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RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS IN EGYPT, SAUDI ARABIA AND IRAQ: COULD THERE BE A REGION-SPECIFIC APPROACH TO INTERNATIONAL ARBITRATION?**

Abstract: *Arbitration award enforcement proceedings are the crucial point of any dispute, as even the most groundbreaking award is pointless if it cannot be executed. The issue of the enforceability of awards is especially interesting in the region usually omitted from discussions on alternative dispute resolution: West Asia and North Africa. Usually portrayed as a monolith, the Arab states counter this assumption by taking on a highly nuanced and jurisdiction-specific approach to international arbitration. This paper presents snippets of recognition and enforcement legislation and the case law from three states: Egypt, characterised by its active engagement in international arbitration; the Kingdom of Saudi Arabia, traditionally vested in the legal tradition of Islamic law; and Iraq, which only recently acceded to the international award implementation system. These examples are employed to determine whether there are any region-specific similarities in domestic courts' reasoning on international arbitration. The legislation and cases analysed herein provide a unique outlook on these underrepresented jurisdictions, characterised by firm attachment to national law and legal tradition and subjected to global currents of economic liberalisation.*

Keywords: international arbitration, enforcement of arbitral awards, Egypt, Saudi Arabia, Iraq, regional approaches to international arbitration

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INTRODUCTION

The enforcement of an arbitral award is a crucial element of dispute resolution. Thus, the almost automatic mechanism ensured by the system of international conventions is considered an important advantage of international arbitration. At the same time, limited domestic review falls within the enforcement regime and is necessary for ensuring both compliance with provisions of domestic law and the arbitral award itself. Thus, domestic judges are expected to scrutinise such an award to ensure that the basic requirements of enforcement are met.[1]

In an era of globalised trade and investment, domestic judicial systems increasingly encounter foreign judicial decisions, raising the question of how these should be implemented within national jurisdictions. When domestic courts act as "enforcement agencies" for tribunals,[2] it is possible to observe interactions between domestic adjudicators and arbitrators: the former analyse the awards of the latter and determine how they should be implemented.

This paper analyses specific aspects of this judicial engagement in three national jurisdictions: Egypt, Saudi Arabia and Iraq. All of them are bound together by the official language of proceedings (Arabic), a common cultural background and at least partially non-Western legal heritage, strongly rooted in Islamic law. The "Middle East", and in particular the "Arab Middle East" has been recognised as one coherent region[3] – a group of states bound together by a common identity, language, geographic location, history, ideologies (such as pan-Arabism and pan-Islamism) and even certain integration initiatives, both political and economic.[4] However, each of these states has formed its own judicial system, based on legislation designed to fit its specific interests in accordance with its legal tradition – hence the unique system of each country. Considering both the presumed regional unity and the inherent national distinctiveness, the question arises as to how similarly domestic courts interact with arbitration tribunals in the Middle East. Are these similarities substantial enough to define a region-specific approach?

The three states under analysis were selected according to the most distinctive features of their foreign award enforcement case law. Egypt was chosen because of

[1] C.H. Schreuer, *The Implementation of International Judicial Decisions by Domestic Courts*, 24 International and Comparative Law Quarterly 153 (1975), p. 154.

[2] A. Tzanakopoulos, *Domestic Courts in International Law: The International Judicial Function of National Courts*, 34 Loyola of Los Angeles International and Comparative Law Review 133 (2011), p. 145.

[3] Silvia Ferabolli discusses various means of delimiting that region, ultimately concluding that it is the League of Arab States which plays the main role in defining the term "Arab" and constructing an Arab identity within the 22 member states (S. Ferabolli, *Arab Regionalism: A Post-Structural Perspective*, Routledge, New York: 2014, pp. 76–77).

[4] Such as the League of Arab States, the Gulf Cooperation Council or the Arab Maghreb Union.

its longstanding active engagement in international arbitration based on the New York Convention.[5] Its judiciary attempted numerous times to balance investors' interests and the state's right to regulate. Thus, the Egyptian enforcement case law is focussed predominantly on a national understanding of the public policy exception. Apart from its well-developed jurisprudence, Egypt also houses one of the most recognisable arbitration centres in the region – the Cairo Regional Centre for International Commercial Arbitration – which further strengthens its proactive attitude towards alternative dispute resolution.

The second section outlines the changes that enforcement has undergone in the Kingdom of Saudi Arabia in recent years. This jurisdiction is of special interest due to its strong attachment to the legal tradition based on Islamic law (Sharia). The incorporation of Sharia in the legal system compels enforcement judges to adopt a particular approach to judgments of arbitrators from international tribunals, also invoking the public policy exception to safeguard local principles of law. Saudi Arabia's law has not only been fully based on Islamic law, with limited and delayed codification, but it has also since been subject to rather little influence of external, especially Western (both continental and common) legal tradition, as it has never been colonised.

Finally, the last section of this article is devoted to award enforcement in a jurisdiction which only recently was opened up to foreign arbitral awards. It discusses the recent accession of Iraq to the international award implementation system and examines the possible outcomes of this development, as well as the anticipated changes to the recognition and enforcement of international arbitral awards. In this case, the approach to international arbitration is predominantly assessed through domestic law, with scarce involvement of international norms.

The enforcement of awards issued in domestic arbitration is always subject to local laws, unsurprisingly – these are the reference points for domestic courts. On the other hand, when faced with an award issued by an international arbitration tribunal, domestic courts should also take into consideration the system of international arbitration[6] (in both commercial and investment disputes), consisting firstly of international agreements between states, and secondly of any particular contracts on which the dispute at hand are directly based. The global system of recognition and enforcement of foreign arbitral awards is structured in the form of the New York Convention, the key instrument in international arbitration. It guarantees

[5] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted on 10 June 1958, entered into force on 7 June 1959), 330 UNTS 33.

[6] The term "system" has been used to reinforce the fact that the regulations of international arbitration create a full "body of norms sufficiently organized, complete, and effective to qualify as a system" (E. Gaillard, *The Emerging System of International Arbitration: Defining "System"*, 106 Proceedings of the Annual Meeting 287 (2012).

the enforcement of foreign arbitral awards and binds contracting states to observe the awards of international tribunals; it is one of the most successful international agreements,[7] enjoying the widest acceptance among the international community, with over 150 parties, including countries from West Asia and North Africa. Almost all Arab states are parties to this agreement, with the exception of Libya and Yemen, and the most recent accession was that of Iraq in 2021. The enforcement rules it envisages extend to two kinds of arbitral awards: foreign awards, i.e. awards rendered in a state other than the one in which enforcement is sought, and non-domestic, that is, judgments that for some reason cannot be considered domestic by national enforcement courts.[8] The second type of awards may be found in three instances: when an award is made in the state of enforcement, but under foreign substantial law, or foreign procedural law or under no specific domestic law (an "a-national" award).[9]

Nonetheless, there are also region-specific implementation frameworks: in West Asia and North Africa there is the Riyadh Arab Agreement for Judicial Cooperation (the Riyadh Convention),[10] which was signed in 1983 and provides more detailed provisions on the exchange of judicial and administrative information, in both civil and penal matters. This is one of the most crucial instruments of Arab League cooperation.[11] In Arab judicial practice, foreign arbitral awards are enforced in compliance with the New York Convention, the Riyadh Convention (if applicable) and domestic law.

