
Legal Issues in the Laws Governing the Enforcement of Foreign Arbitration Awards in Petroleum Disputes in Iraq

¹Haitham Abdulwahhab Mohammed, ²Nuarrual Hilal bin Md Dahlan, & ³Yusramizza Binti Md Isa @ Yusuff

^{1, 2, 3}, School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia

School of Law, Universiti Utara Malaysia, Sintok, Kedah, Malaysia

Email: ¹ haitham.albaqer@yahoo.in, ² nuarrualhilal@uum.edu.my, ³ yusramizza@uum.edu.my

Abstract

Recognition and enforcement of international arbitration awards is the most important stage of arbitration, being one of the most important alternative methods for resolving petroleum disputes. When an arbitration award is issued, there are two ways to enforce it: The first is through voluntary (consensual) enforcement. The second is through judicial enforcement when the losing party refuses to respect the award. In order to enforce the arbitral award, the enforcement rules approved in each country shall be applied, taking into account the international conventions in this regard. Through doctrinal legal research methods, this research seeks to analyze the Iraqi laws that govern the enforcement of arbitration awards in petroleum disputes and to clarify the legal issues and challenges facing the enforcement of arbitration awards in Iraq, which are represented by the weaknesses of the Iraqi Code of Civil Procedures and the absence of a mechanism for enforcing arbitration awards in the Iraqi enforcement law and foreign court judgments, in addition to the existence of laws in force that prevent enforcement. The importance of this study lies in the necessity of developing the legal system for enforcing arbitration awards in Iraq to create a friendly environment for international arbitration, which will attract and encourage foreign petroleum investment in Iraq. Therefore, this study proposes a restructuring of the legal system for the enforcement of arbitral awards and the introduction of legislative improvements by enacting a new arbitration law, amending the Iraqi enforcement law, and repealing the law on the Protection of Funds, Interests, and Rights of Iraq from Inside and Outside Iraq.

Keywords: Arbitration in Iraq, recognition and enforcement of arbitration awards, petroleum disputes.

1- Introduction

After the arbitral tribunal issues an award for settling a petroleum dispute, the winning party will seek to enforce the award. This is done either through voluntary enforcement by the losing party or through judicial enforcement in the event that the losing party refuses to voluntarily enforce it. In the case of voluntary enforcement, which takes place through the consent of the two parties, the enforcement will be smooth and without a problem, which is the natural end of the arbitration process. In the event that the losing party refuses to enforce, the winning party will have to resort to the judiciary to impose the award. The winning party must follow specific enforcement procedures that vary from jurisdiction to jurisdiction.

Generally, the petroleum arbitration process goes through several stages, starting with the "arbitration agreement", which is subject to the substantive law usually determined by the parties to the oil contract. The second stage is the "arbitration procedures", which begins with the referral of the dispute to the arbitral tribunal and ends with the issuance of the award. This stage is subject to procedural rules usually determined by the parties. The third stage is the stage after the issuance of the award. If the losing party refuses to enforce the award voluntarily, the losing party can "challenge the award", and the challenge is subject to the law of the country of the arbitration location. The next stage is "enforcing the arbitration award", which is a procedure sought by the winning party to impose the award, done through the judiciary. This procedure is subject to the legal system for enforcement in the country in which it is to be enforced.

The legal system for enforcing arbitration awards in Iraq suffers from weakness and lack of clarity. The Iraqi Code of Civil Procedures No. 83 of 1969 (hereafter CCP) is the only law that governs arbitration in general and the enforcement of its awards. The legal provisions in CCP that govern the enforcement of arbitral awards suffer from weakness and inconsistency with modern international trends to enforce international arbitration awards. The Iraqi enforcement law No. 45 of 1980 and Iraqi enforcement of Foreign Court Judgments Law No. 30 of 1928 do not

govern the enforcement of arbitration awards. Likewise, the laws regulating the petroleum industry in Iraq do not address arbitration or the enforcement of its awards.

With regards to international conventions, Iraq joined the New York Convention on November 11, 2021, which is considered the most important convention in recognising and enforcing arbitration awards. However, upon its accession, Iraq placed a set of reservations on the scope of the application of the NY Convention, including commercial reservation, which may prevent the application of the NY Convention to petroleum disputes in Iraq. In addition to Iraq's accession to a group of other international agreements is the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention 1965), which governs the resolution of investment disputes and of which cannot be applied to petroleum disputes in Iraq because Iraqi law does not consider petroleum disputes as investment disputes. In addition, there are several bilateral arbitration agreements at the level of the Arab world such as the Riyadh Agreement and the Amman Agreement. This article focuses on analysing and studying Iraqi national laws and showing their challenges and shortcomings.

This article provides an overview of the legislative framework governing the enforcement of arbitration awards in Iraq. The first section provides an overview of the national laws governing the enforcement of arbitration awards in Iraq. The second section will discuss legal issues and challenges facing the enforcement of arbitration awards in petroleum disputes in Iraq. This article proposes a restructuring of the legal system for the enforcement of arbitral awards and the introduction of legislative improvements by enacting a new arbitration law, amending the Iraqi enforcement law, and repealing the law on the Protection of Funds, Interests, and Rights of Iraq from Inside and Outside Iraq.

2. Methodology

This article is based on the doctrinal legal research methodology. Both primary and secondary data are used. Besides that, the data were collected using the library-based approach. Specifically, the primary data were collected from Acts and Laws, whilst the secondary data were sourced from books, legal documents, and articles from journals and online resources. Both primary and secondary data were critically and analytically examined and interpreted using the content analysis approach.

