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DISSERTATION

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ARBITRATION AGREEMENT: EFFECTS AND EFFICIENCY

A critical Analysis and Framework for Reform in Palestine

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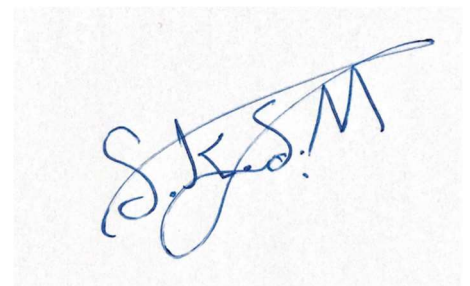
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Recommendation
to Mrs Suad Mahameed's public defense
Title: Arbitration agreement: effect and efficiency

Throughout their studies at the doctoral school, the student, **Mrs Suad Mahameed** concentrated on their chosen subject. He successfully completed his studies and the required credits and made progress on the topic in consultation with the students.

The topic was to provide the theoretical ammunition for the Palestinian arbitration system and legislative reform, an objective that has been hampered by many obstacles in the meantime. The lock down caused by the coronavirus outbreak, the escalation of the Palestinian-Israeli conflict and, as we can see from the dissertation, the fragmentation of the legal environment and access to sources have all played a complicating role in his studies and research.

Despite the legal and territorial fragmentation, it has proved to be a promising objective to contribute to the development of a Palestinian arbitration model by providing the theoretical and practical basis for alternative dispute resolution and commercial arbitration.

The paper addresses the following key questions:

What is the Reality of Commercial Arbitration in Palestine? From this question the following sub-questions branch off:

- The extent of the commercial arbitration culture Worldwide and in Palestine?
- To what extent are there rules and regulations governing commercial arbitration processes in Palestine?
- To what extent are bodies and institutions dealing with commercial arbitration Worldwide and in Palestine?
- To what extent has Palestine been affected by the experience of the Israeli occupation in the field of commercial arbitration?
- To what extent are there qualified cadres to work in commercial arbitration in Palestine?

This thesis aims to test the following hypotheses:

- Hypothesis 1: The arbitration framework in Palestine remains underdeveloped due to regulatory gaps, lack of enforcement mechanisms, and limited institutional support, making it less efficient than international arbitration models.
- Hypothesis 2: Despite Palestine's efforts to align its arbitration laws with international standards, political instability and jurisdictional fragmentation hinder the effective implementation of arbitration agreements.
- Hypothesis 3: The lack of specialized arbitration courts, trained arbitrators, and adequate legal infrastructure significantly affects the efficiency and fairness of commercial arbitration in Palestine.
- Hypothesis 4: Enhancing arbitration mechanisms in Palestine will lead to increased foreign investment by providing a more reliable and predictable dispute resolution framework.
- Hypothesis 5: Political and legal challenges arising from the Israeli occupation negatively impact the recognition and enforcement of arbitration agreements and awards in Palestine.

In terms of structure, the dissertation is basically divided into two types of chapters: in the course of the research, the author has emphasized the theoretical foundations of commercial arbitration, including the history of commercial arbitration, its development, the nature and types of arbitration proceedings in chapter one, and the colorful international framework of commercial arbitration law in chapter three, with regard to its regional, European Union and international specificities.

The most interesting sections of the dissertation are undoubtedly the presentations of Israeli and Middle Eastern peculiarities, with subsections 3.3 and 3.4 of chapter three providing the most interesting exposition for the reader. The second chapter, between these two chapters on the meaning of the arbitration agreement itself, will explain the distinction between procedures based on submission, stipulation and subrogation, and the essential differences between them. From the fourth chapter onwards, the author focuses on regional and national rules and contexts that are of European relevance and excitement. Within this, the author sensitively presents to the uninitiated reader the current situation and state of commercial arbitration and adjudication in Palestine,

alongside legal and territorial division, by presenting the rules applicable to the West Bank and the Gaza Strip and East Jerusalem, as well as the new Palestinian vision for arbitration.

The author not only describes the legal fragmentation that currently prevails, but also analyses it and suggests how the current legal framework could be revitalized in a way that would make commercial arbitration an effective procedural mechanism, taking into account the interests of traders and foreign direct investors. For each of these, the author offers the legislator, among the conclusions, a kind of legislative proposal and an initiative for the tasks to be carried out.

In my opinion, based on the workplace defense outcomes, I truly think, that the author has done significant effort into the research, the topic is relevant and highly important especially for her region of origin, in its supervised and modified version the dissertation is appropriate for being evaluated in the public defense procedure.

Debrecen, 17 April 2026



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Abstract

This dissertation critically examines the arbitration agreement as the cornerstone of international commercial arbitration, with particular emphasis on its legal effects and practical efficiency. By adopting a comparative analytical approach, the research evaluates how different jurisdictions conceptualize, interpret, and enforce arbitration agreements, highlighting both convergences and divergences in practice. The study investigates the legal validity, scope, and enforceability of arbitration agreements, as well as their role in safeguarding party autonomy while ensuring procedural fairness. Moreover, it assesses the efficiency of arbitration agreements in reducing litigation risks, promoting legal certainty, and fostering international trade relations. Drawing on international conventions, arbitral rules, and national legislation, the research underscores the dynamic interplay between theory and practice in arbitration. The findings contribute to ongoing scholarly and policy debates by identifying strengths and shortcomings in existing legal frameworks and offering recommendations for enhancing the effectiveness of arbitration agreements in a globalized economy.

KEYWORDS: Arbitration Agreement; Commercial Arbitration; International Trade; Alternative Dispute Resolution (ADR); Enforceability; Comparative Law; Efficiency; Party Autonomy; International Conventions; Legal Framework.

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Introduction

In today's world, there is a growing global demand for complementary, economically practical systems to resolve both international and local trade disputes. Commercial arbitration has presumed a critical role in this environment, with the majority of developing countries choosing to use arbitration systems as a strategic response to global economic upheavals.

Arbitration holds noteworthy relevance within the economic relations involving corporations and individuals. It serves as a feasible alternative prior to engaging the national judicial system in commercial, industrial, or real estate agreements, about transactions such as sales, leases, or mortgages. This alternative dispute resolution (ADR) mechanism ensures speedy resolution with minimal effort and a concise timeframe, alongside fostering the preservation of good-natured relationships among the disputing parties.

Given the prolonged duration of various trade disputes in the Palestinian region, which has jeopardized social cohesion and had a negative impact on local trade and investment, as well as the rise of tribal arbitration, commercial arbitration emerges as a critical and effective mechanism composed to address these challenges. This takes on greater significance, especially in the context of commercial dispute settlement.

Due to the lack of previous studies dealing with the subject of commercial arbitration in Palestine, and due to the importance, that this type of arbitration can represent and the many advantages it provides to various parties, this dissertation comes to shed light on the reality of arbitration in all its various aspects and components.

Moreover, this study seeks to highlight the legal framework governing arbitration in Palestine, analyze the extent to which international conventions impact Palestinian arbitration mechanisms, and propose potential legal reforms aimed at improving the arbitration process in the country.

a) Research Hypothesis

This research is built upon the following primary hypothesis:

- Hypothesis 1: The arbitration framework in Palestine remains underdeveloped due to regulatory gaps, lack of enforcement mechanisms, and limited institutional support, making it less efficient than international arbitration models.

Additionally, the research will explore the following sub-hypotheses:

- Hypothesis 2: Despite Palestine's efforts to align its arbitration laws with international standards, political instability and jurisdictional fragmentation obstruct the effective implementation of arbitration agreements.
- Hypothesis 3: The lack of specialized arbitration courts, trained arbitrators, and adequate legal infrastructure significantly affects the efficiency and fairness of commercial arbitration in Palestine.
- Hypothesis 4: Enhancing arbitration mechanisms in Palestine will lead to increased foreign investment by providing a more reliable and predictable dispute resolution framework.
- Hypothesis 5: Political and legal challenges arising from the Israeli occupation negatively impact the recognition and enforcement of arbitration agreements and awards in Palestine.

Rationale for Hypothesis Development

The foundation of these hypotheses is based on the current limitations observed in the Palestinian arbitration framework, as well as the broader challenges faced by arbitration institutions in politically complex regions. Unlike well-established arbitration hubs that benefit from a robust legal system, Palestine faces unique obstacles such as overlapping jurisdictions, limited institutional support, and economic constraints that hinder the full realization of arbitration's potential.

By testing these hypotheses, the study will provide an analytical understanding of the extent to which arbitration is effective in Palestine and will recommend legal and institutional reforms to enhance its efficacy. Through comparative legal analysis, this research will examine international best practices and assess their applicability to the Palestinian context.

b) Scope and Contribution of Research

This research aims to provide an in-depth analysis of arbitration in Palestine, focusing on its legal, procedural, and institutional aspects. The findings will not only contribute to the academic discourse on commercial arbitration but will also offer practical insights for policymakers, legal practitioners, and investors seeking to navigate the arbitration landscape in Palestine.

The study will particularly examine:

1. The historical evolution of arbitration in Palestine.
2. The extent to which Palestinian arbitration laws comply with international standards.
3. The effectiveness of arbitration agreements and awards in the Palestinian legal framework.
4. The institutional and legal challenges limiting arbitration's effectiveness.
5. Recommendations for enhancing arbitration efficiency and enforceability in Palestine.

By addressing these areas, this research aspires to bridge the existing knowledge gap and propose viable solutions to strengthen arbitration as an alternative dispute resolution mechanism in Palestine.

c) Questions of Research

Due to the challenging circumstances experienced by Palestine arising from the Israeli occupation and the associated imposition of political and economic constraints, there have been notable limitations on both local and international trade activities, and owing to the challenging economic circumstances experienced by the West Bank specifically, it has often led to the failure of many companies, investors and traders to fulfill their commercial and financial obligations and commitments, both at the local and external levels, which led to the occurrence of many commercial and financial disputes as a result of the long period for judicial procedures to resolve such disputes and their complexity, on the other hand, and the lack of sufficient experience in the judicial authorities in resolving commercial disputes and transferring them to those competent to express an opinion on them; which pushes towards the need to search for an alternative through which to provide quick, sound, legal and fair solutions to the attendant of such disputes.

This alternative can be provided in resorting to commercial arbitration as an alternative means of resorting to the national judiciary. But the problem that lies here, which is considered the main concern of this study, can be formulated by the main question of this study, which is: What is the Reality of Commercial Arbitration in Palestine? From this question the following sub-questions branch off:

- The extent of the commercial arbitration culture worldwide and in Palestine?
- To what extent are there rules and regulations governing commercial arbitration processes in Palestine?
- To what extent are bodies and institutions dealing with commercial arbitration worldwide and in Palestine?
- To what extent has Palestine been affected by the experience of the Israeli occupation in the field of commercial arbitration?
- To what extent are there qualified cadres to work in commercial arbitration in Palestine?

d) Significance of the Research

The significance of this research in the scientific context arises from its unique focus on the practical realities of arbitration, a subject that is inadequately addressed in existing literature. The lack of studies and references on this topic, particularly within the Arab States, underscores the distinctive contribution of this research. Consequently, this study seeks to serve as a valuable reference, addressing a notable gap in the scholarly discourse, thereby manifesting its scientific significance.

As for its practical importance, it is due to its contact with the reality of commercial arbitration in Palestine, through which is recognized the extent of using this method in resolving commercial disputes in the Palestinian environment. It also tries to shed light on the various aspects and dimensions of the arbitration process and to identify the problems and requirements of arbitration and arbitrators, so that at the end of this study, an expressive and comprehensive picture of the commercial arbitration process in Palestine is reached, and the availability of the basic elements necessary for the success of the arbitration process, which constitutes a benefit to all relevant parties.

e) Objectives of the Research

This research aims to examine the law on commercial arbitration in Palestine. To achieve this, specific objectives have been formulated:

- Explore the validity conditions of arbitration agreements in Palestine.
- To analyze the procedural system of arbitration as it applies in Palestine.
- Examines the status of commercial arbitration under Israeli law.
- To improve commercial arbitration in Palestine, an analysis of international arbitration laws and standards is necessary.
- To suggest improvements to Palestine's arbitration law.

f) Methodology

This section provides an overview of the research method implemented in the study. It includes the research design, scope, and analysis of the legal framework domain. Also, it defines the approach taken for data collection, including the sources of data and the method of data analysis.

- Research Design

A research design outlines the necessary data to gather, the method of collecting data, and specifies how the collected data should be analyzed. There are diverse data collection methods available, which are selected based on the specific research questions and requirements of the study. Examples of these methods include surveys, interviews, observations, and analysis of existing data.

The study adopted a doctrinal research method and empirical approach due to its focus on arbitration and related legal procedures. The doctrinal approach was chosen because it supplies a systematic presentation of the rules governing a particular legal doctrine and analyzes the relationship between the rules. This method is rooted in the philosophy of law, with a focus on legal authority and the nature of justice.

The doctrinal method is effective in explaining areas of difficulty and can potentially predict future developments in arbitration. It combines the mixture of legal arguments through "legal analysis" and places emphasis on analyzing theoretical concepts and their applications, as well as "legal rules and procedures." The primary aim of the doctrinal approach is to systematically examine and analyze how laws and legal institution's function. In the context of arbitration in Palestine, this approach would

systematically examine and analyze legal principles and rules to uncover the truth about the applicability of arbitration.

The basis for using the doctrinal approach is to ensure the research aims, such as studying and analyzing the challenges faced by arbitration in commerce disputes in Palestine, can be achieved. This approach is considered most proper for the research context as it enables the researcher to address all the questions and research aims. This approach offers various methods of analyzing the collected data, such as analysis and comparison, thereby easing the accomplishment of the research aims.

In addition to employing doctrinal methods in this study, it is crucial to note that the researcher also included a comparative approach. The reason behind combining doctrinal and comparative methods was to enhance the information extracted from international and regional instruments, along with relevant Palestinian laws. This dual approach proves essential as it allows the researcher to acquire firsthand insights from key stakeholders in the realm of commercial arbitration, a crucial point of this research.

This study needs comprehensive reading and a deep comprehension of both national laws and arbitration procedures in Palestine. It also involves examining articles and employing various legal research methods. To conduct this, a thorough review of relevant laws is essential. The practical consideration of these aspects aims to assess the potential development of national laws concerning arbitration in Palestine.

- Scope of the Research

The research in commercial arbitration includes the legal and practical structure, primarily examining the alignment of Palestinian national laws and practical reality related to arbitration.

The current study centers on the legal framework in Palestine, specifically addressing arbitration as outlined in the Arbitration Law No. 3 of 2000 and, which sets up primary guidelines for arbitration. Besides, the UNCITRAL (The United Nations Commission on International Trade Law), Model Law on International Commercial Arbitration of 1985, joining the modifications endorsed in 2006, together with the revised UNCITRAL Arbitration Rules of 2010. The 1958 New York Convention (NYC) about the recognition and enforcement of foreign arbitral awards was also mentioned.

As well, attention has been given to various international arbitration centers, including WIPO (World Intellectual Property Organization). Given that neighboring countries, especially Arab States, may be in use for Palestine's arbitration laws, the literature review includes several scholarly works related to these countries.

- Data Types

As shown previously, the present research employed a methodological mixture involving both doctrinal and comparative approaches. This dual approach eased the use of diverse resources, encompassing both primary and secondary data. Primary data sources covered statutory enactments, legal precedents, and qualitative interviews.

The selected foreign legal jurisdictions for the current study included the regulatory framework governing arbitration within the Arbitration and Mediation Center, UNCITRAL recommendations, in addition to related conventions and treaties about arbitration. Supplementary data sources for this scholarly inquiry formed newspaper articles, specifically those authored by experts in arbitration law, academic journals, authoritative textbooks, governmental publications, online resources, and relevant guidelines, serving to complement the primary dataset.

- Method of Data Collection

This section examined the methodologies employed for data acquisition, including both secondary and primary sources, within the context of the study. The significance of selecting proper data collection tools depends upon many factors such as costs, time-based constraints, available services, ability, the necessary precision level mandated by the research, and other related attributes associated with the data acquisition process. Thus, this research needs a comprehensive examination and profound comprehension of national legislations, as well as arbitration procedures in Palestine.

To assess the relevant laws, journals articles and other legal research methodologies were employed. These considerations were deliberated with respect to their practical implementation and the potential for the evolution of national laws relevant to the realm of arbitration in the Palestinian context.

The researcher systematically conducted bibliographic inquiries, encompassing the library at the University of Debrecen, along with the university libraries in Palestine and Israel, to obtain relevant data about the subject under consideration.

As well, electronic sources, including the Unified National Library and other affiliated libraries, were used. Furthermore, online exploration covered information derived from the United Nations Informal Committee, as well as certain international arbitration centers such as the WIPO and the Centre for Mediation and International Arbitration.

Also, the present research derived considerable advantages from supplementary resources, including web pages, literary works, journal publications, and journalistic pieces related to the subject of the study. The researcher so engaged in an exploration of qualitative secondary data retrieval within the domain, drawing upon diverse outlets of secondary information, such as the Arbitration Law No. 3 of 2000 of Palestine.

Moreover, the study referenced legal frameworks, including the New York Convention of 1958 (NYC), The UNCITRAL model law on international commercial arbitration of 1985, joining the amendments ratified in 2006, alongside the UNCITRAL code of international commercial conciliation 2002 and the UNCITRAL arbitration rules, as revised in 2010. Especially several arbitration statutes invoked in this research exhibit applicability in Palestine's neighboring Arab States. The literature review also found relevant scientific works useful to the study's scope.

- Data Analysis

In pursuit of the research aims, the researcher employed content analysis and comparative methodologies within a doctrinal framework, particularly when addressing legal dilemmas or issues. This entailed the identification of relevant regulations and principles, as well as an in-depth review of laws, concerns, journals, and articles.

Through these methodologies, the researcher systematically analyzed and compared rules, and principles. This involved the dissection of rules, identification of their constituent elements, discernment of interrelations among these elements, and clarification of the associations between these rules and principles within the relevant legal domains.

It is imperative to underscore that the use of a comparative approach holds significance in the realm of legal research. This approach eases the refinement of comprehension in the research domain, incorporating insights and experiences gathered from diverse jurisdictions. Specifically, the comparative approach in this research

served the purpose of evaluating the procedural practices of the UNCITRAL law and the New York convention of 1958, as well as certain entities (e.g., WIPO) tasked with arbitration. This evaluation was conducted with reference to national legislation and the application of arbitration within the context of Palestine. Likewise, the achievement of the first, second, third, and fourth research aims happened through the meticulous analysis of documentary sources.

Hence, it is imperative to underscore that the integration of these two methodologies eases the examination of gathered data, thereby enabling the comprehensive addressing of all research inquiries, and after conducting the predefined research goals. To illustrate, the use of content analysis, comparative methods, and thematic analysis equips the researcher with the means to address research questions 1, 2, 3, and 4, while concurrently reaching research aims 1, 2, 3, and 4.

g) Limitation of the Research

Anticipated restrains include various sides such as limitations in resources, financial considerations, and temporal constraints. Primarily, the shortage of present-day literature addressing legislative amendments in Palestine, coupled with a lack of prior research or relevant published articles, poses a significant challenge. The research process is further impeded by constraints in resources and time.

Particularly, a noteworthy obstacle arises from the inclination of many respondents, government officials, to withhold information if they perceive it as conflicting with state interests. The challenging nature of critiquing government legislation worsens these limitations. Acknowledgment is duly given to these inherent concerns.

Moreover, the reluctance of Palestinian courts to allow the publication of cases, restricting the dissemination of judgments solely to the parties involved in the dispute, adds an added layer of complexity to accessing related legal cases from the Palestinian judicial system.

To summarize these constraints, the researcher chose to explore alternative strategies, including addressing the challenge posed by limited resources. Also was strategically used online resources accessible through Hungarian and Palestinian libraries. To mitigate the potential obstacle of uncooperative respondents, more facile modes of communication, such as email and written feedback, were employed.

h) Structure

A brief on the scope of the dissertation would be the following. Firstly, the present dissertation includes a legal analysis of the Palestinian commercial arbitration reality. Since Palestine has been under occupation since 1948 Arbitration law was amended multiple times. This research focused on each legislation as it reflected the arbitration regime and policy in the country for a relevant period, so resulting in the current reality.

Secondly, the dissertation analyzed the Israeli arbitration reality as a regional integration and its current strategies to turn away from traditional arbitration regulations. Finally, reviewing Palestine and Israel and their arbitration regime development eased understanding their arbitration policy nowadays. More crucially, it was necessary to investigate the influence of the international arbitration regime, as well as Palestine and Israel's responses to that influence.

The significance of international arbitration regimes is demonstrated by international arbitration treatments that explain the realities of arbitration on the European continent and in the Arab States.

The structure of the thesis is as follows: Chapters one and two will assess the evolution of commercial arbitration, fundamental doctrines, its sources, and nuances of core terminologies of the field; Chapter three covers major arbitration agreement modules worldwide. Chapter four examined the reality of arbitration in Palestine and an attempt to address arbitration under the Palestinian Israeli conflict.

CHAPTER 1

A Brief History of Commercial Arbitration

1.1 The Origin and Historical Development of Arbitration

In the emerging stages of human societies, the structure of social relationships afforded individuals or tribes the autonomy to proclaim their entitlements independently when confronted with opponents, then arbitration appeared, according to which the disputants hand over their rights with their own hands, entrusting a third person to find a solution to the dispute. This person is either chosen by both parties or is an influential person in society.

Arbitration appeared at this stage because there was no public authority to administer justice, to avoid the implementation of individual justice, and to resolve disputes peacefully. Even when the public authority indicated that in its first stages that was not its task to conduct justice in society, arbitration remained the only means to do that¹.

After the development of primitive societies², the public authorities became responsible for attaining justice in society, yet, arbitration remained in place, and the authority recognized it, and society was eager to maintain it, but became justice again next to official justice and operates under its control and supervision, and this persisted until the twentieth century, and the function of arbitration was to reconcile the disputants, it is reconciliation and not resolution of disputes as in the official judiciary³.

The parties usually resorted to arbitration after a dispute arose between them, and the arbitrators often chose one of the relatives, friends, or wise notables who knew how to settle affably, and the arbitrator was more of a reformer than a judge, comparing in this matter the Islamic countries that applied the Code of Judicial Rulings, or the European countries that applied laws of Roman origin or English laws⁴.

¹ Al-Douri, K. A. R. (2018). 'Aqd al-tahkīm fī al-fiqh al-Islāmī wa-al-qānūn al-waḍ'ī [The arbitration contract in Islamic jurisprudence and positive law] (3rd ed.). Kutub - Nashirun. P.38.

² Moses, M. L. (2017). The Principles And Practice Of International Commercial Arbitration (3rd ed.). Cambridge University Press. P.3.

³ Muhammad, S. A., & Al-Mulla, A. A.-S. (1998). Al-Tahkīm al-'ādī (al-Tahkīm al-ikhtiyārī aw al-fardī) fī al-sharī'ah wa-al-qānūn al-Kuwaytī [Ordinary arbitration (optional or individual arbitration) in Sharia and Kuwaiti law] (1st ed.). Kuwait: Mu'assasat Dār al-Kutub lil-Tibā'ah wa-al-Nashr. (Original work published 1998). P.8.

⁴ Schultz, T., & Grant, T. D. (2021). Arbitration: A very short introduction. Oxford University Press. P.6.

So, the arbitration system has evolved over time, beginning in antiquity, progressing to the Middle Ages with the Islamic Sharia, and finally to the present day, when it has seen remarkable development.

1.1.1 Development of Arbitration Concept Through Human Civilization

Unquestionably, the arbitration system as a mean of resolving disputes arising between the parties to any legal relationship is not a new phenomenon that has its roots independent of the age-old past; rather, it is an application of the idea of arbitration in ancient societies⁵. Arbitration was known to man before the emergence of the state, but the demand for it has increased in the modern era, which was characterized by the overlap of relations and interests and the increasing frequency of exchanges and commercial transactions at the internal and external levels⁶.

However, it has developed with the development of human life and the transition of the individual's life from family to tribe and then to civilized societies, in addition to the multiplicity and diversity of sources of livelihood from grazing and agriculture to trade and industry, each of these stages had a positive role in the development of the arbitration system and highlighting its role in the economic and social life of individuals, especially in the absence of an organized central authority to arbitrate disputes that occur between individuals and preserve their rights during an era when the principle of revenge and taking revenge was dominant⁷.

Yet, with the transition of the individual from family to tribe, there was a significant change in the settlement of disputes between individuals among themselves or between individuals and groups through what was known as the tribal elder, who was often used to settle the dispute through tribal customs and traditions, which were the legislative

⁵ Al-Tahhawi, M. A.-S. U. (2002). *Al-tahkīm bil-qaḍā' wa-al-tahkīm ma'a al-tafwīḍ bil-ṣulḥ: sharḥ tafṣīlī lil-tahkīm bil-qaḍā' "al-tahkīm al-'ādī" wa-al-tahkīm ma'a tafwīḍ hay'at al-tahkīm al-mukaffalah bil-faṣl fī al-nizā' mawḍū' al-ittifāq 'alā al-tahkīm bil-ṣulḥ bayna al-aṭrāf al-muḥtakimīn: aṭrāf al-ittifāq 'alā al-tahkīm* [Arbitration by judiciary and arbitration with authorization for conciliation: A detailed explanation of judicial arbitration "ordinary arbitration" and arbitration with the authorization of the arbitral tribunal entrusted with resolving the dispute subject to the arbitration agreement for conciliation between the disputing parties: Parties to the arbitration agreement]. *Mansha'at al-Ma'ārif*. P.11 and beyond.

⁶ Khalil, N. H. S. A. (2004). *Al-tahkīm fī al-munāza'āt al-idāriyah* [Arbitration in administrative disputes] (2nd ed.). *Dār al-Nahḍah al-'Arabīyah*. P. 14.

⁷ Al-Ahdab, A. A.-H. (2009). *Mawsū'at al-tahkīm* [Encyclopedia of arbitration] (3rd ed., Vols. 1-4). Halabi Publishers. P.20.

reference in all disputes⁸. The settlement of the dispute in this way is usually resorted to being based on an earlier agreement between the disputing parties involving the subject of the dispute and the arbitrator.

1.1.1.1. The Arbitration System of the Olden Days

When talking about the empowerment system in ancient societies, it may seem strange to some, especially since these societies were known by force and by fulfilling the right itself through revenge⁹. Not to mention the fact that there is no higher authority that bears the burden of protecting rights and administering justice.

Nonetheless, the reality is otherwise, over time, there was a significant transformation of these communities socially and geographically, which resulted in a set of traditions and customs that forced them to give up power to obtain rights themselves and they began to turn to someone else, often the leader of one of these groups or what is known as the tribal elder, to take on the task of separating them and be chosen by the opponents themselves¹⁰.

The difference in race, culture, and beliefs of these societies reflected on the diversity of arbitration forms in those eras, so we find that they turned to heaven believing in its ability to resolve what happened to them and the problem. Some of them took the form of invoking the opponents' artistic skills, a method that was followed by some ancient Greek groups. Where they resorted to a lyrical debate between the disputants and those who follow to the end without fatigue or tiredness are considered the right holder¹¹.

In the era of the Greeks, arbitration was known in all matters; where the Greek state, including, for example, the state of Athens and Sparta, resorted to arbitration in all disputes that arose between them¹². The arbitration system that the Greeks knew did not contradict the sovereignty of the state or its system of government, because it was based on an earlier system.

⁸ Ibid. P.22.

⁹ Moses, Margaret L (2017).P.4.

¹⁰ Ibrahim, R. R. (2001). *Khudhu' al-dawlah lil-tahkim wa-nazariyat al-siyadah al-taqlidiyah* [State submission to arbitration and the theory of traditional sovereignty] (Publication No. Not Provided) [Doctoral dissertation, University of Alexandria, Faculty of Arts, Economics Department]. Alexandria University. P.31.

¹¹ Agneah, J. O. A. (2004). *Tanfīdh qarārāt al-tahkīm al-tijārī al-ajnabīyah: dirāsah muqāranah* [Enforcement of foreign arbitral award: Comparative study] (Publication No. 547626) [Master's thesis, University of Jordan]. Dissertations. P.5 and beyond.

¹² Schultz, T., & Grant, T. D. (2021). P.6.

The arbitration system has seen a decline in the Greeks after the ancient Rome invaded and extended its control over the sovereignty of the Greek state and did not concede or recognize equality with any other party of arbitration, considering that this contradicts its sovereignty as the dominant state¹³.

1.1.1.2. The Medieval Arbitration System

Arbitration in the Middle Ages witnessed a remarkable development as a mean of resolving disputes between the princes of provinces and states that arise between them during local and regional wars, which are often marketed by referencing people trusted by the conflicting parties. In the thirteenth century, Europe knew the arbitration system and practiced it through the priesthood of the churches and the pope, where they played a significant role in encouraging the resort to the peaceful settlement of all disputes, especially those that may occur between adherents of the Christian religion by recourse to the pope or clergy¹⁴.

Despite the famous oppression of the royal regime that prevailed in that era, the kings at that time considered resorting to arbitration contrary to the sovereignty of their state and in a derogation and insult in their dignity. As for the eighteenth century, the arbitration system witnessed a kind of development after getting rid of authoritarian regimes, especially after the outbreak of the French Revolution in 1789, the elimination of the dictatorship that controlled France and the salvation from the idea of absolute divine right promoted by the churchmen; this was the beginning of acceptance of the arbitration system based on justice and law¹⁵.

This radical transformation brought about by the French Revolution did not stop at the limits of the ending of absolute power, but laid the foundations of the 'democracy of the judiciary'; in a decree issued in 1790, the French legislator considered arbitration to be the most appropriate mean of resolution disputes between individuals, describing it as a 'natural right' that may not be restricted.¹⁶

Consequently, arbitration has evolved from an odd mean dependent on the church's approval or the mood of kings to an institutional legal system based on the parties' will

¹³ Shafiq, M. (1997). *Al-tahkim al-tijari al-dawli: Dirasah fi qanun al-tijarah al-dawliyyah* [International commercial arbitration: A study in international trade law]. Dar Al-Nahda Al-Arabiya. P.22.

¹⁴ Al-Douri, Q (1985). P.40.

¹⁵ Agneah, J. O. A. (2004). P.9.

¹⁶ David, R. (1985). *Arbitration in international trade*. Kluwer Law and Taxation Publishers.

and universal legal principles. This historical development was the first step toward the formation of modern international treaties, changing arbitration from a mere 'friendly conciliation' to a 'special judicial system' with global legal recognition and consistency.¹⁷

1.1.1.3. The System of Arbitration in Islamic law

There are several observes to arbitration in Islamic law mentioned in the holy book (Qur'an), the interpretation of Islam and what the life of the Prophet Muhammad detailed. With the emergence and spread of Islam, there was a change in human life, especially in the Arabian Peninsula, which saw the emergence of the features of a sovereign state and authority held by the Muslim Caliphs¹⁸. The state has a leading role in managing the affairs of the country and societies, especially in the disputes that will arise between them, which will be resolved either through arbitration or the judiciary.

The Holly book in Islam emphasized the legality of arbitration in many matters that occur in everyday life; it ordered people to send a good man from the husband's family, and a man like him from the wife's family to consider the marital dispute. If the husband is the abuser, they withheld his wife from him and ordered him to pay allowance, and if the wife is the abuser, they withheld the allowance from her. If they have a common opinion that they should separate or unite the spouses, then it is permissible for them¹⁹.

The Islamic Sharia has allowed resort to arbitration in matters of personal status, and this includes all disputes that arise between spouses that can be settled either by mutual consent on the continuation of marital life and the money support that includes it, or by ending the marital bond by divorce or khul²⁰. It is also valid to arbitrate between spouses in all life matters in society because the moral is generally to judge, not about the reason²¹.

¹⁷ Foxton, D., Dhar, S., Diwan, R., Moollan, S., Wordsworth, S., Tan, P., & Webster, P. (Eds.). (2024). *Mustill & Boyd: Commercial and investor state arbitration* (3rd ed.). LexisNexis Butterworths.

¹⁸ Omar, N. I. (2011). *Al-tahkim fi al-mawad al-madaniyah wa-al-tijariyah al-wataniyah wa-al-duwaliyah* [Arbitration in national and international civil and commercial matters]. Dar Al-Nahda Al-Arabiya. P33.

¹⁹ Ibn Kathīr, I. (2003). *Tafsīr al-Qur'ān al-'azīm* [Interpretation of the Holy Quran] (1st ed.). Osama Publishing House. P.480.

²⁰ Also called khula, is a procedure based on traditional jurisprudence, which allows a Muslim woman to initiate a divorce by returning the mahr and everything she received from him during their life together, or without returning anything, as agreed by the spouses or judge's decree, depending on the circumstances. For more details: <https://en.wikipedia.org/wiki/Khul%27>

²¹ Al-Ahdab, A. A.-H. (2009). P.22.

The Sunnah of the prophet has confirmed the evidence in the Qur'an that it is legitimate to resort to arbitration in many disputes that occur among the public. The Prophet Muhammad was one of the most important arbitrators in many of the issues presented to him, and he also advised his followers from the caliphs and the public to resort to arbitration to resolve all disputes that arise between them²².

The jurists of the Islamic nation agreed on that it is permissible to resort to arbitration to resolve disputes that may arise among the public, and they did not deny it even though it happened; this is proof of its legitimacy²³.

1.1.1.4. The Arbitration System During The VIII-XIX Centuries

In these two eras, arbitration developed significantly after the outbreak of the French Revolution of 1789, which ended the authoritarian regime that prevailed in France and ended the idea of absolute divine right promoted by churchmen during the reign of kings²⁴.

The second event that contributed to the formation of arbitration was the independence of the United States of America from Britain in 1776, as these two events played a significant role in setting up the principle of arbitration during this era of time.

An international treaty confirming this was concluded, called the Treaty of Friendship, Commerce, and Navigation, and it was between America and Britain; under it, many outstanding issues between the two states were resolved after American Independence. The nineteenth century witnessed the conclusion of collective and two-sided arbitration agreements by many states, that all cannot be listed, but will only mention some of them.

For example, The Protocol On The Arbitration Clause held in Geneva in 1923, The Convention On Foreign Arbitral Awards in Geneva in 1927, and The Convention On The Recognition And Enforcement Of Foreign Judgments in New York in 1958 (NYC)²⁵.

²² Hussein, M. A. S. (2010). Arbitration in jurisprudence and comparative law [Al-Tahkeem fi al-Fiqh wa al-Qanoun al-Moqaran]. (Original work published 2010). P.18.

²³ Ibid. P.19.

²⁴ Schultz, T., & Grant, T. D. (2021). P.6.

²⁵ Al-Hawari, U. A. (2007). Al-qawā'id al-qānūniyah allatī yuṭabīquhā al-muḥakkam 'alā mawdū'āt al-munāza'āt al-dawliyah al-khāṣṣah [The legal rules applied by the arbitrator to the subjects of international private disputes]. Dar Al-Thaqafa. P.50.

It can be noted in this period of time that the international community has paid attention to arbitration, which is a major shift in this field unlike what it was in the past, and this interest was exemplified in the issuance of many regional and international documents that contributed to the codification of arbitration as an exceptional mean of resolving disputes within these international instruments.

1.1.1.5. The Arbitration System Under The League Of Nations Of 1919

The League of Nations phase is the second step in the development of the arbitration system; the League of Nations adopted in its charter the principle of resorting to arbitration for the settlement of disputes to resolve disputes by peaceful means. This is stated in the text of the first paragraph of Article 13 of its charter, which states: " The members of the league agree that whenever a dispute arises between them, they consider that it can be settled by arbitration or judicial means, and this dispute has not been satisfactorily settled by amicable means; they submit the entire subject of the dispute to arbitration or judicial means."²⁶

In 1920, the League of the United Nations, or the international judicial system in the history of the international community, was set up, which is represented in the International Court of Justice In 1929²⁷. A new development took place towards the introduction of the principle of arbitration in the settlement of disputes; it urged the league of the United Nations during that period to conclude an agreement among the member states to develop a general Charter of Arbitration that included the principle of peaceful settlement of disputes that occur between states by means of conciliation, arbitration, and judiciary²⁸.

1.1.1.6. The Arbitration System Under The United Nations Of 1945

The Charter of the United Nations stated the principle of arbitration as one of the principles of the United Nations and its purposes in achieving international peace and security and committed all parties to the need to resort to settling their disputes through arbitration and conciliation before resorting to national jurisdiction. The text of the first article of the charter states: "One of the objectives and principles of the United Nations is to adhere to peaceful means in accordance with the principles of justice and

²⁶ League of Nations. (1920). The Covenant of the League of Nations. Official Journal of the League of Nations, 1, 3-5. https://libraryresources.unog.ch/ld.php?content_id=32971179

²⁷ Al-Hawari, U. A. (2007). P.52.

²⁸ Omar, N. I. (2011). P.40.

international law to resolve all international and regional disputes that may lead to a breach of the peace."²⁹

The United Nations has been keen to include this principle in many conventions and treaties concluded by countries after the establishment of the United Nations; for example, the Geneva Convention of 1949 on the protection of victims of war. It included the right of states to resort to arbitration to resolve disputes that occur between them³⁰.

This stage of time has had a positive role in the development of the arbitration system, which in turn was reflected in the internal laws, although they have differed in their position on the arbitration system, as will be seen that there are some countries who issued special proposals regulating all arbitration issues, including, for example, Palestine, where they issued Law No. 3 of 2000 on arbitration, which increased the development and prosperity of the idea of Arbitration.

While there are some countries that have not legislated a special law for it, they have only mentioned arbitration in a set of articles scattered among the texts of their internal laws, including Libya and Algeria.

1.1.2. Definition of Commercial Arbitration

Arbitration as an exceptional mean of resolving disputes is not a new phenomenon, independent of its roots from the ancient past, but rather an application of the abundance of arbitration in ancient societies³¹. Where man knew arbitration before the emergence of the state, but the changes that have occurred in human life and the accompanying change in all fields and interference in relations and interests between people at the internal and international level resulted in an increase in demand for resorting to arbitration to resolve disputes that arise between them³².

Since arbitration has become a new system of justice, it also has its own meaning, which expresses its subjectivity and distinguishes it from other similar legal systems. To learn more about the arbitration system, there is a need to refer to the doctrinal and

²⁹ United Nations. (1945). Charter of the United Nations. <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

³⁰ Omar, N. I. (2011). P.41.

³¹ Al-Tahhawi, M. A.-S. U. (2002).P.11.

³² Khalil, N. H. S. A. (2004). P.36.

judicial definition of commercial arbitration, and then we return with its connotation to its original status as stipulated in the civil law.

1.1.2.1. Definition of Commercial Arbitration In Jurisprudence

When talking about commercial arbitration in jurisprudence, our appreciation goes to the broad scope of its meaning, which includes all its forms and covers all areas, whether the dispute is civil, commercial, or international, because its content and objectives are almost the same in all areas³³.

There are many doctrinal definitions of commercial arbitration, but they have one content. According to one aspect of jurisprudence, arbitration: "Is an agreement to submit a dispute to a specific person or persons to be resolved without the competent court."³⁴

Another aspect of jurisprudence defined it as: "a Contract in which the will of the contractors to refer the dispute arising from the contract concluded between them or any other dispute that may arise in connection with this contract converges on a certain person or persons to settle this dispute without resorting to the judiciary originally competent to resolve the dispute ."³⁵

While other jurists defined it as: "A complex legal process based on the agreement of the parties to a particular dispute to submit their dispute to one or more arbitrators in order to adjudicate it in the light of the rules of law and general principles governing litigation procedures or in the light of justice as provided for in the agreement with the commitment of the parties to the dispute to accept the judgment issued by the arbitrators, which has the authority of the injunction, and an order for its execution is issued by the judicial authority of the state in which it is intended to be executed."³⁶

It is understood from this definition stated by the jurisprudence that arbitration includes two main elements: first, that resort to arbitration is subject to the will of the

³³ Al-Hadi, B. J. A. (2005). *Al-Tahkim fi munaza'at al-'uqud al-idariyah: Dirasah tahliliyah muqaranah* [Arbitration in administrative contract disputes: A comparative analytical study]. Dar Wael for Publishing.P.10

³⁴ Aboulwafa, A. (2007). *Al-tahkim al-ikhtiyari wa al-ijbari* [Voluntary and compulsory arbitration]. Dar Al-Matbu'at Al-Jami'iyya.P.133.

³⁵ Al-Bin Zaid, A. A. M. A. (2006). *Arbitration in administrative contracts* [Master's thesis, The University of Jordan].P.21.

³⁶ Al-Assar, Y. M. (2010). *Arbitration in contractual and non-contractual administrative disputes: A comparative study* [Al-Tahkim fi al-monazaat al-idariya al-aqdiyyah wa ghayr al-aqdiyyah: Dirasah muqaranah]. Dar Al-Nahda Al-Arabiya. p.14

disputing parties to resolve the dispute without reference to the national judiciary, but by a person or persons agreed by the parties to the dispute. Secondly, the arbitration award issued by the arbitrators is of a mandatory nature.

Arbitration is also defined as: "Arbitration is a procedure in which certain parties choose a decision-maker and grant the decision-maker the exclusive power to render a decision on a dispute between them—usually referred to as an award—following a procedure that complies with some standard of fairness also agreed by the parties. By definition, the award issued in arbitration is legally binding upon the parties. It is directly enforceable against their assets."³⁷

In this definition, it is emphasized that the will of the parties is the decisive factor in choosing to resort to arbitration and in deciding the number of arbitrators and the applicable law, as well as the arbitration clause before the dispute and the arbitration clause after it occurs.

Arbitration has also been defined by jurisprudence as: "A right established by law for individuals entitling them to the possibility of agreeing to refer any dispute that may arise between them regarding the performance of the terms of a particular contract or to refer to a dispute that already arises between them to one or more individuals called arbitrators to settle the said dispute instead of being adjudicated by the competent judiciary."³⁸

Arbitration is distinguished from the national jurisdiction of the state as a special jurisdiction; by agreement between the parties, the authority of the national jurisdiction to resolve the dispute is removed and the arbitral tribunal is empowered to adjudicate it³⁹.

From this point of view, arbitration and mediation have in common that they all constitute alternative means of resolving disputes. Arbitration is one of the most important and dangerous of these alternative means, because the arbitrator decides the

³⁷ Schultz, T., & Grant, T. D. (2021). P.8.

³⁸ Sari, J. S. (2005). *Al-tahkim wa muddat jawaz al-luju' ilayh li-fadi al-munaza'at fi majal al-'uqud al-idariyyah* [Arbitration and the permissibility of resorting to it to resolve disputes in the field of administrative contracts]. Dar Al-Nahda Al-Arabiya. ISBN: 977-04-2833-7. P.23 et seq.

³⁹ Masri, H. (2006). *Al-tahkim al-tijari al-dawli (dirasah muqaranah)* [International commercial arbitration (a comparative study)]. Dar Al-Kutub Al-Qanuniyyah. P. 5.

dispute by a final decision on the subject matter that has all the qualities of a court judgment issued by the court.

One side of the jurisprudence⁴⁰, which is supported by the National Judiciary⁴¹, believes that arbitration as an alternative means of resolving disputes is considered an exceptional case, considering that the national judiciary is the original one, and it has jurisdiction to adjudicate all disputes, and resorting to arbitration is the exception to this general origin.

In this matter, the Ramallah Court of Appeal decided that: "arbitration is an exceptional way to resolve disputes based on the departure from litigation and its guarantees, so it is limited to what the will of the opponents to submit to the arbitral tribunal. If the arbitration clause does not specify the subject of Arbitration in dispute resolution, the arbitration is invalid..."⁴²

1.1.2.2. Definition of Commercial Arbitration In The Judiciary

The judiciary's duty is to implement the rule of law in order to achieve justice through a judicial verdict, which serves as the title of truth and has total authority over the parties. From this stance, the study restricts the judiciary's introduction to the definition of arbitration to what has already been mentioned, so strengthening the power of arbitration as a mean approved by the judiciary without resorting to it.

The Jordanian court of Cassation has provided a definition of the arbitration system in some of its rulings, stating: "Arbitration is an exceptional way to resolve disputes and is limited to what the parties to the arbitration have decided, and the arbitrator should not expand on the interpretation of the contract containing the arbitration clause to determine the disputes subject to arbitration."⁴³ In another decision of the court: "Arbitration is the recourse of the opponents to one or more persons to separate the dispute between them."⁴⁴

⁴⁰ Aboulwafa, A. (2007). P.145.

⁴¹ The UAE court of Cassation - Dubai, where it ruled in its decision issued on 16/03/1997 that: "it is decided in the judgment of this court that arbitration is an exceptional way to resolve disputes based on the exit through ordinary litigation and the guarantees guaranteed by it and is limited to what the will of the arbitrators to submit to the arbitrator without other disputes." Al-Mouktafi.

