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Original Research

A Legal Analysis of Anti-Corruption Clauses in International Commercial Contracts and Their Impact on Transactional Transparency and Integrity

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Corruption in cross-border transactions is one of the principal obstacles to the development of free trade and undermines fair competition in the global economy. Despite the expansion of international regulations, ambiguities concerning the legal nature of anti-corruption clauses, the precise scope of liability, and the remedies applicable to such clauses in private contracts have often reduced them to ineffective drafting formalities. Using a descriptive-analytical method, the present study examines the legal nature and functions of anti-corruption clauses in enhancing the transparency and integrity of commercial transactions. The instruments examined include the United Nations Convention against Corruption, statutes with extraterritorial application, such as the United States Foreign Corrupt Practices Act and the United Kingdom Bribery Act, and, in particular, the model clauses developed by the International Chamber of Commerce. The distinguishing feature and novelty of this study lie in moving beyond the traditional criminal-law and public-law approaches to corruption and focusing exclusively on the civil and contractual consequences of breaching anti-corruption clauses within the sphere of private law. The findings indicate that the inclusion of such clauses, through the establishment of explicit obligations and the conferral of audit rights, minimizes commercial and reputational risks. From a legal perspective, a breach of an anti-corruption clause should not be regarded as a collateral violation but as a fundamental breach of contract, thereby justifying unilateral termination and the recovery of damages by the injured party. The study concludes that the actual effectiveness of anti-corruption clauses depends on moving beyond formulaic drafting, providing precise compensatory remedies, establishing continuous monitoring mechanisms, and ensuring conformity with the standards of institutions such as the ICC. Under these conditions, such clauses can serve as powerful instruments for institutionalizing transparency, eliminating information-based rents, and safeguarding economic integrity.

Keywords: *anti-corruption clause, international commercial contracts, economic transparency, transactional integrity.*

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1. Introduction

In the age of global economic integration and the continuing expansion of cross-border interactions, corruption has evolved from a merely ethical aberration into a systemic challenge that undermines the rule of law and transnational public order. The infiltration of corrupt practices into the channels of international trade not only compromises the fundamental principles of good faith and pacta sunt servanda but also substantially increases transaction costs through unfair competition and resource misallocation, ultimately destabilizing the economic equilibrium of contracts (Srivastava, 2020). As reflected in universal instruments such as the United Nations Convention against Corruption and the OECD Anti-Bribery Convention, the core manifestations of this phenomenon include the abuse of position for the acquisition of illegitimate benefits, the bribery of foreign public officials, and collusion (Landmeier et al., 2002; Topchii et al., 2021). In this context, international commercial contracts, owing to their foreign elements, the intersection of diverse commercial cultures, and the multiplicity of regulatory authorities, have become particularly susceptible to the penetration of such unlawful practices.

In response to this regulatory gap in the transnational sphere and with a view to safeguarding legal certainty, the anti-corruption clause has evolved from a recommendation contained in soft-law instruments into a decisive, binding, and preventive legal mechanism incorporated into commercial contracts, including joint venture, financing, and licensing agreements. Based on the principle of party autonomy, this contractual clause expressly obliges the parties to refrain from any corrupt conduct throughout the pre-contractual, formation, and performance stages of the contractual relationship. The inclusion of such clauses has now become a standard commercial practice, providing business partners with assurance that contractual obligations will be performed within a framework of transparency and legal compliance (Bahoo et al., 2020). The significance of this institution becomes even more pronounced when analyzed in conjunction with domestic legislation possessing extraterritorial reach, such as the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act, which have transformed compliance with anti-corruption standards into a critical requirement for mitigating compliance risks (Bismuth et al., 2021).

Despite the development of contractual practices by institutions such as the International Chamber of Commerce regarding the inclusion of anti-corruption clauses, the precise legal dimensions and effects of this institution remain subject to serious ambiguity in both legal doctrine and practice. The first challenge concerns the clause's substantive and personal scope: Is its application confined to expressly defined offenses, such as bribery, or does it also encompass emerging forms of misconduct, including conflicts of interest and improper influence? Moreover, extending the obligations arising from the clause to third parties connected with the contract, such as agents and subcontractors, requires legal justification in light of the doctrine of privity of contract. To address these challenges, an anti-corruption clause must establish both affirmative obligations, such as independent audit rights and the implementation of compliance programs, and negative obligations, the breach of which may threaten the continued existence of the contract.

