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Commercial Arbitration and its Impact on Developing Countries

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Abstract

International commercial arbitration is a modern legal concept that allows parties involved in a commercial contractual relationship to resolve disputes outside the ordinary judicial system. This research aims to analyze the impact of international commercial arbitration on developing countries, in particular to study the challenges faced by these countries and the economic effects of repeated losses in arbitration cases. The article adopts an analytical and descriptive approach, as it investigates how arbitration can encourage investment in developing countries while exploring the obstacles that hinder its success. The main findings highlight that developing countries often lose arbitration cases due to corruption, insufficient experience in international arbitration, and inadequate contract negotiation practices. The research is based on the experience of Egypt as a case study, revealing that poor drafting of contracts, limited legal knowledge, and corruption contribute significantly to financial losses in arbitration cases. The study recommends that developing countries strengthen legal expertise through specialized training, establish ad hoc arbitration committees to review contracts, and strengthen legislative frameworks to better align them with international arbitration standards. It is also advisable to apply diplomatic dispute settlement

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mechanisms before resorting to arbitration to minimize financial risks and protect national economic interests.

Keywords: Developing countries, International Commercial Arbitration, Foreign Investment, International Investment, Commercial Arbitration.

ملخص

التحكيم التجاري الدولي هو مفهوم قانوني حديث يسمح للأطراف المشاركة في علاقة تعاقدية تجارية بحل النزاعات خارج النظام القضائي العادي. يهدف هذا البحث إلى تحليل تأثير التحكيم التجاري الدولي على البلدان النامية، ولا سيما دراسة التحديات التي تواجهها هذه البلدان والآثار الاقتصادية للخسائر المتكررة في قضايا التحكيم. يعتمد البحث نهجا تحليليا ووصفيا، حيث يبحث في كيفية تشجيع التحكيم للاستثمار في البلدان النامية مع استكشاف العقبات التي تعيق نجاحه. تسلط النتائج الرئيسية الضوء على أن البلدان النامية غالبا ما تفقد قضايا التحكيم بسبب الفساد، عدم كفاية الخبرة في التحكيم الدولي، وعدم كفاية ممارسات التفاوض على العقود. يعتمد البحث على تجربة مصر كدراسة حالة، وكشف أن سوء صياغة العقود، والمعرفة القانونية المحدودة، والفساد يساهمان بشكل كبير في الخسائر المالية في قضايا التحكيم. وتوصي الدراسة بأن تعزز البلدان النامية الخبرة القانونية من خلال التدريب المتخصص، وأن تنشئ لجان تحكيم مخصصة لاستعراض العقود، وأن تعزز الأطر التشريعية لتتماشى على نحو أفضل مع معايير التحكيم الدولية. كما ينصح بتطبيق آليات تسوية المنازعات الدبلوماسية قبل اللجوء إلى التحكيم لتقليل المخاطر المالية وحماية المصالح الاقتصادية الوطنية.

الكلمات المفتاحية: البلدان النامية، التحكيم التجاري الدولي، الاستثمار الأجنبي، الاستثمار الدولي، التحكيم التجاري.

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Introduction

Arbitration has emerged as a crucial requirement for traders and investors, driven by political, economic, and legal concerns. Many opt for arbitration due to doubts surrounding the effectiveness and impartiality of national judicial systems, particularly in developing countries. However, this trend extends beyond the developing world, as an increasing number of nations recognize the importance of embracing arbitration as a means to foster foreign investment. In fact, the global landscape now demands international investments as a fundamental component of economic interconnectedness.

For example, France, which is considered one of the developed countries, was forced to issue Law (8/19) of 1986. This law allowed the state, provinces, and public institutions to accept an arbitration clause in international contracts concluded with foreign companies. This is with the American company Disney insisting on condemning the contract concluded between them on arbitration terms, even though the matter seems clearer and more influential in developing countries for economic and political reasons (Ezz El-Din 2010, 118).

