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Arbitration of e-Commerce in Iran and International Legal System

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Abstract: In the past, the most common way of resolving commercial disputes was recourse to national courts. However, in recent decades, among other resolving methods, international commercial arbitration is increasingly significant to resolve international disputes. Now a days, accelerated communication is the result of emerging of innovative technologies, especially in the global commerce such that increased trading and consequently competition of achieving global markets led to some changes in the international commercial infrastructures. The globalization, at present, demands alternatives such as arbitration in cyberspace which is the developed and modern form of traditional arbitrations. Despite that e-arbitration is the very traditional arbitration, only differs in term of application; this newly established institute causes emerging of many legal and technological discussions including communication tools, giving information, hearings, issuing and notifying the arbitration. The results of the present study show that establishing this new legal entity and technical evolutions in the proceedings led to emerging new conflicts that require applying special rules calling for efforts of scholars, international procedures as well as forming national rules.

Key words: Case (ad hoc) arbitration, institutional arbitration, New York convention, electronic signature, global markets

INTRODUCTION

Now, international activists in the field of international commercial arbitration claim that conventional arbitration approaches are inconsistent with the large international commercial arbitration disputes. Hence, another entity that is sufficiently strength enough to resolve new commercial conflicts must be substituted or supplemented (if possible) the conventional arbitration system; this is what we call electronic arbitration (e-arbitration). The recent entity, lasting almost over a decade, may keep up with the ever-increasing speed of trade, operations associated to technology transfer and subsequent multiple and complex claims however, there are many obstacles on the way of this legal entity. On the issue of electronic vote identification, for instance, a condition of Ney York Convention 1958, the arbitration agreement is in writing.

On one hand, international trade agreements considerably vary due to communication development, written procedures are replaced by new technological achievement and the issue of documents' digital signing and electronic documents is now discussed on the other hand, the conditions of identifying electronic votes are influenced by the conventions approved in previous decades, i.e., the time of no technologic issues.

In UNCOITL (United Nations Commissionon International Trade Law), stipulated the provisions for developing international and national trade law such that set the contracts under these conditions causes identification and enforcing the arbitration decree. Arbitration agreement is intrinsically a contract and may require court intervention, like all other contracts to be mandatory and enforced. The contracts are signed in written or oral and or while connecting. Despite the contractual nature of the arbitration agreement, arbitration contract relies upon some provisions distinguishing it from other contracts.

Arbitration agreements are officially recognized based on international conventions and treaties including New York Convention 1958 which was developed many years ago. Of the identification terms of arbitration awards in the recent convention is that the arbitration agreement must be written. The convention never assumed the electronic document; since this is of the conventions joined or enforced by 131 nations hence, any adjustment may encounter great difficulties. Simply, it is hard adjusted and is performance bonded according to mores.

FIRST CHAPTER: BASIC FORMS OF ARBITRATIONS IN E-COMMERCE

Arbitration emerging is considered a development of a classic society. Arbitration fills the gapleft by the absence of an international court which results from the possibility of establishing ajudicial entity in a society exclusively governed by relations. Public international law

arbitration is sustained in spite of international courts, due to arbitration, recourse to respecting for governments' will and arbitration court is totally consistent with the classic structure of international society.

Arbitration voluntary recourse: International arbitration is similar to international courts as only in exceptions, it is done by government comprises. Governments' determination may express before or after disputes in arbitration.

Arbitration contract: Once the dispute emerges, the parties decide to refer to the arbitration. This consent is "arbitration contact" which is subject to the rules of international law. Arbiter's competence is based on this agreement subjected to principle of parties' freedom for writing such that if it is inadequately unclear, it may lead some difficulties. Some provisions are provided in the contract to resolve these difficulties or the arbiters are authorized to complete the contract however, this requires that both parties intend for the arbitration that the entire arbitration procedure depends on it. To facilitate recourse to arbitration, the recourse decision may manifest prior any dispute in an arbitration commitment (Shams, 2010).

