International Journal of Law
ISSN: 2455-2194
Impact Factor: RJIF 5.12
www.lawjournals.org
Volume 3; Issue 6; November 2017; Page No. 30-34

An overview to international commercial arbitration courts

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Abstract
The scope of international commercial arbitration has been expanding. For instance, we can see that there are numerous arbitration bodies and centre that are responsible for conducting such processes. Furthermore, mentioning terms about such processes in the international contracts of typical form has become something compulsory. Such international contracts are considered highly significant in the world of international trade. Examples of such trade may include: the international supply contracts, international assembling contracts and the international contracts made by industrial facilities. Such contracts shall require referring the cases of disputes to the International Chamber of Commerce and enforcing the arbitration rules of this chamber upon such disputes. Furthermore, referring cases of disputes to arbitration bodies and centres and enforcing their arbitration rules upon have become compulsory. These things have become compulsory pursuant to the terms of multilateral international arbitration agreements and conventions that have been concluded between countries.

Keywords: law, arbitration, UNCITRAL, ICSID, international court of arbitration

1. Introduction
International arbitration is considered to have great special significance. During the recent decades, many countries and bodies have resorted to its processes due to the benefits gained from them and that has participated in increasing the significance of international arbitration. However, there have been many problems and challenges facing such processes, especially with the great significance they have been receiving. In addition, such problems and challenges have been increasing due to the increasing number of opportunities for conducting foreign investments and transactions which started to include parties from various courtiers. Thus, official courts have been facing great difficulty in settling the disputes arising from such transactions and contracts [1].

The arbitration proceedings usually start when requesting to conduct the arbitration process by the disputed parties based on a contract that was concluded between them. After both parties decide to resort to arbitration, they must appoint qualified efficient arbitrators on the basis of a mutual agreement for the aim of settling the concerned dispute. After appointing the desired arbitrators, the arbitration hearing session shall be held to settle the dispute in accordance with the law that was chosen by a mutual agreement reached by both parties. However, this session can be held in accordance with the authority granted for the arbitrators. In addition, there have been many studies conducted about the law that shall be applicable on the arbitration proceedings that are implemented in order settle the concerned dispute and that is considered the goal of the arbitration process.

2. Results & Discussion
2.1 The International Court of Arbitration
The International Court of Arbitration is an arbitration independent subsidiary body of the International Chamber of Commerce. This court is responsible for settling disputes by itself. It also enforces its control upon the arbitration processes that are handled by the arbitration tribunals in order to settle disputes in accordance with the applicable arbitration rules of the International Chamber of Commerce. This court is considered as the only body entitled to impose its control upon the arbitration proceedings to identify their extent of compliance with the law and rules. It is also the only body entitled to examine the issued arbitration awards in accordance with law. The followings include examples about articles related to the International Court of Arbitration (the International Chamber of Commerce, 2013):

- The International Court of Arbitration is a subsidiary body of the International Chamber of Commerce. The latter court is specialized in making sure that the arbitration rules and regulations issued by this chamber are enforced. The court is granted all the necessary powers to make sure of that.
- The court performs its functions and duties independently due to being an institution that is independent from the International Chamber of Commerce and its apparatus
- The members of the court are independent from the national committees of the International Chamber of Commerce.

The International Court of Arbitration consists of the court's president, vice – president and members. The court seeks to assist the Secretariat of the United Nations Administrative Tribunal. The court's session is usually held with the attendance of all of its members with the attendance of the court's president. However, if the court's president did not attend the court's session, then he shall assign one of his vice-presidents to perform his duties in the held session during his absence. The court's proceedings are considered valid and correct if six members attended the session minimum. The

court's judgment is made through being approved with having the majority voting for the same judgment. In case of having equal votes, the vote of the court's presidents or his vice-president shall be considered the casting vote. Furthermore, the court is entitled to form a committee or several ones and the court shall be responsible for assigning functions and duties for such committees to be performed by.

The International Court of Arbitration was established in 1923 under the supervision and control of International Chamber of Commerce. Since that year, the court has been concerned with settling international commercial disputes and the matters related to that. Furthermore, the court has become one of the most prominent international arbitration bodies. The headquarters of this court is located in Paris, France. The judgments issued by this court are characterized with being internationally recognized. For instance, around one hundred and twenty two countries have signed the New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards) in 1958. Through this convention, those countries have recognized the judgments issued by the International Court of Arbitration. It should be noted that this court seeks to achieve the following:

1. Exerting more efforts to settle commercial international disputes through adopting arbitration mechanisms that were proposed by the International Chamber of Commerce. In addition, the court seeks to play the role of a mediator between the disputed parties in order to settle their disputes.
2. Examining the extent of compliance with the law in issuing the arbitration awards and organizing their proceedings for the disputes of commercial nature.
3. Applying the modern arbitration techniques in commerce chambers to settle the current commercial disputes
4. Developing commercial laws, regulations and standards in a constant manner.
5. Examining and looking into the cases that are referred by the bodies responsible for settling disputes.