Commercial arbitration is of great importance in the field of international trade, as it essentially helps in revitalizing the commercial situation and encourages the investor to engage in large investments without fear of losing their rights if a dispute erupts between the parties to the legal relationship in light of the prosperity of international trade, the parties of which are from different countries and nationalities, so it stands out. Here is the role of arbitration to resolve the dispute between them. Palestine, especially the West Bank, being part of the developing

countries, had to study the reasons for the loss of these countries before foreign courts and benefit from their experiences.

Study Problem

Developing countries are often exposed to financial losses in international arbitration cases. Such losses often arise from factors such as corruption, insufficient legal experience, and poor drafting of contracts. This study seeks to identify the underlying causes of these frequent failures and propose strategies to address them effectively.

Study questions

There is no doubt that commercial arbitration is one of the best ways to resolve international commercial disputes, but regarding developing countries, we can say that they are a weak party in international arbitration cases. To find out why, we had to ask these questions:

- Why do developing countries lose many international commercial arbitration cases in which they are parties in?
- Why is the compensation in arbitration cases in vast amounts that exhaust the already exhausted economies of developing countries?
- What are the main reasons why cases are lost? What are the ways to address these causes?
- How can Palestine in general and the West Bank in particular, as a raw environment for foreign investment and a destination for investors, avoid falling into the same mistakes that other countries like Egypt have fallen into, and benefit from their experiences in this field?

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Despite its importance, developing countries often face challenges in arbitration, often leading to unfavorable results. Such frequent losses impose significant economic burdens, which raises concern about the root causes of such failures. Factors such as corruption, limited legal experience, insufficiently drafted contracts are major contributing factors. Thus, this article investigates the underlying causes of these frequent failures and explores workable solutions to mitigate the risks involved.

Study Objectives

In this context, the study aims to analyze the role of International Commercial Arbitration in encouraging investment in developing countries, identify the main reasons behind their frequent losses in arbitration cases, and propose strategies to improve the results in arbitration proceedings. By addressing these objectives, this study provides valuable insights aimed at protecting the economic interests of developing countries. The findings are of particular interest to policymakers, legal professionals, and investors seeking to enhance arbitration outcomes and improve contract negotiation practices.

Significance of the Study

This study is important because it highlights the economic vulnerabilities that developing countries face in international arbitration disputes. By identifying key issues such as corruption, poor drafting of contracts, and insufficient legal experience, the paper provides practical recommendations that can help these countries protect their economic interests. The findings are intended to assist policy makers in developing robust arbitration frameworks, guide legal professionals in improving contract drafting strategies, and provide investors with insights on reducing arbitration risk. Ultimately, this study contributes to

enhancing the economic resilience of developing countries by improving their arbitration outcomes.

Methodology

This article uses an analytical and descriptive approach to investigate the role of International Commercial Arbitration in attracting investment and to identify obstacles faced by developing countries in arbitration cases. The analytical method is used to examine legal texts, arbitration agreements, and case studies of international arbitration to identify patterns and trends. A descriptive method is applied to identify circumstances that affect the results of Arbitration in developing countries. In addition, the study reinforces Egypt's experience as a case study to embody the usual challenges faced by developing countries and provide valuable insights to improve future arbitration strategies. Data was collected from the legal literature, arbitration rulings, and relevant case law to ensure thorough analysis and derivation of results.

Theoretical framework

What is Commercial Arbitration?

Commercial arbitration is a modern legal concept that is based on withdrawing authority from the ordinary judiciary to resolve disputes that occur due to the conclusion and implementation of trade contracts concluded between countries or between countries, commercial companies, or individuals, and thus assigning these disputes to persons chosen voluntarily by the contracting parties (Radwan 1981, 1-3).

Arbitration is the solution of a dispute by amicable means, away from ordinary courts, and arbitration is prior to litigation because arbitration is as old as humanity

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and has existed from the beginning - not in the current form that exists at the present time. There were no international agreements or laws regulating the arbitration process. Rather, it was simple and subject to the rules of societal and religious customs.

