



The Concept, Types and Sources of Legal Regulation of International Commercial Arbitration in the Republic of Iraq

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The subject of the article research is the concept, types and sources of legal regulation of international commercial arbitration in the Republic of Iraq, the methodological basis of the article research is the dialectical approach to the problem under consideration using general and private methods of scientific knowledge, formal legal, and logical, socio-psychological, system analysis. In the process of research the achievements of the sciences of civil, private international, Iraqi law, and civil procedure. This study is divided into two parts: the first part presents the concept and types of international commercial arbitration in the Republic of Iraq, and the second part presents the sources of legal regulation of international commercial arbitration in the republic of Iraq

Key words: *Legal regulation, International Commercial Arbitration, Republic of Iraq*

INTRODUCTION

There is no doubt that the increase in economic exchanges and international trade operations across borders and the inaptitude of the national laws to settle the disputes arising from them tended to search for a specialized technical tool based on the separation of those disputes away from the state's jurisdiction and its law. The international commercial arbitration became such an alternative instrument. Recently, arbitration has become the usual and preferred means by which parties resort to resolving disputes, particularly those arising in the context of international trade relations. There is also no doubt that the parties' resort to choosing this path is to resolve the disputes arising between them. Arbitration offers a special system of advantages that the national



judiciary might be unable to achieve in most cases. This system was distinguished in the advanced societies with special features, so that it has general foundations and principles that it indispensable to achieve the justice for which it was found, including what relates to procedures such as the principle of confrontation between litigants and the principle of equality and the right to defense and other principles that were taken by the principle of litigation before the ordinary judiciary. Modern arbitration does not exceed these principles regardless of description as a special system based on the will of the parties to the conflict.

In addition, arbitration provides confidentiality, and this is in contrast to the public jurisdiction of the state, which is characterized by publicity, which cannot conceal everything related to the subject of the conflict, and this is what attracts parties as the commercial business needs confidentiality considering that publicity does not achieve the interests of litigants in maintaining the confidentiality of commercial transactions, especially that some companies prefer losing their lawsuit to disclosing some commercial secrets that in their view represent a value higher than the value of the justice in the lawsuit. Arbitration is characterized by speed in completing and resolving disputes within a specific time period, especially in matters that require the quick resolution, and this is in line with contracts concluded in the framework of international trade.

All the above shows the relevance of studying the issues relating to the activities of the international commercial arbitration. It is particularly important to study this issue for the development of legislation of the republic of Iraq in this area of public relations. At the present stage, the republic of Iraq, on the one hand, recognizes international commercial arbitration as an important institution, including for improving the state's investment policy.

1.1 The concept and types of International Commercial Arbitration in the Republic of Iraq

Regarding the concept of arbitration in the Iraqi legislation, we find that the Iraqi Law of Procedure No. 83 did not refer to the definition of arbitration, but it authorized the agreement to arbitrate in a specific dispute, as well as the agreement to arbitrate in all the disputes that arise from the implementation of a specific contract in Article 251 of it (Iraqi Civil Procedure Act., 1969). As for the effective Iraqi investment law, it did not refer to the definition of arbitration, but it indicated in Article 27, paragraph 4, that it is permissible when contracting to agree on a mechanism for resolving the dispute, including resorting to arbitration in accordance with Iraqi law or any other internationally recognized entity according to Article 27 of Iraqi Investment Law (Iraqi Investment Act., 2006). This is the opposite of what it is in the Egyptian law and the rest of the other laws, as it referred to the definition of arbitration within the Egyptian Arbitration Law in Article 10 (Egyptian Arbitration Act., 1994), while the Iraqi Civil Procedure Law did not differentiate between the condition of arbitration and the arbitration clause as it authorized the agreement to arbitrate in a specific dispute or all kinds of disputes that arise from the

implementation of a specific contract. However, the Iraqi Court of Cassation pointed to the forms of arbitration within the cases of the decision issued by the Court of Excellence No. 363 Civil First 74 in 1975 (Al-Rubaie, I.I , & Al-khikani, M.M , 2011), where it indicated that arbitration in the law is one type according to Article 251 of the civil pleadings and that the only condition for its existence and arrangement of its effect is that it is to be fixed in writing according to amended Article 252 of the Civil Procedure Law and it is agreed that the agreement was made at the time of the contract or was a separate written agreement agreed or agreed upon during the pleadings. Consequently, it is established from the above provisions that the Court of Cassation authorizes the agreement to arbitration at the time of contracting, i.e. as a condition contained in the terms of the contract between the two parties, which is called (the arbitration clause), as well as the court authorization that the agreement to arbitration should be through an independent contract and this is called (arbitration stipulation). And a definition of international commercial arbitration was contained in the draft of the Iraqi Arbitration Law of 2011 and it dealt with the definitions in the first chapter of it in the first article of it the second paragraph where the arbitration was defined (it is a method chosen by the parties of the dispute to resolve it by one or more arbitrators instead of resorting to the judiciary. It was also mentioned in Article 1 “Commercial arbitration is international if the subject of the dispute relates to international trade, in the following cases”(Al-Ajili, K.H., 2012) :

- A. If the main business center of the arbitration agreement parties is located in two different countries at the time of issuing the arbitration agreement, then if one of the parties has several business centers, the business center will be deemed to be its permanent residence.
- B. If the parties to the arbitration agreed to resort to a permanent arbitration tribunal or an international arbitration center located inside or outside Iraq.

