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An Analytical Look at the Importance of a Legal Organization for the International Electronic Commerce Arbitration Body: Comparative Study between a Draft Law on Arbitration in the UAE and the French and English Laws

Azab Alaziz Alhashemi

Assistant of Secretary General for the Arab Federation of

Engineering Arbitration, Egypt

✉ azabalazizalhashemi@yandex.com

ABSTRACT

This study provides theoretical and practical viewpoints regarding the law required to be applied to proceedings in the field of international commercial arbitration. The Emirati arbitration has been compared under

UAE, French, and English laws. The regulations, rules and procedures of international arbitration bodies, institutions and chambers have also been undertaken in this study. This study presents the subject that was not covered from theoretical and practical viewpoint. By discussing the international electronic commerce arbitration body, this study provides insights for researchers, arbitrators, lawyers, judges with the emphasis given to all the English and French Arbitration Act along with the rules and regulations of national and international arbitration institutions and chambers. Similarly, the importance of this issue lies in the importance of arbitration as an alternative means to litigation to settle disputes. When the role of the arbitration board arises from the agreement of the parties to the arbitration dispute and from what is stated in the arbitration contract or arbitration document in the rules that obliges the parties to the arbitration to sign an arbitration document at the beginning of the proceedings. Therefore, proceedings begin because a party to the arbitration dispute expressed its desire to settle the dispute by arbitration, i.e., from the time of the request for arbitration until the award is issued in its final form.

Keywords: *Comparison, Electronic arbitration, French Law, International Disputes, UAE law*

INTRODUCTION

Electronic commerce is defined as commercial activities of products and services that are carried out using information technology (IT). It serves as an international network, and an electronic data interchange to make commercial transactions, whether between individuals or between individuals and organizations, whether locally or internationally. It should be noted that in the previous definition, the conduct of commercial activities is not limited to those that are held through the Internet only, as

there are other similar networks such as, International Labor Organization (ILO) and Unix to Unix Network (UUNET), which provide new markets for commerce and consumers who wish to contract electronically. Whereas other individuals may also rely on the definition of an electronic contract which states the criterion for the status of parties held in a legal relationship that constitutes it. According to the definition, electronic commerce is defined as 'to carry out all or part of the commercial transactions of goods and services that take place between a business or between a trader and a consumer, using information and communication technologies.'¹

The standards to clarify the concept of e-commerce contracts of the case law varied, leading to the difficulty of establishing a comprehensive standard for the definition of electronic contract, the diversity in the electronic contracts, the complexity of this field, and the rapid development in the field of information along with the increase in Internet connectivity.

International commercial arbitration has progressively become a renowned approach for the resolution of electronic commerce disputes because of its global, inexpensive, and speedy nature. On the contrary, this type of arbitration might experience several doctrinal and consumer issues that threaten the legal authenticity of its processes in the digital world. Therefore, this study intends to examine whether or not there are any legal barriers for using online arbitration or to the identification and enforcement of commercial arbitral awards throughout the existing legal framework in the UAE.

This study sheds light on the issues associated to the international commercial arbitration which includes (1) lack of specialized literature dealing with material related international commercial arbitration; (2) lack of sufficient legislative regulation for international commercial arbitration in the UAE law, and lack of absence of arbitral awards rendered in legal regulation of e-commerce. A comparative analytical method has been adopted to cover the following topics.

¹ UNICTRAL Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade for the year (1996), (2010).

First requirement: Legal regulation of e-commerce, *second requirement:* The arbitration board applies the applicable law according to the law of the will. *Third requirement:* The position of international treaties and standing bodies on the discretion of the arbitral tribunal to determine the applicable law. *Fourth requirement:* The position of legal systems on the discretion of the arbitral tribunal to determine the applicable law, and *Fifth requirement:* Discretion of the arbitral tribunal to determine the law to be applied in accordance with the provisions of arbitral tribunals.

DISCUSSION

I. FIRST REQUIREMENT: LEGAL REGULATION OF E-COMMERCE

The first requirement is based on the legal regulation of e-commerce, which is discussed by shedding light on the issues associated to the legal regulation of e-commerce, the international regulation of e-commerce, legal regulation electronic transaction issues, justifications for electronic transactions, and control on the use of electronic transactions.

A. Issues relating to the Legal Regulation of E-Commerce

There are several issues related to the legal regulation of e-commerce. Some of them includes,²

1. Legal regulation of electronic contracts
2. Legal regulation of the digital signature
3. Legal regulations for the registration of websites
4. Legal organization for domain name and address registration
5. Legal regulations for the filing, registration and certification of electronic documents

² UNCITRAL Electronic Commerce Act of (1986)

6. Legal regulations to pay for goods and services via the Internet
Online payments
7. Legal regulation of the delivery of goods and services in electronic transactions (Delivery of goods and services)
8. Legal regulation of securities transactions via the Internet (Stock market transactions)
9. Fiscal and customs legal regulation of electronic transactions
(Taxation and Customs)

B. The International Regulation of Electronic Commerce

The international agreements have legalized between themselves and other countries to regulate electronic commerce as a means of selling and purchasing goods. This regulation is based on marketing terms, promotion, conclusion of contracts, method of payments, formal and material provisions governing procurement and dispute resolution in a specific way. In addition to model projects by international organizations governing electronic commerce between countries and in the presence of the World Trade Organization (WTO) and its specialized agencies, international legal regulation of electronic commerce is centralized.

C. The Internal Regulation of e-commerce

To develop an increasing flow of e-commerce, whether among citizens of one country or between citizens of two different states, many countries have organized or began to organize e-commerce in a number of legal ways.

Developing Specialized Techniques

Some countries or states within those countries have enacted specialized legislation, for example, to regulate electronic commerce, to regulate communications over the Internet and to follow electronic signature systems. However, to strengthen the developments in e-

commerce, certain amendments are required in the current legislations. This further pinpoint the need to identify necessary changes made by countries to their existing laws which includes civil law, the law of evidence, and other commercial laws related to banking, credit, money market, real estate registration and documentation laws, criminal laws, tax and customs laws, etc., that are associated to the regulation of electronic commerce issues.

The Objective of The Development of a Law on Electronic Commerce

The aim of the Electronic Commerce Act is to confirm the validity of transactions carried out through electronic media, which is used to edit, transfer or store data and contracts related to such transactions. In order to achieve this objective, the Electronic Commerce Law focuses mainly on establishing legal principles that allow the recognition of electronic publishers as a substitute for traditional paper-based media. It also helps in recognizing the electronic signature and equality between electronic publishers and the electronic signature in terms of argument in legal evidence and between paper publishers and the traditional signature that is on paper. E-commerce can be seen as a multidimensional concept and can be emerged in six forms. Perhaps the most important of these forms is e-commerce between business of different establishments and between these establishments and consumers.

