RESOLVING BUSINESS CONFLICTS UNDER ARBITRATION PROCEDURES AT THE INTERNATIONAL CHAMBER OF COMMERCE

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Abstract

The International Court of Arbitration, as an autonomous body within the framework of the International Chamber of Commerce, ICC (Angeon & Callois, 2005), stands as a stalwart institution in resolving disputes arising from international trade contracts (Diemer, 2014). The study aims to delve into the intricate legal framework governing arbitral proceedings under the purview of the ICC, addressing key legal issues that emerge within this domain. The research scrutinizes the procedural mechanisms employed by the arbitral tribunal from the initiation of arbitration proceedings to the issuance of awards, elucidating their function and impacts. This research contributes to a deeper understanding of the legal intricacies surrounding arbitration within the ICC, thereby facilitating decision-making, and fostering greater confidence in the dispute-resolution process of international trade. The study, by integrating theoretical frameworks and qualitative analysis of data, found that the ICC achieved more procedural integrity, and cultivated a dependable repository of information for addressing corporate conflicts. Thus, promoting a more precise comprehension of corporate dispute resolution processes.

Keywords: Arbitration, Business Conflicts, Procedures at International Chamber of Commerce

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1. INTRODUCTION

The International Chamber of Commerce (ICC) arbitration plays a pivotal role in resolving international business conflicts overall. The ICC provides an essential mechanism for resolving international business conflicts, offering parties a fair, efficient, and enforceable means of dispute resolution in today's interconnected global economy (Saadallah, 2007).

Before embarking on the intricate process of arbitration at the ICC in business conflicts, it is essential to navigate through crucial preliminary steps (Wali, 2014). These initial phases not only set the groundwork but also ensure a smooth transition into formal arbitration proceedings. Two pivotal elements stand out in this preparatory phase: the arbitration application submitted by the plaintiff and the subsequent issuance of the task document by the arbitral tribunal. These documents, operating in tandem, serve as the cornerstone of the arbitration process, laying down the framework within which disputes will be adjudicated (Diemer, 2014).

Delving into the legal intricacies preceding the ICC arbitration, two primary considerations demand attention. Firstly, the determination of the ICC's jurisdiction to arbitrate over the dispute,

and secondly, the meticulous preparation of the arbitration application itself. Establishing the ICC's competence hinges upon factors such as the presence of an arbitration clause within the contractual agreement or a subsequent agreement between the disputing parties to resort to the ICC arbitration. The inclusion of a well-crafted arbitration clause, often recommended by the ICC itself, serves as a pivotal precondition for invoking the ICC's jurisdiction. However, if such a clause is absent, parties may still agree to the ICC arbitration through a separate arbitration agreement. Moreover, the arbitration application, a critical precursor to formal proceedings, necessitates meticulous attention to detail. From comprehensive party details to outlining the legal basis of the dispute and delineating the claims sought, the application serves as a comprehensive dossier for the arbitral tribunal. It is imperative to note that adherence to pre-arbitration procedures, such as negotiation or mediation, may precede arbitration, potentially influencing the timing and feasibility of invoking the ICC arbitration (Colletis & Pecqueur, 2005).

In essence, before delving into the arbitration arena at the ICC, meticulous attention to both the legal framework and procedural requirements is paramount. By ensuring adherence to these preliminary steps, parties can embark on the arbitration journey with clarity and confidence, laying the groundwork for a fair and effective resolution of their disputes (Khair, 1995).

The legal problems of proceeding in the ICC primarily revolve around ensuring jurisdictional competence, adhering to procedural requirements, and addressing potential challenges related to arbitration agreements and dispute resolution mechanisms.

While the research provides comprehensive insights into the preliminary steps and procedural aspects of arbitration at the ICC, there appears to be a gap in exploring the practical challenges and strategies associated with effectively navigating jurisdictional complexities and arbitration agreement discrepancies. Specifically, further investigation into how parties address jurisdictional issues in cases where arbitration clauses are ambiguous or absent from contracts could enhance understanding (Hassan, 1974). Additionally, an exploration of real-world case studies or empirical data illustrating the efficacy of the ICC arbitration procedures in resolving complex international business disputes could provide valuable insights for practitioners and scholars alike. This research gap highlights the need for empirical studies or case analyses to complement the theoretical framework outlined in the existing literature (Lacko, 2023).

The main questions arising from the provided text could include: What are the crucial preliminary steps before initiating arbitration at the ICC? What role do the application for arbitration and the task document in the arbitration process? What are the key considerations regarding the ICC's competence to handle arbitration disputes? What conditions need to be met for the ICC to accept an application for arbitration? How does the presence or absence of an arbitration agreement impact the ICC's jurisdiction over a dispute? What steps are taken if there is doubt about the ICC's competence to handle a dispute? What is the significance of the task document in the ICC arbitration proceedings? What are the key components that must be included in the task document prepared by the arbitral tribunal? How does the task document contribute to defining the scope and process of arbitration proceedings? These questions reflect the key points discussed and can guide further understanding and analysis of the arbitration process at the ICC (Wali, 2014, p. 252).

