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The Legal Framework Issue of International Commercial Arbitration in Iraq

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ABSTRACT

The globalization phenomenon altered all aspects of human life, including commerce, when Confronted with a more intricate problem, in this case, arbitration becomes a sound option to adjudicate between the parties to an international commercial contract. In this research, researcher intend to disclose the significance of international commercial arbitration legal framework and its method of solving commercial disputes in Iraq as an alternative to court litigation.

1. Introduction

Over the last decades, arbitration has become a more reliable system to solve international commercial disputes among parties to international commercial contracts; Consequently, the mechanism is the most efficient system to adjudicate between citizens of different jurisdictions. Arbitration has been practiced since prehistoric centuries among the ancient Greeks and Romans, etc., but modern

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arbitration started after the signing of the Geneva Protocol on 1923. It was a pioneering step to embed arbitration in an international system. Subsequently, the most important attempt at crossing the national frontier is the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards, which was a turning point for arbitration because it interlinks countries worldwide. On the other hand, the remaining treaties are a significant source of international commercial arbitration.

The legal framework of the international commercial Arbitration as a peaceful method for solving international dispute encompass with following procedures. In order to settle potential disputes, both parties sign arbitration agreement at the same time the contract finalized, it indicates that the arbitration clauses are attached to the commercial contract and specify the method for resolving upcoming disputes. Therefore, the arbitration procedure depends on the agreement between the parties, which is the primary condition for resorting to arbitration. All parties to the arbitration agreement frequently voluntarily enforce the arbitral award; in contrast, if one party refuses to comply with the award, the prevailing party should resort to court intervention to intervene and pressure the losing parties to enforce their awards.

1.1 objective of the research

International commercial arbitration is an important and contentious topic among legal scholars; hence, it deserves more analysis, and the research intends to reveal significant aspects of international commercial arbitration framework, for instance:

1. The collecting different concept of international commercial arbitration under different legal perspectives.
2. Various kinds of legal framework of international commercial arbitration
3. Arbitral institutions and effective international treaties on influence of international commercial arbitration in Iraq.

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1.2 Statement Problem

Numerous issues make it necessary for us to do research regarding international commercial arbitration and its reality in Iraq. The preliminary issue in Iraq that there are no obvious perspectives in the various stages for the International commercial arbitration, which is one of the major loopholes faced for prevalent international commercial arbitration and become an alternative to court proceedings. Therefore, each political regime in Iraq mainstreamed international commercial arbitration in accordance with their respective political vision.

Additionally, the problem of relation between sovereignty and peaceful Methods for settling international disputes. Also, the Iraqi law doesn't distinguish between national and international commercial arbitration, which is cause to ambiguity between of the proceeding of the tribunal, selecting arbitrators, and enforcing award. Because some states differentiate between national and international arbitration but Iraqi legislation ignored this significant point.

1.3 Research methodology

This paper intends to be analyzed the international commercial arbitration aspects and the effect of it on modern transaction. It is also, written from the academic and legal perspectives of scholars of international commercial arbitration.

1.4 Hypothesis

From researcher point of view, the research will answer some hypothesis, including:

1. International commercial arbitration is described as having high value in international business.
2. International treaties and domestic law are effective ways to establish arbitration in international transactions.
3. Variety of international commercial arbitration treaties, rules of institution and domestic laws are loophole procedures.

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1.5 Research structure

This research divided in to Three chapters, in the first chapter will concentrate on the description of International Commercial arbitrations, in the next chapter will discuss the contemporary legal framework of International Commercial Arbitrations, In the Last Chapter will focus on the rules of arbitrations in Iraq. ultimately, will discuss all the discloses about the Statement problems mentioned above.

Chapter 1: Brief Introduction to International Commercial Arbitration

Arbitration is not a recent method; it has been used in ancient communities since prehistoric centuries to solve conflicts. It gradually developed and incepted in old communities, then was legalized and embedded in different jurisdictions, but the turning point for international commercial arbitration during the previous era was the New York Convention on the Recognition and Enforcement of Arbitral Awards in 1958, which paved the way for the further progression of arbitration worldwide (Ferrari, Rosenfeld, & Fellas, 2021, p. 2). Notwithstanding, the New York Convention and other treaties make international commercial arbitration more common and unified. Meticulously, international commercial arbitration is a consensual mechanism because it suspends to the conditions of the parties as per arbitration agreement, meaning that only the parties to the arbitration decide the authority of the arbitrator and tribunal (Bergsten E. E., 2005, p. 2).

