ABSTRACT

International commercial arbitration is an alternative method of resolving disputes between private parties arising out of commercial transactions conducted across national boundaries that follows the parties to avoid litigation in national courts. Arbitration is one of the possible procedural measures for the settlement of disputes. It is a preferred means of alternative dispute resolution method. In the present juncture, arbitration is a private system of adjudication, parties who arbitrate have decided to resolve their disputes outside any judicial system.

The expanding of trade relations along with the complicated relations has caused to the growing trade disputes. Any trade or business relationships of such contract of selling, buying, insurance, transportation etc. will become sources of disputes. So, those trade disputes in course of international, need to settle by suitable means for parties of economic, commercial and business relationships. The courts are considered the primary means of resolving these disputes, but there were other ways besides the courts, and that is the arbitration which they have a prior history of the courts. Along with the courts and arbitration, there are some methods that have evolved as an Alternative Dispute Resolution (ADR) mechanism.

The arbitration award is a final and binding decision, it is enforceable in a national court. The decision maker, usually one or three, are generally chosen by the parties. In addition to choosing the arbitrators and the rules, parties can choose the place of arbitration and language of arbitration.

All of us know significance of trade arbitration within international and local laws. Where role of arbitration were developed after develop concept of state in current time. And leads to increase commercial exchange between states, establishing over borders firms, construct free zones for transactions that led to decrease restrictions imposed on procurement of commodities and facilities. After industrial revolution in the developed states, such as social states, developing countries that made to improve its manufacturing situation, all of these aforementioned made these states start to seek markets for their exports as an important step towards economy development to fresh it in these countries. Therefore to rise economic, living level for people of a state. The whole of this trade revolution produced many of proceedings, procedures which are manufactured by importation or exportation to exchange goods or services alike between states or among states and people, or between people of each other. All of those matters led to occurrence trade conflicts. The conflict needs to solution to give the right for everyone deserves it. The conflicted parties did not have just the way of courts to settle these conflicts, but resort to court may face another obstacle which are laws differences. Where every country has Act to rule trade proceedings. This act is valid on people who live in
this country without apply it on people live in other states. How the situation may be if parties of conflict are from different states. Every party subjects to regulations different from regulations of the other party. The law which parties be subjected is contradictory with the law of the last party. This from a part , from another party that resort to court to resolve conflict that was occurred between parties of conflict distinguished by its longitude of its procedure , such as with intricate . It needs to very high expenses, there are cases in transactions lack to immediate solution, otherwise may happened big loss for parties of conflict as the case when exporting fast decay products as marketing fruits and vegetables etc.

In all of these details and conditions, attention has been paid to international commercial arbitration because of its distinctions. These distinctions highlight its role in commercial transactions because of the characteristics that the opposing parties have in their own free will. The principle of the will of the parties to the dispute plays the primary role in commercial arbitration. Commercial arbitration and speed in resolving the dispute , do not need high costs , the parties to resolve the dispute between them away from court of laws between the states to which the parties to the conflict.

The United Nations has taken steps on commercial arbitration as an effective means of resolving commercial disputes between the parties involved. There are several procedures, the most recent being the enactment of the Commercial Arbitration Model Law of 1985 and the latest amendments to the Model Law of 2006 which is the subject of our research.

It has two objectives:

1. The United Nations desire that the parties of the dispute resolve disputes through commercial arbitration which is considered an encouraging step in this area.

2. The desire of the United Nations to standardize the laws of commercial arbitration in the domestic legislation of States and this leads to reduce the conflict of laws and commercial arbitration between the parties to the dispute.

The study included the vast majority of the texts of the Model Law which were studied, analyzed in addition to the status of the other cases accompanying each article of this Model Law as well as some international and local laws related to commercial arbitration to study all the aspects surrounding each article of this law.

**The arbitration agreement:**

The arbitration agreement is defined as the method chosen by the parties to settle disputes arising out of the contract. Which are decided before one or more persons
called arbitrator’s name or by the arbitrator. The arbitrators without resorting to the judiciary as well as the nature of the arbitration agreement is considered an agreement as it is in all other contracts subject to the principles of the Sultan of will and be in the form of a condition or partnership that the agreement on arbitration includes the requirement of permission to resort to the judiciary to review the arbitral award.