As for what concern rules and provisions issued by the International Chamber of Commerce for settling disputes amicably, they include the following:

1. Disputed parties usually need to reach an amicable settlement for their disputes. That can occur during any stage of the proceedings. Reaching an amicable settlement for the dispute is usually easier through the interference of a third party.
2. Provisions of settling disputes amicably were issued through holding discussions and negotiations. These discussions and negotiations were held by specialists and experts in the field of settling disputes and representatives of commercial companies who were selected from 75 countries.

2.2 International Court of Justice (Referred to as the World Court or ICJ

The International Court of Justice is one of the six major organs of the United Nations bodies; the General Assembly, defunct Council, the United Nations Security Council (UNSC), the United Nations Economic and Social Council (ECOSOC), the United Nations Secretariat. According to article 92 of the United Nations charter and article 1 of this court's statute, this court shall be the principal judicial organ of the United Nations and shall function in accordance with the annexed statute, which is based upon the Statute of the Permanent Court of International Justice. According to those articles, the court's statute shall form an integral part of the present Charter.

This court is composed of fifteen judges who are elected to nine year term of office. Electing them is based on a decision issued by the General Assembly and a recommendation provided by the UN Nations Security Council (UNSC). However, this decision must be approved by nine members of the latter council and the permanent five member countries must be among them. In relation to the amount of powers granted to this court in settling investment disputes, article 34 of this court's statute states that only states may be parties in the cases referred to the court, provided that the other countries who are involved in the case must agree to appear before the court [2].

The International Court of Justice is granted its authorities by the UN charter and the ICJ statute. It is known that this court is considered the principal judicial organ of the United Nations. It also performs its functions and duties in accordance with the provisions stated in the ICJ statute.

The International Court of Justice, established by the Charter of the United Nations, shall be the principal judicial organ of the Commission and shall function in accordance with the provisions of this Statute. The Tribunal shall be composed of independent judges elected by persons of high moral character who possess in their country the qualifications required for appointment to the highest judicial offices, Shall be competent in international law and all this regardless of their nationality. Article 25 of the Statute of the International Court of Justice states:

- Rapid arbitration within the WTO as an alternative means of dispute settlement can facilitate the resolution of certain disputes on issues clearly defined by both parties.
- Except for any other provision of this Understanding, recourse to arbitration shall be affected
- Subject to the consent of the parties to the dispute who should agree on the procedures they wish to follow and notify all members of any agreements to resort to arbitration well before the effective commencement of the arbitral proceedings.
- Other members may not become parties to arbitration without the consent of the parties that have agreed to resort to arbitration. The parties to the case agree to be bound by the award. The arbitral awards shall be sent to the DSB and to the Council or Committee of any relevant agreement where any member may raise any relevant point.

2.3 International Centre for Settlement of Investment Disputes

The International Arbitration Centre was established in the context of investment disputes under historical conditions and factors which had the greatest role in its inception, in the development of its constituent system and in its unique characteristics which made it distinguished from the rest of the arbitral centres in terms of the nature and effectiveness of its provisions or its relation to, With its unique legal status, its

unique treatment of the issue of sovereignty, which has long been considered a stumbling block to the development of international commercial arbitration, the conflict between States and the International Chamber of Commerce in Paris on the New York Treaty, and the issue of diplomatic immunity enjoyed by foreign investors Which was notorious for its association with the privileges enjoyed by the major companies beyond the sovereignty of states, and sometimes the reason for the occurrence of countries that refuse such immunity to the occupation, especially as this immunity was exploited the most exploitative under the Ottoman Empire when he was called sick man. He therefore established this arbitral tribunal to resolve investment disputes without any party and regardless of its legal status being exploited [3].

If the International Bank for Reconstruction and Development is an international institution that provides productive loans and seeks to provide guarantees and technical assistance aimed at encouraging the inflow of foreign investments, the Bank has set up a number of specialized international mechanisms in this field, including the International Centre for Settlement of Investment Disputes The General Assembly of the World Bank in 1961 proposed a treaty to settle these disputes. In 1965, an agreement on the settlement of investment disputes between Contracting States and citizens of a Contracting State was approved. It was signed by 65 countries and ratified by 63 countries. This agreement, called the Washington Agreement, came into force in 1966. It is the only specialized body to settle disputes between contracting countries and foreign investors. However, this does not preclude the parties from agreeing to resort to arbitration because of the possibility of one of the other arbitration centres [2].