Commitment to compulsory arbitration: Governments' determination is cleared in a general commitment of arbitration recourse to resolve all disputes of a country in relation to the other parties or in a particular commitment to resolve disputes of a treaty. The first case presents the treaties referred as compulsory arbitration treaties, bilateral such as France-Spain arbitration convention, 10 June 1929 or multilateral treaties like general document of peaceful settlement of international disputes 1928.

In second case, recourse to arbitration is predicted pursuant to arbitration provisioned in a treaty to resolve the resulting disputes. Such provisions may be included in bilateral contracts or multilateral contracts such as Geneva convention on fishing and environmental preservation of international waters (trans-boundary waters) (Schmitthoff, 1999).

An arbitration agreement is always necessary whether in compulsory arbitration conventions or on arbitration terms for arbitration proceedings however, the parties are obliged to conclude such agreement due to prior arbitration commitment. If such a duty is certain, the governments in practice, may try to resolve some disputes from the pre-territory of arbitration commitment through using "reservation" in this regard, the general issue of "reservation" is introduced in international conventions. Further, governments' malice in writing arbitration contract is apparent. To solve these problems of compulsory arbitration commitments, recourse to the third party to resolve arbitral dispute or to write arbitration contract, if non-consensual is predicted. Therefore, resolving any issues of referring to the arbitration requires declared governments' determination where the court of arbitration also depends on it.

Voluntary arbitration court: Voluntary arbitration court is one off the main aspects of arbitration distinguished from judicial review. Court of justice is permanent independent of the parties' will (the presence of judge of the parties, survivor of the arbitration system in the international court of justice is an exception). The arbiter is entirely appointed by the parties. Even if an organization is appointed as the arbiter by the parties, it is merely by the parties' determination. Thus, it leads to extreme variety of accepted solutions of arbitration composition and many difficulties of the arbiter appointment.

Diversity of arbitration body: Variation in practice is seriously high. Theoldest form is arbitration by the head of State or Pope referred due to the credibility and authority. Referring to a board like Hamburg Senate or the federal council of Switzerland in addition to recourse to an international body such as league of nations council is other form of action.

These old solutions indicate that governments (in the past) had refused of referring to court of justice to settle the disputes; rather, they preferred settlement through political or diplomatic ways. A new face is attributed to the international arbitration by the head of State that is often seen today. This form of arbitration is judicial (and legal) to some extent as voting is provided by a panel of (legal) experts; the head of state officially adopts.

Different arbitration committees also evolved. Though, these committees were initially bilateral; later, a referee was assigned to make decision if any disputes among national arbiters appeared. Along new forms of arbitration this procedure is still seen with difficult differentiation due to arbitrary commissions' delivery (Daniel, 1955)

Now, arbitration is usually seen in the form of a single arbiter or a court composed of an odd number of arbiters. The first type (single arbiter) is rarely seen. It is survivor of nations' heads arbitration system in which an authentic character of the law world deals with arbitration rather than head of state.

Arbitration courts are usually composed of three members (in particular, the Hague convention agreed

upon this resolution for summary jurisdiction). Each party selects an arbiter and the third arbiter shall be appointed by mutual agreement. Some courts have more than three members: 5 members of plenary proceedings predicted by the Hague conference; 7 members in the predicted system by Conventions of June 3, 1995 signed between France and Tunes or sometimes 9 members. Freedom of will of the parties is no way restricted; unconditional, non-constrained will of governments causes difficulties in arbitration appointment.

Difficulties of arbitration appointment: The parties in a document expresses their consent to arbitration shall agree on how the arbitration is appointed. Despite the earlier agreement, the difficulties arose when the parties intend for arbitration assignment in particular, when a large gap is seen between the agreed time of resolving the probable dispute through arbitration and the time the dispute emerged. These difficulties are of two: one party may refuse assigning the arbiter. The parties may disagree on selecting the single arbiter or referee (Guyomar, 1959). According to international current status, the idealized solution is that the governments in advance, remedy these difficulties.

One common way is to leave referee assignment to the special arbiter. However, this may be inadequate since national arbiters are often influenced by the disputes of the states they were selected. International conventions consider complete solutions. Article 45 of the Hague convention anticipates that both parties assign two arbiters and the referee is appointed by the two arbiters. In the case of disagreement, each party assigns a state other than the other party's selected state and these states agree upon assigning the referee. In absence of agreement, within two months, each introduces two candidates and the referee is assigned by lot.

