BALANCING FINALITY AND FAIRNESS UNDER ARTICLE V(1)(D): ENFORCEMENT AS THE GUARDIAN OF TRIBUNAL LEGITIMACY

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ABSTRACT

This article examines the recognition and enforcement of foreign arbitral awards under Article V(1)(d) of the New York Convention and Article 36(1)(a)(iv) of the UNCITRAL Model Law, focusing on situations where the tribunal's composition departs from the parties' agreed appointment mechanism because of defects such as pathological clauses, unwilling nominees, or non existent appointing authorities. The central problem is that curative intervention by courts at the seat, including the appointment of arbitrators to resolve procedural deadlock, may restore local legitimacy and preserve the arbitration but does not ensure enforcement abroad. Courts at the enforcement stage may independently review compliance with the parties' original agreement under Article V(1)(d), leading to refusals, fragmentation, and uncertainty despite remedial action at the seat. Drawing on comparative case law, the article asks how far enforcement courts should defer to determinations made at the seat and how finality and party autonomy can be reconciled with the Convention's pro-enforcement orientation. It advances a principled two stage framework that gives priority to res judicata, subject to a narrow public policy safeguard, and situates the enforcement court as a residual guardian of arbitral legitimacy and procedural fairness.

I. INTRODUCTION

Arbitration is anchored in the principle of party autonomy. By agreement, parties shape both the substantive and the procedural framework of their dispute, deciding how the tribunal is formed, which rules will govern, and whether an institution will administer the proceedings. This procedural freedom is firmly safeguarded in the New York Convention and the UNCITRAL Model Law, which make party agreement the cornerstone of arbitration's legitimacy. Party autonomy has long distinguished arbitration from litigation. The arbitration

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agreement gives binding effect to that autonomy by defining the tribunal's composition and the procedural framework governing the dispute.[1]

Drafting a functional arbitration clause is often more challenging than it first appears. The practical realities of designing a workable mechanism, particularly regarding the composition of the arbitral tribunal, frequently give rise to difficulties. Common issues include the nomination of a specific individual who later proves unwilling or unable to act, or reference to a non-existent or defunct appointing authority. In such instances, parties may find themselves at an impasse, unable to constitute a tribunal and proceed.[2]

These are often referred to as "pathological clauses", a term denoting arbitration provisions that depart significantly from the essential elements of a standard model clause.[3] A clause may fall into this category where, for example, it does not mandate referral to arbitration, omits fundamental procedural requirements necessary for an effective process, names an arbitral institution or rules that do not exist, or assigns an arbitral institution to administer proceedings under the rules of another body.[4]

When confronted with a defective appointment clause, parties may abandon arbitration, seek judicial assistance at the seat, attempt consensual correction, or invoke a designated appointing authority. In practice, consensual solutions are rare once disputes crystallise, leaving abandonment or judicial intervention as the realistic alternatives. Court-appointed arbitrators, however, come with drawbacks. Courts are not typically immersed in arbitration and may lack the expertise to assess the suitability of candidates. Judicial intervention also tends to be time-consuming and can introduce substantial delay.[5]

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[1] *See* Derek Roebuck, 'Sources for the History of Arbitration: A Bibliographical Introduction' (1998) 14 *Arbitration International* 237 ; William W Park, 'Arbitration and the Contract' (1989) 59 *Tulane Law Review* 417, 420–423 ; Alex Mills, 'Arbitration Agreements' in Alex Mills*, Party Autonomy in Private International Law* (Cambridge University Press 2018) 210–15*;* Nigel Blackaby QC, Constantine Partasides QC & *Alan Redfern, Redfern and Hunter on International Arbitration* (7th ed., Oxford: Oxford University Press 2022).

[2] *See* Orkun Akseli, 'Appointment of Arbitrators as Specified in the Agreement to Arbitrate' (2003) 20(3) *Journal of International Arbitration* 247.

[3] *See* Laurence Shore, Vittoria De Benedetti, and Mario de Nitto Personè, 'A Pathology (Yet) to Be Cured?' (2022) 39 *Journal of International Arbitration* 365

[4] *ibid.*

[5] For example, *see* Emmanuel Onyedi Wingate and Pontian N Okoli, 'Judicial Intervention in Arbitration: Unresolved Jurisdictional Issues Concerning Arbitrator Appointments in Nigeria' (2021) 65 *Journal of African Law* 223, 223–43

A further concern also warrants attention. Although intervention by the courts of the seat may preserve the arbitration and lend local procedural legitimacy, it does not ensure seamless enforcement abroad. When recognition is later sought elsewhere, the fact that the seat's court cured the defect may still face close scrutiny. While rare, this risk merits careful consideration. The core research problem addressed in this article is precisely this risk. Even when the seat court successfully cures a defect in the tribunal's composition by appointing arbitrator(s) or otherwise regularizing the process under its supervisory powers, enforcing courts in other jurisdictions may still refuse recognition and enforcement under Article V(1)(d) of the New York Convention on the ground that the tribunal's composition was not in accordance with the parties' original agreement.

Against this background, the article addresses three questions. First, where a court at the seat has intervened to cure defects in the appointment process, to what extent are enforcement courts bound, or should they defer, under principles such as res judicata. Second, how should enforcement courts reconcile the strict requirement of Article V(1)(d), namely adherence to the parties' agreement, with the Convention's pro-enforcement orientation and the legitimate supportive role of courts at the seat. Third, what coherent doctrinal framework can balance finality and fairness, allowing enforcement courts to remain a residual safeguard against serious defects in arbitral legitimacy without becoming unduly interventionist.

This article first emphasises the importance of procedural compliance in international arbitration, before developing a structured two-stage model of review that channels enforcement scrutiny through doctrines of finality and narrowly confined public policy control. It examines the legal issues that arise when courts at the seat intervene to sustain proceedings, most notably by appointing arbitrators where the agreed mechanism has failed. It then considers how enforcement courts have addressed objections under Article V(1)(d) of the New York Convention and Article 36(1)(a)(iv) of the UNCITRAL Model Law. A comparative case-law review across key jurisdictions highlights and contrasts prevailing approaches to such procedural irregularities. Building on this, the article proposes a balanced doctrinal framework, one that upholds the strong pro-enforcement policy while remaining faithful to the applicable legal text, and that gives due weight to the supervisory role of the seat's courts, particularly when they act to regularise the tribunal's constitution.

