

Importance of Qualitative Addition to the New Arbitration Rules in Settling International Disputes - Experience of the Kingdom of Bahrain International

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Abstract

A complete set of procedural rules have been added in the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules and the parties agree on the application of arbitration procedures developed from this commercial relationship. These laws are widely used in arbitrations conducted by the institutions along with the ad hoc arbitrations. All the aspects of arbitration processes are covered by these rules such as setting out rules of procedure for appointing arbitrators, conducting arbitration proceedings, and modelling arbitration clause. The arbitration process also comprises of rules associated with form, impact, and interpretation of arbitral award. This study aims to investigate the experience of the Kingdom of Bahrain related to the addition of new arbitration rules. A detailed analysis of the newly developed changes has been conducted to provide important propositions. Findings of the study indicate that despite the effectiveness of newly developed changes, a few further amendments are required to increase the flow of international investments in Bahrain by providing the investors with the security they need.

Keywords: arbitration rules, dispute settlement, Kingdom of Bahrain

1. Introduction

In 1966, the resolution 2205 (XXI) of the United Nations General Assembly was used to establish the UNCITRAL; the commission was given a mandate to develop unification of law associated with international trade stressing that the mandate must be designed with respect to the interest of people, specifically of those belonging to the developing regions and are involved in the high-level of international trading.¹ UNCITRAL emphasizes the significance of recognizing arbitration as a method of dispute settlement between investor and state corresponding to international relations and the widespread use of arbitration.

UNCITRAL rules of arbitration are perceived as the most constructive development made in the arbitration landscape with respect to the settlement of investor state dispute. However, after the establishment of the rules of International Center for Settlement of Investment Dispute (ICSID), the UNCITRAL rules are now considered as the second most used rules for the settlement of disputes. This development in the arbitration rules resulted in the spread of the Bilateral Investment Treaties (BITs) with other major investments made by the private investor. These investments put forward their arbitral claims against different host states and selected UNCITRAL rules which serves as the basis for the investor's arbitration.

There are more than 2500 BITs, along with various trade agreements with investor protection provisions. The agreements are involved in approximately 250 well known arbitrations which are increasing day by day with the passage of time. It is further estimated that around 30% of these cases were largely based on the UNCITRAL rules. These are further used for the investor state agreements, which also emphasizes its value as an important part of public international law and establishes permanent arbitration forum to create balance between investment

¹ UNCITRAL. UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. United Nations. New York. (2014). Available at: <https://www.uncitral.org/pdf/english/texts/arbitration/rules-on-transparency/Rules-on-Transparency-E.pdf>

protection and right of host states to regulate.² A study by Ermakova et al.³ investigated the new trends in establishing other ways to resolve financial disputes. They found that the selection of arbitration for the resolution of disputes in the field of finance instead of selecting national courts of New York and London became more prevalent and was taken into consideration by the entrepreneurs and the politicians.

The UNCITRAL arbitration rules are critical as they render comprehensive and functional set of rules that are shown by the parties in their agreement to conduct arbitral proceedings that arise through the commercial relationship and have high usability in the administered as well as ad hoc arbitrations. The rules are significant as they cover different aspects of the arbitral process with procedural rules and a model arbitration clause for conducting arbitral proceedings. This results in the formation of rules in relation to the form, impact, and interpretation of the award. At present, there are three different versions of arbitration rules developed in different time intervals. The 1st version of the UNCITRAL arbitration rule developed in the year 1976, second version was then introduced in 2010 along with certain amendments in the previous study. Finally, the third version was produced in 2013 that incorporated the UNCITRAL transparency rules created on the treaty-based investor state arbitration.⁴ These transparency rules include treaty-based arbitration between investors and countries.