In addition, Article 23 of arbitration general document 1928 assumes that once the chairman is not assigned in three months from application date of each party, a third state is chosen to assign the referee. In case of disagreement on the third state, each party shall select a third state. Finally, if these states fail, too, the appointment is done by chairman of the permanent court of international justice. European convention of peaceful settlements of disputes (Article 21) provides a similar but simpler solution.

The principle of autonomy, even modified which governs the procedure of arbitration appointing, stimulated disparities on the autonomy of national arbiters. In this area, recognition of arbiters' independence has developed formally by selecting neutral persons and by delegating the responsibilities. Such development results from arbitration participation in applying of judicial duty of international community.

CHAPTER 2: ARBITRATION PARTICIPATION IN APPLYING JUDICIAL DUTY OF INTERNATIONAL COMMUNITY

The significance of this participation is undeniable. A new investigation demonstrated that 14.12% of the 4667 registered treaties provisioned the arbitration. Arbitration provision constitutes of 17.99% of the provisions assuming dispute resolution way; further, arbitration provisions are more than the provisions considering court recourse. The court and legal aspect of arbitration is also confined by states' determination (autonomy) governing law and execution of court decisions.

Determination of the law: In traditional arbitration, particularly arbitration of nations' heads, the awards issued relying upon political and diplomatic considerations. Therefore, arbitration (legal arbitration) suggests extending the legal role in international society. However, arbitration may not be confused by judicial affair. Court of justice issues the awards in the name of an international community. The arbitration shall be issued in the name of two states. As a result, the rules that dispute settlements are based are determined to a large extent by the parties (Shahbaziniya, 2007).

Governing laws by parties: Arbitration contract, often, determines the executable rules by arbiter. The aforementioned contract may refer to a general or specific convention the parties bound. Furthermore, it is also possible that the parties refer to entry into force legal rules in the arbitration agreement as in Alabama arbitration between US and GB remindingoccurred between the Great Britain and Venezuela on Guyane. In practice, arbitration in relation to the mentioned rules of the parties is to some extent, autonomous and sometimes refers to other credits.

The parties may also give more authority to enforcing legal rules like disputes of technical issues or the claims with legal gaps. As the case, the arbiter is authorized to judge on the equity, settles the lawsuit by the aid of elders or issues the general or procedural decree. In the latter case, arbitration explicitly violating the court framework plays the role of legislator. This violation of duty stems from the will of the parties and is fundamentally manifested in the arbitration (Joneidi, 1999).

Parties' silence on governing law: The only solution is the arbitration is authorized to determine enforcing rules. This possibility relies upon the eligibility principle of jurisdiction (qualification) (it means a rule by which the arbitrations are qualified and competent to make decision on own jurisdiction and the governing rule) which is particularly agreed in Alabama arbitration. The same rule in Article 73 of the Hague Convention is as follows: "the court is authorized, by interpreting arbitration agreement and other treaties that may be evidenced in this issue and by enforcing legal principles to determine its competency and jurisdiction". The aforementioned rule is more clearly reflected in the Article 26 of European convention for peaceful settlement of disputes. According to this article "in case of silence or lack of arbitration agreement, court of arbitration sentences based on ex aequo et bono and according to general principles of international law in compliance with contractual obligations and decisions of international courts binding for both parties".

However, the arbitration regulations provided by international law commission envisions that wherever the parties disagree, the court prosecutes the rules mentioned in this document. These rules were also mentioned in Article 38 statute of international court of justice (Khazaei, 2007).

Despite similarity of Article 10 sample rules to Article 38 of statute of international court of justice, some differences are seen, too distinguishing arbitration, even court arbitration from judicial issue whereas, Article 38 claims that the court may execute the mentioned rules. In Article 10, it is stated that these rules are administered even the parties disagree. This shows the power of governments' autonomy (in term of arbitration) which influences enforcement terms of arbitration award (Cracknell, 1998).

