INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 4 OF 2025

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

INTERNATIONAL COMMERCIAL ARBITRATION: HARMONISATION AND DIVERGENCE IN GLOBAL ENFORCEMENT MECHANISMS

AUTHOR - KINJAL KATARIA* & MS. GRISHMA BRAHMBHATT**

* STUDENT AT BBA LLB (BUSINESS LAW HONS.), UWSL, KARNAVATI UNIVERSITY

** ASSISTANT PROFESSOR AT UWSL, KARNAVATI UNIVERSITY

BEST CITATION - KINJAL KATARIA & MS. GRISHMA BRAHMBHATT, INTERNATIONAL COMMERCIAL ARBITRATION: HARMONISATION AND DIVERGENCE IN GLOBAL ENFORCEMENT MECHANISMS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (4) OF 2025, PG. 520-533, APIS – 3920 – 0001 & ISSN - 2583-2344.

ABSTRACT

A synthesis of prominent academic publications in international commercial arbitration forms the scholarly backbone for new academic research. This paper presents a unified explanation of the history of international commercial arbitration together with its essential legal bases represented by the New York Convention and UNCITRAL Model Law as well as its procedural specifications. An extensive breakdown of key fundamentals which govern international arbitration especially through examining the revered right of party autonomy and essential requirements for procedural fairness. The worldwide adoption of the UNCITRAL Model Law needs additional research to study the different domestic legal perspectives on its enforcement. The evolving role of public policy defence in award enforcement and the emerging concept of arbitral precedent along with judicialization trends in international commercial arbitration are presented by the article as central research opportunities for academic study. The main objective of contemporary research in this domain seeks to advance the operational effectiveness and equity and certainty within international commercial arbitration as the leading method for transnational commercial dispute resolution. This study recognizes how modern trends including global expansion and technological transformation affect current arbitration practices and a comprehensive knowledge about the entire arbitral process to support practical applications and theoretical comprehension.

Keywords: *International Commercial Arbitration, New York Convention, UNCITRAL Model Law.*

I. INTRODUCTION

Arbitration's historical development can be traced to ancient civilizations where elementary methods of settling disputes through neutral third parties were implemented. In the ancient times of Greece, the acts of citizens serving as judges, the so-called δικαστές (dicastes), to hear complaints from men for resolution purposes is documented in Aristotle's Athenian Constitution.[915] This helped to solidify the very first essentials of third-party dispute resolution mechanisms. Similarly, ancient Roman law gave a formal recognition to the institution of arbitration whereby the praetor had the power to appoint arbitrators, as set forth in the Corpus Iuris Civilis.[916] Though not exclusively commercial, these early frameworks provided an essential avenue for extrajudicial dispute resolution.

The medieval era saw a paradigm shift with the emergence of merchant guilds and trade fairs, which established different legal frameworks and mechanisms for the resolution

[915] Aristotle, Athenian Constitution (H Rackham tr, Harvard University Press 1935) ch 53.

[916] Justinian, Corpus Iuris Civilis (P Krueger ed, Weidmann 1877) Dig 4.8.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

of disputes, labelled the Lex Mercatoria.[917] This body of merchant law was, in itself, supportive of arbitration through codifications like the Consolato del Mare, and thus helped in boosting trade in Europe through a systematic resolution of commercial disputes. As a result, during this age, arbitration grew to be a vital aspect of international trade along the lines of an enlarging mercantile economy.[918]

Arbitration was implemented in national legislations only in the 19th century, aided due to the rapid growth of international commerce. One great landmark in this development was the English Arbitration Act, enacted in 1889, which rendered arbitration agreements enforceable.[919] Thus, it provided a basis for subsequent legal systems. The law marked a watershed in its approach towards accepting arbitration as an alternative to litigation before a court of law, especially in commercial disputes.[920]

The early 20th century saw the League of Nations attempting to draft an international law under which foreign arbitral awards would gain recognition. The Protocol on Arbitration Clauses was signed on September 24, 1923, and entered into force on June 28, 1924. It provided for the recognition of arbitration clauses incorporated into contracts.[921] The second instrument is the Convention on Foreign Awards, signed on September 26, 1927, and brought into force on July 25, 1929, aiming to simplify the enforcement of arbitral awards. However, both instruments were hampered by various limitations, among which one could name the requirement of reciprocity and the condition of the award being considered final in the jurisdiction of origin.[922] Though historically important, these legal frameworks were afflicted by their rather stringent prerequisites and limited acceptance.[923]

Following World War II, the global community united to establish a system for addressing international conflicts fairly and effectively. On June 10, 1958, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards was established, allowing the global community to depend on arbitration for settling commercial disagreements. Looking ahead to the present, the Convention has expanded to include more than 170 nations, offering a uniform system for acknowledging and implementing arbitral awards.[924]

At the core of this framework lies the United Nations Commission on International Trade Law (UNCITRAL), which was created in 1966. Consider UNCITRAL as the adhesive that binds international trade law. In 1985, it launched the Model Law on International Commercial Arbitration, which has been embraced by more than 80 nations.[925] This contemporary arbitration framework has highlighted international standards, simplifying the navigation of the intricate realm of international trade for businesses.[926]