1. PUBLIC POLICY EXCEPTION AS A BAROMETER OF ARBITRATION CLIMATE IN EGYPT

The public policy exception from Art. V(2)(b) of the New York Convention is one of the grounds for refusing to recognise an arbitral award. This has been drafted as a safety valve for states; however, its scope and extent remain unclear, for both arbitration tribunals and domestic courts[12] – hence its recurring nickname, the "unruly

[7] *See* G. Born, *The New York Convention: A Self-Executing Treaty*, 40 Michigan Journal of International Law 115 (2018), p. 184; M. Fahim Nia, *Enforcement of Foreign Arbitral Awards: A Closer Look at the New York Convention*, Nova Science Publishers, Hauppauge, New York: 2017, p. 135.

[8] Fahim Nia, *supra* note 7, p. 34.

[9] *Ibidem*, p. 44.

[10] Council of Arab Ministers of Justice, *Riyadh Arab Agreement for Judicial Cooperation*, 6 April 1983, available at: https://www.refworld.org/legal/agreements/las/1983/en/39231 (accessed 10 September 2025).

[11] M.I. Aleisa, *A Critical Analysis of the Legal Problems Associated with Recognition and Enforcement of Arbitral Awards in Saudi Arabia: Will the New Saudi Arbitration Law (2012) Resolve the Main Legal Problems?*, University of Essex, Essex: 2016, p. 154.

[12] B. Pirker, *Proportionality Analysis and International Commercial Arbitration – The Example of Public Policy and Domestic Courts*, in: H. Palmer Olsen, J. Jemielniak, L. Nielsen (eds.), *Establishing Judicial Authority in International Economic Law*, Cambridge University Press, Cambridge: 2016, p. 303.

horse".[13] A teleological interpretation of that reservation (following the New York Convention's main aim: to ensure enforceability of arbitral awards) should lead to the conclusion that it is supposed to be construed rather narrowly and restrictively.[14] The theory of public policy is constantly developing, particularly when it comes to either positioning that principle in the sphere of international law – thus shaping it into supranational public policy, focussed more on the universal notions of morality and justice[15] – or emphasising the meaning of states' sovereignty and interests.[16] Practice so far has shown that both of these theories might find support in the domestic courts of various jurisdictions.[17]

The concept of public policy is also included in Egyptian law no. 27/1994 (Egyptian Arbitration Law [EAL]).[18] Art. 53(2) stipulates that "[t]he court adjudicating the action for annulment shall *ipso jure* annul the arbitral award if it is in conflict with the public policy in the Arab Republic of Egypt." Translated into Arabic as "*al-niẓām al-ʿāmm*" (literally "public order"), this phrase has been inconsistently interpreted on a case-to-case basis. The EAL generally provides grounds for setting aside the award similar to Art. 34 of the UNCITRAL Model Law,[19] but also cites other grounds: if a tribunal fails to apply the substantive law chosen by the parties and or violates an essential procedural rule of Egyptian domestic legislation.[20] That being said, the enforcement judgments do contain at least a brief reference to the New York Convention.[21] Local jurisprudential practice has confirmed that the New York Convention forms part of the Egyptian legal order and domestic laws shall not be applied if they are more onerous to the parties, as per the judgment of

[13] Judgment of the Court of Common Pleas of 24 November 1824, *Richardson v. Mellish*, 2 BING. 229, para. 252. The phrase originated from a decision of the English Court of Common Pleas: "I, for one, protest, as my Lord has done, against arguing too strongly upon public policy; it is a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from the sound law."

[14] Pirker, *supra* note 12, p. 305.

[15] J.D. Fry, *Désordre Public International under the New York Convention: Wither Truly International Public Policy*, 8(1) Chinese Journal of International Law 81 (2009), pp. 87–89.

[16] L. Trakman, *Domestic Courts Declining to Recognize and Enforce Foreign Arbitral Awards: A Comparative Reflection*, 6 The Chinese Journal of Comparative Law 174 (2018), pp. 178–179.

[17] L. Trakman, *Aligning State Sovereignty with Transnational Public Policy*, 93 Tulane Law Review 207 (2018), pp. 230–231.

[18] Law No. 27/1994 Promulgating the Law Concerning Arbitration in Civil and Commercial Matters [1994] OG 16 (bis) 27.

[19] UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.

[20] Y.I. Badr, *Resolving Arab Capital Investment Disputes: The Aftermath of the Al-Kharafi Award's Annulment by the Egyptian Courts*, 1 Journal of Law in the Middle East 52 (2021), p. 69.

[21] *See e.g. The C.E.O of El-Husan Company for Import, Export and food packaging & wrapping S.A.E. v. El-Khaleej for Sugar Co., and the Minister of Justice* [Cairo Court of Appeal], judgment of 21 July 2011, Case 86/125; *Harbottle Company Limited v. Egypt for Foreign Trade Company* [Cairo Court of Appeal], judgment of 21 May 1990, Case 815/52; *Interfood Co. v. The legal representative of RCMA Asia Pte Ltd Singapore* [Egyptian Court of Cassation], judgment of 9 January 2020, Case 282/89.

the Court of Cassation in the dispute between John Brown Deutsche Engineering and SEMADCO.[22] Egyptian jurisdiction is generally considered to have adopted a pro-enforcement approach.[23]

1.1. Shaping the public policy exception through domestic law

One of the first enforcement cases in which the Egyptian court considered the public policy exception was in *Harbottle Company Limited v. Egypt for Foreign Trade Company*.[24] The dispute revolved around a breach of contract for coal that Harbottle was supplying. In arbitration proceedings in London, the defendant was awarded compensation with interest, which they then sought before the South Cairo Court of First Instance. That court refused enforcement and dismissed the case, and the Cairo Court of Appeal upheld the challenged judgment. Ultimately, the case was submitted to the Court of Cassation, which ruled partially in favour of the defendant, allowing enforcement of damages and interest up to 5%. The court justified the rejection of the latter part of the award (as the interest was initially set to 8%) due to the public policy exception, since domestic commercial law at that time permitted no more than 5% interest on damages. Thus, the court reasoned that any award rendered in contradiction with national legislation violated domestic public policy and any part which is incompatible with municipal law should not be enforced. However, it also emphasised that the court should enforce the remaining part, as long as it is in line with domestic regulations.

