International Journal of Social Science And Human Research

ISSN(print): 2644-0679, ISSN(online): 2644-0695

Volume 05 Issue 01 January 2022

DOI: 10.47191/ijsshr/v5-i1-18, Impact factor-5.586

Page No: 122-129

Legal Concept and Essence of International Arbitration

Prof. Dr. Islambek Rustambekov[1], Dr. Mokhinur Bakhramova[2]

[1]Deputy Rector of Tashkent State University of Law, Uzbekistan.

[2]Senior lecturer at Intellectual property law department, Tashkent State University of Law, Uzbekistan.

ABSTRACT: This article analyzes the legal concept and essence of international arbitration. The authors analyses that international arbitration is a legal process aimed at resolving disputes between companies or individuals in different states, usually by including a clause in the contract to refer future disputes to an international arbitrator. Analyses showed that there is arbitration jurisprudence, which is an established method of international arbitration consisting of decisions on certain types of cases and has become a source of legal norms in a number of areas, including issues of substantive law.

KEY WORDS: international arbitration, dispute resolution, ADR, arbitration juresprudence.

Arbitration is a process used to resolve disputes by reaching an agreement between parties. Disputes in the arbitral tribunal are compulsorily settled by the person or persons acting in the court, not by the court of internal parties, as long as the parties agree to include them, giving them jurisdiction.

Arbitration is an alternative method of dispute resolution in which the dispute is referred to 'an impartial (third party) has chosen by the parties so that both parties can hear the decision of the arbitrator after the trial'.[1] The essence of arbitration is that the dispute is not referred to the court but to the forum chosen by the parties for themselves. This is important because of the consensual and binding nature as well as the flexibility of most arbitration courts specifically.

There has been a surge in cross-border arbitration in recent years, thus imbuing the procedure with an international character. International commercial arbitration has evolved as a private transnational dispute resolution system consisting of multilateral conventions, bilateral treaties, national arbitration rules and the principles and rules of private informal dispute resolution. The 1920s saw the rise of modern law governing international commercial arbitration, and in 1958, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, was adopted. This was followed by the harmonisation of arbitration procedures in the form of the 1976 UNCITRAL Arbitration Rules and the 1985 UNCITRAL Model Law on International Commercial Arbitration.

In the scientific field of private international law, there have been lengthy discussions about the legal nature of arbitration and its place in the system of jurisdictional bodies. Thus, there are several basic theories (concepts) today regarding the determination of the nature of arbitration (international commercial arbitration): jurisdictional, contractual, mixed and autonomous arbitration.[2]

International arbitration is a legal process aimed at resolving disputes between companies or individuals in different states, usually by including a clause in the contract to refer future disputes to an international arbitrator.

Arbitration jurisprudence is an established method of international arbitration consisting of decisions on certain types of cases and has become a source of legal norms in a number of areas, including issues of substantive law.

There are four main features of international arbitration. First, international arbitration is autonomous and exists in an area that is independent of and unrelated to national laws and jurisdictions. As some have speculated, arbitration does not operate solely on the basis of a contract, a waiver of jurisdiction by the state or even a combination of both. Rather, arbitration is an autonomous system with procedures independent of any national legal system. Second, the parties express to the arbitration tribunal their views on and preferences for the case at hand. Regardless of their reasoning, the parties agree that the courts should be set aside, the question being the extent to which the courts should be involved. Third, except in rare cases, the arbitral tribunal is primarily responsible for resolving all relevant issues. National courts, which possess the ability to bypass the arbitrary decisions of courts, also have the ability to attract the attention of knowledgeable decision-makers and secure the final and binding nature of any decision. Access to the autonomous domain of international arbitration is an attractive feature of an alternative dispute resolution system. Even if national law is chosen as the substantive law of the contract or the right of the arbitral tribunal, the parties may

[1] Rustambekov I.R. (2018) 'Practical aspects of formation of the system of international commercial arbitration in the Republic of Uzbekistan'. p. 6

[2] Rustambekov I.R. (2018) 'International commercial arbitration'. *Textbook*. pp. 13–14.

deliberately and explicitly deny the jurisdiction of these courts. The parties may make this choice for a variety of reasons, such as the non-acceptance, inadmissibility or inconsistency of the 'separation' of national courts, and the arbitration agreement may be maintained even if the dispute between the parties is resolved. Fourth, despite the autonomous nature of the arbitral tribunal, it must be acknowledged that no dispute resolution system exists in a vacuum. Without compromising its autonomy, international arbitration routinely deals with national jurisdictions to ensure its legitimacy, support, assistance and efficiency. The assistance of local courts is provided in various forms at different stages of the arbitral proceedings, as: (1) national law must recognise and enforce the arbitration agreement as well as any decisions made; (2) national law must support the arbitration process; and (3) international arbitration has established some basic standards requiring the maintenance of law and order in society that are reflected in international instruments at the international level.

