



Zeeshan Aziz¹, Omar Khalid Omar Faisal²

¹PhD Scholar, School of International Law, Zhongnan University of Economics and Law, China & Member Young International Arbitration Council Pakistan, Email: zeeshanazizdurani@gmail.com

²LLM, School of International Law, Zhongnan University of Economics and Law, China, Email: omerkhalid668@gmail.com

KEYWORDS	ABSTRACT
International Commercial Arbitration, New York Convention, Enforcement of Arbitral Awards, Pakistan Arbitration Law, REFA 2011	International commercial arbitration has become a central mechanism for resolving cross-border commercial disputes, but its effectiveness ultimately depends on the predictability and enforceability of arbitral awards within national legal systems. This article comparatively examines the recognition and enforcement of international commercial arbitral awards in Pakistan and Iraq, using the United Kingdom as a benchmark for evaluating arbitration-friendly judicial and legislative practices. Drawing on statutory frameworks, relevant judicial decisions, international conventions, and practical enforcement considerations, the study identifies the principal legal and institutional factors affecting the effectiveness of arbitration in the three jurisdictions. The analysis finds that Pakistan has made significant progress through the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011 (REFA), particularly by incorporating the principles of the 1958 New York Convention into its enforcement framework. Nevertheless, the effectiveness of this framework is constrained by judicial delays, inconsistent application of arbitration law, institutional weaknesses, and the relatively broad use of public policy considerations. Iraq faces more fundamental structural limitations. Its arbitration regime remains embedded in Articles 251–276 of the 1969 Code of Civil and Commercial Procedure and lacks a comprehensive, modern arbitration statute. Iraq's non-membership of the New York Convention further complicates the international enforcement of arbitral awards, although the Riyadh Convention provides a limited regional mechanism for reciprocal enforcement. The comparative analysis demonstrates that the United Kingdom's pro-enforcement judicial approach, restrictive interpretation of public policy, procedural consistency, and mature arbitral institutions contribute substantially to legal certainty and investor confidence. The article argues that Pakistan should prioritize judicial consistency, institutional strengthening, and reduction of unnecessary judicial intervention, while Iraq requires comprehensive legislative modernization and closer alignment with international arbitration standards. The study concludes that predictable enforcement regimes are essential to strengthening confidence in arbitration, facilitating international commerce, and attracting foreign investment.
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Correspondence	Omar Khalid Omar Faisal
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Introduction

The ICA has become a favored method for addressing cross-border conflicts, providing parties with an impartial, efficient, and enforceable alternative to conventional litigation. The enforcement of arbitration rulings is essential to this process, as it guarantees the efficacy and integrity of the arbitration system. Pakistan has implemented unique strategies for the implementation of international commercial arbitration, influenced by its legislative frameworks, judicial perspectives, and compliance with international conventions like the New York convention 1958¹. Pakistan has made considerable progress in recent years to harmonize its arbitration framework with international standards under the Arbitration Act of 1940² and the Recognition and Enforcement of Foreign Arbitral Awards Act, 2011. This study examines the enforcement procedures of the ICA in Pakistan, emphasizing the parallels, peculiarities, and obstacles encountered in the effective execution of arbitral rulings³. This paper seeks to offer a comparative analysis of the two legal systems and their adherence to international arbitration standards by scrutinizing case law, statutory provisions, and practical enforcement experiences.

The implementation of ICA awards in Pakistan encounters substantial obstacles stemming from its legal frameworks, court practices, and governmental policies. In Pakistan, notwithstanding the alignment of the REFA, 2011, with international treaties such as the New York convention, challenges remain that impede the effective implementation of foreign arbitral rulings. This encompasses court delays, inconsistent enforcement of arbitration legislation, political or institutional intervention, and an absence of robust arbitral institutions to support and advance arbitration as a dependable means of conflict settlement⁴.

