



**The International Commercial Arbitrator
A Research presented by the students**

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Abstract: International commercial arbitration agreements are characterized by the parties' desire to depart from the scope of national legal and judicial solutions in favor of procedural and situational measures and solutions. Due to the significance of arbitration in general and international commercial arbitration in particular, countries have enacted laws to regulate the various phases of the arbitration process. This research is significant because it examines the concept of international commercial arbitration, the mandatory conditions to be applied to its function and legal standing in arbitration, as well as its rights and imposed obligations.

Consequently, arbitration has emerged as an alternative method for resolving commercial disputes in comparison to litigation, mediation, and reconciliation. This pertains to its significance. Regarding the problematic aspect of the topic, however, our research on international commercial arbitration focuses on fundamental issues, such as:

1. What is the concept of international commercial arbitration, and what are its legal frameworks and conditions?
2. What rights and responsibilities do international commercial arbitrators have?

This investigation was written using a descriptive-analytical approach, which relies on analysis and connecting causes and effects.

Key words: The International ,The Arbitration, The Commercial, Center

The Research's Significance

1. International commercial arbitration takes into account the distinctive characteristics of international commerce. Therefore, it was necessary to define international commercial arbitrators and differentiate them from other intermediaries. Additionally, it is essential to emphasize their rights and responsibilities.
2. International commercial arbitration has evolved to become a necessity in the sphere of trade and its requirements, in response to the ever-changing demands and trends. The emergence of e-commerce as a result of technological advancements, for instance, demonstrates the need to consider the

contemporary aspects of this form of trade. With the rapid expansion and diversification of international arbitration institutions, as well as the rising number of cases and disputes, it is imperative to address the contemporary landscape.

The Research's Difficulties

The fundamental problematic feature of our research topic is around key concerns, such as:

1. The notion of international commercial arbitrator, its circumstances, and legal standing are defined.
2. International Arbitrators' Rights and Duties, and How They Differ from Other Agents and Mediators.
3. What are the time-consuming procedures for terminating an international commercial arbitrator's employment?

The following methods was employed

The descriptive-analytical methodology was used in the drafting of the research on the issue of international commercial arbitration and its role as an alternative legal mechanism for resolving international business disputes.

INTRODUCTION

That the state's judiciary, as an original way to resolve disputes, did not carry out its mission in the desired manner, as a result of some obstacles, including the small number of judges, the methods of fraud by lawyers and judges' assistants, the crowding of courts with the huge number of cases, the slow and complex litigation procedures and the multiplicity of degrees of litigation, And the problems of implementing judicial rulings, the lack of response of internal legal systems to the requirements of international dealings, the foreign investor's ignorance of the internal laws of the country in which the investment is made, and his lack of confidence in the independence of its national judiciary before its political apparatus, Escaping from the problem of conflict of laws, instability, and legislative stability, the desire to be free from national laws in the field of international trade, and to encourage and protect foreign investments from political and economic risks, This led to thinking about systems that avoid all these defects by resorting to alternative means of dispute resolution. These means are conventional methods for settling civil and commercial disputes without resorting to the official state judiciary. Such as arbitration, mediation, conciliation, and negotiation... with the intent of reaching an amicable, quick, and inexpensive settlement. Arbitration has witnessed a flourishing that was neither expected nor expected, and the judicial circles in many countries accepted it and accepted it with seriousness and interest, and this was reflected in the emergence of legislation and laws regulating arbitration, and resolving disputes through arbitration will be more effective than resolving them through the judiciary. Arbitration is the panacea for resolving disputes in the modern era, The arbitrator opens discussion and dialogue for the two parties to the dispute by providing solutions to the dispute, and the two parties to the dispute can, by their agreement, exit the arbitration process at any time. The arbitrator is a wise person with personality and experience and has a keen sense of justice and fairness .¹

The first topic

Defining the international commercial arbitrator and distinguishing it from others

This topic will constitute a basic introduction to the subject, the linguistic and terminological definition of the international commercial arbitrator will be clarified, and the extent to which the arbitrator is distinguished from other people who exercise the task of adjudicating the dispute will be explained, according to the following two requirements:

The first requirement / the definition of the international commercial arbitrator: In this requirement , we deal with the definition of the arbitrator in language, and terminology through the following two sections.

