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The Dynamics of Party Autonomy in International Arbitration: Current Trends and Jurisdictional Limits

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ABSTRACT

This paper explores the principle of party autonomy in international commercial arbitration, examining its role as a cornerstone of the arbitration process and its interaction with jurisdictional and procedural constraints. Party autonomy allows parties to shape arbitration procedures according to their preferences, including selecting the applicable law and procedural rules. This flexibility is contrasted with the limitations imposed by mandatory rules and public policy, which ensure minimum standards of fairness and enforceability. Through an analysis of recent developments in arbitration practices, this paper highlights how party autonomy is maintained and restricted in various jurisdictions. It also discusses the evolving discourse on confidentiality and transparency, reflecting on how these issues impact party autonomy. The paper concludes by assessing the balance between party autonomy and regulatory oversight in shaping the future of international arbitration.

Keywords*: Principle of Party Autonomy; International Arbitration; International Trade; Limitations to Party Autonomy.*

I. INTRODUCTION

The unique legal structure that governs international commercial arbitration was created mostly by the parties concerned.[2] Arbitration is distinguished by the principle of party autonomy, which grants the disputing parties considerable discretion over the procedural and substantive parts of the process, regardless of whether they want to follow institutional standards or tailor own methods.[3] In addition to being a distinguishing characteristic, this control plays a significant role in the general preference for arbitration over traditional litigation in cross-border business

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[2] Stephan W Schill, "Crafting the International Economic Order: The Public Function of Investment Treaty Arbitration and Its Significance for the Role of the Arbitrator" (2010) 23 Leiden Journal of International Law 401 <https://doi.org/10.1017/s0922156510000117>.
[3] Moses Oruaze Dickson, "Party Autonomy and Justice in International Commercial Arbitration" (2018) 60 International Journal of Law and Management 114 <https://doi.org/10.1108/ijlma-12-2016-0184>.

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conflicts.[4]

At the heart of party autonomy is the flexibility it grants to the parties to shape the arbitration to suit their particular needs.[5] This adaptability allows for expedited processes, the selection of arbitrators with specific expertise, and the customization of procedural rules to fit the complexities of the dispute.[6] Party autonomy is thus central to the appeal of arbitration, often considered to provide a more efficient and effective means of resolving international disputes.[7]

The origins of this principle are deeply rooted in the broader legal doctrine of *laissez-faire*, which emphasizes minimal interference by external authorities in private commercial agreements.[8] The foundation of this approach can be traced to the classical theory of freedom of contract, wherein the will of the parties is seen as paramount. As Cohen observed in The Basis of Contract[9]:

"Contractualism in the law, that is, the view that in an ideally desirable system of law, all obligation would arise only out of the will of the individual contracting freely, rests not only on the will theory of contract but also on the political doctrine that all restraint is evil and that the government is best which governs least".

In line with this theory, party autonomy in international arbitration allows for the creation of a legal space where the parties' consent is the primary source of rights and obligations.[10] This concept is particularly significant in arbitration, where parties from different legal systems and cultural backgrounds seek to avoid the uncertainty of national courts by agreeing to procedures and rules tailored to their dispute.[11] However, party autonomy is not an unfettered principle.

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[4] Jacob Anthony Nikituk, "Bridging an Access-to-Justice Gap for International Commercial Dispute Resolution: Recent Developments of Interim Measures in Cross-Border Chinese Arbitration — Columbia Journal of Transnational Law" (*Columbia Journal of Transnational Law*, August 18, 2021) <https://www.jtl.columbia.edu/volume-59/bridging-an-access-to-justice-gap-for-international-commercial-dispute-resolution-recent-developments-of-interim-measures-in-cross-border-chinese-arbitration-1>.

[5] Law4u, "What Is the Significance of the Principle of Party Autonomy in Arbitration? | Law4u" (*Law4u*) <https://law4u.in/answer/5261/what-is-the-significance-of-the-principle-of-party-autonomy-in-arbitration#:~:text=The%20principle%20of%20party%20autonomy%20is%20a%20fundamental%20concept%20in,%2C%20needs%2C%20and%20mutual%20agreements.>.

[6] Ticen Azize Özraşit, "Assessment of the Balance of Autonomy and Justice in English Arbitration Proceedings in the Light of the Assistance of State Courts and Injunctions" (2024) 14 Hacettepe Hukuk FakülTesi Dergisi 175 <https://doi.org/10.32957/hacettepehdf.1368579>.

[7] Russell Thirgood, "Appeals in Arbitration: 'To Be or Not to Be'" (2021) 87 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 423 <https://doi.org/10.54648/amdm2021028>.

[8] Hanoch Dagan and Michael Heller, "Autonomy for Contract, Refined" (2021) 40 Law and Philosophy 213 <https://doi.org/10.1007/s10982-021-09404-y>.