ICSID was established as an international organization in accordance with the Agreement on the Settlement of Investment Disputes between States and Citizens of Other States. The International Centre for Settlement of Investment Disputes (ICSID) oversees two main organs, the Administrative and Secretarial Council. The Centre shall maintain a list of the approvers and the other arbitrators. That agreement created a delicate balance between the interests of both the host State and the foreign investor [4].

1. Advantages of foreign investors ICSID provides foreign investors with an international court in the right sense and is able to sue the host countries directly. The Convention on the Settlement of Investment Disputes between States and Citizens of Other States contains provisions that prohibit a citizen of a Contracting State (a State party to the Convention) To resort directly to an international court to settle an investment dispute with another Contracting State without requiring such consent to be obtained by the consent or cooperation of his State of which he is a national. In addition, the Settlement of Disputes Convention included investments between States and nationals of other States which allowed a national of another Contracting State to provide for investment disputes between the parties to be settled in accordance with the provisions and principles of international law
2. Advantages of the Contracting State: The settlement of the investment disputes referred to the Contracting State shall be guaranteed if, in accordance with the Convention, it is not subject to any diplomatic or other issues or claims of diplomatic or other protection by the State of another Contracting State, The State of the investor or citizen who has entered into an agreement with the first State (the host). In addition, the Convention on the Settlement of Investment Disputes allowed the contracting State to require that the State of the other Contracting State (the investor) exhaust all internal procedures in the State (whether administrative or judicial) prior to the commencement of any dispute settlement procedure of the Contracting State, Its State in the domestic courts of its State or at any other international or domestic level that the host State may wish to invoke. This Convention also protects the Contracting State from the judicial or legal proceedings that may be invoked by the investor in the courts of his State or any other State, to the investor state.
3. Mutual Benefits of the Parties the Agreement on the Settlement of Investment Disputes contained several advantages for both parties to the investment relationship at the same time (the Contracting State and the other Contracting State). The practical experience through the cases and disputes brought before the Centre for settlement through arbitration has shown that many of these advantages Applicable to the practice of the Centre for its function. The most important aspects of the Centre's advantages to the parties include:
   - The Agreement on the Settlement of Investment Disputes provides that once the parties accept the ICSID's jurisdiction, either party cannot waive the acceptance, withdrawal, modification or cancellation of such jurisdiction by its own will. In order to ensure that this provision is non derogable for any reason, on a means by which the composition of the Conciliation Commission or the Arbitration Tribunal may be reached despite the objection or non-cooperation of either party to proceed with the proceedings.
   - The Convention on the Settlement of Investment Disputes (ICERD) included a provision to recognize the compulsory force of the arbitral tribunal's ruling. In accordance with the Convention for the parties to the dispute and as final and irrevocable in any way other than those specified in the Convention on the Settlement of Investment Disputes. The Convention also included another provision requiring all States parties to the Convention to consider the arbitral award rendered in accordance with the Convention binding and the financial obligations contained therein Judgment within a State if the execution of the sentence requires that, just as it had a final judgment issued by the courts of the State to be implemented.
   - The neutrality of the members of the arbitral tribunal. The Convention contains provisions that require the impartiality of the members of the arbitral tribunal to form a dispute between two parties in the event that the parties do not agree on the method of forming the tribunal and its members, since the majority of the members of the court will not be nationals of the State party to the dispute or other State of which the investor is a national.
   - Arbitration in accordance with the Investment Disputes

Settlement Agreement through the International Centre for the Settlement of Investment Disputes (ICSID) is characterized by a confidential nature, except for information relating to the commencement of arbitral proceedings and the evolution of proceedings in their various stages, which are declared matters. All the Centre's documents relating to arbitration or satisfaction remain strictly confidential. The report of the Conciliation Commission or the arbitral tribunal may be published only with the agreement of the parties to the dispute.

- Arbitral or conciliation procedures through the Centre for the Settlement of Investment Disputes are flexible because the Centre adopts a set of rules of procedure to facilitate the process of arbitration or conciliation with the guarantee of seriousness. However, the parties may agree on what they see as procedures
- Conciliation or arbitration procedures through ICISD are characterized as inexpensive when compared to other arbitration or conciliation procedures at the international level.

3. Conclusions

The international commercial arbitration process is processes that seek to achieve justice similarly to what the state's official judiciary seeks to achieve. In order to make sure that arbitration has achieved justice, many legal systems state that tasks performed by the arbitrators must be supervised and controlled by the specialized relevant court in settling the concerned dispute.