Commercial arbitration is related to contracts and transactions that fall within the framework of private local or international law, as well as international commercial laws or international business laws. Article 36 of the 1907 Hague Legal Convention defined arbitration as: *"the settlement of disputes between states by judges of their choice and on the basis of respect for the law.*" Among the most important international commercial arbitration centers are the Permanent Arbitration Center in Geneva, the London Arbitration Center, the Conciliation and Arbitration Center for Arab, European Commercial Arbitration, and the Cairo Regional Arbitration Center (Adel 2014, 3).

1. Legal definition of arbitration

The prevailing definition of arbitration is that which was previously included in Article 93 of the Hague Convention for the Peaceful Settlement of International Disputes reached by the Second International Peace Conference held in The Hague in 1907, where the article decided that the subject of international arbitration is the settlement of disputes between states by judges of their choice and on the basis of respect for The law requires that resorting to arbitration entails an undertaking to submit in good faith to arbitration (Ibrahim 2006, 20).

Regarding legislation, we find that the Palestinian Arbitration Law No. 3 of 2000 did not refer to the definition of arbitration, but it permitted agreement to arbitrate in a specific dispute. It also permitted agreement to arbitrate in all disputes that

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arise from the implementation of a specific contract. As for the Palestinian Investment Promotion Law in force, it did not refer to the definition of arbitration, but it indicated in Article 27/4 of it that the parties to the dispute may resort to arbitration in accordance with Palestinian law.

As for Egyptian law, the amended Law of Arbitration in Civil and Commercial Matters No. 27/1994 stated that *"the term arbitration in the provisions of this law applies to arbitration agreed upon by both parties to the dispute of their own free will, whether the party undertaking the arbitration procedures based on the agreement of the two parties is an organization or a center. Permanent arbitration or not."* As for the Egyptian Investment Guarantees and Incentives Law, it did not indicate the definition of arbitration, but it permitted resorting to arbitration to settle disputes related to the provisions of the law.

The Journal of Judicial Rulings defined arbitration in Article 1790 as: *"The two adversaries appoint an arbitrator with their consent to settle their dispute and claim."* Article 10 of the Egyptian Arbitration Law defined it in its first paragraph as the arbitration agreement*: "The agreement of the two parties to resort to arbitration to settle all or some of the disputes that arise or may arise between them on the occasion of a specific legal relationship, contractual or non-contractual."*

Article 1 of the Palestinian Commercial Arbitration Law defines it as*: "a method chosen by the parties to the dispute to resolve it through an arbitrator or rather instead of resorting to the judiciary."*

After looking at the previous definitions, we can say that arbitration is an institution that decides on disputes, and therefore it is a judiciary, but a judiciary

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has its own space. It is a jurisprudence agreement that is established between the parties to the conflict and is resorted to in the event of a dispute between them. That is, we can confirm that arbitration is a procedural guarantee for resolving investment disputes and an exceptional method that the parties to the investment contract resort to base on their agreement taken either as a condition included in the investment contract before the dispute arises or an arbitration agreement before or after the dispute arises and with the aim of achieving a solution to their disputes away from procrastination with a binding ruling. And a final cut off the axis of the dispute.

2. The importance of international commercial arbitration

To demonstrate the importance of international commercial arbitration and its role in revitalizing the global economy, it is necessary to know its advantages that have made it the most popular method in the field of international trade, but despite this, it is a system that is not devoid of defects. Arbitration is considered a double-edged sword that must be used carefully to avoid harming the economic and national interests of the state.

2.1. Advantages of arbitration

Arbitration has many advantages that have made it the focus of attention of opponents in resolving disputes, as it has become the ideal method that commercial and investment companies prefer to resort to when concluding contracts with the state, and the most prominent of these advantages are:

- Saving time and expenses, the stages and degrees of litigation can be shortened, and the dispute is resolved in less time. The arbitration award cannot be challenged by means of appealing to the judicial ruling, which

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leads to shortening the procedures and saving expenses at the same time (Ahmed 1997, 29).

