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Arbitration in International Investment Contract Disputes

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Abstract: This study addresses the topic of arbitration in international investment contract disputes, reviewing the legal frameworks that govern the arbitration process and its importance as a means of settling disputes between investors and states. Through arbitration, parties avoid resorting to traditional judiciary, which achieves speed in procedures and impartiality in adjudicating conflicting interests.

The study confirms that the presence of clear and specific controls for arbitration in international investment contracts contributes to creating a safe investment environment, as these controls preserve the rights of investors on the one hand, and take into account the sovereignty of states on the other hand, which supports legal stability and encourages the flow of international investments.

Keywords: International Investment Contracts, Arbitration, Investment Contracts, Investor, Dispute Adjudication.

Introduction:

First: Definition of the research topic

Arbitration is one of the means of resolving disputes, and it is an exceptional way based on the will of the parties, as the opponents resort to it to resolve the dispute without the competent court.

The importance of arbitration in the field of international investment contracts has been confirmed as a means of resolving disputes arising from these international relations, as it has become the original judiciary for resolving these disputes, and its importance increases when the state or one of the public legal persons is a party to these disputes.

The prosperity of arbitration was linked to the development of international economic relations, as the parties found their purpose in it as a specialized judiciary that resolves disputes arising from international contracts due to its simplicity, speed of procedures, flexibility, and confidentiality.

The basic idea of arbitration is the final settlement of international disputes with a binding decision issued by arbitrators chosen by the parties to the dispute per the law (1). In the contemporary era, the state's intervention has increased, and its role has grown in another way in the field of international trade through its direct participation in new forms of contracts. This has led to it being a strong competitor for individuals and companies (2), and therefore, the provision of the arbitration clause in the field of investment contracts in practical reality is not considered new (3).

Foreign investors adopt the arbitration system because it is considered the best investment for them (4), and this is what creates the desire among the parties to international contracts to "transcend or rise above every specific legal system of a country, and work to settle the disputes raised between them by a real international arbitrator who directly applies a supranational legal system, derived from the customs and traditions of international trade" (5).

From the above, investment contracts are not

concluded without an arbitration agreement, which would refer disputes arising from these contracts to arbitration.

Talking about investment requires understanding its meanings and dimensions in light of the so-called era of globalization, as international investment activities are often related to the movement of goods, services, capital, and people across the national borders of a different country. Foreign investment usually takes the form of direct investment, which constitutes the backbone of globalization or takes the form of indirect investment.

Second: The importance of the research

The importance of the research lies in the economic and social variables that imposed resorting to arbitration to resolve administrative disputes. Countries in which national savings and revenues from their natural resources were unable to meet the growing needs for capital required by their development plans have adopted policies that would work to stimulate and encourage national and foreign investments by providing and preparing the appropriate climate in which various aspects of guarantee against political and economic risks are achieved. There is no doubt that the arbitration clause, which aims to settle disputes that arise in connection with the implementation or interpretation of these contracts, occupies a prominent place in the field of guarantees, as the investor requires its inclusion in the terms of the contract to provide him with reassurance in the event of a dispute with the contracting state, given the difficulty of the state appearing before a foreign judiciary for considerations related to sovereignty. Given that arbitration is based primarily on the will of the parties to the dispute, they are the ones who prefer to resort to it over the state judiciary. They are the ones who determine the arbitrators jointly and equally, and they are the ones who determine the applicable law. Accordingly, arbitration may result in the exclusion of the administrative judiciary and the exclusion of the applicable law to international administrative contracts, which constitutes a violation of the theory of the administrative contract.

Third: The research problem

The research problem arises from the principle of how to apply arbitration in settling disputes over international investment contracts. This problem branches out into the following sub-questions:

1- What is the legal nature of international investment contracts?

2- What are the arbitration procedures in disputes over international investment contracts?

Fourth: Research objectives

The research aims to shed light on the legitimacy of the arbitration system in international investment contracts, especially international ones. The study of the subject of arbitration in international investment disputes also stands out because it is one of the topics that raise renewed concepts according to the continuous change witnessed by international economic life and the resulting development of the role of the state on the stage of international relations, and the development of the individuals of the international community in light of the development of these data.

Fifth: Research Methodology

To answer the previously raised problems, the comparative analytical approach was relied upon in analyzing a set of controls determining the nature of arbitration in international administrative contracts.

Sixth: Research Structure:

To answer the raised problem, this research was divided into two requirements. In the first requirement, we devoted ourselves to discussing the nature of international investment contracts within two branches. The first branch is the legal compatibility of international investment contracts, while the second branch is international standards for investment contracts.

For the second requirement, resorting to arbitration in international investment contract disputes in two branches. The first branch is the nature of investment contract disputes, while the second is the motives for resorting to arbitration in investment contract disputes.

The First Requirement

The Nature Of International Investment Contracts

International investment contracts are usually concluded to achieve common interests between the two parties. These are the contracts concluded by the state or its affiliated agencies with a foreign natural or legal person, and they obligate the foreign investor to transfer economic values to the host state to exploit them in investment projects on its lands. These contracts vary, and their forms are multiple (6), according to the needs of those countries, with the aim of economic development for the host state and profit for the foreign investor. In most cases, the duration of the contract is relatively long. They are international contracts with a special nature due to their connection to the development plans of the host state for investment. However, these contracts are considered international activities due to the presence of an international element in them, such as international activities, the shareholders belonging to more than one country, or the people in charge of managing them being of different nationalities. The international nature also appears in these contracts as it relates to the interests of international trade, according to the economic criterion of the internationality of the contract, as the international character is given to every economic activity that includes the transfer of funds and services between two or more countries. Therefore, the legal and economic criteria may come together. Still, without the economic criterion being absent as a decisive and final criterion given priority, the two aforementioned criteria often complement each other to give the contract an international character ( ).

