



PROTECTION OF DIRECT FOREIGN INVESTMENT

Public Policy exception impact on foreign direct investments: “Court (non) enforcement of arbitration decisions based on Public Policy exception”

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1. INTRODUCTION

This paper is not a target by itself. It is part of a project to research and analyze certain aspects of foreign investments in different jurisdictions¹.

In certain countries, some industries, such as car manufacturing, are granted specific treatment, benefits or incentives resulting from a kind of international competition for new investments. A movement that, sometimes, results in more benefits to the industry than to the country or the community where they are located, and which has been properly described as a “race to the bottom”. When this phenomenon occurs within the boarder of a given country, some regulation may be effective. However, in the international context the questions gain much more complexity.

These are basically incentives to attract new investments and they are ordinarily granted to specific market agents. However, incentives may be a “Siren’s song”, attracting new entrepreneurs without giving them real protection for their ventures. In this sense, predictability and a stable legal framework may be an effective incentive for direct investments.

New problems emerge from international transactions involving technology companies as well. For instance, Amazon, a global player has started operations in different jurisdictions bringing several legal challenges regarding transactions taking place outside (virtual environment) the country were the services are rendered or goods delivered. In other words, how to deal with operations conducted by a company with local presence, including distribution and logistics systems, but closed outside the country?

¹ As attachment to this paper, there are specific reports prepared by each school regarding the same issue in each country.



In such context, it is essential that judicial decisions and arbitral awards be recognized as valid and enforced in different jurisdictions. In most of international deals, the parties elect specific rules for their businesses, such as CISG, UNIDROIT, Principles of European Contract Law, the law of one of the contracting parties or a “neutral law” from another country. At the same time, arbitration has been the most frequent method of dispute resolution in the international arena. Therefore, it is an important part of international transactions to enforce decisions taken in one jurisdiction in another country were the practical result is actually effective.

However, in most of the countries, a foreign award must be acknowledged by local courts in order to obtain the “*exequatur*” of such decision. Usually, the courts would evaluate only formal aspects to ensure that a local resident had the chance to present a proper defense according to a “due process of law” in the foreign jurisdiction (“*loci arbitrii*”). The merits of the cause should not be disputed again in the place of enforcement, except in very restrict matters. Public policy is certainly the most relevant one.

2. THE ECONOMIC CONTEXT OF THIS WORK

The so-called globalization process from an economic point of view is based on three economic flows: i) Trade; ii) Foreign Direct Investment (FDI); iii) Financial Capital. As a consequence, considerable part of transnational legal issues is based on transactions relating to these three flows.

The first relevant observation to make is that present capitalism is embodied by two apparently contradictory economic drives: globalization and regionalization. On one hand, the progressively intense inter-dependence and inter-penetration of countries configure the observed globalization process. On the other hand, the spatial concentration of production which brings the greatest possible competitive advantages between geographically closed countries delimits the regionalization process. These two influences of globalization and

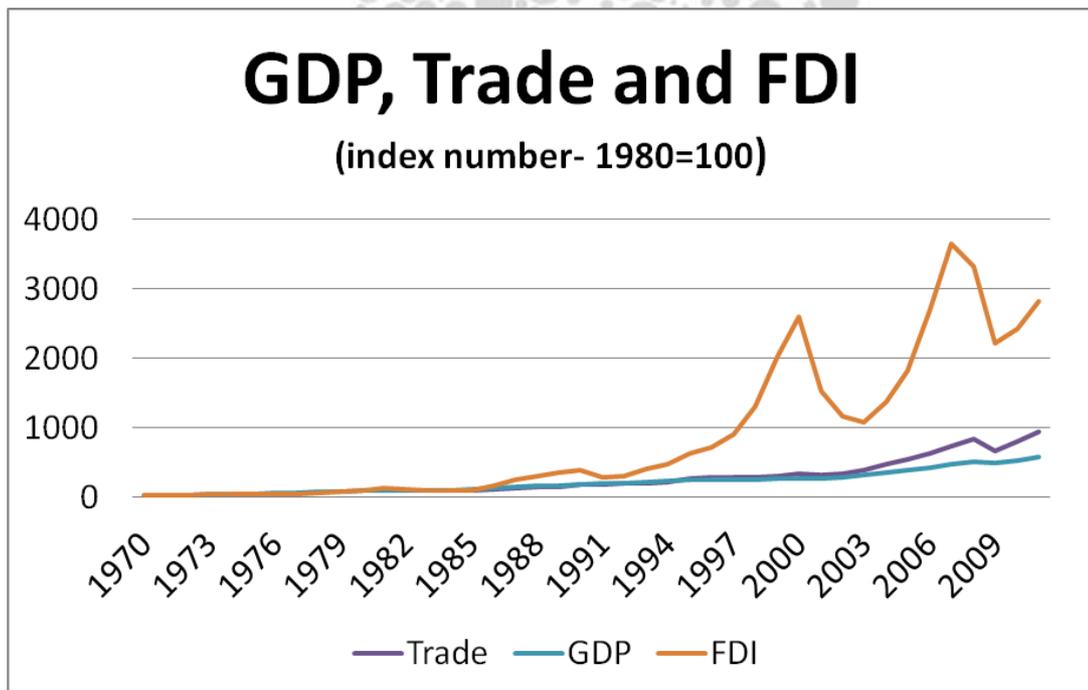


regionalization have incessantly formed and transformed the exchanges between nations within contemporary capitalism