Selection of arbitrators

Article (11) of the United Nations Model Arbitration Law (1985) states: No person shall be barred from serving as an arbitrator, where the arbitrator shall be chosen by the parties to the dispute. In the event that the parties do not agree to appoint an arbitrator. A party to the dispute shall choose an arbitrator. The arbitrators chosen shall assume the task of selecting a third arbitrator. There shall be conditions to be met by the arbitrator. The arbitrator shall require the judge to be independent, impartial and competent from the time of his election until the decision is made. Arbitrator qualifications, personal abilities as intelligence and the ability to devise that enables him to perform the task of resolving the dispute as soon as possible. The arbitrator must have moral, behavioral qualities such as honesty. Honesty and chastity that do not extend his hand to bribery or bias to one side without the other. In conclusion, there are conditions of situations and cases of the convention. The conditions of the agreement shall be the gender and nationality of the arbitrator. The expertise, competence of the arbitrator, the arbitrator's approval of the functions assigned to him. The arbitrator being a natural person enjoying his civil rights. Also, the number of arbitrators must be a number, not a single number as one, three or five... etc.

The language of arbitration

The decision of the referee shall be written by the arbitrator or the arbitral board or determined by the parties to the dispute where the parties to the dispute have the freedom to agree to use the language or languages used in the arbitration proceedings.

In order to facilitate arbitral proceedings, the arbitrator uses experts to present their expertise. The definition of experience is the procedure whereby a technician is authorized to express his opinion on an issue related to his competence. There is also a historical development of experience from the Roman period through the Islamic era. The value of the experience of proof is subject to the discretion of the arbitrator, may be made by the arbitrator as the basis for the judgment, the extent to which the arbitrator is committed to the expert's experience. The opinion of the expert is not binding and the matter is up to the discretionary authority. However, some regulations require the use of experts in certain cases such as medical or technical matters unless otherwise agreed by the competent authorities. The arbitral board
may take one of the following decisions: Accrediting the experience entirely Accreditation of the experience.

In addition, it is possible to appeal against the decision of experience. It is possible to challenge the decision of experience, and this appeal should not be independent because it is considered part of the arbitral award. In the absence of experience, the law do not explicitly and directly state the invalidity of experience. Its existence to the invalidity of experience null and void where it may be invoked at any stage of the proceedings.

The principle of arbitration is the freedom of the parties to choose the legal rules applicable to the subject matter of the dispute. Whether the parties to the dispute do not choose the law applicable to the subject matter of the dispute. It is agreed to authorize the court to apply the rules of justice and equity: The adversaries are authorized to order the court to which the dispute is brought before it to issue its judgment in accordance with the rules of justice and equity.

Or the opponents choose the law of a particular state. Where the arbitral board selects the substantive legal rules that it applies. It is the arbitrators who choose the law of the state in which the arbitration takes place or the law of the state in which the dispute taken place or the application of the arbitral board to international trade norms. The international arbitrator shall apply the customs, manners of international trade until it becomes apparent that it is impossible to apply a particular law to the subject matter of the dispute and to apply the rules of conflict to the nationality law of the arbitrator. This tendency assumes that the arbitrator has a broad knowledge and know-how of these special rules in his legal system. In addition, when selecting a particular arbitrator, the arbitrator assumes that he or she has also implicitly chosen the legal system of the arbitrator's country or the combined application of the common principles of the rules of conflict. The most correct view of jurisprudence and arbitration was that the idea of the universal application of the common principles of the rules of conflict should be referred to.

**International agreements and applicable law**

There are many agreements that embodied the law applicable law on the subject of the dispute where some of the conventions gave the main role of the freedom of parties in determining the applicable law, the other highlighted the role of the arbitrator or the arbitral tribunal, 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 as follows:

1. Agreements that provide for the role of will in determining the applicable law.
2. Agreements that provide for the arbitrator's freedom in determining the applicable law.
3. Agreements that provide for the adoption of customary customs and customs in determining the applicable law.
4. Exclusion of international law in determining the applicable law.
Hypothesis

Arbitration is the most efficient mechanism for solving dispute in the world in particular international commercial disputes. The establishment of a single arbitration system will be a significant development for all countries of the world in accordance with the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) or the enactment by States of their arbitration laws in accordance with this law. As well as arbitration can serve as a method to replace the judiciary to resolve disputes arising from international trade.

The Object of Study

As a result of the increasing use of arbitration in the area of disputes in international trade, where arbitration is increasingly being pursued day by day among developed and developing countries, although their legal, political legislation varies, they regulate the arbitration by adopting their domestic legislation to take this alternative method. These countries have exceeded the limits of their legislation and therefore the objectives of our research will be:

1) Introducing the reader to the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) as a model prepared by the jury in the United Nations to serve as a basis for legislation in the countries of the world.

2) Arbitration is an alternative means of judicial authority to resolve commercial disputes.

3) The definition of the advantages of arbitration as a way to resort to parties to resolve the dispute, these advantages speed, lack of expenses and closer to the achievement of justice.

4) To seek an international, unified arbitration law to avoid conflicts of national laws relating to the nature of the dispute.

