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Investment Arbitration and Sustainable Development

Dr. Djamila Abdelli, Doctorate in Business Law and Intellectual Property , Faculty of Law, University of Algiers 1, Algeria. Email: djamilaabdelli16@gmail.com

Dr. Hamdi YAMINA, Doctorate in Business Law and Intellectual Property, Faculty of Law, University of Algiers 1, Algeria

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Abstract

This article examines the role of arbitration as a procedural safeguard for investment. It also considers whether arbitration can support sustainable development rather than merely settle disputes after they arise. The study argues that its effectiveness cannot be measured by speed and confidentiality alone. It also depends on key legal safeguards: the separability of the arbitration clause, competence-competence, and the rule against a State invoking its own lack of capacity to arbitrate. An effective legal framework for recognising and enforcing arbitral awards is equally important. Using analytical and comparative methods, the article examines the laws of Iraq, Egypt, Saudi Arabia, Syria, and France. It also considers the UNCITRAL Model Law and the New York and Washington Conventions. The study finds that arbitration can foster sustainable investment when procedural efficiency is accompanied by transparency and respect for environmental and public interests. Electronic procedures can further support this role. The article concludes with legislative recommendations for countries whose arbitration frameworks do not yet adequately accommodate international arbitration.

Keywords: arbitration; investment disputes; sustainable development; arbitration clause; competence-competence; enforcement of arbitral awards; electronic arbitration.

Introduction

Precise statutory and contractual provisions do not, by themselves, reassure investors. A right without an effective remedy remains a promise that may never be fulfilled. Investors have therefore sought a neutral method of dispute resolution outside the courts of the host State. Those courts are often viewed with caution¹. International practice has established arbitration as a preferred option. It offers speed, confidentiality, and specialised expertise. It also responds to the particular nature of investment contracts in which the State is a party.

Traditional scholarship has largely viewed arbitration as a means of resolving disputes after they arise. The questions are now broader. Investment is no longer assessed solely by the amount of capital it attracts. Its ability to continue without harming the environment or the rights of host communities also matters. This principle underlies the definition of sustainable development in the report of the World Commission on Environment and Development². It was later reaffirmed in the 2030 Sustainable Development Goals. These include Goal 9 on industry, innovation, and infrastructure, and Goal 16 on justice and effective institutions³. This raises a question that has received insufficient attention in Arabic-language scholarship. Can arbitration promote sustainable investment, or does it remain a mechanism for reconciling private interests with State sovereignty?

¹ Ibrahim Ismail Ibrahim and Maher Mohsen Abboud, Arbitration as a Procedural Safeguard for Settling Investment Disputes: A Comparative Study (undated research paper in the available source; cited here as 'n.d.').

² World Commission on Environment and Development (WCED), Our Common Future (Oxford University Press, 1987).

³ United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1 (2015), Goals 9 and 16.

The central research question is: To what extent do existing principles and legal provisions ensure the effectiveness of investment arbitration? How can arbitration be directed towards economic, environmental, and institutional sustainability?

Several related questions arise. What is the legal basis for the separability of the arbitration clause and the principle of competence-competence? Do national laws allow a State to enter into an arbitration agreement without later repudiating it? How does the failure to recognise foreign arbitral awards affect investor confidence?

The study advances three hypotheses. First, the effectiveness of arbitration depends on safeguards that protect the arbitration agreement from abusive challenges. Second, an inadequate framework for enforcing foreign arbitral awards deprives procedural guarantees of practical value. Third, linking arbitration to transparency, public interests, and digital technology strengthens its contribution to sustainable investment.

The study uses an analytical method to examine legal provisions and judicial decisions. A comparative method is used to assess the laws of Iraq, Egypt, Saudi Arabia, Syria, and France. The analysis also draws on the UNCITRAL Model Law¹, the New York Convention (1958), and the Washington Convention (1965). It focuses on procedural and legislative issues. Technical matters are left to specialist studies. The article comprises four sections, followed by a conclusion presenting its main findings and recommendations.

