CHAPTER - I
INTRODUCTION

1.1. Introduction

The alternative dispute resolutions are modes of resolving disputes outside the courts which basically are in charge of dispute resolution proceedings with non-binding verdicts. It has become known that the increasing exchanges and trade transactions at the international level led to the growth of arbitration until it became the distinctive phenomenon of our time. The time constraint existing obstacles during the court proceedings, especially in trade issues, result in an increasing tendency of parties to tackle the dispute of the case out of court settlement. It is one of the most important contemporary legal phenomena openness to arbitration and broadening of horizons. It is said that it is the language of the modern era and the main reference for resolving international trade disputes.

The reason for arbitration in this form is the desire of the parties in commercial transactions to free themselves from all the restrictions contained in national laws, to avoid the slow pace usually known by ordinary courts, the multiplicity of litigation procedures in addition to the freedom enjoyed by the parties in the field of arbitration in the selection of arbitrators and the law that applies to the subject.

The dispute, procedures, place, language of arbitration and confidentiality of the latter. All led to the rapid growth of arbitration until it became the mechanism and an important means of settling disputes that arise between the dealers in the field of international business transactions. And the importance of arbitration will not know only as a boom especially in the shadow of globalization, which aims to eliminate the administrative, legal obstacles imposed by the states for all of this arbitration has now become more than ever an urgent necessity as a way to settle disputes in international trade contracts, which has attracted the interest of countries and international organizations has led to the emergence of several arbitration centers such as the International Chamber of Commerce, Arbitration Chamber of Paris, Chamber of Commerce and Industry in Geneva, Chamber of Commerce in Milan, European Chamber of Commerce, Arab International Commercial Arbitration
Center in Cairo and the conclusion of many international conventions that regulate
the various arbitration procedures, the most important of which are the following:

- New York Convention of 10/6/1958 relating to the recognition and
implementation of foreign arbitral awards.

- Washington Agreement of 18 /3/ 1965 on the settlement of investment
disputes.

- The 1985 International Commercial Arbitration Model, established by the
United Nations. This is in addition to multilateral and bilateral agreements
between countries.

The Arab countries and Iraq remained in isolation from the countries of the world in
this area. Most of these countries enacted laws regulating international commercial
arbitration, especially since the beginning of the nineties.

As India went a long way in the field of commercial arbitration after the enactment
of the Indian Arbitration Act in 1996. Either in Iraq wants to development in
economic and political reforms .The need to provide a modern national legislation in
the field of international commercial arbitration. Although there are texts scattered
in some laws, regulations and instructions in Iraq. There is a broad move in the
drafting of the Iraqi arbitration law. Finally, we cannot mention that Iraq has ratified
many of the international conventions on the resolution of trade disputes.

- Convention on the Recognition of Foreign Arbitral Awards known as the New
York Convention adopted by the United Nations Diplomatic Conference on