As movements to boost the free exchange of goods and to reduce or eliminate trade barriers advanced, other matters emerged in commercial negotiations – noticeable among them were the opening of market for services and investments, the protection of intellectual property rights and social and environmental issues.

This proliferation of investment agreements have been caused by the growing economic importance of the FDI. As it is widely known, FDI flows have played a major role in the globalization process in the past thirty years. The increasing importance of FDI flow is evident through the evolution of the world Gross Domestic Product (GDP), Trade and FDI. Not only did the FDI flow increase at a faster rate than the GDP and Trade but it also changed its profile faster. Chart 2.2 shows the different paces among these three economic flows.

Chart 2.2 GDP, Trade and FDI (1970/2009)

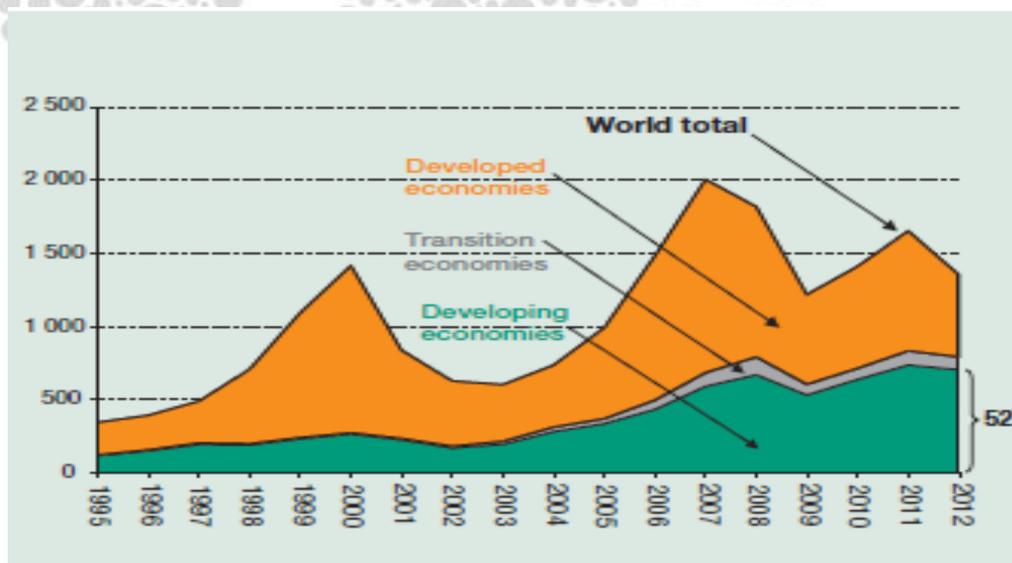




Insofar FDI is concerned such rise in their importance is equally noticeable as FDI rebounded after the global financial crisis. To understand the changes in the FDI profile, it is essential to understand well the changes occurred in the role and relevance of emerging countries in this period.

In 2013, emerging countries were the recipients of approximately 52% of the total FDI, totaling to an amount of US\$759 billion, of which 20% went to China alone. The challenging economic scenario in the developed countries has impacted international economic flows, including direct investments, but the profits made by transnational companies in the emerging markets have allowed for a steady flow of investments in these countries. Chart 2.3 shows the growing participation of emerging countries in FDI.

Chart 2.3 – Global FDI flows (1995-2012)