The rest of the paper is structured as follows. Section 2 reviews the relevant literature. Section 3 analyzes the methodology that has been used to conduct empirical research on the International Court of Arbitration process. Section 4 outlines and discusses key findings regarding arbitration procedures. Section 5 concludes the research.

2. LITERATURE REVIEW

The theoretical background of this study encompasses several key concepts and theories related to international arbitration and dispute resolution. It covers principles and theories related to arbitration, institutional arbitration, jurisdiction, legal frameworks, procedural requirements, and enforceability of arbitral awards. These theoretical concepts provide the framework for understanding and analyzing the mechanisms and processes involved in the ICC arbitration.

2.1. Before proceeding with the arbitration process

Before initiating the ICC arbitration, parties must confirm the ICC jurisdiction and adhere to application requirements. The process involves submitting detailed arbitration applications to the ICC Secretariat General. Pre-arbitration considerations, such as financial readiness and evidence availability, are crucial.

The task document, outlining arbitration scope and procedures, is collaboratively prepared by the arbitral tribunal and parties. It serves as the arbitration reference upon approval. Additionally, a case administration hearing establishes procedural timelines, accommodating both parties and the tribunal's needs.

This review underscores the legal complexities inherent in the ICC arbitration initiation, stressing the significance of jurisdictional confirmation, application adherence, and collaborative document preparation.

Two things are worth highlighting before proceeding with the arbitration process at the ICC: the application for arbitration filed by the plaintiff and the task document that will be issued by the arbitral tribunal. These two parallel documents represent the basic preparations that precede the initiation of arbitration procedures.

2.1.1. The legal matters of the arbitration application

Two matters must be dealt with before entering the ICC arbitration process. Yet, at the outset, the parties must ascertain the ICC's competence to adjudicate on the arbitration dispute to be submitted to the ICC while the second is the arbitration application itself, which must be filed under the conditions established by the ICC (Angeon & Callois, 2005).

To accept the application for arbitration, the arbitration court must be affiliated with the ICC in Paris and be competent to entertain the dispute by agreement of the parties to the dispute according to an arbitration clause or agreement (ICC, 2017, Article 6). Hence, the parties' acceptance of resorting to arbitration at the ICC is a condition for the establishment of its jurisdiction. The ICC has developed a model arbitration clause that it recommends to be included in international trade contracts whose parties wish to cause any disputes that may arise from it to be subject to its jurisdiction. Hence, this condition stipulates the following: "All disputes arising from this contract shall be finally settled according to the conciliation and arbitration regulation of the International Chamber of Commerce through an arbitrator or several arbitrators appointed in accordance with that regulation" (Khair, 1995, p. 45).

If the arbitration condition is not available, then the two parties to the dispute must agree to resort to the ICC through an arbitration agreement after which the application for arbitration submitted by the disputing parties or either of them will be accepted, i.e., the dispute is subject to arbitration according to the regulation set by the ICC if there is a condition that requires its jurisdiction to adjudicate in the presented dispute or that the parties agreed to resort to its arbitration (ICC, 2017, Article 6(1) and 6(2)). Hence, and in this case, the refusal or abstention of one of the parties to participate in the arbitration does not affect the establishment of the court's jurisdiction but the arbitration shall continue despite the said refusal or abstention (ICC, 2017, Article 6). Yet, the allegation of either party to the dispute of the invalidity or absence of the contract shall not result in the lack of jurisdiction of the ICC Arbitration Court to hear the dispute arising from a contract in which its jurisdiction is stipulated as long as the arbitration agreement is valid. The court remains competent to determine the rights of the parties in dispute and to adjudicate their claims and requests even in case of the absence of the contract itself or its invalidity since the arbitration clause is independent of the contract it contains (ICC, 2017, Article 6).

Yet, if there is no arbitration agreement — as apparent — between the disputing parties, or if the agreement concluded between them does not explicitly refer to the jurisdiction of the ICC following which the defendant refuses to arbitrate through the Chamber, then arbitration is not possible and the plaintiff is notified to that effect (Hassan, 1974).

In addition, if doubt arose about the competence of the ICC to consider the dispute and the arbitral tribunal approved, in principle, the permissibility of proceeding with the arbitration procedures, then the arbitration court in this case must decide on the issue of its jurisdiction first.

The commencement of the procedures for the arbitration process at the ICC shall be preceded by the delivery of the arbitration application to the Secretariat General while the Secretariat General notifies the plaintiff and the defendant of its receipt of the "application" as well as the date of this reception (ICC, 2017, Article 4(1)). Hence, the date of the commencement of arbitration shall be the date of receipt of the application by the Secretariat General (ICC, 2017, Article 4(2)) which must include basic data (ICC, 2017, Article 4(3)) being: the full name, description, address and other contact details of each party; the full name, address and other contact details of any person(s) representing the claimant in the arbitration; the legal basis for the dispute; the claims of the plaintiff requesting arbitration and the value of any of the value-limited requests as well as the estimated financial value of any other requests; the existing agreements, in particular the arbitration agreement, the documents and papers that clarify the reality and circumstances of the dispute; all data relating to the number of arbitrators and how they are selected; all relevant details and any comments or suggestions regarding the number and selection of arbitrators (Rustambekov, 2021).