⁴² Ramallah Court of Appeal, No. 21/2003, dated 13/06/2005. Al-Mouktafi.

⁴³ Judgment of the Supreme Constitutional Court dated December 17, 1994, in case No. 13 of the 15th Judicial Year. Available on the following website: <https://cco.gov.jo/Default/Ar>

⁴⁴ Jordanian court of Cassation, Rights, 72/37 Journal of the Jordanian Bar Association, No. 3, 1972, p.3.

The Palestinian Supreme Court clarified to clarify the concept of arbitration in its ruling issued in the Civil Appeal No. 36/23, where it stated: "The decision not to accept the appeal was preceded by an agreement to arbitrate on the subject of the right raised in the claim of validity of detention, stating that the barrier has no interest in the case of filing the lawsuit because there is an arbitration agreement between him and the detainee prevents him from resorting to the judiciary to defend his right. The reservation will also be signed on a right other than the case of performance and will be on no grounds."⁴⁵

In the Arab Republic of Egypt, the Egyptian court of Cassation has defined arbitration as: "An exceptional way to resolve disputes based on exit through ordinary litigation, whatever guarantees it guarantees. Therefore, it is limited to what the will of the arbitrators act in presenting it to the arbitral tribunal and it is settled in this that the agreement to arbitrate in a particular dispute should be by a special document or a withdrawal to all disputes arising from the performance of a particular contract."⁴⁶

From the above, it can be said that the Jordanian, Egyptian, Palestinian and other Arab jurisdictions considered arbitration for the agreement of the parties to settle the dispute out of court. Since it is an agreement based on the consensus of the will of the parties to entrust the settlement of any dispute that has arisen between them or may arise later to an arbitrator or arbitral tribunal.

This applies whether the dispute is related to a special article or is related to all disputes arising during the execution of the contract. This agreement also has an important consequence, which is the inadmissibility of the case before the competent court if one of the parties adheres to this agreement before the judicial authorities⁴⁷.

In the previous ruling, the Egyptian judiciary did not go far from what was stated by the Palestinian judiciary, as it stressed that arbitration is considered a method of disputes, and once an agreement is reached between the opponents by resorting to it, it makes the issue outside the ordinary judicial scope⁴⁸.

⁴⁵ Appeal No. (03 / 36q), issued in 1982/1/25, Journal of the Palestinian Supreme Court, the nineteenth year, the first issue, P.52.

⁴⁶ Appeal No. 1645, sitting .14 .2, 1988, judicial year 31, p. 242.

⁴⁷ Aboulwafa, A. (2007). P.147.

⁴⁸ Masri, H. (2006). P.9.

Here it should be noted that the method of resorting to arbitration by the parties may be in the form of an arbitration clause that is included in the sections of the contract that has been agreed upon so that any dispute that may occur in the future will be subject to arbitration or may take the form of an arbitration clause, which is after the dispute with the participation of arbitration, because the agreement is subsequent to the outbreak of the dispute.

1.1.2.3. Definition of Arbitration in the Legislation

We have already mentioned that arbitration has become an alternative and exceptional system of public origin in many countries from the ordinary judiciary in the settlement of many civil and commercial disputes, but what this has witnessed the system of development in all areas is no longer limited to resolving not only commercial and civil disputes, but also includes contractual and non-contractual administrative disputes.

To accomplish this, it is unavoidable to refer to the definition of arbitration to its initial position, as established in the civil legal systems of states as the major source of arbitration, and then to its meaning in public law.⁴⁹

In this section, the arbitration systems will be reviewed in some countries, despite the differences in their legislation and laws, but will be found that the main feature of arbitration is that it is an optional mean of settling disputes that may arise when comprising a contract between the parties. And the fact that it is binding on its parties if they agree to resort to it under the arbitration agreement or arbitration submission agreement in these contracts, similar and even almost the same features in all arbitration systems of states⁵⁰.

The first article of the Palestinian Arbitration Law No. 3 of 2000 defines arbitration as: "Arbitration: a mean of resolving an existing dispute between the parties by submitting the subject of the dispute to the arbitral tribunal for adjudication..."

Among other legal systems is the French law, where arbitration is defined in Article (1442) of it:

⁴⁹ Moses, Margaret L (2017).P.11.

⁵⁰ Soussi, M. A. (2019). al-Taḥkīm al-tijārī al-dawlī (International commercial arbitration) [Published master's thesis]. Mohamed Kheider University of Biskra. http://archives.univ-biskra.dz/bitstream/123456789/13995/1/souici_mohamed_adam.pdf.P.12.

"Arbitration agreement, arbitration agreement takes the form of an arbitration clause or an arbitration clause.

Arbitration clause: is an agreement under which the parties to one or more contracts are obliged to submit their disputes arising from this contract or those contracts to arbitration.

*An arbitration clause is an agreement under which the parties to an existing dispute agree to submit their dispute to arbitration."*⁵¹

It is understood from this definition that the French legislator has considered arbitration an agreement subject to the will of the parties to resort to an arbitrator replacing the judiciary to adjudicate the dispute now or in the future, and thus it did not deviate from what is stated in the national legislation of some countries, as we will note below.

Whereas the Egyptian Legislature clarified arbitration in the Arbitration Law No. (1994 /27) as amended by Law No. 5 of 1997, where the first article of the second part came to say that the arbitration agreement is: "It is the agreement of the parties to resort to arbitration to settle all or some of the disputes that have arisen or may arise between them on the occasion of a certain legal relationship, whether contractual or non-contractual. "⁵²

As for the Jordanian legislator, it did not include a definition of Arbitration in the new Arbitration Law No. 31 of 2001, and that was correct, as the definition statement is the function of jurisprudence and not the function of the legislator⁵³.

It should also be noted that the Hungarian legislator in Act LX of 2017 on arbitration in Section 3 (1), Arbitration is defined as: " 1. arbitration means deciding on legal disputes that arise in commercial relationships in proceedings, whether or not

⁵¹ Khalil, H. I., Mansour, H. A. H., & Emad, H. (Eds. & Trans.). (2013). *Al-qānūn al-tahkīm al-Faransī: Al-mu'addal bimūjab al-marsūm raqm 84 li-sanat 2011, ma'a irād al-nuṣūṣ al-Miṣrīyah al-muqābilah, mad'ūman bi-aḥdath aḥkām maḥkamat al-naqd al-Faransīyah wa-al-Miṣrīyah ḥattā 'ām 2012* [The French arbitration law: Amended by Decree No. 84 of 2011, with the corresponding Egyptian texts cited, supported by the latest rulings of the French and Egyptian Court of Cassation until 2012] (H. I. Khalil, H. A. H. Mansour, & H. Emad, Trans.). Dar Al-Nahda Al-Arabiya. P.12 et seq. This law did not specifically define arbitration, as the Palestinian legislator did, but the definition was merged with the arbitration agreement.

⁵² The Egyptian civil and commercial litigation and arbitration law was the last of the amendments until 1997.

⁵³ The Jordanian Legislature has provided a definition of Arbitration in the Arbitration Law No. 18 of 1953, which is repealed in Article 2 thereof, where it states that arbitration is: "a statement of the written agreement containing the referral of existing or upcoming disputes to arbitration, whether the court or the arbitrators are mentioned in the agreement or not."

administered by a permanent arbitral institution, chosen by the parties instead of litigation before a state court...”⁵⁴

We would also like to refer in this regard to the definition given by the Model Law⁵⁵ of the arbitration agreement, where Article 1/7 states that: "An agreement between the parties to submit to arbitration all or some of the disputes that have arisen or that may arise between them, regarding a specific legal relationship, whether contractual or not. The arbitration agreement may be in the form of an arbitration clause in the contract or in the form of a separate agreement."

And what can be deduced from the variety of definitions of Arbitration (jurisprudence, case law, legislation) can be figured out in the following points:

- All these definitions revolve around one essence and express one content and meaning, which is that arbitration is a special means of settling disputes without referring to the official authority originally competent to settle disputes, which is the judicial authority.
- Recourse to arbitration to resolve disputes of any kind is subject to the will of the parties, which is often embodied in the same contract and is called the arbitration clause or in a separate contract before the dispute arises and is called the arbitration clause. Both cases are based on the agreement of the parties to submit the dispute to arbitrators to settle the dispute by a decision binding on the parties.
- The arbitration clause has a preventive benefit, since it is received before the dispute arises and by its presence excludes the discrepancy and disruption in the presentation of the dispute that may occur at the conclusion of the arbitration agreement.
- Some legislation allows resorting to arbitration without defining it, but some of them allow arbitration in any legal relationship, whether civil, commercial, or administrative. Etc.

⁵⁴ Hungarian Act LX of 2017 on Arbitration (as in force on 2 January 2018), For more details:

<https://www.international-arbitration-attorney.com/wp-content/uploads/2022/09/Hungary-Arbitration-Act.pdf>

⁵⁵ The model law refers to the International Commercial Arbitration Law adopted by the United Nations Commission at its eighteenth session based on the recommendation of the United Nations General Assembly No. 110 on December 11, 1985, in which it confirms its convictions that the development of a model arbitration law acceptable to countries with different legal, social and legal systems contributes to development of coordinated international economic relations. For further clarification, see General Assembly Resolution No. 70/42 of 1985.

1.1.3. The Legal Nature Of Commercial Arbitration

The research on the legal nature of the arbitration system leads us to first get acquainted with the position of the legislator and the judiciary from it, and then we touch on the statement of the position of jurisprudence.

1.1.3.1. The Position of the Legislator on the Legal Nature of Arbitration

The Palestinian arbitration law has recognized the judicial nature of the arbitrators' rulings, and this is confirmed by the fact that the legislator considered this decision to be a degree of litigation⁵⁶; Article 47 of it stipulates that: "The arbitration decision, after its ratification by the competent court, shall have the force and effect of court decisions and shall be executed in the manner in which any judgment or decision issued by a court is executed in accordance with due process."

The Jordanian Arbitration Law No. 31 of 2001 also stipulates that arbitral awards acquire the authority of the injunction in order to confirm the arbitral authority of the injunction in order to confirm the legal nature of the arbitration award and be enforceable considering the provisions stipulated therein⁵⁷.

As for the position of the comparative law on the judicial nature of arbitration, it points out that the French arbitration law of 1975, amended by Decree No. 48 of 2011, came in accordance with what was stipulated in the Palestinian law, which clarified the judicial status of arbitration as it acquires from the time of its issuance the authority of the ruling⁵⁸.

The same is the case in the text of Article 55 of the Egyptian Arbitration Law No. 27 of 1994. As amended by Law No. 7 of 1997, which states: "The judgments of the arbitrators issued in accordance with this law shall have the authority of the judicial order and shall be enforceable taking into account the provisions provided for in this law."

What we observe in the texts of the Palestinian, Jordanian, French, Hungarian and Egyptian law, which emphasized the judicial nature of arbitration, is that the legislator

⁵⁶ Shandi, Y. M. (2014). *Al-tahkīm al-dākhilī wa al-dawlī fī ḥill qānūn al-tahkīm al-Filasṭīnī raqam (3) li-sanat 2000: Dirāsah muqāranah* [Internal and international arbitration under the Palestinian Arbitration Law No. (3) of 2000: A comparative study] (1st ed.). Birzeit University, Faculty of Law and Public Administration. P.23.

⁵⁷ Article (52) of the Jordanian arbitration law of 2001.

⁵⁸ Article (1484) of the French arbitration law of 1975 and amended in 2011. Khalil, H. I., Mansour, H. A. H., & Emad, H. (Eds. & Trans.). (2013). P.4.

has confirmed a general and generally recognized rule in the judicial system, which is the acquisition of judicial rulings for the validity of the injunction, and it was dropped on the arbitration ruling, which indicates that the legislator has considered the arbitration ruling in the ranks of judicial rulings, so it painted the arbitration rulings judicial nature.

1.1.3.2. The Position of the Judiciary on the Legal Nature of Arbitration

As for the position of the comparative judiciary on the legal nature of arbitration, in the past, a court did not approve of it in 1812, in which the French Cassation adopted the judicial nature of arbitration, where it issued a ruling on the contractual theory of Arbitration⁵⁹. This continued to be the case for an extended period of time, but this provision was not supported by the French judiciary, which ended up issuing a right judgment confirming that: "The arbitration award is based on the will of the parties to grant the arbitrator judicial authority."⁶⁰

This ruling was a confirmation of the position of the French court of cassation on the judicial nature of arbitration, as it is a parallel system of state judges, in which the arbitrators are representatives of the state and its judges in their responsibility to adjudicate disputes, administer justice and achieve stability between the disputing parties.

The Egyptian court of Cassation ruled that: "Arbitration is an exceptional way to resolve disputes, based on going out through ordinary litigation, and although it is originally the result of the will of the opponents, but the arbitrators' rulings, like judicial rulings, acquire the authority of the sentenced thing as soon as they are issued and this authority remains as long as the ruling remains in place and has not been invalidated."⁶¹ This is confirmed by Article (55) of Law No. 27 of 1994 by issuing a law on arbitration in civil and commercial matters, which repealed articles 512 to 513 of the civil proceedings law⁶².

As for the Jordanian judiciary, its position fluctuates between taking the contractual or judicial theory, perhaps this is due to the difference in its rulings regarding the

⁵⁹ Al-Mahishi, O. S. (2012). [Mashru'iyat al-Tahkim fi 'Uqud al-Ashghal al-'Ammah fi al-Qanun al-Liby] The legitimacy of arbitration in public works contracts in Libyan law. Global Arbitration Journal, 4(16). p.76.

⁶⁰ Cour de cassation [Court of Cassation]. (1960, October 29). Bulletin des arrêts de la Cour de cassation [Bulletin of the Judgments of the Court of Cassation].

⁶¹ Appeal No. 1224 (61st Judicial Year, session 27-12-1997).

⁶² Khalil, H. I., Mansour, H. A. H., & Emad, H. (Eds. & Trans.). (2013). P.27.

interpretation of the legal nature of the arbitration system, however, one of the rulings of the Jordanian court of Cassation stated that the request for enforcement of the arbitration award is not accepted if the date of filing a claim for invalidation of the award has not expired.. Etc.⁶³. This means that it added the judicial status to the arbitration judgments when it stipulated for the submission of an application for its execution that the period of the appeal date should expire, similar to judicial judgments that may not be appealed only during the legally established appeal date.

1.1.3.3. The Position Of Jurisprudence On The Legal Nature Of Arbitration

The jurisprudence struggled to find an explanation of the legal nature of the arbitration system, so they were divided into several doctrinal doctrines, divided as follows:

- The Contractual doctrine: Proponents of this trend argued that arbitration is based on the will of the parties to the dispute in their desire to resolve the dispute by resorting to one or more people of their choice of their own free will with their prior acceptance of the mandatory what this person decides⁶⁴. Since arbitration is such, according to the proponents of this doctrine, it is not envisaged to consider the authority of the arbitrator as the judicial authority, which is considered one of the public authorities in the state, and the role of the state in the field of Arbitration stands at the limit of not compromising public order.

While the commencement of arbitration and its course until the issuance of the judgment finds its basis in the agreement of the parties to resort to arbitration and obey the arbitrator's rulings, this gives arbitration the nature of an agreement and contractual rather than judicial nature, and this also reinforces that the arbitrator's failure to adjudicate the dispute is not a crime of denial of Justice, which is punishable by law according to the rules for disputing judges⁶⁵.

They reinforce their argument that arbitration is of the nature of a contractual agreement because it is aimed at achieving a private interest of the parties to the agreement or contract, while the judiciary is aimed at achieving a public interest, namely, the administration of Justice.

⁶³ Decision of the Jordanian discrimination Court No. 3522/2006 dated 4/3/2007.

⁶⁴ Al-Morshedy, M. A.-A. M., & Karbal, R. K. R. (2007, May). Al-tahkīm wa-atharuhu 'alā al-'aqd al-idārī: dirāsah muqāranah [Arbitration and its effect on the administrative contract: A comparative study]. *Majallat Jāmi'at Bābil - Al-'Ulūm Al-Insāniyah, 14(1). P.4

⁶⁵ Al-Assar, Y. M. (2010). P.25.

Arbitration is based on an agreement, the parties to which waive the lawsuit. The contractual nature of arbitration is also emphasized; in arbitration, it is not required that the arbitrator be a national, while the function of state judges is exercised only by national judges⁶⁶.

Despite the ideas that the proponents of this doctrine came up with, they were not spared from criticism, as one side of the jurisprudence argued that this doctrine leads to ignoring the real function of the arbitrator that it performs, which is actually what the judge does, and ends up with a verdict similar to the one issued by the judge, in addition, the arbitration award is enforceable only if approved by the court based on the application for execution submitted to it⁶⁷. Whatever the justifications presented by the proponents of this doctrine, the evidence and ideas of the judicial doctrine have come to put arbitration in the rank of regular Justice.

- Judicial doctrine: The proponents of this doctrine produced ideas contrary to what the previous doctrine stated, by saying that arbitration is of a judicial nature and not an agreement or contractual as the supporters of the previous doctrine claimed. They have substantiated this with a set of arguments proving this, which was that the statement that arbitration is related to the will of the parties to choose the arbitrator and comply with his decision, does not preclude the judicial capacity of arbitration, as evidence that there are many who agree in a particular contract to determine the competent court to consider any dispute that may occur between them about the performance of this contract and commitment to the provisions issued by it in the same dispute.

The parties' desire is the same, whether it is to follow the arbitral award or the judgment of the court, in both cases it is considered compliance with the provision of the law, and therefore arbitration cannot be delegated jurisdiction based on the desire of the parties.

The judicial character of the arbitration also does not prevent the statement that it aims to achieve a special interest, this interest is aimed at the decision to agree on arbitration, and the arbitration award ultimately aims – like the judicial

⁶⁶ Sari, J. S. (2005). P.36.

⁶⁷ Agneah, J. O. A. (2004). P.42.

ruling-to achieve justice through the application of the law. Also, the essence of the judiciary is to adjudicate the dispute before it and apply the rule of law to it⁶⁸. This is what arbitration does, and the existence of some differences between the judiciary and arbitration does not prevent the recognition of the judicial competence of arbitration, as the arbitrators cannot summon witnesses and oblige them to attend and appear before them, and their decision is not enforced forcibly only by an order of execution from the official national judiciary of the state.

This is not an argument for denying the jurisdiction of arbitration, because if true, this means that a foreign judgment is also not considered a judgment because the same applies to it⁶⁹. In addition, most of the legal systems of states have made arbitration judicial in nature, as well as the judiciary of some states.

- Mixed doctrinal: Proponents of this doctrine believe that arbitration is of a contractual and judicial nature at the same time, it is not a pure Agreement and purely judicial. But it is a system that goes through several stages and each stage has a special character, it is in the first agreement, the middle of a procedure and The Last Judgment, which is not implemented only by issuing an execution order from the state judge and here it becomes judicial⁷⁰ in possession of the force of the judicial order after the issuance of the order for its execution by the state courts. This is confirmed by the arbitration legislations in Palestine, Jordan, Egypt, and France.

On the one hand, arbitration represents a new system of justice, as it seeks to establish justice and achieve peace and security between the conflicting parties through the decisions issued by the arbitrators that are respected and committed by all parties, and this is what the judicial authorities in the state did as long as the goal was the same for both sides Judicial and arbitration authority.

⁶⁸ Abd al-Majid, M. (2000). *Al-usus al-'ammah lil-tahkim al-dawli wa al-dakhili fi al-qanun al-khass fi dhu' al-fiqh wa qada' al-tahkim* [The general foundations of international and domestic arbitration in private law in light of jurisprudence and arbitral awards]. Mansha'at al-Ma'arif. P.356

⁶⁹ Sari, J. S. (2005). P.40.

⁷⁰ Altabbakh, S. (2015). *Al-tahkim al-ikhtiyari wa-al-ijbari fi daw' al-qada' wa-al-fiqh* [Voluntary and compulsory arbitration in light of judiciary and jurisprudence]. Dar Al-Nahda Al-Arabiya. P.39.

1.1.4. Distinguishing Commercial Arbitration From Other Alternative Means of Dispute Resolution

Perhaps one of the characteristics of arbitration is that it is a system aimed at resolving disputes submitted to it by the parties. which is a key factor that helps to distinguish between arbitration and other legal systems that may be similar to it, in giving the non-task to do something specific that differs from the task of the arbitrator, which necessitates a distinction between arbitration and alternative means of dispute resolution. These are the mechanisms that the parties resort to instead of ordinary justice when a dispute arises between them, in order to reach a solution to that dispute⁷¹.

Proceeding from this meaning, litigation falls outside the framework of this definition; it is not an alternative means of resolving disputes, but an original one, since the parties have the right to resort to the courts and try to resolve their differences through litigation in case of a dispute between them.

Despite this, the increase in the use of these means by the disputants in the recent period has led to the inadmissibility of calling these means an alternative, as the frequent use of them has led to their transformation in many cases into authentic means resorted to by the parties, taking advantage of their advantages in the speed of dispute resolution, maintaining confidentiality, reducing costs in many situations, in addition to their flexibility in terms of dispute resolution procedures and the rules applicable to it⁷².

Arbitration is a peaceful means of settling disputes between states, but it differs from other peaceful means as it is a means of settling the dispute by judges chosen by the parties to the dispute, and the settlement is based on respect for the law, good faith, as well as that the judgment issued in it is binding on the parties. It is the opposite of the other means that help to resolve the conflict, which are conciliation and expertise.

1.1.4.1. Distinguishing Arbitration From Conciliation

⁷¹ There are those who define it as various means or processes used to resolve problems or disputes outside the scope of official courts and judicial bodies.

⁷² Sarhān, ‘. M. H. (1972). *Qawā‘id al-qānūn al-dawlī al-‘āmm fī aḥkām al-maḥākīm wa-mā jarā ‘alayhi al-‘amal fī Miṣr* [The rules of public international law in judicial rulings and the practice followed in Egypt]. *Al-Majallah al-Miṣrīyah lil-Qānūn al-Dawlī*, 28, 1–203. p.7.

Article 548 of the Journal of judicial rulings applied in Palestine defines conciliation as: "A contract by which the parties resolve an existing dispute, or anticipate a potential dispute, by which each of them mutually waives part of his claim." Article 647 of the Jordanian civil code defines conciliation as: "a contract that settles a dispute and breaks the antagonism between the litigants."⁷³

Reconciliation, as defined by Egyptian Civil law in Article 549, is: "a contract that resolves an existing dispute or anticipates a potential dispute for the parties by having each of them concede equally a part of his claims." Reconciliation is based on two basic elements: first, the existence of an existing or potential future conflict. Secondly, the waiver of equal claims for each of the parties to the dispute.

Conciliation is similar to arbitration in terms of purpose and purpose; each of them is considered a means of dispute resolution, i.e., two alternative means that individuals resort to instead of resorting to the national jurisdiction of the state to resolve disputes that have arisen between them or may arise in the future.

The essential difference between conciliation and arbitration is clearly clear. In conciliation, each party waives part of his claim in order to be able to reach a compromise that satisfies both parties, while arbitration issues a ruling that satisfies the requests of one of the opponents and rejects the requests of the other party. They are also similar in terms of elements; there must be a dispute between the parties as one of the pillars of the morning and arbitration contracts, and therefore there must be an agreement between the parties that unequivocally expresses the desire to resolve the dispute away from the national jurisdiction of the state⁷⁴.

Sometimes it happens that the reconciliation in the dispute that has arisen between the parties is achieved by a third person, is this considered reconciliation or arbitration?

The lesson here is the fact of the task entrusted by the parties to the third person; if it is intended to resolve the dispute by a binding ruling, it is a matter of Arbitration. But if the task of the third person was limited to just mediating between the parties to reach a reasonable solution between them, the matter was related to reconciliation.

1.1.4.2. Distinguishing Arbitration From Expertise

⁷³ Jordanian Civil Code No. 43 of 1976. (2011). Jordan Legal Network.P.10

⁷⁴ Sarhān, ‘. M. H. (1972). P.10.

An expert is a technical person who gives an advisory opinion on a technical issue that is required by a dispute before the court, and it is difficult for the arbitrator to familiarize himself with it technically based on a decision in response to the request of one of the opponents or from the judge.

In the Palestinian code of civil and commercial procedural procedures No. 2 of 2001, the expert is not defined, but the law only defines the functions of the expert's powers in articles 47-55 thereof.

As for the arbitrator, he starts his profession without having a case before the court and without a ruling on his appointment because he is chosen from the parties to the dispute before the arbitration. It also issues a decision binding on the parties without being subject to judicial discretion in this⁷⁵.

Experience is a technical testimony given by a person who specializes in some knowledge that is not recognized by a judge or arbitrator⁷⁶. Experience is also the procedure by which a judge entrusts a person with the task of expressing his opinion on some issues of a technical nature that he is familiar with without obliging the judge or opponents to this opinion⁷⁷.

An expert is an expert in a particular science or art, such as agriculture, industry, medicine, trade, taxation, or division...Etc. Thus, he is not required to be a scientist in all sciences and arts. The expert submits his opinion on a particular subject whenever you ask him to do so, without his opinion having binding force either on the opponents nor on the judge.⁷⁸ he clarifies the aspect of ambiguity in a particular issue, and his opinion is not considered an advisory opinion to the judge; the judge has full freedom to follow this opinion or leave it.

While the arbitrator's ruling, if issued correctly, is binding on the opponents, even if it is contrary to their wishes and opinions, there is nothing to prevent the expert from

⁷⁵ Farrāh, M. (2010). Al-taḥkīm ṭarīq badīl li-hall al-nizā'āt: ḥasb ākhir ta'dīl li-qānūn al-ijrā'āt al-madanīyah wa-al-idāriyah al-Jazā'irī [Arbitration as an alternative method for dispute resolution: According to the latest amendment of the Algerian civil and administrative procedure law]. Dār al-Hudá. P.66.

⁷⁶ Boulguas, S. (2011). Al-turuq al-badilah li-hall munaza'at al-'uqud al-idariyah dhat al-tabi' al-dawli [Alternative means of resolving disputes of administrative contracts with an international nature] [Master's thesis, University of El Hadj Lakhdar, Batna]. P.31

⁷⁷ Abū Ahmad, 'A. M. al-D. M. (2008). Al-taḥkīm fī munāza'āt al-'uqud al-idāriyah al-dawliyah: fī daw' al-qawānīn al-waḍ'iyyah wa-al-mu'āhadāt al-dawliyah wa-aḥkām maḥākīm al-taḥkīm: dirāsah muqāranah [Arbitration in international administrative contract disputes: In light of positive laws, international treaties, and arbitration court rulings: A comparative study]. Dār al-Jāmi'ah al-Jadīdah. P.30.

⁷⁸ Foxton, D., Dhar, S., Diwan, R., Moollan, S., Wordsworth, S., Tan, P., & Webster, P. (Eds.). (2024)

being an arbitrator chosen by the parties, provided that he has the ability to rule. The expert adheres to the errand and its limits stipulated in the judge's order for appointment, which are limited to expressing a technical opinion on the subject matter in question.

Despite the similarity of the arbitrator with the expert in that each of them is not a member of the judiciary and each of them is a technical person who issues a technical opinion in a particular case, and each of them is subject to the principles of independence, impartiality and objectivity, but each of them differs from the other in terms of the role played by each of them⁷⁹.

The arbitrator performs the judicial function and resolves the dispute between the parties, and his judgment is imposed on them. While the expert is not appointed only to express an opinion on the issues put to him, and his opinion is an advisory opinion that is not binding on the past on the one hand nor on the opponents on the other.

The arbitrator differs from the expert in that the former produces a judgment and complies with the conditions, deadlines and procedures set out in the arbitration law, and his judgment is enforceable after the executive version is drawn up on it. While the expert drafts a report that he sends to the judiciary, which is a non-binding report for the judge to add to the case papers.

The arbitrator can adjudicate both technical and legal issues; he performs the same function as a judge. While the expert is exposed to technical issues only and may not be exposed to legal issues⁸⁰.

1.1.4.3. Distinguishing Arbitration From Mini-trial And Impartial Opinion

Some legal systems, especially in the United States of America, take what is known in the mini-trial system. The parties may consider that it is in their interest to submit the dispute to a special commission consisting of several people with experience and competence in the field of the dispute, from well-known arbitrators to retired judges.

This commission is held in the form of a small trial similar to a regular court. The committee usually consists of three people, each party selects a member, and the two selected members are appointed as the chairperson of the committee. Each party submits its requests, arguments, statements, arguments, and documents to the mini-trial

⁷⁹ Farrāh, M. (2010). P.67.

⁸⁰ Abū Aḥmad, 'A. M. al-D. M. (2008). P.30 -31.

Committee and after studying them briefly and quickly, the committee prepares a draft settlement to be presented to the parties.⁸¹

The parties remain free to accept or reject this draft without incurring any responsibility for refusing to sign it on the grounds that the mini-trial committee is deprived of the authority to issue a binding verdict to the parties. Therefore, the mini court does not become one of the types of mediation, where its role is limited to stating the legal position of the parties to the dispute if it is submitted to the judiciary a, arbitration.

The mini-trial system is approached by another system known as neutral opinion; it is based on the agreement of the parties to the dispute to refer the dispute to a third person, whom they agree to appoint, who has the qualities of neutrality or independence, in order to state his legal opinion on the dispute before resorting to judicial or arbitration.

This is after studying the case file and the documents submitted to him and taking notes of the evidence and arguments of each party. Nothing prevents the parties from presenting the subject of the dispute to more than one impartial person to form several opinions and compare them with each other so that each party can determine its position on the issue and based on it decide what it deems appropriate on it or resort to arbitration or the judiciary⁸².

The opinion of an impartial person is only an indicative opinion that is not binding on the parties; therefore, the parties are not obliged to appear before this person or cooperate with him, but each of them can withdraw without arranging any responsibility on his shoulders.

From this it becomes clear that a mini-trial and a neutral opinion differ from arbitration not only in the nature of the task performed by the third person, but also in the result and binding force of each of them⁸³.

The task of arbitration is to settle the dispute by a final decision binding on the parties, which has all the qualities of a judicial verdict. While the third person in the mini-trial

⁸¹ Altabbakh, S. (2015). P.23.

⁸² Boulguas, S. (2011). P.33.

⁸³ Farrāh, M. (2010). P.69.

and the neutral opinion, his role is limited to giving an opinion or position that the parties can be guided by without being binding on them.

1.2. Justifications For The Application Of Arbitration

No one can deny the essential role that arbitration plays in resolving disputes nowadays, but the use of arbitration as a means of resolving disputes is still increasing both domestically and internationally. This is due to the set of justifications and advantages that arbitration achieves more than the national jurisdiction of the state.

1.2.1. The Importance Of Commercial Arbitration

One of the most important consequences of international trade is the emergence of globalization and the lack of a universal judiciary to resolve international trade disputes that fall within the framework of private law, and the inadequacy of the state's own national judiciary to resolve such disputes. The countries' efforts to attract foreign investments to achieve their economic and social development plans have led to the development of the arbitration system towards a broad global one⁸⁴. Nowadays, arbitration has become the first and most preferred means of resolving commercial disputes, almost no contract is currently devoid of an arbitration agreement.

We can say that the choice of arbitration as an alternative means of resolving commercial disputes is due to several reasons, the most important of which is the great freedom enjoyed by the parties in the field of commercial arbitration, which any national legal system, no matter how developed, is unable to provide. This is shown by the freedom of the parties to determine the type of Arbitration to be individual or through an arbitration institution, to appoint the arbitral tribunal, and to determine most of the substantive and procedural rules governing the arbitration process from the beginning to the end until the arbitration award.

In addition to the desire of those dealing in the field of trade to create their own environment commensurate with their interests, away from the complexities of the laws

⁸⁴ Based on this, The Washington Convention, signed in 1965, was issued, which deals with the settlement of disputes arising from investments between countries, and resulted in the establishment of the International Center for the settlement of investment disputes between countries. In addition, the unified agreement for the investment of Arab capital was issued in the Arab countries in 1980. The Investment Promotion Law was issued in Palestine in 1998.

and judicial systems of the state. And try to set up and follow their own rules that are better suited to the requirements of trade and the speed, flexibility and specialization required in concluding and executing contracts. It follows that arbitration considers the prevailing customs and Customs in the field of trade more than the state's own judiciary.

Countries have stepped up their efforts at the global level to regulate commercial arbitration due to the significant role that the latter plays in resolving trade disputes. Several international and regional conventions have appeared in the field of commercial arbitration⁸⁵.

The international community has also made huge efforts to unify the rules related to commercial arbitration, as these efforts have resulted in the following:

- UNCITRAL rules: The United Nations International Trade Law issued these rules⁸⁶. Approved by the General Assembly of the United Nations by Resolution No. 98/31 of 1976, known as the rules of International Commercial Arbitration of the United Nations Commission on International Trade Law⁸⁷. These rules consist of 41 articles and do not have any mandatory character, but are of a guiding nature for states to follow when preparing their legislation on arbitration⁸⁸.

The aim of the development of these rules was to unify the rules of commercial arbitration globally, and to try to narrow the difference between the national legislations of countries and reduce the appearance of conflicts of laws in the framework of commercial disputes, especially international ones. The appropriateness of the various main trends prevailing in the world in the field of Arbitration has been considered in the development and drafting of these rules.

- The 1985 model law and its 2006 amendments: After the remarkable success achieved by the UNCITRAL rules of 1976, countries have recognized arbitral

⁸⁵ One of the international conventions is the Geneva Protocol of 1924 on arbitration clauses, which is still in force in countries that have not signed the New York Convention of 1958. One of the regional conventions is the European Convention on International Commercial Arbitration, signed in 1961 and entered into force in 1964. The Amman convention signed in 1987 on commercial arbitration among Arab states.

⁸⁶ This assembly was established on the basis of UN General Assembly Resolution No. 2205 in 1966. More information available at: <https://uncitral.un.org/en/about>

⁸⁷ Carey, J. (1966). UNCITRAL: Its origins and prospects. *The American Journal of Comparative Law*, 15(3), 626–639. <https://doi.org/10.1093/ajcl/15.3.626>

⁸⁸ Broches, A. (1990). *Commentary on the UNCITRAL Model Law on International Commercial Arbitration*. Kluwer Law and Taxation Publishers. P.11.

awards and are keen to implement them and remove any obstacles from their national laws that prevent this. And the desire to consider practical practices in the field of institutional arbitration and arbitration of exceptional cases. The United Nations Commission on international trade law considered the need to develop in the process of unifying the rules and provisions of commercial arbitration; it prepared a draft model law on international commercial arbitration with the participation of a large number of the world's best experts in the field of Arbitration and trade.

The draft law was adopted by the committee in 1985 and received the approval of the UN General Assembly by its resolution 72/40 of 1985, provided that members should refer to it when preparing their legislation in the field of Arbitration⁸⁹. Some amendments were made to this model law in 2006⁹⁰.

1.2.2. Practical Justifications For The Application Of Commercial Arbitration

There are many reasons why parties may resort to commercial arbitration to resolve their disputes away from the state's own judiciary; jurist David Rene believes that there are at least four justifications behind the parties choosing arbitration to resolve disputes⁹¹. Those justifications are classified as follows:

- The parties know in advance in this category that the final arbitration decision on the subject of the dispute to be issued by the arbitrator may be completely identical to the verdict to be issued by an ordinary judge if the dispute is presented to him. However, the parties prefer to resort to arbitration to resolve the dispute arising between them; desiring that the arbitration process be conducted in better conditions and under better conditions than if the dispute was resolved before the National Judiciary. These include lower costs and expenses, more flexible procedures, and adjudication of the dispute by people whom the parties give a high degree of confidence or have a high degree of technical specialization in the subject of the dispute that is not generally available in an ordinary judge.

⁸⁹ Gaillard, E., & Savage, J. (Eds.). (1999). Fouchard Gaillard Goldman on international commercial arbitration. Kluwer Law International. P.46

⁹⁰ United Nations Commission on International Trade Law. (2006). UNCITRAL Model Law on International Commercial Arbitration 1985: With amendments as adopted in 2006. United Nations. https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

⁹¹ David, R. (1985). P.15 et s.

- In this category, the parties wish to resolve the dispute in a different way from the national judiciary; if the judge is obliged to apply the provisions of national law because he derives his authority from the state that appointed him to perform the judicial function, then the parties wish to resolve the dispute not under the National Law of the judge's country, but under another law or based on the customs of international trade. This can be achieved only when resorting to arbitration because the arbitrator derives his task from the arbitration agreement itself, the arbitrator has no national law to defend.
- The parties here wish to resolve the dispute in a manner that is to some extent acceptable and satisfactory to both parties, leading to the resolution of the dispute in a way that preserves their common interests and without affecting their future relations. Despite the existence of the dispute, they may wish to continue their contractual relations in the future, and this is what arbitration can achieve.
- Here, the parties wish to resolve the dispute by resolving the dispute that has arisen between them without this dispute reaching the point of dispute; therefore, it cannot be submitted to the judiciary. Such as a request to review a contract or supplement it in proportion to some urgent circumstances or the desire of the parties to amend the contract based on circumstances that have arisen after it was concluded.

In addition to the previous justifications, practical considerations always call for an agreement on arbitration to submit disputes to people trusted by the parties instead of submitting them to the National Judiciary. This is either to benefit from their technical expertise, or to avoid problems of international conflict of laws, or to avoid public judicial hearings, in addition to saving time, effort and expenses in all cases⁹².

1.2.2.1. Effectiveness

The effectiveness of arbitration is shown by the great freedom that the parties to the dispute have in the field of commercial arbitration. We can see this great freedom at all

⁹² Aboulwafa, A. (2007). P.151.

stages of Arbitration, for example, the freedom to choose the type of Arbitration, whether institutional or individual, the freedom to choose the arbitration procedure by law or by conciliation, the freedom to choose the arbitrators and their number and choose the law applicable to the subject matter of the dispute and the arbitration proceedings... Etc.

However, the effectiveness of arbitration is mainly shown in investment contracts, both for the foreign investor and for the host country of the investment. On the investor's side, he is afraid of being subject to the jurisdiction of the host country of the investment and finds in arbitration a suitable alternative to ensure his investment and preserve his rights.⁹³

Considering that the arbitrator is an ordinary person chosen by the parties of their common will and derives his task from the arbitration agreement and not a judge belonging to the state hosting the investment, this provides a great degree of confidence and reassurance to the investor. Therefore, the foreign investor usually initiates the inclusion of an arbitration clause in the investment agreement and stops the conclusion of the investment agreement on the approval of the state to the arbitration agreement, and if it refuses, he refrains from signing this agreement⁹⁴.

On the part of the state hosting the investment, it refuses to submit to the jurisdiction of another state on the grounds that this affects its national sovereignty, and that the judge expresses the sovereignty of its state and is committed to respecting its laws and defending its public order. While states accept to submit to arbitration because the arbitrator is an ordinary person whose task derives from the arbitration agreement itself and does not express the sovereignty of a particular state and does not have a national law obligated to defend it. The justification for accepting states to submit to arbitration is to encourage foreign investors to invest in their territories to achieve their economic and social development plans⁹⁵.

Once the state approves the arbitration agreement, it becomes bound by this Agreement and is obliged to implement it, and this is an implicit waiver of its right to

⁹³ Soussi, M. A. (2019). P.26.

⁹⁴ Sharafuddin, A. (1993). *Dirasat fi al-tahkim fi munaza'at al-'uqud al-dawliyah* [Studies in arbitration in international contract disputes]. Self-published. P.32.

⁹⁵ Makhloof, A. (2001). *Ittifaq al-tahkim ka-uslub litaswiyat munaza'at 'uqud al-tijarah al-dawliyah: Dirasah tahliliyah ta'siliyah* [Arbitration agreement as a method for settling international commercial contract disputes: An analytical and foundational study]. Dar al-Nahdah al-Arabiyah. P.120.

invoke its judicial immunity. If it violates this, it violates the principle of good faith in the performance of its contractual obligations.

1.2.2.2. Specialization and Technical Competence

Specialization and technical competence are one of the most important advantages of commercial arbitration; the freedom of the parties to choose arbitrators allows them to choose arbitrators with high specialization and competence in the subject matter of the dispute that the judge may not have due to his legal qualification and lack of specialized experience in the subject matter of the dispute⁹⁶.

In addition, the selection of specialized arbitrators may prevent the parties to pay the costs of technical expertise in many aspects of the dispute and allow the arbitrators to discuss and direct dialogue on the technical side of the dispute with the parties, witnesses, experts, and others. It also allows the parties to choose arbitrators from the same language as the parties or the language of the contract.

Specialization and technical competence seem to be more important, especially in commercial disputes due to the huge development in the arts and practices of trade, which has led to the emergence of new types of commercial transactions and contracts. Which are usually characterized by their length, complexity in their legal and technical aspects, and high financial value. In many cases, they come in the form of complex and complex contracts and in their legal and technical organization in many aspects depart from the traditional rules known within the framework of national law⁹⁷.

This role of arbitration is not limited to international trade disputes only, but there are some internal trade disputes that are of great complexity, especially in the field of business and trade. It is preferable that an arbitrator and not a national Judge resolve it, given the complexity of the elements of the dispute and the existence of conflicting interests of multiple parties such as partners, customers, managers, and financiers...Etc. In such kind of disputes⁹⁸, the dispute enters into more than one legal field and the legal side merges with the technical side, and examples of this kind of disputes include: disputes between partners or shareholders and the board of directors, difficulties related

⁹⁶ Boucobza, X. (1998). La clause compromissoire par référence en matière d'arbitrage commercial international. *Revue de l'Arbitrage*, 495. P.96.

⁹⁷ Ibid.P.97-98.

⁹⁸ Makhloof, A. (2001). P.122.

to the exploitation of trademarks or patents, and disputes that arise between financial and banking institutions.

Article 2/11 of the law of the International Commercial Arbitration Center of the Cooperation Council for the Arab states of the Gulf of 1993 states: "The arbitrator must be a jurist or a judge or a person with high experience and broad knowledge in trade, industry or finance...". Also, Article 14 of the Washington Convention of 1965 required that people aiding in the arbitral tribunal be recognized as competent in the field of Law, trade, and industry⁹⁹.

But despite this, the legal qualification remains greatly adjudicated specially if the arbitral tribunal is multi-member and the subject of the dispute is a high-value research, preferably one of them is a jurist, because the arbitrator adjudicated on the subject of the dispute by a final arbitration award that meets all the specifications of the judicial judgment. Thus, he is exposed to the rights, obligations, and legal positions of the parties; he is obliged to apply the substantive and procedural rules chosen by the parties or established by law and respect the rights of defense and public order. It is necessary to consider the formal and objective conditions of the award, including the reason for the award. These are issues that are expressed by a person who does not have legal ability¹⁰⁰.

1.2.2.3. Speed, Ease And Flexibility Of Procedures

Speed is one of the main advantages of Arbitration, the ordinary judiciary, when considering a dispute, must consider a set of formalities and procedural procedures in order to protect the rights and legal positions of the parties. This significantly prolongs the duration of the adjudication of disputes, and the court may continue to consider the dispute for several years. This situation does not fit with the nature of transactions and commercial transactions that require speed, a great degree of trust, simplicity, and ease in making deals, all in order to seize opportunities and make profits.

From this point of view, arbitration may seem to be the appropriate alternative to resolving commercial disputes, whether internal or international, based on the speed it performs in resolving disputes, because the issuance of an arbitration award is limited

⁹⁹ David, R. (1985). P.20.

¹⁰⁰ Sharafuddin, A. (1993). P .36.

to a specific period during which it must be issued, and this period is determined by the general agreement of the parties. In case of default of this agreement, the law itself shall determine it¹⁰¹. In addition, arbitration does not consider the principle of litigation to two degrees applied before the national jurisdiction of the state, which also leads to gaining time.

Finally, most laws prohibit the appeal of arbitral awards only on the basis of the original invalidity, if it is marred by one of the grounds of invalidity specified by the law exclusively. All these competitions combined make arbitration actually faster than the National Judiciary. But in all cases, the speed of dispute resolution does not mean haste in issuing judgments, and the speed does not allow violating some basic principles in litigation, especially respect for the rights of defense, equality of adversaries and the principle of confrontation.

Arbitration is also distinguished from the national judiciary by the ease and simplicity of its procedures and the exclusion of secondary formalities, which achieves speed and effectiveness in resolving the dispute. The arbitrator follows the procedures prescribed by the parties, and in the absence of such an agreement between the parties, he chooses to apply flexible procedural rules equal with the medically of the dispute. This is especially clear in the arbitration of exceptional cases and in arbitration with the undermining of the arbitral tribunal by the conciliation procedure between the parties, but the arbitrator is obliged in all cases to respect the jus cogens, public order and basic guarantees of litigation.