Apart from the clear focus on domestic public policy considerations – i.e. the understanding of justice defined by national legislation instead of international treaties – the substantive matter for the basis of refusal is also notable. Reluctance to accept high interest (a notion that would reappear in Egyptian courts) might not only stem from a literal reading of the word of (domestic) law, but may also be rooted deeper in the local legal tradition. Although Egypt's legislation and jurisprudence follow the civil-law system, Islamic law has been awarded primary significance. In the Constitution of 1971 Sharia was designated as the principal source of legislation,[25] and that declaration was stated in both the 2011 interim constitution[26] and the 2012

[22] *John Brown Deutsche Engineering v. El Nasr Company for Fertilizers & Chemical Industries (SEMADCO)* [Cairo Court of Appeal], judgment of 6 August 2003, Case 32/119. John Brown sought enforcement of an award against SEMADCO before the Egyptian courts, but once the ruling was implemented SEMADCO challenged the recognition on the grounds that it violated Egyptian public policy, as per Art. V.2(b) of the New York Convention.

[23] M.I. Bhatti, *Islamic Law and International Commercial Arbitration*, Routledge, London: 2018, pp. 216–217.

[24] *Harbottle Company Limited v. Egypt for Foreign Trade Company* [Cairo Court of Appeal], judgment of 21 May 1990, Case 815/52.

[25] Constitution of the Arab Republic of Egypt [1971, as amended in 2007], Art. 2.

[26] Constitutional Declaration [2011], Art. 2.

constitution;[27] it is also now included in the 2014 constitution.[28] Although those religious foundations are visible predominantly in the sphere of family relations, they can also be noted in commercial dealings. As such, it could be argued that the consistent (as will be argued in later paragraphs) aversion towards excessive interest derives directly from Sharia's prohibition of *ribā*, usurious interest, which is considered to be exploitative and unjustified enrichment.[29] The extent of this prohibition may vary, and although it indisputably covers bank loans, it might also be extended to any debt, including the obligation to pay compensation awarded by an arbitral tribunal. The approach to *ribā* differs between jurisdictions, depending on the level of rigidity and influence of Islamic law, with the Egyptian approach being shaped rather by discouragement than prohibition per se (apart from compound interest, which is strictly forbidden).[30]

In the more recent case of *Abu-Ghenema Co. v. SHINNG Co. S.A.*,[31] the Cairo Court of Appeal reiterated the public policy exception as contained in the New York Convention in conjunction with the EAL. It considered that refusing to recognise an award on the grounds of breaching public policy requires that the award contradicts Egyptian law and that this contradiction must relate to the public policy of the state. The court understood this principle as rules established to "attain public interest for the State in the political, social or economic dimension, which relates to the natural, material or moral order of the society, prevailing over the interests of individuals."[32] Public policy therefore is not determined by objective standards, but is rather left to the discretion of the judge, restricted only by the general notions of importance at the time of adjudication. It is a strong reiteration of the "domestic" public policy concept (as opposed to the supranational public policy mentioned in previous paragraphs). In this ruling, the court also refused enforcement of part of the award, as the awarded interest exceeded the statutory limit.

This view was later endorsed by the Court of Cassation in *Interfood Co. v. RCMA Asia Pte Ltd Singapore*,[33] in which the court additionally pronounced that a court reviewing an enforcement case may not reconsider the merits, but must either recognise or refuse the award.

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[27] Constitution of the Arab Republic of Egypt [2012], Art. 2.

[28] *Ibidem*.

[29] The Qur'an (2:275, 3:130).

[30] Bhatti, *supra* note 23, pp. 174–76.

[31] *Abu-Ghenema Co. v. SHINNG Co. S.A.* [Cairo Court of Appeal], judgment of 28 January 2018, Case 5/124.

[32] *Ibidem*, p. 7.

[33] *Interfood Co. v. The legal representative of RCMA Asia Pte Ltd Singapore* [Egyptian Court of Cassation], judgment of 9 January 2020, Case 282/89.

Refusal to enforce an award which partially exceeds the statutory interest has been acknowledged among arbitration scholars and practitioners.[34] The judgments of Egyptian courts are not incoherent in their treatment of interest above the permissible norm and, as such, should be generally considered justifiable and in line with the domestic understanding of equitable debt repayment. However, when taking into consideration the current (January 2025) state of the Egyptian economy,[35] it should be noted that further re-evaluation of this judicial practice – and the allowed interest rate in general – might be needed, as it no longer serves as a sufficient tool to ensure that the value of compensation eventually repaid corresponds to the initial estimate made by the arbitration tribunal.

There are some very recent judgments on the implementation of arbitral awards that shed more light on the public policy exception as construed within the Egyptian legal regime, including the international arbitration case of *Al-Kharafi v. Libya*.[36] The saga of the Al-Kharafi award enforcement began in 2013, when an arbitral award was issued under the Unified Arab Investment Agreement[37] by a tribunal formed under the rules of the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in Cairo, Egypt. With interest, it was worth approximately USD 1 billion. The subsequent proceedings were initiated in both Egypt and France, lasting in the latter jurisdiction until February 2023.[38]

The judgment of significance to the notion of public policy was made in a dispute between Mohamed Abdulmohsen Al-Kharafi & Sons Company – a Kuwaiti construction company – and the State of Libya over a failed project for hospitality

[34] S.H. Reisberg, K.M. Pauley, *An Arbitrator's Authority to Award Interest on an Award until "Date of Payment": Problems and Limitations International*, 1 Arbitration Law Review 25 (2023), p. 27.

[35] For the past few years, Egypt has been struggling with high inflation; it reached its 10-year peak in September 2023 (38%), and only in 2025 started to slow down, with the most recent data showing 12% in August 2025. *Egypt Inflation Rate*, Trading Economics, available at: https://tradingeconomics.com/egypt/inflation-cpi (accessed 10 September 2025).

[36] It is disputable whether the Al-Kharafi arbitral award falls within the scope of the New York Convention; if so, it should be considered an "a-national" award, rendered under no specific national law, but rather in line with the substantial provisions of the Unified Arab Investment Agreement and procedural requirements of the Cairo Regional Center for International Commercial Arbitration (CRCICA) in Cairo. The content of the New York Convention remains outside the scope of this article; that being said, it is beyond any doubt that the Egyptian Arbitration Law does apply to enforcement sought in Egypt, and thus judicial interpretation of the public policy provision in this dispute constitutes a significant contribution to this doctrine in Egypt's jurisdiction.

For further reading on the Al-Kharafi jurisdiction conundrum, *see e.g.* M. Mahmoud, *Egyptian Arbitration Law: The Absence of Some Generic Concepts of the New York Convention of 1958 (A Private International Law Perspective)*, 3 International Journal of Doctrine, Judiciary and Legislation 442 (2022).

[37] Unified Agreement for the Investment of Arab Capital in the Arab States (signed on 26 November 1980, entered into force on 7 September 1981), not published in the UNTS.