What is truly influencing the development of international commercial arbitration? The solution is found in the expansion of specialized organizations that address the requirements of both businesses and individuals. Consider the International Chamber of Commerce (ICC), as an example. Established in 1919, the ICC has served as a prominent advocate for international trade and arbitration. Its International Court of Arbitration offers

[917] Nigel Blackaby and others, Redfern and Hunter on International Arbitration (6th edn, Oxford University Press 2015) 8.
[918] Ibid.
[919] Arbitration Act 1889 (52 & 53 Vict c 49).
[920] Ibid.
[921] Protocol on Arbitration Clauses (adopted 24 September 1923, entered into force 28 June 1924) 27 LNTS 157, art 1.
[922] Convention on the Execution of Foreign Arbitral Awards (adopted 26 September 1927, entered into force 25 July 1929) 92 LNTS 301, art 1.
[923] Blackaby and others (n 3) 12.
[924] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention); UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)' https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status accessed 7 March 2025.
[925] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006) (United Nations 2008) UN Doc A/40/17; UNCITRAL, 'Status: UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments as adopted in 2006)' https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status accessed 7 March 2025.
[926] Ibid art 1.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

administrative assistance and uniform rules, simplifying the arbitration process for involved parties.[927] Other organizations, including the London Court of International Arbitration (LCIA) and the Singapore International Arbitration Centre (SIAC), have also played important roles in the field of international arbitration.[928] These organizations have raised the level of arbitration by offering a variety of administrative services and regulations, enhancing its efficiency and consistency.[929]

II. THEORETICAL ROOTS OF INTERNATIONAL COMMERCIAL ARBITRATION

International commercial arbitration is grounded by extensive theoretical concepts which differentiate this method from judicial dispute resolution with its vital role in global trade. Arbitration derives from the fundamental principle of party autonomy because involved parties maintain freedom to build their dispute resolution process which includes selection of arbitrators along with procedural rules and legal framework. The liberty to decide on the arbitration process does not come without restrictions. Arbitration operates within restrictions of public policy and commanding legal standards to strike a balance between parties having control and governmental oversight. In an interview Gary Born described autonomy as the underlying basis for arbitration legitimacy because it provides parties with the capability to mould proceedings according to their individual commercial needs thus boosting confidence in the arbitration process.[930]

The concept of neutrality stands as a vital theoretical doctrine which addresses jurisdictional bias that domestic courts must handle. International arbitration stands out to international business activities because it functions beyond national legal rules to establish an impartial setting. The New York Convention from 1958 enables international enforcement of arbitral awards since it defends against judicial biases which might exist in local systems. International arbitration exists independently from specific national guidelines through the delocalisation theory that bases its power on the international legal framework. The excessive implementation of delocalisation causes enforceability threats in situations where national courts retain power over administrative functions.[931]

The symbolic definition of arbitration differentiates it from litigation because it exists through mutual consent of the parties. The process of arbitration depends on voluntary party participation because they must first sign arbitration clauses or agreements. This common understanding matches the interpretation of arbitration as private contractual law beyond its basic contractual stage according to the contractual perspective. The contractual nature described by Emmanuel Gaillard helps arbitration remain flexible yet creates problems regarding its authority to resolve cases dealing with public interest matters specifically related to human rights and environmental standards. Julian Lew and his team agree that consent remains essential but point out its practical limitations since participants sometimes consent to arbitration due to financial limitations or unequal negotiation strength which leads to concerns about genuine voluntariness.[932]

The theoretical foundation of arbitration exists between its core values while integrating features from both adjudication and negotiation into its framework. According to Catherine Rogers arbitration functions as both a contractual matter and procedural instrument to serve various legal systems with global uniformity. The flexible nature of arbitration

[927] International Chamber of Commerce, 'ICC Arbitration' https://iccwbo.org/dispute-resolution-services/icc-arbitration/ accessed 7 March 2025.
[928] London Court of International Arbitration, 'About the LCIA' https://www.lcia.org/About_Us/About_the_LCIA.aspx accessed 7 March 2025; Singapore International Arbitration Centre, 'About SIAC' https://www.siac.org.sg/about-us accessed 7 March 2025.
[929] Gary B Born, International Commercial Arbitration (2nd edn, Kluwer Law International 2014) 45.
[930] Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) 45.
[931] Emmanuel Gaillard, *Legal Theory of International Arbitration* (Martinus Nijhoff 2010) 25.
[932] Jan Paulsson, 'The Idea of Arbitration' (Oxford University Press 2013) 30.

emerges through its capability to unite common law structures with civil law frameworks thus increasing its international applicability. The hybrid nature of arbitration raises concerns about privatized justice according to Thomas Carbonneau since it possesses elements of private justice systems without the same level of transparency or public court accountability.[933] Party autonomy alongside neutrality together with consent form the base principles of international commercial arbitration which provides theoretical elements for analysing its legislative structures.