1.2.2.4. Confidentiality

Arbitration beginning and ending is a secret jurisdiction, unlike the national jurisdiction of the state, which is a public jurisdiction. As a matter of general principle, the court's trial sessions must be held in public, which is expressed by the principle of publicity or the publicity of the judiciary¹⁰². Even if the procedural laws allow the judge in some cases to decide, on his own initiative or at the request of one of the opponents, to hold one or more court hearings in secret for reasons of protecting the family or

¹⁰¹ Omar, N. I. (2011). p.28.

¹⁰² Sharafuddin, A. (1993). P .37.

preserving public order or decency¹⁰³. The ruling of the national judiciary of the state must always be issued in a public hearing¹⁰⁴.

But the matter is different when it comes to arbitration; the principle of publicity is not applied to it, but the principle of confidentiality, and this justifies the contractual nature of Arbitration. The Palestinian arbitration law and its Explanatory Memorandum have referred to the principle of confidentiality at all stages of Arbitration; Article 50 of the Executive Regulations states that: "the arbitral tribunal shall consider the dispute before it in secret, provided that the agreement of the parties may be based on making the hearing public." Article 41 of the Palestinian arbitration law states: "... The arbitration award or parts thereof may not be published except with the consent of the arbitration parties or the competent court."

It is clear from these two texts that the general principle in the field of arbitration is confidential in all its stages and procedures and the exception is public, while the general principle in the national judiciary is public, and the exception is confidentiality.

Confidentiality is widely applied in the field of Arbitration; it includes confidentiality towards a third party who was not a party to the arbitration agreement, and towards public opinion and the media, especially towards competitors¹⁰⁵.

Publicity may be very harmful to the parties, it may lead to the disclosure of their trade and industrial secrets, manufacturing methods and secrets. Especially if they are not protected by patents and disclose the knowledge they possess in a certain field, such as in contracts for the transfer of technical knowledge, technology contracts, satellite manufacturing, electronic computers, data processing, information banks, disclosure of information related to the size of the business, future plans and financial position of the project. Publishing these details to competitors, potential customers, public opinion, and the media may lead to the collapse of the project or cause serious harm to the parties and their commercial interests¹⁰⁶.

¹⁰³ Article 115 of Civil and Commercial Procedure Law No. 2 of 2001 (Palestine) stipulates that: "the trial sessions shall be public now that the court May, on its own or at the request of one of the opponents, conduct them in secret to preserve public order or respect morality or the inviolability of the family."

¹⁰⁴ Article 171 of the Palestinian code of civil and commercial procedure states: "the judge shall pronounce the verdict, with a spoken recitation with his reasons, and the verdict shall be pronounced in a public hearing, otherwise the verdict is invalid."

¹⁰⁵ Makhloof, A. (2001). P.123.

¹⁰⁶ Boucobza, X. (1998). P99.

For all these reasons, confidentiality is one of the most important advantages of commercial arbitration, and it may be the first motive for the parties to resort to arbitration in resolving their commercial disputes.

1.2.2.5. Maintaining Future Relations Between The Parties

Resorting to the national judiciary may not be an appropriate way to resolve a large number of disputes; strict application of the law and the judge's decision based on the past and the facts of the dispute, the parties' preferences and without paying attention to the nature of the current and future relations linking the parties to each other may lead to a rupture and inflame the causes of disagreement between the parties¹⁰⁷.

The greatest harm is caused to their common interests, especially if the dispute or judicial consideration lasts a long time. A judicial decision may be fair from a legal point of view, but in reality it may not be a proper solution. In many disputes in which the parties have common interests that bind them to each other, such as disputes that arise between partners, especially in personal companies and family projects, between suppliers and suppliers, or between the original contractor and the subcontractor. In all these cases, recourse to the judiciary may lead to a negative impact on the relationship of the parties to each other and even stop it many times.

Thus, resorting to arbitration may be a suitable alternative to resorting to the national judiciary because arbitration usually proceeds in a kinder atmosphere than the National Judiciary, and considers the future relations of the parties. The interests of the parties may require resolving the dispute, but in a way that ensures the continuation of their current and future relations in order to achieve their common interests, especially if the arbitrator is authorized to reconcile¹⁰⁸.

For example, disputes that arise between partners in companies or family enterprises, resolving the dispute through arbitration, especially with the authorization of conciliation, is the best way for the parties' relations to continue to exist. Because

¹⁰⁷ Aboulwafa, A. (2007). P.152.

¹⁰⁸ Al-Jamal, M. (1998). *Al-tahkeem fi al-'alaqat al-khassa al-dawliyya wa al-dakhiliyya: wad' al-tahkeem min al-nitham al-kulli - ittifaq al-tahkeem - khusoomat al-tahkeem* [Arbitration in international and domestic private relations: The position of arbitration within the overall system - the arbitration agreement - the arbitration litigation] (1st ed., Vol. 1). Al-Halabi Legal Publications. P.220.

legally fair solutions may not be the best at times, when the continuation of relations is almost inevitable and preferable.

The general atmosphere prevailing in the arbitration process remains friendlier than the National Judiciary and is dominated by the suspensive character, and the solution issued by the arbitrator is more acceptable to the parties than the judicial ruling, which often leads to the convict accepting the arbitration decision and initiates its implementation voluntarily without the need to follow the compulsory enforcement procedures¹⁰⁹.

The arbitrator, especially if he is authorized to reconcile, must consider the continuation of future relations between the parties and this achieves a degree of psychological comfort for the parties and keenness to continue their future relations. This is in addition to the confidence that the parties give to the arbitrator, especially if they choose him, unlike the judge who imposes on the parties, and it has nothing to do with their desire to choose him.

1.3. Types of Commercial Arbitration

Article 3¹¹⁰ of the Palestinian arbitration law deals with the types of Arbitration, distinguishing on the one hand between local arbitration, international arbitration, and foreign arbitration, and then distinguishing on the other hand between private arbitration and institutional arbitration.

¹⁰⁹ Ibid. P.221.

¹¹⁰ Article 3 of the Palestinian arbitration law stipulates that: "for the purposes of this law, arbitration shall be: first: local if it is not related to international trade and is conducted in Palestine. Second: internationally if the subject of a dispute is related to an economic, commercial or civil issue, in the following cases: 1 - if the main centers of the arbitration parties are located in different countries at the time of the conclusion of the arbitration agreement, if one of the parties has more than one business center, the example is the center most associated with the arbitration agreement, but if one of the parties does not have a business center, the example is at his usual place of residence. 2-if the subject matter of the dispute covered by the arbitration agreement is related to more than one state. 3-if the main center of business of each of the arbitration parties is located in the same country at the time of the conclusion of the arbitration agreement and one of the following places is located in another country: a - the place of arbitration as designated by the arbitration agreement or indicated how to designate. B-the place of execution of a material aspect of the obligations arising from the commercial or contractual relationship between the parties. C- the place most closely related to the subject of the dispute. Third: a foreigner if it takes place outside Palestine. Fourth: especially if it is not organized by a competent arbitration institution. Fifth: institutionally, if it is done through a competent institution to organize and supervise arbitration, whether inside or outside Palestine."

1.3.1. Local Arbitration

Arbitration shall be local based on the first paragraph of Article 3 of the Palestinian arbitration law if it meets two conditions: first, it is not related to international trade. Secondly, it should take place in Palestine.

It is not enough for the arbitration to be conducted in Palestine (geographical criterion), but it must also not be related to international trade (economic criterion); if one of these two conditions fails, the arbitration will not be local, but an international or foreign arbitration, as the case may be¹¹¹. It is noted in this text that no attention is expressed to the nationality of the parties, their place of residence, the nationality of the arbitrator, the law applicable to the subject matter of the dispute, the law applicable to arbitration proceedings and other elements for the arbitration to be considered local.

1.3.2. Foreign Arbitration

Foreign arbitration is considered based on the third paragraph of Article 3 of the Palestinian arbitration law if the arbitration takes place outside Palestine.

This shows that Palestinian law has adopted one criterion for considering arbitration as foreign, which is the geographical criterion of the place of arbitration; if the arbitration takes place outside Palestine, then it will be foreign, regardless of whether it is related to international trade or not. Moreover, the arbitration retains the foreign status even if the law applicable to the dispute is Palestinian law, or the parties to the arbitration are persons with Palestinian nationality, or the dispute concerns a contract or a purely domestic legal relationship.

For comparison, Article 9 of the Egyptian arbitration law of 1994 stipulates that two conditions are met for the arbitration to be considered foreign: the arbitration award must be issued outside Egypt, and a foreign law must be applied to the dispute. Article 1/1 of the New York Convention of 1958 on the recognition and enforcement of judgments of foreign arbitrators has taken the place of the foreign arbitral award without considering whether the dispute concerns the interests of international trade or not¹¹².

It should be noted that the previous definitions of foreign arbitration, which are based on the place of arbitration or the place of issuance of the arbitration award, do not agree

¹¹¹ Makhloof, A. (2001). P.125.

¹¹² Abd al-Majid, M. (2000). P.30.

with the opinion of most jurisprudence on this matter. Some believe that arbitration is Foreign if it includes a foreign element, such as a difference in the nationality of the opponents or given the place of arbitration or the law applicable to the subject matter of the dispute or arbitration proceedings¹¹³.

While another aspect considers that the arbitration is foreign even if it is issued within the same state in which the arbitration award is intended to be executed, as long as the law applied to the dispute is foreign law¹¹⁴.

Whatever it is, determining the nature of arbitration as local or Foreign has important consequences, represented by the difference in the legal rules governing each of them, especially in terms of how the arbitration award was issued, determining its contents, methods of Appeal and the mechanism of its implementation. For example, the Palestinian arbitration law allows one way to challenge arbitral awards issued in Palestine, which is to challenge the invalidity, based on the reasons specified by the second two exclusively. While the foreign arbitration award is not subject to the rules of Appeal in force in Palestine, it is subject to the rules of Appeal in force in the law of the country of its issuance, and this law may allow other means of appealing the arbitration award that differ from Palestinian law.

Moreover, local arbitral awards issued in Palestine are implemented directly in the same way as the enforcement of the judgments issued by the courts after ratification by the competent court. While the procedures for implementing foreign judgments in Palestine are subject to different rules, their implementation requires following complex procedures defined by the arbitration law and the enforcement law. The foreign arbitration award is not given the executive version unless specific objective and procedural conditions are met.

1.3.3. International Arbitration

The Palestinian legislator adopted in Article 3 of the arbitration law the broad concept of international arbitration, which it took for the most part from Article 3 of the UN Model Law of 1985 and its amendments of 2006.

¹¹³ Shafiq, M. (1997). P.26.

¹¹⁴ Al-Muaawad, N. M. (2000). *Al-tahkīm al-tijārī al-dawī* [International commercial arbitration] (2nd ed.). Dar Al-Nahda Al-Arabiya. P. 178 - 179.

Legislation and jurisprudence adopt one of three criteria for adapting arbitration as international: geographical, legal, and economic criteria¹¹⁵.

- Geographical criterion: This criterion is based on geographical or spatial elements by which the international character of the arbitration is determined¹¹⁶. Such as depending on the place of Arbitration, the place of issuance of the arbitration award, the business center of the arbitration parties, or their usual place of residence. This criterion has been adopted by Article 1/1 of the New York Convention of 1958, which states: "this convention shall apply to the recognition and enforcement of arbitrators' judgments issued in the territory of a state that is not required to recognize and implement such judgments on its territory and arising from disputes between persons. Arbitrators' judgments that are not considered national in the country to which recognition or enforcement of these judgments is requested shall also be applied."

Article 2 of the Jordanian law on the execution of foreign judgments of 1952 also adopted this criterion, stating that: "the term foreign judgment contained in this law means every judgment issued by a court outside the Hashemite Kingdom of Jordan."

- Legal criterion: This criterion in adapting arbitration as international or national depends on the same criterion used in private international law; the representative is investigating the extent to which the legal relationship includes a foreign element or not. If the legal relationship includes a foreign element, the arbitration shall be international, but if this element fails, the arbitration shall be national.

The application of this criterion to the various elements of arbitration is considered to verify the availability of the foreign element in them: the nationality of the parties, their domicile and habitual residence, the law applicable to the subject matter of the dispute and the arbitration proceedings, the nationality of the arbitrator, the language and place of Arbitration and other elements.

¹¹⁵ Boucobza, X. (1998). P101.

¹¹⁶ Al-Haddad, H. A.-S. (1994). *Al-Ta'n bil-butlān 'alā aḥkām al-taḥkīm al-ṣādirah fī al-munāza'āt al-khāṣṣah al-dawliyah* [Challenging the nullity of arbitration awards issued in private international disputes]. Dar Al-Fikr Al-Jami'i. P.49.

Accordingly, arbitration is international if these elements are distributed over more than one national legal system, and it is National if all these elements are related to the legal system of one state¹¹⁷. The application of the legal standard requires that the judge consider all the foreign elements related to a particular legal relationship, and work to separate the influential or decisive elements in it from the minor non-influential elements¹¹⁸. In determining the international character of Arbitration, the judge relies on the influential elements only, without the secondary elements, depending on the degree of their connection with one or several legal systems. Accordingly, the mere inclusion of a foreign element in the legal relationship is not in itself sufficient to be considered an international arbitration; rather, the foreign element must be influential and productive¹¹⁹.

This criterion was adopted by the New York Convention of 1958 in Article 1/1, as well as Article 176 of the Swiss private international law; this article stated that the provisions of this law apply to every arbitration if the seat of the arbitration court is in Switzerland, or at least one of the parties to the arbitration at the moment of the conclusion of the arbitration agreement was not domiciled in Switzerland. The third paragraph of Article 1 of the 1985 model law has also been adopted. As well as Article 2 of the Amman Arab convention for commercial arbitration of 1987, stating that: "this convention applies to commercial disputes arising between persons, regardless of their nationalities, who are connected by a commercial transaction with one of the contracting parties or one of its Persons, or have their main headquarters there."

- Economic criterion: According to this criterion, it is sufficient to consider arbitration as international if the subject matter of the dispute relates to a matter related to international trade or an international transaction; if the legal

¹¹⁷ Ibrahim, N. M. M. (2000). Markaz al-qawā'id al-'abra al-dawliyyah amām al-tahkīm al-iqtisādī al-dawlī: Dirāsah hawl māhiyyah wa taṭbīq al-a'raf al-tijāriyyah al-dawliyyah wa sawābiq al-tahkīm fī iṭār wāqi' al-tahkīm al-iqtisādī al-dawlī wa aham al-anzimah al-qānūniyyah al-muttaṣilah bih [The status of international rules before international economic arbitration: A study on the nature and application of international commercial customs and arbitration precedents in the context of international economic arbitration and its related legal systems] (2nd ed.). Ma'had al-Buḥūth wa al-Dirāsāt al-'Ālamiyyah. P.84.

¹¹⁸ Abd al-Majid, M. (2000). P.32.

¹¹⁹ Ibid. P.33.

relationship or contract is International, the arbitration acquires the status of international by extension.

Article 1504 of the French Code of Civil Procedure has been adopted as an economic criterion by stating: "narrow arbitration shall be international and relate to the interests of international trade."¹²⁰ Thus, this provision has established a material rule that arbitration is considered international only as it concerns the interests of international trade¹²¹. This material base performs its role independently and independently of the will of the parties and even the will of the state; the international character of arbitration is determined solely on the basis of the nature of the economic process from which the dispute arose. It is sufficient that the economic process leads to the movement of goods, services, or money across borders to be considered an international arbitration.

The economic criterion does not leave any role to the desire of the parties in adapting arbitration as international; they may not, by agreement between them, dye the International on internal or local arbitration or artificially dye the international character on arbitration. The nationality of the parties also does not prevent the parties from adapting the arbitration as a local or internal contract between two groups of foreign companies to manage a hotel located in Palestine¹²². On the other hand, the fact that the parties have the same nationality does not prevent the arbitration from being considered international, such as arbitration over an existing dispute between two Italian companies over the ownership of real estate located in Palestine and over the agreement that the fulfillment must be made in Israeli currency.

The question here is what is the position of the Palestinian legislator on the international status of Arbitration, and by which of the previous criteria was taken?

With reference to Article 3 of the Palestinian arbitration law, we find that it adopted a mixed criterion that combines the legal and geographical criteria, while it excluded the economic criterion when defining international arbitration, despite referring to it when

¹²⁰ The number of this article has been amended to become 1504 of the French Civil Procedure Code instead of Article 1492 of the same law, by French Decree No. 48 - 2011 on the amendment of Arbitration

¹²¹ The economic criterion first appeared in the pleadings of the French public defender P. Matter before the French court of cassation on the occasion of its judgment of 1927.

¹²² Al-Rifai, A. A. A. (1997). *Al-nizam al-'am wa al-tahkim fi al-'alaqat al-dawliyyah al-khassah: Dirasah fi qada' al-tahkim* [Public order and arbitration in private international relations: A study in arbitral jurisprudence]. Dar al-Nahda al-'Arabiyyah. P.105.

defining local arbitration. This is confirmed by the second paragraph of the same law, which states that arbitration is international if its subject matter is a dispute related to an economic, commercial, or civil issue; the term civil definitely excludes the adoption of the economic criterion.

1.3.4 Private Arbitration And Institutional Arbitration

Article 3 of the Palestinian arbitration law distinguishes between private arbitration and institutional arbitration¹²³. It made one of them the opposite of the other, as it considered arbitration private if it was not organized by an arbitration institution specialized in arbitration. On the other hand, it will be institutional if it is done through an institution specialized in organizing and supervising arbitration, whether inside or outside Palestine.

The distinction between private arbitration and institutional arbitration results in important results; in private arbitration, the parties have great freedom to organize the arbitration process at all stages, from selecting arbitrators, determining their number, determining the duration, language, and place of Arbitration, choosing the substantive and procedural rules applicable to the dispute and other issues¹²⁴.

On the other hand, the freedom of the parties is restricted in institutional arbitration due to the existence of Arbitration regulations at each permanent Arbitration institution that regulates all aspects of the arbitration process, starting with the drafting of the arbitration agreement, the mechanism for submitting the dispute to the arbitration institution, how the arbitral tribunal is formed, which is often carried out within the lists of arbitrators accredited by it, which mostly cover all specialties and from different nationalities and languages, the number of arbitrators and how to replace them, through the organization of arbitration sessions, pleadings, arbitration procedures and how the arbitration award is issued¹²⁵.

Despite the wide freedom enjoyed by the parties in private arbitration, institutional arbitration is considered the best due to the advantages it achieves, including the high

¹²³ Jurisprudence gives several names to private arbitration from it: casual, free, or individual arbitration, arbitration of private suits and unregulated arbitration. Institutional arbitration is also called structured arbitration. It is also noted that there is no correlation between considering arbitration as private or institutional and being a local or international arbitration; private arbitration may be local or international and institutional arbitration may be local or international.

¹²⁴ Al-Rifai, A. A. A. (1997). P.105 – 107.

¹²⁵ Ibrahim, N. M. M. (2000). P86.

reputation enjoyed by permanent Arbitration institutions, having huge material capabilities, specialized administrative devices such as secretarial and translation communications that facilitate the arbitration process, in addition to specialization in multiple fields of international trade and the long experience of these institutions in practical practices in the field of international trade. In addition to the ease, it provides to the parties throughout the course of the arbitration process.

One of the most important permanent Arbitration institutions in the world is the International Chamber of Commerce in Paris (ICC), which is the first institution in the world in terms of the number and type of cases it hears. It is followed by the International Center for Settlement of Investment Disputes in Washington, the American Arbitration Association (AAA), the London Arbitration Court and the Swiss Arbitration Association in Zurich¹²⁶.

In the Arab region: the Cairo Regional Center for International Commercial Arbitration, the Commercial Arbitration Center of the GCC countries in Bahrain, the Abu Dhabi Center for Commercial Conciliation and Arbitration, and the Committee for Commercial Conciliation and Arbitration at the Dubai Chamber of Commerce and Industry.

The arbitration agreement serves as the cornerstone of Arbitration, defining the legal basis and procedural mechanisms governing the settlement of disputes. Its contractual nature, the need for clarity of intent, and the procedural independence that it gives distinguish arbitration from traditional litigation. By understanding the legal requirements, enforceability, and implications of arbitration agreements, we gain insight into how arbitration works at the national level.

As we move forward, it is necessary to explore arbitration frameworks on a global scale. Arbitration is not limited to domestic laws; international treaties, conventions, and institutional rules shape its application across jurisdictions.

Chapter 3 will examine major international arbitration frameworks, such as the New York Convention, the UNCITRAL Model Law, and various arbitration institutions, highlighting their role in harmonizing arbitration practices worldwide. Through this

¹²⁶ Shafiq, M. (1997). P.33.

lens, we will understand how arbitration agreements transcend national borders to facilitate the resolution of international disputes.

The historical development of Arbitration highlights its permanent role in resolving disputes across civilizations. From its origins in ancient societies, where influential figures mediated conflicts, to formalization under modern legal frameworks, arbitration has continuously adapted to meet the needs of trade and international relations. The development of arbitration through religious, customary, and state-supported mechanisms confirms its flexibility and efficiency in ensuring a fair resolution of disputes.

While history provides valuable information on the foundation and evolution of Arbitration, the practical application of Arbitration in the modern legal landscape begins with the arbitration agreement. The arbitration agreement serves as the contractual basis that binds the parties to the arbitration process, determines their intention, scope, and legal obligations. In the next chapter, we will delve into the essential elements of arbitration agreements, their enforceability, and their relevance in both domestic and international arbitration frameworks.

CHAPTER 2

Overview Of The Concept Of Arbitration Agreement

2.1 What is an Arbitration Agreement

The arbitration agreement represents the starting point and the cornerstone of the entire arbitration system; arbitration revolves around the existence and non-existence of the arbitration agreement, and this gives the study of the arbitration agreement special importance.

Article 5/1 of the Palestinian arbitration law defines an arbitration agreement as: "an arbitration agreement is an agreement between two or more parties to refer all or some of the disputes that have arisen or may arise regarding a particular legal relationship, whether contractual or non-contractual, and the arbitration agreement may be in the form of an arbitration clause contained in a separate contract or agreement."

This definition finds its basis in the first paragraph of Article 7 of the UN Model Law on international trade law 1985, which defines an arbitration agreement as: "an agreement between the parties to refer to arbitration all or some disputes that have arisen or may arise between them regarding a specific legal consequence, whether contractual or non-contractual. The arbitration agreement may be in the form of an arbitration clause contained in a contract or in the form of an independent arbitration agreement."

The 1958 New York Convention defined an arbitration agreement as: "a written agreement by which the parties undertake to submit to arbitration all or some disputes arising, or which may arise between them on a subject of contractual or non-contractual legal ties relating to a matter that may be settled by arbitration."

From reading the previous texts, it is possible to deduce the key features of the arbitration agreement and present them as follows:

2.1.1 Arbitration Agreement Is A Contract

As long as the arbitration agreement is a contract, it is concluded positively and accepted by its parties; this is achieved by agreeing on their will to resolve the dispute by arbitration, and the will of the parties is free from defects of consent. The validity of the arbitration agreement also requires that the parties have the capacity to perform at the time of their conclusion, and that this agreement has a legitimate place and reason. The arbitration agreement also provides similar effects to other contracts, especially the principle of binding force on contracts and the principle of proportionality of the effect of contracts. These conditions and effects are only an application of the general rules in contract theory¹²⁷.

However, the procedural nature of the arbitration agreement, which provides the arbitral tribunal with the authority to adjudicate the dispute, makes it subject to some special conditions that differ from other contracts, including that the arbitration agreement must be in writing and the issue to be resolved can be settled by arbitration, and that the parties have the freedom to dispose of the disputed rights and agreed to refer them to arbitration.

It also arranges some special effects different from the rest of the contracts; in particular, preventing the national jurisdiction of the state from considering the dispute agreed to be resolved by arbitration and giving the arbitral tribunal the authority to adjudicate it, recognizing the arbitral tribunal the authority to decide on the issue of its jurisdiction, as well as recognizing the independence of the arbitration agreement from the original contract containing the arbitration clause or associated with the arbitration agreement in the event of nullity, termination or expiration of the original contract¹²⁸.

¹²⁷ Hamzeh Esfandiari, B. (2016). Validity and effects of the arbitration agreement in domestic and international law of Iran and arbitration rules of the international chamber of commerce. *Journal of Politics and Law*, 9(2), 146–146. <https://doi.org/10.5539/jpl.v9n2p146>. P.12.

¹²⁸ Al-Muhammad, E. D. (2019). *Ṭabī‘at wa-anmā‘ al-taḥkīm ma‘a al-tarkīz ‘alā al-taḥkīm ‘abra al-intirnit* [The nature and patterns of arbitration with a focus on online arbitration]. *Al-Firdawsīy Library Collection*. <https://archive.org/details/4507.pdf5473>. P.9.

2.1.2 Arbitration Agreement Aims To Resolve The Dispute

The arbitration agreement is considered a procedural agreement because it aims to resolve the dispute by arbitration without resorting to the jurisdiction of the national state by a decision binding on the parties that have all the qualities of a judicial judgment. In this respect, it differs from other contracts in that it focuses on substantive issues involved in determining the rights and legal positions of the parties. The arbitration agreement deals with these rights only indirectly; when a dispute arises regarding these rights, it is the role of the arbitration agreement to be resolved by arbitration¹²⁹.

Based on this, arbitration presupposes the existence of two Associations: an objective Association in dispute between the parties to be resolved by arbitration, and a procedural Association that gives the arbitral tribunal the authority to adjudicate this dispute. An arbitration agreement is never abstract, but is always linked to a certain legal relationship, and therefore it rotates existentially and non-existentially with the existence of this objective Association. If there is no substantive dispute at all or there is a dispute, but it has been resolved, there is no point in an arbitration agreement, if such an agreement exists, it will be invalid due to the absence of its subject matter¹³⁰.

To clarify the issue, if the parties agree to refer to disputes arising between them over the interpretation or performance of a particular contract to arbitration, the arbitration agreement gives the arbitral tribunal the authority to resolve this dispute. If this contract is terminated by the agreement of the parties or through the judiciary or is terminated by force of law or is invalid, the arbitration agreement becomes without subject matter and there is no point in resorting to arbitration because there is no dispute to be resolved by arbitration.¹³¹

The broad meaning of the dispute is taken for arbitration purposes; this is not limited to contractual disputes, but includes all disputes and financial claims, regardless of their legal basis or type of legal relationship, whether contractual or non-contractual. Such

¹²⁹ Al-Douri, K. A. R. (2018). P.40.

¹³⁰ Hathout, T. (2020). Electronic arbitration law in Algeria [Doctoral dissertation, Universiti Utara Malaysia]. Ghazali Shafie Graduate School of Government, College of Law, Government and International Studies (COLGIS). P.66.

¹³¹ Najjar, N. (2018). *Arbitration and international trade in the Arab countries* (Vol. 13). Brill. <https://doi.org/10.1163/9789004357488>

as a claim for compensation for a harmful act or for a beneficial act, or the law is its direct source, regardless of whether that relationship is civil, commercial, or administrative, as long as it accepts settlement through arbitration¹³².

From the above, it becomes clear to us that the definition of an arbitration agreement contained in the Palestinian arbitration law is flawed and ambiguous in two respects: First, it included the referral of the dispute without mentioning the party to which this dispute is referred, since it was supposed to indicate that the referral of the dispute is for arbitration, however, the term arbitration agreement makes this easy to understand. Secondly, if it is not clarified that the referral of the dispute to arbitration is for the purpose of resolving the dispute. For comparison, for example, Article 1/10 of the Egyptian Arbitration Law No. 27 of 1994 bypassed these two criticisms, when it defined the arbitration agreement as: "the agreement of the parties to resort to arbitration to resolve all or some of the disputes that have arisen or may arise between them on the occasion of a certain legal relationship, whether contractual or non-contractual."¹³³

Accordingly, we believe that the text of Article 5/1 of the Palestinian arbitration law should be amended to eliminate this deficiency, and in this regard, the definition of the arbitration agreement set out in Article 7/1 of the 1985 model law can be taken, or benefit from the definition contained in the Egyptian law.

2.1.3 Arbitration Agreement May Come Earlier Or Later On The Occurrence Of The Dispute

Most laws distinguish, either explicitly or implicitly, between two forms of an arbitration agreement: an arbitration clause and arbitration submission agreement¹³⁴. Article 5 of the Palestinian arbitration law has implicitly distinguished between these two forms: the arbitration agreement either comes in the form of an arbitration clause

¹³² Al-Arabawi, N. S. (2016). Itifāq al-tahkīm [Arbitration agreement]. Al-Majallah Al-Qānūniyah, 15), 361–371. <https://www.asjp.cerist.dz/en/article/12321> . P.15.

¹³³ Al-Sawi, A. A. (2013). Al-wajiz fi al-tahkim [The concise guide to arbitration]. Dar Al-Nahda Al-Arabiya. P.45.

¹³⁴ Some laws explicitly stipulate that an arbitration agreement may take the form of an arbitration clause or an arbitration submission agreement, for example, Article 3 of the Mauritanian Arbitration Law No. 6 of 2000, and Article 7 of the Greek arbitration law of 1999. This has also been stipulated in the regulations of Permanent Arbitration centers and institutions, including the first article of the rules of arbitration procedures at the Commercial Arbitration Center for the cooperation of the Gulf states for the year 1994, which stipulates that: "the arbitration agreement is in writing to resort to arbitration, whether before or after the dispute arises."

contained in the original contract or in a separate agreement, or on the condition of an arbitration submission agreement.

The time criterion is taken in order to adapt the arbitration agreement as an arbitration clause or an arbitration submission agreement; where this is based on the moment when the arbitration agreement was concluded¹³⁵; if the arbitration agreement was concluded before the dispute arose, it is called the arbitration clause even if the parties give it another name. If the arbitration agreement is concluded after the dispute has arisen, it is called the arbitration submission agreement.¹³⁶

The moment when the arbitration agreement is concluded for the time the dispute arises is considered the criterion and the decisive element in the adaptation of the arbitration agreement as an arbitration clause or arbitration submission agreement and not based on the will of the parties. Therefore, for example, an arbitration agreement that comes before the dispute arises and gives jurisdiction to the arbitral tribunal to adjudicate it is not considered an arbitration submission agreement¹³⁷.

If the adaptation of the arbitration agreement in its form is conducted independently of the will of the parties, however, they have absolute freedom to choose and estimate the time at which the arbitration agreement is concluded, before or after the occurrence of the dispute.

The distinction between the arbitration clause and the arbitration submission agreement has some important legal consequences, including: the subject matter of the dispute must be mentioned in the arbitration submission agreement otherwise it is invalid¹³⁸.

Because the subject of the dispute, the features of which at this time have become clear, the subject of the dispute had to be determined so that the arbitral tribunal knows the limits of the dispute that it is required to resolve. While no such determination of

¹³⁵ Al-Arabawi, N. S. (2016). P.16.

¹³⁶ Najjar, 2018, P.36.

¹³⁷ Al-Sawi, A. A. (2013). P46-47.

¹³⁸ The Ramallah Court of Appeal ruled that: "arbitration is an exceptional way to resolve disputes based on the departure from litigation and its guarantees, so it is limited to what the will of the opponents to submit to the arbitral tribunal, so if the subject matter of arbitration is not specified in the arbitration submission agreement, the arbitration is invalid... The arbitration submission agreement, which stipulates that the parties have arbitrated the arbitrators in resolving disputes between them and submitted to the courts, is a general, non-specific provision that renders the arbitration submission agreement invalid." Ramallah Civil Appeal, case No. 21/2003 of 2005, Al-Muktafi.

the subject matter of the dispute is required in the arbitration clause because it concerns a future dispute that may actually occur and may never occur¹³⁹. When concluding an arbitration clause, the parties do not know in advance whether the dispute will actually occur or not, and they cannot know the limits of that dispute unless it actually occurs, and therefore, in this case, the requirement to determine the subject of the dispute is not envisaged¹⁴⁰.

Some criticize the distinction between arbitration clause and the arbitration submission agreement, especially in the framework of international commercial arbitration, on the grounds that arbitration has become the original in resolving this type of dispute, and not the exception¹⁴¹. It would have been better not to distinguish between them and to give them one provision in terms of the approval of the arbitration submission agreement, if it did not include a determination of the subject matter of the dispute, as there is no practical justification for saying that the arbitration agreement is invalid because its subject matter is not specified, while this is absolutely permissible in the arbitration clause¹⁴².

2.1.4 Direction Of The Parties ' Intention To Resolve The Dispute By Arbitration

The arbitration agreement must clearly express the direction of the will of the parties and their intention not to resolve the dispute by arbitration¹⁴³. However, if this is unclear, it is not considered an arbitration agreement. However, it is not necessary to express such a will to resort to arbitration that the term arbitration is used to confirm the existence of an arbitration agreement, such as the use of a term such as (arbitration, arbitrators, arbitral tribunal). However, any other word or phrase may be used, provided that it clearly indicates the intention of the parties to resolve the dispute by arbitration. On this basis, the Qatar Court of Appeal considered that if the arbitration agreement provides for the appointment of an expert to prove the rights of the parties, and his

¹³⁹ Najjar, 2018,P.38.

¹⁴⁰ The Egyptian court of Cassation ruled on this matter that: "if the arbitration agreement came before the dispute occurred, the legislator did not require in this case that the subject matter of the dispute be specified in advance in the arbitration agreement and replaced it with specifying it in advance that it must be stipulated in the statement of claim, which coincides with the statement of the opening of the case. "Egyptian cassation, appeal No. 291 of judicial year 70, session 2001.

¹⁴¹ Al-Haddad, H. A.-S. (1994). P.116.

¹⁴² Ibid. P.117.

¹⁴³ Cairo appeal, appeal 121/29, 2004 session.

decision is binding, and neither of them challenges or objects to this decision, that agreement is considered arbitration¹⁴⁴.

On the other hand, the word, reference, or term arbitration may be mentioned, but it is intended only to conduct work of expertise, conciliation, or mediation, and not arbitration. In all cases, it is necessary to look for the common intention of the contractors and try to identify their true intention and not to identify the terms used, since the lesson in the interpretation of contracts is for purposes and meanings, not for words¹⁴⁵.

2.2 Forms Of Arbitration Agreement

Most laws, jurisprudence and jurisprudence distinguish two forms of an arbitration agreement: an arbitration clause and an arbitration submission agreement. The Palestinian arbitration law and its Implementing Regulations did not explicitly address the forms of the arbitration agreement but included in its definition of the arbitration agreement disputes that have arisen or are arising regarding a legal relationship.

2.2.1 Arbitration Clause

Unlike the Palestinian arbitration law, which did not explicitly define the arbitration clause, some laws have distinguished between them, such as the French Civil Procedure Law, which defined the internal arbitration agreement¹⁴⁶ and distinguished between the arbitration clause and the arbitration submission agreement: article 1442 States: "the agreement on arbitration takes either the form of an arbitration clause or an arbitration submission agreement. An arbitration clause is an agreement under which the parties to a contract or a group of contracts are obliged to submit disputes that may arise from this contract to arbitration. As for the arbitration submission agreement, it is the agreement under which the parties to the dispute that has arisen are obliged to submit it to arbitration."

The predominant and most commonly used form in practical life is that the arbitration agreement is based on a clause or clause included in the original contract or in a separate

¹⁴⁴ Qatar appeal 799/2002, dated 6/5/2002. Al-Muqtafi.

¹⁴⁵ Al-Douri, K. A. R. (2018). P.43.

¹⁴⁶ This law did not distinguish between the arbitration clause and the arbitration submission agreement in international arbitration, as it adopted one name, the arbitration agreement, in Article 1507 of it.

agreement. It is required to refer to all or some disputes that deviate from the original contract to arbitration. The arbitration clause always relates to a future dispute that may occur, and it is not known whether it will happen or not in the future, as the parties agree in advance to resolve the dispute if it actually occurs through arbitration¹⁴⁷.

The arbitration clause does not require the inclusion of special provisions such as the names of arbitrators or the designation of the subject matter of the dispute, but it is sufficient to specify the subject matter of the dispute in general in the original contract¹⁴⁸. It is assumed that all disputes arising from the contract are covered by the arbitration clause, unless the parties express explicitly or implicitly their will to make it on some of these disputes and not others, such as limiting arbitration to the interpretation or performance of the contract or its termination. In this case, the arbitration shall be competent to consider the issues covered by the arbitration clause, and the national jurisdiction shall be competent to consider all other disputes not covered by this clause.¹⁴⁹

The place where the arbitration clause is contained does not affect; it may be in the front, middle or back of the original contract. However, it was customary to include it on the back of the original contract after addressing the substantive rights and obligations of the parties. The arbitration clause contained in the original contract is usually brief without detail, and this is permissible in principle, as the rest of the issues can be agreed later when the dispute occurs between the parties¹⁵⁰.

For this reason, the parties may sometimes prefer to include the arbitration clause in a document independent of the original contract in any document that is materially separate from the contract, and the motivation for choosing this method is mostly to emphasize on the one hand the independence of the arbitration clause from the original contract in the event of nullity, termination or expiration of the latter in order to avoid future disputes between the parties in this matter¹⁵¹.

¹⁴⁷ Al-Najjar, A. A. S. (2018, January). Ittifaq al-tahkim al-iliktruni [The electronic arbitration agreement]. *Al-Majallah al-Masriyyah lil-Dirasat al-Qanuniyyah wal-Iqtisadiyyah* [The Egyptian Journal of Legal and Economic Studies], 10, 566–635. <https://doi.org/10.33812/1834-000-010-012>. P.19.

¹⁴⁸ Federal Supreme Court of Abu Dhabi, Appeal No. 22 of the 22nd Judicial Year, dated 2002.

¹⁴⁹ Najjar, 2018, P.43.

¹⁵⁰ Al-Haddad, H. A.-S. (1994). P.119.

¹⁵¹ Currently, most laws consider the independence of the arbitration agreement from the original contract in the event that the latter is invalid, terminated or expired.

On the other hand, the desire to provide some important details related, for example, to the type of Arbitration, the number of arbitrators, how to choose them, the place of Arbitration, arbitration procedures, the law applicable to the arbitration agreement, the subject matter and arbitration procedures and other related issues in order to avoid any difficulties that may arise in the future¹⁵².

Whether the arbitration clause is contained in the original contract or in an independent agreement, nothing prevents the parties from including whatever conditions and details they want, as long as they do not violate peremptory rules, order and general etiquette, such as determining how to start arbitration proceedings, how to form the arbitral tribunal, determine the place and language of Arbitration, etc., but they can also include a penalty clause to ensure its effectiveness and urge the parties to implement it if the conditions of its work are met.

It is stipulated in the arbitration clause that it must always be written, understandable and legible indicating the truth of what it is intended for, so it cannot be taken if it is not written, illegible or printed in an accurate handwriting that the ordinary human eye cannot read¹⁵³.

The arbitration clause itself is sufficient to refer the dispute to arbitration if it actually occurred without the need to conclude the arbitration submission agreement¹⁵⁴. However, activating the arbitration clause and putting it into effect may require the parties to prepare and sign the so-called Task document, which is a contract concluded between the arbitration parties and the arbitrators before the start of arbitration proceedings in preparation for the start of those proceedings. This document is usually completed with various data, including specifying the subject of the dispute to be resolved by arbitration, the names of the arbitrators, determining their fees, the descriptions and addresses of the parties for the purposes of their correspondence, announcement and notification, the address of the arbitrator or arbitrators, the place of Arbitration, the rules applicable to arbitration proceedings and other issues related to arbitration.

¹⁵² Hathout, T. (2020). P68.

¹⁵³ Dubai Court of Cassation, appeal 2003/87. Dated 2003 issue fourteen.

¹⁵⁴ Court of Cassation in Dubai, Case No. 403/2003, dated 2004.

The task document does not replace the arbitration agreement, does not replace it, and does not fill its gap; since the original is the arbitration agreement and the important document is subordinate to it, the absence of the original, the absence of the subordinate, but if the task document is absent, this does not affect the validity of the arbitration agreement¹⁵⁵. Even if the parties do not sign the assignment document, the arbitration agreement remains valid, productive of its effects, and arbitration procedures can be carried out and the dispute submitted to the arbitration tribunal can be adjudicated, but the assignment document can be dispensed with, as many permanent arbitration centers do not require it, such as the London Court of international arbitration, the American Arbitration Association and the International Commercial Arbitration Center for the Gulf Cooperation Council countries¹⁵⁶.

In practice, it may happen that the same contract includes an arbitration clause and a jurisdiction clause of a particular state¹⁵⁷. This conflict between the two conditions may have come intentionally from the parties or unintentionally, so that it is sometimes difficult or impossible to give jurisdiction at the same time to both the arbitrator and the judge. This requires the appointment of one of them and not the other, so which two conditions should be considered in this case?

It is a matter of jurisprudence who considers it necessary to take the arbitration clause and neglect the jurisdiction clause, because it can be reached to consider the arbitration clause and neglect the jurisdiction clause based first on the fact that the arbitration clause is a special condition and the jurisdiction clause is a general condition and the special restricts the general and precedes it in case of conflict. Secondly, arbitration is the preferred jurisdiction in the system of international contracts capable of providing appropriate solutions to the problems of those contracts¹⁵⁸.

Others from jurisprudence have given a set of practical solutions on this issue, where they believe that if the agreement comes as a choice between arbitration and the National Judiciary, and the choice was given to one of the parties and resorted to arbitration, then his right to resort to the judiciary will be forfeited, and if he chooses to

¹⁵⁵ Salamah, A. A. K. (2004). *Qanun al-tahkim al-tijari al-dawli wa al-dakhili: Tanzir wa tatbiq muqaran* [The law of international and domestic commercial arbitration: Comparative theory and application] (1st ed.). Dar Al-Nahda Al-Arabiya. P.253.

¹⁵⁶ Ibid. P.254- 253.

¹⁵⁷ Ibid. P.275.

¹⁵⁸ Al-Haddad, H. A.-S. (1994). P.52.

resort to the national judiciary, then his right to resort to arbitration will be forfeited. But if the choice is given to all the parties and one of them resorts to the judiciary and the other party does not object, the issue is resolved so that it is considered tacit acceptance of this choice, but if each of them sticks to their position and one of them resorted to the judiciary and the other to arbitration, then it is impossible to implement an arbitration agreement in the sense of its fall because it is impossible to implement it¹⁵⁹.

The foregoing solutions do not address all the assumptions related to the conjunction of the arbitration clause with the jurisdiction clause. Where there are cases in which the arbitration clause and the jurisdiction clause can be applied at the same time, the agreement of the parties may be limited to making the arbitration clause resolve certain disputes such as the interpretation or performance of the contract and other disputes agreed to be resolved by the judiciary in accordance with the jurisdiction clause. The combination of these two conditions together may be intended by the parties to indicate and confirm the issues that they wish to resolve through arbitration. The arbitration clause and the jurisdiction clause may come in a consequential way so that arbitration will be resorted to and if there is an opponent, you will resort to the judiciary. This imposition may seem unpalatable and useless because recourse to the judiciary is possible in all cases, but it may be useful in the field of international contracts by enforcing the jurisdictional clause and giving jurisdiction to the dispute to the courts of a particular state. The arbitration clause and the jurisdiction clause may come as a choice, where one of them can be chosen.

The French judiciary has issued many rulings to resolve the problem of conflict between the arbitration clause and the jurisdiction clause based on the common intention of the parties; this is what the French court of Appeal¹⁶⁰ ruled that it excluded the application of jurisdiction clauses in favor of the application of the arbitration clause.

While the Paris court of Appeal has issued several conflicting decisions on this matter, while we find it in one of its rulings that takes the arbitration clause on the basis that it is the original and excludes the jurisdiction clause on the basis that it is a

¹⁵⁹ Salamah, A. A. K. (2004). P.276.

¹⁶⁰ Paul Smith Ltd. v. H & S International Holding Co. Inc., [1991] 2 Lloyd's L.Rep., 127 referenced at <https://www.trans-lex.org/303000> . P.725.

precaution; meaning that the jurisdiction is convened first for arbitration, the failure or obstruction of its procedures is then referred to the National Judiciary¹⁶¹.

In another judgment, the court ruled that the mere requirement by the parties of national jurisdiction was not sufficient to exclude the possibility of resorting to arbitration. Whereas, in another judgment, it ruled to exclude arbitration when the arbitration agreement is ambiguous due to a conflict between the arbitration clause and the jurisdiction clause¹⁶².