Source: UNCTAD, Global Investment Report, 2013

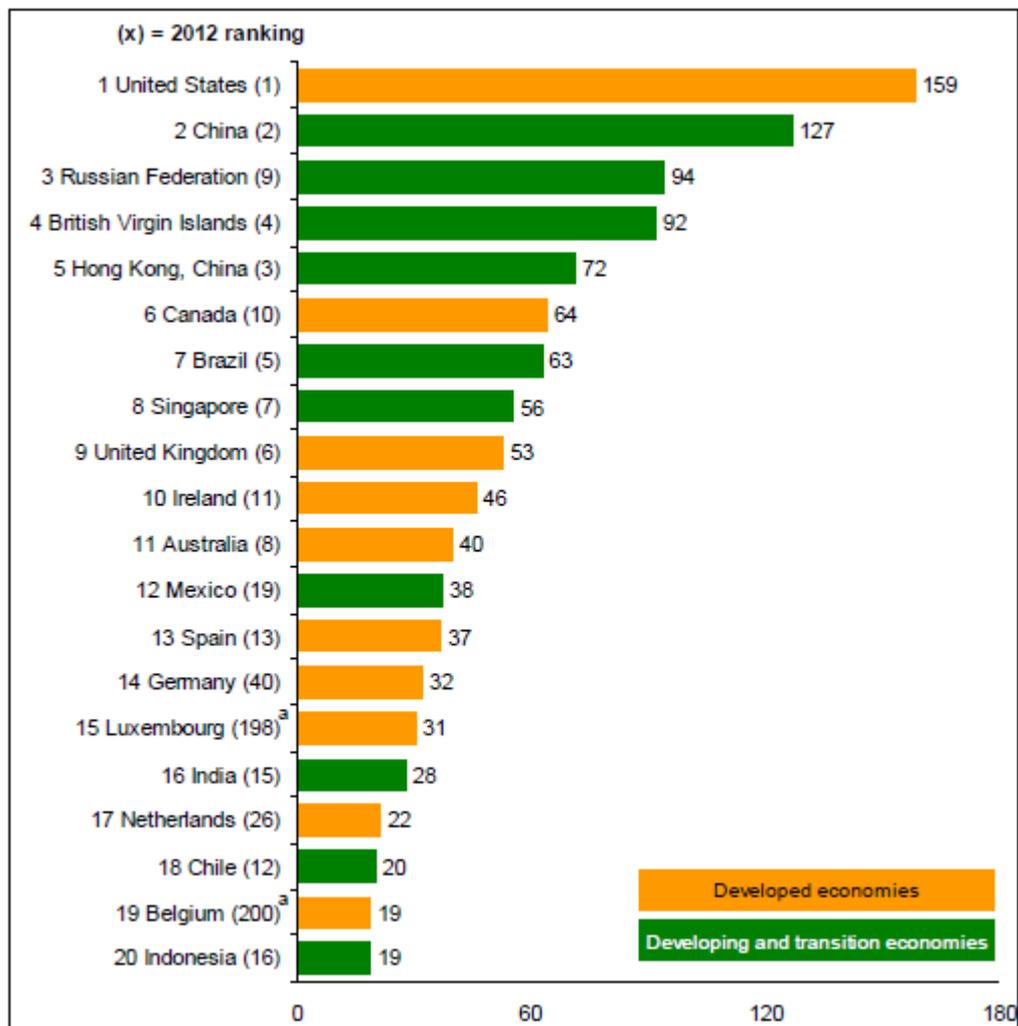
Another interesting aspect of FDI in emerging countries is their targeting of new plants (greenfield) which entails the growth of production capability in these countries. Contrarily to what happens in emerging countries, in developed countries the flow of FDI has primarily



been to Merger & Acquisition (M&A) transactions in the wake of the on-going restructuring of production in these economies.

It must be noted that, apart from being in the receiving end of FDI (Chart 2.4), emerging countries have also acted as investors and their investment has accounted for 20% of the total FDIs in 2013. Although the U.S.A. and Japan continue to be the major investors, the aggregate data pictured in Chart 2.5 shows this new trend. The largest rise in these FDIs is due to investment in emerging countries, most especially in China.