While the broader application of Article V(1)(d) has attracted considerable recent scholarship, including powerful calls for greater deference to arbitral and institutional interpretations of

procedural agreements,[6] the predicament examined in this article remains under-theorised. Commentators have noted the risk that a seat court's curative intervention may not travel abroad,[7] yet the literature has not developed a coherent doctrinal mechanism for reconciling the seat's supervisory role with the enforcing court's independent mandate under Article V(1)(d). Existing approaches tend either to advocate blanket deference or strict literalism. This article therefore advances a structured two-stage framework, giving presumptive res judicata effect to the seat court's determination, subject only to a narrow public-policy safeguard, that is anchored in the Convention's text, respects comity, and preserves the enforcement court's residual function as guardian of fundamental fairness.

II. PROCEDURAL COMPLIANCE IN ARBITRATION PROCEEDINGS

Article V(1)(d) of the New York Convention permits a court to refuse enforcement if *"the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties."* Its counterpart in the UNCITRAL Model Law, Article 36(1)(a)(iv), mirrors this language. Together, these provisions safeguard party autonomy even at the enforcement stage, acting as a check against unauthorized procedural deviations.

The starting point in determining the tribunal's proper composition is the arbitration agreement and whether the tribunal was constituted in accordance with its terms, as interpreted under the law of the seat.[8]

On this note, while courts traditionally show a marked reluctance to overturn arbitration awards on mere technicalities, they nonetheless remain vigilant against breaches of the agreed procedures that would undermine the arbitration's overall integrity and legitimacy.[9]

For example, if an appointing authority exercises its discretion prematurely or acts outside the clearly defined framework established by the parties, this may ultimately render the tribunal

[6] *See* Gary Born and Claudio Salas, 'Procedural Autonomy Under the New York Convention' (2023) 56 New York University Journal of International Law & Politics 45–106 ; Franco Ferrari, Friedrich Rosenfeld and Charles T Kotuby, 'The New York Convention as an Instrument of Uniform Law', in Recognition and Enforcement of Foreign Arbitral Awards: A Concise Guide to the New York Convention's Uniform Regime (Edward Elgar Publishing 2023) 3.
[7] *infra* note 22.
[8] *China Nanhai Oil Joint Service Corporation, Shenzhen Branch v Gee Tai Holdings Co Ltd* [1994] 3 HKC 375, [1995] ADRLJ 127 (Hong Kong High Court, Court of First Instance, 13 July 1994).
[9] *infra* note 29.

improperly constituted and call into question the award's enforceability.[10] A typical example of a court refusing to enforce an arbitral award because of improper tribunal composition is found in *Encyclopaedia Universalis S.A. v. Encyclopaedia Britannica Inc.*[11] In that case, the arbitration clause stipulated that if the two party-appointed arbitrators failed to agree on a third arbitrator, the Tribunal of Commerce of the Seine would make the appointment. However, one party requested the Tribunal to appoint the third arbitrator before the two initial arbitrators had the chance to reach consensus. The court held that the premature appointment violated the parties' agreed mechanism and therefore engaged Article V(1)(d). It emphasised that adherence to the agreed method of tribunal constitution is not a mere technicality but a foundational condition of arbitral legitimacy.[12]

It should be highlighted, however, that refusal under Article V(1)(d) of the New York Convention is discretionary, not mandatory. Courts are not required to deny enforcement for every departure from the agreed procedure. Paulsson likewise advocates for an interpretation of Article V of the New York Convention that vests the enforcing court with a degree of discretion. Rather than mandating automatic enforcement or refusal, this reading suggests that the court may, but is not compelled to, refuse recognition and enforcement of a foreign arbitral award if one of the grounds in Article V is established.[13] The discretionary power of the court invites a doctrinally grounded approach to assessing whether or not enforcement should be refused under these circumstances.

III. LOCAL LEGITIMACY AND TRANSNATIONAL ENFORCEMENT

In view of the above, a particularly challenging scenario arises when one party, confronted with a defective arbitration clause, seeks relief from the courts at the seat of arbitration. National courts, exercising powers under their domestic procedural law, may step in to appoint arbitrators or interpret ambiguous provisions to enable the arbitration to proceed.[14]

[10] *ibid.*
[11] *Encyclopaedia Universalis S.A. v Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 90 (2d Cir. 2005), U.S. Court of Appeals, Second Circuit.
[12] *ibid*
[13] *See* J Paulsson, 'May or Must Under the New York Convention: An Exercise in Syntax and Linguistics' (1998) 14 *Arbitration International* 227.
[14] *infra* note 16 and 17.

This intervention is often essential to avoid a complete breakdown of the process. It also speaks to the supervisory and supportive role of the court of the seat, which stands as a guardian of the arbitration proceedings, ensuring that the parties' intent to arbitrate is not frustrated by technical defects or procedural impasses.[15]

For example, in *Robotunits Pty Ltd v Mennel*,[16] it was undisputed between the parties that the arbitration clause referred to a non-existent set of arbitration rules. Despite this, the Supreme Court of Victoria upheld the validity of the arbitration clause, reasoning that the language of the agreement clearly revealed the parties' intention to resolve disputes through arbitration. The court gave effect to that intention, prioritising substance over the technical defect in the clause.

Furthermore, in *Broken Hill City Council v Unique Urban Built Pty Ltd*[17], the arbitration clause designated a specific institution to appoint the arbitrator, yet that appointing authority did not exist. Nevertheless, the New South Wales Supreme Court referred the matter to arbitration, emphasizing that the arbitration agreement plainly reflected the parties' mutual intention to resolve disputes by arbitration. The absence of the named appointing authority was not seen as fatal to the enforceability of the clause.[18]

In line with the above, the Supreme Court of the Republic of Cyprus in the case *Yalta Sea Trade Port v. Emed Chartering Ltd*[19] held that the absence of a specified procedure governing the arbitration, or of the applicable law, or of the composition of the arbitral tribunal does not undermine the binding nature or the validity of the arbitration agreement. On the contrary, in such instances, it becomes necessary for the court of the seat to intervene to fill the gap, as was

[15] *Paul Smith* [1991] 2 Lloyd's Rep 127, 130. Redfern and Hunter have outlined a range—though not an exhaustive one—of issues governed by the lex arbitri in international commercial arbitration. This body of law typically determines, among other things, whether a dispute is eligible for arbitration under local law (i.e., whether it is arbitrable); the deadlines for initiating proceedings; the availability and regulation of interim protective measures; how the arbitration is to be conducted; the extent of the arbitrators' authority, including whether they may act as amiable compositeurs; the requirements for the form and legal validity of the arbitration award; and the award's finality, including whether and how it may be challenged before the courts at the seat of arbitration. *See* N. Blackaby et al., A. Redfern and M. Hunter on International Arbitration, 7th edn (London: Sweet & Maxwell, 2004) [2-06].

