NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

MASTER OF LAW IN INTERNATIONAL LAW PROGRAM (LLM)

MASTER`S THESIS

INTERNATIONAL COMMERCIAL ARBITRATION IN IRAQ- FACING CHALLENGES

SARA KHALIL QADIR

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ABSTRACT

The system of the international commercial arbitration has increased in prosperity and brightness day after day to become a global system. This is a manifestation of the modern era which is characterized by the complexity of relationships and diversity of interests. It is very importance to find solutions to conflicts, and there are conflicts of different kinds. All the conflicts of various kinds can be submitted to arbitration in order to resolve them especially in the commercial relationship, International Commercial Arbitration is relatively new a legal concept based on withdrawal of jurisdiction of national courts to resolve disputes that occur due to the conclusion or implementation of international trade contracts between states or between States and international commercial companies or individuals. The assignment of solving these conflicts by particular individuals are selected as involuntarily by the Contracting Parties, the international commercial Arbitration Private Justice Carried out by ordinary people that the parties of the dispute themselves choose them and they have specific properties. My aim in this research is to address a big change in the legal institutions in Iraq since the end of the US-led occupation and with these changes some real changes may come to Iraq's legal culture. Yet there is a lot of work to be done in Iraq in order to establish this kind of legal system which will meet their ambitions and provide a strong environment for increased trade, and also to know a matter of legislative and treaty efforts. The reform of Iraq's domestic arbitration laws since 2011 and the possibility of Iraq's joining the New York Convention on arbitration have been under discussion in Iraq.

Keywords: international Commercial Arbitration, International Law, arbitrators ,Alternative Dispute Resolution, United Nations, Iraqi law, Violence.

ÖZET

Uluslararası ticari tahkim sistemi, gün geçtikçe refah ve canlılık kazanarak küresel bir sistem haline gelmiş ve ilişkilerin, çıkarların ve çeşitliliğin karmaşıklığı ile karakterize olan modern çağın bir tezahürü haline gelmiştir. Çatışmaların çözümü açısından büyük öneme sahip olduğu için çeşitli türdeki tüm çatışmalar, özellikle ticari ilişkilerdeki çatışmalar, çözüme kavuşturulması için tahkime sunulabilir. Uluslararası Ticari Tahkim, devletler arasındaki veya devletler ile uluslararası ticaret şirketleri veya bireyler arasındaki uluslararası ticaret sözleşmelerinin sonuçlandırılması veya uygulanması nedeniyle ortaya çıkan uyuşmazlıkların çözümüne yönelik olarak ulusal mahkemelerin yargı yetkisinin kaldırılmasına dayanan nispeten yeni bir yasal kavramdır. Bu çatışmaları çözümü için tayin edilecek bireyler Sözleşme Tarafları tarafından istemsiz olarak seçilir. Uluslararası Ticari Tahkim Özel Adalet anlaşmazlığa dahil tarafların seçtiği sıradan şahıslar tarafından yürütülür ve bu şahısların belirli özellikleri bulunur. Bu konudaki asıl amacım, Amerika önderliğindeki işgalin sona ermesinin ardından Irak'daki resmi kurumların yaşadığı değişimi ortaya çıkarmaktır. Bu değişikliklerle Irak'ın hukuk kültüründe gerçek değişimler meydana gelebilir. Fakat, hedeflere ulaştıran ve artan ticaret için sağlam bir ortam hazırlayan türde bir hukuk sistemi oluşturabilmek için Irak'ın çok çaba harcaması gerekmektedir. Ayrıca, yasama ve antlaşma çabalarının hususlarını anlamak için, Irak'ın iç hakemlik yasalarının reformu ve Irak'ın New York Kongresi'ne katılma ihtimali 2011'den beri Irak'ta tartışılıyor.

Anahtar Kelimeler: Uluslararası Ticari Tahkim, Uluslararası Hukuk, Hakemler, Alternatif Anlaşmazlık Çözümü, Birleşmiş Milletler.

DEDICATION

I am very pleased to dedicate my thesis to my wounded country (Iraq). I hope everything will be fine in the future, I also dedicate this work to my parents that's supported me, my husband, my brothers and sisters, my supervisor Dr.Tutku Tugyan, all teacher in the faculty of law in Near East University and all friends.

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First of all, thanks to God for everything, after that I would like to mention many people who helped me in my work:

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- And finally, thanks to my friends and everyone who helped me.

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LIST OF ABBREVIATIONS

ICA: International Commercial Arbitration.

ICC : International Chamber of Commerce.

HCPSID: Hague Convention for the peaceful settlement of international disputes.

UNCITRAL: United Nations Commission on International Trade Law.

CPC: The Civil Procedure Code.

GATT: General Agreement on Trade and Tariffs.

WTO: The World Trade Organization.

THE INTRODUCTION

The International Commercial Arbitration has become the most important means used by traders or states in international trade to resolve disputes arising from their dealings. Each contract related to this type of trade contains a clause that makes the parties in all disputes that may occur between them concerning the interpretation or implementation of the contract including elimination arbitration for adjudication use of arbitration. The ICA has a prominent position in the economic and legal thinking on a global scale at the moment, many books and laws explained it,[1] and established specialized bodies with internationally recognized systems. Arbitration has become a manifestation of the age as a result of its importance in the overall commercial transactions, because of their distinct nature, specialization or international character. The importance of arbitration appears in the features and benefits that it has, for example, Practical reasons: it is concerns about the importance of international trade exchanges in the modern era. This importance has imposed the thought of finding judicial framework outside the State Judiciary. And it is through the development of international judicial bodies Consistent with international trade requirements, particularly about resolving these conflicts quickly, by reformatting it from the National Judicial Department which it has long procedures and cost. Physical reasons: that international trade dispute related to parties that usually inhabit different territories spaced which constitute impact on the final cost of the separation of the dispute. As for legal reasons: is to the existence of a legal impediment or a barrier essential, it is the ignorance of the dealers in the international trade of different national laws and procedures, In addition, the international commercial arbitration can overcome the issue of conflict of laws within the framework of the so-called international law and by not allowing to application one national law at the expense of another national law. Finally, the reasons for choosing international commercial arbitration system based on psychological reasons lies in the refusal of international trade parties to accept foreign courts and fears of bias treatment. All these reason and more make the ICA the good way to solve internationals trade disputes.

[1]Siraj Hussain Mohammed Abu Zaid, ***Arbitration in Contracts of Oil***, (Cairo, Renaissance Publishing House, 1st Ed, 2000), p.11.

It has become better than the judiciary, like the simplifying the procedures and shortening the time the parties resorted to it in order to avoid long procedures that are found it in the judiciary like the jurisdiction of the court, periods, dates and judicial proceedings etc...

Another advantage that is that the Parties also have the right to choose arbitrators. This provides psychological comfort to it for its contribution to the selection of arbitrators, the arbitration contrary of the judiciary in the secret procedures, in order to protect the reputation of traders, which are characterized by publicity. The acceleration of economic growth and the development of international relations especially in the commercial field making ıt the focus of attention of the States and international and regional institutions that they wanted to implement it and organize it quickly, At the international level, several international conventions relating to arbitration were held, as well as the arbitral bodies, the United Nations established Model Law on ICA on 12 June 1985. At the internal level different countries legislation has organized its laws consistent with ICA laws such as Iraqi law that be will explained Where Iraqi legislator was allowed to use the arbitration in the disputes, especially in commercial disputes. Arbitration is not a new system for alternative dispute resolution to the traditional state administered court litigation but it is old. According to Aristotle, 'it is equitable to be patient under wrong (not to retaliate); to be willing that a difference shall be Settled by discussion rather than by force; to agree to arbitration instead of to go to court - for the umpire in an arbitration looks to equity, whereas the juryman sees only the law.

- **The Importance of the Research:** Many states are interested in ICA including (Iraq) because it is natural to eliminate conflicts that arise within the scope of modern international trade contracts. The importance of the topic is clear from the center that it reached in the International Business Transactions Under the control of economically powerful nations and under the control of arbitration bodies under a special regulation. This why researchers in the developing countries study ICA mechanisms in order to fill the gaps in their law as well as to remove the ambiguity that exists in the provisions of ICA of these countries in order to be activated instead of retreat ,fear, and frequency of the application of it.
- **The Objective of The Research:**

  Any contract of international trade includes the arbitration clause, because of that arbitration will be studied and researched in order to understand the reasons and motives of it, to give a legal analysis of the background and the context in which ICA reform is taking place in Iraq. Another reason is to know the steps that have been taken by the Iraqi government for further reform. This topic has been chosen because of its importance in the economic life of Iraq which headed towards a free market economy, and its attendant Openness in the field of trade and investment, as arbitration is the best system to resolve this kind of dispute. This is in addition to our tendency to study topics related to resolving conflicts peacefully.

- **The Research Problem**:

  How can we understand the concept of the ICA?

  How has the Iraqi legislator dealt with the subject of the ICA?

  Clarify the difference between the Iraqi law with the Egyptian and Jordanian law?

- **The Scope of the Research:** Scope of the research is on ICA definition and the most important advantages and disadvantages under the Public international law and under the UNCITRAL and the types of arbitration and the highlight on the situation in Iraq before and after 2003 and to know the difference between the Iraqi law with the Egyptian and Jordanian law.
- **The Theoretical Framework of the Study:**

  The dissertation contains five chapters, the first chapter consists of the definition of ICA and legal Basis of it in different treaties and conventions. The Second Chapter is other International and commercial nature of the Arbitration, types of arbitration and distinguishes it from other ways of resolving disputes. The third chapter is about the conduct of arbitration and arbitration judgments, the applicability of court litigation and arbitration, the implementation of arbitration provisions and ways of appealing, the ICA in Iraq, Arbitration between Local and Foreign Entities, Obligations of Parties to the New York Convention. The fourth chapter is about the Position of ICA Law in Iraq and overview about it. The fifth chapter compares Iraqi law with some other laws and the Conclusion, Recommendations, and Bibliography.
- **The Research Methodology:**

  Our study will be based on the Analytical and comparative methodology according to the topic which is focused on the ICA and the role of arbitration in Iraq according to the legal sources that are available to us and related to the thesis topic.

CHAPTER ONE THE CONCEPT OF ICA AND THE LEGAL BASIS OF IT

1: The Definition of ICA and legal Basis of it:

To highlight and illustrate the meaning of the term and the concept of ICA, we find that the international dealers used arbitrations to resolve disputes arising from international trade fields in the past, but now it has become a common way to resolve disputes. As a result the demand for specialized commercial teams in this area has increased, and several arbitration and arbitration centers at the national and international levels were established.