3. Findings and Discussion

3.1 An Overview of the Legislative Framework Governing the Enforcement of Arbitration Awards in Iraq

Iraq is a civil law country, and Iraqi civil law is considered one of the most important laws in the country after the Constitution. It serves as the reference for many cases for which no legal text is mentioned. However, the essential features of the civil legal system are the non-binding judicial decisions of third parties, meaning that each case has its circumstances and judgment. Therefore, judicial decisions and court cases are not considered one of the primary sources of Law in Iraq and cannot be considered a reference to cases not mentioned in specific legal texts. Therefore, in cases with no legal text, the judiciary cannot rely on judicial precedents to issue the judgments; thus, the absence of the law is a real problem in countries that follow the civil law system.

In the time period following the nationalization of Iraqi oil and during the period between 1970 and 2003, Iraq issued several laws to tighten international arbitration and the enforcement of its awards. In 1973, a decision was made by the Committee of Pursuance for Oil Affairs and Implementation of Agreements, which stated that the requirement of international arbitration means to override the principle of sovereignty and diminish the value of Iraqi courts and laws. Likewise, the decision of the Iraqi Codification Bureau (later the State Consultative Council) 1978 states that international commercial arbitration may include a foreign element because it may be outside of the country and may be entrusted to foreign arbitrators who may apply foreign law either in terms of substantive rules or the rules of procedure. Consequently, the implementation of foreign arbitral awards within the Republic of Iraq would create legal and sovereign barriers, and the State Consultative Council ended up saying that it is possible to resort to arbitration. Still, with utmost care and caution, above all, the opinion of the higher authorities must be sought and agreed upon.

In addition, the law on the Protection of Funds, Interests, and Rights of Iraq from Inside and Outside Iraq No. 57 of 1990 (hereafter Law 1990) is still enforceable, confirming the inability to resort to international arbitration or enforce its awards. Article 6 of the Law 1990 states that Iraqi courts and arbitral tribunals shall not consider any action in Iraq against the Iraqi government, its institutions, companies, any governmental body or any Iraqi natural or legal person contrary to the provisions of the above. Any law or decision of any nature issued by any court, arbitral tribunal, or any other body in a foreign matter in this regard shall not be taken into account, and the relevant parties shall bear the consequences of implementing any law or decision contrary to the law 1990. Moreover, Article

8 of the law 1990 also states that any provision, law, or decision that contradicts the provisions of the Law 1990, including laws, rulings and awards issued in other countries by any party, shall not be taken into consideration. Despite that, the Iraqi legislator's view of international arbitration differed from the situation before 2003 and some laws enacted post-2003 confirm the possibility of resorting to international arbitration. These include the Iraqi Investment Law No.13 of 2006 and Iraq, Instructions for The Implementation of Government Contracts No.2 of 2014, as well as all petroleum contracts concluded by Iraq recently on the arbitration clause. The following will analyze the Iraqi national laws governing the enforcement of arbitration awards.

3.2 Iraqi Code of Civil Procedures No. 83 of 1969

Iraqi Code of Civil Procedure No. 83 of 1969 (CCP) is the only law that generally governs arbitration in Iraq, specifically Articles (251-276) of the CCP regulate arbitration in general. Articles 272 and 274 govern procedures for recognizing arbitration awards in Iraq. No legal provision in the CCP has addressed international arbitration.

To enforce the arbitration awards under the CCP, it is not possible to go directly to the enforcement departments. Instead, the award must be ratified by the civil court first where one of the parties to the dispute must apply to the Iraqi civil court to ratify the arbitral award before proceeding to its enforcement. This is stated in Article 272 (1) of the CCP, that the enforcement departments shall not enforce the arbitral awards unless approved by the civil court.

The CCP does not give enforceability to the arbitration awards. In other words, the CCP does not give "force of res judicata" to arbitral awards. This means that the Iraqi civil court has exclusive power based on Article (274) of the CCP, which states that the court can approve or revoke the arbitration award either wholly or partially. The Iraqi civil court can also send the award back to the arbitrators to amend it, or the court may resettle the dispute by itself. Many national laws give the force of res judicata to arbitration awards such as the arbitration law of the United Arab Emirates, the Syrian arbitration law, the Jordanian arbitration law, and the Saudi arbitration law.

3.3 Iraqi Enforcement of Foreign Court Judgments Law No.30 Of 1928

The Iraqi Enforcement of Foreign Court Judgments Law No. 30 of 1928 is the law that governs and organizes the provisions for enforcing the decisions of foreign courts in Iraq. The scope of this law includes the enforcement of judgments of foreign courts only, not arbitral tribunals, as Article (1) of the Iraqi Enforcement of Foreign Court Judgments Law defines (foreign judgment) as the judgment issued by a court outside Iraq. Thus, arbitration awards cannot be enforced under the Foreign Court Judgment Enforcement Law because its scope includes judgments of foreign courts only. The Iraqi judiciary confirmed this in the decision issued by the Iraqi Federal Court of Cassation No. 162 of 2012, which states that the plaintiff requested the Iraqi civil court to issue a ruling to enforce the arbitration award given by the International Commercial Arbitration Court from the Romanian Chamber of Commerce and Industry on March 23, 2010 under the Iraqi Enforcement of Foreign Court Judgments Law No. 30 of 1928, but the court found that the Enforcement of Foreign Judgments in Iraq does not govern the enforcement of international arbitration awards, only the judgments of foreign courts. Another decision of the Iraqi Court of Cassation No. 108 of 2013 confirmed the impossibility of applying the Law of Enforcement of Judgments of Foreign Courts to enforce the arbitration awards in Iraq, which stipulates that the award issued by arbitrators cannot be requested to be enforced based on the provisions of the law on the Enforcement of Foreign Judgments in Iraq, because the Iraqi Enforcement of Foreign Court Judgments Law applies to the enforcement of foreign court Judgments and does not apply to foreign arbitration awards.