- Convention on the Implementation of Provisions between the Arab States in
1954 and the Convention on the Settlement of Disputes arising out of
Investments between the State and the Citizens of other States (Oxid-
Washington Convention 1965), Convention on the Settlement of Investment
Disputes between host Countries of Arab Investments and Citizens of Arab
States.
As for the Arab countries, they initially tried to avoid in trade relations with foreign
countries the requirement of arbitration in contracts, but their keenness to achieve
civilized construction and access to modern technology eventually make them
conform to what is done in international business dealings by accepting the
arbitration clause. In their dealings with the industrialized countries, many of these
countries have adopted laws relating to internal and international commercial
arbitration since the 1990s. They also concluded the implementation of the
provisions adopted by the Council of the League of Arab States on 14/9/1952 and
the Arab Amman Convention on International Commercial Arbitration on 14/4/ 1
987 in addition to several bilateral agreements. All this indicates that arbitration is
considered one of the most important contemporary legal phenomena. And it is one
of the most important legal means that have expanded to the extent that its
legitimacy has been recognized by all the members of the international community
in different economic situations. This confirms the increasing recourse between
contractors, both at the international, internal trade levels and to resolve their
disputes through arbitration. The peculiarity of arbitration as an instrument of justice
lies in its being a tool of agreement and the direction to arbitration is at stake. The
parties concerned, whether in the selection of the person, the arbitral board or the
law applicable to the dispute. These considerations concerned States, concerned with
the development of a legal organization of arbitration, dealing with the agreement
and determining the disputes that may be brought before it. Simplifying the selection
of procedural rules, in the field of international economic relations, the signs of this
interest have emerged since the end of the First World War. And then the conclusion
of the Geneva Protocol of 1923 on the conditions of arbitration and the Geneva
Convention of 1927 on the implementation of arbitration provisions. The most
important of these conventions is the 1958 New York Convention on the
Recognition and Enforcement of Foreign Arbitral Awards, which establishes the
arbitration agreement as the first stage of the arbitration process. The question of the
law applicable to the arbitration agreement shall first arise before the arbitrator,
before he begins the arbitration process to verify the validity of the agreement and
its effect, given that his mandate is vested in this agreement. Where the arbitration
clause takes two forms, the arbitration clause and the arbitration clause. The
The arbitration agreement is one of two forms of the arbitration clause or an arbitration clause. The arbitration takes two kinds first one come before dispute and other kind come after dispute the arbitration clause arises between a disputes concerning a particular legal relationship to be settled by arbitration. The requirement is usually found in the same original contract as the source of the legal association; therefore the arbitration clause is intended to waive the contractors in advance, prior to the dispute arising from the review of the courts and their obligation to present the dispute to the arbitrators. The arbitration agreement is the agreement whereby the parties accept the offer of an earlier dispute to arbitration. The distinguishing feature of the arbitration agreement is that it takes place after the dispute has arisen and the dispute is presumed necessary for the validity of the arbitration party. Thus, recourse to arbitration under Iraqi law is by agreement, which is in a contract relating to disputes that may arise between the Contracting Parties. The arbitration clause shall be evidenced by writing in the original agreement or in the document on which it is based or in the form of the arbitration party. We will therefore focus our study on the (UNCITRAL) Model Law on International Commercial Arbitration 1985 (with Amendments adopted in 2006) as the United Nations recognizes the value of international trade in the settlement of commercial disputes in which the parties to the conflict request another person or persons to assist them in their quest for a friendly settlement of the dispute. These methods of dispute settlement are referred to terms such as conciliation, mediation. Such terms are increasingly used in international and domestic business transactions as an alternative to litigation. Considering that the use of such methods to settle the dispute is of great benefit. Convinced that the enactment of model legislation on such methods would be acceptable to states in all their legal, social, economic systems would contribute to the establishment of harmonious international economic relations, noting with satisfaction the completion by the United Nations Commission on International Trade Law of the Model Law on International Commercial Conciliation. Its adoption convinced that the Model Law will greatly assist States in strengthening their legislation governing the use of conciliation or modern plan and in the development of this legislation, if were not present origin. The model law aims at assisting states to reform, modernize their laws on arbitral proceedings to take into
account the particular characteristics and needs of international commercial arbitration. The law covers all stages of the arbitration process, beginning with the arbitration agreement, the composition, and jurisdiction of the arbitral board, the scope of the court's intervention through recognition and enforcement of the arbitral award. The law reflects a global consensus on the main aspects of international arbitration practices, accepted by States from all regions and from different legal or economic systems in the world. Since the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006).

The text of which was attached to the law as attached to any arbitration, regardless of the nature of the legal relationship in which the dispute was involved. If such arbitration took place in commercial relations and its parties agreed to subject it to the provisions of the Model Law annexed thereto.

