CHAPTER - VI

MAKING OF AWARD AND TERMINATION OF PROCEEDING

6.1. Law Obligatory Applicable on Subject of Conflict

6.1.1. Introduction

The arbitration board shall apply the rules agreed upon by the parties to the subject matter of the dispute. And if they agree to the application of the law of a particular State, the substantive rules have been followed without the conflict-of-laws rules unless otherwise agreed by the parties. However, if the parties do not agree on the legal rules applicable to the subject matter, the arbitral board shall apply the substantive rules of the law which it considers to be the most relevant to the dispute. The arbitral board when determining the dispute shall take into accounts the terms and conditions of the contract in question. If the arbitral parties expressly agree to authorize the arbitral board to reconcile, it has the right to do justice and fairness rules without being bound by the provisions of the law. The first of these methods is to determine the law applicable to the subject of the dispute by both parties to the conflict and by free will. We are in an easy way to resolve the dispute as long as there is agreement on the law applicable to the subject dispute by free will by two parties who voluntarily chose this law but in some cases the arbitral board does not agree on the law applicable to the subject-matter of the dispute whether it is inadvertent or leaves the arbitral board to choose the law applicable to the subject of the ban. There are several ways in which the arbitral board can choose the applicable law and this is what we will deal with in this topic.

6.1.2. In case of choosing the Parties the law applicable to dispute

The principle of arbitration is the freedom of the parties to choose the legal rules applicable to the subject matter of the dispute.¹

Taking into account they have authority in determining their rights and obligations if the parties are agreed to apply the law of a particular or State law to the subject matter of dispute between them, the arbitral tribunal must respect them and apply what parties select from law and must respect this agreement between parties.\(^2\)

The law of will is the law chosen by the parties to govern their contractual relationship and to be a source of the rules governing the subject of the international contract, even if another law is applicable when the parties do not select that law.\(^3\)

The choice of the law applicable to the subject matter of the dispute may be expressly referred to in the arbitration agreement, in which case no difficulty arises in respect of the applicable law. The parties of the arbitration dispute, as previously stated, are free to agree on the rules applicable to the dispute that arises between them. Just as it is the parties who have chosen arbitration instead of resorting to the judiciary and have chosen the arbitrators to separate themselves from a dispute and have the choice of dispute proceedings before the arbitrators. The parties may agree on legal rules other than the law of the state in which the arbitration is conducted to control the dispute between them. Such rules shall be the law which the arbitrators shall apply to the dispute without any force. And the parties have the power, even if the dispute is not about a contractual relationship, but what is meant by the "rules agreed by the parties to the arbitration ..." The legal rule derives from the fact that it is a rule of law established in a law or an Islamic rule in a particular legal system or a principle of general legal principles in law or a rule of customary customs or current customs in transactions.\(^4\)

6.1.3. In case of do not choosing the parties the law applicable to dispute

In some cases, the contractors fail to express the will in a clear form and conclude their contract without specifying the law applicable to the dispute that may arise between them. If this omission is intended or inadvertent by the parties to the agreement, the arbitration board shall decide the dispute, if not, there is no explicit determination of the applicable law under a clause in its doctrinal provisions. It is

\(^2\) Ibid. p 157.
\(^4\) Wali, Dr. Fathi. Arbitration Law in Theory and Practice. 1\(^{st}\) ed. s.l.: Dar Al Maaref, 2007. p 419.
imperative that the arbitrator or arbitrators determine this law by using appropriate rules. There are a number of laws that may be invoked by the arbitral board to find the law applicable to the subject matter of the dispute. Some of them have been determined by international agreements, as stipulated in international conventions and the rules and regulations of arbitration centers, bodies and institutions in the choice of law applicable to the subject of dispute. In the 1961 European Convention on the freedom of the parties to agree on the determination of the applicable law. And in case of disagreement, the arbitrators shall apply the law determined by the rules of conflict of laws appropriate to the subject and in both cases the arbitrators shall take into consideration the provisions of the contract and business habits.

This is also emphasized in the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006).

Article 28, which provides that:

1) The arbitral board shall decide in accordance with the rules of law chosen by the parties as applicable to the subject matter of the dispute and any choice of law or legal order of a state shall be taken as a reference directly to the substantive law of that state and not to its own conflict-of-laws rules, unless the parties expressly agree otherwise.

2) If the parties do not designate any rules, the arbitral board shall apply the law determined by the conflict of laws rules which the commission considers to be applicable.

3) The arbitral board may not adjudicate the dispute on an amicable basis unless the parties expressly authorize it,

4) In all cases the arbitral board shall determine the dispute in accordance with the terms of the contract and shall take into

---


account the customs of that type of commercial activity applicable to the transaction”

The arbitral board shall follow one of the following laws applicable to the subject matter of the dispute ".

6.1.3.1. Agreement to Authorize the Court to Apply principals of Justice and Fairness

The contracting parties may not agree to define a specific law to apply the relationship, but they delegate the matter to the court to which the dispute is submitted, to issue its judgment in accordance with the rules of justice and equity.\(^7\)

Provided that the parties expressly agree on this. It should be counted among the advantages of the applicable law-making system of the convention. As it codified a flexible method of dispute settlement, although some of the other bodies of arbitration, such as the International Chamber of Commerce, whose text of conciliation and arbitration had a similar text in Article 19.

The arbitral board tends to apply a particular legal regime, most likely to be the law of the Contracting State itself, if the arbitrators find that the system lacks or gaps. They make an effort to find a more just solution to the dispute, using natural justice to supplement legal justice. Such a provision must be implemented, which must be substantiated and based on a law, but not a legal system of a specific state.

Although the arbitration provisions of the Center's arbitral board are subject to special prestige, causation and legal reasoning are necessary to maintain the balance of interests between the parties and to encourage investment in developing countries.

Thus, the benefit to the Court from this provision is that it extends the powers of the Court and gives it greater freedom to settle the dispute. When the parties agree to authorize it, the arbitrator can choose which legal regime it deems appropriate and can use a basis for settlement derived from general principles and can extend or modify the application of a particular legal principle to suit the conflict in question.

\(^7\) Ibid. p.118-119.
\(^8\) Article (42) Third paragraph of the Washington Convention.
Which in turn contributes to the development of the legal rules applicable to state contracts for economic development.