[38] The enforcement case considered by the French courts did not satisfy Al-Kharafi's claims, as the assets it sought to seize were frozen under international regulations. The last judgment in that regard was issued on 23 November 2023, by the Paris Court of Appeal (no. 22/05055).

infrastructure in Libya, which was hindered by the public authorities demanding the return of land and later revoking the applicant's licence for refusing the state's demands. Faced with a loss at arbitration, the host state hoped the decision would be set aside by the Cairo Court of Appeal under the EAL. After lengthy proceedings in the appellate court and the Court of Cassation, the Cairo Court of Appeal ultimately set the award aside on public policy grounds. It concluded that the arbitration panel had overestimated damages due to the addition of the potential loss of profits that the court considered "dreams, visions and aspirations", whilst only direct future damages should be included, thus leading to the disproportionality of the adjudicated sum. It reasoned that the proportionality of damages is tied to the established principle of public policy, as this relates strongly to the rights of individuals and their legitimate expectations. As such, the court concluded that national judicial institutions are entitled to set aside an award that orders an aggravating and utterly unjust remedy, thus linking the estimation of damages to the public value of legitimate expectations.[39]

By this decision, the appellate court undertook to consider anew the factual and legal background of the case, somehow positioning itself in lieu of the actual tribunal. However, it should be noted that in this case, the arbitral tribunal did indeed take it upon itself to calculate *lucrum cessans* based on predictions that had no chance of being realised: the project was to be built in a country on the brink of civil war, so the hospitality facility never would have been operational. Thus, perhaps it was overly optimistic to estimate the potential losses of Al-Kharafi and Sons at hundreds of thousands of dollars, as the Court of Appeal pointed out.[40]

The investor objected to the award being set aside and challenged the judgment before the Court of Cassation, which overturned the ruling of the Court of Appeal. The court evaluated the matter only from the perspective of national legislation. It stressed that the EAL does not provide the overestimation of damages as grounds for annulling an award, thus rejecting the Court of Appeal's reasoning that linked the value of compensation to public policy. The Court of Cassation focussed predominantly on the fact that domestic courts cannot review arbitral awards on their merits. By refraining from addressing the connection between the overestimation of damages and public policy – treating it solely as a review of merits – it signalled a narrow interpretation of this exception and left no room to extend its application to the specific circumstances of the award in question. This decision, due to

[39] *See also* Pirker, *supra* note 12, p. 310. According to Pirker, domestic courts usually apply one of two approaches when refusing enforcement on the grounds of public policy: either they examine whether the award in question violated a certain value protected by public policy, or they reflect upon the gravity of a violation of a specific norm to establish whether it was serious enough to be set aside.

[40] Badr, *supra* note 20, p. 79.

its very concise shape, answers the question of interplay between the principle of proportionality and public policy very rigidly. The court left no doubt as to the fact that proportionality and public policy are two distinct concepts that do not derive from one another.

The Al-Kharafi final judgment was welcomed by investors arbitrating or seeking enforcement in Egypt, as it greatly narrows the scope of interpretation of the public policy exception.[41] Nonetheless, the outcome of this case may seem to be somehow in conflict with the previous pronouncements of Egyptian courts. Especially regarding the estimation of financial compensation due, they now seem to be rather lenient towards the nominal amount of damages, although there is no indication that interest rates above the statutory limit will become seen as acceptable for enforcement. From an investor's perspective, this discrepancy may appear unjustified: depending on the specifics of an arbitral ruling, they may or may not be entitled to receive the full financial compensation awarded. However, from the perspective of the Egyptian State, the distinction becomes more understandable. The reluctance to permit higher interest rates reflects an effort to maintain equitable treatment for both domestic debtors – who are bound by statutory limits – and international ones, further reinforced by Islamic law's traditionally apprehensive attitude towards interest rates.

1.2. Shifting (certain) tides in award enforcement

Notwithstanding the appraisal presented above, shortly after the *Al-Kharafi* judgment the Egyptian Court of Cassation took a much more interventionist approach to the public policy exception. The case in question was initiated by Damietta International Port Company SAE (DIPCO) against the Damietta Port Authority (DPA), the public agency in charge of Damietta port administration.[42] The dispute revolved around the DPA's unilateral annulment of a concession agreement in 2015. The case was submitted to the CRCICA under ICC Rules. The tribunal considered the termination of the concession agreement unlawful and ordered the DPA to pay almost USD 500 million in compensation to DIPCO. The DPA sought an annulment of the arbitral award, which was initially not granted by the Cairo Court of Appeal; the case was then brought before the Court of Cassation. The court reasoned that the licence agreement is related to the activity of a public service

[41] I. Shehata, A. Rasekh, K. Duggal, *All's Well That Ends Well? Looking at the Future of the Unified Arab Agreement in Light of the Al-Kharafi v Libya Decisions by the Egyptian Courts*, 37(3) ICSID Review – Foreign Investment Law Journal 654 (2022), p. 671.

[42] Although the arbitration was conducted under the ICC Rules, it should be noted that the enforcement was correctly conducted solely under the EAL, as the "arbitration rules" dictating the shape of arbitral proceedings are not synonymous with the "applicable procedural law" and cannot justify applying the New York Convention – *see* Mahmoud, *supra* note 36.

(a terminal in a port), for which the administration (DPA) had adopted the method of public law in granting a licence to establish and operate a container terminal on state-owned land; therefore, it is considered a contract of public works and public utility. As such, it is an administrative contract in nature and confers to the administrative authority powers relating to public policy. Due to the administrative nature of that contract, only state courts could adjudicate on the validity of the annulment, and, by deciding the case in their stead, the tribunal had violated Egyptian public policy, as the contract could not be subject to the tribunal's jurisdiction. Therefore, pursuant to Art. 53(2) of the Egyptian Arbitration Law, the award was set aside.

The EAL, quite contrary to the Court's pronouncement, does allow for arbitration between public and private entities – in its very first article.[43] The only additional requirement for administrative contracts is an *a priori* approval of the arbitration agreement granted by the public authority competent to conclude a contract in question. There is no clear trend in the Arab region to regulate administrative contracts. In certain jurisdictions, such as Kuwait,[44] a debate on the nature and arbitrability of administrative contracts has been ongoing for some time now, while others – for example, Saudi Arabia – allow this conditionally.[45] While this suggests that there is no preferred type of regulations from the states' perspective, it should be noted that the universal arbitrability of administrative contracts would be beneficial for potential investors.

Notwithstanding the EAL, by considering the annulment, the Egyptian judiciary clearly drew a line separating contracts of private and administrative natures (as a side note, saving the state from paying billions of Egyptian pounds in damages[46]) and insisted that they are not arbitrable disputes. Contrary to the *Al-Kharafi* judgment, this decision did not spark enthusiasm among investors, as its expansion

[43] *See* Art. 1 EAL (translated by the author): "Without prejudice to the provisions of international agreements in force in the Arab Republic of Egypt, the provisions of this law [the EAL] apply to every arbitration between public-law or private-law persons, regardless of the nature of the legal relationship around which the dispute revolves, if this arbitration is conducted in Egypt or is an international commercial arbitration conducted abroad and its parties agreed to subject it to the provisions of this law.

