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Obstacles To International Trade Arbitration Proceedings And Ways To Address Them (Comparative Study)

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ABSTRACT

International trade arbitration is undoubtedly an important and prominent place in international trade، which is a major pillar of the economies of states، particularly developing countries، and it was therefore natural that the provision of appropriate possibilities to attract and encourage such trade would be of interest to them، and a fundamental objective of most of their policy. In the absence of an international judiciary، disputes over international trade arose between persons from different States، or between a State and nationals of another State. Because of the complexity and length of the proceedings، contrary to the speed and breadth of normal litigation procedures required in contemporary life، particularly in the area of international trade relations and their breadth in various areas، everyone is looking for ways to resolve such disputes away from the constraints of national legal systems and to replace them with new means that give them broad powers to choose alternatives to dispute resolution. In view of the importance of arbitration at the international level، several international centers specializing in the resolution of existing disputes have been established through arbitration، as well as several national legislations has been enacted to regulate the idea and has been concerned with the development of a legal arbitration regulation، which deals with the agreement and identifies disputes that may be brought before it، and simplifies how the procedural rules are chosen. International trade arbitration is one of the most important and best means of resolving commercial disputes، both domestically and internationally، as a result of the advantages of this system، which has become a prominent feature of national and commercial transactions across states and which we have been looking into through this legal study.

Keywords: International Trade Arbitration. Commercial disputes. The verdict of arbitration. International trade contracts.

Introduction

Introductory introduction to the subject of the study:

International trade arbitration has become a global judicial system aimed at peacefully resolving all international disputes away from the corridors of the courts, providing them with greater stability and reassurance, given their suitability to the nature of international trade contracts. States have come to recognize the judgements of arbitral tribunals, particularly in international areas, and to issue special orders for their entry into force. The International Commercial Arbitration Agreement and the antagonism

of international commercial arbitration are one of the most important stages of the arbitration process, and the arbitration agreement is the beginning of the arbitration process, and before the arbitrator begins the arbitration process must ascertain the validity and effectiveness of the agreement, considering that its mandate is entrusted to this agreement.

The importance of the study:

Given the importance of international commercial arbitration, in the field of international trade relations, the researcher chose an issue that he considers very important, relating to the obstacles to the procedures of the international trade arbitration process, which would prevent the completion of the arbitration process proceedings, or the difficulty of completing them in practice, especially with the lack of solutions in national constitutions and laws and international conventions governing the international trade arbitration process, and the lack or weakness of preventive or therapeutic means to counter these Constraints.

The problem of the study:

The problem of studying the procedures for resorting to international commercial arbitration, sometimes accompanied by circumstances or obstacles that prevent the completion of such proceedings or hinder their validity, is that the parties to the dispute and the arbitrators, especially in the field of the international trade arbitration process, face many problems and difficulties, including what appears before the beginning of this process, such as: the difficulty of signing the international trade arbitration advice, which is important when there is a dispute between the parties over a transaction, and there may be a problem in The appointment of arbitrators in international commercial arbitration, the difficulty in selecting them if the parties differ, or the difficulty of meeting the commission or moving to the arbitration headquarters due to the occurrence of circumstances of the specific place to hear the arbitration case, or the fact that they have a barrier due to emerging emergency circumstances, and the best example of what we are talking about is what is going on around us now and we are all suffering from it which is (epidemic or pandemic Corona). The problem of requiring writing for the International Trade Arbitration Agreement may arise in the light of the difficulty of achieving it for one reason or another, as well as the problem of locating international commercial arbitration and its consequences because of its association with applicable law on procedures.

The study hypothesis:

The study proceeds from the assumption that the arbitrator finds himself obliged to resolve the dispute in the light of rules of creation of international trade customs and customs that are independent of national laws, because of the limitations and different concepts of national laws that would hinder the progress of international trade in general, as they are characterized by the lack of breadth of their principles, or the level of their rules, only to the extent that they correspond to internal relations. The arbitration process and its decision. The study assumes that the problems and difficulties associated with arbitration proceedings often lead to the disruption or obstruction of the arbitration process, or the improper conduct of international commercial arbitration, leading to the annulment of the arbitral award if a case of nullity is brought.

Study questions:

- What is the international commercial arbitration ruling?
- Are the provisions of the Arbitration Act in Arab countries sufficient in themselves to identify preventive and therapeutic means for these constraints? Or does legislative intervention be needed to reorganize it, amend it or bring in new texts to address these problems?

The objectives of the study:

There are a range of objectives that the researcher seeks to achieve through this study, the most important of which are: Review the constraints and problems facing the international trade arbitration process, the position statement, national legislation and international conventions, on the failure to complete the procedures of the international trade arbitration process, the extent to which national legislation is committed to providing for the handling of such cases, monitoring legislative deficiencies in national legislation and international conventions - if any - and proposing to address them, so that these solutions keep pace with developments in international trade arbitration procedures.

Study limits:

The limits of this study are limited to comparative legislation in some Arab and foreign countries to the extent necessary, and international agreements on the subject of the study such as the New York Convention, the Riyadh Agreement and other agreements that serve the study.

The methodology of the study:

In order to learn about the subject of the study, we followed more than one approach in the study with the aim of highlighting all the elements and removing the ambiguity surrounding the complexity of relations arising from international trade arbitration, so we took the comparative study approach, by focusing on foreign laws, Egyptian law and some laws of Arab countries, including the Arab Gulf states. The subjectof the study is also addressed through international conventions on international arbitration, such as the New York Convention on the Implementation of Foreign Arbitrators' 1958, the European Convention on International Commercial Arbitration of 1961.