The second fundamental ambiguity concerns the legal consequences of breaching the clause and the resolution of resulting disputes before international arbitral tribunals. Once a breach of an anti-corruption clause has been established, determining the precise boundary between the absolute nullity of the contract for violation of transnational public policy and the mere creation of a right to terminate the contract and claim damages constitutes one of the most complex issues in international trade law. When confronted with corruption-tainted contracts, arbitral tribunals have adopted divergent approaches concerning jurisdiction, the application of the governing law, and the legal characterization of available remedies (Amundsen, 1999; Landmeier et al., 2002; Nakajima & Palmer, 2010; Sykes, 2023). Accordingly, employing a descriptive-analytical approach, the present study seeks to address the following principal question: How should the legal structure of anti-corruption clauses be formulated and interpreted within the instruments and practices of international trade so that, while resolving regulatory gaps and doctrinal ambiguities concerning personal scope and remedies, such clauses may become effective instruments for risk management, the enhancement of transparency, and the maximum protection of transactional integrity?

2. Literature Review

A review of the legal literature concerning the fight against corruption in international trade demonstrates that legal doctrine has concentrated on three broad areas: the development of international standards and criminalization, the analysis of civil remedies, and the challenges arising from the interaction between transnational norms and public policy. In the first area, scholars have emphasized the transition from soft supervisory instruments to binding instruments, such as the United Nations Convention against Corruption, and the role of investment treaties in balancing competing interests (Topchii et al., 2021; Zal Nejad & Ramezani, 2022). In the second area, researchers have examined the divergence among national courts and arbitral bodies, including the International Centre for Settlement of Investment Disputes, regarding the legal status, inherent nullity, or voidability of corruption-tainted contracts (Alavi Qazvini & Beigi Habibabadi, 2015; Bonell & Meyer). Studies within the third area have highlighted the difficulties involved in applying these standards in interaction with mandatory rules and national sovereignty (Akbari et al., 2022). Nevertheless, an examination of this literature reveals that legal doctrine has predominantly focused on ex post consequences and remedies imposed after corruption has occurred, while a comprehensive legal analysis of the nature, structure, and function of the anti-corruption clause as an autonomous and voluntary agreement incorporated into the contract has been largely neglected. Moving beyond a purely criminal-law and nullity-oriented approach, the present study therefore seeks to explain the regulatory and preventive role of this contractual institution in promoting transparency, systematically limiting legal risks, and safeguarding the integrity of international commercial transactions.

3. Research Methodology

In terms of its objective, the present research constitutes a fundamental-developmental study, while in terms of its nature, it is a descriptive-analytical investigation employing a normative approach. The data were collected through library-based and documentary research from primary sources, including international conventions, legal doctrine, and decisions rendered by transnational arbitral tribunals. Rather than relying on quantitative models, the analysis is founded on the systematic and teleological interpretation of legal rules. Accordingly, to examine the nature, structure, and function of the anti-corruption clause, the analytical framework of the study focuses on a detailed evaluation of four interconnected variables: the requirements arising from the nature and scale of the contract, the classification of corrupt violations according to their severity, the scope of party autonomy, and, finally, the intersection of relevant regulatory regimes.

4. The Legal Framework of Anti-Corruption Clauses in International Commercial Contracts

The introduction of the anti-corruption clause into the discourse of transnational commercial contracts reflects a normative transformation within the legal order governing the international economy. This development represents a transition from the permissive approach prevailing before the 1990s, under which irregular payments were treated as part of transaction costs, to a stringent legal regime. This change is rooted in the emergence of binding universal instruments, including the 2003 United Nations Convention against Corruption and the 1997 OECD Anti-Bribery Convention, which required states to criminalize the bribery of foreign public officials and develop preventive mechanisms (Borlini, 2017; Topchii et al., 2021). Alongside treaty-based obligations, the complexity of global supply chains and, in particular, the extraterritorial application of legislation such as the U.S. Foreign Corrupt Practices Act compelled multinational corporations to transform anti-corruption clauses from purely ethical recommendations into binding contractual obligations designed to manage compliance risks.