1.1 The Definition of ICA. The concept and definition of ICA is not simple , so that a lot of people tried to define it as well as lots of agreements and treaties. A few definitions will be given here in order to make it clear. The most common definition is:

The Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties for a private dispute resolve the problem by themselves[2].

HCPSID define the arbitration:

The prevailing definition of arbitration was the one which is contained in Article 37 of the Hague Convention for the peaceful settlement International disputes which were confirmed by the Second International Peace Conference held in The Hague in 1907. This article decided that the subject of international arbitration is the settlement of disputes between States by judges of their choice On the basis of respect for the law and resort to arbitration a pledge to undergo in good faith to the rule was involved. [3]

[2] Dr. Ibrahim Mohammed Anani, ***Resorting to International Arbitration Own Business***, (Dar Arab renaissance Abdel Khalek Tharwat 2006), p.20.
[3] ***The Hague conventions, for Peaceful Settlement of International Disputes*** **Article** 93, (1907).

The UNCITRAL Model Law knew that arbitration "*means any arbitration, whether carried out by the permanent arbitration institution or not*. "[4]

It has been defined by some of the legislation, such as the Egyptian and Jordanian legislation: we find that the Egyptian law No. 27 of 1994 is a result of inspiration of the UNCITRAL Model Law, which was intended to determine the arbitration, stipulating the first paragraph of Article IV of Egyptian Arbitration Law provides that: the term of the arbitration of this law means the arbitration in which the conflicting parties agree to use it with any force whether the arbitrations are held by organizations or arbitration Institutions.[5]

Also find here that the Jordanian legislator did not define the definition of arbitration in the new Arbitration law 2001 but stated arbitration [6] the definition that in the old Law No. 18 Year 1953, where the second article stipulates saying: It means the arbitration agreement is a written agreement containing the referral of disputes existing or future arbitration Whether the arbitrator or arbitrators name is mentioned in the agreement or not.[7]

There is another definition from the French legislature which defined it as a special procedure for the settlement of certain types of disputes by arbitration court entrusted with the task of eliminating the parties under an arbitration agreement.

The Iraqi Procedure Code No. (83 (1969) as amended) did not refer to the definition of arbitration but authorized arbitration agreement in a particular dispute is also authorized to agree on arbitration of all disputes that arise from the implementation of a particular contract.

The French professor Motulsky had defined arbitration as the rule disputed by people chosen as an asset by other people under an agreement.[8]

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[4]***The United Nations Commission on International Trade Law (UNCITRAL) 1985 with amendments as adopted in 2006, (Vienna, 2008)*.**Article 2-A.

[5] Halima Nora, ***International Commercial Arbitration***, (Egypt, Khemis Miliana University 2013-2014), p. 8.

[6] ***Jordanian Arbitration Law***, No. 31, (Jordan, Official Journal No. 4496 2001).

[7] Mohammed Walid al-Abadi, ***The Importance of Arbitration and the Inadmissibility of Resorting to in Disputes Administrative Contracts***, (Jordan, Comparative Study 93, Volume, Issue 1, Faculty of Jurisprudence and Legal Studies,1993),p. 55.

[8] Motulsky Henri, **Ecrits,** Etudes ***ET Notes sur arbitrage***, (Paris, Dalloz, 1974), p. 6.

And Glasson, Tissier ET morale defined Arbitration as the judiciary in the dispute by ordinary people who are considered by the disputing parties judges.[9]

It has also been defined by Professor Jean-Robert stating that arbitration is a means for achieving justice is to be withdrawn from the public dispute judiciary and place it under the authority of the individuals who are judged by it.[10]

It has also been defined by the professor M.De Boisseson and he defined Arbitration as a system under which disputed parties choose a special arbitrator to solve the issue and is done under their own will .[11]

It has been defined by Jarrosson that Arbitration is a system under which the third party, exists disputes between two or several parties, or the practice of the profession of judicial entrusted by the parties. [12]

At last, we can say that the Arbitration can be defined as a system of litigation arising from the agreement between the parties concerned to give the award to a person or several people from a third party for the adjudication of disputes, including a binding decision.

The outcome from these definitions:

1. The arbitration is a special tribunal.
2. The arbitration finds his exporter in the party agreement.
3. The arbitration job is resolving the dispute between the parties.
4. The arbitral award issued by the arbitrator is binding.

The recourse to arbitration to resolve disputes arising in the field of international trade is accepted and it became a Common and optimal method at the present time to settle disputes as a result of the development of commercial and service transactions And globalization. The transformation in the third world is still a slow and it is not commensurate with the new data, therefore, an international trade arbitration centers emerged.

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[9] Glasson, Tissier ET moral, ***Traitede Procedure Civil*****.** **(**No 801, 1936), p.801.
[10] Robert Jean, ***Avec la collaboration De Bertrand Moreau, L'arbitrage***, (Paris, Dalloz, 6x Ed 1993), 1.
[11] M.De Boisseson***, Le dorit Français de l"arbitrage*** .Gide loyrtte noual, (1990), p. 5.
[12]Ch, Jarrosson, ***La notion D"arbitrage*** L G D J, (1987), p.372.

There are statistics for the ICC in Paris demonstrating the increasing role of ICA in the field of dispute resolution, which the third world countries have become a part of it like: Nigeria, Libya, Syria and Egypt While the ICC inauguration of arbitrators from developing countries, especially from Egypt, Lebanon, Jordan, Tunisia, Colombia and Korea in addition to the room to take many of the developing countries, the seat of the bodies as is the case in Cairo, Bangkok, Tunisia.

For this find several bodies and arbitration centers at the international level, and the most important are:

Court of Arbitration of the ICC in Paris, the Institute of International Arbitration England ,London Court of Arbitration And conciliation, the International Centre for settlement of investment disputes) and Washington (Institute of International Arbitration England (London), Society American Arbitration (New York), the Permanent Court of Arbitration in the Netherlands), The Hague (, Mediterranean Council for Arbitration And the trans-Mediterranean (Tunisia), Islamic Centre for Commercial Arbitration (Cairo)[13.]

[13] Halima Nora, Supra note 5, p. 9.

1.2 The Legal Basis of ICA

In this section the legal basis for ICA will be explained and that we see reflected in the various international conventions and rules of international arbitration as well as regional agreements and the different national legislations devoted to arbitration as a means to resolve existing disputes and international trade contracts between the parties to the conflict. This will be explained in two sections: the first section is the legal basis of ICA in international conventions and the private arbitration rules to UNCITRAL and the second section is the legal basis of ICA in the regional conventions and national legislation.

1.2.1 The legal basis of ICA in international conventions and the private arbitration rules to the UN Commission International Trade Law UNCITRAL:
Through this branch, we will explain the most important international conventions founded ICA rules and has organized various provisions, first we will look at the International conventions and secondly the rules of UNCITRAL:

A- The New York Convention of 1958:

It is a special agreement to recognize and implement the provisions of foreign arbitrators and approved by the United Nations Conference on Private International Arbitration held in New York In the period May 19, 29 June - 1954 It provides for the application of the Convention to the recognition and implementation of the provisions of the arbitrators and the judgments of permanent arbitral bodies invoked individuals and institutions, Where the application of the provisions of the arbitrators, which are not considered National in the requested state to recognize or implement these provisions.[14]

B- The Washington Convention 1972:

It is a private international convention to settle disputes arising from the investment of other countries, signed in Washington in11-2-1972 where ICA recognized as the first article of which provides the first chapter.[15]

[14] The New York Convention, ***Convention on the Recognition and Enforcement of Foreign Arbitral Awards and implementation***, (New York, 1st Ed., 1958).
[15] The Washington Convention, ***An international Convention to Settle Disputes Arising from the Investment of Other Countries***, (1972).

1. Establishment of the International Centre for the settlement of disputes arising from the investment.

2. The purpose of the center is to provide the necessary conciliation and arbitration to settle disputes arising from Investment between the contracting states and nationals of the contracting states and nationals of other Contracting States in accordance with the provisions of this Agreement, however, the agreement did not detract from the right of the Contracting States to pay the non-implementation of a sovereignty considerations.[16]

C- Special UNCITRAL Rules for arbitration in 1976, as well as the UNCITRAL Model Law on ICA Act of 1985:

It has been approved by the General Assembly of the United Nations in 15/02/1972 a force in the Cairo Regional Centre for International Arbitration. It is also the temporary headquarters of the Arab Center for Commercial Arbitration that has provided the first article of UNCITRAL, When a party to a contract agrees to write the submission of disputes relating to this contract to arbitration in Accordance to rules of UNCITRAL for arbitration, those disputes will be settled in accordance with these rules, taking into account adjustments that the two sides may agree in writing. These rules shall govern the arbitration, but if any of them go contrary to the provision in the applicable law to arbitration and that the parties cannot reach then is predominant text.

A short definition of the (United Nations Commission on International Trade Law) UNCITRAL will be given:

It is a legal body with universal membership specializing in commercial law reform worldwide for over 30 years, which is the main legal body of the United Nations in the field of international trade law, Its mission as modernizing and harmonizing the rules relating to international business and in order to increase the opportunities for growth for the exchange of Trade on a global scale has worked to formulate modern and fair rules.

[16] Mohammed Shehab, ***The Basics of International Commercial Arbitration and the Laws and Conventions of the Organization of Arab Arbitration***, (Egypt, Library Alwafaa legal, 1st Ed., 2009), p.39-40.

It include the following: Conventions, model laws and rules universally accepted, Legislative and legal evidence and of great practical value recommendations, Accurate Information on the case law and enact a uniform commercial laws, Technical assistance in the reform bills, Regional seminars and national in unified commercial laws, Sale of goods, arbitration, Electronic commerce .... Etc.

Where the General Assembly established the UNCITRAL in 1966 Resolution 2205 of December 17- 1966 The Committee shall consist of 60 Member States elected by the General Assembly the elected members of the Committee for a term of six years, ending the mandate of half of the members of the three years.

Where the UNCITRAL Secretariat headquarters in Vienna. There are some actions by the Commission including the International Sale of Goods and related transactions and that fall, including the United Nations Convention on the statute of limitations and the United Nations Convention on international sales contracts for goods among the acts Nations Convention United for maritime transport of goods, international payments and the United Nations Convention on the Assignment of Receivables in International Trade (2001) As well as the UNCITRAL Model Law on Electronic Commerce.

