

Arbitration and Technical Expertise in Tourism Investment Disputes, Practical Study on: The Privacy of Arbitration in Tourism Investment Disputes and the Necessary Controls to Attract Tourism Investment

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Abstract

This study concluded arbitration processes in tourism investment disputes, to contribute to the importance of the role of arbitration in tourism investment disputes, so it defined a specific definition for tourism investment contracts, so that it can be dealt with through a stable and unambiguous formulating vision, which can be an obstacle to the important role of arbitration in tourism investment disputes. And so it focused on enactment a legal system for arbitration in the disputes of tourism investment agreements, so that it will be in the process of dealing with all matters of arbitration in such disputes in a way that guarantees the protection of the rights of the investor and the host country. And this study came to approve arbitration centers shall prepare guiding models, which include the general rules to be followed during the formulating of tourism investment agreements and the related arbitration agreements to settle disputes that may arise.

Keywords: tourism investment, disputes, arbitration, legal system, tourism investment agreements, arbitration agreements

1. Introduction:

In the very beginning and before handling the subject of the study, it is essential to mention the importance of the tourism sector and its effective and influential role in the development of the rest of the economic sectors, whereas it is considered as an interface that reflects the economic and legislative development. It is clear that all countries seek to improve their economic level in light of their certain elements, which distinguish them from others. The economic power of one country or another focuses on the aspects that constitute the cornerstone of its economy¹. It is imperative that we shall look for the economic power of the Arab nation, and shall seek to stimulate and support it with all economic, legislative and judicial means.

In light of growing role of tourism sector and its importance in the economic level, it is necessary to support it and working to strengthen it in all ways. The most important of these are the legislative remedies and reforms, and the legal privacy that it may have in dealing with the tourism sector, and the uniqueness of judicial systems, which are completed and guaranteed to the privacy of financial and economic statements for the parties of the tourism relations and dispute that may arise thereto.

2. Study Subject

The subject of the study is about arbitration in the disputes of tourism investments. We address this subject through a review of the specificity of tourism investments and the general features that affect the nature and rules of arbitration in the disputes of these investments, and the implications thereof on the issues of tourism sector and related disputes whereas it needs an arbitration of a special nature to ensure the attraction of tourism investments, and ensure its stability and continuity.

3. Study plan

3.1. The First Topic: The disputes of tourism investments.

An overview of tourism investments, what are the tourism investments disputes? Definition of tourism investment disputes. The nature of tourism investment disputes.

3.2. The Second Introduction: The role of technical expertise and arbitration in the settlement of tourism investment disputes, and the necessary controls.

3.2.1. The importance of the implementation of arbitration in adjudication of tourism investment disputes.

3.2.2. Arbitration rules in the tourism investment disputes.

3.2.3. Technical expertise and its impact on arbitration in tourism investment disputes.

- Definition of the technical expertise in arbitral proceedings.
- The legal description of technical expertise and its importance.

¹Ahmed Adeb Ahmed. Analysis of Tourism Activities, Master's Degree Thesis, Tishreen University, Faculty of Economics, Syria, 2005, p. 3.

- The controls that govern the work of the technical expert.
- The effect of expert's report on arbitral proceedings.

4. The First Topic: The Disputes of Tourism Investments

At the beginning of this study and before handling with the issue of arbitration in tourism investment disputes, we should handle any disputes that may arise over tourism investments, whereas these investments have a special distinction from other aspects of investment activities because it has a great impact on all sectors of the national economy.

The attractiveness of tourism investments depends on the extent of legislative development and the trends adopted by the state. The extent to which the local market is able to attract investments depends on the extent of compatibility between the objectives of the investor and the host country, which seek to achieve the highest rates of economic growth, and the adoption of legislation, legal and judicial systems commensurate with the requirements and privacy of those important investments.

Whereas the tourism investments occupy such an important economic position, its disputes and privacy may be difficult to be dealt with in the same traditional ways of settling normal disputes, which may negatively affect the attractiveness of the national tourism investment market.

Regarding the subject of this introduction, it can be reviewed through the following axes:

4.1. An overview of tourism investments

First, the investment is the employment of money for the purpose of yield, income or profit. The investment may be in the form of tangible material or ethereal¹, it also known as the total of investments that increase the income and achieve the actual increment to the original capital².

