

Impact of International Arbitration Centers on Arab Arbitration Cases: A Comparative Study of the Negative Effects on Arab Dispute Resolution

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Abstract

This study addresses the impact of international arbitration centers on traditional Arab dispute resolution methods, which are deeply rooted in cultural and religious values. Despite the growing popularity of arbitration centers worldwide, their effects on Arab societies remain inadequately explored. Through a comparative analysis of select Arab arbitration cases, the present study has examined the adverse consequences arising from international arbitration centers. Key factors contributing to these negative effects, including cultural and language barriers, as well as the financial costs associated with arbitration have been investigated. The research objectives encompass understanding the clash between international arbitration and traditional methods and proposing strategies for better integration and coexistence. Drawing on the findings, the present study offers practical recommendations to enhance the collaboration between international arbitration centers and local communities. The study underscored the importance of upholding cultural diversity and advocated for the preservation of community-specific dispute-resolution mechanisms. By shedding light on these complexities, this study has contributed to theoretical advancements and practical solutions for understanding the arbitration's influence on Arab societies and promoting harmonious coalescence between global arbitration practices and traditional values.

Keywords: international arbitration centers, Arab cases, disputes, resolution, negative effect

1. Introduction

Disputes arising from ordinary contracts are inevitable in today's world, and there are several legal approaches to resolving them. One such approach is arbitration, which is widely recognized and available in many jurisdictions (Blackaby et al., 2023). In this method, a neutral third party is appointed to act as a referee in the dispute and issue a final award. To opt for arbitration, the involved parties must agree to it in writing, typically through an 'arbitration agreement'. These agreements are critical to the arbitration process and are generally included as an 'arbitration clause' in the initial contract. However, parties can also agree to arbitration after signing the contract (Yu, 2014). For international contracts, where parties hail from different states, arbitration is often preferred as a means of dispute resolution.

The agreement of arbitration comprises two types: the arbitration clause and the arbitration stipulation. The arbitration clause, which is typically included in the text of the investment contract, stipulates that arbitration will be used as a means of resolving any future disputes between the contracting parties regarding the contract's

implementation. On the other hand, the arbitration stipulation refers to any agreement between the parties of an investment association in a different contract to submit their existing disputes to arbitration for resolution (Ibrahim and Abood, 2011).

Although arbitration is gaining popularity in many jurisdictions, hurdles may arise due to differing legislation across jurisdictions. For example, Jordan follows the civil law system, while England follows the common law system. Such diverse legislation can pose challenges since certain legal principles or doctrines may not be recognized in certain jurisdictions (Tang, 2014). Parties may prefer to apply their legislation to resolve disputes since different jurisdictions may lack the necessary legal perspectives. To address such challenges, various arbitration institutions have been established with their own procedural rules, such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and others (Bantekas, 2015).

International arbitration centers have been established in the Arab region to offer alternative dispute resolution mechanisms that provide opportunities to settle disputes outside of traditional courts (Afif, 2022). Despite this, the establishment of these centers raises concerns about their negative impact on Arab traditional dispute resolution mechanisms. The novelty and contribution of this paper lie in exploring the extent to which international arbitration centers harm Arab dispute resolution and identifying the various factors that contribute to such negative effects. By doing so, this study aims to provide insights into the challenges facing traditional Arab dispute resolution mechanisms and offer recommendations to international arbitration centers to mitigate their negative impact on Arab dispute resolution.

2. Methodology

This study employed a comparative literature review approach to analyze the impact of international arbitration centers on traditional Arab dispute resolution mechanisms. The data for this study was gathered through an extensive review of scholarly articles, legal documents, case studies, and reports available in academic databases and legal repositories. Various databases were searched using relevant keywords, including “international arbitration,” “traditional Arab dispute resolution,” “cultural barriers,” “language barriers,” “arbitration costs,” and “cultural diversity.” The search encompassed articles published within the last decade to ensure currency and relevance. The data was extracted from selected sources, focusing on details of Arab arbitration cases, observed outcomes, challenges faced, and contributing factors.

3. Overview of Traditional Arab Dispute Mechanisms

Arab societies have a long-standing tradition of resolving disputes based on their cultural and religious values. Before the establishment of Islam, the Arabs, and other ancient communities used traditional methods to settle disputes. With the founding of the Islamic Ummah in Medina, these pre-Islamic methods were recognized and modified to settle disputes among the people following Islamic Sharia law. In the pre-Islamic era, Arabia was governed by various tribal systems without any regulations or regulatory bodies, and even the leaders of tribes had limited power to resolve disputes between individuals. As a result, revenge and warfare were the primary means of settling disputes. However, it has been reported that individuals and tribes eventually turned to arbitration and other forms of dispute-resolution mechanisms, but usually only after all other options had been exhausted (Al-Ammari and Timothy Martin, 2014).

