E-ISSN: 2997-9420

American Journal of Political Science and Leadership Studies

https://semantjournals.org/index.php/AJPSLS

| Research Article

Check for updates

International Commercial Arbitration as an Alternative Means for Resolving Commercial Disputes

Mohammed Saud Dhannoon

Asst. Lect., Email: mohammed.saud@tu.edu.iq

Abstract: This research aims to study international commercial arbitration as an alternative means of settling commercial disputes, by analyzing the theoretical and legal framework on which it is based, reviewing its advantages compared to the formal judiciary, and highlighting the most prominent challenges facing it, whether at the legal or practical level. The research in its three chapters dealt with the concept of arbitration, its legal basis, and its sources, and then detailed the advantages it provides compared to the judicial system, before discussing the problems that limit its effectiveness, such as the limited appeal, the difficulty of implementing judgments in some countries, the absence of legislative standardization, as well as the future challenges associated with electronic arbitration and institutional transformation.

The study concluded that international commercial arbitration represents an effective and preferred option for dispute settlement, especially in commercial relations of an international nature, but its effectiveness remains contingent on the existence of a supportive legal environment and an international will to develop arbitration legislation and practices in line with the developments of the digital age and economic globalization.

Keywords: International commercial arbitration, institutional arbitration, commercial justice, electronic arbitration, commercial disputes

First: Introduction

International trade relations have witnessed a remarkable development in light of globalization and economic openness, which has led to an increase in transactions between companies and individuals of multiple nationalities. As these transactions have increased, so has the proportion of commercial disputes that are often difficult to settle through local jurisdiction due to differing national jurisdictional laws. This reality has prompted the search for more flexible and impartial

alternative means of resolving these disputes, and international commercial arbitration has been one of the most prominent and widespread such means in recent decades [1].

International commercial arbitration is defined as a legal system that allows the disputing parties to agree to refer the dispute to an independent arbitral tribunal, which shall adjudicate it outside the formal courts, and issue decisions called "arbitral awards" that are binding on the parties. This system is based on the principle of the will of the parties, as they can determine the applicable law, the place of arbitration, and the number of arbitrators, which gives them great flexibility in managing their dispute[2].

The 1958 New York Convention is one of the most important legal pillars that promoted international recognition of arbitral awards, obliging signatory states to recognize and enforce foreign arbitral awards under specific conditions. Other legislative frameworks such as the UNCITRAL Model Law have also contributed to the standardization of arbitration procedures and the provision of legal[3] safeguards for parties.

In addition to its advantages, arbitration faces challenges related to the disparity of judicial systems, implementation difficulties, and the absence of means of appeal in some cases, which may undermine confidence in its fairness among some investors. Therefore, the evaluation of international commercial arbitration must be carried out objectively, taking into account its advantages and problems within the practical and legislative context [4].

This study acquires its importance from the increasing reliance on arbitration in the settlement of international commercial disputes, especially by multinational companies, and seeks to analyze the efficiency of the current arbitration system, and research ways to develop it in line with the requirements of the constantly changing commercial environment [5].

Second: - The Importance of Research

The importance of this research is highlighted in that it deals with one of the most important alternative legal means that have become the focus of attention of States and commercial institutions alike, which is international commercial arbitration, which has proven effective in reducing judicial complications and providing a more favorable environment for commercial parties in dispute. Arbitration also contributes to the element of confidentiality, which is crucial in disputes involving trade secrets and the reputation of institutions.

Research is increasingly important in developing countries, including Iraq, which seeks to attract foreign investment by providing a stable and fair legal climate. Activating arbitration mechanisms is an essential part of this investment environment. Hence, the research contributes to making recommendations to improve the arbitration structure in national legislation in line with international conventions and standards.

Research Problem:

Despite the multiple advantages of arbitration, there is a wide debate about the adequacy of the legal guarantees it provides, especially in light of the absence of appeal mechanisms in the

[1] Sami Zidan. International Commercial Arbitration and its Contemporary Applications, 1st Edition, Beirut: Al-Halabi Legal Publications, 2020, p. 7.

[2] Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 14.

[3] Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 41.

[4] Yasser Abu Obaid. International Commercial Law and Arbitration, 1st Edition, Cairo: Dar Al-Nahda Al-Arabiya, 2021, p. 38.