What are that are carried out by the arbitration rules, which we find in this regard?

A. UNCITRAL Arbitration Rules of 1976: Which includes a comprehensive set of procedural rules that the parties may agree upon to implement the arbitration procedures[17], and rules used widely in the individual arbitration and that arbitration operations in unregulated operations.

B. UNCITRAL Model Law on ICA of 1985:

It is designed to assist States in reforming and modernizing their laws on arbitral proceedings. UNCITRAL has adopted a law Model in 1985 and prescribed the law in a large number of legal systems in developed and developing countries and , Where due Model origination to request African Legal Consultative Committee Act Asian 1977 Of UNCITRAL (to reconsider In the rules of the New York Convention of 1958 And the said Committee has proposed amending the New York Convention on

[17] ***The United Nations Commission on International Trade Law***, (UNCITRAL), UNCITRAL Arbitration Rules, (General Assembly Resolution, 31/98 1976).

the so Dealing with additional issues such as judicial control over the course of justice and a fair trial and Immunities of the State, after the Secretariat of the UN began to look at International Trade Law) UNCITRAL (study of the subject they find that it needs to develop a comprehensive model law for ICA.

Objectives adopted by this law is to:

1. The commercial arbitration on the principle of authority will reduce the role of the courts.
2. Setting mandatory rules to ensure justice and the defense guarantees.
3. Establishing a framework for the management of commercial arbitration so that it is possible to complete the arbitration even if you cannot proceed on
   Procedural matters because the parties do not agree.
4. Put some additional rules that will help to implement the provisions of the arbitration.[18]

As UNCITRAL Model Law came on ICA with amendments adopted in 2006 this is where the Model Law is designed to help countries reform and modernize their laws on Arbitration proceedings to take into account the special arbitration ICA needs. UNCITRAL adopted the amendment to some articles in the July 7, 2006 articles 1, 7 and 35(2) and some other articles.[19]

D. Uruguay Final Document of the tour in Morocco, organized by the World Trade Organization in 04/15/1995:

Uruguay rounds was held and organized by the (GATT), General Agreement on Trade and Tariffs After the final round is the World Trade Organization (WTO) and which provided for the establishment of Settlement Body Origin of disputes according to the agreement of his mediation. The establishment of arbitration teams and named (DSB) and that of texts are Important in recent Uruguay round in Marrakesh following text "*must all matters that are compatible solutions formally raised based on the provisions relating to consultation and dispute settlement under the Convention, including arbitration agreements with those decisions*". However, it should be noted that in the text of the last convention of the multilateral trade agreements included in the first supplements Convention (WTO) in the final

[18] Mohammed Shehab, Supra Note 16, p.15.
[19] United Nations, -A / RES / 61 General Assembly Distr: General, Item 33 of the agenda Aloamal06-93697 ***WWW.uncitral.org***, (Sixty-first session, 18 December 2006).

document of the results of the Uruguay Round Annex in this theses did not mention only the word Memorandum of Understanding, a document of understanding on the rules and only procedures that govern dispute settlement mechanism to be Integrated in dispute resolution.

In this thesis find that there are many agreements held at the regional level, including what has been among the European countries who have a Uniform Law of Arbitration which was prepared by the European Council In 1966, as well as what has been among the Latin American countries. There is also the Moscow Agreement of 1972 and for the settlement of disputes arising from the relationship of economic cooperation c, scientific and technical cooperation between the Member States of the Council of Mutual Economic Cooperation) Comecon.

In the Arab world scale, there are many agreements provided for in the arbitration decision and the way to resolve disputes arising between the Contracting States or citizens of those countries and it will mention the most important conventions that were held at the level of Arab World 2.[20]

E. the Execution of sentences agreement of the League of Arab States 1952: where the Arab League Council agreed to -This Agreement at its sixth session on 14 September 1952 and became effective since June 19 -1954, only includes Arab countries. The most important provisions is dealing with the implementation of the provisions Judicial decision issued in an Arab country, as well as the provisions of the arbitration issued by one of the Arab countries and to be implemented in other Arab countries of the organization countries are also included provisions issued by the dispute civil or relating to personal status.

[20] Fawzy Mohammad Sami, ***International Commercial Arbitration, a Comparative Study of the Provisions of the International Commercial Arbitration,*** (Jordan, House of Culture for Publishing and Distribution, 1st Ed., 2008), p. 6.

F. Unified Agreement for the Investment of Arab capital for the year 1980:

Which became effective since - the seventh of September 1981 and ratified by the fifteen Arab countries who are members of the Arab countries League of Arab States, with the theme focused on Arab investment capital in the Arab countries, where all the countries have joined except Egypt, Oman and Algeria.[21]

G. Riyadh Arab Agreement for Judicial Cooperation of 1983:

Terms of this agreement dealt mainly with matters relating to the provisions and letters rotatory.

[21] Fawzy Mohammad Sami, Ibid, 7.

CHAPTER TWO INTERNATIONAL AND COMMERCIAL NATURE OF THE ARBITRATION, CHARACTERISTICS AND THE TYPES OF IT

2.1 International and Commercial Nature of the Arbitration

Several criteria have emerged to identify international arbitration. We will mention them through three branches in this requirement:

2.1.1 International Nature of Arbitration

Several criteria have emerged to explain the International nature of arbitration, which has evolved over time which will be explained under this branch positions of international conventions as well as national legislation.

1) First the legal criterion : the Model Law on ICA Developed by the UNCITRAL as adopted by the Commission At June 21, 1985 which is considered the legal standard for arbitration according to the text of the first article, first paragraph, selects the scope of application of the Model Law that applies to the ICA. The same article provides in the third paragraph of which states:

(1) Any arbitration becomes international:

(A) If the place of business Parties of the arbitration agreement at the time of the contract agreement are in different States.

(B) If one of the following places is out of the state where work parties headquarters is located:

- The place of arbitration if specified in the arbitration agreement or according to the arbitration agreement.
- Anywhere if the important part of the relations arising from the commercial obligations executes in it, or the place has a stronger link with the subject of the conflict.

(C) If the parties agreed that the subject of the arbitration agreement relates to more than one States explicitly.

It will be seen from the third paragraph:

- If a party has more than a place of business, priority shall be to the place which is closest to the place of arbitration agreement.
- If the parties don’t have a place of work the priority will be for the place of residence.

The Model Law identified some situations where arbitration becomes international as stated below:

- It is international if the workplace of the parties of arbitration is in different States, but if it was in one state it is not considered to be international. It is considered national and it is not subject to the Model Law, For example, if a German company agreed with another company inside Germany, the arbitration is subject to German law but when a German company deals with a French company the arbitration becomes international, it is therefore subject to the Model Law.[22] In case if there is more than a place of business for the parties to arbitration, they choose the place most closely associated with the subject of the arbitration agreement. If the parties don't have a place of work the priority will be for the residency place.[23]
- If one of the following places is out of state where work parties headquarters is located:

A- The place of arbitration if specified in the arbitration agreement or according to it: here we find that the Model Law on ICA adopted the spatial standard in order to determine International arbitration.

B- Anywhere if the important part of the relations arising from the commercial obligations executes it, or the place has a stronger link with subject of the conflict Article 1- P 3. [24]

- An international arbitration based on the will of the parties: The first article states in the third paragraph Sentence "c" that the arbitration is international if the parties expressly agreed that the subject matter of the arbitration agreement relates to more than one State. the freedom of the parties to agree on the subject of arbitration which relates to more than one State can change the arbitration from national to international but that cannot be left to the freedom of the parties because it is possible they do not respect the general rules for arbitration. You can establish dependence on this criterion because it depends on the will of the parties and this will is unstable.

[22] Hafiza al said Haddad, ***Summary In General Theory of International Commercial Arbitration***, (Beirut, Lebanon, Halabi rights 1st Ed, 2004), p. 40.
[23] Mohammed Shehab, supra note16, p.16.
[24] ***The UNCITRAL***, Supra note 4, (2008) Article 1- P 3- B.

2) Second the economic criterion: it is an international arbitration under this standard if the contract is related to the interests of international trade and there is disagreement about the intentionality of the contract which becomes an external trade but the prevalent opinion is considered international trade, if it has abroad such as importing of goods from abroad or export of national products from abroad, in general it is a round-trip movement of Goods and money across borders. This is a new standard that has been adopted by a lot of legislation, including the French legislation where the French procedural law took in international trade.[25]

3) Third the double criterion**:** we find that the European Convention allocated to ICA, signed at Geneva1961 makes the definition of ICA and did not depend only on economic criteria but took a new standard which added to it the legal component Where it should be for the parties habitual set up or management center in different States. Some legislation has taken this criterion, including Egyptian legislation where it is taken by the Egyptian Law No. 27 in 1994 to impart on Internationality of arbitration.

[25] French Court of Cassation's judgment, ***French Court of Cassation's judgment***, French, (17-5-1927).

2.1.2 Commercial Nature of Arbitration

Commercial character is in arbitration through the presence of disarming people are prone to specialists and their decision is a recipe mandatory, that the arbitration is an optional way to resolve international trade disputes between natural persons or between the moral of the people of the state. The arbitration will be an optional way but in some of the disputes relating to the ICA it is compulsory in international facilities, international procurement contracts of commercial nature the ICA makes its scope narrower than the field of private arbitration. And the consequence of all this is the exception or the enslavement of civil disputes and labor from the area of ICA.

The commercial nature includes not only commercial matters but it also includes all the issues of an economic nature as found in the Model United Nations Commission on International Trade Law, as we find that the first article of this law has a margin of state clearly the comprehensive definition of Arbitration to include contractual trade relations and non-contractual but not exclusively to include all related to the supply of commercial transaction or the exchange of goods and services as well as the distribution, commercial representation, collection agreements adoption of leasing, the construction of factories, business advisory services and engineering and licensing and investment and finance and banking, insurance, or exploitation concessions and agreements of Joint ventures and forms of industrial cooperation and other trade and transport of goods and passengers by air, sea or road or rail or road-rail.,International arbitration has proved effective in the global marketplace. Arbitration in international commercial disputes is believed to contribute to market integration by safeguarding and improving the efficiency of international private transactions.[26]

[26] Qureshi, K. "***Practice Points: The International View of Arbitration*"** Law Society Gazette, (2006), p.26.