[9] Morris R Cohen, "The Basis of Contract" (1933) 46 Harvard Law Review 553 <https://doi.org/10.2307/1331491>.

[10] Ilias Bantekas, "Equal Treatment of Parties in International Commercial Arbitration" (2020) 69 International and Comparative Law Quarterly 991 <https://doi.org/10.1017/s0020589320000287>.

[11] Joshua Karton, "International Arbitration as Comparative Law in Action" [2020] SSRN Electronic Journal <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3654734_code1332011.pdf?abstractid=3654734&mirid=1

While the freedom to design the arbitration process is central to its attractiveness, it is circumscribed by mandatory legal norms and considerations of public policy.[12] For instance, national arbitration laws often impose minimum standards of due process and fairness, ensuring that arbitration does not contravene fundamental principles of justice.[13] In practice, this means that certain elements, such as the right to be heard or the impartiality of arbitrators, cannot be waived by the parties, even in the interest of expediency.[14] Additionally, in some jurisdictions, the enforcement of arbitral awards may be refused if the award is found to violate public policy, a concept that varies significantly across legal systems.[15]

The *lex loci arbitri*, or the law of the seat of arbitration, further influences the scope of party autonomy.[16] While the autonomy of the parties is central to arbitration, the role of the *lex loci arbitri* serves as a safeguard, providing a legal framework that ensures procedural integrity.[17] For example, the UNCITRAL Model Law on International Commercial Arbitration, which has been adopted by many countries, emphasizes the primacy of party autonomy but includes provisions that protect against procedural abuses or manifest injustice.[18] Courts in different jurisdictions also play a role in upholding or restricting party autonomy, particularly when reviewing arbitral awards for compliance with domestic and international legal standards.[19]

Party autonomy is still the mainstay of international arbitration despite these drawbacks. Due to its pivotal role, parties are able to design solutions that better suit their business objectives while eschewing the strict procedural restrictions of national courts. The limits of party autonomy will probably come under more scrutiny and adjustment as the field of international arbitration develops, particularly in light of technological breakthroughs and the growing complexity of international trade.

(A) Party Autonomy in International Arbitration

In contrast to state court proceedings, international arbitration is fundamentally rooted in the

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[12] Thomas Schultz and Thomas Grant, *Arbitration: A Very Short Introduction* (2021), page 27 <https://doi.org/10.1093/actrade/9780198738749.001.0001>.

[13] N 9

[14] Agla Eir Vilhjálmsdóttir, "Combating dilatory tactics in international arbitration and the impact of due process paranoia on efficiency" (June 1, 2019) <http://hdl.handle.net/1946/33134>.

[15] Shu Zhang, "Public Policy in International Arbitration Law," *Springer eBooks* (2023) <https://doi.org/10.1007/978-3-662-67679-0_2>.

[16] Maksuda Sarker, "Seat Theory in International Commercial Arbitration: Evolution from Lex Loci Arbitri to Lex Arbitri" (2022) 33 Dhaka University Law Journal 121 <https://doi.org/10.3329/dulj.v33i1.61512>.

[17] Louisa Dinchi James and Tayo T Bello, "Delocalization of Arbitration: Dynamic Change in International Commercial Arbitration" [2020] SSRN Electronic Journal <https://doi.org/10.2139/ssrn.3724941>.

[18] Michael Pryles, "Limits to Party Autonomy in Arbitral Procedure" (2007) 24 Journal of International Arbitration 327 <https://doi.org/10.54648/joia2007023>.

[19] N 6

principle of party autonomy.[20] The legal foundation for arbitration lies in the parties' agreement to submit a dispute to arbitration, which distinguishes it from the more rigid procedures of domestic courts.[21] This agreement empowers the parties to shape the arbitral procedure, either directly or by adopting a set of predefined rules from an arbitral institution, and to select the applicable procedural law. In cases where the parties fail to agree on procedural matters, the arbitral tribunal steps in to determine the applicable procedure, either by applying the relevant law or referring to rules of arbitration.[22]

Party autonomy is the guiding principle that determines the procedure to be followed in international commercial arbitration, according to eminent scholars Redfern and Hunter.[23] They further point out that the regulations of international arbitral institutions as well as national arbitration laws uphold this idea. The UNCITRAL Model Law's legislative history highlights the widespread approval of party autonomy, as it was enacted without opposition during the drafting process.[24] To support their assertion, Redfern and Hunter reference Article 19(1) of the UNCITRAL Model Law, which provides:

"Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings".

This provision highlights the broad scope of party autonomy in arbitration, allowing the disputing parties significant freedom to structure the process in accordance with their preferences.