In our opinion, this conflict between the arbitration clause and the jurisdiction clause should be resolved on the basis of the Common will of the parties in each individual case. But if it is not possible to determine the truth of what the contractors intended, or it is difficult to enforce the arbitration clause and the jurisdiction clause together at the same time to deal with the same disputes, then the arbitration clause should prevail over the jurisdiction clause only in the framework of international commercial arbitration; because of its frequent use in practical life and as an almost exclusive way to resolve this type of dispute. In the framework of internal arbitration, the condition of jurisdiction should be taken without the condition of Arbitration; and the two conditions should not be wasted together on the basis that the condition of jurisdiction is the minimum that can be imagined and implemented to resolve disputes.

In all cases, the arbitrator is competent to decide on the application of one of these two conditions but not the other based on the principle of jurisdiction, unless the arbitration clause shows its inapplicability¹⁶³.

2.2.2 Arbitration Submission Agreement

At the conclusion of the contract, the parties may omit including the arbitration clause in the original contract or in a separate agreement and may even find no need to include such a clause before the dispute arises. But if the dispute actually occurs between them, they can, if they wish, resolve it by arbitration by concluding a so-called arbitration submission agreement. Which always comes after the occurrence of the dispute and aims to resolve an existing and specific dispute between the parties, unlike the

¹⁶¹ Ibid. P.726.

¹⁶² Shandi, Y. M. (2014). P45.

¹⁶³ Al-Haddad, H. A.-S. (1994). P.53.

arbitration clause, which comes before the dispute arises and is followed by a probable future dispute that does not materialize¹⁶⁴.

Since the arbitration submission agreement is related to an existing dispute, it is closer in currency terms to the lawsuit list since it is concluded after the dispute has arisen and after the features of this dispute have become clear between the parties. For this reason, most laws require that the subject matter of the dispute be adequately specified in the arbitration submission agreement, otherwise it is invalid¹⁶⁵.

This is obvious because the dispute became known and its features became clear, so it had to be determined in order for the arbitral tribunal to know the boundaries of the dispute to be decided¹⁶⁶. The Palestinian arbitration law has adopted the condition that the subject matter of the dispute must be specified in the arbitration party in Article 5/4, which states that: "If the arbitration is agreed after the dispute arises, the agreement must include the subject matter of the dispute, otherwise it is invalid."

The Palestinian law did not specify either how or when the subject matter of the dispute is determined, but it seems from the previous text that the subject matter of the dispute must be determined in the arbitration submission agreement itself, and this is unlike some laws that indicated that if the subject matter of the dispute is not specified in the arbitration submission agreement, it can be determined during the argument before the arbitral tribunal and in the statement of claim¹⁶⁷.

The purpose of determining the subject of the dispute is to determine the nature of the dispute reasonably and clearly enough to remove the outrageous ignorance about it and tone without the need to mention all the details. It is sufficient for the arbitral tribunal to be able to know the limits of the dispute it is required to adjudicate, and the national judiciary is allowed to exercise its supervisory role over the arbitration decision on the

¹⁶⁴ Boulahia, S. (2010). Istiqbaliat itifaq altahkim ka'uslub litaswiyyat almunaza'at altijariat alduwalia [The autonomy of the arbitration agreement as a method for settling international commercial disputes] (Master's thesis). University of Algiers 1 - Benyoucef Benkhedda, Faculty of Law. P.33.

¹⁶⁵ Ibid.P.34.

¹⁶⁶ The Egyptian court of Cassation ruled that: "the subject matter of the dispute must be determined by the arbitration document in order for the jurisdiction of the arbitral tribunal to be determined . However, this determination can be made during the proceedings or by the arbitral tribunal." Egyptian cassation, appeal No. 3173 of the 61st Judicial Year, session 1997.

¹⁶⁷ Article 10/2 of the Egyptian arbitration law of 1994 has been adopted. However, the subject matter of the dispute cannot be deduced from excuses or notices directed to other than the purposes of the arbitration, nor from the list of claims submitted before the arbitral tribunal, which does not refer merely to the subject matter of the dispute.

occasion of challenging it as invalid or on the occasion of recognizing and implementing it¹⁶⁸.

There are those who believe that the requirement of the law to specify the subject of the dispute in the arbitration party should be interpreted broadly in favor of arbitration so that the assignment to arbitration includes any reference to the dispute in the agreement, even if it is general, especially if the assignment covers all contract disputes¹⁶⁹. However, this trend does not correspond to the Palestinian reality, as the Ramallah Court of Appeal ruled in its ruling issued in 2005 that as long as arbitration is an exceptional way to resolve disputes, it is limited to what the will of the opponents to submit to the arbitration tribunal. If the subject matter of the arbitration is not indicated in the arbitration submission agreement, the arbitration is invalid. The arbitration clause, which stipulates that the parties have authorized the arbitrators to resolve disputes between them and filed before the courts, is a general provision without limitation that renders the arbitration clause invalid¹⁷⁰.

The Palestinian law also did not clarify whether the invalidity resulting from the failure to specify the subject of the dispute is absolute or relative invalidity. In this regard, the Paris court of Appeal ruled that this invalidity is relative invalidity so that the arbitration submission agreement remains valid as long as the determination of the subject matter of the dispute was not opposed by one of the parties during the arbitration proceedings¹⁷¹. It is originally up to the arbitrator to assess the grounds for invalidity unless the condition is not applicable.

The parties can, according to the principle of free will, include whatever conditions they want in the arbitration submission agreement, as long as they do not violate the rules and general etiquette, such as agreeing on the duration of the arbitration, the appointment of arbitrators, the place and language of Arbitration and other matters. There is nothing to prevent the parties from adding a penalty clause to ensure that the arbitration clause is not violated, and this is consistent with what was mentioned earlier when studying the arbitration clause.

¹⁶⁸ Al-Haddad, H. A.-S. (1994). P.55.

¹⁶⁹ Paul Smith Ltd. v. H & S International Holding Co. Inc., [1991] P.731.

¹⁷⁰ Ramallah Court of Appeal, case No. 21/2003 dated 2005, Al-Muktafi.

¹⁷¹ Paris court of Appeal, case 15808/230 of 1969.

The arbitration submission agreement always comes in a document independent of the original contract because it is concluded after the dispute arises and not at the conclusion of the contract that resulted in the dispute. According to some, the signing of the assignment document is not considered sufficient to state the existence of the arbitration clause¹⁷².

However, the French judiciary disagrees, as the Paris court of Appeal ruled that: "In the absence of an arbitration clause, the signature of the parties on the mission document... Their recourse to arbitration is tantamount to an arbitration party."¹⁷³ However, if the parties do not sign the important document, it is not considered an arbitration submission agreement, because the arbitrators do not derive their authority from their own will, but from the will of the parties, which requires the signature of the parties.

There is no justification for concluding an arbitration submission agreement unless the original contract is free from the arbitration clause. However, there is nothing to prevent the parties from concluding an arbitration submission agreement in order to determine the arbitrator's task and conduct the arbitration. The conclusion of the arbitration submission agreement in this case achieves an important practical benefit; namely, the party prevents one of the arbitration parties from upholding the invalidity of the arbitration clause in order to remove jurisdiction from the arbitral tribunal and grant it to the National Authority. The parties also have the right to amend the arbitration clause under new conditions after the dispute has arisen¹⁷⁴.

It should be noted that there is a special case that takes the ruling of the arbitration submission agreement, which is the case in which the parties agree to refer the dispute to arbitration during the consideration of the case before the National Judiciary. In principle, this situation comes as long as the issue can be resolved by arbitration, and this applies regardless of the degree of the arbitrator, whether it is the first or second instance, or even the court of Cassation¹⁷⁵.

In this case, there is no need for the parties to write an arbitration agreement or sign a special document on this matter, because the agreement of the parties to arbitration is

¹⁷² Salamah, A. A. K. (2004). P.258.

¹⁷³ Shandi, Y. M. (2014).).P47.

¹⁷⁴ Cairo Court of Appeal, case No. 72 of the 117th Judicial Year, session 2012.

¹⁷⁵ Hathout, T. (2020). P70.

fixed in the court record, which is an official document that is challenged only by forgery. In this case, there is also no need for the parties to determine the subject of the dispute since the referral to the case file is sufficient to accurately know the subject of the dispute. As soon as the parties agree to arbitration, the court stops the trial proceedings until the arbitration award is issued¹⁷⁶.

2.3 Terms Of Validity Of The Arbitration Agreement

In order for the arbitration agreement to be concluded correctly to produce its effects, it must meet two types of conditions: formal conditions and objective conditions. The Cairo Court of Appeal expressed these conditions by saying: "The arbitration agreement is the legal basis for arbitration and its constitution determines its scope and extent and the subject matter of the dispute is out of the jurisdiction of the jurisdiction that has the general jurisdiction to adjudicate disputes, from which the arbitrators derive their authority to resolve the dispute, hence it is necessary to verify that this agreement meets its substantive and formal conditions stipulated by law to ensure that it is free of defects that invalidate it ... With regard to the objective conditions, they do not deviate from the general conditions in the theory of the contract related to consent, the place and the reason, it is necessary that the arbitration agreement is based on valid consent and its subject matter is possible and legitimate and all this is based on a reason that does not contradict the general development and etiquette."¹⁷⁷

2.3.1 Formal Conditions (Writing)

Most laws require that the arbitration agreement be in writing, and the Palestinian arbitration law has also applied in this way, where Article 5/2 of it stipulates that: "2 - the arbitration agreement must be in writing. "Article 5/3 of the same law added that:" 3.the arbitration agreement shall be in writing if it is contained in an editor signed by the parties or included in the letters, telegrams or other written means of communication exchanged by them."

Then Article 19 of the executive regulations of this law came to add that: "it is permissible to agree on arbitration in a certain existing dispute, and it is also permissible

¹⁷⁶ Paul Smith Ltd. v. H & S International Holding Co. Inc., [1991]. P.739.

¹⁷⁷ Cairo Court of Appeal, case No. 97 of the 120th judicial session of 2005.

to agree in advance on arbitration in any dispute that may arise as a result of the performance of a certain contract, and the following conditions are taken into account when agreeing: 1. The agreement shall be in writing and shall be in writing in any of the following cases: a. If it is in an editor signed by the parties. P. If it is in the form of letters, telegrams, or other written means of communication. T. If it is in the form of an information message exchanged between the parties via electronic means. 2. The agreement should include the subject of the dispute if arbitration was agreed after the dispute arose."

Despite the requirement of the previous texts to write the arbitration agreement, it did not clarify the legal value of writing, and is it a requirement for convening or proof?

The writing requirement imposed by the Palestinian law and its implementing regulations can be considered as a requirement for proof only and not for the meeting, based on the following two justifications:

- The previous texts are taken from Article 7/2 of the United Nations model law of 1985, which required the writing of the arbitration agreement and made it only for proof and not for convening without explicitly stipulating this, but this is implied by the Model nature of this law, which assumes a move away from emphasis and approximation between different legal systems and an attempt to reconcile them, which requires the introduction of writing for proof and not for convening¹⁷⁸.
- The text of Article 5/2 of the arbitration law, although it is stated in the form of a requirement, did not cause invalidity on non-observance of the writing requirement, and therefore we see that the writing requirement came here to prove and not to convene; based on the rule that there is no invalidity without a text.

This means that if the Palestinian legislator wanted the writing to be for the meeting, he would have explicitly stipulated the invalidity as a penalty for failing the writing requirement, and as long as he did not do so, this indicates

¹⁷⁸ The writing of the arbitration agreement was stipulated by the Amman Arab Convention on Commercial Arbitration of 1987. The Washington Convention of 1965 is in Article 25.1. The Riyadh Arab Convention on judicial cooperation of 1983 is in Article 37. The law of the Cairo Regional Center for international commercial arbitration is in Article 12.

that he wanted the writing to be for proof and not for the convening. This opinion is supported by the fact that article 5/4 of the same law established the penalty for invalidity if the arbitration agreement that comes after the dispute arises does not contain a mention of the subject of the latter¹⁷⁹.

If the Palestinian law wanted to arrange invalidity on the failure of the writing requirement, it would explicitly stipulate this, as it did in the text of Article 5/4. In addition, most laws that require the writing of an arbitration agreement have imposed writing as a requirement for proof, not for convening¹⁸⁰.

There are some who believe that there is no significant effect in practical life to distinguish between the requirement of writing to convene or to prove. Because the result is the same in both cases, as there is rarely an oral arbitration agreement and it is almost non-existent in practical life, especially since arbitration may be proved only in writing¹⁸¹, contrary to the general rules of proof.

Therefore, the writing of the arbitration agreement has become one of the arbitration customs that must be applied without the need for a legislative text¹⁸². The judiciary in some countries proceeds in this way, where the arbitration agreement must be proved exclusively in writing and refuses to prove it by any other means, especially by confession and oath¹⁸³.

To fulfill the writing requirement, the arbitration agreement itself must be written, whether before or after the dispute arises, and this is what the French judiciary defended by saying: "even if the other party does not object, the letter sent by one party to the other to confirm the contract concluded between them by phone includes the arbitration clause, it does not fulfill the writing requirement imposed by law."

In all cases, the purpose of the requirement in writing, whether for the meeting or for proof, is to ensure the will of the parties to resolve the dispute through arbitration and to prevent conflict in this matter, and on the other hand, to allow the arbitral tribunal to verify its competence and to ascertain the issues it is required to resolve by arbitration.

¹⁷⁹ Al-Najjar, A. A. S. (2018, January). P.22

¹⁸⁰ Al-Haddad, H. A.-S. (1994). P.95.

¹⁸¹ Paul Smith Ltd. v. H & S International Holding Co. Inc., [1991] P.755.

¹⁸² Al-Haddad, H. A.-S. (1994). P.96.

¹⁸³ Syrian Court of Cassation No. 46/91 dated 1959.

Finally, allowing the national judiciary to control the arbitration award, provided that it was issued in accordance with a valid arbitration agreement and in an issue where arbitration is permissible, and to verify that the arbitral tribunal has complied with the limits of its task and decided on the issues covered by the arbitration agreement only.

As for the concept of writing, it has been expanded significantly, it includes all types of writing, whether it is contained in the original contract or in an independent agreement, whether it comes by hand or written by the printer machine or by computer, whether it is official or customary publications or even unsigned papers if the principle of proof is achieved in writing .

Therefore, writing in this regard includes all types of correspondence, transcripts, ordinary written documents, electronic, fax and e-mail. On the other hand, all audio means, such as telephone, video, camera, audio and video, such as video films or internet interviews, are not considered as writing for the purposes of arbitration; they are not considered a writing requirement, even if they are recorded or their content can be retrieved later in the form of writing. Also, the arbitral tribunal may not issue a bond granting them the authority to adjudicate the dispute, because the arbitral tribunal does not derive its authority on its own, but from the agreement of the parties to arbitration¹⁸⁴.

As for the absence of a date, it does not affect the validity of the arbitration submission agreement, as its date is considered to be the date of acceptance by the last arbitrator of the arbitration task or the date of commencement of arbitration proceedings. If there is an error in the date, it can be corrected based on other papers.

2.3.2 Objective Conditions

The validity of the arbitration agreement requires the availability of objective conditions required by law in contracts in general, namely: eligibility, consent, subject matter, and reason. However, the application of these substantive conditions differs in some aspects from their application in other contracts due to the specificity of the arbitration agreement and its procedural nature, which consists in granting the arbitral tribunal the authority to adjudicate the dispute without the state's jurisdiction, while the rest of the contracts are based mainly on determining the substantive rights and obligations of the parties.

¹⁸⁴ Shandi, Y. M. (2014). P52.

2.3.2.1 Eligibility To Conclude An Arbitration Agreement

Article 2 of the Palestinian arbitration law stipulates that: "subject to the provisions of Article (4) of this law, the provisions of this law shall apply to any arbitration between natural or legal persons who have the legal capacity to dispose of rights, regardless of the nature of the legal relationship around which the dispute revolves, taking into account the international agreements to which Palestine is a party."

Based on this provision, every natural or legal person, whether a person of public or private law, who has the capacity to dispose of his financial rights, whether with the permission of the court or by the text of the law, has the capacity to conclude an arbitration agreement.

The arbitration agreement is considered one of the acts of disposal that are based on the exercise and disposal of rights and not one of the acts of management that are based on the management and preservation of money. It is also an act of disposition that circles between benefit and harm. There are those from jurisprudence who object to the arbitration agreement being considered one of the actions between benefit and harm, so that it follows that if one of the parties to the arbitration agreement is a small one, the agreement is voidable in the interests of this small one¹⁸⁵.

However, the examiner of the arbitration agreement finds that its object and purpose is to resolve a specific dispute related to one of those acts, i.e., acts of administration or acting away from national jurisdiction and resorting to a private person to settle it is agreed upon.

It is not a business of management, as long as it is not about managing a fund of money by investment or otherwise. It is also not an act of disposition because its object or place is not to dispose of a certain amount of money. Therefore, it is of a special nature, and it is difficult to include it under any kind of legal acts as mentioned¹⁸⁶.

Accordingly, it is tried to leave the incompetent out of Arbitration in all financial disputes, whether the conduct is purely beneficial or harmful, pure harm, or both. The

¹⁸⁵ Abu al-Wafa, M. (1954). Optional arbitration agreement. Journal of the Faculty of Law for Legal and Economic Research, Alexandria University. P.220.

¹⁸⁶ Al-Haddad, H. A.-S. (1994). P.102.

need to take into account the full capacity to conclude an arbitration agreement, and therefore the conclusion of an arbitration agreement is completely excluded for the incompetent, whether directly or indirectly through a guardian, unless there is a special provision for that effect¹⁸⁷.

The arbitration agreement has the peculiarity of being a procedural agreement that entitles the arbitral tribunal the authority to resolve the dispute without national jurisdiction and not an objective agreement based on determining the rights and obligations of the parties, but this agreement nevertheless remains the contract of any legal action in terms of its convening and the order of its effects; it inevitably enters into the actions between benefit and harm on the basis that it arranges reciprocal obligations for the parties. These obligations by themselves cannot be adapted as falling within the scope of purely beneficial or purely harmful actions but depend on the outcome of the arbitrator's final decisive decision on the subject matter of the dispute.

The judicial reality in many countries is moving towards the approval of the conclusion of an arbitration agreement from an incompetent person, and his action is suspended or revocable, considering that the conclusion of this agreement is one of the actions between benefit and harm that can be authorized by an incompetent guardian or his own leave after reaching the legal age¹⁸⁸.

As long as the arbitration agreement is an act of conduct, it requires for its conclusion that the person is eligible for legal actions, i.e., has the capacity to perform, which requires reaching the age of majority, and the person does not have a symptom of capacity and is not restricted to it the duty capacity, which proves to the person once she is born alive, is not sufficient, without the capacity for litigation. Accordingly, a person who has reached the legal age and has the capacity to dispose of his financial rights in the original or with the permission of the court or by the text of the law is eligible to conclude an arbitration agreement, but if his capacity is absent, the arbitration agreement is invalid, and if it is incomplete, the agreement is suspended or accepted for invalidation according to the legal system followed.

With regard to determining the eligibility of people, the personal law is applied so that either the law of nationality or the law of the domicile is applied according to the

¹⁸⁷ Salamah, A. A. K. (2004). P.273.

¹⁸⁸ Hamzeh Esfandiari, B. (2016). P.27.

legal system followed. Arab countries generally adopt the Nationality Law in the matter of eligibility. Some believe that it is possible to apply the rules for the exclusion of foreign law applicable in good faith on eligibility¹⁸⁹.

2.3.2.2 Mutual Consent In Concluding An Arbitration Agreement

The arbitration agreement is a binding contract for both sides and is concluded with the affirmative consent and acceptance of the parties to take arbitration as a means of resolving disputes without resorting to national jurisdiction. The will of the parties must be clear in expressing their desire to resolve the dispute through arbitration and that this will be free from defects such as coercion and error, otherwise it cannot be invalidated on the basis of the theory of defects of consent in contracts.

But the possibility of invalidation is eliminated if the party whose consent was defective attends and does not express any objection. As for the disadvantage of the inequality of the opposite obligations of the parties, it is an objective obligation, therefore it cannot be applied to the arbitration agreement as a procedural one aimed only at empowering the arbitral tribunal to resolve the dispute without national jurisdiction¹⁹⁰.

If it comes in the form of an arbitration clause contained in the contract, then it is enough to approve the entire contract containing the arbitration clause without the need for a special reference or signature next to this clause. However, if the arbitration clause is contained in a separate document from the original contract, it requires the parties to sign it for its validity.

As a general principle, the arbitral tribunal has the authority to verify the existence of mutual consent between the parties to the arbitration agreement. As stated in one of the decisions of the Cairo Regional Center for International Commercial Arbitration: "it is the authority of the arbitral tribunal to adapt the claims of the opponents the correct legal adaptation in accordance with the requests of the opponents and their intended without taking into account the words in which these requests were formulated."¹⁹¹

¹⁸⁹ Salamah, A. A. K. (2004). P.374.

¹⁹⁰ Abu al-Wafa, M. (1954). P.222

¹⁹¹ Arbitration award No. 234 of 2001, Cairo Regional Center for International Commercial Arbitration.

2.3.2.3 The Reason For The Arbitration Agreement

An arbitration agreement, like any contract, must have an existing and legitimate reason. The reason for the arbitration agreement is the direction of the will of the parties to resolve the dispute through arbitration without resorting to the national jurisdiction of the state, and the original reason for the arbitration agreement is legitimate, because the legality of the reason is always assumed in contracts unless proven otherwise. But the reason for the arbitration agreement becoming illegal if the parties' goal of resorting to resolving the dispute by arbitration is to conceal something illegal, cheat, circumvent the law or evade the application of its rules.

In this sense, the Cairo Court of Appeal ruled that: "it is stipulated in the agreement to resort to arbitration that its reason is legitimate, otherwise it is invalid, and the reason is illegal if it involves one of the cases of fraud that transforms the law as if resorting to arbitration with the intention of evading the application of the peremptory provisions of the law¹⁹².

If the dispute is submitted to the judiciary or to evade publicity and the guarantees of declaring liabilities provided by litigation procedures, either the courts or fraud on the due procedures to prove ownership of real estate or dispose of it by collusion with the aim of assaulting the ownership of non-hidden or blackmail or circumventing the procedures for registration of real estate transactions and the prescribed fees. "¹⁹³

The legality of the reason for the arbitration agreement in this sense differs from the legality of the subject matter of the arbitration agreement; the first concerns the search for the intention of the parties to resolve the dispute by arbitration and whether its cause is legitimate or not. The second relates to determining the subject matter of the dispute agreed to be resolved by arbitration and whether it is legitimate or not and thus determining the extent to which the subject matter of the dispute can be resolved by arbitration or not¹⁹⁴.

In all cases, it is sufficient for the validity of the arbitration agreement not only to have a legitimate reason for it; it is also required that the reason for the agreed obligation to resolve the dispute by arbitration be within the scope of the arbitration agreement.

¹⁹² Shandi, Y. M. (2014). P55.

¹⁹³ Cairo Court of Appeal, case No. 91, for the judicial year 199, session 2002.

¹⁹⁴ Al-Haddad, H. A.-S. (1994). P.10.3

But if he is outside of it, there is no way to resolve it by arbitration because of his departure from the arbitration agreement in terms of his reason.

This was expressed by the Jordanian Court of Cassation by saying: "if the reason for the bills of exchange claimed in this lawsuit is the price of goods purchased and handed over to the defendant after inspection and experience, the subject matter of the bills of exchange and the dates of their release and maturity are in no way related to any of the two agreements referred to, and the plaintiff has not provided any evidence proving the relationship of the bills of exchange subject to this lawsuit with the two agreements that included the arbitration clause, then what the court of Appeal concluded by not following the Cassation and insisting on its previous decision is in no way related to the reasons for the discrimination are listed and should be reversed..."¹⁹⁵

2.3.2.4 The Subject Of The Arbitration Agreement

An arbitration agreement, like any contract, must have a subject added to it. The subject of the arbitration agreement is the factual issue in which the dispute arises between the parties, whether the dispute actually occurred or is likely to occur in the future. In the arbitration submission agreement, the dispute must have actually occurred between the parties, and they want to resolve it by arbitration, and this requires specifying the subject of the dispute in reasonable detail, otherwise the arbitration submission agreement was invalid. As for the arbitration clause, it is necessary to specify the issues that are likely to be disputed in the future and the parties wish to resolve them through arbitration. In both cases, this is called the determination of the subject of the arbitration agreement.

The arbitration agreement is never abstract, but is always related to a certain legal relationship, whether contractual or non-contractual, and can be called the original relationship. This relationship defines the substantive rights and obligations of the parties, and the arbitration agreement comes as a procedural agreement aimed at resolving disputes arising from that legal relationship by arbitration without resorting to national jurisdiction¹⁹⁶.

¹⁹⁵ Jordanian court of Cassation, No. 3557/2003, dated 18/3/2004, Al-Muktafi.

¹⁹⁶ Al-Kharraz, I. A. W. (2009). International commercial arbitration within the framework of the conflict approach: A comparative study [Master's thesis, An-Najah National University]. .P91.

Without this original relationship, the arbitration agreement is without subject matter and therefore void, because there is no benefit from the existence of the agreement in the absence of a substantive dispute to be resolved by arbitration. For example, an agreement comes to resolve a dispute related to the performance or interpretation of a particular contract, to compensate for a harmful act, to compensate for the lack of a beneficial act, and so on. However, if there is no contract at all or there is no harmful act to be compensated for, there is no point in having an arbitration agreement in this case.

The same is the case if there is a dispute agreed to be resolved by arbitration but settled in advance; there is no business arbitration agreement in this case because there is no dispute to be resolved, so this agreement becomes without subject matter and therefore invalid¹⁹⁷.

Based on the foregoing, the arbitration agreement always presupposes the existence of a dispute between its parties and is taken in the broad sense of a dispute, as it includes every claim or claim related to the commercial interests of the parties, whether the dispute actually occurred about it or is likely to happen in the future. Even if this claim or claim is not serious or has no legal basis, the dispute may be just an apparent dispute.

However, the dispute is required to be reasonably specific but does not mean that the dispute was known and specified precisely at the time of conclusion of the arbitration agreement. Rather, an arbitral agreement may be agreed on a specific future dispute that may never occur. On the other hand, it is not allowed to agree on arbitration on a current or future dispute arising from an anonymous legal relationship¹⁹⁸.

The dispute also stipulated that the arbitration agreement concluded on it should be subject to settlement by arbitration; in principle, all claims and financial disputes that fall within the framework of private law may be settled by arbitration as long as the parties have the freedom to dispose of the disputed rights.

¹⁹⁷ Abu al-Wafa, M. (1954). P.224.

¹⁹⁸ Salamah, A. A. K. (2004). P.275.

2.3.2.5 Penalty For Non-Availability Of Objective Conditions For The Validity Of The Arbitration Agreement

If the aforementioned conditions imposed by law for the validity of the arbitration agreement are not met, the latter shall be void. However, the parties can conclude an arbitration submission agreement if they wish, and the dispute is subject to settlement by arbitration.

The law applicable to the arbitration agreement is concerned with determining the conditions of its validity, the extent to which the dispute can be arbitrated, determining the penalty resulting from this and whether it is absolute or relative nullity, and determining whether the nullity of the arbitration agreement can be fragmented or not. This law is also concerned with determining the entity that has the authority to raise the claim of invalidity and the time in which its procedures must be carried out and indicating the extent to which a claim of invalidity may be filed or just non-recognition and refusal to implement the arbitration award¹⁹⁹.

As a general rule, the arbitral tribunal is competent to verify the validity of the arbitration agreement, including the question of the arbitrability of the dispute on the basis of the rule of jurisdiction, which means that the arbitral tribunal is competent to verify the issue of its competence in the subject matter of the dispute under the supervision of the National Judiciary. As for the judge, as a general principle, he does not have this authority except in exceptional circumstances, which in France is the case when the arbitration agreement appears to be invalid or unenforceable.

In all cases, the invalidity of the arbitration clause, apart from the issue of the non-arbitrability of the dispute, is mostly a relative invalidity; as the parties cannot uphold it and waive it, such as the presence of the parties and their participation in the arbitration proceedings without making any payment or reservation to the proceedings so that it can be considered a waiver of their right to uphold the invalidity of the arbitration clause²⁰⁰.

If the arbitration clause is invalid, it is considered unwritten, as if it were never included in the original contract. However, the entire contract, and not the arbitration

¹⁹⁹ Moses, Margaret L (2017). P.10.

²⁰⁰ Al-Kharraz, I. A. W. (2009). P.92.

clause alone, is invalidated if the clause is the motivation for the contract, in accordance with the general rules in contracts²⁰¹.

The invalidity of the arbitration clause may lead to the invalidity of the entire arbitration award on the grounds of the absence of the legal basis of this provision. Unless the parties have to conclude an arbitration party after the eruption of the dispute, which in this case is considered an implied waiver by the parties to uphold the invalidity of the arbitration clause.

2.4 Effects Of The Arbitration Agreement

The arbitration agreement produces interrelated substantive and procedural effects. The arbitration agreement, when concluded correctly, produces as a contract a binding force for its parties, which is to oblige the parties to resort to arbitration to resolve the dispute agreed to be referred to in arbitration, which represents the positive effect of the binding force of the arbitration agreement. On the other hand, preventing the national judiciary from considering the dispute agreed to be resolved by arbitration represents the negative impact of the binding force of the arbitration agreement. The arbitration agreement produces such binding force as long as it remains in force.

2.4.1 Effects Of The Arbitration Agreement For Contractors

If the arbitration agreement is valid, it produces, like other contracts, binding force on the parties. This force is represented by three interrelated obligations as follows²⁰²:

- The obligation of each party not to revoke the arbitration agreement, amend it or cancel it by its own will; otherwise, this is considered a violation of the binding force of the arbitration agreement. The Jordanian court of Cassation expressed this by saying: "As long as the will of the contractors has been directed that in the event of a dispute between them over the implementation of this agreement or the interpretation of its provisions or any dispute related to it, this dispute is submitted to arbitration .

Since this agreement does not violate the law or public order and is permissible, it is binding on both sides and may not be reversed, amended, or annulled except

²⁰¹ Ibid.93-94.

²⁰² Al-Sawi, A. A. (2013). P.52.

by mutual consent or litigation or under the text of the law in accordance with the provisions of Article 241 of the Civil Code."²⁰³

On the other hand, there is nothing to prevent the parties by mutual agreement from revoking the arbitration agreement as it is a binding contract for both sides. This aspect of the binding force of the arbitration agreement has been referred to in Article five-sixths of the Palestinian arbitration law stating that: "the arbitration agreement may not be revoked except by agreement of the parties or by a decision of the competent court."

- The obligation of each party to refrain from presenting the dispute concluded in connection with the arbitration agreement to the national jurisdiction of the State (negative effect) but referring the dispute to the arbitration court for adjudication (positive effect), in order to comply with the binding nature of the arbitration agreement.

However, if one of the parties violates this and resorts to the national judiciary, he has violated the principle of binding force of the arbitration agreement and the principle of good faith in the execution of contracts, which allows the other party to pay before entering into the basis of the existence of the arbitration agreement and the return of jurisdiction to the arbitral tribunal²⁰⁴.

The binding force of the arbitration agreement is not limited only to the arbitration parties, but also obliges the arbitral tribunal, if it accepts its task, it is obliged to proceed with the arbitration proceedings until a verdict is issued in the dispute and it must comply with the arbitration agreement in terms of subject matter and procedures on the basis that it derives its authority from the arbitration agreement.

- The obligation of each party to take whatever is necessary on its part in order to start proceeding with the arbitration proceedings is an obligation to achieve a result. If one of the parties fails to do what is required by the arbitration agreement or tries to disrupt the arbitration process, the other party may resort

²⁰³ Jordanian court of Cassation, Case No. 1843/2007, dated 30/10/2007, Al-Muktafi.

²⁰⁴ Al-Kharraz, I. A. W. (2009). 94.

to the judiciary to request assistance and order to take the necessary measures to proceed with the arbitration process.

For example, the Palestinian arbitration law clarifies in Article 11²⁰⁵ the cases in which the competent court appoints an arbitrator at the request of the parties or the arbitral tribunal, including if each party has the right to appoint an arbitrator by him and has not done so.

The law applicable to the arbitration agreement is competent to determine the concept of binding force of the arbitration agreement, its scope and the nature of the penalty resulting from its violation²⁰⁶.

However, part of the jurisprudence does not agree with the orientation that subjects the binding force of the arbitration agreement to the law applicable to it, because this allows for a conflict of laws regarding it. It is preferable to consider the principle of binding force of an arbitration agreement as an objective or material basis for International Commercial Arbitration, justifying this on the grounds that the binding force of an arbitration agreement must be recognized regardless of the law applicable to it²⁰⁷.

2.4.2 Effects Of The Arbitration Agreement On Third Parties

The binding force of the arbitration agreement is limited to its parties . Thus, arbitration agreement does not apply to third parties as a general principle based on a relative rule of the effect of contracts and agreements. This was expressed by the Egyptian court of Cassation in its decision of 1971, which stated: "the effects of the arbitration clause shall not be passed on to the third party who was not a party to it and had no connection

²⁰⁵ Article 11 of the Palestinian arbitration law stipulates that: " 1.at the request of one of the parties or the arbitral tribunal, the competent court shall appoint an arbitrator or a weighted arbitrator from among the list of arbitrators approved by the Ministry of justice in the following cases: A - if the arbitration agreement provides for referring the dispute to one arbitrator and the parties have not agreed on the name of that arbitrator. B-if each party has the right to appoint an arbitrator by him and has not done so. C-if the arbitrator does not accept his task in writing within fifteen days from the date of his knowledge of the selection of an arbitrator. D-if the arbitrator or the arbitrator of one of the parties to the multi-arbitration apologizes for conducting the arbitration or has become incompetent or unable to do so and has not appointed the parties or that party as his successor. E - if the arbitrators have to appoint a weighted one and they do not agree. F-if the arbitrator refuses or apologizes for conducting the arbitration, and the arbitration agreement does not include how to appoint a successor to him, and the parties have not agreed on the appointment of that successor. 2-the court shall issue its decision on the appointment within fifteen days from the date of notifying the other party of the copy of the application, and the decision shall be non-appealable."

²⁰⁶ The majority of states take the implementation of the arbitration agreement in kind; if the binding force is violated, the arbitration agreement will be enforced in reparation for the party in breach. While some countries, especially Latin American countries, make the penalty is execution in return.

²⁰⁷ Salamah, A. A. K. (2004). P.445.

with any of its parties, whether these effects are a right or an obligation, since it appears from the impugned judgment that the buyer has agreed with the selling company under the contract of sale concluded between them that any dispute arising from this contract shall be adjudicated by an arbitral tribunal. If the carrier company is not a party to this contract, but its rights and obligations are determined on the basis of the contract concluded between it and the seller company, the arbitration clause contained in the original contract of sale does not extend to the carrier company and it may not invoke it when a dispute arises between the latter company and the buyer, in application of the principle of binding force of contracts."

However, there are some exceptions to the relative impact of contracts, including the following²⁰⁸:

- **Public and Private Successors:** The arbitration agreement applies to the public and private successors. According to the general rule, an arbitration agreement as a contract has the effect, as a general principle, of the contractors and the general successor, the heirs, and testators of a common share in the estate of the deceased, except in the case when the arbitration agreement is concluded with the aim of fraud on their rights.

The arbitration agreement also applies to a legal person who succeeds another legal person in his financial liability, for example, if a company merges with another company or two companies merge, and a new company is established in their place. In application of this, the arbitration ruling issued by the Cairo Regional Center for International Commercial Arbitration dated 2005 stated: "the merged company shall be a general successor to the merged company, and we shall replace it with legal solutions with respect to its rights and obligations within the limits agreed in the merger contract and without prejudice to the rights of creditors and the rights and obligations of the merged company shall be transferred to it. The arbitration agreement, like any other voluntary act, has the effect of passing to its parties and to the general successor, and the latter is considered a party to the arbitration agreement concluded by its predecessor."

The arbitration agreement also applies to the special successor who succeeds the predecessor in a certain financial right. Accordingly, the arbitration

²⁰⁸ Shandi, Y. M. (2014). P72.

agreement goes to the creditors, but the guarantor is not considered a third party in relation to the relationship of the creditor with the original debtor. The arbitration decision of this relationship is directly invoked against the sponsor. An arbitration agreement is also imposed on the joint debtor²⁰⁹.

One of the arbitration decisions issued by the Cairo Institute stated: "the prevailing principle in the field of international trade... The idea of a party to arbitration means not only the person who signed the agreement, but also his public or private successor."²¹⁰

- Third-party interference in the execution of the contract: If a third person interferes in the execution of the contract containing the arbitration clause and is aware of its existence, this clause shall apply in the face of it. This provision is mainly applied to corporate groups so that the effect of the arbitration clause extends to the parties directly involved in the execution of the contract on disputes that may occur due to it.²¹¹

It was stated in one of the decisions of the Egyptian court of Cassation that: "the fact that one of the parties to the arbitration dispute is a company within a group of companies in which a parent company contributes to its capital is not evidence of the latter's commitment to the contracts concluded by the first company containing an arbitration clause, unless it is proved that it interfered in its execution or caused a confusion about the committed in such a way that its will and the will of the other company are mixed, all this with the obligation to verify the availability of the conditions for interference in the arbitration dispute according to its exceptional nature."²¹²

The Cairo Regional Center for international commercial arbitration is also moving in this direction, as stated in one of its decisions: "the arbitration agreement extends to all projects established as a joint project or branch if this branch concludes a contract that includes the arbitration clause. The latter, which is contained in one of the contracts, can bind other companies from the

²⁰⁹ Cole, R. J. V. (2009). Some reflections on international commercial arbitration [Doctoral dissertation, University of South Africa]. Institutional Repository. <http://hdl.handle.net/10500/1111> .P.36.

²¹⁰ Arbitration case No. 109 of 1998, Cairo Regional Center for International Commercial Arbitration, 1999 session.

²¹¹ Najjar, 2018,P.47.

²¹² Egyptian court of Cassation, Case No. 4792 of the 72nd Judicial Year, session 2004.

members of one group, despite not having signed the contract containing the arbitration clause, as long as they have participated in the formation, execution, and termination of the contract."²¹³

- The Partners: If there is an arbitration clause in the company's basic contract, in its bylaws, or in a special agreement on disputes related to the company, between the partners themselves, or between the company and others, this clause applies to the remaining partners, even if they did not sign it, as it applies to future or new shareholders.

The arbitration agreement is valid between the partners as partners in the company and not in their personal capacity, but the Jordanian court of Cassation States: "the effect of the arbitration agreement is limited to the parties themselves in their capacity as described in the arbitration agreement. If one of the parties is a recommended partner in a company and it is agreed to resolve disputes related to the company and settle them by arbitration, this agreement does not apply to the partner in his personal capacity, but as a joint partner in the company."²¹⁴

2.4.3 Effects Of The Arbitration Agreement On The Subject

Arbitration is a special judicial system based on an arbitration agreement and the task of the arbitrator is determined by the requests that the parties have agreed to refer to the arbitrator, and this applies to arbitration by law and arbitration by conciliation. In all cases, the arbitrator shall abide by the limits of his task and the limits of the requests and issues that the parties have agreed to submit to the arbitrator only, and the arbitrator cannot amend his task strictly specified in the arbitration agreement.²¹⁵

In this regard, the Egyptian court of Cassation ruled that: "if the parties have specified in the arbitration party the subject of the dispute between them regarding a contracting contract and provided for arbitration of the arbitrator to resolve the dispute and specified his order to inspect the works carried out by the contractor to determine the extent of conformity to specifications and technical assets or not and to estimate the value of the works. If the arbitrator issues a ruling in the dispute and specifies in the operative part

²¹³ Arbitration decision No. 109 of 1998, Cairo regional Arbitration Center, session dated 11/3/1999.

²¹⁴ Jordanian court of Cassation, Case No. 1249, dated 29/10/2007.

²¹⁵ Najjar, 2018, P.50.

what the contractor is entitled to for the works that he has performed all up to the date of the ruling for a certain amount, he will not have deviated from the limits of the agreement or ruled other than what the parties requested."²¹⁶

However, after accepting his task, which he derives from the arbitration agreement, the arbitrator can accept additional requests submitted by one of the parties, as long as the subject matter of the request falls within the scope of the arbitration agreement. And that this additional medicine is sufficiently related to the original applications submitted to the arbitral tribunal. The French court of Cassation stated in this: "when the arbitrator derives his task from the arbitration clause, he may request one of the parties to submit additional documents as long as they fall within the scope of the arbitration clause and this request is sufficiently linked to the original requests of the parties subject to the arbitration agreement. "²¹⁷

In addition, the additional request must be a topical request related to the dispute before the arbitral tribunal; in this, the Egyptian court of Cassation stated that: "an incidental request that is accepted by the plaintiff without the permission of the court is a request that deals with compliance, increase or addition of the dispute from an objective point of view with the reason remaining the same or change the reason with the subject matter."²¹⁸

For example, if there is a change in the subject matter of the contract subject to arbitration by increase or decrease, as if the supervising engineer in the construction contract issued an order to make changes in construction by increase or decrease, then this change is considered part of the original contract and therefore the arbitration agreement applies to it.

In all cases, an additional request must be submitted by one of the parties to the arbitration agreement, which is imposed by the contractual nature of the arbitration, and this request must be submitted within the period specified by the arbitration panel and before the closing of the case²¹⁹.

On the other hand, an arbitrator whose task derives from an arbitration agreement cannot accept additional requests from one of the parties as long as the subject matter

²¹⁶ Egyptian court of Cassation, Case No. 586 for the 30th Judicial Year, in the 1961 session.

²¹⁷ The French court of Cassation, Case No. 10136 in judicial year No. 133, in a session dated 8/4/1999.

²¹⁸ Egyptian court of Cassation, Case No. 235 of the 72nd Judicial Year dated 22/5/2006.

²¹⁹ Cole, R. J. V. (2009). P.39.

of such request does not fall within the scope of the arbitration agreement. For example, a company's tort claim cannot be considered as an additional claim that has the same subject matter as the original contract-based dispute but has a different subject matter. The tort in this case needs a new arbitration agreement between the parties so that it can be resolved through arbitration.

In all cases, if the arbitrator finds that the subject matter of the additional request does not fall within the scope of his task, but its resolution is necessary to resolve the dispute before him, he must suspend the proceedings pending the issuance of a final judgment by the competent court on this request. As for the judge, in this case he may not terminate the arbitration proceedings or intervene in the arbitration case²²⁰.

²²⁰ Shandi, Y. M. (2014). P82.

CHAPTER 3

Arbitration Frameworks on a Global Scale

3.1 International Treatments For Arbitration

Arbitration has become a crucial mechanism for resolving international trade disputes, which has led to the creation of various international frameworks. Over time, various entities, governmental and non-governmental, played a role in the development of arbitration laws and agreements to create a more structured dispute settlement process. These frameworks aim to harmonize arbitration laws across jurisdictions, enhance the enforceability of arbitral awards, and provide companies with reliable mechanisms for efficient dispute resolution.

Some international entities have taken substantial measures to accelerate the issuance of domestic legislation and address challenges in the field of commercial arbitration ²²¹. These entities include intergovernmental organizations, such as the United Nations Commission on international trade law (UNCITRAL) and the European Union (EU), as well as multilateral treaties such as the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards, the 1961 European Convention on international commercial arbitration, and the 1983 Riyadh convention. These frameworks provide structured mechanisms for Dispute Resolution and enforcement of arbitral awards across different jurisdictions.

In conjunction with the European Union and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, numerous non-governmental entities and international centers are engaged in addressing issues related to commercial arbitration. Subsequent mention will be made of select organizations within this category.

The history of international arbitration goes back centuries, but its modern form has developed significantly in the last few decades. Arbitration mechanisms were initially local, but with the expansion of international trade, a need arose for coordinated frameworks for managing cross-border disputes.

²²¹ These governmental entities may encompass a global or regional scope, comprising a coalition of nations united by shared interests.

The timeline of major developments in international arbitration frameworks is as follows:

- 1923- Geneva Protocol on arbitration clauses (introduction to modern arbitration agreements).
- 1927- Geneva Convention on the enforcement of foreign arbitral awards.
- 1958- adoption of the New York Convention, a turning point for world arbitration.
- 1961- European Convention on international commercial arbitration, aimed at harmonizing arbitration within Europe.
- 1966- UNCITRAL is established to promote the Coordination of international trade.
- 1983- Riyadh agreement, focusing on Arab judicial cooperation in arbitration.
- 1994- establishment of regional arbitration centers such as the Dubai International Arbitration Center.
- 2006- the UNCITRAL Model Law was revised, modern arbitration practices were introduced.
- 2010- present-digital arbitration and online dispute resolution are gaining momentum.

These milestones highlight the steady progress of Arbitration frameworks from local efforts to a more globalized and harmonized system.

Many institutions play a key role in shaping the international arbitration landscape. The main ones are the following:

- UNCITRAL: develops model laws and guidelines for National Arbitration legislation.

