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International Arbitration in Theory and Practice: Global Standards and the Case of Kosovo

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Abstract

International arbitration has become one of the most important mechanisms for resolving disputes in international trade and investment relations. This paper provides a detailed examination of the concept, functioning, and advantages of arbitration as an alternative to traditional courts. Through analysis of international legal sources such as the New York Convention and the UNCITRAL Model Law, as well as the rules of key institutions such as the ICC, LCIA, and ICSID, the paper elaborates on the forms, procedures, and practical impact of arbitration. It further explores the advantages and shortcomings of this method, as well as Kosovo's position in this field. The methodology includes theoretical analysis, comparative approaches, and interpretation of international practices. This study aims to offer a comprehensive overview for students, professionals, and policymakers on the importance of arbitration in the international legal order.

Keywords: *International Arbitration, Trade Dispute, Alternative Procedure, New York Convention, UNCITRAL Model Law, ICC, LCIA, ICSID, Private Adjudication, Impartial Resolution.*

Introduction

The resolution of international conflicts is a key area of international law and global economic integration. With the growth of cross-border trade relations and the involvement of multinational corporations, there has emerged an urgent need for efficient, reliable, and neutral methods of dispute resolution. International arbitration has gained the status of a preferred alternative for contracting parties seeking swift and professional solutions, without relying on national courts, which are often perceived as biased or slow.

Since its codified beginnings in the Hague Convention (1907), arbitration has evolved to address new challenges and encompass a broad range of legal and economic relationships. This introduction underscores the necessity of arbitration in resolving international disputes, grounded in a legal and institutional framework that ensures enforceability, impartiality, and procedural efficiency. In this context, the paper analyzes the structure, procedures, and influence of international arbitration in global practice, with particular emphasis on Kosovo as a country undergoing economic and legal transition.

The Concept and Meaning of Arbitration

Arbitration represents one of the oldest and most widespread forms of dispute resolution, playing a significant role in both international and interpersonal relations. At its core, it is a private and consensual process in which the contracting parties agree—either in advance or after the dispute

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has arisen—that their case will be resolved by one or more individuals called arbitrators, who render a final and binding decision (Redfern & Hunter, 2015).

This form of alternative justice differs from the traditional court system through its procedural flexibility, non-public character, and the fact that parties have direct control over the selection of arbitrators, the language, the seat, and the procedural rules to be applied during the process. Such features foster a high degree of trust and neutrality, particularly in international disputes where the parties often come from different legal systems and cultural backgrounds (Moses, 2017).

The importance of arbitration has grown significantly, especially following the adoption of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1958, which has been ratified by over 160 states and serves as the primary mechanism for the recognition of international awards (United Nations, 1958). Furthermore, the UNCITRAL Model Law of 1985, revised in 2006, has influenced the harmonization of national legislations with international standards, thereby providing arbitration with a solid legal foundation (UNCITRAL, 2006).

In this regard, arbitration is not merely a practical solution but also a strategic tool for the protection of economic rights in global markets. It contributes to reducing the cost and time associated with dispute resolution, preserves business relationships, and avoids the negative public exposure that often accompanies court proceedings. In the following section, we will examine in more detail the structure of arbitration procedures and the institutions that ensure its effective implementation.

Arbitration Procedure

The arbitration procedure constitutes a fundamental aspect of this mechanism, setting it apart significantly from traditional court proceedings. While adversarial in nature, it is characterized by flexibility and the autonomy of the parties to define the rules and conduct of the process. Typically, it is conducted on the basis of an arbitration agreement concluded between the parties, which outlines elements such as the number and method of appointment of arbitrators, the language of the proceedings, the seat of arbitration, and the procedural rules to be applied (Moses, 2017).

The main stages of a typical arbitration procedure include:

- (1) the submission of a request for arbitration and the respondent's reply;
- (2) the appointment of arbitrators and constitution of the arbitral tribunal;
- (3) the submission of written pleadings and evidence by the parties;
- (4) oral hearings where arguments are examined; and
- (5) the issuance of the final award.

This award is final and generally not subject to appeal, except in rare circumstances where procedural irregularities or lack of impartiality are proven (Redfern & Hunter, 2015).