Whereas the tourism sector is one of the most important steams of the local and even global economy, the investments are made through the use of financial and physical mechanisms to develop the tourism sector, increase income and make real additions to it by adding new capital assets and liabilities to the local market.

The tourism investments vary and differ in accordance with the needs of the local market. There are tourism investments in the field of marketing contracts for hotel rooms and tourist units, investment in the level of tourist residences and resorts, tourist transport contracts, and other aspects of tourism investment.

It is worth mentioning that there are encouraging factors in investment in the tourism sector and in other sectors, as follows:

- Appropriate economic policy shall be applied, where the state shall follow the most appropriate economic means and ways to achieve its long-term aspirations. Its economic policy shall be clear and stable, and its laws, regulations and general judicial systems, including arbitration, shall be consistent with these economic policies.
- The need to provide an appropriate administrative structure away from the complexities, procedural and administrative obstacles, so as to ensure that there are no obstacles to the investor in the field of tourism or other.
- The importance of the interdependence of public and private laws and regulations with each other, and with the objectives and aspirations of both of the host State and the investor.

These factors are a guarantee of the rapid adjudication of potential tourism investment disputes, despite the above factors, disputes between the host State and the investor are difficult to avoid, which requires a separate judicial environment that is properly harmonized, taking into account the interests of both parties to the investment.

4.2. What are the tourism investment disputes?

The disputes of tourism investment are characterized by the characteristics of investment disputes. It is located between the host State and the investor on the implementation of the contracts concluded between them and any procedural or substantive obstacles that may be encountered or the State may adhere to legislative requirements or rules, (Unilateral host state procedures)³ that cause delays or impeding the execution of investment contracts. And to identify what the tourism investment disputes are through: definition and statement of its nature.

4.2.1. Definition of tourism investment disputes.

Initially, some legislators and jurists tried to address the definition of the concept of investment. One of the jurists defined it based on the economic basis of investment as:

"Directing savings to increase the economic base; and thus raising the general economic level"⁴. The investment

¹ Ghassan Khaled. Study on the concept of investment and its legislative reality. Volume 22, p. 1165. School of Law. An-Najah National University, Nablus, Palestine. 2008.

² The previous reference

³ Omar Mashour. Arbitration in Investment Disputes. Journal of Bar Association. Jordan. In 2002

⁴ Hossam Marwan Abu Hamadeh. Arbitration in Investment Disputes. University of Jordan. Jordan. 2011. P.8

contract arranges rights and obligations on its parties, so that each party has its own legislative and convention framework in an organized and accurate manner¹. Despite the supposed mutual cooperation between the state and the investor, however, there may be conflict between the parties in the exact content of their rights and obligations.

4.2.2. As for effect of investment disputes:

It is those disputes that may arise between the host country _ and in particular the developing countries _ and the investor, on the occasion of a contractual relationship or an agreement between them that are taken from the tourism sector and focus on one of the models of tourism investment.

Where a dispute may arise between the host State and the investor as a result of the attempt by either party to infringe upon the rights of the other or to evade the implementation of its obligations or other causes which, by their very nature, lead to an investment dispute such as the force majeure, foreign companies and unilateral actions of the host State².

4.2.3. The nature of tourism investment disputes

The determination of the nature of tourism investment disputes has an important role in giving procedural and objective privacy to the means of adjudication. Investment disputes have a specificity that derives from the unique quality of the contracts and agreements of the tourism investment.

The search for the nature of tourism investment disputes requires reference to the specificity of tourism investment. It represents the most important major industries of the world; if it is determined that its rates exceeded the rates of agricultural and industrial growth and exceeded the importance of all traditional manufacturing industries and services in terms of sales, industry and foreign exchange. Tourism investment is one of the major economic circles in many countries of the world.

As such tourism investments are important, the inevitable conflicts that may ensue and which are distinct from those of other conflicts, which require that the means of adjudication to be characterized by excellence, speed and achievement, and that it guarantees both the rights of the investor and the host State, which is not can only be achieved by arbitration as an independent, completed conclusion.

From the aforementioned, we conclude that tourism investment disputes are the disputes arising in respect of an investment contract that focuses on the tourism sector. These disputes are characterized by a special nature derived from the importance of tourism investments as mentioned above.

As this peculiarity characterizes these conflicts; it was necessary to have a special way to adjudicate them and to match its own qualitative, and serve as guarantor for the investor and the host State through the implementation of some controls that can be described as the guarantors of arbitration in the disputes of tourism investment.