[16] *Robotunits Pty Ltd v Mennel* [2015] VSC 268 (Supreme Court of Victoria, Australia).

[17] *Broken Hill City Council v Unique Urban Built Pty Ltd [2018]* NSWSC 825 (Supreme Court of New South Wales, Australia).

[18] *ibid*

[19] *Yalta Sea Trade Port v. Emed Chartering Ltd and Others* (2001) 1 AAD 7 (Supreme Court of Cyprus).

done in the present case.[20] After all, an agreement to refer a dispute to arbitration is to be given effect unless strong reasons, such as the invalidity of the arbitration agreement itself, are demonstrated that justify its non-application.

While such judicial assistance may confer procedural legitimacy at the seat, it does not necessarily insulate the resulting award from challenge elsewhere. As discussed above, article V(1)(d) of the New York Convention, together with its counterpart in the UNCITRAL Model Law, has been construed to allow an enforcing court to independently review whether the arbitral procedure complied with the parties' original agreement.[21]

A leading illustration of the above is *Hub Street Equipment Pty Ltd v Energy City Qatar Holding Company*.[22] Under a contract governed by Qatari law, ECQ engaged Hub to supply and install street infrastructure in Doha. The arbitration clause required disputes to be resolved in accordance with Qatari arbitration rules, by a three-member tribunal appointed through mutual procedure: each party was to nominate one arbitrator within 45 days of receiving written notice.

After ECQ paid an advance but chose not to proceed with the contract, Hub retained the funds and ceased communication. ECQ bypassed the contractual appointment mechanism and unilaterally applied to the Qatari Plenary Court for tribunal constitution, without giving Hub the required 45-day notice. The arbitration proceeded in Arabic without Hub's participation and resulted in an award in ECQ's favour.[23]

When ECQ sought enforcement in Australia, the Full Federal Court refused, finding that the tribunal's composition was not in accordance with the parties' agreement, thereby engaging Article V(1)(d) of the New York Convention. The court held that Qatari procedural law could not override the arbitration agreement, and that the Qatari court's premature intervention, absent compliance with the agreed process, vitiated the award's enforceability.

[20] *ibid.*
[21] *infra* note 29.
[22] *Hub Street Equipment Pty Ltd v Energy City Qatar Holding* Company [2021] FCAFC 110. For a commentary *see* Sam Luttrell and Larissa Welmans, 'Jumping the Gun: Federal Court of Australia Declines Enforcement of Qatari Award on the Basis of Defective Constitution of Court-Appointed Arbitral Tribunal' (2022) 88(1) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 118.
[23] *ibid.*

Importantly, the court explicitly declined to defer to the Qatari court's decision on grounds of international comity, observing that comity is inherently discretionary and does not require or mandate blind recognition of foreign judicial acts without independent scrutiny.[24]

The ruling reaffirmed the principle that arbitral jurisdiction rests solely on the parties' clear and express consent, and that strict compliance with agreed procedural steps, especially those governing the tribunal's constitution, is essential. Notably, this was not a case in which the seat intervened because the appointment mechanism had failed or become unworkable. The Qatari court acted despite the mechanism remaining intact and the contractual preconditions unmet. *Hub Street* thus stands as a cautionary illustration of the limits of judicial assistance at the seat and the importance of procedural integrity for cross-border enforcement.

Under this approach, the enforcing court conducts its own assessment and does not defer to prior determinations, even those of the tribunal or the courts of the seat. This creates a doctrinal tension: although the seat's court may intervene to constitute the tribunal, an enforcing court elsewhere may adopt a more literal reading and require strict adherence to the parties' agreed procedure. An award may therefore be valid and enforceable at the seat yet still face refusal abroad.

This divergence reflects a structural feature of international arbitration. Legitimacy is subject to dual control by the courts of the seat and those of the enforcing state.[25] Without a principled allocation of authority between them, Article V(1)(d) risks becoming a vehicle for horizontal relitigation of issues that properly belong to the supervisory jurisdiction of the seat.

IV. CONTEMPORARY PERSPECTIVES ON PROCEDURAL COMPLIANCE

A. Approaches Favoring Enforcement

Given that an enforcing court may still refuse recognition even where the court of the seat has cured a procedural defect, the key question becomes: how serious must the defect be, and how

[24] *ibid.*

[25] *See* Hayk Kupelyants, 'Conflict of Laws Before International Arbitral Tribunals' (2024) *British Yearbook of International Law* (advance article, 1 October 2024) ; Franco Ferrari, Friedrich Rosenfeld and Charles T Kotuby, 'The New York Convention as an Instrument of Uniform Law', in *Recognition and Enforcement of Foreign Arbitral Awards: A Concise Guide to the New York Convention's Uniform Regime* (Edward Elgar Publishing 2023) 3 ; Gary Born and Claudio Salas, 'Procedural Autonomy Under the New York Convention' (2023) 56 New York University Journal of International Law & Politics 45–106.

directly must it have affected the proceedings, to justify refusal? Striking the right balance is essential between respecting the seat court's remedial action and protecting the integrity of the enforcement process under the enforcing court's own law.

Commentators continue to debate the level of defect or causal impact required to engage Article V(1)(d) of the New York Convention and its UNCITRAL Model Law equivalent. Some jurisdictions take a distinctly pro-enforcement approach, reluctant to let minor procedural flaws unravel the outcome of a full arbitration.[26] Based on this, minor or technical breaches, particularly those causing no prejudice, may not justify refusal.[27]

In *Armada (Singapore) Pte Ltd v Gujarat NRE Coke Limited*[28], the court dismissed the award debtor's contention that the arbitral tribunal had been improperly constituted on the basis that the arbitration agreement stipulated the tribunal should consist of "commercial men." While two of the arbitrators were senior members of the legal profession, Foster J held that their extensive experience in the resolution of commercial disputes by arbitration was sufficient to meet this requirement.