Section One: The Conceptual Framework of Investment Arbitration

1. The Concept and Legal Nature of Arbitration

Legal scholars have defined arbitration in different ways. Their definitions nevertheless share one central idea: the parties agree to remove a dispute from the jurisdiction of national courts and submit it to one or more arbitrators of their choice². Some scholars note that these definitions focus on the purpose of arbitration. They give less attention to arbitral institutions, which now administer most investment disputes³. National laws also differ in their definitions. Syrian Law No. 4 of 2008 describes arbitration as a consensual legal means of resolving disputes instead of litigation. It applies whether or not a permanent organisation or centre administers the proceedings⁴. Article 4 of Egyptian Law No. 27 of 1994 follows a similar approach. By contrast, Iraqi Civil Procedure Law No. 83 of 1969 and the Saudi arbitration system issued in 1403 AH permitted arbitration agreements without defining arbitration. The UNCITRAL Model Law defines arbitration as any arbitration, whether or not it is administered by a permanent arbitral institution⁵. This is a procedural definition. It identifies the form of administration without explaining the essential nature of arbitration.

In Egyptian case law, the Court of Cassation has described arbitration as an exceptional means of resolving disputes outside ordinary litigation⁶. The Supreme Constitutional Court has described it as the submission of a dispute to an independent third-party arbitrator. The arbitrator issues a decision after each party has presented its position and without any appearance of favouritism⁷. On this basis, investment arbitration may be defined as an exceptional means of settling investment disputes. It rests on an agreement made before or after a dispute arises. The process ends in a binding award that settles the dispute⁸.

Scholars also disagree on the legal nature of arbitration. Four approaches can be identified: contractual, judicial, mixed, and autonomous. This disagreement reflects the two distinct acts involved. The first is the arbitration agreement, which arises from the parties' consent. The second is the award, which has the force of a final adjudication. This study adopts the contractual approach as its starting point. Party autonomy is the source of the arbitrator's authority. It transfers the power to decide the dispute from a judge to an arbitrator and defines the scope of that power⁹. This approach does not deny the judicial effect of an award. The State may enforce an award compulsorily once the applicable conditions are met.

2. Forms of the Arbitration Agreement

Investment parties may resort to arbitration only by agreement. Such an agreement takes three forms. The first is an arbitration clause in an investment contract. It refers potential future disputes to arbitration. The second is a submission

¹ UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006.

² Fawzi Muhammad Sami, *International Commercial Arbitration* (Dar al-Thaqafa for Publishing and Distribution, 1992); Abu Zayd Radwan, *General Foundations of International Commercial Arbitration* (Dar al-Fikr al-Jami'i, 1981).

³ Ibrahim and Abboud, op. cit.

⁴ Syrian Law No. 4 of 2008 on arbitration in civil, economic, and commercial disputes (issued 25 March 2008; entered into force 1 May 2008), Article 1.

⁵ UNCITRAL Model Law, Article 2(a).

⁶ Egyptian Court of Cassation, cited in Murad Mahmoud Al-Mawajdeh, *Arbitration in State Contracts of an International Character: A Comparative Study* (Dar al-Thaqafa for Publishing and Distribution, 2010), p. 24.

⁷ Supreme Constitutional Court (Egypt), cited in Hafiza al-Sayyid Al-Haddad, *A Concise Account of the General Theory of International Commercial Arbitration* (Al-Halabi Legal Publications, 2007), p. 42.

⁸ Ibrahim and Abboud, op. cit.

⁹ Ghassan Salim Arnous, *Arbitration*, course material (fourth year, Open Education Department), Al-Baath University, Faculty of Law, 2012.

agreement, which is concluded separately after a dispute arises and identifies that dispute. The third is arbitration by incorporation by reference. In this case, the contract refers to another document containing an arbitration clause and incorporates it into the contract¹. The distinction between a clause and a submission agreement is important. Some laws require the dispute to be specified in a submission agreement, failing which the agreement is void. They do not impose the same requirement on a clause. The clause concerns a future dispute, while the submission agreement relates to an existing one.