Prosecution of the awards: The issued verdict is mandatory. It has the partial credit of the sealed. Therefore, arbitration is an achievement comparing political settlements. Great conventions like the Hague convention (Articles 81 and 84) agreed upon award's mandatory dimension. Though, enforcement faces several difficulties.

Difficulties of nonpermanent arbitration court: These difficulties may origin from post-issued awards. How arbitration interpretation or appeal court are organized (Hunt, 2000). Arbitration conventions usually envisage this possibility by assigning reference to the issuing court. This is a subtle solution as not only the parties shall agree upon litigation but also it should be possible. The latter ration caused arbitration general document and European convention envisage referring to the international court of justice in case of impossible reference to the issuing court. Finally, it is worth notifying that some conventions approved a typical appeal of arbitral decisions which is extremely limited since is inconsistent with the nature of arbitration.

Difficulties of a country avoidance of enforcing arbitration award: In principle, the awards shall be prosecuted in good will. If nations avoid prosecution, the general issue of implementing international law. Certain solutions are not considered for awards' enforcement. Force which obviously leads to chaos, violates UN charter. Referring to an international court also requires agreement of both parties; anyway, it delays the enforcement. The solutions of arbitration conventions are merely secondary like the necessity of fair prosecution in case where civil rights of one party disagrees the enforcement (Shahbaziniya, 2007).

Prosecution difficulties clearly show that development of arbitration is tightly tied to the status of international community, in particular the level of institutionalization. If arbitration of general international law largely reflects intergovernmental structure of an international community, international commercial arbitration witnesses fundamental transformation of this community.

THIRD CHAPTER: INTERNATIONAL COMMERCIAL ARBITRATION AND TRANSFORMING THE STRUCTURE OF INTERNATIONAL COMMUNITY

Legal disagreements in traditional (classic) international community, resulting from relations between government and the foreign person or between two people of different nationality, only resolved through referring to national courts. The disagreement was only international once another government intervenes in term of political (diplomatic) support (Berlia, 1957). Such intervention turns the claim to intergovernmental disagreement therefore, it may demands arbitration for settlement. This individual negation which is condemned by George Scelle as a (n) (incorrect) hypothesis, requires that some alternatives considered for individual participation in arbitration (Berlia, 1957).

These alternatives were inadequate comparing considerable increasing of these relations depending on developing international commerce. In past, mixed arbitration courts following World War I which obliged determining payable compensation to citizens of the allied governments burdened financial, right and interest losses cared individuals (Blundon, 1932).

Developing the policy of government intervention as well as dramatic increase of economic ties is the origin of international commercial arbitration of its two life-giving movements: arbitration, on one side, substituted for state court and on the other side, it tends to get free from governments' dominance.

FIRST PARAGRAPH: REFERRING TO INTERNATIONAL COMMERCIAL ARBITRATION RATHER THAN STATE COURTS

In commercial relationships, trading among people with different nationality, distrusting state courts as well as fear of complexities resulted from courts' conflict system;make parties to refer the selected arbiters rather than national competent courts (Fouchard, 1965). Absence of an international judge dealing with the disputes between people and government may substitute national courts by arbiter, according to the parties agreed determination.

Agreed determination of parties: In many cases, the parties are free to self-determination through arbitration agreement whether prior or after the dispute.

Arbitration contract (post-dispute): Arbitration reference will of the resulted disrupt is manifested in the contract which indicates the parties' agreement. This is an unsatisfactory solution to the legal security, since nothing guarantees that the parties, after dispute, agree upon arbitration.

Arbitration provision: Agreement parties, envisaging resort to arbitration in case of dispute in advance negate jurisdiction of state courts. There are many contracts containing arbitration provisions. Moreover, some provisions are also suggested to the parties by arbitration organizations (Fouchard, 1965). Strangers, contracting to states, seriously feel the necessity of such provisions. These relationships directly results from state's evolving role and intervention in economic area. Arbitration provision in western democracies, due to the philosophy of freedom which is still dominant, leads to some difficulties. In these countries, sometimes state capacity for arbitration is doubted whereas in Marxist democracies, it is totally consistent with state socialist analysis. Though, arbitration provisions in intergovernmental contracts and private entities often respond to technical requirements; it results from, in some cases, the foreign dominance phenomenon that hurts state's economic sovereignty.