5. The second Topic: The role of technical expertise and arbitration in the settlement of tourism investment disputes, and the necessary guarantee controls

"The determination of the rights and obligations of investors in the field of tourism is through the organization of legislation and convention in an organized and accurate manner. This is not enough to reassure investors, and it is not an effective guarantor unit to protect the rights of investors in the tourism sector. There must be a buffer means to protect those rights in case of violation thereof".³

Notwithstanding the mutual cooperation between the host State and the investor to determine those rights and obligations in terms of scope and content, there may be a dispute between them, which may be the result of the unilateral actions of the host State. Therefore, the tourism investor seeks neutral and effective means of settling any disputes that may arise with the host State.

The ordinary judiciary is no longer an effective guarantee for the protection of investors' rights, because they look at the national judiciary with suspicion, as well as their desire to preserve the secrecy of their disputes in relation to large-scale financial activities and actions, which makes arbitration the top alternative means of adjudicating tourism investment disputes.

Arbitration as a conclusive and accomplished means is the most effective way to provide a case and complete secrecy, as well as speed in deciding disputes, and to provide a large procedural and substantive space for both parties to the conflict, so that they may choose the rules governing the arbitration process in form and substance.

¹ Dr. Ibrahim Ismail Al-Rubaie. Arbitration is a procedural guarantee for settlement of investment disputes. A comparative study. School of Law. University of Babylon. Iraq. No history. P. 1.

² Omar Mashour. Arbitration in Investment Disputes. Journal of Bar Association. Jordan. In 2002

³ Dr. Ibrahim Ismail Al-Rubaie. Arbitration is a procedural guarantee for settlement of investment disputes. A comparative study. Journal of the Faculty of Law. University of Babylon. Without publication year.

5.1. First: The importance of the implementation of arbitration to determine the disputes of tourism investments.

Arbitration, because of its procedural and substantive characteristics and, is a real guarantee for preserving the rights of both parties to the tourism investment agreements. It provides the necessary reassurance and confidence to attract investment to the tourism industry.

First, before recognizing the importance of arbitration for the settlement of tourism investment disputes, reference should be made to the definition of arbitration "It is an agreement between the parties to bring to arbitration all or some of the new disputes that have arisen or may arise between them with respect to a specific relationship whether it is contractual or not contractual, and the arbitration agreement may be in the form of an arbitration clause contained in a contract or a separate agreement."¹

Talking about the importance of arbitration to settle tourism investment disputes stems from being an "effective procedural guarantee", as well as its distinctiveness and what is different from the national judiciary and the accompanying fears of investors who see it as a rival rather than a neutral party.

Arbitration has procedural characteristics, which make it the most important and appropriate method for resolving disputes of tourism investments. This importance stems from the following characteristics:

5.1.1. Independence of arbitration clause for tourism investment contract.

Arbitration as a means of resolving the disputes of tourism investment is characterized by its independence from the investment contract. The nullity of the investment contract does not affect the arbitration agreement, which leads to the efficiency required for arbitration as a guarantee for investors in resolving their disputes.

In this regard, the French Court of Cassation ruled in the COSSET case as follows:

"In the area of international arbitration, the arbitration agreement, whether separately concluded or included in the legal disposition thereof, shall enjoy full legal independence so as not to be affected by the nullity of such conduct"²

It was also referred to in the Model Law on International Arbitration of 1985; it emphasized the independence of the arbitration agreement over the investment agreement - including tourism investment - and that the nullity of the investment agreement did not extend to the arbitration agreement.³

Subject to the above, the independence of the arbitration agreement and its inherent legal character, it is considered an effective guarantee to protect the rights of the investor in the tourism sector.

5.1.2. Principle jurisdiction of jurisdiction - "Jurisdiction of Arbitration in adjudication of Tourism Investment Disputes"

The principle jurisdiction of jurisdiction shall mean that the arbitrator shall determine its jurisdiction in the consideration of disputes, determine its authority and determine whether the dispute is true or not. Accordingly, in the event that one of the parties of the tourism investment agreement objects that there is no arbitration agreement or that the subject matter of the dispute is not related to arbitration, the arbitral tribunal alone, without the jurisdiction of the State shall determine and decide whether this is true or not.

The 1965 Washington Agreement on the Settlement of Investment Disputes referred to the principle jurisdiction of jurisdiction, as provided for in Article (1 / f 1) of the Agreement.