In this regard, it is worth taking into account some important legal notes when submitting an application for arbitration[1]. Implementation of the arbitration clause may require resorting to some pre-arbitration procedures, such as seeking to resolve the dispute amicably through direct negotiations or conciliation via mediation by a neutral party between the two parties to the dispute in which cases the parties to the dispute must take into account the conditions and procedures required for the implementation of the arbitration clause, otherwise the door to arbitration will be closed to them (ICC, 2017, Article 10).

The commercial and non-commercial factors that affect determining the appropriate time for resorting to arbitration must be taken into account such as the financial capabilities and the extent of readiness to take arbitration procedures, the requirements and the provisions of the necessary evidence, especially if the disputed works are still in the process of implementation, as this may represent an obstacle to resorting to arbitration. Further, this also includes the extent of willingness to bring witnesses and other evidence proving his/their right to what he/they claims. Furthermore, it must also take into account the possibility of multiple arbitration procedures in case of submitting several consecutive applications for arbitration during the implementation of one contract and the consequent increase in expenses as well as lengthening of the procedures since the arbitral tribunal is obligated to prepare, at the beginning of the arbitration procedures, a document defining its mission. This document must include all the claims that the parties seek to adjudicate while new applications may not be submitted later during the arbitration process as the arbitration process will answer these requests specified in the task document exclusively (ICC, 2017, Article 23(4)) for which any new additions to the previously formulated submissions by the task document signed by the parties shall require the agreement of the disputing parties so that they can be considered. Hence, if they do not agree to add the new claims, then they will not be subject to arbitration until after new arbitration procedures are followed while the jurisdiction may then be of a new

[1] The arbitration system of 1998 was the most important amendment made to the system of ICC Arbitration in more than 20 years, and it came as a result of a series of consultations conducted at the global international level, aimed at reducing delays and ambiguity as well as filling some gaps that appeared during the Court's work (Al-Hadi, 2020).

court (ICC, 2017, Article 23). Of course, this would increase arbitration expenses as well as delay adjudicating the dispute for which the parties to the dispute must take such action upon submission of the application.

2.1.2. The task document and the schedule of procedures

The rules of arbitration at the ICC are distinguished from other rules in force at other arbitral institutions in that the rules of the Chamber include what is called the task document or the reference of the arbitral tribunal.

The task document is the document issued by the arbitral tribunal to specify the origin and scope of its task concerning the dispute presented before it. The arbitral tribunal prepares the task document after receiving the arbitration file from the Secretariat (Mohs et al., 2021); at this stage, the file contains the application for arbitration by the claimant (the Claimant), the answer to it by the respondent (the Respondent), the counterclaim by the respondent and the claimant's answer. These documents include many of the basic and preliminary elements of the arbitration case, such as the names of the litigants, the incidents of the dispute, the evidence, and the requests so that the arbitral tribunal shall have a preliminary idea of the nature of the dispute (Haddad, 2014).

The first duty that falls on the arbitral tribunal at this stage is to prepare before it starts to consider the dispute, a document defining its task. The task document shall be prepared based on the documents submitted by the parties to the dispute or in their presence and based on the last pleas submitted by them including a summary of the incidents, the dispute, requests, litigants, and issues that the tribunal will decide in conclusion.

In particular, the task document must include the following data: a) the names, titles, and capacities of the parties as well as the contact information for each of them; b) the addresses of the parties to which all communications and notifications may be made during the course of the arbitration; c) a summary of the parties' claims, the claims sought which each party is claiming, the value of any such valued claims and the estimated monetary value of any other claims as far as possible; d) identifying the points of dispute to be adjudicated; e) the full names, addresses and contact details of the arbitrators; f) the place of arbitration; g) the details related to the rules applicable to the procedures together with the reference to the powers granted to the arbitral tribunal to adjudicate such as authorization for conciliation, or according to the rules of justice and equity (ICC, 2017, Article 23(1)).

The task document is usually prepared by the arbitral tribunal in cooperation with the parties to the dispute for which the arbitral tribunal submits a preliminary draft to the parties to the dispute who have the right to comment on and express their views thereupon. A meeting may be held between the arbitral tribunal and the parties to the dispute to complete the task and establish it in its final form (Al-Desouki, 1993). Further, the arbitral tribunal and the parties must sign the task document while the arbitral tribunal must deliver the document signed by the tribunal and the parties to the court within 30 days of receiving the file. Yet, the court may, upon a reasoned request from the arbitral tribunal or on its own when necessary, extend the aforementioned period (ICC, 2017, Article 23(2)).