3.4 Iraqi Enforcement Law No. 45 Of 1980

Iraqi Enforcement Law No. 45 of 1980 outlines how to enforce the judgments and executive documents and deliver the rights to the creditor. The scope of this Iraqi enforcement law does not include international arbitration awards where Article 3 (2) specifies the scope of application of the Iraqi enforcement Law on the enforcement judgments and foreign judgments that are enforceable in Iraq, under the Iraqi Enforcement of Foreign Court Judgments Law No. 30 of 1928, considering the provisions of international conventions in force in Iraq. Thus, the enforcement departments cannot implement international arbitration awards directly. Still, a ratification decision must be obtained from the competent Iraqi court under the mechanism indicated by the Iraqi CCP. It is worth noting that many of the national enforcement laws have included provisions that allow the enforcement of arbitration awards explicitly, as in the Palestinian enforcement law, the Saudi enforcement law, and the Kuwaiti enforcement law.

3.5 Oil and Gas Laws

As for the oil and gas laws in Iraq, these laws do not regulate the process of enforcing arbitration awards in petroleum disputes. Iraq still does not have an effective oil and gas law. Several other laws govern some oil gas sector in Iraq such as the National Petroleum Company Investment Zones Law No. 97 of 1967, the Import and Sale of Petroleum Products Law No. 9 of 2006, the Law of Private Investment in the Refining of Crude Petroleum No. 64 of 2007, and the Law of the Iraqi National Petroleum Company No.4 of 2018. It is important to note that these laws do not govern or regulate arbitration in petroleum disputes nor enforce its awards in Iraq.

3.6 Legal Issues in the Enforcement of Arbitration Awards in Oil Disputes in Iraq

The Iraqi Code of Civil Procedure No. 80 of 1969 (CCP), which governs the enforcement of arbitration awards, was enacted when Iraq sought to nationalise its oil wealth (1948-1975). Iraq's position at that time was against arbitration, and it had positions and decisions against arbitration and the enforcement of its awards. There has been no amendment to the legal provisions regulating arbitration since its enactment. The CCP underwent several amendments in 1979, 2001, and 2016, but the amendment did not include any provision regulating arbitration. Therefore, the legal provisions of the CCP that generally govern arbitration and the enforcement of its awards in Iraq are still insufficient and not compatible with the great development of arbitration systems and the enforcement of its awards worldwide.

3.6.1 The Exclusive Power of the Iraqi Court to Intervene In the Origin of the Arbitral Award

After an application is submitted to the court to certify the arbitration award, the Iraqi court has wide authority when considering the arbitration award for its approval. According to Article 274 of the CCP, the court has several powers, where the judge is to ratify the arbitration award after ascertaining that it is free of any defect, it can nullify the award in whole or in part or return it to the arbitral tribunal to issue a new award, or the court can determine the dispute again and issue a new judgment.

The decision of the Iraqi Federal Court of Cassation No. 171 of 2007 confirmed that when the Iraqi court finds the arbitration award inappropriate, the court shall use the powers conferred upon it in Article 274 of the CCP and issue a new judgment in the dispute without relying on the arbitrators' award. This was also confirmed by Iraqi Federal Court of Cassation Decision No. 103 of 2007.

Another decision issued by the Federal Court of Cassation No. 293 of 2008 affirmed the broad authority of the Iraqi Court to reject arbitration awards by Article 274 of the CCP, where the principle of judgment stipulates that if the arbitrators did not follow the procedures stipulated in the Iraqi Code of Civil Procedure, the court must invalidate the arbitrators awards and decide on the merits of the case under Article (274) of the CCP. Moreover, the decision issued by the Iraqi Federal Court of Cassation No. 2070 in 2012 entailed the dispute between one of the companies equipped with Kerosene for the Khor Al-Zubair gas power station and the South Refineries Company (an Iraqi national company operating in the oil sector) where the supplier obtained an arbitration award of compensation of USD 3.640 million, but the state-owned Company rejected to enforce the award and obtained the civil court decision to set aside the arbitral award and return the case to the civil court under provision 274 of CCP, and the Iraqi Federal Court of Cassation decision No. 2430 of 2012.

Based on the above, Article 274 can make the enforcement of arbitration awards difficult. This is because the court is granted the authority to re-evaluate the award and then issue a decision either to nullify it or return the award to the arbitral tribunal for reform according to the court's instructions, or the court can issue a new judgment to settle the dispute and cancel the arbitration award. This broad and exclusive authority of the Iraqi court is inconsistent with the primary purpose of arbitration, which is to settle the dispute and award an award away from the national judiciary.

3.6.2 Partial Arbitration Awards Cannot Be Enforced Under the Iraqi Civil Procedure Code

Before issuing the final award that resolves all the issues in the dispute before the arbitral tribunal, the arbitrators may issue an award based on their conviction or through the desire of the arbitration parties to request a decision on a particular issue that constitutes one of the components of the case. Such a decision addresses only some disputed issues and is referred to as a "partial arbitration award". This type of award is common in international arbitration. Its provisions have been regulated by many international arbitration institutions such as the ICC Rules of Arbitration and the UNCITRAL Arbitration Rules, where they are considered binding and enforceable awards.