UNCITRAL is the United Nations Commission on International Trade Law, a subsidiary body of the United Nations General Assembly. The Commission plays an important role in improving the legal framework for international trade through the preparation of international legislative texts for use by States in the modernization of the law of international trade and non-legislative texts for use by trade parties in negotiating transactions. Legislative texts deal with the international sale of goods, the settlement of international trade disputes, including arbitration and conciliation, electronic commerce, insolvency including cross-border insolvency, international transport of goods and international payments. Non-legislative texts include rules on arbitration, conciliation proceedings, notes on the organization and conduct of arbitral proceedings etc. UNCITRAL issued the Model Law, some States adopted the literal, complete text of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) and its amendments adopted in 2006. This provision made the Model Law the "national" legislation issued to codify all matters relating to arbitration in some of the laws of countries in the world. In this respect, the explanatory memorandum issued by the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) secretariat, together with the Model Law, did not call for the adoption of the literal text of the Model Law, but rather that the Model Law
constituted a sound basis for the promulgation of national law, in each country. The aim of this vision is to work on consensus throughout the world on the important principles, issues governing the areas and practices of international arbitration. All of this is in the pursuit of a global justice. The United Nations, with all sincerity, has worked on the preparation and promulgation of the Model Law to address the considerable disparity between national laws on arbitration. All this showed the need for action to be improved, harmonized, especially after it became clear that national laws were often completely inappropriate for international issues. The fact that this situation is beyond doubt is frustrating for those seeking justice because of the existence of outdated and outdated national laws which makes it of no purpose at all.

The secretariat of UNCITRAL calls upon all States to guide the model law on international commercial arbitration 1985 (with amendments adopted in 2006) to the maximum extent possible so as to overcome the difficulties, shortcomings, differences in national laws. However, as we have seen, adopting the Model Law with its full text, spirit without any deletion, modification or addition is an effective step for (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006). Of course, such a situation has many difficulties. For example, what is referred to in the Model Law is one of several options for an "arbitration agreement" to provide alternatives. This may be permissible in a "model law" but in the applicable laws only the appropriate choice is made instead of referring to several options at the heart of the law. We also note that the Model Law refers to "other power" in several articles, namely the "authority" required to take certain arbitration procedures, but the national law had to state the name of that authority specifically and not the reference to the word "other authority". Arbitration, which is the will of the parties, is used as an alternative to the settlement of disputes that may occur between the parties away from the courts and through arbitration as an agreed alternative. It is noted that the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) granted several powers of arbitration and the arbitral tribunal to the courts. That is, the law, although it codifies arbitration but at the same time does not give this arbitration all the necessary powers and retain some of these authorities to the courts. To give arbitration the driving force, we consider it best to grant the
necessary powers to the individual arbitrator or to the arbitral board, rather than bypassing them, granting their powers to the courts, thus giving the arbitration all the motivation required to play the desired role. Undoubtedly, there are certain matters that must be dealt with by the courts only, namely, those relating to the assistance of the arbitral board in provisional orders, restraining procedures, thereafter the completion of all proceedings relating to the execution of arbitral awards. In these cases, there is an absolute necessity to resort to the courts, a great need to use the courts because they have authority and have the powers under the law, otherwise let's leave it to arbitration, arbitral board. We note that the model law, while granting some powers to the courts is at the same time allowing the arbitral boards to continue arbitration until the final decision is made. From this situation there may be a conflict between court decisions and arbitral awards. What is the situation when such a conflict occurs? In order to demonstrate this contradiction, for example, we recall the article dealing with the arbitrator's response procedure where the party requesting the "arbitrator's reply" may apply simultaneously to the court to decide on such a response, but the article provides that this does not stop the arbitral proceedings which may continue until the issuance. The final decision, here may be a conflict between decisions issued or issued by the court, those decisions issued or issued by arbitration. What is the situation if this conflict occurred. It should be noted that other similar cases are mentioned in the model law. Finally, we note that the wording of the Model Law is not in some cases compatible with the usual and customary language used in some legislation. For the purpose of harmonizing the legislation, it would have been better to reformulate the Model Law so that the wording is appropriate and consistent with the language of formulation prevailing in some legislation. We highlight some of the necessary paragraphs in the Model Law as in the arbitration agreement, the problematic, objective conditions of the arbitration agreement, the law, selection of the arbitrator and the conditions to be provided in the arbitrator. The number of arbitrators, the law applicable to arbitral proceedings, language, sat listening and as experts appointed by the court. As well as the law applicable to the subject of the dispute and the termination of arbitration proceedings, the form and content of the award of law. In addition to the recognition, implementation of the resolution and to appeal this decision.
1.2. Historical Background