[5] Hala Khalil. Arbitration in International Trade Disputes, 1st Edition, Beirut: Dar Al-Manhal Al-Lebanon, 2020, p. 15.

majority of its systems, and the existence of disparities in the implementation of its provisions between States. The research problem lies in the extent to which international commercial arbitration can be an effective and reliable alternative to resolving commercial disputes without compromising the rights of the parties or harming justice.

Arbitration also faces challenges related to its understanding and use by many economic actors, especially in countries that have not yet activated clear legislative systems that support it or effectively adopt the New York Convention, which opens the way for a defect in the application of arbitration principles on the ground.

Research Objectives

This research seeks to achieve a set of objectives, foremost of which are:

1. Analyze the legal framework for international commercial arbitration, whether through international conventions or national laws.
2. Highlight the advantages that arbitration offers in comparison to traditional adjudication, particularly in the international commercial context.
3. Discuss the most prominent legal and practical problems that limit the effectiveness of arbitration, especially in developing countries.
4. Providing an analytical vision for the future of arbitration in light of the digital transformation and the global trend towards institutional mediation.

Fifth: Research Methodology and Limitations

The research relies on the descriptive analytical approach, by analyzing the national and international legal texts that regulate commercial arbitration, with the use of legal comparison to clarify the aspects of agreement and difference between the various arbitration systems. The applied approach was also adopted through the analysis of the most prominent international conventions such as the New York Convention, and the UNCITRAL Model Law.

The limits of the research are determined by focusing on international commercial arbitration without addressing internal arbitration, and the study includes legal analysis of official sources only, without the procedural practical aspect in arbitration institutions or courts. The research also focuses on developments between 2000–2025.

Chapter One: Theoretical Framework for International Commercial Arbitration

International commercial arbitration is one of the most important modern legal means that have emerged as an alternative to national jurisdiction in the field of settling disputes of a commercial nature across borders, and it has gained increasing importance in light of the increasing volume of international commercial relations and the overlapping of interests between economic actors from different countries. Arbitration is based on the principle of the agreement of the parties, which gives it a contractual character distinct from the traditional judiciary, and makes it a flexible tool and more able to adapt to the nature of the commercial dispute [(6)].

The historical development of arbitration reveals its transition from an informal means used in merchant communities to an integrated legal system supported by international conventions and national legislation, such as the 1958 New York Convention, which contributed to the establishment of universal recognition and enforcement of arbitral awards, in addition to the

[(6)] Khalil Ibrahim. Principles of International Arbitration, 1st Edition, Baghdad: Dar Al-Jinan, 2019, p. 10

"UNCITRAL Model Law", which made it easier for States to adopt convergent legal systems in the field of arbitration[7].

The importance of international arbitration has increased with the expansion of multinational companies, and the increase of investment and commercial contracts that require the resolution of disputes outside the courtrooms that may be slow, expensive, or impartial. Therefore, international commercial arbitration is seen as one of the pillars of modern economic justice, for its speed, confidentiality, and specialization in dispute resolution[8].

Proceeding from this reality, this chapter aims to consolidate the theoretical concept of international commercial arbitration, by addressing its definition, characteristics, legal foundations on which it is based, and then reviewing its most important international and national sources. It also seeks to clarify the difference between it and other means of conflict resolution, as a prelude to understanding the applied framework that will be addressed in the following chapters [9].

The first topic: The concept of arbitration and its legal basis

First: Definition of International Commercial Arbitration

International commercial arbitration is defined as an agreement between two or more parties to submit a dispute of a commercial nature that has arisen or may arise between them, to an arbitral tribunal for adjudication, rather than to formal adjudication. This type of arbitration is distinguished by the fact that it crosses national borders, whether in terms of the nationalities of the parties, the location of the dispute or the law applied to it, which distinguishes it from internal arbitration [10].

The element of "internationality" in arbitration is what gives it its special character, as the nature of cross-border commercial relations requires flexible arbitration rules that are not linked to a particular national legal system. Some legislations, such as French and English legislation, have defined international arbitration as arbitration that is linked to more than one national legal system [11].

Second: Characteristics of International Commercial Arbitration

One of the most prominent characteristics of international commercial arbitration is that it is based on the free will of the parties, where they agree in advance on arbitration as a means of resolving the dispute, on the arbitral tribunal, the applicable law, and the place and procedures. It is also characterized by its confidentiality compared to the courts, and its relative speed in issuing judgments, which achieves the interests of the parties more effectively[12].

International arbitration also provides an element of neutrality, as arbitrators are appointed by agreement of the parties of different nationalities, which creates a kind of balance and mutual trust in resolving the dispute. In addition, the implementation of arbitral awards on a global level is one

[7] Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 44.