B2B E-commerce

It is one of the oldest types of e-commerce and is designed to deal with merchants and other B2B channels. This type of exchange takes place between different business entities, in which the Internet is used to submit purchase orders to suppliers and receive invoices in exchange of purchase requisitions to other business units. This leads towards the exchange of data and information until an agreement is reached between them, at that time both parties can conclude an electronic contract for the supply of goods and services, receive invoices and make payments electronically. As

for the supply, it may be electronic or physical, depending on the agreement or the nature of the goods and services.³

B2C e-commerce

It is designated by the symbol (B2C) and is used by the customer to purchase products and services via the Web. There are Internet shopping malls or virtual malls for providing all kinds of goods and services, and this form is used by the commercial facility to access new markets.

Consumer Electronic Commerce (C2C)

This type of e-commerce takes place between two consumers via the Internet, and this group of people buys or sells directly on the Internet and then resell their products to other consumers to attain high profits via specific websites such as ouedkniss and Al-Waseet. These websites allow many users to display their goods, products, real estate and other property for online sale and trade purposes.

Business-to-Administration (B2A) Electronic Commerce

It covers all transactions that take place between business units and government departments, such as the United States and Canada post procedures, regulations and transaction forms on the Internet so that businesses can view them online and complete the transaction process electronically without having to deal with a government office.

Electronic Commerce Between Consumers and Government

This type of form has recently begun to spread in many countries. For example, in Malaysia an individual can pay taxes electronically as in Malaysia and obtain a driver's license in Dubai. It is intended to allow the citizen to conduct transactions with the management via the Internet. In

³ United Nations Commission on International Trade Law. UNCITRAL Model Law on Electronic Signatures with Guide to Enactment, 2001. United Nations Publications, 2002.

this way, it would increase the efficiency of the public sector and save citizens' time and effort. It should be noted that this type includes tenders and call-ups issued by the government for services provided to citizens electronically.

E-commerce

This is green e-commerce within intra-organizational trade and includes international organizations that use technology to communicate between its branches, divisions or subsidiaries. For example, a computer in one of the companies is pre-programmed as if the existing goods in the company were diminished. For a certain amount, the program automatically activates and sends an e-mail to the main computer located in the warehouses of the company via an internal network that includes sending goods equal to the decreased amount and quantity. The main power is on receiving the message and giving an order appears on the screen to send the ordered goods, with instructions is another electronic calculation of work compensation between the company and a warehouse of the branch to reimburse the value of disbursed goods.

E-commerce Tools

E-commerce has many forms and tools, including tools to display goods and services, to deliver goods and for pre- and post-sales services. However, the two most important elements include:

1. Tools for electronic payment systems such as electronic funds transfer (EFT), inter-bank transfers, and magnetic cards such as smart cards, Mondex, e-purse, digital money, e-money and electronic payment tools. These tools are included in the scope of implementation of electronic contracting.
2. Business exchange tools, i.e., EDI, e-mail and electronic contracts.

D. Legal Regulation of Electronic Transaction Issues

The most important objective for the legal organization of electronic commerce relations and transactions is to achieve justice and its right, which requires the need to provide legal protection to all dealers in the field of electronic commerce and to meet the challenges facing its organization and development. At the forefront of these challenges are the lack of recognition of these transactions, lack of authenticity of their documents, controls on the use, confidentiality and security of electronic information, and the legal value of an electronic signature.⁴ These problems are addressed in the context of the United Nations Model Law on Electronic Commerce of 1996 and Model Law on Electronic Signatures of 2002. Several other models were also developed such as the Tunisian Law on Trade and Electronic Commerce No. 83 of 2000 (1), the Jordanian Law on Electronic Transactions No. 85 of 2001, and the Law of Emirate of Dubai on Electronic Transactions, Trade No. 2 of the United Arab Emirates of 2002, and the Egyptian Law on Electronic Signature No. 15 of 2004.

Justifications for Electronic Transactions

There is no doubt that one of the most important challenges facing electronic transactions is the issue of denying their authenticity or its strength to prove or to question the validity of data or provided signatures. The laws stipulate that there is no distinction between electronic writing and other forms of traditional writing, which is identical to what the law approves for electronic signatures in terms of authenticity. The electronic signature has the authenticity prescribed for signatures in the provisions of law on evidence in civil and commercial matters when it has been made in accordance with the conditions established and stipulated in the law.

In order to obtain this legal effect i.e. electronic writing and electronic signature, it is necessary to fulfill the conditions and controls required by law. In the report of that decision, legislators referred to the Model Law on

⁴ UNCITRAL (2001)

Electronic Commerce and the Model Law on Electronic Signatures. Article 5 of the Model Law on Electronic Commerce approved the legal effect of electronic data, including their authenticity and accessibility. Article 9 of the form also prohibits the denial of the authenticity of an electronic data message in evidence simply because it was issued in that form or because the person failed to provide the original.⁵

The third article of the Model Law on Electronic Signatures also approved the authenticity of signature and its legal effect whenever the requirements of the first paragraph of article six of the form were met, as well as the requirements of applicable law. The Tunisian law on electronic commerce approved the authenticity of electronic contracts in accordance with the first chapter of that law, which stipulates that electronic contracts must have a written contract system in terms of the expression of will, legal effect, validity and enforceability in a manner that is not contrary to the provisions of that law. Based on this text, electronic contracts will apply to all electronic contracts in relation to all possible legal effects.

It is the same as that determined by the Jordanian Electronic Transactions Act, the first paragraph of article seven of which stipulates that electronic records, electronic contracts, electronic messages and electronic signatures shall be regarded as products of the same legal effects resulting from written documents and written signatures in accordance with the provisions of the legislation in force in terms of binding them to their parties or their power to evidence.

This is the same as required by the law of the Emirates of Dubai concerning emirate e-commerce transactions and the Bahraini e-commerce law, which establishes electronic records with the authenticity prescribed in the proof of cognitive documents. According to the fifth article, it was not permissible to deny the legal effect of the electronic signature in terms of its validity and the possibility of working according to it, simply because it was received in whole or in part in electronic form. If the law requires the signature of a document or the organization of an effect, it was legally

⁵ UNCITRAL Law on International Commercial Conciliation with Guide to Enactment and Use 2002 United Nations Publications, New York (2004)

exempt from signature. Therefore, if an electronic record was used in this regard, the electronic signature contained therein satisfies the requirements of this Act in accordance with article VI. This is the same as required by the English and French Electronic Signature Act issued in 2002, or the U.S. Electronic Signature Act issued on June 30, 2000.

E. Controlling the use of Electronic Transactions

It is difficult to recognize the absolute authenticity of electronic transaction documents and signatures on them without adopting a system that guarantees the authenticity and integrity of these documents and signatures, and to verify the identity of resellers and the confidentiality and privacy of their information. Among the controls and conditions necessary for the use of authentic electronic writing as evidence, three objectives were achieved:

First: The electronic signature is linked to the person who signed the signature alone. *Second:* The authority of the signatory alone is exclusive to the electronic medium. *Third:* The possibility of detecting any modification or alteration of the electronic publisher's data or the electronic signature.