According to the opinion of Rustambekov,[1] international commercial arbitration is a self-regulating, politically and procedurally independent system of non-state consideration and resolution of international trade disputes arising on the basis of foreign economic transactions between subjects of different states. The consideration of these disputes is based on the use of substantive law, according to the agreement of the parties or in accordance with conflict of laws rules at the discretion of arbitrators based on the principle of fairness in trade and business practices. International commercial arbitration was first emphasised in the Dispute on the United Nations Conference on International Commercial Arbitration in 1958. The global proliferation of 'development' has influenced various aspects of humanity, and the wider dissemination of information on commercial arbitration laws has contributed significantly to progress in international commercial arbitration. The confusion of concepts such as liberalisation, globalisation and consumerism has led to schematic changes in the way people think about trade and related concepts. Evolving multilateral, bilateral and transnational treaties and policies have had inevitable impacts abroad. Thus, international arbitration is considered to be an excellent means of resolving commercial disputes. As pointed out by Ubaydullaev, existing acts are theoretically outdated, fail to meet the requirements of a market economy and are rather complicated to apply, and therefore, a new legislative basis is needed to regulate these relations.[2]

As Boguslavsky notes, 'One of the most important goals of procedural legislation is to provide conditions for the execution of a court decision. If such a decision is not carried out or is not enforceable, the entire system of legislative norms aimed at protecting violated rights, and all judicial activities to assess the offence, the choice and application of measures to protect the right turn into fiction, therefore, the legal execution of the decision on protection becomes paramount'.[3]

International arbitrationA has long enjoyed a reputation as the preferred method of dispute resolution between transnational contracting parties. Arbitration is preferable to the judicial mechanisms of national courts, as the former comparatively provides for a more neutral forum, a decision that can be easily enforced. The jurisdiction of international arbitration depends on its advantages as well as its disadvantages. The benefits of international arbitration trade aside, it faces several misconceptions. For example, international commercial arbitration requires denationalisation in order for national laws to be considered separately and the entire process of international commercial arbitration to be regulated by the lex mercatoria system. However, this has not been achieved, as it is impossible to remain indifferent to national laws. Thus, national laws converged, and efforts have been made to unify and harmonise the laws surrounding international commercial arbitration, despite the various approaches to arbitration by national courts. Even today, national jurisdictions play supervisory roles, which can be inferred from the fact that many national jurisdictions do provide for arbitration mechanisms in accordance with their respective civil procedure codes. However, the onus is on nation-states to determine what is 'international' and 'commercial' in terms of international commercial arbitration.

Another issue faced by international commercial arbitration is the subject matter. The compilation of a list of arbitration cases in accordance with national law is the prerogative of the state. Topics may vary depending on the development of science and technology and can include technology transfer, e-commerce, entertainment and sports, sponsorship, genetic engineering, commercial space exploitation, telecommunications and so on. International transactions are very complex, as they involve multiple parties, and it is not possible for several parties to resolve a dispute together in one arbitration court. Furthermore, the consolidation of claims is not allowed as it is in the court, and the res judicata principle is not applicable. Consequently, it is necessary to initiate several court proceedings.

International commercial arbitration is also associated with conflicts of arbitral awards. Conflicts of arbitral awards mainly arise from the fact that the doctrine of precedent is irrelevant to arbitration. There is no rule that would imply that a decision on a particular issue or set of facts binds arbitrators facing similar problems or similar facts. Each award is regarded separately, leading to situations of uncertainty and hesitation, the solutions to which are neither quick nor inexpensive.

[1] Rustambekov I.R. (2018) 'Practical aspects of formation of the system of international commercial arbitration in the Republic of Uzbekistan'. p.12.

[2] Ubaydullaev, Z.S. (2004) 'Concept for the development of legislation on arbitration courts and international commercial court in the Republic of Uzbekistan'. *Arbitration courts in Uzbekistan: Analysis and development trend*. T.: Shark, pp. 340–341.

