Introduction

Arbitration has become a reality at the heart of international commercial relations. As every modern society seeks to meet the needs of the international market and to integrate fully into the international commercial community, arbitration has become increasingly important. This has been recognised in several legal systems, and therefore legal rules that regulate arbitration are now part of every modern legal system; international arbitral tribunals are instituted in every region around the world; and international conventions are organising and harmonising the arbitration rules between states.

The importance and increasing popularity of arbitration in international business, in preference to litigation, stems from its many advantages. In arbitration, parties hope to use arbitrators who have some technical knowledge of the subject matter of the dispute, which may not be expected in the case of ordinary judges.[1] They expect to settle their dispute in a manner more suited to commercial matters: they appreciate the fact that in arbitration there will be less solemnity and less bureaucracy, the procedures will be less rigid and less expensive, there will be less publicity and the discussion will take place in a more peaceful climate.[2]

Nevertheless, despite its attractions, the ultimate measure of success in an international commercial arbitration case will depend on the enforceability of the resulting arbitral award, otherwise all of the arbitration process will be no more than a waste of time and money. Therefore, efforts have been made to guarantee international respect for the enforcement of foreign arbitral awards, by means of inter-

1. Some times arbitrators are chosen on account of their technical knowledge, e.g. to give a final decision on the question of whether the goods which have been delivered are of the quality specified in the contract or to which extent the contract price ought to be reduced. For more information, see Rene David, Arbitration in International Trade, Kluwer Law and Taxation, (1985), p. 12.

2. See, Redfern and Hunter, Law and Practice of International Commercial Arbitration, 2nd ed., London: Sweet & Maxwell (1991), pp. 53-57; Rene David, op cit., pp. 10-12; Okezie Chukwumerije, Choice of Law in International Commercial Arbitration, Library of Congress Catalog, (1994), p. 6-9; Wolfgang Peter, Arbitration and Renegotiations of International Investment Agreements, Martinus Nijhoff Publishers (1986), p. 94.

national conventions and domestic arbitration laws. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (hereafter the New York Convention)[3] is the most important international treaty relating to international commercial arbitration. It paved the way for the recognition and enforcement of foreign arbitral awards, as opposed to enforcing a foreign court judgement, thus establishing one of the greatest advantages of international commercial arbitration over conventional court settlement. Moreover, the New York Convention has led to a substantial degree of uniformity between the different enforcement proceedings of various legal systems. The unifying effect of the New York Convention has turned enforcement proceedings into a more or less mechanical approval process which has little in common with adversarial court proceedings.

However, an arbitral award cannot be expected to be recognised and enforced without being subject to some control by the competent authority in the country in which enforcement is sought. This could be established upon various grounds, the violation of which may lead to the refusal to enforce a foreign arbitral award. Such grounds are not the same in every legal system, therefore the New York Convention has introduced a list of internationally recognised grounds, and imposes on its parties an obligation to limit the grounds upon which an arbitral award can be refused to those set out in Article V paragraphs (1) and (2).

One of these grounds provides that enforcement of the award may be refused if such enforcement "would be contrary to the public policy of the country in which enforcement is sought."[4]

Unfortunately, public policy is an ambiguous notion that could be interpreted in various ways. This may leave the door widely open for national courts to exercise ultimate control over foreign arbitral awards, which may expose a foreign arbitral award to additional grounds, contrary to what had been intended by the drafters of the New York Convention. Moreover, the rules that could be considered to be of a public policy nature vary from state to state. Thus, what could be considered to be a valid action under one legal system, could be contrary to public policy under another. Accordingly, an ar-

3. United Nations Treaty Series (1959) Vol. 330, p. 38, No. 4739. See AnnexxA, p 288. The New York Convention was prepared and opened for signature on 10 June 1958, the United Nations Conference on International Commercial Arbitration, convened in accordance with Resolution 604 of the Economic and Social Council of the United Nations, adopted on 3 May 1956. It entered into force on 7th of June 1959, in accordance with Article 12 of the Convention.

4. Article V (2)(b) of The New York Convention.

bitral award that was correctly made under a particular national law, may not be recognised and enforced, because it violates the national public policy rules of the state in which enforcement is sought. This may lead to uncertainty and confusion, since it will be difficult to secure the enforceability of foreign arbitral awards under the New York Convention, the consequence of which may undermine the effectiveness of international commercial arbitration.