5.1.3. Rejection of the plea of the state and its public authorities for the lack of their capacity to arbitrate the tourism investment disputes

One of the features of the arbitration in the tourism investment disputes is that the plea of lack of capacity for arbitration raised by the hosting states and the public authorities thereof may not be accepted. The hosting state may not plead before the arbitral tribunal to reject the arbitral lawsuit on ground of its lack of capacity to conclude an arbitration agreement or the legal disposal related thereto.

This is confirmed by many national legislation and international rules including the Egyptian Law. The Egyptian legislator showed that the state and its affiliating public legal persons shall have capacity to conclude arbitration agreements whether in field of tourism or otherwise. The Saudi System, however, made the capacity of concluding the arbitration agreement conditioned by the approval of Council of Ministers.

The Washington Agreement on the Settlement of Investment Disputes provided for the eligibility of the State and its legal persons for recourse to arbitration. (Art. 25).

While arbitration characteristics different from the characteristics of the judiciary of the state and while of its independence in the conduct of the dispute, for that, it the most appropriate means and ways to decide the disputes of tourism investment. These investments, which are required to be attracted and developed, are accompanied by a flexible and effective judicial system to decide any disputes that may arise. The fact is that arbitration is the best way to resolve tourism investment disputes.

¹ Article 7 of the UNCITRAL Rules of International Arbitration. United Nations Commission on International Trade Law. 21 June 1985.

² (COSSET) issued on May 7, 1963. French Court of Cassation.

³ International Arbitration Model Law, 1985. Article 16 / 1.

5.2. Second: Arbitration rules in the disputes of tourism investments

The fact that arbitration as a means of adjudicating tourism investment disputes will be effective only through the implementation of a set of controls and rules governing it at all stages of procedure and objectivity. These controls are considered as guarantees for the rights of the investor and the aspirations of the host country.

The arbitration rules in the tourism investment disputes are the set of rules regulating the arbitral process in all aspects of formality and objectivity, which are considered in its substance as guarantees for the protection of tourism investments. It can be reviewed in the following format with a presentation of the positions of some international investment agreements in this regard:

5.2.1. The existence of an agreement to resort to arbitration.

The fact is that this condition is one of the most important things to look for when dealing with an arbitration case as a guarantee of the validity of the arbitral action to be carried out. This agreement is considered as recognition by the host State and the investor of their recourse to arbitration.

It is not enough to look only for the existence of the arbitration clause, but there are some controls and restrictions that shall be observed so that the condition is correct in itself, so that there is no meaning to the existence of the arbitration clause without it. It can be defined as: "A set of restrictions and controls necessary for the validity of the existence of arbitration agreement".

The requirements for the validity of the arbitration agreement are as follows:

- 1- The arbitration agreement is the object of the dispute that the parties wish to present to the arbitral tribunal, so that the subject matter of the dispute shall be unequivocally defined and shall relate to tourism investments and related activities.
- 2- The reason for the arbitration agreement: It means that the parties of Tourism Investment Agreement have the desire to resolve the dispute through arbitration, and this desire shall exist in its existence and legitimacy.¹
- 3- Eligibility shall be available to whoever enters into the arbitration agreement. In this regard, arbitration may only be agreed upon by the natural or legal person who has the right to dispose of his rights and funds. If the arbitration is an administrative contract, the agreement shall be approved by the competent minister or the competent administrative authority, unless the arbitration shall be void.
- 4- The principle of proportionality of arbitration: a principle that is used by the general rules of contracts, where these rules stipulate proportionality of contracts, it may not be invoked against non-parties, and since the arbitration agreement was consensual, met with the affirmation and acceptance of the investor and the host state, so it shall be bound to them without going to others.

5.2.2. The subject matter of the dispute shall be a matter of tourism investment agreements.

The matter of dispute is related to the contract between the host state and the foreign investor in the tourism sector. On other hand, the subject matter of the dispute is a legal matter connected with the tourism investment agreement, such as disputes over the interpretation of an order or violation of a right determined by the agreement². In fact, one of the most important issues that lead to disputes between the investor and the host country in the field of tourism is the occurrence of a breach of contract by one of the parties, and most often this party is the host country with several motives vary depending on the political and economic systems followed in this country.