Wide range of disputes, such as the disputes between private sector commercial parties where arbitration institutions do not interfere, or issues between investors and states, between one country, and disputes held at commercial level have been resolved by UNCITRAL arbitration rules. The UNCITRAL Arbitration rules were revised in 2006 by the commission in accordance with the changes that occurred in arbitration practiced in the past 30 years.⁵ This revision has improved the efficiency of arbitration under the UNCITRAL arbitration rules, without any alteration in original spirit and wording of the text. However, the UNCITRAL arbitration rules were enacted on 15th August 2010 after undergoing revision in its text, with inclusion of provisions that deal with multilateral arbitration, annexation, liabilities, and objection procedures for experts appointed by arbitral tribunal. The revised rules contain a number of innovative features meant to improve procedural efficiency by revising procedures to replace an arbitrator and establishing reasonable costs and audit mechanism related to arbitration costs. The new set of procedures also included detailed provisions on interim measures. Following the adoption of “the transparency rule” in treaty-based investor-state arbitration in 2013, a new paragraph 4 was added to article 1 of the Arbitration rules to allow the use of transparency rules in arbitration. Further, it was clarified that transparency rules apply to investor-state arbitration commenced under the UNCITRAL arbitration rules. In contrast to this, there is no difference in the 2013 UNCITRAL arbitration rules and the version published in 2010.

The revised UNCITRAL arbitration of 2013 states that the parties would be referred to the arbitration provided by the UNCITRAL arbitral rules, after the agreement of parties to settle disputes. Further, Article 1 of the UNCITRAL 2014 states that any such dispute shall be resolved following the modified rules in accordance with the agreement of both parties. The second paragraph of the same article states that the parties that had undergone the arbitration agreement and had their arbitration settlement after 10th August, 2010 will be referred to as effective since the date of commencement of arbitration. This presumption is not effective for the cases, where the arbitration was concluded after 15th August, 2010. Third paragraph of the article states that the arbitration shall be governed by the rules, except in the case where rules are contrasting to the provision proposed by the law. This is further conditional to the fact that law is only applicable to the arbitration that is non-derogatory to the participants. The fourth paragraph of the Article 1 focuses on the protection of investors by stating that arbitration held between investor and state must comply with the rules provided by the UNCITRAL regarding the transparency in treaty-based investor state arbitration.

International law has adopted modern rules which can be referred to resolve international and other disputes. Disputes that are needed to follow certain methods are mentioned when settling them. However, the international perspective is different while providing solutions for international disputes. It can be said that these legal rules have become binding in that they oblige the international community to follow them in order to resolve any conflict that may arise between different countries. The conflicts of the past, especially in former empires, were resolved through traditional methods, but after recent developments, the new rules of international arbitration have become

² Thakur, Tanaya. “Reforming the investor-state dispute settlement mechanism and the host state’s right to regulate: a critical assessment.” (2020).

³ Petrovna, Ermakova Elena, Frolova Evgenia Evgenevna, and Sitkareva Elena Vitalevna. "New Trends in Developing Alternative Ways to Resolve Financial Disputes." *Journal of Politics & Law* 13 (2020): 280.

⁴ UNCITRAL. UNCITRAL Arbitration Rules. Available at: <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>

⁵ UNCITRAL. UNCITRAL Arbitration Rule (as revised in 2010). United Nations (2011). Available at: <https://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf>

clearer in terms of mandatory controls for both parties with respect to the dispute.

The past record of Kingdom of Bahrain shows its commitment to modern international rules in the field of arbitration and dispute settlement. In 2009, Bahrain Chamber for Dispute Resolution (BCDR) was set up in association with American Arbitration Association (AAA), which was based on the rules set by the International Center for Dispute Resolution. In 2015, the arbitration law was promulgated in Bahrain; in its initial phase, this new law, incorporated the UNCITRAL model law to practice in accordance with the practices of the international arbitration. Bahrain has its bilateral investment treaties with countries such as Algeria, Egypt, France, Germany, India, China etc.⁶ Under such conditions, it is critical to examine that how Bahrain has been affected either positively or negatively by the adoption of the new arbitration rules proposed for the settlement of international disputes.

