

THE LEGAL CONSTRUCTION FOR THE INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION IN RESOLVING CORPORATE CONFLICT

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Abstract

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The International Chamber of Commerce (ICC) is a private international non-governmental organization that provides its services to the international trade sectors (Wetter, 1985). Further, the ICC supervises its arm known as the International Court of Arbitration, which is an independent arbitral institution, affiliated with the ICC, which administers arbitration proceedings following the arbitration rules of the ICC but without adjudication of disputes as the adjudication of disputes is the jurisdiction of the arbitral tribunal. Yet, we have two problematic issues that the research treats: the confusion in the nomenclature and competencies between the components and units of the ICC during its practice of arbitration to settle corporate conflicts; while the second issue is that the basic elements of the arbitration process at the ICC based on its arbitration rules is not clear. Hence, the research approached these two issues in a direct presentation of the reality of arbitration at the ICC. The research emphasized the new modifications of the ICC arbitration system that resolve both above problematic issues.

Keywords: Corporate, Conflict Resolution, International Chamber of Commerce, Arbitration, Corporation Rights, Emergency Arbitrator

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1. INTRODUCTION

Arbitration is a kind of private judiciary to which the parties to the dispute resort of their own free will as a way to resolve the dispute between them and they choose their arbitrators who adjudicate the dispute in accordance with the procedures followed and the applicable law. In fact, arbitration has become a common and desirable matter for settling internal and international disputes, especially in commercial disputes and international contract disputes, instead of resorting to the judiciary when the parties to the relationship do not wish to submit to the courts of the other party.

Yet, since almost a decade of international trade contracts at present is devoid of the arbitration clause, which imposed its feasibility as a method for resolving disputes in the field of international trade, the arbitration activity has expanded and is no longer limited to free arbitration (*ad hoc*) only, but has been accompanied by the emergence of another type of arbitration, i.e., institutional arbitration, where arbitration is entrusted to bodies that conduct the arbitration process within arbitration bodies, institutions or centers that operate at the national, regional, and international levels in accordance with rules and procedures set by international agreements or the decisions establishing these bodies. One of the most important of these bodies is

the arbitration of the International Chamber of Commerce (ICC), which is a private international non-governmental organization, headquartered in Paris (Diemer, 2014).

In the same context, this research deals with the formation and work of the Court of Arbitration at the ICC in Paris, as it is one of the oldest and most important arbitration bodies in international commercial disputes which exercises arbitration functions through its specialized bodies (Colletis & Pecqueur, 2005). The ICC was founded in 1919, headquartered in Paris, as a non-governmental organization that aims to serve the international business sector by promoting international trade and investment, opening markets for goods, and the free flow of capital. Further, the Chamber has national committees in dozens of countries, serving as centers that provide the Chamber with all the information it needs related to international trade in the countries in which these committees are located. Later, the International Court of Arbitration affiliated with the Chamber was established in 1923 to become one of its most important working units (Saadallah, 2007).

The Chamber works through its various units in areas including arbitration, banking, competition, e-business, customs, trade facilitation, financial services, insurance, tax, trade policies, transportation, and logistics. Yet, within these areas, the Chamber prepares research and sets standards and guidelines that private sector companies can apply around the world. Further, the ICC includes in its membership thousands of companies and organizations from more than 140 countries including a large number of the most influential companies in the world, which represent all industrial, commercial, and service sectors.

In addition, they practice arbitration to implement the law, not to reconcile the parties to the dispute as resorting to the arbitration court is not an amicable means of settling disputes, but rather a binding means of settling disputes in light of international agreements and national laws that recognize the legal validity of the arbitral awards issued by them and give them the force of enforcement (Lalive, 1998). This is precisely what gives the ICC's arbitration court an influence in the international trade community (Angeon & Callois, 2005).

We have problematic issues regarding the confusion in the classification and competencies for components and units of the ICC when settling corporate conflicts, yet the ICC arbitration rules are not quite clear. Hence, we try here to approach these subjects in a direct presentation of the reality of arbitration at the ICC. The research emphasized the new modifications of the ICC arbitration system that resolve both above problematic issues.

Certain issues of the arbitration system were raised as key issues in the context of international corporate conflicts while referring to the ICC: What are the actual composition and powers of the Arbitration Court? What questions are to be answered for the confidentiality of the work of the Arbitration Court? Who are its determinants of the members? Yet, there is a need to distinguish it from the arbitral tribunal and the Arbitration Committee.