Both laws dealt with different forms of electronic commerce and electronic signatures in order to establish controls for the enjoyment of genuine electronic transactions. For the Model Law on Electronic Commerce, article 7 requires the use of a system or means to verify the signature of resellers through electronic means, its conformity with their actual signature and their acceptance of data or information received in terms of messages exchanged, and left Model Law for Countries Developing Legislation on Electronic Commerce.⁶ The question of defining such a system or means and formulating its method of work is to ensure its impartiality and accuracy in the performance of the work which

⁶ UNCITRAL Law on International Commercial Conciliation with Guide to Enactment and Use 2002 United Nations Publications, (New York 2004)

requires the approval of a neutral party as a court or arbitrator. Article Seven clarified that the system or means used to verify dealers by electronic means and the conformity of their signatures must be appropriate for the purpose of the exchange of messages or their transmission by electronic means, taking into account all the circumstances, including the agreement or understanding reached by the parties.

These rules leave each country free to choose the appropriate system to verify the validity of electronic transactions and to match signatures of its customers and its relationship to their population, as these rules were developed to guide the development of national legislation. Article VI of the electronic signature model required that, for an electronic signature to have legal effect, its authentication should be performed in a reliable manner consistent with the purpose for which the electronic data message was issued or communicated. It also showed some instances where the signature was considered reliable⁷, such as:

1. Signature creation data must be linked to the person who signed the signature and not to others in the context in which they are used.
2. The signature creation data are subject to the control of the signatory and not of others at the time of signing.
3. It is possible to discover any changes in the electronic signature after it has been made.
4. If the purpose of requiring the signature to be legal, is to confirm the integrity of data on which the signature was placed, however any change in that data after the signature is detectable.
5. Since these rules do not preclude any party from verifying whether or not the electronic signature is otherwise valid.

Article 8 of that model law obliges those who sign the electronic signature that has legal authority to exercise due diligence to avoid using an unauthorized electronic signature. Article IX also requires the authentication service provider to exercise due diligence to ensure the control and completeness of all devices and tools used in connection with

⁷ UNCITRAL Rules on Electronic Commerce, revised in (2010)

electronic certificates or its time period and to facilitate customers to verify the authenticity of those certificates and the corresponding signatures which were made at the time of issuance of the certificate. Tunisian law has also established a system to verify the validity and integrity of electronic transactions, Chapter V of which stipulates that anyone who wishes to sign an electronic document may create his electronic signature through a reliable system whose technical specifications are set by a decision of the Minister in charge of communications.

In addition, any person who uses an electronic signature system - in accordance with chapter six of the Act - must take precautions to prevent any illegal use of encryption elements or personal equipment related to his signature. It informs the electronic authentication service provider for any illegal use of his signature and guarantees the reliability of all data declared by a service provider. Electronic authentication and for all parties who have been asked to trust his signature.

Chapter eleven of the law obliges any natural or legal person wishing to carry out the activity of an electronic authentication service provider to obtain a prior license from the National Agency for Electronic Certification, such that the legislator decided to create in accordance with chapter eight as an institution following legal personality and financial independence based in Tunisia and not having administrative capacity and subject to commercial law. It was responsible for licensing the electronic authentication service provider's business and monitoring its compliance with the provisions of the law, specifying the specifications of the signature, compliance and audit system, as well as certain other tasks, including the issuance, issue and maintenance of electronic certification certificates.

Jordanian law required that the electronic record or electronic signature be authenticated, otherwise it would have no authority (in accordance with article 22 of the law), and the electronic record was considered to be documented - in accordance with article 30 - if it was made in accordance with authenticated or commercially acceptable documentation procedures agreed between the parties to the relationship. An electronic signature was

considered authenticated if it was distinguished solely by its affiliation with the person in question. It was sufficient to identify the person as its owner and was created by means of the person under its control, with a link to the record which is associated to it in a manner that does not allow the record to be altered after it is signed without effecting any alteration to the signature.

According to section 32 of the Act, an authenticated electronic signature was deemed to be issued by the person to whom it was attributed and to have been created by him or her to demonstrate his or her agreement with the contents of the bond and that the authenticated electronic record has not been changed or modified since the date of his or her authentication procedures. The law of the Emirate of Dubai also requires that the electronic signature report must be protected or enhanced, while article 20 of the law stipulated that:

A signature shall be considered to be a protected electronic signature if it can be verified by the application of court documentation procedures, as provided in this law or if it is commercially reasonable and agreed upon by the parties, that the electronic signature was at the time when:

1. It is unique to the person who used it.
2. It is possible to prove the identity of that person.
3. It is under the full control of that person, either with respect to its creation or the means of its use at the time of signing.
4. It is linked to the electronic message associated to it or in a way that provides reliable confirmation of the security that is no longer protected.

In the case of electronic information, Bahraini law requires that the recipient must be able to access and retrieve it later, whether by dissemination, printing or otherwise, and that the recipient must be able to save the information.⁸ The following elements must be taken into account when assessing the authenticity of the electronic recording of evidence when a dispute arises over its security:

⁸ United Nations Commission on International Trade Law. UNCITRAL Arbitration Rules (2010). (2011).

1. Degree of confidence in the manner, in which the electronic recording was created, stored or transmitted.
2. Degree of confidence in the manner in which the electronic record was signed.
3. Degree of confidence in the method used to maintain the integrity of the information contained in the electronic record.
4. Any other issues related to the integrity of the electronic record.

II. THE SECOND REQUIREMENT: THE ARBITRATION BOARD APPLYING THE LAW OF WILLS

The Emirati proposal was in favor of the Arbitration Law on the principle of consent to arbitration from its inception and during its proceedings. Accordingly, in this case, the arbitration committee was bound to respect the will of the parties to the arbitration dispute and not to violate the provisions of arbitration in the course of its agreement. This is due to the fact that the source of arbitration served as the will, as for State legislators and drafters of international agreements, will is an important and plays a decisive role in determining the applicable law.⁹ Most case laws were supported this direction, as held in the case of international commercial arbitration in the sense the arbitral tribunal may determine the rules of procedure for itself which deems appropriate to the circumstances of the arbitration dispute, while respecting the fundamental guarantees of the dispute.

In view of the broad power granted to the parties with respect to the choice of procedural rules governing the arbitration process, it has been noted that the parties are entitled to exercise this freedom, in the manner they deem appropriate, or in the following ways:

⁹ Egyptian Civil Law published on 9 Ramadan 1367 accompanying (1948)

First: In their agreement, the parties may begin the process of defining the arbitration procedures by disclosing among themselves and following the procedures through legal means in the event of a dispute between them. *Second:* The parties may agree to entrust this task to the arbitration board on their behalf, i.e. to refer to the arbitration board all matters relating to the arbitration proceedings, irrespective of the details of those proceedings. The parties consider that the measures taken by the arbitration board are decided by their will at the outset.

Third: the parties may agree to follow procedures stipulated in a specific national law, and it is conceivable that the parties to the arbitral dispute choose a specific national law to govern the arbitration proceedings for many purposes, including the belief of the parties that such procedures are more appropriate for arbitration than others considering the simplicity of procedures and their distance from complexity. The parties may choose the same law to rule on the subject matter of the dispute, and they may choose the same law to apply to the proceedings. Rather, it is possible for the parties to the arbitration dispute to agree to submit the arbitration, to procedures that were stipulated in a repealed law, and it is therefore possible to agree to submit the arbitration proceedings to the procedures and time limits that were provided, despite the repeal of these texts and the enactment of the arbitration law.