[3] Boguslavsky M.M. Modern trends in expanding the scope of institutional arbitration courts // Actual issues of international commercial arbitration / Ed. A.S. Komarov. - M .: Spark, 2002 . - P. 39.

Legal Concept and Essence of International Arbitration

The parties of any contract have the right to choose the scope of the arbitral tribunal. Certain terms are included in the contract, and arbitration proceedings, as well as related rules and procedures, must be selected in advance. In addition, independent arbitral tribunals must establish separate rules and procedures for conducting arbitration proceedings. As noted by Shamukhamedova, despite the existing differences in approaches to the regulation of hereditary relations, the role of substantive legal norms of international agreements – transformed into national legislation – is steadily increasing. The significance of the norms of direct action is especially great, as standard rules have established in accordance with these norms for states and their participants in order to uniformly resolve specific issues. Under modern conditions, many countries have pursued the expansion of the scope of application of unified substantive legal norms.[1]

The actual contract is concluded by the parties, and the regulations on the submission of dispute arise to them upon arbitration. At the request of one of the parties, the dispute is subject to arbitration. The two issues that must be addressed in the early stages of arbitration are whether there is a valid contract and whether it includes the relevant rules of arbitration.

In recent years, over 30 international arbitration claims have been filed by investors from developing countries with institutional centres and ad hoc arbitration courts. In most cases, international investment disputes are submitted to specialised international investment arbitrators. Most often, claims from foreign investors are filed against developing countries; thus, the countries of Central and Latin America often act as defendants in international arbitration courts in investment disputes. However, the number of cases in which the defendants are Ukraine, Georgia, the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Uzbekistan is growing.[2] According to a well-known French commentator, 'the arbitration agreement and the autonomy of the main contract do not mean that they are completely independent of each other, because the acceptance of the contract leads to the unconditional acceptance of this article'.[3]

The determination of jurisdiction of a local arbitral tribunal depends on the fulfilment of the following preconditions.

- ✓ There must be a valid contract between the parties;
- ✓ The contract into which the parties enter must contain an arbitration clause, which must be valid and enforceable;
- ✓ The dispute under consideration must be arbitration; that is, it must be included in the subject of consideration.

The determination of the jurisdiction of international arbitration depends on the following factors.

- ✓ The agreement between the parties must be in writing;
- ✓ The arbitration must take place in a country that has signed the New York Convention;
- ✓ The dispute under consideration must be arbitration, which should be included in the topic;
- ✓ The determination of jurisdiction cannot be completely internal in scope.

To understand the differences between the definition of jurisdiction in national and international arbitration, it is necessary to answer the following questions: do the national courts hold the supreme position in the arbitration process, and to what extent can a sovereign country tolerate international commercial arbitration as an exception to the jurisdiction of national courts?

As long as the concept of state sovereignty is noteworthy, decisions regarding any transnational dispute can only be enforced through sovereign national courts, a fact that is clearly emphasised in the provisions of the New York Convention. This is because even the unanimous decision of an international forum has no more force than a merciful appeal, as sovereign states remain sovereign.

The arbitral tribunal is accepted as an autonomous entity and can be separated from other clauses of the contract. This is what separates the arbitral tribunal from litigation courts, allowing it to be governed by laws other than the law governing the main settlement.

A significant increase in the role of international trade in the economic development of any country is associated with a simultaneous increase in trade disputes. The participants of a transnational treaty are representatives of different nationalities and, therefore, the national courts of each country. Thus, they may experience strong disagreements that are subject to the laws of the other party's country for fear of the 'supremacy of the local court' of which the other party may take advantage. This has led to the recognition of arbitration as the preferred method of resolving cross-border commercial disputes.

Thus, it would not be an exaggeration to say that the existence of international commercial arbitration is entirely dependent on the compliance of member states with their obligations under the Convention. While the executive and legislative branches of governments of the Member States definitely have roles to play in light of their specific municipal structures, the entire mechanism of the Convention and other important instruments of arbitration law require the cooperation of national courts, as the system is based on mutual trust. If the court favours its citizens, this reciprocity is violated, and a negative precedent is set. Thus, the possible

[1] Shamukhamedova Z. (2008) 'The system of international legal regulation of hereditary relations'. *Review of the legislation of Uzbekistan*, No. 3–4, p. 49.
[2] Rustambekov I.R. (2018) 'Practical aspects of formation of the system of international commercial arbitration in the Republic of Uzbekistan'. pp. 10–11.
[3] Jean Francois Poudret et al. Comparative Law of International Arbitration (2nd ed, 2007).

strengthening of the rule of law, the widening use of international arbitration to resolve cross-border disputes and the enforcement of arbitral awards depend on the essence and efforts of sovereign national courts.