The speech imposes itself here on the breach of contract in tourism agreements, and the unilateral actions of the host State, where the State may act in isolation in one of the two forms:

First: Substantial amendments to its national legislation, which may affect the extent of their authority to resort to arbitration to adjudicate investment disputes - including tourism investment disputes - or may have a negative impact on the system of legal rules governing arbitration in tourism investment disputes.

Second: the actions taken by the host State to nullify or terminate the investment contract, which includes the arbitration agreement itself.³

5.2.3. The condition of the capacity in the arbitration claimer.

The arbitration case is the closest to the ordinary legal case in terms of the necessity of the availability of what is known as the "conditions of hearing the case", so that the two conditions of interest and capacity are required to evaluate the case. The same matter applies to the arbitration case. The acceptance of hearing an arbitration claim requires that the claimer for arbitration shall have the capacity and interest. It is easier to know what does the arbitration agreement stated, which determines who has the right to asylum and to claim an arbitration claim.

¹ Dr. Sahar Rashid Al-Ghunaimi. Supersede Arbitration Agreement.

² See the counselor/ Najwa Mohamed Sadiq. Arbitration in Investment Disputes. Faculty of Law Mansoura University Conference. Egypt, without publication.

³ Omar Mashoor. Arbitration in Investment Disputes. Journal of the Jordanian Bar Association. Jordan. Publication Year, September and October 2002.

5.2.4. Legalization of the judicial control of host countries.

We have mentioned above that arbitration is a consensual way of resolving certain disputes that may arise in relation to a legal relationship, and that the host State that has accepted this arbitration considers it to be an official confession and all the procedures associated with it under the terms of the agreement.

Indeed, this is a matter that the host States need to pay special attention to the legislative and judicial levels because such control is one of the mechanisms owned by the host State to ensure that its sovereignty and actual authority are maintained, but at the same time it is required to strike a balance between its judicial control and activating the role of arbitration to settle tourist investment disputes to ensure protection of investors' rights and attracting investments. This shall only be done by codifying the extent of the judicial control of the host country over arbitration and related formal and objective procedures.

5.3. Technical expertise and its impact on arbitration in tourism investment disputes

Introduction:

While arbitration in the disputes of tourism investment is rightly considered as the most important means that can achieve a serious adjudication, which achieve the interests of the parties to the investment because of the guarantees of procedural and substantive guarantees. While the arbitration, in accordance with many jurisprudential views and judicial decisions is an alternative judiciary to settle disputes, its arbitral claim is regulated by many necessary procedural and optional mechanisms, perhaps the most important of which is what is known as "Technical expertise".

The technical expertise is one of the mechanisms that the arbitrator may resort to on his own initiative, upon the request of the parties to the arbitration dispute or one of them. The technical expert shall be referred to the subject matter of the case in such a way that the judgment may object to the dispute.

To determine the nature of the technical expertise, its role in the arbitral work, the extent to which the technical report of the arbitrator is required and the rules governing the work of the expert, it will be through the following research points:

- 1) Define technical expertise in arbitral proceedings.
- 2) Legal description for importance of the technical expertise.
- 3) Controls governing the work of the technical expert.
- 4) Effect of expert's report on arbitral proceedings.

The following are the aspects of the study:

1) Define technical expertise in arbitral proceedings.

Technical expertise can be defined as a non-binding verification mechanism, which shall be followed to know the technical truth in the issues and facts of the arbitral proceedings, so that a technical report on a subject shall be obtained, in order to clarify some of the technical aspects that cannot define the fact of the matter.¹

We conclude from the previous definition and the context of the First Article of the rules of expertise at the Mecca International Center for Conciliation and Arbitration that the technical expertise is to express an opinion on matters that are considered the merits of the arbitral proceedings. These matters shall be referred to a specialized technical expert upon the request of one of the parties or upon an automatic referral from the arbitrator.

It is worth mentioning that the work of the expert who starts upon the request of one of the parties may be before the start of the arbitration dispute or during the course of its work. The technical expertise does not depend on the existence of arbitral proceedings or not. The technical expertise may also be an independent mechanism to determine the technical status of the parties to a legal or contractual relationship.

2) Legal description and importance of expertise.

The legal description of the technical expertise is a statement of the legal adaptation of the work of the technical expert before the arbitral tribunals, where it can be described as a non-binding technical proof for the arbitrator or the parties to the request for referral. The expert's report is considered by some commentators and jurists as one of the methods of evidence such as witness testimony and technical consultation, which gives rise to the question of whether it is binding on the arbitrator or the parties to the request for referral.