By using international commercial arbitration, conflicting nations can resolve issues amicably which is one of the many ways countries resolve conflicts. It is greatly esteemed because of its flexibility, fairness, and guarantee to ensure that decisions or accolades are enforceable internationally. The success of this approach stems primarily from the existence of a system that permits recognition and enforcement of awards from one nation to another. The New York Convention initiated in 1958 is essential to this system as it facilitates cooperation internationally for the enforcement of these medals. More than 180 countries have come together to form this agreement whose description aims at uniformity of procedures for enforcement. Regardless of the objectives of the Convention, there is always a complicated procedure that must be followed in regard to the real practice of awards. This complexity is caused by distinct legal rules, procedures, ad policies of each country.[934]

The chosen jurisdictions for this study encompass a wide and varied range of legal systems. The jurisdictions embodying Common Law traditions include the United Kingdom, the United States, Singapore, and India, with each offering distinctive procedural standards and judicial approaches relevant to the enforcement of arbitration. In contrast, the Civil Law jurisdictions mentioned—specifically France, Switzerland, Germany, and Brazil—function as a counterbalance, distinguished by their dependence on codified legal systems, which significantly influence their arbitration practices. Additionally, hybrid legal systems like those in China, the United Arab Emirates, and Qatar are acknowledged for their growing importance in the arbitration framework, blending aspects of Common Law, Civil Law, and other legal traditions. This dissertation deliberately limits its scope to concentrate solely on Common Law and Civil Law jurisdictions. This intentional limitation enables a focused comparative assessment, thus clarifying the complex interactions between these two main legal families and their individual impacts on the implementation of arbitral awards.[935]

The effort to realize a state of harmonisation in the field of international commercial arbitration is largely supported by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, supplemented by additional legal instruments, including the UNCITRAL Model Law on International Commercial Arbitration issued in 1985. These regulatory structures are intentionally crafted to standardize the legal procedures overseeing the recognition and enforcement of arbitral awards, thus reducing the ambiguities and uncertainties faced by parties involved in international disputes. Within this analytical structure, harmonisation is defined as the methodical alignment of diverse national regulations and judicial practices to foster a cohesive and effective enforcement regime, aiming to reduce jurisdictional conflicts and tensions.[936]

Nevertheless, the occurrence of divergence appears as national jurisdictions perceive and apply these established international standards

[933] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015) 10.
[934] United Nations Commission on International Trade Law, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).
[935] Lew J D M, Mistelis L A and Kröll S M, Comparative International Commercial Arbitration (Kluwer Law International 2003) 705.
[936] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (1985)

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

through the lens of their domestic legal principles, often leading to varying and inconsistent judicial results. Multiple factors, such as procedural requirements, the extent of judicial involvement, and the implementation of public policy exceptions, lead to these discrepancies. As a result, this demonstrates an intrinsic conflict between the desire for worldwide consistency in arbitration methods and the claim of l ocal sovereign legal rights.

A. Areas Of Successful Harmonisation

The alignment of international commercial arbitration laws and practices represents an important step toward creating a dependable, effective, and globally acknowledged system for resolving cross-border commercial conflicts. This subsection will explore five key areas where harmonization has seen significant achievements: recognition of arbitration agreements, favourable judicial perspectives on enforcement, consensus on the arbitrability of commercial conflicts, uniformity in essential procedural standards, and empirical evidence demonstrating the success of these harmonization efforts. These developments, surpassing different legal systems and traditions, have received backing from global instruments like the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the New York Convention) and the UNCITRAL Model Law on International Commercial Arbitration, along with continuous support from courts and legislatures.

The acknowledgment of arbitration agreements is a core principle of international commercial arbitration, guaranteeing that the parties' intention to participate in arbitration is respected in different jurisdictions. The New York Convention (1958) has been essential in this process of harmonization. Article II of the Convention requires contracting states to acknowledge written arbitration agreements and to direct parties to arbitration when these agreements are invoked, thereby creating a uniform international standard. This necessity has been extensively incorporated into national legal structures, encouraging consistency.[937]

In the United Kingdom, the Arbitration Act 1996, particularly Section 5, requires that arbitration agreements be recorded in writing, thus conforming to the stipulations established by the New York Convention. Likewise, in the United States, the Federal Arbitration Act (FAA), found at 9 U.S.C. § 2, requires the enforcement of written arbitration agreements in contracts related to commerce, reflecting this global norm. The judicial application of these principles additionally strengthens this synchronization. A significant example of this is Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. (1985), where the U.S. Supreme Court affirmed an arbitration agreement under the New York Convention, broadening its reach to antitrust matters—previously considered beyond the realm of arbitration. This decision exemplifies how the judiciary has adopted the Convention's framework, guaranteeing the worldwide acknowledgment of arbitration agreements.[938]

A proactive judicial approach towards the enforcement of arbitral awards serves as a key feature of harmonisation, ensuring that such awards are not frequently overturned but are maintained with minimal interference. The New York Convention, as articulated in Article V, specifies a limited set of grounds for refusing enforcement—those being the invalidity of the arbitration agreement, procedural unfairness, or violations of public policy—thus encouraging courts to adopt a supportive posture. This stringent perspective has been consistently applied across various jurisdictions, reflecting a global inclination in favour of enforcement.[939]

In the U.S., the case of *Parsons & Whittemore Overseas Co. v. Société Générale de L'Industrie du Papier (1974)* highlights this trend. The U.S.