Fourth: The parties choose the rules of procedure from a body of national laws and regulations of regional or international arbitration bodies, so that they are a mixture of all of them. The parties to the arbitration dispute sometimes use this method in order to arrive at procedures that are quick and far from complicated, for example the rule for forming a body Arbitration. The parties to an arbitration dispute may see it taken from the English Arbitration Act because they consider it most appropriate. The rules for arguing before the arbitration panel may choose it from the French Arbitration Act and so on, until the rules of procedure were completed. These are represented as the forms of expression of will in the field of the law Applicable to International Commercial Arbitration Proceedings.

It is called “absolute arbitration” or “arbitration without law” and this designation was derived from the fact that it does not adhere to a legal system or certain procedural rules but rather is a mixture of all the laws and rules chosen by the parties. The question here is whether implicit will has a role in determining the law to be applied to arbitration proceedings, or is it limited to the explicit will?

In order to answer this question, part of the case-law directs that the will of the parties may fulfill its function of determining the rules of procedure, so this will have to be explicit and clear. It is possible in the field of law applicable to contracts to seek the implicit will of the contracting parties if they do not provide timely will. This is due to the fact that in the field of arbitration, it is impossible to say that the implicit will of the opponents can be invoked.

Whereas, another direction of French case law sees that the rule of application of the law of the will on procedural questions in the field of arbitration, as stipulated in Article (1/5 / d) of the New York Convention of 1958 AD does not mean the commitment of the judge only to the law explicitly defined by the will of the parties. It can also be recommended by the apparent text of the agreement, which also means giving the judge the opportunity to disclose the law that the parties' implied will has revealed in the event that they do not explicitly state their choice of law.

The researcher believes that the second opinion that takes the implicit will is the closest to the right, because the expression is the direct expression of the will. The direct expression as accepted by people is in writing and by reference, otherwise the indirect expression is by accepting or rejecting the ideas provided by the will. The parties to the dispute may explicitly define the applicable law in the arbitration agreement, for example by stating that the applicable law is Jordanian or Egyptian law, and the parties may implicitly accept this law by the fact that the parties agree to choose Jordanian or Egyptian law.¹⁰ The Egyptian will conduct the arbitration and may not agree at the same time that the proceedings are

¹⁰ Egyptian Civil Law (1948)

subjected to another law, so their agreement will be evidence of the application of law of the place of arbitration. It is well established that the mere fact of entrusting arbitration to an arbitration center implies an agreement to follow a set of rules and the rules it contains concerning procedures.

Moreover, certain examples of express images were given in the definition of the law applicable to the contract, where the contracting parties name a law by name, provided that the arbitration dispute was referred to it, and this can clearly be in the field of international trade and transport, where the use of standard contracts was common. Each of them was subject to the law stipulated therein, and all disputes arising out of that contract were subject to the law stipulated therein, for example, contracts for trade in cotton, rubber, grain or shipping contracts, and may be a choice of law the applicable rule is a tacit choice, which the judge extracts from the circumstances.

It is surrounded by the contract, for example, to ensure that the consideration of disputes relating thereto falls within the jurisdiction of the courts of a particular country or is submitted to arbitration by an arbitrator of a particular country, or of a particular country whose intention to leave the parties subject to the law of the country of the judge or the law of the State of the arbitrator, may be extracted and documented from the contract with a notary. A certain person or revising it in a specific language, or agreeing to perform a specific task, the judge may extract from it the existence of an implied intention to apply the law of the State to which that document is affiliated, or the law of the country in which that language or currency is used.

Given the difficulty encountered by the parties in choosing the rules governing arbitration proceedings, because they do not take notes of all the details expected of the dispute or may not have sufficient knowledge of the legal aspects, they choose rules that are not adapted to the dispute submitted to arbitration. Its use in the arbitration of special cases is due to the arbitration rules issued by the United Nations in 1976.

In addition, moderation in the law of the will prevails in free arbitration, and in this type of arbitration, the parties do not choose a permanent arbitration center, but the arbitration takes place according to the will of the litigants, in terms of how to proceed with the arbitration proceedings and determine the applicable law. If this type of arbitration comes back, someone has been confronted with the arbitration of permanent centers. However, it still has its place in certain areas of importance, such as arbitration in the field of competition between enterprises, in patents, technology transfer contracts and international concession contracts. The parties to such arbitration may organize the conduct of the dispute according to the rules of procedure or a combination of many arbitrations center rules, so that they are an element that is not related to those rules.

Consequently, the Emirati legislature must endeavor to establish the principle of the freedom of parties in determining the procedures followed by the arbitration panel on the arbitration dispute. Since article (24/A) of the Jordanian Arbitration Act stipulates that “the parties to the arbitration shall agree on the procedures followed by the arbitration board, including their law by subjecting such procedures to the rules followed in any arbitration institution or center in the Kingdom or abroad”.¹¹ The researcher believes that each of the proposed UAE legislators comes from a single source, which is the Model Arbitration Law published by the United Nations Commission on International Trade.

It is apparent from the text of this article (24/A) that the proposed UAE legislator has subjected to the arbitration proceedings to the rules agreed upon by the parties in the first place while recognizing them in complete freedom, defining these rules where they were allowed to be formulated in the arbitration agreement, the rules of procedure, which are mandatory to be followed before the arbitrators. The legislator agree that the procedures shall be applied in accordance with the rules in force in an institution or arbitration center in the United Arab Emirates, or outside such as the rules of the International Chamber of Commerce in Paris, or the

¹¹ Jordanian Electronic Transactions Act No. 58 of (2001)

Arbitration List of the United Nations Committee or the rules of the Cairo Regional Centre for Commercial Arbitration States.

Thus, according to the provision of Article (24) of the UAE Arbitration Law, the parties shall depart from the procedural rules that this law has drawn up, to regulate the arbitration proceedings, as it is the law that should be applied to the arbitration proceedings because the arbitration takes place in the United Arab Emirates.

In this way, the parties to the arbitration dispute can establish procedural rules of their own creativity to regulate the conduct of the dispute and its procedures in terms of the location of the parties to the arbitration, their dates, the language used in their proceedings. The rules used to hear witnesses, appoint experts, how to advertise, organize the exchange of the rights of defense and provide documents that explain the reasons on which each party relies to prove its requirements and legitimate right, and we note that the Jordanian legislature has given this power. The freedom of the parties to the dispute choose the law applicable to the proceedings of the arbitration dispute, since they are able to know what is in their interests, and accused them. Therefore, he allowed them to deviate from the ordered rules, provided that they organize cases in which it hears the interests of the parties. This freedom presents itself to them only as an obstacle to the violation of public policy, and this is an advantage of arbitration, characterized by speed, confidentiality and specialization, and avoiding conflicts of laws and jurisdiction.