The CCP does not recognize partial awards, requiring the award to include all aspects of the dispute referred by the parties to arbitration for settlement. The legal jurisprudence in Iraq justifies this because the arbitral tribunal derives its authority from the parties' agreement to the dispute and does not have the right to adjudicate with less or more than the dispute before it because it is not within its competence. Therefore, it is impossible to accept an arbitration award issued for the settlement of less than the dispute submitted to it or part of it because it will be outside the limits of the agreement. Therefore, the award is considered to have violated the provision of Article 273 (1) of the CCP, which identified among the cases in which arbitration awards may be challenged if it violates the agreement of the parties.

The judicial decision No. 2517 of 2019 / Appeals Panel issued by the Iraqi Federal Court of Cassation, confirmed the Iraqi judiciary's refusal to recognize partial arbitration awards, where the Court of Cassation nullified two decisions, one of which was issued by the Civil Court and the Court of Appeal to ratify an arbitration award, because the award did not cover all issues in the dispute. Therefore, this violates the legal articles related to arbitration in the Iraqi Code of Civil Procedure, so the court issued a ruling annulling the award ratification provisions by the Iraqi Civil and Appeal Court and then invalidating the arbitration award.

The Iraqi Civil Court refused to consider the request submitted by the State Organization for Marketing of Oil (SOMO), an Iraqi national oil Company, to cancel the final partial award issued in favour of a Canadian oil Company (Taurus) in the petroleum arbitration case, where the Iraqi civil court issued its judgment to reject the request to cancel the partial award because it did not include the dispute as a whole and that the request is still premature.

It is concluded that the Iraqi courts cannot enforce the partial arbitration awards issued by international arbitration institutions, which consider this type of awards to be binding and enforceable, unlike the Iraqi Law, which does not recognise these awards and considers them to violate the arbitration provisions in the CCP. This will lead to additional losses for the winning party, as sometimes partial awards serve as precautionary measures to pay larger losses, such as partial awards issued in petroleum disputes to avoid damage to the used equipment or stored materials, and thus failure to recognise will lead to large losses borne by the parties.

3.6.3 Determining a Specific Time for the Issuance of the Arbitral Award

An arbitration process may last for a long period, perhaps years. In some complex disputes such as petroleum disputes, the disputing parties cannot anticipate the time the arbitrator can resolve the dispute until a period has been established during which the arbitral tribunal will operate.

Iraqi law specifies only six months for a dispute to be resolved if the parties did not specify a time to resolve the dispute as stipulated in Article 262 (1) and (2) of the CCP, which means that the court is left with the choice of setting the period for the disputing parties. If they do not do so, the arbitral tribunal must resolve the dispute within six months from the date of the tribunal's acceptance of arbitration. If the dispute is not resolved, the award will be granted within the period specified by the disputing parties or the six months specified by law if the parties do not agree on a specific period. The disputing parties have the right to submit a request to the competent court to add a time or judgment of the dispute through the court itself, or a request to replace the arbitrators; this is stated in Article 263 of the CCP.

According to the provisions of the Egyptian, Omani, and Jordanian arbitration laws, if the parties to the dispute do not specify the arbitration duration, then it will be twelve (12) months from the date of the start of the arbitration procedures. The arbitral tribunal may extend the arbitration duration by six (6) months without referring to the competent court, even if the arbitration agreement does not authorize it. Thus, under the Egyptian, Omani, and Jordanian arbitration laws, the total arbitration duration for resolving the dispute will be eighteen (18) months, not six (6) months, as is the case in the Iraqi CCP.

Determining a specific period for resolving a dispute differs from the fast-track arbitration that is being followed recently to shorten the period for resolving a dispute and issuing the award in a relatively short time. However, fast-track arbitration applies only to disputes with small financial claims. Therefore, this type of arbitration cannot be applied to petroleum disputes which have claims amounting to millions of dollars. In addition, the six-month period is not sufficient to resolve any dispute, even ordinary disputes. A study by the London Court of International Arbitration confirms that the average time required for arbitration depends on the amount being claimed. Arbitration, of which amount ranges from USD 1-10 million, will need at least 16 months to resolve, according to the following figure.

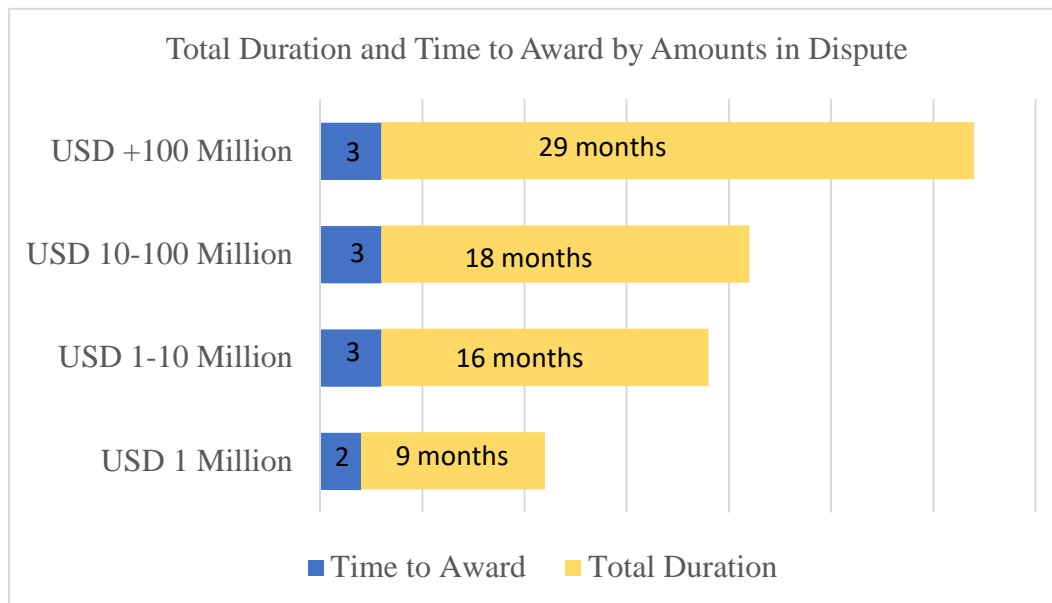


Figure 1: Total Duration and Time to Award by Amounts in Dispute

Source: This figure was done by the researcher based on the study by the London Court of International Arbitration. <https://tinyurl.com/5fwd9hxa>.

