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# MANDATORY RULES AND ITS EFFECT ON ENFORCEABILITY OF ARBITRAL AWARDS: THE 'SECOND LOOK' SOLUTION

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**Abstract**

*Since its inception, the courts and the disputing parties have never seen eye to eye as far as the mandatory rules are concerned. This difference of opinion exists on the traditional public-private dichotomy which is exhibited by mandatory rules. The mandatory law problem is further aggravated once the parties seek to enforce an arbitral award. This paper is an attempt to review the existing scholarship pertaining to mandatory rules. The author has firstly tried to elaborate and clarify the concept of mandatory laws in the relevant context. Secondly, the paper explores the 'second look' doctrine which is often overlooked by commentators and scholars. Finally, the author has advocated a liberal exercise of this doctrine with a view to bring harmony amongst diverse interests of the courts, the parties and the arbitrator.*

## I. Introduction

Arbitration is founded on the principle of party autonomy. It is preferred over the conventional adversarial method of dispute resolution because it gives the parties a choice to determine various catalysts of arbitral proceeding like the arbitrators, the substantive law and the procedural law applicable to the dispute. Generally, an arbitrator is only required to consider the will of the parties and respect the agreed law while deciding a dispute.

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With the growing concept of arbitrability and cases like *Mitsubishi Motors*[1], scholars have directed their attention to the concept of mandatory laws. Such rules are criticised by the global business community as unreasonable restrictions on party autonomy while on the other hand their application is persistently insisted upon by states. In spite of the abundant literature on the subject, there is no general consensus among the national courts as well as international commentators as to how to deal with the concept of mandatory laws. This article will firstly examine the meaning of mandatory rules and its significance during an arbitration proceeding. Concludingly, it will examine the role of the enforcing court whose actions can give substance to an arbitral award or leave the whole arbitration exercise futile.

## II. Understanding Mandatory Laws

### A. DEFINING MANDATORY LAWS

In the contemporary arbitration arena, arbitrators are trying to understand and apply the concept of mandatory laws which is not defined in various national and international instruments. Before proceeding with the dilemma of mandatory law application in international arbitration, it would be prudent to first understand the meaning of 'mandatory laws'. There are a number of definitions that try to incorporate different elements pertaining to mandatory rules. Some of them are stated below to arrive at a working definition of mandatory rules.

The most cited dentition of mandatory law is by Professor Mayer. He defines mandatory rules as:

A mandatory rule (*loi de police* in France) is an imperative provision of law which must be applied to an international relationship irrespective of the law that governs that relationship. To put it another way: mandatory rules of law are a matter of public policy

[1] Mitsubishi Motors Co. v. Soler Chrysler Plymouth Inc., 473 U.S. 614 (1985).

(*ordre public*) and moreover reflect a public policy so commanding that they must be applied even if the general body of law to which they belong is not competent by application of the relevant rule of conflict of laws.[2]

Another author states:

> *Internationally mandatory rules of law are... statutory provisions enacted by national parliaments in order to protect (or applied by courts to implement) specific public policies. These are not just any public policies, however; internationally mandatory laws enforce only those policies that are deemed to be so strong that – even in the situation of an international contract – the national statutory provisions must take precedence over any foreign law that would normally govern the contract.*[3]

The above definitions of mandatory law reflect that these rules are so invariantly linked to public policy that their application or non-application cannot be left to contractual parties as they might affect the interests of third party or of the public at large. This is supported by the fact that traditionally, arbitral awards were denied on the grounds of public policy.[4] It is submitted here that mandatory rules can be better understood with respect to public interest rather than public policy. This is because public policy is a subjective term which may vary from state to state. Moreover, public interest is a broader term which includes economic goals, legal goals etc. which might not be covered in public policy. This statement should not be misconstrued that mandatory rules are not public policy, rather, it simply means that mandatory rules include something more than just public policy. The correct

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2 Pierre Mayer, *Mandatory Rules of Law in International Arbitration*, 2(4) ARB. INT'L 274, 274-75 (1986).

3 Jan Kleinheisterkamp, *The Impact of Internationally Mandatory Laws on the Enforceability of Arbitration Agreements*, 3(2) WORLD ARB. & MEDIATION REV. 91, 91 (2009).