There is no doubt that everything we have offered about the freedom of the parties to choose the law applicable to the subject matter of the dispute will apply here. If no agreement exists or is not sufficient to cover one of the procedural issues that have arisen so the court shall decide.9

Article 28 paragraph 3 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) provides that "the arbitral board shall make a settlement in accordance with justice and equity or as a basis for friendly accommodation, only if expressly authorized by the parties." The common denominator between these texts is the release of the arbitrator from complying with any legislative texts or any legal rules whose source is for the arbitrator to settle the dispute before him on the basis of what he sees as justice and satisfaction of his conscience. He performs a constructive "creative" work which is subject only to what pleases him as well as the position of the criminal judge, who has absolute freedom to form his faith, as long as he has achieved the principle of equality and has given the parties the means to defend them. In view of the powers of the arbitrator based on his good or his absolute misjudgment, The composition of the arbitrator, his personality, his cultural background for general and the legislator required declaration of the parties express declaration unequivocal intent authorized this authority.10

The aim of the arbitrator's powers is to achieve justice, which may be hampered by legal texts, does not envisage by wasting the alphabets and which are axioms of access to justice. In addition, it is necessary to make a distinction between internal arbitration and international arbitration. In the former case, it is indisputable that the arbitrator's power to rule in accordance with justice allows him to derogate from the provisions of the law. It explains the terms of the sale contract, for example,

---

mitigates the seller's obligations or guarantees or the obligations of the buyer and the contract may include conditions that he considers arbitrary or imbalanced, but he does not have the contract and deal with it as a lease or contract.\textsuperscript{11} The authorization of the arbitrator to settle the dispute free him from complying with any legislative texts or any legal rules of any origin to find the arbitrator of the settlement of the dispute before him, inspired by what he sees justice and satisfaction of his conscience. He does a job that pleases his conscience like the criminal judge as he gives the litigants opportunity to achieve the principle of equality.\textsuperscript{12}

\textbf{6.1.3.2. Choose Law of Certain State}

If the parties do not agree on applicable legal rules on the subject matter of the dispute. The arbitral board selects the substantive legal rules that it applies. It is the arbitrators who choose the law that they apply, it may be the law of the state in which the arbitration is being conducted or the law of the state in which the dispute took place, or any legal rules in force in another state. If the dispute is about the validity of the contract, the law most relevant to the dispute is the law of the state in which the contract was concluded and if the dispute is about the implementation of a particular obligation in the contract, in which this obligation is implemented, or where the parties have agreed to implement it.\textsuperscript{13} In one case, the arbitral board went on to state that the arbitral board was proceeding with its search for the law applicable to the law of the place of arbitration. The law of the place of signature of the original contract, the law of the place of residence of the parties to the contract. The law of the country of execution of the contract, if they are different from the language of the contract.\textsuperscript{14}

The arbitration board may choose the law of a state in the absence of an agreement by the parties to designate the law applicable to the subject matter of the dispute.


\textsuperscript{14} Samia Rashed. Arbitration within the framework of the Regional Center in Cairo and its extent to the Egyptian law.1\textsuperscript{st} ed. Alexandria: The Origin of Knowledge, 1976. P 214.
When the arbitrator cannot, through implicit indicators, disclose the implicit will of the parties to apply a particular law. It is incumbent on the international arbitrator to address this problem by the subject matter of the dispute is governed by its application of the rules of conflict. By implementing conflict-of-laws rules, the international arbitrator, unlike the national judge, has broad discretion in choosing the rules of conflict through which the law applicable to the subject of the dispute is determined, in the absence of express or implied will of the parties.\textsuperscript{15}

In implementing the conflict-of-laws approach, the arbitration board may resort to the law of the state of one of the parties. The law of the place of arbitration or the law of the place of enforcement of the award as the most appropriate and most relevant to the subject matter of the dispute.\textsuperscript{16}

Therefore, the criteria differed regarding the consideration of a particular law that is most closely related to the conflict.

\textit{6.1.3.2.1. Presumption of Place of the Contract}

In the absence of an explicit choice of the applicable law on the subject of dispute by the parties, the prevailing for this problem is the application of the law of conclusion as the most appropriate law for dispute resolution, and the international commercial arbitration court tends to prevail over this argument. In one of the disputes, the International chamber of commerce in Paris arbitrated over the implementation of the contract of a public agency in the sale between an Italian and Swiss company, according to which the distribution of the company's first products in America and Mexico, did not clarify in the contract law governing the dispute, while the Italian company demanded the application of Italian law. And the other demanded the application of the general rules of the civilized nations without referring to a particular national law. However, the arbitrator, after confirming in his decision that the discretionary power to appoint the law governing the subject matter of the dispute if the litigants did not expressly choose the law governing the dispute. It

\textsuperscript{15} Kamal Ibrahim. International Commercial Arbitration. 1\textsuperscript{st} ed. (s.l): Arab Thought House, 1991.p145.
decided to enforce Italian law as the most appropriate law on the basis that the contract had been signed in Italy.\textsuperscript{17}

6.1.3.2.2. Presupposition of Place of Performance of the Contract

Some jurists tend to take the presumption of contract execution to determine the applicable law. Since the place of execution of the contract is the purpose of the contract, but the adoption of the presumption of implementation may be difficult to determine where the execution is multiple depending on the multiple obligations arising from the contract. The objection is that in the case of multiple applications. The main implementation is the lesson.\textsuperscript{18}

Based on the foregoing in the introduction of some of the evidence mentioned, there are other evidence such as nationality and domicile. The presumption of the language of arbitration, the presumption of the place of arbitration through which the arbitrator can choose the applicable law. And therefore all the above controls must be considered comprehensively and the choice of the officer which are most relevant and relevant to the contract in question. It should be noted that in international commercial arbitration, the arbitrator does not consider domestic public order, in accordance with the law chosen by the parties to apply it, only as a complement to their will. Therefore, if the contract contains provisions contrary to public order, the arbitrator shall respect these provisions even if they violate public order. The rule of the internal public order is at the same time the rule of an international public order. The arbitrator does not abide by the rules of the internal public order related to the law most related to the dispute, but only to the international public order.\textsuperscript{19}

Under this direction, the international arbitrator must seek the law that governs the subject of the dispute by implementing conflict-of-laws rules in the law of the state

\textsuperscript{17} Alhawari, Osama Ahmed. The legal rules applied by the arbitrator on the subjects of special international disputes. 1\textsuperscript{st} ed: Oman: House of Culture for Publishing and Distribution, 2008, pp 111-112.