Confidentiality in arbitration is a particularly divisive topic when it comes to talks about party autonomy.[25] Commentators have argued that maintaining secrecy is essential to maintaining the privacy and integrity of arbitration procedures and that it should be viewed as an inherent obligation originating from the agreement to arbitrate.[26] Academics contend that because arbitration is private, confidentiality is in line with the expectations of the parties who select

[20] Saloni Khanderia and Sagi Peari, "Party Autonomy in the Choice of Law under Indian and Australian Private International Law: Some Reciprocal Lessons" (2020) 46 Commonwealth Law Bulletin 711 <https://doi.org/10.1080/03050718.2020.1804420>.
[21] ibid
[22] Article 22 of International Chamber of Commerce (ICC) *Arbitration Rules* (2021).
[23] A Redfern and M Hunter, *Law and Practice of International Commercial Arbitration* (6th edn, Oxford University Press 2015) 43-44
[24] UNCITRAL, *Model Law on International Commercial Arbitration* (1985) https://uncitral.un.org/en/model-law-international-commercial-arbitration
[25] Moses, M L, *The Principles and Practice of International Commercial Arbitration* (Cambridge University Press 2017) 89-91
[26] Brown, Julian Christopher Patric. *The protection of confidentiality in arbitration: balancing the tensions between commerce and public policy*. Diss. London Metropolitan University, 2021. <https://repository.londonmet.ac.uk/id/eprint/6685>.

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it.[27] They contend that the core goals of arbitration, including secrecy, safeguarding private information, and preventing unwelcome publicity, would be jeopardised in the absence of confidentiality.

There is a sizable counterargument, though. According to some academics, confidentiality is not a given in arbitration and is not an obligation that should be taken for granted.[28] They argue that enforcing a strict confidentiality requirement would go against the idea of party autonomy, which grants parties the wide latitude to choose their procedures.[29] According to these observations, the parties are free to insert particular secrecy measures in their arbitration agreement or decide on them later if maintaining confidentiality is important to them. As a result, confidentiality is viewed as a negotiable feature of the arbitration process rather than an obligation that applies to everyone.

A practical difficulty resulting from the differing perspectives on secrecy is that it is nearly hard to make generalisations regarding the existence or extent of confidentiality obligations in arbitration without looking at the particular agreement between the parties. Confidentiality laws and any institutional or national regulations governing the arbitration, as well as the decisions taken by the parties during the arbitration process, will determine whether or not confidentiality applies.

(B) Applicability of Party Autonomy

Party autonomy is still a fundamental component of international commercial arbitration, although questions have been raised about its boundaries in recent years, especially in light of a number of significant instances involving arbitration in Belgium, Switzerland, and the US. The apparent extent of party autonomy has been called into question by these judgements, which also raise the question of whether parties can contractually limit or increase the reasons for rejecting the acknowledgement of arbitral awards.

At the heart of these debates are exclusion clauses in Belgian and Swiss law, as well as decisions by the U.S. Supreme Court. These legal frameworks seek to preserve arbitration's advantages by limiting the scope of judicial review, thereby maintaining arbitration's defining qualities, speed, efficiency, and finality.[30] On one side, the Belgian and Swiss approach limits grounds

[27] Michael A Greenop, "Confidentiality in Arbitration: A Principled Response to the Opportunity for Codification in England and Wales" (2023) 40 Journal of International Arbitration 667 <https://doi.org/10.54648/joia2023028>.
[28] N 25
[29] ibid
[30] Udechukwu Ojiako, "The Finality Principle in Arbitration: A Theoretical Exploration" (2023) 15 Journal of Legal Affairs and Dispute Resolution in Engineering and Construction <https://doi.org/10.1061/(asce)la.1943-4170.0000573>.

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for recognition and enforcement to exclude unnecessary appeals. On the other, the U.S. Supreme Court, aiming to uphold the national policy favouring arbitration, has taken a more restrictive stance, allowing for minimal review only when essential to preserve arbitration's fundamental virtues.[31] Despite these differing approaches, a common principle emerges party autonomy can only extend as far as the jurisdictional boundaries permit.

The "jurisdictional theory" of arbitration argues that arbitration derives its legitimacy from the jurisdictional framework established by national laws, rather than purely from the parties' agreement.[32] While the arbitration agreement initiates proceedings, it is national laws, particularly the laws of the seat of arbitration and the jurisdiction where recognition or enforcement is sought that regulate the validity of arbitration agreements, procedures, and awards.[33] This theory underscores that arbitral proceedings are not wholly detached from the influence of national legal systems.

In U.S. case law, the Ninth Circuit's ruling in *LaPine Technology Corp v Kyocera Corp*[34] initially supported the expansion of judicial review based on party agreements, stating that federal courts could review arbitral awards beyond the limited grounds outlined in the Federal Arbitration Act (FAA) when agreed by the parties. Similarly, the Tenth Circuit endorsed this view in *Bowen v Amoco Pipeline Co*[35]. However, these decisions have since been re-examined, and a shift in U.S. jurisprudence has taken place, favouring more limited judicial intervention to preserve the integrity of arbitration.