It is clear from Figure 1 that the minimum period for normal dispute resolution is nine months, which is 50% higher than the period specified in the CCP. Therefore, setting a period of six months is not sufficient to resolve petroleum disputes.

It is concluded that defining a period and time does not fit with specific types of disputes which require periods of investigation, scrutiny, assignment of experts, and hearing testimonies of witnesses, especially if one of the disputing parties is a country where communications are conducted through official channels which entail a long response time. Additionally, there is also the complexity of technical and legal issues that the arbitrators must examine. Therefore, setting six months for this will force the arbitrators to overlook many details which may be important and decisive in the case, thus later prompting one of the parties to challenge the validity of the arbitration. Determining a period for resolving disputes in the Iraqi Civil Procedures Law may be helpful in some types of local arbitration of which dispute is not complicated and does not require more than six months to resolve. However, it is unsuitable for oil disputes between Iraqi state institutions and foreign oil companies. Moreover, as stated in the UNICTRAL Expedited Arbitration Rules (2021), there is no specific period for resolving a dispute but rather a specific timetable through which delays in resolving the arbitration procedures can be avoided. In addition, the parties can agree on a specific period during which the dispute will be resolved by fast-track arbitration. Still, in all cases, its violation does not entail the challenge of the arbitral tribunal or change of the arbitral tribunal as in the Iraqi Law.

3.6.4 The Iraqi Code of Civil Procedure Application and Scope

The CCP does not distinguish between national and international arbitration. The CCP provisions do not address international arbitration in general or specify whether they apply to the enforcement of international arbitration awards. In this regard, there are two views regarding the extent to which CCP applies to international arbitration. The first view holds that the CCP does not apply to international arbitration because it does not explicitly provide for international arbitration. The second view holds that the CCP can apply to national and international arbitration because the provisions of the CCP are absolute. According to the second view, CCP can govern both national and international arbitration.

Moreover, when a case is filed before the Iraqi courts regarding international arbitration issues, the judge cannot refuse to determine the case because of the non-existence of a law governing the subject of international arbitration. Article 30 of the CCP has been considered as the judiciary's refusal to consider cases and requests because no law or the lack of clarity in the legal text will be considered a failure to do justice. Therefore, the Iraqi judiciary has no

choice but to apply the provisions of the CCP to international arbitration, even if there is no explicit text specifying the scope of its application.

Some judicial decisions in this regard also confirm that Iraqi courts have considered cases of requests for recognition and ratification of foreign arbitration awards based on the Iraqi Civil Procedures Law, such as in the decision issued by the Federal Court of Cassation No. 162 / Arbitration / 2012, where the court rejected an application submitted by the winning party for the enforcement of the arbitration award issued by the Romanian Chamber of Commerce by the provisions of the Law on Execution of Judgments of Foreign Courts. The court ruled that the enforcement of the awards must be subject to Article 272 of the CCP. The NY Convention of 1958 applies only to a foreign arbitration, that is, awards issued in a territory other than the country's territory in which recognition and enforcement are sought. Therefore, since the CCP did not specify when the awards are considered national or international, it will not be easy to know the extent of the convention application to arbitration awards in Iraq.

The importance of distinguishing between national and international arbitration lies in the law that will apply to each type of arbitration. The legal rules of national arbitration often differ from international arbitration, where national arbitration is completely subject to national law in terms of substantive and procedural rules. International arbitration is not subject to national law but rather to international arbitration rules such as international conventions and rules in international arbitration centers. On this basis, a distinction was made between domestic and international arbitration in many national arbitration laws such as that of the Saudi, Malaysian, and Indian arbitration laws. The failure of the Iraqi CCP to differentiate between national and international arbitration will subject all types of arbitration to the substantive and procedural rules in the CCP.

In terms of enforcement procedures for international arbitration awards, they must be subject to enforcement procedures which differ from domestic arbitration procedures. Often, states enact legal rules to enforce international arbitration awards that differ from domestic ones. Therefore, the absence of rules for international arbitration in the CCP and the failure to differentiate it from local arbitration is a flaw in the CCP that must be resolved. In addition, the distinction between national and international arbitration is useful in determining the extent to which international arbitration agreements apply to arbitration awards enforced in Iraq.

3.6.5 The Existence of Law on the Protection of Funds, Interests, and Rights of Iraq from Inside and Outside Iraq No. 57 of 1990 (Law 1990)

The protection of funds, interests, and rights from inside and outside Iraq Law No. 57 of 1990 (Law 1990) states that it is impossible to enforce international arbitration awards issued against the Iraqi government or one of its government institutions, including the National Petroleum companies and the Ministry of Oil, which are the parties responsible for contracting with international petroleum companies to exploit petroleum wealth. Article 6 of Law 1990 states that Iraqi courts and arbitral tribunals shall not determine any action in Iraq against the Iraqi government, its institutions, companies, governmental body, or any Iraqi natural or legal person contrary to the above provisions. Any law or decision of any nature issued by any court, arbitral tribunal, or any other body in a foreign matter in this regard shall not be enforced, and the relevant parties shall bear the consequences of implementing any law or decision contrary to Law 1990.