[937] United Nations Commission on International Trade Law, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), art II.
[938] Arbitration Act 1996 (UK) s 5; Federal Arbitration Act, 9 USC § 2 (US).
[939] United Nations Commission on International Trade Law, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) art V

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

Court of Appeals highlighted that the aim of the New York Convention is to promote enforcement, interpreting the reasons for refusal narrowly and rejecting unrelated disputes regarding the validity of an award. Likewise, in the United Kingdom, the Supreme Court (previously the House of Lords) in the case of *Dallah Real Estate and Tourism Holding Co. v. Ministry of Religious Affairs of the Government of Pakistan (2010)* demonstrated restraint, allowing enforcement only when it was clearly justified under the exceptions specified in the Convention.[940]

This judicial philosophy is not confined to common law jurisdictions. For instance, in France, within a civil law framework, the Cour de cassation in the case of *Société PT Putrabali Adyamulia v. Société Rena Holding (2007)* upheld an arbitral award despite its annulment at the seat of arbitration, reinforcing France's pro-enforcement position as stipulated by the New York Convention. Collectively, these cases underscore a harmonized judicial approach that prioritizes the finality and enforceability of arbitral awards, thereby minimizing the risk of inconsistent outcomes across different jurisdictions.[941]

Arbitrability pertains to determining which disputes can appropriately be resolved via arbitration. Historically, this assessment has differed among various jurisdictions, with certain issues, like those connected to public policy or statutory rights, frequently deemed non-arbitrable. Nonetheless, a notable trend of convergence has developed, broadening the spectrum of conflicts suitable for arbitration and harmonizing practices worldwide.

In general, this convergence demonstrates a growing acknowledgment that commercial conflicts—irrespective of their links to public policy—can be effectively settled via arbitration. This change is driven by judicial interpretations and legislative changes that align with international standards.

The harmonisation of procedural elements in arbitration, such as the selection of arbitrators, management of proceedings, and delivery of awards, has advanced notably through the UNCITRAL Model Law on International Commercial Arbitration, first introduced in 1985 and revised in 2006. This Model Law has been embraced by more than 80 jurisdictions, providing a uniform legislative structure that improves certainty in processes.[942]

Besides legislative measures, institutional arbitration regulations also aid in fostering uniformity. Prominent organizations like the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), and Singapore International Arbitration Centre (SIAC) provide well-known procedural structures that parties frequently select, irrespective of their jurisdiction. For instance, the ICC Rules offer detailed instructions regarding the selection of arbitrators and the granting of awards, which are uniformly implemented in international arbitrations. This two-pronged strategy for harmonization—comprising both legislative and institutional aspects—guarantees the standardisation of essential procedural requirements, thereby improving the efficiency and accessibility of arbitration.[943]

Statistical information provides strong proof regarding the effectiveness of harmonisation, especially concerning the enforceability and acceptance of arbitration awards. The International Chamber of Commerce (ICC) announced that in 2020, it handled 946 new cases involving participants from 145 different countries, with an outstanding 97% of awards being complied with voluntarily. Moreover, when enforcement measures are implemented, the assistance offered by judicial systems stays exceptionally strong. A detailed study carried

[940] Parsons & Whittemore Overseas Co v Societe Generale de L'Industrie du Papier, 508 F 2d 969 (2d Cir 1974); Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan [2010] UKSC 46.
[941] Société PT Putrabali Adyamulia v Société Rena Holding, Cour de cassation, 29 June 2007, No 05-18.053.
[942] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments as adopted in 2006).
[943] Institute for Transnational Arbitration, 'Enforcement of Arbitral Awards: A Survey of Recent Cases' (2019); International Chamber of Commerce, '2020 ICC Dispute Resolution Statistics' (2021).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

out by PricewaterhouseCoopers in collaboration with Queen Mary University of London in 2018 revealed that 90% of participants preferred international arbitration for cross-border disputes, mainly due to the enforceability of the resulting awards.[944]

Additionally, a comprehensive study performed by the Institute for Transnational Arbitration (ITA), covering the years 2008 to 2018, reveals that courts located in major arbitration centres upheld more than 90% of foreign arbitral awards submitted to their jurisdiction. This exceptionally high enforcement rate highlights the effectiveness of the New York Convention and the aligned national legal systems in guaranteeing global acknowledgment and support of arbitral awards. These statistics not only help confirm the current legal frameworks but also clearly demonstrate the effective performance of arbitration as a dependable dispute resolution method, supported by continual harmonisation initiatives.[945]

The harmonisation of international commercial arbitration, including the acknowledgment of arbitration agreements, supportive judicial attitudes, consistency in arbitrability, standardization in procedural requirements, and empirical proof of positive results, has firmly established it as a core element of global trade. Legal tools like the New York Convention and the UNCITRAL Model Law, supported by uniform judicial and legislative practices, have successfully closed jurisdictional gaps, creating a unified framework that enhances predictability and enforceability. These achievements clearly establish arbitration as the leading method for resolving international commercial disputes, providing parties a trustworthy alternative to traditional litigation.