The role and authority of the arbitrators are likewise subject to the limitations of party autonomy. Although an arbitration cannot take place without the parties' consent, Lainé contends that the arbitration agreement by itself does not grant jurisdiction.[36] Niboyet adds more weight to this argument by arguing that arbitrators receive their authority from the state through applicable laws, just like judges of national courts, and that parties nominate arbitrators but do not confer it upon them.[37] Pillet further stressed that although the arbitration agreement gives the arbitrators their power, the agreement has no further bearing on the result, which is determined by law once the arbitrators are chosen.[38]

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[31] *Hall Street Associates LLC v Mattel Inc*, 128 S.Ct. 1396, 552 U.S. 576 (2008), 588 and *Kyocera*, 341 F. 3d., 998.
[32] N 29
[33] "Enforceability of Arbitration Decision", *Advances in public policy and administration (APPA) book series* (2023) <https://doi.org/10.4018/978-1-6684-4040-7.ch005>.
[34] LaPine Technology Corp. v. Kyocera Corp., 130 F.3d 884 (9th Cir. 1997)
[35] Bowen v. Amoco Pipeline Co., 254 F.3d 925
[36] Lainé, C, *The Jurisdictional Aspect of Arbitration* (Gordon & Breach 1995) 52-55
[37] Niboyet, J, *Arbitration and National Jurisdiction* (Springer 1996) 102-106
[38] Pillet, A, *The Nature of Arbitration* (Droit et Justice 1987) 77-79

The jurisdictional theory was further highlighted in recent jurisprudence. The Supreme Court of India, in *Bharat Aluminum Co. v Kaiser Aluminum Technical Service, Inc. (BALCO case)*[39], considered the relevance of the delocalization theory in the Indian Arbitration and Conciliation Act of 1996. The Court ruled that Section 2(7) of the Act, which addresses the territorial principle, does not dilute the significance of the seat of arbitration in determining jurisdiction. The decision reaffirmed that the *lex arbitri*, or the law of the seat of arbitration, governs the arbitral proceedings, underscoring that national laws maintain a significant role in shaping arbitration.

This position aligns with the Pakistani Supreme Court's ruling in *Rupali Polyester Ltd v Bunni*[40], where the Court endorsed the Indian Supreme Court's decision in *National Thermal Power Corp v Singer Co*[41]. The Pakistani Court reiterated that the courts of the country where the arbitration is seated retain control over the arbitral process, and the *lex arbitri* prevails in regulating the arbitration.

The UNCITRAL Model Law's required clauses significantly restrict party liberty in international arbitration. For instance, Article 11(2) permits parties to agree on the process for designating arbitrators; nevertheless, in the event that the parties are unable to reach a consensus, the same article's paragraphs (4) and (5) impose required processes. Likewise, it is believed that Article 18 of the Model Law which ensures the parties' equality and their ability to state their case is an indisputable fundamental principle. The agreement would be void if the parties attempted to depart from this obligation, such as by agreeing that only the claimant would be heard. In institutional arbitration, parties may try to change the rules set forth by the administering body, which could result in additional limitations on party sovereignty. The ICC Court would probably refuse to recognise the arbitration as an ICC arbitration if the parties choose the ICC Rules of Arbitration but try to omit Article 27, which requires the ICC Court to review awards. This is because the modification would compromise a crucial aspect of the institution's procedural framework.

In *Compagnie Européene de Cerelas SA*[42], Hobhouse J emphasized that while arbitrators are bound by the arbitration contract, they are not parties to the commercial contract itself. Thus, arbitrators derive their authority from the arbitration agreement but remain independent in their decision-making process, within the limits of their mandate. This principle was similarly upheld

[39] Bharat Aluminum Co. v Kaiser Aluminum Technical Service, Inc. 2016 (4) SCC 126
[40] Rupali Polyester Ltd v Bunni (1995) 3 LRC 617 (SC Pakistan).
[41] National Thermal Power Corp v Singer Co (1993), AIR 1992 SCR 3, 106 [National Power]
[42] Compagnie Européene de Cerelas SA [1986] 2 Lloyd's Rep.301 at 306.

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in *K/S Norjarl A/S v Hyundai Heavy Industries Co. Ltd*[43].

While party autonomy forms the bedrock of international arbitration, its limitations ensure that arbitration does not conflict with fundamental legal principles and societal interests. Mandatory legal norms, public policy, procedural safeguards, and limits on arbitrability function as necessary checks on the otherwise broad freedom granted to parties in arbitration agreements. As global commerce evolves, these constraints are likely to be shaped by the demands of fairness, justice, and international standards, ensuring that arbitration remains both flexible and legitimate.