\textsuperscript{18} Ibid. p 112-113.

in which the decision to be made in the dispute brought before the arbitration\(^{20}\) is to be implemented. Objection to its implementation by the State of enforcement.\(^{21}\)

However, this solution is taken because it pre-empts the work of the arbitrator who rules the subject of the dispute with practical difficulties that the arbitrator must resolve in the first place.\(^ {22}\)

6.1.3.3. Application of Arbitration Board for International Trade Customs

The international arbitrator shall apply the customs and customs of international trade until it becomes apparent that it is impossible to apply a particular law to the subject of the dispute either because of a shortage in the contract that is the subject of the dispute or because of a contradiction and conflict with the position of the parties to the dispute. For example, which may mean the authorization of the arbitrator to adopt the customs and customs of international trade. In an example, the arbitrator issued his judgment in a dispute concerning the execution of a sale contract on F.O.B (Free On Board) terms between a Yugoslav seller and a French buyer. The arbitrator had to explain whether the seller or the buyer should bear the payment of expenses. The suit was F.O.P in this dispute, the arbitrator applied the rules of custom, custom to the interpretation of the terms of sale, established the decision of the arbitrator and decided that it was the buyer who bore the expenses.\(^ {23}\)

Commercial customs, habits represent a new set of unified substantive provisions that traders have followed to find their source in the customs, manners of the profession and case law. As a result of the construction effort of arbitration which plays an effective role in creating these rules. Linked to more than one state, responding to a true law of the international community's requirements for international trade.\(^ {24}\) It was also called the jurist for sellers and buyers.\(^ {25}\)

\(^{21}\) Article (5) Second paragraph (b) of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
Based on the special nature of the international trade arbitration and the flexibility it offers. It provides us with some kind of solutions that the international trade community hopes and hopes for. The arbitrator can subject the dispute to a set of non-national legal rules called the principles of international trade law. The arbitrators often find themselves faced with the need to refer to international trade norms and customs. This is for a number of reasons, reasons that are often due to the failure to explicitly refer to the law applicable to the dispute or to the existence of a vague text that is not sufficient to apply to the dispute. The appropriateness of such trade customs and manners to the dispute before them.26

These customs and manners are originally rooted in commercial practice. They are derived from national laws. As professor Hans Kles sees as "normative rules of the creation of independent groups" in the sphere of international trade. Which some see as a "new law of peoples". A law that transcends states and embodies the reality of international trade law.27 International conventions have given great importance to international trade norms and customs as the arbitrator's jurisdiction. Article 7 of the 1961 European Convention on Arbitration states in its first paragraph: The arbitrator of the law of will, or of the law which determined by the rules of appropriate conflict of conflict, in both cases the arbitrators shall take into account the customs and manners of international trade.

The Amman Convention on International Commercial Arbitration 1987 expressly enshrines this provision in Article 21.28 Which states:

The arbitral board shall decide on the dispute in accordance with the contract concluded between the parties and the provisions of the law which the parties have expressly or implicitly agreed to exist, otherwise in accordance with the provisions of the law most closely related to the

subject matter of the dispute. Taking into account the rules and norms of stable international trade.

The application of the customs and customs of international trade in the field of arbitration. We find the case on which the arbitrator applied the so-called law, "VALENCIANA" French Court of Cassation in the case committed to the supply of "American primary coal" traders, where the facts of the case are summed up that the company amount of "Espagnole Valenciana de Cementos Portland "three years for a Spanish company in the issues of (CCI) coal, where Article 7 of the contract to settle the dispute according to the system of arbitration procedures, but the law applicable to the subject has not been determined by the parties. Subject to international trade customs as the most appropriate law conflict. The Spanish company paid for the invalidity of the rule to adopt trade habits, while the rules of conflict of laws should have been applied in the absence of express will, but the French Court of Cassation rejected this payment. The decision was issued by the Civil Chamber on 22/10/1991 in favor of the French party.29

As for the extent to which the international customs and manners of the arbitrator are binding, some argue that they represent preservative or complementary controls, but others, such as the jurist “Lucerne “, are the main source of the arbitrator.30

Some criticism of these international customs and trade practices, Although considered by some to be a separate legal system, exempts the arbitrator from the problem of recourse to conflict of laws rules, but some criticize them as not constituting a legal system because they are not covered by all international trade disputes, which in some cases requires the implementation of national law, such as the state of eligibility, in addition to representing a theory without a legal basis. It is derived from the laws of the internal states, but the habits and customs of traders. And the community of traders is not a unified institution that will create rules and organization.31

6.1.3.4. Arbitration countries law will apply in case of conflict of law

This trend assumes that the arbitrator has a broad knowledge and experience of these special rules in his legal system. In addition, when selecting a particular arbitrator, the parties are presumed to have also implicitly chosen the legal system of the arbitrator's country.32

The view is that it detracts from the competence of international arbitrators, questioning their ability to know the legal systems of rules of private international law other than those of their own country.33 The arbitration countries law will apply in case of conflict of law. In this situation arbitrator will apply law that does not have any relation with the dispute.34

6.1.3.5. Apply the law more suitable for resolve dispute

In view of the lack of support for the pre-existing jurisprudence as the rules of attribution to choose the rules of conflict applicable to the dispute, The most reasonable view in jurisprudence and arbitration ruled that the idea of the universal application of the common principles of conflict rules should be drawn up, through which the most appropriate law to resolve the dispute.35 Thus, the application of this standard would lead the arbitral board to eliminate the possibility of bias to a particular officer as long as the result was the same.36

6.2. International Conventions and Obligatory Applicable Law

6.2.1. Introduction

There are many agreements that embodied the law applicable on the subject of the dispute where some of the conventions give the main role of the freedom of the parties in determining the applicable law. And the other highlighted the role of arbitrator or the arbitral board and the other gave the role of customs and trade norms in determining the applicable law while there is a view to exclude

international law. In determining the law applicable to the subject matter of the dispute and this is what we will deal with in this subject after talking about international conventions.

6.2.2. International Conventions

The international conventions have established objective rules in various fields related to international private relations, but their fertile field is found in international trade issues such as conventions on trade papers, intellectual property, etc. Although the substantive rules formulated by collective treaties have limited impact on the unification of laws and the substantive rules in bilateral treaties are characterized by their bona fides and their lack of contribution to the unification of laws.\(^\text{37}\) States often find that the conclusion of such agreements is a preferred means of resolving conflicts of laws and applying them. We find that the French judiciary has referred to some of the rules contained in treaties that have not been ratified as a basis for the solutions it provides to certain disputes.\(^\text{38}\) Moreover, some treaties have been created for unified objective rules that apply in all internal and international relations by their own nature as The Geneva Convention, 1930.\(^\text{39}\) Under this agreement, the signatories undertook to implement them in international relations and to amend their domestic laws in a way that would make them compatible with the provisions of the convention.\(^\text{40}\)

In the scope of the research, specifically in the WTO. We find that the substantive rules in the covered conventions play the main role in determining the law applicable to the subject matter of the dispute. The substantive law is mainly concentrated in the agreements covered because they constitute the basic building blocks of the trade system.

---


\(^{38}\) Ibid.p 25.

\(^{39}\) The Geneva Convention, 1930.

6.2.3. Conventions are stated for the important to Determine Obligatory Applicable Law

Article 28 of the Model Law on International Commercial Arbitration states that "the arbitral board shall decide on the dispute in accordance with the rules of law chosen by the parties as applicable to the subject matter of the dispute and any choice of law or legal system of a state take direct to the substantive law of that state. And not to its own conflict-of-laws rules, unless the parties expressly agree otherwise if the parties do not designate any rules. The arbitral board shall apply the law determined by the conflict of laws rules which the commission considers to be applicable. The arbitral board may adjudicate the dispute on a friendly basis, unless the parties have expressly authorized them in all cases. The arbitral board shall decide the dispute in accordance with the terms of the contract and take into account the usages in that kind of commercial activity applicable to the transaction." As well as the provisions of the international conventions, the rules and regulations of arbitration centers, Bodies and institutions on the subject of the arbitrator's authority to choose the law applicable to the subject of dispute. The European Convention of 1961 states that the parties have the right to agree on determining the applicable law, which is determined by the rules of conflict of laws appropriate to the subject and in both cases the arbitrators shall take into account the provisions of the contract and customs of trade.