In the rich history of Arab societies, there have been several incidents of effective dispute-resolution mechanisms. One such example is the renovation of the Kaaba, where a dispute arose between the Quraysh tribes over who would have the honor of reinserting the Black Stone. To prevent a potential war, the Prophet Muhammad (PBUH) intervened and found a peaceful solution. When the walls of the Kaaba were rebuilt, there was another disagreement about who would place the Black Stone in its southeastern corner. The issue was resolved when the oldest man in Mecca suggested that the first person to enter the mosque gate the following morning would make the decision. As it happened, Muhammad (PBUH) was the first person to enter, and the people accepted him as the arbitrator. Muhammad (PBUH) made the decision, and the matter was settled (Monjur, 2011). These examples illustrate the importance of effective dispute-resolution mechanisms in Arab societies, which have been present since ancient times.

In traditional Arab society, disputes were resolved through the guidance of various figures, such as tribal chiefs, healers, and influential aristocrats, who held considerable authority due to their status. These individuals made judgments based on tribal laws, which centered on collective responsibility and retribution or compensation, aiming to restore the balance between offending and offended families or tribes. Before Islam, arbitration was a voluntary process, and the final judgment was not necessarily enforced. Both parties were required to attend arbitration hearings for the award to be considered valid, with no strict procedural rules for arbitrators, except for certain customs like hearing both parties involved. As Hamidullah (1937) noted, the customs surrounding

arbitration in traditional Arab society were not static but evolved to accommodate changes in societal norms and expectations.

4. The Rise of International Arbitration Centers

International arbitration centers have gained popularity as a preferred means of resolving cross-border disputes related to trade and commerce, as they provide an alternative to traditional litigation mechanisms (UNCITRAL). Companies choose to use these centers because they offer impartial decisions that promote fairness and equality. Furthermore, international arbitrators have specialized knowledge and can handle complex cases involving unique issues more efficiently. They also render judgments promptly, reducing the expenses associated with long legal proceedings. In addition, international arbitration awards can be enforced in multiple jurisdictions through treaties like the New York Convention, ensuring that rulings are recognized and executed across borders (Born, 2018).

5. International Arbitration's Negative Impact on Arab Traditional Dispute Mechanisms

The establishment of international arbitration centers in the Arab region marks a significant development in the legal landscape, providing an alternative means for resolving disputes. These centers offer a range of benefits, such as neutrality, expertise, and speed, which make them an attractive option for parties seeking to resolve disputes outside the traditional court system (Al-Qaaida, 2020). However, there is a growing concern among scholars and practitioners that the proliferation of international arbitration may have negative consequences on traditional Arab dispute resolution mechanisms. International arbitration centers may have a negative impact on Arab dispute resolution mechanisms in several ways:

5.1 Language and Cultural Barrier

The increasing prevalence of international arbitration institutions has raised concerns regarding their potential negative impact on traditional Arab dispute resolution mechanisms. One such challenge is the use of English as the predominant language of communication in these institutions. While English is widely used as a lingua franca among legal professionals globally, it presents significant difficulties for Arabic speakers who may struggle to understand the proceedings conducted in English and communicate effectively with arbitrators, counsel, witnesses, and experts. This linguistic barrier increases the risk of misunderstandings, which can lead to potential misconceptions and misinterpretations during hearings and deliberations, potentially impacting the outcome of cases involving parties from these regions (Wilske, 2016). To ensure the fairness and effectiveness of international arbitration, it is crucial to address these language barriers and find ways to accommodate the linguistic needs of all parties involved in the dispute resolution process.

5.2 Bias toward Western Legal Principles and Practice

International arbitration has been subject to criticism regarding its potential bias towards Western legal principles and practices, which may disregard local cultures and norms. This criticism stems from concerns that arbitrators from common law countries may impose their legal frameworks on non-common law parties without considering differences in legal systems and cultural backgrounds. The lack of consideration for these differences could lead to unfavorable outcomes for non-common law parties, who may not have the same level of familiarity or understanding of the legal principles at play. Moreover, some scholars have argued that these biases reflect broader power imbalances within the international legal system, where developed nations hold significant influence over developing ones (Renteln, 1998; Fikfak, 2022). Such biases can have a negative impact on Arab traditional dispute mechanisms as they may overlook the cultural and legal nuances of the region, leading to unjust outcomes.