Arbitration has arisen as a means of resolving disputes between individuals and groups since ancient times. It precedes the systematic judiciary that arose in the presence of the state in its legal and executive, judicial and legislative powers. The arbitration is the result of the interplay of relations between individuals, societies in the commercial, political, social and other fields of disputes from time to time. Although there is no organized judiciary in some of these societies. The law of the jungle was not dominant, the strong ones were not the weak and the food was the prevailing. But there were several means of resolving disputes, including mediation, conciliation and arbitration. Judges are still important means for people to resolve their differences. If in the present day the state established the courts, the appointment of judges, the enactment of legislation, in the past it is otherwise, where the prominent role in this matter and is still the elders of the tribes where the opponents resort to resolve the differences. And do so themselves or the appointment of a person or persons for that people who have been known in society for wisdom, honesty, the satisfaction of enlightened opinion and thought. After the boom of international trade arbitration with the flourishing of international trade and associated with it. It was glowing whenever international trade flourished. When international trade flourished in the middle Ages through the establishment of exhibitions and markets, especially in Germany, Spain, Holland, France and Italy. The international trade arbitration law was established in the wake of its great development and rapid spread in the world of international trade. Although this has been achieved relatively recently. The term international commercial arbitration was first introduced legally in the Geneva Convention of European Union Issued on 21 /4/ 1961, as well as its development in international trade. This was after the First World War when power, as in the old societies, was no longer a means to demand, defend rights by intervening after long historical periods in social and economic life to eliminate what was known as the special justice system. Where individuals, groups resorted to force to demand their own rights. The establishment of justice in the state has replaced the old system. The administrations of justice, the enforcement of substantive law have become one of the main functions of the modern State. They are protected by the courts, by the judicial bodies that establish them and grant them
the jurisdiction to settle disputes between their citizens which enable it to carry out its mission, put in place laws, regulations that show ways of resorting, methods of dismissal, ways to challenge the judgments and means of implementation. These systems, laws included all guarantees guaranteeing the independence, impartiality, impartiality, impartiality of the judiciary and guaranteeing freedom of defense for litigants. If the origin is that the judiciary, which is a manifestation of the sovereignty of the state, is exercised only by the public authority allocated to it, must be done only by the state. It has the authority to recognize some individuals or non-judicial bodies with the power to adjudicate certain disputes in the jurisdictions established for the general jurisdiction of the state, in a particular scope and when certain conditions are met. Arbitration is not a new phenomenon independent of its roots from the past, but is an application of the idea of arbitration in ancient societies. The arbitration was known in Ancient Greece between the 6th and 4th centuries BC. Many of the arbitrators' rulings were issued in the 6th century BC. Arbitration in Rome has been known since ancient times, both in the era of the ancient empire and in the era of the Lower Empire. The company, however, is not only a system of Romania, but a system known to the ancient Egyptians, Assyrians, Babylonians and the Arabs before Islam. Arbitration in Islamic law is permissible by the book, the Sunna and the consensus.

In the Holy Book, Allah says: "Come, if you make a difference between them, then they will make a judgment from His family and a ruling from its people. If they seek a reform that will reconcile God between them.