International commercial arbitration is a type of the Alternative Dispute Resolution (ADR) system. It is obvious that ADR is a private system outside of the state authority; it is a peaceful way to settle disputes; therefore, the word “alternative” it stands for an alternative to court litigation; hence, parties to a commercial contract require arbitration rather than going to a national court (Slampa, INTERNATIONAL ARBITRATION PROCEDURE IN THEORY AND PRACTICE, 2010, p. 11). Except for arbitration, other forms of ADR that settle disputes include mediation, conciliation, etc. The main difference between arbitration and other types of the (ADR) is binding, because the decision of arbitration tribunal is obligatory to the both parties, whereas the decisions of mediation and conciliation tribunal are not binding, they

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are just guiding parties to negotiate and reach settlement. Despite, the dominance of arbitration at the international level, it is also prevalent in national jurisdiction, hence, arbitration is not restricted to the international level, even though it is practiced between citizens of the same state to settle disputes. So, the majority of the states have their own national arbitration laws. In addition, some states distinguish between national arbitration law and international arbitration law. Currently, France has enacted specific law to govern national arbitration and other law to govern national arbitration

1.1. Sub-Chapter one: Definition of International Commercial Arbitration and its pros and cons

1.1.1. Definitions of International Commercial Arbitration

The expression "international commercial arbitration" doesn't have a unifying definition, so different scholars and treaties describes it based on their individual insights. However, when both parties, who contain foreign elements, consensually agree to an international commercial arbitration and attach an arbitration clause to the contract, international commercial arbitration considered an alternative to court litigation. They consent to the mechanism for settling future disputes, all mechanisms are determined in the arbitration agreement (arbitration clause) (Bergsten E. E., 2005, p. 4) . We mentioned the meaning of arbitration in the previous section, but now it's important to understand when arbitration is international. The UNCITRAL model law is the most trustworthy standard to use when determining the foundation of internationally, which in article 1(3) explicitly determine some circumstances if the parties at the time of conclusion of the agreement, their place of business or residence was in a different state, or a substantial part of the obligation is situated outside the state, or the parties consent, the subject-matter of arbitration would relate to more than one country (UNCITRAL Model Law on International Commercial Arbitration , 1985 with amendments as adopted in 2006). Arbitration commercial if it is related to commercial matters. The first endeavor to define commercial subjects in arbitration began with the Geneva Protocol in 1923, which allowed contracting countries to

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only settle disputes by arbitration that were commercial matter according to national law, otherwise, they were rejected (Protocol on Arbitration Clauses, 1923). For the first time, the UNICITRAL Model Law obviously limits the commercial matters in detail in footnote Art. 1(3), which provides wide interpretation

"The *term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of commercial nature, whether contractual or not. Relationship. Relationship of commercial nature include, but are not limited to, the following transactions: any trade sanctions for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road."*

Also, Iraqi law mentions commercial acts in the commercial law in Article 5, which specifies certain acts are commercial if they have beneficial intent, these acts include:

"Buy or rent movable or immovable property for selling or leasing, and export goods or service, export goods or import, industry and extraction of raw materials, publishing, printing, photography, advertising, construction and repair, demolishing, renovating, and services of the truism, hotels, restaurants, theaters, stadiums, and selling in the public auction, transferring goods or persons, and storage of goods, cargo, and suppling they necessity of celebrations and meetings. Banking and insurance and transaction by shares of the company and commercial agencies, transformation agencies, brokerages, and other commercial mediation (Iraq Commercial Law, 1984).

Also, Iraqi commercial law states Article 6:

"Creating *commercial papers and all processes that pertained. is the commercial act without intent or characteristic of the person who does this"* (Iraq Commercial Law, 1984).

The UNCITRAL Model Law is the international framework for unifying national laws in the arena of international commercial arbitration. Consequently, it neatly specifies all the procedures of that process. That is why it is most preferable and accurate, in addition to being consistent with the international requirements of contemporary international commercial arbitration. In spite of this concept of international commercial activities according to international criteria, Iraqi accede to New York convention on the basis of commercial reservations which only allow

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this acts that consider commercial according to Iraqi commercial law (Law of acced Iraqi Republic to convention of Recognition and Enforcement of Forign Arbitral Awards, 2021).