Fortunately, evidence suggests that courts around the world are implementing the Convention in an increasingly coherent and synchronised manner in order to serve global trade and commerce. As a result of the Convention, an international standard is emerging in many ways. All of this has greatly contributed to the harmonisation of international arbitration law, which, in turn, contributes to the achievement of a quality desired by the international trading community.

A debate settlement system in which a nonpartisan outsider decides the settlement between the parties privately rather than at the state level is known as arbitration. The mediator's choice is official, the judges are managerial experts in the relevant subjects and, if the contentions are business- or trade-related, the jurisdiction may be local or global. In situations where nations require interventional strategies to resolve their dispute, arbitration techniques may be utilised. Model Law states that if parties are prepared to dispute and their seats of arbitration are in various conditions at the conclusion of the agreement, if the arbitration agreement is arranged outside of the state in which they have acnes of commercial or if the parties identify with more than one nation and they concede to mediation, then the debates are haired as universal business discretion.

In general, business intercession plays an essential role in settling disputes between countries. There are several favourable circumstances for intervention under which states are likely to undergo the process of arbitration. They surmise that this system is narrower than litigation; however, in actuality, it is especially broad. Mediators are specialists in their spheres, and they endeavour the circumstance with the regular consent of the social affairs and besides its miles the clean method to clear up the discussions and once you have the solicitation events has fitting to visit the court plan on specific grounds yet this contraption has still now not a ghastly part benefits for the events and the enforceability of solicitations similarly occurs, there may be worldwide court of affirmation underneath which by and large assembly room of trade 'ICC' is a free establishment who deals the models related to trade this court plan doesn't, now clear up the events quickly, it settle the inquiries by using arbitrational parties who course of action circumstances under the ICC rules.

The arbitral tribunal has the ability to choose its own jurisdiction, as its power arises from the contract between parties. Separability and the competence-competence principle are very notable ideas in universal arbitration. These two propositions are intended to maintain a strategic distance between arbitration and other types of legal intervention that may create disarray within the framework of arbitration.

The principle of competence-competence permits the court to exert private force. Arbitration is presently becoming an attractive process for dynamic debate as a result of its particular capabilities, and most would agree that this methodology is progressively becoming simpler and more effective.[1]

The International Chamber of Commerce provided the arbitral court with a Chair of Arbitration to discuss the problems facing the current system of international arbitration. Official decisions are continually made on parties' behalfs. The guidelines of separability and competence are customary apparatus that serve as precepts in 'global business mediation practices to peer that the interests and consistent quest for its key players are cultivated. These activities are extensively pace, money related framework, familiarity, specialized data shirking of countrywide for producing grants that oppose legal strategy in some cases and appreciate legitimacy in others'.[2] In his article, Barceló III states that although these concepts differ from one another, they are in many ways related on the grounds that they both prevent legal mediation from discouraging legal procedures. According to Sabirov, arbitration has a number of advantages over the economic court. Firstly, arbitration is more efficient. If parties apply to the economic court, the case may go through three or more legal instances. The arbitration tribunal provides only one instance, and the award made by it is final and enforceable (unless a party requests a revision and can prove that the proceedings contained violations due to which an unfair award was made). Currently, there are cases in the economic courts that have been tried for several years to no avail. Secondly, in the economic court, dispute resolution is carried out by judges appointed by the state, while in arbitration proceedings, the parties of the dispute can select an arbitrator from a list of those available. Moreover, this list may include not only lawyers but representatives of other specialties as well who may possess a greater understanding of the essence of the economic dispute. Thirdly, arbitration is more profitable in economic terms, as parties do not have to pay for participation, while in the economic court, parties may have to pay for three or more instances. Finally, there are fewer potential opportunities for corruption in arbitration.[3]

This study examines the jurisdiction of the arbitral tribunal based on the experiences of foreign countries according to UNCITRAL Model Law and provides recommendations for the optimal pre-trial settlement of economic and civil disputes in the Republic of Uzbekistan. Additionally, it will discuss the purpose, extent of utility and shortcomings of arbitration regulations in

[1] Rustambekov I.R. (2018) 'Practical aspects of formation of the system of international commercial arbitration in the Republic of Uzbekistan'. p. 15.