What the world knew before World War I, especially in the 19th century, when England was a center of world trade, where arbitration was exercised under the control of the judiciary. The arbitrator could in many cases stop the arbitral proceedings to seek the Court's intervention in resolving the dispute. The effects of this can be seen in the laws issued by England, particularly the Arbitration Laws (1899-1934-1950). It is no coincidence that the real beginning (international commercial arbitration in its current form is an international legal organization known to the whole world and administered by arbitration bodies and centers) (1914-1918), the results of this war represented a sad collapse of many private
enterprises, the loss of confidence of the majority of international traders in launching any new economic activities. The deal in the field of international trade becomes very difficult. While the world was seeking peace at the Versailles Conference in Paris in January 1919, the proposal by the French Minister Etienne Clementel to establish an International Chamber of Commerce to be a forum for all private companies in the world was a hope that restored confidence and reassurance. The international community's desire to have a non-governmental institution that cares for the interests of these clients provides them with security and legal protection. The Chamber played a major role in preparing an international agreement aimed at achieving this goal. After considerable efforts by the Chamber, the Geneva Protocol of 24 September 1923 was issued under the auspices of the League of Nations on the conditions of arbitration. The first article states that each Contracting State undertakes to recognize the terms, conditions of arbitration in international private transactions and to implement foreign arbitral awards. The text of the Protocol obligates Contracting States to implement these provisions. ICC (International chamber of commerce) has therefore had to remedy this shortcoming, is preparing a Convention supplementing the First Convention on the Implementation of Foreign Arbitral Awards. Indeed, on 26/9/ 1927, under the auspices of the League of Nations. The Geneva Convention on the Implementation of Foreign Arbitral Awards, which was ratified by most of the States that signed the Protocol, was signed. Thus, these two agreements represented the first international legal system for international commercial arbitration. The impact of these two agreements on the activity of the Chamber's arbitration center led to the emergence of other centers with the same role. And this was the time when the international arbitration system was reinvigorated, but this time with greater strength and faith, and arbitration became important in international trade. Hence, specialized national bodies and organizations were formed, whose task was to arbitrate according to procedures and controls derived from the provisions of the laws, with a new engagement of the International Chamber of Commerce in Paris. The Economic and Social Council of the United Nations adopted a draft new convention to replace the Geneva Convention of 1927 (1953-1958) until a major international conference was held in New York City (20 / 5-10 / 1958) officially recognized as the New York
Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention is a universal charter of international commercial arbitration. It was joined by 123 countries by 1/1/2001.