For the first time in 30 years Iraq's oil production has surpassed 3 million barrels-per-day, and the International Energy Agency believes that in less than 20 years the country will overtake Russia as the world's second largest oil exporter. Iraq also has huge gas fields and mineral deposits, as well as a rich agricultural tradition due to the fertile lands watered by the two great rivers, the Tigris and the Euphrates. Iraq is therefore not a country that can be ignored by international and regional companies, despite its ongoing political and security issues. A key concern for foreign companies when considering doing business in Iraq is whether disputes can be settled in an efficient, fair and final manner. Arbitration can satisfy these needs, and although in Iraq it has its challenges, arbitration is possible and is getting easier.

The lack of robust, independent arbitration institutions intensifies enforcement challenges, since numerous cases encounter judicial hesitance to acknowledge and execute arbitral awards due to

¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

² Mahmood, M. (2022). The Arbitration Act, 1940 (7th ed.). Al Qanoon Publishers.

³ Rafiq F, 'Whether does the New York convention 1958 still fit for the purpose in the UK and Pakistan?' (PhD thesis, University of Essex 2019).

⁴ Baig K, Mushtaq S A and uz Zaman W, 'Arbitration Agreement as a Pillar of Recognition and Enforcement of Foreign Commercial Arbitral Awards: An Exploratory Study of Pakistan and the UK' (2024) 6(1) Journal of Law Social Studies 17.

insufficient institutional backing and a deficiency of experience. Moreover, judicial independence continues to be a critical issue, as political factors frequently affect the implementation of international awards⁵. The objective is to identify deficiencies in Pakistan's arbitration framework, including the absence of recognized arbitral institutions, and to recommend improvements to enhance enforcement efficacy.

Case Study Analysis of Enforcement of International Commercial Arbitration in Pakistan

Hitachi Limited v. Rupali Polyester (1998)⁶: This case is pivotal in Pakistan's arbitration history, as it pertained to the implementation of a foreign arbitral ruling pursuant to the Arbitration (Protocol and Convention) Act, 1937. Hitachi, a Japanese corporation, pursued the execution of an award against Rupali Polyester, a Pakistani organization. The Supreme Court of Pakistan affirmed the verdict, underscoring the need for adhering to international arbitration agreements and awards. The court emphasized procedural delays and the necessity for more explicit laws to facilitate enforcement. This case highlighted the difficulties in implementing foreign verdicts under Pakistan's antiquated arbitration statutes, subsequently rectified by the REFA, 2011⁷.

Societe Generale de Surveillance S.A. v. Pakistan (2003)⁸: In this case, the Swiss firm Societe Generale de Surveillance (SGS) pursued the execution of an arbitral ruling against the Government of Pakistan pursuant to a bilateral investment treaty (BIT). The Supreme Court of Pakistan determined that the implementation of the award was contingent upon domestic public policy concerns, thus restricting its enforceability. This case underscored the conflict between international arbitration duties and domestic legal standards, eliciting worries regarding Pakistan's dedication to enforcing foreign decisions. The ruling underscored the necessity for legislative measures to synchronize Pakistan's arbitration regime with international standards⁹.

Islamic Republic of Pakistan v Broadsheet LLC (2019)¹⁰: This case pertained to the enforcement of a \$28 million arbitral award granted to Broadsheet LLC, a U.S.-based asset recovery firm, against Pakistan. The tribunal in London delivered the award according to the UK-Pakistan BIT. The UK High Court upheld the verdict, representing a major advancement in Pakistan's arbitration jurisprudence. The court's ruling exemplified Pakistan's increasing compliance with international arbitration standards as established under the REFA, 2011. The case exposed difficulties in

⁵ Justice Jawad Hassan, 'Role of Judiciary and Jurisprudence in Domestic and International Arbitration' (2018).

⁶ *Hitachi Limited v Rupali Polyester* (1998) PLD SC 161.

⁷ Rafiq F, 'Whether does the New York convention 1958 still fit for the purpose in the UK and Pakistan?' (PhD thesis, University of Essex 2019).