- International Chamber of Commerce (ICC): manages arbitration under ICC arbitration rules.
- London Court of international arbitration (London Court of international arbitration): provides an independent arbitration framework with a focus on commercial disputes.
- The International Center for settlement of investment disputes focuses on investment disputes between states and foreign investors.
- Permanent Court of Arbitration: resolution of disputes between states, international organizations, and private parties.

These institutions serve as platforms for resolving international commercial disputes, ensuring consistency in arbitration rulings, and facilitating enforceability.

3.1.1 The UNCITRAL Model

UNCITRAL functions as a subordinate entity under the auspices of the United Nations General Assembly. Established by the General Assembly through Resolution 2205 (D21) on December 17, 1966, the United Nations Commission on International Trade Law (UNCITRAL) has been operative since its inception.

Upon the inception of the Commission, the General Assembly acknowledged the existence of disparities within national legislative frameworks pertaining to international trade, identifying them as impediments to the smooth flow of commerce. The Commission was conceived as the instrumental means through which the United Nations could assume a more initiative-taking role in mitigating or eliminating these hindrances²²².

In December 1966, the United Nations General Assembly convened a session wherein it sanctioned a resolution for the establishment of the United Nations Commission on International Trade Law (UNCITRAL). At its inception, the Committee was constituted by 29 Member States, encompassing seven African States, notably Egypt; five Asian

²²² Stipanowich, T. J. (2010). Arbitration: The "new litigation." *University of Illinois Law Review*, 2010(1), 1–60. P.7.

States; four Eastern European States; five Latin American States; eight Western European States; and additional States, among them the United States of America.

In accordance with Resolution No. 3108, promulgated during the 28th session in 1973, the United Nations General Assembly made the determination to augment the quantity of its constituent member states to 36, apportioned as follows: 9 members emanating from African nations, constituting 25% of the total representation; 7 members from Asian nations, representing 4.19%; 5 members from Eastern European nations, comprising 9.13%; 6 members from Latin American nations, amounting to 6.16%; and 9 members from Western European and other countries, collectively representing 25%²²³.

The Commission consists of sixty-member States, appointed through General Assembly elections. The composition of the membership is designed to reflect the diverse geographic regions of the world and encompass various principal economic and legal systems. Commissioners are elected for six-year terms, with half of the members' terms concluding every three years²²⁴.

It has been proposed that the Committee's mandate ought to encompass the formulation and advancement of novel international treaties or conventions, the development of model legislation, the establishment of harmonized legal frameworks, and the codification and dissemination of international terms, conditions, and trade practices²²⁵.

The United Nations Commission on International Trade Law (UNCITRAL), as indicated by its nomenclature, endeavors to facilitate the harmonization and gradual unification of legal principles pertinent to international trade. It is noteworthy that the foundational resolution of UNCITRAL delineates pivotal measures required to realize this objective. Such measures encompass the following²²⁶:

- To incentivize nations to ratify extant international conventions and embrace standardized or harmonized legislative frameworks pertaining to the domain of

²²³ More information is available on this website: <http://www.worldlii.org/int/other/UNGA/1973/>

²²⁴ Ibid P.22.

²²⁵ Boudchich, M. A. (2015, October). Al-tahkim al-tijari wa al-'awlama al-iqtisadiyya [Commercial arbitration and economic globalization]. Al-Manbar Al-Qanuni, 9, 49–94. <https://platform.almanhal.com/Article/815618.P9>.

²²⁶ Alijah, U.-D. (2008). P.22-23.

international trade represents a crucial approach within the context of the unification of international trade law.

- To formulate projects for international conventions and develop novel or standardized legal frameworks, as well as to compile and disseminate trade-related terminology, norms, and customs within the realm of international trade, through collaborative efforts with extant organizations and entities.
- To gather data pertaining to domestic trade statutes with the aim of discerning contemporary patterns within the domain of international trade jurisprudence.
- To enhance the affiliations with United Nations entities and their specialized agencies pertaining to global commerce, specifically the Conference on Trade and Development.
- To implement actions deemed essential by the Commission for the facilitation of its operational endeavors.

It is noteworthy to highlight that the Commission is engaged in endeavors primarily focused on the gradual harmonization and unification of legal regulations pertinent to international trade. In the execution of its functions, consideration should be given to the interests of all nations, encompassing the concerns and endorsement of developing countries, with the overarching goal of fostering substantial advancements in the realm of international trade²²⁷.

The impact of UNCITRAL goes beyond the creation of model laws. It actively shapes international trade policies by promoting legal uniformity and ensuring the effectiveness of Arbitration frameworks across jurisdictions. The organization works closely with international bodies such as the World Trade Organization and the International Chamber of Commerce to promote legal predictability in business transactions.

Since the introduction of the UNCITRAL Model Law on International Commercial Arbitration in 1985, it has been widely adopted in more than 85 countries across

²²⁷ Salamah, A. A. K. (2004). P. 127.

different legal traditions. Countries such as Canada, Singapore, Australia, and Germany have been used as the basis for domestic arbitration laws, ensuring greater harmonization in arbitration proceedings worldwide.

For example, in Singapore, the International Arbitration Act (IAA) incorporates the UNCITRAL Model law, making Singapore one of the largest arbitration centers in the world. In India, the arbitration and Conciliation Act of 1996 is largely based on the Model Law, and reforms in 2015 and 2019 have further aligned it with international standards.

The countries of the East demonstrate a heterogeneous approach to the adoption of the UNCITRAL Model Law. Some countries, such as Bahrain, Egypt, and the United Arab Emirates (UAE), have enacted arbitration laws closely aligned with the Model Law. For example, the Federal Arbitration Law of the United Arab Emirates (2018) reflects the main provisions of the model law, providing a modern framework that enhances the attractiveness of the country as an arbitration center. Similarly, the Egyptian Arbitration Law No. 27 of 1994, based on the model law, established Cairo as the leading Arbitration Center in the region. Other jurisdictions, such as Saudi Arabia and Qatar, have incorporated essential elements of the model law while retaining certain features influenced by Sharia principles.

Conversely, some Middle Eastern countries have been slower to adopt comprehensive arbitration reforms due to legislative gridlock, concerns about sovereignty, and resistance to international legal harmonization. Countries with outdated arbitration laws often face criticism regarding judicial interference, procedural shortcomings, and limited independence of the parties, discouraging foreign investment and international business transactions²²⁸.

The political, legal, and economic challenges in Palestine present obstacles and opportunities for legal reform. The ongoing conflict, coupled with limited sovereignty, has hindered the Palestinian Authority (PA) from fully implementing a robust legal framework that ensures transparency, accountability, and access to justice. As a result, Palestine faced difficulties in achieving stability, attracting foreign investment, and gaining credibility in the international arena.

²²⁸ Boudchich, M. A. (2015, October). P.10.

The introduction of a unilateral law could help address some of these challenges by establishing a transparent legal framework that enforces openness in government dealings, including decision-making, procurement, public spending, and policy formulation. Such a law would emphasize the importance of preventing corruption, ensuring fair access to public services, and promoting an effective and accountable government.

UNCITRAL is currently working on digital arbitrations and dispute resolution with the help of artificial intelligence. As technology is transforming global trade, UNCITRAL has recognized the need to modernize arbitration processes to improve efficiency, reduce costs and enhance accessibility.

In response, UNCITRAL is actively exploring digital arbitration mechanisms and the integration of artificial intelligence (AI) in dispute resolution. These initiatives aim to simplify arbitration, improve fairness, and reduce human bias, while ensuring that technology is used ethically and transparently²²⁹.

One of the most important UNCITRAL projects is the development of online dispute resolution (ODR) frameworks, which facilitate arbitration and mediation through digital platforms²³⁰. Alternative Dispute Resolution (ADR) allows parties to resolve disputes remotely using technology-based arbitration tools, reducing the need for in-person hearings.

The integration of digital arbitration and AI-assisted dispute resolution represents a major shift in the global arbitration landscape. While there are challenges, UNCITRAL's research and policy-making efforts are aimed at striking a balance between efficiency, equity, and technological innovation. As artificial intelligence and digital processes continue to evolve, they will play an essential role in shaping the next generation of international arbitration frameworks.

²²⁹ UNCITRAL. (2021). UNCITRAL Expedited Arbitration Rules and Notes on Organizing Arbitral Proceedings. United Nations. Retrieved from <https://uncitral.un.org>

²³⁰ Scherer, M., Bassiri, N., & Abdel Wahab, M. S. (Eds.). (2020). International arbitration and the COVID-19 revolution. Kluwer Law International. https://doi.org/10.5555/BOOK_ID_PLACEHOLDER . P.4.

Although UNCITRAL is one of the most widely accepted frameworks, it is not the only arbitration standard. Other legal instruments also constitute international arbitration, such as:

- New York Convention (1958): focuses on enforcement of foreign arbitral awards but does not provide for a model arbitration law.
- International Chamber of Commerce arbitration rules: established by the International Chamber of Commerce (ICC), which provides arbitration rules commonly used in commercial contracts.
- Investment dispute settlement convention (ICSID): primarily for investor-state disputes, supervised by the International Center for settlement of investment disputes.

3.1.2 The 1958 New York Convention

To date, over thirteen Arab nations have ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Among these states are Palestine, Bahrain, Egypt, Syria, Tunisia, Algeria, Morocco, Jordan, Lebanon, Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Oman, and Sudan. This group of fourteen nations constitutes a subset within the broader framework of the Convention, which boasts a total of 161 Member States.

In 1953, the International Chamber of Commerce (ICC) submitted a preliminary convention proposal to the United Nations concerning the enforcement of international arbitration provisions. This draft was perceived as a groundbreaking development in the realm of international arbitration, primarily characterized by its commitment to endowing the process with a distinctly international character, minimizing reliance on the domestic legal frameworks of individual states. Central to this initiative is the emphasis on the autonomy of the will as a guiding principle in the arbitral proceedings²³¹.

The preliminary convention was submitted to the United Nations Economic and Social Commission for deliberation. Subsequently, the study led to the establishment

²³¹ International Council for Commercial Arbitration ICCA guide to interpreting the 1958 New York Convention. https://www.arbitration icca.org/media/3/14410417883860/icca-31aug2015_v2- formatted_ -_quotes.pdf

of a working committee tasked with crafting an alternative proposal in response to the draft convention put forth by the International Chamber of Commerce. This alternative proposal was characterized as a conciliatory synthesis of the 1927 Geneva Convention and the ICC's initiative. The matter was then presented to the member states of the United Nations, prompting a call for an international conference to address the issue. Notably, the international conference convened in New York on May 20, 1958, with the objective of formulating the text of what later became known as the New York Convention, officially ratified on June 10, 1958. This marked a departure from the terminology "international provisions" as originally suggested by the International Chamber of Commerce. It is noteworthy that a substantial number of countries worldwide, including a majority of Arab nations, have become signatories to this convention²³².

Acknowledging the escalating significance of international arbitration as a mechanism for resolving international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) endeavors to establish unified legislative norms governing the acknowledgment of arbitration agreements, as well as court recognition and enforcement procedures for foreign and non-domestic arbitral awards²³³. The term "non-domestic" appears to encompass awards that, despite being rendered within the jurisdiction of enforcement, are deemed "foreign" under its legal framework due to the presence of some foreign element in the proceedings, such as the application of procedural laws from another sovereign state²³⁴.

The primary objective of the Convention is to eliminate discrimination against foreign and non-domestic arbitral awards. It imposes an obligation on the parties involved to guarantee the recognition and enforceability of such awards within their jurisdiction, treating them on par with domestic awards. Additionally, the Convention serves the supplementary purpose of compelling the courts of the parties involved to uphold arbitration agreements fully. This entails courts refraining from granting parties

²³² Al-Ahdab, A. H. (2018, March 20-21). New York Convention and the relationship between the decisions of the judge in the country of origin of the arbitral award and the decisions of the judge in the country of enforcement of the arbitral award [Conference presentation]. The Third International Conference: Arbitration between Qatari Law and International Agreements, Doha, Qatar. p. 3.

²³³ Ibid. P.5.

²³⁴ Dandan, W. (2018). Al-tahkim al-tijari al-dawli fi al-qanun al-jaza'iri [International commercial arbitration in Algerian law] (Master's thesis, Abdelhamid Ibn Badis University - Mostaganem) .P.100.

access to judicial proceedings that contradict their agreement to resolve the dispute through arbitration²³⁵.

Article 7 of the Convention underscores the imperative of advancing the acknowledgment and enforcement of foreign arbitral awards across a broad spectrum of instances. This provision articulates the necessity to eliminate stipulations in domestic legislation governing recognition and enforcement that surpass the standards delineated in the Convention. Failure to do so renders the Convention inefficacious despite a State's accession, thereby permitting the perpetuation of any indigenous legal provisions conferring distinctive rights upon the party seeking enforcement²³⁶.

3.1.3 European Convention on International Commercial Arbitration of 1961

This accord deviates from the model of the New York Convention, which exclusively focused on the matter of recognizing and enforcing arbitration awards. Instead, it comprehensively encompasses all facets arising from arbitration, commencing with the determination of the scope within which arbitration may be implemented or declined.

It further stipulates the autonomy of the involved parties in selecting arbitrators, organizing the arbitration proceedings, and underscores the noteworthy point that participation is not confined solely to European nations, despite the nomenclature, as there exists no provision precluding non-European countries from acceding to it²³⁷.

On the specified date of this agreement in 1955, the committee tasked with advancing European Economic Relations assembled a panel of arbitration experts. The primary objective was to formulate a provisional convention delineating the regulations governing international arbitration mechanisms, with the overarching goal of facilitating the exchange of goods and services between capitalist and socialist nations in Europe.

Subsequent to the completion of the draft, the aforementioned expert panel underwent a transformation, evolving into a conference comprising representatives convened between April 10 and 20, 1961. The culmination of this conference occurred

²³⁵ More information is available on the following website:

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

²³⁶ Boukli, N. A. (1993). *Ittifaq al-tahkim al-tijari al-dawli fi al-qanun al-jaza'iri* [The international commercial arbitration agreement in Algerian law]. *Al-Urdun - Al-Jami'ah Al-Urduniyyah*. P.47.

²³⁷ Bermann, G. A. (2012). The "gateway" problem in international commercial arbitration. *Yale Journal of International Law*, 37(1), 1–45. https://scholarship.law.columbia.edu/faculty_scholarship/3293

on April 21, 1961, with the formal adoption of the European Convention on International Trade Arbitration. This convention officially came into effect on January 7, 1964²³⁸.

While the convention is not exclusive to European countries, its principles and provisions have influenced the legal landscape for international commercial arbitration in Europe. European countries have ratified and implemented the convention to facilitate cross-border trade and investment through a reliable mechanism for resolving disputes²³⁹.

The convention creates a system of reciprocal recognition among contracting states. This means that signatory governments undertake to accept and enforce arbitrate awards rendered in the territory of another contracting party. The convention particularly handles conflicts originating from legal connections, whether contractual or not, that are classified as commercial by the contracting state's national laws. This concentration on commercial issues is consistent with the greater scope of international commercial arbitration²⁴⁰.

While emphasizing the importance of recognizing and enforcing arbitral awards, the convention also provides limited grounds for refusal. These typically include issues related to the validity of the arbitration agreement, due process concerns, and considerations of public policy.

One of the key objectives of the convention is to promote uniformity in the recognition and enforcement of arbitral awards. By establishing common standards among contracting states, the convention facilitates a more predictable and consistent approach to cross-border arbitration.

The European Convention on International Commercial Arbitration complements the New York Convention, which is a globally recognized instrument for the enforcement of foreign arbitral awards. European countries, as parties to both conventions, contribute to a comprehensive and well-established framework for international arbitration²⁴¹.

²³⁸ Boudchich, M. A. (2015, October). P.11.

²³⁹ Boukli, N. A. (1993). P48-49.

²⁴⁰ Stipanowich, T. J. (2010). P10.

²⁴¹ Bermann, G. A. (2012). P.17.

3.1.4 The Riyadh Convention 1983

The Inter-Arab Convention on Judicial Co-operation, commonly referred to as the Riyadh Convention, was formally executed in 1983 within the Kingdom of Saudi Arabia. This treaty, widely employed in the Middle East, serves as a pivotal instrument for the acknowledgment and execution of court judgments as well as arbitral awards among Arab nations²⁴². Article 37 of the Riyadh Convention specifically stipulates that arbitral awards emanating from the initiating States shall be acknowledged and implemented in the receiving States, subject to specified exceptions:

- The verdict or decision is in conflict with the principles of Shari'a, the constitution, public policy, or ethical standards within the jurisdiction where enforcement is being pursued.
- In the becomes procedural irregularities in the case, such as the inadequate notification of the losing party regarding the hearing, thereby impeding its ability to mount a proper defense, significant deficiencies in the procedural protocol become evident.
- If the parties involved were not adequately represented during the hearing in accordance with the statutory provisions of the jurisdiction where enforcement is being pursued; or
- If a dispute has previously undergone adjudication or has resulted in an award involving the identical parties and factual circumstances within the jurisdiction where enforcement is being pursued, or in another jurisdiction where such judgment has been acknowledged, this holds true even when proceedings are currently in progress.

This convention serves to underscore the executory nature of arbitral awards rendered within a contracting State, irrespective of the nationality of the prevailing

²⁴² Article 25 of the Riyadh Convention stipulates that, contingent upon specific provisions, each contracting party is obligated to acknowledge the adjudications rendered by the courts of any other contracting party in civil matters. This encompasses judgments arising from penal courts pertaining to civil rights, as well as judgments in commercial, administrative, and personal statute matters possessing the status of *res judicata*. Furthermore, each contracting party is required to execute these judgments within its territorial jurisdiction in accordance with the procedures delineated in this section.

party. To illustrate, should an arbitral award be granted in Jordan in favor of an individual of Brazilian nationality, its enforceability extends to Iraq²⁴³.

The Riyadh Convention delineates a distinction between matters pertaining to public policy and morality, on one hand, and the precepts of Shari'a law on the other. This distinction likely arises from the perception that the obligatory tenets of Shari'a are generally not construed as integral components of public policy within the majority of Arab States²⁴⁴.

The Riyadh Convention proves to be notably advantageous for Arab States that have refrained from endorsing the New York Convention, such as Iraq and Libya. However, for those nations that have ratified the New York Convention, it represents a regression, as it necessitates securing permission for enforcement within the jurisdiction where the arbitral award originated²⁴⁵.

Hence, the necessity for authorization to enforce judgments originating from the state of origin is imperative, a requirement not applicable in the context of the New York Convention. With the exception of Egypt, which maintains analogous bilateral agreements with the majority of states in the region, all Middle Eastern states are parties to the Riyadh Convention.

3.2 The European Union: A Unified Market on Arbitration

The European Union is widely recognized as a jurisdiction with a favorable nature towards arbitration. Several prominent arbitration centers and institutions of global standing are situated within the continent, and individuals allied with the European Union (EU), including arbitrators and academics, assume influential positions within the global arbitration sector.

The positive orientation towards international commercial arbitration is evident in the extensive efforts undertaken by nearly all EU member states over the past 15 years to revise or introduce new arbitration legislation. These endeavors aim to promote and

²⁴³ Zerrouk, N. (2018). *Muḥāḍarat fi al-taḥkim al-tijari al-dawli* [Lectures in international commercial arbitration] (Lecture Notes). Mohamed Lamine Debaghine Setif 2 University, Faculty of Law. P.56.

²⁴⁴ Al-Shubaiki, T. A. (2003). *The Saudi Arabian arbitration law in the international business community: A Saudi perspective* [Doctoral dissertation, The London School of Economics and Political Science]. LSE Theses Online. <http://etheses.lse.ac.uk/id/eprint/2654>. P.197.

²⁴⁵ Article 34 of the Convention.

streamline the utilization of arbitration as a dispute resolution mechanism for both individuals and enterprises operating within Europe²⁴⁶.

3.2.1 The Evolution of ADR and the TFEU Framework (From Tampere 1999 to Article 81 TFEU)

The production of arbitration within the European Union (EU) represents a phenomenon that is not isolated but rather should be analyzed in the context of the affirmative stance consistently sustained by the European Commission regarding the utilization of Alternative Dispute Resolution (ADR) mechanisms in Europe.

This dedication to improving access to justice for both residents and companies date back to October 1999, when the program was officially launched in Tampere. Following this initial effort, the European Commission released the Green Paper on Alternative Dispute Resolution in Civil and Commercial Law in 2002²⁴⁷.

Moreover, it substantiated the evident citation relating to the Adoption of a Directive on Alternative Dispute Resolution (ADR) – mediation (2006) as articulated in the Communication from the Commission to the Council and the European Parliament – The Hague Program: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice dated 2005²⁴⁸.

The prolonged development concluded in its formal acknowledgment in 2008, specifically articulated in Article 81, paragraph 2 of the Treaty on the Functioning of the European Union (TFEU) concerning civil and commercial affairs with transnational implications. This stipulation overtly mandates the adoption of measures by the European Parliament and the Council²⁴⁹.

The extended process ultimately facilitated the declaration of Directive 2008/52/EC by the European Parliament and the Council on 21 May 2008, addressing specific facets

²⁴⁶ Esplugues Mota, C. (2009). Some current developments in international maritime arbitration. In *The Hamburg lectures on maritime affairs 2007 & 2008* (pp. 119–175). Springer. P.165.

²⁴⁷ European Commission, Green Paper on Alternative Dispute Resolution in Civil and Commercial Law, Brussels, 19.04.2002, COM(2002) 196 final, p. 7, No 5 available at: http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0196en01.pdf

²⁴⁸ COM/2005/0184 final, No. 4.3, Official Journal of the European Union C 236, of 24.9.2005.

²⁴⁹ The article states that: "... particularly when necessary for the proper functioning of the internal market, aimed at ensuring a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases; ... g) the development of alternative methods of dispute settlement; ..."

of mediation in civil and commercial matters. Specially, no legislative framework within the (EU) has been developed thus far concerning arbitration.

3.2.2 Post-Lisbon Competencies and Investment Arbitration (Covering the China agreement and Article 207)

Following the implementation of the Lisbon Treaty on 1 December 2009, the EU acquired exclusive jurisdiction over foreign direct investment, as stipulated in Article 207, paragraph 1, of the treaty on the Functioning of the European Union (TFEU), and has actively exercised this authority.

Building upon these foundations, on 23 May 2013²⁵⁰, the Commission issued a Recommendation for a Council decision, seeking authorization to initiate negotiations on an investment agreement between the EU and China, wherein arbitration is anticipated to play a significant role²⁵¹.

Simultaneously, persistent debates surround the perceived discord between European Union (EU) legislation and two-sided investment treaties established among EU Member States, potentially rendering the latter void. Also, arbitration assumes significance in the resolution of determinations related to unions within the EU. Anyhow the incorporation of arbitration into the routine operations of the European Union, the governance of both domestic and international commercial arbitration remains exclusively within the purview of individual EU Member States. It is binding upon them to formulate, legislate, and enforce regulations in this domain, typically characterized by a pronounced pro-arbitration stance²⁵².

The absence of European Union (EU) legislation in the realm of arbitration is not arbitrary; rather, it is substantiated by the stance of numerous arbitration stakeholders in Europe who assert that arbitration possesses a distinct nature warranting its exclusion

²⁵⁰ At the 15th EU-China Summit in February 2012 agreement was reached to launch negotiations for an EU-China Comprehensive Agreement on Investment (CAI). In May 2013, the European Commission published an impact assessment on the EU-China investment relations accompanying a recommendation for a Council Decision authorizing the opening of negotiations of an EU-China CAI. In October 2013, the Council adopted the negotiating mandate for the Commission and in November 2013 the launch of negotiations was announced at the 16th EU-China Summit. The first round of talks took place in January 2014. European Parliament. (n.d.). EU-China Comprehensive Agreement on Investment (CAI). Legislative Train Schedule. Retrieved from <https://www.europarl.europa.eu/legislative-train/package-investment/file-eu-china-investment-agreement>

²⁵¹ Cole, S. R. (2017). The lost promise of arbitration. *SMU Law Review*, 70(4), 849–880. <https://scholar.smu.edu/smulr/vol70/iss4/5>

²⁵² Drahozal, C. R. (2008). Busting arbitration myths. *Kansas Law Review*, 56(3), 663–734. P.5.

from EU legal frameworks. Remarkably, the exclusion extends to Regulation 44/2001 (Brussels I).

Despite this prevailing sentiment, the deficiency of EU instruments governing arbitration has not prevented a confluence between the arbitration institution and regulation 44/2001. This intersection has given rise to related questions and tensions within the legal landscape²⁵³.

Arbitration stakeholders have invoked Regulation 44/2001 in various instances, each with disparate objectives, either seeking to promote or undermine arbitration. Examples of such references include the European Court of Justice (ECJ) ruling on July 25, 1991, in the case C-190/89, *Rich*, which addressed the appointment of an arbitrator.²⁵⁴

Additionally, the ECJ ruling on November 17, 1998, in the case C-391/95, *Van Uden*²⁵⁵, pertained to the application of provisional measures. Furthermore, the ECJ ruling on February 10, 2009, in case C-185/07, *Allianz*²⁵⁶, presented a scenario before the EU Court of Justice. Noteworthy instances such as the *National Navigation Co v Endesa Generacion SA*²⁵⁷ (The Wadi Sudr) case in England serve as clear illustrations of this phenomenon²⁵⁸.

These judicial developments, particularly the limited approach used in *West Tankers*, painted a serious conflict between the EU's goal of judicial uniformity and the practical needs of the global arbitration community. The resulting legal uncertainty produced a "tactical" climate in which the Brussels I Regulation might be used to avoid arbitration agreements, undermining the appeal of European seats.

Recognizing that court meddling was undermining the internal market's efficiency, EU policymakers were forced to reconsider the line between court jurisdiction and arbitral independence. This tense climate paved the way for a significant legislative

²⁵³ Tijmes, J. (2015). Who wants what? Final offer arbitration in the World Trade Organization. *European Journal of International Law*, 26(2), 587–606. <https://doi.org/10.1093/ejil/chv037>. P.10.

²⁵⁴ *Marc Rich & Co. AG v. Società Italiana Impianti PA*, Case C-190/89, [1991] E.C.R. I-3855. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61989CJ0190>

²⁵⁵ *Van Uden Maritime BV v. Kommanditgesellschaft in Firma Deco-Line*, Case C-391/95, [1998] E.C.R. I-7091. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61995CJ0391>

²⁵⁶ *Allianz SpA v. West Tankers Inc.*, Case C-185/07, [2009] E.C.R. I-663. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62007CJ0185>

²⁵⁷ *National Navigation Co v. Endesa Generacion SA (The Wadi Sudr)*, [2009] EWCA Civ 1397. <https://jsumundi.com/en/document/decision/en-national-navigation-co-v-endesa-generacion-sa-judgment-of-the-high-court-of-justice-of-england-and-wales-2009-ewhc-1397-thursday-17th-december-2009>

²⁵⁸ Bermann, G. A. (2012). P.30.

revision, culminating in the "Recast" of the Brussels I Regulation, which sought to define the "arbitration exception" and restore a level of protection for arbitral procedures within the Union.

3.2.3 The "Arbitration Exception" and Regulation 1215/2012 (The interface with the Brussels I Recast)

The presence of this unavoidable interface has prompted discourse regarding the interplay between Regulation 44/2001 and arbitration, particularly with respect to Article 1, paragraph 4 of the Regulation, which expressly exempts arbitration from its applicative purview. An initial *de minimis* perspective was introduced by the European Commission in December 2010; however, this stance was disregarded in the enactment of the ultimate version of the Regulation – the subsequent Regulation 1215/2012. Ultimately, an explicit exclusion of arbitration from the Regulation's ambit was formally ratified²⁵⁹.

In the present-day era, the European Union accommodated twenty-eight distinct and autonomously functioning national systems for commercial arbitration, encompassing both domestic and international scopes. Despite a foundational alignment with the UNCITRAL Model Law of 1985, these systems maintain full independence and operate under the sole jurisdiction of national legislative authorities. It is notable that the arbitration frameworks of the three principal arbitration hubs in the EU—namely, England (1996), France (2011), and Sweden (1998)—deviate from being designated as UNCITRAL Model Law jurisdictions²⁶⁰.

The deficiency of European Union (EU) legislative framework in this domain stands in association with the shared adherence of EU Member States to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 10 June 1958 (NYC). Besides, a relatively diminished degree of alignment is observed with the European Convention on International Commercial Arbitration dated 21 April, with sixteen out of 28 Member States being signatories. Furthermore, certain bilateral conventions governing cooperation and the recognition and enforcement of foreign

²⁵⁹ Tilman, V. (2011). Lessons learnt from the implementation of the EU Mediation Directive: The business perspective. Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, European Parliament. <http://www.europarl.europa.eu/document>. P.4.

²⁶⁰ Juras, C. (2003). International intellectual property disputes and arbitration: A comparative analysis of American, European and international approaches: The search for an acceptable arbitral site [Master's thesis, McGill University]. <https://escholarship.mcgill.ca/concern/theses/sb3978881>. P.31.

decisions, entered into by multiple Member States, also exist and pertain to arbitral proceedings²⁶¹.

While the European Union maintains a devolved approach to arbitration to preserve national legal traditions, its commitment to ADR as a pillar of the 'internal market' sets a high standard for other regions seeking to harmonize trade through legal efficiency, such as the frameworks discussed in the following chapters..

3.3 Characteristics Of Arbitration In Israel

Israel exhibits a pronounced proclivity for legal proceedings, establishing itself as a global frontrunner in terms of litigation frequency per capita. The confluence of a substantial caseload and a comparably limited judiciary have resulted in an overtaxed legal system characterized by delays in the adjudication process.

In a recent special report, the Israel State Comptroller noted that: “disparities within various segments of society have given rise to social discord and fractures among distinct groups, including but not limited to Arabs and Jews, observant and non-observant Jews, and left-wing and right-wing factions. These societal divisions have significantly altered the fabric of Israeli society. Manifestations of racism, violence, bigotry, persecution, and even acts of hatred have regrettably become more prevalent.”²⁶²

In the year 2004, Israel found itself occupying the third position in terms of judicial burden among seventeen developed nations²⁶³. The confluence of a substantial caseload and a comparatively limited judiciary complement resulted in a legal system overwhelmed by a proliferation of cases, leading to notable delays in the dispensation of judgments. As early as 1980, the Committee on the Structure and Jurisdiction of the Courts, commonly referred to as the "Landau Committee," observed that the excessive

²⁶¹ Gavra, I. (2010). Arbitration in the context of EU merger control and its interface with Brussels I regulation: A new era for arbitration in the EU arena? *Global Antitrust Review*, (3), 151–175. pp. 72 et seq.

²⁶² In a recent special report, the State Comptroller of Israel conducted an examination as delineated in the Special Report on Education for a Shared Society and Prevention of Racism (2016) by the State Comptroller and Ombudsman of the State of Israel, accessible at <http://www.mevaker.gov.il/he/Reports/Pages/545.aspx>. The English abstract of this report can be found at http://www.mevaker.gov.il/he/Reports/Report_546/53a7c1d8-b0ce4eb5-a228-66a1ea62635f/102-life-together-eng-abstract.pdf, hereinafter referred to as the "Comptroller Special Report on Education."

²⁶³ Mironi, M. (Moti). (2014). Mediation v. case settlement: The unsettling relations between courts and mediation—A case study. *Harvard Negotiation Law Review*, 19, 173–248. P.173, 175.

caseload within the courts raised apprehensions²⁶⁴. It expressed concerns that, in the absence of expeditious resolutions, the justice system might be incapable of fulfilling its obligations and adequately serving the public interest.

Scholars and jurists have expressed comparable apprehensions alike, persisting to the present day²⁶⁵. Arbitration represents a singular endeavor to address this challenge, complemented by alternative approaches such as augmenting the judiciary, streamlining civil procedures, and implementing expedited mechanisms for specific case categories.

3.3.1 A Concise Historical Overview Of Arbitration In Israel

Arbitration within the jurisdiction of Israel has historical roots dating back to the era of the Ottoman Empire and preceding periods. Throughout the existence of both pre-state Israel and the contemporary state, the utilization of private arbitration as a mechanism for the resolution of legal disputes has played a significant and enduring role. Religious arbitration, in various manifestations, stands as no anomaly, having received formal acknowledgment over an extended period and possessing substantial historical antecedents predating the establishment of the state.

The growing adoption of Arbitration in Israel has been significantly influenced by globalization and the increasing complexity of business transactions. As the Israeli economy has become more integrated with international markets, the demand for an alternative dispute resolution mechanism that provides greater efficiency, flexibility and confidentiality has increased. Arbitration acts as the preferred method of resolving disputes in cross-border transactions due to its ability to assimilate international legal principles and enforceability under the New York Convention of 1958, to which Israel is a signatory.

In 1968, Israel enacted its Arbitration Law, thereby acknowledging private mechanisms for dispute resolution, specifically those outside the purview of the state. These non-state forums derive their adjudicative authority from the consensual agreements of the litigants. The legal framework safeguards jurisdiction pertaining to

²⁶⁴ Sulitzeanu-Kenan, R., Reichman, A., & Vigoda-Gadot, E. (2007). Judicial workload: A comparative study of 17 countries [Report]. Center for Public Management and Policy.

http://elyon1.court.gov.il/heb/haba/Courts_burden_Final_report_5.07.pdf

²⁶⁵ Bar Niv, M., & Lachman, R. (2018). To raise or not to raise: This is the question of judicial compensation. *Journal of Law and Courts*, 6(2), 291–317. <https://doi.org/10.1086/69828> . P.139.

arbitration agreements akin to its protection of contract enforcement in a broader context. Within the ambit of the parties' overarching contractual autonomy, they possess considerable latitude to designate the governing law for their transaction, commonly referred to as "choice of law."²⁶⁶

The entitlement of individuals to engage in unconstrained contractual agreements serves to substantiate the rationale for permitting parties to opt for diverse forums and legal frameworks. Moreover, the determination of applicable law is predicated upon the firmly established tenet that judicial intervention in the affairs between voluntary organizations and their members is infrequent in nature, generally extending to a reluctance to interfere in the rulings of internal judicial bodies.

This serves as an additional rationale for the choice of law. Clause N within the addendum of the Arbitration Law stipulates that the arbitrator is granted immunity from adherence to the substantive legal framework of the jurisdiction: "The arbitrator will act in such manner as appears to him most conducive to a just and speedy settlement of the dispute, and he will make the award to the best of his judgment in accordance with the material before him. The arbitrator will not be bounced by the substantive law, the rules of evidence or the rules of procedure that is obtained in Courts." ²⁶⁷

The Supreme Court of Israel has articulated the notion that judicial review of arbitration should align with the objectives of arbitration law and, consequently, should be conducted with a strict and limited scope²⁶⁸. This evaluation ought not to inquire into the hypothetical concurrence of an identical outcome under the jurisdiction of a secular court. Instead, its primary emphasis lies on the adherence to Arbitration Law and the absence of fraudulent activities. Furthermore, it is within the court's purview to annul the arbitration award that runs counter to public policy. Such a prerogative is to be exercised predominantly in instances where the award's substance is deemed "to harm the interests, the principles and the values that our society is asking to keep and protect."²⁶⁹

²⁶⁶ Broyde, M. J. (2021). Religious alternative dispute resolution in Israel and other nations with state-sponsored religious courts: Crafting a more efficient and better relationship between rabbinical courts and arbitration law in Israel. *Touro Law Review*, 36, 901–940. <https://scholarlycommons.law.emory.edu/faculty-articles> .P.15

²⁶⁷ Attias, A. (2020). Legal origin and court involvement: A U.S.-Israeli comparison of commercial arbitration. *Journal of Dispute Resolution*, 2020(2), Article 12. <https://scholarship.law.missouri.edu/jdr> P.12.

²⁶⁸ Groitzman V. Fried. Civ A, 5991/2. 2004, Isr.

²⁶⁹ Bar Niv, M., & Lachman, R. (2018). P.140.

Despite its advantages, concerns remain about the enforcement of arbitral awards in cases involving state interests or public policy matters. While Israeli courts generally uphold arbitration agreements and decisions, they have occasionally intervened in cases where the decision contradicts basic principles of justice, morality, or national security. Such judicial control, although limited, reflects the constant tension between the independence of the parties and considerations of the public interest.

Following the enactment of the Arbitration Law in Israel, the legal system has actively promoted arbitration as an efficacious avenue for dispute resolution, contingent upon mutual contractual agreement by the parties involved. This endorsement is primarily rooted in the fact that arbitration holds the standing of a judicial decree, thereby exempting it from scrutiny for compliance with Israeli legal norms.

It is noteworthy, however, that the legal framework incorporates a provision for appellate review, delineated in Section 29B (a)²⁷⁰. Furthermore, Israeli jurisprudence recognizes the principles of choice of law and forum as integral facets of the arbitration process.

3.3.2 Concerns about Arbitration in Israel

The evolution of arbitration within the legal framework of Israel has engendered considerable scholarly discourse concerning the potential hazards and risks inherent in the utilization of Alternative Dispute Resolution (ADR) mechanisms. Moreover, there has been a discernible exploration of the repercussions of (ADR) application on issues pertaining to justice.

3.3.2.1 The Qualifications of Arbitrators

Arbitration was a relatively unfamiliar concept in Israel until 1986 when it was formally incorporated into the legal framework by the Israeli legislature²⁷¹. Subsequently, in 1987, the Minister of Justice granted courts the authority, through Regulations, to divert ongoing cases to arbitration, yet the specific criteria for individuals eligible to serve as arbitrators were not explicitly defined.

²⁷⁰ Mironi, M. (Moti). (2014). P.176.

²⁷¹ Sulitzeanu-Kenan, R., Reichman, A., & Vigoda-Gadot, E. (2012). Mediation and the ombudsman: A look to the future (Report No. 1257). The State Comptroller and Ombudsman of Israel.
<https://library.mevaker.gov.il/sites/DigitalLibrary/Pages/Reports/1257-13.aspx>

In 1996, the enactment of Regulations on Arbitrator Appointment bestowed the authority upon the Director of the Courts Administration to curate a roster of arbitrators eligible for case referrals by the courts. Additionally, it mandated the Director to establish an Advisory Committee reporting to the Minister of Justice, tasked with offering counsel on the requisite qualifications and competencies for arbitrators associated with the judiciary.

In addition to concerns about the qualifications of arbitrators, criticism has emerged regarding the transparency of arbitrator selection processes. The potential for bias in the appointment of arbitrators, particularly within close-knit professional circles, has raised ethical and procedural concerns. Legal practitioners and researchers have called for more regulation and oversight in arbitrator appointments to ensure impartiality and fairness²⁷².

The 1988 report of the Committee, chaired by Justice Gadot, deliberated upon the qualifications of Arbitrators with a focus on justice rather than mere efficiency, albeit without explicit use of such terminology. The Committee emphasized the imperative of establishing minimal qualifications for Arbitrators to safeguard the interests of consumers (i.e., arbitration parties) and the nascent arbitration process in Israel.

Moreover, the proliferation of private arbitration institutions in Israel has given rise to inconsistencies in training and accreditation standards. While the Gadot Committee's recommendations remain influential, the absence of uniform statutory requirements for arbitrators has led to disparities in the quality of arbitration services. This has prompted discussions on the need for a centralized regulatory body to oversee arbitrator accreditation and professional development.

Rejecting the vehemently endorsed perspective of the Israeli Bar that legal professionals acting as Arbitrators need not undergo specialized arbitration training, the Committee advocated the stipulation that all Arbitrators engaged in court-affiliated arbitration initiatives undergo training courses sanctioned by the Committee. These

²⁷² Shany, Y. (2012). Regulating arbitration in Israel: Between efficiency and justice. *Journal of Dispute Resolution*, 2012 (2), 187–210. P.189.

courses were designed to encompass both theoretical and practical dimensions of arbitration²⁷³.

In response to the findings outlined in the Gadot Committee report, modifications were introduced to the Arbitrator Appointment Regulations. These amendments stipulate that an arbitrator included in the courts' roster is required to possess an academic degree, demonstrate a minimum of five years of practical experience in their respective professional domain, and undergo either a forty-hour fundamental arbitration training program or a sixty-hour family arbitration training course.

Subsequently, the Gadot Committee conducted an in-depth examination of the curriculum encompassed within these courses. The resultant recommendations from the committee's subsequent report have since become the benchmark for arbitrator training within the Israeli jurisdiction, applicable to both those associated with the judiciary and those engaged in extrajudicial arbitration proceedings²⁷⁴.

The registry of arbitrators has been subject to considerable scrutiny, particularly concerning aspects beyond mere procedural efficiency. Primarily, concerns have been articulated regarding competency, revealing a discernible issue. This pertains to the inclusion of numerous individuals whose eligibility for the registry stems solely from the completion of training courses spanning forty to sixty hours. Notably, these individuals lack substantive arbitration experience and do not view arbitration as a professional vocation²⁷⁵.

Concurrently, criticism has also underscored equitable distribution concerns. A considerable number of individuals aspiring to establish themselves in the field of arbitration have found that the judiciary, lacking a discerning mechanism for selecting arbitrators from the registry, disproportionately favors a limited cohort of arbitrators with whom the judges are personally acquainted. As a consequence, the broader pool of arbitrators enlisted on the registry faces a diminished likelihood of being appointed, raising questions about the impartial and equitable allocation of cases²⁷⁶.

²⁷³ Azrieli, A. (1993). Improving arbitration under the U.S.-Israel Free Trade Agreement: A framework for a Middle East Free trade zone. *St. John's Law Review*, 67(4), 1–43. <https://scholarship.law.stjohns.edu/lawreview> . P.11.

²⁷⁴ Broyde, M. J. (2021). P.17.

²⁷⁵ Azrieli, A. (1993). P.12.

²⁷⁶ Mironi, M. (Moti). (2014). P.178.

The Rubinstein Committee (2006), in its examination of strategies for enhancing the utilization of arbitration within the legal system, identified a significant impediment to the advancement of arbitration in Israel. This hindrance stemmed from the discontent expressed by both disputants and legal practitioners regarding the professional competence of arbitrators and the unfavorable experiences encountered by participants in arbitration proceedings.

In response to this issue, the Rubinstein Committee endeavored to address the matter by instituting a relatively restricted pool of proficient and seasoned arbitrators qualified to preside over court-mandated cases. These arbitrators were envisaged to be appointed through a transparent public procurement process, engage in ongoing professional development initiatives, and undergo systematic evaluations²⁷⁷.

The implemented plan achieved a degree of success; however, it engendered novel issues pertaining to justice. This emergent legal framework proved contentious among arbitrators, who perceived governmental constraints on their professional autonomy and opportunities for engaging in arbitration as a livelihood. Legal challenges presented before the Israeli High Court of Justice exerted pressure on the government, culminating in the revocation of the Regulations on the courts' list of arbitrators in 2008. Consequently, there exists a current absence of officially stipulated criteria delineating the minimum qualifications required of arbitrators. Nevertheless, in practice, the standards articulated by the Gadot Committee with respect to arbitrators' qualifications and training persist as the de facto benchmarks within the field²⁷⁸.

In 2017, the enactment of the Courts Regulations (Arbitrators' List) introduced rigorous criteria for court-affiliated arbitrators. These criteria encompass engagement in a supervised practicum, substantiation of tangible experience in arbitration, and successful fulfillment of a formalized professional evaluation procedure. The ongoing discourse within Israel regarding the qualifications of arbitrators and the accessibility to this evolving professional sphere is anticipated to persist.

3.3.2.2 Misuse of Process and Ethics

²⁷⁷ Attias, A. (2020). P13.

²⁷⁸ Maita, A. (2013). Development of a commercial arbitration hub in the Middle East: Case study — The state of Qatar [Master's thesis, Golden Gate University School of Law]. Digital Commons @ Golden Gate University School of Law. <https://digitalcommons.law.ggu.edu/theses/36> P.120.

The integration of arbitration within the Israeli legal framework has elicited apprehensions regarding its potential adverse effects on certain participants in the process. Israeli commentators, particularly those addressing commercial arbitration, have acknowledged existing power differentials between genders.

They have underscored the perils, as articulated in Alternative Dispute Resolution (ADR) literature, wherein arbitration may exacerbate the prevailing power imbalances, resulting in suboptimal settlement conditions for women. This issue assumes heightened significance and pertinence in the Israeli context due to the incorporation of religious norms into commercial law, which systematically perpetuates gender inequality and reinforces the empowerment of men²⁷⁹.

Examining instances of workplace discrimination, additional analysts have highlighted the dominance of evaluative arbitration within the Israeli context. They contend that policymakers in Israel should acknowledge that evaluative arbitration may not be appropriate for certain cases, particularly those involving discrimination disputes. Allowing such cases to undergo arbitration may subject vulnerable parties to an elevated risk of mistreatment²⁸⁰.