From the perspective of the typology of obligations, the anti-corruption clause is a multifaceted institution within the architecture of commercial contracts, comprising a combination of negative and affirmative obligations. Its central component is the negative obligation to refrain from any unlawful payment or collusive conduct. Nevertheless, the effectiveness of this institution requires the establishment of complementary affirmative components, including an independent audit clause, which permits financial records to be opened and examined by a third party, and disclosure and reporting obligations, such as whistleblowing systems. The ultimate purpose of this contractual architecture is to protect the commercial reputation of the parties and limit risk exposure. Before international arbitral tribunals, the inclusion of such a clause may be regarded as evidence of the parties' common intention to comply with transnational public policy and the principle of good faith. Consequently, where corruption by one party is established, the clause enables the injured and innocent party to distinguish the criminal conduct from the parties' shared contractual intention, avoid the consequences of absolute nullity, and enforce its contractual rights.

At the macro level, recent developments in the doctrine of corporate responsibility have linked anti-corruption obligations to unprecedented sanctions and remedies. Contemporary practices, including the World Bank's debarment system and international standards—particularly ISO 37001 concerning anti-bribery management systems—have created an interconnected network of obligations. Within this framework, anti-corruption clauses in modern contracts must incorporate liability-allocation and indemnification mechanisms capable of activating decisive remedies, including the injured party's right to immediate unilateral termination. The absence of such preventive contractual mechanisms exposes legal entities to substantial financial penalties, exclusion from participation in international tenders, and the direct criminal liability of senior executives. This reality has made the careful drafting of anti-corruption clauses a critical but frequently missing component of risk management in commercial contracts.

5. The Impact of Anti-Corruption Clauses on the Transparency and Integrity of Transactions

From the perspective of the economic analysis of law and contract theory, the fundamental function of the anti-corruption clause in international commercial transactions extends beyond that of a merely punitive mechanism. It restructures the contractual arrangement to neutralize the consequences of information asymmetry and moral hazard. In the absence of such a clause, business partners operate in an opaque environment in which transaction costs increase substantially. By establishing a self-regulatory mechanism, this legal architecture compels the parties to disclose their financial flows and redirects competition away from rent-seeking and collusion toward merit and economic efficiency. Ultimately, this contributes to contractual certainty and protects supply chains against disruptions arising from criminal prosecutions and trade sanctions.

At the macro level and from the perspective of legal sociology, the widespread and repeated incorporation of anti-corruption clauses into network contracts has contributed to institutional isomorphism within the global commercial environment. Such clauses are no longer merely bilateral obligations; rather, they function as channels for transmitting and implementing higher-order instruments, including the United Nations Sustainable Development Goals, particularly Sustainable Development Goal 16. The compliance of multinational corporations with these contractual standards under the pressure of extraterritorial regulatory regimes, such as the U.S. Foreign Corrupt Practices Act and the UK Bribery Act, gradually institutionalizes a culture of compliance within the broader economy. The resulting effects include the reduction of systemic risks, the direction of foreign direct investment toward transparent markets, and the integration of corporate-governance principles into the fabric of private obligations. Within this paradigm, the anti-corruption clause, as a norm evolving within the soft law of international trade, serves as a catalyst connecting the private interests of commercial partners with the public interests of the international community.

Nevertheless, the actual value and enforceability of these clauses are ultimately tested through judicial practice and international arbitration. In dealing with corruption-tainted contracts, domestic courts and arbitral tribunals have achieved meaningful convergence around the protection of transnational public policy. Under the Iranian legal system, courts, relying on principles of Islamic jurisprudence and Articles 190, 217, and 975 of the Civil Code, regard the contamination of a contract by collusion and bribery as a manifestly unlawful contractual purpose and consequently declare the contractual network absolutely null and void. In this context, an anti-corruption clause substantially facilitates the claimant's evidentiary burden. At the transnational level and in the practice of institutions such as the International Court of Arbitration of the International Chamber of Commerce, a breach of the clause activates the injured party's right to unilateral termination under the doctrine of fundamental breach. A significant development in this field concerns the modification of evidentiary standards. Arbitral tribunals increasingly move beyond stringent criminal-law standards, such as proof beyond a reasonable doubt, and rely instead on the balance of probabilities and circumstantial indicators commonly described as the red-flags doctrine, including irregular commissions and the use of opaque intermediaries. On this basis, they may establish a breach of the anti-corruption clause and subject the offending company to civil and reputational consequences.