In addition, if Article (24) above has decided on the principle of the freedom of the parties to choose the procedures and not indicated their right to submit, these procedures rule the force in a specific foreign law. This can be seen by extrapolating the text of Article (27) of the UAE Arbitration Bill, which states that “the parties to the arbitration shall agree on the place of arbitration in the UAE or abroad, and if there is no agreement. The arbitration committee shall designate the place of arbitration, which means that the parties to the dispute are free to choose the place of arbitration in accordance with the above text, and they may also and indirectly choose the law under which the arbitration is subject to

its rules of procedure. In accordance with the principle, the arbitration is subjected to the procedures in force in a specific foreign law despite the arbitration procedure in the United Arab Emirates.¹²

As for the French law on arbitration, it provided for the freedom of the parties and their willingness to organize the arbitration proceedings, either directly or by referring to an arbitration law or to a law of Law No. 48/2011. However, the basic principles of the case set out in Articles (4 to 10) and the first paragraph of Article as well as the second and third paragraphs of Article (12) and Articles 21 and 23 are still applicable. The parties and the arbitrators shall conduct the proceedings expeditiously and honestly, taking into account contractual obligations. Arbitration proceedings shall be subject to the principle of confidentiality, unless otherwise agreed by the parties. As such, it can be said that French law was extremely liberal, and this liberal methodology was decided on two levels.

First level: The parties are free to define procedural rules without reference to any national law. *Second level:* Where reference is made to French law, it has allowed the parties to be able to fragment its rules and choose the rules that suit them and exclude others even if they are mandatory and form part of the basic rules geared to litigation in the Act on domestic procedural acts.

It was noted that when the freedom of the parties to the arbitral dispute reaches the level of liberation from all national laws according to their willingness to draw up the rules of procedure, the case may be qualified as arbitration without law or free arbitration. According to the provisions of English law, the will of the parties to the dispute plays its part in determining the stages and procedures of arbitration, since the case before the arbitration board is the business of the parties and each of them is anxious to present its claims and defend it before the board in a convincing manner through appropriate procedures so that the arbitral award is not set aside. The arbitral award shall be binding on the parties to the dispute, or not to recognize it, or not to implement it in the country to which it is to

¹² Jordanian Electronic Transactions Act No. 58 of (2001)

be submitted for that purpose. On the contrary, the power of arbitrators in determining arbitration proceedings derives from the will of the parties to the extent permitted by the applicable law.

The English Arbitration Act gave the disputed parties the power to agree on the procedures they wished, and those to be followed by the arbitral tribunal (articles 15, 16, 23 and 34). The text of article 68 (2) (c) set aside the arbitral award if the arbitration board was unaware of the rules of procedure that the will of the parties tended to apply to arbitration disputes. As stated in paragraph E of the same article, the arbitral award was null and void if the arbitral tribunal or any other person authorized by the parties exceeded certain powers in relation to the proceedings.

Furthermore, the English legislature has given the judge in case of a fundamental breach of the procedures that the arbitral award be referred in whole or in part to the arbitration board. The judge thus, has the right to set it aside in completely or in part, or to refuse to give it the executive form of the decision in completely or in part and this is stipulated in section (68/3 A, B and C) in the English Arbitration Act.

III. THE THIRD REQUIREMENT: THE POSITION OF INTERNATIONAL TREATIES AND PERMANENT BODIES ON THE DISCRETION OF THE ARBITRAL TRIBUNAL IN CHOOSING THE LAW TO BE APPLIED TO THE ARBITRATION DISPUTE

The rule of origin, as noted above, is the willingness of the parties to agree on the rules governing arbitration proceedings. However, there may be cases where there is no agreement between the parties to settle procedural issues or where the parties agree to allow the arbitration panel to choose the applicable law as the arbitral body has with the same freedom or possibility as the litigants had in this regard. In such cases, the arbitral

tribunal shall determine for itself the rules of procedure which it considers most appropriate to the circumstances of the dispute. It shall have the right to decide to follow the system of procedure approved in the roster of an organization or permanent arbitration center. It may decide to follow the procedural system of either country. The authority of the arbitral tribunal to regulate the procedures of arbitration thrives and becomes clear in arbitration of special cases, where the parties do not agree to regulate them, or refer to the law, or specific arbitration rules, or in the case of institutional arbitration.¹³

The positions of international treaties, agreements, and permanent bodies differed from the question of the discretionary power of the arbitrator (arbitration body) in determining the law to be applied to the proceedings. Some of them enforced its own rules of procedure, with the will of the parties to the arbitration dispute not to violate these rules, which we will answer through the following examples:

Article 4 of the Rules of the Abu Dhabi Centre for Commercial Conciliation and Arbitration of the Dubai Chamber of Commerce and Industry for the year 1994 AD provided that “In the absence of a special agreement between the parties, the conciliation or arbitration bodies shall be competent to determine the rules of procedure or substance necessary to settle the dispute before them”. This was also stipulated in the same vein. Under this system a specific issue in the dispute is governed,

In the event of disagreement, the Conciliation or Arbitration Committee shall determine the procedures to be followed without prejudice to the mandatory provisions of the laws applicable in the Emirate.

Article (44) of the 1965 Washington Agreement stipulated that arbitration proceedings shall be conducted in accordance with the provisions of this section and in accordance with the arbitration rules in force on the day of the arbitration agreement, unless the parties concerned agree otherwise and if a question is raised relating to proceedings not included in this Section. Alternatively, in the arbitration system or any

¹³ Tunisian Law on Trade and Electronic Commerce No. 83 of 2000

other rules agreed upon by the parties, the court should decide the question.

The law chosen by both parties means that the Centre's list has given the arbitrator the power to rule on any dispute that may arise between the parties to the arbitration dispute, concerning the contract concluded between them, or in any contract, a subsequent agreement between them. The arbitrator has been authorized to rule, in the event of disagreement between the arbitrators, on the law applicable to Litigation Proceedings, and the power to choose any law that applies to the arbitration as he or she deems appropriate. The New York Convention adopted the principle of the freedom of the parties to determine the law applicable to arbitration proceedings, but in case of disagreement between the parties, it decided to apply the law of the country in which the arbitration took place, i.e. the law of the place of arbitration.