First Section

Legal Compatibility Of International Investment Contracts

International investment contracts take different forms, whether bilateral or collective, and these contracts may differ in terms of the diversity of their parties between contracts concluded between a country and a private person or those whose parties are countries. Determining the legal nature of these contracts is an important matter. However, solving the compatibility problem of these contracts cannot be ignored in light of the difference in jurisprudential interpretation regarding the term most relevant to international investment contracts, which will undoubtedly overcome many difficulties when investigating the legal nature of these contracts.

First, International investment contracts are administrative contracts

Jurisprudence has been divided regarding considering investment contracts as administrative contracts into two trends:

The first trend (7): denies that these contracts are administrative contracts, as this trend considered that "if the considerations that are based on the existence of a great convergence between both the administrative contract and the state contracts, then there is a group of factors that reject this convergence between the two contracts, and thus lead to the collapse of the hypothesis of giving the administrative character to state contracts, from those factors the subject of the contract and the law that is supposed to be applied when a dispute occurs. It is established that many of these contracts fall within the framework of civil or commercial works, and that all arbitration institutions refer the matter to the will of the parties, and then the law of the state and international law, while the administrative contract remains a national contract subject in all cases to the state party to it."

Investment contracts are not single and, therefore, are not subject to a single legal system. Sometimes, they are administrative contracts; other times, they are considered private law contracts. The point is to analyze each contract separately to clarify its pillars and its compatibility with the system that governs it (8). As for the second trend, it believes that investment contracts concluded by the state with a foreign person are administrative contracts due to the characteristics that these contracts enjoy, which make them close to the idea of an administrative contract since the state concludes these contracts in its capacity as a public authority to achieve a public interest. From this standpoint, these contracts are administrative, given that they enjoy the same characteristics as this contract (9). As a result, the contracting state can amend the

contract by its sole will or terminate it without being subject to any contractual liability. Some of them (10) went further, considering that the distinguishing criterion of the administrative contract is the one that contains exceptional conditions, whether because the nature of public authority characterizes them or because they are unusual conditions in private law contracts, and reveal the intention of the contracting parties to follow the method of public law and submit to its principles and provisions, and what it includes of elements of public authority and its privileges since public authority is what gives the contract its administrative character. It is undoubtedly the distinguishing character of the administrative contract and the basis and criterion of administrative law, and the criterion of exceptional conditions is nothing but an application of this rule in administrative contracts. The trend supporting the consideration of the contract concluded by the state as an administrative contract, which is considered more modern, sees that the current system that has begun to crystallize regarding these contracts, about the issue of nationalization, is close to the French administrative contract system that has influenced other legal systems, as nationalization is considered one of the forms of terminating the administrative contract, and is consistent with the principles of the administrative contract theory (11).

The Lebanese State Council, in the two cases of the State against the two cellular companies, Libnacell S.A.L. (12) and F.T.M.L. (13), considered these contracts to be internal administrative contracts and did not distinguish between administrative contracts concluded by the State that meet the necessary conditions to be considered administrative, and contracts of an international nature that relate to the interests of international trade, as it considered that "the contract signed between the State and the respondent is a concession contract and an internal administrative contract that does not relate to the interests of international trade, and is therefore not subject to international and internal arbitration." A decision was also issued by the President of the Lebanese State Council on the occasion of the request to give the executive formula to two arbitration decisions (14). It ended with the refusal to give the executive formula after considering that "even if administrative contracts include provisions that have an impact on the interests of international trade, the predominant nature of the contract remains the administrative nature, as long as the obligated contractor contributes to the implementation of one of the national public facilities, those facilities that are governed by the principle of the necessity of managing and operating them to achieve the national public interest. To say otherwise and to consider that administrative contracts can themselves be the subject of international commercial operations contradicts the principle above, given that it is one of the established principles in administrative science and jurisprudence that it is not possible to accept the existence of international administrative contracts. In the same context, the proponents of this trend (15) considered that "the international administrative contract cannot see the light except through the administrative judiciary itself, which by applying the traditional standards of the internal administrative contract to contracts that include external elements concerning the internal legal system, can alone prove, define and recognize the administrative contract, and is still far from this recognition in science and jurisprudence, as science and jurisprudence in countries whose legal system separates The judiciary between both the administrative and judicial judiciaries still considers the issue of the international administrative contract difficult. Either an administrative contract or an international contract. This is what the Beirut Court of Appeal, its tenth chamber, ruled in 2001, the case of the Lebanese State versus the Bank of Lebanon and the Emigrants (16): "International arbitration is considered arbitration in a contract whose obligations result in the movement of values and their transfer back and forth across borders, which results in mutual results in each of the two states concerned with that contract... 6- The French judiciary has gone beyond the position based on the rule of conflict between the State and arbitration in administrative matters that the jurisprudence of the French and Lebanese State Council has settled on, by establishing a material rule stipulating the validity of arbitration clauses in state contracts of an economic nature, and this is what the Lebanese legislator has enshrined in a direct text in the second paragraph of Article (809) of the Civil Procedure Code. 7- The state and legal entities also conclude, as they conclude internal administrative and international commercial

contracts, using intrusive clauses. Two characteristics may come together in these contracts: their connection to international trade interests due to the entry and exit of values across borders, their administrative nature due to the intrusive clause they contain, and the achievement of a public utility.