1.1- Definition of arbitration

The term arbitration in jurists, for which there are several definitions, noting that it focuses on certain aspects of it, some of which have focused on the function of arbitration, means: "Referring the dispute or dispute between at least two persons in order to resolve it after hearing the litigants in a judicial manner, by persons who are not court judges "[1]

1- Dr. Hisham Khaled: The Priorities of International Commercial Arbitration, University Think Tank, Alexandria, without a date edition, p. 36.

Or it is: a system of special justice whereby the parties to the conflict exclude the state as an option, and choose individuals to adjudicate disputes between them[2.]

Some jurisprudence defines arbitration as: "Litigant's resort to a private individual who asks him to resolve the dispute between them"[3,] or that it is: "a special judiciary based on a contractual requirement."[4]

Or: a special judicial system in which the parties choose their judges, entrusted under a written agreement with the task of resolving disputes that may or may have already arisen between them regarding their contractual or non-contractual relations, which may be resolved by arbitration, in accordance with the requirements of law and justice and a binding judicial decision [5].

Or: "A contractual system used by two teams to resolve the dispute arising between them by one or more non-judges."[6]

Another defined it as: "Two or more parties agree to remove a dispute or a number of disputes from the jurisdiction of the ordinary judiciary, and entrust it to a body consisting of one or more arbitrators to adjudicate it with a bindingsentence[7.]

While there are those who have given great importance to the arbitration agreement when defining arbitration, arbitration is considered to be: "A means of resolving an issue of interest to several persons through one or more so-called arbitrators or arbitrators, who derive their authority in a special agreement and serve under this agreement without being granted this function by the State."[8]

Arbitration is also intended: the parties agree that all or some disputes that have arisen or may arise between them on the occasion of a particular legal relationship, whether contract or non-contract, will be adjudicated by persons selected as arbitrators[9].

There are those who define control as: an agreement to bring the dispute before one or more arbitrators to be adjudicated instead of the competent court, by a binding ruling of the opponents, provided that the legislator approves this agreement as a condition or a consultation[10].

2- Dr. Mahmoud Samir Al-Sharqawi: International Commercial Arbitration, Comparative Legal Study, Arab Renaissance House, Cairo, 2011, p. 5-6.; Dr. Saeed Yousef, Private International Law, Al-Halabi Human Rights Publications, Beirut, 2004, p. 226. Dr. JumaSaadoun al-Rubaie, Guide to The Establishment of Da'awi, Legal Library, Baghdad, 2006, p. 215.

3- PH. Grandjean: "l'évolution du référécommerciale": Rev. jurisp. Com.1998. p.177.Foucharrd‹LarbitrageCommercalInternatinal. Dalloze‹Parise‹1965‹P.62.

4-Yves Guyon, "Business Law. Volume 1 general commercial law and society". 10th. edition. Ecomica paris1998. P. 826.

5-Dr. Ahmed Abdel Karim 5Salameh, Arbitration in Domestic and International Financial Transactions, Arab Renaissance House, Cairo, 2006, p. 19.

6-Dr. Amina 6Al-Nimr: The Origins of Civil Trials" University House, 1988 edition, p. 325.

BertrandMoreuEtThierry Bernard‹ Droit Interen Et Droit Interratio De larbitrage (2em) Edition‹ Parise‹1985‹P15.

7-Dr. Muhannad Ahmed Al-Sanouri, Arbitrator's Role in The Special International Arbitration Discount, First Edition, First Edition, Culture Publishing and Distribution House, Amman, 2005, p. 33.7

8- Rene David8‹ L arbitaytion Le ComereIntrnatial Economica‹1982‹ Parise‹P9.

9-Dr. Mahmoud Mukhtar Ahmed Brieri, International Commercial Arbitration, Second Edition, 1999, Arab Renaissance House9, Cairo, No. 5.

Or it is "a special system of litigation arising from the agreement between the parties concerned to entrust to persons or a third party, the task of adjudicating disputes between them and has the argument sought."[11]

There are those who view the purpose for which arbitration is used as the basis for its definition: "By establishing a special judiciary by which disputes are withdrawn from the public judiciary for the purpose of resolving them by persons with the power of the judiciary in the case of a particular case" [12]or: "Enabling the parties to the conflict to exclude their disputes from the jurisdiction of the courts authorized to apply the law, in order to be resolved by persons of their choice."[13]

Or: "The manner in which the parties choose to resolve disputes arising from the contract by bringing the dispute before a person, or more named arbitrators, or arbitrators without recourse to justice."[14]

It should be noted that there is a doctrinal difference in the definition of arbitration, which is also found in the laws that dealt with the arbitration provisions[15.]

1.2- The definition of arbitration in laws:

One of the laws that defined arbitration is the Egyptian Arbitration Act, which states: "Arbitration in the provision of this law is to arbitration agreed upon by the parties to the dispute of their own free will, whether or not the arbitral proceedings are conducted under the agreement of the parties are an organization or a permanent arbitration centre." [16]

Article 1 of the Syrian Arbitration Bill 2006 was defined as: "An agree mentalmethod of resolving disputes through arbitration rather than the judiciary, whether the arbitral proceedings under the agreement of the parties are organized or a permanent arbitration centre".