Under Law 1990, governments or foreign companies cannot enforce Iraqi funds belonging to the Iraqi institutions inside or outside of Iraq due to delays in implementing contractual obligations or delays in the payment of any financial dues. Based on that, Iraqi courts refrain from considering any arbitration award to be issued in this regard. This was confirmed by the Federal Court of Cassation in decision No. 189/2011. According to the decision, the request of the foreign party (a Jordanian company) against an Iraqi national institution (Al-Rasheed Bank) regarding foreign debts was rejected based on Article 5 of Law 1990, whereby no foreign company can claim the money resulting from the delay of one of the ethnic institutions in fulfilling its obligations.

The 1990 Law is an explicit and clear declaration of Iraq's anti-arbitration position in general, and against the enforcement of international arbitration awards in Iraq in particular. The 1990 Law was enacted at a time of exceptional circumstances that Iraq was going through during the first Gulf War and then the international economic sanctions (1990-2003). Iraq wanted to preserve its money from enforcement. The situation changed after 2003, and the sanctions were lifted. Iraq entered a new and different era more open to investment. Law 1990 must be reconsidered by amending or repealing it in line with Iraq's new orientations in international arbitration.

Based on the preceding, the 1990 Law in force may be an obstacle to the enforcement of international arbitration awards in Petroleum disputes in Iraq because it contains legal provisions that oppose arbitration in general and the enforcement of its awards in particular. It is issued against Iraq in any form. Law 1990 is considered an effective legislative prohibition against the enforcement of arbitral awards. The national judge may take it as a reason to refuse the enforcement of international arbitration awards in petroleum disputes. The 1990 law has become

inconsistent with Iraq's recently joined international arbitration conventions, such as the NY Convention and the ICSID Convention. Article III of the NY Convention stipulates that contracting states must recognize and enforce arbitration awards issued in foreign countries under the procedural rules in the country. It also expressly contradicts the text of provision 6 of Law 1990 which states that any law, decision, or arbitration award issued outside of Iraq against the Iraqi government or one of its national institutions due to a delay in contractual obligations or delay in payments shall not be considered. Law 1990 contradicts Article 53 (1) of the ICSID Convention, which states that all arbitration awards issued by the centre are binding on all parties, and each party must comply with and enforce them.

4. Rrecommendations

To develop the Iraqi legal system for the enforcement of international arbitration awards in Iraq and to solve the problems experienced by the enforcement of international arbitration awards in petroleum disputes related to relevant national legislation, this study proposes the following solutions:

4.1 Enaction Of A New National Arbitration Law In Iraq, Taking Into Account The Following Matters:

- [1] Abolition of Chapter Two of the Iraqi Code of Civil Procedure No. 80 of 1969 (Arbitration).
- [2] The new arbitration law must follow the modern principles of international rules, such as the UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments adopted in 2006.
- [3] The proposed arbitration law should focus on canceling the provisions contained in Article 274 of the CCP, which include giving exclusive power to the Iraqi judiciary to examine the arbitration award and the possibility of canceling it and issuing a new ruling in the dispute as this is considered one of the most important weaknesses contained in the CPP, which should not be repeated in the proposed arbitration law.
- [4] The proposed Iraqi arbitration law should differentiate between national and international arbitration as it is important to determine the law applicable for enforcing the arbitral award.
- [5] The proposed arbitration law must recognize partial arbitration awards and cancel the provisions contained in Article 273 (1) of the CCP.
- [6] The proposed arbitration law should not specify any specific period during which the dispute must be resolved, as contained in Articles 262 and 263 of the CCP. Instead, the period for resolving the dispute should be left to the circumstances of the case and according to the procedural rules determined by the parties to the dispute.

4.2 Amendment To The Iraqi Enforcement Law No. 45 Of 1980 As Follows:

- [1] Amend Article 3 of the Iraqi Enforcement Law by adding a new subsection that adds national and international arbitration awards to the scope of the Iraqi Enforcement Law.
- [2] Amend Chapter Two, Article 14 of the Iraqi Enforcement Law No. 40 of 1980, to add arbitration awards as enforceable documents in the Iraqi Enforcement departments.
- [3] Add a chapter on enforcement procedures for arbitration awards within Part Three (implementation procedures) of the Iraqi Enforcement Law No. 40 of 1980. The new chapter should include all provisions for enforcing national and international arbitration awards. In addition, the new chapter should clarify on how to enforce arbitration awards against the government or one of its institutions in a manner that does not contradict Article 62 of the Iraqi Enforcement Law.
- [4] Cancellation of the Law on the Protection of Funds, Interests, and Rights of Iraq from Inside and Outside Iraq No. 57 of 1990 (Law 1990) as it contradicts international arbitration conventions that Iraq recently joined, such as the NY Convention and the ICSID Convention.

5. Conclusion

Despite the importance of international arbitration as one of the alternative methods for resolving petroleum disputes in Iraq, the Iraqi legal system for arbitration and the enforcement of its awards still suffer from weakness and lack of clarity. Iraq relies on the Iraqi Civil Procedure Law No. 83 of 1969 (CCP). The CCP legal provisions govern the recognition and enforcement of arbitration awards. The CCP grants broad authority to the court competent to hear arbitration cases in Iraq to re-examine and evaluate the final arbitration awards. Article 274 of the CCP gives the judge the right to annul the arbitral award and issue a new ruling on the dispute.