National legislation takes different approaches to this distinction. Egyptian law uses the single term 'arbitration agreement' for both forms. Saudi law and Article 7 of the UNCITRAL Model Law take the same approach. Iraqi procedural law does not distinguish between them. In Decision No. 363 of 1975, however, the Iraqi Court of Cassation stated that arbitration is a single legal mechanism. It must be evidenced in writing, whether agreed upon when the contract is concluded, in a separate written agreement, or during proceedings². French law takes a different approach. Article 1442 of the Code of Civil Procedure provides that an arbitration agreement may take the form of an arbitration clause or a submission agreement³.

Practice suggests that arbitration clauses are the most common form. They reportedly appear in around 80 per cent of international commercial contracts, particularly investment contracts⁴. The French Disney project illustrates the importance investors attach to such clauses. The American investor reportedly made the clause a condition for concluding the contract. France accepted it after lengthy negotiations, although its laws at the time restricted arbitration in relationships involving the State⁵.

3. Types of Arbitration

In organisational terms, arbitration may be ad hoc or institutional. In ad hoc arbitration, the parties appoint the arbitrators and agree on procedures for the particular case. No permanent set of institutional rules is required. In institutional arbitration, a permanent centre administers proceedings under established rules. Arbitrators may be selected from designated lists. Examples include the International Chamber of Commerce in Paris, the International Centre for Settlement of Investment Disputes (ICSID) in Washington, the American Arbitration Association, the Cairo Regional Centre for International Commercial Arbitration, the Dubai Arbitration Centre, and the Ajman Centre for Conciliation and Arbitration⁶. Arbitration may also be domestic or international. It is domestic when its elements are confined to one State. It is international when it involves more than one State, as when the parties have their places of business in different countries. Syrian law adopts a criterion of this kind⁷. A similar approach appears in the UNCITRAL Model Law.

This distinction is relevant because investment contracts are often international in character. They are therefore governed by the rules of international arbitration, not solely by those of domestic arbitration. This also explains investors' preference for internationally recognised arbitral institutions.

Section Two: Legal Principles Safeguarding Effective Arbitration

An arbitration agreement alone does not guarantee effective arbitration. The agreement must be protected by legal principles that prevent obstruction. Three such principles are well established in international commercial arbitration. They are examined below.

1. Separability of the Arbitration Clause from the Investment Contract

The principle of separability treats an arbitration clause in an investment contract as an agreement independent of the contract's other terms. The invalidity, rescission, or termination of the underlying contract does not automatically affect the clause. Conversely, the invalidity of the clause does not invalidate the main contract⁸. This principle is especially important when a State terminates a contract or alleges that it is void. If the clause fell with the contract, the stronger party could avoid arbitration simply by challenging the contract itself.

Comparative legislation has recognised this principle in similar terms. Article 23 of the Egyptian Arbitration Law states that an arbitration clause is independent of the other terms of a contract. The contract's invalidity, rescission, or termination does not affect a clause that is valid in its own right. The same rule appears in Article 11 of Syrian Law No. 4 of 2008, Article 16 of the UNCITRAL Model Law, and Article 6 of the ICC Arbitration Rules. Under French law, Article 1447 of the Code of Civil Procedure establishes the independence of the arbitration agreement from the contract

¹ Samia Yatouji, *Electronic Arbitration: The Legal and Procedural Framework*, presentation for the International Arbitration course (Master's in International Law), Mohamed Khider University, Biskra, 2009; Arnous, op. cit.

² Iraqi Court of Cassation, Decision No. 363 of 1975, as cited in Ibrahim and Abboud, op. cit.

³ French Code of Civil Procedure (Code de procédure civile), Article 1442, as amended by Decree No. 2011-48 of 13 January 2011; for a comparative discussion, see Ibrahim and Abboud, op. cit.

⁴ Al-Mawajdeh, op. cit., p. 27.

⁵ Ali Khalil Al-Hadithi, *Arbitration and Its Importance*, article, adviser to the Ajman Chamber of Commerce and Industry, n.d.; Ibrahim and Abboud, op. cit.

⁶ Al-Hadithi, op. cit.; Ibrahim and Abboud, op. cit.

⁷ Syrian Law No. 4 of 2008, Article 1.

