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The importance of institutional maritime arbitration in the light of international disputes: Comparative study of the rules of arbitration institutions

أهمية التحكيم المؤسسي البحري في ظل المنازعات الدولية

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الملخص

نشأ التحكيم المؤسسي في نهاية القرن التاسع عشر وتطور تطورا سريعا لا سيما على صعيد التجارة الدولية. وأنشئت عدة مراكز غالبا ما تكون من القطاع الخاص متخصصة لهذا الغرض، خاصة مع تطور المنازعات وشيوع الالتجاء إلى هذه المراكز بإدراج شرط في العقود الدولية يقضي باللجوء إلى ذلك.

ويعد التحكيم المؤسسي صورة من صور التحكيم يتميز بعدة خصائص وأثار تميزه عن التحكيم الحر الأسبق ظهورا من الناحية التاريخية. وعليه سنحاول التعرض للنظام القانوني للتحكيم المؤسسي البحري، وذلك من خلال تحديد مفهومه والوقوف على أهم خصائصه، والإشكالات التي يطرح، وتمييزه عن التحكيم الحر.

الكلمات المفتاحية : التحكيم المؤسسي - المنازعات الدولية - القواعد التحكيمية.

Abstract

Institutional arbitration arose at the end of the nineteenth century and developed rapidly, especially in the area of international trade. And several centers were established, often from the private sector, specialized for this purpose, especially with the development of disputes and the prevalence of resorting to these centers by including a clause in international contracts requiring asylum.

Institutional arbitration is considered a form of arbitration characterized by several characteristics and effects that distinguish it from free arbitration, which is historically evident. Accordingly, we will try to expose the legal system to institutional maritime arbitration, by defining its concept and examining its most important characteristics, and the problems that arise, and distinguishing it from the arbitration:

Introduction

In our view, institutional arbitration, due to its advantages, is the best way to solve maritime disputes, because it provides the competing parties with confidence, reassurance, experience and specialization in the dispute by permanent centers of well-known reputation in this field. Adversity has the trouble of agreeing on various details of this process, enabling them to gain time which is an essential element in the business world that is based on two important pillars: speed and credit.

Accordingly, we will try, through this study, to identify the most important guarantees provided by the institutional arbitration of maritime disputes, thus preserving their peculiar character and driving investment in the field of maritime navigation.

Key words :(institutional arbitration - international disputes - arbitration rules)

The importance of research and study hypotheses

This law is based on several foundations, all of which reflect the legislator's awareness of the nature of the arbitration system in terms of:

First: Keeping pace with modern international trends regarding commercial arbitration:

This was evidenced by the transfer of substantive provisions contained in the Model Law on International Commercial Arbitration issued by the United Nations Commission on International Trade Law (UNCITRAL) in 1985, the commitment to divide its chapters and the distribution of texts, and to establish a balance between the nature of global drafting as contained in the Model Law and the requirements of legislative drafting National.

Second: Taking into account the nature of arbitration in terms of being an agreed judiciary based on freedom of the will of the parties and not imposed by a commanding text:

This was evidenced by what was stipulated in Article 4 - contained in Chapter One (General Provisions), which the legislator singled out for tariffs - in the first clause of it that the term arbitration in the provision of this law goes to "arbitration agreed upon by the parties to the conflict of their own free will, whether it is the body that undertakes Arbitration procedures pursuant to the agreement of the parties, an organization or a permanent center for arbitration, or not.

Third: Respecting the will of the two parties to arbitration by giving them freedom to organize it in the manner that suits them:

This was evidenced by the approach taken by the legislator from an approach that leaves the parties free to agree on how to appoint and nominate arbitrators, choose the rules that apply to the procedures and those that apply to the subject of the dispute, and set the place of arbitration and the language in which it is used, while setting up backup rules that apply when there is no agreement .

Fourth: Adopting the principle of speed in completing the procedures for issuing the arbitration award:

This was evident in the fact that the legislator permitted the arbitration board to continue the procedures despite challenging its decision and choosing reasonable dates for the procedures, and setting a time limit that the parties after his expiry may request to end the procedures in preparation for raising the dispute to the state's jurisdiction.

Research problem.[1]

The parties plead in agreement with the arbitrator they have chosen because of his experience and integrity and his ability to resolve the dispute between them and to convince them whatever the arbitrator's decision may be, which leads them to implement his decision, which leads to the continuation of relations between the parties and their cooperation, even after the dispute between them has ended. Arbitration has a particular and distinctive characteristic that distinguishes it from the ordinary judicial system.

Research Methodology

In our study, we will follow the subject of research marked with arbitration in maritime institutional arbitration and international arbitration rules. The approach of comparative study and descriptive analysis.

Reasons for choosing a topic

Among the most important reasons that led us to choose the subject of the research are:

1- The importance of institutional arbitration in achieving commitment to the international norm in the developing countries, as countries compete with each other in order to attract investments to their lands, especially in the Persian Gulf after what happened in the Arab region and the

[1] An arbitration agreement is an agreement by which certain parties agree not to resort to the national court and to comply with one or more arbitrators they choose to settle their disputes. The term arbitration agreement includes the two traditional forms: the lease agreement and the arbitration clause. The arbitration clause includes the text contained in the provisions of a particular contract, which decides to use arbitration as a means of resolving and enforcing disputes that may arise concerning the contract (see Fouchard (Ph)), commercial trainee in Traite de l'arbitrage ational, L.C.C, Paris. 1996, pp. 213—57

emergence of a large void in the investment side, and the developed countries' fear of investment It is due to security problems.