It can be said that free arbitration in which the freedom of parties is more evident than institutional arbitration, can only be welcomed by stating that freedom in the rules of the International Center for Settlement of Investment Disputes is one of the most important institutional arbitration centers, Which is in line with modern international arbitration, As well as the text of article 21/1of the Amman Convention on Commercial Arbitration of 1987 signed by Iraq. It which stipulates that (the body shall decide on the dispute in accordance with the contract between the parties, and the provisions of the law which the parties have agreed to explicitly or implicitly, if any). Article 42/1 of the Washington Convention 1965 states: "The

42 Ibid. p 118.
43 Iraq ratified the Convention under Law No. 86 of 1988.
Court shall govern the dispute in accordance with the legal rules agreed by the parties…\textsuperscript{44} The will may be expressed explicitly by reference to a national law or a set of rules that the international trade custom has adopted or implicitly emerging from certain indicators. Which indicates its intent to choose a particular law to govern the subject matter of the dispute.\textsuperscript{45} It should be noted that there are several restrictions placed by some on the freedom of the parties to the conflict in the choice of law applicable to them not to violate the public order of the state to be implemented and the other is that the arbitration is not an officer, but there must be a link between the law that was chosen and the agreement of the parties, which is called the restricted choice and they see that the absolute choice is not permissible, While others believe that this opinion is unacceptable when judging arbitration and must be dropped, especially in commercial transactions,\textsuperscript{46} And much supports the first trend of the need to respect and take into account the public order in the country to be implemented. As stipulated in the New York Convention on the implementation of foreign judgments of 1958 in Article 5/2/b thereof, As well as article 1502/f/5 of the new French Code of Procedure of 1975, There is also a conflict that may occur between national laws of direct application and the principle of free will namely commercial legislation, As it relates to the subject matter of the research. These are laws that determine their competence with individual will making them immediate and direct.\textsuperscript{47} What is the role of the will to determine the law applicable to contracts concluded by the state (not as the sovereign and the sultan) represented by one of the public moral persons in it, and the foreign private person within the scope of commercial relations, specifically investment, services and based on their national laws. In general, within the organization in particular. It can be said that there is no dispute that there is nothing to prevent the direct will of the contracting parties to choose a particular law.\textsuperscript{48} And that the status held by the

\textsuperscript{44} Iraq ratified this Convention under Law No. (64) for the year 2012, published in the Iraqi Chronicle No. (4283) on 29/5/2013.

\textsuperscript{45} Alsumadan, Dr. Ahmed, "Applicable Law in International Commercial Arbitration", published in the Journal of Law, Kuwait University, Year (17), No. 1251, 1993, p176 also p 193.

\textsuperscript{46} Almawajiduh, Murad Mahmoud. Arbitration in State contracts of an international character. (1\textsuperscript{st} ed.). Jordan: House of Culture for publication and distribution, 2010. P 186.

\textsuperscript{47} Ibid. p 186.

parties does not play any role in the law. Many of the contracts necessary for their economic growth. 49

6.2.4. Conventions are used freely by Arbitrator to Determine Obligatory Applicable Law

The jurisprudence, arbitration, international conventions, national legislation tend to give the arbitrator the freedom to choose the law applicable to the subject of the conflict in the absence of will without a specific law, including the provisions of Article 21/1 of the Arab Convention on Commercial Arbitration of 1987, which states:

The Authority shall be separated in accordance with the contract between the parties and the provisions of the law, which the parties have expressly or implicitly agreed to exist, otherwise the provisions of the law most related to the subject matter of the dispute. Take into account established rules of international trade norms.

Article 33/1 of the arbitration rules established by the Commercial Law Committee of the United Nations in 1976, and the text of Article 1496 of the new French Code of Procedure and others. 50 This means that the arbitrator plays an important role in choosing the law applicable to the subject matter of the dispute. In addition to its role in invoking the implicit will of the parties to the relationship, it has an independent role given to it by national, international legislative texts in the absence of will and is directly linked to the role of will. It has some discretion in defining this law. Which draws the implicit will of the parties from several indicators by weighting in accordance with an objective criterion. In addition, the list of arbitration procedures for the Arbitration Center of the Commercial Arbitration Center of the Gulf States 1993 show that the arbitrator has the power to adjudicate the dispute that arises over the determination of the law most relevant to the subject matter of the dispute. As stated in the text of Article 29 in its third paragraph, that "the Commission shall decide on the dispute in accordance with the law most closely related to the subject

matter of the dispute in accordance with the conflict of laws rules that the Commission deems appropriate”.  

The review of international conventions on international commercial arbitration, which dealt with the issue of determining the law applicable to the subject matter of the dispute, it maybe note that some international conventions governing international commercial arbitration limit the freedom of the international arbitrator in this regard and must determine this law through the conflict of laws rules in a particular country. Article 42 of the Washington Convention on the Settlement of Investment Disputes between States and Nationals of 1966 obligates the arbitrator. In the absence of the will of the litigants, not to agree on the applicable law, to adjudicate the dispute in accordance with the law of the contracting state party to the dispute and rules on conflict of laws. As well as the principles of international law on the subject. The (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006), when not included, is governed by a rule of attribution in a national legal system. Article 28, paragraph 2 relates to the rule of arbitration which the arbitrator deems applicable.

Article 7 some international arbitration regimes applicable to certain arbitral institutions, such as the Arbitration System of the International Chamber of Commerce in Paris in 1998. It is interesting to note here that in the absence of agreement between the adversaries, the former arbitration system of the International Chamber of Commerce in Paris had to apply the law which the arbitrator referred to as appropriate to the subject of the dispute. Article 13/3 and the change in the wording of Article 13/3 of the old regime which became Article 17/7 of the new regime, expresses the desire of the authors of this new system to give the arbitrator more freedom in determining the law applicable to the subject. Matter of the dispute, making it more independent of the systems of conflict of national laws. If the arbitrator acts outside the framework of any system that requires a specific criterion or criteria for determining the law applicable to the subject matter of the

52 Article (42) of the Washington Convention of 1966.
dispute. In the absence of the basic criterion on the agreement of the will of the litigants to apply a particular law, The previous questions remain about the arbitrator's independence vis-à-its attempt to determine the rules to be applied to the dispute, as well as on the extent to which the arbitrator is free to interpret the meaning of the appropriate or more relevant attribution rule in the systems adopting such rules.\textsuperscript{55}