Some courts, adopting a pro-enforcement bias, have also considered whether the challenging party waived objections by failing to raise them during the arbitration.[29] For example, in the Hong Kong case *China Nanhai Oil Joint Service Corporation Shenzhen Branch v. Gee Tai Holdings Co Ltd*[30] the refusal to enforce the arbitral award was initially sought on the basis that the arbitrators were selected from the Shenzhen panel, whereas the arbitration agreement required selection from the Beijing panel. The Supreme Court of Hong Kong declined enforcement on this jurisdictional ground, holding that the arbitrators technically lacked authority to resolve the dispute.

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[26] *infra* note 29.

[27] A court held that the presence of an administrative secretary alongside a sole arbitrator did not render the tribunal improperly constituted, so long as the secretary's role was confined to purely administrative functions, such as recording the taking of evidence. This was deemed acceptable despite the arbitration agreement providing only for a sole arbitrator. *See Clement C. Ebokan v. Ekwenibe & Sons Trading Company*, Lagos Court of Appeal, Nigeria, 22 January 2001, [2001] 2 NWLR 32

[28] *Armada (Singapore) Pte Ltd (Under Judicial Management) v Gujarat NRE Coke Ltd* [2014] FCA 636 (Federal Court of Australia).

[29] Patricia Nacimiento, 'Article V(1)(d)', in Herbert Kronke, Patricia Nacimiento, et al (eds), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention* (Kluwer Law International 2010) 300.

[30] *China Nanhai Oil Joint Service Corporation, Shenzhen Branch v Gee Tai Holdings Co Ltd* (Hong Kong High Court, 13 July 1994) [1994] 20 YB Comm Arb 671, [1995] 2 HKLR 215.

However, it is important to note that enforcement was ultimately granted, as the party opposing enforcement had participated in the arbitration proceedings despite being aware of the improper composition of the tribunal. The judge opined that even if there had been a valid ground for refusing enforcement due to lack of jurisdiction, he would have exercised his discretion to enforce the award, nonetheless.[31]

Other enforcement courts require the award debtor to establish that there has been a serious breach of the agreement resulting in significant harm before enforcement will be denied. Courts commonly insist on either a significant procedural irregularity or a clear causal link between the defect and the award. Various theories exist on how to assess causality and materiality. One suggests looking to the procedural law applicable.[32] If that law considers the defect sufficient to annul an award, it is deemed substantial.[33]

In practice, however, the lines between these competing theories often blur. Courts frequently treat them as interchangeable, making much of the debate more semantic than substantive. The prevailing view is that enforcement should be refused only where the procedural defect could plausibly have affected the outcome or materially undermined the fairness of the proceedings.[34]

On this note, courts have also approached such situations through the lens of the material prejudice test. An example of a court applying the material prejudice test is the Singapore High Court in *Sanum Investments v. ST Group*.[35] The dispute involved two agreements, one providing for arbitration in Macau, the other under SIAC rules. The claimant commenced arbitration in Singapore before a three-member tribunal. Although the tribunal accepted jurisdiction, the court later found that the arbitration should have been seated in Macau and that the tribunal's composition did not follow the parties' agreement.

Despite these procedural defects, the court enforced the award because the respondents failed to show material prejudice. On appeal, the Court of Appeal clarified that while lack of prejudice is irrelevant for jurisdictional challenges, it is relevant in procedural ones. However, it

[31] *ibid.*
[32] *ibid.*
[33] *ibid* 299.
[34] *Supra* note 29.
[35] *ST Group Co Ltd, Sithat Xaysoulivong and ST Vegas Co Ltd v Sanum Investments Ltd; Sanum Investments Ltd v ST Vegas Enterprise Ltd* [2019] SGCA 65, Civil Appeals Nos 113 and 114 of 2018 (Singapore Court of Appeal).

ultimately held that enforcement could be refused for a wrongly seated arbitration even without proving actual prejudice.

The material prejudice test has been endorsed in a number of decisions by United States District Courts. In *Hammermills*,[36] the award debtor sought to resist enforcement on the basis that the arbitral tribunal had deviated from the agreed procedural framework by including in the award an allocation of legal costs after the draft had already been approved by the ICC International Court of Arbitration. The District Court rejected this challenge, finding that the award could only be set aside if the procedural breach resulted in substantial prejudice to the party raising the objection.[37]

B. The Formalistic Approach

On the other hand, certain courts have adopted a notably strict and formalistic approach, holding that even the slightest deviation from the parties' agreed procedural framework may suffice as grounds for refusing enforcement, regardless of whether such a deviation had any actual impact on the outcome. This was clearly exemplified in the *Encyclopaedia Britannica* case.[38]

Furthermore, the court in *Polimaster Ltd. v. RAE Systems, Inc. ("Polimaster")*[39] considered a dispute resolution clause that required disputes first be resolved through negotiation, and failing that, through arbitration "at the defendant's side", a phrase the parties understood to mean at the geographical location of the defendant's business. In *Polimaster*, the Ninth Circuit adopted a strict reading of the arbitration clause, holding that counterclaims had to be brought in the contractual forum even though this fragmented related proceedings. The court prioritised literal compliance over procedural efficiency, illustrating the risks of an inflexible approach to Article V(1)(d).

[36] *Compagnie des Bauxites de Guinee v Hammermills Inc* 724 F.2d 369 (3rd Cir 1983, US), U.S. District Court, District of Columbia.
[37] *ibid.* Also *see Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 190 F. Supp. 2d 936, [2002] (U.S. District Court for the Southern District of Texas).
[38] *Supra* note 11.
[39] *Polimaster Ltd. v. RAE Systems, Inc. ("Polimaster")* 623 F.3d 832 (9th Cir. 2011), U.S. Court of Appeals, Ninth Circuit.

The problem with this formalistic approach lies in its potential to prioritize procedural technicalities over substantive justice. By focusing exclusively on strict adherence to contractual language, courts risk producing outcomes that are inefficient or disconnected from the parties' actual intentions. Such an approach can frustrate the very purpose of arbitration, by elevating form over function.

