Scientific Research Publishing

Beijing Law Review, 2025, 16(3), 1840-1860
https://www.scirp.org/journal/blr
ISSN Online: 2159-4635
ISSN Print: 2159-4627

A Comparative Study of the Commercial Arbitration System between the International System and the Islamic System

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How to cite this paper: Alajlan, S. K. (2025). A Comparative Study of the Commercial Arbitration System between the International System and the Islamic System. *Beijing Law Review, 16,* 1840-1860.
https://doi.org/10.4236/blr.2025.163093

Received: November 26, 2024
Accepted: September 13, 2025
Published: September 16, 2025

Abstract

This paper examines arbitration in both international and Islamic commercial law frameworks, providing an in-depth analysis of arbitration as a dispute resolution mechanism. The first section introduces the concept of arbitration, including its definition, history, and various terms. It explores major international arbitration centers like the ICC, LCIA, and ICSID, highlighting their role in global dispute resolution. The second section delves into international commercial arbitration, discussing key conventions and arbitration rules, particularly the UNCITRAL guidelines. The third section shifts focus to Islamic commercial arbitration, analyzing its principles, notable arbitration centers, and how Islamic law influences arbitration procedures. The paper concludes by comparing international and Islamic arbitration systems, identifying common challenges and benefits in their application.

Keywords

Arbitration Law

1. Introduction

Arbitration has long been recognized as one of the oldest and most effective methods of resolving disputes, a practice deeply rooted in human history and utilized by diverse civilizations. In today's increasingly interconnected world, arbitration has evolved into an indispensable mechanism for dispute resolution, offering numerous advantages that make it a preferred alternative to traditional litigation. Among its most notable benefits is its ability to preserve stability and foster cooperation across relationships, whether between individuals, corporate entities, or even nations. Its application transcends sectors, playing a vital role in economic,

social, political, and military contexts, thereby cementing its universal relevance.

This research undertakes a comparative analysis of two significant systems of arbitration: international commercial arbitration and Islamic commercial arbitration. While international commercial arbitration is widely recognized and practiced globally, Islamic commercial arbitration, rooted in the principles of Sharia, offers a distinctive perspective that remains underexplored in academic literature. By examining both systems, this research aims to illuminate their respective characteristics, methodologies, and contributions to the field of dispute resolution, addressing the gap in scholarship regarding Islamic arbitration and its practical applications.

The study is structured into three comprehensive chapters. The first chapter lays the foundation by introducing arbitration, providing key definitions, a historical overview, and a discussion of the world's most prominent arbitration centers. It also outlines the significant advantages of arbitration, such as its cost-effectiveness, speed, and flexibility, which contribute to its global appeal. This chapter establishes a contextual framework that is essential for understanding the subsequent comparative analysis.

The second chapter delves into international commercial arbitration, focusing on its legal frameworks, including cornerstone agreements like the New York Convention of 1958 and the UNCITRAL Arbitration Rules. These instruments have played a pivotal role in standardizing and harmonizing arbitration practices across jurisdictions, thereby facilitating international trade and investment. This chapter also examines key procedural elements, such as the selection of arbitrators, the applicable laws, and the enforcement of arbitral awards, highlighting the mechanisms that ensure fairness and efficiency in international arbitration.

The third chapter explores Islamic commercial arbitration, which is deeply rooted in the ethical and legal principles of Sharia. This system emphasizes justice, equity, and reconciliation, reflecting the values enshrined in Islamic teachings. The chapter begins with an overview of the primary sources of Islamic law, including the Quran, Sunnah, Ijma (consensus), and Qiyas (analogical reasoning). It then examines the leading Islamic arbitration centers, such as the Saudi Center for Commercial Arbitration (SCCA) and the International Islamic Centre for Reconciliation and Arbitration (IICRA) and provides an in-depth analysis of the Saudi arbitration system as a case study. Furthermore, the chapter identifies the areas where arbitration is permissible under Islamic law and discusses the unique features that distinguish Islamic arbitration from its international counterpart.

Through this comparative analysis, the research aims to bridge the gap between these two systems, providing a nuanced understanding of their strengths, limitations, and areas of convergence. The study emphasizes the importance of context and culture in shaping arbitration practices, demonstrating how international and Islamic systems address the needs of their respective stakeholders while adhering to fundamental principles of fairness and justice.

Ultimately, this research seeks to contribute to the broader discourse on arbitration,

offering valuable insights for academics, practitioners, and policymakers alike. By highlighting the interplay between international and Islamic arbitration systems, it underscores the potential for mutual learning and collaboration, paving the way for more inclusive and adaptable approaches to dispute resolution in a globalized world. This study not only enhances the understanding of arbitration as a legal and cultural phenomenon but also serves as a foundation for future research and practical applications in the field.

2. What Is Arbitration?

2.1. The Definition

There are many definitions of arbitration, and I will summarize the most important ones here.

> "Arbitration is one of various methods that together are referred to as alternative dispute resolution or ADR. As suggested by the name, the idea behind methods of ADR is to provide an alternative to filing a lawsuit and going to court, which is the traditional method for resolving legal disputes. Arbitration and similar alternatives were primarily designed to provide for a streamlined and cost-conscious option to deal with a legal issue." (FindLaw, 2018)

To arbitration itself it is a singular option inside a greater concept, one aspect of allowing us to rely less on our judicial system and clearing up court dockets.

