

Courts' Intervention in Arbitral Proceedings: The Afghan Arbitration Law Perspective

Abdul Hadi Zamani¹ and Sayed Banaras Hashimi²

¹Private Law Department, Nangarhar University School of Law, Jalal Abad, Afghanistan

²Public Law Department, Nangarhar University School of Law, Jalal Abad, Afghanistan

Corresponding Authors' Email:

abdulhadi.zamani@gmail.com¹,
Fawad_hashimi@yahoo.com²

Article History

Submitted: 29th April 2023

Accepted: 14th May 2023

Published: 23rd May 2023

Abstract

The paper explores the role of courts in arbitral proceedings in light of New York Convention on the Recognition and Enforcement of Foreign arbitral awards and the UNCITRAL Model law. It discusses the role of courts in arbitral proceedings from the perspective of the Afghan Arbitration Law. It analyzes the circumstances when courts can intervene in arbitral proceedings in all stages of the arbitration processes, including the setting aside of arbitral awards and the enforcement of awards. Then, it examines the legal framework governing the relationship between courts and arbitrators in Afghanistan, and the possible changes that could be made to enhance clarity on the extent of the courts' role in arbitral proceedings. Furthermore, the article considers the implications of court intervention in arbitral proceedings for the efficacy and credibility of the arbitral process in Afghanistan so that the law ultimately enhances the confidence of investors and businesses in the Afghan arbitration system, which will eventually contribute to the country's economic development and growth.

Keywords: *Arbitration, intervention, award, courts, proceedings*

INTRODUCTION

Afghanistan's economy has been rapidly growing in the last few years. According to World Bank's 2018/19 doing business reports, Afghanistan was ranked as top economic improver who even left India, China, and Turkey behind (World Bank, 2019). Such economic growth and further attraction of foreign investments in Afghanistan necessitate the need for an expeditious, cost-efficient, convenient, and alternative or out of court mechanism to adjudicate or settle commercial disputes. The judicial adjudication processes in Afghanistan is deemed to be time-consuming, expensive, and inefficient in terms of capable professionals and efficacy of quality judgments. This situation along with Afghanistan's commitment and obligation towards arbitration pertinent conventions and other legal documents shape the strong need for formal system of commercial arbitration to adjudicate or settle commercial disputes in an expeditious, cost-efficient, and timely manner.

On the other hand, arbitration as a favored and autonomous mechanism has yielded common acceptance both globally and at domestic level. Due to its autonomous function, it's also argued that arbitration would completely oust the jurisdiction of the courts from the arbitration proceedings. As matter-of-fact, arbitration cannot continue to exist without the interference or involvement of courts as sometimes it cannot resolve the disputes by its own since it does not own the legal power to enforce its rendered awards in favor of winning parties (Zhao, 2006). Hence, under relevant international legal instruments and laws of states such as Turkey, a certain extent of courts' interference/involvement in various stages of the arbitral proceedings is permissible so that it can resolve the disputes very effectively.

Afghan arbitration law also allows courts involvement and interference in arbitration processes under particular circumstances. In order to evaluate the given scope through which the courts intervene in arbitration proceedings, this paper first provides general information about arbitration development in Afghanistan and its advantages for Afghanistan. The paper then discusses general rules in light of UNICITRAL Model Law about courts involvement in arbitration processes. Next, it discusses courts interference from Afghan laws' perspectives and analyze the extent and stages that the court can intervene in court proceedings.

Development of Arbitration in Afghanistan

Historically, Afghanistan first accepted commercial arbitration in a written and codified form in the law on commercial procedure code of 1965. The law had given the parties to a commercial contract or transaction the choice to settle their dispute through arbitration even if their dispute has been filed in the relevant courts. Such out of court mechanism or arbitration was not in itself legally binding neither its mechanism nor its decisions; rather it was simply a kind of non-binding dispute settlement for commercial disputes (Hakimi, 2016)

After enacting Afghan Constitution of 1964, Afghanistan also signed many international conventions and treaties and promulgated various laws upon establishing commercial arbitration. For instance, despite the law on commercial procedure code which had a separate chapter for conducting commercial arbitration, Afghanistan also signed the convention on the settlement of investment dispute in 1968. This committed Afghanistan to accept arbitration and mediation as legal mechanisms for the settlement of investment disputes arising among the states and nationals of the states.