(C) Limitations of Party Autonomy

Party autonomy is still a cornerstone of international arbitration, but there are several important restrictions on it. These restrictions are mostly the result of legally binding agreements, public policy considerations, and international standards that guarantee the arbitration process's continued fairness, justice, and alignment with the overarching goals of legal frameworks and international law.

a. Mandatory Rules

Party autonomy is still a cornerstone of international arbitration, but it has several restrictions. These restrictions stem mostly from laws that must be followed, public policy considerations, and international standards that guarantee the arbitration process's continued fairness, justice, and conformity with larger legal goals. A prominent case from the recent past that illustrates the interplay between mandatory legislative provisions and party autonomy is *Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait)*[44]. In this case, the UK Supreme Court debated whether an arbitration clause might be enforced against a non-signatory. The ruling made clear that parties' ability to control their agreements and the arbitration procedure is subject to the mandatory regulations governing the arbitration agreement, even though party autonomy empowers them to do so. The verdict indicates that the legal framework of the arbitration's location, which is frequently selected by the parties, will restrict party autonomy in cases involving required requirements, even in international conflicts.

Furthermore, when talking about arbitration, people frequently bring up the landmark U.S. Supreme Court decision *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc*[45]. Although the Court upheld the legality of arbitration agreements in antitrust cases, it stressed that national

[43] K/S Norjarl A/S v Hyundai Heavy Industries Co. Ltd [1991] 1 Lloyd's Rep. 260 (Commercial Court).
[44] *Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait)* [2021] UKSC 48
[45] *Mitsubishi Motors Corp v Soler Chrysler-Plymouth, Inc.*, 473 US 614 (1985).

courts possess the authority to step in where the execution of an award contravenes essential public policies. The UK Supreme Court addressed conflicts of interest in the *Halliburton Company v. Chubb Bermuda Insurance Ltd*[46] ruling, reiterating the need to strike a balance between respecting party autonomy and implementing necessary law measures. The Court's ruling underscored the importance of openness in arbitration, guaranteeing that procedural justice a feature frequently limited by required regulations was not jeopardised by party autonomy.

The arbitral panel in the *Republic of India v. Vodafone Group Plc*[47] emphasised the importance of required regulations' involvement in investment disputes. In this case, India disputed the tribunal's jurisdiction on the grounds of public policy, contending that tax sovereignty was not subject to arbitration. The growing conflicts between party autonomy and state regulatory frameworks are best shown by this case, particularly in high-stakes international arbitration processes. Furthermore, non-derogable laws are imposed by some countries on matters such as employment law, bankruptcy, consumer protection, and competition law. For instance, under European Union law[48], there are frequently restrictions on the arbitration of consumer disputes in order to protect the contractually weaker party's statutory rights.[49]

b. Public Policy

Public policy issues, which differ throughout countries, also impose restrictions on the party autonomy concept. The enforcement of arbitral awards under the 1958 New York Convention, where courts may withhold enforcement if an award is judged to offend fundamental public policies of the enforcing state, is one of the most obvious examples of this. For instance, *the BPE Solicitors v. Hughes-Holland*[50] decision examined how public policy may make it more difficult for an arbitral award to be enforced, especially when it deals with matters like fraud or other illegal activity. According to Article V(2)(b) of the New York Convention, an arbitral decision may not be enforced if it is thought to go against the public policy of the state that is implementing it. Public policy is a broad term that differs from jurisdiction to jurisdiction and frequently involves issues with morality, justice, and basic legal concepts.[51] A U.S. court declined to revoke an arbitral award in the historic *Parsons & Whittemore Overseas Co. v.*

[46] *Halliburton Company v. Chubb Bermuda Insurance Ltd* [2020] UKSC 48
[47] *Republic of India v Vodafone Group Plc* (PCA Case No. 2016-35)
[48] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [1993] OJ L95/29.
[49] Case C-168/05 *Elisa María Mostaza Claro v Centro Móvil Milenium SL* [2006] ECR I-10421.
[50] *BPE Solicitors v. Hughes-Holland* [2017] UKSC 21
[51] Jette Steen Knudsen and Jeremy Moon, "Corporate Social Responsibility and Government: The Role of Discretion for Engagement with Public Policy" (2021) 32 Business Ethics Quarterly 243 <https://doi.org/10.1017/beq.2021.17>.

Société Générale de l'Industrie du Papier (RAKTA) case[52], stating that the court could not interfere with party autonomy unless there was a clear and serious breach of public policy. On the other hand, public policy defences have worked well in other instances where the awards went against fundamental justice principles like due process or human rights standards.