Research objectives

Arbitration is characterized by flexibility, speed of dispute resolution and speed of dispute resolution procedures, as the procedures are generally determined by the parties involved, which allows the arbitrator to proceed accordingly, thus saving a lot of time, particularly for maritime arbitration. All these advantages have led the parties to recognize the importance of commercial arbitration, which has led them to use it to monitor social and economic developments, including arbitration in banking, financial and marine insurance cases. The arbitrator shall not be subject to any discrimination or control. Such ratification will result in the judgment becoming enforceable.

Experiences of some countries in arbitration and arbitration rules

Most investment disputes at the present time are resolved by these institutions

As for the legislation, we find that the Iraqi pleadings law No. (83) for the year 1969 (the amended) did not refer to the definition of arbitration, but it permitted the agreement to arbitrate in a specific dispute, as well as the agreement to arbitrate in all disputes that arise from the implementation of a specific contract

As for the effective Iraqi investment law, it did not refer to the definition of arbitration, but it was indicated in (27F4) of it that ((parties to the dispute may resort to arbitration in accordance with Iraqi law .[1]

As for the Egyptian law, the Arbitration Law in Civil and Commercial Articles No. 27 of 1994 (amended stated in the text of Article (4P1) that ((the term arbitration in the provision of this law is devoted to arbitration, which is agreed upon by the parties to the dispute by their free will, whether The party that performs the arbitration procedures according to the agreement of the parties was an organization or a permanent center for arbitration or not)).

As for the Egyptian Investment Guarantees and Incentives Law, it did not refer to the definition of arbitration, but it did allow arbitration to settle disputes related to the provisions of this law

[1] Abdul Hamid Mohammed Al-Hosani, Maritime Arbitration, New University House, Alexandria, 2007, p. 54.

As for Saudi law, the Saudi Arbitration Law No. 46, on 12/3/1403 AH, did not refer to the definition of arbitration, but it permitted the agreement to arbitrate in a specific existing dispute, and it also agreed in advance to arbitration in any dispute arising as a result of the implementation of a specific contract

As for the Saudi investment law, it also did not refer to the definition of arbitration.

As for French law, the French pleading law No. 500/81 of 1981, which was in force, did not refer to the definition of arbitration, but it permitted recourse to arbitration to resolve disputes arising or that arose between them later.

As for the UNCITRAL Model Law on International Commercial Arbitration of 1985 with the amendments adopted in the year 2006, he referred to the definition of arbitration in the text of Article Article (2 / A) of it as arbitration means ((i.e. arbitration, whether it is undertaken by a permanent arbitration institution or not.

It becomes clear to us from the advanced definition that it was not inclusive and inhibiting because it only referred to the administrative body that can manage the arbitration process whether it was taken over by a private arbitration institution or not by institutions, and this is called free arbitration.

As for the international agreements governing arbitration, as far as we know, they did not refer to the definition of arbitration.

As for the judiciary, arbitration has been defined by the Egyptian Court of Cassation as "(a way to settle disputes, which is based on exit through regular litigation and failure to adhere to the procedures for pleadings before the courts with the basic principles of litigation and not violating what was stipulated in the arbitration section".

Likewise, the same court went to another ruling that arbitration "is an exceptional way to settle disputes, and its consist is a departure from ordinary litigation".

The Supreme Constitutional Court in Egypt pointed out that the intended arbitration is defined as ((displaying the dispute between two parties to an arbitrator who is appointed by a third party and appointed by their choice or in the light of conditions determined by them). In its aspects that

the two parties referred to it after each of them gave his point of view in detail through the main guarantees of litigation)) (16). Also, the Jordanian Court of Cassation defined arbitration as ("an exceptional way to settle disputes, limited to what the will of the parties to the arbitration went to, and the court should not expand the interpretation of the contract that includes the arbitration clause to determine the disputes subject to arbitration)" .

After highlighting the definition of arbitration, we can define arbitration as "a procedural guarantee for resolving investment disputes and an exceptional path for parties to the investment contract based on their agreement taken either as a condition contained within the terms of the investment contract before the dispute arose or an arbitration clause concluded before or after the dispute arises, with the aim of Resolving their disputes away from procrastination by a binding and final ruling that cuts off the rivalry.[1]

Research plan

I- **Prerequisite: institutional arbitration.**

II- **Requirement is institutional arbitration in maritime disputes.**

III-**Requirement: A Comparative Study of the Arbitration Rules of International Institutions**

The first requirement

Institutional Arbitration

I-1: the legal system of institutional arbitration

Institutional arbitration began at the end of the 19th century and developed rapidly, particularly in international trade. Several centers, often specialized in the private sector, have been established for this purpose, in particular because of the development of litigation and the frequent use of such centers by including an obligation in international recourse contracts.

[1] Mohammed Abdel Fattah Turk, ibid., P. 415.414.

Institutional arbitration is a form of arbitration characterized by several characteristics and effects that distinguish it from the previous free arbitration that has historically emerged. Accordingly, we will attempt to address the legal system of institutional arbitration by defining its concept, identifying the most important characteristics and problems, and distinguishing it from arbitration as follows:

1. The concept of institutional arbitration:

The growth of international trade in all its forms and the scale and complexity of disputes have led to the limitation of freedom of arbitration, which must be invoked before permanent arbitration bodies and centers, which requires us to define institutional arbitration and to distinguish it.

Definition of institutional arbitration

Institutional or regulated arbitration is defined as arbitration conducted at the discretion of the parties by a permanent arbitral tribunal. These centers prepare and facilitate the arbitration of the parties to the dispute by managing the arbitration process from beginning to end by assisting the parties in selecting their arbitrators from the lists established by these centers and by preparing the place where the arbitral tribunal meets.