In 2005, Afghanistan signed the New York Convention on the recognition and enforcement of foreign arbitral awards. Following the New York Convention, Afghanistan also enacted her law on commercial arbitration in light of UNCITRAL Model Law in 2007, foreign investment law, mediation law and the law on contracts and sales of goods which contain arbitration provision for dispute settlement. As at 2023, almost all Afghan commerce pertinent laws (e.g., the law on commercial arbitration, law on contracts and sales of goods, private investment law) accepted commercial arbitration as an independent and out of court dispute settlement mechanism. But until 2015, practically, Afghanistan did not have any institutionalized commercial arbitration center to serve as an effective commercial dispute resolution mechanism. In 2011, Ministry of Commerce in collaboration with some private law firms and companies established an ADR (Alternative Dispute Resolution) center and one arbitration center under the International Chamber of Commerce. These centers conduct both commercial mediation and arbitration upon commercial dispute between merchants and business companies (Hakimi, 2016).

Justifications for Courts Interference in Arbitral Proceedings

The major reason why arbitration has become a preferred method of dispute resolution is that courts mechanism is extremely time-consuming and expensive. Arbitration on the other hand resolve the cases in a timely and cost-efficient manner. Thus, it's also argued that arbitration would completely oust the jurisdiction of the courts from the arbitration proceedings which is not so true as arbitration cannot resolve the dispute by its own. Similarly, arbitration does not possess the legal power to enforce its rendered awards in favor of winning party as sometimes the losing party may deny enforcing them (RAJOO, 2012). Hence, courts intervention in arbitration proceeding has become undeniable fact and is thus permitted either by national law of the states or the pertinent international legal instruments. It has similarly been justified for a number of reasons by the scholars and experts of dispute resolution mechanisms. Generally, courts interventions take place in three stages of arbitral proceedings which are; prior to the commencement of arbitral proceedings, during arbitral proceedings, and after issuing awards (Dessie, 2020).

COURTS' INTERVENTION UNDER NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

New York Convention (NYC) convention of 1958 has been one of the most effective legal documents which has significantly contributed to the development of commercial arbitration and most specifically to the recognition and enforcement of arbitral awards. Under New York Convention, courts involvements in arbitral proceedings are limited to certain situations (Dessie, 2020). First, the convention requires the contracting parties' courts to recognize an agreement in writing in terms of which parties agree to arbitrate their dispute. If a valid agreement between the disputant parties exists, the relevant courts should at the request of the one of the parties refer them to arbitration unless the pertinent courts find the agreement null, and void, inoperative, or incapable of being performed (N.Y.C., 1958). Secondly, the convention requires the contracting states to recognize arbitral awards as binding and enforce them in accordance with the rules of territory where the award is relied upon (N.Y.C., 1958). Lastly, the convention allows court intervention/involvement in territory of the state where recognition and enforcement are sought to refuse or set aside an award in particular circumstances provided by the convention (N.Y.C., 1958).

As stated above, New York Convention has not provided more instances about courts interference/involvements in appointing the arbitral tribunal or supervisory authority of the courts

regarding arbitral proceedings. According to the convention, courts' competency in terms of intervention in arbitral proceeding is limited to recognizing an arbitral agreement in writing, submitting the dispute to the arbitral tribunal when the parties have agreed to arbitrate the dispute and the recognition and enforcement of the awards.

COURTS INTERFERENCE IN LIGHT OF UNCITRAL MODEL LAW

The UNCITRAL model law has been widely accepted as a true guide towards shaping the most effective system of commercial arbitration in many states (Sheravi, 2012). While UNCITRAL model law deals with arbitration as an autonomous dispute settlement mechanism, where it even very explicitly prohibits courts intervention in all matters governed by the model law, it similarly provides some instances in which the courts interference is permitted within a limited scope. Article 5 of the model law prescribes: "in matters governed by this law; no court shall intervene except where so provided in this law" (UML, 1985). The main aim of article 5 is not to completely preclude court intervention but rather to grant the courts limited powers to intervene in arbitral proceedings in certain circumstances. Since arbitration for many reasons cannot resolve the disputes by its own, courts intervention in arbitral proceedings has become an integral and indispensable part of arbitration system (Dessie, 2020). For instance, the law allows the court of seat of arbitration to intervene in assisting with appointment of an arbitral tribunal, decide challenges, and terminate arbitral mandates. Also, the law allows the court to rule on jurisdiction matters, decide application for setting aside an award, staying court proceedings if a valid agreement exists to govern the dispute between the parties, provide the parties with interim measures for protection and few more instances. The fore-mentioned instance of court intervention in arbitral proceeding can be in the form of assisting arbitral proceeding or supervising the processes.