One of the most important features of the procedure is that arbitrators are usually selected by the parties themselves, and they may be experts in the relevant field—such as commercial law, construction, or international investment. Moreover, arbitration is a non-public process, ensuring

confidentiality and shielding the dispute from public exposure—an aspect that is particularly valued by many companies (Born, 2021).

Additionally, the parties may agree to apply the rules of a specific arbitration institution, such as the ICC, LCIA, or SIAC, or they may define customized procedural rules. The challenge or disqualification of arbitrators due to conflicts of interest or lack of independence is also provided for in most international arbitration frameworks. Procedural costs are generally borne by the losing party, although this may vary depending on the agreement between the parties or the applicable institutional rules (ICC, 2020).

In conclusion, the arbitration procedure offers a flexible, customized, and often faster alternative to judicial proceedings, granting parties considerable freedom to tailor the process to the specific needs of their dispute.

International Arbitration

International arbitration represents a legal and institutional mechanism that enables the resolution of disputes involving foreign elements, such as the differing nationalities of the parties or the subject matter of the dispute being connected to multiple jurisdictions. Compared to domestic arbitration, international arbitration has developed a broader regulatory framework aimed at harmonizing procedural and substantive rules through international instruments and unified practice.

The development of international arbitration is closely tied to the growth of economic globalization and the increasing need for efficient solutions to cross-border commercial disputes. It provides a neutral forum where parties can avoid national court systems, which are often perceived as biased or slow. Furthermore, the ability of the parties to select arbitrators ensures confidence and specialized expertise in the relevant fields (Gaillard & Savage, 1999).

International institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the International Centre for Settlement of Investment Disputes (ICSID) provide standardized rules and specialized infrastructure for resolving international conflicts. Moreover, their arbitral awards enjoy international recognition due to the 1958 New York Convention, ratified by over 160 countries (United Nations, 1958).

International arbitration can be identified through both subjective and objective criteria. The subjective criterion relates to the different nationalities of the parties, whereas the objective criterion pertains to the international nature of the dispute—such as when a contract has legal effects in more than one state or when the place of performance differs from the place where the contract was signed (Craig, Park & Paulsson, 1999).

In conclusion, international arbitration not only represents a modern and efficient method for resolving disputes but also promotes legal certainty and trust among contracting parties in a global context. As a flexible, transparent, and solution-oriented process, it serves as a vital tool for maintaining stability and fostering international economic development.

Identifying Arbitration as International

To determine whether an arbitration is international in nature, international legal doctrine and practice have developed two fundamental criteria: the subjective criterion and the objective criterion. The subjective criterion refers to the nationality or place of business of the parties involved in the dispute. If at least one party is domiciled or incorporated outside the state where

the arbitration takes place, it is deemed international (UNCITRAL, 2006). This approach is reflected in the UNCITRAL Model Law and the 1961 European Convention on International Commercial Arbitration.

The objective criterion, on the other hand, relates to the nature of the contractual relationship or dispute. If the agreement concerns a contract to be performed in a different country, or if its legal effects extend beyond national borders, it is considered international even when both parties are of the same nationality (van den Berg, 1981). For example, a supply contract between two Kosovar companies, where the goods are to be delivered in Italy and paid for in France, constitutes an international dispute.

Moreover, the New York Convention does not offer a precise definition of international arbitration, thereby allowing member states the discretion to define it through their national legislation. However, most states have aligned their definitions with that of UNCITRAL to ensure harmonization and avoid jurisdictional disputes (Paulsson, 2010).

In practice, identifying the international nature of an arbitration is essential, as it directly impacts the applicable procedural rules, the substantive law, and the mechanisms for recognition and enforcement of the final award. It also influences the choice of arbitral institution and the seat of arbitration.

In conclusion, correctly identifying arbitration as international is not merely a formal requirement but a key aspect that ensures the validity and enforceability of the final award. Therefore, parties should exercise caution when drafting their contractual agreements and consult international standards to avoid legal uncertainty in the future.