Broadening the assertion, an additional commentator highlighted discrepancies between the prevailing notion that arbitration functions as a voluntary and consensual procedure and the tangible manifestations of arbitrator behaviors as documented, which compromise the autonomy of involved parties, manipulate information, and neglect to forestall procedural improprieties.

Conversely, a separate commentator, while emphasizing the significance of informed consent in the context of arbitration—an aspect intricately linked to considerations of fairness—expressed reservations about the clarity of Israeli arbitration law concerning arbitrators' responsibilities in securing parties' informed consent regarding potential arbitration risks, the utilization of individualized meetings, arbitrator identity, the modality of arbitration proceedings, and the ultimate arbitration outcome²⁸¹.

Scholars have observed a notable absence of comprehensive ethical guidelines for Israeli arbitrators. While some direction is offered by the Court (Arbitration)

²⁷⁹ Bar Niv, M., & Lachman, R. (2018). P335 - 337.

²⁸⁰ Azrieli, A. (1993). P.14.

²⁸¹ Shapira, O. (2008). Exploring the Concept of Power in Mediation: Mediators' Sources of Power and Influence Tactics. 24 Ohio State J. on Disp. Resol. 535 (2009). P8.

Regulations, which delineate essential responsibilities for arbitrators associated with the court, the regulatory language is both abstract and succinct, permitting considerable latitude for interpretation and arbitrator discretion. Additionally, it is pertinent to note that these regulations are expressly applicable to court-connected arbitration, thereby leaving private arbitration largely devoid of regulatory oversight.

The lack of comprehensive ethical guidelines for arbitrators was also a focal point of concern. The discretionary powers granted to arbitrators, particularly in procedural matters, have sometimes led to allegations of misconduct and bias. An official code of ethics for arbitrators, coupled with mechanisms to address grievances, has been proposed as a way to enhance the credibility of Arbitration in Israel²⁸².

Raising concerns extending beyond efficiency considerations regarding the equitable nature of arbitration procedures, scholars have cautioned that the Regulations lack a robust mandate for arbitrators to uphold the parties' right to self-determination²⁸³. Additionally, they highlight the considerable discretion granted to arbitrators in determining conflicts of interest, the absence of explicit elucidation on the concept of impartiality within the arbitration context, thereby undermining the duty of impartiality, and insufficient safeguards for maintaining the confidentiality of arbitration communications.

Moreover, scholars have examined the impact of Arbitration on vulnerable parties, in particular in cases involving labor and consumer rights disputes. The imbalance of power between legal entities and individual claimants was pointed out as a possible disadvantage of arbitration since weaker parties may be forced to accept unfavorable terms due to economic restrictions. Calls for legislative intervention to protect the interests of weaker litigants in arbitration proceedings have gained momentum, emphasizing the need for procedural guarantees to support fairness and equity²⁸⁴.

The absence of clearly defined ethical guidelines and the elevated level of arbitrator discretion have prompted scholars to scrutinize the arbitrators' comprehension of their professional roles and limitations, critique the inadequacy of guidance provided to

²⁸² Shany, Y. (2012). P.193.

²⁸³ Shapira, O. (2008). P.10.

²⁸⁴ Shany, Y. (2012). P.193 - 194.

arbitrators in addressing power imbalances among disputing parties, and raise inquiries regarding arbitrators' accountability for arbitration outcomes.

3.3.3 The future of Arbitration in Israel

The legal system in Israel is anticipated to continue experiencing a significant caseload in the near future. The prevailing litigious ethos within Israeli society is unlikely to yield to a discourse-oriented culture founded on consensus in the short term. Israel faces the dual challenge of enhancing the expeditious and cost-effective resolution of legal disputes and cultivating a more nuanced conception of justice that extends beyond mere efficiency. This involves striving towards a comprehensive and intricate approach to addressing interpersonal conflicts, with the overarching goal of fostering societal improvement²⁸⁵.

Arbitration in Israel has hitherto failed to substantially alleviate the caseload burden of the judicial system. Despite the annual processing of approximately one million cases by the courts, the incidence of arbitration cases remains relatively modest, estimated in the realm of several hundred per year. Nevertheless, there exists room for optimism regarding a potential shift in this trajectory, wherein arbitration may assume a more pivotal role in achieving the objectives of alternative dispute resolution (ADR) with a focus on efficiency in the dispensation of justice²⁸⁶.

Initially, a primary impediment to legal practitioners recommending the incorporation of arbitration clauses in commercial contracts or endorsing arbitration has been the lack of a recourse mechanism for challenging arbitrators' awards. The recent statutory amendment to the Arbitration Law, which permits the implementation of a consensual appellate process for arbitrators' decisions, has the potential to gradually alter the apprehensive stance of legal professionals towards arbitration.

Secondly, the considerable expenses associated with arbitration, predominantly arising from the substantial fees charged by arbitrators, frequently comprising retired judges of notable standing, and esteemed legal practitioners, act as a deterrent for potential users of arbitration. This is particularly evident in cases with a relatively modest monetary magnitude or involving disputants who do not belong to affluent

²⁸⁵ Maita, A. (2013). P.128.

²⁸⁶ Bar Niv, M., & Lachman, R. (2018). P.142.

corporate or individual categories, which constitute the predominant proportion of cases. Nonetheless, there are discernible shifts in this domain, with emerging arbitration providers asserting the provision of high-quality arbitration services at more accessible cost structures²⁸⁷.

Thirdly, the implementation of obligatory arbitration, potentially diverting numerous legal cases from the judicial system to arbitration, persists as a viable prospect. Although the Mandatory Arbitration Bill of 2011 failed to attain legal status, proponents of arbitration are endeavoring to reinvigorate this legislative endeavor. Presently, a more circumscribed legislative proposal advocating mandatory arbitration specifically in matters related to construction and road accidents is under deliberation within the Constitution, Law, and Justice Committee of the Knesset, the Israeli Parliament²⁸⁸.

There exists an ongoing exploration into novel domains for the application of Alternative Dispute Resolution (ADR) mechanisms within the Israeli context, with the potential to enhance the societal relevance of ADR in the future. An exemplification of this lies in recent scholarly discourse, wherein it is posited that ADR has the capacity to empower consumers in their interactions with businesses, thereby bolstering the safeguarding of consumers' rights. The argument put forth contends that businesses, equipped with superior financial, legal, and informational resources, contribute to the relatively low incidence of consumer litigation in traditional courts, consequently resulting in the under-enforcement of consumers' rights²⁸⁹.

The proposal advocates for the utilization of ADR methods, including arbitration, med-arb, and Online Dispute Resolution (ODR), as a means to augment the accessibility of redress for consumers without necessitating resort to litigation. Furthermore, the suggested implementation of these ADR mechanisms is seen as instrumental in enabling the judicial system to furnish more efficacious resolutions when consumer litigation is instigated.

²⁸⁷ Shapira, O. (2008). P.11.

²⁸⁸ Halperin-Kaddari, R., Bogoch, B., & Ronen, Y. (2002). ,7, כתב-עת לענייני משפט, המשפט: גישור בהליכי גירושין. 335-372. <http://www.nevo.co.il/books/%d7%9b%d7%aa%d7%91%d7%99%20%d7%a2%d7%aa/%d7%9b%d7%aa%d7%91%d7%99%20%d7%a2%d7%aa/%d7%94%d7%9e%d7%a9%d7%a4%d7%98/%d7%9b%d7%a8%d7%9a%20%d7%96/hamishpat-07-335.pdf>. P139.

²⁸⁹ Yehuda, I. (2016, October 1). Hainam ein motzah? Al yishuv sikhshukh tsarkhaniyim bedrakhim khalufiyot [Resolving consumer disputes in alternative ways]. HaMishpat, 21, 247–277. <https://ssrn.com/abstract=3778771> . P.247.

Looking ahead, the development of Arbitration in Israel is likely to be influenced by ongoing legal reforms and technological progress. The integration of online dispute resolution mechanisms (ODR), facilitated by artificial intelligence and blockchain technology, has the potential to revolutionize arbitration by enhancing accessibility, efficiency, and transparency. Online Dispute Resolution Platforms (ODR) can simplify case management, reduce costs, and speed up decision-making processes, making arbitration a more viable option for a wide range of disputes.

Such initiatives encompass ramifications that extend beyond procedural efficiency, encompassing not only swifter and cost-effective legal claims processing but also broader considerations, such as reaching a larger demographic of aggrieved parties. Additionally, these initiatives aim to provide pertinent information, accessible avenues for redress, and innovative solutions, thus embodying justice both in terms of procedural efficiency and transcending mere efficiency to encompass a more expansive understanding of justice²⁹⁰.

In addition, legislative developments aimed at strengthening arbitration are expected to continue. Efforts to expand mandatory arbitration in specific sectors, coupled with initiatives to enhance the enforceability of arbitration agreements, may contribute to a more robust and widely accepted arbitration framework. However, striking a balance between efficiency and fairness remains a critical challenge, necessitating a careful approach to arbitration reform that prioritizes both procedural integrity and fair outcomes²⁹¹.

As the development of Arbitration in Israel continues, its role in alleviating judicial congestion and providing an effective mechanism for resolving disputes will be examined more closely. The extent to which arbitration is able to achieve its intended objectives depends on ongoing legislative improvements, judicial interpretations, and the willingness of stakeholders to adopt innovative approaches to dispute resolution.

3.4 Arbitration Across the Middle East

The Middle East has predominantly entrenched its political, legal, and commercial frameworks in Islamic law, impeding the widespread adoption of Western arbitral

²⁹⁰ Maita, A. (2013). P.129.

²⁹¹ Shany, Y. (2012). P.197.

norms within the region. Established arbitration centers in the Middle East, such as those situated in the United Arab Emirates and Bahrain, are emblematic of the enduring reliance on arbitration as a means of dispute resolution within Islamic communities. However, the prevailing arbitration practices in these centers do not align with the conventional "modern" or "Western" arbitration systems.²⁹²

Arbitration in the Middle East is strongly influenced by Islamic jurisprudence (Sharia), which emphasizes the principles of fairness, equity, and contractual inviolability, however it differs significantly from Western arbitration frameworks that emphasize party independence and procedural neutrality.

While international arbitration mechanisms advocate uniformity and predictability, Middle Eastern arbitrations often incorporate religious and customary legal traditions, promoting an alternative model of dispute resolution. The extent to which Sharia influences arbitration varies across jurisdictions, with some countries adopting mixed models that integrate Islamic and international legal principles.

As noted by George Khokaz, the methodological difference in approaches to conflict resolution arises from the scarcity of knowledge and cultural understanding related to the political and religious history of the Middle East²⁹³. This deficiency translates into an inability to address the interests of Middle Eastern countries and integrate them appropriately into the wider international system. Thus, a comprehensive understanding of the Middle East experience becomes essential to contextualize the predicaments faced by the region's societies.²⁹⁴

Moreover, the developing legal landscape in the region suggests a gradual, albeit cautious, adaptation to Western arbitration principles, which emphasizes the need to balance modern legal trends with deeply rooted Islamic traditions

3.4.1 East V. West

In the pre-Islamic era within the Middle East, the prevailing customs of the local society significantly influenced the approaches utilized for resolving disputes, emphasizing the

²⁹² Barghouty, M. (2022). Investment arbitration as a tool for peace: A new foreign investment arbitration regime between Palestine and Israel. *Ohio State Journal on Dispute Resolution*, 37(1), 113–150. <https://moritzlaw.osu.edu/sites/default/files/2022-08/12-%20Barghouty%20113-150.pdf>

²⁹³ Khokaz, G. (2017). Sharia law and international commercial arbitration: The need for an intra-Islamic arbitral institution. *Journal of Dispute Resolution*, 2017(1). <https://scholarship.law.missouri.edu/jdr/vol2017/iss1/14/> P181.

²⁹⁴ Barghouty, 2022

communal welfare over individual concerns. Conflict was perceived as a detriment to societal equilibrium and prosperity, prompting an emphasis on the expeditious and harmonious resolution of issues—a perspective on dispute resolution that gained further reinforcement with the advent of Islam in the region²⁹⁵.

Khoukaz underscores, nonetheless, that this communal-centric decision-making paradigm diverges from the Western perspective that attributes positivity to conflict: “arbitration arbitrators catharsis to redefine relationships between individuals, groups and nations and makes it easier to find adequate settlement or possible solutions.”²⁹⁶

Islam acknowledges two methods for resolving disputes: *sulh* and *tahkim*²⁹⁷. *Sulh* bears resemblance to the principles of negotiation and mediation, while *tahkim* is analogous to arbitration. However, notable distinctions exist between Islamic arbitration through *tahkim* and the familiar Western approach.

In Western arbitration, outcomes typically manifest as binding arbitral awards, reinforced by widespread adherence to the New York Convention. In contrast, *tahkim* relies on the voluntary consent of the involved parties, contingent upon their agreement to uphold the award, placing significant emphasis on the arbitrators' credibility²⁹⁸.

The evolution of Islamic arbitration integrated it into a relatively structured judicial system, mandating approval from a *quadi* (court judge) before enforcing the arbitrator's decision, further accentuating its disparities from Western practices.²⁹⁹

Moreover, Islamic dispute resolution mechanisms reflect an inherent moral and ethical dimension deeply rooted in religious principles, which contradicts the predominantly contractual and secular basis of Western arbitration. Islamic jurisprudence emphasizes the importance of fairness, impartiality, and moral integrity of arbitrators, thereby strengthening the role of justice beyond mere legal proceedings. This approach is in line with the overarching principles of Sharia, which prioritize societal stability and fair outcomes over strict procedural adherence.

²⁹⁵ Al-Qadhi, K. M. (2002). *Mawsū'at al-tahkīm al-tijārī al-dawlī* [Encyclopedia of international commercial arbitration] (1st ed.). Dar Al-Shorouk. P.26.

²⁹⁶ Ibid. at 186–87

²⁹⁷ Al-Ramahi, A. (2008). *Sulh: A crucial part of Islamic arbitration* (LSE Law, Society and Economy Working Papers, 12/2008). London School of Economics and Political Science, Law Department. P.45.

²⁹⁸ Rahmani, S. (2019, February 4). *Al-sukuk al-Islamiyah ka-badil ghair taqlidi lil-tamwil* [Islamic sukuk as a non-traditional alternative for financing]. Paper presented at the Conferences, Seminars, Meetings, and Study Days Symposium, University of M'sila. <https://repository.univ-msila.dz/handle/123456789/10806> .P.269.

²⁹⁹ Barghouty, 2022

In addition, the role of the arbitrator in arbitration is different from that of Western arbitration. Unlike Western arbitrators, who derive their authority primarily from contractual agreements and legal frameworks, Islamic arbitrators must have a strong moral and ethical standing within society. Their legitimacy often stems from their scientific knowledge of Islamic jurisprudence and their ability to control social trust, factors that directly affect the effectiveness and enforceability of their judgments³⁰⁰.

The integration of the governance system into the wider Islamic legal tradition emphasizes a more holistic approach to conflict resolution, where legal, ethical, and societal considerations meet to promote justice and reconciliation. This interplay of ethical obligation and legal enforcement illustrates the fundamental difference between Islamic and Western arbitration frameworks, highlighting the cultural and philosophical dimensions that shape dispute resolution across these distinct legal traditions.

3.4.2 The Application of the New York Convention in the Middle Eastern Context

Presently, a predominant number of nations adhering to the Islamic faith have entered into agreements as signatories to the New York Convention, with the notable exception of Saudi Arabia³⁰¹. However, it is imperative to underscore that such participation should not be misconstrued as a wholesale adoption of Western arbitration principles, given the profound cultural and religious underpinning influencing arbitration practices within the region.

As an illustrative point, the Convention provides for the exemption of award enforcement under two specific circumstances: firstly, when the subject matter of the dispute is deemed incapable of resolution through arbitration according to the pertinent national legislation; and secondly, when the acknowledgment or enforcement of the award would contravene the public policy of the respective country.³⁰²

In the Middle East, nations adhering to Sharia law, notably including Iran, Saudi Arabia, Bahrain, and others, may opt for non-enforcement of international arbitral

³⁰⁰ Ibid. at 269 – 270.

³⁰¹ Al-Khuwaylidi, 'A. A.-S. (2018). *Mi'ah su'āl wa-jawāb ḥawla al-taḥkīm al-tijārī: Ma'a mashrū' al-qānūn al-ittiḥādī li-sanat 2017 fi sha'n al-taḥkīm li-dawlat al-Imārāt al-'Arabīyah al-Muttaḥidah wa-mulḥaq li-ba'd al-fatāwā wa-al-qarārāt al-majma'īyah wa-al-ittifāqiyāt al-dawlīyah wa-al-iqlīmīyah al-ṣādirah fi majāl al-taḥkīm* [100 questions and answers on commercial arbitration: With the draft federal law of 2017 concerning arbitration for the United Arab Emirates and an appendix of some fatwas, collective decisions, and international and regional agreements issued in the field of arbitration]. *Idārat al-Ma'rifah wa-al-Nashr, Ma'had Dubayy al-Qadā'ī*. P.11.

³⁰² Barghouty, 2022

awards on the basis that such recognition contradicts the public policy inherent in their Islamic legal frameworks.

It is noteworthy, however, that the likelihood of a country exercising this exemption is contingent upon its receptivity to Western legal principles. Notably, Arthur Gemmel, a scholar in the field, underscores that Saudi Arabia, despite being a signatory to the Convention, maintains a legal system that precludes both the acknowledgment and enforcement of foreign jurisdiction agreements. Similarly, Iran conditions its recognition of foreign awards, and Egypt's willingness to enforce such awards hinges upon their alignment with public policy and moral standards³⁰³.

In the case of Saudi Arabia, it is alleged that the enforcement of certain arbitral awards is inconsistent with the statutes and regulations to which the other contracting parties are bound under the New York Convention, which reinforces a trend towards non-enforcement. This selective application of the convention underscores the ongoing tension between the principles enshrined in international arbitration frameworks and the distinct legal traditions upheld by Middle Eastern jurisdictions³⁰⁴.

Moreover, the interpretation of public policy within the region remains fluid, often influenced by contemporary political, economic, and social considerations. Consequently, while some jurisdictions may show a tendency towards aligning their enforcement practices with international standards, others remain steadfast in prioritizing religious and cultural imperatives over foreign arbitration provisions.

Despite this divergence in enforcement practices, several states within the region are showing an inclination to accede to the convention. For example, Syria has demonstrated its readiness to give priority to the convention over its domestic legislation in cases involving the enforcement of non-Syrian arbitral awards.

Similarly, it is known that Kuwait consistently enforces foreign provisions even before formally acceding to the convention. In addition, the UAE has gradually adopted arbitration-friendly reforms, which indicates a shift towards greater coordination with global arbitration standards. In contrast, countries such as Iraq and Libya have historically shown a reluctance to

³⁰³ Roy, K. T. (1994). The New York Convention and Saudi Arabia: Can a country use the public policy defense to refuse enforcement of non-domestic arbitral awards? *Fordham International Law Journal*, 18(3), 920–982. <https://ir.lawnet.fordham.edu/ilj/vol18/iss3/9> P.936.

³⁰⁴ Al-Omari, M. (2018). The enforcement of foreign arbitral awards in the Middle East: A comparative study of the application of the New York Convention. *Arab Law Quarterly*, 32(4), 289–315. <https://doi.org/10.1163/15730255-12324045>

recognize and enforce foreign arbitral awards, often invoking public policy exceptions as reasons for non-compliance³⁰⁵.

These differences across the legal landscape in the Middle East highlight the delicate and evolving interaction between international arbitration and national legal frameworks, reflecting a broader dialogue between legal modernization and the preservation of traditional legal principles.

3.4.3 Endeavors towards the Standardization of Commercial Arbitration Practices in the Middle East

The escalation of global trade and a heightened focus on commercial engagements in the Middle East have necessitated the region's concerted efforts to engage with the evolving international arbitration framework. Presently, Middle Eastern nations acknowledge the indispensability of a contemporary approach to dispute resolution in fostering economic advancement.³⁰⁶

Consequently, they have actively participated in a spectrum of bilateral and multilateral agreements aimed at promoting investment within their respective jurisdictions. Since 2016, countries across the region have executed more than 638 investment treaties, with this number consistently increasing. Despite this proliferation, Middle Eastern nations grapple with challenges related to the clarity and precision of investment agreements, posing a threat to the efficacious resolution of disputes in this context³⁰⁷.

In the context of endeavors aimed at transforming international trade dynamics in the Middle East and fostering increased investment engagement, the establishment of fully operational arbitration centers in the region has become imperative. Notably, the Cairo Regional Centre for International Commercial Arbitration (CRCICA)³⁰⁸, originating from one of the oldest institutions of its kind in the Middle East and Africa, was instituted in 1979 under the auspices of the Asian African Legal Consultative Organization³⁰⁹.

³⁰⁵ Ibid. at 297.

³⁰⁶ Barghouty, 2022

³⁰⁷ Khattar, M. (2019, January 20). Recent investor-state arbitration trends in the Middle East: Young ITA Talks in Dubai [Blog post]. Kluwer Arbitration Blog. <http://arbitrationblog.kluwerarbitration.com/2019/01/20/recent-investor-state-arbitration-trends-in-the-middle-east-youngitatalks-in-dubai/>

³⁰⁸ Barghouty, 2022

³⁰⁹ Horigan, D. (2009). International Commercial Arbitration in the Arabian Peninsula. Working Paper. P.22.

Operating in accordance with the CRCICA Arbitration Rules, which draw inspiration from the rules of the United Nations Commission on International Trade Law (UNCITRAL) with slight modifications, this forum has overseen the administration of more than 1,200 cases since its inception³¹⁰. The CRCICA extends its services for the resolution of trade and investment disputes through methods such as conciliation, mediation, and arbitration. Furthermore, the center offers guidance to parties involved in international commercial and investment agreements³¹¹.

In manifesting its dedication to assuming a substantial role in the global economy, the United Arab Emirates has undertaken notable initiatives aimed at establishing international forums for commercial dispute resolution. In 1994, the inception of the Dubai International Arbitration Center (DIAC) marked a pivotal development, establishing it as an autonomous institution dedicated to conciliation and arbitration. The primary objective of DIAC is to facilitate the efficient and impartial adjudication of commercial disputes, while concurrently fostering a culture of arbitration within local, regional, and international contexts.

Through the utilization of DIAC's arbitration services, disputing parties possess the capability to address their conflicts in accordance with the prescribed rules and procedures endorsed by the forum or as mutually agreed upon. The organizational structure of DIAC comprises three hierarchical levels: the Board of Trustees, the Executive Committee, and the Administrative Body, all of which are bound by obligations of confidentiality and impartiality³¹².

Foremost among its attributes, the Dubai International Arbitration Centre (DIAC) possesses unequivocal autonomy in delivering its arbitration or conciliation services, being safeguarded against any form of governmental interference³¹³. In the present context, the DIAC serves as the preeminent forum for dispute resolution within the region.

Advancing a step beyond, the collaboration resulting in the establishment of the DIFC–LCIA in 2008 was forged through a strategic alliance between the esteemed London Court of International Arbitration and the Dubai International Financial Centre.

³¹⁰ Barghouty, 2022

³¹¹ Khoukaz, G. (2017). P182.

³¹² Khattar, M. (2019, January 20).

³¹³ Barghouty, 2022

Since its inception, the DIFC–LCIA has been instrumental in furnishing alternative dispute resolution services to both domestic and international enterprises within the region, encompassing diverse sectors such as real estate, international trade, finance, and telecommunications³¹⁴.

In contrast to other arbitration centers within the region, the DIFC–LCIA distinguishes itself by adopting a unique position. It stands as the sole arbitration center in the Middle East that employs an internationally oriented set of rules, derived from those utilized by the London Court of Arbitration³¹⁵. Simultaneously, the DIFC–LCIA demonstrates a nuanced comprehension of the business customs and cultural intricacies inherent to the region. This distinctive amalgamation renders it a genuinely impartial forum for international entities and a dependable one for local parties. Notably, the Center released its latest regulations on January 1, 2021, superseding the 2016 rules and aligning with the 2020 amendments to the LCIA Rules of Arbitration³¹⁶.

The DIFC–LCIA forum holds particular allure for global investors and commercial entities, as it provides a more expansive framework for the acknowledgment and execution of awards across the Arab region³¹⁷. Notably, when the DIFC–LCIA is designated as the arbitral seat—either through mutual agreement or as a default provision—the DIFC Courts assume the role of the curial court for the recognition and enforcement of arbitral awards vis-à-vis a respondent's assets. This procedural arrangement facilitates the direct enforcement of an arbitral award rendered by the DIFC–LCIA within Arab nations³¹⁸.

Pioneering the advancement of arbitration modernization within the region, the United Arab Emirates (UAE) has facilitated investor and stakeholder access to globally recognized institutions, thereby spearheading progress in regional development. The aforementioned three arbitral entities offer a concise glimpse into the evolution of international arbitration across the Middle East³¹⁹.

³¹⁴ Mahabadi, S. (2016). The need for the harmonisation of provisional measures in international commercial arbitration in the European Union [Unpublished doctoral dissertation]. The University of Manchester. P.34.

³¹⁵ Barghouty, 2022

³¹⁶ Al-Mulla, H. (2021, September 28). UAE: No surprise as Dubai establishes full autonomy of Dubai International Arbitration Centre (DIAC). Middle East Insights.P.3.

³¹⁷ Barghouty, 2022

³¹⁸ Al-Mulla, H. (2021, September 28).P.5.

³¹⁹ Bar Niv, M., & Lachman, R. (2018). P.940.

Despite the region's historical association with Sharia law, substantial endeavors to contemporize arbitration statutes and protocols underscore a revitalized commitment to addressing the demands of the contemporary, rapidly evolving global business landscape, emphasizing international trade and economic development.³²⁰

The global arbitration landscape has evolved through the contributions of international conventions, regional agreements, and national frameworks, all shaping the effectiveness and enforcement of arbitral awards. The development of Arbitration in jurisdictions such as Israel and across the Middle East underscores both the increasing reliance on alternative dispute resolution mechanisms and the unique challenges posed by legal, cultural, and political considerations³²¹.

With arbitration continuing to serve as a crucial tool for the settlement of commercial disputes, its application within specific national contexts deserves closer study. Palestine, with its distinctive legal framework and well-developed business environment, provides a case study of both the opportunities and challenges of arbitration within an evolving legal system. The next chapter deals with the arbitration scene in Palestine, explores its legislative foundations, institutional frameworks, and practical application in dispute resolution.

³²⁰ Barghouty, 2022

³²¹ Ibid³

CHAPTER 4

Palestine's Position on Arbitration

4.1 The Juridical Framework Of Arbitration In Palestine

For the efficacy of Alternative Dispute Resolution (ADR) in Palestine, the existence of a regulatory framework is imperative, delineating its legal standing and impact within the legal milieu. This regulatory structure assumes the responsibility of ascertaining the precision and enforceability of the judgments, decisions, or settlements arising from ADR processes³²². An examination of the legal framework governing Alternative Dispute Settlement assumes significance in evaluating its effectiveness on one hand, and in understanding the foundational legal landscape on the other.

4.1.1 Historical Legal Framework

Over the course of several centuries, Alternative Dispute Resolution (ADR) processes have earned respect as a preferred or, at the very least, viable system for dispute resolution. However, the legal structure has struggled to keep up with these advances, with the primary focus being on admitting and executing rulings or settlements reached through such methods. The use of alternative dispute resolution has been ad hoc, contingent on unique conditions and cases, acting independently of legal endorsement, as initially envisioned.³²³

The legal structure for alternative conflict resolution in Palestine dates back to the seventeenth century, when the Ottoman Empire codified its laws. Notably, under Ottoman civil law, the Journal of Judicial Rulings dedicated an entire section to the issue of arbitration. Following the British Mandate of Palestine in 1916, the Arbitration Law of 1926 was promulgated and later amended. Foreign Arbitration Law was created in 1934, aligning with the greater British Empire³²⁴.

Palestine, as part of the Geneva Arbitration Protocol Signatories in 1923 and later as a participant in the Geneva Convention on the Enforcement of Foreign Arbitral Awards, adhered to these international agreements. It is pertinent to note that these legislative enactments and international accords retained their applicability in Gaza post-1948 when it fell under Egyptian administration. Meanwhile, the West Bank,

³²² De Palo, G., Trevor, M. B., & Alexander, N. M. (Eds.). (2007). *Arbitration and mediation in the Southern Mediterranean countries*. Kluwer Law International. <https://doi.org/10.1007/978-1-137-11721-3> P.59.

³²³ Katbeh, L. (2019). *Assessment of Alternative Dispute Resolution Mechanisms in Palestine*. United Nations Development Programme (UNDP), UN Women, & UNICEF.

³²⁴ United Nations Country Team in the occupied Palestinian territory. (2017, July). *Gaza ten years later*. United Nations. <https://www.un.org/unispal/document/gaza-ten-years-later-un-country-team-in-the-occupied-palestinian-territory-report/>. P.4.

under Jordanian administration after 1948, adhered to the Jordanian Arbitration Law of 1952³²⁵.

Following the conclusion of the Oslo Accords and the establishment of the Palestinian National Authority (PNA), a concerted effort was initiated to streamline and modernize legal frameworks.³²⁶

In 2000, the Palestinian Legislative Council promulgated a new arbitration law applicable in both the West Bank and the Gaza Strip, thereby unifying and harmonizing the applicable legal provisions in these regions³²⁷.

Contemporary legislative measures have further incorporated various alternative dispute resolution mechanisms, notably within the Labor Code, Penal Code, and laws pertaining to child and juvenile matters. Ongoing endeavors involve the formulation of drafts aimed at amending the arbitration law, enacting legislation for mediation, and introducing penal mediation procedures.

4.1.2 Applicable Laws And Regulations In The West Bank And Gaza Strip

In June 2007, Hamas took control of the Gaza Strip, resulting in a divergence between the West Bank-based Palestinian Authority and Hamas' de facto government in Gaza³²⁸. Since 2006, there has been no presidential or legislative elections in Palestine, resulting in a democratic deficit that undermines the credibility of governmental institutions and activities on both sides of the border³²⁹. The Palestinian Legislative Council has not been officially convened since the split, significantly hindering Palestine's advancement toward democratic processes.

The schism resulted in the establishment of divergent legislative processes, leading to the enactment of distinct laws in Gaza and the West Bank. In Gaza, members of the Palestinian Legislative Council affiliated with Hamas, particularly the "Change and

³²⁵ Katbeh, L. S. (2015). Palestine moving ahead - new draft of the arbitration law. *Transnational Dispute Management (TDM)*, 2. www.transnational-dispute-management.com/article.asp?key=2208, P. 2.

³²⁶ Katbeh, 2019

³²⁷ De Palo, G., Trevor, M. B., & Alexander, N. M. (Eds.). (2007). P.59.

³²⁸ Katbeh, 2019

³²⁹ Khalil, A. (2009). Formal and informal justice in Palestine: Dealing with the legacy of tribal law. *Études rurales*, (183), 169–184. <https://doi.org/10.4000/etudesrurales.10550> P.3.

Reform" bloc, persisted in conducting meetings beyond their term's expiration on January 25, 2010.³³⁰

Despite obstacles such as the difficulty to establish a quorum, which is aggravated by the imprisonment of several Hamas members, the legislative system in Gaza has permitted the introduction of fifty-five new or amended laws since 2007³³¹. Notable among these enactments is the new Civil Code, prompting constitutional and legal scrutiny by the Palestinian Authority and legal scholars regarding its constitutionality or legality. Certain provisions within these laws violate established international human rights norms, particularly in relation to civil and political rights as well as gender equality³³².

In contrast, legislative reforms in the West Bank adhered to Article 43 of the Basic Law. This article limits the issuance of legislation by presidential decree to instances deemed "necessary" and requires that any bill acquire presidential approval during the opening session of the Palestinian Legislative Council³³³.

Hence, legislative enactments in Gaza possess jurisdiction exclusively within the confines of Gaza, while legal provisions promulgated in the West Bank hold authoritative sway solely within the territorial limits of the West Bank.

Regardless of potential breaches in enforcement by governmental or public sector entities in Gaza, private sector institutions and individuals within Gaza retain the right to mutually agree to the observance and execution of such legal restrictions amongst themselves.

4.1.2.1 Arbitration Law No. 3 of 2000

The current Palestinian Arbitration Law, which applies in both the West Bank and the Gaza Strip, sets the legal framework governing arbitration within the Palestinian territory³³⁴. The first chapter of the legislation defines terminology, distinguishes between domestic and foreign legal domains, and determines which instances are exempt from arbitration. The following chapter looks into the arbitration agreement, which allows disputing parties to mutually agree to have their disputes resolved through

³³⁰ Katbeh, 2019

³³¹ Ibid

³³² Katbeh, L. S. (2015). P.3.

³³³ United Nations Country Team in the occupied Palestinian territory. (2017, July). P .6

³³⁴ Shandi, Y. M. (2014). P304.

arbitration. Alternatively, the arbitration agreement may appear as an arbitration clause contained within a contract, referring disputes resulting from the contract to arbitration.³³⁵

The third chapter elucidates the constitution of the arbitral tribunal, detailing its responsibilities, competencies, impartiality standards, provisions for appeals, and related considerations. Notably, each party involved in the dispute is afforded the opportunity to appoint an arbitrator individually, with these chosen arbitrators collectively selecting a presiding arbitrator to lead the tribunal.

Chapter four of the aforementioned statute delves into the procedural complexities of arbitration, drawing influence from the UNCITRAL Model Arbitration Rules. Chapter V requires the competent court to issue a ruling ratifying arbitral awards and granting them executive effect³³⁶. This ratification process is consistent with the legal principles outlined in the 1985 United Nations Commission on International Trade Law (UNCITRAL) Report on International Commercial Arbitration. Furthermore, it states that parties shall submit a validly signed copy of the arbitration award for confirmation by the appropriate court, along with any court judgments or decisions given in accordance with due process³³⁷.

4.1.2.2 Cabinet Resolution No. 39 of 2004 On The Executive Regulations Of The Arbitration Law No. 3

The efficacy of the Council of Ministers' resolution concerning the Enforcement Regulations of the arbitration law in the West Bank and the Gaza Strip has been realized. The initial segment of this regulation pertains to the validation of arbitrators, the protocol for bestowing arbitration licenses, and the delineation of matters eligible for arbitration in accordance with the statutory framework³³⁸.

The subsequent section of the regulation delves into the intricacies of the arbitration agreement, while the ensuing chapter addresses facets pertinent to the arbitral tribunal, encompassing its constitution, jurisdictional parameters, among other considerations. The subsequent chapter expounds upon the specifics of the arbitration procedures, and

³³⁵ Katbeh, 2019

³³⁶ Ibid

³³⁷ Shandi, Y. M. (2014). P305.

³³⁸ De Palo, G., Trevor, M. B., & Alexander, N. M. (Eds.). (2007). P.60.

the closing chapter is dedicated to the adjudication and execution of the arbitration award.

4.1.2.3 Journal of Judicial Rulings (Ottoman Civil Law)

The Journal of Judicial Rulings, still applicable in the West Bank and the Gaza Strip, serves as a compendium of general laws to which authorities turn when confronted with cases lacking specific legislative guidance in matters of civil and commercial disputes. Found within Book XVI, dedicated to the judiciary, it encompasses the legal aspects of administering justice, encompassing the codification of judges, judgments, retrials, and arbitration.

Articles 1841 to 1851³³⁹ within the Journal pertain to arbitration, delineating arbitrable issues, the appointment and responsibilities of arbitral tribunals, the formulation of arbitral awards, and the subsequent enforcement or application of such awards. However, the practical application of these articles is constrained by the existence of specialized arbitration laws, currently in effect, which comprehensively address these issues in a more detailed manner.

4.1.3 Applicable Laws And Regulations In East Jerusalem

In defiance of numerous United Nations resolutions³⁴⁰, residents of East Jerusalem find themselves subjected to Israeli legal jurisdiction. The unlawful annexation of East Jerusalem by the Israeli occupation in 1967 resulted in the extension of the Israeli Local Court's authority over the Palestinian inhabitants of the city.

The 2004 advisory opinion issued by the International Court of Justice affirmed that subsequent events, such as the enactment of the Jerusalem law, the Israeli peace treaty with Jordan, and the Oslo Accords³⁴¹, did not alter the legal classification of the West Bank, including East Jerusalem, as occupied territory, with Israel maintaining its status as an occupying power³⁴².

³³⁹ Article 1841 States: "it is permissible to arbitrate in money claims related to the rights of people." Article 1851 States: "if a case between two persons is separated without a ruling, and the parties are satisfied with that and allow his judgment, his judgment shall be executed."

³⁴⁰ General Assembly resolution 1812 of November 29, 1947, known as the partition resolution, divided historic Palestine into two states: Jewish and Arab. Jerusalem was given a special status, known as a "separate entity Separatum-Corpus", an independent international entity subject to a special international regime. This situation has not changed since then.

³⁴¹ Katbeh, 2019

³⁴² Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 136 (July 9). <https://www.icj-cij.org/case/131>

In East Jerusalem, arbitration and alternative dispute resolution mechanisms are subjected to the framework of Israeli law, notwithstanding Israel's contravention of international legal norms and United Nations resolutions pertaining to its implementation³⁴³.

4.1.3.1 The Israeli Arbitration Law Of 1968

Arbitration within the confines of East Jerusalem is governed by the Arbitration Law of 1968, specifically applicable to Palestinian residents electing to invoke this obligatory legislation. This legal framework, largely stemming from English arbitration laws originating in approximately 1889, was assimilated during the British Mandate in Palestine. The statute accords with the involved parties considerable latitude in configuring their arbitration mechanism, providing them with the authority to designate an arbitrator or a body of their choosing³⁴⁴.

This grants indefinite power and discretion to the neutral third party. Furthermore, the law empowers the disputing parties to determine various aspects of the arbitral proceedings, including the selection of possible provisions and the methodologies for presenting evidence and pleadings, ultimately allowing them to establish the governing law for the case.

The initiation of the arbitration process is contingent upon the antecedent agreement between the parties involved, either predating the emergence of the dispute or subsequently formed. In accordance with the 1984 legislation governing judicial proceedings, the presiding judge possesses the authority to propose to the disputing parties the option of arbitral resolution rather than resorting to litigation, contingent upon the mutual consent of the parties.³⁴⁵ Upon the parties' agreement to engage in the arbitration procedure, it assumes a binding nature, precluding either party from retracting their commitment and pursuing dispute resolution through the judicial system³⁴⁶.

4.1.3.2 The Amended Israeli Arbitration Law Of 1984

³⁴³ Shapira, O. (2008). P32.

³⁴⁴ Ibid.P32.

³⁴⁵ Katbeh, 2019

³⁴⁶ De Palo, G., Trevor, M. B., & Alexander, N. M. (Eds.). (2007). P.61-58.

The 1984 amendment to the courts statute, which applies to Palestinian residents of East Jerusalem, authorizes the courts to send civil disputes to mediation or arbitration with the parties' cooperation³⁴⁷. Under this law, the court might take the initiative to refer the matter to arbitration if both parties agree³⁴⁸.

Section 79 (C) (E) of the consolidated version of the act confers judicial authority upon the court to, at the discretion of the involved parties opting for conciliation/mediation, temporarily halt the progression of legal proceedings when deemed necessary. Furthermore, the court is empowered to prolong the suspension of proceedings upon the parties' request³⁴⁹.

Additionally, Article 79 (C) (F) stipulates that in the event that the conciliation/mediation process fails to reach a resolution within the aforementioned timeframe, the court proceedings shall be recommended. This reinstatement may occur either automatically or upon the initiative of the conciliator, mediator, or any of the involved parties, even before the lapse of the agreed-upon temporal duration³⁵⁰.

4.1.3.3 The Courts System Of 1993

Regulation 5(D) within the framework of the judicial or arbitration system stipulates that the arbitrator is proscribed from utilizing any information divulged to them throughout the arbitration proceedings for purposes beyond the arbitration itself³⁵¹. This prohibition extends to the disclosure of such information to any individuals other than the parties involved unless the arbitrator can independently ascertain the information through reasonable means.

Furthermore, if a party furnishes information to the arbitrator with a condition of confidentiality, the arbitrator is precluded from disclosing said information to any other party involved in the arbitration, unless the party originally disclosing the information waives the confidentiality requirement.

³⁴⁷ Katbeh, 2019

³⁴⁸ Khalil, A. (2009). P.5.

³⁴⁹ Ibid.P.5.

³⁵⁰ Shapira, O. (2008). P33.

³⁵¹ Davis, W. E., Katbeh, L., & Ali, S. (2005). Creating a commercial dispute resolution center in the Palestinian Territories. *Dispute Resolution Journal*, 60(2). <https://ssrn.com/abstract=1783199> .P.12.

Thus, if the arbitrator wishes to consult a colleague in a matter before him, he must either acquire the approval of the parties or their anonymity; nevertheless, the basic or secondary legislation in Israel does not address the parties' obligations to secrecy³⁵².

In the event that the involved parties opt for arbitration within the jurisdiction of Israel, it is imperative to note that in the absence of a mutually stipulated written agreement to the contrary, the standard arbitration agreement articulated in the arbitration system schedule shall govern the arbitration proceedings. This agreement shall function as a formalized understanding between the parties with respect to arbitration.

4.1.3.4 Israeli Labor Courts Law 5729 of 1969

The Labor Courts Law of 1969 governs labor courts in Israel and applies to Palestinian citizens of East Jerusalem. Article 28 states that "nothing in this law shall be construed as being aimed at preventing the referral of a particular case to arbitration. However, if it is the only subject matter that the court has exclusive competence to consider, the court shall be vested with the powers of a regular court regarding the subject matter of Arbitration."³⁵³

4.1.4 Draft of The Palestinian Arbitration Law

The arbitration committee initially presented this legislation proposal to the International Chamber of Commerce - Palestine³⁵⁴. The proposal sought to amend Law No. 3, which was promulgated in 2000, with the primary goal of developing a cohesive and complete legal framework in accordance with fundamental international principles, the Model Law, and the New York Convention. The fundamental motive behind this project was to address and remedy any shortcomings in the current 2000 legislation³⁵⁵.

The jury for the (ICC) - Palestine law included practicing lawyers, academics, Bar Association officials, and lawyers from the Ministry of Justice. The proposed law is currently overseen by the Ministry of Justice, which continues to work with the national

³⁵² Katbeh, L. S. (2015). P.5.

³⁵³ Khalil, A. (2009). P.6.

³⁵⁴ Katbeh, 2019

³⁵⁵ Foster, C. (2011, June 28). ICC Palestine to start operation in Ramallah. International Chamber of Commerce. <https://iccwbo.org/media-wall/news-speeches/icc-palestine-to-start-operation-in-ramallah>

team. The manuscript is in its last stages of debate. Here are some of the most notable features of the new proposed arbitration statute³⁵⁶:

4.1.4.1 Arbitration Agreement

The proposed legislative framework comprises standardized legal provisions governing the acceptance of electronically exchanged documents as legally valid arbitration agreements. The legislation posits the recognition of an arbitration agreement when explicitly stated within any of the contractual documents.

Additionally, the enforceability of the agreement is contingent upon the inclusion of such a provision within the agreement itself³⁵⁷. The legislation affords litigating parties the prerogative to opt for arbitration, mandates judicial approval of their application for arbitration, and designates the resulting court order as constituting a formal arbitration agreement.

4.1.4.2 Nomination of Arbitrators

The proposed legislation incorporates several noteworthy advancements, specifically accentuating and safeguarding the autonomy of the parties involved. The bill designates the third arbitrator as a neutral referee rather than a constituent of either party's team.

Additionally, it gives the parties the right to choose an appointing authority, such as the Palestinian Chamber of Arbitration (PCA), the International Chamber of Commerce (ICC), or any other entity clearly stated in the arbitration agreement. Furthermore, the draft law defines a particular period, stating that response parties shall nominate an arbitrator within 15 days of receiving the application for arbitration appointment³⁵⁸.

4.1.4.3 The role of the courts

One of the most significant revisions to the proposed law concerns the courts' participation in arbitration. The draft law accepts the broad premise that courts lack jurisdiction to hear a case if there is a valid arbitration agreement. However, it also specifies that if one of the parties proceeds to the court, the opposing party must first invoke the arbitration agreement before litigating the essence of the matter in court³⁵⁹.

³⁵⁶ Katbeh, L. S. (2015). P. 12.

³⁵⁷ Ibid. P.13.

³⁵⁸ United Nations Country Team in the occupied Palestinian territory. (2017, July). P .10

³⁵⁹ Khalil, A. (2009). P .13.

