Exploring Algeria's International Commercial Arbitration Legislation in Light of the UNCITRAL Model Law on International Commercial Arbitration. A National View on International Investments

Assistant professor **Mejd Aures BENLALA**[1]

Abstract

This paper attempts to examine Algeria's international commercial arbitration legislation in light of the UNCITRAL Model Law on international commercial arbitration. This is crucial and pertinent to the overall business and trade activity in Algeria, particularly with regards to potential disputes related to the increasing presence of foreign companies and investors (FDI). The research method is mainly based on the analytical approach with the aim to analyze Algeria's legislation that deals with international commercial arbitration, nevertheless, it tends to be descriptive and comparative at times (when necessary). After analysis and comparison of Algeria's Code of Civil and Administrative procedure; namely the part, which is concerned with international commercial arbitration, this paper concludes that this existing international commercial arbitration legal framework can be described as adequate and functional in harmony with the UNCITRAL Model Law on international commercial arbitration.

Keywords: *international commercial arbitration, international investment, UNCITRAL Model Law, Algeria's Code of Civil and Administrative Procedure, dispute resolution.*

JEL Classification*:* F21, K33, K40, K41

1. Introduction

Arbitration is considered as a special legal means to settle disputes between the conflicting parties away from resorting to traditional courts, where the conflicting parties present their differences to an arbitration panel consisting of one or more arbitrators, which issues a final, decisive and binding ruling on the dispute. Arbitration has become the main legal means for resolving disputes in the field of international trade, as arbitration is considered essential in the context of negotiations between the parties regarding any transaction, where one or more parties propose the introduction of an arbitration clause as a clause of the contract, stating that in the event of any dispute or if there are claims or contractual violations, they shall be decided and resolved by arbitration. The parties can also agree to resort to arbitration after the dispute has arisen in the event that an arbitration clause is not included in their contract, under an agreement called an arbitration compromise or agreement. According to Article 1006 of the Algerian Code of Civil and Administrative Procedure (CCAP),[2] any individual or private entity may resort to arbitration when rights of which it disposes are at stake. Given that the UNCITRAL Model Law on international commercial arbitration aims to assist States in drafting and modernizing their laws on arbitral procedure so as to take into account

[1] Mejd Aures Benlala - Department of Economics, University of Batna 1, Algeria, majdaures.benlala@univ-batna.dz.

[2] Algeria's Code of Civil and Administrative Procedure (promulgated by Law No. 08-09 of 18 Safar 1429 corresponding to February 25, 2008), the document is available online at https://wipolex.wipo.int/en/legislation/details/14776, last accessed on 19/11/2022.

the particular features and needs of international commercial arbitration, this paper attempts to examine Algeria's legislation on international commercial arbitration in light of the UNCITRAL Model Law on international commercial arbitration[3]. The research method is mainly based on the analytical approach with the aim to analyze Algeria's CCAP Articles that deal with international commercial arbitration, nevertheless, it tends to be descriptive and comparative at times (when necessary).

The study concludes that Algeria's legal framework for international commercial arbitration ca be said to be adequate, as it covers all main provisions and recommendations embedded in the main chapters of the UNCITRAL Model Law on international commercial arbitration[4].

The paper looks into the research subject by, first, briefly discussing the conceptual background of the research subject. Then, in comparison (as a parallel to) with the main chapters of the UNCITRAL Model Law on international commercial arbitration, the paper analyzes Algeria's CCAP legislation on international commercial arbitration and discusses the arbitration clause (along with the arbitration compromise or agreement), the initiation of the arbitration proceedings, the appointment of arbitrators and venue, the applicable law, the conditions to be met in the arbitral award, the recognition and enforcement of the award and finally, the recourse against the arbitral award.