⁸ *Société Générale de Surveillance S.A. v Pakistan, through Secretary, Ministry of Finance, Revenue Division, Islamabad* (2002) 2002 SCMR 1694

⁹ Ullah I, *Arbitration Law of Pakistan* (Kluwer Law International 2021)

¹⁰ *Islamic Republic of Pakistan v Broadsheet LLC* [2019] EWHC 1832 (Comm) [35].

implementing substantial awards against state organizations, underscoring the necessity for more reforms to bolster investor trust¹¹.

Grounds for Refusal of Enforcement of International Commercial Arbitration Awards in Pakistan

Pakistan is a signatory to the New York convention, which establishes a framework for the recognition and enforcement of international arbitral rulings. Nevertheless, the Convention delineates particular reasons upon which enforcement may be denied.

Under the REFA of 2011 Pakistan acknowledges the subsequent bases for denying the enforcement of international arbitral awards:

Enforcement may be denied if the arbitration agreement is deemed illegal according to the governing law chosen by the parties or, in the absence of such specification, under Pakistani law. This encompasses scenarios in which one party lacked the legal capacity to engage in the agreement. Secondly, if a party did not receive adequate notice of the arbitration proceedings or was otherwise unable to submit its case, the enforcement of the judgment may be denied. This guarantees the adherence to the norms of natural justice. Thirdly, if the arbitral tribunal surpassed its jurisdiction or power by adjudicating issues outside the parameters of the arbitration agreement, the judgment may be denied execution¹². If the tribunal's composition or arbitration method deviates from the parties' agreement or the law of the arbitration seat, enforcement may be refused and If the award has not yet been binding on the parties or has been annulled or suspended by a competent authority in the jurisdiction where it was issued, enforcement may be denied.

Enforcement may be denied if it contradicts Pakistan's public policy. This is a wide-ranging and frequently contentious area, as it permits domestic courts to evaluate local legal and ethical standards. In *Societe Generale de Surveillance S.A. v. Pakistan* (2002)¹³, the Supreme Court of Pakistan used national policy to restrict the enforceability of a foreign arbitral ruling. Finally, if the subject matter of the issue cannot be resolved by arbitration under Pakistani law.

Arbitration under Iraqi Law

Iraq is a civil law system and its laws have been subject to constant and significant change in recent years. Many laws and regulations have been issued which have relaxed the legal environment and made it easier for foreigners to invest and operate in the country. Iraq has explicitly endorsed the use of arbitration by investors¹⁴, as well as the use of arbitration in relation to government

¹¹ Nasir Hussain and Yasir Arfat, Interpretation and Construction of the New York Convention in Pakistan: A Critical Study' (2022) 5(3) Pakistan Journal of International Affairs.

¹² Makarenkov O and Mesquita L V, 'Challenges of Legal Guarantees for the Enforcement of Arbitral Awards in International Commercial Cases' (2024) *Access to Justice in Eastern Europe* 107.

¹³ *Société Générale de Surveillance S.A. v Pakistan, through Secretary, Ministry of Finance, Revenue Division, Islamabad* (2002) 2002 SCMR 1694,

¹⁴ article 27 of Investment Law 2006

contracts¹⁵. The law relating to arbitration however has remained largely untouched. It does not exist as a free-standing law but can be found in articles 251 – 276 of the Code of Civil and Commercial Procedure 1969. The arbitration law is not modern and in parts is very different to the UNCITRAL Model Law on International Commercial Arbitration which is used in many countries around the world. However, provided caution is used and expert legal advice sought, it is just as possible to conduct successful arbitrations under the law as it is in other Middle Eastern countries.

Arbitration agreements must be in writing¹⁶. According to article 253 of Code of Civil and Commercial Procedure 1969 The Iraqi courts must stay a court action if an arbitration clause exists, provided the party wishing to rely on the clause makes its objection as early as possible. There are no restrictions on who may sit as an arbitrator. There are no restrictions on who may represent a party. There are no provisions allowing or forbidding a tribunal from making orders for interim measures.

