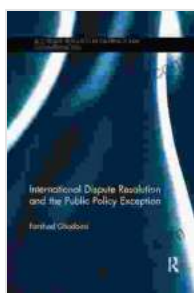


# Navigating the Complexities of International Dispute Resolution: A Comprehensive Guide to the Public Policy Exception

International dispute resolution (IDR) is a complex and multifaceted field that plays a critical role in resolving cross-border disputes and fostering global cooperation. Amidst the intricate legal framework governing IDR, the public policy exception stands as a significant concept that can significantly impact the outcome of international arbitration proceedings.



## International Dispute Resolution and the Public Policy Exception (Routledge Research in International Commercial Law)

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This article delves into the complexities of international dispute resolution and examines the public policy exception in depth. We will explore its historical origins, legal basis, and practical implications through real-world case studies. By gaining a comprehensive understanding of this crucial concept, practitioners and scholars alike can navigate the challenges and

seize the opportunities presented in the evolving landscape of international dispute resolution.

## **Understanding the Public Policy Exception**

The public policy exception is a legal doctrine that allows a court or arbitral tribunal to refuse to enforce an arbitral award if it is found to be contrary to the public policy of the forum.

This exception is based on the principle that a court or tribunal should not enforce an award that would violate the fundamental principles of the forum's legal system. Public policy exceptions can be invoked in various circumstances, including when the award:

- Is contrary to the forum's fundamental notions of justice or morality
- Would violate the forum's public health or safety
- Would undermine the forum's national security

The public policy exception is a narrow one, and it is generally not invoked lightly. However, it can be a powerful tool for courts and arbitral tribunals to protect the public interest.

## **Historical Origins of the Public Policy Exception**

The public policy exception has its roots in the early days of international arbitration. In the 19th century, courts in England and the United States began to refuse to enforce arbitral awards that were found to be contrary to their public policy.

One of the earliest cases involving the public policy exception is *Watts, Watts & Co. v. Mitsui & Co.*, which was decided by the English Court of Appeal in 1917. In this case, the court refused to enforce an arbitral award that required a British company to pay damages to a Japanese company for breach of contract. The court found that the award was contrary to British public policy because it would have required the British company to pay damages for an act that was not illegal under English law.

### **Legal Basis of the Public Policy Exception**

The public policy exception is now recognized in most legal systems around the world. It is typically based on a provision in the arbitration law of the forum country.

For example, in the United States, the public policy exception is codified in the Federal Arbitration Act (FAA), which provides that an arbitral award may be vacated if it is "contrary to the public policy of the United States." The FAA does not define "public policy," but courts have interpreted it to mean "fundamental notions of justice and morality."

### **Practical Implications of the Public Policy Exception**

The public policy exception can have a significant impact on the outcome of international arbitration proceedings. If a party believes that an arbitral award is contrary to public policy, it can file a motion to vacate the award.

The burden of proof is on the party challenging the award to show that it is contrary to public policy. However, the standard of proof is relatively low. A party can usually succeed in vacating an award by showing that it is "manifestly repugnant" to public policy.

## Case Studies

The public policy exception has been invoked in a number of high-profile international arbitration cases. Some of the most notable cases include:

- *Methanex Corporation v. United States of America* (NAFTA Chapter 11 Tribunal, 2005)
- *Yukos Oil Company v. Russian Federation* (PCA, 2014)
- *Antronic v. Romania* (ICSID, 2015)

In *Methanex*, a NAFTA Chapter 11 tribunal refused to enforce an arbitral award that required the United States to pay damages to a Canadian company for breach of contract. The tribunal found that the award was contrary to US public policy because it would have required the United States to pay damages for an act that was not illegal under US law.

In *Yukos*, a PCA tribunal annulled an arbitral award that required Russia to pay damages to a Russian oil company for expropriation. The tribunal found that the award was contrary to Russian public policy because it would have required Russia to pay damages for an act that was lawful under Russian law.

In *Antronic*, an ICSID tribunal refused to enforce an arbitral award that required Romania to pay damages to a Romanian businessman for breach of contract. The tribunal found that the award was contrary to Romanian public policy because it would have required Romania to pay damages for an act that was not illegal under Romanian law.