In addition, the CCP does not recognize partial arbitration awards issued by the arbitral tribunal, as Article 273 (1) of the CCP requires the arbitral tribunal to issue an award covering all the disputes presented. Otherwise, it will be

considered to have exceeded the arbitration agreement's limits, thus leading to a non-enforcement partial arbitration award. Moreover, Article 262 (1) and (2) of the CCP set a period of six (6) months during which the arbitral tribunal must resolve the dispute. Otherwise, the parties to the dispute have the right to request for the annulment of the award. This period is short and unsuitable for resolving complex disputes, such as petroleum disputes. The CCP does not differentiate between national and international arbitrations.

The Iraqi Enforcement Law No. 45 of 1980 does not regulate the provisions for the enforcement of arbitration awards. The Iraqi Enforcement of Foreign Court Judgments Law No. 30 of 1928 does not include the enforcement of international arbitration awards in its scope, but only the rulings of foreign courts. Meanwhile, the Law on the Protection of Funds, Interests, and Rights of Iraq from Inside and Outside Iraq No. 57 of 1990 prevents the enforcement of international arbitration awards before the Iraqi courts. The weakness of the legal system for enforcing arbitration awards makes Iraq an unfriendly environment for arbitration, which constitutes one of the obstacles in attracting foreign investment in the Iraqi oil sector, i.e., the most important and largest economic sector in Iraq.

References

- [1] Anis S Mokhtar*, Nurhayo Asib, A. R. R. . R. M. A. . (2022). Development of Saponin based
- [2] Nano emulsion formulations from Phaleria macrocarpa to Control Aphis gossypii. *Journal Of Advanced Zoology*, 43(1), 43–55. Retrieved from <http://jazindia.com/index.php/jaz/article/view/113>
- [3] Faisal, H. T. ., Abid, M. K. ., & Abed, A. . (2022). Study Of Some Biochemical Parameters in
- [4] Dose During Pregnancy in Goats. *Journal Of Advanced Zoology*, 43(1), 01–06.
<https://doi.org/10.17762/jaz.v43i1.109>
- [5] Mokhtar, A. R. R. A. S. . (2022). Development Of Saponin Based Wettable Powder Formulation
- [6] from Phaleria macrocarpa To Control Pomacea maculate. *Journal Of Advanced Zoology*, 43(1), 17–31. Retrieved from <http://jazindia.com/index.php/jaz/article/view/111>
- [7] An Introduction to International Arbitration,” *Conventus Law*, April 20, 2015. Accessed January 18, 2023, <https://conventuslaw.com/report/an-introduction-to-international-arbitration/>.
- [8] Abdel Moneim Al-Jubouri, *International Commercial Arbitration...between reality and ambition under Iraqi legislation*, Iraqi Center for International Arbitration, 2018, Accessed January 18, 2023, <http://www.icacn.org/study-3172-html/>.
- Abdelaziz Khanfusi, “Procedural rules governing the issue of recognition and enforcement of arbitral awards and the necessity of appeal in the light of comparative legislation,” *Policy and law notebooks* 12, (2015):230. Accessed February 7, 2023. <https://dspace.univ-ouargla.dz/jspui/bitstream/123456789/8231/1/D1214.pdf>.
- [10] Aceris Law LLC, “International Arbitration in Kuwait,” March 15, 2021. Accessed January 18, 2023. <https://www.international-arbitration-attorney.com/international-arbitration-in-kuwait/>.
- [11] Agneskv, Difference between international and domestic arbitration in the light of various decided case laws, *Legal Serves India*, Accessed January 18, 2023, <http://www.legalservicesindia.com/article/511/Domestic-&-International-Arbitration.html>.
- [12] Ali Al-Bayati, *Maritime Commercial Arbitration - A Comparative Legal Study* (, Jordan, House of culture, publishing and distribution, 2006).
- [13] Amer Al-dulaimy, *Civil Liability of the Judge in Iraqi Legislation (A Comparative Study)*, (Master thesis, Meddle East university, Jordan, 2020), 60-66, Accessed January 18, 2023. <https://tinyurl.com/yzm3x978>.
- [14] B. Sena Gunes, “Res Judicata in International Arbitration: To What Extent Does an Arbitral Award Prevent the Re-Litigation of Issues,” 12, 6 (November 2015): 4. Accessed February 11, 2023, file:///C:/Users/MJ/Downloads/Res_Judicata_in_International_Arbitratio.pdf.
- [15] Christopher B Strong, “A general introduction to oil and gas law in Iraq,” *Lexology*, November 3 2021. Accessed January 18, 2023. <https://www.lexology.com/library/detail.aspx?g=d15b1226-227a-47fb-9662-1b9a7c9e2af5>.
- [16] Diaf Sara, “The effectiveness of the arbitration award” (Ph.D. Diss, Djilali Leabis University), 82, Accessed February 3, 2023. http://rdoc.univ-sba.dz/bitstream/123456789/3006/1/DS_SJ_DIAF_Sara.pdf.
- [17] Emmanuel Gaillard, Benjamin Siino, “Enforcement under the New York Convention” *Global Arbitration Review*, 8 June 2021, Accessed January 18, 2023, <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/2nd-edition/article/enforcement-under-the-new-york-convention>.
- [18] Fawzi Sami, "International Commercial Arbitration and its implementation in Iraq", *Journal of Legal Sciences*, 8, No.2, (1989):35.