Speed is of immense importance in resolving disputes that arise between foreign companies and the state due to contracts concluded between them, because these contracts are often characterized by enormous amounts of capital (Ruhan 2014, 18). It is in the interest of contracting companies to resolve the dispute as quickly as possible. After a dispute occurs, it is resolved through arbitration faster because the arbitrators devote themselves to study the matter and resolving it ،unlike the national judge, who looks at multiple cases at the same time (Allen, Obrien, William 2007, 21). In addition to all of this, arbitration laws often stipulate a specific period of time during which the arbitrator is obligated to resolve the dispute, and the arbitration agreement is not considered invalid (Enas 2015, 4).

- Reassurance for investors, which is that the investors do not know the national laws, and they do not trust the host country's judiciary. Therefore, without arbitration, they are not confident about their commercial future, and their investments remain dependent on the host country's ordinary judiciary, which is affected by the country's political circumstances and sympathizes with them in its rulings (Othman 2016, 11).
- It is less expensive than ordinary judiciary if you look at it from financial aspects, given that the international commercial dispute concerns parties who usually live in distant regions, with the implications it poses on the final cost of resolving the dispute. Arbitration only requires small expenses that are almost negligible in addition to what the case requires before the courts, such as judicial fees, lawyers' fees, experts' fees, witness recruitment expenses, and so on (Qahtan 2002, 33).

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- Confidentiality and secrecy. Arbitration provides a fantastic opportunity to conceal transactions and conceal their details, especially since most of them relate to contracts that contain confidential aspects. This contrasts with ordinary judicial sessions, which are public, and any person has the right to be aware of the session and see the details of the case (Sindler 2008). In addition to preserving the continuity of the commercial relationship between the two parties and resolving the dispute through a friendly means, unlike the case if the ruling was issued because of quarrels, intensification of hostility, and intensification of influence, which results from disputes brought before the judiciary (Muhammad 1952, 545). An ordinary judge may be brilliant but has little experience in international trade affairs, making it difficult for him to resolve disputes related to international trade except by seeking the assistance of an expert who will guide him and reveal all aspects of the matter (Ezz El-Din, 30).
- The experience and competence enjoyed by the arbitrators and the freedom to choose them by the parties to the dispute are among the most prominent features of arbitration, as the parties to the dispute can choose a specific person or several people who have experience and competence in the subject of the dispute. At the same time, they can be trusted by the parties, unlike the national judge, as he is merely a state employee, and the parties to the case do not have the right to choose the judge who will resolve the dispute (Shah 2011, 234-236). Because there are some issues that require scientific and technical qualifications to decide, and among these issues are oil contracts (Sindler, 2008) ،when a dispute occurs, the national courts refer the matter to one or several experts to express their opinion. This leads to

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increased expenses, so it is better to refer it to arbitrators who have the required qualifications (Siraj 2004, 12).

2.2. Disadvantages of arbitration

Arbitration is undoubtedly a system with its share of flaws. It is often viewed as a double-edged sword that can lead to a better resolution of disputes compared to litigation. However, on the other hand, it also carries the risk of unfavorable outcomes and significant financial implications for foreign commercial entities and investors.

According to the UNCTAD[1] principles, the rise in bilateral agreements between nations in 2012 was the cause of the 2012 spike in international arbitration proceedings. The organization's report said that 68% of the countries affected by arbitration were developing countries (Adel 2014). It is possible to argue that arbitration's drawbacks and benefits are equal, but if we examine them from a distinct perspective, we hope to shed light on them through the following points:

- The speed of resolving disputes is considered one of the most important advantages of arbitration, but at the same time it is considered a disadvantage, the average years of international arbitration are 3 years and 6 months[2]. This negates the argument to resort to it due to the slowness of ordinary litigation because there are cases where the dispute may be resolved in a shorter period than this, for example, the case of Southern Pacific real

[1] UNCTAD is an acronym for The United Nations Conference on Trade and Development It was established as a permanent governmental body in 1964 and is the main body of the United Nations in the field of trade and development.
[2] M. Sindler (2008)

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estate - Middle East against the state of Egypt took 7 years[3]. This is in addition to the excessive costs of litigation in international arbitration.