[8] Huda Lutfi. International Commercial Arbitration in the Shadow of Globalization, 1st Edition, Beirut: Dar Al-Fikr Al-Jami, 2019, p. 62.

[9] Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 29.

[10] Khalil Ibrahim. Principles of International Arbitration, 1st Edition, Baghdad: Dar Al-Jinan, 2019, p. 17.

[11] Hala Khalil. Arbitration in International Trade Disputes, 1st Edition, Beirut: Dar Al-Manhal Al-Lebanon, 2020, p. 23.

[12] Sami Zidan. International Commercial Arbitration and its Contemporary Applications, 1st Edition, Beirut: Al-Halabi Legal Publications, 2020, p. 35.

of its main advantages, thanks to the New York Convention, which has facilitated the recognition and enforcement of arbitral awards in more than 160 countries(13).

Third: The Legal Basis for International Commercial Arbitration

Arbitration is based on a solid legal basis based on the principle of freedom of contract, that is, the parties are free to choose to resort to arbitration instead of justice, and this freedom is protected under most national legislation and international conventions. It is also based on the common will of the parties to regulate the dispute, giving arbitration a quasi-contractual character (14).

In addition, modern national legislation now recognizes arbitration as an independent legal institution, devoting special chapters to it in the codes of civil and commercial procedure. Also, many Arab countries, such as the UAE and Egypt, have adopted independent laws to regulate arbitration in accordance with the UNCITRAL Model Principles, which indicates the global legislative trend towards strengthening the[15] role of arbitration.

The second topic: Sources of international commercial arbitration

International Conventions:

International conventions are one of the most important sources of international commercial arbitration, most notably the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is the cornerstone of the legal system of arbitration. This Convention obliges States Parties to recognize and enforce arbitral awards, unless there are legal grounds to refuse enforcement. This Convention covers more than 160 countries, making arbitration a globally recognized means (16).

International conventions also include the 1985 UNCITRAL Model Law on International Commercial Arbitration (amended in 2006), developed by the United Nations Commission on International Trade Law. This law has contributed to the unification of the basic legal principles of international arbitration, and is considered a legislative reference for countries that wish to develop or update their national laws in the field of arbitration(17).

National Legislation:

National laws are the primary internal source regulating arbitration within each country, and many legal systems have undergone significant modernization in this area. Most Arab countries, such as Egypt, the UAE and Iraq, have promulgated laws regulating commercial arbitration, inspired by the UNCITRAL Rules. These laws regulate the terms of the arbitration agreement, the formation of the tribunal, the conduct of the procedures, and the manner of implementing the provisions(18).

It should be noted that some States separate domestic and international arbitration in their laws, and give the parties the freedom to choose the law applicable to the dispute, as long as it does not conflict with public order, which enhances the flexible and independent character of arbitration(19).

(13) Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 51.

(14) Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 40.

(15) Mazen Abdul Hadi. Model Law on Commercial Arbitration, 1st Edition, Baghdad: Dar Al-Amal, 2020, p. 61.

(16) Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 44.

(17) Mazen Abdul Hadi. Model Law on Commercial Arbitration, 1st Edition, Baghdad: Dar Al-Amal, 2020, p. 68.

(18) Hala Khalil. Arbitration in International Trade Disputes, 1st Edition, Beirut: Dar Al-Manhal Al-Lebanon, 2020, p. 55.

(19) Nidal Al-Hayali. Comparison between Judiciary and Commercial Arbitration, 1st Edition, Baghdad: Dar Al-Safwa, 2020, p. 77.

Third: General Customs and Principles of International Trade

Commercial usages and general principles recognized in international trade are an important source of arbitration, especially in the absence of an express agreement between the parties on the applicable law. These customs include the rules of international trade that are recognized among traders, such as the terms of Incoterms, and the principles of justice and fairness that are used to interpret contracts or complete what their texts have been silent about [20].

In some cases, international arbitral tribunals are based on what is known as “uniform international trade law”, which consists of internationally agreed legal principles, without strictly adhering to any national legal system. This trend is known as "indefinite law arbitration", and is often used when the parties wish to have an impartial arbitration that is not governed by the law of a particular state [21].