The New York Convention of 1958 in Article 5/1 provides that "... according to the law of the country in which the sentence was pronounced". The convention was unique in this case after it affirmed the priority of the will of law but did not specify what the country's was law, in which the judgment was rendered, whether it was substantive law or conflict of laws rules, which directly or indirectly emphasizes the principle of freedom of the international arbitrator. Article 5 of the above Convention excludes the idea of reviewing the matter before the national justice judge "when implementing the provisions of foreign arbitrators", which may be based on monitoring the determination of the law applicable to the dispute under the relevant attribution rules. Whether in the country of the arbitral board or in the country where implementation is required, the control of arbitrators' judgment is limited to the extent to which it conforms to the public order in the country of implementation and to determine the relevant law regarding the eligibility of the contractors. And the validity of the arbitration clause only following the procedures.\textsuperscript{56}

Article 7 of the 1961 Geneva Convention does not consider the non-use or non-use of a specific conflict of law regime as the "regime of the seat of arbitration", and the application of a law other than the law referred to in the rules of attribution in this system is one of the reasons for the invalidity of the award. This principle is also followed in arbitration systems adopted by some arbitral institutions known in western systems such as the International Chamber of Commerce (ICC) system in Paris. Article 26 of this Chamber Regulation, which obliges the arbitrator to take care of his judgment to be enforceable, does not involve restricting the arbitrators' freedom to choose a conflict of law regime, nor does it obligate them to follow the

\textsuperscript{55} Arbitration System at the International Chamber of Commerce in Paris, 1998.
\textsuperscript{56} New York Convention of 1958.
rules of this regime. Any rules of conflict for laws in the country of enforcement, in general, national laws do not make non-compliance with the rules of attribution in the country of enforcement grounds for refusing implementation or for refusing to recognize the arbitrators' judgment.

In summary, the role of the arbitrator in determining the law applicable to the subject matter of the dispute is an emphasis in international conventions, such as the arbitrator's choice of conflict of laws rules for the law of a Contracting State, including the general principles of international law as well as fairness also fairness in, ICC in Article 13/3.\textsuperscript{57}

The rules of conflict of laws, as well as the general principles of the law, the rules of justice and fairness Show that the arbitrator is not bound by a specific national law. When the dispute is resolved, the principles of international law, the provisions of this agreement and the special obligation provisions that have been granted as well as the national law of the contracting party concerned with the dispute, including the rules on conflict of laws. This indicates that some international conventions expressly provide for applicable law if the parties to the dispute do not agree to appoint it.\textsuperscript{58} In otherwise the Hague Convention on the Law Applicable to the International Sale of Goods of 1955. Article 2 of which states that "the applicable law is the national law of the country appointed by the parties to the contract." The Rome Convention on the Law Applicable to Contractual Obligations of 1980 and others.\textsuperscript{59}

6.2.5. Requirement of Following Trade Customs to Determine Obligatory Applicable Law

International conventions as well as international contracts are often referred to the application of the general principles of international trade law and customs at the will of the parties. The arbitrator resorts to the commercial customs, general

\textsuperscript{57} Arbitration System at the International Chamber of Commerce in Paris, 1998.
principles of international law because of the investor's confidence in them in comparison to domestic laws which governs foreign investment.\(^{60}\)

Article 6/1 of the Agreement Establishing the Arab Institution for Investment Guarantee 2015 states: "... Where there is no provision in the texts referred to in the preceding paragraph. The common legal principles of the Contracting States and the principles recognized in international law shall apply". \(^{61}\) Referring to these principles, especially for developing countries, may pose a risk to their interests and because of their interpretation by the arbitrators in an explanation that serves the interests of foreign companies. \(^{62}\)

The rules of customary law are complementary or precautionary rules. The arbitration team is primarily concerned with the application of the substantive rules contained in the World Trade Organization 1995 (WTO) and the covered agreements. Giving the role of the will to choose the law applicable in some cases under the rule of attribution. That international trade rules are applied only in a manner that does not conflict with the applicable law. That is the agreement that does not require the arbitration team to apply them but only to observe trade norms. \(^{63}\)

On the other hand, the application of the international arbitrator of such norms must be limited by the legal scope in which such application may be established, which is determined by the principle of including legal rules in the order of their binding power, \(^{64}\) if an international convention the subject of the dispute was presented to others and so on.

In other words, in general, in order to clarify the idea of the incorporation of legal rules, the international arbitrator in disputes of a commercial nature is obliged to apply the law to which the parties agreed (the law of will) in the conflict. If the rules

\(^{60}\) Nawara Hussein, the consecration of international commercial arbitration as a guarantee for foreign investments, an intervention within the forum. International Conference on International Commercial Arbitration, University of Bejaia, 2006. p. 02.


\(^{63}\) Hugh Ali Hussain, Commercial Arbitration in the WTO, Master Thesis Presented to the Faculty of Law, University of Baghdad, 2007, p 130.

of law are found to be inadequate or ambiguous. It is different in the World Trade Organization 1995 WTO, although the stipulates that the interpretation of the World Trade Organization 1995 WTO agreements should be in accordance with customary rules of international public law. Some see the role of custom in this the agreements will be little, and the reason for this is that these agreements are characterized as trade agreements directly linked and affect the economies of member states. They are international conventions that generate rights and obligations on member states.

6.2.6. Dismissal of International Law to Determine Obligatory Applicable Law:

As for the determination of the law applicable to the subject matter of the dispute within the World Trade Organization 1995 WTO and the Convention on Understanding of Dispute Settlement in Annex 2 to the Convention. There are those who believe 65 that the discussion of the law applicable to the subject of the dispute excludes the idea of general international arbitration, which concerns a dispute between two States as persons of public international law. This type of arbitration is subject to general international law. And there is no room for it to speak of the law of duty. Although the World Trade Organization (WTO) 1995 law is an advanced form that is part of international public law which is based on a broad international convention, the application of this law in disputed legal relationship between two persons, is not applied, because one of the conditions for conflict between the laws is to be between laws of private law and not conflict between general laws.66 The rules for World Trade Organization (WTO) 1995 apply when there is a dispute between country and other country but when there is a dispute between person and other person it's impossible to apply World Trade Organization (WTO) 1995 rules.

The dispute that is caused by the application of the provisions of the Convention and the covered agreements is presented to the Dispute Settlement board DSB through the representatives of the member states of the Organization. This is an organizational aspect stipulated in the MOU. It does not entail the cancellation of the provisions of the commercial laws of the member states. In general, following our

review of the law-abiding conventions on the subject matter of the dispute in commercial arbitration. Some of the agreements gave priority to the parties' will to determine the applicable law and essentially gave the role to the arbitral board or the arbitrator in determining the law. Taking into consideration that the freedom given by the conventions differs between the restriction of this freedom in determining the law applicable to specific laws such as the laws of attribution or there are conventions that give the arbitral board or the arbitrator complete freedom to determine the law applicable to the subject Conflict.