5) Discuss all stages of arbitration from the stage of agreement to arbitration, the end of the issuance of the decision; appeal to be considered a source of
everyone who resorted to arbitration to resolve the dispute between one of
the opponents and the other discount.

6) To find a solution to all the problems that face arbitration, the most important
of which is the conflict of procedural rules used by the arbitrator or the
arbitral tribunal to carry out the arbitration procedures.

7) This research is an important source of arbitration because it deals with the
stages of arbitration in all its parts.

8) Statement of the content of doctrinal theories that were said about arbitration,
the foundations of these theories, the criticism directed at it and the position
of the judiciary.

9) Statement of the implications of the award.

10) Statement of how this provision is implemented, the problems that arise in
connection with implementation.

11) Statement of the methods of appeal against the arbitration award and the
consequent effect thereof.

12) To give recommendations on the adoption of clear legal rules addressing the
most practical aspects of this system in the absence of such rules so as not to
become arbitration approved by the legislator as a means to resolve the
conflict a conflict in itself.

Research Methodology

In order to answer this problem and to deal with various aspects of commercial
arbitration under the (UNCITRAL) model law on international commercial
arbitration 1985 (with amendments adopted in 2006), the analytical descriptive
approach was adopted in this study. The study is mainly doctrinal and therefore
gives more attention to the analysis, interpretation, explanation and examination of
key concepts derived from primary and secondary data including judicial cases
relating to international commercial arbitration. The study will be theoretical in
nature. The data will include national and international instruments, arbitral awards
and court decisions and arbitral rules of international institutions, by shedding light on the various jurisprudential, legal opinions, judicial applications in support of and opposition to the Model Law. In addition, I tried to address some of the texts in order to determine their compatibility with the Model Law, to know the extent to which the arbitration bodies restricted the application of this law. On the other hand, a comparative approach was adopted by focusing on the position of international legislation. The national comparison on this issue in general, the desired end of the model, and the requirements of national legislation of this law to establish a unified law on Arbitration Law.

**Chapters outline**

The present research work comprises of eight chapters in which *chapter I* is an introductory part. It focuses on the concept and importance of International Commercial Arbitration. Under this chapter, the researcher will give an introduction of international commercial arbitration and will also define the meaning of international commercial arbitration and will examine the role and functions of international commercial arbitration organizations.

*Chapter II* is devoted to the study of origin and development of commercial arbitration. The researcher has made efforts to discuss the concept of arbitration in Islam, arbitration in international law and focusses on the historical perspective of the development of arbitration law in India.

The tenets of the arbitration agreement has been dealt within *Chapter III*. It also envisaged the form of provisions of arbitration agreement along with substantive terms of arbitration agreement. The chapter also discusses the overall importance of the development of arbitration agreement in settling the disputes.

*Chapter IV* details the composition of arbitral tribunal in international commercial arbitration organizations. It is broadly divided into three parts. Part I deals with the selection of arbitrators. Part II deals with the conditions essentials to be met for the arbitrators and part III about the number of arbitrators to be appointed by the parties as well as rule of the odd number in the (UNCITRAL) model law on international commercial arbitration.

*Chapter V* is devoted to the conduct of arbitral proceedings. This chapter is again broadly divided into three parts. Part I deals with the laws obligatory to be applicable within procedures of arbitration. Part II is devoted to the necessity of language and sessions of hearing. While part III deals with the needs for the assignment of experts by the Arbitral Board.
Wider ground for the making of awards and termination of proceedings has been discussed in *Chapter VI*. This chapter mainly devoted to the study of law obligatory applicable on subject of conflict, international conventions and obligatory applicable laws and conclusion procedures of issuing a decision from Arbitral Board.

*Chapter VII* entitled ‘The Award of Arbitral Tribunal’ discuss the form and content of arbitration’s decision in part I. Part II of the chapter focusses on the recognition or refusal of judgment of arbitrators. While the appeal in arbitration decision is covered by part III of the said chapter.

Chapter VIII is about conclusion and suggestions. In this chapter some modest but sincere suggestions have been made by the researcher to the proposed research.

**CONCLUSION**

- The main objective of the United Nations from enacting the Model Law is to establish a single and comprehensive arbitration law.
- The (UNCIRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) aims to unify the laws of arbitration in all countries of the world.
- The Commission on the enactment of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) shall aim at the enactment of all domestic laws by all States of the world along the lines of the Model Law.
- The main objective of the enactment of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) was to eliminate arbitration obstacles arising from the incompatibility inconsistency of national laws, making it difficult to resort to international arbitration, because in some cases national laws conflicted with international arbitration law and the legal policy of each State.
- Arbitration as a way to resolve international disputes derives power from the power of will to resort to arbitration to resolve the dispute between the opponents, which is different from the judiciary, which almost deviate from the principle of power of will, the parties to the dispute to waive their right to subject their dispute to arbitration either in the direction of intention to dispute by arbitration, this is considered to deprive the judiciary of considering the dispute.
The arbitration shall be agreed before the dispute occurs, shall be done by a condition set forth in the contract. This is called the arbitration clause, the arbitration agreement is a second form which is agreed upon after the dispute.