2. Arbitration: definition, concepts and legal nature

An arbitration agreement is defined as "an agreement by the parties to refer to arbitration all or some specific disputes that have arisen or may arise between them in connection with a legal relationship[5]. The arbitration agreement may be in the form of an arbitration clause contained in the contract or in the form of a separate agreement."[6] From this definition it is clear that arbitration is a method chosen by the parties to resolve disputes that arise from the contract by presenting the dispute to an arbitral tribunal to decide on it without resorting to local courts and judiciary systems. Article 1039 of the Algerian Code of Civil and Administrative Procedure (CCAP) provides the following definition: "International arbitration, in the sense of this law, is arbitration that concerns disputes related to the economic interests of at least two countries." Article 17 of the Algerian Law (Decree) no. 01-03 of August 20, 2001, related to investment promotion

[3] For other examples, see David Schneiderman, *Local resistance: at the margins of investment law*, „Globalizations", 19:6, 2022, pp. 897-910, DOI: 10.1080/14747731.2022.2035057.

[4] About the vast activity of the United Nation in dispute resolutions, see Laura Magdalena Trocan, *The United Nations' new system for settling the disputes between organization and its employees*, in Volume `The International Scientific Session – CKS 2011 – Challenges of the Knowledge Society`, Bucharest, 15-16 April 2011, 5-th Edition, Pro Universitaria, Bucharest, 2011, pp. 737-746.

[5] As possibilities, the current developments are converging towards the emergence of theories for incorporating the assessment of ecosystem services in international arbitration, applying scientific and economic studies in this field to the settlement of legal disputes. See Emily Rebecca Hush, *The Valuation of Ecosystem Services in International Investment Arbitration*, „Environmental Claims Journal", 30:4, 2018, pp. 273-301.

[6] Model Law on International Commercial Arbitration 1985 (United Nations Commission on International Trade Law [UNCITRAL]) UN Doc A/40/17, Annex I, Article 7/1, the document is available online at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf, last accessed on 19/11/2022.

states: "Any dispute arising between a foreign investor and the Algerian state against him shall be referred to the competent courts, unless there are bilateral or multilateral agreements concluded by the Algerian state. Relating to conciliation and arbitration, or a special agreement that stipulates an arbitration clause or allows the parties to agree on a conciliation procedure by resorting to private arbitration."[7] Similarly, Article 12 of the investment Law (Decree) no. 22-18 of July 24, 2022 stipulates "any dispute resulting from the application of the provisions of this law between the foreign investor and the Algerian state caused by the investor, or due to a measure taken by the Algerian state against him, shall be subject to the competent judicial authorities, except in the case of bilateral or multilateral agreements ratified by the Algerian state, the provisions of which relate to reconciliation, mediation and arbitration, or in the case of a special agreement between the Algerian Agency for Investment Promotion (which acts on behalf of the state) and the investor, allowing both parties to resort to arbitration."[8]

Arbitration as a method of dispute resolution is characterized by the following: (1) the speed in resolving disputes compared to the work of national courts, because arbitrators are usually dedicated to adjudicating one dispute; (2) economy in expenses, as the costs of arbitration are much less than the expenses of court fees, attorneys' fees, and enforcement procedures; (3) confidentiality, as the file of the dispute between the two parties remains exclusively under the knowledge of the arbitrators, while the situation differs in the work of the national courts, whose sessions are primarily public; (4) its procedures are simple and uncomplicated compared to the work of national courts; (5) the arbitrators are usually chosen with the consent of the parties to the dispute, which gives rise to their decision of acceptance.[9] Commercial arbitration is generally related to three general legal dimensions: the contractual dimension; the legislative dimension; and the judicial dimension. The contractual dimension is related to the obligation of the two parties to the dispute to agree to refer the dispute between them to a specific arbitration committee, to consider it and come up with a binding decision for both of them. In the event of disagreement, either party may resort to the courts having jurisdiction to adjudicate this dispute. The contractual dimension also extends to include the necessity of agreement between the parties to the dispute on the one hand and the arbitral tribunal, in addition to the law that will be resorted to in order to resolve the issue of the dispute. The legislative dimension relates to the need for a legal system (legislation) that regulates