This was mentioned in Article five(d), which states that “No refusal to recognize and enforce the ruling on the basis of the request of the opponent invoking the ruling shall be permitted if such surrender is submitted to the competent authority of the country to which it was obliged to recognize and enforce evidence that the formation of the arbitration panel or the arbitration proceedings were contrary to what the parties have agreed or to the law of the country where the arbitration took place in case of disagreement. According to the text of the above agreement, a decreasing arrangement was observed with respect to the procedures applicable to arbitration. The priority in application is what the parties have agreed, and in the event that the parties to the arbitration dispute do not agree on the specification of the applicable law, the law of the place of arbitration shall apply.¹⁴

It was clear that the agreement did not confer on the arbitrator (arbitral tribunal) the discretion to determine the law to be applied to the proceedings. The 1961 European Convention, however, went further than the New York Agreement, where it emphasized the freedom of the parties

¹⁴ Tunisian Law on Trade and Electronic Commerce (2000)

in determining the rules of procedure to be followed by arbitrators, and also emphasized the freedom of the parties to choose the type of arbitration. It stipulated in the first paragraph of the said Article that where the parties choose the type of arbitration, and one of the arbitration institutions, the arbitration proceedings shall be conducted in accordance with the rules of that institution, and this is what is stipulated in Article IV of the Europe Agreement by saying: *The parties may stipulate in the arbitration agreement that: Their disputes shall be submitted to a permanent arbitration center, in which the arbitration case shall be conducted in accordance with the rules of that center.*

If the parties agree to settle their disputes by free arbitration, without the arbitration agreement containing a statement on the procedures necessary for the organization of the arbitration, the arbitrators shall have the right to take such measures. The head of the competent chamber of commerce, or the competent commission, as the case may be, shall have the power to lay down the rules of procedure to be followed by the arbitrators, either directly or by recourse to a permanent arbitration list of the Centre. The arbitrators do not specify such rules in the absence of an agreement between the parties in this respect. This means that in the event that the parties to the dispute do not agree on the application of the rules of certain procedures, the arbitrator will follow the procedures established by the rules of the International Chamber of Commerce. In the event that these procedures are not sufficient or if the rules mentioned are silent on the treatment of certain procedural issues, the arbitrator may act on one of the national laws or he may decide on appropriate procedures without drawing them from a specific law.

Some legal scholars argued that the Europe Agreement, by setting out various solutions to the question of the law applicable to the proceedings, has created a law in international commercial arbitration, as it avoids the many problems that may arise due to a conflict of laws in the country where the arbitration takes place.

IV. FOURTH REQUIREMENT: THE POSITION OF LEGAL SYSTEMS REGARDING THE DISCRETION OF THE ARBITRAL TRIBUNAL IN THE CHOICE OF LAW TO BE APPLIED TO THE ARBITRATION DISPUTE

It may not be possible for the parties to the arbitration dispute to establish the procedural organization to be followed by the arbitral tribunal. Especially as this requires a certain degree of specialization and a qualification may not be available to them, so it is agreed to delegate the arbitrator in the definition of the procedural organization, but to delegate the choice of procedures to the arbitrator.

This may lead to unfair results, either for the unfairness of the proceedings themselves or for the arbitrator to exploit the determination of the rules of procedure, as he or she deems appropriate in a manner that may prejudice the expectations of the parties to the dispute. Hence, the arbitrator must always inform the parties of the rules, he or she intends to follow, before the proceedings begin to provide sufficient time to them to make submissions, suggest alternative measures and inform them of any subsequent changes required for the proper functioning of the proceedings. It was noted that some national laws have expressly referred to the freedom of the parties to choose the rules of procedure to be followed in arbitration proceedings, and in the event of disagreement on this matter, the arbitrator or arbitrators shall determine the rules of procedure they deem appropriate. Practical applications confirm that arbitrators rarely determine the rules of procedure, in the event of a dispute, despite their legitimate right to do so, and the arbitration board selects those rules on their behalf.

In such cases, the arbitral tribunal, whether one or more arbitrators, has the power to determine the rules of procedure which they consider appropriate for the settlement of the dispute, and the arbitrator has in this

respect powers which are not even recognized for the jurisdiction of the State, and may therefore specify the procedures to be followed. The sources from which such measures derive provided do not affect the rights and guarantees of defense, equality and justice between the opponents.

It was clear from the text of the above article that the proposed Emirati legislature will determine jurisdiction by determining the rules of procedure in the absence of an agreement between the parties to the arbitration on privacy. However, this freedom is limited by compliance with the rules and procedures contained in the provisions of the Arbitration Act in the sentence the arbitration board may choose the arbitration procedures it deems appropriate and taking into account the provisions of that Act. In this statement, the legislator intends that each arbitration body shall, when using its power, in the selection of the rules of procedure, comply with the procedural rules.¹⁵

The mandatory conditions stipulated in the Arbitration Act includes that they are obliged in all cases to comply with the basic rules governing the conduct of arbitration proceedings. Those relating to public order, to ensure equality and confrontation for each of the two rivals, and to implement the right of defense in the desired manner, must respect the rules without the need for a text, since it is a universal right in which all laws are agreed, and all arbitration institutions are international or national. The arbitral tribunal is free to choose the procedures it deems appropriate - the standard here seems to be a purely personal one, but following elements should be taken into consideration:

First: If the arbitral tribunal deliberately establishes procedural rules of procedure in accordance with the discovery of the nature of the dispute and its particulars, then it is free to establish such rules, and it has no restrictions other than the restriction of public policy.

¹⁵ Newcomer, Joshua J. "Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)-Supremacy Clause-self-executing and non-self-executing treaties-treaty implementing statutes-effect as domestic law in United States jurisdictions." *The American Journal of International Law* 105, no. 2 (2011): 326.

Second: If the arbitration board deliberately chooses a procedural system affiliated with either state, it must choose a procedural system related to the dispute before it, in a manner that does not violate the legitimate expectations of both parties, such as the system of the place of arbitration or the place where the arbitral award is enforced, or a system whose provisions are more appropriate to the nature of the dispute. It is not permitted to choose a procedural system that is not related to the dispute as compared to what we justify choosing, and where there are several laws related to the relationship, it must entail his choice of one of them without other laws. If he intends to choose the procedures in force organization or arbitration center, there are organizations or arbitration centers specializing in one type of dispute or another, then the procedures in force in the organization, or arbitration center specializing in the type of dispute before it.

As for the French law, it distinguishes between domestic and international arbitration, each of them is different with respect to text because article (1464) of the new Act on Procedural Acts stipulates that the arbitrators determine the procedures of the arbitration proceedings without the obligation to follow the rules followed by the courts unless the parties to the arbitration decide apart from the arbitration agreement. However, the basic principles of the dispute shall be applied by the arbitral tribunal as set out in Articles 4 to 10 and 11/1, and 13 to 21 from the codification of the pleadings.¹⁶

As mentioned above, the law gives the arbitrator a broad role in determining the rules, procedures, and stages of the arbitration proceedings. In this respect, it excludes the rules of procedural law, except those related to the fundamental guarantees of the dispute, since the text mentioned in its last paragraph decides to entrust the arbitrator with the task of separation by organizing and managing the means of proving the facts of the case, as well as the obligations of both parties. If the last

¹⁶ Secretariat, U. N. C. I. T. R. A. L., Emmanuel Gaillard, and George A. Bermann, eds. Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards: New York, 1958. Brill, 2017.

paragraph of Article (1460) determines procedural acts according to which the arbitrator may compel one of the parties to the dispute to submit any evidence in the case. In international arbitration, Article (1509) 1 of the French law on procedural acts stated that if the parties do not agree on the organization of the arbitration proceedings, the arbitration board was responsible for organizing the arbitration proceedings, either directly or by reference to a specific law or arbitration rules. The legislator has allowed the parties, as well as the arbitration board, to choose the way in which the rules of procedure are determined, and allowed them to settle themselves directly, or to choose one of the laws or arbitration rules, or by selecting a set of rules so that it is a mixture of all of them without the arbitrators having to observe what has come in the texts relating to domestic arbitration.