2.2 The Characteristics (Advantage and Disadvantage) of ICA

The arbitration has become a universal and important way to resolve disputes, including commercial disputes, but despite the fact that arbitration is an important means to resolve disputes, it has disadvantage and advantage which will be explained in order to make it clear.

2.2.1 Advantage of ICA.

Arbitration decisions are final and definitive: is characterized by binding arbitration and access the same final and binding degree enjoyed by the judgments of the courts' decisions.

An alternative to national courts: The most obvious forum for all disputes is a system of national courts, which exist and are maintained by the state to defend the parties' rights and interests. It is the responsibility of the state to ensure that national courts work properly, that there are procedural rules to regulate the basis of jurisdiction and the conduct of cases before the court.[27]

The speed to solve the problem: arbitration speed up the resolution of the conflict, because the arbitrators are usually full-time seasoned in this rivalry before them making it easier for them to start arbitration proceedings and end it in a much shorter time than it is in the courts. It also has the power to determine how long they deem binding arbitrator to end the conflict and the arbitrator stick.[28]

So, the neutrality of the forum (that is, being Able to stay out of the other party's court) and the likelihood of obtaining enforcement, by virtue of the New York Convention is high[29]. The treaty includes more than 145 Member. An arbitration award is generally easier to enforce at the international court than a national court judgment because, under the New York Convention, courts are required to enforce an award unless there are serious Procedural irregularities, or problems that go to the integrity of the process. The New York Convention is considered to have a pro-enforcement bias, and most courts will interpret the permissible grounds for non-

[27] Lew, J.D.M., Mistelis, L.A., Kroll, S.M, ***Comparative International Commercial Arbitration***, (Hague/London/New York, Kluwer Law International, 2003).

[28] *ICC commission on arbitration,* ***Techniques for Controlling Time and Costs in Arbitration Report***, (Paris, 2007).

[29] Bühring-Uhle, Christian, ***a Survey on Arbitration and Settlement in International Business Disputes, in Christopher,*** (2005). P.31.

enforcement quite narrowly, leading to the enforcement of the vast majority of awards.[30]

The Confidentiality: The basic principle in the arbitration proceedings as secret only on the parties to the conflict and their representatives, so that it can be said that such secrecy is one of the arbitral norms that must be observed both in international arbitration or procedure, even if silent legal rules enforce (national legislation, for example) for the text on it. This is unlike litigation procedures that are, as a general principle, a public session so that anyone can attend these sessions.[31]

Special rehabilitation of convicts: Arbitration ensures quality, in judicial proceedings many settings lack the judge specialization in the subject of the dispute, and thus there is a need for the appointment of experts in the subject. But through arbitration, the parties can directly appoint arbitrator that is a specialists in the field of dispute.

Suitability for international transactions: Contracting parties from one country are generally unwilling to submit a claim to the national courts of the other party. The neutrality and independence of the arbitration process, established within the context of a neutral venue, and not belonging to any national system, is a real attraction for the parties to the ICA as a system. Some conflicts may arise in international transactions between countries with different political, legal, moral and cultural systems that will lead to different jurisdictions and here comes the role of arbitration which protects and respects all interests.[32]

The General Assembly being convinced that the establishment of rules for arbitration, that are acceptable in countries with different legal, social and economic systems.

Determine the rules in dispute: Arbitration provides a way out where the question of conflict of laws, the International Conflicts are often subject to conflict of laws, all of whom sought in the application of Pearls town laws categorize subject of the contract comes to root out categorically arbitration of this dispute and conflict of interest.

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[30] New York Convention, Supra note, 14.

[31] Mohammed Nasser Mutaioa Almhkoura, ***Report Preliminary Engineering and Scientific Symposium*** (organized by the Law Division of the Faculty of legal, economic and social sciences Fez in partnership with the Ministry of Justice and the lawyers Fez, published in the publications dissemination of legal and judicial information Society, April 2003).

[32] http://www.***uncitral.***org/pdf/english/texts/arbitration/arb-rules/arb-rules (5.5.2016).

Language: The parties can determine the language of the arbitration, which will not only apply to the language in which the oral hearings will be conducted in but also in which the briefs and supporting documents must be submitted.

Elasticity: Arbitration rules are generally simpler and more flexible than those of court proceedings. They are relatively easy to understand for parties of different nationalities, and the parties can adapt the dispute resolution process to suit their relationship and the nature of their dispute.

2.2.2 Disadvantage of ICA

The time: The arbitration process may not be quick, especially when there is a panel of arbitrators. As an example should be provided the arbitration award from May 2014; these arbitration proceedings have been pending for nearly eight years involving a patent license agreement between the technology companies.

If the arbitrator makes an error: the parties don't have the right to appeal, however, there are some limitations on that rule. The exact limitations are hard to define, unless in general terms, and are fact driven and it is difficult to improve the mistake that the arbitrator makes it on general principles of law applicable or interpretation.[33]

The arbitrators have no authority: to impose sanctions on the parties if they do not implement their decision but in the court they may impose a fine on those who do not implement the court's ruling. [34]

There may not be a jury: and be a serious disadvantage for parties because they can't put all their trust in the jury system.

[33] Arthur Mazirow, Esq., CRE, ***The Advantages and Disadvantage of Arbitration as Compared to litigation,*** (Los Angeles, California, on April 13, 2008), p.2.

[34] Moses, Margaret, ***Introduction to the International Commercial Arbitration***, "chapter one of the principles and practices of international arbitration", (Chicago, published by Cambridge university press, 2nd ED, 2011), p.7.

The basis of resolution: When the arbitrator's decision shall be taken, it depends on the general principles such as justice and equality in general and not on laws.

There are some restrictions: on the power of the court in order to speed up the procedures not to take a long time[35].

Prejudice to the arbitration: of national sovereignty of countries, international arbitration causes countries to compromise national sovereignty, especially in the contracts to which the state or one of its public institutions is a party state waives the jurisdiction of national jurisdiction in the chapter in Streptococcus all disputes, prompting many of Pearls states to refrain from resorting to Pearls Arbitration for impairing national sovereignty[36].

The arbitration decision may collide after the issuance of a significant snag, which is implemented. This issue is one of the most serious problems facing the practice of arbitration decision. Winner suit does not concern him to win just as much as what it means to gain access to its ruling in favor of any arbitration body, in other words, on the implementation of the resolution. Certainly, it does not arise any problem in the event that the other party voluntarily implements resolution amicably, and this is the safest roads for arbitration and the shortest. But the problem arises where that party rejects such a voluntary implementation, forcing the party that gained that lawsuit to seek redress.

[35] Dr. Qahtan Abdul league, ***Contract Arbitration in Islamic Jurisprudence and Positive Law***,(Baghdad, 1st Ed, Press immortality, 2008),p. 404.

[36] Dr. Ahmed Makhlouf, ***The Arbitration Agreement as a Way to Settle International Trade Disputes Decades***, (Cairo, Dar Al Arab renaissance.2001),p. 315.

2.3 Types of ICA.

Arbitration is a kind of private justice, where the parties of the conflict in their free will chose arbitration to resolve disputes between them. It is not a secret that the arbitration has become a familiar and a desirable way to resolve disputes that arise mostly in relationships about Contractual agreements and that instead of resorting to the national judiciary, but the arbitration has become more necessary in the field of international relations.

So there are many kinds of arbitration by the way in which they resort to arbitration in this section we shall examine some of it in order to make it clear:

1.Ad hoc arbitration: Free arbitration is arbitration that takes residence by the parties of the conflict because of a particular conflict and have the freedom to choose who they want to be arbitrators themselves and determine the procedural and substantive rules which control the conflict[37]. Free arbitration provides great flexibility for the parties to the conflict in agreement that would allow them feel better, but there are some difficulties in this type of arbitration which may not be able to allow parties of the conflict to know the problems they may face and then not being able to have a reserve in the arbitration agreement. It is possible that one of the parties in the conflict will cause the prolongation of the issues that may be leading them to resort to the judiciary.[38]

2. The institutional arbitration: when the parties to the dispute agree to refer their dispute that is happening between them to the institution then the arbitration of this kind is called institutional arbitration. It happens from the arbitration institution that controls the dispute in accordance with its own rules.

Where it is assigned to a group of arbitrators that are selected by the list of pre-written or chosen by the parties but of the names in the list, "Institutional Arbitration" is arbitration conducted under the rules laid down by established arbitral organization. Some of the leading international institutions are, ICC (ICC), Paris, London Court of International Arbitration (LCIA), London, London Maritime Arbitration Association (LMAA), International Centre for Settlement of Investments

[37] Clifford Larsen, ***International Commercial Arbitration***, (ASIL Insights, April 1997).
[38] Moses, Margaret, Supra Note 34, p. 9-10.

Disputes (ICSID), London, Grain and Feed Trade Association (GAFTA), London, and American Arbitration Association (AAA), New York. Others are World Intellectual Property Organization (WIPO), an agency of the United Nations, offering services for intellect .

This type of arbitration is subject to a fixed system and the rules and instructions of the stable that are managed by private institutions where there is a requirement mandated under the ICC, which provides any dispute gets under the contract are judged according to the rules of Conciliation and Arbitration of the ICC. This type of arbitration gives the parties fixed rules so as not to engage in future in contravention.[39] Ad Hoc Arbitration' may be domestic or ICA[40], Here, where the parties do not resort to institutions in order to resolve the dispute.

3. Optional and compulsory arbitration: originally the arbitration should be optional, not compulsory and cannot be imposed on the parties to resort to it, and this type of arbitration is based on two grounds. The first is the will of the opponents and the second passes the legislature this will. In the optional arbitration, it can be agreed that arbitration in the dispute even if it was held in front of a lawsuit the judiciary, Compulsory arbitration is stipulated by the legislator and should use it in disputes originally. The arbitration has right given by the law over individuals, but in some cases it can be an exception imposed on individuals but should be used in a Minimalistic way in order to save the Contractual status of arbitration which is the legal basis in arbitration.

4. Internal arbitration: Is that kind of arbitration that all elements related to the state of one without the other, and in terms of subject of the dispute, the nationality of opponents, the nationality of arbitrators, the applicable law, the place where the arbitration takes place, and here it is applied to the national law does not arise a problem of the conflict of laws and rules or how to implement foreign judgments as in the case of foreign arbitration.

[39] Redfern and Hunter, ***Law and Practice of International Commercial Arbitration***, (Oxford university press, 6th ED, 2004), p. 47.