While the expert's report is a non-binding verification mechanism, it indicates the extent of its obligation to the arbitral tribunal, whereas the arbitrator may take it fully, leave some or shall not be considered as a whole. It indicates that the expert's report shall not binding to the arbitral tribunal, which shall not mean that it loses its importance and its role in the arbitral proceedings, but has the importance of drawing on its technical results to pave the way for adjudicating the subject of the arbitral proceedings.

The importance of expertise may come when requested by one of the parties to a legal or contractual relationship before the dispute occurs or before arbitration, so that the concerned party can benefit from an understanding of its position with the opponent and the validity of its claim to know its obligations and rights.

¹ Article (1) of the rules of experience at the Mecca International Center for Conciliation and Arbitration.

3) Controls governing the work of the technical expert.

While technical expertise is a non-binding mechanism of proof for the arbitrator and its importance is to draw upon its technical results, it stems from the nature of the work of the expert, which is described as a consultative work, which overshadows the controls governing the work of the technical expert.

These controls shall be in the following manner:

- A- Qualification: It is intended that the request for referral to the expert who has the legal capacity, that is, who has a status in the arbitral proceedings, the referral shall be upon the request of one of the parties to the arbitral proceedings or arbitral tribunal.
- B- Determination of the scope of the request: In the sense that the request of the adversaries are specific in scope and subject matter, so as to facilitate the work of the expert and help to clarify the technical results, and if otherwise, the expert shall return the request to its source for clarification.
- C- Objectivity of the request: The request for referral shall be objective, having an objective basis relevant to the subject matter of the dispute.
- D- Right of the expert to transfer and know: The expert shall have the right to move to any place related to the subject matter of the case, as well as the right to know what he deems necessary to express his technical opinion.
- E- Obligation to confidentiality: The expert shall be committed to confidentiality, where he shall be prohibited to disclose the secrets of what he sees or what he knows from the realities of non-parties to the dispute.
- F- Writing the technical report: The expert shall express his opinion in a written report signed by him, including his findings within the scope of the task assigned to him and specified in his application for appointing. His report shall also include minutes of meetings with the parties.

However, this technical report shall be binding the arbitrator right to ensure that a neutral technical report emerges and is in line with reality. However, this technical report shall not be binding the arbitrator in his adjudication of the subject matter of the dispute, which we may define it as (the effect of the expert's report on the arbitral proceedings).

4) Effect of expert's report on arbitration proceedings.

The arbitrator, during the process of adjudicating the subject matter of the dispute, may be faced with the vagueness of some technical aspects of the subject of the arbitral proceedings. The arbitrator or one of the parties to the arbitration dispute may refer these aspects to a technical expert to express his technical opinion on these matters. This opinion shall have a technical impact and a mandatory scope for the arbitrator's work.

The technical effect of the expert's report is to clarify the real and factual aspects of the technical issues relating to the subject matter of the dispute before the arbitral tribunal, so that it is difficult for the arbitrator to adjudicate the subject of the dispute without presenting these technical matters to the expert.

The existence of the work of the expert has an important role in clarifying the reality of the demands of the opponents, which strengthens the role of arbitration itself as a means of separation in the privacy of the disputes that it requires to be dealt with serious, critical mechanisms such as arbitration.

While the extent to which the experts' report is binding the arbitrator, it has already been pointed out that the expert's report and its results are for the purposes of resurrection and shall not binding the arbitrator. He may take the entire report, some of it or present it in its entirety as reassured. In the light of the scope and objectivity of the claims of the litigants in the dispute before it, as it said that the arbitrator is the highest technical expert to take what he sees or put away what does not reassure him and his conscience.

Whereas the technical expertise, with its important and independent role in determining the truth of the substantive nature of the claims, shall rightly be regarded as one of the most positively produced mechanisms to clarify the ambiguity surrounding certain aspects of the dispute before arbitration, which makes the expertise and arbitration as a wings for justice

6. European and Arab Conventions including dispute settlement through arbitration.

6.1. European Conventions:

- **First: The European Convention on International Commercial Arbitration, held at Geneva in 1961.**
 - **Article (1) of the Convention defines that:**
"This Convention shall apply to arbitration conventions concluded with a view to resolving disputes arising or may arise as a result of international trade transactions between private or legal persons".
 - **Article (10) defines that:**
"This Agreement shall open the way for the signature or accession of the member countries of the Economic and European Commission and the countries accepted by that Committee in an advisory capacity".