From the above points it becomes clear when arbitration can be considered international.

There have been many interpretations and definitions of arbitration between writers and researchers in Iraq and one of the most important of these definitions arbitration has been defined as an agreement in a specific contract on the subject of the dispute to the arbitrators, and agreement to arbitration is established only in writing, and it may be agreed upon during the pleadings, and if it is proven to the court that there is an agreement on arbitration or if it approves the agreement of the parties during the pleading and this is what stipulated in Article 252 of Iraqi Civil Procedure Law No. 83 , then it is decided to consider the case as overdue until a decision has been issued arbitration. One of the parties may resort to filing a lawsuit without regard to the condition of arbitration. If the other party did not object to it in the first session, the case may be considered and the arbitration clause considered null.

As it became necessary to pass the Iraqi Arbitration Bill due to the many deficiencies in Iraqi legislation pertaining to arbitration and the country's openness to other countries of the world and the result of the commercial and urban development taking place in Iraq.

As for the Iraqi researchers and writers in arbitration, where the definitions differed, some writers knew the arbitration that it is an agreement between the two parties to refer to all or some of the specified disputes that have arisen or may arise between them. By specific legal relationship, whether contractual or not, and the arbitration agreement may be in the form of an arbitration clause contained in the contract or in the form of a separate agreement (Al-Dulaimi, H. L, 2011).

It is noted from the definition above that the proponents of this opinion did not specify the types of contractual relationships that can be resolved by arbitration, and this is a violation of the Iraqi Civil Procedure Law, which was stipulated that the subject of the contract must be reconcilable, and this is not what the Proponents of this opinion mentioned.

As for the second opinion of the Iraqi law, it was known that the arbitration is the agreement of the parties to the contract to submit their disputes to the judgment of individuals chosen by these parties (Al-Rubaie, J. S, 2011).

We note from the definition above that the types of disputes were not specified either. It was absolute, and this is also a contradiction to Iraqi legislation, this definition was closer to the definition of Ad Hoc arbitration than to being a definition of arbitration in general, on the other hand, he did not specify the type of legal relationship in the definition, whether contractual or non-contractual this makes this definition insufficient.

It is noted that there is a big problem in arbitration in Iraqi law in general and in particular in defining arbitration, as the definition was vague and we suggest that the definition of arbitration should be *“It is the agreement of the parties to the dispute to submit their disputes before neutral individuals or arbitral institutions for the purpose of settling the dispute, provided that the arbitrators’ decision or the institutions’ decision is binding on the parties to the conflict and it does not violate public morals and that it is compatible with the Iraqi Civil Procedure Law”*.

As for international commercial arbitration, which was not mentioned in the Iraqi Civil Procedure Law No. 83, as it is difficult to distinguish between arbitration and international commercial arbitration in the Iraqi law and in the definition, the procedures as well. We will explain that in the coming chapters accordingly, the definitions of international commercial arbitration have multiplied in legal jurisprudence in Iraq. In order to define international

commercial arbitration, it is necessary to address the legal characteristics of international commercial arbitration.

Among the most important of these legal traits and characteristics are

- The Commercial characteristic of arbitration: The commercial characteristic of arbitration is by presenting disputes related to commercial issues to tribunals chosen by the litigants whose decision in the dispute is final, international commercial arbitration is an optional way to resolve disputes related to international trade, i.e. disputes that arise between natural individuals from different countries (Shuaib, A.S.,1981) and even if the original of this type of arbitration is optional, it is compulsory in some cases, as is the case in arbitration with the International Chamber of Commerce in contracts for industrial installations and international supplies of a typical form (Kamal, I.,1991).
- The specialized characteristic of arbitration: This trait is represented in international institutions devoted to settling international trade disputes exclusively. International commercial arbitration does not deal with labor disputes or personal status disputes (Shab, T. M.,1977).
- The absolute characteristic of arbitration: This trait is represented in the fact that the principle in international commercial arbitration is the settlement of the dispute to end it, but this does not preclude the agreement to make it an arbitration with reconciliation, provided that this agreement is explicit and clear in its indication of the will to arbitrate with reconciliation (Fathi,W.,1981), where it is permissible for the arbitrator to adjudicate in the dispute, or reconciliation between the parties and accordingly he is not bind to the provisions of a specific law, and his ruling is not subject to appeal unless it violates public order, or public morals, with reference to the fact that the arbitrator is obligated in the two types above in issuing the award (Al-Tabaqjali, N.,1989).
- Total characteristic of arbitration: This characteristic is that arbitration is complete by the parties agreeing to make it inclusive of all the paragraphs included in the contract concluded between the parties, whether these paragraphs are of a legal, technical, financial or other nature, but the arbitration may be partial when the parties agree to make it exclusive in some but not all the clauses of the contract, such as it includes clauses of a legal nature, or of a technical or financial nature, or otherwise (Al-Wafa, A. A.,1988).
- International Arbitration Characteristic: The most important characteristic of commercial arbitration is that it has an international character, but it is not easy to assign a specific nationality to arbitration, so it is not described as national, foreign, or international in nature, but rather it is neutral arbitration, and the reason for this is that they believe that

arbitration is like a contract based on the will of the parties, Therefore, we find that jurisprudence and the judiciary distinguish in this area between three types of arbitration which are (Barale, J., & Dreyfus, S.,1960):