Another concern arises from the possibility of a "second try," whereby an arbitral award that has been refused enforcement or set aside in one jurisdiction can still be pursued for recognition and enforcement in another. Because refusals are territorial, a rejection in one country does not automatically prevent success elsewhere. The flexibility of the New York Convention allows award holders to seek enforcement in more permissive jurisdictions after a formalistic refusal, but this practice can create significant problems. [40] It encourages forum shopping, increases the risk of parallel or inconsistent proceedings across borders, and undermines both the finality and predictability of arbitral awards. Moreover, it can erode confidence in the international arbitration system by allowing the same award to be considered valid in some countries but invalid in others. This fragmentation may prolong disputes, generate inefficiencies, and ultimately frustrate the very goals of efficiency and substantive justice that arbitration is meant to promote.

C. The Issue at Stake

While the authorities above offer doctrinal guidance, they remain largely silent on a distinct and significant matter: judicial intervention by the courts of the seat during the arbitral process, particularly concerning the composition of the tribunal. These precedents do not engage with the implications of such court involvement on the integrity or legitimacy of the arbitral proceedings.

[40] Although cases invoking strict Article V(1)(d) refusals, followed by varying outcomes in other jurisdictions, remain relatively rare in publicly reported decisions, there is jurisprudence showing that an award annulled or denied enforcement in one country may still be enforced or refused elsewhere. Notable examples include the Hilmarton cases (France/Switzerland, 1980s–1990s); Putrabali Adyamulia v. Rena Holding, Tribunal de Grande Instance [TGI] Paris, 2007 (France/Indonesia); Chromalloy Aeroservices v. Arab Republic of Egypt, 939 F. Supp. 907 (D.D.C. 1996) (U.S./Egypt); and various Yukos-related cases, such as Yukos Capital S.A.R.L. v. Rosneft Oil Co., 2010s (multiple jurisdictions).

Moreover, it is important to recognize that the cases and approaches referenced above are not firmly anchored in the strict legal text of the applicable legal framework, such as the UNCITRAL Model Law or the New York Convention, but rather reflect domestic judicial interpretations and preferences.

As such, they contribute to a growing fragmentation of the international arbitration enforcement regime. Instead of fostering legal certainty and a uniform, predictable approach to arbitration, these divergent domestic practices risk undermining the coherence of the legal framework, introducing unnecessary complexity and diminishing the reliability of enforcement outcomes across jurisdictions.

This issue has been raised in certain cases and commentary, yet without any convincing treatment or attempt to grapple with its doctrinal and practical ramifications.[41] The interplay between party autonomy and judicial oversight in such instances is often noted, but rarely analyzed in depth.[42] Addressing this gap requires a separate doctrinal inquiry, one that examines the interplay between judicial oversight and party autonomy, and the extent to which external interference may compromise the validity of the award itself.

V. LIMITING JUDICIAL INVOLVEMENT VIA RES JUDICATA AND PUBLIC POLICY

A. Res Judicata

Having identified the key jurisprudential approaches to procedural irregularities at the enforcement stage, this article contends that decisions regarding the constitution of the arbitration tribunal, once conclusively resolved by the court of the seat, should be afforded a significant degree of deference by enforcing courts. This deference is warranted both due to the *res judicata* effect of the seat's determinations, which promotes finality and legal certainty, and in recognition of the fundamental principle of international comity that underpins the entire arbitration framework.[43]

[41] *See* Nuwan Peiris, 'Appointment of an Arbitrator by a Court: A Problem in the UNCITRAL Model Law!' (2014) 80(1) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 63.
[42] *ibid.*
[43] International comity refers to the practice whereby one nation defers to the laws and judicial decisions of another nation, out of respect, rather than obligation. It's based on the recognition that while states are sovereign and equal, they coexist in a global order that benefits from cooperation. *See* Chee Yong Lim and Hui En Lee, 'The Doctrine

Res judicata precludes the relitigation of issues finally determined by a competent court and is recognised across common and civil law systems as a foundational guarantee of finality and legal certainty.[44] The doctrine applies to foreign judgments as well, as confirmed in *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No.2)*,[45] where the House of Lords held that a foreign judgment can give rise to issue estoppel under English law if it (1) is final and on the merits, (2) involves the same subject matter, and (3) the same parties. In *The Sennar (No.2)*,[46] a Dutch judgment satisfied these criteria and precluded the claimant from disputing jurisdiction in England.

This extends not only to claims raised but also to any grounds which could or should have been raised in the supervisory proceedings.[47] Therefore, failing to raise an objection at the appropriate time will be deemed a waiver of the right to later seek annulment of the award on those same grounds.[48]

While occasionally critiqued for potentially prioritizing procedural closure over substantive justice, *res judicata* remains essential to the integrity and stability of the legal system, reflecting a broader commitment to legal certainty and the orderly administration of justice.[49]

In the case of *Union of India v. Reliance Industries Ltd & Anor*,[50] the English High Court, citing a series of authorities, held that the principles of res judicata and abuse of process are equally applicable, as fundamental procedural doctrines, to both judicial and arbitration

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of Transnational Issue Estoppel: Greater Certainty and Finality in International Arbitration?' (Legal Herald Issue 1/2024) ; Abubakri Yekini, *Recognition and Enforcement of Foreign Judgments: Theoretical Background, in The Hague Judgments Convention and Commonwealth Model Law: A Pragmatic Perspective* (Oxford: Hart Publishing, 2021) ch. 2 ; Ronald Bradman, *Enforcement of Foreign Money-Judgments in the United States: In Search of Uniformity and International Acceptance*, 67 Notre Dame L. Rev. 253 (1991) ; Franco Ferrari and Friedrich Rosenfeld (eds), Deference in International Commercial Arbitration: The Shared System of Control (Kluwer Law International 2023).

[44] *infra* note 52.

[45] *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No.2)* [1967] 1 A.C. 853 (United Kingdom)

[46] *DSV Silo- und Verwaltungsgesellschaft mbH v Owners of the Sennar and 13 Other Ships (The Sennar (No.2)* [1985] 1 W.L.R. 490 (UK House of Lords).

[47] *infra* note 52.