10-Dr. Esmat Abdullah 10Al-Sheikh, Arbitration in Administrative Contracts of an International Nature, Arab Renaissance House, Cairo, 2000, p. 21.

11-Dr. Qahtan11al-Douri, Arbitration Contract in Islamic and Posture Jurisprudence, I1, Al-Khlood Press, Baghdad, 1985, p. 20.

12- Jean 12Robert،Arbitrationgivil ET commercial en droit interne et intrnatianalPrive، Iemeedition،Dalloz،Paris،1967،p.98.62.

13-Dr. Sadiq Mohammed 13Gibran, International Commercial Arbitration in accordance with the Arab Convention on Commercial Arbitration 1987, i1, Al-Halabi Human Rights Publications, Beirut, 2006, p.19.

14-Dr. Hisham 14Khaled, Private International Judicial Law, University Think Tank, Alexandria, 2001, p. 522.

15- State laws in their regulation of arbitration provisions are divided into two parts, some of which are regulated in the Civil Pleadings Act, the other is regulated in an independent law, and the example of section 1: The French Pleadings Act of 1981 in articles (1442-1507) of it, and the Dutch Pleadings Act of 1986, which was organized Article (1020-107615), the Swiss Special International Law of 1978, which regulated arbitration in articles (179/199) of it, and the Iraqi Pleadings Act No. 83 of 1969, which he dealt with in articles (251-276) of it, Syrian law, which was regulated in Title IV of the Civil Due Process Act of 28 September 1952 in articles (506-534) of it, and the Uae law regulated in the Civil Procedure Act No. 11 of 19 92 In Title III of articles (203-218), Bahraini law in the Civil and Commercial Pleadings Act No. 9 of 1994 in articles (243-330), and the second section dealt with it in an independent law: Such as the Egyptian law he dealt with in the Egyptian Arbitration Act No. 27 of 1994. Jordanian law in arbitration law No. 31 of 2001, as well as Tunisian Arbitration Act No. 42 of 1993, Saudi Arbitration Act No. 46 of 1983.

16-Article (4) of the Egyptian Arbitration Act No. 27 of 161994.

As well as The Tunisian Arbitration Act No. 42 of 1993, article (1) of which stipulates that arbitration is: "A special way to separate certain types of disputes from the arbitral tribunal, to which the parties are assigned the task of deciding under an arbitration agreement."

Qatar Arbitration Act No. 2 of 2017, which he defined in the article as "a legal agreement method for resolving the dispute rather than resorting to the judiciary, whether or not the party to handle the arbitration proceedings under the parties' agreement, is a permanent arbitration centre."

In The Palestinian Arbitration Act No. (3) of 2000, article (5) defined the arbitration agreement as: "An agreement between two or more parties to refer all or some disputes that arose or may arise in relation to a particular contractual or non-contractual legal relationship, and the arbitration agreement may be in the form of an arbitration clause contained in a separate contract or agreement.

The Dutch Case Act stated that the arbitration contract was intended in article (1020) paragraph (2) of it: "The term arbitration contract means the arbitration agreement under which the parties are obliged to refer an emerging dispute between them to arbitration."[17]

1.3- Obstacles to the proceedings of the international trade arbitration process

The problem of requiring writing for an international trade arbitration agreement and procedures arises in the difficulty of achieving them for one reason or another, and the inability to implement the writing requirement is contrary to the text of most arbitration legislation and its almost agreement to require writing, regardless of whether it is a condition of proof or a condition for the validity of the proceedings, as in Swiss special international law [18] and in French law of arguments [19] .

There is no question of the need for international commercial arbitration proceedings to be subject to a particular national law. Command and related rulespublic order in the states concerned, or this choice is marred by fraud towards the law that was supposed to be applied to the subject matter of the conflict.[20]

States are often keen to choose their domestic law to apply to disputes arising between them and the foreign party, although the foreign party is often able to get rid of the law through its reservations, such as requiring the application of the rules of international law in one area or another, in the event of a dispute between it and the State, or suspending the application of domestic law, and therefore the national party must, if aware of the real dimensions of such reservations, When drafting the arbitration clause, or its consultation."[21]

17-The 17Dutch Pleadings Act is considered on the Internet, visit date: 22 February 2021, at: http://site.eastlaws.com/GeneralSearch/Home/ArticlesTDetails?MasterID=1735189 .

18-Article (178) paragraph (1) states: "The arbitration agreement shall be valid in form if it is concluded in writing, telegraph, telex18, fax or any other means of communication that allows proof."

19-Article (1443) of it states 19: "The arbitration clause must be written in the original contract or in a document to which this contract is referred or otherwise invalid".

20-Dr. Abo Zaid Radwan, former source, p. 130.

21- Dr. Mustafa Mohammed Al-Jamal21, Dr. Okasha Abdel-Al, Arbitration in International and Internal Private Relations, Arbitration in International and Internal Private Relations, Part 1, Arbitration Status of the Total Legal System, Arbitration Disputes, Arbitration Discount, First Edition, Al-Halabi Human Rights Publications, Beirut, 1988, p. 268.

The Court of Arbitration must do its utmost to ensure that its judgement is not only valid, but also enforceable, and the Court of Arbitration may do so as a legal duty; to the parties under the provisions of certain legal systems,[22]or perhaps to do so under Arbitration rules, such as those of the International Chamber of Commerce, which article 26 states: "The arbitrator must make every effort to ensure that the arbitration award is legally enforceable; and whether or not there is a legal obligation."