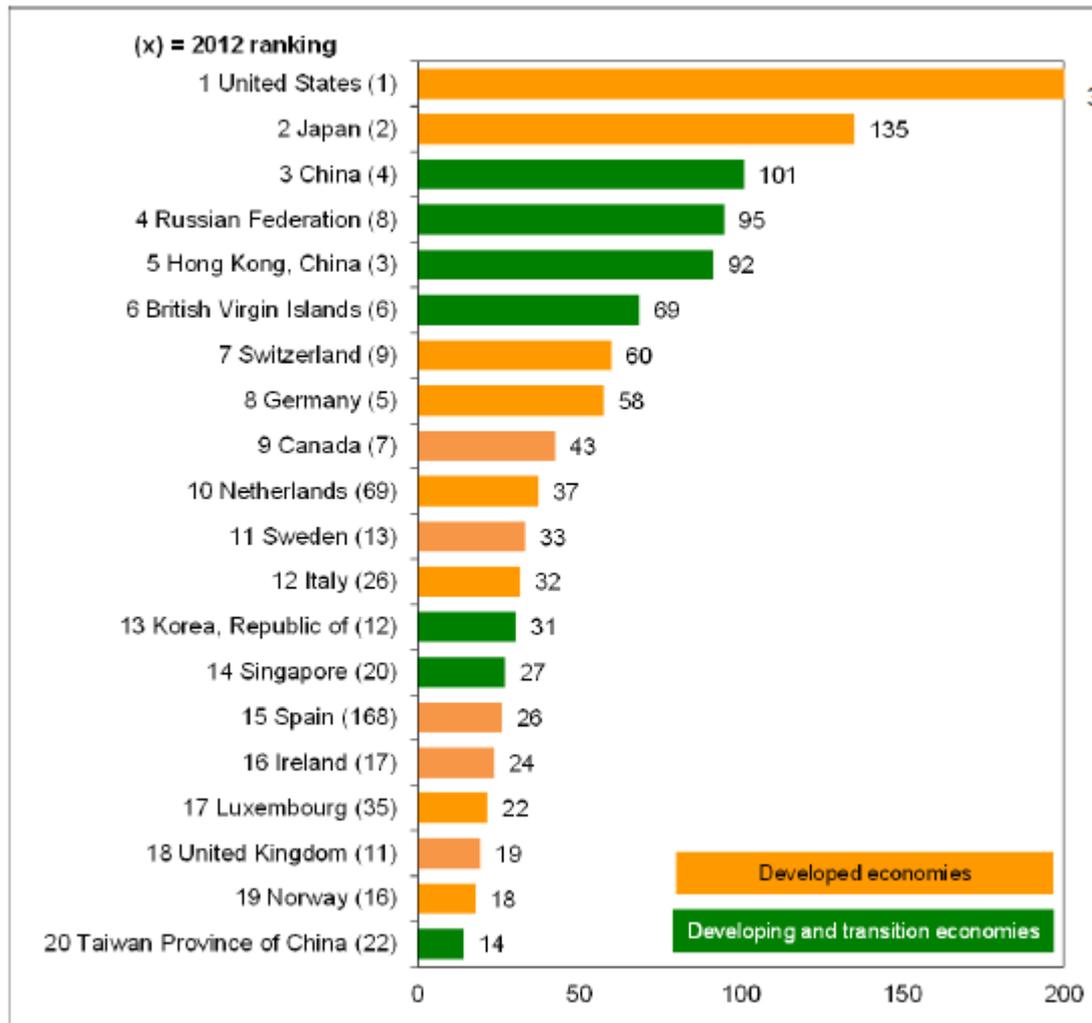
Chart 2.4 FDI Top host economies, 2013 (Billions of US\$)



Source: Global Investment Trends Monitor n°15, January 2014



Chart 2.5 FDI Top investor economies, 2013 (Billions of US\$)



Source: Global Investment Trends Monitor n°16, April 2014

Most likely, the ongoing economic recovery in the advanced economies namely USA and Japan will improve the positive prospects of the FDI in 2014 and 2015, although some uncertainties exist regarding emerging countries such as Russia and Brazil.

The relevance of the amounts involved, the perspective of improving trade among countries, and developing local economies shows how important is predictability and reliability of an international system of enforcement of judicial and arbitral decisions on business matters.



The specific question of public policy was selected because it is not only one of the restricted hypotheses of exception of enforcement, but it is also one of the most “fluid” concepts. We expect this paper may be a contribution in searching of a more objective and comparable concept of public policy in the international field.

3. PUBLIC POLICY EXCEPTION TO THE ENFORCEMENT OF AWARDS

a. The NY Convention and public policy

All five states – Brazil, Italy, Spain, Turkey, USA – of our research paper are party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)².

Turkey and USA made two reservations permitted by the New York Convention: the ‘reciprocity’ and the ‘commercial’ reservations. This two states apply Article 1(3) of the New York Convention only with respect to the recognition and enforcement of an award rendered in a signatory state in accordance with the reciprocity principle and they apply the New York Convention only to disputes arising from legal relationships, whether contractual or not, and to disputes which are considered as commercial under their domestic laws. On the other hand, Spain, Italy and Brazil have ratified the convention without any reservations³.

As a party to the New York Convention, the recognition and enforcement of foreign arbitral awards in these states is allowed if the relevant conditions stated in Article V of the New York Convention are met. In case of recognition and enforcement of a foreign arbitral award in these states, the New York Convention will be applied instead of the national codes such

² Entry into force dates for each state are as following: Brazil (5/9/2002); Italy (1/5/1969); Spain (10/8/1977); Turkey (30/9/1992); USA (29/12/1970).

³ Since the number of states ratified the Convention has reached the number of 149 and the definition of ‘commercial affair’ under domestic laws is very broad, the reservations are not very effective in limiting the scope of the convention.



as the Turkish Private International Law Code, Italian Code of Civil Procedure, Brazilian Law on Arbitration, Spanish Law on Arbitration and Federal Arbitration Act of the USA. However Article VII of the New York Convention provided that any interested party is entitled to benefit from the provisions of the place of enforcement. Furthermore, if the New York Convention is not applicable, the foreign award can still be enforced under the national codes. Since the New York Convention does not contain any procedural rules and leaves the procedure of recognition and enforcement lawsuits to the law of the country where the recognition and enforcement is sought (Art.III), the procedural rules for recognition and enforcement lawsuit are the rules provided in the national codes.