Comparing the position of the French legislator and each of the legislators proposed for the Emirates, some legal scholars have supported the said approach of the French legislator to introduce a separation between national and international arbitration that has been successful as it eliminates any confusion, controversy and debate that might arise under the Jordanian and Egyptian laws which added the treatment of all forms of arbitration in a single law. In accordance with the text of article 1495 of the Law of Procedure and International Arbitration, the arbitration texts do not apply, despite what is characterized by the texts.

As for the English legislator, it was noted that the arbitration procedures were organized to domestic arbitration and international arbitration in articles (33-45). These articles have organized the arbitration authority and the parties, to adopt appropriate rules of procedure, for the conditions of arbitration proceeding, and to save time while providing costs by reasonable and fair means to resolve the dispute entrusted to the arbitral tribunal.

Article (18) of the Syrian Arbitration Act stipulates that: The parties to the arbitration shall agree on the procedures to be followed by the arbitration panel, including their right to submit such procedures to the

rules in force in any organization or permanent arbitration center in Syria or abroad.

In the absence of such an agreement, the arbitration panel shall select the arbitration procedures it deems appropriate and in the same sense, Swiss law applies to private international arbitration. Since Article (182/2) stipulates that if the parties do not organize the procedures, the arbitral tribunal shall determine them as appropriate. This can be done either directly or by recourse to a specific law or arbitration rules. It is noted that the Swiss legislator has explicitly declared the freedom of the parties to determine the law applicable to the proceedings in addition to this, stipulating alternatives and possibilities from which the parties may choose according to the above text and Article (21 / 2) of the Spanish Law on It. Arbitration proceedings shall be a subject to the will of the parties or to the rules established by the organization or association entrusted with the management of the arbitration, or to the arbitration agreement in the absence of rules specified by the parties or by the organization or association to which the task of managing the arbitration has been assigned.

In addition, observing the second paragraph of the above article, it is noted that the Spanish legislator has submitted the arbitration proceedings as follows: on the one hand, to the will of the parties to the dispute. On the other hand, to the rules contained in the arbitration rules in force in the arbitration centers, which the parties have agreed that the arbitration shall take place under its auspices, and in the third and last rank of the arbitration board in the absence of the rules specified by the parties or by the organization or association to which the assignment of the arbitration has been assigned.

This text is identical to Article (37) of the Portuguese Law, Article (1693) of the Belgian Procedural Code, Article (1036) of the Dutch Procedural Law, Article (811) of the Lebanese Procedural Code and Article (25) of the Omani Arbitration Law, Article (25) of the English Arbitration Law and Article (212/2) of the UAE Arbitration Law stipulating that the arbitrator shall be dismissed without being obliged to follow the judicial procedures

except for the procedures stipulated in this study, and procedures for the parties to appear and present their defense aspects, as well as procedures allowing them to provide documents. However, the parties may agree on specific procedures to be followed by the arbitrator.

Where the legislator has given the board of arbitration the power to determine and select the rules of procedure that it considers appropriate without being obliged to follow the rules of procedure stipulated in the section on arbitration, this does not mean that the law applicable to the proceedings applies to the subject matter of the dispute.

V. FIFTH REQUIREMENT: DISCRETION OF THE ARBITRAL TRIBUNAL IN THE CHOICE OF LAW IN ACCORDANCE WITH THE PROVISIONS OF THE ARBITRATION TRIBUNALS

The decisions of the arbitral tribunal differed in the definition of procedural law and typical judicial power of arbitration with respect to the authority of the arbitral tribunal in determining the proceedings. The arbitral award rendered in a case concerning the dispute between the Government of Saudi Arabia and the Arab American Petroleum Company (Aramco) and the dispute concerns a contract for the exploitation of an oil field on Saudi lands (Aramco). When the Saudi Government signed a contract with another person called "Onassis" to transport oil exported from Saudi Arabia, the first thing the arbitration board was faced with, was to define the law applicable to the proceedings and decided in this area, applying the procedural rules mentioned in the machinery. It exceeded and reserves the right to supplement it with a majority decision in a manner that does not violate the provisions of the arbitration agreement.

The arbitral tribunal excluded the application of Saudi law on the ground that this law does not include specific rules concerning oil

exploitation contracts. It also excluded U.S. law not only because the arbitration took place outside the United States of America, but also works for the principle of full equality between the parties before the arbitral tribunal, after having released the arbitration from adherence to domestic procedural law. The tribunal resorted to the internationalization of the arbitration, as a prelude to subjecting it directly to the provisions of international law. The tribunal specified the subject matter of the arbitration to public international law by saying: There is a place to apply rules that include The Draft Agreement on Arbitration Procedures, which was approved by the United Nations International Law Committee at its fifth session held in New York in 1955 AD, and was supplemented with the arbitration rule on several occasions with consultations between the parties and considered it better than referring to the law of the procedural acts of a country and criticized the idea of referring in this respect to the law of the State of the seat as it did not agree with the particularities of the case.¹⁷ The tribunal decided that the proceedings should be based on an existing legal system and ruled out the idea of leaving the determination of the proceedings to its own discretion and eventually submitted the arbitration proceedings to public international law, since one of the parties to the dispute was a state.

Mainly because of the arbitration contract and the agreement between the arbitrators, the principle is to follow the conduct of the arbitration proceedings and the choice of law to be applied in the case where the arbitration agreement is free to refer to the law of a country or to the list of a permanent center, arbitration body or institution, then the arbitrator has a discretionary power. In choosing the law to be applied to the arbitration proceedings and conducting the proceedings as he or she deems appropriate, the question is whether there are any restrictions on the arbitrator's freedom to determine the arbitration proceedings.

¹⁷ United Arab Emirates Arbitration Law No. 6 of 2018. Retrieved from <https://www.tamimi.com/crm-media-uploader/fileupload/server/php/files/UAE%20Arbitration%20Law%20-%20Federal%20Law%20No%20%206%20of%202018.pdf>

In fact, there are practical limitations translated into legal considerations, which the arbitrator must observe in order to ensure the international effectiveness of the decision. The arbitrator cannot ignore the procedural rules in the law of the seat of arbitration, or in the law of the country's most likely to implement the decision, and therefore these texts determine the limits. The freedom enjoyed by an arbitrator in the determination of arbitration procedures and, therefore, it can be said that the restrictions are represented as follows:

First: The arbitrator is obliged to comply with the procedural provisions in the law of the country where the arbitration is to take place, where a legal action may be filed that invalidates the arbitration in case of violation of the rules of the country. **Second:** The arbitrator shall comply with the procedural rules prescribed by the law governing the enforcement of the decision, where recognition and enforcement of the decision may be refused. **Third:** It is within the framework of the arbitration agreement itself that the arbitral tribunal must respect the limits of the authority conferred upon it in the organization of the arbitration proceedings, and it is established that exceeding this limit is unacceptable. The party against whom the decision is rendered is entitled to challenge the arbitration by nullity before the competent state authority. In cases where the judgment is intended to be enforced, even though the arbitration shall not violate the procedural rules applicable under the law of that country.