5.1. Transparency-Enhancing Mechanisms

Corruption in transnational transactions, rather than constituting merely an ethical deviation, is primarily the direct product of information asymmetry and organized concealment within contractual structures. In the institutional law-and-economics literature, corrupt practices such as facilitation payments and concealed bribes are understood to arise from informational blind spots between the parties to a transaction and regulatory authorities, in which one party exploits its informational advantage to distort the other party's decision-making process. Within this legal framework, the anti-corruption clause functions as a transparency-enhancing mechanism by imposing affirmative obligations of proactive disclosure and thereby repairing these informational gaps. It requires economic actors, both before the conclusion of the contract and throughout its duration, to disclose fully the identities of beneficial owners, the ownership structures of business partners, and the precise nature of payments made to third parties. From the perspective of international trade-law doctrine, the incorporation of such a clause transforms the traditional principle of good faith from an abstract concept into an objective, tangible, and measurable obligation, substantially reducing transaction costs arising from concealed risks. Specialized literature has similarly emphasized the need to move from reactive approaches toward mandatory structural transparency and has identified the anti-corruption clause as an effective instrument for addressing informational imbalance (Bonell & Meyer; Rose-Ackerman & Palifka, 2016; Turnes & Ernst, 2015).

Despite the critical importance of information disclosure, an obligation of transparency unaccompanied by internal contractual monitoring instruments reduces the anti-corruption clause to a merely formal declaration lacking practical enforceability. Accordingly, the effectiveness of transparency-enhancing mechanisms requires the institutionalization of a cross-audit right within the contractual provisions, thereby embedding the means of detecting violations within the structure of the parties' obligations. This legal right constructs a transparent barrier within the contractual relationship and permits either contracting party or its legal representatives, at specified intervals or where reasonable suspicion arises, to conduct a detailed examination of the other party's general ledgers, financial records, and banking transactions. The primary function of this legal institution is to close the channels through which slush funds and off-the-books accounts are created, as these commonly constitute the principal mechanisms for financing white-collar crime and making transnational bribe payments. Furthermore, the effective exercise of audit rights depends on the standardization of financial data and adherence to uniform accounting procedures, because unlawful payments are frequently concealed under ostensibly legitimate headings such as consultancy fees, marketing expenses, or agency commissions. By transforming monitoring from an external governmental intervention into a fundamental contractual right, the cross-audit mechanism creates the conditions required for the early detection of financial misconduct and safeguards the integrity of capital flows (Bismuth et al., 2021; Ponti et al., 2022; Rezaei & Yavari, 2020).

The organic relationship between proactive disclosure obligations and the establishment of cross-audit rights fundamentally transforms the architecture of international commercial contracts from the perspectives of risk management and transactional integrity. A doctrinal analysis of these two mechanisms demonstrates that, through their synergistic operation, the anti-corruption clause is not merely an additional legal provision appended to the contract; rather, it operates as a self-regulating system that restructures the flow of information. In complex commercial environments in which governmental regulators are unable to trace transnational violations because of territorial jurisdictional limitations, these contractual instruments fill the gap created by the absence of an integrated global rule-of-law system. More precisely, the combination of reduced information asymmetry and the deterrent power of direct monitoring by a business partner substantially increases the cost of concealment and effectively neutralizes the expected benefits of corrupt conduct. This paradigmatic shift compensates for the inadequacies of traditional approaches based on the nullity of corruption-tainted contracts and, by imposing strict financial discipline, prevents corrupt networks from penetrating global supply chains. Accordingly, the transparency-enhancing function of the anti-corruption clause directly contributes to transactional security, the reduction of complex arbitral disputes, and the institutionalization of a culture of compliance in international trade law (Bahoo et al., 2020; Shirovi & Eshraghi, 2023; Shleifer & Vishny, 1993).