Nature of arbitration organization: It principally depends on the parties' selection (choice). If arbitration is assigned without referencing to an organized entity it is called ad hoc arbitration. If an organized system is selected, the result will be institutionalized arbitration.

Ad hoc arbitration: Arbitration is assigned based on parties' determination. They agree with number and place of arbitration. The close relationship between parties' determination and organizing the arbitration is fully consistentwith the nature of arbitration and parties' trust. Case arbitration provides the opportunity of dominance, to parties, over organizing arbitration. This arbitration is particularly efficient in the relationships between governments and private entities. And finally, this typical arbitration allows parties to keep the secret of disputes and remedies by avoiding institutions (Safaei, 1996).

Despite these merits, ad hoc arbitration suffers several disadvantages due to the characteristic excessive voluntarism. The disadvantages appear in different forms including parties' avoidance of arbitration appointment such that Iran refused arbitration assignment in 1951 in Iran oil company claim versus England. Another disagreement results from absence of parties' common determination in assigning competent arbitration, third arbitration or head arbitration. Finally, resignation or dismissal of arbitration is seen not only in international arbitration among people but in the arbitration between government and individual that is closer to intergovernmental arbitration (Nikbakht, 2009).

The difficulties are resolved through the solutions of resorting to the third party. But, where can we look for this third party? It may be referring to national judge that intervenes in case of an abstaining party or in parties' disagreement. This is a high-risks solution; indeed, it is in contrast to what parties intended by referring to international arbitration. It may also leads to many legal problems in relation to the authorized court and the governing rule which is provided in contrast to court and rules.

Parties usually prefer other solutions to this which are more consistent to their needs and necessities. They often refer to corporate references such as the president of chamber of commerce to play the role of the (third) appointer in addition, they resort to public or international officials. Public authorities may be the courts or judges of a neutral country. This solution is different from the already mentioned solution in which national intervening judge was usually the very authorized judge. However, intervention of international authorization more adapts to arbitration objective. Thus, Intervention of the President

or Vice President of international court of justice is often demanded. Agreements of some international corporations or between states and oil companies perhaps offer this provision (in particular, agreements on oil concessions in Middle East as well as arbitration agreement between France and Algeria signed in June 26 1963 prosecuting Evian agreements) (Joneidi, 1999). In order to avoid difficulties of possible refusal of the appointer in fulfilling its duties, the parties are already coordinated informally to be ensured of agreement or probably, another person is selected.

Some documents (of arbitration) envisaged the third appointer intervention if the parties conflict. Provisions of permanent court of arbitration March 26, 1962 on disputes between governments and individuals, through arbitration, authorize Secretary General of the permanent court of arbitration, provided that the parties explicitly granted this authorization.

Geneva convention 1961 which is particularly for prosecution in commercial relationships between east and west, contemplated the third appointer mechanism for case (ad hoc) arbitration. This convention distinguishes the two hypotheses: if parties predicted the place of arbitration, the applicant may refer to Chairman of the Chamber of Commerce of the selected country by the parties and or the head of defendant country's Chamber of Commerce. If the place of arbitration is not envisaged, the applicant may refer to the head of defendant chamber of commerce or a combination of East and West chamber of commerce representatives. The more these mechanisms are developed comparing primitive and non-appointing ad hoc arbitration, the lower level are in term of institutional arbitration.

Institutional arbitration: Of the most significant characteristics of international commerce is institutionalization. Law scholars lack the consensus on the realization terms of institutional arbitration. The purpose of institutional arbitration is what accepted by Devine Pierre Lalilo (dean) who expressed that this type of arbitration is true when "the parties already agree on the authorization (competency) and more or less the organization's regulations". This evolution leading to emerging of institutional arbitration along ad hoc arbitration is now officially recognized by New York convention 1985 (Article 1) and European convention 1961 (Articles 1 and 55). There are several arbitration institutions (entities). UN economic commission estimated 127 organizations in Europe.