5.3 High Cost and Complexity

The cost of using international arbitration for dispute resolution in the world is a significant concern. Many international arbitration centers charge high fees that may be unaffordable for many parties. This, coupled with additional expenses such as travel and accommodation costs, makes international arbitration an expensive option. As a result, parties may be discouraged from using this method of dispute resolution, leading to the underutilization of local arbitration centers. The complexity of the international arbitration process is another disadvantage (Hodgson et al., 2021). This process involves legal experts from different jurisdictions and may be challenging for parties who may not be familiar with the legal systems and procedures of other countries. Furthermore, international arbitration may be time-consuming, causing delays in resolving disputes. The high cost of international arbitration in the world may also have wider economic implications. Small and medium-sized enterprises (SMEs), which are the backbone of many economies, may be particularly affected as they may not have the financial resources to bear the high costs of international arbitration. This could hinder their ability to engage in cross-border trade and investment and stifle economic growth in the region. Moreover, the complexity of the international arbitration process may be compounded by cultural differences between parties and arbitrators

from other regions. Parties may have different expectations and approaches to dispute resolution, which may not align with those of arbitrators from other regions. This misalignment may lead to misunderstandings and may impact the outcome of cases.

6. Specific Cases and Examples of Negative Impact in International Arbitration

The issue of transparency and fairness in the arbitral process is a major concern for arbitration cases within international arbitration (Singh and Kumar, 2020). Numerous academic journals, including the *Journal of International Arbitration*, *Arab Law Quarterly*, and *Arab Journal of Legal and Political Sciences*, have documented this issue, citing a Western bias that often prioritizes the interests of Western parties over those of parties. This bias results in the imposition of Western legal standards and procedures that may not align with the legal system and cultural norms of other countries, ultimately affecting the outcome of cases. Moreover, the exorbitant costs associated with the arbitral process at international arbitration centers pose a significant financial burden on parties, limiting their access to justice. This concern is evident in the growing number of cases filed by parties in national courts instead of international arbitration centers, further highlighting the need to address the negative impact of international arbitration on Arab traditional dispute mechanisms (Fadlallah, 2008).

6.1 The Pyramid Plateau

In 1974, the Egyptian government signed a preliminary agreement with the Egyptian General Society of Tourism and Hospitality (EGOTH) and the South Pacific Property Company (SBB) to establish tourism projects in the Plains of the Pyramid Plateau and the Cape of Wisdom. However, a dispute arose between the two claimant companies and the Egyptian government, which was brought to the International Chamber of Commerce for arbitration.

The claimants argued that their claim was derived from Article 20 of the contract signed between them and EGOTH on December 12, 1974. However, the arbitration panel interpreted the official translation of the law published by the General Authority for Investment in English and refused to pay. The panel requested that the International Center for Settlement of Investment Disputes (ICSID) have jurisdiction to resolve the dispute.

After several hearings, on May 20, 1992, the arbitration panel ruled that the Egyptian government should pay the company \$16.27 million. However, it should be noted that following the publication of this ruling, an agreement was reached between the Egyptian government and the foreign investor to settle the dispute amicably based on the value of the compensation awarded (Palevičienė, 2014).

This case highlights the challenges of international arbitration, including disputes over jurisdiction, the interpretation of legal provisions, and the impact of translations on the outcome of cases. It also underscores the importance of finding amicable solutions to disputes to avoid potential negative impacts on the parties involved.

6.2 The Wena Case No 4/1998

In December 2000, the arbitral committee issued a unanimous decision on the Wena case. The decision stated that The Arab Republic of Egypt was required to pay Wena Hotels Company Ltd \$21 million, along with 9% quarterly interest. The case arose when Wena Company filed an arbitration claim against Egypt in 1998, alleging expropriation of its funds and failure to protect its investments in Egypt, resulting in significant losses that led to the termination of its investment. The arbitration committee established by the parties comprised Dr. Ibrahim Fadlallah and Professor Don Wallace, who received four jurisdictional objections from Egypt.