4 *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(2)(b), *signed* June 10, 1958, 330 U.N.T.S 38.

observation with respect to relationship between mandatory laws and public policy would be that "public policy and mandatory laws may reflect similar concerns."[5] On the other hand, "the common feature of international mandatory rules of law is the paramount pursuance of a public interest."[6]

Furthermore, it is to be understood here that there are two types of mandatory rules, namely, domestic and international. Domestic mandatory rules are those laws which can be circumscribed by the parties in an international scenario by means of an arbitration agreement. However, the international mandatory laws are those laws whose roots are found in almost all legal systems and in any case, cannot be avoided by the parties. The difference between the two is based upon the notion that not every law which is instrumental to domestic interests should form part of the so called 'international public policy', especially in case of international commercial arbitration. The difference between the two can be explained by way of a simple example.

Suppose, two parties, one from India and one from U.S.A. enter into a contract which will be performed in India. Both agree to submit all future disputes to an arbitrator. Here, in case of any breach, the contract law of India would apply. Further, suppose the breach involves a question of abuse of dominant position by one party, competition law will come into play. In this example, contract law of India can be termed as domestic mandatory law which can be avoided by parties by selecting the contract law of some other state. On the other hand, competition law represents crucial public interests which directly affect the consumers as well as other competitors in the market. Therefore, keeping aside the

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5 Luke Villiers, *Breaking in the 'Unruly Horse': The Status of Mandatory Rules of Law as Public Policy Basis for the Non-Enforcement of Arbitral Awards*, 18 AUSTRALIAN INT'L L. J. 155, 164 (2011).

6 Nathalie Voser, *Mandatory Rules of Law as a Limitation on the Law Applicable in International Commercial Arbitration*, 7 AM. REV. INT'L ARB. 319, 325 (1996).

debate with respect to arbitrability of competition law, the parties cannot so easily avoid the application of competition law which is considered to hold a fundamental position in every state's economic policy. Thus, competition law can be said to be a branch of international mandatory law.

## B. JUSTIFICATION OF MANDATORY LAWS

"The role of mandatory rules in international commercial arbitration is uniquely complicated because they put the interests of states and parties in direct conflict."[7] This is because if the mandatory laws are not followed, then the arbitration agreements would become a loophole for the parties that they can use to circumvent their obligations. On the other side, such rules cannot be applied that have been expressly or impliedly excluded from the ambit of the arbitration agreement.

There are a number of reasons forwarded for application of mandatory laws. For example, Lorenzo opines, "[L]egal certainty and legitimate expectations justify the application of mandatory rules... as these rules are recognisable in the frame of principles that govern world trade."[8] Amongst these reasons, the most frequently submitted justification for application of mandatory laws is the state's foremost responsibility to protect public interests. There is a strong evidence to suggest that even the most liberal national systems recognize supremacy of strong public policies in curtailing excess free wills.[9] In addition to this, some commentators have opined that while there may be fundamental disagreements as to which country's mandatory laws are to be

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7 Andrew Barraclough & Jeff Waincymer, *Mandatory Rules of Law in International Commercial Arbitration*, 6(2) MELB. J. INT'L L. 205, 206 (2005).

8 Sixto Sánchez Lorenzo, *Choice of Law and Overriding Mandatory Rules in International Contracts after Rome I*, 12 Y.B. PRIV. INT'L L. 67, 88 (2010).

9 *See* Charles H Brower II, *Arbitration and Antitrust: Navigating the Contours of Mandatory Law*, 59 BUFF. L. REV. 1127, 1142-43 (2011).

applied, they do not represent a challenge to the existence of mandatory laws per se.[10]

Calliess and Renner have made some noteworthy observations under the garb of transnational public policy norms. They opine that such norms are "the very interaction of private actors and public regulators".[11] In the views of this author, such interaction is nothing more and nothing less than mandatory rules in international arbitration. It is further submitted that mandatory rules are justified as they act as a bridge between the policy of promoting arbitration and protection of specific state or societal interests. To substantiate this in words of Maniruzzaman, "[t]he source of these rules lies in the national sovereignty of the State for the realization of public interest."[12]

In the views of this author, the liberalist argument that mandatory laws are in violation of parties' consent is also misconstrued. The rationale behind the application of particular mandatory laws is that it has sufficiently close nexus with *lex contractus* which is aimed to satisfy the facts and circumstances of a particular case. Therefore, it is only logical to assume that "[a]s long as parties have no particular expectation that they can escape mandatory rules by entering into arbitration agreements, those rules will vindicate public policy by exerting a deterrent effect, and parties weighing whether to bring or settle claims will do so in the shadow of mandatory law."[13]

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10 *Id.*

11 Gralf-Peter Calliess & Moritz Renner, *Transnationalizing Private Law - The Public and the Private Dimensions of Transnational Commercial Law*, 10 GERMAN L. J. 1341, 1355 (2009).