Some of these organizations are national; they are specifically authorized in a commercial activity such as Pane Havard arbitration room or generally authorized, like Paris chamber of arbitration which is affiliated to chamber of commerce. Surprisingly, such national entity interferes in international arbitration. However, it is technically justified. The methods of eastern nations are differently justified; these countries mainly envisage intervention of national arbitration entities which are extremely governmental, in commercial relations to foreign companies. Their autonomy composition comparing foreign trade government agencies, contracting foreign firms, creates doubts. Moreover, a well-known case, Israeli Oil Case, revived this pessimism. In this case, USSR foreign trade commission rejected petition of an Israeli company suffering from contract breach (Khazaei).

Eastern nations' arbitration entities, due to the nature of their economic regime, clearly represent disadvantages of referral to national arbitration. Requirements of international trade and the need to trust arbitration which is required, push individuals toward institutional arbitration.

International arbitration entities are enormously varied. They operate at bilateral regional or global level. One of the most famous entities of international court of arbitration at global level is international chamber of commerce intervening in relations between governments and private individuals as well as in relations between individuals.

In the relations between governments and private individuals, the special regime of convention of International Bank of Reconstruction and Development (IBRD) is mentioned. This convention envisages establishing an international center to settle investment disputes. The center, dependent on IBRD, works independently.

In addition to various organizations, intervention mechanisms also vary. They share two common features: one positive feature in which institutional arbitration goes beyond just intervening of an appointer third party and the other is negative: the entity never settles the disputes on its own. Arbitration entities will suffice to arbitration court and facilitating settlement by the aid of regulations.

In international chamber of commerce mechanism in three different hypotheses, court of arbitration intervenes regarding parties; if they select a single arbitration, the court only confirms their choice. If parties are unable to agree within 30 days, the single arbiter is assigned by court. If parties agree upon an arbitration court consisting of three members, each select one arbiter and the third arbiter is assigned by the court. Though, if one party does not appoint its arbiter, it will be assigned by the court. And finally, if court composition is not assigned by parties, the court will appoint a single arbitration; unless, one party requests a three-membered court and it is justified by court (Nasiri, 2004).

The envisaged mechanism of IBRD convention is highly flexible, too (Articles 37-40). According to this mechanism, the parties are allowed to select one or three arbitrations. In case of parties' disagreement, convention prefers multiple-individual court which is justified by parties' description in convention framework: each party assignsan arbiter and the third is appointed by mutual consent. But, if, within 90 days of arbitration lawsuit registration date, the court is not held, the chairman of settlement division may assign the arbitration.

PARAGRAPH 2: INTERNATIONAL COMMERCIAL ARBITRATION RELEASE OF STATES' DOMINANCE

Referring to private international arbitration rather than state courts is only an aspect of evolution and development. Such substitutions are supplemented by getting rid of state dominance. This is an infant release due to states' avoidance of accepting an independent arbitration entity. Tendency toward freedom seeks for two main objectives: autonomy in selecting governing law and restricting national judge intervention.

Autonomy tendency in choosing the governing law: International arbitration depends on the nature of governing law. If the capacity of arbitration parties undoubtedly follows their private law; then, the laws governing arbitration agreement, rules of arbitration and the nature of claim can be discussed. Choosing this law is significant in term of arbitration evolution and getting rid of state dominance. The autonomy of parties, that legal evolution of arbitration shows some tendencies toward; merely facilitates this freedom.

Laws of arbitration agreement: Different solutions are assumed to identify this law. Contrary to the position of International Law Institute, consistent with implementing the rule of arbitration place, new international conventions agreed upon parties' autonomy. New York convention (Paragraph 1, Article 5) like Geneva convention (Paragraph 2, Article 6) envisaged that governing laws are determined through contract parties. In this regard, they avoid multiple difficulties of implementing the rule of arbitration place (Safaei, 1996).

New York convention predicts that in case of parties' disagreement, the governing rule is the law of arbitration place. It is also approved by Geneva Convention; however, Geneva conventions explains that in case of disagreement, where award issuing country is unpredictable "the governing law is the law whereby the tribunal conflict rules would be known authorized (competent)" (Paragraph 2, Article 6). The governing law may not solve the issue of the territory of enforcement (Fouchard, 1965). The convention of international bank of reconstruction and development went one step beyond through internationalizing this contract (agreement).