## Best Practices for Avoiding Public Policy Challenges

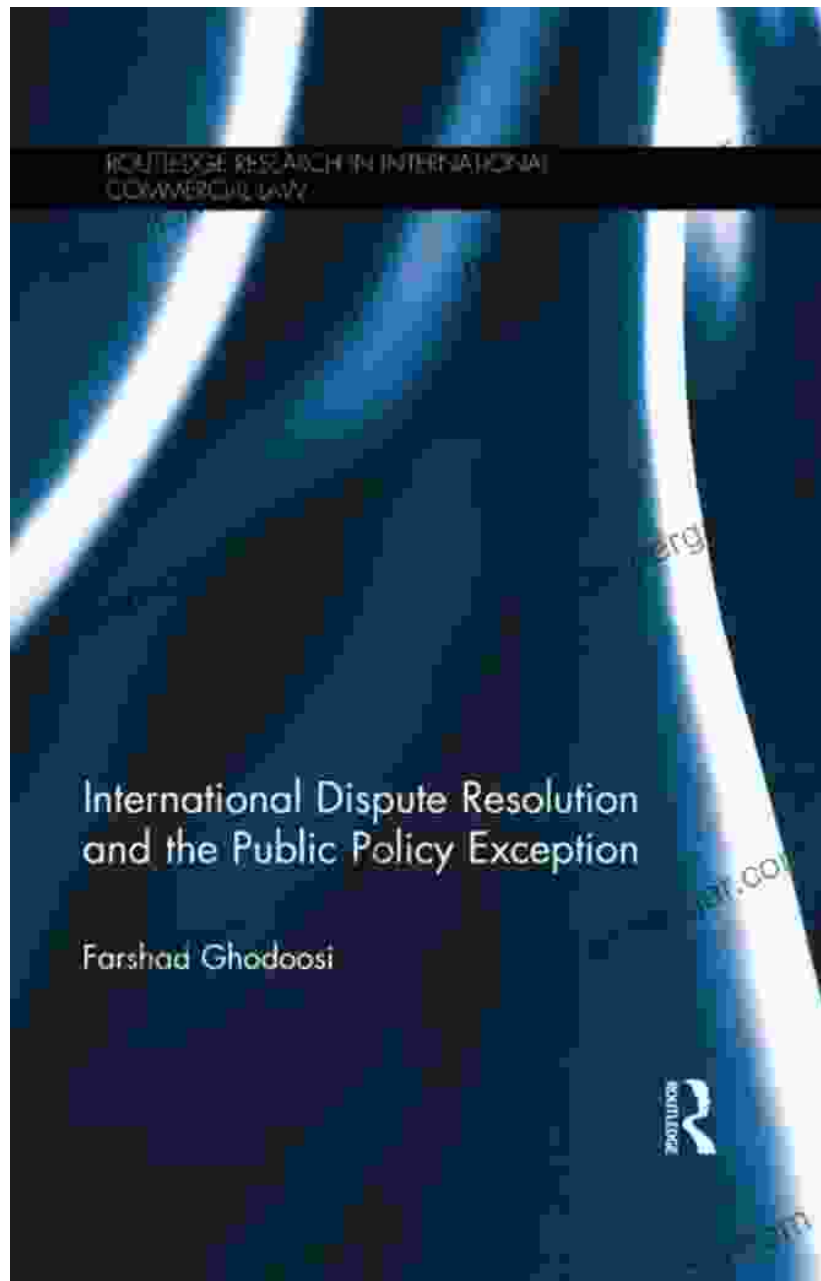
Parties to international arbitration can take a number of steps to avoid public policy challenges:

- **Choose a neutral forum.** The forum country should be one that has a neutral legal system and a track record of enforcing arbitral awards.
- **Choose a reputable arbitral institution.** The arbitral institution should have a reputation for impartiality and competence.
- **Draft the arbitration agreement carefully.** The arbitration agreement should clearly state that the parties agree to abide by the public policy of the forum country.
- **Present a strong case.** The party seeking to enforce an arbitral award should present a strong case that the award is not contrary to public policy.

The public policy exception is a complex and important concept in international dispute resolution. It can have a significant impact on the outcome of international arbitration proceedings. By understanding the public policy exception and taking steps to avoid public policy challenges, parties to international arbitration can increase their chances of success.

### **Free Download Your Copy Today**

To learn more about the public policy exception and its implications for international dispute resolution, Free Download your copy of 'International Dispute Resolution and the Public Policy Exception' from Routledge today.



This comprehensive guide provides a detailed analysis of the public policy exception, including its historical origins, legal basis, and practical implications. It also includes case studies and best practices for avoiding public policy challenges.

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