Regarding administrative contract disputes, the agreement to arbitrate shall be made with the approval of the competent minister or whomever assumes his jurisdiction with respect to public legal persons, and it is not permissible to delegate this."

[44] K. Alhamidah, *Administrative Contracts and Arbitration, in Light of the Kuwaiti Law of Judicial Arbitration No. 11 of 1995*, 21 Arab Law Quarterly 35 (2007).

[45] H.S. Alhussein, Z. Meskic, A. Al-Rushoud, *Sustainability and Challenges of Arbitration in Administrative Contracts: The Concept and Approach in Saudi and Comparative Law*, 8 Special Issue: International Conference on Legal, Socio-economic Issues and Sustainability 1 (2023), p. 14.

[46] *See e.g.* a press release from the DPA's counsel: *A Historic Ruling That Saves the Egyptian Government an Estimated EGP 8 Billion in Settlements*, Sarie El-Din and Partners, 11 July 2021, available at: http://www.sarieldin.com/news/press-release/sarie-eldin-partners-historic-ruling-saves-egyptian-government-estimated-egp-8 (accessed 30 June 2025).

of the public policy exception onto a whole category of contracts has significantly limited the impact that international arbitration may have on settling disputes with Egyptian public entities.[47]

In the rich history of enforcement decisions rendered by the Egyptian judiciary to date, the public policy exception has been interpreted rather narrowly. This jurisprudential direction has fostered an environment that is favourable to both commercial and investment arbitration, seated both outside Egypt and within its territory. As the courts were not eager to annul awards on the vague and undefined grounds of public policy, those interested in conducting business linked to the Egyptian State anticipated fair and effective dispute resolution, which presumably increased their willingness to participate in the Egyptian economy. The case law remained cohesive and allowed parties to effectively plan litigation strategy and predict the outcome of enforcement proceedings. The courts seemed to adhere to the principles of alternative dispute resolution, including their determination to uphold the award, even if in a slightly modified shape. Therefore, among identifiable patterns in recognition and enforcement of arbitral awards, there is a strong inclination towards ensuring the implementation of the award, even if part of it must be overturned due to noncompliance with domestic law. However, recent developments signal that the courts are also taking up an active role in protecting Egyptian public assets and the interests of state-owned entities. The judges in *DIPCO* rejected the entirety of an award rendered after lengthy arbitration proceedings in order to protect public funds by denying arbitrability to a whole group of contracts: administrative ones. This decision suggests that the Egyptian judiciary may become rather interventionist when certain public values are at stake. It might also become the basis for further interventionist decisions, potentially making any disputes between private entities and Egyptian public companies or authorities non-arbitrable under the cover of "administrative contracts". In such case, the mutual understanding of a shared objective would be called into question, as the roles of the judiciary and arbitrators would diverge significantly, with the former leaning more towards safeguarding the state and the latter traditionally favouring the private party.

[47] D. Baizeau, A. Barrier, B. Rigaudeau, *Assessment Report on Arbitration Centre in Egypt (CRCICA)*, African Development Bank, Abidjan: 2022, p. 34, available at: https://www.afdb.org/sites/default/files/2023/01/24/2022_report_on_arbitration_centre_crcica_published.pdf (accessed 30 June 2025).

2. THE INFLUENCE OF ISLAMIC HERITAGE ON AWARD ENFORCEMENT IN SAUDI ARABIA

The Kingdom of Saudi Arabia, the birthplace of Islam, takes pride in its long-standing tradition of arbitration, dating back to early Islamic, or even pre-Islamic times. Sharia strongly promotes this alternative method of settling disputes, as even the Qur'an mentions it,[48] and its traces are also visible in the Riyadh Convention, which lists contradictions to Islamic law as grounds for refusing to recognise a judgment.[49]

To this day, Islamic law has influenced the legal system of the Gulf Cooperation Council countries, including Saudi Arabia, which is evident in an explicit reference to Sharia in the Kingdom's Basic Law on Governance.[50] Although the Kingdom is a Contracting Party to the New York Convention, ratified in 1994, the Saudi Arabian courts seem reluctant to reference that treaty in their judgments and or adhere to arbitration principles, as with several of their GCC counterparts.[51] This might be seen in a negative light by potential investors interested in conducting business and arbitrating commercial disputes in this state, since it comes across as incohesive in its application of international obligations, creating an atmosphere of uncertainty for business arbitration. The Saudi Arbitration Law (SAL)[52] is predominantly based on the UNICTIRAL Model Law, though it also contains reference to Sharia in Arts. 25 and 55(2)(B). That reference, when combined with the public policy exception – also understood to be closely tied with Islamic principles[53] – means that a lack of compliance with specific religious requirements might result in refusal of enforcement in this jurisdiction.[54]

Alongside the most important Islamic rules relating to commerce and business activity, there are the strict approach to observing private contracts[55] and the

[48] M.T.-D. Al-Hilālī, M.M. Khān, *Interpretation of the Meanings of the Noble Qur'ān in the English Language*, Darussalam, Riyadh: 1995, p. 172. Qur'an 4:35. For more Islam-based context, *see also* S. Al-Ammari, A.T. Martin, *Arbitration in the Kingdom of Saudi Arabia*, 30 Arbitration International 387 (2014), p. 388.

[49] Arts. 30(a) and 37(e).

[50] Equivalent to the constitution – Basic Law on Governance [1412 AH, 1992 AD], Art. 8.

[51] R.M. Seyadi, *Understanding the Jurisprudence of the Arab Gulf States National Courts on the Implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 12 International Review of Law 1 (2017), p. 11.

[52] Royal Decree no. M/34 concerning the approval of the Law of Arbitration [1433 AH, 2012 AD], Art. 2.

[53] Al-Ammari, Martin, *supra* note 48, p. 390.

[54] A.Q. Farah, R.M. Hattab, *The Application of Sharī'ah Finance Rules in International Commercial Arbitration*, 16 Utrecht Law Review 117 (2020), p. 137.

[55] J.A. Mohammed, *Business Precepts of Islam: The Lawful and Unlawful Business Transactions According to Shariah*, in: C. Luetge (ed.), *Handbook of the Philosophical Foundations of Business Ethics*, Springer, Dordrecht: 2013, p. 889.

prohibition of abusive interest (a described in section 2).[56] Unclear or speculative wording of the rights and obligations stemming from an agreement (*ǧirār*) are also forbidden, since they are perceived as being linked to gambling, which is also condemned in Sharia.[57] It has also been documented that Saudi Arabian courts tend to adopt a restrictive approach to potential damages (*lucrum cessans*) and awarding additional compensation thereto, as these are seen as speculative and unearned.[58] Thus, the main features responsible for the distinction between Islamic arbitration and secular arbitration are related to substantial matters. Procedural provisions of due process are rather similarly interpreted in both Sharia and international law.[59] As such, they do not threaten the enforcement capability of an award.