The International Center for the Settlement of Investment Disputes (ICSID) was also established on 18/3/1965, has been joined since September 1966 until December 2003 by (157) one hundred and fifty-seven countries. This is what the annual report of the International Center for Settlement of Investment Disputes. The development took place on 28 /4/ 1976, when the United Nations International Trade Law (UNCITRAL) developed an integrated set of arbitration rules for some international commercial arbitration centers to date, and on 21 /6/ 1985, when the same Model Law on International Commercial Arbitration. This was used by most of the legislation comparisons in the development of their own laws on international commercial arbitration. There is no doubt that arbitration is now the most important means that traders in international trade wish to resort to resolve their differences resulting from their dealings. There is almost no contract in international trade, from a condition under which arbitration is agreed upon in the event of a dispute or dispute relating to the interpretation or implementation of the said contract, because international contracts differ from the contracts for internal dealing, as the latter governed by the rules of internal law. International relations are often between parties belonging to different States. The laws of those States differ in dealing with issues that arise as a result of dispute between the parties, while arbitration rules are known internationally and followed by traders. The other thing that has made the dispute over disputes difficult to resolve is to avoid the contractors presenting their differences to be resolved by the courts of the State of the other party because of the heavy fees, costs and time consuming. Provision of the judgment of the element of coercion in the case of non-implementation. For this reason, we find that the parties are reluctant to know the legal and judicial system of the State of the other party, so as to exclude the dispute from being submitted to the national judiciary. In fact, the reason is the lack of confidence in the judicial system of the State party to the other party. The novelty and ambiguity of the subject of arbitration has made me shed light on this brief historical overview. The system of arbitration, which was considered to be the norm in the adjudication of disputes between individuals,
groups in old societies, has reappeared, albeit in the form of an exception to the general jurisdiction of the State. In the first image of societies, the enactment of the positive law, the observance of it were left to the will of individuals based on their own power and their own means (the so-called special judiciary). This has not allowed for the stability of societies, does not guarantee security and justice in them. The positive law has been in the hands of force, preventing it from being applied to it and exercising it against the weaker ones. The law is positive, such as commitment, the general, to the extent that power is not applied to the influential people and authorities in society. As well as stripped of its moral beliefs when justice is not achieved, puts the right to face force. It was not possible to overcome this crisis, overcome it only by finding a neutral body whose function is to ensure the protection of positive law and ensure its application in practice. While also having the power to enforce and enforce it against society. The necessity of the existence of this body represents the necessity of the existence of the positive law itself as an integral necessity for it. It is not upright; its components are not integrated without it. The principle of legality cannot be established, if there is no free and stable judiciary on its side, protecting it from aggression and prevent tyranny. Initially, that member appeared under the so-called arbitration system. Whereby interested parties, at their own volition, resorted to a third person, the arbitrator from third parties, who was neutral and excluded from the interest in the disputes before him, to separate them. The system of arbitration, the way it was in the old societies to continue after the societies were organized in the form of States, one of its basic functions is at the same time a manifestation of sovereignty. Who are appointed for this purpose, provide them with the authority, the necessary qualifications for that, so ended up with the solution of the public judiciary in the state in the special jurisdiction and the judiciary. Arbitration is exercised under the supervision of the judiciary. In many cases, the arbitrator may suspend the arbitration proceedings to seek the court's intervention in finding a solution to the dispute. At the present time, arbitration has evolved, international bodies and centers have become arbitrarily active. Each body or center has its own model law for international commercial arbitration. Most of the comparative legislation has also established laws on international commercial arbitration. Since international
commercial arbitration is a tool for resolving disputes between the parties. It is necessary to have a previous contract or transaction between the parties, then there must be a dispute arising out of the transaction or contract in respect of its implementation or interpretation, hence the parties to the dispute can agree to resort to arbitration Commercial International. The arbitration agreement may be prior or later to the establishment of the dispute between the parties. If, prior to the occurrence of the dispute, it is in the form of a condition in the first contract between the parties, the dispute arises in respect of the subject of this first contract, under this condition they agree that disputes that may arising from its interpretation or implementation through the arbitration system, then called the arbitration clause. If, however, the dispute arises between the parties, it shall take the form of a contract in which they agree to present the dispute to be settled by an arbitral tribunal, rather than resorting to the general jurisdiction of the State with general jurisdiction and jurisdiction to adjudicate all disputes between individuals. International commercial arbitration is established to promote of peace and reduce the chances of war between nations of the world if it is used to settle conflicts between States such as Limiting border disputes and others.

1.3. Statement of the Problem

Since the international trade consists mostly of contracts between the parties belong to different countries. Where the laws of those countries differ in dealing with issues that arise as a result of disagreement between the parties, so the difference of laws to resolve the dispute in addition to the time, high cost made the parties resort to arbitration as a way to resolve their differences. In this case what are the laws and their impact on the arbitration process and the implementation of its decisions? Here comes the role of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006), to develop the Model Arbitration Law in the desire of other countries to enact laws similar to the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) of all countries.
1.4. 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.

1.5. The Aim of the 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.

1.6. 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. Thus 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.

1.7. Review of Literature

A number of sources, references related to the subject of research, namely laws, books, periodicals, conference proceedings, university dissertations, published researches on websites, CD-ROM containing judicial rulings were all based on the list of sources and references. The legal nature of the arbitral award was mentioned in the examination of the legal nature of the arbitration system or the arbitration function. The effects of this provision, the methods of its appeal were mentioned in the examination of other matters relating to arbitration. Some of the references reviewed will be referred to as follows.