AFGHAN LAW'S PERSPECTIVE ABOUT NON-COURT INTERFERENCE IN ARBITRAL PROCEEDING

Since Afghan arbitration law is enacted in light of UNCITRAL model law, it therefore covers almost the same issues as UNCITRAL model law does. As for as the principle of court non-interference in arbitral proceedings is concerned, the Afghan law provides the same provision and does not allow court intervention in arbitral proceeding except the instances provided by the law itself. Nevertheless, Afghan arbitration law goes one step beyond the UML, by prohibiting other governmental departments from intervention in arbitral proceedings. Article 8 of the Afghan arbitration law provides: "in matters governed by this law, no court or government agencies shall intervene except as provided by this law" (arbitration, 2007). Likewise, according to article 15th of the arbitration law, when an action subject to arbitration agreement is brought before the court, and the competent courts finds that the agreement meets the requirement of the arbitration law, the court shall by the request of either of the parties before timely filing of their first substantive statements, refer them to the arbitration. The article further reads: "When the action referred to in paragraph 1) of this article is brought but not resolved, arbitral proceedings may nevertheless be commenced or continued, and an award may be made by the arbitrators or tribunal. In such a case mentioned above, the court shall suspend its proceeding until the arbitral preceding is concluded" (arbitration, 2007). However, despite mentioning the principle of court non-interference in arbitral proceeding, Afghan arbitration law provides with some instance of court interference in arbitral proceedings that may take place in the following three stages of arbitration hearings. First, it may

take place before the commencement of the proceeding, next, during the proceedings and finally after the arbitral proceedings (arbitration, 2007). Each of the above-mentioned instances are discussed in light of Afghan arbitration law as follows:

Court Intervention before the Commencement of Arbitral Proceedings

Court intervention before the commencement of arbitral proceedings takes place when the agreement lacks arbitration clause or agreement regarding resolving the dispute through arbitration or the validity of the existing arbitration agreement is in question. Second, the court intervenes before the commencement of arbitration when the disputant parties cannot agree upon appointing arbitrators. In such case, the courts appoint arbitrators.

Court intervention in regard to arbitration agreement and its validity

The Afghan arbitration law first requires the parties to a commercial transaction to agree upon a written arbitration agreement for the settlement of their dispute (arbitration, 2007). This can be a separate agreement from that of the transaction or can be an arbitration clause as a part of the commercial transaction. But in both cases, the agreement should be in writing. If either of a separate arbitration agreement or arbitration clause exists and still one of the disputant parties challenges the existence of a valid arbitration agreement for resolving their dispute through arbitration, then the court is required to first ensure the existence of arbitration agreement in writing and then evaluate its validity (NOURI, 2017). For instance, when one of the disputant parties challenge the existence of the agreement, the court should make sure that the claimed arbitration agreement exists. Supposed, the agreement exists then the court should also determine that whether or not the arbitration agreement is still valid. If the court found that a written agreement between the parties is existed and is valid, then the court can no longer hear the case and is obliged to refer the parties to arbitration (arbitration, 2007).

Article 13 of the Afghan arbitration law provides for a written arbitration agreement as follows: (arbitration agreements shall be written. An agreement is in writing if it is: contained a document signed by the parties; “in an exchange of letters or other communications (including, but not limited to, electronic mail) which presents a record of the agreement; or in exchange of statement of claim and defense in which the existence of an agreement is alleged by one party and not denied by another” (arbitration, 2007). Likewise, article 15 provides about court proceedings in arbitration as follows: “ If an action is subject to an arbitration agreement is brought before a Court, the Court shall refer the matter to arbitration if any of the parties requests, before timely filing with the Court his or her first substantive statement, and if the Court finds that the arbitration agreement meets the requirements of this law” (arbitration, 2007). The concerning article further reads: (if an action referred to in paragraph 1, of this article is brought but not resolved and settled, arbitral proceedings may nevertheless be commenced or continued, and an award may be made by arbitrator (s) or arbitral tribunal. However, the Court shall suspend its proceedings until the arbitral proceeding is concluded (arbitration, 2007).