Some define it as follows: Arbitration in which the parties agree to submit to arbitration disputes that will arise or have already arisen before one of the permanent institutions of arbitration, where the arbitration procedure takes place from the beginning, i. e. from the receipt of the request until the award is issued through its administrative bodies and predefined rules.[1]

This type of arbitration is called several names, such as permanent organization arbitration, permanent organ arbitration, statutory arbitration, regulatory arbitration or structured arbitration, and in this study, we will adopt the term institutional arbitration, regardless of the

[1] Abdul Hamid Mohammed Al-Hosani, Maritime Arbitration, New University House, Alexandria, 2007, p. 54.

name of the organization, arbitration institution, arbitration chamber, arbitration association, arbitration committee or arbitration tribunal.

Consequently, institutional arbitration is based on two main elements:

1- Permanent Arbitration Centre with an organic and organizational structure of the headquarters and the arbitration board of directors, a list of arbitrators and an arbitration list.

The arbitration center organizes, manages and supervises the arbitration process itself through the secretariat and administrative bodies, from the receipt of arbitration requests to the publication of the arbitrator's decision. Once the center was selected, the parties also chose their own rules.

While this adaptation is correct, it should not be relied upon, although it is true that the use of institutional arbitration and the tendency of the parties to find a solution to the dispute in accordance with the arbitration rules of an institution or arbitration center imply the application of those rules to the arbitration procedure. However, we must not lose sight of the fact that the use of institutional arbitration does not prevent the parties from choosing certain legal rules or laws to apply to the proceedings at the beginning of the arbitration process. The case of silence the compensation rules special categories of arbitration rules of this institution is applied.

2. Distinction between institutional and arbitration

Maritime control may be institutional or free, the latter being the oldest manifestation of institutional arbitration, but for several factors its scope has been limited to institutional arbitration, in particular in private disputes to which the State is not a party and which holds sovereignty. Therefore, it is important to distinguish between institutional arbitration and free arbitration, identifying the person responsible for the distinction between them, and there is no doubt that the mode of procedure is the most distinctive between them, as the parties to free arbitration choose the rules of procedure themselves outside the arbitration institutions, while

the administration of the arbitration remains. It takes place in accordance with the Centre's rules on institutional arbitration.

Consequently, the distinction between institutional arbitration and free arbitration lies in the delay in one of the two distinctive elements of institutional arbitration mentioned above: (1) A permanent arbitration center with an organic and organizational structure consisting of an arbitration seat, a board of directors, a list of arbitrators and an arbitration list. The arbitration center organizes, manages and supervises the arbitration process itself, through the secretariat and administrative bodies, from the receipt of requests for arbitration to the publication of the arbitral tribunal's decision.

It should be recalled that the reference in an arbitration agreement to an arbitration institution should not be considered as institutional arbitration, but should consider the availability of the two distinctive elements of institutional arbitration in that institution, as we could be in a permanent arbitration center with its own arbitration rules and administrative bodies. It has no role in overseeing the implementation of the regulations or administering the arbitration process. We are therefore faced with free arbitration. In summary, initial arbitration is a free arbitration, unless the agreement of the parties otherwise shows that it is institutional when both of the above elements are available.[1]

Effects of the use of institutional arbitration:

The arbitration agreement, which provides for the use of institutional arbitration, obliges both parties to refrain from using the courts to settle the dispute subject to arbitration. To raise it alone, unless the parties request it, so that both parties can voluntarily, explicitly or implicitly assign it.

[1] Mohammed Abdul Fattah Turk, ibid., P. 415.414.

The importance of this obligation is beyond doubt, since arbitration is a dispute resolution mechanism parallel to the judiciary, and the agreement of the parties to settle the dispute by arbitration before a given institution is within the exclusive competence of the latter. The institution may close the arbitration file and, if it continues, its verdict may be appealed to the courts. The reason for this action is to urge the parties to exercise their obligations on the one hand and to stabilize the judicial centers on the other.

On the other hand, in the case of arbitrators using one of the arbitration institutions, the arbitration system applied by the arbitration institution shall be respected and may not be excluded from that system, except to the extent permitted by the system itself. The procedures and selection of arbitrators to settle the dispute do not pose any problems in this type of arbitration, unlike free arbitration, because the rules followed in this arbitration institution deal with these issues, in order to force the arbitrators to entrust the arbitration to an arbitration center implicitly inferred from its agreement to follow the Rules and Instructions of this center.

Institutional arbitration also entitles the arbitral institution to which the dispute was submitted before and during the dispute by the arbitral tribunal, as stipulated in its rules, and the institution is then competent to the extent provided for in these rules, but in the event of a dispute For a particular case between the national judiciary and the arbitral institution, it is a matter of public policy.

Finally, it should be noted that the choice of the parties in institutional arbitration facilitates their failure or agreement on the place of arbitration, because what is contained in the rules of arbitration centers and bodies often guarantees this specificity, which often raises problems of free arbitration.

Notwithstanding the foregoing, the parties to the dispute who have chosen this arbitration procedure shall take into account the following elements:

1. Care must be taken to ensure that the jus covens of the country of the place of arbitration and those contained in the Centre's Rules do not conflict. The extent of cooperation between the judicial bodies of the country of arbitration and the arbitration center, because recourse to arbitration is not essential for the judiciary, as it must act as a supporter, both when the arbitration takes place outside the arbitrators' jurisdiction and when the enforcement is carried

   out after the judgment is delivered. Taking into account the conditions relating to the validity of the arbitration agreement and the conditions of the arbitrators and restrictions on the freedom of the parties to choose the law applicable to the subject .[1]
2. matter of the dispute, or the authority of the arbitrators to eliminate peace and contained in the country of arbitration. In the event of a problem, the work of the arbitral tribunal is difficult if it does not make it impossible.