6.3. Conclusion Procedures

6.3.1. Introduction

Article 32 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) stipulates:

1) The arbitration proceedings shall be terminated by final arbitration decision or by an order of the arbitral tribunal in accordance with paragraph 2 of this article.

2) The arbitral tribunal shall issue an order to terminate the arbitration proceedings.

A) The claimant withdraws an allegation, or if the defendant objects to it and a body is recognized.

   Arbitration has a legitimate interest in obtaining a final settlement of the dispute:

B) The parties agree to terminate the proceedings.

C) If the arbitral tribunal finds that the continuation of the proceedings has become unnecessary or impossible for any other reason.

3) The term of the arbitral board shall be terminated by the end of the arbitration proceedings, subject to the provisions of Article 33 and paragraph 4 of Article 34.
There are two natural ways to end the arbitration proceedings in accordance with Article 32 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006), either by issuing a decision by the arbitral board to resolve the dispute between the parties to the dispute who sought arbitration to resolve the dispute between them. The decision is considered the final outcome of the arbitration by obtain a decision ending the dispute between them.

Or the second way shall be by an order issued by the arbitration board to terminate the proceedings without a final decision in the case of the dispute. This shall be either when the plaintiff withdraws a claim or if the respondent objects to it and the court admits, or if the parties agree to terminate the proceedings. Or if the arbitral board finds that the continuation of the proceedings, has become unnecessary or impossible for any other reason.

Finally, we will talk about the termination of the jurisdiction of the arbitral board in accordance with Article 32, paragraph 3, of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006).

**6.3.2. Conclusion Procedures by Issuing a Decision from Arbitration Board**

Article 32 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) stipulates:

Arbitration proceedings shall be terminated by final arbitration decision.

Opinions differed as to the designation of the ruling on this disagreement was by the jurists as well as "it was for the legislations, so some jurists referred to the designation of the decision." This designation was adopted instead of" of the Code of Iraqi pleadings 83 year 1969, which provided that (The arbitrators issue their decision by agreement or majority views ... etc.).And we see that the term of the resolution is more powerful and inclusive "of the term of the government and

---

support what is referred to the Code of Civil Procedure of Iraq is the judgment that ends the case. 68

It is therefore possible to understand that the internationally enforceable arbitral award is meant to be the provision binding on both parties to the dispute and the termination of the dispute. As stated in the Court's decision to appeal Paris by setting out a definition of the arbitral award in its judgment of 22/3/1994 in Sardisud case, provided that "the work of the arbitrators, which shall finalize in all or part of the dispute before them, whether in the basis of the dispute, jurisdiction or arbitral proceedings, shall lead to a final settlement of the case." 69

Note that the decision does not end the dispute, but the referee or arbitrator ends the rivalry. There has been a wide debate about the nature of the ruling or the decision that is issued as a result of which appeared in many directions. The direction went to the judge that the nature of the contractual considering that the resort to arbitration is due to the parties and commitment to the final outcome of arbitration.

The jurists the French and judiciary have ruled that the judgment issued by the arbitrator is a final and decisive decision and judgment in the dispute, a judicial act that is regarded as a judgment rather than an agreement. In Iraq, the arbitration decision is a judgment, because it is issued based on the will of the legislator, who has established a formality for its issuance similar to the judicial decisions "The third and final approach is that the arbitrator has a mixed nature, while the nature of the contract and the judiciary. Day of judgment Resurrection shall be confirmed by the competent court, but before such a proceeding it shall have a contractual status only." 70

Thus, the arbitral award can be defined as "any conclusive judgment in all matters before the arbitral board or any final decision on a subject matter. Whatever its nature, or in the question of jurisdiction or any procedural matter." In fact, this

definition falls within the definition of judgment the ruling is conclusive or non-categorical and is based on certain grounds, aims to achieve specific goals and has certain criteria, all of which have no basis in determining the essence of arbitration. It is also known that the importance of defining an arbitrator's judgment is that it alone generates specific effects in the law and is challenged by the methods of appeal determined by the legislator. And the definition of the arbitrator. The arbitrator's judgment is the decision of the arbitrator which is specified in a specific request or is terminated in whole or in part by the arbitrator's dispute and the arbitrator's decision.

The decisions made by the arbitrator in a non-adversarial manner shall not be considered as an arbitrator. For example, decisions regarding the date and place of the arbitration or adjournment sessions, all these decisions do not constitute provisions such as the decision of an expert scribe or a decision that includes the inspection of goods or the hearing of a witness. The judgment of the arbitrator is an action conducted by the arbitrator through or at the end of the dispute to declare his will is not the will of the parties and therefore this provision as a procedural action subject to the procedures provided for in the Arbitration Act as well as the basic principles of litigation even if not included in this last law. The court ruled effectively in the proceedings. This means that the arbitrator fulfills his procedural duty to issue decision. The other effects of this judgment depend on his role in the dispute and the will he declares. In other words, if a final judgment of the adversary leads to its dissolution and gives the convicted person an opportunity to challenge it, the power of the judgment outside the scope of the dispute is a procedural form of judicial action that guarantees the rule of law in the matter settled by the judgment on the subject.

The arbitrator or the arbitral board shall issue the judgment in the dispute before them, and the judgment in accordance with the form and procedures established by the arbitration system shall terminate the dispute and terminate the process of adjudication. The arbitral board has completed the task entrusted to them by the parties to the dispute and given the crucial importance of the arbitrator's judgment as the final outcome of the arbitrator's recourse to arbitration, particular care has been
given to the manner in which the judgment must be rendered and the legal consequences thereof. There is no doubt that obtaining the arbitration rule is the goal pursued by the parties to the dispute. It is envisaged that the arbitration dispute will be terminated without judgment. As in cases of conciliation during the course of the dispute or the death of the litigants or in the event that the parties agree to terminate it or if the plaintiff leaves the arbitration dispute. There are some rules that the arbitral board must take into account when issuing the arbitration rule already referred to, namely that the rules agreed upon by the parties apply to the subject matter of the dispute. If they agree on unless the parties agree on the applicable rules of law subject matter of the dispute. The arbitral board has applied the substantive rules in the law that it considers to be the most relevant to the dispute and the arbitral board shall take into account the application of the rules of jurisdiction of a particular State to give decision on the subject of the dispute conditions of the contract subject to dispute and current norms in the type of treatment.  

It may be noted that the final decision rendered by the arbitral board on the subject matter of the dispute. One party may request certain requests that are rejected by the other in full. And even proceed on a counterclaim. After the exchange of regulations, memorandums and the submission of evidence. The commission shall reserve the case for judgment, issue its final judgment in all the applications of the parties once and this is the final judgment.

If the arbitral board has more than one dispute, The arbitral board may settle such disputes by a single provision or separate them and issue a final award in each dispute as long as possible, as the arbitrator deems appropriate. If he makes his judgment in some of these disputes without the other as mentioned, the judgment shall be subject to appeal, ratification and enforcement. Apart from other disputes, In line with this approach, the Court of Cassation ruled that, in this case, the parties are obliged to enforce the judgment rendered in one of the disputes, even if the arbitrator has not ruled the other disputes.