⁸ Al-Haddad, op. cit., p. 119.

to which it relates. Article 1506 extends this provision to international arbitration. The French Court of Cassation had recognised the principle in *Gosset* (7 May 1963), *Hecht* (4 July 1972), and *Dalico* (20 December 1993)¹. The principle also appears in investment arbitration awards. In the *LIAMCO* case against the Libyan government, the arbitrator held that the arbitration clause survived the State's termination of the contract².

The Iraqi law and the Saudi arbitration system of 1403 AH did not expressly state this principle³. This legislative gap can weaken investor confidence. The survival of the arbitration clause then depends on the court's approach in each case.

2. Competence-Competence

An arbitration agreement has two effects. Its positive effect requires the parties to refer their dispute to arbitrators. Its negative effect prevents them from submitting the same dispute to national courts⁴. Under the principle of competence-competence, arbitrators may decide objections to their own jurisdiction. These include allegations that the arbitration agreement does not exist or is invalid. They need not await a court decision.

The practical purpose is clear. If a party could halt arbitration by challenging the tribunal's jurisdiction before a court, jurisdictional objections could become a delaying tactic. This would undermine the speed that makes arbitration attractive.

The principle is recognised in Article 22 of the Egyptian Arbitration Law and Article 1465 of the French Code of Civil Procedure⁵. It is also reflected in the English Arbitration Act 1996. Article 16 of the UNCITRAL Model Law authorises the arbitral tribunal to rule on its jurisdiction, including objections to the existence or validity of the arbitration agreement. At the international level, Article 5 of the European Convention on International Commercial Arbitration (1961) addresses the principle. Article 41 of the Washington Convention (1965) also empowers the tribunal to determine its own competence⁶. Syrian law likewise allows an arbitral tribunal to hear objections to its jurisdiction. The tribunal may decide them as a preliminary issue or consider them together with the merits⁷.

By contrast, Iraqi procedural law and the Saudi system of 1403 AH contain no express provision on this principle. The principal study cited here urged Iraqi legislators to adopt it and clarify the tribunal's power to determine its own jurisdiction⁸. This recommendation is supported here. Competence-competence does not exclude judicial review. Rather, it generally postpones review until a later stage, such as a challenge to the award or opposition to its enforcement. This balances efficient proceedings with judicial oversight.

3. Inadmissibility of a State's Plea of Incapacity to Arbitrate

Under this principle, a State or public legal entity that has voluntarily agreed to arbitration should not later invoke its lack of legal capacity to escape that agreement⁹. Some scholars regard this as an established principle of international arbitration¹⁰. Its rationale is straightforward. A State that benefits from an investment relationship should not subsequently rely on an undisclosed restriction in its domestic law to avoid its commitment.

Domestic laws differ considerably. Egyptian law allows the State and public entities to enter into arbitration agreements. Article 27 of Iraqi Investment Law No. 13 of 2006 permits arbitration in commercial disputes when the contract expressly provides for it. Under the Saudi system, government entities required the approval of the Prime Minister before resorting to arbitration¹¹. Its implementing regulations also required the government entity to prepare a memorandum explaining the reasons for arbitration¹². Earlier French law prohibited the State from arbitrating, but French courts confined this prohibition to domestic arbitration. In 1996, the Paris Court of Appeal held that the restriction was

¹ French Code of Civil Procedure, Articles 1447 and 1506; Cass. 1re civ., 7 mai 1963, *Gosset*; Cass. 1re civ., 4 juill. 1972, *Hecht*; Cass. 1re civ., 20 déc. 1993, *Dalico*. See also Al-Haddad, *op. cit.*; Siraj Husayn Abu Zayd, *Arbitration in Petroleum Contracts* (Dar al-Nahda al-Arabiyya, 2010), p. 203.

² *LIAMCO* arbitration against the Libyan government, cited in Abu Zayd, *op. cit.*, p. 93.

³ Ibrahim and Abboud, *op. cit.*

⁴ Abu Zayd, *op. cit.*, p. 36.

⁵ French Code of Civil Procedure, Article 1465 (the positive effect of competence-competence) and Article 1448 (its negative effect). Both apply to international arbitration under Article 1506.