Reasons for Choosing International Commercial Arbitration

Parties involved in international commercial relations are increasingly opting for arbitration as the method of resolving disputes arising from their contracts. This choice is far from incidental and is based on several advantages that arbitration offers compared to traditional litigation.

The foremost advantage is neutrality: arbitration allows parties to avoid the courts of either party's home jurisdiction, providing an impartial forum that does not favor one side over the other (Moses, 2017).

Secondly, arbitration is considered a confidential process. Many companies, especially those operating in global markets, prefer their disputes to be resolved away from public scrutiny and media exposure, preserving their reputation and existing business relationships (Born, 2021). Confidentiality also helps safeguard sensitive business information.

Another compelling reason is the procedural flexibility that arbitration offers. Parties are free to choose the procedural rules, the language of the arbitration, the seat of arbitration, and arbitrators with relevant expertise and experience. This is particularly important in complex commercial disputes, where arbitrators must understand the dynamics of the specific industry (Redfern & Hunter, 2015).

Moreover, arbitration can be faster and more cost-effective, especially when expedited procedures are adopted. In an international context, where disputes may involve multiple jurisdictions and complex legal elements, arbitration presents a more practical and predictable resolution method (Gaillard & Savage, 1999).

Finally, many businesses express distrust in foreign court systems, whether due to lack of judicial independence or inexperience in handling complex economic matters. International arbitration, in this regard, provides a guarantee of fairness and efficiency.

For all these reasons, international commercial contracts often include specific arbitration clauses, designating the dispute resolution mechanism to be applied in case of future disagreements. These clauses are not only internationally recognized but also provide legal certainty and global enforceability through award recognition networks such as the New York Convention (United Nations, 1958).

Leading Institutions of International Arbitration

In the resolution of international disputes, arbitration institutions play a key role by providing procedural rules, administrative support, and often a globally recognized reputation that ensures credibility and trust for the parties involved. These institutions are not courts in the classical sense of the term but rather structured platforms that facilitate the arbitration process while ensuring impartiality, efficiency, and adherence to international standards (ICC, 2020).

The International Chamber of Commerce (ICC), headquartered in Paris, is one of the most renowned and experienced institutions in the field. The ICC Arbitration Rules are among the most widely used worldwide. The ICC ensures that each stage of the procedure undergoes institutional oversight, including the scrutiny and approval of the final award by the ICC Court of Arbitration, thereby enhancing the quality and reliability of the process (Craig, Park & Paulsson, 1999).

The London Court of International Arbitration (LCIA) is recognized for its flexibility and efficiency. It particularly attracts complex disputes that require a more streamlined and transparent approach and is known for its speed in handling cases. The LCIA also provides institutional supervision throughout the entire procedure and offers cost-effective solutions.

The International Centre for Settlement of Investment Disputes (ICSID), part of the World Bank Group, has a specific mandate to resolve disputes between foreign investors and host states. ICSID is widely used in investment-related disputes, particularly where investors challenge state measures that are alleged to violate international investment protection treaties (Schreuer, 2001).

Other important institutions include the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), and the International Centre for Dispute Resolution (ICDR). These institutions provide reliable alternatives for dispute resolution in their respective regions and are increasingly chosen due to their neutrality, the quality of arbitrators, and modern procedural rules (SIAC, 2021).

The choice of an arbitral institution often depends on factors such as the location of the parties, the nature of the contract, the preferred set of rules, and the institution's reputation. A well-drafted arbitration clause typically includes the name of the institution, the rules to be applied, the language of the proceedings, and the number of arbitrators—thus minimizing uncertainty in the event a dispute arises.

Consequently, international arbitration institutions not only support the implementation of high procedural standards but also contribute to the stability of the global dispute resolution system by promoting transparency and fairness in international economic relations.

Fast-Track Arbitration

Fast-track arbitration is a relatively recent development in the international arbitration system, designed to meet the growing demand for quicker and more cost-effective procedures. This model emerged in response to criticism regarding the length and expense of arbitral proceedings, which in some cases have come to resemble the protracted nature of traditional litigation (Moses, 2017).

At its core, fast-track arbitration is characterized by shorter timelines for the submission of documents, fewer or no oral hearings, greater use of electronic communication, and often a single arbitrator instead of a full tribunal. This provides the parties with an efficient tool for resolving disputes that require urgent attention or are factually and legally straightforward (ICC, 2020).