2.1. Where religion and arbitration meet

The first codified attempt at regulating arbitral award enforcement in Saudi Arabia took place in the 1980s, with the introduction of the first arbitration regulations[60] ("old Arbitration Law", which was not replaced until 30 years later, in 2012). The main characteristics of the old regime included the possibility of reviewing the merits of the award to ensure its compliance with national legislation, including the religion-inspired provisions. Under the old Arbitration Law, the Board of Grievances[61] – an organ responsible for recognising awards – would use its competence to ensure conformity with Sharia to reverse certain awards.[62] Thus, upon Saudi Arabia's accession to the New York Convention in 1994, the jurisdiction was perceived as being notably hostile toward the enforcement of foreign arbitral awards.[63]

In the dispute between Jadawel International (Saudi Arabia) and Emaar Properties PJSC (UAE),[64] the Board of Grievances conducted an extensive, interventionist review of the commercial arbitration award issued by a tribunal constituted under

[56] Al-Ammari, Martin, *supra* note 48, p. 406.

[57] P. Sloane, *The Status of Islamic Law in the Modern Commercial World*, 22 The International Lawyer 743 (1988), p. 745.

[58] Al-Ammari, Martin, *supra* note 48, p. 406.

[59] Seyadi, *supra* note 51, p. 191.

[60] Royal Decree no. M/46 [1403 AH, 1983 AD].

[61] In Arabic: *Dīwān al-Maẓālim* (ديوان المظالم).

[62] Al-Ammari, Martin, *supra* note 48, p. 402.

[63] K. Roy, *The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?*, 18 Fordham International Law Journal 920 (1994), p. 922.

[64] The dispute commenced in 2004 before the Board of Grievances, then it was referred for arbitration in 2006. The ICC issued the award in 2008, and the Board of Grievances issued its final decision in 2009. *Jadawel International (Saudi Arabia) vs. Emaar Property PJSC (UAE)* [2009], Board of Grievances, award not made public. For the details of the case, *see e.g.* Aleisa, *supra* note 11, p. 140; A. Alajlan, A. Mikel, *The Baker McKenzie International Arbitration Yearbook. Saudi Arabia 2017*, Baker McKenzie, Riyadh: 2017, available at: https://www.globalarbitrationnews.com/wp-content/uploads/sites/42/2017/06/Saudi-Arabia.pdf (accessed 30 June 2025).

ICC Rules. The case concerned a dispute that arose from an alleged breach of contract by Emaar Properties (a company working on a construction project). In the aftermath, the claim of almost USD 1.2 billion was dismissed and Jadawel was ordered to pay the costs of arbitration, but when Emaar Properties turned to the Board of Grievances for enforcement of that payment from the Saudi Arabian's company assets, the Board conducted a review so far-reaching that it resulted in the complete overturn of the award and a ruling in favour of Jadawel, not only in terms of costs but also damages (USD 250 million). Unfortunately, the proceedings were not public, and scant information is available on the matter. There is no doubt, however, that it sparked regionwide controversies and concerns as to the certainty of arbitration awards in Saudi Arabia.[65] Indeed, a pronouncement of a rather straightforward nature, ready to be enforced in full, was completely and unexpectedly reversed, in a move shaped by Sharia in matters of arbitration. This very negatively impacted the business dispute resolution system in the Kingdom, causing uncertainty in enforcement proceedings.[66]

It was not uncommon, however, for the Board of Grievances to influence the final award (thus also causing significant delays), as it was fully responsible for ensuring awards' compatibility with Islamic principles, which frequently conflict with contemporary global commerce. Under the old Arbitration Law, judges were able to influence the outcome of arbitration proceedings, often conducting a full retrial (as in the *Jadawel* case) or pushing for re-litigation within the domestic judicial system.[67] When the final decision of the Board was issued in the *Jadawel* case, some voiced the need to further inspect considerations of Sharia in order to better understand and respect its requirements and to further foster economic cooperation between Muslim-majority states and the rest of the world.[68]

2.2. New law, old doubts

The religious references in the legislation of the Kingdom strongly influence the enforcement agenda of Saudi Arabian courts, even though its new regulations, introduced in 2012, are considered some of the most modern and suited to the standards of the New York Convention among Gulf States.[69] They clearly were inspired by the UNCITRAL Model Law on International Commercial Arbitration and designed to facilitate the enforcement of both domestic and international awards. It nonetheless contains provisions which facilitate the special place of Sharia

[65] Alajlan, Mikel, *supra* note 64, p. 371.

[66] *Ibidem*, p. 372.

[67] Al-Ammari, Martin, *supra* note 48, p. 389.

[68] *International Commercial Arbitration in the Deserts of Arabia*, Association for International Arbitration, October 2009, p. 3, available at: https://www.arbitration-adr.org/documents/?i=62 (accessed 30 June 2025).

[69] Seyadi, *supra* note 51, pp. 162, 204.

in the Saudi Arabian legal system, e.g. requiring arbitrators to hold a degree in law (general) or Sharia. However, some adjustments have been made; for example, there is no reference as to the gender of the arbitrator (although the Hanbali maḏhab allows only men to be arbitrators), which suggests that the new law does allow women to serve as arbitrators,[70] thus removing a possible obstacle to enforcement within the Saudi jurisdiction.

The enforcement of a foreign arbitral award has been simplified, with only three grounds for annulment: conflict with any prior judgment or decision of the court; violation of principles of Sharia or the public policy of the Kingdom; and lack of proper notification to the party against whom it will be enforced. That act is supplemented by the Saudi Enforcement Law[71] (in force since 2013), which established special enforcement courts (in lieu of the Board of Grievances). It also provides for more specific requirements for the enforcement of foreign judgments: the tribunal (or court) that made the award is competent to do so (and the Saudi judiciary is not); the parties were properly represented; the judgment is final and not inconsistent with prior Saudi court rulings; and it does not violate national public policy or Sharia. The Board of Grievances has been stripped of its competence to assess awards, and that role was taken over by the Enforcement Department of General Courts.[72] An appellate mechanism has also been introduced, as the decisions of enforcement judges may be challenged. Although the new legislation aims to promote arbitration, especially with international partners, it remains complicated and troublesome, with two-tier proceedings, first to recognise (under the Saudi Arbitration Law) and then enforce (under the Enforcement Law) the award.[73]

The changes in the legislative approach towards enforcement have been welcomed by commentators and generally assessed positively, even though the reform has been scrutinised for allowing a wide interpretation of the public policy exception.[74] It is predicted that the changes should further foster the popularity of arbitration in the Kingdom, which could contribute positively to enhancing the economy.

To date, there has been little record of landmark enforcement cases under the new legislation. A few publications contain mentions of recent disputes, one of them being Etihad Etisalat ("Mobily") versus Mobile Telecommunication Company

[70] F. Nesheiwat, A. Al-Khasawneh, *The 2012 Saudi Arbitration Law: A Comparative Examination of the Law and Its Effect on Arbitration in Saudi Arabia*, 13 Santa Clara Journal of International Law 443 (2015).