Court intervention in regard to determining arbitral tribunal

Another instance of court intervention in arbitral proceeding before the commencement of the arbitration proceeding is the selection of arbitral tribunal/institution under which the arbitration is being conducted. Sometimes, arbitration agreement between the disputant parties lacks selection of arbitral institution under which the parties are supposed to conduct arbitration (Dessie, 2020).

In a situation where the parties do not specify or they cannot agree upon arbitral institution, the institution is then determined by the competent court whose decision in this regard would also not be subject to further appeal. Article 32 of the Afghan arbitration law states: “Absent an Agreement by the parties to conduct an Arbitration without using an Arbitral institution, if the parties do not specify and cannot agree upon an Arbitral institution under which the Arbitration will be conducted, the Arbitral institution shall be determined by a court, which decision shall not be subject to further appeal” (arbitration, 2007).

Court intervention in regard to appointing arbitrators

Regarding the appointment of arbitrators, it seems that Afghan arbitration law has provided almost the same provision as MDL does. The law first provides for the composition of the arbitral tribunal and then gives the parties the discretion of determining the numbers of arbitrators. In case the parties do not determine the numbers of the arbitrators, the law then assigns one arbitrator. If one of the disputants is the state, the number of the arbitrators in light of the law shall be three. Article 17 of the Afghan arbitration law reads: “the parties are free to determine the number of arbitrators, but if they do not, the number of arbitrators shall be one, unless of the parties is a state, in which case the number of the arbitrators shall be three” (arbitration, 2007). Article 18 of the Afghan arbitration law mentions the issue of nationality of the arbitrators and indicates that none shall be precluded by reason of his or her nationality from serving as arbitrators unless the parties agreed otherwise (arbitration, 2007). The law similarly provides about the procedure of appointing arbitrators and completely provides with the same provision as MDL suggests.

Article 19 of the Afghan arbitration law states: “if the parties have not agreed on a procedure for appointing arbitrators, the law states; “if the composition of the tribunal determined to be three arbitrators, then each party shall appoint one arbitrator thus appointed arbitrators shall appoint the third arbitrator” (arbitration, 2007). These are some general rules regarding appointing arbitrators without the intervention of courts. But, in case, the parties or one of the parties fails to appoint arbitrator within 30 days or the two appointed arbitrators fail to appoint the third one within the 30 days, then the appointment shall be made within 30 days of either party’s written request by the competent courts. Likewise, in arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator shall be appointed by the competent court within 30 days of a written request of a party to the court. This is the second instance of court intervention before the commencement of arbitral proceedings in light of Afghan arbitration law (arbitration, 2007).

Similarly, the law prescribes the situation in which the parties have agreed on the appointment procedure but a party fails to act the way of procedure they have agreed upon. Or the parties or arbitrators are unable to agree on what they are expected to do based on the agreed procedure. Or the third party, including an arbitral or other institution fails to perform any function entrusted to do it in light of the previously agreed procedure. Then either of the parties may request the competent court to take necessary measures, unless the agreement of appointment procedure provides otherwise. The article further states that a court acting pursuant to paragraph 1 or 2 of the article shall have due regard to any qualifications required for the arbitrators by the arbitration agreement of the parties (arbitration, 2007). The qualifications are provided as follows: “The potential arbitrator’s knowledge of relevant law and relevant commercial and economical experience, Independence and impartiality of the arbitrators, and citizenship of other than those of

the parties, The law also provides that the decision by the competent court on a matter subject to paragraph1) or 2) of the article shall be subject to further appeals” (arbitration, 2007).