Chapter Two: Advantages of International Commercial Arbitration and its Comparison with the Judiciary

In recent decades, international commercial arbitration has become one of the most prominent mechanisms for settling disputes of a commercial nature, especially in light of the great transformations taking place in the global economy and the growing need for quick and effective means to resolve disputes. This shift was the result of the traditional national judiciary's failure to meet the requirements of the international commercial environment, which encouraged commercial parties to resort to arbitration as a more flexible and appropriate option [22].

Arbitration has a number of characteristics that have made it superior to the formal judicial system in the eyes of many investors, including speed, confidentiality, flexibility of procedures, and specialization of arbitrators. Arbitration gives the parties broad freedom to choose the applicable law, the arbitral tribunal and the place of arbitration, which is often difficult to achieve before the national judiciary, which is subject to strict procedural and legal restrictions [23].

Despite these advantages, arbitration is not without some problems, the most prominent of which are the high costs, the possibility of biased arbitration in the event of weak conditions for the formation of the tribunal, in addition to the limited means of challenging judgments. Hence, there is a need for a comprehensive comparison between arbitration and the judiciary, in terms of legal structure, procedures, guarantees, and results, to determine the effectiveness of each in settling international commercial disputes [24].

The first topic: Advantages of international commercial arbitration

First: Speed in the procedures and adjudication of the dispute

The element of speed is one of the most important reasons for the parties to the commercial dispute to prefer arbitration over the judiciary, as courts often suffer from slow procedures, multiple degrees of litigation, and frequent postponements. In arbitration, the parties agree in

[20] Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 59.

[21] Sami Zidan. International Commercial Arbitration and its Contemporary Applications, 1st Edition, Beirut: Al-Halabi Legal Publications, 2020, p. 63.

[22] Ahmed Ezzedine. Commercial Disputes and International Arbitration, 1st Edition, Cairo: House of Legal Culture, 2021, p. 61.

[23] Huda Lutfi. International Commercial Arbitration in the Shadow of Globalization, 1st Edition, Beirut: Dar Al-Fikr Al-Jami, 2019, p. 66.

[24] Marwa Al-Jubouri. Limitations of Challenging Arbitral Awards, 1st Edition, Beirut: Dar Al-Rawafed, 2022, p. 108.

advance on the timelines, which reduces the time period for the adjudication of the dispute and achieves prompt justice[25].

Second: Confidentiality and Protection of Business Information

Arbitration is highly confidential compared to the public judiciary, as its hearings are often held away from the media and the public. This feature is vital in disputes involving sensitive information or trade secrets, such as patents or contract details. This gives companies and commercial institutions greater confidence in arbitration as a means that does not harm their reputation or strategy[26].

Flexibility of procedures

Arbitration is characterized by great flexibility in the procedures, as the parties can agree on the mechanism for presenting the dispute, presenting evidence, determining the language used, and even the number of arbitrators and the venue of the hearings. This flexibility enables the parties to adjust the course of arbitration to suit the nature of the dispute, without being bound by the complex formalities imposed by traditional judicial systems [27].

Fourth: Technical Specialization of Arbitrators

One of the most prominent advantages of arbitration is that the parties can choose arbitrators with high technical expertise in the field of dispute (such as construction, technology, energy), which earns the arbitral award a higher degree of understanding and accuracy compared to the general judge who may not have specialization in the subject matter of the dispute[28].

Fifth: International enforceability

Arbitral awards are widely accepted at the international level and can be enforced in most countries of the world under the 1958 New York Convention, which facilitates the recovery of rights, especially in disputes where one of the parties is a foreigner or has assets abroad. This makes arbitration more conducive to the settlement of disputes of an international dimension [29].

Sixth: Neutrality and Independence

Arbitral tribunals have a great deal of independence and impartiality, unlike some national courts where bias may be suspected, especially in disputes where one of the parties is from the host State. Therefore, the parties usually choose neutral arbitrators from other countries, which enhances their confidence in the arbitral process [30].

The second topic: Comparison between arbitration and commercial justice

In terms of procedures:

Procedures in international commercial arbitration differ from those applied before the formal commercial judiciary, as arbitration is characterized by simplicity and few formal restrictions, and the parties are given the freedom to agree on procedural rules, while the commercial judiciary

[25] Sami Zidan. International Commercial Arbitration and its Contemporary Applications, 1st Edition, Beirut: Al-Halabi Legal Publications, 2020, p. 71.

[26] Huda Lutfi. International Commercial Arbitration in the Shadow of Globalization, 1st Edition, Beirut: Dar Al-Fikr Al-Jami, 2019, p. 74.

[27] Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 51.