However, if one of the parties refuses to participate in the preparation or signature of this document, whether because he/they refused to participate in the drafting procedures, he/they refused the jurisdiction of the arbitration court to consider the dispute, or for any other reason, the document shall be presented to the court for approval (ICC, 2017, Article 23(3)). After signing the task document or having it approved by the court, no party may submit new requests that go beyond the limits of what is stated therein unless authorized by the arbitral tribunal. In this case, the arbitral tribunal must take into account the nature of these new requests and the stage reached by the arbitration process as well as the other relevant circumstances (ICC, 2017, Article 23(4)) while this document is considered the arbitration reference for the parties and the tribunal for which everyone shall follow its guidance (Haddad, 2014).

The main objective of preparing the task document is to examine the points of disagreement that must be resolved to organize the arbitration procedures accompanied by holding a meeting between the parties and the arbitration tribunal. The said meeting may lead to solving some of the dispute points or agreeing on some of the arbitration matters like the arbitration place, its language, or the applicable law if these matters have not been agreed upon in advance.

Nevertheless, the document may not include some issues of dispute between the parties, which are mostly left to the arbitral tribunal to deal with while considering the subject matter of the dispute, the subject of arbitration, as this may result in prolonging the dispute and delaying the start of its substantive consideration. For the same reason, some detailed issues related to procedural rules that regulate the consideration of arbitration are often excluded from the task document as it is preferable to leave such issues and not to determine them in the document for the arbitrators to discuss and decide on what they deem appropriate in their regard later, during the investigation of the dispute (Al-Desouki, 1993).

Upon preparation of the task document by the arbitral tribunal, or as soon as possible thereafter, and to achieve an arbitration litigation characterized by fairness, speed, and economy, the arbitral tribunal shall hold a case administration hearing to consult with the parties on the procedural measures that may be taken (ICC, 2017, Article 24(1)). During or after this meeting, the tribunal shall establish the schedule of procedures it intends to follow for the administration of arbitration taking into account the magnitude of the dispute and the appropriate times for the arbitral tribunal and the parties after which the schedule of proceedings and any amendments thereto shall be communicated to the arbitral tribunal and the parties (ICC, 2017, Article 24(2)). To ensure continued effective case administration, the arbitral tribunal may take further procedural

measures or amend the schedule for proceedings after consulting with the parties through another hearing on case administration or otherwise (ICC, 2017, Article 24(3)).

2.2. Proceeding with the arbitration procedures

The arbitration tribunal, and in the light of the task document prepared by it, will proceed with the arbitration procedures and consider the dispute taking into account the applicable rules regarding determining the incidents of the dispute and pleading in it. The arbitration tribunal, when examining the arbitration dispute, must take into account the rules and procedures included in the ICC regulation or agreed upon by the parties to the dispute. If the Chamber's regulation does not stipulate and the parties to the dispute do not agree on a specific method, then the arbitral tribunal shall consider the dispute in a manner that allows each party to express his/their defenses and arguments and it must avoid any obstacle that prevents the same. Further, in arbitration procedures, the arbitrator adheres to the factors of flexibility and appropriateness on the one hand, and speed, ease, and uncomplicatedness on the other.

As for the law applicable to the arbitration process, except for the case in which the arbitral tribunal has the powers of the authorized for conciliation (ICC, 2017, Article 21(3)), i.e., the power to decide the dispute following the principles of justice and fairness without being bound by the legal rules, then the disputing parties have the freedom to determine the law that the arbitral tribunal must apply to the subject matter of the dispute. Hence, if the parties to the dispute do not specify a specific law, then the arbitral tribunal shall apply the rules of law that it deems appropriate in this regard (ICC, 2017, Article 21(1)) while the arbitral tribunal, and in all cases, must take into account the provisions of the contract, if any, and take into account any relevant commercial customs (ICC, 2017, Article 21(2)).

Accordingly, it appears from the foregoing that the rules of arbitration of the ICC do not restrict the freedom of the parties to choose the law that governs the contract and, if the parties to the dispute do not agree on the law applicable to the dispute, then the arbitral tribunal is obligated to apply the law it deems appropriate.

According to the ICC arbitration regulation, the arbitrators are not obligated to apply certain rules of conflict of laws. They may apply the rules of conflict of laws to the legal regulation of the country in which the arbitration takes place, i.e., the place of arbitration or the other countries related to the dispute.

It happens in some cases that the arbitrators see that it is not appropriate to apply a specific national law to the subject matter of the dispute when they tend to apply the so-called international law of contracts, international custom, and traditions or *Lex Mercatoria*, that is, the international commercial law or international trade law (Barsukov & Bergen, 2023). It is worth noting here not to confuse the law applicable to the subject matter of the dispute and the procedural law that regulates arbitration procedures. As we have previously explained, the ICC arbitration regulation does not oblige arbitrators to apply a specific procedural law.

Hence, and in light of the foregoing, the arbitration process can commence following the procedures in force at the ICC up to the issuance of the award (ICC, 2021).

2.2.1. The case procedures and arbitration hearings

In the following, we present the most important legal issues that regulate the conduct of the arbitration process in terms of the procedures of the case itself, and then in terms of arbitration hearings.

The arbitration file shall be transferred to the arbitral tribunal at an agreed location and in the agreed language after payment of the due fees.