A request for an enforcement order of a foreign arbitral award can be refused under limited circumstances. Therefore, an examination of the grounds stated in New York Convention Art. V shall suffice and the judge may not proceed to any further review. The judge has no discretion in this matter; he or she may not refuse enforcement upon any ground other than those listed in New York Convention Art. V, nor may he or she decide on enforcement despite a ground for refusal being present. The burden of proof lies with the party arguing for refusal of enforcement. However, where questions of the violation of public policy or non-arbitrability arise, the enforcing court may consider these two grounds on its own motion. Article (V) (2) (b) of the New York Convention states that, the award must comply with the public policy of the enforcement state. The conformity of the foreign arbitral award to public policy must be taken into consideration by the state courts at the enforcement state *ex officio*.

b. How do countries rule this exception

As referred to above, all five countries represented in the paper are signatories of New York Convention. Therefore, despite any discussion regarding the hierarchy of an international convention in comparison with local legislation, all of them acknowledge public policy as an exception. However, as we could intuitively expect, national laws does not define or provide clear rules about what is deemed as a public order issue.



In United States in a relevant case, the Court said that policy should be understood in the context of the “most basic notions of morality and justice”. In the same path, an Italian Court has ruled that, under New York Convention, public order means “a set of universal principles common to many nations of similar civilization, aimed to protecting certain fundamental rights, often enshrined in declarations or international conventions”⁴.

In other countries, like Brazil, we can observe certain hesitation or confusion between the concept of public order and mandatory rules. In Brazil, consumerist and environmental law are explicitly defined as rules of public policy, but in most cases public policy is derived as a general principle of law. On the other hand, a Turkish Court has stated very clearly that a violation of a mandatory rule does not mean necessarily violation of a public policy principle⁵.

In Spain, as well in the other countries, the concept of public order is not defined in any regulation, but it is understood as the values protected by the Spanish Constitution and the fundamental principles of the legal system.

c. Comparative concept of public policy

It is a common approach that the concept of public policy and its definition are much debated issues under the laws examined both in practice and in doctrine. Since the limits of the public policy concept are neither clear, nor defined in the national laws, the discretion of the judge on the assessment of the violation of public policy plays a very important role in the studied jurisdictions.

It is accepted that grounds for non-recognition due to public policy with regards to international arbitrations shall be interpreted in a more restrictive manner as compared with domestic arbitrations. Public policy with regard to international arbitration means that the

⁴ A. Milano, 4-12-1992.

⁵ YHGK, E. 2010/1, K.2012/1, dated 10.2.2012.



judge cannot examine the award from a pure national perspective, but should also take international norms regarding to public policy into consideration when applying the public policy test⁶. An exhaustive list or definition however is not available. Moreover mandatory rules are not necessarily related to public policy, and therefore a violation of a mandatory rule which is not also a violation of public policy could not lead to the denying of exequatur.

Furthermore, as a principle, courts are prohibited from examining the merits of the dispute upon an application to enforcement (prohibition of *revision au fond*). It is beyond doubt that the enforcement judge does not have the authority to examine and evaluate the material facts determined by the arbitral tribunal⁷.

Public policy exception in Italian, Spanish, Turkish and Brazilian case law basically regards the infringement of fundamental procedural guarantees. US courts do not expand the notion of public policy to encompass many other procedural objections.

⁶ Turkey: Çelikel/Erdem, p.132; Şanlı/Esen/Figanmeşe, p. 598. Italy: On the concept of international public policy see Ago, *Teoria del diritto internazionale privato*, Padova, Cedam,1934, Ballarino, *Diritto internazionale privato*, Padova, Cedam, 1999, 302 ff.; Sperduti, *Ordine pubblico internazionale e ordine pubblico interno*, RDI, 1954, 83 ff. See also Atteritano, *Arbitrato estero*, Digesto delle discipline privatistiche, Utet, Torino, 2007, p. 78 ff. Spain: In the Ruling of the High Court of Justice of the Basque Country dated April 19, 2012 (RJ 2012, 6133), which grants the exequatur, the distinction between domestic and international public policy is set forth in the following terms: “[t]he notion of international public policy is narrower than the internal public policy, (so) the non-recognition of a foreign decision can only take place when it implies a violation of particularly essential principles of the State involved in the exequatur