⁶ Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention, 1965), establishing the International Centre for Settlement of Investment Disputes (ICSID), Article 41.

⁷ Arnous, *op. cit.*

⁸ Ibrahim and Abboud, *op. cit.*

⁹ Abu Zayd, *op. cit.*, p. 304.

¹⁰ Bashar Muhammad Al-As'ad, *Investment Contracts in Private International Relations*, 1st ed. (Al-Halabi Legal Publications, 2006), p. 405.

¹¹ Saudi Arbitration Regulation issued by Royal Decree No. M/46, dated 12/7/1403 AH, Article 3.

¹² Implementing Regulations of the Saudi Arbitration Regulation (High Order No. 7/2021/M, dated 8/9/1405 AH), Article 8.

not part of international public policy¹. Article 25 of the Washington Convention follows a similar logic. It extends the Centre's jurisdiction to disputes involving a contracting State or one of its constituent subdivisions or agencies. This presupposes their capacity to submit to arbitration².

This principle closes an important avenue for delay. It gives investors protection that contractual wording alone cannot provide. The Saudi approach of requiring prior authorisation is, in principle, acceptable because the restriction is disclosed before the contract is concluded. The crucial distinction is between stating a legal restriction in advance and invoking it only after a dispute has arisen.

Section Three: Arbitration and Sustainable Investment

The previous section considered the conditions that make arbitration effective as a dispute resolution mechanism. This section asks a broader question: how can arbitration support the continuity of investment in a sustainable form? Three aspects are examined: dispute prevention, transparency and the public interest, and digital transformation.

1. From Dispute Resolution to Dispute Prevention

Arbitration need not be limited to resolving disputes after they arise. Many participants at the Fourth International Arbitration Conference in Moscow in 1972 and the Fifth Conference in London in 1974 viewed it as a means of preventing disputes. They considered it useful during negotiations and the performance of long-term international contracts³. This preventive role directly supports sustainability. Major investments in sectors such as energy and infrastructure can last for decades. Their success requires a stable relationship between investors and host States. It should not depend on which party prevails in a single dispute. A carefully drafted arbitration clause can establish stages of dispute resolution: negotiation, followed by mediation, and finally arbitration. This may preserve the contractual relationship and reduce the cost of conflict.

Dispute prevention also relates to technology transfer, an important channel of sustainable development in developing countries. The technological gap between developed and developing economies has made technology transfer essential to narrowing development disparities. This explains legislative interest in regulating these contracts⁴. In Egypt, however, Article 87 of Commercial Law No. 17 of 1999 assigns jurisdiction over technology transfer contracts to Egyptian courts. It permits arbitration only in Egypt and under Egyptian law. Any agreement to the contrary is void. In a judgment dated 17 November 2021, the Egyptian Court of Cassation confirmed the mandatory nature of this rule. It invalidated an arbitration clause that provided for a seat outside Egypt in a technology transfer contract⁵. The judgment has been criticised for restricting party autonomy. Critics argue that parties should be free to choose the seat of arbitration and the applicable law, as reflected in Articles 25, 28, and 39 of the Egyptian Arbitration Law. Restricting arbitration to Egypt limits that freedom⁶. The broader lesson is that legislative sovereignty must be balanced against investment attractiveness. Rules should be non-mandatory where the public interest does not require otherwise.

2. Transparency, the Public Interest, and the Environment

Investment arbitration is often criticised for its confidentiality. Disputes involving regulatory decisions on the environment, public health, or natural resources affect more than the parties. They concern society as a whole. The international legal framework has responded to this concern. In 2014, the United Nations Commission on International Trade Law adopted the Rules on Transparency in Treaty-based Investor-State Arbitration. These rules address the publication of dispute-related information, public access to hearings, and submissions by third parties. The Mauritius Convention on Transparency was then adopted to extend the application of these rules to existing treaties⁷. This development does not undermine the confidentiality of ordinary commercial arbitration. Trade secrets can still be protected. Transparency is especially relevant when the State is a party and the dispute concerns the public interest.