[40] Henri Alvarez, Fasken Martineau, ***Achieving the Potential of International Commercial Arbitration***, (April 2005).

5. International Arbitration: Arbitration is international if the theme of a dispute concerning the interests of international trade and which have at least one limb is home or headquarters abroad, and this was confirmed by the Moroccan legislator in Chapter 40-327 of Law No. 05-08 where he was to be international arbitration in the following cases[41]:

1. If the parties to the arbitration agreement entered into institutions of different countries at the time.

2. The parties expressly agree that the subject matter of arbitration involve more than one country.

3. Or one of the following places is situated outside the State in the institutions of the Parties:

(A) Places when the arbitration is provided for in the arbitration agreement or appointed under this Agreement.

(B) Everywhere it must be implemented as an important part of the obligations of the commercial relationship or the place with which the subject of the dispute is more closely related to.

6. Judicial «Jurisdictional»: It is usually provided for in the Rules of Civil Procedure. Rules in which the mission is similar to the task of judges, at least in terms of pre-organized in procedural law.

7. A contractual «Contractual»: and is in the application of the rules and obligations of contracts party rule agreed in advance[42]**.**

[41] Nabil Ismail Omar, ***Arbitration in National and International Civil and Commercial Matters***, (The New University House, Alexandria, I 0.2, 2005). P.37.

[42] Mark G. Anderson, ***Journal of Dispute Resolution, Waiver of a Contractual Arbitration Agreement by Causing Prejudice to the Opponent***(Volume 1992 | Issue 1, Article 10, 1992) .

CHAPTER THREE THE CONDUCT OF THE ARBITRATION AND ARBITRATION JUDGMENT

Arbitration is known as an alternative means of dispute or conflict resolution outside the confines of the court of law. The Webster Dictionary defines arbitration as *"a process of settling an argument or disagreement in which the people or groups on both sides present their opinions and ideas to a third person or group".*[43] The essence of arbitration is aimed at reducing acrimony between business partners whose interest may conflict in the course of doing business. This is done through the establishment of common legislative standards that can cater for both local and international business interests and concerns. Arbitration is therefore done or conducted in a way that arbitration judgments or awards are enforceable irrespective of the place of award or judgment.

During the 39th session of UNCITRAL in 2006, the signatories consented that the arbitration agreement must be in writing and must have the full backing of the parties involved. According to (Domke, 1968) , a written agreement has more validity than verbal agreement because of the incidences of denial or willful wrong interpretation on the part of the concern parties.[44]

3.1 The Applicability of Court Litigation and Arbitration.

The existence of an arbitration agreement does not foreclose on the rights of an aggrieved party or parties to seek redress in a competent court of law.[45] This therefore means that an aggrieved person has the right to seek redress or even opt out of an arbitration agreement if his interest is not fully represented. This may be achieved through official representation at the arbitration tribunal. Domke believes that an arbitration agreement should not conflict with the existing laws of a country or a nation state. Where this happens, and the nation is a signatory to the international conventions then the international convention will take precedent.

[43] ***Merrien Webster Dictionary*** (2014), (6/9.2016).
[44] Domke, Marthin. ***The law and Practice of Commercial Arbitration***. (Callaghan 1968), p. 38.
[45] Domke, Marthin, Ibid, p. 39.

This view is in harmony with Calamita and Al-Sarraf views about the importance of written agreement serving as valid evidence during arbitration.[46] In the same vein, Richard caution about the prevalence of verbal agreement especially in third world countries which he attributes to a high cost of doing business and ignorance. [47]

Arbitration awards and court judgments sometimes lead to conflict. Majid believes that this conflict or indeed conflicts can be resolved at the arbitral tribunal through an appeal which could lead to the reconstitution of the arbitral tribunal.[48] Drahozal explained that an enforceable award must be respected by both parties in order for the arbitration to be smoothly implemented.[49] Secondly, Article 5 (2b) of the Convention on the Recognition and Enforcement of Arbitral awards Cleary states that: *"The recognition or enforcement of the award would be contrary to the public policy of that country"*.[50] In Iraq, this has remained a huge problem as emphasized by Calamita that the absence of a sound legal framework on arbitration in Iraq has continued to affect the economic wellbeing of the country and the stability of businesses in Iraq because business people tend to do business with their Iraqi counterparts with a lot of suspicion especially because of the non-execution or enforcement of some foreign arbitral awards.[51] The non-execution or enforcement of arbitration award in time is equally a huge problem. According to Fawzi the timely dispensation of the arbitration award is indeed the essence of arbitration in the first instance. Where this fails to be achieved, the aim of arbitration itself is defeated and could result in huge losses on the part of the aggrieved party or parties.[52]

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[46] Calamita, N. Jansen & Al-Sarraf, Adam. '***International Commercial Arbf1itration in Iraq: Commercial Law Reform in the Face of Violence***'. Journal of International Arbitration 32, no. 1 (2015), p. 37–64.

[47] Richard A. Posner, ***Creating a Legal Framework for Economic Development***, 13 World Bank Research Observer 1 (1998).

[48] Saleh Majid, ***Iraq Arbitration Law, Business Laws of Arab Countries***, (2011), p.67.

[49] Drahozal, C.R. ***New Experiences of International Arbitration in the United States***. (The American Journal of Comparative Law, 54, 2006).

[50] ***The New York Convention***, Supra Note 14, Article 5 (2b).

[51] Calamita, N. Jansen & Al-Sarraf, Adam. Supra note 46, p. 39.

[52] Fawzi Sami, the New Arbitration Bill in Iraq: ***A Few Guidance Principles of the Forthcoming Rules***, 2 International Journal of Arab on Arbitration 51 (2010), p. 33-50.

3.1.1 Arbitrators.

Tweeddale and Tweeddale (Tweeddale, 1999) define the arbitrator as an independent person that is appointed to resolve or adjudicate on disputes between conflicting parties based on the written agreements that were signed before the execution of a business deal.[53] It is expected that the arbitrator is a neutral person and shares no interest in the subsisting matter. The arbitrator must be empowered by enabling law or laws before he/she can act as one.[54] In law, the arbitrators are seen as persons or group of persons who are not partial and are conferred with the power to sit over issues of dispute with the aim of resolving the dispute in an amicable way without resorting to court action or litigation.

Brower and Sharpe explained the primary role and functions of the arbitrator to include the fact that arbitrator or arbitrators normally determine the compensation level that is established based and established by an existing contract and decide on the level or the award that is commensurate to what has been decided by both parties before the business was even executed.[55] Shaw agrees that the arbitrator must be seen as the third party to a dispute since the parties involved in the dispute submit their claims to him/her for a decision to be made.[56] The noble duty of the arbitrator requires that he remains transparent and fair to all concern. Where his/her decision is considered bias by any of the parties then the award itself can be challenged at the relevant place.

[53] Tweeddale, Andrew and Tweeddale, Keren. ***A practical Approach to Arbitration law***. (Blackstone Press, 1999), p.70.
[54] Tweeddale, Andrew and Tweeddale, Keren, Ibid, p.71.

[55] Charles N. Brower. Jeremy K. Sharpe, ***International Arbitration and the Islamic world***: (The third phase. The American Journal of *International Law, 97(3), 2003)*, p.*643-656.*
[56] *Malcolm N. Shaw*, ***International*** **Law** (Cambridge University Press, 6th ED June 2012), p. 921.

Shaw equally believes that the various enabling laws that empower the arbitrators usually are the binding contract that clearly outlines the willingness of both parties to respect the decision of the arbitrator if and when a dispute occurs. Secondly, the laws of certain lands or countries that stipulates the need for business contracts to include and arbitration clause and compel all parties to respect and abide by the decision of an arbitrator if and when the need arises.[57]

3.1.2 The Arbitration Clause.

The arbitration clause is a provision in business contracts that require all the parties to subject themselves to the process arbitration in the event of a dispute. The essence of such a clause is to bind the contracting parties to specific modes of resolving unseen disputes outside the law courts. The parties to the contract usually agree that when a problem arises, it would be settled through arbitration. This means that the parties are obliged to stay away from instituting claims in the law court.[58] Arbitration as an alternative means of settling disagreements in the course of a business by its nature is anticipatory since parties usually sign the arbitration agreement even before the dispute or disagreement occurs. This is aimed at nipping the problem in the bud so that businesses can progress smoothly. Ones this is done speedily, the progress and confidence of doing business are increased.

Tweeddale and Tweeddale contend that an arbitration clause is a form of an agreement which may come even before a dispute is encountered or when a dispute is encountered.[59] These forms of agreements according to stanivukovia are normally upheld by the courts as valid agreements and parties are required to abide by it.[60] In order for the arbitration clause or agreement to be effective, arbitration tribunals are normally constituted in order to consider the dispute at hand and come up with a viable decision in an impartial way. The decision of the arbitration tribunal or arbitrator is called an arbitral award.[61]

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[57] *Malcolm N. Shaw*, Ibid, p.922.
58 Charles N. Brower. Jeremy K. Sharpe, Supra note, 55.p.643.
[59] Tweeddale, A. and Tweeddale, K. ***Arbitration of Commercial Disputes: International and English law and practice.*** *(Oxford University Press, 2005), p. 72.*
[60] M. Stanivukovia, ***National Report for Serbia*** *(2011),* in International Handbook on Commercial Arbitration 1-62 (Jan Paulsson ed., 1984 & May 2011 Supp. No. 64).
[61] Tweeddale, A. and Tweeddale, K. Supra note, 59, p. 71.

3.1.3 The Arbitral Award.

In arriving at a commercial arbitral award, the arbitrators are expected to pay due diligence to the general and acceptable principles of doing business. Parties to a commercial contract that embodies or provides for use of arbitration to resolve disputes are compelled by extant laws of the land to respect the outcome of the arbitration and the arbitral award.[62] The arbitral award is not a new thing Iraq. Alternative dispute resolution has been part and parcel of the Islamic culture in Iraq. What remained difficult to achieve however the international content aspect of the arbitration is?