Arbitration expenses, fees, and charges: Arbitration expenses include the arbitrators' fees and potential expenses as well as the ICC administrative expenses determined by the court following the schedule in force at the time of the commencement of the arbitration (ICC, 2017, Appendix III, Article 1(4)); the experts' fees and expenses (ICC, 2017, Appendix III, Article 1(4)); fees for the appointment of arbitrators for arbitrations not subject to the International Chamber of Commerce; the ordinary expenses incurred by the parties in their defense; and the reasonable legal expenses. To commence with the arbitration process, a registration fee of $5,000 must be attached to each application. This amount is non-refundable and is considered part of the plaintiff's share of the advance payment on account of the arbitration expenses.

Referral of the file to the arbitral tribunal: According to Article 16 of the ICC Arbitration Rules of 2017, and taking into account the provisions of Article 5 of the ICC Arbitration Rules of 2017, the Secretariat General must send the file to the arbitral tribunal as soon as it is formed provided that the advance payment of the expenses requested by the Secretariat General is paid at this stage.

Place of arbitration: The place of arbitration means the place where the arbitration will take place and in which the final award must be issued. However, the parties may agree on the place of arbitration. If they do not agree, then the arbitration court before which the dispute is presented will determine it as arbitration according to the ICC has no fixed place (ICC, 2017, Article 18(1)).

The ICC Arbitration Rules differentiated between the place of arbitration (the legal seat) as a legal conception of legal effects and the place of hearings (the geographical location). Hence, the arbitral tribunal, after consultation with the parties, may hold its hearings and meetings anywhere it deems appropriate unless otherwise agreed by the parties (ICC, 2017, Article 18(2)). Further, the tribunal may also conduct its deliberations anywhere it deems appropriate (ICC, 2017, Article 18(3)). When the disputing parties search for the place where the arbitration takes place, they usually choose a neutral place suitable for taking the arbitration procedures. Choosing the place of arbitration has important legal consequences, whether concerning the arbitration procedures or the arbitration award that will be issued as well as the possibility of its implementation. Hence, consideration is taken in choosing the arbitration place that the legal

regulation adopted would make the arbitration agreement binding on the parties, so it does not allow any of them to revoke it at their own will and to allow the implementation of the award issued in the arbitration easily and without difficulties. Given that the national laws governing arbitration differ in their position concerning the two previous issues, it would be better to choose the place of arbitration in a country that is a member of an international treaty that provides for the recognition of the executive capacity of the arbitrators' awards and the recognition of arbitrators' awards in the country or countries in which the award will be enforced. In addition, when choosing the place of arbitration, it is also taken into account to check the position of the laws in force in this place regarding arbitration as a means of resolving disputes as some regulations allow their courts the power to review international arbitrators' awards issued in their territory or allow these awards to be annulled or revoked.

The regulation of the ICC does not obligate the arbitrator to apply the procedural rules of the place of arbitration. Yet, the arbitrator is free to choose the procedural rules that he deems appropriate. Nevertheless, arbitration laws can have an impact on the procedural rules that apply to arbitration (Freshfields Bruckhaus Deringer, 2021). The law of the country in which the arbitration takes place may impose the application of some procedural rules according to its applicable laws (Al-Desouki, 1993).

Language of arbitration: The same means the language used in arbitration procedures including lawsuits, pleas, hearings of witnesses, experts, etc. If the parties do not agree on the language of arbitration, then the arbitral tribunal shall determine the language or languages of arbitration taking into account all relevant circumstances, including the language of the contract (ICC, 2017, Article 20), the documents exchanged between the parties in respect of it or the dispute or the language of the state which the parties have agreed to choose as the place of arbitration as well as the applicable law and the language of the participating parties if any (Wali, 2014).

Determining the language of arbitration is one of the important matters for the parties to follow up on the progress of the arbitration process accurately and to avoid incurring expenses and effort when submitting documents and papers in the agreed language (Farhan, 2014).

As for the language used in the work of the ICC Arbitration Court, then it is English and French while if the documents submitted to the court are written in another language, then they shall be translated into one of those languages referred to in agreement with the Secretariat (Hamdouni, 2015).

In general, the organization of holding hearings in terms of their number and dates is decided by the arbitration tribunal based on its authority to conduct the arbitration case provided that the parties shall be notified of the date and place of the hearing well in advance of the date of their convening. Yet, the authority of the arbitration tribunal in this regard is subject to certain restrictions, including the will of the parties, the necessity of holding at least one hearing, making of the minutes of the hearings, the confidentiality, and the representation of the parties before the arbitral tribunal.

Accelerating the examination of the dispute: The arbitral tribunal has to consider the dispute in the shortest possible time by examining the facts of the case by all appropriate means, examining the written pleas submitted by the parties to the dispute and all the documents submitted in the case as well as hearing all the parties in presence at the request of one of them or on its own in the absence of a request. Further, the arbitral tribunal may also hear witnesses, specific experts, or any person in the presence of the parties to the dispute or otherwise in their absence provided that they are properly summoned (ICC, 2017, Article 25(1), (2), and (3)). The arbitral tribunal shall decide on the dispute submitted to it based on the documents submitted by the parties only unless one of the parties to the dispute requests a pleading hearing (ICC, 2017, Article 25(6)).