This issue also relates to statutory limits on arbitrability. Under the cited laws, disputes that cannot be settled by compromise, or that concern public policy, are not arbitrable⁸. Mandatory public policy rules, including environmental standards, can therefore prevent arbitration from being used to evade legal protections. Syrian law allows a court hearing

¹ Paris Court of Appeal, 1996, cited in Al-As'ad, *op. cit.*, p. 376.

² Washington Convention, Article 25(1) and (3).

³ Al-Hadithi, *op. cit.*

⁴ Al-Adala Centre for Arbitration and Legal Consultancy, *The Importance of Technology Transfer and the Formation of a Technology Transfer Contract*, online material, 2013 (accessed 16 November 2013).

⁵ Egyptian Commercial Law No. 17 of 1999 (effective 1 October 1999), Articles 72–87 (technology transfer); Egyptian Court of Cassation judgment dated 17 November 2021, as reported in K&L Gates, *Recent Judgment Highlights Potential Pitfalls in Technology Transfer Agreements in Egypt* (18 March 2022).

⁶ Al-Adala Centre for Arbitration and Legal Consultancy, *op. cit.*

⁷ United Nations Commission on International Trade Law, *UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration* (2014); United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention) (2014).

⁸ Syrian Law No. 4 of 2008, Article 9; Saudi Arbitration Regulation (1403 AH), Article 2.

an annulment action to set aside an award on its own motion if the award violates public policy¹. Such review takes place after the award. It preserves State authority without preventing arbitration from proceeding.

The position of the weaker contractual party offers another example. In electronic commerce, this party is often the consumer. Some authors fear that an arbitrator might apply the chosen law while disregarding mandatory consumer protections. The award could then be annulled or denied enforcement². Others argue that arbitrators take account of the public interest and trade usages. They also point to electronic court rules that provide for the application of the consumer's national law when the parties have made no choice. Although this example has limitations, it shows that arbitration procedures can include protective safeguards when their rules are carefully designed.

3. Electronic Arbitration and the Cost of Access to Justice

Sustainable procedures can reduce cost, delay, and the environmental impact of travel. Electronic commerce has led to electronic arbitration, in which proceedings take place online from the filing of a claim to the issuing of an award³. This model offers several practical advantages. It can be fast: proceedings under the Uniform Domain Name Dispute Resolution Policy generally take about sixty days. It reduces expenses by avoiding physical attendance and allowing electronic exchange of documents. It may also ease jurisdictional and conflict-of-laws difficulties in a borderless environment. Early initiatives included the Virtual Magistrate project (1996), which was reported to resolve disputes within seventy-two hours, the CyberTribunal at the University of Montreal, and the WIPO Arbitration and Mediation Center, where decisions could be issued within two months⁴.

Electronic arbitration also presents significant risks. These include cybersecurity threats to confidentiality, domestic laws that still require handwritten signatures or paper documents, uncertainty over the legal seat of virtual proceedings, and difficulties in verifying a party's capacity remotely⁵. The United Nations Convention on the Use of Electronic Communications in International Contracts (2005) addressed some of these matters by permitting the exchange of documents in electronic form. Modern legislation, including Syrian law, also recognises arbitration agreements made by email, fax, or telex when mutual consent can be established⁶.

One possible solution to the question of the arbitral seat is a legal presumption. Where the parties have not agreed on a seat, the place where the arbitral institution is established could be treated as the seat. The award would then be linked to a national legal system and could be enforced under the New York Convention⁷.

Section Four: Comparative Legislative Experience and Prospects for Reform

1. Comparison of Arab Legal Frameworks

The following table compares four Arab legal systems in relation to the principles discussed in Section Two. It draws on the legislative provisions and other sources used in this study⁸.