If the implementation of the international commercial arbitration award is not part of the arbitration proceedings but is relevant to it, because if the international commercial arbitration proceedings are not valid, we do not expect the decision to be implemented by the court.

Accordingly, some of the obstacles that precede the international commercial arbitration process can be limited, from the researcher's point of view, the difficulties of signing the International Commercial Arbitration Charter, the problem of appointing arbitrators to international commercial arbitration, the problem of requiring writing in international commercial arbitration, the problem of ignoring the location of international commercial arbitration, and the problem of not specifying the applicable law on the proceedings.

Therefore, the importance of familiarity with these procedures and the difficulties and possible solutions to them lies in the fact that they bring the distance between all sectors of society in their different disciplines, because the arbitrator does not necessarily have to be legal; [23]

1.4- Difficulties in signing the international trade arbitration process

The arbitration agreement can come before or after the dispute arises, if it comes before the dispute arises, it is called the arbitration clause, but if it comes after it, it is called the arbitration clause[24]as well as the agreement can come through a referral to a contract or document containing the arbitration clause, which is known as the arbitration clause by referral."[25]

The legislation was keen to highlight the two images, one of which could take the arbitration agreement without being singled out for specialtreatment[26]. For example, the second paragraph of article (10) of the Egyptian Arbitration Act stipulates that the arbitration agreement may be pre-established by

22-Reviews: Dr. Mohammed MohammedBadran: Notes in the arbitration judgment, drafted by nullity - his authority and implementation - Arab Renaissance House Cairo: Egypt, 1999, p. 94 and beyond.International justice and the impact of national sovereignty in the implementation of international rulings, with an analytical study of the most important international issues, Arab Renaissance House, Cairo, Egypt, 1998, p. 251 and beyond. Dr. Mohammed Ali Skiker, Arbitration Legislation in Egypt and Arab Countries, New University House, Cairo, 2007, p. 132: Mahmoud Al-Sayed Al-Tahwi, Arbitration Agreement and Its Rules, University Think Tank, Alexandria, 2002, p. 197 and beyond.

23-The researcher notes that this presentation of the constraints prior to the procedures of the international trade arbitration process will not include the proposed solutions to address these constraints, to which the third chapter of the study is allocated 23.

24 Dr. Maher Mohsen Abboud Al-Khaikani, Arbitration is a procedural guarantee for the settlement of investment disputes, legal research at the Faculty of Law, Babylon University, Iraq, 2011, p. 6.

25-Dr. Ahmed Makhlouf, Arbitration Agreement, Arab Renaissance House, Cairo, 2005, p. 32.25

26 Dr. Mahmud Mr. Omar Al-Tahwi, former source, p. 74. Dr. Ahmed Abu Al-Wafa, Optional and Compulsory Arbitration, Knowledge Facility, Alexandria, 1988, p. 65.

the dispute; whether it is independent in itself or in a particular contract on all or some of the disputes that may arise between the parties, in which case the subject matter of the dispute must be specified in the statement of action referred to in the initial paragraph of article (30) of this Act.)[27]

The existence of an arbitration agreement in international trade contracts is inevitable, and therefore if a party is brought before a judge that there is no or no arbitration agreement, the latter must examine the legal existence of such an agreement[28.]

The New York and Riyadh agreements did not require the award to include a summary of the arbitration agreement and merely provided for a copy of the arbitration agreement to be attached to the application for an executionorder[29.]

In article 1/4/b, the New York Convention required those applying for recognition and implementation of a foreign award to attach to the award the origin of the written arbitration agreement on which the parties are obliged to submit to arbitration, or a copy of the agreement that combines the conditions required for the validity of the bond[30.] The Riyadh Agreement adopted a similar[31] text.

The New York Convention also requires article (2/2) that the arbitration agreement be written, and has provided two forms of writing: the first is the arbitration clause or the arbitration clause signed by the parties, and the second form is the arbitration agreement contained in the letters and telegrams exchanged between the parties, which are effectively indicative of the parties' intention to resort to arbitration.

1.5- The problem of appointing arbitrators in the international commercial arbitration process

The term "arbitral tribunal" goes to the body formed by one or more arbitrators to adjudicate the dispute referred to arbitration.

The jury shall form an agreement of one or more arbitrators, and they have agreement on how and when to choose them, and if they do not agree, the legislation will be keen to extend a hand of judicial aid to them ..[32], as decided by the Egyptian Arbitration Act .[33]

27- Dr. SafwatBehnsawi27, Dr. Ahmed Hassan Ghandour: Former Source, p. 6.

28- Dr. Salhah al-Din Jamal al-Din and Dr. Mahmud Masilehi, International Event for The Acceptance of Arbitration in International Disputes, Dar al-Din University, Alexandria, 2004, p. 123.

29-For more consideration: Dr. Ibrahim Ahmed Ibrahim, Private International Law, No Publishing House, Cairo, 1986, p. 299, p. 171.29

30-Article (1/4/b) of the New York Convention. This was confirmed by the Australian Act in article 30(35/2).