1.1.2. Pros and Cons of International Commercial Arbitration

Despite its merits, international commercial arbitration is not deprived of its demerits, therefore, it has both sides. due to universal treaties such as the New York Convention arbitral awards are easily enforced, which impel the recognition and enforcement of arbitral awards worldwide and create a legal framework to manage the procedure of international commercial arbitration (Ferrari, Rosenfeld, & Fellas, 2021, p. 13) Easy enforcement is one of the main causes of internationally escalated demands on the arbitration because parties to international commercial contracts fear the partiality of the national court judgment in favor of citizens. International commercial arbitration is used to give a wider opportunity to contribute to the selection of tribunal procedures, such as the number of arbitrators, language, and place of arbitration, hence, neutrality is the main reason to choose arbitration over courts (Born, 2009, p. 29). As well, additional reasons cause a preference for international commercial arbitration instead of litigation, like flexibility, because the parties have full freedom to determine the procedure and timetable in comparison to the compulsory rules of court (Griffith, Gavan; D Mitchell , Andrew;, 2007, p. 186). Additionally, international commercial arbitration proceedings offer a confidential process, for this reason, business entities are urged to involve in the proceeding to protect their commercial secrets. (Born, 2009, p. 30). Key demerits, non- coercive power to comply of the non-successful party to enforce arbitral award, because does the non-successful party rarely refuse to voluntarily enforce the arbitral award, hence the arbitral tribunal doesn't have the power to directly enforce the award, so in this circumstance they need the assistance of the court, that is why international commercial arbitration is subject to more intricate procedure and judicialization (Blackaby, Partasides, Redfern, & Hunter, 2015, p. 34). As well as, lack of transparency due to the tribunal secrecy, the high-cost in comparison to court judgement, the lack of an appeal, and other disadvantages of

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international commercial arbitration the process has become more complicated for the parties.

1.2. Sub-Chapter Two: Types of International Commercial Arbitration

Fundamentally, arbitration may be either an institutional or an ad hoc procedure, the difference between those two types emerges from the administration of the arbitral proceeding. (Ferrari, Rosenfeld, & Fellas, 2021, p. 6). Therefore, arbitration is segmented into ad hoc and institutional arbitration.

1.2.1 Ad hoc Arbitration

In this type of arbitration, the parties independently select the entire procedure of the arbitration according to their interests, which means the parties don't select each arbitral institution to conduct the procedure; they unanimously determine all strands of the arbitration in the arbitration agreement without recourse to specific institutional arbitration (Aliaj, 2016, p. 243). Ad hoc arbitration allows maximum flexibility compared to institutional arbitration because parties are accountable to determine all procedures such as the number of arbitrators, the place, the language, etc. (Ferrari, Rosenfeld, & Fellas, 2021, p. 8). As I mentioned above, the most prominent of the rules for ad hoc proceeding is the UNCITRAL rules, which direct the parties to draft the arbitration procedures (Ahuja, 2022, p. 19). Also, this type of arbitration is not widely accepted in some legal regimes, particularly in the states with an extremism political regime, for instance China (Ahuja, 2022, p. 20).

1.2.2. Institutional Arbitration

In the last decade, proliferation of the institutional organizations for arbitration has widely spread worldwide to deal with disputes in such areas as commercial and investment, sport, etc. Institutional arbitration means the contracting parties consent to the arbitration being managed by a regular arbitration organization, and the process relies on the fixed procedural rules pursuant to that institution (Aliaj, 2016, p. 246) .Commonly, in this type of arbitration, parties precisely mention the

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name of the institution in the arbitration clause and retrieve to the institution for adjudication; according to surveys, more than 90% of practitioners of international arbitration clearly prefer institutional arbitration (Metsch, 2015). Globally, some institutions have been incepted and provide arbitral service to the clients, some of them national or international, some general or private, and some institutions are commercial and non-commercial. Here are some prominent commercial institutions samples (International Chamber of Commerce, American Arbitration Association, London Court of International Arbitration, Stockholm Chamber of Commerce) (Gerbay, 2016, p. 18); some of the institutions are not commercial, like the Permanent Court of Arbitration, the London Maritime Arbitrator Association, and the International Centre for the Settlement of Investment Disputes).

Chapter 2: Contemporary Legal Framework of International Commercial Arbitration

The edifice of International commercial arbitration is surrounded by several national and international instruments to conduct it from the beginning to the end of the process, but the final stage is enforcement of the award, which will be left to state courts (Born, 2009, p. 90). The legal framework of international commercial arbitration has an ancient history, it started more than a century ago with the Geneva Protocol for arbitration clause in 1923, which was a pioneer effort intended to promote proceedings for recognition and enforcement of the arbitral award (Brazil-David, 2011, p. 446) In the upcoming subchapters, we will discuss some of the crucial and recent international treaties and national laws, as well as, other initiatives such as rules and guidelines.

