Doc. E/2704 and E/AC.42/4/Rev.1 (Mar. 28, 1955).

[31] Jean-Baptiste Racine, L'arbitrage commercial internal et l'ordre public 3, LGDJ (1999)

[32] Of the place of enforcement

[33] 'Although Article V(2)(B) is not explicit on this point, there is no doubt that the reference in that provision to public policy is in fact a reference to the international public policy of the host jurisdiction', Fouchard, Gaillard and Goldman on International Commercial Arbitration 996, Kluwer (1999)

[34] "…the general principles of morality accepted by civilised states", International Law Association Report on the 69th Conference, London 2000, p.345

[35] Prof Pieter Sanders, 60 Years of ICC Arbitration - A Look at the Future, 1984

[36] There has been debate regarding the French text obliging the court to refuse recognition or enforcement however the other three authentic texts (Russian, Chinese and Spanish) all confirm the meaning of the English text

[37] The New York Convention of 1958: An Overview Albert Jan van den Berg, Article V(2) – Public Policy

[38] Hanseatisches Oberlandesgericht Hamburg, 1998, XXIX Y.B. Com Arb 663: "the violation of due process in the arbitral proceedings alleged by the defendant is not only a ground for refusal of enforcement

conducted or the legitimacy of the arbitration itself'.[39] An arbitral award should be denied if the party challenging the award proves that he was not given a meaningful opportunity to be heard. The narrow interpretation of this Article was confirmed in the US District Court, where it was confirmed that the Arbitrator is not bound, for instance, to hear all the evidence tendered by the parties.[40]

ii. Procedure – To be a ground here, failure must violate a fundamental rule. When the claimant failed to inform the tribunal that a settlement had been achieved, it was held that the basic principles of fairness, trust and cooperation that are indispensable for efficient international commerce, had been violated.[41]

iii. Impartiality – To be considered contrary to public policy, generally actual bias rather than imputed or appearance of bias is a requirement.[42] A Swiss court refused to enforce an award where the arbitration clause had been drawn up by the named arbitrator and provided for a penalty of 1,000,000 Swiss Francs should the arbitrator be removed.[43]

iv. Illegality - Not all illegal contracts are unenforceable on the basis of public policy. The English judges seem to distinguish between 'serious illegality' (which would render enforcement contrary to English public policy) and 'mere illegality' (which is 'not sufficiently grave to justify non-enforcement')[44]. In *Westacre*[45], Waller LJ stated that "there are some rules of public policy which if infringed will lead to non-enforcement by the English court whatever their proper law and wherever their place of performance but others are based on considerations which are purely domestic"[46]. Theses non-domestic rules which may provide grounds for non-enforcement are "of the greatest importance and

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pursuant to Article V(1)(b); it is also a violation of public policy which, pursuant to Article V(2)(b), must be examined ex officio"

[39] 'The Public Policy Exception to the Recognition and Enforcement of Foreign Arbitral Awards' (December 2004) Quinn Emanuel, 2; Glenn Hendrix, 'International Judicial Assistance from American Courts in Russian Litigation and Arbitration Proceedings' (Paper presented at the Russian-American Symposium on Private International Law, Moscow, 29 June 2004) 6; Randall Peerenboom, 'The Evolving Regulatory Framework for Enforcement of Arbitral Awards in the PRC' (2000) 1 *Asian-Pacific Law & Policy Journal* 12:1, 12:25

[40] Generica Ltd v Pharmaceutical Basics Inc, 125 F.3d 1123 (7th Circ 1997)

[41] Baterisches Oberstes Landesgericht, 20 November 2003, XXIX Y.B.Com. Arb 771 (2004)

[42] FN 37

[43] Berirksgericht Affoltern am Albis, 1994, XXIII Y.B. Com Arb 754 (1998)

[44] Jonathan Hill, 'Illegality Under the Law of the Place of Performance and the Enforcement of Arbitration Awards' (2000) Lloyd's Maritime and Commercial Law Quarterly 311, 314.