- I. National arbitration: National (internal) arbitration is defined as arbitration which belongs to all its elements to a specific country.
- II. Foreign Arbitration: it is generally defined as arbitration, which in one of its elements is linked to external or foreign factors.
- III. International Commercial Arbitration: Arbitration between it and the legal systems of different countries defines many points of convergence, or is not related at all to any of the national legal systems (Radwan, A. Z.,1981). The importance of the distinction between national (internal) and other types of arbitration is due to the many problems that arise from these types and it does not appear in national arbitration, and these problems, for example, determine the law applicable to the arbitration agreement (Munir, A. M. 1997), and jurisprudence and the judiciary provide several criteria for the distinction between National (internal) and international arbitration , but the most important of them can be traced back to the following criteria (Ahmed, S. D.,1992):
 - The geographical criterion is represented by the place of arbitration. According to this criterion, arbitration is national if the decision is issued within the state , but if the decision is issued outside the state, the arbitration is considered international (New York Convention , 1958). Or an alien to the procedures (Mohsen, S. 1997), as this criterion is not accurate, as the parties may agree to apply to their disputes a law other than the law of the place that they set for arbitration, here we are facing international arbitration in relation to the state in whose region the award was issued due to the application of foreign law, then the place of the arbitration may be considered an indication of national or international to arbitration, but it is not enough alone to determine this characteristic (Al-Kilani, M. ,2015).
 - The legal criterion: is the law that is applicable to arbitration procedures. If the law applied internally it is national arbitration, and if the law applied is foreign then arbitration is international, as is the case if the arbitration is subject in its procedures to the provisions of an international agreement (Al-Menshawy, A. H.,1994), but this opinion has been subjected to several criticisms, including the possibility of arbitration proceedings going on in several countries, then the laws governing its procedures will multiply as a result of the arbitrators ‘travel between several countries (Al-sanhoury, A.R., 2001).
 - The economic criterion: is represented by the nature of the dispute, whereby jurisprudence takes the criterion of the nature of the dispute, so arbitration is considered international if it

relates to an international dispute related to the commercial activity, and it is noted that this standard did not specify the cases in which the transactions are international or not and the great difficulty in this matter is not hidden (Al-Menshawry, A. H.,1994).

- The nationality of the parties and the arbitrators or the place of their residence: under this criterion, arbitration is international if the nationality of the opponents differs, or the place of residence of the arbitrators, or the nationality of the arbitrators, on the contrary the arbitration is national if the nationality of the opponents, or the place of residence, or nationality arbitrators, and jurisprudence almost unanimously not to adopt this standard because it leads to unacceptable results (Faris, M.I., 2015), as the criterion of nationality, or the place of residence is not sufficient in itself to give international character to arbitration and that the Model Law on International Commercial Arbitration, developed by the United Nations Commission on International Trade Law (UNCITRAL), identifies cases where arbitration is international in the third paragraph of Article 1 thereof, as it states the following: "Arbitration shall be international:
 - A. If the headquarters of the parties to the arbitration agreement at the time of the conclusion of that agreement are located in two different countries.
 - B. If one of the following places is located outside the country in which the workplace of the two parties is located, namely:
 - The place of arbitration if it is specified in the arbitration agreement or according to it.
 - Any place where it implement an important part of the obligations arising from the commercial relationship, or the place where the subject matter of the dispute is most closely related.
 - If the parties expressly agree that the subject of the arbitration agreement relates to more than one country (UNCITRAL Model Law., (1985).

We believe that the model law (UNCITRAL) was unsuccessful in defining an international standard of arbitration, because in its text it left room for fraud towards national law, as the parties can circumvent this law, which may be originally incompetent, by fabricating one of the criteria mentioned in the aforementioned text.

We suggest that the definition of International Commercial Arbitration in the Iraqi law should be as follows: "*The International Commercial arbitration is an alternative method to resolve the disputes in which the parties agree to take the disputes related to the implementation of an*

international commercial contract to a non-state court by appointing one arbitrator or more, and these arbitrators will issue a ruling called the arbitration award that will be enforced on the parties to the conflict, and it is implementable by order of the public authority". We propose to add this definition to Iraqi Civil Code and the Iraqi Investment Law, and in the future, to include this definition in the Law on International Commercial Arbitration of the Republic of Iraq.

Before we dive into the types of arbitration in the Iraqi law, it must be cleared out that the international commercial arbitration was not mentioned in the Iraqi laws except in the Iraqi Investment Law No. 30 of 2006 amended, the second amendment, as stated in Article 27 first "Disputes arising from the application of this law are subject to Iraqi law and the jurisdiction of the Iraqi judiciary, and it is permissible to agree with the investor to resort to commercial arbitration (national or international) in accordance with an agreement concluded between the two parties specifying the procedures of the arbitration and its destination and the applicable law" (Iraqi Investment Law, 2006)

1. The national arbitration:

Before diving into the arbitration at the level of internal legislation, it must be said that the legislative policy adopted by the countries coupled with the degree of their economic openness which affects the importance and role of arbitration in settling disputes besides the national judiciary. Where some countries worked to give the judiciary only the right to adjudicate disputes and not to give the arbitration any significance, and this is due to the sovereign considerations of these countries and among these countries is Iraq, but on the other hand, there are a number of considerations that call for other ways to resolve disputes that reduce the large number of cases submitted to the judiciary and takes into consideration what the traditional judiciary cannot take, especially in a developing country like Iraq. At the forefront of these considerations are the existences of legal relations that require specialization and accuracy, which are often not available in the regular judiciary. For example, the emergence and expansion of trade relations and their ramifications and the emergence of economic concepts and ideas and the accuracy required in these economic and commercial activities, topics of intellectual property and the regulation of the commercial law in the services at the international level, contracts for technology transfer, and the role that technology plays in many fields, especially in patents, which made it extremely difficult for the national judge to consider such cases. This is how we had to resort to the means of achieving a kind of private justice away from the jurisdiction of the judiciary, which seeks to implement the legal text and not the achievement of justice between the litigants, and the two contractors may seek the arbitration to resolve the dispute avoiding the slow procedures and saving the time and expenses that they incur.