If the decision above accepted arbitration in international administrative contracts if the two aforementioned characteristics came together before the issuance of Decision No. 440/2002 permitting arbitration in administrative contracts, then, based on that, a decision was issued by the State Council on 4/26/2005 (17), i.e., after the issuance of this law - ruling that the arbitration clause in the concession contract is invalid due to the lack of a trade condition in this contract despite its connection to international interests.

In confirmation of the idea of the existence of an international administrative contract, some say (18), "Accordingly, it is clear from the above, the State Council is keen to encourage investments in Lebanon and attract foreign capital, through its activation of the provisions of international agreements related to the activation and protection of investments And presenting it in application to the texts of the internal public law that do not bias arbitration in administrative contracts, and because it has the character of international administrative contracts.

Therefore, it is clear that the supporters of applying the concept of the administrative contract in the field of contracts concluded by the State and aiming to exclude the application of any law other than the national law of the host state of the investment to these contracts, which fall within the framework of administrative contracts according to the classification that these adhere to, as they consider that if arbitration has become possible in the field of administrative contracts thanks to the will of the legislator, then these contracts cannot be removed from the framework of administrative contracts as they must also be subject to administrative law.

According to this trend, which is the best, there is no objection to considering the administrative contract an international administrative contract as the international character of the contract does not negate its status as an administrative contract, as long as the necessary criteria are met to bestow this description on it by the applicable law (19), as these criteria are the same ones adopted in giving the absolute contract the international character, and the most important of these criteria is the economic criterion.

To consider the contract as an administrative contract, it is necessary to consider the actions issued by the State as a public entity, as well as the exceptional conditions contained in these contracts, such as the benefits granted to the foreign investor, taxes and customs duties, and granting him land to establish the project, in addition to some principles that are not seen in contracts subject to private law, such as the concept of regulatory authority, financial rebalancing and force majeure, and terminating the contract by its sole will, which is what distinguishes administrative contracts. The administrative contract is also indicated by the use of the state party in concluding this contract of extraordinary clauses in its capacity as a public authority and if it relates to the management of one of its facilities to achieve the public interest, which places it within the framework of administrative contracts, and the necessity of applying the national law of the host state.

Second, International investment contracts are private law contracts. This opinion completely contradicts the previous opinion, as its supporters consider investment contracts to be private law contracts (20) because the absence of exceptional conditions in investment contracts results in the absence of an administrative nature because many investment contracts may not have the state as a party, as the administrative body is a party to the contract, acting in it as an ordinary person and not a public person. The privileges the investment law grants to the foreign party are against the state and not the opposite. These exceptional and unusual conditions are what make the contract administrative; when the administration is a party to it, and the contract is related to the management of a public facility of the state's facilities, these conditions are originally granted and decided in favor of an administrative body, Not the party contracting with it. The state applies public law within its territory with its sovereignty, including its citizens. This law is not

applied to the foreign party contracting with it; the state's sovereignty is limited to the scope of its territory, and outside this territory, it does not have this right, so the state stands in a position of equality with the foreign contractor. Thus, the state does not enjoy any exceptional authority over the foreign party except to the extent permitted by their contractual terms (21). This opinion does not only concern international investment contracts but rather includes all contracts concluded by the state with a foreign party. As a result of practical considerations, the requirements of investment and international trade require not adhering to public law methods in contracting because if the state adheres to its sovereignty and public powers, it destroys contractual relations with the foreign party and also raises political problems between the state party and the foreign contracting state if it resorts to diplomatic protection for its state. Therefore, the state must descend to the level of the private contractor to achieve its interests if it is attractive to investment (22). This requires contracting using the private law to encourage foreign investment and achieve the state's economic goals.

Establishing legal equality between the contracting parties, the state and the investor, is a contemporary step towards working to flourish the international investment movement and achieve security for the foreign investor, as there is no reason to fear dealing with the state or disrupting its legal status (23).

This opinion concludes that investment contracts are private law contracts, even if one of the parties is a person from the public law persons, and that in comparison with the first opinion, we prefer this opinion, as investment contracts cannot be attached to administrative contracts in any way because they do not include all the elements of the administrative contract (24). Legally, the investment contract is completely equal between its two parties, making it lose the administrative contract's most important elements. The flexibility of the investment contract can also harmonize the interests of the investor and the government agency contracting with it, which is also not available in administrative contracts that always tend to favor the government agency and the harsh conditions it sets in its contracts. This is because giving the investment contracts an administrative character would destroy the basic idea on which they are built when the investor finds himself bound by administrative controls and systems that are completely inconsistent with the nature of the work of the private sector, which is based on freedom and lack of restriction. Also, subjecting investment contracts to the administrative judiciary in interpreting them and resolving disputes between their two parties gives the government agency the upper hand, which would lead to the private sector and investors refraining from taking the initiative to contract with government agencies through this type of contract. Accordingly, giving the character of an administrative contract to investment contracts and being keen to distinguish the state's role in contracting may lead to a state of imbalance and result in negative results in attracting foreign investors. Therefore, it is better to view investors in investment contracts as partners in the development process with the state. They seek profit, but they choose to establish their project within the framework of cooperation with the state or the owner and within the framework of the projects it offers. Therefore, it is necessary to find a formula for balancing those contracts.