1) Baqir Abdel Kadhim, *World Bank Guarantees for Foreign Investment*, MA, Faculty of Law, University of Babylon, 2012. Because the text of the Washington agreement does not give any control to the national judiciary, but merely orders its implementation. The Paris Court of Appeal also appealed to the Court of Appeal in Paris to overturn a ruling issued by the President of the Court of First Instance.

2) Mohammed Gard, *role of will in International Commercial Arbitration*, Faculty of Law and Political Science, University of Abu Bakr Belqayd, Tlemcen, 2009-2010, the nature of arbitration was taken from this source as a fundamental act of freedom as well as the role of parties to the conflict If the arbitration is specific, that is, without referring to an arbitral institution, the
parties to the dispute have a broad freedom to regulate arbitration through each stage, from the arbitration agreement to the passage of the arbitration agreement by choosing an arbitration panel to which it is entrusted.

How the parties to the conflict delineate the limits, scope of their powers, how to determine the procedures that govern the regulatory disputes and substantive rules to which this body is committed.

3) Al-Jaghbir, Ibrahim Radwan. *The arbitrator's invalidity, Dissertation of Dissertation*, 2009. The source of the arbitration decision was taken from this source as well as a statement of the factual, legal arguments and evidence on which the arbitrator relied. The obligation is a guarantee to the adversaries of the arbitrators' judgment, it leads to respect for the rights of the defense.

4) Fawzi Mohammed Sami. *A Comparative Study on International Commercial Arbitration*, 2008. We have dealt with some of the provisions of international commercial arbitration as mentioned in the international, regional, Arab rules, conventions, with reference to arbitration provisions in Arab legislation. We also discussed the definition of arbitration, the role of international, regional Arab and foreign agreements in arbitration. Since the two contracting parties agreed to follow their differences until the arbitration decision was issued and implemented or challenged. It was not limited to the provisions of international commercial arbitration, but included arbitration in general, because international arbitration may be subject to the provisions of the law whether for the proceedings or for the law applicable to the subject matter of the dispute. The implementation of the arbitral award is often subject to the procedural rules of the law of the country in which the decision is to be implemented.

5) Bashar Ismat SamihSikri, *Electronic Contracts - A Study on Applicable Law and Dispute Settlement*. 2008 The electronic arbitration is the subject of this dispute. The disputes revolve around the contracts, electronic transactions that take place over the Internet, as well as the need of the arbitrator of scientific efficiency, practical briefing on the technical aspects of the interventions and exits of electronic operations. As well as the mechanisms of communication
through electronic media, in addition to the need for knowledge, knowledge of terms and customs which are traded in the world of e-commerce.

6) Hugh Ali Hussein, *Commercial Arbitration in the World Trade Organization*, Master Thesis submitted to the Faculty of Law, University of Baghdad, 2007. The source of the application of the arbitrator to the substantive rules of the International Trade Organization, WTO. The covered agreements as well as a statement of the will to play a role in choosing the law applicable in some cases under the attribution rule, the statement when international trade rules are applied which are applied only in a manner that does not conflict with the applicable law.

7) Naciri, Mustafa Nateq, *The International Commercial Arbitrator "Comparative Study"* (Master Thesis), University of Mosul, 2005. The role of the judiciary in selecting the arbitrator in case of procrastination or refusal of one of the parties to the dispute was chosen from this source. The arbitration is carried out by specialized international or national bodies or centers in accordance with pre-established rules, procedures such as international conventions or decisions establishing such bodies or centers.

8) Omar, Nabil Ismail: *Arbitration in civil, commercial matters, national, international*, 2004. The reference to the arbitration agreement, its structure, the scope of its objectivity, the dispute of arbitration, the manner in which the arbitrator adjudicated the dispute before it, referred to some of the effects of the arbitral award: exhaustion of jurisdiction. And the validity of the order ordered the implementation of this provision in accordance with the Egyptian law under study, referred to the challenge of invalidity as the way set by the Egyptian law to challenge the arbitral award.