With respect to the restrictions on the freedom of the arbitration, board chooses the procedures to be applied in the Arbitration Act of the United Arab Emirates, and with regard to the design of those restrictions that some of the jurisprudence sees.¹⁸ The abstract general formulation to which the proposed Emirati legislature and the Egyptian legislature in the Arbitration Act, may not hide the fact that the situation is different in forms of arbitration that takes place in the Emirates. The arbitration board shall be bound to follow the procedural provisions stipulated in the Arbitration Act of the United Arab Emirates pursuant to the provision of its article (3),

¹⁸ United Arab Emirates Arbitration (2018)

as it stipulates that the provisions of this law shall apply to any arbitration agreement taking place in the Emirates, and attached to a civil or commercial dispute, between parties of persons of public or private law, regardless of the nature of the legal relationship around which the dispute arises, whether contractual or non-contractual. Therefore, the mandate of the procedural provisions established by the arbitral tribunal is a reserved mandate whose scope is limited to cases in which it is permissible to agree otherwise than to the rules stipulated in the Arbitration Act, in accordance with the provisions of this Act itself and to cases which are not governed by this Act.

In the case of arbitration that takes place abroad, the jurisdiction of the arbitration board originally did not comply with the provisions of the Arbitration Act of the United Arab Emirates owing to the lack of commitment on the part of the arbitration board to comply with that Act. It should be noted that arbitration that takes place abroad is subject to the provisions of the 1978 New York Convention on the Enforcement of Foreign Judgments. If it is implemented in a member country for the treaty, the arbitral tribunal had to apply the place of arbitration to ensure the enforcement of a decision. Since article 5/1 of the agreement requires that enforcement of the judgment be refused only if the procedures followed in respect of it were contrary to the will of the parties to the arbitration or a violation of the law of the country in which the arbitration takes place. It also noted that the legislator has left the arbitration board free to choose the procedures it deems appropriate, and the standard appears to be a purely personal one, but the issue necessarily varies depending on the method used by the arbitration panel in selecting the procedures to be applied.

CONCLUSION

Finally, it is concluded that arbitration should be introduced considering the following cases:

1. Absence of recourse to the judicial authorities of the state in respect of urgent or temporary decisions in disputes that have been agreed to refer to arbitration within eight days from the day after the date of publication of the urgent decision. The failure of one of the parties to the arbitration should be informed to initiate proceedings that open the arbitration dispute and for eight days. The decision of the urgent cases judge falls, and although this case is not expressly provided for in the Arbitration Act, it must be measured in the first case because it is not possible to seize indefinitely the funds of the party pursuing the action against him in addition to the urgent action to preserve the Sphenoid ill right, a prelude to the implementation of what he has judged. Some legal scholars have obliged the party that has an urgent decision to reserve custody to follow a supplementary procedure, which is required by the UAE Procedures Law to file a complaint to establish a provisional seizure on the specified legal date. It is correct for a person to devise a legal solution that has no basis in the UAE law requiring arbitration proceedings to be moved within that time period.
2. The expedited and provisional decision is also revoked by the decision of the person who rendered it, whether it is the judge of an urgent cases or the arbitration board in case of a change in the legal situation of the parties and the conditions under which they were rendered.
3. The dismissal of the lawsuit and the decision of no right or discharge or one of the reasons for the expiry of the right shall expire and expire accordingly in accordance with the urgent decision, as well as the waiver of the urgent decision by his request. Furthermore, the urgent decision rendered by the arbitration board shall have no effect if no order has been made. Its implementation and the party who brought the action against it have refused to implement it.

RECOMMENDATIONS

Finally, the publication of the UAE Arbitration Bill will provide a new platform for the development of arbitration in the UAE in line with global economic developments. Despite its lack of sufficient attention to the role of the arbitration body in determining the law to be applied to arbitration proceedings under foreign law, however rigorously it is regulated to achieve the objective set by the legislator, and just as legislative work. However comprehensively, it is not without contradictions, emptiness and ambiguity, and when the objectives have been sought in each research, it is to extract the final results, and to make proposals or recommendations, where appropriate, to develop the research. By addressing the issues raised, following recommendations are made:

1. Commercial arbitration is used as a means of settling disputes, because of the freedom enjoyed by the parties to the arbitration dispute in the choice of law to be applied to the arbitral proceedings in addition to the freedom to choose the arbitration panel and the law governing the dispute etc.
2. Choosing the law to be applied to the proceedings, restricted by not violating the arbitration procedures of public order.
3. The basic rule in the proceedings is the freedom of both parties to choose the rules of the proceedings provided that the principles of due process are taken into consideration, including equality between the two parties and giving each party full and equal opportunity to present its case.
4. The law applicable to the arbitral proceedings shall not necessarily be the law applicable to the subject matter of the dispute.
5. It is clear from the UAE Arbitration Bill, both French and English, international treaties and agreements, legal opinions and arbitration decisions, that it has given priority to the will of the parties to determine the procedures themselves, or to choose a national law, or arbitration rules to be applied to the procedures. However, in its

absence, this agreement shall have the power to arbitrate this law in the choice of law in accordance with the alternatives mentioned in the research.

6. Organization of intensive courses for lawyers, judges and arbitrators related to issues of arbitration procedure.
7. It is examined that the proposed UAE legislator introducing the separation between domestic and international arbitration, similar to the French legislator, in order to eliminate any confusion and controversy, and the dispute that may arise under UAE law.
8. The study has recommended drawing the attention of researchers to research on the social impact of arbitration for its money by preserving friendly human relations, and maintaining and interconnecting them, instead of the nature that burdens them with litigation in addition to the complexity and multiplicity of proceedings before the courts.

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About Author(s)

Dr. Azab Alaziz Alhashemi currently working as an Assistant of Secretary General for the Arab Federation of Engineering Arbitration, Egypt. Dr. Alaziz is an expert in international arbitration, with more than thirteen years of experience at international commercial arbitration and investor-state arbitration specialty. He completed his B.A. degree as an engineer in "Information security" and got his PhD in the same field in 2010, also he

earned the British double-board certificate in information security and managing international enterprises, then continued in the field of international arbitration, where he held the position of Arbitrator in disputes in all continents” in multiple countries, in oblige to the rules of UNCITRAL and the international criminal court and the permanent court of arbitration in Hague. Dr. Alaziz also had preserved high ranked positions and distinguished place as an international arbitrator, and won exceptional prizes for his essential role in spreading the culture of arbitration in several countries, as well as training a group of intellectuals, lawyers, academics, ministers, and managers in Georgia, Azerbaijan, Turkey, Iraq, and Gordon. Because of his leading role in the field of international arbitration and investments, he has his print in establishing his own enterprises, which exceeds sixty companies in various disciplines, for a large number of investors in the UAE and Britain, as well as his understanding and practice of international law. His work is not only shortened to international arbitration, but establishing law networks such as “The international diplomatic network for human right’s law” in Norway, as well as spreading the culture of law and human rights in several Arab countries.