Therefore, the current study aims to shed light on the existing experience of Kingdom of Bahrain considering the addition of new arbitration rules for the settlement of disputes. The study further sheds light on the existing organizations and institutions with their ability to resolve disputes. The objective of the study will be accomplished through analytical method which is divided under three phases. In the first phase of the study, international models and rules developed for the new arbitration and dispute settlement have been analyzed. In the second phase, a comparative analysis has been conducted to analyze the foundations of the main arbitration institutions and organizations such as the Association for International Chamber (AIA), American Arbitration Association (AAA) etc. The final phase of the study sheds light on the modern rules developed for the international arbitration in Bahrain. The study is important as it highlights one of the most important topics in international commercial arbitration and their settlement under modern international dispute resolution rules. The reason behind the initiative of investigating this topic is that most of the previous studies lacked the knowledge of adequate legal organization for this subject in the modern law and regulations in Bahrain. Besides, the lack of adequate legal organization for this subject in the modern law and regulations in Bahrain is another reason behind the investigation of the performance of Bahrain in settling the international disputes. Finally, the study will provide a unique advantage to different investors and arbitrators for carrying out a successful settlement of disputes specifically in the Kingdom of Bahrain.

2. Analyzing the International Models for New Arbitration and Dispute Settlement

Some international institutions and bodies have established rules of conduct for international trade in general and in electronic commerce in particular. Some of the most important of these institutions and bodies are listed below:

2.1 International Chamber of Commerce (ICC)

The specialized bodies, known as International Chamber of Commerce (ICC) comprises of several well-known business experts that are nominated by the panel committees of ICC and serves to examine the major issues ranging from the political concerns to the world businesses which works through joint efforts to address cross cutting subjects. The role of ICC is to prepare policies, rules and codes important to facilitate the international business transactions and investments. ICC due to its competent efforts is globally recognized as the most trusted system of arbitration.⁷ Since the development of ICC, several new cases have been reported at the approximate rate of more than 750 per year. This led to the development of international center of ICC for Amicable Dispute Resolution (ADR), which further developed a complete range of other dispute resolution services, which were based on the ICC mediation rules, ICC Dispute Board Rules, DOCDEX rules, and, ICC rules for expertise for dispute settlement.⁸

ICC developed in 1987 under the support of the International Chamber of Commerce “Rules for the Unified Conduct of Electronic Exchange of Commercial Data by Remote Transmission” in association with a number of international organizations. ICC has also set up an e-commerce project that includes three working groups specializing in the issues of electronic business practices, information security and electronic terminology. ICC works on several different motives such as marketing and advertising, taxation, financial services and insurance, anti-corruption, banking techniques and practices, etc. However, one of the major aims is to develop a self-regulatory framework for e-commerce and make it usable in the trading community.⁹

⁶ Charles Russell Speechlys. Arbitration in Bahrain. (2016). Available at: <https://www.charlesrussellspeechlys.com/globalassets/pdfs/offices/doha/2016/arbitration-in-bahrain-feb-2016.pdf>

⁷ International Chamber of Commerce. 2016 Programme of Action. (2016). Available at: <https://iccwbo.org/content/uploads/sites/3/2016/11/ICC-in-2016-Programme-of-Action-English.pdf>

⁸ Id.

⁹ Kelly, Dominic. The international chamber of commerce.” 259 *New Political Economy*, 268 (2005).

One of the works presented by the concerned authority is the revision of the guidelines on online advertising and purchasing, as these guidelines apply to all advertising and marketing activities on the World Wide Web to promote any type of products or services. These guidelines also include a set of standards of ethical conduct that must be followed by advertisers and merchants to increase public credit in purchases to ensure the freedom of advertisers to express and reduce the issuer of government regulation and the relevance of reasonable expectations of consumers. Some of these include identification and transparency of marketers, the identity of marketer, respect for public groups and public societies and respect for the potential sensitivities of a global audience etc.¹⁰