According to article 262 Unless the parties agree otherwise, a tribunal has six months from accepting its appointment to render its award but there is an exception in article 263 that A party can apply to court for an extension of this time. But for the arbitration agreement of both parties otherwise, a tribunal must comply with the procedures set out in the Civil Actions Law¹⁷ (article 265). Provided the agreement is clear parties can therefore choose to apply the ICC Rules or any other arbitral rules they wish. A tribunal must give reasons for its award

Enforcement of Awards in Iraq

Most arbitral awards are either complied with or form the basis of an amicable settlement between the parties. However, there will be times when enforcement action is necessary.

A domestic Iraqi award cannot be enforced unless the supervising court approves it¹⁸. The court may decide to annul an award where, pursuant to Article 273, it is found that: The arbitral agreement was invalid. The award was not made in writing, or the tribunal acted beyond its powers. The award does not comply with the Iraqi arbitration law, or contradicts public policy (Iraqi law does not distinguish between national and international public policy). There are grounds for a retrial (such as forged evidence). There was a substantial error in the award or in any of the proceedings that might influence the validity of the award.

When deciding whether to approve or annul an award it is not the practice of the court to reopen the substantive issues. Any decision made by the court can be appealed. Iraq is one of the few countries which is not a signatory to the New York Convention. This means that enforcing an Iraqi award outside Iraq will depend on whether the country where enforcement is sought has a treaty

¹⁵ article 11 of Regulation No.1 of 2008 Regulations for Implementing Government Contracts

¹⁶ article 252 of Code of Civil and Commercial Procedure 1969

¹⁷ article 265 of Code of Civil and Commercial Procedure 1969

¹⁸ article 272 of Code of Civil and Commercial Procedure 1969

with Iraq on judicial matters; has some other special relationship; or is willing to enforce foreign awards regardless of their origin.

Within the Middle East enforcement is made easier by the fact that Iraq is a signatory to the Riyadh Convention on Judicial Cooperation 1983. This treaty specifically provides for the reciprocal enforcement of arbitral awards. One of the conditions is that the party seeking enforcement must produce a statement from the local judicial authority certifying that the award has become finally binding, which in Iraq means the award must have been approved by the Iraqi courts. The Riyadh Convention will not however assist if the party against whom enforcement is sought is an Iraqi government entity.

Parties do not have to use an arbitration centre to assist with the arbitral process, but it is recommended. In Iraq there are no restrictions on which centre can be used, so parties can choose international centers (ICC, LCIA) or regional ones (DIFC-LCIA, BCDR-AAA, CRCICA). Iraq does have two national centers: the Federation of the Chambers of Commerce Arbitration Centre and The International Commercial Arbitration Centre Najaf. Both centers will accept international as well as domestic disputes, although at present neither centre has any cases. Until these centers have a regular caseload of complex cases and a track record, it is unlikely that they will be used by non-Iraqi parties.

Comparative Analysis with UK

Historically, Pakistan's courts have liberally referenced public policy, frequently relying on domestic legal and moral principles to substantiate their rulings. Conversely, UK courts construe public policy restrictively, limiting its application to instances of egregious breaches of fundamental norms, such as fraud or corruption. This distinction underscores the UK's more stringent approach to public policy, which is consistent with its pro-enforcement position. The UK judiciary is generally perceived as favorable towards arbitration, prioritizing the enforcement of verdicts unless there are explicit and compelling justifications for refusal. Despite advancements under the REFA, 2011, Pakistan continues to encounter problems, including judicial delays and inconsistent implementation of arbitration regulations, which may impede the enforcement process¹⁹. Both nations emphasize procedural fairness, but the courts in the UK demonstrate greater consistency in preserving due process rules, guaranteeing that parties receive adequate notice and a fair opportunity to present their case. In Pakistan, procedural delays and inefficiencies can compromise the efficacy of arbitration processes. Furthermore, in instances concerning state entities, the UK's methodology is more consistent. In *Dallah Real Estate v. Pakistan* (2010), the UK Supreme Court denied enforcement due to the absence of permission from the sovereign authority, exemplifying a clear and principled stance. In Pakistan, the execution of awards against state institutions is complicated by public policy concerns and bureaucratic obstacles, presenting further barriers for parties attempting to execute such verdicts. Overall, although both states acknowledge