[45] FN 28

[46] FN 28

almost certainly recognised in most jurisdictions throughout the world".[47]

International Law Association Recommendations[48]

The 2002 Conference of the ILA produced recommendations on the application of international public policy[49] as a ground for refusing enforcement of international arbitral awards. The finality of awards was acknowledged whilst recognising that in exceptional circumstances, when found to be against public policy, refusal would be justified.[50]

The recommendations defined a state's international public policy as including[51]:

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"
iii. the duty of the state to respect its obligations towards other states or international organizations

With regards to the fundamental principles set out in the recommendations, it is suggested that courts should consider the award with reference to their own legal system and not with that of the law governing the contract, the law of the place of performance or the law of the seat.[52] In determining whether a principle is sufficiently fundamental to justify refusal, a court should take cognisance of the case's international nature, any connection with the court's state and whether there was a consensus of international opinion on the matter.[53] If a party failed to raise such a principle with the tribunal it should not be entitled to raise it at the enforcement stage.[54]

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[47] FN 28

[48] On the Application of Public Policy as a Ground for Refusing Recognition of International Arbitral Awards

[49] International Law Association Recommendations on the Application of Public Policy as a Ground for Refusing Recognition of International Arbitral Awards, 1(c) The expression "international public policy" is used in these Recommendations 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).

[50] FN 49, 1(a) and 1(b)

[51] FN 49, 1(d)

[52] FN 49, 2(a)

[53] FN 49, 2(b)

[54] FN 49, 2(c)

The recommendations include four public policy rules:

i. An award's violation of a mere "mandatory rule"[55] should not bar its enforcement.[56] Case law generated by courts that have applied the rule generally support this view.[57]
ii. Refusal of enforcement due to a rule of public policy forming part of the court's own legal system should only be implemented when: (i) the scope of the rule is intended to encompass the situation under consideration; and (ii) enforcement of the award would manifestly disrupt the essential political, social or economic interests protected by the rule.[58]
iii. The court can reassess the facts if violation of public policy cannot be established by review only.[59]
iv. When a public policy rule is enacted after the rendering of the award, a court should only refuse the award's enforcement if it is plain that the legislator intended the rule to have effect as regards awards rendered prior to its enactment.[60]

Finally it is recommended that a court can apply Article V(2)(b)[61] where otherwise it would constitute a manifest infringement by the state of its obligations towards other states.[62]

Distinction between the Application of Section 68(2)(g)[63] & Article V(2)(b)[64]

Judicial attitudes generally differ when matters under these headings are considered at

[55] a rule that is mandatory but does not form part of the State's international public policy so as to compel its application in the case under consideration
[56] FN 49, 3(a)
[57] 3 April 1975 - Oberlandesgericht Hamburg in Pieter Sanders (ed), Yearbook Commercial Arbitration Volume II - 1977, Volume II (Kluwer Law International 1977) pp. 241 - 241 'With respect to the defence of the German firm F that it had not been able to present its case (*audi et alteram partem*), the Court of Appeal referred to a leading decision of the Supreme Court of 21 October 1971 which draws a distinction between domestic and international public policy with respect to the recognition and enforcement of foreign arbitral awards. Reference was made to the same trend in France and Switzerland where the same distinction, in the case of foreign arbitral awards, is made.
[58] FN 49, 3(b)
[59] FN 49, 3(c)
[60] FN 49, 3(d)
[61] New York Convention 1958
[62] FN 49, 4.
[63] Arbitration Act 1996
[64] New York Convention 1958

primary[65] and secondary[66] jurisdiction. Courts have highlighted the differences in many states.[67]

> "It follows also that a failure to raise the public policy ground in proceedings to set aside an award cannot operate to preclude a party from resisting on that ground the enforcement of the award in the enforcing court in another jurisdiction. That is because each jurisdiction has its own public policy"[68]

The scope of public policy is relatively narrow and most states restrict it further when considered in an international sphere[69]. Therefore not every breach of national rule would justify the refusal to enforce an international award. This narrow interpretation was affirmed by the United States Court of Appeal in *Parsons and Whittemore v RAKTA*[70] where the plaintiff appellant sought to resist an award following abandonment of a construction contract in Egypt around the time of the six-day war with Israel. The court held that:

> "The general pro-enforcement bias informing the Convention and explaining its supersession of the Geneva Convention points toward a narrow reading of the public policy defense".[71] "Enforcement of foreign arbitral awards may be denied on this basis only where enforcement would violate the forum state's most basic notions of morality and justice."[72]