9) Abdul Rasul Karim Mahdi, *Recognition of Arbitration rules, decisions of foreign arbitration and to perform them in the international conventions*. Dissertation of Master Degree, University of Babel, 2002. The power of rule of arbitration was taken from this source, to be considered that judgment of arbitration as final proof to new invitation. It is an evidence no accept to affirm
the inverse. It is not permitted to be impugned in truth of arbitral judgment for reality or law. The national judge becomes committed to adopt this proof merely to fulfill some form provisions without check conflict subject. According to this system, it is necessary to differentiate between confessions and execute. The recognition has to be for right that included arbitral rule while execute shall be for national judicial judgment that recognized arbitration rule.

10. Awad Khalaf Akho Arshida, *Execution of Commercial Arbitration Provisions in Accordance with International Agreements*, Master Thesis, Faculty of Law, University of Mosul, 1999. This was taken from the source of some of the provisions of the Washington Convention for the Settlement of Investment Disputes (1965). Which included the establishment of the (International Centre for Settlement of Investment Disputes) (ICSID) center which settles investment disputes, how each Contracting State recognizes the provisions of this Agreement, guarantees the implementation of its financial obligations Judgment. As if it were a final judgment issued by a local court, what are the duties of the contracting states that follow the federal system to ensure the execution of the sentence through their federal courts, what are the obligations of these courts to treat this provision as a final judgment issued by the courts of a federal state. Thus, the judgments issued under this system have the advantage of direct access, that is, they are enforceable in the territories of the Contracting States, they are not subject to the internal control of those States, but are considered as the final judgments of the internal courts of the requested State.

11) Dr. Basem Said Younis, *The Law Applicable to the International Contract* (PhD thesis) Faculty of Law - Mosul University, 1998 This certificate was taken from the source before the arbitration court. On the testimony, take this procedure by resorting to the competent Egyptian courts that require the witness to attend and testify before the arbitrators as well as the text of the Iraqi Code of Procedure on the case of the request to bring witnesses and request for judicial representation. As well as the role of arbitrators refer to the
court competent to consider the dispute to issue a special resolution. The competence of the arbitrators under Iraqi law to issue such decisions and to suspend the validity of the article necessary to issue their judgment upon referral to the court.

12) Breiri, Mahmoud Mokhtar Ahmed: *International Commercial Arbitration*. 1995 This article deals with many topics related to arbitration including the definition of arbitration, its legal nature, the arbitration agreement and its effects. How to form an arbitral board, pointed out the validity of the arbitral award. And how it is implemented under the arbitration law under study. The arbitration law has been under consideration, under French law and international conventions.

13) Nusseera Saadi, *Technology Transfer Contracts* (PhD), University of Algiers, 1992. The role of important trade union blocs has been taken from this source, without arbitration status, as well as model contracts, general conditions of sale, provided that a trade union authority intervenes in the formation of the arbitral board if necessary.

14) Abdullah Dermish, *International Arbitration in Commercial Materials*. 1982 His study deals with the role of international arbitration in resolving commercial disputes, the role of arbitration in disposing of the dispute from the authority of the ordinary jurisdiction, depriving the parties to the contract from resorting to the courts in respect of the dispute. Arbitration results in the parties having waived the ordinary jurisdiction and submitted the arbitration.

15) Al-Tahiwi, Mahmoud El-Sayed Omar: *The Legal Nature of the Arbitration System*. This reference dealt with the definition of the arbitration system, its elements, the content of the jurisprudential theories that were said about defining this nature. Its fundamentals, the criticisms against it, but did not address the effects of the arbitration ruling and the ways to challenge it.

1.8. 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 organisations.

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 focuses on the historical perspective of the development of arbitration law in India.

The tenets of the arbitration agreement have 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 focuses 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.