Third: The Mixed Nature Of The International Investment Contract

Some investment contract jurisprudence has gone from mixed contracts and that they are of a special nature that combines public law and private law, to consider the new conditions in this contract to give it a mixed character of a special nature, as these conditions contain new developments that restrict the sovereignty of the state and reduce its powers, and deprive the contract of its judicial jurisdiction, and prevent the state from appearing as a public authority in the contract, so it cannot amend a contract by its sole will, in addition to the fact that it protects the foreign investor against changes in tax and customs legislation that may lead to harm to the financial side of the investor (35).

There is no doubt that the existence of the condition of legislative stability and the condition of the contract, the absence of which undoubtedly leads to the contract returning to the fold of public law and the immediate application of the rules of administrative contracts

familiar in the general theory of administrative contracts, leads to the dilution of the legal nature of the contract and its transformation from a purely administrative nature to a mixed nature (36). Several arbitration rulings have supported the mixed nature of investment contracts, including the Aramco arbitration issued in the case of Aramco Company against the Saudi government, which indicated that the mining concession is a contract of a special nature that cannot belong entirely to any contract, i.e., it cannot be included within the usual categories of contracts, as it is an action that has the nature of a single act about its reliance on the initial license, and it also has the nature of a contract because it requires an agreement of mutual wills of both the state and the concession holder. The idea of the mixed nature of the investment contract is only a partial case at best, as it is not easy to challenge its dominant elements, whether they are elements of public law or elements of private law. It is noted that this differs from one contract to another. The contractual and commercial nature of the deal is one of the most important elements of private law, as its terms are discussed by the two parties and imposed by one of them, in addition to the fact that it includes conditions of the applicable law and the settlement of disputes through arbitration (37). The conditions for choosing the law aim to exclude the internal legal system of the contracting state, as the contracting party seeks to free it from the authority of its law. As for the dispute settlement condition aims to provide neutral and effective means for settling disputes arising from this penalty to restore balance between the parties while considering the dispute. The arbitration condition is often considered a general guarantee in this regard, as arbitration is likely to dispel the fears of foreign investors about their disputes being subject to the state's judiciary, which is rarely welcomed by foreign investors (38). This originally existed in contracts concluded between parties of equal legal status. In contrast, the most important elements of public law in an investment contract are the existence of the state itself, in addition to granting the foreign investor several exceptional privileges and facilities and requiring legislative approval of some contracts. Despite this difficulty in determining the predominance of public or private law elements, the mixed nature of investment contracts remains an undeniable reality, which requires the application of appropriate legal rules, whether related to private or public law, but taking into account that the rules of private law are the basic and most applicable rules for their compatibility with the flexibility of the contract terms and the project's needs for some privileges. Investment contracts have a special nature due to the nature of their parties and the connection to the economic development plans of the host country. This requires the recognition of investment contracts for some general principles that are not necessary to achieve the desired goal of concluding them, regardless of whether the contract contains the elements of an administrative contract or not, as the special nature does not result from being a public law contract or a private law contract, but rather derives this specificity from the connection of its subject matter to the development plans of the host country. Section Two

International Standards Investment Contracts

An international contract is a contract that is connected to several legal systems, i.e., a contract that is not limited to one legal system, but jurisprudence (39) acknowledges that it is difficult to find a comprehensive and exhaustive definition, which necessitates searching for a standard that helps determine what is meant by an international contract. It is noted that there are three standards used to determine the international nature of a contract: a legal standard, an economic standard, and a third standard that combines the two previous standards, which is the mixed standard.

First: The Legal Standard

The legal standard, in determining the international nature of a contract, is based on the idea that the contract is considered international simply because the foreign nature touches on any element of the legal relationship (40). However, supporters of this trend have differed over the effectiveness of the contractual bond's legal elements and their effect on the international nature of this bond. It can be said that there are two forms of the legal standard: the first traditional and the other modern, as follows:

1- The traditional legal standard:

The supporters of this standard go to the settlement between the legal elements of the contractual relationship; as the foreign character touches on any of them, the contract acquires an international character that justifies subjecting it to the provisions of private international law (41). Meaning that it is sufficient for the contract to be considered international that the foreign element touches on the element of the parties, such as their nationalities being different, or the element of the subject, such as the place of execution of the contract being different from the judge's country, or the element of the establishing fact, such as the place of conclusion of the contract being in a country other than the judge's country (42). According to its supporters, this standard can confirm the universality of the solutions of private international law (43).

This standard has been criticized, as it is a rigid mechanical standard, as it requires that the contract be considered international simply because there is a foreign element in the contractual relationship, regardless of the importance of that element or the nature of the relationship in question (44). This is what led to the emergence of the modern legal standard.

B- The modern legal standard:

According to the proponents of this standard, it is necessary to differentiate the legal elements of the contract that may be affected by the foreign character between the ineffective or neutral elements and the effective or influential elements in the contractual relationship, as the mere availability of the first elements is not sufficient to give this bond an international character, but rather, for it to acquire this character, the foreign character must have touched an effective or influential legal element (45). It has been said that it is unreasonable to consider the contract international, for example, simply because it was written on paper manufactured in a foreign country (46).