Even though under the Arbitration Act 1996, there is no explicit statutory distinction between domestic and international public policy, English court decisions reflect different approaches in each instance. These are illustrated by the decisions in the

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[65] Represented here by Section 68 Arbitration Act 1996

[66] Represented here by Article V of the New York Convention

[67] United States: Polytek Engineering Co. v. Hebei Import & Export Corp., XXIII YB Comm. Arb. 666 (1998),para 83 "In Proceedings to set aside are governed by the law under which the award was made or the law of the place where it was made, while proceedings in the court of enforcement are governed by the law of that forum. The Convention, in providing that enforcement of an award may be resisted on certain specified grounds, recognizes that, although an award may be valid by the law of the place where it is made, its making may be attended by such a grave departure from basic concepts of justice as applied by the court of enforcement that the award should not be enforced." India: Renusagar Power Co Ltd v General Electric Co (1995) XX Ybk Comm Arb . Switzerland: KS AG v CC SA (1995) XX Ybk Comm Arb 762. Germany: Company A v Trustee in bankruptcy of company X (1987) XII Ybk Comm Arb 489. France: SA Laboratoires Eurosilicone v Societe Bez Medizintechnik GmbH (2004)

[68] FN 67, para 86

[69] The New York Convention of 1958: An Overview Albert Jan van den Berg, Article V(2) – Public Policy: "The distinction between domestic and international public policy means that what is considered to pertain to public policy in domestic relations does not necessarily pertain to public policy in international relations. According to this distinction, the number of matters considered as falling under public policy in international cases is smaller than that in domestic ones. The distinction is justified by the differing purposes of domestic and international relations."

[70] Parsons and Whittemore Overseas Co., Inc., v Societe Generale De L'Industrie Du Papier (RAKTA), and Bank of America, 508 F.2d 969 (2d Cir. 1974), I.Y.B. Com. Arb 205 (1976)

[71] FN 70, para 8

[72] FN 70, para 9

Soleimany[73], *Westacre*[74] and *OTV*[75] cases.

In the *Soleimany*[76] case, Waller LJ refused to enforce a domestic award on the basis of public policy and stated that English courts will not enforce a foreign judgment that enforces an illegal contract[77]. The arbitrator had found that the contract was illegal in the place of performance, but that under the proper law of the contract[78] such illegality did not affect the parties' rights under the contract.

In *Westacre*[79] and *OTV*[80] (both under the New York Convention) English courts enforced awards based on contracts that were illegal in the place of performance[81]. The fact that English law may view the contract as illegal is insufficient; it is necessary to establish that the illegality 'infects the award as well' and it was held that such enforcement would not offend 'international comity' as it was not a direct enforcement of the underlying contract.[82]

Conclusion

It is clear that courts generally distinguish between deciding to set aside or remit an award and deciding whether to enforce an award. The application of largely unforeseeable purely domestic public policies when parties have chosen a seat that has no or little connection with the country of enforcement seems unsatisfactory.

The differences also give states scope in deciding domestic challenges whilst maintaining a strictly narrow approach to enforcing international awards. It can be argued that certain states like to dress their jockeys (of their "unruly horse"[83]) in the colour of their nations, meaning that nationals are more likely to profit from the public policy exception than foreigners.[84]; however when restricted to purely domestic awards as in the Arbitration

[73] Soleimany v Soleimany [1999] 3 All ER 847
[74] FN 28
[75] Omnium de Traitement et de Valorisation SA v Hilmarton Ltd [1999] 2 Lloyd's Rep 222
[76] FN 73
[77] A contract for smuggling carpets which was illegal in Iran, the place of performance "a foreign and friendly state"
[78] Jewish Law
[79] FN 28
[80] FN 82
[81] In both cases the arbitrator found that the contract was valid under the proper law of the contract
[82] Omnium de Traitement et de Valorisation SA v Hilmarton Ltd [1999] 2 Lloyd's Rep 222, 225
[83] FN **Error! Bookmark not defined.**
[84] Ylva Axelsen, Public Policy as a Bar to Recognition and Enforcement of International Arbitral Awards, 2004, Master Thesis at the School for Advanced Legal Studies, University of Cape Town

Act 1996[85], the parties can take this into consideration when choosing their place of seat.

[85] FN 5

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