[28] Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 66.

[29] Mazen Abdul Hadi. Model Law on Commercial Arbitration, 1st Edition, Baghdad: Dar Al-Amal, 2020, p. 79.

[30] Marwa Al-Jubouri. Limitations of Challenging Arbitral Awards, 1st Edition, Beirut: Dar Al-Rawafed, 2022, p. 115.

obliges the parties to follow strict procedural rules determined by the law of the state. This difference gives the arbitration greater flexibility and reduces the chances of delay[31].

Second: In terms of the speed of adjudication of the dispute

Speed is a prominent feature of arbitration compared to the judiciary, as the dispute in the judiciary usually passes through multiple stages (court of first instance, appeal, cassation), which prolongs the dispute. In arbitration, there is one body that issues the final decision, without appeal in most cases, which leads to the resolution of the dispute in a shorter period of time [32].

Third: In Terms of Confidentiality

Arbitration is characterized by a high degree of confidentiality, as hearings are held away from the public, which protects corporate secrets and preserves their commercial reputation, while adjudication is often conducted in public hearings that may expose sensitive commercial information to exposure[33].

Fourth: In terms of cost

Although arbitration may cost more in terms of arbitrators' fees and expenses of arbitral institutions, the short duration and flexibility of the proceedings may compensate for this, especially in complex disputes. As for the judiciary, it is initially less expensive, but the length of the proceedings and the frequency of the sessions may raise the total cost [34].

Fifth: In terms of the possibility of appeal

The formal commercial judiciary provides multiple levels of appeal, giving the parties the opportunity to review the decision before higher courts. As for arbitration, its decisions are final and not subject to appeal in most cases, which is an advantage in terms of speed of adjudication, but it may be seen as a deficiency in the legal guarantees of some parties[35].

Sixth: In terms of international implementation

Judicial awards face challenges when enforced beyond national borders, requiring complex procedures for their recognition in other states, while arbitral awards are more broadly enforced internationally under the **1958 New York Convention**, which provides a universally recognized[36] legal framework.

Chapter Three: Problems and Challenges of International Commercial Arbitration

Although international commercial arbitration has many advantages that have made it a preferred option in the settlement of cross-border commercial disputes, it is not without legal and practical problems that affect its effectiveness and credibility. These problems began to emerge with the growing use of arbitration and the increase in the number of arbitral institutions, which revealed

[31] Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 64.

[32] Sami Zidan. International Commercial Arbitration and its Contemporary Applications, 1st Edition, Beirut: Al-Halabi Legal Publications, 2020, p. 78.

[33] Huda Lutfi. International Commercial Arbitration in the Shadow of Globalization, 1st Edition, Beirut: Dar Al-Fikr Al-Jami, 2019, p. 82.

[34] Marwa Al-Jubouri. Limitations of Challenging Arbitral Awards, 1st Edition, Beirut: Dar Al-Rawafed, 2022, p. 118.

[35] Nidal Al-Hayali. Comparison between Judiciary and Commercial Arbitration, 1st Edition, Baghdad: Dar Al-Safwa, 2020, p. 85.

[36] Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 74.

gaps in organization and procedures, especially in countries whose national laws are still inconsistent with international arbitration standards [37].

The most prominent of these challenges is the limited mechanisms for challenging arbitral awards, which raises concerns about the guarantees of justice, especially in cases where a serious error is committed by the arbitral tribunal. The fact that arbitrators are not subject to a globally uniform legal system may also raise issues of lack of impartiality or[38] conflict of interest.

Also, the issue of the implementation of arbitral awards is one of the most prominent challenges, as some countries still set legal or judicial restrictions that hinder the implementation of judgments issued by foreign arbitral tribunals, despite their accession to the New York Convention, which threatens the effectiveness of arbitration as a real international mechanism [39].

In addition, rapid technical transformations have led to the emergence of a new type of challenge, which is how to organize electronic arbitration and ensure its safety and legitimacy, especially in the absence of unified legislation regulating this type of remote procedures [40].

Proceeding from this reality, this chapter deals with the most important problems facing international commercial arbitration, whether at the level of procedures, the enforcement of judgments, or the powers of the arbitral tribunal, with a focus on future challenges associated with information technology and digitization.