⁷ Turkey: Şanlı/Esen/Figanmeşe, p. 599. This principle is stated explicitly in the decisions of the Court of Cassation: Y.15.HD, E. 1991/4163, K. 1991/5339, dated 7.11.1991; Y. 11.HD, E. 1997/10534, K. 1998/1106, dated 23.2.1998; Y.19.HD, E. 2000/7171, K. 2000/7602, dated 9.11.2000. Italy: The Court of Appeal of Milan has explicitly stated that: "it must be clear, in fact, and it is in the national legislation, international conventions, as well as in case law and consolidated doctrine, that the present judgment in no case is understood as a judgment of appeal or review of the merits of what was decided in arbitration ". A. Milano, 5-11-2003, RA, 2005, 295 ff. As stated by the Spanish Judgment of the Constitutional Court of 17 June 1991 (RTC 1991, 132), the exequatur is a process of recognition of a foreign decision that prevents, in principle, a substantive review, except for limited grounds, among which the international public policy exception itself. In the same way, the court in Brazil ruled that the analysis of occurrence of an alleged fraud, even against a minor, would enter in the merits of the case, and the foreign decision was totally confirmed (Weil Brothers Cotton Inc. v. Pedro Ivo da Motta Cezar Ferreira, Disputed Foreign Decision N° 4.213 - EX - 2009/0107931-0, published on June 26th, 2013).



The most pro arbitration approach among the states studied can be observed in the United States that recognizes that any generous interpretation of the exception would threaten all of the advantages of arbitration namely settling disputes efficiently and avoiding long and expensive litigation⁸. Therefore, the refusal to enforce an arbitral judgment is quite rare in the United States. Supreme Court’s willingness to enforce foreign awards is shown by a series of cases⁹. The most frequently stated general test is that “[e]nforcement of foreign arbitral awards may be denied on this [public policy] basis only where enforcement would violate the forum state’s most basic notions of morality and justice.”¹⁰ In practice, however, courts seem to have restricted the notion of a public policy defense to those instances in which an enforcement award would require a party to violate specific U.S. statutory or decisional law¹¹.

d. Substantive grounds

⁸ *Encyclopaedia Universalis S.A. v. Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 90 (2d Cir. 2005).

⁹ See generally, e.g., Sternlight, Jean R. Sternlight & Elizabeth J. Jensen, *Using Arbitration to Eliminate Consumer Class Actions: Efficient Business Practice or Unconscionable Abuse?*, Law and Contemporary Problems 75-103 (2004); Richard A. Nagareda, *Litigation-Arbitration Dichotomy Meets the Class Action*, 86 Notre Dame L. Rev. 1069 (2011).

¹⁰ *Parsons & Whittemore Overseas Co. v. Societe Generale de L’industrie du Papier (RATKA)*, 508 F.2d 969, 974 (2d Cir. 1974). See, e.g., *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 306 (5th Cir. 2004); *Slaney v. Int’l Ass’n of Amateur Athletics*, 244 F.3d 580, 593 (7th Cir. 2001); *Termorio SAESP v. Electranta SP*, 487 F.3d 928, 938 (D.C. Cir. 2007); *M&C Corp. v. Erwin Behr Gbmh*, 87 F.3d 844, 851 n.2d (6th Cir. 1996).

¹¹ For example, in *Ministry of Defense of the Islamic Republic of Iran v. Gould, Inc.* (969 F.2d 764 (9th Cir. 1992)), the arbitral award would have required a U.S. company to transfer certain military equipment to Iran at a time when such an export would have clearly violated U.S. export restrictions.



The public policy exception can be based on substantive or procedural grounds. However, the latter tend to prevail in both the allegations of the parties and the merits of judgements delivered in the process of recognition of foreign awards.

As a preliminary *caveat*, it should be noticed that the public policy exception is stated in Article V.2. (b) of the New York Convention and, in principle, it should not include the other grounds for the non-recognition of an award, enshrined in Articles V.1 and V.2 (a). Despite the aforementioned, the borders of the said articles are not clear when applied as there is a tendency to include in the public policy exception [Article V.2 (b)] grounds for the non-recognition of awards that are framed in Articles V.1 and V.2 (a). There is case law, in this respect –i.e. reasoning on the public policy exception in relation to grounds stated in other provisions of the New York Convention-, on failures to produce proper notices in the arbitration proceedings [Article V.1 (b)]¹², on matters not capable of settlement by arbitration under the law of the enforcing country [Article V.1 (a)]¹³, or on invalid or inexistent arbitration clauses [Article V.1 (a)]¹⁴. As can be noticed, some of these matters are of procedural nature; others, substantive.

Even if we examine case law taking this into account, we observe that the public policy exception based on substantive grounds is rarely admitted as a cause for the non-recognition of a foreign award. As a starting point, it is worthy to insist that case law of the five countries under analysis –Brazil, Italy, Spain, Turkey and USA- agree that the merits of a foreign award cannot be reviewed on the basis of the public policy exception¹⁵.