The first section / An arbitrator is someone who is delegated to adjudicate and settle disputes in a legal context. An arbitrator is selected to make a final and binding decision in a dispute, and their decision is known as an "award." When it comes to international commercial arbitration, an arbitrator is appointed to settle disputes between parties from different countries who are engaged in business transactions. ⁱⁱ

The second section / definition of the international commercial arbitrator idiomatically: the arbitrator is a person who enjoys the confidence of the parties to the arbitration by assuming the authority to decide one or more specific disputes by a binding ruling . ⁱⁱⁱOr he is a person entrusted by the parties to arbitration to settle the dispute between them by a binding judgment. The Egyptian Court of Cassation defined the arbitrator as: "He is a person who is not a party to the arbitration dispute, who enjoys the confidence of the arbitration parties, and decides what is argued between them by a judgment that possesses the authority of the thing adjudged as soon as it is issued."^{iv}

The second requirement / distinguishing the arbitrator from others: an arbitrator is a natural person who is chosen by the parties to the dispute or from any other party in order to adjudicate the dispute between the litigants and establish the right between them, and accordingly the arbitrator plays an important role in resolving the dispute, And that this role may be similar to some people in other legal systems, which necessitates setting the line between them.

this topic will be discussed in the following branches:

The first section / distinguishing the arbitrator from the judge: We will explain the similarities and differences between the arbitrator and the judge, and therefore the work of the arbitrator is similar to the work of the judge in that they both resolve the dispute and administer justice. However, there are a number of differences, including the prohibition of the judge upon his appointment to exercise any job or other earnings, including working as an arbitrator unless he obtains permission from a specific party, which is in the Iraqi Procedure Law (Supreme Judicial Council) ^v, We find that the arbitrator practices arbitration as a private tool to resolve the dispute, while the judge practices the judiciary, which is a general way to protect rights and legal positions.^{vi} And that the arbitrator is chosen by the parties to the dispute, while the judge is appointed by the state, and the will of the parties has no role in that . ^{vii}

The second section: Distinguishing the Arbitrator from the Expert: Expertise is technical advice that the judge resorts to when the subject matter of the case before him calls for it. Because it relates to illegal technical or scientific matters, the judge cannot form his belief in order to decide on the case ^{viii}, Accordingly, the expert is a third party who intervenes in the occasion of the litigation to explain to the parties, the judge or the arbitrator certain technical elements in order to remove ambiguity through his report.^{ix} There are similarities between the arbitrator and the expert, as each of them is better when they are more numerous.^x This is to give weight between opinions when they differ, and both are subject to cases of the judge's response^{xi} It is noted that the parties to the dispute resort to arbitration and expertise to other people ^{xii}With these similarities, we find that the arbitrator differs from the expert in several respects, including: The arbitrator enjoys the confidence of the litigants to resolve the dispute, and his task is not a technical one. ^{xiii}While the expert is a person who has knowledge in a particular art and expresses his opinion on the issue before him ^{xiv} It does not address legal issues and notes that the arbitrator issues his decision based on the legal evidence and documents provided by the parties to the dispute. As for the expert, he relies on his information and experience and the information provided to him by the parties to the dispute.^{xv} And we find that the expert's opinion is a non-binding advisory opinion, while the arbitrator issues a binding decision that must be implemented on the dispute parties.^{xvi}

The third section / Distinguishing the arbitrator from the attorney: The agency is defined as ((a A contract by which a person other than himself takes the place of himself in a known permissible behavior))^{xvii}

And that there are similarities between the attorney and the arbitrator, it is possible for the principal in the agency contract to dismiss the attorney, as is the case with the parties to the dispute in the arbitration contract, where they have the right to dismiss or reject the arbitrator by agreement, and that the attorney deserves a fee for his work, as is the case for the arbitrator when he separates the dispute. As for the differences between the arbitrator and the attorney, we find that the attorney derives his authority to act from his client, meaning that the attorney performs legal work for the account of the client.^{xviii}

As for the arbitrator, he is considered completely independent of the litigants. This is because the authority of the arbitrator derives from the arbitration agreement.