I -2. Advantages of institutional arbitration:

Institutional arbitration is characterized by the characteristics of arbitration in general and also specializes in some of the advantages mentioned below:

The benefits of arbitration are generally:

(1) - Jamal Mahmoud Kurdi, ibid., P. 89.

1. Arbitration is characterized by the early resolution of the dispute for several reasons, including the lack of arbitrators and non-compliance with formal procedures generally adopted by the judiciary. The exclusion of the usual methods of recourse to the courts would be an additional element of speed.

[1] Mohammed Abdul Fattah Turk, ibid. at p. 423.

2. The arbitration system is based on the simplification of dispute resolution procedures, which allows for a quick resolution of the dispute, which is not the case in normal court proceedings. Commercial contracts must therefore be processed quickly.

3. Confidentiality is available in arbitration hearings and is important because merchants do not prefer to disclose their trade secrets in court.

4. Avoid the problem of conflict of international jurisdiction before the courts to determine the State whose courts have jurisdiction to hear the dispute, which is not a problem.

5. The presence of arbitrators involved in the dispute before them, because the use of experts is rarely, unlike the judiciary, regardless of the judge's ability in his or her field of competence, but in most cases, he or she is inexperienced in international trade, which may not resolve the dispute Only with the assistance of an expert can he or she not exercise personal knowledge, if an expert is required, despite the time lost waiting for his or her report, in addition to the additional expenses that may result from the expertise.

6. With the expansion of international trade and its expansion due to the globalization of the economy, arbitration in various countries of the world, with different legal and political systems, has become a guarantee for traders in the field of international trade.

As for institutional arbitration, it offers individuals many guarantees, due to the experience and long experience of the centers in this field, as well as qualified human resources capable of pursuing arbitration in all its phases. These guarantees can be summarized as follows:

1. Institutional arbitration ensures that the files on which the dispute has been resolved are archived by the Centre's archives for several years, which can set a precedent and serve as a general principle known to the parties, thereby stabilizing maritime trade. On copies of expert reports, these services are not provided by free arbitration.[1]

[1] Alan Redfern, Martin Hunter. Law and Practice of International Commercial Arbitration, L.G.D.J., London 1991, p. 4

2. Institutional arbitration provides for the possibility of choosing arbitrators on the basis of their competence, quality and nature of the dispute, in particular when it comes to technical issues whose understanding requires particular expertise that is difficult to access.

3. Institutional arbitration is the most effective way to manage arbitration, especially when it involves high-value disputes and complex issues.

4. Institutional arbitration allows litigants to choose arbitrators from the lists approved by the Centre, because operators only rarely know each other, which makes it difficult to agree on some people who perform the arbitration task only through these lists, thus avoiding the difficulties of research.

5. Institutional arbitration is conducted in accordance with the Centre's rules, thus avoiding the arbitrator having to take the trouble to agree on the procedures to be followed before the arbitrator.

6. Institutional arbitration provides administrative services provided by its centers and institutions, such as secretarial services, translation and security of documents, which is not the case in the case of free arbitration.

7. Arbitration institutions must provide well-trained administrative staff on how to organize arbitration, as well as on how it is conducted and monitored from beginning to end.

8. Arbitration institutions shall ensure that the arbitral award is as secure as possible, even in its form. These include ICC rules that the Chamber should consider the arbitral award as a draft before the arbitrators sign it in its final form, and the arbitral tribunal will comply with the formal observations of the Chamber. The Authority's final decision has yet to be adopted or not.

At this stage, we have listed the most important provisions relating to institutional arbitration, which are relevant to the subject of the study, highlighting the guarantees provided by this form of arbitration. All of the above will allow us to determine the ability of this type to resolve maritime disputes...

II - **1 requirement**

Institutional arbitration in maritime disputes[1]

The Maritime Trade Act contains several forms of dispute resolution in maritime disputes, including

First: the negotiations

The increased interest in resource exploitation and the threat of mandatory dispute settlement mechanisms have encouraged States to enter into negotiations that may sometimes lead to conflict resolution in the form of a convention or other forms, and negotiation is by far the preferred method for States. Other means when these negotiations fail.

Mandatory dispute settlement mechanisms have shortcomings and risks, while negotiation has important advantages under which the parties will continue the common maritime development process and allow them to focus on stabilizing the implementation of concrete measures to ensure that the parties' fundamental objective is achieved in a free and flexible manner.

Second: mediation

States rarely use mediation or good offices. For example, mediation of the border dispute between Belize and Guatemala was unsuccessful and the dispute was referred to the International Court of Justice.

Third: conciliation

The continental shelf dispute over Iceland's main island, Jay-Main, in 1981, remains one of the few conflicts ever recorded.

[1] An arbitration agreement is an agreement by which certain parties agree not to resort to the national court and to comply with the obligations of one or more arbitrators they choose to settle their disputes. The arbitration clause consists of the text contained in the provisions of a particular contract, which determines the use of arbitration as a means of resolving and settling disputes that may arise with respect to the contract (see Fouchard (Ph)).) et al, Traite de l'arbitrage commercial inte national, L.C.C., Paris. 1996, pp. 213—57

States prefer to use finally binding means to make a decision, especially since conciliation is very similar to arbitration and recourse to arbitration is preferable to conciliation.

Fourth: Arbitration in maritime disputes

It was agreed to divide maritime navigation issues into dry and non-dry matters. The first concerns all commercial uses of ships and non-marine activities related to maritime accidents. The first concerns contracts and their implementation.