31-Article (37) of the Riyadh Agreement is incapacitated.31

Under the text of article (9) of the Egyptian Arbitration Act, which states in its initial paragraph32: "The jurisdiction to consider arbitration matters referred by this law to the Egyptian judiciary is the court already competent to hear the dispute. If arbitration is internationally commercial, whether conducted in Egypt or abroad, the jurisdiction of the Cairo Court of Appeal will be the 32-same unless the parties agree on the jurisdiction of another court of appeal in Egypt."

33-Dr. SafwatBehnsawi33, Dr. Ahmed Hassan Ghandour: Former Source, p. 53.

The arbitrator is chosen through a basic method, which is mediated by the parties to the dispute, either an agreement from them to appoint a single arbitrator, or each of them to appoint an arbitrator, in the event of the selection of more than one arbitrator, if the parties are unable to agree to appoint the arbitrator, if one of them fails to perform his or her duty, or fails to appoint a court for one reason or another, another method of selection is used, through the court competent to adjudicate the dispute, or Through permanent arbitration institutions.[34]

This estimated freedom of choice of arbitrators is provided for by national laws and international arbitration treaties, so that the second and third methods of selecting arbitrators on international trade contracts are only a complement to the free selection of the parties or to fill a shortage or penalty for negligence or leave to appoint arbitrators from such parties.

The appointment of the arbitrator by the parties to the dispute governs two basic principles: - the will of the parties to be the origin of the appointment of the arbitrator; if they agree to appoint one or more arbitrators, then what has been agreed must be adhered to, and second: - taking into account the equality of adversaries in the appointment of arbitrators, one of them may not have priority in appointing all arbitrators without the other[35].

The appointment of arbitrators is the second pillar of international commercial arbitration after the arbitration agreement[36], since with the agreement and the emergence of the dispute, an arbitrator or arbitrators are appointed to adjudicate the dispute, and arbitrators may be appointed by agreement of the litigants in the arbitration of special cases, while the will of the litigants shall be diminished in the case of institutional arbitration, which is done through an institution or arbitration centre; [37]

The importance of appointing arbitrators is due to the fact that the arbitral award shall be invalidated if the arbitral tribunal, whether formed by one or more arbitrators, is contrary to the agreement, or the law to be available to them, where the orderly procedural system should be respected, whether it is an arbitration agreement, or the law applicable to the proceedings in terms of the number of arbitrators, how they are appointed and the conditions to be met, if the arbitral tribunal has been formed by two arbitrators while the law applicable to procedures chosen by the parties requires that Their number is individual, and here the verdict is invalidated. The award is also invalidated if all arbitrators are appointed by one of the parties to the arbitration agreement, while the arbitration agreement requires that the parties participate in their appointment[38.]

One of the problems facing the appointment of arbitrators (the formation of the body) is also, if the other party refuses or procrastinates in appointing an arbitrator on its part, or if the parties fail to agree

34 Dr. Muhannad Ahmed Al-Sanouri, Arbitrator's Role in The Special International Arbitration, Culture Publishing and Distribution House, Amman, 2005, p. 79.

Dr. Hussam al-Din Fathi35Nasif, Electronic Arbitration in International Trade Disputes, Arab Renaissance House, Cairo, 2005, p. 42.

36- Dr. Muhannad Ahmed Al-Sanouri, former source, p. 79.

37-We will postpone the answer to this question until legislative solutions to this issue are presented in chapter three of the study.37

38- Dr. Hisham Sadiq, Law applicable to international trade contracts, University Thought, Alexandria, 2001, p. 398.

on the sole arbitrator or the president (the likely arbitrator), the majority of national laws and international arbitration agreements give the parties or one of them the right to resort to the appointment authority in accordance with the agreement in the contract or applicable law .[39]

The process of appointing arbitrators may face other difficulties and problems, if a state of war is established and one of its parties is from the State parties to the dispute or the arbitral tribunal, political conflicts occur in the country of arbitration or the home of the litigants, or global or local natural disasters. There may be an emergency or objective circumstance for an arbitrator or a conflicted, the emergence of an epidemic and its consequences (isolation, quarantine, injury to a person of arbitration), war, closure of borders, etc., because of the suspension of aviation and transportation between some countries, or because of state legislation leading to the suspension of proceedings, which would be a first to disrupt arbitration proceedings, whether free or institutional, whether internal or international.

The arbitrator may therefore request the arbitrators to apologize for attending a particular hearing or several hearings, or to exempt him from the task, and therefore notify the other member of the circumstances of that member, as he informs the parties to the dispute, in which case the parties to the dispute may agree to the continuation of the proceedings with the two courts present, and we find here in the event that one of the parties to the dispute may refuse in the case of the absent arbitrator who was appointed by him; The presence of the chairman of the body who has also participated in his appointment.

However, if the proceedings continue in the two courts, the difficulty lies in the case of a request from one of the parties that requires atime decision.[40]

1.6- The problem of requiring writing in the international trade arbitration process

Most laws require that the arbitration agreement be written, but differ on the form of writing required, whether it is a condition for the validity of the arbitration agreement or merely for proof.

Writing is therefore a fundamental pillar that must be provided in order to say that there is an arbitration agreement, otherwise it is subject to nullity. The only demand for the form of an arbitration agreement - even under international treaties - is that such an agreement must be written.

There have been many interpretations of what is meant by writing, as this meaning has been extended to all conventions made through modern means of communication from telegrams and others, and from this point of view the writing itself is a formal framework for the validity of the arbitration agreement, in its content beyond mere proof.