Hearings management: The arbitration tribunal manages the hearings in the presence of the parties to the dispute. Attending the investigation hearings is either personal by the parties or through their appointed representatives while they can also seek the assistance of consultants (ICC, 2017, Article 26(4)) or otherwise appoint one or more experts, define their task, accept their reports and allow the parties to the dispute to interrogate the expert or experts in the arbitration hearing as well as summoning any of the parties to the dispute during the arbitration procedures to provide additional evidence (ICC, 2017, Article 25(4) and (5)). In addition, the arbitration court may, if it is decided to hold a pleading hearing, assign the parties to the dispute to appear before it at the place and time it specifies after notifying them within an appropriate deadline in addition to informing the Secretariat of the tribunal to that effect (ICC, 2017, Article 26(1)). If any party fails to appear without an acceptable excuse, and despite being properly summoned, then the arbitral tribunal shall hold the pleading hearing while the procedures shall be deemed to have taken place in the presence of all parties (ICC, 2017, Article 26(2)).

When the arbitral tribunal decides to hold arbitration hearings, then it is necessary, as a general principle, to make minutes for these hearings in which the data on them are recorded. In all cases, the arbitral tribunal must act with impartial justice and ensure that each party has a reasonable opportunity to present his/their case (ICC, 2017, Article 22(4)).

Confidentiality of hearings: One of the principles recognized in arbitration is that the principle of its hearings is confidential and not made public. Confidentiality means limiting the attendance of hearings to the arbitral tribunal, the parties to the dispute, their representatives and assistants as well as any other person whose presence the tribunal deems necessary for the proper conduct of the arbitration, such as the clerk of the hearings, witnesses, experts, etc. Otherwise, no person may attend the hearings except with the approval of the arbitral tribunal and the parties to the dispute (ICC, 2017, Article 22(3)).

Powers of the arbitral tribunal in proving: the arbitral tribunal has wide authority to prove the dispute represented in the authority to issue

orders to any of the parties to the dispute during the arbitration procedures to submit certain documents that contribute to resolving the dispute (ICC, 2017, Article 25(5)); the authority to appoint experts, define their mission and assign them to clarify pure technical issues; the authority to summon witnesses and hear their testimonies while the statements of witnesses are subject to the discretion of the arbitral tribunal (ICC, 2017, Article 25(3)).

Examination of witnesses: The rules of arbitration at the ICC do not include special procedures for hearing witnesses while the matter is left to the discretion of the arbitral tribunal and is carried out under its supervision and control in the presence of the parties or in their absence provided that they are properly summoned (ICC, 2017, Article 25(3)), whether the request for examination of witnesses is from the arbitration tribunal or the parties to the dispute. We find that the rules have referred to the written testimony when they provided an example of the methods of case management that the arbitration tribunal and the parties can use to control time and cost which means that the written testimony is acceptable in arbitration at the ICC. The rules did not include any provisions regulating this, whether in terms of the obligation of the written testimony to be sworn while the opponent has the right to request the witness to interrogate him and to exclude the testimony when the witness does not comply with the attendance for his interrogation by the other party.

Determining the incidents of the dispute: The arbitral tribunal shall, in the shortest possible time, determine the incidents of the dispute based on the pleas of the parties and the documents they submitted as well as in the light of hearing the statements of the parties to the dispute and other witnesses and experts as well, if necessary (ICC, 2017, Article 25(3) and (4)), and following the rules of the ICC. The parties to the dispute submit their documents at the same time as submitting their written pleas.

Usually, the arbitration tribunal sets a specific date, prior to the pleading hearing, to file any new additional pleas in which the aim of the tribunal is to avoid — as much as possible — the submission of new pleas or documents during the hearing, which leads to a prolongation of the resolution of the dispute. Sudden requests are not desirable in international arbitration until the other party to the dispute is allowed sufficient opportunity to examine and respond to new elements (Salton, 2022).

Pleading: Because of the high cost of arbitration, and to relieve the parties to the dispute and their witnesses as well as their advisors, then it is always preferable not to prolong the pleading hearings and make them in the shortest possible time. Therefore, the trend in international arbitration is towards making the pleading in writing as much as possible while limiting the hearings to hearing witnesses and interrogating them if necessary. To shorten the time of the hearing and not prolong it, the arbitrator can resort to many methods including setting a specific time for each of the parties to the dispute in which he/they presents his/their defenses. The arbitrators do not prefer such limitation guided by the wish to grant the parties sufficient opportunity to defend their rights; limiting pleadings to requests and claims of significant financial implications which is subject to the discretion of the arbitrator; seeking help from the statements and written reports of witnesses as well as experts instead of hearing their statements in the hearing.