Moreover, "Arbitration is a non-judicial process for the settlement of disputes where an independent third party—an arbitrator—makes a decision that is binding." (Ciarb, 2018)

Even though these decisions do not have the courts authority behind them they still can be dispositive of issues because their decisions force the parties to comply.

2.2. Arbitration Terms

Arbitration involves several key terms that are integral to understanding the process. An arbitrator refers to an independent individual or body officially appointed to resolve disputes by making binding decisions. In arbitration proceedings, the respondent is the party against whom a claim is made, often analogous to a defendant in litigation, whereas the claimant is the party initiating the claim, seeking resolution or remedy for a perceived wrong.

The outcome of arbitration is termed an arbitration award, which is a determination on the merits by the arbitral tribunal. This award holds legal significance as it serves a function like a court judgment in traditional litigation. The arbitration process is governed by an arbitral tribunal, which is a panel of one or more adjudicators tasked with resolving disputes. The tribunal can consist of a single arbitrator or multiple members, including a presiding arbitrator or chairperson.

Finally, certain disputes may be barred from arbitration due to arbitrability, which is determined by national legislation or judicial authority. This concept outlines whether specific types of cases can be resolved through arbitration or must

be addressed in traditional courts.

2.3. Brief History

Arbitration has been around since ancient times with its use being to resolve disputes between parties. Some historians have said that ancient civilizations used arbitration to resolve disputes. Arbitration was used during the Roman era, the Greek era and regularly by the Islamic civilization. In fact, arbitration has gone through stages, during some periods of time it has lost its value and its significance. Especially with the development of the legal system of state-sponsored justice, the state completely took over this role and rendered arbitration irrelevant. However, with the growth of the global economy and the development of international relations and trade exchanges, arbitration has become more important and international arbitration centers were established.

Also, the countries and arbitration centers began to codify laws and regulations governing arbitration at the local and international levels. This is because they explain that arbitration is very useful to resolve disputes faster, thus contributing to increased trade and an increase in the level of confidence in the existing approved arbitration centers agreed upon in the contract. Currently, there are many accredited arbitration centers and the parties have the right to determine which arbitration center they wish to use based on their agreement (Al-Suwaidi, 2008).

2.4. The Most Famous Arbitration Centers

2.4.1. International Court of Arbitration, International Chamber of Commerce (ICC)

This organization provides arbitration and supervision of arbitration services. It is mainly focused on commerce as it is a business organization. This arbitration service gives much latitude to the parties to come up with their rules and procedures for the arbitration, they intend to be flexible (Arbitral Institutions, 2018).

2.4.2. London Court of International Arbitration (LCIA)

Provides several ADR services including arbitration and mediation. Follows the UNCITRAL rules governing arbitration and appoints administrators as needed (Arbitral Institutions, 2018).

2.4.3. International Centre for Settlement of Investment Disputes (ICSID)

The ICSID Established in 1965 by the Washington convention, is focused on the resolution of international investment disputes. These are referred to as BIT arbitrations. This does not actually arbitrate the disputes; it merely provides the framework for independent panels to do so (Arbitral Institutions, 2018).

2.4.4. International Centre for Dispute Resolution (ICDR)

ICDR is the international arm of the American Arbitration Association (AAA). Offices in NY and several other nations, provide ADR services worldwide using the AAA rules (Arbitral Institutions, 2018).

2.4.5. Organization for the Harmonization of Business Law in Africa (OHADA)

OHADA is an arbitration organization that has been approved to set the ADR rules in 16 African countries. Under OHADA the Common Court of Justice and Arbitration was set up to be a court and an arbitration provider at the same time. This set of rules and dual system governs the arbitration proceedings in all the member countries (Arbitral Institutions, 2018).

2.5. The Advantages of Arbitration

> "Arbitration is preferred by many to resolve commercial disputes. It has significant advantages over litigation in court, such as party control of the process, typically lower cost and shorter time to resolution, flexibility, privacy, awards which are fair, final and enforceable, decision makers who are selected by the parties on the basis of desired characteristics and experience, and broad user satisfaction." (Benefits of Arbitration for Commercial Disputes, 2018)

The following is a detailed examination of the individual advantages.

2.5.1. The Speed

The increased speed of dispute resolution is one of the most important factors that give it an advantage for some parties compared to litigation. The reasons for this are that courts are often overloaded with cases and there are many ways for skilled attorneys to delay the proceedings. Arbitration allows for the expedient resolution of issues without delays.

2.5.2. Lower Cost

Arbitration centers are often less costly than courts. This is because long court proceedings are expensive. Attorneys' fees will also increase with the length of the case. These costs are the most significant in terms of the entire litigation. Arbitration minimizes this because the arbitrations take much less time and there are less procedural rules that allow for delay to the proceedings. People who are attempting to have their dispute settled cheaply and quickly might prefer this option.

> "Although it is true that there are no arbitrator or institutional charges in court cases, the International Chamber of Commerce reports that those charges represent only 18% of the cost of arbitration. This 18% (and substantially more) can be recouped quickly because of the increased speed and efficiency of arbitration and the ability to tailor the arbitration to the specific needs of the parties. Court cases generally require more counsel time and, thus, more expense for preparation and trial than is needed in arbitration. For example, trial-related matters which consume time and money in court but which are usually not part of arbitration include extensive evidentiary issues, voir dire, jury charges, broad motion practice, proposed findings of fact, endless authentication of documents, qualification of experts, cumulative

witnesses and, finally, appeals, which are far more limited in arbitration than in court." (Benefits of Arbitration for Commercial Disputes, 2018)

2.5.3. Flexible Process

Dispute resolution by arbitration is more flexible than in court. The reason for this is that the style and rules for the arbitration depends on the agreement between the parties involved.