Determining the internationality of the contract or not in this manner is a relative matter that depends on the nature of the contractual bond. For example, suppose the nationality of the contracting parties is considered a negative element that does not affect financial transaction contracts. In that case, it is, on the contrary, a decisive element in marriage contracts, as the fact that one of the spouses has a foreign nationality is likely to give the contract an international character. The relative nature of the international character of the contractual relationship confirms that this character is determined through a "qualitative" criterion, which is the "influential" foreign element in this relationship, regardless of the numerical quantity of neutral foreign elements that may be involved.

Second: The economic criterion

The economic criterion appeared in the late twenties of the last century in the field of monetary law and international payments (47), as the contract is considered international according to this criterion if it is related to the interests of international trade, and since the term international trade itself needs a definition, this criterion took multiple forms, as each form was a solution that meets certain economic needs witnessed by the French society in which this criterion appeared, such as the need to apply or avoid applying a specific legal text. The following are the most important of these images:

1- The first image: The ebb and flow criterion:

This criterion requires that for a contract to be considered international, it must contain a movement of ebb and flow, i.e., the back and forth of economic values across the borders of two or more countries. This criterion has been criticized for its inability to accommodate all international economic relations, which made it difficult to adopt it within the scope of some contracts, such as international service contracts. It is also criticized for not considering the diversity of payment methods, as not every back and forth is the payment amount. There are other payment methods, so there is no escape from developing this criterion (48).

2- The second image: The criterion of international trade interests:

To apply this criterion, every contract that focuses on economic operations, including the movement of money, services, or payments across borders, even in one direction, is considered an international contract.

The interests of international trade, as defined by French jurisprudence, mean the existence of an economic transaction that requires the movement or circulation of money, services, or payment across borders, and in the words of French jurisprudence, the existence of an ebb and flow of values or services beyond borders. Based on the ebb and flow criterion, this concept of the interests of international trade was previously used by the French Court of Cassation in its definition of the international contract until its application. This time was subject to some development, as French jurisprudence considered (49) that the interests of international trade are achieved even if this movement is absent in the form of the two operations of going and returning or the ebb and flow, as long as the contract or transaction indicates this movement across borders. In a famous case brought before the French Court of Cassation on February 19, 1930, this case concerns a contract of sale concluded in France between two Frenchmen regarding one hundred tons of wheat under a contract of sale, according to the terms of the London Grain Trade Association, which contains an arbitration clause and the effect of a dispute between the parties. The dispute was brought before the French judiciary, and despite the contract concluded between France and two Frenchmen and France being the place of execution, the French Court of Cassation overturned the ruling of the Court of Appeal, which ruled that the arbitration terms were invalid according to French law. The French Court of Cassation decided that the invalidity of the arbitration clause stipulated in Article (1006) of the French Code of Civil Procedure is unrelated to public order in France. Therefore, this invalidity, although it applies within the scope of domestic contracts, does not apply within the scope of international contracts, which acquire this character merely because they take into account or take into account the interests or requirements of international trade (50). Among the legislations on which this standard was relied upon by Lebanese legislation, Article (809) of the Lebanese Code of Civil Procedure of 1983 stipulated that arbitration related to international trade interests is considered international. The economic standard adopted by French jurisprudence (51) and the judiciary is distinguished by the fact that it gives the arbitration agreement an international character regardless of the nationality of its parties as long as it relates to the interests of international trade.

Third: The mixed standard

The mixed standard combines both of the previous standards, the legal standard and the economic standard, as it is not sufficient to verify the presence of a foreign element in the contractual relationship to decide the internationality of the contract in question, but it also requires that the contract be related to the interests of international trade.

The French Court of Cassation, in its ruling issued on July 4, 1976, called for the application of the mixed standard by relying on the legal standard and the economic standard together, as it was not satisfied with the availability of the legal standard to determine the state of the contract, but rather went on to confirm the state of the contract, i.e., what the contract aims to achieve by transferring funds across borders, that it affects the interests of international trade (52).

The modern legal standard is the general standard in determining the state of contracts, that the contract is international if an influential foreign element addresses it. In contrast, the economic standard of the state of contracts answers the question: When does the foreign element influence the field of international economic relations?

It is also preferable in international economic arbitration that the legislation and agreements regulating arbitration adopt the modern economic standard, i.e., the international trade standard, adopted by the French legislator. Still, some countries have adopted mixed standards, such as the Model Law (53).

What can be concluded is that investment contracts are contracts concluded by the host state or one of its bodies or public institutions affiliated with investors, whether they are natural or legal persons. It is possible to differentiate between citizens and foreigners by the criterion of nationality in the case of natural persons or by one of the standards followed, such as the criterion of control or establishment or the nationality of the partners in the case of legal persons.

As for the legal nature of the investment contract, despite the differences around it, the investment contract has a special nature not because it is a mixture of elements of public law and elements of private law due to the inequality in the legal positions of its parties and its connection to the development plans of the host state.

The Second Requirement

Recourse To Arbitration In Disputes Over International Investment Contracts

Since political considerations often govern the public foreign investments obtained by developing countries, developing countries have tended to attract private foreign investments to complete the economic development process. For this purpose, countries usually resort to concluding contracts with foreign capital owners according to what their development plans require, such as contracts to exploit their natural resources, technology transfer contracts, factory construction contracts, and contracts for the works required for their infrastructure... which fall within the framework of investment contracts.