One of the biggest arbitration problems of Iraq is the fact that Iraq is not a signatory to the New York Convention. Calamita and Al-Saraaf believe that since Iraq is yet to be a signatory to the New York Convention, arbitration awards of international magnitude and proportion are difficult to be achieved and executed especially if the award is gotten from a country that has no judicial cooperation or agreement with Iraq.[63] In fact, they believe that because of political turbulence that Iraq experienced, many business men and women shy away from any form of arbitration agreement or clause knowing full well that it will come to no effect or it will be delayed unnecessarily. This point is equally highlighted by Born when he pointed out that trust is the heart of business and arbitration clauses can help in generating trust among partners.[64] But time is changing fast and the business climate is improving. Calamita and Al-Saraaf also believe that the commercial and business environment in Iraq is getting more conducive and more accommodated of certain international principles and tenets of doing international business.[65] One of the fundamental tenets is the respect for and execution of arbitral awards in good time. Sadly arbitration cases take very long time for them to be decided in Iraq. For instance, the case between Fiencantierri-Cantierri (an Italian company) vs the department of Armament in Iraq (Fincantieri–Cantieri Navali Italian S.p.A. & Oto Melara S.p.A. v. Ministry of Armament, Supply, 1994) is a typical example. Although an Italian court in Genoa had awarded Fiencantierri-cantierri, the case has continued to linger on in Iraqi

[62] Tweeddale, A and Tweeddale, K, Supra note, 53, p.72.
[63] Calamita, N. Jansen & Al-Sarraf, Adam. Supra note 46.p.42.
[64] Born, G. ***International Commercial Arbitration***. (Kluwer, 2009), p.38.
[65] Calamita, N. Jansen & Al-Sarraf, Adam, Supra note 46, p.45.

courts because the department of Armament has refused to honor the arbitral award.[66] When such occurs, businesses suffer and business ties are broken. Not only that, many other business persons will begin to do business with caution or refuse to do business with Iraq. This clearly is not a good signal for a country that wants to make economic advancement in the comity of nations.

3.2 The Implementation of Arbitration Provisions and Ways of Appealing.

The decision of an arbitration tribunal is said to be binding on all parties and should be fully executed and implemented. However, this is very difficult to achieve as pointed out by Calamita (2015) in the protracted *Fincantieri* (Fincantieri–Cantieri Navali Italiani Spa. & Oto Melara S.p.A. v. Ministry of Armament, Supply,, 1994) case even though it was eventually ruled by the Iraqi Cassation Court (the highest court in Iraq) in favor of the need to respect the arbitration contract entered by the feuding parties.[67] This was a major shift from the old interpretation that the Civil Procedure Code (CPC) in Iraq does not recognize the validity of arbitration agreements entered internationally. This positive shift meant that Iraqi jurisprudence is quickly realizing the importance of arbitration agreements to the smooth operation of businesses and contracts.

Born believes that any party who feels that the decision of the tribunal was not fair or was executed in bad faith has the right to seek redress in court.[68] In like manner, Sayre encourages that such a person can request for the constitution of a separate arbitral tribunal if he feels that the initially constituted tribunal was skewed or that the arbitration awards was wrongly acquired as such it is not valid or the arbitrator acted beyond his authority or that in reaching such an award, the arbitrator violated due process.[69] However, parties to an arbitral agreement cannot be entertained in court over the same issue without the award yet to be given. In other words, whatever litigation arising from the transaction that is requiring arbitral award cannot be taken to court for determination except such an award has been given.

Born also stated that the parties can however, challenge the validity of the arbitral

[66] *Fincantieri–Cantieri* Navali Italiani S.p.A. & Oto Melara S.p.A. v. Ministry of Armament, Supply, Directorate of Iraq and Republic of Iraq, Corte di Appello, Genoa, May 7, 1994, **XXI Yearbook** 594 (1996).
[67] Calamita, N. Jansen & Al-Sarraf, Adam, Supra note 46.p. 47.
[68] Born, G**,** Supra note 64**,** 39.
[69] Sayre, P. L, ***Development of Commercial Arbitration Law. The Yale Law Journal*****,** **37**(5), (1928), p.595-617.

agreement in court to proof that the challenging party was not hoodwinked into signing the arbitral agreement.[70]The need to protect the interest all parties is at the heart of arbitration law. It is important thus for all parties to enter into such arbitral agreements with knowledge and full consent because all parties must agree to be bound by the provisions of the arbitral agreement.

3.3 Commercial Arbitration in Iraq.

Commercial arbitration has been a very tricky subject in Iraq. This is so because the Iraqi Constitution appears to be silent on arbitration involving international bodies. Calamita and Al-Saraaf pointed out that *"Iraqi jurisprudence considers any arbitration agreement requiring arbitration in Iraq to be a "domestic" arbitration, and therefore subject to the provisions of the CPC, irrespective of whether the arbitration agreement is between Iraqi parties or between an Iraqi party and a foreign party"*.[71] As a result of this, many business men and women find it difficult to enter into agreements that have clauses that rely on arbitration for the resolution of disputes since the awards may not be honored at the long run. This problem creates a lack of confidence in the Iraqi business environment. It is important for a there to exist an arbitration agreement even before the commencement of the business engagement for all parties to under study the nitty-gritty of the business.

Secondly, Queen (Queen Mary) clearly states the importance of arbitration to the stability of the business environment of any country.[72] However, this stability is also dependent on many other factors especially the politically related factors. As a country, Iraq has suffered lots of set back because of the dictatorship of the Saddam era and the occupation that followed the collapse of the Saddam regime. This means therefore that for any successful legal and arbitral system to be formed in a country such as Iraq, the political, social and everyday existence of the country must be stable.

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[70] Born, G, Supra note 64, p.18.
[71] Calamita, N. Jansen & Al-Sarraf, Adam. Supra note 46, p. 64.
[72] Queen Mary, University of London & White & Case**, *International Arbitration Survey*** (Current and Preferred Practices in the Arbitral Process (2012) *available at* http://annualreview 2012.whitecase.com/International_Arbitration_Survey_2012.pdf).

3.4 Arbitration between Local and Foreign Entities.

Arbitration between a local business concern and an international one is usually very difficult to achieve in Iraq. The lack of specific provisions in the Iraqi Constitution regarding international arbitration makes it difficult for foreign countries to enter into arbitration agreements since the resulting award may not be honored or enforced by the Iraqi authorities. This creates doubts among business partners and slows down commercial progress of the country which is contrary to the aims and the primary objective of establishing or setting up of an arbitration tribunal.

Most foreign business entities usually seek for the enforcement of awards from arbitrators that may not be favorable to the local business person. While the local business person tries to hide from satisfying the provision of the arbitration agreement since the Iraqi constitution is silent on international arbitration. The provisions of the New York Convention are however sufficient guide for both domestic and international arbitration so long as the law can uphold the arbitration agreements that have been entered by consenting parties. This is because of the New York Convention clearly and unambiguously states the need for there to be an arbitration tribunal and how the tribunal must be constituted while encouraging all parties to respect the outcome of an arbitration process.[73]

3.5 Obligations of Parties to the New York Convention.

Parties to arbitration agreements are bound by the statutes establishing the New York Convention. Among the obligation of parties is the need to abide by agreements entered into regarding the outcome of the arbitration.[74] The New York Convention requires that parties to an agreement stay out of court until an award is successfully given.

Parties to the convention are equally required to give their full backing to the decision of the arbitration tribunal. The convention obligates parties and *"require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal"*. This means that if parties own up to their responsibilities and duties as expected, then the commercial arbitration will be a

[73] ***New York Convention***, Supra note 14.
[74] Born, G. Supra note 64, p.13.

Reliable alternative to dispute resolution. As has been pointed out, Iraq is not a signatory to the convention as a result, Iraq is not obligated to honor or enforce foreign arbitration. Because Iraq is not the only country that is yet to ascend to the New York Convention, foreign arbitral awards will continue to remain problematic as far as enforcement and execution are concerned.

Although the story is changing, Norri and Karrar most modern arbitration laws do not comply with the arbitration provisions of Iraq because that of Iraq is requiring change and modernization. But this too has been slow because of the mutual suspicion that Iraq has for some of the western countries.[75]

[75] Norri, M. a. K. R., 2013. ***www.tamimi.com***. [Online] [Accessed 10th December 2016].

CHAPTER FOUR THE POSITION OF ICA LAW IN IRAQ

The legal system in Iraq today is undergoing a great transformation. The past dictatorship coupled with the wars of 1991 and 2003 have not really helped in the development of a sound legal framework that would accommodate internationally recognized arbitration mechanism. However, efforts are today being made to strengthened the legal system in order to honor and respect foreign arbitral awards. Sayre believes that this is very important because commercial arbitration is more suitable to the needs of businesses than civil litigations that an accommodated in the court of law.[76] As such, it is incumbent on countries that want to progress economically to have a viable and reliable arbitration system.

As already stated, the Civil Procedure Code (CPC) only talks about arbitration between parties that are domicile to Iraq.[77] The interpretation of the courts regarding arbitration is centered only on parties that are in Iraq. Moreover, Iraq is not a signatory to the New York Convention. Therefore, international arbitral awards are not enforced in Iraq. The only form of enforcement that can be gotten from Iraq is when the award is issued by any country that is a signatory to the 1983 Riyadh convention on Judicial Cooperation to which Iraq is a signatory or the award is given by any other state that has an agreement with Iraq on Judicial Cooperation. In like manner, awards to international Iraqi businessmen in foreign countries are not enforceable if the country or countries do not have a bilateral relationship with the country where the award is expected to be redeemed. This is not good enough to engender confidence in the international business community.

Despite the good intention of the New York Convention, Iraq is yet to become a signatory to the provisions of the convention. Brower and Sharpe believe that this failure may not be unconnected to the general suspicion by many Islamic countries of many western ideologies and policies as well as the prolong period of wars and military occupation of the country.[78]It is however very clear that if Iraq must succeed in international business, she must guarantee the safety of the investment of her business partners and one of the ways of doing that is by ascending to some of these international protocols.

[76] Sayre, P. L, Supra note 69, p.601.
[77] Calamita, N. Jansen & Al-Sarraf, Adam, Supra note 46, p. 37–64.
[78] Charles N. Brower. Jeremy K. Sharpe, Supra note, 55, p. 650.

The importance of arbitration agreements in any international commercial contract cannot be over emphasized. Arbitration agreements generally help in reducing the cumbersome nature of doing business internationally. Secondly, Shaw explained that arbitration agreements help in creating an atmosphere of trust and mutual understanding among business partners. Thirdly, Born contend that, arbitration agreements help in shedding light on the intricate aspects of a particular business by highlighting the likely pitfalls that might arise in the course of doing the business even before the pit falls actually occur.[79] In other words, arbitration agreements are preemptive and anticipatory of possible problems and as such, they provide viable and adequate means of tackling them with the willing consent of all parties. But of course, it is important that the business person seeks for proper counseling from his lawyers regarding any arbitration agreement before he/she signs the agreement.