2.1. New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards

The New York convention appeared to succeed the 1923 Geneva Protocol and the 1927 Geneva Convention for the Execution of Foreign Arbitral Awards and fill the gaps left by those earlier incomplete initiatives. Initially, the International Chamber

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of Commerce proposed a first draft to create an international system to comport with modern business demands, after many revisions, the draft became the New York Convention (Born, 2009, p. 93). The New York Convention is the most successful international legal framework like the multilateral treaty concluded on June 10,1958, in New York City between twenty-five states (VERBEKE, 1995, p. 293). Scholars considered the convention the cornerstone of international commercial arbitration practice because it provides a constitutional foundation for recognition and enforceability within contracting states (Brazil-David, 2011, p. 447). It means if the award is rendered in one of the contracting states must be recognized and enforced in the other signatories' states under the convention, such as domestic awards; hence, international awards shouldn't be discriminated with national awards. Furthermore, according to the New York convention, the concerned authorities of states may refuse to enforce the awards if the award is contrary to public policy or if the subject-matter of the arbitration is not arbitrable, so some matters are not capable of arbitration, for instance, criminal and family matters, and insolvency (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, p. Article V.2). So, both of the outlined above reasons to refuse awards encourage the states to enter the New York Convention. For the moment, a large number of the states around the world have ratified that Convention. Nevertheless, after many debates, the Republic of Iraq officially acceded to the New York Convention in 2021 pursuant to law of acceded Iraqi Republic to Convention of Recognition and Enforcing Foreign Arbitral Award no. (14) of (2021). That is why I highly optimistic the accession will be great pace to attract the international business to Iraq and being opportunity to the nationals of the Iraq more vital involvement in the global trade.

2.2. National Laws and the UNCITRAL Model Law on International Commercial Arbitration

Majority national legal regimes provide specific laws for the regulation of international commercial arbitration. But there are deep discrepancies between

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them; therefore, the heterogeneity of the arbitration laws is the main reason for the impediment to the development of international commercial arbitration (Bergsten E. E., 2005, p. 29). The Model Law enacted to unify and harmonize of the practice of international commercial arbitration between arbitration laws; it aimed to be a uniform law for the various stages of the arbitration proceeding, from the arbitration agreement, to the Jurisdiction of the arbitral tribunal, to the composition of the arbitral tribunal, court intervention, recourse against the award, to recognition and enforcement (Contini, 1959, p. 152).

After subsequent failed endeavors to amend of the New York Convention, finally, the UNCITRAL in June 21, 1985, after several months of deliberation, issued model law on international commercial arbitration to clear the ambiguity of the New York Convention (Milhem, 2012). The UNCITRAL issued a Model Law in order to cover all issues related to the reforming and modernizing of the national laws in all features of the due process in international commercial arbitration and curtail weird restrictions. Currently, it is adopted by a large number of states, so certain states adopted it in the same form and others partially adopted it, meaning only certain elements of the model law are used in national law (VERBEKE, 1995, p. 269).The UNCITRAL model law was amended in 2006.

2.3. Arbitration Rules

Arbitration rules are the third source governing the legal framework for conducting international commercial arbitration. Essentially, the parties to the arbitration agreement determine the type of arbitration rules, either institutional or ad hoc. The arbitration rules are distinct from the institutional and ad hoc rules, but both sets of rules are on the same level in all facets, in particular enforcement and significance (Slampa, IINTERNATIONAL ARBITRATION PROCEDURE IN THEORY AND PRACTICE, 2010, p. 29). Hence, the arbitration rules are bifurcated into:

2.3.1. Institutional Arbitration Rules

Moreover, in this type arbitration agreement mention the arbitration rules which administered under auspice of the determined institution. (Bergsten E. E., 2005, p.

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30) Therefore, any conflicts should be solved in accordance with the rules of those institutions that indicated a pursuant arbitration agreement. So, institutional arbitration is governed according to the rules connected to a certain institution from the commencement of the procedure until it issues an award. It means each institution has specific rules that deal with particular disputes created by the institution itself; the majority arbitration institution has only one arbitration rule, but some of the institutions have numerous rules for different sorts of disputes (VERBEKE, 1995, p. 297). For instance, the American Arbitration Association has 44 sets of rules to handle various disputes. (Bergsten E. E., 2005, p. 31).

2.3.2. Ad hoc Arbitration Rules

May parties not reach consent on the particular institution, therefore the recourse to ad hoc arbitration without resort to specific institutions, but in certain cases, the institution may provide assistance with some administrative tasks (Bergsten E. E., 2005, p. 31). Ad hoc arbitration is the opposite of institutional arbitration in that it is not administered by a certain institution; in this case, the parties fully and voluntarily determine all the details of the arbitration procedure. The main disadvantage of ad hoc arbitration is that when one of the parties refuses to cooperate, there is no system to assure the continuation of the arbitration proceedings (VERBEKE, 1995, p. 297). The UNCITRAL Arbitration Rules were adopted in 1976, and they have been it as quite successful and practically suitable for ad hoc arbitration. (Griffith, Gavan; D Mitchell , Andrew;, 2007, p. 187). It contains 41 articles and wraps up all stages of the tribunal procedure by way of ad hoc arbitration.