[7] Algeria's Investment Code (promulgated by Order No. 01-03 of 1 Jumada Ethania 1422 corresponding to August 20, 2001, on the Development of Investment), the document is available online at https://wipolex.wipo.int/en/legislation/details/14777, last accessed on 20/11/2022. For some issues regarding arbitration clauses, see Tarald Laudal Berge & Taylor St John, *Asymmetric diffusion: World Bank 'best practice' and the spread of arbitration in national investment laws,* „Review of International Political Economy", 28:3, 2021, pp. 584-610.

[8] Loi n° 22-18 du 25 Dhou El Hidja 1443 correspondant au 24 juillet 2022 relative à l'investissement (Investment law), Official Gazette, the document is available online at https://www.joradp.dz/FTP/jo-francais/2022/F2022050.pdf, last accessed on 19/11/2022. For certain current issues related to the resolution of international disputes, see Cristina Elena Popa Tache, *International investment protection in front of the state's role in crisis times to managing disputes,* "Juridical Tribune - Tribuna Juridică", volume 10, issue 3, December 2020, pp. 455-465.

[9] Moamen Elwan, Mohamed Samy and Khaled Abou El Wafa, *Consequences of the Judicial Nature of Arbitration: An Egyptian Perspective,* Kluwer Arbitration Blog, September 5, 2019, http://arbitrationblog.kluwerarbitration.com/2019/09/05/consequences-of-the-judicial-nature-of-arbitration-an-egyptian-perspective/, last accessed on 17/11/2022.

arbitration proceedings and lays down the procedural and legal rules governing the work of arbitration bodies and committees. These arbitration bodies and committees base their work on a law. This law may be the national law in the event that the dispute relates to whole national elements, and it may be international agreements or treaties regulating the activity of international arbitration bodies at the international level. However, in the absence of such legislation, we will be faced with pure mediation and reconciliation processes that do not have a binding legal dimension or clear and unified procedural rules. The fact that national arbitration legislation differs from one country to another prompted many international legal bodies and committees to issue an international arbitration model law, which guides countries when enacting their national law. In the year (1985) the (UNCITRAL) Commission drafted the Model Law on international commercial arbitration, which served as a guide for most countries of the world in the development of their national arbitration legislation. Finally, the judicial dimension relates to the power of national courts to supervise the work of national arbitral tribunals and to overrule their rulings when necessary if they do not observe the rules and procedures stipulated in the legislation. On the other hand, these courts will ensure the implementation of the decisions issued by the arbitral tribunals, by ratifying these decisions and giving them the authority of judicial rulings.

First of all, I would like to draw the attention to the jurisprudential difference in defining the legal nature of the arbitral award, as the jurisprudential viewpoints differs significantly in dealing with that nature. Some jurists believe that the nature of the arbitration award is contractual, because the parties, when referring their dispute to arbitration, have been committed from the beginning and are satisfied with the ruling issued by the arbitral tribunal. Thus, the arbitral award is a direct result of the agreement on arbitration, and therefore is not subject to the judicial gradation to which the judicial ruling is subject. On the other hand, others believe that there is a similarity between the arbitral award and the judicial ruling, but this similarity does not mean that they have one legal nature, and in the end, the implementation of the arbitral award takes place on the basis that it is a contract that has no enforcement power, that is, it is only a reflection of the agreement on arbitration. Supporters of the judicial school rely on the fact that the arbitral award is of a judicial nature, as it is a ruling like a judicial ruling, except for what is related to its ability in itself to compulsory implementation, and this is supported by the fact that there are many legislations that have adopted this nature,[10] and this is what the Algerian legislator has opted for in Article 1051 of the Algerian CCAP: "International arbitration awards are recognized in Algeria if the party adhering to them proves their existence, and this recognition is not contrary to the international public policy and order. It is considered enforceable in Algeria and under the same conditions, by an order issued by the president of the court in whose jurisdiction the arbitral awards were issued, or by the court in the place of execution if the seat of the arbitration court is located outside the national territory."[11] It is noted that this theory is more popular than others in view of the arguments put forward by its supporters. As for the mixed theory, it combines both the contractual and the judicial character, as its supporters believe that the arbitration award is of a judicial nature from the time of its ratification by the competent court, i.e., after the order to implement it, but before that it is