The first topic: Legal and practical challenges

First: Limited challenge to arbitral awards

One of the most prominent challenges facing international commercial arbitration is the absence or limitation of mechanisms to challenge arbitral awards, as these awards are final and binding as soon as they are issued, and they cannot be appealed or discriminated against, except in rare cases related to serious breach of procedures or violation of public order. Although this final character is an advantage in terms of speed, it raises concerns related to the fairness of the procedures and the rights of the parties, especially in major and complex disputes [41].

Second: Lack of legislative uniformity between legal systems

The diversity of national legislation on arbitration is one of the problems hindering the effectiveness of international commercial arbitration. Despite the existence of an UNCITRAL Model Law, many States have not harmonized their legislation with it, creating disparities in the conditions for the recognition and enforcement of judgements and dealing with the invalidity of proceedings. This disparity leads to confusion in the arbitral process and affects investors' confidence in its results[42].

Third: Impartiality and Independence in the Composition of the Arbitral Tribunal

Although the selection of arbitrators is often made by the parties, the question of impartiality and independence remains questionable in some cases, especially when one arbitrator is proposed by

[37] Marwa Al-Jubouri. Limitations of Challenging Arbitral Awards, 1st Edition, Beirut: Dar Al-Rawafed, 2022, p. 101.

[38] Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 70.

[39] Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 86.

[40] Jassim Al-Hassan. Electronic Arbitration and International Trade, 1st Edition, Baghdad: Dar es Salaam, 2022, p. 55.

[41] Marwa Al-Jubouri. Limitations of Challenging Arbitral Awards, 1st Edition, Beirut: Dar Al-Rawafed, 2022, p. 103.

[42] Mazen Abdul Hadi. Model Law on Commercial Arbitration, 1st Edition, Baghdad: Dar Al-Amal, 2020, p. 84.

one party but not the other. The absence of uniform international rules to ensure the avoidance of conflicts of interest makes some parties question the impartiality of the arbitral tribunal, which affects the credibility of the entire process [43].

Fourth: Difficulty in implementing arbitral awards in some countries

Although the 1958 New York Convention provided an international framework for the recognition and enforcement of arbitral awards, some States maintain legal or judicial impediments to such enforcement, such as requiring the national court to review the award before it is executed, or invoking the existence of formal irregularities or breaches of public order. These difficulties are exacerbated in countries that do not have an independent judiciary or lack international trust [44].

Fifth: The High Cost of International Arbitration

High cost is a notable practical impediment to the adoption of arbitration in some cases, especially by SMEs. Appointing international arbitrators, paying the fees of arbitration institutions, and traveling to hold hearings in prestigious arbitration centers all raise the cost significantly compared to the national jurisdiction [45].

Sixth: The weakness of the legal culture of arbitration in some countries

In many developing countries, the legal culture related to arbitration remains weak whether among judges, lawyers, or even businessmen. This weakness leads to the misuse of the arbitration mechanism or its formal inclusion in contracts without sufficient awareness of its details and effects, which opens the way for disputes and procedural irregularities[46].

The second topic: The future of international commercial arbitration

First: The trend towards institutional rather than individual arbitration

International commercial arbitration is moving towards greater reliance on institutional arbitration provided by prestigious international arbitration centres such as the Court of Arbitration of the International Chamber of Commerce (ICC), the London Centre for International Arbitration (LCIA) and the Dubai International Arbitration Centre (DIAC). Parties prefer this type of arbitration due to the confidence in the regulations of the centers, the stability of their procedures, and the existence of supervisory bodies that ensure the integrity of the arbitration process [47].

Second: The Evolution of E-Arbitration and Digital Transformation

Recent technological changes have imposed a new reality in the field of dispute resolution, where the concept of online arbitration has emerged, from application to adjudication. The need for it increased after the Corona pandemic, prompting many arbitration centers to develop their electronic platforms and adopt digital systems to attend remote sessions and exchange documents electronically[48].

---

[43] Fuad Shafiq. Alternative Dispute Resolution, 1st Edition, Amman: House of Culture, 2019, p. 73.

[44] Nabil Darwish. International Arbitration: The New York Convention and its Applications, 1st Edition, Cairo: Dar Al-Nahda, 2021, p. 93.

[45] Ahmed Ezzedine. Commercial Disputes and International Arbitration, 1st Edition, Cairo: House of Legal Culture, 2021, p. 82.

[46] Hala Khalil. Arbitration in International Trade Disputes, 1st Edition, Beirut: Dar Al-Manhal Al-Lebanon, 2020, p. 95.

[47] Lubna Abdul Karim. Institutional Arbitration: Reality and Hope, 1st Edition, Dubai: Arab Arbitration Center, 2023, p. 33.

