THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN THE STATES OF THE ARAB MIDDLE EAST

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An eminent author on international arbitration law has described the rules on the enforcement of foreign arbitral awards as being beset by uncertainty. According to that author, this uncertainty is fostered by the conflicting views of scholars and practitioners in each State. For our present purposes the conflicting views of lawyers in any particular State need not trouble us since little has been written on the subject. Faced however with the need to formulate some general proposition about the situation in the Arab Middle East there are only two indisputable things one can mention: first, that there are in certain States except where the New York Convention applies, domestic laws and a regional convention adopting, in the majority of cases, outdated concepts, and secondly, one can say that apart from these there is a lack of legislation. The statutory vacuum is potentially filled by Islamic law.

To analyse the laws of each State in turn would take too long and would entail unnecessary detail; I therefore propose an overview, a sort of survey based on an attempt to classify some of the problems peculiar to this part of the world. This will be achieved by trying to find the answers to the following questions:

I Which Arab States have modern legislation on the recognition and enforcement of foreign arbitral awards?
II Which Arab States do not have modern legislation and are still subject to Islamic law?
III Which Arab States have adhered to the New York Convention or other international conventions relating to the recognition and enforcement of foreign awards?
IV Which States have adhered to the Arab League Convention of 14 September, 1952 relating to the enforcement of judgments and awards?
V What is the status of bilateral treaties in the regional context of the Arab States?
VI What are the peculiar obstacles to affect the enforcement of foreign awards?

States with modern legislation dealing specifically with recognition and enforcement of arbitral awards are very few in number. Lebanese and Libyan laws have autonomous provisions applicable to foreign awards without any reference to their

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respective domestic laws on the enforcement of foreign judgments. Although Lebanon does not make reciprocity a condition of enforcement, Libya, like Egypt, regards it as a fundamental prerequisite.

Syria, Egypt, Kuwait and Bahrain recognise the principle of enforcement of foreign awards and generally apply, in a somewhat literal manner, the same provisions as relate to the enforcement of foreign judgments. As a result, the principle of reciprocity of treatment is required. For example, the laws of Syria, Kuwait and Bahrain require a foreign arbitral award to bear an enforcement order from the State where it was made. Doctrinal trends in certain States such as Egypt also impose this condition. (While the majority of legislative systems require an award to be final, res judicata and capable of being enforced, these are, however, generally interpreted purely and simply as a requirement for enforcement in the State where the award was made.)

While other States, such as Iraq, Jordan, the United Arab Emirates and North Yemen are well furnished with modern laws dealing with the enforcement of foreign judgments, those laws contain no express reference to their application to foreign arbitral awards. In practice, the result is that an award which is not embodied in the judgment of a national court will not be enforceable in these States.

Except in the case of Lebanon, the essential characteristic of Arab national laws—and in this respect they differ from the New York Convention, and bilateral regional treaties—is that they are generally concerned only with the enforcement of arbitral awards. The idea of recognition of arbitral awards is rarely mentioned in national laws owing to the fact that the Arab League Convention, which we shall analyse shortly, is solely concerned with the enforcement of judgments and awards, and that the Convention has served as a model, however outdated, for draftsmen of the domestic laws.

Another characteristic of those legal systems which have their own national laws is that the criterion of extraneity of the arbitral award is determined by the place where the award is made. The Explanatory Memorandum of Kuwaiti Civil and Commercial Procedure makes an illustrative case for the use of this criterion. Lebanon, however, while adopting the same principle, allows an exception to the rule by deeming an award to be foreign if it was made in Lebanon but under a foreign law of procedure.

Most of the States with modern statutes have a common denominator. There is a distinction in the field of procedure between the enforcement of a domestic award and that of a foreign award: while domestic awards are generally enforced, in camera, without summoning the party to a hearing, the procedure of enforcement of a foreign award is subject to the rules of an ordinary case, i.e., a public hearing and summoning the party against whom the enforcement is sought (e.g., Syria, Jordan, Egypt, Kuwait, Bahrain).

It is evident that in those States with modern national laws the foreign award will not be subjected to any deep scrutiny. Accordingly the merits of the case will not be examined. However, exceptions are available when the concept of public policy is brought into play (for example, in Syria, Lebanon, Libya, Kuwait, Bahrain). Exceptions peculiar to arbitration, such as the question of the arbitrability of the case, are sometimes additional to the public policy requirements.