[10] Ibid.
[11] Algeria's Code of Civil and Administrative Procedure 09-08.

considered as a contract, and therefore the contractual nature is attached to it. Finally, the independent theory considers that the arbitration award is of a special nature, and it must be viewed independently from the different influences that the arbitration agreement is exposed to in its different stages.

3. Arbitration clause and arbitration compromise (or agreement)

The parties to the contract usually agree to resort to arbitration to resolve any disputes that may arise in the future during the negotiation of the terms and conditions of the contract. In this case, the arbitration clause will be part of the terms of the contract, in which the parties to the contract will agree on the arbitral tribunal that will adjudicate any future disputes, in addition to the law that the tribunal will rely on in its judgment. This condition is called the "Arbitration Clause", and it differs from the case in which the two parties agree to refer their dispute to a specific arbitral tribunal after the dispute arose (Submission to Arbitration known as Arbitration Compromise or Agreement). The Algerian codifier called it an arbitration agreement instead of an arbitration compromise, Article 1011 of the Algerian CCAP states that: "An arbitration agreement is an agreement under which the parties agree to submit a dispute that has already arisen to arbitration."[12] The difference between the two is that the former relates to an unspecified future dispute, while the later relates to a dispute that has already occurred and has become specific and clear. Unlike the arbitration clause a priori as long as it relates to a future dispute.

The legal systems differed in determining the legal conditions that must be met in the arbitration agreement or condition in order for it to be considered enforceable. According to the text of Article 7/2 of the UNCITRAL Model Law "The arbitration agreement must be in writing. The agreement is considered written if it is contained in a document signed by both parties or in an exchange of letters, telexes, telegrams or other means of wired and wireless communication. It serves as a record of an agreement, or through a claim by one of the parties to the dispute that there is an arbitration agreement in the event that the other party does not deny this claim. A reference in a contract to a document that includes an arbitration clause is considered an arbitration agreement, provided that the contract is in writing and that the reference is made so as to make that clause part of the contract."[13] This is exactly what the Algerian codifier chose in Article 1008 in its first paragraph "the arbitration clause is established, under pain of nullity, by writing in the original agreement or in the document on which it is based."[14]

The distinctive nature of these arbitration clauses and agreements incentivized contemporary legal systems to adopt them. Arbitration agreements, or the arbitration clauses, should not make one of the contracting parties in a better legal position than the other party when referring the dispute to a specific arbitral tribunal. This is what was expressly stipulated in Article 18 of the UNCITRAL Model Law, which stipulates that: "The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case."[15] Subsequently; the arbitration agreement is considered null in

[12] Ibid.
[13] Model Law on International Commercial Arbitration 1985 UNCITRAL.
[14] Algeria's Code of Civil and Administrative Procedure 09-08.
[15] Model Law on International Commercial Arbitration UNCITRAL 1985.

the event that one of the parties to the dispute is entrusted with determining all or some of the members of the arbitral tribunal without the opposite party obtaining the same right. Likewise, this agreement is considered void if the two parties agree to refer the dispute to an arbitration authority affiliated with, or affiliated with, any of the parties to the dispute.