Laws of arbitration: It is a controversial issue among opponents of arbitration place and believers of the parties' autonomy. Only the autonomy system is followed by getting free from states' dominance. It should be mentioned that in ARAMCO case, the arbitration court rejected enforcing arbitration place rule, Swiss law in that case and accepted implementing of international law. If rejecting the law of arbitration place seems a proper solution, resort to general international law is criticized. The ration that general international law shall be prosecuted in arbitration regulations as one party is government is not convincing in particular, it is inconsistent with arbitration court reason, refraining from implementation in point 1993 as the government is no more one of the parties (Carr, 1999).

Autonomy is a system approved by New York convention: the laws governing arbitration are assigned by parties; otherwise, the law of arbitration place is enforced (Article 5D).

Geneva convention emphasizes on moving toward free from states' dominance: the parties may determine rules of arbitration that are binding (Paragraph 1, Article 4). If the governing law is not determined by parties, arbiters may assign their own proceedings; otherwise, rule of arbitration is determined by the authorized chamber of commerce or a specific commission. In addition, the Convention accepts another performance in institutional arbitration framework: the parties may provision that disputes are referred to a permanent arbitration entity therefore, arbitration goes according to the regulations of the assigned entity.

This rule demonstrates real internationalization of international commercial arbitration. The entity's arbitration regulations manifests as an accepted international law by parties. According to convention of international bank of reconstruction and development, getting rid of state dominance and internationalization are realized through the envisaged rules of arbitration and regulations of arbitration center.

Therefore, it is considered that the principle of autonomy first gives the right to choose from governmental rules and in second step of developing arbitration, let the parties ignore national law in favor of international regulations (Barker and Padfield, 1992).

Law governing the claim nature: This may be other than the effective law in arbitration. The nature law is agreed in Geneva Convention based on the parties' determination

(Paragraph 1, Article 8). In case of disagreed parties, arbiters enforce the law determined according to conflict rule. Therefore, arbitrations are allowed to refer to national systems of conflict of laws to identify the governing law; thus, they are free to refrain from implementing the law of arbitration place. Once the analysis of some authors indicating the birth of an international commercial law governing then nature is accepted, getting free from governmental dominance is more complete. Undoubtedly, it is not perfect; however, it dramatically develops by increasing international relations. According to international bank for reconstruction and development Convention, the laws governing the nature are the selected laws of the parties (Article 429). In case of disagreement, then rights of the state (one party of contract) and principles of international laws are enforced (Joneidi, 1999).

Though, contents of conventions and orientation of arbitration function reveal an indisputable movement toward autonomy; there is still a long way to get rid of states' dominance and control. Some nations rejected the convention; the interpretation differs in term of countries. regulatory rules sometimes are inconsistent to the conventions. Traditions (conventions) of national courts often serve as barrier to the freedom from state control.

CONCLUSION

Developed technology, in recent years, on the issue of resolving international commercial disputes caused tendency toward electronic arbitration and challenged legal regime of traditional (conventional) international commercial arbitration. This non-judicial arbitration of dispute settlement has some problems like any newly-established legal entity and new conflicts emerged due to the effect of technical evolutions (transformations) in proceedings. However, regarding the enormous benefits, it is necessary to consider these challenges.

It appears that electronic arbitration is the very traditional (conventional) arbitration entity that applies all new communication ways which is only altered in its application. The steps are the same as conventional arbitration containing all issues of conventional arbitration proceedings. However, some steps and issues provide a new, typical form of this arbitration due to the technology. The steps are from starting the arbitration, notices, timing, the jury, hearing, as well as the reasons to arbitration decision and noticing where in some cases encounter challenges including proceeding security and confidentiality principle of the proceedings for merchants, high cost of communication and complex websites as well as contradiction of arbitration award with the effective and fair principle of justice. It seems that the security issue of cyberspace may be solved; security increased through coding information and using electronic signature; especially in most countries, regulations related to commerce and electronic signing are approved and entry into force.

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