Besides, the guide provided by the International Chamber of Commerce (ICC) provided special considerations to the electronic terms (E-terms) which came into force in 2003 as they are used by parties when they start their electronic transactions. This guide includes all the necessary means to organize contracts on the World Wide Web and to engage in electronic transactions with the lowest legal risks. The guide has been further developed and complemented by important considerations with respect to media activities on the internet. According to ICC, the modern-day businesses are confronted with various challenges, mostly caused by the presence of insecure enterprise information systems and enterprises. One of the major initiatives taken by ICC in this regard is the development of Cyber Security Guide for Businesses which aims to provide guidance to several business experts regarding the prevailing risk associated to cyber security.¹¹

2.2 United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT)

The body that serves as an intergovernmental and subsidiary body represented by the United Nations Economic Commission for Europe (UNECE) is known as the United Nations Center for trade facilitation and Electronic Business (UN/CEFACT). In this regard, UNECE serves as the focal point of all electronic standards of businesses and required recommendations. The UN/CEFACT is based on different members including some business experts belonging to the intergovernmental organizations, business communities and authorities of the individual countries.¹²

UN/CEFACT is based on simple vision of establishment of a simple, transparent and effective processes for global commerce. UNECE plays an important role in providing suggestions and recommendations for the commercial as well as government business processes leading towards international growth and widespread of the businesses. In this regard, UN/CEFACT was developed as a subsidiary intergovernmental body for implementing program that would help in achieving global cooperation and coordination among businesses. It particularly supports the improved ability of businesses, administrative and trade from various developed, developing and transition economies for effective trading purposes.¹³ The development of the body is based on the principal focus which is to facilitate various national and international transactions by means of harmonized, simplified and standardized procedures for business processes, with an aim to contribute in the development of the global trade. UN/CEFACT provides open opportunities for both public and private sector experts to work under the guidance of its secretariat, plenary, bureau that leads to the development of materials that are useful for guidance, suggestions and recommendations important to reduce procedural and regulatory barriers for smooth trading.¹⁴

In March 2001, the Centre adopted a recommendation entitled (Standard Rules of Conduct for Electronic Commerce) which is considered as a means of facilitating electronic commerce agreements to support the previous recommendation of the electronic agreement. These codes of conduct are self-regulatory instruments that can work in parallel with other measures to facilitate electronic commerce. This recommendation demands countries to encourage and develop self-regulatory instruments for electronic commerce. The recommendation is attached with an example of such rules, which are the standard rules of conduct for e-commerce established by the e-commerce program in the Netherlands.

2.3 International Institute for the Unification of Private Law (UNIDROIT)

The unification of law is defined as a joint action of two or different states, which aims to jointly introduce legal system or municipal legislation in the form of some uniform rules. The functioning of the unification of law is

¹⁰ International Chamber of Commerce (ICC). ICC Advertising and Marketing Communications Code. (2018). Available at: <https://cms.iccwbo.org/content/uploads/sites/3/2018/09/icc-advertising-and-marketing-communications-code-int.pdf>

¹¹ International Chamber of Commerce. ICC Cyber Security Guide for Business. (2015). Available at: <http://pubdocs.worldbank.org/en/713231432913966990/Gerard-Hartsink-ICC-Cyber-Seminar-18-19-May.pdf>

¹² UNECE Sustainable Development Goals. UN/CEFACT. Available at: <https://www.unece.org/cefact.html>

¹³ Economic and Social Council. Economic Commission for Europe. United Nations. (2019). Available at: https://www.unece.org/fileadmin/DAM/cefact/GuidanceMaterials/PoW_2019-2020_E.pdf

¹⁴ Id.

based on the intention to unify the legislation while promoting smooth functioning.¹⁵ The independent intergovernmental organization, known as international institute for the unification of the private law (UNIDROIT) have its foundations in the Villa Aldobrandini in Rome. The development of UNIDROIT is based on the examination of different methods and needs that are specifically related to the harmonizing, modernizing and coordination of private and commercial law between different states or groups of states resulting in the development of uniform laws, rules and principles to accomplish the target objectives. In 1926, UNIDROIT was set up as an auxiliary organ of the League of Nation. The institute was re-established in the year 1940 following a multilateral agreement i.e. the UNIDROIT Statute.¹⁶