12 A.F.M. Maniruzzaman, *International Arbitrator and Mandatory Public Law Rules in Context of State Contracts: An Overview*, 7 J. INT'L ARB. 53, 54 (1990).

13 Alexander K.A. Greenawalt, *Does International Arbitration Need a Mandatory Rules Method*, 18 AM. REV. INT'L ARB. 103, 106-07 (2007).

## C. THE ARBITRATOR AND THE MANDATORY LAW

The present debate regarding mandatory rules is that the arbitrator has no authority to apply law which falls outside the scope of the contract. This is based on the fact that an arbitrator derives his authority from an agreement between the parties. "One of the reasons why there is no consensus on the proper approach to mandatory rule issues is that the question can be approached in a diverse range of ways."[14] Furthermore, "[d]etermining the source of applicable mandatory rules [by the arbitrator] is a matter of controversy."[15] While different approaches have been forwarded to guide the arbitrators while applying mandatory rules, this paper focuses on the why instead of how an arbitrator should apply these mandatory norms.

In practice, it is not unusual to see arbitrators apply mandatory rules even though they were not agreed by the parties. Some authors believe that the arbitrators respect the mandatory rules as part of their public commitment which brings them in line with their transcendent values of their profession.[16] On the contrary, critics have opined that the arbitrator is not under any legal obligation to apply a particular set of mandatory rules. Jones has strongly argued:

> *As the arbitral tribunal is not a gatekeeper of any country's laws, it can determine whether to apply a mandatory rule, and which one, and it is likely to be more attuned to the interests of the parties than*

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14 Jeff Waincymer, *International Commercial Arbitration and the Application of Mandatory Rules of Law*, 5(1) ASIAN INT'L ARB. J. 1, 9 (2009).

15 Mohammad Reza Baniassadi, *Do Mandatory Rules of Public Law Limit Choice of Law in International Commercial Arbitration?*, 10 INT'L TAX & BUS. LAW. 59, 68 (1992).

16 *See* Catherine A. Rogers, *The Vocation of the International Arbitrator*, 20(5) AM. U. INT'L L. REV. 957, 1016 (2005).

> *to the interests of the legal system and the society as a whole, as compared to national courts.*[17]

This argument is very much true as all mandatory laws are foreign mandatory laws to arbitrators who do not have a *lex fori*.[18]

This discussion has brought us to square one. In other words, neither the arbitrator has any sense of obligation towards the laws of a particular state nor can he allow the parties to use arbitration as a means to contract out of their statutory claims. Then what could be the possible reason that leads the arbitrator to apply the mandatory rules.

Some commentators opine that the arbitrators can apply mandatory rules much like an international judge.[19] While, both arbitrators as well as an international judge do not have a *lex fori* and there is a possibility that arbitrators may put themselves in position of judges to override the *lex contractus*, yet, in the author's views, this notion does not serve as compelling evidence of application of mandatory laws by international arbitrators. One argument that can be forwarded against this is that judge aims to do justice while the arbitrator is interested in acting according to will of the parties. Moreover, such an approach may confer arbitrary authority on the arbitrator which may adversely affect his reputation. The reason for the same is that while choosing an arbitrator, the party considers not only the skill and knowledge of the arbitrator but also his ability to act within the scope of the arbitration agreement. If an arbitrator has a reputation for

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17 Doug Jones, *Choosing the Law or Rules of Law to Govern the Substantive Rights of the Parties: A Discussion of Voie Directe and Voie Indirecte*, 26 SINGAPORE ACAD. L. J. 911, 928 (2014).

18 *See* Carolina Pitta E Cunha, *Arbitrators and Courts Compared: The Long Path Towards an Arbitrators' Duty to Apply Internationally Mandatory Rules*, YOUNG ARB. REV., Apr 2016, at 26, 32.