In which the Iraqi legislator specified the Articles (251–276) of the Civil Procedures Law No. 83 to arbitration, then Article 251 of it stipulated that "arbitration in a specific dispute may be



agreed upon, as well as an agreement to arbitrate in all disputes arising from the implementation of a specific contract”.

What is meant by national arbitration is the set of methods available to the litigants within the commercial or civil restrictions agreed upon between them to resolve their reconcilable disputes and emerging disputes due to the implementation of the contract or its interpretation in accordance with the rules of arbitration in the internal or national law of the state by arbitrators who are chosen or appointed with full will of the conflicting parties. The arbitrator is required to be a natural person with full capacity in all civil rights and that he accepts the task entrusted to him written, as the Article 259 of the Iraqi Civil Procedure Law No. 83 requires that the acceptance of the arbitrator to be written.

The Arbitration in the Iraqi civil law of procedures is not limited to commercial and investment disputes only, but went further than that in Article 254 of Iraqi Civil Procedure Law No. 83, in which the Iraqi legislator authorized the arbitration in personal status cases and Islamic Sharia cases, and stipulated that the arbitration is allowed only in the solvable cases.

There was no definition of international commercial arbitration in the Iraqi law except in the proposed draft of Arbitration Law for the year 2011 where international commercial arbitration was defined. The commercial arbitration is considered international if the subject of the dispute is related to international trade as in the following cases (Al-Ajili, K.H., 2012):

1. If the main business center of the arbitration agreement parties is located in two different countries at the time of issuing the arbitration agreement, then if one of the parties has several business centers then the transit is in his usual place of residence.
2. If the arbitration parties agreed to resort to a permanent arbitration tribunal or an international arbitration center located inside or outside Iraq.
3. If the subject of the dispute within the arbitration agreement is related to more than one country.

The term international arbitration is contained in the Investment Law No. 30 of 2006 in matters relating to investment did not refer to any explicit or implicit definition in the Iraqi legislation represented in the Civil Procedure Law or the Investment Law It is necessary to point out that Iraq needs an independent arbitration law, and reference must be made in this law to clear definitions of the concept of international commercial arbitration and laws governing arbitration procedures in Iraq.

On the other hand, the Iraq is linked to a number of international agreements that have regulated the arbitration and addressed some of the problems that the arbitration faced represented by the Geneva Convention of 1923 (Implementation of foreign court Awards in Iraq., 1928) related to the reinforcing of the international arbitration and assistance in implementation of the arbitration decisions. Where the Iraq has joined this arrangement in the year 1928 and this indicates the recognition of international trade arbitration by Iraq.

2. Institutional Arbitration:

This type of arbitration is done through a permanent arbitration board, organization, or center, whether it is Arabic, regional or international, and these centers and organizations have rules and procedures in which they operate by. Iraq has endorsed institutional arbitration by signing the Amman Arabic Treaty for Commercial Arbitration of 1987 (Amman Arab Convention law in Iraq.,1988), which mentioned in Chapter Two, Article 4 the recognition of the signatory countries that the institution (the Arab Center for Commercial Arbitration) is a permanent institution with independent legal personality and the signatory countries must recognize the decisions of this institution and apply Its decisions (Amman Arab Agreement Act., 1987) . Today we see the establishment of many arbitration institutions in Iraq, including the Iraqi Center for International Arbitration (icacn) in the city of Najaf and Basra International Commercial Arbitration Center, and the Erbil International Commercial Arbitration Center.

Institutional arbitration was defined in an article published by Judge Imad Abdullah as an organized arbitration through permanent national or international tribunals, institutions or centers such as the Paris Chamber of Commerce, London, or Dubai for arbitration. These tribunals or institutions undertake arbitration according to rules or procedures contained in their regulations and they are known previously, and they have lists of names of accredited arbitrators with expertise, competencies and reputation, and given the prosperity of international trade there are currently a large number of arbitration institutions or tribunals around world, including what is related to In arbitration of a specific dispute or trade. The truth is that the major powers took the lead in unilaterally by forming such arbitration institutions, which made them the opponent and the ruler to third world countries that are trying hard to defend their interests by establishing arbitration centers (Imad, A.A.,2018).

We believe that the definition that came by Judge Imad Abdullah is a comprehensive compiler of the concept of institutional arbitration and we suggest adding it to the Iraqi Civil Procedure Law.

3. Ad Hoc Arbitration: This arbitration is based on the agreement of the parties to the dispute without resorting to the services of any permanent arbitration center, and this type of arbitration is still exists in which the burden of organizing and implementing the



arbitration is the responsibility of the parties to the dispute, but this type of arbitration has become at the present time is the exception after major arbitrations have become the specialty of the jurisdiction Arbitration institutions.