[71] Royal Decree No. M/53 [1433 AH, 2012 AD].

[72] Aleisa, *supra* note 11, p. 30.

[73] Al-Ammari, Martin, *supra* note 48, p. 405.

[74] A. Saleem, *A Critical Study on How the Saudi Arbitration Code Could Be Improved and on Overcoming the Issues of Enforcing Foreign Awards in the Country as a Signatory State to the New York Convention*, SSRN, 14 May 2012, p. 12, available at: https://papers.ssrn.com/abstract=2315728 (accessed 30 June 2025).

Saudi Arabia ("Zain").[75] This case is an example of the effectiveness of the new Saudi Arbitration Law, which does not allow for review on the merits of the case. The dispute revolved around a service agreement from 2008 between these two companies, and it was resolved through arbitration in favour of Mobily, although the compensation awarded amounted only to about 10% of the original claim.[76] Both the claimant and the respondent chose not to seek annulment – a move believed to have been motivated by changes in Saudi enforcement regulations,[77] which by 2014 had already precluded the review of awards as to their merits.

Thus, based on the current statutory framework and the outcome of the Etihad case, it appears that the interaction between arbitrators and judges in Saudi Arabia is now focussed predominantly on procedural issues and, secondarily, on matters concerning Sharia compliance. This should not be perceived as a negative development. In the case of enforcing arbitral awards, limiting potential judicial activism may facilitate the creation of a more stable – and thus more attractive – business environment. On the other hand, there is still much space remaining for the judiciary to engage in a conversation on public policy in this context,[78] which may also damage enforcement practice in the state, as demonstrated in the previous section. It is yet to be determined whether awards which are partially non-compliant with Sharia may be refused recognition in their entirety.[79]

When making an arbitral award enforceable in the Kingdom of Saudi Arabia, tribunals must beware of the special requirements of Islamic Sharia, or the litigators must be prepared to strategise the litigation,[80] to ensure compliance with domestic law and Saudi public policy. Otherwise, the implementation of the award will be hindered. The new Arbitration Law, in contrast to its predecessor, leaves rather limited room for judicial review of the merits of an award, only to the extent justifiable by the state's public policy, which seems to be undergoing a thorough redefinition, aimed at balancing the requirements of globalised markets and Islamic legal tradition. Further judgments of enforcement courts should shed more light on the intricacies of Sharia in arbitration, as the judges have a difficult task ahead of them: to explain the content of Islamic law and indicate how future awards should be drafted so as to ensure their swift and effective implementation. On the

[75] Alajlan, Mikel, *supra* note 64, p. 265.

[76] A. White, *Zain / Mobily Arbitration Panel Judgement Rejects 90% of Mobily's SAR2.2 Billion Claim*, LinkedIn, 14 November 2016, available at: https://www.linkedin.com/pulse/zain-mobily-arbitration-panel-judgement-rejects-90-mobilys-white/ (accessed 30 June 2025).

[77] Alajlan, Mikel, *supra* note 64, p. 3.

[78] Aleisa, *supra* note 11, p. 201.

[79] Al-Ammari, Martin, *supra* note 48, p. 407.

[80] Nesheiwat, Al-Khasawneh, *supra* note 70, p. 464.

other hand, it is also the arbitration tribunals' responsibility to issue an award that is enforceable in Saudi Arabia's jurisdiction.

3. IRAQ: WHAT MAY ACCESSION TO THE NEW YORK CONVENTION BRING?

Iraq's jurisprudence on the enforcement of arbitral awards used to be the primary example of legislation that is ill-equipped to accommodate alternative dispute resolution, in both domestic and international settings. Iraqi law does not contain separate provisions for the enforcement of international arbitral awards.[81] Instead, courts apply the Code of Civil Procedure, which allows them to thoroughly review the merits of each award.[82] Before its recent accession to the New York Convention in 2021, the courts strictly and narrowly interpreted the national code, confirming their stern stance on a rather case-by-case basis, even though Iraq is a civil-law state, in which court judgments do not have the power of precedence.[83] This clear favouritism of domestic law was observable even though Iraq is also party to several recognition and enforcement agreements at the regional level, concluded mostly with its Arab counterparts.[84]

3.1. Dealing with arbitral awards pre-ratification

The early days of arbitral award enforcement in modern Iraq were rather uncertain. For example, in the judgment of the Federal Court of Cassation no. 162 of 2012,[85] the court expressly refused to implement an international arbitral award[86] based on Iraqi law on the recognition of foreign judgments, stating that the international arbitral awards do not fall within the scope of those regulations. In the text of the judgment, it differentiated between decisions of foreign courts and awards of arbitration tribunals, emphasising that international arbitral awards should be implemented based on the Code of Civil Procedures, in the same manner as domestic arbitration awards. A year later,[87] that same court also confirmed that the

[81] H.A. Mohammed, N.H. Dahlan, Y. Yusuff, *Legal Issues in the Laws Governing the Enforcement of Foreign Arbitration Awards in Petroleum Disputes in Iraq*, 8 BiLD Law Journal 168 (2023), p. 170.

[82] The applicability of this act is sometimes disputed. *See* F.A.H. Al-Khafaji, H.F.A. Al-Hasoon, *The Concept of Arbitral Award and the Enforcement of Arbitration Awards in the Republic of Iraq*, 17 PalArch's Journal of Archaeology of Egypt/Egyptology 8208 (2020).

[83] Mohammed, Dahlan, Yusuff, *supra* note 81, p. 169.

[84] Al-Khafaji, Al-Hasoon *supra* note 82, p. 8221.

[85] Case 162 [2012], Federal Court of Cassation of Iraq.

[86] Issued by the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania.

[87] Case 108 [2013], Federal Court of Cassation of Iraq.

Iraqi Foreign Judgments Enforcement Act[88] was not applicable to international arbitral awards.

By applying the Code of Civil Procedure, judges are bound to conduct a review of both the procedural and substantive aspects of arbitral awards. Indeed, in the past, Iraqi courts did perform such reviews. For example, in the judgment of the Federal Court of Cassation no. 293 of 2008,[89] the court examined the arbitration process and challenged the arbitrators' assessment of the merits of the case, pointing out that the tribunal allowed as evidence an invalid expert opinion, and the dissenting arbitrator did not provide reasons for their *votum separatum*. As a result, the award was returned to the tribunal. However, Civil Procedure Law[90] also equips the judge with powers to overturn an award and decide on its merits. The Iraqi Federal Court of Cassation did return several judgments to the competent Courts of Appeal to decide on the case in lieu of the tribunal, deeming the arbitrators failure to abide by relevant law a condition that prevented them from amending the ruling.[91] Of course, the reluctance to enforce certain arbitral awards should not imply that Iraqi courts are generally hostile towards alternative dispute resolution systems; on the contrary, they sometimes expressly refer the parties to arbitration.[92] Especially in investment disputes, Iraqi Federal Investment Law allows the parties to engage in arbitration under both Iraqi law and international systems.[93]

There is a noticeable lack of referencing of international law in Iraqi judicial decisions, as the jurisprudential culture of the state does not involve any extensive referencing of international acts.[94] Therefore, enforcement of arbitral awards has been governed strictly by local legislation. In theory, Iraq's international commitments are binding in their original form, as they should be published in the Official Gazette, just as any other laws. However, the international legal order might be seen as competing with Iraqi domestic law and Islamic principles.[95] Therefore, the trend of refusing to recognize awards when arbitrators do not comply with domestic Iraqi law continued at least until the ratification of the New York Convention, with the last ruling being issued in 2021 by the Federal Court of Cassation.[96]

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[88] Law No. 40 on Enforcement [1980].