Egypt had refused to participate in the arbitration process, but the arbitrator ultimately ruled in favor of the claimant, finding that Egypt had breached its contractual obligations by failing to maintain the status quo until the dispute resolution procedure could take place. After the award was issued, Egypt sought to annul it through various domestic courts. These efforts included a decision in April 2016 that held that irregularities may have occurred, but there was no evidence of fraud committed by the previous majority shareholder of the target company. (Gaillard, 2006)

In a separate case, the claimant-initiated proceedings against Egypt regarding the alleged unlawful sale of two hotels owned by an Egyptian public sector company. However, Egypt refused to participate in the arbitration process, arguing that the tribunal lacked jurisdiction due to the absence of consent from all necessary parties. Despite Egypt's objections, the arbitrator ruled in favor of the claimant, finding that Egypt had breached its contractual obligations to maintain the status quo until the dispute resolution procedure could take place. In response, Egypt brought several actions before domestic courts seeking an annulment based on various grounds, including procedural violations and failure to comply with requirements under the convention (Gaillard, 2006).

6.3 Middle International Cement Company and Egypt

In November 1999, a Greek company's contract with an Egyptian company for the supply and distribution of grey Portland cement was canceled without justification, leading to an arbitration process initiated by the Greek company. The arbitration committee, composed of Don Wallace, Professor Karl Heinz Bockstiegel, and Petro Berandini, subsequently rendered its decision in favor of the Greek company, awarding an annually compounded amount with 6% interest.

The project involved a 10-year contract for importing and storing cement in Egypt, with a 10-year investment period. However, the Egyptian Ministry of Housing determined that the company could not import any type of cement until December 1995, leading to the withdrawal of the company's remaining assets from Egypt, and an ongoing dispute over their export. Despite the investor's mismanagement of investments violating the terms of the agreement, the arbitral tribunal determined that the investor's claims were better treated under the law than under national law, with the plaintiff required to prove their case to prevail.

The court considered the terms of the license granted to the Egyptian cement company, governed by Article 9 of the contract, which set 10 years for cement purchases. The tribunal found that the price of the cement was low and that the ship involved was not part of an investment, but was instead sold at an auction, leading to a dispute over its ownership that was ultimately decided by the Tribunal in favor of the plaintiff. The tribunal also found that Egypt did not follow the correct legal procedures for the sale of the boat, which was subsequently seized and sold at an auction.

The court ruled that the ship was not auctioned at the proper price and that Egypt had not acknowledged any of the damages resulting from the bankruptcy, with bank debts deemed not to be part of the total loss. Other claims against the Egyptian government, such as misinterpretations of the investment law, were dismissed. Ultimately, the court ordered Egypt to compensate the Greek company for the prohibition on the import of grey cement and Portland, as well as the damages resulting from the cancellation of the contract (Frutos-Peterson, 2003).

6.4 The Case of Helnan

In March 2005, Helnan Hotels Company initiated an arbitration case against The Arab Republic of Egypt, alleging that the country had violated a bilateral agreement. Helnan claimed that Egypt's actions were in breach of the management contract for the Shephard Hotel, which had a duration of 26 years. Under the terms of the contract, Helnan was responsible for managing and renewing the hotel and was entitled to 20% of the total profits. The hotel was in a poor state when it first opened in January 1987, but Helnan refurbished and developed it to a five-star level. Helnan also argued that the Egyptian government had conspired with the Egyptian General Organization for Tourism and Hotels (EGOTH) to issue false inspection reports that led to the hotel's rating being reduced by five stars.

Furthermore, Helnan claimed that Egypt had unfairly treated her in court during appeals against the arbitral award. Egypt had exerted pressure to influence the outcome of the case, leading to Helnan's eviction from the Shephard Hotel and a smear campaign against her in the Egyptian media. Helnan asserted that Egypt had violated several international obligations under the bilateral agreement, including the obligation not to expropriate or confiscate her property. Helnan sought compensation of around 40 million euros from the arbitration board.

However, Egypt argued against Helnan's claims, stating that they were all contractual claims arising from the management contract and that they had already been decided by the arbitral award of 30/12/2004. The award was issued unanimously in Cairo by the arbitration clause mentioned in the contract and an arbitration commission empowered to make peace. Egypt argued that Helnan's attempt to reconsider her claims was miserable since the arbitral proceedings had already been preceded by a final and binding arbitral award.