In which the Iraqi Investment Law No. 30 of 2006 in Article 27 authorized the Parties of the dispute to choose the Arbitration procedures, the applicable law, and the authority applying the arbitration judgment, thus, this means that the Iraqi legislator left the matter to the parties of the conflict as the arbitration in Iraq is subject to the autonomy of will principle.

1.2 Sources of legal regulation of International Commercial Arbitration in the Republic of Iraq

Many Iraqi laws stipulated the arbitration as a way to settle disputes related to commercial and investment issues, for example, the amended Civil Procedure Law No. 83, and the Foreign Investment Law No. 13 of 2006, as well as the terms of reference approved by the Specialized Chamber of Commerce and Industry and according to its founding laws (Iraqi Chambers of Commerce law. 1989) . As for the International Commercial Arbitration, the Iraqi legal system has adopted it since 1928 in the Law No. 30 of 1928. That included the Iraq's Authentication on the protocol of arbitration clauses signed at Geneva for the year 1923 (Implementation of foreign court Awards Law in Iraq, 1928), in which the Iraqi law has made the arbitration subject to the approval of the competent court on the arbitration decisions issued by the institutions or the competent arbitration organizations based on the Civil Procedure Code law No. 83 and at the request of one of the parties then the competent court applies the law of pleadings and the provisions contained in the Articles 251–275 of it, which allows the competent court to access the origins of the arbitration decision and the reasons for its issuance and circumstances according to the Iraqi law, and that means it is necessary to void the arbitration decision from its content.

For example, if two parties of an international commercial contract agreed to supply medical equipment, and the contract indicated almost all types of the disputes arising from the implementation of the contract by the arbitration accordance to the laws of the International Chamber of Commerce (ICC) (ICC Rules., 2017), and one of the contractors committed a violation , the aggrieved party concluded to the Paris Arbitration Chamber according to the law and after a series of procedures, an arbitration award was issued in which this decision cannot be implemented in Iraq as soon as it is submitted to the Implementation Department, but a case must be filed before the Iraqi judiciary for the purpose of obtaining a ruling to implement the arbitration decisions and in application of the Iraqi Civil Procedure Law No. 83, the judiciary has a broad authority to reconsider the arbitration decision in terms of formality and objectivity.

That means the text of arbitration is not valid and the parties of the dispute should resort to the Iraqi judiciary directly, and it cannot be said here that the arbitration decision can be implemented based on the Law on the Implementation of Foreign Provisions No. 30 of 1928, as this law applies to judicial rulings specifying the conditions under which it can be implemented Inside Iraq. On the other hand, the issue of implementing a foreign arbitration decisions that is related to the recognition of arbitration decisions that were addressed by the New York Agreement of 1958, which Iraq has not ratified yet, and perhaps the reasons that prompted Iraq not to ratify this agreement are the historical factors as a result of experiences that Iraq has gone through in that matter most of the Arab countries that have taken a negative position on international commercial arbitration for the great loss that they were incurred when choosing arbitration to resolve disputes, or poorly drafting contracts that include the arbitration clause since accuracy was not observed in the text and their efforts are limited to the physical condition of the contract such as the price and specifying the materials and dealing with the contracts in a traditional way.

That is what motivated the Iraqi legislator to stipulate the prohibition of arbitration and the decisions issued by arbitration institutions, including the dissolved Revolutionary Command Council Resolution No. 57 of 1990 (Protecting Iraqi funds law., 1990), which includes the protection of Iraqi funds, interests and rights inside and outside the Iraqi territory, In spite of this, we find many texts contained in the Civil Procedure Law and the Iraqi Foreign Investment Law, or contracts concluded by the government in response to the ruling of practical necessities and the claim of the contracting companies in order to provide reassurance to the capital owners belonging to the investing companies.

Iraqi law has concerned in the arbitration provisions in many disputes, especially commercial ones, and many institutions and companies turn to them to dispense the judicial courts, and Article 251 of the Civil Procedure Law No. 83 states that the arbitration may be agreed upon in a specific dispute. And if the litigants agreed to arbitrate in a dispute and in the case of resorting to the arbitration, it is not permissible to resort to filing a case before the judiciary except after the exhaustion of the method of arbitration.

There is no reference to international commercial arbitration in the Iraqi civil law, while other texts have embraced the possibility of resorting to international commercial arbitration which is represented by the Iraqi Investment Law No. 30, where it permitted resorting to the international commercial arbitration and the national arbitration in Article 27 thereof, we will expand more in the legislation that regulated the arbitration in Iraq:

1. The Civil Procedure Law of 1969 did not address the provisions of international commercial arbitration, and that doesn't mean it is prohibited by it, because Article 16 of

the Iraqi Civil Law No. 40 of 1951 (non-valid law) (Civil Procedure Act 1951) allows the implementation of the rulings issued by foreign courts, and Law 30 of 1928. This means if an Iraqi and a foreigner agreed in a contractual relationship to resort to international commercial arbitration and a judgment is issued by a foreign court in this dispute, the arbitration decision can be implemented in Iraq. It is not correct to refuse the implementation of the decision by saying that the international commercial arbitration in Iraq is not authorized. Because Article 25 of the Iraqi Civil procedure No. 40 of 1951 stipulates it, as it applies to the contractual obligations of the law of the country in which the contract was issued. That if the two parties didn't agree or it is clear whoever differs, another law is to be applied. Accordingly the resort to the international commercial arbitration is subject to the original principle, which is the autonomy of will principle, and it is effective here and is not bound by any restrictions. It is possible to stipulate in the investment contract between the Iraqi state and foreign investors to resort to international commercial arbitration in a commercial dispute resulting from the implementation or interpretation of this contract.