- Arbitration is not less expensive than ordinary litigation in all cases, for example, in the event that the parties agree to arbitrate before an international institution, the appointment of arbitrators and translators, the sending of arbitrators to international arbitral tribunals and the costs of their stay are all financial burdens borne by the parties to the dispute (Ruhan 2014, 22).
- Prejudice to National sovereignty, international commercial arbitration is associated with prejudice to national sovereignty, especially in contracts to which the international or one of its public institutions is a party, the state waives its national authority to resolve all contractual disputes, which led many countries to refrain from resorting to arbitration (Ahmed 2001, 315).
- One of the most prominent disadvantages of Arbitration in international trade contracts is that it concerns developing countries, as they are the weakest party in the dispute and lose huge sums (Shah 2011, 234 – 236).
- Arbitration is a friendly means of resolving disputes, it is only a legal procedure of the nature of an agreement in which the disputing parties seek to reach a solution that satisfies everyone in the interests of the ongoing public interest of the state and preserves its sovereignty on the one hand and protects the rights of the foreign-invested company and its right to compensation in case of damage to it. It is not considered a violation of

[3] The issue of the pyramid or South Pacific, which was between the Egyptian Ministry of Tourism and a British company, which was tasked with building chalets around the Pyramid Plateau, and after this company warned all its equipment and began to implement the procedures, the Egyptian side terminated the contract, which cost Egypt an amount of 36 million US dollars after resorting to arbitration and after the dispute was settled, the amount of 18 million US dollars was actually paid.

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inferiority because it is the state that made the agreement with the other party with its consent.

3. International commercial arbitration standards

Arbitration is considered a chosen authority because it differs from the ordinary judiciary in terms of the legal basis of the judge's authority, which is the law, so that the legislator is the one who authorizes the judge to accept authority and exercise the judicial function in the dispute entrusted to him. As for arbitration, recourse to it is not subject to the power of the legislator, but is consensual, based on the will of the parties to the dispute to resort to it. When considering the importance of foreign investments and their role in the economic growth of developing countries, these countries are obliged to reassure foreign investors to protect their investments by waiving their authority and resorting to international trade arbitration to resolve investment disputes that meet international trade.

There are two basic criteria for determining International Commercial Arbitration. The first is that the dispute arises from a commercial relationship. Second, trade should be international.

Many laws have recognized the provisions of the UNCITRAL Model Law regarding the internationality of Arbitration, and the model law on International Commercial Arbitration developed by the United Nations Commission on international trade law defines the solutions in which arbitration is International in the third paragraph of Article I thereof (UNICTRAL 1996, 23 – 33).

According to the text of the third article of the Palestinian arbitration law Arbitration can be considered International by the follow:

"For the purposes of this law, arbitration shall be:

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Second: internationally, if the subject of the dispute relates to an economic, commercial, or civil issue, in the following cases:

1-if the main centers of the arbitration parties are located in different countries at the time of the conclusion of the arbitration agreement, if one of the parties has more than one business center, the example is the center most closely related to the arbitration agreement, but if one of the parties does not have a business center, the example is at his usual place of residence.

2-if the subject matter of the dispute covered by the arbitration agreement is related to more than one state.

3-if the main center of business of each of the parties to the arbitration is located in the same country at the time of the conclusion of the arbitration agreement and one of the following places is located in another country:

A-the place of arbitration as designated by the arbitration agreement or indicated how to appoint it.

B-the place of execution of a material aspect of the obligations arising from the commercial or contractual relationship between the parties.

C-the place most closely related to the subject of the dispute. "

4. Distinguishing international trade contracts from foreign investment contracts

The jurists of Economics defined investment as the employment or exploitation of capital to be productive from an economic point of view or to direct savings to productive areas to fill an economic need and provide a return on the other hand

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(Ahmed 1993, 87). As for the jurists, they disagreed on the establishment of a comprehensive definition of investment, including those who defined it as*: "the transfer of foreign capital to invest abroad directly to work in the form of industrial, financing, construction, agricultural or service units, and the profit incentive remains the main goal of these foreign direct investments. "* (Abdul Hamid 2012, 145)

We can say that jurisprudence lacks criteria for distinguishing international trade contracts from foreign investment contracts, even though they are contracts that include a foreign element.