2.2.2. The arbitral award

The arbitration award is one of the most important stages of arbitration which importance is represented in the final resolution of the dispute between the parties. This award must have several provisions and characteristics as follows:

Definition of the arbitration award: The arbitration award is defined as being the final judgment issued by the arbitration court on the subject matter of the dispute which is the principle, whether the judgment is inclusive of all or part of the dispute, and whether the arbitration court accepts the requests of any of the parties in whole or rejects them all or accepts part of them and rejected the other. After the completion of the exchange of lawsuits and pleas as well as the submission of evidence, the tribunal retains the case for judgment and issues its final award that settles the dispute and ends the litigation. In addition, the final award must meet the conditions of the judgment. The arbitral tribunal may decide on some of the requests of one of the parties as a preliminary matter while delaying the decision on other requests in order to decide on them at a later time. The arbitration tribunal may issue many decisions during the procedures which include several times, partial, or procedural decisions such as the decisions set for determining the law applicable to the dispute and the language of arbitration while such decisions are not required to meet the terms of the judgment (Haddad, 2014).

Conditions of the arbitral award: Some conditions must be taken into account in the arbitral award: 1) that the award be in writing which condition is not explicitly stipulated in the rules of arbitration of the ICC although this formal condition is an essential condition for the establishment of the judgment which absence leads to affecting the content of the award and even to not knowing the content of the same; 2) the signature of the arbitration tribunal, which is a formal element, so that the award, and without the signature of the members of the arbitration tribunal, becomes just a piece of paper that has no legal value (ICC, 2017, Article 35(1)); 3) the issuance of the award by majority if the arbitral tribunal is composed of three arbitrators and if the majority is not achieved, then the head of the tribunal may decide on the ruling alone (ICC, 2017, Article 32(1)); 4) that the arbitral award should include the reasons on which it was based (ICC, 2017, Article 32(2)); 5) the approval of the award in terms of form by the court before it is signed by the arbitral tribunal (ICC, 2017, Article 34).

Issuance of the arbitral award: The arbitral award shall be issued by the majority if the arbitral tribunal is composed of more than one arbitrator. If the majority is not available, then the award shall be issued by the head of the arbitral tribunal alone while the reasons on which it is based must be mentioned in the award. Further, the arbitral award shall be considered issued at the place of arbitration

and on the date recorded therein (ICC, 2017, Article 33). In addition, the Secretariat General shall notify the parties of the award after it is signed by the arbitral tribunal provided that the parties or one of them has paid the arbitration expenses to the ICC in full (ICC, Article 35(1)).

Duration of issuance of the award: The duration of issuance of the award means the period during which the arbitral tribunal must issue the final arbitral award which is determined by Article 31 of the ICC Arbitration Rules of 2017 by six months. This period begins from the date of the last signature of the arbitral tribunal or to the parties to the dispute on the task document; or from the date on which the arbitral tribunal is notified by the Secretariat of the (Court's) approval of the task document. However, the tribunal may specify a different period based on the schedule set for the procedures and it may extend the six-month period during which the award must be issued, either at the request of the arbitrator made with reasons or on its own initiative, if necessary, as long as it deems that there is a necessity to that effect (ICC, 2017, Article 31(2)).

Notifying the parties with the award: After issuing the award, the Secretariat General shall inform the parties of the text of the same signed by the arbitration tribunal provided that this is preceded by the parties or one of them paying the full arbitration expenses to the International Chamber of Commerce. Further, the parties may be allowed extra copies of the award certified by the Secretariat General being a true copy upon request and at any time (ICC, 2017, Article 35(1) and (2)).

Filing the award: Every award issued following the rules of arbitration at the ICC shall have an original copy of the same filed with the General Secretariat while the latter and the arbitral tribunal assist the parties with the legal filing of the award (ICC, 2017, Article 35(4) and (5)).

The finality and enforceability of the award: The arbitral award is considered final while the parties are committed to accepting and implementing the same without delay. Further, they waive all means of appeal that they may legally waive (ICC, 2017, Article 35(6)). It is noted that this does not preclude some parties to the dispute from appealing to their national courts and requesting its annulment or non-execution based on national legal provisions governing the recognition of the arbitrators' awards and their binding force when the waiver of these provisions is not recognized, but to the contrary, some legal regulations permit, as, for example, in England, Switzerland, and Sweden, the parties waive the resort to methods of appeal against the arbitrators' awards (Al-Desouki, 1993).

3. RESEARCH METHODOLOGY

This study utilized the updated 2021 version of ICC arbitration rules to examine the procedures of resolving business conflicts under arbitration procedures in the ICC literature, aiming to merge theoretical perspectives for enhanced procedural rigor and knowledge development (Angeon & Callois, 2005).

Employing an inclusive methodology, the investigation considered existing literature and insights from scholars, focusing primarily on theoretical analyses and incorporating ICC arbitration rules, particularly those of 2021. Additionally, qualitative data derived from official ICC documents, obtained through both traditional and electronic sources, supplemented the analysis. By comparing this qualitative data with previous ICC rule versions, a deeper understanding of the issue was achieved.