3.1. The arbitration agreement is independent of the original contract

The principle of the independence of the arbitration agreement from the original contract is considered among the most stable principles and this is evident both in the framework of positive laws or international treaties, as well as arbitration regulations so that this independence derives from the difference in the subject matter of both contracts (the original contract and the agreement on arbitration). As the latter is considered merely a contract that responds to the procedures and does not aim to define the rights and obligations of the substantive parties, rather it is focused on adjudicating disputes that arise from the substantive conditions contained in the content of the original contract, it becomes clear to us that the agreement on arbitration is not just a condition contained in the original contract. Rather, it is another contract of a different nature, since the independence of the arbitration agreement is based on the fact that this agreement constitutes a contract within the other contract, so that the illegality of the original contract, its validity, invalidity, or termination does not affect the arbitration clause, whether this condition is included in the original contract or was independent in the form of an agreement, and this is what the Algerian legislator took into account in the text of Article 1040 in its last paragraph, which states that "it is not possible to invoke the invalidity of the arbitration agreement, due to the invalidity of the original contract".[16] The arbitration agreement is considered a self-contained act, completely independent of its entity on the original contract, meaning that the invalidation of the investment contract does not entail the invalidation of the arbitration clause included in the terms of the contract, as it was stipulated by some legislations. This conforms to the UNCITRAL Model Law of International Commercial Arbitration, as Article 16/1 stresses the necessity of looking at the arbitration clause, which is part of the contract, as if it were independent of the other terms of the contract. It also states that any decision issued by the arbitral tribunal to invalidate the contract does not entail, by law, any invalidity of the arbitration clause. Here we see the importance of this principle as one of the most crucial principles that gives comfort and reassurance to investors from any effect or invalidity of the arbitration clause according to the original contract. It makes arbitration an effective tool for resolving disputes.

It is worth noting how the sole arbitrator in the Ad Hoc-Award concerning Elf Aquitaine Iran (France) v. National Iranian Oil Company ended up recognizing jurisdiction for himself, and this is based on the principle of the independence of the arbitration agreement: "as it is one of the principles recognized in international arbitration law That the arbitration clauses continue to be in force, even in spite of the objection of one party that the contract containing the arbitration clause is unlawful and void."[17] Hence, achieving the effectiveness of the international arbitration agreement

[16] Algeria's Code of Civil and Administrative Procedure 09-08.
[17] Ad Hoc-Award of January 14, 1982, Elf Aquitaine Iran (France) v. National Iranian Oil Company, YCA

required recognition of the principle of the independence of the arbitration agreement from the original contract, which would dissipate the concerns of the investors and dealers, while protecting the arbitration clause from issues of invalidity that could affect the original contract, as well as accepting that the original contract is subject to a legal framework and system different from the one that governs the arbitration agreement.

4. Initiation of arbitration proceedings

The second paragraph of Article 3 of the UNCITRAL Rules stipulates that the arbitration procedures begin from the date the defendant receives the request for arbitration from the plaintiff, and the same applies to the model law of the UNCITRAL, where Article 21 of it stipulates that arbitration procedures in a dispute begin on the day on which the respondent receives a request to refer the dispute to arbitration. Unless the parties agree otherwise. As for the national legislation, the Algerian legislator did not provide an explicit text regarding the initiation of arbitration procedures, nevertheless it can be deduced from the text of Article 1018 of the CCAP, that determining the time for the initiation of arbitration procedures starts from the date of appointment of arbitrators or notification of the arbitration court, as it states that the arbitration agreement shall be valid even if no deadline is set for its termination. In this case, the arbitrators are required to complete their mission within four months starting from the date of their appointment or from the date of notification of the arbitration court. Accordingly, the date for the start of the arbitration procedures is calculated from the date of the parties forming the arbitral tribunal, and this is in the case of Ad Hoc arbitration, or from the date of notification in the case of institutional arbitration, and accordingly. Therefore, if we take into account that the Algerian legislator stipulated that the arbitrators must accept the assigned task, otherwise, the formation of the arbitration court would be null and void, based on the text of Article 1015, which stipulates that "the formation of the arbitral tribunal is not valid unless the arbitrator or arbitrators accept the mission entrusted to them."[18] We end up with the question about which of the two dates should be used to start the procedures, is it the date on which the parties appointed their arbitrators? Or the date of the arbitrator or arbitrators accepting the mission entrusted to them? By reading the text of Article 1015 and Article 1018, it can be said that the arbitration procedures begin from the date in which the arbitrator, or the arbitrators, announce their acceptance of the mission assigned to them, given that the appointment of the arbitrator without the latter accepting his mission is not considered a correct formation of the arbitral tribunal, and therefore it cannot be taken as a starting point for the procedures, as it may lead to the invalidity of the arbitral award on the grounds that the formation of the tribunal was not correct because its members did not express their acceptance of the arbitration task[19]. Therefore, considering the date of acceptance of the task by the arbitrator, or the arbitrators is the most convenient and acceptable to be considered the starting point of the arbitral proceedings. The Algerian legislator did well when he linked the commencement of the