19 *See* Maniruzzaman, *supra* note 12, at 56-57.

routinely overriding the *lex contractus*, no party would prefer to appoint such an arbitrator to adjudicate their disputes.

Professor Guzman's work on reconciling mandatory arbitration rules and international arbitration is noteworthy here. He has opined that in absence of any judicial review, the arbitrator will always be inclined towards application of the law agreed in the arbitration clause because honouring the arbitration agreement is one of the primary reasons for which an arbitrator is chosen. However, as soon as judicial review comes into play, the court may deny enforceability of award because the mandatory laws were not applied. Thus, the duty to produce an enforceable award acts as an incentive for the arbitrator to respect the relevant mandatory laws.[20] The author terms this as the incentive based approach. The rationale behind this approach is that the application of mandatory rules by the arbitrator does not stem from any obligations towards the state policies but from the interest of the parties to produce an unchallengeable and enforceable award. The word 'incentive' is used instead of 'obligation' because an arbitrator cannot be reduced as a slave to parties' will. While enforceability is one of the most dominant reasons as to why an arbitrator must respect the mandatory laws, it is not the only reason.

To put the matter in a nutshell, it is submitted that it is impossible to determine conclusively which factor or set of factors motivate an arbitrator to respect mandatory rules. However, the inference which can be drawn from the above discussion is that no matter what the reason may be, an arbitrator will always be inclined towards applying mandatory rules of law in an arbitral proceeding.

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[20] *See* Andrew T Guzman, *Arbitrator Liability: Reconciling Arbitration and Mandatory Rules*, 49 DUKE L. J. 1279 (2000).

## III. Court Review of Arbitral Awards: The Real Problem

A solution as to why an arbitrator should apply a particular set of mandatory rules is not an end to the mandatory law problem. "One cannot overlook the fact that the application of mandatory laws by the arbitrator may give rise to complex problems."[21] As a matter of fact, the real part of the problem begins once an award has been delivered by the arbitrator. The problem here is the enforceability of the award.

In principle the arbitral awards are binding and enforceable.[22] The court cannot review such award on merits and it is deemed to be final. Mandatory laws pose an exception to this principle as they seek to protect vital public interests and it is the job of the courts to see whether these public interests are not compromised in any way. If it is found that public interests are vitiated due to wrong application of mandatory laws, the court may set aside an arbitral award.

Some authors have opined that there must be some regulation governing which sorts of disputes are arbitrable[23] or in other words, only disputes which are purely of private nature should be capable of being submitted to arbitration. The reason behind such argument is that whenever a dispute involving mandatory rules is brought before an arbitrator, it may be difficult for him to apply mandatory rules as different jurisdictions have different notions of what is regarded as mandatory. In response it is submitted here that such an argument is against the growing ambit of arbitrability. Today, states offer unbridled freedom to the parties to submit

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21 Matthias Lehmann, *A Plea for a Transnational Approach to Arbitrability in Arbitral Practice*, 42 COLUM. J. TRANSNAT'L L. 753, 772 (2004).

22 *See* also Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, *signed* June 10, 1958, 330 U.N.T.S. 38.

23 *See* Hong- Lin Yu & Peter Molife, *The Impact of National Law Elements on International Commercial Arbitration*, 4(1) INT'L ARB. L. REV. 17, 22 (2001).

almost any type of dispute to an arbitration forum. This is because the national courts have come up with the concept of 'second look'.

### A. SECOND LOOK DOCTRINE

The 'second look' doctrine emerged in the infamous case law of *Mitsubishi Motors*[24] where the U.S. Court showed faith in the abilities of an arbitrator to apply mandatory laws because of a potential review at the enforcement stage. The second look doctrine simply means that the courts can and will review all arbitral awards in respect of those disputes which involve mandatory laws. This approach is also known as the 'equilibrium approach'[25] as it acts as an intermediary approach to two extreme approaches. The first extreme is the supremacy of arbitration in which the arbitrator pays no heed to mandatory rules. The other extreme is supremacy of courts which means that any dispute concerning mandatory rules is not arbitrable at all. Under, the second look approach the parties get the freedom to submit a dispute to arbitration and the courts get a chance to ensure that the parties have not, in any way, circumscribed out of their statutory obligations.

A potential argument against second look can be that the arbitrators cannot precisely determine the place where the arbitral award is sought to be enforced. This is because the losing party will always try to conjure a mandatory law claim in its country to escape the liability imposed by the arbitral award. This argument has substance in it and needs to be addressed.