"In arbitration, parties can schedule hearings and deadlines to meet their objectives and convenience. The flexibility of arbitration and the opportunities it allows parties to save time and money are apparent in common arbitration practices such as: choosing a location for the hearing that will minimize costs; taking witnesses out of order or interrupting a witness to accommodate individual needs; continuing a hearing after normal business hours (e.g., during the night or over a weekend) in order to complete a witness or finish the hearing; taking testimony of distant witnesses by video conference or by telephone; ordering testimony so that all experts on a topic testify directly after one another or even all at the same time (a procedure known as 'hot tubbing'); and using written witness statements for some or all of the witnesses in lieu of time-consuming, oral direct testimony." (Benefits of Arbitration for Commercial Disputes, 2018)

3. International Commercial Arbitration

3.1. The Concept of International Commercial Arbitration

International commercial arbitration has been given great attention at the international and the local level. This is because arbitration has contributed to the development of trade among the countries of the world and made trade more secure and successful. In fact, many international arbitration institutions have contributed to the development of laws regulating arbitration procedures. Finally, as we observe at this time, the arbitration system is characterized by being complementary to trade agreements and covers many aspects of commercial trade (Sayed, 2004).

3.2. International Arbitration Agreements

There are many international conventions and treaties related to international arbitration. At this point we will refer to the most important international agreements.

3.2.1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

"Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term 'non-domestic'

appears to embrace awards which, although made in the state of enforcement, are treated as 'foreign' under its law because of some foreign element in the proceedings, e.g. another state's procedural laws are applied.

The Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against, and it obliges parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal."[1]

3.2.2. United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988)

"Adopted by the General Assembly on 9 December 1988, this Convention is designed to overcome the major disparities and uncertainties that currently exist in relation to instruments used for international payments. The Convention applies if the parties use a particular form of a negotiable instrument indicating that the instrument is subject to the UNCITRAL Convention."[2]

3.2.3. United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration (New York, 2014) (the "Mauritius Convention on Transparency")

"Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term 'non-domestic' appears to embrace awards which, although made in the state of enforcement, are treated as 'foreign' under its law because of some foreign element in the proceedings, e.g. another State's procedural laws are applied."[3]

3.3. Arbitration Rules of the (UNCITRAL) Committee

"The UNCITRAL Arbitration Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising

[1]1958—Convention on the Recognition and Enforcement of Foreign Arbitral Awards—the "New York" Convention, Uncitral.org (2018), http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html (last visited Mar 6, 2018).

[2]1988—United Nations Convention on International Bills of Exchange and International Promissory Notes, Uncitral.org (2018), http://www.uncitral.org/uncitral/en/uncitral_texts/payments/1988Convention_bills_promissory.html (last visited Mar 8, 2018).

[3]2014—UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, Uncitral.org (2018), http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2014Transparency_Convention.html (last visited Mar 10, 2018).

out of their commercial relationship and are widely used in ad hoc arbitrations as well as administered arbitrations. The Rules cover all aspects of the arbitral process, providing a model arbitration clause, setting out procedural rules regarding the appointment of arbitrators and the conduct of arbitral proceedings, and establishing rules in relation to the form, effect and interpretation of the award." (UNCITRAL Arbitration Rules, 2018)

3.3.1. Number and Appointment of Arbitrators

The default position if there is no proposal to the contrary is that there will be three arbitrators to rule on a dispute. However, either party may make a request to have a single arbitrator and if this request is not responded to by the other party for 30 days the panel may rule on this request. If the other party does respond they can request an additional arbitrator. If a sole arbitrator is selected, they will be so chosen by the "list-method". The arbitration panel will submit a list containing at least three names of potential arbitrators. The parties will have 15 days to review this list, deleting any names they object to and ranking the remaining names in order of preference. The appointing authority will then choose the sole arbiter provided the same name is on both lists, in accordance with the parties' order of preference. The appointing authority has discretion to appoint the arbiter if there is no possible way to choose them via the list method.

If three arbitrators are chosen each party will appoint one of them. The two arbitrators will then meet and appoint a third arbitrator who will preside over the proceedings. If for whatever reason one of the parties does not nominate their arbitrator within 30 days, then the other party can request the appointing authority to select the second arbitrator. If the two arbitrators are successfully chosen by the two parties but they cannot agree on a third presiding arbitrator within 30 days, then the authority will select the presiding arbitrator following the same procedure as they would for appointing a sole arbitrator.