[2] Brams, S.J. and Taylor,A.D (1996) 'Fair division from cake cutting to dispute resolution', *Cambridge university press, Cambridge*, U.K, p.33-34.

[3] Sabirov, M. (2003) 'Arbitration: advantages, necessity and problems of introduction in Uzbekistan'. *Economic Review*, No. 11. http://www.review.uz/archive/article.asp?y=2003&m=64&id=199

Wales and England with respect to the Arbitration Act 1996,[1] the LCIA Arbitration Guidelines 2014, the Convention on the Recognition and Enforcement of Foreign Arbitral Rewards 1958[2] and other books and papers.

The Arbitration Act 1996 is a countrywide law that oversees interventional procedures in England and Wales and regards the principles of separability and competence in Sections 7 and 30(1) as follows:

Except in cases agreed upon by the parties, the arbitration agreement will not be viewed as invalid, non-present or insufficient in light of the fact that the other agreement is invalid, and it will be treated as a separate agreement for that purpose.

The convention of separability states that fair-minded mediation is essential to the settlement of cases. This idea is known in some guidelines as the self-governance of mediation provision – 'autonomic de la proviso compromissiore'[3] – and furthermore referred to as 'the teaching of independence, severability or separability'.[4] It subsequently concludes that, if these guidelines fall flat or become null, the arbitration conditions contained in the initial agreement still stand.[5]

Lord Macmillan, in the case of Heyman v Darwins Ltd,[6] succinctly stated the doctrine of the principle of separability as follows: 'The arbitration procedures [may have] fallen, but the arbitral tribunal is not one of the deal's features… the arbitral clause endures for the reason of assessing the violation arguments and also persists in order to decide the nature of their contract'.[7]

On the other hand, the doctrine of jurisprudence[8] is a philosophy of jurisprudence stating that the arbitral tribunal may also rule on its authority to decide upon the substantive claims filed previously.

The competence-competence principle is well defined in the arbitration agreement, as the court is granted inherent competence to decide the case and, essentially, the validity of the principal agreement.[9]

However, this effect also restricts the features of the court docket, giving the court the opportunity to choose its personal authority and the legitimacy of the adjudication contract. Courts may stand by the power to conduct a thorough evaluation only once an award has been given, either to separate the award or to incorporate it.

Devlin, J. states that 'Usually, the issue of authority is a formal substance for the arbitral tribunal to evaluate. Whether a conflict should be resolved by a jury rather than a judge is theme to issues such as if there is adjudication arrangement, whether it is legitimate or whether the argument falls within the reach of the adjudication arrangement'.[10] The author of 'International Commercial Arbitration – A Transnational Perspective' states that 'Especially in the US, these queries are frequently collectively termed as the issue of "arbitrability"'.[11] 'The concept has been used to determine whether a tribunal has authority to hear a disagreement as a part of establishing arbitration agreement. It involves whether the tribunal will hear a conflict that has already been settled in another court'.[12]

The principle of competence-competence permits the tribunal to declare that an arbitration agreement is illegal and, without contradicting itself, that it lacks jurisdiction. Therefore, a dispute may arise as to how a judiciary that relies solely on the adjudication contract may consider the agreement to be invalid. The solution lies within the competence-competence concept. This concept is not provided for in the adjudication clause but rather in the adjudication rules of the state in which the adjudication is held (known as lex arbitri or the seat) as well as the adjudication laws of any authority in which the settlement is implemented.

While general arbitration grants deliberate power to the tribunal, courts of law in these states in which the settlement is held are obliged to impose a reward distributed by the tribunal concerning their private influence with the proviso that competence-competence is recognised in their state arbitration rules.[13]

The study of jurisdictional methods of competence reveals differences between judges regarding the constricting conditions in the application of the NYC Convention and Model Law. The differences in state court approaches to undesirable results are also attributable to certain state strategy rationales, including the strategy of avoiding dilatory tactics used by parties to postpone