[48] Jassim Al-Hassan. Electronic Arbitration and International Trade, 1st Edition, Baghdad: Dar es Salaam, 2022, p. 49.

Despite the many advantages offered by electronic arbitration in terms of cost and time, it raises legal questions about the extent of its recognition, the mechanism of ensuring the digital identity of the parties, the security of documents, and the place of arbitration in the virtual environment, which requires the development of special legislation to cope with these challenges[49].

Third: Enhancing transparency and accountability mechanisms

One of the most prominent trends of the future in international arbitration is the promotion of transparency, especially in disputes related to the public interest such as investment disputes between countries and companies. Some institutions have begun to establish rules that provide for the publication of some arbitral awards and the disclosure of arbitrators' relations with the parties, which contributes to raising the level of trust and impartiality.

Fourth: Integration with other alternative means

The future is expected to see a shift towards hybrid approaches, which combine arbitration with other alternative means such as mediation and negotiations. There is a tendency to adopt what is known as Med-Arb, a mixture of mediation and arbitration, which begins with mediation and if it fails, the dispute moves to arbitration. This model saves time and effort, and increases the chances of amicable settlement without sacrificing legal obligation.

Fifth: Enhancing the role of States in the development of the arbitral structure

Many countries are moving to review their national legislation on arbitration, and to establish domestic arbitration centers that take into account international standards, in order to attract foreign investment. Some governments are also including arbitration in their strategic plans, which reflects their awareness of the importance of a strong and transparent arbitration system that enhances the business environment [50].

Conclusion

International commercial arbitration is one of the main pillars of the modern dispute settlement system, as it has proven its ability to meet the needs of the international commercial community in terms of speed, confidentiality, and flexibility. The research has shown that arbitration is not limited to being an alternative means of justice, but has become a complementary tool to it, keeping pace with global economic transformations, and protecting contractual relations from collapse due to disputes.

With multiple sources of arbitration, from international conventions and national legislation to the rules of arbitral institutions, the structure of this complex legal system requires harmony and complementarity between local and international levels to ensure the effectiveness of proceedings and the implementation of judgments. The study showed that the disparity in the legislative structure between countries is one of the most prominent obstacles to the effectiveness of arbitration.

The comparative analysis between arbitration and commercial justice also revealed clear advantages of arbitration in several aspects, especially in terms of flexibility and procedures, in contrast to some shortcomings such as limited appeal and high costs. The study showed that these challenges do not reduce the value of arbitration, but require careful reforms and regulations to ensure a balance between efficiency and justice.

[49] Marwa Al-Jubouri. Limitations of Challenging Arbitral Awards, 1st Edition, Beirut: Dar Al-Rawafed, 2022, p. 122.

[50] Sami Zidan. International Commercial Arbitration and its Contemporary Applications, 1st Edition, Beirut: Al-Halabi Legal Publications, 2020, p. 96.

In view of future trends, arbitration is moving towards a new stage based on technology, transparency, and institutionalization, which requires states and international bodies to keep pace with these transformations with flexible legislation and effective follow-up mechanisms that ensure the integrity and sustainability of this system.

Recommendations

1. Harmonization of national legislation in line with the UNCITRAL Model Law, to ensure consistency of proceedings and to facilitate mutual recognition of arbitral awards.
2. Promote the independence of arbitrators through binding ethical rules and international standards to avoid conflicts of interest and ensure the impartiality of the arbitral tribunal.
3. Spreading the legal culture of arbitration between jurists and economists, through seminars, training courses and university programs, especially in developing countries.
4. Regulating e-arbitration legislatively to ensure the security of digital transactions, and the legal recognition of remotely implemented procedures.
5. Supporting local institutional arbitration and developing Arab arbitration centers with international standards, to reduce reliance on foreign centers and raise the efficiency of alternative solutions in the regional environment.