In fact, when trying to probe the legal system of the Court of Arbitration at the ICC, many questions arise: What is the Court of Arbitration in the ICC? And how is the formation of the arbitral tribunal? What is the mechanism for appointing arbitrators, dismissing and replacing them? What does an emergency arbitrator mean? We will try to answer these questions by presenting the components of the arbitration court and showing their relationship with the units operating at the ICC while we will do so based on the contents of the relevant legal rules and texts in addition to analyzing them together with legal opinions. Hence, and based on this methodology, we will divide the study of this subject into three topics: the first topic presents the nature and function of the Court of Arbitration at the ICC; the second topic explains the composition of the arbitral tribunal operating within the framework of the arbitration court while the third topic explains the role of the emergency arbitrator and the scope of his work.

The structure of this paper is as follows. Section 1 presents the Introduction. Section 2 reviews the literature. Section 3 presents the research methodology. Section 4 provides the research results and discusses the International Court of Arbitration. Section 5 concludes the paper.

2. LITERATURE REVIEW

The ICC provides a contemporary structure for arbitration in the corporate conflict. It supervises its arm known as the International Court of Arbitration which is an independent arbitral institution affiliated with the ICC, which administers arbitration proceedings following the arbitration rules of the ICC but without judgment of conflicts (Rustambekov, 2021).

2.1. The International Court of Arbitration

The ICC consists of several bodies¹, the most important of which is the International Court of Arbitration, which in turn supervises the formation of the arbitral tribunal, which adjudicates a particular dispute. The International Court of Arbitration was established in 1923 in the French capital, Paris, and it is the most advanced and most important body since the entry into force of the ICC Arbitration System in 1975, especially in the arbitration of disputes related to contracts and international trade. The cases presented to the International Court of Arbitration until the end of 2019 amounted to about 23,000 cases since its establishment² (Al-Hadi, 2020). The current arbitration system applied by the International Court of Arbitration entered into force in 2021³.

¹ The word "international" was added to the Court's name by a decision of the Council of the ICC in 1989 in order to better reflect the nature of the composition of the Court.

² 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.

³ ICC adopted the new version (2021) of its arbitration rules on October 6, 2020. The new version entered into force on January 1, 2021 and automatically applied to arbitration proceedings initiated after that date. The version of 2017 shall continue to apply to arbitration proceedings initiated before that date. The version of 2021 does not create major procedural mechanism, it mainly reflects the institution's desire to enhance transparency and efficiency of the arbitration proceedings.

2.1.1. Composition and powers of the International Court of Arbitration

The International Court of Arbitration is not a court exercising judicial jurisdiction. It is an administrative organization that provides its assistance and services in settling disputes submitted to the ICC through arbitral tribunals applying a system of arbitration established by the ICC. Further, the Court of Arbitration holds its meetings in Paris in its entirety at the rate of one to three times each month (Al-Desouki, 1993, p. 64), while the Court is currently composed of 176 members belonging to more than 104 nationalities and that it exercises arbitration in more than 30 countries of the world.

The ICC assigned the Court of Arbitration the task of setting its rules of procedure while the Court consists of a President, Vice-Presidents, and members and alternate members; in its work, it is assisted by the Secretariat of the Court (ICC, 2021a, Appendix I, Article 2). The President has important powers, including his power to make urgent decisions on behalf of the court, provided he informs the members of the Court in the next session about the same. In addition, the Global Council of the Chamber appoints these members of the Court for a period of three years. Upon the recommendation of the Executive Council, the membership of any member may be extended for more than three years by a decision of the Global Council of the ICC (ICC, 2021a, Appendix I, Article 3).

The Court's task is to administer and supervise arbitration trials adjudicating disputes (Mustill, 1989) through the application of the ICC Arbitration Rules. Therefore, the Court has all the powers necessary for it to carry out its work (ICC, 2021a, Appendix I, Article 1(1)) and shall make its decisions by a majority of votes, while the vote of the president or vice president shall cast in case of equality.

In the case of multi-party or multi-contract proceedings, the new Rules of 2021 allow the arbitral tribunal, in certain circumstances, to join third parties in the proceedings even after the arbitrators have been appointed⁴. Further, the new Rules also decide that several arbitrations may be joined into a single procedure⁵.

The pursuit of efficiency of the arbitration proceedings invited the possibility for the arbitral tribunal to decide that hearings be held remotely, especially by videoconference⁶. Such practice, which reduces time and costs, becomes more employed in the ICC arbitration proceedings⁷.

⁴ "Any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party accepting the constitution of the arbitral tribunal and agreeing to the Terms of Reference, where applicable. In deciding on such a Request for Joinder, the arbitral tribunal shall take into account all relevant circumstances, which may include whether the arbitral tribunal has prima facie jurisdiction over the additional party, the timing of the Request for Joinder, possible conflicts of interests and the impact of the joinder on the arbitral procedure. Any decision to join an additional party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that party" (ICC, 2021a, Article 7.5).