4.1 A Historical Overview of Arbitration in Iraq.

The date and place where the first arbitration took place cannot be specifically stated. However, it obvious that man has been able to advance his course by continually seeking for a solution to the problems in his society. Sayre claims that the earliest form of arbitration was probably executed by ancient merchants in order to foster and develop their business relationships with each other.[80] One basis feature of arbitration is its informal nature which tends to make business partners be at ease with each other. The earliest forms of arbitration were done informally and verbally.

Brower and Sharpe highlighted the fact that arbitration as a means of resolving conflict is not a recent development in Iraq. The Islamic world has always provided an alternative means of dispute resolution.[81]The right to arbitration is captured under the provisions of Iraq Civil Procedures Law No.183 of 1969 (as amended) .[82] However due to the prolonged period of dictatorship that bedeviled Iraq, the principles behind civil and commercial arbitration could not be fully developed because of various reasons. This included lack of political and economic stability. Calamita and Al-Saraaf also pointed out that among the many problems faced by parties to an arbitration is the lack of implementation and execution of awards and the hitherto disregard to foreign or international arbitral awards. The civil courts

[79] Born, G, Supra note 64, p.28.
[80] Sayre, P. L. Supra note 69, p.617.
[81] Charles N. Brower. Jeremy K. Sharpe. Supra note, 55, p. 656.
[82] **Iraq Civil Procedures Law** No 183 of 1969.

simply will not enforce arbitral awards that are not seated in Iraq. The courts simply deny jurisdiction to international arbitral awards. This is because of the fact that civil courts in Iraq recognize the validity of arbitration that is entered domestically but does not enforce arbitral awards that are awarded internationally. This reason, as observed by Calamita and Al-Sarraf is not unconnected with the fact that "*While the CPC includes detailed rules and procedures governing domestic arbitration clauses, agreements, selection of arbitrators, judicial review, and enforcement of arbitral awards, it does not make any specific reference to international arbitration"*(P.39).[83] The courts in Iraq, therefore, presume that any arbitration that is to be enforced has to be that which is concerned with local arbitration between parties in Iraq.

According to Calamita and Saraaf, after the US-led inversion of Iraq in 2003 and the end of the dictatorial regime of Sadam Hussein, Iraq has been trying to lay a sound legal system and infrastructure that can help in fostering better economic growth as well as engendering confidence in the system. As such, it was important for the country to honor and respect court judgments in and outside Iraq. Arbitration as a viable means of settling disputes also was brought to the fore the need for peaceful and harmonious resolution of the disagreement.[84] This is because international corporations can easily have confidence in doing business with a country if their interest is guaranteed under international regulations enshrined in various international conventions and are honored by the country in a transparent way.

Calamita and Al-Saraaf pointed out that the post-independence monarchist period in the history of Iraq, saw the country being a signatory to the Geneva protocol on the enforcement of foreign arbitral awards. Unfortunately, the Saddam regime viewed the Geneva protocol with lots of suspicions therefore the Geneva protocol was effective sideline by the courts paying attention only to local arbitration. This too has its implication to the Iraqis who intend to do business internationally as they too cannot claim arbitral awards outside Iraq or within countries that have bilateral ties with Iraq.

The seeming hostility of Iraqi jurisprudence towards arbitration is fast subsiding. Sinjakali observed that Iraqi legislators have since identified arbitration as a civilized means of resolving conflicts amicably. This is seen in the amendments of

[83] Calamita, N. Jansen & Al-Sarraf, Adam. Supra note 46, p.39.
[84] Calamita, N. Jansen & Al-Sarraf, Adam. Supra note 46, p. 40.

the law No 88 of 1956 in order to give strength to the principles of arbitration.[85] As a matter of necessity, Iraq is reported to be drafting an arbitration law that will enable the country to ratify the provisions of the New York Convention of 1958 .[86] Once this is done, confidence will be restored among international business partners and arbitral awards will become enforceable across many countries that are signatories to the convention.

4.2. International Conventions on Arbitration.

International conventions on arbitrations are aimed at making arbitration enforceable and executable among member countries in such a way that conflict is reduced to the barest minimal and to deal with the uncertainty of enforcing arbitral awards. These conventions are:

1. The New York Convention commonly referred as the United Nations Convention on the Recognition and Enforcement of Arbitral Awards, 1958 is aimed at recognizing and enforcing foreign arbitral awards by giving arbitration powers beyond the borders of the countries of the parties that are involved. The signatory states and their national courts are required to enforce and execute the arbitration awards. Finally, this Convention requires courts of signatory nations to honor arbitral agreements.
2. The Panama Convention was held in 1975 as an inter-American Convention on International Commercial Arbitration. This convention aims at promoting enforcement of Arbitral awards among countries in Latin America by giving validity to any valid arbitral clause. The Panama Convention also provides that the Arbitration tribunal can rely on the Rules of Procedure of the Inter-American Commercial Arbitration Commission (IACAC).
3. The European Convention on International Commercial Arbitration has identical aims with the Panama Convention. Its basis principle of application is where parties to a business agreement are from separate states. The basis aim of the convention are the creation of a Europeanized platform that can deliberately ease the difficulty of doing business.

[85] Dr. Adil siajaka. ***Arbitration in Iraq*** (Bagdad, 2004), p. 78.
[86] ***New York Convention***, Supra note 14.

4.3 The Limitation of the Conventions.

The conventions on arbitration are seen as the bedrock of arbitral awards enforcement. Calamita and Al-Saraaf claimed that these conventions are viewed to have their limitations in both countries that are signatories to the conventions and those that are not. New York Convention which seems to be the umbrella body for all regions of the world is viewed with lots of suspicion by the Arab world and the third world or developing countries.[87] In other words, these countries view it as instruments of coercion by the more industrialize nations. Iraq and some other Arab countries have found it very difficult to ascend to the provision of the convention because of the level of the suspicion that they have for the instrumentality of the convention. Secondly, Domke speaks about the need to have a common understanding of the provisions of the arbitration agreement but the cultural and religious differences that are not envisaged in the arbitral agreements often create serious problems during arbitration.[88]

The limitation of the Panama Convention is that it is restricted to Latin American countries. That means that only countries of that origin can become signatories to the provision of the convention. The same can be said of the European Convention on International Commercial Arbitration. Although it has the in its title, 'international', its application is not global. Its principal concern is with countries that are in Europe. As such the needs and plights of the rest of the world is not adequately catered for in the convention.

[87] Calamita, N. Jansen & Al-Sarraf, Adam. Supra note 46, p. 50.
[88] Domke, M., Supra note 44, p.87.

4.4. Domesticating the New York Convention in Iraq.

Among all the conventions on arbitration, only the New York Convention seems to have a wider and universal spread. Calamita and Al-Saraaf pointed out that "*As a matter of legislative and treaty efforts, the reform of Iraq's domestic arbitration laws and the possibility of Iraq's accession to the New York Convention have been under debate in Iraq since 2011"*[89]. The only viable way of domesticating the New York Convention in Iraq is if the government decides to be a signatory to the Convention. If that is done, then the enforcement of foreign arbitral awards will become possible.

If the New York Convention is domesticated in Iraq, it is likely that the commercial space will be broadened such that it will lead to an ease of doing business.

By domesticating the provisions of the Convention, foreign arbitral awards can be quickly dispensed with. The trust will be easily established and Iraq will be considered as a place where there is ease of doing business. This will also reduce the problems associated with contracts and contractual agreements. This is so because; the insertion of an arbitration agreement will be honored far and beyond the shores of Iraqi land.

[89] Calamita, N. Jansen & Al-Sarraf, Adam. Supra note 46, p. 54.

CHAPTER FIVE THE IRAQI LAW COMPARED WITH THE EGYPTION AND JORDANIAN LAW

To study and analyze the Iraqi Arbitration Law and know the duration of the power of this law, the Iraqi Arbitration Law is compared with other Arab states, such as Egypt and Jordan. The Iraqi Civil Procedure Act No. 83 of 1969 starts from Article 251 and ends with Article 2761, it is not independent as adopted a lot of terminologies the Civil Procedure Code.

Egyptian Arbitration Law No. 27 of 1994 [90] cancelled the articles of 501-513 of the Civil and Commercial Procedures Law No. 13 of 1968 on arbitration in civil and commercial matters Consistent with the international trend towards arbitration and reduced the burden on the judiciary official in the State. This law has 58 articles included the arbitration process starting from the arbitration agreement and until the implementation of the rule governing the arbitration[91], which is a separate and independent law. And has been modified certain paragraphs of Law No. 9 of 1997, where it was added arbitration in disputes contracts administrative consent of the competent minister, the Egyptian law consists of seven chapters:

1. General Provisions are discussed in Article No. 1-9.

2. The arbitration agreement is covered Article No. 10-14.

3. The arbitral tribunal is detailed Article No. 15-24.

4. Arbitration proceedings are in Article No. 25-38.

5. The arbitration award and an end to measures are in articles 39-51.

6. Invalidity of the arbitration award is in Article No. 52 -54.

7. Authentic provisions of arbitrators and their implementation are in 55-58 articles.

[90] Egyptian Arbitration Law (No. 27/1994), articles 3.
[91] Mohammad Salim Al-Awa, ***Studies in the Egyptian and Comparative Law***, (publisher house of legal books, Date of publication 01/01/2008), p.10.

While the Jordanian Arbitration Law No. 31 of 2001[92], this replaces the previous policy in 1953 and consists of 56 items. Arbitration Law No. 31 is an independent, and it contains seven chapters[93]:

1. General Provisions, from Article No. 2-8.

2. The arbitration agreement, from Article No. 9-13.

3. The arbitral tribunal, from Article No. 14 - 23.

4. Arbitration proceedings from 24-36 articles.

5. The arbitration award and an end to measures from Article No. 36-47.

6. Invalidity of the arbitration award from Article No. 48 - 51.

7. Authentic provisions of arbitrators and their implementation Article No. 52-56.

Here will be analyzed and compared to the Iraqi law for the arbitration consisting of 26 articles within a Code of Civil Procedure No. 83 of 1969 these are some comparisons:

1. The Iraqi law did not include some of the terms such as arbitration, the arbitral tribunal, the court, Parties to the arbitration and expert as found in the Egyptian and Jordanian law.