B. Persistent Areas of Divergence

Sovereign immunity represents another key area of difference, especially regarding the enforcement of arbitral awards against sovereign nations or entities linked to the state. The principle of sovereign immunity, which protects states from legal actions in foreign courts, shows significant differences in its enforcement in the area of arbitration. In common law regions like the United Kingdom and the United States, legislative measures like the UK State Immunity Act of 1978 and the United States Foreign Sovereign Immunities Act of 1976 (FSIA) outline particular exceptions that allow for claims enforcement against state property under certain conditions, especially when states have relinquished their immunity or have participated in commercial activities. A notable example of this situation is evident in Servaas Inc. v. Rafidain Bank (2012), where the Supreme Court of the United Kingdom permitted the enforcement of claims against Iraqi state assets used for commercial activities, showcasing a practical method of balancing state immunity principles with enforcement rights.[946]

In contrast, some civil law jurisdictions take a more limited stance on sovereign immunity, making it more difficult to enforce claims against state entities. For instance, in Switzerland, the Federal Supreme Court has traditionally upheld strict immunity safeguards, requiring clear waivers for any enforcement measures aimed at state assets. This disparity is further intensified by the lack of a unified international standard regulating sovereign immunity in arbitration, leading to inconsistent treatment of state parties. Thus, parties involved in arbitration with sovereign states must skilfully navigate a complicated web of national legal systems, where the chances of effective enforcement heavily depend on the jurisdiction where the pertinent assets are located.

Despite the wide acceptance of the UNCITRAL Model Law, there remains a significant variety of procedural differences in arbitration laws among various jurisdictions, which in turn

[944] Ibid.
[945] Ibid.
[946] State Immunity Act 1978 (UK) s 9; Foreign Sovereign Immunities Act 1976, 28 USC §§ 1330, 1602-1611 (US); Servaas Inc v Rafidain Bank [2012] UKSC 40.

affects the enforcement process. A notably prominent area of difference relates to the time constraints set for the contesting or enforcement of arbitration awards. In the Federal Republic of Germany, parties have three months from the arbitral award date to submit a request for its annulment as per Section 1059 of the Zivilprozessordnung (ZPO). In sharp contrast, the Arbitration and Conciliation Act of 1996 in India allows only a thirty-day timeframe to challenge an award, though there is a possibility of a further thirty-day extension at the presiding court's discretion. These differing temporal frameworks carry significant consequences for the ability of parties to either challenge or implement arbitral awards, especially within cross-border disputes that require cooperation among multiple jurisdictions.[947]

Another aspect of procedural variation lies in the level of judicial involvement considered allowable during enforcement actions. In the Republic of Singapore, the judiciary takes a minimal approach, intervening only on the specific grounds outlined in the International Arbitration Act. In contrast, in the Federative Republic of Brazil, the Superior Court of Justice has sometimes conducted more thorough examinations of arbitral awards, especially when matters of public policy or arbitrability are involved. These inconsistencies illustrate significant differences in legal traditions, as common law jurisdictions generally Favor limited judicial oversight, whereas civil law systems might sometimes allow for broader examination. Such procedural irregularities might unintentionally lead to forum shopping, where parties pursue enforcement in areas seen as more favourable to arbitration.[948]

The application of temporary measures, including injunctions or asset preservation orders, signifies an important and diverse aspect within the field of international arbitration. While the UNCITRAL Model Law (revised in 2006) provides a fundamental framework for recognizing and enforcing interim measures ordered by arbitral tribunals, its adoption is not universal, leading to inconsistencies among jurisdictions. For example, in Singapore, the International Arbitration Act clearly empowers courts to enforce provisional measures ordered by tribunals, regardless of whether the arbitration is local or international, thus enhancing their overall efficacy.

To begin with, legal traditions significantly influence this divergence. Common law systems, characterized by an emphasis on party autonomy and judicial restraint, generally adopt a more permissive stance towards the enforcement of arbitration agreements. In contrast, civil law systems, which are based on codified statutes and government oversight, may demonstrate greater caution, particularly in matters concerning public policy or sovereign immunity.[949]

Cultural perceptions also play a crucial role in this divergence. In jurisdictions where arbitration is regarded as a private and consensual process, courts are more inclined to respect arbitral decisions. On the other hand, in jurisdictions where arbitration is considered secondary to national court systems, judicial interference may occur more frequently. Additionally, economic factors further influence arbitration legislation, as jurisdictions strive to attract arbitration business by implementing favourable enforcement mechanisms. For instance, Singapore's supportive approach to arbitration is largely motivated by its objective to establish itself as a premier arbitration hub within Asia.[950]

In conclusion, although the harmonisation process has achieved notable successes, persistent differences in the interpretations of public policy, sovereign immunity, procedural

[947] Zivilprozessordnung (ZPO) (Germany) § 1059; Arbitration and Conciliation Act 1996 (India) s 34.
[948] International Arbitration Act (Cap 143A, 2002 Rev Ed Sing) s 12; EDF International S/A v Endesa Latinoamerica S/A and YPF S/A, Superior Court of Justice (Brazil), 2 December 2015, SEC 9412.
[949] Redfern A and Hunter M, Law and Practice of International Commercial Arbitration (5th edn, Sweet & Maxwell 2009) 589.
[950] Ibid.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

standards, the implementation of interim measures, and the handling of non-signatories continue to present substantial obstacles to the consistency of arbitration enforcement. These differences are sustained by deep-rooted inequalities in legal systems, cultural perspectives, and national priorities, highlighting the complex challenge of achieving a fully unified global arbitration framework. Addressing these complex challenges requires a dedication to ongoing conversation, legal reform, and judicial training, with the primary aim of closing the gaps between various jurisdictions and guaranteeing that arbitration stays a reliable and effective method for resolving international commercial conflicts.