---

[1] The Arbitration Act 1996 is the core legislation governing arbitration in England and Wales as well as Northern Ireland.
[2] The 'who decides' question concerns the competence rule, and the question of 'whether an element is mandatory element' concerns the rule of separability.
[3] The LCIA Rules 2014 is a set of core institutional rules governing international commercial arbitration in England and Wales.
[4] The United Kingdom applies the New York Convention only to the recognition and enforcement of awards made in the territory of another contracting state.
[5] Born, G.B. 'International commercial arbitration: commentary and materials'.
[6] (1942) AC 356 at 374.
[7] The words in brackets are my original words and have only been inserted for emphasis.
[8] Known as *kompentenz-kompentenz* in the German language and *compétence-compétence* in French.
[9] Poudret, J.F. above n 11, [162].
[10] Devlin, J. (1954) Christopher Brown Ltd v Genossensschaft Oestterreichischer Waldbessitzer Holzwirtschaftsbetriebee Registriertte GmbH. 1 Q.B. 12, 13.
[11] Varady, T., Barcele III, J.J. and von Mehren, A.T. (2006). *International Commercial Arbitration – A Transnational Perspective*, 3rd ed. p. 87.
[12] *AT&T Technologies Inc v Communications Workers,* 475 US 643 (1986); *First Options of Chicago Inc v Kaplan,* 514 US (1995).
[13] Banttekas, I. (1996) *Australian Year Book of International Law*. Volume 27 (2008) p. 193. See *US Fire Insurance Co v National Gypsum Co*, 101 F 3d 813 (2nd Cir).

arbitration, which is based on the principle of competence-competence. Another approach is founded on the guiding code of centralising judicial review of adjudication disputes.[1] Also we can see some differences in national laws and Model Law.[2]

It is a universal principle that the jurisdiction of the arbitration court is to control its private power.[3] This principle is clearly established in Section 30 of the Arbitration Act 1996, and Lord Collin addresses this general position in the Dallah actual estate case[4] as well. Authority is granted to the court to resolve the challenges of, for example, invalidations of the arbitration agreement. Doctrine law grants the court the power to bring proceedings against the respondent who raised the objection as well as to hear the contest and, in this manner, adhere to the original agreement.[24]

Undesirable influence constrains the obligations of the court and furnishes the court with the capacity to choose its own power, compromising the integrity of the arbitration arrangement. In the primary case, the council has the ability to survey its own charges by allowing temporary status to the court to be investigated by the tribunal.[5]

Courts of law have the influence to implement or set apart the reward after it is authorised, and they reserve certain powers as well. In the case of Dallah Real Estate & Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan, the Supreme Court ruled that the doctrine of competence-competence is the power of the arbitral tribunal to determine its jurisdiction.[6]

The issue of jurisdiction must first be considered in order for the arbitral tribunal to determine its authority.[7] If a court is required to decide a conflict rather than challenge whether the arbitration agreement occurs and its legality, its domain is beyond the reach of the adjudication arrangement.[8] In this manner, the arbitration agreement is used to decide whether a tribunal possesses jurisdiction over the hearing on the issue of the development of the arbitration contract.[9] This identifies whether the court has the jurisdiction to hear a conflict that has already been decided and settle in another way.

Under these circumstances, the court makes it plain that competence-competence is the purview of a strong council that the court believes could use its influence and feels is significant.[10] It is likewise noted that the council is not the main appointed authority in this domain; whether it is genuine or not, there seems to be a higher-level power that can analyse the decisions of the council and may be in a position to authorise decisions.[11]

As previously mentioned, the principle of competence-competence enables the tribunal to conclude that a discrete settlement is unacceptable and, without disavowing itself, declare that it lacks the authority to intervene.[12] Thus, according to Gaillard and Savage: 'There are likewise particular harmful ramifications of this hypothesis, as per French regulations, the idea of negative competence-competence has been formalised and sets out that, when a contradiction is brought before the court under an arbitration agreement, the council diminishes its jurisdiction if the court has not gotten the issue and furthermore cannot, on the off chance that it imagines that the arrangement is useless and invalid'.[13]

The Arbitration Act 1996 section 30(1) declares that 'the arbitral tribunal may rule on its own substantive jurisdiction'.[14] Similarly, the LCIA Rules[15] and the ICC Rules[16] state that the adjudication court has the authority to decide its jurisdiction over the disputes brought before it. At this point, the issue of 'who decides?' becomes imperative. Do the LCIA Rules, the empowering facility of the Arbitration court's Regulation and the Arbitration Art give the tribunal absolute, exclusive and unfettered power to select its jurisdiction?[17]

---

[1] Article II(3) of the NYC Convention states: 'The court of a contracting State, when seized of an action in an issue in respect of that the parties have made an treaty, within the meaning of this article, shall, at the claim of one of the parties, refer the parties to arbitration, unless it finds that the said contract is null and void, inoperative or not capable of being performed.'