2. Article No. 251 of the Iraqi law approved an agreement of arbitration of all disputes arising from the implementation of a specific contract, but it did not specify the type of conflict concerning the civil, commercial conflict or with persons of public law or private law or normal contractual relationship to which the dispute. However, the Jordanian law Jordanian in Article No. 3 and 4 and the Egyptian law in Article No. 2 have identified the area where the work of the law of arbitration in the commercial rule of law if the dispute arose about the economic nature such a legal relationship.

3. Regarding to the arbitration outside of the country, the Jordanian law allows the parties to choose this procedure, no matter if it institution or arbitration center do arbitration outside the country. The Egyptian law has allowed arbitration outside the

[92] Jordanian Arbitration Law No. 31 of 2001 Supra note, 6.
[93] Mohammed Walid al-Abadi**,** Supra note, 7, p.70**.**

country but only commercial without prejudice to the rules of international conventions, which are in force in the Egypt. Iraqi law did not allow it.

4. According to the Arbitration Agreement Article No. 252 of the Iraqi Law Arbitration, the agreement can only be proved by writing, but Iraqi law did not specify the nature of the writing. Article No. 10 of the Jordanian law, explained how two writing both letters, fax or other ways of written, as well as Egyptian law in Article No. 10 and 12, said that the Arbitration Agreement should be writing in the contract[94].

5. The Egyptian law allows using international arbitration, mention it in the law and can be resorted to it in specific stations reversing the Jordanian and Iraqi law, where an unspecified resort to it. Within the context of this Law, the arbitration is international whenever a dispute related to international commerce in any of the following cases:

First, the principal places of business of the two parties to the arbitration are situated in two different States at the time of the conclusion of the arbitration agreement. If either party to the arbitration has More than one place of business, due consideration shall be given to the place of business, which has the closest relationship with the arbitration agreement. If either party to the arbitration does not have a place of business, then the place of its habitual residence shall be relied upon.

Second, the parties to the arbitration have agreed to resort to a permanent arbitral organization to an arbitration center having its headquarters in the Arab Republic of Egypt or abroad.

Third, the subject matter of the dispute falling within the scope of the arbitral agreement is linked to more than one country.

[94] Dr. Hatem Khalifa Prism Ojaili, ***Proposed Development of the Iraqi Arbitration Act through a comparative study of some Arab laws***, Journal of Engineering and Development (Volume VI XI. Issue II June-2012, ISSN 1813- 7822).

Fourth, the principal places of business of the two parties to the arbitration are situated in the same State at the time of the conclusion of the arbitration agreement, but one of the following places is located outside the said State[95]:

a) The place of arbitration as determined in the arbitration agreement or pursuant to the methods provided therein for determining it;

b) The place where a substantial part of the obligations emerging from the commercial relationship between the parties shall be performed; or

c) The place with which the subject matter of the dispute is most closely connected.

6. Egyptian law and Jordanian law did not allow the arbitrator be from the judiciary, but Iraqi legislator was authorized to do that but with the consent of the Judicial Council[96].

7. Egyptian law in Article No. 23 mentions that the arbitration clause considered Independent clause of the other terms shall not result in termination of the contract or invalidate any trace on arbitration clause if this condition is true but Iraqi law did not mention the subject.

8. Iraqi law does not specify the nationality of arbitrators, but the other laws mention it.

9. Iraqi law does not cover the procedures required in the arbitration process and the length of time, but the Egyptian law in Article No. 17 and Jordanian law in Article No. 16 specify the arbitration duration. In Jordanian law, the period is limited to 15 days if either party does not choose the arbitrator while Egyptian law has set 30 days for the appointment of the arbitrator.

10. In agreement with the Article 266 of the Iraqi law, the arbitrator decides on the dispute displayed in front of the arbitrator on the basis of the arbitration contract or arbitration clause and the papers offer from the parties. Iraqi law did not clarify the powers of the tribunal to take temporary measures required by the dispute, but the Jordanian law in Article No. 23 explained this, Egyptian law as well as in Article No.

[95] Dr. Hatem Khalifa Prism Ojaili, Ibid.p.38.
[96] Younis Hamid, ***The Terms of the Arbitration Court and the Extent of Control on the Arbitrators***, (journal of the judiciary, the second issue, Year 3, Baghdad, 1698).

24 provided that in case the parties agree to give the Court of Arbitration this power[97].

11. Iraqi law does not specify when to start arbitration proceedings, but the Egyptian legislator in Article No. 27 and the Jordanian legislator in Article 26 marked the beginning of the arbitration proceedings from the day when the formation of the Court of Arbitration completed unless the parties agree otherwise.

12. Iraqi law did not discuss the subject of the language used in the arbitration, but the Egyptian legislator in Article No. 29 and the Jordanian legislator in Article No. 28 have determined that the arbitration takes place in the Arabic language unless the parties agree otherwise or the Court of Arbitration[98].

13. Iraqi law made no mention of how the experts set, but Egyptian law in Article No. 36 and the Jordanian law in Article No. 34 explained how the appointment of the expert by the arbitral tribunal[99].

[97] Dr. Hatem Khalifa Prism Ojaili, Supra Note, 94.p.38.
[98] Radwan Obeidat, ***The Positive Effects of the Agreement of Commercial Arbitration in Accordance with the Provisions of the Jordanian and Comparative Law***, Journal ,(Sharia and Law Science Studies, Volume 99, Issue 1, Faculty of Law, University of Jordan, Jordan ,2011).
[99] Radwan Obeidat, Ibid, p.11.

CONCLUSIONS

In the modern period there is an increase in using arbitration's phenomenon as a system for settlement of disputes as offering advantages which are not provide by judicatory of the state. Furthermore arbitration, gives the advantages of contractors from different states, by helping them to avoid the problem or misunderstanding of not knowing the rules of substantive and procedural foreign law. When the enormous development was made on investment level, its importance was doubled, which may possess innate tendencies towards its representation. It has even fallen due to its acceptance by a great majority of countries in their economic and social system. Because of that, the arbitration came to be envisaged not only as appositive impatient for settlement of disputes within internal and external relationships of the states but also as to be an incentive which is needful as a result of these relationships between the states.

As a result, it should pointed out in the conclusion of this research the following important points from the thesis:

- The resort to the ICA is a good way that is characterized by speed and contributes to solving the huge amount of disputes that arise in the process of international trade relations. Up to 80% of disputes are resolved through international commercial arbitration.
- There were many definitions to the ICA whether in Jurisprudence or the laws of the states or the judiciary which are very similar. That means the ICA is an agreement between two parties of dealer'sni International trade to settlement disputes that may happen between them through a third or more people, away from the routine of the courts and the judiciary.
- The existence of arbitration clauses has effect on the sovereignty of the state which gives them some characteristics, as judicial immunity. Any country that agrees to put the arbitration clause may waive its judicial immunity.
- The thesis also explains to us the nature of international commercial arbitration and shows us the mixed nature of being in an Agreement and judicial adjective.
- Iraqi Arbitration Act depends on a lot of vocabulary in the Civil Procedure Act No. 83 of 1969.

- Iraqi law does not specify the area covered by the arbitration laws about the type of conflict -Is it a civil, commercial or people with a general law or special law or the nature of the contractual relationship to which the dispute if the contractual or non-contractual.
- Iraqi law does not explicitly mention using ICA and the possibility of resorting to it.
- ICA in the current Iraqi legal system still suffers from some of the imbalances and deficiencies if we compare it with the legal systems of the Arab and foreign World.
- After the events of 2003, the Iraqi legislator encourages recourse to ICA for the necessities imposed by commercial business nowadays.
- The Iraqi legislator moves forwards (institutional arbitration), which is the Arbitration that is done by the institutions or international arbitration centers or national.

Recommendations :

- The Iraqi Arbitration Act should get a new law about the ICA and divide it into seven chapters which are, General Provisions, the arbitration agreement, the arbitral tribunal and arbitration proceedings, and the arbitration award and an end to the proceedings, and the invalidity of the arbitration award, and Authentic provisions of the arbitrators, ease the responsibility of the judicial power of the state.
- The Iraqi law should include the meanings of words such as arbitration body and the court, Parties to the arbitration and expert.
- Iraqi law should determine the type covered by the laws in terms of the conflict a civil or commercial dispute and its relationship to people, public or private law the law and the nature of the relationship to the dispute.
- We suggest to the Iraqi legislature to enact a law for ICA, because of the high impact it has on attracting foreign investment to the Iraqis.
- We recommend amending the enforcement of foreign judgments, Law No. 34 of 1929, to include the implementation of the provisions of the arbitrators, especially in the light of the developments witnessed by the world.
- Must be reconsidered in the position of Iraqi legislator from ICA through the study of the issue of Iraq's accession to the New York Convention of 1958 in

order to provide real guarantees for investors. Since it ratification of the Convention mentioned, more than 128 states and foreign ones such as Algeria, Arab countries like Saudi Arabia, Bahrain, the United Arab Emirates, Djibouti, Egypt, Jordan, Kuwait, Mauritania, Syria, and Tunisia have acceded to it.

- Recommend to the legislation of Law on International Commercial Arbitration deals with the organization of arbitration mentioned in terms of its concept and its authority along with its assets of legal procedures and how to implement it, based on the Model Law and comparative legislation in this area, and then we can take one of the following two models:

1. Model Law on International Commercial Arbitration developed by the International Trade Commission Act in the United Nations (UNCITRAL) and adopted by many countries, including Egypt, Jordan, Hashemite Kingdom of Jordan, Yemen, and , Bahrain.

2. The French law Model, which was adopted by some Arab countries such as Lebanon, Algeria, Tunisia and the Morocco.

- The need to create channels of communication with the arbitration centers in neighboring countries to benefit from their experiences and participate in conferences dealing with arbitration matters.
- The need for legislation of a special law of arbitration which includes international legal principles in line with the sources of Iraqi legislation in order to achieve justice and equality among the contractors, whether they are foreign countries or Arab countries.
- The need for the proposed law includes protecting the interests of all parties can benefit from the provisions of the New York Convention of 1958 and other international agreements.

- The need to establish an Iraqi Chamber of Arbitration of the International Arbitration like Chamber that is recognized in the case of holding international conventions and trade contracts and cooperation with international arbitral institutions and to provide the necessary facilities in order to achieve advancement in the arbitration process in Iraq.
- Iraqi legislator must have a clear opinion about the nationality of the arbitral tribunal.
- The Iraqi legislature must determine the arbitration proceedings and the duration to choose the arbitrators.

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