¹² Italy: A. Firenze, 22.10.1977; see also, D'Alessandro, E., in Menchini (ed.), *La nuova disciplina dell'arbitrato*, Padova, Cedam, 2010, sub artt. 839-840.

¹³ Turkey: YHGK E. 2011/13-568, K. 2012/47, dated 8.12.2012; Y.11.HD, E. 2006/7396, K. 2007/6672, dated 1.5.2007.

¹⁴ Brazil: Oleaginosa Morena Hermanos v. Moinho Paulista Ltda. (Disputed Foreign Decision N° 866 – EX 2005/0034926-5), published on October 16th, 2006.

¹⁵ Brazil: Weil Brothers Cotton Inc. v. Pedro Ivo da Motta Cezar Ferreira (Disputed Foreign Decision N° 4.213 – EX 2009/0107931-0), published on June 26th, 2013. Spain: Judgment of the Constitutional Court of 17th June 1991 (RTC 1991, 132). Turkey: see Şanlı/Esen/Figanmeşe, p. 599. The judge in charge of the recognition of the award does not have the authority to examine the material facts determined by the arbitrators, as stated in the the decisions of the Court of Cassation: Y.15.HD, E. 1991/4163, K. 1991/5339, dated 7.11.1991; Y. 11.HD, E. 1997/10534, K. 1998/1106, dated 23.2.1998; Y.19.HD, E.



Although the merits themselves are not reviewed, some of the countries mentioned do not enforce certain provisions of foreign awards based on substantive public policy, in cases that scarcely ever occur and, therefore, can be considered as distinguished though rare exceptions. Brazil and Turkey have denied recognition of an award on matters related to what is known as economic public policy (although this is not mentioned in the decisions): taxes¹⁶ or indexation/conversion of debts¹⁷. In the U.S., the leading judicial decisions of non-enforcement imply that the award is not enforced if it would require a party to act contrary to statutory or decisional law. And, as it was noted in the previous section, the infringement of law should violate the forum state's most basic notions of morality and justice (i.e. not every act contrary to the law entails the non-enforcement of the award). On these grounds, the order to transfer military equipment to an enemy state was not enforced¹⁸.

Finally, a broader margin to the non-enforcement of foreign awards can be appreciated in Turkey concerning immovable properties (real estate), in respect of which arbitral decisions are not likely to be enforced¹⁹. In this issue, Turkish case law deviates from the standard of the rest of jurisdictions studied.

e. Procedural grounds

2000/7171, K. 2000/7602, dated 9.11.2000. In Turkey, the prohibition of *revision au fond* will be ignored if the award was obtained by means of fraud in connection with a procedural matter.

¹⁶ Turkey: Y.11.HD, E. 2007/10205, K. 2007/13081, dated 19.10.2007. A foreign award stating that the VAT has to be paid by the claimant to the defendant was not recognized on the ground that only the tax authority may collect taxes. The General Assembly of the Court of Cassation underlined in a recent decision that taxing forms part of public policy (YHGK E. 2011/13-568, K. 2012/47, dated 8.12.2012).

¹⁷ Brazil: *Construccion y Auxiliar de Ferrocarriles S.A v. CAF Brasil Indústria e Comércio S.A* (Disputed Foreign Decision N° 2140 – EX 2007/0161265-0), published on February 19th, 2014. The award ordered payment of the debt (in US dollars), converted to Brazilian Reals, adjusted by the inflation index. The existing prohibition, in Brazil, to cumulate the exchange rates with inflation indexes resulted in a partial non-recognition of the award, excluding the currency rate variation.

¹⁸ U.S.: *Ministry of Defense of the Islamic Republic of Iran v. Gould, Inc.*; 969 F.2d 764 (9th Cir. 1992).

¹⁹ Y.18.HD, E. 1996/3347, K. 1996/4735, dated 13.5.1996.



When the public policy exception has been admitted, the grounds on which it was construed were, in the majority of cases, procedural violations committed in the arbitration proceedings. All five countries coincide that not any infringement of the rules of procedure constitutes, at the time, a violation of public policy. This would occur only if the right to due process were strictly affected, in particular, in connection with the prohibition of defenselessness²⁰.

In this sense, the failure to perform a due service of the arbitration proceedings, which leads to an award rendered *in absentia*, is a sure cause for non-enforcement (as stated in the previous section, case law has included in the concept of public policy other grounds for non-recognition and non-enforcement, enshrined in Article V.1 of the New York Convention, and this is one of the cases). In Brazil, the courts have traditionally been quite formalistic in the way services should be performed, requiring a “letter rogatory” (formal service that involves the Ministry of Foreign Affairs)²¹. However, this has been gradually changing and the most recent decisions seem to have overcome this formalism²², in line with the rest of jurisdictions analyzed.