Table 1. The Position of Four Arab Legal Systems on the Safeguarding Principles⁹

Principle	Egypt	Syria	Iraq	Saudi Arabia (1403 AH system)
Separability of the arbitration clause	Article 23	Article 11	No express provision	No express provision
Competence-competence	Article 22	Expressly recognised	No express provision	No express provision
State capacity to arbitrate	Permitted	Not addressed in sources consulted	Investment Law, Article 27	Prime Minister's approval (Article 3)

The table shows a gap between more modern legislation that has adopted international standards, as in Egypt and Syria, and earlier frameworks in Iraq and Saudi Arabia under its 1403 AH system. The latter frameworks were designed mainly for domestic arbitration. Courts authenticated arbitration instruments and supervised awards. This difference has practical consequences. Investors may find no express guarantee that an arbitration clause is separable or protected from challenge. They may therefore include clauses referring disputes to foreign institutions. Such clauses offer limited protection if awards cannot be enforced. The Saudi legislation discussed in the table is the 1403 AH system, as presented in the sources. It was replaced by the Arbitration Law issued under Royal Decree No. M/34 of 24/5/1433 AH (2012). The later law drew on the UNCITRAL Model Law. Article 21 expressly recognises separability. Article 10(2) continues to

¹ Arnous, op. cit.

² Yatouji, op. cit.

³ Yatouji, op. cit.

⁴ Yatouji, op. cit.

⁵ Yatouji, op. cit.

⁶ Syrian Law No. 4 of 2008, Article 8.

⁷ Yatouji, op. cit.

⁸ The legislative comparison draws on the texts available in the sources used for this article. Some sources relate to earlier years. The law in force at the time of citation must therefore be checked.

⁹ The table was prepared from the legal texts and sources discussed in Section Two and the subsequent clarification concerning the Saudi Arbitration Law of 2012.

require the Prime Minister's approval for arbitration agreements involving government agencies unless a specific legal provision states otherwise¹. Thus, the observations about the absence of these principles in Saudi law apply only to the 1403 AH system. Any subsequent comparison must consider the law in force at the relevant time.

The Syrian framework merits separate attention as an example of broad legislative reform. Law No. 4 of 2008 repealed the arbitration provisions of the former Code of Civil Procedure. It regulated institutional arbitration and the registration of arbitration centres under the Ministry of Justice. It also made arbitral awards final and not subject to ordinary appeal. An action for annulment may nevertheless be brought before the Court of Appeal within thirty days on specified grounds. The law sets a period of 180 days for arbitration, with a possible extension of 90 days². Syria acceded to the New York Convention in 1959. It signed the Washington Convention in 2005, which entered into force for Syria on 24 February 2006³. This framework achieved a degree of consistency with international standards. Some shortcomings remain, including the uncertain meaning of the period considered sufficient for notifying parties of hearing dates⁴.

2. Obstacles to the Recognition and Enforcement of Awards

Iraq provides a clear example of the difference between allowing arbitration in law and making it effective in practice. Article 27 of Investment Law No. 13 of 2006 permits domestic or international arbitration. Yet the Civil Procedure Law regulates domestic arbitration alone. Law No. 30 of 1928 on the enforcement of foreign judgments requires a judgment to have been issued by a competent foreign court. It does not expressly cover foreign arbitral awards⁵. The principal study cited here therefore concluded that the Investment Law would have limited practical value without legislation enabling enforcement. That study also noted Iraq's ratification of several Arab agreements: the Unified Agreement for the Investment of Arab Capital (1980), the Riyadh Arab Agreement for Judicial Cooperation (1983), and the Arab Convention on Commercial Arbitration (1987). At the time, Iraq had not joined the New York Convention of 1958, the European Convention of 1961, or the Washington Convention of 1965⁶. These findings reflect the date of the earlier study and were later superseded. The Washington Convention entered into force for Iraq on 17 December 2015, following the deposit of its instrument of ratification on 17 November 2015. Iraq also acceded to the New York Convention through legislation published in the Official Gazette on 31 May 2021, without retroactive effect⁷.

Electronic arbitration creates additional enforcement issues. The New York Convention requires a written and signed arbitration agreement and the submission of the original award or a certified copy. It also assumes an identifiable seat from which the award derives its nationality. These concepts call for a broader interpretation of writing and signature to accommodate electronic procedures⁸. The 2006 amendments to the UNCITRAL Model Law adopted a wider concept of writing. It encompasses forms of communication that provide a record of the agreement⁹. National legislators should follow this approach.