Dry navigation has four basic types:

1. Collision.

2. Settlement of joint marine losses.

3. Limitation of liability.

4. Rescue and assistance.

With regard to the limitation of liability, the owner of a ship is entitled to limit his liability for loss or damage for which he may be held liable up to a certain amount calculated on the basis of the ship's cargo under an international treaty.

The types of dry shipping are divided into several types, ranging from passenger ships to bulk or dry cargo ships to tankers. In practice, most disputes arising from these commercial uses are governed by contracts that are either parties to the lease, or for travel or a certain period of time, or loading invoices, or sales and purchase contracts, or even sales contracts. Vessel maintenance.[1]

Arbitration is one of the two parties to the judicial settlement of international disputes. Dr. Abdel Moez Negm said: "In fact, since arbitration began to fall within the scope of the law as a means of settling international disputes, its importance has increased daily. Even after the establishment of the International Court of Justice and the International Court of Justice, A great importance in the settlement of international disputes in our modern world". To illustrate this, the case law of public

[1] Abdul Hamid Mohammed Al-Hosani, ibid., Pp. 26-31.

international law states: "It is not an exaggeration to say that international arbitration has been linked, in terms of its origin and development, to border disputes".

The definition of arbitration within the meaning of Article 15 of the 1899 Hague Convention for the Peaceful Settlement of International Disputes is as follows: "Settlement of disputes between States through judges of their choice and on the basis of respect for the law:" Article 27 of the Hague Agreement No. 1907 on the Peaceful Settlement of International Disputes reaffirmed the same meaning. International judgments have also adopted the same definition.

It is clear from the definition that one of the distinctive features of arbitration is that it is essentially based on the will of the parties to the dispute and the existence of a prior or subsequent agreement on the initiation of the dispute in the first case is called the arbitration clause and by the stipulation of the arbitration, under which the parties to the dispute agree to refer their dispute to arbitration.

Although the arbitration is based on the will of the parties, the procedural organization of the arbitral tribunal with regard to the composition and procedures of the tribunal and the applicable law are, of course, subject to negotiation by the parties to the dispute. It should be noted, however, that this does not mean that the Court is subordinate to these parties.

The majority of maritime arbitrations concern Tramp Shipping, which is not part of regular shipping lines. The vast majority of maritime disputes submitted to arbitration are not submitted to institutional arbitration. London and New York are one of the least institutionalized cities in the world, followed by Paris and Tokyo, where more than 400 maritime arbitrations are published each year.

Reasons for the use of arbitration:

1. The parties' desire to regulate their relationships with the reality of the specialized professional sector in which they work.

2. Keep the confidentiality of ordinary courts that cannot provide them in proceedings and judgments.

3. The speed in the settlement of disputes that they do not have before the ordinary courts, which are generally burdened with numerous cases or so-called judicial suffocation.

4. International maritime relationship because the nationality of the carrier is different from the nationality of the shipper and the nationality of the ship in most cases.

Maritime trade and its contracts are linked to the movement of goods, funds, services and persons from one country to another, this international character is compatible with the nature and flexibility of arbitration.

5. Maritime activities are considered to be one of the most important economic activities in which States have decided to intervene, which has led the parties to try to exclude jurisdiction from the ordinary judiciary for fear of respecting the interests of States parties in maritime relations.[1]

II -2- Types of disputes arising from maritime contracts

1. Ship charter contracts for a certain period of time

These disputes concern the liability of the ship-owner or charterer for losses incurred during the term of the contract.

2. Travel Charter Parties

These disputes relate to the determination of the liability of the lessee or ship-owner for a particular loss or the safety of ports and berths for loading and unloading, or the status of the ship upon delivery to the charterer or penalties for delay.

3. Transportation contracts

Under which the carrier undertakes to make several maritime shipments on one or more ships within an agreed period of time, resulting from a series of lease sharing contracts for a given voyage.

[1] Jamal Mahmoud Kurdi, ibid., p. 89.

4. Loading invoices:

This is one of the means of proof linked to the proof of the contract of carriage between the carrier and the owner of the goods. As a result, most bill of lading disputes relate to loss and damage suffered by the goods during the journey, delay on arrival, non-arrival of the goods or improper delivery of the goods.

5. Sale of used boats:

These are typical contracts used when selling used vessels and most disputes concern the condition of the vessel upon delivery to the buyer.

6. Shipbuilding and repair contracts:

Disputes arise as to whether the vessel complies with the specifications previously agreed between the parties.

7. Insurance and reinsurance contracts:

It concerns insurance-related aspects, in particular among insurers who replace the initial beneficiaries in accordance with the principle of insurance solutions.

8. Other disputes:

They concern other shipping issues, such as complaints against ship suppliers or disputes with port authorities.

Parties to maritime arbitration:

Sellers and buyers of ships are parties to the arbitration and insurance companies may also be parties to maritime arbitration.

- Arbitration conditions:

Most shipping contracts are based on standard contracts or previous contracts originally concluded on the basis of these standard contracts, which contain arbitration clauses and determine in turn the number and mode of arbitrators, as well as the place of arbitration.[1]

[1] Jamal Mahmoud Kurdi, ibid., p. 89.

It should be noted that the appointment of a single arbitrator to review the maritime dispute contributes to expedited procedures and generates cost savings. Some arbitration clauses provide for the appointment of two arbitrators and Faisal. In many cases, the parties agree to settle the dispute through the arbitrators appointed by them without the appointment of the president of the arbitral tribunal, if the verdict is agreed only by documents and without the appointment of a hearing. This procedure is used in about 80% of maritime arbitrations in London.