[48] *Avraham v Shigur Express Ltd*, 1991 U.S. Dist. LEXIS 12267 (District Court, New York. 1991).

[49] *See* A V Dicey, J H C Morris and L Collins (eds), *Spencer Bower and Handley: Res Judicata (5th edn, LexisNexis Butterworths 2019);* IBA Arbitration Committee Task Force on Res Judicata in International Arbitration*, Report on Res Judicata in International Arbitration* (International Bar Association 2022) https://www.ibanet.org/Res-Judicata-Report-2022 accessed 29 June 2025.

[50] *Union of India v Reliance Industries Limited and* Another [2022] EWHC 1407 (Comm).

proceedings. Moreover, the Judge found that there was substantial legal support for the view that the *Henderson* principle is applicable in the context of arbitration.[51]

In the same vein, the principle of *res judicata* has also been invoked by enforcing courts in various legal contexts beyond the immediate recognition and enforcement of arbitral awards, particularly where determinations by the supervisory court at the seat have addressed issues of validity, finality, and enforceability.[52] As stated by Lord Sumption in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd*,[53] issue estoppel arises where an issue common to both proceedings has already been decided and is binding, even if the causes of action differ.

As such, a judgment rendered by such a court, properly seized and acting within its supervisory mandate, carries binding legal consequences for the parties, their privies, and successors in title.[54] This gives rise to an issue estoppel *per rem judicatam* or analogous forms of preclusion before the enforcement court.

B. Public Policy

Although the doctrine of *res judicata* is fundamental and should generally be observed, there are circumstances in which an enforcing state may justifiably depart from it. This may arise

[51] The *Henderson v Henderson* rule is rooted in the broader doctrine of abuse of process. A key question is whether this doctrine should apply where a party, having failed to challenge the award at the seat, later raises objections during enforcement that could and should have been pursued earlier. Similar findings also arise from the decision of the English High Court in *Nomihold Securities Inc v Mobile Telesystems Finance SA* [2011] EWHC 337 (Comm). *See* April Lacson, 'Final and Binding: Towards a Transnational Theory of Issue Preclusion' (2019) 85 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 355. English courts have also recognised that the principle of res judicata forms part of domestic public policy *See generally* Francisco Blavi, 'The Role of Public Policy in International Commercial Arbitration' (2016) 82 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 1 ; Winnie (Jo-Mei) Ma, 'Recommendations On Public Policy In The Enforcement Of Arbitral Awards' (2009) 75 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 14–37.

[52] *See generally* Rishabh Jogani, 'The Role of National Courts in the Post-arbitral Process: The Possible Issues with the Enforcement of a Set-aside Award' (2015) 81(3) *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 276; Philippe Hovaguimian, 'The Res Judicata Effects of Foreign Judgments in Post-Award Proceedings: To Bind or Not to Bind?' (2017) 34(1) *Journal of International Arbitration* 47.

[53] *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] United Kingdom Supreme Court 46.

[54] *Supra* note 56.

where the original judgment was tainted by fraud or offends the enforcing state's laws or principles of natural justice.[55]

The exceptions above echo and may be translated into the public policy exception found in Article V(2)(b) of the New York Convention and the corresponding provision of the UNCITRAL Model Law, underscoring a shared recognition across jurisdictions that justice must not be sacrificed to formalism.[56] In particular, public policy may be invoked to deny recognition where enforcement would be contrary to the forum state's public policy.[57]

Though this exception is to be applied sparingly, it remains a critical failsafe. Public policy permits the enforcement court to waive the estoppel requirement in exceptional cases, where doing so is warranted in the interests of justice or other justifiable circumstances. In such cases, strict adherence to precedent gives way to the broader imperative of fairness and legal integrity. In this way, a defendant may still raise a public policy objection at the enforcement stage notwithstanding the tribunal's or the courts of the seat findings.[58]

As Lord Justice Waller explained in *Soleimany v Soleimany*,[59] the enforcement court should conduct an inquiry when there is *prima facie* evidence suggesting a breach of public policy. This principle underscores the only available mechanism under the New York Convention and the UNCITRAL Model Law for a merits review of the arbitration award and the proceedings at the seat of arbitration.

In this spirit, when the composition of an arbitral tribunal has been altered or influenced by judicial action at the seat, enforcing courts must navigate carefully between upholding the supervisory authority of the seat and protecting the integrity of the arbitral process. In doing so, the enforcing court must balance two competing policies: the principle of finality and the

[55] *infra* note 56. Also *see* Yukos Capital SARL. v. OJSC Rosneft Oil Company (2014) EWHC 2188 (UK Commercial Court).
[56] *Dicey, Morris & Collins on the Conflict of Laws* (16th edn, Sweet & Maxwell 2022) para 16-116
[57] *ibid.*
[58] *ibid.*
[59] *Soleimany v Soleimany* [1999] Q.B. 785 (UK).

need to prevent enforcement of awards that undermine core expectations of fairness which may justify refusal of enforcement.[60]

Viewed through this lens, public policy could function as a filter that enables enforcing courts to distinguish between acceptable procedural deviations and those that fundamentally compromise the arbitration. For example, refusal may be warranted where tribunal composition reflects arbitrary, discriminatory, or politically motivated interference, where equal treatment and the right to be heard were denied, or where the impartiality and independence of the tribunal were effectively neutralized.[61]

As famously articulated by the United States Court of Appeals for the Second Circuit in *Parsons*, the enforcement of foreign arbitral awards may be refused on public policy grounds "only where enforcement would violate the forum state's most basic notions of morality and justice."[62] This formulation has been influential well beyond the United States, with courts in numerous jurisdictions invoking it when interpreting the public policy exception.