On the basis of the preceding analysis, legislative reform should follow four main directions:

(1) Adopt a dedicated arbitration law based on the UNCITRAL Model Law. It should expressly recognise separability and competence-competence and regulate international arbitration.

(2) Amend the laws governing the enforcement of foreign judgments so that they also cover arbitral awards under clear conditions.

(3) Accede to the New York and Washington Conventions where accession has not yet taken place.

(4) Incorporate transparency and digital procedures into domestic arbitration law. Public policy and environmental safeguards should operate as grounds for subsequent judicial review rather than as preliminary barriers to arbitration.

Conclusion

¹ Saudi Arbitration Law, Royal Decree No. M/34, dated 24/5/1433 AH (16 April 2012), Articles 21 and 10(2). See also Tamimi & Co., *Arbitrating in the Kingdom of Saudi Arabia: A New Frontier*; Mayer Brown, *Arbitration in the Kingdom of Saudi Arabia – Part 4* (2023).

² Arnous, *op. cit.*

³ Arnous, *op. cit.* For the Washington Convention, see ICSID, *List of Contracting States and Other Signatories of the Convention* (ICSID/3), which records Syria's signature on 25 May 2005 and entry into force on 24 February 2006.

⁴ Arnous, *op. cit.*

⁵ Ibrahim and Abboud, *op. cit.*

⁶ Ibrahim and Abboud, *op. cit.*

⁷ ICSID, *List of Contracting States* (ICSID/3); Herbert Smith Freehills Kramer, *The ICSID Convention Enters into Force in Iraq* (2016); White & Case, *Iraq Ratifies the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (2021) (Article 1(1) of Iraq's accession law provides for no retroactive effect); Herbert Smith Freehills Kramer, *Iraq Will Become the 168th Signatory to the New York Convention* (2021) (reciprocity and commercial reservations).

⁸ Yatouji, *op. cit.*

⁹ UNCITRAL Model Law, Article 7.

This study has shown that arbitration plays two roles in investment relations. It is a procedural safeguard that protects investors' rights and builds confidence. It can also support the long-term sustainability of investment when adequate legal guarantees exist and public interests are respected. The three research hypotheses were assessed as follows.

1. Findings

1. Investment arbitration is an exceptional dispute resolution mechanism based on party agreement. The agreement may appear as a contractual clause, a separate submission agreement, or an incorporation by reference. Modern legislation tends to place all three forms under the general term 'arbitration agreement'.
2. The effectiveness of arbitration depends on three safeguards: separability, competence-competence, and the rule that a State cannot invoke its own lack of capacity to arbitrate. These principles are recognised in Egyptian and Syrian legislation and in the UNCITRAL Model Law. They were absent from the Iraqi provisions and the Saudi arbitration system of 1403 AH examined in this study. This supports the first hypothesis.
3. The legal recognition of arbitration is insufficient without a framework for enforcing foreign arbitral awards. The Iraqi example shows how the absence of such a framework can weaken the practical effect of legislation permitting arbitration. This supports the second hypothesis.
4. Arbitration may contribute to sustainable investment through dispute prevention, transparency, public-interest protection, and electronic procedures that reduce cost and delay. This provides partial support for the third hypothesis. Some claimed benefits, such as the environmental effect of electronic arbitration, require empirical evidence beyond the scope of this legislative study.

2. Recommendations

1. Enact arbitration legislation based on the UNCITRAL Model Law. It should govern international arbitration and expressly recognise separability and competence-competence where these principles are not yet codified.
2. Amend legislation on the enforcement of foreign judgments to include arbitral awards under clear and specific conditions.
3. Accede to the New York and Washington Conventions where this has not already occurred, and verify the current treaty status before relying on earlier information.
4. Adopt transparency rules for State-related arbitration involving the public interest and the environment, while maintaining protection for trade secrets.
5. Give legal recognition to electronic writing and signatures in arbitration agreements and regulate the seat of virtual arbitration.
6. Conduct empirical studies to assess the contribution of investment arbitration to sustainability. The present study is based on legal and documentary analysis.

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