This work discusses the role of public policy in the domain of international commercial arbitration and identifies the problems that may arise from applying the public policy ground. In dealing with these problems, relevant suggestions and proposals will be presented in light of recent developments. In the process, a distinction will be drawn between domestic arbitration and international arbitration. Emanating from this will be an exploration of the existence of international public policy rules that are more suitable to govern international commercial disputes - an approach that has already become a trend in cases decided under the New York Convention.[5] In this regard, relevant arbitration rules and court decisions of various legal systems will be discussed in order to determine the extent to which courts are prepared to apply a narrow interpretation of the public policy ground. This will include examining decisions where enforcement has been refused, and also decisions in which applications based on public policy have been rejected. However, since it would be difficult to examine all national arbitration rules of the various legal systems, the research will focus on the situation in two countries (England[6] and Egypt[7]). The reason for choosing these countries is that one of them is a Common Law country (England); and the other is a Civil Law country (Egypt), although Egypt's civil law system at the same time, has its roots in Islamic law. In addition, the Egyptian legal system may be considered to be the leading legal system by most of the Arab countries.

This study is divided into seven chapters. Chapter One examines the source of a foreign arbitral award.[8] This chapter aims to give

5. See the International Law Association Report, "Final report on Public Policy as a Bar to Enforcement of Arbitral awards," London Conference (2000), p. 18. (Hereinafter " the ILA Report").

6. The English Arbitration Act of 1996, came into force on 31 January 1997. See web site address: (http: //www.hmso.gov.uk/acts/acts1996/1996023.htm).

7. The Egyptian Law No 27 of 1994, published in the Egyptian Official Gazette No. 16, 21 April 1994 and became effective on the 22nd of May 1994. Intl. Handbook on Comm. Arb. Suppl. 19. August 1995, Egypt, Annex B, p. 14. See ahead Annex B, p. 293.

8. See, Chapter One, p. 7.

a general background of international commercial arbitration and the enforcement of foreign arbitral awards. It is therefore necessary to begin by defining 'arbitration' and 'arbitral awards', then to place this subject in the framework of international commercial arbitration. A distinction will further be drawn between national and international arbitration and arbitral awards. The execution and resisting to enforce national and foreign arbitral awards will also be considered in relation to the relevant provisions of the New York Convention, particularly Article V (2)(b).

Chapter Two examines the notion of public policy.[9] Several important topics will be discussed in this chapter: what constitutes a public policy rule; how can a court distinguish between public policy rules and mandatory rules; the role of public policy in private international law and international commercial arbitration; and finally a distinction will be drawn between national and international public policy. The latter distinction will be put in perspective throughout the following chapters.

Chapter Three deals with the question of whether or not arbitrators are required to consider the application of public policy and how an arbitrator can determine the applicable public policy rules in the domain of international commercial arbitration.[10] The importance of examining this subject refers to the duty of an arbitrator to provide the parties with an enforceable arbitral award.

Chapter Four concerns the degree of control that can be exercised by the courts in the country of origin over international arbitral awards, and the role of the public policy ground in extending such control.[11] The importance of examining this subject relates to the fact that setting aside an international arbitral award for considerations of public policy in the country of origin is a ground that may lead to a refusal to enforce foreign arbitral awards, under Article V (1)(e) of the New York Convention.
The effect of public policy on the enforcement of foreign arbitral awards under Article V (2)(b) of the New York Convention will be examined in Chapters Five and Six.

9. See, Chapter Two, p. 59.

10. See, Chapter Three, p. 101.

11. See, Chapter Four, p. 151.

Chapter Five is confined to examination of whether or not the public policy ground could lead to the refusal of enforcement of foreign arbitral awards if the award was based upon procedures that violate public policy of the country in which enforcement is sought.[12]
A number of examples and judicial decisions that have been considered as constituting a violation of procedural public policy will be reviewed. This includes examining whether the right of the parties to be treated equally is a public policy issue, whether the absence of reasons in the award can be a valid ground to refuse the enforcement, and finally whether the lack of impartiality of an arbitrator could be raised under Article V (2)(b) of the New York Convention.

Chapter Six is devoted to analysing particular examples which concern public policy as a ground to refuse the enforcement of foreign arbitral awards for reasons that concern the subject matter of the dispute.[13] This includes morality issues, political issues and economic issues. A summary and conclusion will be provided at the end of this work in Chapter Seven.[14]Lore veliquat. Lore dolobor irillum odionsed dit wisi.

12. See, Chapter Five, p. 184.

13. See, Chapter Six, p. 239.

14. See, Chapter Seven, p. 278.