In a similar spirit, the Federal Court of Australia has emphasised that only those elements of public policy touching upon "fundamental, core questions of morality and justice" within the forum state can justify non-enforcement under the relevant statutory exception.[63]

Echoing this restrictive approach, the Hong Kong Court of Final Appeal has characterised an award that breaches public policy as one that is "so fundamentally offensive to [the enforcement jurisdiction]'s notions of justice" that adherence to the Convention cannot reasonably be expected.[64]

The Court of Appeal of England and Wales has observed that the exception applies where enforcement would be "clearly injurious to the public good" or "wholly offensive to the ordinary reasonable and fully informed member of the public on whose behalf the powers of

[60] *Westacre Investments Inc v Jugoimport-SPDR Holding Co* [2000] 1 QB 288, 314 (UK).
[61] *Supra* note 56.
[62] *Parsons & Whittemore Overseas v. Société Générale de L'Industrie du Papier* (RAKTA), 508 F.2d 969 (2d Cir. 1974, United States).
[63] *Traxys Europe S.A. v. Balaji Coke Industry Pvt Ltd.,* [2012] FCA 276 (Federal Court of Australia, 23 March 2012).
[64] *Hebei Import & Export Corp. v. Polytek Engineering Co. Ltd*., [1999] 2 HKC 205 (Court of Final Appeal, Hong Kong, 9 February 1999). Also *see Neil Kaplan, 'Polytek Nearly Victorious: A Tale of Three Cities' (2000) 66(1) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 20.*

the state are exercised." At the same time, the Court cautioned that public policy "can never be exhaustively defined" and must be invoked sparingly.[65]

In sum, the public policy exception empowers the courts of the enforcing State to examine whether the content of the arbitral award is compatible with that State's fundamental legal values. This review is not limited to the substantive merits alone; it also encompasses procedural aspects. Accordingly, an award may be denied recognition or enforcement if the proceedings at seat departed from standards of procedural fairness as understood within the legal order of the forum State.

While views may differ, utilizing public policy does not, push the threshold too far.[66] On the contrary, it is firmly grounded in the express language of the relevant legal frameworks and reflects the sound principle that more than a trivial or merely formal departure from the agreed or applicable procedure should be required before such a grave consequence is justified.[67]

VI. A DOCTRINAL FRAMEWORK FOR JUDICIAL ENGAGEMENT

The proposed framework proceeds in two analytically distinct stages. First, the enforcing court determines whether the issue of tribunal constitution has already been finally resolved, or could and should have been raised, before the supervisory court at the seat. If so, principles of res judicata and waiver strongly militate against reopening the question. Second, even where such deference applies, the enforcing court retains a narrowly confined power to refuse enforcement where the tribunal's constitution, as confirmed at the seat, violates the forum's most fundamental standards of procedural justice. Based on the foregoing analysis, when a party challenges the enforcement of an arbitral award on the ground that the arbitral tribunal was improperly constituted, the enforcing court may apply a carefully structured, two-stage doctrinal framework to properly evaluate the objection.

At the first stage, the court examines whether the issue has already been conclusively determined under the doctrine of *res judicata* by the competent courts of the arbitration seat.[68]

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[65] *Deutsche Schachtbau-und Tiefbohrgesellschaft m.b.H. v. Shell International Petroleum Co. Ltd*., [1990] 1 A.C. 295 (Court of Appeal, England and Wales, 24 March 1987).

[66] Iris Ng, Melissa Ng, Andre Soh and Siyuan Chen, 'Five Recurring Problems in International Arbitration: The Relationship Between Courts and Arbitral Tribunals' (2020) 8(2) *Indian Journal of Arbitration Law* 19

[67] *See Popack v Lipszyc*, 2016 ONCA 135; *Rhéaume v. Société d'investissements l'Excellence inc,* 2010 QCCA 2269, [2011] RJQ 1 (Quebec Court of Appeal).

[68] *Supra* note 49.

Rodgers raises a critical concern about the dismissal of foreign judgments, asking how the principle of *res judicata* can remain intact when its validity depends on judges in one country judging the laws of another. How can such a foundational doctrine survive if its acceptance hinges on this cross-national scrutiny?[69]

In this context, where the composition of the tribunal has been raised and finally determined in set-aside or annulment proceedings at the seat, the enforcing court may attach weight to that determination. Conversely, even if no such proceedings were brought, the court may consider whether the party resisting enforcement had a meaningful opportunity to challenge the tribunal's composition earlier and, having failed to do so, may be taken to have waived its right to object at the enforcement phase.[70]

The rationale underlying this deference lies in the widely accepted view within international arbitration practice that the courts of the seat are best placed, both practically and legally, to review procedural matters arising directly out of the arbitration.[71] Accordingly, enforcement courts should exercise restraint and not lightly reopen issues that have already been carefully considered and resolved by a competent judicial authority.[72]

Furthermore, it has been argued that the waiver principle naturally aligns with the parties' autonomy in international arbitration. Since international arbitration lacks a fixed procedural code and relies primarily on the procedure the parties agree upon, any objections arising during the proceedings must be raised without delay. Failing to do so should forfeit the party's ability to later challenge the award or resist its enforcement.[73]

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[69] Andrew Rogers, 'The Enforcement of Awards Nullified in the Country of Origin' in Albert Jan van den Berg (ed), *Improving the Efficiency of Arbitration Agreements and Awards: 40 Years of Application of the New York Convention*, ICCA Congress Series, Vol 9 (ICCA 1998), 548.

[70] *ibid.*

[71] *Supra* note 25.

[72] This approach is supported by Born & Salas, who argue that enforcement courts must defer to tribunal or institutional interpretations of ambiguous procedural agreements under Article V(1)(d), refusing enforcement only for material breaches that cause concrete harm. See This approach is supported by Born & Salas, who argue that enforcement courts must defer to tribunal or institutional interpretations of ambiguous procedural agreements under Article V(1)(d), refusing enforcement only for material breaches that cause concrete harm. See Gary Born and Claudio Salas, 'Procedural Autonomy Under the New York Convention' (2023) 56 New York University Journal of International Law & Politics 45–106.

[73] *See* Fabricio Fortese, 'Is an Irregularly Composed Tribunal a Tribunal at All?' (2022) 78 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 1

By acknowledging that the recognition of foreign judgments may give rise to estoppel, thereby precluding a party from relitigating issues already decided abroad, the enforcing court not only conserves judicial resources but also fulfills its obligation under the New York Convention and the UNCITRAL Model Law to recognize and enforce arbitral awards rendered in foreign jurisdictions.[74]

This doctrinal framework does not abolish the second-look doctrine; it simply channels it through doctrinal filters that respect finality while preserving an enforcing court's ability to intervene.[75] The enforcing court still retains a "second look" at tribunal constitution under the New York Convention, but that review is informed by prior determinations at the seat and by whether a party waived its objections.