2.4. Guidelines and Notes

International guidelines and notes are the significant framework of international commercial arbitration for practitioners and arbitrators. The International Bar Association issues many guidelines to address the numerous hindrances of international arbitration. UNCITRAL issued non-binding UNCITRAL Notes on

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Organizing Arbitral Proceeding in 1996 to assist practitioners at all stages of the arbitral tribunal (UNCITRAL Note on Organizing Arbitral Proceedings, 1996).

Chapter 3: Iraqi Legal perspective to international commercial Arbitration

Due to political and economic chaos as a result of the Iraq wars with neighboring states during the past forty years, the main reason for isolating Iraqi legal infrastructure from international law. Also, at that time, laws completely dominated by the Iraqi Revolutionary Leadership Council, in the below sub-chapters, we will discuss regarding the attitude of the Iraqi legislation forward international commercial arbitration.

Also discuss about legal framework of international commercial arbitration under Iraqi legislation post-liberation, this topic will be covered in more detail in the following sub-chapter because the current Iraqi legal system still suffers from loopholes if we compare it with regional and international legal systems in this respect. Therefore, some observations are indispensable to highlight.

1.1. international commercial arbitration in different periods under Iraqi Law.

At the first face will talk about Iraq Before 2003, According to the international threshold, Iraq was only Participated signatory to the Geneva Protocol on Arbitration Clause during monarchy era but it under deep suspicion during post revolution governments. Iraq was neither a party in the New York Convention for Recognition and Enforcement of Arbitral Awards nor signatory to the other international conventions for recognition and enforcement of international arbitral awards (N.Jansen CALAMITA, Adam AL-SARRAF*, 2015, p. 40). the Iraqi government was strongly opposed to accession to international treaties and resisted the wave of international arbitration. During that period, Iraq only allowed national arbitration proceeding; otherwise, they barred international arbitration because they assumed it could be used as justification for violating the jurisdiction and sovereignty of the state (Majid, 2004, p. 274)In this respect, non-participation of that conventions significantly decreases the opportunity to interlinked of Iraq with international

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system of arbitration. Iraq only accessed certain regional convention between Arab League states such as Riyadh Convention to judicial cooperation and bilateral agreement with some Arabic states like Jordan and Egypt (N.Jansen CALAMITA, Adam AL-SARRAF*, 2015, p. 40). Other than Arab states, some bilateral agreements on legal and judicial cooperation were signed in 1977 with European states like Hungary (The Law of Ratification of the Bilateral Agreement of Judicial and Legal Cooperation between the Republic of Iraq and the Republic of Hungary., No 92/1977). As a result, Iraq does not play a significant role in participation in the international convention; on the other hand, lack an independent law to govern all aspects of international commercial arbitration, both of these factors led to the culmination of international arbitration problems during previous era in Iraq. In addition, before 2003, Iraq only relied on the law of civil procedure in 1969, which found from Article 251 through 276 that was outdated and only regulated national arbitration procedures.

From our point of view, the Iraqi governments dominated the majority of commercial transactions during that time and did not create a space for Limited Lability Companies to participate in such commercial dealing. As well, the Iraqi political regimes have overcome the side of sovereignty by using all-peaceful methods for settling international disputes, including arbitrations in the field of commercial acts. The other one is that Iraq in this period of time, has its own rules for arbitration that are compiled in the Civil Procedure Law.

Post-period 2003, due to political and economic change, an important transformation period appeared to more actively activate international commercial arbitration in Iraq. The Iraqi lawmakers encourage the parties to resort to commercial and investment arbitration, by providing favorable legal environment, which is reflected in the various laws. Which started with the Article 27 Investment Law (No.13) in 2006, and Article (17) Investment Law (No.4) in 2006 of Kurdistan Region-Iraq, obviously allows the parties to adopt an arbitration clause in the investment contract, subsequently reflected in the government contract Law, and

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the rest (Iraq Investment Law, 2006). Since 2003, the Iraqi government has realized the importance of arbitration in international business and foreign investment; therefore, government begun making efforts to modernize national legislation and accede to international treaties (N.Jansen CALAMITA, Adam AL-SARRAF*, 2015, p. 41). Despite investment and other indirect laws that relate to arbitration. In 2010, the Iraqi legislator started a process of drafting a modern arbitration law largely based on the UNCITRAL Model Law on International Commercial Arbitration, also, Benefited of some article of the regional states' arbitration laws such as Egypt (N.Jansen CALAMITA, Adam AL-SARRAF*, 2015, p. 44).

After more than a two decades, Iraq does not have an independent arbitration law. However, of the drafting process and deliberation of Iraqi Arbitration Law from to 2010 till the day of writing this Article, Therefore, the nonexistence of modern international arbitration law will be an undeniable dilemma for the improvement of cross-border transactions.