The arbitral board may adjudicate some of the requests of one of the parties as a preliminary matter, while the other applications are adjourned to be adjudicated later and the arbitral board responds accordingly. Subsequently, the final decision shall be made on the rest of the claim. In this case, we shall have two arbitral awards, each of which shall have the conditions of the provision. And shall be subject to the rules of the arbitration provisions in terms of their ratification and execution or appeal.

The arbitral award as in the case of a judicial ruling must be clear and decisive, especially in its operative form. As determined by the competent court, so that it leaves no doubt on the obligations imposed on both parties and the rights granted to them. Or positive, or otherwise subject to appeal with different means of appeal.

On the other hand, the arbitral board issues many decisions during the proceedings including various temporal, partial or procedural decisions. Such as decisions on the determination of the law applicable to the dispute, venue of arbitration, hearing of witnesses, recourse to expertise, language of arbitration including the language of evidence. The exchange of notes and regulations, dates of submission, the timetable for the conduct of arbitration proceedings. Such decisions, which do not affect the subject matter of the dispute, are not, as we see, arbitral awards and, therefore, are not required to meet the conditions of the provision and may not be challenged independently of the final judgment. The question of purely procedural decisions is agreed upon, not disputed, such as the decision to accept or reject evidence, to schedule hearings, to specify the language and place of arbitration to refuse or to accept a party's request for a submission. As a general rule, the arbitral board has the power to withdraw from a purely procedural decision on the assumption that such recourse is justified, whereas in the final award it is not as a general rule.72

6.3.3. Conclusion procedures without issuing a decision from Arbitration Board

Article 32 paragraph 2 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) stipulates:

The arbitral board shall issue an order to terminate the arbitration proceedings

A) If the plaintiff withdraws a claim or if the respondent objects to it and the arbitral board acknowledges that it has a legitimate interest in obtaining a final settlement of the dispute.

B) The parties agree to terminate the proceedings.

C) If the arbitral board finds that the continuation of the proceedings has become unnecessary or impossible for any other reason.

The (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) clarifies the ways in which arbitration ends without a decision by the arbitral board terminating the dispute. This means that it indicates an exceptional way to end the arbitration without the issuance of the arbitration award which ends the dispute between the parties. Either it is terminated by one of the parties, the dispute shall be confirmed by the article (a) of the above article or by agreement between the parties to the case where there is an agreement between the parties to the proceedings to terminate the arbitration proceedings. And for any reason retained by the parties to be convincing to them in the termination of the arbitration either the third method shall be terminated by the Commission Arbitration was not wanted regardless of whether this will is individual by one of the parties to the dispute or if it is a marriage of both parties and therefore the termination of the dispute may be by agreement of the parties to terminate the arbitration or if the arbitral tribunal considers the arbitration proceedings futile or the solution becomes impossible. In all these cases arbitral tribunal decides for the termination of the dispute 73

That arbitral proceedings may also be terminated in other circumstances without an arbitral award under the agreement of the parties or the discretionary power of the

arbitral board, the parties may agree to terminate the arbitration and resort to the judiciary. The arbitral board may also exercise discretionary power to terminate the arbitral proceedings if it finds that the continuation of arbitration is futile because the majority required for awarding the arbitral award or because of the continued absence of the plaintiff and the defendant's request to terminate the arbitration proceedings cannot be achieved.\(^{74}\)

The arbitration proceedings shall end in a natural manner by the award of the awarding award. Under provision. But there are other cases where arbitration proceedings are terminated without an award.

One of the most prominent cases of termination of arbitral proceedings without a judgment ending the dispute is the case of the arbitral board's rejection of its jurisdiction. Another case for the termination of arbitral proceedings without a judgment ending the dispute is the failure of the parties to deposit the expenses of arbitration and the fees of the arbitrators assessed. If the parties did not respond to the deposit of the estimated amounts on an assignment, except for reference to the termination of the proceedings for lack of jurisdiction or termination of the arbitration period or failure to deposit the expenses of arbitration and the fees of the arbitrators estimated did not indicate the list of arbitration procedures to the end of the arbitral proceedings without a ruling.

Arbitration procedures shall also be terminated in certain laws by the expiration of the period prescribed for the issuance of the award or without the issuance of the award, which provides that the task of the arbitral board shall be terminated by the expiry of the time limit for the award. It should be noted that the conclusion of the arbitration proceedings without a judgment that ends the substantive dispute does not prevent the arbitral board from deciding which party bears the expenses and fees in whole or in part. Since this is the matter of justice and the nature of things.

\(^{74}\) It is noted that some arbitration laws refer to the termination of arbitral proceedings in certain circumstances, but it is not necessary to rely on the law of the place of arbitration to determine the possibility of termination of arbitration. The basis of this possibility is the discretionary power of the arbitral tribunal.
The arbitral proceedings shall end with the issuance of the arbitral award. Such procedures shall have ended, but sometimes such proceedings shall be terminated before the arbitration. In the French case law, the arbitral board must terminate the arbitral proceedings if the arbitration period is terminated without a final award of the dispute. Hence, the arbitral board shall subsequently refrain from continuing such proceedings or awarding the arbitral award or the invalidity of the proceedings or of judgment. This is the position of the French law.

6.3.4. Completion of task by arbitral board

Article 32 paragraph 3 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) stipulates

"The jurisdiction of the arbitral board shall be terminated by the end of the arbitration proceedings, subject to the provisions of Article 33 and paragraph 4 of Article 34"

The task of arbitral board is finished after having the giving the mandate and issue the final judgment of the dispute. However, there are specific cases in which this function extends as an exception to this article for reasons of governance such as the case of the arbitrator, with ambiguity, material error or obscurity, Presented to the arbitral board and not adjudicated.

It is therefore considered that the arbitral board is competent to interpret the arbitral award or to correct any material errors that may be made or to issue an additional judgment in which is not dismissed in it. In this view, the arbitral tribunal is competent to interpret the arbitral award or to correct any material errors or to make an additional judgment.

While the traditional view is that this body is exhausted by its mandate once the judgment has been handed down in the dispute. It is not permissible to refer to it by

requesting the interpretation of its ruling, correcting the material errors or dismissing the requests. This is requested by the competent court, on the expiration of the mandate of the arbitral tribunal as follows:

6.3.4.1. Correction of Arbitration Judgment

Article 33 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) stipulates:

1) Within 30 days from the date of receipt of the award unless the parties agree on another term.

A) Each of the parties may on condition of notifying the other party request the arbitral board to correct any errors in arithmetic, typographical or other similar errors in the decision.

The fact that the arbitral board has made material mistakes inadvertently, such as mistakes of the language possible because the law requires the writing of the award which requires that it be given the power to rectify these errors in order to give its judgment its correct meaning.