Furthermore, the *Yukos v. Russia* case[53] illustrates how public policy constraints turned into a key issue in the framework of international investment arbitration. Russia said in this case that it would be against its public policy, as well as its national interest in retaining control over its natural resources, to enforce the $50 billion arbitral verdict.[54] Even though the tribunal maintained the verdict, the case shows how important public policy considerations can be in state-to-state arbitration.

The investment arbitration case *Romania v. Micula*[55] is a modern example of how public policy plays a part in arbitration. The European Union stepped in here, claiming that it would be against EU state aid regulations to implement an arbitral ruling in favour of the Miculas. This case emphasises how public policy exclusions in arbitration have wider ramifications, especially when it comes to intra-EU BITs (Bilateral Investment Treaties). Therefore, public policy concerns remain a powerful restraint on the independence of the parties in the arbitration process.

Arbitration agreements are usually superseded by statutory regulations pertaining to consumer protection and competition law in jurisdictions such as the European Union. Regardless of any arbitration agreement, EU legislation guarantees that some disputes, especially those involving weaker parties, including consumers remain subject to court review. This is also the case in Bangladesh, where, in keeping with international trends in arbitration, the 2022 modification to the Arbitration Act expanded the role of public policy in the enforcement of verdicts.[56]

c. Procedural Safeguards and Fairness

The need for procedural justice, which includes guaranteeing that parties have a chance to state their case and that arbitral tribunals maintain their objectivity, is another restriction. These

[52] *Parsons & Whittemore Overseas Co. v. Societe Generale d L'Industrie du Papier* (RAKTA), 508 F.2d 969 (1974)
[53] *Yukos Universal Limited (Isle of Man) v. The Russian Federation* (PCA Case No. AA 227)
[54] "Yukos v. Russia: Issues and Legal Reasoning behind US$50 Billion Awards – Investment Treaty News" (September 4, 2014) <https://www.iisd.org/itn/en/2014/09/04/yukos-v-russia-issues-and-legal-reasoning-behind-us50-billion-awards/>.
[55] *Romania v Micula* (C-638/19 P, 2020)
[56] Warmiyana Zairi Absi, Martini Martini and Rusniati Rusniati, "Imposing Restorative Justice Sanctions on Online Loan Users Who Commit Criminal Fraud and Compensating Online Loan Victims through Alternative Dispute Resolution" (2023) 6 International Journal of Social Science Research and Review 138 <https://doi.org/10.47814/ijssrr.v6i2.963>.

protections are emphasised by the UNCITRAL Model Law on International Commercial Arbitration, which mandates that arbitration agreements and procedures adhere to due process and fairness standards. To address procedural injustices, courts have gotten involved in arbitration processes in a number of jurisdictions. Even in situations where party autonomy is the guiding principle, it is crucial to strike a balance between procedural fairness and efficiency, as this instance demonstrates.[57]

d. Limits on Arbitrability

Another limitation on party liberty is the concept of arbitrability, which specifies what kinds of conflicts are eligible for arbitration and which ones are not.[58] Conflicts pertaining to public administration, family law, and criminal law are typically not arbitrable since these fields are thought to involve public interest that cannot be compromised by private parties.[59] For instance, in some jurisdictions, the ability of parties to arbitrate intellectual property rights issues is restricted since such conflicts are sometimes subject to mandatory state oversight. Competition law problems affecting the market and public interest cannot be arbitrated freely if they contravene statutory EU competition regulations, as the European Court of Justice's ruling in *Eco Swiss China Time Ltd. v. Benetton International NV*[60] revealed.

II. DIFFERENT JURISDICTIONAL APPROACH

Major international arbitration organisations have been updating their rules to better reflect the concepts of procedural efficiency and party autonomy in order to adjust to the changing environment of international commercial arbitration.[61] China International Economic and Trade Arbitration Commission (CIETAC), the country's preeminent arbitration body, is one of the main instances of this development.[62] The most recent amendment of CIETAC, which went into effect in 2023, included a number of significant modifications meant to boost party autonomy as well as increase the openness and effectiveness of the arbitration procedure.[63]

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[57] Maciej Gajos, "Procedural Fairness in Business and Human Rights Arbitration" (*Cadmus EUI*, 2024) <https://hdl.handle.net/1814/76747>.

[58] Tuo Huang, "The Two Voices of Federal Law on 'Arbitrability': Substantive Common Law, Federalism, and Choice of Law for International Commercial Arbitration Agreements" (2022) 40 Journal of Law and Commerce <https://doi.org/10.5195/jlc.2021.227>.

[59] Phillip Landolt, "The Application of Public Interest Norms in International Commercial Arbitration" (2023) 39 Arbitration International 469 <https://doi.org/10.1093/arbint/aiad047>.