Court Intervention During the Arbitral Proceedings

During the arbitral proceeding, the court may play vital role. For instance, when there is the need to consolidate arbitral proceedings for the sake of preventing conflicting resolution of disputes or to increase and promote the efficiency of an interim measure or protection order by either party, the court is obliged to get involved in arbitral proceedings and take necessary actions (Bachand, 2012). Arbitral tribunal does not have obligatory powers while the court does have and can therefore make such orders. Section 3 of article 15 reads; “during any arbitral proceedings by an arbitrator(s) or arbitral tribunal, a party may request, and the competent court may grant interim protection measures” (arbitration, 2007). Likewise, article 29 of the law provides about precautionary measures which can either be taken by the arbitral tribunal or the competent court. Article 29 reads: “Unless otherwise agreed by the parties, the Arbitral Tribunal may, at the request of a party, take measures and issue any interim orders it deems necessary during the proceedings to protect the subject matter of the Arbitration, including any measures for protecting the goods and commodities involved in the dispute, such as entrusting such items to third parties or selling perishable goods The Arbitral Tribunal may require the payment of expenses resulting from such measures mentioned in paragraph 1) of this article requests or applications by either party for such an interim order of protection from the Court shall not be deemed inconsistent with the Arbitration Agreement or a waiver of such Agreement” (arbitration, 2007).

Similarly, the law provides with maintaining the confidentiality of the arbitral proceedings and awards and insists on keeping them confidential, unless the parties themselves agree otherwise. In order to ensure such confidentiality of the proceedings and awards, the law also allows the court to take reasonable actions to ensure such confidentiality upon the request of either party or arbitrator. Article 10 of the law states: (“unless the parties agree otherwise, all Arbitral proceedings conducted, and Awards made pursuant to this Law shall be kept confidential. A Court shall, upon request by any party or Arbitrator, take reasonable actions to ensure that confidentiality”) (arbitration, 2007).

Besides, during the commencement of arbitral proceedings, the court have supervisory power over challenging arbitrator and in case of the request and application of either party about challenging arbitrator, the competent court decides in light of the existed evidence (Dessie, 2020). However, hearing the claim of challenging arbitrators at the first step is the authority of arbitral tribunal and in second step the court gets involved in the arbitral proceedings and hears the claim. In regard to challenging arbitrator, article 22 prescribes the role of arbitral tribunal while article 23 of the ARL provides with the role of the court. Article 22 regarding challenging arbitrators, reads: “If the parties have not agreed on a procedure for challenging an arbitrator, then a party who intends to challenge an arbitrator may within 15 days after becoming aware of the constitution of the Arbitral Tribunal or after becoming aware of any circumstance referred to in article 23, send a written statement of the reasons for the challenge to the arbitral tribunal and, unless the challenged Arbitrator withdraws from his or her office or the other party agrees to the challenge, the Arbitral Tribunal shall decide on the challenge” (arbitration, 2007). Likewise, article 23 provides with the role of court upon challenging arbitrators as follows: “If a challenge under any procedure agreed upon by the parties or under the procedure of article 22 is not successful, then the challenging party

may request, within 30 days after having received notice of the decision of the arbitral tribunal rejecting the challenge, that a court decide on the challenge, which decision shall not be subject to further appeal, but while such a request is pending, the arbitral tribunal, including the challenged Arbitrator, may continue the Arbitral proceedings and make an award” (arbitration, 2007).

The last instance of court intervention during the arbitral proceedings is the request for evidence which the arbitral tribunal or either of the parties may request from the court. This instance of court involvement comes under assistive competency of the competent court which takes place upon the request of the tribunal or any of the parties. Article 42 of the law reads: “The Arbitral Tribunal or any one of the parties, when needed, may request the relevant documents or evidence from a Court” (arbitration, 2007).

As mentioned earlier, as per the Afghan arbitration law, the Afghan relevant courts (commercial courts) have limited competency to intervene justifiably during arbitral proceedings and these all happen to assist, supervise and facilitate arbitral tribunal and proceedings.

Court Intervention in Arbitration After Proceedings

Since arbitration as a dispute settlement mechanism does not possess legal power to enforce its rendered award, the need for court intervention arises (RAJOO, 2012). Because the courts have the competencies of enforcing and executing the awards. Courts have supervisory role upon arbitral proceedings, but its competency of judicial control arises when the matter of recognizing, enforcing, and executing of award is in question. Court intervention after issuing the awards takes place in two circumstances (Zhao, 2006). Court intervention before enforcing the awards and during the enforcement processes. Both instances of court interventions are discussed in light of Afghan arbitration law as follows.