5.2. Mechanisms for Safeguarding Transactional Integrity

From the perspective of the economic analysis of law, incorporating an anti-corruption clause into international commercial contracts operates as an interventionist instrument that restructures the risk matrix and fundamentally alters the cost-benefit calculations of rational economic actors. In the absence of such clauses and under the general rules of contract law, the expected economic benefits of corruption, such as accelerating customs procedures or securing success in tenders, may outweigh the anticipated costs associated with the possible future detection of misconduct. By incorporating severe, immediate, and certain contractual remedies, the anti-corruption clause shifts this balance in favor of transactional integrity. More specifically, granting a right of immediate unilateral termination upon the establishment of any unlawful payment, together with substantial contractual penalties and an obligation to compensate fully for direct losses and lost profits, institutionalizes structural deterrence within transnational agreements. Under this new structure, the consequences of breach are not limited to the possible invalidation of the contract following lengthy judicial proceedings. The offending party also faces immediate exclusion from the relevant commercial network, enforcement against bank guarantees, and the collapse of its commercial reputation. By eliminating the economic justification for corrupt conduct and imposing substantial costs on opportunistic behavior, this mechanism directs the parties toward voluntary compliance with standards of commercial integrity (Rose-Ackerman & Palifka, 2016; Shirovi & Eshraghi, 2023; Sykes, 2023).

Nevertheless, safeguarding transactional integrity in the complex environment of the global economy cannot be limited to the principal contracting parties and requires the extension of integrity-based obligations to all actors involved in the commercial process. The effectiveness of modern anti-corruption clauses therefore depends on moving beyond the traditional concept of individual responsibility and the doctrine of privity of contract toward the establishment of a system of joint accountability throughout the supply chain. Transnational corruption networks commonly outsource the risks associated with white-collar crime to subcontractors, intermediaries, and local agents in an effort to insulate principal companies from legal prosecution. Advanced standard clauses, including those developed by international trade regulatory institutions, require the principal obligor to pass these obligations contractually down to third parties, thereby producing a positive and deterrent spillover effect throughout the entire transactional network. Under this legal mechanism, the principal company is required not only to comply with anti-corruption standards within its internal structure but also to bear responsibility for demonstrating and monitoring the integrity of its subcontractors' performance. A breach of the relevant standards of conduct by any intermediary link is treated as a breach by the principal contracting party and activates stringent contractual remedies. This paradigmatic shift transfers the substantial costs of monitoring and control from public institutions to the private sector and, by establishing an interconnected network of accountability, effectively closes the channels through which corruption may penetrate the lower levels of major contractual arrangements (Argandona, 2024; Bismuth et al., 2021; Hassanzadeh, 2022).

5.3. Remedies and Effectiveness at the Adjudicatory Stage

Under the traditional approach governing international commercial proceedings, allegations of corruption arising during the formation or performance of a contract are generally examined as fundamental violations of transnational public policy. This approach places arbitral tribunals in an apparently insurmountable evidentiary impasse. On the one hand, corruption is a concealed offense involving highly complex structures, making access to direct evidence and written documentation almost impossible. On the other hand, establishing a violation of public policy and imposing the severe consequence of nullity requires the tribunal to be persuaded according to a particularly demanding evidentiary standard, such as clear and convincing evidence. The reluctance of arbitral institutions to assume the role of criminal courts, together with concerns that national courts may set aside their awards on the ground that the tribunal exceeded its jurisdiction, means that, in the absence of definitive evidence or a prior criminal conviction, many corruption-based claims are rejected and corruption-tainted contracts remain legally effective (Bonell & Meyer; Rogers, 2005; Shirovi & Eshraghi, 2023). This structural uncertainty clearly demonstrates the inadequacy of the general law of obligations in addressing corruption within networks of free trade.