[2] Islambek Rustambekov (2021). Uzbekistan. The New – and First – International Commercial Arbitration Law. ICC Dispute Resolution Bulletin. #2. P.25-28. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3872373

[3] Lew, J. et al. (2003) *Comparative International Commercial Arbitration (the Hague, Kluwer Law).* Note 1, p. 332.

[4] http://arbitrationblog.kluwerarbitration.com/2011/04/07/dallah-and-the-new-york-convention/

[5] Poudret, J.F. et al. (2007) *Comparative Law of International Arbitration*. 2nd ed. p. 162.

[6] *Dallah Real Estate & Tourism Holding Case.*

[7] Jones, D. (2009) Competence-competence 75(1) *Arbitration: The Journal by the Chartered Institution of Arbitrations*. p. 56.

[8] Devlin, J. (1954) *Christstopher Brown Ltd v Genossenschaft Oesterreischer Waldbesitzer Holzwirtschaftsbetriebe Registrierte GmbH*. 1 Q.B 12, 13.

[9] Varady, T., Barcele III, J.J. and von Mehren, A.T. (2006). *International Commercial Arbitration – A Transnational Perspective*, 3rd ed. p. 87.

[10] Ilias Bantekas, *Australian year Boak of International Law* Volume 27 (2008) 193.

[11] Also in *US Fire Insurance Co v National Gypsum Co, 101 F 3d 813 (2nd Cir 1996).*

[12] Dallah, supra note 1, at 22, referring to P. Fouchard, E. Gaillard, B. Goldman & J. Savage, Fouchard Gaillard Goldman on International Commercial Arbitration, 659(1999).

[13] Gaillard, E. and Savage, J. (1999) Fouchard Goldman on International Commercial Arbitration, 661.88.

[14] Arbitration act of UK", 1996, URL: https://www.legislation.gov.uk/ukpga/1996/23/contents.

[15] LCIA Rules 2014, section 23.4.

[16] LCIA Rules 2014, section 23.12.

[17] Gaillard, E. and Savage, J. (1999) Fouchard Goldman on International Commercial Arbitration, 661.88.

The decision of the Supreme Court in the case of Dallah Estate and Tourism Holding Co v The Ministry of Religious Affairs, Government of Pakistan[1] clarified the applicability of the rule of competence-competence in England. In this case, the Supreme Court claimed[2] that 'it is a common principle of intercontinental commercial arbitration that a tribunal is allowed to make a decision as to its jurisdiction separate from the contract with the practical privileges in argument'.[3] This is widely known as the doctrine of competence-competence. Moreover, the fact that a tribunal may determine its own jurisdiction does not give it special authority to do so and definitely does not prevent the re-examination of the jurisdiction of the tribunal by an administrative court that is not in the arbitration seat.[4]

Fouchard Gaillard Goldman on Intercontinental Profitable Arbitration[5] epitomised reasoning behind not simply engaging the arbitral council on the teaching of control as monitors: '[arbitrators cannot be] single appointed authorities of their locale, which would be neither sensible nor good. For sure, the genuine explanation of the [competence-competence] rule is in no way, shape or form to leave the inquiry of the ward of the mediators alone in the possession of the judges'.

Furthermore, 'a party which doesn't take part in the arbitral proceeding can initiate court proceedings under the country court by prudence of the Arbitration Act 1996'.[6] For a presentation that the council unlucky deficiencies jurisdiction on the grounds of an invalid arbitration contract, weakness of the contract of the discretion court or that the issue referenced in the assertion are not as per the intervention contract.