A possible solution to this can be a change in the attitude of the reviewing authority or the enforcing court. Dr. Blanke has seen the matter from English perspective and has opined that the job

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[24] *See* Mitsubishi Motors Co. v. Soler Chrysler Plymouth Inc., 473 U.S. 614 (1985).

[25] *See* also Eric A Posner, *Arbitration and the Harmonization of International Commercial Law: A Defense of Mitsubishi*, 39 VA. J. INT'L L. 647 (1999).

of the courts is not to inquire whether laws which are considered to be mandatory in English law have been applied by the arbitrator or not rather the court has to see why the arbitrator has applied a particular set of mandatory rules.[26] This seems to be a valid argument considering that the concept of truly 'international mandatory rules' is a far cry. Contributing to this ideology, Greenawalt has opined, "...the non-waivable character of mandatory rules can be recharacterized to focus on protecting the core interests behind the mandatory rule rather than on honoring every aspect of the rule as codified in a particular national law."[27] The logic behind such an ideology is based upon the nature of mandatory rules. It has already been established that such rules are based upon those interests which are found or can be near almost found in all legal systems. The ideology simply advocates that the national courts must protect only the interests and not the national law. If foreign mandatory rules offer the same level of protection as of the national law, the courts should have no problem while enforcing an award.

Arguing on similar lines, Lorenzo has opined, "The application of mandatory rules means that arbitrators will take into consideration and will consider legitimate the binding character and the intervention of economic public policies or governmental interests from a state closely connected with the contract...."[28] Furthermore, there is a highly unlikely possibility that the arbitrators will always apply the law of the state where the award is sought to be enforced.

The English Courts have held:

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26 *See* Gordon Blanke, *Brexit and Private Competition Law Enforcement under the Arbitration Act, 1996: Taking Stock: Part 2*, 10(1) GLOBAL COMPETITION LITIG. REV. 1, 3-4 (2017).

27 Greenawalt, *supra* note 13, at 118.

28 Lorenzo, *supra* note 8, at 88.

> *[A]n arbitration award should be enforced in England. In this context it seems to me that (absent a finding of fact of corrupt practices which would give rise to obvious public policy considerations) the fact that English law would or might have arrived at a different result is nothing to the point. Indeed, the reason for the different result is that Swiss law is different from English law, and the parties chose Swiss law and Swiss arbitration.*[29]

Similarly the Indian Courts have held, "... contravention of law alone will not attract the bar of public policy and something more than contravention of law is required."[30]

Thus, it can be concluded that in lieu of the pro-arbitration policy, the global attitude of national courts is to ensure underlying public interest and not the robust enforcement of their national laws. Moreover, countries that have tried to deviate from this basic norm have been criticised by scholars and commentators.[31]

## B. STANDARD OF REVIEW: NEED FOR JUDICIAL GLOBALIZATION

The next point of debate which is associated with the applicability of 'second look' doctrine is what should be the standard of review to be adopted by the courts while reviewing arbitral awards. To reframe this statement, should a court make a rigorous effort to find some manifest lacuna or only consider those defaults which are prima facie visible.

Guzman has argued that the courts should indulge in de novo review of every case. His argument is based upon the premise that review by a court is inevitable and if the court permits any

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[29] Omnium de Traitement et de Valorisation S.A. v. Hilmarton, [1999] 2 Lloyd's Rep. 222, 224 (Q.B.) (U.K.).

[30] Renusagar Power Co. Ltd. v. General Electronic Co., A.I.R. 1994 S.C. 860 (Ind.).

[31] *See* E.g. Gisèle Stephens-Chu & Yann Dehaudt-Delville, *Towards a Clearer Standard of Review by the French Courts of International Arbitral Awards Relating to Public Law Contracts*, 11(1) DISP. RESOL. INT'L 67 (2017).

leniency, there is a chance that arbitrators will 'fool' the courts that the mandatory rule is applied.[32] It is admitted here that an indeed review of arbitral awards by courts is inevitable; however, the lack of faith in the arbitrator is unjustified. Rau (while analysing various national and international case law) has opined "arbitrators usually do try their best ... to model their awards on what courts would do in similar cases...."[33]

One option for the parties can be that they limit the scope of judicial review in the contract itself. However, considering the fact that most parties opt for arbitration because it is less costly and less time consuming, the parties would always want limited judicial intervention.[34] Conversely speaking, had the parties wanted a de novo review by national courts, they never would have opted for arbitration in the first place.