1.2. The Iraqi Legal Framework for the International Commercial Arbitration

1.2.1 Stages According to Laws related to Arbitrations.

Iraq is a civil law system state that predominantly relies on written law. Post-liberation, the Constitution of 2005 has become the main source of all laws, orders, and regulations and each of them contradict the Constitution is deem void. Despite Sharia law, the French law system, which was developed to Iraq by the Egyptian legal scholar (Abd El-Razzak El-Sanhuri)[1] after enacting Iraqi Civil Law No. 40 of 1951 has had a significant impact on Iraqi Law. Arbitration in Iraq was used for more than century ago when Iraq was a part of the Ottoman Empire, hence, it is clearly regulated in al-majalla ahkam al-adaliyyah in articles 1841 to 1851, which embed arbitration to promote peace between parties and arbitrate between people. (Al-

[1] Abd El-Razzak El-Sanhuri: (11 August 1895 – 21 July 1971) was an Egyptian jurist, law professor, judge and politician. In 1943, al-Sanhūrī left Egypt to help draft the civil code of Iraq. This time, the attempt at drafting a code was more favorable; an Iraqi Civil Code which combined the al-majalla ahkam al-adaliyyah and the Egyptian Civil Code as its sources was promulgated in 1951 (but only came into force in 1953)

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Majalla Ahkam Al-Adaliyyah, 1882). But following the separation of the Iraqi kingdom from the Ottoman Empire modern arbitration emerged. Iraq ratified the 1923 Geneva Protocol on Arbitration Clause as it first international treaty after becoming independent, but the Convention enforcement was practically suspended following the revolution of 1958 (EL-AHDAB, 1995, p. 170). After the end of the Ottoman Empire reign, Iraq passed specific law in 1928 pertaining to enforcement of foreign judgements (Law No. 30 of 1928 on the Enforecement of Foreign Court Judgments in Iraq, 1928). Although the law obviously does not make any reference to provisions for the enforcement of arbitral awards, but practically, arbitral awards must adapt to the requirement of the enforcement of foreign judgement, therefore, foreign arbitral awards must be subject to the same provisions for the enforcement of judgments (EL-AHDAB, 1995, p. 171). As well, Iraq ratified the Arab League Convention in 1952 for the enforcement of foreign judgment and arbitral awards, even though the convention does not mention recognition procedure it only deals with the enforcement of judgements and awards (Saleh, 1985, p. 24). Additionally, in 1983, the Riyadh Convention substituted Arab League Convention, the regional multilateral convention precise name is" The Convention of the Judicial Cooperation between the States of the Arab League" (Saleh, 1985, p. 25). With the exception of the Republic of Egypt, the majority of the Arab states were represented among the contracting states of the Riyadh Convention, the goal of the convention is to provide assistance to the member states with their broad-judicial issues, in particular, mutual recognition and enforcement for judgement and arbitral awards, which means each of the court decisions and arbitral awards rendered in one of the contracting states must be recognized and enforced in the other contracting states by way of court. (Kilian Balz , Aouni Shahoud ALmousa, 2014, p. 277).

The first contemporary Iraqi commercial law that organizes commercial matters is Law No. 149 of 1970, which Iraqi jurisprudence considers the best commercial law because it is more comprehensive than the current law (Al-yaseri & Hasan , 2020, p. 319). As a result, Law No. 149 was repealed by Law No. 30 in 1984, is now in force,

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and determines all commercial acts for both national and international commercial arbitration.

In 1984, Iraq ratified the Riyadh Convention for Judicial Cooperation under Law No. 110. (Law No.110. Ratification of the Riyadh Convention for Judicial Cooperation , 1984). Consequently, Iraq became a party of the Amman Arab Convention on Commercial Arbitration in 1987, which was held in Jordan according to the presumption that the convention would establish an Arab Center for Commercial Arbitration in Rabat, but in fact the Convention is ineffective (EL-AHDAB, 1995, p. 180). During the establishing the Iraqi state till 1969, there is not legal framework for conducting arbitration in both international and national side, the provisions that regulate arbitration procedures had not mentioned in one or more laws in connection with arbitration except the provision related to enforcing arbitration award as a foreign judgement according to the Law of Enforcement Foreign Judgement in 1928. Although, the question emerged in this case which states that consider arbitration as foreign judgement or not?

Arbitration awards suppose as foreign judgment however the discussion emerged about is arbitration commission consider as foreign courts or not. The reason of this question retrieve to Law of 1928 defines the foreign judgement in Article one (the judgement that issued from foreign courts). Based on the opinion of Professor Abdul-Hamid El-Ahdab arbitral awards must adapt to the requirement of the enforcement of foreign judgement, therefore, foreign arbitral awards must be subject to the same provisions for the enforcement of judgments (EL-AHDAB, 1995, p. 171). The researcher didn't consent with this opinion, the reason is that the Article one of Law of 1928 clearly define the foreign courts, as it is common between legal scholars' courts as a part of judicial authority is part of the sovereignty of the state, while arbitration institution is not a segment of state. However, considering arbitration awards as a foreign judgment, another question emerges related to arbitration awards between two Iraqi citizens, whether that kind of arbitration awards considered foreign judgements or not. The researcher point of

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view is negative because the nationality of the parties and place of the arbitral tribunal.