However, since the arbitration agreement may be linked to or independent of the original contract, or may be broken at the beginning of the contract or when a dispute is raised, i.e.contemporary to the dispute, hence a problem that requires this requirement arises when it is not possible for the parties to

39- Dr. Asaad Fadhil Mendel, Arbitration in Iraqi Pleading Law, Master's Degree to the Faculty of Law at The University of Al-Nahrin in 2002, p. 84.

40-Dr. Hossam Abdul Latif Mohi, The Role of the Arbitrator in Internal Arbitration Proceedings40, Master's Letter submitted to the Faculty of Law at The University of Nahrain, 2007, p. 65.

meet to sign the written agreement, a particular method must be adopted, so that the dispute does not last without arbitration or resolution.

Returning to arbitration legislation, we find it almost in agreement to require writing for the arbitration agreement. Some laws requiring the writing of the arbitration agreement stipulate that writing is a condition of proof and not a condition for the validity of this agreement, as in Swiss special international law 41and in Frenchlaw of arguments [42].

It should be noted that the French legislator had stipulated that the arbitration clause should be written only in the area of internal arbitration without international arbitration, which raised the question of whether the same rule applied to the international arbitration agreement or not?

To answer this question, it is noted, first of all, that article (1495) of the French Pleadings Act stipulates that "when international arbitration is subject to French law, the provisions of Title I, II and III do not apply, unless the parties agree otherwise".

This means that the parties can subject the arbitration agreement to the provisions of this law on internal arbitration, as well as exclude it whenever they agree to this order, and therefore the requirement to write in French law applies to parties to international contracts in general only if they agree to do so[43].

As for the Dutch legislator,[44] it was expressly stated in the Civil Arguments Act that writing was a condition of proof rather than validity, which meant that the arbitration agreement was valid in the event of a default of the writing requirement. [45]

As for the Egyptian legislator,[46] he notes that he arranged for the writing to be invalid, as determined by article (12) of the Arbitration Act, which stipulated that "the arbitration agreement must be written or void."

41-Article (178) stipulates paragraph (1) of it that "the arbitration agreement shall be valid in form if it is concluded in writing, telegraph, telex41, fax or any other means of communication that allow proof".

42-Article (1443) of it stipulates that "the arbitration clause must be written in the original contract or in a document to which this contract is referred or otherwise invalid".42

43- Rene Pavid‹. op. Cit‹P.89.

44-Article (1021) of it states that "the arbitration contract must be proved in writing ...".44

45-Article (252) stipulates that "the agreement on arbitration can only be established by writing, 45and this is confirmed by the Iraqi Court of Excellence in its decision no. 363/Civil I/1974 on 5 July 1975 by saying that "arbitration in law is one type and the only condition for its existence and the order of its effects is to be fixed by writing "published in the set of judicial judgements, third amendment, year 6, p. 117. "

46- Consider in the same direction: 46Article (10) of the Saudi Arbitration Act, Article 6 of the Tunisian Arbitration Act, Article (766) of the Lebanese Civil Trial Assets Act and Article (509) of the Syrian Civil Trial 46-Assets Act. Article (12) of Omani law confirmed the restriction in this form by stating: "The arbitration agreement must be written, otherwise it is invalid, and the arbitration agreement shall be written if it is contained by an editor signed by the parties, or if it contains the letters, telegrams or other means of written communication exchanged by the parties."

The legislator intended to empty the arbitration in a written form, namely, to reflect the fact that the parties' will and willingness to resort to arbitration would be expressed with important implications, and therefore any arbitration agreement that was written was null and void, and had no effect, which is why the writing of the arbitration agreement, whatever the form it contained, gave it a formality that reflected its validity.[47]

As for the international conventions that dealt with the arbitration order with regard to international commercial contracts in general, it is clear to us that most of them are in the requirement to write the arbitration agreement, and if they do not specify a particular form of such writing, whether it is a necessary requirement in the contract at Abram's or a subsequent consultation on this conclusion, which requires that the writing requirement of the arbitration agreement be counted as a condition for establishing such an agreement without prejudice to its validity.

Article (2) paragraph (1) of the New York Convention on the Implementation of Foreign Arbitration Provisions of 1958 states that "each contracting State recognizes the written agreement under which the parties are obliged to be subject to arbitration all or some of the disputes that have arisen, or may arise between them".

It also stated in paragraph (2) of the same article that "the written agreement is intended as the arbitration clause included in the contract or the arbitration agreement signed by the parties or the agreement contained in the letters and telegrams exchanged between them".

This means that the Said Convention requires that the arbitration agreement be written for member States to approve and recognize it, and they are not obliged to recognize the arbitration agreement unless such an agreement is written.

In any case, the need for writing - as a formal condition for the validity of the arbitration agreement - is a means of litigation under which the jurisdiction of the judiciary to the courts or the arbitral tribunal is established, but if such writing is not available, the arbitration agreement has lost a condition of its validity and has therefore been invalidated, thereby denying any jurisdiction to the courts or the arbitral tribunal in the view of the dispute between the parties[48].

This has been confirmed by most of the French judicial rulings requiring the arbitrator to write the statements provided for by law, but he does not object to the elimination of errors that may occur in such statements as the competent judge is held accountable. The arbitrator may only mention the basic statements, as it is not a deficiency for which the names of the litigants are held accountable without mentioning their characteristics or surnames[49].