If there are multiple parties as claimants or respondents, they must choose their arbitrator jointly as a unit. If another number of arbitrators other than one or three are selected, then the selection method is left up to the parties. If there is any failure to appoint the correct arbitrators under these rules then the appointing authority reserves the right to appoint arbitrators, either presiding or secondary, as needed to meet the needs of the given arbitration.[4]

3.3.2. Challenges to Remove Arbitrators

When a person is approached to be an arbitrator of a dispute they must disclose any possible conflict of interest that might affect their ability to be impartial. They must continue to report on any change in their ability to be impartial to the parties and the other arbiters throughout the entire arbitration process. If circumstances exist that cast doubt upon an arbitrator's impartiality then they may be challenged by one of the parties. They may only make this challenge if the information that casts doubt on the arbitrator's impartiality came to them after the appointment,

[4]UNCITRAL Arbitration Rules, At10 (2013).

that is they cannot appoint an arbitrator whom they already know to be damaged goods in order to disrupt the proceedings at a later date. If an arbitrator cannot perform their duties for any reason then they also may be challenged.[5]

A party must challenge an arbitrator within 15 days of their appointment or within 15 days of their receiving knowledge that questions the arbitrator's neutrality. This type of challenge must be sent to all parties, the arbitrator in question and all of the other sitting arbitrators and it must state the reason for the challenge. All the parties can agree to a challenge and as such the arbitrator will step down. Additionally upon receipt of a challenge the arbitrator might withdraw voluntarily. In either circumstance this does not admit the grounds of the challenge. If neither of these things happens, then the party who made the challenge can pursue a ruling by the appointing committee within 30 days of the notice of challenge (Redfern & Hunter, 2015).

3.3.3. Grounds for Replacement of Arbitrators

Arbitrators can be replaced pursuant to articles 8 - 11 that were applicable to the original appointment. This rule applies even if the parties declined to participate in the appointment itself. Under extraordinary circumstances a party may be deprived of its right to appoint a substitute arbitrator. In this situation the appointing authority may appoint the substitute arbitrator themselves or after the closure of the hearing allow the other arbitrators to make the ruling. If an arbitrator is replaced the hearing resumes from where it left off unless the arbitral tribunal decides otherwise.[6]

3.3.4. Statements of Claims and Defenses

Statements of claim must be written and given to the respondent as well as the arbitral tribunal. The notice of arbitration can satisfy this requirement provided it follows the rules for statements of claims. The statement of claim must include the names and contact details of the parties, a statement of facts supporting the claim, the points at issue, the relief or remedy sought and the legal grounds or arguments supporting the claim. Any original contract or other legal instrument out of which this dispute arises must be annexed to the statement of claim. The statement of claim shall be accompanied by all documents and other evidence related to the claim (Redfern & Hunter, 2015).

3.3.5. Experts Appointed by Arbitrators

The tribunal can appoint an independent expert to give a written opinion on a particular topic after consultation with the parties. The tribunal shall communicate the expert's credentials to both parties in order to vet him as a qualified expert in the field that he is giving evidence in. The expert should provide a statement related to their impartiality and independence to both parties and the tribunal. Either party may object to the expert on the grounds of improper credentials or a

[5]*Id. At12.*

[6]UNCITRAL Arbitration Rules, At10 (2013).

lack of impartiality and independence, however this must be done before their appointment. If it is not then their reason for objecting must be from new information they have received after the appointment for the objection to have any validity. The parties shall provide any information, documents or evidence that the expert may require. In case of any sort of dispute between them the tribunal shall rule. After the expert's report is received by the tribunal each party shall have a chance to respond to it in writing. Additionally, the parties are entitled to examine any materials which the expert based their opinion on. After the written report is received, either party may request the expert to defend their findings at a hearing where the parties are able to interrogate the expert as well as provide rebuttal witnesses.[7]

3.3.6. Place of Arbitration

The arbitral tribunal decides the place of arbitration unless the parties have already made an agreement. The award is deemed as being issued from the place where the arbitration is held. The arbitral tribunal is allowed to meet anywhere they so deem appropriate for deliberations and hearings.[8]

3.3.7. Language

The language is determined by the arbitral tribunal unless the parties have already made an agreement on this point. This determination applies to all things in the case, written and oral. Any supporting documents that come in in the original language can be required to be translated by the arbitral tribunal.[9]

3.3.8. Fees and Expense of Arbitration

The arbitral tribunal is responsible for fixing the costs associated with the arbitration. Costs to be included in this analysis are all fees related to the arbitrator's salary and travel expenses, expert witnesses' fees and travel expenses, legal fees and any fees related to the appointing authority and the governing organization (PCA). Other than these fees as laid out in Article 40 b-f the arbitral tribunal cannot charge anything. As a general principle guiding arbitration the unsuccessful party must bear the cost of the proceedings, however the tribunal has the power to apportion costs as it sees fit depending on the appropriateness and the totality of the circumstances. The tribunal may include moneys to be paid by one party to another related to fees in the final award or in any other document that it sees fit to do so. Prior to the proceedings the tribunal may require either or both parties to deposit money in order to make sure these fees will be paid for. If after requesting a deposit either or both parties have failed to pay the tribunal may suspend the proceedings after 30 days from the request have passed. If the arbitration terminates related to fees then the tribunal shall provide an accounting and shall return any balance to the party who is not in breach.[10]

[7]UNCITRAL Arbitration Rules, *At 21.*
[8]*Id. At 16.*
[9]*Id.*
[10]*Id. At 27.*

3.3.9. The Applicable Law

The parties shall declare to the tribunal what law is binding in this situation. Upon silence from the parties on the choice of law issue the tribunal shall make the ruling as to what laws will be applied. The parties can also expressly request the arbitrators to make a ruling on the choice of law issue. If the arbitrators make a ruling on the choice of law issue they must respect the terms of the contract and also any applicable trade laws. The arbitrators are allowed to dispense with the law and decide based upon what is fair and equitable if and only if the parties expressly consented to amicable compositor in the contract.[11]