C. Legal Uncertainty and Risk Management

The phenomenon of legal uncertainty emanates from the inconsistent application of enforcement practices, notwithstanding the prevalent endorsement of the New York Convention. Divergences in the interpretation of specific provisions, such as public policy as articulated in Article V(2)(b), yield unpredictable judicial outcomes. A salient illustration of this is found in the case of Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (1974), wherein a court in the United States opted to enforce an arbitral award, in stark contrast to the decision made by a French court in Société PT Putrabali Adyamulia v. Société Rena Holding (2007), which adopted an opposing stance grounded in analogous considerations. Such inconsistencies imply that an award deemed enforceable within one jurisdiction may be categorically denied in another, thereby necessitating that parties proactively anticipate and adeptly manage these inherent risks.[951]

In pursuit of mitigating these uncertainties, parties frequently engage in the meticulous crafting of arbitration clauses that delineate the seat of arbitration, the governing legal framework, and the institutional regulations, with a pronounced preference for jurisdictions such as Singapore or the United Kingdom, renowned for their judiciary's pro-arbitration disposition. Esteemed institutions, including the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA), are esteemed for their provision of procedural consistency, thereby alleviating the burden of uncertainty. Notwithstanding these measures, the prevailing variability in enforcement practices engenders the necessity for robust risk management strategies, which encompass comprehensive legal evaluations across various jurisdictions and the formulation of contingency plans tailored for enforcement disputes.[952]

D. Enforcement Planning in International Transactions

The meticulous formulation of enforcement strategies assumes an imperative role in the context of heterogeneous practices. In this regard, the involved parties meticulously select the jurisdictions and institutions for arbitration with due consideration and construct contractual agreements that are conducive to enhancing the enforceability of said agreements. Provisions that relinquish sovereign immunity or delineate enforceable assets serve to mitigate associated risks. Comprehensive due diligence regarding the locational aspects of a counterparty's assets facilitates the identification of jurisdictions favourable to arbitration, while the provision of security deposits or guarantees further augments the prospects for recovery.[953]

Small and Medium-sized Enterprises (SMEs) encounter an array of exacerbated challenges attributable to their constrained resources and limited expertise. The prevailing uncertainty and financial implications of disparate enforcement practices may become exceedingly burdensome, particularly when pursuing claims

[951] United Nations Commission on International Trade Law, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958) art V(2)(b); *Parsons & Whittemore Overseas Co v Societe Generale de L'Industrie du Papier*, 508 F 2d 969 (2d Cir 1974).

[952] Servaas Inc v Rafidain Bank [2012] UKSC 40.

[953] Redfern A and Hunter M, Law and Practice of International Commercial Arbitration (5th edn, Sweet & Maxwell 2009) 589.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

against larger entities endowed with extensive global assets. In contrast to their larger counterparts, SMEs frequently find themselves devoid of the requisite leverage to negotiate favourable terms in arbitration, which culminates in a diminished selection of advantageous arbitration seats or stipulations.[954]

E. Case Studies of Enforcement Challenges

The seminal legal cases elucidate the disparate interpretative approaches adopted by national jurisdictions in relation to the New York Convention, thereby resulting in variances in enforcement outcomes that are not uniformly applied. Two noteworthy cases—Dallah Real Estate and Tourism Holding Co. v. Ministry of Religious Affairs of the Government of Pakistan and Chromalloy Aeroservices v. Arab Republic of Egypt—serve as quintessential examples of these complexities manifesting within both Common law and Civil law legal frameworks.

Dallah Real Estate and Tourism Holding Co. v. Ministry of Religious Affairs of the Government of Pakistan[955]

In the present matter, Dallah, an esteemed corporation hailing from the Kingdom of Saudi Arabia, diligently pursued the enforcement of an arbitral award rendered by the International Chamber of Commerce (ICC) against the Islamic Republic of Pakistan within the jurisdictions of the United Kingdom, governed by common law, and France, governed by civil law. The genesis of the dispute can be traced back to a contractual arrangement pertaining to accommodations for pilgrimage, with the arbitration proceedings duly seated in the city of Paris. The Supreme Court of the United Kingdom, however, declined to grant enforcement, determining that the arbitration agreement was rendered invalid pursuant to the stipulations of French law due to Pakistan's non-signatory status, as articulated in Article V(1)(a) of the New York Convention. Conversely, the Court of Appeal in Paris affirmed the validity of the award, concluding that the tribunal possessed jurisdiction predicated upon the conduct exhibited by the parties involved. This dichotomous ruling starkly illuminates a profound divergence: the United Kingdom's rigorous scrutiny with respect to arbitration agreements juxtaposed against France's favourable stance towards enforcement, which is deeply entrenched in the civil law tradition that espouses the principle of arbitral autonomy. The resultant conflicting legal outcomes significantly undermine the predictability of enforcement under the auspices of the New York Convention, thereby exemplifying a fundamental challenge to the pursuit of harmonization in this area of international arbitration.