- Steps in the arbitration procedure:

1. Request for arbitration

After the formation of the Maritime Arbitration Commission by selecting its members by the parties to the dispute or by third parties, in accordance with the conditions that must be fulfilled by the arbitrator as his or her specialty, independence and impartiality. The procedure for submitting this request varies according to the type of arbitration, whether institutional or free. The application generally includes data relating to the determination of the subject matter of the dispute, the designation of the defendant, the documents explaining the reason for the application and the applicant's requests. It must be organized in a number equal to the number of parties to the dispute and the request must be made within the time limit prescribed by law or by agreement so that the applicant's right to make the request is not subject to the expiry of the time limit or limitation.

2. Place of arbitration

A place where a maritime arbitral award is to be made is generally the place of arbitration proceedings. If the arbitration takes place in several places, only one place of arbitration must be legally chosen, which is of great importance in several respects, in particular as regards what may be a determining factor in determining the nationality of the arbitral award and the consequences that may affect its enforcement. It is also an important factor in determining the law applicable to a number of important issues raised by the arbitration. The law of the place of arbitration shall

determine the validity of the arbitration agreement and the manner in which the arbitral tribunal shall be constituted and administered. The place of arbitration is also an important factor in assessing the extent of the relationship between national courts and arbitration and the extent to which those courts are involved in the arbitration proceedings, either by helping to take provisional measures or by deciding on the validity of the original contract.

In most cases, the place is determined by the parties directly or by arbitration before an institutional maritime arbitration center where the arbitration is based, or under the arbitration rules determining the place, the will of the parties involved is the key factor in determining the place of arbitration.

Mission and jurisdiction of the maritime arbitrator:

Before considering a dispute, the arbitral tribunal shall determine its mandate, competence, validity and scope in terms of persons and subject matter in agreement with the Institutional Arbitration Centre or with the parties and their advisors. Through the documents, the arbitration procedure will be followed until the award is made.

If the agreement is not concluded, the arbitral tribunal faces obstacles to its jurisdiction for two reasons:[1]

First: it is a dispute in the presence or validity of the original contract containing the arbitration clause between its terms. Claim the effect of the invalidity of the initial contract on the arbitration clause considered as one of its clauses, because its fate is linked to that of the initial contract.

This obstacle can be overcome by recognizing the independence of the maritime arbitration clause from the original contract. Most maritime arbitration regulations and provisions have followed this principle.

Secondly: the dispute is represented by the absence or invalidity of the arbitration agreement itself from which the maritime arbitrator derives his jurisdiction and that of the courts. Or dispute

[1] See it: Munir Abdul Majeed, The General Bases of International and Internal Arbitration, Without the House and the Country of Publication, 2005, p. 7. Ali Taher Al-Bayati, Maritime Commercial Arbitration, Dar Al-Thaqafa, Jordan, 2006, pp. 56-60.

in the arbitrary beyond its jurisdiction because the arbitration agreement does not cover the foreseeable dispute.

Principles of maritime arbitration procedures:

1. The freedom of the parties to agree on the rules governing the conduct of arbitral proceedings, whether institutional or free.

2. The arbitral tribunal is free to initiate such proceedings when the parties disagree, as they are not essentially bound by the procedures of the national courts, as the source of the powers of the national courts is the law, while the arbitrator finds the source of his powers in the agreement of the parties.

3. There is a cooperative relationship between the arbitral tribunal and the national courts, as the arbitral tribunal may not prevent it from taking interim or provisional measures.

Applicable law:

The parties to a maritime dispute are free to determine the law applicable to the subject matter of the dispute, applying the principles set out in most legislative texts, which establish the priority of the express or implicit will of the contracting parties as long as this choice is not contrary to the rules of jus cogens relating to public policy in the State concerned. This choice is tainted by a fraud of the law that should have been applied to the subject matter of the conflict.

Thus, the maritime arbitral tribunal will apply the law that the parties have expressly agreed to apply in the arbitration agreement, failing which that body may request the tacit consent of those parties.

Freedom is transferred from the parties to the arbitral tribunal if the parties to the relationship do not specify the applicable law explicitly or implicitly. The Authority is free to determine the law it deems appropriate to settle the subject matter of the dispute, a freedom that is limited by the 1978 Hamburg Treaty on International Maritime Transport of Goods by Bill of Lading.

This problem does not pose major problems for the following reasons:

1. The maritime domain is rich in international treaties, bringing together several maritime bases between different countries and meeting the needs of the parties to the maritime conflict as international legislation.[1]

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2. The maritime field is a specialized professional field characterized by the type of activity that has its own private life and independence, which differentiates it from other fields.

3. The maritime community is a closed society The historical circumstances have made it possible to dominate certain centers where this type of activity is concentrated and take the title of maritime arbitration work such as London, New York and Paris.

Characteristics of maritime disputes and justification for recourse to institutional arbitration:

Maritime disputes are characterized by many characteristics that distinguish them from other commercial disputes. Institutional arbitration, with its particular advantages, is considered to be the most effective way to resolve the dispute in a way that preserves their privacy.

1. Maritime disputes are characterized by their complexity and difficulty due to their essentially technical nature. Their purpose is often of great value and therefore requires judicial processing of legal, technical and commercial data. Thus, arbitration is a formula for settling such disputes, as the tables containing the names of the center's arbitrators include the best experts and arbitrators (masters, shippers, lawyers, etc.), which provides confidence and assurance to the opposing parties, provided that their dispute is examined by an experienced team. And experience and specialization Some maritime arbitration centers have defined the type of maritime relations that give rise to disputes, for example, article I of the International Arbitration

[1] See that Abdul-Hamid Muhammad al-Hosani, previous reference, p. 58.57; Muhammad Abdul-Fattah Turk, previous reference, p. 212,211

Rules, which provides for the examination of disputes relating to maritime commerce and arbitrations relating to the settlement of disputes concerning Ships, maritime transport contracts, maritime insurance and salvage contracts, joint maritime incidents, sale and repair of ships, as well as any other operation related to maritime transport activities.