3.3.10. The Arbitral Award

A settlement when reached during an arbitration can be adjudged and recorded as an arbitral award. Arbitral awards are subject to interpretation by the panel upon request of either party within 30 days of receipt. These requests must be responded to within 45 days and they form a part of the award going forward. The provisions of article 34 shall apply to this addendum as well as to the original award. This means that the arbitral tribunal may make different awards at different times that are binding in writing. The tribunal must state their reasoning for the award unless the parties have agreed otherwise. The award must be signed by the arbitrators and it should contain the place and date of the arbitration. If an arbitrator cannot sign the reason for their signature's absence shall be included in the award. This award may be made public for any reason, including for it to be used as a supporting argument in a court of law. All parties to the arbitration must receive a copy of the award sent from the tribunal in a timely fashion.[12]

4. Islamic Commercial Arbitration

4.1. Introduction

The Religion of Islam urges justice, equity, and support of the oppressed. This religion has established laws and regulations that govern people's lives. In fact, Islam supports arbitration, and even pushes it more than the usual method of litigation such as the courts. The best example of Islamic arbitration is the famous story of Ka'ba. When the prophet Muhammad had not yet become prophet, a dispute broke out between the major clans of the people who lived in Makkah with respect to the placement of the Black Stone. No one wanted to relinquish the great honor of reinserting the Black Stone. They agreed to choose Prophet Muhammad to arbitrate between them, and they agreed that his decision would be binding. In fact, The Arab and Islamic countries have recently taken great interest in arbitration, so much that many arbitration centers have been opened. These arbitration centers will be mentioned later. In this chapter I will explain the most important sources of Islamic law. After that, I will present the most important Islamic arbitration centers. Then, I will clarify matters where arbitration is not

[11] *Id. At 25.*
[12] *Id. At 26.*

permitted. Finally, I will explain the Islamic arbitration law represented by the Saudi arbitration law (Akaddaf, 2001).

4.2. General Principles of Islamic Business Law

Islamic law, known as the Shariah, has various sources, just like other legal systems, including international law, etc., and these sources are very important to understand the system. Islamic law has two types of sources: primary sources and the secondary sources. The primary sources include the Quran, which is the holy book of Islam embodying the revelations from God to Prophet Mohammad, and The Sunnah, which explains the traditions and practices of Prophet Mohammad. The Sunnah elaborates on the general principles contained in the Quran. It helps to explain the Quran, but it may not be interpreted or applied in any way which is inconsistent with it.

Types:

(1) Sayings/Hadith.

(2) Actions taken.

(3) Actions tacitly approved: Prophet did not express condemnation.

Secondary sources include the consensus of scholars: human reason supported by general consensus. "And lastly, Qiyas are legal principles arrived at by analogy or analogous deduction. However, the logic utilized must be based on the Quran, Sunnah or Ijma." (Gemmell, 2006)

4.3. The Most Famous Islamic Arbitration Centers

4.3.1. Muslim Arbitration Tribunal

"An expert panel of legal professionals (including qualified Solicitors, Barristers and Judges) and Islamic Scholars well versed in both English and Islamic Law. Our panel are able to offer the widest range of expert opinion and reach a decision recognized by both legal systems. The expertise of our panellists in both legal systems enables them to reconcile between contradictory rulings and provide appropriate solutions.

Tribunal panellists who are raised and educated in the UK, ensuring that each panellist understands and has experience in dealing with modern day dilemmas faced by the Muslim community." (Muslim Arbitration Tribunal, 2018)

4.3.2. International Islamic Centre for Reconciliation and Arbitration (IICRA)

"The International Islamic Centre for Reconciliation and Arbitration (IICRA) is an international, independent, non-profit organization, and one major infrastructure institutions of the Islamic finance industry.

The center settles in all financial and commercial disputes that arise between financial or business institutions that choose to apply the provisions of Islamic law, Sharia principles, in resolving disputes arise between these institutions and their clients or between them and third parties through reconciliation or arbitration." (Islamic Arbitration, 2018)

4.3.3. Saudi Center for Commercial Arbitration

"SCCA is dedicated to providing professional, transparent and efficient ADR services. SCCA services are inspired by Sharia principles and meet international standards. SCCA shall contribute to enhancing ADR awareness in order to create safe investment environment that attracts both domestic and foreign investments." (Saudi Center for Commercial Arbitration, 2018)

4.4. In What the Arbitration Is Permissible under the Islamic Law?

Islam is a religion that preserves rights and urges justice. Thus, Islam supports arbitration in all forms. This is because arbitration is a way to reconcile. Arbitration may be used in commercial transactions, civil cases, and international transactions to ensure that every right reserved for the litigants may be arbitrated, and the decision of the arbitrator is carried out. However, there are cases where arbitration is not permissible, even if arbitration is based on Islamic law. The examples of this are serious crimes such as murder and the things that are between people and their Lord. Moreover, as the Saudi arbitration law clarified "An arbitration agreement may only be concluded by persons having legal capacity to dispose of their rights (or designees) or by corporate persons".[13] In addition, if the judgment is rendered in cases where arbitration is not permissible, then its ruling is null and void. Finally, any legal system may be arbitrated provided that it does not violate the Islamic legal system, but if the arbitrator rules against a regime that contradicts the Islamic legal system and is the champion of arbitration, it is necessary to refer to the Islamic legal system.