The new draft clarifies the activities that the courts will do in the aforementioned Court. Instead of requiring the arbitrator to grant a stay or suspend the case, the new law mandates the courts to dismiss the case from the start and direct the parties to arbitration. The statute also transfers the responsibility for examining arbitral awards from the court of first instance to the court of appeals, ensuring that judicial review of arbitration awards is limited. Thus, any decision affirming or canceling an arbitration award can only go to the court of Cassation.³⁶⁰

4.1.4.4 Alignment with international standards

One of the most obvious structural flaws in the Palestinian Arbitration Law No. 3 of 2000 is the lack of legislative harmonization with international standards, as the law fails to sufficiently reflect the modern principles established by the International Organization of Commercial Arbitration. This weakness is noticeable when contrasted to the UNCITRAL Model Law on International Commercial Arbitration and the 1958 New York Convention, which serves as the foundation for present national arbitration legislation.³⁶¹

At the level of legal vocabulary and conceptions, the 2000 law employed traditional formulations that are contradictory with recognized international concepts, such as the concept of an arbitration agreement, the arbitral tribunal's scope of jurisdiction, and judicial control boundaries. This terminological divergence was more than just a formal distinction; it resulted in conflicting judicial interpretations, undermining the stability of arbitral awards and affecting their recognizability and enforceability, particularly in cross-border contexts.

In terms of basic principles of arbitration, current law has failed to protect a number of fundamental principles that support international arbitration, most notably the principle of competence by competence, the principle of independence of the arbitration clause from the original contract, and the principle of minimal judicial intervention.³⁶² The absence of express provisions on these principles, or their treatment in a vague implicit manner, damaged the arbitration process's independence and provided national

³⁶⁰ Katbeh, 2019

³⁶¹ Ibid

³⁶² Ibid

courts with a broad scope for involvement, contradicting the worldwide trend in favor of arbitration.

In response to these issues, the new draft obviously draws on the UNCITRAL Model Law and the New York Convention, both in terms of overall framework and guiding principles. The proposal was eager to use internationally recognized concepts and vocabulary, which helps to unify legal interpretation and reduces the possibility of dispute between national courts and international standards.³⁶³

The draft also precisely stated the core principles of arbitration, the most important of which are the independence of the arbitration agreement, the competence of the arbitral tribunal to decide in its jurisdiction, and the idea of restricting judicial intrusion. This method is a critical step in strengthening Arbitration's independence and ensuring compliance with established international norms.

Regarding the execution of arbitral awards, the new draft has been anxious to align the grounds for appeal and invalidity with those defined specifically in the New York Convention, which improves the recognizability and enforceability of arbitral rulings, whether national or foreign. This strategy will boost trust in the Palestinian judicial system and solidify its status as a favorable legal environment for international commercial arbitration.

As a result, the new arbitration draft not only fills the existing legislative gap, but also seeks to integrate Palestine into the international arbitration system in order to increase legal certainty, attract investment, and promote arbitration as an effective means of resolving commercial disputes.

4.1.4.5 Comparison between the 2000 and the draft arbitration law

A comparison of the current 2000 law, applicable in the West Bank and Gaza, and the proposed draft demonstrates a dramatic shift in legislative thinking, from a traditional framework with practical gaps to a united system that meets international standards. With regard to the arbitration agreement (Article 5)³⁶⁴, the 2000 law is limited to the

³⁶³ Shandi, Y. M. (2014). P307.

³⁶⁴ “1. An arbitration agreement is an agreement between two or more parties to refer all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or non-contractual, to arbitration. The arbitration agreement may take the form of an arbitration clause within a contract or a separate agreement. 2. The arbitration agreement must be in writing.”

traditional written form, raising concerns about the legitimacy of mutual agreements made electronically.

While the draft specifically states that electronic exchange of documents is an acceptable manner for the conclusion of an arbitration agreement, this is a required expansion to meet the needs of modern trade. The proposal also includes a new process that permits opponents to agree on arbitration after a dispute develops and jointly seek to the court for an order referring them to arbitration, which was not explicitly provided for in the 2000 statute.

While the current law briefly addresses the nomination of arbitrators (Articles 8-19 of the 2000 Law), the new proposal focuses on increasing the arbitral tribunal's independence and impartiality. The draft distinguishes itself by restricting the time required for the defendant to nominate an arbitrator to 15 days, a specified time limitation that did not previously exist, so reducing delay tactics. The draft also allows the parties to choose a neutral appointee, such as the Palestinian Chamber of Arbitration or the International Chamber of Commerce, whereas the 2000 law is more unclear by separating the alternative options.

The most notable change appears in the court's role (Articles 5, 7, 11, 14, 17, 28, 29 and 41-53 of the 2000 law). Under present law, if a claim is filed by someone with an arbitration agreement, the court must halt the proceedings and refer the parties to arbitration. The draft directs the court to dismiss the case immediately if the arbitration agreement is stated in the first hearing, a firmer approach that upholds the principle of separation of jurisdiction.

Still, the new draft shifts jurisdiction to consider applications for the cancellation or implementation of Arbitration verdicts from the court of first instance to the court of appeals, as opposed to the current law, which places this authority with the court of first instance³⁶⁵. This modification tries to ensure that judicial review is carried out by a higher and more competent judicial body before the final appeal is confined to the Court of Cassation, thus strengthening the idea of arbitral decision finality and eliminating the space for lengthy appeals.

4.1.5 Non-official Justice

³⁶⁵ Katbeh, 2019

Informal justice pertains to the resolution of conflicts among litigants beyond the jurisdiction of state courts, the formal justice system, or alternative dispute resolution mechanisms. The principal participants in the informal tribal judiciary are commonly referred to as "tribal judges"³⁶⁶.

In recent years, "tribal arbitration" has been used to describe both the procedure and the outcomes of conflict resolution proceedings handled by tribal judges or Reform committees established by the Palestinian Authority³⁶⁷.

The legal foundation for the emergence of informal clan arbitration finds its roots deeply embedded within the diverse governing authorities that have presided over Palestine. Across the epochs of Ottoman, British, and Jordanian rule, the acknowledgment of informal tribal arbitration mechanisms remained conspicuous³⁶⁸.

The customary legal framework governing these practices in Palestine has engendered a complex scenario, contributing to legal pluralism wherein multiple legal systems concurrently exist within the same societal domain. A primary apprehension associated with this legal framework, particularly in instances involving the enactment of customary law in Palestine, pertains to its ramifications on the rule of law³⁶⁹. Notably, there is an absence of evaluative scrutiny regarding the equity of judgments arising from the arbitration procedures.

4.1.5.1 The Relationship Between The Non-Official Judiciary In Palestine And The Palestinian Authority

Historically, the informal judiciary has served as a major social pillar, providing outlets for settling numerous problems and disagreements that develop among citizens. The Palestinian Authority has fostered and maintained the role of clan arbitration, especially after the Oslo Accords³⁷⁰ barred a significant segment of the population from obtaining legal services, particularly those living in Area C and Jerusalem³⁷¹.

³⁶⁶ Darwazeh, N. (2014). The Jerusalem Arbitration Centre: From tradition to innovation. *Journal of International Arbitration*, 31(2), 121–138. <https://doi.org/10.54648/joia2014008> P.110.

³⁶⁷ Katbeh, 2019

³⁶⁸ Davis, W. E., Katbeh, L., & Ali, S. (2005). P.14.

³⁶⁹ Khalil, A. (2009). P.7.

³⁷⁰ Katbeh, 2019

³⁷¹ Darwazeh, N. (2014). P111.

The Palestinian Authority has utilized informal justice as a means of extending its authority over the Palestinian people and the Palestinian area, because it is unable to use the official state system, which is mostly under Israeli control.³⁷²

There is substantial evidence to demonstrate that the Palestinian Authority (PA) has deliberately backed customary law, not only through its support for informal judicial agents, but also through its general governance structure. On November 9th, President Yasser Arafat issued Presidential Decree No. 161, which formed the Department of Clan Affairs under the supervision of the Office of the President³⁷³. This department developed internal directives to manage its operations, defined the administrative status of its employees, and created specified criteria for the recruitment of reformers and tribal judges across Palestinian governorates.

In 2004, the Tribal Affairs Department successfully instituted Central Reform Committees in multiple Palestinian governorates. Additionally, the PA exhibited tolerance towards existing tribal judges, fostering and endorsing their activities. The PA not only facilitated the creation of official conciliation committees but also organized an administrative apparatus to oversee their functions and disbursed salaries in support of their endeavors.

Under the administration led by President Mahmoud Abbas, there was a discernible reduction in the level of coordination, with a consequential transfer of authority to regional governors and the interior ministry³⁷⁴. This restructuring underscored the primacy of the Palestinian Authority and its executive and judicial systems. Furthermore, the purview of Tribal Affairs underwent a noteworthy shift from the purview of the presidential office to the Ministry of Internal Affairs, as stipulated by a resolution from the Council of Ministers³⁷⁵.

Despite these organizational changes, a pronounced deficiency in the institutionalization of reconciliation committee activities persists within Palestinian municipalities. Notably, numerous reconciliation leaders operate in an independent capacity, indicative of a substantive absence of cohesive institutional frameworks.

³⁷² Katbeh, 2019

³⁷³ Shandi, Y. M. (2014). P.327.

³⁷⁴ Cabinet Resolution No. (AQ/CM25/52/09/ of 2005 issued on March 2, 2006 by approving the structure of the Department of Corrections and Tribal Affairs.

³⁷⁵ Shandi, Y. M. (2014). P.328.

Additionally, the most recent decision undertaken by President Abbas reflects a conspicuous lack of internal coordination or information exchange. The rescission of the initiative to establish the Supreme Committee for Tribal Affairs serves as a poignant illustration of a political maneuver aimed at circumscribing the influence of tribal arbitration³⁷⁶.

4.1.5.2 The Interaction Between Non-Official Justice And Formal Justice

Informal justice exerts a substantial impact upon the formal justice system within the Palestinian context, with varying degrees of influence evident across different regions. The discretionary latitude afforded by judges within the legal framework provides a conduit through which decisions rendered in informal justice settings can significantly shape court outcomes.

Specifically, prevailing penal codes operative in both the West Bank and the Gaza Strip confer upon judges the authority to exercise discretion in commuting legally prescribed sentences based on the nuanced circumstances of the crime and the societal context deemed relevant by the presiding judge³⁷⁷.

Moreover, the extant Criminal Procedure Law grants judges the prerogative to release accused individuals on bail. Notably, the act of victim forgiveness serves as a mitigating factor, warranting the cessation of legal proceedings and the suspension of statutorily mandated penalties, particularly in instances where a final verdict remains pending, or the case is predicated upon a personal claim.

In addition, in the framework of judicial practice, it is common for Palestinian courts to commute the sentence to the minimum established by the punishment established after the conciliation proceedings.

Nevertheless, the influence of official judicial pronouncements on alternative tribal arbitration remains negligible. Instances have been observed where individuals, despite lacking formal convictions, are treated by the informal justice system as culpable. The discernible tardiness of court proceedings, when juxtaposed with the relatively expeditious nature of reform committees, results in an inherent inability of court decisions to exert any impact on informal justice. This phenomenon may be a pivotal

³⁷⁶ Khalil, A. (2009). P.9.

³⁷⁷ United Nations Country Team in the occupied Palestinian territory. (2017, July). P .12.

factor prompting a substantial number of individuals to seek recourse in informal mechanisms rather than formal justice systems³⁷⁸.

The categories of cases addressed by informal justice mechanisms exhibit minimal divergence from those adjudicated within formal judicial systems. Distinctions, however, arise primarily within the realms of civil and criminal litigation³⁷⁹. Notably, individuals display a predilection for engaging in alternative clan arbitration in criminal proceedings to a greater extent than in civil matters. This proclivity is attributable to a variety of factors, including an imperative for expeditious resolution, given that traditional legal channels often entail protracted timelines for case adjudication.

4.2 Recognition Of Actors In The Field Of Arbitration In The West Bank

In Palestine, various institutions from the public and business sectors, as well as civil society, participate in arbitration. Given the nature of many firms' interactions with the field of interactive development, the participation of such a diverse range of institutions is expected³⁸⁰. The regulatory framework varies in terms of training and service delivery. Commercial and civil settlements differ from Community Mediation, Conciliation and mediation in the criminal arena, and negotiation and conciliation in the labor sphere³⁸¹.

It is imperative to acknowledge a conspicuous dearth of proficient and well-trained professionals available for the provision of arbitration services, as well as for the formulation of essential legislation and requisite institutional support. This deficiency significantly impedes endeavors aimed at enhancing and facilitating alternative dispute resolution services.

Notably, a substantial proportion of adept arbitrators within the civil and commercial domain are affiliated with private enterprises and were not encompassed within the scope of this institutional examination. Nevertheless, this cohort represents a pivotal cadre of experts upon whom reliance can be placed for advancements in this domain.

³⁷⁸ Davis, W. E., Katbeh, L., & Ali, S. (2005). P.16.

³⁷⁹ Shandi, Y. M. (2014). P.330.

³⁸⁰ Katbeh, 2019

³⁸¹ De Palo, G., Trevor, M. B., & Alexander, N. M. (Eds.). (2007). P.65.

The subsequent enumeration delineates the principal institutions engaged in the alternative resolution of disputes in the Palestinian context³⁸².

4.2.1 Public Institutions

Several state entities play critical roles in organizing, implementing, and delivering alternative conflict resolution services to the Palestinian population.

4.2.1.1 Ministry of Justice

The Ministry of Justice has a discrete section within its organizational structure known as the General Directorate for Professional Affairs and Alternative Dispute Resolution Means. This directorate consists of three independent divisions, one of which is dedicated to arbitration and dispute resolution.³⁸³

Among the department's responsibilities are the accreditation and categorization of arbitrators, the compilation of rosters featuring accredited arbitrators across diverse specialized domains, and the subsequent submission of these rosters to judicial entities. The most recent compilation comprises 274 arbitrators situated in the West Bank and Gaza. Notably, the roster has undergone recent restructuring to streamline its format, wherein each arbitrator is now assigned to a singular specialization category³⁸⁴.

The Ministry of Justice advocates for a singular specialization focus for accredited arbitrators. Presently, the administration lacks an operational database encompassing arbitration expert specializing in alternative dispute resolution. Comprehensive statistical data pertinent to this sector is currently unavailable through this service. The potential for assuming a crucial role in the imminent future appears evident.

This unit refrains from engaging in substantive activities within the realm of mediation or conciliation, including training, organization, and the formulation of policies and strategies pertaining to Alternative Dispute Resolution (ADR). Instead, its primary function involves presenting recommendations to the minister for the accreditation of arbitrators who fulfill the stipulated requirements outlined in the regulations of the arbitration law³⁸⁵, thereby issuing certificates to these arbitrators. As

³⁸² Darwazeh, N. (2014). P113.

³⁸³ Katbeh, 2019

³⁸⁴ Katbeh, L. S. (2015). P.15.

³⁸⁵ Khalil, A. (2009). P.11.

per statements from an official within the administration, the unit is currently inadequately staffed with only four employees.

Moreover, the existing personnel lack pertinent expertise in dispute resolution, lack specific training, practical experience, or dedicated education in Arbitration and mediation. Consequently, they are ill-equipped to proficiently lead, organize, or administer dispute resolution processes in Palestine in a contemporary and effective manner that optimally serves the community³⁸⁶.

It is imperative to address this deficiency by providing training to current staff, enhancing their understanding, and supplementing the administration with experts capable of delivering technical proficiency in the realms of Arbitration and mediation legislation. This is imperative as it aligns with the administration's priorities and legislative agenda, aiming to enhance the quality of services provided to the community.

4.2.1.2 Ministry of Interior: General Directorate of Tribal Affairs and Reform

The Council of Ministers resolved to incorporate the Department of Tribal Affairs and Reform into the Ministry of Interior, which is now one of the public departments of the Ministry of Interior.³⁸⁷

The services provided by the General Directorate of Tribal Affairs and corrections include the following³⁸⁸:

- 1 Respond to public complaints and guide them to appropriate authorities to address family, clan, or legal disputes.
- 2 Supervision and follow-up with all reconciliation committees and clans that operate within the framework of the rule of law and tribal custom.
- 3 Issuing special cards to employees in the field of tribal arbitration to legitimize their work in front of all official and unofficial bodies.

³⁸⁶ United Nations Country Team in the occupied Palestinian territory. (2017, July). P.13.

³⁸⁷ Katbeh, 2019

³⁸⁸ Ibid

- 4 Interfere in the work of any group or clan in case of any violation of the law.
- 5 The Directorate works on the development of tribal law in line with Sharia and the rule of law.
- 6 The formation of committees in all governorates to achieve civil peace and harmony among all members of society and intervene in any clan disputes, whether personal or social, in line with the law and clan customs.
- 7 The Directorate is responsible for appointing and approving mukhtars (heads of villages or towns) and works on issuing identity cards to workers in the field of clan arbitration to facilitate their work³⁸⁹.

4.2.1.3 Governorates: Civil Peace Department

Governorates are fundamental components of the state's overarching administrative framework, as defined by Governorates Law No. 29, which was enacted in 1955³⁹⁰. A Civil Peace Department functions inside each governorate, reporting to the Civil Peace and Security Unit, which is headed by the appointed governor. The major purpose of the civic Peace Department is to resolve societal issues, preserve civic harmony, and facilitate agreements between parties involved in disputes³⁹¹.

The Civil Peace Department within each governorate is comprised of two distinct committees: the primary committee, denoted as the Tribal Council, and a subsidiary sub-committee. The leadership of the Tribal Council is entrusted to key figures including the governor, the deputy governor responsible for civil peace, the director of the Civil Peace Department, the legal advisor within the province, and the head of the Security Department.

Additionally, the Tribal Council includes members recognized for their authoritative roles and profound understanding of Palestinian culture and traditions, contributing to the decision-making processes within the committee³⁹².

³⁸⁹ The structure of the General Administration of rehabilitation and tribal judiciary in Hebron affairs-tribal/Departments/PS.pna.moi.www://htt

³⁹⁰ Katbeh, 2019

³⁹¹ De Palo, G., Trevor, M. B., & Alexander, N. M. (Eds.). (2007). P.67.

³⁹² The Department of civil peace.html -66.page/PS.plo.hebron.www://http

The governor typically receives written grievances pertaining to specific disputes, wherein the complainant seeks the governor's intervention. Subsequently, the governor channels the complaint to the Department of Civil Peace. The sub-committee initiates communication with involved parties, as well as any relevant stakeholders, with the aim of facilitating a resolution. In certain instances, the committee may seek the involvement of clan leaders for assistance. Upon completion of its deliberations, the sub-committee presents its recommendations to the overarching committee for the purpose of arriving at judicious decisions for each individual case³⁹³.

The Civil Peace Department operates within each governorate in collaboration with legal professionals and civil society organizations. It is imperative to guarantee that clan leaders affiliated with the department are devoid of any financial incentives and are esteemed for their sagacity and integrity. The selection of clan leaders by the Civil Peace Department is contingent upon their demonstrated influence over the conflicting parties. Notably, a formalized mode of collaboration between the governorates and clan leaders is absent, primarily stemming from the apprehension within the governorates that such interactions may be exploited by clan leaders for personal gains.

Nevertheless, certain governorates are availing themselves of support from Indigenous organizations, including the Centers for Human Rights, media democracy, and the Geneva Center for security sector governance. These organizations are engaged in the provision of training programs for tribal leaders, focusing on topics pertaining to Alternative Dispute Resolution and gender sensitivity³⁹⁴. An evaluative analysis is conducted to assess the advancements achieved by clan leaders subsequent to their participation in training initiatives facilitated by the aforementioned entities.

Furthermore, the provinces failed to sustain collaboration with clan leaders who had undergone training, deeming a majority of them inadequately qualified. Additionally, a deficiency in training programs targeted at tribal leaders in Palestine persists. This is primarily attributed to the prevalent belief among key stakeholders that instructing tribal leaders on gender-sensitive matters is ineffectual, as these leaders are perceived to steadfastly adhere to traditional masculine ideologies. This presents a contemporary

³⁹³ De Palo, G., Trevor, M. B., & Alexander, N. M. (Eds.). (2007). P.68.

³⁹⁴ Davis, W. E., Katbeh, L., & Ali, S. (2005). P.18.

challenge, as such attitudes hinder the application of progressive approaches in conflict resolution or intervention³⁹⁵.

It is noteworthy that the significance of civil peace departments varies across governorates, influenced by the prominence of tribal arbitration and the level of trust placed in these mechanisms by conflicting parties. The Civil Peace Department in Hebron is particularly noteworthy for its heightened activity in the West Bank.

4.2.2 Private Sector And Civil Society Organizations

Numerous private sector endeavors have been instigated in recent decades to facilitate the advancement of Alternative Dispute Resolution (ADR) services. A considerable proportion of these initiatives have manifested as projects underwritten by donor organizations or institutions; however, they have encountered impediments related to inadequate funding, sustainability concerns, or limited acceptance from stakeholders. Consequently, the provision of ADR services in a proficient capacity has been compromised, notwithstanding the commendable efforts exerted by these initiatives.

The private sector's initiatives concentrate on two issues. One of the parties intends to create centers for resolving trade disputes. The opposite side focuses on civil society organizations and is directed towards community dispute resolution, mediation, and conciliation training, as well as developing public knowledge of Alternative Dispute Resolution³⁹⁶.

4.2.2.1 Center For Settlement Of Commercial Disputes

In the latter part of the 1990s, USAID³⁹⁷ embarked upon an ambitious initiative aimed at legal reform to bolster the emergent justice system within the Palestinian Territories. This undertaking, which constituted one among various ongoing international assistance endeavors in the region during that period, sought to concentrate on the initiation of prototype courts. The strategy involved providing support to four law schools, engaging civil society in the advocacy for justice, and instituting an alternative dispute resolution program affiliated with the court. Notably, the contracting entity

³⁹⁵ Ibid.P.19.

³⁹⁶ Yehuda, I. (2016, October 1). P.250.

³⁹⁷ USAID is the world's premier international development agency and a catalytic actor driving development results. USAID's work advances U.S. national security and economic prosperity, demonstrates American generosity, and promotes a path to recipient self-reliance and resilience. Available on website: <https://www.usaid.gov>

DPK has recommended the incorporation of alternative dispute resolution capacities specifically tailored for the commercial sector into the program³⁹⁸.

DPK engaged the services of legal professionals from the West Bank and Gaza, specifically Palestinian lawyers, for the purpose of conducting a comprehensive feasibility study. Out of the seventy-nine companies subject to the survey, a noteworthy 97% demonstrated familiarity with the concepts of arbitration and mediation. Nearly 60% of the surveyed entities acknowledged previous engagement with Alternative Dispute Resolution (ADR) services. However, their collective sentiment towards ADR was nuanced: 29% reported a positive impression, 62% characterized their experience as average, and 9% expressed a negative perception of their involvement in the realm of dispute resolution.

Upon analysis, it was discerned that the primary motivation for these companies to opt for mediation or arbitration rested on the desire to economize on time and financial resources. Notwithstanding the varied encounters with ADR mechanisms, a substantial majority, exceeding 93%, expressed a keen interest in the establishment of a commercial center dedicated to Alternative Dispute Settlement within the region³⁹⁹⁴⁰⁰.

The Palestinian authority, represented by the Dispute Prevention and Resolution Committee (DPK), extended invitations to Palestinian enterprises to participate in the solicitation of proposals for the establishment of an alternative dispute resolution center. The procurement process culminated in the selection of the private consulting firm "Masar Associates" as the successful contractor in 2001, with the commencement of operational activities a year later⁴⁰¹.

Subsequently, in 2002, Masar Associates undertook a comprehensive follow-up evaluation, encompassing interviews with chief executive officers of diverse Palestinian companies and associations. Notably, 95% of respondents conveyed a willingness to lend their support to the Center for Alternative Dispute Resolution. The establishment of such a center holds the potential to significantly enhance the

³⁹⁸ United Nations Country Team in the occupied Palestinian territory. (2017, July). P. 16.

³⁹⁹ Katbeh, 2019

⁴⁰⁰ Davis, W. E., Katbeh, L., & Ali, S. (2005). P.21.

⁴⁰¹ Katbeh, L. S. (2015). P.19.

dispensation of justice and foster economic development by furnishing arbitration and mediation services to the private sector within the region⁴⁰².

Masar has opted to designate Ramallah and Gaza City as the prospective locations for the offices of the Center for Alternative Dispute Resolution, to be officially referred to as "Arbitration." The Arbitration Center encountered noteworthy challenges, particularly in the realm of limited public awareness regarding the nature and methodologies of Alternative Dispute Resolution (ADR).

In response to this issue, the center undertook comprehensive marketing and educational initiatives aimed at fostering positive perceptions of alternative dispute resolution mechanisms. These initiatives included the development and dissemination of a monthly newsletter targeting the general public and potential clientele. The purpose of this newsletter was to impart knowledge regarding the existence of the center's offices, elucidate the concept of Alternative Dispute Resolution, and convey information pertaining to pertinent laws and regulations affecting the business community⁴⁰³.

The arbitration center engaged in collaborative efforts with regional and international counterparts across the Arab world and beyond. The procedural guidelines of the arbitration center were formulated through a collective process in alignment with the Palestinian arbitration law enacted in 2000.

These standards follow global benchmarks, with inspiration from the UNCITRAL Model Arbitration Rules and the ICC Arbitration Rules. To ensure the impartiality and dependability of its services, the arbitration center has established a code of ethics for neutral third parties. This rule is essentially based on the American Bar Association's rule of Conduct for Arbitrators in Commercial Disputes, which was developed by committees.⁴⁰⁴

To bolster the competency of its practitioners, the center has established a training unit offering legal education to the private sector. Training programs and manuals on arbitration and mediation have been meticulously developed. Knowledgeable

⁴⁰² Ibid.P.20.

⁴⁰³ Ibid.P.21

⁴⁰⁴ Katbeh, 2019

practitioners⁴⁰⁵, encompassing seasoned arbitrators and mediators, as well as novices in the realm of alternative dispute resolution who have undergone foundational training and practical experience, are recruited to contribute their expertise to the training initiatives.

An arbitration center encountered the imperative of cultivating a clientele to attain financial autonomy. Subsequent to its inception, the arbitration center autonomously administered numerous domestic and international arbitration and mediation proceedings. Presently, it holds official recognition as a non-profit entity from the Palestinian Ministry of Interior. Furthermore, the Ministry of Justice and the Ministry of National Economy have endorsed the registration of said arbitration center. In the spring of 2003, it acceded to the International Federation of Commercial Arbitration Institutions. Additionally, in January 2004, the arbitration center attained membership status within the Arab Federation of Arbitration Institutions⁴⁰⁶.

For a considerable duration subsequent to its establishment and financial backing as a venture, the arbitration center persisted in its role. Operated under the auspices of the Masar company, its administration was coordinated by offices located in both Ramallah and Gaza, thereby ensuring its sustained operation⁴⁰⁷.

Nevertheless, the center eventually faced closure, attributable to deficiencies in cultural comprehension regarding alternative dispute resolution mechanisms, compounded by its placement within a privately owned enterprise in a competitive landscape with numerous counterparts. Furthermore, the closure was exacerbated by the relatively elevated fees associated with the utilization of the arbitration center's services.

4.2.2.2 Palestinian National Committee-International Chamber of Commerce

The International Chamber of Commerce in Palestine was created in January 2011 as a National Chamber of the International Chamber of Commerce - Paris, with the purpose of connecting the Palestinian economic sectors with international economic practice.⁴⁰⁸ Promote a competitive and healthy economic climate, and ensure that Palestinian

⁴⁰⁵ Darwazeh, N. (2014). P.114.

⁴⁰⁶ Davis, W. E., Katbeh, L., & Ali, S. (2005). P.22.

⁴⁰⁷ United Nations Country Team in the occupied Palestinian territory. (2017, July). P.17.

⁴⁰⁸ Katbeh, 2019

private sector institutions can represent their different interests locally, globally, and regionally⁴⁰⁹.

It was established as a consequence of collaboration between the ICC headquarters and prominent Palestinian businesspeople. Among the founding members of the ICC - Palestine group were representatives from Palestine's key economic sectors. The International Chamber of Commerce Group in Palestine has also made a substantial contribution to increasing, modernizing, and improving the prospects of international commerce and investment in Palestine.⁴¹⁰

The International Chamber of Commerce, the International Chamber of Commerce - Palestine, and the International Chamber of Commerce - Israel signed a memorandum of understanding to establish an arbitration center in Jerusalem to settle trade disputes between Israel and Palestine. It is expected to help repair relations between Palestinian and Israeli businesspeople, open up new markets, attract local and foreign investments, and deliver long-term benefits to the legal profession⁴¹¹.

This is the first time since the 1993 Oslo Accords that trade between Israel and Palestine has been more controlled, with an internationally approved arbitration process in place to resolve commercial issues⁴¹². The ICC has played an important role in the development of the ICC - Israel - Palestine Joint Committee, which will act as an independent supplier of dispute resolution services, in order to handle international commercial issues between Palestinians and Israeli firms.

The JAC⁴¹³ the international arbitration committee also employs special rules based on the ICC arbitration rules, with slight variations based on the Palestinian and Israeli arbitration procedures. The International Court of Arbitration agreed to contribute its expertise to the center, including ongoing training on ICC arbitration rules, guidance on arbitrator selection, jurisdiction, and other legal concerns.

⁴⁰⁹ Foster, C. (2011, June 28).

⁴¹⁰ Katbeh, 2019

⁴¹¹ Foster, C. (2011, June 28).

⁴¹² Katbeh, 2019

⁴¹³ JAC - the Jerusalem Arbitration Center - a joint enterprise by ICC Israel and ICC Palestine for the resolution of Palestinian Israeli business-related disputes. The JAC is endorsed by ICC International. JAC will enable wider and more secured commerce between Israelis and Palestinians . More about the JAC at <http://www.iccisrael.co.il/en/content/jac-challenge>

The international jury of the center consisted of nine members, including its chairperson Rifat Hisar Kik leglu, who is also the president of the International Chamber of Commerce - Türkiye. The International Chamber of Commerce - Palestine and the International Chamber of Commerce - Israel have each recommended two members of the court.⁴¹⁴

The chair proposed the remaining four members, including the vice-chair. The International Chamber of Commerce-Palestine and the International Chamber of Commerce-Israel appointed the appropriate members with the consent of the International Court of Arbitration. The center's administrative offices are housed in the ICC-Palestine office in Ramallah and the ICC-Israel office in Tel Aviv, while the secretariat and circulation center are in East Jerusalem⁴¹⁵.

Despite significant political and technical support for the formation of the JAC International Arbitration Committee, as well as numerous efforts to introduce new rules and market a venue for Palestinian-Israeli disputes, the JAC committee was unable to persuade any of the aforementioned disputants to settle their dispute in this high-level forum. The Joint Advisory Committee has been formally closed. There are several reasons for the failure of the JAC International Arbitration Committee following the absence of any actual cases presented to it, the most notable of which are the international nature, exorbitant fees, and lack of faith on the part of the disputants⁴¹⁶.

4.2.2.3 Palestinian International Arbitration Chamber

The Palestinian International Arbitration Chamber was founded through an Italian cooperation project involving the province of Umbria and the University of Perugia, as well as collaboration with many local Palestinian groups and associations. The president issued a special resolution establishing the chamber⁴¹⁷. This initiative developed the necessary legislation to establish the first Palestinian arbitration chamber and provided the necessary human resources through professional training and qualification, as well as the tools to provide high-quality services⁴¹⁸.

⁴¹⁴ Katbeh, 2019

⁴¹⁵ Ibid

⁴¹⁶ Darwazeh, N. (2014). P.115.

⁴¹⁷ Katbeh, 2019

⁴¹⁸ Katbeh, L. S. (2015). P.22.

The chamber aims to manage and settle all disputes and disputes about contracts and engineering, commercial and financial works submitted to it in accordance with the law, based on the legal relationship between the disputing parties, whether these relations are contractual or non-contractual, and work to resolve and end these disputes through arbitration.

The Palestine International Arbitration Chamber offers alternative dispute resolution services, such as mediation and arbitration, through the arbitration court, arbitration procedural rules, and a list of specialized arbitrators who can meet the needs of the disputing parties and ensure the establishment of a fair and impartial arbitration award. To assure efficiency. Members of the arbitrators submit an application, and the selection is based on the unit's norms and criteria.⁴¹⁹

There is a list of arbitrators of the Palestine international arbitration chamber that includes some experts who, by the spring of 2014, had attended and passed training courses. The list of arbitrators is divided into all types of commercial and economic spheres, which allows the parties to choose the best qualified arbitrators to resolve their disputes⁴²⁰.

The Palestine international arbitration chamber was established as a donor program to promote alternative dispute resolution in Palestine. It was intended mainly for commercial, civil and contract work. The chamber gained traction when it was sponsored, holding many training courses for future arbitrators and developing arbitration rules⁴²¹. The establishment of the chamber did not develop a plan for sustainability or to develop a strategy to attract disputants to the chamber. Although the founders are one of the largest professional sectors of the economy, which is the Union of Engineers, the Jerusalem Center⁴²².

To deliver its services, the Palestine International Arbitration Chamber created arbitration rules based on Palestinian arbitration statutes and UNCITRAL arbitration

⁴¹⁹ Katbeh, 2019

⁴²⁰ Katbeh, L. S. (2015). P.22.

⁴²¹ Katbeh, 2019

⁴²² Roshan, A., & Turrini, M. (2020). DIFC-LCIA Arbitration Centre introduces new arbitration rules. White & Case LLP. <https://www.whitecase.com/publications/alert/difc-lcia-arbitration-centre-introduces-new-arbitration-rules> P.3.

model rules. No mediation or conciliation guidelines are available or approved to implement techniques other than these⁴²³.

Cases presented to the Palestinian international arbitration chamber include financial and commercial conflicts, real estate disputes, intellectual property disputes, and a variety of other issues. The commission advocates the adoption and inclusion of arbitration in its guidelines for settling disputes.⁴²⁴

The Palestinian Bar Association; the Palestinian Contractors Union; the Palestinian Chambers of Commerce, Industry, and Agriculture; and the Palestinian Industries Union. Disputes were expected to be reported to the center by national organizations and groups, which formed the founding committee and then the board of directors of the Palestine International Arbitration Chamber⁴²⁵.

Apparently, the Palestinian international arbitration chamber's services were not well marketed to the public membership of these unions and groups. Furthermore, the chamber failed to meet the disputants' expectations for attentiveness in case management and tribunal selection. The chamber does not have a trained permanent secretary who can advise, handle applications, or nominate and appoint arbitrators.

The chamber has not been able to settle any cases in the past years to build a reputation in this area. Despite requests for data on the cases submitted and adjudicated, the chamber did not respond to this request, probably because there were no large numbers of them⁴²⁶.

The founding members are the Jerusalem Center Engineers Syndicate, the Palestinian Bar Association, the Palestinian Contractors Union, the Palestinian Federation of Industries, and the Federation of Agricultural Industrial Chambers of Commerce, and the board of directors is made up of representatives from these organizations.⁴²⁷

4.2.2.4 AL Faisal Center for Mediation and Arbitration (ACT)

⁴²³ Davis, W. E., Katbeh, L., & Ali, S. (2005). P.23.

⁴²⁴ Katbeh, 2019

⁴²⁵ Ibid

⁴²⁶ Katbeh, L. S. (2015). P.23.

⁴²⁷ Katbeh, 2019

It is a mediation and arbitration center established in Jerusalem with the aim of achieving justice and making sure that Palestinians living in Jerusalem have an alternative to the Israeli judicial system to resolve their disputes. The center has established the systems required for its establishment. These regulations were founded on the first dispute settlement Alternatives Center in Jerusalem, such as the arbitration rules and the code of conduct that exist in regional and international arbitration centers similar to the "arbitration center"⁴²⁸.

The ACT, which specializes in a variety of professional industries, provides a framework for resolving disputes over financial concerns, engineering projects, commercial agreements, and investment and banking conflicts. Once the parties involve the center in these situations, the arbitration process is administered according to the precise procedural guidelines established by the institution.

Aside from its procedural functions, the Al Faisal Center conducts educational programs centered on the fundamental principles of arbitration, such as a recent specialized program on gender-sensitive mediation. As a registered civil society organization functioning in both Palestinian and Israeli jurisdictions, the center is overseen by a diverse nine-member Board of Directors whose varied professional backgrounds promote institutional monitoring⁴²⁹.

Besides, the Center advocates the use of Arbitration and its inclusion to finish agreements concluded and based on its norms in the resolution of disputes.

The Center for Mediation and Arbitration, established with the backing of benefactors, endeavors to promote alternative conflict resolution mechanisms in Jerusalem, concurrently fostering enhanced access to justice through alternative modalities. Primarily dedicated to matters pertaining to business, civil, and commercial contracts, the center has gained impetus by conducting numerous training sessions for potential arbitrators and formulating arbitration regulations with the assistance of proficient local experts, supported by donors.⁴³⁰ Despite a pressing requirement for a robust alternative dispute resolution system in Jerusalem for the Palestinian population, there appears to be a shortfall in concerted efforts to position the AL Faisal Center for

⁴²⁸ Interview with Mohammed Hadiya, director of Al-Faisal Center for mediation and arbitration Al-Faisal Jerusalem, al-Faisal Center for alternatives to conflict resolution and studies, Jerusalem, August 9, 2022.

⁴²⁹ Ibid.

⁴³⁰ Katbeh, 2019

Mediation and Arbitration as a competent entity for dispute resolution in Jerusalem via alternative avenues⁴³¹.

It is noteworthy that the center currently lacks a publicly disclosed roster of recognized neutral third parties esteemed for their experience within the societal context. Furthermore, the absence of a permanent secretariat capable of offering guidance, processing applications, and appointing arbitrators poses a noteworthy limitation. Notably, the center lacks available data concerning its level of communication and outreach with the public, and there is a dearth of information regarding any discernible trends in the annual caseload, whether an increase or decrease in case volumes⁴³².

4.3 Identification of Arbitration Mechanisms Used In Palestine, With A Special Focus On Area "C" And Area 2H In Hebron And East Jerusalem

The emphasis on conflict resolution methods for residents of Area "C" and Area 2H in Hebron and east Jerusalem tries to promote access to the settlement of their problems in an easy, less costly, and time-consuming approach, and tends to focus more on the outputs of restorative justice.⁴³³

4.3.1 Area "C"

⁴³¹ Al-Faisal Center for Mediation and Arbitration, for more details on the center please visit this site: <https://actadr.org/en/projects/288.html>

⁴³² Alfaisal Arbitration Center. Alfaisal Arbitration Center guidelines booklet. Jerusalem: Alfaisal Center for arbitration and mediation 2018.

⁴³³ Katbeh, 2019

According to the Oslo II accord, which was signed in 1995 by the Palestine Liberation Organization and Israel, the West Bank was divided into three governorates. Area C is under complete Israeli authority; the Palestinian Authority has been given a restricted mandate to exercise its functions, and it is only responsible for education and healthcare.⁴³⁴.



*Figure 4.3.1. Jurisdictional Divisions of the West Bank: Areas A, B, and C**

Area C, which accounts for approximately 62% of the West Bank's total area, acts as a geographic buffer, isolating Areas A and B. This territory is home to an estimated 150,000 Palestinians, or approximately 5.8% of the region's overall population.

⁴³⁴ Katbeh, L. S. (2015). P.24.

* This map illustrates the administrative divisions established under the Oslo Accords. Area A (dark blue) is under Palestinian civil and security control; Area B (light blue) is under Palestinian civil and Israeli security control; Area C (orange) is under full Israeli civil and security control. Adapted from "Map of the West Bank and Gaza Strip," by SoWhAt249, 2018, Wikimedia Commons. CC BY-SA 4.0.

Palestinians residing in areas C are subject to Israeli military law and military courts, while Israeli settlers abide by Israeli civil and criminal law⁴³⁵. Therefore, the Palestinian population is subject to entrenched discrimination, which is followed by a violation of equality and undermines international standards⁴³⁶.

To enter some locations during the Israeli occupation, Palestinian police had to coordinate their movements with Israel. As a result, they must acquire permission from Israeli officials before entering specific locations.

The means used for Alternative Dispute Resolution in regions C vary between being formal and informal, and stem from formal alternatives to tribal arbitration for dispute resolution, including arbitration and mediation in juvenile and personal status cases in family courts.⁴³⁷ On the other hand, the dominant mechanism used in settling disputes in these areas is tribal arbitration, due to the political situation that prevents the existence of Palestinian official institutions to carry out their activities in these areas, which in turn limits the population from close communication with police departments and implementation in the Palestinian Authority⁴³⁸.

However, the Palestinian population in Area C is governed by the Palestinian Authority. Another reason residents resort to tribal arbitration is the cultural influence exerted by tribal leaders due to the isolation of these communities from the Palestinian executive and judicial authority.⁴³⁹

The accessibility of the Palestinian population in Area(C)to alternatives to conflict resolution, provided by formal or informal institutions, depends on their level of awareness of the existence of alternatives to conflict resolution services. Some of the population may be aware of the concepts of alternatives to conflict resolution, but there is a lack of awareness of the efforts made by formal and informal institutions to present contemporary concepts of alternatives to conflict resolution, in addition, the number of institutions active enough in this area is not⁴⁴⁰.

⁴³⁵ Katbeh, 2019

⁴³⁶ Shalhoub, N., & Abd al-Baqi, M. (2003). *Al-qada' wa al-sulh al-'asha'iri wa atharuhuma 'ala al-qada' al-nizami fi Filastin* [Tribal judiciary and reconciliation and their impact on the formal judiciary in Palestine]. Birzeit University - Institute of Law. P.2.

⁴³⁷ Katbeh, 2019

⁴³⁸ Shalhoub, N., & Abd al-Baqi, M. (2003). P.3.

⁴³⁹ Katbeh, 2019

⁴⁴⁰ Darwazeh, N. (2014). P.118.

The spatial concentration of both formal and informal institutions in Area A creates a considerable barrier to accessing alternative dispute resolution (ADR) in Area C. This concentration drastically limits outreach to Palestinian inhabitants in Area C, effectively transferring the responsibility of accessibility onto the disputing parties, who must actively seek services from institutions located outside their local neighborhood.

The third and final factor is the level of trust in these institutions, which also acts as an obstacle as an obstacle to access alternatives to conflict resolution. Many institutions, especially official ones that provide alternatives to conflict resolution, point out that people residing in marginalized areas in areas(C)do not trust the official mechanisms of alternatives to conflict resolution for reasons related to political and security issues, because they know that the Palestinian Authority does not have access to these areas, so they cannot impose decisions resulting from the mechanisms of alternatives to conflict resolution⁴⁴¹.

There is no specific type of case in which alternative dispute resolution mechanisms are used in regions (C), it often depends on the nature of the disputes themselves and on the alternatives to dispute resolution provided by the competent institutions . In this regard, the Palestinian population in Area(C)resorts to informal bodies in the settlement of disputes such as tribal arbitration in financial, family, and criminal cases because of the proximity and accessibility of these bodies⁴⁴².

The level of formalization of alternative mechanisms for conflict resolution in the (C)zones is not observed. All the dispute settlement alternative services provided in (C)zones are mainly provided through clan arbitration, and therefore these efforts lack their institutionalization⁴⁴³. If there is a formalization of these services, it will happen at the level of official institutions and neutral individuals providing alternative dispute resolution services, but not at the level of national policy due to political restrictions⁴⁴⁴.

⁴⁴¹ Katbeh, L. S. (2015). P.25.

⁴⁴² Khalil, A. (2009). P.15.

⁴⁴³ Katbeh, 2019

⁴⁴⁴ Institute of Law. (2006). Al-Qada' ghayr al-nithami: siadat al-qanun wa hall al-niza'at fi Filastin (al-taqrir al-watani hawl nata'ij al-bahth al-midani) [The non-formal judiciary: The rule of law and dispute resolution in Palestine (The national report on the results of the field research)]. Birzeit University. P.4

Based on the previous information, the decisions taken are not binding in most cases, the dispute settlement alternatives have succeeded in only three out of ten cases⁴⁴⁵.

4.3.2 Hebron district 2H

Following the 1997 Hebron Protocol, the city was divided into two separate administrative zones: H1 and H2. While the Palestinian Authority retains full civilian and security jurisdiction over H1, the H2 territory is nonetheless subject to Israeli military oversight in addition to Palestinian civilian rule. Notably, H2 accounts for nearly 20% of Hebron's overall geographic area.