The distinction between the two contracts is especially important in terms of the impact of each of them, especially in determining the specific authority of arbitration centers, there are special arbitration centers to consider disputes arising from foreign investment and the state between the foreign investor and the host state of the investment. Other international trade disputes are settled by other centers, whether international or local centers (Haval 2017, 19). In addition, because foreign investors are a party to investment contracts, they may be subject to privileges by the contracting state, and these privileges are not giving to a foreign trader in international trade contracts (Haval 2017, 19).

The impact of international commercial arbitration on the economies of developing countries

The term developing countries is one of the many terms given to some countries such as third world countries, poor countries, and also less developed countries. Although the name is different now, it is consistent in content, developing countries are countries that suffer from low income and living standards for most

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of their population, low consumption levels, the spread of chronic poverty, corruption, underdevelopment of production methods and social organization.

The presence of developing countries as a party to many investment contracts and The Associated political and economic factors reinforce the need to reconsider and negotiate the terms of these contracts, and they should also study the reason for their loss in commercial arbitration, which causes exhaustion of their already exhausted economy. That is, developing countries are the weakest party in the International Commercial Arbitration relationship.

1. The position of some national laws that prohibit resorting to arbitration

We also know that commercial arbitration is a sensitive system and must be dealt with accurately at all stages, and because this system relates to international trade, it should be dealt with developed countries in this field, so the laws of some Arab countries have banned the use of Arbitration in resolving disputes that arise between the state or public or private persons, such as Saudi Arabia, Algeria and Libya.

Saudi Arabia had previously allowed recourse to arbitration in the petroleum field, where Aramco's arbitration ruling was administered in 1958, but in 1963 the Saudi Council of ministers issued a decision prohibiting all forms of International Commercial Arbitration. But several years later, specifically in 1983, the Saudi arbitration law was issued, which allows resorting to arbitration under certain conditions, where the first paragraph of Article three of it stated: *"government agencies may not resort to arbitration to settle disputes with others only after the approval of the prime minister, and a decision of the Council of ministers may amend this provision."* (Siraj 2004, 16)

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2. The position of the Palestinian legislator on international commercial arbitration

Palestine is economically exhausted for several reasons, most notably wars, economic sanctions, and foreign occupation, so it was necessary to promote the economy by encouraging foreign investors to bring their capital to Palestine.

The Palestinian legislator has taken steps towards encouraging the use of international empowerment for the necessities imposed by the data of commercial transactions at the present time. It issued the Investment Promotion Law of 1998 and amended it by a decision by Law No.33 of 2020 in order to advance and develop the process of economic and social development, bring technical and practical expertise, develop human resources and create job opportunities for Palestinians by encouraging investments and supporting the process of establishing, expanding and developing investment projects in Palestine in various economic aspects and granting privileges and exemptions to these projects (Decree Law No. 33 of 2020).

In the aforementioned law, the Palestinian legislator has authorized the possibility of resorting to commercial arbitration, where Article 10 indicates that: *"If the parties to the dispute are subject to the provisions of this law, they May, when contracting, agree on a dispute resolution mechanism, including resorting to arbitration in accordance with Palestinian law or any other internationally recognized body."*

It can be said that Palestine's position on arbitration was a negative position, as it like most developing countries, is afraid of Arbitration for two reasons: the first, which is political reasons; this system was initially understood as affecting the sovereignty of the state, as it is based on the exclusion of state courts from

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adjudicating international commercial disputes. This fear is mainly due to the legal provisions contained in the international conventions of international arbitration, which sees a kind of infringement of some aspects of the sovereignty of states and their abandonment of their exclusive and absolute competence in the administration of their own justice by accepting the restrictions that limit this sovereignty by virtue of their unilateral waiver of the exercise of sovereignty rights, under multilateral agreements signed by them, in addition to the experiences of some states not encouraging this (Abbosh 2014).