⁵ Paragraph (b) of Article 10 of Appendix I of the ICC Arbitration Rules for the year 2017: "The Court may, at the request of a party, consolidate two or more arbitrations pending under the Rules into a single arbitration, where: ...; b) all of the claims in the arbitrations are made under the same arbitration agreement or agreements; ...".

⁶ Paragraphs (1) of Article 26 of the ICC Arbitration Rules for the year 2021: "The arbitral tribunal may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or other appropriate means of communication".

⁷ The revision repeats the procedural case management techniques detailed in Appendix IV (f) of the ICC Arbitration Rules of 2021: "Using telephone or

2.1.2. Confidentiality of the work of the International Court of Arbitration

The work of the Court of Arbitration is confidential while its sessions are limited to its members and the employees of the General Secretariat. The President of the Court may, in exceptional cases, invite other persons. Further, the documents submitted to the Court or issued by it during the procedures it conducts shall not be delivered except to the members of the court, the General Secretariat, and the persons authorized by the President to attend the sessions of the arbitral tribunal (ICC, 2021a, Appendix II, Articles 1(2), 1(3), and 1(4)). The President of the Court or its Secretary General may authorize the researchers who carry out work of an academic nature to view the arbitration awards and documents of general interest to the exclusion of pleas, statements, and documents submitted by the parties in the framework of the arbitration procedures. This permission may not be granted unless the beneficiary undertakes to observe the confidentiality of the documents, he has access to and refrain from publishing the same before submitting the contents of the publication to the General Secretariat for approval (ICC, 2021a, Appendix II, Articles 1(5) and 1(6)).

2.1.3. Determinants of the members of the International Court of Arbitration

The President and members of the Court constitute what is known as the arbitral tribunal, which we will differentiate later from the tribunal of arbitration. The President of the Court, his deputies, members, and the General Secretariat of the Court are prohibited from serving as arbitrators or advisors to one of the parties in the cases submitted for arbitration at the ICC due to the special responsibilities entrusted to them by the ICC arbitration system. In addition, the Court may not appoint one of its other members as arbitrators in the arbitration trials, but one or more of the parties to the case may propose assigning them these tasks or under any other procedure agreed upon by the parties, provided that the Court agrees to that effect (ICC, 2021a, Appendix II, Articles 2(1) and 2(2)). If the President of the Court or one of his deputies, any other member of the arbitral tribunal, or the General Secretariat has any relationship to a case entertained before the Court, then the Secretary General of the Court must be informed of that as soon as he becomes aware of this relationship (Mohs et al., 2020). The arbitrator concerned shall refrain from attending and participating in the sessions and discussions of the arbitral court or participating in its decisions regarding this case while he shall not be informed (that is to the arbitrator concerned) of any information or documents related to this case that has been submitted to the arbitral court (ICC, 2021a, Appendix II, Articles 2(3), 2(4), and 2(5)).

The innovation of rules of 2021, in order to stimulate transparency of arbitration proceedings, the new rules provide for better mechanisms, in

video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat of the Court".

particular with regard to conflict of interest, independence and impartiality of arbitrators, for example: the parties are required to inform the General Secretariat, the arbitral tribunal and the other parties about the any financing agreement established for the purposes of the arbitration proceedings with a third party, for they would have a financial interest in the resolution of the dispute⁸; the parties become obligated to inform the General Secretariat, the tribunal and the other parties of any change of counsel, to let the arbitral tribunal take the appropriate procedures to avoid the situation of conflict of interest, including by excluding new party representatives⁹; the new rules defend the neutrality of the nationality of the arbitrators¹⁰, declaring that none of the arbitrators shall be of the same nationality as one of the parties, to be noted here that the emergency arbitrator mechanism, which was invented in the 2012, is not applicable in this area (Freshfields Bruckhaus Deringer, 2021).

2.1.4. Activities of the International Court of Arbitration

The International Court of Arbitration monitors the work of the arbitral tribunals conducted, through its periodic meetings. Further, the usual administrative business of the Court shall be entrusted to the Secretary-General, assisted by a General Counsel and several advisors, the number of whom may be up to six.