- **Second: The World Bank Agreement on Settlement of Investment Disputes between States and Citizens of Other Countries.**
- **Article (25) of the Convention defines that:**
"The jurisdiction of the Center - the Dispute Settlement Center – shall extend to any legal dispute arising out of an investment between a Contracting State and citizens of another Contracting State."
- **Third: General Agreement on Tariffs and Trade of 1947.**
- This Convention has taken arbitration and conciliation as a way to resolve disputes that may arise between Member States in the following manner:
"Article 22, 23 and 24 of the General Agreement on Tariffs and Trade (GATT) state that arbitration and conciliation are the instruments of the Convention on the Resolution of International Trade Disputes, as confirmed by the Tokyo Round of Trade Negotiations 1979, resulting in a decision on 28/11/1979, for ratification The Memorandum of the General Agreement on Arbitration and Conciliation for the Settlement of Investment Disputes and Trade among Member States ".¹
- **Fourth: The dispute settlement system of the World Trade Organization.**
- The World Trade Organization Dispute Settlement Convention, Article 2, 3 and 24, acknowledge that arbitration considered as a quick and effective means of resolving international trade disputes that may arise between the Member States of the Organization.

7. Arab Conventions

- **Arab Investment Guarantee Corporation Agreement (1970).**

Including an annex to the settlement of disputes arising between the members of the Convention and the institution established under the Convention, on any investment insured under the Convention, through negotiations, conciliation or arbitration as the case may be. (M / 1 of the Convention).

The Convention on the Settlement of Investment Disputes between the Host Countries of Arab Investments and the Citizens of Other Arab Countries (1974).

It is concerned with the settlement of disputes arising directly from an investment between the host Arab States, one of its bodies or public institutions and citizens of other Arab States through conciliation and arbitration. (M / 2 of the Convention).

- **The unified Convention for the investment of Arab capitals in the Arab countries for the year 1980.**

It includes an annex to the settlement of disputes through conciliation and arbitration.

- **Amman Arab Commercial Arbitration Convention (1987).**

It is the most important of Arab Convention in the field of commercial arbitration. It is the only Convention that has regulated this arbitration for various commercial disputes within an institutional framework, starting with the establishment of a unified Arab Center for the Settlement of Disputes through Arbitration then arbitral proceedings and ending up to the issuance, correction and appeal of the arbitral award.

- **The Settlement of Investment Disputes Convention in Arab Countries.**

The agreement aims to resolving any dispute arising directly from an investment between the hosting Arab countries, the investment, one of its entities, public institutions, its subsidiaries or its citizens and one of the other Arab States, one of its bodies, institutions, its subsidiaries or citizens to ensure the creation of A favorable climate conducive to encouraging the increasing investment of Arab investments.

Article (3) of the Convention defines that:

Without prejudice to the right of the claimant to resort to the jurisdiction of the host States for direct investment, the dispute shall be settled by conciliation among the conflicting parties in accordance with the provisions governing it subsequently, or arbitration in accordance with the rules set out in this Convention. The rules of conciliation and arbitration shall be applied by the Council and the Secretary-General.

- **Conclusion and Recommendations:**

After a brief study of arbitration in tourism investment disputes, we conclude with a set of recommendations that can contribute to the importance of the role of arbitration in tourism investment disputes, as follows:

- 1) **First/** Define a specific definition for tourism investment contracts, so that it can be dealt with through a stable and unambiguous formulating vision, which can be an obstacle to the important role of arbitration in tourism investment disputes;
- 2) **Second/** Enactment a legal system for arbitration in the disputes of tourism investment agreements, so that we will be in the process of dealing with all matters of arbitration in such disputes in a way that guarantees the protection of the rights of the investor and the host country;
- 3) **Third/** The approved arbitration centers shall prepare guiding models, which include the general rules

¹Dr. Gaded Rabeh. Master's Degree in Dispute Resolution in the International Trade Organization, Faculty of Law and Political Science. Meamari Ouzou University. Algeria. Without publication year. Source: Internet.

to be followed during the formulating of tourism investment agreements and the related arbitration agreements to settle disputes that may arise.

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