¹⁹ Idrees R Q, Azhar I and Baig M S R, 'The Enforcement of Foreign Arbitral Awards: A Critical Analysis' (2020) International Commercial Arbitration 11.

the significance of arbitration, the UK's more consistent and predictable legal structure contrasts with Pakistan's developing, although occasionally uneven approach.

Conclusion

The implementation of international commercial arbitration awards in Pakistan and Iraq illustrates the broader development of arbitration as a favored method for addressing cross-border disputes. As signatories to the NYC, they have developed legal frameworks to enable the recognition and enforcement of arbitral awards. Pakistan's arbitration framework, regulated by the Arbitration Act of 1940 for domestic arbitration and the REFA of 2011 for international arbitration, has encountered difficulties in conforming to global standards. Pakistan has achieved notable progress in recent years, as demonstrated by Pakistan's adoption of REFA, 2011, which signifies a constructive advancement in aligning its arbitration laws with international standards, despite existing challenges. The Act integrates the principles of the NYC and establishes a systematic method for the enforcement of foreign arbitral awards. Effective implementation of these laws necessitates ongoing judicial training, institutional reforms, and a transition to a more arbitration-oriented perspective. The experience of the UK provides important insights for Pakistan, especially regarding the reduction of judicial intervention, the narrow interpretation of public policy grounds, and the enhancement of procedural efficiency.

It is likely that as Iraq's economy grows and attracts more international businesses, the role of arbitration in the country will become more important. At present the Iraqi arbitration law is flexible enough that parties can choose any arbitral institution they wish, and can choose their arbitrators and representatives. The courts will respect arbitral agreements and have the power to assist the process if necessary (such as by appointing an arbitrator where one party fails to do so, or granting more time for the issuing of an award).

The courts do however have more powers to annul an award than would be the case under most modern arbitral laws especially those based on the UNCITRAL Model Law.

The shortcomings in Iraq's current approach to arbitration have been recognized and there are reports of a new arbitration law being drafted. It is unclear when this law will be enacted and whether it will be based on the UNCITRAL Model Law. Since the aim of the law will be to attract international trade and investment it seems likely that it will be comprehensive and robust.

Iraq's High Judicial Council has also stated that Iraq is keen to join the New York Convention. Again, it is not clear how soon this will happen, but when it does it will be a crucial step in encouraging further foreign investment into the country.

Pakistan is experiencing a trajectory of incremental enhancement. Both jurisdictions acknowledge the significance of arbitration in promoting international trade and investment; however, the UK's established legal framework and global standing provide it with a notable advantage. The ongoing reforms and recent judicial decisions in Pakistan indicate a potentially positive trajectory; however, continuous efforts are essential to foster trust and confidence among international stakeholders. By

tackling its current challenges and adopting best practices from the UK, Pakistan can enhance its status as a dependable jurisdiction for the enforcement of international commercial arbitration awards. Both Pakistan and the UK acknowledge comparable bases for denying the enforcement of international arbitral awards; however, their implementation varies considerably. The United Kingdom's pro-enforcement position, limited interpretation of public policy, and effective judicial system render it a favored jurisdiction for the enforcement of awards. Pakistan, notwithstanding recent reforms under REFA, 2011, persists in encountering difficulties in aligning its arbitration framework with international standards. Cases such as *Broadsheet LLC v. Pakistan* (2021) demonstrate positive developments, indicating that Pakistan is progressing toward a more arbitration-friendly legal framework.

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