4.5. The Applicable Law

The Islamic system does not prevent the use of any other legal system in the arbitration, provided it does not conflict with Islamic law. For example, there is a similarity between the Islamic system and other systems in many matters, and thus can be used and tried by courts or arbitration centers. For example, some big crimes such as matters of retribution may not be arbitrated even under the Islamic system; these should only be in the official courts.

For example, the Saudi arbitration system provides that "Without prejudice to provisions of Sharia and international conventions to which the Kingdom is party, the provisions of this Law shall apply to any arbitration regardless of the nature of the legal relationship subject of the dispute, if this arbitration takes place in the Kingdom or is an international commercial arbitration taking place abroad and the parties thereof agree that the arbitration be subject to the provisions of this Law. The provisions of this Law shall not apply to personal status disputes or to matters not subject to reconciliation".[14]

Since this section of the research is concerned with the commercial arbitration of Islamic law, I will explain the most important things in this subject. At the

[13]Ministry of justice, Saudi Arbitration Law, Article 10 (1) At.3 (2012).
[14]*Id. Article 2 At 1.*

beginning, I will talk about the most important Sunni Islamic schools that are Hanafis, Shaafa'is, Hanbalis and Malikis. In fact, all these schools agree on many things, and it may be difficult for the common person to differentiate them. It is worth mentioning that all these schools use the same sources that I mentioned previously. In this research, the focus will be on the Hanbali School, which is the ideology applied in Saudi Arabia. Also, I will explain the Saudi arbitration system which applies to all issues, including the subject of the research.

4.5.1. The Arbitration Agreement

The Saudi arbitration system defined the arbitration agreement as an agreement between "two or more parties to refer to arbitration [in] all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. The arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate arbitration agreement".[15] Moreover, the Saudi arbitration system also stated that if two parties agree to subject the relationship between them to the provisions of any document such as an international convention, they must apply the provisions of this document provided they do not violate Islamic law.[16] The law also added that the arbitration agreement must be in writing, otherwise it is void.[17] Finally, "A court before which a dispute, which is the subject of an arbitration agreement, is filed shall dismiss the case if the defendant raises such defense before any other claim or defense".[18]

4.5.2. Arbitrators

The number of arbitrators shall be an odd number, otherwise the arbitration shall be void. The system does not allow for a single arbitrator. The conditions that must be in the arbitrator are: they must be of full legal capacity, good conduct and reputation, and have a university degree in sharia or law.[19] However, If the arbitration tribunal is composed of "more than one arbitrator, it is sufficient that the chairman meet such requirement".[20]

4.5.3. The Arbitral Award

Subject to non-violation of the provisions of Islamic law and public system in the Kingdom, the arbitral tribunal shall consider the following:

"Apply to the subject matter of the dispute rules agreed upon by the arbitration parties. If they agree on applying the law of a given country, then the substantive rules of that country shall apply, excluding rules relating to conflict of laws, unless agreed otherwise.

a. If the arbitration parties fail to agree on the statutory rules applicable to the

[15]Ministry of justice, Saudi Arbitration Law, Article 10 (1) At.1 (2012).
[16]*Id. Article 5 At 2.*
[17]*Id. Article 9(2) At 3.*
[18]*Id. Article 11.*
[19]*Id. Article 12,14 At 4.*
[20]*Id. Article 14(3) At 4.*

subject matter of the dispute, the arbitration tribunal shall apply the substantive rules of the law it deems most connected to the subject matter of the dispute.

b. When deciding the dispute, the arbitration tribunal shall consider the terms of the contract subject of the dispute, prevailing customs and practices applicable to the transaction as well as previous dealings between the two parties."[21]

The arbitral tribunal shall issue judgment after a secret deliberation by a majority of the members of the arbitration committee. If the opinions of the arbitral tribunal are not sufficient and the majority cannot be obtained, the arbitral tribunal shall elect an arbitrator who must reach a decision within 15 days.[22]

The arbitral award shall be rendered in writing and shall be substantiated, with the signature of the arbitrators. The arbitral award shall include the place of issue and the date, as well as the names of the parties and their addresses and the names of the investigators and their addresses. It should also include the summary of the arbitration agreement and the summary of the expert report.[23]

4.5.4. The Language and Place

The arbitration parties may choose the place of arbitration in the Kingdom of Saudi Arabia or abroad. However, if there is no agreement on the place of arbitration, the arbitral tribunal shall appoint the appropriate place.[24]

In addition, arbitration shall be in Arabic unless the parties to arbitration agree on another language. All documents shall also be in the same language as the language of arbitration, including written notes and oral pleadings.[25]

4.5.5. Pleadings

A hearing must be held by the arbitral tribunal so that each party can explain the evidence. It is also possible to submit written notes only, unless the parties to the arbitration agree to something different. After that, the arbitral tribunal shall record the summary of the proceedings at the hearing and shall be signed by witnesses or experts and members of the arbitral tribunal. Then, a copy of it shall be delivered to the parties of the arbitration.[26]