The fourth section / distinguishing the arbitrator from the conciliator: conciliation is the agreement of the two parties to end their dispute by mutual consent. In conciliation, it is assumed that there are opposite rights that result in a dispute between the two parties, so they agree to resolve it conciliate without a judicial or arbitral ruling.^{xix} Reconciliation is similar to arbitration in that each of them is through which the dispute between the disputing parties is resolved by mutual consent and without the need for a ruling by the ordinary judiciary, and arbitration and reconciliation are only proven in writing, and the reconciled parties must have full capacity to dispose of their rights as is the case in arbitration^{xx}, It is also necessary to ratify the reconciliation that takes place and the arbitrator's decision when it is issued by the court. As for the difference between them, it is noted in reconciliation that the conciliators are the litigants themselves or those who represent them in the dispute, that is, without resorting to another person or entity to resolve the dispute, while in arbitration, the arbitrator is chosen by the litigants, and he is the one who issues the decision ending the dispute.^{xxi} Also, the reconciliation contract cannot be executed unless it is concluded before the court and its execution is possible^{xxii} While in arbitration, the arbitrator issues an enforceable award after its ratification by the competent court and according to the general rules of law .^{xxiii}

The fifth section: Distinguishing the arbitrator from the broker: Brokerage is defined as “an optional means that the parties resort to and through which they choose the brokerage procedures in order to understand the issue of the dispute and develop appropriate solutions for it ,^{xxiv}

The brokerage process takes place through a third and neutral person who assists the parties in resolving the dispute, as the broker works to bridge the points of view between the disputants only. Accordingly, we find that brokerage is an advanced stage of negotiations, and it is similar to arbitration in that both the arbitrator and the broker are chosen by the two parties to the dispute, and the work of each of them is similar in that their intervention takes place when there is an existing dispute between the two disputing parties. The broker is subject to cases of response, where he can be dismissed or dismissed by the two parties to the dispute in the event of doubts between him and one of the parties to the dispute, as is the case with the arbitrator. With this similarity between the arbitrator, we find that there are a number of differences between the arbitrator and the broker. The broker can be a judge, as there is a judicial broker who is chosen from among the judges of the first instance and conciliation courts. On the contrary, with regard to the arbitrator, many laws prevent the selection of the arbitrator from among the judges unless permission is obtained from a specific authority.^{xxv}

Likewise, the broker cannot take a decision that ends the dispute or any decisive and categorical decision of the dispute, unlike what is the case with the arbitrator, since his task originally is to resolve the dispute by issuing a decision in it .^{xxvi}

The second topic: the conditions of the international arbitrator, his legal status, and arbitration centers:

In this topic, we will address the conditions that must be met in the international commercial arbitrator and its legal status in the first requirement, and we will address in the second requirement the arbitration centers in Arab and foreign countries, as follows:

The first requirement / the conditions of the arbitrator and his legal status: In this requirement , I explain the conditions that must be met by the international commercial arbitrator and his legal status through two branches.

The first section / conditions of the international commercial arbitrator:

That the conditions that must be met by the arbitrator are for the purpose of ensuring impartiality and exploitation so that the two parties are satisfied with the decision that this arbitrator will issue, The arbitrator is not considered an attorney or advocate for one of the parties, but the choice of this arbitrator is an authorization from the person of one of the parties to another person to resolve the dispute, with the acceptance of the authorized person of what the arbitrator issues ^{xxvii}

In view of the different laws, they set texts that define and regulate the conditions for the person who can be entrusted with the task of arbitration, which are often the same conditions that must be met by the judge. The conditions that must be met by the arbitrator can be limited in general according to what is stated in a number of laws, namely:

1. That the arbitrator be a natural, national or foreign person: The arbitrator must be a natural, national or foreign person and may not be a legal person, and this can be deduced from the legal texts without stating that explicitly. And if the arbitration agreement appoints a legal person, then his mission is limited to organizing arbitration, and accordingly, the arbitrator is only a natural person. ^{xxviii}
2. That the arbitrator has full capacity: The arbitrator must be fully competent according to his personal law, and there is no difference whether he is male or female, ignorant or educated, employed or unemployed. As long as there is no legal impediment preventing him from carrying out his mission, unless the parties to the arbitration agree or the law stipulates otherwise, And some laws stipulate that the arbitrators must be chosen from the citizens of this country, as is the case in the laws of Colombia and Ecuador, except that in other legislations, the arbitrator may be a foreigner. ^{xxix}
3. The arbitrator should not be prevented from arbitration: the law sometimes prevents people from assuming the task of arbitration. For example, what was stipulated in the Egyptian Judicial Authority Law No. 46 of 1972 AD in Article (63) (. it is not permissible for a judge, without the approval of the Supreme Council, to be an arbitrator, even without payment, even if the dispute is not referred to the judiciary)^{xxx} The principle is that it is not permissible for the judge to choose an arbitrator; Whatever his rank, even without pay, and even if the dispute is not referred to the judiciary, because he devotes himself to judicial work and does not delay the settlement of judicial cases, and does not prejudice the prestige of the judiciary.
4. The arbitrator should not have an interest in the dispute: The arbitrator should not have an interest in the dispute, and he should not be related to the subject matter of the dispute or to one of the parties or their attorneys. And that he has no direct or indirect material or moral interest in the case he is considering, and that there is no previous financial, professional or social relationship linking the arbitrator with the parties to the dispute. ^{xxxi}
5. The number of arbitrators in the arbitral tribunal must be odd: the number of members of the arbitral tribunal should not be odd, but the number must be odd. The formation of the arbitration court from an odd number is a matter related to public order, in order to facilitate the formation of the majority opinion when issuing the arbitral award. If the parties to the arbitration agree on an even number, then the arbitration agreement is not invalid, and a person who completes the number must be appointed according to the arbitration agreement, even if the arbitration agreement does not stipulate the

appointment of the arbitrator necessary to complete the arbitration panel. The competent court originally handled the dispute with the usual procedures for filing a lawsuit based on the request of one of the arbitration parties ^{xxxii}

The second section: The Legal Position of the Arbitrator:

The second requirement / arbitration centers in Arab and foreign countries:

The first section / Arbitration Centers in Arab Countries:

The second section: Arbitration Centers in Foreign Countries:

The third topic: the rights and obligations of the arbitrator and the end of his mission:

When the arbitrator accepts the task of reviewing the dispute, it will entail rights and obligations on the shoulders of both the arbitrator and the parties, and that this task between the arbitrator and the parties to the dispute leads to the emergence of rights for the arbitrator that are considered obligations on the parties, and in return there are obligations on the arbitrator that are considered rights for the parties. After that, the task of the arbitrator who was chosen to resolve the dispute between the two parties ends. The natural way to end his task is by issuing the ruling that ends the dispute and decisive for it. However, the arbitrator's task may end for other reasons, which I will explain later. Accordingly, we will divide this topic into two requirements. In the first requirement, I will show the rights and obligations of the international commercial arbitrator. In the second, I will show the end of the international commercial arbitrator's mission as follows:

The first requirement: the rights and obligations of the arbitrator:

As we have already shown in the introduction to the topic that any contract concluded entails rights and obligations on both parties, and the arbitration contract, like other contracts, entails rights and obligations on both the arbitrator and the parties to the dispute. Accordingly, this topic will be discussed by dividing this requirement into two branches. We devote the first to the rights of the international commercial arbitrator, and we devote the second section to the obligations of the international commercial arbitrator, as follows:

The first section / the rights of the international commercial arbitrator: prove to the arbitrator; This is because he is a person entrusted with the task of adjudicating the dispute, and in return he enjoys rights that are as a duty of the litigants towards the arbitrator, so there is his right to accept the arbitration task; This is because it is not possible to force a person to do something against his will, his right to the fees and expenses he spent on arbitration, his right to enjoy immunity, and his right to step down from the arbitration mission when there is a legitimate justification. These rights will be explained as follows:

1. The right of the arbitrator to accept the arbitration mission: to appoint the arbitrator, whether by the litigants or the judiciary, is considered an offer addressed to the arbitrator by them, and it is not possible to say that the contract for arbitration has been concluded unless the arbitrator accepts the task, which is to resolve the dispute between the two parties; The reason behind the necessity of accepting the arbitrator is to give him an opportunity to decide whether to undertake the task or not, and to give him the opportunity to know the extent of his ability to resolve the dispute during the arbitration period. This is because the arbitrator's acceptance of the task and then his retirement due to his inability to settle the dispute is a breach of a contractual obligation that requires responsibility and compensation for the parties. ^{xxxiii}
2. The right of the arbitrator to obtain his fees and the expenses he spent: When the arbitrator is empowered with the authority to resolve the dispute between the disputants, he has the right to obtain fees in return for settling the dispute, unless he has accepted the task for free. ^{xxxiv} Accordingly, the arbitrator is

compensated for the effort and time he exerted during the consideration of the dispute, and it is estimated on the basis of the effort exerted throughout the arbitration period. The law may authorize the arbitrator to determine his fees and what each party bears.