There is an aspect of jurisprudence that supports that the arbitration clause is an implicit waiver of immunity, and this aspect has been supported by some international conventions and some legislation, including the European conventions on the immunity of foreign states concluded in 1972 as well as the Washington Convention of 1965. One of the laws that considers the existence of an arbitration clause as an implicit waiver of immunity is the English immunity law, as stated in the first paragraph of Article 9 of it: *" When a state agrees in writing to submit a dispute, arising or may arise, to arbitration, that state cannot invoke its immunity before the British courts associated with such arbitration."*

The legal status of the state is equivalent to the legal status of the investor, considering that the state's acceptance of the arbitration clause is tantamount to waiving its judicial immunity before the national judiciary when an issue related to arbitration is raised before it, and saying otherwise means there is no point in including the arbitration clause in investment contracts concluded by the state.

The second reason is the protection by the Palestinian legislator of Palestinian funds, interests and rights inside and outside Palestine؛ As a result of the experiences taken by Palestine, the Palestinian legislator has taken a negative

attitude towards international commercial arbitration because of the great loss that was inflicted on it when choosing the method of international arbitration to settle contractual disputes before the bodies, centers and Arbitration Chambers, or the poor drafting and implementation of contracts that include the arbitration clause, as the accuracy is not taken into account in the stipulation of arbitration terms and the implementation of these contracts by parties that do not have legal experience and knowledge and their efforts are limited to the material terms of the contract such as price and specifications of materials contract research as a traditional process (Abbosh 2014).

Despite the above, the Palestinian law requires resorting to international commercial arbitration and the implementation of foreign judgments in Palestine, and here lies the flaw because the existing Palestinian arbitration law is insufficient with its current provisions to regulate the international arbitration process.

3. Reasons why developing countries lose arbitration cases

Each of the disputes referred to international arbitration has its own nature, each has its own legal status, and its end cannot be judged due to this difference, therefore, the intervention of legal and economic experts is required to implement the cases individually to find out the circumstances of each dispute and the reasons for the dispute in them.

Because these disputes have a negative impact on the economy, as the state Treasury bears the fines and sanctions approved by international arbitration, the burden increases and there is a deficit in the budget in addition to the benefits that impose amounts in case of non-payment or delay. In order to avoid this problem, it is necessary to study the reasons that cause developing countries to lose in arbitration cases filed in these same countries.

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Since Egypt is the most affected country in international commercial arbitration and ranks third in the list of the most losing countries in arbitration cases globally, Egypt ranked fourth in the world, and the first in North Africa and the Middle East as a party to international arbitration cases in 2014 with twenty-four cases. According to the International Investment Report of UNCTAD, 60% of cases are decided in favor of the investor, which means that Egypt loses fifteen cases per year. The total fines amount to 10 billion US dollars (Hatem 2013).

Egypt was chosen as a model for developing countries in international arbitration cases, because of its many experiences in this field, it is also a destination for foreign investors, as Palestine became after 2008, especially the West Bank. These companies force countries to conclude an arbitration contract for reasons discussed earlier, the most important of which is the lack of confidence in national law and the protection of their interests, which is why it was important to find out the reasons that led to Egypt's loss in arbitration to understand the current situation in developing countries, and these reasons are as follows:

3.1 Lack of technical staff and sufficient legal experience to draft contracts between the government and companies

The lack of technical staff and sufficient legal expertise to draft contracts concluded between the government and companies, especially that the government relies on legal affairs in the government, ministries or departments in each contract it concludes, and therefore its expertise is limited related only to administrative issues within it and does not have international experience in European, Asian and American laws. And the need not to conclude any contracts or other between a department of the government or ministries and any foreign party only after referring to arbitration experts and there are penalties for these experts if one of

them fails or is not in the high profession of the work entrusted to him, as is the case in Western countries (Hind 2013).