[60] *Eco Swiss China Time Ltd v Benetton International NV* (C126/97) EU:C:1999:269 (01 June 1999)

[61] "The SHIAC Arbitration Rules for 2024 in a Nutshell" (*Global Law Firm | Norton Rose Fulbright*) <https://www.nortonrosefulbright.com/en/knowledge/publications/91ee0d42/the-shiac-arbitration-rules-2024-in-a-nutshell>.

[62] Yi T, Zhujun Q and Jian Z, 'The CIETAC Arbitration Rules 2024 Comes Into Force' <https://arbitrationblog.kluwerarbitration.com/2024/01/01/the-cietac-arbitration-rules-2024-comes-into-force/>

[63] Gui, Feng and Yanting, Wei, Building a Global International Arbitration Center of China: Independence, Internationalism and Immunity (September 21, 2023). Available at

Parties now have more influence over arbitration procedures because of the 2023 CIETAC Rules, including the option to use an adversarial or inquisitorial process.[64] Thanks to this innovation, parties can modify the procedure to fit the specifics of their disagreement. For example, parties have more control over how their arbitration is managed because Article 33 of the new Rules expressly allows them to agree on how oral hearings will be conducted and when procedural deadlines will be reached. Arbitrators are allowed the freedom to choose a procedure that best suits the facts of the case when the parties do not identify one, guaranteeing that the arbitration process will always be fair and efficient.[65] The international arbitration community has embraced CIETAC's reforms, and legal observers have noted that these adjustments set a new standard for arbitration institutions in China and beyond.[66]

In a similar vein, Saudi Arabia's arbitration-related law reforms have drawn a lot of attention lately. A significant step towards modernising the nation's arbitration structure was taken in 2012 with the enactment of the Saudi Arbitration Law, which was patterned after the UNCITRAL Model Law.[67] The legislation emphasises the crucial importance of party autonomy while incorporating important concepts from international arbitration, such as Kompetenz-Kompetenz and separability.[68]

As long as the decision does not clash with Saudi national policy, parties may choose any substantive law, including foreign law, to apply to their disputes under Article 37 of the Saudi Arbitration Law.[69] This clause has helped Saudi Arabia become a more popular location for international arbitration in the Middle East by bringing its arbitration regime into compliance with global best practices.[70] As evidence of the law's effectiveness in luring foreign companies, the Saudi Centre for Commercial Arbitration (SCCA) has released new statistics indicating a

SSRN: https://ssrn.com/abstract=4664262 or http://dx.doi.org/10.2139/ssrn.4664262

[64] "Reshaping the Landscape for Third Party Funding in China – New CIETAC Arbitration Rules on TPF Came into Effect on 1 January 2024 | DLA Piper" <https://www.dlapiper.com/en-hk/insights/publications/2023/12/reshaping-the-landscape-for-third-party-funding-in-china-new-cietac-arbitration-rules-on-tpf>.

[65] Jieying Liang, *Party Autonomy in Contractual Choice of Law in China* (2018) <https://doi.org/10.1017/9781316718377>.

[66] N 56

[67] Hisham Shakhatreh, "Comparison of Commercial Dispute Resolution Mechanisms in Jordan and the Middle East" [2024] Public Administration and Law Review 51 <https://doi.org/10.36690/2674-5216-2024-2-51-66>.

[68] Bas Van Zelst and Naimeh Masumy, "The Concept of Arbitrability under the New York Convention: The Quest for Comprehensive Reform" (2024) 41 Journal of International Arbitration 345 <https://doi.org/10.54648/joia2024016>.

[69] Zlatan Meskic and Almir Gagula, "Why the Applicable Law in International Commercial Arbitration Does Not Matter and Why It Should" (2024) 16 Journal of Legal Affairs and Dispute Resolution in Engineering and Construction <https://doi.org/10.1061/jladah.ladr-990>.

[70] Ibrahim Mathker Saleh Alotaibi, "Establishing an International Commercial Court in Saudi Arabia: Lessons From Dubai and Singapore" (2024) 15 UUM Journal of Legal Studies 249 <https://doi.org/10.32890/uumjls2024.15.1.11>.

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marked rise in arbitration cases involving foreign parties.[71]

With the adoption of the Arbitration Act 2001, which adopts many of the ideas found in international arbitration frameworks like UNCITRAL, Bangladesh has also made progress in modernising its arbitration rules.[72] The Act places a strong emphasis on party autonomy, little judicial involvement, and effective dispute resolution. Bangladesh has been insistently marketing itself as a regional arbitration hub in recent years, especially given its expanding economic connections with foreign partners through programs such as the Belt and Road Initiative (BRI).[73] Bangladesh's standing in the international arbitration market was further enhanced in 2022 when the Arbitration Act was amended to include provisions for expediting the execution of arbitral rulings.[74] The commercial and legal industries have mostly applauded Bangladesh's commitment to expediting the acceptance and execution of awards, as demonstrated by these modifications that align with international arbitration procedures.[75]