47- Judge Ali bin Abdulla bin Mohammed al-Hinai, working paper entitled: "Modern Trends of Arbitration in the Field of Administrative Contracts", presented at the 7th Conference of Heads of Arab Administrative Courts held at the Arab Center for Legal and Judicial Research in Beirut, Lebanon, from 21 to 23 August 2017, p. 14.

48- Judge Ali bin Abdullah bin Mohammed al-Hinai, former source, p. 14.

49-The ruling of the French Seine Court on February 27, 1936, 49referred to as: Ahmed Abu Al-Wafa, optional and compulsory arbitration, former source, p. 206.

1.7- The problem of ignoring the location of the international trade arbitration process

The mention of the place where the international commercial arbitration award was issued is of a significant degree;[50]

The origin is that the place of award is the same as the place of arbitration, and if the arbitration parties agree that a State is the place of arbitration, the arbitral tribunal must prove that the state is a place for the award; [51]

If the arbitrator neglects to state the statement of where the arbitration was made or where the judgement was issued, the absence of such a statement does not affect his judgement in terms of nullity, since the purpose of this statement is to determine which court must deposit the origin of the judgement, which is originally specified in the court competent to hear the dispute and which the arbitrators must deposit the origin of the judgement or those before which the case is brought by one of the parties to ratify or annul the award[52.]

It is well known that arbitration laws have established the principle of the freedom of will of the parties to choose the place of arbitration, leaving them open to determine it, and if not, it is left to the arbitral tribunal to determine this place, taking into account the circumstances of the dispute before it, as well as the appropriateness of the place to the parties to the dispute.[53]

As for international conventions, notably the New York Convention, the venue of the award was of great importance. The scope of its application is determined by the place of the award, where the award is issued, as the latter is required to apply its provisions to recognize the implementation and implementation of the award, which is considered unpatriotic to the State required to recognize and implement the decision, as a key criterion for determining the scope of its validity, in addition to another criterion, which is when the decision is considered unpatriotic to the State required to recognize and implement the decision on Although it was issued on its territory, as well as the location of the decision is important in accordance with the principle of reciprocity, the Convention allowed contracting states to reserve the application of the Convention to arbitration decisions issued in a contracting State.[54]

50-Article 20 of qatar arbitration law No. 2 of 2017. Article 28 of the Egyptian Arbitration Act No. 27 of 1994. 50

51-Musleh Ahmed Tarawneh51, former source, p. 116.

52- D. Hossam Abdul Latif, former source, p. 13.

53-Article 20 of qatar arbitration law No. 2 of 2017.53

54- Article (1) of the New York Convention of 1958 to implement foreign arbitration provisions provided that the provisions of the Convention applied to the decisions of arbitrators in the territory of a State other than those required to recognize and implement the provisions on its territory. Determining the location of the award is important to determine the scope of the application of the Riyadh Agreement, and if the award is issued in one of the contracting states of this agreement, it is implemented in accordance with the provisions of this agreement and not by national law.

1.8- **The problem of not specifying the law applicable to the procedures of the international** commercial arbitration process

The law governing arbitration is intended as "the set of legal rules that the arbitrator amounts to as suitable for application to the dispute, whether they originate from national law, or are customary in the context of international trade away from the national laws of States."[55]

In other cases, they are the procedural rules that define agreement, procedures and decision-making, which are often rules or arbitration laws, and these rules locally and globally hardly find a difference between them, such as objective rules or substantive law, which are often technical rules issued by national or international institutions applicable to certain types of transactions or national law.

These objective rules or laws vary from state to state, and may be due to ideological, political and other trends.

It may be difficult for the parties to agree on a particular law because of each party's desire to apply its national law, or one of its choices alone, as each party is ignorant of the provisions of the other party's law, both of which are ignorant of the provisions of a neutral law, and therefore have no choice but to remain silent and not to agree on the law applicable to the subject of the dispute[56.]

This may also happen in contractual relations in international trade contracts when it is held between a weak party belonging to a developing country and a strong party belonging to a developed country, as the first party does not trust the integrity of the intentions of the second party, and the other does not trust the efficiency of the first party's law[57].

In addition, the contract may be silent about the law applicable for various reasons, such as negligence of the parties, or ignorance of the mechanism for determining it.

In all these assumptions, the parties decide to leave the arbitrator free to determine the applicable law on the subject of the dispute. Who may see the application of a particular national law as long as the parties do not agree to choose a particular law to govern the subject matter of the dispute?[58]

Hence the problem of not specifying the law applicable to the international commercial arbitration process if the state on which the arbitration will be conducted - on the basis of the liabilities' agreement - or being the place of arbitration, with exceptional circumstances, thus infringes on the arbitration process in that state.

Here, the parties and the arbitral tribunal are forced to transfer arbitration to the territory of another State, with the consequent change in formal and substantive procedures that may affect the integrity of the arbitration proceedings and the implementation of its judgement.

55- Dr. Sadiq Mohammed Gibran, International Commercial Arbitration in accordance with the Arab Convention on Commercial Arbitration 1987, i1, Al-Halabi Human Rights Publications, Beirut, 2006, p. 104.

56- Dr. Mahmud Mukhtar Ahmed Brieri, former source, p. 135.

57- Dr. Sarraj Hussein, Arbitration in Petroleum Contracts, Arab Renaissance House, Cairo, Egypt, 2010, p. 577.