The incorporation of an express anti-corruption clause into commercial agreements produces a strategic shift and a fundamental paradigmatic change in evidentiary architecture, whereby serious criminal prohibitions are translated into private, formal, and contractual obligations. Once such a clause and its compliance annexes have been incorporated, a claimant seeking termination or compensation for lost profits is no longer required to establish the criminal offense of bribery or improper influence according to stringent criminal-law standards. Under this new legal structure, the claim may be based solely on the breach of an express contractual obligation, such as the refusal to provide transparent financial records, the submission of fictitious invoices, obstruction of the exercise of cross-audit rights, or failure to implement internal monitoring programs. This change in characterization transforms a complex public-policy matter into an ordinary dispute concerning breach of contract and lowers the evidentiary standard from the level of criminal certainty to the standard commonly applied in civil proceedings, namely the balance of probabilities (Bismuth et al., 2021; Hassanzadeh, 2022). Accordingly, the claimant's evidentiary burden is substantially moderated, and the structural barriers that previously impeded the enforcement of rights before arbitral tribunals are largely removed.

The legal and economic consequences of this evidentiary paradigm extend beyond facilitating adjudication and contribute to the establishment of an immediate accountability regime and the protection of operational integrity throughout the supply chain. Where arbitral tribunals can hold a non-compliant party liable solely on the basis of its failure to satisfy the contract's formal standards, the risk that national supervisory courts will set aside the resulting award on the ground of interference with sovereign matters is reduced to a minimum. This sophisticated contractual mechanism not only enables compliant parties to withdraw rapidly from a contaminated commercial relationship before lengthy domestic criminal proceedings have concluded, but also creates substantial deterrence against opportunistic behavior through the development of a firm judicial and arbitral practice (Perez Torres, 2020; Shirovi, 2022). Ultimately, translating the criminal concept of corruption into a series of objective and measurable contractual obligations transforms the anti-corruption clause from a merely formal declaration into an effective and compelling procedural instrument within the international trading system.

6. Conclusion

The legal and economic analyses conducted in this study demonstrate that, within the contemporary structure of international commercial contracts, the anti-corruption clause has evolved beyond a merely ethical or formal statement and has become a binding instrument of private regulation. Its fundamental function lies in transforming the architecture of risk and restructuring transaction costs. From the perspective of the economic analysis of law, the inclusion of stringent compliance provisions, together with cross-audit rights and disclosure requirements, changes the decision-making matrix of commercial actors. Under deterrence theory, the anti-corruption clause increases the probability of detecting misconduct by requiring compliance with transparency standards, including ISO 37001, while simultaneously increasing the cost of breach through the immediate activation of decisive contractual remedies, such as unilateral termination and the recovery of lost profits. In this manner, it creates a structural and ex ante form of deterrence. Furthermore, at the adjudicatory level, the incorporation of the clause transforms the evidentiary regime by replacing the complex burden of proving the illegality of the contractual purpose with the comparatively straightforward task of establishing a breach of an express contractual obligation, thereby facilitating the enforcement of rights before arbitral tribunals.

Nevertheless, the application of this legal framework to the operational realities of cross-border trade is confronted by doctrinal and structural frictions. The first challenge arises where such clauses operate within jurisdictions characterized by a high risk of systemic corruption, in which the absence of the rule of law seriously undermines their effectiveness. The second challenge concerns divergences among conflict-of-laws rules and the absence of a uniform approach within private international law. This normative fragmentation may create uncertainty for adjudicatory bodies where, for example, certain conduct constitutes bribery under the law governing the contract, such as the UK Bribery Act, but is regarded under the commercial customs of the place of performance as a permissible facilitation payment. These legislative conflicts, combined with the cognitive difficulties faced by enterprises in distinguishing conventional business gifts from unlawful commissions, demonstrate that anti-corruption clauses will remain ineffective in the absence of comprehensive organizational training infrastructure and an institutional culture of compliance.

Ultimately, overcoming the existing implementation impasse requires courts and arbitral tribunals to regard the anti-corruption clause not merely as a private obligation between the parties but as a binding manifestation of transnational public policy. In light of developments in arbitral practice up to mid-2026, the identification of existing gaps requires future research to focus on a detailed examination of evidentiary standards in the practice of international commercial arbitral tribunals so that the legal boundary between direct evidence and the use of circumstantial indicators, such as red flags, may be precisely defined. Furthermore, examining the inevitable conflict between transnational public policy and local mandatory rules in the enforcement of arbitral awards governed by the 1958 New York Convention may open new avenues of research concerning the challenges involved in recognizing and enforcing awards based on breaches of anti-corruption clauses within the doctrine of international trade law.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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