1986, at 97, 102 et seq., available online at https://www.trans-lex.org/261100, last accessed on 19/11/2022.

[18] Algeria's Code of Civil and Administrative Procedure 09-08.

[19] For certain issues related to some similar clauses at the international level, see Joseph (Yusuf) Saei, *Amicus curious: structure and play in investment arbitration*, „Transnational Legal Theory", 8:3, 2017, pp. 247-295.

procedures to the issuance of the approval of the last arbitrator, in the case of a tribunal composed of more than one arbitrator.

5. Appointment of arbitrators and venue

The agreement on the venue or place or of arbitration is one of the most important elements that the two parties to the dispute must expressly agree upon in their arbitration agreement, as the two parties initially have absolute power to agree to specify this place, and if they do not agree on that, the designated arbitral tribunal determines this place. This is expressly stipulated in Article (20/1) of the UNCITRAL Model Law. Now according to the explicit text of Article (10) of the UNCITRAL Model Law, the arbitral tribunal may consist of one or more arbitrators, but in the case of multiple arbitrators, the number of arbitrators must be three. Similarly, Article 1008 of the CCAP stipulates that the arbitration clause must include, the appointment of the arbitrator or arbitrators, or specifying the modalities of their appointment for the purpose of having a preliminary agreement on this body in charge with arbitration, as well as the agreement of the parties later and of their own free will to form this body according to their freedom where It may consist of one or several persons, and here the Algerian legislator (codifier) explains in the text of Article 1017 adding "The arbitration court shall be composed of an arbitrator or several arbitrators with an odd number."[20]

6. Applicable law

This is considered one of the most important issues that affect the essence of the arbitration decision, since this law is the one on which the arbitral tribunal will rely in its ruling, and therefore its decision may differ as a result of the difference in these laws. The general rule states that the parties to the dispute are free to determine this law, whatever that law may be, and at that point, the arbitral tribunal must respect their will. In the event that the parties do not agree on a specific law, the law that regulates the contractual relationship (the law of the contract) will be applied to the arbitration dispute, taking into account the rules of attribution that national laws may refer to. Each party will be keen to choose the legal rules that best serve their claims, and therefore each party will have to start testing the extent to which any of the legal systems or legal rules are applied before making a decision. For example, it would be in the interest of the debtor party in international commercial contracts to choose the Latin legal system (Civil Law such as French or Italian law) to govern the contractual relationship, since this system treats the debtor with much ease with regards to the implementation of his contractual obligations. On the other hand, it would be in the interest of the creditor to choose the Anglo-Saxon school (Common Law such as the English or American system) as it treats the debtor with much more firmness and severity with regards debt solvency. In order to reconcile the two, the parties usually agree on certain agreed upon international legal rules, to adjudicate the dispute (such as the rules of UNIDROIT).[21] In

[20] Algeria's Code of Civil and Administrative Procedure 09-08.