The error which is not related to the understanding or appreciation of the arbitrator is a mistake in proving the truth of what he wanted to judge, so that it can be considered a slip of the pen "or" the formal written error relating to the editing of the judgment, which was followed by the arbitrator in the facts of the case to reach his final decision in the dispute, its correction affects the modification of its content in the subject matter of the dispute.

It is clear from these definitions that the role of the arbitral board is limited to correcting the material error related to editing and expression not appreciative. The validity of this correction requires that the material error be a basis in the minutes of the hearing or in the documents of the case indicating in everything right. In this

78 Ibid. p 16.
decision, the correction may not be a means of reconsidering the subject matter of
the dispute with the aim of changing and modifying what was decided by the arbitral
tribunal. Otherwise, 'I went beyond the limits of its authority in the correction
allowing the opponents to uphold the invalidity of the ruling issued by the
correction. This body may not reject the request for correction of the error contained
in the judgment, unless it finds that this request is incorrect, as if the applicant
believes that such error exists. The ruling on rejecting the correction may not be
challenged by a separate application for the appeal against the original award in
which the material error because the leave to appeal in a manner, may lead to a
delay in the adjudication of the dispute if the litigants submit non-serious correction
requests. The ruling on the correction shall apply to the provisions of the original
provision of the provisions of Article. 81

6.3.4.2. Interpretation of Arbitration Judgment

Article 33 paragraph 1/b of the (UNCITRAL) model law on international
commercial arbitration 1985 (with amendments adopted in 2006) stipulates that:

A party may on condition of notifying the other party request the arbitral
board to explain a particular point in the award or a certain part of the
award, if the parties have agreed to do so. If the arbitral board considers
that the request is justified. It shall make the correction or issue the
interpretation within (30) days from the date of receipt of the application.
The interpretation shall be part of the award.

The arbitral award may be issued with ambiguity and vagueness which makes it
subject to many different interpretations in its content. Therefore, the parties to the
dispute have the right to submit an application to the arbitral board for the purpose
of interpreting the sentence in whole or in part. 82

82 Ibid. p 262.
The purpose of interpretation is to clarify the ambiguity of the provision and to show the truth of the ambiguity in order to determine the substance of the provision by examining its constituents.\textsuperscript{83}

It is clear from this definition that the role of the arbitral board is limited to defining the ambiguous provision by the provision and clarifying the fact that it is intended. It may not take the interpretation as a means of reviewing the dispute in which the judgment was rendered with a view to revoking it or amending it. Otherwise its judgment would be subject to appeal. That this arbitral board has exceeded important limits.\textsuperscript{84}

There is a tendency contrary to the trend taken by the laws that an application for interpretation must be made within the time limit for the award. The submission of such a request after the expiry of the specified period requires a new agreement between the litigants whose object is the interpretation, which would lead to the existence of the provision ambiguous although the arbitral board might interpret that provision. The time prescribed by law for the submission of an application for interpretation is an organizational time. The date of which does not entail the loss of the right to request interpretation, but if the legislator wanted to make the request for interpretation without a time limit, it is not explicitly stated in a specific date.

The applicant must declare his application to the other party so that he may attend the interpretation session and express his opinion on this interpretation in respect of the rights of the defense, And the arbitral board's obligation to deliver the arbitral award to the adversaries.\textsuperscript{85} The arbitral board shall issue the interpretative award in writing within thirty days following the date of submission of the application. And it shall not be stated whether there is a right to extend such period. Moreover, if the provision is automatically canceled, the interpretative provision is superseded by force of law without the need for a new provision to do so. Since the interpretative

provision is part of the explanatory provision. As noted in Article 33 of the (UNICTRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006).

6.3.4.3. Determination of Forgotten Matters by Arbitration Judgment

Article 33 paragraph 3 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) stipulates:

3) Unless the parties agree on the following dispute either party may, upon notification of the second party request the arbitral board within thirty days from the date of receipt of the award but the arbitral award omitted it. If the arbitral board considers that the request is justified. It shall issue such additional decision within sixty days

This case presumes that the arbitral board has failed to adjudicate matters before it during the consideration of the dispute, which requires that it have the power to issue an additional or supplementary judgment covering all matters which have been omitted by the original provision. Since in this case the provision is incomplete is adequate. Which is the separation of the dispute by considering all applications relating to it. But cannot be counted as null and void. It remains a valid provision which results in its effects on the applications in which it is settled. In this case it can be measured against the partial judgment that is part of the dispute in the sense that the arbitral board did not finalize the application. The separation of applications does not mean that this body expressly provides for acceptance or refusal in every application submitted to it. But it is sufficient that the language of the operative provision is functional.

This omission should be about omission or error and not deliberate but not a material error in expressing the fact that the arbitral board has referred to the correction of the judgment and the authority of the arbitral board to issue an

---

additional judgment limited to what has been dismissed. It may not decide on a new application which was not before it. Otherwise, I will go beyond the limits of authority beyond. The appeal of invalidity of the additional award may be appealed.\textsuperscript{90} It follows from this that there are conditions that must be met in order for the arbitral board to be empowered to issue an additional judgment after it has been issued to the original judgment. These conditions include the omission of the arbitrator in certain applications. This requirement requires that a particular request submitted by one of the litigants during the dispute proceedings is fully disregarded when the final judgment of the dispute is rendered. In order for the arbitral board to be granted such power, an adversary may submit an application for an additional judgment. This case is in accordance with the interpretation of the arbitral award. Since both require a request to the body in this regard. Where this body cannot do so on its own all by herself. Such request shall be submitted within thirty days following the receipt of the original award provided that it shall be preceded by the declaration of the other opponent in respect of the rights of the defense. The declaration shall be made in the same manner as the litigants are notified of the arbitral award as previously detailed.

The additional provision shall be issued within sixty days from the date of submission of the application to the arbitral board. It shall not be recalled if it had the discretion to extend such time for a further period of thirty days if it deems it necessary. Notwithstanding the absence of a provision, the additional provision shall apply to all provisions applicable to the original provision.\textsuperscript{91}

The request for the interpretation, correction or supplementation of an award by issuing an additional judgment in the absence of applications requires recourse to the arbitral board itself that rendered the award. But this may not be possible, Due to death, loss of capacity for any other reason preventing such a body from doing so.\textsuperscript{92} Upon returning to these proceedings the litigants must agree to complete the arbitral board if it is a problem of more than one arbitrator and one of them is unable to carry out the task or choose a new arbitrator or arbitral board. And if they do not

\textsuperscript{90} Prairie, Dr. Mahmoud Mokhtar. Op .cit. p 204.
\textsuperscript{91} Ibid. p 204.
\textsuperscript{92} Nabil Ismail Omar. Op .cit. p 201.
agree to that, recourse shall be made to the court originally competent to hear the dispute to appoint the arbitrator or the arbitral board. If one of the litigants violates what has been agreed on the selection of the arbitrators or failure of others to perform the functions entrusted to him.