[89] Case 185 [2008], Federal Court of Cassation of Iraq.

[90] Civil Procedure Law No. 83 [1969].

[91] *See e.g.* Cases 185 [2008], 103 [2007] or 2517 [2019], Federal Court of Cassation of Iraq.

[92] Case 928 [2016], Federal Court of Cassation of Iraq.

[93] S. Shubber, *The Law of Investment in Iraq*, Brill, Boston: 2009, p. 140.

[94] H. A. Hamoudi, *International Law and Iraqi Courts*, in: A. Nollkaemper, C. Ryngaert, E. Kristjansdottir (eds.), *International Law in Domestic Courts: Rule of Law Reform in Post-Conflict States*, Intersentia, Cambridge: 2012, p. 120.

[95] *Ibidem,* pp. 111, 120.

[96] Case 371 [2021], Federal Court of Cassation of Iraq.

3.2. Navigating the post-accession arbitration landscape

Iraq ratified the New York Convention on 31 May 2021. The accession was subject to three main reservations: the principles of reciprocity, non-retroactivity and application only to disputes deemed commercial under Iraqi law.[97] This was implemented into the Iraqi system via publication in the Official Gazette. Hence, from a purely theoretical standpoint, there are no more barriers in applying the text of the Convention directly to enforcement cases brought before Iraqi courts. In the case of a conflict with the Civil Procedure Law, it could be argued that the international agreement constitutes law that is more specific and temporarily supersedes the strict, invasive provisions of municipal law; however, the extent to which this reasoning will be applied is yet to be determined.

So far, the research on post-ratification arbitration has not been satisfactory; the cases are scarce, and official Iraqi case law search engines do not provide many results. For the purposes of this study, the official Iraqi Federal Supreme Court case-law database[98] was searched for records of arbitration award enforcement proceedings. Searches with keywords such as "international arbitration", "arbitration", "New York Convention" and "Enforcement of Arbitral Awards" returned no results. Due to the lack of available detailed court records, the assessment of the judicial approach towards arbitral awards post-accession has so far proven difficult, since no cases have been awarded sufficient media coverage to provide the required legal insights.

Despite the discouraging context, the accession might be the turning point for certain legal issues, especially those related to the precedence of international law on the review of awards. In this case – unlike in Saudi Arabia – arbitrators cannot do much to foster the swifter and smoother enforcement of awards. Domestic tribunals, somehow by default, pay attention to relevant local provisions; usually, the arbitrators are already familiar with them, being practitioners based in the seat of arbitration. However, in the case of arbitration on an international level, it seems less likely that arbitrators could be instructed to decide on a case based on Iraqi law, as they are also bound by the relevant international procedural rules and contract law. Thus, their ability to successfully shape awards to ensure their enforceability in Iraqi territory is rather limited, and the space for engaging with local judges is limited. Additionally, reforming domestic legislation – especially excluding arbitration provisions from the Civil Procedure Law and implementing a separate arbitration

[97] As a side note, it should be mentioned that, according to Mohammed et al., the commercial reservation prevents the application of the Convention to petroleum disputes, which only further negatively impacts the arbitration environment in this state. *See* H.A. Mohammed, N.H. Dahlan, Y. Isa, *The Possibility of Applying the New York Convention to Recognise and Enforce the Foreign Arbitration Awards in Petroleum Disputes in Iraq*, 17(6) Revista de Gestão Social e Ambiental 1 (2023).

[98] *Iraq Federal Supreme Court case-law database*, Iraq Federal Supreme Court, available at https://www.iraqfsc.iq/ethadai.php (accessed 30 June 2025).

law, such as similar acts in the region based on the UNCITRAL Model Law – could further promote the efficient enforcement of arbitral awards in this jurisdiction.[99]

CONCLUSIONS

The Arab region, although it strives to be arbitration-friendly, has not mastered conclusive interactions between tribunals and courts, with the former often disregarding relevant national legislation, especially religion-based provisions, and the latter often ignoring existing international instruments. That being said, positive patterns have been observed, such as the similar understanding of the aims and objectives of arbitration or the recognition of its role in promoting business.

The approaches towards the enforcement of arbitral awards are subjected predominantly to domestic public policy, which is rooted in a legal tradition based on, inter alia, Islam. Although that foundation may seem universal, the various interpretations of Islamic law and the degree to which it is incorporated into a given legal system contribute to a rather fragmented image of the Muslim-majority states. Some of them transposed Islamic principles into the general understanding of justice, as happens to be the case in Egypt; others rely only on Sharia, which gives rise to specific requirements that international actors must fulfil in order to successfully enforce an award, as is the case in Saudi Arabia; still other jurisdictions, such as Iraq, safeguard their legal tradition by relying solely on domestic law, which may hinder the effective implementation of international obligations.

Egyptian courts recognise the New York Convention as a key enforcement framework while proactively safeguarding state assets. The courts and tribunals share common values, seeking to make alternative dispute resolution methods more effective, as long as they remain in line with domestic public policy. However, recent anti-arbitration tendencies may jeopardise this progress, if they continue evolving in the rather interventionist direction.

In Saudi Arabia, arbitral award enforcement depends heavily on compliance with Islamic commercial law, which constitutes the basis of the state's public policy. Sharia requirements limit judges' ability to implement awards if they contradict the Islamic understanding of justice. Saudi legislation stems from a legal system that might be unknown to international arbitrators, and as such they are required to scrutinise Islamic commercial principles in order to frame their verdicts in ways that will be acceptable to national courts.

Iraq's approach to arbitration remains judiciary-centric, with enforcement of arbitral awards being inconsistent and strictly bound by domestic law. Despite

[99] Mohammed, Dahlan & Yusuff, *supra* note 81.

joining the New York Convention over three years ago, there is little evidence of tribunals achieving parity with domestic courts, hindering the adoption of alternative dispute resolution mechanisms.

As such, there is no unified approach to the enforcement of international arbitration awards in the region. However, there are certain patterns that should be taken into consideration by parties seeking enforcement in states rooted in the Islamic legal tradition, revolving around the understanding of conducting fair business. Sharia is a complete legal system, and as such the knowledge of its requirements in commercial transactions is essential to successfully implement arbitral awards in jurisdictions following this system.