[21] Yves Derains, *Attente légitime des parties et droit applicable au fond en matière d'arbitrage commercial international*, Travaux du comité Francais de Droit International Privé, 1986 (6), pp. 81-103, the document is available online at https://www.persee.fr/doc/tcfdi_1140-5082_1986_num_6_1984_1470, last accessed

this regard, Article 1050 clearly stipulates that the arbitration court shall decide the dispute in accordance with the rules of the law chosen by the parties, and in the absence of this choice, it shall decide according to the rules of law and customs that it deems appropriate.[22]

7. Conditions to be met in the arbitration award

The ruling must meet formal conditions in order for it to be enforceable, this is what makes all arbitration legislations keen to mention these conditions within their texts. However, the subject matter aspect precedes the formal aspect, and for this reason, Article 1040 of the CCAP indicated it in its second paragraph that the arbitration agreement can only be valid in terms of the subject-matter, if it responds to the conditions set by either the law that the parties agreed upon, or the law regulating the subject matter of the dispute, or the law that the arbitrator deems appropriate.[23] Thus, the arbitrators must issue their arbitral award in accordance with the rules of the law chosen by the parties, whether with regards to the procedures or the subject matter, hence, it would be grounds for the invalidity of the award if the arbitrators ignore the will of the parties and rule in accordance with another law.

As for the formal aspect (Article 1029), the arbitral awards must be signed by all the arbitrators, and in the event that the minority refuses to sign, the rest of the arbitrators must indicate it, but the award has full effect as it is signed by all the arbitrators. So domestic arbitration awards in Algeria must be signed by the arbitrator(s) and state the following information for their validity (Article 1028): full names of the arbitrator(s); date of issuance; place of issuance; parties' full names and addresses; and names of their representatives.

The CCAP does not determine the necessary contents for international awards. Therefore, the validity of international awards will depend on the arbitration rules or the specific arbitration law applicable to the case. In any case, it would be very difficult to enforce a foreign award that does not contain at least the arbitrators' names, their signatures and the date the award was rendered.

It is worth noting that the UNCITRAL rules did not consider the writing requirement as a subject-matter or formal condition at all, and this is what the Model Law rules did as well, as Article 19 of the Model Law rules indicates that the parties have the freedom to choose the procedural rules that the arbitral tribunal must follow. After the issuance of the award ending the litigation and its fulfillment of the conditions of its validity, the original award shall be deposited in the Court's Registry Secretariat by the party interested in expediting. An official copy, annotated with the executive version, of the arbitral award for whoever requests it from the parties. The issuance of this ruling also has effects on the task of the arbitral tribunal, whereby with the end of the dispute and its adjudication, the arbitrator's mission ends as stipulated in the first paragraph of Article 1030, but despite the connection between the status of the tribunal remaining with the issuance of the judgment ending the entire dispute, the codifier kept it with a limited capacity to face specific cases included in it. The same article mentioned

on 15/11/2022.

[22] Algeria's Code of Civil and Administrative Procedure 09-08.

[23] Ibid.

it in the second paragraph, where it said: "However, the arbitrator may interpret the award, or correct material errors and omissions in it, in accordance with the provisions contained in this law."[24]

8. Recognition and enforcement

The UNCITRAL Model Law (Articles 35, 36) does not require ratification of the decision by the courts of the arbitral tribunal's country in order to ratify and implement it in foreign courts. Therefore, the party wishing to implement the award will not be obligated to ratify it by more than one court, and this saves him effort and time. On the other hand, this decision may not be ratified in any of the foreign arbitral tribunals if the national arbitral tribunals of the arbitral tribunal country invalidated this decision. Accordingly, Article 1051 of the CCAP stipulates that international arbitration awards are recognized in Algeria if those who adhere to them prove their existence, and this recognition is not contrary to international public policy and order. It is considered enforceable in Algeria and under the same conditions by an order issued by the president of the court which is within the jurisdiction of where the arbitral awards were issued, or by the court of the place of the award execution or implementation if the arbitration court is located outside the national territory.[25]