The UNIDROIT has its membership in almost 63 different states, along with 10 APEC member states which include Australia, China, Chile, Korea, Canada, Japan, Indonesia, Russia, Mexico, and the United States. The aim of UNIDROIT is to serve as a strong legislative role with 28 international instrumentals including principles, rules, treaties and model clauses. UNIDROIT serves in the Asia Pacific region, which now serves as its specific target.¹⁷ It further performs its function by drafting different laws and conventions aiming to develop uniform international law. Several drafts of agreement are being prepared to improve international relations in terms of private law. It also plays a functional role in conducting studies regarding the comparative private law. It also participates and organizes conferences and publish works that are specifically worthy of wide circulation.¹⁸ This institute has developed a number of rules for international commercial contracts since 1994.

3. Comparative Analysis of the Rules of Main Arbitration Institutions and Organizations

Following are some major arbitration institutions and organizations which are functional in the settlement of disputes.

3.1 American Arbitration Association (AAA)

The body specifically responsible to facilitate the process of dispute resolution is known as American Arbitration Association (AAA). The process, however, begins with the selection of helping parties for their disputes which could either be in the form of mediator or arbitrator. This selection of the arbitrator or mediator takes place at the final stage of the process which is critically important. Businesses, that are running in Florida and are a part of an alternative dispute resolution, generally requires a neutral, experienced party who remains fair and handles the dispute competitively. The AAA is further responsible to administer the entirety of the process, and specifically works to assist all sort of scheduling issues, to ensure that the disputes are being resolved through proper procedures, to provide additional support to parties when needed and to effectively handle any sort of logistics issue.¹⁹

The contributions of AAA are significant as it has conducted more than 4.1 million cases of alternative dispute resolution (ADR) since its development. The organization has 26 offices in US, Bahrain, Mexico, Singapore and Bahrain, and its ADR services are expanded to organizations of almost all sizes and types.²⁰ The organization has further created a set of certain rules and regulations that are known as the final offer arbitration supplementary rules. These rules can be used with the other rules of AAA or with the ICDR's international arbitration rules. The rationale behind the development of these rules is to develop firm understanding regarding the arbitration process, and to prepare them in assessing the risks and rewards of adopting the following process of arbitration.

Moreover, in cases where the arbitral agreement specifies the final or last best offer of arbitration, the following rules will provide a framework for the arbitration that is not present whether in the rules or in legal precedent.²¹ Final offer arbitration relies on the parties' desire to settle their disputes before arbitration. These tasks are accomplished following a series of preliminary settlement offers that are intended to bring the parties closer while

¹⁵ Matteucci, Mario. "The history of Unidroit and the Methods of Unification." 286 *Law Libr. J.*, (1973).

¹⁶ UNIDROIT. International Institute for the Unification of Private Law. History and Overview. (2020). Available at: <https://www.unidroit.org/about-unidroit/overview>

¹⁷ UNIDROIT. International Institute for the Unification of Private Law's Contribution to Legal Certainty, International Commerce and Economic Growth: A Long Story of Success Program. (2019). Available at: http://mddb.apec.org/Documents/2019/EC/WKSP1/19_ec_wksp1_002.pdf

¹⁸ Id.