Well-known institutions such as SIAC, ICC, LCIA, and HKIAC have incorporated special fast-track rules into their arbitration frameworks, specifying the types of cases eligible for expedited treatment and setting financial thresholds for the value of the dispute. For example, under its 2017 Rules, the ICC automatically applies fast-track procedures to cases valued below EUR 2 million, unless the parties agree otherwise (ICC, 2020).

A key feature of fast-track arbitration is that the final award is usually rendered within six months from the constitution of the arbitral tribunal. Moreover, most institutions provide that the decision shall be made primarily on the basis of written submissions, thereby avoiding hearings unless they are deemed strictly necessary (SIAC, 2021).

However, fast-track arbitration is not without challenges. In complex cases requiring extensive evidence or deep legal analysis, this approach may not be suitable. There are also concerns regarding the possible limitation of a party's right to be fully heard, particularly in the absence of oral hearings. As such, fast-track arbitration is generally considered appropriate only for cases that are relatively straightforward and involve lower monetary claims.

In conclusion, fast-track arbitration represents a highly useful alternative for parties seeking procedural and financial efficiency, while still preserving the core advantages of traditional arbitration—such as impartiality, neutrality, and international enforceability of awards. It is a testament to the ongoing efforts to modernize and enhance the effectiveness of international arbitration in the digital age.

Advantages and Disadvantages of International Arbitration

International arbitration is one of the most effective mechanisms for resolving disputes in international economic and commercial relations. It offers a range of advantages that make it increasingly preferred by business entities and international institutions, yet it is not without its shortcomings.

Advantages

One of the key advantages is speed in dispute resolution. Arbitral procedures are designed to avoid the delays that often characterize national court proceedings. In many cases, an arbitral award can be rendered within a few months—an especially valuable factor in commercial disputes where time directly affects the parties' financial interests (Paulsson, 2010).

Neutrality and impartiality are other central pillars of international arbitration. The parties are free to select the arbitrators, determine the procedural rules, and designate the seat of arbitration,

thus avoiding potential biases from the court system of a particular state (Redfern & Hunter, 2015).

Expertise of arbitrators is another significant benefit. Arbitrators are often chosen for their specialized knowledge in a specific field (e.g., construction, oil, technology), resulting in higher-quality decisions grounded in the commercial realities of the dispute. Additionally, arbitration ensures confidentiality, protecting the reputation and trade secrets of companies involved in the dispute (Moses, 2017).

The international enforceability of awards is guaranteed through the 1958 New York Convention, ratified by over 160 countries, which ensures that arbitral awards are recognized and enforced efficiently in most jurisdictions (United Nations, 1958).

Disadvantages

However, international arbitration is not without flaws. One major disadvantage is the lack of an appeal mechanism—the principle of finality means that arbitral awards are generally not subject to appeal. This can be problematic if the decision is perceived as unjust or was influenced by improper circumstances, leaving little recourse for redress (Hetemi, 2015).

Cost can also be significant, especially in cases involving internationally renowned arbitrators or when the proceedings are conducted in high-expense jurisdictions. Although often cheaper than litigation, international arbitration remains a legal service requiring considerable financial resources (Gaillard & Savage, 1999).

The lack of coercive powers to issue interim measures or compel witness testimony is another limitation. Unlike state courts, arbitral tribunals do not have direct authority to enforce such measures unless supported by local courts in the relevant jurisdiction.

There is also the risk of imbalance if one party is significantly more financially powerful. Such parties may attempt to influence the process through arbitrator selection or indirect pressure, particularly in the absence of institutional oversight or in cases involving one-sided arbitration agreements.

The Final Arbitral Award

The final arbitral award represents the culmination of the arbitral process and is the conclusive outcome of the dispute resolution procedure. Known as the "award," it is legally binding on the parties and serves as the instrument through which the parties' rights are finally adjudicated. Unlike national court judgments, arbitral awards are not typically subject to appeal, except in limited circumstances such as lack of jurisdiction, arbitrator bias, or serious procedural irregularities (UNCITRAL, 2006).