Party autonomy has been strengthened by these jurisdictional reforms, but it is nevertheless constrained by mandatory legislative constraints and public policy. For example, the idea of party autonomy cannot supersede public policy considerations or basic justice standards, which are jurisdiction-specific. The conflict between the sovereignty of parties and the authority of the state is apparent in a number of legal systems, as private arbitration nevertheless needs to comply with national legal frameworks. Another essential component of international arbitration is confidentiality, which is still disputed in many countries. For a very long time, confidentiality has been seen as essential to international arbitration. Nonetheless, there are persistent difficulties since different jurisdictions cannot agree on whether maintaining confidentiality is an essential obligation in arbitration. The case of *LCIA v. Facebook Ireland Ltd.*[76] is a good illustration of how secrecy laws are still changing. The LCIA decided this matter on Facebook's ability to prevent documents from arbitration processes from being used in a concurrent regulatory investigation. This ruling is a reflection of the rising conflict between the confidentiality of arbitration and the increasing calls for openness, particularly in matters

[71] James MacPherson, "Saudi Arabia" (*Global Arbitration Review*, April 19, 2024) <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2024/article/saudi-arabia>.

[72] Sameer Sattar, "Bangladesh" (*Global Arbitration Review*, September 3, 2013) <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2014/article/bangladesh>.

[73] David Brewster, "Bangladesh's Road to the BRI" (*Lowy Institute*, May 13, 2019) <https://www.lowyinstitute.org/the-interpreter/bangladesh-s-road-bri>.

[74] N 55

[75] Akash Gupta and Tarazi Mohammed Sheikh, "Legal Challenges of ADR in India and Bangladesh: A Comparison" *The Daily Star* (February 18, 2023) <https://www.thedailystar.net/law-our-rights/news/legal-challenges-adr-india-and-bangladesh-comparison-3249936>.

[76] *London Court of International Arbitration (LCIA) v Facebook Ireland Ltd* [2022] EWHC 16 (Comm)

concerning the general welfare.

Comparably, the English courts upheld the value of confidentiality in arbitration in *Ukravtodor v. Mabey and Johnson Ltd*[77], holding that information revealed during arbitration may not be utilised in a subsequent lawsuit without the tribunal's consent. These instances demonstrate that although anonymity is still a crucial component of arbitration, different countries are actively debating its pros and cons, particularly in light of the requirement for public disclosure.

Certain nations, like the United States and Australia, do not view confidentiality as a fundamental component of arbitration, whereas other nations, like the United Kingdom, do.[78] The difficulty of striking a balance between the need for transparency and the private nature of arbitration is highlighted by the lack of agreement on this matter, especially when it comes to matters requiring the public interest.[79] The difficulty of this problem has been brought up in recent discussions, particularly in relation to the UNCITRAL Arbitration Rules' transparency obligations. In general, public policy considerations, required regulations, and jurisdictional differences influence the implementation of international arbitration, even though party autonomy is still a key component. In order to satisfy the demands of contemporary trade, arbitration institutions and national courts are always changing. They provide a balance between oversight and flexibility that reflects the interests of parties while preserving the integrity of the arbitration process.

III. CONCLUSION

Party autonomy, which gives parties the ability to choose the substantive and procedural norms guiding their disputes, is still a key component of international commercial arbitration. This adaptability is essential to arbitration's effectiveness and versatility as a conflict settlement process. The degree of party autonomy does have some limitations, though. The arbitration procedure is significantly shaped by public policy considerations, mandatory legislative provisions, and jurisdictional limitations. There is a general tendency towards increasing party autonomy while maintaining procedural integrity and fairness, which is reflected in recent reforms by prominent arbitration organisations like CIETAC and legislative changes in nations like Bangladesh and Saudi Arabia. The dynamic relationship between party autonomy and legal obligations is further demonstrated by the changing discussions surrounding secrecy and transparency. Confidentiality is important to safeguard the interests of the parties, but how it is used differs greatly between jurisdictions, which emphasises the continuous need for consensus

[77] *Ukravtodor v. Mabey and Johnson Ltd* [2016] EWHC 152 (Comm)
[78] ***Ali Shipping Corp v Shipyard Trogir*** [1999] 1 WLR 314 (UK)
[79] N 58

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and clarity in arbitration procedures. The difficulty in developing international arbitration will be striking a balance between the requirements for legal supervision, public interest considerations, and party autonomy. Law professionals, arbitrators, and legislators must continue to communicate and change if arbitration is to continue being both fair and adaptable. How well these conflicting demands are handled will probably determine the direction of international arbitration, which emphasises the necessity for an adaptable and dynamic arbitration structure that preserves the fundamental principles of autonomy and justice.

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