Court intervention before the enforcement of the awards

The instance of court intervention before the enforcement of the awards comes to the ground in the form of objection over arbitral award (Dessie, 2020). For instance, either of the parties has the right to object arbitral awards in particular situations and within specific time limits. It means when the award is made and announced to the parties, the parties are given a specified time to reach the court and make the application of setting aside the award. The application to set aside an award means to challenge the validity and legitimacy of the awards by the losing party for the sake of having the whole or some parts of it annulled (NOURI, 2017). In this regard, Afghan arbitration law gives the parties the right to challenge the recognition of the awards in 7 instances based on the ground mentioned in the law. article 53 provides that an arbitral award may be set aside by a court based on the request or based on the objection of a party if: 1) A party of the arbitration agreement referred to in article 14 was under legal incapacity; or 2) the arbitration agreement has subjected the parties to law that is not valid under the laws of Afghanistan; 3) the party who requests setting aside was not given proper notice of appointment of an arbitrator, of the arbitral proceedings or was otherwise unable to present his or her case as provided by the law; 4) an arbitrator was bribed, subject to undue influence or had a material conflict of interest with respect to a party, witness or the subject matter of the arbitration that was not timely disclosed to the parties pursuant to this law; 5) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement or contains decisions on matters beyond the scope of the submission to arbitration, but if the decisions on matters beyond the scope of the arbitration can

be separated from those not beyond the scope of the arbitration, then only that part of the award which contains decisions on matters beyond the scope of the arbitration may be set aside; 6) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the Agreement of the parties, unless the agreement of the parties was in conflict with a provision of this law from which the parties cannot deviate; or 7) or the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Afghanistan, or the award is in conflict with the public [State] policy of Afghanistan.

As mentioned above, Afghan arbitration law gives the competent court the power to hear the claims of setting aside the arbitral award upon the request of either of the parties. Likewise, the law provides with almost the same grounds for setting aside an award that are provided by the model law (arbitration, 2007).

Court intervention in regard to the recognition and enforcement of the awards

Although as a party to the New York Convention on the recognition and enforcement of foreign arbitral award, Afghanistan has the legal obligation to recognize and enforce foreign arbitral awards in its territory, Afghan legal system has so far done nothing particular except some substantive provisions of the law about the recognition and enforcement of arbitral awards (Zamani, 2022). Still there are lots of procedural uncertainties regarding the mechanisms to recognize and enforce arbitral awards. However, Afghan arbitration law allows commercial courts to recognize and enforce arbitral awards in Afghan territory which is a clear instance of courts' involvement after arbitral proceedings. The provisions of Afghan law in regard to the courts' involvement in the form recognizing and enforcing the awards are discussed in the following paragraphs.

RECOGNITION OF ARBITRAL AWARD UNDER AFGHAN LAWS

Afghan arbitration law clearly does not mention anything upon recognition of foreign/international arbitral awards. It just provides some ground with international arbitration signed or being signed between Afghanistan and other states on commercial and economic arbitration, the definition of the international arbitration as well as the enforcement of international arbitral awards in Afghan territory (Zamani, 2022). For instance, upon the definition of the international arbitration, article 3 of the law states that arbitration can be conducted in two ways; domestic and international. Arbitration is international if in the contract, it is described as international or if the transaction occurs between two or more countries although this has not been mentioned in the agreement (arbitration, 2007). The law has not used the word “recognition” even for a single time. Likewise, it has not used the term “foreign arbitral award”. However, the terms “foreign” and “international” are not absolute synonyms of each other in terms of arbitration.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS UNDER AFGHAN LAWS

Unlike recognition of foreign arbitral awards, Afghan laws provide clear substantive provisions upon enforcement of arbitral awards. For instance, article 56(1) of the Afghan arbitration law states: “an arbitral award, irrespective of the country in which it was made, shall be enforceable” (arbitration, 2007). The arbitration law provides clear substantive provision about enforcement of arbitral awards even one step beyond the responsibility that Afghanistan has before the NYC. Because Afghanistan has signed the convention based on the reciprocity reservation, the law provides the enforcement ground for the arbitral awards irrespective of their countries where they

are made (Zamani, 2022). The concerned article of the law is in obvious contradiction with Afghanistan's reciprocity reservation of the convention. Beyond the arbitration law, the Afghan law on foreign investment also provides enforcement of arbitral awards in Afghan territory. For instance, article 30(3) of private investment law states: "any award resulting from arbitration between the parties shall be final and also enforceable by the government upon application of any party to such arbitration" (Afg. Investment law. 2007) Similarly, article 88 of Afghan law on contracts and sales of goods also reads: "parties shall enforce the decision or arbitral awards or mediation agreement. If any of the party fails to enforce it or does not perform its obligation, a competent court issues an order for its enforcement based on the request of the concerning party" (LCSG, 2007).