- [19] Firas She'an and Khairul-Din Obaid, "The executive power of foreign rule", *Al muhaqqaq Alheli Journal of Legal and Political Sciences*, 1 (2009):222. Accessed January 18, 2023 <https://www.iasj.net/iasj?func=fulltext&aId=37056>. Tareq Ageel, "The Legal System of International Commercial Arbitration", *AL-Mansour Journal*, 2, No.14, (2010): 43, Accessed January 18, 2023. <https://www.iasj.net/iasj?func=article&aId=35431>.
- [20] Forqan Al-Khafaji, Ali Hussein, and Hind Faez Ahmed Al-Hasoon. "The Concept Of Arbitral Award And The Enforcement Of Arbitration Awards In The Republic Of Iraq." *PalArch's Journal of Archaeology of Egypt/Egyptology* 17, no.7 (2020): 8215, Accessed February 7, 2023. <https://www.archives.palarch.nl/index.php/jae/article/view/3597>.
- [21] Haider Abdullah, *Judicial control over arbitration in disputes related to administrative contracts: a comparative study*, (Egypt, Arab Center for Studies and Research, 2017),53.
- [22] Hammad & Al-Mehdar, "Enforcement Law in Saudi Arabia," Lexology, May 11 2022. Accessed January 18, 2023. <https://www.lexology.com/library/detail.aspx?g=7a79a329-4aa1-4b47-a69d-6ec995ba3b56>.
- [23] Hassan Kahdhum, Putting foreign judicial rulings into effect in Iraq, *Journal of the Scientific Rights Letter* 1, no.1, (2009), 97, Accessed February 11, 2023 <https://www.iasj.net/iasj/download/d7436386058b629e>.
- [24] Imad Abdullah, "Arbitration" Republic of Iraq Supreme Judicial Council, July 16, 2018, Accessed January 18, 2023, <https://www.hjc.iq/view.4425/>. And also, Hamza Haddad, *International Trade Law*, (Beirut: United House for Publishing,1980),4.
- [25] International Arab Union for International Arbitration: The Types of Arbitration, Accessed January 22, 2023, <http://www.aifa-eg.com/arbitration-types.html>.
- [26] Jesus Aguirre, "Validity of the Arbitration Agreement, Jsumundi," 25 August 2022. Accessed February 8, 2023. <https://tinyurl.com/2hdvvr3p>.
- [27] Joop Hox, and Hennie Boeije, "Data collection, primary versus secondary," *Encyclopedia of Social Measurement* 1 (2005): 593-599.
- [28] Luay Ismail, "The intentional mistake of a civil judge and its effect Between law and the judiciary", *Tikrit University Journal For Rights*, 4, no.4/2 (2020): 250, Accessed January 18, 2023. <https://www.iasj.net/iasj/article/190190>.
- [29] Mahir Jalili, "International arbitration in Iraq." *J. Int'l Arb* 4 (1987): 109, <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/jia0004&div=39&id=&page=>.
- [30] Marwa Abu Alaula, "A reading in the sources of Iraqi commercial law," Mohamah, June 9, 2018. Access February 11, 2023, <https://tinyurl.com/2zy43s6s>.
- [31] Nasif Hamid, *Judicial control over arbitrators' judgments in Iraqi law* (Baghdad: Alsabah library, 2018), 38.
- [32] Nazzini, Renato. "The Law Applicable to the Arbitration Agreement: Towards Transnational Principles." *International & Comparative Law Quarterly* 65, no.3 (2016): 681-703, Accessed February 7, 2023. <https://tinyurl.com/yfbd2xyu>.
- [33] Rana Rahdi, "The strategy of the execution judge in administrative disputes" A comparative analytical study in the light of the rulings and decisions of the administrative courts, *Journal of the College of law /Al-Nahrain University*, 23, no.1(2021):147-165. Accessed February 11, 2023. <https://www.iasj.net/iasj/download/761aa9479f41d7fe>.
- [34] Resolution No. 920 on 9/12/1973; See Najjar. Natalie, *Arbitration and International Trade in the Arab Countries*" (Brill Nijhoff, 2018), 452; See also, Razzaq Hamad, "Arbitration rules in the Iraqi legal system and international agreements" *Modern Discussion*, January 27, 2012, Access February 11, 2023, <http://www.ahewar.org/debat/show.art.asp?aid=293052&r=0>.
- [35] Rewaz Faaiq, "Oil ownership system and oil assets: a comparative study between Iraqi and American laws," *Drawmedia*, March 9, 2-22. Accessed January 18, 2023. https://drawmedia.net/ar/page_detail?smart-id=9840. Samir Saul, "Masterly inactivity as brinkmanship: The Iraq petroleum company's route to nationalization, 1958–1972," *The International History Review* 29, No.4 (2007): 746-792. Accessed February 11, 2023. <https://www.tandfonline.com/doi/pdf/10.1080/07075332.2007.9641140>.
- [36] Sarah Qadeer, "International Commercial Arbitration In Iraq- Facing Challenges (Master theses, Near East University Graduate School of Social Sciences Law Program, 2017), 35, Accessed February 8, 2023, 2022, <http://docs.neu.edu.tr/library/6518630474.pdf>.
- [37] The London Court of International Arbitration, *COSTS AND DURATION: 2013-2016* (London: LCIA, 2016)9-10, Accessed January 18, 2023, <https://tinyurl.com/5fwd9hxa>.
- [38] Yasamin Yousuf, "The impact of public order on the arbitration agreement in Iraqi law (a comparative study), (Master theses, Near East University, 2019), 30, Accessed January 18, 2023, <http://docs.neu.edu.tr/library/6814890382.pdf>.