The most important tasks of the International Court of Arbitration are: 1) ensuring the existence of an arbitration agreement between the disputants in accordance with the rules (ICC, 2021a, Article 13(6)); 2) referral of the arbitral award to the arbitral tribunal (ICC, 2021a, Article 36(4)); 3) the appointment of the arbitrator chosen by the disputing parties, and the appointment of the arbitrators, or one of them in the event that one of the parties is not named (ICC, 2021a, Article 14(3)); 4) adjudication of motions for the arbitrators' recusal (ICC, 2021a, Article 14(3) and Article 3(2)); 5) specifying the venue where the arbitration shall take place if the parties have not agreed to it (ICC, 2021a, Article 18(1)); 6) approval of the "arbitrator's mission document" prepared by the arbitrator or arbitrators prior to the commencement of consideration of the dispute (ICC, 2021a, Article 23(3)); 7) considering the request to extend the period during which the arbitral tribunal must issue its award and other periods (ICC, 2021a, Article 31(2) and Article 39(2)); 8) checking the draft arbitration award in terms of substance and approving it in terms of form before pronouncing it

(ICC, 2021a, Article 34 and Appendix II, Article 6); and 9) determining fees, administrative expenses, arbitrators' fees and other expenses of the arbitration trial (ICC, 2021a, Article 37(2) and Article 38).

2.1.5. Distinguishing the International Court of Arbitration from the arbitral tribunal and the Arbitration Committee

The convergence of nomenclature creates confusion. The International Court of Arbitration differs from the International Arbitration Committee as the latter is one of the many committees of the Court of Arbitration working under its umbrella and aims to promote the work of the International Court of Arbitration in settling international disputes. Further, it also works to study the legal aspects of arbitration and other ways of settling disputes of an international commercial nature¹¹. In other words, the Arbitration Committee is one of the arms of the Court of Arbitration, working in the field of managing and developing the resolution of international trade disputes but it does not consider disputes to decide them and is not directly related to the arbitral tribunals constituted by the Court.

The Committee consists of a president and at least two members, headed by the President of the Court. The President may, in his absence, or at his request, assign one of his deputies, or, under exceptional circumstances, assign another member of the Court to take his place in chairing the Committee. Further, the Court of Arbitration appoints the other two members of the Committee from among the Vice-Presidents or from among its other members and shall, at each meeting, select the members assigned to attend the meetings of the Committee to be held before the next meeting of the Court with all its members (ICC, 2021a, Appendix II, Article 4(2) and 4(3)). The Committee meets at the invitation of its chairman while the quorum is considered satisfied by the presence of two members and it takes its decisions unanimously. The arbitral tribunal determines to the Committee the type and scope of the decisions it may take (ICC, 2021a, Appendix II, Articles 4(4) and 4(5)). In addition, the Committee shall submit its decisions to the Court of Arbitration with all its members in its first session while if the Committee is unable to issue a decision or decides to refrain from issuing it, then it shall refer the matter to the Court of Arbitration with all its members in its first session with making any suggestions it deems appropriate (ICC, 2021a, Appendix II, Article 4(5)).

2.2. The arbitral tribunal

The Court of Arbitration does not consider disputes through its general body, but rather confirms the arbitrators chosen by the parties or appoints these arbitrators if the parties cannot agree on their selection¹². Therefore, the Court operates or supervises the formation of the arbitral tribunal, whether constituted of one or three arbitrators, following the provisions of the ICC system, taking into account the arbitrators' nationality and place of

⁸ "In order to assist prospective arbitrators and arbitrators in complying with their duties under articles 11(2) and 11(3), each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defenses and under which it has an economic interest in the outcome of the arbitration" (ICC, 2021a, Article 11(7)).

⁹ "1. Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation; 2. The arbitral tribunal may, once constituted and after it has afforded an opportunity to the parties to comment in writing within a suitable period of time, take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation, including the exclusion of new party representatives from participating in whole or in part in the arbitral proceedings" (ICC, 2021a, Article 17).

¹⁰ "Whenever the arbitration agreement upon which the arbitration is based arises from a treaty, and unless the parties agree otherwise, no arbitrator shall have the same nationality of any party to the arbitration" (ICC, 2021a, Article 17(2)).

¹¹ <https://iccwbo.org/>

¹² "One 'eternal verity' is, however, immediately apparent. Just as there does not exist an ideal arbitration clause suitable for every contract, neither does there exist any arbitrator suitable for every arbitration" (Bond, 1990, p. 3).

residence or other relations with the countries to which the parties or other arbitrators belong (Al-Desouki, 1993). This means that the arbitral tribunal is an arm of the Court of Arbitration. The name of the arbitral tribunal constituted by the Court of Arbitration may be confused with the name of an ICC body. ICC bodies are separate units from the Court of Arbitration. Hence, we address hereunder the composition of the arbitral tribunal within the framework of the ICC by clarifying the composition of the arbitral tribunal, appointment, recusal, and replacement of arbitrators as well as highlighting the emergency arbitrator.