The content of the award usually includes the identification of the parties, a summary of their claims and defenses, an analysis of the evidence, and the legal basis on which the decision is founded. Additionally, the award may contain orders for the payment of contested sums, damages, legal costs, and interest, depending on the nature of the case (Moses, 2017).

According to international practice, the award must be **reasoned and well-motivated**, to ensure its legitimacy and facilitate its recognition and enforcement in other jurisdictions. This is particularly important when enforcement is sought under the **New York Convention** in a different state (United Nations, 1958).

The UNCITRAL Model Law (Article 32) provides that with the issuance of the award, the arbitral proceedings are concluded, except in cases where requests are made for corrections or interpretations within specified timeframes. This gives the final award a status similar to that of a supreme court judgment, with the added benefits of international neutrality and procedural efficiency (Paulsson, 2010).

However, the enforcement of arbitral awards can pose challenges when one party refuses to comply. In such cases, the prevailing party may need to apply to a competent court in the jurisdiction where the losing party's assets are located. At this stage, objections may arise based on grounds set out in the New York Convention, such as the absence of a valid arbitration agreement or violation of due process rights.

In conclusion, the final arbitral award is a powerful instrument of private international law and constitutes the mechanism by which the effectiveness of this alternative dispute resolution method is realized. It not only resolves the dispute but also reinforces trust in the global system of professional, fair, and neutral dispute settlement.

Conclusions

The resolution of international conflicts through arbitration has proven to be one of the most efficient and suitable mechanisms for the legal and economic realities of our time. With the rise of international trade relations and cross-border investments, the need for a neutral, rapid, flexible, and professional method of dispute resolution has become vital. International arbitration has successfully filled this gap by offering a solid alternative to national courts, which in many cases are not adequately responsive to the challenges of globalization.

Through the analysis provided in this paper, it has been demonstrated that arbitration not only ensures internationally enforceable decisions but also preserves confidentiality, allows for the free selection of arbitrators, procedural rules, and applicable law. The parties enjoy a high degree of autonomy that is not available in state courts. Moreover, arbitral decisions are grounded in professional expertise and are more readily accepted by the parties, thus reducing long-term disputes.

Nonetheless, arbitration is not without its limitations, such as the lack of appeal mechanisms, potentially high costs, and difficulties in the enforcement of interim measures. These limitations can be minimized by resorting to reputable arbitration institutions and by incorporating detailed clauses in commercial contracts.

In the context of Kosovo, its increasing engagement in international markets makes the further development of the legal framework for arbitration essential, including the ratification of international instruments and the building of domestic capacity in this field. A reliable arbitral system would improve the investment climate, provide greater protection for economic actors, and contribute to the establishment of a functional rule-of-law-based state integrated into the international legal order.

In conclusion, international arbitration represents not only an efficient form of justice but also a key component in the architecture of legal certainty and the stability of international relations. It must be promoted, improved, and utilized as a bridge between different legal systems to ensure a more just and functional global order.

Final Remarks

This paper has presented a comprehensive analysis of international arbitration as an alternative and increasingly important method for resolving disputes arising in international relations, particularly in the commercial and investment sectors. By examining the international legal framework, major arbitration institutions, procedural rules, and the benefits of this method, it has become clear that arbitration offers a more suitable, impartial, and efficient approach compared to national courts.

International arbitration guarantees equal protection for the parties in conflict, ensures confidentiality, and contributes to the maintenance of stable business relationships. It has also become indispensable for ensuring legal certainty in cross-border relations, relying on mechanisms such as the New York Convention and the UNCITRAL Model Law. The growing number of arbitral institutions across different countries testifies to the success of this form of modern justice.

In the case of Kosovo, there is a clear need to strengthen the legal framework for arbitration and raise professional awareness about this mechanism. Investment in legal education, full alignment with international norms, and institutional support for alternative dispute resolution mechanisms are essential steps to fully benefit from this system.

Ultimately, international arbitration is not merely a procedural technique but an essential factor in global economic development and international legal peace. It serves not only businesses and investors but also the broader international legal order as a bridge for cooperation and sustainable dispute resolution.

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