As regards evidence, the arbitration proceedings are not required to match the rights granted by the internal procedural law and the arbitrator’s decision on admission or denial cannot be challenged.

Thirdly, the traditional requirement –at least in the Civil Law countries- that a judgment (and an award) should be reasoned is not always admitted to fit in the public policy exception. Case law of the countries analyzed varies: while Brazil and Spain require a reasoned award (to a certain extent)²³, Italy and Turkey seem more permissive²⁴.

²⁰ Italy: Cass., 15.12.1982, n. 6915; A. Genova, 2.5.1980. A Firenze, 22.10.1977. Spain: Ruling of the Supreme Court, 11.04.2000 (RJ 2000, 3236). Turkey: Y.19.HD, E. 2001/6576, K. 2002/1513, dated 7.3.2002.

²¹ See *Walter Matter, S.A. v. Fenelon Machado, S.A.*

²² See *Keytrade AG v. Fercitrus Indústria e Comercio de Fertilizantes* (Disputed Foreign Decision n° 4.024 – EX 2010/0073632-7), published on September 13th, 2013.

²³ Spain: Judgment of the Constitutional Court dated 17.06.1991 (RTC 1991, 132).



Finally, there is a strong case law in Spain and Turkey as regards the problematic issues posed by international parallel litigation and arbitration among the same parties — *lis pendens* and *res iudicata* in a very broad sense. This fact has brought about a number of decisions effectively denying recognition of a foreign award on the basis of public policy²⁵. There is an established rule in the said countries that recognition of a foreign award is denied if the proceedings were commenced before the foreign arbitral ones or if the national courts have already rendered a final judgment. However, courts have been careful to cut down fraudulent strategies in which the court procedure is tactically used as a means to prevent the recognition of a foreign award. This issue seems not to have raised problems in the rest of countries as case law to this respect scarce.

4) Conclusions and suggestions

As a general conclusion, we can observe a clear “pro arbitration” movement of the Courts in all the countries taking part of this work. We can also notice that the Courts are becoming more restrictive in interpreting the “substantial” meaning of public policy. The concept is understood as a most basic notion of morality, fundamental principles of a legal system, or values that can be shared by the international community. In several countries, there is a genuine search and debate about the concept of international public order, going beyond the national borders.

As a consequence, in the great majority of the cases, where public policy was an effective exception to prevent the enforcement of arbitration or judicial decisions, the values at stake were always related to procedures to ensure the due process of law.

²⁴ Italy: See Atteritano, *Arbitrato estero*, Digesto delle discipline privatistiche, Utet, Torino, 2007, p. 78 ff; Cass., 8.2.1982, n. 722. Turkey: General Assembly of the Court of Cassation, 10.02.2012; YHGK, E.2010/1, K.2012/1, dated 10.2.2012. For an opposing view see Şanlı/Esen/Figanmeşe, p. 486, fn 285.

²⁵ Spain: Rulings of the Supreme Court 1.12.1998 (RJ 1998, 10537); 19.6.1999 (RJ 1999, 186) and 20.3.2001 (RJ 2001, 5520). Turkey: Y.11.HD, E. 2006/7396, K. 2007/6672, dated 1.5.2007.



Finally, we need to emphasize that this paper should be a starting point of analysis of several aspects related to direct foreign investment. In our discussions, through e-mails, skype or personally in Torino, we could envision a myriad of questions, challenges, achievements in different areas of law in connection with international investments. Just as an idea, during our work, we conducted a survey among the participants of the business group, and we listed sixteen topics:

Liabilities of foreign investor and piercing the corporate veil

- Flow of capital and repatriation of earnings;
- Level of government and political interference in the economy
- Predictability and reliability of the judicial system
- Enforcement of arbitral decisions
- The recognition of international institutions by local government
- Treaties and international agreements (regional or global) on commerce and direct investments;
- Restrictions on importation;
- Respect of property rights and standards of protection against expropriation
- Equal treatment and non-discrimination, compared to local investors
- Financing incentives for direct investments
- Transparency of bureaucracy for incorporating and running a foreign direct investment
- Termination or revision of contracts by the government
- Engagement with FDI principles;
- Protection and enforcement of Intellectual Property Rights
- "Bali Package" and the Future of WTO

Several other issues were raised, as for instance, shareholder's activism in the international arena, the social impact of relevant infrastructure projects, corruption as an important concern to decide where invest etc.



As proposition for futures joint efforts, we would like to propose an empiric survey to evaluate the perception of economic players in the countries involved regarding investing in the other countries of our group. We would like to have a sort of “cross perception” about the investment environment in our countries. This survey could then determine what are the major concerns that should be addressed in our further researches.

Finally, we also believe that there are several issues to be developed in connection with the other groups. Something to be debated in our Academic Meeting in Istanbul.