3. The right of the arbitrator to enjoy immunity: the issuance of the judgment and the emergence of a losing party in the dispute, as such a person against whom the judgment was issued may try to settle his account with the arbitrator through arbitrary prosecutions, which makes the arbitration order meager in solving international trade problems, Voices appeared calling and still calling for the necessity for the arbitrator to enjoy immunity in order to resolve the dispute in the fullest way, as he performs a quasi-judicial function^{xxxv}
4. The right of the arbitrator to withdraw from the arbitration task when there is a legitimate justification: the principle and rule is that the arbitrator, whether he is appointed by the parties or by one of them from an arbitration center or from third parties or from the judicial court, After accepting the task of arbitration, he shall proceed with the arbitration litigation procedures until their natural end with the issuance of a judgment in their subject matter. He is not entitled to step down during the course of the arbitration dispute, except that it is an exception that may emerge from the circumstances and reasons that may compel the arbitrator to submit his resignation, at any stage of the course of the arbitration dispute, if the arbitrator becomes in a position with which he cannot continue to consider the arbitration dispute. ^{xxxvi}

The second section / Obligations of the International Commercial Arbitrator: When the arbitrator considers the dispute presented to him, he must abide by a number of obligations that, in turn, are considered rights for the parties to the dispute, otherwise he is liable for breaching his duties and he must compensate. Among these obligations is the arbitrator's commitment to impartiality and exploitation towards the parties to the dispute, the arbitrator's commitment to respect the right of defense for both parties, and the arbitrator's commitment to confidentiality in arbitration. The most important of these obligations are:

1. The arbitrator's commitment to impartiality and exploitation towards the parties to the dispute: that when the arbitrator begins to look into the dispute, he, as we previously explained, his work is similar to the judge. Accordingly, the arbitrator must be independent and impartial. Because the existence of these two elements achieves the success of the arbitration, the arbitrator is not entitled to take the image of the lawyer arbitrator or the litigant arbitrator . ^{xxxvii}
2. The obligation of the arbitrator to respect the right of defense for both parties: This duty is one of the most important duties that the arbitrator must abide by. The reason for this is that it is possible to challenge the arbitral award issued by it and refuse to implement it and thus nullify it if such a duty towards the litigants is not observed. And that the right of defense is the most important basis for litigation, as it is one of the basic rights that cannot be denied . ^{xxxviii}
3. The arbitrator's commitment to confidentiality in arbitration: Confidentiality is one of the most important features of the arbitration system. This is because the parties resorting to this method of resolving disputes is mainly due to its confidentiality in the procedures and the impermissibility of publishing the arbitral award after the resolution of their dispute to the arbitral tribunal. The principle is that the arbitration sessions are confidential, and no one who has nothing to do with the dispute may attend, unless the parties agree otherwise . ^{xxxix}

The second requirement / the end of the international arbitrator's mission: the arbitrator's task naturally ends when he issues his ruling that separates and ends the entire dispute, and the arbitrator's task may end without issuing the arbitral award, as in his response and dismissal or other reasons, Therefore, these reasons that terminate the arbitrator's task will be explained through the branches that will be indicated as follows:

The first subsection: the end of the arbitrator's task by issuing the arbitral award: the names differed regarding the end of the arbitration procedures and the realization of the right for one of the parties to the dispute. Others called this the arbitral award, and the Iraqi Procedure Law has adopted for itself the designation (arbitral decision) according to the text of Article (270) .^{xi}

The second section / the arbitrator's task ends without issuing the arbitral award: There are some cases in which the arbitrator's task may end by not resolving the dispute, as in the arbitrator's response and dismissal, and I will explain that as follows:

1. The arbitrator's response: Many legislations, rules and international arbitration agreements have been keen to grant the parties to the dispute important guarantees in order to provide a minimum level of impartiality, integrity and independence in the arbitrator who has been chosen, including by the two parties to the dispute and according to which his task ends in the consideration of the dispute. The Iraqi legislator dealt with the case of the arbitrator's rejection in Article (261) pleadings, where he permitted the arbitrator's rejection for the same reasons as the judge's response .^{xli}
2. Dismissal of the arbitrator: Various legislations also granted other guarantees to the parties to the dispute in the face of the arbitrator, which is the possibility of removing him from considering the dispute, and that the dismissal of the arbitrator cannot take place unless the arbitrator has accepted the task of arbitration expressly. And that the dismissal of the arbitrator is a specificity that characterizes the arbitration contract, as is the case with the agency contract, where one of its parties can independently terminate it, and the arbitrator is dismissed with the agreement of all the parties^{xlii}. There are no specific reasons for dismissing the arbitrator. Rather, the matter is left to the will of the parties, as they may see his incompetence or lack of experience and other reasons. It is not required that the litigants disclose the reason for their dismissal of the arbitrator. When the parties agree to remove him, the arbitrator shall refrain from taking any action or issuing any judgment, otherwise it shall be considered null and void.

The third section: The termination of the arbitrator's task due to other reasons: The natural end of the arbitrator's task is the issuance of the ruling ending the dispute presented to the arbitrator, and the arbitrator's task may end by not issuing a ruling on the dispute.

1. The lapse of the deadline set for issuing the judgment ending the dispute, whether it was specified by agreement or by law; This is because Article (262) pleadings required the arbitrators to issue their decision within six months from the date of their acceptance of the arbitration task unless the parties agreed otherwise^{xliii}
2. What is stipulated in Article (256) pleadings that in the event of a dispute and one or more of the agreed upon arbitrators refrain from working or announce his retirement.
3. Also, among the cases in which the task of the arbitrator or the panel may end, the Iraqi legislator stipulated that the decision be issued by agreement or by majority^{xliv}

Conclusion

Through what has been researched, I have reached a number of results and recommendations.

First: Results:

1. The Iraqi legislator is far behind the rest of the arbitration legislation in general and the arbitration legislation of the Arab countries in particular. Due to the failure of the Iraqi legislator to deal with international commercial arbitration.
2. It was found through the research that the arbitrator must be a natural person with legal capacity that qualifies him to be an arbitrator and not be among the judges in countries that prevent his selection.
3. It became clear to us that the Iraqi legislator did not arrange the penalty for invalidity in the case of choosing two arbitrators or any other number that is not an odd number.

4. It was found through the research that the selection of the arbitrator is either made by the parties directly, by the court or any other authority that appoints the arbitrator, or from the arbitration center.
5. It became clear through the research that confidentiality in arbitration is one of the most important reasons why parties, especially in the field of international trade, turn to arbitration as one of the ways to resolve disputes. Because of the great advantages it provides.
6. The arbitrator is entitled to the fees and expenses he spent in order to accomplish his mission.
7. Some laws and permanent arbitration centers granted certain protection to the arbitrator so that the party against whom the final judgment was issued would not pursue the arbitrator who decided the dispute, so the arbitrator was granted immunity.
8. The arbitrator's task ends after he issues his final decision, which ends the entire dispute, and thus he is considered to have naturally completed his mission.

Second: Recommendations:

Through researching this topic and the results reached, we show below a number of recommendations that we hope the Iraqi legislator will take into consideration, namely:

1. We recommend that the Iraqi legislator take advantage of the rules of the Model Law of International Commercial Arbitration issued by the United Nations in 1985 AD and the legislation of other countries in drafting a unified arbitration law in civil and commercial matters that includes internal and international arbitration and is independent of the pleadings law and commensurate with the objectives of arbitration.
2. The necessity of issuing special legislation that deals with matters related to electronic commerce and carries with it special provisions dealing with electronic commercial arbitration.
3. We recommend the necessity of forming a special committee in the Ministry of Justice whose task is to prepare lists of names of arbitrators known for their legal culture and adequate experience and who are known for their high efficiency in their work.
4. We recommend that the arbitrator enjoy appropriate immunity, not (absolute), in order to protect him from liability claims that are filed by one of the parties to the dispute, which may harm the arbitrator and arbitration in general.

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