The generalization of institutional arbitration in this way would lead to the transformation of arbitration into a profession practiced almost permanently by practitioners, which would be an advantage for maritime operators.

On the other hand, institutional arbitration allows arbitrators to overcome the complexity and difficulty of maritime disputes thanks to its technical equipment and human resources with great efficiency due to experience and specialization.

2. Institutional arbitration, because of its flexibility, ensures that arbitrators resolve disputes quickly, allowing them to benefit from the funds in dispute. This feature is not only unique in this form of arbitration, but also includes free arbitration, but not to the same degree, as it may have to easily provide these services through institutional arbitration for the enjoyment of integrated management, which is a benefit that takes time to argue. Before the verdict, Because these questions are dealt with in accordance with the Centre's rules, unlike free arbitration in which they lead to the suspension of proceedings until the judgment of the court, which leads to an extension of the settlement of the dispute.[1]

3. Maritime activity is characterized by an international character. Transactions between the parties to the maritime relationship are generally of different nationalities, particularly with the technological development of the media, where procurement is carried out via the Internet, so that concessionaires often ignore each other, This makes it difficult to agree on certain persons to carry out the arbitration task, and the use of institutional arbitration is in this case the best way to

[1] See Articles 4,5 of the Arbitration Chamber of Maritime Arbitration in Paris.

have nominal lists of arbitrators in each center and the place occupied by certain arbitration institutions for its long tradition and the annexation of the most famous arbitrators at the international level. Hood them as effectively as the Lloyds Maritime Arbitration Chamber.

4. Maritime law is international in nature, because its rules are consistent and similar, despite the different systems and traditions of societies, because the conditions of maritime navigation do not differ according to the nationality of the ship or the shipper. Consequently, the criticism of this position led by developing countries becomes unjustified, namely that most of these arbitration centers exist in industrialized countries and that they have rules, traditions and experts, or even most of them, most of them from industrialized countries, which is considered as a guarantee that arbitrators are not thoroughly familiar with the laws of developing countries, the customs and practices followed and the conditions prevailing in these countries, which are important elements in forming a fair opinion on the circumstances of each case, which have an impact on the determination of the sentence.

III-**1 Requirement**

A comparative study of the arbitration rules of international institutions

First: - A comparative study between the rules of the main arbitration institutions and organizations

- Selection of arbitrators

If the arbitration agreement provides for the appointment of an arbitrator by the parties or the method of selection of arbitrators, this selection shall be followed.

(B) If the parties do not appoint an arbitrator or provide any method of appointment, the arbitrator shall simultaneously appoint, from the list of arbitrators of the American Arbitration Association, each of the parties to the dispute, a copy of the names of the persons selected from the list.

The American Arbitration Association will invite, in order of preference, approved persons from both lists to accept the task of arbitrator or arbitrators to rule on the dispute.

If the parties knowingly select the arbitrators or if the arbitrators appoint them and authorize them to appoint a neutral arbitrator within a specified period of time and in the absence of such appointment, the American Arbitration Association may appoint a neutral arbitrator to chair the arbitral tribunal.[1]

If the parties are nationals or residents of different countries, the neutral arbitrator shall be appointed at the request of one of the parties from among the nationals of the State party or among the States parties.

The request must be made before the time limit for the appointment of the arbitrator in the agreement of the parties or in accordance with these rules (rule 16).

- Evidence and pleading procedures

The same American system that can follow the procedure, but that arbitrators can change (rule 28)

The questioning of witnesses is certain:

Applicable law:

There is no provision concerning the applicable law (a text may be added to the agreement): the arbitrators are separated in accordance with the terms of the contract, taking into account the application of the customs of trade).

- Arbitral award

Arbitral awards shall be made by a majority of the arbitrators by a short decision without reasons.

[1] Abdul-Hamid Muhammad al-Hosani, op. Cit., P. 19.

- Administrative services

The American Arbitration Association provides comprehensive administrative services.

- Forms of arbitration clause in the American Arbitration Chamber

If the parties agree to arbitrate under the UNCITRAL Arbitration Rules and the American Arbitration Association is the appointing authority and provides its administrative services, it may add this condition:

Any dispute, controversy or claim arising out of or relating to the termination or invalidity of this contract shall be settled in accordance with the UNCITRAL Arbitration Rules in force on the date of the contract and the appointing authority shall be the American Arbitration Association.[1]

Observation:

Parties may wish to add:

(A) arbitrators (one or three)

(B) Place of arbitration (city or country)

(C) The language or languages used in the arbitral proceedings shall be conducted and the arbitration shall be administered by the American Arbitration Association in accordance with its rules.

Arbitration clause in accordance with the UNCITRAL Joint Venture Regulations:

Any dispute or claim concerning this Agreement or concerning it or its violation shall be settled by arbitration to be held at...

In accordance with the Arbitration Rules of the United Nations International Commercial Arbitration Commission in force at the time of conclusion of this Agreement

[1] Muhammad Abd al-Fattah Turk, op. Cit., P. 343.

The arbitration must be conducted by a person of his or her choice...

The arbitrator shall settle the dispute in accordance with the principles of conciliation.

All arbitration proceedings, including identifiers and memoranda, shall be conducted in (language) and the arbitrator shall accept evidence directly from witnesses and documents submitted by the parties.

All witnesses may be questioned:

The arbitrator shall render his decision in writing and state the reasons therefor, provided that it is rendered within a period of..... months from the date of the request for arbitration. The award is final and binding on both parties.