9. Recourse (appeal) against the international commercial arbitration award or decision

The UNCITRAL Model Law allows only one type of recourse, to the exclusion of any other recourse regulated in any procedural law of the State in question. Article 34/1 stresses that the sole recourse against an arbitral award is by application for setting aside, which must be made within three months of receipt of the award (article 34/3). The Model Law lists comprehensively the grounds on which an award may be set aside. This list essentially mirrors that contained in article 36/1, which is taken from article V of the New York Convention. The grounds provided in article 34/2 are categorized into two sets. Grounds contested and proven by one party are: lack of capacity of the parties to conclude an arbitration agreement; lack of a valid arbitration agreement; lack of notice of appointment of an arbitrator or of the arbitral proceedings or inability of a party to present its case; the award deals with matters not covered by the submission to arbitration; the composition of the arbitral tribunal or the conduct of arbitral proceedings are contrary to the effective agreement of the parties or, failing such agreement, to the Model Law. On the other hand, grounds that a court may consider of its own initiative are: non-arbitrability of the subject-matter of the dispute or violation of public policy (which is to be understood as serious deviations from fundamental notions of procedural justice).[26]

Under this legal framework provided by the UNCITRAL, the Algerian legislation distinguishes between domestic and international awards by stating that domestic awards may be subject to appeal (which can be waived) while international

[24] Ibid.
[25] Ibid.
[26] Model Law on International Commercial Arbitration UNCITRAL 1985.

awards may only be set aside in limited circumstances. It is worth noting that, as a member of the New Convention, the role of Algerian judges is limited to a *prima facie* analysis of arbitral awards.

According the CCAP, international awards rendered in Algeria can be set aside under the following conditions (Article 1058):[27]

- the award was rendered based on an inexistent, void, or expired arbitration agreement;
- the arbitral tribunal was not properly constituted, or the sole arbitrator was irregularly designated;
- the arbitral tribunal ruled without complying with its mandate;
- due process was not respected;
- the arbitral tribunal did not state the reasons of the award or there are contradictions in the decision; or
- the arbitral award was rendered in violation of international public policy.

With regards the procedures, Article 1059 states that an appeal (set aside) for the nullity of the arbitral award stipulated in Article 1058 shall be filed before the Judicial Council in whose jurisdiction the arbitral award was issued. The appeal shall be accepted starting from the date of pronouncement of the arbitral award. This appeal shall not be accepted after a period of one month from the date of official notification of the execution order.[28]

10. Conclusion

International commercial arbitration, at the national legislative level, gained a lot of traction since the introduction of the UNCITRAL Model Law on international commercial arbitration in 1985. Since then, many countries have endeavored to implement the core of this Model Law into their domestic legal frameworks. This paper scrutinized Algeria's legislation, specifically the part concerned with international commercial arbitration, through the lens of the UNCITRAL Model Law on international commercial arbitration in search for the core chapters' provisions and recommendations of the Model Law within the Algerian Code of Civil and Administrative Procedure (CCAP) 09-08. Provisions and recommendations specific to general provisions, arbitration agreement, composition and jurisdiction of arbitral tribunal, conduct of arbitral proceedings, making of award and recourse against it and recognition and enforcement of awards are, to a great extent, all implemented into Algeria's CCAP. This essentially forms an adequate legal framework, in which international commercial arbitration matters can be treated and disputes can be resolved in total harmony with the UNCITRAL Model Law on international commercial arbitration. The implications of this can be interpreted and witnessed in practice, as it offers a form of a guarantee to foreign investors and corporations pondering an involvement in the economic and business activities in Algeria.

[27] Algeria's Code of Civil and Administrative Procedure 09-08.
[28] Ibid.

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2. *Algeria's Code of Civil and Administrative Procedure*, promulgated by Law No. 08-09 of 18 Safar 1429 corresponding to February 25, 2008.
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