4.5.6. Experts Appointed by Arbitrators

The arbitral tribunal may appoint one or more experts on specific matters to submit a written or oral report and they must tell the parties about it. Also, "Each party shall provide the expert with information relating to the dispute and enable him to examine and inspect any documents, goods or other property relating to the dispute. The arbitration tribunal shall decide any dispute that may arise between the expert and either party in this respect pursuant to a nonpeelable decision".[27] Next, the arbitral tribunal shall send a copy of the expert report to both

[21] *Id. Article 38At 9.*
[22] *Id. Article 39 (1,2).*
[23] *Id. Article 43 At 11.*
[24] *Id. Article 28 At 7.*
[25] *Id. Article 29.*
[26] *Id. Article 33(1,3) At 9.*

parties. Then, the parties of the case shall have the right to express their opinions on the expert's report. Finally, the experts will then issue their final report after reviewing what the parties to the arbitration have said about the report.[28]

4.5.7. Arbitrators' Fees

When the arbitrators are selected, the parties must include a contract with them clarifying the fees of the arbitrators. However, if the arbitrators' fees are not agreed upon, they shall be determined by the competent court in which they shall decide in a decision that cannot be appealed (see Born, 2021).

4.5.8. Execution of Arbitration Award

The competent court shall issue an order to execute the award of the arbitrators. The application for execution of the sentence shall be accompanied by the following:

1. The original or certified copy of the award.
2. A copy of the arbitration agreement.
3. A translation of the arbitral award into Arabic shall be certified by an accredited body, if it is issued in another language.
4. Evidence of the filing of the judgment with the competent court in accordance with article (44) of this Law.[29]

5. Analysis and Comparison: A Critical Study of International Commercial Arbitration and Islamic Commercial Arbitration

Arbitration has long been regarded as an efficient and adaptable method of resolving disputes in a globalized world. Both international commercial arbitration and Islamic commercial arbitration serve as critical mechanisms for dispute resolution, yet they operate within distinct frameworks influenced by different legal traditions, cultural contexts, and procedural norms. This section undertakes a detailed analysis and comparison of these systems, exploring their underlying principles, regulatory structures, procedural dynamics, and enforcement mechanisms. The aim is to highlight their strengths and limitations while providing insight into their practical applications (Bhatti, 2019).

5.1. Legal Foundations and Underlying Principles

The legal foundations of international commercial arbitration and Islamic commercial arbitration reflect the divergent values and priorities of their respective systems. International commercial arbitration operates within a secular legal framework that prioritizes party autonomy, neutrality, and procedural efficiency. Its foundational instruments, such as the New York Convention of 1958 and the UNCITRAL Model Law, provide a cohesive structure that transcends national

[27] *Id. Article 36(1,2,3).*
[28] *Id.*
[29] *Id.*

legal systems, enabling parties from different jurisdictions to resolve disputes efficiently. These instruments emphasize the importance of enforceability, ensuring that arbitral awards are recognized and executed across a wide range of jurisdictions.

In contrast, Islamic commercial arbitration is deeply rooted in Sharia law, drawing its principles from the Quran and Sunnah, alongside supplementary sources such as Ijma and Qiyas. This system places a strong emphasis on ethical conduct, justice, and reconciliation, aligning its rules and procedures with Islamic moral values. The integration of Sharia principles means that the outcomes of arbitration not only aim to resolve disputes but also to uphold religious and ethical standards. While this provides a unique moral dimension, it also introduces certain limitations, particularly when parties from non-Islamic jurisdictions are involved (Kutty, 2006).

5.2. Procedural Frameworks and Institutional Roles

The procedural frameworks of international and Islamic arbitration are shaped by their respective legal traditions, offering distinct approaches to dispute resolution. International commercial arbitration is characterized by its flexibility and adaptability. Parties have the freedom to choose the governing law, arbitral institution, and procedural rules, allowing for a tailored arbitration process that suits their specific needs. Institutions such as the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) provide detailed procedural rules that serve as a guideline while preserving party autonomy.

Islamic commercial arbitration, while also offering a degree of procedural flexibility, operates within the boundaries set by Sharia principles. For example, the selection of arbitrators in Islamic arbitration requires adherence to specific qualifications, such as knowledge of Islamic jurisprudence and a reputation for ethical conduct. Institutions like the Saudi Center for Commercial Arbitration (SCCA) and the International Islamic Centre for Reconciliation and Arbitration (IICRA) play a pivotal role in ensuring that the arbitration process aligns with Islamic values. This dual focus on procedural integrity and ethical compliance distinguishes Islamic arbitration from its international counterpart (Khoukaz, 2017).

5.3. Comparison of Applicable Laws

One of the most critical differences between the two systems lies in the determination of applicable laws. International commercial arbitration provides significant latitude for parties to select both the substantive and procedural laws governing their disputes. This flexibility allows for the resolution of disputes under a neutral legal framework, minimizing potential biases and ensuring that the arbitration process meets the expectations of all parties involved.

In contrast, Islamic arbitration requires adherence to Sharia law as the primary source of legal principles. While parties may agree on certain procedural aspects, the substantive law must align with Islamic jurisprudence, particularly in areas

such as financial transactions, contracts, and inheritance. This requirement ensures that the arbitration process remains consistent with religious values but may limit its applicability in disputes involving parties unfamiliar with or unwilling to accept Sharia-based rules (Bhatti, 2018).

