

Iraq's Ratification of the New York Convention on Recognition and Enforcement of Foreign Arbitration Awards

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Introduction

After years of lobbying by the Iraqi legal community, including the authors of this Article, Iraq recently ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 “**New York Convention**”. The text of the New York Convention was published in the Iraqi official gazette on 31/5/2021. The Republic of Iraq officially became a member state after the accession instrument was deposited at the UN Secretary on 16 November 2021. Iraq made the following reservations on ratification of the New York Convention: (1) the New York Convention shall only apply with respect to arbitral awards issued after 31/5/2021 the date of publication of the New York Convention ratification law in the official gazette and also its coming into force date in Iraq; (2) the New York Convention shall be applied on the basis of reciprocity; and (3) the Republic of Iraq will only apply the New York Convention to differences arising out of legal contractual relationships that are considered commercial under the laws of Iraq. This article will discuss these three reservations, their effect on application of the New York Convention in Iraq, and the potential conflict with other Iraqi laws.

The New York Convention does not Apply Retroactively

Similar to 9 out of the existing 150 member states, Iraq limited application of the New York Convention to awards issued after its ratification. Even though this type of non-retroactivity reservation is not expressly contemplated in the text of the New York Convention, there is no recorded objection despite the previous nine instances. Therefore, the Iraqi reservation falls in line with the conduct of the member states so far. The intended effect of this reservation is that the New York Convention will not apply to awards issued before 31/5/2021.

Reciprocity

Article I (3) of the New York Convention allows restricting the application of the New York Convention to awards made in the territory of another contracting state. The nationality of the disputing parties is irrelevant to determining if reciprocity is satisfied. The test to determine whether the reciprocity

requirement is satisfied or not is applied between the two contracting states where the award was issued and where recognition is sought. In fact, the reciprocity reservation is common to New York Convention signatories and almost two thirds of the member states have made such reservations. Courts in other member states have found that reciprocity was met if one of the following is met:

- If there were any court decisions applying the New York Convention in the country where the award was issued whether refusing or enforcing arbitral awards;
- If there were similar cases to the one where enforcement and recognition is sought;
- If the court expects the other country's courts to enforce arbitration awards based on law and practice;
- Whether the state where the award was issued has also made a reciprocity reservation.

If Iraqi courts take this view of reciprocity, it will be possible to argue that reciprocity is assumed as long as the award is issued in another member state that maintains diplomatic relations with Iraq unless the contrary is proven by the party objecting to enforcement and recognition of the award.

The New York Convention only applies to contractual commercial relationships.

This is another common reservation restricting application of the New York convention to commercial disputes as defined by domestic law. Commercial relationships under the Iraqi Code of Commerce are defined in Article 5 (1) and include the following where conducted for a profit:

1. purchase or rent of real or movable property for re-sale or renting out;
2. supply of goods and services;
3. import or export of goods and the business carried out by import/export offices;
4. industry and extraction of raw materials operations
5. publishing, printing, photography and advertising;
6. construction, restoration, demolition and maintenance contracts;
7. services rendered by tourism offices, hotels, restaurants, cinema houses, playgrounds, and other various display premises;
8. sale in public auction premises;
9. transport of goods and persons;
10. shipping and customs clearance of goods;
11. depositing goods in public depots;
12. undertaking to provide the requirements of celebrations and other social occasions;
13. operations of banks;
14. insurance;
15. dealing in shares and debentures of companies;
16. Commercial and commission agencies, transport agency, auctioneering and other commercial intermediary's activities.

Article 6 of the Iraqi Code of Commerce also recognizes all dealings in commercial papers (promissory notes, bill of exchange, and checks) as commercial activities regardless of whether they are conducted for profit or not.

Conflict with other Iraqi Laws and Implementation of

the New York Convention

The Iraqi Code of Civil Procedure gives courts very broad review powers when enforcing arbitration awards. In contrast, the New York Convention only allows refusal of recognition and enforcement on exclusive grounds that are defined in the Convention. The New York Convention ratification law did not address this conflict between the New York Convention and the Iraqi Code of Civil Procedures. The Iraqi Constitution and Treaty Conclusion Law are silent on how such a dispute between an international treaty and domestic law would be resolved. In addition, Iraqi courts will apply the New York Convention as domestic law by virtue of its ratification law that includes the text of the Convention. Therefore, it is possible to argue that the rules of the New York Convention are more specific to foreign arbitration awards and should override the general position of the Code of Civil Procedures as an exception in such cases. However, Iraqi courts have not yet established any practices with regards to application of the New York Convention. Enforcement and recognition of foreign arbitration awards in Iraq must still be done through the Iraqi judiciary and the latter's interpretation of the New York Convention remains to be seen.

Conclusion

Ratification of the New York Convention is an important step forward for the legal framework of the business environment in Iraq. The steps to rely on the New York Convention as domestic Iraqi law are now complete and it can be relied on before Iraqi courts. There are still a number of questions that will have to be answered by the Iraqi judiciary regarding the interoperation of the reservations made by Iraq on ratification and the conflict with the Iraqi Code of Civil Procedures. The authors of this Article hope that the interpretations that will be adopted by Iraqi courts will not defeat the purpose of its ratification.

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