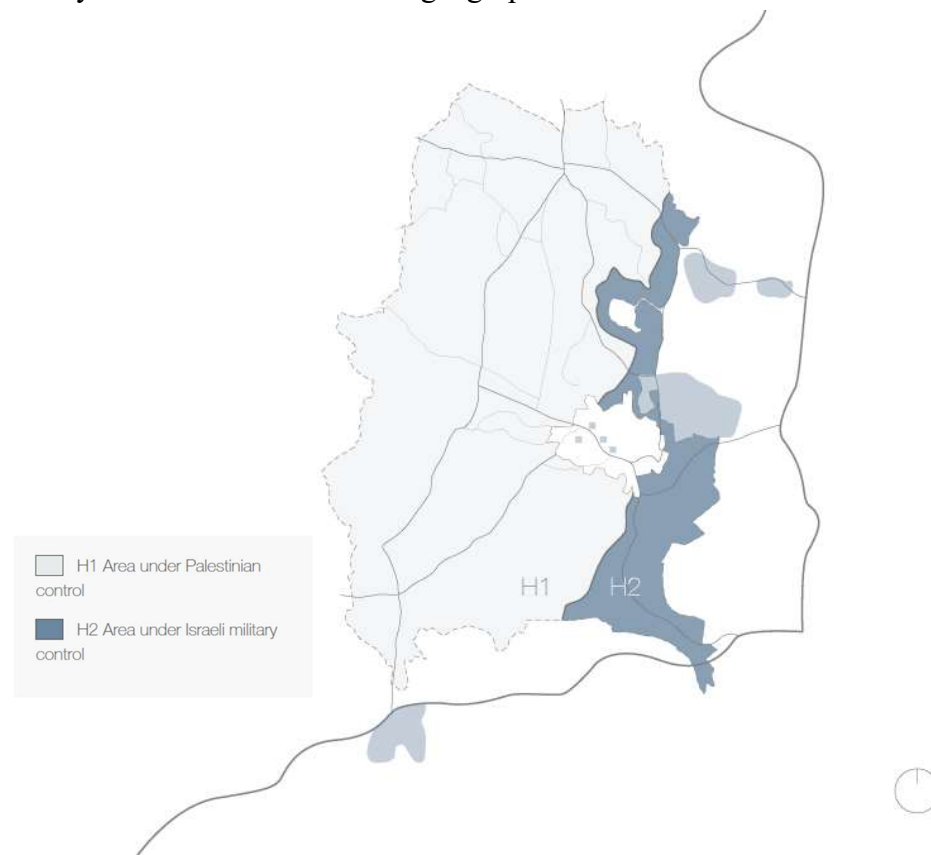


*Figure 4.3.2 Jurisdictional Divisions of Hebron into two areas, H1 and H2**

The H2 sector of Hebron is home to over 30,000 Palestinian residents, who live in close proximity to a settler community of about 700 Israelis spread across four distinct

⁴⁴⁵ Ibid.P.15.

* This map displays the division of Hebron into H1 (Palestinian control) and H2 (Israeli military control) following the 1997 Hebron Protocol. From Area H1 - H2 - Mapping Hebron's divisions, by Mapping Hebron's Apartheid, n.d., (<https://www.hebronapartheid.org/index.php?glossary=area-H1-H2>) .

colonies. This demographic mix within H2 emphasizes the complicated urban environment created by the city's administrative division.

The issue of law enforcement in Hebron's area 2H faces many challenges, as the Israeli army continues to impose movement restrictions as well as checkpoints on Palestinians living inside this area. These checkpoints have completely closed many streets of the Old City to Palestinian access⁴⁴⁶.

"Tribal arbitration "emerges as a prominent alternative for dispute resolution within the 2H district of Hebron, primarily owing to the intricate social dynamics prevalent in the region. The inhabitants exhibit a preference for seeking recourse from tribal leaders, given their longstanding historical involvement in conflict resolution.⁴⁴⁷ This inclination is accentuated by the challenges faced by Palestinian residents in engaging with the Palestinian executive authority within the 2H area, a circumstance exacerbated by the prevailing political conditions⁴⁴⁸.

Moreover, culturally, these leaders have traditionally served as the accepted conduit for conflict resolution across successive generations. The consolidation of their role gained further impetus as these tribal communities interlinked with urban settlements in the West Bank. Presently, the sway wielded by these tribal leaders and their respective clans surpasses the efficacy of contemporary conflict resolution mechanisms⁴⁴⁹.

The Civil Peace Department in the Hebron governorate employs clan-based arbitration as a conflict resolution method, reflecting the pervasive influence of clans and the intricacies of the social fabric within Area 2H of Hebron. In recognition of this socio-cultural context, the Civil Peace Department collaborates with tribal leaders to establish informal mechanisms for conflict resolution as alternatives for the Palestinian populace residing in Area 2H of Hebron city⁴⁵⁰.

In pursuit of this objective, the department has operationalized the concept of civil policing within Area 2H, serving as the executive arm of the Palestinian rule of law in regions that pose challenges for conventional law enforcement efforts. This strategic

⁴⁴⁶ Katbeh, L. S. (2015). P.26.

⁴⁴⁷ Katbeh, 2019

⁴⁴⁸ Shalhoub, N., & Abd al-Baqi, M. (2003). P.4.

⁴⁴⁹ United Nations Country Team in the occupied Palestinian territory. (2017, July). P.19.

⁴⁵⁰ Katbeh, L. S. (2015). P.26.

deployment is necessitated by the prevailing security vacuum within the 2H zone. Notably, the civil police operate under the guise of municipal inspectors; however, their efficacy is constrained in certain neighborhoods within Area 2H due to Israeli control over this geographic area.

Inhabitants residing in zone 2H within Hebron may avail themselves of tribal justice services either by direct engagement with tribal leaders or through the Civil Peace Department in Hebron governorate. The latter facilitates the connection between disputing parties and an influential tribal leader who holds sway over one or both factions. Nevertheless, the accessibility of the populace in region 2H to alternative dispute resolution mechanisms beyond tribal channels is constrained. This limitation primarily arises from factors such as a diminished awareness of formal alternative dispute resolution mechanisms currently in place⁴⁵¹.

It is noteworthy that Hebron currently lacks a substantial array of informal institutions that offer diverse mechanisms for dispute resolution alternatives beyond tribal arbitration. This deficiency can be ascribed to the prevailing presumption that the populace exhibits limited enthusiasm for availing themselves of institutions specializing in alternative dispute resolution, characterized by mediation or arbitration, primarily owing to perceived cost implications and a lack of familiarity with the intricacies of such mechanisms⁴⁵².

Alternative methods for resolving disputes in Hebron are insufficient. The judicial processes involved in formalizing clan mechanisms exhibit a lack of systematic organization and are, in numerous instances, characterized by chaos. Furthermore, there is a notable absence of adequate oversight over these procedures, consequently increasing the likelihood of infringements upon the rights of both families and children⁴⁵³.

The Civil Peace Department in the Hebron governorate currently employs rudimentary procedures for the formalization of Alternative Dispute Settlement mechanisms, predominantly relying on the involvement of tribal arbitration practitioners. Nevertheless, the efficacy of their endeavors remains informal. Notably,

⁴⁵¹ Institute of Law. (2006). P.5.

⁴⁵² Davis, W. E., Katbeh, L., & Ali, S. (2005). P.24.

⁴⁵³ Khalil, A. (2009). P.16.

the absence of a comprehensive roster of dependable clan leaders for collaboration and a reliance on non-governmental organizations (NGOs) for the provision of training courses for clan leaders underscore the informality of their operations. This stands in contrast to an initiative-taking engagement by the Department in directly training clan leaders⁴⁵⁴.

The nature of settlement is contingent upon numerous factors, including the inherent characteristics of the dispute, the specific alternative dispute resolution mechanisms employed by the involved parties, and the formal or informal nature of the selected mechanism.

Additionally, it is essential to consider the potential challenges associated with the implementation of decisions arising from alternatives to the official dispute resolution process, particularly in the 2H area of Hebron where Palestinian enforcement forces face restricted access⁴⁵⁵.

The imposition of clan rule in instances of reconciliation is influenced by the cultural and social impact wielded by the clan leader overseeing the resolution. Consequently, the regulations of clan arbitration tend to carry substantial binding authority owing to the influential role of clan leaders within the judicial framework.

4.3.3 East Jerusalem

Following the Arab-Israeli conflict of 1948, Jerusalem was split into two sectors: East Jerusalem and West Jerusalem. Jordan controlled East Jerusalem, including the Old City, while Israel occupied West Jerusalem⁴⁵⁶. However, during the 1967 war, East Jerusalem and the rest of the West Bank were seized. The Israeli occupation also illegally annexed East Jerusalem and extended the reach of internal Israeli law to the Palestinian citizens of the city⁴⁵⁷.

⁴⁵⁴ Shalhoub, N., & Abd al-Baqi, M. (2003). P.5.

⁴⁵⁵ Institute of law.(2006).P.6.

⁴⁵⁶ Katbeh, 2019

⁴⁵⁷ Katbeh, L. S. (2015). P.27.

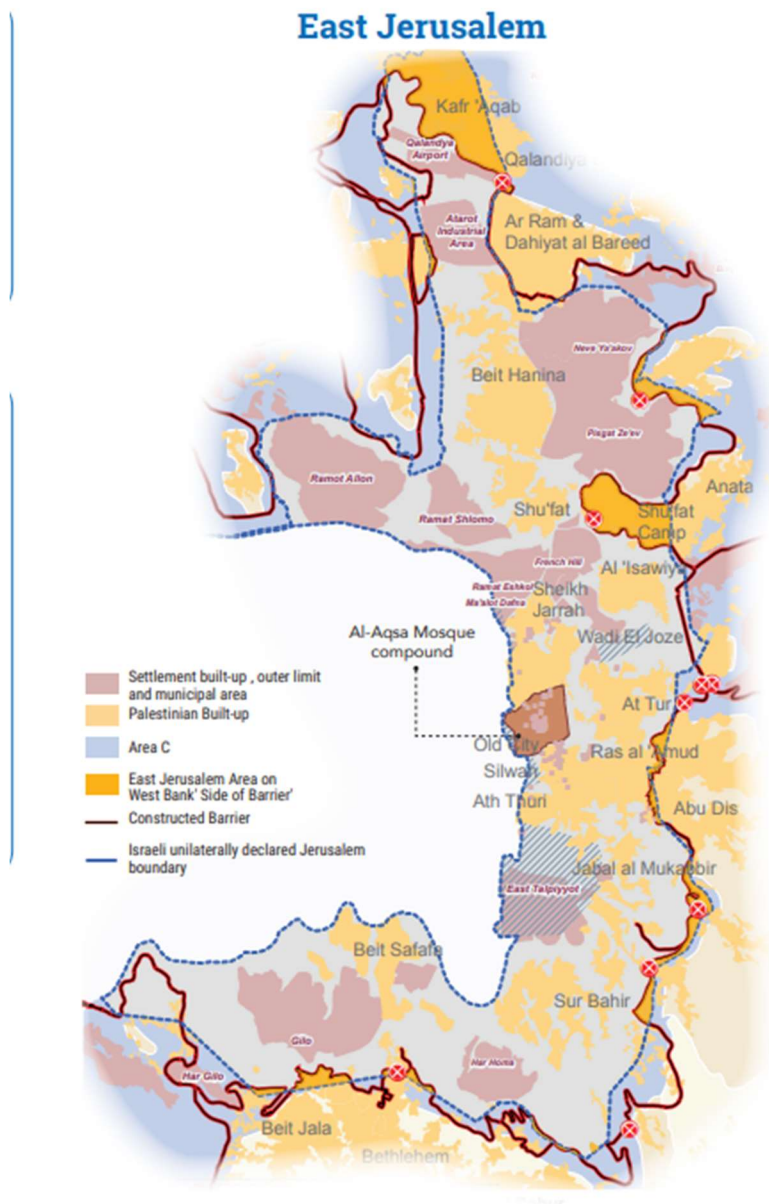


Figure 4.3.3 Map of East Jerusalem: Jurisdictional and Administrative Boundaries*⁴⁵⁸

According to 2016 Palestinian Central Bureau of Statistics (PCBS) estimates, the Palestinian population of East Jerusalem is estimated to be 426,533. This demography is split by the Separation Wall, with roughly 161,597 people living beyond the barrier; these residents do not have Jerusalem residency rights and must obtain special permits from Israeli officials to enter the city. In contrast, around 264,937 Palestinians live within the Wall and have permanent residency status.

* This map identifies the administrative boundaries and "Greater Jerusalem" area, illustrating the impact of the barrier and settlement expansion on Palestinian neighborhoods. From East Jerusalem, by United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 2011, (<https://www.un.org/unispal/document/east-jerusalem-ocha-map/>) . In the public domain.

June 28, 1967, Israel augmented its legal authority over the East Jerusalem region by assimilating it into the purview of the West Jerusalem municipality, albeit without explicit nomenclature. This entailed the extension of municipal boundaries, effectively integrating East Jerusalem into West Jerusalem. Consequently, East Jerusalem became subject to Israeli law, jurisdiction, and administration through this legal framework, a situation deemed illegitimate.⁴⁵⁹ Consequently, residents of East Jerusalem experience limited accessibility to the official institutions of Palestinian justice and security due to the imposition of Israeli control. Importantly, the United Nations Security Council rejected the annexation of East Jerusalem through Resolution 478, declaring it invalid⁴⁶⁰.

Palestinian citizens of East Jerusalem prefer not to go to Israeli courts because they distrust the Israeli legal system, which has been proven biased in several cases. Furthermore, the public refuses to legitimize the Israeli occupation. As a result, people choose to use alternate dispute resolution procedures to settle their issues.⁴⁶¹

The processes employed vary from formal to informal, but they are all fundamentally forms of clan arbitration. Civil and economic problems can be handled through more professional arbitration systems⁴⁶².

In the context of conflict resolution alternatives, the East Jerusalem governorate faces a deficiency in its ability to furnish such services. These interventions may be facilitated either directly by the governor or through the delegation of a third-party mediator. Additionally, the governor may opt to refer certain disputes to clan leaders, who possess the capacity to exert influence over one or both disputing parties⁴⁶³.

The AL Faisal Center for Mediation and Arbitration, affiliated with the Association for Alternative Studies and Means of Dispute Resolution, offers arbitration and mediation services to the Palestinian populace residing in East Jerusalem. However, these services are not pro bono, and their associated fees exhibit variability contingent upon the nature of the case⁴⁶⁴.

⁴⁵⁹ Katbeh, 2019

⁴⁶⁰ Khalil, A. (2009). P.18.

⁴⁶¹ Katbeh, 2019

⁴⁶² Khalil, A. (2009). P.18 – 19.

⁴⁶³ Shalhoub, N., & Abd al-Baqi, M. (2003). P.6.

⁴⁶⁴ Alfaisal Arbitration Center guidelines booklet (2018).

The center does not retain permanent arbitrators; instead, it collaborates with autonomous and specialized professionals in the field. The utilization of the center's arbitration services is comparatively modest in relation to the prevalence of disputes in Jerusalem. This is largely attributed to a limited awareness among Palestinians in East Jerusalem regarding the concept of arbitration, a circumstance further exacerbated by the absence of available data from the center detailing the volume and nature of cases processed or referred to it in recent years.

The denizens residing in East Jerusalem encounter constraints in availing themselves of alternative dispute resolution mechanisms, notably Arbitration, attributable to several factors. These include a dearth of awareness regarding extant formal dispute resolution alternatives and the prevailing influence of a tribal arbitration culture. The latter has gained prominence in the region due to the absence of a comprehensive rule of law in various sectors of the city, prompting certain individuals to opt for tribal arbitration and eschew alternative dispute resolution mechanisms⁴⁶⁵.

Ultimately, the disputing parties often resort to gratis tribal justice services, primarily owing to the absence of cost-free dispute settlement alternatives. Notably, within the same contextual framework, women in East Jerusalem emerge as particularly susceptible cohorts, burdened by heightened financial outlays to access Alternative Dispute Resolution Services⁴⁶⁶.

At the national policy level, the degree of formalization pertaining to mechanisms for dispute resolution alternatives in East Jerusalem is markedly inadequate. Notably, institutions offering official services and alternative dispute resolution mechanisms, such as the JAC Foundation, have been entirely shuttered. Furthermore, the ACT Foundation, having exhibited minimal activity in recent years, lacks the capacity for prospective implementations⁴⁶⁷.

In contrast, a limited number of Palestinian civil society organizations exist, endeavoring to furnish alternatives for conflict resolution in East Jerusalem. However, the informality characterizing their operations hinders the official presentation of conflict resolution alternatives.

⁴⁶⁵ Darwazeh, N. (2014). P.121.

⁴⁶⁶ Shalhoub, N., & Abd al-Baqi, M. (2003). P.6-7.

⁴⁶⁷ Ibid.P.7.

The resolution outcome is contingent upon the chosen alternative dispute resolution (ADR) mechanism and its formal or informal nature. Consequently, the authoritative influence of tribal arbitration leaders renders the majority of decisions rendered by the tribal judiciary legally binding⁴⁶⁸.

However, the actual enforcement of these decisions hinges upon the parties' willingness to do so. In instances where compliance with the arbitration decision is achieved, land-related matters are resolved. Conversely, should the prevailing party encounter reluctance from the opposing party, resorting to Israeli courts becomes necessary to implement the decision, thereby incurring additional temporal and financial expenditures⁴⁶⁹.

4.4 Arbitration as a Mechanism for Addressing Economic Disparities in the Context of the Palestinian Israeli Conflict

The enduring Israeli Palestinian conflict has been a pivotal determinant of peace in the Middle East over an extended period. Beyond influencing the political and social milieu of the region, its ramifications have posed significant obstacles to legal advancements, particularly within the context of Palestine. This segment aims to provide a succinct overview of the prevailing legal and economic conditions in both Palestine and Israel. The enhancement of safeguards through the introduction of an autonomous commercial arbitration mechanism stands to markedly improve the respective legal and economic landscapes in these regions.

4.4.1 Israeli Palestinian Endeavors to Align with Arbitration Patterns

The conceptual groundwork laid by the French philosopher Montesquieu posited that the progression of commerce engenders reciprocal interdependence, subsequently fostering a state of tranquility. Aligned with this theoretical framework and regional initiatives delineated earlier, a consortium of Israeli and Palestinian entrepreneurs endeavored to leverage the advancing landscape of arbitration within the Middle East⁴⁷⁰. Their objective was to establish an institution exclusively committed to the

⁴⁶⁸ Khalil, A. (2009). P.19.

⁴⁶⁹ Darwazeh, N. (2014). P.122.

⁴⁷⁰ Steinberg, G. M. (2000). Conflict prevention and mediation in the Jewish tradition. *Jewish Political Studies Review*, 12(3/4), 3–21.3.P.4.

adjudication of their respective commercial disputes. Through collaboration with the International Chamber of Commerce (ICC), these entrepreneurs successfully inaugurated the Jerusalem Arbitration Center (JAC) in November 2013⁴⁷¹.

Drawing considerable influence from the overarching structure of the International Chamber of Commerce (ICC), the establishment of the Jerusalem Arbitration Center (JAC) is delineated through two foundational instruments, akin to charters: the Joint Venture Agreement and the JAC Cooperation Agreement. The former formally institutes the JAC as a forum characterized by independence, impartiality, professionalism, apolitical orientation, and enforceability, specifically designated for the adjudication of commercial disputes arising between Palestine (encompassing the West Bank and the Gaza Strip, including East Jerusalem) and Israel. This agreement meticulously elucidates the organizational framework and operational modalities of the JAC upon its inception⁴⁷².

The subsequent accord, conversely, governs the association among the initiators of the forum, namely the International Commercial Court (ICC), ICC Palestine, and ICC Israel. While the National Committees, designated as the architects of the Joint Advisory Committee (JAC) or "JAC Partners," are acknowledged as such, the ICC assumes a more authoritative role, exercising supervision over the functioning of the Center, especially during its initial phases⁴⁷³.

For instance, as elucidated by academic scholar Nadia Darwazeh, diverse members of the governing board of the JAC, encompassing inaugural presidents, vice-presidents, and participants in the JAC Court of Arbitration, are designated and proposed by the International Chamber of Commerce (ICC). It is noteworthy that the Joint Venture Agreement stipulates the allocation of nominative authority to the JAC Partners, in collaboration with the ICC during subsequent stages⁴⁷⁴.

In terms of its organizational framework, the establishment of the Joint Arbitration Center (JAC) was designed to emulate the International Chamber of Commerce (ICC), comprising four integral components: a Governing Body, a Court of Arbitration, a Secretariat, and a General Manager. Functioning as the principal administrative entity

⁴⁷¹ Darwazeh, N. (2014). P124.

⁴⁷² Ibid.P.124-125.

⁴⁷³ Katbeh, L. S. (2015).). P.30.

⁴⁷⁴ Darwazeh, N. (2014). P125.

within the JAC, the Governing Board serves as the embodiment of the Center's foundational tenets of impartiality and equitable treatment between the conflicting parties, Palestine, and Israel. The Governing Board exercises oversight over all aspects of the Center's operations, with the exception of matters directly pertaining to arbitration proceedings.

The Judicial Appointments Commission's (JAC) Tribunal assumes a supervisory function throughout the arbitration process at the Center, encompassing preliminary determinations of jurisdiction, resolutions of challenges to arbitrators, and the establishment of arbitration costs. In the case of the Secretariat, the administrative arm of the Center, this entity functions as an intermediary between the Tribunal and the users/arbitrators, addressing procedural inquiries and serving as a discerning interface in matters related to pecuniary jurisdiction⁴⁷⁵.

In jurisdictional terms, the Judicial Arbitration and Conciliation Center (JAC) employs a traditional arbitration framework to delineate its jurisdiction, grounded in the foundational principle of party consent⁴⁷⁶. Accordingly, the parties involved are mandated to explicitly manifest their agreement to arbitrate disputes within the purview of the JAC.

For the formal acceptance of jurisdiction by the Center, additional criteria must be satisfied, including: (1) adherence to the monetary limits stipulated by the court for arbitration requests, (2) the presence of a business dispute, (3) the nexus of the business dispute with Israel, the West Bank, and the Gaza Strip, encompassing East Jerusalem, and (4) the establishment of a *prima facie* case demonstrating the existence of a JAC arbitration agreement in accordance with the prescribed rules⁴⁷⁷.

It is noteworthy, however, that the procedural guidelines of the JAC introduce a provision for the potential transfer of a dispute to the International Chamber of Commerce (ICC) under specific circumstances. Consequently, by consenting to JAC arbitration, parties implicitly commit to subjecting their dispute to ICC arbitration pursuant to the ICC rules in scenarios outlined by the JAC procedural framework⁴⁷⁸.

⁴⁷⁵ Davis, W. E., Katbeh, L., & Ali, S. (2005). P.28.

⁴⁷⁶ Steinberg, G. M. (2000). P.5.

⁴⁷⁷ Davis, W. E., Katbeh, L., & Ali, S. (2005)P.29.

⁴⁷⁸ Khalil, A. (2009). P.22.

In conclusion regarding the Joint Arbitration Committee (JAC), Darwazeh highlights a notably inventive aspect in its inception—the conceptualization of a "virtual" arbitration seat. Given the inherent divisiveness of the conflict zone, maintaining the JAC's impartiality stands as a paramount consideration for all stakeholders. Consequently, the Joint Venture Agreement designates Paris, France, as the seat of arbitration, while physical hearings take place at the JAC Hearing Center in East Jerusalem unless mutually agreed otherwise by the involved parties. Emphasizing this avant-garde approach, Darwazeh underscores its overarching objective to safeguard the Center's imperative mandate of neutrality, thereby redirecting attention from the contentious issues between Israel and Palestine and fostering an environment conducive to progress⁴⁷⁹.

Being among the most recent entities in the realm of arbitration, the founders of the Joint Arbitration Committee (JAC) endeavored to bring about transformative changes within the commercial arbitration domain, particularly within the context of a politically volatile environment⁴⁸⁰. At its inception, the JAC was heralded as a significant development fostering dialogue and mutual understanding between Israelis and Palestinians. However, subsequent to its establishment, there has been a conspicuous dearth of information regarding the JAC, with no discernible updates on its activities since its launch in 2014. The conspicuous absence of comprehensive documentation is disconcerting, as it appears to foreshadow the potential failure of the JAC, notwithstanding the considerable collaborative efforts invested in its formation.

The establishment of the Joint Arbitration Committee (JAC) marked the inaugural effort to foster investment and commercial engagement within the regions of Palestine and Israel through the implementation of an international dispute resolution mechanism. The apparent dissolution of the JAC can be ascribed to multifaceted factors, encompassing political volatility, economic discord, unsuccessful negotiation endeavors between the involved parties, or deficiencies within the national court systems implicated⁴⁸¹.

The pronounced impact of the International Criminal Court (ICC) on the proceedings of the JAC, however, potentially played a pivotal role in its demise,

⁴⁷⁹ Darwazeh, N. (2014). P126.

⁴⁸⁰ Yehuda, I. (2016, October 1). P.30.

⁴⁸¹ Darwazeh, N. (2014). P127 – 128.

exacerbating discord and skepticism rather than fostering collaborative support and transparency. The paucity of available information pertaining to the JAC's activities since its inception not only gives rise to suspicions but also prompts an examination of the effectiveness of an institution conceived under the auspices of the ICC—an entity grounded in Western principles and formulated without the inclusion of perspectives from the developing world⁴⁸².

4.4.2 Revitalizing the Arbitration Framework in the Palestinian Israeli Context

The economic disparities between Palestine and Israel are notably pronounced, and these divergences are further widening as Israel's economic prowess and global influence continue to burgeon. With an approximate trade volume of nearly \$5 billion existing between the two entities at present, as delineated in section II(C), the establishment of a stable economic framework between Israel and Palestine assumes paramount importance in fostering an environment conducive to attracting investments, particularly for Palestine⁴⁸³.

Over time, however, the absence of an impartial platform for the adjudication of potential disputes in commercial transactions has heightened legal uncertainties for past, present, and prospective commercial ventures. Despite an ostensibly unsuccessful endeavor to address these uncertainties through the Joint Advisory Committee (JAC), the prospect of investment arbitration persists as a viable recourse for invigorating economic relationships and ensuring stability within Palestine and Israel, contingent upon judicious handling⁴⁸⁴.

An institution of this nature must conscientiously contemplate the principles and conceptual underpinnings propelling the evolution of arbitration within the Middle Eastern context, rather than adhering strictly to Western customs.

The distinguishing characteristics of international arbitration encompass the principles of foreseeability and autonomy of the adjudicative forum. Concerning predictability, arbitration frameworks frequently highlight the distinct advantage of tailoring dispute resolution to the specific requirements of the involved parties,

⁴⁸² Roshan, A., & Turrini, M. (2020).

⁴⁸³ Rabinovitch, O. (2014). Reflecting on ADR: The Israeli example. *The Arbitration and Dispute Resolution Law Journal*, 2014(1), 48–53. .P.2

⁴⁸⁴ Steinberg, G. M. (2000). P.7.

encompassing procedural regulations, the arbitration's scope, and the conclusiveness of the verdict⁴⁸⁵.

Furthermore, in a region characterized by persistent political uncertainties, genuine independence is frequently compromised, particularly in instances where the influence of institutional entities (such as the United Nations and the World Trade Organization) and national governments (including the United States, Great Britain, and France) exerts a considerable impact, as observed within the contexts of Israel and Palestine. Even the Judicial Arbitration and Mediation Services (JAC) operates under the overarching oversight of the International Chamber of Commerce (ICC), seemingly serving as a pretext for advancing Western business interests⁴⁸⁶.

In a nascent geopolitical entity like Palestine, characterized by diminished economic and political influence on local, regional, and global scales, institutional biases aligned with Western perspectives disproportionately perpetuate the prevailing status quo, exhibiting scant indications of amelioration in the near future.

Instead of instituting an arbitration framework akin to the JAC, predicated upon Western regulations and perspectives, it is imperative to acknowledge the distinctive requisites and values intrinsic to the developing world, even within the context of contemporary, industrialized Israel. In this context, the significance of cultural considerations and a proclivity to comprehend the traditions and values of counterparties cannot be overstressed⁴⁸⁷.

Establishing a genuinely autonomous, impartial, and safeguarding commercial arbitration system for investors and enterprises necessitates a commitment to fortifying and advancing regional arbitration centers, thereby diminishing reliance on the norms prevalent in the developed world⁴⁸⁸.

The potential cessation of the Joint Arbitration Committee (JAC) could conceivably be ascribed to the absence of legal safeguards for arbitration within the broader contexts of Israel and Palestine. This phenomenon is particularly noteworthy in light of the

⁴⁸⁵ Bercovitch, J., & Simpson, L. (2010). International mediation and the question of failed peace agreements: Improving conflict management and implementation. *Negotiation Journal*, 26(1), 99–119. <https://doi.org/10.1111/j.1468-0130.2009.00613.x> 1.P.69.

⁴⁸⁶ Rabinovitch, O. (2014). P.3.

⁴⁸⁷ Darwazeh, N. (2014). P129.

⁴⁸⁸ Steinberg, G. M. (2000). P.8.

persistent prevalence of the Oslo Accords' Paris Protocol as the primary economic accord between the parties involved. Notwithstanding the substantial alterations in political and economic landscapes at present, the absence of statutory support for arbitration persists as a hindrance⁴⁸⁹.

The establishment of a robust commercial arbitration platform necessitates the harmonization of national legal frameworks across all implicated jurisdictions, manifesting a collective commitment to such an endeavor. This alignment would serve to foster a conducive environment for both domestic and international investors and enterprises, thereby facilitating equitable capital influx into the Palestinian and Israeli regions⁴⁹⁰.

To ensure sustained advancement and ultimate success of the proposed arbitration forum, it is imperative to augment state-backed protection through legislative measures and revise the existing economic agreement accordingly.

To counter the proposed efficacy of this initiative, some individuals may put forth a politically oriented argument, citing recent diplomatic endeavors involving Israel and Arab nations, notably the United Arab Emirates and Bahrain, under the framework of the September 2020 Abraham Accords⁴⁹¹.

These accords aim to normalize relations and enhance bilateral cooperation between Israel and Arab states, specifically in the realms of finance and investment. In response to such normalization efforts, the Palestinian government has opted to abstain from engagement in discussions, expressing strong disapproval for the improved relations between Israel and its Arab counterparts and, in some cases, suspending negotiations with Israel altogether. Such contentions may also be coupled with concerns that heightened Palestinian radicalization could ensue in reaction to these developments, thereby influencing the broader Arab stance against the Israeli occupation and in support of Palestinian sovereignty⁴⁹².

⁴⁸⁹ Bercovitch, J., & Simpson, L. (2010). P.70.

⁴⁹⁰ Copeland, C. S. (1999). The use of arbitration to settle territorial disputes. *Fordham Law Review*, 67(6), 3073–3103. <https://ir.lawnet.fordham.edu/flr/vol67/iss6/7> P.3076.

⁴⁹¹ Declaration of the Abraham accords (2020): declaration of an ongoing peace treaty between several Middle Eastern countries and the United States.

⁴⁹² Makovsky, D., & Chabon, S. (2011, January 20). Imagining the border: Options for resolving the Israeli-Palestinian territorial issue. The Washington Institute for Near East Policy. <https://www.washingtoninstitute.org/policy-analysis/imagining-border-options-resolving-israeli-palestinian-territorial-issue> .P.2.

Nevertheless, it is pertinent to note that the political maneuvers orchestrated by Israel and Arab states, often with the facilitation of the United States, bear limited relevance to the potential efficacy of alterations in economic relations with the Palestinian entities⁴⁹³.

Nevertheless, it is imperative to clarify that this commentary does not advocate for the normalization of relations between Palestine and Israel. Instead, it is presented as a strategic guide delineating a pathway towards fostering a secure, dependable, and efficient investment climate within the region⁴⁹⁴.

In light of Israel's status as an occupying power, its obligation to collaborate with the Palestinians differs from its engagements with Arab states. Both parties are tasked with the responsibility of cooperative efforts aimed at enhancing the well-being of their respective societies⁴⁹⁵.

Through initiative-taking adjustments to their national legislative frameworks and potentially engaging in negotiations for a bilateral treaty, economic stabilization becomes feasible. This approach not only establishes a robust foundation for the protection of external investors but also ensures legal certainty within an investment arbitration framework.

⁴⁹³ Copeland, C. S. (1999). P.3077.

⁴⁹⁴ Makovsky, D., & Chabon, S. (2011, January 20). P2.

⁴⁹⁵ Bercovitch, J., & Simpson, L. (2010). P72.

Conclusion

Arbitration is a key alternative to traditional litigation, providing a method for resolving conflicts outside of the judicial system. It includes a number of methods adapted to the parties' individual interests and the complexities of the conflict, with selection frequently impacted by factors such as the nature of the disagreement, financial considerations, and procedural confidentiality. Arbitration, which is fundamentally focused on constructive settlement, is divided into various specialized domains, the most notable of which are domestic and international commercial arbitration.

There exists a pressing imperative for the implementation of Commercial Arbitration mechanisms. The accessibility, affordability, and expeditious nature of informal dispute resolution avenues underscore their significance. Conversely, formal dispute resolution mechanisms require cultivation and improvement, which necessitates advocacy efforts through public awareness campaigns and promotional initiatives to emphasize their services .

Organizations providing alternative dispute resolution services must skillfully distinguish between formal and informal options for Dispute Resolution. Non-transparent and legally insensitive specialized mechanisms should gradually be subjected to unambiguous and simplified procedures supervised by qualified experts, in particular in the procedural aspects of conciliation, mediation or arbitration. Thus, the founding role of a cadre of competent experts specialized in Conciliation, Mediation and arbitration emerges as a key focus for the promotion of alternatives to dispute settlement in Palestine.

This dissertation examined many of the legal and pragmatic aspects inherent in the practice of commercial arbitration on a global scale, with a particular focus on Palestinian jurisdiction. This research falls within the broader goal of strengthening the arbitration center within the region, aspiring to be the preferred venue for disputing parties.

It has been confirmed that Palestine possesses the required design and infrastructure, which indicates the possibility of positioning its jurisdictions as a prominent option for hosting arbitration proceedings within the region.

Alternatively, it makes sense to substantially strengthen the formal mechanisms inherent in arbitration by implementing diverse interventions, collaboratively involving multiple stakeholders to increase access to justice. Thus, each numbered entry point requires individual scrutiny, which entails a thorough investigation to ascertain the exact requirements and results associated with each intervention. To elucidate, the initial entry point will be expounded upon comprehensively, serving as an illustrative example:

1. Support for the implementation of Arbitration Guidance Departments across all arbitration courts, supplemented by the expertise of duly qualified and trained arbitrators, is imperative. Adequate training should be extended to the personnel within these departments, as well as impartial third parties appointed by them to facilitate conflict resolution through conciliation, mediation, and arbitration. This is done by taking into account the following:

- 1.1. Conducting a detailed study on the location of arbitration courts and means of communication and access to them in the West Bank (Area " C " in precise, in Gaza and east Jerusalem).
- 1.2. A thorough evaluation of each court's arbitration guidance offices and staff, including their qualifications, experience, and abilities.
- 1.3. Evaluate these departments' processes and procedures for clarity, transparency, fairness, sensitivity, compliance with applicable laws, and rule of law.

In fact, it is necessary to compile data that will allow us to design the best interventions for the development of the work of these departments. After conducting such a detailed study, the following procedures should be followed:

- 1.4. Collaboration with the Palestinian Ministry of Justice aims to ascertain the modalities for providing essential services in areas currently lacking such provisions. The endeavor involves streamlining processes to facilitate the realization of this objective, including the potential decentralization of personnel and experts specializing in arbitration to regions where their services are needed. Remote recruitment, potentially managed by local councils, is considered as a means to achieve this strategic outcome.

- 1.5. Designing the necessary training that employees must undergo to enable them to perform their work based on the evaluation of employees, in addition to maintaining the annual evaluation and work evaluation procedure.
 - 1.6. Develop dispute resolution procedures and create work guides in order to ensure that these sections effectively comply with the above standards.
 - 1.7. Archiving and saving files of these sections of disputes, settlements, mutual consent, etc., in order to build a database of Mezan program or other program, used for the purposes of developing the work of these sections.
 - 1.8. Harmonize and unify the applicable laws and regulations that apply to these departments.
2. Propose the inception of a dedicated national task force focused on exploring alternatives to dispute resolution via commercial arbitration. This entity shall be tasked with the systematic gathering and analysis of data, the formulation of policies, and the provision of legislative support. The advancement of dispute resolution mechanisms, particularly arbitration, hinges upon the collaborative and interdependent engagement of all pivotal stakeholders in the institutionalization of alternative conflict resolution methods in the Palestinian context, a goal that can be effectively realized through the establishment and operation of this specialized team.
- This team is poised to function as a central repository, furnishing foundational information, data, training, and service orientation to diverse stakeholders. The exigency for such an undertaking is pressing, given the pervasive deficiency in data and analytics across both public and private sector entities.
- The dispute settlement alternatives unit within the Ministry of Justice could potentially serve as the core for the inception of this consortium, fostering connectivity among civil society institutions, private entities, and public organizations. The remit of this national consortium may encompass the formulation of standardized terminology for conflict resolution alternatives and the crafting of a national strategy that advocates for the proliferation of mechanisms

aligning with the rule of law, characterized by equitable, transparent, and efficacious procedures.

3. Develop the capabilities of Ministry of Justice employees working in disputes related to commercial arbitration.
4. The implementation of a cohesive framework for the advancement of dispute resolution through arbitration within Chambers of Commerce is imperative. Moreover, facilitating the establishment of institutional divisions within these chambers dedicated to dispute resolution via arbitration, and establishing connections with proficient mediators and arbitrators, is essential. This intervention should be specifically targeted at the Jerusalem Chamber of Commerce, particularly in addressing civil and commercial dispute resolution in the context of East Jerusalem.
5. Commence on a public discourse concerning the jurisdiction of tribal arbitration with the aim of delineating its scope to specific matters. Of utmost significance is the examination of the conformity of clan arbitration with established legal principles. This deliberation will progressively culminate in the identification of matters inappropriate for resolution through informal justice mechanisms, particularly those involving sanctions conflicting with human rights and gender justice. Additionally, it seeks to articulate consequences for activities incongruent with human rights and legal norms. Ultimately, we advocate for incremental measures aimed at diminishing the reliance on informal justice mechanisms.
6. Enhancing the capabilities and functions of the Dispute Settlement Alternatives Unit within the Ministry of Justice involves the engagement of both local and international experts to collaborate with the unit in formulating arbitration and mediation laws in alignment with globally recognized standards. Furthermore, the unit is tasked with supporting the ministry in crafting legislative policy documents, as outlined in the second point, and conducting a comprehensive impact assessment of these legal frameworks. Additionally, the unit is expected to serve as the central hub for all pertinent data and statistics pertaining to arbitration-driven dispute

resolution, encompassing aspects such as individual profiles, backgrounds, experiences, and issues.

Furthermore, it is imperative to facilitate the unit in establishing a system that facilitates the regular updating of the diagnostic dossier containing information about conflict resolution alternatives experts, their cases, and associated activities. This initiative should extend to the provision of dedicated pages for training institutes, educational materials, and available experts.

7. Training civil society and private arbitration experts, who may also train workers from other institutions. The goal is to build a group of certified and trained neutrals who can be trusted as experts in this sector by various institutions.

Additional Insights and Future Prospects

Expanding on these recommendations, further research should be conducted on the integration of digital arbitration platforms. The advancement of technology offers great prospects in ensuring simplified, effective, and transparent mechanisms for resolving conflicts. Digitization of arbitrations will not only enhance accessibility but also ease the geographical and logistical constraints that currently pose challenges in the Palestinian context.

Moreover, the intersection of arbitration with economic development should be emphasized. A well-established arbitration system enhances investor confidence, reduces legal uncertainties, and enhances the overall business climate. Thus, strengthening the arbitration framework will contribute to economic stability and the flow of foreign investments, making Palestine A Center for International Commercial Arbitration.

In addition, cooperation with international arbitration institutions should be pursued to create knowledge exchange programs. Learning from the best practices adopted at globally recognized arbitration centers will help improve local arbitration frameworks. The training of local arbitrators through international partnerships will enhance the credibility and reliability of arbitral awards issued in Palestine.

Finally, ongoing political reforms and legal amendments should be an ongoing priority. Keeping arbitration laws in line with evolving global standards is imperative to maintain the legality and efficiency of arbitration proceedings. Creating periodic

reviews of Arbitration legislation, involving legal scholars, decision makers, and practitioners, will ensure that the arbitration system remains robust, impartial, and adaptable to new challenges.

Ultimately, achieving an effective arbitration system in Palestine depends on the collective commitment of all stakeholders. Through the implementation of the above strategies and continuous improvements, Palestine can establish itself as a prominent regional center for alternative conflict resolution, promoting justice, stability, and economic growth.

Policy Implications and Legal Reforms

An essential aspect in ensuring the effectiveness of arbitration mechanisms is the constant improvement of the legal frameworks governing arbitration proceedings. This requires a thorough assessment of existing arbitration laws and their harmonization with international best practices. The implementation of periodic legal reviews and consultations with industry experts will help keep the arbitration system relevant and effective. Additionally, the establishment of clear guidelines on enforcement procedures and recognition of arbitral awards is essential to ensure the credibility of arbitral awards.

Moreover, the incorporation of arbitration as a key element in commercial contracts will help encourage companies to adopt arbitration as the primary means of dispute resolution. Legal awareness campaigns targeting entrepreneurs and business entities should be launched to promote the benefits of Arbitration and increase confidence in its operations.

Another crucial area of legal reform is the development of specialized arbitration courts and regulatory bodies dedicated to the supervision of Arbitration activities. These institutions should work towards establishing a unified approach to arbitration, ensuring fairness, transparency, and adherence to internationally recognized arbitration protocols.

Through these political and legal developments, arbitration in Palestine can evolve into a more structured and reliable mechanism, enhancing trust between stakeholders and enhancing its role as an indispensable tool for resolving disputes.

Finally, to synthesize the results of this study and provide a clear path forward, figure 5.1 provides a conceptual framework for reform. This model integrates the organizational, institutional and political dimensions discussed throughout the thesis to illustrate how targeted interventions can lead to sustainable economic results.

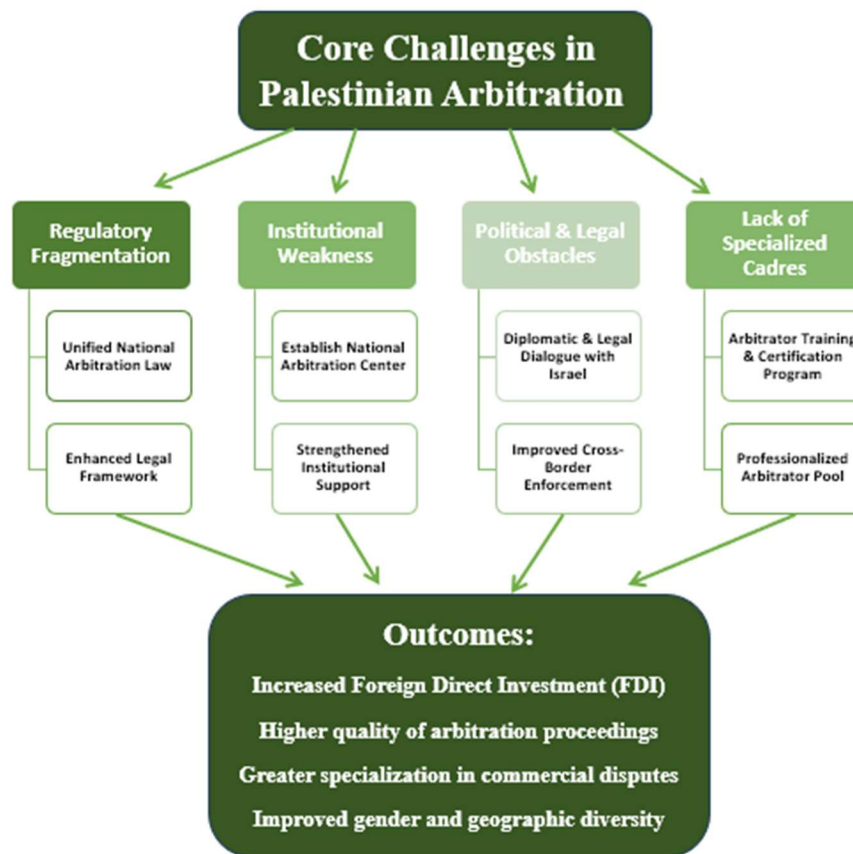


*Figure 5.1: A Synthesis Model for Palestinian Arbitration Reform: From Challenges to Strategic Outcomes**

This visual framework serves as a final road map for the development of arbitration in the Palestinian venue. By moving away from the existing state of regulatory fragmentation and toward a specialized, unified system, the legal infrastructure can effectively support both local justice and international commercial sureness. Finally, successful execution of these pillars will ensure that arbitration remains a key component of the region's economic stability and judicial independence.

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