Therefore, disputes arising from investments are closely linked to changes in the political, social, and economic circumstances that accompany the emergence of the investment link, whether by a contract or a license issued by the host country or through an international investment agreement, which calls for the need to reconsider and review it, and these new circumstances may lead the host country to take some measures or resort to actions emanating from its sovereign authority.

Section One

The Nature of Investment Contract Disputes

Sometimes, some matters may lead to an imbalance in the contractual obligations correctly formed at the time of contracting. These matters may expose the contract to complete collapse and cancellation by both parties as if a force majeure occurred. The contract may be exposed to an imbalance, but this does not require its cancellation; rather, it requires reconsideration and renegotiation of its terms (54).

The state may also sometimes make changes to its laws or legislation in order to respond to global developments, which may lead to influencing the authority that it or its agencies enjoy in terms of resorting to arbitration, or may lead to amending the legal rules governing the settlement of its disputes (55).

The matter is wider than making legislative changes. Still, it may extend to the state, with its authority in the contract and with its authority, carrying out some actions or procedures that may lead to the invalidation, cancellation, or termination of the investment contract that includes an arbitration clause or refers to the arbitration agreement that regulates the method of resolving their disputes.

First: The effect of force majeure on the investment contract

One of the most important principles governing the formation of contracts is the principle of contractual justice. The contract must achieve an economic balance between its two parties, especially in the field of investment, so that one party does not become rich at the other party's expense (56).

If achieving profit and incurring loss are the effects of every contract, then achieving huge profit versus huge loss cannot be the natural and acceptable result of any contract, as contractual integrity and justice reject any imbalance in the contractual balance when this imbalance exceeds the acceptable or reasonable limit in dealing (57).

Force majeure constitutes an unexpected and irresistible event or group of events. It occurs due to an act independent of the one who invokes it. He could not anticipate or prevent it, and its occurrence resulted in the expiration of his obligation due to the impossibility of implementing it without bearing the consequences of that (58).

The matter may be different when force majeure occurs in an international investment contract, as the parties often rely on this contract and the profits they will reap. Therefore, they prefer to maintain the contractual relationship between them, regardless of this event, contrary to the general rules established by

most legal systems, which cancel the contract when an event that constitutes force majeure occurs.
Therefore, the parties often resort to including a condition in their contract, the force majeure condition (59).

The dispute that occurs between the two parties to the investment contract, which resulted from the impact of force majeure, may relate to non-compliance with what the two parties originally agreed upon due to the occurrence of force majeure, which constituted an obstacle to the best implementation agreed upon in the contract.

Let's look at the role of the judge in resolving disputes arising between individuals due to force majeure. We will find that the judge considers this force majeure an obstacle to liability, as it appears as an event beyond human control, unpredictable, and irresistible. It also constitutes force majeure if it could be anticipated but could not be prevented (60). To create a kind of trust and protection for third-world countries, the Washington Convention of 1965 was founded, which aims primarily to resolve disputes arising from investment. Investment is often linked to arbitration, and the reason for this may be that the investor is a foreigner in most cases and may not be sufficiently familiar with the law of the country in which his investment is taking place, in addition to his fear that the investing country will impose its legislative authority on the method by which investment disputes are settled (61). Thus, arbitration contributes to attracting investments to countries ( ), and these diverse investments involve various disputes, most of which are technical disputes, and therefore, resolving them requires special programs that require a lot of experience and knowledge. Although arbitration has proven its role over time in resolving international trade disputes in general and investment disputes in particular, some believe that these issues of a technical nature double the difficulty of the tasks assigned to arbitration bodies. Although these arbitration bodies can appoint experts specialized in this field, the time between force majeure events, referring the dispute to arbitration, and appointing experts makes it difficult to reach real results consistent with the circumstances of the dispute (62). However, regardless of the length or shortness of the period, the reality is that settling investment disputes through arbitration is consistent with the nature of these disputes and with the desire of the parties to maintain their ties more than any other means. In light of the expansion of investment contracts, resorting to arbitration is better than resorting to the judiciary and obtaining a coercive ruling from the point of view of one of the parties, as arbitration is based on settling the dispute amicably, thus preserving good relations between the two parties, which provides an opportunity for future dealings between them.

Second: The dispute arising as a result of a legislative interpretation carried out by the state

Global developments at the economic and political levels are reflected in all countries due to their general interaction. There is no doubt that security guarantees and a political climate suitable for attracting investment, which any sudden change affects the investment contract, are important matters supporting countries' economic policies. However, the matter is not limited to providing a political, social, and economic climate for the investment to succeed, but more importantly, providing the legal systems that the investor seeks to facilitate his investment, whether in terms of tax legislation, customs, or legislation related to investment, which the investor pays special attention to in his studies related to investment in this country, as he extracts from his study of these systems and legislation, the limits within which he works, the incentives he will enjoy, the flexibility of the dispute resolution system and other things that may affect the results of his work (63).