Where it is noted that the regulation of the arbitration and the civil procedures law in one law reduces the importance of arbitration, we believe that the Iraqi legislator must expedite the legislation of an arbitration law due to the multiplicity of laws that arbitration needs to regulate the procedures and to develop a clear concepts of arbitration terms that differ in their interpretation between jurist and another. The legislator's silence on many concepts related to arbitration opens the door for controversy between jurists. And it assigns the task of interpreting the texts on arbitration mentioned in the Iraqi Civil Procedure Law No. 83 for the year 1969, before the judiciary and sometimes even the interpretation of the judiciary may violate the intention of the legislator, which causes the creation of problems for the conflicting parties and arbitral tribunals. Accordingly, the need for arbitration is negated due to the absence of its advantages that distinguished it from the national judiciary. Therefore, we see that the Iraqi legislator and the legal committee of the Iraqi parliament must expedite the legislation of an arbitration law in the (international – national) class or adopt an arbitration law as we suggested in the conclusions, such as whether the UNCITRAL law or the French arbitration law.

2. Iraqi Investment Law No. 13 of 2006 according to Article 27, it is permissible for the parties of the conflict subject to the provisions of this law to agree on a mechanism to resolve disputes including the recourse to arbitration in accordance with Iraqi law or any other internationally recognized entity.

We noticed that the Iraqi Investment Law No. 13 of 2006, it lacked many laws and was satisfied with mentioning the arbitration in Article 27 only; as it did not rise to the international or foreign arbitration procedures that the conflicting parties must follow. This lack of investment law is

considered an expulsion of investment and does not match the current reality of Iraq in development and openness to the international world. The legislator needs to provide more guarantees to encourage investment by organizing arbitration provisions for foreign and even national investment. Accordingly, we suggest that the Iraqi legislator expedite the legislation of an International Commercial Arbitration Law that would cover up the shortfall in the Iraqi investment law.

3. Whereas, Iraqi Commercial Law No. 149 1970 (Iraqi Commercial Law, 1970) referred to arbitration in Article 661, paragraphs 1, 2 and 4, after taking the opinion of the observer and hearing the bankrupt's statements or notifying him. The bankruptcy judge may authorize the bankruptcy secretary to make conciliation or to accept arbitration in every dispute related to bankruptcy, even if it is related to rights or real estate claims. If the dispute is about unknown value or its value exceeds five hundred IQ dinars then the conciliation or acceptance of the arbitration will not take effect until after the bankruptcy judge has ratified its terms. The bankrupt is requested to appear upon ratification, and the bankruptcy judge shall hear his statements if he attends, and his objection shall have no effect. And in the fourth paragraph the bankruptcy judge's decision may be appealed if it is issued refusing to ratify the conciliation or arbitration.
4. International treaties: Iraq is linked to a number of regional treaties concluded in the framework of the League of Arab States And some international agreements related to the promotion and protection of investment in general and other related to resolving disputes concerning Arab investments in particular and these agreements require the commitment of the parties to them to resort to international commercial arbitration to resolve the investment dispute and from these agreements the following:
 - A. Geneva Protocol of Arbitration of 1923;
 - B. Riyadh Agreement for Judicial Cooperation in 1983 (Iraqi law , 1984);
 - C. The Arab Investment Guarantee Agreement, 1970 (Iraqi law , 1970);
 - D. The Unified Agreement for Investing Arab Funds in the Arab Countries in Amman for the year 1981 (Iraqi law , 1981) ;
 - E. The Arab Agreement for Commercial Arbitration in Amman for the year (1988) (Iraqi law , 1988);
 - F. Treaty of judicial and legal cooperation between the Republic of Iraq and the Union of Soviet Socialist Republics 1973 (JLCRIUSSR law in Iraq , 1973) .



That means all Arab investment disputes in Iraq are covered by one or more of the mentioned treaties. All of these agreements require resorting to international commercial arbitration to resolve investment disputes.

Some of these international and regional agreements will be explained because of their great role in the arbitration:

– Riyadh Agreement for Judicial Cooperation in 1983:

The Riyadh Agreement is considered one of the most important agreements for judicial cooperation in the Arab world and it was signed by the Arab countries represented by the Hashemite Kingdom of Jordan, the United Arab Emirates, the Kingdom of Bahrain, the Tunisian Republic, the Algerian Republic, the Republic of Djibouti, Saudi Arabia, the Republic of Sudan, the Syrian Arab Republic, the Republic of Somalia, the Iraqi Republic, the Sultanate of Oman, the State of Palestine, the State of Kuwait, the State of Qatar, the Lebanese Republic, the Libyan Arab Republic, the Kingdom of Morocco, Yemen. Where it is stated in Article 37 of this agreement (provisions of Riyadh agreement , 1983) “it recognizes and acknowledges the provisions of the arbitrators and its implementation in any of the contracting parties in the same manner stipulated in this section, taking into account the legal rules of the contracting party required to be implemented with it. The subject of arbitration, and not to refuse to implement the arbitration award, except in the following cases:

1. If the law of the contracting party whom is required to recognize and implement the award does not allow the issue of the dispute to be resolved through arbitration If the arbitration award was issued in implementation of a condition or for a null arbitration contract or if it did not become final.
2. If the arbitrators are not competent according to the arbitration contract or conditions or according to the law that the arbitrators award was issued according to it
3. If the opponents were not informed to be present by a proper or legal manner.
4. If the arbitration award contains anything that violates the provisions of Islamic Sharia, public order or morals of the contracting party whom is required to implement. The party requesting recognition of the arbitrators' award and implementing it must submit a certified copy of the award accompanied by a certificate issued by the judicial authority stating that it possesses the executive force. In the case of a valid written agreement before the parties under which the jurisdiction of the arbitrators is submitted in order to settle a specific dispute or what may arise between the two parties from disputes in a

specific legal relationship, a certified copy of the aforementioned agreement must be presented” (Arab Riyadh Agreement , 1983).

- Amman (Jordan) Arab Commercial Arbitration Agreement 1988:

Many Arab countries signed this agreement ,the Hashemite Kingdom of Jordan, Republic of Tunisia-The Democratic Republic of Algeria, Republic of Djibouti, Republic of Sudan, The Syrian Arab Republic, Iraqi Republic, Palestine, Lebanon Republic, the Libyan Arab Republic, the Kingdom of Morocco, the Islamic Republic of Mauritania, Republic of Yemen, the agreement stipulates the basic rules for arbitration and control procedures, how to choose arbitrators, and how to implement control decisions in the signatory countries. This agreement is one of the most important agreements to remove obstacles to arbitration in the Arab world (provisions of Amman Agreement , 1988).

- Geneva Protocol on Arbitration of 1923:

This agreement is the most important arbitration agreement that the Iraq recently entered into, it was issued to the aforementioned protocol. Article 1 included that the signatories accept the provisions contained therein that each of the Contracting States recognizes the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration it is related to the present disputes or the disputes that will occur in they whether the arbitration took place in a country not subject to the jurisdiction of one of the parties or not, and Article 2 of the protocol referred to the principles of arbitration, including the composition of the arbitration court, according to the will of the parties and the law of the country in which the arbitration takes place, and Paragraph 3 of the protocol included (the contracting state’s pledge to guarantee, through its employees, the provisions of its national laws to implement arbitration decisions issued in its territory in accordance with paragraphs 1, 2 of the same protocol.

- The Arab Investment Guarantee Agreement, 1970: As this agreement stipulated the importance of economic cooperation between the signatory countries and the need to preserve the Arabic funds and it produced a special chapter for arbitration in Article 4 of it in which it dealt with special provisions in arbitration represented by arbitration procedures, the method of notifying the parties and the jurisdiction of arbitration and the way to appeal the arbitration award. The agreement was signed in the State of Kuwait by some Arab countries represented by the Kingdom of Jordan, the United Arab Emirates, the Kingdom of Bahrain, the Tunisian Republic, the Algerian Republic, the Republic of

Djibouti, the Kingdom of Saudi Arabia, the Republic of Sudan, the Syrian Arab Republic, the Republic of Somalia, the Sultanate of Oman, the Republic of Iraq, the State of Palestine, the State of Qatar, the State of Kuwait and the Republic Lebanese, Libya, Arab Republic of Egypt, Kingdom of Morocco, the Mauritanian Republic, Yemen, Arab Fund for Economic and Social Development, Arab Monetary Fund, Arab Investment Authority.

- The Unified Agreement for Investing Arab Funds in the Arab Countries in Amman for the year 1980: As stated in the topic of the treaty it includes the ways to settle disputes between investors in the case of a dispute arising, the parties have the right to resort to local courts or the Arab Investment Court as the parties may agree on any other alternative method to Settle of the disputes, i.e. mediation, conciliation and arbitration As well. In this latter case, the parties may agree to refer their dispute to any Arbitration center (such as the International Center of Investment Disputes). If not, ICC and the International Chamber of Commerce ICSID agree the parties to the rules governing their alternative method of settlement Disputes, dispute is subject to the rules of the Committee of Nations (UNCITRAL) United International Trade Law(Investing Arab Funds Agreement provisions, 1980).
- Treaty of judicial and legal cooperation between the Republic of Iraq and the Union of Soviet Socialist Republics 1973: Iraq has ratified this treaty in Law No. 104 of 1973, as stated in Article 16 of this agreement, the authority whom is required to implement an arbitration award issued by the state of the other contracting party doesn't have the right to reconsider the subject of the case in which the judgment was issued, but rather it may reject the request to implement the arbitration award submitted to it in the following cases:
 1. If the law of the party whom is required to implement the ruling doesn't permit the subject of the dispute to be resolved by arbitration.
 2. If the arbitration award was not issued as an implementation of a condition or a valid arbitration contract.
 3. If the arbitrators are not competent according to a condition or to the arbitration contract, or according to the law that the arbitrators' award was issued according to it.
 4. If the opponents were not informed to be present in the proper or legal manner.
 5. If there was something in the arbitration award that violates the public order or morals in the country from which it is required to execute, and it has the authority to estimate that it is so and not to implement anything that contradicts with the public order or morality in it.
 6. If the arbitration award is final in the country from which it was issued.