5.4. Ethical Considerations in Arbitration

Ethics play a central role in shaping the practices of both international and Islamic arbitration, albeit in different ways. International arbitration relies on codes of conduct established by arbitral institutions and professional organizations. These codes emphasize impartiality, confidentiality, and the avoidance of conflicts of interest. Arbitrators are expected to adhere to high professional standards to maintain the integrity of the arbitration process.

Islamic arbitration, however, incorporates ethical considerations as an integral part of its framework. Arbitrators are not only expected to resolve disputes impartially but also to act in accordance with Islamic values, promoting fairness, reconciliation, and justice. The emphasis on moral accountability extends to all aspects of the arbitration process, from the conduct of arbitrators to the enforcement of awards. This ethical dimension enhances the credibility of Islamic arbitration in communities that prioritize religious values but may pose challenges in international contexts where secular principles dominate (Zee, 2016).

5.5. Enforcement Mechanisms

The enforcement of arbitral awards is a key factor in determining the effectiveness of any arbitration system. International commercial arbitration benefits from the widespread adoption of the New York Convention, which provides a robust framework for the recognition and enforcement of awards in over 160 countries. This global reach enhances the reliability and predictability of international arbitration, making it an attractive option for cross-border disputes.

Islamic arbitration awards, while enforceable within jurisdictions that recognize Sharia-based arbitration, face challenges in gaining recognition under the New York Convention. The religious and cultural specificity of Islamic arbitration may limit its acceptance in non-Islamic jurisdictions, particularly in cases where the award is perceived to conflict with public policy or local legal norms. This disparity underscores the need for greater harmonization between Islamic arbitration practices and international legal standards (Bhatti, 2021).

5.6. Case Studies and Practical Applications

The practical implications of these differences can be observed through case studies and real-world applications. International arbitration has been instrumental in resolving complex disputes involving multinational corporations, state entities, and international investors. Its procedural neutrality and global enforceability make it a preferred choice for high-stakes commercial disputes. For instance, the resolution of disputes under bilateral investment treaties often

relies on international arbitration mechanisms to ensure fairness and predictability.

Islamic arbitration, on the other hand, has proven effective in addressing disputes within the context of Islamic finance and commerce. The integration of Sharia principles ensures that outcomes are not only legally binding but also ethically acceptable to the parties involved. Examples include disputes related to Islamic banking, sukuk (Islamic bonds), and commercial contracts governed by Sharia-compliant terms. These cases highlight the ability of Islamic arbitration to meet the unique needs of parties seeking faith-based dispute resolution (Ribeiro & Lee, 2015).

5.7. Summary of Findings

The analysis and comparison of international commercial arbitration and Islamic commercial arbitration reveal a rich tapestry of similarities and differences, each reflecting the values and priorities of its respective legal tradition. While international arbitration offers a flexible, neutral, and globally enforceable framework, Islamic arbitration emphasizes ethical accountability, justice, and adherence to religious principles. Both systems have their strengths and limitations, making them suitable for different contexts and parties. By understanding these distinctions, stakeholders can make informed choices that align with their legal, cultural, and commercial objectives.

6. Conclusion

The evolution of arbitration as a mechanism for resolving disputes reflects its critical role in facilitating commerce, preserving relationships, and fostering legal certainty in a complex globalized world. Over the years, arbitration has gained prominence as an effective alternative to traditional litigation, offering parties a more flexible, efficient, and confidential process. This study has explored arbitration from a dual perspective, comparing the frameworks and practices of international commercial arbitration with those rooted in Islamic commercial arbitration. By addressing their similarities, differences, and unique contributions to dispute resolution, this research highlights the broader significance of arbitration in bridging legal traditions and promoting harmonization in international and cross-cultural contexts.

International commercial arbitration, grounded in conventions such as the New York Convention of 1958, has established itself as a cornerstone of transnational dispute resolution. Its structured rules, impartial procedures, and enforceable awards offer predictability and fairness to parties operating across jurisdictions. Conversely, Islamic commercial arbitration, deeply embedded in the principles of Shariah, reflects a holistic approach that prioritizes equity, reconciliation, and moral accountability. These two systems, though distinct in their origins and methodologies, share a common goal: to resolve disputes efficiently and justly.

This research underscores the need for greater dialogue and integration between

these systems to enrich the global discourse on arbitration. The analysis reveals areas where Islamic arbitration principles can contribute valuable insights, such as the emphasis on ethical standards and the preservation of communal harmony. Simultaneously, international arbitration frameworks offer practical mechanisms for standardization and enforcement, which can enhance the effectiveness of Islamic arbitration in a globalized legal landscape.

Furthermore, this study identifies challenges that warrant further attention, including the alignment of arbitration practices with domestic legal systems, the role of cultural and religious values in shaping arbitration outcomes, and the potential for greater inclusion of Islamic arbitration within international frameworks. Addressing these challenges requires a concerted effort from legal scholars, policymakers, and practitioners to foster mutual understanding and innovation in arbitration practices.

In conclusion, the field of arbitration continues to evolve as a vital tool for resolving disputes in an increasingly interconnected world. By examining its international and Islamic dimensions, this research provides a foundation for future studies and practical advancements in the discipline. It is hoped that the insights presented here will inspire further inquiry and contribute to the development of arbitration as a bridge between diverse legal traditions, fostering collaboration, fairness, and justice on a global scale.[30]

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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