Attracting investment to developing regions such as third-world countries requires a legal framework that helps flow capital. One of the most important elements that constitute this framework is the existence of national laws that provide the opportunity for the foreign investor to obtain the returns and profits he seeks from his investment in this country, which guarantee the protection of his capital and ensures the stability of this investment (64). However, the investor may sometimes need help convincing the host country of his investment to subject this contract to other than its law. In all cases, if the contract is subject to the law of the host country or other, some legislative changes

may occur in the law chosen to govern the contract between them. In light of the collapse of colonial systems and the arrival of many formerly colonized countries to obtain their independence and sovereignty, their legal systems could be more stable due to their work on commercial economic development with developed countries (65). Such legislative changes in the host country's laws may lead to undermining confidence in this country and not providing the appropriate climate to attract investments, especially in a country seeking economic development in various fields. This prompted many investors to put what is known as legislative stability conditions in their contracts with the host countries. The primary goal of implementing these conditions is to freeze the legislative role of the state party to the contract, from changing the legal rules in force at the time of concluding this contract and not issuing new legislation that applies to the contract concluded between them in a way that leads to disrupting the economic, contractual balance, and harming the foreign investor contracting with it (66). Therefore, the existence of this condition prevents the state from using the advantage it enjoys, as it is an authority that has the right to legislate and create a law and implement it on the contract concluded between it and the foreign investor, which creates a kind of inequality between the two parties. Third: The dispute arising as a result of an individual action taken by the state

Considering the individual actions that the state may take, such as if it nationalized a project, is open to discussion from two aspects, as it includes two basic matters: the legitimacy of the action taken by the state and the damage resulting from this action, as the contract has a legal and an economic balance.

Can the arbitrator consider the appropriate compensation for the damage resulting from the action taken by the state without considering the legality of the action itself? Neither the arbitrator nor the international courts have the authority to force the state to retract the action and oblige it to implement the contract, even if the investor based his request on the real motives behind the state's action (67).

When considering whether this dispute arising from an individual action taken by the state is legal and subject to the arbitration of the center, we must not confuse the nature of the action taken by the state, such as nationalization or expropriation, with the nature of the dispute surrounding it.

Sometimes, the state may take some individual measures considered political measures given the motive for taking them. At the same time, the dispute revolves around matters of a predominantly legal nature, such as compensation. Thus, when the dispute is related to nationalization without compensation, it is subject to arbitration in the center as a legal dispute. However, when the dispute revolves around the state's right to take this measure or the validity of the motive for taking it, in this case, the dispute is not legal and is not subject to the center's agreement (68).

Section Two

Motives For Resorting To Arbitration In Investment Contract Disputes

Arbitration plays an important role in resolving disputes that may arise in investment contracts, and some of them have made arbitration in investment contracts a necessary and inevitable matter (69).

The countries hosting the investment see that it is not more appropriate to resort to their national judiciary in investment disputes because this leads to a ruling in their favor, which conflicts with the interests of the foreign investor and leads to his fear and reluctance to invest in such a country (70).

Many initiatives have been taken at the national and international levels to support the efficiency of arbitration and encourage it as a means of settling trade and investment disputes of an international nature (71). And it has become the natural judiciary in this field (72). Those dealing within the framework of international relations prefer arbitration over the state judiciary (73). The preference of countries to resort to arbitration in investment contract disputes is due to the following reasons:

First, The most important advantages of arbitration are consistent with the nature of investment contract disputes

The most important advantages of arbitration are the speed of the procedure, confidentiality, and specialization, and we summarize them in the following matters:

1- Speed of procedures:

Arbitration procedures are simple, as the parties to the dispute determine those procedures, which leads to the speed of issuing the arbitration decision (74). This is what is required to resolve investment contract disputes. There may be investments and large amounts of cash frozen awaiting a court ruling, which leads to a real loss to disrupt those amounts awaiting a resolution in the dispute, as the parties to investment contracts prefer to resort to arbitration for the rapid justice it provides (75).

In addition to the speed of its procedures compared to the usual judicial procedures, the selection of arbitrators and specialists in the field of investment gives them the great ability to understand the problems presented to them and find the best solutions for them, as arbitration is capable of applying the objective provisions that govern the relationships presented, given their international nature (76).

In addition to the fact that arbitration shortens the levels of litigation, as the arbitration panel issues a final judgment that cannot be appealed (78) by any normal means of appeal, with the possibility of filing a lawsuit for nullity regarding it and the reasons exclusively stated in the law, and as a general principle, the appeal for nullity does not stop the implementation of the arbitration award (79). In addition to the above, the international agreements concerned with arbitration did not address the methods of appealing nullity and its procedures, as they made that part of the countries' national legislation. These agreements recognize the right of the national judiciary to monitor arbitration awards. Hence, the laws of different countries regulate the methods of review and nullification of arbitration awards and their causes, and these laws are similar to the arbitration legislation of many countries (80). One of the professors says this: "The legitimate interest of the parties in international arbitration and their keenness on it should not allow the absolute authority to be enjoyed by the courts of the state in which it was issued, as interest and keenness require that the court's authority to declare the invalidity or cancellation of the ruling be a specific authority" (81). Accordingly, arbitration provides the foreign investor with a neutral body that he requests due to the weakness of his legal position in the face of the host state of investment. It also gives him complete freedom in choosing his arbitrators who will be assigned to resolve the dispute, form the arbitration court, and determine the law applicable to the arbitration procedures and the subject of the dispute (82).