¹⁹ Pike, Michael and Lustig, Daniel. What You Need to Know About the American Arbitration Association (AAA). (2016). Available at: <https://www.turnpikelaw.com/what-you-need-to-know-about-the-american-arbitration-association-aaa/>

²⁰ Clark, Michael C, and Simpson, Laura. Arbitration Remains a Trusted Venue for Resolving B2B Disputes. (2018). Available at: https://www.adr.org/sites/default/files/document_repository/180223_AAA_ICDR_Arbitration_Caseload_Data_Press_Release.pdf

²¹ International Center for Dispute Resolution. Final Offer Arbitration Supplementary Rules. (2015). Available at: <https://www.adr.org/sites/default/files/Final%20Offer%20Supplementary%20Arbitration%20Procedures.pdf>

making them less divided in their positions. Such settlement offers might be exchanged or negotiated in dispute resolution or mediation processes. During the arbitration processes, the parties would further settle the offers, leading towards the exchange of final offer before the beginning of arbitration hearing. This exchange of multiple preliminary offers is based on two different strategic purposes. The first part includes the close examination of the case's real value before commencing the expensive long-term preparation of arbitration. The second process involves parties to assess the differences between their respective positions at the time of exchange. Following this, if these differences such as the cost and risks of proceeding exist, the arbitration are effectively reduced until they are considered as unwarranted, then settlement may be possible.²²

3.1.1 Selection of Referees

The selection of referees is based upon the following rules:

i. This choice is followed, where the arbitration agreement includes appointment of parties to an arbitrator or method to select the arbitrators; however, the arbitration agreement does not specify the number of arbitrators. The dispute shall be referred to an arbitrator to settle it, unless the AAA considers that the matter requires the appointment of a certain number of arbitrators.²³

ii. If the parties do not appoint an arbitrator or do not provide any method of appointment, the arbitrator shall be appointed from the American Arbitration Association's list of arbitrators. At the same time, for each party, a duplicate name of the persons will be selected from the list.

iii. The American Arbitration Association shall invite persons who, received approval in order of preference, to accept the task of arbitrator or arbitrators to adjudicate the dispute on both the lists.²⁴

iv. The American Arbitration Association may be appointed as a neutral arbitrator to head the arbitration panel in the event that the parties select the arbitrators with their knowledge, or if the arbitrators have appointed and authorized the parties to appoint a neutral arbitrator within a specified period of time and no appointment has been made.

v. The neutral arbitrator shall be appointed at the request of one of the parties if the parties are nationals or residents of different countries. This appointment will be made from the citizens of the states.

vi. The request needs to be submitted for the appointment of the arbitrator with the agreement of the parties or in accordance with these Rules (Rule 16) before the fixed time.

3.1.2 Evidentiary, Pleading Procedures and Applicable Law

The same U.S. system that may follow procedures and that arbitrators may change (rule 28). There is no provision on applicable law i.e. a clause may be added to the agreement. The arbitrators are separated considering the application of business practices based on the contract.

3.1.3 Arbitral Award and Administration Services

Majority of the arbitrators render arbitral awards by a short decision without reasons. The final award would be rendered within thirty days of closing of the hearing or after the hearing has been waived.²⁵ The American Arbitration Association provides full administrative services.

3.2 General Arbitration Clauses and the American Chamber of Arbitration

The following condition may be added if American Arbitration Association serves as the appointing authority to provide administrative services and the parties agree to arbitration under the UNCITRAL Arbitration Rules:

Every dispute, disagreement or claim that arises with connection to this contract or involving a breach, invalidity or termination shall be settled with accordance with the arbitration rules of UNCITRAL which are in force on the contract date and the American Arbitration Association shall be the appointing authority.²⁶ Following this, the

²² Id.

²³ International Center for the Settlement of Investment Disputes (ICSID). Number of Arbitrators and Method of their Appointment - Additional Facility Arbitration. Available at: [https://icsid.worldbank.org/en/Pages/process/Number-of-Arbitrators-and-Method-of-their-Appointment-\(Additional-Facility-Arbitration\).aspx](https://icsid.worldbank.org/en/Pages/process/Number-of-Arbitrators-and-Method-of-their-Appointment-(Additional-Facility-Arbitration).aspx)

²⁴ American Arbitration Association (AAA). Arbitrators & Mediators: Arbitrator Selection. (n.d.). Available at: <https://www.adr.org/ArbitratorSelection>

²⁵ JAMS. JAMS Comprehensive Arbitration Rules & Procedures. (2014). Available at: <https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule-28>

²⁶ University of Cologne. Arbitration in Banking and Finance: General Arbitration Clauses. (n.d.). Available at: http://arbitrationinfinance.com/general-arbitration-clauses_ID11

parties may wish to add:

- i. One to three arbitrators.
- ii. Place (city/country) of arbitration.