Requirement of most laws the requirement of writing in arbitration despite the difference in the role of writing the requirement of arbitration is it a corner of arbitration or is a means of proof or a condition of the validity of arbitration.

Arbitration shall be held as the rest of the contracts, shall be available in all its forms of satisfaction, suitability, place and reason.

Everyone has the right to work as an arbitrator, must be available in the civil arbitrator, independence, impartiality, efficiency, as a general condition must be available in the arbitrator intelligence, speed of art, the ability to devise moral qualities such as honesty, chastity and not extend to bribery or bias.

There are several ways to choose the arbitrator, whether individually or individually by the parties to the dispute or through the arbitral tribunal itself as in the selection of the third arbitrator or through an external body and the number of arbitrators should be.

The law applicable to the arbitral proceedings shall be determined either by the will of the parties or by the arbitral board. The arbitral board shall specify means to choose the applicable law such as the application of international law or a national law such as the law of the arbitral board or the law applicable to the subject matter of the dispute or the law of one of the centers Permanent Court of Arbitration.

The hearings also include the hearing of witness testimony. The arbitral board appoints one or more experts, requests the parties to provide relevant information to the expert. The arbitrator is not bound by the decision of the expert, two parties may appeal against the decision of the expert if the decision of experience contains substantial defects.

The original in arbitration is the choice of the parties to the law applicable to the subject matter of the dispute. If the parties do not choose this law, the court shall apply the rules of justice, fairness, the choice of the law of a particular country or the law in place of the conclusion of the contract or the law of the place of execution of the contract. The nationality of the arbitrator
or the application of the universal law of the common principles of rules of conflict.

- International conventions have given the arbitrator the right to follow the applicable law, certain international conventions give the right to follow trade customs and norms in determining the applicable law.

- The proceedings shall be terminated by a final decision by the arbitral board based on article (32) of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006).

- The jurisdiction of the arbitral tribunal shall cease after the award of the arbitral award in the case of the dispute before the arbitral board.

- The decision must be in accordance with a specific norm, must contain (signature, cause of judgment, date and place of judgment).

- The arbitral award may be corrected by two parties in the event of some errors in the arbitral award.

- The parties to the dispute may also refer to the arbitral board in order to interpret the arbitral award rendered in the event of any ambiguity in the arbitral award.

- The arbitral award shall be binding, may be appealed in accordance with the remedies provided by the law.

SUGGESTIONS:

- The United Nations Arbitration Commission shall develop the Arbitration Act to be a universal model law containing all solutions to trade disputes between States.

- All States of the world must enact their laws along the lines of the Model Law for the Unification of International Arbitration Laws.

- The countries of the world must conclude international conventions on the arbitration of commercialization, implementation of decisions issued by international arbitration bodies.

- All states shall accept the implementation of foreign arbitral awards on their territories.

- The enactment of national laws that accept international arbitration, the implementation of arbitration decisions on their territories.
All States shall place the objective of arbitration as a substitute for the judiciary and work towards this goal to achieve it.

The Iraqi legislators must legislate the arbitration law as is the case with the Indian arbitration law.

The Indian legislators should develop the arbitration law in India in line with developments in society so that the Indian arbitration law is an integrated system containing all future situations.

The definition of the community advantages, low risk of arbitration, its role in resolving the conflict between natural and moral persons.

Involve all arbitrators in training courses to strengthen them in the field of arbitration.

Dissemination of virtuous, benevolent ethics among the arbitrators, define the role they play in the area of dispute resolution, what they should enjoy the impartiality, independence and non-alignment of one party without another.

There should be control over the work of the arbitrators to avoid mistakes they make in the right of the parties to the conflict.

A system shall be established to prevent the parties to the dispute from resorting to the judicial authorities before referring their dispute to arbitration in order to resolve their dispute.

The opening of many arbitration centers in all places, which makes it easier for parties to the dispute to resort to the arbitration centers to avoid the difficulties, obstacles to resort to the arbitration centers whether these centers are far from their place of residence, may avoid the parties to the dispute resolving the dispute between them on the pretext of difficulty to access the centers arbitration or going to arbitration centers may be expensive, requires many expenses, which is a major reason for the reluctance of most parties to the dispute to resolve their dispute through arbitration.