2- Confidentiality:

Arbitration decisions are usually not published, unlike what happens with judicial decisions. For this reason, business people prefer arbitration over ordinary judiciary because publication conflicts with the confidential nature of their work and disputes with host countries, and the principle is that arbitration rulings may not be published except with the consent of the arbitrators and arbitrators (83). The failure to disclose the secrets of disputes as a result of the openness of the judiciary is something that economic and commercial circles at the international level are reluctant to do (84). 3- Arbitration is a specialized judiciary:

Since the judge in the state courts may be a skilled jurist, but he has little experience in international trade affairs (85). Because arbitration is based primarily on the management of the two parties, the two parties choose those to whom the arbitration task is assigned from those who know the type of commercial dealings (86).

They can take into account when choosing arbitrators the degree of specialization required in the subject of the dispute (87) and those who have sufficient experience and professional training instead of referring it to the judiciary, which may resort to seeking the assistance of experts in technical trade matters (88) or may not have the necessary competence to resolve complex technical and legal issues, which are often included in investment disputes. Therefore,

Arbitration is closer to achieving justice because the specialized arbitrator is more capable of understanding the subject of the dispute, its details, and complexities,

unlike the judge, who looks into all disputes, regardless of whether he is specialized in the dispute (89).

Based on the above, and considering arbitration as a specialized judiciary, instead of litigation, the parties choose the arbitration panel and those who have the experience, competence, and special knowledge in the areas related to the dispute, which leads to the speed of adjudication and settlement of the dispute, and also leads to increasing the possibilities of optional implementation of the panel's ruling ("arbitrators") and resolving the dispute quickly.

Second: The foreign investor's insistence on the arbitration clause

Because in many countries, there is no special system for suing governments (90), as a result, foreign investors are keen to include the arbitration clause in investment contracts due to the lack of confidence in the integrity and fairness of the courts of the host country, in addition to the fact that its position will not be neutral towards the dispute, as the national judiciary. However, independent of the state itself, it is not neutral regarding investment disputes or those in which the state is a party with a foreign contractor. That contract arises from a contract related to economic or social interests and the state's sovereignty (91).

Naturally, private foreign companies do not accept that their agreements be subject to the domestic law of the host state or the party to the contract, in addition to the fact that the state refuses to subject the concessions and contracts to which it is a party to the law of the foreign state, so the parties "the state and companies" agree to subject them to international law or in general to the general principles of international law. Hence, the parties guarantee their agreement by stipulating that they will resort to arbitration in the event of a dispute between them. Including an arbitration clause in international trade contracts has become a common condition, especially when the state is one of the parties (92).

For this reason, the foreign investor, out of his desire not to be subject to the judiciary of the host state and its laws as a result of the state's interference with its influence or influencing the justice of national arbitration or the national judiciary as well, and the foreign investor's fear that the state will make sudden amendments or changes that affect his interests, therefore the will of the foreign investor tends to be keen to include the text of resorting to arbitration in investment contracts.

Third: Arbitration is a procedural judicial guarantee to encourage investment

International trade professionals have sought to include an arbitration clause in their contracts at a time when the state judiciary is no longer the only one concerned with resolving international contract disputes, as arbitration has become a competitor to this judiciary, in addition to the fact that those dealing in the field of international trade see that it is better to submit their disputes to people with special technical expertise, who are specialists in trade or the profession, who by nature have a technical nature and are raised by the dispute; Because this makes them feel safe and secure, and ensures that they avoid internal legal surprises, the topics, and provisions of which they are ignorant of (93). Another opinion believes that "the arbitration system has created for itself and its assistants, the jurists of the era of internationalization and the dominance of multinational companies, legal formulas and tools that guarantee the exclusion of state law and the effectiveness of contract provisions through arbitration," and says in another topic "It is necessary that we do not look at arbitration in itself, but rather as an integral part of a broader and more comprehensive legal system, which is, in turn, part of a new system of international economic relations" (94), and thus the non-subjection of arbitration to any official body, or a state with a specific interest, confirms in the eyes of foreign investors the necessary neutrality, and the necessary guarantees to protect their investments. As for international investment contracts, in which the state "any state" is linked to a foreign buyer, they usually do not trust the judiciary of the contracting state or its laws because the judge is influenced by national motives that conflict or contradict the interests of the investor, and because the laws in developing countries are easy to amend, and are not stable (95). If estimating it when disputed remains in the hands of the host country's judiciary, the importance of international arbitration as an

appropriate means and an effective guarantee for resolving investment disputes is very serious.

CONCLUSION

In conclusion, the topic of resorting to arbitration in disputes over international investment contracts makes it clear to us that arbitration is a vital tool for achieving justice and maintaining a balance between the interests of the contracting parties, whether countries or investors. The importance of arbitration is highlighted in its ability to provide solutions characterized by neutrality and flexibility, which provides a safe and reliable environment for resolving disputes arising from investment contracts, away from the pressures of the traditional judiciary and its influences.

It is also clear that the success of arbitration depends largely on the existence of precise legal controls that regulate the arbitration mechanism and determine the procedures for resorting to it, starting from the arbitration clause in contracts, through the appointment of the arbitration panel, and reaching the formulation and implementation of judgments. These controls enhance transparency and trust between the parties and preserve the rights of investors on the one hand and the rights of countries to protect their sovereignty and economic interests on the other hand.

Therefore, it can be said that international arbitration, with its established controls, contributes to creating a stable legal environment that encourages investment and supports economic growth, making arbitration an indispensable legal tool in the field of international investment and a means of reconciling the aspirations of investors and the development goals of countries.

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