2.2.1. Formation of the arbitral tribunal

The ICC has set a general framework for the formation of the arbitral tribunal, i.e., it is a system that establishes a prior mechanism for selecting and confirming the arbitral tribunal. The content of this system is not necessarily compatible with the conditions established by national arbitration laws regarding the appointment or confirmation of arbitrators in an arbitral tribunal¹³.

The arbitral tribunal is composed of one or three arbitrators according to the parties' agreement. If the parties do not agree on the number of arbitrators, then the Court shall determine the number of arbitrators. The parties' agreement may be included in the arbitration agreement or the arbitration clause included in the original contract, meaning that the parties may agree on the number of arbitrators before the outbreak or aftermath of conflict (ICC, 2021a, Articles 12(1) and 12(2)). Though the arbitration rules refer to the power of the parties' will to determine the number of arbitrators (ICC, 2021a, Article 12(2)), their will is restricted to choosing between one or three arbitrators, and this is confirmed by the text of Article 12(1) of the ICC Arbitration Rules of 2021, which states that: "The disputes shall be decided by a sole arbitrator or by three arbitrators". Hence, the choice of the parties is between having one or three arbitrators in their dispute while they have no authority to choose two, four, or five arbitrators but this is not considered a restriction of the will of the parties because the number of arbitrators according to the arbitration rules of the ICC is consistent with the provisions of the national arbitration laws and the institutional arbitration rules as the number of arbitrators is usually individual and it is rare to exceed three. If the parties do not agree on the number of arbitrators, the formation of the arbitral tribunal shall be referred to the Court and the principle is that it shall be composed of one arbitrator, taking into account the interests of the arbitration parties in reducing the costs of arbitration and speeding up the settlement of the dispute (ICC, 2021a, Article 12(2)). However, it is necessary to balance the interests of the parties in reducing the costs of arbitration and speeding up the settlement of the dispute on the one hand, and achieving justice¹⁴ in the case of major disputes that require a variety of expertise,

whether legal or commercial to decide on them, on the other hand (Wali, 2014). Therefore, the arbitration rules of the ICC authorize the formation of the arbitral tribunal by three arbitrators if the nature of the dispute so requires (ICC, 2021a, Article 12(2)).

2.2.2. Procedures for appointing, recusal and replacing of arbitrators

The procedures for appointing arbitrators under the arbitration rules of the ICC are similar to the rules for the appointment of arbitrators in national laws, but the General Secretariat of the Court assists the parties in the appointment or completing it. The principle is the parties' freedom to choose the arbitrators for which the arbitration applicant (the plaintiff) names the arbitrator he/it chose in the arbitration request while the one against whom arbitration is requested (the defendant) names an arbitrator on his/its part in his/its reply made to the request.

Since the arbitral tribunal may consist of one or three arbitrators, then and in the case of a single arbitrator, the opportunity is first given to the parties' agreement to nominate and confirm him by the court. The applicant for arbitration may name an arbitrator in his/its request and the applicant against him/it agrees to him/it in his/its reply, so here the named arbitrator is the appointed arbitrator. It is not usually imagined that the parties will agree on the sole arbitrator in this way, so a period of 30 days has been set, which is the period for the respondent to submit his/its reply in terms of the sole arbitrator or during the additional period that may be granted by the Secretariat and if the parties cannot agree on the sole arbitrator, then the Court appoints him (ICC, 2021a, Article 12(3)).

But if the arbitral tribunal will be composed of three arbitrators, then each party shall name an arbitrator, whereby the applicant for arbitration appoints an arbitrator to be chosen by him/it in the arbitration request, and the person against whom the arbitration is sought shall name an arbitrator in his/its reply (ICC, 2021a, Article 12(4)), and if there are multiple plaintiffs or multiple defendants, the multiple plaintiffs shall be considered as one arbitration applicant who shall agree on one arbitrator from their side, and the multiple defendants shall be considered one party and they shall name one arbitrator on their behalf (ICC, 2021a, Article 12(6); Wali, 2014, p. 256). So that one of the parties does not cause a delay in the arbitration process by delaying the appointment of an arbitrator on his/its part, the Secretary General shall appoint the arbitrator after the expiry of the opportunity for his appointment by the concerned party, that is, after submitting the arbitration request without naming an arbitrator, and after the expiration of the deadline for submitting the reply by the respondent (ICC, 2021a, Article 12(2) and 12(3)).

After appointing two arbitrators for the parties, whether they are appointed by the parties or by the Court, the third arbitrator who will occupy the position of the president of the tribunal is chosen by agreement of the parties or by agreement of the two arbitrators chosen from the parties to the dispute. However, if the appointment of the third arbitrator is not agreed upon within 30 days from the date of confirmation or appointment of the

¹³ "There may still be a few countries in the world where legislation or jurisprudence requires that the arbitrators be named in the arbitral clause" (Bond, 1991, p. 4).