The huge figures of compensation and sanctions in such cases necessitate studying the contracts that are signed with foreign investors, whether governments, companies or even individuals, to reach the most appropriate formula, in addition to adequate guarantees for the parties, which requires the presence of legal staff studying investment contracts to ensure all this before signing any contract (Hind 2013).

The problem of Egypt's failure in international arbitration cases and incurring fines that often reach millions of dollars is due to the lack of legal and economic cadres, competencies and expertise in concluding commercial contracts with foreign companies or bodies, in addition to the weakness of domestic laws and legislations and conflicting investment policies at times, which led to Egypt incurring heavy losses in many cases raised at the international arbitration level.

3.2 Non-observance of accuracy in the drafting of arbitration contracts

Many developing countries that have approved arbitration have made their decision impulsive and poorly studied as a result of the pressure of the foreign investor, so the permission to resort to arbitration is subject to the conditions of the foreign investor, and this is contrary to the higher interests of the state (Izz Al Din 2010, 120).Also, the majority of these countries required the approval of the competent minister to agree to resort to arbitration, and this is considered an insufficient guarantee, as the approval must be issued by a higher authority, such as the Council of ministers, after studying the terms of the contract in detail with legal experts. And specialists in the field of arbitration before signing contracts with

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foreign companies in order to properly formulate the terms of the contract (Izz Al Din 2010, 122).

3.3 Lack of legal specialists in the field of International Commercial Arbitration

Neglecting the presence of legal specialists in the field of international arbitration is one of the most important reasons for losing a large number of cases to several opponents from the countries of the world. This gap must be filled through the organization of training courses for jurists and in cooperation with well-developed countries in this field.

The idea that a lawyer or a legal specialist in general is better able to understand the law and study international contracts and their legal implications for the parties to the contract cannot be neglected.

3.4 Corruption

Corruption rampant in developing countries is an important cause of loss in arbitration cases, because based on nepotism and mediation on a certain side, a person who does not possess the necessary competencies that should be exhaled in the arbitrator can be given the status of an arbitrator by a body or institution in an improper way, such as paying a bribe in exchange for granting him the title of arbitrator, and many other forms of corruption.

3.5 Instability

Arbitration as a means and as a condition in contracts is not taken by some countries, however, it is more attractive for investment as the investor is always looking for the most stable economic markets. Also, the wrong policy in dealing with arbitration has cost the Arab world the loss of more than 750 arbitration cases, in addition to projects stalled without solutions until today.

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Conclusion

International Commercial Arbitration presents both opportunities and risks to developing countries. While arbitration provides a platform to resolve disputes efficiently and boost investor confidence, developing countries have often faced significant losses due to corruption, poorly drafted contracts, and limited legal experience. This research underscores the urgent need for these countries to adopt initiative-taking measures to improve their arbitration outcomes.

To enhance their success in arbitration, developing countries should prioritize capacity-building efforts by investing in the training of legal professionals, especially in international arbitration laws and contract drafting. The creation of specialized arbitration committees to review investment contracts before signing can help identify possible risks and ensure compliance with international standards. In addition, the integration of international legal advisers into contract negotiations can mitigate the risks associated with ambiguous or biased clauses.

Moreover, developing countries should actively reform their legal frameworks to bring them into line with global arbitration practices. Strengthening national arbitration laws and ensuring their compatibility with international agreements will build investor confidence and improve the enforceability of arbitration results.

No less important is the adoption of diplomatic and Alternative Dispute Settlement mechanisms before embarking on formal arbitration. Such an approach can prevent costly and lengthy legal proceedings, ensuring the amicable and effective settlement of disputes.

Ultimately, by adopting these strategies, developing countries can protect their economic resources, create a more attractive investment environment, and promote

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sustainable economic growth. The results of this research provide valuable insights for policymakers, legal practitioners and investors seeking to improve arbitration practices and outcomes in developing countries. By implementing these recommendations, developing countries can shift from being victims of Arbitration to confident participants in global economic interactions.

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