58- Dr. Jamal Mahmoud al-Kurdi, Applicable Law in arbitration, New University Publishing House, Alexandria without date, p. 66.

However, on the direction of applicable law; on the arbitral ability of the dispute, the competent national courts, following the example of the dominant jurisprudence, must take into account two important principles for resolving that issue.

The first is the principle of arbitration preference, in the sense that any doubt about the area of arbitrability must be resolved by the weight of arbitration.

Second, the principle of agreement on arbitration, if it is invalid in national disputes, does not have to be considered so in disputes of an international nature. The prohibition on national public order should not necessarily extend to relations across the State,[59] yet the competent state judiciary must take into account the power to support its own lawon the relationship in dispute, when the national public order finds room for application.[60]

The procedural aspect of arbitration is the backbone of arbitration, while at the same time the fence that guarantees its legitimacy.[61]

The distinction between procedural and substantive arbitration issues is therefore a difficult study in the jurisprudence of private international law; trying to establish a decisive standard separating this from that is not a good thing.

This is because many legal rules are relevant and procedures at the same time; it is difficult to separate these issues from this.[62]

The importance of distinguishing between procedural and substantive issues appearsto be from two angles:[63]

The first is that the arbitrator has the power to break the rule of law, where the arbitrator may exempt followers of procedural matters without objectivity, because procedural rules are not an end in themselves but a means of showing all aspects of the truth before the arbitrator64, and therefore there is no objection to overriding them whenever such abuse is achieved for another purpose worthy of consideration without prejudice to the purpose for which it was established.

59-In his commentary on 59Mitsubishi's ruling, mitsubishi reviews the ruling of the Robert Court (j) of the Paris appeal in: 15 July 1956 published in D-1958 p. 175 and beyond.

60-Mustafa Mohammed al-Jamal and Akasha Mohammed 60Abdul Aal, former source, p. 208 and beyond. The provisions of article 458 review paragraph 14 of Legislative Decree No. 93-09 of: 25 April 1993 amended to Order No. 154-66 of: 8/7/1966 on the Civil Procedure Act of the Algerian Arbitration Section, article stating: The Court of Arbitration adjudicates the dispute in accordance with the rules of law chosen by the parties and, in the absence of this, The Court of Arbitration shall decide in accordance with the rules of law and the customs it deems appropriate." The corresponding provisions of Article 1050 of Law No. 08-09 containing the Civil and Administrative Procedure Act of: 25 February 2008 in the Official Gazette No. 21 on 23 April 2008.

61-Dr. Jamal Mahmoud al-Kurdi61, former source, p. 21.

62-Dr. Ahmed Abdul Karim Salameh62, International Civil Proceedings, World Library, Mansoura, 1984, p. 297.

63-Dr. Abu Ala Ali63, Law applicable to procedural matters in the field of arbitration, first edition, Arab Renaissance House, Cairo, without a year of publication, p. 7.

64- Dr. Hafeez Al-Sayyid al-Haddad, former source, p. 191.

Second: in terms of determining the law to be applied within the scope of private international law. So that the court can apply it to the proceedings during the course of the litigation.

Here, it is difficult when the parties do not agree on certain rules governing arbitration proceedings, and with the freedom enjoyed by arbitrators to choose the rules governing procedures in accordance with international treaties and national laws, there has been a trend to see regional arbitration removed from each State and arbitration proceedings separated from any national legal system in order to avoid the problem of legislative changes in national laws.[65]

The procedural rules governing arbitration liability vary depending on whether it is a special or free arbitration, or institutional arbitration within permanent arbitration bodies and centers. Institutional arbitration does not raise any difficulty with regard to the applicable law to the proceedings, as the mere agreement of the arbitrators to assign arbitration to an arbitration centre implies their agreement to follow the regulations and instructions of that centre with its proceduralrules.[66]

Conclusion:

In summary, most Arab legislation (such as the Egyptian legislator and the Jordanian legislator) has arranged for the arbitration ruling to be invalid if some of the rules of procedure set by the law, whether Egyptian or Jordanian, are not observed, provided that these procedures have an impact on the nullity of the arbitration ruling. (Article 53). / 1/g) of the Egyptian Arbitration Act, and (Article 49/a/7) of the Jordanian Arbitration Act, violating the rules of procedure set by the Arbitration Act, which result in its violation of its nullity, and therefore nullity of the judgment, relates to areas of non-compliance an opponent declares his opponent's requests, documents submitted, or any evidentiary procedure. This reason also includes the omission of the judgement to respond to a substantial defense of the deduction, as well as the rules set out in the Arbitration Act regarding the arbitration proceedings to which the arbitral tribunal was obliged to follow. The rules are derived from the basic principles of litigation. One of them is the principle of confrontation between adversaries, and if an opponent takes any action in the absence of his opponent, and the commission does not enable him to prepare his defense, the procedure is invalid, and therefore invalidates the judgement. Any violation of the procedural law agreed upon by the parties, or the provision of the law to rule the dispute, falls within this reason and therefore exposes the arbitration ruling to invalidity.

65- Y ves DERATINS DROIT et Pratiqve de L'Arbitrage international En France, FECUCL, Paris, 1984, p. 55.

. Referred to by Dr. Ibrahim Ahmed Ibrahim, p. 137.

66- Dr. Abou Ala Ali al-Nimr, Applicable Law on Procedural Matters in arbitration, First Edition, Arab Renaissance House, Cairo, without a year of publication, p. 11.