Chromalloy Aero-services v. Arab Republic of Egypt[956]

In this instance, the esteemed entity Chromalloy, a corporation based in the United States of America, attained a notable accolade against the Arab Republic of Egypt, which award was subsequently rendered null and void by the judicial systems of Egypt. Chromalloy then pursued the enforcement of said award in the jurisdictions of the United States (governed by common law) and France (guided by civil law). The United States District Court, in a remarkable decision, upheld the enforcement of the award notwithstanding the prior annulment, interpreting Article V(1)(e) as a discretionary provision, thus favouring enforcement over the ruling of the seat's jurisdiction. Correspondingly, the Paris Court of Appeal similarly sanctioned the enforcement of the award, underscoring its autonomy from the authority of the seat. These

[954] International Chamber of Commerce, 'ICC Arbitration for SMEs' https://iccwbo.org/news-publications/policies-reports/icc-sme-toolkit-complying-competition-law-good-business/#:~:text=ICC%20SME%20Toolkit:%20Why%20complying%20with%20competition%20law%20is%20good%20for%20business,-11%20January%202017&text=Designed%20by%20business%20for%20smaller,ICC's%20top%20ten%20tip accessed 7 March 2025.

[955] Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan [2010] UKSC 46; Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan, Paris Court of Appeal, 17 February 2011, No 09/28533.

[956] Chromalloy Aeroservices v Arab Republic of Egypt, 939 F Supp 907 (DDC 1996); Chromalloy Aeroservices v Arab Republic of Egypt, Paris Court of Appeal, 14 January 1997, No 95-23025; TermoRio SA ESP v Electranta SP, 487 F 3d 928 (DC Cir 2007).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

judicial determinations stand in stark contrast to those jurisdictions which regard annulment as binding; exemplified in the matter of TermoRio S.A. E.S.P. v. Electranta S.P., in which the United States Court of Appeals declined to enforce an award subsequent to its annulment by Colombian courts. The Chromalloy case illuminates a pronounced dichotomy between jurisdictions that exhibit a willingness to disregard annulments (such as France and, at times, the United States) and those which adhere stringently to the authority of the seat, thereby revealing a persistent divergence in practices related to enforcement.

These cases serve to illustrate that, notwithstanding the ostensibly unifying framework provided by the New York Convention, the interpretations by national courts of its provisions—particularly in relation to the validity of arbitration agreements and the enforcement of annulled awards—present considerable challenges to enforcement.

F. **Recommendations for Enhanced Harmonization**

i. **Legal Framework Improvements:** Ambiguities involving public policy and procedural fairness as to the New York Convention require clarification. A supplementary protocol could the heart of something as specific as public policy and ensure consistent outcomes by limiting judicial discretion and forcing consistent outcomes on the court. Now, most important, this would bring the Convention up to date with regard to digital asset enforcement and online arbitration, increasing its relevance and its status as an important global enforcement role.[957]

ii. **Judicial Training and Cooperation Initiatives:** The regular enforcement of any law is dependent on the consistent enforcement of that law. Organizations such as the UNCITRAL and the ICC should have training programs made for interpretation and enforcement of the NY Convention. This would promote cross border dialogues, exchange programmes at the level of judges, to dispel any cultural bias; and help uniform enforcement in the practice of law.[958]

iii. **Institutional Best Practices:** Harmonization can be increased by standardizing procedure and giving guidance for enforcement through arbitration institutions. Model arbitration clauses to deal with challenges and enforcement statistics would provide assistance to practitioners and courts, thereby enhancing the confidence in institutional arbitration.[959]

iv. **Practitioner Strategies for Improving Enforcement Outcomes:** Arbitration agreements should be drafted clearly, and in a manner specific to the jurisdiction in question, and if a legal practitioner should engage with local counsel to have advice on legal nuances. Technology use, such as e-filing and virtual hearings can also advocate for such use thereby improving efficiency and reducing costs.[960]

v. **Technology Solutions for Enforcement Challenges:** Blockchain can help to authenticate awards and AI can predict enforcement outcome to make the arbitration process more technological. Online dispute resolution platform can help digital asset disputes get automated

so that they become more harmonized.[961]

III. CONCLUSION

In this vision, the arbitration ecosystem is swift, equitable, and adaptive, featuring legal innovation, technological development and cooperative institutional frameworks for enforcement of its awards. Defined in terms of how it envisions a world that harmonizes whilst alleviating uncertainty without compromising

[957] Van den Berg A J, *The New York Arbitration Convention of 1958* (Kluwer Law International 1981) 301-302; *Blockchain and the Law: The Rule of Code* (Harvard University Press 2018) 152.

[958] UNCITRAL, 'Judicial Training Materials on the UNCITRAL Model Law' (2020) https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf accessed 7 March 2025.

[959] International Chamber of Commerce, 'Model Clauses' https://iccwbo.org/business-solutions/model-contracts-clauses/ accessed 7 March 2025.

[960] Blackaby N and others, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2022) 123-125; UNCITRAL, 'Online Dispute Resolution for Cross-Border E-Commerce Transactions' (2016) UN Doc A/CN.9/WG.III/WP.140.

[961] Blockchain and the Law: The Rule of Code (Harvard University Press 2018) 150, 153.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 5 AND ISSUE 4 OF 2025
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

the cultural richness, resulting in justice that transcends borders whilst empowering all those involved in the global commerce, it is what can be described as, which is necessary for any justice based on an order of reason.

The harmonisation of enforcement of international commercial arbitration makes it predictable and efficient. Nevertheless, it is essential to appreciate that no such legitimate divergences form an inherent feature of attempting harmonising legal traditions and priorities. A completely uniform system could ultimately sacrifice part of the diversity and fairness in the process for adaptability. The task for practitioners is to avoid unnecessary at variance in legal points and personal variations that realistically verify difference between legal system and culture, demonstrably and consequently, the validity and also the potency of arbitration.