¹⁴ The actual arbitrations are necessarily compound to require sole arbitrator who can manage the arbitration process in every sense of the term (Wetter, 1985).

other arbitrators or otherwise during any period agreed upon between the parties or specified by the “Court”, then the Court shall appoint the third arbitrator (ICC, 2021a, Article 12(5)). Further, if an additional party joins and the dispute is before three arbitrators, the additional party may participate with the plaintiff or with the defendant in nominating an arbitrator to confirm him (ICC, 2021a, Article 12(7)).

As for the arbitrators’ recusal, and contrary to national arbitration laws and many institutional arbitration rules, the rules did not restrict the arbitrators’ recusal to the existence of circumstances that raise serious doubts about the arbitrator’s independence or impartiality. Rather, they left it to the party requesting the arbitrator’s recusal to determine the reasons for his/its request as follows:

Each of the parties may request the recusal of an arbitrator for reasons indicated in his/its request. The recusal request is submitted to the General Secretariat in the form of a written memorandum specifying the facts and circumstances on which the recusal request is based, whether the recusal request is based on the absence of impartiality, independence, or otherwise (ICC, 2021a, Article 14(1)).

The recusal request must be submitted by one of the parties either within the 30 days following his/its notification of the arbitrator’s appointment or confirmation by the arbitral tribunal or within the 30 days following the date on which he/it became aware of the facts and circumstances on which his/its request is based if this date is later than the aforementioned notification, otherwise, the request shall not be accepted (ICC, 2021a, Article 14(2)).

The arbitral tribunal decides on the acceptance of the recusal request, and at the same time on the subject matter of the request if necessary, after the General Secretariat has provided the opportunity for the arbitrator to be recused and the parties and other members of the arbitral tribunal, if any, to submit their observations in writing within an appropriate period (ICC, 2021a, Article 14(3)).

We note here that Article 14 of the ICC Arbitration Rules of 2021 did not specify deadlines for the other party and the arbitrator to state their position on the recusal request and left the matter to the Secretary-General to set a deadline for them to state their positions. In addition, it also did not set controls to assess the seriousness of the reasons for the recusal.

As for the replacement of arbitrators; Article 15 of the ICC Arbitration Rules of 2021 regulates the provisions for the replacement of arbitrators in cases where the arbitrator’s task ends during the arbitration proceedings, as follows: The arbitrator shall be replaced by another if he dies or the Court accepts his resignation or otherwise a request for his recusal is made or that the arbitrator shall be replaced by another if the Court finds that the arbitrator is unable to perform his duties due to a legal or actual impediment or otherwise that he is not performing his function following the rules or on the specified dates. If the Court decides to apply the preceding paragraph based on the information available to it, then it shall decide on the matter after the Secretary-General informs of that information in writing to the concerned arbitrator, the parties, and the rest of the members of the arbitral tribunal, if any, provided that they can

submit their observations in writing and within an appropriate period; when replacing an arbitrator with another, the Court shall have the discretion to determine the extent to which the original procedures for appointing the arbitrators have been followed. Further, the new arbitral tribunal shall decide, following its reconstitution, and after inviting the parties to express their observations, whether and to what extent the procedures previously taken shall be considered (ICC, 2021a, Article 15(4)). After closing the pleading, the Court may decide to continue the arbitration by the remaining arbitrators instead of replacing an arbitrator who has died or has been dismissed from the court, if it deems it appropriate, taking into consideration the opinions of the remaining arbitrators, the opinions of the parties and all other factors that it deems relevant to the decision (ICC, 2021a, Article 15(5)).

2.3. The emergency arbitrator

The emergency arbitrator is the natural person chosen at the request of one or both of the parties to the dispute who is entrusted with a set of competencies and powers granted to him to issue temporary or precautionary measures to face temporary and urgent emergency circumstances that cannot be delayed, before the arbitral tribunal is formed in its final form but without prejudice to the origin of the dispute or the nature of the right subject of the dispute, that is, the emergency arbitrator does not finalize the dispute between the two parties, but its main purpose is to bridge the gap between the period of the dispute until the formation of the arbitral tribunal in its final form (Sayed, 2015).

The role of the emergency arbitrator in the Court is similar to the role of the summary judge for urgent matters in the national judiciary, knowing that the emergence of the emergency arbitrator whose main objective is to keep the parties to the dispute away from resorting to the state’s judiciary before the formation of the arbitral tribunal and to achieve the principle of confidentiality in settling disputes, especially in international trade disputes (Sayed, 2015, p. 672). Accordingly, the emergency arbitrator has the authority to take measures and issue orders, which are implemented until the arbitral tribunal is formed in its final form, and therefore this person has powers and authorities that are no less important than the authority of the summary judge.