The author argues that the courts should not generally undertake extensive review of each and every intricacy of the award. Perhaps, the lack of confidence in 'second look' is because the doctrine has been misconceived by many. As Sørensen and Torp have opined, "the second look is not a substantive review of the case, but a superficial test of the arbitrators' legal rationale."[35] Moreover, the initial prejudice in favour of enforcement of awards in itself narrows down the scope of judicial review.

Brozolo has opined that mere erroneous application or an application of mandatory laws which is contrary to the opinions of enforcement authorities does not count as a basis for setting

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32 *See* Guzman, *supra* note 20, at 1310-15.

33 Alan Scott Rau, *The Arbitrator and "Mandatory Rules of Law"*, 18 AM. REV. INT'L ARB. 51, 87 (2007).

34 *See* also Daniel M Kolkey, *Attacking Arbitral Awards: Rights of Appeal and Review in International Arbitrations*, 22(3) INT'L LAW. 693 (1988).

35 Jakob B Sørensen & Kristian Torp, *The Second Look in European Union Competition Law: A Scandinavian Prospective*, 34(1) J. INT'L ARB. 35, 52 (2017).

aside an arbitral award.[36] Similarly, Gibson argues that courts should refuse enforcement only in exceptional cases. He further argues that the courts should not only respect their own legal systems' interests but also important public policies of other states.[37]

In the views of the author, only those manifest violations of mandatory rules which seriously jeopardize the goals of public policy should be basis for setting aside an arbitral award. It is admitted here that it will be difficult to differentiate the manifest violations from the non-manifest ones but the same can be determined by the courts by taking into account various factors like which branch of mandatory law is involved, the legal system of the state etc. In words of Villiers, "[w]hat constitutes an essential legal principle is, as yet, uncertain...."[38]

Some scholars have opined that by expanding scope of arbitrability, the courts have impliedly agreed to consequences of non-application of mandatory laws.[39] In response, it is submitted that the courts allow arbitration of 'mandatory laws' in light of increasing global trade and commerce. The liberal exercise of 'second look' (which has been advocated here) does not mean that 'mandatory rules' have been reduced to a 'semi-mandatory' status. There might be some cases in which the enforcing courts may be faced with circumstances which indicate that the parties have attempted to avoid their mandatory law obligations. In such cases, the court is left with no other option other than indulging in an in-depth review of the arbitral award. However, the basis

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36 *See* Luca G Radicati di Brozolo, *Mandatory Rules and International Arbitration*, 23 AM. REV. INT'L ARB. 49, 60 (2012).

37 *See* Christopher S Gibson, *Arbitration, Civilization and Public Policy: Seeking Counterpoise between Arbitral Autonomy and the Public Policy Defense in View of Foreign Mandatory Public Law*, 113 PENN ST. L. REV. 1227 (2009).

38 Villiers, *supra* note 5, at 180.

39 *See* Tamieka Spencer Bruce, *A Choice of Public Law? Resolving the International Arbitrator's Dilemma*, 20 AM. REV. INT'L ARB. 97, 113 (2009).

for such a de novo review should be provided by the party seeking such clarification.[40]

## IV. Concluding Remarks

Mandatory rules as a factor during judicial review of arbitral awards has emerged one of the most vigorous and continuing debates amongst scholars and academicians. At the beginning of this paper, it was established that arbitration is the connecting bridge between party consent and public interest. The concept of second look has been submitted in light of this observation. Furthermore, it has been seen that there is plenty of room to accommodate the interests of both the courts and the parties. One can undeniably argue that court review of arbitral award affects the cost-effectiveness of the arbitral process, yet, in the author's views, this is the price to be paid to keep all stakeholders happy.

It has been seen that a very high standard of what qualifies as a mandatory rule has been established in almost all parts of the globe and therefore, it seems in practice, that if the courts exercise a liberal 'second look', refusal of arbitral awards on grounds of non-application of mandatory law would be a rare sight. To conclude it can be said that the only way to reconcile mandatory rules with international arbitration is when both the arbitrator as well as the court takes one step forward and recognizes each other's positions and interests.

40 *See* Kleinheisterkamp, *supra* note 3, at 116.