However, one should take into consideration the special nature of the arbitration process and the way it is based on having a mutual agreement reached by both parties. Many legal systems also state it's necessary to set more regulations that can govern the process of appealing the arbitration award. Such regulations should be set in the aim of identifying the arbitration's award objectivity and compliance with the law. If the arbitration agreement does not authorize the state's judiciary to settle the concerned dispute, then that shall not prevent that state's official judiciary from supervising and controlling the procedures followed by the arbitrators and the arbitration award they have issued [5].

The arbitration court usually consists of three arbitrators. It should be also noted that many tribunals have been formed in accordance with the rules issued by the United Nations Commission on International Trade Law (UNCITRAL) and the UNCITRAL Model Law on International Commercial Arbitration. For instance, article no. 5, states that the arbitrators must be appointed by a mutual agreement reached by both parties willingly. However, if there was no prior agreement upon that and both parties couldn't reach a mutual agreement about that within 15 days since the day on which the defendant has received the writ of starting the arbitration proceeding, then the tribunal shall consist of one arbitrator. According to the arbitration rules that are adopted by the International Chamber of Commerce, the arbitration tribunal may consist of one or three arbitrators. As for the arbitration rules of the London Court of International Arbitration, the arbitration tribunal may consist of one arbitrator or several ones and the disputed parties are entitled to suggest the names of the arbitrators. However, the president of the latter court or his deputies the one who shall issue the judgment that shall settle the dispute [6].

As for what concerns the international arbitration rules, they are based on reaching a mutual agreement in choosing the procedural rules that shall be applicable on the arbitration process. According to the international arbitration rules, in case both parties were not able to reach a mutual agreement in relation to which procedural rules shall be applicable, then arbitrators are granted the power of deciding that. However, these procedural rules differ among legal systems in relation the amount of freedom and authorities granted to the disputed parties and their arbitrators. For instance, the applicable arbitration rules of the International Chamber of Commerce grant the disputed parties and their arbitrators a full authority in organizing the arbitration proceedings. However, this granted authority is subjected to conditions that are in compliance with the applicable selected law.

One of the main goals of the International Bank for Reconstruction and Development is attracting international and foreign investments to be established on the land of developing countries in the aim of developing the economic systems of these countries. Many governments of such countries also seek to achieve that. However, there are many reasons that have prevented the injection of foreign capitals and investments into those countries. For instance, the customary international law states that any investment conducted is subjected to the sovereignty authority of the country of which the investment is established on. The latter law also states that the government of the latter country is entitled to exercise all of its rights and sovereign authority within the borders of its land. In accordance with the state's sovereign authority, the state is entitled to issue organizational laws and regulations that can govern the investment activities and set conditions for approving foreign investment projects. The state can also issue laws and regulations that shall aim at identifying the types of such projects and the conditions of moving capitals and allowing foreigners to enter the country and reside in it. These laws and regulations shall also govern all the matters related to various types of economic activities that are launched within the state. Based on the International customary law, any country has the right to require referring all the foreign investment cases of disputes that arise on its land to its official judiciary in the aim of settling them. Such judiciary shall be responsible for enforcing the applicable laws upon such cases to settle disputes [4].

The phase in which the final arbitral award is issued by the arbitration courts is considered the final phase. In this phase, the arbitrator or the whole tribunal must fully check that the all the formal and content requirements have been fully fulfilled in order to issue the arbitral award. Such award which shall be issued by the arbitrator or the arbitration tribunal is considered the final judgment that shall settle the dispute for good in the matters that both parties have agreed mutually to settle. In addition, the arbitrator does not have any authority to settle any matter that was not referred to him / her to settle; otherwise the arbitral award shall be considered invalid [7]. Furthermore, the arbitrator or the arbitration tribunal must issue the arbitral award in accordance with law that has been chosen by a mutual agreement reached by both parties with

their free will. Compliance with the law and taking both parties' free will into consideration shall apply on choosing the matters that shall be referred to the arbitration tribunal. That shall also apply on the arbitration proceedings organized not taking both parties' free will into consideration shall make the arbitration award considered invalid.

Furthermore, numerous arbitration centres, and courts have been established in various areas all around the world. Each one of them has its own arbitration regulations that govern the arbitration processes in the aim of settling the submitted dispute. Submitting the dispute for an arbitration body or court shall subject the arbitration proceeding to certain arbitration regulations to be governed by. When referring to such courts or bodies, the dates of the hearing sessions shall be set in accordance with their regulations of the concerned body or court. Most of the arbitration bodies' regulations include a basic rule which is enforcing the provisions of their regulations upon the arbitration proceedings to be governed by. These bodies authorize arbitrators to act in case there were things related to the arbitration proceedings that were not covered by their regulations. However, such gaps may be addressed based on the procedures act that is applicable in the country in which the arbitration body or courts located on.

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