This Article clarifies cases of refusal to implement arbitration awards in the signatory countries. As for Article 17 of this agreement, it specifies the documents that must be attached to the implementation request represented by:

- An official copy of a certified true copy from the competent authorities for the requested judgment and its implementation, with a certified copy of the arbitration agreement.
- The original document informing the judgment required to be executed or an official testimony indicating that the judgment was notified in the correct manner.
- A testimony from a competent authority indicates that the requested judgment is a final award, implementable, supported by the Ministry of Justice, stating that this authority is competent to give that testimony.
- The original document of the award that is requested to implement or any other document that indicates the contracting parties were informed in a proper legal manner.
- Certified translation of the request and documents mentioned in the language of the contracting party required to implement the ruling in its territory or in English (Iraqi USSR Treaty judicial cooperation provisions, 1973).

5. Government Contract Execution Law No. 2 of 2014 (Iraqi law , 2014):

In which, Article 8, Paragraph 1 of this Law states disputes shall be settled after the signing of the contract by agreement (willingly), and during the formation of a joint committee between the two parties to the dispute represented by the contracting party and its contractors according to the provisions of the law and the relevant instructions and the terms of the contract, details of that agreement shall be prepared and approved by the contracting authority.

As for what came in the second paragraph of Government Contract Execution Law No. 2, it is an explanation of the national arbitration, as it stipulated accordance with the procedures specified in the terms of the tender or the Civil Procedure Law No. 83 of 1969.

And the International Commercial Arbitration was mentioned in paragraph 2 thereof, where it stipulated for the contracting party to choose international arbitration to settle disputes in cases of necessity and for major or important strategic projects, and when one of the parties to the dispute is foreign, the following must be taken into account:

- 1) To choose one of the accredited international institutions.
- 2) To determine the place of arbitration and language.

- 3) To adopt the Iraqi law as applicable law.
- 4) The staff of the contracting authority must have the qualifications required to settle the dispute.
- 5) Referral of the dispute to the competent court to settle the dispute.

The international agreements signed by Iraq, they are very few and did not cover arbitration except with the Arab countries and the countries of the former Soviet Union. It does not rise to the level of ambition as old treaties, and the laws of most of these countries have changed. The Republic of Iraq must accelerate the renewal of these agreements, organize arbitration with these friendly countries, and add new laws that are in line with the economic and commercial development taking place in the world. Iraq must also expedite the conclusion of arbitration agreements with the European Union countries and other countries, in order to open Iraq to these countries.

As a result of the research, the following conclusions can be drawn in this chapter:

1. It is noted that there is a big problem in arbitration in the Iraqi law in general and more specifically in the definition of the arbitration, the definition was vague and therefore we suggest that the definition of arbitration should be the agreement of the parties to the dispute to submit their disputes before neutral individuals or arbitration institutions for the purpose of resolving the dispute that the decision of the arbitrators or the decision of institutions It is binding on the parties to the conflict and does not violate the public morals and it must be compatible with the Iraqi Civil Procedures Law.
2. We suggest that the definition of International Commercial Arbitration in the Iraqi law should be as follows: "*The International Commercial arbitration is an alternative method to resolve the disputes in which the parties agree to take the disputes related to the implementation of an international commercial contract to a non-state court by appointing one arbitrator or more, and these arbitrators will issue a ruling called the arbitration award that will be enforced on the parties to the conflict, and it is implementable by order of the public authority*". We propose to add this definition to Iraqi Civil Code and the Iraqi Investment Law, and in the future, to include this definition in the Law on International Commercial Arbitration of the Republic of Iraq.
3. Types of Arbitration were limited in Iraqi law (national – International – Ad Hoc – institutional). On the other hand the Iraqi legislator does not determine the institutional arbitration. Institutional arbitration possible defines as organized arbitration through permanent national or international tribunals, institutions or

centers such as the Paris Chamber of Commerce, London, or Dubai. These tribunals or institutions undertake arbitration according to rules or procedures contained in their regulations and they are known previously, and they have lists of names of accredited arbitrators with expertise, competencies and reputation, and given the prosperity of international trade there are currently a large number of arbitration institutions or tribunals distributed around the world, including what is related to In arbitration of a specific dispute or trade.

4. The legislation of the Republic of Iraq does not sufficiently regulate issues related to International Commercial Arbitration on the pretext that foreign law infringes on the sovereignty of Iraqi courts. However, due to the government's desire to improve the investment climate in the country, there is a need to ensure the possibility for international companies to settle disputes in arbitration. The Iraqi Code of Civil Procedure and other Iraqi legislation do not solve the problem of the legal regulation of International Commercial Arbitration at the national level. In that connection, we consider it necessary to adopt the International Commercial Arbitration Law of the Republic of Iraq, which will determine the main terms and regulate issues relating to the arbitration agreement, the composition of the arbitral tribunal, its competence, the procedure for arbitration proceedings, the form and content of the arbitral award and the recognition and enforcement of arbitral awards. We hope that this will enhance the culture of the settlement of international commercial disputes and increase Iraq's investment appeal.
5. As for the international agreements signed by Iraq, they are very few and did not cover arbitration except with the Arab countries and the countries of the former Soviet Union. It does not rise to the level of ambition as old treaties, and the laws of most of these countries have change. The Republic of Iraq must accelerate the renewal of these agreements, organize arbitration with these friendly countries, and add new laws that are in line with the economic and commercial development taking place in the world. Iraq must also expedite the conclusion of arbitration agreements with the European Union countries and the United States of America and the United Kingdom, in order to open Iraq to these countries.



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