An alternative method used in the study is the development analysis, so we examined and interpreted the development that has been carried out by new arbitration rules in ICC, aiming to resolve business conflicts.

4. RESULTS AND DISCUSSION

The findings of this study have shown that the ICC consists of the International Court of Arbitration, the International Arbitration Commission, and the Court of Arbitration. The arbitral tribunal is composed of one arbitrator or three arbitrators according to the agreement of the parties. The rules of arbitration of the ICC do not restrict disqualification of the arbitrators to the existence of circumstances that raise serious doubts about the independence and impartiality of the arbitrator but rather leave it to the party applying for the arbitrator's disqualifying to determine the reasons for his/their request. Article 14 of the ICC Arbitration Rules of 2017 did not specify a deadline for the other party and the arbitrator to state their position on the disqualification application and left it to the Secretariat General to set a deadline for them to state their positions. Article 14 of the ICC Arbitration Rules of 2017 did not establish criteria for assessing the seriousness of the reasons for the disqualification. The rules of arbitration of the ICC created the so-called emergency arbitrator to meet temporary and urgent circumstances before the arbitral tribunal is formed. The date of commencement of arbitration is the date on which the Secretariat General receives the arbitration application. The rules of arbitration at the ICC included what is called the task document or the reference of the arbitral tribunal. An arbitration award may not be issued by the arbitral tribunal until it is approved by (the court) in terms of form.

5. CONCLUSION

As we observed in the above, this study has potential limitations. The new regulations of ICC arbitration are based on interventional experiments in resolving business conflicts in international space. They are therefore subject to pragma that may have influenced our theoretical legal estimates. Thus, our discussions may be conservative every time we try to approach the ICC regulations with national arbitration perspectives. However, it is still useful for international commerce aspects.

We need to overcome these limitations in future studies, the reason behind that is we need to discuss the resolving of business conflicts process after having the ICC arbitration award; when the parties of conflict have to take the conflict to the execution stage into the national borders.

The ICC procedures for resolving disputes between corporations offer a robust framework supported by updated rules and inclusive methodologies. Through the incorporation of theoretical perspectives and qualitative data analysis, the ICC aims to enhance procedural rigor

and develop a reliable knowledge base for resolving corporate conflicts. The utilization of the 2021 version of ICC arbitration rules ensures alignment with contemporary practices, facilitating a more accurate understanding of corporate dispute resolution mechanisms. Overall, the ICC procedures demonstrate a commitment to fairness, efficiency, and effectiveness in addressing complex corporate conflicts on an international scale.

The study emphasizes the legal complexities inherent in ICC arbitration initiation and stresses the importance of jurisdictional confirmation, application adherence, and collaborative document preparation. These preparatory steps lay the groundwork for a fair, efficient, and effective resolution of international business conflicts through ICC arbitration. Moreover, the arbitral award represents the culmination of the arbitration process, providing a binding resolution to the dispute and establishing obligations for the involved parties.

The study underscores the critical preparatory steps and legal complexities involved in initiating arbitration procedures at the ICC. It emphasizes the importance of confirming ICC jurisdiction and adhering to application requirements, which involve submitting detailed arbitration applications to the ICC Secretariat General. Pre-arbitration considerations, such as financial readiness and evidence availability, are highlighted as crucial factors in this process.

Furthermore, the significance of the task document in outlining arbitration scope and procedures is underscored. This document, collaboratively prepared by the arbitral tribunal and parties, serves as a crucial reference point upon approval. Additionally, the establishment of procedural timelines through a case administration hearing is emphasized, aiming to accommodate both parties and the tribunal's needs efficiently.

The arbitral award represents a pivotal stage in the arbitration process, marking the final resolution of the dispute between the parties involved. Several provisions and characteristics define the arbitral award. The arbitral award is the conclusive judgment issued by the arbitration court, settling the dispute either entirely or partially. It encompasses the tribunal's acceptance or rejection of the parties' requests and may include preliminary decisions on certain matters. Certain conditions must be met for the arbitral award to be valid, including being issued in writing, signed by the arbitration tribunal, and containing the reasons on which it is based. Additionally, court approval in terms of form is required before the award is signed. The arbitral award is typically issued by a majority decision if the tribunal comprises more than one arbitrator. It is considered issued at the place of arbitration and must be notified to the parties by the Secretariat General. The arbitral tribunal is generally required to issue the final award within a specified timeframe, typically six months according to the rules of the ICC. This period may be extended under certain circumstances. After issuance, the Secretariat General informs the parties of the award, provided that arbitration expenses have been paid in full. Parties may request certified copies of the award from the Secretariat General. An original copy of the award is filed with the Secretariat General, with assistance provided to the parties for legal filing as necessary. The arbitral award is considered final, and parties are obligated to accept and implement it without delay. While parties may waive means of appeal, some national legal provisions allow for appeal or annulment under certain conditions.

This study recommends amending Article 14 of the ICC Arbitration Rules of 2017 by setting deadlines for the other party and the arbitrator to clarify their position on the disqualification request and to establish controls for assessing the seriousness of the reasons for the disqualification.

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