The American Arbitration Association shall administer arbitration in accordance with its rules, procedural procedures developed by the UNCITRAL Arbitration Rules. A clause may be added in accordance with the UNCITRAL Rules for Joint Ventures following arbitration:

i. Arbitration would settle any disagreement or claim arising out of or related to this agreement or the breach of its provisions in accordance with the arbitration rules of the United Nations Committee on International Trade Arbitration.

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

3.2.1 Arbitral Award and Administration Services

- i. The solution of matters depends on the decision of the majority of all its members.
- ii. The decision of the tribunal shall be provided in written form, signed by all the tribunal members, who voted for it. The arbitration decision shall state the reasons for particular decision and also details in all cases submitted to the tribunal. Full administrative services will be provided by the arbitrator.

4. Analyzing the Modern Rules of International Arbitration in Bahrain

Bahrain has an extensive arbitration history, and international commercial arbitration is the most popular form of dispute resolution in the country, currently. It has a business-friendly and diverse private-sector economy which allows the business relationships to expand in the form of commercial agreements which opts for arbitration as a means to resolve disputes. At times, unavoidable disputes infrequently arise in international business relationships which cannot be solved cordially between the parties and instead they depend on their chosen formal dispute resolution mechanisms. The legal framework of Bahrain provides a steady and strong system for the protection of an individual's rights and the rule of law, including arbitration. Bahrain has ensured that the arbitration-friendly framework even continues into the future, it has passed a number of constitutional or legal measures in the recent years which aimed to modernize its arbitration management by adopting the best practices established by international groups, practitioners and institutions.

4.1 Bahrain's Arbitration Law

Bahrain's previous arbitration law provided a complete legal support for arbitration, the country sought to continue its development and keep updating its legal framework. In context to this, in July 2015 Bahrain issued a Legislative Decree No 9 of 2015 which circulated the Bahrain Arbitration Law. This law adopted the UNCITRAL Model Law on international arbitration which provides individuals and businesses with freedom to use the arbitral proceedings according to internationally accepted best practices in arbitration. It also made further changes to the already existing arbitration regime which includes the stipulation that Non-Bahraini lawyers can represent parties in international commercial arbitrations in the country, and the limitation of the arbitrator accountability under the law of arbitration, except the cases of ill determination and unsophisticated negligence. One concern in international arbitration that is constantly in the limelight is the different approaches and from time to time, results of the Common law system as opposed to the Civil law. Bahrain's arbitrators are more inclined towards the interrogational or investigative approach rather than the confrontational or argumentative one to resolve disputes. In this context, it is important to note that in December 2018 a complete set of rules for taking the evidence in international arbitration in the system of Civil Law was introduced in the form of, the Prague Rules. These rules provide a better interrogation focused system for guidance in relation to the evidence in Civil law- based arbitrations. Bahraini parties or the ones from Civil Law Jurisdiction without any doubts prefer this approach as it very close to the approaches taken by their domestic courts in respect to the disclosure and the evidences and cross examination of the witness.

The Bahraini practitioners welcomed the Prague Rules and many of them are acquainted with the International Ba Association Rules on taking the evidence in international arbitration, adopting a Civil Law- alternative will no doubt become famous in Bahrain.

5. Critical Analysis of the Meeting

The speeches of the participants were presented at the meeting, during which Mr. William Slate II stated that, "an excellent team of experts and specialists prepared the draft of the new Arbitration Rules of the Bahrain Chamber

for the Settlement of Disputes, which was verified by a large number of academics and practitioners in the profession, reflects the great interest that the Bahrain Chamber has in settling disputes in arbitration proceedings. Certainly, the experience and competence of the members of the Arbitration Rules Development Committee, composed of Messrs. Nasseeb Ziada, Adrian Win Stanley, and Antonio Parra are unsurpassed and unmatched by tripartite commission to create a set up for the same purpose. Where the results of their work, which they have shared are based on fundamental arbitration rules considering the requirements of the present and anticipate future demands.”