BIBLIOGRAPHY

1) Boguslavsky M.M. Modern trends in expanding the scope of institutional arbitration courts // Actual issues of international commercial arbitration / Ed. A.S. Komarov. - M .: Spark, 2002 . - P. 39.
2) Brams, S.J. and Taylor,A.D (1996) 'Fair division from cake cutting to dispute resolution', *Cambridge university press, Cambridge*, U.K, p.33-34.
3) Born, G.B. 'International commercial arbitration: commentary and materials'. 2014.
4) Banttekas, I. (1996) *Australian Year Book of International Law*. Volume 27 (2008) p. 193. See *US Fire Insurance Co v National Gypsum Co,* 101 F 3d 813 (2nd Cir).
5) Cordero-Moss (2010) 'Can an Arbitral Tribunal Disregard the Choice of Law Made by the Parties?', p.38-39.
6) Devlin, J. (1954) Christopher Brown Ltd v Genossensschaft Oestterreichischer Waldbessitzer Holzwirtschaftsbetriebee Registriertte GmbH. 1 Q.B. 12, 13.
7) Gaillard, E. and Savage, J. (1999), Fouchard Gaillard Goldman on International Commercial Arbitration.
8) Dallah, supra note 1, at 22, referring to P. Fouchard, E. Gaillard, B. Goldman & J. Savage, Fouchard Gaillard Goldman on International Commercial Arbitration, 659(1999).
9) Islambek Rustambekov (2021). Uzbekistan. The New – and First – International Commercial Arbitration Law. ICC Dispute Resolution Bulletin. #2. P.25-28. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3872373
10) International Chamber of Commerce Rules on Arbitration 2012, article 8(3)
11) Ilias Bantekas, *Australian year Boak of International Law* Volume 27 (2008) 193.
12) Jones, D. (2009) Competence-competence 75(1) *Arbitration: The Journal by the Chartered Institution of Arbitrations*. p. 56.
13) Jean Francois Poudret et al. Comparative Law of International Arbitration (2nd ed, 2007).
14) Lew, J. et al. (2003) *Comparative International Commercial Arbitration (the Hague, Kluwer Law).* Note 1, p. 332.
15) Poudret, J.F. et al. (2007) *Comparative Law of International Arbitration*. 2nd ed. p. 162
16) Rustambekov I.R. (2018) 'Practical aspects of formation of the system of international commercial arbitration in the Republic of Uzbekistan'.
17) Rustambekov I.R. (2018) 'International commercial arbitration'. *Textbook*.
18) Sabirov, M. (2003) 'Arbitration: advantages, necessity and problems of introduction in Uzbekistan'. *Economic Review*, No. 11. http://www.review.uz/archive/article.asp?y=2003&m=64&id=199
19) Shamukhamedova Z. (2008) 'The system of international legal regulation of hereditary relations'. *Review of the legislation of Uzbekistan*, No. 3–4, p. 49.
20) Smith, H. in association with Glass Lutz and Stibbe (2011) 'The Competence-Competence Doctrine and the Enforcement of Arbitral Awards'. *Japan Dispute Avoidance Newsletter*. http://www.lexology.com/library/detail.aspx?g=70303764-71b7-4352-babb-6c8c8d399190

[1] International Chamber of Commerce Rules on Arbitration 2012, article 8(3)

[2] Smith, H. in association with Glass Lutz and Stibbe (2011) 'The Competence-Competence Doctrine and the Enforcement of Arbitral Awards'. *Japan Dispute Avoidance Newsletter*. http://www.lexology.com/library/detail.aspx?g=70303764-71b7-4352-babb-6c8c8d399190

[3] Cordero-Moss (2010) 'Can an Arbitral Tribunal Disregard the Choice of Law Made by the Parties?', p.38-39.

[4] Arbitration Act 1996, section 30

[5] Arbitration Act 1996, section 67

[6] Gaillard, E. and Savage, J. (1999), Fouchard Gaillard Goldman on International Commercial Arbitration.

21) Ubaydullaev, Z.S. (2004) 'Concept for the development of legislation on arbitration courts and international commercial court in the Republic of Uzbekistan'. *Arbitration courts in Uzbekistan: Analysis and development trend*. T.: Shark, pp. 340–341.
22) Varady, T., Barcele III, J.J. and von Mehren, A.T. (2006). *International Commercial Arbitration – A Transnational Perspective*, 3rd ed. p. 87.
23) *AT&T Technologies Inc v Communications Workers,* 475 US 643 (1986); *First Options of Chicago Inc v Kaplan,* 514 US (1995).
24) The "Arbitration act of UK", 1996.
25) The LCIA Rules 2014.
26) http://arbitrationblog.kluwerarbitration.com/2011/04/07/dallah-and-the-new-york-convention
27) https://www.legislation.gov.uk/ukpga/1996/23/contents