Egypt also argued that Helnan did not have an international reputation in the field of hotel management and had not contributed to the advancement of tourism in Egypt. The decision to reduce the Shepherd Hotel's rating was taken by the Minister of Tourism, under the law, and after conducting extensive research on the hotel, which showed a deterioration in the level of service. There was no conspiracy to reduce the rating to facilitate the hotel's sale, as Egoth and Helnan had previously agreed in an annex dated 15 October 2002, which allowed for the possibility of selling the hotel while respecting the rights of all management companies.

Egypt maintained that it had given Helnan ample opportunity to remedy the errors and reconcile the situation. The decision to reduce the rating was not arbitrary and did not discriminate against Helnan compared to other management companies operating in Egypt. Egypt also gave Helnan full opportunity to complain about the decision and appeal the arbitral award of 30/12/2004, which denied the Government of the Arab Republic of Egypt the charge of denial of justice.

In its defense, Egypt requested that the arbitral tribunal issue a judgment not to accept Helnan's claims as a precautionary measure. Egypt also requested a judgment dismissing Helnan's case and ruling that the tribunal was not competent to hear the dispute. In any case, Egypt demanded that Helnan pay all arbitration costs, including attorney's fees.

However, the arbitration panel refused Egypt's arguments and confirmed its jurisdiction to hear the dispute, based on Helnan's claims. The panel found that Egypt had indeed violated its international obligations under the bilateral agreement by expropriating or confiscating Helnan's property. The panel also rejected Egypt's assertion that Helnan did not have an international reputation in the field of hotel management and had not contributed to the advancement of tourism in Egypt.

Egypt provided clear evidence, including testimony and written documents, demonstrating that it had given Helnan ample opportunity to address their errors and reconcile the situation. The decision to reduce was not arbitrary and was consistent with the treatment of other management companies operating in Egypt. Additionally, Egypt granted Helnan full opportunity to challenge the decision and appeal the arbitral award. In its defense note, Egypt requested that the arbitral tribunal take precautionary measures and issue a judgment dismissing Helnan's claims, as Egypt had not violated any of its obligations under the bilateral agreement. Egypt also requested that the tribunal rule on its competence to hear the dispute and that Helnan pay all arbitration costs, including attorney's fees. However, in the case of *Helnan International Hotels A/S v. The Arab Republic of Egypt* in 2016, Egypt was unsuccessful in these matters.

7. Recommendations

To minimize the risks associated with language barriers in international arbitration, it is recommended to implement a multi-faceted approach. One way is to utilize interpretation services that are provided by some international arbitration institutions in multiple languages, including Arabic. Alternatively, parties can appoint bilingual representatives to ensure accurate communication during the arbitration process. However, given the complex nature of legal terminology, these measures may not always guarantee accuracy in translation and comprehension. Therefore, stakeholders should work collaboratively towards enhancing cultural competency and responsiveness within the international arbitration community to promote equitable and just resolutions, regardless of language proficiency. This could be achieved through training programs for arbitrators, interpreters, and other stakeholders, as well as through the establishment of clear guidelines for effective communication.

To reduce bias and ensure fair and impartial decisions, it is essential to diversify the pool of arbitrators and increase representation from different regions, legal traditions, and linguistic backgrounds. Encouraging a more diverse and multicultural approach can help align decisions with regional perspectives and reduce biases against specific legal traditions. Additionally, protocols that encourage arbitrators to consider the cultural context of the dispute and parties' expectations regarding applicable laws can contribute to a more equitable and just decision-making process. Overall, to address the bias toward Western legal principles and practices in international arbitration, conscious efforts must be made to promote inclusivity, cultural sensitivity, and legal pluralism. This includes embracing different legal traditions, valuing diverse perspectives, and recognizing the importance of cultural context in international arbitration. By doing so, the public trust in alternative dispute-resolution mechanisms can be strengthened, and global commerce can be promoted while respecting local needs and values.

8. Conclusion

In conclusion, this paper has highlighted the negative impact of international arbitration centers on Arab traditional dispute resolution mechanisms and the various contributing factors that perpetuate such negative effects. It also offered practical solutions and recommendations for international arbitration centers in local communities. By promoting greater cultural competency and responsiveness within the international arbitration community, diversifying the pool of arbitrators, and acknowledging the cultural context of disputes, international arbitration centers can better align with regional perspectives and reduce perceived biases against specific legal traditions. It is crucial to recognize and address these biases to ensure equitable and just decision-making processes. Overall, this study contributes to a more nuanced understanding of the relationship between international arbitration centers and Arab dispute resolution mechanisms, highlighting the importance of promoting inclusivity, cultural sensitivity, and legal pluralism.

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