Lord Goldsmith QC, Head of European and Asian Litigation at Debevoise & Plimpton LLP, added that “the strengthened arbitration practices are beneficial for the emergence of regional centers around the world to promote arbitration as an effective and efficient method of dispute resolution. This positive trend has continued with the launch of the new arbitration rules by the Bahrain Chamber for Dispute Resolution. Much effort has been devoted to the new draft rules.”

These rules refer to the comprehensive but modern approach to the practice of arbitration in the region. It is expected that the Bahrain Chamber for the Settlement of Dispute achieved more success with the launch of the new Arbitration Rules. In turn, Mr. Jad Kessler, a partner at Porter Wright Morris & Arthur LLP in Washington, DC, said that, “The Bahrain Chamber of Dispute Resolution is a pioneer in this field not only because of its leadership, rather because it corresponded to the transparent settlement of international disputes within the framework of rules and regulations for the observance of national and international law, while the trend is developing in the interest of regional arbitration centers.”

Mr. Alec Emerson, former head of the Dispute Resolution Group of Clyde & Co Dubai added that, “With the emergence of the Gulf region and its large number of arbitration centers. It is important for the centers wishing to excel in the performance of their work, to ensure that his firm not only focuses on the prompt and efficient management of business, but also extends to the need to constantly review and update the arbitration rules it adopts and applies. Therefore, new draft arbitration rules launched by the Bahrain Chamber for the Settlement of Dispute is welcomed wholeheartedly and requested to participate in the morning discussion session held on the sidelines of the annual conference of the International Bar Association in Washington, D.C., where leading arbitration experts review the proposed amendments.”

6. Propositions

The current study sheds light on the intervened changes in the arbitrational rules that are important for the settlement of international dispute. On the basis of the above-mentioned discussion, the study provides the following propositions:

- a) The first proposition addresses the Bahraini legislator to prepare an advanced draft law called the Amended Arbitration Law, which includes the most recent texts. These texts contain the laws of the precursors in the publication of arbitration laws guided by the Model Law on International Commercial Arbitration prepared by the United Nations Committee in 1985. Later, it was amended in 2006 to take the provisions related to legal system with some modifications and additions corresponding to the reality of Bahrain’s economic policy.
- b) It is suggested that the legislator should organize arbitration within the framework of regional and international institutions to provide guarantee and encouragement to the investors to invest in Bahrain.
- c) It is important to adhere to international agreements governing arbitration, in particular the Implementation of Foreign Arbitration Provisions, the 1958 New York Convention on the Recognition, and the 1965 Washington Agreement on the Settlement of Investment Disputes. This will encourage foreign investors to invest in Bahrain and make them clearly understand the legal environment of Bahrain available for investment.
- d) The privacy of regional situation of Gulf States is maintained by merging international legal provisions while settling disputes and making amendments in the implementation of unsuitable foreign judgments. The arbitration law needs to be followed in the implementation of decisions of foreign court and foreign provisions of arbitration to make arbitration highly effective and a procedural guarantee and settle the issue related to investment and other disputes.

7. Conclusion

Arbitration has been considered as a flexible, efficient and proactive mechanism for solving disputes. The parties have the freedom to choose whichever procedure suits them best and courts are able to provide these to them appropriately and constructively. The institutions are capable to implement the conditional measures to counter the concerns faced by the field of arbitration in a quick and effective way. The Legislative Decree No 30 is a great change which shall provide direction to the international arbitration to a whole new different level of excellence

and potentiality. The appreciation and credit go to Bahrain institutionalizing the much-needed change in regard to the trend in international arbitration is concerned in the Middle East.

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