In Iraq, there is no separate arbitration law governing arbitration. the various laws only partially addressed arbitration; the only important law specifically dealing with arbitration is the Law of Civil Procedure No. 83 of 1969, which governs procedures for arbitration in articles 251 to 276 (Jalili, 1987, p. 109). Furthermore, the Civil Procedure Law allows the parties to the arbitration to choose other legal frameworks except Iraqi Civil Procedure, even if the arbitration take place in Iraq, therefore, the parties are free to reject the implementation of the Civil Procedure rules and choose other rules of arbitration, such as the UNCITRAL Arbitration Rules. (Majid, 2004, p. 271). Additionally, it is an undeniable issue because it is unclear how the Iraqi court will resolve the contradiction between arbitration under the Law of Civil Procedure and other adopted rules, such as the UNCITRAL Arbitration Rules (Jalili, 1987, p. 118). The Law of Civil Procedure stipulates that arbitration awards must be in writing and include the arbitration agreement, statement of parties, evidence, and justification for the award, this means the award must contain all procedures, such as court decisions, and finally the award must subject to judicial confirmation by a competent court (Jalili, 1987, p. 121). Therefore, before 2003, according to Iraqi laws, each arbitration within Iraq, even between two foreign nationals, was deemed a national arbitration subject to Iraqi law unless the parties had agreed upon something different. (Majid, 2004, p. 274). During that epoch, Iraq did not explicitly refuse international arbitration but impliedly resisted its acceptance. the main disadvantage of the Law of Civil Procedure is that it only regulates the domestic arbitration procedure while ignoring international arbitration, regardless of whether the arbitration is between a citizen and a foreign party, as a result, it is inconsistent with modern arbitration.

After the previous government was overthrown, a new legal environment came into being to attract international trade. According to Article 27 paragraph 4 of the 2006 Iraqi Investment Law, the first law after being overthrown is Law No. 13, which

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allows the parties to resort to arbitration pursuant to the Iraqi law or another international entity (Iraqi Investment Law , 2006). Additionally, the investment law of the Kurdistan region in Article 18 permits the parties of the investment contract to resort to arbitration. (Iraqi Kurdistan region Investment Law, 2006).

Following a long wait, Iraq officially ratified the New York Convention and passed Law No. 14 in 2021, which is named "Law on Accession of the Republic to New York Convention of Recognition and Enforcement of Foreign Arbitral Awards" (Law of acced Iraqi Republic to convention of Recognition and Enforcement of Forign Arbitral Awards, 2021). This is a critical step to more enhance the practice of international commercial arbitration. Additionally, the Law of Accession was initiated with three different types of reservations. The first one is the non-retroactive effect of the awards rendered before the date inter into force, the second one is the reciprocity reservation. The last one is commercial reservation, which means Iraq only applies the awards that consider commercial acts under Iraqi Commercial Law.

1.2.2. The Iraqi Legal Framework for International Commercial Arbitration

Domestically, in Iraq national rules indirectly adapt the process of national commercial arbitration as partially governed under national laws such as the law of civil procedure and commercial law, etc., However on a global scale, as aforementioned, Iraq has ratified the Riyadh Convention since 1984 and most recently acceded to the New York Convention, both of which are currently in force in Iraq. The main aim of the Riyadh Convention is to judicially unify the Arab countries, particularly by promoting judicial cooperation between them on a wide range of problems. Originally, the Riyadh Convention did not deal with international commercial arbitration because the essence of the Convention was judicial cooperation, but, in some circumstances, it dealt with arbitration, such as in Article 37. In accordance with that article, each member state of the convention is obliged to recognize and enforce arbitration awards rendered in one of the contracting states unless contrary to public order and Islamic rules (Gemmell, 2006, p. 190).

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Furthermore, according to the Riyadh Convention, the procedure of enforcement of the awards is intricate because it requires double recognition -exequatur- from the country where the award was rendered and where the award is sought (Kilian Balz , Aouni Shahoud ALmousa, 2014, p. 286). In addition, certain documents must be included when submitting the arbitral awards for enforcement in accordance with Article 37. The certified copy of the arbitral award and the concerned authority of the state where the award was rendered confirm essentially the enforcing of the award, in addition to the certified copy of the arbitration agreement. But in sum, the arbitration system in the Riyadh Convention does not provide a comprehensive procedure because it does not cover all matters of arbitration and is constrained by its limited scope of application because it only includes some regions of North Africa and the Middle East. The researcher believes the Riyadh Convention does not satisfy the demands of modern international commercial arbitration and is rarely used in commercial arbitration, despite the fact that it is a good avenue for Iraq and non-New York Convention countries to obtain recognition and enforcement of awards.