2.3.1. Appointment and recusal of the emergency arbitrator

The party wishing to appoint the emergency arbitrator must submit a request to take urgent temporary or precautionary measures to the General Secretariat of the ICC. The request must be submitted before the General Secretariat sends the arbitration file to the arbitral tribunal (ICC, 2021a, Article 29(1)). It is necessary to provide sufficient copies of the request to each of the parties to the dispute, the emergency arbitrator, and the General Secretariat (ICC, 2021a, Appendix V, Article 1(2)) and provided that the request includes reasons for issuing temporary emergency measures. The President of the Court shall appoint the emergency

arbitrator within two days from the date of receipt by the General Secretariat of the request to take urgent measures (ICC, 2021a, Appendix V, Article 2(1)). The short period here is commensurate with the emergency nature of the required procedure. Thereafter, the General Secretariat shall notify the parties about his appointment while the file, communications, and any other documents done between the parties shall be sent to the arbitrator together with a copy to the other party and the General Secretariat. Further, a copy of any written communication addressed by the emergency arbitrator to the parties shall be sent to the General Secretariat (ICC, 2021a, Appendix V, Article 2(3)) and the emergency arbitrator must remain impartial and independent of the parties in addition to dealing with the parties based on respect of the right of defense for each party according to the principle of equality (ICC, 2021a, Appendix V, Article 2(4)). Further, the potential emergency arbitrator must sign, before his appointment, a declaration stating his acceptance to take the measures required of him as well as his impartiality and independence, provided that the General Secretariat provides the parties with a copy of his acknowledgment (ICC, 2021a, Appendix V, Article 2(5)).

As for the emergency arbitrator's recusal; an application for his recusal must be submitted within three days of the party requesting the recusal receiving a notification of the appointment of an emergency arbitrator, or from the date of his knowledge of the facts and circumstances on which his recusal is based, if this date is later than the receipt of the aforementioned notification (ICC, 2021a, Appendix V, Article 3(1)). The Court shall decide on the recusal request after allowing an opportunity for the arbitrator and any party to defend or comment on anything within the recusal request within an appropriate period (ICC, 2021a, Appendix V, Article 3(2)) for which the matter shall stand to be a deficit if it does not specify the period for the emergency arbitrator and the other party to express their defense and comments. Further, regarding the place in which the arbitration takes place when appointing an emergency arbitrator, then it is the place agreed upon between the parties as the seat of arbitration. In the event of disagreement between the parties, the President of the Court shall appoint the place of the arbitration proceedings before the emergency arbitrator without prejudice to the text of Article 18(1) of the Rules (ICC, 2021a, Appendix V, Article 4(1)). In addition, meetings may be held to conduct the procedures with an emergency arbitrator in the presence of the parties in any place that the arbitrator deems appropriate to hold the sessions or by using the means of modern technologies and communications such as video conference, telephone or via the Internet and other modern communication technologies to transmit sound and image anywhere in the world (ICC, 2021a, Appendix V, Article 4(2)) as is consistent with the philosophy of emergency arbitration in speed and flexibility.

2.3.2. Actions of the emergency arbitrator

The emergency arbitrator must set a timetable for the conduct of his procedures in the shortest time until issuing his decision in the form of an order

(ICC, 2021a, Appendix V, Article 5(1) and Article 29(2)). Further, he must commit himself to conducting the sessions and taking the appropriate measures required of him within the request in an appropriate manner and to act with impartiality and integrity as well as to provide an actual opportunity for each party to present his/its case (ICC, 2021a, Appendix V, Article 5(2)). The arbitrator is the one who decides the issue of accepting the request to take urgent measures and also decides his competence regarding taking orders for temporary and emergency measures (ICC, 2021a, Appendix V, Article 6(2)). The President of the Court may extend this period according to a reasoned request from the emergency arbitrator or on his initiative if the President so decides (ICC, 2021a, Appendix V, Article 6(3) and 6(4)). When issuing the order, he must send a copy of it to the parties and the General Secretariat by any means of modern technologies and communication that ensure rapid receipt of the order (ICC, 2021a, Appendix V, Article 6(5)). Nevertheless, the order issued by the emergency arbitrator regarding the issuance of temporary and urgent measures shall not be binding on the parties in the following cases (ICC, 2021a, Appendix V, Article 6(6)): when the president terminates the emergency arbitrator's procedures or if the General Secretariat does not receive the arbitration request from the applicant within a period of 10 days from receiving the request for measures summary unless the emergency arbitrator decides that it is necessary to extend this period; when the Court accepts the request for the emergency arbitrator's recusal; when the arbitral tribunal has rendered its final judgment on the dispute; or upon withdrawal of all applications or termination of arbitration before a final judgment is issued.