Payment of amounts paid by doing so in.....

The judgment rendered by the arbitrator(s) shall be filed with the competent court..... 0

In accordance with the law of the State in which this Court exists

The parties to the arbitration shall be bound by the costs of the arbitration as determined by the arbitrators, provided that each party pays the costs of experts, evidence and advice.

The Court cannot decide that a judgment cannot be rendered in the absence of a legal provision governing the case and the ambiguity of the law.

- Arbitral award

The Court shall decide all questions by a majority of the votes of its members.

The decision of the Court shall be written and signed by the members of the Court who voted in favor, the arbitral award shall decide all questions submitted to the Court and shall state the reasons on which it is based.[1]

[1] For more information on this topic, see: Muhammad Al-Qalioubi, Maritime Law, Dar Al-Nahda Al-Arabia, Cairo, 1993, pp. 15-18

- Administrative services

- Full administrative services

III-2 **: International arbitration clause forms for the Dispute Resolution Centre**

Investment in Washington

The above-mentioned parties agree to submit any dispute arising out of or in connection with this Agreement to the International Centre for Settlement of Investment Disputes, to be settled by conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

(5) International arbitration clause forms

London Court of International Commercial Arbitration

In accordance with the validity, interpretation and implementation of.....

Any dispute arising out of or relating to this contract, including its validity, amendment or performance, shall be settled by arbitration in accordance with the rules of the London Court of International Arbitration in force at the time.

The arbitration rules of the United Nations Commission on International Trade Law apply when such rules are not regulated and the parties agree that all arbitration statements sent to the securities mentioned in the contract (or subsequently in writing) shall be considered valid and sufficient.

- Selection of typical arbitration clauses

1- International Chamber of Commerce (ICC)

All disputes arising out of or in connection with this contract shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by an arbitrator or arbitrators appointed in accordance with these Rules.

2.AAA International Dispute Resolution Centre

Any dispute or controversy arising out of or relating to this contract shall be settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association and the parties may wish to add the following information:[1]

A) The number of arbitrators (one or three) shall be equal to 0

B) The place of arbitration shall be (city or state)

C) The language of the arbitration shall be.....

3- Cairo Regional Centre for International Commercial Arbitration (CRCICA)

Any dispute or controversy arising out of, relating to or in breach of this contract shall be settled by arbitration in accordance with the arbitration rules of the Regional Centre for International Commercial Arbitration in Cairo.

Parties may wish to add the following data:

The designating authority must be 000 (name of the organization or person)

The number of arbitrators is set at one or three.

The place of arbitration shall be (000 city or country)

The language or languages used in the arbitral proceedings are 000

(E) The number of multilateral arbitrators and the manner of their appointment in multilateral arbitration shall be 000; if the parties disagree on this point, the amended rules of the Regional Centre for International Commercial Arbitration in Cairo shall apply and the Centre shall, in accordance with article 8 bias, appoint all arbitrators and determine who shall preside over the arbitral tribunal.

[1] Refer to this: Ali Al-Baroudi, Hani Dowidar, Principles of Maritime Law, New University House, Alexandria, 2003, pp. 87-253. Muhammad Al-Qalioubi, Previous reference, pp. 69-676.

Note: However, it is not necessarily adopted verbatim, as the parties may use other terms at their convenience, but with a clear reference to the organization of the arbitration by the institution concerned.

- The principles of arbitration in disputes

It is important for the public and private sectors to recognize that this legal system was created as a result of considerable economic development, driven very quickly by the rigidity of procedural structures and their inability to keep up with the development of solutions adapted to the spirit of the times and to solve the difficult equation instead of using the old legal structures to try to adapt.

While the legislator has set up an arbitration system to avoid litigants having to resort to justice, it must nevertheless establish rules to be followed before arbitrators, failing which their decisions could not be enforced. Frequent and complex problems rather than easy problems.

The arbitration system is of interest to the various sectors of industry and commerce at all levels, global and local, because it helps to solve many of the sensitive technical problems that are the common denominator in most modern-day disputes and there is no doubt that the competence of these problems will hinder economic growth, due to the length of the proceedings. Regular litigation and its high costs eventually lead to a loss of interest in such disputes.

This arbitration has been in existence since ancient times and has extended to a wide range of disputes, Aristotle argued.[1]

[1] See it: Muhammad Abd al-Fattah Turk, previous reference, p. 344, footnote (5).

Conclusion:

From the previous study, we draw the following:

1- The extent to which institutional arbitration is appropriate to resolving maritime disputes, given the number of reasons we mentioned earlier, which requires us to activate this mechanism in our Arab countries as having a good coastal strip that would, if there were sufficient guarantees to attract a lot of investments, which would push the wheel of development forward in this Countries.

2 - The presence of permanent arbitration centers specialized in resolving maritime disputes will contribute to finding a balance of case law that can be used to formulate model contracts.

Institutional arbitration due to the climate that it provides, from the speed, confidentiality and confidence of the arbitrators and the services of the center that administers the arbitration, makes the disputes between the dealers transient, as the deal is resumed naturally after the verdict is issued, away from defamation of the media, and also ensures that the conflict file is closed as Definitive.

3- The Arab countries should establish specialized centers in maritime arbitration along the lines of the International Chamber of Commerce in Paris, and the Lloyd's Chamber of Maritime Arbitration, especially as the human staff that these countries have of competence cannot be underestimated.

4 - Holding seminars for students on arbitration in general and institutional in particular, and opening specializations in postgraduate studies to teach marine arbitration.

5 - Take advantage of the expertise of the permanent arbitration centers, through scientific missions and conferences.

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