References

1. Ahmad Ezz El-Din Homsi. *Commercial Disputes and International Arbitration.* 1st ed. Cairo: House of Legal Culture, 2021.
2. Akram Ali. *Problems in the Enforcement of International Arbitration.* 1st ed. Cairo: Dar Al-Multaqa, 2020.
3. Ahmad Jasim Al-Hassan. *Electronic Arbitration and International Trade.* 1st ed. Baghdad: Dar Al-Salam, 2022.
4. Khalil Ibrahim. *Principles of International Arbitration.* 1st ed. Baghdad: Dar Al-Jinan, 2019.
5. Sami Zidan. *International Commercial Arbitration and Its Contemporary Applications.* 1st ed. Beirut: Al-Halabi Legal Publications, 2020.
6. Sanaa Mahmoud. *Arbitration Between Theory and Practice.* 1st ed. Amman: House of Publications, 2020.
7. Suad Abdullatif. *Modern Trends in Arbitration.* 1st ed. Amman: Dar Majdalawi, 2020.
8. Fouad Chafik. *Alternative Means of Dispute Resolution.* 1st ed. Amman: House of Culture.
9. Mazin Abdul-Hadi. *The Model Law on Commercial Arbitration.* 1st ed. Baghdad: Dar Al-Amal, 2020.
10. Marwa Al-Jubouri. *Limitations of Challenging Arbitral Awards.* 1st ed. Beirut: Dar Al-Rawafid, 2022.
11. Nabil Mohammed Darwish. *International Arbitration: The New York Convention and Its Applications.* 1st ed. Cairo: Dar Al-Nahda, 2021.
12. Nidal Al-Hayali. *Comparison Between Judiciary and Commercial Arbitration.* 1st ed. Baghdad: Dar Al-Safwa, 2020.
13. Aura. *Arbitration of International Trade Disputes.* 1st ed. Beirut: Dar Al-Manhal Al-Lubnani, 2020.
14. Huda Lutfi. *International Commercial Arbitration in the Age of Globalization.* 1st ed. Beirut: Dar Al-Fikr Al-Jami‘i, 2019.

15. Lubna Abdul-Karim. *Institutional Arbitration: Reality and Expectations.* 1st ed. Dubai: Arab Arbitration Centre, 2023.
16. Yasser Abu Obeid. *International Commercial Law and Arbitration.* 1st ed. Cairo: Dar Al-Nahda Al-Arabiya.
17. Sharfuddin Mustafa. *Legal Approaches in Scientific Research.* 1st ed. Beirut: Dar Al-Resala, 2018.
18. Ahmed Ezz El-Din. *Commercial Disputes and International Arbitration.* 1st ed. Cairo: Dar Al-Thaqafa Al-Qanuniya, 2021.
19. Akram Ali. *Problems in the Enforcement of International Arbitration.* 1st ed. Cairo: Dar Al-Multaqa, 2020.
20. Jassim Al-Hassan. *Electronic Arbitration and International Trade.* 1st ed. Baghdad: Dar Al-Salam, 2022.
21. Khalil Ibrahim. *Principles of International Arbitration.* 1st ed. Baghdad: Dar Al-Jinan, 2019. 22- Sami Zidan. *International Commercial Arbitration and Its Contemporary Applications.*
22. 1st ed. Beirut: Al-Halabi Legal Publications, 2020.
23. Sanaa Mahmoud. *Arbitration Between Theory and Practice.* 1st ed. Amman: Dar Al-Matbooat, 2020.
24. Suad Abdullatif. *Modern Trends in Arbitration.* 1st ed. Amman: Dar Majdalawi, 2020.
25. Fouad Shafeeq. *Alternative Dispute Resolution Mechanisms.* 1st ed. Amman: Dar Al-Thaqafa, 2019.
26. Mazin Abdul-Hadi. *The Model Law on Commercial Arbitration.* 1st ed. Baghdad: Dar Al-Amal, 2020.
27. Marwa Al-Jubouri. *Limits of Appealing Arbitral Awards.* 1st ed. Beirut: Dar Al-Rawafid, 2022.
28. Nabil Darwish. *International Arbitration: The New York Convention and Its Applications.* 1st ed. Cairo: Dar Al-Nahda, 2021.
29. Nidal Al-Hayali. *A Comparison Between Judiciary and Commercial Arbitration.* 1st ed. Baghdad: Dar Al-Safwa, 2020.
30. Juru. *Arbitration in International Commercial Disputes.* 1st ed. Beirut: Dar Al-Manhal Al-Lubnani, 2020.
31. Huda Lutfi. *International Commercial Arbitration in the Age of Globalization.* 1st ed. Beirut: Dar Al-Fikr Al-Jami‘i, 2019.
32. Lubna Abdul-Karim. *Institutional Arbitration: Reality and Prospects.* 1st ed. Dubai: Arab Center for Arbitration, 2023.
33. Imad Al-Din Mustafa. *Legal Methodologies in Scientific Research.* 1st ed. Beirut: Dar Al-Risala, 2018.