Frameworks such as the New York Convention and UNCITRAL have contributed a lot to the international commercial arbitration enforcement. Nevertheless, it needs to change in accordance with existing needs. In order to provide solutions, especially regarding rapid technological advancements, changing global dynamics, and the emerging of new type of disputes, the judicial cooperation should be improved; all need to be carried out in a more creative way and with the implementation of legal reform. The international community by embracing these developments, arbitration will continue to play an important role in resolving disputes between individuals and companies as the world becomes more globalized, and justice will remain a core pillar to maintain an equitable and efficient balance.

IV. BIBLIOGRAPHY

Primary Sources

Legislation

- Arbitration Act 1889 (52 & 53 Vict c 49)
- Arbitration Act 1996 (UK)
- Arbitration and Conciliation Act 1996 (India)
- Federal Arbitration Act, 9 USC § 2 (US)
- Foreign Sovereign Immunities Act 1976, 28 USC §§ 1330, 1602-1611 (US)
- International Arbitration Act (Cap 143A, 2002 Rev Ed Sing)
- State Immunity Act 1978 (UK)
- Zivilprozessordnung (ZPO) (Germany)

Treaties

- Protocol on Arbitration Clauses (adopted 24 September 1923, entered into force 28 June 1924) 27 LNTS 157
- Convention on the Execution of Foreign Arbitral Awards (adopted 26 September 1927, entered into force 25 July 1929) 92 LNTS 301
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention)
- United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006) (United Nations 2008) UN Doc A/40/17

Cases

- Chromalloy Aeroservices v Arab Republic of Egypt, 939 F Supp 907 (DDC 1996)
- Chromalloy Aeroservices v Arab Republic of Egypt, Paris Court of Appeal, 14 January 1997, No 95-23025
- Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan [2010] UKSC 46
- Dallah Real Estate and Tourism Holding Co v

Ministry of Religious Affairs of the Government of Pakistan, Paris Court of Appeal, 17 February 2011, No 09/28533

- E DF International S/A v Endesa Latinoamerica S/A and YPF S/A, Superior Court of Justice (Brazil), 2 December 2015, SEC 9412
- P arsons & Whittemore Overseas Co v Societe Generale de L'Industrie du Papier, 508 F 2d 969 (2d Cir 1974)
- S ervaas Inc v Rafidain Bank [2012] UKSC 40
- S ociété PT Putrabali Adyamulia v Société Rena Holding, Cour de cassation, 29 June 2007, No 05-18.053
- T ermoRio SA ESP v Electranta SP, 487 F 3d 928 (DC Cir 2007)

Secondary Sources

Books

- A ristotle, *Athenian Constitution* (H Rackham tr, Harvard University Press 1935)
- B lackaby N and others, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015)
- B lackaby N and others, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2022)
- B orn G B, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014)
- G aillard E, *Legal Theory of International Arbitration* (Martinus Nijhoff 2010)
- J ustinian, *Corpus Iuris Civilis* (P Krueger ed, Weidmann 1877)
- L ew J D M, Mistelis L A and Kröll S M, *Comparative International Commercial Arbitration* (Kluwer Law International 2003)
- P aulsson J, *The Idea of Arbitration* (Oxford University Press 2013)
- R edfern A and Hunter M, *Law and Practice of International Commercial Arbitration* (5th edn, Sweet & Maxwell 2009)
- V an den Berg A J, *The New York Arbitration Convention of 1958* (Kluwer Law International 1981)
- *B lockchain and the Law: The Rule of Code* (Harvard University Press 2018)

Reports and Articles

- I nstitute for Transnational Arbitration, 'Enforcement of Arbitral Awards: A Survey of Recent Cases' (2019)
- I nternational Chamber of Commerce, '2020 ICC Dispute Resolution Statistics' (2021)
- U nited Nations Commission on International Trade Law, 'Online Dispute Resolution for Cross-Border E-Commerce Transactions' (2016) UN Doc A/CN.9/WG.III/WP.140

Websites

- I nternational Chamber of Commerce, 'ICC Arbitration' https://iccwbo.org/dispute-resolution-services/icc-arbitration/ accessed 7 March 2025
- I nternational Chamber of Commerce, 'ICC Arbitration for SMEs' https://iccwbo.org/news-publications/policies-reports/icc-sme-toolkit-complying-competition-law-good-business/#:~:text=ICC%20SME%20Toolkit:%20Why%20complying%20with%20competition%20law%20is%20good%20for%20business,-11%20January%202017&text=Designed%20by%20business%20for%20smaller,ICC's%20top%20ten%20tip accessed 7 March 2025
- I nternational Chamber of Commerce, 'Model Clauses' https://iccwbo.org/business-

solutions/model-contracts-clauses/ accessed 7 March 2025

- London Court of International Arbitration, 'About the LCIA' https://www.lcia.org/About_Us/About_the_LCIA.aspx accessed 7 March 2025
- Singapore International Arbitration Centre, 'About SIAC' https://www.siac.org.sg/about-us accessed 7 March 2025
- UNCITRAL, 'Judicial Training Materials on the UNCITRAL Model Law' (2020) https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf accessed 7 March 2025
- UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)' https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status accessed 7 March 2025
- UNCITRAL, 'Status: UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments as adopted in 2006)' https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status accessed 7 March 2025