Notwithstanding the above explicit substantive provisions upon enforcement of arbitral awards, none of the concerning laws provides the procedural mechanism for the enforcement and execution of the arbitral awards. However, both NYC and UNICITRAL model law have submitted the national laws with the discretion to enact procedural mechanism upon the enforcement of arbitral awards based on their own legal systems.

CONCLUSION

This study concludes that courts' interventions in arbitral proceedings are allowed to a limited extent and have been logically justified by the laws either domestic or international. In one hand, the court's interventions have never been determined to be troublesome or disrupting but rather are true support towards a well-trusted arbitration mechanism. Likewise, to omit possible negative intervention of courts' that would have had negative impact on the proceeding or it might have negatively impacted the autonomy of the arbitral tribunal in question. Therefore, the laws either domestic or international legal instruments have put limitation to the courts' intervention in arbitral proceedings.

Afghan arbitration law also allows commercial courts' intervention in every step of arbitral proceeding (e.g. prior to the commencement, during the proceedings and after), but these are in the form of supervising, assisting and facilitating the proceedings. By doing so, Afghan arbitration laws fully comply with provision of NYC and UNITRAL model law of the United Nations. Besides the positive points and well-drafted provision about courts intervention in arbitral proceedings, the Afghan Arbitration law lacks sufficient provision regarding courts intervention after arbitral proceedings. The law specifically lacks procedural mechanism through which the courts are expected to enforce arbitral awards. This situation has faced Afghan courts with lots of problems in enforcing arbitral awards which ultimately makes courts involvement in this stage of the proceedings ineffective.

RECOMMENDATION

To fix the uncertainties, this article recommends reforms in the Afghan arbitration law to clarify the specific circumstances when court intervention is justified, while ensuring that such intervention does not undermine the efficiency and credibility of the arbitral process. Overall, a well-defined legal framework will enhance the confidence of investors and businesses in the Afghan arbitration system, which will ultimately contribute to the country's economic development.

REFERENCES

- Bachand, F. (2012). Court Intervention in International Arbitration: The Case for Compulsory Judicial Internationalism Symposium. *Journal of Dispute Resolution*.
- World Bank, w. (2018/2019). *Doing Business*. wb.
- CAL. (2007). *Commercial Arbitration Law of Afghanistan*.
- Dessie, A. G. (2020). The Extent of Court Intervention in Arbitration Proceedings: Ethiopian Arbitration Law in Focus. *Scholars International Journal of Law, Crime and Justice*, 56.
- Hakimi, N. (2016). Designing an Emergency Arbitration Mechanism for Afghanistan . *SW. J. Int'l L.*
- Law, U. N. (1985, amended in 2006). *UNCITRL Model Law on International Commercial Arbitration* . United Nations .
- LCSG. (2007). *Law on contracts and sales of goods also reads*.
- Moses, M. L. (2012). *The Principles and Praticce of International Commercial Arbitration* .
- N.Y.C. (1958). Conventioin on the Recognition and Enforcement of Foeign Arbitral Awards.
- NOURI, A. B. (2017). An Investigation of the Role of Domestic Courts in International Commercial Arbitration in Iranian Law. *Lex Humana, Petrópolis*, v. 9, n. 2, p. 20-39, 2017, ISSN 2175-0947© Universidade Católica de Petrópolis, Petrópolis, Rio de Janeiro, Brasil.
- RAJOO, D. P. (2012). The Extent of Court Intervention Inarbitration in Malaysia as a Model Law jurisdiction. *Malayan Law Journal*, 5.
- UN. (1958). *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. New York.
- Zamani, R. A. (2022). The Recognition and Enforcement of Foriegn Aarbitral Awards: New York Convention and Afghan Arbitration Law Perspectives . *Eximia Journal* .
- Zhao, J. (2006). Judicial Intervention in International Arbitration: A ComparativevStudy of the Scope of the New York Convention in U.S. and Chinese Courts. *Washington International Law Journal*, 404-406.