Before adoption of the New York Convention, majority international disputes settle based on litigation but the circumstance in 1958 dramatically converted. The New York Convention consider the most successful treaty in world for recognition and enforcement of foreign arbitral awards. Iraq officially in 2021 acceded to the New York convention and issued “Law on the Accession of the Republic of Iraq to the New Convention for recognition and enforcement New York 1958” the Iraqi legislator set similar rules which stipulated in the New York Convention. According the accession law the arbitration agreement must be in writing or electronical messages possible (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, p. Article 2). Also, the convention clearly declares it will be open for all states to future accession while determining the withdrawal procedure.

The New York Convention was criticized because it has some loopholes that reflect the comprehensiveness of the treaty because its core is too short, therefore, it is deficient in comparison to the contemporary treaty to deal with international

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arbitration. Furthermore, the New York Convention legal framework ignores determining the notion of "Commercial" and leaves it to the domestic laws (Veeder, 2010, p. 184).

In the long run, depending on what was previously mentioned, researchers understand that the Iraqi legal system generally does not provide comprehensive legal framework in the area of commercial arbitration at the national and international levels. So, we urge the Iraqi legislator to follow in the footsteps of the French legislator, which enacted commercial arbitration in two different regulations on both the national and international sides (French Code of Civil Procedure, 2011)

Conclusion

After the researcher terminated the topic of the legal issues of the framework for international commercial arbitrations in Iraq, we reached several results and recommendations, including the following:

A- Results:

1- International commercial arbitration is the most reliable legal system to solve disputes; it has become an unarguable reality in the international business community.
2- Huge gap exists in the absence of a uniform definition for commercial arbitration on both a national and international level.
3- International commercial arbitration cannot completely be an alternative to the national courts because the arbitration does not have the coercive power to compel a recalcitrant party to enforce the award if it refuses.
4- Inconsistence of rules of intentional commercial arbitration among institutional arbitration and ad hoc arbitration procedure.
5- Alteration of attitude and perspectives toward international arbitration during different epochs of Iraqi recent history.
6- The Iraqi legislator entirely disregarded the regulation of the legal framework in the field of commercial arbitration on a both national and international level.

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B- Recommendations:

1- Urgent need for the Iraqi legislator to enact the law of arbitration on a national and international level with comprehensive practical regulation from fathom to proceedings and enforcements.

2- Iraqi lawmaker should adapt the most modern arbitration law, the UNCITRAL model law to international commercial arbitration, because it became a critical reason to harmonize with the New York Convention and approach the international criteria.

3- While many laws were issued that motivated foreign traders and investors to do business activities in Iraq, but the most recently drafted Iraqi arbitration law, the draft, should deeply concentrate on attracting international business and be enacted on the basis of the UNCITRAL model law on international commercial arbitration. Also proliferate arbitration centers in Iraq.

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کێشەی چوارچێوەی یاسایی ناوبژیوانی بازرگانی نێودەوڵەتی لە عیراق

پـوخـتـە:

دیاردەی جیهانگیری هەموو لایەنەکانی ژیانی مرۆڤی گۆڕی، بە بازرگانیشەوە، کاتێک ڕووبەڕووی کێشەیەکی ئاڵۆزتر دەبێتەوە، لەم حاڵەتەدا، ناوبژیوانی دەبێتە بژاردەیەکی دروست بۆ حوکمدانی نێوان لایەنەکانی گرێبەستی بازرگانی. لەم توێژینەوەیەدا، تویژەر بەنیازە تیشک بخاتە سەر گرنگی

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چوارچێوەی یاسایی ناوبژیوانی بازرگانی نێودەوڵەتی و شێوازی چارەسەرکردنی ناکۆکییە بازرگانییەکان لە عێراق وەک جێگرەوەیەک بۆ دادگا.

اشكالية اطار القانوني للتحكيم التجاري الدولي في العراق

الملخص:
غيرت ظاهرة العولمة جميع جوانب الحياة البشرية، بما في ذلك التجارة، عندما تواجه مشكلة أكثر تعقيدا، في هذه الحالة، يصبح التحكيم خيارا سليما للفصل بين أطراف عقد تجاري دولي. ينوي الباحث في هذا البحث الكشف عن أهمية اطار القانوني لتحكيم التجاري الدولي وأسلوبه في حل النزاعات التجارية في العراق كبديل للتقاضي أمام المحاكم.