A good illustration is *Minmetals Germany GmbH v Ferco Steel Ltd*,[76] where the court at the seat of arbitration rejected a procedural challenge to the award. The defendant then raised the same objection in England to resist enforcement. Colman J held that where such a challenge has already been dismissed by the competent supervisory court, English courts will generally regard that decision as a strong policy reason to uphold the award.

Similarly, in *PAO Tatneft v. Ukraine*, the Commercial Court held that a party's failure to raise a jurisdictional objection during arbitration constitutes a waiver at the enforcement stage. Ukraine sought to resist enforcement of an arbitral award under section 103(2)(d) of the Arbitration Act 1996, paralleling Article V(1)(c) of the New York Convention, arguing the award exceeded the tribunal's jurisdiction due to the alleged illegality of Tatneft's investment.[77]

The court accepted the illegality argument in principle but rejected it on waiver grounds, as Ukraine had not challenged the tribunal's jurisdiction during arbitration. Citing, among others, the ICCA Guide to the New York Convention, the court stressed that its discretion must be

[74] Burton S. DeWitt, 'A Judgment Without Merits: The Recognition and Enforcement of Foreign Judgments Confirming, Recognizing, or Enforcing Arbitral Awards' (2015) 50 *Texas International Law Journal* 495, 517.
[75] *See* Pierre Mayer, The Second Look Doctrine: The European Perspective (2011) 21 American Review of International Arbitration 1.
[76] *Minmetals Germany GmbH v Ferco Steel Ltd* [1999] 1 All E.R. (UK Commercial Court) 315.
[77] *ibid.*

exercised consistently with the pro-enforcement bias of the New York Convention, reinforcing the limited scope for raising new challenges at enforcement.[78]

Turning to the second stage of the test, if the matter has been addressed by the court of the seat, the enforcement court must then consider whether enforcement would be contrary to the public policy of the enforcing forum.[79] The public policy exception, as formulated in Article V(2)(b) of the New York Convention and the UNCITRAL Model Law and reflected in many national arbitration laws, is generally interpreted narrowly.[80]

Not every irregularity in the appointment of arbitrators will justify refusal of enforcement; rather, the question is whether the manner in which the tribunal was constituted is so fundamentally at odds with the forum's most basic notions of fairness and procedural justice that it would be inappropriate to enforce the award.[81]

On this note, in *Hebei Import & Export v. Polytek*,[82] the Court of Final Appeal addressed the intersection of international arbitration and domestic public policy, a central concern of this article's thesis regarding judicial restraint in refusing enforcement of foreign arbitral awards. The court acknowledged the narrow public-policy exception, holding that a party may resist enforcement on public policy grounds even if it could not, or chose not to, seek set-aside of the award at the arbitral seat.[83]

Importantly, the court affirmed that enforcement should be treated as the norm and that public policy must be construed restrictively.[84] Ultimately, the inquiry before the enforcement court is not whether the arbitration proceeding was flawless or entirely free from procedural imperfections, but rather whether it meets the minimum standards required for enforcement under the relevant law and public policy of the enforcing jurisdiction. This calibrated two-stage analysis enables courts to strike a delicate balance between respecting the finality and

[78] *PAO Tatneft v Ukraine* [2020] EWHC 3179 (UK Commercial Court).
[79] For a similar approach regarding the enforcement of annulled awards *see* Shaneel Mehta and Anusha Sarkar, 'Enforcement of Annulled Awards: A Balanced Approach' (2024) 90 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 421*
[80] Generally *see* George A Bermann (ed), *Recognition and Enforcement of Foreign Arbitral Awards: The Interpretation and Application of the New York Convention by National Courts* (Springer 2017).
[81] *Supra* note 76.
[82] *Hebei Import & Export v Polytek* [1999] HKCFA 7 (Hong Kong).
[83] *ibid.*
[84] *ibid.*

autonomy of the arbitral process and ensuring that fundamental principles of justice and fairness are upheld within the enforcement forum.

VII. CONCLUSION

Applying res judicata at the enforcement stage strengthens the finality of arbitral awards and promotes legal certainty. It reflects comity and acknowledges that, while arbitration is autonomous, it remains rooted in a legal order under the limited supervision of national courts. Choosing the seat is, in effect, choosing the legal forum for procedural challenges, and decisions of the seat, particularly on tribunal constitution, deserve substantial deference from enforcing courts.

This approach does not leave the award debtor without protection, since allegations of serious procedural irregularity or extreme injustice may be addressed and corrected by the courts of the seat. Recognising that corrective function ensures that finality does not come at the expense of fairness and that the legitimate interests of the award debtor remain safeguarded within the structure of the arbitral system itself.

This approach aligns with the New York Convention and the UNCITRAL Model Law, both crafted with a unifying spirit to ensure consistent interpretation across jurisdictions. Harmonisation recognises arbitration's transnational character and aims to avoid jurisdictional divergence that could frustrate party expectations and diminish procedural efficiency.

Public policy remains a narrow but essential safeguard. It permits refusal of enforcement only where the process has been fundamentally tainted, for example, by political interference or breaches of due process such as lack of equal treatment or the right to be heard. This does not expand judicial review, but preserves a limited oversight role to protect core principles of justice.

Enforcing courts must balance award finality and deference to the seat with vigilance against procedural illegitimacy. They are not mere rubber stamps. They play a constitutional role in preserving the rule of law within arbitration, correcting rare but serious defects to maintain coherence and integrity. Tension between pro-enforcement aims and legitimate limits is inevitable, but should be managed through clear doctrine rather than policy-driven discretion.

A principled approach sustains the legitimacy of the arbitral system by keeping it anchored in law.

In sum, the enforcing court functions as a final safeguard in international arbitration, but not as a forum for a comprehensive re-examination of the arbitral process. While the courts of the seat retain primary supervisory authority, the enforcing court operates as a residual and carefully confined filter, intervening only where fundamental defects falling within the limited grounds of the New York Convention are established. Enforcement proceedings are not designed to revive technical objections that have already been raised and rejected in set-aside proceedings, nor to encourage strategic relitigation. Their purpose remains the recognition and enforcement of arbitral awards, subject only to narrowly circumscribed safeguards that preserve basic standards of fairness and legitimacy.