With all of the foregoing, the arbitrator has the right to amend, terminate, or nullify the order based on a reasoned request from one of the parties, provided that it is submitted before the file is sent to the selected arbitral tribunal in its final form (ICC, 2021a, Appendix V, Article 6(8)).

The emergency arbitrator's arbitration is not free. Article 7 of Appendix V of the ICC Arbitration Rules of 2021 included the amounts to be paid by the applicant to choose the emergency arbitrator with the possibility of increasing or decreasing them by the president of the court, taking into account certain considerations including the nature of the case and the volume of work performed by the emergency arbitrator (ICC, 2021b). The expenses of the procedures done before the emergency arbitrator shall be determined upon the issuance of the order with an indication of the party that bears them or the percentage of each party bearing these expenses (ICC, 2021a, Appendix V, Article 7(3)). Such expenses include the administrative expenses of the ICC, the arbitrator's fees and expenses, reasonable legal expenses, and any other expenses incurred by the parties for the conduct of the proceedings before the emergency arbitrator.

Finally, Article 8 of Appendix V of the ICC Arbitration Rules of 2021 gave a general authority to the President of the Court to take any decision he deems appropriate regarding the conduct of emergency arbitrator procedures for which no special provision was made. It is noted that the rules of the ICC have identified only one emergency arbitrator and we believe that the reason is that this arbitrator is tasked with taking urgent and

emergency interim measures without having the purpose of settling the dispute, and even that these measures and procedures taken by the emergency arbitrator are not yet binding after the arbitral tribunal is formed and performs its duties (ICC, 2021a, Appendix V, Article 7(4)).

3. RESEARCH METHODOLOGY

In conducting the literature review on resolving corporate disputes under ICC arbitration rules, this study adopted the new version of 2021, whereby the objective is to offer current standing through a theoretical merger, such that the examination process improves the procedural rigor and develops a reliable knowledge base for doctrines (Angeon & Callois, 2005).

The examination into legal construction for the ICC Arbitration in resolving corporate conflict introduced an inclusive methodology. In addition to reviewing standing literature, with works by authors, perceptions from scholars who have addressed related observations have been fundamental. However, the study merely relies on theoretical studies. It integrates ICC arbitration rules. Notably, the rules of 2021 (after the late amendment) are evidentially explained. Alongside this, qualitative facts are composed through official documents of the ICC. This qualitative data was collected through traditional and electronic references. By comparing qualitative data with the precedent version of ICC rules, a more accurate recognition of the issue developed.

4. RESULTS AND DISCUSSION

The results of this study have shown that the new rules, relating to the construction of the ICC Arbitration positively affect resolving corporate conflict, which is consistent with studies that determined that ICC rules are the most significant regulation to resolve conflicts in international business. Furthermore, the study findings have indicated that the ICC construction has a better influence on doing the job (Salton, 2022, p. 81).

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Moreover, the findings indicated that the new version of the ICC rules automatically applied to arbitration proceedings initiated after January 1, 2021, meanwhile, the version of 2017 continued to apply to arbitration proceedings initiated before that date (the new rules do not invent major mechanisms, as was the case in previous versions). Moreover, the study findings on the ICC body indicate that it should be sufficient for the institutional arbitration to reach an agreement of the disputing parties, to resort to one of its bodies, with a precondition set in the contract or with a subsequent stipulation. Thus, the body will then undertake the arbitration according to the rules and procedures contained in its rules and regulations in a well-known manner.

5. CONCLUSION

Earlier in 2021, the ICC updated its rules to reflect the impact of the continued rise of arbitration in the international business conflict. The ICC added provisions relating right to international arbitration and its Court's capacity to appoint arbitrators notwithstanding the parties' covenant, arranged its governing law when resolving conflicts, and provided more insight into the ICC's internal procedures.

The ICC provides a modern framework for international arbitration in the world trade space. Further, the International Court of Arbitration is an effective arm in this regard where disputes are settled according to advanced techniques and systems for dispute resolution backed by the recognition of national laws and international agreements in a time of economic globalization in which trade exchanges between different regions prevail.

The International Court of Arbitration of the ICC will continue to maintain the independence of its work with binding effect and will continue to maintain open possibilities in its decisions as it does not adopt a system of case law while it leaves its arbitral tribunals with great freedom to perform their work as their decisions take into account the unique factors of each dispute brought before it.

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